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### Sweet v. Hisgen, 138 Nev. Adv. Op. 68 (Oct. 20, 2022)

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## GUIDELINES FOR PROBATING AN INTERNATIONALLY EXECUTED WILL

### **Summary**

When determining the proper identity of an “authorized person,” the Court must look at the laws of the foreign state where the will was executed. So, if a notary is an “authorized person” in the country the will was executed, Nevada must accept the will as valid when signed by a notary. Further, NRS 133A.050(2) and NRS 133.080(1) allow a will that fails to comply with the UIWA, to be probated if it complies with NRS 133. Also, courts must construe wills to avoid intestacy and the term “universal heir” implies that the person is the heir to the entire estate. Therefore, when referring to someone as the “universal heir,” it is interpreted that the entire estate goes to them. Lastly, to be entitled to a will contest, one must comply with NRS 137.010(1).

### **Background**

In 2006, Marilyn Sweet executed a will in Portugal. The will was signed and overseen by a notary, and was signed by two witnesses, which were notarized. The will was written in Portuguese. Marilyn Sweet was living in Maryland when the will was executed, but later moved to Nevada, where she died. Her estate at the time of her death was a home in Nevada. Her surviving spouse, Hisgen, filed a petition for general administration of the estate and to admit the will to probate. He attached a waiver of notice signed by one of Marilyn’s daughters, Kathryn, and attached a translation of the will, which read:

[Marilyn Weeks Sweet] establishes as universal heir of all her goods, rights, and actions in Portugal, Christopher William Hisgen, single, adult, native Washington, DC, United States of America, of American nationality with whom she resides. Should he have already died, on the date of her death, Kathryn Kimberly Sweet, married, resident of Arlington, Virginia, United States of America and Christy Kay Sweet, single, adult, resident of Thailand, will be her heirs.

Marilyn’s other daughter, Christy Sweet (Sweet), filed an objection to the petition, arguing: (1) the will could not be probated in Nevada because it was signed in a foreign country, and (2) the will only applied to property in Portugal and thus did not include the Nevada home. Hisgen then filed a reply in support of his petition, along with three declarations from the witnesses. In the declarations, the witnesses attested that they observed Marilyn execute the will. Marilyn’s Portuguese attorney, Santos, verified that the will was valid under Portuguese law and additionally offered another translation of the will that read: “[Marilyn Weeks Sweet] [e]stablishes universal heir to all her assets, rights and shares in Portugal, Christopher William Hisgen . . . .”

After a hearing in front of the probate commissioner, a report and recommendation (R&R) was issued, concluding: (1) the will was a valid international will under NRS 133A; (2) even if the will was invalid under NRS 113A, it could still be probated under NRS 133.040; (3) the will applied to the entire estate rather than only property in Portugal. The probate

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<sup>1</sup> By Sydnee Mongeon.

commissioner recommended that the will be admitted to probate and be interpreted to dispose of the entirety of the estate to Hisgen.

Sweet filed an objection to the R&R and the district court held a hearing. The district court issued an order affirming the R&R in its entirety and admitting the will to probate. Sweet appealed under NRS 155.190(2).

### **Discussion**

#### ***The district court did not err in ruling that the will was a valid international will under NRS 133A***

The Court first considered whether the will was a valid international will. Sweet asserted the will was not a valid international will under NRS 133A. She claimed that the will facially failed to comply with 133A because it lacks the signature of an “authorized person” and the will does not include Marilyn’s signature on each page or a certificate attesting compliance with Uniform International Wills Act (UIWA). Hisgen argued that Santos was an “authorized person” because she is licensed to practice law in Portugal. Additionally, he argued the notary was an “authorized person” because Nevada law allows for the recognition of a foreign notarial act and neither the lack of Marilyn’s signature on each page of the will nor the absence of certification of compliance is fatal to the validity of the will under 133A.

The Court agreed with Hisgen, finding that under NRS 133A.070(4), neither the absence of Marilyn’s signature on each page or the absence of an attached certificate is fatal to the will’s validity. The Court also affirmed the district court’s finding that the will complied with NRS 133A.060. For the will to be valid, it must be signed “in the presence of two witnesses and of a person authorized to act in connection with international wills.”<sup>2</sup> “Authorized person” in Nevada is defined as a person admitted to practice of law in Nevada or a person empowered to supervise the execution of international wills by the laws of the United States.<sup>3</sup> However, if the nation of execution and the nation of probation both signed the Convention Providing a Uniform Law on the Form of an International Will, courts must look at the laws of the nation where the will was executed to determine who an “authorized person” is.<sup>4</sup>

Both Portugal and the United States signed the convention and consented to be bound by it. Additionally, a notary is an “authorized person” in Portugal. Therefore, the signature by the Portuguese notary is an “authorized person”, and the will met all the requirements for a uniform international will.

#### ***The district court did not err in alternatively ruling that the will could be admitted to probate under NRS 133***

Next, the Court considered whether the will could be admitted to probate under NRS 133. Sweet claimed that the district court erred in concluding that even if the will was an invalid international will, it could be probated under NRS 133. She argued that NRS 133.040 is inapplicable to the will because it was executed outside of Nevada. Additionally, she argued NRS 133.080(1) should only apply to wills executed in other states or in countries that have not adopted the UIWA.

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<sup>2</sup> NEV. REV. STAT. §133A.060 (2019).

<sup>3</sup> NEV. REV. STAT. §133A.030 (2019).

<sup>4</sup> ULIW Convention, Resolution, art. I, ¶ 1, Oct. 27, 1973, S. Treaty Doc. No. 99- 29.

The Court disagreed with Sweet, finding that when taking NRS 133A.050(2) and NRS 133.080(1) together, there is nothing preventing the probate of a will under NRS 113, even if it fails to comply with the UIWA. The Court also found that NRS 133.080 can apply to wills executed in countries that have adopted UIWA. The Court based its decision on the ordinary meaning of the words in both statutes and legislative history stating that “Nevada will recognize a will validly executed in another state and probably would recognize in most instances a will executed in another country.”<sup>5</sup>

Additionally, the Court held that NRS 133.080(1) provides for the will to be probated as a foreign will. The will was legally valid in Portugal, meaning it was properly admitted to probate under NRS 133.080(1). Also, the will could have been properly admitted to probate under NRS 133.080(1) because it was valid under Maryland law, where Marilyn lived at the time of execution. Therefore, even if a will does not comply with the UIWA, it can still be probated in Nevada, even if it is executed internationally.

However, the district court erred in concluding that the will could be probated under NRS 133.040 because the statute only applies to wills executed in Nevada. Nevertheless, the district court’s order was affirmed because the will could have been admitted to probate under NRS 133.080(1).

***The district court did not err in ruling that the will applied to the entire estate***

The Court then decided whether the will applied to the entire state, or only to the property in Portugal. Sweet argued that the will only applied to Marilyn’s property in Portugal because of the modifier “in Portugal.” Sweet claimed that the modifier applied to the entire preceding clause, and not just “actions” in the Piotrowski translation or “rights and shares” in the Santos translation.

The Court rejected Sweet’s position and held that the will was properly applied to the entire estate. The Court decided this issue by determining the testatrix’s intent because the will was ambiguous. First, the Court found that applying the modifier to the entire preceding clause would result in total intestacy because the only asset was in Nevada. Under Nevada law, a will must be interpreted to avoid total or part intestacy.<sup>6</sup> Next, the Court held that Marilyn’s use of “universal heir” indicated her intent that Hisgen inherits the entire estate.<sup>7</sup> Also, the presumption against intestacy overrides any contradiction by the modifier. Lastly, the Court found that the will applied to the entire estate because the modifier was not included in the residuary clause, which states that her daughters would be her heirs if Hisgen had predeceased her.

***Sweet was not entitled to a will contest***

Finally, Sweet claimed that the district court erred in not holding a will contest as to the validity of the will. She maintained that NRS 1137.020(2) requires a will contest. Hisgen countered, contending Sweet never requested a will contest and therefore waived the argument on appeal. Also, he asserted Sweet needed to issue notices before the probate commissioner or the district court could have ordered a will contest.

The Court agreed with Hisgen and held that Sweet was not entitled to a will contest. First, Sweet did not argue below that she was entitled to a will contest in accordance with NRS

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<sup>5</sup> *Hearing on S.B. 141 Before the Assemb. Comm. on Judiciary*, 75th Leg. Sess. 3 (Nev. 2009).

<sup>6</sup> *In re Foster's Estate*, 82 Nev. 97, 100, 411 P.2d 482, 483 (1966).

<sup>7</sup> *Succession*, Black’s Law Dictionary (11<sup>th</sup> ed. 2019) (definition of “universal heir” is “succession to an entire estate of another at death.”).

137.010(1) and thus, the argument could be considered waived on appeal. Additionally, Sweet needed to provide personal notice of a will contest to heirs and all interested parties. Because she failed to give notice, the district court was deprived of jurisdiction over the contest and did not err.

### **Conclusion**

When determining the proper identity of an “authorized person,” in an internationally executed will, the court must look at the laws of the foreign state where the will was executed. Here, because a notary was an “authorized person” under Portuguese law, the will complied with NRS 133A.060. Further, NRS 133A.050 and NRS 133.080(1) allow a will that fails to comply with the UIWA to be probated in Nevada, if it complies with NRS 133. Here, the will complied with NRS 133.080(1), as it was legally valid in Portugal. Therefore, the will could be probated in Nevada. Third, courts must construe wills to avoid intestacy and the term “universal heir” implies the person is the heir to the entire estate. Therefore, the will was properly applied to the entire state because the term “universal heir” was used in reference to Hisgen and because the alternative interpretation would result in intestacy. Lastly, to be entitled to a will contest during the proceeding below, one must comply with NRS 137.010(1). Sweet did not comply with NRS 137.101(1), so she was not entitled to a will contest. The Court affirmed the district court’s order.