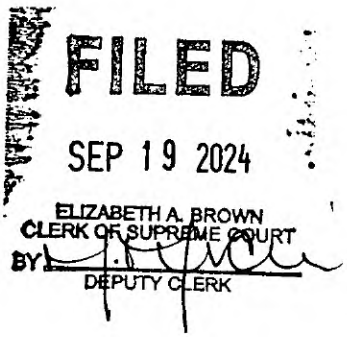
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF C.T.F. AND P.G.S.

KRISTIN S.,
Appellant,
vs.
C.T.F., MINOR PROTECTED PERSON; P.G.S., MINOR PROTECTED PERSON; JOHN ADAM MCGREW; MARIA DANIELLE MCGREW; DONALD WILLIAM F.; VICKI LYNN F.; MICHAEL THOMAS LUCERO; AND PAMELA JEANNIE LUCERO,
Respondents.

No. 87554-COA



ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition to terminate guardianships over two minor children. Fourth Judicial District Court, Elko County; Kriston N. Hill, Judge.

This appeal stems from two permanent guardianships established in May 2021.[1] A few years prior, appellant Kristin S. was in the throes of addiction and grief and unable to adequately care for her two minor children, C.F. and P.S., following the death of P.S.'s father in 2017.[2]

[1]This court previously affirmed the order establishing the guardianships in 2022. *See In re Guardianship of C.T.F.*, No. 83443-COA, 2022 WL 872635 (Nev. Ct. App. Mar. 23, 2022) (Order of Affirmance).

[2]C.T.F., hereinafter C.F. (born January 2018) and P.G.S., hereinafter P.S. (born May 2016) were five and seven years old, respectively, at the time the district court entered its order denying Kristin's petition to terminate the guardianships in September 2023.

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Acknowledging her struggles, Kristin solicited the help of C.F.'s paternal grandparents, Donald and Vicki F., and P.S.'s paternal grandparents, John and Maria McGrew, to take care of C.F. and P.S., respectively (we refer to these parties collectively as the "paternal grandparents" or "guardians"). Each set of paternal grandparents filed a petition to establish permanent guardianship over their respective grandchild in April 2018, and Kristin signed formal consent forms granting guardianship to both parties soon after. Upon notification of the impending guardianship petitions, Kristin's grandparents, Pamela and Michael Lucero (the Luceros), filed their own petition seeking guardianship over both children. Kristin, who was residing with the Luceros at the time, subsequently signed a new consent form in favor of the Luceros.

Pending the hearing to establish permanent guardianship, the Luceros and the paternal grandparents acted as temporary co-guardians on a week-on/week-off schedule, in which the Luceros would have both children one week and the children would be split between the paternal grandparents the following week. This arrangement lasted for almost three years. During this time period, P.S. gained a concerning amount of weight, and the McGrews and Luceros were unable to act as effective co-guardians. Following a hearing on the matter in March 2021, the district court appointed Donald and Vicki as C.F.'s guardians, the McGrews as P.S.'s, and removed the Luceros as co-guardians entirely. Kristin was not a named party to the action.

The Luceros appealed, arguing that, among other things, the district court abused its discretion when it awarded guardianship to the paternal grandparents, and that the children were no longer in need of

guardianships because Kristin was suitable to parent.[3] We disagreed with the Luceros, and concluded that the district court's decision to grant guardianship to the paternal grandparents was appropriate. At that time, and as relevant to this appeal in revisiting the issue of suitability, we reasoned that the district court's finding that Kristin was not suitable was supported by substantial evidence because she had no full-time job or means of providing for the children's needs; had no identification or driver's license; had never sought treatment for drug abuse or attended mental health counseling, despite having a serious problem and the means to address it; and had not requested permission to visit the children during the pendency of the action.[4]

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[3]We note that Kristin's suitability was likely improperly raised in this first appeal because the Luceros seemingly lacked standing to assert the issue. Not only was Kristin not a party to the proceedings that gave rise to the Luceros' appeal, *see High Noon at Arlington Ranch Homeowners Ass'n v. Eighth Jud. Dist. Ct.*, 133 Nev. 500, 507, 402 P.3d 639, 646 (2017) ("Generally, a party has standing to assert only its own rights and cannot raise the claims of a third party not before the court."), but the record reflects that the Luceros argued Kristin's suitability for the first time on appeal as an alternative to granting their petition for guardianship, *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal"). However, the guardians did not challenge the Luceros' standing to assert the issue, so this court addressed the district court's suitability findings in its order of affirmance. *See In re C.T.F.*, 2022 WL 872635 at *5-*6.

[4]The statements that we made in our prior order of affirmance regarding Kristin's suitability were based on the district court's findings and did not constitute an independent legal finding that Kristin was unsuitable. That being said, we find our statements useful to the extent that they demonstrate elements specifically relevant to Kristin's suitability in the current appeal.

Kristin filed a petition to terminate guardianship in May 2022.[5] At the outset of her petition, Kristin described the circumstances surrounding the initial consent forms and explained that she had allowed the paternal grandparents to care for her children following the death of P.S.'s father because she needed help, and that both sets of grandparents began advocating for guardianships over the children shortly thereafter. Kristin stated that she felt pressured and did not understand the full legal consequences associated with formal guardianship but averred that she signed the consent forms willingly.

Regarding her current suitability, Kristin argued that, upon termination of the guardianships, she would be able to adequately provide for C.F. and P.S.'s needs. Kristin explained that since the guardianships were established in 2021, she had enrolled in mental health counseling; had voluntarily undergone hair follicle testing and tested negative for any illegal substances; had obtained a driver's license and job, and was working full-time; had been living in a comfortable mobile home on the Luceros' property; and had been paying rent and utilities. Kristin also highlighted that her two youngest children, M and A, resided in her care with no issues.[6]

The district court held a hearing on Kristin's petition over the course of two days in November and December 2022. During this hearing,

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[5]The district court's order indicates that the paternal grandparents filed oppositions to Kristin's motion in June 2022, but the court did not summarize their arguments, and the oppositions are not included in the record on appeal.

[6]M and A are C.F. and P.S.'s half-sisters. At the time of the hearing in November and December 2022, they were four years old and one year old, respectively. M and A have the same father, but their father and Kristin are no longer in a relationship or living together. The record is silent as to the extent of the father's involvement in their lives.

Kristin was represented by counsel, the paternal grandparents were jointly represented by counsel, the children were represented by counsel, and the Luceros were represented by counsel and present as interested parties without objection.

At the outset of the hearing's first day in November 2022, the district court explained that, pursuant to NRS 159A.1915, Kristin would need to prove that there had been a material change of circumstances since the guardianships were created, and that the children's well-being would be substantially enhanced by termination of the guardianships. Kristin took issue with the "substantial enhancement" requirement, arguing that because she initially consented to the guardianships, she needed to prove only that there had been a material change of circumstances, and that she was now suitable to parent C.F. and P.S.[7] The court acknowledged that consent negates the "substantial enhancement" requirement but declared that Kristin withdrew her consent to the guardianships when she rescinded her consent to have the paternal grandparents act as guardians. Kristin countered that although she withdrew her consent from the paternal grandparents in favor of the Luceros, she never opposed the concept of the guardianships themselves. The district court concluded by stating that,

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[7]Pursuant to NRS 159A.1915(1), a parent petitioning to terminate a guardianship must prove by clear and convincing evidence that (a) there has been a material change of circumstances since 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, and (b) except as otherwise provided in subsection (2), the child's welfare would be substantially enhanced by the termination of the guardianship. Subsection (2) states, "If the parent consented to the guardianship when it was created, the parent is required to make only that showing set forth in paragraph (a) of subsection (1)."

although it could be convinced otherwise, it believed Kristin withdrew consent to the guardianships because she opposed the guardians the court ultimately appointed.

Subsequent to the preliminary consent discussion, the district court heard testimony from Dana Kincaid, a juvenile probation officer who has supervised both in-person visits and Zoom calls between the children and Kristin; Gerri Goddard, a licensed marriage and family therapist who has counseled Kristin since 2020; and Kristin herself. Kincaid testified that Kristin's interactions with the children during both the Zoom and in-person visits were positive, but that Kristin had not requested to coordinate many in-person visits. Kincaid also stated that Kristin and the Luceros no longer lived in Elko, Nevada, and had moved to a ranch in Colorado shortly after the permanent guardianships were established in 2021.

On direct examination, Goddard testified that Kristin has attended consistent counseling sessions with her since 2020, and that, since the two began meeting, Kristin's parenting abilities and overall ability to manage her mental health have improved significantly. To that end, Goddard stated that many of Kristin's past issues were complicated by grief and an inability to confidently assert herself, but that Kristin has been consistently implementing techniques learned in therapy and is now a confident, sophisticated, and affectionate parent. To support this assertion, Goddard explained that she had recently administered an objective parental capacity assessment on which Kristin did "exceptionally well" and scored two standard deviations above what the assessment considers to be the "normal" parenting range. Regarding drug use, Goddard acknowledged Kristin's past issues but called those issues minimal and stated that, since meeting Kristin, she has had no concerns regarding drug use or Kristin's

ability to parent. Goddard also testified that the current guardians often prevent Kristin from speaking with the children and restrict her visitation.

Mid-day, before Kristin's direct examination, the district court re-visited the consent issue and cited *Matter of Guardianship of M.F.M.*, an unpublished order from the Nevada Supreme Court, to support its position that Kristin needed to demonstrate both a "material change" and "substantial enhancement" before it would terminate the guardianships.[8] According to the district court, this case stood for the principle that if a parent does not consent to the guardians ultimately appointed, then there is likewise no consent to the guardianship, and both prongs under NRS 159A.1915 apply.

During her direct examination, Kristin testified that she had not used illegal substances or marijuana for at least a year, and that she has obtained and maintained permanent employment for at least a year as well. In describing her living environment, Kristin explained that she lives in Strasburg, Colorado, a small town slightly east of Denver, in a fifth wheel trailer located on a ranch the Luceros purchased after they moved to Colorado from Elko. According to Kristin, the trailer has all of the basic amenities; is plumbed into the main property; has a kitchen, multiple bedrooms, and bathroom with a bathtub; and acts as a semi-permanent structure that cannot easily be moved with a car. Regarding rent, Kristin testified that she pays the Luceros $230 a month, which includes utilities. Kristin maintained that she purchases all of her own food, as well as M's and A's clothing, diapers, and necessities, and she also testified that she had obtained her driver's license and had purchased a car.

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[8]No. 82469, 2022 WL 1538589 (Nev. May 13, 2022) (Order of Affirmance).

As to Kristin's employment, she testified that she works full-time at Subway and makes $16.50 per hour. Kristin's job comes with health insurance, and both M and A are insured through Kristin.[9] Kristin further explained that M and A have a pediatrician whom they see on a regular basis, are fully vaccinated, and have updated medical histories. Kristin, a high school graduate, expressed a desire to attend college and obtain a nursing degree in the future.

Kristin testified that she moved to Colorado with the Luceros in 2021 because she did not have the financial ability to cover her living expenses in Elko.[10] According to Kristin, she felt that both C.F. and P.S. would benefit from the guardianships' terminations because they would not only be able to live together under one roof again but would also be reunited with M and A. Kristin expressed additional concern that P.S. was currently homeschooled with the McGrews and felt that it would benefit P.S. to go to public school in Colorado where she could engage in meaningful social interactions.

Regarding visitation, Kristin stated that she calls the children every Monday and pays a coordinator to monitor the calls and in-person visits. For in-person visits, Kristin is required to give the paternal grandparents at least two-weeks' notice, and a third-party supervisor must be present. Kristin expressed frustration that the paternal grandparents do not return her phone calls or send pictures of the children when she requests them, and, according to Kristin, the paternal grandparents will

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[9]Kristin testified that her health insurance would also be able to cover C.F. and P.S.

[10]The record reflects that the majority of Kristin's extended family also lives in Colorado, including Kristin's aunt and cousins.

speak to her only through a supervisor, despite the fact that the parties' stipulated parameters do not prohibit them from speaking with Kristin directly.

On cross examination, Kristin conceded that she purchased her car with money the Luceros gifted her and recognized that the $230 she pays the Luceros per month in rent is low, apparently meaning below market value. In response to questions regarding her independence, Kristin acknowledged that the district court had previously found her dependency on the Luceros to be problematic but countered that, while the Luceros are her family and continue to provide support, she is self-sufficient in all meaningful respects. As to visitation, Kristin recognized that she had visited the children in-person only four times in the 18 months since the guardianships were established and agreed that the paternal grandparents had never denied her an in-person visit when she had requested one with at least two-weeks' notice.[11]

At the conclusion of the hearing's first day, the district court ordered that Kristin be permitted an in-person visit with the children within the next 48 hours and set a reconvening date for December 2022.

Kristin was recalled at the beginning of the hearing's second day for additional cross examination. In response to questions regarding P.S.'s education, Kristin testified that she believed P.S.'s reading ability was not on par with her grade level but acknowledged that she was not qualified to make that official determination. Regarding her consent to the

[11]Kristin testified that her sparse visits stemmed from the paternal grandparents not answering or returning her calls. The record as a whole suggests that Kristin felt it was futile to contact the paternal grandparents to arrange visits or get school and medical information.

guardianships, Kristin maintained that, although she rescinded her consent to the paternal grandparents in favor of the Luceros, she never opposed the guardianships themselves.

After Kristin's cross examination, the district court heard from Donald and Vicki F. and Maria McGrew. Donald and Vicki testified that they prioritize C.F. spending time with P.S. and would like to see both children returned to Kristin's care in the future, once she had her own housing and was fully independent from the Luceros. Regarding Kristin's initial consent to the guardianships, Vicki F. recalled that, in early 2018, Kristin contacted her shortly after P.S.'s father died and requested her immediate help watching C.F. Maria McGrew similarly testified that Kristin reached out to her in 2018 for help after P.S.'s father died and expressed concern that Kristin could not make decisions without the Luceros' support and authorization. By way of example, Maria referenced the guardianship itself. Namely, she stated, "I have yet to see [Kristin] make an independent decision, aside from the initial choosing for guardianship, which[,] once she did that, she received very harsh, very hostile backlash and immediately rescinded the guardianship to [Donald and Vicki] and myself and granted it to the Luceros." Maria also noted that when Kristin took her children to the pediatrician, she wrote down the pediatrician's statements so that the Luceros could interpret them for her.

Later, upon Kristin's inquiry, the district court discussed the consent issue for a third time. The court articulated that it was "inclined to find that there was not consent in this case," this time citing this court's rejection of the Luceros' appeal to support its position that when Kristin rescinded her consent to the paternal grandparents and granted it to the Luceros, she revoked her initial consent to the guardianships. Specifically, it characterized our statement that Kristin "rescinded [her] consent to the

[paternal grandparents]" and "instead consented to the Luceros" as an official finding of no initial consent.[12] The district court also noted that Kristin's initial consent may have been invalid, as she insisted that the paternal grandparents pressured her to sign the original consent forms and stated that she did not fully understand them.

Following the conclusion of witness testimony, the district court, in lieu of closing arguments, ordered both parties to prepare and submit proposed findings of fact, conclusions of law, and orders. The district court issued its findings of fact, conclusions of law, and order denying Kristin's petition to terminate guardianship in September 2023, nine months after the evidentiary hearing's completion.[13] In its findings of fact, the court determined that Geri Goddard was not credible in part because the court doubted her qualifications to perform a parental capacity assessment, she did not provide a written report regarding the assessment, and she did not interview third party collateral sources. Yet, despite finding Goddard not credible, the district court subsequently relied on her testimony regarding Kristin's perceived lack of understanding as to consent

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[12]We again clarify that this statement was intended to operate as a purely factual description of the events that gave rise to the previous appeal and was not a legal finding as to consent.

[13]We note that district and appellate courts are required to expedite decisions affecting the custody of minor children. Specifically, district courts are required to reach a resolution within six months of a contested custody or parenting time issue, absent unforeseeable circumstances with specific findings to justify the delay. *See* SCR 251. Here, the record reflects that the matter became contested when the paternal grandparents filed their opposition to Kristin's petition in June 2022. This makes the district court's September 2023 order denying Kristin's petition more than nine months late, and the order contains limited explanation and no findings justifying this delay.

to the guardianships, and found that it appeared that Goddard "did not believe Kristin's own reports of criminal activity or drug use because [they] were not corroborated by anything other than Kristin's own admissions."[14] The district court similarly discounted Donald's, Vicki's, and Maria's testimony because they "did not add anything significant to the hearing." Thus, in making its conclusions, the district court seemingly considered only Kristin's testimony and, to a minimal extent, Goddard's.[15]

In its conclusions, the district court determined that Kristin did not initially consent to the guardianships and deduced that she was required to prove both a material change of circumstances and substantial enhancement. To support this conclusion, the court cited evidence from the prior proceeding—a proceeding in which, to reiterate, Kristin was not a named party—and reasoned that Kristin's initial consent was likely invalid. According to the court, Kristin did not understand the original consent forms when she signed them, and sufficient evidence demonstrated that Kristin never intended for C.F. and P.S. to be in a guardianship with the paternal grandparents. Alternatively, the district court explained that, even if Kristin's initial consent to the paternal grandparents was valid, Kristin intended to revoke that consent in favor of the Luceros, who were not the guardians the court ultimately appointed.

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[14]We note that this finding is belied by the transcript. Goddard never stated she did not believe Kristin; quite the opposite, she testified that she had no concerns regarding Kristin's prior drug use since she began counseling her.

[15]As to Dana Kincaid, the district court briefly summarized his testimony regarding Kristin's Zoom calls with the children and then stated, "Mr. Kincaid did not provide any testimony that was determinative to the outcome of the hearing."

With the stricter, two-prong legal standard in mind, the district court concluded that Kristin demonstrated neither a material change of circumstances since the guardianships were established nor that the children's welfare would be substantially enhanced by termination. As to the "material change" prong, the court acknowledged that Kristin had obtained employment since moving to Colorado but reasoned that this "improvement" was not determinative, as Kristin was still "completely reliant" on the Luceros. Moreover, the court was concerned that Kristin had made little effort to visit the children in-person and had not requested school or healthcare information.[16] As to "substantial enhancement," the district court concluded that the children's welfare would not be substantially enhanced by termination merely because Kristin is their mother, without addressing the parental preference doctrine, and made minimal findings regarding the evidence and facts in Kristin's favor. Kristin now appeals.

On appeal, Kristin and the Luceros argue that the district court (1) erred when it required her to demonstrate that the children's welfare would be substantially enhanced by the termination of the guardianships and (2) abused its discretion when it found that Kristin had not demonstrated a material change of circumstances or that the children's welfare would be substantially enhanced by termination. The paternal grandparents respond that the court did not err when it held Kristin to the stricter legal standard and required her to demonstrate substantial enhancement because Kristin's initial consent was either rescinded or

[16]We note that this finding is also belied by the record. Kristin testified on cross examination that she had requested this information on at least one occasion.

invalid.[17] We conclude that the district court erred when it determined there was no initial consent and no material change of circumstances. Thus, it was incorrect to apply the two-pronged standard. In addressing these issues, we conclude, in the alternative, that the district court abused its discretion in finding that Kristin did not meet her burden in satisfying the substantial enhancement requirement. Thus, Kristin satisfied both prongs of the statute in support of her petition to terminate the guardianships.

The district court erred when it determined that the two-prong legal standard was applicable

Kristin argues that the district court erred when it required her to demonstrate substantial enhancement, in addition to a material change of circumstances, because she initially consented to the guardianships. The paternal grandparents (whom we hereinafter refer to as "the guardians") respond that the two-pronged legal standard applies because Kristin revoked her consent to the guardianships when she rescinded her consent to the appointed guardians in favor of the Luceros. Neither party disputes that consent is required for the lesser legal burden to apply pursuant to NRS 159A.1915. Rather, Kristin cites *Matter of Guardianship of M.F.M.*, No. 82469, 2022 WL 1538589 (Nev. May 13, 2022) (Order of Affirmance) and argues she consented to a guardianship as envisioned by the statute. The guardians make no argument regarding the applicability of the *M.F.M.*

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[17]The guardians do not address the second issue, substantial enhancement, asserting mootness. Specifically, they state only that "[Kristin] failed to meet either prong of NRS 159A.1915(1)(a) [material change] or (b) [substantial enhancement]." *See generally Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider arguments on appeal that are either not cogently argued or lack the support of relevant authority).

case. The question Kristin raises is one of statutory interpretation, which is a question of law that this court reviews de novo. *In re Guardianship of D.M.F.*, 139 Nev., Adv. Op. 38, 535 P.3d 1154, 1161 (2023) ("[Q]uestions of law within a guardianship determination are reviewed de novo."); *Irving v. Irving*, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006).

NRS 159A.1915 governs the burden of proof required to terminate a guardianship. By its terms, if the petitioning parent did not consent to the guardianship when the guardianship was created, then the parent must demonstrate two things: that (1) there has been a material change of circumstances since the guardianship was created, and, as part of that change, the parent has been restored to suitability, and (2) the child's welfare would be substantially enhanced by the termination of the guardianship. NRS 159A.1915(1). In contrast, a parent who gave their consent to the guardianship when it was created is required to prove only a material change of circumstances and suitability, and is not required to show substantial enhancement. NRS 159A.1915(2).

Matter of Guardianship of M.F.M., an unpublished order from the Nevada Supreme Court, appears to be the only source of persuasive authority that explicitly addresses the level of consent required to satisfy the statute. No. 82469, 2022 WL 1538589 at *1 (Nev. May 13, 2022) (Order of Affirmance). In *Matter of M.F.M.*, a mother informally left her father in charge of her children when she went to prison. *Id.* Her father subsequently faced significant health issues, and the children moved in with their aunt and uncle. *Id.* at *2. The aunt and uncle filed a petition seeking appointment of themselves as the children's guardians, which the mother opposed, alternatively requesting that her father be appointed as a temporary guardian, should the district court determine that a guardianship was necessary at all. *Id.* The court ultimately concluded that

a guardianship was necessary and appointed the aunt and uncle as guardians. *Id.* When the mother later filed a petition to terminate the guardianship, the court determined that there was no initial consent, and that the mother was therefore subject to the two-prong evidentiary standard. *Id.* After concluding, without holding an evidentiary hearing, that the mother did not prove substantial enhancement, the district court denied her petition. *Id.*

On appeal, the mother argued that NRS 159A.1915's reference to "consent to the guardianship" meant consent to *any* guardianship, and that, because she consented to a guardianship with her father, the lesser evidentiary burden applied, despite the fact that her father was not the guardian ultimately appointed. *Matter of M.F.M.*, 2022 WL 1538589 at *2. The supreme court disagreed and concluded that, by its plain meaning, the statute's reference to "the guardianship" referred to the specific guardianship the district court authorized, such that the mother's consent to her non-appointed father was insufficient. *Id.*

In reaching its conclusion, the supreme court acknowledged both Nevada public policy and the statute's legislative history. Regarding public policy, the court explained that its conclusion did not either violate the policy in favor of encouraging parents to seek guardianships when necessary to protect their children's best interest or otherwise disregard that a parent asking for help during a challenging time is itself the first step towards suitability. *Id.* As to the legislative history, the court stated there was no discussion regarding the specific intent behind NRS 159A.1915's consent requirement. *Id.* at *2 n.1. The court was careful, however, to limit its decision to the facts of the case, which it made clear both in the text and in a footnote stating that the case did "not establish binding precedent." *Id.* at *2 & n.3. Notably, the court recognized that due process issues were

present, and that the "parental preference" was of concern, but determined the mother raised the parental preference issue too late for consideration on appeal. *Id.* at *2 n.3. Thus, while not binding, *Matter of M.F.M* appears to stand for the principle that consent encapsulates both consent to the guardianship itself *and* consent to the guardians ultimately appointed. *See id.* at *3.

Here, as a preliminary matter, there is no question that Kristin gave her initial written consent to allow the paternal grandparents to be her children's guardians.[18] And indeed the paternal grandparents acted as co-guardians with the Luceros pursuant to the temporary court order for several years. But before the permanent guardianships were created by court order, Kristin signed a new consent form in favor of her grandparents, the Luceros, as the children's guardians.

We conclude that even under *Matter of M.F.M.*'s apparent more stringent consent standard, the evidence strongly supports that Kristin provided the necessary consents to the guardianships to comply with the statute and controlling public policy. Specifically, it is in the best interest of children to encourage parents that are having major parenting difficulties to voluntarily seek help, including not opposing guardianships. Imposing an additional onerous legal requirement to end a guardianship when the parent becomes suitable, is not in the best interest of children, because it could deter or even punish a parent for taking the correct course of action, thereby putting children at risk, keeping families separated, and prolonging

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[18]NRS 159A.1915 mandates that the relevant time period for evaluating whether a parent consents is the time the guardianship "was created." NRS 159A.1915(2). Here, both parties, as well as the district court, characterized this to mean Kristin's "initial" consent to the guardianships, and we will use the term "initial" for consistency.

litigation. *See Hudson v. Jones*, 122 Nev. 708, 712, 138 P.3d 429, 431-32 (2006) ("[W]e do 'not want to discourage parents from willingly granting temporary guardianships, while working through problems in their own lives, if that is in the child's best interest.'" (quoting *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995))).

Here, the facts of this case are distinguishable from those in *Matter of M.F.M.*—where the supreme court determined there was no initial consent—in five significant ways: namely, the mother in *Matter of M.F.M.* (1) was a named party in the original proceeding and contested the guardianship itself; (2) was responding to an unsolicited petition for guardianship from relatives when she suggested her father as an alternative option for temporary guardianship; (3) never initially consented to either the appointed guardians or to a permanent guardianship with any party, including her father; (4) never informally sought the appointed guardians' help or voluntarily left her children in their care; and (5) sought termination of the guardianship only months after the guardianship was established.

In contrast, it is undisputed by all parties in this case that Kristin was not a named party contesting the guardianship itself in the initial proceeding below; originally signed and had notarized the consent forms in the appointed paternal guardians' favor prior to the time that the guardians filed their petitions for guardianship; contacted the appointed guardians of her own volition to help care for the children after P.S.'s father died; and sought the current termination of the guardianships years after the temporary and permanent guardianships were established, only after the circumstances had dramatically changed. The fact that Kristin later gave consent in favor of the Luceros should not negate the reality that Kristin, recognizing she needed support raising her children while she

worked through her grief and drug abuse issues, initially consented to the specific guardianships the court ultimately ordered and never stated that she opposed guardianships for C.F. and P.S. nor did she formally revoke them. *See Hudson*, 122 Nev. at 712, 138 P.3d at 431-32.

The district court's alternative conclusion that Kristin intended to revoke her consent to the paternal grandparents' guardianships when she gave consent to the Luceros is also unavailing. The previous district court proceedings focused on *who* would be granted guardianship and not *whether* a guardianship should exist in the first place. It is clear that Kristin's general consent for the guardianships themselves was ongoing. Specifically, the record supports that Kristin, to the extent she rescinded her consent to the paternal grandparents, did so for the express purpose of replacing them with the Luceros. In other words, by executing a new consent form, Kristin was simply expressing her current preference as to which set of petitioning co-guardians she wanted the court to appoint.

Further, the district court's determination that Kristin's initial consent to the guardianships may have been invalid because she felt pressured to sign the original consent forms is unpersuasive. To support its conclusion, the court reasoned there was no "meeting of the minds" when Kristin executed the original consent forms because she did not grasp the full extent of the guardianship agreements. Yet, this conclusion contradicts the guardianship forms and both Kristin's and the guardians' testimony. It is undisputed that, consistent with public policy, Kristin reached out to both sets of guardians after P.S.'s father died, and that when she signed the consent forms in the guardians' favor, she understood she was relinquishing the care, custody, and control of her children while she got her life in order. Moreover, when Kristin changed her consent, the record supports that she did so not because she regretted asking for help and felt that a guardianship

was unnecessary, but rather so that it was so she could execute alternative consent to a different set of guardians. The consent forms themselves were also filed with the district court, notarized, and contained verification from the notary that Kristin signed the forms "freely and voluntarily."

Thus, because substantial evidence does not support the district court's conclusions, and because Kristin understood the general nature of the guardianship arrangements, any pressure Kristin felt when she signed the original consent forms does not render her initial consent inoperative. *See Campanelli v. Conservas Altamira, S.A.*, 86 Nev. 838, 841, 477 P.2d 870, 872 (1970) (noting, in the context of an arbitration agreement, that the signing parties are "bound by [the agreement's] conditions regardless of their subjective beliefs at the time the agreement was executed," and that "he who signs or accepts a written contract, in the absence of fraud or other wrongful act . . . is conclusively presumed to know its contents and to assent to them").

Finally, because Kristin consented to the guardianship, the district court was obligated to apply the parental preference doctrine, which it did not do. *See* NRS 159A.061(1); *In re A.S.*, No. 73876, 2018 WL 5291457 *1 (Nev. Oct. 18, 2018) (Order of Reversal and Remand). The parental preference doctrine creates a rebuttable presumption in favor of a parental custody unless the parent is unfit or other extraordinary circumstances are present. *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995). *See also Hudson*, 122 Nev. at 712, 138 P.3d at 432. We discuss the parental preference doctrine in more detail in the next section.

In accordance with public policy, because Kristin initially consented to the guardianship, including the paternal grandparents, we conclude that the district court erred when it subjected her to the two-pronged evidentiary standard and required her to demonstrate substantial

enhancement in addition to a material change of circumstances and suitability.

The district court abused its discretion when it determined that Kristin had not demonstrated either a material change of circumstances or substantial enhancement

Kristin (and the Luceros) argue that, even if she were obligated to satisfy both of NRS 159A.1915's evidentiary prongs, the district court abused its discretion when it found that she failed to do so. Specifically, regarding a material change of circumstances, Kristin contends that she has been restored to suitability because she has obtained full-time employment, health insurance for herself and the children, housing, a driver's license, and a car. She has also been attending regular mental health counseling sessions and has consistently tested negative for any illegal substances.

As to substantial enhancement, Kristin argues that P.S.'s schooling and social interactions would improve if she were to live with Kristin in Colorado because the McGrews homeschool P.S., while Kristin would send P.S. to public school. Kristin further argues that both children's lives would be enhanced by termination because they would be able to live together, under one roof, with their biological mother and half-siblings, and would also have support from nearby relatives. The guardians respond that Kristin "failed to meet either prong," and take issue with Kristin's reliance on the Luceros for partial financial support, as well as Kristin's alleged inability to make decisions without the Luceros' authorization. Moreover, as previously explained, the guardians do not address whether the evidence demonstrates substantial enhancement.

We review a district court's guardianship determinations deferentially and will not disturb them absent an abuse of discretion. *In re K.A.J.*, No. 78217, 2020 WL 5837919, (Nev. Sept. 30, 2020) (Order of

Affirmance); *Jason S. v. Valley Hosp. Med. Ctr. (In re Guardianship of L.S. & H.S.)*, 120 Nev. 157, 163, 87 P.3d 521, 525 (2004). An abuse of discretion occurs when the court's decision is not supported by substantial evidence, *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018), which is evidence a "sensible person may accept as adequate to sustain a judgment," *Irving*, 122 Nev. at 498, 134 P.3d at 721. An abuse of discretion also occurs where the district court fails to supply appropriate reasons to support its determinations, *Valley Hosp.*, 120 Nev. at 163, 87 P.3d at 525, "exceeds the bounds of law or reason," or makes an "arbitrary or capricious" decision, *In re Eric A.L.*, 123 Nev. 26, 33, 153 P.3d 32, 36-37 (2007). In reviewing guardianship determinations, this court must also ensure that the district court did not base its decisions on clearly erroneous factual determinations or disregard controlling law. *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016). Further, we "must . . . be satisfied that the district court's determination was made for appropriate reasons." *Rico v. Rodriguez*, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005).

Here, as previously discussed, Kristin initially consented to the guardianships and was therefore required to demonstrate only a material change of circumstances and suitability and not substantial enhancement. With that in mind, we conclude that the district court abused its discretion because compelling and undisputed evidence supports that Kristin demonstrated a material change of circumstances and is now suitable. In its conclusions on the first prong, the district court also appeared to partly rely on a clearly erroneous factual determination—namely, a mischaracterization of Gerri Goddard's testimony.

Additionally, although not determinative to this appeal, we conclude that the district court's findings regarding the second prong, substantial enhancement, also constitute an abuse of discretion because

they were conclusory, not sufficiently definite, omitted or overlooked significant evidence, and disregarded the controlling parental preference doctrine. *See* NRS 159A.1915(1)(a) (referencing NRS 159A.061 ("Preference for appointment of parent as guardian")).

Finally, with respect to both prongs, the court did not set forth specific, unambiguous guidelines as to how Kristin could become suitable in the future, or otherwise outline the necessary changes Kristin would need to make before she could be reunited with her children.[19] *See Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 290 (Ct. App. 2023) (requiring a district court in a family law matter to "specify the compliance details in unambiguous terms"). Thus, regardless of whether Kristin was required to satisfy both prongs, we conclude that the district court abused its discretion and reversal and remand are warranted.

Kristin demonstrated a material change of circumstances

The guardianship provisions prescribe their own set of considerations in determining parental suitability. As previously discussed, a parent petitioning to terminate a guardianship must demonstrate that they have been restored to suitability in order to satisfy the first "material change of circumstances" prong. *See* NRS 159A.1915(1)(a). A parent is presumed unsuitable if they cannot "provide for any or all of the basic needs of the proposed protected minor," which include food, shelter, clothing, medical care, and education. NRS 159A.061(4)(a)(1)-(5). In making its suitability determination, a district court must also consider the parent's

[19]The district court did not, for instance, address co-guardian Donald's statement that he would feel comfortable with reunification once Kristin had her own place to live off of the Luceros' property.

alcohol consumption and controlled substance use in the six months preceding the court's review. NRS 159A.061(3)(c).

Here, we conclude that there is compelling and undisputed evidence in the record supporting a material change of circumstances, and that Kristin has been restored to suitability. To start, we previously outlined, in our 2022 order of affirmance rejecting the Luceros' appeal, specific examples as to how Kristin was not acting suitably based upon the district court's findings. *See In re Guardianship of C.T.F.*, No. 83443-COA, 2022 WL 872635 *6 (Nev. Ct. App. Mar. 23, 2022) (Order of Affirmance). Specifically, we reasoned that Kristin was "without identification or a driver's license . . . had never sought treatment for drug use . . . did not have a job . . . and . . . had not had mental health treatment." *Id.*

Since that time, Kristin has remedied nearly every concern listed. She has a job, she has a driver's license, and she attends regular counseling sessions. Moreover, it is undisputed that Kristin is drug-free, that she voluntarily chose to undergo hair follicle drug testing, and that she provides food, shelter, clothing, medical care, and education for her other two children and can do the same for C.F. and P.S. *See* NRS 159A.061(4)(a)(1)-(5). While Kristin may rely on the Luceros for some financial support, this does not foreclose the termination of the guardianships, particularly because her reliance is partial, if not minimal, and she is employed and largely independent. Further, the district court's finding that Kristin is "completely reliant" on the Luceros and there has been no improvement in that area from the time of the creation of the guardianships is not supported by substantial evidence. Additionally, the guardians offered no authority to substantiate the notion that receiving support and financial assistance from grandparents is a negative factor for a parent, especially here, where a parent who sought the paternal

grandparents' assistance has stabilized her life with the help of all. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280,1288 n.38 (2006).

While the district court's additional concerns that Kristin has made minimal effort to emotionally connect with or visit her children are important, they are ultimately not decisive. Although Kristin's in-person visits have been historically sparse, she has visited the children more frequently since the entry of the order rejecting the Luceros' appeal, and the record reflects that her visits have been trending in a positive direction both in quality and quantity. Moreover, Kristin testified to her eagerness, ability, and motivation to connect with her children through both Zoom and in-person visits. In addressing Kristin's visitation, the district court also failed to account for testimony that Kristin's relationship with the guardians is strained, that phone calls with the children were short, and that Kristin lives in another state.

Regarding her decision-making ability, the guardians imply that Kristin does not have the mental capacity to make adult decisions, as evidenced by her reliance on the Luceros for advice and assistance with interpreting the children's medical information. The guardians, however, do not meaningfully argue Kristin's current circumstances, and the facts support that Kristin is a competent parent. She is a high school graduate who is currently working towards a management position and has aspirations of becoming a nurse. Moreover, in contrast to the guardians' claim that Kristin asking for guidance somehow renders her unsuitable, we note that, by doing so, Kristin demonstrated a mature propensity for self-reflection and an ability to put her children's best interest at the forefront of her decision-making.

Finally, in arriving at its conclusion that Kristin failed to demonstrate a material change of circumstances, the district court seemingly discounted most, if not all, of the witness testimony in Kristin's favor and relied on clearly erroneous factual determinations. *See Valley Hosp.*, 120 Nev. at 163, 87 P.3d at 525. All three guardians who testified acknowledged that Kristin initially consented to the guardianships, is now gainfully employed, drug-free, and seems much healthier than she did when the guardianships were created. Yet, the district court concluded that the guardians' testimony "did not add anything significant to the hearing," despite the fact that their testimony was directly relevant to both Kristin's initial consent, as well as her suitability.

Uniquely concerning is the district court's mischaracterization of Gerri Goddard's testimony regarding Kristin's past drug use and parenting abilities. Despite first finding that Goddard was not credible, the court subsequently analyzed and relied on Goddard's testimony in concluding that Kristin was not suitable. Specifically, the court stated that it appears Goddard "did not believe Kristin's own reports of criminal activity or drug use because [they] were not corroborated by anything other than Kristin's own admissions." Yet, this assertion is belied by the record. While Goddard stated she was aware of the allegations regarding Kristin's past drug-use, she never stated she did not believe Kristin. She also testified that she has had "no concerns" that Kristin is currently using drugs. Indeed Goddard—who has provided counseling to Kristin for over two years—called Kristin an "amazing success story," and was adamant that Kristin has blossomed into a mature, competent, and affectionate parent. Based on the foregoing, we conclude the district court's decision, to entirely discount Goddard's favorable testimony and find that Kristin had not demonstrated a material change of circumstances, in part on an

inaccurate representation of Goddard's testimony, was a clearly erroneous determination. *See Alaska Pac. Leasing*, 132 Nev. at 88, 367 P.3d at 1292.

Accordingly, we conclude that the district court abused its discretion when it determined that Kristin had not demonstrated a material change of circumstances because compelling and undisputed evidence supports that Kristin has been restored to suitability in that she is able to provide for her children's basic needs.

The district court's findings regarding substantial enhancement constitute an abuse of discretion

Although Kristin was not required to demonstrate substantial enhancement, we address in the alternative the district court's conclusions on that account because they are relevant to suitability and also raise important constitutional issues relevant to minor guardianship proceedings.

Kristin presented evidence to support substantial enhancement in that P.S.'s schooling and social interactions would improve if she were to be reunited with Kristin, and that both children would benefit from living together, under one roof, with their biological mother and half siblings. The guardians do not contest Kristin's statements but instead respond that the substantial enhancement issue is moot because the district court found that, pursuant to the first evidentiary prong, there was no material change of circumstances. We conclude that the district court's summary conclusion that Kristin did not demonstrate substantial enhancement was an abuse of discretion because its findings were not sufficiently definite, omitted key evidence, and overlooked clearly controlling law.

Although NRS 159A.1915 does not elucidate specific factors for district courts to consider regarding substantial enhancement, the statute references NRS 159A.061, which sets forth a "parental preference." NRS

159A.061(1) ("The parents of a proposed protected minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian"). This parental preference creates a "presumption wherein natural parents are preferred . . . as guardians of [their] minor children. *In re Guardianship of T.T.H.*, No. 73932, 2018 WL 3213818, *2 (Nev. June 22, 2018) (Order of Affirmance); *see also Troxel v. Granville*, 530 U.S. 57, 68, 72 (2000) (recognizing that a fit parent's decisions concerning the care, custody, and control of their child should be given material weight due to the presumption that a fit parent acts in their child's best interest). This preference reflects the time-honored principle that a parent has a constitutionally protected due process liberty interest in the care, custody, and control of their children, *Hudson*, 122 Nev. at 711, 128 P.3d at 431, as well as the principle that a child's best interest "is usually served by awarding . . . custody to a fit parent," *In re T.T.H.*, 2018 WL 3213818 at *2 (quoting *McGlone v. McGlone*, 86 Nev. 14, 17, 464 P.2d 27, 29 (1970)). The preference is rebuttable but can be overcome only "by a showing that the parent is unfit or other extraordinary circumstances." *Litz*, 111 Nev.at 38, 888 P.2d at 440; *see also* NRS 128.018 (defining an "unfit parent" in the context of termination of parental rights). Extraordinary circumstances are those that "result in serious detriment to the child." *Locklin v. Duka*, 112 Nev. 1489, 1495-96, 929 P.2d 930, 934 (1996).

Here, as an initial matter, we note that while Kristin did not use the term "parental preference" on appeal, she argued the functional equivalent on appeal and below, and the parental preference implicates constitutional concerns. *See Hudson*, 122 Nev. at 711, 128 P.3d at 431; *Sustainable Growth Initiative Comm. v. Jumpers, LLC*, 122 Nev. 53, 71, 128 P.3d 452, 464-65 (2006) (recognizing that appellate courts have the "sua sponte power to reach constitutional issues"). Thus, when the district court

summarily concluded that keeping C.F. and P.S. together with their biological mother and half-siblings was insufficient to establish substantial enhancement, it essentially rejected parental preference without first making the requisite findings necessary to rebut the presumption in favor of a fit biological parent.[20] *See Litz*, 111 Nev. at 38, 888 P.2d at 440. While the court stated it had "previously found that the children's current placement [with the guardians] was in their best interest," it did not make findings that Kristin was currently unfit or whether extraordinary circumstances justified keeping the children with the non-parent guardians and away from their half-siblings.[21] The district court also failed to address Kristin's argument regarding P.S.'s schooling, which is a significant

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[20]Regarding Kristin's fitness, we reiterate that, as previously discussed, strong evidence supports that Kristin is suitable, and that many of the district court's contrary findings are not supported by substantial evidence.

[21]We also note that while the district court referenced its previous findings from the order establishing guardianship to support that the current guardianships were in the children's best interest, those findings do not appear to be supported by substantial evidence in the present case. Moreover, those findings pertained to the legal standard for termination, and the district court neither explained nor incorporated those findings by reference in its order denying Kristin's petition. Thus, the district court improperly considered that evidence for the purpose of determining whether a change in circumstances had occurred. *Compare Myers v. Haskins*, 138 Nev., Adv. Op. 51, 513 P.3d 527, 533 n.10 (Ct. App. 2022) (stating that the district court is barred from considering facts that preexisted the current custody order to determine whether a change in circumstances has occurred, but that it may consider those preexisting facts to determine if modification is in the child's best interest if it incorporates them by reference), *with Monahan v. Hogan*, 138 Nev. 58, 61 n.3, 507 P.3d 588, 591 n.3 (Ct. App. 2022) (viewing favorably a district court's decision to incorporate its previous best interest findings by reference into its most recent custody order).

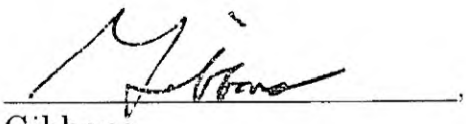
omission, considering education is one of a child's basic needs, as contemplated by the minor guardianship statutes. NRS 159A.061(4)(a)(5).

Thus, although Kristin was not required to demonstrate substantial enhancement, we conclude that the district court abused its discretion when it summarily determined that she had not shown it. Not only was the district court's conclusion supported by minimal explanation and not tied to specific evidence in the record, but it also overlooked the controlling parental preference doctrine and declined to consider Kristin's argument that P.S.'s education and social interactions would be substantially enhanced by termination. *See Rico*, 121 Nev. at 701, 120 P.3d at 816 (reasoning that this court must be satisfied that the district court came to its conclusions for the appropriate reasons). Further, the guardians do not challenge the evidence on appeal.

Consequently, we conclude that Kristin has met her burden to terminate the guardianships because compelling and undisputed evidence supports that there has been a material change of circumstances, and that Kristin is suitable. Further, considering the parental preference doctrine and the lack of rebuttal or any findings to overcome its presumption in favor of Kristin, we conclude in the alternative, that substantial enhancement was demonstrated by Kristin. Thus, on remand, the district should address only logistical issues that were previously un-litigated, including but not limited to the children's transition from living with their grandparents in Nevada to living with Kristin in Colorado, as well as grandparent visitation moving forward.

Accordingly, we

ORDER the district court judgment REVERSED and REMANDED to grant the petition for termination of the guardianships and to implement the children's timely transition to Kristin's custody.[22]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Kriston N. Hill, District Judge
Kristin S.
Amens Law, LLC
Hillewaert Law Firm
Gerber Law Offices, LLP
Elko County Clerk

[22]Insofar as the guardians have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief. Further, we deny Kristin's motion for appointment of counsel.