

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO D.K.W.N., I.C.J., AND
J.C.J., MINORS.

No. 55395

CHERYL L. W.,
Appellant,
vs.
STATE OF NEVADA DEPARTMENT
OF FAMILY SERVICES,
Respondent.

FILED

NOV 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER RESOLVING MOTIONS AND
ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order terminating appellant's parental rights as to the minor children. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

As an initial matter, on July 19, 2010, respondent filed a motion to strike appellant's supplemental appendix and portions of appellant's reply brief. Appellant opposes the motion and has filed a countermotion to strike and seeks sanctions against respondent. No opposition to appellant's countermotion has been filed. Having considered the parties' arguments, we grant respondent's motion to strike those documents from appellant's supplemental appendix that were not filed in the district court. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981). Thus, we direct the clerk of this court to strike attorney Robert L. Langford's declaration from appellant's supplemental appendix, filed on July 2, 2010, as well as Exhibits A, B, C, D, and E, to the declaration.

Regarding the parties' requests to strike portions of the other party's briefs, we deny those requests. In considering the merits of this appeal, we have disregarded any arguments that address matters that are not properly a part of the district court record. Additionally, we deny appellant's July 27, 2010, motion for sanctions against respondent.


We now consider the merits of this appeal. Having considered the parties' appellate arguments and the appellate record, we conclude that the district court abused its discretion in refusing to allow appellant's counsel to make a record of the reasons why counsel was not prepared for the termination hearing. Cf. Dettloff v. State, 120 Nev. 588, 97 P.3d 586 (2004) (providing, in the context of criminal cases, that a district court's refusal to allow a defendant to make an offer of proof is reviewed for an abuse of discretion); Burgeon v. State, 102 Nev. 43, 714 P.2d 576 (1986) (explaining that when a party makes an offer of proof, such information allows the district court the chance to modify or change its ruling in light of the proof given and provides a complete record for this court's review). In prior cases, we have identified the essence of an abuse of discretion in the lack of reasons or grounds for the district court's action. Carson City v. Lepire, 112 Nev. 363, 366, 914 P.2d 631, 634 (1996) (relying on City Council v. Irvine, 102 Nev. 277, 280, 721 P.2d 371, 372-73 (1986)).


We further note that parents' fundamental liberty interest in the care and custody of their children is entitled to certain due process rights, even when the parents have lost temporary custody of their children to the state. Santosky v. Kramer, 455 U.S. 745, 753-54 (1982). When a party seeks to terminate this fundamental liberty interest, the parents must be provided with fundamentally fair procedures. Id. Indeed, we have recognized that the termination of parental rights is "tantamount

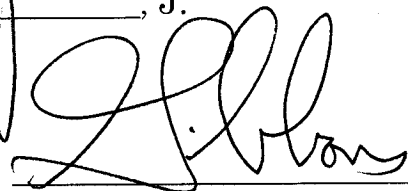
to imposition of a civil death penalty.” Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1423, 148 P.3d 759, 763 (2006).

Here, the district court, without explanation, refused to hear appellant’s counsel’s reasons and thereby deprived this court of a complete record. Absent such a record, we cannot conduct a proper review of the issues. Because the district court acted arbitrarily, the mother’s due process rights to a fair trial were violated. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, J.
Saitta


_____, J.
Cherry


_____, J.
Gibbons

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Robert L. Langford & Associates
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk

¹Because we are reversing and remanding this matter to the district court for further proceedings, we need not reach the parties’ remaining arguments.