

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
Z.M.P., PROTECTED MINOR.

GINA SAFERRA,
Appellant,

vs.

ERENE RIVERA; AND ROGELIO
RIVERA,
Respondents.

IN THE MATTER OF THE
GUARDIANSHIP OF Z. M. P.,
PROTECTED MINOR.

GINA SAFERRA,
Appellant,

vs.

ERENE RIVERA; AND ROGELIO
RIVERA,
Respondents.

No. 80818-COA

FILED

MAY 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *S. Young*
DEPUTY CLERK

No. 81119-COA

ORDER OF AFFIRMANCE

These are consolidated appeals from district court orders appointing guardianship over a minor. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

Appellant Gina Saferra began babysitting Z.M.P. in 2015 and eventually became his caretaker and temporary guardian.¹ When Z.M.P.'s mother (Florene P.) left for Argentina, the respondents (Z.M.P.'s maternal grandparents: Rogelio and Erene Rivera) wanted custody of Z.M.P., but Saferra refused without Florene's written consent.

¹We do not recount the facts except as necessary to our disposition.

Saferra filed a verified petition for appointment of guardian and the district court set a hearing. The Riveras opposed it and filed their own verified petition. After the district court heard from the parties and an Eighth Judicial District Court's Guardianship Compliance Division investigator (court investigator) at the hearing, it issued findings from the bench and granted guardianship to the Riveras. In addition, the district court stated it would issue an order appointing the Riveras as guardians on the same day as the hearing and later issue a more detailed order that would include findings of fact addressing the child's best interests. Consistent with this plan, the district court issued a form order and issued a more detailed order one month later. Saferra filed a notice of appeal from the form order before the district court entered its more detailed order. She subsequently filed an additional notice of appeal from the more detailed order. These consolidated appeals followed.

Saferra argues this court should reverse the district court's order for four reasons. First, the district court lacked jurisdiction to issue its more detailed order because the timely filing of her notice of appeal from the form order divested the district court of jurisdiction to act.² Second, the district court erred by not including specific findings in its form order regarding the factors it considered when it granted guardianship to the Riveras. Third, the district court erred when it did not hold an evidentiary hearing to decide guardianship over Z.M.P. because she did not receive notice of the Riveras' competing petition. Fourth, the district court erred

²We need not resolve this issue because, as explained below, the form order is effective and supported by the district court's oral findings, which are supported by the court investigator's report and the parties' verified petitions.

when it did not appoint an attorney or guardian ad litem to represent Z.M.P. because of the conflicting facts in the case. We disagree.

Saferra first argues the district court erred by not including findings in the form order showing the district court considered the mandatory factors set forth in NRS 159A.061(3) (2017)³ to determine who was most suitable to be Z.M.P.'s guardian. Saferra also avers that the district court's oral findings were not valid for any purpose because they were oral pronouncements from the bench.⁴ She further maintains that the district court's oral findings did not consider Z.M.P.'s circumstances or his relationship with Saferra.⁵

Absent an abuse of discretion, this court "will not disturb the district court's exercise of discretion concerning guardianship determinations." *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 163, 87 P.3d 521, 525 (2004). The district court must base its judgment on necessary findings of fact. *See In re Parental Rights as to C.C.A.*, 128 Nev. at 169, 273 P.3d at 854. In addition, this court defers to the district court's

³The Legislature amended NRS 159A.061 in 2019, which became effective after the hearing in this case. 2019 Nev. Stat., ch. 595, § 190, at 3844-46. Thus, we refer to the statute's 2017 version to assess relevant issues. 2017 Nev. Stat., ch. 172, § 46, at 828-30.

⁴While true that the district court's "oral pronouncement of judgment is not valid for any purpose," *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (emphasis added), the oral pronouncements Saferra refers to do not constitute a judgment because the district court recited factual findings necessary to appoint the Riveras as Z.M.P.'s guardians. As a result, this argument is unpersuasive.

⁵This is belied by the record. The district court considered all applicable statutory factors before it appointed the Riveras as Z.M.P.'s guardians. Therefore, we reject this argument.

factual findings and must uphold them if they are not clearly erroneous and are supported by substantial evidence. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704. Substantial evidence “is evidence that a reasonable person may accept as adequate to sustain a judgment.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). If the district court’s order is silent regarding its factual findings, this court can review the lower court’s oral findings on the record to construe its judgment. See *In re Parental Rights as to C.C.A.*, 128 Nev. at 169, 273 P.3d at 854; *Holt*, 127 Nev. at 895, 266 P.3d at 608.

Further, evidence must support the district court’s findings so that these findings support the judgment. See *Clark v. Clark*, 44 Nev. 44, 54, 189 P. 676, 679, *on reh’g*, 44 Nev. 44, 194 P. 96 (1920). “[A]rguments of counsel are not evidence.” *Mizrachi v. Mizrachi*, 132 Nev. 666, 678 n.12, 385 P.3d 982, 990 n.12 (Ct. App. 2016). A court-appointed investigator’s report is considered evidence when the investigator “is required to complete and submit [a report] to the district court.” See *In re Parental Rights as to N.D.O.*, 121 Nev. 379, 385, 115 P.3d 223, 226-27 (2005) (holding a party’s objection to a court-mandated investigator’s testimony as hearsay is irrelevant because the “statements appeared in the [investigator’s] reports,” which “already formed part of the district court record”). With that in mind, NRS 159A.046(1) grants the district court discretion to appoint an investigator to file a report regarding, among other things, “any competing interests in the appointment of a guardian[,] . . . allegations or claims which affect a proposed protected minor[,] . . . [or] the suitability of a proposed guardian to provide for the basic needs of a proposed protected minor.” NRS 159A.046(3) requires an investigator to file “a report concerning the scope of the appointment of the guardian.”

NRS 159A.061 provides the statutory scheme from which the district court can grant guardianship. NRS 159A.061(3) requires the district court to consider six factors if they apply. Further, NRS 159A.061(5) provides that the court must “appoint as guardian the qualified person who is most suitable and is willing to serve.” Along with the factors set forth in NRS 159A.061(3),⁶ the district court must consider an additional six factors to determine who the most qualified person is. NRS 159A.061(6). Finally, NRS 159A.061(9) requires the district court to consider the child’s best interests. NRS 125C.0035(4) defines those best interests using 12 factors.

Here, the district court did not abuse its discretion because the form order is supported by its oral findings, which are supported by the court investigator’s report and the parties’ verified petitions. At the hearing, the district court considered NRS 159A.061(3)’s applicable factors to determine the Riveras were more qualified to become Z.M.P.’s guardians. As to NRS 159A.061(3), in sequential order, the district court: (a) did not note whether either parent had custody of Z.M.P; (b) discussed at length the Riveras’ ability to protect Z.M.P; (c) did not discuss whether either proposed guardian engaged in habitual alcohol or controlled substance use; (d) did not discuss whether the proposed guardians had been convicted of a crime of moral turpitude or domestic violence or a crime including abusing, neglecting, exploiting, abandoning, or isolating a child, parent, spouse, or another adult; (e) did not discuss whether the proposed guardians had been convicted of a felony, but it did discuss Z.M.P.’s father’s (Dylan T.) imprisonment, which the Riveras’ counsel relayed could have resulted from

⁶NRS 159A.061(2) & (4) also include factors the district court must consider, but we do not include them because they only apply when a minor’s parent petitions for guardianship.

being convicted of a felony; and (f) considered allegations of domestic violence between Florene and Dylan but noted that there were no allegations of such violence between the proposed guardians. Of NRS 159A.061(3)'s six factors it could have considered, the district court did not deem paragraphs (a), (c), or (d) applicable. Of the other three it did discuss, the court investigator's report supports paragraphs (e) and (f).

Further, the district court considered NRS 159A.061(6)'s mandatory factors. In sequential order, the district court: (a) considered Florene's wavering nominations for who should be Z.M.P.'s guardian and Dylan's decision to nominate the Riveras; (b) determined Z.M.P. was too young to request a guardian; (c) informed the parties that biological relatives of the minor "have a certain preference to those not related by biology"; (d) did not discuss recommendations by a master of the court or special master because there were none; (e) was silent regarding recommendations by an agency, guardian ad litem, or special advocate because none of these entities made recommendations;⁷ and (f) considered Saferra's request to be appointed as Z.M.P.'s guardian. Of NRS 159A.061(6)'s six mandatory factors the district court considered, minus two that did not apply because recommendations for paragraphs (d) and (e) did not exist, the court investigator's report and the parties' petitions support the district court's findings regarding paragraphs (a), (b), and (c). The remaining factor is independently substantiated because the district court

⁷Although the district court appointed a court investigator to investigate this case, the investigator did not represent Z.M.P. Moreover, the investigator's report does not contain recommendations, but only information about Z.M.P.'s circumstances and about the proposed guardians.

undoubtedly considered Saferra's request to be Z.M.P.'s guardian by virtue of these proceedings, thereby satisfying paragraph (f).

Finally, the district court recited NRS 125C.0035(4)'s best interest factors and found, in sequential order, the following:

[a] [Z.M.P.] is seven, of insufficient age and capacity to form intelligent preference as to his or her physical custody.

....

[b] Dad has nominated the [Riveras] and Mom's nomination is fluid and changing.

....

[c] Here and Hawaii, . . . both . . . [M]aternal and Paternal Grandparents, reside . . . Dad is incarcerated in Hawaii. That gives him the ability to have a continuing and frequent association with Dad. And I think that the grandparents have not said that they would restrict phone contact between Mom and [Z.M.P.]

....

[d] I don't think there's any conflict between the parents . . . [Although there are allegations of domestic abuse between them, they were both] over the age of majority.

....

[e] Here the parents cannot [cooperate to meet the needs of Z.M.P.]. The parents are in two separate prisons in two separate countries However, I think the family in Hawaii is able to cooperate

....

[f] The Court is concerned about Mom's mental and physical health in prison and the circumstances surrounding her imprisonment.

....

[g] [Z.M.P.'s] doing well in school, . . . [and] for a seven year old is extraordinarily performing. However, he has . . . had some concerns and had some nightmares in the past few months regarding going to Hawaii. He speaks to his mom on the phone every day, . . . and that there was a decision made that [Z.M.P.] would attend counseling. . . .

I am concerned he has certainly suffered from a lot of trauma in his life to this period. Both of his parents are incarcerated. . . . [Y]ou can imagine that [Z.M.P.] has undergone a tremendous last few months, losing his mother and having to talk to her every day while she's in prison. . . .

So my order will include that he continue with therapy one time per week when he gets to Hawaii to aid in a smooth transition . . . [and] deal with all of the trauma that he's experienced.

. . . .

[h] Clearly each parent loves and adores [Z.M.P.]. [Saferra] loves him. . . . [Saferra] considers him part of her family. . . . [Saferra] wants the best for him. . . . The information that the Court is receiving is conflicting about the role and how much time [Saferra] has actually been the caretaker more than a babysitter

. . . .

[i] [T]hat issue has not been raised.

. . . .

[j] Certainly there's allegations that perhaps Mom has been neglectful of her child, but it doesn't rise at this point to a finding of neglect.

. . . .

[k] There's been no allegation between the Proposed Guardians about domestic violence. Mom did tell the investigator that her and biologic father to [Z.M.P.] engaged in domestic violence while in Paternal Grandparents' home. And while that is a

concern, the fact that both parents are separated from each other, both in custody and don't have any contact with each other, the Court is not concerned about that issue.

....

[I] That issue is not relevant.

Of the 12 best interest factors to consider, the district court discussed 10 because findings regarding paragraphs (i) and (l) were irrelevant or not raised. Of those 10, the court investigator's report or the parties' petitions supported 9 of them, specifically paragraphs (a), (b), (c), (e), (f), (g), (h), and (k). As to the remaining factor contained in paragraph (j), it is reasonable to conclude the court investigator's report supports the court's consideration of it as well. The district court likely contemplated Florene's potential neglect of Z.M.P. after reading that she moved to California and left six-year-old Z.M.P. with Saferra and traveled abroad, failed to make contact, and was detained in an Argentine prison.

As shown above, the district court made findings of fact to determine the Riveras were the more suitable guardians. The district court considered each statutory factor that applied and made oral findings supported by the court investigator's report and the parties' verified petitions. That unobjected to, unsworn testimony also supported these findings is not controlling in our determination because other evidence in the record supported most of these findings. Because the totality of the district court's oral findings support the form order, we conclude the form order is valid. Thus, the district court did not abuse its discretion by granting the Riveras' petition.

Second, Saferra argues the district court should have held an evidentiary hearing to decide guardianship over Z.M.P. She claims that the Due Process Clauses of the Fifth and Fourteenth Amendments protect the

rights of minor children and parents from governmental constraint. U.S. Const. amends. V, XIV. Saferra contends the Riveras violated Nevada law when they filed their petition for guardianship in her existing action, of which she did not receive notice. Saferra also argues that because she did not receive notice of their petition, the district court erred by not holding an evidentiary hearing. She also contends an evidentiary hearing is necessary because Z.M.P. “has a beneficial interest in the” resolution of this case.⁸

In addition, Saferra contends that the Riveras failed to file a citation to appear and show cause pursuant to NRS 159A.047(1), which constitutes a denial of her due process rights.⁹ She also maintains that because she was unaware of the Riveras’ petition, she believed the hearing was set for her petition, not for theirs as well. Lastly, Saferra argues the district court did not base its decision on evidence because it only heard

⁸We elect not to consider these arguments because Saferra failed to support them with legal authority other than by raising broad principles of due process and she fails to show specifically how they apply. *See Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 795 (2017) (concluding that this court need not consider claims that are not cogently argued or supported by relevant authority). Further, aside from failing to support her argument regarding lack of notice, Saferra waived this argument because she failed to object to the lack of receiving notice of the Riveras’ petition below. *See In re Parental Rights as to M.M.L., Jr.*, 133 Nev. 147, 152, 393 P.3d 1079, 1083 (2017) (holding that a party waives an objection to service of process if it does not make it in a timely motion); NRCP 12(h)(1).

⁹We will not consider this argument because Saferra waived this objection when she failed to raise lack of service of process below. *See In re Parental Rights as to M.M.L., Jr.*, 133 Nev. at 152, 393 P.3d at 1083; NRCP 12(h)(1).

unsworn statements from the parties before it granted guardianship to the Riveras.¹⁰

Here, Saferra's argument that she could not have objected to the Riveras' failure to serve her with notice because she was not aware of their petition at the hearing is unpersuasive.¹¹ Saferra knew the Riveras were pursuing guardianship because the hearing expressly involved whether she or the Riveras would take guardianship of Z.M.P. The transcript of the hearing also belies her argument. For instance, the Riveras' trial counsel made her appearance for the record and stated she represented "the proposed petitioners, Rogelio Rivera and Erene Rivera." Additionally, the district court referred to the court investigator's report and stated, "the father is also incarcerated and is in support of Maternal Grandparents obtaining guardianship." In another instance, the court stated that the law prefers to grant guardianship to someone biologically related to the minor rather than an unrelated person. Therefore, the district court did not err by not holding a separate evidentiary hearing to determine who would be Z.M.P.'s guardian.

Finally, Saferra contends the district court erred when it did not appoint an attorney or guardian ad litem for Z.M.P. because of conflicting facts in the case, such as the parents nominating different

¹⁰As discussed above, evidence in the record supported the district court's form order. As such, the same analysis and conclusion applies to this argument.

¹¹We also apply the following analysis to Saferra's argument that she believed the hearing was to resolve her petition and no one else's. The record belies this argument because there were many instances at the hearing showing the Riveras were also pursuing guardianship of Z.M.P.

guardians, when and who received temporary guardianship, and potential sexual abuse in the Rivera home. She argues this court should remand the case and direct the district court to appoint representation. Saferra also contends that the court investigator did not serve the purpose of a guardian ad litem or an attorney. She further argues the court investigator did not investigate the Riveras because the investigator was not part of the action when the district court appointed her.¹²

This court reviews the district court's decision to appoint an attorney, a guardian ad litem or advocate for a proposed protected minor for an abuse of discretion. *See generally In re Guardianship of N.M.*, 131 Nev. 751, 758, 358 P.3d 216, 220 (2015). NRS 159A.045(1)(a) grants the district court discretion to "appoint an attorney to represent the . . . proposed protected minor." NRS 159A.0455(1) similarly grants the district court discretion to "appoint a guardian ad litem or an advocate for the best interests of a . . . proposed protected minor . . . if the court believes that the minor could benefit from that appointment."

Here, we elect to disregard this argument because Saferra fails to provide legal authority holding that the district court has a sua sponte duty to appoint an attorney, a guardian ad litem, or an advocate for a proposed protected minor. Neither statute required the district court to appoint these types of representatives for Z.M.P. and Saferra did not request it below. Saferra failed to provide legal authority supporting her position that these statutes required the district court to have appointed representation when the facts of the case conflicted in the way they did here.


¹²This is untrue; the court investigator's report not only contains investigative details about the Riveras, but also devotes the same number of lines to both parties.

As a result, we will disregard this argument. *See Vaile*, 133 Nev. at 217, 396 P.3d at 795 (concluding that this court need not consider claims that are not cogently argued or supported by relevant authority). Therefore, we conclude that no abuse of discretion occurred.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marquis, District Judge, Family Court Division
Israel Kunin, Settlement Judge
The Grigsby Law Group
Rocheleau Law Group/Right Lawyers
Eighth District Court Clerk