IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: K.P.; X.P.; AND J.P.

JESSICA P., A/K/A JESSICA P.D.,
Appellant,
vs.
KYLE P.,
Respondent.

No. 86912

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a district court order denying a petition for termination of parental rights. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.

To terminate parental rights, the petitioner must demonstrate by clear and convincing evidence that at least one ground of parental fault exists and termination is in the child's best interest. NRS 128.105(1). Appellant Jessica P. sought to terminate respondent Kyle P.'s parental rights to their three minor children based on allegations that Kyle had paid no child support and had no contact with the children for more than six months. The district court held an evidentiary hearing on Jessica's petition but terminated the hearing *sua sponte* after only a few minutes of testimony from Jessica and then denied the petition.

Jessica takes issue with the district court's handling of the evidentiary hearing on the petition, arguing that the district court violated her right to due process. We agree that the district court erred. By prematurely ending the evidentiary hearing shortly after it started, the district court did not allow Jessica to finish presenting her case or take any

testimony or evidence from Kyle other than confirming that Kyle had not seen the children in "about a year" and had not paid child support in "quite a while."

We understand the district court's reticence to entertain the extreme measure of terminating parental rights in the context of a dispute between a custodial parent and a noncustodial parent. *See, e.g., Drury v. Lang*, 105 Nev. 430, 776 P.2d 843 (1989), *Smith v. Smith*, 102 Nev. 263, 720 P.2d 1219 (1986), *overruled on other grounds by In re Termination of Parental Rts. as to N.J.*, 116 Nev. 790, 800 n.4, 8 P.3d 126, 132 n.4 (2000). We also express no opinion regarding the ultimate outcome of the matter.

Regardless of the outcome, the court had a responsibility to afford the parties a full and fair hearing. *Cf. Wiese v. Granata*, 110 Nev. 1410, 1412-13, 887 P.2d 744, 746 (1994) (addressing due process challenge in the context of a custody dispute between two parents and observing that "[l]itigants in a custody battle have the right to a full and fair hearing concerning the ultimate disposition of a child" (quoting *Moser v. Moser*, 108 Nev. 572, 576, 836 P.2d 63, 66 (1992))). Due process demands for a full and fair hearing that both sides of a dispute be allowed to present evidence in support of their respective positions: the parent arguing for termination must be able to present relevant evidence in support of termination and the parent opposing termination must have the opportunity to refute the evidence presented. We conclude that the district court failed to meet that responsibility here. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court to conduct a full and fair

evidentiary hearing and make a determination on the motion after hearing the evidence.[1]

_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Hon. Mary D. Perry, District Judge, Family Division
Pecos Law Group
Kyle P.
Eighth District Court Clerk

[1]We deny Jessica's request to have this matter reassigned to a different district court judge as she has not demonstrated reassignment is warranted. *See* NRS 1.230 (listing grounds for disqualifying a district court judge); *FCH1, LLC v. Rodriguez*, 130 Nev. 425, 435, 335 P.3d 183, 190 (2014) (reassigning where a judge formed a conclusion on the merits based on improperly admitted evidence); *Leven v. Wheatherstone Condo. Corp.*, 106 Nev. 307, 310, 791 P.2d 450, 451 (1990) (reassigning where a judge made numerous errors suggesting favoritism).