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STANDARD OF PROOF: WHAT STANDARD IS APPROPRIATE FOR AN SIJ APPLICANT

Summary

A party requesting predicate factual findings under NRS 3.2203 must only show that such findings are warranted by a preponderance of the evidence. Further, when district courts consider abuse and neglect when evaluating the practical workability of a parent-child reunification, the courts should consider the entire history of the relationship between the parent and child.

Background

B.A.A.R., a protected minor, was born in El Salvador in 2001 to respondents Maria M.R. and Jesus V.A. He remained there until 2018 when he fled to the United States and to the care of his aunt, Lucia, in Las Vegas. Lucia successfully petitioned the district court for guardianship of B.A.A.R. to which he consented. She wanted B.A.A.R. to apply for Special Immigrant Juvenile (SIJ) status with the United States Citizenship and Immigration Services of the Department of Homeland Security (USCIS). This status allows undocumented juveniles to acquire lawful permanent residency in the United States. However, B.A.A.R. would have to first obtain an order from the court issuing predicate findings before he could petition USCIS for SIJ status. Lucia requested that the district court make such predicate findings under NRS 3.2203 in her petition for guardianship.

Predicate findings that reunification of a child with one or both of its parents is not viable because of abuse or neglect can enable a child to apply for SIJ status.² Similarly, if the district court finds that it is not in the best interests of the child to return to the child's country of nationality, that child would be allowed to apply for SIJ status. Lucia wanted to prove that reunification of B.A.A.R. and his mother was not viable because of abuse and neglect as defined under NRS 3.2203. She argued that Maria had exposed B.A.A.R. to domestic violence between Maria and her live-in boyfriend, Jose. Further, Maria had not intervened when Jose physically abused B.A.A.R.'s sister and when Jose threatened to kill B.A.A.R. if he continued to intervene in those instances. According to both Lucia and B.A.A.R., these events caused B.A.A.R. to suffer emotional distress. Lastly, Lucia cited Maria's poverty and lack of employment as further evidence that she could not provide for B.A.A.R.

The district court denied Lucia's request for predicate findings noting that Maria and Jose had separated months before B.A.A.R. fled to the United States. Further, the court stated it required a more detailed history of neglect to terminate the relationship between Maria and B.A.A.R. if the sole basis for termination was Maria's poverty. Termination proceedings require a heightened standard of proof, and, typically, a lack of financial resources alone is not a sufficient basis to terminate a parent-child relationship.

Lucia appealed the district court order arguing that the court wrongfully applied the heightened standard of proof used in parental-right termination proceedings to her request for predicate findings. She also argued that the district court misconstrued the statutory definition of "abuse or neglect." The Supreme Court addressed both arguments in its opinion.

¹ By Sullivan Winesett.

² NEV. REV. STAT. § 3.2203(3) (2017).

Discussion

The preponderance-of-the-evidence standard applies when a district court determines whether to make SIJ predicate findings under NRS 3.2203

The Court begins its analysis with a discussion of the process of applying for SIJ status with the USCIS. As explained above, the first step is to obtain an order with predicate findings from a state juvenile court. After the applicant receives this order, the applicant may petition the USCIS for SIJ status. The Court noted that the trial court only provides an evidentiary record for USCIS to review.³ It does not play a role in determining whether a petitioner qualifies for SIJ status.

By requiring Lucia to provide a detailed history of neglect, the district court applied a heightened standard of proof. The Supreme Court disagreed with the district court's application. NRS 3.2203 gives no guidance as to what standard of proof a court should apply to a request for SIJ predicate findings. However, the Court noted that the minimum civil standard of proof, the preponderance-of-the-evidence standard, is generally applicable in civil cases. Following this reasoning, this standard is applied to all civil proceedings "absent a clear legislative intent to the contrary."⁴ For example, a typical proceeding for the termination of parental rights requires petitioners to support their claims through clear and convincing evidence.⁵

The Supreme Court ruled that the district court erred in equating a petition for a predicate finding with a proceeding for the termination of parental rights. Since the SIJ findings do not result in the termination of parental rights, the district court erroneously applied the clear and convincing standard. Further, since NRS 3.2203 does not set forth any standard of proof, no clear legislative intent exists for the application of anything but the preponderance-of-the-evidence standard.

A district court may find that reunification is not viable due to past abuse or neglect

The Court next addressed the issue of whether the district court misconstrued the statutory definition of "abuse or neglect" as set forth in NRS 3.2203(8)(b). The definition in that statute ascribes the same definition set forth in NRS 432B.020 which states that "abuse or neglect" encompasses "[n]egligent treatment or maltreatment as set forth in NRS 432B.140," which is "caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm."⁶ The Court then looked to NRS 432B.140 which finds negligent treatment "if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic."⁷

By focusing on Jose's alleged abuse and the Maria's alleged neglect because of her poverty, the district court missed Lucia's primary argument that Maria was also an abuser. The Supreme Court noted that, based on NRS 432B.140, Maria's past inaction might constitute abusive behavior.

³ *Amaya v. Guerrero Rivera*, 135 Nev. 208, 209–10, 444 P.3d 450, 452 (2019).

⁴ *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 251, 327 P.3d 487, 491 (2014).

⁵ NEV. REV. STAT. § 128.090(2) (2017).

⁶ NEV. REV. STAT. § 432B.020(1) (2004).

⁷ NEV. REV. STAT. § 432B.140(1) (2015).

In noting that Maria and Jose separated in the months preceding B.A.A.R.'s arrival in the U.S., the district court disregarded Lucia's argument that Maria's past inaction constituted "abuse or neglect." However, when a court assesses the viability of reunification, it must consider the entire history of the relationship between the child and the parent. The Supreme Court found that the district court should still consider Maria's prior conduct even though Jose had left the home.

Conclusion

The Court reversed the district court order denying Lucia's request for predicate findings and remanded it with instructions to reevaluate the evidence and arguments relating to the reunification prong of NRS 3.2203 under the correct standard of proof. The Supreme Court added that, on remand, the district court must first determine whether reunification between B.A.A.R. and his mother is viable. In doing so, the district court should consider the entirety of Maria and B.A.A.R.'s relationship and apply the correct statutory definition of "abuse or neglect" set forth in NRS 432B.020 and NRS 432B.140. If the court finds reunification is not viable, it must then consider whether it is in B.A.A.R.'s best interest to return to El Salvador. If the district court finds that it is not in B.A.A.R.'s best interest to return to El Salvador, then it must enter an order setting forth the predicate findings that would allow B.A.A.R. to petition USCIS for SIJ status.