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In re Hughes, 136 Nev. Adv. Op. 46 (July 16, 2020)

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JUDICIAL DISCIPLINE: CONTEMPT OF COURT IN FAMILY LAW DISPUTES

Summary

A judge who modified a mother's custody rights was disciplined by the Nevada Commission on Judicial Discipline. The Commission found that the judge held the mother in contempt for failing to comply with the father's visitation rights, but the judge did not allow the mother to rebut the judge's finding. In addition, the judge modified the mother's custody rights of the child, which the Commission found was a sanction to holding the mother in contempt. The Commission ordered the judge to be publicly reprimanded and take a mandatory course on family law. The judge appealed the Commission's disciplinary actions. The Court held that, when taking all the facts into context, the judge did not hold the mother in contempt, but instead admonished the mother and scheduled a show-cause hearing to then decide whether or not to hold the mother in contempt. The Court also held that the custody rights modification was not a sanction to holding the mother in contempt, but was made for the best interest of the child. The Court reversed the Commission's disciplinary actions because there was no showing of a deliberate or knowing violation, and there were no aggravating factors found.

Background

Judge Hughes is a family court judge who took over a pending divorce decree when she began her judgeship. The divorce decree between the mother and father granted shared joint custody over their child, in which the mother had primary custody and the father had weekend visitation rights. The father was unhappy with the mother's transfer of the child on the weekends.

Judge Hughes held a status check regarding the weekend exchanges. During that hearing, Judge Hughes admonished the mother that if she did not participate in the weekend exchanges with the father, she would be held in contempt. However, this admonishment was never recorded. A month later, Judge Hughes found that the mother still did not participate in the weekend exchanges with the father, and thus, violated the father's parental rights and Judge Hughes' previous order. Judge Hughes allegedly found the mother in contempt from her previous admonishment and ordered another hearing with the child present.

Judge Hughes granted the father temporary sole custody of the child. Judge Hughes reasoned this order based on her belief that it would be in the child's best interest to grant the father temporary sole custody because the mother was not complying with the weekend exchanges and hindering the child's relationship with the father.

At the next hearing, Judge Hughes did not hold the mother in contempt because the admonishment from the prior hearing was never recorded, so according to the record, there was nothing to hold the mother in contempt of.

¹ By Holly Parr

The mother filed a disciplinary complaint to the Nevada Commission on Judicial Discipline (Commission) regarding Judge Hughes' decision to hold the mother in contempt. The Commission charged Judge Hughes for holding the mother in contempt without allowing the mother an opportunity to contest the contempt order and punishing the mother for not complying with the admonishment by lessening the mother's custody rights. Judge Hughes replied to the charges, claiming that she did not formally hold the mother in contempt, but found only a prima facie case of contempt and set to hold a show-cause hearing for the mother to rebut the prima facie case at a later time. Judge Hughes also claimed that she reduced the mother's custody rights because she thought it was in the best interest for the child, not as a punishment.

The Commission found that Judge Hughes did find the mother in contempt without giving the mother the opportunity to rebut that finding and used the finding of contempt as justification for lessening the mother's custody rights. Because of these findings, the Commission ruled that Judge Hughes violated five canons of the Code of Judicial Conduct and sentenced Judge Hughes to a public reprimand and a mandatory course at the National Judicial College to better handle family law issues. Judge Hughes appealed the Commission's findings and sentence.

Discussion

The Court will defer to the Commission's findings if there was clear and convincing evidence in the record to support those findings.²

Clear and convincing evidence does not support the Commission's findings that Judge Hughes held the mother in contempt and that Judge Hughes changed the custodial arrangement as a contempt sanction.

The Court held that there was not clear and convincing evidence that Judge Hughes held the mother in contempt for not following her visitation order and lessened the mother's custody rights as a punishment for being in contempt. Judge Hughes' order asserting that the mother was in contempt for respecting the father's visitation rights also established a show-cause hearing at a later date for the mother to respond before being found in contempt. Thus, the Court found Judge Hughes' order to be ambiguous because there were two possible interpretations from it.³ Because the order was ambiguous, the Court reviewed Judge Hughes' order as a whole and applied the interpretation that was most reasonable with the facts and law.⁴

The Court found that, taking the facts and order as a whole, Judge Hughes' order did not hold the mother in contempt. The contempt by the mother was indirect because it did not occur in front of Judge Hughes. Indirect contempt cannot be immediately sanctioned because there are necessary procedural safeguards that must be respected before adjudicating and sanctioning someone for contempt.⁵ The mother was subject to civil contempt by Judge Hughes' order because Judge Hughes wanted to correct the mother's noncompliance with the visitation order.

² *In re Fine*, 116 Nev. 1001, 1013, 13 P.3d 400, 408 (2000).

³ *See Margrave v. Dermody Props., Inc.*, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994).

⁴ *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 570, 170 P.3d 989, 993 (2007).

⁵ *See Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826–27 (1994).

Thus, Judge Hughes' contempt order was meant to ensure the mother's future compliance with the visitation order, which would be reviewed at the show-cause hearing; if the mother was still shown not to have complied with the contempt order at that hearing, then Judge Hughes' would have ruled that the mother was in contempt and issued the mother a sanction. In addition, Judge Hughes found only a prima facie case for contempt, which the mother could have rebutted at the show-cause hearing. Lastly, Judge Hughes' order only addressed possible sanctions for being found in contempt, but did not issue any upon the mother.

The Court also found that there was not clear and convincing evidence that Judge Hughes' modification of the custody rights between the mother and father was a sanction on the mother for being in contempt. The modification of custody rights was in the best interest of the child. Judge Hughes found that the mother was alienating the child from the father, which was not in the best interest of the child. While Judge Hughes did tell the mother that continuing to not comply with the visitation order would result in being found in contempt, Judge Hughes did not ever state that the mother was already in contempt. In addition, Judge Hughes scheduled a later hearing to review the mother's compliance and then to decide to hold the mother in contempt.

Judge Hughes had the authority to issue a temporary custody change before holding the mother in contempt.⁶ Also, the Court ruled that a review of a judge's abuse of discretion is for an appellate court, and not the Commission, to decide.⁷

Because Judge Hughes did not find the mother in contempt prior to a show-cause hearing and did not modify the mother's custody rights as a sanction to finding the mother in contempt, Judge Hughes did not violate any of the canons of the Code of Judicial Conduct.

The statutes governing judicial discipline do not support the discipline imposed based on the Commission's findings.

After finding that Judge Hughes violated the Code of Judicial Conduct, the Commission ordered Judge Hughes to be publically reprimanded and take a mandatory family law course at the National Judicial College.

The Court noted that a judge can be sanctioned, and sanctions vary based on the judge's misconduct.⁸ However, the Court also stated that a public reprimand is a severe sanction, one that may only be issued if aggravating factors are present or if the violation is not knowing or deliberate.⁹ The Court held that Judge Hughes did not commit any knowing or deliberate violation of the Code of Judicial Conduct and that there were no aggravating factors justifying a public reprimand. At most, Judge Hughes should have been punished with a public admonishment or censure.¹⁰

⁶ See NEV. REV. STAT. § 125C.0055 (2015).

⁷ NEV. REV. STAT. § 1.4653(5)(b) (2017).

⁸ NEV. REV. STAT. § 1.4677 (2009).

⁹ NEV. REV. STAT. § 1.4294; NEV. REV. STAT. § 1.4677(3).

¹⁰ See NEV. REV. STAT. § 1.4257; NEV. REV. STAT. § 1.4677(2).

Conclusion

The Commission failed to put into context Judge Hughes' order when it found that Judge Hughes violated the Code of Judicial Conduct. The facts establish that Judge Hughes did not find the mother in contempt before a show-cause hearing and that Judge Hughes' decision to lessen the mother's custody rights was in the best interest of the child, not a sanction based upon a finding of contempt. In addition, a public reprimand was not an appropriate form of discipline because there was no showing that Judge Hughes deliberately or knowingly violated the Code of Judicial Conduct and there were no aggravating factors present to justify a public reprimand. The Court reversed the Commission's decision.

Concurring in part and Dissenting in part

Judge Cadish and Judge Silver agreed with the majority of the Court that the Commission should not have imposed a public reprimand on Judge Hughes. However, they believed that Judge Hughes should have received some form of punishment because Judge Hughes did violate some canons of the Code of Judicial Conduct, specifically, violations that are not knowing or deliberate and are absent aggravating factors.