

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Case No. P-20103540-E
Docket No. 83342
Electronically Filed
Mar 11 2022 07:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CHRISTY KAY SWEET,

Appellant,

vs.

CHRISTOPHER WILLIAM HISGEN,

Respondent.

On appeal from the Eighth Judicial District Court, Clark County
Hon. Gloria J. Sturman, Department XXVI
District Court Case No. P-20-103540-E

JOINT APPENDIX

Michael N. Feder, Esq.
Nevada Bar No. 7332
Kerry E. Kleiman, Esq.
Nevada Bar No. 14071
DICKINSON WRIGHT PLLC
3883 Howard Hughes Pkwy. Suite 800
Las Vegas, NV 89169
Tel: (702) 550-4400
Fax: (844) 670-6009

*Pro Bono Counsel for Appellant,
In conjunction with the Partners in Pro Bono Project between Legal Aid of
Southern Nevada and UNLV Boyd School of Law*

CHRONOLOGICAL INDEX

Exhibit	Document	Page #s
1	US District Court hearing transcript, November 13, 2020	001-011
2	Probate Commissioner hearing transcript, May 20, 2021	012-036

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of March, 2022, I submitted the foregoing JOINT APPENDIX for filing via the Court's eFlex electronic filing system.

Michael A. Olsen, Esq.
Nevada Bar No. 6076
mike@blackrocklawyers.com
Thomas R. Grover, Esq.
Nevada Bar No. 12387
tom@blackrocklawyers.com
BLACKROCK LEGAL, LLC
10155 W. Train Avenue, Suite 100
Las Vegas, NV 89147
Attorneys for Chris Hisgen

/s/: Dianne M. Kelling
An Employee of DICKINSON WRIGHT PLLC

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Ann L. Johnson
CLERK OF COURT

1 TRANS

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5 EIGHTH JUDICIAL DISTRICT COURT

6 FAMILY DIVISION

7 CLARK COUNTY, NEVADA

8
9 In the Matter of:) CASE NO. P-20-103540-E
10) DEPT. 26
11) APPEAL NO. 83342
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BEFORE THE HONORABLE WESLEY YAMASHITA
TRANSCRIPT RE: PETITION FOR GENERAL ADMINISTRATION OF ESTATE,
APPOINTMENT OF PERSONAL REPRESENTATIVE FOR LETTERS
TESTAMENTARY AND TO ADMIT WILL TO PROBATE
FRIDAY, NOVEMBER 13, 2020

APPEARANCES:

The Petitioner: CHRIS HISGEN
For the Petitioner: THOMAS R. GROVER, ESQ.
10155 W. Twain Avenue
Suite 100
Las Vegas, Nevada 89147

The Objector: CHRISTY KAY SWEET
For the Objector: RYAN D. JOHNSON, ESQ.
1160 North Town Center Drive
Suite 140
Las Vegas, Nevada 89144

1 LAS VEGAS, NEVADA

FRIDAY, NOVEMBER 13, 2020

2 P R O C E E D I N G S

3 (THE VIDEO HEARING BEGAN AT 11:01:52.)

4 (THE PROCEEDINGS BEGAN AT 11:02:04.)

5 THE COURT: Make your appearance...

6 MR. GROVER: I -- I...

7 THE COURT: Mr. Johnson.

8 MR. GROVER: I feel like (indiscernible).

9 THE COURT: Let's make appearances now.

10 MR. JOHNSON: Ryan Johnson, 12790, on behalf of Christy
11 Sweet.

12 MR. GROVER: Thomas Grover, 12387, on behalf of Chris
13 Hisgen, the surviving spouse.

14 THE COURT: Okay. Let me cut right to the chase with
15 regard to foreign wills. They are absolutely admissible. We
16 have basically a Full Faith and Credit issue between the
17 United States and any other country that we have to admit
18 those legal documents that have force and effect within their
19 territories or, you know, there. So there's no problem.
20 It's that, the fact that it's a Portuguese will. The
21 question to me comes into how this all fits in the picture
22 and whether the way it's written changes anything, so.

23 MR. JOHNSON: But, Your Honor, if I may, this -- this
24 international will statute 133A, there's a requirement that
25 the testator present the will in front of a person authorized

1 in connection with the statute. And that person has to be
2 someone admitted to practice law in Nevada or someone with
3 the foreign services de- regulation -- or Foreign Service
4 Department of the United States. So they can have a foreign
5 will. It says a will, it can be executed anywhere. But it
6 needs to be brought before someone authorized under the
7 United States statutes to be certified.

8 THE COURT: So you're telling me all those Canadian
9 wills I've been admitting, I've been doing wrong?

10 MR. JOHNSON: Well, if you -- if you look at NRS
11 133A.060, the requirements under the international wills,
12 number 2 says, the testator shall declare in the presence of
13 two witnesses and a person authorized to act in connection
14 with international wills.

15 An authorized person is defined in the statute is a
16 person who's admitted to practice law before the courts of
17 this state or someone of diplomatic and consular service of
18 the United States designated by the Foreign Service.

19 They -- the will can be written in any language,
20 and it can be signed anywhere, but it has to -- the testator
21 has to present it before someone who can -- before someone
22 who has authority in the United States to certify it as a
23 valid will.

24 THE COURT: Mr. Grover.

25 MR. GROVER: There's (indiscernible) my -- my connection

1 cut off for about ten seconds.

2 THE COURT: Yeah, it just...

3 MR. JOHNSON: Yeah, I made a really great argument.
4 You're not gonna be able to respond to it (breaking up -
5 indiscernible).

6 MR. GROVER: Shoot.

7 THE COURT: His issue -- his issue was 133, whether I'm
8 bound by 133 or whether I can go as I normally do with
9 Canadians, with English wills, whatever else. If I found
10 that it to be a validly executed will or a document within
11 the other jurisdiction and it's found there, then I think
12 under Full Faith and Credit, don't I have to accept that?

13 MR. GROVER: Yeah, and not only that, Your Honor, but
14 there are multiple paths here to admission. We presented
15 obviously an affidavit to showing this is valid under
16 Portuguese law. It could be admitted that way, Full Faith
17 and Credit. It can also be admitted through 133A. There's a
18 notary on this document. And we've now submitted
19 declarations from the witnesses. So it can be admitted
20 straight up under 133. So I...

21 MR. JOHNSON: I disagree with that.

22 MR. GROVER: However -- however we choose to get there,
23 we end up in the same place.

24 THE COURT: Well, he's saying under 133, the
25 (indiscernible) either be someone who's (indiscernible) while

1 being executed done before someone from the consulate or the
2 -- that type of state department indi- individual or a member
3 of the Nevada bar. And I -- I don't see -- I -- I -- I see
4 -- I don't see the impact. I don't think 133 is applicable
5 here.

6 MR. GROVER: Well, 133 (indiscernible)...

7 MR. JOHNSON: We're talking about 133A.

8 THE COURT: Yeah.

9 MR. JOHNSON: It's the international will. 133 doesn't
10 apply because it's -- when it's talking about foreign wills
11 in 133, it's referring to other states in the United States.
12 It's a (indiscernible)...

13 MR. GROVER: Like I should be more -- I should be more
14 clear about that. I -- I'm talking about the simple
15 requirement that there's two witnesses and they provide a
16 sworn statement. That -- that we've done. So this meets --
17 this meets the requirements of Nevada law. It's a -- a valid
18 will under Nevada law. It's a valid will as an international
19 will. It's a valid will as a Portuguese will. So I -- I --
20 there's a lack of clarity on my part. I apologize for it.

21 But whatever direction we go, we end up in the same
22 place. And -- and it -- this will satisfies any one of those
23 three paths. Those three paths of them being an
24 international will, a Nevada will or Portuguese will.

25 MR. GROVER: I'm saying the -- the 133A, international

1 wills, there's obviously that statute to apply to
2 international wills. And it doesn't meet the requirements of
3 the statute. Number two, the requirement, like I said,
4 number two, the testator shall declare in the presence of two
5 witnesses and a person authorized to act in connection with
6 international wills. It doesn't meet that requirement under
7 this international will statute 133A.

8 THE COURT: But now that you've got the original
9 witnesses to give self-proving affidavits, does that not now
10 pull us back into 133?

11 MR. JOHNSON: Well, it -- it -- well, no, no, because
12 133 apply -- only applies to wills executed in Nevada or
13 there's also the foreign jurisdictions statute under 133...

14 THE COURT: Okay. I -- I'm ready to rule.

15 MR. JOHNSON: ...which the specifically applies to...

16 THE COURT: I'm ready to rule. I'm accepting this under
17 133. And also my -- just my regular things that under the
18 rules of Full Faith and Credit is as demonstrated to be valid
19 within another jurisdiction. We have to accept others'
20 jurisdictional legal documents. That -- that's some in Full
21 Faith and Credit under -- under international law and what
22 we're required to do when we're talking with other
23 jurisdictional families and whatever else of other nations.
24 So I'm gonna find that. So that can go to report and
25 recommendation.

1 But I am also gonna find that the -- it met all the
2 requirements under -- under our rules of one thirty -- 133,
3 so.

4 My question comes back now.

5 MR. GROVER: (Indiscernible).

6 THE COURT: Is -- is the modifier in Portugal limiting
7 in some manner as to what estate there is?

8 MR. GROVER: Well, you -- you've read the briefing on
9 that, Your Honor. The -- to interpret it the way -- I -- I
10 -- I always admire (indiscernible). Mr. Johnson's a great
11 (indiscernible). But it fall -- it fails for a couple of
12 reasons. You read the briefing. If it were interpreted that
13 way, we would end up with a situation where the primary
14 beneficiary has a more narrow interest in the contingency
15 residual with Cherry. And that's -- that's an absurd result.

16 The actions in Portugal, in Portugal modifies only
17 actions which contemplates legal actions, you know, the right
18 to sue, a chosen action, if you will. And I think that's a
19 -- a pretty straightforward thing. And on top of that, you
20 have the universal heir language. You know it would be a
21 contradiction to say that we have a universal heir, but the
22 universal heir's portion of the estate is -- is limited. And
23 we're gonna leave a part of the estate out of this intestacy.

24 THE COURT: Do -- do you know the ety- etymology of --
25 of the universal heir and how that's used in Europe?

1 MR. GROVER: I -- I don't. I -- I sense that you do. Am
2 I right?

3 THE COURT: Yeah, I had some research done by my staff
4 here. And it's used in -- in many European countries making
5 the universal heir also liable for all debts. That's the
6 terminology that they use to make the universal heir liable
7 for all debts of the decedent. So interesting concept there
8 as what -- what that actually meant. But that's -- that's
9 derivative there as how they use that, so.

10 So -- so my question always came down to as I look
11 the -- what does that modifier mean? And where does that
12 go? And again, like I said, because of time situations here,
13 I -- I'm able to rule on -- on the pleadings basically
14 through and what I've read and researched through.

15 It -- it is my finding at this point -- and this
16 will go -- I don't know if it's a separate R and R or part of
17 the same, that the -- the -- the universality of this and to
18 make it there, coupled with the concept of naming contingent
19 for the other, you know, being the daughter or whoever else,
20 I can't remember who it was, gives me an indication that this
21 was to be complete of everything that person may hold and
22 have testamentary power over.

23 I also place that upon the general rule of probate
24 that we've been going through years, is if -- if you would
25 always favor in favor of testacy over intestacy. And so

1 because of those rulings and -- and what I have there, I
2 believe that the will as written is not limiting to only
3 assets in the nation of Portugal but is to make that person
4 Chris Hisgen the heir of everything that is out there. And -
5 - and over which this person had a testamentary power.

6 So I need that and a form report, report and
7 recommendation. My recommendation will be -- will be
8 therefore the will would be admissible. And that Mr. Hisgen
9 will be appointed as a administrator CTA. The bond will be
10 waived the -- any assets will be held in a trust account, so.

11 MR. GROVER: So my -- my client's appointed in the
12 interim then? Is that -- am I understanding that correctly?

13 THE COURT: Well...

14 MR. GROVER: Even if -- even if there's intestacy, he
15 would still have priority. I would like to get...

16 THE COURT: Yeah, I mean...

17 MR. GROVER: ...notice to creditors...

18 THE COURT: ...we -- we -- we...

19 MR. GROVER: ...and things going.

20 THE COURT: We can go ahead and appoint him as -- well,
21 let's go special administrator.

22 MR. GROVER: Okay. We have authority...

23 THE COURT: With general authority...

24 MR. GROVER: ...to do...

25 THE COURT: ...the general powers to go ahead and do the

1 -- give notice to creditors.

2 MR. GROVER: Okay. Special general. Okay.

3 And, Ryan, do you mind if we just do the
4 appointment as an order and that way we...

5 MR. JOHNSON: Yeah, that's fine.

6 MR. GROVER: ...can get the administration going?

7 MR. JOHNSON: Yeah.

8 MR. GROVER: Okay. And then...

9 THE COURT: Okay. The department has an order...

10 MR. GROVER: ...Ryan, do you on -- on...

11 THE COURT: ...then going R and R with the other one.

12 MR. GROVER: ...on -- on the other -- okay. And, Ryan,
13 do you mind if we just do one R and R? That's probably
14 (indiscernible)?

15 MR. JOHNSON: Yeah, that's fine.

16 THE COURT: Okay. Mister...

17 MR. GROVER: Okay.

18 And then there's on last i- item of business, Your
19 Honor. There's a -- a pending ex parte petition for medical
20 records. And normally those are routine and we don't even
21 have hearings on those.

22 But prior to Mr. Johnson coming into this case, I
23 received a barrage of really, how do I put this, crazy and
24 obscene e-mails from Mr. Johnson's client claiming that my
25 client murdered his wife. And they had graphic pictures.

1 And I -- I'm a little bit reluctant to let her have carte
2 blanche access to medical records. And so if -- if Mr.
3 Johnson wants to proceed on that, I would ask that that be
4 set for a hearing.

5 THE COURT: Yeah, I -- I -- I guess if that's what you
6 want to come after, then I think you ought to put it on for
7 hearing because it's -- it's strictly where we're at. Then
8 it needs to come on and we'll make a discussion of it, so.
9 We will not act upon...

10 MR. GROVER: Okay. Thank you.

11 THE COURT: ...any (indiscernible) at this point.

12 MR. GROVER: All right.

13 MR. JOHNSON: Thanks, Your Honor.

14 MR. GROVER: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (THE PROCEEDINGS ENDED AT 11:14:42.)

17 (THE VIDEO HEARING ENDED AT 11:14:46.)

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19 * * * * *

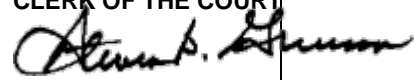
20 ATTEST: I do hereby certify that I have truly and
21 correctly transcribed the video proceedings in the above-
22 entitled case to the best of my ability.

23

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25


SHERRY JUSTICE,
Transcriber II



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 In the matter of:

9 MARILYN WEEKS,

10 Deceased.

CASE#: P-20-103540-E

DEPT. XXVI

11
12
13 BEFORE THE HONORABLE GLORIA J. STURMAN,
14 DISTRICT COURT JUDGE
15 THURSDAY, MAY 20, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **OBJECTION TO PCCR**

18 APPEARANCES:

19 For Christopher Hisgen,
20 Petitioner:

[All appearances by Bluejeans]

THOMAS R. GROVER, ESQ.

21
22 For Christy Sweet,
23 Respondent:

RYAN D. JOHNSON, ESQ.

24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

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LAS VEGAS, NEVADA; THURSDAY, MAY 20, 2021

[Case called at 10:45 a.m.]

MR. GROVER: Good morning, Your Honor, Thomas Grover, 1387, on behalf of the surviving spouse.

THE COURT: Okay. We're getting a little bit of an echoey there, Mr. Grover. Just FYI.

MR. GROVER: Yeah, I don't know why.

THE COURT: Okay. And then, Mr. Johnson.

MR. JOHNSON: 790, Ryan Johnson on behalf of Christy Sweet Weeks –

THE COURT: Okay.

MR. JOHNSON: -- Weeks Sweet.

THE COURT: This is really interesting, this International Will thing. Okay. So this is an objection to a Report and Recommendation. The Commissioner found that this Portugese Will – can I ask the question: Were they not married at the time the Will was written and they later got married, or were they never married? That's what I was a little confused about.

MR. JOHNSON: I believe they got married --

MR. GROVER: I believe he --

MR. JOHNSON: -- after there was –

MR. GROVER: -- they were married.

THE COURT: Okay. Mister, Mr. Grover –

MR. GROVER: I believe they're married at the time, but I don't know for sure.

1 THE COURT: -- your, your echo -- Mr. Grover, you're echoing
2 so badly. I'll let you work on that. So Mr. Barlow, if you just want to
3 address that question.

4 MR. JOHNSON: Mr. Johnson.

5 THE COURT: Mr. Johnson, I beg your pardon.

6 MR. JOHNSON: It's -- yeah, no problem. Yes, Your Honor, I
7 believe that's correct. They were not married at the time of the Will, and
8 then subsequently got married before she passed away.

9 THE COURT: Okay, just wanted to --

10 MR. JOHNSON: Tom, I think you might have your phone and
11 your computer audio on. I think that might be the problem.

12 MR. GROVER: You're right. I think we fixed it.

13 THE COURT: Okay. Perfect.

14 MR. GROVER: My, my phone has a much better microphone.

15 THE COURT: Perfect.

16 MR. GROVER: That's why I like to use it.

17 THE COURT: Okay, there we go. That, that -- it's fixed.

18 Thank you. That's right. Okay. Thanks for clarifying that. I just wanted
19 to make sure.

20 MR. GROVER: Appreciate your patience.

21 THE COURT: So I -- so I printed the International -- the
22 Uniform International Will Act. It's so interesting. So -- all right, so the
23 objection here is that the Commissioner found this to be a valid
24 International Will.

25 THE COURT: And so --

1 MR. JOHNSON: Right.

2 THE COURT: -- there was an objection to that. And then the
3 other objection --

4 MR. JOHNSON: There --

5 THE COURT: -- was to -- just the interpretation that it was as,
6 as to all of her property, not just her property in Portugal.

7 MR. JOHNSON: The first three objections --

8 MR. GROVER: Also --

9 MR. JOHNSON: Our first objection, you're right, it's not a
10 valid -- it wasn't an International Will. The second one is even -- it's also
11 not admissible under NRS 133, the normal Will Statute. And then, even
12 if it were it would only apply to the Portugese assets. Those are our
13 three objections.

14 THE COURT: Oh, okay. So I missed -- I missed the middle
15 one there, that 133 one. Okay. I just want to make sure I had the
16 issues correct. Okay. So, do you want to address them, all three of
17 them, and then we'll let Mr. Grover respond. I just want to make sure
18 that we have the issues identified. Okay. So we can start with
19 International Will.

20 MR. JOHNSON: Sure. Sure. So there's a number of
21 requirements for an International Will. The most clear of which did not
22 happen here, is that there was not a certificate produced by an
23 authorized person. Mr. Grover's client argues that the Portugese
24 attorney was an authorized person.

25 But the statute is very clear, NRS 133A.030 and 120. The

1 only authorized persons are: United States diplomatic and consular
2 service persons and persons who have been admitted to practice law
3 before the courts of this state, Nevada. So that did not happen. In – as
4 for – under NRS 133, that only applies to Wills that don't apply, so they
5 aren't International Wills.

6 So NRS 133.080 which addresses Foreign Wills, specifically
7 says:

8 Except as provided in 133A, so except for Foreign
9 Wills, other Wills within the United States can be admitted if
10 they're – if they're done properly according to the state in
11 which it was executed.

12 But any International Will has to be gone through the
13 133A International Will Statute. It said, "Except as provided
14 in 133A." It doesn't say, "Regardless of or notwithstanding
15 133A," it says, "Except."

16 And then the modifiers are just what it is. It's a specific list.
17 She went to – she lived in the United States. She went to Portugal for
18 the specific reason of dealing with her Portugese assets. And the
19 Portugese Will says, "I give him all of my assets," you know, lists it all
20 the way down, in Portugal. So there's – those are our arguments.

21 THE COURT: Okay. All right. So here's my question. The
22 intent – the intent and purpose – I mean, generally you give full faith and
23 credit to anything that's legal in another jurisdiction. Typically, you give
24 full faith and credit to it. This International Will Act was intended to allow
25 a person to draw up a Will that would be recognized internationally.

1 I don't think it's the only thing you could do to have a valid
2 Will. I appreciate the concept was to have uniformity and to allow
3 persons who are ex-patriots or who own property in multiple countries to
4 have a way to do it that would be recognized in both countries. You
5 know, people who live here and are originally from Canada. People who
6 live here are from England, whatever.

7 But I'm not sure I understand, I mean, is there an obligation of
8 the foreign country to exactly follow this statute in order for a formal Will
9 to be recognized. Because otherwise, generally, just under the concept
10 of full faith and credit, if it's valid where it's written on, why isn't it valid
11 here? So that was –

12 MR. JOHNSON: I would –

13 THE COURT: -- kind of my question. It seemed to me that
14 whether it complied with the International Statute or not, if it's a valid Will
15 in Portugal, why shouldn't Nevada give it credit?

16 MR. JOHNSON: Okay. Well, I would argue two things: So
17 the first is full faith and credit. Everybody throws around the full faith
18 and credit clause. That applies to the United States of America.
19 Second, when the Legislature enacted 133A regarding International
20 Wills in 2009, it also specifically amended NRS 133, which is the
21 General Will Admission Statute, which I already cited, 133.080. And it
22 amended it to add these words and say, "Except as provided in 133A".

23 So they specifically amended the Will Statute, the
24 previous Will Statute to say that, now that we have this International Will
25 it has to comply with it. And she can't – anybody can make a Will

1 anywhere that's valid in that country, but if they wanted to apply to the
2 United States, they have to bring it to a United States consular or a
3 United States attorney who can go through these procedures to verify it.

4 That's the purpose of the uniform statute.

5 THE COURT: Okay. All right. And then so, so if the person
6 hasn't done that, then what?

7 MR. JOHNSON: Then it's not valid. Because it – may be
8 previous to 2009 it would have been valid, but because the Legislature
9 changed the statute in 133, it says you have to look to 133A now that I
10 just cited like three times.

11 THE COURT: Uh huh.

12 MR. JOHNSON: That now International Wills, after the
13 enacting of this International Will Statute, have to go through the
14 International Will – have to comply with the International Will Statute
15 133A.

16 THE COURT: Oh, okay. But here's my question. So she's
17 got a Will in Portugal which can be probated in Portugal as to her
18 Portugese assets.

19 MR. JOHNSON: Correct.

20 THE COURT: What difference does it make, they're married
21 and so –

22 MR. JOHNSON: They weren't married when she made the
23 Will.

24 THE COURT: Well, but in Nevada, what difference does it
25 make in Nevada, should – were you saying that –

1 MR. JOHNSON: Because my client would then take half the
2 estate.

3 THE COURT: -- the commissioner should say she was
4 intestate -- she's intestate in Nevada?

5 MR. JOHNSON: Yeah. There is no -- there is no other Will
6 besides this Portugese Will. So right, it would go intestate and my client,
7 as her daughter, would get half of the estate, because she had no Will
8 that's valid in the United States --

9 THE COURT: Okay. That's what --

10 MR. JOHNSON: -- or in Nevada.

11 THE COURT: -- that's what I was trying to clarify. Okay.
12 Thanks. All right. Thank you. Okay, Mr. Grover.

13 MR. GROVER: All right. Just to give you a road map, Your
14 Honor. I'm going to talk about NRS 133 and then shift over to 133A.

15 THE COURT: Uh-huh.

16 MR. GROVER: I completely and fundamentally disagree,
17 respectfully with Mr. Johnson's reading of NRS 133.080. As you know,
18 from reading our briefing, we have cited to the Legislative history, the
19 convention -- the International Convention that created this statute --

20 THE COURT: Uh-huh.

21 MR. GROVER: -- and this and NRS 133 itself. And all three
22 say the same thing.

23 The purpose of the International Will Statute is not preempt
24 the local law of the jurisdiction. So when we look at NRS 133.080, and
25 except, it says, "Except is otherwise provided in NRS 133A. What it's

1 saying is, "Except as of the – except as what is available in 133A, these
2 are the requirements of a Will that has been executed in a foreign
3 jurisdiction."

4 So, in other words, that's consistent with what the Nevada
5 Legislature said, what the International Convention said, and what NRS
6 133A says itself. I don't have it pulled up in front of me, but there's the
7 provision that says: Nothing in this prevents a statute from a Will from
8 being prevent – admitted in another way.

9 THE COURT: Right.

10 MR. GROVER: So in other words, just like you were saying in
11 the beginning, Your Honor. The purpose of the International Will Statute
12 isn't to narrow the way, the ways by which a Will can be admitted; it's to
13 provide a uniform way of cross jurisdictions to allow Wills to be admitted
14 if they don't happen to meet the local requirements.

15 THE COURT: Okay. So here's my question about that. So
16 the – Mr. Johnson's concerned about this 133.080 is that –

17 MR. GROVER: Yeah.

18 THE COURT: -- we're all okay, except as otherwise provided
19 in 133A if in – I mean, because if this – I mean, this has been the way
20 you do a Will for 500 years:

21 If in writing and subscribed by the testator, a Last Will
22 and Testament executed outside of this State. Okay.
23 Anywhere in the world in the matter prescribed by the law
24 either of the State where executed or of the testator's
25 domicile.

1 So Mr. Barlow's argument would be, she didn't execute this in
2 the State, so you aren't talking about full faith and credit within the
3 United States. This is an international question. But if it's a valid Will in
4 Portugal, that's the testator's domicile. So –

5 MR. JOHNSON: It wasn't –

6 MR. GROVER: Well –

7 MR. JOHNSON: -- it wasn't her domicile.

8 THE COURT: -- is that your argument that you valuable –
9 valid there?

10 MR. GROVER: Excuse me, Your Honor.

11 MR. JOHNSON: Sorry.

12 MR. GROVER: So, well, let me clarify the record. She was a
13 – she was domiciled in Maryland at the time, and I've cited the Maryland
14 statute which is exactly like ours. Two witnesses who witnessed the
15 execution of the Will. So whether – this is why the briefing that says –
16 whether we go by Nevada, Portugal or Maryland, we end up in the same
17 place. I'll also note on the State issue, and I briefed this. State in
18 reference to Nevada is capitalized.

19 THE COURT: Uh-huh.

20 MR. GROVER: But it says, "either of the state were
21 executed." And this is an interesting issue, Your Honor, in researching
22 this. This, this International Will Uniform Act –

23 THE COURT: Uh-huh.

24 MR. GROVER: -- has been adopted, not just by states in the
25 United States, but other countries. And other countries adopted at the

1 national level, but the United States, as we all know from civics, is
2 different. In that, sovereignty in this country doesn't reside in the
3 national government, it resides in the state government. And so, when
4 NRS 133.080 refers to state, the second time in subsection one.

5 THE COURT: I'm very sorry.

6 MR. GROVER: -- that means -- well, that's okay.

7 THE COURT: Give me a minute here. Okay. I'll talk to this
8 officer, I'll be right back.

9 MR. JOHNSON: All right.

10 [Judge excused herself from the bench]

11 [Colloquy between Counsel]

12 [Hearing trailed at 10:58 a.m.]

13 [Hearing resumed at 10:59 a.m.]

14 THE COURT: Okay. We will go back on the record.

15 MR. GROVER: Sorry.

16 THE COURT: So yeah, we were discussing the --

17 MR. JOHNSON: Okay.

18 MR. GROVER: Let me go back.

19 THE COURT: -- what state means where it talks about this --

20 MR. GROVER: Right.

21 THE COURT: -- state capitalized any other state, lower case,
22 or domicile.

23 MR. GROVER: -- Right. And so when, when this -- and the
24 interpretation that I've briefed that I presented to the Court --

25 THE COURT: Uh-huh.

1 MR. GROVER: -- where state means any jurisdiction outside
2 of Nevada, whether it's a United States state or a foreign state, it's
3 consistent with reading this. Because what is this subsection saying? It
4 talking about Wills executed outside of Nevada. The universe of Wills
5 executed outside of Nevada includes the other 49 states and the other,
6 you know, 280 states that are in this country.

7 So like I said, this International Will Statute was – and I briefed
8 this, was adopted at the national level by the other countries. But in the
9 U.S. it couldn't have been adopted at the federal level, because as we
10 all know the federal government has – he wrote business in dealing with
11 the states, and so it had to be adopted state by state.

12 And so, if we adopted the interpretation Mr. Johnson
13 suggests, then subsection one would apply to some, some jurisdictions
14 but not others. And it would mangle the first provision, which is the
15 exceptions otherwise provided in 133A which provides the alternative,
16 and would completely ignore the statements of the convention, the
17 legislative history, and the explicit provision in NRS 133A that says:
18 This is not the only way to admit a Will in, in Nevada.

19 THE COURT: Okay. All right.

20 MR. GROVER: This is simply a uniform way.

21 THE COURT: Okay. So then – so then the next issue is, so
22 that statute doesn't bar a valid Will in any other jurisdiction. I grant – it's
23 not technically full faith and credit, but we're outside the jurisdiction of
24 the United States. But the concept is, if it's valid where it was executed
25 – just like a marriage. If a marriage is valid where it's performed it's

1 recognized in the United States. So next.

2 MR. JOHNSON: Your Honor, I would just say, "What's the
3 purpose of saying, except for provided in one NRS 133A though?" Like
4 why would the Legislature add that part to it?

5 MR. GROVER: Because just like the Legislative history says,
6 Ryan, you could either go with 133A or you can go with 133. The
7 purpose of 133A is not to narrow the path; it's to provide a secondary
8 path and uniform across jurisdictions.

9 MR. JOHNSON: So shouldn't it have said, "Notwithstanding
10 or regardless of 133A instead?"

11 THE COURT: Well, maybe if we had written it –

12 MR. GROVER: Well –

13 THE COURT: -- it would. Okay. So then is that everything
14 about 133, Mr. Grover?

15 MR. GROVER: Yes, so –

16 THE COURT: Okay.

17 MR. GROVER: -- and then I guess you probably want to
18 move on to –

19 THE COURT: So your point – I guess the point is that, if
20 we're just going under 133 it's otherwise – the way it was executed in
21 Portugal is similar to the way it would have been executed in the United
22 States, in Nevada. You've got the witnesses –

23 MR. GROVER: Or, or Maryland.

24 THE COURT: Maryland – they – that's where she was living
25 at the time. Thank you. I forgot that. Yeah, thank you.

1 MR. GROVER: Right. Okay. So now I think you're asking
2 me to shift gears onto the text of the Will itself.

3 THE COURT: Yes.

4 MR. GROVER: Okay. So as the Court definitely knows from
5 a bajillion cases over the years. The law favors an interpretation of Wills
6 that – it is testate rather than intestate. And in this case, the
7 Commissioner interpreted this Will to have the words in Portugal
8 modifying actions. In addition to that, on his own, this wasn't me. He
9 looked up universal heir in European probate law --

10 THE COURT: Yeah.

11 MR. GROVER: -- which I guess he got curious.

12 THE COURT: Uh-huh.

13 MR. GROVER: But I thought that was interesting. And I
14 briefed that issue, so that would indicate that Chris is the universal heir.

15 THE COURT: Right.

16 MR. GROVER: And then on top of that --

17 THE COURT: And that --

18 MR. GROVER: -- there's a residuary clause.

19 THE COURT: -- that's a civil law concept.

20 THE COURT: Because the purpose of the International Will
21 Act was to combine the basic elements of civil and common law. What
22 are the uniform requirements that everybody recognizes for a Will to be
23 valid, generally? And so that -- that's --

24 MR. GROVER: Right.

25 THE COURT: -- specific language. That's like local

1 language.

2 MR. GROVER: Yes. Yeah it's a civil law thing that we could
3 probably call up our friends in Louisiana. They could lecture us about
4 that, but we're not – we're not a civil law jurisdiction. But nonetheless,
5 what it does show is the intent under this document to make Chris –

6 THE COURT: It's a term of art. It's a term of art for them.

7 MR. GROVER: -- a recipient of everything.

8 THE COURT: Okay. And again –

9 MR. GROVER: Right.

10 THE COURT: -- that's why I wanted to clarify that, at the time
11 they weren't married, so he otherwise would not have had any rights.

12 MR. GROVER: It – a married couple, that is true. And then
13 the last point on this interpretation that I think is really critical is – there's
14 a residuary clause. Just like any Will, and it says, "If Chris predeceases
15 me, then I want my two daughters to be my heirs." There's no limitation
16 on that language, at all.

17 There's no limitation about actions in Portugal or assets in
18 Portugal. It's just must my universe, my – these are my heirs. So if, if
19 what Mr. Johnson is arguing were accepted, it would create this bizarre
20 [sic] world where the – where Chris is receiving only assets in Portugal.

21 But if he had predeceased these two daughters, they would
22 have received the entire estate. So it's a narrow interpretation for the
23 primary beneficiary, but a universal interpretation for the residuary.

24 THE COURT: And that was my question –

25 MR. GROVER: And that doesn't make a lot of sense.

1 THE COURT: -- that was my question to Mr. Johnson, was
2 that, is the theory would be that he -- they could probate the -- any
3 Portugese assets in Portugal, and he's the heir there. And anything in
4 Portugal goes to him, but she would be considered intestate in the
5 United States under Nevada or Maryland.

6 And so, whatever assets there are in the United States would
7 go by intestacy and be split between the surviving spouse and her
8 children from the prior marriage. And that's inconsistent with what the
9 Will said was going to happen. It goes to him. If he's gone, then it goes
10 to the daughters.

11 MR. JOHNSON: May I respond to that Your Honor?

12 THE COURT: I don't know. Are you done there Mr. Grover?

13 MR. GROVER: Unless the Court has any other actions --
14 questions about the interpretation. I think I've covered my main points.

15 THE COURT: Okay. Thank you.

16 MR. GROVER: Thank you for asking.

17 THE COURT: Thank you.

18 MR. JOHNSON: I would just say regarding the intestacy
19 issue, also we have to look to the intent of the testator. If she wanted
20 him to have the assets in the United States, her assets, and she lived in
21 Maryland with him. Why would she fly all the way to Portugal and make
22 a Portugese Will referring to Portugese assets so that he could have her
23 assets in the United States? That doesn't make any sense. Why didn't
24 she just go to an attorney down the street and make a Will leaving him
25 his -- her stuff in the United States?

1 MR. GROVER: My understanding is they were on an
2 extended stay in Portugal when they did these. And so, when they
3 decided – and there's a reciprocal Will from Chris as well. So when they
4 decided to do their Will it happened to be in Portugal at the time on an
5 extended stay. I –

6 THE COURT: And they were not married?

7 MR. GROVER: Borderline vacation.

8 THE COURT: And they were not married, and so it would not
9 – and I don't – I mean, did they own a home there or something? I
10 mean, I'm just – never mind. So I guess –

11 MR. GROVER: Yeah.

12 THE COURT: -- and so I guess we're ready now. So Mr.
13 Barlow I guess, again, looking for errors of fact or law. So as a matter of
14 law your, your position is the Commissioner improperly interpreted the –
15 that it's not a valid International Will.

16 I'll let this one go. This is Judge Sturman, can you call me
17 back in half an hour? Thanks, bye. He'll call back.

18 MR. GROVER: What a crazy morning for you.

19 THE COURT: Yeah. Well, it's only – it's two weeks a year
20 that you do this and boy – you don't want to know what happens in this
21 town. Ugha. Anyway.

22 So getting back to our topic -- not a valid International Will,
23 because the certification was not in front of of a governmental agency,
24 the United States Consulate, so I guess that's kind of what puzzled me.
25 Because they don't have – you don't have to – here in Nevada if I were

1 a, a local resident and I wanted to have a Will that would be recognized
2 in Europe somewhere, all I'd have to do is have somebody – a local you
3 – a Nevada attorney sign up, you know, do it.

4 Or if I were a foreign resident, and I had property in Nevada,
5 and I wanted it recognized internationally is – all I would have to do
6 would be to come to a Nevada attorney? Because I'm not
7 understanding –

8 MR. GROVER: Well, yeah.

9 THE COURT: -- why they have that – those two separate
10 provisions.

11 MR. JOHNSON: That yeah, so –

12 THE COURT: Why shouldn't they have the whole thing done
13 formally at the consular or by a licensed attorney?

14 MR. JOHNSON: Yeah. So if I may Your Honor.

15 THE COURT: Why does it have to be a licensed attorney in
16 Europe? I just am not –

17 MR. JOHNSON: It's licensed attorney in Nevada. So in this
18 situation, what she should have done – she had her Portuguese Will. If
19 she wanted it to be valid internationally or in Nevada, she had two
20 options: She could have taken it to the United States Consulate to be
21 authenticated there, or since she was a resident of Nevada she could
22 have come into Mr. Grover's office and he could have filled out
23 certificates, since he's a licensed attorney in Nevada, and then it would
24 have been valid in Nevada; that's all she had to do.

25 But because she didn't take any effort to do any estate plan in

1 Nevada or the United States, it fails.

2 THE COURT: Okay. Okay. That's number one.

3 MR. GROVER: And I – I – yeah.

4 THE COURT: And then --

5 MR. GROVER: If I can –

6 THE COURT: Okay, okay, Mr. Grover. Mr. Johnson, Mr.
7 Johnson, you are going to get the last word. So yes, Mr. Grover,
8 something else to add?

9 MR. GROVER: I'll be very, very quick. The definitions that
10 are referenced in 133A about authorized person are expansive. They
11 have – they are inclusive. It says, "Including members of the Diplomatic
12 Consular Service of the United States." And so, it's not that is has to fall
13 within one of these categories, but these are categories that count as an
14 authorized person.

15 The attorney that drafted this Will, Isabel Santos, we've
16 presented. She is a member of the bar, duly admitted in good standing
17 in Portugal, and she is authorized to draft Wills. And so, I, I can
18 appreciate, you know, they can do lawyering here, but this is not
19 language that's limiting in these definitions.

20 THE COURT: Okay. Thank you. So again, Mr. Johnson, you
21 get the last word. So International Will not valid as an International Will.
22 Then we look at 133. And are you saying that it's only invalid under 133
23 because of the carve out for 133A, or are there other –

24 MR. JOHNSON: Yeah, I'm saying –

25 THE COURT: -- issues with 133?

1 MR. JOHNSON: Yeah, I'm saying, the Legislature created the
2 International Will Statute in 2009. They also amended 133 to do that
3 carve out showing intention that any International Wills have to now
4 comply with 133A.

5 THE COURT: Okay. Got it. And then, then the final is that
6 where we get more, not so much for the question of law, but his
7 interpretation – the Commissioner's interpretation of the language of the
8 Will which talks about Portugese property. And yeah, I mean, I just – I
9 guess – because I guess for me is, at the time they weren't married.
10 And so, it makes a difference to me that they later got married.

11 Because it seems to have – that that's a reason why she
12 might not have thought to make any other changes is because, they're
13 married. And most people don't know the laws of intestacy, just don't. I
14 mean, how many people have read that statute? So, I guess I'm trying
15 to figure out –

16 MR. JOHNSON: Well, it hurts –

17 THE COURT: -- you're now – you're concerned with the way
18 he analyzed the Portugese property is that, it meant to limit his rights to
19 anything to what's in Portugal.

20 MR. JOHNSON: Yeah, the Portugese Will says, "All my stuff
21 in Portugal [laughs]."

22 THE COURT: Right. Okay. And so, when the Commissioner
23 says he viewed that more broadly and said that he interpreted that as
24 not just limiting her – what he was to receive to the property in Portugal,
25 he read it broadly to say, "Including the property in Portugal." Such that,

1 you know, if you're – if you're leaving the United States to probate a Will
2 in a foreign country, it isn't – he – she specifically meant to include this
3 property in Portugal in this Will when she goes back to the U.S.

4 And he read that broadly. Your view is, no it means she only
5 intended him to get the property she owned in Portugal, nothing else.

6 MR. JOHNSON: Yes, it's the plain language of the document;
7 yes.

8 THE COURT: Okay. All right. Great. Thank you. Like I said,
9 "Really interesting legal issue." With all due respect, you know, I have to
10 look for errors of fact or law. This to me is pretty much purely a question
11 of law. Even the interpretation of the language of Portugese property. I
12 think this is all a question of law. And I do not see an error on the part of
13 the Commissioner here.

14 I believe that this International Will Statute was intended to
15 offer a mechanism by which – people who are ex-patriots, people who
16 own property in multiple – United States and some foreign country have
17 some uniformity. But it wasn't meant to say this is the only way you can
18 do it if you own property in the United States and other countries. So I
19 agree with Mr. Grove there.

20 I don't think the statute was intended to limit the way a person
21 can dispose of their property in the United States and a foreign country.
22 It's simply a way of hopefully having your intent recognized in that
23 foreign country. I do not believe that the language of 133.080 – is it
24 080? What – whatever – was intended to say exclusively here.

25 Because again I, I think the idea is, you want this to be as

1 expansive as proper – as possible. And is this an otherwise valid Will?
2 If we're just looking at this Will and saying, "It's just in Nevada or
3 Maryland – wherever she was. Is this a valid Will? Is this – does this
4 give away her property to her, her now spouse, then significant other?
5 Is – does it have the – otherwise have the elements that make it a valid
6 Will? And it does.

7 As I said, you know, those have been the elements of a Will
8 since 1500. So then we get down to our final question is: Did the
9 Commissioner make an error of law when he interpreted the language of
10 the Will, expansively to say that she intended to dispose of her property
11 to – as her universal heir, who was her heir to everything, including
12 property in Portugal.

13 As opposed to Mr. Johnson's view that that is limiting
14 language intended to say, "You're going to get what I have in Portugal;
15 that's it." And I think he looked to the whole document as a whole and
16 said:

17 It appears that her intention was that it would go to him
18 and if he doesn't survive her, all of the property goes to him.
19 And if he doesn't survive her, all of her property goes to her
20 daughters.

21 Because it doesn't say:

22 It's my intention that my property in Portugal go to my to
23 my significant other. My property in the United States goes to
24 my daughters.

25 She could have said that and she doesn't.

1 I read this as, they wanted to make sure that in Portugal if
2 there was any question in Portugal that that property was intended to be
3 included, and I think that's how the Commissioner viewed it as
4 expansive, and give it the language of the entire document. And I don't
5 think that was an error of law on his part. I don't see that really as a
6 factual question. That's interpreting the document as a matter of law.

7 So, I'm going to deny the objection. I do not find any error of
8 law here. And I don't really think there will – any of this was factual. I
9 think he – this was strictly a question of law. And I believe the
10 Commissioner was correct in his interpretation of this very unique
11 International Will Statute, and what the Legislature intended when they
12 adopted it.

13 So I'm denying your objection. Who's going to do the order?

14 MR. GROVER: I can put that together Your Honor.

15 THE COURT: Okay. Yeah. Because I think it's, it's -- all
16 three of them should be addressed.

17 MR. JOHNSON: Well, can we go back and ask the Portugese
18 attorney what the intention was?

19 THE COURT: You know, I guess that could, you know, that's
20 certainly an option is if – I, I wouldn't say no. I mean, I, I think that
21 certainly if that's what she intended, and she had the communication
22 with that attorney to that effect that would change things. But as we
23 know right now, we're just interpreting the document that we have before
24 us.

25 And so, I think the Commissioner interpreting the entire

1 document and viewing it broadly that these folks were living in Portugal
2 at the time. They wanted to make sure if anything happened to them in
3 Portugal that their relationship was recognized. And then they just didn't
4 – they just didn't fix things when they got home.

5 I mean, how is that any different than if – none of us would
6 have a job if people fixed, fixed the problems in their estate plans when
7 they should. Seriously, we wouldn't. So this is just the kind of stuff that
8 people do.

9 It makes sense to me that these folks living in a foreign
10 country for an extended period of time thought, "We better do something
11 to make sure we're okay here if anything should happen to us."
12 Because at the time they weren't married, and she wanted to make sure
13 that that was recognized. Okay.

14 MR. GROVER: All right.

15 THE COURT: Mr. Grover.

16 MR. GROVER: Thanks Your Honor.

17 THE COURT: Okay. All right. So show it to Mr. Johnson
18 before you send it over, okay?

19 MR. GROVER: Of course. All right.

20 MR. JOHNSON: Thank you.

21 MR. GROVER: All right. Thanks Mr. Johnson.

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THE COURT: Thank you gentlemen, and thanks for waiting.
Thanks, bye bye.

MR. GROVER: Thank you.

[Hearing concluded at 11:19 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


Kerry Esparza
Court Recorder/Transcriber