

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH GORDON,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK AND THE
HONORABLE WILLIAM O. VOY, DISTRICT
JUDGE, FAMILY COURT DIVISION,

Respondents,

and

GEORGE MICHAEL WEBER,

Real Party in Interest.

No. 35701

FILED

NOV 21 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of mandamus, prohibition or certiorari challenges an order of the district court allowing the real party in interest to file a third party complaint against petitioner in the underlying divorce proceeding and requiring petitioner to submit to genetic testing.

The underlying divorce proceeding is between real party in interest George Michael Weber and Nancy Weber. In the mid-1990s, George consented to Nancy undergoing artificial insemination. In 1997, a child was born to the couple. It is unclear, from the record before this court, when George filed the complaint for divorce. After George filed for divorce, he filed a third party complaint in the divorce proceeding against petitioner Keith Gordon. George moved the district court to order genetic testing for the purpose of determining whether Keith is the biological father of the child.

district court did not abuse its discretion in ordering Keith to be named a third party defendant and to submit to genetic testing. Moreover, George contends that Keith has a plain, speedy and adequate remedy at law by submitting to the genetic testing to quickly resolve the issue of paternity.

Generally, pursuant to NRS 125.020, the district court has jurisdiction over the parties to a divorce action. Under Nevada's parentage statute, the district court may join a paternity action with an action for divorce. See NRS 126.091(1). In a paternity action, "[t]he child must be made a party to the action. If he is a minor, he must be represented by his general guardian or a guardian ad litem appointed by the court." NRS 126.101(1). A man presumed to be the father of a child may bring suit to establish the existence or nonexistence of the father/child relationship. See NRS 126.071(1).

Based on the documents submitted to this court, we conclude that it was improper for the district court to name Keith in the third party complaint in the divorce proceeding between George and Nancy. See generally NRCP 14 (providing the basis upon which a third party may be named in a complaint). Therefore, we conclude that the district court exceeded its jurisdiction when it ordered Keith to be named a third party defendant to the divorce proceeding and to submit to genetic testing. We note that George is free to file a separate paternity action, which can be consolidated with the divorce proceeding. If George can establish a prima facie showing that the child is not the product of artificial insemination and is the product of a liason between Nancy and

Keith, the district court can then exercise its jurisdiction under the paternity statute. See generally NRS Chapter 126.

Accordingly, we grant this petition for a writ of prohibition. We direct the clerk of this court to issue a writ of prohibition precluding the respondent district court from exercising jurisdiction over petitioner as a third party defendant to the divorce proceeding. Finally, we vacate in its entirety our prior order staying the proceedings in the district court, which we entered on August 17, 2000.

It is so ORDERED.

Young J.
Young

Maupin J.
Maupin

Becker J.
Becker

cc: Hon. William O. Voy, District Judge,
Family Court Division
Lynn R. Shoen
Allan Dodd Bray
Clark County Clerk