


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE  
GUARDIANSHIP OF NICHOLAS  
SARNELLI, A PROTECTED PERSON.

No. 85698-COA

**FILED**

MAR 29 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

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ANTHONY BARONE, JR.,  
Appellant,  
vs.  
NICHOLAS SARNELLI,  
Respondent.

*ORDER OF AFFIRMANCE*

Anthony Barone, Jr. appeals from a district court order in a guardianship matter. Eighth Judicial District Court, Family Division, Clark County; Linda Marquis, Judge.

Barone was appointed to be the guardian of the person and estate for his nephew, Nicholas Sarnelli, in 2010. Beginning in 2019, issues arose concerning Barone's yearly accounting of Sarnelli's estate, and the district court ordered Barone to provide receipts for expenditures over \$250. As the issues continued, the district court admonished Barone that he needed to maintain accurate records and receipts, refrain from making cash withdrawals, and refrain from comingling his funds with Sarnelli's.

In January 2022, Barone submitted a petition for approval of accounting for December 2020 to December 2021, and Sarnelli's counsel raised concerns with the proposed accounting. The district court again requested that Barone produce receipts for expenditures over \$250. The court appointed a Nevada Guardianship Compliance Office financial

forensic specialist to conduct a financial forensic audit. The specialist filed a report with the district court outlining various issues with the accounting and noting Barone's failure to comply with statutory guardianship accounting requirements.

Following a hearing, in September 2022, the district court denied Barone's request to approve the accounting, noting that he had been provided several opportunities to amend the accounting and submit additional documents, but he had failed to correct the errors addressed in the specialist's report.

Shortly thereafter, Sarnelli's counsel filed a petition to remove Barone as guardian of Sarnelli's estate. The district court issued a citation to Barone, notifying him of the petition to remove him as guardian of the estate and ordering him to appear and show cause if he had any objection or opposition to being removed as guardian of the estate.

In response, Barone filed various documents, including an objection and a supplemental opposition to the petition; a notice of intent to present video evidence at the hearing on the petition to remove him, which stated he would present video footage of prior court hearings; a brief in companion to his video presentation; and a motion to remove Sarnelli's appointed counsel.

The day before the hearing on the petition to remove Barone, the district court issued a written order, stating that it would not permit Barone to play his video presentation at the hearing and finding that the video was "duplicitous" and contained information the court had already reviewed.

On November 3, 2022, the district court held a hearing on the petition. The court continued the hearing to November 10, 2022. However,

on that date, the court vacated the November 10 hearing and issued a written order granting Sarnelli's petition to remove Barone as guardian of the estate. This appeal followed.

On appeal, Barone first asserts that he was denied due process when the district court granted the petition to remove him without conducting a hearing. We are unpersuaded by Barone's contention.

"A deprivation of due process is of constitutional dimension, and this court applies a de novo standard of review to constitutional challenges." *Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) (internal quotation marks omitted). Procedural due process requires notice and an opportunity to be heard. *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (internal quotation marks omitted). "Due process is satisfied where interested parties are given an opportunity to be heard at a meaningful time and in a meaningful manner." *Mesi*, 136 Nev. at 750, 478 P.3d at 369 (internal quotation marks omitted). This generally takes the form of a live hearing, but in some cases the parties may be "afforded sufficient opportunity to present their case through affidavits and supporting documents." *J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. 366, 378, 240 P.3d 1033, 1041 (2010).

Here, Barone received notice when the district court, in compliance with NRS 159.1855, issued him a citation to appear and show cause for why he should not be removed and the court provided him with an opportunity to be heard both when he responded to the petition to remove him as guardian of the estate and at the November 3 hearing. *See id.*; *see also, e.g., In re Guardianship of Jones*, 139 Nev., Adv. Op. 17, 531 P.3d 1236, 1245-46 (2023) (determining where numerous filings and a hearing gave a

party the opportunity to be heard, due process rights were not violated). Therefore, we conclude that Barone was not deprived of due process.

Our conclusion in this regard is unchanged by the district court's decision to vacate the subsequent November 10 hearing. While Barone contends that the district court violated the Nevada Code of Judicial Conduct (NCJC) Canon 2, Rule 2.6 by vacating that hearing, that argument lacks merit. NCJC Canon 2, Rule 2.6(A) provides that a judge "shall accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law." Here, as previously discussed, the district court afforded Barone the right to be heard at the previous hearing. Thus, we cannot say that he was deprived of that opportunity simply because there was not an additional hearing. *Cf. State, Div. of Child, & Fam. Servs. v. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 453, 92 P.3d 1239, 1244 (2004) ("District courts have wide discretion to control the conduct of proceedings pending before them.").

Moreover, Barone's reliance on the Confrontation Clause set forth in the Sixth Amendment to the United States Constitution is misplaced. Barone contends that, under the Sixth Amendment, he was entitled to confront Sarnelli's counsel and the financial forensic auditor who prepared the report which showed issues with Barone's accounting, whom he refers to as his accusers. However, the Confrontation Clause is inapplicable here as it applies to criminal proceedings. *See, e.g., Kille v. State*, No. 77265-COA, 2019 WL 1976981, \*1 (Nev. Ct. App. May 2, 2019) (explaining that the Confrontation Clause does not apply in civil proceedings); *see also* U.S. Const. amend. VI (The Confrontation Clause of the Sixth Amendment guarantees that "[i]n all *criminal* prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against

him.” (emphasis added)). In sum, we conclude that Barone has not demonstrated that he was denied due process under these circumstances.

Next, Barone contends that the district court abused its discretion by removing him as the guardian of Sarnelli’s estate.<sup>1</sup>

This court reviews a district court’s guardianship determinations for an abuse of discretion and its conclusions of law de novo. *Jones*, 139 Nev., Adv. Op. 17, 531 P.3d at 1246. “We give deference to the district court’s findings of fact, and we will not set them aside unless clearly erroneous or not supported by substantial evidence.” *Id.* at 1247. Substantial evidence “is evidence that a reasonable person may accept as adequate to sustain a judgment.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

Under NRS 159.185, the district court may remove a guardian if it determines that “[t]he guardian has negligently failed to perform any duty as provided by law or by any order of the court and . . . [t]he negligence resulted in injury to the protected person or the estate of the protected person,” NRS 159.185(e)(1), or that “[t]he guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury,” NRS 159.185(f), or that “the guardian has violated any right of the protected person” identified in the chapter, NRS 159.185(g).

Barone’s arguments on appeal do not address the district court’s findings on these points. Instead, he asserts that he was never required to support purchases with receipts during past accountings, that

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<sup>1</sup>To the extent Barone contends that the district court refused to address his motion to disqualify Sarnelli’s counsel, this is incorrect. The district court denied Barone’s motion in its order, and multiple similar requests made by Barone were likewise ruled on and denied in the course of the underlying case.

he had to take cash withdrawals from Sarnelli's debit card because he could not use a card in Sarnelli's name, and that he submitted an affidavit to the court in place of receipts pursuant to NRS 159.179(6) (allowing for payment to be proved by the oath of a competent witness when a receipt is lost or for good reason cannot be produced). With respect to his first two arguments, those do not address the district court's findings that the court had ordered him to produce receipts for expenditures yet he had failed to do so, and, therefore, he has failed to demonstrate the district court abused its discretion through these arguments. *See Jones*, 139 Nev., Adv. Op. 17, 531 P.3d at 1246. As to his argument regarding his affidavit, in making this point, he confusingly both claims that this affidavit is not contained in the record and also refers to a February 12, 2022, affidavit, which is contained in the record. But the February 12 affidavit does not contain any mention of the missing receipts and Barone does not explain how it complied with NRS 159.179(6). And to the extent this argument relies on an affidavit that is not contained in the record, as the appellant, it was Barone's responsibility to ensure that a full and accurate record of the underlying proceedings is produced. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (holding that it is the appellant's responsibility to make an adequate appellate record, and when documents are not contained in the record, the appellant's associated claims of error will not be considered). Consequently, Barone has failed to demonstrate that the district court abused its discretion in this respect. We therefore conclude Barone failed to demonstrate that the district court abused its discretion by removing him as guardian of Sarnelli's estate. *See Jones*, 139 Nev., Adv. Op. 17, 531 P.3d at 1246.


Moreover, the district court's determination was supported by substantial evidence. *See id.* at 1247. The district court found that the statutory conditions for removal were met where Barone mismanaged the guardian estate by comingling his funds with Sarnelli's, failing to support expenditures with receipts or vouchers, and making expenditures that did not benefit Sarnelli. *See* NRS 159.185(1)(e). Further, the district court found that Barone had intentionally failed to provide the court with receipts and vouchers for expenditures over \$250, despite his duty under NRS 159.179 (specifying the contents of an account made and filed by a guardian of the estate and requiring receipts or vouchers for all expenditures to be retained by guardian for examination by the court) and prior admonishments by the court to retain and provide such documentation. *See* NRS 159.185(1)(f).

The district court made further findings that Barone's accounting for December 2020 to December 2021 was not approved due to his mismanagement, and he was given the time and opportunity to correct the accounting but failed to do so. These determinations were supported by the Guardianship Compliance Office's financial forensic specialist's report, which revealed that there were \$32,490.23 in cash withdrawals unsupported by receipts, \$12,434.07 in credit card payments similarly unsupported by receipts, and \$28,625.49 in expenditures that did not appear to have benefitted Sarnelli. The report also revealed that Barone comingled his business funds and expenses and unknown deposits in Sarnelli's account.

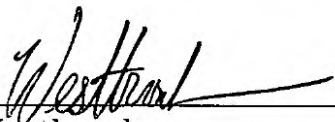
Under these circumstances, the district court properly determined that Barone violated Sarnelli's right to have his affairs prudently managed pursuant to NRS 159.328(q) (providing that a protected

person has the right to “[r]eceive prudent financial management of his or her property and regular detailed reports of financial accounting”). See NRS 159.185(1)(g). As a result, we discern no abuse of discretion in the district court’s removal of Barone as the guardian of Sarnelli’s estate. See *Jones*, 139 Nev., Adv. Op. 17, 531 P.3d at 1247.

Accordingly, for the reasons set forth above, we  
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Linda Marquis, District Judge, Family Division  
Anthony Barone, Jr.  
Legal Aid Center of Southern Nevada, Inc.  
Eighth District Court Clerk

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<sup>2</sup>Insofar as Barone raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.