

STATE V. JOHNSON

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STATE OF NEW MEXICO ex rel., **HUMAN SERVICES DEPARTMENT**,
Petitioner,
SARAH JOHNSON,
Petitioner-Appellant,
v.
CORWIN JONES,
Respondent-Appellee.

No. 31,651

COURT OF APPEALS OF NEW MEXICO

January 23, 2012

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Jacinto Palomino,
District Judge

COUNSEL

Jay Goodman & Associates, Law Firm, P.C., Sharon Pomeranz, Santa Fe, NM, for
Appellant

Yalkut Law Firm, Kent Yalkut, Las Cruces, NM, for Appellee

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

Sarah Johnson (Mother) appeals from the district court's order denying her motion for relief from judgment. [RP 140] Mother raises two issues on appeal: (1) whether the district court abused its discretion in denying Mother's motion for relief from judgment where Mother received no notice that child custody and visitation rights would be considered at the June 17, 2011, hearing [DS 3]; and (2) whether the district court erred in failing to enter specific findings regarding a material change in circumstances affecting the best interests of Child [DS 5].

The calendar notice proposed summary reversal. [Ct. App. File, CN1] Mother has filed a memorandum in support. [Ct. App. File] Father has not filed a memorandum in opposition to the proposed disposition, and the time for timely doing so has passed.

For the reasons set forth in this Court's calendar notice filed on November 30, 2011, we reverse the district court's order denying Mother's motion for relief from judgment and remand to the district court to vacate the judgment filed on September 27, 2011. [RP 140] We also remand to the district court for further proceedings. Upon appropriate motion and notice to the parties and a hearing, any resulting district court order that material changes in circumstances have or have not occurred, shall provide reasons for the disposition and how it relates to Child's best interests, under circumstances where Child, who is three or four years old at this time, has spent the majority of her time, up to and after the district court's adoption of the April 9, 2010, parenting plan, with Mother.

IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

TIMOTHY L. GARCIA, Judge