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In re Davis Family Heritage Trust, 133 Nev. Adv. Op. 26 (May 25, 2017).

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CIVIL PROCEDURE: JURISDICTION

Summary

The Court determined that (1) NRS § 155.190(1)(h) only provides appellate jurisdiction to the Court over instruction or appointment of a trustee, and (2) Nevada courts may exercise specific personal jurisdiction over a nonresident who serves as a trust advisor under NRS § 163.5555 when the suit arises out of his decisions or actions as a trust advisor.

Background

In 2000, Beatrice Davis, a Missouri resident, established The Beatrice B. Davis Family Heritage Trust (the FHT) under Alaska law, with the trust situs in the state of Alaska. In 2014, the trustee of the FHT transferred the trust situs to the state of Nevada and appointed the Dunham Trust Company (the DTC) as the successor trustee. Thereafter, the FHT created a Nevada limited liability corporation (FHT Holdings) and appointed Beatrice's son, appellant/petitioner Christopher Davis (Christopher) as the investment trust advisor (ITA) of the FHT and sole manager of FHT Holdings.

Respondent Caroline Davis (Caroline), Christopher's sister and a beneficiary of the FHT, requested information of FHT and FHT Holdings' activities. Christopher, as the manager of FHT Holdings and ITA of the FHT, failed to produce the requested information prompting Caroline to file a petition for the district court to assume jurisdiction over the FHT.

The district court assumed jurisdiction over the FHT, confirmed the DTC as trustee, and found that the court had personal jurisdiction over Christopher as ITA and the manager of FHT Holdings under NRS 164.010, and required Christopher to produce the requested documents and information. Christopher appealed the district court's order and petitioned for a writ of prohibition or mandamus challenging the district court's exercise of jurisdiction over him under NRS § 163.5555.

Discussion

Christopher's appeal of the district court's order assuming jurisdiction over the FHT and over Christopher is beyond the scope of NRS 155.190(1)(h).

The Court disagreed with Christopher's argument that the Court could consider all matters addressed in the district court's order because "nothing in NRS 155.190(1)(h) expressly grants th[e] court the authority to address the district court's findings of fact or conclusions of law beyond the instruction or appointment of a trustee." Accordingly, the Court dismissed Christopher's appeal and did not address whether the district court erred in assuming jurisdiction over the trust and over Christopher, and directing Christopher to disclose requested information related to the FHT.

¹ By Ping Chang.

Christopher's writ petition is denied because Christopher accepted a position as an ITA and therefore submitted to personal jurisdiction in Nevada under NRS 163.5555.

The Court disagreed with Christopher's argument that the district court offended traditional notions of fair play and substantial justice by exercising personal jurisdiction over him because while Christopher is not a resident of Nevada, he submitted to personal jurisdiction when accepted the ITA appointment of a trust with a situs in Nevada.²

Nevada courts may exercise specific personal jurisdiction over a nonresident when the said person "purposefully avail himself the privilege of acting in Nevada" and the cause of action arises from the consequences of his activities that have "substantial enough connection with Nevada."³ Here, Christopher accepted the position as an ITA of the FHT, which demonstrates his "purposeful availment of the privilege of acting in Nevada." Further, this suit arose out of Christopher's role as an ITA, thus the district court's exercise of specific personal jurisdiction over him is proper.

Conclusion

The Court held that (1) NRS § 155.190(1)(h) only provides appellate jurisdiction to the Court over the instruction or appointment of a trustee, and (2) Nevada courts may exercise specific personal jurisdiction over nonresidents who serve as ITAs under NRS § 163.5555 when the cause of action arises from the ITA's decisions or actions. Accordingly, the Court dismissed Christopher's appeal and denied his writ petition.

² NRS § 163.5555 provides:

"If a person accepts an appointment to serve as a trust protector or a trust adviser of a trust subject to the laws of this State, the person submits to the jurisdiction of the courts of this State, regardless of any term to the contrary in an agreement or instrument. A trust protector or a trust adviser may be made a party to an action or proceeding arising out of a decision or action of the trust protector or trust adviser."

³ *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458, 282 P.3d 751, 755 (2012) (first alteration in original) (quoting *Jarstad v. Nat'l Farmers Union Prop. & Gas. Co.*, 92 Nev. 380, 387, 552 P.2d 49, 53 (1976)).