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In re Guardianship & Estate of Echevarria, 132 Nev. Adv. Op. 45 (June 30, 2016)

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ESTATES AND TRUST; CIVIL LAW

Summary

Distribution of estate funds under NRS Chapter 159 or a court's distribution order requires a district court finding identifying the source of the funds. A valid stipulation requires mutual assent either through the presence of all interested parties or a signed writing showing the assent of the party against whom the stipulation is offered.

Background

Michael Echevarria (Appellant) is a judgment creditor against his mother Jean Ruth Echevarria's guardian estate. Angel Echevarria is Jean's daughter and acted as the original guardian of Jean's estate through 2007. Robert Ansara is the successor and current guardian of Jean's estate. Attorney Elizabeth Brickfield performed legal work for both the original and successor guardians of Jean's estate. Attorney Elyse Tyrell represented Robert during his guardianship.

In August 2012, the district court entered a distribution order for the use of Jean's monthly rental income from her California property. Funds were to be used to pay, until fully satisfied, the following: 1) Appellant's \$625K judgment lien; 2) Brickfield's \$103K attorney fees; 3) Tyrell's \$13K attorney fees; and 4) Robert's \$20K guardian's fees.

Around the same time, Robert accepted an offer to sell Jean's California property. The district court approved and ratified the sale, directing proceeds to pay off the mortgage, satisfy an IRS lien, with the remainder paid toward Appellant's judgment lien. Appellant received \$200K in partial payment of his lien; Jean's estate received nothing from the sale.

After the sale of the property, Angel petitioned for distribution of funds in an operating account associated with the California property. Present at the hearing were Angel, Robert, Brickfield, and Tyrell; Appellant was not present. The parties present objected to Appellant receiving funds from the operating account, noting Appellant had instead received the proceeds from the property sale. The parties present then stipulated to a distribution of the account funds, which at that time was the remaining asset of value in Jean's estate. The court entered the stipulation and order, without obtaining Appellant's participation, signature, or agreement.

Discussion

The district court erred by failing to identify the source of the funds in the operating account

Appellant argued that the funds in the operating account were from the sale of the California property, and should therefore be distributed in accordance with either NRS § 159.1365 or the August 2012 court order.² Robert argued that the funds were not from the property sale, thus neither the statute nor the August court order applied.

The record, however, has no indication of the source for the funds in the operating account. No previous court proceeding reached this dispositive issue, neither court transcripts

¹ By Paul George.

² NEV. REV. STAT. § 159.1365.

nor minutes provide guidance, and the parties here present no evidence as to the source of the funds. Without identifying the funds' source, the court entered stipulation was made in clear error, unsupported by substantial evidence.

If the funds in the operating account are proceeds from the sale of Jean's California property, then NRS 159.1365 governs

NRS 159.1365 governs the sale of a ward's property, prioritizing use of proceeds to: 1) pay sale expenses; 2) satisfy mortgages and other liens; and 3) to go to the estate of the ward.³ If the funds in the operating account were derived from the property sale then the statute requires distribution to Appellant.

If the source of the funds was not the sale of the California property, then the August 2012 distribution order partially governs

The August 2012 distribution order governs to the extent that funds in the operating account constitute rental income from the California property.

If the source of the funds is neither the sale of the California property nor Jean's excess rental income, then NRS 159.103, NRS 159.105, and NRS 159.183 apply

If the funds are from any other source, distribution of the operating account is then determined in accordance with NRS § 159.103 (dealing with claims against the estate of the ward),⁴ NRS § 159.105 (dealing with claims of a guardian or attorney fees),⁵ and NRS § 159.183 (dealing with compensation and expenses of a guardian).⁶

The district court erred by approving the stipulation

Valid stipulations are controlling and conclusive, and courts are bound to enforce them.⁷ Stipulations are agreements made before a judicial tribunal, and, like a contract, require assent by all parties to the terms.⁸ Appellant was the party against whom the stipulation was offered. Without his assent, the stipulation was invalid, and the court erred in approving it.

Conclusion

The Nevada Supreme Court vacated the stipulation order, and remanded to determine the source of the operating account funds. A finding as to the source of the funds is necessary before distribution is made.

³ *Id.*

⁴ NEV. REV. STAT. § 159.103.

⁵ NEV. REV. STAT. § 159.105.

⁶ NEV. REV. STAT. § 159.183.

⁷ *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118, 197 P.3d 1032, 1042 (2008).

⁸ *Taylor v. State Indus. Ins. Sys.*, 107 Nev. 595, 598, 816 P.2d 1086, 1088 (1991).