

**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 APPELLANT ROBIN DAVID FLORES GALEAS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF JURISDICTION.....	6
STATEMENT OF THE CASE.....	6
1. <u>Nature of the Case</u>	6
2. <u>Issues Tried in Court Below</u>	6
3. <u>How the Issues Were Decided</u>	6
4. <u>Standard of Review</u>	7
ASSIGNMENTS OF ERROR	7
SUMMARY OF ARGUMENTS	7
PROPOSITIONS OF LAW	8
STATEMENT OF FACTS	9
ARGUMENT.....	14
I. THE TRIAL COURT ERRED BY FAILING TO APPOINT ROBIN DAVID FLORES GALEAS AS THE GUARDIAN OF THE MINOR CHILD, NATALY SARAI FLORES GALEAS.....	14
II. THE TRIAL COURT ERRED BY FAILING TO MAKE THE SPECIAL FINDINGS OF FACT REGARDING THE BEST INTERESTS OF THE MINOR CHILD, INCLUDING (1) REUNIFICATION WITH THE MINOR CHILD’S PARENTS IS NOT VIABLE DUE TO ABUSE AND NEGLECT; AND (2) THAT IT WOULD NOT BE IN THE MINOR CHILD’S BEST INTEREST TO RETURN TO HONDURAS.....	32
CONCLUSION.....	38

TABLE OF AUTHORITIES

CASES

<i>Barreto Nieves v. East Coast Water Sports, LLC</i> , 213 D.P.R. 852 (P.R. 2024) ...	19
<i>De Mateo v. Mateo-Cristobal</i> , 27 Neb. App. 969, 938 N.W.2d 372 (2020)	38
<i>De La Guerra v. Packard</i> , 17 Cal. 182, 189 (Cal 1860).....	19
<i>Gomez v. Savage</i> , 254 Neb. 836, 580 N.W.2d 523 (1998)	35
<i>Guardianship of Saul H.</i> , 514 P.3d 871, 885 (Cal. 2022).....	36
<i>Hernandez v. Dorantes</i> , 314 Neb. 905, 994 N.W.2d 46 (2023)	35
<i>In re Domingo C.L.</i> , 2017 WL 3769419, 2017 Tenn. App. LEXIS 590 (Tenn. App. Aug. 30, 2017)	36
<i>In re Estate of Fuchs</i> , 297 Neb. 667, 900 N.W.2d 896 (2017).....	19
<i>In re Estate of Jeffrey B.</i> , 268 Neb. 761, 688 N.W.2d 135 (2004))	21
<i>In re Gabriel B.</i> , 31 Neb. App. 21, 976 N.W.2d 206 (2022).).....	25
<i>In re Guardianship and Conservatorship of Brandon P.</i> , No. A-02-730, 2003 WL 21279594, 2003 Neb. App. LEXIS 153 (June 3, 2003).....	23
<i>In re Guardianship of Brenda B.</i> , 13 Neb. App. 618, 698 N.W.2d 228 (2005)	22
<i>In re Guard. of Cameron D.</i> , 14 Neb. App. 276, 706 N.W.2d 586 (2005).....	21
<i>In re Guard. of Carlos D.</i> , 300 Neb. 646, 915 N.W.2d 581 (2018).....	8, 14, 33, 36
<i>In Re Guardianship of Copenhaver</i> , 865 P.2d 979 (Idaho 1993)	24
<i>In re Guardianship of D.J.</i> , 268 Neb. 239, 682 N.W.2d 238 (2004)...16, 17, 21, 34	
<i>In re Guard. of Elizabeth H.</i> , 17 Neb. App. 752, 771 N.W.2d 185 (2009)	18, 24
<i>In re Guardianship of Heather L.</i> , A-03-1048, 2004 WL 2158139, 2004 Neb. App. LEXIS 254. *18 (Sept. 28, 2004)	17, 18, 23, 25
<i>In re Guardianship of Issabela R.</i> , 27 Neb. App. 353, 932 N.W.2d 749 (2019)...21	
<i>In re Guardianship of Jamie G.</i> , No. A-16-895, 2017 WL 4269830, *4, 2017 Neb. App. LEXIS 184, *8 (Sept. 26, 2017).....	28
<i>In re Guardianship of Lavone M.</i> , 9 Neb. App. 245, 610 N.W.2d 29 (2000).....	17

<i>In re Guardianship of Robert D.</i> , 269 Neb. 820, 696 N.W.2d 461 (2005).....	20
<i>In re Guardianship of Tomas J.</i> , 318 Neb. 503, 18 N.W.3d 503 (2025) .7, 8, 16, 28	
<i>In re Guardianship of Zyla</i> , 251 Neb. 163, 555 N.W.2d 768 (1996)	16, 19
<i>In re Interest of Angelica L.</i> , 277 Neb. 984, 767 N.W.2d 74 (2009)	20, 21
<i>In re Interest of Luis G.</i> , 17 Neb. App. 377, 764 N.W.2d 648 (2009).....	38
<i>In re Jordan M.</i> , 20 Neb. App. 172, 820 N.W.2d 654 (2012)	16, 22
<i>In re Nicole M.</i> , 287 Neb. 685, 844 N.W.2d 65 (2014)	22
<i>In re Penning</i> , 930 A.2d 144 (D.C. 2007)	19
<i>In re Steven S.</i> , 27 Neb. App. 831, 936 N.W.2d 762 (2019).....	22
<i>In re V.K.S.</i> , 63 P.3d 1284 (Utah App. 2003)	20
<i>Marcelina M-G v. Israel S.</i> , 973 N.Y.S.2d 714 (N.Y. App. Div. 2d Dept. 2013) .	36
<i>Matter of Guardianship of Aschenbrenner</i> , 597 P.2d 1156, 1161 (Mont. 1979) ..	25
<i>Matter of Guardianship Petition of Lupe C.</i> , 812 P.2d 365, 369 (N.M. 1991).....	25
<i>Meija Ramirez v. Mercado Baustista</i> , No. A-19-908, 2020 WL 2730967, 2020	
LEXIS 159 (May 26, 2020)	38
<i>Midwest Neurosurgery, P.C. v. State Farm Insurance Companies</i> , 268 Neb. 642,	
686 N.W.2d 572 (2004)	18
<i>Romero v. Perez</i> , 205 A.3d 903 (Md. 2019).....	36
<i>Sabino v. Ozuna</i> , 305 Neb. 176, 182-83. 939 N.W.2d 757, 762 (2020).....	35
<i>Stansell v. Superior Court</i> , 607 P.2d 959 (Ariz.1980).....	19, 20

STATUTES

8 U.S.C. § 1101.....	29, 33, 34
NEB. REV. STAT. § 24-517	34
NEB. REV. STAT. § 28-705	36
NEB. REV. STAT. § 28-710	35
NEB. REV. STAT. § 30-333	26
NEB. REV. STAT. § 30-2220	26
NEB. REV. STAT. § 30-2601.	27

NEB. REV. STAT. § 30-2604.	8, 27, 28
NEB. REV. STAT. § 30-2608	7, 9, 18, 22, 30, 31
NEB. REV. STAT. § 30-2611	9, 26, 30, 31
NEB. REV. STAT. § 30-2613	31
NEB. REV. STAT. § 30-2614	14
NEB. REV. STAT. § 30-2620	27
NEB. REV. STAT. § 43-245	36
NEB. REV. STAT. § 43-1238.	6, 7, 10, 32, 34, 35, 38
NEB. REV. STAT. § 43-2101	8, 14
NEB. REV. STAT. § 43-2921	17
NEB. REV. STAT. § 43-3801	26

REGULATIONS

8 C.F.R. § 204.11	16
45 CFR § 410.1201	15
45 C.F.R. § 410.1202	15
45 C.F.R. § 410.1203	15
45 C.F.R. § 410.1205	16
45 C.F.R. § 410.1209	16
45 C.F.R. § 410.1210	16

STATEMENT OF JURISDICTION

Appellate jurisdiction is proper under NEB. REV. STAT. § 25-1911. The Judgment appealed from is a final Order, determining the issues before this Court.

- (i) The date of entry of the initial Judgment for the matter to be reviewed was October 7, 2025. (T46-55).
- (ii) The date of filing any motion claimed to toll the time within which to appeal: None.
- (iii) The date of filing of the Notice of Appeal, and the date of depositing the docket fee: October 20, 2025. (T56-58).
- (iv) Basis for interlocutory appeal: Not applicable.

STATEMENT OF THE CASE

1. Nature of the Case.

This case involves the petition for the appointment of a guardian, with a request for special findings regarding the best interests of the minor, including: (1) reunification with the minor child's parents are not viable due to the abuse, neglect and abandonment the minor child's parents inflicted upon him; and (2) that it would not be in the minor child's best interest to return to Honduras, the minor's country of nationality and last habitual residence.

2. Issues Tried by the County Court.

a. Whether or not the petitioner, Appellant Robin David Flores Galeas, should be appointed as the guardian of the minor child, Nataly Sarai Flores Galeas.

b. Whether or not to make special findings (1) that reunification with the minor child's parents is not viable due to abuse, neglect, and abandonment; and (2) that it would not be in the minor child's best interest to return to Honduras, as allowed under NEB. REV. STAT. § 43-1238(b).

3. How the Issues Were Decided.

a. The County Court of Lancaster County, Nebraska, trial court in this matter, denied the Appellant Robin David Flores Galeas's petition to be appointed the guardian of minor child and proposed ward, Nataly Sarai Flores Galeas, finding that petitioner "has failed to present sufficient evidence that all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order." (T47).

b. Since the County Court of Lancaster County, Nebraska did not grant the guardianship, Appellant Robin David Flores Galeas' request for the entry of special findings of fact under NEB. REV. STAT. § 43-1238(b) was not addressed.

4. **Standard of Review.**

Appeals of matters arising under the Nebraska Probate Code are reviewed for error on the record. *In re Guardianship of Tomas J.*, 318 Neb. 503, 18 N.W.3d 503 (2025). When reviewing a judgment for errors appearing on the records, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.*

ASSIGNMENTS OF ERROR

I. The trial court erred by failing to appoint Appellant Robin David Flores Galeas as the guardian of the minor child and proposed ward, Nataly Sarai Flores Galeas.

II. The trial court erred by failing to make the special findings of fact regarding the best interest of the minor child, Nataly Sarai Flores, including: (1) reunification with the minor child's parents is not viable due to abuse and neglect, and (2) that it would not be in the minor child's best interest to return to her country of origin, Honduras.

SUMMARY OF ARGUMENTS

The trial court abused its discretion in failing to find that Appellant Robin David Flores Galeas demonstrated that the minor child and proposed ward's natural parents' custodial rights were suspended by prior or current circumstances, as provided for in NEB. REV. STAT. § 30-2608(d). The minor child's parents had consented to the Appellant having custody of and providing for the minor's care for over two (2) years, the minor child had been in the sole care of the Appellant to the exclusion of the minor's parents for over two years while the parents continued to live in Honduras, the minor's parents have not financially supported the minor child in any way for over two years, and evidence offered and accepted by the trial court demonstrated that returning the child to live with her parents would be to her detriment as they could not support or protect her from the dangerous conditions in Honduras. The Appellant

demonstrated that he had complied with all statutory notice provisions to interested parties, including the minor's parents, in addition to providing notice to the Honduran consulate. The minor child nominated the Appellant to be appointed as her guardian and the Appellant further demonstrated that it would be in her best interests for him to be appointed as her guardian.

The trial court further erred by not making the special findings requested by Appellant, as provided for under NEB. REV. STAT. § 43-1238(b), that (i) the minor child's parents had abandoned and neglected her; (ii) that due to such abandonment and neglect, the minor child's reunification with her parents was not viable, and (iii) that it was not in the minor child's best interest to be returned to Honduras, her country of origin.

PROPOSITIONS OF LAW

I.

Statutory interpretation presents a question of law, which the Nebraska appellate courts reviews independently of the lower court's determination.

In re Guardianship of Carlos D., 300 Neb. 646, 915 N.W.2d 581 (2018).

II.

For a minor child who is a resident of Nebraska, a parental power of attorney delegating parental responsibility of their child to another is only valid for a period of no longer than six months.

NEB. REV. STAT. § 30-2604.

III.

An appellate court reviews guardianship proceedings for error appearing on the record made in the county court. When reviewing a judgment for errors on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence and is neither arbitrary, capricious, nor unreasonable.

In re Guardianship of Tomas J., 318 Neb. 503, 18 N.W.3d 87 (2025).

IV.

All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends.

NEB. REV. STAT. § 43-2101(1).

V.

The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as providing in this section.

NEB. REV. STAT. § 30-2608(a).

VI.

The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspending by prior or current circumstances or prior court order.

NEB. REV. STAT. § 30-2608(d).

VII.

The court may appoint as guardian any person whose appointment would be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age older, unless the court finds the appointment contrary to the best interest of the minor.

NEB. REV. STAT. § 30-2610.

VIII.

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. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

NEB. REV. STAT. § 30-2611(b).

STATEMENT OF FACTS

On June 18, 2025, Appellant Robin David Flores Galeas (“Mr. Flores Galeas”) filed a petition requesting to be appointed as the permanent guardian for his younger sister, minor child and proposed ward, Nataly Sarai Flores Galeas (“Nataly”), in the County Court of Lancaster County, Nebraska (“trial court”). (T1-5). At the time Mr. Flores Galeas filed his petition, Nataly had just turned 16 years of age, having been born in May 2009, in Barrio Buenos Aires, Choluteca, Honduras. (T1). The petition alleged the following:

- That Nataly is a native of Honduras and traveled to the United States in August 2023 by herself when she was 14 years of age. *Id.*
- That Nataly was apprehended by Customs and Boarder Protection (“CBP”), an agency within the U.S. Department of Homeland Security (“DHS”), and detained by DHS, under the care of the U.S. Department of Health and Human Services’ Administration for Children and Families Office of Refugee Resettlement (“ORR”), at Donna Holding Facility in Hidalgo, Texas for a period of approximately three (3) weeks after entering the United States. (T1-T2; E2).
- That DHS, through ORR, released Nataly to the care of Mr. Flores Galeas on September 4, 2023, and she has lived with him in Lincoln, Lancaster County, Nebraska, continuously since that date. *Id.*

Additionally, in his petition, Mr. Flores Galeas requested that the trial court “find that [Nataly’s] unification with her parents is not viable due to abandonment and neglect pursuant to NEB. REV. STAT. § 43-1238.” (T4). The petition also requested that the trial court “find that it would not be in [Nataly’s] best interests to be returned to Honduras pursuant to NEB. REV. STAT. § 43-1238.” (T4).

The trial court set a hearing on Mr. Flores Galeas’ petition for the appointment of a guardian for Nataly on August 20, 2025. (T9). Notice of such hearing was sent in English and with Spanish translation to Nataly, in English and with Spanish translations to both Nataly’s mother and to Nataly’s father—who live separately and have individual residential mailing addresses in Choluteca, Honduras, as well as in English the to the Honduran Consulate in Chicago, Illinois. (T12-43). On August 20, 2025, Mr. Flores Galeas’s petition for appointment of permanent guardianship of Nataly came before the trial court and Mr. Flores Galeas appeared at the uncontested hearing, along with Nataly and his legal counsel. (T44; 3:10-14).

Mr. Flores Galeas testified that he and Nataly have the same parents, both of whom are living in Honduras. (10:7-13). He also clarified his parents were never married and have been separated for over 12 years. (10:14-17). Mr. Flores Galeas himself has been living in the United States for over three (3) years, currently has work authorization in the United States, and will shortly be obtaining lawful permanent resident (“LPR”) status (also known as “green card

holder”) in the United States. (6:8-18). He works full-time for Lincoln Industries, Monday through Friday. (6:19-24).

Mr. Flores Galeas testified that Nataly came to the United States in August 2023, when she was just 14 years old. (7:3-6; 10:22-25:5). Initially upon arrival in the United States, Nataly was detained at the Texas border by the DHS. (T1, 7:7-10). On September 4, 2023, DHS, through ORR, released Nataly into Mr. Flores Galeas’s care. (7:11-13). Specifically, ORR flew Nataly from Hidalgo, Texas to Omaha, Nebraska, where Nataly was released to Mr. Flores Galeas’s care. (T1; 7:14-18). As a part of Nataly being released into his care in Nebraska, Mr. Flores Galeas agreed to be Nataly’s “sponsor,” which means that he had to pledge to the Federal Government that he would provide for Nataly’s needs and ensure she attended all immigration proceedings before the immigration administrative courts. (7:19-8:8). Importantly, as a part of Mr. Flores Galeas agreeing to serve as the ORR sponsor for his minor sister, he also had to pledge to attempt to obtain a guardianship over Nataly since he is not her “parent or legal guardian.” (E2; 8:9-14). A printout of the ORR Sponsor Care Agreement (“SCA”) provisions that Mr. Flores Galeas agreed to before he was approved to be Nataly’s sponsor, was offered and received into evidence. (E2). The SCA specifically states:

“You have applied to the Office of Refugee Resettlement (ORR) to sponsor an unaccompanied alien child in the care and custody of the Federal Government pursuant to 6 U.S.C. § 279 and 8 U.S.C. § 1232. If your sponsorship application is approved, you will receive an ORR Verification of Release form and enter into a custodial arrangement with the Federal Government in which **you agree to** comply with the following provisions while the minor is in your care:

- Provide for the physical and mental well-being of the minor, including but not limited to, food, shelter, clothing, education, medical care and other services as needed.
- If you are not the minor’s parent or legal guardian, **make best efforts to establish legal guardianship with your local court** within a reasonable time.”

(E2, p. 1)(emphasis added).

Mr. Flores Galeas testified that since ORR placed Nataly in his care on September 4, 2023, he has been the only person financially providing for Nataly.

(8:15-19). Nataly's and his parents have provided no financial support whatsoever for Nataly since she has been in the United States. (10:18-21). More specifically, since September 4, 2023, Mr. Flores Galeas has been the only person that has "been providing housing, food, clothing, all of the necessities" for Nataly. (8:25-9:3). Nataly testified that she believes that her brother is taking good care of her. (19:8-16).

Nataly is currently in the 11th grade at Lincoln High School. (9:4-7). She is doing "very good" in school and is expected to graduate in two years with her high school diploma. (9:8-14). At the time of the guardianship hearing, Nataly was attempting to engage in extracurricular activities at school, for example trying out for the cheerleading team, and hoping to attend college after high school graduation. (9:14, 18:1-19:7).

Both Mr. Flores Galeas and Nataly provided testimony demonstrating why Honduras is one of the most dangerous countries in the world. (11:11-14). In particular, is gang violence and extortion are rampant, and the Honduran government—including law enforcement—are often controlled by the gangs. (11:15-18; 19:17-21:9). Nataly specifically testified that there was significant criminal and gang activity, such as murder, kidnapping and rape, targeted at women, around her in Honduras. (19:17-20:3). In fact, several of Nataly's friends were murdered by gang members in Honduras. (20:7-10). Nataly herself was fearful to even leave her own home as she had been threatened with death or kidnapping and, ultimately because she felt the threats were credible, she left Honduras on her own and came to the United States to avoid such danger. (20:18-21:9). Additionally, the trial court received evidence in the form of a U.S. Department of State 2024 Country Report on Human Rights Practices in Honduras ("Honduras 2024 Human Rights Report") which details "significant human rights issues in Honduras, including unlawful killings, disappearances, torture or cruel, inhuman or degrading treatment or punishment. (E1, p.1). The Honduras 2024 Human Rights Report confirms significant gang and trafficking activity within the country, including homicide, torture, kidnapping, extortion, human trafficking as well as other threats and violence directed against women and other vulnerable populations. *Id.*

Nataly testified that her life in Honduras was not only unsafe but it was also unstable. (21:17-22:10). Nataly said that when she lived in Honduras, she

primarily lived with her mother, and Nataly's mother could not defend Nataly from the gang members that were threatening Nataly. (21:13-15). Nataly said that she did not believe that either of her parents could keep her safe in Honduras. (21:16-20). Nataly also testified that there is a lot of poverty in Honduras and that her parents were having a hard time financially supporting her. (21:21-22:6). In particular, her parents even had a difficult time providing her a sufficient amount of food. *Id.*

Ultimately, Nataly's parents did not try to stop her from coming to the United States when Nataly decided to leave Honduras for her own safety. (22:11-14). And, both Mr. Flores Galeas and Nataly testified that they believe it is in Nataly's best interests to remain in the United States, and not return to Honduras. (11:23-12:3; 22:11-19). Nataly specifically agreed not only that it is in her best interest to remain in the United States, but that it is in her best interest that Mr. Flores Galeas be appointed as her guardian and for him to continue to provide care for her. (19:11-16; 22:15-19). There was no evidence offered to suggest it would be in Nataly's best interest to return to Honduras.

The trial judge interrogated Mr. Flores Galeas, including asking him if his parents had signed a "power of attorney" or piece of paper giving him "custody" of Nataly. (12:23-13:25). Through Spanish-language interpretation, Mr. Flores Galeas indicated several times he did not understand the trial judge's questions; however, he clarified that his parents at the request of ORR, and after receiving financial support from Mr. Flores Galeas' aunt, had returned a "piece of paper" to the United States giving him "custody" of Nataly so he could be Nataly's "tutor," which is a Spanish term for "guardian." (13:4-10; 13:23-25, 14:21-15:2). The trial judge asked Mr. Flores Galeas if he "any problems getting [his] parents to sign that paperwork" giving him "custody" of Nataly, to which Mr. Flores Galeas asked, "[w]hat do you mean?" (15:5-10). After the trial judge asked for clarification from Mr. Flores Galeas, "[d]id they do it when you asked them to," he answered, "[y]es." (15:11-12).

Mr. Flores Galeas, confirmed that he still has contact with his parents often, "[b]asically every day." (15:13-18). Mr. Flores Galeas confirmed that his parents know that Nataly lives with him and that they are in supportive of him caring for her and becoming her "tutor." (14:25-15:2; 15:19-23). Upon redirect examination, Mr. Flores Galeas clarified that his parents never signed a Nebraska

power of attorney. (16:4-9). In response to additional questioning from the trial judge, Mr. Flores Galeas testified he believe his parents would agree to sign such “paperwork” if he asked them to do so and sent “paperwork” to Honduras. (16:18-25).

Nataly was also questioned by the trial judge about how often she talks to her parents and Nataly testified that she talks to her parents about “[t]wice a week . . . maybe ever four days.” (23:8-12). Nataly also answered affirmatively when the trial judge asked if her parents agreed to let her come to the United States because they thought it would be better for her. (23:13-16).

On October 7, 2025, the trial court entered an order denying Mr. Flores Galeas’ uncontested petition for a guardianship over Nataly. (T46-55). On October 20, 2025, Mr. Flores Galeas timely appealed the court’s ruling. (T56-57).

ARGUMENT

I. THE TRIAL COURT ERRED BY FAILING TO APPOINT ROBIN DAVID FLORES GALEAS AS THE GUARDIAN OF THE MINOR CHILD, NATALY SARAI FLORES GALEAS.

Statutory interpretation presents a question of law, which the Nebraska appellate courts reviews independently of the lower court’s determination. *In re Guardianship of Carlos D.*, 300 Neb. 646, 915 N.W.2d 581 (2018). Nataly is a minor child located exclusively in the State of Nebraska. *See* NEB. REV. STAT. § 43-2101(1)(“All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends.”). A minor child is eligible for a guardianship until the “minor’s death, adoption, marriage or attainment of majority [].” NEB. REV. STAT. § 30-2614. Here, Mr. Flores Galeas petitioned the trial court to be appointed as his younger sister’s guardian due to Nataly being under the age of nineteen and living in Lincoln, Lancaster County, Nebraska without parental supervision. (T1-4).

Additionally, Mr. Flores Galeas entered into an agreement with the Federal Government, through the ORR, in which he not only pledged to provide for Nataly’s physical and mental well-being and ensure her presence at all immigration proceedings, but he also agreed to attempt to establish legal guardianship over Nataly with his “local court within a reasonable time.” (E2). The ORR has policies and procedures in place to ensure unaccompanied minors in

their care are released in a safe, efficient manner without unnecessary delay. ORR Unaccompanied Alien Children Bureau Policy Guide: Section 2, THE ADMINISTRATION FOR CHILDREN AND FAMILIES, *available at* <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2> (last visited Feb 1, 2026). These policies require the release of unaccompanied minors to “parents, guardians, relatives, and/or “individuals designated by the child’s parents, referred to as ‘sponsors.’” *Id.* Proposed sponsors are assessed by ORR to determine if the sponsor would ensure the child’s safety and timely appearance at immigration court, and ranks the following as one of the preferred sponsors for unaccompanied children: “an adult individual or entity **designated by the parent** or legal guardian as capable and willing to care for the unaccompanied child’s well-being **in:** (i) **[a] declaration** signed under penalty of perjury before an immigration or consular officer **or** (ii) **[s]uch other document** that establishes to the satisfaction of ORR, in its discretion, the affiant’s parental relationship or guardianship. *See* 45 CFR § 410.1201(a)(4)(emphasis added).

Once ORR identifies a potential sponsor for an unaccompanied child, the potential sponsor must complete an online application package, be subjected to ORR’s suitability assessment. *See* 45 C.F.R. § 410.1202(a)-(b). The sponsor suitability assessment includes verification of the potential sponsor’s identity, relationship to the child, the child’s considerations and wishes, and overall capability of the potential sponsor to provide for the child’s physical and mental well-being. *See* 45 C.F.R. § 410.1202(b)-(d). Again, ORR “shall consider” the unaccompanied child’s parent’s “preference and perspective on the release to the potential sponsor.” *See* 45 C.F.R. § 410.1202(e). It is important to note that ORR “shall not” “release an unaccompanied child to any person or agency it has reason to believe may harm or neglect the unaccompanied child or fail to present the unaccompanied child before DHS or the immigration courts when requested to do so.” *See* 45 C.F.R. § 410.1203(e). Moreover, a potential sponsorship “shall be denied if as part of the sponsor assessment process described at § 410.1202 or the release process described at § 410.1203, ORR determines that the potential sponsor is not capable of providing for the physical and mental well-being of the unaccompanied child or that the placement would result in danger. *See* 45 C.F.R. § 410.1205(a).

Once the sponsor is approved and the unaccompanied child is released to the sponsor, and as ORR’s SCA requires, the non-parent/non-legal guardian sponsor must attempt to establish a guardianship over the child as soon as possible. (E2); *see also* 45 C.F.R. § 410.1210(b)(3)(“**Guardianship**. If the sponsor is not a parent of legal guardian of the unaccompanied child, then the [ORR post-release services provider] shall provide the sponsor and unaccompanied child information about the benefits of obtaining legal guardianship of the child . . . and may assist the sponsor in identifying the legal resources to do so)(emphasis original). Moreover, if a sponsor and unaccompanied minor seek to request the jurisdiction of a juvenile court, which includes guardianship courts, for Special Immigrant Juvenile (“SIJ”) status predicate findings of fact, they do not need to request specific consent from ORR as long as they “**do not seek** the juvenile court’s jurisdiction **to alter the child’s custody status** or release.” 45 C.F.R. § 410.1209(b)(emphasis added); *see also* 8 C.F.R. § 204.11(a)(“As used in this section, the following definitions apply to a request for classification as a special immigrant juvenile . . . *Juvenile court* means a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.”)(emphasis added).

A proceeding for the appointment of a guardian is a matter arising under the Nebraska Probate Code and is reviewed for error on the record. *In re Guardianship of Tomas J.*, 318 Neb. 503, 18 N.W.3d 87 (2025). When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.* An appellate court, in reviewing a judgment for errors appearing on the record, will not substitute its factual findings for those of the lower court where competent evidence supports those findings. *In re Jordan M.*, 20 Neb. App. 172, 820 N.W.2d 654 (2012).

A guardianship is no more than a temporary arrangement established for the well-being of a child. *In re Guardianship of D.J.*, 268 Neb. 239, 246, 682 N.W.2d 238, 248 (2004). Importantly, the “**appointment of a guardian is not a de facto termination of parental rights**, which results in a final and complete severance of the child from the parent and removes the entire bundle of parental rights.” *Id.* (emphasis added)(citing *In re Guardianship of Zyla*, 251 Neb. 163, 166, 555 N.W.2d 768, 771 (1996), *superseded by statute on other grounds by In*

re Mekhi S., 309 Neb. 529, 960 N.W.2d 732 (2021)). Rather, guardianships can give parents an opportunity to temporarily relieve themselves of the burden involved in raising a child, thereby enabling parents to take those steps necessary to better their situation so they can resume custody of their child in the future, if they so choose. *In re Guardianship of D.J.*, 269 Neb. at 246, 682 N.W.2d at 248. Guardianships are temporary and depend on the circumstances existing at the time. *See In re Guardianship of Lavone M.*, 9 Neb. App. 245, 610 N.W.2d 29 (2000)(“The best interests of the children **must always be considered** in determining matters of child custody, and, where the parent is shown to be unfit or have forfeited his or her superior right to custody, the court may place the children in the custody of a [] third party.”)(emphasis added).

Ultimately, in adjudicating minor guardianship matters, courts are required to make findings regarding the best interest of the children in need of a guardianship. NEB. REV. STAT. § 30-2610 (“The court may appoint as guardian any person whose appointment would be in the **best interests of the minor.**”)(emphasis added); NEB. REV. STAT. § 43-2921 (“In any proceeding involving a child, the **best interest of the child shall be the standard by which the court adjudicates** and establishes the individual responsibilities, including consideration in any custody, parenting time, visitation, or other access determinations as well as resolution of conflicts affecting each child.”)(emphasis added); *In re Guardianship of Heather L.*, A-03-1048, 2004 WL 2158139, *7, 2004 Neb. App. LEXIS 254. *18 (Sept. 28, 2004)(“Parental forfeiture means that parental rights may be forfeited by substantial, continuous, and repeated neglect of a child and failure to discharge duties of parental care and protection [] Further, forfeiture may be effected by a parent’s indifference to a child’s welfare over a long period of time.”

A. The trial court erred when it found that the parental rights to the custody of Nataly had not been suspended by prior or current circumstances.

In this matter, the trial court found that Mr. Flores Galeas “failed to meet the burden of proof for appointment of a guardian.” (T53). Specifically, the trial court found that there was “insufficient evidence of suspension or termination of parental rights by prior or current circumstances, and the petition should be denied and dismissed.” (T53). Nebraska’s Probate Code clarifies that a “court

may appoint a guardian 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). However, there is no guidance regarding or definition of “suspended by circumstances” within the Probate Code itself.

Statutory language is to be given its plain and ordinary meaning. *See Midwest Neurosurgery, P.C. v. State Farm Insurance Companies*, 268 Neb. 642, 686 N.W.2d 572 (2004). The ambiguity of “circumstances” necessitates that the probate court assess the lived reality of the child’s care. *See, e.g. In re Guardianship of Elizabeth H.*, 17 Neb. App. 752, 771 N.W.2d 185 (2009)(“Guardianships are temporary and depend upon the circumstances existing at the time.”). The analysis of “circumstances” should focus on the parent’s lack of physical presence and failure to provide the child’s material needs. *See In re Guardianship of Heather L.*, 2004 WL 2158139, 2004 Neb. App. LEXIS 254 (Sept. 28, 2004)(Even though Heather’s parents ultimately objected to Heather’s aunt and uncle being appointed as her guardians, the appellate court still affirmed the guardianship finding that the parents’ right to custody had been suspended by prior circumstances as they voluntarily entrusted the guardians with the care and custody of Heather for over one year, they neglected Heather, and they failed to discharge the duties of parental care and protection.)

In the case at hand, the lived reality of Nataly is that she is a minor child living in Nebraska without proper parental supervision, as her parents live in another country, allowed her to travel alone at 14 years old to the United States, and have not provided any financial support for her whatsoever in since September 2023, well over two years. Whether intentional or unintentional, Nataly’s parents’ right to custody has been suspended by those circumstances as they voluntarily entrusted Mr. Flores Galeas with the care and custody of Nataly, they abandoned and neglected Nataly and, ultimately, have failed to discharge the duties of parental care and protection of Nataly for over two years.

1. *Parental consent to “custody” of Nataly with Mr. Flores Galeas.*

It is important to clarify, the matter at hand is an uncontested guardianship proceeding involving a minor child living in Lincoln, Nebraska without parental support. There is no case law in any jurisdiction, including Nebraska, that supports the trial court’s decision in this matter to deny the appointment of a

current caretaker as a minor child's guardian in which the caretaker is a suitable and has been exclusively caring for the child with the consent of the child's parents. Moreover, in the current matter, Nataly's caretaker was specifically directed by the Federal Government to not only provide care for the child, but to also attempt to establish a guardianship over the child as soon as possible. (E2). In other words, **Nataly's parents have not opposed the guardianship** and, in fact, they **voluntarily consented to the minor child being placed with her brother, the guardianship petitioner**, who pledged to the Federal Government that he would try to be appointed as her guardian by his local court. Nataly's parents did not appear or petition the trial court in any way. The only evidence before the trial court regarding Nataly's parents' position on these proceedings comes from the trial judge's questioning of Mr. Flores Galeas. In particular, Mr. Flores Galeas responded to the trial judge's questions stating that his parents had given him a "piece of paper" awarding him "custody" of Nataly so he could be her "tutor." (13:23-25); *see In re Penning*, 930 A.2d 144, fn 3 (D.C. 2007), *as amended* (Aug. 16, 2007)("The parties treat a '**tutor**' under Spanish law as the **legal equivalent of a guardian** and conservator")(emphasis added); *De La Guerra v. Packard*, 17 Cal. 182, 189 (Cal. 1860)("Spanish law requires that every male orphan under fourteen years of age, and every female orphan under twelve, shall have a **tutor**")(emphasis added); *Barreto Nieves v. East Coast Water Sports, LLC*, 213 D.P.R. 852, 853 (P.R. 2024)(the court utilizes the Spanish term "tutor" as a "legal guardian" who has specific responsibility for a minor child). Both Nataly and Mr. Flores Galeas clearly testified that their parents knew that Nataly lives with Mr. Flores Galeas and that they are supportive of this. (15:19-23). In fact, Mr. Flores Galeas testified on the record that his parents, helped by his aunt and himself, provided ORR a written document specifically consenting to him becoming Nataly's tutor/guardian.

Nebraska's probate statutory scheme utilizes the Model Uniform Probate Code. *See In re Estate of Fuchs*, 297 Neb. 667, 900 N.W.2d 896 (2017). Arizona also follows the Model Uniform Probate Code. The Arizona guardianship matter of *Stansell v. Superior Court*, 607 P.2d 959 (Ariz.1980) was cited by the Nebraska Supreme Court for its reference to the definition of a parent's rights to custody being "suspended by the then current circumstances." *See In re Guardianship of Zyla*, 251 Neb. at 167, 555 N.W.2d at 771. In *Stansell*, it was held that parental rights are "suspended by circumstances" when the parent has

consented to the placement of the minor with the guardians. *Id.* at 960-61 (“A child over the age of 14 years whose father is deceased, and who is not welcome in the maternal home with a stepfather, surely can, with her mother’s consent, claim the bounty of loving [guardians].”). In reviewing the language of the case of *Stansell*, the Arizona Supreme Court found that the guardianship petitioner had met their burden that the mother’s parental rights had been suspended by circumstances when the minor child’s father was deceased, that the minor’s new stepfather did not welcome the minor in the home he shared with the minor’s mother, and the mother had voluntarily placed the minor with the grandparents and she desired that the grandparents to be the child’s guardians. *Id.* Moreover, the facts of the mother’s custodial rights suspension by circumstances in *Stansell* was sufficient to even overcome the county attorney’s objection to such guardianship. *Id.*

Additionally, the Utah Court of Appeals, in *In re V.K.S.*, 63 P.3d 1284 (Utah App. 2003), found that when a parent consents to a guardianship, that parent’s rights to custody are “suspended by circumstances.” Additionally, when the mother in *In re V.K.S.* no longer consented to the guardianship, the Utah Court of Appeals found the mother could go back to the court and terminate the guardianship.

A significant number of guardianship cases in Nebraska begin with either parental consent or with the initial entry not being contested, or as in the case at issue—both parental consent and an uncontested guardianship petition. *See, e.g., In re Guardianship of Robert D.*, 269 Neb. 820, 696 N.W.2d 461 (2005) (guardianship order entered upon consent of mother). The present matter is an uncontested guardianship and as noted, *infra*, and Nataly’s parents were given proper statutory notice and never appeared to contest the guardianship. Moreover, the **only** evidence before the trial court was that Nataly’s parents **consented** to Nataly being in the custody and care of their son, Mr. Flores Galeas, and that they provided a written document to the Federal Government as a result of their desire for Mr. Flores Galeas to be Nataly’s tutor/guardian. (13:23-25; 15:19-23).

The trial court’s reliance on such cases as *In re Interest of Angelica L.*, 277 Neb. 984, 767 N.W.2d 74 (2009) is misplaced. The matter of *Angelica L.* dealt with a mother who was deported to Guatemala and the State terminated her parental rights to her two U.S. born children. The evidence in *Angelica L.* was that

the mother wanted to take the children with her to Guatemala after she had been deported. In comparison, the trial court in this matter concedes that Nataly's parents consented to Nataly leaving their custody and care in Honduras and traveling at only 14 years of age to live in the United States with her brother. (18:5-8; T53). The other guardianship cases cited by the trial court similarly misplaced as they are also contested, in some way, usually by one of the parents. (T51-52). *See In re Estate of Jeffrey B.*, 268 Neb. 761, 688 N.W.2d 135 (2004)(both parents of child were deceased, and there was a guardianship contest amongst third parties); *In re Guardianship of D.J.*, 268 Neb. 239, 682 N.W.2d 238 (mother petitioned to terminate existing guardianship of minor child); *In re Guardianship of Cameron D.*, 14 Neb. App. 276, 706 N.W.2d 586 (2005)(mother petitioned to remove one of the co-guardians for her minor child); *In re Guardianship of Issabela R.*, 27 Neb. App. 353, 932 N.W.2d 749 (2019)(the Nebraska Department of Health and Human Services filed motion to terminate guardianship with maternal grandmother).

Moreover, Nataly's parents are going to be living indefinitely in Honduras and Nataly is going to be living indefinitely in the United States. At this point in time, by the parents' consent, Nataly has already lived in Lincoln, Nebraska with Mr. Flores Galeas for over two years. (13:23-25; 15:19-23; 22:11-14). In *Angelica L.*, the Nebraska Supreme Court held, "[b]ut so long as the parent is capable of providing for the children's needs, what country the children will live in is not a controlling factor in determining reunification." 227 Neb. at 1010, 767 N.W.2d at 94. This statement from the Court was related to the mother's request that the children live in Guatemala with her after she was deported. This is completely opposite of Nataly's situation. "The expectation of separation from parent[s] until a child reaches the age of majority easily satisfies the requirement [for lack of reunification]." *Angie Junck et. al.*, SPECIAL IMMIGRANT JUVENILE STATUS AND OTHER IMMIGRATION OPTIONS FOR CHILDREN AND YOUTH § 4.4 (2015).

In Nataly's case, there will not be any reunification with the parents during her minority; furthermore, there is no evidence whatsoever that Nataly's parents in anyway want her to return to Honduras to be in their care. In fact, the evidence offered demonstrates the opposite. The only evidence before the trial court was that Nataly's parents consented for Nataly to live in the care of a third-party indefinitely and that they want that third party to be her tutor/guardian.

(13:23-25; 15:19-23; 22:11-14). And to date, Nataly has been in the care of that third-party, her older brother, to the exclusion of her parents for over two years. (T1). It is undisputed that Nataly's parents have consented to Nataly being placed indefinitely in the care of Mr. Flores Galeas. As a result, the parental rights of Nataly's parents have been voluntarily forfeited and suspended by prior and current circumstances.

2. *Parental failure to provide financial support.*

The financial support of a minor child is factor in considering whether a natural parent has forfeited the custody of their child. For instance, under NEB. REV. STAT. § 30-2608(b), when determining parental fitness and custody priority of the remaining child of a deceased parent, Nebraska courts are explicitly required to consider the parent's "payment of child support." A consistent failure to provide for the child's financial needs is frequently cited as a factor in findings of parental unfitness. It likewise must be considered when determining if a parent's rights to custody have been suspended by circumstances.

A parent's financial instability demonstrates unfitness. *See In re Steven S.*, 27 Neb. App. 831, 936 N.W.2d 762 (2019); *see also In re Nicole M.*, 287 Neb. 685, 844 N.W.2d 65 (2014)(finding mother unfit in part because she was "sporadically employed and has recently worked as a hotel housekeeper and in the fast-food industry" and was unable to financially support the minor children); *In re Guardianship of Brenda B.*, 13 Neb. App. 618, 698 N.W.2d 228 (2005)(ability of parent to provide "financial support for the benefit of the children" is a factor in determining whether or not to terminate guardianship). For instance, in *In re Guardianship of Jordan M.*, 20 Neb. App. 172, 183, 820 N.W.2d 654, 663 (2012), this Court upheld the trial court's granting of a guardianship over a minor, finding that the mother was unfit, in part, because she "simply does not have resources to adequately provide" for her daughter.

In this matter, Mr. Flores Galeas testified that since September 4, 2023, he has been the only person financially providing for Nataly. (8:15-19). He clarified that their parents have provided no financial support whatsoever for Nataly since she has been in the United States. (10:18-21). More specifically, Mr. Flores Galeas has been the only person that has "been providing housing, food, clothing, all of the necessities" for Nataly. (8:25-9:3). Nataly's parents' failure to provide any financial support whatsoever for Nataly for over two years demonstrates that

her parents have failed to discharge the duties related to parenting a child, and, thus, Nataly's parents' rights to custody have been suspended by prior circumstances.

3. *The trial court improperly found parental contact with the child prevented a finding that the parents' rights of custody had been suspended by prior or current circumstances.*

When guardians are appointed for the best interest of minor children in Nebraska, the natural parents retain residual parental rights, which typically include the reasonable right to visitation with the minor child. *See In re Guardianship and Conservatorship of Brandon P.*, No. A-02-730, 2003 WL 21279594, 2003 Neb. App. LEXIS 153 (June 3, 2003). In *Brandon P.*, for instance, this Court found that while the guardianship should remain due to Brandon's mother's unfitness, Brandon should still be allowed to have regular visitation with his mother. In this matter, the trial court seemed to find that because Nataly has frequent phone contact with her parents in Honduras and that her parents care about her well-being, there can then, consequently, be no finding that her parents have had their parents' rights of custody suspended by prior or current circumstances. (T53). The focus should not be on whether Nataly's parents have continued contact with her, but should instead focus on whether the parents are continually discharging their parental duties. *See In re Guardianship of Heather L.*, 2004 WL 2158139 at *7, 2004 Neb. App. LEXIS at *18-19 (even though Heather's parents had frequent in-person and phone visitation with her, their parental rights of custody were found to have "been suspended by prior circumstances in that they voluntarily entrusted [Heather's aunt and uncle] with the care and custody of Health for over a year and have substantially and repeatedly neglected Heather and failed to discharge the duties of parental care and protection.").

In this matter, there is overwhelming evidence that Nataly's parents are not carrying out their parental duties of care and protection. For example, Nataly's parents are not providing her with any food, clothing, health care or any other kind of financial support whatsoever. Nataly's parents are assigning every single parental obligation imaginable, including day-to-day care, to Mr. Flores Galeas.

4. *The evidence showed that placing Nataly with her parents would result in detriment to Nataly.*

A parent can be found unfit for the purposes of establishing a guardianship if the clear and convincing evidence demonstrates that placing the child with the natural parent(s) would result in detriment to the child. *See In re Guardianship of Elizabeth H.*, 17 Neb. App. 752, 766, 771 N.W.2d 185, 196 (2009). Nataly testified that her life in Honduras was not safe. She said that she lived in a neighborhood where there was a lot of crime and a lot of gangs. (19:17-21). She also said that it was not safe to go out in public in Honduras, such as going to the store, school or even in the front of her house, as there were people that could cause her harm. (19:20-25). Nataly also said that women are in particular targeted in Honduras, as they are often kidnapped and gang members will get them pregnant. (19:25-20:3). Nataly also said that there is a lot of gang violence in Honduras and that several of her friends have been killed by gangs. (20:4-9). Natalie testified that she has been threatened herself death threats and kidnapping threats while living in Honduras. (20:10-21:5). Nataly said that when she lived in Honduras, she primarily lived with her mother. (21:13-15). Nataly said that she did not believe that either of her parents could keep her safe in Honduras. (21:16-20). Nataly also testified that there is a lot of poverty in Honduras and that her parents were having a hard time financially supporting her when she lived in Honduras and, specifically, that they had a hard time providing a sufficient amount food for her. (21:21-22:6).

The only evidence before the trial court was it would be detrimental to Nataly if she was forced to return to the physical care of one or both of her parents, as they could not protect her from the violence of neighborhood and her parents did not have the resources to support her. This demonstrates a past and present circumstance showing that her parents' right to custody of her has been suspended.

5. *Parents' lack of physical presence and placing the child in the care of third parties.*

The trial court failed to consider that a parent may forfeit their right to custody through failure to discharge their duties of parental care and protection, which includes leaving a child long-term in the care of others while living elsewhere. Nebraska's probate statutory scheme utilizes the Uniform Probate Code, just as does Idaho. the Idaho Supreme Court found, in *In Re Guardianship of Copenhaver*, 865 P.2d 979 (Idaho 1993), that the mother's placement of her

children in the care of a third parties for a prolonged period of time warranted a finding that the mother's parental rights had been suspended by circumstances to warrant the appointment of guardians for the children. However, the appellate court ultimately reversed the trial court's decision because at the time of trial the mother contested the appointment of guardians, no longer desired to place the minor children in the care of third-parties, and she was capable of caring for them. *Id.* at 984.

Demonstrating the importance of the physical placement of the children at the time of the guardianship proceeding, the New Mexico Court of Appeals, in *Matter of Guardianship Petition of Lupe C.*, 812 P.2d 365, 369 (N.M. 1991), found that a "parent's right to custody is not 'suspended by circumstances' if in fact the parent has lawful custody, is present, and has not voluntarily relinquished physical custody of the child." Likewise, the Montana Supreme Court in *Matter of Guardianship of Aschenbrenner*, 597 P.2d 1156, 1161 (Mont. 1979) also found that when a mother has "actual physical custody of the children at the time the [guardianship] petition was filed" there can be no finding that the mother's parent rights of custody have been terminated by circumstances.

Again, in *In re Guardianship of Heather L.*, the parents of the minor child had previously executed powers of attorney to place the child in the care of the child's aunt and uncle who later petitioned to be appointed as the child's guardians. The trial court found that although the parents were not "unfit" specifically as "it related to providing necessary education, food, and clothing," the parents' parental rights have been suspended by circumstances. 2004 WL 2158139 at *5, 2024 LEXIS at *13-14. However, in upholding the trial court's decision, this Court found that the parents' parental rights of custody "have been suspended by prior circumstances in that they have voluntarily entrusted [the uncle and aunt] with the care of custody of Heather for over a year and have substantially and repeatedly neglected Heather and have failed to discharge the duties of parental care and protection." *Id.*

A parent neglects a child by failing to put themselves in a position where the child cannot be placed in the parent's care. *In re Gabriel B.*, 31 Neb. App. 21, 976 N.W.2d 206 (2022). In this matter, Nataly's parents are going to be living indefinitely in Honduras and Nataly is going to be living indefinitely in the United States. (8:15-19; 8:25-9:23; 10:11-13). The only evidence before the trial court

was that Nataly's parents allowed her to travel to the United States alone and that she will be living indefinitely during her minority with a third-party, her older brother, in the United States. (8:25-9:23). And to date, Nataly has been in the physical care of her older brother to the exclusion of her parents for over two years. (7:11-18; T1).

B. The trial court erred when it implied that Nataly's parents did not receive proper notice of these proceedings.

In this matter, the trial court stated, "[w]hile it is true that [Mr. Flores Galeas] filed a certificate of service mailing the notice to Nataly's parents, it is unknown whether Nataly's parents received any meaningful notice of the nature or substance of the petition." (T53). The notice of the time and place of a hearing for the petition of a guardianship of a minor has to be given to, *inter alia*, to any living parent of the minor. NEB. REV. STAT. § 30-2611(a)(3). Additionally, NEB. REV. STAT. § 30-2220(a)(1) requires that the parents be served by mailing a copy with notice of the hearing at least fourteen days before the time set for the hearing by . . . first-class mail addressed to the person notified at the post office address . . . at his or her . . . place of residence." Notice was properly given to both of Nataly's parents in this matter. (T33-44). The trial court should not have implied that Nataly's parents did not receive notice of this proceeding, or that notice was improper whatsoever, as there was no such evidence. (T53). Mr. Flores Galeas' notice to his parents met the statutory mandates.

Moreover, Mr. Flores Galeas also properly notified the Honduran Consulate of these proceedings. (T22-31). The Vienna Convention on Consular Relations, art. 37, Apr. 24, 1963, 21 U.S.T. 77, 102, and Nebraska law, NEB. REV. STAT. § 30-333 and §§ 43-3801 to 3812, provide for notification to, and involvement by, the consular officials when subjects of their country are or may be interested parties of a guardianship or termination proceeding affecting the minor child of their nation. *See* Christine A. Lustgarten, *Parents, Children and Deportation*, THE NEBRASKA LAWYER 29-31 (May 2010). Mr. Flores Galeas complied with NEB. REV. STAT. § 30-333.

Again, notice of this matter was properly provided and it is improper to suggest otherwise without any indication of such lack of notice.

C. The trial court erred when it implied that a written power of attorney, or some other written permission by a parent, is

sufficiently tantamount to or prevents the establishment of a guardianship over a minor child.

Here, the trial court placed significant weight on the fact that Nataly's parents consented to Mr. Flores Galeas caring for Nataly and that Mr. Flores Galeas testified that he thought they would effectuate a power of attorney "if asked." After interrogating both Mr. Flores Galeas and Nataly, the trial court found:

 Their support of her travel to the United States, their written permission for her to stay with her brother, their continued and frequent communication after her arrival in the United States and the fact that they would sign a power of attorney if asked all represents their involvement in Nataly's custody and care.

(T53).

First and foremost, the establishment of a guardianship for a minor child does **not** require a finding that such guardianship appointment is the "least restrictive alternative" available for providing the continued care or supervision of the minor child. *Compare* NEB. REV. STAT. § 30-2620 (the requirement of "least restrictive alternative" is only for the appointment of a guardianship of an incapacitated adult); *with*, NEB. REV. STAT. § 30-2601(1)(minor child is explicitly exempted from the definition of an incapacitated person). Moreover, a temporary delegation of parental authority in Nebraska can only last for a period not exceeding six (6) months. NEB. REV. STAT. § 30-2604. This type of power of attorney provides a streamlined, non-judicial method for a parent or legal guardian to delegate their authority over a minor child to another person; however, this procedure under NEB. REV. STAT. § 30-2604 is obviously designed for situations where a parent expects to be absent or unable to act for a **temporary period**, such as during medical treatment, military deployment, or extended work-related travel.

The only evidence before the trial court in this matter is that it was difficult for Nataly's parents to get a written permission document from Honduras to ORR, and more importantly that Nataly's situation is **not** temporary, as she will be in Nebraska indefinitely during her minority with Mr. Flores Galeas. Moreover, Nataly intends on graduating high school and then going to college in the United States. (9:8-14). In comparison, although the guardianship court in *In*

re Guardianship of Jamie G., No. A-16-895, 2017 WL 4269830, *4, 2017 Neb. App. LEXIS 184, *8 (Sept. 26, 2017) imputed an incorrect requirement of mandating less restrictive alternatives in a guardianship over a minor ward case suggesting power of attorney was an appropriate alternative to a guardianship (as explained below, a less restrictive alternative requirement **only** applies to guardianship cases involving an **adult** wards), the trial court did find that since “Jamie’s parents ha[d] relocated to Mexico and placed the minor with Ana, [the parent’s suspend[ed] their parental rights of custody” of Jamie, the minor child.

In *Guardianship of Jamie G.* is the only time there has been any discussion by a Nebraska appellate court, beyond a discussion in *In re Guardianship of Tomas J.*, 318 Neb. 503, 18 N.W.3d 87 (2025), regarding a trial court’s finding that a power of attorney under NEB. REV. STAT. § 30-2604 is the equivalent of a guardianship over a minor and should be mandated in lieu of a guardianship as a “least restrictive alternative.” However, no Nebraska appellate court has ever held that it is appropriate for a probate court to find that a power of attorney under NEB. REV. STAT. § 30-2604 is the equivalent of a guardianship over a minor or should be mandated or considered as a “least restrictive alternative.” Importantly, a power of attorney has not been found to prohibit a guardianship over a minor child. Again, the facts of the present case are uncontested. Nataly is a minor child living in Lincoln, Nebraska without parental supervision, with her parents living in Honduras, and a guardianship over her is **necessary**.

1. *The appointment of a guardian is necessary for Nataly as she is unable to make healthcare decisions on her own.*

As Nataly is only 16 years old, as healthcare systems are unable to provide medical care to minor children without the appointment of legal decision makers. Children living without or apart from their natural parents require a legal guardian to make necessary medical decisions. An individual who is not a natural parent or legal guardian cannot give consent for immunizations for a minor child needed to attend school. Further, a hospital cannot release immunization records due to HIPAA restrictions. Additionally, a guardianship is also necessary to apply for Medicaid on behalf of the minor child to provide a payment source for medical treatment. *See* 477 NAC § 5.002 (G)(2020)(“A child who has a pending

application for Special Immigrant Juvenile status, as escribed in . . . 8 U.S.C. §1101(a)(27)(J)’’).

2. *The appointment of a guardian is necessary for Nataly as she is unable to make educational decisions on her own.*

A critical aspect of Nataly obtaining appropriate educational services and supports requires that the adult with she lives with have the legal right to make educational decisions on her behalf as a minor student. All children of education age in Nebraska have an obligation to attend school and have a right to all services and educational supports offered by the school, regardless of immigration status, including those students living in the United States without their natural parents. Moreover, any student subject to neglect or abandonment, such as Nataly, have a right, pursuant to the Individuals with Disabilities Education Act (IDEA), to be evaluated for verification for services pursuant to federal and state law. *See also* 92 NAC § 51 (2022). Children who have suffered neglect and/or abandonment often suffer from anxiety, depression, post-traumatic stress disorder and other social or emotional disturbances that impede their ability to access education to the same level as their general education peers. [cite]. School districts are required to identify students with potential needs that impede their ability access education, and with consent of an education decision-maker, evaluate and verify such students for services and supports that are then provided by the school district. This verification applies to children ages birth through 21 years old, regardless of immigration status. However, for a school district to conduct the evaluation and/or provide services, the school district must have the consent of an individual who has education decision-making authority.

As described above, in order for immigrant children who entered the United States unaccompanied and placed in the care of ORR must have a “sponsor” for purposes of allowing the child to leave an ORR institutional or foster care setting and be released to an adult who agrees to provide care for the child and ensure compliance with the minor child’s obligations regarding their immigration case. While an ORR sponsor can be the child’s parent or previously established guardian, and therefore have education decision-making authority under IDEA and 92 NAC § 51, in cases where the ORR sponsor does not have such parenthood or guardianship that sponsor does not automatically have education decision making authority. Sponsors who are not guardians must either

obtain guardianship or a court must appoint a separate guardian or education surrogate with decision-making authority so that the unaccompanied minor may obtain appropriate school supports to address the impact that abuse, neglect or abandonment has on the student's ability to access education. School districts do not have the authority to appoint a surrogate parent unless an unaccompanied minor is also homeless, which by definition, does not apply to an unaccompanied minor student residing with a sponsor.

Services a child may be eligible for may include special instruction, related services such as occupational therapy, physical therapy, nursing and school psychologist supports, as well as accommodations such as modified assignments, specific seating, and longer time for assessments. None of these services can be provided, however, without the permission of a guardian or other individually specifically appointed to have educational decision-making rights. Ultimately, it is not in the best interest of Nataly, or any student for that matter, to be denied a guardian in that this in turn can deny the student the ability to obtain the education they otherwise have a right to under federal and state law. Nataly has been able to overcome her traumatic experiences in Honduras, her travel to the United States, and being in the United States without the support of her parents thus far in terms of currently doing "very good" in school. (9:8-14). However, her access to any and all available educational supports if and when she would need such supports, including access to a school psychologist, would be in her best interested and facilitated by the appointment of Mr. Flores Galeas as her guardian.

D. The trial court erred when it did not find that appointment Mr. Flores Galeas as Nataly's guardian was in her best interests.

The Nebraska Probate Code specifically lists the criteria that must be met before a court can appoint a guardian for a minor child:

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).

Here, all of the standards in §30-2611(b) were met. Mr. Flores Galeas had been taking care of Nataly for over two years without any assistance from their parents. (8:15-19; 10:18-21). All of the proper notices were provided and verified to the trial court. (T33-44). Moreover, the requirements of § 30-2608 were met, as Nataly's parents have abandoned Nataly by not having her in their care since September 4, 2023, and by providing her with no financial support in that same two-year time period. (8:15-19; 10:18-21). Evidence on the record demonstrates that it is in Nataly's best interest to have Mr. Flores Galeas appointed as her guardian, as Nataly is not only completely reliant upon him for her care, but she is thriving in his care. (8:25-9:14).

It is important to note, Nataly was 16 years old at the time of trial and specifically requested that the trial court appoint Mr. Flores Galeas as her guardian. (19:11-16). The Probate Code specifically states that in a guardianship of a minor case, "[t]he court shall appoint a person nominated by the minor is fourteen years of age or older, unless the court finds the appointment is contrary to the best interests of the minor." NEB. REV. STAT. § 30-2610. Here, Mr. Flores Galeas' petition to be appointed as Nataly's guardian is uncontested and there is no evidence on the record that his appointment would be contrary to the best interest of Nataly.

Guardians are appointed over minors because they do not have parental supervision so that the guardian is given the "powers and responsibilities of a parent who has not been deprived of custody of his or her minor and unemancipated child." *See* NEB. REV. STAT. § 30-2613. Again, Nataly is without parental supervision, as her parents are living in Honduras and providing her with no financial support. The trial court erred by failing to find it was in Nataly's best interests to have Mr. Flores Galeas appointed as her guardian. The trial court's decision was not supported by competent evidence, and the trial court's decision to dismiss Mr. Flores Galeas's petition was arbitrary, capricious and unreasonable. Thus, such decision should be reversed.

E. Conclusion

The denial of an unopposed guardianship of a minor when parents live in a foreign country is a significant judicial act that should require rigorous justification. In the absence of a contest from the natural parents, the trial court's discretion is not a license to impose its own sociological preferences, but a duty to

ensure that the minor's welfare is protected in a manner consistent with the parents' constitutional rights. Nataly's parents are unable to provide any care or support due to their circumstances of being in a foreign country—compounded by the poverty and danger that is a current reality in Honduras. Nataly's parents have surrendered their daily caregiving duties to a relative in Nebraska for the past two years, and the trial court's refusal in this matter to legalize this relationship by appointing Mr. Flores Galeas as the legal guardian over Nataly is acting against the evidence as well as the best interest of Nataly.

It is untenable for the trial court to deny this uncontested guardianship when the uncontroverted evidence shows that Nataly's parents are unable to care for her daily needs, are unable to provide any financial support for her whatsoever, have had another person provide for the physical care of Nataly for over two years, and with the evidence demonstrating that the child is flourishing in the care of Nataly's older brother and her proposed guardian, Mr. Flores Galeas. This matter should be reversed with direction for the trial court to find that Mr. Flores Galeas has met his burden that Nataly's parents have forfeited their rights to her custody by prior and current circumstances and to grant Mr. Flores Galeas a guardianship over Nataly.

II. THE TRIAL COURT ERRED BY FAILING TO MAKE THE SPECIAL FINDINGS OF FACT REGARDING THE BEST INTERESTS OF THE MINOR CHILD, INCLUDING (1) REUNIFICATION WITH THE MINOR CHILD'S PARENTS IS NOT VIABLE DUE TO ABUSE AND NEGLECT; AND (2) THAT IT WOULD NOT BE IN THE MINOR CHILD'S BEST INTEREST TO RETURN TO HONDURAS.

In this matter, Mr. Flores Galeas as a part of his petition for his appointment of guardian of Nataly requested that the court "find that reunification with [Nataly's] parents is not viable due to abuse, abandonment and neglect pursuant to NEB. REV. STAT. § 43-1238(b)." (T3). The petition also requested that the court "find that it would not be in Nataly's best interest to be returned to Honduras pursuant to NEB. REV. STAT. § 43-1238(b)." *Id.* Establishing a legal guardianship and special findings of fact regarding the neglect and abandonment Nataly experienced, whether or not her parents intentionally engaged in such

neglect and/or abandonment intentionally, is necessary for Mr. Flores Galeas to support Nataly with necessary decision-making as she transitions from minority into adulthood as well as to assist Nataly through the immigration process in the United States. The appointment of Mr. Flores Galeas as Nataly's guardian and entry of special findings will simply allow him to help Nataly meet his current future needs to become free from the harm and threats of harm she previously experienced and to become self-sufficient, including her ability to apply for SIJ status in the United States, a form of relief that could lead to lawful permanent residency in the United States and the only form of immigration relief that Nataly is likely eligible to apply for.

Unfortunately, Nataly's need for a legal guardian as well as her eligibility for SIJ status in the United States are both the result of being abandoned and neglected by her parents as well as the life-threatening danger she would face if separated from Mr. Flores Galeas, her sole caretaker and support provider, and forced to return to Honduras. In addition to facilitating Nataly's access to health care and full participation in school, educational activities including participating in cheerleading and joining field trips, as well as to access educational supports that would benefit Nataly as a result from experiencing trauma in Honduras, Mr. Flores Galeas desires to assist Nataly as she navigates the United States immigration legal process—including aiding Nataly in applying for SIJ status—a form of humanitarian relief created by Congress to protect the most vulnerable immigrant community members in the United States from experiencing further harm as a result of the abandonment, abuse and/or neglect of their parents. *See* 8 U.S.C. 1101(a)(27)(J); INA § 101(a)(27)(J)(i)-(ii); *see also* Pub. L. 110-475, 122 Stat. 5044, 5080, § 235(d)(1)(A) (December 23, 2008).

An applicant for SIJ status must submit a U.S. Citizenship and Immigration Services *Form I-360, Petition for Special Immigrant*, which must include special findings by a state "juvenile court" regarding the minor applicant's best interest. It has been established that these special findings of fact regarding a minor's best interest made by Nebraska probate courts in guardianship proceedings meet this requirement established by Congress and adjudicated by DHS. *E.g. In re Guardianship of Carlos D.*, 300 Neb. at 653, 915 N.W.2d at 586 ("[A] guardianship of a child is a child custody determination and thus, the county court was considered a 'juvenile court' for purposes of 8 U.S.C.

1101(a)(27)(J)(i) and (ii).”); *see also* NEB. REV. STAT. § 24-517(2)(“Each county court shall have the following jurisdiction . . . (2) Exclusive original jurisdiction of all matters related to the guardianship of a person” subject to exceptions not applicable in the instant minor guardianship case); *In re Guardianship of D.J.*, 268 Neb. at 248, 682 N.W.2d at 246 (“A guardianship is not more than a temporary custody arrangement established for the well-being of a child.”).

Moreover, subsection (b) of § 43-1238 outlines a Nebraska custody courts role in adjudicating the underlying predicate findings surrounding the best interest of the minor child, which does **not** include adjudication of the child’s eligibility for SIJ status, and states as follows:

Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state. In addition to having jurisdiction to make judicial determinations about the custody and care of the child, a court of this state with exclusive jurisdiction under subsection (a) of this section has jurisdiction and authority to make factual findings regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence. If there is sufficient evidence to support such factual findings, the court shall issue an order containing such findings when requested by one of the parties or upon the court's own motion.

The Nebraska Supreme Court stated the following regarding a trial court’s role in making SIJ determinations:

The role of state courts in the SIJ status determination is to make the findings of fact necessary to the U.S. Citizenship and Immigration Service’s legal determination of the immigrant child’s entitlement to SIJ status. Federal law affirms the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, and abandonment, as well as a child’s best interests. But it is not the

role of the state court to make a determination as to whether a child will ultimately be eligible for SIJ status; that is a determination reserved for the U.S. Customs and Immigration Service and the federal government.

That a court is requested to make findings for purposes of SIJ status does not mean that it must make findings favorable to the party seeking them. Courts asked to make these findings may conclude that there was insufficient evidence or that the evidence was not credible.

Federal law provides: ‘Applications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children’s cases.’

Courts in other jurisdictions have interpreted this language as a caution to courts to not place insurmountable evidentiary burdens on SIJ petitioners, because those seeking that status will have limited abilities to corroborate testimony with additional evidence.

Sabino v. Ozuna, 305 Neb. 176, 182-83. 939 N.W.2d 757, 762 (2020).

When special immigrant juvenile findings are requested, the preponderance of the evidence standard applies. *Hernandez v. Dorantes*, 314 Neb. 905, 994 N.W.2d 46 (2023). In this matter, Mr. Flores clearly met his burden of proof for the trial court to make findings under section 43-1238(b).

A. Neglect

Nebraska criminal code defines child neglect, in part, as “knowingly, intentionally, or negligently permitting a child to be . . . of necessary food, clothing, shelter, or care.” NEB. REV. STAT. § 28-710(b). Additionally, the Nebraska Supreme Court has clarified, that “one need not have the physical possession of a child to demonstrate the existence of neglect. *Gomez v. Savage*, 254 Neb. 836, 580 N.W.2d 523 (1998). The fact that harm to the child is attributable to a parent's poverty and inability or unwillingness to financial provide for the child should be considered when focusing “on the workability or practicality of returning the child to live with the parent” when considering

making special immigrant juvenile findings. *See Guardianship of Saul H.*, 514 P.3d 871, 885 (Cal. 2022).

Here, both Mr. Flores Galeas and Nataly testified that their parents have provided no financial support whatsoever since Nataly has arrived in the United States in September 2023, as Nataly is solely relying on Mr. Flores Galeas to support her. (8:15-19; 8:25-9:3; 10:18-21). Thus, Mr. Flores Galeas has sufficiently shown neglect of Nataly by their parents.

B. Abandonment

Nebraska statutes define abandonment as a “parent’s intentionally withholding from a child, without just cause or excuse, the parent’s presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child. *See* NEB. REV. STAT. § 43-245(1). Another Nebraska statute states that a person has committed abandonment of a child when a person “neglects to provide for . . . his or her child . . . for three consecutive months or more. . . .” *See* NEB. REV. STAT. § 28-705(2).

In this matter, Mr. Flores Galea has presented testimony that his parents have not seen Nataly for over six years. (7:11-18; T1). Furthermore, failing to provide financial support by a parent for a minor child for an extended period of time further demonstrates not only neglect, but also abandonment. *See Marcelina M-G v. Israel S.*, 973 N.Y.S.2d 714 (N.Y. App. Div. 2d Dept. 2013); *see also In re Domingo C.L.*, 2017 WL 3769419, 2017 Tenn. App. LEXIS 590 (Tenn. App. Aug. 30, 2017)(finding that mother’s failure to financially support the minor child for the one year that the child was in the United States constituted neglect for purposes of special immigrant juvenile status findings).

C. There is nonviability of reunification between Nataly and her parents.

In the context of SIJ predicate findings, the “focus of the nonviability inquiry is on the effect of that harm on the workability or practicality of returning the child to live with the parent.” *Guardianship of Saul H.*, 514 P.3d at 886; *see also Romero v. Perez*, 205 A.3d 903 (Md. 2019)(“In SIJ cases the terms “abuse,” “neglect,” and “abandonment” should be interpreted broadly when evaluating whether the totality of the circumstances indicates that the minor's reunification with a parent is not viable, that is, workable or practical, due to prior mistreatment.”).

In the case at hand, Nataly’s parents are going to be living indefinitely in

Honduras and Nataly is going to be living indefinitely in the United States. “The expectation of separation from parent[s] until a child reaches the age of majority easily satisfies the requirement [for lack of reunification]” *See Junck et. al.*, SPECIAL IMMIGRANT JUVENILE STATUS AND OTHER IMMIGRATION OPTIONS FOR CHILDREN AND YOUTH § 4.4. The evidence demonstrated that for over two years, Nataly has not been in the custody and care of her parents. Thus, there is necessarily a nonviability of reunification between Nataly and her parents due to their neglect and abandonment of her.

D. It is in Nataly’ best interests to remain in the United States and not be returned to the country of Honduras.

Mr. Flores Galeas testified that Honduras is one of the most dangerous countries in the world. (11:11-14). Nataly testified that her life in Honduras was not safe. She said that she lived in a neighborhood where there was a lot of crime and a lot of gangs. (19:17-21). She also said that it was not safe to go out in public in Honduras, such as going to the store, school or even in the front of her house, as there were people that could cause her harm. (19:20-25). Nataly clarified that women are in particular targeted in Honduras, as they are often kidnapped and gang members will get them pregnant. (19:25-20:3). Nataly said that there is a lot of gang violence in Honduras and that several of her friends have been killed by gangs. (20:4-9). **Natalie testified that she has been threatened herself death threats and kidnapping threats while living in Honduras.** (20:10-21:5). Nataly also described that there is a lot of poverty in Honduras and that her parents were having a hard time financially supporting her when she lived in Honduras. (21:21-22:6). The Honduras 2024 Human Rights Report verified that there are “[s]ignificant human rights issues” in Honduras and that the country suffers from “a weak judicial system, political interference, and corruption.” (E1).

It is axiomatic that the United States is superior for Nataly and in her best interest to remain in the United States in comparison to Honduras, as the evidence demonstrated the conditions in Honduras are generally deplorable. Repatriation to a country such as Honduras would in no way be in the best interests of Nataly.

Ultimately, trial courts deciding matters of custody of minor children, including guardianship matters, in Nebraska “**shall** issue an order containing the findings when requested by one of the parties or upon the court’s own motion” if there is “sufficient evidence to support such factual findings”. NEB. REV. STAT. §

43-1238(b)(emphasis added). Nebraska appellate courts have repeatedly found that a trial court's failure to address a request for special findings under NEB. REV. STAT. § 43-1238(b) is a reversible error. *See Sabino*, 305 Neb. 176, 939 N.W.2d 757; *In re Guardianship of Luis J.*, 300 Neb. 659, 915 N.W.2d 589 (2018); *In re Guardianship of Carlos D.*, 300 Neb. 646, 915 N.W.2d 581; *De Mateo v. Mateo-Cristobal*, 27 Neb. App. 969, 938 N.W.2d 372 (2020); *In re interest of Luis G.*, 17 Neb. App. 377, 764 N.W.2d 648 (2009); *see also Meija Ramirez v. Mercado Baustista*, No. A-19-908, 2020 WL 2730967, 2020 LEXIS 159 (May 26, 2020).

This Court should reverse the trial court's refusal to address Mr. Flores Galeas' request for special findings for the purposes of Nataly's eligibility to simply apply for special immigrant juvenile status, as provided for under NEB. REV. STAT. § 43-1238(b), and to remand this matter with directions for such findings.

CONCLUSION

Based upon the foregoing, Appellant Robin David Flores Galeas respectfully requests this Court to reverse the trial court's, the County Court of Lancaster County, Nebraska, denial of his petition for appointment as guardian for his minor sister, Nataly Sarai Flores Galeas, to enter the guardianship and remand this matter for the trial court to find: (1) that the court erred in failing to find that parental rights of Nataly's parents have been suspended by prior or current circumstances and that it is in Nataly's best interests for Mr. Flores Galeas to be appointed as Nataly's guardian; and (2) that the evidence submitted to the trial court warranted the court making special findings of fact that (a) Nataly had been abandoned and neglected by both of her parents, (b) that Nataly's reunification with her parents was nonviable due to such abandonment and neglect, and (c) that it would not be in Nataly's best interest to be returned to Honduras.

DATED this 2nd day of February, 2026.

**ROBIN DAVID FLORES
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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief contains 13,966 words. This Brief was drafted using Microsoft Word using Microsoft Office for Windows 10 that was subsequently converted to PDF using Adobe Acrobat DC. This Brief used Times New Roman font exclusively.

s/ David V. Chipman
David V. Chipman

CERTIFICATE OF SERVICE

That on the 3rd day of February, 2026, I caused a true and correct copy of this brief to be served by first-class U.S. Mail, postage prepaid:

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That on the 3rd day of February, 2026, I caused a true and correct copy of this brief to be sent by First-Class Mail International through the U.S. Postal Service to the following:

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David V. Chipman

Certificate of Service

I hereby certify that on Monday, February 02, 2026 I provided a true and correct copy of this *Brief of Appellant* to the following:

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

Nataly S Flores Galeas (Self Represented Litigant) service method: **First Class Mail**

Robin Arturo Flores Arriola (Self Represented Litigant) service method: **First Class Mail**

Signature: /s/ David V. Chipman (23151)