

SUMMARY STATEMENT

Glatte v. Hernandez

Dkt. No. 49372

This expedited appeal arose out of the dismissal of a stepfather's petition for custody of a child filed three years after the stepfather and mother divorced. The stepfather based his legal claim to custody of the child, against the wishes of the biological mother, on the underlying divorce and the Court's decision in *Stockwell v. Stockwell*, 116 Idaho 297, 775 P.2d 611 (1989). The magistrate court ultimately dismissed the stepfather's petition for failure to state a claim upon which relief could be granted. The stepfather timely appealed.

On appeal, the Idaho Supreme Court affirmed the magistrate court's judgment of dismissal. The Court reasoned that the stepfather, who never adopted the child and was not a biological parent, had brought a common law custody claim under *Stockwell* as specifically prohibited by *Doe v. Doe*, 162 Idaho 254, 395 P.3d 1287 (2017). The Court further held that Idaho Code section 32-717(1), governing the custody of children in a divorce, did not save the stepfather's petition because under no circumstances was the child a "child of the marriage." Thus, the stepfather failed to state a custody claim upon which relief could be granted.

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