

# In re Guardianship of Carlos D

## Caselaw No.

S-17-1056

## Filed on

Friday, July 27, 2018

**Summary:** Eleany Esmerelda Zunun Gonzalez (Gonzalez) appeals the County Court for Lancaster County. The Court here finds that the County Court acting as a juvenile court did have the jurisdiction to make special findings on the basis of 8 U.S.C. § 1101 (a)(27)(J). The Court reverses the order of the county court, and remands for further proceedings.

Carlos was born in Guatemala in November 1998 and arrived in Nebraska in 2015 at age 16 without any support or parental supervision. Carlos grew up in Tacana de San Marcos, Guatemala with his mother, stepfather, and three sisters. His stepfather was verbally and physically abusive toward Carlos, his sisters, and his mother. Carlos was verbally abused daily and was hit two or three times a week. After 13 years, the stepfather decided to leave, abandoning the family. After the separation of Carlos' mother and stepfather, she began to reject Carlos, and would not feed him because she was mad at him. Carlos became the 'man' of the house at age 8, working on a farm after school. At age 10, Carlos' mother would no longer let him attend school so he could work full time and provide for the family. At age 13, Carlos began to be approached by members of the 'MS 13' gang, attempting to recruit him. Once Carlos declined to join the gang, they verbally harassed him and beat him up. The gang members would threaten his life, with a gun to a head or knife behind his back. Carlos feared for his life and ultimately fled Guatemala to live with his aunt, Gonzalez in Lincoln, NE.

On June 13, 2017, Gonzalez and Carlo came before the county court for a hearing, and the court appointed Gonzalez as Carlos' guardian. Gonzalez submitted a proposed order which included special findings consistent with 8 U.S.C. § 1101 (a)(27)(J), but the county court did not make special findings, stating 'Carlos is not dependent on this court'.

Gonzalez claims the county court erred when it concluded that because Carlos was not dependent on the county court, it could not make the requested special findings. Specifically, Gonzalez assigns error to the county court in:

1. Failing to determine that Carlos was a 'declared dependent' on the county court or 'legally committed to, appointed by a' juvenile court' as these terms are defined by 8 U.S.C. § 1101 (a)(27)(J), and
2. Refusing to make the requested findings of fact that:
  - a. Reunification with one or both parents is not viable due to abuse, neglect, or abandonment, and
  - b. It would not be in Carlos' best interests to return to Guatemala.

Under Nebraska law, a guardianship proceeding is a child custody proceeding. Neb. Rev. Stat. § 43-1227(4). The county court believed that it did not have the authority to make the special findings of fact requested by Gonzalez. However, in 2018 the Nebraska Legislature

enacted LB 670, which became effective on July 19, 2018 as Neb. Rev. Stat. § 43-1238(b), providing explicit guidance that courts who make initial child custody decisions, like guardianships, have jurisdiction and authority to make special findings. When a legislative bill takes effect, procedural changes apply to pending cases, while substantive changes do not. See *Smith v. Mark Chrisman Trucking*, 285 Neb. 826 (2013). The amendment in LB 670 just clarified the authority and procedure for making factual findings, and so is procedural and therefore applies to pending cases.

The Nebraska Supreme Court determined that the county court erred when it concluded it had not made a custody determination for purposes of 8 U.S.C. § 1101 (a)(27)(J)(i). The Court reverses the order and remands the cause for further proceedings consistent with the opinion.

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