

SHARATH CHANDRA,
ADMINISTRATOR, NEVADA REAL
ESTATE DIVISION,

Appellant

Vs.

MELANI SCHULTE; AND WILLIAM R.
SCHULTE

Respondent

APPEALS CASE NO: 75477

Lower Ct. Case No. JA12-458809-D
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Elizabeth A. Brown
Clerk of Supreme Court

From the Eighth Judicial District Court, Clark County
The HONORABLE CHERYL, B. MOSS, District Court Judge
District Court Case No., D-12-458809-D

PETITION FOR REHEARING

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PETITION FOR REHEARING

COMES NOW, MELANI SCHULTE, by and through her attorney of record, AMBERLEA DAVIS of the Law Offices of Amberlea Davis, and hereby petitions this Court for rehearing in the above-captioned case. This petition is based upon the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 13th day of January, 2020

Respectfully submitted:

By: /s/ Amberlea Davis
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POINTS AND AUTHORITIES

A. The court should grant a rehearing on the issue of whether the statute bars a former spouse from recovering from the fund.

On December 26, 2019, this court filed an Opinion granting the APPELLANT's appeal and reversing the Eight Judicial District Court orders

directing payment from the Real Estate Education, Research and Recovery Fund. The court may consider rehearings in the following circumstances: A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.” NRAP 40(c)(2).

Instead of correctly applying the strict “plain meaning” rule, this court found ambiguity where none existed. See Respondent’s Responding Brief page 9, subsection B. Further, the court misinterpreted the legislative intent to bar recovery by a former spouse.

The statutory language was not ambiguous or capable of two reasonable interpretations. Simply because a clever person can come up with more than one interpretation of a statute does not make it ambiguous, the interpretation must be reasonable. Bonner Cty. v. Cunningham, 156 Idaho 291, 295, 323 P.3d 1252, 1256 (Ct. App. 2014). The statute reads:

Upon the hearing on the petition, the petitioner must show that:

(a) The petitioner is not the spouse of the debtor, or the personal representative of that spouse.

Brief page 10-11.

There is no room for interpretation here. The statute specifically states that “Upon the hearing”. It does not, as it would have if it were the intent of the legislature to do so, state that the petitioner must show that they were not the spouse of the debtor at any time, or at the time of the alleged wrongdoing, only that they are not the spouse “Upon the hearing”. There is no room for misinterpretation. It is not reasonable to bar former spouses from recovery under any circumstance. Nor is it reasonable to allow a non-spouse who is in a relationship with a fraudulent broker to recover but a spouse cannot recover. This is utterly irrational, yet this court’s ruling makes it possible.

The Court’s application of the California case, Powers v. Fox 195 Cal. Rptr. 130, 147 Cal.App.3d 371(Cal.App.,1983),was misplaced as the spouse in Powers was directly involved in the fraudulent acts. Brief page 12. There were no allegations by Appellant that MELANI in any way was involved with the acts of WILLIAM SCHULTE.

Therefore, the court should allow a rehearing on the reversal of the lower courts decision.

B. The court should grant a rehearing on whether MELANI may recover from the fund on behalf of single asset real estate LLC’s.

The court further misapplied NRS 645 by holding that recovery from the fund for community property business entities who were aggrieved by a spouse's conduct. The court erred in interpreting NRS 645.0445(1)(a) to bar recovery simply because a broker was not required for ones' own properties. NRS 645.0445(1)(a) is enacted to eliminate the need for one to obtain a license if they are managing only their own properties. It is not intended to bar recovery by a spouse if the properties retain an entity to manage the properties for them, place money in a broker's trust, and are comingled with third party properties. Brief page 13.

In this case, it is undisputed that the properties were owned by LLC entities, not the individual spouses. It is further undisputed that WILLIAM took on the role of broker when he accepted the LLC entities as clients and placed their money into his broker trust account. WILLIAM's wrongful acts in draining the account has made it possible for the property LLC's to recover.

It is unconscionable to interpret the statute to bar recovery from the fund simply because a portion of the money stolen by the tortfeasor belonged to an entity of which the tortfeasor had an interest. The property LLC's were aggrieved by WILLIAM's conduct. Just as an LLC cannot represent themselves in court, so to, can they not act as their own broker. MELANI could not have managed the LLC properties herself as she was unlicensed and the properties were under LLC

entities. While it may be arguable that WILLIAM could not recover on behalf of the entities, there is nothing that should bar MELANI from recovering.

Therefore, the court should grant a rehearing on this issue.

Wherefore, MELANI SCHULTE requests that rehearing should be granted.

DATED this 13th day of January, 2020

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CERTIFICATE OF SERVICE

I hereby certify I am over the age of 18 and not a party to this action. On January 13, 2020, I served a true and correct copy of Appellant's brief by electronic service through eflex on:

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 /s/ Amberlea Davis
An employee of Amberlea Davis