

WEDNESDAY, NOVEMBER 18, 2009
11:00 A.M.

NO. 3

#25025, #25193

#25037

IN THE MATTER OF THE
GUARDIANSHIP OF: S.M.N.,
T.D.N. and T.L.N, Minors.

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(FOR APPELLANT HUGHES COUNTY, #25193)

The Honorable John Brown
Sixth Judicial Circuit
Hughes County

(GDN 08-13)

NOTICE OF REVIEW FILED NOVEMBER 4, 2008

20-20-10

STATEMENT OF LEGAL ISSUES

1. **WHETHER THE TRIAL COURT ERRED BY ALLOWING PETITIONER TO PROCEED UNDER THE GUARDIANSHIP ACT AND TIMMY LAWS AND CIRCUMVENT THE ABUSE AND NEGLECT STATUTES.**

The trial court allowed the matter to proceed under SDCL 29A-5-106.1 and SDCL §§ 25-5-29 thru 25-5-34, inclusive.

Most relevant cases and statutory authority:

In the Matter of the Guardianship and Conservatorship for T.H.M. and M.M.M., 2002 SD 13, 640 N.W.2d 68.

SDCL § 25-5-29 through 25-5-34.

SDCL § 26-8A-21.

2. **WHETHER THE TRIAL COURT ERRED IN GRANTING A GUARDIANSHIP TO A NON-PARENT.**

The trial court held Mother was fit but extraordinary circumstances were present and granted permanent guardianship of the children to Petitioner.

Most relevant cases and statutory authority:

Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054 (2000).

In the Matter of the Guardianship and Conservatorship of A.L.T. and S.L.T., 2006 SD 28, 712 N.W.2d 338.

Clough v. Nez, 2008 SD 125 ¶ 8, 759 N.W. 2d 297

SDCL § 25-5-29 through 25-5-34.

1. **WHETHER THE TRIAL COURT ERRED IN ALLOWING CHILD HEARSAY STATEMENTS TO BE INTRODUCED.**

The trial court determined the children were unavailable and allowed witnesses to testify to statements allegedly made by the children.

Most relevant cases and statutory authority:

SDCL § 19-16-4

SDCL § 19-16-39

STATEMENT OF LEGAL ISSUES

1. WHETHER THE TRIAL COURT ERRED BY ALLOWING THE PETITIONER TO PROCEED UNDER THE GUARDIANSHIP ACT AND TIMMY LAWS AND CIRCUMVENT THE ABUSE AND NEGLECT STATUTES.

The trial court correctly allowed the matter to proceed under SDCL 29A-5-106.1 and SDCL §§25-5-29 THRU 25-5-34, inclusive.

2. WHETHER THE TRIAL COURT ERRED IN GRANTING A GUARDIANSHIP TO A NON-PARENT.

The trial court correctly granted a guardianship to Petitioner.

3. WHETHER THE TRIAL COURT ERRED IN ALLOWING CHILD HEARSAY STATEMENTS TO BE INTRODUCED.

The trial court determined the children were unavailable and allowed witnesses to testify to statement allegedly made by the children.

SDCL §19-16-4

SDCL §19-16-39

STATEMENT OF LEGAL ISSUES

1. **WHETHER THE TRIAL COURT HAD AUTHORITY TO APPOINT AN ATTORNEY AT COUNTY EXPENSE TO REPRESENT A PARENT IN A GUARDIANSHIP PROCEEDING WHERE THERE WAS NO REQUEST FOR TERMINATION OF PARENTAL RIGHTS AND ONLY CUSTODY WAS AT ISSUE.**

The trial court ordered Hughes County to pay the cost of a court appointed attorney to represent a parent in a guardianship proceeding where termination of parental rights was not at issue.

Most relevant cases and statutory authority:

In the Matter of the Guardianship and Conservatorship for T.H.M. and M.M.M., 2002 SD 13, 640 NW2d 68

Lassiter v. Department of Social Services of Durham County, North Carolina, 452 US 18, 31-32, 101 SCt 2153, 2162, 68 LEd2d 640 (1981))

State v. \$1,010.00 in American Currency, 2006 SD 84, 722 NW2d 92

SDCL § 29A-5

SDCL § 25-5-29 through 25-5-34