

IN THE SUPREME COURT OF THE STATE OF NEVADA

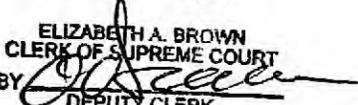
IN THE MATTER OF THE ESTATE OF  
MARILYN SWEET WEEKS,  
DECEASED.

No. 83342

CHRISTY KAY SWEET,  
Appellant,  
vs.  
CHRIS HISGEN,  
Respondent.

FILED

AUG 23 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER REGARDING PRO BONO COUNSEL AND DIRECTING  
TRANSMISSION OF RECORD*

This is an appeal from an order affirming the report and recommendation of the probate commissioner admitting a will to probate and to enter letters testamentary.<sup>1</sup> Having considered the documents transmitted by the district court, this court has determined that the appointment of pro bono counsel to represent appellant would assist this court in reviewing this appeal. By this order, the court expresses no opinion as to the merits of this appeal.

Pro bono counsel is an attorney who provides legal services without charge for the benefit of the public good. The appointment of pro bono counsel provides attorneys with an opportunity to volunteer legal services in furtherance of their professional responsibility and, at the same time, allows financially eligible litigants access to quality legal

<sup>1</sup>A copy of the district court's order is attached.

representation without cost. Counsel will be appointed for purposes of this appeal only and will participate in oral argument. Currently, the Pro Bono Committee of the Appellate Litigation Section of the State Bar of Nevada (Pro Bono Committee), in conjunction with the Legal Aid Center of Southern Nevada, has developed a pro bono appellate program to assist the public and this court. This case is hereby referred to the program established by the Pro Bono Committee to evaluate whether appellant can benefit from the program.

Accordingly, the clerk of this court shall transmit a copy of this order, the attached district court order and report and recommendation, and the attached case summary to the Legal Aid Center of Southern Nevada for financial eligibility screening. If appellant qualifies and does not object to pro bono counsel, the Legal Aid Center in cooperation with the Pro Bono Committee shall locate a volunteer attorney from the program to represent appellant. Once an attorney is located, the attorney shall file a notice of appearance in this court within 60 days from the date of this order. Briefing and oral argument will be scheduled thereafter. Alternatively, if appellant is not financially eligible or objects to pro bono representation, or if a volunteer attorney cannot be located, the Legal Aid Center of Southern Nevada shall notify this court in writing within 60 days from the date of this order. In such case, oral argument will not be held. The deadlines for filing documents in this appeal shall be suspended pending further order of this court.

This court has further concluded that review of the complete record is warranted. NRAP 10(a)(1). Accordingly, within 30 days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the trial court record in District Court Case



*Docket No. 83342*

*In re Estate of Weeks*

Respondent filed a petition to admit the will of his deceased wife to probate. The will was executed in Portugal and left the estate to respondent. Appellant, the decedent's daughter, filed objections arguing that an international will cannot be probated in Nevada, that the will was not properly witnessed, and that distribution was limited to property located in Portugal. The probate commissioner rejected appellant's arguments and recommended the will be admitted to probate and interpreted to distribute of the entirety of the decedent's estate to respondent. The district court affirmed the recommendations. Appellant appeals.

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16 Attorneys for Chris Hisgen

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 In the Matter of the Estate of

14 **MARILYN SWEET WEEKS,**

15 **Deceased.**

Case No.: P-20-103540-E

Dept. No.: 26

**HEARING DATE: 5/30/2021**

17 **ORDER AFFIRMING REPORT AND RECOMMENDATION, ADMITTING**  
18 **WILL TO PROBATE AND TO ISSUE LETTERS TESTAMENTARY**

19 **Appearances:**

- 20
- 21 • Ryan Johnson of Johnson & Johnson law firm on behalf of objector Christy Kay Sweet.
  - 22 • Thomas R. Grover of Blackrock Legal on behalf of surviving spouse Christopher Hisgen.
- 23

24 **Filings:**

- 25
- 26 • *Report and Recommendation*, March 3, 2021 (“RAR”), **Exhibit “1”**.
  - 27 • *Objection to Report and Recommendation* (“Objection”), March 15, 2021 filed by Christy Kay Sweet.
  - 28 • *Opposition to Objection to Report and Recommendation* (“Opposition”), May 10, 2021 filed by Chris Hisgen.



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**ORDER**

The Court, having considered the arguments of counsel in the above referenced filings and at the hearing on this matter,

**ORDERS AND AFFIRMS** the REPORT AND RECOMMENDATION attached here to as **Exhibit "1"**.

**THE COURT FURTHER ORDERS** that the Last Will and Testament of Marilyn Weeks ("Testamento Publico") dated May 3, 2006 is admitted to probate under General Administration.

**THE COURT FURTHER ORDERS** that Letters Testamentary shall issue to Christopher Hisgen.

Dated this 14th day of July, 2021

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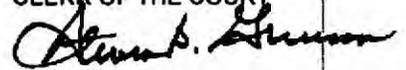
**029 75E F479 86D5  
Gloria Sturman  
District Court Judge**

Prepared and submitted by:

**BLACKROCK LEGAL, LLC**

/s/ Thomas R. Grover  
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# EXHIBIT 1



1 RAR  
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15 Attorneys for Chris Hisgen

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

12 In the Matter of the Estate of  
13  
14 MARYLYN SWEET WEEKS,  
15  
16 Deceased.

Case No.: P-20-103540-E  
Dept. No.: 26

Hearing Date: November 13, 2020

**REPORT & RECOMMENDATION**

**APPEARANCES:**

- Thomas R. Grover, Esq. of Blackrock Legal, LLC, on behalf of Chris Hisgen, Petitioner & Surviving Spouse (hereafter "Chris" or "Petitioner").
- Ryan Johnson, Esq. of the law firm of Johnson & Johnson, on behalf of Christy Kay Sweet (hereafter "Christy").

**FILINGS:**

- *Chris' Petition for General Administration of Estate, Appointment of Personal Representative for Letters Testamentary and to Admit Will to Probate* (hereafter "Petition") filed on or about July 14, 2020.
- *Christy's Objection to Petition for General Administration of Estate, Appointment of Personal Representative and Letters Testamentary and to Admit Will to Probate* (hereafter "Objection") filed on or about August 11, 2020.



- 1 • *Chris' First Supplement to Petition for General Administration, Appointment of Personal Representative and for Issuance of Letters Testamentary and to Admit Will to Probate* (hereafter "First Supplement") filed on or about September 29, 2020.
- 2
- 3
- 4 • *Chris' Reply in support of Petition for General Administration, Appointment of Personal Representative and for Issuance of Letters Testamentary and to Admit Will to Probate* (hereafter "Reply") filed on or
- 5 about November 12, 2020.
- 6
- 7 • *Declaration of Isabel Pires Cruz Santos* (hereafter "Santos Declaration")
- 8 filed on or about November 12, 2020.
- 9
- 10 • *Declaration of Gilda Dos Santos Barradas* (hereafter "Barradas Declaration") filed on or about November 12, 2020.

#### FINDINGS OF FACT

- 11 1. Notice of the Petition, hearing on the Petition and aforementioned filings
- 12 was proper.
- 13 2. MARILYN SWEET WEEKS (hereafter "Decedent" or "Marilyn") died on
- 14 February 4th, 2020 in Clark County, Nevada, being at that time a resident of Clark
- 15 County Nevada.
- 16 3. At the time of her death, Marilyn was married to Chris.
- 17 4. Marilyn had two daughters from a previous marriage, Kathryn Kimberly
- 18 Sweet (hereafter "Kathryn") and Christy Kay Sweet (hereafter "Christy").
- 19 5. The Decedent left a last will and testament (hereafter "Will") dated May 3,
- 20 2006.
- 21 6. The will is in Portuguese. However, a translation has been attached to the
- 22 Petition as Exhibit "3".
- 23 7. The Will contains the following clause: "She establishes as universal heir
- 24 of all her goods, rights, and actions in Portugal, Christopher William Hisgen, single,
- 25 adult, native of Washington, DC, United States of America, of American nationality and
- 26 with whom she resides." (hereafter "Disposition Clause").
- 27
- 28

1           8.     The Will has signature witnesses from Isabel Pires Cruz Santos (hereafter  
2     “Santos”) and Gilda dos Santos Barradas (hereafter “Barradas”), and it is notarized by  
3     Joaquim Augusto Lucas de Silva.

4                           **CHRISTY’S ARGUMENTS AGAINST ADMISSION OF THE WILL**

5           9.     In her Objection, Christy argues against admission of the Will for the  
6     following reasons:  
7

- 8           a.     “Under Nevada Law, there is no provision for the probate of a Will signed  
9                 in a foreign country. Therefore, Sweet asserts Hisgen’s submission of the  
10                Will for probate in the State of Nevada is improper and should be denied.”<sup>1</sup>  
11                (hereafter “Argument One”).  
12
- 13           b.     “Even if the Will is admitted to Probate in Nevada, this State requires that  
14                 the witnesses to the execution of the Will sign an Affidavit or Declaration.  
15                 Since Hisgen’s petition did not include any attestations from the  
16                 subscribing witness, the Will is inadmissible in Nevada.”<sup>2</sup> (hereafter  
17                 “Argument Two”).  
18
- 19           c.     “Most importantly, the Decedent in her Will disposed only of her assets  
20                 situated ‘in Portugal.’ Therefore, even if the Will is admitted to probate in  
21                 Nevada, the provisions thereof will not effectuate a transfer of any assets  
22                 of the decedent in the United States.”<sup>3</sup> (hereafter “Argument Three”).  
23

24                 ///

25  
26           <sup>1</sup> Objection, at pg. 1:24-26.

27           <sup>2</sup> Objection, at pg. 2:1-4.

28           <sup>3</sup> Objection, at pg. 2:5-7.

1 **CONCLUSIONS OF LAW**

2 **I. Argument One Falls Because Wills Executed in Countries Outside the**  
3 **United States May Be Admitted to Probate in Nevada**

4 10. Christy misstates the law in her argument that Nevada law only allows, “the  
5 admission of Wills to probate in Nevada only if they are Wills executed in another State  
6 within the United States (or its territories) not Wills executed in countries outside the  
7 United States.”<sup>4</sup> The undersigned Probate Commissioner notes that this Court has  
8 admitted wills executed in other nations, such as Canada for many years.

9 11. Indeed, Nevada law provides multiple provisions, under which an  
10 international will may be admitted to probate. These provisions are independent of one  
11 another. That is, even if a will may not be admitted by one provision, it may still be  
12 possible for it to be admitted by another.

13 **A. The Will is valid and should be admitted to probate under NRS 133A**

14 12. The Will should be admitted to probate as an international will under NRS  
15 133A. Christy argues that, “Under Nevada Law, there is no provision for the probate of  
16 a Will signed in a foreign country.”<sup>5</sup> This is not accurate. The plain language of NRS  
17 133A provides for admission to probate of wills executed outside the United States.

18 13. More specifically, in NRS 133A.060, the Legislature enumerated  
19 requirements for admission of an international will to probate in Nevada. In essence, an  
20 international will needs to be in writing, signed in the presence of two witnesses and  
21 signed by the testator.<sup>6</sup>

22 \_\_\_\_\_  
23 <sup>4</sup> Objection, at pg. 2:23-25.

24 <sup>5</sup> Objection, at pg. 1:23-24.

25 <sup>6</sup> See NRS 133A.060(1) – (5).

1           14.     In this instance, the will is in writing and signed by both the Decedent and  
2 two witnesses. The Will is also signed by a notary. The Will meets the requirements of  
3 NRS 133A.060 and may be admitted to probate under that section.

4                           **B. The Will is valid and should be admitted to probate under NRS 133**

5           15.     Even if the Will is not admitted under NRS 133A as an international will, it  
6 may still be admitted under NRS 133. “The invalidity of the will as an international will  
7 does not affect its formal validity as a will of another kind.” NRS 133A.050(2).

8           16.     NRS 133.040(1) provides that, “[n]o will executed in this State, except  
9 such electronic wills or holographic wills as are mentioned in this chapter, is valid unless  
10 it is in writing and signed by the testator, or by an attending person at the testator’s  
11 express direction, and attested by at least two competent witnesses who subscribe their  
12 names to the will in the presence of the testator.”

13           17.     The Will facially meets this requirement. However, to be admitted, the  
14 witnesses must sign a statement under penalty of perjury that, “that the testator  
15 subscribed the will and declared it to be his or her last will and testament in their  
16 presence; that they thereafter subscribed the will as witnesses in the presence of the  
17 testator and in the presence of each other and at the request of the testator; and that the  
18 testator at the time of the execution of the will appeared to them to be of full age and of  
19 sound mind and memory.” NRS 133.050(2).

20           18.     The Santos Declaration and Barradas Declaration, filed after Christy’s  
21 objection, satisfy this requirement. As such, Argument Two is now moot and fails.  
22 Therefore the Will must be admitted to probate pursuant to NRS 133.040.

23           **II.    Argument Three Fails Because the Language of the Will Disposes of All**  
24 **Estate and Testamentary Assets, Wherever Located, to Chris Hisgen, the**  
25 **Surviving Spouse.**

1  
2 19. In Argument Three, Christy contends that the Will only disposes of the  
3 Decedent's property in Portugal, and is thus inapplicable to any assets or property  
4 outside of Portugal, such as property in Nevada.

5 20. Argument Three fails for the following reasons.

6 **A. Probate law favors testacy over intestacy.**

7  
8 21. First, Christy's interpretation would have the effect of placing any property  
9 in Nevada, real or personal, into intestacy. "The rule is that a will must be construed  
10 according to the intention of the testator, and so as to avoid intestacy."<sup>7</sup> "The rule of  
11 wills construction that favors testacy over intestacy makes courts prefer holding a will  
12 absolute, if it is possible to construe questionably conditional language as the testator's  
13 motivation to write a will."<sup>8</sup>

14  
15 22. Christy's interpretation of the Disposition Clause would render all  
16 property, real and personal, outside Portugal intestate. This would apply to all Nevada  
17 property, real and personal.

18  
19 23. A plain, straightforward interpretation of "actions in Portugal" recognizes  
20 that "in Portugal" modifies only "actions." Merriam-Webster defines "action," in a legal  
21 context, as "the right to bring or maintain such a legal or judicial proceeding."<sup>9</sup> Thus,

22  
23 <sup>7</sup> Estate of Baker, 131 Cal. App. 3d. 471 (1982).

24 <sup>8</sup> Mason v. Mason, 268 SE 2d. 67, 68 (1980); See also National Bank of Commerce v. Wehrle, 124  
25 W.Va. 268, 20 S.E.2d 112 (1942); Eaton v. Brown, 193 U.S. 411, 24 S.Ct. 487, 48 L.Ed. 730 (1904); In re  
26 Desmond's Estate, 35 Cal.Rptr. 737, 223 C.A.2d 211, 1 A.L.R.3d 1043 (1963); Vaught v. Vaught, 247  
27 Ark. 52, 444 S.W.2d 104 (1969); Warren v. Hartnett, 561 S.W.2d 860 (Tex.Civ.App.1977); Barber v.  
Barber, 368 Ill. 215, 13 N.E.2d 257 (1938); Watkins v. Watkins' Adm'r., 269 Ky. 246, 106 S.W.2d 975  
(1937); Bobblis v. Cupol, 297 Mass. 164, 7 N.E.2d 440 (1937); In re Morrison's Estate, 361 Pa. 419, 65  
A.2d 384 (1949); In re Trager's Estate, 413 Ill. 364, 108 N.E.2d 908 (1952);

28 <sup>9</sup> <https://www.merriam-webster.com/dictionary/action>

1 the Will confers upon Christopher the right to bring or maintain a legal proceeding in  
2 Portugal that Marilyn could have brought herself.

3 24. As Christy's interpretation of the Disposition Clause would create partial  
4 intestacy, the Court chooses to construe it in favor of testacy. As such, the Court  
5 interprets "in Portugal" as a modifier of "actions" only.  
6

7 **B. The plain meaning of "universal heir" favors a broad interpretation of**  
8 **the Disposition Clause.**

9 25. Second, the language of the Disposition Clause purports to establish Chris,  
10 Marilyn's surviving spouse, as the universal heir. Merriam-Webster defines  
11 "universal" as "including or covering all or a whole collectively or distributively  
12 without limit or exception."<sup>10</sup> In other words, it appears that the Decedent desired  
13 for the Will to establish Chris as the universal heir of all her property, which would  
14 necessarily be without limit or exception.  
15

16 26. Additionally, the undersigned, *sua sponte*, researched the meaning of  
17 "universal heir" in European probate law:

18 The universal nature of the hereditary legal succession in classical Roman law,  
19 which held the heir unlimitedly liable for the testator's debts, was based on the  
20 mystical idea that the legal identity of the deceased was embodied in the  
21 inheritance. At the same time, a distinctive feature of the hereditary legal  
22 succession is a one-time transfer (in a single act) to the legal successor of all  
23 rights and obligations that are part of the property of the predecessor. Thus, a  
24 characteristic feature of the hereditary legal succession is that the universal heir  
is the direct successor of the testator's property: the inheritance passes from the  
deceased to the heir not only immediately and simultaneously, but also directly  
from the testator.<sup>11</sup>

25 <sup>10</sup> <https://www.merriam-webster.com/dictionary/universal?src=search-dict-hed> Emphasis added.

26 <sup>11</sup> Anatoliy Kostruba. HEREDITARY LEGAL SUCCESSION IN THE CIVIL LAW OF UKRAINE:  
27 PROBLEMATIC AND THEORETICAL ASPECT. Journal of the National Academy of Legal Sciences of  
Ukraine, National Academy of Legal Sciences of Ukraine, 2019, 26 (3), pp.135-149. ff10.31359/1993-  
0909-2019-26-3-161ff. fihal-02411634f retrieved from [https://hal.archives-ouvertes.fr/hal-  
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27. This concept clearly contemplates disposition of *all* of the decedent's property directly to the universal heir, without limit or exception.

28. Furthermore, Christy's interpretation would leave a logical hole in the Will. The Will also provides that, "[s]hould [Chris] have already died, on the date of her death, Kathryn Kimberly Sweet, married, resident of Arlington, Virginia, United States of America and Christy Kay Sweet, single, adult, resident of Thailand, will be her heirs." Obviously, this provision contains no language that could be construed as limiting distribution to assets in Portugal. Yet, Christy would have this Court believe that the clause naming Chris as the "universal heir" is limited to assets in Portugal, while the residuary clause has no such limitation. This interpretation would expand distribution of the residuary clause to the full estate, even though Chris would receive only property in Portugal. In short, the "universal heir" would receive a narrow (likely non-existent) estate, while the residuary would be expansive and universal, an absurd result.

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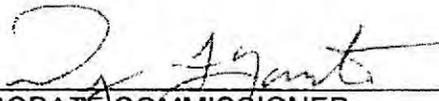
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**RECOMMENDATIONS**

**IT IS THEREFORE RECOMMENDED** that last will and testament of Marilyn Sweet Weeks, dated May 3, 2006, be admitted to probate under either NRS 133A.060 or NRS 133.040-050.

**IT IS FURTHER RECOMMENDED** that the that last will and testament of Marilyn Sweet Weeks, dated May 3, 2006, be interpreted to dispose of the entirety of the Estate to the decedent's surviving spouse, Christopher Hisgen.

DATED: 3/02/2021

By:   
PROBATE COMMISSIONER

Submitted by:  
BLACKROCK LEGAL, LLC

/s/ Thomas R. Grover

\_\_\_\_\_  
THOMAS R. GROVER, ESQ.  
Nevada Bar No. 12387  
BLACKROCK LEGAL

Approved as to form by:

Submitting competing RAR.

\_\_\_\_\_  
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