

IN THE SUPREME COURT OF THE STATE OF NEVADA

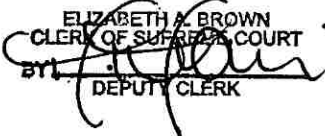
IN THE MATTER OF THE
GUARDIANSHIP FOR THE PERSON
AND ESTATE OF: DRENA SHIVELY

DRENA SHIVELY,
Appellant,
vs.
TIFFANY SHIVELY-BUSSE,
Respondent.

No. 85871

FILED

JAN 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion for attorney fees. Eighth Judicial District Court, Family Division, Clark County; Linda Marquis, Judge.

Respondent Tiffany Shively-Busse is the guardian for her mother, appellant Drena Shively, and of Shively's estate. Shively is represented in this matter by the Legal Aid Center of Southern Nevada (collectively, Shively).¹ Shively-Busse filed an accounting and a petition for attorney fees with the district court pursuant to NRS 159.344. She attached attorney billing ledgers containing partial redactions in the descriptions of 15 of the 44 time entries, based upon attorney-client privilege. Shively filed an opposition to the accounting, arguing that 10 of the 15 redacted entries, totaling \$660.00, contained insufficient information to determine whether

¹In light of our disposition, we need not address Shively-Busse's argument that Shively did not authorize the Legal Aid Center of Southern Nevada to object to Shively-Busse's request for attorney fees.

the attorney fees were reasonable. Shively did not object to the remainder of Shively-Busse's requested attorney fees.

At a hearing, Shively-Busse offered to let the district court review in camera an unredacted billing ledger so that the district court could determine whether the objected-to entries were privileged. Despite the district court's willingness to do so, Shively objected, contending that such an in-camera review would be "improper" because it would limit the ability of counsel to advocate for her since she did not have a chance to "meaningfully object" to the redacted descriptions.

The district court found that the redacted billing entries provided sufficient detail to determine whether the attorney fees requested were appropriate and granted the request for attorney fees and costs, including the fees associated with the redacted communications. While the district court did not review the contents of the redacted statements, it found that "the nature and extent of the service performed" was still evident from the unredacted statements.

First, Shively argues that the district court erred by not reviewing the unredacted entries in camera. However, "[a] party who participates in an alleged error is estopped from raising any objection on appeal." *See Carter v. State*, 121 Nev. 759, 769, 121 P.3d 592, 599 (2005). By objecting to an in-camera review of the unredacted billing entries, Shively invited many of the alleged errors she asserts on appeal. Shively, therefore, cannot assert on appeal that the court should have reviewed the unredacted entries.

Shively further contends that the attorney-client privilege asserted by Shively-Busse with respect to the attorney billing ledgers does not apply to a party who voluntarily avails themselves of NRS 159.344,

which authorizes a party to have their attorney fees and costs paid from the protected person's estate. We disagree. "The attorney-client privilege is a long-standing privilege . . . that protects communications between attorneys and their clients." *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017) (internal quotation marks omitted). Shively has presented no salient authority to support the proposition that the Legislature, in enacting NRS 159.344, intended to abrogate this long-standing privilege for those seeking attorney fees in a guardianship matter. *See Cf. Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is an appellant's responsibility to support arguments with salient authority).

Moreover, in its order granting attorney fees and costs, the district court found that "the nature and extent of the service performed is still evident" in the redacted portions of the billing entries. Shively-Busse provided an itemized, detailed list of each task performed, an indication of the time billed, and a fee summary with the amounts charged to the lawyers. She included redacted entries that range in specificity from "Email from client" with the remaining words blacked out to "Updating third annual accounting with June Statement- e-mail to client [redacted]. Finalized accounting for Wells Fargo and Nevada State Bank accounts. Finalized Brunzell. Sent to Marjorie for review." The court was still able to determine the general purpose of each task, even if it did not know the exact contents of the task. Because the district court was able to decide the case based on the redacted entries, we conclude that the court did not abuse its discretion in granting fees and costs for the redacted billing entries.

Shively next argues that her right to due process was violated when the district court ordered the estate to pay fees and costs without


allowing Shively the opportunity to review the unredacted billing entries. Under Nevada’s due process clause, “[n]o person shall be deprived of life, liberty, or property, without due process of law.” Nev. Const. art. 1, § 8(2); *Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305, 310 (2012); *see also* U.S. Const. amend. XIV, §1. Procedural due process requires that parties receive “notice and an opportunity to be heard.” *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879(2007) (internal quotation marks omitted). We hold that Shively’s due process claim has no merit because the district court gave her an opportunity to be heard. *See In re Guardianship of Jones*, 139 Nev., Adv. Op. 17, 531 P.3d 1236, 1245 (2023) (determining where numerous filings gave a party the opportunity to be heard, due process rights were not violated). Not only did the court entertain her opposition to the accounting and consider her arguments presented at the hearing, but it also offered to review the redacted portions of the billing statements in-camera, which Shively declined. Nor are we persuaded that due process entitled Shively herself to review the unredacted billing statements. *See Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir. 2016) (holding that the due process clause requires that the district court “allow Defendants access to the timesheets, appropriately redacted to remove privileged information, so they can inspect them and present whatever objections they might have concerning the fairness and reasonableness of Plaintiffs’ fee request.”). Shively had access to the billing statements, was able to inspect them, present objections, and was heard. As the redacted billing entries contained sufficient information for the court to determine the nature and extent of the services performed, there was no need for Shively to view the unredacted portions. Because she had the opportunity to view the

statements and make objections, the district court did not violate Shively's right to due process.

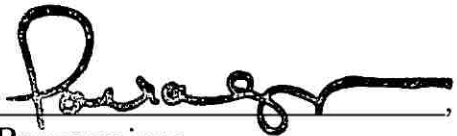
Lastly, Shively argues that Shively-Busse failed to comply with NRCP 26(B)(5)(A) before withholding information related to her counsel's billing entries. NRCP 26(b)(5)(A) applies to discovery and requires a party to submit a privilege log that identifies any potentially privileged information. NRCP 26(b)(5)(A)(ii). We conclude that NRCP 26(B)(5)(A) does not apply in a case without discovery. Here, the billing statements were appended to a petition for fees submitted to the court, rather than as part of discovery. We conclude that Shively has not shown that relief is warranted on the basis of NRCP 26(b)(5)(a).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

²We have carefully considered Shively's remaining arguments and conclude that they lack merit.

cc: Hon. Linda Marquis, District Judge, Family Division
Israel Kunin, Settlement Judge
Legal Aid Center of Southern Nevada, Inc.
Goldsmith & Guymon, P.C.
Eighth District Court Clerk