

**IN THE COURT OF APPEALS
FOR THE STATE OF NEBRASKA**

Case No. A-25-792

**In the Matter of the Guardianship of
NATALY SARAI FLORES GALEAS, a minor child**

**APPEAL FROM THE COUNTY COURT OF LANCASTER COUNTY,
NEBRASKA**

The Honorable Holly J. Parsley, County Court Judge

**BRIEF OF *AMICUS CURIAE* UNIVERSITY OF NEBRASKA
IMMIGRATION CLINIC**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae, University of Nebraska College of Law Immigration Clinic, is a course at the College of Law in which senior law students, under faculty supervision, represent clients in various matters, including but not limited to juvenile, guardianship, and immigration cases. *Amicus curiae* has received consent from Appellant to file this brief.

STATEMENT OF JURISDICTION

Appellate jurisdiction is proper under NEB. REV. STAT. § 30-1601. *Amicus* otherwise accepts and adopts Appellant's Statement of Jurisdiction.

STATEMENT OF THE CASE

Amicus accepts and adopts Appellant's Statement of the Case.

ASSIGNMENT OF ERROR

Amicus accepts and adopts Appellant's first Assignment of Error. Appellant's second Assignment of Error is beyond the scope of *Amicus'* brief.

SUMMARY OF THE ARGUMENT

The trial court erred when it held that Appellant's evidence at trial failed to meet the legal tests in NEB. REV. STAT. § 30-2608(d) and § 30-2611(b) and therefore refused to appoint a guardian for the minor child. The 16-year-old minor child consented to the guardianship. The parents of the minor child, after having been given proper notice of the proceedings, did not object to the guardianship. The consulate of the country from which the minor child came, which was notified of the proceedings, did not object to the guardianship. There was no finding by the trial court that the proposed guardian was unqualified. And there was no finding – as there could not be, based on the evidence at trial – that it would not be in the best interests of the minor child for the proposed guardian to be appointed. Yet in the face of this evidence, the trial court refused to appoint a guardian for the minor child. The rationale used by the trial court to deny the guardianship petition reads a requirement into the guardianship statutes that

simply does not exist. That rationale would prevent a court from ever establishing a guardianship for a minor child, even if the parents consent to that guardianship, so long as one of the parents had some tangential ongoing connection to the minor child. Such a holding flies in the face of the clear language of the statutes, legislative intent, and good public policy.

PROPOSITIONS OF LAW

I.

A court may appoint a guardian for a minor child if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. NEB. REV. STAT. § 30-2608(d).

II.

Unless an exception applies, the burden of proof in civil cases requires only the greater weight of the evidence. *Burgardt v. Burgardt*, 304 Neb. 356, 362, 934 N.W.2d 488, 493 (2019).

III.

The greater weight of the evidence means evidence sufficient to make a claim more likely true than not true. *Burgardt v. Burgardt*, 304 Neb. 356, 362, 934 N.W.2d 488, 493-494 (2019).

IV.

The court may appoint as guardian any person whose appointment would be in the best interests of the minor and shall appoint a person nominated by a minor 14 years or older, unless such an appointment is contrary to the minor's best interests. NEB. REV. STAT. § 30-2610.

V.

Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 30-2608 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. NEB. REV. STAT. § 30-2611(b).

VI.

The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and: (1) the parents consent; (2) all parental rights have been terminated; or (3) the parents are unwilling or unable to exercise their parental rights. Unif. Probate Code § 5-204(a) (amended 2019).

VII.

[T]he parental preference principle must be applied to initially determine whether to appoint a guardian *over a parent's objection*. *In re Elizabeth H.*, 17 Neb. App. 752, 761, 771 N.W.2d 185, 193 (2009) (emphasis added).

VIII.

One purpose of creating guardianships is to enable parents to “take those steps necessary to better their situation so they can resume custody of their child in the future.” *In re Guardianship of Cameron D.*, 14 Neb. App. 276, 706 N.W.2d 586 (2005).

STATEMENT OF FACTS

Amicus accepts and adopts Appellant's Statement of Facts.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT FAILED TO APPOINT ROBIN DAVID FLORES GALEAS AS GUARDIAN FOR THE MINOR CHILD.

Succinctly put, the trial court in this matter, in refusing to appoint a guardian for the minor child, strayed from the clear language of the statutes governing appointment of guardians for minor children. The statutory requirements, as set forth both in Neb. Rev. Stat. § 30-2608(d), and in Neb. Rev. Stat. § 30-2610, were clearly met to allow the trial court to appoint a guardian in this case. But the trial court seemed to be hung up on the factual context leading to the filing of the guardianship petition. On page 4 of its opinion, the trial court stated: “The issue of whether or not the court has sufficient evidence to support the appointment of a guardian for a minor child *who is an unaccompanied alien child* is not unique to this court. The challenge for the court in deciding the case stems, in part, from the lack of legal precedent.” (T49) (emphasis added).

The trial court's concerns were both misplaced and irrelevant. The statutory provisions relating to the appointment of a guardian for a minor child are straightforward and certainly do not turn on whether the child is “an unaccompanied alien child.” NEB. REV. STAT. § 30-2611(b) provides that a court **shall** appoint a guardian for a minor child if the petitioner demonstrates that the

following factors are met: (1) a qualified person seeks the appointment, (2) the required statutory notices have been given, (3) all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order, and (4) the best interests of the minor will be served by the appointment of a guardian. Where no biological parent of the minor child opposes such an appointment, the burden of proof in such a case is the general civil burden of proof – preponderance of the evidence. That burden of proof simply requires that the petitioner demonstrate that the statutory requirements are met by the greater weight of the evidence produced at trial in this matter, since no exception to this general burden of proof applies in cases of this type. *See, e.g., Burgardt v. Burgardt*, 304 Neb. 356, 934 N.W.2d 488 (2019). The basis of the trial court’s refusal to appoint a guardian was its holding that the petitioner failed to present sufficient evidence to meet factor (3) above. (T47). In so holding, the trial court erred as a matter of law.

A. The clear statutory language in § 30-2608(d), as informed by language in the Uniform Probate Code, required the trial court to appoint the proposed guardian in this case, and legislative history further underscores the trial court’s legal error.

The trial court’s analysis should have begun and ended with a plain reading of the language in NEB. REV. STAT. § 30-2608(d). That statutory language is straightforward. And the evidence presented at trial in this matter certainly demonstrated, by a preponderance of the evidence, that all of the statutory requirements were met.

The legal analysis in this case begins and ends, as it must, with the language of the guardianship statutes. NEB. REV. STAT. § 30-2202 states that the Nebraska probate code “shall be liberally construed to simplify and clarify the law concerning...minors [and]...to make uniform the law among the various jurisdictions.” An examination of the history of the Uniform Probate Code (hereinafter “UPC”) and Nebraska’s deliberate incorporation of its provisions into Nebraska’s probate code reveal the Legislature’s intent regarding the guardianship statutes in play in this case.

In 1974, the Nebraska Legislature adopted the Nebraska Probate Code through LB 354, an act modeled on the UPC. DONALD H. KELLEY, *Probate Up-Date*, INSTITUTE ON 1974 REGENT DEVELOPMENTS IN NEBRASKA LAW

LEGISLATION AND DECISIONS, Green pages (Sept. 13, 1974). The procedures and substantive provisions related to appointment of guardians of minors were one of nine subjects addressed in LB 354. *Id.* The framework adopted by the Nebraska Legislature aligns with the UPC's standards for appointment of guardians for minors, which authorize courts to appoint a guardian for a minor child if there has been a lapse in parental custody, either by law or in fact.

The UPC allows a minor or a person interested in a minor child's welfare to petition for the appointment of a guardian for such a minor child. UPC § 5-204(a). More specifically, the UPC provides that a court may appoint a guardian for a minor if the court finds the appointment is (1) in the child's best interest, and either (2) the parents consent, or (3) all parental rights have been terminated, **or** the parents are unwilling or unable to exercise their parental rights. UPC § 5-204(b) (emphasis supplied). In the situation mentioned in subsection (3) above, the UPC directs courts to evaluate specific criteria to determine whether a parent is capable of acting on behalf of their minor child, reinforcing the notion that guardianships should function as a protective measure when parental care is unavailable, rather than as a substitute for terminating parental rights. DAVID M. ENGLISH, 29 U. MIAMI HECKERLING INSTITUTE ON ESTATE PLANNING ¶ 503 (2025 University of Miami).

B. The Facts of This Case Meet the Meaning of “Suspended by Circumstances”

Although Nebraska case law does not define what it means for parental rights to be “suspended by prior or current circumstances,” statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of words which are plain, direct, and unambiguous. *State v. McColery*, 301 Neb. 516, 522 (2018). The facts of this case met that legal standard, and it was error for the trial court to find that they did not. In this case, the parents of Nataly, the minor child, allowed her to travel to the United States from Honduras on her own when she was only 14 years old, exposing her to many dangers. (10:22-24). Nataly's parents, who live in Honduras and have no plans of coming to the United States, consented to her coming to the United States to live with her brother. (22:7-10). It is logical to conclude that Nataly's parents knew, when they permitted Nataly to come to the United States, that they would not be able to exercise their parental rights, given the distance, the

language barriers, and the lack of reliable communication. Prior to coming to the United States, Nataly lived alone with her mother in Honduras, who, as Nataly testified at trial, could not protect her from the gang members living in her neighborhood. (21:18-20). Further, Nataly's parents have not provided any financial support to Nataly or her brother with whom she is living since she came to the United States. (10:18-21).

The facts of this case fit the plain and ordinary meaning of "suspension of parental rights by prior and current circumstances." The trial court erred in finding there was not sufficient evidence to meet this definition.

C. The Cases Relied on by the Trial Court to Justify its Holding are Factually Distinct from Those in this Case.

Of course, the superior rights of biological parents necessarily trump a pure "best interest of the child" test in custody cases. As the Nebraska Supreme Court has repeatedly stated, the "parental preference principle" establishes a rebuttable presumption that the best interests of a child are served by placing custody of a minor child with the child's parent. *See, e.g., In re Guardianship of D.J.*, 268 Neb. 239, 682 N.W.2d 238 (2004). But that legal principle has always been applied in factual settings in which a parent is resisting having custody of their child placed with a third party – not in cases where the parents either affirmatively consent to having a child placed with a third party or, having been given proper notice of proceedings to place a child with a third party, do not object to such a placement. *See, e.g., In re Elizabeth H.*, 17 Neb. App. 752, 761, 771 N.W.2d 185,193 (2009), holding that the parental preference principle must be applied to initially determine whether to appoint a guardian *over a parent's objection* (emphasis added). To adopt a contrary rule would actually undercut a biological parent's ability to voluntarily place their child, or allow their child to be placed, with a third party when the parent believes it is in the child's best interests to do so. Such a rule undermines a parent's ability to make custody arrangements the parent believes is in the child's best interest.

The trial court cited several cases it believed justified its refusal to appoint a guardian in this case. But in nearly all of the cases cited by the trial court, at least one of the minor children's biological parents was resisting the appointment of a guardian, contending that they were not unfit to be deprived of custody of their own children. Following is a list, in reverse chronological order, of the cases

cited by the trial court to justify its denial of the petition in this matter, along with a brief explanation of the factual setting in each case.

In re Guardianship of Issaabela R., 27 Neb. App. 353, 932 N.W.2d 749 (2019) – parental preference doctrine did not apply where DHHS sought to terminate *grandmother’s* guardianship of minor child.

In re Interest of Angelica L., 277 Neb. 984, 767 N.W.2d 74 (2009) – juvenile case in which the State sought to terminate biological mother’s parental rights over her objection.

Farnsworth v. Farnsworth, 276 Neb. 653, 756 N.W.2d 522 (2008) – trial court erred in failing to consider biological father’s superior right to custody when denying father’s desire to obtain custody of his minor children over the objection of maternal grandparents.

In re Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007) – trial court erred in terminating biological mother’s parental rights over mother’s objection.

In re Interest of Aaron D., 269 Neb. 249, 691 N.W.2d 164 (2005) – juvenile case in which the State sought to terminate biological mother’s parental rights over her objection.

In re Guardianship of Cameron D., 14 Neb. App. 276, 706 N.W.2d 586 (2005) – evidence was insufficient to establish that biological mother was unfit to have custody and trial court therefore erred in refusing to terminate guardianship.

In re Guardianship of D.J., 268 Neb. 239, 682 N.W.2d 238 (2004) – it was appropriate to terminate grandmother’s guardianship over minor child upon request of biological mother where biological mother was not shown to be unfit.

Uhing on Behalf of Jones v. Uhing, 241 Neb. 368, 488 N.W.2d 366 (1992) – trial court erred in failing to recognize biological mother’s superior right to custody where she sought return of custody of her minor child from grandmother.

D. Where Biological Parents are not Contesting Custody, the Legal Test is a Simple one of Best Interests of the Child.

Ironically, one of the cases the trial court cited in its order denying the guardianship petition actually stands for the proposition urged by the Appellant and *Amicus* in this case. In *In re Estate of Jeffrey B.*, 268 Neb. 761, 688 N.W.2d 135 (2004), the court held that where the custody dispute was between two non-parents (testamentary guardians versus appointed successor testamentary guardians), the legal standard for removal of the testamentary guardians was “best

interest of the ward.” In other words, no heightened finding of unfitness was necessary where no biological parent was involved in the custody case – a court simply considers what is in the best interest of the minor child.

Indeed, the facts of this case are much more analogous to those in *Wirsig v. Scott, et al*, 79 Neb. 322, 112 N.W. 655 (1907) than to any of the cases cited by the trial court. In that case, the parents consented to the appointment of a guardian for their minor children who lived in a different school district than the parents, so that the children could attend school in that district. The court held that, where the parents consent to the appointment of a guardian for their minor children, unsuitableness of the parents is not required to be shown. *Id.* at 322, 112 N.W. 655 at 655. The *Wirsig* court stated that “we know of no rule of law which will prevent the parents from voluntarily surrendering custody and control of their children to a suitable guardian, if they choose to do so. . .” *Id.* Although this case was obviously decided before Nebraska’s current guardianship statutes were adopted by the Legislature, the principle it articulates is still sound – parents may, by choice or circumstances, allow their children to reside with another adult and, if they do so, entry of a guardianship is both permissible and valid. That is the very definition of “parental rights of custody being suspended by circumstances.”

CONCLUSION

The trial court’s interpretation of NEB. REV. STAT. § 30-2608(d), in light of both the language of the governing statutes and case law, was improper. For the foregoing reasons, *Amicus* requests that this Court reverse the holding of the trial court and remand this matter to the trial court with directions to grant the petition for appointment of a guardian. *Amicus* also requests that this Court direct the trial court, upon remand, to consider the request for special findings sought by the guardian in connection with the guardianship petition.

DATED this 7th day of May, 2026.

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Certificate of Compliance

I hereby certify, pursuant to § 2-103(C)(4) of the Nebraska Court Rules of Appellate Practice, that the Microsoft 365 MSO (Version 2604 Build 16.0.19929.20086) 64-bit version of Word was used to prepare this brief, that this brief complies with the typeface requirements of § 2-103, and that the total number of words in the brief is 3428.

By: /s/ Kevin Ruser

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CERTIFICATE OF SERVICE

That on the 7th day of May, 2026, I caused a true and correct copy of this Brief of Amicus Curiae to be served by First-Class U.S. Mail, postage prepaid to the following:

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That on the 7th day of May, 2026, I caused a true and correct copy of this Brief of Amicus Curiae to be sent by First-Class Mail International through the U.S. Postal Service to the following:

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Certificate of Service

I hereby certify that on Thursday, May 07, 2026 I provided a true and correct copy of this *Brief of Amicus Curiae* to the following:

Gloria Galeas Vasquez (Self Represented Litigant) service method: **First Class Mail**

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