IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO M.C., A MINOR.

PARIS C.,
Appellant,
vs.
MICHELLE R.D.,
Respondent.

No. 58070

FILED

JUL 03 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order terminating appellant's parental rights to a minor child. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

The underlying action arose after respondent filed in the district court and served appellant with a petition to terminate appellant's parental rights as to the parties' minor child. The district court record reveals that appellant submitted documents to the district court for filing in response to the termination petition, but the district court clerk rejected the documents and returned them to appellant unfiled.[1] Based on

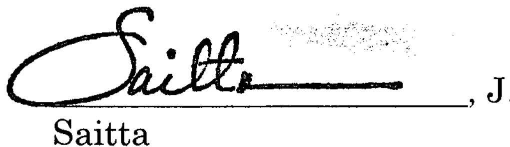
[1]The documents that appellant submitted for filing were not a part of the district court record. This raises a concern as to whether the district court clerk ignored proper procedural rules for receiving and documenting papers submitted to the district court by proper person litigants. See Whitman v. Whitman, 108 Nev. 949, 951, 840 P.2d 1232, 1233 (1992) (reiterating that it is a gross dereliction of duty for the district court clerk to return documents unfiled to a party when the proper procedure to follow is to stamp the documents as received, retain the unfiled documents in the district court record, and notify the submitting party by letter of any perceived deficiencies).

appellant's attempt to submit documents to the district court, the district court judge found that appellant had made an appearance in the action. Thereafter, respondent served appellant with a notice that she intended to take a default, pursuant to NRCP 55(b)(2), unless appellant responded to the petition within three days. Appellant did not respond. The district court subsequently held an evidentiary hearing at which only respondent and her husband appeared and testified. After a clerk's default was entered on the record, the district court entered its written order terminating appellant's parental rights, which was effectively a default judgment. This appeal followed.

We have held that "[w]ritten notice of application for default judgment must be given if the [opposing party] has appeared in the action." Durango Fire Protection, Inc. v. Troncoso, 120 Nev. 658, 661, 98 P.3d 691, 693 (2004) (internal citations omitted). Recently, we explained that a clerk's default must be entered before a party may pursue a default judgment, and before applying for a default judgment, the moving party must serve a three-day notice of intent to seek a default judgment to satisfy NRCP 55(b)(2). See Landreth v. Malik, 127 Nev. ___, ___, 251 P.3d 163, 172 (2011) (distinguishing the notice requirements for entry of default from those for entry of a default judgment); Epstein v. Epstein, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997) (explaining that under NRCP 55(b)(2), a party must provide specific and particular notice of intent to seek a default judgment, and providing notice that the party is in a position to seek a default under NRCP 55(a) is insufficient). A failure to serve the proper notice of a party's intent to take a default judgment renders such a judgment void. Durango, 120 Nev. at 661, 98 P.3d at 693; Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978).

Having considered appellant's proper person appeal statement, respondent's response, and the district court record, we conclude that the district court erred in granting the petition to terminate appellant's parental rights, as respondent did not follow the proper procedures for obtaining a default judgment, which renders the termination order entered in the district court void. See Landreth, 127 Nev. at ___, 251 P.3d at 172; Epstein, 113 Nev. at 1405, 950 P.2d at 773; Durango, 120 Nev. at 661, 98 P.3d at 693; Christy, 94 Nev. at 654, 584 P.2d at 689. In this case, while there was a three-day notice sent, the notice was of intent to seek a default, not of intent to seek a default judgment. This invalidated the default judgment that followed. Epstein, 113 Nev. at 1405, 950 P.2d at 773. Accordingly, we reverse the district court's order terminating appellant's parental rights and remand this matter to the district court so that respondent may follow the proper procedure for applying for a default judgment, if she so chooses, or for the district court to set an evidentiary hearing on the termination petition.

It is so ORDERED.



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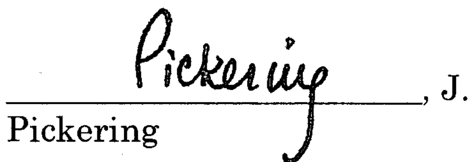

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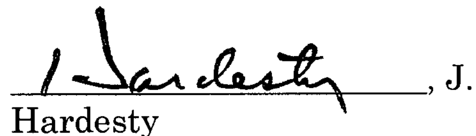

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Hardesty

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Paris C.
Murray Law Group, LLC
Eighth District Court Clerk