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### Yesennia Esmeralda Amaya v Milton Orlando Guerrero Rivera, 135 Nev. Adv. Op. 27 (July 3, 2019)

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## FAMILY LAW: FAST TRACK CHILD CUSTODY

### **Summary**

The Court determined that under NRS 3.2203 (1) an order determining physical custody of a child satisfied the dependency or custody prong for Special Immigrant Juvenile predicate findings; and (2) in order to determine predicate findings, the reunification prong is satisfied where the juvenile cannot reunify with at least one parent.

### **Background**

Plaintiff Yesennia Esmeralda Amaya gave birth to her child, A.A in El Salvador. Amaya soon migrated to the United States, while A.A stayed with her father, respondent Milton Orlando Guerrero Rivera. While with her father, A.A was treated poorly and experienced both emotional and physical abuse.

When A.A was 12 years old, she moved to the United States to live with her mother to escape from El Salvador. In December 2017, Amaya petitioned to get sole physical custody of A.A. The District Court entered a default against the nonresponsive Guerrero Rivera and granted her physical custody. Following this judgement, Amaya filed a motion for Special Immigrant Juvenile (“SIJ”) predicate findings. The District Court decline to hold a hearing and denied Amaya’s request. The District Court determined that by granting Amaya petition for custody over A.A, that the court did not appoint Amaya to have custody over A.A. Additionally, the District Court determined that Amaya did not prove that A.A was not able to reunify with both of her parents and as such did not satisfy the prongs necessary to be granted SIJ status.

### **Discussion**

*A child custody order satisfies the dependency or custody prong for SIJ predicate findings.*

Federal law provides a pathway for undocumented juveniles that live in the United States to acquire lawful permanent residency by first obtaining SIJ status.<sup>2</sup> To get SIJ status, the state must first obtain a juvenile court order that issues predicate findings and once done, the applicant can petition to the United States Citizenship and Immigration Services for SIJ status.<sup>3</sup> To acquire the requisite state predicate findings, it must be established that (1) the juvenile is dependent on a juvenile court, placed under custody of a state agency, or has been placed under the custody of an individual appointed by the court; (2) due to abandonment, abuse, neglect, the juvenile’s reunification with one or both parents is not viable; and (3) it is not in the juvenile’s best interest to be returned to the country of the juveniles origin.<sup>4</sup> The court first looked at the first dependency prong and ultimately determined that by placing A.A under the custody of Amaya by granting her

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<sup>1</sup> By Salma Granich.

<sup>2</sup> 8 U.S.C. § 1101(a)(27)(J).

<sup>3</sup> *Id.*

<sup>4</sup> 8 U.S.C. § 1101(a)(27)(J); NEV. REV. STAT. § 3.2203(3).

petition for custody, under Nevada law, this constituted a court determination that placed A.A under Amaya's custody which was enough to satisfy the dependency clause to issue predicate findings.<sup>5</sup>

*Showing that reunification with one parent is not viable satisfied the reunification prong for SIJ predicate findings.*

Next, the court examined the reunification prong required to issue predicate findings. The court determined that the plain language of the statute of that "the reunification of the child with one or both of [the juvenile's] parents was determine not to be viable" indicates that the use of disjunctive "or" signals that the reunification prong is met when reunification is not possible with one or both parents.<sup>6</sup> By showing that reunification was possible with the mother, the district court determine that this prong failed and did not even consider whether reunification with A.A's father was viable. The court determined that the district court erred when it declined to consider whether or not reunification with the A.A's father was possible.

### **Dissent**

Justice Silver dissents to the fact that NRS 3.2203 details when the district court can make predicate findings under specific circumstances. Specially, NRS. 3.2203 applies to proceedings made under Chapter 62B (Juvenile Court Proceedings), 125 (Dissolution of Marriage), 159 (Guardianship of Adults), 159A (Guardianship of Minors), or 432B (Protection of Children from Abuse and Neglect).<sup>7</sup> Because Amaya filed her petition under NRS Chapter 125C, which falls outside of NRS 3.2203 scope, the district court was not needed to make the predicate findings. Justice Silver notes that nothing precludes Amaya from petitioning under the correct category of guardianship under NRS Chapter 159A, which is covered by NRS 3.2203, where she would be able to seek predicate findings that she needs to get SIJ status.

### **Conclusion**

An order determining physical custody of a child satisfies the dependency or custody prong for Special Immigrant Juvenile predicate findings. Additionally, reunification with one parent, is not enough to disqualify an applicant from meeting the reunification requirement to issue predicate findings. The Court reversed and remanded the ruling of the district court and ordered the district court to consider whether reunification with A.A's father was viable after concluding that reunification with A.A's mother was viable.

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<sup>5</sup> NEV. REV. STAT. § 125A.045(a) (providing that an order determining a child's physical custody is a "[c]hild custody determination.").

<sup>6</sup> NEV. REV. STAT. § 197.467(b).

<sup>7</sup> *Id.*

