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**In re Guardianship of Jones, 138 Nev. Adv. Op. 6 (Nev. Ct. App.  
Feb. 24, 2022)**

Winnie Wu

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GUARDIANSHIP LAW: APPROPRIATENESS OF ATTORNEY FEES PAID FROM THE  
PROTECTED PERSON'S ESTATE UNDER NRS. 159.344

**Summary**

This case is about whether the district court properly granted attorney fees to guardians from the estate of the protected person under NRS 159.344.<sup>2</sup> Donna and Robyn, daughters of the appellant and protected person, Jones, acted as her temporary guardians for a period in 2019 before their sister Kimberly was appointed general guardian. The dispute involves the attorney fees accumulated during Donna and Robyn's guardianship period.

Jones first argued that the award itself was improper due to the presumption against such fees payable from the protected person's estate. The Court rejected this argument, holding that the district court did not abuse its discretion by awarding attorney fees because it properly considered the relevant NRS 159.344<sup>3</sup> factors, and determined that the fees were just, reasonable, and necessary. Jones next argued that the *amount* awarded was excessive due to the guardianship's short duration. The Court again rejected Jones's argument, holding that the district court acted reasonably, given the complexity of the work involved, as *complexity* was the proper factor, not duration. The Court of Appeals affirmed.

**Background**

Kimberly was appointed power of attorney by Jones years before Jones began experiencing dementia. After the onset of dementia, Jones required full-time care, and her husband Yeoman acted as caretaker for a time. However, after the onset of his own health issues, Yeoman relocated to Arizona, and Kimberly moved in with Jones to become her new caretaker. Tensions soon arose between Yeoman's side of the family and Kimberly. Yeoman relocated Jones to Arizona against Kimberly's wishes, Yeoman's daughter Candice began eviction proceedings against Kimberly and Jones (who were living in a property Jones quitclaimed to Candice for below market value after the onset of Jones's dementia symptoms), Yeoman directed money to be withdrawn from Jones's account, and even Jones's dogs were taken away from Jones. Despite her status as power of attorney, Kimberly was unable to prevent or stop these conflicts.

Due to these ongoing disputes, Donna and Robyn sought help from counsel, and after extensive investigation and negotiation, filed two guardianship petitions. They were granted temporary guardianship. Kimberly filed a competing petition for general guardianship, and her petition was granted after the district court determined she had not misused Jones's funds. Donna and Robyn were thereafter discharged, and they petitioned for attorney fees, to be covered by Jones's estate. The district court granted attorney fees, and Jones now appeals.

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<sup>1</sup> By Winnie Wu.

<sup>2</sup> NEV. REV. STAT § 159.344 (2021).

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

## **Discussion**

Jones's first argument is that NRS 159.344<sup>4</sup> requires a guardian to confer a benefit upon the protected person before the protected person's estate is required to pay the guardian's attorney fees, and Donna and Robyn did not confer a benefit. As an initial matter, the Court noted that the statutory language does not contain such strict requirements. Additionally, Jones's argument fails because the district court's finding that Jones benefitted from Donna and Robyn's temporary guardianship was not an abuse of discretion.

Although NRS 159.344<sup>5</sup> presumes that guardians are personally liable for their own attorney fees, the court has discretion to award fees if the guardian so petitions and it finds that the fees are "just, reasonable, and necessary." In making this finding, the district court may consider "(1) whether the guardian's attorney conferred a benefit on the protected person (2) the character of the work performed, including its difficulty; (3) the result of the work; and (4) any other factor that may be considered relevant."<sup>6</sup> Here, the district court reasonably determined, after a consideration of the factors, that given the inter-family dispute and circumstances surrounding the sale of Jones's home and her finances, Jones benefitted from Donna and Robyn's guardianship work.

Jones's second argument is that the district court's award of attorney fees were improper in *amount*, given the short time that Donna and Robyn were guardians. The Court rejected this argument for much of the same reasons. Additionally, the Court emphasized that duration is not a factor enumerated in NRS 159.344<sup>7</sup> nor provided in *Brunzell v. Golden Gate National Bank*.<sup>8</sup> Rather, it is the complexity of the case that is a factor in determining the proper fee amount. Not only did some motions in the district court attract four filings from four different parties, Donna and Robyn reasonably asked their attorney to work on power of attorney matters. Thus, given the scope of work and its complexity, the fee amount was proper.

Jones's final argument was rejected by the Court for noncompliance with NEV. R. APP. PRO. 28, citing *Edwards v. Emperor's Garden Restaurant*.<sup>9</sup>

## **Conclusion**

The district court properly applied the relevant NRS 159.344<sup>10</sup> factors and did not abuse its discretion in finding that the attorney fees accumulated during Donna and Robyn's temporary guardianship warranted compensation from Jones's estate as they were just, reasonable, and necessary. For the same reasons, and considering *Brunzell*, the district court did not abuse its discretion in setting the amount of the award, given the complex and time-consuming nature of the issue. The Court therefore affirmed.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Citing NEV. REV. STAT § 159.344 (5)(b), (d), (f), (n) (2021).

<sup>7</sup> NEV. REV. STAT § 159.344 (2021).

<sup>8</sup> 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 555, 429 P.3d 664, 668 (Ct. App. 2018) ("When considering the amount of attorney fees to award, the analysis turns on the factors set forth in *Brunzell*.").

<sup>9</sup> 122 Nev. 317, 330 n.38, 130 P.3d, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks support by relevant authority).

<sup>10</sup> NEV. REV. STAT § 159.344 (2021).