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Summary of Rennels v. Rennels, 127 Nev. Adv. Op. No. 49

Erin Elliot
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Rennels v. Rennels, 127 Nev. Adv. Op. No. 49 (August 4, 2011)¹
DOMESTIC RELATIONS – Termination of Non-Parental Visitation

Summary

Appeal from a court order granting Respondent’s motion to terminate grandparent visitation with Respondent’s minor child.

Disposition

District court’s judgment reversed and remanded. Stipulated visitation orders are final decrees entitled to res judicata protections. The parental presumption no longer controls once visitation rights are judicially approved. To modify or terminate a visitation order, the moving party must demonstrate changed circumstances affecting the child’s welfare and that modification or termination is in the child’s best interest.

Factual and Procedural History

Respondent Roger Rennels (“Roger”) received sole custody of his daughter, Martina, after divorcing her mother in 2001. Subsequently, Roger and Martina moved in with Roger’s mother, appellant Audrey Rennels (“Audrey”). After a five month stay, Roger and Martina moved to Texas. Audrey and Martina remained close and visited one another. In 2003, Roger and Martina moved to Las Vegas. Thereafter, Roger married his current wife, Respondent Jennifer Rennels (“Jennifer”). In 2006, Jennifer adopted Martina.

Appellant Audrey sought court-ordered non-parental visitation pursuant to NRS 125C.05, claiming Roger stopped allowing Martina to see her in June 2004 because he disapproved of the frequent contact. Respondent Roger opposed with a motion to dismiss. The district court denied the motion to dismiss and required an evidentiary hearing because there was a rebuttable presumption that granting non-parental visitation over a parent’s objection is not in the child’s best interest.

Before the evidentiary hearing, the parties reached a settlement regarding visitation and the court prepared a visitation order. The order allowed Audrey four supervised visits per year, which would become unsupervised if a psychologist so determined. In 2008, a psychologist recommended unsupervised visitation, but Roger refused. The district court denied Audrey’s motion to compel Roger to comply with the order and granted Roger and Jennifer’s motion to terminate visitation altogether.

Discussion

The Stipulated Visitation Order was Final

Public policy favors prompt and voluntary resolution of matters relating to minor children.² Additionally, the Supreme Court of Nevada recognizes the preclusive effect of such

¹ By Erin Elliott.

agreements if deemed final.³ An order is final when it fully resolves the presented issues and leaves nothing for future consideration, regardless of what the order is actually called.⁴ Final judgments regarding non-parental visitation matters have preclusive effects on subsequent litigation.⁵

Here, the visitation order was final because the order resolved the visitation dispute, memorialized the agreement, set forth the specific parameters for visitation, and provided for modifications. There was no indication that the parties intended that the order be anything other than a final judgment. Additionally, the order remained unchallenged for two years. Because the order was final, it precludes re-litigation of Audrey's right to visitation based on the same set of facts already considered by the district court.

The Parental Presumption

The United States Supreme Court presumes fit parents act in their children's best interests.⁶ As a result, fit parents' wishes must accord at least some special weight with courts.⁷ NRS 125C.050(4) also provides fit parental deference, stating that after a parent has "denied or unreasonably restricted visits with the child, there is a rebuttable presumption that the right to visitation . . . is not in the best interests of the child."⁸

However, when there is a court-ordered custody arrangement, the nonparent has effectively rebutted the parental presumption.⁹ The Supreme Court of Nevada extended this rule to judicially approved nonparent visitation arrangements, stating the parental presumption does not apply, giving deference to court orders, and promoting stability for children.¹⁰

The Ellis Test

The *Ellis* test was originally used for modifying custody arrangements, but the Supreme Court of Nevada extended *Ellis* to also govern modifications and terminations of judicially approved nonparent visitation rights. Under the *Ellis* test, modifications and terminations are only warranted when 1) there has been a substantial change in circumstances affecting the welfare of the child, and 2) the child's best interest is served by the modification.¹¹ Courts should evaluate both prongs without regard to parental preference.

² See *Rivero v. Rivero*, 125 Nev. 410, 429, 922 P.3d 213, 226-27 (2009); *Ellis v. Carcucci*, 123 Nev. 145, 151, 161 P.3d 239, 243 (2007).

³ See *Castle v. Simmons*, 120 Nev. 98, 105, 86 P.3d 1042, 1047 (2004).

⁴ *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994).

⁵ *Ingram v. Knippers*, 72 P.3d 17, 22 (Okla. 2003).

⁶ *Troxel v. Granville*, 530 U.S. 57, 68 (2000).

⁷ *Id.* at 70.

⁸ NEV. REV. STAT. 125C.050(4) (2007).

⁹ See *Hudson v. Jones*, 122 Nev. 708, 713-14, 138 P.3d 429, 432-33 (2006).

¹⁰ *Ellis v. Carcucci*, 123 Nev. 145, 151; 161 P.3d 239, 243 (2007).

¹¹ *Id.* at 150, 242.

Prong One: Substantial Change in Circumstances Affecting the Welfare of the Child

The Supreme Court of Nevada did not address what circumstances are sufficient enough to modify or terminate a nonparent's visitation rights. However, some hostility between the parent and nonparent is insufficient, especially since animosity exists when a party resorts to litigation to settle visitation issues.¹²

Here, neither parties nor the district court addressed changed circumstances before terminating Audrey's rights. Rather than make specific findings regarding changed circumstances, the district court cited acrimony between the parties. Acrimony, by itself, is insufficient to demonstrate changed circumstances.

Prong Two: The Best Interests of the Child

To evaluate whether a parent's request to modify or terminate a nonparent's judicially approved visitation is in the best interest of the child, courts should consider the factors in NRS 125.480(4) and any other relevant considerations. The district court must consider custodial stability in applying the factors.

Conclusion

The stipulated visitation order entered into by the parties was final because the order resolved the visitation dispute, memorialized the agreement, set forth the specific parameters for visitation, and provided for modifications. Furthermore, the district court failed to consider Roger's motion to terminate Audrey's visitation rights in light of the *Ellis* factors. Consequently, the Supreme Court of Nevada reversed the district court's order and remanded to the district court for further proceedings consistent with this opinion. Meanwhile, the stipulated visitation order remained in full force and effect.

¹² Mosley v. Figliuzzi, 113 Nev. 51, 58, 930 P.2d 1110, 1114 (1997).