

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: THE GUARDIANSHIP
OF THE PERSON AND ESTATE OF JEAN
RUTH ECHEVARRIA, AN ADULT WARD,

No. 65598

MICHAEL A. ECHEVARRIA,

Appellant,

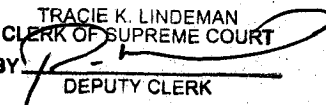
vs.

ROBERT L. ANSARA; AND ANGEL
ECHEVARRIA,

Respondents.

FILED

JUN 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

Appeal

From the Eighth Judicial District Court, Clark County
Honorable Charles J. Hoskin, Judge

Appellant's Opening Brief

BEAU STERLING

Nevada Bar No. 6833

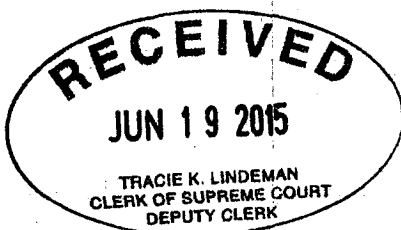
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15-18881

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Jurisdictional Statement

This is an appeal from a district court order in a guardianship proceeding, under Chapter 159 of the Nevada Revised Statutes, authorizing the guardian to pay certain fees and costs and/or other administrative claims and debts (including guardian fees and attorney fees) from excess funds of the ward's estate. 8 ROA 1834–36. The written *Stipulation and Order* was entered on April 8, 2014. Written notice of entry of the order was served by mail on April 9, 2014. 8 ROA 1837–38. Appellant filed his notice of appeal on May 1, 2014 (within 30 days after notice of entry from the order). 9 ROA 1842. Accordingly, this Court has jurisdiction, and the appeal is timely, pursuant to NRS 159.325 (authorizing appeals to the Nevada Supreme Court within 30 days from certain orders in guardianship proceedings).¹ See also NRAP 3A(b)(1) (appeal from final

¹ NRS 159.325 provides.

Appeals to appellate court of competent jurisdiction. In addition to any order from which an appeal is expressly authorized pursuant to this chapter, an appeal may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after its notice of entry from an order:

1. Granting or revoking letters of guardianship.
2. Directing or authorizing the sale or conveyance, or confirming the sale, of property of the estate of a ward.
3. Settling an account.
4. Ordering or authorizing a guardian to act pursuant to NRS 159.113.

judgment) and NRCP 54(a) (defining “judgment” to include a decree “and any order from which an appeal lies”).

Issues Presented

1. Whether the district court abused its discretion, and violated appellant’s right to due process, when it approved the distribution of the ward’s assets to satisfy the putative administrative claims of the appointed guardian, successor guardian and their respective attorneys in contravention of the district court prior order recognizing appellant’s claim, his right to (at a minimum) a *pro rata* portion of any distribution and pursuant to a “stipulation and order” to which appellant was not a party.

5. Ordering or authorizing the payment of a debt, claim, devise, guardian’s fees or attorney’s fees.

6. Determining ownership interests in property.

7. Granting or denying a petition to enforce the liability of a surety.

8. Granting or denying a petition for modification or termination of a guardianship.

9. Granting or denying a petition for removal of a guardian or appointment of a successor guardian.

Appellant's Opening Brief

Statement of the Case

This is an appeal from a district court order in a guardianship proceeding under NRS Chapter 159 authorizing the distribution of Estate funds to pay administrative claims. Eighth Judicial District Court, Clark County; Honorable Charles J. Hoskin, Judge.

Respondent Robert L. Ansara ("the Guardian") is the successor guardian² of the estate of Jean Ruth Echevarria ("the Ward"), having been appointed to serve in that capacity in 2007, and is also the successor trustee of the Ward's living trust.³ 6 ROA 1197-99, 1201-04; 8 ROA 1618, 1626, 1733. Respondent Angel Echevarria ("Angel") is the Ward's daughter and previous guardian. Appellant Michael A. Echevarria ("Michael" or appellant) is the Ward's son.

Michael is also is also a judgment creditor pursuant to an earlier judgment against his mother and her trust entered in the state of Tennessee and subsequently

² On January 5, 2005, the district court appointed Angel Echevarria as special guardian of the estate of the Ward and general guardian of the person of the Ward, took jurisdiction of the Jean R. Echevarria Trust dated May 30, 2000 (the "Trust"), as a proceeding in rem, and confirmed Angel Echevarria as Trustee of the Jean R. Echevarria Trust, dated May 30, 2000. *See* 3 ROA 634-37 (January 7, 2005 Order).

³ In 2005, the district court also determined that the Trust owned one hundred percent of the membership interests of the Mill at Lebanon, LLC, which in turn owned certain real property relevant to these proceeding. 3 ROA 635.

domesticated in California and Nevada. *See* 5 ROA 1002; 8 ROA 1663-70. In 2007, Michael obtained a judgment in Tennessee⁴ against his mother (and his mother's trust) in the amount of \$679,995.88 plus interest. 8 ROA 1667-69. Also in 2007, Michael domesticated the judgment in California (*see* 8 ROA 1783-84, 1806), where the Ward's Trust indirectly owned an interest in commercial property located at 333-335 Hatch Drive in Foster City (8 ROA 1733). As recognized by the Guardianship Commissioner, Michael Echevarria agreed "not to foreclose on the Ward's property as long as the property is providing income for the care of the Ward."⁵ 9 ROA 1929.

During the course of the proceedings the district court entered several orders authorizing the payment of Robert L. Ansara's guardian fees and costs, and attorney fees and costs incurred by then Lionel Sawyer Collins attorney Elizabeth Brickfield and attorney fees and costs incurred by Trent, Tyrell & Associates on behalf of the original and successor guardian and trustee. This including orders entered on May 8, 2007, April 7, 2009 and August 15, 2012. 8 ROA 1784, 1819, 1823, 1828.

⁴ Earlier, the district court in Nevada had determined that Tennessee was the proper venue and dismissed pending proceedings in this state. *See* 3 ROA 619-20.

⁵ On May 15, 2013 Michael filed an affidavit of renewal of the judgment in Nevada pursuant to NRS 17.214 (8 ROA 1663), and, on February 24, 2014 (after the Foster City property was sold with the approval of the district court), Michael attempted to file a notice of levy for enforcement of judgment with the Nevada district court (8 ROA 1762-69).

Notably, the August 15, 2012 district court order not only reconfirmed the previous fees, costs and expenses authorization on behalf of the guardians and their attorneys, but also recognized Michael's judgment lien (in the amount of \$625,814.00 plus 10 percent interest per year)—and authorized and directed the guardian to utilize a portion of available trust funds to make payments *on each of these claims, including Michaels, on a pro-rata basis*. 8 ROA 1626-27. As provided in the district court's August 15, 2012 *Order Giving Instructions*:

...[U]pon the Petition for Instructions filed by ROBERT L. ANSARA, Guardian of the Estate and Successor Trustee of the Ward's Living Trust ; the court having considered the same and having found that all allegations contained therein are true and correct , and good cause appearing therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED ROBERT L. ANSARA is authorized and directed to utilize up to \$3,000.00 of the ward's monthly income, to satisfy, on a pro- rated basis, the following expenses, until the same are paid in full, or until there is no income with which to satisfy the same, to-wit:

- a. Michael Echevarria, in the original amount of \$625,814.00 + 10% interest per year, for a judgment which was secured by him.
- b. Elizabeth Brickfield, in the amount of \$103, 032.10, for attorneys fees and costs.
- c. Trent , Tyrell & Associates, in the amount of \$13,203.25, as and for attorney's fees and costs.
- d. Robert L . Ansara , in the amount of \$20 , 771 . 75 , as and for the Guardian's fees and costs , as well as Successor Trustee's fees and costs .

On December 6, 2013, the Guardian filed a *Report to Court Regarding Sale of Ward's Trust Asset* (8 ROA 1683) wherein the Guardian notified the Nevada district court of the pending sale of the Trust's interest in the Foster City, California property. The Guardian reported that the sale price of the California Property was \$6,570,000 (8 ROA 1687), and that, Michael's judgment lien would be partially satisfied from proceeds from the sale (8 ROA 1684). It was further represented by the Guardian that the Ward would not receive and funds from the sale but that "Michael Echevarria has agreed assist in funding the guardianship estate so as to provide for the ward's basic needs." 8 ROA 1684-85.

As clarified in his *Errata* filed on December 9, 2013, the Guardian represented, as reason for the sale, "because the ward's trust is insolvent, it is unable to continue to make the monthly payments given the current cash flow from rent." 8 ROA 1703. "She is under I think \$20,000 give or take a few dollars," the Guardian's counsel further represented to the district court at the December 18, 2013 hearing. 9 ROA 1863:21-22; *see also* 9 ROA 1864 (December 18, 2013 Hearing *Trans.* at 7), noting that the property was no longer generating income and that funds not paid to Michael in satisfaction of his lien would otherwise go to the IRS).

On January 13, 2014, the district court approved and ratified the Guardian's actions in selling the Foster City, California property and authorized and directed the sale thereof. 8 ROA 1733-34. The sale closed on or around February 7, 2014.

See 8 ROA 1751. According to the Guardian, Michael received slightly more than \$200,000 from the sale. 9 ROA 1874 (March 12, 2014 Hearing *Trans.* at 5:20).

On February 14, 2014, after the sale of the Foster City property closed, Elizabeth Brickfield of Lionel Sawyer & Collins, counsel of record for Angel Echevarria, the Ward's former Guardian, petitioned the district court for an Order for Distribution of Estate Funds, in particular money held in an operating account associated with the Foster City, California property (the "Operating Account"). 8 ROA 1748.

On March 12, 2014, the district court held a hearing on the Distribution Petition. *See* 9 ROA 1870-1882 (March 12, 2014 Hearing *Trans.*). During the hearing, which Michael did not attend, Mr. Ansara, the Guardian, represented "It was about \$120,000 that the management company held in the operating account outside of the escrow." 9 ROA 1875 (March 12, 2014 Hearing *Trans.* at 6:2-4). The Guardian's counsel then notified the district court of the Guardian's objection to Michael "getting anything more at this point." *Id.* (March 12, 2014 Hearing *Trans.* at 6:7-16). Following the hearing, it was recorded in the minutes of the courtv that the district court was conditionally granting the Distribution Petition, "subject to the review and agreement by Counsel of the specific amounts to be paid." 9 ROA 1956 (Court Minutes from March 12, 2014 hearing).

On April 8, 2014, the district court entered the *Stipulation and Order*, without Michael's signature or agreement, at issue in this appeal. As provided therein, in relevant part:

IT IS HEREBY STIPULATED AND AGREED by and between ELYSE M. TYRELL, ESQ., counsel for ROBERT L. ANSARA, Guardian of the Estate of JEAN RUTH ECHEVARRIA and Successor Trustee of the ward's living trust; ELIZABETH BRICKFIELD, ESQ., counsel for the ward's daughter, Angel Echevarria, as follows:

WHEREAS, the court entered several orders throughout the course of this instant guardianship proceeding, whereby the outstanding fees and costs due to Michael Echevarria, Elizabeth Brickfield, Esq. of Lionel Sawyer & Collins, Elyse M. Tyrell, Esq., of the law firm of Trent, Tyrell & Associates and the Guardian and Successor Trustee, Robert L. Ansara, were to be paid, upon receipt of excess funds not needed to care for the ward, on a pro-rata basis, until paid in-full; and

WHEREAS, Michael Echevarria recently received in excess of \$200,000.00 directly from the sale of the ward's real property in the State of California and, therefore, he will not be sharing in this pro-rated distribution; and WHEREAS, the outstanding fees due to Elizabeth Brickfield, Esq. of Lionel Sawyer & Collins, are \$96,512.10; the outstanding

fees due to Elyse M. Tyrell, Esq., of the law firm of Trent, Tyrell & Associates are \$24,775.14; and the outstanding fees due to the Guardian and Successor Trustee, Robert L. Ansara are \$44,772.50, which amounts to \$166,139.74 in outstanding fees and costs; WHEREAS, the pro-rated amounts are to be paid as follows:

Elizabeth Brickfield, Esq. of Lionel Sawyer & Collins: 58% or \$38,029.56; Elyse M. Tyrell, Esq., of the law firm of Trent, Tyrell & Associates: 15% or \$9,835.23; and the Guardian and Successor Trustee, Robert L. Ansara: 27% or \$17,703.41;

NOW, THEREFORE, in consideration of the mutual

covenants and conditions outlined herein, the parties hereby stipulate and agree as follows:

1. Elizabeth Brickfield,, Esq. of Lionel Sawyer & Collins shall receive payment in the amount of \$38,029.56;
2. Elyse M. Tyrell, Esq., of the law firm of Trent, Tyrell Associates shall receive payment in the amount of \$9,835.23;
3. Robert L. Ansara shall receive payment in the amount of \$17,703.41.

8 ROA 1834-36.

Thereafter, Michael timely filed his notice of appeal. 9 ROA 1842.

Argument

I.

The District Court Abused its Discretion in Approving the Stipulated Distribution Without Michael's Agreement and in Contravention of its Earlier Order Approving His Claim

A. Standard of Review.

This Court reviews de novo questions of law and issues of subject matter jurisdiction. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). We further review a district court's factual findings for an abuse of discretion and will uphold them if they are supported by substantial evidence. *Id.* at 668, 221 P.3d at 704. Substantial evidence is "evidence that a reasonable person may accept as

adequate to sustain a judgment.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

B. Relief is Warranted in This Case

This Court has authority under NRS 159.105 and NRS 159.183 to approve payment of the attorneys’ fees and costs incurred by the Guardian and to authorize those fees and costs to be paid from the Ward’s estate. That is not disputed here. Nevertheless, NRS 159.1365 expressly requires that “money from sale of real property of a ward that is subject to lien must be satisfied before general administrative claims. As provided in that statute:

If real property of the estate of a ward is sold that is subject to a mortgage or other lien which is a valid claim against the estate, the money from the sale must be applied in the following order:

1. To pay the necessary expenses of the sale.

2. To satisfy the mortgage or other lien Application of money from sale of real property of ward that is subject to mortgage or other lien. If real property of the estate of a ward is sold that is subject to a mortgage or other lien which is a valid claim against the estate, the money from the sale must be applied in the following order:

1. To pay the necessary expenses of the sale.

2. To satisfy the mortgage or other lien, including, without limitation, payment of interest and any other lawful costs and charges. If the mortgagee or other lienholder cannot be found, the money from the sale may be paid as ordered by the court and the mortgage or other lien shall be deemed to be satisfied.

3. To the estate of the ward, unless the court orders otherwise.

Here, the district court abused its discretion First by failing to follow the statute and instead using funds from the sale of the real property to pay outstanding fees and expenses of the guardians and the guardians' attorneys.

Second, the district court abused its discretion in approving the stipulation, without Michael's agreement, in the absence of any findings on the record justifying ignoring the district court prior order recognizing and approving his judgment lien. This was both an abuse of the district court's discretion and a violation of Michael's right to due process of law as generally provided for in the Nevada and federal constitutions and the specific procedures provided for in Chapter 159, including NRS 159.169—the statute pursuant to which the district court originally evaluated the Michael's judgment lien and approved it as a claim on the Ward's estate.⁶

⁶ As provided in NRS 159.169:

NRS 159.169 Advice, instructions and approval of acts of guardian.

1. A guardian of the estate may petition the court for advice and instructions in any matter concerning:

- (a) The administration of the ward's estate;
- (b) The priority of paying claims;
- (c) The propriety of making any proposed disbursement of funds;
- (d) Elections for or on behalf of the ward to take under the will of a deceased spouse;

Conclusion

For the reasons set forth above it is respectfully requested that the judgment of the district court be reversed.

(e) Exercising for or on behalf of the ward:

(1) Any options or other rights under any policy of insurance or annuity; and

(2) The right to take under a will, trust or other devise;

(f) The propriety of exercising any right exercisable by owners of property; and

(g) Matters of a similar nature.

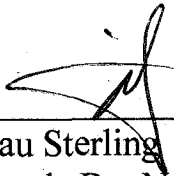
2. Any act done by a guardian of the estate after securing court approval or instructions with reference to the matters set forth in subsection 1 is binding upon the ward or those claiming through the ward, and the guardian is not personally liable for performing any such act.

3. If any interested person may be adversely affected by the proposed act of the guardian, the court shall direct the issuance of a citation to that interested person, to be served upon the person at least 20 days before the hearing on the petition. The citation must be served in the same manner that summons is served in a civil action and must direct the interested person to appear and show cause why the proposed act of the guardian should not be authorized or approved. All interested persons so served are bound by the order of the court which is final and conclusive, subject to any right of appeal.

DATED this 15th day of June 2015.

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By:



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Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2010 Times New Roman 14—point font**.

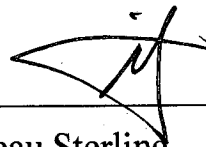
2. I further certify that this Brief complies with the page or type—volume limitations of NRAP 32(a)(7). Excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

☒ Does not exceed 30 pages; or

☐ Proportionately spaced, has a typeface of 14 points or more and contains _____ words.

3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of June 2015.



Beau Sterling
Counsel for Appellant

Certificate of Service

1. Electronic Service:

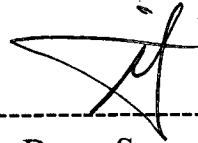
I hereby certify that on this date, the 15th day of June 2015, I submitted the foregoing **Appellant's Opening Brief** for filing and service by mailing it, postage prepaid, to the Clerk of the Court. Electronic notification will automatically be sent, via eFlex, to the following:

Elizabeth Brickfield

Elyse Tyrell

Beau Sterling

Mark Solomon

A handwritten signature in dark ink, appearing to be 'BS' or 'Beau Sterling', written over a horizontal dashed line.

BEAU STERLING