IN THE SUPREME COURT OF THE STATE OF NEVADA

LORI IRISH,
Appellant,
vs.
JAMES H. GORMLEY,
Respondent.

No. 46004

FILED

OCT 0 2 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from post-decree district court orders concerning a child custody dispute. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

Appellant Lori Irish and respondent James Gormley are the parents of Colby Gormley Irish, a minor child. Lori and James divorced in 1998. In August 2004, James filed a motion seeking sole legal and physical custody of Colby. After several continuances, the district court scheduled an evidentiary hearing on this motion for June 2005. On the date of the evidentiary hearing, the district court indicated that it preferred a settlement of the matter and presided over a settlement conference between the parties. After the parties reached impasse, the district court adjudicated their disputes from the bench and vacated the evidentiary hearing.

On August 19, 2005, the district court issued four dispositional orders purporting to resolve all the remaining disputes between the parties.[1] Lori challenges three of these orders on appeal.[2]

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[1]The record indicates that the Honorable Jennifer Elliott, Eighth Judicial Court District Judge, heard and adjudicated all the motions relevant to this appeal. Although Judge Elliott directed James's counsel

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The permanent restraining order

First, Lori challenges the district court's order establishing a permanent restraining order between the parties. She contends that the restraining order violates Nevada law and is unconstitutionally overbroad and vague.[3] The decision whether to grant injunctive relief is reviewed for abuse of discretion.[4] We conclude that the district court abused its discretion in granting a permanent restraining order for three reasons.

First, the district court failed to provide a full and fair hearing prior to issuing the restraining order, in violation of NRS 33.020 and constitutional due process requirements. NRS 33.020(3) provides that "[a]n extended order may only be granted after notice to the adverse party and a hearing on the application."[5] We have also held that due process

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to draft the dispositional orders, these orders bear the signature of Senior Judge James Brennan.

[2]Lori's notice of appeal indicates that she also wished to appeal from a fourth order in the case that essentially requires her to attend therapy. However, Lori's briefs contain no legal arguments contesting this order. We therefore do not address its validity on appeal.

[3]As an initial matter, we reject James's contention that Lori stipulated to this permanent restraining order. Our review of the record indicates that Lori's counsel, Rhonda Mushkin, proposed the permanent restraining order, but Lori objected on the record. In fact, it appears that Lori's stance on this issue provoked attorney Mushkin's motion to withdraw as counsel.

[4]Number One Rent-A-Car v. Ramada Inns, 94 Nev. 779, 780, 587 P.2d 1329, 1330 (1978).

[5]NRS 33.020(3).

requires the district court to provide a full and fair hearing before issuing permanent or extended injunctive relief.[6] There is no indication in this case that the district court held a full and fair hearing before the imposition of this order. In fact, the district court vacated the evidentiary hearing and adjudicated the disputes between the parties without hearing testimony, legal arguments, or considering exhibits.

Second, the restraining order in this case is both overbroad and vague. NRS 33.030 governs the acceptable scope of an extended restraining order. Among other things, NRS 33.030 permits the district court to enjoin the adverse party from injuring or harassing the applicant or minor child, exclude the adverse party from the applicant's home, and prohibit the adverse party from entering the home, school, or business of the applicant or minor child. The restraining order in this case goes far beyond the behaviors contemplated by NRS 33.030. Additionally, we have held that an injunction is void where its terms are vague, ambiguous, and so uncertain as to be impossible of compliance.[7] Given the number of persons affected by this restraining order and the nebulous character of the behavior to be enjoined, we conclude this restraining order is both overbroad and vague.

Third, Nevada law does not permit the issuance of a truly "permanent" restraining order in the family law context. NRS 33.080(3) states clearly that "[a]n extended order expires within such time, not to

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[6]Director, Dep't of Prisons v. Simmons, 102 Nev. 610, 613, 729 P.2d 499, 502 (1986), overruled on other grounds by Las Vegas Novelty v. Fernandez, 106 Nev. 113, 118-19, 787 P.2d 772 (1990).

[7]Maheu v. Hughes Tool Co., 88 Nev. 592, 597, 503 P.2d 4, 7 (1972).

exceed 1 year, as the court fixes." The restraining order in this case includes no expiration date.

We conclude that the district court abused its discretion by imposing a permanent restraining order on the parties. Accordingly, we, reverse the district court's first dispositional order.

"Satisfaction" of the 1999 stipulation

Second, Lori challenges the district court's determination that James could "satisfy" the terms of a 1999 stipulation between the parties by establishing a $5 million insurance policy for Colby's benefit.[8] This stipulation was neither part of the divorce decree nor incorporated therein, and thus, contract principles apply.[9]

"Valid stipulations are controlling and conclusive and both trial and appellate courts are bound to enforce them."[10] Under Nevada law, the district court may set aside a stipulation only upon a showing that the stipulation was entered into through "mistake, fraud, collusion, accident or some ground of like nature."[11]

Here, neither party has contested the validity of the 1999 stipulation. Consequently, we conclude that the district court lacked

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[8]Pursuant to this stipulation, Lori agreed to waive the right to litigate Colby's paternity in exchange for certain financial considerations.

[9]Renshaw v. Renshaw, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980).

[10]Second Bapt. Ch. v. Mt. Zion Bapt. Ch., 86 Nev. 164, 172, 466 P.2d 212, 217 (1970).

[11]Citicorp Services v. Lee, 99 Nev. 511, 513, 665 P.2d 265, 266 (1983).

jurisdiction to revisit and set aside the stipulation. We therefore reverse the district court's second dispositional order.

Child support obligations and payment of unreimbursed medical bills

Third, Lori challenges the district court's order setting the amount of child support and requiring that Lori pay for all of Colby's unreimbursed medical expenses. She contends that these rulings violate Nevada law. We agree.

Child support

NRS 125B.070 establishes a statutory formula for determining a support obligation predicated upon the gross monthly income of the non-custodial parent. Due to the "presumptive nature of the formula, application of the formula must be the rule, any deviation . . . must be the exception."[12] Where the district court awards support that is either greater than or less than that due under NRS 125B.070, the district court is required to "[s]et forth findings of fact as to the basis for the deviation from the formula[.]"[13] The failure to do so is an abuse of discretion.[14]

There is no indication in the record that the district court considered any evidence regarding James's financial condition in calculating the amount of child support due. Other than an unsupported, conclusory statement in the order, there are no findings of fact or conclusions of law that reinforce the district court's calculation of James's

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[12]Barbagallo v. Barbagallo, 105 Nev. 546, 552, 779 P.2d 532, 536 (1989).

[13]NRS 125B.080(6)(a).

[14]Wallace v. Wallace, 112 Nev. 1015, 1021, 922 P.2d 541, 544-45 (1996).

support obligation. As a result, we conclude that the district court abused its discretion in failing to engage in the required calculations under NRS 125B.070 or make findings of fact to support any deviation.

Unreimbursed medical expenses

NRS 125B.080(7) provides that "[e]xpenses for health care which are not reimbursed, including expenses for medical, surgical, dental, orthodontic and optical expenses, must be borne equally by both parents in the absence of extraordinary circumstances." The order in this case, however, requires Lori alone to pay for all of Colby's unreimbursed medical expenses. This provision clearly contravenes the statute.

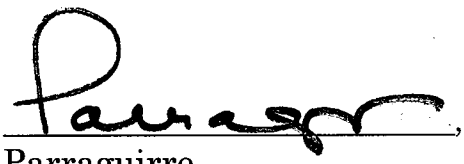
Consequently, we reverse the district court's third dispositional order. We remand this matter for the district court to recalculate the child support obligation.

Conclusion

Although we sympathize with the district court's attempts to end this protracted litigation and provide closure for Colby, the orders issued in this case are unsupportable as a matter of law.

Accordingly, we reverse all three of the district court's dispositional orders discussed herein and remand for further proceedings.[15]

It is so ORDERED.



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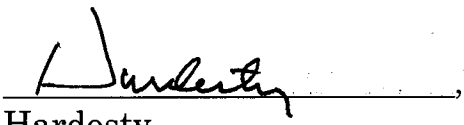

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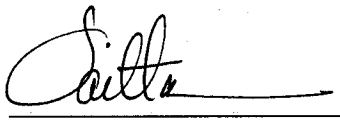

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cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Bruce I. Shapiro, Ltd.
Black, Lobello & Sparks
Eighth District Court Clerk

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[15]In her filings before this court, Lori also alleged that the district court violated her due process rights by failing to hold a full evidentiary hearing, apparently adjudicating the disputes between the parties based upon statements made during settlement negotiations, and permitting attorney Mushkin to withdraw without affording Lori time to retain replacement counsel. Because we conclude that the district court's dispositional orders are legally deficient and remand for a new evidentiary proceeding, we do not reach Lori's due process claim.