IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER IN THE ESTATE OF MARILYN WEEKS SWEET, DECEASED, CHRISTY KAY SWEET, Christy, Vs. CHRISTOPHER WILLIAM HISGEN, Hisgen,	Case No. P-20-103540-E Docket No. 83342

On appeal from the Eighth Judicial District Court, Clark County

Hon. Gloria J. Sturman, Department XXVI

District Court Case No. P-20-103540-E

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HISGEN'S OPENING BRIEF

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I. JURISDICTIONAL STATEMENT

This appeal is brought pursuant to NRS § 155.190(1)(b), which permits an aggrieved party to appeal an order "admitting a will to probate." The district court's order admitting decedent's will to probate was entered on July 14, 2021, and Christy's Notice of Appeal was filed on August 4, 2021.

II. ROUTING STATEMENT

Hisgen has no preference regarding whether this matter is heard by the Nevada Supreme Court or the Nevada Court of Appeals. However, the Hisgen disagrees with Christy as to whether this is an issue of first impression as contemplated by NRAP § 17(a)(11). Christy argues that an issue before the Court is "whether a foreign will can be admitted to Nevada probate when it fails to comply with NRS § CHAPTER 133A and the content is in dispute." (Opening Brief, at 1). However, this statement conflates multiple issues. First, as discussed below, this matter involves the straightforward, plain meaning application of relevant probate statutes. If the Will at issue can be admitted under NRS § CHAPTER 133 or 133A, the District Court's judgment must be affirmed. Second, it involves a question of fact as to translation. Accordingly, this appeal is more properly

characterized by NRAP 17(b)(14) ("Cases involving trust and estate matters in which the corpus has a value of less than $5,430,000.").

III. STATEMENT OF ISSUES

Issue 1: Was the District Court correct to admit the last will and testament of Marilyn Sweet Weeks, dated May 3, 2006, to probate pursuant to the provisions of NRS § CHAPTER 133 even though the Will was executed outside the State of Nevada?

Issue 2: Was the District Court correct to admit the last will and testament of Marilyn Sweet Weeks, dated May 3, 2006, to probate as an international will pursuant to the provisions of NRS § 133A?

Issue 3: Was the District Court correct to interpret the last will and testament of Marilyn Sweet Weeks, dated May 3, 2006, as disposing of all estate assets in favor of Christopher Hisgen, Hisgen and surviving spouse?

Issue 4: **This issue has been raised by Christy for the first time on appeal.** Was Christy Sweet improperly denied a trial/evidentiary hearing in a will contest pursuant to NRS

§ Chapter 137, where she did not make any such argument before the District Court and failed to issue citations?

IV. STATEMENT OF THE CASE

This matter involves a will, executed in Portugal, which leaves the entire estate to the testator's surviving spouse. (1 ROA 10-15). The will is valid under Portuguese law, where it was executed; Maryland law, the domicile of the testator at the time of execution; and Nevada law, where it is now being probated. The daughter of the testator contends that the Will is invalid. The Probate Commissioner recommended that the Will be admitted to probate, offering multiple, independent theories (or paths) for admission. (1 ROA 93-101). The Probate Commissioner also interpreted the will to favor testacy over intestacy, disposing of the entire estate in favor of Hisgen Chris Hisgen, the decedent's surviving spouse. The District Court adopted, in their entirety, the Probate Commissioner's multiple, independent paths for admission to probate of the Will.

V. STATEMENT OF RELEVANT FACTS

On May 3, 2006, Marilyn Sweet Weeks ("Decedent") executed her *Testamento Publico* ("Will"). The Will is written in Portuguese. (1 ROA 10-15). On July 14, 2020, Chris, the surviving spouse of the Decedent, filed his *Petition for General Administration, Appointment of Personal*

Representative and for Issuance of Letters Testamentary and to Admit Will to Probate ("Petition" at Record, 1 ROA 1-33). The Petition sought to obtain letters of general administration and to have the Will admitted to Probate. (1 ROA 4-5). As the Will is written in Portuguese, Chris obtained an English translation of the Will and filed it as a supplement to the Petition on September 29, 2020. (1 ROA 65-90).

Christy filed her *Objection to Petition for General Administration, Appointment of Personal Representative and for Issuance of Letters Testamentary and to Admit Will to Probate* ("Objection", 1 ROA 4-45). Christy based her *Objection* on three separate arguments.

First, she asserted that there is no process for admission of a will executed outside the United States: "The decedent's Will was executed in the country of Portugal on May 3, 2006. Under Nevada law, there is no provision for the probate of a Will signed in a foreign country. Therefore, Sweet asserts Hisgen's submission of the Will for probate in the State of Nevada is improper and should be denied." (1 ROA 41).

Second, Christy contended that the Will is not signed by two witnesses: "Even if the Will is admitted to Probate in Nevada, this State requires that the witnesses to the execution of the Will sign an Affidavit of

Declaration. Since Hisgen's petition did not include any attestations from the subscribing witness, the Will is inadmissible in Nevada." (1 ROA 42).

Finally, she argued that the Will does not dispose of assets in Nevada, but only of assets in Portugal: "Most importantly, the Decedent in her Will disposed only of her assets situated 'in Portugal.' Therefore, even if the Will is admitted to probate in Nevada, the provisions thereof will not effectuate a transfer of any assets of the decedent in the United States." (1 ROA 42).

Prior to the hearing on the Petition, Chris obtained the declarations of the witnesses to the Will, as well as the declaration of an attorney licensed in Portugal who testified that the Will satisfied the requirements of Portuguese law. (1 ROA 74).

On September 29, 2020, Chris filed his *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," 1 ROA 48-53). The First Supplement had no additional argument or facts in its body, but merely attached the Declaration of Dr. Maria Isabell Santos (hereafter "Santos Declaration," 1 ROA 51), which included a translation of the Will (1 ROA 53). From the Santos Declaration:

> The Will of Marilyn Weeks Sweet meets the requirements of a will in Portugal. Under Portuguese law, a will is drawn up before a Notary,

> with the presence of two witness[es], which certified [sic] that is made of free and spontaneous will. The Civil Code defines at the article 2179: "is one deed made by ow2n will and revocable any time, by which someone dispose freely of it's assets after death." The Will of Marilyn Weeks Sweet meets this criteria because was made voluntarily of her own free will.
>
> From the Translation of the Will (1 ROA 53):
>
> Marilyn Sweet Weeks…establishes universal heir to all her assets, rights and shares in Portugal, Christopher William Hisgen, single, from Washington D.C., United States of America, American nationality and with her resident.
>
> If he has already died at the time of her death, shall be her heirs, Kathryn Kimberly Sweet, married with address at Arlington, Virginia, United States of America and Christy Kay Sweet, single, with address at Thailand.

Chris filed his *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", 1 ROA 65-90). Attached to the Reply are the Declarations of the subscribing witnesses, Isabel Pires Cruz Santos and Gilda Dos Santos Barradas.

> From the Declaration of Gilda Dos Santos Barradas (1 ROA 85-90):
>
> On or about May 3, 2006, I witnessed Marilyn Sweet Weeks (hereafter 'Testator') execute her last will and testament. A copy of the last will and testament that I witnessed the Testator sign is attached hereto as Exhibit '1' (hereafter 'Will'). I affixed my signature as a witness to the last will and testament attached hereto as Exhibit '1'. The Testator subscribed the Will and declared it to be her last will and testament in my presence. I then subscribed the Will as a witness in the presence of the Testator and in the presence of the other witness, ISABEL PIRES CRUZ SANTOS, at the request of the Testator.

The Declaration of Isabel Pires Cruz Santos (1 ROA 79-84) is in substantially the same form and attached as an Exhibit to the Reply.

At the hearing on the *Petition*, the Probate Commissioner rejected each of Christy's arguments and recommended admission of the Will to probate in Nevada. At no point during the hearing did Christy argue that she was entitled to a will contest under NRS § Chapter 137. The Probate Commissioner did not rule on whether Christy was entitled to a will contest under NRS § Chapter 137 because Christy never raised the issue in briefing or in oral argument. (*See* Appendix 1-11, generally). Subsequent to the hearing on the *Petition*, a Report & Recommendation was filed on March 3, 2021 ("RAR" 1 ROA 93-101).

In the RAR, the Probate Commissioner concluded, as a matter of law, that, "Nevada law provides multiple provisions, under which an international will may be admitted to probate. These provisions are independent of one another. That is, even if a will may not be admitted by one provision, it may still be possible for it to be admitted by another." (1 ROA 96). Then the Probate Commissioner made legal conclusions as to specific statutes.

First, the Probate Commissioner concluded that the Will is admissible to probate under NRS § Chapter 133A , which governs international wills (1 ROA 96-97):

> In essence, an international will needs to be in writing, signed in the presence of two witnesses and signed by the testator. See NRS § 133A.060(1) – (5).
>
> In this instance, the will is in writing and signed by both the Decedent and two witnesses. The Will is also signed by a notary. The Will meets the requirements of NRS § 133A.060 and may be admitted to probate under that section.

Second, the Probate Commissioner concluded the Will is admissible under NRS § Chapter 133, which governs admission of wills to probate generally (1 ROA 96):

> Even if the Will is not admitted under NRS § CHAPTER 133A as an international will, it may still be admitted under NRS § 133. "The invalidity of the will as an international will does not affect its formal validity as a will of another kind." NRS § 133A.050(2).
>
> NRS § 133.040(1) provides that, "[n]o will executed in this State, except such electronic wills or holographic wills as are mentioned in this chapter, is valid unless it is in writing and signed by the testator, or by an attending person at the testator's express direction, and attested by at least two competent witnesses who subscribe their names to the will in the presence of the testator."
>
> The Will facially meets this requirement. However, to be admitted, the witnesses must sign a statement under penalty of perjury that, "that the testator subscribed the will and declared it to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory." NRS § 133.050(2).

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

Next, the Probate Commissioner addressed Christy's argument that the Will only disposed of property in Portugal: "As Christy's interpretation of the Disposition Clause would create partial intestacy, the Court chooses to construe it in favor of testacy. As such, the Court interprets 'in Portugal' as a modifier of 'actions' only." (1 ROA 99).

Further, the Probate Commissioner found that use of the term "universal heir" "clearly contemplates disposition of all of the decedent's property to the universal heir, without limit or exception." (1 ROA 100). The Probate Commissioner also noted that in the event Chris predeceased Marilyn, the residuary clause indicates Marilyn's daughter's, Christy and Kimberly "will be the heirs." (1 ROA 100). From the Probate Commissioner in the RAR (1 ROA 100):

> 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.

In conclusion, the Probate Commissioner made two recommendations in the RAR (1 ROA 101):

> 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.

At no point in the Recommendation did the Probate Commissioner make any ruling as to whether Christy was entitled to a will contest under

Christy filed her *Objection to Report and Recommendation* ("Objection to RAR" 1 ROA 116-122) on March 15, 2021. The Objection to RAR contained three specific objections:

Issue 1: "The Court should reject in whole the Special Master's recommendation that the last will and testament of Marilyn Sweet Weeks, dated May 3, 2006, be admitted to probate in Nevada under NRS § 133A, since it does not comply with the requirements of the statute." (1 ROA 122).

Issue 2: "The Court should reject in whole the Special Master's recommendation that the last will and testament of Marilyn Sweet Weeks, dated May 3, 2006, be admitted to probate in Nevada under NRS § 133, since the Court may only admit wills executed in the United States, unless they comply with NRS § 133A." (1 ROA 122).

Issue 3: "The Court should reject in whole the Special Master's recommendation that the last will and testament of Marilyn Sweet Weeks, dated May 3, 2006, be interpreted to dispose of assets outside of Portugal." (1 ROA 122).

The Court held a hearing on the Objection to RAR on April 15, 2021. At the hearing, after listening to oral argument, Judge Sturman offered the following analysis from the bench regarding **Issue 1** and **Issue 2** (Appendix at 21:9-22:8):

> With all due respect, you know, I have to look for errors of fact or law. This to me is pretty much purely a question of law. Even the interpretation of the language of Portuguese property. I think this is all a question of law. And I do not see an error on the part of the Commissioner here.
>
> I believe that this International Will Statute was intended to offer a mechanism by which – people who are ex-patriots [sic], people who own property in multiple – United States and some foreign country have some uniformity. But it wasn't meant to say this is the only way you can do it if you own property in the United States and other countries. So I agree with Mr. Grover there.
>
> I don't think the statute was intended to limit the way a person can dispose of their property in the United States and a foreign country. It's simply a way of hopefully having your intent recognized in that foreign country. I do not believe that the language of 133.080 – is it 080? What – whatever – was intended to say exclusively here. Because again I, I think the idea is, you want this to be as expansive as proper – as possible. And is this an otherwise valid Will? If we're just looking at this Will and saying, "It's just in Nevada or Maryland – wherever she was. Is this a valid Will? Is this – does this give away her property to her, her now spouse, then significant other? Is – does it have the – otherwise have the elements that make it a valid Will?

And it does. As I said, you know, those have been the elements of a Will since 1500.

As to **Issue 3**, Judge Sturman offered the following analysis

(Appendix at 22:8-23:12):

So then we get down to our final question is: Did the Commissioner make an error of law when he interpreted the language of the Will, expansively to say that she intended to dispose of her property to – as her universal heir, who was her heir to everything, including property in Portugal.

As opposed to Mr. Johnson's view that that is limiting language intended to say, "You're going to get what I have in Portugal; that's it." And I think he looked to the whole document as a whole and said: It appears that her intention was that it would go to him and if he doesn't survive her, all of the property goes to him. And if he doesn't survive her, all of her property goes to her daughters. Because it doesn't say: It's my intention that my property in Portugal go to my to my significant other. My property in the United States goes to my daughters. She could have said that and she doesn't.

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

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

At no point during the April 15, 2021 hearing did Christy ask for a will contest under NRS § Chapter 137. Nor did Christy argue for an NRS § Chapter 137 will contest in her Objection to RAR. Christy did not argue that the Probate Commissioner's RAR was in error for failure to recommend declaration of a will contest. Judge Sturman never ruled on whether Christy was entitled to a will contest under NRS § Chapter 137 *because Christy never raised the issue in front of the District Court, in briefing or oral argument*.

Similarly, Christy never challenged the Probate Commissioner's *sua sponte* research, re: "universal heir."

On July 14, 2021, the District Court signed an *Order Affirming Report and Recommendation, Admitting Will to Probate and to Issue Letters Testamentary* (hereafter "July 2021 Order"). The July 2021 Order affirmed the Report and Recommendation in its entirety. From the July 2021 Order (1 ROA 179):

> 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.

On appeal, Christy has combined **Issue 1** and **Issue 2** this way: "Can a will, executed in a foreign country and written in another language, be properly admitted to probate in Nevada when it fails to comply with the requirements of NRS § 133A?" Christy now takes the position that if a will executed outside of the United States cannot be admitted under NRS § CHAPTER 133A (international wills), it cannot be admitted under any other means, including NRS § CHAPTER 133(wills generally). (Opening Brief, at 7). In short, Christy has combined **Issue 1**, which deals with NRS § 133A, with **Issue 2**, which deals with NRS § 133.

Christy now frames **Issue 3**, as to application of the language of the Will, this way: "Is the general rule favoring testacy over intestacy a sufficient basis for disregarding the rules of grammar and revising the contents of a will?" It is worth noting here that Christy cited to no authority in the record that challenges or provides exceptions to the well-established rule to interpret a will to favor testacy over intestacy.

On appeal, Christy now raises a fourth issue, not raised in front of the Probate Commissioner or District Court, either in briefing or in oral argument. **Issue 4**: "Can a will be properly admitted to probate without first holding a trial pursuant to NRS § 137.020 when a written objection to a Petition for General Administration and Admittance to Probate contests

the validity of the will?" As noted above, Christy did not argue she was entitled to an NRS § Chapter 137 Will contest in her original Objection. At the hearing in front of the Probate Commissioner, she did not ask for a will contest to be declared. Consequently, the RAR did not include a ruling on whether to declare a will contest. Even so, Christy did not argue in her Objection to RAR that the RAR was in error for failure to declare a will contest. Nor, at oral argument on April 15, 2021, did Christy argue she was entitled to a will contest. Christy's argument that she is entitle to a will contest under NRS § Chapter 137 is raised for the first time on appeal.

VI. SUMMARY OF THE ARGUMENT

Issue 1: The District Court was correct to admit the Will to probate pursuant to NRS § 133.040 because it was signed by the testator, Marilyn Sweet Weeks, and two competent witnesses in the presence of the testator. Though the Will was executed outside the State of Nevada, the District Court correctly admitted the Will to probate because under NRS § 133.080, as long as the Will is properly signed and witnessed, it is "is of the same force and effect as if executed in the manner prescribed by the law of this State."

Issue 2: The District Court was correct to admit the Will to probate as an international will, pursuant to NRS § 133A.060 because the will is in writing (NRS § 133A.060(1)), was executed in the presence of two witnesses and an authorized person (NRS § 133A.060(2)-(3), (5)). Contrary to Christy's arguments, signing each page and producing a certificate does not affect the validity of an international will, so long as it complies with NRS § 133A.060, which the Will does. *See* NRS § 133A.070(1), NRS § 137.090.

Issue 3: The District Court was correct to interpret the Will as disposing of the entirety of the estate to Christopher Hisgen, the Hisgen and surviving spouse. The law favors testate interpretations of wills over intestate interpretations. The plain meaning of "universal heir" indicates that the entirety of the estate is to be distributed to the identified universal heir, the surviving spouse Hisgen. The broad residuary clause, operative only if Hisgen predeceased decedent spouse, is broad and

without limitation, which suggests that the entire estate was intended to be distributed to Hisgen.

Issue 4: This issue was raised on appeal for the first time. It has therefore been waived. Christy did not, at any point, argue in front of the Probate Commissioner or District Court that a will contest should be ordered pursuant to NRS § Chapter 137. Further, because Christy never issued citations, the District Court lacked personal jurisdiction and a will contest could not, and cannot, proceed.

VII. STANDARD OF REVIEW

Christy seeks to have the *entirety* of this appeal reviewed on under a *de novo* standard of review without giving distinction to the separate issues on appeal. The *de novo* standard of review applies *only* to legal arguments that the will does not conform to Nevada statutory provisions found in NRS § Chapter 133A nd/or NRS § 133A. "Statutory interpretation is a question of law which this court reviews de novo." Day v. Washoe County School Dist., 121 Nev. 387, 388, 116 P.3d 68, 69 (2005). However, the remaining issues raised by Christy—the translation of the Will (AOB 20-25) and the determination of material dispositive provisions (AOB 16)—have already

been reviewed and considered by the District Court. Christy makes a factual argument about the use of Portuguese modifiers, (AOB 17-18), that the District Court has already considered and ruled on in favor of Hisgen Chris Hisgen. (Joint Appendix, 007). Similarly, the lower court heard and ruled on arguments about the plain language dispositive provisions of the Will. (Joint Appendix, 034). These are factual issues, not questions of law. The District Court considered and ruled on these factual issues. Accordingly, the standard of review for as to translation of the Will must be *clear error*. This Court should give deference to the trier of fact absence clear error, a much higher standard than *de novo*.

The Nevada Supreme Court has stated that a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by *substantial evidence*." Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009), Emphasis added. Furthermore, the factual determinations of a trial court sitting without a jury "will not be disturbed on appeal where supported by substantial evidence." Dickstein v. Williams, 93 Nev. 605, 608, 571 P.2d 1169, 1171 (1997). Additionally, clear error must be so "unmistakable" that even a "casual inspection of the record" would make it manifest. LaChance v. State, 130 Nev. 263, 271, 321 P.3d 919, 925 (2014) (citing Saletta v. State, 127 Nev. 416, 421, 254 P.3d 111, 114 (2011).

Christy avoids the distinction between the standard of review for legal questions (de novo) and factual questions (clear error) because Christy's cannot establish clear error on the factual questions raised.

In this case, the District Court considered and ruled on factual questions regarding the scope of dispositive portions of the Will. (R. 97-101). Deference must be given, absent clear error. Furthermore, despite Christy's argument against Commissioner Yamashita's "universal heir" research and findings, these conclusions are nonetheless factual conclusions and should likewise be reviewed under a clear error standard. Nonetheless, Christy failed to challenge the Commissioner's *sua sponte* research before Judge Sturman, (Joint Appendix, 012-036), and this argument has been waived.

VIII. LEGAL ARGUMENT

VI. Overview

There are multiple paths the District Court could have, and did rely on, to admit the Will to probate. The District Court was correct to admit the Will as a foreign will under NRS § CHAPTER 133A (admission of foreign wills, **Issue 1**). Independently and alternatively, the District Court was correct to admit the Will under the standard provisions of NRS § CHAPTER 133(**Issue 2**, admission of wills, generally). For this Court to reverse on the

issue of admission of the Will to probate entirely, it would have to find that, as a matter of law, the District Court committed clear error as to both NRS § Chapter 133A and NRS § 133. If the District Court was correct to admit the Will under NRS § Chapter 133A or NRS § 133, this Court must affirm the decision below.

VII. Issue 1 (Application of NRS § 133A)

a. Background on Nevada's Adoption of the Uniform International Wills Act

NRS § 133A, Uniform International Wills Act (NRS § 133A.010), provides a mechanism to admit an international will to probate, regardless of whether it would otherwise qualify as a will under the standard provisions of NRS § Chapter 133. Nevada has adopted the Uniform International Wills Act (UIWA), which was the product of a 1973 international convention.[2]

> In 1973 in Washington, D.C., the International Institute for the Unification of Private Law (UNIDROIT) held the Convention Providing a Uniform Law on the Form of an International Will. The Washington Convention was held in hopes of creating an international will that would make estate planning with international ramifications more straightforward and uncomplicated. **The Convention did not and has not attempted to revoke or override the laws of signatory nations.** It merely seeks to create a system of estate planning for those individuals who hold property

[2] https://www.unidroit.org/instruments/international-will (1 ROA 135).

> and assets in a nation or nations other than their domiciliary country.[3]

Although the Convention was ratified by the United States Senate in 1991, Adoption of the UIWA in the United States has occurred on a state-by-state basis because under the American federal system, states, not the federal government, have sovereignty over issues related to the creation of testamentary documents.

NRS § 133A.050(1) provides that, "[a] will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the requirements of this chapter."

Regarding Nevada's adoption of the Uniform International Wills Act, the Nevada Legislative Counsel's Digest notes:

> This bill enacts the Uniform International Wills Act, which was promulgated by the National Conference of Commissioners on Uniform State Laws in 1973 and was intended to provide testators with a way of making wills that would be valid as to form in all states adopting the uniform act and all countries joining the Washington Convention of 1973.

2009 Nevada Laws Ch. 73 (S.B. 141).

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[3] "Estate Planning with Foreign Property," April 3, 2019, American Bar Association, (1 ROA 164-168) Emphasis added.

Moreover, in the adoption of the Uniform International Wills Act, the Nevada Assembly Committee on Judiciary held the following discussion:

> **Senator Care:**
>
> . . . To help clarify this a little bit so the Committee understands, if you already have a will, you can convert it into a so-called international will by going through the formalities here. That is the basic idea. Section 6 states that the will [will] be valid regardless of form. It does not matter about the location of the assets, nationality, domicile, or residence of the testator – that is the person who makes the will – so long as the formalities are observed. ***The invalidity of the will as an international will does not affect its formal validity as a will of another kind***. Let us say that you do not observe some of the formalities: it may be that you have handwritten the will; you may be in a country where they recognize a holographic will, where somebody writes out a will and there is no witness. Just because it is not valid as an international will does not necessarily mean that it would not be a valid will under the law of the other jurisdiction.

NV Assem. Comm. Min., 4/15/2009 (emphasis added).

Thus, the advantage in making an "international will" is to ensure that the will is recognized as a will in ***any*** jurisdiction that has adopted the Uniform International Wills Act irrespective of that jurisdiction's specific requirement for making a valid will. However, just because a will may not qualify as an "international will" does not mean that it can never be admitted to probate.

b. NRS § 133A.060(2) – Requirements for Admission as an International Will

A will may be admitted as an "international will" if the following criteria are met under NRS § 133A.060:

1. The will must be made in writing. It need not be written by the testator. It may be written in any language, by hand or by any other means.
2. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the testator's will and that he or she knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.
3. In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge his or her signature.
4. [Not applicable because the Decedent personally signed the Will].
5. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Of the six requirements in NRS § 133A.060, Christy only disputes that subsection 2 is not met. Specifically, Christy argues the District Court erred as a matter of law when it admitted the Will as an international will. According to Christy, there was no "authorized person" who witnessed execution of the Will: "There is no indication that [the Will] was witnessed or signed by an 'authorized person.' Although the Will was signed by a Portuguese Notary, that does not constitute an 'authorized person' under Nevada law. Thus, the Will fails to comply with the initial requirement of NRS § 133A.060(2)." (Opening Brief, at 11).

The formal definition of an "authorized person" is found in NRS § 133A.030 which defines an "authorized person" as "a person who, by NRS § 133A.120, or by the laws of the United States, **including** members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills." Importantly, the definition of "authorized person" is *inclusive* members of the diplomatic and consular service, not *exclusive*.

Isabel Pieres Santos satisfies the requirement for certification by an "authorized person." "The 'authorized person' referred to in the UIWA is limited to individuals who have been admitted to practice law and are currently licensed to do so before the courts of the state where the Will was signed."[4] In this instance, Isabel Santos satisfies that requirement. She is admitted to practice law in Portugal. She has provided a declaration certifying the validity of the Will under Portuguese law, as discussed above.

Nevada state law allows for the recognition of foreign notarial act. Specifically, NRS § 241.165 recognizes the notarial acts of foreign officials "under the laws of [Nevada] as if performed by a notarial officer of [Nevada] if performed within the jurisdiction of and under authority of a

[4] "Estate Planning: Principles and Problems," at pg. 261, by Wayne M. Gazur and Robert M. Phillips.

foreign nation . . . .” Furthermore, “[a] notary public” is the first listed example of a recognized official. NRS § 240.165(1)(a). Because the notary in Portugal, Joaquim Augusto Lucas de Silva, was authorized with the authority to notarize wills (I ROA 14-15, 17) and did so in the authorizing country, (1 ROA 12), he is considered as a person “empowered to supervise the execution of international wills.” NRS § 133A.030.

c. NRS § 133A.070(1) Doesn’t Require a Signature on Every Page Where the Will Complies with NRS § 133A.060

Christy argues the District Court erred admitting the Will to probate as a foreign will for failure to comply with NRS § 133A.070(1). “Furthermore, the Will consists of two sheets. 1 ROA 10–11. However, the Decedent only signed at the end of the Will, and did not sign each page as required by NRS § 133A.070(1).” (Opening Brief, 11).

In addition to other requirements not in dispute, NRS § 133A.070(1) requires that “If the will consists of several sheets, each sheet must be signed by the testator…” However, Christy overlooks subsection four of the same statute. NRS § 133A.070(4): “A will executed in compliance with NRS § 133A.060 is not invalid merely because it does not comply with this section.” As the Will does comply with NRS § 133A.060, as discussed

immediately above, whether or not the Will complies with NRS § 133A.070(4) is moot.

d. A NRS § 133A.080 Certificate Isn't a Prerequisite to Validity

Christy argues the District Court erred admitting the Will to probate as a foreign will based on NRS § 133A.080: "Finally, there is no certificate establishing that the Will was validly executed in accordance with the provisions of the International Will, as mandated by NRS § 133A.080." (Opening Brief, at 11). NRS § 133A.080: "The authorized person shall attach to the will a certificate to be signed by him or her establishing that the requirements of this chapter for valid execution of an international will have been complied with." However, "[t]he absence or irregularity of a certificate does not affect the formal validity of a will under this chapter." NRS § 133A.090. Thus, like the issue of a signature on each page, discussed immediately above, the issue is moot.

e. UNIDROIT Commentary

Much of Christy's Opening Brief makes argument about the origins of NRS § CHAPTER 133A as a uniform law. Christy raises these arguments for the first time on appeal. Christy cites to a "study" that isn't law, and which should be ignored. Christy's argument that a Portuguese will is invalid if it doesn't name adult children as beneficiaries is made for the first time on

appeal, is unsupported by any actual legal authority and ignores the fact that the Will names Kimberly and Christy as alternate beneficiaries in the event that Hisgen predeceased Marilyn.

VIII. Issue 2 (Application of NRS § 133): The Will is Independently Admissible Under NRS § Chapter 133.

c. Admissibility Generally

Even if the Will had not been admissible as an international will under NRS § 133A, which it was, the District Court was correct to conclude, as a matter of law, that the Will is also admissible under NRS § 133A.

Under NRS § 133.040, a will executed in Nevada is valid if it (1) "is in writing and signed by the testator," and (2) "attested by at least two competent witnesses who subscribe their names to the will in the presence of the testator."

Christy does not dispute that the Will facially meets these requirements. Indeed, the Will has two subscribing witnesses, Isabel Pires Cruz Santos and Gilda dos Santos Barradas. On top of that, the Will is notarized by Joaquim Augusto Lucas de Silva.

d. Admissibility of a Foreign Will

Rather, Christy argues that because the Will was executed outside the State of Nevada, the District Court committed legal error by admitting it to probate.

A Will does not need to be executed in Nevada to be admitted to probate in Nevada. NRS § 133.080(1) governs admission of foreign wills to probate:

> Except as otherwise provided in chapter 133A of NRS , if in writing and subscribed by the testator, a last will and testament executed outside this State in the manner prescribed by the law, either of the state where executed or of the testator's domicile, shall be deemed to be legally executed, and is of the same force and effect as if executed in the manner prescribed by the law of this State.

Christy focuses on "except as otherwise provided in Chapter 133A of NRS ," to argue that a will that falls within the scope of NRS § CHAPTER 133A cannot be admitted under NRS § 133.[5] Marilyn's will is admissible under NRS § CHAPTER 133 because the will was duly executed under the laws of Portugal wherein the will was executed. (R. 74). Furthermore, even if NRS § 133.080 were to apply only to wills "made in other states or wills made in countries that have not adopted the UNIDROIT International Will [Act]" as argued by Christy, (Opening Brief, 14), Marylin's last will and testament is nonetheless valid because it conforms to the laws of Maryland, wherein she was domiciled at the time of her death (R. 138). NRS § 133.080

[5] "The plain language of NRS 133.080 is properly interpreted as saying: this statute applies to all wills executed outside the State of Nevada, except for international wills governed by the provisions of NRS 133A. This interpretation would apply to wills made in other states or wills made in countries that have not adopted the UNIDROIT International Will." (Opening Brief, at 14).

recognized wills that are valid in the testator's domicile. Marylin's will is therefore admittable under NRS § CHAPTER 133 because not only does it conform to the requirements of NRS § CHAPTER 133A as referenced in the execution of foreign wills in NRS § 133.080, but it also stands the test of validity in the state of Maryland, Marilyn's domicile at her death, and is therefore admissible under NRS § 133.080 "as if executed in the manner prescribed by the law of this State." NRS § 133.080.

Further, As noted above, the purpose of the Uniform International Wills Act is to provide an international protocol by which wills of one jurisdiction may be recognized by another. The UIWA is not intended to supplant the existing law of the jurisdiction. In fact, NRS § 133A.050(2) is explicit: "The invalidity of the will as an international will does not affect its formal validity as a will of another kind."

Christy argues that because NRS § 133.040 refers to requirements as to the validity of wills "executed in this State," the same means that an international will may not be admitted under NRS 133. (Opening brief 12). This is incorrect for two reasons. First, the inclusion of NRS § 133.080 governing the execution of foreign wills within NRS § CHAPTER 133suggests that the Nevada legislature did indeed intend for internationally executed wills to be recognized and admitted to Nevada

probate subject to certain requirements. Second, even if the Nevada legislature did not intend for internationally executed wills to be admissible directly under NRS § 133, the very same chapter incorporates the means whereby international wills may be admitted to Nevada probate through internal reference to NRS § 133A, and Marilyn's will conforms to the requirements of NRS § CHAPTER 133A as analyzed in the above section.

Because Marilyn's will conforms to the admission requirements of Portugal, Maryland, and NRS § 133A's requirements for international wills, it is admissible under NRS § 133.

Marilyn has advanced the theory that "state" within the meaning of NRS § 133.080 refers only to one of the 50 United States. This argument is unavailing for several reasons. Neither NRS § CHAPTER 133nor NRS § 132 defines "state". The American use of the word "state" is a reflection that sovereignty of the government does not reside with the national (federal) government but with the 50 regional governments. "State" then, is the government where sovereignty resides. The American concept of federalism is an anomaly internationally where "state" is generally a reference to the national government, not a regional government.

Indeed, in a legal context, "state" has been defined as follows:

> 1) A body of people that is politically organized, especially one that occupies a clearly defined territory and is sovereign. 2) The political

> system that governs such a body of people. 3) One of the constituent parts of a nation, as in any of the 50 states.[6]

Thus, both Portugal and Nevada (or any of the other 49 United States) are properly referred to as "states" in a legal context. Portugal is "[a] body of people that is politically organized, especially one that occupies a clearly defined territory and is sovereign." Portugal is a "state" within the meaning of NRS § 133.080. As such, this Court should admit the Will pursuant to NRS § 133.080 as it is valid under the laws of Portugal, a state.

IX. Issue 3 (Application of the Language of the Will): The District Court Did Not Commit Clear Error When it Applied the Plain Language of the Will and Rule Favoring Testacy

Christy asks this court to find legal error in the Court's conclusion that the will disposed of all estate assets in favor of Chris Hisgen.

a. Christy Asks This Court to Ignore the Rule of Interpretation Favoring Testacy over Intestacy

Christy argues the Will should be interpreted to only apply to assets in Portugal, which violates the rule to interpret wills in favor of testacy.[7]

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[6] "State" Wex Legal Dictionary, retrieved 9 May 2021 from https://www.law.cornell.edu/wex/state#:~:text=Definition%20from%20Nolo's%20Plain%2DEnglish,such%20a%20body%20of%20people.

[7] "Here, the lower courts were tasked with interpreting a Portuguese will and determining if it disposed of all of Decedent's property regardless of its location, or if it disposed of only those assets located in Portugal. Appellant contends that the plain language of the Will clearly shows that it is intended to devise only property located in Portugal" (Opening Brief, 16).

This is particularly significant because both parties agree the only known asset of the Estate is real property in Nevada.

"The rule is that a will must be construed according to the intention of the testator, and so as to avoid intestacy." Estate of Baker, 131 Cal. App. 3d. 471 (1982). "The rule of wills construction that favors testacy over intestacy makes courts prefer holding a will absolute, if it is possible to construe questionably conditional language as the testator's motivation to write a will." Mason v. Mason, 268 SE 2d. 67, 68 (1980); *See also* National Bank of Commerce v. Wehrle, 124 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 Desmond's Estate, 35 Cal.Rptr. 737, 223 C.A.2d 211, 1 A.L.R.3d 1043 (1963); Vaught v. Vaught, 247 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).

Christy attempts to avoid the rule in favor of intestacy, by invoking, for the first time arguments against the Rule of the Last Antecedent. Christy concedes she did not argue the "Rule of the Last Antecedent" below.[8] As

[8] "Although not specifically stated or discussed in the proceedings below, it appears that the lower courts applied the so-called "rule of the last antecedent…" (Opening Brief, at 17).

noted elsewhere in this brief, arguments not made on the record below are waived. Christy cites to authority, for the first time, which limits application of the Rule of the Last Antecedent to statutes. In Lockhart v. United States, 577 U.S. 18 347, 351, 136 S. Ct. 958, 963, 194 L. Ed. 2d 48 (2016), the United States Supreme Court interpreted 18 U.S.C. § 2252(b)(2), a federal criminal sentencing statute regarding the possession of child pornography, not the terms of a will. Similarly, Paroline v. United States, 572 U.S. 434, 447, 134 S.Ct. 1710, 1721, 188 L.Ed.2d 714 (2014) addresses interpretation of another federal criminal statute which addresses restitution for trafficking child pornography. *This matter* involves interpretation of a will, and this Court, like the District Court, is therefore bound by the imperative to interpret in favor of testacy.

Christy's interpretation of the Will would render all property, real and personal, outside Portugal intestate. Christy acknowledges that "[t]he Decedent's estate is comprised of one parcel of real property—a home bearing APN 139-32-403-004 (the "House")—estimated to be worth approximately $530,000.00 at the time of Decedent's passing. Record on Appeal, Vol. 1 '1 ROA')" (Opening Brief, at 2). If this Court finds that the District Court committed clear error in its interpretation of the terms of the Will, the actual effect is total intestacy as there are no known assets in

Portugal. Christy provides no compelling reason why the District Court committed clear error when it interpreted the Will in favor of testacy, particularly where the only known asset is Nevada real property.

Similarly, Christy argues, for the first time that supposed differences between the Piotrowski translation and Santos translation justify reversing the District Court. Whether an oxford comma was properly or improperly included is not a basis to find clear error and reverse and remand. Christy further argues that "[t]he modifier 'in Portugal,' can easily be applied to all of those nouns without requiring what the U.S. Supreme Court referred to as heavy lifting." (Opening Brief, at 24). However, while modifying all nouns may not be "heavy lifting" involving child pornography criminal statutes, it certain is "heavy lifting" in this matter. First, it is "heavy lifting" because it requires this Court to favor partial intestacy over testacy, but which is functionally full intestacy. Second, Christy asks "heavy lifting" of this Court as her interpretation requires this Court to ignore both the plain meaning and European civil law meaning of "universal heir." As noted elsewhere in this brief, that language conveys a clear intention to convey the entire universe of the estate to Hisgen. Finally, it is "heavy lifting" to ask this Court to construe Hisgen's interest narrowly by modifying all nouns, while ignoring the fact that the residuary clause which names Christy and

Kimberly as alternative beneficiaries is expansive and without limitation. One wonders how Christy would interpret the Will if Hisgen predeceased Marilyn and Christy's interests were adverse to an intestate heir. Christy is asking this Court to do *a lot* of "heavy lifting."

b. Universal Heir

i. The plain meaning of the term "universal heir" favors of disposing of all Estate property pursuant to the will.

It is not in dispute the language of the Will purports to establish Hisgen as the **universal heir**. Merriam-Webster defines "universal" as "including or covering all or a whole collectively or distributively **without limit or exception**."[9] In other words, it appears that the Decedent desired for the Will to establish Hisgen as the universal heir of all her property, which would necessarily be without limit or exception.

ii. Christy's interpretation of the modifier "in Portugal" produces an absurd result, a narrow interpretation of Hisgen's interest and a broad interpretation of the residuary

Christy's interpretation would leave a logical hole in the will. The Will also, provides that, "Should [Hisgen] have already died, on the date of her

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[9] https://www.merriam-webster.com/dictionary/universal?src=search-dict-hed Emphasis added.

death, Kathryn Kimberly Sweet… and Christy Kay Sweet… will be her heirs." Obviously, this provision contains no language that could be construed as limiting distribution to assets in Portugal. Christy would have this Court believe that the clause naming Hisgen as the "universal heir" is limited to assets in Portugal, while the residuary clause has no such limitation.

The "universal heir" would receive a narrow (likely nonexistent) estate, while the residuary would be expansive and universal, an absurd result. 1 ROA 70.

iii. Christy failed to make any argument or objection to the application of "universal heir" based on the Probate Commissioner's *sua sponte* research in the District Court below and cannot make new arguments on this point for the first time on appeal.

The Probate Commissioner, sua sponte, conducted research as to the meaning of "universal heir" in European civil codes. Those legal conclusions were included in the Report and Recommendation. The Probate Commissioner concluded that the term "universal heir" "clearly contemplates disposition of all of the decedent's property directly to the universal heir, without limitation or exception." (1 ROA 100).

While Christy did make argument in her Objection to RAR as to whether "in Portugal" was a modifier, at no point did she challenge the

Probate Commissioner's legal conclusions that came from his *sua sponte* research. At the April 15, 2021, hearing on her Objection to RAR, Christy did not make any oral argument challenging the Probate Commissioner's sua sponte research. Now, for the first time on appeal, Christy argues "[t]he lower courts concluded, without proper argument or briefing, that the term 'universal heir' was a concept that indicated the Will was intended to apply to all of Decedent's assets, worldwide, regardless of the 'in Portugal' modifier. This conclusion is incorrect and should be reversed." (Opening Brief, 26). It isn't true that the District Court accepted the Report and Recommendation as to the application of "universal heir" "without proper argument or briefing." Christy filed an objection to the Report and Recommendation and chose to not challenge the Probate Commissioner's analysis and conclusions as the meaning and application of "universal heir." Again, at the April 15 hearing, Christy chose to not make any argument challenging the Probate Commissioner's "universal heir" conclusions. Christy complains that the Probate Commissioner's "improper interpretation is based, in part, on the Probate Commissioner's sua sponte research, which appears to have not uncovered the GoInEU Case Study cited herein." The reason the District Court didn't consider the supposed "GoInEU Case Study" is because Christy didn't present or raise it for

consideration in the proceedings below. She cannot raise these arguments for the first time on appeal.

X. Issue 4 (Request for Will Contest): Christy failed to raise the issue of a will contest under NRS § Chapter 137 below, deprived the District Court of jurisdiction by failing to issue citations and isn't entitled to an evidentiary hearing even in the absence of those defects.

Christy argues for reversal and remand because the District Court did not proceed with a will contest under NRS § Chapter 137: "The lower courts committed reversible error by failing to hold a trial of contest to test the validity of the Will. Accordingly, the order adopting the Probate Commissioner's Report & Recommendation should be reversed and this matter should be remanded for a trial in accordance with NRS § 137.020." (Opening Brief, 28).

a. Christy waived any argument regarding NRS § 137 by failing to make the argument in the District Court proceedings

As noted above, Issue 4, whether the District Court should have

> A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal. It was incumbent upon Christy to direct the trial court's attention to its asserted omission to mention the counterclaim expressly in its judgment.

Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52-53, 623 P.2d 981, 983-84 (1981) quoting Britz v. Consolidated Casinos Corp., 87 Nev. 441, 447, 488

P.2d 911 (1971); Harper v. Lichtenberger, 59 Nev. 495, 92 P.2d 719 (1939). "This court does not consider issues raised for the first time on appeal." Hewitt v. Allen, 43 P.3d 345, FN6 (Nev. 2002).

b. The District Court lacks jurisdiction to proceed with a will contest

Even if Christy had raised NRS § Chapter 137 arguments before the District Court, which she didn't, the issue is now moot as the District Court lacks jurisdiction to proceed with a will contest.

In order to preserve the right to a will contest, the contestant must do more than simply file an objection with the District Court. "Personal notice must then be given by a citation directed to the heirs of the decedent and to all interested persons, including minors and incapacitated persons, wherever residing, directing them to plead to the contest within 30 days after service of the citation in the manner provided in NRS § 155.050." NRS § 137.010(1). Consistent with failing to raise any arguments, at any stage regarding NRS § Chapter 137, Christy did not issue citations pursuant to NRS § 137.010(1). That failure is fatal to the ability to proceed with a will contest, even if Christy had attempted to invoke NRS § Chapter 137 below, which she did not.

In In re Estate of Black, 367 P.3d 416, 418 (2016), in which undersigned counsel represented the prevailing Christy, this Court addressed the critical role a citation plays in a will contest:

> A citation in a will contest is equivalent to a civil summons in other civil matters. See In re Estate of Kordon, 157 Wash.2d 206, 137 P.3d 16, 18 (2006). As defective service of process deprives a court of personal jurisdiction, see Gassett v. Snappy Car Rental, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995), superseded by rule on other grounds as stated in Fritz Hansen A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 654-56, 6 P.3d 982, 984-85 (2000), so too does a failure to issue citations in a will contest, see In re Estate of Kordon, 137 P.3d at 18 (holding that a "failure to issue a citation deprives the court of personal jurisdiction over the party denied process"); see also 95 C.J.S. Wills § 578 (2011) ("A court acquires personal jurisdiction over an adverse party to a will contest by issuance of a citation. A will contestant's failure to issue a citation on the decedent's personal representative deprives the court of personal jurisdiction over the personal representative.").

As Christy in this matter failed to issue citations, the District Court was, and is, deprived of personal jurisdiction for a will contest. Therefore, even if Christy hadn't waived this argument, this Court cannot remand to the District Court for a will contest because the failure to issue citations deprived the District Court of personal jurisdiction.

c. There Is No Factual Issue to Resolve in A Will Contest

Notwithstanding the failure to raise NRS § Chapter 137 arguments below, and the absence of personal jurisdiction resulting from the failure to

issue citations, a will contest cannot proceed unless there is a factual issue to resolve. Here, there are no factual issues to resolve.

NRS § 137.020(2) provides that,

> An issue of fact involving the competency of the decedent to make a will, the freedom of the decedent at the time of the execution of the will from duress, menace, fraud or undue influence, the due execution and attestation of the will, or any other question substantially affecting the validity of the will, must be tried by the court unless one of the parties demands a jury.

In a Contest of Wills, NRS § 137.040 requires witnesses to be brought to testify to the validity of the will. However, the witnesses must be "present *in the county* and…of sound mind" as a prerequisite to be required to be "produced and examined" for live testimony. In the event that witnesses are not in the county, as in this matter, NRS § 136.160(1) provides as follows:

> Any or all of the attesting witnesses to any will may, after the death of the testator and at the request of the executor or any interested person, make and sign an affidavit stating such facts as a witness would be required to testify to in court to prove the will. **The sworn statement of any witness so taken must be accepted by the court as if it had been taken before the court.**

That is what happened in this matter. Declarations have been provided from the subscribing witnesses. Those declarations must be treated as though they were taken in live court. Given the presence of the declarations in the record, and the absence of the witnesses from the county, there are no factual issues to resolve. In any event, the issue is moot

as Christy did not raise any issues regarding NRS § Chapter 137, and, fatally, never issued citations.

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CERTIFICATE OF CCOMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4)– (7) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010, font size 14-point, Georgia, and contains 10,005 words, excluding those parts exempted by NRAP 32(a)(7). Finally, I hereby certify that I have read this appellate 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, including NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. I understand that I may be subject to sanctions if the accompanying brief is

not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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