

SUPREME COURT OF NEVADA

Friedman v. Eighth Judicial District Court, 127 Nev. 842

264 P.3d 1161 (2011) · No. No. 57245 · Decided November 23, 2011

SUMMARY

The Supreme Court of Nevada held that Nevada lacked authority under the Uniform Child Custody Jurisdiction and Enforcement Act to proceed with a custody modification after finding that both parents and the children no longer resided in Nevada and that California was the children's home state. The parties' agreement selecting Nevada as the forum could be considered by a court with UCCJEA jurisdiction but could not confer subject matter jurisdiction on Nevada. The court granted writs of prohibition and mandamus, directing the Nevada district court to stay or dismiss the proceeding unless California declined jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Pickering, J., by the Court; Cherry, J.; Douglas, J.; Gibbons, J.; Hardesty, J.; Parraguirre, J.; Pickering, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	November 23, 2011
DOCKET	No. 57245
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for extraordinary writs of prohibition and mandamus challenging the Nevada district court's assertion of subject matter jurisdiction over an interstate child-custody modification proceeding.
STANDARD OF REVIEW	Subject matter jurisdiction under the UCCJEA is reviewed de novo when the jurisdictional facts are undisputed. Review of a petition challenging denial of a motion to dismiss by extraordinary writ is discretionary and appropriate when the issue is not fact-bound and involves an unsettled, significant, recurring question of law.
PRECEDENTIAL VALUE	Published Nevada Supreme Court en banc opinion; precedential

PARTIES

Daniel E. Friedman v. Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, The Honorable T. Arthur Ritchie, Jr., District Judge, Family Court Division, Kevyn Q. Friedman, Real Party in Interest

TOPICS

child custody family law procedure subject matter jurisdiction writ of certiorari appellate procedure

PRACTICE AREAS

family law child custody appellate procedure subject matter jurisdiction statutory interpretation remedies

QUESTIONS PRESENTED

1. Whether Nevada retained exclusive, continuing jurisdiction under the UCCJEA after the court found that the children, both parents, and all persons acting as parents no longer resided in Nevada.
2. Whether a post-divorce custody motion constitutes a new proceeding requiring a fresh UCCJEA jurisdictional analysis based on the facts existing when the motion was filed.
3. Whether the parties' agreement selecting Nevada as the forum could confer or preserve UCCJEA subject matter jurisdiction after Nevada's exclusive, continuing jurisdiction ceased.
4. Whether Nevada could conduct an inconvenient- or more-appropriate-forum analysis or require California to defer when California was the children's apparent home state.
5. Whether judicial or equitable estoppel could confer UCCJEA subject matter jurisdiction on Nevada.
6. Whether extraordinary writ relief was appropriate to restrain the Nevada district court's unauthorized exercise of jurisdiction.

HOLDINGS

1. Nevada's exclusive, continuing jurisdiction over the prior custody determination ceased when the district court determined that the children, both parents, and any person acting as a parent no longer presently resided in Nevada.
2. For a post-divorce custody modification, the relevant proceeding for determining the date of commencement under the UCCJEA is the post-divorce custody or visitation motion, not the original divorce proceeding.
3. Because California was the children's home state and had a custody proceeding commenced in substantial conformity with the UCCJEA, Nevada was required to stay its proceeding, communicate with the California court, and dismiss unless California determined that Nevada was the more appropriate forum.
4. A parental agreement selecting Nevada as the forum, and judicial or equitable estoppel based on that agreement, cannot confer or preserve UCCJEA subject matter jurisdiction that Nevada otherwise lacks.

5. Writs of prohibition and mandamus were appropriate to restrain the Nevada district court's unauthorized exercise of UCCJEA jurisdiction and to require compliance with NRS 125A.355(2).

KEY QUOTATIONS

“Under the UCCJEA, California appears to have jurisdiction as the children's "home state," and Nevada cannot proceed unless California determines that Nevada is the more convenient forum.” (264 P.3d at 1163-64)

“Since the UCCJEA deems this to involve "subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is ineffective.” (264 P.3d at 1167)

“The decision to decline jurisdiction on inconvenient/more appropriate forum grounds is for the court of the state that has UCCJEA jurisdiction to make, not the state to which deferral is pressed.” (264 P.3d at 1168)

“We therefore grant the petition for the writs of prohibition and mandamus and direct the clerk of this court to issue alternative writs of prohibition and mandamus directing the district court to stand down from its assertion of jurisdiction in this case except to the extent permitted by NRS 125A.355(2) and to dismiss this case unless the California court declines jurisdiction in favor of Nevada.” (264 P.3d at 1170)

FACTUAL BACKGROUND

Daniel and Kevyn Friedman were divorced in Nevada in 2008, and their stipulated decree provided for joint legal custody and a planned transition in physical custody after the family moved. Daniel later obtained employment in California, and both parents and the three children moved there from Nevada. When the parents could not agree on a joint physical-custody schedule, Kevyn sought a custody modification in Nevada, while Daniel initiated a competing proceeding in California. The Nevada district court found that none of the parents or children had lived in Nevada since at least September 2009 but nevertheless relied on the parties' forum-selection agreement to retain jurisdiction.

PROCEDURAL HISTORY

The parties' Nevada divorce decree incorporated an agreement providing for Nevada jurisdiction over future custody disputes. After both parents and the children moved to California, Kevyn sought a custody modification in Nevada, while Daniel registered the decree and initiated competing proceedings in California. The Nevada district court rejected Daniel's jurisdictional challenge and provisionally awarded Kevyn primary physical custody. Daniel petitioned the Nevada Supreme Court, which granted writ relief.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court was directed to stand down from asserting jurisdiction except as permitted by NRS 125A.355(2), and to dismiss the proceeding unless the California court declined jurisdiction in favor of Nevada.

The clerk was directed to issue alternative writs of prohibition and mandamus.

CASES CITED

- In re Custody of A.C., 165 Wash. 2d 568, 200 P.3d 689 (2009)
- Sidell v. Sidell, 18 A.3d 499 (R.I. 2011)
- In re Marriage of Nurie, 176 Cal. App. 4th 478, 98 Cal. Rptr. 3d 200 (2009)
- Ogawa v. Ogawa, 125 Nev. 660, 221 P.3d 699 (2009)
- In re A.C.S., 157 S.W.3d 9 (Tex. App. 2004)
- In re Marriage of Akula, 404 Ill. App. 3d 350, 935 N.E.2d 1070 (2010)
- Krebs v. Krebs, 183 Md. App. 102, 960 A.2d 637 (2008)
- Horgan v. Romans, 366 Ill. App. 3d 180, 851 N.E.2d 209 (2006)
- Vaile v. District Court, 118 Nev. 262, 44 P.3d 506 (2002)
- Insurance Corp. v. Compagnie des Bauxites, 456 U.S. 694, 702 (1982)
- Adoption House, Inc. v. A.R., 820 A.2d 402 (Del. Fam. Ct. 2003)
- In re Jaheim B., 169 Cal. App. 4th 1343, 87 Cal. Rptr. 3d 504 (2008)
- Rosen v. Rosen, 222 W. Va. 402, 664 S.E.2d 743 (2008)
- Anderson v. State, 109 Nev. 1129, 865 P.2d 318 (1993)
- Staats v. McKinnon, 206 S.W.3d 532 (Tenn. Ct. App. 2006)
- Hendry v. Hendry, 339 N.J. Super. 326, 771 A.2d 701 (N.J. Super. Ct. App. Div. 2001)
- Buckwalter v. District Court, 126 Nev. 200, 234 P.3d 920 (2010)
- Westpark Owners' Ass'n v. District Court, 123 Nev. 349, 167 P.3d 421 (2007)
- Mineral County v. State, Department of Conservation, 117 Nev. 235, 20 P.3d 800 (2001)
- State ex rel. Ferrara v. Neill, 165 S.W.3d 539 (Mo. Ct. App. 2005)
- Stephens v. Fourth Judicial District Court, 331 Mont. 40, 128 P.3d 1026 (2006)
- Rosen v. Celebrezze, 117 Ohio St. 3d 241, 883 N.E.2d 420 (2008)
- Valley Health System v. District Court, 127 Nev. ___, 252 P.3d 676 (2011)