

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. )  
~~~~~ )

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Supreme Court No.: 76924

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

RESPONDENT'S REPLY TO OPPOSITION TO MOTION TO DISMISS

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***RESPONDENT'S REPLY TO OPPOSITION
TO MOTION TO DISMISS APPEAL***

The background facts of the appeal at hand are inconsequential as it pertains to the facts maintained in the Motion to Dismiss. However, St Jude's opposition to the Motion to dismiss raises even more questions than it answers-who or what is St Judes doing in Nevada?

1. Order (5/16/15) from Petition for Instructions-intestacy

That being said, given Appellant's argument, the order that held the Decedent died estate "intestate" was filed May 26 2015 (Order and minutes-Exhibit "A"), which states: "Ordered that the Petitioner be Appointed Administrator of the *intestate Estate* of the Decedent.....". [Emphasis added]

This proves that the Decedent's (in 2015) estate had already been ordered as intestate. Appellant was served with notice of the Petition for Instructions (Exhibit "B"-Certificate of Mail and Notice of Hearing) (Exhibit "C"- Petition without exhibits), which centered on the issue of the original October 2012 will, the original not being found, seeking instructions from the District Court as to the intestacy of the estate.

The probate court allowed for an additional time in order for the appearance of any potential challenger, and when no one came forth, including Appellant, the order issued. This order, which was independently appealable (NRS 155.190), it was never challenged. It is a final order, and is the law of the case. Appellant never appealed or moved to modify the 5/26/15- order, which already determined heirship under NRS Chapter 134- Intestate Succession.

Appellant commenced this (new) matter (9/13/16)-the subject of this appeal as the Petitioner, "Saint Jude Children's Research Hospital, Inc." (Exhibit "D") The petition reads "Petition for Probate of Lost will (NRS 136.240); Revocation of letters of Administration (NRS 141.050); issuance of letters Testamentary (NRS 136.090)". See relief requested an "Court" (order) admit a copy..... pg. 9 lines 7-10.

2. St. Jude does do Business in Nevada

Appellant on page 3 of its Opposition brief states: "St. Jude's is not a charity". Appellant, in their Opposition, also makes various other representations, including the argument that since St. Jude does not do business in Nevada, they do not need to comply with Nevada law and that their "foreign corporation" with the Nevada Secretary of State complies under NRS 80.015. Apparently "doing business" is separate from "bringing an action".

According to St Jude - Facebook page, they apparently have a business address of 1635 Village Center Circle, Suite 270, Las Vegas, Nevada 89134. There is another listing online from "yellow.place" indicating the same address, is a hospital and a nonprofit. (Exhibit "E") As such, there must be staff, employees, etc. Upon further review, it appears St. Jude's hires contractors to build houses in Nevada and runs a Lottery to win a home-giveaway. (Exhibit "F") Operating a "lottery", selling tickets etc., requires St. Jude to comply with NRS 462.160.

According to the Facebook page, they both raised and gave “substantial” amounts of money/ prizes to Nevada residents. If Appellant does not do business in Nevada and is not a charity, as claimed, then there may be improper activities by Appellants occurring in Nevada.

St. Jude solicits via the U.S. Mail, for donations from Nevada residents, and it then sending the monies to the State of Tennessee. (Exhibit “G”) The small print disclaimer denotes ASLAC is using the name of “St. Jude”, also a violation of NRS 462.200.

It seems ASLAC is utilizing the St. Jude name for receiving charitable donations. ALSAC stands for “American Lebanese Syrian Associated Charities, Inc.”, a nonprofit 501.3(c) organization incorporated in the State of Illinois. (Exhibit “H”)

If St. Jude is “not” a charity (Opps. pg 3) then what is it exactly doing by soliciting, collecting and accepting donations and/or money from the people of the State of Nevada, and/or operating a lottery for a free Nevada home in the name of St. Jude. According to its Nevada websites “This page is moderated by the ALSAC/St. Jude fundraising office in Las Vegas, Nevada.” Further, mailings are made within Nevada, seeking charitable donations, or to enter the lottery.

ASLAC and Appellant claim to be two different nonprofit entities, incorporated in two different states (Appellant in Tennessee and ASLAC in Illinois). As such, any potential cooperation between them still requires each entity to follow NRS Chapter 82. Has St. Jude disclosed to people of the State of

Nevada it is not a charity as it alleges? Has St. Jude taken the necessary precaution to not be confused with ALSAC? Did St. Jude notify Mr. Theodore Scheide (decedent) it was “not” a charity, while they accepted his donation(s)? Are they claiming that Mr. Scheide intended to instead actually leave his estate to ALSAC. Maybe Mr. Scheide discovered that St. Jude was a “front” to raise money for the ASLAC and he revoked his will. It appears Appellant does not want to be known by “ALSAC”. What do St. Jude donors think or know about ASLAC.

As part of Exhibit “G” is a disclaimer which is utilized, literally stating that ASLAC is a fundraising arm of St. Jude. St. Jude admits on page 7 of their Opposition: “accepting donations from Nevada residence is not doing business in Nevada”. If they are accepting donations and sending those funds out of State to Tennessee, it would be a violation of NRS 462.200, which requires lottery funds to remain within the confines of the State of Nevada.

3. NRS Chapter 80 Argument

A further statute review indicates that NRS Chapter 80 (entitled Foreign Corporations) deals strictly with “regular” foreign corporations. While Appellant wants this Court to believe it is simply a “foreign corporation”, Appellant is especially founded and registered in the State of Tennessee as a “not-for-profit” corporation (IRC 501.3.c) which is a significant distinction from any other sort of “corporation”, foreign or domestic. Nonprofits are specifically dealt with under NRS Chapter 82 (entitled Nonprofit Corporations); therefore NRS Chapter 80 does

not apply to the Appellant, which must comply with the regulations promulgated under NRS Chapter 82.

Appellant is doing business in Nevada, as above noted, but has never, as a nonprofit corporation (no matter what business they are engaged in) complied with NRS 82.5234 registered with the Nevada Secretary of State as a foreign not-for-profit corporation.

NRS 82.5234 is not restricted to the “commencement of an action” but also restricts “maintaining an action”, and the grounds under NRS 82.5234(2) are continuing in nature. The statute serves an important purpose. The general citizenry need to be protected from unscrupulous organizations from seeking monetary contributions (running lotteries, etc.) from this State, yet now argues they are exempt from State law. St. Jude commenced the matter before the Probate Court when it filed its Petition requesting court order. Defined by NRS 132.275. NRCP 17(a) is clear.

ASLAC and Appellant are two separate nonprofit corporations, and as to Nevada both are foreign nonprofit corporations, both would be required to register pursuant to NRS Chapter 82. Appellant would have this court believe that they are not a charity, nor has business in the State of Nevada. They seek to blur the lines between ASLAC and St. Jude. There are other registered businesses in Nevad utilizing the St. Jude name, for example, St. Jude’s Ranch for Children, which has nothing to do with the Appellant.

Appellant commenced the action in the District Court in the name of St. Jude Children's Hospital, Inc., which in and of itself is a foreign nonprofit corporation, not registered with Nevada, with a verification signed by a director of ASLAC's legal department. Appellant did not sue with the convergence of two entities or one as a "dba" as the "plaintiff", only in the capacity of St. Jude Children's Research Hospital, Inc, which in and of itself as a separate, foreign nonprofit corporation (501.3(c) charity) that did not comply with NRS Chapter 82.

Ultimately, Appellant did not have the requisite authority to *commence or maintain* its Lost Will Petition, and therefore cannot commence or maintain this appeal.

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

Dated: July 26, 2019

Respectfully Submitted,


CARY COLT PAYNE, ESQ. (#4357)

CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 26th 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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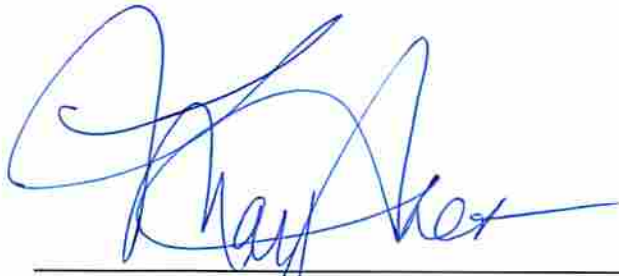
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