IN THE SUPREME COURT FOR THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSON AND ESTATE OF KATHLEEN JUNE JONES, PROTECTED PERSON. KATHLEEN JUNE JONES, Appellant, *vs.* ROBYN FRIEDMAN; AND DONNA SIMMONS, Respondents.	Supreme Court No. 83967

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable Linda Marquis, District Judge
District Court Case No. G-19-052263-A

APPELLANT'S OPENING BRIEF

Scott Cardenas
Nevada Bar No. 14851
Elizabeth Mikesell
Nevada Bar No. 08034
Legal Aid Center of Southern Nevada
725 East Charleston Boulevard
Las Vegas, Nevada 89104
(702) 386-1539
Attorneys for Appellant

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 Kathleen June Jones, 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: June 23, 2022

LEGAL AID CENTER OF SOUTHERN NEVADA

By: /s/ Scott Cardenas
SCOTT CARDENAS, ESQ.
NEVADA BAR NO. 14851
725 East Charleston Blvd
Las Vegas, NV 89104
Attorney for Appellant

TABLE OF CONTENTS

DISCLOSURE STATEMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES v

JURISDICTIONAL STATEMENT viii

ROUTING STATEMENT ix

STATEMENT OF THE ISSUES x

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 4

I. Procedural History 4

II. Background and Facts 6

A. The Visitation and Communication Litigation 6

B. The District Court's Order 10

SUMMARY OF ARGUMENT 16

ARGUMENT 19

I. The District Court Misinterpreted and Ignored Various Provisions in NRS Chapter 159 When It Purported to Grant Robyn and Donna's Request to Remove Kimberly, and then Appointed Robyn as Successor Guardian 19

A. In 2017, the Nevada Legislature completely overhauled NRS Chapter 159 to, among other things, ensure that protected

persons received notice and an opportunity to be heard throughout the guardianship proceedings 21

B. The district court erred when it purported to grant Robyn and Donna's nonexistent "request" to remove Kimberly as guardian because they never filed a petition under NRS 159.1853 nor served a citation pursuant to NRS 159.1855 . 24

C. Even if the district court found that immediate action was necessary in this case, it should have only appointed a temporary substitute guardian until a proper request for removal and appointment of a successor guardian was filed 26

D. Robyn did not provide any information regarding her suitability and qualification to serve as guardian, so the district court could not have even determined that she was suitable and qualified to serve as guardian as required by NRS 159.0613..... 28

E. June, and other interested persons, were not given statutorily required notice that Kimberly might be removed as guardian and that Robyn might be appointed as successor guardian 33

F. NRS 159.1871 does not provide a loophole for the statutory processes regarding removal and appointment of a successor guardian, nor does it abrogate the district court's duty to determine the suitability and qualification of a successor guardian 37

II. June's right to due process was violated because she did not receive notice or an opportunity to be heard regarding potential removal of her preferred guardian, Kimberly, and potential appointment of Robyn as successor guardian 42

III. The District Court Erred When It Concluded that June Is Required to File a Petition Pursuant to NRS 159.333 and Receive

Permission from the Court If She Wants the Autonomy to Manage Her Familial Relationships 48

A. The plain language of the statutory provisions regarding communication, visitation, and interaction..... 50
B. Statutory provisions concerning visitation, communication, and interaction must be read in harmony with each other . 54

CONCLUSION 58

ATTORNEY CERTIFICATE..... 60

CERTIFICATE OF SERVICE..... 61

TABLE OF AUTHORITIES

Cases

Beazer Homes Nev., Inc. v. Eighth Judicial Dist. Court, 120 Nev. 575, 97 P.3d 1132 (2004) 50

Berberich v. Bank of America, N.A., 136 Nev. 93, 95, 460 P.3d 440, 442 (2020) 50

Chur v. Eighth Judicial Dist. Court, 136 Nev. 68, 458 P.3d 336 (2020) 50

Dezzani v. Kern & Associates, 134 Nev. 61, 412 P.3d 56 (2018)..... 19, 50

Great Basin Water Network v. State Eng'r, 126 Nev. 187, 234 P.3d 912 (2010) 20

Grupo Famsa v. Eighth Jud. Dist. Ct., 132 Nev. 334, 371 P.3d 1048 (2016) 43

Lassiter v. Department of Social Services of Durham County, N.C., 452 U.S. 18 (1981) 43

Leven v. Frey, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007)..... 54

Mathews v. Eldridge, 424 U.S. 319 (1997) 44, 47

Morrissey v. Brewer, 408 U.S. 471, 481 (1972) 43

Salas v. Allstate Rent-A-Car, Inc., 116 Nev. 1165, 14 P.3d 511, (2000) 19

Szydel v. Markman, 121 Nev. 453, 117 P.3d 200 (2005)..... 48, 50

Torrealba v. Kesmetis, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008)..... 54

Watson v. Housing Authority of City of North Las Vegas, 97 Nev. 240, 242, 627 P.2d 405, 407 (1981) 43

Williams v. United Parcel Servs., 129 Nev. 386, 302 P.3d 1144 (2013) 19, 20

Statutes

NRS 159.044 ..... 15, 30, 38

NRS 159.0613 ..... 15, 17, 28, 30, 31, 32

NRS159.077–125 44

NRS 159.1845 ..... 27, 28

NRS 159.1853 ..... 14, 16, 24, 25, 26

NRS 159.1855 ..... 14, 16, 24, 25, 26, 27, 33

NRS 159.187 ..... 29, 34

NRS 159.1871 ..... 10, 14, 15, 17, 29, 37, 38, 39, 40, 41, 42

NRS 159.328 ..... 34, 35, 56

NRS 159.332 ..... 11, 12, 48, 50, 51, 52, 53, 54, 55, 56

NRS 159.333 ..... 6, 10, 17, 18, 48, 50, 51, 52, 53, 57, 58

NRS 159.337 52

Other Sources

Minutes of the S. Comm. On Judiciary: 79th Leg. Sess., 79th Leg. 10 (Mar. 29, 2017) 21, 22, 24

Minutes of the Assemb. Comm. on Judiciary: 79th Leg. Sess., 79th Leg. 17 (May 5, 2017) 23

S. Journal: 80th Leg. Sess., 80th Leg. 39 (Feb. 4, 2019) 39

Minutes of the Assembly Comm. On Judiciary: 80th Leg. Sess., 80th Leg. 3 (Apr. 29, 2019) 39

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act § 111..... 39, 40

Who is Guarding the Guardians? A Localized Call for Improved Guardianship Systems and Monitoring, Judge David Hardy, 4 NAELA Journal 1 (2008) 22

National Probate Court Standards, Commentary, Standard 1.3.1 Fair and Reliable Judicial Process, 2d. Ed. (2013) 35

JURISDICTIONAL STATEMENT

This Court has jurisdiction under NRS 159.375(1) and NRS 159.375(9) to consider this appeal. Appellant appeals from the District Court's Findings of Fact and Conclusions of Law and Order Regarding Visitation, First Annual Accounting, Guardian's Fees, Caretaking Fees, Attorney's Fees and Costs, and Removal of the Guardian entered on December 06, 2021. Notice of Entry of Order for the order appealed from was filed on December 13, 2021, and Appellant's Notice of Appeal was filed on December 15, 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 interpretation of various provisions in NRS Chapter 159, which will undoubtedly affect future cases before the district court. For instance, the district court's conclusion that a protected person is required to file a petition under NRS 159.333 and ask for the court's permission before the protected person can manage personal matters like visitation and communication with loved ones. Additionally, the district court interpreted NRS 159.1871 as providing the district court with a loophole to avoid the suitability and qualifications findings that it is required to make under NRS 159.044 and NRS 159.0613. Under the district court's interpretation, NRS 159.1871 allows it to appoint a person, who did not even request appointment as guardian and whose suitability and qualification was not vetted by the district court, as successor guardian at a moment's notice. The district court's conclusions of law severely undermine the rights of protected persons in Nevada.

STATEMENT OF THE ISSUES

1. Did the district court err when it purported to grant Respondents' request to remove the guardian, Kimberly Jones, even though Respondents never filed and served a petition pursuant to NRS 159.1853 and NRS 159.1855 seeking removal of the guardian?

2. Did the district court err when it appointed Respondent, Robyn Friedman, as successor guardian even though she never requested appointment as successor guardian, and without the district court making any findings that she was suitable and qualified to serve as guardian as required by NRS 159.0613?

3. Did the district court deny June her right to due process when it removed Kimberly Jones as guardian and appointed Respondent, Robyn Friedman, as successor guardian without a hearing and without giving June any prior notice or an opportunity to participate in the proceedings?

4. Did the district court err when it concluded that a protected person cannot manage communication, visitation, and interaction with family members or other persons unless the protected person first files a petition under NRS 159.333 and obtains court approval?

STATEMENT OF THE CASE

The Appellant, Kathleen June Jones (hereinafter referred to as "June" or "Appellant"), appeals from the district court's Findings of Fact and Conclusions of Law and Order Regarding Visitation, First Annual Accounting, Guardian's Fees, Caretaking Fees, Attorney Fees and Costs, and Removal of Guardian. AA00951–95. This appeal centers on the portions of that order regarding the removal of Kimberly Jones (hereinafter referred to as "Kimberly") as guardian, appointment of Robyn Friedman (hereinafter referred to as "Robyn") as successor guardian, and June's authority to manage visitation and communication with family members.

The catalyst for the order at issue in this case was the Verified Petition for Communication, Visits, and Vacation Time with Protected Person filed on December 30, 2020. AA00064–97. June filed an opposition to this petition on January 25, 2021. AA00110–31. The district court held a hearing on Respondents' petition on February 11, 2021. AA00221–22. The district court did not rule on the petition during that hearing. Instead, the district court continued the hearing, appointed a guardian ad litem, and appointed an investigator from the State Guardianship

Compliance Office. AA0221–37. The guardian ad litem filed her Report to the Court on March 29, 2021. AA 0294–99.

Respondents then filed an additional Petition for Visitation with Protected Person on April 23, 2021, which requested a visit with June on Mother's Day of that same year. AA0301–21. June then filed her own Petition to Approve Kathleen June Jones's Proposed Visitation Schedule on May 05, 2021. AA0340–61. June explained in her petition that it had become clear that Respondents, the court-appointed guardian ad litem, and even the district court were ignoring her expressed wishes, so June felt forced to concede on the issue of visitation. But rather than approve June's petition, the district court decided to set an evidentiary hearing on the visitation and communication issue for June 08, 2021. AA00372–73. There was no petition for removal of Kimberly as guardian or petition to appoint Robyn as successor guardian that was filed at any time prior to the evidentiary hearing.

The district court made clear at the outset of the evidentiary hearing, that the scope of the hearing was only focused on the visitation and communication issue. *See* AA01244 ("The relevant inquiry today is whether or not Kimberly unlawfully restricted communication,

visitation, and/or interaction between the protected person and Donna and Robyn."). The district court never stated that it was considering removal of Kimberly Jones as guardian and appointment of a successor guardian. During the course of the one-day evidentiary hearing, the district court heard testimony from Robyn Friedman, Donna Simmons, Kimberly Jones, and other family members. The district court never held a separate hearing regarding removal of Kimberly as guardian and appointment of Robyn as successor guardian at any time following the evidentiary hearing. Over six months after the evidentiary hearing, on December 06, 2021, the district court entered its Findings of Fact Conclusions of Law and Order Regarding Visitation, First Annual Accounting, Guardian's Fees, Caretaking Fees, Attorney's Fees and Costs, and Removal of Guardian (hereinafter referred to as the "December 06, 2021 Order"). AA00951–95. June then filed her Notice of Appeal to that order on December 15, 2021. AA01129–30.

STATEMENT OF THE FACTS

I. Procedural History

This guardianship case commenced back on September 19, 2019 when Respondents, Robyn and Donna Simmons (hereinafter referred to as "Donna"), petitioned ex parte for guardianship over June. The district court hastily granted guardianship ex parte four days later, but once it finally heard from June, the district court learned that June had already executed a Power of Attorney naming her daughter Kimberly as her agent. AA00007–11; AA00040. It became clear that June preferred Kimberly assisting her rather than Robyn or Donna. But rather than terminate the guardianship for less-restrictive alternatives, the district court at least acknowledged June's preference, removed Robyn and Donna as guardians, and appointed Kimberly as successor guardian on November 25, 2019. AA00039–44. Since being removed as temporary guardians over two years ago, neither Robyn nor Donna ever requested that the district court appoint them as successor guardian.

Following Kimberly's appointment as guardian, the endless fighting in this guardianship matter ensued. Much of the fighting centered on June and Kimberly pushing back against Robyn's and

Donna's demands. One iteration of such demands is the crux of this appeal, which is the Verified Petition for Communication, Visits, and Vacation Time with the Protected Person (the "Petition") filed by Robyn and Donna on December 30, 2020. AA00064–97. The petition sought to dictate how and when June would communicate and visit with relatives, which included, among other things, requesting that June be made available for weekly phone calls, Robyn and Donna not be refused visits at June's home, and that the parties use Talking Parents as if June were a child. AA00084–93.

The Petition led to the district court appointing a guardian ad litem ("GAL"), appointing an investigator, and holding an evidentiary hearing. AA00223–25; AA00228–32; AA00572–73. All while June consistently made her wishes known and vehemently opposed the Petition. AA00110–0131. However, the district court eventually disregarded June's wishes and went far beyond what the Petition requested. The district court removed Kimberly as guardian, even though no petition requesting removal was ever filed; appointed Robyn as successor guardian, even though she never requested appointment as successor guardian; and concluded that June had no right to manage her personal relationships

unless she first filed a petition under NRS 159.333. AA00951–95.

II. Background and Facts

A. The Visitation and Communication Litigation

On December 30, 2020, Robyn and Donna filed their Petition. AA00064–97. In the Petition, Robyn and Donna requested that the district court set a visitation schedule or otherwise dictate visitation over June. Not only that, they also requested that the parties use Talking Parents when discussing visitation regarding June, who is an adult; that June be interviewed by and participate in mediation with someone from the Family Mediation Center; and that the district court itself canvass June regarding her wishes (even though June has court-appointed counsel who advocates for her wishes). AA00084–87. The Petition did not request the removal of Kimberly as guardian or appointment of Robyn as successor guardian, and it does not contain any information regarding Robyn's qualification and suitability to even serve as successor guardian. Thereafter, no party in the case ever filed a separate petition requesting removal of Kimberly as guardian and appointment of Robyn as successor guardian, and no citation regarding such a request was ever issued.

On January 25, 2021, June filed her Opposition to The Petition.

AA00110–0131. In that opposition, June makes clear that she does not want any restrictions on her ability to manage her personal relationships, and that she simply wants her family to listen to her wishes and to stop treating her like a child. AA00111. June made clear throughout the litigation leading up to the evidentiary hearing that she simply wanted the autonomy, like any other adult, to dictate when and how family members could communicate and visit with her.

The district court held a hearing on the Petition, on February 11, 2021. AA00221–22. Rather than June's objection to *any* visitation schedule or other restrictions ending the dispute, the district court decided to appoint a guardian ad litem for June, to which June also objected. AA00228–32. Later, on February 26, 2021, June filed her Notice of Objection to Guardian Ad Litem's Written Notice of Intention to Seek Attorney's Fees and Costs from Guardianship Estate Pursuant to NRS 159.344(3). June did not think that she should have to pay for a guardian ad litem that she did not want and that was appointed based on Robyn and Donna's request.[1] Later, Robyn and Donna filed another petition

[1] June's estate having to pay the GAL's fees and costs is the crux of a separate appeal that was filed after this appeal. *See* Case No. 84655.

regarding communication and visitation, which specifically requested visitation time with June on Mother's Day. AA00301–21.

It became clear to June that Robyn and Donna, the GAL, and the district court were going to continue to ignore June's expressed wishes regarding visitation and communication. Instead, they insisted on focusing on what they believed was in June's "best interests" despite June's wishes. June felt like she had no choice but to propose her own parameters around visitation and communication so that she could try to have some say over what restrictions might be imposed upon her. *See* AA 00338 ("Despite her own desired wishes and stated preferences, June feels she has been *forced* by all parties, including the court-appointed GAL, to concede on the issue of visitation.") (Emphasis in original). In essence, June's proposal was a desperate attempt to have some semblance of control over her ability to manage personal relationships.

However, even June's proposal was not enough. The hearing on June's petition to approve her proposed visitation schedule was set for May 13, 2021, and June assumed that the district court would just accept her proposal and respect her wishes, but the day before the hearing, the district court entered a minute order (without holding a hearing)

vacating the May 13, 2021 hearing, and setting an evidentiary hearing. The evidentiary hearing was then held on June 08, 2021. AA00372–73.

At the outset of the evidentiary hearing, the district court made clear that its focus was on whether or not Kimberly, the guardian, improperly restricted access to June in violation of NRS 159.335. AA01244. In short, according to the district court, the scope of the evidentiary hearing was narrowly focused on the communication, visitation, and interaction issue raised in the Petition. The district court gave no indication that it was considering removing Kimberly as guardian and/or potentially appointing Robyn as successor guardian during the evidentiary hearing.

Thereafter, the evidentiary hearing proceeded with the district court hearing testimony from witnesses who testified about facts regarding communication, visitation, and interaction with June.[2] Throughout the entire evidentiary hearing, no testimony was presented

[2] Although the district court stated that June's alleged inability to coordinate visits would be relevant to its determination regarding visitation and communication, Robyn and Donna presented no testimony or other evidence from a medical professional regarding June's alleged inability to coordinate visits.

nor discussion or argument made regarding removal of Kimberly as guardian and appointment of Robyn as successor guardian. AA01222–01586.[3] After the evidentiary hearing, the district court never held separate hearings regarding removal of Kimberly as guardian and appointment of a successor guardian.

B. The District Court's Order

The district court started its order by discussing the history of the case leading up to the evidentiary hearing and then summarizing the testimony from June's family members, specifically, Scott Simmons (June's son), Cameron Simmons (June's grandson), Samantha Simmons

[3] The evidentiary hearing was quite lengthy and centered on facts specific to the allegations in the Robyn and Donna's petition regarding Kimberly's conduct. Because the issues in this appeal only focus on questions of law—*i.e.*, the statutory process that was required for Robyn and Donna to request removal of Kimberly, whether June's due process rights were violated, the qualification and suitability findings that the district court must make before appointing Robyn as successor guardian, the district court's interpretation of NRS 159.1871, and whether a protected person is required to file a petition under NRS 159.333 in order for the protected person to dictate communication, visitation, and interaction—June will not unnecessarily summarize the lengthy testimony during the evidentiary hearing. However, June has provided the entirety of the evidentiary hearing transcript on appeal, at the very least, for the purpose of showing that removal of Kimberly and appointment of Robyn as successor guardian were never discussed.

(June's granddaughter), Donna, Robyn, and Kimberly. AA00952–69.[4] It then went on to summarize the GAL's report and issues that the district court noted with the annual accounting filed by Kimberly. AA00969–77. The district court's factual findings are not the thrust of this appeal, instead, the district court's misapplication of the law and failure to follow processes outlined in NRS Chapter 159 are the heart of this dispute.

Regarding its conclusions of law, the district court began by first addressing June's request to manage her own communications and visits. It first stated that "[o]nly a guardian may request a restriction of a family member's communication and contact with the Protected Person." AA00977. It then discussed the general prohibition under NRS 159.332 regarding a guardian restricting communication and visits, and the process that the guardian must follow to properly do so. AA00977–78. Moreover, the district court outlined the rights expressed in the Protected Persons' Bill of Rights that center on a protected person's right, among other things, to communications, visits, and overall independence.

[4] The district court did not discuss testimony from Terri Butler (June's daughter) that was favorable to Kimberly and June's position in regards to the communication, visitation, and interaction issue.

AAA00978–0979. Ironically, after discussing the rights enumerated in the Protected Persons' Bill of Rights, the district court then turned those rights on their head and determined that a protected person who wishes to manage their own personal communications and visits is, as a matter of law, held to the same standard under NRS 159.332 as a guardian who is seeking to restrict communications and visits. AA00982.

While the district court stated just a few paragraphs prior that only a guardian can request an order restricting communications and visits, it then suddenly characterized June's request as a "request for a court order restricting" communication and visitation. AA00982. Even though June was simply trying to manage her own personal relationships on her terms like any other adult. Then, the district court determined that it could not even address June's desperate plea for some sense of autonomy because June "failed to establish the statutory requirements necessary in order to restrict visitation and communication with her family members." AA00990. In essence, under the district court's interpretation, June, the only person with any rights and liberties at stake in the guardianship, has no freedom to manage her personal relationships unless she first asks for permission from the district court.

After disposing of June's request, the district court turned its attention towards removal of June's preferred guardian. First, the district court discussed issues with the annual accounting. AA00982. The district court stated that, pursuant to NRS 159.179, Kimberly had failed to itemize all expenditures, and failed to retain receipts and vouchers or show that it would be impossible to obtain duplicates. AA00982–84. In total, the district court noted that the guardian failed to account for around $22,000.00 that was expended in home renovations, and failed to account for additional withdrawals. AA00984.

Next, the district court addressed the alleged restrictions that Kimberly was placing on visitation and communication. AA00984. It stated that "Kimberly through her actions and inactions has created an environment in which the Protected Person has been isolated from her family." AA00985. This is despite the fact that all that Kimberly did was adhere to June's wishes. This is why June has always been aligned with Kimberly when it comes to the communication and visitation issues raised by Robyn and Donna. Nonetheless, the district court found that Kimberly restricted June's communication, visitation, and access to her relatives in violation of NRS 159.331 to NRS 159.338. AA00991.

The district court's findings regarding Kimberly's alleged restrictions on communication and visitation, and her failure to properly account for expenditures of June's estate, served as the basis for the district court removing Kimberly as guardian. The district court found that the conditions for removal listed in NRS 159.185(d), (e), (i), and (j) were met. AA00991–92. The district court then stated that it was granting Robyn and Donna's "request to remove Kimberly Jones as guardian of the person and estate." AA00993. However, in the Petition, Donna and Robyn did not petition for removal as required under NRS 159.1853, nor did they serve a citation on such a petition as required under NRS 159.1855. And no separate petition seeking removal was ever filed. Despite Donna and Robyn's failure to invoke NRS 159.1853 and NRS 159.1855, the district court purported to grant their "request" to remove Kimberly. Moreover, the district court never held a separate hearing prior to or after the evidentiary hearing regarding removal or provided notice that it might remove Kimberly as guardian.

Finally, the district court stated that NRS 159.1871 gave it the authority to "appoint a successor guardian at any time to serve immediately or when a designated event occurs." AA00986. And that

revocation of letters of guardianship or any other court action to suspend a guardian's authority may serve as a "designated event" under NRS 159.1871. AA00986. The district court then appointed Robyn as successor guardian now that Kimberly was removed as guardian. AA00994. This is despite the fact that Robyn never requested that the district court appoint her as successor guardian, Robyn never provided the district court with information regarding her suitability and qualification to serve as guardian as required by NRS 159.044 and NRS 159.0613, and the district court never made any findings regarding Robyn's suitability and qualification to serve as guardian. In essence, the district court concluded that NRS 159.1871 gave it the authority to pluck any person at random to serve as successor guardian without vetting the person's suitability and qualification to serve, and without notice or an opportunity to be heard for the protected person or other interested persons regarding the appointment of a successor guardian.

Robyn has served as guardian for June since the time that the district court entered the order appealed from in this case.

SUMMARY OF ARGUMENT

This case presents a textbook example of why the process is just as important as the outcome. The district court's December 06, 2021 Order disregarded the processes outlined throughout NRS Chapter 159, and stripped June of any opportunity to voice her objections. No matter the issue before it, the district court still has a duty to follow the process mandated by law. However, the district court here failed to do so, and instead blindsided June with an order that completely changed June's life without her having the opportunity to make her voice heard. This flies directly in the face of the recent overhaul to NRS Chapter 159 in which the legislature went to great lengths to enshrine a protected person's right to notice and an opportunity to participate at almost every juncture of the proceedings.

First, the district court erred by purporting to grant Respondents' nonexistent "request" to remove Kimberly. Respondents never filed a petition and citation regarding removal of the guardian as required by NRS 159.1853 and NRS 159.1855. Accordingly, Appellant never had the opportunity to voice any objection to removal of her preferred guardian.

Second, the district court erred by appointing Robyn as successor

guardian even though Respondents never filed a petition to appoint a successor guardian. The district court had no information regarding Robyn's qualification and suitability to serve as guardian, and therefore, the district court could not have made any findings regarding the same as required by NRS 159.0613. Instead, the district court concluded that it could use NRS 159.1871 to abrogate its duty to vet the qualification and suitability of a potential guardian. In essence, the district court concluded that it could select any person at random to serve as successor guardian without notice to the protected person or any interested persons (including the person selected as successor guardian who did not even request appointment). The legislature did not intend for NRS 159.1871 to provide the district court with this boundless authority.

Finally, the district court erred when it concluded that a protected person is required to file a petition pursuant to NRS 159.333 before the protected person can manage their own communications and visitations. NRS Chapter 159 repeatedly emphasizes the protected person's privacy and independence, and there are not many things more private than the personal relationships a person chooses to maintain throughout their life. A protected person's visitation and communication rights must of course

encompass the right to say with whom the protected person does and does not want to visit and communicate. Nonetheless, under the district court's analysis here, a protected person is treated like a child who must first ask the paternalistic district court for permission before the protected person can manage their own personal relationships. The district court's interpretation of NRS 159.333 severely restricts a protected person's authority to manage their own personal relationships.

In short, the district court repeatedly disregarded the processes outlined in NRS Chapter 159, and instead, imposed what it thought was in June's "best interests" despite June's expressed wishes and without giving June any notice or chance to participate in the proceedings.

ARGUMENT

I. The District Court Misinterpreted and Ignored Various Provisions in NRS Chapter 159 When It Purported to Grant Robyn and Donna's Request to Remove Kimberly, and then Appointed Robyn as Successor Guardian.

The issues surrounding the district court removing Kimberly as guardian and appointing Robyn as successor guardian center on the district court's interpretation of various provisions in NRS Chapter 159 regarding removal of a guardian and appointment of a successor guardian. This Court reviews questions of statutory interpretation de novo, and therefore, no deference is owed to the district court's interpretation. *Williams v. United Parcel Servs.*, 129 Nev. 386, 391, 302 P.3d 1144, 1147 (2013). When interpreting a statute, the court's main goal is to discern the legislature's intent in enacting the statute at issue. *Dezzani v. Kern & Associates*, 134 Nev. 61, 64, 412 P.3d 56, 59 (2018). In determining the legislature's intent, this Court must look first to the plain language of the statutory provisions. *Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 513–14 (2000).

This Court's "duty is to interpret the statute's language; this duty does not include expanding upon or modifying the statutory language because such acts are the Legislature's function." *Williams*, 129 Nev. at 391–92, 302 P.3d at 1147. Thus, if the statute's plain language is clear, then the inquiry ends there. *Great Basin Water Network v. State Eng'r*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010); *see also William*s, 129 Nev. at 391, 302 P.3d at 1147 ("In the absence of an ambiguity, we do not resort to other sources, such as legislative history, in ascertaining that statute's meaning.").

This Court only resorts to interpretive aids when the statutory language is ambiguous, which is when the statute is susceptible to multiple interpretations. *Great Basin Water Network*, 126 Nev. at 196, 234 P3d at 918. If a statute is ambiguous, this Court must discern the legislature's intent by considering "legislative history and construing the statute in a manner that conforms to reason and public policy." *Id.* Moreover, this Court must ensure that it avoids any interpretation that renders statutory language meaningless or superfluous, and must also ensure that it interprets provisions within a statutory scheme harmoniously to avoid an unreasonable or absurd result. *Id.*

A. *In 2017, the Nevada Legislature completely overhauled NRS Chapter 159 to, among other things, ensure that protected persons received notice and an opportunity to be heard throughout the guardianship proceedings.*

In the past, abuses of the guardianship process devastated many families throughout the state of Nevada. Once appointed, a guardian exercises tremendous authority over a protected person. That authority can range from deciding where the protected person will live, what medical treatment they may receive, how to spend their estate, whether to place the protected person in a locked psychiatric or memory care facility, to even end-of-life decisions.

Prior to the legislative overhaul in 2017, guardians regularly abused the system and exploited protected persons throughout Nevada. This happened, in large part, because the guardianship statutes at the time did not ensure that notice was given to the protected person. In many cases the court, without any oversight[5], would grant guardianship without the protected person or their family ever being notified. A culture

[5] When the Guardianship Commission began in Clark County, there were 8,737 open adult guardianship cases, many of which the Court had not reviewed in years. In fact, some guardianship cases dated back to the 1950's and the only piece of paper in the case file was the Order appointing the guardian. *Minutes of the S. Comm. On Judiciary: 79th Leg. Sess.*, 79th Leg. 10 (Mar. 29, 2017).

which saw courts rubber-stamping many requests without notice to anyone contributed to the suffering of many protected persons.

Despite the fact that the protected person was at risk of losing their liberty, all of their savings and property, and possibly their life, proper due process often was not provided. "Many, by their testimony, had never wanted to be a part of a guardianship, did not know they were part of guardianship, had been segregated and separated from their family members, who were never represented by lawyers and never appeared in court when a guardianship was established for them." *Minutes of the S. Comm. On Judiciary: 79th Leg. Sess.*, 79th Leg. 10 (Mar. 29, 2017). There were no enforced notice requirements, the protected person was not appointed counsel, and the protected person oftentimes never had an opportunity to object to anything.[6]

However, that all changed once the Nevada Supreme Court created

[6] "Guardianships were often granted without meaningful review. Due process was frequently violated in proceedings that divested elderly citizens of fundamental rights and relegated them to the status of a child." *Who is Guarding the Guardians? A Localized Call for Improved Guardianship Systems and Monitoring*, Judge David Hardy, 4 NAELA Journal 1 (2008)(citing Guardians of the Elderly: An Ailing System, The Associated Press (1986)).

a commission to study guardianship in Nevada Courts. The Commission recommended 16 amendments to NRS Chapter 159, which included the Protected Persons' Bill of Rights, which Justice Hardesty called the "most significant recommendation the Commission made." *Minutes of the S. Comm. On Judiciary: 79th Leg. Sess.*, 79th Leg. 10 (Mar. 29, 2017). The Protected Persons' Bill of Rights, along with other changes to NRS Chapter 159, sought to ensure procedural due process rights for the protected person. *See Minutes of the Assemb. Comm. on Judiciary: 79th Leg. Sess.*, 79th Leg. 17 (May 5, 2017) (describing the Bill of Rights, which includes "rights to have access to information about the actual guardianship, and basically solidifies in Nevada law that people who are in a guardianship do not lose every right to live their life."); *Minutes of the S. Comm. On Judiciary: 79th Leg. Sess.*, 79th Leg. 10 (Mar. 29, 2017) ("The system inside our courts is sometimes reactive. When one party files a document, the court often will grant an order unless someone else opposes it. Well, if you do not know about it, you do not oppose it. When you skip providing notice to people, bad things happen.").

These significant legislative changes that are aimed at ensuring the protected person receives due process mean nothing in practice if courts

simply ignore the statutory process and make life-altering decisions behind closed doors like the district court did here in June's case.

B. *The district court erred when it purported to grant Robyn and Donna's nonexistent "request" to remove Kimberly as guardian because they never filed a petition under NRS 159.1853 nor served a citation pursuant to NRS 159.1855.*

The authority to remove a guardian is governed by NRS 159.185, which grants the district court the power to remove and describes under what conditions removal may occur. However, that statute does not outline the procedure to request removal. It is NRS 159.1853 and NRS 159.1855 that outline the procedure for a party to request that the district court remove a guardian. NRS 159.1853(2) describes what an interested person must file to request removal and states what information "must" be included in a petition for removal. Then, NRS 159.1855 states that the person must serve a citation on all interested persons, so that they can appear and show cause why the guardian should not be removed.

Pursuant to NRS 159.1853, a request for removal must be made through a petition containing the information mandated in the statute. The petition must state with particularity the reasons for removing the guardian and show cause for the removal. NRS 159.1853(2)(a)–(b). Moreover, the statute delineates who may file a petition with the Court

to remove a guardian, which includes the protected person, protected person's spouse, any relative within a second degree of consanguinity of the protected person, a public guardian, or any other interested person. NRS 159.1853(1)(a)–(e).

Then, NRS 159.1855(1) provides that the court *shall* issue and serve a citation on the guardian and all other interested parties. The citation must require the guardian to appear and show cause why they should not be removed. NRS 159.1855(2). This provides a hearing date for the protected person and other interested parties to object or voice other concerns—essentially, encapsulating the right to due process at this critical stage of the guardianship proceeding.

Here, Robyn and/or Donna never filed a petition for removal containing the necessary information pursuant to NRS 159.1853, and therefore, also never served a citation as required by NRS 159.1855 regarding such a petition. Thus, the district court never entertained a petition for removal, nor held any hearings regarding the same. Instead, it only held hearings regarding visitation on June 8, 2021 and the First Amended Accounting on August 12, 2021. The evidentiary hearing on visitation was set via a Minute Order dated May 12, 2021. AA00372–73.

The Minute Order instructed, "an Evidentiary Hearing relative to the Petitions for Visitation, Petition to Approve Proposed Visitation Schedule, and Oppositions SHALL be set …." AA00373.

And, as stated previously, at the outset of the evidentiary hearing, the district court set the scope of the hearing as "whether or not Kimberly unlawfully restricted communication, visitation or interaction between the protected person and Donna and Robyn." AA01244. Removal of Kimberly as guardian was not within the scope of the evidentiary hearing. Similarly, during the accounting hearing on August 12, 2021, the district court never indicated that it was entertaining a request from Robyn and Donna to remove Kimberly as guardian. AA01587–01623. In short, Robyn and Donna never made a proper request to remove Kimberly as guardian at any time prior to the district court's December 06, 2021 Order.

Therefore, the district court erred when it purported to grant Robyn and Donna's nonexistent "request" to remove Kimberly as guardian because no petition was ever filed pursuant to NRS 159.1853 nor any citation served pursuant to NRS 159.1855.

C. *Even if the district court found that immediate action was necessary in this case, it should have only appointed a temporary*

substitute guardian until a proper request for removal and appointment of a successor guardian was filed.

While NRS 159.1855(3) and NRS 159.1845 contemplate circumstances whereby the district court may sua sponte strip the guardian of their authority immediately, those statutes do not allow the district court to make a final determination on removal without notice to the protected person and an opportunity for them to participate in the proceedings. Instead, the statutory scheme allows the district court to temporary suspend the guardian's authority or appoint a temporary substitute guardian if necessary to avoid harm to the protected person prior to the district court making a final determination on removal.

First, NRS 159.1855(3) addresses scenarios where the protected person may suffer harm or loss while a petition for removal is pending. If the district court determines that it must act before making a final decision on a petition for removal, the district court can: issue a temporary restraining order or injunction suspending the guardian's authority, order the guardian to surrender the protected person to a temporary guardian for no more than 30 days, and/or order the guardian to turn over assets of the estate to the public guardian or temporary guardian until the date of the hearing on a petition for removal. Second,

NRS 159.1845(1) provides the district court with the authority to appoint a temporary substitute guardian if there is a pending proceeding to remove a guardian or the district court finds that the guardian is not performing their duties and immediate action should be taken for the welfare of the protected person.

Accordingly, even if the district court found that immediate action was necessary here while no petition for removal was pending, it could only have temporarily suspended Kimberly as guardian and appointed a temporary substitute guardian. At that point, June and/or Kimberly would have had the opportunity to dispute permanent removal, and Robyn could have filed a petition to serve as successor guardian. Instead, the district court disregarded the statutory process set out by the legislature, and granted a nonexistent "request" to remove Kimberly as guardian, all without June having any opportunity to object. This was a complete overreach of the authority that the statutes provide.

D. *Robyn did not provide any information regarding her suitability and qualification to serve as guardian, so the district court could not have even determined that she was suitable and qualified to serve as guardian as required by NRS 159.0613.*

In addition to the district court's authority to remove an existing guardian, there are statutory requirements that must be met before the

district court can appoint a successor guardian. The statutory process to appoint a guardian ensures that the district court vets the potential guardian so that it can determine whether or not the person is qualified and suitable to serve as guardian. However, the district court did no such vetting here and simply appointed Robyn as successor guardian without Robyn making such a request, without any notice or opportunity to be heard for June or other interested persons, and without any information showing that Robyn is in fact qualified and suitable to serve as guardian.

Once an existing guardian is removed, NRS 159.187 provides the district court with the authority to appoint a successor guardian. That statute states that "[w]hen a guardian dies or is removed by order of the court, the court, upon the court's own motion or upon a petition filed by any interested person, may appoint another guardian **in the same manner and subject to the same requirements as are provided by law for an original appointment of a guardian.**" NRS 159.187(1) (emphasis added). Therefore, the statute is quite clear that the district court must go through the same process when vetting a potential successor guardian that it does at the front end of the case when it is considering the original appointment of a guardian.

In order to appoint a guardian, the district court must determine that the person is "suitable and qualified" to serve as guardian. The information that the district court must consider when determining whether a guardian is suitable and qualified is outlined in NRS 159.0613. This statue provides, in part, that when determining whether a person is suitable and qualified to serve the court "shall consider" factors like: the person's ability to provide for the basic needs of the protected person, whether the person has been convicted of a felony, whether the person is incapacitated or has a disability, etc. *See* NRS 159.0613(2)(a)–(e). The statute further provides that a person is not qualified and suitable to serve as guardian "if the person has been suspended for misconduct or disbarred from any profession listed in this subsection," which includes law, accounting, and other professions requiring licensure or management of money. *See* NRS 159.0613(8)(a)–(c). Additionally, a potential guardian must inform the court if they have filed for bankruptcy within the last seven years prior to their request for appointment. NRS 159.044(2)(s).

This vetting process is intended to ensure that a protected person does not end up with a guardian who is incapable of providing for their

basic needs or who is unable to properly manage their estate. Importantly, the language of NRS 159.0613 mandates that the district court weigh the enumerated suitability and qualification factors and make a finding that the person is qualified and suitable to serve before it can appoint that person as guardian for the protected person.

Here, the district court did not, and could not even, make these necessary findings because Robyn never provided the district court with information relevant to her suitability and qualification to serve as guardian. The district court did determine years ago that Robyn was qualified to serve as guardian when she was appointed temporary guardian on September 23, 2019. However, Robyn's appointment as guardian ended on November 11, 2019 when Kimberly was appointed as successor guardian. Events relevant to Robyn's suitability and qualification to serve as guardian could have occurred between November 11, 2019 and December 06, 2021, when Robyn was not the guardian. And Robyn had no ongoing obligation to inform the district court whether something occurred between those dates that would make her unqualified or unsuitable to serve as successor guardian. For all the district court knew, during those two years Robyn could have: been

convicted of a felony; engaged in the habitual use of alcohol or a controlled substance; been judicially determined to have committed abuse, neglect, exploitation, isolation, or abandonment of a child, spouse, parent, or other person; been deemed incapacitated or disabled; or filed for bankruptcy. All of which are factors that the district court *must* consider before appointing her as guardian.

Robyn provided no information to the district court regarding these factors, and the district court failed to even inquire into Robyn's suitability and qualification to serve as guardian before appointing Robyn as the successor guardian for June. Instead, the district court just hastily appointed Robyn as successor guardian without making any findings regarding her suitability and qualification. Because the district court could not have and did not make the required suitability and qualification findings, there is no way that the district court could have known whether or not Robyn was even suitable and qualified to serve as successor guardian prior to appointing her.

Thus, the district court failed to fulfill its duty, pursuant to NRS 159.0613, to make findings regarding Robyn's suitability and qualification to serve prior to appointing her as successor guardian. This

constitutes reversible error.

E. *June, and other interested persons, were not given statutorily required notice that Kimberly might be removed as guardian and that Robyn might be appointed as successor guardian.*

Given the clandestine manner with which Kimberly was removed as guardian and Robyn was appointed as successor guardian, June, along with other interest persons in the case, never received notice that removal and appointment of a successor guardian might occur, and no hearing was ever held regarding the same.

In addition to the petition for removal, which is required for an interested person to request removal of a guardian, NRS 159.1855 requires that the district court issue a citation and that the citation be served "on the guardian and on all other interested persons." NRS 159.1855(1). But because Robyn and Donna never filed a petition for removal, no citation regarding the same was ever issued and served on June and other interested persons, and no hearing regarding removal of Kimberly as guardian was ever held. Therefore, June was never given notice that the district court was considering removal of her preferred guardian, Kimberly.

Moreover, in regards to the appointment of a successor guardian, NRS 159.187(2) provides that "[i]f a guardian of the person is appointed for a protected person pursuant to this section, the protected person must be served with the petition" to appoint a successor guardian. As with the original appointment of a guardian, June is entitled to notice and the opportunity to voice any objections if the district court is considering appointing a successor guardian. However, neither June, nor any other interested person in the case, received that opportunity. And June never even had the chance to argue that someone other than Robyn should serve as successor guardian. What's more, Robyn did not even request appointment as successor guardian, so presumably even she was unaware of her potential appointment. Shockingly, June had her preferred guardian removed and was forced to have a guardian she did not want, all without any statutorily required notice or opportunity to voice her objections or preference for successor guardian. This completely disregards the statutory notice to which June is entitled.

Further, the Protected Persons' Bill of Rights requires that June "[r]eceive notice of all guardianship proceeding[.]" NRS 159.328(1)(b); *see also* NRS 159.328(1)(c) (requiring that June "[r]eceive a copy of all

documents filed in a guardianship proceeding"); NRS 159.328(1)(f) (requiring that June be allowed to participate in any plan for her care); NRS 159.328(1)(g) (requiring that due consideration be given to June's "current and previously stated personal desires[.]"). So, in addition to specific statutory provisions regarding notice on a petition to remove and/or petition to appoint successor guardian, the Protected Persons' Bill of Rights doubles-down on June's right to notice of proceedings and further highlights the district court's error in granting Robyn and Donna's nonexistent "request" without June receiving any notice and without the district court holding a hearing regarding these matters.[7]

Collectively, these statutory provisions encapsulate the protected person's right to notice and an opportunity to participate in every stage of the proceedings. This is sensible given the liberty deprivation a person,

---

[7] The National Probate Court Standards also describes the need fair and just procedures in guardianship proceedings. It states, in part, that "[f]airness should characterize the court's process. This principle is derived from the concept of due process, which includes notice and a fair opportunity to be informed and heard at all stages of the judicial process[.]" National Probate Court Standards, Commentary, Standard 1.3.1 Fair and Reliable Judicial Process, 2d. Ed. (2013). Moreover, this standard emphasizes that "justice also should be 'perceived to have been done' by those who directly experience the quality of the court's adjudicatory process and procedures." *Id.*

like June, experiences once under guardianship. Therefore, June should have had the opportunity to have her voice heard prior to the district court's December 06, 2021 Order.

Without notice to June or any other interested person, the district court granted Robyn and Donna's nonexistent "request" to remove June's preferred guardian, Kimberly, even though no petition for removal was ever filed and no citation regarding the same was ever issued, then appointed Robyn as successor guardian even though Robyn never requested appointment and even though the district court never vetted Robyn's suitability and qualification to serve. All of this occurred without the district court holding any hearings regarding these matters. The district court making these life-altering decisions for June behind closed doors without a hearing and without June receiving any notice, eerily resembles the kind of scenarios that led to the legislature overhauling NRS Chapter 159 not that long ago.

Because June did not receive statutorily required notice and no hearing was ever held regarding the potential removal of Kimberly as guardian and appointment of Robyn as successor guardian, the district court committed clear legal error when it purported to grant Robyn and

Donna's nonexistent "request."

F. *NRS 159.1871 does not provide a loophole for the statutory processes regarding removal and appointment of a successor guardian, nor does it abrogate the district court's duty to determine the suitability and qualification of a successor guardian.*

The district court invoked NRS 159.1871 when it removed Kimberly as guardian and appointed Robyn as successor guardian. But NRS 159.1871 does not provide the district court with the authority to remove a guardian at any time, and then simply select a person at random to serve as successor guardian before that person has even requested to serve as successor guardian or been vetted to determine their suitability and qualification. Interpreting NRS 159.1871 as a loophole that allows the district court to select a successor guardian without any notice and evade its duty to properly vet the suitability and qualifications of a potential guardian would be an unreasonable and absurd result.

When the legislature enacted NRS 159.1871 it did not intend to provide the district court with the unfettered authority to suddenly select any person it wanted to serve as successor guardian without notice and without first vetting the successor guardian. Instead, NRS 159.1871 was meant to be a much narrower provision that provides the district court with the authority to preemptively name a successor guardian who may

or may not serve sometime in the future. This provision creates a backstop if the current guardian becomes unwilling, unable, or no longer qualified and suitable to serve. The statute states:

> 1. The court at any time may appoint a successor guardian to serve immediately or when a designated event occurs.
> 2. A person entitled under NRS 159.044 to petition the court to appoint a guardian may petition the court to appoint a successor guardian.
> 3. A successor guardian appointed to serve when a designated event occurs may act as guardian when:
>
> (a) The event occurs; and
>
> (b) The successor has taken the official oath and filed a bond as provided in this chapter, and letters of guardianship have been issued.
>
> 4. A successor guardian has the predecessor's powers unless otherwise provided by the court.
> 5. The revocation of letters of guardianship by the court or any other court action to suspend the authority of a guardian may be considered to be a designated event for the purposes of this section if the revocation or suspension of authority is based on the guardian's noncompliance with his or her duties and responsibilities as provided by law.

NRS 159.1871. When the legislature was considering S.B. 20, which eventually became NRS 159.1871, Justice Hardesty stated that the Guardianship Commission was recommending the change "to save time for the guardianship process and assure that if an appointed guardian either passes away or becomes unable to serve or handle their duties, that a successor **who has already been approved by the court** can step in."

See Minutes of the Assembly Comm. On Judiciary: 80th Leg. Sess., 80th Leg. 3 (Apr. 29, 2019) (statement from J. Hardesty) (emphasis added). The Guardianship Commission pulled the language used in NRS 159.1871 from the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act ("UGCOPAA" or "Uniform Act"). *See S. Journal: 80th Leg. Sess.*, 80th Leg. 39 (Feb. 4, 2019).

The Uniform Act contains a section titled "Judicial Appointment of Successor Guardian or Successor Conservator" that uses the same language as NRS 159.1871 regarding a successor guardian serving "immediately or when a designated event occurs." *See* UGCOPAA § 111. The comment to Section 111 of the Uniform Act states that the statute, in part, "authorizes a court to appoint a successor guardian or conservator, effective either upon appointment of the original guardian or conservator or upon a future contingency." *See* Comment to UGCOPAA § 111. In explaining the kind of situation Section 111 is meant to address, the comment states:

> The ability to appoint a guardian or conservator to act upon some specified future event can be particularly useful in situations involving adults with developmental disabilities. The initial guardian or conservator appointed will usually be a parent of the individual subject to guardianship or conservatorship. The ability to appoint a successor guardian or conservator at the time

> of the initial appointment can provide both the parent and the individual with assurance that upon the parent's death someone will be available to step in and provide continuity of assistance.

Id.

Continuity—that is what this provision is meant to provide. It allows the court to preemptively determine the suitability and qualification of a successor guardian and designate at what time or following what event the successor guardian's appointment will spring into action. This statute serves as a safety net to prevent any gaps in time between when an existing guardian is no longer willing or able to serve, and when a successor guardian steps in. Without this statute, a protected person could be left vulnerable for weeks or even months until a successor guardian is appointed. However, the district court here did not use NRS 159.1871 for its intended purpose, and instead used the section to remove the existing guardian and appoint the district court's chosen successor guardian at its whim without notice to June; Robyn, who the district court selected as successor guardian; or any other interested persons.

To be clear, the language in NRS 159.1871(3) shows that the legislature contemplated that a successor guardian would be vetted and approved at a prior time, and that the statute simply specifies when or

under what circumstances that successor guardian's appointment will spring into existence. However, following her removal as temporary guardian, Robyn never requested to be appointed as successor guardian pursuant to this statute, and the district court never informed June nor any other interested person that Robyn might become successor guardian following some "designated event." Moreover, the district court here never entered a prior order invoking NRS 159.1871 that specified when or following what "designated event" Robyn may serve as successor guardian. To properly invoke this provision, the district court should have, prior to its December 06, 2021 Order, entertained a petition from Robyn requesting appointment as successor guardian, vetted Robyn's suitability and qualification to serve, given June and other interested parties an opportunity to object, and then entered an order stating when or following what "designated event" Robyn might serve.

Instead, under the district court's interpretation, NRS 159.1871 allows the court to completely abrogate its responsibility to determine the qualification and suitability of a potential guardian, and just pluck someone at random who did not even request appointment to serve as successor guardian without any notice to June or other interested

persons. Put simply, the district court blindsided June by removing her preferred guardian and appointing a person who did not even request appointment as a successor guardian. This is not what the legislature intended. NRS 159.1871 was intended to provide continuity within the guardianship and safeguard the well-being of the protected person if an existing guardian is removed. It was not intended to eviscerate the statutory process and subject the protected person to the whims of the court without any warning like the district court did here.

Thus, the district court misinterpreted and misapplied NRS 159.1871 here, which constitutes reversible legal error.

II. June's right to due process was violated because she did not receive notice or an opportunity to be heard regarding potential removal of her preferred guardian, Kimberly, and potential appointment of Robyn as successor guardian.

Prior to the district court entering its December 06, 2021 Order, June never received notice that her preferred guardian, Kimberly, might be removed, and that the district court might subsequently appoint a successor guardian. No petition to remove Kimberly as guardian was ever filed, neither was a petition to appoint Robyn as successor guardian. Moreover, no hearing regarding these matters was ever held. Instead, June was blindsided with an all-encompassing order that completely

altered her life without June having any opportunity to object or participate in the proceedings prior to the district court entering that order. This violated June's right to due process.

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 these 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 (1997). Each of these factors weigh in June's favor here.

With respect to the first factor, the interest affected is June's ability to express her preference for who will serve as her guardian. As a protected person, almost every aspect of June's life is dictated by her guardian, like: where she lives, medical and financial decisions, and management of her estate. *See* NRS 159.077–125. The legislature recognized that, despite what a court might find is in the protected person's best interest, it is critical that the protected person have the opportunity to express their preferences and wishes throughout the proceedings. And the district court should consider those preferences and wishes in any determination that it makes. The right to receive notice and participate in all proceedings is a cornerstone of the guardianship process. This is why the legislature, throughout NRS Chapter 159, emphasized the protected person's right to receive notice and have an opportunity to participate at every stage of the proceedings.

June was not given a chance to object or participate in the district court's decision to remove her preferred guardian and to appoint a

successor guardian who did not even request appointment. The removal of June's preferred guardian and appointment of successor guardian means that a new person will have the authority to make life-altering decisions for June. June's right to participate in the proceedings and have the district court at least hear and consider her wishes/preferences regarding these matters that significantly affect her life is as profound as any interest can be.

With respect to the second factor, the procedure used here (or technically lack thereof) resulted in an improper deprivation of June's right to participate in the proceedings and to express her wishes to the district court. June never received notice that the district court might remove Kimberly as guardian, nor that the district court might appoint Robyn as successor guardian. Robyn and Donna never filed a petition with the district court regarding those matters, and the district court never held any hearings regarding potential removal of Kimberly as guardian and/or appointment of Robyn as successor guardian. So, without June ever receiving notice or having any chance to participate in the proceedings, the district court suddenly purported to grant Robyn and Donna's nonexistent "request" to remove Kimberly.

Because there was never a proper petition for removal of guardian and petition for appointment of a successor guardian filed, June never had the opportunity to object to Kimberly's removal, offer options other than removal of Kimberly as both guardian of the person and estate, or state who she would want to serve as successor guardian if Kimberly were removed. June is the person most affected by the district court's decision, yet she was informed of nothing regarding removal and appointment of a successor guardian prior to the district court entering its December 06, 2021 Order. Therefore, the district court's disregard of June's right to participate in the proceedings and to express her wishes prior to the district court's December 06, 2021 Order resulted in an improper deprivation of June's rights.

With respect to the third factor, there is hardly any governmental interest and/or costs in further procedural protections. Here, the district court completely disregarded the processes outlined in NRS Chapter 159 regarding removal of a guardian and appointment of a successor guardian, and it never gave June the opportunity to participate in any proceedings regarding those matters. All that the district court had to do in this case was follow the procedure outlined in NRS Chapter 159. It

should have entertained petitions for removal of guardian and appointment of a successor guardian, and given June the chance at a hearing to express her wishes and object if she wished. Instead, the district court made these decisions behind closed doors without notice to anyone. To be clear, in this particular case the "further procedural protection" for the purposes of the *Mathews* 3-part analysis is the district court simply following the processes mandated by NRS Chapter 159 and thereby letting June participate in the proceedings. There were no "further procedural protections" beyond what NRS Chapter 159 explicitly requires that were needed here. All that the district court had to do was adhere to the statutory process, but it failed to do so. Accordingly, the third factor weighs in June's favor.

The district court's December 06, 2021 Order completely upended June's life. It removed her preferred guardian, Kimberly, and appointed Robyn who never even requested appointment; and in the short time that Robyn has served as successor guardian, she has drastically altered June's life by, among other things, moving June to a different state and seeking to restrict June's ability to communicate and visit with Kimberly. June should have received notice and an opportunity to be heard before

the district court entered its life-altering December 06, 2021 Order, and because she did not, June's right to due process was violated.

III. The District Court Erred When It Concluded that June Is Required to File a Petition Pursuant to NRS 159.333 and Receive Permission from the Court If She Wants the Autonomy to Manage Her Familial Relationships.

Because this issue concerns the district court's interpretation of various statutory provisions regarding visitation, communication, and interaction, this Court's review of this issue is also de novo. *Szydel v. Markman*, 121 Nev. 453, 456–57, 117 P.3d 200, 202 (2005).

Here, in regards to the visitation and communication issue, the relevant statutes are NRS 159.332–NRS 159.338. Most relevant are NRS 159.332, which prohibits a guardian from restricting communication and visitation unless certain requirements are met, and NRS 159.333, which outlines how a guardian can petition the court for an order restricting communication and visitation. The district court's interpretation of those statutes here contradicts their plain language and inevitably places restraints on a protected person's ability to manage communication and visitation with their relatives and other persons. The legislature did not intend for these provisions to limit the *protected person's* ability to manage personal relationships; rather, the legislature only intended for

these provisions to limit the *guardian's* authority to impose restrictions and isolate the protected person.

Ironically, despite the fact that the protected person is the only person with liberties and rights at stake in the guardianship, the district court here concluded that they are treated like any other interested person in the case and have no autonomy in managing communication and visitation unless they first get the court's permission. Specifically, in response to June's attempt to manage communication and visitation with her family, the district court concluded that June "failed to establish the statutory requirements necessary in order to restrict visitation and communication with her family members." AA00990. This is both degrading for protected persons who wish to manage personal relationships like any other adult and a misinterpretation of the law.

When the legislature overhauled NRS Chapter 159 just a few years ago, it emphasized the autonomy and wishes of the protected person, and it did not intend for the paternalistic restraints that the district court imposed in June's case. A review of the statutory language, and the purpose behind the entire statutory scheme concerning visitation,

communication, and interaction demonstrates that the district court erred in June's case.

A. The plain language of the statutory provisions regarding communication, visitation, and interaction.

The best indicator of the legislature's intent is the plain meaning of the language that the legislature included in the statute. *Dezzani*, 134 Nev. at 64, 412 P.3d at 59. "When the language of a statute is clear on its face, this court will deduce the legislative intent from the words used." *Szydel*, 121 Nev. at 457, 117 P.3d at 202; *see also Chur v. Eighth Judicial Dist. Court*, 136 Nev. 68, 71, 458 P.3d 336, 339 (2020) ("If the plain meaning of a statute is clear on its face, then this court will not go beyond the language of the statute to determine its meaning.") (alteration omitted) (citing *Beazer Homes Nev., Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 575, 579–80, 97 P.3d 1132, 1135 (2004)). Importantly, when interpreting a statute's plain language, this Court must ensure that every word is given effect and not rendered meaningless. *Berberich v. Bank of America, N.A.*, 136 Nev. 93, 95, 460 P.3d 440, 442 (2020).

Here, NRS 159.332 and NRS 159.333 are specifically targeted at the guardian, and the guardian's conduct as it relates to restricting communication, visitation, and interaction between the protected person

and relatives or other persons of natural affection. Each subsection of NRS 159.332 discusses what the guardian can and cannot do, in regards to restricting communication, visitation, and interaction; the statute does not place any conditions on the protected person's autonomy to manage their own personal relationships. *See* NRS 159.332(1) ("**A guardian** shall not restrict the right of a protected person to communicate, visit or interact with a relative or person of natural affection . . .") (emphasis added); NRS 159.332(2) ("[I]f **a guardian** restricts communication, visitation or interaction between a protected person and a relative or person of natural affection . . .) (emphasis added); NRS 159.332(3) ("**A guardian** may consent to restricting the communication, visitation or interaction between a protected person and a relative or person of natural affection . . .") (emphasis added).

Similarly, NRS 159.333, which discusses what must be included in a petition to restrict communication, visitation, and interaction, centers on the guardian and the showing that they must make. *See* NRS 159.333(1) (stating that "**a guardian** may petition a court to issue an order restricting the ability of a relative or person of natural affection to communicate, visit or interact with a protected person.") (emphasis

added); NRS 159.333(2) ("After a petition is filed by **a guardian** pursuant to subsection 1 . . .") (emphasis added); NRS 159.333(3) ("Upon a showing of good cause by **a guardian** . . .") (emphasis added). Also, NRS 159.337 states that when a new restriction is sought, the guardian bears the burden of proof. *See* NRS 159.337(1) ("**The guardian** has the burden of proof . . .") (emphasis added).

Accordingly, the standards outlined in NRS 159.332–338 clearly govern the *guardian's* ability to restrict communication, visitation, and interaction, and the standard that the *guardian* must meet when seeking a court order enforcing such restrictions. Based on the process outlined in NRS 159.332–338, the legislature sought to place parameters and conditions on the guardian's authority to restrict a protected person's communication, visitation, and interaction with relatives and other persons of natural affection. It would be one thing for a guardian to have the unfettered authority to place such restrictions, which could potentially isolate a protected person from relatives and persons of natural affection (such abuses were part of what led to the legislature overhauling NRS Chapter 159 just a few years ago). But it is another thing entirely when a protected person can communicate their wishes to

their counsel, the guardian, and the district court, and the protected person states that they want control over when and how relatives or other persons can communicate, visit, and interact with them.

A protected person, who is able to communicate their wishes, has the freedom to manage their personal relationships just as any other adult who is not under guardianship. The statutory scheme was meant to shield the protected person from the guardian's misconduct, not constrict the protected person's autonomy to manage their personal relationships. So, the protected person is not required to file anything.

The language in NRS 159.332–338 does not explicitly limit the protected person's ability to manage communication, visitation, and interaction. Yet, the district court here concluded that NRS Chapter 159 constrains the protected person's ability to manage their personal relationships. According to the district court, June must first ask for the court's permission and meet the standard outlined in NRS 159.332–338 before June can dictate how, when, and even if she wants to communicate, visit, or interact with relatives or other persons. AA00980–82; AA00993. Such an interpretation strips protected persons of their

autonomy in managing personal relationships and contradicts the plain language of the relevant statutory provisions.

B. Statutory provisions concerning visitation, communication, and interaction must be read in harmony with each other.

Contrary to the district court's interpretation, the plain language of NRS 159.333 clearly does not place a requirement on June to file a petition asking for permission to manage her personal relationships, so this Court's inquiry should stop there.

However, even if this Court determined that the statute was ambiguous, NRS 159.332–338 must be read in harmony with other statutes in NRS Chapter 159. *See Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) ("[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent.") (internal quotation marks omitted). Indeed, considering the policy and subject matter of an entire statutory scheme serves as an important interpretive aid, so this Court should review "the statute's multiple legislative provisions as a whole." *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

Here, in addition to NRS 159.332–338, the Protected Persons' Bill of Rights must be considered when discussing the protected person's right to manage visits, communications, and interactions. This statute recognizes the liberty deprivation that an individual experiences once placed under guardianship, and at its core, the Protected Persons' Bill of Rights operates to ensure that protected persons' wishes are respected and that they are granted the greatest degree of autonomy possible. The Protected Person's Bill of Rights enshrines the personhood that the protected person ought to maintain throughout the guardianship. Put simply, the legislature sought to ensure that guardianships were no more restrictive than necessary to provide for the protected person's needs.

The Protected Persons' Bill of Rights provides, among other things, that a protected person has the right to "[r]emain as independent as possible;" "[b]e granted the greatest degree of freedom possible, consistent with the reasons for a guardianship, and exercise control of all aspects of his or her life that are not delegated to a guardian specifically by a court order;" "[e]ngage in any activity that the court has not expressly reserved for a guardian;" "[b]e treated with dignity and respect;" and "[m]aintain privacy and confidentiality in personal

matters." NRS 159.328(1)(h), (1)(i), (1)(j), (1)(k), (1)(m). Each of these subsections, along with others, in the Protected Persons' Bill of Rights emphasize the autonomy that the protected person maintains despite the guardianship. Many of the enumerated rights center on matters relating to personal relationships, presumably because these rights concern the most intimate aspects of a person's life. When interpreting how various statutory provisions in NRS Chapter 159 operate, this Court should always be mindful of the profound rights enumerated in the Protected Persons' Bill of Rights.

However, the Protected Persons' Bill of Rights has little force under the district court's interpretation of NRS 159.332–338. The Protected Persons' Bill of Rights specifically provides the protected person with freedom over matters that are not specifically delegated to the guardian in an order appointing guardian, and the guardian here was never given the broad authority to manage June's personal relationships.[8] Moreover,

[8] It is important to note that the district court previously addressed visitation in its order appointing Kimberly as guardian. At that time, the district court had evidence regarding June's alleged "incapacity" that supported the request for guardianship in the form of the Physician's Certificate. Yet, despite the district court's findings regarding June's "incapacity," the district court did not order that June's right to manage personal relationships was completely inhibited or delegated to the

the Protected Persons' Bill of Rights makes clear that a protected person should have independence and privacy in personal matters; and arguably nothing is more personal than the relationships that one maintains throughout their life. And there is no dignity and respect provided to a protected person by treating them like a child who first needs to ask for the district court's permission to manage their personal relationships.

It should go without saying, but as the title implies a "protected person" is still a *person* despite the guardianship. Like any other person, they have feelings, preferences, likes and dislikes, and all the complexities that go into managing personal relationships. The district court's interpretation of NRS 159.333–338 ignores that reality, as well as the rights enumerated in the Protected Persons' Bill of Rights. Instead, under the district court's interpretation, protected persons are nothing

---

guardian, aside from specifically requiring supervised visits between June and her now late husband. This is the one situation in June's case in which the district court delegated authority regarding communication and visitation to the guardian. Therefore, aside from this specific situation regarding visitation with June's now late husband, the district court has never restricted June's authority to manage her personal relationships prior to the December 06, 2021 Order.

more than non-sentient beings who are always on display for relatives and other persons, unless the protected person requests otherwise.

Accordingly, this Court should hold that a protected person is not required to file a petition under NRS 159.333 in order to manage their personal relationships, and therefore, the district court erred here when it found that June failed to establish the statutory requirements to restrict communications between herself and family members.

CONCLUSION

Based on the foregoing, this Court should: 1) reverse the portion of the district court's December 06, 2021 Order that grants Respondents' nonexistent "request" to remove Kimberly as guardian; 2) reverse the portion of the district court's December 06, 2021 Order that appoints Robyn as successor guardian; and 3) reverse the portion of the district court's December 06, 2021 Order that concludes that June is required to file a petition under NRS 159.333 and establish the statutory requirements before she can manage communication and visitation with her family members.

Dated: June 23, 2022

LEGAL AID CENTER OF SOUTHERN NEVADA

By: /s/ Scott Cardenas
SCOTT CARDENAS, ESQ.
NEVADA BAR NO. 14851
725 East Charleston Boulevard
Las Vegas, Nevada 89104
Attorney for Appellant

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 12,366 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 June 23, 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:

Elizabeth Mikesell, Las Vegas, NV, as counsel for Appellant

Maria Parra-Sandoval, Las Vegas, NV, as counsel for Appellant

Scott Cardenas, Las Vegas, NV, as counsel for Appellant

Jeffrey Sylvester, Las Vegas, NV, as counsel for Respondent

David Snyder, Las Vegas, NV, as counsel for Respondent

John Michaelson, Henderson, NV, as counsel for Respondent

Micah Echols, Las Vegas, NV, as counsel for Respondent

/s/ Jennifer Bocek-Dobijanski
An employee of Legal Aid Center
of Southern Nevada