

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BETHANY CLARK,
Appellant,
vs.
VICTOR GUERRERO; AND MARIA
GUERRERO,
Respondents.

No. 67269

FILED

MAY 06 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
[Signature]
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order declining to terminate nonparent visitation in a child custody matter. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

Appellant Bethany Clark is the legal and physical custodian of her granddaughter. Respondents Victor and Maria Guerrero are the parents of the child's putative father. The child lived with the Guerreros for more than a year before custody was awarded to Clark. When Clark was granted custody, she agreed to allow the Guerreros to have up to three periods of visitation with the child per year, but she later filed a motion to terminate that right of visitation, arguing that the Guerreros had not made any attempts to have contact with the child in fifteen months. Without taking evidence or making findings, the district court temporarily denied the motion in order to give the Guerreros an opportunity to show that they were trying to have contact with the child. To that end, the court entered an order setting certain deadlines by which the Guerreros were to make efforts to have contact with the child.

On a return hearing, although no testimony was presented on the matter, the court made findings with regard to the Guerreros' efforts and Clark's failure to facilitate the Guerreros' visitation. In particular, the court found that the Guerreros wanted to see the child and had made efforts to do so, but that Clark had failed to act in good faith to facilitate such visitation. As a result, the court concluded that the Guerreros had substantially complied with the temporary order and therefore denied the motion to terminate visitation. This appeal followed.¹

Clark argued in her motion to terminate visitation, as she does on appeal, that the underlying circumstances had changed and that it was in the child's best interest to terminate visitation. But the district court did not make any findings with regard to whether there had been a substantial change in circumstances since visitation was granted, particularly insofar as Clark alleged that the Guerreros failed, for 15 months after the initial visitation order, to make any efforts to see the child. And while the district court mentioned the child's best interest at

¹Clark also filed a notice of appeal from the district court's earlier order temporarily denying the motion to terminate visitation. In her fast track brief challenging the order finally denying the motion to terminate visitation, she argues that the district court lacked jurisdiction to modify the previous order in light of her pending appeal. Because, as noted in our December 29, 2015, order resolving the jurisdictional issues and allowing the appeal to go forward under this docket, the initial notice of appeal was premature, it did not deprive the district court of jurisdiction over this matter, and thus, Clark's jurisdiction-based argument lacks merit. See NRAP 4(a)(6) ("A premature notice of appeal does not divest the district court of jurisdiction.").

the hearings on this matter, the court did not make any specific findings, either orally or in its written orders, with regard to whether it would be in the child's best interest to discontinue visitation. In the absence of such findings, we conclude the district court abused its discretion by denying the motion to terminate visitation.² See *Rennels v. Rennels*, 127 Nev. 564, 572-73, 257 P.3d 396, 401-02 (2011) (concluding that, in order to modify a nonparent's judicially established visitation rights, the custodian must demonstrate a substantial change in circumstances and that modification is in the child's best interest³); *Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) ("Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation.").

As a result, we reverse the district court's order declining to terminate visitation and remand this matter to the district court to take evidence on the visitation issue, to make findings with regard to whether

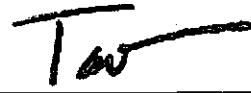
²On appeal, the Guerreros contend that it would have been improper for the district court to make factual findings because the court did not take evidence and Clark did not request an evidentiary hearing. But Clark specifically asked the court to require the Guerreros to provide evidence regarding their efforts to see the child before she filed the motion to terminate visitation. Thus, the Guerreros argument in this regard does not provide a basis to affirm the district court's decision.


³Unlike in *Rennels*, 127 Nev. 564, 257 P.3d 396, which dealt with a parent seeking to terminate a nonparent's right of visitation, neither party in this case is the child's parent. Despite this difference, we find *Rennels* to be instructive on the issue of terminating a nonparent's right of visitation, particularly where, as here, the person seeking to terminate the nonparent visitation rights has sole physical custody of the child.

there was a substantial change in circumstances preceding the motion to terminate and whether discontinuing visitation would be in the child's best interest, and to rule on the motion to terminate visitation based on those findings.⁴

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

⁴By reversing and remanding for the reasons discussed in this order, we make no comment on the merits of the motion to terminate visitation, as the decision regarding termination is within the district court's discretion once it has made the appropriate findings and considered the motion under the proper standard.

In addition, given the basis of our decision to reverse and remand, we do not reach Clark's arguments that the district court abused its discretion by declining to terminate visitation despite the Guerreros' failure to comply with the temporary order requiring them to make certain efforts to communicate and have physical contact with the child.

cc: Hon. Vincent Ochoa, District Judge
Robert E. Gaston, Settlement Judge
Mills & Mills Law Group
Prokopius & Beasley
Eighth District Court Clerk