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Johnson v. District Court
124 Nev. Adv. Op. No. 23
May 1, 2008¹

Family Law–Sealed Records and Gag Order

Summary:

Petition for Writ of Mandamus or Writ of Prohibition challenging a district court order sealing a divorce case and a gag order restricting all parties and their attorneys from discussing the case with the public.

Disposition/Outcome:

Writ of Mandamus granted directing the district court to vacate its order sealing the records and the gag order. The district court was obligated to maintain the divorce proceedings public status. The district court abused its discretion by issuing an overly broad gag order.

Factual and Procedural History:

Petitioner Jane Elizabeth Johanson and real party in interest Robert W. Lueck, a district court judge at the time, obtained a divorce in 1999. After a failed bid for reelection in 2004, Lueck filed a motion to reduce child support payments. The district court entered an order reducing payment.

During a hearing on a motion to correct clerical errors, Lueck stated he was running for judge again and he did not want the arrears to be used against him. Following the hearing the district court entered an order sealing the entire case file and sua sponte issued a gag order.

Discussion:

NRS 125.110 provides that divorce actions “shall” remain public record. The Court concluded that under the plain language of NRS 125.110, the district court has no discretion in divorce cases to seal pleadings.

A district court may only enter a gag order when “(1) the activity restrained poses either a clear and present danger or a serious and imminent threat to a protected competing interest, (2) the order is narrowly drawn, and (3) less restrictive means are not available.”² The district court failed to consider whether publicity would pose a serious and imminent threat to a competing interest. Because the judicial campaign had no apparent bearing on a protected interest, the district court’s gag order did not satisfy the

¹ By: Tyler Ure

² Levine v. US Dist. Court for C. Dist. Cal., 764 F.2d 590, 595 (9th Cir. 1985).

first prong of the test. Further, the order was overly broad because the perpetual gag order was not necessary to protect a competing interest. Finally, the district court failed to make any determination as to whether less restrictive means were available to protect against the perceived threat.

Conclusion:

The district court was obligated to keep the divorce proceedings public record. Additionally, the district court abused its discretion by issuing an overly broad gag order sua sponte without making findings that it was necessary to protect a competing interest or if there were less restrictive means available.