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Spring 4-30-2023

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Ramos v. Franklin, 139 Nev. Adv. Op. 6 (Mar. 16, 2023)¹

FAMILY LAW: ONE PARENT PROVIDING A PETITIONER VISITATION TO A MINOR CHILD CONSTITUTES REASONABLE VISITATION UNDER NRS125C.050 EVEN WHEN THE OTHER PARENT DENIES VISITATION.

Summary

NRS 125C.050 provides that certain relatives and other persons may petition for visitation with a minor child.² Under the statute, a court may only order visitation when the minor child’s parents “deny or unreasonably restrict visits with the child.”³ When the parents of the child have joint custody and one parent provides the petitioner with sufficient contact with the minor child so that visitation was not denied or unreasonably restricted, the petition for visitation fails regardless of the parent who provides contact.

Background

Appellants Ramos are the maternal grandparents of two minor children. Respondents are the minor children’s divorced parents. When the divorce proceedings were ongoing, appellant Carolyn Ramos was given a 6-month guardianship agreement of the minor children which included temporary custody. The minor children have since returned to the care of Respondents under a partial parenting agreement. Appellants have since petitioned for visitation under NRS 125C.050 contending that the parents have “unreasonably restricted their ability to visit with the minor children.”

Following the minor children’s return to parental custody, a five-month period occurred in which both Respondents denied Appellants visitation. After the minor children’s father found out he was mistaken about the Appellants’ involvement in his fiancé’s arrest, the father provided the Appellants with the following forms of visitation: (1) visitation during a weekend afternoon; (2) picking up the children from school occasionally; (3) an overnight stay during Christmas Eve 2021; (4) a spring break trip involving Appellants, father, father’s fiancé, and the minor children; and (5) three overnight stays when he was working. The minor children’s mother continues to deny the Appellants visitation.

The district court concluded that, while the contact with the minor children was limited to the weeks in which they are in custody of the father, the amount of time the minor children spent with the grandparents was sufficient to defeat a finding that visitation was unreasonably restricted.

Discussion

Petitioners’ visits with the children must have been denied or unreasonably restricted to warrant relief in a petition for visitation.

Appellants argue that their visits have been denied or unreasonably restricted. Appellants contend that the district court’s finding that they were not denied or unreasonably restricted green lights the mother’s full denial of visitation of the minor children. The Court disagrees with

¹ By Alexander C. Provan.

² NEV. REV. STAT. 125C.050 (2001).

³ NEV. REV. STAT. 125C.050(3) (2001).

Appellants contention and takes this opportunity to clarify the way courts should interpret NRS 125C.050.

The Court thus turns to answering the question of whether NRS 125C.050(3) requires each parent, rather than just one, to have denied or unreasonably restricted contact. NRS 125C.050(3) states that a court may order visitation “only if a parent of the child has denied or unreasonably restricted visits with the child.”⁴ As the issue presented involves statutory interpretation, the Court reviews this issue de novo.

NRS 125C.050(3) is ambiguous.

The Court begins by providing the two reasonable interpretations of NRS 125C.050(3). First, the statute refers to “a parent,” which is singular. This allows for a reading that the court may order visitation when only one parent has denied visitation. Second, the statute can be read, where two parents have joint custody, as applying to each parent so that the inquiry becomes whether, overall, the visitation has been denied or unreasonably restricted.

Reason and policy suggest that NRS 125C.050(3), in a petition for visitation, refers to the actions of both parents collectively, not to those of just one parent.

In 2001, the Nevada Legislature amended the statute in response to the constitutional challenges of a recent United States Supreme Court case, *Troxel v. Granville*.⁵ In *Troxel*, the Supreme Court held a Washington State visitation statute was unconstitutional because it infringed on parental rights to make decisions of care, custody, and control of their child.⁶ NRS 125C.050(3) was added to strengthen the constitutionality of the statute.

The Court, here, is persuaded that interpreting “a parent” to refer to each parent rather than just one parent serves both the interests of the child and of the parents. The interpretation focuses on what contact the child actually receives, which properly vindicates the child’s interests without unreasonably burdening the parents’ interests. In contrast, interpreting “a parent” to refer to only one parent unreasonably burdens the parents’ interests without furthering the child’s interests. The child’s interests are not furthered because they are already met through the visitation that one parent provides. Thus, the proper focus is not whether one parent denied or unreasonably restricted contact with the child; rather, it is whether each parent denied or unreasonably restricted a petitioner’s visitation.

The district court did not abuse its discretion by finding that the parents did not unreasonably restrict visits with the children.

Here the record does not support Appellants’ contention that their visitation has been unreasonably denied when using the proper interpretation of NRS 125C.050(3). As this section does not deal with statutory interpretation, the Court reviews it under an abuse of discretion standard.

⁴ *Id.*

⁵ *Troxel v. Granville*, 530 U.S. 57 (2000).

⁶ *Id.* at 60, 75.

The Appellants do not dispute the facts or the visits facilitated by the minor children's father, which were the basis of the district court's finding. Based on these facts, where the Appellants are receiving fairly regular visits with the minor children, the Court cannot conclude that the district court abused its discretion in finding that visitation has not been denied or unreasonably restricted.

Conclusion

When the parents of the child have joint custody and one parent provides the petitioner with sufficient contact with the minor child so that visitation was not denied or unreasonably restricted, the petition for visitation fails regardless of the parent who provides contact. Here, the minor children's father provided Appellants fairly regular visitation while the mother denied Appellants any visitation. Because the minor children's interests in visiting their maternal grandparents is vindicated through the visitations allowed by the father, there is no denial or unreasonable restriction of visitation regardless of the mother's refusal. Thus, the Court affirmed the district court's decision.