IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSON: A.D.I.; A.R.I. AND A.J. I., PROTECTED MINORS.

RANDY SUE K.,
Appellant,
vs.
ADISON R.; A.D.I.; A.R.I.; AND A.J.I., PROTECTED MINORS,
Respondents.

No. 84126

FILED

JUL 09 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating a guardianship. Eighth Judicial District Court, Family Division, Clark County; Linda Marquis, Judge.

Appellant Randy Sue K. was granted guardianship over her daughter, respondent Adison R.'s minor children, respondents A.D.I., A.R.I., and A.J.I. (Minor Respondents) in 2018. Adison petitioned to terminate the guardianship in 2020. After the conclusion of a multi-day evidentiary hearing, the district court terminated the guardianship. Randy Sue appeals, asserting several errors concerning application of the law and the weight of evidence warrant reversal. Minor Respondents appeal, asserting errors concerning the appointment of their guardian ad litem. We address each in turn, and we affirm.

Standard of review

Guardianship determinations are reviewed for an abuse of discretion. *In re Guardianship of D.M.F.*, 139 Nev., Adv. Op. 38, 535 P.3d 1154, 1161 (2023). An abuse of discretion occurs if a district court "fails to supply appropriate reasons to support" its decision, *id.*, or if its decision is "arbitrary or capricious or . . . exceeds the bounds of law or reason," *State v. Eric A.L. (In re Eric A.L.)*, 123 Nev. 26, 33, 153 P.3d 32, 36-37 (2007) (internal quotation marks omitted). Further, a district court abuses its discretion when it "bases its decision on a clearly erroneous factual determination or disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016) (internal quotation marks omitted). "However, questions of law within a guardianship determination are reviewed de novo." *In re D.M.F.*, 139 Nev., Adv. Op. 38, 535 P.3d at 1161.

The district court did not err in utilizing the best-interest factors listed in NRS 125C.0035(4) in evaluating substantial enhancement pursuant to NRS 159A.1915(1)(b)

Randy Sue argues that under any standard, the district court's decision to apply the best-interest of the child analysis set forth in NRS 125C.0035 instead of determining if termination would substantially enhance Minor Respondents' welfare as set forth in NRS 159A.1915 amounts to reversible error. Minor Respondents generally join in Randy Sue's arguments. Adison did not file an answering brief.[1] Whether the

[1]We decline in these circumstances to invoke our discretion to consider Adison's failure to file an answering brief a confession of error, and instead review the appeal on the merits. *See* NRAP 31(d)(2) ("The failure of respondent to file a brief may be treated by the court as a confession of error and appropriate disposition of the appeal thereafter made.").

district court properly examined the best interest factors from NRS Chapter 125C as part of evaluating the substantial enhancement requirement in NRS 159A.1915 implicates statutory construction, which this court reviews de novo. *Potter v. Potter*, 121 Nev. 613, 616, 119 P.3d 1246, 1248 (2005). NRS Chapter 159A governs guardianships of minors. When a parent seeks to terminate a guardianship over their children and the parent did not consent to the guardianship when it was created, NRS 159A.1915 unambiguously provides that the parent must show by clear and convincing evidence that (1) there has been a material change in circumstances that includes the parent's restored suitability, and (2) the "welfare of the protected minor would be substantially enhanced by the termination of the guardianship and placement of the protected minor with the parent." *See Richardson Constr., Inc. v. Clark Cnty. Sch. Dist.*, 123 Nev. 61, 64, 156 P.3d 21, 23 (2007) ("The construction of a statute should give effect to the Legislature's intent. In determining the Legislature's intent, we may look no further than any unambiguous, plain statutory language.") (footnote omitted).

At issue here is whether the district court, by utilizing the best interest factors from the child custody provisions of NRS Chapter 125C as part of its analysis, thereby overlooked the guardianship statute's requirement that Adison show that terminating the guardianship would substantially enhance Minor Respondents' welfare. The substantial enhancement standard is different than the best interest standard. *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 243 (2007) (noting in child custody cases "modification of custody may serve a child's best interest even if the modification does not substantially enhance the child's welfare"). However, both standards naturally involve similar considerations which bear on the

child's welfare, such as the physical, developmental, and emotional needs of the child. Thus, discussing and considering the best interest factors in this context is not inappropriate so long as the district court considers whether those factors and other relevant considerations demonstrate that the children's welfare would be substantially enhanced if the guardianship ends and the children are returned to the parent.

Beyond its analysis of the best interest factors, the district court made findings regarding Randy Sue's and Adison's respective financial situations, Minor Respondents' special and unique needs, Randy Sue's failure to pursue IEP or 504 plans for Minor Respondents until the court mentioned those services, and the opportunities that would be available to Minor Respondents if they were to return to Adison's custody, such as a more spacious living situation. Therefore, the district court did not abuse its discretion in considering the best interest factors in analyzing whether termination of the guardianship substantially enhanced the welfare of Minor Respondents.

Substantial evidence supports that the welfare of the Minor Respondents would be substantially enhanced by termination of the guardianship

Randy Sue maintains the district court abused its discretion in determining Adison presented clear and convincing evidence that termination would substantially enhance the welfare of Minor Respondents. Randy Sue's argument implicates the district court's factual findings, to which we generally give deference. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) ("The district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence."); *see In re Guardianship of D.M.F.*, 139 Nev., Adv. Op. 38, 535 P.3d at 1161 (applying an abuse of discretion standard in reviewing a guardianship determination). A

witness's credibility impacts the weight of their testimony, and this court will not reweigh credibility determinations on appeal, as that duty is solely the province of the trier of fact. *See Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996) (holding that the rationale for an appellate court not substituting its own judgment for that of the district court is because "the district court has a better opportunity to observe parties and evaluate the situation").

Here, we perceive no abuse of discretion in the district court's conclusion that termination of the guardianship would substantially enhance the welfare of Minor Respondents. The district court was presented with substantial evidence that both Adison and Randy Sue were willing to address Minor Respondents' special health needs, Adison was in a significantly better financial position than Randy Sue, Adison had a more spacious living situation for Minor Respondents, and Minor Respondents' medication needs being met continuously changed while they were in Randy Sue's care. The district court found, and the record supports, that Randy Sue's testimony was at times unresponsive and she offered various different reasons for why she never took affirmative steps to have Minor Respondents diagnosed through Clark County School District, which foreclosed their ability to qualify for an IEP or a 504-plan. Further, Randy Sue's other adult children testified in support of terminating the guardianship, describing Randy Sue as unfit to serve as the guardian and Adison as fit to care for Minor Respondents. Despite finding Minor Respondents are very bonded with Randy Sue, based on this record, we are not persuaded that the district court abused its discretion in finding that Adison satisfied NRS 159A.1915(1)'s substantially enhanced welfare requirement by clear and convincing evidence. *See In re Discipline of Schaefer*, 117 Nev. 496, 515, 25

P.3d 191, 204 (2001) (observing that clear and convincing evidence "need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference . . . may be drawn") (internal quotation marks omitted), *as modified by* 31 P.3d 365 (2001).

The district court did not err in appointing a guardian ad litem

Both Randy Sue and Minor Respondents challenge the way in which the district court appointed a guardian ad litem for Minor Respondents and whether it was first required to appoint an attorney for them. To begin, the record does not support that any party requested the appointment of an attorney for Minor Respondents before the close of the evidentiary hearing. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). Further, we decline to address whether NRS 159A.0455 requires the appointment of an attorney before the appointment of a guardian ad litem because Randy Sue and Minor Respondents have not shown that the result in this case would have been different had Minor Respondents been appointed an attorney. *See Edwards v. Emperors Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument or relevant authority); *cf. In re J.D.N.*, 128 Nev. 462, 469, 283 P.3d 842, 847 (2012) ("Relief under the plain error standard is rarely granted in civil cases and is reserved for those situations where it has been demonstrated that the failure to grant relief will result in a manifest injustice or a miscarriage of justice." (quoting 5 Am. Jur. 2d *Appellate Review* § 720 (2007))). Thus, while we note that the guardian ad litem's failure to speak with the Minor

Respondents is concerning, we discern no error in the district court's decision to appoint the guardian ad litem in the manner in which it did so.

The district court did not err in concluding that Adison was entitled to the presumption of parental suitability[2]

Randy Sue argues that the district court failed to consider all of the relevant evidence and factors in finding Adison was entitled to the presumption of suitability. A parent is generally entitled to a presumption of fitness to care for their children. *Locklin v. Duka*, 112 Nev. 1489, 1494-95, 929 P.2d 930, 933-34 (1996). The parental preference can be overcome by showing that the parent is unfit or through extraordinary circumstances which result in serious detriment to the child. *Id.* at 1495-96, 929 P.2d at 934; *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995).

Factors that "may be considered in evaluating" such unfitness or extraordinary circumstances include, among many others, abandonment or persistent neglect by the parent; likelihood of serious physical or emotional harm to the child; extended, unjustifiable absence of parental custody; bonded relationship between the child and non-parent guardian that could result in significant harm to the child if custody were changed; the parent's delay in seeking custody; and the quality of the parent's commitment to raising the child. *Locklin*, 112 Nev. at 1496, 929 P.2d at 934-35. When determining if "there is sufficient detriment to the welfare of the child to overcome the parental [preference] presumption," the district court must evaluate the *Locklin* factors that "may be present in the case

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[2]The applicability of the parental preference doctrine in light of the burden imposed on a non-consenting parent by NRS 159A.1915 is unclear. However, we decline to address this issue because the parties failed to present arguments regarding the applicability of the doctrine here. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

before it." *Id.* at 1496, 929 P.2d at 935. Here, the district court sufficiently addressed the *Locklin* factors present in the case by considering Adison's extended absence, her abdication of parental responsibilities, her commitment to raising Minor Respondents, and the extent to which Minor Respondents' education would be impacted by the termination. Substantial evidence supports the district court's ultimate conclusion, based on consideration of the factors present in the case, that termination of the guardianship would not result in sufficient detriment to overcome the parental preference presumption. For example, despite her absence from Minor Respondents' lives, Adison actively participated in the reunification process. Additionally, the record supports the court's finding that Adison's delay in petitioning to regain custody was partially justified by her pursuit of a new career and difficulties regarding service of the guardianship papers. Further, Adison had enrolled Minor Respondents in school, which supports that their education would not be impacted by the termination. *See Locklin*, 112 Nev. at 1496, 929 P.2d at 935 (listing the child's right to an education and impairment thereof if in the parent's custody as a consideration). Therefore, while the district court did not analyze all the *Locklin* factors, it did analyze factors present in this case and we perceive no abuse of discretion in the district court's determination that the parental preference presumption was not overcome.

For these reasons, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Hon. Linda Marquis, District Judge, Family Division
Littler Mendelson, P.C./Las Vegas
Ballard Spahr LLP/Las Vegas
Legal Aid Center of Southern Nevada, Inc.
Adison R.
Eighth District Court Clerk