

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

Fall 9-6-2019

(In re Guardianship of Carmen Wittler) Wittler v. Wittler, 135 Nev. Adv. Op. 31 (Aug. 01, 2019)

McKay Holley

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Constitutional Law Commons](#), and the [Jurisdiction Commons](#)

Recommended Citation

Holley, McKay, "(In re Guardianship of Carmen Wittler) Wittler v. Wittler, 135 Nev. Adv. Op. 31 (Aug. 01, 2019)" (2019). *Nevada Supreme Court Summaries*. 1244.

<https://scholars.law.unlv.edu/nvscs/1244>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Summary

The Court held that it did not have jurisdiction to hear appellant's appeal. Thus, an order extending temporary guardianship is not independently appealable.

Background

On May 4, 2018, Eric Wittler, son of the appellant, filed a verified petition for the appointment of a temporary and permanent guardian of appellant Carmen Gomez Wittler and her estate. On May 9, 2018, the district court entered an order appointing a temporary guardian. The district court extended the temporary guardianship on May 30, 2018, and again on August 22, 2018. This appeal arose from the August 22, 2018 order.

Discussion

The Nevada rules for appellate procedure provide for ten (10) circumstances where an aggrieved party may appeal a district court's judgment or order. The appellant asserts four (4) arguments by which the Court may issue a ruling. First, she asserts that the order of temporary guardianship is a final judgment pursuant to NRAP 3A(b)(1). The Court rejected this argument, finding that "the order does not resolve all issues before the court and is not a final judgment for purposes of NRAP 3A(b)(1)."¹

Second, the appellant asserts that the order is equivalent to a preliminary injunction and is therefore appealable pursuant to NRAP 3A(b)(3). The Court rejected this argument, finding that it has "consistently concluded that temporary orders subject to periodic review are not appealable."² The appellant argues that temporary guardianships are not subject to periodic review because they contain an automatic sunset date. The Court found that the challenged order contained no sunset date, and further found that temporary guardianship orders are unsuitable for appellate review because they may only be extended upon review by the district court.³

Third, the appellant asserts that the order is appealable under NRS 159.375(1), which allows for appeals from orders that grant or revoke letters of guardianship.⁴ The Court rejected this argument because the challenged order does not grant or revoke letters of guardianship, and the Court declined to broadly construe the NRS 159.375(1).

Fourth, the appellant asserts that the Court should consider the appeal based on public policy, which the Court will not do.⁵

Conclusion

¹ See *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

² See *Sicor, Inc. v. Sacks*, 127 Nev. 896, 900, 266 P.3d 618, 620 (2011).

³ See *In re Temporary Custody of Five Minors*, 105 Nev. 441, 443, 777 P.2d 901, 902 (1989).

⁴ NEV. REV. STAT. 159.375(1).

⁵ See *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013).

The Court held that the appellant failed to demonstrate that the Court had jurisdiction to hear the appeal because an order for temporary guardianship does not fall within any of the ten circumstances under NRAP 3A(b).