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IN THE SUPREME COURT OF THE STATE OF NEVADA

BIRTH MOTHER,
Appellant,
vs.
ADOPTIVE PARENTS AND NEW
HOPE CHILD AND FAMILY AGENCY,
Respondents.

No. 38572

FILED

DEC 27 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Appeal from a district court order granting a motion to dismiss a contractual claim. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

Affirmed.

Lee T. Hotchkin Jr., Reno,
for Appellant.

Gamboa & Stovall, Reno,
for Respondents.

BEFORE THE COURT EN BANC.

OPINION

By the Court, SHEARING, J.:

This case involves an agreement between the appellant, birth mother, and the respondents, adoptive parents and New Hope Child and Family Agency (New Hope), which allowed the birth mother continuing contact, after the adoption, with the adopted child. All parties consented to the agreement. After the birth mother attempted to terminate her

ASSEMBLY JUDICIARY SUBCOMMITTEE

DATE: 2/26/03 EXHIBIT C

SUBMITTED BY: Angela Howard

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the child and her natural kindred.”⁶ Thus, subsequent to an adoption decree, a natural parent has no rights to the child unless provided for in the decree.⁷ We conclude that while an agreement may grant a natural parent rights to post-adoption contact, enforcing it would be inconsistent with the Legislature’s mandate that a natural parent may not exercise any right to the adopted child not incorporated in the adoption decree.⁸

This decision leads to an unsatisfactory result in that natural parents may consent to an adoption because, pursuant to an agreement, they believe they have a right to post-adoption contact with the child.⁹ However, what many of these natural parents fail to realize is that, if the agreement is not incorporated in the adoption decree, their rights as to the child are terminated upon adoption and any contact with the child may be had only upon the adoptive parents’ permission, regardless of the agreement.* Despite this unfortunate result, this court cannot enforce such an agreement until the Legislature mandates otherwise. Because this agreement is unenforceable under Nevada law and the adoption decree

⁶Bopp, 110 Nev. at 1250, 885 P.2d at 562.

⁷Id.; NRS 127.160.

⁸See NRS 127.160; see, e.g., Lowe v. Clayton, 212 S.E.2d 582, 586-87 (S.C. 1975) (holding that an adoption decree foreclosed enforcement of a prior contact agreement because the final adoption terminated all rights of the natural parent), superceded by statute on other grounds as stated in Hagy v. Pruitt, 500 S.E.2d 168 (S.C. Ct. App. 1998).

*⁹In such a situation, natural parents may attempt to contest the validity of their consent to an adoption by arguing mistake of fact. To avoid this issue in the future, agencies should inform natural parents of the need to incorporate the agreement into the adoption decree if their consent is conditioned upon post-adoption contact.

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