IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW JOHN MCLAUGHLIN, AND MARILYN ANN MCLAUGHLIN,
Appellants,
vs.
CHASTITY MCLAUGHLIN-PRIMMER,
Respondent.

No. 51733

FILED

MAY 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order awarding primary physical custody of the minor child to respondent, the child's mother, and awarding visitation rights to appellants, the child's grandparents. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

FACTS

In May 2000, respondent, who was 16 years old at the time, gave birth to the minor child. Shortly thereafter, appellants, who are respondent's parents, were granted temporary guardianship of the child. Letters of guardianship were issued to appellants in June 2001. In December 2005, respondent filed a petition to terminate the guardianship, and appellants opposed the petition. In March 2006, the district court entered an order deferring ruling on respondent's motion and setting a visitation schedule for respondent and the child. The matter was heard by the guardianship commissioner in October 2006, after which the commissioner entered a report, recommending that the guardianship remain in place. Citing NRS 159.185 and NRS 159.186, the commissioner determined that respondent failed to demonstrate that appellants had become unsuitable guardians or that terminating the guardianship was in

the child's best interest. Applying the standards set forth in Hudson v. Jones, 122 Nev. 708, 138 P.3d 429 (2006), the commissioner found that respondent failed to show that any of the parties' circumstances had materially changed or that terminating the guardianship would substantially enhance the child's welfare. The commissioner further found that respondent was not entitled to the parental preference set forth under NRS 125.480(3)(a) because, as explained in Hudson, the preference does not apply when a parent seeks to modify custody in a litigated custody dispute and there has been an earlier determination of either parental unfitness or extraordinary circumstances justifying the award of custody to a nonparent.

Respondent moved for reconsideration, and, after a hearing, the commissioner entered a report recommending that reconsideration be granted, based on findings that respondent had not contested the guardianship when it was initiated, as evidenced by the guardianship order containing the parties' stipulation for a status check when respondent turned 18 years old. Although respondent took no action to terminate the guardianship upon turning 18, the commissioner found that, at that time, she was working through issues in her life, and at no time was a finding made that custody in respondent's favor would be detrimental to the child or even an evidentiary hearing held upon which such a finding could be made. The commissioner found that respondent had actively participated in the court proceedings, consented to the guardianship, and continued to be an active part of the child's life in hope of reunifying with the child. Thus, the commissioner found that respondent was entitled to a full evidentiary hearing with the parental preference standard to apply.

Appellants objected to the report and recommendation on reconsideration, asserting that respondent had not unconditionally consented to the temporary guardianship and that during a subsequent hearing, she testified that she was opposed to the guardianship from its inception. Appellants argued that respondent's failure to do anything until December 2005 "constitute[d] a waiver." According to appellants, reconsideration was unwarranted, as the commissioner's recommendation following the October 2006 hearing was supported by findings that, notwithstanding the parental preference and whether it applied, respondent had failed to demonstrate, under NRS 159.185 and NRS 159.186, that the guardianship should be terminated.

After a hearing, the district court entered an order setting the matter for an evidentiary hearing to determine the child's best interest. The district court agreed with the commissioner's finding that the parental preference doctrine applied, concluding that the commissioner's first report and recommendation was based on the mistaken belief that respondent had objected to the initial guardianship. Following a subsequent hearing, the district court entered an order finding that the guardianship was technically defective because the child's John Doe birth father was not properly notified of appellants' June 2000 guardianship petition. Thus, the court dismissed the guardianship, noting that it would exercise a 90-day emergency jurisdiction over the matter and ordering that, at the end of the 90-day period, if another court had not ruled on the matter by then, custody would revert to respondent. Appellants then petitioned the district court for an order establishing custody, support, and visitation. Shortly thereafter, they petitioned specifically for joint legal and primary physical custody of the child with reasonable visitation for

respondent and for an order directing respondent to pay child support. Respondent opposed the petition.

The district court held a hearing on the custody petition and entered an order on February 19, 2008, awarding primary physical custody of the minor child to respondent and visitation rights to appellants.[1] In so doing, the court specifically found that NRS 125.480(3)'s parental preference provision applied and that respondent was fit and suitable to have custody of the child. The order thus directed that "her custody is now restored." This appeal followed.

DISCUSSION

The district court has broad discretion in deciding child custody matters, and this court will not disturb the district court's custody

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[1]Although the court's order awarded appellants visitation with the child three weekends per month, according to the minutes of a February 26, 2008, hearing, the district court orally clarified its visitation ruling and scheduled an evidentiary hearing on the visitation issue. The minutes from the February 26 hearing suggest that the visitation rights set forth in the February 19 order were intended to be temporary, although the February 19 order itself does not so indicate.

Later, on May 27, 2008, the district court entered a written order regarding the visitation schedule discussed at the February 26 hearing. Appellants moved the court to correct or clarify its order, but, in light of this pending appeal, the district court would not consider the motion unless this court directed it to do so. Appellants then filed a petition for a writ of mandamus, which this court denied, pointing out that the May 27 order clarifying the visitation rights was not valid, since the district court lacked jurisdiction to modify the February 19 order after the notice of appeal was filed. McLaughlin v. Dist. Ct. (McLaughlin-Primmer), Docket No. 52202 (Order Denying Petition for Writ of Mandamus, September 5, 2008).

determinations absent a clear abuse of that discretion. See Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

A minor child's parent is given preference over nonparents in custody determinations, "unless in a particular case the best interest of the child requires otherwise." NRS 125.480(3)(a); cf. NRS 159.061 (providing that a minor child's parent, if qualified and suitable, is "preferred over all others for appointment as guardian for the minor"). In accordance with that preference, NRS 125.500(1) provides that, before awarding custody to a nonparent, the district court must "make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interest of the child." Hudson v. Jones, 122 Nev. 708, 711, 138 P.3d 429, 431 (2006).

In Hudson, this court recognized that the parental preference doctrine generally applies in cases in which a parent voluntarily relinquishes custody of the child to a nonparent on the assumption that the custody arrangement is temporary. Id. at 712, 138 P.3d at 431-32. In so doing, this court explained that parents should not be discouraged from consenting to a temporary guardianship while working through their own problems, if that is in the child's best interest. Id. Thus, generally, the natural parent, by consenting to a guardianship in favor of a nonparent, "does not waive [her] right to the parental preference at a subsequent proceeding to reevaluate the custody arrangement." Id. at 712, 138 P.3d at 432. Nevertheless, the parental preference doctrine does not apply when a parent seeks to modify custody in a litigated custody dispute and there has been a "prior determination of either parental unfitness or extraordinary circumstances justifying the award of custody to a nonparent." Id. at 713, 138 P.3d at 432.

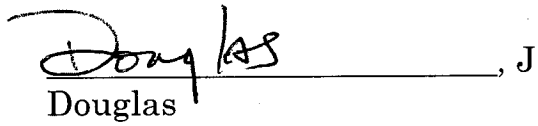
As stated in Litz v. Bennum, 111 Nev. 35, 888 P.2d 438 (1995), and reemphasized in Hudson, 122 Nev. 708, 138 P.3d 429, parents should not be penalized for consenting to a temporary guardianship while working through problems in their own lives, if doing so is in the child's best interest. Here, respondent was 16 years old when the child was born and, during the several years between then and when she moved to dissolve the guardianship, she maintained an active role in the child's life while working through issues in her own life, including finding adequate housing and attending parenting classes. Respondent did not contest the temporary guardianship in favor of appellants, and therefore, the district court properly applied the parental preference doctrine in evaluating respondent's request to dissolve the guardianship and regain custody of the child. Hudson, 122 Nev. 708, 138 P.3d 429; see also Litz, 111 Nev. 35, 888 P.2d 438; Locklin v. Duka, 112 Nev. 1489, 929 P.2d 930 (1996).

Although appellants point out that the temporary guardianship remained in place for several years and assert that a full evidentiary hearing on the custody issue should be held based on their status as the child's primary caretakers during the majority of his life, this court previously has rejected arguments that the length of a temporary guardianship alone should override the parental preference doctrine. See Litz, 111 Nev. at 38, 888 P.2d at 440; Locklin, 112 Nev. 1489, 929 P.2d 930. Moreover, in this case, no finding of parental unfitness or extraordinary circumstances has been made to justify awarding custody to

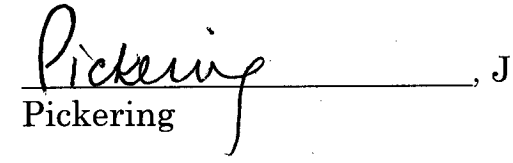
a nonparent.[2] Accordingly, we conclude that the district court acted within its discretion in awarding custody to respondent, and we

ORDER the judgment of the district court AFFIRMED.

Parraguirre, J.



Douglas, J.



Pickering, J.

cc: Eighth Judicial District Court Dept. K, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Denise A. Pifer
Stephen M. Caruso
Eighth District Court Clerk

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[2]Because the district court dissolved the guardianship based on its finding that the John Doe birth father was not properly noticed before the guardianship was granted, the factors listed in NRS 159.185 (listing conditions upon which the court may remove a guardian) and NRS 159.186 (listing considerations for court in determining whether to remove a minor child's guardian) are inapposite here, as no guardianship was in place when the district court made the custody determination being challenged on appeal.