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Joanna T. v. Nevada, 131 Nev. Adv. Op. 77 (Sep 24, 2015)

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CIVIL PROCEDURE/FAMILY LAW: SERVICE OF SUMMONS IN CHILD PROTECTION CASES

Summary

The court considered whether NRCP 4(i)'s 120 day requirement for service of a summons applied to cases filed under NRS § 432B, for protection of children from neglect and abuse. The court held that the 120 day requirement does not apply to cases filed under 432B and denied the petition for a writ of mandamus to order the juvenile court to dismiss an abuse-and-neglect petition on that premise.

Background

While petitioner Joanna T. was in jail, her mother, Sheila T., cared for her child. In December 2012, Joanna's daughter was removed from the care of her mother. The state filed an abuse-and-neglect petition, naming both Joanna and Sheila, however, no summons was issued to Joanna and she did not appear at the adjudicatory hearing. The abuse-and-neglect petition was orally sustained and Joanna and Sheila were provided with case plans. In June 2013, the child was returned to Sheila, and Joanna was allowed supervised visitation until further ordered. Subsequently, in March 2014, Joanna filed a motion to set aside the master's oral recommendation because she had never received a summons notifying her of the adjudicatory hearing. On April 24, 2014, 486 days after the abuse-and-neglect petition was filed, because of a "procedural defect", the state served a summons on Joanna. Joanna then moved to dismiss the petition as untimely under NRCP 4(i). The juvenile court denied Joanna's motion. Joanna then filed a writ of mandamus or prohibition challenging the juvenile court's authority to adjudicate the petition as to her. The court found that extraordinary writ relief is not warranted, but took the opportunity to clarify NRCP 4(i).

Discussion

NRCP 4(i) requires that in a civil action the summons and complaint be served on the defendant within 120 days of the filing of the complaint.² However, NRCP 4(i)'s 120-day requirement is inconsistent with the expedited nature of NRS 432B proceedings. It follows that NRCP procedures which conflict with the procedures required under NRS § 432B do not apply to those filings. Petitions filed under NRS § 432B must adhere to procedures and time schedules outlined in NRS § 432B, including its summons provision. NRS § 432B requires the issuance of a summons after an abuse-and-neglect petition has been filed. This requirement serves several purposes; it puts the person with custody or control of the child on notice that the petition has been filed, notifies that person of his or her right to counsel, and it requires that person to appear personally and bring the child before the court.³ The purposes of NRCP 4(i) include providing notice and ensuring judiciary efficiency. As the proceedings filed under NRS § 432B regard the

¹ By Audra Powell.

² NEV. R. CIV P. 4(i).

³ *Id.*

critical and urgent matters of child protection and parental rights, its procedures align with NRCP 4(i)'s purposes while further expediting the judicial process. Additionally, the remedy for failure to adhere to NRCP 4(i) is dismissal with prejudice which directly conflicts with the purpose of NRS §432B: to protect children in unsafe circumstances. Dismissing petitions filed under NRS §432B, without very good cause, would greatly prejudice children unable to protect themselves.

The Court then considered whether Joanna meet her burden of establishing that the court's intervention is warranted to require the district court to dismiss the petition because of the State's extensive delay in serving the summons on her.⁴ The Court found that this case did not linger unnoticed after the petition was filed. Despite having knowledge of this matter, Joanna failed to raise the summons issue until more than a year after the petition had been filed. The State was given the opportunity to cure the procedural error by serving a summons on Joanna for a new adjudicatory hearing and subsequently held a hearing of which Joanna had proper notice. Further, the Court found the child's best interest would not be served by her return to Joanna's care.

Therefore, here, although the state committed a procedural error by not originally serving Joanna with a summons, the juvenile court did not exceed its jurisdiction or act arbitrarily or capriciously by denying Joanna's motion to dismiss.⁵ The juvenile court had the power to grant the state leave to correct the error in order to protect the best interest of the child.⁶ It used its power correctly as it would not have been in the best interest of the child to be returned to Joanna at that time.

Conclusion

Petitions filed under NRS §432B are subject to NRCP unless the statute provides an alternate and conflicting procedure. The juvenile court has discretion to allow parties to remedy procedural errors in order to protect the best interest of the child involved.

⁴ Pan v. Eighth Judicial Dist. Ct., 120 Nev. 222, 228, 86

⁵ See NEV. REV. STAT. 34.160; NEV. REV. STAT. 34.320; See also Int'l Game Tech., Inc. v. Second Judicial Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

⁶ NEV. REV. STAT. § 432B.570(2) (2007).