

ORIGINAL

David D. Spitzer, NV Bar No. 2242
Jennifer Richards, NV Bar No. 14109
WASHOE LEGAL SERVICES
299 South Arlington Avenue
Reno, NV 89501
Telephone: (775) 329-2727
Facsimile: (775) 227-9396
Attorneys for Protected Person

REC'D & FILED

2018 SEP -7 PM 4: 17

SUSAN MERRIWETHER

Electronically Filed
Sep 17 2018 09:24 a.m.
BY Elizabeth A. Brown
Clerk of Supreme Court

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

**IN THE MATTER OF THE GUARDIANSHIP
OF THE PERSON AND ESTATE OF:**

Case No.: 18 GRD 00038 1B

CARMEN GOMEZ WITTLER,

Dept. No.: II

A Protected Person. /

NOTICE OF APPEAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Notice is hereby given
that Carmen Gomez-Wittler, by and through WASHOE LEGAL SERVICES, and by and
through counsel, David D. Spitzer, Esq and Jennifer Richards, Esq., hereby appeals to the
Supreme Court of Nevada from the ORDER EXTENDING TEMPORARY GUARDIANSHIP
AND DENYING MOTION TO DISMISS filed on August 22, 2018, with Notice of Entry filed
on August 24, 2018, and served upon all counsel of record.

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 16 day of September, 2018.


Jennifer M. Richards, Esq.
WASHOE LEGAL SERVICES
Attorneys for Carmen Gomez-Wittler
299 South Arlington Avenue
Reno, NV 89501
Telephone: (775) 329-2727

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Washoe Legal Services, and that on 6th day of September, 2018, I served a true and correct copy of the foregoing:

NOTICE OF APPEAL

☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope, postage prepaid, with the United States Postal Service, at Reno, Nevada addressed as set forth below. NRCP 5(b)(2)(B).

To: Allison MacKenzie
P.O. Box 646
Carson City, NV 89702

Margrate Krug
301 2nd Street
Hartwick, IA 52232

Sandra Barrett
13545 6th Av. SW
Burien, WA 98166

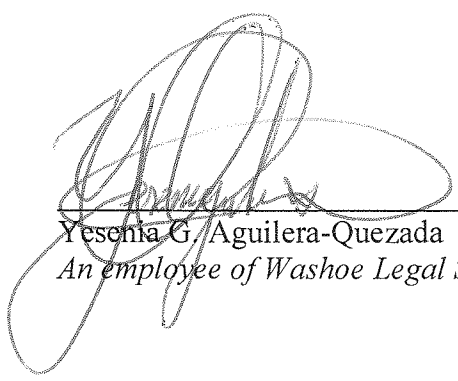
Gabriella Lee
1720 Balfour Downs Circle
Fuquay-Varina, NC 2756

Florentino Gomez
73-1206 Lilia Dr.
Kailua Kona, HI 96740

Johnny Gomez
1335 Englewood Dr.
St. Cloud, FL 34772

Skyline Estates Senior
Living and Memory Care
Attn: Administration
2861 Mountain Street
Carson City, NV 89703

Rita Sanders
507 Martin Drive
North Bellevue, NE 68005



Yesenia G. Aguilera-Quezada
An employee of Washoe Legal Services

ORIGINAL

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Jennifer Richards, NV Bar No. 14109
WASHOE LEGAL SERVICES
299 South Arlington Avenue
Reno, NV 89501
Telephone: (775) 329-2727
Facsimile: (775) 227-9396
Attorneys for Protected Person

REC'D & FILED

2018 SEP -7 PM 4:17

SUSAN HERRIWEITER
CLERK

BY  DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

**IN THE MATTER OF THE GUARDIANSHIP
OF THE PERSON AND ESTATE OF:**

Case No.: 18 GRD 00038 1B

CARMEN GOMEZ WITTLER,

Dept. No.: II

A Protected Person. /

CASE APPEAL STATEMENT

COMES NOW Carmen Gomez-Wittler, by and through WASHOE LEGAL SERVICES,
and by and through court appointed counsel, Jennifer Richards, Esq., pursuant to NRAP 3(f) and
hereby provides the following Case Appeal Statement:

1. Name of appellant filing this case appeal statement:

Carmen Gomez-Wittler, by and through Washoe Legal Services.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable James E. Wilson of the First Judicial District Court of the State of
Nevada in and for Carson City.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Carmen Gomez-Wittler, by and through Washoe Legal Services, represented
by court appointed attorney Jennifer Richards, Esq., 299 South Arlington Avenue Reno,
NV 89501.

*4. Identify each respondent and the name and address of appellate counsel, if known, for each
respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and
provide the name and address of that respondent's trial counsel):*

Respondent: Eric Wittler (petitioner in underlying action), appellate counsel unknown. Represented by Joel Locke Esq. of Alison MacKenzie, 402 N Division St, Carson City, NV 89703, in underlying guardianship action.

5. *Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42:*

All above-named attorneys are licensed to practice law in the State of Nevada.

6. *Indicate whether appellant was represented by appointed or retained counsel in the district court:*

Appellant was represented by appointed counsel from Washoe Legal Services pursuant to NRS 159.0485.

7. *Indicate whether appellant is represented by appointed or retained counsel on appeal:*

Appellant is represented by appointed counsel from Washoe Legal Services; specifically, David D. Spitzer, Esq and Jennifer Richards, Esq.

8. *Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:*

Appellant was not granted leave to proceed in forma pauperis.

9. *Indicate the date the proceedings commenced in the district court:*

The Verified Petition for Appointment of Temporary and Permanent Guardian of the Person and Estate was filed on May 4, 2018.

10. *Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:*

This is an adult guardianship action in which petitioner, Eric Wittler, petitioned the Court for temporary and permanent guardianship of the person and estate of Ms. Carmen Gomez-Wittler. The issues on appeal are whether the district court committed reversible error by granting and extending a temporary guardianship without making any factual findings pursuant to NRS 159.0523 and NRS 159.0525. Specifically, the district court did not hold a hearing within 10 days of entering a temporary guardianship order and failed to make findings regarding notice requirements, including personal service of the proposed protected person. The district

1 court failed to establish a jurisdictional basis to exert temporary guardianship authority and the
2 court committed reversible error by granting a temporary guardianship without a valid
3 physician's certificate and assessment. Secondly, whether the court committed reversible error
4 by denying the motion to dismiss for lack of jurisdiction and finding an emergency exists under
5 NRS 159.1998 (2)(b).
6

7 *11. Indicate whether the case has previously been the subject of an appeal to or original writ*
8 *proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of*
9 *the prior proceeding:*

10 This case has not previously been the subject of an appeal or an original writ proceeding
11 in the Supreme Court.

12 *12. Indicate whether this appeal involves child custody or visitation:*

13 This appeal does not involve child custody or visitation.

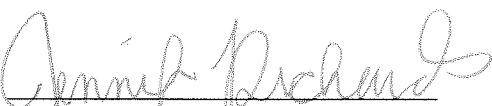
14 *13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:*

15 The nature of this case does not lend itself to a settlement arrangement.

16 AFFIRMATION PURSUANT TO NRS 239B.030

17 The undersigned does hereby affirm that the preceding document does not contain the social
18 security number of any person.

19 **DATED** this 6th day of September, 2018.

21
22 
23 Jennifer M. Richards, Esq.
24 WASHOE LEGAL SERVICES
25 Attorneys for Carmen Gomez-Wittler
26 299 South Arlington Avenue
27 Reno, NV 89501
28 Telephone: (775) 329-2727

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Washoe Legal Services, and that on 6th day of September, 2018, I served a true and correct copy of the foregoing:

CASE APPEAL STATEMENT

☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope, postage prepaid, with the United States Postal Service, at Reno, Nevada addressed as set forth below. NRCP 5(b)(2)(B).

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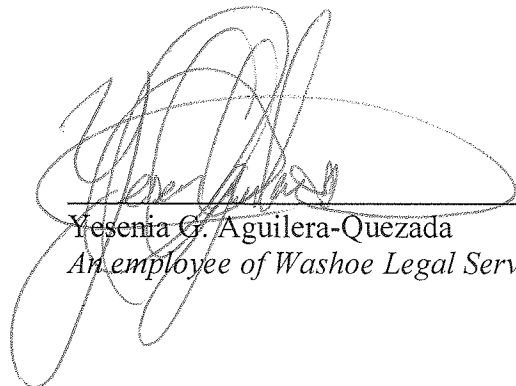
Gabriella Lee
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73-1206 Lilia Dr.
Kailua Kona, HI 96740

Johnny Gomez
1335 Englewood Dr.
St. Cloud, FL 34772

Skyline Estates Senior
Living and Memory Care
Attn: Administration
2861 Mountain Street
Carson City, NV 89703

Rita Sanders
507 Martin Drive
North Bellevue, NE 68005



Yesenia G. Aguilera-Quezada
An employee of Washoe Legal Services

Judge: WILSON JR, JAMES E

Case No. 18 GRD 00038 1B
Ticket No.
CTN:

WITTLER, ERIC R

By:

WITTLER, CARMEN GOMEZ

WARD

-vs-

By: SPITZER, DAVID D
299 S. ARLINGTON AVE
RENO, NV 89501RICHARDS, JENNIFER
299 SOUTH ARLINGTON AVE
RENO, NV 89501Dob: Sex:
Lic: Sid:Plate#: Make:
Year: Accident:
Type: Venue:
Location:

WITTLER, ERIC R

PLNTPET

Bond: Set:
Type: Posted:

Charges:

Ct.

Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

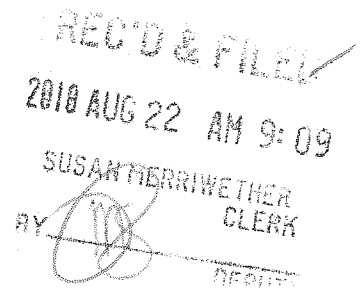
No.	Filed	Action	Operator	Fine/Cost	Due
1	09/11/18	TRIAL DATE MEMO	1BJULIEH	0.00	0.00
2	09/11/18	HEARING HELD: The following event: GUARDIANSHIP HEARING scheduled for 09/11/2018 at 8:30 am has been resulted as follows: Result: HEARING HELD Judge: WILSON JR, JAMES E Location: DEPT II	1BJULIEH	0.00	0.00
3	09/10/18	PROOF OF PERSONAL SERVICE, ACKNOWLEDGMENT OF CONSENT, AND WAIVER AND ACCEPTANCE OF SERVICE	1BJULIEH	0.00	0.00
4	09/07/18	CASE APPEAL STATEMENT	1BVANESSA	0.00	0.00
5	09/07/18	NOTICE OF APPEAL FILED	1BVANESSA	24.00	0.00
6	08/31/18	CONFIDENTIAL REPORT	1BCCOOPER	0.00	0.00
7	08/27/18	CITATION ISSUED	1BCCOOPER	0.00	0.00
8	08/24/18	NOTICE OF ENTRY OF ORDER	1BVANESSA	0.00	0.00
9	08/22/18	ORDER EXTENDING TEMPORARY GUARDIANSHIP AND DENYING MOTION TO DISMISS	1BJULIEH	0.00	0.00
10	08/21/18	REQUEST FOR SUBMISSION (2)	1BJULIEH	0.00	0.00
11	08/21/18	REPLY TO PETITIONER'S OPPOSITION OF MOTION TO STRIKE SUPPLEMENTAL PHYSICIAN'S CERTIFICATE	1BJULIEH	0.00	0.00
12	08/20/18	REQUEST FOR SUBMISSION	1BCCOOPER	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
13	08/10/18	HEARING HELD: The following event: GUARDIANSHIP HEARING scheduled for 08/10/2018 at 9:00 am has been resulted as follows: Result: HEARING HELD Judge: WILSON JR, JAMES E Location: DEPT II	1BCFRANZ	0.00	0.00
14	08/09/18	OPPOSITION TO WASHOE LEGAL SERVICES' MOTION TO STRIKE SUPPLEMENTAL PHYSICIAN'S CERTIFICATE	1BCFRANZ	0.00	0.00
15	08/01/18	MOTION TO STRIKE SUPPLEMENTAL PHYSICIAN'S CERTIFICATE	1BCTORRES	0.00	0.00
16	07/20/18	SUPPLEMENT TO VERIFIED PETITION FOR THE APPOINTMENT OF TEMPORARY AND PERMANENT GUARDIAN OF THE PERSON AND ESTATE AND FOR ISSUANCE OF LETTERS OF GUARDIANSHIP	1BJULIEH	0.00	0.00
17	07/11/18	AFFIDAVIT OF SERVICE BY REGULAR MAIL	1BJULIEH	0.00	0.00
18	06/08/18	ORDER TO APPOINT INVESTIGATOR	1BJULIEH	0.00	0.00
19	06/05/18	TRIAL DATE MEMO	1BJHIGGINS	0.00	0.00
20	06/04/18	REQUEST FOR SUBMISSION	1BJHIGGINS	0.00	0.00
21	06/04/18	REPLY TO OPPOSITION	1BJHIGGINS	0.00	0.00
22	05/31/18	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
23	05/30/18	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
24	05/30/18	ORDER EXTENDING TEMPORARY GUARDIANSHIP AND SETTING HEARING	1BJHIGGINS	0.00	0.00
25	05/24/18	REQUEST FOR SUBMISSION	1BCTORRES	0.00	0.00
26	05/24/18	AFFIDAVIT OF SERVICE BY REGULAR MAIL	1BCTORRES	0.00	0.00
27	05/24/18	NOTICE OF ENTRY OF ORDER (2)	1BCTORRES	0.00	0.00
28	05/23/18	OPPOSITION TO WASHOE LEGAL SERVICES MOTION TO DISMISS FOR LACK OF JURISDICTION	1BCCOOPER	0.00	0.00
29	05/22/18	LETTERS OF TEMPORARY GUARDIANSHIP	1BCFRANZ	0.00	0.00
30	05/22/18	HEARING HELD: The following event: GUARDIANSHIP HEARING scheduled for 05/22/2018 at 8:30 am has been resulted as follows: Result: HEARING HELD Judge: WILSON JR, JAMES E Location: DEPT II	1BCFRANZ	0.00	0.00
31	05/18/18	MOTION TO DISMISS FOR LACK OF JURISDICTION	1BCFRANZ	0.00	0.00
32	05/11/18	NOTICE OF APPEARANCE OF COUNSEL	1BCCOOPER	0.00	0.00
33	05/09/18	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
34	05/09/18	ORDER APPOINTING WASHOE LEGAL SERVICES TO REPRESENT PROPOSED PROTECTED PERSON	1BJHIGGINS	0.00	0.00
35	05/09/18	ORDER APPOINTING TEMPORARY GUARDIAN, ISSUING LETTERS OF TEMPORARY GUARDIANSHIP, AND SETTING HEARING ON EXTENSION OF TEMPORARY GUARDIANSHIP	1BJHIGGINS	0.00	0.00
36	05/04/18	NOTICE OF INTENT TO SEEK FEES FROM GUARDIANSHIP ESTATE	1BJHIGGINS	0.00	0.00
37	05/04/18	PLAINTIFF'S/PETITIONER'S INITIAL APPEARANCE AFFIRMATION PURSUANT TO NRS 239.030	1BJHIGGINS	0.00	0.00
38	05/04/18	VERIFIED PETITION FOR THE APPOINTMENT OF TEMPORARY AND PERMANENT GUARDIAN OF THE PERSON AND ESTATE AND FOR ISSUANCE OF LETTERS OF GUARDIANSHIP FILED \$2501.00+ Receipt: 54971 Date: 05/04/2018	1BJHIGGINS	5.00	0.00
Total:				29.00	0.00
Totals By: COST				29.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

1 JOEL W. LOCKE, ESQ.
Nevada State Bar No. 10128
2 ALLISON MacKENZIE, LTD.
402 N. Division Street
3 P.O. Box 646
Carson City, NV 89702
4 Telephone: (775) 687-0202
Facsimile: (775) 882-7918

5 Attorneys for Petitioner,
6 ERIC R. WITTLER



7
8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR CARSON CITY

10
11 IN THE MATTER OF THE
12 GUARDIANSHIP OF THE PERSON
AND ESTATE OF:

Case No. 18 GRD 00038 1B
Dept. No. II

13 CARMEN GOMEZ WITTLER,
14 an Adult.
15 _____/

16 **ORDER EXTENDING TEMPORARY GUARDIANSHIP AND**
17 **DENYING MOTION TO DISMISS**

18 This matter came before the Court on WASHOE LEGAL SERVICES' Motion to Dismiss
19 Temporary Guardianship of CARMEN S. WITTLER, an Adult Proposed Protected Person. Petitioner
20 ERIC R. WITTLER, by and through his attorneys, ALLISON MacKENZIE, LTD., filed an Opposition
21 thereto. A hearing on the Motion to Dismiss and its Opposition was held on May 22, 2018. Present at
22 the hearing were Petitioner and his Counsel, Joel Locke, Esq. and Jennifer Richards, Esq. from
23 Washoe Legal Services. During the hearing, which was set on the uncontested calendar, a hearing on
24 the merits of the Motion to Dismiss and its Opposition was set by this Court for August 10, 2018.

25 Petitioner, Eric Wittler and his attorney were present at the August 10 hearing. Jennifer
26 Richards, Esq. from Washoe Legal Services, on behalf of Carmen Gomez Wittler, was also present at
27 the August 10 hearing. Carmen Gomez Wittler, was scheduled to attend the hearing however, refused
28 to attend. This Court verified her absence via a telephone conference with her social worker, Kenise at

1 Skyline Estates Memory Care Unit, on the record. Carmen's sister Rita Sanders also testified
2 telephonically during the proceedings regarding Carmen's whereabouts between July 2017 and
3 February 2018 as well as her general demeanor in and around that time.

4 Petitioner filed his Verified Petition for the Appointment of Temporary and Permanent
5 Guardian of the Person and Estate and for the Issuance of Letters of Guardianship on May 4, 2018.
6 Washoe Legal Services was appointed as Counsel for the Proposed Protected Person on May 9, 2018
7 by this Court. Subsequently, Washoe Legal Services filed a Motion to Dismiss for Lack of Jurisdiction
8 on May 17, 2018. Petitioner filed his Opposition to Washoe Legal Services' Motion on May 23, 2018.

9 This Court, deeming itself fully advised of the matter, hereby enters the following Findings of
10 Fact, Conclusions of Law, and Order as follows:

11 **FINDINGS OF FACT**

12 The Court finds that the following was proven by clear and convincing evidence:

- 13 1. Carmen Gomez Wittler was a long-time resident of Kansas.
- 14 2. In July 2017, Ms. Wittler went to Nebraska until October of 2017.
- 15 3. Ms. Wittler then returned to Kansas because she understood her ex-husband wished to
16 reconcile with her. She had a contact with law enforcement while in the State of Kansas and then
17 returned to Nebraska, where she remained until February of 2018. At that time, Ms. Wittler now
18 believed her husband to be deceased.
- 19 4. During the time she spent in Nebraska, she lived in a Microtel and was there to visit her
20 sister, Rita Sanders.
- 21 5. Ms. Sanders had been a commercial real estate broker for several years and was
22 currently serving as the Mayor of Bellevue, Nebraska
- 23 6. When Ms. Sanders went to collect her sister, she was informed by hotel personnel that
24 Ms. Wittler could no longer remain at the hotel.
- 25 7. Ms. Sanders then took Ms. Wittler home. During Ms. Wittler's stay at Ms. Sanders'
26 home, Ms. Sanders observed Ms. Wittler having discussions with "her team" or "her people" and
27 would go to the restroom to have conversations in the dark with "her people."

8. Other behaviors observed by Ms. Sanders included: Ms. Wittler confusion and her inability to use a phone. Ms. Wittler had lost the concept of money. Ms. Wittler was not able to eat properly off a dinner plate and used her hands extensively while eating. Ms. Wittler did not sleep and would wander around the house at all hours waiting for "her people" to come and get her. Ms. Wittler could not provide information to her son or sister to obtain financial information or medical records. Ms. Wittler stopped driving.

CONCLUSIONS OF LAW

1. The Court finds it has jurisdiction to order a temporary guardianship under NRS 159.1998(1)(d). Ms. Wittler has not been a resident of any state since she left Kansas. She was not present in Nebraska for six (6) months. She therefore, does not have a “home state” for the purposes of jurisdiction under NRS 159.1998(1)(d).

2. The Court concludes that an emergency exists under NRS 159.1998(2)(b). Ms. Wittler has lost her connection with reality. This is evidenced by checking with “her people” along with other signs of impairment to which Ms. Sanders testified. Therefore, there is sufficient evidence to support this Court’s conclusion that it can exercise jurisdiction under NRS 159.1998(2)(b).

IT IS HEREBY ORDERED that WASHOE LEGAL SERVICES' Motion to Dismiss is DENIED.

The Court hereby concludes that it has jurisdiction over Ms. Wittler for the purposes of a temporary guardianship. The temporary guardianship of Carmen Gomez Wittler is hereby extended. A hearing will be set to determine permanent guardianship on September 11, 2018. Petitioner shall issue a citation and serve on all required parties for the permanent guardianship

IT IS SO ORDERED.

DATED this 21 day of August, 2018.

DISTRICT JUDGE

JOEL W. LOCKE, ESQ.
Nevada State Bar No. 10128
ALLISON MacKENZIE, LTD.
402 N. Division Street
P.O. Box 646
Carson City, NV 89702
Telephone: (775) 687-0202
Facsimile: (775) 882-7918

Attorneys for Petitioner,
ERIC R. WITTLER

REC'D & FILED

2018 AUG 24 PM 3:20

SUSAN MERRIWETHER
CLERK

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF:

Case No. 18 GRD 00038 1B

Dept. No. II

CARMEN GOMEZ WITTLER,
an Adult.

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that on the 22th of August, 2018, the Court duly entered an Order Extending Temporary Guardianship and Denying Motion to Dismiss, in the above-entitled matter. A copy of said Order is attached hereto.

DATED this 24 day of August, 2018.

ALLISON MacKENZIE, LTD.

By:


JOEL W. LOCKE, ESQ.
Nevada State Bar No. 10128
Attorneys for Petitioner,
ERIC R. WITTLER

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served to all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- Facsimile
- E-Mail
- Federal Express, UPS, or other overnight delivery
- E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Washoe Legal Services	Rita Sanders
Danielle L. Christenson, Esq.	507 Martin Drive North
Jennifer Richards, Esq.	Bellevue, Nebraska 68005
David D. Spitzer, Esq.	
299 South Arlington Ave.	Sandra Barrett
Reno, NV 89501	13645 6 th Avenue South West
	Burien, Washington 98166
Carmen Gomez Wittler	
Skyline Estates	Johnny Gomez
2861 Mountain Street	1335 Englewood Drive
Carson City, NV 89703	St. Cloud, Florida 34772
Eric R. Wittler	Gabriella Lee
524 Sugarloaf Drive	1720 Balfour Downs Circle
Dayton, Nevada 89403	Fuquay-Varina, NC 27526
Margrate Krug	Florentino Gomez
601 2 nd Street	73-1206 Lilia Drive
Hartwick, Iowa 52232	Kailua Kona, HI 96740 USA

DATED this 24 day of August, 2018.



DEIRDRE REID

1 JOEL W. LOCKE, ESQ.
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5 Attorneys for Petitioner,
6 ERIC R. WITTLER

REC'D & FILED

2018 AUG 22 AM 9:09

SUSAN MENDIVETHER
M. GONZALES

BY _____ DEPUTY

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13 CARMEN GOMEZ WITTLER,
14 an Adult.
15 _____/

16 **ORDER EXTENDING TEMPORARY GUARDIANSHIP AND**
17 **DENYING MOTION TO DISMISS**

18 This matter came before the Court on WASHOE LEGAL SERVICES' Motion to Dismiss
19 Temporary Guardianship of CARMEN S. WITTLER, an Adult Proposed Protected Person. Petitioner
20 ERIC R. WITTLER, by and through his attorneys, ALLISON MacKENZIE, LTD., filed an Opposition
21 thereto. A hearing on the Motion to Dismiss and its Opposition was held on May 22, 2018. Present at
22 the hearing were Petitioner and his Counsel, Joel Locke, Esq. and Jennifer Richards, Esq. from
23 Washoe Legal Services. During the hearing, which was set on the uncontested calendar, a hearing on
24 the merits of the Motion to Dismiss and its Opposition was set by this Court for August 10, 2018.

25 Petitioner, Eric Wittler and his attorney were present at the August 10 hearing. Jennifer
26 Richards, Esq. from Washoe Legal Services, on behalf of Carmen Gomez Wittler, was also present at
27 the August 10 hearing. Carmen Gomez Wittler, was scheduled to attend the hearing however, refused
28 to attend. This Court verified her absence via a telephone conference with her social worker, Kenise at

1 Skyline Estates Memory Care Unit, on the record. Carmen's sister Rita Sanders also testified
2 telephonically during the proceedings regarding Carmen's whereabouts between July 2017 and
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6 Washoe Legal Services was appointed as Counsel for the Proposed Protected Person on May 9, 2018
7 by this Court. Subsequently, Washoe Legal Services filed a Motion to Dismiss for Lack of Jurisdiction
8 on May 17, 2018. Petitioner filed his Opposition to Washoe Legal Services' Motion on May 23, 2018.

9 This Court, deeming itself fully advised of the matter, hereby enters the following Findings of
10 Fact, Conclusions of Law, and Order as follows:

11 FINDINGS OF FACT

12 The Court finds that the following was proven by clear and convincing evidence:

- 13 1. Carmen Gomez Wittler was a long-time resident of Kansas.
- 14 2. In July 2017, Ms. Wittler went to Nebraska until October of 2017.
- 15 3. Ms. Wittler then returned to Kansas because she understood her ex-husband wished to
16 reconcile with her. She had a contact with law enforcement while in the State of Kansas and then
17 returned to Nebraska, where she remained until February of 2018. At that time, Ms. Wittler now
18 believed her husband to be deceased.
- 19 4. During the time she spent in Nebraska, she lived in a Microtel and was there to visit her
20 sister, Rita Sanders.
- 21 5. Ms. Sanders had been a commercial real estate broker for several years and was
22 currently serving as the Mayor of Bellevue, Nebraska
- 23 6. When Ms. Sanders went to collect her sister, she was informed by hotel personnel that
24 Ms. Wittler could no longer remain at the hotel.
- 25 7. Ms. Sanders then took Ms. Wittler home. During Ms. Wittler's stay at Ms. Sanders'
26 home, Ms. Sanders observed Ms. Wittler having discussions with "her team" or "her people" and
27 would go to the restroom to have conversations in the dark with "her people."
- 28

8. Other behaviors observed by Ms. Sanders included: Ms. Wittler confusion and her inability to use a phone. Ms. Wittler had lost the concept of money. Ms. Wittler was not able to eat properly off a dinner plate and used her hands extensively while eating. Ms. Wittler did not sleep and would wander around the house at all hours waiting for "her people" to come and get her. Ms. Wittler could not provide information to her son or sister to obtain financial information or medical records. Ms. Wittler stopped driving.

CONCLUSIONS OF LAW

1. The Court finds it has jurisdiction to order a temporary guardianship under NRS 159.1998(1)(d). Ms. Wittler has not been a resident of any state since she left Kansas. She was not present in Nebraska for six (6) months. She therefore, does not have a “home state” for the purposes of jurisdiction under NRS 159.1998(1)(d).

2. The Court concludes that an emergency exists under NRS 159.1998(2)(b). Ms. Wittler has lost her connection with reality. This is evidenced by checking with “her people” along with other signs of impairment to which Ms. Sanders testified. Therefore, there is sufficient evidence to support this Court’s conclusion that it can exercise jurisdiction under NRS 159.1998(2)(b).

IT IS HEREBY ORDERED that WASHOE LEGAL SERVICES' Motion to Dismiss is DENIED.

The Court hereby concludes that it has jurisdiction over Ms. Wittler for the purposes of a temporary guardianship. The temporary guardianship of Carmen Gomez Wittler is hereby extended. A hearing will be set to determine permanent guardianship on September 11, 2018. Petitioner shall issue a citation and serve on all required parties for the permanent guardianship

IT IS SO ORDERED.

DATED this 21 day of August, 2018.

DISTRICT JUDGE

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 18 GRD 00038 1B

TITLE: IN THE MATTER OF THE GUARDIANSHIP
OF CARMEN GOMEZ WITTLER

09/11/18 – DEPT. II – HONORABLE JAMES E. WILSON, JR.
J. Harkleroad, Clerk – Not Reported

PETITION FOR GUARDIANSHIP

Present: Kyle Winter counsel for petitioner; Jennifer Richards, counsel for protected person.

Winter indicated he was told there would be an objection and requested the matter be set on the contested calendar.

Richards made Mo/Excuse Protected Person's Appearance.

COURT ORDERED: Her presence is excused.

Further statements were made by counsel and Court.

COURT ORDERED: Counsel to meet and confer. Contested hearing set for December 17, 2017 at 9:00 a.m. for 1 day and an alternate setting is set for January 16, 2019 at 9:00 a.m. for 1 day.

Winter requested a formal written objection be filed and a formal briefing scheduled.

COURT ORDERED: Objection to be filed by September 21st and the response filed by October 5th and any Reply filed by October 17th.

Richards inquired about the Flieger evaluation.

Court indicate it will review it.

Winter made Mo/to Waive Further Citations. No objection by Richards.

COURT ORDERED: So Ordered. Winter to prepare a brief Order including the scheduling order dates, the waiver of citations and that the parties meet and confer prior to the next hearing. Richards advised the Court that the Guardianship Commission Report does reference Dr. Fliegler's evaluation, should the Court decide to strike the evaluation from the proceedings that their report be amended in compliance with that Order. No objection by Winter.

COURT ORDERED: Include that in the Order as well. Counsel to submit proposed order's on that Motion. Whoever the order goes to make sure the commission is on notice so that they know whether to amend the order or not.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 18 GRD 00038 1B

TITLE: IN THE MATTER OF THE GUARDIANSHIP
OF CARMEN GOMEZ WITTLER

08/10/18 – DEPT. II – HONORABLE JAMES E. WILSON, JR.
C. Franz, Clerk – Not Reported

EXTENSION OF TEMPORARY GUARDIANSHIP AND MOTION TO DISMISS

Present: Petitioner with counsel, Joel Locke; Jennifer Richards, counsel for protected person.

Statements were made by Court and counsel regarding the protected person not being present.
Court called and left a message for Kenise at Skyline Estates.

Statements were Court and counsel.

Kenise from Skyline Estates called back and gave statements.

Richards requested protected person be excused from the hearing today.

COURT ORDERED: The protected person is excused from the hearing today.

Statements were made by Donna Kingman-Silva from behind the bar.

Counsel gave arguments as to motion to dismiss.

COURT ORDERED: It is going to proceed with the evidence today and It allows Ms. Sanders to appear and testify via telephone.

Donna Kingman-Silva came forward and made statements as to their investigations.

Court called and left a message for Rita Sanders.

Evidence was marked in accordance with Exhibit Sheet.

The following witnesses were sworn and testified:

1. Eric Wittler
2. Rita Sanders

Closing statements were made by Court and counsel.

Court stated findings of fact and conclusions of law;

COURT ORDERED: The motion to dismiss is denied and temporary guardianship will continue and sets a review hearing September 11, 2018 at 8:30 A.M. Locke to prepare Order and have it to Ms. Richards by August 14, 2018 and to the Court by August 20, 2018. Ms. Richards is to file any objection to the order by August 20, 2018. It puts the matter on calendar for August 21, 2018 at 11:30 A.M. to check the status of the order.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 18 GRD 00038 1B

TITLE: IN THE MATTER OF THE GUARDIANSHIP
OF CARMEN GOMEZ WITTLER

05/22/18 – DEPT. II – HONORABLE WILLIAM A. MADDOX
C. Franz, Clerk – Not Reported

PETITION FOR GUARDIANSHIP

Present: Petitioner with counsel, Joel Locke; Jennifer Richards, counsel for protected person.

Statements were made by Court and counsel.

COURT ORDERED: Counsel to contact chambers and set the matter for a contested hearing. It continues the temporary Guardianship in accordance with the Order to be filed. Locke to prepare Order.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.
