

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO N. S. Y., A MINOR
CHILD,

BILL S. Y.,
Appellant,
vs.
TIFFANY R. M. H.,
Respondent.

No. 39616

FILED

AUG 25 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

ORDER OF REMAND

Bill S. Y. appeals, in proper person, an order by the district court terminating his parental rights as to his minor child. A termination hearing was held after Tiffany R. M. H., a maternal aunt and guardian of Bill's minor child, filed a petition seeking the termination of Bill's parental rights. Bill, who has been incarcerated since March 2000 on a narcotics conviction, was not permitted to attend the hearing in person; however, his counsel was present at the hearing. On appeal, Bill asserts that his right to due process was violated when he was not permitted to attend the hearing and that the district court's findings are not supported by substantial evidence. We conclude that the district court did not err when it concluded that Bill did not have a due process right to be physically present at the termination hearing; however, we remand this matter so that the district court may determine whether or not Bill waived his right to participate at the hearing by deposition pursuant to NRS 50.215(2).

Parents have a fundamental liberty interest in the care and custody of their children.¹ “[T]he Due Process Clause of the Fourteenth Amendment protects parents’ fundamental right to care for and control their children.”²

However, we have never held that due process vests an incarcerated parent with an absolute right to be present at a termination hearing. Bill’s private interest in the care and custody of his minor child is substantial; however, the state also has a strong interest in avoiding the unnecessary expense of transporting prisoners across Nevada.³ Moreover, the right to participate in a termination hearing by deposition pursuant to NRS 50.215(2),⁴ or by such other alternative procedure, adequately protects a parent’s right to be heard, and Bill has failed to demonstrate how his personal presence would provide any greater benefit than the

¹Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1220 (1986), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 800 n.4, 8 P.3d 126, 132 n.4 (2000).

²Matter of Parental Rights as to J.L.N., 118 Nev. ___, ___, 55 P.3d 955, 958 (2002) (footnotes omitted).

³See Matter of Parental Rights as to Daniels, 114 Nev. 81, 88, 953 P.2d 1, 5 (1998) (noting that a due process analysis requires that the court consider “any additional burdens imposed [on the government] in implementing additional procedures”), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. at 800 n.4, 8 P.3d at 132 n.4.

⁴NRS 50.215(2) states that “[i]n a civil action, if the witness is imprisoned in the county where the action or proceeding is pending, his production may be required by the court or judge. In all other cases, his examination, when allowed, must be taken upon deposition.”

procedures already in place.⁵ Accordingly, the district court did not violate Bill's right to due process when it denied Bill's motion to be transported to the termination hearing.


Nonetheless, due process requires that an incarcerated parent be provided with a "meaningful opportunity to be heard and defend through alternative procedures."⁶ It is unclear from the record whether Bill was ever given an opportunity to participate in the hearing by way of deposition pursuant to NRS 50.215(2) or by another alternative procedure. Accordingly, we remand this matter to the district court so that it may determine whether Bill intended to waive his right to participate in the hearing by way of an alternative procedure. If the district court concludes that Bill did not intend to waive this right, then the termination hearing must be reopened, and Bill must be given an opportunity to participate by deposition or by another alternative procedure. If the district court concludes that Bill did intend to waive his right to participate by way of deposition or an alternative procedure, then we conclude that there is substantial evidence in the record to support the district court's order terminating Bill's parental rights.⁷ Accordingly, we

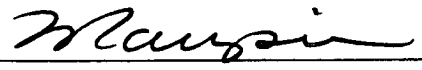
⁵See id. (noting that a due process analysis requires that the court consider "the value of adding additional procedures").

⁶In Interest of C.J., 650 N.E.2d 290, 293 (Ill. App. Ct. 1995).

⁷See Matter of Parental Rights as to N.J., 116 Nev. at 795, 8 P.3d at 129 (noting that we "will uphold termination orders based on substantial evidence").

ORDER that this matter be REMANDED to the district court for proceedings consistent with this order.⁸


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Archie E. Blake, District Judge
Bill S. Y.
Mackedon & McCormick
Churchill County Clerk

⁸We also order that the stay we granted during the pendency of this appeal be vacated.