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Summary of In re Estate of Murray, 131 Nev. Adv. Op. 8

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Nevada Law Journal

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In re Estate of Murray, 131 Nev. Adv. Op. 8 (Mar. 5, 2015)¹

Comment [C1]: Include "By [name of author]"

PROBATE: CONTESTING PARENTAGE OF A POTENTIAL HEIR

Summary

~~The Court was required to decide whether, in probate proceedings, the parentage of a potential heir is contested under NRS Chapter 123 (Nevada's probate statutes) or NRS Chapter 126 (the Nevada Parentage Act). The Court determined the NRS Chapter 126 (the Nevada Parentage Act) and not NRS Chapter 123 (Nevada's probate laws) controls for parentage determinations of potential heirs, including determinations sought for probate matters.~~

Comment [C2]: Well done. Your version is much more clear.

Background

Respondent Joyce Slaughter was born on January 26, 1949. Her delayed birth certificate from Arkansas identifies ~~her as the decedent of~~ Robert Murray as her "father"; and Margaret Polk as her "mother." Robert was too young to marry without parental consent when Joyce was born. Robert eventually married Margaret when he was 19 years old. Robert never commenced proceedings to formally establish or challenge his status as Joyce's father.

Robert died intestate in 2012 in Las Vegas. Robert's obituary identified Joyce as his sole living child. A few months after Robert's death, his sister and nephew (appellants) filed an ex parte petition for appointment as special administrators of Robert's estate. The petition identified Robert's siblings and their issue as his heirs under NRS 134.060 and Joyce was identified as Robert's stepdaughter. The district court entered an order making appellants co-administrators of the estate.

Comment [C3]: FYI...you need not include a space between paragraphs within each section/subheading.

Probate Proceedings

Joyce filed a petition for revocation of the letters of special administration and for appointment as the special administrator. Joyce argued that appellants' appointment was based in part on misrepresentation to the court that Joyce was Robert's "stepdaughter" rather than his daughter.

Appellants responded to Joyce's petition for revocation arguing that the Arkansas birth certificate was invalid; that Joyce's claim of paternity did not satisfy the Nevada Parentage Act; that Joyce knew that she was not the decedent's biological child; and that DNA testing was necessary to confirm biological parentage.

The probate commissioner explained that the delayed birth certificate must be given full faith and credit and that, absent fraud, Robert was the only individual with a right to fight the birth certificate. After the hearing, the probate commissioner issued a report and recommendation that determined (1) Joyce's birth certificate was entitled to full faith and credit in Nevada; (2) under NRS 126.051(1)(c) and (d), there is a legal presumption that Joyce was

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¹ By Vincent M. Godinho.

Robert's child because Robert and Margaret had resided together with Joyce and held themselves out to be husband and wife, and because Robert received Joyce into his home, held her out to be his natural child, and allowed her to be known by his surname; (3) Robert's siblings lacked standing to contest paternity under NRS 126.071(1); and (4) Robert's siblings were time-barred from contesting Joyce's paternity pursuant to NRS 126.081(1). The Commissioner recommended that the district court find Joyce to be Robert's child and that Joyce is entitled to appointment as administrator. The district court entered an order finding that the commissioner's recommendations were not clearly erroneous and ordered that the report and recommendation be fully accepted and adopted. Appellants appealed the decision.

Discussion

Nevada's Parentage Act

Historically, "[t]o determine parentage in Nevada, courts must look to the Nevada Parentage Act, which is modeled after the Uniform Parentage Act (UPA). The Nevada Parentage Act is 'applied to determine legal parentage.'"² Nevada's Parentage Act was adopted in large part for reasons relating to financial support of children. Nevertheless, the Court has recognized that minor children have "legal interests that flow from a determination of paternity beyond the right to collect support. Such interests include...the right to an inheritance."³ The Legislature's intent by adopting the UPA and failing to provide any independent means of determining parentage for the purposes of inheritance was for Nevada's parentage statutes to apply in such circumstances.

Comment [C4]: Note that the NLJ uses en-dashes and not dashes for spanning numbers.

The Court held that deferring to the Nevada Parentage Act will equitably resolve paternity disputes when conflicts arise between presumptive and biological paternity in probate proceedings. The Court was not persuaded by the argument that a child's paternity is determined differently simply because a party is involved in a probate dispute rather than a custody or child support dispute. Therefore, the Nevada Parentage Act governs paternity contests in intestacy proceedings.

Standing and timeliness requirements

Under NRS 126.071(1), only "[a] child, his or her natural mother, a man presumed or alleged to be his or her father or an interested third party" has standing to ~~initial~~ initiate a paternity action.⁴ The Court then determined that "an interested third party" in a paternity action is someone with a direct personal stake, either financial or social, in establishing or disestablishing the relationship.⁵ Additionally, the person contesting paternity must bring the action within the period under the Nevada Parentage Act. Under NRS 126.081(1), "[a]n action

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² St. Marry v. Damon, 129 Nev. ___, ___, 309 P.3d 1027, 1031 (2013) (quoting Russo v. Gardner, 114 Nev. 283, 288, 956 P.2d 98, 101 (1998)).

³ Willerton v. Bassham, 111 Nev. 10, 21--22, 889 P.2d 823, 830 (1995).

⁴ NRS.NEV. REV. STAT. §1265.071(1) (2013).

⁵ See generally Matter of Paternity of Vainio, 943 P.2d 1282, 1286 (Mont. 1997).

brought under this chapter to declare the existence or nonexistence of the father and child relationship is not barred until 3 years after the child reaches the age of majority.”⁶

Here, Joyce is entitled to a presumption of paternity under NRS 126.051(1)(d). Further, by the time appellants brought the challenge to Joyce’s parentage, it had been longer than three years since Joyce reached the age of majority. Finally, appellants do not seek to assert paternity and have asserted no other personal interest in the nonexistence of Joyce and Robert’s filial relationship other than to make themselves eligible to inherit Robert’s estate. Accordingly, appellants are time-barred by NRS 126.081(1) and lack standing under NRS 126.071(1) to challenge Joyce’s paternity.

Conclusion

First, the Court held that the Nevada Parentage Act governs paternity contests in intestacy proceedings. After determining that the Nevada Parentage Act applies, the Court held that NRS 126.082 precludes appellants from contesting the heir’s parentage on the grounds that more than three years have passed since the child reached the age of majority. The Court affirmed the Order by the Eight Judicial District Court appointing respondent as the administrator of the decedent’s estate.

⁶ [NEV. REV. STAT. §126.081\(1\) \(2013\)](#).

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