IN THE SUPREME COURT OF THE STATE OF NEVADA
CASE NO. 65598

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

MICHAEL A. ECHEVARRIA,

Appellant,

vs.

ROBERT L. ANSARA; AND ANGEL ECHEVARRIA,

Respondents.

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APPEAL

From the Eighth Judicial District Court, Clark County
District Court Case No. G027262

APPELLANT'S REPLY BRIEF

Karen K. Wong
Nevada Bar No. 13284
Wong Appellate Law
9484 S. Eastern Ave., #408
Las Vegas, Nevada 89123
(702) 830-6080
karen.wong@wongappellatelaw.com

Attorney for Appellant

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INTRODUCTION

As Respondent Ansara has admitted in the Answering Brief, the funds from the operating account at the center of this appeal are proceeds of the sale of real property. Appellant, as a judgment creditor with a lien on that property, should have been paid prior to the general unsecured creditors—in this case the current guardian, his counsel, and former guardian's counsel. The district court's approval of the stipulation and order, to which Appellant was not a party, was plain error. Even if the district court did not err in recognizing the priority of Appellant's lien, the district court erred by failing to even include Appellant's claim in the pro rata distribution of the funds.

ARGUMENT

I. The Guardianship Court Erred by Failing to Order the Proceeds of the Sale of the Real Property Be Distributed in Accordance with the Payment Priority Outlined in NRS 159.1365, or at Least Pro Rata.

A. The funds should have been paid to Appellant in accordance with NRS 159.1365.

The guardianship court should have ordered that the roughly $120,000.00 be paid to satisfy Appellant's lien. NRS 159.1365 states that the money from the sale of real property of the estate of a ward, which is subject to a mortgage or lien must be paid 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.
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> 3. To the estate of the ward, unless the court orders otherwise.

Id. In accordance with this section, any money from the sale of the real property should have been used first to pay the expenses of the sale and then to pay off any lien on the property. Only after any liens had been paid should the money have been paid to the estate of the ward, including any expenses of the estate such as guardianship and attorneys' fees.

Respondent misrepresents to this Court that the sale of the real property was approved by the guardianship court with the understanding of all of the parties that the sale proceeds would be made available for pro rata distribution and that the parties only learned of the IRS levy subsequent to the closing. (AB at 6.) At a hearing on December 18, 2013, however, Respondent's attorney herself stated that the property was underwater—any net proceeds from the sale that were not paid toward Appellants' lien would go to the IRS for taxes. (ROA 1859, 1864.) The order approving the sale was not filed until almost a month later on January 13, 2014 (ROA 1737), so the parties clearly knew of the IRS lien prior to closing.[1]

[1] Respondent also untruthfully accuses Appellant of failing to deliver funds in accordance with the terms of an order. This statement is completely unfounded

Respondent argues that NRS 159.1365 does not apply because the funds were not sale proceeds; but this is false. The funds were held outside of escrow by the company managing the property (ROA 1875) but were both proceeds of the sale and subject to Appellant's lien. These funds were only available to Respondent following the sale of the property precisely because they were subject to the lien and represented sale proceeds. The account was not disclosed prior to the discussion of the sale of the property. Respondent has admitted as much in its Answering Brief: "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 . . . ." (AB at 3 (emphasis added).) Because the funds were sale proceeds, their distribution should have been covered by NRS 159.1365, and the guardianship court's approval of the stipulation in contravention of NRS 159.1365 was plain error.

Although Respondent argues that Appellant should have gotten nothing from the additional funds because he had been paid on his real property lien, that reasoning cannot withstand scrutiny. The guardianship court had no jurisdiction over the real property located in California. (*See* ROA 1860.) Because the

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as the court never ordered Appellant to deliver funds to the Court and its falsity is evidenced by Respondent's failure to cite the record for this assertion. To the extent this Court would consider Respondent's unclean hands theory, raised for the first time in the Answering Brief (AB at 13–14), the accusations that Appellant disregarded any order of the court or breached any agreement of the parties are groundless.

guardianship estate was underwater and had no equity interest in the real estate, the proceeds from the sale were not subject to the court's jurisdiction or to its prior order for a pro rata distribution. Appellant's lien on the real property was prior to an IRS lien that would otherwise have eaten up any gains from the sale of the property. (ROA 1864.) The amount received by Appellant on account of his lien on the real property in California had no bearing on the guardianship court's order for a pro rata distribution, except to the extent that it would reduce the pro rata amount due Appellant. Furthermore, the order referred to by Respondent for a pro rata distribution is the order of August 15, 2012, which instructs Respondent to use *up to $3,000.00* of the ward's monthly income to pay Appellant, the current guardian, his attorney, and the former guardian's attorney on a pro-rata basis. (ROA 1626.) This order did not apply to the proceeds from the sale of the California property; but rather only to monthly income to the extent of $3,000 per month. (ROA 1626.)

Respondent's argument that Appellant's lien should be excluded from the payment priority outlined in NRS 159.1365 because it was not properly domesticated also lacks merit. (AB 10–11.) On June 27, 2007, Appellant filed an exemplified copy of the Tennessee judgment in the instant case in accordance with

NRS 17.350.[2] (ROA 977–82.) The guardianship court recognized the judgment as evidenced by its order of August 15, 2012, ordering that Appellant be paid a pro rata of the ward's monthly income, along with her guardian, his attorney, and her former guardian's attorney. (ROA 1627.) In the eight years following Appellant's domestication of the judgment and the court's recognition of the judgment, Respondent never contested whether Appellant had properly domesticated the judgment. (*See, e.g.*, ROA 1872 (transcript of Respondent's attorney admitting that the guardianship court had previously recognized Appellant's Tennessee judgment).) Appellant properly domesticated the Tennessee judgment in 2007; even if some error rendered the domestication improper, Respondent cannot contest that error more than eight years later.

B. Even if the funds did not represent sale proceeds, they should have been paid to Appellant based on the guardianship court's prior pro rata distribution order.

Even if the funds are not considered proceeds from the sale of the California property, the funds should have been paid to Appellant pro rata with the other

[2] NRS 17.350 states:

> 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.

expenses. The petition from which the instant appeal stems asserted that the guardian and former guardian's administrative expenses and obligations have a higher priority than claims of other creditors, citing NRS 147.195, a statute applicable only to probate estates. (ROA 1752.) *Cf. First Bank & Tr. Co. v. Hoeper (In re Estate of Denten)*, 2012 IL App (2d) 110814, ¶ 54, 361 Ill. Dec. 793, 804, 972 N.E.2d 278, 289 (rejecting the invitation "to invent a legislative priority scheme that does not exist" by applying the probate estate payment priority statute to a guardianship estate).

Appellant's claims were perfected in June 2007 and (even if not a lien on property under NRS 159.1365) were prior in time to the majority of other claims, including all of Respondent's claims against the trust.[3] The guardianship chapter, NRS 159, does not give administrative expenses payment priority over other claims against the estate. Therefore, Appellant's claim—if not given payment priority under NRS 159.1365—should have been given at least pro rata treatment with the other claims in this distribution as in the August 15, 2012, order.

II. The Guardianship Court Plainly Erred by Approving a Stipulation Not Signed by All the Parties

The Stipulation and Order from which Appellant now appeals, states that Appellant would not share in the pro rata distribution of funds because he had

[3] Respondent was not appointed as guardian until October 17, 2007. (ROA 1201–02.)

received sale proceeds from his property lien on the California property. The Court's prior order had acknowledged Appellant's right to a pro rata distribution along with the other parties. Approval of a stipulation between the other parties that was not signed by Appellant—but that effectively denied Appellant the benefit of the prior distribution order and excluded Appellant from the distribution of funds—was plain error. A stipulation cannot bind persons not party to it. *See, e.g.*, *Pac. Live Stock Co. v. Ellison Ranching Co.*, 52 Nev. 279, 298-99, 286 P. 120, 124 (1930). In addition, this Court should not be bound by the erroneous view of the law relied on by the parties to the stipulation. *See Avila v. Immigration & Naturalization Serv.*, 731 F.2d 616, 620 (9th Cir. 1984) (stating that "a stipulation of law is not binding upon an appellate court," and that the court is "not bound by a party's erroneous view of the law").

On February 4, 2014, the attorney for the former guardian petitioned for distribution of funds held in an operating account associated with the California property. (ROA 1751.) The guardianship court ordered counsel for the current and former guardians to stipulate to a distribution of funds. (ROA 1879–80.) Appellant was excluded from this discussion and was unable to participate in the settlement although he had a valid interest in the funds. Although the stipulation affected Appellant's rights, the stipulation effectively determined Appellant's rights to be zero without his signature. The guardianship court plainly erred by

failing to order that Appellant sign off on the stipulation. *Cf. Account Mgmt. Associated v. Sanglimsuwan*, 91 Cal. App. 4th 773, 780, 110 Cal. Rptr. 2d 780, 785 (2001) (stating that although a trial court may enter judgment based on stipulation pursuant to CCP 664.6, the court must decide whether the parties entered into a valid settlement of all or part of the case, and the failure of a party to sign the stipulation rendered the judgment unenforceable).

CONCLUSION

The district court plainly erred by approving a stipulation that did not conform to law and that excluded an interested party. Accordingly, this Court should reverse the Stipulation and Order entered April 8, 2014.

NRAP 28.2 CERTIFICATE OF COMPLIANCE

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:

1. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 15 pages.

3. Finally, 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 4th day of January, 2016.

/s/ Karen K. Wong
Karen K. Wong

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on January 4, 2016. Electronic service of the foregoing document shall be made, in accordance with the service list, upon the following counsel of record:

Beau Sterling (Sterling Law, LLC)

Mark A. Solomon (Solomon Dwiggins & Freer, Ltd.)

Elyse M. Tyrell (Trent, Tyrell & Phillips)

/s/ Karen K. Wong
Karen K. Wong
Wong Appellate Law