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 REPLY BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

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

Appellant Kathleen June Jones ("June"), 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: November 7, 2022

LEGAL AID CENTER OF SOUTHERN NEVADA

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SUMMARY OF ARGUMENT

Because much of Respondents' argument both in this appeal and before the district court places June's counsel, rather than June, at the center of the dispute, there is a need to refocus this appeal.[1] The purpose of this appeal is to enforce June's statutory rights and due process rights, and to ensure that her voice is heard. It is not to permanently reinstate Kimberly as guardian, nor is it to completely prevent Robyn from serving as successor guardian. Put simply, the district court failed to adhere to the rules governing removal of the guardian and appointment of a successor guardian, and June simply wants the district court to follow those rules before it upends her life.

No matter what the district court's and Respondents' opinions are regarding Kimberly's conduct as guardian, NRS Chapter 159 outlines processes that must be followed before a guardian can be removed and a successor guardian appointed. June was deprived of a chance to participate in any proceedings regarding removal of Kimberly and selection of a successor guardian. Although, the communication and

[1] Respondents repeatedly referring to "LACSN" rather than "June" when referring to Appellant is an example of this.

visitation issue was all that the district court stated it was considering, June received an all-encompassing order that completely changed her life without any warning. And to make matters worse, the district court also concluded that June had to first get the district court's permission before she could exercise any autonomy over her familial relationships.

The district court at no time prior to its December 06, 2021 Order, provided June with the chance to participate in the removal of Kimberly as guardian and potential appointment of Robyn as successor guardian. This disregard for the statutory process, and failure to provide June with notice and an opportunity to participate in the proceedings, is strikingly similar to the situations that led to a complete overhaul in the guardianship scheme not that long ago. Through this appeal, June simply wants to enforce the rights of which the district court deprived her.

ARGUMENT

I. The District Court Erred When It Removed Kimberly as the Guardian and Appointed Robyn as Successor Guardian.

Because June's Opening Brief covers the analysis regarding the removal and successor guardian statutes, June will only clarify a few key points and address arguments raised in the Answering Brief.[2] First, Respondents would prefer for this Court to take into account the district court's findings of facts, and nothing else, when determining whether removal of Kimberly was proper. However, that is not how NRS Chapter 159 operates. The district court cannot disregard the rules and decide that the ends justify the means. Despite Respondents' or the district court's opinion of Kimberly, there are statutory processes that must be followed. Those processes ensure that protected persons, like June, have

[2] Respondents argue that this appeal should be transferred to the Court of Appeals. RAB, at 2. That court handled a previous appeal that addressed the narrow issue of attorney fees and costs related to Robyn's time as temporary guardian, but it would not be familiar with the communication and visitation issues that occurred years later. Therefore, this should not weigh in favor of assigning this appeal to the Court of Appeals. Moreover, this appeal raises various issues of first impression regarding the process of removing a guardian and appointing a successor guardian, which should be addressed by the Nevada Supreme Court.

a meaningful chance to participate in proceedings that so significantly impact their lives.

A. Respondents misunderstand the removal processes outlined in NRS Chapter 159.

To put it simply, Respondents conflate the "why" (conditions for removal) with the "how" (processes for removal). While NRS 159.185 provides reasons why the district court can remove a guardian, it does not explain how that process should occur.

Whereas, other statutes, like NRS 159.1845 and NRS 159.1853 provide the process for how a guardian can be removed. If the district court believes that there is an emergency and the welfare of the protected person requires immediate action, it can exercise its authority under NRS 159.1845 to remove the guardian and appoint a temporary substitute guardian.[3] But when, like here, a party purports to request removal, they must follow the processes outlined in NRS 159.1853 and

[3] When immediate action is needed, it is typically the Pubic Guardian who steps in temporarily considering that this is the only entity who the district court knows in all cases is qualified and suitable to serve. Family members or other interested persons are then given an opportunity to petition to be successor. However, it is telling here that Kimberly's removal did not take place until almost six months after the evidentiary hearing. This contradicts the Respondent's argument that Kimberly's conduct amounted to an emergency.

NRS 159.1855 before the district court can grant that request. Respondents do not dispute that the district court purported to grant their "request" for removal. *See* 4 AA00993 (". . . the request to remove Kimberly Jones as guardian of the person and estate is GRANTED."). However, Respondents never made a proper request for removal. Respondents never filed a petition for removal under NRS 159.1853 nor served a citation under NRS 159.1855 regarding removal.

June is entitled to an opportunity to participate in the proceedings regarding the potential removal of her preferred guardian. As this Court is aware, it has a duty to read statutory provisions in a harmonious manner, and to ensure that statutory language is not rendered meaningless or superfluous. *Williams v. State Department of Corrections*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). There are a multitude of statutory provisions that enshrine the protected person's right to notice and an opportunity to participate in the proceedings. *See* NRS 159.1855 (right to notice of a petition to remove the guardian); NRS 159.187(2) (right to notice of a petition to appoint successor guardian); NRS 159.328(1)(b) (right to notice of all guardianship proceedings); NRS 159.328(1)(f) (right to participate in developing a

plan for their care); NRS 159.328(1)(g) (right to have due consideration given to their current and previously expressed wishes).

Here, without any notice that it was considering removal or a proper request for removal from Respondents, the district court removed Kimberly; then, without any notice or request for a successor guardian, it selected Robyn as successor guardian. It makes little sense to say that NRS 159.185 allows the district court to suddenly change the guardian without warning. The manner in which the district court removed Kimberly disregards the common theme throughout NRS Chapter 159 that a protected person has the right to notice and an opportunity to participate.

B. The district court could not have known if Robyn was still suitable and qualified to serve as successor guardian after she was discharged as temporary guardian.

Respondents believe that Robyn's prior service and discharge as temporary guardian means that she is now considered suitable and qualified for all time. However, there is one fatal flaw to that argument that Respondents fail to address, which is NRS 159.1852.

This statute provides that a guardian has an ongoing duty, after they are appointed, to inform the district court if anything happens that might affect their suitability and qualification. NRS 159.1852

enumerates the same things that the district court must consider under NRS 159.0613 when it is determining suitability and qualification prior to appointing the guardian. But as Respondents acknowledge, Robyn's letters of guardianship were revoked and she was discharged as temporary guardian. 1 AA00049; 10 RA01738–42. Once Robyn was no longer serving, she had no ongoing obligation under NRS 159.1852 to inform the district court if something happened that affected her suitability and qualification. All that we are left with is speculation because Robyn had no duty to notify the district court under NRS 159.1852 and the district court did not vet Robyn before appointing her as successor guardian.

C. NRS 159.1871 does not save the December 06, 2021 Order.

Rather than simply discharging Robyn as temporary guardian and revoking her letters, the district court could have entered an order, pursuant to NRS 159.1871 proactively appointing her as the successor guardian in case Kimberly ever became unable or unsuitable to serve. If the district court had entered such an order, then all interested parties would have had notice that Robyn might serve as successor guardian at some later date and Robyn would have had an ongoing duty under NRS 159.1852 to inform the district court if anything happened

that made her unsuitable to serve. Instead, the district court used NRS 159.1871 to subject June to its whims.

When interpreting statutes the main goal is to give effect to the legislature's intent. *Anthony Lee R. v. State*, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997). Importantly, this Court must avoid reading statutory language in a way that would produce absurd or unreasonable results. *Id.* "When the words of a statute clearly contradict the legislature's intent, the intent of the legislature will predominate[.]" *Id.* Respondents hope that this Court will review the language in NRS 159.1871 in isolation and with disregard for the rest of NRS Chapter 159.

However, Respondents' reading of NRS 159.1871 would empower the district court to unilaterally change the protected person's guardian without warning. This contradicts various statutory provisions. The legislature included numerous provisions providing the protected person with the right to notice when removal and/or appointment of a successor is sought. *See* NRS 159.1855; NRS 159.187(2). Indeed, in addition to these specific notice provisions, the Protected Persons' Bill of Rights, emphasizes the protected person's broad right to notice and an opportunity to participate at each stage of the proceedings. It would

be an absurd result if NRS 159.1871 could be used to disregard those safeguards and the wishes of the protected person.

Moreover, this Court presumes that the legislature was aware of preexisting, related statutes in NRS Chapter 159 when it enacted NRS 159.1871 in 2019. *See Martinez Guzman v. Second Judicial Dist. Court*, 136 Nev. 103, 107–08, 460 P.3d 443, 448 (2020). The other provisions regarding removal and successor guardians (NRS 159.185–159.187) were already in effect when the legislature enacted NRS 159.1871. The legislature did not intend for NRS 159.1871 to abrogate, or create an exception to, the processes outlined in those statutes. Nonetheless, Respondents hope that this Court will read it as such. When the legislature enacted NRS 159.1871 in 2019, it intended to fill in a gap in the guardianship scheme, which was the inability of the district court to ensure continuity within the guardianship. It allows the district court to vet a "standby" successor guardian, and to enter a prior order stating when or upon what designated event the successor guardian will serve. This is the only way to read this provision so that it is in harmony with the rest of the removal and successor guardian statutes.

The legislature intended for NRS 159.1871 to be a proactive, not reactive, statute by allowing the district court to vet a successor guardian and indicate when their appointment may come into effect. The district court here never entered such an order. Instead, it used NRS 159.1871 to unilaterally change the guardian without June receiving notice and a chance to participate, and without a request from Robyn to be appointed as successor guardian.

II. The District Court Clearly Concluded as a Matter of Law That June Was Required to File a Petition Under NRS 159.333.

First, Respondents attempt to characterize June's argument in her Opening Brief as a factual argument, when in reality, June is challenging the district court's misinterpretation of the law concerning NRS 159.332 through NRS 159.337. *See* AOB 48–58. Contrary to Respondents' contentions, this issue is not about facts surrounding June's ability to manage communication and visitation, rather it is about the district court's error in concluding that as a matter of law, June must meet the standard under NRS 159.333 before she can

manage her familial relationships.[4] Thus, this Court should ignore Respondents' mischaracterization of this issue.

Second, in a somewhat clever sleight of hand, Respondents attempt to explain away the district court's conclusions of law regarding the communication and visitation issue. They chalk this issue up to nothing more than a misunderstanding about the context of language in the December 06, 2021 Order. But tellingly, Respondents shy away from including any language from the order itself.

Here is what the district court actually said in regards to June's petition to approve her proposed visitation schedule (4 AA00340–61):

- "The Guardian **and Protected Person** have failed to meet the statutory requirements that would allow the Court to restrict communication with the Protected Person." 4 AA00981 (emphasis added).
- "Here, the Guardian, Kimberly, did not file a petition for order restricting communication. Instead, **the Protected Person** has filed a petition for visitation order." 4 AA00981–82 (emphasis added).

[4] Respondents' present a red herring here. The question is not whether June has the ability to manage communications and visits, the question is whether the district court can ever shift the burden under NRS 159.333 through NRS 159.337 to the protected person, and require that they seek permission before managing their personal relationships.

- " . . . Counsel for Protected Person failed to present evidence or testimony through an independent statement by an unrelated party." 4 AA00982.[5]
- ". . . the Protected Person failed to establish the statutory requirements necessary in order to restrict visitation and communication with her family members." 4 AA00990.[6]
- ". . . the Protected Person's request to limit all communication and visitation with family members to a two hour window one day per week is DENIED." 4 AA00993.

The district court clearly considered June's petition as a petition for an order restricting communication and visitation, and as such, June was required to meet the statutory requirements outlined under NRS 159.333 through NRS 159.337. It was not viewing June and Kimberly "interchangeably and together as a single unit" as Respondents allege. RAB, at 46. Respondents' characterization ignores the language in the December 06, 2021 Order and is antithetical to how guardianships actually work. A protected person and a guardian are never viewed as "interchangeable" or a "single unit." To the contrary, the guardian and the protected person are separate parties, and routinely take conflicting

[5] The district court was referencing the requirement under NRS 159.333(3)(c) for a statement from at least one independent witness.

[6] The district court even set this paragraph discussing June's alleged failure to meet the statutory requirements separately from the preceding paragraph addressing the guardian's alleged failure to meet the statutory requirements. *See* 4 AA00990.

positions. Moreover, the protected person is the only person in the proceeding who is suffering a liberty deprivation, and thus, is entitled to an entire universe of their own rights. Viewing the protected person and the guardian as "interchangeable" or a "single unit" defies logic and is contrary to how guardianship proceedings actually operate.

Further, to support their argument Respondents claim that June "is cognitively unable to express her preferences" and then cite to filings in the district court that were filed back when the guardianship case first commenced, and emails between counsel. RAB 46–47. However, the documents cited do not state that June is "unable to express her preferences," and the district court has never made such a finding. Thus, this Court should disregard this contention because Respondents fail to cite anything in the record supporting it. *See* NRAP 28(e)(1).

Aside from mischaracterizing June's argument, and spinning the language in the December 06, 2021 Order, Respondents fail to rebut the merits of June's argument regarding whether NRS 159.333 through NRS 159.337 even applies to her, so this Court should conclude that they have conceded on this issue. *See Ozawa v. Vision Airlines, Inc.*, 125

Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating a party's failure to respond to an argument as a concession that it is meritorious).[7]

III. June Has Standing to Challenge Violations of Her Statutory Rights and Due Process Rights.

A. June's standing to challenge the district court's order is independent from Kimberly's standing.

Respondents appear to believe that Kimberly, as the former guardian, is the only person who has standing to challenge the December 06, 2021 Order. RAB, at 1, 23. Bear in mind, June is the only person whose autonomy is at stake. June has, among many other rights, the right to notice as outlined in various statutes throughout NRS Chapter 159, the right to participate at each stage of the proceedings, and the right to have the district court consider her preferences. These are June's personal rights, and they do not flow through the guardian.

Standing comes in two forms, it must either be an injury that is "special," "peculiar," or "personal" to the person, *Schwartz v. Lopez*, 132 Nev. 732, 743, P.3d 886, 894 (2016), or the Legislature must provide a

[7] Also, Respondents' contention that the Amicus Brief raises new issues for the first time on appeal is without merit. The Amicus Brief simply asks this Court to provide a clear standard that the district court must apply regarding NRS 159.333, considering that the district court improperly shifted the burden to June, and did so without warning.

statutory right that gives the person standing, *Hangtes v. City of Henderson*, 121 Nev. 319, 322–23, 113 P.3d 848, 850 (2005).

Here, June suffered a harm that is independent from any harm Kimberly may have suffered, which is that June never received notice that the district court might remove Kimberly and appoint Robyn as successor guardian. June was completely blindsided by this all-encompassing order (when the district court stated it was only resolving the communication/visitation issue), and was never given a chance to participate in the proceedings. This is a violation of June's statutory rights[8] and her due process rights.

Tellingly, Respondents only focus this argument on Kimberly's removal, and do not even mention the harm to June in the district court selecting Robyn as successor guardian without June having the chance to object. Even after Kimberly's removal, June still should have had the opportunity to voice her preference of successor guardian. Robyn, nor

[8] *See* NRS 159.1855 (right to service of a citation regarding removal); NRS 159.187 (right to service of petition to appoint successor guardian); NRS 159.328(1)(b) (right to receive notice of all proceedings); NRS 159.328(1)(f) (right to participate in a plan for his or her care); NRS 159.328(1)(g) (right to have due consideration given to current or previously stated desires). These are all rights specific to June.

anyone else, requested appointment as successor guardian, so June had no idea that the district court was considering appointing her. If the district court had given June the chance to participate in selecting a successor guardian, June may have voiced a preference for a family member other than Robyn, a private professional guardian, or the public guardian. And it should be concerning that the district court, without any request from Robyn, suddenly selected her to serve, so presumably even Robyn did not know she might be selected, which raises questions as to how the district court even knew she would accept the appointment.

In addition to the personal harms that give June standing to challenge the district court's order, the legislature has also conferred standing upon a protected person to pursue an action if their rights under the Protected Persons' Bill of Rights are violated. Specifically, NRS 159.328(2) states, in part, that the rights outlined in the statute "may be addressed in a guardianship proceeding or be enforced through a private right of action." June suffered violations of numerous rights within the Protected Persons' Bill of Rights, like not being given the opportunity to participate in a plan for her care and no due consideration being given to

her current and previously expressed wishes in regards to removal of her preferred guardian and selection of successor guardian.

Therefore, June has standing, independent from Kimberly, to challenge the district court's December 06, 2021 Order.

B. June's preference for Kimberly as guardian is the law of the case and cannot be disturbed on appeal.

There was no need for June to express her preference for Kimberly as guardian during the communication and visitation litigation because the district court already recognized this preference years ago.[9] Before the guardianship proceedings commenced, June executed numerous estate planning documents, which included: a Healthcare Power of Attorney and a Financial Power of Attorney, both naming Kimberly as her attorney-in-fact; and a Last Will and Testament, naming Kimberly as her person representative and naming Kimberly as her preferred guardian if the need ever arose. These documents were recognized by the district court and included in its findings for the original order appointing Kimberly as guardian. *See* 1 AA00040.

[9] Once again, Respondents' argument presents a red herring because removal was never discussed prior to the December 06, 2021 Order, so there was no need for June to reiterate her preference for Kimberly.

The question of June's preference was already resolved years ago, and therefore, it became the law of the case. The law-of the-case doctrine refers to "the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e. established as law of the case) by that court or a higher one in earlier phases." *Reconstruct Co. v. Zhang*, 130 Nev. 1, 7–8, 317 P.3d 814, 818 (2014) (citing to *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995)). As the district court recognized, June executed estate planning documents that reflected her preferences. Respondents neither in the guardianship action nor a separate action, ever challenged the validity of those estate planning documents. And Respondents never presented any evidence to the district court, or even alleged, that June's preference changed. So, in addition to June's preference for Kimberly being the law of the case, it is an issue that Respondents cannot raise for the first time on appeal. *See Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). Thus, this Court should disregard Respondents' attempt to spin this issue when June's preference has been undisputed.

C. *The deprivation of June's statutory rights and due process rights is not harmless.*

Respondents contend that any error by the district court was harmless, however, that is untrue. "To demonstrate that an error is not harmless, a party 'must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached.'" *Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) (quoting *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010)). Here, June's substantial rights were affected because she never had the chance to participate in the removal of her preferred guardian, and appointment of a successor guardian.[10]

Even if the district court concluded that Kimberly, as guardian, violated NRS 159.332, it was not mandated to remove Kimberly. *See* NRS 159.185(1)(i) (stating that the court ***may*** remove the guardian for

[10] One might say that the harm here is structural, and therefore, not even subject to harmless error review. *See Dixon v. State*, 137 Nev. 217, 222, 485 P.3d 1254, 1259 (2021) (stating that structural errors affect the framework within which the case proceeds, and render them fundamentally unfair). When a guardianship case is commenced, there is a rigorous process that ensures that the protected person gets due process and has their voice heard, and that the potential guardian is properly vetted. Allowing the district court, later on, to disregard these safeguards and preferences, renders the proceedings fundamentally unfair.

violating any provision of NRS 159.331 to 159.338). The district court should have required that Robyn and Donna file a petition pursuant to NRS 159.1853 before it granted their "request." A citation and hearing would have needed to follow that petition, which would have given June an opportunity to contest removal of Kimberly. June could have proposed alternatives, like some kind of court oversight or agreement to ensure that communication and visitation were not being restricted, which could have resolved Respondents' concerns in the Visitation Petition,[11] and would have allowed June to retain her preferred guardian. Outright removal was not the only tool at the district court's disposal.[12]

Moreover, it is not harmless that June never had the opportunity to contest Robyn's appointment as successor guardian. The appointment of a successor guardian is entirely separate from the removal of the current guardian. Robyn never filed a request to be appointed as successor guardian, and the district court never indicated that it was

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[11] The Verified Petition for Communication, Visits, and Vacation Time with Protected Person filed on December 30, 2020 (1 AA00064–97) is referred to as "Visitation Petition" throughout this Reply.

[12] It is not uncommon in guardianship proceedings that when a guardian restricts communication or visitation, the district court will admonish the guardian and then give them an opportunity to correct the error.

considering appointing her. If a proper request had been made and June received notice, then June could have had the chance to contest Robyn serving as successor, or could have stated a preference for someone other than Robyn serving as successor guardian, which the district court would have needed to consider. *See* NRS 159.0613; NRS 159.328(1)(g). Assuming, for the sake of argument, that Kimberly's removal was proper, nothing in the record shows that Robyn was more qualified than any other person to serve as successor guardian. So, June, along with other interested persons, should have been given the opportunity to weigh in on Robyn's potential appointment. This reasonably could have resulted in someone other than Robyn being appointed as successor guardian.

At a minimum, the district court must allow the protected person to participate at each stage of the proceeding, and must at least entertain the protected person's wishes. The district court here failed to do so, which affects June's substantial rights, and therefore, is not harmless.

D. This Court's disposition of the December 06, 2021 Order would necessarily disturb the December 07, 2021 Order.

Respondents contend that disposition of the December 06, 2021 Order will not affect the December 07, 2021 Order Appointing Successor

Guardian of the Person and Estate and for Issuance of Letters of General Guardianship. *See* RAB, 2; 5 AA01023–29. This is disingenuous.[13]

To clarify, the December 06, 2021 Order was the operative order that appointed Robyn as successor guardian. *See* 4 AA00994 ("Robyn Friedman SHALL be appointed as Successor Guardian of the Person and Estate of Kathleen Jones. An Order Appointing Successor Guardian shall issue, along with Letters of Guardianship."). The December 07, 2021 Order did not add any substance regarding Robyn's appointment, made no findings of fact, and was duplicative of the portion of the December 06, 2021 Order that already appointed Robyn. The December 07, 2021 Order itself states that it hinges on the December 06, 2021 Order. 5 AA01023. Moreover, the December 07, 2021 Order simply contains boilerplate language that is often used in orders appointing guardians.

The sole purpose of this subsequent order is for the guardian's convenience when dealing with third parties. Entering a subsequent boilerplate order when the guardian's appointment is included within an omnibus order is a routine practice within guardianships. This is so that

[13] It is worth mentioning that June did note the December 07, 2021 Order in her Notice of Appeal.

the guardian, when dealing with third parties on behalf of the protected person like state entities, medical providers, or financial institutions, can present a short boilerplate order stating that they are the guardian, rather than, as would be the case here, a 45-page order which might be confusing to third parties who are not actively involved in the case.

The December 07, 2021 Order was for Robyn's convenience and to prevent any pushback from third parties who might be confused, hesitant, or resistant if handed a 45-page all-encompassing order. This routine practice should not be used as a tactic to try to avoid appellate review. *See State v. Shade*, 110 Nev. 57, 61 n.1, 867 P.2d 393, 395 n.1 (1994) (stating that for the purposes of appellate review, it is the substance of the order, not the caption, that is determinative).[14]

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[14] Respondents also argue that their motion to remove Legal Aid Center as counsel for June before the district court would render this appeal moot. That argument is without merit. June is the protected person, and thus, the party to this appeal, not her counsel. Even if Legal Aid Center were removed, new counsel would have an obligation under Statewide Rules of Guardianship Rule 9 to protect June's due process rights and statutory rights, which is the purpose of this appeal. Respondents fail to cite any authority to support their novel argument that change in counsel renders an appeal moot, so this Court should disregard it. *See Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that the court need not consider arguments that are not cogently argued and fail to present any relevant authority).

IV. June Was Blindsided with Kimberly's Removal and Robyn's Appointment as Successor Guardian, So June Had No Chance to Raise Issues Concerning Her Statutory and Due Process Rights.

Respondents argue that although Robyn and Donna never made a proper request to remove Kimberly, Robyn never requested appointment as successor guardian, and the district court never indicated that it was considering removal and appointment of a successor guardian, June apparently should have read the judge's mind and anticipated that this all-encompassing order would result from Robyn and Donna's Visitation Petition. However, the statutory process was thrown to the wayside, which left June without any notice regarding potential removal of Kimberly and appointment of Robyn as a successor guardian. That is the thrust of this entire appeal.

Respondents' entire argument on this point hinges on a portion of the December 06, 2021 Order stating "the Court directed that the supplemental legal briefs further examine the issues contained in NRS 159.332 though NRS 159.334 (visitation and communication); NRS 159.335 through NRS 159.337 (removal of guardian); and NRS 159.328

(Protected Persons' Bill of Rights)." 5 AA01087.[15] However, that mischaracterizes the May 12, 2021 minute order. At no point does the district court state that it is considering removal of Kimberly as guardian and appointment of Robyn as successor guardian, nor does it ask for any briefing on those issues. *See* 5 AA00372–73. What the district court requested was briefing related to Robyn and Donna's "request for communication, access, and time with their Mother, the Protected Person, pursuant to NRS 159.332 through NRS 159.337, and NRS 159.328." 2 AA00373. Thus, the district court centered the briefing on Robyn and Donna's visitation petitions and the requests made therein.

Robyn and Donna's Visitation Petition does not request removal of Kimberly as guardian and appointment of Robyn as a successor guardian. To the contrary, Robyn and Donna's Visitation Petition

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[15] Respondents claim that June "chose not to respond to the District Court's request for supplemental legal briefs[.]" RAB, at 29. But that is untrue. June filed an untimely pretrial memorandum, which the district court considered. *See* 5 AA01243 ("I considered the briefs that they filed yesterday and read them."). Therefore, this Court should reject Respondents' "invited error" argument that hinges on an inaccurate statement of the facts. Also, it would be an unreasonable application of the "invited error" doctrine to say that a party invites error if they do not somehow predict what the district court might do, without any warning.

explicitly states that "[t]his Petition is NOT to ask this Court to remove Kim as guardian." 1 AA00065 (emphasis added). Also, the Visitation Petition never requests that Robyn serve as successor guardian. Respondents were adamant in their Visitation Petition that their request was only a "course correction" that was seeking parameters around communication and visitation with June given the obstacles they alleged Kimberly created. *See* 1 AA00065–67.

Similarly, Respondents' subsequent April 23, 2021 Visitation Petition does not request removal or appointment of successor guardian. *See* 2 AA0301–21. At best, it passively suggests that if the district court granted the specific May 08, 2021 visit requested in the petition, and if Kimberly failed to obey the order, "then this Court should consider removing or suspending Kim as June's guardian at the scheduled May 13, 2021 hearing." 2 AA00317.[16] Also, that petition never mentions appointing a successor guardian, let alone Robyn specifically.

[16] Ultimately, the district court decided to hold an evidentiary hearing and did not address the specific visit requested in this petition, so even this passive mention of removal related to that request became moot.

The district court made clear in its May 12, 2021 minute order that the evidentiary hearing, and therefore briefing, was focused on Robyn and Donna's visitation petitions and June's May 27, 2021 petition to approve her proposed schedule. None of these petitions mention (let alone properly request) removal of Kimberly as guardian and appointment of Robyn as successor guardian. And while admittedly untimely, June did file a pretrial memorandum that provided briefing on the specific issues raised in Robyn and Donna's visitation petitions and in June's own petition. *See* 3 AA0510–38. The district court stated at the evidentiary hearing that "[t]he relevant inquiry today is whether or not Kimberly unlawfully restricted communication, visitation, and/or interaction between the protected person and Donna and Robyn." 5 AA01244. It never mentioned removal and appointment of a successor guardian.[17]

However, Respondents appear to believe that a party fails to preserve issues for appeal when their briefing and arguments address

[17] Similarly, at no time prior to its December 06,2021 Order did the district court ever state that it was viewing June's petition as a petition for an order restricting, and as such, June was required to meet the standard outlined in NRS 159.333. Robyn and Donna also never argued that this standard should apply to June.

the specific matters that the district court orders them to focus on, and then the district court decides to go far beyond those matters. This defies logic and is unjust, and misunderstands the *Old Aztec Mine* doctrine. *Old Aztec Mine, Inc. v. Brown*, stands for the idea that a party cannot raise new points not urged in the district court, or points inconsistent or different from the ones raised below. 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). This rule is not meant to be "harsh" or "overly formalistic," rather it is simply meant to prevent a party from "reinvent[ing] [their] case on new grounds." *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 437–38, 245 P.3d 542, 544–45 (2010). Therefore, it does not apply when, like here, a party never has a chance to raise issues before the district court because the statutory process was disregarded and the party's due process rights were violated. It would be an injustice to say that June failed to preserve issues for appeal even though she was never given notice and a meaningful opportunity to participate regarding removal and appointment of a successor guardian.[18]

[18] Similarly, to the extent that Respondents argue that the record looks incomplete, if it does at all, that is a result of the district court going far beyond the issues that were litigated. June has provided all the necessary filings related to the communication and visitation litigation, the accountings, and the evidentiary hearing; these served at the basis for

Therefore, this Court should consider the issues raised on appeal.

CONCLUSION

This Court should enter an order: 1) reversing the December 06, 2021 Order; 2) directing the district court to adhere to the processes outlined in NRS 159.1853 and NRS 159.1855 before it can purport to grant Robyn and Donna's request to remove Kimberly as guardian; 3) directing the district court to require that Robyn file a petition for appointment as successor guardian and serve a citation regarding the same on interested persons; 4) directing the district court to make findings, pursuant to NRS 159.0613, regarding Robyn's suitability and qualification before appointing her as successor guardian; and 5) stating that June is not required to comply with NRS 159.333–159.337.

Dated: November 7, 2022

LEGAL AID CENTER OF SOUTHERN NEVADA

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the December 06, 2021 Order. There are no necessary documents that June failed to include.

ATTORNEY'S CERTIFICATE

1. This Reply 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 Reply 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 6,112 words, which is less than the 7,000 word count available for a reply brief pursuant to NRAP 32(a)(7)(A)(ii).
3. Finally, I certify that I have read this Reply 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 Reply 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 November 7, 2022, I submitted the foregoing **APPELLANT'S REPLY BRIEF** for filing through the Court's electronic filing system. Electronic notification of service will be sent to the following:

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