

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: GUARDIANSHIP OF A. W.

No. 43733

ROLLAND P. W.,
Appellant,
vs.
KELLIE W.,
Respondent.

FILED

DEC 01 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT

IN RE: GUARDIANSHIP OF A. W.

No. 45312

BY *J. Richards*
CHIEF DEPUTY CLERK

KELLIE W.,
Appellant,
vs.
ROLLAND P. W.,
Respondent.

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING WITH INSTRUCTIONS

These consolidated appeals arise from a district court order dissolving a guardianship and an order denying an NRCP 60(b) motion to set aside the portion of the guardianship order concerning visitation. First Judicial District Court, Carson City; Noel E. Manoukian, Judge.

Appellant/respondent Rolland P. W. appeals a district court order denying his petition for general guardianship over respondent/appellant Kellie W.'s minor child. Rolland argues that the district court abused its discretion in finding that Kellie is a fit parent and subsequently denying his guardianship petition. Kellie appeals from the district court order denying her NRCP 60(b) motion to set aside the visitation portion of the guardianship order. Kellie argues that the district court abused its discretion in denying her motion because she did not receive notice or an opportunity to oppose visitation when she

contested Rolland's guardianship petition. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

Nothing in the record or in Rolland's arguments to this court indicates that the district court abused its discretion in finding Kellie a fit parent and denying Rolland's guardianship petition.¹ Consequently, we affirm the district court's order denying Rolland's petition for general guardianship of the child.

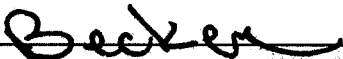
We further conclude that the district court did abuse its discretion in granting visitation to Rolland because the issue of visitation was not properly before the district court. The district court established the visitation order via Rolland's petition for guardianship. But NRS 125C.050 requires visitation to be determined by a separate petition for visitation. Since Rolland did not file a petition for visitation, Kellie was denied notice that the district court would consider visitation as well as an opportunity to argue that Rolland could not satisfy the requirements of NRS 125C.050. For these reasons, we reverse the district court's order granting visitation to Rolland.

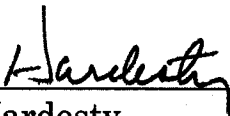
Accordingly, we affirm the district court's order denying Rolland's petition for general guardianship, and we reverse the district court's order denying Kellie's NRCP 60(b) motion to set aside the portion of the guardianship order concerning visitation. We remand this matter to

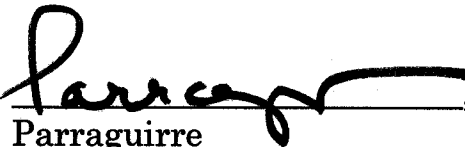
¹NRS 159.061 (providing that a qualified and suitable parent is "preferred over all others for appointment as guardian" over the minor). See also McGlone v. McGlone, 86 Nev. 14, 17, 464 P.2d 27, 29 (1970) (stating that "[t]he best interest of the child is usually served by awarding his custody to a fit parent").

the district court with instructions that it grant Kellie's NRCP 60(b) motion and set aside that portion of its guardianship order that pertains to visitation.

It is so ORDERED.


Becker J.


Hardesty J.


Parraguirre J.

cc: Chief Judge, First Judicial District
Hon. Noel E. Manoukian, Senior Judge
Allison, MacKenzie, Russell, Pavlakis, Wright & Fagan, Ltd.
Allison W. Joffe
Leslie T. Miller
Carson City Clerk