IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF: A. A L R.

DONNA GILMORE,
Appellant,
vs.
MONICA FEARS; AND A. A L R.,
Respondents.

No. 88396-COA

ORDER OF AFFIRMANCE

Donna Gilmore appeals from an order of the district court denying a petition for guardianship of a minor. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

On May 15, 2023, Gilmore filed a petition for guardianship of her three-year-old granddaughter. Gilmore asserted that the child's mother, respondent Monica Fears, was unable to properly care for the child because she was homeless, lacked a vehicle, and had substance abuse issues. Gilmore also requested a temporary guardianship over the child until a final determination of her guardianship petition. Gilmore later filed an amended petition in which she stated that the child had been residing with her since May 2022 and reiterated that Fears was unable to properly care for the child as Fears was often homeless, lacked steady employment, and had a substance abuse problem. Gilmore also stated that the child's father was incarcerated and unable to care for the child.

The district court later held a hearing and both Gilmore and Fears appeared at that hearing. Fears opposed Gilmore's petition and contended that Gilmore's allegations were not accurate. The district court

25-02174

set an evidentiary hearing concerning the guardianship issues but granted Gilmore's request for temporary guardianship of the child until resolution of her petition.

The district court subsequently held an evidentiary hearing. A guardianship compliance administrator testified concerning the investigation into the child's circumstances and noted that an investigation into Fears' residence had not been completed. Both Gilmore and Fears also testified at the hearing concerning the child and their care of the child. In particular, Fears testified concerning her living and financial situation and explained that she was employed and had a residence. Fears also denied that she had substance abuse problems. After presentation of the evidence, the district court announced that Gilmore failed to meet her burden to prove by clear and convincing evidence that her request to be appointed guardian of the child was necessary and directed Gilmore to return the child to Fears.

The district court subsequently entered a written order denying Gilmore's petition for guardianship. The court reiterated that Gilmore failed to prove by clear and convincing evidence that her request for guardianship of the child was necessary. The court found that Gilmore failed to demonstrate that the child resided with her for the six-month period immediately preceding the filing of the petition such that NRS 159A.061(4)(c)'s rebuttable presumption that the child's parent was unfit did not apply to this matter. In addition, the district court considered the NRS 159A.061(3) factors and found that those factors did not warrant Gilmore's request for guardianship of the child as Gilmore did not demonstrate that Fears was unsuitable or unqualified to care for the child, including that the evidence did not establish that Fears had a drug or alcohol problem. This appeal followed.

First, Gilmore argues the district court abused its discretion by denying her petition for guardianship. Gilmore contends the court should have found the rebuttable presumption from NRS 159A.061(4)(c) applied because the child resided with Gilmore for more than six months prior to the filing of the petition. Gilmore further asserts that the court abused its discretion by finding that she failed to demonstrate Fears was unable to meet the child's basic needs or that Fears was unqualified or unsuitable to care for the child, as she contends the evidence showed that Fears did not have a stable residence and failed to ensure the child received appropriate medical care.

"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). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (quotation and citation omitted). In addition, this court defers to the district court's factual findings and must uphold them if they are not clearly erroneous and are supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). 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).

When seeking a guardianship, "[t]he petitioner has the burden of proving by clear and convincing evidence that the appointment of a guardian of the person, of the estate, or of the person and estate is necessary." NRS 159A.055(1). Moreover, "[i]f the court finds that the proposed protected minor is not in need of a guardian, the court shall

dismiss the petition." NRS 159A.054(1). "In determining whether to appoint a guardian of the person or estate of a proposed protected minor and who should be appointed, the court must always act in the best interests of the proposed protected minor," NRS 159A.061(9), but "the best interest of the child is usually served by awarding [the child's] custody to a fit parent," *Hudson v. Jones*, 122 Nev. 708, 711, 138 P.3d 429, 430-31 (2006) (internal quotations and brackets omitted).

At the evidentiary hearing, Gilmore testified that she was the child's grandmother and often babysat the child while Fears was at work. Gilmore testified that Fears had allowed other people to babysit the child but Gilmore explained that she did not know those people and did not agree with Fears' decision to have those people babysit. Gilmore further explained she did not like Fears' friends and coworkers and did not think they should be around the child. Gilmore also stated the child resided with her since May 2022. In addition, Gilmore stated that shortly before she filed the petition in May 2023, she thought Fears had grown thin and was concerned Fears was using drugs or had a mental health issue.

Fears testified that the child had not resided with Gilmore since May 2022 but rather that Gilmore had merely been the child's babysitter until May 2023. Fears explained that she previously worked night shifts at a club and Gilmore had watched the child during those shifts but that the child had been with her when she was not working. Fears also explained that in May 2023, she suffered a fainting spell, which was later diagnosed as a syncope, while at work and had been admitted to the hospital. Gilmore then filed the petition for guardianship and thereafter withheld the child from Fears. In addition, Fears testified she did not have a substance abuse problem. Moreover, Fears explained she was employed and had a residence.

She stated she works a full-time job as a server at a restaurant and also works part-time as a tattoo artist. Fears further explained that she was able to care for the child and provide for the child's needs. Fears stated she had taken the child to medical providers when the child was ill or needed medical attention and that she would take the child to medical visits as necessary in the future. Fears also testified she had a plan for care for the child while she was at work, as her housemate was willing and able to babysit.

In consideration of the evidence presented at the evidentiary hearing, the district court made several findings concerning whether a guardianship was necessary. The court found that the child's father was incarcerated and that Fears was the child's custodial parent. *See* NRS 159A.061(3)(a). The court also noted Fears had difficulty finding well-paid jobs and sometimes struggled with her residential situation but there was no evidence that Fears was unable to provide the child with her basic needs, such as food, shelter, clothing, and medical care. *See* NRS 159A.061(3)(b). In addition, the court found that Gilmore did not establish that Fears has a problem with the use of drugs or alcohol. *See* NRS 159A.061(3)(c). Finally, the district court found that there was no evidence Fears had been convicted of crimes or had engaged in acts of domestic violence. *See* NRS 159A.061(3)(d), (e), (f).

The district court also considered application of NRS 159A.061(4)(c), which presumes a parent is unsuitable to care for his or her child if the child has been out of the parent's care, custody, and control for the six months preceding the filing of a petition for guardianship. However, the court concluded that Gilmore failed to prove that the child had not been in Fears' care and custody for the six-month period immediately preceding

the filing of the petition. The court found that Fears requested Gilmore watch the child while Fears worked overnight shifts, which did not constitute the sort of abandonment of a child that would trigger NRS 159A.061(4)(c)'s rebuttable presumption that a parent is unsuitable to care for a minor child.

In light of the foregoing, the district court found that Gilmore failed to meet her burden of establishing by clear and convincing evidence that Fears was unsuitable to parent the child or that her request for appointment as the child's guardian was necessary, *see* NRS 159A.055(1), and accordingly denied the petition. Considering the evidence presented at the evidentiary hearing, the district court's factual findings are supported by substantial evidence. *See Ogawa*, 125 Nev. at 668, 221 P.3d at 704.

On appeal, Gilmore challenges the district court's findings and contends it should have found that Fears is not a suitable parent and that the child resided with Gilmore since May 2022. However, generally this court does not reweigh the evidence or the district court's credibility determinations on appeal. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). Gilmore also fails to demonstrate that the district court's decisions were arbitrary or capricious or exceeded the bounds of law or reason. *See Skender*, 122 Nev. at 1435, 148 P.3d at 714. Accordingly, we discern no abuse of discretion by the district court in its decision to deny the petition for guardianship. *See In re Guardianship of L.S. & H.S.*, 120 Nev. at 163, 87 P.3d at 525.

Second, Gilmore argues that the district court exhibited bias by asking demeaning questions concerning Gilmore's decision to withhold the child from Fears and by using a condescending tone toward Gilmore during the hearing. Gilmore also argues that the court closed its mind and did not

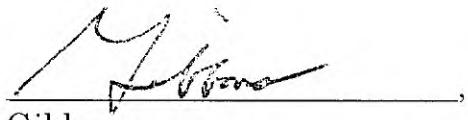
listen to all of the evidence before reaching its decision. We conclude that relief is unwarranted on this point because Gilmore has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions or actions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022).

Moreover, the record demonstrates that the district court listened to the testimony and considered the evidence presented at the evidentiary hearing in the course of making its decision. In addition, as discussed previously, the court's guardianship determination was supported by the evidence presented at the evidentiary hearing. Accordingly, the record does not show that the court had closed its "mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281,

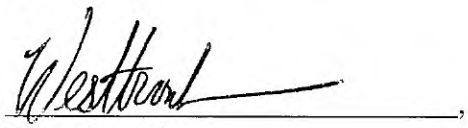
1283, 968 P.2d 1169, 1171 (1998). Therefore, we conclude that Gilmore is not entitled to relief based on this argument. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Dawn Throne, District Judge, Family Division
Gastelum Law
Legal Aid Center of Southern Nevada, Inc.
Monica Fears
Eighth District Court Clerk

[1]Insofar as Gilmore raises 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.