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Falconi v. Secretary of State, 129 Nev. Adv. Op. 28 (April 25, 2013)¹

FAMILY LAW – DISCLOSURE OF A CO-PARENT’S CONFIDENTIAL ADDRESS
INVOLVING DOMESTIC VIOLENCE

Summary

Petitioner filed this original petition for a writ of mandamus, seeking an order directing the Secretary of State to remove his ex-wife from the fictitious address program. The Court provided guidelines to determine whether to grant the writ, but ultimately denied the petition because this is not the proper court.

Disposition/Outcome

A district court may grant the disclosure of a parent’s address to a co-parent by extraordinary writ. To determine whether to grant the writ, the district court must consider whether the moving party was a perpetrator of domestic violence. If established, the burden shifts to the moving party to show that disclosure is in the child’s best interest despite the existence of domestic violence.

Factual and Procedural History

Petitioner Falconi and real party in interest Farrar separated because of domestic violence and Farrar was granted a temporary restraining order, which prohibited Petitioner from having any contact with Farrar or the parties' child. Three months after the restraining order expired, the district court awarded the parties joint legal and physical custody of their child. Later, Farrar applied to respondent Secretary of State for a fictitious address as part of Nevada's fictitious address program for domestic violence victims.² Petitioner challenged issuance of the fictitious address, but his petition was denied on its merits. An appeal from that order was affirmed solely because the district court lacked jurisdiction under Nevada's Administrative Procedure Act to review the Secretary of State's decision.

Petitioner then filed this original petition for a writ of mandamus, seeking an order directing the Secretary of State to remove Farrar from the fictitious address program. Petitioner argues that the temporary restraining order was insufficient for a showing of domestic violence in order to receive the fictitious address. In addition petitioner argues the fictitious address infringes his fundamental liberty interest in parenting his child.

¹ By David Rothenberg, Senior Staff Member, Nevada Law Journal.

² See NEV. REV. STAT. § 217.462–71.

Discussion

Extraordinary writ relief is within this court's discretion,³ which may be exercised when the petitioner does not have an adequate remedy at law and when “an important issue of law needs clarification.”⁴ Here, consideration of this writ is appropriate because petitioner has presented important legal issues, regarding the fictitious address statutes and a co-parent's ability to seek disclosure of the other parent's address, that need clarification, and he does not have an adequate remedy at law.

Overview of the fictitious address program

Nevada's fictitious address program was enacted in 1997 to help domestic violence victims establish and maintain confidential home addresses.⁵ To accomplish this goal, the fictitious address program provides that “[a]n adult person, a parent or guardian acting on behalf of a child, or a guardian acting on behalf of an incompetent person may apply to the Secretary of State to have a fictitious address designated by the Secretary of State serve as the address of the adult.”⁶

To receive a fictitious address, an individual must submit to the Secretary of State an application containing “[s]pecific evidence showing that the adult, child or incompetent person has been a victim of domestic violence, sexual assault or stalking before the filing of the application.”⁷ The relevant statute allows, as examples of specific evidence, “an applicable record of conviction, a temporary restraining order or other protective order.”⁸ The Secretary of State *must* approve an application accompanied by the required evidence,⁹ making the applicant a participant in the program, and *must* issue the participant a fictitious address.¹⁰ The Secretary of State forwards any mail received for the participant to the participant at his or her actual address¹¹ and is prohibited from making records available containing the applicant's name or addresses unless requested from a law enforcement agency or court order.¹²

Issuance of the fictitious address to Farrar was proper

The Court concluded that the Secretary of State was required to issue the fictitious address upon the presentation of the temporary restraining order. The fictitious address program does not authorize the Secretary of State to investigate or determine whether a protective order was issued based on a finding of domestic violence or on a finding of a potential threat of violence before approving an application.¹³ The statute is silent as to whether a temporary

³ See *Walker v. Eighth Judicial Dist. Court*, 120 Nev. 815, 819, 101 P.3d 787, 790 (2004).

⁴ See *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197–98, 179 P.3d 556, 558–59 (2008).

⁵ See S.B. 155, 69th Leg. (Nev. 1997) (bill summary).

⁶ NEV. REV. STAT. § 217.462(1) (2005).

⁷ NEV. REV. STAT. § 217.462(2)(a).

⁸ NEV. REV. STAT. § 217.462(4).

⁹ NEV. REV. STAT. § 217.462(4).

¹⁰ NEV. REV. STAT. § 217.464(1)(a) (2005).

¹¹ NEV. REV. STAT. § 217.464(1)(b).

¹² NEV. REV. STAT. § 217.464(2).

¹³ See NEV. REV. STAT. § 217.462(4); *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) (explaining that

restraining order must be active in order to constitute specific evidence of domestic violence.¹⁴ Here, the Secretary of State did not have to evaluate the application and was obligated to accept Farrar into the program. As a result, Falconi is not entitled to writ relief.¹⁵

Effect of the fictitious address program on custodial parenting rights

Potential problems may arise when a parent who shares joint custody of his or her child is admitted into the fictitious address program.

Balancing the protection of domestic violence victims with parental rights

Both parents need to be informed and involved in making major decisions regarding the child when the parents share joint legal custody of a child.¹⁶ The rights of a custodial parent to know where his or her child resides must be balanced against the important state interest in protecting victims of domestic violence served by the state's fictitious address program.¹⁷

Procedure for seeking disclosure of a co-parent's confidential address

Nevada's fictitious address statutes do not delineate the procedure by which a court may disclose a participant's address to a specific party. Thus, the Court looked to a similar case in New Jersey for guidance.¹⁸ In that case, to balance the competing interests of protecting victims of domestic violence and allowing parents to know where their children are living, the court concluded that a determination must be made as to whether address disclosure is in the child's best interest.¹⁹

Petition for writ of mandamus

Here, the fictitious address was not obtained until after the custody order was entered, thus, an order compelling disclosure of a home address must be determined outside the context of the custody proceeding. For a writ of mandamus to issue, the petitioner must have some right of relief.²⁰ The Secretary of State is only authorized to release an address upon court order, thus

“when a statute's language is plain and its meaning clear, the courts will apply that plain language”). In addition, this requirement was debated and ultimately left out. *Compare* S.B. 155(2)(4), 69th Leg. (Nev. 1997) (second reprint), with S.B. 155(2)(4), 69th Leg. (Nev. 1997) (third reprint); *see also* Hearing on S.B. 155 Before the Assembly Comm. on Ways and Means, 69th Leg. (Nev., June 26, 1997) (expressing concern that the earlier version of the proposed statute required the Secretary of State to exercise judgment and make legal determinations).

¹⁴ *See* NEV. REV. STAT. § 217.462.

¹⁵ *See* NEV. REV. STAT. § 34.160 (2001) (providing that a petition for a writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station); *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (same).

¹⁶ *Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009); *see also* *Kirkpatrick v. Eighth Judicial Dist. Court*, 119 Nev. 66, 71, 64 P.3d 1056, 1059 (2003) (recognizing that parents have a “liberty interest in the care, custody, and management of their children” that is fundamental but not absolute).

¹⁷ *See* *Grant v. Pugh*, 887 N.Y.S. 2d 802, 807–08 (Fam. Ct. 2009) (recognizing that it may be proper to balance an individual's constitutional rights against a state's interest in protecting domestic violence victims).

¹⁸ *Sacharow v. Sacharow*, 826 A.2d 710, 714 (N.J. 2003).

¹⁹ *Id.* at 721-22.

²⁰ *See* NEV. REV. STAT. § 34.160.

the Secretary must be made a party to the writ petition as a respondent. The program participant must be included as a real party in interest.

Burden to establish disclosure

It is the petitioner's burden to establish that writ relief is warranted.²² A custodial parent generally has a right to know where his or her child resides, even when the child is in the other parent's physical custody. Therefore, a parent may meet the initial burden with a showing of joint legal custody.²³ If the party seeking disclosure meets this initial burden, the party seeking to maintain the confidential address, as the real party in interest, will have the burden of proving that the party seeking disclosure was the perpetrator of an act of domestic violence against him or her or against the parties' child and that he or she fears further domestic violence.²⁴ If established, the burden shifts back to petitioner, who must then demonstrate that confidentiality is nonetheless not in the child's best interest under this state's best interest factors.²⁵ If the court ultimately determines that disclosure is in the child's best interest, the court should order release of the confidential address. If not, the address may remain confidential.

Conclusion

The district court is the appropriate tribunal for seeking this relief because such a petition will necessarily require factual determinations to be made.²⁶ In addition, a petition should be filed, to the extent possible, in the same district court in which any child custody order has been entered because of the close relationship between child custody issues and the issues implicated in this situation. As a result, the Court denied the petition for the writ of mandamus because the Secretary of State was required to issue the fictitious address under the program statutes, and because the Court is not the proper place to determine whether the Secretary should be ordered to disclose Farrar's confidential home address..

²² See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

²³ See *Rivero*, 125 Nev. at 420–21, 216 P.3d at 221; *Kirkpatrick*, 119 Nev. at 71, 64 P.3d at 1059; see also *Sacharow*, 826 A.2d at 722.

²⁴ See *Sacharow*, 826 A.2d at 722; cf. NEV. REV. STAT. § 125.480(5) (2009) (providing that if a court determines "by clear and convincing evidence that either parent or any other person seeking custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child," a rebuttable presumption arises against that parent having sole or joint custody of the child).

²⁵ See NEV. REV. STAT. § 125.480(4) (setting forth the factors for a court to consider in determining a child's best interest, including the amount of conflict between the parents, the parents' ability to cooperate to meet the child's needs, the parents' mental and physical health, and any previous parental abuse or neglect of the child); see also *Sacharow*, 826 A.2d at 722.

²⁶ See *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (explaining that "an appellate court is not an appropriate forum in which to resolve disputed questions of fact," and that "[w]hen disputed factual issues are critical in demonstrating the propriety of a writ of mandamus, the writ should be sought in the district court, with appeal from an adverse judgment to this court").