

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID FRUEHAUF,
Appellant,
vs.
ALICIA FRUEHAUF,
Respondent.

No. 36356

FILED

NOV 21 2002

JENNIFER L. LOM
CLERK OF SUPREME COURT
BY: *J. Ribick*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a district court order modifying David Fruehauf's custody and visitation rights to his son and granting Alicia Fruehauf a temporary protection order (TPO) against David. David filed a motion to dismiss the TPO and requested that the district court order the parties to remediate child visitation, or in the alternative, that the district court itself modify the visitation if he and Alicia were unable to come to an agreement. The district court held a hearing and issued an order awarding Alicia sole custody of the child, revising David's visitation rights, and issuing a TPO. The district court has broad discretion to determine child custody matters.¹ However, before acting to modify or change custody, the district court must provide the parties with adequate notice of the potential modification.²

We conclude that David was not given adequate notice of the change of custody. When the district court fails to provide adequate

¹Truax v. Truax, 110 Nev. 437, 439, 874 P.2d 10, 11 (1994).

²Mosley v. Figliuzzi, 113 Nev. 51, 57-60, 930 P.2d 1110, 1114-16 (1997); Wiese v. Granata, 110 Nev. 1410, 1412, 887 P.2d 744, 745 (1994); Dagher v. Dagher, 103 Nev. 26, 27, 731 P.2d 1329, 1330 (1987); Matthews v. District Court, 91 Nev. 96, 97-98, 531 P.2d 852, 853 (1975).

notice, it acts beyond its jurisdiction,³ and violates the party's due process rights.⁴ Neither Alicia nor David requested the district court to change custody of their child. David merely requested a visitation schedule. Instead, the district court sua sponte changed custody without notifying either party that change of custody was going to be an issue at the hearing. Thus, because the district court changed custody without giving David adequate notice, it abused its discretion, and its order must be reversed.

David argues that the district court abused its discretion by taking it upon itself to modify his visitation rights, rather than ordering the parties themselves to remediate child visitation. We disagree. Alicia and David's parenting plan provided they were to complete a parental review of the plan two months after the child's second birthday for a possible expansion of the child's time with David. However, for more than a year, David and Alicia were unable to come to a visitation agreement on their own. Therefore, the district court found that neither party was mature enough to remediate visitation on their own. Further, David requested the district court to remediate the visitation schedule if he and Alicia were unable to come to an agreement. Since the parties were unable to come to an agreement, it was not an abuse of discretion for the district court itself to remediate visitation.

Although the district court did not grant David the amount of visitation time that he requested, it did increase his visitation time. The district court's increase in visitation was a reasonable compromise between the visitation rights provided by the parenting plan and the

³Matthews, 91 Nev. at 98, 531 P.2d at 853.


⁴See Wiese, 110 Nev. at 1412, 887 P.2d at 745-46.


visitation rights David requested. The district court's modification was not an abuse of discretion.

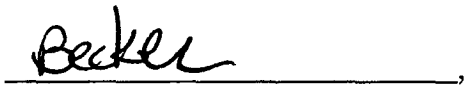
David also appeals the issuance of the TPO. NRAP 3A(b) designates the decisions from which an appeal may be taken.⁵ NRAP 3A(b) does not provide for an appeal from a TPO. "[W]here no statutory authority to appeal is granted, no [such] right exists."⁶ Thus, this court lacks jurisdiction to consider the TPO issue.

Accordingly, we REVERSE the change of custody, AFFIRM the visitation modification, and do not consider the TPO.

It is so ORDERED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Gerald W. Hardcastle, District Judge,
Family Court Division
Bob Reeve
Bruce I. Shapiro
Clark County Clerk

⁵Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984).

⁶Id.