

IN THE SUPREME COURT OF THE STATE OF NEVADA

JODY JOANNE MARSAW,  
Appellant,  
vs.  
WILLIAM HANILY,  
Respondent.

No. 38342

FILED

MAR 17 2003

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal challenging a district court order modifying child custody. Jody Marsaw and William Hanily had a child together in February 1993. Jody and William were married, but divorced in November 1996. The parenting plan, incorporated into the parties' divorce decree, granted the parties joint legal custody, and Jody primary physical custody, of the child. In April 2000, William moved the district court to modify the child custody arrangement and give him primary physical custody. William alleged that Jody used illegal drugs and that her irresponsible and nomadic lifestyle was adversely affecting the child.

On July 30, 2001, the district court conducted a hearing for approximately fifteen minutes. William was represented by counsel, but Jody appeared pro se. During the hearing, the district court discussed a report prepared by a family evaluator who recommended a change of primary physical custody from Jody to William. The family evaluator was not present during the hearing, and neither William nor Jody was given a copy of the evaluation report prior to the hearing. No evidence was presented. The district court modified custody and granted William primary physical custody of the child.

Jody contends that the district court violated her due process rights by not holding an evidentiary hearing before it modified custody.

This court has held that parties to a custody dispute “have the right to a full and fair hearing” regarding the custody of their child,<sup>1</sup> and the parent threatened with losing custody must be afforded the opportunity to refute the evidence presented.<sup>2</sup> In other contexts, this court has held that due process requires that a party be provided with the material upon which the court is making a determination and an opportunity to respond thereto.<sup>3</sup> Further, due process requires that a party be given the opportunity to establish facts that could provide a defense in her favor.<sup>4</sup>

In this case, the district court did not provide Jody with a full and fair hearing before changing custody. The district court held a short hearing with no opportunity for the presentation of evidence. Jody attended the hearing, but was not given time to read the family evaluator’s report before the hearing started or to cross-examine the family evaluator. Thus, the district court denied Jody due process. On remand, the district court must allow Jody time to read the report prepared by the family evaluator and the opportunity to present evidence on her behalf. Accordingly, we

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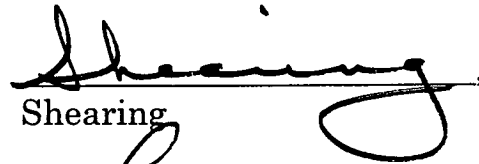
<sup>1</sup>Moser v. Moser, 108 Nev. 572, 576, 836 P.2d 63, 66 (1992).


<sup>2</sup>Id. at 577, 836 P.2d at 66.

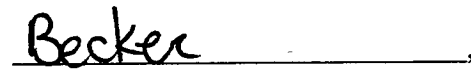
<sup>3</sup>Watson v. Housing Authority, 97 Nev. 240, 242-43, 627 P.2d 405, 407 (1981).

<sup>4</sup>Barrett v. Baird, 111 Nev. 1496, 1512, 908 P.2d 689, 700 (1995); see also Wiese v. Granata, 110 Nev. 1410, 1412-13, 887 P.2d 744, 746 (1994).

ORDER the judgment of the district court REVERSED and  
REMAND this matter to the district court for proceedings consistent with  
this order.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Robert W. Lueck, District Judge,  
Family Court Division  
Mark A. Jenkin  
Edward B. Hughes  
Clark County Clerk