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Summary of Blanco v. Blanco, 129 Nev. Adv. Op. 77

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Blanco v. Blanco, 129 Nev. Adv. Op. 77 (Oct. 31, 2013)¹
FAMILY LAW: DISCOVERY VIOLATIONS / DEFAULT JUDGMENT

Summary

The Court determined two issues: (1) whether a district court may grant a default judgment regarding child custody and child support without violating statutory law; and (2) whether a district court in divorce proceedings may grant a case-concluding default judgment regarding issues other than child custody or support, such as property division, spousal support, or attorney's fees.

Disposition

A district court may not enter a default judgment regarding child custody and child support because child custody must only be determined based on the best interests of the child(ren) and child support is determined only by a statutory formula. Additionally, although property division is typically handled in accordance with a statutory formula requiring an equal disposition, a court may deviate from the formula if there is a compelling reason, thus default judgment is inappropriate because the court does not make that determination. Finally, case-concluding default judgment may be used in determining spousal support and attorney's fees because the court has sole discretion, but the court must provide appropriate procedural due process such as an evidentiary hearing and a finding that a less severe sanction is not warranted.

Factual and Procedural History

In 1989 Mario and Lalaine Blanco married each other. The Blancos had 4 children together. Lalaine eventually filed for divorce. Lalaine asked for primary physical custody of the children. Mario asked for joint physical custody. Mario also asked for significantly more spousal and child support because he made significantly less than Lalaine. The Blancos agreed to joint legal custody of their two minor children (the other two were no longer minors) in June 2011. As to physical custody, Mario was awarded visitation three consecutive days every week. The Court also ordered Lalaine to pay temporary child support prior to trial.

Before trial, Lalaine's counsel withdrew and Lalaine proceeded pro se. Lalaine had begun working only two days a week because of a claimed injury, so Mario requested discovery relating to her injury claim, seeking to prove that Lalaine was willfully underemployed. Lalaine failed to answer Mario's discovery requests. Lalaine claimed that her prior counsel had given her the requests only a few days before the hearing, so the court gave her two weeks to comply with the request. The court warned Lalaine that failure to comply would result in default judgment in favor of Mario.

Although Lalaine answered some of the requests, she failed to provide everything and the district court found that sanctions were warranted. The court ordered a default judgment, consistent with the prior order from June 2011 and Mario's counterclaim. The default judgment provided for joint legal and joint physical custody of the children, made the temporary child support permanent, awarded Mario \$1,000.00 per month in spousal support for ten and a half (10

¹ By Lee Gorlin

½) years, and granter Mario permission to claim both minor children as tax exemptions. Lalaine was ordered to take on most of the community debt, and to pay Mario's attorney fees.

Discussion

Default Judgment and Nev. R. Civ. P. 37(b)(2)(c)

Typically, a district court may use case-concluding sanctions, such as default judgment as a punishment for noncompliance with its orders.² Although a district court may use this severe sanction, the Nevada Supreme Court uses a heightened standard of review on appeal to ensure that the sanctions comport with procedural due process.

When a district court uses case-concluding sanctions, they must "be supported by an express, careful and preferably written explanation of the court's analysis."³ The court, among other factors, should look to the offender's willfulness, the potential prejudice to the other party if the court were to use a lesser sanction, whether dismissal is too severe for the instant abuse, and the "policy favoring adjudication of cases on their merits." Default is a severe penalty, only to be used in the most extreme cases.

Even after default, the prevailing party must still present evidence to establish a prima facie case. In typical civil cases, the court should still conduct a hearing in order to determine proper damages. The same holds true for divorce. Although divorce cases do not typically involve claims for damages, the court must still determine issues such as child custody, child support, spousal support, property division, and attorney's fees. Accordingly, whether case-concluding sanctions are appropriate in a given case depends on the claims involved in that case.

Default Judgment with regards to Child Custody and Child Support

Regarding child custody and support, the Court determined "that a case-concluding discovery sanction is simply not permissible." According to Nevada Statutory Law, child custody must be determined solely in consideration of the child's best interest.⁴ Child support is similarly guided by formulas prescribed by law.⁵ Default judgment bypasses both the best interest of the child analysis and the child support formulas and is therefore not permissible.

This decision is consistent with prior findings that a court may not use change of custody to punish parental misconduct in the courtroom and with the concept that the ability to raise one's child is a fundamental right that cannot be taken away without a due process analysis. Although the court may not use default judgments regarding custody and child support as a sanction, the court may use other traditional sanctions such as monetary sanctions, attorney's fees and even contempt, so long as those sanctions are not dispositive.

² NEV. R. CIV. P. 37(b)(2)(C).

³ *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990).

⁴ NEV. REV. STAT. § 125.480 (2013).

⁵ *See* NEV. REV. STAT. § 125B.070 (2013) (for cases of primary physical custody the non-custodial parent pays a percentage of his or her gross monthly income, subject to presumed maximums, to the custodial parent); *Wright v. Osburn*, 114 Nev. 1367, 1368-69, 970 P.2d 1071, 1072 (1998) (for cases of joint physical custody, the court takes the difference between each parent's gross monthly income and the parent with a higher gross monthly income pays that difference to the other parent).

Default Judgment with regards to Property Division, Spousal Support and Attorney's Fees

Other than child support and child custody issues, “case-concluding discovery sanctions are permissible,” but those sanctions “must comply with the procedural due process requirements of *Young*⁶ and *Foster*⁷.” Essentially, the court must determine whether the case-concluding sanction is the most appropriate sanction, or whether a lesser sanction would be more appropriate. An appropriate sanction “relate[s] to the claims at issue in the violated discovery order and must be supported by an explanation of the pertinent factors guiding such determination.

Nevada law⁸ requires an equal disposition of property in a divorce unless the district court finds a compelling reason for an unequal disposition and that reason is set forth in writing. The Court held that an equal disposition simply cannot occur through default judgment. Rather, a court may need to conduct a separate evidentiary hearing in order to determine equal disposition, though the court may also “limit the offending party’s presentation of evidence in line with the discovery violation.”

With regards to spousal support and attorney’s fees, Nevada Statutory law grants the court wide discretion.⁹ Because of this discretion, the court may decide these issue via default judgment so long as the court makes findings that default is the most appropriate sanction and that a lesser sanction would not suffice.

Conclusion

Although the child custody issue was mostly decided before default judgment, there was still some ambiguity, thus the district court must decide the issue based on the best interest of this children. Similarly, the district court must apply child support based upon the statutory formula and cannot merely adopt the temporary order. The district court must also perform an analysis as to whether default judgment is appropriate as a sanction for the discovery violations or whether there is a less sever sanction that would be appropriate.

⁶ *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990).

⁷ *Foster v. Dingwall*, 126 Nev. ___, ___, 227 P.3d 1042, 1048 (2010).

⁸ NEV. REV. STAT. § 125.150(1)(b) (2013).

⁹ NEV. REV. STAT. § 125.150(1)(a), (3) (2013).