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***Jacobson v. Estate of Clayton*, 121 Nev. Adv. Op. 53, 119 P.3d 132 (2005)¹**

TORTS – SPECIAL ADMINISTRATOR LIABILITY

Summary

Nevada Revised Statute 140.040 specifically allows suits against a special administrator, in place of probate proceedings, when the estate's sole asset is a liability insurance policy.

Disposition/Outcome

Reversed and remanded. The Nevada Supreme Court found that the Nevada Legislature superseded the court's decision in *Bodine v. Stinson*² by enacting NRS 140.040(3).

Factual and Procedural History

In 2001, Tony Jacobson ("Jacobson") and Amoreena Victorine ("Victorine"), Nevada residents, were struck by Daniel Clayton ("Clayton"), when his vehicle crossed the median. At the time, Clayton was towing a trailer owned by McDonald's Travel 'N' Fun ("McDonald's"). Clayton, a California resident, died as a result of the accident. Clayton's sole Nevada asset was his liability insurance policy, issued by Kemper Insurance Companies.

The Carson City Public Administrator was appointed special administrator of Clayton's Nevada estate. Jacobson and Victorine, filed a complaint against the estate to recover for damages and compensation. Jacobson and Victorine also filed a third-party complaint against McDonald's. McDonald's moved to dismiss for failure to comply with the probate procedures of NRS Chapter 147. The district court initially dismissed the complaint, and the appellants filed a second complaint. In their second complaint, Jacobson and Victorine, while attempting to substantially comply with the probate requirements, argued that no formal probate requirements applied because Clayton's only asset was a liability insurance policy. Still, the district court dismissed the second complaint.

The court reviewed both dismissals *de novo*.

Discussion

In the past, the court had held that a special administrator, whose duty it was to preserve the decedent's property, was not liable to estate creditors, was not a legal representative, and thus was not subject to suit under Nevada's wrongful death survival statute when the only asset was a liability insurance policy.³ The court reaffirmed this holding in *Klosterman v. Cummings*,⁴ and

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² 85 Nev. 657, 461 P.2d 868 (1969).

³ *Id.* at 660, 461 P.2d at 871.

⁴ 86 Nev. 684, 476 P.2d 14 (1970).

stated that the Legislature was the proper forum for a change in this procedure. In 1971, the Legislature responded by amending NRS 140.040(3). The amendment made the special administrator of an estate liable to an action by any creditor when claims involve “wrongful death, personal injury or property damage where the estate contains no assets other than a policy of liability insurance.” Thus, the Legislature, in passing the amendment to NRS 140.040(3), superseded the court’s decisions in *Bodine* and *Klosterman*.

Conclusion

Because NRS 140.040(3) supersedes the court’s decision in *Bodine*, the case was reversed and remanded. Pursuant to NRS 140.040(3), the special administrator of an estate with a liability insurance policy as the sole asset may pay personal injuries claims under the specific circumstances detailed by the statute.