IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSON AND THE ESTATE OF ERIC CHRISTOPHER GRIFFITH.

ANGELA GRIFFITH,
Appellant,
vs.
WILLIAM CALDWELL AND MELISSA CALDWELL,
Respondents.

No. 51176

FILED

MAY 21 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting letters of guardianship. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

Appellant Angela Griffith is the biological mother of Eric Griffith, a young man with Downs Syndrome. On or about April 14, 2003, Eric was removed from Angela's care after Angela's mother, Fran Smyth, called the Department of Family Services to report abuse and neglect of Eric. Eric was then placed in foster care, and was eventually placed in the home of respondents William and Melissa Caldwell.

As Eric approached the age of 18, petitions for guardianship of Eric were filed, one by the Caldwells and one by Angela and Fran jointly. After a hearing before a hearing master, the district court adopted the recommendation of the hearing master and awarded guardianship of Eric to the Caldwells and denied Angela and Fran's petition for guardianship. This appeal follows.

Standard of review

A district court is afforded wide discretionary power to determine questions of child custody. Locklin v. Duka, 112 Nev. 1489, 1493, 929 P.2d 930, 933 (1996). We will not disturb a district court's decision in this area unless there is an abuse of discretion and if we are satisfied that such decision was based upon appropriate reasons. Id.

We will not disturb a district court's findings of fact on appeal if they are supported by substantial evidence. Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003). However, we review a district court's conclusions of law de novo. Id.

Parental preference

At the guardianship hearing, the district court relied on our holding in Hudson v. Jones, 122 Nev. 708, 712, 138 P.3d 429, 431-32 (2006), and concluded that Angela had lost her parental preference under NRS 159.061 because she had been previously determined to be unfit to care for Eric under NRS 432B.530.

Angela now argues that the district court erred in concluding that her parental preference had been lost because the district court's reading of Hudson, was erroneous. Angela contends that our holding in Hudson stands for the proposition that the parental preference is lost where the parent had been adjudged unfit and had previously contested custody being awarded to a nonparent. Id. at 713, 138 P.3d at 432. Angela further contends that since she voluntarily relinquished custody of Eric, and because the Caldwells never had legal guardianship of Eric, that she did not lose her parental preference. We agree.

We conclude that the situation here is distinguishable from Hudson because Angela never contested custody of Eric. As such, Angela's situation is in line with a series of cases that stand for the proposition that

because we want to encourage parents to change their lives and to become suitable guardians, the parental preference is not lost when a parent voluntarily relinquishes custody and then seeks to reestablish guardianship of their child. See Litz v. Bennum, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995); Locklin v. Duka, 112 Nev. 1489, 1491-93, 929 P.2d 930, 931-933 (1996). As such, the district court abused its discretion in concluding that Angela had lost her parental preference under NRS 159.061 based on our holding in Hudson, and we reverse the order of the district court as it pertains to this issue.

Suitable guardian

At the guardianship hearing, the district court did not make any determination as to whether Angela was qualified and suitable to care for Eric. As to Angela's suitability as a guardian, the district court merely stated that "I would have a hard time finding you suitable."

Angela argues that the district court erred in failing to make a finding as to whether she was suitable to be Eric's guardian. Angela contends that because a showing of unsuitability is required to rebut the parental preference, the district court erred in finding that the parental preference did not apply without first making a definite finding regarding Angela's fitness to care for Eric.

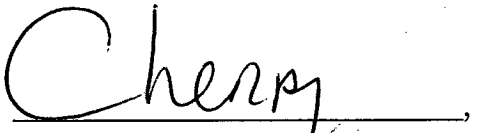
A district court must make a determination as to whether a parent is qualified or suitable before the parental preference will apply. Matter of Guardianship & Estate of D.R.G., 119 Nev. 32, 37, 62 P.3d 1127, 1130 (2003).

We conclude that the district court erred in failing to make findings as to Angela's suitability to care for Eric in order to make a determination as to whether the parental preference applies. Accordingly, as to Angela's suitability to care for Eric, we remand this case to the

district court with instruction to make specific findings in order to make a ruling as to whether the parental preference applies.[1] In making a determination of whether Angela should be afforded the parental preference, we further instruct the district court to look at Angela's suitability at the time of hearing[2] and to give the Caldwells a chance to present evidence to rebut Angela's suitability. See Litz v. Bennum, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995).

In light of the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



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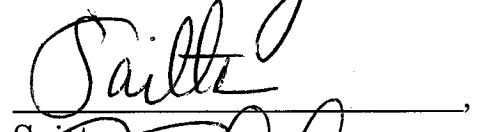

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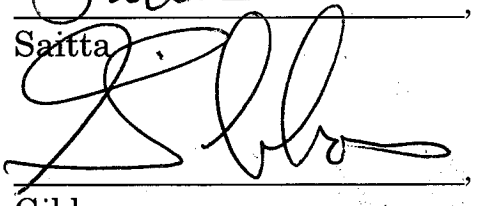

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[1]The factors set forth in NRS 159.061 should be used as a guide for the factors the district court should consider to determine whether Angela would be a suitable guardian for Eric.

[2]Angela also argues that the district court erred in relying on her previously being adjudged unfit to care for Eric under NRS 432B.530. We conclude that it was error for the district court to rely only on the 2003 determination that Angela was unfit at the guardianship hearing that took place on March 5, 2007. See Matter of Guardianship & Estate of D.R.G. at 37, 62 P.3d at 1130 (stating that suitability of the parent's fitness to care for the child is to be judged as of the time of the guardianship hearing).

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Special Public Defender David M. Schieck
Frank J. Toti
Eighth District Court Clerk