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Elizabeth A. Brown  
Clerk of Supreme Court

14 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

15 In the Matter of the Guardianship of the Person  
16 and Estate of:

Case No.: 82935

17 Mae Brown,

18 Adult Proposed Protected Person.

19 Shawntina Brown-Palmore,  
20 Appellant,

21 vs.  
22 Mae Brown; and Tyrese Brown,  
23 Respondents.

24 **RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW**

25 **CAUSE: RE: MOOTNESS DUE TO DEATH**

26 Mae Brown, Respondent, by and through counsel, Scott Cardenas, Esq. and Katie  
27 Anderson, Esq., of the Legal Aid Center Of Southern Nevada, Inc., hereby submits this Reply  
28 to Appellant's Response to Order to Show Cause: Re: Mootness Due to Death.

1 This Reply is made and based upon the following Memorandum of Points and  
2 Authorities, any and all pleadings and papers on file, the attached exhibits and oral argument  
3 submitted at the time of the related hearing in this matter.  
4

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8 /s/ Scott Cardenas

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1 for guardianship to devolve into an inquisition regarding the proposed protected person's alleged  
2 capacity. Thus, the district court did not err in dismissing Appellant's petition.

3 That aside, the issue presented in this appeal has now been rendered moot due to Mae  
4 Brown's passing. Accordingly, this Court should dismiss the appeal as moot.

## 5 **II. BRIEF STATEMENT OF FACTS**

6  
7 On March 31, 2021, Appellant filed her petition for guardianship over Respondent, Mae  
8 Brown, with the district court. At the time of filing, Appellant failed to file a physician's certificate,  
9 proof of personal service on Mae Brown, and confidential identifiers, all of which are required  
10 under NRS Chapter 159 when petitioning for guardianship. Respondent Tyrese Brown also failed  
11 to file a physician's certificate with his counter-petition for guardianship, but did inform the district  
12 court that he was the agent for Mae Brown under a medical power of attorney and financial power  
13 of attorney. Mae Brown filed her Objection to Appellant's Petition for Appointment of Guardian  
14 over Adult ("Petition") and requested that the same be dismissed.

15  
16 At the citation hearing on May 06, 2021, Appellant argued that NRS Chapter 159 did not  
17 require that she file a physician's certificate with her petition, and that the court could simply order  
18 that one be completed. Ultimately, the district court denied Appellant's petition without prejudice  
19 based on her failure to file a physician's certificate. The district court entered its order stating as  
20 much on May 14, 2021. That same day, Appellant filed her notice of appeal.

21  
22 While this appeal was pending, Mae Brown unfortunately passed away on June 11, 2021.  
23 Counsel for the parties on appeal discussed Mae Brown's death during a scheduling conference  
24 call with the settlement judge. The settlement judge concluded that the case was not appropriate  
25 for mediation and should be removed from the settlement program because Mae Brown had passed  
26 away. *See Settlement Program Early Case Assessment Report*, filed on June 14, 2021.  
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1 On July 13, 2021, this Court entered an Order to Show Cause why the case should not be  
2 dismissed for “lack of jurisdiction.” Thereafter, Appellant filed her Response to Order to Show  
3 Cause: Re: Mootness Due to Death, on August 12, 2021.

### 4 III. LEGAL AUTHORITY AND ARGUMENT

#### 5 A. *This case is now moot because Mae Brown passed away during the pendency of the* 6 *appeal.*

7 A little under a month after Appellant filed this appeal, Mae Brown passed away. Because  
8 this appeal centered on Mae Brown’s guardianship case, there is no longer an ongoing controversy  
9 for this Court to resolve, and therefore, this appeal is now moot.

11 Mootness is a question of justiciability. *Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d  
12 572, 574 (2010). The court is tasked with resolving actual controversies by an enforceable  
13 judgment, not rendering advisory opinions or declaring principles of law that cannot affect the case  
14 before it. *Id.* And while a case may present an actual controversy at first, subsequent events can  
15 render the case moot. *Id.* Here, because Respondent has passed away and this case centered on a  
16 potential guardianship over her, there is no ongoing controversy for this Court to resolve. Any  
17 decision this Court might render in this case would only be a general declaration regarding the  
18 law, it would not resolve any issue in the present case. Because Respondent has passed away, even  
19 if Appellant were successful in this appeal, the guardianship case cannot be reopened and  
20 Appellant cannot file a new petition. There is simply nothing for this Court to resolve in regards  
21 to a potential guardianship over Respondent, Mae Brown.

24 Appellant argues that even though this case is now moot, this Court can nonetheless  
25 consider her appeal because the issue presented is capable of repetition, yet evading review. The  
26 capable of repetition, yet evading review standard provides a mootness exception. *University of*  
27 *Community College System of Nevada v. Nevadans for Sound Government*, 120 Nev. 712, 720,  
28

1 100 P.3d 179, 186 (2004). However, it applies “only in exceptional circumstances.” *In re*  
2 *Guardianship of L.S. & H.S.*, 120 Nev. 157, 161, 87 P.3d 521, 524 (2004). For this exception to  
3 apply, the issue “must be too short in its duration to be fully litigated prior to its natural expiration,  
4 and a reasonable expectation must exist that the same complaining party will suffer the harm  
5 again.” *Id.*

6  
7 Here, the issue presented—whether the district court erred by dismissing Appellant’s  
8 petition for guardianship because she failed to file a physician’s certificate—is not too short in  
9 duration such that it evades review. While Mae Brown’s death may have rendered the issue too  
10 short for review in this particular case, the issue itself is not one that is naturally too short in  
11 duration such that it evades review.

12  
13 Further, and most importantly, this Court recently decided two cases that raised issues  
14 identical to the ones raised in this case. *See In re Guardianship of Rubin*, No. 80300, 137 Nev.,  
15 Adv. Op. 27, \_\_\_ P.3d \_\_\_ (2021); *In re Guardianship of Powell*, No. 80210, 2021 WL 3185274  
16 (Nev. July 27, 2021). Those cases concerned the same general issues presented in this appeal: the  
17 parameters of the physician’s certificate requirement under NRS 159.044(2)(i) and whether a  
18 petitioner has some automatic right to an evidentiary hearing when they are unable to obtain a  
19 physician’s certificate. The issues raised in this appeal are not evading review, and have already  
20 been decided by this Court during the pendency of this appeal. In both *Powell* and *Rubin*, this  
21 Court ruled that the “failure to include a certificate that meets NRS 159.044(2)(i)(1)’s requirements  
22 warrants the petition’s dismissal.” *In re Guardianship of Powell*, No. 80210, 2021 WL 3185274  
23 (Nev. July 27, 2021) (citing *In re Guardianship of Rubin*, 137 Nev., Adv. Op. 27, \_\_\_ P.3d \_\_\_  
24 (2021)). Appellant in this case presented even less before the district court than the appellants in  
25 *Powell* and *Rubin*. In fact, Appellant did not present a physician’s certificate in the form typically  
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1 required by the district court in guardianship cases, let alone any evidence from a medical  
2 professional regarding Mae Brown's capacity. Put simply, the scenario presented in this case does  
3 not lend anything to the same issues that this Court already decided in *Powell* and *Rubin*. And  
4 Appellant fails to even acknowledge or attempt to distinguish *Powell* and *Rubin*—the most  
5 relevant cases on this issue—in her Response. Accordingly, the issues presented in this appeal do  
6 not fall into the capable of repetition, yet evading review exception, and therefore, this Court  
7 should dismiss this appeal as moot.  
8

9 **B. *The Guardianship Court cannot proceed, and cannot determine damages to the Estate.***

10 Appellant suggests that so long as an Injury-In-Fact remains which may be resolved, then  
11 the appeal should not be dismissed. However, Appellant fails to recognize the context in which  
12 this is appeal is raised. The case before the District Court revolved around Appellant's request to  
13 be appointed as guardian for Mae Brown, and the district court only made a decision in regards to  
14 that specific request under NRS Chapter 159.  
15

16 Appellant cites her allegations of financial abuse and exploitation mentioned within her  
17 District Court pleadings and papers. The alleged financial abuse and exploitation, however, are  
18 acts alleged to have been committed by the Power of Attorney for Mae Brown, rather than a  
19 guardian. Neither this Court nor District Court can resolve such concerns within the context of  
20 NRS Chapter 159 because no guardian was ever appointed over Mae Brown, and therefore, there  
21 is no basis for recovery under this Chapter. While these issues are not appropriate given the posture  
22 of the guardianship case, it does not appear that anything would preclude Mae Brown's estate from  
23 raising such issues in a probate case.  
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25 Further, this should go without saying, but the district court cannot establish a guardianship  
26 over Mae Brown posthumously. Even if that were possible, the District Court could only resolve  
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1 acts of the Guardian committed within the context of his or her term as Guardian. Because the  
2 Guardianship Petition was never granted, the District Court, within the context of a guardianship  
3 case, would not have jurisdiction to preside over a recovery action. Given those limitations, no  
4 Injury-in-Fact yet exists that can be resolved.

5 ***C. The issues raised in this case are moot, even if a Personal Representative were***  
6 ***substituted for Mae Brown.***

7 The Appellant cites Nevada Rules of Appellate Procedure 43 to suggest that the case is not  
8 moot insomuch as a Personal Representative can be appointed to pursue an appeal after an  
9 appellant's death. In support of her argument, the Appellant cites to *Cf. State v. Salazar, 123 NM*  
10 *778, 945 P.2d, 996 (1003-04) (1997)*. *Salazar*, however, stands for the proposition that an appeal  
11 can survive the death of the Appellant. But Appellant fails to recognize that her argument on this  
12 point does not resolve the ultimate mootness issue.

13 A guardianship is only intended to provide a court-appointed decision-maker for a  
14 protected person who is unable to handle their affairs. With there being no protected person for a  
15 guardian to be appointed over in this matter (given that Mae Brown has passed away), there is  
16 simply no basis for a guardianship case to proceed. Even if Appellant were right with every issue  
17 raised in her Response, the end result would simply be this case being remanded to the District  
18 Court where it would be dismissed due to Mae Brown's death.

19 The Appellant suggests that she intends to file a Motion to Substitute as a Personal  
20 Representative in District Court Case G-21-054970-A. However, nothing under Nevada Law  
21 provides the Guardianship Court with the authority to appoint a Personal Representative for a  
22 proposed protected person who has passed away. The appropriate venue for a Personal  
23 Representative to pursue posthumous but unresolved claims, which are the main issues Appellant  
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1 raises here, is in Probate Court. Nothing involved in this case would preclude Appellant from  
2 raising such issues in a probate action.

3 Therefore, the novel result that Appellant argues for would have little effect on the outcome  
4 of this guardianship case. The case, for all the reasons set forth above, remains moot.

#### 6 IV. CONCLUSION

7 This Court should dismiss the instant appeal because it has been rendered moot due to Mae  
8 Brown's passing, and no mootness exception applies.

9 DATED this 25<sup>th</sup> day of August, 2021.

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