

SUPREME COURT OF NEW HAMPSHIRE

In re Guardianship of Matthew L.

164 N.H. 484 (2012) · Decided December 21, 2012

SUMMARY

The New Hampshire Supreme Court affirmed the termination of Joan M.’s co-guardianship over Matthew L. The court held that the trial court did not abuse its discretion in denying a continuance or new trial after the burden of proof shifted under *In re Guardianship of Reena D.* The court declined to address an unpreserved argument concerning whether the statutory termination standard is conjunctive or disjunctive, while noting that the legislature might consider the issue.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hicks, J.; Dalianis, C.J.; Conboy, J.; Lynn, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	December 21, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Joan M., a co-guardian of the minor Matthew L., appealed the family division's order granting the biological mother's petition to terminate Joan's co-guardianship.
STANDARD OF REVIEW	Findings of fact are final unless plainly erroneous and will not be disturbed unless unsupported by the evidence or plainly erroneous as a matter of law. Rulings concerning continuances and management of proceedings are reviewed for an unsustainable exercise of discretion.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Joan M. v. Mary S.

TOPICS

- guardianships
- guardianship procedure
- appellate procedure
- preservation of error
- statutory interpretation

PRACTICE AREAS

- guardianships
- family law
- appellate procedure
- statutory interpretation
- constitutional law

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Joan's motion for a continuance or a new trial after Reena D. changed the allocation and standard of proof.
2. Whether the trial court improperly interpreted Reena D. to require Joan to prove both statutory grounds for continuing the consensual guardianship.
3. Whether Reena D. was inapplicable because the guardianship was used to create a two-parent family and Joan stood in loco parentis to Matthew.

HOLDINGS

1. The trial court did not abuse its discretion in denying Joan's motion for a continuance or new trial.
2. The court declined to review the argument because Joan did not make a contemporaneous and specific objection in the trial court.
3. The court did not reach the argument because Joan failed to preserve it and had expressly agreed in the trial court that Reena D. governed the proceedings.

KEY QUOTATIONS

“Three months before the hearing, the respondent’s counsel knew or should have known that the respondent had the burden of proof.” (164 N.H. at 487)

“Regardless of which party had the burden of proof, the issues in the hearing remained the same: (1) whether the guardianship was necessary to provide for the minor’s essential physical and safety needs; and (2) whether terminating it would adversely affect the minor’s psychological well-being.” (164 N.H. at 487)

“The general rule is that a contemporaneous and specific objection is required to preserve an issue for appellate review.” (164 N.H. at 488)

FACTUAL BACKGROUND

Mary S. and Joan M. were involved in a relationship when Mary became pregnant through artificial insemination and gave birth to Matthew in 2007. The parties petitioned for co-guardianship to establish a familial relationship between Matthew and Joan. After the relationship ended, Mary sought to terminate the guardianship, and the renewed termination proceeding resumed after the Supreme Court issued Reena D., which placed the burden on a guardian opposing termination of a consensual guardianship.

PROCEDURAL HISTORY

Mary S. and Joan M. were appointed co-guardians in 2007. After their relationship ended, Mary moved to terminate the guardianship; an initial motion was denied in 2009, and a renewed motion was granted after a hearing that resumed following the Supreme Court's decision in *In re Guardianship of Reena D.* The trial court denied Joan's request for a continuance or new trial, applied the clear-and-convincing burden described in Reena D., found that she failed to establish the statutory grounds for continuation, and terminated the guardianship.

DISPOSITION

affirmed

CASES CITED

- In re Guardianship of Reena D., 163 N.H. 107 (2011)
- Troxel v. Granville, 530 U.S. 57, 69 (2000)
- In the Matter of Sawyer & Sawyer, 161 N.H. 11, 18 (2010)
- Appeal of Alexander, 163 N.H. 397, 406 (2012)
- Petition of Guardarramos-Cepeda, 154 N.H. 7, 9 (2006)

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