

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF PATRICK BRETON,
AN ADULT WARD,

LINDA CHRISTIAN,
Appellant,
vs.
PATRICK BRETON,
Respondent.

No. 43889

FILED

JUL 06 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

ORDER PARTIALLY DISMISSING APPEAL AND AFFIRMING

This is an appeal from a district court order affirming the guardianship commissioner's recommendations to deny appellant's second petition to appoint a guardian for respondent and to award attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Robert W. Lueck, Judge. When our preliminary review of the documents before this court revealed a potential jurisdictional defect as to the denial of appellant's petition, we directed appellant to show cause why that portion of the appeal should not be dismissed.

Specifically, it appeared that the portion of the district court's July 27, 2004 order denying the petition to appoint a guardian was not

appealable because it was not a final judgment,¹ a special order made after a final judgment,² or otherwise appealable under NRS 159.325.³ In particular, appellant had filed an earlier petition to appoint a guardian for respondent, and the district court dismissed that petition in a written order on March 24, 2004. Notice of that order's entry was served by mail on March 31, 2004. The March 24, 2004 order was the final judgment in the guardianship proceeding, but appellant did not timely appeal from that order.⁴ Appellant's contention that the March 24, 2004 order was issued by the guardianship commissioner, and thus only appealable to the district court, is incorrect. That order was signed by the district judge and was therefore appealable to this court.

Appellant then filed a second petition to appoint a guardian, which was heard initially by the guardianship commissioner, and later by the district court. On July 27, 2004, the district court denied appellant's second petition to appoint a guardian and awarded attorney fees to respondent in a written order, which is the subject of this appeal. That order is not a special order made after a final judgment because it did not

¹NRAP 3A(b)(1); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

²NRAP 3A(b)(2); Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002).

³NRS 159.325(9) allows an appeal from an order denying a petition to appoint a successor guardian.

⁴NRAP 4(a); NRAP 26(c).

affect the rights of any party arising from the earlier March 24, 2004 order. Rather, the second petition to appoint a guardian could be construed as a motion for rehearing; an order denying rehearing is not appealable.⁵ Moreover, the July 27, 2004 order is not otherwise independently appealable under NRS 159.325, which does not allow an appeal from an order denying a petition to appoint an initial guardian.

Accordingly, we dismiss this appeal to the extent that it challenges the portion of the July 27, 2004 order denying the second petition to appoint a guardian. Thus, this appeal is limited to the attorney fees award.⁶

Appellant has submitted the opening brief in this appeal.⁷ In that brief, appellant does not challenge or provide any legal argument concerning the attorney fees awarded to respondent. Thus, appellant has waived the issue of attorney fees, and we need not consider it.


⁵Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

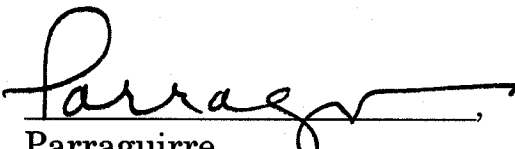
⁶This court has held that a post-judgment order awarding attorney fees is appealable as a special order made after final judgment. Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); see also NRAP 3A(b)(2).

⁷We grant appellant's April 27, 2006 motion to file an opening brief that exceeds the page limit, and we direct the clerk of this court to file the opening brief and appendix provisionally received on April 24, 2006.

Accordingly, we affirm the portion of the district court's order granting attorney fees to respondent.⁸

It is so ORDERED.


_____, J.
Becker


_____, J.
Parraguirre


_____, Sr. J.
Shearing

cc: Eighth Judicial District Court Dept. E, District Judge, Family Court
Division
Lester H. Berkson, Settlement Judge
Brian K. Griffith
George D. Frame
Clark County Clerk

⁸In light of our order, we deny as moot appellant's April 12, 2006 motion to admit video transcript and May 12, 2006 motion to consolidate this appeal with the appeal in Docket No. 44937, and respondent's May 22, 2006 motion to dismiss this appeal.

The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered January 6, 2006.