

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LORI IRISH,
Appellant,
vs.
JAMES H. GORMLEY; AND
KATHLEEN HARRIS GORMLEY,
Respondents.

No. 81868-COA

FILED

AUG 04 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lori Irish appeals from a district court order granting a combined motion to dismiss/motion for summary judgment in a civil action. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

In 1999, Lori and her former husband, respondent James Gormley, entered into a stipulation and order (the 1999 stipulation) wherein Lori and James agreed (1) that Colby Gormley Irish, Lori and James' son, would be named the "irrevocable Beneficiary of the entirety of [James'] estate to be transferred by Will at the time of [James'] death," (2) that James would enter into a prenuptial agreement with any future spouse(s) that provides that the stipulation "shall not be disturbed in any way, shape or form," and (3) that any of James' future spouse(s) would be "precluded from receiving any portion of [James'] future or existing earnings or assets." Additionally, Lori would receive monthly child support payments until Colby reached the age of 18, and, in the event that Colby predeceased James, would have a one-half interest in James' estate and a separate trust established for Colby under the 1999 stipulation until 2019.

As relevant here, James remarried after the divorce and, in 2015, allegedly purchased a condominium with his wife, respondent

Kathleen Harris Gormley, through the 9101 Alta Dr. Unit 907 Trust. Lori later filed an action against both James and Kathleen (collectively, the Gormleys), alleging that the purchase of the condominium violated the terms of the 1999 stipulation as it purportedly gave Kathleen an ownership interest in one of James' assets. Lori further asserted that this purchase harmed Colby (by depriving him of a portion of his inheritance), requested that punitive damages be assessed against the Gormleys, and requested that title to the condo be transferred to Colby.

In lieu of filing an answer, the Gormleys filed a combined motion to dismiss/motion for summary judgment, arguing that Lori lacked standing to enforce the 1999 stipulation as she no longer receives any benefit from the stipulation now that Colby has reached adulthood. Lori opposed the motion, and after briefing was complete, the district court granted the Gormleys' motion and dismissed Lori's complaint on the basis that Lori lacked standing to assert the claims in her complaint, and failed to show how she incurred damages from the Gormleys' actions. Lori now appeals.

In her informal brief, Lori argues that the district court improperly dismissed her complaint as the Nevada supreme court had previously decided the issue of standing, the validity of the 1999 stipulation, and the 1999 stipulation's enforceability in an earlier appeal.¹ Accordingly, Lori argues that the law-of-the-case doctrine applies and asks this court to reverse the district court's order dismissing her complaint on that basis.

Normally, "for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by

¹See *Irish v. Gormley*, Docket No. 46004 (Order of Reversal and Remand, October 2, 2007).

necessary implication.” *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010); see *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003) (“The doctrine only applies to issues previously determined, not to matters left open by the appellate court.”). “Subjects an appellate court does not discuss, because the parties did not raise them, do not become the law of the case by default.” *Bone v. City of Lafayette*, 919 F.2d 64, 66 (7th Cir.1990), quoted with approval in *Dictor*, 126 Nev. at 44-45, 223 P.3d at 334.


Here, the supreme court’s 2007 decision did not determine the inherent validity of the 1999 stipulation, nor did it explicitly address whether Lori would continue to have standing to enforce the 1999 stipulation once Colby reached adulthood and her benefit under the stipulation expired. See *Irish v. Gormley*, Docket No. 46004 (Order of Reversal and Remand, October 2, 2007). Instead, as relevant here, the supreme court resolved the issue of whether the district court had jurisdiction to revisit and set aside the 1999 stipulation. *Id.* Specifically, in its order, the supreme court determined that “neither party has contested the validity of the 1999 stipulation,” and consequently held that the district court lacked jurisdiction to revisit and set aside the stipulation under these circumstances.

Thus, because the supreme court did not address the issue of standing in its earlier order, we conclude that the law-of-the-case doctrine does not apply, such that the district court was not constrained in its ability to determine the issue of standing in the case. See *Dictor*, 126 Nev. at 44, 223 P.3d at 334; *Wheeler Springs*, 119 Nev. at 266, 71 P.3d at 1262. And because Lori otherwise failed to challenge the district court’s determination that she lacked standing once Colby reached adulthood, or its separate

determination that she failed to demonstrate that she suffered damages based on the Gormleys' actions, those issues are deemed waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived); *see also Hillis v. Heineman*, 626 F.3d 1014, 1019 n.1 (9th Cir. 2010) (affirming the district court's ruling where the appellants failed to challenge an alternative ground the district court provided for it). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 2
Lori Irish
Jones & LoBello
Eighth District Court Clerk

²Insofar as Lori raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.