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Nguyen v. Boynes, 133 Nev. Adv. Op. 32 (June 22, 2017)

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PATERNITY AND CHILD CUSTODY: EQUITABLE ADOPTION DOCTRINE

Summary

The Nevada Supreme Court held that granting joint legal and physical custody to the non-adoptive parent in a same-sex couple adoption does not violate the equitable adoption doctrine or the equal protection clauses of the United States and Nevada State Constitutions.

Background

Ken Nguyen (“Ken”) and Rob Boynes (“Rob”), a same-sex couple, decided to adopt a child from Catholic Charities of Southern Nevada (“Catholic Charities”). At that time, Catholic Charities disallowed joint adoptions for same-sex couples. As such, Rob testified that Ken would adopt the child first and Rob would later also adopt the child. In February 2013, Catholic Charities notified Ken that it was placing a child with him for adoption.

In May 2013, the parties ended their relationship. Around this time, Rob asked Ken to add his name to the child's birth certificate, and Ken refused. In October 2013, Ken formally adopted the child. During the adoption hearing, Ken reiterated that he would neither place Rob's name on the child's birth certificate nor allow a second-parent adoption.

However, both parties participated in every step of the adoption process. At the baby shower, guests addressed cards to both Ken and Rob. Both parties were present to receive the newborn child. The baptism certificate lists both parties as the child’s parents. Further, both parties were present to receive the child for placement, and the child stayed at Rob's house during the first night.

In May 2014, Rob filed a petition for paternity and custody. The district court issued an order holding, inter alia, that (1) Rob was entitled to a presumption of paternity under NRS 126.051(1)(d), and (2) Rob and Ken were to have joint legal and physical custody of the child. Ken now appeals the district court's order.

Discussion

The district court did not err in granting Rob paternity

The district court properly applied the doctrine of equitable adoption finding that Rob was the adoptive father even though this was not a custody suit.

The doctrine of equitable adoption applies in this case

Equitable adoption is an equitable remedy to enforce an adoption agreement under circumstances "where there is a promise to adopt, and in reasonable, foreseeable reliance on that

¹ By Angela Lee.

promise a child is placed in a position where harm will result if repudiation is permitted."² In past cases, the Court declined to extend the equitable adoption doctrine to determine legal parentage between a biological and nonbiological parent, specifically where a putative father's biological relationship with a child is in dispute.³ Instead, this Court held that a determination of parentage as to whether a putative parent is the natural parent of the child falls within the purview of Nevada's Uniform Parentage Act ("NUPA").⁴

However, unlike past cases, Ken and Rob did not dispute their nonbiological parentage as required to implicate the NUPA. Instead, this case concerned whether the parties had agreed to adopt the child together at the beginning of the adoption process and whether accompanying that agreement was an intent and promise by Ken to allow Rob to adopt the child later given Catholic Charities' policy disallowing joint adoptions for same-sex couples. Thus, the equitable adoption doctrine applied to enforce an adoption agreement under this case's unique factual circumstances.⁵

The district court did not abuse its discretion in granting Rob paternity under the equitable adoption doctrine

The district court did not err in granting Rob paternity through equitable adoption of the child. The facts of this case satisfied the four elements of equitable adoption: (1) intent to adopt, (2) promise to adopt, (3) justifiable reliance, and (4) harm resulting from repudiation.⁶

Regarding the first and second factors, substantial evidence supported the district court's finding that the parties intended for Ken to adopt the child first and Rob second. Further, that intent was accompanied by a promise from Ken to allow Rob to do so. Rob was an integral factor in the child's adoption and was intimately involved with the adoption process. Moreover, Ken treated Rob as a second parent to the child before the commencement of the underlying suit.

Third, substantial evidence supports the district court's finding that Rob justifiably relied on Ken's promise to allow him to adopt second. Rob acted upon that promise to his detriment. Rob dedicated a substantial amount of his time to the adoption process. Moreover, Rob primarily cared for the child post-placement. Rob also made substantial changes to his house and lifestyle to accommodate the child's needs, which included changing one of the rooms in his house to a nursery.

Finally, the resulting harm from Ken's repudiation would be the deprivation of Rob's emotional and financial support to the child. As such, if Ken "were allowed to renege with impunity, it would be to the probable detriment of an innocent child," and "[e]quity cannot allow such a result."⁷ Therefore, the Court affirmed the district court's application of the equitable adoption doctrine and grant of paternity to Rob.

² *Frye v. Frye*, 103 Nev. 301, 303, 738 P.2d 505, 506 (1987).

³ *See Russo v. Gardner*, 114 Nev. 283, 956 P.2d 98 (1998); *Hermanson v. Hermanson*, 110 Nev. 1400, 887 P.2d 1241 (1994).

⁴ *Russo*, at 288-89; *Hermanson*, at 1406.

⁵ *See St. Mary v. Damon*, 129 Nev. 647, 655 (2013) ("Ultimately, the preservation and strengthening of family life is a part of the public policy of this State." (internal quotation marks omitted)).

⁶ *Frye* at 302.

⁷ *Id.*

The district court's order did not violate the United States and Nevada Constitutions' equal protection clauses

"The threshold question in [an] equal protection analysis is whether a statute effectuates dissimilar treatment of similarly situated persons."⁸ Ken did not challenge the constitutionality of a particular statute. Instead, he alleged that the district court treated the parties differently than it would have a heterosexual couple. However, "[c]hild custody determinations are by necessity made on a case- by-case basis," and, here, "there is nothing to indicate that the ultimate decision of the district court turned on [the couple's sexual orientation]."⁹ Thus, the Court held that the district court did not violate the United States and Nevada Constitutions' equal protection clauses in granting its order of paternity and child custody.

The district court did not abuse its discretion in granting Rob joint legal and physical custody

Ken argued that the district court erred in awarding Rob joint legal and physical custody of the child because the district court failed to properly consider Rob's mental health. However, Ken's argument is without merit because (1) "[t]here was nothing noteworthy" regarding both parties' mental and physical health, (2) the single harassing email sent by Rob was not sufficient to create a showing of "obsessed stalking behavior," and (3) both parties "parented with no major incident even during the so-called cyberstalking period." Further, the testimonies of Ken and Rob indicate that both parties were able to take care of the child in a joint effort despite the harassing emails. Thus, both parents were mentally fit to take care of the child.

Ken also argues that Rob intentionally destroyed his computer and lied about the destruction date to avoid disclosing evidence of his stalking behavior contained on the computer. Ken argues that the district court should have found such evidence willfully suppressed and deemed adverse to Rob. However, only inconclusive evidence existed to support a spoliation claim against Rob. Accordingly, the Court affirmed the district court's order granting Rob joint legal and physical custody of the child.

Conclusion

The district court did not err in granting Rob paternity under the equitable adoption doctrine. Furthermore, the district court's order did not violate the United States and Nevada Constitutions' equal protection clauses. Lastly, the district court did not abuse its discretion in granting Rob joint legal and physical custody. Accordingly, the Supreme Court affirmed the district court's order granting Rob paternity and joint legal and physical custody of the child.

Concurring

STIGLICH, J., with whom CHERRY, C J, and HARDESTY, J., agree, concurring:

⁸ Rico v. Rodriguez, 121 Nev. 695, 703 (2005).

⁹ *Id.* at 704.

The district court did not err in granting Rob paternity. However, the Nevada Parentage Act is a more appropriate analysis for the facts of this case, rather than the doctrine of equitable adoption.

Nevada law does not preclude a child from having two mothers under the Nevada Parentage Act.¹⁰ Accordingly, this court held that maternity could be proved by (1) offering proof to establish that the appellant is the child's legal mother; or (2) applying paternity statutes "insofar as practicable" under NRS 126.051¹¹.

If a presumption of parentage can apply to a woman in a same-sex relationship, there appears no reason why the provisions of NRS 126.051 cannot apply to a man in a same-sex relationship. Rob submitted ample evidence to support the presumption of parentage under NRS 126.051(1). Therefore, the judges concurred with the majority's holding affirming the decision of the district court, but on different grounds.

¹⁰ *St. Mary*, at 654.

¹¹ *Id.* at 653.