

SUMMARY STATEMENT

John and Ronda Nicholson v. Brittany Bennett

Docket No. 47550

Brittany Bennett is the biological mother of the minor child, T.J.T.-M. Jon and Ronda Nicholson, the paternal great uncle and great aunt of T.J.T.-M., petitioned for co-guardianship of T.J.T.-M., which the magistrate court granted. Bennett appealed and argued the magistrate court erred when it appointed the Nicholsons as co-guardians of T.J.T.-M.

On appeal, the Idaho Court of Appeals affirmed the magistrate court's judgment appointing the Nicholsons as co-guardians, but vacated the order granting attorney fees. The Court of Appeals held that the burden of proof standard for the appointment of a guardian is by a preponderance of the evidence. The Court explained this is the proper standard for appointing a guardian in both a temporary guardianship and a permanent guardianship proceeding. In this case, the appointment of the Nicholsons as co-guardians was established by a preponderance of the evidence. However, there was insufficient evidence in the record regarding the award of attorney fees. Thus, the Court of Appeals affirmed the magistrate court's judgment appointing the Nicholsons as co-guardians, but vacated the magistrate court's decision to award attorney fees and costs.