IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

RESPONDENTS' MOTION TO REISSUE
OCTOBER 20, 2021 , ORDER OF AFFIRMANCE AS AN OPINION

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RESPONDENTS' MOTION TO REISSUE
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Respondents, Robyn Friedman ("Robyn") and Donna Simmons ("Donna"), by and through their counsel of record, hereby move this Court pursuant to NRAP 36(f) to reissue the October 20, 2021, Order of Affirmance as an opinion, which is attached **Exhibit 1**.

I. *INTRODUCTION*

Robyn and Donna respectfully request that this Court reissue its October 20, 2021, Order of Affirmance as an opinion for several reasons. The Court's order presents issues of first impression, according to NRAP 36(c)(1)(A), and issues of public importance that have application beyond the parties to this litigation, according to NRAP 36(c)(1)(C). The Court's order analyzes NRS 159.344, which is a new statute that was enacted in 2017. The Court's order reissued as a published opinion would be the first decision construing this statute. This Court's clarifications of NRS 159.344 are of public importance throughout the State of Nevada. This importance is evident by the Supreme Court's Order Approving Additional Statewide Rules for Guardianship, ADKT 507 (Nov. 7, 2019), which mentions NRS 159.344 under Rule 7.

Guardianship counsel in this case, John P. Michaelson, Esq., focuses a large part of his firm's practice on guardianships. Mr. Michaelson and his firm deal with the guardianship statutes on a regular basis, including NRS 159.344. The Court's order provides much-needed guidance to guardianship practitioners throughout the State, guardianship Judges, and parties to a guardianship proceeding. With the Court's order as precedent, the guardianship bench, bar, and clients will have guidance on how to construe this statute and predict how this Court will construe similar provisions. This understanding will also help these groups take positions that are consistent with the Court's published opinion. If the Court chooses not to publish its order, these groups will be left without guidance on NRS 159.344 that has not yet been construed by the Appellate Courts in this State through a published opinion.

II. *CRITERIA FOR PUBLICATION*

NRAP 36(c) states in pertinent part that "[a]n unpublished disposition, while publicly available, may not be cited as precedent except in very limited circumstances. . . ." NRAP 36(c). But, "[a] published disposition is an opinion designated for publication in the Nevada

Reports and ***may be cited as precedent***." NRAP 36(c) (emphasis added).

NRAP 36(f) allows any interested party, including the parties to the litigation, to file a motion to reissue an order of this Court as opinion. NRAP 36(f)(3) outlines the criteria in NRAP 36(c)(1)(A)–(C) as the basis to file such a motion, which are: (A) Presents an issue of first impression; (B) Alters, modifies, or significantly clarifies a rule of law previously announced by either the Supreme Court or the Court of Appeals; or (C) involves an issue of public importance that has application beyond the parties. NRAP 36(f)(4) also states that "[p]ublication is disfavored if revisions to the text of the unpublished disposition will result in discussion of additional issues not included in the original decision." In the case at bar, the Court's order can easily be converted into a published opinion without the need for extensive revisions.

III. *THIS ORDER IS APPROPRIATE FOR PUBLICATION*

A. *The Order Clarifies Nevada Law, Which Is Beneficial to the Public and the Bench, Bar, and Parties Beyond this Litigation.*

The Court's October 20, 2021, Order of Affirmance significantly clarifies Nevada law. As this Court is aware, the District Court's Order Granting Robyn Friedman's and Donna Simmons' Petition for Attorney

Fees in Part allowed them to recover attorney fees from Kathleen June Jones' estate. Specifically, the District Court decreed that under NRS 159.344(1) and 159.344(2), Robyn and Donna were entitled to attorney fees and costs that benefited the protected person. 1 Appellant's Appendix ("AA") 289-90.

This Court's order echoed the District Court's ruling and confirmed that "[f]ees are awardable from the protected person's estate . . . [when] fees are just, reasonable and necessary" under NRS 159.344(4)–(5). Ord. at 6. Notably, this Court clarified that Nevada does not have a strict requirement that the district court find that the requested attorney's fees benefited the protected person – instead stating that the statute is permissive and invites courts to consider any benefit to the protected person. Additionally, this Court clarified that "duration of representation" is not an enumerated factor in NRS 159.344 or one of the many considerations provided by *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

Also of great importance is this Court's recognition that a district court could find that pre-guardianship petition fees incurred by a party prior to guardianship – seeking to avoid guardianship – by pursuing less

restrictive means of assisting an elderly or vulnerable person, such as the power of attorney enforcement or construction proceedings that were pursued in this case, could be recovered in a petition in a subsequent guardianship proceeding, subject of course to the district court's approval. Much attention has been paid in recent legislation to view guardianship more as a last resort, only to be sought when no less restrictive means are available. Obedient to these principles, parties such as family members sometimes expend great resources seeking to protect loved ones while avoiding guardianship. It is important that district courts have the opportunity to weigh whether pre-petition efforts, including meeting and conferring with all parties involved, can or should be recoverable from a subsequent guardianship estate.

Since the District Court properly determined that the NRS 159.344 requirements were satisfied, this Court concluded that "the district court did not abuse its discretion in determining that the fees were payable from [Jones'] estate." Ord. at 6. The entire Order of Affirmance analyzes NRS 159.344 and deals with guardianship attorney fees issue in a step-by-step fashion, with various clarifications at each step. Importantly, aside from this order, no other reference to NRS 159.344 is found in a

Lexis search other than the Supreme Court's Order Approving Additional Statewide Rules for Guardianship, ADKT 507 (Nov. 7, 2019), which mentions NRS 159.344 under Rule 7, as well as *In re Sheldon*, Order Dismissing Appeal, Dkt. No. 82515 (Jul. 30, 2021) (unpublished). *In re Sheldon* is an appeal in which the Supreme Court mentioned NRS 159.344 and determined that an attorney representing a party in litigation does not have independent standing to pursue an appeal. Thus, the Supreme Court did not analyze NRS 159.344 but instead dismissed the appeal for lack of jurisdiction. Therefore, the Court's order in the instant case is the only decision that substantively analyzes NRS 159.344.

B. *No Substantial Revisions of the Unpublished Order Will Be Necessary to Reissue the Order as an Opinion.*

NRAP 36(g)(4) states that the granting of a motion to reissue an order as a published opinion is in the sound discretion of this Court. "[I]f revisions to the text of the unpublished disposition will result in discussion of additional issues not included in the original decision," publication is disfavored. NRAP 36(g)(4). However, in the case at bar, the Order of Affirmance does not require extensive revisions for publication. The order succinctly sets forth the background facts and

legal standards pertinent to this Court's disposition regarding guardianship attorney fees issue under NRS 159.344. Furthermore, the Court sets forth a detailed analysis of the legal issues supporting its holdings. As such, the Court can publish the order without substantial revisions.

IV. *CONCLUSION*

Based upon the foregoing, Robyn and Donna respectfully request that this Court reissue its October 20, 2021, Order of Affirmance as an opinion.

DATED this 17th day of November 2021.

CLAGGETT & SYKES LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *RESPONDENTS' MOTION TO REISSUE OCTOBER 20, 2021, ORDER OF AFFIRMANCE AS AN OPINION* was filed electronically with the Supreme Court of Nevada on the 17th day of November 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 (LACSN)

Joel E. Tasca (Ballard Spahr LLP/Las Vegas)

/s/ Anna Gresl
Anna Gresl, an employee of
CLAGGETT & SYKES LAW FIRM

EXHIBIT 1

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KATHLEEN JUNE JONES,
Appellant,
vs.
ROBYN FRIEDMAN; AND DONNA SIMMONS,
Respondents.

No. 81799-COA

ORDER OF AFFIRMANCE

Kathleen June Jones, an adult protected person, appeals from the district court's award of attorney fees to Donna Simmons and Robyn Friedman, Jones's former temporary guardians. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

The fees at issue in this case stem from a period in 2019 when Donna Simmons and Robyn Friedman served as temporary co-guardians for Kathleen June Jones.[1] After that period, Jones's other daughter, Kimberly Jones,[2] assumed the role of general guardian. Kimberly is not a party here.

Before Jones needed a guardian, she executed multiple power of attorney forms, each naming Kimberly as her power of attorney. She later executed a will in which she named Kimberly as her preferred guardian should she ever need a guardian. Years after she executed these documents,

[1]We recount the facts only as necessary for our disposition.

[2]We refer to all of Jones's daughters, including Donna and Robyn, by their first names for clarity between the numerous parties in this litigation.

Jones began experiencing the onset of dementia and eventually required full-time care. Initially, Jones's husband, Gerald Rodney Yeoman, handled much of Jones's caretaking. Yeoman started experiencing health problems of his own, however, and he relocated to Arizona for treatment, rendering him unable to keep caring for Jones. As a result, Kimberly moved from California to Las Vegas and assumed the caretaker role. At this point, Kimberly was Jones's caretaker and power of attorney, and no party had filed a guardianship petition.

Despite his struggling health, Yeoman wanted to maintain as much contact with Jones as possible. Yeoman's children, Richard and Candice Powell (collectively the Powells), assisted Yeoman in his efforts to remain close with Jones despite his move to Arizona. But as power of attorney, Kimberly believed she was the more appropriate caretaker; moreover, considering her recent move from California, Kimberly wanted Jones to remain in Las Vegas. These competing interests created tensions between Jones's daughters and Yeoman's side of the family.

Despite Kimberly's status as power of attorney, concerns about Jones's estate arose, particularly with regard to ownership of Jones's home, which she had owned as separate property from before her marriage to Yeoman. After the onset of her dementia symptoms, Jones had executed a quitclaim deed, conveying the property to the Powells for far under market value. When Jones was asked of this transfer, she denied any recollection of transferring the property to the Powells. Nevertheless, as owners of the property, the Powells brought an eviction action against Kimberly, who was living with Jones in the home as her caretaker.

In addition to the issues with the home, the Powells—at the direction of Yeoman—withdrew money from Jones's bank account without Kimberly's consent as power of attorney and even held Jones's dogs against

the wishes of Jones's side of the family. While the Powells and Yeoman offered pure intentions to support their actions, these interactions between the families created grave concerns for Donna and Robyn and prompted them to act. While Kimberly possessed power of attorney, her requests and demand letters were ineffectual at stopping the financial transactions with Jones's assets. In addition, Yeoman took Jones to Arizona without Kimberly's knowledge or permission, and Kimberly went to Arizona and brought her mother back to Las Vegas citing her power of attorney. In short, the families disagreed on Jones's property, location, and finances. Realizing this, Donna and Robyn sought legal counsel. Donna and Robyn's attorney considered the case, and spent extensive time investigating, negotiating and preparing two comprehensive guardianship petitions, one for temporary guardianship and one for general guardianship. In the end, Donna and Robyn, through counsel, filed the temporary guardianship petition.

After their appointment as temporary guardians in September 2019, Donna and Robyn set to work filing proposed care plans for Jones. Meanwhile, Kimberly filed a competing petition to become Jones's general guardian. The district court appointed counsel for Jones and an investigator to determine whether Kimberly had misused Jones's funds. After the investigation concluded she had not misused any property the court appointed Kimberly as Jones's general guardian, thereby ending Donna and Robyn's temporary co-guardianship in October.

Only one issue of Donna and Robyn's temporary guardianship remained: attorney fees. They sought fees payable from Jones's estate, and produced their attorney's billing invoices to support a claim for $62,029.66 in fees. After some argument on the rate charged for paralegal time, Donna and Robyn's counsel conceded and reduced the paralegal fees. After the reduction, Donna and Robyn reproduced the invoices and requested

$57,742.16 in attorney fees—to be exacted as a lien against Jones's estate after her death. The district court granted the full amount of this request,[3] addressing almost every factor under the controlling NRS 159.344 and rejecting Jones's "specific objections" "for each billing entry." Jones now appeals.

On appeal, Jones challenges the award of fees primarily on two grounds. First, she alleges that the grant of the award was an abuse of the district court's discretion because the fees conveyed no benefit on Jones, as appointing Donna and Robyn instead of Kimberly—Jones's clearly preferred guardian—only delayed the inevitable guardianship arrangement. Because Kimberly's guardianship was what she sought from the outset, Jones argues, any fees accrued by Donna and Robyn were actually harmful to Jones. On this first point, we disagree.

To begin, we review an award of attorney fees for an abuse of discretion. NRS 159.183(1) (noting that payment of attorney fees in guardianship cases is subject to discretion and approval of the court); *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005).

With that, we first address whether a guardian must confer a benefit to a protected person before the protected person's estate is required to pay guardianship fees.[4]

Other courts have read such a mandatory requirement into guardianship fee statutes. *See, e.g., In re Guardianship of Sleeth*, 244 P.3d

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[3]While the district court titled its order, "Order Granting Robyn Friedman's and Donna Simmons' Petition for Attorneys Fees in Part," it granted Donna and Robyn's request in full after the adjustments to paralegal fees.

[4]We note that we possess jurisdiction under NRS 159.375(5).

1169, 1174 (Ariz. Ct. App. 2010) ("We cannot agree that the legislature intended that courts overlook whether an attorney's or a fiduciary's services produced any value or benefit to the protected person."); *In re Guardianship of Ansley*, 94 So. 3d 711, 713 (Fla. Dist. Ct. App. 2012) (requiring courts consider benefits conferred despite the statute's failure to list such benefits as a factor in an enumerated list of factors to support guardianship fees). Nevada has no such strict requirement; rather, NRS 159.344 employs permissive language—"may"—to invite courts to consider any benefit to the protected person. *See* NRS 159.344(5) (providing factors for consideration).

Here, the language of the statute does not mandate a finding that the guardian rendered a benefit, but the district court determined Jones did benefit from Donna and Robyn's temporary guardianship. Accordingly, we review that determination for an abuse of discretion and need not reach Jones's invitation to read the strict requirement into the permissive statute codified by the Nevada Legislature.

Before the court appointed a guardian in this case, the Powells had received ownership of Jones's home and withdrawn funds from her bank account. While it is true that Jones would have preferred Kimberly as her guardian, it is also true that Donna and Robyn's guardianship petition was the first petition filed amidst concerns surrounding Jones's pecuniary and proprietary interests. Further, there were reasonable concerns involving money Kimberly had taken from Jones. Because of these concerns, the district court appointed an investigator to reassess Jones's financial and medical wellbeing. Even though Kimberly was ultimately awarded the general guardianship role after the investigation established she did not mishandle Jones's funds, the temporary guardianship facilitated the investigation that examined Jones's finances and enabled Kimberly, Jones's preferred guardian, to be appointed.

NRS 159.344 begins with a presumption that guardians are personally liable for their own fees. NRS 159.344(1). Fees are awardable from the protected person's estate, but only if sought by petition and the court concludes the statutory requirements support a finding that fees are just, reasonable and necessary. *See* NRS 159.344(4)-(5). NRS 159.344(5) sets forth several factors to determine when fees are just, reasonable and necessary, all of which may be considered by the district court. Among these factors, the district court may consider (1) whether the guardian conferred a benefit on the protected person, (2) the character of the work performed, including its difficulty, (3) the result of the work, (4) and any other factor that may be considered relevant. NRS 159.344(5)(b), (d), (f), (n).

Under the factors of NRS 159.344(5), the district court did not abuse its discretion in determining, first, that Jones benefitted from the temporary guardianship because the temporary guardianship prompted a rigorous scrutiny of Jones's financial situation as well as an examination into the issues surrounding her home. The understanding of Jones's financial situation enabled Kimberly's appointment. Moreover, Jones benefitted from other guardianship work, such as efforts to secure the return of her dogs of which Yeoman had taken possession. Based on these facts, we cannot say that the district court abused its discretion when it determined Jones benefitted from Donna and Robyn's temporary guardianship.

Second, and for many of the same reasons, the district court did not abuse its discretion in determining that the fees were payable from her estate. The district court acknowledged NRS 159.344(4) and found its requirements had been satisfied. Expanding on this conclusion, the district court conducted findings under almost every single NRS 159.344(5) factor. Accordingly, we affirm the district court's overall decision to award fees from Jones's estate.

We turn now to Jones's challenge to the amount of the award. First, she alleges that the amount of $57,742.16 is unreasonable given the length of Donna and Robyn's guardianship of just over one month. Second, Jones argues that some of the billing entries on the invoices compensated unrelated work or work that the Legislature expressly excluded under NRS 159.344. We address each argument in turn.

The duration of representation is neither an enumerated factor in NRS 159.344 nor is it a consideration provided by *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). "When considering the amount of attorney fees to award, the analysis turns on the factors set forth in *Brunzell*." *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 555, 429 P.3d 664, 668 (Ct. App. 2018). Instead of duration, the difficulty of the work is an enumerated factor considered in setting fee awards. NRS 159.344(5)(d); *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. In addition, temporary guardians possess only the powers necessary to address the concerns that prompted the temporary guardian's appointment; thus, the awardable temporary guardianship fees are likewise limited. NRS 159.0525(6).

Here, the amount of the award is not improper based on the relatively short duration of the temporary guardianship or the work performed during the guardianship. First, Donna and Robyn are correct to note that the duration of representation is not a factor in directly controlling statute or precedent.[5] Instead, the complexity of the case is a factor. With

[5]We acknowledge Jones challenged the district court's fee award for compensating work Donna and Robyn performed before the district court appointed them as guardians; however, in her reply, Jones concedes that compensation could start with the drafting of the petition on September 9, 2019. The record demonstrates that the parties contested individual billing

that, it is important to acknowledge the complexity of this case; some petitions at the district court attracted four filings, one each from Jones, Kimberly, Donna and Robyn together, and Yeoman. Both the statute and controlling precedent contemplate the difficulty of the representation. In a case like this one, responding to three opposing viewpoints is difficult; it takes time. Donna and Robyn also asked their attorney to work on power of attorney matters. While technically a probate issue, the district court did not err in compensating this work because the ineffectiveness of Kimberly's power of attorney was a factor that contributed to Donna and Robyn's appointment. Therefore, the probate issue was within the scope of the temporary guardianship under NRS 159.0525.

Thus, considering the complexity of the litigation and the concerns involving Kimberly's power of attorney, we conclude that the district court did not abuse its discretion by awarding fees for the scope of work performed. We turn next to the amount awarded within this scope.

Jones broadly challenges the district court's fee award for improperly compensating work expressly excluded under NRS 159.344. Donna and Robyn do not argue the substance of each billing entry on appeal; they argue Jones's entry-by-entry challenges are not properly before this court due to Jones's violation of appellate briefing rules. We agree with Donna and Robyn and reject Jones's final challenge.

On appeal, parties have a duty to cite relevant authority. NRAP 28(a)(10)(A). "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

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entries starting on September 10, 2019. Accordingly, we see no major disagreement on this point.

appeal." NRAP 28(e)(2). Without citing supporting authority, a party fails to argue cogently her position, and thus this court need not consider the argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks support by relevant authority).

Here, Jones refers to a copy of her spreadsheet for her legal argument, but the spreadsheet fails to meet the standards of NRAP 28(e)(2). Nevertheless, the district court considered the statute and Jones's itemized challenges. Indeed, the district court made explicit findings on pages 10 and 13 of its order and determined that Jones had not established any fee entries were unjustified, citing directly to NRS 159.344(5)-(6) and Jones's itemized challenges.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Linda Marquis, District Judge, Family Court Division
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