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In re Guardianship of N.M., 131 Nev. Adv. Op. 75 (September 24, 2015)

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CIVIL PROCEDURE: TEMPORARY EMERGENCY JURISDICTION CHILD PROTECTION

Summary

The Court heard an appeal from a parent-appellant challenging a district court's exercise of temporary emergency jurisdiction to appoint a temporary, non-parent, guardian and general, non-parent, guardian. Affirmed.

Background

The appellant gave birth in California to N.M. in 2007.² The appellant and N.M. then relocated to Mexico later that year. In 2008, the appellant left N.M. in Mexico with the maternal grandparents and by 2009 or 2010, N.M. was in the care of the appellant's sister (the Aunt) and the respondent, her then-boyfriend and citizen of the United States. In 2011, the appellant signed a document giving the Aunt and the respondent custody of N.M.

In September 2012, the respondent moved with N.M. to Nevada, the relationship with the Aunt had ended. After the appellant's half-sister attempted to remove N.M. from the respondent's house at night, the respondent filed an emergency petition for an appointment as N.M.'s temporary general guardian in November 2012, which was subsequently granted.

In March 2013, after an evidentiary hearing, the district court found that the appellant had abandoned N.M. and appointed the respondent as N.M.'s general guardian. The Court granted appellant's petition for reconsideration en banc.

Discussion

The district court properly exercised temporary emergency jurisdiction.

The Court applied NRS 125A.335(1) which allows a district court to exercise temporary emergency jurisdiction to protect children physically present in Nevada when "the child has been abandoned or it is necessary in an emergency to protect the child because the child . . . is subjected or to or threatened with mistreatment or abuse."³ Here, because of the Aunt's attempted removal of N.M., there was sufficient support in the district court's finding a risk of mistreatment to N.M. Therefore, the district court did not abuse its discretion by appointing the respondent as a temporary guardian.

The district court had jurisdiction to appoint respondent as N.M.'s general guardian.

A district court exercising emergency temporary jurisdiction may enter a final order, appointing a general guardian when: "(1) no court in another jurisdiction has entered an applicable custody order or commenced custody proceedings, (2) the district court's order

¹ By Daniel Ormsby.

² *In re Guardianship of N.M.*, 131 Nev. Adv. Op. 75, 2 (September 24, 2015).

³ NEV. REV. STAT. § 125A.335(1).

provides that it is to be a final determination, and (3) Nevada has become the child's home state."⁴

NRS 125A.335(2)⁵ does not allow a district court exercising emergency temporary jurisdiction to make Nevada the child's home state through a final order, however a child's home state is established when the child has lived in that state for six consecutive months prior to a custody proceeding.⁶ Here, because the custody hearing regarding general guardianship commenced over six months after the respondent and N.M. relocated to Nevada and because there was not a prior custody hearing in another jurisdiction, the district court was authorized to enter an order appointing general guardianship.

The district court did not abuse its discretion in granting a general guardianship to respondent

The appellant argued that the district court could not award general guardianship because of the parental preference presumption. The Court explained that the parental preference presumption could be overcome by showing the parent is unfit. The Court further explained that a parent can be found unfit through abandonment, specifically when a parent has intent to "forego all parental custody and relinquish all claims to the child."⁷ Intent to abandon is established when a parent leaves the child in the care and custody of another, without support or communication, for a period of six months. Here, evidence from the Mexican authorities, a signed document purportedly giving custody to the grandparents in 2008, and the lack of communication or support establish that the district court did not abuse its discretion in awarding general guardianship to the respondent.

Conclusion

The district court did not abuse its discretion in exercising temporary emergency jurisdiction to award temporary guardianship nor its discretion in later awarding general guardianship because the record does not show a prior custody proceeding in another jurisdiction, N.M. lived in Nevada for six months before the general guardianship proceedings began, and because substantial evidence supported the district court's finding that the appellant abandoned N.M. The Court affirmed the district court's order granting general guardianship of N.M.

⁴ In re Guardianship of N.M., 131 Nev. Adv. Op. 75, 4-5 (September 24, 2015). The Court refers specifically to the three requirements set out in NEV. REV. STAT. § 125A.335(2).

⁵ NEV. REV. STAT. § 125A.335(2).

⁶ NEV. REV. STAT. § 125A.085(1).

⁷ In re Guardianship of N.M., 131 Nev. Adv. Op. 75; *see also* NEV. REV. STAT. § 128.012(1).