

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF: CHRISTINE B.
JOHNSON, A/K/A CHRISTINE B.
WEIDERMAN, AN ADULT
PROTECTED PERSON.

No. 83912-COA

CHRISTINE B. JOHNSON, A/K/A
CHRISTINE B. WEIDERMAN,
Appellant,
vs.
KAREN KELLY, CLARK COUNTY
PUBLIC GUARDIAN; AND MOUNTAIN
VIEW CARE CENTER,
Respondents.

FILED

SEP 22 2022

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

ORDER OF REVERSAL AND REMAND

Christine B. Johnson appeals from a district court order in a guardianship matter. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

Respondent Mountain View Care Center (Mountain View) filed a petition requesting the appointment of respondent Karen Kelly, the Clark County Public Guardian as the general guardian of Johnson's person and estate.¹ The petition included a physician's certificate that indicated, among other things, that Johnson has been diagnosed with amyotrophic lateral sclerosis (ALS), a degenerative disease that has impacted her ability to speak and care for herself. The petition and physician's certificate also indicated that Johnson has been diagnosed with major depressive disorder,

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

which led to “sufficient loss of executive function resulting in a barrier to meaningful understanding or rational response,” and that due to her social circumstances, there was “no one with legal authority to make medical decisions or to obtain Medicaid benefits to pay for [Johnson’s] medically necessary care.”

With the assistance of counsel, Johnson—a former patient of Mountain View—filed an opposition to the petition, arguing that a guardianship was unnecessary. In her opposition, Johnson argued that although she had substantial physical limitations and requires supportive care, she was not mentally incapacitated and was still capable of making decisions for herself. Johnson questioned the accuracy of the physician’s certificate, and presented medical records from her time at Mountain View, which purported to demonstrate that she was not mentally incapacitated, and that the same doctor who prepared the physician’s certificate had found her mentally capable of preparing orders for life sustaining treatment just 38 days prior to filing the petition. In light of these medical records, which conflicted with the statements in the physician’s certificate, Johnson argued that Mountain View failed to prove by clear and convincing evidence, that a guardian over her person and estate was necessary.

During the proceedings below, Johnson asked the district court to hold an evidentiary hearing so that she would have the opportunity to present evidence on her behalf and cross examine the doctor who prepared the physician’s certificate. After full briefing on the matter, the district court held a citation hearing on Mountain View’s petition, and subsequently granted Mountain View’s petition over Johnson’s objection, denied Johnson’s request for an evidentiary hearing, and appointed the Clark

County Public Guardian as the general guardian of Johnson's person and estate. Johnson now appeals.

"Absent a showing of abuse, we 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). "However, we must be satisfied that the district court's decision was based upon appropriate reasons." *Id.* (internal quotations omitted). "Further, a district court's decision to conduct an evidentiary hearing in a guardianship matter is within its sound discretion." *In re Guardianship of Rubin*, 137 Nev., Adv. Op. 27, 491 P.3d 1, 6 (2021).

On appeal, Johnson and amicus curiae, the Aging and Disability Services Division (ADS), argue, among other things, that the district court abused its discretion in this matter by granting Mountain View's petition without providing Johnson with the opportunity to present evidence on her behalf and cross-examine the doctor who prepared the physician's certificate.

On December 22, 2021, this court issued a notice to file documents in this appeal, stating that following filing and service of the opening brief, briefing shall proceed in accordance with NRAP 31(a)(1). On April 20, 2022, Johnson filed her opening brief, which was timely served on both respondents.² Thus, in accordance with this court's notice to file documents, respondents' answering brief(s) were due on May 20, 2022. As of this date, respondents have failed to either file an answering brief, or communicate with this court regarding an extension. Because respondents

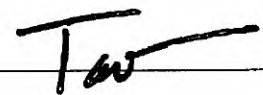
²The Aging and Disability Services Division filed an amicus curiae brief in this matter on April 21, 2022. This brief was also served on respondents.

have failed to file an answering brief in this matter, we elect to treat respondents' failure to file their answering brief as a confession of error. See NRAP 31(d)(2) (providing that the appellate courts may treat a respondent's failure to file an answering brief as a confession of error); *Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating a party's failure to respond to an argument as a concession that the argument is meritorious).

Accordingly, we reverse the order of the district court appointing the Clark County Public Guardian as the general guardian of Johnson's person and estate, and remand these proceedings for the district court to hold an evidentiary hearing in this matter.³

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³Johnson also raised concerns regarding documents collected and prepared by the Guardianship Compliance Office, which contained statements from Johnson's medical providers in North Dakota. Although we need not address these arguments based upon our disposition in this order, we note that nothing in this order precludes the parties from requesting discovery related to those medical providers in preparation for the hearing.

⁴Insofar as appellant and ADS raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Linda Marquis, District Judge, Family Court Division
Legal Aid Center of Southern Nevada, Inc.
State of Nevada, Department of Health and Human Services Aging
and Disability Services Division
Boyer Law Group
Carling Law Office PC
Eighth District Court Clerk