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Summary of In re Estate of Melton, 128 Nev. Adv. Op. No. 4

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In re Estate of Melton, 128 Nev. Adv. Op. No. 4 (February 16, 2012)[1]

WILLS AND ESTATES –DISINHERITANCE CLAUSES

Summary

The Court considered an appeal from a district court order granting that, contrary to testator's intent, the estate rightfully passed to testator's heirs.

Disposition/Outcome

The Court reversed the district court's judgment, concluding that the disinheritance clause in the testator's will is enforceable under NRS 132.370. The Court ruled that the estate must escheat to the State because the testator validly disinherited all of his heirs.

Factual and Procedural History

In 1975, the testator, William Melton ("Melton") executed a formal will in which he devised most of his estate to his parents and small portions to his brother and two of his cousins. Four years later Melton added a friend, Alberta Kelleher to his will ("Kelleher"). In 1995, after the passing of both of his parents, Mr. Melton wrote a handwritten letter to Ms. Kelleher in which he devised his entire estate to her. In this letter he explicitly stated that he does not want any of his relatives, including his daughter, Vicki Palm ("Palm"), "to have one penny of [his] estate."

Melton passed away in 2008, predeceased by Kelleher, thus requiring Mr. Melton's three million dollar estate to be administered under the regulations of probate law. The district court suspended the powers of the current estate administrators and appointed a disinterested third party as special administrator of the estate.

Palm argued that the 1995 letter to Ms. Kelleher was a valid will, thus revoking the 1975 will, but she also argued that the 1995 letter was ineffective because the only named devisee, Kelleher, predeceased Melton. Consequently Palm reasoned that Melton's estate should pass to her through intestacy pursuant to NRS 134.100.

Furthermore, Melton's half sisters contended that the 1995 letter was not a valid will. They contended that the 1975 will was still in force. Additionally, they argued that even if the 1995 letter was a valid will, that it did not revoke the 1975 will, and alternatively, even if it did revoke the 1975 will, the revocation should be disregarded under the doctrine of dependent relative revocation. Melton's half sisters asserted that under NRS 133.200, they could take their parent's share of Mr. Melton's estate as devised to the parents in the 1975 will.

The State claimed that the 1995 letter was a valid will that revoked the 1975 will, and that Melton's express disinheritance of all of his heirs in the 1995 letter should be enforced under the

[1] By Eric Carson.

Legislature's 1999 revisions to the Nevada Probate Code, which provided for the enforcement of disinheritance clauses.

Discussion

Chief Justice Saitta wrote for the unanimous Court, sitting en banc. The Court discussed the district court's findings in turn, beginning with whether the 1995 letter constituted a valid will.

1. The 1995 letter is a valid will because Nevada law gives holographic wills the same weight as formally executed wills.

"A holographic will is a will in which the signature, date and material provisions are written by the hand of the testator, whether or not it is witnessed or notarized."[2] Therefore, Melton's 1995 letter to Kelleher, despite its informal nature, constituted a valid. The Court further bolstered this argument by identifying Mr. Melton's clearly stated intent that Ms. Kelleher should receive his entire estate, and that his heirs should receive nothing, as well as Mr. Melton's acknowledgement that he should place his intent in writing.

2. The disinheritance clause contained in the 1995 letter is enforceable because NRS 132.370 abolished the common law disinheritance rules.

The Court found that the district court erred in applying the prevailing common law rule regarding disinheritance clauses. The district court followed the "American common law rule" which holds that a testator could "prevent an heir from receiving his share of any property that passes by intestacy only by affirmatively disposing of the entire estate through a will."[3]

The Court rejected the common law disinheritance rules because the common law rules "distort testamentary intent and conflict with testamentary freedom" by limiting the enforcement of disinheritance clauses to those circumstances where the testator has "affirmatively dispos[ed] of the entire estate through a will." This view was consistent with The Restatement (Third) of Property.

With that rationale in mind, the Court turned to NRS 132.370 to abolish the common law rules. The Court specifically focused on the statutory definition of a will as an instrument that "expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."[4] The Court ruled that just because Kelleher predeceased Melton, thus causing the devise to lapse, the remainder of the will, including the disinheritance clause, remained enforceable.

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[2] NEV. REV. STAT. §133.090(3) (2007).
[3] *See* J. Andrew Heaton, *The Intestate Claims of Heirs Excluded by Will: Should "Negative Wills" Be Enforced?*, 52 U. CHI. L. REV. 177, 179-83 (1985).
[4] §132.370.

3. The 1995 letter revoked the 1975 will by implication because the 1975 will and the 1995 letter are so inconsistent that they cannot stand together.

Despite the fact that revocations by implication are disfavored,[5] the Court found that this implied revocation was necessary because the two wills competed against each other for the same property. NRS 133.120(1)(b), which provides that a will may be revoked by another will in writing,[6] supported the revocation. The case of *Shephard v. Gebo*, which stated that "[r]evocation of a former will is presumed where a second will is executed,"[7] also supported the revocation

4. The doctrine of dependent relative revocation is applicable in Nevada, but does not apply under the particular facts of this case because the objective of Mr. Melton's 1995 letter did not fail.

The doctrine of dependent relative revocation is a "common-law doctrine that operates to undo an otherwise sufficient revocation of a will when there is evidence that the testator's revocation was conditional rather than absolute."[8] Consistent with the doctrine's purpose, "[t]he doctrine can only apply where there is a clear intent of the testator that the revocation of the old will is made conditional on the validity of the new one."[9]

The Court reasoned that when responsibly applied, this doctrine promotes the general public policy of giving effect to a testator's intent in interpreting a will. "This policy," the Court explained, "is sound and coincides with the long-standing objective of this court to give effect to a testator's intentions to the greatest extent possible." Therefore, the Court expressly adopted the doctrine of dependent relative revocation. As a result of this adoption, the court rejected the notion that NRS 133.130 precludes the doctrine under Nevada law.

Despite the Court's express adoption of this doctrine, the Court held that the doctrine did not apply under the specific facts of this case. The Court reasoned that the doctrine did not apply here because Melton's objective in the 1995 letter –disinheriting his heirs– did not fail, despite the lapsed devise to Kelleher. Consequently the disinheritance clause contained in the 1995 letter remains enforceable.

5. The proper distribution of Melton's estate under the 1995 letter was an escheat to the State because Melton's disinheritance clause was enforceable.

NRS 134.120 sets forth the requirements for the escheat of an intestate estate. "If the decedent leaves no surviving spouse or kindred, the estate escheats to the State for educational purposes." The Court pointed out that "a disinherited heir is treated, as a matter of law, to have predeceased the testator."[10]

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[5] In re Arnold's Estate, 60 Nev. 376, 380, 110 P.2d 204, 206 (1941).
[6] §133.120(1)(b).
[7] 77 Nev. 226, 231, 361 P.2d 537, 540 (1961).
[8] BLACK'S LAW DICTIONARY 503 (9th ed. 2009).
[9] 95 C.J.S. *Wills* § 412 (2011).
[10] *See* In re Will of Beu, 333 N.Y.S.2d 858, 861 (Sur. Ct. 1972).

Accordingly, the Court concluded, "that when a testator disinherits all heirs, he or she 'leaves no surviving spouse or kindred' for the purposes of NRS 134.120 and, as a consequence, an escheat is triggered." The Court came to this conclusion –that the estate must escheat to the State– despite the strong public policy against escheats because "the law strives to effectuate the intentions of testators."[11]

Consequently the Court held that "[i]t is unmistakable that in enacting NRS 132.370, the Legislature weighed these competing considerations and determined that testamentary freedom has primacy over the policy disfavoring escheats." Thus resulting in Mr. Melton's estate escheating to the State because Mr. Melton had the freedom to disinherit all of his heirs.

Conclusion

The Court expressly adopted the common law doctrine of dependent relative revocation to undo an otherwise sufficient revocation of a will when there is evidence that the testator's revocation was conditional rather than absolute. However, the plain language of NRS 132.370 abolished the common law rules that would render a testator's disinheritance clause unenforceable.

[11] Zirovcic v. Kordic, 101 Nev. 740, 741, 709 P.2d 1022, 1023 (1985).