

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.

Electronically Filed
Nov 22 2021 12:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 REPLY BRIEF

TIMOTHY A. WISEMAN, ESQ.
Nevada Bar No. 13786
tim@morrislawcenter.com
MORRIS LAW CENTER
5450 W. Sahara Ave. Suite 330
Las Vegas, Nevada 89146
Telephone: (702) 850-7798
Pro Bono Counsel in Association with LACSN
Attorneys for Appellant

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

MORRIS LAW CENTER

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

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE STATEMENT ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES iv

ARGUMENT1

I. Response to Respondent’s Statement of Facts.1

II. Ms. Newport was only required to show a change of circumstances and that she was not a suitable parent.3

III. Even using the standard applied by the District Court, Ms. Newport has provided sufficient evidence to show that the welfare of the protected minors would be substantially enhanced.4

IV. The right of both parent and child to maintain the parental bond is of great concern.6

V. Conclusion8

CERTIFICATE OF COMPLIANCE WITH RULE 28.2.....9

CERTIFICATE OF SERVICE11

TABLE OF AUTHORITIES

Cases

Arcella v. Arcella, 133 Nev. 868, 407 P.3d 341 (2017)2

Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 27, 101 S. Ct. 2153, 2159-60 (1981). 6

Ramon P. v. Juan S. (In re A.S.), 134 Nev. 957, 429 P.3d 297 (2018).....4

Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212 (1972).....6

Statutes

NRS 159.0613, 4

ARGUMENT

I. Response to Respondent's Statement of Facts.

Mr. Green and Ms. Coaxum-Green note in their statement of facts that they questioned the validity of Ms. Newport's evidence regarding Ms. Newport's employment. **Ans. Br. p. 4 – 5.** However, the only evidence that they provided to support their concern are records from the U.S. Department of Transportation showing that some of her employer's trucks were out of service. **Vol. II, AA164 – AA165.** That does not genuinely call into question the reliability of Ms. Newport's paystub as proof of employment. **Vol. III, AA199.**

Mr. Green and Ms. Coaxum-Green also question the veracity of Ms. Newport's documents and statements regarding her home. **Ans. Br. at p. 4 – 5.** They base this on a claim that the documents do not match the correct property management company. *Id.* This allegation was made in writing before the District Court, but no evidentiary support for their claim was provided. **Vol. IV, AA320 – AA321, ¶ A.** Even if, *arguendo*, their allegation about the property management company were true that would still establish nothing since property owners can change management companies for a multitude of reasons without disrupting the tenancy.

Mr. Green and Ms. Coaxum-Green also allege that Ms. Newport is a prostitute. **Ans. Br. p. 4.** This seems to be based on nothing but speculation and a

desire to cast aspersions on Ms. Newport. *See id.* Ms. Newport does not deny that she has worked as an escort in the past, but she has worked hard to improve her life. *See e.g.* **Vol. II, AA170 – AA171.** Ms. Newport found a steady job. **Vol. III, AA199.** She rented an appropriate apartment. **Vol. III, AA216.** She prepared rooms for her children. **Vol. III, AA192 – AA198.** While Ms. Newport had a difficult period in her life during which both bad choices on her part and external circumstances made it impossible for her to properly care for her children, she has worked hard to move past that and get her children back.

As discussed in more detail below, Ms. Newport has met any possible applicable standards to show that her children should be returned to her. But to the extent there are questions of fact that might be relevant, the existence of those questions underscores the need for an evidentiary hearing. This Court should direct that the District Court promptly order the return of the children, but at a minimum it should direct reconsideration with an evidentiary hearing and with due consideration to the appropriate standard and to the parental preference. *See 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.””).

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II. Ms. Newport was only required to show a change of circumstances and that she was now a suitable parent.

The District Court determined that Ms. Newport was required to show by clear and convincing evidence that the welfare of the protected minors would be substantially enhanced by the termination of the guardianship. **Vol. IV, AA341 – 345.** Mr. Green and Ms. Coaxum-Green allege that “This is the correct standard Mom did not consent to the guardianship”. **Ans Br. p. 9.**¹ However, while Ms. Newport may not have consented to Ms. Green and Ms. Coaxum-Green as the guardians, she did consent to a guardianship and acknowledged its necessity during a dark period in her life. **Vol. IV, AA379; see also Vol. IV, AA352, ll. 22 – 25.** Since Ms. Newport did consent to a guardianship, the law says that to have the guardianship terminated she need only show a change in circumstances and that she “has been restored to suitability as described in NRS 159A.061.” NRS 159A.1915(1)(a).²

Mr. Green and Ms. Coaxum-Green note that they challenged Ms. Newport’s evidence during the hearing. **Ans. Br. at p. 10.** However, while they questioned the trustworthiness of the evidence, they did not provide any meaningful contrary evidence or any reasonable arguments as to why Ms. Newport’s evidence should not

¹ See also **Ans. Br. p. 10.**

² The argument regarding statutory construction and the correct applicable standard is laid out in more detail in the Opening Brief at pages 7 – 13.

be accepted. Ms. Newport presented strong evidence that she now has a job and an appropriate apartment, and that in general she has worked hard to be an appropriate mother for her children. *See e.g* **Vol. II, AA167 – AA176**. Had the District Court applied the appropriate standard, it would have been clear that Ms. Newport’s children should have been returned to her. Accordingly, Ms. Newport now asks that this Court reverse the District Court and enter an Order requiring termination of the guardianship. At a minimum, the District Court should be required to reconsider its prior Order using the appropriate standard and with due consideration given to the parental preference.

III. Even using the standard applied by the District Court, Ms. Newport has provided sufficient evidence to show that the welfare of the protected minors would be substantially enhanced.

The District Court determined that Ms. Newport failed to prove, 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.” **Vol. IV, AA345**. As discussed above, the District Court applied the wrong standard. However, even if it were assumed, for the sake of argument, that Ms. Newport was required to meet that burden, she has done so. Ms. Newport, as the natural mother, benefits from a parental preference. NRS 159.061(1); *see also Ramon P. v. Juan S. (In re A.S.)*, 134 Nev. 957, 429 P.3d 297 (2018). The parental preference, when combined with Ms. Newport’s

uncontroverted evidence that she has poured out substantial efforts to make herself an appropriate parent, shows that the welfare of the protected minors would be substantially enhanced by terminating the guardianship and returning them to their mother. *See e.g.* **Vol. III, AA199; Vol. III, AA216; Vol. III, AA192 – AA198.**

If read literally, the Respondent’s Answering Brief seems to agree with this line of reasoning. *See* **Ans. Br. at p. 11 – 12.** However, Mr. Green and Ms. Coaxum-Green chose to file their Brief in Proper Person, and it must be assumed in light of the rest of the Brief and their inclusion of the word “not” in the header for their section II(A) that this is a drafting error. In light of the circumstances, Appellant asserts that Respondent’s legal arguments should be read in the light most favorable to their intent.

Nonetheless, as discussed in the Opening Brief, Ms. Newport’s evidence, when viewed alongside the parental preference, meets even the higher standard that the District Court erroneously applied. Therefore, Ms. Newport asks that this Court overturn the prior Order and direct the District Court to promptly terminate the guardianship. At a minimum, the District Court should be required to give consideration to the parental preference.

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IV. The right of both parent and child to maintain the parental bond is of great concern.

Mr. Green and Ms. Coaxum-Green allege that Ms. Newport has failed to produce evidence that she is a suitable parent or that a change would be in the best interests of the children. **Ans. Br. at p. 13.** However, the record makes clear that she has produced abundant evidence that she now holds a respectable job and has procured appropriate housing. *See e.g. Vol. III, AA199; Vol. III, AA216; Vol. III, AA192 – AA198.* There is no doubt that Ms. Newport went through a dark and troubled period in her life when she could not have properly raised her children. That is why she asked for a temporary guardianship to be instituted. But since then, she has worked hard to change her personal circumstances and make better decisions about her life. She is now an appropriate parent, and her children have a right to be raised by their natural mother.

Moreover, while the best interests of the children always come first, Ms. Newport herself has rights that should not be forgotten. *See e.g. Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 2159-60 (1981). Ms. Newport has a right to the companionship and custody of her children. *Id.*; *see also Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212 (1972).³ There are times when the parent's rights must yield to the needs of the children, but such a finding should be

³ Noting that this right is more precious than any property right.

made only with great care and only with due consideration to the parental preference and the fact that the parent does have vital rights to in the companionship and custody of the children.

In light of this policy, the District Court's Order should be overturned with a requirement that the guardianship be promptly terminated. At a minimum, the District Court should be required to give due consideration to the parental preference and Ms. Newport's rights.

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V. Conclusion

Ms. Newport has put in time and effort to improve her life so that she can properly raise her children. She has a fundamental right to raise her own children so long as she can do so appropriately, and her children have a fundamental right to be with their natural mother. Policy and justice require that the District Court's Order be overturned. This Court should remand with instructions that the guardianship should be terminated promptly, but at a minimum the District Court should be required to apply the appropriate standard and do so with appropriate consideration of the parental preference.

Dated this 22nd day of November, 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 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) because 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 2,430 words.

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3. Finally, I hereby certify that I have read this Appellant's Reply 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 22nd day of November, 2021.

MORRIS LAW CENTER

By: 
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 22nd day of November, 2021, I served a true and correct copy of the foregoing Appellant’s Opening Brief as follows:

- X 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.

Montrail Green and Jermia Coaxum-Green
In Proper Person
7808 License St.
Las Vegas, NV 89131

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