IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO: J.F., MINOR CHILD.

LYDIA H.,
Appellant,
vs.
WASHOE COUNTY DEPARTMENT OF SOCIAL SERVICES,
Respondent.

No. 65044

FILED

FEB 27 2015

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order terminating appellant's parental rights as to her minor child. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

Respondent filed a petition to terminate appellant's parental rights, and the parties entered a stipulation after settlement negotiations. The stipulation provided that respondent agreed to hold the parental termination proceedings against appellant in abeyance for 60 days and to facilitate the placement of the minor child with his maternal aunt and uncle. Appellant stipulated that she would relinquish her parental rights within 60 days, and if she did not relinquish her parental rights within that time, she stipulated to her parental unfitness and waived her right to contest that the termination was in the child's best interest. After the child's placement with his aunt and uncle did not occur and appellant

refused to relinquish her parental rights, respondent moved forward with the termination of appellant's parental rights. The district court held an evidentiary hearing, but no notice of the hearing was provided to either appellant or her counsel. Despite the failure to notice appellant, and her subsequent absence at the hearing, the district court took testimony from respondent's witness and thereafter terminated appellant's parental rights.

Appellant argues that the failure to notice her of the evidentiary hearing violated her procedural due process rights. We agree. "Severance of the parent-child relationship is tantamount to imposition of a civil death penalty. Accordingly, this court closely scrutinizes whether the district court properly preserved or terminated the parental rights at issue." *In re Termination of Parental Rights as to N.J.*, 116 Nev. 790, 795, 8 P.3d 126, 129 (2000) (internal quotation marks and citations omitted). Procedural due process mandates that parents be afforded notice of a parental termination hearing and an opportunity to be heard. *See In re Parental Rights as to N.D.O.*, 121 Nev. 379, 382, 115 P.3d 223, 225 (2005); *see also Gonzales-Alpizar v. Griffith*, 130 Nev. ___, ___, 317 P.3d 820, 827 (2014) ("[A]n elementary and fundamental requirement of due process . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." (internal quotation marks omitted)).

Here, appellant was provided no notice of the evidentiary hearing terminating her parental rights.[1] Respondent argues that because appellant stipulated that she waived her right to contest the termination proceedings, she was not entitled to notice of the hearing. Appellant's stipulation, however, did not address her right to notice of the hearing. *See In the Interest of C.T.*, 749 S.W.2d 214, 216-17 (Tex. Ct. App. 1988) (finding valid a waiver to notice of parental termination hearing when parent had signed an explicit waiver agreeing to "waive and give up my right to be given notice about anything going on in the lawsuit"). Additionally, although appellant had waived her right to contest the termination, the district court retained a duty to ensure that termination was in the child's best interest and respondent bore a burden of presenting evidence to establish the child's best interest. *See* NRS 128.105 ("The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination."). Consequently, the evidentiary hearing on terminating appellant's parental rights remained a meaningful proceeding despite the parties' stipulation, and the failure to provide appellant notice of the hearing violated her procedural due process right to notice. *See N.D.O.*, 121 Nev. at 382, 115 P.3d at 225.

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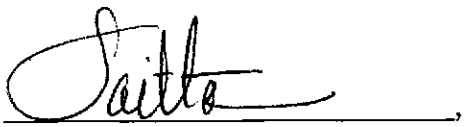
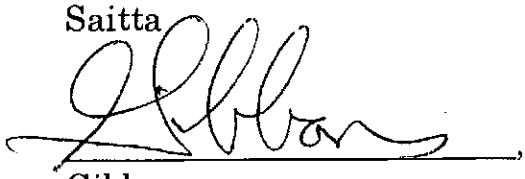
[1]At the termination hearing counsel for respondent noted, "I discovered before I left the office, an application for setting had not been filed in this case. I did not independently notice [appellant's counsel] or his client of this hearing." WDCR 4(9) provides that a party seeking an application for setting "shall file the original and serve a copy upon counsel for each other party."

Accordingly, we

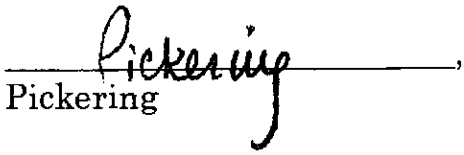
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[2]



_____, J.
Saitta



_____, J.
Gibbons



_____, J.
Pickering

cc: Hon. Cynthia Lu, District Judge, Family Court Division
Washoe County Public Defender
Washoe County District Attorney
Washoe District Court Clerk

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[2]We note appellant's additional argument that her stipulation was unenforceable as against public policy, and her reliance on *In re T.M.C.*, 118 Nev. 563, 52 P.3d 934 (2002). Her position is unpersuasive, however, as *T.M.C.* addressed the public policy implications of a parent seeking to voluntarily surrender parental rights to avoid the parent's child support obligation, rather than a parent entering a stipulation in the midst of a contested parental termination action.