IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF DEMETRIOS A. DALACAS, DECEASED.	No.: 83702 Dist. Court Case No.: P103708
RYAN MCCLARAN, Appellant, vs. ESTATE OF DEMETRIOS A. DALACAS; AND JASEN E. CASSADY, Respondents.	

REPLY IN SUPPORT OF MOTION FOR CLARIFICATION

COMES NOW, Jasen E. Cassady, as Special Administrator (hereafter "Special Administrator") of the ESTATE OF DEMETRIOS A. DALACAS (hereafter "Estate") by and through his attorney, Thomas R. Grover, Esq., of the law firm of Blackrock Legal, LLC, and hereby submits this *Reply in Support of Motion for Clarification* on the grounds set forth in the Points and Authorities herein, any exhibits attached hereto, and any papers or pleadings on file with this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND

The Appellant is in agreement that clarification is necessary. "McClaran frankly agrees with Mr. Cassady that this Court's December 17, 2021 Order may need some clarification."[1]

The District Court has only signed and entered **one order** relating to the appointment of Jasen Cassady, the *Order Affirming Probate Commissioner's Report and Recommendation, Appointing Jasen Cassady as Special Administrator* (DocID #51

[1] Response, at pg. 2 ¶ 2.

hereafter ").[2] Yet, this Court's December 17, 2021 Order (hereafter "December 17 Order") refers to two different orders.

LAW AND ARGUMENT

A. McClaran mis-states Nev. Paving v. Callahan, 83 Nev. 208, 427 P.2d 383 (1967)

McClaran states his position:

> McClaran's counsel openly confesses that the applicable statutes concerning appeals from probate proceedings do not appear to clearly delineate what procedure is available to contest a District Court order appointing a Special Administrator, especially one that is not anticipated to be a short or limited duration as we have in this case. The root cause of this confusion is the clear statutory conflict between NRS § 140.020(3)(b) [providing for no appealability] and NRS § 155.190 [providing for appealability of an order "[g]ranting or revoking letters testamentary or letters of administration"].[3]

There is no conflict between the statutes, which is why clarification of the December 17 Order is a straightforward matter. McClaran argues that the legal question of whether there is a conflict between NRS 140.020(3)(b) and NRS 155.190(1) is unresolved. According to McClaran, "[t]he Supreme Court last addressed this issue over 50 years ago in Nev. Paving v. Callahan, 83 Nev. 208, 427 P.2d 383 (1967), yet some uncertainty over how the statutes are to be applied persists…"[4]

> **NRS § 140.020 Notice and order of appointment; order not appealable.**
>
> 1. The appointment of a special administrator may be made at chambers or in open court, and without notice or upon such notice to such interested persons as the court deems reasonable, and must be made by entry upon the minutes of the court or by written order signed

[2] Attached as Exhibit "2" to the underlying Motion.

[3] Response, at pgs 1 ¶ 1—2 ¶ 1.

[4] Response, at pg. 2 ¶ 1.

and filed, which must specify the powers to be exercised by the special administrator.

2. Upon the filing of the order, and after the person appointed has given bond if fixed by the court, the clerk shall issue special letters of administration, with a copy of the order attached.

3. In making the appointment of a special administrator, the court:

(a) Must appoint a person who satisfies the qualifications set forth in NRS 139.010; and

(b) May give preference to the person or persons entitled to letters testamentary or letters of administration, but no appeal may be taken from the appointment.

NRS 155.190 Appealable orders.

1. Except as otherwise provided in subsection 2, in addition to any order from which an appeal is expressly permitted by this title, an appeal may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after the notice of entry of an order: (a) Granting or revoking letters testamentary or letters of administration.

More from McClaran:

> In that [December 17] Order, the Supreme Court seemed to be revising or expanding on its holding in Nev. Paving v. Callahan and stating that McClaran's appeal is proper because, while the Order Appointing Special Administrator is not appealable under NRS § 140.020(3)(b), the issuance of the actual Letters of Special Administration themselves are appealable under NRS § 155.190.[5]

The crux of McClaran's argument is that NRS 140.020(3)(b) and NRS 155.090(1)(a) are in conflict because one says an appointment order may be appealed and the other does not. However, a careful reading of these statutes makes clear that there is no conflict.

Nevada Paving left no uncertainty, contrary to McClaran's argument. In Nevada Paving, the Washoe County Public Administrator was appointed Special Administrator of the Estate of Valentina Khochtaria. The Special Administrator brought a wrongful death

[5]

action on behalf of the Estate. "The defendants [from the wrongful death action] filed a motion in the estate proceedings for an order vacating, annulling, and setting aside the appointment of [Public Administrator] Callahan as special administrator. After a hearing the motion was denied, from which denial the defendants have appealed."[6]

The Defendants in the wrongful death action in Nevada Paving made the same argument that McClaran now makes:

> NRS 140.020 expressly states that there shall be no appeal from an order appointing a special administrator, and Callahan reasons that it follows that an order refusing to vacate the appointment of a special administrator is likewise not appealable. In opposition to the motion Nevada Paving and Curtis relied upon NRS 155.190(1) which allows an appeal to this court from an order granting letters of administration.[7]

This Court rejected this argument when the Defendants in the wrongful death action made it in Nevada Paving. This Court should reject it again now that it is made by McClaran in this appeal.

More from Nevada Paving:

> It may appear that the mentioned statutes are in conflict. However, we do not think so. We read NRS 155.190(1) to have reference to letters of general administration and NRS 140.020 to apply only to letters of special administration and therefore not in conflict with each other.[8]

In simpler terms, a *Special Administrator* and an *Administrator* are not the same. The definition of each, found in Chapter 132 of Nevada Revised Statutes, confirms as much.

> **NRS 132.315 "Special administrator" defined.** "Special administrator" means a personal representative appointed pursuant to chapter 140 of NRS.

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[6] Nevada Paving, at 384.

[7] Nevada Paving, at 384.

[8] Nevada Paving, at 384.

(Added to NRS by 1999, 2253)

NRS 132.040 "Administrator" defined. "Administrator" means a person not designated in a will who is appointed by the court to administer an estate.
(Added to NRS by 1999, 2249)

An Administrator is a person generally appointed, as described in NRS 155. A Special Administrator is appointed pursuant to Chapter 140. Thus, there is not a conflict, as McClaran claims. As such, it is reasonable that different rules apply to the appealability of each different type of appointment. The appealability of appointment a Special Administrator is governed by NRS 140.020 while the appealability of an administrator is governed by NRS 155.190.

This Court, in Nevada Paving, continues:

> It makes sense to so construe those statutes for letters of general administration are issued only after notice, an opportunity to be heard and the resolution of a possible contest. On the other hand, letters of special administration may be issued ex parte without notice and are in many instances designed to cover emergent situations. Realizing this it becomes apparent why the legislature thought it best to provide for an appeal from an order granting letters of general administration but refused that remedy from an order granting special letters. We hold, therefore, that the present appeal from an order refusing to set aside the appointment of Callahan as special administrator is not an appealable order, and grant the motion to dismiss this appeal.

Contrary to McClaran's position, there is no conflict between NRS 140.020(3)(b) and NRS 155.190(1). It is not true that "some uncertainty over how the statutes are to be applied persists…"[9] In fact, this Court could not have been more clear in Nevada Paving. NRS 140.020(3)(b) and NRS 155.190(1) are "not in conflict with each other."[10] Where in

[9] Response, at pg. 2 ¶ 1.

[10] Nevada Paving, at 384.

that language is an unresolved issue? Indeed, this Court was similarly clear in the December 17 Order: "no appeal lies from the order appointing special administrator."[11]

NRS 140.020(3)(b) explicitly states that "no appeal may be taken from the appointment" of a *Special Administrator*. In contrast, NRS 155.190(1)(a) explicitly allows a party to appeal an order "Granting or revoking letters testamentary or letters of administration."

B. Canons of Statutory Construction Support there is No Conflict Between NRS 140.020(3)(a) and NRS 155.190(1)(a)

Multiple statutory constructions adopted by Nevada courts apply directly to the interpretation of NRS 140.020(3)(a) and NRS 155.190(1)(a). Nevada courts only have the "right and the duty … to interpret the [legislative] document" not "to rewrite the words."[12] Each canon of construction below illustrates that no conflict exists between NRS 140.020(3)(a) and NRS 155.190(1)(a).

i. Avoiding Conflict Canon

First, this Court has held "when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems."[13] By differentiating Administrators from Special Administrators, NRS 140.020(3)(a) and NRS 155.190(1)(a) Nevada Paving interprets in a way to avoid conflict.

ii. Specific/General Canon

[11] December 17, 2021 Order, at pg. 2:3-4.

[12] Doe Dancer I v. La Fuente, Inc., 137 Nev. Adv. Op. 3, 481 P.3d 860, 872 (2021).

[13] Degraw v. Eighth Judicial Dist. Court, 134 Nev. 330, 333, 419 P.3d 136, 139 (2018) (internal quotations omitted).

Next, Nevada courts have also adopted construction that distinguishes between specific and general canons and those specific statutes take precedent over general ones. "[I]t is an accepted rule of statutory construction that a provision which specifically applies to a given situation will take precedence over one that applies only generally."[14] Whenever possible, Nevada courts will interpret a rule or statute in harmony with other rules or statutes.[15] NRS 140.020(3)(a) explicitly forbids appeals of appointments of Special Administrators. This is the specific statute, whereas NRS 155.190(1)(a) refers to Administrators generally. Thus, NRS 140.020(3)(b) controls because it is specific.

iii. Title-and-Headings Canon

Another canon of construction adopted by Nevada courts is the title or heading of a given statute. "A title is typically prefixed to a statute in the form of a descriptive heading or a brief summary of the contents of the statute. The title of a statute may be considered in determining legislative intent."[16] Here, there is clear legislative intent in the chapter titles of NRS 140 and NRS 155. NRS 140 chapter title is specifically "Special Administrators." This chapter title, by extension, directly applies to NRS 140.020 title: "Notice and order of appointment; order not appealable." Thus, in order involving a Special Administrator, such as Mr. Cassady's, clearly supported by the specialized title and construction of NRS 140.020(3)(b).

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[14] Sierra Life Ins. Co. v. Rottman, 95 Nev. 654, 656, 601 P.2d 56, 57–58 (1979) (citing W.R. Co. v. City of Reno, 63 Nev. 330, 172 P.2d 158 (1946)).

[15] City Council of Reno v. Reno Newspapers, 105 Nev. 886, 892, 784 P.2d 974, 978 (1989).

[16] Coast Hotels & Casinos, Inc. v. Nevada State Lab. Comm'n, 117 Nev. 835, 841–42, 34 P.3d 546, 551 (2001) (internal citations omitted).

On the other hand, NRS 155 chapter title reads "Notices, Transfers, Orders, Procedure and Appeals." Although NRS 155.190's title is "Appealable orders," NRS 155.190(1)(a) is only applicable to "letters of administration." The Nevada legislature clearly intended to make the rules different for Special Administrators rather than Administrators with the specified language not only included in NRS 132.315 and NRS 132.040 respectively, but also with an entire statutory chapter specially designated to Special Administrators in NRS 140. Thus, the title of NRS 155.190 is only applicable to (General) Administrators. This again supports the specific versus general argument given above.

iv. Mandatory/Permissive Canon

This Court has articulated that the phrase "may not" creates a mandatory obligation. "[W]hile the use of the word 'may' is generally permissive, the use of the word 'not' disallows discretion."[17] The same applies to both NRS 140.020(3)(b) and 155.190(1)(a). NRS 140.020(3)(b) states that when the court appoints a Special Administrator, it "**[m]ay** give preference to the person or persons entitled to letters testamentary or letters of administration, **but no appeal may** be taken from the appointment."[18] This statutory construction essentially has the same effect as "may not" and "unless." The discretionary element of the sentence (the "may" clause) occurs at the

[17] State v. Second Jud. Dist. Ct. in & for Cty. of Washoe, 134 Nev. 783, 789, 432 P.3d 154, 160 (2018) ("Indeed, the structure of the statute at issue ('may not' followed by 'unless') supports our interpretation that "may not" disallows discretion because the use of the word "unless" would be meaningless if 'may not' was discretionary. *See Hobbs v. State,* 127 Nev. 234, 237, 251 P.3d 177, 179 (2011) (recognizing that this court 'avoid[s] statutory interpretation that renders language meaningless or superfluous'")).

[18] Emphasis added.

beginning the sentence while the mandatory element (the "no appeal may" clause) occurs at the end of the sentence.

NRS 155.191(1) provides, in relevant part: "**Except** as otherwise provided in subsection 2, in addition to any order from which an appeal is expressly permitted by this title, an appeal **may** be taken to the appellate court[.]"[19] The term "except" serves as the mandatory term emphasizing to the reader to subsection 2 or to any appellate relief the title permits. However, the "may" in this statute serves as discretionary option for parties to pursue appeals, including Administrators in subsection (a). Thus, there is a clear mandatory and permissive language distinction between what NRS 140.020(3)(b) requires and what NRS 155.191(1)(a) permits. These subtle but vital differences indicate a crucial distinction in how appeals are applied to Administrators and Special Administrators respectively.

C. No Appeal for Appointment of Special Administrators Supports Public Policy

As already noted, the December 17 Order refers to two different District Court orders. **"**Accordingly, appellant may appeal from the order issuing letters of special administration; no appeal lies from the order appointing a special administrator."[20] There is only one order that appointed Jasen Cassady. It appears this Court may be referring to the issuance of Letters of Special Administration as a second order. However, Letters of Special Administration are not themselves an order. On this point, McClaran is in agreement:

> Such a ruling would seem a bit unusual since the Letters themselves are more or less administrative, are not actually signed by a District Court Judge, and given

[19] Emphasis added.

[20] December 17, 2021.

> that Letters of Special Administration will nearly (if not always) closely follow an Order Appointing Special Administrator, it seems odd to hold that the Order is not appealable but the related Letters of Administration are.[21]

McClaran goes on to argue that even if the order appointing an administrator isn't appellable (it isn't), the Court should nonetheless allow for appeal of the letters themselves. McClaran reasons: "However, such an interpretation does promote resolution of disagreements by appeal rather than writ and would provide a finite amount of time to challenge Letters of Special Administration." This, however, would lead to an untenable result. If the order appointing a special administrator is not appealable, how could the Letters of Special Administration issued by the Clerk of the Court pursuant to the same non-appealable order be appealable? This is to say nothing of the fact that the Letters of Special Administration are not appealable. Such an application would render NRS 140.020(3)(b) a nullity because the non-appealable order could effectively be challenged by appealing the Special Letters of Administration issued pursuant to a non-appealable order.

DATED this 10th day of January 2022.

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[21] Response, at pg. 2 ¶ 1.