



Parentage and Probate:

Which Court Has Jurisdiction to Determine Heirship in Trust or Estate Proceedings?

BY ALEXANDER G. LEVEQUE, ESQ.

In trust and estate proceedings, it is not uncommon for disputes to arise concerning the determination of the lawful beneficiaries of a trust or heirs of an estate. Sometimes, the disputes focus on whether particular beneficiaries or heirs are the natural issue of a decedent or settlor. When such disputes have to be litigated, the legal issue of parentage can arise. For example, in the instance of an intestate estate (when the decedent dies without a will), a court is required to determine who the heirs are for purposes of intestate succession and priority to serve as the estate's administrator.

If a party has cause to believe that they are a natural child of the decedent, but the administrator (or another heir) disputes the claim, a court will have to decide whether the decedent was, in fact, a parent of the claimant.

In Nevada, claims to establish heirship and parentage are governed by statute. Conflict between the two statutory schemes exists, which has not yet been resolved by our appellate courts. In fact, conflict is equally found within the Nevada Supreme Court's jurisprudence, which hopefully will soon be resolved.

Legislative Conflict Between Probate and Family Law Statutes

With regard to determinations concerning heirship, Nevada Revised Statutes (NRS) 30.060(1)(a) and (2) state in no uncertain terms that “[any action for declaratory relief ... [t]o ascertain any class of creditors, devisees, legatees, heirs, next of kin or others ... may only be made in a proceeding commenced pursuant to the provisions of title 12 or 13 of NRS, as appropriate. Titles 12 and 13 of the NRS govern proceedings concerning “Wills and Estate of Deceased Persons” and “Trusts,” respectively. However, the Nevada Legislature has enacted conflicting law when claims arise as to parentage. Specifically, NRS 3.223(1)(a) and (e) dictate that family courts have “original, exclusive jurisdiction” in any proceeding “brought pursuant to ... chapter 126 ... of NRS [and] to establish ... parentage of a minor.” Chapter 126 of the NRS is dedicated to actions to determine maternity and paternity.

So, the question arises, if a claimant is required to establish that he or she is an heir or beneficiary by proving parentage, in what court should such a proceeding be filed? NRS 30.060 demands that it “may only” be filed pursuant to Titles 12 and 13, yet NRS 3.223 equally demands that the family court has “exclusive” jurisdiction to determine parentage.

For most districts, the answer is likely easily resolved since there are no separate family and probate courts. With the exceptions of the Second and Eighth judicial districts, district court judges are vested with original jurisdiction to hear all such matters.¹ Accordingly, there would likely be no problem with a litigant in a probate proceeding filing a petition pursuant to NRS 30.60 and Chapter 126, because the district court can hear and resolve the parentage claim under both statutes. However, problems arise if the issue of parentage is raised in probate proceedings in the Second and Eighth Judicial Districts.

Probate Procedure in Second and Eighth Judicial District Courts

The Eighth Judicial District Court Rules (EDCR) require all probate and

trust proceedings under Title 12 and Chapters 162 through 167 of Title 13 of the NRS are automatically referred to a probate commissioner.² And while any interested person has the right to request that the district court hear the matter, the district court judge would be either the chief judge or another judge appointed at the chief judge’s discretion.³ Currently, estate and trust matters are assigned to three Departments: 5, 8, and 26.

Accordingly, if an alleged heir or beneficiary wishes to make a claim to the assets of an estate or trust on grounds that they are the natural child of a decedent or settlor, that alleged heir is required to file a probate case under NRS 30.060 (for an estate) or NRS 153.031(e) (for a trust), which under the EDCR, would be heard by either the Probate Commissioner or the assigned district court judge. The Second Judicial District Court also automatically refers all such proceedings to a probate commissioner.⁴

Landreth and “Reverse” Landreth –Subject-Matter Conundrum

In 2011, the Supreme Court determined that the subject-matter jurisdiction of the district courts’ family divisions is not limited to matters enumerated in NRS 3.223. To the contrary, it held in *Landreth v. Malick* that the Nevada Constitution grants family court judges jurisdiction to hear any matter that a general district court judge could otherwise hear.⁵ In 2017, the Supreme Court upheld *Landreth* in a challenge to the family court’s exercise of jurisdiction over a self-settled spendthrift trust, which is typically within the exclusive province of the probate court in the Second and Eighth judicial districts.⁶ There is little doubt, therefore, that the family court has subject-matter

jurisdiction to determine the heirs or beneficiaries of an estate or trust under NRS 30.060 and NRS 153.031.

But the issue remains whether a probate court determines “parentage” as contemplated under NRS 3.223 for purposes of establishing heirship, intestate succession, and beneficiaries in estate and trust proceedings when the Legislature has determined that family courts have “original, exclusive” jurisdiction over such matters. Unfortunately, Nevada caselaw on this issue is clear as mud.

Two published opinions that predate *Landreth* posit conflicting positions on

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whether a general district court can decide matters prescribed in NRS 3.223. In *Mainor v. Nault*, the court determined that the family courts have exclusive jurisdiction over guardianships, because “the Legislature, by creating family courts and giving them exclusive jurisdiction over certain matters, removed oversight of guardianships from the district court’s jurisdiction in jurisdictions that have separate family courts.”⁷ However, in *Barelli v. Barelli*, the court held that “both the family and the general divisions of the district court have the power to resolve issues that fall outside their jurisdiction when

necessary for the resolution of those claims over which jurisdiction is property exercised.”⁸ Indeed, the court in *Barelli* gave the specific example of a district court of general jurisdiction having authority to reach a family law issue where necessary to resolve a claim such as reformation or rescission. *Landreth* cites favorably to *Barelli* and *Mainor* suggesting that both opinions remain good law.

It would therefore not be unreasonable for a practitioner to rely on

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Barelli when seeking to have a probate court determine parentage for purposes of heirship, intestate succession, beneficiary status, etc. because reaching that issue would be “necessary to resolve a claim that would ordinarily fall within its jurisdiction.” A more recent unpublished opinion supports this view as well. In *Matter of Guardianship of T.T.H.*, the Supreme Court addressed the reverse issue in *Landreth* – “whether a district court judge sitting outside the family law division has jurisdiction over family law matters.”⁹ At issue in *Guardianship of T.T.H.* was whether a chief judge’s reassignment of a guardianship matter to general district court department was an impermissible overreach of her power. The court answered the question in the affirmative but seemingly limited its holding to situations “in times of judicial necessity and convenience[.]” This could explain why the opinion was unpublished.

Reconciliation of Conflicting Law Could Occur Soon

Hopefully, the Supreme Court will soon clarify whether *Barelli*, as supported by *Guardianship of T.T.H.*, remains good law. Currently pending before the court is the matter of *Guo v. Geng*, where a wife filed a complaint against her husband in the general civil division of the Eighth Judicial District Court,

alleging claims of breach of contract for promises made before marriage.¹⁰ The district court dismissed the complaint due to lack of subject-matter jurisdiction. Guo appealed on grounds that the district court had jurisdiction because her claims fell outside NRS 3.223(1)(a), which should be strictly applied. Acknowledging its inconsistent jurisprudence, Guo has asked the court to reexamine several cases to “bring clarity to the jurisdiction of Nevada family courts,” including *Landreth* and *Guardianship of T.T.H.*

A legislative fix is probably the easiest way to vest district courts sitting in probate the authority to determine parentage in estate and trust proceedings. Notwithstanding, there is ample reasoning within the Supreme Court’s existing jurisprudence to permit a district court sitting in probate to resolve issues of parentage for the limited purpose of ascertaining heirs and beneficiaries.

ENDNOTES:

1. Article 6, Section 6(1) of the Nevada Constitution, and NRS 3.0105-3.020.
2. EDCR 4.03.
3. EDCR 4.02.
4. WDCR 57.3(1).



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5. *Landreth v. Malik*, 127 Nev. 175, 251 P.3d 163 (2011) (Where the court upheld the family court's exercise of subject-matter jurisdiction over a dispute between two unmarried persons over the title and ownership of property.)
6. *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017) (“[W]e reach the same result as we did in *Landreth* – we conclude that the family court had subject-matter jurisdiction over all claims brought in the Nelsons’ divorce, including those relating to property held within the [trusts.]”.)
7. *Mainor v. Nault*, 120 Nev. 750, 760, 101 P.3d 308, 315 (2004) (overruled on unrelated grounds).
8. *Barelli v. Barelli*, 113 Nev. 873, 878, 944 P.2d 246, 249 (1997)
9. *Matter of Guardianship of T.T.H.*, 134 Nev. 958, 421 P.3d 282, 2018 WL 3213818, at *1 (2018) (unpublished).
10. *Guo v. Geng*, Supreme Court Case No. 82599, EJDc Case No. A-20-823642-C.



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