IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSON AND ESTATE OF KATHLEEN JUNE JONES, AN ADULT PROTECTED PERSON.	Case No. 81799
KATHLEEN JUNE JONES, Appellant, vs. ROBYN FRIEDMAN; AND DONNA SIMMONS, Respondents.	Appeal from the Eighth Judicial District Court, the Honorable Linda Marquis Presiding

RESPONDENTS' ANSWERING BRIEF

John P. Michaelson, Esq.
Nevada Bar No. 7822
MICHAELSON & ASSOCIATES, LTD.
2200 Paseo Verde Parkway, Suite 160
Henderson, Nevada 89052
Telephone: (702) 731-2333
Facsimile: (702) 731-2337
john@Michaelsonlaw.com

Micah S. Echols, Esq.
Nevada Bar No. 8437
Claggett & Sykes Law Firm
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
Telephone: (702) 655-2346
Facsimile: (702) 655-3763
micah@claggettlaw.com

Attorneys for Respondents, Robyn Friedman and Donna Simmons

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Robyn Friedman and Donna Simmons are individuals.

2. Robyn Friedman and Donna Simmons are or have been represented in the District Court and this Court by Sylvester & Polednak, Ltd.; Michaelson & Associates, Ltd.; and Claggett & Sykes Law Firm.

DATED this 27th day of May 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols
Micah S. Echols, Esq.
Nevada Bar No. 8437

MICHAELSON & ASSOCIATES, LTD.
John P. Michaelson, Esq.
Nevada Bar No. 7822
john@Michaelsonlaw.com

Attorneys for Respondents,
Robyn Friedman and Donna Simmons

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I. JURISDICTIONAL STATEMENT

The Legal Aid Center of Southern Nevada ("LACSN") pursues this appeal on behalf of Kathleen June Jones ("Ms. Jones").[1] LACSN argues that this Court has appellate jurisdiction over the District Court's order granting attorney fees to Respondents, Robyn Friedman ("Robyn") and Donna Simmons ("Donna"). Appellant's Opening Brief ("AOB") 1. However, the attorney fees order is not a final, appealable order. 1 Appellant's Appendix ("AA") 286–299. LACSN claims that NRAP 3A(b)(1) provides the jurisdictional basis for its appeal. However, NRAP 3A(b)(8) is the provision within this rule that allows for an appeal from an attorney fees order. But, according to this rule, the fees order must be entered "after final judgment." *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). As the Court can see from the District Court docket, this litigation has not ended. 12 Respondents' Appendix ("RA") 1622–1635. Ultimately, LACSN has the burden to establish proper jurisdiction in this Court. *See Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984); *In re Estate of Miller*, 111 Nev. 1, 5, 888 P.2d 433, 435 (1995). However, NRAP 3A(b)(1) does not provide the basis for appellate jurisdiction because there is no final judgment.

[1] Although LACSN's opening brief refers to Kimberly Jones as "Ms. Jones," Robyn and Donna refer to Kimberly Jones as "Kim."

II. ROUTING STATEMENT

LACSN has not identified an issue of first impression that fits within NRAP 17(11) or (12) for the Supreme Court to retain this appeal. Rather, LACSN only challenges the amount of a $57,742.16 fees award. 1 AA 286–299. Due to the nature of LACSN's arguments in this appeal, the review by this Court is deferential. *See Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (reviewing the amount of fees awarded "for an abuse of discretion, and will affirm an award that is supported by substantial evidence") (citation omitted). Although LACSN mentions NRS 159.344 in its opening brief, LACSN does not ask this Court to construe any provisions of this statute. LACSN also does not specifically identify any provisions of this statute that it contends that the District Court misapplied. Instead, LACSN only offers general arguments to avoid the District Court's award of attorney fees to Robyn and Donna. Thus, LACSN has not presented an issue for the Supreme Court to retain this appeal. Therefore, this appeal should be assigned to the Court of Appeals.

III. ISSUES ON APPEAL

A. WHETHER LACSN HAS FAILED TO PROPERLY CHALLENGE THE DISTRICT COURT'S AWARD OF $57,742.16 IN ATTORNEY FEES TO ROBYN AND DONNA BY:

(1) OFFERING ONLY ARGUMENTS THAT LACK SPECIFICITY;

(2) OMITTING RELEVANT PORTIONS OF THE RECORD, WHILE ARGUING THAT THE AWARD OF ATTORNEY FEES IS UNSUPPORTED BY THE RECORD;

(3) IMPROPERLY ATTEMPTING TO REFER THIS COURT TO LACSN'S OWN DISTRICT COURT FILINGS FOR ITS POSITION; AND

(4) PRESENTING FACTUAL CHALLENGES THAT CANNOT BE DISTURBED ON APPEAL.

B. WHETHER THE DISTRICT COURT PROPERLY AWARDED $57,742.16 IN ATTORNEY FEES TO ROBYN AND DONNA, DESPITE LACSN'S CHALLENGES SINCE:

(1) LACSN OFFERS AN IMPROPER STANDARD THAT DOES NOT TRACK THE LANGUAGE OF NRS 159.344(5)(b);

(2) THE RECORD, AS A WHOLE, DEMONSTRATES THAT THE DISTRICT COURT'S AWARD OF ATTORNEY FEES TO ROBYN AND DONNA COMPLIED WITH NRS 159.344(5)(b);

(3) LACSN IMPROPERLY ARGUES THAT THE DURATION OF LITIGATION IS A RELEVANT INQUIRY TO DETERMINE THE REASONABLENESS OF ATTORNEY FEES; AND

(4) AS A FACTUAL MATTER, KIM'S POWERS OF ATTORNEY WERE COMPLETELY INEFFECTUAL AGAINST THE HARMS CAUSED TO MS. JONES.

IV. STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

This is an appeal in which LACSN challenges the amount of the District Court's award of $57,742.16 in attorney fees to Robyn and Donna under NRS 159.344 for acting as temporary co-guardians to Ms. Jones during this litigation. 1 AA 286–299. Robyn and Donna sought emergency guardianship relief for their mother, Ms. Jones, because of her "safety and well-being…despite the existence of a Power of Attorney." 1 AA 287. In granting temporary guardianship, the District Court was concerned about Ms. Jones' husband, Rodney Gerald Yeoman, whose daughter and son-in-law had transferred Ms. Jones' real property to themselves and had begun proceedings to evict Ms. Jones from her own home. 1 AA 287–288. Robyn and Donna performed work to benefit Ms. Jones throughout this litigation until their eventual discharge as temporary co-guardians, in compliance with NRS 159.344. 10 RA 1417–1421.

In this appeal, LACSN's challenges are largely factual and beyond the purview of this Court's role as an appellate court. However, LACSN's substantive challenges also fail as a matter of law. For the following reasons, this Court should affirm the District Court's award of attorney fees to Robyn and Donna:

LACSN has offered only arguments that lack specificity. In its opening brief, LACSN offers general arguments to challenge the amount of the District Court's award of $57,742.16 in attorney fees to Robyn and Donna. However, "prejudice must be established in order to reverse a district court judgment; it is not

presumed…." *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008).

LACSN has omitted relevant portions of the record, while arguing that the award of attorney fees is unsupported by the record. Ultimately, LACSN, as the appellant, has the burden to present this Court with a complete record. *See Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 600, 172 P.3d 131, 133 (2007) ("[A]ppellant bears the responsibility of ensuring an accurate and complete record on appeal and that missing portions of the record are presumed to support the district court's decision."). But, LACSN's arguments based upon the alleged lack of evidence largely amount to bare assertions because it has not presented this Court with the corresponding portions of the record to support its assertions.

LACSN has improperly attempted to refer this Court to LACSN's own District Court filings for its position. Instead of providing some legal or factual support for its position, LACSN simply refers the Court to what appears to be a stand-alone exhibit from its own objection to Robyn and Donna's attorney fees petition filed in the District Court. 1 AA 300–336. However, this attempted incorporation by reference is expressly prohibited by NRAP 28(e)(2). Additionally, LACSN's referenced document does not have a file stamp from the District Court, which means it should be stricken from the record according to NRAP 30(c)(1).

LACSN has presented factual challenges that cannot be disturbed on appeal. According to the standard of review for attorney fees orders, this Court

must only look to any evidence that supports the District Court's award. *See Logan*, 131 Nev. at 266, 350 P.3d at 1143. Implicit within this standard is the broader rule that this Court does not weigh competing evidence. *See Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (noting that appellate courts are "not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party"). Therefore, the Court should refuse to second guess the District Court's factual findings since LACSN's contrary factual assertions cannot disturb these factual findings.

LACSN offers an improper standard that does not track the language of NRS 159.344(5)(b). The statutory language of NRS 159.344(5)(b) states, "In determining whether attorney's fees are just, reasonable and necessary, the court ***may*** consider all the following factors . . . (b) Whether the services conferred any actual benefit upon the protected person ***or*** attempted to advance the best interests of the protected person." (emphasis added). But, LACSN only discusses the first half of the provision in NRS 159.344(5)(b), and avoids that the entire standard is discretionary. Therefore, LACSN's analysis of NRS 159.344(5)(b) is incomplete and does not serve to disturb the District Court's award of attorney fees to Robyn and Donna.

The record, as a whole, demonstrates that the District Court's award of attorney fees to Robyn and Donna complied with NRS 159.344. Although LACSN misreads the standard in NRS 159.344(5)(b), Robyn and Donna have,

nevertheless, complied with this statute, as evidenced by the District Court's attorney fees order and the record as a whole. 1 AA 286–299; *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001) (allowing appellate courts to look to the record to support an award of attorney fees). Therefore, the Court should affirm the District Court's award of attorney fees and costs based upon the District Court's findings, as well as the substantial evidence in the record.

LACSN improperly argues that the duration of litigation is a relevant inquiry to determine the reasonableness of attorney fees. In its opening brief, LACSN argues that Robyn and Donna were only temporary co-guardians for 37 days. AOB 22. However, the record demonstrates that Robyn and Donna were involved in this litigation for over nine months. 1 RA 1–58; 10 RA 1417–1421. Regardless, the duration of time is not a factor in determining the reasonableness of attorney fees in either NRS 159.344 or *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349–350, 455 P.2d 31, 33 (1969). Therefore, the Court should reject LACSN's challenge to the reasonableness of Robyn and Donna's attorneys fees based upon the duration of time.

As a legal and factual matter, Kim's powers of attorney were completely ineffectual against the harms caused to Mr. Jones. The District Court's order awarding attorney fees to Robyn and Donna reflects even though Kim had powers of attorney, they were ineffective to protect Ms. Jones from harm because the powers of attorney were simply ignored. 1 AA 287–288. As a matter of law, a power of

attorney can be revoked orally according to NRS 162A.820 and is, therefore, a very fluid document. Thus, LACSN's assertion that Kim's powers of attorney were sufficient to protect Ms. Jones, without the need for intervention by the District Court, is inaccurate according to both the facts of this case and Nevada law.

In summary, Robyn and Donna urge this Court to affirm the District Court's award of $57,742.16 in attorney fees to them based upon NRS 159.344 for the several procedural and legal reasons presented in this answering brief. Alternatively, this Court should affirm the District Court's award of attorney fees based upon any other ground supported by the record. *See Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981) ("If a decision below is correct, it will not be disturbed on appeal even though the lower court relied upon wrong reasons.").

V. STANDARDS OF REVIEW

A. STANDARDS FOR REVIEWING FACTUAL FINDINGS.

This Court will not disturb a district court's findings of fact unless they are clearly erroneous and not supported by substantial evidence. *See Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005).

B. STANDARDS FOR REVIEWING AWARDS OF ATTORNEY FEES.

This Court reviews decisions awarding or denying attorney fees with an abuse of discretion standard. *See Frantz v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351, 361 (2000). Since an award of attorney fees is fact intensive, this Court will affirm an

award of attorney fees if it is based upon substantial evidence. *See Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

VI. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. ROBYN AND DONNA'S INITIAL PETITION.

Robyn, Donna, and Kim are all daughters of Ms. Jones. In September 2019, Robyn and Donna filed their "Ex-Parte Petition for Appointment of Temporary Guardian of the Person and Estate and Issuance of Letters of Temporary Guardianship, and Petition for Appointment of General Guardian of the Person and Estate and Issuance of Letters of General Guardianship." 1 RA 1–58. This initial petition was very detailed, verified by Robyn and Donna, and supported by various exhibits. *Id.* The petition explained that Ms. Jones lacks mental capacity, having suffered from dementia for years, and she is unable to care for herself medically or financially. 1 RA 2, ¶ 1. The most immediate concern within this petition was the unknowing transfer of Ms. Jones' real property to the children of her current husband, Mr. Yeoman. 1 RA 2, ¶ 2. Before filing this petition, Robyn and Donna attempted to resolve the various issues informally to no avail. 1 RA 2–3, ¶ 3.

Robyn and Donna's petition also explained that Mr. Yeoman and his children had prevented Ms. Jones from returning to her own home, they separated Ms. Jones from Kim, and Ms. Jones was not permitted to see her own healthcare providers. 1 RA 3, ¶ 4. Police officers were called, and there were allegations among the several parties that Ms. Jones had been kidnapped. 1 RA 3, ¶ 5. Additionally,

Mr. Yeoman's son-in-law had also begun proceedings to evict Ms. Jones from her own home. 1 RA 3–4, ¶ 6.

Even though Ms. Jones had powers of attorney, they were routinely ignored, which made at least a temporary guardianship necessary. 1 RA 4, ¶¶ 8–9. Although Kim was appointed as the power of attorney, she failed to prepare a plan for visitation and communication, thus frustrating the parties. 1 RA 4–5, ¶ 10. While Kim was the power of attorney, there was money missing from Ms. Jones' accounts. 1 RA 5, ¶ 11. And, Ms. Jones was missing out of state from her own home for weeks. 1 RA 5, ¶ 12.

Robyn and Donna explained that they were willing to pay Kim's expenses as the power of attorney, or even a guardian, just to get some organization and Court supervision for Ms. Jones. 1 RA 6, ¶ 13–14. Due to the immediate harm, the District Court granted Robyn and Donna's petition, and they were appointed as temporary co-guardians. 1 RA 63–70, 71–75. It was at this point that LACSN appeared in the case to represent Ms. Jones, and Mr. Yeoman also appeared in the case through counsel. 1 RA 76–83.

B. MS. JONES' INCAPACITY AND MEDICAL RECORDS.

At the time Robyn and Donna filed their petition, they also provided the District Court with a "Confidential Physician's Certificate of Incapacity and Medical Records." 13 RA 1636–1641. Although LACSN acknowledges that Ms. Jones had declined cognitively, LACSN also asserts that Ms. Jones was the "preferred and

chosen agent." AOB 6. Tellingly, however, LACSN omits from its opening brief all the harm that occurred to Ms. Jones under Kim's watch as the power of attorney.

C. OBJECTIONS TO ROBYN AND DONNA'S INITIAL PETITION.

After Robyn and Donna's petition was granted in part, Mr. Yeoman filed an objection, claiming that the temporary guardianship was unnecessary. 1 RA 84–119. Mr. Yeoman also argued that he should become a temporary guardian of Ms. Jones. 1 RA 93–95. Kim also filed her own objection and similarly moved to have herself appointed as a temporary and general guardian of Ms. Jones. 2 RA 120–257. Kim essentially argued that she was capable of managing Ms. Jones' affairs, even though there were serious problems that gave rise to Robyn and Donna's petition. *Id.*

Robyn and Donna filed a reply in support of their petition, which provided additional support for their petition. 3 RA 262–282. The reply reiterated that even though Kim had powers of attorney for both financial and health concerns for Ms. Jones, Kim had failed to generate a plan on either front. 3 RA 263–264, ¶ 2–3. The reply also confirmed that the powers of attorney were ignored, especially given that Ms. Jones' real property had been unknowingly transferred. 3 RA 264–265, ¶ 4. Robyn and Donna further asserted that withholding medical care from Ms. Jones, among other mistreatment, amounted to elder abuse under NRS 200.5092. 3 RA 272.

The District Court eventually entered a written order appointing Kim as the guardian of Ms. Jones, while maintaining Robyn and Donna as co-guardians of Ms. Jones. 5 RA 488–495.

D. FURTHER ACTIONS TAKEN BY ROBYN AND DONNA TO BENEFIT MS. JONES.

Due to the petition filed by Robyn and Donna, the District Court appointed an investigator to examine Ms. Jones' "personal circumstances including, but not limited to, the Protected Person's [Ms. Jones] medical and psychiatric/psychological condition, care and maintenance, educational status, placement, and financial status." 1 RA 432, ¶ 2. The investigator was ordered to file written reports with the Court within 90 days. 1 RA 433, ¶ 5. These reports were subsequently filed with the Court. 13 RA 1647–1648, 1649–1698, 1699; 14 RA 1700–1881.

E. KIM'S PETITIONS TO RECOVER MS. JONES' PROPERTY AND SEEK CIVIL RELIEF AND MR. YEOMAN'S OPPOSITIONS.

Given the contentious nature of this litigation, Kim was required to retain new counsel which appeared and immediately filed a petition for return of property, which focused on two dogs belonging to Ms. Jones. 4 RA 438–451. Kim's second petition focused on having Ms. Jones' real property returned to her. 4 RA 452–487. Not surprisingly, Mr. Yeoman opposed both petitions. 5 RA 498–525, 526–528. The District Court eventually granted both motions after a hearing. 5 RA 630–635.

F. ROBYN AND DONNA'S PETITION FOR ATTORNEY FEES AND COSTS, AND KIM AND LACSN'S OBJECTIONS.

After approximately five months of contentious litigation, Robyn and Donna filed their petition for attorney fees and costs. 7 RA 847–892. Robyn and Donna's petition explained that because of their actions, they provided the means for Ms. Jones to recover her real property that had been transferred to Mr. Yeoman's daughter and son-in-law. 7 RA 849–850. Robyn and Donna specifically requested that the award of attorney fees be taken from Ms. Jones' estate after her passing, ***not*** from her liquid guardianship estate. 7 RA 857–858. Rather, they requested that the award of attorney fees become a lien on a rental property in California held by Ms. Jones, such that the award of fees would not affect Ms. Jones, but only the distribution of her estate after her passing. *Id.* Robyn and Donna requested $61,755 in attorney fees and $274.66 in costs, for a total of $62,029.66. 7 RA 859. Their petition further analyzed their time entries in compliance with the provisions of NRS 159.344(3). 7 RA 859–864. LACSN objected to Robyn and Donna's petition for attorney fees and costs. 8 RA 949–975. Kim also filed her own objection to Robyn and Donna's petition for attorney fees and costs. 8 RA 984–990. Robyn and Donna filed a combined reply to both objections. 8 RA 998–1056. In their reply, Robyn and Donna voluntarily reduced the requested amount to $57,742.16. 8 RA 1009.

The District Court held a hearing on various pending matters, including Robyn and Donna's petition for attorney fees and costs. 1 AA 260–282. The District Court's written order reflects the reasons for granting Robyn and Donna's requested attorney fees and costs. 1 AA 283–299. LACSN appeals from this attorney fees order. 12 RA 1592–1593.

G. ROBYN AND DONNA'S PETITION FOR DISCHARGE AS TEMPORARY CO-GUARDIANS.

In May 2020, Robyn and Donna filed a petition to be discharged as temporary co-guardians of Ms. Jones. 9 RA 1177–1191. With no oppositions being filed, Robyn and Donna were discharged as temporary co-guardians in June 2020. 10 RA 1417–1421.

VII. LEGAL ARGUMENT

A. LACSN HAS FAILED TO PROPERLY CHALLENGE THE DISTRICT COURT'S AWARD OF $57,742.16 IN ATTORNEY FEES TO ROBYN AND DONNA.

1. LACSN Has Offered Only Arguments that Lack Specificity.

LACSN has offered only arguments that lack specificity. In its opening brief, LACSN offers general arguments to challenge the amount of the District Court's award of $57,742.16 in attorney fees to Robyn and Donna. However, "prejudice must be established in order to reverse a district court judgment; it is not presumed…." *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008). Indeed, this Court "do[es] not presume prejudice from the

occurrence of error in a civil case." *Boyd v. Pernicano*, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963). Additionally, well established Nevada law places the burden on LACSN, as the appellant in this appeal, to "present relevant authority" in support of its "appellate concerns." *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 331 n.38, 130 P.3d 1280, 1289 n.38 (2006). In fact, due to LACSN's failure to come forward with cogent arguments, this Court should ignore the general nature of LACSN's arguments. *See id.*

The District Court's attorney fees award contains 14 pages of findings and legal analysis. 1 AA 286–299. Within this order, the District Court explained its "grave concerns regarding the safety and well-being of the Protected Person [Ms. Jones]…." 1 AA 287. The District Court also found that Kim, while holding powers of attorney, together with Ms. Jones "were unable to respond to the substantial and immediate risk of financial loss." 1 AA 288. Further, the District Court established that Kim "was unable to respond to the exploitation and isolation of the Protected Person [Ms. Jones]." *Id.* The District Court also observed that "the Protected Person [Ms. Jones] and the POA [Kim] were unable to establish that they were able to obtain appropriate medical care and medication for the Protected Person [Ms. Jones]." *Id.* The District Court expressed concern that Kim herself did not come forward with a petition of her own with the finding that it "was clear that the Power of Attorney was being ignored, violated or was insufficient to protect the Protected Person." *Id.* The District Court also specifically found Robyn and Donna "were left with no

alternative, but to intervene and instigate litigation in order [to] safeguard the [P]rotected [P]erson." 1 AA 289. The District Court noted that Robyn and Donna could have challenged the powers of attorney, particularly under the circumstances of this case, but they chose to "benefit the [P]rotected [P]erson and to minimize the cost of litigation." *Id.* The District Court's order continues with very specific findings that are favorable to Robyn and Donna's position in this litigation, which has always been to benefit and support Ms. Jones. 1 AA 290–299.

Despite the District Court's very specific findings, LACSN offers only generalized arguments, which are legally insufficient to challenge the District Court's attorney fees order. *See Logan*, 131 Nev. at 266, 350 P.3d at 1143. For example, LACSN generally argues that the "district court's various findings to support that award of fees runs contrary to the fact that Respondents [Robyn and Donna], through the guardianship proceeding, did not confer a benefit upon Appellant [Ms. Jones]." AOB 19–20. LACSN further argues that the District Court's findings were "contrary to the facts in this matter that the guardian proceeding resulted in [Kim] continuing to be Appellant's [Ms. Jones] guardian and protector." AOB 20. However, LACSN's generalized assertions do not overcome the District Court's award of attorney fees, as a matter of law. Indeed, the argument of counsel is not evidence. *See Jain v. McFarland*, 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the facts of the case.") (citations omitted). And, importantly, LACSN's bare

assertions do not satisfy its burden to demonstrate specific error in the District Court's attorney fees order. Therefore, due to the lack of specificity in LACSN's arguments, the Court should ignore such arguments.

2. LACSN Has Omitted Relevant Portions of the Record, While Arguing that the Award of Attorney Fees Is Unsupported by the Record.

LACSN has omitted relevant portions of the record, while arguing that the award of attorney fees is unsupported by the record. In its opening brief, LACSN asserts that the "district court's order has no basis in fact, and no reasonable person would agree with the finding that Respondents [Robyn and Donna] improved Appellant's [Ms. Jones] living circumstances or conferred any substantial benefit upon her." AOB 21. LACSN goes on to argue, "The district court allowing Respondents [Robyn and Donna] to recover $57,742.16 in fees, for work performed during a thirty-seven day period, is unreasonable and unsupported by the evidence in this matter." AOB 22. However, LACSN does not present "the evidence in this matter" for the Court to consider. Instead, LACSN provides this Court with only a single appendix volume. Ultimately, LACSN, as the appellant, has the burden to present this Court with a complete record. *See Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 600, 172 P.3d 131, 133 (2007) ("[A]ppellant bears the responsibility of ensuring an accurate and complete record on appeal and that missing portions of the record are presumed to support the district court's decision.").

As presented, LACSN's arguments based upon the alleged lack of evidence largely amount to bare assertions because it has not presented this Court with the corresponding portions of the record to support its assertions. *See Jain*, 109 Nev. at 475–476, 851 P.2d at 457. Additionally, this Court is not required to comb the record to attempt to ascertain LACSN's position. *See Summa Corp. v. Brooks Rent-A-Car*, 95 Nev. 779, 780, 602 P.2d 192, 193 (1979) ("This court will not comb the record to ascertain matters which should have been set forth in [appellant's] brief."). Importantly, LACSN cannot rehabilitate its deficient opening brief and appendix by attempting to raise new issues or evidence for the first time in its reply brief. *See LaChance v. State*, 130 Nev. 263, 279 n.7, 321 P.3d 919, 930 n.7 (2014) ("Because the Nevada Rules of Appellate Procedure do not allow litigants to raise new issues for the first time in a reply brief, we decline to consider this argument.") (citing NRAP 28(c)). Therefore, the Court should ignore LACSN's assertions claiming a lack of evidence, due to LACSN's failure to present the evidence for this Court to consider.

3. LACSN Has Improperly Attempted to Refer this Court to LACSN's Own District Court Filings for Its Position.

LACSN has improperly attempted to refer this Court to LACSN's own District Court filings for its position. Toward the end of its opening brief, instead of offering an analysis of its challenges to the District Court's attorney fees award, LACSN simply concludes that there were "problematic billing entries." AOB 23–

24. However, LACSN does not offer any legal analysis to support its position. *Id.* This bare assertion should be ignored for lack of legal support. *See Edwards*, 122 Nev. at 331 n.38, 130 P.3d at 1289 n.38.

Instead of providing some legal or factual support for its position, LACSN simply refers the Court to what appears to be a stand-alone exhibit from its own objection to Robyn and Donna's attorney fees petition filed in the District Court. 1 AA 300–336. LACSN's attempt to incorporate its own position by reference is expressly prohibited by NRAP 28(e)(2): "Parties ***shall not*** incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal." (emphasis added). Therefore, according to NRAP 28(e)(2), the Court should disregard LACSN's attempts to incorporate arguments by reference to its own District Court filings.

Since this referenced document does not have a file stamp from the District Court, its origin is unclear. 1 AA 300–336. To the extent that this referenced document was not previously filed in the District Court, it should be stricken from the appendix. According to NRAP 10(a), "[t]he trial court record consists of the papers and exhibits ***filed in the district court***, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk." (emphasis added). NRAP 30(c)(1) mandates that "[a]ll documents included in the appendix shall be placed in chronological order by the dates of filing beginning

with the first document filed, and ***shall bear the file-stamp of the district court clerk***, clearly showing the date the document was filed in the proceedings below." (emphasis added). With respect to the presentation of documents not filed in the district court, this Court has articulated, "We cannot consider matters not properly appearing in the record on appeal." *Carson Ready Mix, Inc. v. First Nat'l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981); *see also State ex rel. Sisson v. Georgetta*, 78 Nev. 176, 178, 370 P.2d 672, 673 (1962) (striking documents in a writ petition proceeding that were not part of the underlying court's record). Therefore, to the extent that LACSN's referenced document within its appendix was not part of the District Court record, the Court should strike it from the appendix.[2]

4. LACSN Has Presented Factual Challenges that Cannot Be Disturbed on Appeal.

LACSN has presented factual challenges that cannot be disturbed on appeal. In its opening brief, LACSN acknowledges the District Court's findings relevant to the attorney fees issues, yet asks this Court to believe LACSN's contrary assertions. For example, LACSN asserts: "The district court's various findings to support that award of fees runs contrary to the fact that Respondents [Robyn and Donna], through the guardianship proceeding, did not confer a benefit upon Appellant [Ms. Jones]."

[2] Even if the Court were to consider LACSN's index of challenges, Robyn and Donna refer the Court to their own responses filed in the District Court. 8 RA 1013–1056.

AOB 19–20. According to the standard of review for attorney fees orders, this Court must only look to any evidence that supports the District Court's award. *See Logan*, 131 Nev. at 266, 350 P.3d at 1143. Implicit within this standard is the broader rule that this Court does not weigh competing evidence. *See Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (noting that appellate courts are "not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party"); *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 365, 184 P.3d 378, 385 (2008) ("[I]t is not the role of this court to reweigh the evidence."); *Ryan's Express Transp. Servs. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.") (citations omitted). Therefore, the Court should refuse to second guess the District Court's factual findings since LACSN's contrary factual assertions cannot disturb these factual findings.

B. THE DISTRICT COURT PROPERLY AWARDED $57,742.16 IN ATTORNEY FEES TO ROBYN AND DONNA, DESPITE LACSN'S CHALLENGES.

1. LACSN Offers an Improper Standard that Does Not Track the Language of NRS 159.344(5)(b).

LACSN offers an improper standard that does not track the language of NRS 159.344(5)(b). Throughout its opening brief, LACSN argues that Robyn and Donna did nothing to confer a benefit upon Ms. Jones. *See, e.g.*, AOB 13. Aside

from the fact that the District Court found exactly the opposite, LACSN offers an incomplete analysis on this issue. The District Court's attorney fees order states several times that Robyn and Donna conferred a benefit upon Ms. Jones. *See, e.g.,* 1 AA 287–288. As such, LACSN's argument fails on this basis alone because the Court cannot presume error. *See Boyd*, 79 Nev. at 359, 385 P.2d at 343. In any event, the statutory language of NRS 159.344(5)(b) states, "In determining whether attorney's fees are just, reasonable and necessary, the court ***may*** consider all the following factors . . . (b) Whether the services conferred any actual benefit upon the protected person ***or*** attempted to advance the best interests of the protected person." (emphasis added). These emphasized terms give rise to two important points of analysis. First, the term "may" is discretionary, which prefaces this entire section, meaning that the District Court was not obligated to make the specific finding that the "services conferred any actual benefit upon the protected person…." *See, e.g., Rivero v. Rivero*, 125 Nev. 410, 431–432, 216 P.3d 213, 228 (2009) ("Because the term 'may' is discretionary, the district court has discretion to review a support order based on changed circumstances but is not required to do so."); *Tarango v. State Indus. Ins. Sys.*, 117 Nev. 444, 462 n.20, 25 P.3d 175, 187 n.20 (2001) (commenting that in statutes, "may" is permissive and "shall" is mandatory).

Second, under NRS 159.344(5)(b), the District Court "may" consider either the actual benefit conferred "or" attempts to "advance the best interests of the protected person." The term "or" in the statute means that the Court can satisfy one

condition or the other. *See* Merriam-Webster Online Dictionary https://www.merriam-webster.com/dictionary/or (defining "or" as "used as a function word to indicate an alternative") (last accessed May 27, 2021). Thus, LACSN's analysis of NRS 159.344(5)(b) is incomplete because it fails to consider whether Robyn and Donna "attempted to advance the best interests of the protected person." Additionally, LACSN's citation to foreign case law to support its partial reading of NRS 159.344(5)(b) cannot change the plain language of the statute, which the District Court followed. *Cf. Egan v. Chambers*, 129 Nev. 239, 240, 299 P.3d 364, 365 (2013) ("While we acknowledge the important role that stare decisis plays in Nevada's jurisprudence, we recognize that we broadened the scope of NRS 41A.071, expanding the reach of the statute beyond its precise words."), *superseded by statute as recognized in Szymborski v. Spring Mt. Treatment Ctr.*, 133 Nev. 638, 649 n.2, 403 P.3d 1280, 1289 n.2 (2017). Therefore, LACSN's analysis of NRS 159.344(5)(b) is incomplete and does not serve to disturb the District Court's award of attorney fees to Robyn and Donna.

2. The Record, as a Whole, Demonstrates that the District Court's Award of Attorney Fees to Robyn and Donna Complied With NRS 159.344.

The record, as a whole, demonstrates that the District Court's award of attorney fees to Robyn and Donna complied with NRS 159.344. Although LACSN misreads the standard in NRS 159.344(5)(b), Robyn and Donna have, nevertheless, complied with this statute, as evidenced by the District Court's attorney fees order

and the record as a whole. 1 AA 286–299; *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001) (allowing appellate courts to look to the record to support an award of attorney fees). Thus, the Court only needs to look to the District Court's attorney fees order. However, if there is anything missing from the District Court's order, this Court is permitted to look to the record to support the order. *Id.*

Robyn and Donna's petition explained that Ms. Jones lacks mental capacity, having suffered from dementia for years, and she is unable to care for herself medically or financially. 1 RA 2, ¶ 1. The most immediate concern within this petition was the unknowing transfer of Ms. Jones' real property to the children of her current husband, Mr. Yeoman. 1 RA 2, ¶ 2. Robyn and Donna's petition also explained that Mr. Yeoman and his children had prevented Ms. Jones from returning to her own home, they separated Ms. Jones from Kim, and Ms. Jones was not permitted to see her own healthcare providers. 1 RA 3, ¶ 4. Police officers were called, and there were allegations among the several parties that Ms. Jones had been kidnapped. 1 RA 3, ¶ 5. Additionally, Mr. Yeoman's son-in-law had also begun proceedings to evict Ms. Jones from her own home. 1 RA 3–4, ¶ 6.

Even though Ms. Jones had powers of attorney, they were routinely ignored, which made at least a temporary guardianship necessary. 1 RA 4, ¶¶ 8–9. Although Kim was appointed as the power of attorney, she failed to prepare a plan for visitation and communication, thus frustrating the parties. 1 RA 4–5, ¶ 10. While Kim was the power of attorney, there was money missing from Ms. Jones' accounts.

1 RA 5, ¶ 11. And, Ms. Jones was missing out of state from her own home for weeks. 1 RA 5, ¶ 12. At the time Robyn and Donna filed their petition, they also provided the District Court with a "Confidential Physician's Certificate of Incapacity and Medical Records." 13 RA 1636–1641.

Due to the petition filed by Robyn and Donna, the District Court appointed an investigator to examine Ms. Jones' "personal circumstances including, but not limited to, the Protected Person's [Ms. Jones] medical and psychiatric/psychological condition, care and maintenance, educational status, placement, and financial status." 1 RA 432, ¶ 2. The investigator was ordered to file written reports with the Court within 90 days. 1 RA 433, ¶ 5. These reports were subsequently filed with the Court. 13 RA 1647–1648, 1649–1698, 1699; 14 RA 1700–1881.

By bringing this matter to the District Court's attention, Ms. Jones was eventually able to have the Court order Ms. Jones' dogs returned to her, as well as Ms. Jones' real property returned to her. 5 RA 630–635. Ultimately, Robyn and Donna were able to compel Kim to fulfill her duties to protect Ms. Jones, provide a financial and medical plan for Ms. Jones, and begin to have normal visitation and communication with Ms. Jones' daughters and her grandchildren.

LACSN next asserts that Robyn and Donna did work outside of the guardianship case for which no award of attorney fees should have been given. AOB 22–23. However, LACSN supports this argument only with a general reference to NRS 159.344(5)(k)–(n), which does not stand for the asserted

proposition. *See Edwards*, 122 Nev. at 331 n.38, 130 P.3d at 1289 n.38. In any event, the record reflects that the separate District Court litigation, Case No. P-19-100166 was a power of attorney matter initiated by Kim, involving Ms. Jones, in which Robyn and Donna attempted to settle. 8 RA 1004–1005. Thus, the matters were related and ultimately benefitted Ms. Jones. *See Wynn*, 117 Nev. at 13, 16 P.3d at 428; *Henderson v. Viesca*, 922 S.W.2d 553, 561 (Tex. App. 1996) (concluding that a guardian was able to recover attorney fees from a separate disgorgement action due to the similarity of the arguments); *In re Guardianship of Glenn*, 381 N.W.2d 77, 79 (Minn. Ct. App. 1986) (awarding surety attorney fees incurred in defending guardian against claim of mismanagement). Therefore, the Court should affirm the District Court's award of attorney fees and costs based upon the District Court's findings, as well as the substantial evidence in the record.

3. LACSN Improperly Argues that the Duration of Litigation Is a Relevant Inquiry to Determine the Reasonableness of Attorney Fees.

LACSN improperly argues that the duration of litigation is a relevant inquiry to determine the reasonableness of attorney fees. In its opening brief, LACSN argues that Robyn and Donna were only temporary co-guardians for 37 days. AOB 22. However, the record demonstrates that Robyn and Donna were involved in this litigation for over nine months before they were discharged as co-guardians. 1 RA 1–58; 10 RA 1417–1421. Regardless, the duration of time is not a factor in determining the reasonableness of attorney fees in either NRS 159.344 or *Brunzell*

v. Golden Gate Nat'l Bank, 85 Nev. 345, 349–350, 455 P.2d 31, 33 (1969). To hold otherwise would encourage the prohibited practice of adding language to statutes that does not exist. *See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 451, 117 P.3d 171, 174 (2005) ("[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.").

Importantly, NRS 159.344(5)(c)–(f) contains statutory factors that are patterned after the *Brunzell* factors for determining the reasonableness of attorney fees: (1) qualities of the advocates: ability, training, education, experience, professional standing, and skill; (2) the character of the work: difficulty, intricacy, importance, time, skill required, and responsibility imposed; (2) the work actually performed: skill, time, and attention; and (4) the result: whether the attorney was successful and the benefits derived. *See Brunzell*, 85 Nev. at 349–350, 455 P.2d at 33. The District Court weighed these factors in favor of the award of attorney fees to Robyn and Donna, as well as the additional factors in NRS 159.344(5)(f)–(n). 1 AA 291–295. Thus, LACSN has not properly challenged the reasonableness of the District Court's award of attorney fees to Robyn and Donna. Therefore, the Court should reject LACSN's challenge to the reasonableness of Robyn and Donna's attorneys fees based upon the duration of time.

4. As a Legal and Factual Matter, Kim's Powers of Attorney Were Completely Ineffectual Against the Harms Caused to Ms. Jones.

As a legal and factual matter, Kim's powers of attorney were completely ineffectual against the harms caused to Mr. Jones. The District Court's order awarding attorney fees to Robyn and Donna reflects even though Kim had powers of attorney, they were ineffective to protect Ms. Jones from harm because the powers of attorney were simply ignored. 1 AA 287–288. Within this order, the District Court explained its "grave concerns regarding the safety and well-being of the Protected Person [Ms. Jones]…." 1 AA 287. The District Court also found that Kim, while holding powers of attorney, together with Ms. Jones "were unable to respond to the substantial and immediate risk of financial loss." 1 AA 288. Further, the District Court established that Kim "was unable to respond to the exploitation and isolation of the Protected Person [Ms. Jones]." *Id.* The District Court also observed that "the Protected Person [Ms. Jones] and the POA [Kim] were unable to establish that they were able to obtain appropriate medical care and medication for the Protected Person [Ms. Jones]." *Id.* The District Court expressed concern that Kim herself did not come forward with a petition of her own with the finding that it "***was clear that the Power of Attorney was being ignored***, violated or was insufficient to protect the Protected Person." *Id.* (emphasis added). The District Court also specifically found Robyn and Donna "were left with no alternative, but to intervene and instigate litigation in order [to] safeguard the [P]rotected [P]erson."

1 AA 289. The District Court noted that Robyn and Donna could have challenged the powers of attorney, particularly under the circumstances of this case, but they chose to "benefit the [P]rotected [P]erson and to minimize the cost of litigation." *Id.* Thus, the record is replete with proof that Kim's powers of attorney were completely ineffective to prevent the harm done to Ms. Jones.

As a matter of law, a power of attorney can be revoked orally according to NRS 162A.820 and is, therefore, a very fluid document. Thus, LACSN's assertion that Kim's powers of attorney were sufficient to protect Ms. Jones, without the need for intervention by the District Court, is inaccurate according to both the facts of this case and Nevada law. *See Jain*, 109 Nev. at 475–476, 851 P.2d at 457.

VIII. CONCLUSION

In summary, Robyn and Donna urge this Court to affirm the District Court's award of $57,742.16 in attorney fees to them based upon NRS 159.344 for the several procedural and legal reasons presented in this answering brief.

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Alternatively, this Court should affirm the District Court's award of attorney fees based upon any other ground supported by the record. *See Torres*, 97 Nev. at 403, 632 P.2d at 1158.

DATED this 27th day of May 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols
Micah S. Echols, Esq.
Nevada Bar No. 8437

MICHAELSON & ASSOCIATES, LTD.
John P. Michaelson, Esq.
Nevada Bar No. 7822
john@Michaelsonlaw.com

Attorneys for Respondents,
Robyn Friedman and Donna Simmons

CERTIFICATE OF COMPLIANCE

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-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 28.1(e)(2) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☐ proportionally spaced, has a typeface of 14 points or more and contains _____ words: or

☒ does not exceed 30 pages.

3. Finally, I hereby certify that I have read this 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.

4. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 27th day of May 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols
Micah S. Echols, Esq.
Nevada Bar No. 8437

MICHAELSON & ASSOCIATES, LTD.
John P. Michaelson, Esq.
Nevada Bar No. 7822
john@Michaelsonlaw.com

Attorneys for Respondents,
Robyn Friedman and Donna Simmons

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENTS' ANSWERING BRIEF** was filed electronically with the Supreme Court of Nevada on the 27th day of May 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Appellant–Kathleen June Jones

Maria L. Parra-Sandoval (Legal Aid Center of Southern Nevada, Inc.)
Joel E. Tasca (Ballard Spahr LLP/Las Vegas)

/s/ Anna Gresl
Anna Gresl, an employee of
Claggett & Sykes Law Firm