NFLR
NEVADA FAMILY LAW REPORT
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DIVISION OF CO-OWNED REALTY BETWEEN UNMARRIED COHABITANTS

Tonopah Photos Inside

by MARY ROSE ZINGALE, ESQ. & MARSHAL S. WILLICK, ESQ.

This article will review the analysis for determining the relative equity ownership in co-owned realty between unmarried cohabitants per the latest Nevada Supreme Court decisions in *Sack v. Tomlin*, 110 Nev. ____, ____ P.2d ____ (Adv. Opn. No. 24, March 30, 1994), *Michoff v. Michoff*, 108 Nev. 931, 840 P.2d 1220 (1992), *Malmquist v. Malmquist*, 106 Nev. 231, 792 P.2d 372 (1990) and *Hay v. Hay*, 100 Nev. 196, 678 P.2d 672 (1984).

In the *Sack* case, the Nevada Supreme Court was faced with a case of determining the equitable split of property owned by tenants in common, who had been cohabitating. The parties, appellant Catherine P. Sack, hereinafter referred to as Sack, and respondent, Rickey Randell Tomlin, hereinafter referred to as Tomlin, refinanced property that Sack had obtained in a prior divorce action. The parties had lived together for six months prior to Sack obtaining a divorce from her husband. In the divorce, Sack received fee simple ownership to house and property in Carson City, Nevada. Sack then gave her husband a promissory note for his interest in the property. In 1990, Sack and Tomlin refinanced the property and Sack conveyed the property to Sack and Tomlin as tenants in common. Tomlin moved out of the house in February, 1991. He continued to pay one-half of the mortgage payments through October, 1991. The house was sold in April, 1992 with Sack making all mortgage payments from November, 1991 until April, 1992.

The *Hay* and the *Michoff* cases established that unmarried, cohabitating parties can create either partnership holdings or community property by analogy. In *Michoff*, the parties, though not mar-

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IN THIS ISSUE

NEVADA FAMILY LAW REPORT is a quarterly publication of the Family Law Section of the State Bar of Nevada. Subscription price for non-section members is $35 payable in advance annually from January 1 to December 31. There are no prorations.
The *NEVADA FAMILY LAW REPORT* is intended to provide family law related material and information to the bench and bar with the understanding that neither the State Bar of Nevada, Family Law Section editorial staff nor the authors intend that its content constitutes legal advice. Services of a lawyer should be obtained if assistance is required. Opinions expressed are not necessarily those of the State Bar of Nevada or the editorial staff.
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From the Editor

by Marshal S. Willick

By all accounts, this year's Tonopah Showcase was a great success. Many thanks, on behalf of all who attended, to CLE coordinator Mary Anne Decaria and Social Events Chair Ishi Kunin. Those who missed the Roast of Judge Terrance Marren overlooked an opportunity to view some entertaining barbs. Some fairly candid (but unlikely to result in lawsuit) photos from the event are reproduced in this issue.

Also in this issue is the full text of the proposed Certification of Specialization plan, along with "pro" and "con" statements concerning it. You will soon receive under separate cover a ballot on this plan. READ IT! By vote of the Section in Tonopah, our decision on whether or not to go forward with this plan, send it to the Board of Governors, and recommend that it go to the Supreme Court for implementation, depends on the outcome of this vote. The decision made will impact your practice for many years to come.

The Section elected several new members to the Executive Council at the Tonopah meeting. Joining the Council to replace outgoing members are Ann Price McCarthy of Carson City, Dara Marias of Las Vegas, Shawn Meador of Reno, Lamond Mills of Las Vegas, Muriel Skelly of Reno, and Roger Wirth of Las Vegas. The officers for the next year will be: Marshal S. Willick, Las Vegas, Chair; Rhonda Mushkin, Las Vegas, Vice-Chair; Cassandra Campbell, Reno, Secretary; and Bruce Shapiro, Las Vegas, Financial Officer. Please contact any of the continuing or new members of the Council with any matters that you think the Section should do (or not do), or could do better. The Council wishes very much to be both useful and responsive to the Section membership.

The Nevada Supreme Court is issuing significant family law decisions at a substantial pace. We will continue to try to bring you the case summaries in as timely a manner as possible.

To what I'm sure will be the significant relief of several members of the Section, this will be my last Editorial as editor of the NFLR; beginning with the next issue, Mary Rose Zingale of Elko will be taking over the editorial reins. Please do her the favor of burying her in too many articles, letters, opinion pieces, and ideas for her to print. I wish her the very best in her development and improvement of the NFLR.

At "the Ace" a motley crew indeed. L-R, Dawna Richards, Judge Robert Gaston, Ishi Kunin, Marshal Willick, Bob Dickerson, Judge Terrance Marren, Tina Head, Rebecca Burton, Morrisa Schechtman, (unidentified) and Eileen Luttrell

Jim Jimmerson's top ten things to never say to Judge Marren.

Judge Marren, in response, gave as well as he got.

The roundtables explored topics in depth.

Social Director Ishi Kunin reads questions to Jeopard contestants Mary Groesbeck, Bob Dickerson and Barbara Finley. Rhonda Mushkin keeps score.

ried, held themselves out as a married couple with the woman even changing her name to the man's. The Court reviewed the theory of implied contract and also that "unmarried cohabiting adults may agree to hold property that they acquire as though it were community property." 108 Nev. at 938. The Court affirmed the lower court's decision to award one-half of the assets the parties acquired to each party. In the case of *Hay*, the parties were married, then divorced and almost immediately after the divorce began cohabitating and did so for the next 23 years. The court determined that unmarried cohabitants have the same right to contract with each other regarding property as do couples who are married to each other.

In the *Malmquist* case the parties were married and there was separate property enhanced by the community at the time of the divorce and the value of the separate property and the value of the community property was reviewed. The Court used what appears to be a theory of contribution, reviewing the appreciation of the property and then also reviewing the reimbursement for actual contributions made toward the equity by separate and community property to determine a total equity for the separate and community aspects of the property.

Sack was a "catch-all" case in which the Supreme Court reviewed the possible theories by which division of property between prior cohabitating tenants in common might be effected. The first theory reviewed was that of Quantum Meruit, that of reasonable value for services provided. The next theory concerned whether there was an express contract, or pursuant to there was an implied contract of a partnership or joint venture agreement or a "tacit understanding" as to the interests of the parties in the property (the theories of implied contract all being based on the conduct of the parties). Additionally, the Supreme Court reviewed the contribution theory as to whether there was a written income pooling agreement. Equitable contribution was viewed by virtue of co-tenants receiving in proportion to the amount contributed. Lastly there was the possibility of applying constructive or resulting trust theories.

The theory of quantum meruit requires reasonable value given for services (in this case household services), less a value for support received, if those services were rendered with the expectation of monetary reward. Generally there does not tend to be an agreement such as this.

The theory of contribution based on an express contract is also rare, so it would appear that in general, the implied contract theory or equitable contribution, would be used the most. In this case, the Court determined in *Sack* that there is a rebuttable presumption that co-tenants mean to hold the property in equal shares. This presumption may be rebutted by the conduct of the parties. Unequal contributions between the parties clearly is one fact to be reviewed by the courts to rebut the presumption of equal ownership.

The Court determined in *Sack* that determining the interest each party has in the property, is determined by valuing the property on date of sale, less the total debt acquired by the parties, plus any equity the parties acquired prior to the joint debt being acquired. In the case of Sack, the sale value of the property was $170,000.00. The debt the parties acquired jointly was initially $126,000.00. This debt was apportioned equally between the parties for a debt of $63,000.00 to Sack and $63,000.00 to Tomlin. Sack had an additional $44,000.00 equity which was obtained prior to the refinancing (figured as the difference between the appraised value and the mortgage debt when the parties took out the new loan. The Court then determined that Sack had a 107/170 interest in the house and Tomlin had 63/170 interest in the house.

Here, the Court observed that the parties"mutually benefitted from their cohabitation," and granted neither party any offset to the sums derived from the purchase of the property (set out below). It would appear in the *Sack* case, that the Court is mirroring for cohabitants the changes in the law appearing in NRS 125.150(2) for divorcing joint tenants, which permits the direct tracing back of separate property contributions to down payments.

There is a presumption of equal ownership of property by tenants in common, but there is another presumption that where cotenants unequally contribute to the purchase of real property, they intend to share the property in proportion to their contributions. Unequal contributions by cotenants who are not related and show no donative intent can rebut the former presumption. The formula presumed to be most equitable once the presumption of equal interests has been rebutted is as follows:

Sale Price of Property
Less selling expenses
Net Proceeds

Share of Net Proceeds (in this case 63/170 to Tomlin and 107/170 to Sack)
Less: Mortgage Debt
Apportionment

Articles, Case Summaries Wanted for NFLR

The Nevada Family Law Report seeks to provide interesting and substantive family law material to educate both the bench and the bar. NFLR needs articles for upcoming issues. If you are interested in writing critiques of pertinent cases, reports/opinions of family law legislation or discussions of family law trends and issues, please request authors guidelines from Editor Marshal Willick, 330 S. Third St., #960, Las Vegas, NV 89101. Telephone, 384-3440.

Articles published in the NFLR are eligible for continuing legal education credits. Contact the MCLE Board, 329-4443, for applications.

The Section's publication needs your input and contributions. Please contact an editor to discuss any article topic, critique or book review.

NEVADA PLAN OF CERTIFIED LEGAL SPECIALIZATION

1. PURPOSE

The purpose of this plan of certified legal specialization is to assist in the delivery of legal services to the public by identifying to the public those lawyers who have demonstrated special knowledge, skill, and proficiency in the area of specialty, allowing the public to more closely match their needs with available services; and to improve the competency of the bar by establishing an additional incentive for lawyers to participate in continuing legal education and meet the other requirements of specialization.

2. ESTABLISHMENT OF BOARD OF LEGAL SPECIALIZATION

The State Bar of Nevada, with the approval of the Nevada Supreme Court, hereby establishes a Board of Legal Specialization ("Board"), which Board shall be the authority having jurisdiction under state law over the subject of specialization of lawyers. The Board shall be composed of nine members appointed by State Bar of Nevada. The members of the Board shall be representative of the legal profession and shall include lawyers who are in general practice as well as those who specialize in the areas of specialization approved by the State Bar of Nevada and the Nevada Supreme Court. One of the members shall be designated annually by the State Bar of Nevada as chairperson of the Board. The members shall be appointed by the State Bar of Nevada to staggered terms of office and the initial appointees shall serve as follows: three shall serve for one year after appointment; three shall serve for two years after appointment and three shall serve for three years after appointment. Appointment to a vacancy among the members shall be made by the State Bar of Nevada for the remaining term of that member leaving the Board. Any member shall be eligible for reappointment to not more than one additional three-year term after having served one full three-year term.

Meetings of the Board shall be held at regular intervals at such times and places and upon such notice as the Board may from time to time prescribe.

3. POWERS AND DUTIES OF THE BOARD

Subject to the general jurisdiction of the State Bar of Nevada and the Nevada Supreme Court, the Board shall have jurisdiction of all matters pertaining to regulation of certification of specialists and shall have the power and duty:

3.1 To administer the plan;

3.2 Subject to the approval of the State Bar of Nevada and the Nevada Supreme Court, to designate areas in which certificates of specialty may be granted and define the scope and limits of such specialties and to provide procedures for the achievement of these purposes;

3.3 To appoint, supervise, act on the recommendations of and consult with specialty committees as hereinafter identified;

3.4 To make and publish standards for the certification of specialists, upon the Board's own initiative or upon consideration of recommendations made by the specialty committees, such standards to be designed to produce a uniform level of competence among the various specialties in accordance with the nature of the specialties;

3.5 To certify specialists or deny, suspend or revoke the certification of specialists upon the Board's own initiative, upon recommendations made by the specialty committees or upon request for review of recommendations made by the specialty committees;

3.6 To establish and publish procedures, rules, regulations and bylaws to implement this plan;

3.7 To propose, and request the State Bar of Nevada to make amendments to this plan whenever appropriate;

3.8 To cooperate with other boards or agencies in enforcing standards of professional conduct and to report apparent violations of the Nevada Rules of Professional Conduct to the appropriate disciplinary authority;

3.9 To evaluate and approve, or disapprove, any and all continuing legal education courses, or educational alternatives, for the purpose of meeting the continuing legal education requirements established by the Board for the certification of specialists and in connection therewith to determine the specialties for which credit shall be given and the number of hours of credit to be given in cooperation with the providers of continuing legal education; to determine whether and what credit is to be allowed for educational alternatives, including other methods of legal education, teaching, writing and the like; to issue rules and regulations for obtaining approval of continuing legal education courses and educational alternatives; to publish or cooperate with others in publishing current lists of

approved continuing legal education courses and educational alternatives; and to encourage and assist law schools, organizations providing continuing legal education, local bar associations and other groups engaged in continuing legal education to offer and maintain programs of continuing legal education designed to develop, enhance and maintain the skill and competence of legal specialists; and

3.10 To cooperate with other organizations, boards and agencies engaged in the recognition of legal specialists or concerned with the topic of legal specialization.

4. RETAINED JURISDICTION OF THE STATE BAR OF NEVADA

The State Bar of Nevada retains jurisdiction with respect to the following matters:

4.1 Upon recommendation of the Board, establishing areas in which certificates of specialty may be granted;

4.2 Amending this plan;

4.3 Hearing appeals taken from actions of the Board;

4.4 Establishing or approving fees to be charged in connection with the plan; and

4.5 Regulating attorney advertisements of specialization under the Nevada Rules of Professional Conduct.

5. PRIVILEGES CONFERRED AND LIMITATIONS IMPOSED

5.1 No standard shall be approved which shall in any way limit the right of a certified specialist to practice in all fields of law, Subject to the Nevada Rules of Professional Conduct, any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he or she is certified as a specialist, in a particular field of law;

5.2 No lawyer shall be required to be certified as a specialist in order to practice in the field. Subject to Nevada Rules of Professional Conduct, any lawyer, alone or in association with any other lawyer, shall have the right to practice in any field of law, or advertise his availability to practice in any field of law consistent with the Rules of Professional Conduct, even though he or she is not certified as a specialist in that field;

5.3 All requirements for and all benefits to be derived from certification as a specialist are individual and may not be fulfilled by nor attributed to the law firm of which the specialist may be a member;

5.4 Participation in the program shall be on a completely voluntary basis; and

5.5 Any lawyer certified as a specialist under this plan shall be entitled to advertise that he or she is a "Nevada Board Certified Specialist" in his or her specialty to the extent permitted by the Nevada Rules of Professional Conduct.

6. SPECIALTY COMMITTEES

The Board shall establish a specialty committee for every approved specialty area. The specialty committee shall be composed of seven members appointed by the Board, one of whom shall be designated annually by the chairperson of the Board as chairperson of the specialty committee. Members of each specialty committee shall be lawyers licensed and currently in good standing to practice law in this state who, in the judgment of the Board, are competent in the areas of law to be covered by the specialty. Members shall hold office for three years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the Board to staggered terms of office and the initial appointees shall serve as follows: two shall serve for one year after appointment; two shall serve for two years after appointment; and three shall serve for three years after appointment. Appointment by the Board to a vacancy shall be of the remaining term of the member leaving the specialty committee. All members shall be eligible for reappointment to not more than one additional three-year term after having served one full three-year term. Meetings of each specialty committee shall be held at regular intervals, at such times, places and upon such notices as the specialty committee may from time to time prescribe or upon direction of the Board.

Each specialty committee shall advise and assist the Board in carrying out the Board's objectives and in the implementation and regulation of this plan in that specialty. Each specialty committee shall advise and make recommendations to the Board as to standards for the specialty and the certification of individual specialists in that specialty. Each specialty committee shall be charged with actively administering the plan in its specialty and with respect to that specialty shall:

6.1 Recommend to the Board reasonable and nondiscriminatory standards applicable to that specialty;

6.2 Make recommendations to the Board for certification, continued certification, denial, suspension or revocation of certification of specialists and for procedures with respect thereto;

6.3 Administer procedures established by the Board for applications for certification and continued certification as a specialist and for denial, suspension or revocation of such certification;

6.4 Administer examinations and other testing procedures, if applicable, investigate references of applicants; and, if deemed advisable, seek additional information regarding applicants for certification or continued certification as specialists;

6.5 Make recommendations to the Board concerning the approval of and credit to be allowed for continuing legal education courses, or educational alternatives, in the specialty; and

6.6 Perform such other duties and make such other recommendations as may be requested of or delegated to the specialty committee by the Board.

7. MINIMUM STANDARDS FOR CERTIFICATION OF SPECIALISTS

To qualify for certification as a specialist, a lawyer applicant must comply with the following minimum standards, and meet any other standards established by the Board for the

specialty:

7.1 Pay any required fee;

7.2 The applicant must be licensed and currently in good standing to practice law in this state;

7.3 The applicant must make a satisfactory showing, as determined by the Board after advice from the specialty committee, of substantial involvement in during the five years immediately preceding his or her application according to objective and verifiable standards. Such substantial involvement shall be defined as to each specialty from a consideration of its nature, complexity and differences from other fields and from consideration of the kind and extent of effort and experience necessary to demonstrate competence. It is a measurement of actual experience in specialized area according to any of several standards. It may be measured by the time spent on legal work in the specialized area, the number or type of matters handled within a certain period of time or any combination of these or other appropriate factors. However, experience requirements should be measured by objective standards. In no event should they be either so restrictive as to unduly limit certification of lawyers as specialists or so lax as to make the requirement of substantial involvement meaningless. "Substantial involvement" for specialization, if measured on a time-spent basis, in no event shall the time spent in practice in the specialty be less than thirty-three and one-third percent (33-1/3%) of the total practice of a lawyer engaged in a normal full-time practice for five (5) years preceding application. Also, an applicant for specialization must have devoted an average of five hundred (500) hours per year during the five (5) years preceding application to work done within the specialty and no less than five hundred (500) hours in any year. Reasonable and uniform practice equivalents may be established including, but not limited to, successful pursuit of an advanced educational degree, teaching, judicial, government or corporate legal experience. Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation of a practice equivalent. Practice equivalent shall mean:

a.Service as a law professor concentrating in the teaching of family law. Such service may be substituted for one (1) year of experience to meet the five (5) year requirement;

b.Service as a judge who has heard a substantial number of cases in the specialty area; and

c.Judges who work exclusively in the area of the specialty may receive a year-for-year credit for continued service exclusively hearing cases within the specialty to meet the five (5) year requirement.

7.4 The applicant must make a satisfactory showing, as determined by the Board after advice from the specialty committee, of continuing legal education in the specialty accredited by the Board for the specialty, the minimum being eighteen (18) hours of credit for continuing legal education per year, for each of the three years immediately preceding application;

7.5 The applicant must make a satisfactory showing, as determined by the Board after advice from the specialty committee, of qualification in the specialty through peer review by providing, as references, the names of at least three (3) lawyers and three (3) judges, all of whom are licensed and currently in good standing to practice law in this state, or in any state, who are familiar with the competence and qualification of the applicant as a specialist in the specialty area. This requirement may be waived in part if an applicant does not practice in a county with at least 100,000 population. An applicant who does not practice in a county with at least 100,000 population must submit as references the names of at least one (1) judge and one (1) lawyer. The precise number of judge and attorney references for an applicant who does not practice in a county with at least 100,000 population will be determined by the applicable specialty committee on a case-by-case basis. None of the references may be persons related to the applicant, or at the time of application, a partner of or otherwise associated with the applicant in the practice of law. The applicant by his or her application consents to confidential inquiry by the Board, or appropriate disciplinary body and other persons regarding the applicant's competence and qualifications to be certified as a specialist. Completed references must be received from at least three (3) lawyers and three (3) judges unless the applicant does not practice in a county with at least 100,000 population in which case the applicable specialty committee will determine how many completed references need to be supplied on a case-by-case basis; however, completed references must be received from at least one (1) lawyer and one (1) attorney.

7.6 The applicant must achieve a satisfactory score on a written examination designed to test the applicant's knowledge and ability in the area of specialty. The examination must be applied uniformly to all applicants. The Board shall assure that the contents and grading of the examination are designed to produce a uniform level of knowledge within the specialty. The examination will cover topics within the particular specialty. A specialty committee may also require an oral examination as a part of the certification or continued certification process.

7.7 All information contained in the application and supporting documents submitted for certification under this section and for continued certification under section 8 shall be confidential and shall be available for use only, by either the Board, the specialty committee, or any appropriate body in event of an appeal, to determine the qualifications of the applicant for certification or continued certification. Any scores on any examinations required under these rules shall likewise be confidential and used under the same circumstances; however, the score may be released to an applicant's applicant.

7.8 The Board may adopt uniform rules waiving the requirements of 7.4 and 7.5 for members of each specialty committee at the time the written examination for that specialty is given and permitting said members to file application to become a Board Certified Specialist upon

compliance with all other required minimum standards for certification of specialists. Should such an applicant be certified by the Board as a specialist, said certification shall terminate on the earlier of (i) two years after said applicant ceases to be a member of the Specialty Committee; or (ii) when such person's examination results are determined.

8. MINIMUM STANDARDS FOR CONTINUED CERTIFICATION OF SPECIALISTS

The period of certification as a specialist shall be five (5) years. During such period the Board or appropriate specialty committee may require evidence from the specialist of his or her continued qualification for certification as a specialist and the specialist must consent to inquiry by the Board, or the appropriate specialty committee, of lawyers and judges, the appropriate disciplinary body or others in the community regarding the specialist's continued competence and qualification to be certified as a specialist. Application for and approval of continued certification as a specialist shall be required prior to the end of each five-year period. Failure of a specialist to apply for continued certification prior to expiration of the certification period requires the specialist to be subject to the requirements of initial certification, including written examination. To qualify for continued certification as a specialist, a lawyer applicant must demonstrate to the Board with respect to the specialty both continued knowledge of the law of this state and continued qualification and must comply with the following minimum standards:

8.1 The specialist must make a satisfactory showing, as determined by the Board after advice from each specialty committee, of substantial involvement in the specialty during the entire period of certification as a specialist;

8.2 The specialist must make a satisfactory showing, as determined by the Board after advice from the specialty committee, of continuing legal education accredited by the Board for the specialty during the period of certification as a specialist, the minimum being an average of eighteen (18) hours of credit for continuing legal education, or its equivalent, for each year during the entire period of certification as a specialist; and

8.3 The specialist must comply with the requirements set forth in sections 7.1 through 7.5 above. A written examination is not normally required for continued certification.

8.4 Time for Application

Application for continued certification shall be made not more than one hundred eighty (180) days nor less than ninety (90) days prior to the expiration of the prior period of certification.

8.5 Lapse of Certification

Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, continued certification will require compliance with all requirements of Section 7, including the examination.

8.6 Suspension or Revocation of Certification

If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Section 7.

8.7 Oral Examination

A specialty committee may require an oral examination of the specialist as a part of the continued certification process.

9. ESTABLISHMENT OF ADDITIONAL STANDARDS

The Board may establish, on its own initiative or upon the recommendations of a specialty committee, additional standards for certification that those provided in section 7. Additional standards or requirements established under this section need not be the same for initial certification and continued certification as a specialist.

10. SUSPENSION OR REVOCATION OF CERTIFICATION AS A SPECIALIST

The Board may revoke its certification of a lawyer as a specialist if the specialization program in the specialty is terminated or may suspend or revoke such certification if it is determined, upon the Board's own initiative or upon recommendation of the specialty committee and after hearing before the Board on appropriate notice, that:

10.1 The certification of the lawyer as a specialist was made contrary to the rules and regulations of the Board;

10.2 The lawyer certified as a specialist made a false representation, omission or misstatement of material fact to the Board or specialty committee;

10.3 The lawyer certified as a specialist has failed to abide by all rules and regulations promulgated by the Board;

10.4 The lawyer certified as a specialist has failed to pay the fees required;

10.5 The lawyer certified as a specialist no longer meets the standards established by the Board for the certification of specialists; or

10.6 The lawyer certified as a specialist has been publicly disciplined, disbarred or suspended from practice by the Supreme Court of any state or federal court.

The lawyer certified as a specialist has a duty to inform the Board promptly of any fact or circumstance described in sections 10.1 through 10.6, above.

If the Board revokes its certification of a lawyer as a specialist, the lawyer cannot again be certified as a specialist unless he or she so qualifies upon application made as if for initial certification as a specialist, and upon such other conditions as the Board may prescribe. If the Board suspends certification of a lawyer as a specialist, such certification cannot be reinstated except upon the lawyer's application therefor and compliance with such conditions and requirements as the Board may prescribe.

11. RIGHT TO HEARING AND APPEAL TO STATE BAR OF NEVADA

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revoked shall have the right to a hearing before the Board and, thereafter, the right to appeal the ruling made thereon by the Board to the State Bar of Nevada under such rules and regulations as the Board and State Bar of Nevada may prescribe.

12. FINANCING THE PLAN

After initial implementation of this Plan, the financing of the plan shall be derived solely from applicants and participants in the plan. If fees are not established by the State Bar of Nevada, the Board shall establish reasonable fees in each specialty field in such amounts as may be necessary to defray the expenses of administering the plan, which fees may be adjusted from time to time. If established or adjusted by the Board, however, the fees must be approved by the State Bar of Nevada as provided in section 4.4 above.

13. STANDARDS FOR CERTIFICATION AS A SPECIALIST IN FAMILY LAW

13.1 Establishment of Specialty Field
The State Bar of Nevada hereby designates family law as a field of law for which certification of specialists is permitted.
13.2 Definition of Specialty
The specialty of family law is the practice of law relating to those areas specified in NRS 3.223 as now stated or as they change from time to time. A copy of the current version of that statute is attached hereto as Exhibit "A".
13.3 Recognition as a Specialist in Family Law
If a lawyer qualifies as a specialist in family law by meeting the standards set for the specialty, a lawyer shall be entitled to represent that he or she is a "Nevada Board Certified Specialist in Family Law."
13.4 Applicability of Provisions of the Nevada Plan of Legal Specialization
Certification and continued certification of specialists in family law shall be governed by the provisions of the Nevada Plan of Legal Specialization as supplemented by these Standards for Certification.
13.5 Standards for Certification as a Specialist in Family Law
Each applicant for certification as a specialist in family law shall meet the minimum standards set forth in Section 7 of this Plan.
13.6 Examinations
A. Written Examination for Initial Certification
An applicant for initial certification must pass a written examination designed to test the applicant's knowledge and ability in family law.
1. Terms - The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the Specialty Committee.
2. Subject Matter - The examination shall cover the applicant's knowledge and application of the law relating to the areas listed in NRS 3.233 as they now exist or may change from time to time.
B. Oral Examination for Continued Certification
An oral examination may be required for continued certification as a family law specialist.
13.7 Nevada family division district court judges shall receive a year-for-year credit to meet the five (5) year requirement for each year serving as a family division district court judge.
13.8 Each applicant for continued certification as a family law specialist shall meet the requirements of Section 8 of this Plan as well as any additional requirements imposed by this section.
13.9 Related Continuing Legal Education
Some related continuing legal education may be approved for credit to family law specialists by the family law specialty committee in the areas of arbitration, bankruptcy, evidence, taxation, trial advocacy, mediation, torts and negotiation.
13.10 Applicability of Other Requirements
The specific standards set forth herein for certification of specialists in family law are subject to any general requirement, standards, or procedure adopted by the Board applicable to all applicants for certification or continued certification.

Argument in Favor of Adoption of Proposed Nevada Plan of Certified Legal Specialization for Family Law Practitioners

by Terrance P. Marren

About five (5) years ago, the Executive Council of the Family Law Section began discussing the idea of legal specialization in Nevada for family lawyers. The Council found that the general public had no reliable way to pick a family lawyer, especially for a complicated case. The communities in Las Vegas and Reno had gotten so large that the old method of asking a friend who he or she had used as a family lawyer became impracticable. Also, the flourishing of advertising caused the public to be bombarded with large color phone book ads and television commercials hinting that the attorneys specialized in family law among several other offerings.

The goal of the Council was to explore the advisability of specialization for family lawyers in Nevada, and if so, to suggest a format for the same. Early on, the Executive Council determined that legal specialization was necessary in Nevada in order to give the public some assurance that certain lawyers were found to be substantially involved in the area of family law and that these practitioners had demonstrated a level of expertise and competence in the field of family law justifying designating as a Nevada certified family law specialist. While this step will not and cannot provide complete protection for the public, it was believed it would provide some assurance to the public that a Nevada certified lawyer was capable of competently representing a family law client.

It is important to know that legal specialization in Nevada will not limit the ability of any Nevada lawyer to continue to practice family law in Nevada. Any licensed Nevada lawyer in good standing may practice family law.

Certification by the Nevada State Bar for family law specialists is important. While it is certainly acknowledged that other certification programs exist, no other program can be as Nevada-specific as Nevada Certification program. Also, it is an unfortunate fact that some of the other certification programs appear to lack substance. They give the public the illusion that the lawyers so certified possess above-average competence in the field while, in reality, the lawyer may have obtained certification by essentially merely paying a fee.

The format of written examination for initial certification is not specified in the proposal. That was done intentionally so that the State Bar could receive input from all concerned parties and determine whether the Nevada exam should be prepared in Nevada in whole or in part. The exam could be prepared by a Nevada committee or a National examination with a Nevada component could be selected. A written examination would only be required for initial certification.

Once obtained, a Nevada certified specialist in Family Law would be able to advertise that fact on letterhead, in print ads or otherwise. It is not proposed that other non-Nevada certifications would be barred from advertising. The specifics of that will also be decided by the State Bar.

There has been some criticism of the 18 hours of family law Continuing Legal Education each year to maintain certification. However, the Executive Council believes a significant dedication to the field of family law is necessary in order to make this program meaningful and not a sham. Also, other areas of C.L.E. are authorized for credit in the family law specialty such as bankruptcy, tax and several other fields. Also, most Nevada family law specialists attend the Tonopah Family Law Conference which offers the family law practitioner an opportunity to obtain at least 10 family law credits at one event. Most practitioners who practice substantially in this field earn 18 or more C.L.E. credits per year in family law.

The model proposes that a family law specialist donate at least one-third (1/3) of his or her practice to family law and that the practitioner practice at least 500 hours per year in family law. The original proposal suggested a dedication of 50% of a practice to family law and 750 hours per year. As result of the vote of the section membership at the 1995 Tonopah meeting, the percentages and practice hours were lowered. The section membership overwhelmingly believed a lower standard in hours per year or percentage of practice would make specialization meaningless. Assuming a lawyer takes four (4) weeks off per year, 500 hours per week equates to 10.4 hours per week for forty-eight (48) weeks per year. That certainly is not a large commitment of hours per week.

In sum, we need to start somewhere if we are ever to implement legal specialization in Nevada. Few argue against the need for legal specialization in Nevada. The membership at Tonopah felt this model had enough merit to recommend by overwhelming margin that it be submitted to our entire membership for approval.

Argument Against Adoption of Proposed Nevada Plan of Certified Legal Specialization for Family Law Practitioners

by Roger A. Wirth

1. The purported goal of the Plan is to protect the public, but it will not accomplish that. Non-certified attorneys will still be permitted to announce practice areas in ads such as the Yellow Pages, which are the most likely source of information for unsophisticated consumers. Although certified attorneys will be able to advertise that they are "Board Certified", unsophisticated consumers are unlikely to know the difference, and sophisticated consumers already have the means to select qualified counsel.

2. Rather than establishing its own certified legal specialization board and procedures, Nevada should merely permit its attorneys to publicly announce that they are certified as specialists in particular areas where they have satisfied the requirements of programs that are approved by the American Bar Association. Alternatively, the State Bar, itself, could investigate and approve certification bodies. Both of these approaches have the benefit of eliminating the burdens that would be imposed on a small bar that has found it difficult enough to administer its own bar exam. As proposed, the state-operated plan creates the risk of "empire building" because the practice area specialty committee administering the plan will consist of attorneys from within that specialty area who will be empowered to restrict access to certification by other attorneys in their practice area. Indeed, this spectre is raised by the proposed Plan, itself. For example, Section 7.8 provides for waiver of certain threshold requirements for the select seven who will be on the committee. In addition Sections 7.6, 8.7 and 13.6, B, permit the administration of an *oral* examination, which, even more than a subjective essay examination is subject to arbitrariness. In summary, adopting by reference ABA-approved certification programs (which arguably is akin to the American Medical Association Board Certification program for physician specialties), or merely having the State Bar approve independently operated certification programs, would both avoid the administrative burdens that would fall upon a small bar and avoid the risk of "empire building".

3. Several attorneys throughout the state have already obtained certification through legitimate certification programs, for example in bankruptcy and trial practice. Adoption of this Plan would render that meaningless and would require them unnecessarily to go through another specialization certification process.

4. The requirement of 18 hours of CLE in the specialty area (Section 8.2) is too great. An attorney having more than one specialty (certainly not an unlikely prospect) would be required to complete at least 36 hours of CLE, confined to two specialty areas. Furthermore, the retroactive imposition of this requirement, for the three years immediately preceding an application (Section 7.4), is unreasonable and would likely result in very few certified specialists for the first three years.

5. The proposed requirement that a certified specialist attorney spend at least one-third of his/her total practice time, with a minimum of 500 hours per year (Sections 7.3 and 8.1) is excessive; there are many highly qualified practitioners who provide specialized service who would be excluded. Moreover, it may be questioned whether any arbitrary percentage of practice or hours per year should be established since the examination presumably establishes qualification as a specialist.

6. The draft plan is replete with ambiguities and broad grants of power to the Board of Legal Specialization and the particular committee assigned responsibility to govern the particular specialty. Examples are found in Section 8, in particular:

Section 8 grants blanket power without guidelines to "require evidence from the specialist of his or her continued qualification for certification as a specialist . . . ;;

Section 8.1 permits the Board and specialty committee to require evidence of "substantial involvement in the specialty during the entire period of certification" without defining "substantial involvement" or giving any criteria;

Section 8.2, similarly broadly permits requirement of "satisfactory showing" of continuing education (while establishing a *minimum* of 18 hours, but no *maximum*); and

Section 8.3 provides that a written examination is not "normally" required for continued certification after the first five year period, but does not specify under what conditions the written examination may be required.

In addition, the Court determined that co-tenants are equally liable for the debt even if one of the co-tenants is no longer residing in the home if there is no agreement otherwise, and there has been no "ouster" of the out-tenant. In the *Sack* case, Sack was entitled to contribution from Tomlin for _ of all mortgage payments made by her after he left the premises.

The Court also affirmed old case law providing for contribution by the out-tenant for improvements made to the joint property, but provided that the co-tenant remaining in the home must deduct a reasonable value for the rent of the same from the monies requested for improvements. In this case, there were no improvements at issue.

Clearly equitable theories of contribution will be applied by the Court to ensure that "[e]ach case should be assessed on its own merits with consideration given to the purpose, duration, and stability of the relationship and the expectations of the parties." *Hay v. Hay*, 100 Nev. 196, 199, 678 P.2d 672 (1984).

Case Summaries

Murphy Reaffirmed Again; No Change of Custody Without Advance Notice to Custodial Parent

Wiese v. Granata, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 176, Dec. 22, 1994) Father obtained custody in 1987 divorce. On December 30, 1993, Mother obtained Temporary Protective Order against domestic violence, alleging physical abuse eight years earlier, coupled with recent receipt of "bizarre" letters, alleged inquiries by Father into the car being driven by Mother, and Mother's sighting of Father stalking her so that she felt in danger. Mother sought extension of the Temporary Protective Order in January, 1994, seeking alteration of Mother's visitation with child, but not modification of custody, with a hearing set in April.

Father did not appear at the TPO extension hearing; the record on appeal did not specify what occurred, but the district court (Jordan) issued an order five days later granting Mother physical custody. Father requested an emergency stay; there was a 30-minute hearing, five days after which the court denied the stay request and reaffirmed its change-of-custody order.

Father appealed and requested stay of custody change from Supreme Court, which the Supreme Court granted. After full appeal, the Supreme Court vacated the order changing custody because Father did not receive notice that the issue of child custody was before the district court, he did not receive a full and fair hearing, and the district court did not consider or apply the correct standard before it changed custody.

Due process requires that notice be given before a party's substantial rights (such as custody) are affected; prior specific notice that custody is at issue is required. Reaffirming *Dagher v. Dagher*, 103 Nev. 26, 731 P.2d 1329 (1987), the Court held that a district "court may not use changes of custody as a sword to punish parental misconduct." Notice in the moving papers that the non-custodian seeks to alter visitation is not sufficient.

Even if adequate notice had been given, the hearing on the Father's motion for emergency stay would not have sufficed to satisfy due process. Quoting from *Moser v. Moser*, 108 Nev. 572, 836 P.2d 63 (1992), the Court reiterated that litigants in a custody battle have the right to a full and fair hearing concerning the ultimate disposition of a child, which at minimum includes support of the elements underlying the change prior to such a change, with an opportunity to the custodian too disprove those elements. Here, the 30-minute hearing in which Father was not allowed to present any witnesses, and in which Mother presented no evidence to rebut, was not sufficient.

Finally, the finding by the district court that the child would not be exposed to harm in Mother's custody was insufficient. A change in custody is warranted only when (1) the circumstances of the parties are materially altered, and (2) the child's welfare would be substantially enhanced by the change. Here, there was no record of either material change of circumstances or substantial enhancement of welfare by the ordered change of custody, which was reversed. Without explanation, the Supreme Court directed reassignment to a different family court judge "in the interest of justice."

Non-Custodian's New Spouse's Income To Be Considered Via Back Door, Although Not a Direct Figure for Setting Child Support; Discretion to Increase Child Support Increased

Rodgers v. Rodgers, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 168, December 22, 1994) In 1991 divorce, Mother got custody and Father paid $250.00 per month child support. In a stipulation six months later, custody was transferred to Father; Mother was to pay $125.00 per month child support. Mother moved to California and remarried; Father moved

to increase child support.

A Domestic Relations Referee recommended imputing half of the Mother's new spouse's net income to the Mother, and basing support thereon. Mother objected; district court judge (Guy) reversed Referee's findings and recommendation without explanation. Father appealed.

The Supreme Court rejected the Father's contention that NRS 125B.070 grants district courts the discretion to consider a new spouse's income in setting child support, but held that "under appropriate circumstances, a noncustodial parent's community property interest may be taken into account pursuant to NRS 125B.080."

Specifically, the definition of "gross monthly income" in NRS 125B.070(1)(a) includes "income from any source" for a wage-earner, or the gross income from any source of a self-employed person." The Court recited several rules of statutory construction: "It is well settled in Nevada that words in a statute should be give their plain meaning unless this violates the spirit of the act"; "no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided"; when a statute's language is clear and unambiguous, "there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself"; if a statute is ambiguous, however, courts should attempt to follow the legislature's intent.

The Court termed 125B.070 "hardly a model of clarity." The Court reaffirmed its holding in *Lewis v. Hicks*, 108 Nev. 1107, 843 P.2d 828 (1992) that "gross monthly income" does not include a parent's community property interest in a new spouse's income.

However, the Court went on to note that under NRS 125B.080, the lower courts can, upon making appropriate findings of fact, deviate from the statutory schedule, and noted that NRS 125B.080(9)(1) lists "the relative income of both parents" as a factor. In prior cases, the Court construed this provision as including relative standards of living and financial circumstances, and reiterated its holding in *Barbagallo v. Barbagallo*, 105 Nev. 546, 779 P.2d 532 (1989) that "[w]hat really matters in these cases is whether the children are being taken care of as well as possible under the financial circumstances in which the two parents find themselves. Greater weight, then, must be given to the standard of living and circumstances of each parent, their earning capacities, and the `relative financial means of parents' than to any of the other factors." From dicta in *Barbagallo*, *Lewis*, and *Herz v. Gabler-Herz*, 107 Nev. 117, 808 P.2d 1 (1991), the Court inferred that "considerations such as standard of living and financial means may be intimately connected to community income," and noted that under the community property scheme, a spouse has a present, vested one-half interest in the other spouse's earnings under NRS 123.130, 123.220, and 123.225, and under California Family Code sects. 751, 760.

Turning to tax law, the Court noted that the IRS considers half the income and expenses of the community to belong to each spouse, and that such a spousal share may be liable for that spouse's premarital debts under NRS 123.050 and Cal. Fam. Code sect. 910. Thus, while spousal income is not part of gross income, the remarried parent's imputed community property right to share in income does count for comparing "relative income" of the two parents. The Court found its approach compatible with the view of Idaho, New Mexico, and Washington courts.

Here, the district court had discretion to consider such income, but erred in failing to make specific findings, so the case was reversed and remanded for such findings.

1988 Referee's Recommendation Resurrected; Court May Not Reduce Child Support to Punish Custodian for Refusal to Provide Visitation

Westgate v. Westgate, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 169, Dec. 22, 1994) Parents fought for ten years over child custody and support since 1982. Mother had custody, and was forced to move to Tennessee when her employer shut its Las Vegas branch. Father stopped paying support, and Mother refused to allow visitation on the allegation that Father had molested daughter on prior visit, and because it was allegedly difficult to arrange for flights. Medical examiners found abuse allegation credible, but charges were eventually dismissed.

In 1985, the district court cut Father's child support payments in half to penalize Mother for violating Father's visitation rights. In 1987, Mother moved for an increase in support under the child support guidelines. In 1988, a Domestic Relations Referee recommended an increase to $400.00 per month, but the district court judge vacated the recommendation on the basis of the visitation refusals and Mother's new husband's salary. Two years later, the Referee again recommended the same increase; it was not opposed and went into effect. When the Mother sought to reduce arrearages to judgment, however, the Father objected, claiming that he did not get an opportunity to contest the recommendations. The district court vacated its own order and remanded to the Referee for still more findings and recommendations.

After various recusals and formation of the family court, the family court judge (Hardcastle) refused to modify the prior support order based on case law predating the child support guidelines.

The lower courts, for all child support requests after July 1, 1987, were required to use the guidelines of NRS 125B.070, with limited discretion to deviate based on the factors set out in NRS 125B.080(9), and the guidelines "intentionally depart from traditional practice in which courts exercised broad discretion in determining child support awards. The Court noted that punishing a parent for failure to provide visitation was not listed. The Court found it unnecessary to decide whether the lower court also erred for refusing to accept the Referee's Recommendation when the Father failed to timely object.

Under NRS 125.180, the statute provides that the district court "may" make an order reducing arrears to judgment, and the Court relied on that language in providing an equitable defense to the Husband in *Libro v. Walls*, 103 Nev. 540, 746 P.2d 632 (1987), whose wife fraudulently withheld from him the information that he was not the child's biological father. The Court also noted its approval of discretionary equitable defenses such as waiver and estoppel, citing *Parkinson v. Parkinson*, 106 Nev. 481, 796 P.2d 229

(1990). The Court found such considerations "not inconsistent with child support guidelines" and added that "of course, the best interest of the child should be of primary importance" under NRS 125.510(1)(a) and NRS 125B.090. The Court then held that "the best interest of the child cannot be served by refusing to reduce arrearages to judgment as a form of punishment for failing to allow visitation."

The Court specifically held that it "cannot allow" circumvention of the child support guidelines for such parental punishment, and that courts may not use visitation non-compliance as a ground for reducing child support or for refusing to reduce arrearages to judgment, and expressly overruled all prior cases to the extent they so indicate. The Court reversed and remanded with instructions to adopt the 1988 Referee's Recommendation of $400.00 per month and to "consider his daughter's best interest and any other equitable factors consistent with the Nevada child support guidelines in determining what amount of support arrearages should be reduced to judgment."

Ninth Circuit Backs Up Nevada Supreme Court Ruling on Bankrupt Doctor Being Required to Pay More Alimony

In re Bankruptcy of Siragusa, ___ P.2d ___ (No. 92-16788, June 20, 1994) Ninth Circuit agrees with Bankruptcy Court, and federal district court for Nevada, in determining that comity required no interference with Nevada Supreme Court judgment recognizing "changed circumstances" in his bankrupting out 1.2 million dollar property settlement and resulting amendment of alimony terms from temporary to lifetime. Attempt to get contrary federal ruling was impermissible forum shopping. [See *Siragusa v. Siragusa*, 108 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 152, Dec. 3, 1992); summarized at Nev Fam. L. Rep., Spr., 1993, at 6.]

Costs Must be "Real" costs, not Estimated Costs, and Westlaw is not a "Cost," but Prevailing Party Entitled to Statutory Interest on Costs From Date Incurred

Gibellini v. Klindt, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 141, Nov. 30, 1994) Law firm's costs, reflected on their NRS 18.110 memorandum of costs and disbursements, figured at 4% of billable hours, reversed and remanded. Determination of allowable costs is within the sound discretion of the trial court, but statute allowing costs is in derogation of common law and therefore to be strictly construed. Statute requires actual costs that are also reasonable, rather than a reasonable or estimated total cost bill. Reversed and remanded for determination of actual costs. For the same reason, Westlaw charges are not recoverable costs, citing Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993).

Additionally, prevailing party is entitled to prejudgment interest on costs, from date costs were incurred, or if not determinable, from date of judgment. Judge must use statutory rate of interest (despite vague "unless otherwise specified in the judgement" language in NRS 17.130).

Criminal Penalties for Non-Support are Not Unconstitutionally Vague

Sheriff v. Vlasak, 111 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 9, Jan. 25, 1995) District court judge (McGee) considered NRS 201.020 unconstitutional for vagueness. The Supreme Court reversed, citing Epp v. State, 107 Nev. 510, 814 P.2d 1011 (1991) for the proposition that "support" is not vague, and holding that father must have known that occasional provision of clothing, food, and entertainment, plus district attorney garnishment of $955 over a period of "some years," could not possibly constitute "support" within the meaning of persons of ordinary intelligence.

"Failure to pay support" means willful refusal to pay the amount previously ordered to be paid. "[P]arents of ordinary intelligence must realize from the language of the statute that trifling and occasional expenditures for entertainment and expenses incident to visitation do not entitle them to disregard their obligations to make lawfully imposed support payment. Such parents are on notice that the willful and legally unexcused refusal to provide the required support is prohibited and will not be countenanced under Nevada law.

Likewise, "persisted for more than a year" was sustained against vagueness attack. Persistence is established by failure to pay the full amount ordered for two months in a row, and if such failure continues for a year, it establishes a felony. The Court distinguished failure to comply from willful refusal to comply. Justices Shearing and Rose concurred with Chief Justice Steffen's opinion.

Justice Springer dissented, on the ground that "persistence" is too vague to give fair notice to what conduct is criminal. Justice Young concurred with that dissent, and added a protest to "judicial legislating" of the two-month "persistence" definition in the majority opinion.

Parental Preference Gives Mom and Edge in Reclaiming Child From Guardian Grandparents Once She Cleans Up Her Act; "Appropriate Reasons" Must Support Lower Court Ruling to Avoid Abuse of Discretion

Litz v. Bennum, 111 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 4, Jan. 24, 1995) Natural mother had child while on probation as a teen-aged drug user. In jail, she (and the natural father) executed consent forms naming the maternal grandparents as the child's temporary guardians. Mother got out of jail and halfway houses after about a year (during which the child was brought for visitation) and settled down; by 1989, she had remarried, settled in a quiet residential area of Reno, had a baby with her new husband, etc. While the grandparents continued to "allow" the Mother to take the child during the day, they would not permit overnights.

In 1992, the Mother moved to dissolve the voluntary guardianship and for overnight visitation. The grandparents, opposed the request, and requested mediation, appointment of a CASA and an independent psychologist. Hearings were held at which two psychologists testified as to the effect on the child if the Mother took custody. One testified that "given time, `he would come to some new rea-

sonable level of adjustment'" if moved to the Mother's house. The other stated that the child perceived himself as "part of his grandparents' family unit" but that if moved "he could cope and adjust."

The district court (McGee) noted the parental preference doctrine, but considered it "just one of many considerations" to be considered in serving "the best interest of the child." The district court left primary physical custody with the grandparents, granting the Mother joint legal custody and visitation.

The Supreme Court reversed and remanded. Beginning with recitation of the "broad discretionary powers" of the district courts as to custody, the Court stated that decisions would only be reversed for an abuse of discretion, citing *Sims v. Sims*, 109 Nev. 1146, 865 P.2d 328 (1993). The Court added, however, that "this Court must be satisfied that appropriate reasoning supported the trial court's decision." [Editor's Note: Does this reverse the long-standing rule that a correct result will be affirmed even if reached for the wrong reasons?]

Here, the district court's determination that the parental preference was less weighty because of the lengthy guardianship was error; while the length of the guardianship was one factor that "may have been considered," the Court held that the parental preference doctrine is a rebuttable presumption that must be overcome by either a finding that the parent is unfit or other extraordinary circumstances." The child's best interest is "usually served" by awarding custody to a fit parent. Since the evidence showed that the Mother was now a fit parent, and had continually payed an active role in the child's life, the grandparent's actual physical custody was not such an extraordinary circumstance. The Court emphasized, however, that the grandparents had "dedicated their lives" to the child's well-being and should therefore "be awarded liberal visitation rights so that they may play a large role in [the child's] life and continue to serve as a positive influence."

MISSION AND GOALS OF THE STATE BAR OF NEVADA
FAMILY LAW SECTION

The mission statement:

THE MISSION OF THE STATE BAR OF NEVADA FAMILY LAW SECTION IS TO SERVE AS THE LEADING FORCE IN THIS STATE FOR THE PROFESSIONAL AND ETHICAL ADVANCEMENT OF POLICIES, PROCEDURES, AND ACTIONS IN THE FIELD OF MARITAL AND FAMILY LAW.

To accomplish its mission, the Council has adopted the following six goals for the Section:

I. TO PROMOTE AND IMPROVE THE FAMILY.

II. TO BE THE PRE-EMINENT LEGAL VOICE IN THE STATE ON MARITAL AND FAMILY ISSUES.

III. TO SERVE OUR MEMBERS.

IV. TO IMPROVE PUBLIC AND PROFESSIONAL UNDERSTANDING ABOUT MARITAL AND FAMILY LAW ISSUES AND PRACTITIONERS.

V. TO INCREASE THE DIVERSITY AND PARTICIPATION OF OUR MEMBERSHIP.

VI. TO IMPROVE PROFESSIONALISM OF ALL PARTICIPANTS IN THE ADMINISTRATION AND PRACTICE OF MARITAL AND FAMILY LAW.

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