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Martinez v. Avila, Jr., 138 Nev. Adv. Op. 49 (June 30, 2022)

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FAMILY LAW: CLARIFYING THE PARAMETERS FOR PARENTHOOD UNDER THE
NEVADA PARENTAGE ACT

Summary

The Supreme Court of Nevada reviewed a district court’s decision granting legal paternity to the biological father of a child over the objection of the person who assumed paternity over the child pursuant to a Voluntary Parenting Agreement. The Court held that while paternity can be established and memorialized through written instruments, biological paternity is supreme.

Facts and Procedural History

For some appreciable period, the mother (“Rosie”) of the subject-minor (“A.A.”) held a series of on-and-off relationships with the appellant (“Henry”) and the respondent (“Ignacio”). In 2011, Rosie became pregnant, and through the consent of both parties, a Voluntary Parenting Agreement (“VPA”) was executed establishing Henry’s legal paternity over the subject-minor. Henry signed the child’s birth certificate and the appellants held themselves out to Ignacio as the parents of the child. Upon learning that Rosie was pregnant again two years later and the possibility that he could be the father of the child, he had both of Rosie’s children tested to determine paternity, pursuant to an order from the court. When the tests revealed that Ignacio was the biological father of both children, he amended his complaint seeking custody of Rosie’s younger child to include a petition for custody for the subject minor as well. The Court granted Ignacio’s petition and ordered the joint custody of the minor with Rosie. Henry and Rosie appealed.

Discussion

The district court correctly interpreted and applied the NPA in determining that Ignacio is A.A.’s legal father

On appeal, Rosie and Henry contended that the court erred in their determination of paternity as to the subject-minor by relying too heavily on the biological results when the execution of the VPA grants Henry legal paternal rights. The Court, however, notes that the appellants are mistaken in their understanding of the law. Citing NRS 440.610,² the Court clarified that while the name on a child’s birth certificate is *prima facie* evidence of paternity, it creates the *presumption* of paternity, that can be rebutted with sufficient evidence. Contrarily, the Court explained, biological paternity is not a factor or a presumption, but proof of the parental relationship.³ Therefore, absent some evidence tending to prove that the best interest of the child is contrary to the finding that Ignacio is the minor’s father, the Court found no reason to disturb the decision of the lower court on this matter.

¹ By Candace Mays.

² NEV. REV. STAT. § 440.610.

³ The Court cites NEV. REV. STAT. § 126.051(2).

The district court was not required to engage in an Ellis v. Carucci⁴ analysis and appropriately awarded joint physical custody to Ignacio and Rosie

The appellants argued that the court should have done an in-depth child-custody modification analysis to determine the best interest of the child prior to making a joint-custody determination.

The Court, again, categorized this as a misinterpretation of the law, explaining that the district court's order was not a modification of an existing agreement. Since the district court was making an initial determination as to the custody of the minor, it was – by definition – not making a modification. Accordingly, it was not necessary to conduct a child-custody modification analysis prior to granting Ignacio and Rosie joint custody of the minor.

The Court cited NRS 125C.0035(3)(a),⁵ which establishes a preference for granting joint custody to the biological parents of a child whenever possible. Therefore, the Court reasoned, it was a reasonable starting arrangement until it was necessary for a court to determine otherwise. If and when the time came for a court to a determination for the purposes of modifying the order, the Court noted, it would be done by looking at the law and the facts.

In dicta, the Court noted that based on the evidence presented and the past encumbrances to Ignacio establishing and maintaining the relationship with the child, it would have been more inclined to award custody against the wishes of the appellants in a “best interest” analysis.⁶

Since custody determinations are reviewed under an abuse of discretion standard, however, and seeing no abuse here, the Court declined to disturb the decision of the lower court.

Conclusion

The Court concluded that there was no error in the district court's determination that Ignacio is A.A.'s legal father with corresponding parental rights, and that Ignacio's status as natural father entitled him to custody rights. Thus, there was no abuse of discretion in its order for joint custody between the minor's biological mother and father.

⁴ The appellants cite the standard for modification which comes from *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007).

⁵ NEV. REV. STAT. § 125C.0035(3)(a).

⁶ The Court referred to NEV. REV. STAT. § 125C.0035, which lists the likelihood that the parent will allow the child to have frequent associations and a continuing relationship with the noncustodial parent' as a factor of custodial fitness.