

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

IN THE MATTER OF THE  
DUCKWORTH FAMILY TRUST,  
DATED MARCH 12, 2015.

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KYLA DUCKWORTH,  
  
Appellant,

v.

CARY DUCKWORTH, TRUSTEE OF  
THE DUCKWORTH FAMILY TRUST,  
  
Respondent.

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Electronically Filed  
Nov 15 2021 04:49 p.m.  
Elizabeth A. Brown  
No. 82314  
Clerk of Supreme Court  
Supreme Court  
District Court Case No.  
P-20-103183-T

Appeal from the Eighth Judicial District Court, Clark County Nevada  
The Honorable Gloria Sturman, Department XXVI, District Court Judge  
District Court Case No. P-20-103183-T

**RESPONDENT'S ANSWERING BRIEF**

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### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. During the proceedings leading up to this appeal, Respondent has been represented by the following attorneys:

R. Gardner Jolley, Esq. of Jolley Urga Woodbury & Holthus, Elizabeth Brickfield, Esq., and Melissa R. Romano, Esq. of Dawson & Lordahl PLLC for the Respondent in the underlying district court case and as attorneys of record for Respondent on appeal.

Dated this 14th day of November 2021.

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## **TABLE OF CONTENTS**

TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
I. STATEMENT OF THE ISSUES	1
II. STATEMENT OF THE CASE AND STANDARD OF REVIEW	1
III. STATEMENT OF FACTS	5
A. MAUREEN’S ENGLISH ESTATE	10
B. THE PROBATE COMMISSIONER’S REPORT AND RECOMMENDATIONS	13
C. THE NOTICE OF ORDER DENYING OBJECTION TO PROBATE COMMISSIONER’S REPORT AND RECOMMENDATIONS	16
D. KYLA’S ISSUES ON APPEAL	16
IV. SUMMARY OF THE ARGUMENT	18
A. The Probate Order as a Final Judgment.	18
B. Determination of the Filing of a Caveat.	18
C. Determination of the Claims Against the Estate.	19
D. Interpretation of the Caveat.	19
V. ARGUMENT	20
A. The Probate Order is Not a Final Judgment Subject to Appeal.	24

B. The District Court Properly Concluded that Kyla Had Filed a Caveat in the English Estate.	28
C. The District Court Properly Concluded that Kyla had Alleged and Claimed That Kyla Was Entitled to the English Assets.	29
D. The Probate Court Did Not Interpret the Caveat or the Claims Against the English Estate.	31
VI. CONCLUSION	32

## **TABLE OF AUTHORITIES**

### **Cases:**

<i>Valley Bank of Nev. v. Ginsburg</i> , 110 Nev. 440, 445, 874 P.2d 729, 733 (1994)	25
<i>August H. v. State</i> , 105 Nev. 441, 443, 777 P.2d 901, 902 (1989)	26
<i>Lee v. GNLV Corp.</i> , 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)	26
<i>Sicor, Inc. v. Sacks</i> , 127 Nev.896, 266 P.3d 618 (2011)	27
<i>Estate of Peterson</i> 255 GA APP 303, 565 S.E. 2d 524 (2002)	28
<i>In re Will of Shepherd</i> , 235 N.C. Appellate. 298 (2014)	28
<i>Matter of Estate of Phillips</i> , 251 N.C.App.99, 795 S.E.2d 273 (2016)	28

### **Statutes and Rules:**

NRAP 28(b)	1, 5
NRS 165.135	21
NRAP 3A(b)(1)	25
NRAP 3A(b)	26
NRS 155.190	26, 27

### **Secondary Sources & Treatises**

<i>Merriam-Webster's Collegiate Dictionary, Tenth Edition, 2002</i>	27
<i>West's Legal Thesaurus Dictionary, 1986</i>	27

## **I. STATEMENT OF THE ISSUES**

- A. Whether the Probate Order is an interlocutory order subject to appeal under NRS 155.190.
- B. Whether the District Court erred in interpreting a foreign legal document based upon its face.
- C. Whether the interpretation of the foreign legal document was a question of law or fact.
- D. Whether the District Court erred in interpreting the legal effect of a foreign document without reference to the foreign jurisdiction's laws.

## **II. STATEMENT OF THE CASE AND STANDARD OF REVIEW**

Under NRAP 28(b), the Respondent, Cary Duckworth, as Trustee of the Duckworth Family Trust (“Cary”) does not object to Appellant, Kyla Duckworth (“Kyla”)’s Jurisdictional Statement and Routing Statement (Standard of Review). Cary submits that Kyla’s Opening Brief mischaracterizes the court’s rulings as “an appealable interlocutory order” and an “interpretation of the caveat.” AOB 5. Cary disagrees with both characterizations.

In 1993, the Decedents, George Duckworth (“George”) and Maureen Duckworth (“Maureen”) (collectively the “Duckworths”), created a trust which provided for equal distributions to the three children of their marriage<sup>1</sup>: Tara Kassity, Kyla Duckworth and Cary Duckworth, after first distributing \$300,000 to Cary as a

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<sup>1</sup> George is also survived by a daughter, Diane Varney, who is not a beneficiary of The Duckworth Family Trust.

“make-up” for not inheriting from his paternal grandmother’s estate because he was not born at the time. In March 2015, the Duckworths executed and funded The Duckworth Family Trust (the “2015 Trust”), a new trust. The dispositive terms of the 2015 Trust carried out the same dispositive scheme as the earlier trust. The Duckworths then died Nevada residents in 2018 and 2019, respectively.

Prior to their deaths, Kyla served as caregiver for her parents. Although all three children were named as equal agents under their parents’ Powers of Attorney, Kyla acted as her parents’ sole agent for health care purposes and managed her parents’ finances, excluding her siblings from participation and knowledge. After Kyla removed her mother from the Duckworths’ residence in January 2018, she abandoned her role as her father’s caregiver.<sup>2</sup> She left her father without liquid assets to support the Duckworth household.<sup>3</sup>

At the time of Maureen’s death in June 2018, she owned assets in Nevada as well as foreign assets in England (“English Estate”). Maureen’s 2015 Will and the Trust excluded her separate property from the Trust. That property (the “English Estate”) belonged solely to Maureen as her separate property and included a residence and certain bank accounts which were valued in excess of \$500,000. Maureen consistently stated that the English Estate would be distributed to her

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<sup>2</sup> R.APP000226.

<sup>3</sup> R.APP000166-000168.

children, in equal shares. However, after Maureen's death, George, Tara and Cary came to learn that Kyla had arranged in 2016 to have her name added to the liquid accounts of Maureen's English Estate as an agent. She then claimed the accounts as her property after her mother's death in June 2018.<sup>4</sup>

After Maureen's death, George hired an English attorney to open an English probate. Maureen had died without an English will and, as a result, George would inherit the majority of the English Estate pursuant to England's intestacy laws. Shortly thereafter, Kyla, hired an English attorney who first wrote to claim the English Estate as Kyla's and then filed a caveat ("Caveat") in the proceedings for the probate of Maureen's English Estate.

Kyla's actions angered George. In January and March of 2019, he executed the First and Second Amendments to the 2015 Trust. The effect of the First and Second Amendments to the Trust were to take into account the funds Kyla received as a result of her claims to the English Estate and offset those amounts against any distribution to Kyla.

In January 2019, working with counsel in the First Amendment, George gifted his primary residence ("Corta Bella") to his son, Cary, with \$300,000 to be the equalizing distribution and the remaining \$178,400 of value to be an additional

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<sup>4</sup> R.APP000464-000470.



advance against his inheritance.<sup>5</sup> George then resigned as Trustee and named Cary as the Successor Trustee. Ten months later, George died.

The underlying litigation relates to Kyla's challenge of the First and Second amendments to the Trust executed by George in 2019 based upon claims for incapacity and undue influence by Cary as fiduciary, and claims which the Court permitted to be added by Cary against Kyla in her capacity as caregiver. Cary alleges that Kyla's action of refusing to provide relevant information regarding the value of the assets belonging to the Trust and the English assets, as well as initiating the instant litigation, go against the No Contest clauses set forth in the Trust.

At the time of the first hearing on Kyla's petition challenging the First and Second Amendments and Cary's claim that Kyla violated the no contest clause, the Probate Commissioner found that Kyla's conduct relating to the English assets and her refusal to provide information relating to the English and Trust assets would "bring into play" the no contest clause set forth in the Trust and the Amendments.<sup>6</sup> This finding of fact is the subject of the instant appeal.

### **III. STATEMENT OF FACTS**

Under NRAP 28(b), Cary may submit a statement of facts if he is dissatisfied with Kyla's statement. Kyla's statement is misleading and incomplete.

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<sup>5</sup> The advance is set out in the 2019-2020 accounting as a distribution.

<sup>6</sup> R.APP000384-000384 (RAR Finding of Fact No. 9.) Kyla did not appeal that Finding.

The Decedents, George Duckworth and Maureen Duckworth, husband and wife, died Nevada residents, leaving behind their three children. In 1993, the Duckworths created a trust which provided for equal distributions to their three children, after first distributing \$300,000 to Cary as a “make-up” for not receiving an inheritance from his paternal grandmother’s estate because he was not born at the time.

Prior to their deaths, in March 2015, the Duckworths executed and funded The Duckworth Family Trust, a new trust. The dispositive terms of the 2015 Trust carried out the same dispositive scheme as the earlier trust: an initial distribution of \$300,000 to Cary Duckworth with the remainder of their assets to be equally divided among their three children. George later executed a first amendment (“First Amendment”) and second amendment (“Second Amendment”) (collectively “Amendments”) in 2019.

Maureen was diagnosed in 2013 with corticobasal degeneration, a rare form of Parkinsonism which causes the deterioration of movement, speech and memory. George experienced normal debility of aging and macular degeneration.<sup>7</sup> In

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<sup>7</sup> Contrary to Appellant’s assertions, Appellant’s own documents stated that in 2016 George required physical assistance with daily activities of life due to age-related physical debility as well as mild decreased cognition, Appellant’s other documents are nothing more than an email from George’s financial advisor after a telephone call where George – who was legally blind – had difficulty writing information and an unsubstantiated listing of medication and conditions which do not include any formal diagnosis of dementia.

December 2013, Kyla moved to her parents' residence and became their caregiver and fiduciary.

From 2014 through January 2018, Kyla served as caregiver for her parents. Although all three children were named as equal agents under their parents' Powers of Attorney, Kyla acted as her parents' sole agent for health care purposes and managed her parents' finances, excluding her siblings from participation and knowledge. During that time, Kyla arranged for her name to be added to certain financial accounts in England owned by Maureen.<sup>8</sup>

Maureen owned community property assets in Nevada as well as foreign assets in England. Maureen's 2015 Will and the Trust excluded her separate property from the Trust. The English Estate belonged solely to Maureen as her separate property inheritance and included a residence and certain bank accounts which were valued in excess of \$500,000. Maureen consistently stated that the English Estate would be distributed to her children, in equal shares. At no time did Maureen ever indicate she would leave a disproportionate share to Kyla, or any of the other children.

In addition to Kyla serving as caregiver, the Duckworths employed paid caretakers to assist Kyla. The Duckworths paid Kyla's living expenses, including assisting with the expenses of her San Diego condominium. The expenditures took

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<sup>8</sup> R.APP000464-000470

a significant toll on the Duckworths' liquid finances. As a result, in 2017, the Duckworths' accountant, Diane Short, CPA, met with the family to advise them of the necessity of using the funds of the English Estate to support the household. Maureen agreed that funds could be brought over. Kyla, as her mother's agent, arranged for funds to be brought over for several months, but then abruptly stopped doing so in early 2018.

Maureen died on June 6, 2018. Before her death, in January 2018, Kyla took Maureen to the hospital. Upon her release, and against the wishes of George, Cary and Tara, Kyla moved Maureen to Las Ventanas, an assisted living facility. Kyla also advised the people in charge at Las Ventanas and the medical staff that she had a Power of Attorney to take care of Maureen. Maureen had always stated that she wanted to die at home. Instead, Kyla kept her at the assisted living facility against the wishes of the rest of the family and most importantly, Maureen.

Not only did Kyla refuse to bring Maureen home, she refused to allow any of the English Estate to be used to pay the Duckworths' household expenses. After Maureen's death, George liquidated the Duckworths' beach vacation condominium which provided him with more than two million dollars in liquid assets. That liquidation would have resulted in prohibitive capital gains taxation had it been sold prior to Maureen's death.

Kyla refused to bring Maureen home and prohibited Maureen's assets from being used to pay the Duckworths' household expenses after January 2018. Shockingly, she also abandoned her role as George's caregiver, leaving him with shifts of ever-changing paid caretakers. Cary and Tara stepped in to fill the void by hiring a full-time paid caregiver to live with George. They also arranged for him to be treated by Dr. Christopher Choi, who adjusted George's medication.<sup>9</sup> After August 2018, Cary, his wife and their two daughters moved into George's residence at George's request. The paid caretakers continued their services.

Kyla's abandonment of her father, her actions as caregiver, her refusal to use Maureen's funds to pay George's expenses and her claims and actions with regard to Maureen's English Estate angered and disheartened George. In January and March of 2019, he executed the First and Second Amendments to the 2015 Trust with the assistance of his counsel and accountant. The effect of the First and Second Amendments to the Trust were to take into account the funds Kyla received as a result of her claims to the English Estate and offset those amounts against any future distributions to Kyla. George also provided that Kyla would receive the Trust's half interest in Hinson Place, a piece of real property owed by the Trust. Hinson Place

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<sup>9</sup> R.APP000474-000476 (Dr. Choi testified that George was his patient from 2018 through 2019, that he considered him to have the capacity to make estate planning documents and that George improved remarkably when his medication was adjusted.)

was valued by the estate planning attorney for purposes of the bequest using the same discounted formula used to value the gift of the Corta Bella residence to Cary and addressed George's intent that Kyla would always have a place to live.<sup>10</sup>

In January 2019, working with counsel, an appraiser, and his accountant, George gifted his Corta Bella residence to his son Cary as an advance against his inheritance, with \$300,000 of its value to be the equalizing distribution and the remaining \$178,400 of its value to be an advance.<sup>11</sup> Due to Kyla's actions towards Maureen and George during their end of life, George sought to expand the no-contest provisions of the Duckworths' Trust to prevent Kyla from claiming a disproportionate share of the assets. George changed the successor trustee, expanded the no-contest provisions, and proposed proportional distribution of the Trust assets. George then resigned as Trustee and named Cary as the Successor Trustee. Ten months later, George died.

#### **A. MAUREEN'S ENGLISH ESTATE**

After Maureen's death, George hired an English attorney to open an English probate. George, Tara and Cary subsequently came to learn that Kyla had arranged

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<sup>10</sup> R.APP000471-000476 At her deposition, the tenant -in -common, Maureen Duckworth's cousin, Marilyn Legg, testified that Kyla was the beneficiary of Marilyn's half interest in the Hinson property.

<sup>11</sup> Contrary to Appellant's assertions on AOB 12, the Accounting properly included the \$178,400 advancement.

in 2016 to have her name added to the liquid accounts of Maureen’s English Estate as an agent. After Maureen’s death, however, Kyla claimed the accounts as her inherited property.

After retaining counsel, George’s attorneys in England received a letter from Kyla’s English attorneys.<sup>12</sup> The allegations made in the letter were completely untrue, including claims that Maureen intended for Kyla to inherit all of the English Estate. Kyla’s attorney specifically stated, “our client intends to lay claim to the Deceased’s Estate in England.”<sup>13</sup> He then stated, “the purpose of this letter is to give early notification of a potential claim or claims against the deceased Estate.”

On January 14, 2019, George’s English attorneys replied to the letter from Kyla’s counsel and challenged her numerous claims.<sup>14</sup> Kyla, however, never disputed her counsel’s representation that she “intends to lay claim to the Deceased’s estate in England”, which later became the basis for the Probate Commissioner’s findings that Kyla alleged and claimed she was entitled to the English assets.

Additionally consistent with their representations, Kyla’s English attorneys filed a Caveat against the English Estate in August 2019.<sup>15</sup> George’s English attorneys responded to the filing of the Caveat in a letter which stated:

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<sup>12</sup> R.APP000343-000345.

<sup>13</sup> R.APP000343-000345.

<sup>14</sup> R.APP000346-000348.

<sup>15</sup> R.APP000027.

We are in the process of obtaining a grant of representation and as of today have been informed that you have entered a Caveat against the Estate of the late Maureen Duckworth.<sup>16</sup>

George's attorney further stated:

This is now delaying the administration of the Estate and we require the urgent removal of the Caveat so the letters of administration may be issued. Let us remind you that your client is a beneficiary of this Estate and further delays in legal costs are likely to adversely impact her.<sup>17</sup>

George then received a letter from the Probate Officer in England stating, "I have checked our records and the Caveat 1562-6771-2396-8672 has been extended and is due to expire on 17<sup>th</sup> January 2020."<sup>18</sup>

Kyla's filing of the Caveat was then addressed by George's local Nevada counsel, Attorney Kenneth Burns. In an August 14, 2019, letter by Attorney Burns to Kyla's local Nevada counsel, Attorney Jerimy Kirschner, George once again addressed the Caveat and requested its removal.<sup>19</sup> Although Kyla and her counsel acknowledged the request to remove the Caveat in letters from September 12, 2019 and December 10, 2019<sup>20</sup>, Kyla never responded to Mr. Burns' letter or his demand to remove the Caveat within seven (7) days.<sup>21</sup> In fact, Kyla never removed the Caveat against the English Estate and failed to respond to the claims that the Caveat was

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<sup>16</sup> R.APP000349.

<sup>17</sup> R.APP000346-000348.

<sup>18</sup> R.APP.000350.

<sup>19</sup> R.APP000293-000294.

<sup>20</sup> R.APP000372, R.APP000183.

<sup>21</sup> R.APP00372, R.APP000183, and R.APP000293-000294.



delaying the adjudication of the English Estate. To the contrary at her sworn deposition in this case taken February 17, 2021, Kyla testified about the renewal of the Caveat:

Q. (Brickfield ): Ms. Duckworth was a caveat put into the proceedings?

A. (Kyla Duckworth) Yes.

Q. And was it done on your behalf?

A. Yes.

Q. More than one caveat?

A. The same caveat renewed.<sup>22</sup>

In a document received by George from the English court, the Caveat on the property placed on August 14, 2019, remained and there was no evidence it was ever removed.<sup>23</sup> Therefore, there was no question that Kyla had followed through on her threat of filing the Caveat and that her English attorney alleged and claimed that Kyla was entitled to the English assets, and the Probate Commissioner correctly found as such.

## **B. THE PROBATE COMMISSIONER’S REPORT AND RECOMMENDATIONS**

Despite the unequivocal declaration of Kyla’s intent to make claims against Maureen’s English Estate through her counsel, and her unequivocal filing of the Caveat, Kyla now argues on appeal that the Probate Commissioner was in error when he found Kyla “alleged and claimed” she was entitled to the English Estate and filed

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<sup>22</sup> R.APP0000465.

<sup>23</sup> R.APP000475-476.

a Caveat. Kyla's position is belied by the writings of her own counsel, her actions, and her failure to deny any of the requests to remove those claims.

In her opening brief, Kyla asserts the following:

The current appeal pertains to a factual finding of the Probate Commissioner ("Commissioner") which was upheld by the District Court. The Commissioner's Factual Finding was that Kyla's filing of a "caveat" in England was the equivalent of a claim upon Trust assets ("Finding #4), which allowed invocation of the expanded no-contest provisions added in the Amendments. <sup>24</sup>

This statement is incorrect. In the Report and Recommendation filed September 30, 2021, and later upheld by the District Court in an Order Affirming filed on December 9, 2020, finding #4 simply states:

Kyla hired an English attorney who filed a "Caveat" in the English proceeding and alleged and claimed that Kyla was to entitled to the English assets. <sup>25</sup>

The Probate Commissioner's findings were twofold: 1) that Kyla had hired an English attorney who filed a Caveat in the English proceeding; and 2) Kyla, through that attorney, alleged and claimed she was entitled to the English assets.

In rendering his decision, the Probate Commissioner relied upon the letter from Kyla's English attorney where he undeniably stated: "Our client intends to lay

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<sup>24</sup> AOB at page 7.

<sup>25</sup> R.APP000384-387.

claim to the Deceased's estate in England. We are presently in the process of formulating the details of our client's claim against the estate."<sup>26</sup>

At the time of hearing on September 11, 2020, the Probate Commissioner found that Kyla's refusal to provide information relating to the English assets and assets that belonged to the 2015 Trust would "bring into play" the no contest clauses set forth in the 2015 Trust and the Amendments.<sup>27</sup> The Court stated it would consider this issue after deciding the validity of the two Amendments, which has not yet occurred.<sup>28</sup>

Within the Report and Recommendation, Kyla contests the Court's Finding No. 4 wherein the Court found that "Kyla hired an English attorney who filed a "Caveat" in the English proceeding and alleged and claimed that Kyla was entitled to the English assets".<sup>29</sup> The Court made **no** findings that Kyla had violated the no-contest clause, despite Kyla's claims to the contrary.<sup>30</sup>

### **C. THE NOTICE OF ORDER DENYING OBJECTION TO PROBATE COMMISSIONER'S REPORT AND RECOMMENDATIONS**

On December 3, 2020, the Probate Judge held a hearing on Kyla's Objection to the Probate Commissioner's Report and Recommendations. On December 9,

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<sup>26</sup> R.APP000343-345.

<sup>27</sup> R.APP000384-000387.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> AOB 7.

2020, the Court held that the Commissioner’s findings and legal conclusions were not clearly erroneous thus, denying Kyla’s Objection to the Commissioner’s Report and Recommendations.<sup>31</sup> On January 11, 2021, Kyla filed her intent to appeal the Order Denying Objection to the Probate Commissioner's Report and Recommendations entered on December 15, 2020.

#### **D. KYLA’S ISSUES ON APPEAL**

On appeal, Kyla alleges the Probate Court Judge improperly upheld the Commissioner’s finding that Kyla had “hired an English attorney who filed a ‘Caveat’ in the English proceeding and alleged and claimed Kyla was entitled to the English assets.” Kyla’s claims are misplaced.

In a letter from Kyla’s English attorneys dated October 11, 2018, Kyla’s attorney stated he would claim not only the English residence but also the bank accounts in England he believed would also be given to Kyla.<sup>32</sup> In addition, he filed a Caveat that put a hold on the English Estate. Although Kyla first claimed there was no Caveat on the English Estate, she attached the letter from the Trustee’s previous attorney, dated August 4, 2019, demanding the removal of the Caveat as Exhibit 32 to her Supplemental Brief filed on August 21, 2020.<sup>33</sup> In the Supplemental Brief, on page 2, Kyla admitted that a Caveat had been placed on the English Estate. In her

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<sup>31</sup> R.APP000384-387.

<sup>32</sup> R.APP000343-345.

<sup>33</sup> R.APP000293-294.

deposition, Kyla admitted that she caused the Caveat to be placed in the English proceedings and it was renewed.<sup>34</sup> As a result, the Finding of Fact in the Report and Recommendation that a Caveat had been placed on the Estate was not made in error.

Additionally, the instant appeal is based upon Kyla's misguided position that the Court's finding that Kyla filed a Caveat and made a claim against the English Estate is a final judgment subject to appeal. However, because the Court reserved the issue of the no-contest clause and its applicability for the time of trial, the Court's findings and orders are interlocutory in nature.

#### **IV. SUMMARY OF THE ARGUMENT**

On appeal, Kyla challenges the District Court's orders and findings entered on December 9, 2020. The arguments are addressed below.

**A. The Probate Order as a Final Judgment:** Kyla argues the District Court's order affirming the Probate Commissioner's Report and Recommendation and denying her objection is a final order subject to appeal. The Order by the Probate Court Judge does not dispose of any of the issues of this case and the Court was very clear that it would only matter for future consideration at the time of trial. The finding that Kyla hired an English attorney who filed a Caveat does not resolve whether the Amendments are valid, whether the Court will determine that the no contest clause was violated or whether the Court will compel Kyla to account for her

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<sup>34</sup> R.APP000465.

handling of the Duckworths' finances and return the assets she misappropriated.

**B. Determination of the Filing of a Caveat.**

The District Court did not err by finding that Kyla had filed a Caveat against the English Estate. Evidence was presented to the District Court that Kyla's counsel threatened to file a Caveat, that Kyla later followed through on that threat and filed a Caveat on August 14, 2019, and that she later extended the Caveat until January 17, 2020. Cary presented evidence that George's counsel had made Kyla aware of the existence of the Caveat and made a demand that it be removed immediately. At no time did Kyla contest the existence of the Caveat. To the contrary, she admitted that she caused the Caveat to be placed in the English probate proceedings. The District Court properly concluded that Kyla failed to dispute any of the facts presented by Cary regarding the Caveat, or to deny its existence.

**C. Determination of the Claims Against the Estate.**

The District Court properly concluded that Kyla's English attorney alleged and claimed that Kyla was entitled to the English assets. In light of the evidence presented by Cary at the time of hearing, the District Court concluded that not only had Kyla filed the Caveat, but that her own counsel had argued that she was entitled to the entirety of the English Estate. Kyla argued at the time of hearing, and later objected to the finding upon review, but failed to provide any evidence whatsoever to support her position that she had not made a claim against the English assets. As

discussed below, the court made specific findings of fact and conclusion of law which were supported by substantial evidence.

#### **D. Interpretation of the Caveat.**

The District Court properly determined that Kyla had filed a Caveat and made claims against the English Estate, however, the District Court never made any attempts to interpret those claims. In her Opening Brief, Kyla incorrectly characterizes the Probate Commissioner's findings as an "interpretation of the Caveat"<sup>35</sup> and "interpreting the legal effect of a 'caveat'".<sup>36</sup> This is, at best, a gross mischaracterization of the Commissioner's findings. The probate court has specifically deferred final adjudication on this issue until after the parties' Evidentiary Hearing. No other comments or findings were made, and certainly none that address the validity of Kyla's actions as a "contest" or an "interpretation" of the Caveat or Kyla's claims against the English Estate.

### **V. ARGUMENT**

The Appellant's Opening Brief starts by stating the following:

The underlying case involves disputes arising from the Duckworth Family Trust, dated March 12, 2015 ("Trust") and its first amendment ("First Amendment") and second amendment ("Second Amendment") (collectively "Amendments") executed in 2019. At the time of the amendments the surviving grantor George Duckworth ("George") had been diagnosed with dementia/Alzheimer's and the Amendments were executed just

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<sup>35</sup> AOB p. 6, Statement of Issues #3.

<sup>36</sup> AOB p. 6, Statement of Issues #4.

months before George died of End Stage Senile Degeneration of the Brain.

The Amendments changed successor trustees, made contemporaneous distributions of substantial assets to George's son Cary Duckworth ("Cary"), and gave Cary new powers to disinherit his sister, Appellant Kyla Duckworth ("Kyla").<sup>37</sup>

Kyla's opening statements and her position on appeal is contrary to what was presented in the first Petition filed by Kyla on June 10, 2020. The title of the Petition was the following:

PETITION FOR CONSTRUCTION OF TRUST TERM;  
PETITION TO COMPEL PROPER ACCOUNTING AND TO  
COMPEL TURNOVER OF TRUST DOCUMENTS<sup>38</sup>

The Introduction to that same Petition on page 2 states the following:

"Petitioner seeks an initial declaration from the Court whether proceedings with a petition regarding objection to an accounting would allow a trustee for Duckworth Family Trust dated March 12, 2015 ("Trust") to enforce the forfeiture provisions with the Trust. Then if, and only if, proceeding with an objection would not permit invocation of the forfeiture provisions, then Petitioner asks that the Court compel the trustee to provide a proper NRS 165.135 accounting to hold the trustee personally liable for costs incurred as well as attorney's fees and to compel the

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<sup>37</sup> AOB p. 6-7.

<sup>38</sup> R.APP000028-141.



trustee to turn over all documents related to the succession of the trustees for the Trust.”<sup>39</sup>

The June 10, 2020, Petition filed by Kyla is the first time that any concern about the no contest clause in the Trust and in the Amendments were raised by Kyla.<sup>40</sup> The June Petition did not request Cary be removed as the Trustee. In addition, there was no objection by Kyla that Cary be appointed as Executor on January 31, 2020, nor did Kyla raise any issue in the probate proceedings that George was not competent to execute the Will that was presented to the Court and admitted to probate. Although served with the Petition, Kyla was not represented at the hearing and, without any objection, Cary was appointed as Executor and the Will was admitted to Probate.

Kyla’s two attorneys, her English and local counsel, received the August 14, 2019, letter from Mr. Burns and the Amendments, yet no one contacted Cary or his attorney or indicated that the Caveat would be removed.<sup>41</sup> All of these documents were in the Trustee’s Reply filed on September 1, 2020, to Kyla’s Supplement filed on August 21, 2020, and were properly before the Probate Commissioner.<sup>42</sup>

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<sup>39</sup> RAPP000029.

<sup>40</sup> R.APP000028-000036.

<sup>41</sup> R.APP000293-000294.

<sup>42</sup> The documents in question were R.APP000295-383.

Kyla's Supplement filed August 21, 2020, on page 23 line 10, quoted the section of the First Amendment which stated that if anyone claimed the property in the English Estate that belonged to Maureen, other than under the intestacy laws, would be considered a contest of the Trust.<sup>43</sup> On page 23, line 16 of her Supplement to the initial petition, Kyla admits that a Caveat was filed.<sup>44</sup> Yet, after receiving the August 14, 2019, letter from Mr. Burns demanding a 7-day response, neither the English attorney nor Kyla's local counsel notified Cary's counsel that they did not intend to renew the "Caveat" or dispute the "warning off" which would deem the Caveat a contest.

Remarkably, in her Opening Brief to this appeal, Kyla alleges that the issue in the underlying case focuses on the Amendments and Cary's conduct as Trustee. OAB p.6. Such argument is belied by the comment in the same Opening Brief on page 7 which states that the District Court erred in referring to the Caveat. Kyla's Brief then goes into detail on other issues not related to the appeal, conveniently avoiding the issue before this Court: whether the referral to the Caveat in Finding of Fact No. 4 in the Report and Recommendation of October 6, 2020, affirmed by the District Court's order of December 9, 2020, should not be allowed.

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<sup>43</sup> R.APP000218.

<sup>44</sup> Id.

On page 3 of Kyla's Objection to the October 6, 2020, Report and Recommendation, she states:

This finding is clearly erroneous and is actually disguised as a conclusion of law about a legal document which the Court has never seen. "To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in this title." See, NRS 52.235. No party produced the "Caveat," an English legal document; not an original nor a copy. The only reference in the record is a discussion of a "Caveat" having been filed, but not the document itself. The court cannot interpret or render findings about there being a claim on the English assets in the Caveat because it has never been presented with the document. Moreover, the "factual finding" is an interpretation of a legal document, which is a legal conclusion, not a factual finding.<sup>45</sup>

Kyla's Objection fails to address the Probate Commissioner's actual finding of fact. That finding did not address or evaluate the legal effect of the Caveat on the English proceeding but simply stated an undisputed fact admitted by Kyla at the time, supported by evidence before the Probate Commissioner, namely that Kyla's English attorney – hired by her – filed a Caveat in the English proceeding and claimed that Kyla was entitled to the English assets.<sup>46</sup>

**A. The Probate Order is Not a Final Judgment Subject to Appeal.**

Kyla seeks to appeal Finding of Fact No. 4 in the Order denying the objection

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<sup>45</sup> R.APP000390.

<sup>46</sup> It was also known to the Probate Commissioner that Kyla had acted to claim Maureen's Barclays assets as her own.

to the Probate Commissioner's Report and Recommendations. However, the Appellant does not cite a legal basis for this appeal. Notwithstanding that fact, there is no legal basis to vest this Court with jurisdiction over the interlocutory order at issue because this Court "determines the finality of an order or judgment by looking to what the order or judgment actually does, not what it is called." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). Oftentimes, this Court has looked past "labels in interpreting NRAP 3A(b)(1), and has instead taken a functional view of finality, which seeks to further the rule's main objective: promoting judicial economy by avoiding the specter of piecemeal appellate review." *Id.* at 444, 874 P.2d at 733.

The issues at the heart of this case are whether the First and Second Amendments to the Trust were valid and whether Kyla's actions give rise to the No-Contest clauses within the Trust and Amendments. Here, the Order by the Probate Court Judge denying the objection to the Commissioner's Finding of Fact No. 4 does not dispose of any of the issues of this case and still leaves plenty for future consideration by the court.

The appealed finding in the ordered and adopted Report and Recommendations simply states the undisputed facts that, "Kyla hired an English attorney who filed a "Caveat" in the English proceeding and alleged and claimed that Kyla was entitled to the English assets."

The finding that Kyla hired an English attorney who filed a caveat does not resolve whether the Amendments are valid, whether the Court will determine that the No-Contest clause was violated, or whether Kyla must account for her actions as caregiver. The Court still has to consider whether the Amendments were valid and whether Kyla's actions trigger the No-Contest clauses.

It is well established that a probate commissioner's ruling will be upheld unless a probate judge determines that his findings were clearly erroneous based on substantial evidence. Here, Appellant is basing her appeal on a factual finding that the Probate Judge already ruled was not a clearly erroneous finding. Since the issues of this case have not been resolved and the standard for reversal of the finding was not met, this Court should deny this appeal.

"The right to appeal is statutory, and where no statute or rule authorizes an appeal, no right to appeal exists." *August H. v. State*, 105 Nev. 441, 443, 777 P.2d 901, 902 (1989). NRAP 3A(b)(1) mandates that "[a]n appeal may be taken... [f]rom a final judgment in an action or proceeding commenced in the court in which the judgment is rendered." A final judgment is "one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

Interlocutory orders are, by definition, not final, appealable orders because they do not resolve all issues before the court. However, NRAP 3A(b) sets forth the

appealable probate orders. If the interlocutory probate order does not fall under NRAP 3A(b), the only recourse is by virtue of NRS 155.190, under which an appeal must be made within thirty days after the date of entry of the order appealed from. *Matter of Estate of Riddle*, 99 Nev. 632, 688 P.2d 290 (1983).

However, NRS 155.190 only allows an appeal from a probate order that is listed within the statute. *Matter of Paul D. Burgauer Revocable Living Tr.*, 465 P.3d 222 (Nev. App. 2020) (where the Court held it did not have jurisdiction to hear the appeal because an order temporarily removing the Appellant as trustee is not within the list of allowable appeals under NRS 155.190). Hence, this Court has repeatedly held that interlocutory orders are not appealable if they do not resolve the underlying issues of the case and do not fall under the exceptions of NRAP 3A(b) or NRS 155.190, and, thus, this Court should deny this appeal. See *Sicor, Inc. v. Sacks*, 127 Nev.896, 266 P.3d 618 (2011).

**B. The District Court Properly Concluded that Kyla Had Filed a Caveat in the English Estate.**

Caveats are used in the United States and more prolifically throughout Europe in probate matters. They serve to place more than mere a pause on the Estate, but instead could cause the removal of the Trustee or challenge a no contest clause. *Merriam-Webster's Collegiate Dictionary, Tenth Edition, 2002* defines a caveat as “a legal warning to a judicial officer to suspend a proceeding until the opposition has a hearing.” *Id. Wests Legal Thesaurus Dictionary, 1986* further defines a caveat

as, “a formal notice or warning. “Let him beware.” (He filed a caveat to be sure that he would be heard on the issue of probating the will.)” Id. By definition, a caveat is an “opposition” or “warning”. Despite Kyla’s arguments, a caveat is not solely a foreign document, but one used within the United States and recognized as a challenge in a probate proceeding.

Although not referred to in Nevada law, other states have recognized the concept of caveats. In *Estate of Peterson* 255 GA APP 303, 565 S.E. 2d 524 (2002), the decedent heirs filed a caveat objecting to the appointment of the lawyer as Executor who drafted the Will. The attorney was disqualified, and the matter was appealed to the Georgia Appellate Court. Id. In North Carolina *In re Will of Shepherd*, 235 N.C. Appellate. 298 (2014), a caveat was filed challenging the will and on appeal the Court reversed the Summary Judgment. While the substance of these two cases are irrelevant to the instant analysis, the two courts nevertheless recognized the existence of a caveat as a viable, cognizable objection in a probate proceeding. In the case of *Matter of Estate of Phillips*, 251 N.C.App.99, 795 S.E.2d 273 (2016), a caveat is the term used for an objector to a probate proceeding thereby creating an in rem proceeding.

Although Kyla first claimed there was no caveat on the English Estate, she attached the letter from the Trustee’s previous attorney, dated August 4, 2019, demanding the removal of the Caveat as Exhibit 32 to her Supplemental Brief filed

on August 21, 2020.<sup>47</sup> In her Supplemental Brief, on page 2, Kyla admitted that a caveat had been placed on the English Estate.<sup>48</sup> In her deposition Kyla testified that she had caused a caveat to be placed and renewed on the English proceedings.<sup>49</sup> It is also interesting to note that on page 10, Kyla's Opening Brief states, on or about July 18, 2018, Kyla caused a Caveat to be filed for the Probate of Maureen in England. As a result, the statement in the Report and Recommendation that a Caveat had been placed on the Estate is factually correct.

**C. The District Court Properly Concluded that Kyla had Alleged and Claimed That Kyla Was Entitled to the English Assets.**

The record below clearly demonstrates that the documents referenced by Kyla on appeal were brought before the Probate Commissioner before he made the decision regarding the Caveat. The letter from Kyla's counsel alleging and making a claim to the English assets and the Caveats are based upon statements and exhibits in Cary's pleadings in the Probate matter.<sup>50</sup> Therefore, all of the evidence now at issue was before the Probate Commissioner and was properly put in the Report and Recommendation acknowledging the Caveat.

Furthermore, Kyla states that although the letter announced an intention to make a claim on Maureen's assets no claim upon those assets was ever claimed.

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<sup>47</sup> R.APP000293-000294.

<sup>48</sup> R.APP000465.

<sup>49</sup> R.APP00065.

<sup>50</sup> R.APP000343-000345.



That is an incorrect statement in that the only thing known is that the Caveat expired on January 17, 2020. Although there may not be a Caveat on the Estate, Kyla has refused to provide information regarding her administration of the assets in England, including the transfers of money out of the Barclays account which was believed to be at least \$200,000 which Kyla has claimed as her own, and Kyla has failed to provide the necessary documents to Barclays Bank to pay the funds to her and received the funds.<sup>51</sup>

Maureen's Will and the Trust stated that all personal property was to be delivered to her husband, George as Trustee.<sup>52</sup> Kyla's claim to the English assets is a violation of Sections 7.02 and 7.05 of the Trust and the Amendments. In Article Fourth in the Special Directives attached to the First Amendment, any refusal by Kyla to provide information relating to the balance in that account would result in an "advancement to Kyla of \$350,000.00" from the account in the United Kingdom.

The letter informed Kyla's attorney that the Caveat would be construed as a "contest" of the Trust and would result in her being eliminated as a beneficiary of the Trust.<sup>53</sup> Kyla's actions delayed the probate of the English Estate so that George's English attorney could not close the Estate and distribute the 75% of the Estate that

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<sup>51</sup> Cary was forced to obtain a Court order compelling Kyla to sign a release allowing Cary information about the Barclay's account. R.APP000484-000492.

<sup>52</sup> R.APP000086-000091, R.APP000096-000097.

<sup>53</sup> R.APP000293-000294.

would have gone to George during his lifetime, pursuant to the intestate statute in England, and no distribution of the 25% to the three children, including Kyla. The letter went into the background of Mr. Burns' position concluding that any further actions by Kyla would result her no longer being a beneficiary of the Trust. A copy of that letter was sent to Kyla. Neither the English attorney nor Kyla responded to that letter.

**D. The Probate Court Did Not Interpret the Caveat or the Claims Against the English Estate.**

The focus, for the purpose of the instant appeal, is on the probate court's determination that, "Kyla hired an English attorney who filed a "Caveat" in the English proceeding and alleged and claimed that Kyla was entitled to the English assets." This finding by the probate court was neither final, nor dispositive of the ultimate issue: whether Kyla's actions are considered a 'contest' under the "no contest" clause of the Duckworths' estate plan. Further, the probate court never made any attempts to interpret or otherwise determine the effect of the Caveat or the claims against the English Estate. The only comment made by the probate court regarding this issue is that it would not consider the "no contest" clause until after making a decision on the validity of the two amendments.

Kyla erroneously argues that the court made a “interpreted” the Caveat and its effects.<sup>54</sup> However, Kyla provides no basis, or even specific language from the court’s findings, that indicate any interpretation of the Caveat. Most importantly, she wholly ignores the fact that the probate court has specifically deferred the issue until the time of trial. Kyla’s failure to cite to any evidence of the Court’s interpretation of the Caveat demonstrates that her argument is without merit.

## **VI. CONCLUSION**

Kyla’s arguments are without merit. The District Court properly found that the Probate Commissioner did not err as a matter of fact when he made Finding No. 4 in the Report and Recommendation. This Court should uphold the District Court’s order adopting the Report and Recommendation in its entirety.

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<sup>54</sup> AOB p. 6 at Statement of Issues #2, #3 and #4.

## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of (a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast Respondent's Answering Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Font Size 14, in Times New Roman;

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionally spaced, has a typeface of 14 points or more, and including the footnotes, contains 8581 words.

3. I further certify that I have read the Respondent's Answering 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 be supported by appropriate references to 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 Appellate Procedure.

Dated this 15<sup>th</sup> day of November 2021.

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## **CERTIFICATE OF MAILING**

I hereby certify that I am an employee of Dawson & Lordahl, PLLC, and that on the 15th day of November 2021, a copy of Respondent's Answering Brief in the above-entitled matter was e-mailed and was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list, to the attorney listed below at the address, email address and/or facsimile number indicated below:

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