IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO L. R. G., A MINOR.

KELLY DENISE G.,
Appellant/Cross-Respondent,
vs.
JOHN G.,
Respondent/Cross-Appellant.

No. 35207

FILED
FEB 15 2002
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order denying a motion to set aside an adoption and a cross-appeal from an order denying a motion to set aside an order that set aside a previous order terminating parental rights.

In 1994, appellant/cross-respondent Kelly G. filed a petition to terminate the parental rights of her child's "unknown" father. Kelly filed the termination petition so that her then husband, respondent/cross-appellant John G., could adopt the child. Kelly insisted that she did not know the identity of the child's natural father. Accordingly, in compliance with NRS 128.070, Kelly served, by publication, notice of the termination proceedings. Following a hearing, the district court entered an order terminating the unknown father's parental rights. Thereafter, John adopted the child.

In 1996, Kelly and John's marriage ended in divorce. As part of the divorce decree, the parties were awarded joint legal custody of the child. Kelly was awarded primary physical custody and John was awarded liberal visitation.



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Three years after the divorce, and four years after the adoption was granted, Kelly moved the district court to set aside the order that terminated the unknown father's parental rights. In her motion to set aside the termination order, Kelly asserted that she was originally "mistaken" about the possible identity of the child's natural father. According to Kelly, she thought she was pregnant by a married man, Michael G., with whom she was having an affair. But during that relationship, she also allegedly had sexual relations once with a man named Ronnie B. In her pleadings, Kelly suggested that she informed her original attorney about Michael and Ronnie and of their whereabouts, but "[b]ecause of [the] circumstance, she was advised by prior counsel to effectuate termination of parental rights in the manner in which it was done."

Attached to Kelly's motion was a genetic test result that shows that there is a 99.99% probability that Ronnie is the child's natural father. Kelly insisted that based on the test result, Ronnie is the biological father of the child, and Ronnie should have been served with notice of the original termination proceedings. Thus, Kelly contended that service was ineffective and that equitable circumstances warranted relief under NRCP 60(b). No notice of Kelly's motion to set aside the termination was served on John. Her motion, however, clearly identifies John as the adoptive father of the child. In addition, there is no indication in the record that Ronnie made any attempt to intervene in the proceedings. Nor did the district court determine the need for John or Ronnie to be named as a party.

Following a hearing, in which Kelly was present and represented by counsel, the district court granted her motion and ordered

the termination order set aside on the basis of ineffective service. The order does not mention Ronnie or John.

Approximately three weeks later, Kelly moved the district court to set aside the adoption. Kelly asserted that "[t]he adoption was based upon a fundamental mistake regarding parentage which, under the circumstances, dictates that setting aside the adoption is in the best interest of the child." Again, Kelly's motion blamed her prior counsel for never communicating the information regarding the possible identity of the alleged natural father to the district court. John was served with Kelly's motion to set aside the adoption.

Thereafter, John timely filed an NRCP 60(b) motion to set aside the order granting Kelly's motion concerning the termination. John also opposed Kelly's motion to set aside the adoption. John based his motion in part on surprise, because he never received notice of Kelly's motion to set aside the termination. John further contended that Kelly was barred from challenging the termination order under the six-month limitation period in NRCP 60(b) and the six-month limitation period in NRS 128.150(5).[1] Additionally, John insisted that Kelly should be sanctioned for failing to bring to the district court's attention these limitation periods. John also contended that the issue of paternity was res judicata under the divorce decree, and that the issue could not be

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[1]See NRCP 60(b) (providing that a motion must be brought "not more than six months after the judgment, order, or proceeding was entered or taken"); NRS 128.150(5) (providing, in part, that six months after a termination order is entered, "the order cannot be questioned by any person in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice or lack of jurisdiction of the parties or of the subject matter").

challenged nearly five years later. Finally, John contended that Kelly failed to overcome the presumption, under NRS 128.160(2), that setting aside the termination order was in the child's best interest.

During a hearing on the parties' motions, the district court reprimanded Kelly for lying to the court about her knowledge of the identities of the two possible natural fathers. The court also stated that Kelly manipulated the system to gain an advantage in the matter to "deprive John of access to [the child]." Moreover, the court did not accept Kelly's allegations that her former attorney knowingly submitted a faulty petition and misled the court by failing to apprise it of information necessary to the proceedings. Nevertheless, the district court proceeded to focus on the due process rights of Ronnie, who never made himself a party to the proceedings in this case. Moreover, the district court never expressly found that Ronnie is the child's natural father.[2] After concluding that the order terminating Ronnie's parental rights was void, the district court denied John's NRCP 60(b) motion to set aside the order concerning the termination. In addition, the district court denied Kelly's motion to set aside the adoption. Both John and Kelly appealed to this court.

Neither John nor the district court raised the issue of whether Kelly had standing to assert a due process argument on Ronnie's behalf. Nevertheless, our authority "to consider relevant issues sua sponte in

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[2]See NRS 126.051 (providing that there is a rebuttable presumption that a man is the natural father of the child if blood test results show a 99% or greater probability of paternity).

order to prevent plain error is well established."[3] Here, the district court's failure to determine whether Kelly had standing to assert the rights of a third person was plain error. The question of standing "focuses on the party seeking adjudication rather than on the issues sought to be adjudicated."[4] Generally, a party must have suffered an injury in order to have standing to raise a claim on behalf of a third person.[5]

In this case, Kelly did not assert that she suffered an injury when Ronnie did not receive notice of the termination proceedings. It was Kelly who sought to terminate the parental rights of the unknown father in the first instance. Thus, Kelly incurred no apparent injury or harm by the district court's order terminating the parental rights of the unknown father. She therefore had no right to allege error on Ronnie's behalf. Accordingly, Kelly lacked standing to raise a due process claim on behalf of the alleged natural father, and the district court erred in granting the order setting aside the termination. Consequently, the district court abused its discretion in denying John's NRCP 60(b) motion to set aside its prior order concerning the termination.

Even if Kelly had been able to challenge any error on Ronnie's behalf, her conduct throughout these proceedings renders her estopped

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[3]Bradley v. Romeo, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986), quoted by DeJesus v. Flick, 116 Nev. 812, 816, 7 P.3d 459, 462 (2000).

[4]Szilagyi v. Testa, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983); see also 13 Charles Alan Wright et al., Federal Practice and Procedure § 3531 (2d ed. 1984).

[5]See Barrows v. Jackson, 346 U.S. 249, 255 (1953).

from challenging the order.[6] The doctrine of estoppel "implies that one who by his deed or conduct has induced another to act in a particular manner will not be permitted to adopt an inconsistent position, attitude, or course of conduct and thereby cause loss or injury to such other."[7] Here, Kelly claimed she had no knowledge about the identity of the natural father. Relying on Kelly's misrepresentations, John petitioned the district court to adopt the child, and with Kelly's consent, the adoption was granted. To now allow Kelly to set aside the termination could interfere with the relationship John has established over the years with the child, causing loss and injury to both John and the child.

Under NRCP 60(b)(1), a moving party may be relieved from a final order where there exists "mistake, inadvertence, surprise, or excusable neglect." A district court has broad discretion in ruling on NRCP 60(b) motions,[8] but the record must contain sufficient evidence to support its decision.[9] Here, John timely filed an NRCP 60(b) motion to set aside the order concerning the termination on the basis of surprise, because he had not received notice of Kelly's 60(b) motion. Moreover, John

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[6]See Boisen v. Boisen, 85 Nev. 122, 451 P.2d 363 (1969); Grant v. Grant, 38 Nev. 185, 188, 147 P. 451, 452 (1915) ("[T]he plaintiff is estopped from questioning the jurisdiction of that court whose power and processes he invoked to secure the end which he sought, namely, dissolution of the bonds of matrimony.").

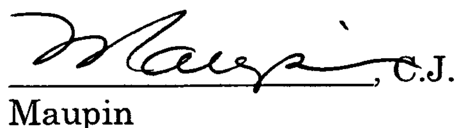
[7]31 C.J.S. Estoppel and Waiver § 2, at 344 (1996); see also Heuer v. Heuer, 704 A.2d 913, 918 (N.J. 1998); Wisel v. Terhune, 204 P.2d 286, 290 (Okla. 1949).

[8]Kahn v. Orme, 108 Nev. 510, 513, 835 P.2d 790, 792 (1992).

[9]Smith v. Smith, 102 Nev. 110, 111-12, 716 P.2d 229, 230 (1986).

also contended that Rule 60(b) relief was warranted on the basis of the statute of limitations, res judicata, and the presumption of the child's best interest. Since Kelly lacked standing to raise issues concerning Ronnie's alleged rights, we reverse the district court's order denying John's motion to set aside its order that set aside the parental rights termination, and we remand this matter to the district court with instructions to grant John's motion and vacate its order setting aside the prior termination order. As the termination order was improperly set aside, we affirm the district court's order denying Kelly's motion to set aside John's adoption of the child.[10]

It is so ORDERED.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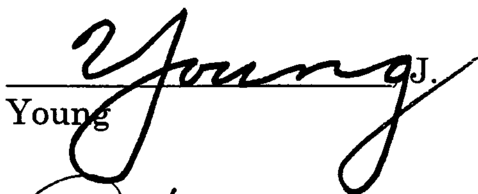
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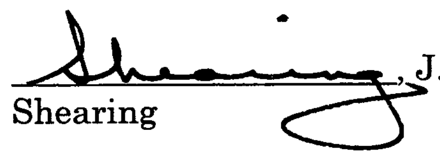
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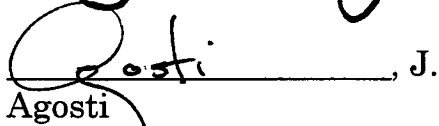
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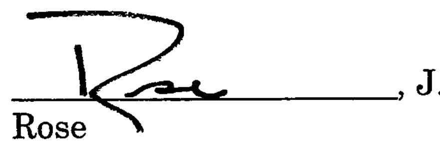
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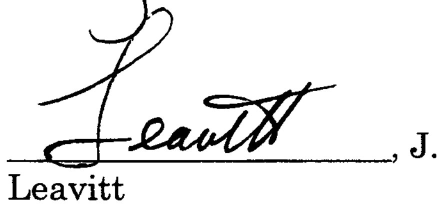
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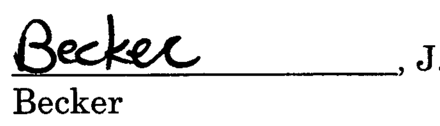
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Becker

[10]We have reviewed all other issues raised in this appeal. In light of this order, we need not reach the merits of the additional contentions.

cc: Hon. Robert W. Lueck, District Judge, Family Court Division
Gayle F. Nathan
Rebecca L. Burton
Clark County Clerk