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Summary of Matter of Harrison Living Trust, 121 Nev. Adv. Op. 26

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***Matter of Harrison Living Trust*, 121 Nev. Adv. Op. 26, 112 P.3d 1058
(June 9, 2005).¹**

CIVIL PROCEDURE – EQUITABLE ESTOPPEL

Summary

An appeal challenging a district court decision denying the petition of a trust beneficiary asking for an order surcharging the trustee for breach of fiduciary duty in distributing assets according to court order that the trustee knew was void.

Disposition/Outcome

Affirmed. The Nevada Supreme Court held that the appellant beneficiary was equitably estopped from setting aside the void judgment for failure to bring petition within a reasonable time. Because the judgment could not be set aside, the trustee could not be held liable for breach of a fiduciary duty for acting in accordance with an order that the Nevada Supreme Court held was beyond challenge.

Factual and Procedural History

The appellant beneficiary of a trust previously failed to receive notice of a probate court hearing concerning the distribution of assets from the trust. The beneficiary did not appeal the initial probate court order, although she learned of the ruling promptly. She tried to bring a petition to set aside the void judgment of the probate hearing 18 months after the probate order was made. The Eighth Judicial District Court, Clark County, Nevada, denied appellant beneficiary's petition to surcharge appellee trustee for breach of fiduciary duty and to vacate the probate court order. The beneficiary appealed.

Discussion

The appellant was named the principal beneficiary of the Harrison Living Trust. The other beneficiary was to receive Harrison's "home furnishings." A dispute arose over whether valuable paintings in the Harrison estate were to be considered "home furnishings." The trustee, Nevada State Bank (NSB), petitioned the probate court for instruction before distributing the assets.

The appellant failed to receive notice of a probate court hearing and the court ruled that the paintings were "home furnishings." Because the appellant had not received notice of the hearing, the judgment was void.

Nevada Rule of Civil Procedure 60(b) provides that "the court may relieve a party... from a final judgment order, or proceeding . . . (4) [if] the judgment is void." The rule further provides that the motion "shall be made within a reasonable time."²

¹ By Jarrod Rickard

Although she learned of the outcome of the hearing from her attorney immediately, the appellant waited until 18 months after the probate order was made to bring a petition to set aside the void judgment.

The Nevada Supreme Court noted that while a prior case previously recognized that motions to set aside void judgments were not subject to a lime limit,³ it confirmed that courts retained the discretion to apply lack of diligence principles to NRCP 60(b)(4) challenges.⁴ The court recognized that a majority of courts permit an attack on a void judgment at any time,⁵ and only a minority recognize that a lack of diligence may preclude relief.⁶

The court saw no reason to ignore the express language of a rule that requires the district courts to consider the timeliness of a motion to set aside a void judgment when determining whether exceptional circumstances, such as lack of diligence or equitable estoppel exist, to justify denying the motion. The court also recognized that whether a party seeking to establish equitable estoppel has met his or her burden is generally a question of fact.⁷ But when the facts are undisputed or when only one inference can be drawn from the facts, then the existence of equitable estoppel becomes of question of law⁸ which can be reviewed de novo.

The Nevada Supreme Court concluded that under the circumstances of this case, the district court did not abuse its discretion in finding that the appellant unreasonably delayed filing a petition to set aside a void judgment, nor did it abuse its discretion in applying equitable estoppel to the case. District courts must consider the timeliness of a motion to set aside a void judgment when determining whether exceptional circumstances existed to justify denying the motion.

The court held that the trustee, NSB, reasonably assumed that the appellant would not challenge the distribution order and, therefore, distributed the trust assets in accordance with the order. Consequently, there was no breach of fiduciary duty for which the trustee could be surcharged.

² NEV. R. CIV. P. 60(b).

³ *Garcia v. Ideal Supply Co.*, 110 Nev. 493, 495, 874 P.2d 752, 753 (1994) (quoting 11 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2862 (1973))

⁴ *See Deal v. Baines*, 110 Nev. 509, 512, 874 P.2d 775, 777-78 (1994).

⁵ *See U.S. v. One Toshiba Color Television*, 213 F.3d 147, 157 (3d Cir. 2000) (stating that “nearly overwhelming authority exists for the proposition that there are no time limits with regards to a challenge to a void judgment”); *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126, 1130 (11th Cir. 1994) (observing that the First, Fifth, Seventh, Tenth and D.C. Circuits hold that Rule 60(b)(4) motions are not subject to a reasonable-time limitation); *Ex Parte Full Circle Distribution, L.L.C.*, 883 So.2d 638, 642-43 (Ala. 2003) (collecting federal and state cases that impose no time limit); *Fisher Sys. Leasing v. J&J Gunsmithing*, 21 P.3d 946, 951 n.4 (Idaho Ct. App. 2001) (recognizing that “many other jurisdictions have severely relaxes or completely done away with the ‘reasonable time’ requirement as to Rule 60(b)(4) motions”).

⁶ *See e.g.*, *Corathers v. Facemire*, 404 S.E.2d (W. Va. 1991) (motion filed twenty-eight years after judgment entered; *McDaniel v. U.S. Fidelity & Guar. Co.*, 478 S.E.2d 868, 870 (S.C. Ct. App. 1996) (concluding the court is bound to follow the reasonable-time requirement in Rule 60(b)(4)).

⁷ *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 674, 918 P.2d 314, 321 (1996) (stating that the burden of proving equitable estoppel is on party asserting estoppel).

⁸ *See e.g.*, *Nugent v. Slaght*, 638 N.W.2d 594, 602 (Wis. Ct. App. 2001).

Conclusion

The district court properly denied the motion to set aside the void judgment because there existed an exceptional circumstance (lack of diligence and equitable estoppel).