

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP
OF: CHRISTINE B. JOHNSON, A/K/A
CHRISTINE B. WEIDERMAN, AN ADULT
PROTECTED PERSON.

CHRISTINE B. JOHNSON, A/K/A
CHRISTINE B. WEIDERMAN,

Appellant,

vs.

KAREN KELLY, CLARK COUNTY PUBLIC
GUARDIAN; AND MOUNTAIN VIEW
CARE CENTER,

Respondents.

Court of Appeals No. 83912-COA

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APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable Linda Marquis, District Judge
District Court Case No. G-21-055340-A

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

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 judges of this Court may evaluate possible disqualification or recusal.

Appellant Christine B. Johnson, a/k/a Christine B. Weiderman, is an individual.

Legal Aid Center of Southern Nevada, Inc., appeared on appellant's behalf in the district court, and is representing her on appeal.

Dated: April 20, 2022

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JURISDICTIONAL STATEMENT

This Court has jurisdiction under NRS 159.375(1) to consider this appeal. Appellant appeals from the District Court's Amended Order Establishing Guardianship of the Person and Estate and for Issuance of Letters of Guardianship (Summary Administration), which granted letters of guardianship. Notice of Entry of Order for the order appealed from was filed on November 22, 2021, and Appellant's Notice of Appeal was filed on December 07, 2021.

ROUTING STATEMENT

This appeal is presumptively retained by the Nevada Supreme Court because it raises multiple issues of statewide importance. Namely, the district court's misapplication of *In the Matter of the Guardianship of Rubin*, 137 Nev. Adv. Op. 27, 491 P.3d 1 (2021), which it will no doubt apply in future cases; and the standard that a petitioner must meet to establish that a proposed protected person is "incapacitated" and that guardianship is necessary.

STATEMENT OF THE ISSUES

1. Did the district court abuse its discretion when it found that Appellant was “incapacitated” as defined by NRS 159.019, and when it found that Mountain View Care Center (“MVCC”) met its burden to show by clear and convincing evidence that a guardianship was necessary?

2. Did the district court misinterpret the Nevada Supreme Court’s decision in *Matter of Guardianship of Rubin*, 137 Nev. Adv. Op. 27, 491 P.3d 1 (2021) when the district court concluded that *Rubin* gives the district court the authority to consider any evidence it wants at a citation hearing for any purpose?

3. Did the district court deny Appellant her right to due process when it imposed a guardianship over her person and estate without allowing her the opportunity to present favorable evidence and to confront Dr. Jorgensen, whose opinions in the Physician’s Certificate were the sole basis for the district court’s “incapacitated” finding, at an evidentiary hearing?

STATEMENT OF THE CASE

Appellant is appealing from the District Court's Amended Order Establishing Guardianship of the Person and Estate and for Issuance of Letters of Guardianship (Summary Administration) entered on November 10, 2021. AA 222–29. Since the case commenced on August 23, 2021, Appellant has opposed the guardianship. Appellant filed her Opposition on September 17, 2021. AA 40–128. The district court continued the Citation Hearing multiple times, and at one point appointed an investigator from the Guardianship Compliance Office to gather facts relevant to the district court's jurisdiction to consider the guardianship case. AA 156–58; 163–64. Eventually, at the Citation Hearing on November 04, 2021, the district court granted the request for guardianship even though Appellant objected, and denied Appellant's alternative request to at least hold an evidentiary hearing. AA 208–09; 222–29; AA 379. After Appellant filed this appeal, the district court granted her Motion to Stay on December 29, 2021. AA 341–45. Accordingly, the order being appealed is currently stayed in the district court case (G-21-055340-A) while this appeal is pending.

STATEMENT OF THE FACTS

I. Procedural History

MVCC, Respondent, initiated the guardianship case when it filed its Petition for Appointment of Clark County Public Guardian as a General Guardian of the Person and Estate and for Issuance of Letters of Guardianship (“Petition”) on August 23, 2021. AA 001–009. Not long after, Christine Johnson (“Christine”), Appellant, filed her Opposition to Petition for Appointment of Clark County Public Guardian as a General Guardian of the Person and Estate and for Issuance of Letters of Guardianship on September 17, 2021. AA 40–128. MVCC filed a response, on September 23, 2021, which mainly centered on allegations regarding criminal charges against Christine’s boyfriend, Anthony Anchondo (“Mr. Anchondo”), and a prior North Dakota temporary guardianship over Christine that was granted ex parte and existed months before the Nevada case was filed. AA 129–54.

At the citation hearing on September 23, 2021, the district court did not address the request for guardianship, and instead appointed an investigator from the State Guardianship Compliance Office to obtain APS records regarding Christine in both Clark County and North

Dakota. AA 155–58; 348–52. However, when the parties returned on October 21, 2021, for the continued citation hearing, the investigator had not yet issued a report. AA 161–62; 366. During that hearing, the district court noted possible jurisdictional issues in regards to the ex parte temporary North Dakota case, and continued the hearing again to allow more time for the investigator to file a report. AA 161–62; 355–66. That same day, the district court entered an Amended Order to Appoint Investigator, instructing the investigator to obtain court files from the North Dakota case, in addition to the APS records that it mentioned in its first Order to Appoint Investigator. AA 163–64.

The investigator filed a Confidential Report of Investigator on November 02, 2021. AA 168–207. The continued citation hearing took place on November 04, 2021. AA 208–09. At that hearing, counsel for Christine reiterated her objection and requested that the district court dismiss MVCC’s Petition, and alternatively argued that if the district court was not inclined to dismiss the Petition, it should at least hold an evidentiary hearing to address conflicting information regarding Christine’s alleged incapacity. AA 208–09; 371–75. Nonetheless, with pertinent information showing that Christine was not “incapacitated,”

the district court found that MVCC had met its burden to establish by clear and convincing evidence that a guardianship over Christine was necessary and that Christine was “incapacitated” because she “cannot receive and evaluate information to an extent that creates in her the inability to meet the essential requirements for physical health, safety and self-care without assistance.” AA 208–09; 222–29; 380. However, the district court later entered Findings of Facts and Conclusions of Law and Orders Appointing Guardian, which made findings very different from the findings that the district court made during the November 4, 2021 hearing. *Compare* AA 379–82 *with* AA 326–38.

On December 29, 2021, the district court granted Christine’s motion to stay the order appointing guardian pending appeal. AA 341–45.

II. Background and Facts

Christine was first diagnosed with ALS in January 2021. AA 294. Since that time, her condition has continued to deteriorate, and she has been unable to handle many activities of daily living as she has become quadriplegic, developed slurred speech, and experiences difficulty swallowing. AA 41. Medical professionals have opined that she likely does not have much time left. Specifically, on or around November 30,

2021, medical professionals opined that ALS “will most likely result in her death within the next 6 to 12 months[.]” AA 291. Christine overcame a battle with pneumonia, an illness that oftentimes is fatal for individuals with ALS, while this appeal was pending. Christine is very much aware of her ALS diagnosis and the fact that it will result in her death. But Christine refuses to let her disease define her, and she continues to fight for her autonomy during what time she has remaining.

Prior to living in Nevada, Christine was living with her fiancé Mr. Anchondo in rural North Dakota. AA 41. But medical providers in North Dakota recommended that she move to a metropolitan area to receive better treatment. AA 41; 144. Thereafter, she moved to Las Vegas, and at her children’s insistence moved in with her sons for some time. AA 41. However, there was some conflict because Christine’s children did not want her seeing Mr. Anchondo. AA 41. During that time, Christine fell from her wheelchair and was subsequently hospitalized at University Medical Center. AA 41. While hospitalized, Christine and Mr. Anchondo decided that they wanted to live together following her discharge from the hospital. AA 41. In the meantime, Christine transitioned to MVCC’s facility while Mr. Anchondo looked for suitable housing. AA 41.

Christine voluntarily signed herself into MVCC's facility on June 25, 2021. AA 51–59. When she was admitted, Christine was presented with and executed a Physician's Order for Life Sustaining Treatment ("POLST"). AA 61–62. The POLST was validated by Dr. Craig Jorgensen who certified that Christine had "decisional capacity." AA 61. Throughout her stay at MVCC's facility, Christine frequently made medical decisions for herself, and it appears the staff treated Christine as competent and able to make decisions. AA 69–70; 77; 80; 114. But that all changed when Christine began expressing a desire to leave the facility to live with Mr. Anchondo. At that point, staff suddenly requested an "emergency competency evaluation" and the process to restrain Christine under a guardianship ensued. AA 128.

Along with MVCC's Petition filed on August 30, 2021, MVCC also filed a Physician's Certificate that was completed on August 06, 2021. AA 10–16. That Physician's Certificate was completed by Dr. Jorgensen, the very same doctor who just 38 days prior, certified that Christine had decisional capacity to execute a POLST. AA 10–16; 61–62. The Physician's Certificate opined that Christine was diagnosed with Amyotrophic Lateral Sclerosis (ICD code G12.21); Quadriplegia,

unspecified (ICD code G82.50); Neuromuscular dysfunction of bladder, unspecified (ICD code N31.9); Abnormal findings of cerebrospinal fluid (ICD code R83); and Major Depressive Disorder (ICD code F32.9). AA 12. Aside from major depressive disorder, the other diagnoses are listed as physical, not mental, diagnoses. AA 12. Also, Dr. Jorgensen did not opine that Christine is unable to receive and evaluate information; instead, he opined that Christine “is unable to make or communicate decisions to such an extent that the patient lacks the ability to meet essential requirements for physical health, safety, or self-care without proper assistance.” AA 12. However, it is not clear from the record what steps, if any, Dr. Jorgensen took to effectively communicate with Christine given her ALS diagnosis and slurred speech. Nothing indicates how much time Dr. Jorgensen spent trying to communicate with her, nor does the record indicate whether Dr. Jorgensen, or other medical staff, used any assistive technologies or other alternative means to communicate with Christine while examining her.

Christine, who has always been able to communicate with and direct her counsel, sought to refute the conclusive allegations against her. To do so, Christine filed documents from MVCC’s facility showing: that

she voluntarily signed herself in and signed various documents relevant to her medical care like the POLST that was certified by Dr. Jorgensen; that medical staff at the facility described her as “alert and oriented” and stated that she “answers all questions appropriately” as recently as June 28, 2021; and that she was administered a BIMS (Brief Interview of Mental Status) test in which she “scored a 15/15 indicating no cognitive impairment.” AA 49–128. Moreover, nothing in the record indicates that there was some sudden decline between when Christine voluntarily signed herself into MVCC’s facility and executed the POLST, and when Dr. Jorgensen executed the Physician’s Certificate. So, it is not quite clear why Dr. Jorgensen’s opinion suddenly changed in regards to Christine’s capacity.

Aside from the Physician’s Certificate, all that MVCC provided, when responding to Christine’s objection, were allegations regarding Mr. Anchondo’s criminal history and a few documents from the North Dakota guardianship case. AA 129–54. All that the documents from the North Dakota case showed was that medical providers expressed a general concern in regards to Mr. Anchondo’s interactions with them, and that they believed Christine would find better treatment for her ALS in an

area more urban than where she was living in rural North Dakota. *See* AA 140–44; 146–47. The additional documents provided by MVCC in its response do not provide any medical information that support their allegations of Christine’s “incapacity.”¹

Further, the documents obtained and provided to the district court by the court-appointed investigator also do not provide any additional information supporting the allegation that Christine was “incapacitated.” All that was provided was information regarding a North Dakota APS investigation concerning Christine in which Mr. Anchondo was the person of interest, a Nevada APS investigation concerning Christine in which her two children were the persons of interest, and filings from the North Dakota guardianship case. AA 179–205.

In regards to the North Dakota APS investigation, the report just

¹ To be clear, the North Dakota court’s grant of temporary guardianship cannot in and of itself be used as evidence of incapacity. Christine of course believes that the North Dakota court also erred when it granted temporary guardianship *ex parte*. But even if it did not, a finding that a person was incapacitated at one time does not mean that they are deemed incapacitated for all time. Guardianships are routinely granted and then terminated when a person regains capacity, for instance, following a catastrophic injury that may have left the person incapacitated for an extended period of time until they were able to recover.

discusses the difficulties that medical providers in North Dakota had when interacting with Mr. Anchondo, and mentions a general concern for Christine's care given her worsening physical condition due to ALS and Mr. Anchondo's alleged conduct as her caretaker. AA 169–76. Nothing from the North Dakota APS case that was provided to the district court discusses Christine's decisional capacity. In regards to the Nevada APS investigation, it was closed shortly after opening because APS was “unsuccessful with discussing the information with Ms. Johnson.” AA 176–77. However, the APS social worker indicated that while Christine had difficulty with speech, “she was able [sic] spell words and shake her head yes or no to questions.” AA 176. Finally, in regards to the North Dakota guardianship case, all that was provided were filings and the register of actions from that case showing that an ex parte temporary guardianship was put in place for ten days, and then the case was closed out. AA 179–205.

In essence, the only filing before the district court that contained any information even remotely supporting MVCC's allegations regarding Christine's capacity was the Physician's Certificate, executed by the same physician who validated Christine's decisional capacity just weeks

prior. At the Citation Hearing on November 04, 2021, the district court rested its findings regarding incapacity on the Physician's Certificate despite the overwhelming evidence that Christine provided showing that she was not incapacitated. AA 378–81. Even though the only allegations regarding Christine's alleged incapacity in the Physician's Certificate centered on her ability to communicate, the district court nonetheless stated on the record that it was finding that Christine is "incapacitated" because she is unable to "receive and evaluate information." *Compare* AA 12 *with* AA 380 (stating "she cannot receive and evaluate information to an extent that creates in her the inability to meet the essential requirements for her physical health, safety, and self-care without assistance"). However, Dr. Jorgensen specifically omitted checking the box stating that Christine was unable to receive and evaluate information when he executed the Physician's Certificate, and only opined about her ability to communicate. AA 12. Ironically, the district court then went on to acknowledge that while Christine struggles with speech, she can still communicate and has the capacity to weigh in about her care, and then ordered that Christine be included in decision-making with the guardian. *See* AA 380–81 ("But although it -- it impacts her

speech, she's still able to communicate. And she still has, I believe, the capacity to weigh in and make sure that her voice is heard as to whether or not she wants those treatments."); *see also* AA 381 ("And I know that her speech in (sic) impacted but that she's still able to communicate."); AA 381 (describing how the district court wanted Christine to "weigh in" on decisions with the guardian).

But later, the district court entered its Findings of Fact and Conclusions of Law and Orders Appointing Guardian, which made findings strikingly different from those that the district court made on the record during the Citation Hearing. In that order, the district court simply mirrored the language from boxes that Dr. Jorgensen checked on the Physician's Certificate, broadly stated that Christine's "ability to communicate diminished," and then noted that "her prescriptions for pain medication evolved to treat her chronic pain." AA 327; 330–31. The district court then went on to conclude that Christine was not entitled to an opportunity to confront Dr. Jorgensen regarding his conflicting opinions or present evidence refuting her alleged "incapacity" at an evidentiary hearing. AA 334–36.

A general guardianship was imposed on Christine with the Clark

County Public Guardian serving as the guardian of her person and estate. AA 222–29; 336–37. Luckily, the district court later granted Christine’s motion to stay pending appeal, which restored some semblance of dignity and independence for Christine as she waits for a resolution in this appeal. AA 341–45.

SUMMARY OF ARGUMENT

The liberty deprivation that a protected person experiences when they are restrained under a guardianship cannot be overstated. Once a guardian is appointed, the protected person is stripped of their autonomy, and the authority to make life-altering decisions is given to the guardian. Thereafter, the guardian can decide where the protected person will reside, which might include placing them in a locked facility; the guardian can control the protected person's finances, essentially dictating how they can or cannot spend money they may have worked their entire life to amass; and, if the protected person's health becomes dire, the guardian can quite literally choose whether they live or die. Presumably, this is one reason why the Nevada Supreme Court has stated that "[g]uardianships are not to be lightly granted."²

In this case, Christine was diagnosed with ALS and suffers from speech difficulties that are typical with ALS. Yet, Christine was able to make her own medical decisions and even sign herself into MVCC's facility a little over a month before the Petition was filed. However,

² *Matter of Guardianship of Rubin*, 137 Nev. Adv. Op. 27, 491 P.3d 1, 6 (2021).

everything changed once Christine attempted to leave MVCC's facility. At that point, the doctor who just weeks prior validated Christine's decisional capacity, suddenly decided that she was incapacitated and needed guardianship due to her alleged inability to communicate. In opposing the Petition, Christine presented substantial evidence showing the opposite, which included opinions from the very same doctor who executed the Physician's Certificate. Nonetheless, relying solely on the debatable allegations in the Physician's Certificate, the district court denied Christine's request for an evidentiary hearing so that she could cross-examine Dr. Jorgensen, and the court found that MVCC met its burden of showing by clear and convincing evidence that Christine was "incapacitated" and needed a guardian.

The district court committed multiple errors when it imposed a guardianship on Christine that warrant this Court reversing the district court's order and directing the district court to either dismiss the Petition without prejudice, or alternatively, directing the district court to hold an evidentiary hearing so that Christine has the opportunity to confront and cross-examine Dr. Jorgensen regarding the opinions expressed in the Physician's Certificate.

ARGUMENT

I. The District Court Abused Its Discretion When It Found That Christine Was “Incapacitated” as Defined by NRS 159.019, and When It Found that MVCC Met Its Burden of Showing by Clear and Convincing Evidence that Guardianship was Necessary.

The district court here found that Christine was “incapacitated” under NRS 159.019 because she was unable to receive and evaluate information or make or communicate decisions to such an extent that she is unable to meet essential requirements for physical health, safety, or self-care without appropriate assistance. However, no evidence was presented showing that Christine was “unable to receive and evaluate information” nor that she is “unable to make or communicate decisions.” At most, what was presented was conflicting evidence regarding Christine’s alleged speech limitations, which is a common obstacle for people diagnosed with ALS. This is not enough for the district court to determine that Christine is “incapacitated” and that MVCC met its burden to show that a guardianship over Christine is “necessary.”

Because the district court’s findings seem to rest on a misunderstanding and/or ignorance as to what ALS is and how it affects one’s capacity, it is worth first briefly discussing the disease that is the

backdrop of this case.

A. *Amyotrophic lateral sclerosis (“ALS”).*

ALS, more commonly known as Lou Gehrig’s disease, is an always-fatal “progressive neurodegenerative disease that affects nerve cells in the brain and spinal cord.”³ This progressive degeneration of nerve cells in the brain and spinal cord eventually causes loss of voluntary muscle control.⁴ Some of the first signs are more subtle, like muscle twitching, weakness in a limb or limbs, or slurred speech.⁵ But as voluntary muscle control continues to be affected, the person may lose their ability to

³ ALS Association, *What is ALS?*, <https://www.als.org/understanding/als/what-is-als> (last visited January 25, 2022).

⁴ ALS Association, *What is ALS?*, <https://www.als.org/understanding/als/what-is-als> (last visited January 25, 2022); Mayo Clinic, *Amyotrophic lateral sclerosis*, <https://www.mayoclinic.org/diseases-conditions/amyotrophic-lateral-sclerosis/symptoms-causes/syc-20354022> (last visited on January 25, 2022).

⁵ Mayo Clinic, Amyotrophic lateral sclerosis (ALS), <https://www.mayoclinic.org/diseases-conditions/amyotrophic-lateral-sclerosis/symptoms-causes/syc-20354022> (last visited February 09, 2022).

speak, chew, move, and even breathe.⁶ The effects of ALS can “vary greatly from person to person, depending on which neurons are affected.”⁷ While ALS has significant physical effects on a person, in many cases it does not affect the person’s mental capacity.

Importantly, current research data regarding ALS “suggest that up to 50% of people with ALS will never develop significant changes in thinking or behavior, over and beyond normal psychological reaction to diagnosis and symptoms.”⁸ However, up to 50% of people with ALS will experience some degree of change in thinking or behavior, with approximately 25% of those people with ALS developing full blown

⁶ ALS Association, *What is ALS?*,
<https://www.als.org/understanding/als/what-is-als> (last visited January 25, 2022).

⁷ Mayo Clinic, *Amyotrophic lateral sclerosis*,
<https://www.mayoclinic.org/diseases-conditions/amyotrophic-lateral-sclerosis/symptoms-causes/syc-20354022> (last visited on January 25, 2022).

⁸ ALS Association, *FYI: Cognitive and Behavioral Changes in ALS: A Guide for People with ALS and their Families*,
<https://www.als.org/navigating-als/resources/fyi-cognitive-and-behavioral-changes-als-guide-people-als-and-their> (last visited January 25, 2022).

dementia.”⁹ Thus, a diagnosis of ALS alone does not establish that a person lacks capacity or that mental faculties, such as memory, reasoning, and behavior, are affected to such an extent that the person is unable to receive and evaluate information. To the contrary, most people diagnosed with ALS will experience no change in their ability to receive and evaluate information.

Moreover, in regards to communication, most people who are diagnosed with ALS develop some trouble speaking.¹⁰ In some cases, a person with ALS might exhibit occasional or mild slurring of their words, but in other cases it can become more severe and difficult to understand.¹¹ However, there are various ways for a person with ALS to

⁹ ALS Association, *FYT: Cognitive and Behavioral Changes in ALS: A Guide for People with ALS and their Families*, <https://www.als.org/navigating-als/resources/fyi-cognitive-and-behavioral-changes-als-guide-people-als-and-their> (last visited January 25, 2022); *but see* Cleveland Clinic, *Amyotrophic Later Sclerosis (ALS)*, <https://my.clevelandclinic.org/health/diseases/16729-amyotrophic-lateral-sclerosis-als> (last visited on February 09, 2022) (estimating that only about 10% of ALS patients develop dementia).

¹⁰ Mayo Clinic, *Amyotrophic lateral sclerosis*, <https://www.mayoclinic.org/diseases-conditions/amyotrophic-lateral-sclerosis/symptoms-causes/syc-20354022> (last visited on January 25, 2022).

¹¹ Mayo Clinic, *Amyotrophic lateral sclerosis*, <https://www.mayoclinic.org/diseases-conditions/amyotrophic-lateral->

overcome obstacles in regards to their speech. For instance, speech therapy is one option through which a person with ALS can learn how to speak more loudly and clearly, and/or to communicate nonverbally.¹² Also, there are a variety of assistive technologies that can help with communication. These include: speech generating devices, eye gaze control systems, writing tablets, text to speech software or apps, brain computer interface, or voice banking systems.¹³ Technologies like these provide persons with ALS a means to maintain decision-making autonomy and to ensure that their voice is heard.

Many people with ALS go on to live independent and accomplished lives, so a diagnosis of ALS by itself should not strip a person of their dignity and be used as a means to impose the paternalistic restraints of

sclerosis/symptoms-causes/syc-20354022 (last visited on February 09, 2022).

¹² Cleveland Clinic, *Amyotrophic Lateral Sclerosis (ALS)*, <https://my.clevelandclinic.org/health/diseases/16729-amyotrophic-lateral-sclerosis-als> (last visited February 09, 2022).

¹³ See ALS Association, *Assistive Technology*, <https://www.als.org/research/research-we-fund/scientific-focus-areas/assistive-technology> (last visited February 09, 2022); see also Your ALS Guide, *ALS Communication Devices*, <https://www.youralsguide.com/communication.html> (last visited February 09, 2022).

a guardianship. Presuming otherwise is degrading to persons diagnosed with ALS. Some notable people who have led successful lives following their diagnosis of ALS include: Stephen Hawking, arguably the most influential physicist and cosmologist in recent history; Tim Green, a former NFL football player who later became a New York Times Best-Selling author and also a practicing lawyer¹⁴; and Stephen Hillenburg, the creator of SpongeBob SquarePants, who continued to work as an executive producer on the show for some time following his diagnosis. The list goes on, but individuals like these demonstrate that a diagnosis of ALS alone and some alleged speech difficulties cannot be used as a means to summarily deem someone “incapacitated” and steal their autonomy.

The conclusory findings in this case lack this context and understanding of Christine’s ALS diagnosis, which undoubtedly contributed to the district court’s error here.

B. The district court abused its discretion when it relied mainly on the Physician’s Certificate, even though Christine provided information refuting the allegations therein, to find that Christine was “incapacitated” and that guardianship was

¹⁴ The New York Times, *Nearly Silenced by A.L.S., an Ex-NFL Pro Thrives Telling His Story*, <https://www.nytimes.com/2021/10/05/sports/tim-green-als-falcons.html> (last visited February 09, 2022).

necessary.

The district court abuses its discretion when its decision rests “on a clearly erroneous factual determination or it disregards controlling law.” *MB America, Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016). The district court’s factual determinations are clearly erroneous if there is not substantial evidence to support those findings. *In re Guardianship of N.M.*, 131 Nev. 751, 754, 358 P.3d 216, 218 (2015). “Substantial evidence is ‘evidence that a reasonable person may accept as adequate to sustain a judgment.’” *Id.* (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007)). While the appellate court “reviews a district court’s discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory that they mask legal error[.]” *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015).

In any guardianship case, the petitioner must prove by clear and convincing evidence that the proposed protected person is “incapacitated.” *Rubin*, 491 P.3d at 6. The definition for “incapacitated” under NRS 159.019 breaks down into two separate prongs: either 1) a person is unable to receive or evaluate information, or 2) a person is

unable to make or communicate decisions, to such an extent that the person lacks the ability to meet essential requirements for physical health safety or self-care without appropriate assistance.¹⁵ *See* NRS 159.019 (“A person is ‘incapacitated’ if he or she, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the person lacks the ability to meet essential requirements for physical health, safety or self-care without appropriate assistance.”). At all times throughout the proceeding, the burden is on the petitioner to prove by clear and convincing evidence that granting the guardianship is necessary, and if the petitioner fails to meet that burden, the district court must dismiss the petition. NRS 159.054; NRS 159.055.¹⁶

¹⁵ For the sake of brevity, Appellant refers to these as the “receive and evaluate information” prong, and the “make or communicate decisions” prong.

¹⁶ Importantly, in its Final Report, the Nevada Supreme Court’s Commission to Study the Administration of Guardianships in Nevada’s Courts expressed a policy statement that “guardianships are approved only for ‘least-restrictive alternatives’” and that a court should make specific findings that no least-restrictive alternatives are available. *See* Final Report, ADKT 507, at 5 (Sept. 2016). Moreover, the Commission included a policy statement that “**would require greater evidence for the judge to make the determination of exactly what incapacity is and how it is documented and supported.**” *Id.* (emphasis added).

1. The record before the district court.

Here, the record before the district court fails to show that Christine is incapacitated and in need of a guardianship. At best, all it shows is that she has some difficulty with speech, which is an obstacle that almost anyone diagnosed with ALS experiences.

In regards to incapacity as defined by NRS 159.019, Dr. Jorgensen simply checked a box on the Physician's Certificate stating that "[t]he patient is unable to make or communicate decisions to such an extent that the patient lacks the ability to meet the essential requirements for physical health, safety, or self-care without proper assistance." AA 12. However, no further explanation is provided by Dr. Jorgensen. Rather than providing further evidence to support its allegations of incapacity against Christine, Respondent MVCC simply filed a response that expressed concern regarding Mr. Anchando's criminal history and provided documents regarding the North Dakota guardianship case. However, the documents from the North Dakota case do nothing more than detail interactions between Mr. Anchondo and medical providers, and express general concern regarding Christine's ALS diagnosis and the care that she will likely require moving forward. All in all, Respondent

MVCC failed to provide enough medical evidence to meet the “receive and evaluate information” prong or “unable to make or communicate decisions” prong under NRS 159.019 by clear and convincing evidence.

While Respondent MVCC failed to meet its burden of showing by clear and convincing evidence that Christine is “incapacitated” based on its evidence alone, Christine took the additional step of presenting medical evidence refuting her alleged incapacity. For instance, Christine provided evidence that less than two months prior to MVCC filing its petition, she voluntarily signed herself into the facility and executed a POLST that was validated by the same physician who executed the Physician’s Certificate. AA 51–62. While Christine was unable to physically sign many documents due to hand contractions, she was nonetheless able to give verbal consent. AA 51–59. Moreover, progress notes from the facility from June 29, 2021–August 08, 2021, detail Christine’s difficulty with speech and voluntary muscle movement, but medical staff consistently describe her as being oriented to person, place, and time, and state “[m]emory intact.” AA 72–111. A progress note from July 07, 2021, even states that Christine had “very dysarthric speech but she was able to spell out words[.]” AA 108. Further, Christine provided

PM&R notes from as recently as July 24, 2021, that state, among other things, that she “was able to speak” with the medical staff but she “needs time to respond,” that she was “[a]lert and aware,” and that she “verbalized understanding.” AA 115–16. Documents related to Christine’s admission into the facility state that a BIMS¹⁷ exam “was conducted on 7/2/21 and resident scored 15/15 indicating no cognitive impairment.” AA 70.

Many of the medical records that Christine provided are dated mere weeks prior to the Physician’s Certificate, and show that Christine was often described as alert and oriented, among other things, and that Christine had the capacity to execute various medical documents. At most, the record just generally shows that Christine has some difficulty with speech. Importantly, nothing in the record demonstrates that Christine experienced some sudden decline leading up to the date of the Physician’s Certificate. And nothing in the record details what steps, if any, medical staff took to effectively communicate with Christine given her speech difficulties.

¹⁷ BIMS is short for “Brief Interview of Mental Status” and is a test routinely used to assist in determining a patient’s cognition.

2. The district court's erroneous "incapacitated" finding.

Still, despite the fact that MVCC failed to meet its clear-and-convincing-evidence burden, the district court imposed a guardianship on Christine. The district court erred in many ways, including by making findings that were inaccurate based on the record and engaging in speculation that was not supported by the record.¹⁸

For example, the district court at one point found that Christine's "ability to communicate diminished." AA 331. The record at most only shows that Christine has difficulty with *speech*, which the district court initially acknowledged at the Citation Hearing. *See* AA 381 ("And I know that her speech in (sic) impacted but that she's still able to communicate."). A person can communicate in more ways than just speaking, which is one reason why so much emphasis is placed on nonverbal communications and assistive technologies for individuals

¹⁸ The district court's Findings of Fact and Conclusions of Law and Orders Appointing Guardian makes findings that are very different from the oral findings that it made on the record at the Citation Hearing on November 04, 2021. Originally, the district signed off on findings that parroted the district court's statements at the citation hearing, however, not long after that, the district court struck its order and entered new findings of facts and conclusions of law once this appeal was pending.

with ALS. As one's speech diminishes, means other than verbal speech can still enable the person to communicate. This distinction between communication generally and verbal speech is critical in this case because the record before the district court only shows that Christine has some difficulties with *verbal speech* (a typical result of ALS), not that she is entirely unable to *communicate*. See AA 70 (describing "low and mumbled speech"); AA 96 (stating that Christine has "dysarthric speech but she was able to spell out words" and that she has "difficulty with speech and is difficult to understand"); AA 113 (stating that Christine can speak but "needs time to respond"). Nothing in the record demonstrates that Christine was entirely unable to communicate, and nothing shows to what extent, if any, medical providers used assistive technologies or other means to communicate effectively with Christine. There is no evidence, let alone substantial evidence, showing that Christine is unable to make or communicate decisions to such an extent that she can be deemed "incapacitated."

Also, the district court erred by engaging in pure speculation regarding Christine's alleged "decline." Specifically, the district court stated, in part, that:

The fact that the Proposed Protected Person was at one time determined to have capacity and weeks later was determined not to have capacity is not unique and is not sufficient to establish the necessity for an evidentiary hearing that would include live testimony from the physician. Medical and mental health is not static. It is not the same overtime. An individual can quickly decline or improve.

AA 336. This is nothing more than the district court's general thoughts on the unpredictability of one's capacity, it does not reference any part of the record in this case that shows Christine did in fact decline to such an extent that she is "incapacitated" as defined by NRS 159.019. Instead, the district court engaged in pure speculation to conclude that Christine supposedly declined and then made a conclusory finding that Respondent MVCC met its burden to show that Christine is "incapacitated" without any reference to specific evidence in the record.

Finally, most, if not all, of the district court's findings relied on simply accepting the allegations in the Physician's Certificate wholesale without any inquiry at all. The district court simply parroted stock language from the Physician's Certificate—language that is available in the standard form Physician's Certificate.¹⁹ The allegations that the

¹⁹ Family Law Self-Help Center, Confidential Medical/Education Documents Form,

district court mainly relied on were from Dr. Jorgensen simply checking boxes and providing no further explanation. *Compare* AA 12 *with* AA 331. Moreover, as stated previously, this same physician validated Christine’s decisional capacity just a little over a month prior to executing the Physician’s Certificate. AA 11; 61. Given that the opinion of this one physician was the foundation for the district court’s findings, any evidence regarding his unreliability should have led the district court to conclude that MVCC failed to meet its clear-and-convincing-evidence burden, or at the very least, should have initiated further inquiry through an evidentiary hearing.

The district court posited that in regards to the Physician’s Certificate, “the district court able (sic) to rely upon its contents without the necessity of live testimony from the physician.” AA 335. It is one thing when the allegations in a petition and physician’s certificate are not contested or objected to, however, it is another thing entirely when the proposed protected person is objecting to the guardianship and has provided evidence refuting allegations in the petition and physician’s

<https://www.familylawselfhelpcenter.org/images/forms/guardianship/gship-adult-physician-pdf.pdf> (last visited February 17, 2022).

certificate. Moreover, even if the district court's position is accepted as true, its ability to rely on a physician's certificate does not alleviate the petitioner of its burden to prove the allegations in its petition by clear and convincing evidence. The district court cannot simply accept the conclusory allegations and stock language in the Physician's Certificate wholesale and ignore the evidence presented by Christine. Nothing that MVCC presented in this case regarding Christine's alleged incapacity was clear and convincing.

Accordingly, there is no substantial evidence in the record supporting the district court's finding that Respondent MVCC proved by clear and convincing evidence that Christine was "incapacitated" and that guardianship was necessary.²⁰ Therefore, the district court abused its discretion when it granted MVCC's request for guardianship, and thus, this Court should reverse the district court's order.

II. The District Court Misinterpreted *Matter of Guardianship of Rubin*, 137 Nev. Adv. Op. 27, 491 P.3d 1 (2021).

²⁰ Also, the district court arguably failed to apply the clear-and-convincing standard to MVCC's evidence. Instead, it stated that it was considering "the totality of the information" presented. AA 379.

This Court reviews questions of law, like interpreting Nevada Supreme Court precedent, de novo. *See Nevada Classified School Employees Ass’n v. Quaglia*, 124 Nev. 60, 63, 177 P.3d 509, 511 (2008) (“We review questions of law de novo”). Therefore, no deference is owed to the district court’s misinterpretations of law. Here, the district court denied Christine’s request for an evidentiary hearing prior to imposing a guardianship on her and based its reasoning for doing so, in part, on a flawed interpretation of *Rubin*.

At the Citation Hearing on November 04, 2021, the district court stated that in *Rubin* the Nevada Supreme Court held that the district court erred when it “did not consider hearsay evidence at the citation hearing,” and then went on to assert that under *Rubin* the district court must “consider all of the evidence produced at the citation hearing that we have been provided with certain documents from [Christine’s counsel] in her opposition.” AA 372; 377. But the *Rubin* court never stated that a court is *required* to consider hearsay evidence at the citation hearing as the district court seemed to imply here.

Here is what the *Rubin* court actually addressed. In *Rubin*, the Nevada Supreme Court was considering an appeal filed by the petitioner

from an order denying a petition for guardianship. The appellant in that case filed a petition for guardianship, to which the proposed protected person (Ida Rubin) objected, that the district court denied because appellant failed to include a physician's certificate. *Rubin*, 491 P.3d at 3. The appellant then later filed a "Petition for Rehearing and Reconsideration of Petition for Appointment of Guardians of the Person and Estate of Ida Rubin" that included a physician's certificate. *Id.* The physician who filled out that certificate reviewed LVMPD call logs concerning Ida, the original petition for appointment of guardian, and email correspondences, but the physician never personally evaluated Ida prior to filling out the certificate. *Id.* Ultimately, the district court again denied the request for guardianship. *Id.* The district court reasoned that the physician's certificate was insufficient because it relied on "hearsay and double hearsay" and "was made without having seen Ida." *Id.* (alteration omitted). Moreover, the district court found that less-restrictive alternatives to guardianship were in place, and then it declined to exercise its discretion to open discovery and hold an evidentiary hearing. *Id.* at 3–4.

Importantly, the *Rubin* court did not provide broad guidance

regarding what the district court can and cannot consider at a citation hearing. Instead, the *Rubin* court specifically addressed the physician's certificate requirement and what information may serve as the basis for the opinion expressed in such a certificate. First, the *Rubin* court held that NRS 159.044(2)'s use of the word "must" indicates that a physician's certificate is required for a guardianship petition. *Id.* at 5. Then, the *Rubin* court went on to address whether a physician or other qualified professional can rely on hearsay evidence when completing the certificate. *Id.* The court reasoned that "experts may, and commonly do, rely on hearsay when making expert opinions." *Id.* (citing NRS 50.285(2)). Because experts can typically rely on facts or data that are not admissible in evidence, the *Rubin* court concluded that it would not add an in-person examination requirement to NRS 159.044(2) that was not explicitly included in the statute. However, the *Rubin* court never once made sweeping assertions regarding what information the district court must consider at a citation hearing.

Also, the *Rubin* court addressed the district court's authority regarding discovery and holding an evidentiary hearing when requested by a petitioner. *Id.* at 6. Specifically, the *Rubin* court stated that when a

petitioner is requesting discovery and an evidentiary hearing, it is within the court's discretion whether or not to order discovery and conduct an evidentiary hearing. *Id.* And that based on the evidence before the district court, further investigations and proceedings were not needed. *Id.* But importantly, the *Rubin* court was not considering such a request, like here, from the proposed protected person, nor the due process implications when it is the proposed protected person requesting an evidentiary hearing.²¹ Once again, the *Rubin* court did not make broad statements regarding what information the district court must consider

²¹ Moreover, *Rubin* does not allow the district court to completely ignore the rules of evidence as the district court here implied. *See* AA 372. Christine's counsel objected to the district court considering the North Dakota reports because they contained hearsay. Hearsay is defined as an out-of-court statement offered to prove the truth of the matter asserted. NRS 51.035. The district court considered the reports in making findings regarding Christine's alleged "incapacity" without Christine having the opportunity to cross-examine witnesses in those reports. *Rubin* does not provide a loophole for the district court to ignore the rules of evidence regarding hearsay, and disregard the due process implications for the proposed protected person as outlined in the proceeding section of this brief. *See* Section III. At least one other district court in Nevada has reached a different conclusion than the district court here when it comes to hearsay objections and the due process rights of the proposed protected person. *See Matter of Guardianship of Beaver*, Case No. GR16-00033, Order After Hearing Denying Petition to Appoint Guardian (2nd Judicial District of Nevada, May 04, 2016).

at the citation hearing.

Put simply, the district court here extrapolated from the *Rubin* court's discussion on whether a physician or other qualified professional can consider hearsay evidence when completing a physician's certificate, to conclude that the *Rubin* court gave district courts the broad authority to consider whatever information it wanted at a citation hearing. This was clear legal error. To be clear, the *Rubin* court did not outline the parameters of what *the court* can and cannot consider at a citation hearing. Instead, it simply addressed what the *physician or other qualified professional* can consider when completing a physician's certificate. At most, the *Rubin* court's analysis regarding hearsay evidence simply reinforces the notion that a physician or other qualified professional who completes a physician's certificate in a guardianship case is an "expert" as defined by NRS 50.285(2), and therefore, can consider inadmissible facts and data in forming their opinion. However, the conclusion that the district court reached in Christine's case—that *Rubin* grants the district court broad leeway to disregard rules of evidence and consider whatever information it wants—is wrong.

Additionally, although the *Rubin* court stated that the district court

has the discretion to open discovery and conduct an evidentiary hearing, the district court here essentially restrained its own discretion and concluded that it was required to consider all information, even hearsay evidence, at the citation hearing. In determining that it was required to consider everything presented to it at the citation hearing, the district court, in effect, simply accepted unreliable hearsay evidence as true. With unreliable evidence from MVCC, and evidence presented by Christine showing that she has capacity, the district court nonetheless found that MVCC met the high bar of showing by clear and convincing evidence that Christine is incapacitated and guardianship is necessary. Legal error such as this, that leads a district court to decline to exercise jurisdiction that it unquestionably has, is also an abuse of discretion. *See Lund v. Eighth Judicial Dist. Court*, 127 Nev. 358, 363, 255 P.3d 280, 284 (2011). Even if the district court was not inclined to dismiss the petition, it at the very least should have ordered an evidentiary hearing.

Accordingly, the district court committed clear legal error when it misinterpreted the Nevada Supreme Court's decision in *Rubin*.

III. The District Court Denied Christine Her Right to Due Process When It Granted Guardianship Without Holding an Evidentiary Hearing Even Though Facts Regarding Her Alleged Incapacity Remained in Dispute.

This Court reviews constitutional challenges de novo. *Grupo Famsa v. Eighth Jud. Dist. Ct.*, 132 Nev. 334, 337, 371 P.3d 1048, 1050 (2016). Procedural due process requires that interested parties be given notice and an opportunity to present their objections. *Id.* “Due process is not a rigid concept: ‘due process is flexible and calls for such procedural protections as the particular situation demands.’” *Watson v. Housing Authority of City of North Las Vegas*, 97 Nev. 240, 242, 627 P.2d 405, 407 (1981) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). It centers on “‘fundamental fairness,’ a requirement whose meaning can be as opaque as its importance is lofty.” *Lassiter v. Department of Social Services of Durham County, N.C.*, 452 U.S. 18, 25 (1981).

To provide guidance in reviewing procedural due process claims, the Supreme Court created a three-part test. Specifically, a court must balance three factors when determining whether due process was satisfied: 1) the private interest affected by the governmental action, 2) the chance that procedures used will result in an improper deprivation of the private interest, and 3) the government’s interest and the additional cost of further procedural protections. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1977). Each of these factors weigh in Christine’s favor here.

First, the proposed protected person's interest in a guardianship case is as substantial as any interest can be. It centers on one's autonomy and ability to make the most deeply personal decisions about one's life. If a guardian is appointed, they can make decisions about where the protected person lives, who they may or may not see, and medical treatments that can quite literally determine whether the protected person lives or dies. Recognizing how profound the liberty interest is in guardianship cases, some courts have described the loss of freedom resulting from a guardianship as resembling "the loss of freedom following a criminal conviction." *In re Conservatorship of Groves*, 109 S.W. 3d 317, 329 (Tenn. Ct. App. 2003); *see also Matter of Guardianship of Hedin*, 528 N.W.2d 567, 573 (Iowa 1995) (listing several court decisions comparing the loss of liberty in guardianship to that of the loss in involuntary civil commitment); *In re Mark C.H.*, 906 N.Y.S.2d 419, 426 (N.Y. Surr. Ct. 2010) (stating that "despite the seemingly benevolent nature of the guardianship system, the consequences of guardianship are very harsh"). While this interest hangs in the balance in every guardianship case, it becomes even more resounding when, like here, the

person who may be forced into guardianship is objecting. Thus, the interest here—personal autonomy—is as profound as any interest can be.

Second, the procedure used here can, and did, result in a deprivation of that interest. In a guardianship proceeding, the finding that a proposed protected person is “incapacitated” is an essential aspect of the case. So, when the district court received significant information refuting Christine’s alleged incapacity, it should have held an evidentiary hearing to resolve the dispute and provide Christine with a chance to confront Dr. Jorgensen, considering that his opinion in the Physician’s Certificate served as the foundation for the district court’s “incapacitated” finding. *See Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) (“In almost every setting where important decisions turn on questions of fact, **due process requires an opportunity to confront and cross-examine adverse witnesses.**”) (emphasis added).

In *Goldberg*, the Supreme Court considered a challenge to procedures used by the state of New York when terminating public assistance payments. The court first recognized the gravity of the interest it was dealing with, stating that “termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the

very means by which to live while he waits.” *Goldberg*, 397 U.S. at 264. The court then went on to hold that due process requires, among other things, that the recipient have “an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.” *Id.* at 268. Thus, the ability to confront and cross-examine adverse witnesses is an essential component of due process. *See United States v. Jordan*, 742 F.3d 276, 279 (7th Cir. 2014) (“Where, as here, a person’s liberty is at stake, the opportunity to confront witnesses and reveal problems with their testimony is an important component of due process. When liberty is at stake, the limited right to confront and cross-examine adverse witnesses should not be denied without a strong reason.”) (emphasis added).²²

Here, the district court relied solely on Dr. Jorgensen’s Physician’s Certificate to find that Christine was incapacitated, even though Dr. Jorgensen validated Christine’s decisional capacity just weeks prior and

²² Similarly, in *Watson*, the Nevada Supreme Court held that the appellant’s due process rights were violated when “she was not afforded an opportunity to confront the allegations before her dismissal” in regards to termination of employment from the North Las Vegas Housing Authority. 97 Nev. at 243.

even though medical documents from MVCC demonstrated that Christine was not incapacitated. Dr. Jorgensen's credibility was very much in question, and Christine should have had the opportunity to confront him about his opinions on her ability to communicate as it relates to his finding that she is "incapacitated." Christine was never afforded the opportunity to cross-examine Dr. Jorgensen regarding what measures, if any, he took to effectively communicate with Christine. For instance, did he or other MVCC staff use assistive technologies or other forms of nonverbal communication with her? How much time did he spend attempting to communicate with Christine before executing the Physician's Certificate? Moreover, Christine should have had the opportunity to cross-examine Dr. Jorgensen regarding his sudden change in opinion about her decisional capacity when nothing in the record shows that she experienced a decline in her health between when Dr. Jorgensen validated her decisional capacity and when he executed the Physician's Certificate. By not holding an evidentiary hearing and not

allowing Christine to confront Dr. Jorgensen, the process used by the district court here did not satisfy due process.²³

Third, the governmental interest in Christine's case is minimal. There was no finding from a governmental agency that Christine was in need of a guardian. And in fact, the only Nevada APS case regarding Christine was unsubstantiated. It was MVCC, not a governmental entity, who pursued guardianship. The government of course has a *parens patriae* interest in protecting the well-being of its citizens, however, in Christine's case all the district court had was her ALS diagnosis and disputed evidence regarding her alleged incapacity, which is not sufficient to appoint a guardian. Moreover, because the CCPG is a governmental entity, there is a governmental interest in ensuring that the CCPG is not unnecessarily appointed in cases and needlessly expending public funds and resources.

²³ Some states have gone as far as statutorily requiring a trial-like process in guardianship matters when requested by the proposed protected person. *See Conservatorship of Tian L.*, 57 Cal.Rptr.3d 382, 386 (Cal. Ct. App. 2007); CA Probate § 1827; *Matter of Application of S.B.*, 117.N.Y.S.3d 814, 819 (N.Y. 2019); NY Ment. Hyg. § 81.11.

Further, while there is a cost to the government in holding an evidentiary hearing, such hearings are not unusual in guardianship. The district court routinely holds evidentiary hearings in guardianship cases. And in Christine's case, this was the first time she had requested an evidentiary hearing, so this was not some heavily litigated issue that was draining judicial resources. Rather, this was Christine's first attempt at fighting the allegations made about her alleged incapacity. Accordingly, the district court deprived Christine of her right to due process.

To be clear, Christine is not arguing that the district court should hold an evidentiary hearing in *every* guardianship case before it can make a finding that the proposed protected person is "incapacitated." Rather, Christine is arguing that given the facts of her specific case and the conflicting information that the district court had in the record regarding her alleged incapacity, the district court violated Christine's right to due process when it denied her the opportunity to cross-examine Dr. Jorgensen regarding his allegations in the Physician's Certificate.

IV. Christine's Life Since the District Court Stayed its Amended Order Appointing Guardian.

While it is not part of the record before the district court or in this appeal, it would be an injustice to Christine to not highlight the relief she

has felt since the district court stayed its order. Obviously, given Christine's ALS diagnosis, she faces tremendous obstacles on a daily basis. However, after months of fighting for her freedom, Christine has finally regained the feeling of personhood and independence that she had prior to the district court imposing a guardianship on her.

Since the time that the district court stayed its order, Christine has executed a Power of Attorney naming Mr. Anchando as her agent. Christine has stayed steadfast in her desire that Mr. Anchando be the one to act as her agent in the future if she ever needs it. Also, Christine has moved to a new facility, and luckily the staff there respect her decisional capacity and have affirmed that they do not believe she needs a guardianship. Staff at the new facility communicate with Christine regarding medical care and treatment, and Christine has been making her own decisions since her admission there.²⁴

The new status quo for Christine is life without the restraints of a guardianship. She is once again independent to the greatest degree

²⁴ It is also worth noting that the Clark County Public Guardian stated in its Petition for Discharge that it never took control of any of Christine's accounts during the life of the case. So by all accounts, Christine has managed her own financial affairs without the assistance of a guardian.

possible and able to make many of her own decisions. Christine's ability to manage her affairs and put less-restrictive alternatives in place since the time that the district court stayed its order just further shows that this whole guardianship case was nothing more than an unnecessary deprivation of Christine's liberty.

CONCLUSION

For the foregoing reasons, Christine respectfully requests that this Court reverse the district court's order granting guardianship over her person and estate.

Dated: April 20, 2022

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ATTORNEY'S CERTIFICATE

1. This Opening Brief complies with the formatting requirements of NRS 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the typestyle requirements of NRAP 32(a)(6) because it has been prepared in proportionally-spaced typeface using Microsoft Word in Century Schoolbook in size 14-point font.
2. I further certify that this Opening Brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding parts of the brief exempted by NRAP 32(a)(7)(C), it contains approximately 9,189 words, which is less than the 14,000 word count available for an opening brief.
3. Finally, I certify that I have read this Opening Brief and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Opening Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion regarding matters in the record to be supported by reference to the page of the record on appeal where the matter relied upon is to be found.

CERTIFICATE OF SERVICE

I certify that on April 20, 2022, I submitted the foregoing **APPELLANT’S OPENING BRIEF** for filing through the Court’s electronic filing system.

Electronic notification of service will be sent to the following:

Matthew D. Carling, Esq: Cedarlegal@gmail.com

I further certify that on April 20, 2022, I served a copy of this document by mailing a true and correct copy thereof, postage prepared, to the following:

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