

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

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) Clerk of Supreme Court

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MICHAEL A. ECHEVARRIA,

)  
)  
) Appellant,  
)  
)

vs. )  
)  
)

ROBERT L. ANSARA and ANGEL )  
ECHEVARRIA, )  
)

) Respondents.  
)  
\_\_\_\_\_

Appeal

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

\_\_\_\_\_  
RESPONDENT'S ANSWERING BRIEF  
\_\_\_\_\_

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## **JURISDICTIONAL STATEMENT**

Respondent, ROBERT L. ANSARA, as the Successor Co-Guardian of the estate of JEAN RUTH ECHEVARRIA and as Successor Trustee of the JEAN RUTH ECHEVARRIA LIVING TRUST, hereby offers the instant brief for this Honorable Court's consideration in response to Appellant's Opening Brief submitted by MICHAEL A. ECHEVARRIA.

## **STATEMENT OF ISSUES PRESENTED FOR APPEAL**

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's 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

## **STATEMENT OF THE CASE**

The District Court proceeding for the case at bar began on December 1, 2004 upon the application of Michael Echevarria, the appellant herein and the son of the ward ("Michael"), which sought his co-appointment as guardian of the person and estate of Jean Echevarria ("Jean), who was then 77 years old and suffering from Alzheimer's Disease. Since that initial filing, this proceeding has been highly contested with issues relating to the proper parties for appointment as Jean's guardians, the proper parties for appointment as successor trustees of Jean's

trust, accounting objections, the appropriateness of attorney's fees and guardian's fees and, ultimately, the manner in which the remaining assets in Jean's insolvent guardianship and trust estates should be applied to satisfy the administrative fees and expenses incurred.

The most significant and current issue incident to this appeal is the manner in which the proceeds from the sale of Jean's real and personal property assets were to be allocated in light of the fact that (1) funds were necessary for Jean's continued care and maintenance; (2) Michael had secured a foreign judgment against Jean which he was seeking to enforce and (3) the court had previously entered fee awards in favor of Lionel Sawyer & Collins, counsel for Angel Echevarria, Jean's daughter and former guardian; Trent Tyrell & Associates, counsel for Robert L. Ansara, Guardian of Jean's estate and Successor Trustee of Jean's Living Trust and Robert L. Ansara ("Robert"). The existence of these circumstances caused the filing of a Petition for Instructions by Robert (8 ROA 1618-1620) which requested the approval of the lower court of his proposed method of distributing the remainder of Jean's income, real and personal property proceeds on a pro-rata basis to the parties. That hearing resulted in the entry of the Order Giving Instructions dated August 15, 2012 (8 ROA 1626-1627) which authorized and directed Robert to utilize a portion of available funds and proceeds

to satisfy the guardianship expenses on a pro-rata basis stating, in pertinent part, as follows:

...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 plus 10% interest per year, for a judgment which was secured by him.
- b. Elizabeth Brickfield in the amount of \$103,032.10, for attorney's 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....

This order was never appealed and, to Robert's knowledge, all interested parties were in agreement with Jean's income and assets being distributed in this manner.

**STATEMENT OF THE FACTS RELEVANT TO ISSUES SUBMITTED  
FOR REVIEW**

On December 6, 2013, Robert filed a Report to Court Regarding Sale of Ward's Trust Asset (8 ROA 1683-1698) in which it was reported that the partnership interest of Jean's trust in the real property located at 333-353 Hatch Drive, Foster City, California was sold for \$6,750,000.00. It was further reported

that, because Michael had secured a judgment and recorded a lien against the California property, the net proceeds, totaling approximately \$200,000.00, would be distributed solely to Michael despite the agreement for a pro-rata distribution between all of the parties, as memorialized in the August 15, 2012 Order Giving Instructions.

The concern with Michael receiving the net proceeds from this sale was two-fold: first, Jean's estate was rapidly depleting and the concern had arisen as to how to fund the costs necessary for Jean's basic support and needs and, pursuant to the agreement of the parties, the net sales proceeds were to be distributed on a pro-rata basis in order to satisfy the outstanding obligations for Jean's guardianship and trust estates.

During a hearing conducted on December 18, 2013 to address Robert's application, at which time Michael personally appeared, the court discussed Michael's lien and Michael's offer to voluntarily assist in Jean's financial support (Transcript Re: Hearing, Page 3-4, lines 24 (page 3) and 1-2 (page 4)). As counsel for Jean's former guardian, Elizabeth Brickfield ("Brickfield"), expressed an interest in discussing the matter personally with Robert, the matter was continued to January 2, 2014. During that hearing, when Brickfield neither appeared nor filed an objection to Robert's petition, the court ordered the approval of the Report

to Court Regarding Sale of Ward's Trust Assets. This approval is confirmed by virtue of the entry of the Order on January 13, 2014 (8 ROA 1733-1734).

With the approval of the court and the understanding of all of the parties that the sales proceeds for the California property would be made available for pro-rata distribution, Robert cooperated in the sale which closed on or around February 7, 2014. Subsequent to that closing, however, it was learned that the IRS had a levy on the real property, however, Michael's lien took priority, therefore all of the net sales proceeds just in excess of \$200,000.00 in value, were paid to Michael from escrow. This was in complete contradiction of the prior court orders that Michael's judgement was to be satisfied pro-rata, along with the other debt owed for the care and maintenance of the Ward and her Guardianship, and was not be paid unless there were sufficient assets to maintain the Ward.

Thereafter, Robert became aware that Jean's trust owned an operating account associated with the partnership owning the California property ("Operating Account") which, although it contained approximately \$100,000, this was still insufficient to fully satisfy the remaining debts of Jean's guardianship and trust estates, as well as provide a source of funds to maintain the Ward. With the Operating Account being the sole remaining asset in Jean's trust and guardianship estates, Brickfield filed a Petition by Lionel Sawyer & Collins for an

Order for Distribution of Estate Funds (8 ROA 1748-1754) which was ultimately heard by the court on March 12, 2014. Despite the fact that he was provided with the appropriate notice of this hearing, Michael failed to appear and, in fact, made no effort whatsoever to object or contest the distribution of the Operating Account on a pro-rata basis which, in Brickfield's application, suggested be applied as follows: (1) to the Guardian of Jean's estate; (2) to Trent, Tyrell & Associates and (3) to Lionel Sawyer & Collins. That application was approved by the court due to the fact that Michael had just received over \$200,000.00 outright and had failed to deliver those funds for application in accordance with the terms of the Order Giving Instructions.

During the hearing conducted for Brickfield's application, the lower court instructed counsel for Robert and Angel to confer, to agree to the manner of the distribution of the \$65,000.00 amount that had been received from the Operating Account, and to provide the court with a written stipulation and order outlining that agreement. (Transcript 3/12/14 Hearing: page 10, lines 23-24 and page 11, lines 1 and 2). Thereafter, the Stipulation and Order, which is the subject of Michael's appeal, was entered on April 8, 2014 (8 ROA 1834-1836).

Preceding the entry of the April 8, 2014 Stipulation and Order, Brickfield filed with the court a Petition for Disgorgement of Funds and Pro Rata

Disbursement on March 24, 2014, (8 ROA 1782-1829). Thereafter, upon having reached what was believed to be an agreement with Robert and his counsel, that hearing was vacated and a Notice to Vacate Hearing was filed on April 3, 2014 (8 ROA 1832-1833). The Notice of Entry of Stipulation and Order was mailed to all parties on the 8<sup>th</sup> day of April, 2014 (8 ROA 1837-1840 AND 9 ROA 1841-1841). Thereafter, on May 7, 2014, Michael's Notice of Appeal was filed.

On the 19<sup>th</sup> day of June, 2014, Michael filed with the court a Motion by Judgment Creditor for an Order Directing the Issuance of a Writ of Execution (9 ROA 1846-1856), to which Robert responded with his Objection to Motion by Judgment Creditor for an Order Directing the Issuance of a Writ of Execution.<sup>1</sup>

### **SUMMARY OF ARGUMENT**

1. No error has been shown which would justify the setting aside of the stipulation and order pursuant to the standard adopted by the court in N.R.C.P. 53(e)(2)

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<sup>1</sup>As the filing of the Objection to Motion did not occur until July 22, 2014 and the Record on Appeal was completed and submitted on July 11, 2014, Robert will be filing separately a motion seeking authority to submit that document, along with the subsequent minutes and filings under a separate appendix, pursuant to N.R.A.P. 10(c) and N.R.A.P. 30(4).



2. Michael's Judgment was not properly domesticated in this jurisdiction pursuant to N.R.S. 17.350 and, therefore, was not a valid lien, thus excluding it from the payment priority outlined in N.R.S. 159.1365.
3. The funds distributed were not received as proceeds from the sale of real property; rather, from the operating account of a partnership partially owned by Jean's trust estate. Therefore, the application of the distribution requirements raised by Michael in citing N.R.S. 159.1365 have no relevance
4. The District Court retained jurisdiction over the ward's person and property and, therefore, did not abuse its discretion in accepting the terms of the Stipulation and Order which is the subject of Michael's appeal
5. Michael comes before this court with unclean hands and, therefore, is not entitled to the relief he seeks. Further, in applying the theory of estoppel, Michael is barred from the relief he seeks

### ARGUMENT

1. No error has been shown which would justify the setting aside of the stipulation and order pursuant to the standard adopted by the court in N.R.C.P. 53(e)(2)

In actions tried without a jury, the standard adopted by the court is made clear in N.R.C.P. 53(e)(2) which states, in pertinent part, that:

In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous.

Further, N.R.C.P. 52 states:

Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as findings of the court."

In *Russell v. Thompson*, 96 Nev. 830, 619 P.2d 537 (1980), this standard is upheld, as the court confirmed that the setting aside of the findings and recommendations of a special master can be accomplished only unless “...the findings are based upon errors in the proceedings or a mistake in law; or are unsupported by any substantial evidence; or are against the clear weight of the evidence.” None of the elements for a reversal of the Stipulation and Order exist in the case at bar. Commissioner Norheim presided over guardianship hearings relative to this proceeding for the past 10 years; therefore, he had extensive knowledge of the facts and the parties herein. Commissioner Norheim was well aware of the credibility of the parties to this proceeding and, therefore, his acceptance of the Stipulation and Order should be affirmed.

2. Michael’s Judgment was not properly domesticated in this jurisdiction pursuant to N.R.S. 17.350 and, therefore, was not a valid lien, thus excluding it from the payment priority outlined in N.R.S. 159.1365.

N.R.S. 17.330, et seq, outlines the proper procedures for the enforcement of foreign judgments in this jurisdiction. However, Michael’s judgment against Jean was never domesticated in Clark County and, in fact, Michael did not attempt to domesticate the judgment until approximately 8 days after the entry of the Stipulation and Order. On June 19, 2014, Michael filed with the court a Motion by Judgment Creditor for an Order Directing the Issuance of a Writ of Execution

(ROA 1846-1856). Within that document, Michael attached as Exhibit A the letter he received from the District Court Clerk dated April 16, 2014 informing him that he was incorrectly attempting to make his judgment of record in this jurisdiction and, for that reason, his request was being rejected. Again, on May 14, 2014, Michael's attempts to domesticate the judgment were rejected as evidenced by a copy of the letter he attached to his Motion as Exhibit C.

N.R.S. 17.350. Filing and status of foreign judgments. An exemplified copy of any foreign judgment may be filed with the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner....

In light of the fact that Michael's judgment was not correctly filed, it cannot be treated as a foreign judgment and, thus, has no effect in this jurisdiction.

3. The funds distributed were not received as proceeds from the sale of real property; rather, from the operating account of a partnership partially owned by Jean's trust estate. Therefore, the application of the distribution requirements raised by Michael in citing N.R.S. 159.1365 have no relevance

Michael contends that, pursuant to the provisions of N.R.S. 159.1365, the application of the funds from the operating account in Jean's trust should have been distributed as follows:

...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.

These funds were not from the sale of the real property, and therefore N.R.S. 159.1365 does not apply to them. Further, Robert argues that Michael was well aware of the hearing that was taking place which resulted in Commissioner Norheim's order to present him with a written stipulation and order directing the manner in which the proceeds from the operating account were to be distributed. On February 21, 2014, Brickfield filed with the court an Application for Order Shortening Time for Hearing the Petition by Lionel Sawyer & Collins for an Order for Distribution of Estate Funds (ROA 1758-1761), the hearing for which was continued to February 27, 2014. On that same day, an Amended Notice of Hearing was filed (ROA 1770-1772). Michael was provided with the proper notice for both of these hearings as evidenced by the Notice of Hearing filed on February 19, 2014 (ROA 1755-1757), which contains the Certificate of Mailing, as well as the Certificate of Mailing filed on March 25, 2015 (ROA 1830-1831). Therefore, Michael cannot claim lack of notice as a defense, and cannot now question the source of the funds. Because Michael chose not to appear either at the first

hearing, or at the continued hearing, one can only argue that Michael had no objection to Brickfield's application, or to the source of the funds.

4. Michael comes before this court with unclean hands and, therefore, is not entitled to the relief he seeks. Further, in applying the theory of estoppel, Michael is barred from the relief he seeks

The essential definition of the "clean hands doctrine" is a rule of law requiring that one bringing a lawsuit or motion and asking the court for equitable relief must be innocent of wrongdoing or unfair conduct relating to the subject matter of his claim. In the case at bar, however, Michael is not innocent, as he had full knowledge of the pro-rata distribution agreement which resulted in the entry of the court's Order Giving Instructions on August 15, 2012, yet he failed to relinquish or deliver the funds he received from the sale of Jean's California property in excess of \$200,000.00 to be distributed accordingly.

Now, despite having unfairly received this substantial sum, Michael is now attempting to secure even more funds by claiming to hold a higher priority for payment than those of the professionals who have represented Jean and her Guardianship over the past 10 years. This behavior offers valuable insight to Michael's character in that his actions reflect one who has no regard for agreements or court orders and, thus, he should not benefit from his misconduct.

Likewise, under the legal theory of estoppel, Michael is not entitled to the

relief he seeks. As previously reported, Michael was provided with the requisite notice of hearing of the applications which ultimately resulted in the entry of the Stipulation and Order. As Michael failed to appear or otherwise enter any type of opposition to those applications, Michael's silence must be construed as acquiescence.

Further, Michael's action in accepting the \$200,000.00 proceeds from the sale of the California property contradicted and breached the earlier agreement of the parties that was memorialized in the Order Giving Instructions. Therefore, that act now prevents Michael from arguing that a reversal of the Stipulation and Order is appropriate, as estoppel imposes a bar against Michael receiving the relief he seeks.

### **CONCLUSION**

The Guardianship Commissioner did not abuse his discretion in approving the Stipulation and Order and the facts and circumstances of the case at bar clearly call for this Court to affirm that decision. With the Guardianship Commissioner having presided over this proceeding for the past 10 years, he had extensive knowledge of the facts, circumstances and parties of the case, as well as the experience and knowledge of the law to render just and appropriate decisions.

Further, as Robert has shown, Michael's judgment has not been

appropriately domesticated in this jurisdiction and, thus, is merely that, a judgment. Without the proper domestication, Michael's judgment did not elevate to lien status and, therefore, has no more priority than any other creditor to Jean's estate to receive payment.

Regardless of whether Michael's judgment did or did not elevate to a lien status, the funds which were the subject of the Stipulation and Order were not received as proceeds from the sale of Jean's property in California; rather, they consisted of liquid funds on deposit in an operating account of a partnership partially owned by Jean's trust. Therefore, Michael certainly had no right to claim a priority in payment.

Michael comes before this court with unclean hands and his behavior over the past 10 year period incident to this proceeding has been unfair, self-serving and damaging to Jean and to her guardianship assets. That behavior, coupled with his breach of the agreement as ordered by the court in the Order Giving Instructions

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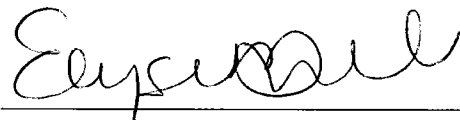
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imposes a bar preventing Michael from receiving the relief he seeks.

In light of the foregoing, Robert would respectfully request that the Stipulation and Order of the district court be affirmed.

DATED this 14<sup>th</sup> day of July, 2015.

TRENT, TYRELL & ASSOCIATES



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ELYSE M. TYRELL, ESQ.

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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:

[ x ] This brief has been prepared in a proportionally spaced typeface using: WORDPERFECT 10 TIMES NEW ROMAN—font point 14.

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), because it is either:



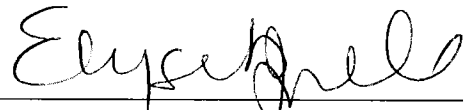
☒ Does not exceed 30 pages; or

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

3. I hereby certify that I have read this Respondent's Answering 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 Civil Procedure.

4. Routing Statement. I hereby certify that, to my knowledge, the Supreme Court has retained the case at bar and has not been assigned to the Court of Appeals.

DATED this 14<sup>th</sup> day of July, 2015.



ELYSE M. TYRELL, ESQ.  
Counsel for Respondent,  
Robert L. Ansara

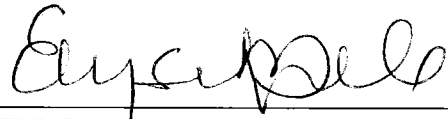
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## **CERTIFICATE OF SERVICE**

1. Electronic Service:

I hereby certify that, on this 14<sup>th</sup> day of July, 2015, I submitted the foregoing Respondent's Answering Brief for filing and service by e-filing it with the Clerk of the Supreme Court. Electronic notification will automatically be sent, via eFlex, to the following:

Elizabeth Brickfield, Esq.  
Beau Sterling, Esq.  
Mark Solomon, Esq.  
Elyse M. Tyrell, Esq.  
Jeanette E. McPherson, Esq.  
Jason A. Imes, Esq.



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ELYSE M. TYRELL, ESQ.

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L. Ansara