

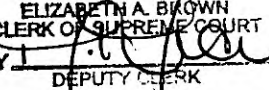
IN THE SUPREME COURT OF THE STATE OF NEVADA

D.C.M.M., A PROTECTED MINOR,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
LINDA MARQUIS, DISTRICT JUDGE,
Respondents,
and
RUSSELL GREENHALGH; ANGELA
GREENHALGH; TACIE LEE
MONTGOMERY; MICHAEL MILLER;
AND G.W.L.P., A MINOR,
Real Parties in Interest.

No. 87207

FILED

SEP 08 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original, emergency petition for a writ of mandamus challenges a district court order denying a petition for appointment of temporary guardians. Because only the district court minutes had been entered at the time the writ petition was filed, on September 1, 2023, we directed entry of a written order. The district court entered a written order on September 5, and petitioner D.C.M.M. timely filed a supplemental appendix containing that order. D.C.M.M. has also moved for leave to file an emergency supplement to the writ petition. We grant that motion and direct the clerk of this court to detach from the motion and file the proposed supplement.

The writ petition and supplement challenge the district court's order insofar as it denies a temporary guardianship for medical purposes under NRS 159A.052 and NRS 159A.053 as to D.C.M.M. Under NRS 159A.052(2), the district court may appoint temporary guardians to serve for 10 days upon finding (1) "reasonable cause to believe that the proposed protected minor is in need of immediate medical attention which he or she cannot obtain without the appointment of a temporary guardian" and (2) that the petitioners satisfied notice requirements by either trying in good faith to notify the persons entitled to notice, or showing that giving notice "is not feasible under the circumstances," or demonstrating that "[t]he proposed protected minor would be exposed to an immediate risk of physical harm if the petitioner were to provide notice to the persons entitled to notice." NRS 159A.052(2) (referring to NRS 159A.052(1)(b)(2)).

In this case, the proposed guardians' petition indicated that they are D.C.M.M.'s grandparents and have been caring for him and his brother since August 2023, when they were abandoned by their mother. As the district court points out, the petition lacks extensive explanation of the circumstances surrounding the request for guardianship and at times is unclear or inconsistent. Nevertheless, the petition, which consists of a form filled out by the proposed guardians pro se, along with the papers submitted therewith, appears to contain all the information required by NRS 159A.052. Specifically, the proposed guardians submitted with their forms a letter of medical necessity from Dr. J. Chadwick Plaire of Children's Urology Associates, which explains that he has been treating D.C.M.M. since 2018 for a chronic medical condition requiring "continuous management and treatment such as routine radiographic imaging" and that

D.C.M.M. “was unable to complete the studies due to his current guardian not having legal guardianship documents to present as per radiology facility requirements.” Dr. Plaire indicated that it was “very important” to complete the imaging and follow up “ASAP” to ensure that D.C.M.M.’s condition did not worsen and so that his prescriptions could be renewed. With respect to notice, the proposed guardians indicated that the parents’ addresses were unknown, that they were “unable to contact” D.C.M.M.’s mother and feared the children would be at risk from “the emotional damage from medical neglect and other needs neglected” should notice be provided, and that it was “unknown how to notify [D.C.M.M.’s mother]” and they feared for the children’s safety.

Under the circumstances, we agree with D.C.M.M. that a temporary guardianship for medical purposes was warranted on these facts. First, the district court had before it a letter of medical necessity from an established provider demonstrating reasonable cause to believe that D.C.M.M. is in need of immediate medical attention that cannot be obtained without the appointment of a temporary guardian, as the letter described a serious medical condition needing regular treatment—according to the proposed guardians’ petition, daily treatment—that could not be accessed per facility policy absent a legal guardianship. Second, the proposed guardians indicated that the children had been abandoned, that the location of the parents was unknown, and that the proposed guardians did not know how to contact the parents. While the district court concluded that this was insufficient to establish that notifying the parents was not feasible, under the circumstances, we disagree. According to the petition, the proposed guardians did not know how to contact or notify the parents; as a result,

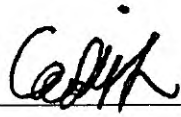
notifying them pre-petition was not possible. *See, e.g., In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 164, 87 P.3d 521, 525 (2004) (recognizing that the best interest of the child, as well as the interests of the State, may in urgent circumstances outweigh the parents' right to immediate notice).

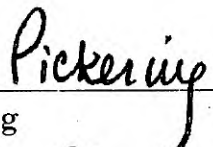
We acknowledge the district court's valid concerns in this matter regarding lack of information and notice. However, when faced with a proposed protected person's documented immediate need for medical attention that cannot be obtained absent a guardianship and assertions that pre-petition notice cannot be provided because the persons entitled to notice cannot be located, a limited temporary guardianship is available under NRS 159A.052 to protect the child's best interest in obtaining the necessary medical care. Here, as the NRS 159A.052 requirements were met, the district court manifestly abused its discretion in denying the temporary guardianship for medical purposes, and we therefore conclude that mandamus relief is warranted.¹ *Redeker v. Eighth Judicial Dist. Court*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006) (explaining that mandamus will issue to cure a manifest abuse of discretion where, as here, no adequate and speedy legal remedy exists). Accordingly, we


ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant the proposed guardians' petition for temporary guardianship under NRS 159A.052 to the limited extent necessary to meet

¹As we conclude that a temporary guardianship is warranted under NRS 159A.052, we do not reach D.C.M.M.'s arguments under NRS 159A.053.

D.C.M.M.'s immediate medical needs as identified in the letter of medical necessity.²


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Linda Marquis, District Judge, Family Division
Legal Aid Center of Southern Nevada, Inc.
Angela Greenhalgh
Russell Greenhalgh
Eighth District Court Clerk

²We note that NRS 159A.052(3) and (4) impose mandatory notice requirements that must be complied with after temporary guardians are appointed. Further, once temporary guardians are appointed, the district court is required to hold a hearing within 10 days to determine whether the guardianship should be extended pursuant to clear and convincing evidence of continuing medical needs. NRS 159A.052(5). Nothing prevents the district court from requiring the proposed guardians to provide additional information clarifying their petition prior to or at that hearing or from fashioning reasonable requirements to protect the interests of the child and the parents. *See generally Guardianship of L.S. & H.S.*, 120 Nev. at 165, 87 P.3d at 526.