IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSONS: M. F. M. AND M. G. M., PROTECTED MINORS.	
ERIN NEWPORT, Appellant, vs. MONTRAIL GREEN; AND JERMIA COAXUM-GREEN, Respondents.	Case No. 82469

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable Linda Marquis, District Judge
District Court Case No.: G-19-052440-M

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

In accordance with Nevada Rule of Appellate Procedure 26.1, the undersigned counsel of record for Appellant Erin Newport certifies the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the Judges of this Court may evaluate possible disqualification or recusal.

In addition, the following is a list of the names of all law firms whose partners or associates have appeared for the party in the case, including proceedings in District Court:

Morris Law Center, in Association with LACSN

The Isso & Hughes Law Firm

Erin Newport, in Proper Person

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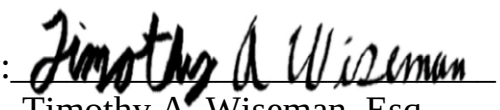
By: 

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Publications

. . .

Other Authorities

JURISDICTIONAL STATEMENT

This matter deals with a denial of a Petition for Termination of Guardianship of two minors. **Vol. IV, AA331 – AA336.** It is therefore appealable pursuant to NRS 159A.375(8), which allows for an appeal from an order granting or denying a petition for modification or termination for guardianship. *See also* NRAP 3A(b)(7) (allowing appeal from certain orders dealing with custody); NRAP 3A(b)(1) (allowing appeal from a final order).[1] The Notice of Entry of the Relevant Order was filed 1/27/2021. **Vol. IV, AA348.** The Notice of Appeal was filed less than 30 days later on 2/8/2021. **Vol. IV, AA358.**

[1] The Docketing Statement, which was filed by Ms. Newport operating in a pro se capacity, relies upon NRAP 3A(b)(1). Appellate counsel asserts that NRS 159A.375(8) is decision as to Appellant's burden to establish jurisdiction without waiving the right to assert other arguments for jurisdiction.

APPELLANT'S STATEMENT REGARDING ROUTING

Pursuant to NRAP 28(a)(5), Appellant Erin Newport states that this matter is presumptively assigned to the Nevada Court of Appeals pursuant to NRAP 17(b)(10). This is a matter involving family law which does not technically involve termination of parental rights or NRS 432B proceedings.

However, Appellant respectfully requests review by the Nevada Supreme Court. NRAP 17(d) (allowing a request for assignment to the Nevada Supreme Court of maters presumptively assigned to the Court of Appeals). This matter centers on a guardianship for minors which is being maintained over the objection of the natural mother. It therefore impacts the parental rights in a way akin to termination of parental rights and implicates significant questions regarding public policy and the correct interpretation of statute. *See* NRAP 17(a)(10) (assigning cases dealing with termination of parental rights to the Nevada Supreme Court); NRAP 17(a)(12) (assigning cases dealing with questions of statewide public importance to the Nevada Supreme Court).[2]

[2] Appellant acknowledges that this is a rare confluence of circumstances and that it therefore would be a stretch to call it a question of statewide public importance. It does however implicate a fundamental right and important questions of statutory interpretation and public policy. Therefore the policies behind NRAP 17(a)(12) are implicated even if the text does not apply directly.

ISSUES PRESENTED

1. Whether the District Court erred in requiring a Petitioner for termination of a guardianship of minors to show that the welfare of the protected minors would be substantially enhanced when the Petitioner, as parent, had consented to a guardianship;
2. Whether the District Court erred in finding that the Petitioner had failed to meet the burden of showing that the welfare of the protected minors would be substantially enhanced by the termination of the guardianship when the District Court failed to conduct an evidentiary hearing and Petitioner is the natural mother of the children who is now able to fully and appropriately provide for the children;

STATEMENT OF THE CASE

This is a guardianship termination case. Appellant Ms. Newport is the natural mother of the twin children at the center of the case. **Vol. IV, AA333.** Ms. Newport consented to a temporary guardianship of the children with her grandfather as the guardian. *Id.* at AA333 – 334. The District Court declined to appoint the grandfather as a guardian and instead appointed Mr. Montrail Green and Ms. Jermia Coaxum-Green. *Id.* Once Ms. Newport was able to properly care for her children again, Ms. Newport moved the District Court to terminate the guardianship. *See id.* The District Court found that Ms. Newport was required, and failed, to prove that the welfare of the minors would be substantially enhanced by the termination of the guardianship. **Vol. IV, AA335.** Accordingly, the District Court denied Ms. Newport's request to terminate the guardianship and return her children to her. *Id.* This Appeal followed.

STATEMENT OF FACTS

This case centers on the termination of guardianship. The subject minors are the natural children of Appellant Erin Newport. The subject minors are twins who were born in September of 2014. **Vol. II, AA076.** Ms. Newport experienced serious difficulties for a brief period of her life that made it impossible for her to properly care for her own children. **Vol. II, AA168 – 169.** Accordingly, she had her father, the maternal grandfather of the children, assist in caring for them for a time. ***Id.*** Mr. Green is the paternal uncle of the children. **Vol. IV, AA314.** The children also often visited Mr. Green and Ms. Jermia Coaxum-Green on a regular basis at this time.

Her temporary difficulties in caring for her children led to a guardianship of her children being appointed on or about June 2, 2020. **Vol. II, AA076 – AA080.** The District Court provided virtually no findings of fact in the written Order. *Id.*[3]

Ms. Newport made efforts to improve her life to enable her to get custody of her children back. *See e.g* **Vol. II, AA167 – AA176.** Among other things, Ms. Newport got a steady job with Patterson Family Shipping. **Vol. III, AA199.** Ms. Newport rented a suitable apartment. **Vol. III, AA216.** She prepared rooms for her children. **Vol. III, AA192 – AA198.** She has, in short, worked hard to prepare herself to properly care for her children.

[3] The minutes include some discussion of the evidence presented. **Vol. III, AA189 – 190.**

Based upon the changes in the circumstances which prepared her to raise her children, Ms. Newport filed an initial Petition to Terminate Guardianship on October 21, 2020. **Vol. II, AA084 – AA139.** The guardians, Mr. Montrail Green and Ms. Jermia Coaxum-Green, filed an objection on November 19, 2020. **Vol. II, AA148.** The District Court heard the matter the next day on November 20, 2020. **Vol IV, AA325.** The District Court denied the Petition. **Vol. IV, AA327 – AA328.**

Shortly thereafter, Ms. Newport filed an Amended Petition to Terminate Guardianship on November 24, 2020. **Vol. II, AA167 – AA176.**[4] The guardians filed an Objection on December 17, 2020. **Vol. IV, AA312 – AA323.**The District Court heard this Petition on December 28, 2020. **Vol. IV, AA332.**[5] The District Court treated this as a Motion for Reconsideration. *Id.* at AA351.

In its written Order, the District Court made factual findings. **Vol. IV, AA333 – 334.** The District Court found that Ms. Newport had previously signed a six-month temporary guardianship to give her father, the children's grandfather, guardianship. *Id.* Nonetheless, the Court determined that Ms. Newport had not consented to the specific appointment of Mr. Green and Ms. Coaxum-Green that was at issue. *Id*. The

[4] The exhibits were filed separately and are produced at Vol, III, AA180 – AA308. This was filed after the hearing on the initial Petition, but before the Order from the initial Petition was filed.

[5] The first page states that the Petition under consideration was filed on October 21, 2020. This appears to be a minor typographical error. The order explicitly contains discussion of the Amended Petition filed on November 24, 2020. **Vol. IV, AA333.**

Court stated that "consent to a guardianship needs to be filed with the Court in a certain format and that no such consent was filed with the Court in any format." *Id.* at 334. The Court therefore determined that Ms. Newport was required to demonstrate by clear and convincing evidence that the welfare of the protected minors would be substantially enhanced by the termination of the guardianship. *Id.* The Court further found that that Ms. Newport had not met that burden and therefore denied the Petition. *Id.* at AA334 – 335.

This Appeal followed.

SUMMARY OF ARGUMENT

Appellant Erin Newport is being denied custody of her children and seeks to have them restored to her. Ms. Newport previously experienced a difficult time and was unable to properly care for her children. **Vol. IV, AA333 – 334.** Ms. Newport asked that her father, the children's grandfather, be appointed as the children's guardian. *Id.* The District Court found that her father was not a suitable guardian and instead appointed Respondents Mr. Montrail Green and Ms. Jermia Coaxum-Green. *Id.* Later, Ms. Newport was able to improve her situation through hard work and was ready to raise her children again. *See id.; see also* **Vol. III, AA199; Vol. III, AA216; Vol. III, AA192 – AA198.** When Ms. Newport sought to terminate the guardianship and regain custody of her children, the District Court required her to prove that the

welfare of the children would be substantially enhanced by the termination. **Vol. IV, AA335.**

The District Court applied the wrong standard. A parent need only show that the termination would substantially enhance the welfare of the children if the parent did not consent to a guardianship. NRS 159A.1915. Here, Ms. Newport did consent to a guardianship even though it may not have been the guardianship actually ordered. Accordingly, both the plain language of the statute and policy show that she should only have been required to show that there has been a change of circumstances and that she was a suitable parent. NRS 159A.1915(1)(a). Since Ms. Newport provided uncontested evidence of a change of circumstances and that she is now suitable, this Court should order that the guardianship be terminated and that Ms. Newport's children should be returned to her. At a minimum, this Court should remand for consideration under the correct standard.

Separately and in the alternative, the District Court erred in finding that Ms. Newport had failed to show that the children's welfare would not be substantially enhanced by termination of the guardianship. The District Court failed to consider the parental preference. *Ramon P. v. Juan S. (In re A.S.),* 134 Nev. 957, 429 P.3d 297 (2018). When the parental preference is considered, the evidence submitted by Ms. Newport is sufficient to show that the children's welfare would be substantially enhanced by being returned to their mother. At a minimum, the District Court abused

its discretion by not conducting an evidentiary hearing since Ms. Newport had provided evidence showing an adequate cause. *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017).

The District Court's Order is clearly flawed under the law, but more than that it is contrary to policy and fundamental justice. Parents have a strong and fundamental right in raising their own children. *Sam Z. v. Hikmet (In re N.J.)*, 116 Nev. 790, 801, 8 P.3d 126, 133 (2000). Ms. Newport is being denied the right to raise her own children even though she is a suitable parent. As a matter of fundamental justice, this result must not stand.

ARGUMENT

I. Standard of Review

The Nevada Supreme Court has stated in cases concerning the termination of guardianship that "The district court enjoys broad discretionary powers in determining questions of child custody." *Locklin v. Duka*, 112 Nev. 1489, 1493, 929 P.2d 930, 933 (1996).[6] Generally, in determinations regarding guardianship and custody, the District Court's "discretion will not be disturbed unless abused". *Id.*

[6] *See also Jason S. v. Valley Hosp. Med. Ctr. (In re L.S.)*, 120 Nev. 157, 163, 87 P.3d 521, 525 (2004) ("Absent a showing of abuse, we will not disturb the district court's exercise of discretion concerning guardianship determinations. However, we must be satisfied that the district court's decision was based upon appropriate reasons.") (internal citations and quotation marks omitted).

However, the District Court's discretion is not unlimited, and an Appellate Court reviewing a matter regarding guardianship "must be satisfied that the district court's decision was based upon appropriate reason" if it is to be upheld. Further, when considering matters of guardianship and custody, there is a strong parental preference. *Id.* at 1493 - 94; *see also* NRS 125C.004.[7]

II. The District Court erred in finding that Ms. Newport was required to show the welfare of the protected minors would be substantially enhanced by the termination of the guardianship.

A. The law only requires a parent who consented to guardianship to show a change of circumstances and that the parent is now suitable.

Ms. Newport, the natural parent of the children at issue, is appealing from a denial of Petition to Terminate Guardianship which ultimately sought to have custody of her children restored to her. *See* **Vol. IV, AA341 – 345** (Appeal from Order Denying Petition to Terminate Guardianship.). The District Court's Order centers the denial of the Petition to Terminate on a finding that the "Natural Mother has not met her burden of proving by clear and convincing evidence that the welfare of the protected minors would be substantially enhanced by the termination of the guardianship and the placement of the protected minors with the parent." *Id.* at 345. However, this is the wrong standard to apply.

[7] The parental preference was previously codified at NRS 125.500, and earlier cases make references to that statute. The parental preference was moved, with virtually identical language, to NRS 125C.004 in 2015 as part of other revisions.

The District Court order correctly notes that if the parent consented to the guardianship when it was created, the parent only needs to make a showing that there has been a chance of circumstances, and that as part of the change of circumstances, the parent has been restored to suitability. *Id.* at 345, ¶ 2; NRS 159A.1915.[8] The relevant language reads:

> 1. If, before a protected minor is emancipated, a parent of the protected minor petitions the court for the termination of a guardianship of the protected minor, the parent has the burden of proof to show by clear and convincing evidence that:
>
> (a) There has been a material change of circumstances since the time the guardianship was created. The parent must show that, as part of the change of circumstances, the parent has been restored to suitability as described in NRS 159A.061.
>
> (b) Except as otherwise provided in subsection 2, the welfare of the protected minor would be substantially enhanced by the termination of the guardianship and the placement of the protected minor with the parent.
>
> 2. If the parent consented to the guardianship when it was created, the parent is required to make only that showing set forth in paragraph (a) of subsection 1.

In its Order, the District Court based its finding that the parent had not consented to the guardianship upon the fact that no formal consent for guardianship had been put on the file. **Vol. IV, AA342, ll. 22 – 25.** At the hearing, the District Court emphasized the fact that the consent was not filed in the specific format preferred by the Court. **Vol. IV, AA379.**

[8] The Order cites to NRS 159A.1919. This seems to be a minor typographical error. NRS 159A.1919 does not exist and the relevant language is contained in NRS 159A.1915 which is correctly cited earlier in the order.

However, nothing in the statute requires that consent for guardianship be filed in a specific form to meet the requirement. NRS 159A.1915(2). Nothing in the statute explicitly defines "consent", so it should be given its ordinary meaning. *See e.g. Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003) (noting that words in a statute should be given their ordinary meaning unless it was clear that meaning was not intended). The plain meaning of "consent" does not require that the consent be in writing. *See e.g. Consent*, Bouvier Law Dictionary (2012).[9] Therefore, by the plain language of the statute any consent to the guardianship should be adequate to apply the lower standard of proof.

Here, the District Court acknowledged that the natural mother consented to a guardianship, albeit with the grandfather as the guardian. **Vol. IV, AA379; *see also* Vol. IV, AA352, ll. 22 – 25.** Therefore, the District Court erred in applying the more stringent standard. The District Court should have found that the guardianship should be terminated if the natural mother could show a change in circumstances and that as part of the change in circumstances "the parent has been restored to suitability as described in NRS 159A.061." NRS 159A.1915(1)(a).

[9] "Agreement to something proposed. Consent is the knowing and intentional act of acceptance or agreement to a proposition. Consent may be manifest in words, which is express consent, or by conduct (including silence in rare and appropriate circumstances), which is implied consent."

The District Court did not make any findings regarding Ms. Newport's suitability or if there were changes in circumstances. **Vol. IV, AA341 – 345.** However, uncontroverted evidence was introduced to show that Ms. Newport had worked hard to change her circumstances to make herself a suitable parent for her daughters. *See e.g* **Vol. II, AA167 – AA176.** Ms. Newport acquired a stable job, got an apartment, and worked hard to make that apartment suitable for her children. **Vol. III, AA199; Vol. III, AA216; Vol. III, AA192 – AA198.**

Since the evidence clearly shows that Ms. Newport is now a suitable parent for her daughters, this Court should remand with instructions that the District Court terminate the guardianship and return Ms. Newport's children to her. At a minimum, this Court should remand with instructions that the District Court consider the matter under the correct standard with the primary question being whether or not Ms. Newport is now a suitable parent.

B. The fact that Ms. Newport may have intended a different guardian is immaterial to this analysis.

The Respondents may argue that even though Ms. Newport consented to a guardianship, she did not consent to the guardianship in question. *See* **Vol. IV, AA379, ll. 1 – 4** (finding during the hearing that Ms. Newport did not consent to the guardianship by Mr. Montrail Green and Ms. Jermia Coaxum-Green)**; *see also* Vol. IV, AA353** (finding in the Order that the natural mother did not consent to the

guardianship in question). In doing so, the Respondents would be placing great emphasis on the word "the" in the statute. *See* NRS 159A.1915(2).

However, when there is more than one plausible reading of a statute, the statute should be read in a way that conforms to legislative intent. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 650-51, 730 P.2d 438, 443 (1986) ("The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute… This intent will prevail over the literal sense of the words… The meaning of the words used may be determined by examining the context and the spirit of the law or the causes which induced the legislature to enact it…. The entire subject matter and policy may be involved as an interpretive aid."). Here, other parts of the statute make clear that there is a strong preference in favor of the parent in questions of guardianship so long as the parent is suitable. NRS 159.061(1).[10] Other related statutes similarly state a strong and clear preference for parental custody unless there is a strong showing that custody of the parent is detrimental to the child. NRS 125C.004.

In light of the other sections of the statute, it is clear that this section should be read to favor an eventual reunion between parent and child. That policy is best

[10] "The parents of a proposed protected minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the person or estate or person and estate of the proposed protected minor.…"

achieved by construing the statute to require the parent to meet the higher burden of proof only when the parent opposed any guardianship at all but the court was forced to find that a guardianship was necessary anyway. When a parent denied that a guardianship was necessary at all but then a court found that there were reasons to appoint a guardianship which were so strong that they overrode the normal parental preference then, as enacted by the legislature, it is reasonable to demand that the parent provide strong evidence that the welfare of the child would be substantially enhanced by the termination of the guardianship. *See* NRS 159A.1915. After all, it normally requires a very strong reason and strong evidence to overcome the parental preference when a parent objects to establishment of a non-parental guardianship. NRS 125C.004; *see Locklin v. Duka*, 112 Nev. 1489, 1494, 929 P.2d 930, 933 (1996) (discussing the parental preference). However, when a parent acknowledges that a guardianship is needed temporarily, the will of the legislature as made clear by the parental preference can only be served by allowing the parent to be reunited upon a showing that the parent is now a suitable parent even if the guardianship appointed is not the precise one the parent requested.

Therefore, both policy and the standard practices in statutory construction, show that the lower burden of proof for a parent should be triggered if the parent consented to a guardianship regardless of whether the court granted the guardianship the parent preferred. Since the District Court noted that Ms. Newport has consented

to a guardianship, Ms. Newport should only have been required to show that she was a suitable parent and the court erred in applying a higher standard.

III. The District Court erred in finding that Ms. Newport had failed to show that the welfare of the protected minors would be substantially enhanced by the termination of the guardianship.

A. Even if Ms. Newport was required to show that the welfare of the minors would be substantially enhanced, Ms. Newport met her burden of proof

As discussed above, Ms. Newport should only have been required to show that she was a suitable parent. However, even if Ms. Newport was required to show that the children's welfare would be substantially enhanced by the termination, Ms. Newport brought forth reasonable evidence that this was true. **Vol. III, AA199; Vol. III, AA216; Vol. III, AA192 – AA198.** This evidence does not stand alone but is supported by the presumption in favor of custody by a parent. NRS 159.061(1); *see also Ramon P. v. Juan S. (In re A.S.)*, 134 Nev. 957, 429 P.3d 297 (2018).[11] The District Court found that Ms. Newport's evidence had not been sufficient to meet her burden of proof. **Vol. IV, AA335, ¶ 3.** The District Court reached this decision without conducting an evidentiary hearing or taking testimony. *See* **Vol. IV, AA332, ll. 18 – 22** (noting that an evidentiary hearing had been requested).

[11] "In addressing the petition to terminate on remand, the district court must apply the parental preference and take evidence and make findings regarding any attempt from Juan and Rebeca to rebut that preference."

Normally, a District Court is in the best position to evaluate the evidence and deference is given to its evaluation. *Locklin v. Duka*, 112 Nev. 1489, 1493, 929 P.2d 930, 933 (1996). However, in guardianship and custody matters, an Appellate Court should be satisfied that "the district court's decision was based upon appropriate reasons". *Id.* Here, the Court seems to have failed to consider the parental preference and gave little weight to Ms. Newport's evidence that the children would be benefitted by being returned. However, Ms. Newport's evidence that she could enhance the welfare of the children was uncontroverted, and, combined with the parental preference, was enough to meet her burden of proof. Thus, this Court should overturn the District Court's Order and remand with instructions to terminate the guardianship and restore the children to Ms. Newport, their natural mother.

At a minimum, this Court should remand with instructions to give proper weight to the parental preference. This Court has previously found that it is an abuse of discretion to fail to consider the parental preference when a parent seeks to terminate the guardianship of a non-parent. *Ramon P. v. Juan S. (In re A.S.),* 134 Nev. 957, 429 P.3d 297 (2018). Since the District Court failed to discuss the parental preference in the Order and does not seem to have considered it in the hearing, the District Court abused its discretion and at a minimum should be required to reconsider with the parental preference given proper consideration. **Vol. IV, AA331**

– AA336 (Order which does not discuss parental preference); **Vol. IV, AA363 – AA388** (transcript which does not discuss parental preference).

B. At a minimum, the District Court abused its discretion by failing to hold an evidentiary hearing.

The District Court declined to conduct an evidentiary hearing when considering whether to terminate the guardianship. **Vol. IV, AA332.** Ordinarily, it is within the District Court's discretion to hold or not hold an evidentiary hearing. *Rubin v. Rubin (In re Guardianship of the Person & Estate of Rubin),* 137 Nev. Adv. Rep. 27 (July 1, 2021).[12] However, when a party asking to modify custody demonstrates adequate cause for holding a hearing, then an evidentiary hearing on the matter should be held. *See Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993) (adopting the "adequate cause" standard for a hearing); *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017) ("A district court must hold an evidentiary hearing on a request to modify custodial orders if the moving party demonstrates "adequate cause."").

A party establishes adequate cause when it shows that there is a prima facie case for modification. *Arcella,* 133 Nev. at 871. A prima facie case is established when "(1) the facts alleged in the affidavits are relevant to the relief requested; and

[12] *Rubin* involved an adult guardianship, but the reasoning is analogous.

(2) the evidence is not merely cumulative or impeaching." *Id.* Here, Ms. Newport alleged sufficient facts to show that the situation had changed in a way to support the termination of the guardianship and justify returning custody to her. **Vol. III, AA199; Vol. III, AA216; Vol. III, AA192 – AA198.** That evidence was not impeaching or merely cumulative. Thus, Ms. Newport showed that there was adequate cause and that a true evidentiary hearing should have been held.

Moreover, as discussed above, the District Court should have considered the parental preference. *Ramon P. v. Juan S. (In re A.S.),* 134 Nev. 957, 429 P.3d 297 (2018). This could best be done in the context of an evidentiary hearing. *See id.*

As discussed in prior sections, this Court should reverse the District Court's Order with instructions to immediately terminate the guardianship and return Ms. Newport's children to her. However, at a minimum, it was an abuse of discretion for the District Court to decline to conduct an evidentiary hearing and thoroughly consider the parental preference under these circumstances.

IV. As a matter of equity and justice, the guardianship should be terminated.

As discussed above, the District Court made technical errors by applying the wrong standard and in the way it weighed the evidence. For those reasons, the District Court's order maintaining the guardianship should be overturned.

However, when considering this matter, it is important to also note that policy and basic justice weigh heavily in favor of Ms. Newport. Here, Ms. Newport is being denied custody of her children. This denial is not in favor of the other parent, but of distant relatives that were not of Ms. Newport's choosing.

Taking her children away in this way is akin to termination of her parental rights. Appellant acknowledges that it is different from truly terminating her parental rights and that maintaining the guardianship without formally terminating her rights allows her at least some hope of having the guardianship terminated later.[13] But this is cold comfort to a mother who has been separated from her children and then been told by the Court essentially that the bar for getting them back is set so high that her best efforts cannot meet it.

As a matter of both basic justice and policy recognized by both legislatures and courts, the bond between parent and child is of great significance. The legislature has enacted multiple direct and clear parental preferences. NRS 125C.004; NRS 159.061(1).

Similarly, the U.S. Supreme Court has recognized the importance of the parental bond with children. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27, 101 S.

[13] Appellant also acknowledges that the judge did at least order facetime or telephone calls, but that is very limited contact for the natural mother. **Vol. IV, AA336, ll. 1 – 11.**

Ct. 2153, 2159-60 (1981). The U.S. Supreme Court stated plainly that "This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection" *Id.* (internal citations and quotation marks omitted). In other cases, the U.S. Supreme Court has noted that the right to raise one's children is essential and is a far more precious right than any property right. *Stanley v. Illinois,* 405 U.S. 645, 651, 92 S. Ct. 1208, 1212 (1972).

The Nevada Supreme Court has similarly strongly favored the right of a parent to raise their own child so long as the parent is suitable. *See e.g. Locklin v. Duka,* 112 Nev. 1489, 1493, 929 P.2d 930, 933 (1996) (discussing the parental preference and the limited set of extraordinary circumstances capable of overcoming it). The Nevada Supreme Court, noting prior precedent from the U.S. Supreme Court, has found that "parents have a fundamental liberty interest in the care, custody, and management of their children." *Kirkpatrick v. Eighth Judicial Dist. Court,* 119 Nev. 66, 71, 64 P.3d 1056, 1059 (2003);[14] *see also Sam Z. v. Hikmet (In re N.J.),* 116 Nev.

[14] Appellant acknowledges that exceptions and limitations do exist, and that *Kirkpatrick* in fact applied such an exception dealing with marriage of a minor with the consent of only one parent. However, the general interest in the care and custody of the children, and the strength of that interest, is well established.

790, 801, 8 P.3d 126, 133 (2000) ("...the parent-child relationship is a fundamental liberty interest.").

Here, Ms. Newport is being deprived of her fundamental right to raise her children despite providing unrebutted evidence that she is a fit and suitable parent. This is contrary to the strong policy in favor of parental rights and contrary to basic justice. As a matter of policy and justice, this Court should remand with direct instructions to terminate the guardianship and return Ms. Newport's children to her. At a minimum, this Court should overturn the order denying the petition to terminate and require the District Court to conduct a full evidentiary hearing and apply the correct standard giving full consideration to the parental preference.

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CONCLUSION

The parent-child relationship is fundamental to American society and has been recognized and accorded respect by legislatures and Appellate Courts. Ms. Newport is being denied her fundamental right to raise her children even though she has shown she is a suitable parent. This is contrary to the law and also contrary to basic fairness. This Court should remand with instructions for the District Court to immediately terminate the guardianship and allow Ms. Newport to raise her children.

At a minimum, the matter should be remanded with instructions for it to be considered under the proper standard and giving full deference to the parental preference.

Dated this 9th day of August, 2021.

MORRIS LAW CENTER

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CERTIFICATE OF COMPLIANCE WITH RULE 28.2

1. I hereby certify that this Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type of style requirements of NRAP 32(a)(6). This Brief has been prepared in a proportionally-spaced typeface using Microsoft Word in 14 point font and Times New Roman.

2. I further certify that this Brief complies with the page or type-volume limitations of NRAP 32(a)(7), excluding the parts of the Brief exempted by NRAP 32(a)(7)(C), as it contains 5168 words.

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3. Finally, I hereby certify that I have read this Appellant's Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the accompanying Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 9th day of August, 2021.

MORRIS LAW CENTER

By: Timothy A Wiseman

Timothy A. Wiseman, Esq.
Nevada Bar No. 13786
Attorneys for Appellant,
in Association with LACSN

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I certify that I am an employee of Morris Law Center, and that on this 9th day of August, 2021, I served a true and correct copy of the foregoing Appellant's Opening Brief as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be sent via facsimile (as a courtesy only); and/or
- ☐ to be hand-delivered to the attorneys at the address listed below:
- X to be submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

John F. Schaller
Patricia H. Warnock
John Buchmiller & Associates
400 S 4th St., #500
Las Vegas, NV 89101

By: Anna M. Kepler
An employee of Morris Law Center