

SUMMARY STATEMENT

Carver v. Hornish

Docket No. 49320

This appeal addressed the subject matter jurisdiction of the magistrate court over custody in a divorce action when a minor is emancipated as a result of marriage. Erin Carver and William Hornish, Jr., were divorced in 2012. Nine years later, in 2021, Carver petitioned to modify the divorce decree and obtain sole physical custody of parties' 16-year-old daughter ("Daughter") after Hornish moved from Idaho to Florida. Hornish counter-petitioned, seeking primary custody of Daughter and permission to relocate her to Florida. While the petition and counter-petition were pending, Carver received information that Hornish was arranging an allegedly sham marriage for the purpose of emancipating Daughter and depriving the magistrate court of jurisdiction over the custody dispute.

Carver filed an ex parte motion on October 28, 2021, to suspend Hornish's legal authority to consent to a marriage of Daughter. The magistrate court did not become aware of Carver's ex parte motion until November 5, 2021, when it granted the motion. However, four days earlier, on November 1, 2021, Daughter had married with Hornish's consent pursuant to Idaho Code section 32-202. Afterwards, Hornish moved to dismiss Carver's petition. The magistrate court granted Carver's motion after determining it did not have the authority to grant Carver's ex parte motion nunc pro tunc to an effective date before Daughter's marriage (when the magistrate court would have granted the motion if not for its oversight). Carver appealed pursuant to Idaho Appellate Rule 12.1.

On appeal, the Idaho Supreme Court affirmed the magistrate court's dismissal. The Court held the magistrate court lacked subject matter jurisdiction over custody of Daughter in the divorce action because she was emancipated by marriage. The Court explained that even if Carver's ex parte order had been made retroactive to the date the motion was filed, Daughter's marriage would be rendered, at most, voidable, and would remain valid unless, and until, it was annulled and the magistrate court lacked subject matter jurisdiction.

Next, the Court declined to address Carver's constitutional challenge to Idaho Code section 32-202. Carver had argued, for the first time on appeal, section 32-202 was unconstitutional because it permitted a marriage license to issue to Daughter with only Hornish's parental consent, thereby allowing Carver's parental rights to effectively be terminated without due process. The Court determined this issue would not be reached under an exception to the preservation requirement because Carver's argument was cursory; both parties failed to provide a substantive response at oral argument and after the Court ordered supplemental briefing; the statute was not clearly unconstitutional; and even if section 32-202 was declared unconstitutional, this would not, by operation of law, nullify Daughter's marriage to then reinstate the magistrate court with subject matter jurisdiction over her custody and control in the divorce action.

Finally, the Court determined neither party was entitled to attorney fees on appeal under Idaho Code section 12-121.

***** This summary constitutes no part of the opinion of the Court but has been prepared by court staff for the convenience of the public. *****