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

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***Landreth v. Malik*, 125 Nev. Adv. Op. No. 61 (December 24, 2009)¹**

FAMILY LAW – SUBJECT MATTER JURISDICTION

Summary

An appeal from default judgment stemming from a property dispute ordered by the Family Court Division of the Eighth Judicial District Court

Disposition/Outcome

Family court’s judgment voided because of lack of subject matter jurisdiction.

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 Nevada Supreme Court on the previously un-argued basis of improper subject matter jurisdiction.

Discussion

Subject matter jurisdiction

Writing for a majority of four, Justice Douglas noted that subject matter jurisdiction concerns may be raised “. . . by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties.”² Admittedly, the Court observed that the issue of subject matter jurisdiction of family courts in judicial districts was an issue of first impression. The Court then noted that family courts have limited jurisdiction because their authority is derived by state law. In Nevada, Article 6, Section 6(2) of the state constitution specifies that the legislature

¹ By Kathleen Wilde

² *Swan v. Swan*, 106 Nev. 464, 468, 796 P.2d 221, 224 (1990).

may provide for the establishment family courts and their jurisdiction.³ Using the constitutionally granted authority, the state legislature enacted NRS 3.0105 to create family courts and NRS 3.223 to specify the extent of original and exclusive jurisdiction of family courts.

In interpreting NRS 3.223, the Court began by looking to the statute's plain meaning. The Court held that NRS 3.223 is unambiguous as written because the language of the statute specifically grants a family court jurisdiction over cases concerning family matters, such as divorce, child custody and support, and guardianship.

Reconciliation with state precedent

Next, the Court distinguished the case at bar from precedent cases. In the 1984 case of *Hay v. Hay*, the Court allowed unmarried cohabitants to bring a cause of action in family court because the parties did not dispute jurisdiction and held themselves out as a married couple.⁴ The Court noted that *Hay* did not control the dispute between Malik and Landreth because neither party claimed to be part of a married couple or familial unit.

Similarly, in *Barelli v. Barelli*, the Court permitted a family court to resolve supplemental issues surrounding an oral contract because the terms of the agreement related to alimony and community property.⁵ By contrast, the Court commented that Landreth and Malik never had a claim eligible for the family court, and as a result, supplemental jurisdiction could not apply.

Application to the case before the Court

The Court concluded that NRS 3.223 does not confer jurisdiction over real or personal property disputes between unmarried, childless parties because the plain language of the statute does not include such proceedings. Because Malik and Landreth never married and did not have children together, the family court lacked subject matter jurisdiction to hear the case or to issue a default judgment. Furthermore, because lack of subject matter jurisdiction is a fundamental defect, the Court concluded that the family court's judgment was void.

Dissenting Opinion

Writing for three members of the Court, Chief Justice Hardesty disagreed with the majority's understanding of NRS 3.223. The dissent reasoned that the statute was open to more than one interpretation and turned to legislative history to determine that family court judges are also district court judges. Reasoning that district court judges receive their authority from the Nevada Constitution,⁶ the dissent believed that legislatively created limitations were invalid. Furthermore, the dissent understood authority to hear family cases as an expanded judicial power for district court judges who are specially trained, rather than a separate specialty court.

³ Section 6(2) states, "The legislature may provide by law for . . . The establishment of a family court as a division of any district court and may prescribe its jurisdiction."

⁴ *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

⁵ *Barelli v. Barelli*, 113 Nev. 873, 878, 944 P.2d 246, 249 (1997).

⁶ Chief Justice Hardesty specifically wrote, "In Nevada, judicial power is derived directly from Article 6, Section 6(1) of the Nevada Constitution, empowering judges with the authority to act and determine justiciable controversies."

Satisfied that the family court judge below had authority to hear the case, the dissent considered whether Landreth received proper notice. The dissent noted that Nevada Rule of Civil Procedure 55(b)(2) requires heightened notice of intent to file a default if a party has appeared before a court. Particularly where time extensions are granted, a party filing for default must also provide a subsequent notice after the completion of the time extension. According to the dissent, the family court record did not clearly indicate if there were any time extensions granted after the initial notice of intent to apply for default judgment and as a result it was unclear whether an additional notice was required prior to the default hearing. The dissent argued that notice is critical in default proceedings and it is judicial abuse of discretion to assume notice requirements are met without a clear showing. Thus, the dissent concluded that the lower court's judgment should have been reversed and remanded for further consideration of notice given to Landreth.

Conclusion

Family courts are limited in subject matter jurisdiction to the areas explicitly conferred by the state legislature. Where a court renders a judgment without the appropriate jurisdiction, the decision is void.