IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN S.,
Appellant,
vs.
ROBERT H. A.; SOPHIE L. T.; AND J.L.A., THE MINOR CHILD,
Respondents.

No. 48962

FILED

OCT 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a paternity action. Eighth Judicial District Court, Family Court Division, Clark County; Stefany Miley, Judge.

Appellant contends that NRS 126.051's paternity presumptions are unconstitutionally vague and render an absurd result.[1] We reject appellant's argument. A statute is vague if "men of common intelligence must necessarily guess at its meaning and differ as to its application." In re Discipline of Schaefer, 117 Nev. 496, 511, 25 P.3d 191, 201, as modified by 31 P.3d 365 (2001) (quotation omitted). Here, the presumptions employed by the court clearly fit the undisputed facts and are not vague. NRS 126.051(1)(d) and (e).[2] Also, under NRS 126.051(2), when two presumptions conflict, the court should apply the one that, upon the facts, is founded on weightier considerations of policy and logic. Cf.

[1]In light of this order, we need not address appellant's remaining arguments, as they are irrelevant to our decision.

[2]The 1997 version of NRS Chapter 126 applies to this appeal, as the statutory provisions related to this appeal were amended in 2007, after the disposition of the underlying matter.

Michael H. v. Gerald D., 491 U.S. 110, 128-29 (1989). In that regard, the district court determined that these considerations favored respondent Robert Anderson as the child's legal father. Appellant did not dispute the facts underlying the district court's conclusion: for the child's entire life, respondent Robert Anderson has lived with the child, provided and cared for her, and has held her out as his own. See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that summary judgment is appropriate when the nonmoving party fails to demonstrate that a genuine issue of material fact remains in dispute and the moving party is entitled to judgment as a matter of law). It was not absurd for the district court to accord these facts more weight than appellant's biological relationship.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

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[3]Appellant requests that this court treat the minor child's failure to file an answering brief as a confession of error. This court has the discretion to treat the failure to file an answering brief as a confession of error. State of Rhode Island v. Prins, 96 Nev. 565, 613 P.2d 408 (1980); NRAP 31(c). In light of this order, our preference for deciding cases on the merits, and the fact that the minor child is not represented by counsel, as the guardian ad litem was allowed to withdraw as the child's attorney of record, we deny appellant's request.

cc: Eighth Judicial District Court Dept. F, District Judge,
Family Court Division
Carolyn Worrell, Settlement Judge
Sylvester & Polednak, Ltd.
Robert H. A.
Sophie L. T.
Eighth District Court Clerk