IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSONS OF: M.J.M. AND F.M.M., MINORS.

ANDREW M.,
Appellant,
vs.
MELANIE GAINS DIXON; JIMMY DIXON; M.J.M.; AND F.M.M., MINORS,
Respondents.

No. 85423

FILED

APR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

This is an appeal from a district court order denying a motion to set aside an order appointing guardian, appointing a co-guardian, and awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.[1]

Appellant Andrew M. is the natural father of the respondent minor children, M.J.M. and F.M.M. Respondent Melanie Dixon is the children's maternal grandmother.[2] On Melanie's petition, the district court appointed her as the children's guardian in 2018. In 2020, Andrew moved to terminate the guardianship, alleging that he was never served with the petition despite Melanie knowing his location. The district court denied the

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

[2]The children's natural mother is deceased.

motion and denied Andrew's later motion to set aside that order pursuant to NRCP 60(b)(6). The district court also later appointed Melanie's husband, respondent Jimmy Dixon, as the children's co-guardian. Andrew filed additional petitions seeking reunification therapy, to remove Melanie and Jimmy as guardians, for an order to show cause as to Melanie's purported failure to fulfill the duties of guardianship, and for the children to get a new therapist and to be appointed a guardian ad litem. The district court denied the petitions and awarded Melanie and Jimmy attorney fees and costs, and denied Andrew's reconsideration requests. This appeal followed.

Andrew first argues the district court abused its discretion in not granting his NRCP 60(b)(6) motion to set aside the order establishing Melanie's guardianship. That rule gives the district court the discretion to set aside a previous order for "any . . . reason that justifies relief." NRCP 60(b)(6); *see also Vargas v. J Morales, Inc.*, 138 Nev., Adv. Op. 38, 510 P.3d 777, 780 (2022) (reviewing decisions on NRCP 60(b) motions for an abuse of discretion). We are not convinced that the district court so abused its discretion despite Andrew's assertion that he was not served with the guardianship petition. Relief under NRCP 60(b)(6) is available only in "extraordinary circumstances" such that relief under this subsection is not appropriate where the circumstances would warrant relief under a different NRCP 60(b) subsection. *Vargas*, 510 P.3d at 781 (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)). Here, Andrew essentially argues that Melanie misled the court by stating she had served Andrew at his "last known address," when she should have sought to serve him by publication because she did not know his whereabouts. If true, this would warrant

relief under NRCP 60(b)(3) for "misrepresentation . . . by an opposing party," and therefore cannot be a basis for relief under NRCP 60(b)(6). *See Vargas*, 510 P.3d at 781 ("[A] party cannot utilize [NRCP] 60(b)(6) for the relief provided by [NRCP] 60(b)(1)-(5).").

We also reject Andrew's challenges to the appointment of Jimmy as co-guardian. While Andrew claims the district court should have denied Jimmy's guardianship petition due to various procedural defects, he fails to allege that those defects resulted in any prejudice. *See* NRCP 61 (providing that district court decisions should not be overturned or set aside for errors that do not affect a party's substantial rights). Moreover, we are satisfied that the district court's proffered reason for granting the petition—so that the children could obtain better health insurance through Jimmy's veteran benefits—is not an abuse of its discretion. *See In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 163, 87 P.3d 521, 525 (2004) ("Absent a showing of abuse, we will not disturb the district court's exercise of discretion concerning guardianship determinations.").

Andrew next challenges the district court's denial of his motion to remove Melanie as guardian for failing to file reports and therapist recommendations as ordered by the district court and for moving the children out of state without prior district court approval. We conclude that the district court did not abuse its discretion in denying Andrew's request. *See* NRS 159A.185(1) (giving the district court the discretion to remove a guardian for enumerated reasons); *In re Guardianship of L.S. & H.S.*, 120 Nev. at 163, 87 P.3d at 525. The issues with the required reports were minor. And Andrew stated on appeal that he "had no objections to his children moving to Florida," which resulted in the children residing in the

same state as Andrew; the district court ultimately approved the move; and Andrew fails to argue that the move prejudiced or harmed him or the children in any way. *See* NRCP 61. Moreover, a district court "shall not remove the guardian or appoint another person as guardian unless the court finds that removal of the guardian or appointment of another person as guardian is in the best interests of the protected minor." NRS 159A.186(1). Here, Melanie provided for the children's basic needs in a safe home, the children had been placed with her for four years, Melanie had a strong emotional bond with them, and the children were prospering in her care.[3] *See* NRS 159A.186(2) (listing best-interest considerations when a district court is petitioned to remove a guardian).

Andrew's final argument is that the district court erred in awarding Melanie attorney fees. We dismiss this portion of the appeal as it is premature where the district court has not yet determined the amount of fees to be awarded.[4] *See Nelson v. United States*, 40 F.4th 1105, 1110 (10th Cir. 2022) (recognizing that a district court order awarding attorney fees without determining the exact amount to be awarded is not appealable).

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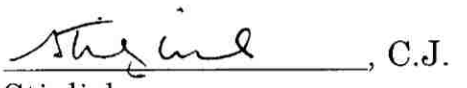
[3]We also reject Andrew's assertion that the district court erred in not holding an evidentiary hearing. As Andrew failed to present any argument why removing the guardian would be in the children's best interest, the district court did not need to hear evidence to reject Andrew's request. *See* NRS 159A.186(1).

[4]We note, however, that the parties agreed that remand was necessary as to the legal basis for the fee award.

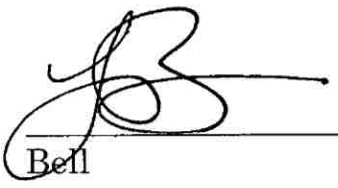
In light of the foregoing, we affirm the district court's orders except as to its award of attorney fees to Melanie and Jimmy, which we do not address because we lack jurisdiction and therefore dismiss that part of the appeal.

It is so ORDERED.



_____, C.J.
Stiglich

_____, J.
Lee



_____, J.
Bell

cc: Hon. Linda Marquis, District Judge, Family Court Division
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Eighth District Court Clerk