Roger Williams University Law Review

Volume 8 | Issue 2 Article 18

Spring 2003

2002 Survey of Rhode Island Law: Cases: Family Law

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Family Law. *In re Jason L.*, 810 A.2d 765 (R.I. 2002). The Rhode Island Supreme Court reviews decisions terminating parental rights to determine whether any legally competent evidence exists to support the decision of the family court.

FACTS AND TRAVEL

Elise S. appealed from a family court decree terminating her parental rights for six of her seven children.[1] Since 1997, Elise has been involved in a tumultuous and abusive relationship with Juan S., also known as Chino.[2] Chino has beaten Elise and two of her children on several occasions.[3]

In January 1997, the Department of Children, Youth, and Families (DCYF) learned that Chino was abusing Elise's children.[4] After a no-contact order was issued against Chino, DCYF filed neglect and abuse petitions against Elise.[5] DCYF then took temporary custody of one child.[6] On February 21, 1997, Elise regained custody of her child provided the no-contact order against Chino remained in effect.[7] Elise, however, allowed the order to lapse when she failed to appear for a hearing.[8] On March 13, 1997, Elise allowed Chino to return to her home.[9] After some time, DCYF found five of Elise's children to be neglected and abused.[10] All five children were then committed to the care, custody, and control of DCYF.[11]

Between January 1997 and March 2000, DCYF continually tried to reunite Elise with her children.[12] DCYF would only return the children provided Chino was not allowed to remain in the home.[13] Elise, however, was unwilling to keep her children from the abusive man.[14]

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1. In re Jason L., 810 A.2d 765, 765 (R.I. 2002).
2. *Id.* at 766.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* at 768.

On March 15, 2000, DCYF petitioned the family court to terminate Elise's parental rights.[15] The family court granted the petition after a six-day hearing.[16] Accordingly, Elise appealed.[17]

BACKGROUND

Section 15-7-7(a)(3) of Rhode Island General Laws provides that:

> The family court shall terminate a parent's rights if it finds by clear and convincing evidence that the "child has been placed in the legal custody or care of . . . [DCYF] for at least twelve (12) months; and the parents were offered or received services to correct the situation which led to the child being placed, and provided that there is not a substantial probability that the child will be able to return safely to the parents' care within a reasonable period of time."[18]

ANALYSIS AND HOLDING

The supreme court stated that a family court decree terminating parental rights shall not be disturbed unless the findings are clearly wrong or unless the trial justice overlooked or misconceived material evidence.[19] Before terminating a parent's rights under section 15-7-7(a)(3) the family court must, inter alia, find the parents were offered or received services to correct the situation that led to the child being placed in the custody and care of DCYF.[20] Thus, it must be clear that DCYF made reasonable efforts to reunite the family.[21] The court stated that the reasonable efforts determination is subject to a case-by-case analysis and takes into account parental conduct and cooperation.[22]

In this case, the court noted that the record revealed countless efforts on the part of DCYF to reunite the family.[23] DCYF prepared numerous case plans, set up meetings with various agencies

15. *Id.* at 766.
16. *Id.* at 766-67.
17. *Id.* at 767.
18. *Id.* at 766 (quoting R.I. GEN. LAWS § 15-7-7(a)(3) (2000)).
19. *Id.* (citing In re Chaselle S., 798 A.2d 892, 895 (R.I. 2002)).
20. *Id.* (citing § 15-7-7(a)(3)).
21. *Id.*
22. *Id.* (citing In re Ryan S., 728 A.2d 454, 457 (R.I. 1999) (quoting In re Nicole B., 763 A.2d 612, 618 (R.I. 1997))).
23. *Id.*

that could help remedy the family problems, and assisted Elise in obtaining housing.[24] The court also noted that Elise repeatedly demonstrated her unwillingness to keep her children away from Chino.[25] The court determined that the efforts of DCYF were reasonable in light of Elise's attitude.[26]

The court also stated that Elise's argument that she suffered from Battered Women's Syndrome (BWS) is of no consequence.[27] Because BWS is a mental condition that has certain legal consequences, a party must prove its existence by a preponderance of the evidence.[28] Elise, however, offered no evidence to prove that she suffered from BWS, thus her failure to do so constitutes a waiver of that issue.[29]

CONCLUSION

The supreme court reviews a decision to terminate parental rights to determine whether any legally competent evidence exists to support the trial justice's findings and whether DCYF made reasonable efforts to reunite the family. In this case, the supreme court upheld the family court's decision to terminate parental rights because the record revealed that the efforts of DCYF to reunite the family were more than reasonable.

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24. *Id.* at 768.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*

Family Law. *JH v. RB*, 796 A.2d 447 (R.I. 2002). The Rhode Island Supreme Court held that the Full Faith and Credit Clause is applicable to a divorce judgment obtained from another state.

FACTS AND TRAVEL

Plaintiff JH, a Florida resident, filed a paternity complaint in Rhode Island Family Court seeking to establish that defendant RB, a Rhode Island resident, is the natural father of her minor child, CMH.[1] Summary judgment was granted to RB in a hearing before a family court magistrate judge on grounds that the Florida divorce decree between JH and her ex-husband, BH, determined the paternity of CMH.[2] JH appealed, and another hearing was conducted before a family court justice, who upheld the magistrate's order.[3] JH made a timely appeal to the Rhode Island Supreme Court.[4]

JH alleged that she and RB had a sexual relationship from 1976 until 1996, with a brief, two-year interruption beginning in 1983.[5] JH married BH, a Florida resident, during the interruption of that affair.[6] JH resumed the affair with RB in early 1985 despite her marriage to BH.[7] CMH was conceived in July or August 1985.[8] On July 26, 1989, the marriage between JH and BH ended in a Florida divorce judgment.[9] The judgment stated that two children, one being CMH, were born of the marriage.[10] Neither BH nor JH disputed this finding.[11] BH agreed to pay child support and JH accepted those child support payments.[12] JH successfully mediated an increase in child support payments five months prior to filing the paternity complaint in Rhode Island.[13]

1. JH v. RB, 796 A.2d 447, 447-48 (R.I. 2002).
2. *Id.* at 448.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.* at 448-49.
12. *Id.*
13. *Id.* at 449.

ANALYSIS AND HOLDING

The Rhode Island Supreme Court held that the Full Faith and Credit Clause, Article IV, Section I of the United States Constitution, is applicable to a divorce judgment obtained from another state's court.[14] The court stated that the Full Faith and Credit Clause is required to be applied, so long as there was a proper exercise of personal and subject-matter jurisdiction by the foreign court.[15] The court noted that there was nothing in the record that indicated the Florida court had not exercised proper jurisdiction over both BH and JH at the time of their divorce.[16] In addition, the fact that a divorce judgment is modifiable does not mean that it is not final, and thus ineligible for protection by the Full Faith and Credit Clause.[17]

The court noted a Florida court decision, which stated that the final dissolution of marriage is res judicata and barred any redetermination of the paternity of the child.[18] The court drew a comparison to another Florida court decision, in a factually similar case, which held that a party cannot accept benefits from a judgment and then later deny the judgment's validity.[19] Distinguishing a case where the court had refused to honor a divorce judgment from the Dominican Republic, where neither party had a connection to the forum; the court noted both JH and BH were Florida residents at the time of their divorce.[20] The court also noted that JH had an opportunity under Florida law to bring an action for fraud upon the court to correct her divorce judgment and had not done so.[21]

As an additional point of error, JH had argued that RB could not rely on the doctrines of res judicata and collateral estoppel to

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14. *Id.* (citing U.S. CONST. art. IV § 1).

15. *Id.* (quoting Jordan v. Jordan, 586 A.2d 1080, 1085 (R.I. 1991) (citing Maryland Cent. Collection Unit v. Bd. of Regents for Educ. of the Univ. of R.I., 529 A.2d 144, 152-53 (R.I. 1987))).

16. *Id.*

17. *Id.*

18. *Id.* (quoting State Dep't of Health & Rehabilitative Servs. v. Robinson, 629 So. 2d 1000, 1000 (Fla. Dist. Ct. App. 1993) (quoting Pelella v. Pelella, 604 So. 2d 14, 15 (Fla. Dist. Ct. App. 1992))).

19. *Id.* (quoting Narcisi v. Brusko, 510 So. 2d 1132, 1133 (Fla. Dist. Ct. App. 1987)).

20. *Id.* at 449-50 (citing Jewell v. Jewell, 751 A.2d 735, 735 (R.I. 2000)).

21. *Id.* at 449 (quoting Lefler v. Lefler, 776 So. 2d 319, 321 (Fla. Dist. Ct. App. 2001)).

enforce the Florida judgment because he was not a party to the judgment.[22] However, the court said that the trial judge was not required to consider these doctrines because the application of the Full Faith and Credit Clause was dispositive of the issue.[23]

CONCLUSION

The Rhode Island Supreme Court upheld the judgment of the family court that the Full Faith and Credit Clause applied to the divorce judgment as long as there was a proper exercise of jurisidiction. This entitled the defendant to summary judgment.

Joshua A. Stockwell

22. *Id.* at 450.
23. *Id.*

Family Law. *State v. Fritz*, 801 A.2d 679 (R.I. 2002). The Rhode Island Supreme Court held that the termination of parental rights does not, as a matter of law, end a terminated parent's child support obligation. Instead, a separate hearing must be had to determine the child's interest in support.

FACTS AND TRAVEL

David Fritz was divorced from his wife Lorraine in January 1994, ending a marriage that bore two children.[1] Following the divorce proceedings, a decree was entered that set child support payable by Mr. Fritz at $147.50 per week.[2] In November 1994, upon a showing by clear and convincing evidence that Fritz had abused his children,[3] the Rhode Island Department of Children, Youth and Family (DCYF) initiated a petition for the "voluntary" termination of David Fritz's parental rights, which was granted.[4] Mr. Fritz never moved to have the original child support order vacated[5] and because of this the Rhode Island office of Child Support Enforcement (CSE) continued to consider Fritz's child support order as being valid.[6] By 1997, the estimated arrearage owed by Fritz was in excess of $30,000[7] and the office of the attorney general, at the behest of CSE, issued a felony complaint for violation of section 11-2-1.1 of the Rhode Island General Laws.[8] This complaint was not filed, until Fritz's arrest in May 2000.[9] Finally, the state filed a criminal information against Fritz in August 2000 be-

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1. State v. Fritz, 801 A.2d 679, 681 (R.I. 2002).
2. *Id.*
3. A petition to terminate parental rights must be supported by clear and convincing evidence. R.I. GEN. LAWS § 15-7-7 (2000).
4. *Fritz*, 801 A.2d at 690.
5. *Id.* at 681. Section 11-2-1.1 of the Rhode Island General Laws provides:
   > Every person who is obligated to pay child support pursuant to an order or decree established by or registered with the family court pursuant to chapter 11.1 of title 15, who has incurred arrearage of past-due child support in the amount of thirty thousand dollars ($30,000), and having the means to do so, who willfully fails to pay one or more installment of child support in an amount previously set by the court, is guilty of a felony for each similar instance of failure to make subsequent payments.

   R.I. GEN. LAWS 11-2-1.1 (2000).
6. *Fritz*, 801 A.2d at 681-82.
7. *Id.* at 682.
8. *Id.*
9. *Id.*

cause, to the state's calculation, the defendant owed a support arrearage in excess of $75,000.[10]

Following Mr. Fritz's motion to dismiss, Chief Justice Jeremiah of the Rhode Island Family Court ruled that Mr. Fritz was not responsible for the back child support.[11] Chief Justice Jeremiah made this ruling based on his interpretation of section 15-7.2-2 of the Rhode Island General Laws.[12] Stating that this statute made it clear the termination of Mr. Fritz's rights also negated his responsibilities, the Chief Justice dismissed the complaint against Mr. Fritz.[13]

ANALYSIS AND HOLDING

The attorney general appealed following the family court's dismissal.[14] The appeal was accepted, and in an opinion by Justice Lederberg, the Rhode Island Supreme Court vacated the family court's dismissal of the complaint, and held that child support obligations are not automatically suspended by a voluntary termination of parental rights.[15] The court based its decision on its own statutory construction.[16] The court's construction was not of section 15-7.2-2 but rather section 15-7-7.[17] The court based its opinion on the fact that while section 15-7.2-2 mentions termination of both rights *and* responsibilities[18] section 15-7-7 mentions *only* the termination of rights.[19] According to the court, section 15-7.2-2 evidences that the legislature "knew how" to terminate responsibilities and rights at the same time.[20] This being the case, the absence of the word responsibility in section 15-7-7 is, according to the court, evidence that the legislature intended to leave responsi-

10. *Id.*
11. *Id.*
12. *Id.* at 684; R.I. GEN LAWS § 15-7.2-2 (2000) ("[A]doption is based upon the legal termination of parental rights and responsibilities of birth parents."). Other than noting that Mr. Fritz had relinquished his right to be notified of or consent to an adoption the family court gave no indication of why the adoption statute should be applied in this case. *See Fritz*, 801 A.2d at 684.
13. *Id.*
14. *Id.* at 682.
15. *Id.* at 685.
16. *See id.* at 683-85.
17. *Id.* at 684.
18. *Id.*
19. *Id.*
20. *Id.*

bilities intact in those situations.[21] The court also noted that the right to inherit survives a parental right termination.[22] Building on this concept, the court noted that a child's "ongoing rights" to financial assistance represent an independent interest that must be represented at a hearing.[23] Putting these two factors together the court decided that Mr. Fritz's child support obligations had not ceased.[24] This decision made Mr. Fritz responsible for the arrearage in child support payments in excess of $75,000.[25]

Justice Goldberg's Opinion

Justice Goldberg dissented from the majority's opinion.[26] The main thrust of Justice Goldberg's dissent is a response to the majority's contention that allowing a parent to voluntarily terminate his or her parental rights to escape child support payments would cause a flood of parents to seek termination of their rights.[27] The Justice pointed out that in Rhode Island a "voluntary petition" for termination of parental rights can only be filed by the state.[28] Accordingly, Justice Goldberg argued that the majority's vision of "recalcitrant parent[s]" lining up to terminate their parental rights in order to avoid support obligations could not come to fruition.[29] The opinion further posited that the court's reading of the section 15-7-7 frustrated the legislature's purpose in enacting that statute and was not consonant with the termination of parental rights in the adoption context.[30]

CONCLUSION

A parent whose parental rights were terminated is still responsible for any child support owed under a court decree until

21. *Id.*
22. *Id.* at 686.
23. *Id.*
24. *Id.*
25. *Id.* at 688.
26. *Id.* at 689 (Goldberg, J., dissenting).
27. *Id.* at 690.
28. *Id.*
29. *Id.*
30. *Id.* at 691.

such time as a hearing can be held to evaluate the interests of the child or children in receiving support.

Mark Ted Romley

Family Law. *Stephenson v. Stephenson*, 811 A.2d 1138 (R.I. 2002). A transfer of property from one spouse to both spouses jointly creates a rebuttable presumption that the intent of the transferor was to give the transferee a present joint interest in the property. The presumption can be rebutted by clear and convincing evidence to the contrary.

FACTS AND TRAVEL

Prior to the marriage of Lawrence and Shari Ann Stephenson, Lawrence held numerous bank accounts and investments in various financial institutions.[1] He held some of the accounts in his name alone, some in his corporation's name, and yet other accounts jointly with his brother.[2] After returning from their honeymoon, Shari Ann repeatedly asked Lawrence to add her name to his individual accounts.[3] Eventually, he acquiesced and added her name to twelve of his accounts, which valued approximately $483,000.[4] The only other change to the accounts during the marriage was the accrual of interest.[5]

At the divorce proceeding, the trial court found that Lawrence did not intend to give Shari Ann a present possessory interest in the accounts and that the addition of her name was merely a matter of convenience.[6] In determining that Lawrence did not intend to give Shari Ann a present interest in the accounts, the trial justice considered the short length of the marriage and the contributions of the parties to the marital estate during the marriage.[7] However, he still concluded, as a matter of law, that making the accounts joint was a transfer to the marital estate and that Lawrence's intent was irrelevant.[8] The trial justice then awarded Lawrence all of the accounts as part of the divorce proceedings.[9] In consideration of this distribution, he ordered Lawrence to pay Shari Ann $250,000.[10] Both parties appealed.[11]

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1. Stephenson v. Stephenson, 811 A.2d 1138, 1140 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* at 1141.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*

ANALYSIS AND HOLDING

The Rhode Island Supreme Court found the conclusion that the accounts were part of the marital estate was clearly erroneous.[12] The court held the transfer of property from one spouse individually to both spouses jointly creates only a rebuttable presumption that the property was a transfer to the marital estate.[13] That presumption can be rebutted by clear and convincing evidence to the contrary.[14] In the present case, the trial court found Lawrence's testimony that he only added Shari Ann's name for convenience, not intending to give her a present interest in the accounts, credible.[15] The trial justice supported his finding with evidence that Lawrence maintained control of the passbooks for the accounts and paid taxes on the interest accrued on the accounts.[16] Therefore, Lawrence did not have the requisite intent to make a transfer to marital property and the trial justice erred in not considering his intent.[17] Accordingly, the supreme court reduced the amount of the marital estate by the amount of money in the accounts and remanded the case for reconsideration of the $250,000 awarded to Shari Ann.[18]

CONCLUSION

A transfer of property from one spouse individually to both spouses jointly creates a rebuttable presumption that the transfer was intended as a transfer to marital property; however, the presumption can be rebutted by clear and convincing evidence to the contrary. In the present case, the name of the spouse was added merely as a matter of convenience and was not intended as a transfer to marital property. Credible testimony to this effect overcame

11. *Id.*
12. *Id.*
13. *Id.* at 1142-43.
14. *Id.* at 1142. This is known as the doctrine of transmutation. *Id.* (citing Quinn v. Quinn, 512 A.2d 848, 852 (R.I. 1986)). The doctrine requires an actual intention objectively manifested in order to convert individual property to marital property during the course of the marriage. *Id.* The transfer of assets from one spouse to both spouses jointly will create a presumption that the transferor spouse had the requisite intent to transfer the assets to the marital estate; however, that presumption can be rebutted by clear and convincing evidence to the contrary. *Id.*
15. *Id.* at 1142-43.
16. *Id.* at 1143.
17. *Id.*
18. *Id.* at 1143-44.

the presumption that the transfer was one converting individual property to marital property.

Amy Hughes