

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW LIM,
Appellant,
vs.
EILEEN MICHELLE CARPO,
Respondent.

No. 58575

FILED

DEC 19 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a district court order concerning paternity and child custody. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

Appellant Andrew Lim appeals the district court's order dismissing his complaint for determination of paternity and related relief. We vacate and remand.¹

NRS 126.101(1) and (2) provide:

1. The child must be made a party to the action [to determine paternity]. If the child is a minor,

¹Respondent Eileen Carpo incorrectly argues that the district court did not render a final disposition on the merits, and as such, there is no judgment for this court to vacate. Whether an order dismissing a complaint represents a final judgment depends on whether the circumstances clearly indicate that the district court intended to terminate the litigation. See Knevelbaard Dairies v. Kraft Foods, Inc., 232 F.3d 979, 983 (9th Cir. 2000); Dredge Corp. v. Peccole, 89 Nev. 26, 27, 505 P.2d 290 (1973). Here, it is inconsequential that the district court dismissed Lim's complaint without prejudice because its intent to render a final, dispositive judgment is clear.

the child must be represented by his or her general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. . . .

....

2. The natural mother and a man presumed to be the father under NRS 126.051 must be made parties, but if more than one man is presumed to be the natural father, only a man presumed pursuant to subsection 2 or 3 of NRS 126.051 is an indispensable party. Any other presumed or alleged father may be made a party.

(Emphasis added.)

Here, Lim did not name the child as a party in the underlying action. Further, a guardian who would speak for the child's interests was not provided. Additionally, Lim did not include the child's presumed father, Jon-Erik Carpo, as a party. The failure to join indispensable parties invalidates the judgment. Schwob v. Hemsath, 98 Nev. 293, 294, 646 P.2d 1212, 1212 (1982) ("Failure to join an indispensable party is fatal to a judgment."); Johnson v. Johnson, 93 Nev. 655, 659, 572 P.2d 925, 927 (1977) (relief granted in an indispensable party's absence is essentially nugatory). Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court with instructions to dismiss or,

if joinder is accomplished, for further proceedings consistent with this order.

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Sterling Law, LLC
Pecos Law Group
Eighth District Court Clerk