IN THE SUPREME COURT OF THE STATE OF NEVADA

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

RESPONDENTS' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

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

1. Robyn Friedman and Donna Simmons are individuals.

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

Dated this 7th day of October 2022.

CLAGGETT & SYKES LAW FIRM

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I. JURISDICTIONAL STATEMENT

The Legal Aid Center of Southern Nevada ("LACSN") pursues this appeal on behalf of Appellant, Kathleen June Jones ("Ms. Jones"). LACSN appeals from the 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, which was filed on December 6, 2021. 5 Appellant's Appendix ("AA") 1079–1128, 1129–1131.

In its opening brief, LACSN asserts that this Court has appellate jurisdiction over this order based upon NRS 159.375(1) and (9). Appellant's Opening Brief ("AOB") at viii. Respondents, Robyn Friedman ("Robyn") and Donna Simmons ("Donna"), contend that LACSN lacks standing to challenge this order for a variety of reasons that will be presented in this answering brief. *See, e.g., Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) ("The question of standing overlaps with the inquiry into whether a party is considered a real party in interest; both questions focus[ ] on the party seeking adjudication rather than on the issues sought to be adjudicated.") (citation and internal quotation marks omitted).

Additionally, LACSN did not appeal from the Order Appointing Successor General Guardian of the Person and Estate and for Issuance of Letters of General Guardianship, which was filed on December 7, 2021. 5 AA 1023–1029. Thus, the Court does not have jurisdiction over this subsequent order, which was not appealed. *See, e.g., Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990) (explaining that the lack of appellate jurisdiction goes to the appellate court's inability to act and can be raised at any time). The net result is that even if the Court were to disturb the earlier December 6, 2021 order, the Court lacks jurisdiction to disturb the subsequent December 7, 2021 order.

II. ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals based upon NRAP 17(b)(10), which includes "[c]ases involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings. . . ." In the routing statement within its opening brief, LACSN argues that this appeal raises issues of first impression that are of statewide public importance to satisfy the exceptions in NRAP 17(a)(11) and (12) for the Supreme Court to retain this appeal. For its position, LACSN cites the District Court's interpretation of NRS 159.333, NRS 159.1871, and NRS 159.0613. Aside from LACSN's lack

of standing, LACSN also failed to preserve many of its challenges presented in this appeal. Thus, LACSN has not satisfied the exceptions in NRAP 17(a)(11) and (12) for the Supreme Court to retain this appeal.

Even if the Court were to reach the merits of LACSN's presented arguments, this appeal should still be assigned to the Court of Appeals because it previously familiarized itself with the lengthy record and rendered a published opinion in Case No. 81799-COA earlier this year: *In re Guardianship of Jones*, 138 Nev., Adv. Op. 6, 507 P.3d 598 (Ct. App. Feb. 24, 2022). So, this appeal should be assigned to the Court of Appeals.

III. ISSUES ON APPEAL

A. WHETHER LACSN LACKS STANDING TO CHALLENGE THE DISTRICT COURT'S REMOVAL OF KIM AS THE GUARDIAN AND ROBYN'S APPOINTMENT AS THE SUCCESSOR GUARDIAN FOR MS. JONES.

B. WHETHER LACSN FAILED TO RAISE ANY OF THE PROCEDURAL DUE PROCESS ISSUES IN THE DISTRICT COURT SUCH THAT THIS COURT SHOULD NOW REFUSE TO CONSIDER THEM.

C. WHETHER THE DISTRICT COURT PROPERLY REMOVED KIM AS THE GUARDIAN AND APPOINTED ROBYN AS THE SUCCESSOR GUARDIAN FOR MS. JONES BASED UPON THE EVIDENCE PRESENTED.

D. WHETHER THE DISTRICT COURT PROPERLY REFUSED TO ENFORCE KIM'S ARBITRARILY IMPOSED RESTRICTED VISITATION AND COMMUNICATION WITH MS. JONES.

IV. STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

This is an appeal in which LACSN offers a limited challenge to the District Court's order that removes Kimberly Jones ("Kim") as the guardian for Ms. Jones, appoints Robyn as the successor guardian for Ms. Jones, and eliminates Kim's arbitrarily restricted visitation schedule and communication protocols for Ms. Jones. 5 AA 1079–1128. This Court should affirm the District Court's order based upon the several reasons outlined in this brief, or for any other reasons supported

by the record. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that this Court may affirm the district court on any ground supported by the record, even if not relied upon by the district court).

First, LACSN lacks standing to challenge the District Court's removal of Kim as the guardian and Robyn's appointment as the successor guardian for Ms. Jones. Even though the District Court issued a lengthy 45-page order, LACSN opts to avoid the factual findings from the evidentiary hearing and, instead, asks this Court to review the District Court's interpretation of several statutes within NRS Chapter 159 (Guardianship of Adults) in a vacuum. AOB at 11 ("The district court's factual findings are not the thrust of this appeal. . . ."). However, before the Court reaches the merits of LACSN's statutory arguments, the Court should first consider whether LACSN (and, thus, Ms. Jones) lacks standing to challenge Kim's removal as the guardian and Robyn's appointment as the successor guardian for Ms. Jones. *See, e.g., Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) ("The question of standing overlaps with the inquiry into whether a party is considered a real party in

interest; both questions focus[ ] on the party seeking adjudication rather than on the issues sought to be adjudicated.") (citation and internal quotation marks omitted).

While LACSN repeatedly asserts that Ms. Jones has expressed a preference for Kim as her guardian, LACSN relies largely upon the assertions of counsel because Ms. Jones did not testify at the evidentiary hearing. 5 AA 1087–1088. Yet, LACSN cannot rely upon the argument of counsel to alter the District Court's factual findings, particularly when they are tied to the legal analysis, as in the instant case. *See Jain v. McFarland*, 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the facts of the case.") (citations omitted).

Ultimately, LACSN cannot overcome the harmless error standard with respect to the change in guardians for Ms. Jones. *See* NRCP 61. The Court "do[es] not presume prejudice from the occurrence of error in a civil case." *Boyd v. Pernicano*, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963); *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008) (confirming that the appealing party must establish "by providing record evidence . . . that, but for the error, a

different result might have been reached"). LACSN has not demonstrated how Ms. Jones' substantial rights have been affected due to the removal of Kim and the appointment of Robyn. That is, Ms. Jones is not an aggrieved party. *See Valley Bank v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) ("[T]his court has jurisdiction to entertain an appeal only where the appeal is brought by an aggrieved party."). Therefore, this Court should conclude that LACSN lacks standing to challenge the District Court's removal of Kim as the guardian and Robyn's appointment as the successor guardian for Ms. Jones.

Second, LACSN failed to raise any of the procedural due process issues in the District Court such that this Court should now refuse to consider them. As a matter of well-established Nevada law, parties cannot raise new issues for the first time on appeal. *See Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Amici curiae also cannot "present novel issues not argued by the parties." *Saticoy Bay, LLC v. Thornburg Mortg. Sec. Trust 2007-3*, 510 P.3d 139, 145 n.7 (Nev. 2022) (citations omitted). LACSN dedicates the majority of its opening brief to discussing a claimed deprivation of procedural due process regarding the removal of Kim as a guardian and

the appointment of Robyn as a successor guarding for Ms. Jones, but LACSN never raised these issues in the District Court. Indeed, the District Court's appealed order notes that LACSN and Kim's attorney failed to respond to the District Court's request for supplemental legal briefs to "examine the issues contained in NRS 159.332 through NRS 159.334 (visitation and communication); NRS 159.335 through NRS 159.337 (removal of a guardian); and NRS 159.328 (Protected Persons' Bill of Rights)." 5 AA 1087 & n.1. Thus, LACSN's decision not to participate in the legal briefing in the District Court of which it now complains amounts to invited error. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit.") (citation omitted). As such, LACSN cannot raise these issues for the first time on appeal, especially because it would require this Court to engage in the prohibited practice of resolving factual issues. *See Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 365, 184 P.3d 378, 385 (2008) ("[I]t is not the role of this court to reweigh the evidence."). For these several reasons, this

Court should conclude that LACSN has not preserved its procedural due process arguments.

Third, the District Court properly removed Kim as the guardian for Ms. Jones and appointed Robyn as the successor guardian based upon the evidence presented. Even if the Court were to reach the merits of the issues presented, the Court should conclude that there was sufficient evidence and legal grounds for the District Court to remove Kim as the guardian for Ms. Jones. The District Court's evidentiary hearing order outlines the background facts of this case based upon the evidence presented. 5 AA 1087–1108. The District Court also outlined its conclusions of law on communication and visitation (5 AA 1108–1113), annual accounting (5 AA 1113–1115), removal of a guardian (5 AA 1115–1117), and appointment of a successor guardian (5 AA 1117). The District Court additionally made its findings of fact. 5 AA 1121–1126.

In ruling upon Kim's removal as guardian, the District Court properly relied upon NRS 159.185. 5 AA 1065–1067. Yet, LACSN argues that NRS 159.1853 and NRS 159.1855 are the exclusive means to remove a guardian. However, the plain language of these statutes contains no such exclusivity language. *See, e.g., Leven v. Frey*, 123 Nev.

399, 403, 168 P.3d 712, 715 (2007) ("Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language."). Additionally, LACSN attempts to avoid the plain language of several statutes within NRS Chapter 159 by relying upon a general discussion within the legislative history. However, to determine legislative intent, this Court first looks at the plain language of a statute. *See Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 513–514 (2000). And, LACSN has not argued that any of the relied-upon provisions within NRS Chapter 159 are ambiguous, such that there is no reason for this Court to resort to legislative history. *See Bacher v. Office of the State Eng'r of Nev.*, 122 Nev. 1110, 1117, 146 P.3d 793, 798 (2006) ("If a statute is clear on its face, the court cannot go beyond its plain language in determining legislative intent."). Ultimately, LACSN received notice and an opportunity to address Kim's removal as a guardian for Ms. Jones. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (concluding that procedural due process "requires notice and an opportunity to be heard").

In its order following the evidentiary hearing, the District Court relied upon NRS 159.1871 to appoint Robyn as a successor guardian for Ms. Jones. 5 AA 1067. Despite the plain language of this statute,

LACSN urges this Court to read additional conditions into the statute that would prevent Robyn from serving as Ms. Jones' guardian. But, such a method of statutory interpretation would violate well-established Nevada caselaw holding just the opposite. *See McKay v. Bd. of Cty. Comm'rs of Douglas Cty.*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987) ("[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done."). Although LACSN argues that the District Court violated NRS 159.0613 by appointing Robyn as Ms. Jones' successor guardian, Robyn had previously been vetted as a guardian and served as a temporary guardian for Ms. Jones. 1 AA 12–19, 34–38. Thus, LACSN's bare speculation regarding Robyn's suitability to serve as Ms. Jones' successor guardian is without merit. *See Jain v. McFarland*, 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the facts of the case.") (citations omitted).

Fourth, the District Court properly refused to enforce Kim's arbitrarily imposed restricted visitation and communication with Ms. Jones. The District Court's order points out that a "guardian is specifically prohibited from restricting

communication and visits." 5 AA 1058 (citing NRS 159.332). Instead of accepting this controlling statute and the supporting evidence, LACSN suggests that Ms. Jones had the cognitive ability to direct her own communication and visits and should not be restricted by the Court's orders and supervision. Yet, as the District Court noted, Ms. Jones never provided an affidavit or declaration. 5 AA 1062–1063. Rather, the District Court was left with the bare argument of counsel. Within this context, the District Court properly ordered Ms. Jones' guardian to file a notice of restriction of any communication and visitation within ten days of the restriction pursuant to NRS 159.332(2), which Kim never filed. 5 AA 1063. LACSN does not challenge this portion of the District Court's order. Rather, LACSN takes issue with the District Court's later recited findings referencing Ms. Jones as not establishing the statutory requirements to restrict communication and visitation. 5 AA 1071–1072. However, the context of the District Court's order demonstrates that the District Court used Ms. Jones and Kim, in her prior role as guardian, interchangeably. *Id.* The District Court's use of interchangeable references was permitted under the circumstances of this case, given that Ms. Jones is cognitively unable to express her preferences. 20 Respondents' Appendix ("RA") 3257–3258, 3364–3370.

Thus, LACSN's entire argument regarding the District Court's supposed imposition upon Ms. Jones of statutory duties relevant to a guardian is without merit.

In summary, Robyn and Donna urge this Court to affirm the District Court's appealed evidentiary hearing order based upon the following reasons: (1) LACSN lacks standing to challenge the District Court's removal of Kim as the guardian and Robyn's appointment as the successor guardian for Ms. Jones; (2) LACSN failed to raise any of the procedural due process issues in the District Court such that this Court should now refuse to consider them; (3) the District Court properly removed Kim as the guardian for Ms. Jones and appointed Robyn as the successor guardian based upon the evidence presented; and (4) the District Court properly refused to enforce Kim's arbitrarily imposed restricted visitation and communication with Ms. Jones.

V. STANDARDS OF REVIEW

A. STANDARDS FOR REVIEWING FACTUAL FINDINGS WITHIN GUARDIANSHIP PROCEEDINGS.

Absent an abuse of discretion, this court "will not disturb the district court's exercise of discretion concerning guardianship determinations." *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 163, 87 P.3d 521, 525 (2004). This Court will not disturb a district court's

findings of fact unless they are clearly erroneous and not supported by substantial evidence. *See Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005). A district court's findings of fact and determinations regarding credibility are entitled to deferential review. *See, e.g., NOLM, LLC v. Cnty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660 (2004); *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996) ("[A]bsent an abuse of discretion . . . the district court has a better opportunity to observe parties and evaluate the situation."); *Wittenberg v. Wittenberg*, 56 Nev. 442, 55 P.2d 619, 623 (1936) ("[M]uch must be left to the wisdom and experience of the presiding judge, who sees and hears the parties and their witnesses, scrutinizes their testimony and studies their demeanor.").

B. STANDARDS FOR REVIEWING QUESTIONS OF LAW.

This Court reviews questions of law de novo. *See Birth Mother v. Adoptive Parents*, 118 Nev. 972, 974, 59 P.3d 1233, 1235 (2002). Statutory interpretation is a question of law that this Court reviews de novo. *Id.*

C. STANDARDS FOR REVIEWING EVIDENTIARY DECISIONS.

Evidentiary decisions are reviewed for an abuse of discretion and will not be disturbed "absent a showing of palpable abuse." *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008).

D. HARMLESS ERROR STANDARD.

Consistent with NRCP 61, LACSN's assigned errors are presumed to be harmless: "Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."

VI. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. ROBYN AND DONNA'S INITIAL PETITION.

Robyn, Donna, and Kim are all daughters of Ms. Jones. In September 2019, Robyn and Donna filed their "Ex-Parte Petition for Appointment of Temporary Guardian of the Person and Estate and Issuance of Letters of Temporary Guardianship, and Petition for Appointment of General Guardian of the Person and Estate and

Issuance of Letters of General Guardianship." 1 RA 1–58. This initial petition was very detailed, verified by Robyn and Donna, and supported by various exhibits. *Id.* The petition explained that Ms. Jones lacks mental capacity, having suffered from dementia for years, and she is unable to care for herself medically or financially. 1 RA 2, ¶ 1. The most immediate concern within this petition was the unknowing transfer of Ms. Jones' real property to the children of her current husband, Mr. Yeoman.[1] 1 RA 2, ¶ 2. Before filing this petition, Robyn and Donna attempted to resolve the various issues informally to no avail. 1 RA 2–3, ¶ 3.

Robyn and Donna's petition also explained that Mr. Yeoman and his children had prevented Ms. Jones from returning to her own home, they separated Ms. Jones from Kim, and Ms. Jones was not permitted to see her own healthcare providers. 1 RA 3, ¶ 4. Police officers were called, and there were allegations among the several parties that Ms. Jones had been kidnapped. 1 RA 3, ¶ 5. Additionally, Mr. Yeoman's son-in-law had also begun proceedings to evict Ms. Jones from her own home. 1 RA 3–4, ¶ 6.

[1] Since this litigation was filed, Mr. Yeoman has passed away. 11 AA 1935–1937.

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

Robyn and Donna explained that they were willing to pay Kim's expenses as the power of attorney, or even a guardian, just to get some organization and Court supervision for Ms. Jones. 1 RA 6, ¶ 13–14. Due to the immediate harm, the District Court granted Robyn and Donna's petition, and they were appointed as temporary co-guardians. 1 AA 12–19, 34–38.

B. MS. JONES' INCAPACITY AND MEDICAL RECORDS.

At the time Robyn and Donna filed their petition, they also provided the District Court with a "Confidential Physician's Certificate of Incapacity and Medical Records." 1 RA 64. Although LACSN acknowledges that Ms. Jones had declined cognitively, LACSN continues to assert that Ms. Jones was able to manage herself and her

affairs. *See, e.g.,* AOB at 7. Tellingly, however, LACSN omits from its opening brief the harm that occurred to Ms. Jones under Kim's watch as the power of attorney.

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

After Robyn and Donna's petition was granted in part, Mr. Yeoman filed an objection, claiming that the temporary guardianship was unnecessary. 1 RA 72–107. Mr. Yeoman also argued that he should become a temporary guardian of Ms. Jones. 1 RA 81–83. Kim also filed her own objection and similarly moved to have herself appointed as a temporary and general guardian of Ms. Jones. 1 RA 108–168. Kim essentially argued that she was capable of managing Ms. Jones' affairs, even though there were serious problems that gave rise to Robyn and Donna's petition. *Id.*

Robyn and Donna filed a reply in support of their petition, which provided additional support for their petition. 2 RA 245–300. The reply reiterated that even though Kim had powers of attorney for both financial and health concerns for Ms. Jones, Kim had failed to generate a plan on either front. 2 RA 246–247, ¶ 2–3. The reply also confirmed that the powers of attorney were ignored, especially given that Ms. Jones' real property had been unknowingly transferred. 3 RA 247–248,

¶ 4. Robyn and Donna further asserted that withholding medical care from Ms. Jones, among other mistreatment, amounted to elder abuse under NRS 200.5092. 2 RA 255–256. The District Court eventually entered a written order appointing Robyn and Donna as co-guardians of Ms. Jones. 1 AA 12–19, 34–38.

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

Due to the petition filed by Robyn and Donna, the District Court appointed an investigator to examine Ms. Jones' "personal circumstances including, but not limited to, the Protected Person's [Ms. Jones] medical and psychiatric/psychological condition, care and maintenance, educational status, placement, and financial status." 1 RA 230, ¶ 2. The investigator was ordered to file written reports with the Court within 90 days. 1 RA 231, ¶ 5. These reports were subsequently filed with the Court. 3 RA 616–665; 4 RA 724; 7 RA 1385–1395; 8 RA 1442–1453; 17 RA 2938–19 RA 3190.

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

Given the contentious nature of this litigation, Kim was required to retain new counsel which appeared and immediately filed a petition for return of property, which focused on two dogs belonging to Ms.

Jones. 2 RA 421–434. Kim's second petition focused on having Ms. Jones' real property returned to her. 2 RA 435–468. Not surprisingly, Mr. Yeoman opposed both petitions. 3 RA 471–498, 499–501. The District Court eventually granted both motions after a hearing. 3 RA 608–613.

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

After approximately five months of contentious litigation, Robyn and Donna filed their petition for attorney fees and costs. 5 RA 878–923. Robyn and Donna's petition explained that because of their actions, they provided the means for Ms. Jones to recover her real property that had been transferred to Mr. Yeoman's daughter and son-in-law. *Id.* Robyn and Donna requested $61,755 in attorney fees and $274.66 in costs, for a total of $62,029.66. *Id.* Their petition further analyzed their time entries in compliance with the provisions of NRS 159.344(3). *Id.* LACSN objected to Robyn and Donna's petition for attorney fees and costs. 5 RA 982–1008, 1017–1023. Kim also filed her own objection to Robyn and Donna's petition for attorney fees and costs. 5 RA 1017–1023. Robyn and Donna filed a combined reply to both objections. 6 RA 1031–1089. In their reply, Robyn and Donna

voluntarily reduced the requested amount to $57,742.16. *Id.* The District Court granted Robyn and Donna's petition for attorney fees in part. 11 RA 1909–1925. LACSN previously appealed the District Court's order granting Robyn and Donna's petition for attorney fees, which was affirmed by the Court of Appeals. *See In re Guardianship of Jones*, 138 Nev., Adv. Op. 6, 507 P.3d 598 (Ct. App. Feb. 24, 2022).

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

In May 2020, Robyn and Donna filed a petition to be discharged as temporary co-guardians of Ms. Jones. 9 RA 1498–1505. With no oppositions being filed, Robyn and Donna were discharged as temporary co-guardians in June 2020. 10 RA 1738–1742.

H. FURTHER PROCEEDINGS FOLLOWING REMAND FROM THE COURT OF APPEALS.

The contentious District Court litigation continued while LACSN's appeal of the attorney fees award to Robyn and Donna was pending. 20 RA 3371–3393. Kim petitioned for her attorney fees before the District Court, which was denied due in part to her conduct, and her counsel eventually withdrew. 11 RA 1956–2022; 5 AA 1079–1128; 13 RA 2304–2308. However, before Kim's counsel withdrew, Robyn and Donna filed a petition for visitation with Ms. Jones, which they

supplemented. 2 AA 301–321, 327–332. This petition eventually became the focus of the evidentiary hearing, which resulted in the District Court's order from which LACSN appeals. 5 AA 1030–1078. After the Court's evidentiary hearing order, the District Court entered its Order Appointing Successor General Guardian of the Person and Estate and for Issuance of Letters of General Guardianship, which LACSN did not appeal. 5 AA 1023–1029.

LACSN did not want to participate in the evidentiary hearing and filed a writ petition to the Supreme Court, which was docketed as Case No. 82974, and denied. The District Court denied LACSN's motion to stay the evidentiary hearing. 2 AA 402–412, 417–451, 467–479; 3 AA 550–563. LACSN believed that it would prevail in its writ petition and stay motion, such that it failed to timely file documents for the evidentiary hearing. 2 AA 480–486.

After the District Court's evidentiary hearing order, LACSN once again moved the District Court to stay enforcement of Kim's removal and Robyn's appointment. 13 RA 2320–2330; 14 RA 2331–2358. The District Court once again denied LACSN's stay request in a lengthy order. 19 RA 3191–3219. However, LACSN did not seek stay relief

from this Court under NRAP 8. In her role as successor guardian, Robyn continues to report to the District Court and fulfill her statutory duties. 20 RA 3371–3393.

VII. LEGAL ARGUMENT

A. LACSN LACKS STANDING TO CHALLENGE THE DISTRICT COURT'S REMOVAL OF KIM AS THE GUARDIAN AND ROBYN'S APPOINTMENT AS THE SUCCESSOR GUARDIAN FOR MS. JONES.

1. As a Matter of Law, LACSN Cannot Assert Rights for Ms. Jones that Actually Belong to Kim.

As a matter of law, LACSN cannot assert rights for Ms. Jones that actually belong to Kim. "Standing is the legal right to set judicial machinery in motion." *Secretary of State v. Nevada State Legislature*, 120 Nev. 456, 460, 93 P.3d 746, 749 (2004) (citing *Smith v. Snyder*, 267 Conn. 456, 839 A.2d 589, 594 (Conn. 2004)). Because standing concerns a question of law, this Court conducts a de novo review. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). Before the Court reaches the merits of LACSN's statutory arguments, the Court should first consider whether LACSN (and, thus, Ms. Jones) lacks standing to challenge Kim's removal as the guardian and Robyn's appointment as the successor guardian for Ms. Jones. *See, e.g., Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) ("The question of

standing overlaps with the inquiry into whether a party is considered a real party in interest; both questions focus[ ] on the party seeking adjudication rather than on the issues sought to be adjudicated.") (citation and internal quotation marks omitted). Kim, as the prior guardian, alone would have the right to seek appellate review of her removal. As such, "a party generally has standing to assert only its own rights and cannot raise the claims of a third party not before the court." *Beazer Homes Holding Corp. v. Eighth Judicial Dist. Court of Nev.*, 128 Nev. 723, 731, 291 P.3d 128, 133 (2012). As such, LACSN has no standing to assert rights that belong to Kim, who is not a party to this appeal.

2. Despite LACSN's Numerous Assertions, Ms. Jones Has Not Expressed a Preference for Kim as Her Guardian During the Guardianship Proceedings.

Despite LACSN's numerous assertions, Ms. Jones has not expressed a preference for Kim as her guardian during the guardianship proceedings. Robyn and Donna expect LACSN to argue that Ms. Jones does have standing to challenge Kim's removal because it is allegedly Ms. Jones' preference to have Kim as her guardian. However, LACSN relies largely upon the assertions of counsel because

Ms. Jones did not testify at the evidentiary hearing. 5 AA 1087–1088. Yet, LACSN cannot rely upon the argument of counsel to alter the District Court's factual findings, particularly when they are tied to the legal analysis, as in the instant case. *See Jain v. McFarland*, 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the facts of the case.") (citations omitted). In the evidentiary hearing order, the District Court observed that the "request to restrict communication does not contain any Affidavit or Declaration executed by the Protected Person [Ms. Jones]. At the Evidentiary Hearing, Counsel for Protected Person failed to present evidence or testimony through an independent statement by an unrelated party. The argument by Counsel for the Protected Person does not represent a statement by a witness who is not affiliated with the Protected Person." 5 AA 1063. Thus, LACSN cannot argue that it has standing to assert Ms. Jones' preference for Kim as her guardian because no evidence was presented at the evidentiary hearing to support such a theory. Therefore, the Court should conclude that due to the lack of evidence, LACSN cannot assert rights that actually belong to Kim.

3. LACSN Cannot Overcome the Harmless Error Standard with Respect to the Change in Guardians for Ms. Jones.

LACSN cannot overcome the harmless error standard with respect to the change in guardians for Ms. Jones. The thrust of LACSN's appeal, on the issue of guardians, is that the District Court erred by removing Kim and appointing Robyn. However, LACSN has not demonstrated how Ms. Jones' substantial rights have been affected due to this change. In other words, what harm has Ms. Jones suffered due to the change in guardians? Consistent with NRCP 61, all of LACSN's presumed errors are harmless: "Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights." The Court "do[es] not presume prejudice from the occurrence of error in a civil case." *Boyd v. Pernicano*, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963); *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008) (confirming that the appealing party must establish "by providing record evidence . . . that, but for the error, a

different result might have been reached"). Since it cannot articulate any harm that Ms. Jones has actually suffered, LACSN has not presented a justiciable argument on guardians. Indeed, the Court's opinion on the merits of the issues presented would amount to an advisory opinion, which this Court does not render. *See Applebaum v. Applebaum*, 97 Nev. 11, 12, 621 P.2d 1110, 1110 (1981) ("This court will not render advisory opinions on moot or abstract questions."). Therefore, Robyn and Donna urge this Court to dismiss this appeal for LACSN's lack of standing.

4. Currently Pending Before the District Court Is a Motion to Remove LACSN as Counsel for Ms. Jones, Which, if Granted, Would Render as Moot this Entire Appeal.

Currently pending before the District Court is a motion to remove LACSN as counsel for Ms. Jones, which, if granted, would render as moot this entire appeal. "Cases presenting real controversies at the time of their institution may become moot by the happening of subsequent events." *National Collegiate Athletic Ass'n v. University of Nevada*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) (citation omitted). Robyn and Donna have referred to LACSN as the party pursuing this appeal because Ms. Jones does not have the cognitive ability to direct this litigation. 20 RA 3257–3258, 3364–3370. This litigation has

become so contentious and protracted that Robyn and Donna have filed a motion in the District Court to remove LACSN from representing Ms. Jones. 20 RA 3220–3299. LACSN filed a partial objection (20 RA 3300–3309), and Robyn and Donna filed a reply. 20 RA 3310–3370. The District Court heard argument on this motion on September 8, 2022, and the matter is currently under advisement. 20 RA 3390.

Robyn and Donna inform the Court of this development because if LACSN is removed as counsel for Ms. Jones, this appeal would likely be dismissed as moot—since no party would actually be challenging the District Court's evidentiary hearing order. If this mootness issue becomes ripe, Robyn and Donna will file a motion with this Court to supplement the record with the District Court's order. Even without this order, however, the Court has sufficient grounds to dismiss this appeal based upon a lack of standing and the related procedural arguments presented.

B. LACSN FAILED TO RAISE ANY OF THE PROCEDURAL DUE PROCESS ISSUES IN THE DISTRICT COURT SUCH THAT THIS COURT SHOULD NOW REFUSE TO CONSIDER THEM.

1. LACSN Cannot Raise New Issues for the First Time on Appeal.

LACSN cannot raise new issues for the first time on appeal. As a matter of well-established Nevada law, parties cannot raise new issues for the first time on appeal. *See Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Since LACSN believed that it would prevail on its writ petition and the stay motion filed in the District Court prior to the evidentiary hearing, LACSN chose not to respond to the District Court's request for supplemental legal briefs to "examine the issues contained in NRS 159.332 through NRS 159.334 (visitation and communication); NRS 159.335 through NRS 159.337 (removal of a guardian); and NRS 159.328 (Protected Persons' Bill of Rights)." 5 AA 1087 & n.1.[2] LACSN chose its position in the District Court and cannot

[2] To the extent that the record before this Court is not complete, LACSN, as the appellant, bears the burden to present this Court with a complete record. "[T]his court has made it clear that appellants are responsible for making an adequate appellate record. NRAP 30(b)(3) provides, in pertinent part, that an appellant's appendix must include any portion of the record that is necessary for this court's determination of the issues raised on appeal. When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision." *Cuzze v. Univ. &*

now take a different position on appeal. In *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 437–438, 245 P.3d 542, 545 (2010), this Court reaffirmed *Old Aztec* and concluded, "We decline to reverse summary judgment to allow Schuck to reinvent his case on new grounds." In reaching this conclusion, the Court explained, "This rule is not meant to be harsh, overly formalistic, or to punish careless litigators. Rather, the requirement that parties may raise on appeal only issues which have been presented to the district court maintains the efficiency, fairness, and integrity of the judicial system for all parties." *Id.* at 437, 245 P.3d at 544. The prohibition against raising new issues on appeal has been stated by this Court repeatedly both before and after *Old Aztec*. As early as 1925, this Court held that the "statute of frauds cannot be raised for the first time on appeal. The objection must first be taken in some appropriate way in the court below; otherwise it will be deemed to have been waived." *Cornell v. Gobin*, 49 Nev. 101, 105, 238 P. 344, 345 (1925).

LACSN dedicates the majority of its opening brief to discussing a claimed deprivation of procedural due process regarding the removal of Kim as a guardian and the appointment of Robyn as a successor

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Cmty. College Sys., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (citations omitted).

guarding for Ms. Jones, but LACSN never raised these issues in the District Court, as noted by the District Court's order. 5 AA 1087 & n.1. Thus, LACSN's decision not to participate in the legal briefing in the District Court of which it now complains amounts to invited error.

> The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit. It has been held that for the doctrine of invited error to apply it is sufficient that the party who on appeal complains of the error has contributed to it. In most cases application of the doctrine has been based on affirmative conduct inducing the action complained of, but occasionally a failure to act has been referred to.

Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (citing 5 Am. Jur. 2d APPEAL AND ERROR § 713 (1962), 159–160; *People v. Marshall*, 50 Cal. 3d 907, 790 P.2d 676, 687, 269 Cal. Rptr. 269 (Cal. 1990), *cert. denied*, 1110 (1991); *Pettingill v. Perkins*, 2 Utah 2d 266, 272 P.2d 185, 186 (Utah 1954)). "Furthermore, the rule that error induced or invited by the appellant is not a proper subject of review on appeal has been applied, in both civil and criminal cases, to a large variety of trial errors, including claimed misconduct of the judge, or alleged error having to do with the jury." *Id.* (citing 5 AM. JUR. 2D APPEAL AND ERROR § 721 (1962), 165)). Thus, the Court should conclude that LACSN's failure to raise its procedural due process arguments in the District

Court prohibits this Court from now considering the arguments for the first time.

2. The Amicus Brief Supporting LACSN's Appeal Also Cannot Raise New Issues for the First Time on Appeal.

The amicus brief supporting LACSN's appeal also cannot raise new issues for the first time on appeal. Since LACSN cannot raise new issues for the first time in this Court involving procedural due process, it would not make sense to allow such arguments through a supporting amicus brief. In fact, this Court has reached this very conclusion that amici curiae also cannot "present novel issues not argued by the parties." *Saticoy Bay, LLC v. Thornburg Mortg. Sec. Trust 2007-3*, 510 P.3d 139, 145 n.7 (Nev. 2022) (citing *Select Portfolio Servicing, Inc. v. Dunmire*, 456 P.3d 255, 2020 WL 466816, at *2 n.4 (Nev. 2020) (Order of Affirmance) (declining to consider new issues raised by amicus); *see also Martin v. Peoples Mut. Say. & Loan Ass'n*, 319 N.W.2d 220, 230 (Iowa 1982) ("Reviewable issues must be presented in the parties' briefs, not an amicus brief."); *Noble Manor Co. v. Pierce County*, 133 Wn.2d 269, 943 P.2d 1378, 1380 n.1 (Wash. 1997) ("Appellate courts will not usually decide an issue raised only by amicus.")).

In the amicus brief filed by the Nevada Department of Health and Human Services, Aging and Disability Services Division, the brief attempts to raise new issues never raised in the District Court, including the same procedural due process argument that LACSN raises with respect to Kim. Am. Br. at 14–18. The amicus brief also attempts to create a new standard for communication and visitation that is contrary to the Nevada statutory scheme: "The Supreme Court should adopt a ruling that creates a rebuttable presumption for express preferences before utilizing substituted judgment and best interests as decision standards." Am. Br. at 18–19. But, the amicus brief may not raise novel issues in this Court, as a matter of Nevada law. *See Saticoy Bay*, 510 P.3d at 145 n.7. Therefore, the Court should ignore these amicus arguments that are not properly before the Court.

3. Since LACSN Has Admittedly Not Challenged the District Court's Factual Findings, LACSN Cannot Now Ask this Court to Reweigh Evidence.

Since LACSN has admittedly not challenged the District Court's factual findings, LACSN cannot now ask this Court to reweigh evidence. Even though the District Court issued a lengthy 45-page order, LACSN opts to avoid the factual findings from the evidentiary hearing and, instead, asks this Court to review the District Court's

interpretation of several statutes within NRS Chapter 159 (Guardianship of Adults) in a vacuum. AOB at 11 ("The district court's factual findings are not the thrust of this appeal. . . ."). Yet, LACSN still attempts to present a version of facts skewed in its favor. AOB at 4–15. Strangely, the amicus brief similarly attempts to isolate some limited facts to support its argument. Am. Br. at 9–12. However, this Court is not an appropriate forum to present disputed facts. *See Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 365, 184 P.3d 378, 385 (2008) ("[I]t is not the role of this court to reweigh the evidence."); *Ryan's Express Transp. Servs. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.") (citations omitted). Thus, this Court should conclude that LACSN has not preserved its procedural due process arguments.

C. THE DISTRICT COURT PROPERLY REMOVED KIM AS THE GUARDIAN AND APPOINTED ROBYN AS THE SUCCESSOR GUARDIAN FOR MS. JONES BASED UPON THE EVIDENCE PRESENTED.

1. The Evidence Presented Demonstrates that Kim Was Properly Removed as the Guardian for Ms. Jones.

The evidence presented demonstrates that Kim was properly removed as the guardian for Ms. Jones. The District Court's

evidentiary hearing order outlines the background facts of this case based upon the evidence presented. 5 AA 1087–1108. The District Court also outlined its conclusions of law on communication and visitation (5 AA 1108–1113), annual accounting (5 AA 1113–1115), removal of a guardian (5 AA 1115–1117), and appointment of a successor guardian (5 AA 1117). The District Court additionally made its findings of fact. 5 AA 1121–1126.

Tellingly, LACSN does not discuss the facts giving rise to Kim's removal as a guardian for Ms. Jones. Rather, LACSN wants to avoid these facts and, instead, discuss its own interpretation of several statutes. But, it is important for this Court to be familiar with the facts, as determined by the District Court, in resolving the issue of Kim's removal as a guardian for Ms. Jones. 5 AA 1030–1078.

Ms. Jones did not testify at the evidentiary hearing. 5 AA 1037–1038. Many of Ms. Jones' family members testified at the hearing that they would like to visit her, but they did not feel comfortable around Kim or her boyfriend, Dean, because of his numerous threats. 5 AA

1038–1045.[3] According to the evidence, Ms. Jones cannot operate a telephone, including both answering or placing telephone calls. *Id.* Rather, Kim had to make all telephone calls and appointments for Ms. Jones. *Id.* The District Court also went through the financial information and found that Kim "fail[ed] to account for a significant amount of funds withdrawn." 5 AA 1065. The District Court ultimately concluded that Kim did not confer any actual benefit on Ms. Jones or attempt to advance Ms. Jones' best interests pursuant to NRS 159.344(5)(b). 5 AA 1070. Kim also did not make any efforts to reduce or minimize the litigation in this case. *Id.* Finally, the District Court concluded that Kimberly did not act in good faith during her time managing the guardianship estate. *Id.* Thus, there can be no dispute that the District Court had a sufficient factual basis to remove Kim as Ms. Jones' guardian.

[3] Notably, in Robyn and Donna's subsequent petition to restrict visitation, communication, and interaction with Ms. Jones, they attached seven criminal case reports for Dean Loggans. 16 AA 2680–2749.

2. NRS 159.1853 and NRS 159.1855 are Not the Exclusive Means to Remove a Guardian.

NRS 159.1853 and NRS 159.1855 are not the exclusive means to remove a guardian. In ruling upon Kim's removal as guardian, the District Court properly relied upon NRS 159.185. 5 AA 1065–1067. Yet, LACSN argues that NRS 159.1853 and NRS 159.1855 are the exclusive means to remove a guardian. However, the plain language of these statutes contains no such exclusivity language. *See, e.g., Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) ("Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language."). Indeed, if the Legislature had intended NRS 159.1853 and NRS 159.1855 to be the exclusive means to remove a guardian, it could have so stated, as in the workers' compensation statutes for example. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) ("The NIIA provides the exclusive remedy for employees injured on the job, and an employer is immune from suit by an employee for injuries arising out of and in the course of the employment."); NRS 616A.020; NRS 616B.612(4).

Importantly, NRS 159.185(1) states that the "court may remove a guardian if the court determines that. . . ." The use of the term "may" in the statute gives the District Court discretion to remove a guardian.

See State of Neu. Emps. Ass'n Inc. v. Daines, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992) ("This court has stated that in statutes, 'may' is permissive. . . ."). Thus, the District Court properly relied upon NRS 159.185 to remove Kim as a guardian. And, contrary to LACSN's argument, the District Court was not required to exclusively rely upon NRS 159.1853 and NRS 159.1855 to remove Kim as a guardian for Ms. Jones.

3. LACSN's Discussion of 2017 Legislative History for NRS Chapter 159 Does Not Change the District Court's Order.

LACSN's discussion of 2017 legislative history for NRS Chapter 159 does not change the District Court's order. LACSN attempts to avoid the plain language of several statutes within NRS Chapter 159 by relying upon a general discussion within the legislative history. However, to determine legislative intent, this Court first looks at the plain language of a statute. *See Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 513–514 (2000). And, LACSN has not argued that any of the relied-upon provisions within NRS Chapter 159 are ambiguous, such that there is no reason for this Court to resort to legislative history. *See Bacher v. Office of the State Eng'r of Nev.*, 122 Nev. 1110, 1117, 146 P.3d 793, 798 (2006) ("If a statute is clear on its

face, the court cannot go beyond its plain language in determining legislative intent."). That is, LACSN has not provided a legal reason for this Court to reach the legislative history. Yet, in its analysis, LACSN proceeds immediately to the legislative history without first giving any treatment to the plain language of the statutory provisions. AOB at 19–24. In any event, nothing within the legislative history changes the District Court's order. Therefore, the Court should limit its analysis of the several statutory provisions to the plain language.[4]

4. Since Robyn Had Previously Been Vetted as a Guardian, There Was No Violation of NRS 159.0613.

Since Robyn had previously been vetted as a guardian, there was no violation of NRS 159.0613. In its order following the evidentiary hearing, the District Court relied upon NRS 159.1871 to appoint Robyn

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[4] As noted in Section VII.B.1. of this answering brief, LACSN received notice and had an opportunity to respond to the District Court's indication that it was considering Kim's removal as a guardian. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (concluding that procedural due process "requires notice and an opportunity to be heard"). But, LACSN simply chose not to participate and cannot be heard to complain now, as a matter of invited error. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit.") (citation omitted).

as a successor guardian for Ms. Jones. 5 AA 1067. Despite the plain language of this statute, LACSN urges this Court to read additional conditions into the statute that would prevent Robyn from serving as Ms. Jones' guardian. But, such a method of statutory interpretation would violate well-established Nevada caselaw holding just the opposite. *See McKay v. Bd. of Cty. Comm'rs of Douglas Cty.*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987) ("[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done."). Although LACSN argues that the District Court violated NRS 159.0613 by appointing Robyn as Ms. Jones' successor guardian, Robyn had previously been vetted as a guardian and served as a temporary guardian for Ms. Jones. 1 AA 12–19, 34–38. Thus, LACSN's bare speculation regarding Robyn's suitability to serve as Ms. Jones' successor guardian is without merit. *See Jain v. McFarland*, 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the facts of the case.") (citations omitted).

Ironically, LACSN hypothesizes that Robyn has violated certain provisions of NRS 159.0613 and may not be suitable to serve as a guardian. AOB at 28–33. At the same time, however, LACSN turns a

blind eye to all of Kim's conduct, as determined at the evidentiary hearing, that disqualified her from being a guardian for Ms. Jones—which was so egregious that the District Court was forced to remove Kim on an emergency basis for Ms. Jones' safety. *See, e.g.,* 5 AA 1065–1067. At the end of the day, it is unclear why LACSN has expended so much time and energy to support Kim as guardian, even though Kim has expressed no interest in continuing to be a guardian for Ms. Jones, evidenced by Kim's failure to appeal or otherwise participate in this appeal. And, the District Court specifically determined that "the Court cannot find that Kimberly has acted in good faith during her time managing the Guardian Estate." 5 AA 1070.

5. LACSN Misinterprets NRS 159.1871 Regarding the District Court's Ability to Appoint a Successor Guardian.

LACSN misinterprets NRS 159.1871 regarding the District Court's ability to appoint a successor guardian. In its opening brief, LACSN argues that Robyn should have filed a petition to become a successor guardian for Ms. Jones (AOB at 37–42), despite the fact that Robyn was previously vetted as a guardian. 1 AA 12–19, 34–38. Without analyzing the plain language of NRS 159.1871, LACSN immediately jumps to the legislative history to make its point that a

successor guardian cannot be appointed in an emergency situation unless the proposed guardian had already been a guardian (which, of course, violates rules of statutory construction, *Bacher*, 122 Nev. at 1117, 146 P.3d at 798). AOB at 38–39. But, Robyn had been a temporary guardian for Ms. Jones earlier in this litigation, so it is unclear what point LACSN advances.

Importantly, the plain language of NRS 159.1871 supports the District Court's appointment of Robyn as the successor guardian for Ms. Jones. 5 AA 1067. The District Court's order notes that NRS 159.1871(1) states, "The court at any time may appoint a successor guardian to serve immediately or when a designated event occurs." The District Court further referenced NRS 159.1871(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." Thus, the District Court provided both the legal basis for its decision to appoint Robyn and the factual background that supports the stated condition to satisfy the application of this statute.

To make its point, however, LACSN avoids the plain language of NRS 159.1871(1), which states, "The court at any time may appoint a successor guardian to serve immediately or when a designated event occurs." Since the Legislature used "or" in this statutory provision, the District Court only had to demonstrate the satisfaction of one of the two statements, but not both. *See Coast Hotels & Casinos v. Nev. State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) ("The word 'or' is typically used to connect phrases or clauses representing alternatives."). As outlined, the District Court's order already satisfied the stated condition NRS 159.1871(5) because of Kim's removal. Thus, the Court can ignore the remainder of LACSN's legal argument on this point, which in any event does not prevail, because Robyn and Donna can prevail on this single provision of "when a designated event occurs." This Court must give meaning to this provision as a matter of well-established rules of statutory construction. *See Paramount Ins. v. Rayson & Smitley*, 86 Nev. 644, 649, 472 P.2d 530, 533 (1970) (No provision of a statute should be rendered nugatory by this Court's construction, nor should any language be made mere surplusage, if such a result can be avoided.); *Bd. of County Comm'rs v. CMC of Nevada*, 99

Nev. 739, 744, 670 P.2d 102, 105 (1983) (Courts should avoid construing statues so that any provision or clause is rendered meaningless.).

At the end of the day, if this Court reaches the merits of LACSN's arguments, this Court should conclude that the District Court properly removed Kim as the guardian and properly appointed Robyn as the successor guardian for Ms. Jones based upon the evidence presented.

D. THE DISTRICT COURT PROPERLY REFUSED TO ENFORCE KIM'S ARBITRARILY IMPOSED RESTRICTED VISITATION AND COMMUNICATION WITH MS. JONES

1. There Is No Evidence to Support LACSN's Assertion that Ms. Jones Is Able to Manage Her Visitation and Communication Schedule.

There is no evidence to support LACSN's assertion that Ms. Jones is able to manage her visitation and communication schedule. Kim had no right to arbitrarily restrict visitation and communication with Ms. Jones. The District Court's order points out that a "guardian is specifically prohibited from restricting communication and visits." 5 AA 1058 (citing NRS 159.332). Instead of accepting this controlling statute and the supporting evidence, LACSN suggests that Ms. Jones had the cognitive ability to direct her own communication and visits and should not be restricted by the Court's orders and supervision. AOB at 48–50. Yet, as the District Court noted, Ms. Jones never provided an affidavit

or declaration. 5 AA 1062–1063. Rather, the District Court was left with the bare argument of counsel, which is not evidence. *See Jain v. McFarland*, 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the facts of the case.") (citations omitted). Within this context, the District Court properly ordered Ms. Jones' guardian to file a notice of restriction of any communication and visitation within ten days of the restriction pursuant to NRS 159.332(2), which Kim never filed. 5 AA 1063. Instead of abiding by this statutory requirement, Kim "through her actions and inactions restricted the Protected Person's [Ms. Jones] communication, visitation, and access to her relatives contrary to the Protected Person's Bill of Rights and NRS 159.331 to NRS 159.338. Thus, there is no dispute that Kim's restricted communication and visitation schedule violated NRS 159.332 and was, therefore, legally improper.

2. LACSN Attempts to Twist the Language in the District Court's Order While Avoiding the Context and the Use of the Challenged Conclusion.

LACSN attempts to twist the language in the District Court's order while avoiding the context and the use of the challenged conclusion. Building on its flawed argument that Ms. Jones allegedly

has the cognitive ability to direct her own communication and visitation, LACSN then argues that the District Court improperly ordered Ms. Jones to file her own individual petition (separate from her guardian) if she wanted to restrict communication and visitation. AOB at 48–58.[5] Importantly, LACSN does not challenge the portion of the District Court's order findings that Kim never complied with NRS 159.332(2) to restrict communication and visitation within ten days of the restriction. 5 AA 1063. Rather, LACSN takes issue with the District Court's later recited findings referencing Ms. Jones as not establishing the statutory requirements to restrict communication and visitation. 5 AA 1071–1072. However, the context of the District Court's order demonstrates that the District Court used Ms. Jones and Kim, in her prior role as guardian, interchangeably and together as a single unit. *Id.* The District Court's use of interchangeable references was permitted under the circumstances of this case, given that Ms. Jones is cognitively unable to express her preferences. 20 RA 3257–

[5] On this issue of Ms. Jones allegedly being the subject of the District Court's requirement for a petition to restrict communication and visitation, the amicus brief merely offers a duplicative argument as LACSN's opening brief, which is an improper amicus argument. Am. Br. at 18; *Ryan v. Commodities Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (concluding that an amicus brief that merely offers a duplicative argument should be rejected).

3258, 3364–3370. Indeed, the District Court's findings of fact (5 AA 1071–1073) must be read together with the District Court's earlier discussion on communication and visitation within the same order. 5 AA 1058–1063; *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (noting that "all favorable inferences must be drawn towards the prevailing party"). Thus, LACSN's entire argument regarding the District Court's supposed imposition upon Ms. Jones of statutory duties relevant to a guardian is without merit.

VIII. CONCLUSION

In summary, Robyn and Donna urge this Court to affirm the District Court's appealed evidentiary hearing order based upon the following reasons: (1) LACSN lacks standing to challenge the District Court's removal of Kim as the guardian and Robyn's appointment as the successor guardian for Ms. Jones; (2) LACSN failed to raise any of the procedural due process issues in the District Court such that this Court should now refuse to consider them; (3) the District Court properly removed Kim as the guardian for Ms. Jones and appointed Robyn as the successor guardian based upon the evidence presented;

and (4) the District Court properly refused to enforce Kim's arbitrarily imposed restricted visitation and communication with Ms. Jones.

Dated this 7th day of October 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because I prepared this brief in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook font.

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

☒ Proportionally spaced, has a typeface of 14 points or more and contains 9,947 words; or

☐ Does not exceed _____ pages.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires a reference to the page and volume number, if any, of the transcript or appendix to support every assertion in the brief regarding matters in the record.

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

Dated this 7th day of October 2022.

CLAGGETT & SYKES LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **RESPONDENTS' ANSWERING BRIEF** with the Nevada Supreme Court on the 7th day of October 2022. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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