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## Summary of Landreth v. Malik, 127 Nev. Adv. Op. No. 16

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FAMILY LAW – SUBJECT MATTER JURISDICTION

**Summary**

Petition for rehearing of an appeal from default judgment stemming from a property dispute ordered by the Family Court Division of the Eighth Judicial District Court. Rehearing based on lack of subject matter jurisdiction and failure of a party to provide adequate notice of intent to seek a default judgment.

**Disposition/Outcome**

The Supreme Court of Nevada held that the family court judge did have subject matter jurisdiction over the case, even though it was outside of the scope of a traditional family court. The Court then reversed the default judgment because Plaintiff failed to serve Defendant with proper notice of intent to seek a default after giving Defendant several extensions to file an answer.

**Factual and Procedural History**

Amit Malik (“Malik”) and Dlynn Landreth (“Landreth”) cohabitated together from July 2001 until September 2005. The parties were never married and did not have any children together during the course of their four-year relationship. In September 2006, a year after the parties ended their relationship, Malik filed an action against Landreth in the family court division, seeking half of the equity in a Las Vegas home, half of certain personal property acquired during the relationship, and all of his separate property.

Malik properly served Landreth with the complaint in early October 2006. During October and November, Malik granted several oral and written time extensions for Landreth to file an answer. Because Landreth failed to answer, even after the extensions, Malik filed a notice of intent to apply for a default judgment in December. In February 2007, Malik filed the default and served Landreth with notice of a default hearing.

During the hearing, Landreth moved to set aside default by alleging Malik granted her an additional time extension after the December notice of intent to apply for default judgment. Reasoning that Landreth had numerous opportunities to answer, the family court granted default judgment to Malik and awarded him half the equity in the home and other personal property located within the residence.

Landreth appealed the decision to the Supreme Court of Nevada on the previously un-argued basis of improper subject matter jurisdiction. Writing for the majority, the Court found that the family court’s judgment was void because of a lack of subject matter jurisdiction. For this rehearing, Landreth asks the Court to re-consider the subject matter jurisdiction issue. She

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<sup>1</sup> By Charles Gianelloni

also asserts that the family court abused its discretion when it failed to consider Landreth's notice argument.

## **Discussion**

### *Subject Matter Jurisdiction*

Writing for the majority, Justice Hardesty made a thorough and exhaustive inquiry into the issue of subject matter jurisdiction. More specifically, the question was whether a family court judge has the judicial power to hear matters outside of the scope of family court issues, as enumerated by statute.

Landreth's argument was that her case did not fall within family court subject matter jurisdiction under NRS 3.223 because the parties were not married, had no children, and the only issue was property distribution.<sup>2</sup> As in Landreth's first appeal,<sup>3</sup> the Court determined that the first step in the analysis was to analyze Article 6, Section 6 of the Nevada Constitution.<sup>4</sup> In parting with the analysis in the first appeal, the Court concluded that Article 6, Section 6 is ambiguous because it could reasonably be interpreted in two different ways. First, it could be interpreted to allow the Legislature to limit the subject matter jurisdiction of family court. But it could also be interpreted to mean that judges sitting in family court have the same powers as other district court judges, which would include the power to hear matters outside of the ones listed in NRS 3.223.<sup>5</sup> Thus, the Court looked at legislative history for support.

From the legislative history, the majority concluded that a family court judge had the same power as any other district court judge.<sup>6</sup> The Court then looked at the legislative history of NRS 3.223.<sup>7</sup> There, the Court found that family court judges must first run as district court judges and then rotate into the position of a family court judge. The Court distinguished this from other states where a judge is only a family court judge, and not first a district court judge. The Court also cited to several hearings where senators expressed much concern about limiting the jurisdiction of family court judges.

After parsing the history of NRS 3.223, the majority concluded that NRS 3.223 in no way limits the constitutional power and authority granted under Article 6, Section 6(1) to district court judges sitting in family court.<sup>8</sup> The Court explained that judicial power of judges is derived directly from the Nevada Constitution, but the subject matter jurisdiction of family court is ultimately established under NRS 3.223. And even though that statute details that family court has original jurisdiction over certain matters, a district court judge's judicial power is not diminished by NRS 3.223. Thus, district court judges presiding in family court may hear matters unrelated to family court. However, the majority was quick to note that this would be rare – only in situations where a case was miss-assigned to family court would this likely occur.

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<sup>2</sup> NEV. REV. STAT. 3.223 (2007).

<sup>3</sup> Landreth v. Malik, 125 Nev. Adv. Op. No. 61, 221 P.3d 1265 (2009).

<sup>4</sup> NEV. CONST. art. VI, § VI.

<sup>5</sup> NEV. REV. STAT. 3.223 (2007).

<sup>6</sup> Hearing on S.J Res. 24 Before the S. Judiciary Comm., 65th Leg. (Nev., Jan. 24, 1989).

<sup>7</sup> NEV. REV. STAT. 3.223 (2007).

<sup>8</sup> NEV. REV. STAT. 3.223 (2007); NEV. CONST. art. VI, § VI.

## *Abuse of Discretion*

Because the Court determined that family court did have jurisdiction over the matter, it next turned to the issue of whether the family court abused its discretion regarding the entry of default judgment. The Court concluded that family court did abuse its discretion and reversed.

Landreth argued for a reversal because Malik did not send a second notice of intent to file a default after granting Landreth extensions for her to file an answer. Malik, on the other hand, argues that there is no further notice requirement after he provided Landreth with the first one. The Court started its analysis first by distinguishing the notice requirements for a default versus the requirements for a default judgment. Relying on *Rowland v. Lepire*,<sup>9</sup> the Court explained that a lawyer has a duty to determine intent to proceed before requesting a default. Looking to NRCPC 55(b)(2),<sup>10</sup> the Court explained that there is a three-day notice requirement before a party can request a default judgment.

Turning to the facts, the Court noted that Malik did send a three-day notice of intent to file a default judgment, but he did so before a default was even entered by the court. Thus, Malik failed to provide notice consistent with NRCPC 55(b)(2) – the three-day notice of intent to seek a default judgment must occur after the clerk has registered the default.<sup>11</sup> Additionally, the Court also found that, under *Rowland*, Malik also had a duty to inquire about Landreth’s intent to proceed after each extension he granted her. Malik stated on the record that he verbally granted Landreth several extensions, but he did not ask whether she intended to proceed. Thus, Malik failed to provide adequate notice under either *Rowland* or NRCPC 55(b)(2). Consequently, the court abused its discretion when it failed to consider this issue.

## **Dissenting Opinions**

Justice Douglas, with whom Justice Pickering and Justice Cherry joined, dissented and would deny the petition for rehearing for lack of subject matter jurisdiction. Douglas’ dissent echoed much of the same analysis he used in writing the majority opinion in the original appeal. He argued that a judge’s power is not personal, but is institutional. Thus, it is a court that has jurisdiction over and matter and not a specific judge. But if a court does not have jurisdiction, then no judge can proceed. Justice Douglas cited to several cases stating similar opinions as support for his statements.<sup>12</sup>

Justice Douglas went on to argue that NRS 3.223 did in fact create original jurisdiction for family courts and without such jurisdiction, family court cannot hear matters other than those enumerated in the statute.<sup>13</sup> He further concluded that family court should hear matters outside the scope of NRS 3.223 only if the matter was in some way related to matters listed in the statute. Otherwise, family court judges would be forced to hear everything from murder to construction defect cases.

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<sup>9</sup> 99 Nev. 641, 643, 600 P.2d 237 (1979).

<sup>10</sup> NEV. R. CIV. P. 55(b)(2).

<sup>11</sup> *Id.*

<sup>12</sup> *People v. Osslo*, 323 P.2d 397, 413 (Cal, 1958); *White v. Superior Court*, 42 P. 480, 482 (Cal. 1895).

<sup>13</sup> NEV. REV. STAT. 3.223 (2007).

The dissenters did not agree that Article 6, Section 6 of the Nevada Constitution was ambiguous.<sup>14</sup> They thought it was simple – family-related matters fall under the jurisdiction of family court.<sup>15</sup> Justice Douglas also argued that under the majority’s rationale, district court judges not assigned to family court had less authority than those assigned to family court, which would violate the constitution. Continuing, he explained that if all district court judges were vested with equal jurisdictional powers, then it also followed that district court judges in districts with family courts should have the power to hear family law-related matters, even if they were not assigned to family court. Thus, the whole idea that family courts have original jurisdiction over family law matters would be meaningless.

Justice Cherry added a separate dissent, stating his concerns that family court was created for the sole purpose of hearing family-related matters. The public did not intend that family court judges should have to hear construction defect or business cases. Justice Cherry also stated that he thought the majority has misapplied the legislative history surrounding the creation of family court.

### **Conclusion**

A family court judge maintains all constitutional powers of a district court judge. Thus, family court judges possess the judicial power to hear matters outside of the scope of family court’s domain. Additionally, a party must provide notice of intent to seek a default in accordance with NRCP 55(b)(2) even after granting extensions to file an answer.

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<sup>14</sup> NEV. CONST. art. VI, § VI.

<sup>15</sup> *Id.*