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Mesi v. Mesi, 136 Nev. Adv. Op. 89 (Dec. 31, 2020)

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Recommended Citation

Sauceda-Chirinos, Dianna, "Mesí v. Mesí, 136 Nev. Adv. Op. 89 (Dec. 31, 2020)" (2021). *Nevada Supreme Court Summaries*. 1376.

<https://scholars.law.unlv.edu/nvscs/1376>

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FAMILY LAW: First-to-File Rule

SUMMARY

The Court first reviewed a due process violation claim, in a divorce action, which involved the first-to-file rule. The Court next reviewed the first-to-file rule and its purpose. In doing so, the Court officially adopted the Ninth Circuit’s three-step test for the first-to-file rule. The Court reversed and remanded, with instructions to the Nevada District Court to stay the proceeding until the issue of jurisdiction is resolved in the first court’s jurisdiction.

BACKGROUND

In 2005, Eric and Vanessa Mesi (“Eric” and “Vanessa”) married in Nevada. During their marriage, they spent time in both Nevada and California. At the end of 2018, the couple officially moved from California to Las Vegas, but Vanessa returned to California without Eric one month later. In January 2019, Vanessa filed for divorce in a California court; two months later, Eric filed for divorce in Las Vegas. Eric sought dismissal of the California lawsuit, arguing the California Court lacked jurisdiction because Vanessa did not satisfy the six-month residency requirement for divorce.² In the Nevada suit, Vanessa moved to dismiss, invoking the first-to-file rule and providing proof of her California suit.

The Nevada District Court held a telephone conference with the California Court, without the presence of Eric and Vanessa. The California Court confirmed Vanessa’s pending suit in California and told the Nevada District Court that Eric objected to the California court’s jurisdiction. The Nevada District Court immediately determined that the first-to-file rule was applicable. In doing so, the Nevada District Court proceeded by deferring jurisdiction to California by dismissing the Nevada suit. Eric appealed the Nevada District Court’s decision. To date, the California Court has not ruled on Eric’s motion to dismiss.

DISCUSSION

The Court first reviewed Eric’s claim that the Nevada District Court deprived him of due process when it held an ex parte conference with the California Court and immediately dismissed his Nevada suit. The standard of review of a constitutional due process challenge is de novo.³ Due process requires that the interested parties be given an “opportunity to be heard at a meaningful time and in a meaningful manner.”⁴ Therefore, before ruling on a dispositive motion, a district court must provide parties a meaningful opportunity to be heard. A live hearing is not required; parties may use “affidavits and supporting documents” to bolster their argument.⁵ The Court further recognized that “[a] court’s consideration of matters outside the record, obtained by

¹ By Dianna Saucedo-Chirinos.

² Cal. Fam. Code § 2320(a) (2012).

³ Callie v. Bowling, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007).

⁴ J.D. Constr., Inc. v. IBEX Int’l Grp., LLC, 126 Nev. 366, 377, 240 P.3d 1033, 1041 (2010) (quoting Mathews v. Eldridge, 424 U.S. 319, 333 (1976)).

⁵ *Id.* at 378, 240 P.3d at 1041.

independent investigation, generally constitutes error.”⁶ Because the Nevada District Court did not rely on the record alone and resolved the dispute with a telephone call to the California Court, the Court ruled that Eric’s due process rights were violated. Still, the Court found this error does not require reversal unless “any party’s substantial rights” are affected⁷ and “a different result might reasonably have been reached.”⁸ Vanessa argued the due process violation was harmless because the first-to-file rule necessitated a dismissal.

The Court explained the purpose of the first-to-file rule as a “doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district.”⁹ The first-to-file rule is not to be applied mechanically and must leave considerable discretion to the lower courts.¹⁰ The Court officially adopted the Ninth Circuit’s three-step test, as outlined in *Alltrade, Inc. v. Uniweld Products*.¹¹ The first step is to determine whether the rule applies in the first instance; next, if it does, determine whether there is some equitable reason not to apply the rule.¹² Finally, if the rule applies, determine whether the second-filed suit should be dismissed or stayed.¹³

Applying the *Alltrade* test, the Court determined the first-to-file rule applied. Next, the Court found that the first suit has priority unless “special circumstances” indicate the second suit should be favored.¹⁴ The Court concluded Eric’s jurisdictional claim did not qualify as a special circumstance that required the first suit to be dismissed, therefore requiring deference to the first court. Finally, in the third step of the *Alltrade* test, the Court found the Nevada District Court abused its discretion by dismissing the Nevada suit. The Court held that when the record reveals likelihood of dismissal in the first suit, the second-filed suit should be stayed, rather than dismissed.¹⁵ Because the Nevada District Court was aware Eric moved to dismiss the California suit on jurisdictional grounds, the appropriate response to Vanessa’s motion to dismiss was a stay of proceedings. The Nevada District Court need not reach the merits of Eric’s motion to dismiss, but rather allow for the California Court to resolve its issue and respond accordingly.

CONCLUSION

The Court held that a district court is not allowed to independently investigate facts in a pending suit via an ex parte communication with another court without allowing parties an opportunity to respond. The Court also held that when the same suit is filed in two separate courts and a party objects to the first court’s jurisdiction, the second court should stay the action while the first court resolves its jurisdictional issue. The Court reversed the Nevada District Court’s order of dismissal and remanded. On remand, the Nevada District Court must enter a stay and either Eric or Vanessa may move to lift the stay, proceed with the action, or dismiss the action but only after the California Court rules on Eric’s motion to dismiss.

⁶ *City of Reno v. Harris*, 111 Nev. 672, 678, 895 P.2d 663, 667 (1995), *modified on other grounds by* Cty. of Clark v. Doumani, 114 Nev. 46, 53 n.2, 952 P.2d 13, 17 n.2 (1998).

⁷ NRCF 61.

⁸ *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010).

⁹ *Pacesetter Sys. Inc. v. Medtronic, Inc.* 678 F.2d 93, 94–95 (9th Cir. 1982).

¹⁰ *Id.* (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183–84 (1952)).

¹¹ *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 625–29 (9th Cir. 1991).

¹² *Id.* at 625–28.

¹³ *Id.* at 628–29.

¹⁴ *William Gluckin & Co. v. Int’l Playtex Corp.*, 407 F.2d 177, 178 (2d Cir. 1969)

¹⁵ *Alltrade*, 946 F.2d at 629.