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In re Guardianship of Jones, 139 Nev. Adv. Op. 17 (July 6, 2023)¹

A PROTECTED PERSON HAS STANDING TO CHALLENGE BOTH THE REMOVAL OF A GUARDIAN AND THE APPOINTMENT OF A SUCCESSOR GUARDIAN ON APPEAL. DISTRICT COURTS MAY REMOVE A GUARDIAN AND APPOINT A SUCCESSOR WITHOUT A WRITTEN PETITION. A PROTECTED PERSON HAS PROCEDURAL DUE PROCESS RIGHT TO NOTICE, BUT SUCH NOTICE MAY BE MET BY FREQUENT AND SUCCESSIVE COURT FILINGS. A PROTECTED PERSON FAILS TO MEET THEIR EVIDENTIARY BURDEN WHEN THEY FAIL TO SHOW THAT A VISITATION SCHEDULE IS TRULY THE WISHES OF THE PROTECTED PERSON.

Summary

A District Court may remove a guardian and appoint a successor without the filing of a formal, written petition. However, the protected person has appellate standing to challenge said removal and appointment. Further, a protected person has a procedural due process right to notice of a District Court’s removal and appointment considerations, but such notice may be met by court filings and court hearings where that consideration is frequently and sufficiently noted. Finally, while the District Court may not shift the burden onto the protected person to file a communication and visitation petition, the Appellant failed to meet their evidentiary burden, meaning no reversible error could be found. Therefore, affirmed.

Background

In 2012, Appellant June Jones executed estate planning documents designating her daughter, Kimberly Jones, as the executor of her will and the chosen guardian of her estate and person. In 2020, Respondents Simmons and Robyn Friedman, two of June’s other children, petitioned the District Court to remove Kimberly as guardian and instead appoint one of them citing that Kimberly had isolated June from the family. Upon further proceedings, the District Court determined that Kimberly had failed to provide an appropriate annual accounting to the Court and parties and had negligently created an isolating environment that made it difficult for family to access June. The District Court therefore removed Kimberly and appointed Robyn Friedman as the successor guardian. June appealed the District Court’s decision.

Discussion

A protected person has standing to challenge the process of removal and appointment of guardians.

As a threshold issue, Respondents Simmons and Friedman argued that June lacked standing to challenge the District Court’s removal of Kimberly and appointment of Friedman, instead asserting that Kimberly, as the removed guardian, is the only one with standing to challenge the District Court’s order. Appellant June argued that the District Court ignored her right to participate in the plan for her care as guaranteed under the Protected Persons’ Bill of Rights, and NRS 159.328(1)(f). After reviewing the relevant statutory scheme in NRS Chapter 159,² the Court

¹ By Chase Christensen.

² See NRS 159.328(1)(g) (“[Protected persons have the right to] [h]ave due consideration given to his or her current and previously stated personal desires”); see also NRS 159.328(1)(f) (noting a protected person’s right to participate in a plan for their care); NRS 159.044(1) (protected person may petition for appointment of a guardian); NRS 159.0613 (setting forth preferences in selecting a guardian and giving precedence to the protected person’s choice); NRS 159.1853(1)(a) (protected person may petition for removal of a guardian).

concluded that Appellant Junes' autonomy interests and personal right to have her desires duly considered were adversely and substantially affected by the court's' order, granting her standing to challenge said order.

The district court did not improperly remove Kimberly as guardian and appoint Robyn as successor guardian.

The district court has authority to remove a guardian pursuant to NRS 159.185 without a written petition having been filed.

Appellant argued that the district court lacked authority to remove Kimberly as guardian and appoint Respondent as a successor guardian because no petition for removal was filed and such removal was done without proper notice and without following statutory emergency removal and appointment procedures. Respondents argued that these issues were raised for the first-time on appeal and were therefore improperly heard by the Court. The Court analyzed NRS 1459.331-.338, 159.1853, 159.1855, and cases from Nevada's common law³ to conclude that while the filing of a petition is certainly contemplated by Nevada's statutory scheme, the District Court has the authority to remove a guardian sua sponte upon a determination that one of the conditions for removal listed in NRS 159.185 had been satisfied.

The district court did not deprive June of her procedural due process rights.

Appellant argued that the District Court's failure to provide her with notice that it was considering removing Kimberly and appointing Respondent Friedman as her successor guardian violated her procedural due process rights. Respondent again argued that this issue was brought up for the first time on appeal and should therefore be deemed waived. The Court first determined that it was able to hear these issues despite them being argued for the first time on appeal. The Court determined that a protected person does have a due process right to notice, but the Court held that the requirement for notice was met due to the multiple cumulative instances of allegations warranting removal of Kimberly as guardian that had been raised in some half a dozen petitions, hearings, and responses over the course of the preceding year. Finally, the Court held that appointing Respondent Friedman was not a violation of Appellant June's due process rights because Appellant June had sufficient notice that the District Court could consider removing Kimberly and that June had adequate time to be heard on who should be appointed as a successor guardian pursuant to NRS 159.1871.

The district court's decision to remove Kimberly as guardian and appoint Robyn as successor guardian is supported by substantial evidence.

Having concluded that June's due process rights were not violated by the removal of one guardian and the appointment of a successor, the Court then determined whether the district court had abused its discretion. The Court held that the District Court's order that removing Kimberly as guardian was in June's best interest was not an abuse of discretion as it was supported by substantial and compelling evidence. Further, though Appellants argued that Respondent had made an insufficient showing that she was a proper guardian, the Court held that such a showing had been made when Respondent Robyn Friedman was vetted in 2019 for a temporary guardianship.

³See *Deegan v. Deegan*, 22 Nev. 185, 197, 37 P. 360, 361 (1894).

Requiring a 're-vetting' process would thus waste judicial resources and disregard the immediacy contemplated by guardianship decisions.

A protected person does not need to file a petition under NRS 159.332 and NRS 159.333, but the district court properly denied June's proposed visitation schedule.

Appellants argued that the District Court misinterpreted NRS 159.33-.338 by improperly shifting the burden to the protected person by requiring her to file a petition to restrict her communications. Respondents argued that June did not have the cognitive ability to manage her own relationships and asserted that June's counsel had proposed the visitation and communication schedule. The Court agreed with Appellant June, but still held that the district court had properly rejected June's proposed visitation schedule as Appellant had made an insufficient showing that the visitation schedule reflected her own wishes.

Conclusion

A protected person has standing to challenge the removal of her guardian and appointment of a successor guardian. However, a protected person's procedural due process rights to notice of the District Court's consideration of removing a guardian are not violated when that protected person has been notified by successive and frequent court filings and decisions. Finally, though the District Court improperly shifted the burden onto a protected person when it required the protected person to file a visitation schedule, such an error was not reversible given the instant evidence.