IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF P. S. F.

MARY W.,
Appellant,
vs.
SYLVIA F.,
Respondent.

No. 48076

FILED

APR 10 2007

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

ORDER AFFIRMING IN PART AND VACATING IN PART

This proper person appeal challenges a district court order terminating appellant's guardianship of a minor child and a post-judgment district court order denying an NRCP 60(b) motion to set aside the guardianship termination order.[1] Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Judge.

[1]On November 22, 2006, appellant filed, in the district court, a document styled "amended motion to appeal." In this document, in addition to restating her contentions regarding the August 22, 2006 order terminating the guardianship, appellant asserts that the district court abused its discretion when it rendered a decision, on October 30, 2006, regarding the arguments set forth in her motion to set aside the judgment. Accordingly, as the district court's October 30 order effectively denying relief under NRCP 60(b) is independently appealable, see Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987), we construe the November 22 document as an amended notice of appeal from the district court's October 30 order.

Appellant has also submitted a document to this court entitled "amended motion to appeal," in which she presents her appellate arguments with respect to the October 30 order denying NRCP 60(b)

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The district court has broad discretion in resolving guardianship matters.[2] Absent a showing of abuse of that discretion, we will not disturb the district court's guardianship determination.[3] While the district court's decision must be based upon appropriate considerations,[4] we will affirm the court's order if the court, using the wrong legal reasoning, reached the correct result.[5]

Usually, in petitioning for the termination of a general guardianship, the petitioner must show, by clear and convincing evidence, that the termination is in the ward's best interests under NRS 159.1905.

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relief. In light of her appeal from that order, we construe appellant's "motion" as an amendment to her civil appeal statement. We direct the clerk of this court to file the amendment, provisionally received in this court on November 30, 2006.

Finally, appellant, on October 23, 2006, submitted to this court courtesy copies of documents that she presented to the district court for review. As it appears that these documents were filed in the district court, they were considered by this court in its review of the record on appeal. Any documents not appearing in the record on appeal, however, have not been considered. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (noting that this court may not consider matters outside of the district court record on appeal).

[2]Locklin v. Duka, 112 Nev. 1489, 1493, 929 P.2d 930, 933 (1996).

[3]Id.

[4]Id.

[5]See Barry v. Lindner, 119 Nev. 661, 670, 81 P.3d 537, 543 (2003) (citing, among other cases, Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987)).

Here, the district court made no findings under that statute. Nonetheless, we affirm the court's order, because the record shows that the district court order granting appellant, the child's paternal grandmother, general guardianship of the child was invalid.

Before granting custody of a minor child to a non-parent, a court must specifically find that parental custody would be detrimental to the child and that the child's placement with a non-parent would be in the child's best interest.[6] The court, in the underlying matter, did not do so. Consequently, the guardianship order was invalid, and the court properly terminated the guardianship when respondent, the child's mother, requested that the guardianship be dissolved. Accordingly, even though the court apparently did not base termination on the guardianship order's invalidity, we affirm the court's order terminating the guardianship.[7]

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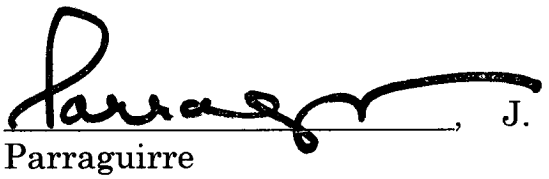
[6]See NRS 125.500(1); Locklin, 112 Nev. at 1493-94, 929 P.2d at 933 (1996); Litz v. Bennum, 111 Nev. 35, 888 P.2d 438 (1995); see also EDCR 5.97 (requiring that all guardianship orders set forth the issues decided, and not merely refer to the petition).

[7]See generally Locklin, 112 Nev. 1489, 929 P.2d 930; Litz, 111 Nev. 35, 888 P.2d 438. We have considered appellant's appellate arguments, including that (1) the child's father was not provided with notice of the guardianship termination petition, (2) copies of the order were not mailed from Nevada, as respondent indicated on the certificate of mailing, but from Florida, and (3) the court never responded to her letters and telephonic requests for a continuance. We conclude that none of appellant's arguments warrant reversal, as appellant may not challenge the guardianship's termination on the father's behalf, whether the order was mailed from Las Vegas or elsewhere does not concern whether the district court abused its discretion in issuing the order, and the record contains no evidence that appellant filed, before or during the hearing on the petition, a proper motion for a continuance, or any objection to the termination petition, in the district court.

With regard to the order effectively denying NRCP 60(b) relief, when appellant, on September 14, 2006, filed her notice of appeal from the order terminating the guardianship, the district court was divested of jurisdiction to further proceed with the matter.[8] Therefore, the October 30 order is void, and we vacate that order.

It is so ORDERED.



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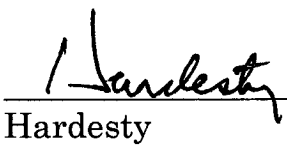

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cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Mary W.
Sylvia F.
Eighth District Court Clerk

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[8]See Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) ("[A] timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court."); Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978) (describing how a party may proceed with NRCP 60(b) motions once an appeal has been filed, which allows this court to remand the matter if the district court certifies that it is inclined to grant the motion); cf. Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978) (holding that a district court has continuing jurisdiction only over matters that are collateral to and that do not affect the merits of a pending appeal).