

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE  
GUARDIANSHIP OF THE PERSON  
AND ESTATE OF N.S., A MINOR.

No. 43919

MARIA LOPEZ,  
Appellant,

vs.

THE STATE OF NEVADA DIVISION  
OF CHILD AND FAMILY SERVICES,  
DEPARTMENT OF HUMAN  
RESOURCES,  
Respondent.

**FILED**

JUN 15 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for guardianship of a minor child. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Judge.

Appellant Maria Lopez argues that the district court abused its discretion when it denied her guardianship of her granddaughter, N.S. Respondent the State of Nevada Division of Child and Family Services, Department of Human Resources, (DCFS), argues that this court does not have jurisdiction to consider an appeal from an order denying a petition for guardianship.

Jurisdiction

Pursuant to NRS 159.325, an appeal may be taken from an order denying a petition for the appointment of a guardian. Thus, we have jurisdiction to consider this appeal.

### Child custody determination

The district court has broad discretion in making child custody determinations.<sup>1</sup> We will not disturb a district court's custody determination "absent a clear abuse of discretion."<sup>2</sup> "In determining custody of a minor child . . . the sole consideration of the court is the best interest of the child."<sup>3</sup> Accordingly, we will not set aside a custody decision as long as the district court made an appropriate determination of the best interests of the child.<sup>4</sup>

Generally, when a child cannot remain in her parent's custody, custodial preference must be given to relatives within the third degree of consanguinity to the child.<sup>5</sup> This preference, however, will be given only to individuals who are "suitable and able to provide proper care and guidance for the child."<sup>6</sup> Further, there is a strong preference, when practicable, to keep children together with their siblings.<sup>7</sup> To rebut this presumption, the opposing party must demonstrate that it is not practicable to place the child with her siblings.<sup>8</sup>

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<sup>1</sup>Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

<sup>2</sup>Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993).

<sup>3</sup>NRS 125.480(1).

<sup>4</sup>Sims, 109 Nev. at 1148, 865 P.2d at 330; NRS 125.480(1).

<sup>5</sup>NRS 432B.550(5)(a).

<sup>6</sup>Id.

<sup>7</sup>NRS 432B.550(5)(b).

<sup>8</sup>See id.

Here, the district court considered several factors before denying Lopez's petition for guardianship. Specifically, the district court expressed concern that Lopez lacked the time, emotional support, and financial resources to care for N.S. Further, the court feared that N.S.'s mother's drug problems and possible interaction with N.S. would make Lopez's guardianship problematic. Balancing these factors and relying on the testimonies of DCFS social worker Kisha Earhart and N.S.'s foster mother, the district court determined that Lopez's guardianship was not in N.S.'s best interests.

Substantial evidence supports the district court's determination that Lopez could not adequately meet N.S.'s needs and that it was impracticable to place the child with her siblings. As a result, the district court had "good grounds for overcoming the [familial] presumption" of NRS 432B.550(5). Further, nothing in the record supports Lopez's contention that the district court disregarded evidence that she would be a suitable and capable guardian. Rather, the district court commended Lopez for her efforts to keep her family together. Nevertheless, the district court appropriately determined that the responsibility of an additional child was too much for Lopez. The district court did not abuse its discretion since it made an appropriate determination of the best interests of the child.<sup>9</sup>

### CONCLUSION

We conclude that the district court properly denied Lopez's petition for guardianship. Substantial evidence exists to overcome NRS 432B.550(5)'s familial presumption and to support the district court's


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<sup>9</sup>See Sims, 109 Nev. at 1148, 865 P.2d at 330.

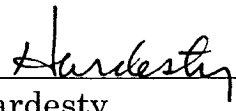
determination that N.S.'s best interests placed her with the foster parents.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division  
Clark County Legal Services Program, Inc  
Attorney General Brian Sandoval/Las Vegas  
Clark County Clerk