

IN RE CARLOS D.

Submitted on Briefs April 29, 2010
Decided May 18, 2010

Panel: SAUFLEY, C.J., and LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

The father of Carlos D. appeals from a judgment of the Waldo County Probate Court (*Longley, J.*) appointing temporary guardianship of the child to the mother's ex-husband pursuant to 18-A M.R.S. § 5-204 (2009). Although the expiration of the temporary guardianship order has rendered this appeal technically moot, because a renewed guardianship petition has been filed, the father's appeal meets one of the exceptions to the mootness doctrine. *See Me. Sch. Admin. Dist. No. 37 v. Pineo*, 2010 ME 11, ¶ 9, 988 A.2d 987, 991 (stating that an appeal will escape dismissal for mootness when the "issues are capable of repetition but evade review because of their fleeting or determinate nature" (quotation marks omitted)). We therefore address the merits of the father's appeal.

Contrary to the father's contentions, we conclude that: (1) the court correctly assigned the burden of proof to the guardian, *see Guardianship of Jewel M.*, 2010 ME 17, ¶¶ 12, 13, 989 A.2d 726, 729-30; and (2) sufficient evidence exists in the record on which the court could find, by clear and convincing evidence, that (A) a temporarily intolerable living situation existed as to the father, and (B) the proposed guardian provided a living situation that was in the child's best interest. *See* 18-A M.R.S. § 5-204(c); *Guardianship of Jewel M.*, 2010 ME 17, ¶¶ 12, 13, 989 A.2d at 729-30; *Guardianship of Emma M.*, 2003 ME 89, ¶ 3, 828 A.2d 776,

777; *In re Amberley D.*, 2001 ME 87, ¶¶ 20, 21, 775 A.2d 1158, 1165.¹

The entry is:

Judgment affirmed.

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Waldo County Probate Court docket number 2009-146
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¹ Because the father's reply brief properly responded to issues raised in the guardian's brief, we deny the guardian's "motion for non-consideration" of Section II of the father's reply brief. *See* M.R. App. P. 9(c) (stating that a reply brief "must be strictly confined to replying to new matter raised in the brief of the appellee").