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Summary of Jennifer L. v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 30 (Jun. 04, 2015)

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FAMILY LAW: PARENTAL DUTIES UNDER A GUARDIANSHIP

Summary

The Court held that, although a legal guardianship had been established, and a parent had neither legal nor physical custody of a child, parents are not relieved of their parental duties to provide for the care, support, or maintenance of the child.

Background

Jennifer L. was diagnosed with a schizoaffective disorder, and is currently civilly committed in Wisconsin. Jennifer's daughter, R.L. had been living with her father, David L., and his wife Evelyn in Nevada until David's death in 2009. Following David's death, Evelyn was appointed guardian of R.L. and served as such until 2010.

In 2010 Marjorie, a neighbor, was appointed guardian of R.L. Marjorie later moved to California and left R.L. with Brenda D., who was never legally appointed guardian. After three years the Department of Family Services removed R.L. from Brenda's care. Although the allegations of abuse and neglect against Brenda were unsubstantiated, Brenda no longer wanted R.L. to live in her home.

Following the investigation, the State filed an abuse and neglect petition naming R.L. as a minor in need of protection. The petition alleged that Jennifer's mental health issues adversely affected her ability to care for R.L. Jennifer filed a motion to dismiss the petition, claiming that, because she had neither legal nor physical custody of R.L., she could not be responsible for neglect. The district court found Jennifer responsible for neglect, as her mental condition prevented her from providing care for R.L.

Discussion

The Court held a petition for a writ of mandamus should be considered because there is no adequate remedy in the ordinary course of law for Jennifer L. She may not substantively appeal a district court's finding of abuse and neglect.² Additionally, the Court exercised its discretion by considering the important legal question of whether a parent may be responsible for abuse or neglect when parental rights have not been relinquished and a guardianship over the child pursuant to NRS Chapter 159 is in place.

Jennifer claims that, because a guardianship for R.L. was in place at the time of the petition, she cannot be responsible for neglect. The State argues that NRS 159.079 does not relieve a parent from the duty to provide for the care of a child. The Court agreed with the district court that a guardianship need not be set aside for responsibility to exist.

¹ By Jaymes Orr.

² NRAP 3A(b)(7).

The Court examined the plain meaning of the statute, which states that a parent is not relieved of her duty by an existing guardianship.³ Jennifer L. contended that the rule from *Chapman v. Chapman*, which holds a parent cannot be responsible for neglect when the child is left with someone known to be providing proper care for the child.⁴ The Court found this case distinguishable from the *Chapman* decision as there is a dispute as to whether R.L. was receiving proper care from Brenda.

Conclusion

NRS 159.079(7) explicitly preserves a parent's responsibility for a child, even if a guardianship is in place. Therefore, the Court declined to issue a writ of mandamus.

³ NEV. REV. STAT. § 159.079(7).

⁴ 96 Nev. 290, 294, 607 P.2d 1141, 1144 (1980).