

Rule 1-154. Kinship guardianship hearing; elements of proof; judgment.

A. Applicability of Rules of Evidence. The Rules of Evidence shall apply to the kinship guardianship hearing.

B. Elements of proof. The petitioner must prove the following allegations by clear and convincing evidence:

- (1) jurisdiction and venue are appropriate;
- (2) service on the parents of the child has been completed;
- (3) the parents had notice of the kinship guardianship hearing;
- (4) the appointment of the proposed guardian is in the best interest of the child;
- (5) for a child who has reached the age of fourteen (14), that
 - (a) if the proposed guardian is the person nominated by the child, it would be in the child's best interest to appoint that nominee; and
 - (b) the child has not filed a written objection to the proposed guardian;
- (6) the petitioner seeking appointment as the guardian is in fact qualified because the petitioner meets the requirements of Section 40-10B-5(A) NMSA 1978;
- (7) no guardian has been appointed for the child under a provision of the Uniform Probate Code; and
- (8) for each parent of the child, at least one of the following:
 - (a) the parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn; or
 - (b) the parent of the child is living but all parental rights in regard to the child have been terminated or suspended by prior court order; or

(c) the child has resided with the petitioner without the parent for a period of ninety (90) days or more immediately preceding the date the petition is filed, and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance, and supervision for the child; or

(d) there are extraordinary circumstances.

C. **Elements not proven.** If the court finds that the elements of proof set forth in Paragraph B of this rule have not been proven by clear and convincing evidence, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interests of the child.

D. **Support and visitation.** As part of a judgment entered under the Kinship Guardianship Act, the court may

(1) order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay; or

(2) order visitation between a parent and child to maintain or rebuild a parent-child relationship if the visitation is in the best interest of the child.

[Adopted by Supreme Court Order No. 22-8300-020, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — At least one of the elements must be met for each parent. In many cases, that element will be different for each parent; there is no requirement that the parents meet the same element. *See Freedom C. v. Brian D.*, 2012-NMSC-017, 280 P.3d 909, *rev'g Freedom C. v. Julie Ann D.*, 2011-NMCA-040, 149 N.M. 588, 252 P.3d 812.

The court shall consider the potential impact of financial payments under this subsection on the relationship of the parent and child and on the prospects of family reunification. The court

DOMESTIC RELATIONS
RULE 1-154
[NEW MATERIAL]

Supreme Court Approved
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- 1 may use the child support guidelines set forth in NMSA 1978, Section 40-4-11.1 (2021) to
- 2 calculate a reasonable payment. *See* NMSA 1978, § 40-10B-8(D) (2020).
- 3 [Adopted by Supreme Court Order No. 22-8300-020, effective for all cases pending or filed on or
- 4 after December 31, 2022.]