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Domestic Relations; Non-Parent Visitation Rights

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39. Id. §25 (adding to NRS Ch. 11). See In re the Marriage of Ben-Yehoshua, 91 Cal.App.3d 259, 154 Cal.Rptr. 80 (1979) for an example of the application of this provision.
40. 1979 Nev. Stats. ch. 269 (hereinafter "Ch. 269") (amending NRS 125.140(1)).
41. Peavey v. Peavey, 85 Nev. 571, 573, 460 P.2d 110, 111 (1969).
42. Ch. 269 §2 (amending NRS 125.140(1)).
43. Id.
44. See Bodenheimer, Progress Under the UCCJA and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modification, 65 CALIF. L. REV. 978 (1977) for a discussion of the implications of joint custody.
45. See Neal v. Neal, 92 Cal.App.3d 834, 838-844, 155 Cal.Rptr. 157, 158-163 (1979) for a discussion of the distinction between legal and physical custody in a joint custody award.
46. 1953 Nev. Stats. ch. 114 §1, at 116 (NRS 125.060(1)).
47. Ch. 85 §28 (amending NRS 125.060(1)).
48. Id. §5 ¶ 3 (adding to NRS Ch. 11).
49. Id. §28 (amending NRS 125.060(1)).
50. 1953 Nev. Stats. ch. 114 §1, at 116 (NRS 125.060).
51. NCL §9463 (NRS 125.050).
52. Ch. 85 §28 (amending NRS 125.060(2)).
53. Id.
54. Ch. 85 §27 (amending NRS 125.050).

DOMESTIC RELATIONS; NON-PARENT VISITATION RIGHTS

Adds to NRS Chapter 123

AB 231 (Westall); STATS 1979, Ch. 224

Chapter 224 amends NRS Chapter 123 to allow reasonable visitation rights to the parents, grandparents and children of the deceased parent or divorced parent without custody of a minor child.¹ They may petition for these rights in the district court in the county where the child resides.² The district court may grant visitation rights in a divorce decree or upon a petition filed after the divorce or death of the parent of an unmarried minor child.³ Visitation rights will be granted only when in

the best interests of the child.⁴ In determining whether to grant visitation rights to someone other than the child's grandparent, the court shall consider the amount of previous personal contact between the petitioner and the child.⁵ Additionally, Chapter 224 provides that termination of the parental rights of the deceased or divorced parent⁶ also bars and terminates the visitation rights of that parent's relatives.⁷

At common law, grandparents had no right to petition for visitation unless there was a specific challenge to the fitness of the parent.⁸ The right of parents to control the actions of their children was considered a basic right of parenthood.⁹ Any parental obligation to allow visitation was a purely moral obligation, unenforceable by law.¹⁰ Therefore, the courts would intervene only when parental authority was clearly abused.¹¹ Later, some courts began to grant visitation rights to non-parents when it was in the best interests of the child, but only if there were "special circumstances," e.g., where the child's father was killed in war.¹² Modernly, non-parent (usually grandparent) visitation rights have been permitted by statute, making "the best interests of the child" the basic requirement.¹³ Chapter 224 is such a statute. In determining whether a child-grandparent relationship is in the child's best interest, the court will usually consider the nature of the relationships between all the affected parties.¹⁴

Apparently, the grandparents, parents, and other children of a parent who has custody of the minor child have no standing to file a petition under this chapter.¹⁵ Therefore, an award of joint custody¹⁶ may defeat the application of Chapter 224. Other problems arise when parental rights are terminated. For example, Nevada law provides that upon final adoption, all responsibilities and rights of the child's natural parents are terminated, and the child becomes the legal child of the adoptive parents.¹⁷ Depending on the perspective taken by the court, the rights granted to eligible relatives of natural parents under visitation statutes also may terminate.¹⁸ Apparently, supporting the Texas view that visitation rights terminate, Chapter 224 expressly provides that terminating the natural parent's rights will also terminate the visitation rights of that parent's relatives.¹⁹ Thus, it appears that Nevada will view an adoptive parent's right to raise and control a child as superior to a natural relative's visitation right.²⁰

Rosalie Lazzarotto

FOOTNOTES

1. 1979 Nev. Stats. ch. 224 (hereinafter "Ch. 224") §1 ¶1 (adding to NRS Ch. 123).
2. Id.
3. Id. §1 ¶2 (adding to NRS Ch. 123).
4. Id. §1 ¶1 (adding to NRS Ch. 123).
5. Id.
6. See NRS 127.160 and NRS Ch. 128.
7. Ch. 224 §1 ¶3 (adding to NRS Ch. 123).
8. Lee v. Kepler, 197 So.2d 570, 573 (Fla. Dist. Ct. App., 1967); Jackson v. Fitzgerald, 185 A.2d 724, 725 (D. of C. Muni. Ct. of App. 1962). See generally, 59 Am. Jur. 2d Parent and Child §92 (1971).
9. Reeves v. Bailey, 53 Cal.App.3d 1019, 1025, 126 Cal.Rptr. 51, 55 (1975) construing Odell v. Lutz, 78 Cal.App.2d 104, 106, 177 P.2d 628, 629 (1947).
10. Succession of Reiss, 15 So. 151, 152 (L.A. Sup. Ct. 1894).
11. Odell v. Lutz, 78 Cal.App.2d at 106, 177 P.2d at 692.
12. Lucchesi v. Lucchesi, 71 N.E. 2d 920, 922 (Ill. App. 1947), See e.g., Boyles v. Boyles, 302 N.E. 2d 199, 201 (Ill. App. 1973) (mother dies, visitation allowed to maternal grandparents). Chodzko v. Chodzko, 360 N.E. 2d 60, 63 (Ill. Sup. 1976) (grant of visitation in absence of special circumstances is error). See generally 90 A.L.R. 3d 322 (1979).
13. E.g., CAL. CIV. CODE §197.5 (West Supp. 1979).
14. See generally Bookstein v. Bookstein, 7 Cal.App.3d 219, 223-24, 86 Cal.Rptr. 495, 498-99 (1970) (relationship considered in light of the best interests of the child); Note, Statutory Visitation Rights of Grandparents: One Step Closer to The Best Interests of The Child, 26 CATH. L. REV. 387 (1976-1977).
15. Ch. 224 §1 ¶1 (adding to NRS Ch. 123).
16. NRS 125.140(1) (as amended by 1979 Nev. Stats. ch. 269 §2). See generally, Bodenheimer, Progress Under the UCCJA and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications, 65 CALIF. L. REV. 978, 1009 (1972).
17. NRS 127.160.
18. Compare Reeves v. Bailey, 53 Cal.App.3d at 1024, 126 Cal.Rptr. at 55 and In re Adoption of Berman, 44 Cal.App.3d 687, 696-97, 118 Cal.Rptr. 804, 810 (1975) (visitation rights not automatically terminated upon termination of parental

rights) with DeWeese v. Crawford, 520 S.W. 2d 522, 526 (Tex. Civ.App. 1975) (adoptive parent's rights prevail over natural parent's; rights terminate).

19. Ch. 224 §1 ¶ 3 (adding to NRS Ch. 123).

20. Compare DeWeese v. Crawford, 520 S.W. 2d at 526 with NRS 127.160. See generally, Note, Visitation Rights of a Grandparent Over the Objection of A Parent: The Best Interests of The Child, 15 J. FAM. L. 51 (1976-1977).

SEE GENERALLY:

1) Annot., 90 A.L.R. 3d 222 (1979).

DOMESTIC RELATIONS; DOMESTIC VIOLENCE

Adds to NRS Chapter 33

Amends NRS 171.124

AB 479 (Wagner); STATS 1979, Ch 488

AB 480 (Wagner); STATS 1979, Ch 452

Chapter 452 authorizes peace officers to arrest a person who has physically abused his or her spouse. Chapter 488 provides for temporary restraining orders in a domestic violence situation.

Chapter 452 provides that a peace officer may arrest a person with or without a warrant when there is probable cause to believe that he has committed battery upon his spouse, and there is evidence of bodily harm to that spouse.¹

Chapter 488 permits courts to grant, with or without notice to the adverse party, a temporary restraining order upon the affidavit of an applicant who is a relative or co-resident of the adverse party.² It must be satisfactorily shown that the adverse party has physically injured the applicant or the minor child of one of the parties by an act of physical violence or that there exists a threat of imminent physical injury if the adverse party is not restrained.³ The order may be granted without regard to whether an action for divorce, annulment, or separate maintenance has been filed regarding the applicant and the adverse party.⁴

The restraining order may enjoin the adverse party from threatening or physically injuring the applicant or minor child.⁵ If necessary to the physical