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Gregory A. Hubbard
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***Mason v. Cuisenaire*, 122 Nev. Adv. Op. 6 (February 9, 2006)¹**

FAMILY LAW – CHILD SUPPORT

Summary

Rod Mason and Martine Cuisenaire were divorced under a decree from a North Carolina court, but did not raise the issue of child support for their mutual child in that court. Cuisenaire petitioned a Nevada court to grant retroactive and prospective child support since Mason had since moved to Nevada. The Nevada Supreme Court held that the district court was correct in awarding retroactive child support, but that the district court should have relied upon North Carolina law, not Nevada law, in determining its retroactive support award.

Disposition/Outcome

The Nevada Supreme Court remanded to the Eighth Judicial District, Family Court Division, to enter an appropriate child support award based on North Carolina law.

Factual & Procedural History

Rod Mason and Martine Cuisenaire met and married in Belgium and later moved to North Carolina. After an eleven-year marriage, which produced one child, the couple divorced in North Carolina. The divorce judgment, entered in 1999, awarded primary physical custody of the child to Cuisenaire, but stated that there were no claims for child support, alimony, or equitable distribution. Mason later moved to Nevada. In 2002, Cuisenaire petitioned a Nevada district court for retroactive and prospective child support. She also petitioned the court for equitable division of the marital estate. The district court granted Cuisenaire \$500 per month in prospective child support payments and \$300 per month in retroactive child support payments. The district court also set an evidentiary hearing regarding the equitable distribution of the marital estate. Before the evidentiary hearing was held, Mason appealed the district court's order to the Nevada Supreme Court. Mason died during the appeal.

Discussion

Because Cuisenaire failed to demonstrate that the North Carolina judgment was invalid on fraud, lack of jurisdiction, or lack of due process, the Nevada Supreme Court held that the judgment was entitled to full faith and credit.

Cuisenaire made several arguments on appeal that she did not make below to the district court. First, she argued that Mason falsified the period of separation in the divorce proceedings. Second, she argued that the divorce is voidable because she did not have independent representation in the divorce proceedings and because Mason did not inform her of his military retirement benefits during the divorce proceedings. Third, she

¹ By Gregory A. Hubbard

argued that her due process rights were violated since Mason served the summons to her Belgium address even though he knew that she was in North Carolina at the time. The Nevada Supreme Court declined to consider these arguments since they were not raised to the district court below. Accordingly, the Court found that Cuisenaire had not demonstrated fraud, lack of due process, or lack of jurisdiction sufficient to overcome the full faith and credit entitled to the North Carolina divorce judgment.

Since the North Carolina decree was entitled to full faith and credit, the Nevada Supreme Court held that North Carolina law controls the retroactive child support award.

1. Application of Nevada Revised Statute 125B.030

The district court relied on Nevada Revised Statute (“NRS”) 125B.030 as its authority for awarding retroactive child support to Cuisenaire. NRS 125B.030 provides, “Where the parents of a child are separated, the physical custodian of the child may recover from the parent without physical custody a reasonable portion of the cost of care, support, education and maintenance provided by the physical custodian. In the absence of a court order, the parent who has physical custody may recover not more than 4 years’ support furnished before the bringing of the action.”² The Court found that the statute’s use of the word “separated” indicated that the statute did not encompass situations where parties had previously been divorced. Since Cuisenaire and Mason had previously been divorced, NRS125B.030 did not apply to their dispute.

2. Retroactive claim for support

The Nevada Supreme Court reasoned that since the North Carolina divorce decree was entitled to full faith and credit, then North Carolina General Statute §50-11.2 should be applied in determining the award of retroactive support. Section 50-11.2 provides: “Where the court has the requisite jurisdiction and upon proper pleadings and proper and due notice to all interested parties the judgment in a divorce action may contain such provision respecting care, custody, tuition and maintenance of the minor children of the marriage as the court may adjudge.”³ The Court looked to cases in other jurisdictions to determine that a divorce judgment which does not contain an ordered amount of child support is not itself considered a child support order to the preclusion of subsequent orders.⁴ Accordingly, the Court determined that the district court may properly determine retroactive child support in this matter, but it must do so under the North Carolina statute, not the Nevada statute.

Conclusion

The Nevada Supreme Court concluded that the district court was correct in giving full faith and credit to the North Carolina divorce judgment. Since Cuisenaire did not raise claims of fraud below, she may not assert them on appeal to disqualify that judgment. However, the Court remanded the matter to the district court in order to determine retroactive child support based on the relevant North Carolina statute. The Nevada statute upon which the district court relied was the wrong state’s law and was not

² NEV. REV. STAT. § 125B.030 (2003) (emphasis added).

³ N.C. GEN. STAT. § 50-11.2 (2005).

⁴ See Willers ex rel. Powell v. Willers, 587 N.W.2d 390, 397 (Neb. 1998).

relevant to these facts. Since the evidentiary hearing concerning the equitable division of the marital estate was delayed pending the results of this appeal, the Supreme Court offered no opinion on that matter.