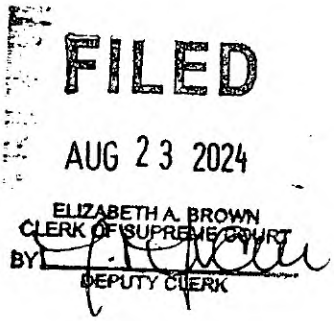
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF: C.A.C., A.M.C. AND C.A.C., PROTECTED MINORS.

AMANDA C.,
Appellant,
vs.
CLIFFORD C.; NANCY C.; C.A.C.; A.M.C.; AND C.A.C.,
Respondents.

No. 86229



ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition to terminate a general guardianship. Eighth Judicial District Court, Family Division, Clark County; Linda Marquis, Judge.

NRS 159A.1915 governs parents' petitions to terminate a guardianship over their children. It places different standards on parents based on whether they "consented to the guardianship when it was created." NRS 159A.1915(2). Parents who consented need only make a showing that "[t]here has been a material change of circumstances since the time the guardianship was created," and "as part of the change of circumstances, the parent has been restored to suitability as described in NRS 159A.061." NRS159A.1915(1)(a). Parents who did not consent "to the guardianship when it was created" must make this same showing as well as a showing that "the welfare of the protected minor would be substantially enhanced by the termination of the guardianship and the placement of the protected

minor with the parent." NRS 159A.1915(1)(b). Under both subsections, parents carry the burden of proof to make a showing by clear and convincing evidence. NRS 159A.1915(1).

NRS 159A.1915 became effective in 2017. Before then, the statute governing all petitions to terminate a guardianship provided that "[t]he petitioner has the burden of proof to show by clear and convincing evidence that the termination or modification of the guardianship of the person . . . is in the best interests of the ward." NRS 159.1905(3) (2003); 2003 Nev. Stat., ch. 322, § 110, at 1799. Neither that statute's plain text nor the rest of NRS Chapter 159 imposed a heightened standard applicable only to parents who did not consent to a guardianship over their child comparable to the enhanced standard now codified in NRS 159A.1915.

In this case, the district court applied NRS 159A.1915 in evaluating appellant Amanda C.'s 2021 petition to terminate a guardianship over her three minor children, respondents C.A.C., A.M.C., and C.A.C. The district court created the guardianship in 2016, when it granted respondents Clifford C. and Nancy C.'s guardianship petition. At that time, Amanda had consented to the guardianship over the eldest child, orally objected to the guardianship over the two younger children, but later failed to appear at the calendar call for the evidentiary hearing as to those two children. Following that nonappearance, the district court vacated the evidentiary hearing and established a guardianship over all three children. Now, citing Amanda's objection in 2016, the district court held Amanda to both showings under NRS 159A.1915 in deciding whether to terminate the guardianship over those two children. It concluded Amanda "met the burden under NRS 159A.1915(1)(a)," but "Amanda was unable to meet the

burden and show the welfare of the protected minor[s] would be substantially enhanced by the termination of the guardianship and the placement of the protected minor[s] with the parent" under NRS 159A.1915(1)(b). It also denied the petition to terminate over the eldest child because "it is best to keep the children together."

On appeal, Amanda challenges the district court's decision on several grounds. One argument is that this "substantially enhanced" requirement—a requirement limited to nonconsenting parents—violates due process and equal protection. Another argument is that Amanda's "failure to 'consent' to the guardianship [in 2016] should not be a trigger for . . . this unconstitutional requirement that the welfare of the child be 'substantially enhanced' in order to terminate the guardianship" because NRS 159A.1915 did not exist in 2016. Because we agree with this second argument,[1] we do not reach Amanda's other due process and equal protection challenges to NRS 159A.1915.

Namely, given that the guardianship was created in 2016, we conclude that applying NRS 159A.1915 here would amount to improper, retroactive application of law. A statute has a retroactive effect if "it takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past." *Sandpointe Apartments,*

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[1]Although Amanda did not explicitly argue this in the district court, we exercise our discretion to consider it because a failure to do so would result in a manifest injustice. *See In re Parental Rights as to J.D.N.*, 128 Nev. 462, 469, 283 P.3d 842, 847 (2012); *Gordon v. Geiger*, 133 Nev. 542, 545 n.3, 402 P.3d 671, 674 n.3 (2017) ("[T]his court may address constitutional issues sua sponte.").

LLC v. Eighth Jud. Dist. Ct., 129 Nev. 813, 821, 313 P.3d 849, 854 (2013) (internal quotation marks omitted). "The essential inquiry . . . is 'whether the new provision attaches new legal consequences to events completed before its enactment.'" *Vartelas v. Holder*, 566 U.S. 257, 273 (2012) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994)).

Here, NRS 159A.1915 does "attach[ ] new legal consequences to events completed before its enactment": it attaches a specific, heightened showing to Amanda's nonconsent at the citation hearing in 2016. *Id.* Stated another way, a "new legal consequence[ ]" exists because the Legislature had not yet codified NRS 159A.1915's heightened standard for nonconsenting parents when the district court granted the guardianship in this case. *Id.* And the legal consequences of Amanda's nonconsent directly implicate her substantive right to care, custody, and control of her children. *See Harrison v. Harrison*, 132 Nev. 564, 569, 376 P.3d 173, 176 (2016) (noting parents' "fundamental liberty interest in the care, custody, and control of their children"); *Guardianship of Jeremiah T.*, 976 A.2d 955, 961 (Me. 2009) (concluding a statute was impermissibly retroactive where "[t]he amendment changing the burden of proof served to restrict the circumstances under which the mother could have the guardianship terminated and shifted the presumption in favor of terminating a guardianship upon petition to a presumption in favor of continuing it").

The problem is that the Legislature did not endorse a retroactive application of NRS 159A.1915. *See Sandpointe*, 129 Nev. at 820, 313 P.3d at 853 ("Substantive statutes are presumed to only operate prospectively, *unless it is clear that the drafters intended the statute to be applied retroactively*." (emphasis added)). In fact, the Statutes of Nevada

unambiguously indicate the Legislature intended for NRS Chapter 159A and its provisions to apply prospectively. 2017 Stat. Nev., ch. 172, §§ 219, 221, at 910 (noting that the act became effective on July 1, 2017, and that "[t]he amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after July 1, 2017"); *see also In re Guardianship of: A.S.*, No. 73876, 2018 WL 5291457, at *2 & n.2 (Nev. Oct. 18, 2018) (Order of Reversal and Remand) (noting that NRS 159A.1915 did not apply to a petition to terminate where the mother stipulated to the guardianship before 2017). Consequently, because applying NRS 159A.1915 to Amanda's petition to terminate the guardianship would create a retroactive effect conflicting with that legislative intent, we conclude it cannot apply here.

Contrary to the respondents' contentions, we are not persuaded that NRS 159A.1915's framework was established in our caselaw at the time Amanda orally objected to the guardianship in 2016 so as to put her on notice of the legal consequences of that conduct. It is true that NRS 159A.1915 parallels the test for modifying custody between parents first set out in *Murphy v. Murphy*, 84 Nev. 710, 711, 447 P.2d 664, 665 (1968), *overruled in part by Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007). It is also true that *Hudson v. Jones*, 122 Nev. 708, 711, 138 P.3d 429, 431 (2006), both adopted the *Murphy* test for modifying custody between a parent and nonparent and discussed guardianship cases in doing so. However, *Hudson* concerned joint legal and primary physical custody, *id.* at 710, 138 P.3d at 430, as opposed to a general guardianship, *cf.* 2 Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases* § 11:3 (2009) ("While guardianship, in and of itself, does not terminate parental

rights, it may terminate the parent's authority over the child for the duration of the guardianship."); NRS 159.079 (2013); 2013 Nev. Stat., ch. 224, § 16, at 917-18 (listing the functions of guardians of the person). More importantly, shortly after *Hudson*, this court abandoned the *Murphy* test in *Ellis v. Carucci*, 123 Nev. at 146-47, 161 P.3d at 240, and instead held "that a modification of primary physical custody is warranted only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the modification serves the best interest of the child." And *Hudson* had extended *Murphy* to parent-nonparent cases on the premise that courts should not modify a child's living arrangement in those circumstances "more readily than" it would in parent-parent cases. 122 Nev. at 714, 138 P.3d at 433. In this way, *Hudson* was less concerned with the substance of the *Murphy* test; it was concerned with ensuring that the same test, which just happened to be the *Murphy* test at the time, applied in both parent-nonparent and parent-parent cases. *See id.* at 713-14, 138 P.3d at 432-33. Because *Ellis* then changed that test for parent-parent cases, we cannot say *Hudson* would have clearly applied in guardianship termination cases to put Amanda on notice in 2016 of its standards later codified in NRS 159A.1915.[2] *See Rennels v. Rennels*, 127 Nev. 564, 572-73,

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[2]While retroactive statutes can otherwise be permissible, such as when they are procedural or curative, we are not persuaded NRS 159A.1915 falls into these categories. *See, e.g., Landgraf*, 511 U.S. at 275 (recognizing a statute governing transfer of an action was procedural); *Wichelman v. Messner*, 83 N.W.2d 800, 816 (Minn. 1957) (explaining that an act concerning marketable title was curative in that it "correct[ed] certain defects which have arisen in the execution of instruments in the chain of title").

257 P.3d 396, 401-02 (2011) (adopting *Hudson*'s "rationale" where a parent sought to modify a nonparent's visitation rights but applying *Ellis*'s test as a result).

For these reasons, we reverse the district court order denying Amanda's petition to terminate the guardianship under NRS 159A.1915 and direct the district court on remand to consider the petition under NRS 159.1905(3) (2003) and the law in effect at the time the guardianship was created. To the extent the parental preference was exhausted upon Amanda's oral objection, *Hudson*, 122 Nev. at 713, 138 P.3d at 432, thereby necessitating some additional showing to justify a modification of the children's living and custodial situation at this juncture, we conclude that (1) substantial evidence supports the district court's finding that Amanda has demonstrated a material change in circumstances and has been returned to suitability, *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) ("The district court's factual findings, however, are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence."),[3] and (2) as the parties indicated at oral argument before this court, the district court on remand must also determine whether termination of the guardianship would be in the best interests of all three children, NRS 159.1905(3) (2003). Accordingly, we

[3]Of note, respondents challenge the district court's order insofar as it allegedly lacks relevant facts because Amanda drafted it. But we treat such "written, signed, and filed" orders as final and binding for the purposes of appeal. *See Div. of Child & Fam. Servs. v. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 451, 455, 92 P.3d 1239, 1243, 1246 (2004).

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[4]

Cadish, C.J.

Stiglich, J.

Pickering, J.

Herndon, J.

Lee, J.

Parraguirre, J.

Bell, J.

cc: Hon. Linda Marquis, District Judge, Family Division
Israel Kunin, Settlement Judge
Roberts Stoffel Family Law Group
Law Offices of F. Peter James, Esq.
Legal Aid Center of Southern Nevada, Inc.
Eighth District Court Clerk

[4]We have also carefully considered the other arguments not specifically addressed herein and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.