

In the Supreme Court of the State of Nevada

IN THE MATTER OF THE ESTATE OF)
THEODORE ERNEST SCHEIDE JR.)

~~~~~ )  
ST. JUDE CHILDREN'S RESEARCH )  
HOSPITAL, INC. )

Appellant, )

-vs- )

THEODORE E. SCHEIDE III )  
Respondent. )  
~~~~~ )

Electronically Filed
Jul 22 2019 11:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 76924

Eighth Judicial District
Court Case No.: P-14-082619-E
Hon. Gloria Sturman, presiding

RESPONDENT'S MOTION TO DISMISS

Filed by:

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MOTION TO DISMISS APPEAL

Appellant has not complied with NRS 82.5234 and does not have the right to commence and/or maintain this appeal.

Whether a party has a private right of action (to maintain) goes to the jurisdictional issue of standing, and questions of jurisdiction are never waived. See Baldonado v. Wynn Las Vegas, LLC, 124 Nev. 951, 968-69, 194 P.3d 96, 107 (2008) (holding that a party lacks standing to pursue declaratory relief under a statute that does not provide a private right of action); Vaile v. Eighth Judicial Dist. Court, 118 Nev. 262, 276, 44 P.3d 506, 515-16 (2002) (questions of subject matter jurisdiction can be raised for the first time on appeal); Applera Corp. v. MP Biomedicals, LLC, 93 Cal. Rptr. 3d 178, 192 (Ct. App. 2009) (standing is jurisdictional, thus lack of standing may be raised for the first time on appeal).

Appellant, St. Jude Children's Research Hospital, Inc., is a not for profit charity IRS 501.3(c) incorporated in the State of Tennessee (per Tennessee Secretary of State). According to the Nevada Secretary of State's website, Appellant is not any sort of entity qualified to do business in the State of Nevada. (Exhibit "A"- printouts)

As such Appellant never had standing to utilize the Nevada courts to commence or maintain any action, or this appeal, in the State of Nevada, pursuant to NRS 82.5234(2), which states in pertinent part:

NRS 82.5234 Penalty for failure to comply with requirements for qualification; enforcement; regulations.

2. Except as otherwise provided in subsection 3, every foreign nonprofit corporation which is doing business in this State and which fails or neglects to qualify to do business in this State in accordance with the laws of this State may not commence or maintain any action or proceeding in any court of this State until it has qualified to do business in this State. [Emphasis Added]

3. An action or proceeding may be commenced by such a corporation if an extraordinary remedy available pursuant to chapter 31 of NRS is all or part of the relief sought. Such an action or proceeding must be dismissed without prejudice if the corporation does not qualify to do business in this State within 45 days after the action or proceeding is commenced. [Emphasis Added]

The use of “must” in the statute denotes mandatory action.

At the time Appellant commenced its original action by way of their Petition for Probate of Lost Will (9/13/16), etc. (AA-141), they were not registered as a foreign non-profit corporation to do business in the State of Nevada, and, to date, are still not registered with the Nevada Secretary of State. Appellant did not seek any remedies under NRS Chapter 31 in their Petition.

Therefore, Appellant did not have standing to *commence or maintain* the original action, and this subsequent appeal. Without standing, the District Court did not have the requisite jurisdiction.

NRS 82.5234 is not restricted to commencement of an action but also restricts maintaining an action, and the grounds under NRS 82.5234(2) are continuing in nature. If not corrected within 45 days, the court must dismiss on motion, regardless of the status of proceedings including this appeal.

Secondly, the District Court entered an order declaring the within estate as intestate. (AA-060) Despite notice, Appellant never appeared, and did not appeal that order. The Supreme Court has held that orders establishing heirship become final after thirty (30) days and could no longer be attacked by appeal or otherwise. In the Matter of the Estate of Miller, 111 Nev. 1, 888 P.2d 433 (1995).

Wherefore, it is requested that this Motion be granted and the appeal be dismissed.

Dated: July 19, 2019

Respectfully Submitted,


CARY COLT PAYNE, ESQ. (#4357)

CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 22ND day of July, 2019 I have served to the following an electronic filing copy of this Brief by electronic filing through the Supreme Court's E-Flex System:

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EXHIBIT PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "A"



Tennessee Secretary of State

Tre Hargett

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000083284: Nonprofit Corporation - Domestic

Printer Friendly Ver

Name: ST. JUDE CHILDREN'S RESEARCH HOSPITAL, INC.

Old Name: ST. JUDE CHILDREN'S RESEARCH HOSPITAL, MEMPHIS, TENNESSEE

Status: Active

Initial Filing Date: 07/18/1959

Formed in: TENNESSEE

Delayed Effective Date:

Fiscal Year Close: June

AR Due Date: 10/01/2019

Term of Duration: Perpetual

Inactive Date:

Principal Office: ROBYN DIAZ

262 DANNY THOMAS PL STOP 280
MEMPHIS, TN 38105-3678 USA

Mailing Address: ROBYN DIAZ

262 DANNY THOMAS PL STOP 280
MEMPHIS, TN 38105-2678 USA

AR Exempt: No

Obligated Member Entity: No

Public Benefit Corporation: Yes

Assumed Names

History

Registered Agent

Name

Status

Expires

No Assumed Names Found...

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