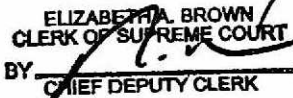


June 14, 2022

Hon. James Hardesty, Associate Chief Justice
Nevada Supreme Court
201 South Carson Street
Carson City, NV

FILED

JUN 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

Via Email to Elizabeth A. Brown, Clerk of the Court

Re: ADKT 598, June 21, 2022

Associate Chief Justice Hardesty and Justices of the Supreme Court:

These written comments are presented as a collaboration by the Clark County, Washoe County and Carson City District Attorney Juvenile Divisions, all of whom serve on the Court Improvement Project (CIP) for Child Dependency. We are honored to serve on the committee to improve processes in child dependency court. Court rules that directly impact processes and procedures in child dependency are important to us as members of CIP; however, we did not have an opportunity to address the creation of rules for children's attorneys in CIP.

The role of a child's attorney in an abuse and neglect proceeding is a very important one. Child Dependency work under NRS 432B is difficult daily for all partners due to a lack of rules of Juvenile Procedure. We support seeking clarification on how an attorney represents a child in an abuse and neglect proceeding.

Our comments are 2 parts; 1. That using a substituted judgement model will directly conflict with statute and 2. We disagree with a substituted judgement model for non-verbal and/or diminished capacity youth.

As this court in In re S.B., an En Banc decision, recognized that Nevada had not adopted the substituted judgement model and specifically that the statute indicates that "the attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings". NRS 432B.420. Furthermore, this court in In re S.B., highlighted the fact that current statute requires the child's attorney to "counsel the child regarding the consequences of" and "assist the child in deciding whether to participate in the program" See NRS 432B.592 (2). In re S.B. also cites NRS 432B.594(1) as being clear and unambiguous, specifically highlighting the words, "if the child so request". This court goes on to state that while a GAL can "undisputedly" make this decision for a child who is non-verbal a child's attorney cannot. (See Attachment of In Re S.B.)

Passing judicial rules of substituted judgement will put the rules in direct conflict with the statute that was interpreted by this Honorable Court in November of 2020 and place the courts in the position of following case law that interprets the statute and court rules.

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In Nevada two or more representatives may work on the same case; a GAL/CASA and an attorney. S.B. 305 from the 2017 legislative session ensured there would be two representatives for every child in an abuse and neglect proceeding. NRS 432B.500 mandates the court to appoint a GAL for the child and NRS 432B.420 mandates that the court appoint a lawyer for same child. SB 305 also ensured that the attorney representing the child was not also the GAL. Testimony from the hearings on SB 305 specifically indicated that "lawyers are trained to be lawyers. They are trained to listen to clients, to represent client's wishes in court and to present evidence but they are not very good at substituting their own opinions, judgement (sic) and morals in a situation", Legislative History testimony SB 305, Senate Health and Human Services, March 29, 2017, Legal Aid Center of Southern Nevada testimony.

In a case where a child has diminished capacity, the court should ensure that a GAL is appointed to represent the child's best interest. Advocacy in abuse and neglect cases for the best interests of a child is being diminished. Since 1985, our statutes have mandated GAL or CASA for every child in the abuse neglect system; however, in Clark County only approximately 25% of our children in foster care have a CASA to represent his or her best interest and in Washoe County, only 10% of children in foster care have a CASA or GAL to represent their best interest. While it is true that the courts are best suited to determine best interest of the child that does not account for who is advocating for that interest and the federal act requires that the child's best interest be accounted for in every case. Passage of the proposed rules for substituted judgment would mean that when a child does not have the capacity to direct the representation, the child's attorney would advocate for what they think the child would want, not for what is in the child's best interests. As this Honorable Court knows the best interest of the child is the priority of every case from child welfare cases to domestic matters and is an important consideration in juvenile delinquency when offering rehabilitative services.

We suggest that the most appropriate model of representation of a party to a civil proceeding who lacks capacity to direct representation is the model that has been used and the model that is designed to protect the party's best interests – the appointment of a guardian ad litem to direct the representation.

We urge this Court to not adopt the last two sentences of proposed rule IV(b)(ii) and the associated comments [During a temporary period or on a particular issue where a normal client-lawyer relationship is not reasonably possible to maintain, the child's lawyer shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she could make an adequately considered decision and representing the child in accordance with that determination.] During a temporary period of diminished capacity or diminished capacity of a particular issue, the child's attorney, like the attorney for every other party, should take no position. If the child lacks capacity all-together (ie. an infant), the guardian ad litem should direct the representation in the child's best interest.

Thank you for your consideration of these comments, we are happy to answer any questions or provide additional information if needed.



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