IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CATHY CAMPBELL,
Appellant,
vs.
CHAD CAMPBELL,
Respondent.

No. 69651

ORDER OF REVERSAL AND REMAND

Cathy Campbell appeals from a post-divorce-decree district court order denying a motion to modify child custody. Second Judicial District Court, Washoe County; Bridget E. Robb, Judge.

Cathy and respondent Chad Campbell shared joint physical custody of their son following their divorce in 2010. In January 2014, the district court entered an order modifying physical and legal custody of the parties' son. From that time, Chad has had primary physical custody of their son, while the parties share joint legal custody, with Chad having complete control over the child's health care decisions.

On November 20, 2015, Cathy moved for joint physical custody based on the fact that the child's grades had significantly deteriorated. Chad opposed the motion, asserting that he was working with the child and the child's teachers and counselor to address his academic performance. Although Cathy attached documentary evidence to support her claims, the district court denied Cathy's motion without a hearing, finding that Cathy had not presented a prima facie case for modification of custody pursuant to *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993). This appeal followed.

This court reviews a child custody decision for an abuse of discretion, *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996), but deference is not owed to legal error. *Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1142 (2015). Under WDFCR 44(4)(b), all contested motions affecting child custody shall be set for a hearing.

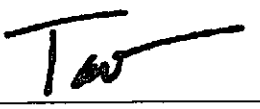
On appeal, Cathy argues that she presented sufficient evidence of changed circumstances in the child's education in the form of failing grade sheets and communications with his teachers. Here, despite the clear language of WDFCR 44(4)(b), the district court denied Cathy's motion to modify custody without holding a hearing. As noted above, in so doing, the court cited to *Rooney*, 109 Nev. at 542, 853 P.2d at 124, finding that an evidentiary hearing was not required prior to denying the motion as Cathy failed to show adequate cause for such a hearing.

Rooney, however, does not negate WDFCR 44(4)(b)'s appearance requirement. Specifically, the rule provides that "[c]ontested motions affecting child custody, including temporary custody, modification of custody and/or request to move out of state with children, shall be set for hearing." WDFCR 44(4)(b). The word "shall" is generally regarded as mandatory. *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 476, 255 P.3d 1275, 1279 (2011). *Rooney* sets forth a standard for compelling evidentiary hearings, but does not apply to simple appearance hearings like the one required by WDFCR 44(4)(b). Given the district court's failure to hold this required initial hearing, we do not determine whether Cathy presented adequate cause for a full evidentiary hearing under *Rooney* at this time. Instead, we conclude that the district court abused its discretion in denying Cathy's motion without setting a hearing on that motion under

WDFCR 44(4)(b).[1] Therefore, we reverse the district court's order and remand this matter for further proceedings consistent with this order.[2]

It is so ORDERED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Bridget E. Robb, District Judge
Cathy Campbell
Chad Campbell
Washoe District Court Clerk

---

[1]Although we do not reach the issue of whether an evidentiary hearing is required at this time, we urge the district court to carefully assess the educational needs of the child in the course of resolving Cathy's motion on remand. While we recognize the deficiencies in the parties' motion practice, delving into these issues at the initial hearing will allow the parties to further develop these issues and address whether an evidentiary hearing is warranted in light of the documentary evidence submitted by Cathy and the lack of contradictory evidence from Chad.

[2]In light of our resolution of this matter, we need not reach Cathy's remaining appellate arguments.