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Mulkern v. Eight Jud. Dist. Ct., 134 Nev. Adv. Op. No. 82 (Oct. 18, 2018)

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FAMILY LAW: REBUTTABLE SIBLING PRESUMPTION TO ADOPTED CHILDREN

Summary

The Court determined the presumption under NRS § 432B.550(5)(a),² that a child's best interest is to be placed together with the siblings of the child, also applies to adopted children. Further, the Court held adoption does not sever a biological sibling relationship for purposes of NRS § 432B.550(5)(a).³

Facts

In October 2017, Baby Girl W was born and placed in foster care with a permanency plan for adoption. Amy Mulkern (Mulkern) is the adoptive mother of Baby Girl W's three-year-old sister, Vivian Mulkern. In January 2018, the Clark County Department of Family Services (DFS) contacted Mulkern to determine if she was interested in adopting Baby Girl W. She was, but DFS determined the baby had bonded with her foster parents, who were also willing to adopt.

Accordingly, Mulkern sought relief in the district court dependency proceedings. Under NRS § 432B.457,⁴ Mulkern and the foster parents were permitted to testify at the placement hearing as persons with special interests in the proceeding. The district court found that: (1) the parties were not entitled to counsel, (2) Vivian was not a person with special interests, and (3) Vivian's adoption severed the sibling bond for purposes of NRS § 432B.550(5)(a).⁵ Mulkern petitioned for a writ of mandamus or prohibition challenging the district court order.

Discussion

A writ of mandamus is appropriate to compel the performance of an act required by law or to control an abuse of discretion.⁶ A writ of prohibition may apply where a district court has acted beyond its jurisdiction.⁷ The petitioner bears the burden of proving extraordinary relief under either procedural mechanism is appropriate.⁸

The rebuttable presumption that a child's best interests are served by placing her with her sibling must be applied to Baby Girl W. NRS § 432B.550(5) requires the district court to prioritize the best interests of the child when placing the child outside the parents' care.⁹ Further, NRS § 432B.550(5)(a) establishes a rebuttable presumption that the child's interests are best served when she is placed with a sibling.¹⁰ NRS Chapter 432B¹¹ defines relative status based on

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² NEV. REV. STAT. § 432B.550(5)(a) (2017).

³ *Id.*

⁴ *Id.* at § 432B.457.

⁵ *Id.* at § 432B.550(5)(a).

⁶ *Int'l Game Tech., Inc. v. Second Jud. Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). *See* NEV. REV. STAT. § 34.160 (2017).

⁷ NEV. REV. STAT. § 34.320 (2017); *Club Vista Fin. Servs., LLC v. Eighth Jud. Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012).

⁸ *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁹ NEV. REV. STAT. § 432B.550(5) (2017).

¹⁰ *Id.* at § 432B.550(5)(a).

¹¹ *Id.* at § 432B.

consanguinity and no statute expressly states adoption severs this relation. Further, the Nevada legislature repeatedly prioritizes a bond between siblings throughout the domestic relations and dependency statutes.¹² Therefore, the presumption under NRS § 432B.550(5) survives a sibling's adoption and must apply in the instant case.

Conclusion

The Nevada Supreme Court granted the petitioner's petition, in part, and directed the court clerk to issue a writ of mandamus requiring the district court to apply the rebuttable sibling presumption under NRS § 432B.550(5)(a) when determining the placement of Baby Girl W. Further, the Court denied all other relief stating that extraordinary intervention was not warranted at this time.

¹² See *Id.* at § 432B.390(7) (initial protective placings must keep siblings together when possible); *Id.* at 128.110(2)(b) (state must place child with siblings upon termination of parental rights); *Id.* at 127.2825 (adoption agency must attempt to place with siblings); *Id.* at § 125C.0035(4)(i) (district court must consider a child's ability to maintain sibling relationships when making custody decisions).