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Summary of State v. Dist. Ct., 119 Nev. Adv. Op. 68

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State v. Dist. Ct., 119 Nev. Adv. Op. 68, 81 P.3d 512 (Nev. 2003)¹

FAMILY LAW - RELEASE OF NAMES AND ADDRESSES OF ADOPTIVE AND NATURAL PARENTS – WRIT OF MANDAMUS

Summary

Petition for writ of mandamus to prevent enforcement of family court order compelling release of names and addresses of the natural and adoptive parents of the siblings of A.M.S. (real party in interest), a minor child.

Disposition

Petition denied.

Factual and Procedural History

A.M.S. was a ward of the state. Division of Child and Family Services (DCFS) was awarded custody of her and her three siblings in April 1998. The mother of these children was unable to care for them because of drug addiction and A.M.S., as the older child, assumed a maternal role for her younger siblings and had an extremely close relationship to her sisters. The four sisters were eventually placed into separate foster care homes and in September 2000 adoptive parents were found for two of the girls. The family court ordered that before adoption could be final, a visitation plan would have to be established allowing the sisters “unlimited unsupervised visitation.” The sisters’ caregivers and DCFS did not comply with the order.

Two of the sisters were adopted in November 2001 and one sister went to live with her biological father. The adoption decrees did not include sibling visitation as ordered by the family court. The only sister who remained a ward of the state in the care of DCFS was thirteen year old A.M.S.

A.M.S. first tried to obtain the names and addresses of the adoptive and natural parents of her sisters through DCFS, which refused to comply with the requests. On August 13, 2002, through court appointed counsel Clark County Legal Services’ Child Advocacy Project, A.M.S. filed a motion in family court to compel the release of information on her sisters in order to serve the parties with a petition for sibling visitation. The motion was granted and the information was ordered to be released to A.M.S.’s attorney. DCFS filed a motion to reconsider the decision and that motion was denied.

DCFS then filed a petition for writ of mandamus in the Nevada Supreme Court to stop the family court’s order compelling the release of the names and addresses of the adoptive and natural parents of A.M.S.’s sisters.

Discussion

¹ By Kathleen Hamers

I. Statutory Challenge

DCFS argued that A.M.S. no longer had any right to seek visitation because she did not file for visitation pursuant to NRS 125C.050(7)² and that NRS 127.171 mandates that once an adoption is final visitation rights are no longer available unless they have been granted by NRS 125C.050.

The Nevada Supreme Court reasoned that DCFS had custody of A.M.S., a minor, and if they were to adopt the reasoning suggested by DCFS, no child would be able to pursue visitation unless DCFS petitioned on the child's behalf before termination of parental rights occurred. DCFS would then have the sole power to petition on behalf of the child and could deny the child their only opportunity to maintain relationships with their siblings. Additionally, the Nevada Supreme Court noted that the family court had ordered sibling visitation be established as it was in the best interest of the children. DCFS maintained that this order was invalid because it was issued after the termination of parental rights. However, the Nevada Supreme Court held that all orders are presumptively valid³ and DCFS was not authorized to ignore the order based on its own position on the order's validity.

DCFS also maintained that NRS 432B.280 and NAC 127.200 required that adoption records remain confidential unless an exception under NRS 432B.290 applied. The Nevada Supreme Court held that NRS 432B.290 does allow for disclosure in this circumstance under two exceptions listed in that statute. First, NRS 432B.290(1)(e) allows for disclosure to the court, in camera, if necessary to determine an issue before it. In this case, disclosure was necessary in order for the family court to address the issue of sibling visitation. Second, NRS 432B.290(1)(g) allows for disclosure to the attorney and guardian ad litem of the child. Here, A.M.S. sought information pertaining to her own case. The information ordered released by the family court fell under two of the statutory exceptions to confidentiality. Importantly, the court noted that A.M.S.'s situation was caused by DCFS. The court held that DCFS had a duty to comply with the family court order compelling release of A.M.S.'s siblings' information and it failed to do so.

II. Abuse of Discretion

DCFS also argued that the family court abused its discretion in compelling the release of A.M.S.'s siblings' information in contravention of public policy. DCFS submitted that forcing this information to be disclosed would prevent adoptive families from being secure in their right to privacy and providing for visitation that was not included in the adoption decree would undermine the stability in the children's new homes.

The Nevada Supreme Court held that the information would allow the service of a petition for sibling visitation, and the family court would then determine whether or not visitation was still in the best interests of all the children. Additionally, the court noted that the information would be protected as it would be disclosed only to the minor's

² NEV. REV. STAT. 125V.050(7) requires that a petition for visitation by grandparents or siblings be filed before the parental rights are terminated.

³ See *Turner v. Dewco Services, Inc.*, 87 Nev. 14, 17, 479 P.2d 462, 465 (Nev. 1971).

attorney, not to A.M.S. herself. Most importantly, the court held, DCFS is responsible for acting in the best interests of the children, not merely acting to ensure permanent placement. Notwithstanding the family court order that sibling visitation be included in the adoption decrees, DCFS failed to comply and in doing so acted to promote the interests of adoptive families' privacy rights above the child's right to a relationship with her siblings. The court held that DCFS had denied the children the special bond of sisterhood.

Conclusion

The Supreme Court held that NRS 432B.290(1)(e) and (g) allow for the disclosure of confidential information in certain circumstances. Specifically, pursuant to a family court order for disclosure so that a petition for sibling visitation may be served. The court further held that DCFS has a duty to act in the best interests of children, not merely to ensure permanent placement and that DCFS failed to comply with that duty in this case. The Court held that it would not terminate the child's right to petition for sibling visitation because DCFS, the child's guardian failed to comply with a family court order.