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B.S. V. DIST. CT. (SIMEK), 140 Nev. Adv. Op. 46 (Jun. 27, 2024)

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THE SUPREME COURT ISSUED AN EMERGENCY WRIT OF MANDAMUS FOR TEMPORARY GUARDIANSHIP AFTER FINDING GOOD CAUSE PER NRS 159A.053.

Summary

This case pertains to an emergency original petition for a writ of mandamus challenging a district court ruling that denied a petition for temporary guardianship over a minor child. The lower court relied on NRS 159A.052 which provides for temporary guardianships of minors who need immediate medical attention when justifying its denial. However, the Supreme Court held that the lower court failed to consider NRS 159A.053, which provides for temporary guardianships of minors for other good cause. Thus, the lower court manifestly abused its discretion, and the Supreme Court granted the petition.

Background

On March 8, 2024, Jeffrey and Nancy S. filed a petition in district court seeking to be appointed guardians of their grandson (B.S.); the petition included a request for temporary guardianship. The district court issued a citation to appear and show cause, scheduling a hearing for May 28, 2024. On March 12, without holding a hearing, the district court denied the request for temporary guardianship, stating simply that Jeffrey and Nancy had failed to show that a medical emergency existed per NRS 159A.052.

B.S. then filed an emergency petition for a writ of mandamus seeking to force the district court to grant his grandparents' temporary guardianship. In the writ, the grandson asserted that the court abused its discretion and acted arbitrarily and capriciously when it failed to even consider granting a temporary guardianship for good cause per NRS 159A.053, the general temporary guardianship statute, when his mother is presumptively unsuitable under NRS 159A.061(4)(a) and (f) and nonmedical emergency circumstances exist. The grandparents then filed a joinder to the petition. Because no adequate legal remedy existed to challenge the denial of temporary guardianship, the Supreme Court considered the petition per NRS 34.170.

Discussion

NRS 159A.052 and NRS 159A.053 both provide for temporary guardianships over minors, when needed before the petition for general guardianship is decided. NRS 159A.052 governs temporary guardianships of minors who need immediate medical attention, while NRS 159A.053 governs temporary guardianships for other reasons. The district court concluded that temporary guardianship was not warranted under NRS 159A.052, but the court failed to consider whether temporary guardianship was warranted under NRS 159A.053. In failing to do so, the court manifestly abused its discretion.

General, nonmedical temporary guardianships may issue upon a finding of good cause, so long as the petitioner attempted to provide pre-filing notice or was excused from so doing. NRS 159A.053(2). While the statute does not define good cause, NRS 159A.061(4)(a) and (b) presume a parent is unsuitable to care for their child if the parent is unable to provide for the child's basic needs or poses a significant risk to the child's physical or emotional safety, respectively. Jeffrey and Nancy's petition and supporting documentation demonstrated that both presumptions likely applied. Jeffrey and Nancy demonstrated, at least preliminarily, that Jennifer, B.S.'s custodial

¹ By Makai Zuniga.

parent, is presumed unsuitable and is currently unlocatable; B.S. has schooling and other special needs that cannot be met absent a guardianship; and they have been entrusted with much of his care since birth. These circumstances constitute good cause for temporary guardianship under NRS 159A.053, and the district court thus was required to issue the requested relief. Consequently, the Supreme Court concluded that mandamus relief was warranted to compel the district court to issue temporary guardianship of B.S. to Jeffrey and Nancy.²

Conclusion

For the reasons set forth above, the petition was granted and the Supreme Court issued a writ of mandamus instructing the district court to grant Jeffrey and Nancy's request for temporary guardianship over B.S. and to comply with the hearing requirements imposed by NRS 159A.053.

² See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).