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### In Re Connell Living Trust, 134 Nev. Adv. Op. 73 (Sep. 13, 2018) (en banc)

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## WILLS AND TRUST: NO-CONTEST CLAUSE

### **Summary**

The Court determined that a no-contest clause in a trust does not foreclose a beneficiary's interest if the beneficiary, acting as the trustee, breaches his or her fiduciary duty.

### **Background**

Eleanor Connell Hartman Ahern is the only trustee of a 1972 Trust. The Trust provides for disbursement of its asset incomes, 35% of which is shared with Eleanor, while the other 65% is shared with Eleanor's daughters, Jacqueline Montoya and Kathryn Bouvier. The Trust also includes a no-contest clause, which holds that any beneficiary wishing to challenge or alter the Trust will receive only one dollar as his or her share of the asset income, instead of the amount he or she should have been granted.

This dispute arose when Eleanor ceased to disburse Jacqueline and Kathryn's share of the asset income. The district court found that Eleanor has breached her fiduciary duty as the trustee when she unilaterally ceased disbursement to her daughters. The district court also appointed a temporary trustee to manage the Trust and ordered Eleanor to surrender all documentations to the new trustee. In the new trustee's affidavit, the trustee claimed that Eleanor has failed to maintain her daughters' interest in the Trust and had withdrawn over \$1 Million of the trust's fund after being removed as a trustee. Jacqueline and Kathryn moved to enforce the no-contest clause of the Trust, but district court declined to enforce the clause because Eleanor's failure as a trustee does not warrant the imposition of a harsh remedy like the no-contest clause in her position as a beneficiary of the Trust. This appeal followed.

### **Discussion**

*Eleanor's breaches of her fiduciary duty as trustee did not violate the no-contest clause*

A no-contest clause expresses a directive to diminish a beneficiary's share of the trust if the beneficiary's conduct frustrate or defeat the settlor's intent, as it is clearly stated in the trust. Appellant Jacqueline and Kathryn argued that Eleanor's conduct was solely to benefit herself, but the district court made no finding of fact regarding Eleanor in her capacity as the beneficiary of the trust. Instead, the district court only found that Eleanor, in her capacity as the trustee, breached her fiduciary duty to her daughters.

The Court further held that even if it was to consider applying the no-contest clause to a trustee-beneficiary for breach of fiduciary duty in his or her position as the trustee, such application would be inappropriate notwithstanding language in the trust stating to the contrary. The main purpose of the no-contest clause is to discourage litigation and disputes among the beneficiaries. If the Court was to enforce the no-contest clause to a trustee-beneficiary for breach of fiduciary duty as the trustee, such a result will invite litigation amongst beneficiaries.

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<sup>1</sup> By Pengxiang Tian.

## **Conclusion**

The Court concluded that the no-contest clause of a trust cannot be enforced against a trustee beneficiary for breach of his or her fiduciary duties in the capacity of a trustee, unless the language of the clause specifically says so. Thus, the Court affirmed the lower court's holding.