

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of The Estate of Milton I. Schwartz, Deceased.

A. Jonathan Schwartz, Executor of The Estate of of Milton I. Schwartz,

Appellant,

vs.

THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE,

Respondent.

Case No. 78341

District Court Case No. 19-1300

Electronically Filed  
Apr 19 2019 11:45 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions

appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: 26 (Probate)  
County: Clark Judge: Hon. Gloria Sturman  
District Ct. Case No. 07-P-061300

**2. Attorney filing this docketing statement:**

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Client(s): Respondent/Cross-Appellant the Dr. Miriam and Sheldon G.  
Adelson Educational Institute

**3. Attorney(s) representing respondents:**

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Telephone: (702) 949-8200  
Firm Address: LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
Client(s): Appellant/Cross-Respondent A. Jonathan Schwartz, Executor of  
the Estate of Milton I. Schwartz

**4. Nature of disposition below (check all the apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgement after bench trial        | <input type="checkbox"/> Dismissal                                      |
| <input checked="" type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                              | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                              | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of injunction                    | <input type="checkbox"/> Other (specify): _____                         |
| <input checked="" type="checkbox"/> Grant/denial of declaratory relief | <input type="checkbox"/> Divorce decree                                 |
| <input type="checkbox"/> Review of agency determination                | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
|  | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following:**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court:** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A.

**7. Pending and prior proceedings in other courts:** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is a will contest turned breach of contract dispute regarding the naming rights to a private elementary school. At issue is an unambiguous \$500,000 Bequest from Milton I. Schwartz to “the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.”

On May 3, 2013, after the School tried for several years to get Milton’s son and the executor of his estate, Jonathan Schwartz, to make the Bequest to the School to no avail, the School filed a Petition to Compel Distribution of the Bequest, in addition to seeking other relief.

On May 28, 2013, the Estate filed its own petition for declaratory relief, raising claims for breach of contract, fraud in the inducement, bequest void for mistake, offset of the bequest, revocation of gift and constructive trust, and construction of the will. On May 28, 2014, the Estate filed a supplemental petition for declaratory relief adding causes of action for specific performance and injunctive relief. The Estate alleged that that it did not have to make the Bequest, that Milton Schwartz had an enforceable perpetual naming rights agreement with the School, and that the Estate was in fact entitled to damages arising from the School's alleged breach of that agreement as well as a return of all of Milton's lifetime gifts to the School.

Before trial, the district court granted the School's Motion for Summary Judgment on the Estate's claim for breach of an oral contract as time barred, based on its finding that Jonathan Schwartz was on notice of the facts giving rise to that claim more than three years prior to the Estate's Petition.

A nine-day jury trial commenced on August 23, 2018. The jury found against the Estate on its contract claims and made certain factual findings regarding Milton Schwartz's subjective intent. The parties then conducted post-trial briefing on the remaining equitable issues. Ultimately, the district court determined that Milton Schwartz intended that the Bequest go only to a school that bore his name in perpetuity and that Milton Schwartz was mistaken regarding the existence of an enforceable naming rights agreement. The district court denied the School's Petition and granted the Estate's competing claims for construction of will and bequest void for mistake. The district court denied the Estate's remaining claims.

Ultimately, four judgments were entered on the parties' claims:

- 1) October 4, 2018 Judgment on Jury Verdict, finding against the Estate on its claims for Breach of Contract, Specific Performance, and Injunctive Relief (NEO October 5, 2018);
- 2) February 20, 2019 Judgment on Jonathan A. Schwartz's, Executor of the Estate of Milton I. Schwartz, Claims for Promissory Estoppel and Revocation of Gift and Constructive Trust (NEO February 21, 2019);
- 3) February 20, 2019 Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting, and for Attorneys' Fees, denying the Petition in its entirety;

- 4) February 20, 2019 Judgment on Jonathan A. Schwartz's Petition for Declaratory Relief, granting in part the Petition with respect to the First Claim for Construction of Will and the Third Claim for Bequest Void for Mistake.

On March 8, 2019, the Estate filed a Notice of Appeal. On March 22, 2019, the School filed a Notice of Appeal.

**9. Issues on appeal:** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- Whether the District Court erred in admitting hearsay and extrinsic evidence related to the unambiguous Bequest at trial.
- Whether the District Court erred in determining that the School was not entitled to distribution of the unambiguous Bequest.
- Whether the District Court erred in determining that the Bequest was void based on Milton I. Schwartz's unilateral mistake.

**10.** Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Unknown.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employer thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

■ N/A

☐ Yes

☐ No,

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United State and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy

- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decision
- ☐ A ballot question

If so, explain:

### **13. Assignment to the Court of Appeals or retained in the Supreme Court.**

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstances that warrant retaining the case, and include an explanation of their importance or significance:

This matter is not presumptively retained by the Supreme Court pursuant to NRAP 17(a) or presumptively assigned to the Court of Appeals pursuant to NRAP 17(b). Therefore, the Supreme Court retains jurisdiction of this matter unless and until ordered otherwise.

### **14. Trial.** If this action proceeded to trial, how many days did the trial last? Was it a bench or jury trial?

Trial in this action proceeded to a nine-day jury trial. Thereafter, the Court determined the remaining legal and equitable claims and issues after briefing and oral argument

### **15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

## **TIMELINESS OF NOTICE OF APPEAL**

### **16. Date of entry of written judgment on order appealed from:**

- October 4, 2018, Judgment on Jury Verdict.
- February 20, 2019 Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting, and for Attorneys' Fees.

- February 20, 2019 Judgment on Jonathan A. Schwartz's Petition for Declaratory Relief.

**17. Date written notice of entry or order was served:**

- October 5, 2018 (Judgment on Jury Verdict).
- N/A (Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting, and for Attorneys' Fees). Appellant/Cross-Respondent A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz did not file a written notice of entry of judgment.
- N/A (Judgment on Jonathan A. Schwartz's Petition for Declaratory Relief). Appellant/Cross-Respondent A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz did not file a written notice of entry of judgment.

Was service by:

- ☐ Delivery  
☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59):**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☒ NRCP 50(b)      Date of filing: 10/22/18  
☐ NRCP 52(b)      Date of filing: \_\_\_\_\_  
☒ NRCP 59      Date of filing: 10/22/18

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion: 02/20/2019

(c) Date written notice of entry of order resolving tolling motion was served:  
02/20/2019

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

**19. Date notice of appeal filed:**

If more than one party had appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

- Appellant/Cross-Respondent A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz filed a Notice of Appeal on March 8, 2018.

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) other:**

NRAP (4)(a)(2).

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1)                      | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                 | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                 | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify): NRS 155.190(1)(n) |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) permits an appeal from a final judgment. The Judgments from which the School appeals are final judgments entered in this matter. The School also appeals from a decision wherein the amount in controversy exceeds \$10,000 under NRS 155.190(1)(n).

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

- Respondent/Cross-Appellant: the Dr. Miriam and Sheldon G. Adelson Educational Institute



- Appellant/Cross-Respondent: A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz

(b) If the parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims and the date of formal disposition of each claim.**

(a) The Dr. Miriam and Sheldon G. Adelson Educational Institute:

The Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting and for Attorneys' Fees sought to compel distribution of the Bequest, damages including attorney's fees and costs, and to compel the Executor to file an accounting in the event the Executor claims insufficient funds existed to make the distribution.

The Court entered the Judgement on the Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting, and for Attorneys' Fees, denying the Petition on February 20, 2019.

(b) A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz:

A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz's Petition for Declaratory Relief asserted claims for (1) Construction of Will; (2) Fraud in the Inducement; (3) Bequest Void for Mistake; (4) Offset of Bequest under Will; (5) Breach of Contract; (6) Revocation of Gift and Constructive Trust. A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz's Supplemental Petition for Declaratory Relief later added claims for (7) Specific Performance; and (8) Injunctive Relief.

On October 4, 2018, the District Court entered the Judgment on Jury Verdict, which dismissed with prejudice the Estate's Fifth, Seventh, Eighth claims for Breach of Contract, Specific Performance, and Injunctive Relief.

On February 20, 2019, the District Court entered the Judgment on Jonathan A. Schwartz's, Executor of the Estate of Milton I. Schwartz, Claims for Promissory Estoppel and Revocation of Gift and Constructive Trust, which dismissed with prejudice the Estate's Second and Sixth claims for relief.

On February 20, 2019 the District Court entered Judgment on Jonathan A. Schwartz's Petition for Declaratory Relief, which found in favor of the Estate on its First and Third Claims for Relief.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

- ☐ Yes  
☒ No

**25. If you answered "No" to question 24, complete the following:**

- (a) Specify the claims remaining pending below: N/A
- (b) Specify the parties remaining below: N/A
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
- ☐ Yes  
☒ No

**26. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The District Court entered four Judgments on the parties' claims. Thus, while the two Judgments from which the School appeals did not adjudicate all of the parties' claims, collectively, the four Judgments do.

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, crossclaims, and third-party claims;
- Any tolling motion(s) and order(s) resolving tolling motion(s);
- Orders of NRCP 41(a) dismissals formally resolving each claim; counterclaims, crossclaims, and/or third-party claims asserted in the action
- Any other order challenged on appeal;
- Notices of entry for each attached order.

To avoid redundancy, Respondent/Cross-Appellant refer to Exhibits A, B, C, E, and I attached to Appellant's Docketing Statement, filed on April 8, 2019, and have attached only documents not included therein. *See* Appendix of Exhibits, attached hereto.

### VERIFICATION

I declare under penalty of perjury that I have read this Docketing Statement, that the information provided in this Docketing Statement is true and complete to the best of my knowledge, information and belief, and that I have attached all require documents to this Docketing Statement.

Dr. Miriam and Sheldon G. Adelson  
Educational Institute

J. Randall Jones

\_\_\_\_\_  
Name of Appellant

\_\_\_\_\_  
Name of counsel of record

April 19, 2019  
Date

/s/ J. Randall Jones  
Signature of counsel of record

Nevada, Clark

\_\_\_\_\_  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 19th day of April, 2019, I caused to be served the foregoing Docketing Statement with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-filing system (Eflex). Participants in the case who are registered Eflex users will be served by the Eflex system as follows:

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