

***Guardianship of L.S. and H.S v. Valley Hospital*, 120 Nev. Adv. Rep. 18, 87
P.3d 521 (2004).¹**

PARENTAL RIGHTS – GUARDIANSHIP

Summary

The parents of a minor child appealed the appointment of temporary guardianship of their child to the hospital administrator and hospital. Valley Hospital petitioned the court because the parents of the minor child refused to consent to a blood transfusion, required as a life saving measure, for religious reasons.

Disposition/Outcome

The Nevada Supreme Court, as a matter of first impression, held that “the parents’ substance due process rights were not violated” when the district court granted temporary guardianship.² The court further held that the procedures identified in Nevada Revised Statute 159.052 were appropriate when making such an application.³

Factual and Procedural History

Twin boys were born on June 11, 2001. Minor H.S. was stillborn as a result of complications during pregnancy caused by twin-to-twin transfusion syndrome. However, doctors were able to revive him after birth. H.S. was critically ill and because of the child’s anemic condition prior to birth, doctors monitored his blood platelet count. The doctors feared that the minor child’s life was in jeopardy when his blood platelet count dropped significantly. The doctors and hospital also knew that the child’s parents objected to a life saving blood transfusion due to religious convictions.

On June 18, 2001, Valley Hospital petitioned the Eight Judicial District Court for temporary guardianship pursuant to NRS 159.052 and guardianship under NRS 159.044.⁴ “The petition was based on the substantial and immediate risk of physical harm, potential death, and the emergency circumstances surrounding the health and well being of both children and requested a “special” guardianship to “provide for the medical care of the twin children.”⁵ The district court granted temporary guardianship.⁶ The court then ordered that the parents be notified as soon as practicable and set a hearing for the following morning.⁷ After the hearing, the court extended the guardianship of H.S. for 30 days but denied temporary guardianship of L.S. because in all likelihood L.S. would not be in need of a blood transfusion.⁸

¹ By James Davis.

² *Guardianship of L.S. and H.S. v. Valley Hospital*, 87 P.3d 521, 526 (2004).

³ *Id.* at 527.

⁴ Although the district court relied on the facts offered in support of NRS 159.044, the Nevada Supreme Court found this to be harmless error since the arguments presented applied to NRS 159.052 as well.

⁵ *Guardianship of L.S.* 87 P.3d at 522–23 (internal quotes omitted).

⁶ *Id.* at 523.

⁷ *Id.*

⁸ *Id.*

Issue

May a court grant temporary guardianship of a minor in need of a blood transfusion notwithstanding the parent's objections to the blood transfusion for religious reasons?

Commentary

Yes, as long as the petitioner can provide sufficient evidence to establish that a minor child's life would be in danger without the blood transfusion, temporary guardianship is appropriate.

State of Law Before *Guardianship of L.S.*

This is a case of first impression in Nevada.

Law in Other Jurisdictions

Other jurisdictions are split on the issue. Nevada has followed other jurisdictions that provide for similar protections for children.⁹ No jurisdictions have denied temporary guardianship when a child's life is in immediate danger. However, Pennsylvania has denied temporary guardianship in favor of religious beliefs when the minor's life was not immediately imperiled.¹⁰ In addition, an Illinois court also denied temporary guardianship when a minor was in need of the blood transfusion that was objected to because of religious beliefs.¹¹ However, in the Illinois case, the minor 17-year-old child was the one that objected to the blood transfusion and the court determined that the child had achieved the required maturity to make her own medical decisions.¹² However, under similar circumstances, a Texas court refused to follow Illinois and denied the wishes of a 16-year-old minor.¹³

Effect of *Guardianship of L.S.* on Current Law

The Court's interpretation of NRS 159.052 provides an avenue for hospitals and care providers to petition the court for temporary guardianship of minor children if their life is in danger and the parents are either not available to provide consent or refuse to consent to the blood transfusion based on religious convictions. Furthermore, when a court grants temporary guardianship, the parents must be notified soon as practicable and a hearing conducted. During the hearing, the court must balance the parents' rights with those of the child. In addition, the court may consider the impact of the decision on the integrity of the medical profession.

⁹ See 59 AM. JUR. 2d *Parent and Child* § 19 (2004); *Muhlenberg Hospital v. Patterson*, 320 A.2d 518 (N.J. 1974); *J.V. v. State*, 516 So. 2d 1133 (Fla. Dist. Ct. App. 1st Dist 1987); *Matter of McCauley*, 565 N.E. 2d 411 (Mass. 1991).

¹⁰ *In re Green*, 292 A.2d 387, 392 (Pa. 1972).

¹¹ *In re E.G.*, 549 N.E. 2d 322 (Ill. 1989).

¹² *Id.* at 327 – 28.

¹³ *O.G. v. Baum*, 790 S.W.2d 839 (Tex. 1990)

Remaining Questions

The court clearly provides a means for a hospital to provide life saving blood transfusion to minor children, over the objection of the parents and when the children cannot speak for themselves. However, the court has not addressed circumstances when the minor is of sufficient age and possesses sufficient maturity to make such a decision on their own.

Conclusion

In emergency situations, the procedures identified in Nevada Revised Statute 159.052 are appropriate when hospitals or caregivers make an application for temporary guardianship of minor children. In order to protect the parents substantive due process rights, notification must be made and a hearing conducted as soon as practicable.