IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF WILLIAM POWELL LEAR. PATRICK CHRISTOPHER LEAR, Appellant, vs. ESTATE OF WILLIAM POWELL LEAR, Respondent.	No. 45856
IN THE MATTER OF THE ESTATE OF WILLIAM POWELL LEAR. PATRICK CHRISTOPHER LEAR, Appellant, vs. ESTATE OF WILLIAM POWELL LEAR, Respondent.	No. 46388

FILED

JUN 17 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE[1]

Consolidated appeals from a district court order denying appellant Patrick Christopher Lear's petition to set aside trust accountings and from an order imposing sanctions upon appellant for a frivolous petition.[2] Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

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[1]The Honorable James W. Hardesty, Chief Justice, and the Honorable Kristina Pickering, Justice, did not participate in the decision of this matter.

[2]This is the first case in a series of three related cases. We refer to this case, the consolidated case of In re Estate of Lear, Nevada Supreme Court Docket No. 45856 and No. 46388, as "Lear I." We refer to related case In re Estate of Lear, Nevada Supreme Court Docket No. 47379 as "Lear II" and In re Estate of Lear, Nevada Supreme Court Docket No. 49684 as "Lear III."

Prior to his death, William Lear, Sr. (William, Sr.) and his wife, Moya, created an inter vivos trust now referred to as the Lear Family Trust (LFT). Upon his death his death in 1978, William, Sr.'s assets poured into the trust. The LFT contained three classes of beneficiaries: (1) outright beneficiaries, (2) income beneficiaries, and (3) remainder beneficiaries. In 1987, the LFT began providing accountings and conducting other asset transactions. Only the outright and income beneficiaries received notice of these transactions.

In 2004, the remainder beneficiaries began receiving notices of the LFT's accountings. Patrick Lear (William, Sr.'s grandson) and his brother, Christian Lear, immediately objected to the accountings. After Christian lost his standing due to his foreign adoption, Patrick filed a petition to set aside all trust accountings (1978-2004). The district court dismissed Patrick's petition and sanctioned him with attorney fees.

Patrick raises the following issues on appeal: (1) as a remainder beneficiary, he had a right to receive notice of the LFT's accountings; (2) his claims were not barred by the doctrines of collateral attack, claim preclusion, or issue preclusion; (3) the district court improperly sanctioned him by awarding the trustees' attorney fees; and (4) the district court improperly determined that laches barred his petition.

For the following reasons, we conclude that each of Patrick's arguments fail, and therefore we affirm the district court's dismissal. The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

Discussion

I. Patrick's petition to set aside the accountings

A. The law-of-the-case doctrine

In 1982 and 1983, the probate court ordered that the LFT trustees produce trust accountings in accordance with the trust

instrument and NRS Chapter 163 and 165.030 through 165.120 while the estate was in probate. Once probate closed, the trustees were to abide by the trust agreement, with no further involvement of the probate court. Patrick argues that NRS 165.030 through 165.120 comprise the law applicable to this case, even after probate closed. He argues that the applicable law does not include NRS 165.135, which the trustees relied upon in arguing that Patrick was not entitled to notice of accountings after probate closed. We disagree with Patrick's contentions because the probate court's order did not establish the law of the case.

To support his law-of-the-case argument, Patrick cites to this court's decision in Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 71 P.3d 1258 (2003). Wheeler Springs Plaza, however, clearly states that the law-of-the-case doctrine only applies when an appellate court decides a rule of law, which controls that point of law throughout subsequent lower court proceedings. Id. at 266, 71 P.3d at 1262. In other words, the law-of-the-case doctrine cannot apply until there is an appeal. Cord v. Cord, 98 Nev. 210, 213, 644 P.2d 1026, 1028 (1982).

Here, the probate court made a ruling in 1982, and there was no appeal. Thus, this court never established the law of the case regarding the 1982 order. Further, the probate court's ruling came before the probate matter closed. Once the probate court closed William, Sr.'s estate, matters regarding the LFT were outside the probate proceedings, and therefore the testamentary trust statutes applied by the probate court no longer governed the trust. Rather, the LFT was governed by its own terms and the NRS statutes regarding nontestamentary trusts, including NRS 165.135, which the trustees used to determine who was entitled to notice. Thus, the probate court's order is not controlling on subsequent district court proceedings regarding the LFT. As a result, we conclude

that the law-of-the-case doctrine does not apply to this appeal or the district court's order.

B. Notice of the trust's accountings

Patrick argues that NRS 155.010, 164.030, and 165.045 entitle him to notice, and the lack of notice violated his right to due process. Therefore, he contends that under NRS 163.115 the district court should reopen all accountings and court orders. We disagree because Patrick either received notice through court appointed counsel, was not entitled to notice, or is barred by the doctrine of laches.

Both the United States and Nevada Constitutions provide due process of law. U.S. Const. amend. XIV; Nevada Const. art. 1, § 8. Notice and an opportunity to present arguments are fundamental requirements of due process. Browning v. Dixon, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998). But notice is only required for interested parties. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, (1950). Finally, failure to provide notice may result in the setting aside of a district court order or judgment. See, e.g., Clark County Sports Enterprises v. Kaighn, 93 Nev. 395, 566 P.2d 411 (1977) (setting aside judgment for lack of notice and hearing).

A nontestamentary trust is any trust not created by a will, whereas a will creates a testamentary trust. See NRS 165.020 (c) and (e) (defining a nontestamentary and testamentary trustee). Here, William, Sr. and Moya created the LFT during their lifetimes, and the LFT instrument is separate from William, Sr.'s pour-over will. In other words, the LFT is a nontestamentary trust.

In 1982, the probate court ordered that the LFT trustees administer the trust in accordance with NRS Chapter 163 and provide accountings in accordance with NRS 165.030 through 165.120. According to the 1982 version of NRS Chapter 165, under NRS 165.070, the LFT

trustees were required to notify each known beneficiary of accountings. NRS 165.070 (1987). Although the probate court did not refer to the statute, NRS 165.020 then defined a beneficiary as both a named beneficiary in the trust instrument and "a person who is entitled to the trust capital at the termination of the trust." NRS 165.070 (1987). Thus, under the 1982 order, the LFT trustees were required to provide notice to both the named income beneficiaries and any known remainder beneficiaries, including Patrick.

C. The first through the fourth accountings

Between 1987 and 1990, the beneficiaries received notice either directly or through appointed counsel, Charles Springer and then Ronald Bath. If the parents of the minor or nonresident beneficiaries opted out of the court appointed counsel, then the remainder beneficiaries received notice through their parent beneficiary or directly. In 1978, William, Jr., Patrick's father—who is also an income beneficiary—sent a letter to the probate judge stating that he did not want Springer representing him or his children, including Patrick. In 1979, the district court discharged Springer as the representative of William, Jr. and his minor children, including Patrick.

In 1980, however, the probate court discharged Springer entirely and appointed Bath to represent the minor and nonresident heirs. When the accountings began in 1987, Patrick was living in Switzerland and did so at least until 1989. Therefore, we conclude that Patrick either received notice through his father or, if William, Jr.'s waiver no longer applied, then Patrick was a nonresident heir who received notice through Bath for the first and second accountings.

In the spring of 1989, Patrick moved to Oakland, California. Although Patrick sent letters to the trustees requesting certain LFT information, there is no evidence that Patrick ever substituted other

counsel for Bath. Further, the trustees specifically stated in a letter that, pursuant to the LFT instrument, Patrick was not a primary beneficiary, and therefore the trustees would not release confidential information to him without the consent of his father, William, Jr. Therefore, we conclude that Patrick either received notice of the first through the fourth accountings through his father or Bath or, alternatively, the doctrine of laches barred his right to challenge the third and fourth accountings, as discussed below.

In sum, Patrick was a nonresident beneficiary until 1989 and received notice of the first and second accountings through the court appointed attorney. Further, Patrick continued to receive notice of the third and fourth accountings through the court appointed attorney. Thus, the district court did not err when it dismissed Patrick's petition to set aside the accountings.

D. The 5th through the 17th accountings

The court appointed counsel ceased upon the closing of William, Sr.'s estate in November 1991. Nevertheless, at the closing of William, Sr.'s estate, the trustees were no longer required to provide notice to the remainder beneficiaries because the 1983 probate court order stated that upon the final distribution and closing of William, Sr.'s estate, the LFT trustees were to administer the LFT in accordance with the trust instrument without further probate court approval. During this time period, Patrick was not entitled to notice for two reasons. First, the LFT instrument held that beneficiaries were not entitled to notice until after Moya's death. Second, the LFT instrument's express terms controlled the notice of accountings because the instrument did not incorporate NRS Chapter 165 (the Uniform Trustees Accounting Act).

The LFT instrument contains the following provision regarding accountings, which states that during William, Sr.'s and Moya's lifetimes the beneficiaries are not entitled to notice of accountings.

> TENTH: During the lifetime of either grantor, Trustees shall account only to the grantors or to the surviving grantor, and their written approval shall be final and conclusive in respect to transactions disclosed in the account as to all beneficiaries of the trust including unborn and contingent beneficiaries. After the death of both grantors, Trustees shall render an accounting to the beneficiaries from time to time, but not less frequently than every five years after any prior accounting, and shall render such an accounting at the time of final distribution of the trust estate, regarding the transactions of the trust or any share thereof created in this trust agreement.

(Emphasis added). Although William, Sr. died on May 14, 1978, Moya lived until December 16, 2001. Thus, we conclude that under the LFT instrument, the LFT trustees were not required to provide accounting notices to Patrick or any beneficiary until a minimum of five years after Moya's death.

Absent from the LFT instrument is any language incorporating NRS Chapter 165. Since 1987, NRS 165.160 has stated that no provision of NRS Chapter 165 applies to a nontestamentary trust unless the trust instrument expressly provides for application. Nowhere in the LFT trust instrument is any provision of NRS Chapter 165 referenced. Therefore, we conclude that none of NRS Chapter 165 notice provisions applied to the LFT after the closing of William, Sr.'s estate in 1991.

In sum, the probate court ordered the LFT trustees to provide accounting notices to all beneficiaries, including the remainder beneficiaries, while the LFT assets were still subject to the probate court's

jurisdiction (i.e. until the probate court closed William, Sr.'s estate). Afterwards, the trustees only needed to provide notice to all beneficiaries as directed by the LFT instrument, which is, at a minimum, every five years following Moya's death. Since Patrick received notice during the probate proceedings and Moya died in December 2001, the LFT trustees were not required to provide Patrick with notice until at least five years after Moya's death. Therefore, Patrick was not entitled to notice when he filed his petition in April 2005, and the district court did not violate his due process rights when it dismissed his petition.

E. Patrick's standing to challenge the accountings

Patrick argues that he is a vested remainder beneficiary with a conditional interest in the LFT's principal at his father's death, and therefore the district court's dismissal deprives him of his right to secure and defend his interest. Initially, the district court found that Patrick was a contingent remainder beneficiary. But then the district court reversed its previous ruling and held that the remainder beneficiaries had a vested remainder interest subject to defeasance. The trustees appealed this issue, which is the subject matter of Nevada Supreme Court Docket No. 47379 (Lear II). In accordance with that case, we conclude that Patrick is a contingent remainder beneficiary because his interest is subject to the condition precedent of survival.

This court has also held that contingent beneficiaries of a trust lack standing to challenge the trustees under NRS 164.015 and NRS 153.031 because the contingent beneficiaries are not interested persons within the meaning of the statutes. Linthicum v. Rudi, 122 Nev. 1452, 1455-56, 148 P.3d 746, 748-49 (2006). As a remainder beneficiary, Patrick's interest is contingent upon him surviving his father, William, Jr. Until William, Jr. dies, Patrick does not have a certain and exercisable interest in the LFT. Thus, Patrick's challenge fails for ripeness because it

is not certain that he will ever have any rights to the LFT's principal or income. As a result, we conclude that Patrick lacks standing to challenge the accountings because the issue is not ripe, and Patrick did not have standing as a contingent beneficiary. Therefore, we conclude that the trustees' arguments regarding collateral attack, claim preclusion, and issue preclusion are moot.

II. The district court's sanction against Patrick

The district court awarded the trustees attorney fees for Patrick's disregard of the court's admonitions about excessive filings and his continued allegations against the district court judge. Patrick argues that he was trying to protect and secure his property rights, and therefore the district court should not sanction him for either filing his petition or using excessive pages. We disagree because Patrick continually abused the litigation process and the district court had the inherent authority to sanction him for such abuses.

This court reviews a district court's award of attorney fees as sanctions for a manifest abuse of discretion. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330, 130 P.3d 1280, 1288 (2006). Courts have statutory and inherent equitable authority to sanction parties. Young v. Johnny Ribeiro Building, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

A. Statutory sanctions

In its October 5, 2005, order, the district court awarded the attorney fees sanction under NRS 18.010(1), which allows the award of attorney fees under an express or implied agreement. According to the district court, the LFT's provision that allows the trustees to retain counsel was sufficient to hold Patrick responsible for the cost of the retained counsel.

Under LFT Article Ninth, the trustees have the authority "to defend, at the expense of the trust estate, any contest or other attack of

any nature of this trust o[r] any provisions of this agreement." This language, however, requires that the expenses come from the trust and not the challenger of the agreement. Thus, we conclude that Article Ninth does not expressly or impliedly authorize the district court to award the trustees attorney fees at Patrick's expense. Instead, the LFT agreement merely authorizes the trustees to pay litigation expenses from the trust estate.

Nevada Revised Statute 18.010(2)(b) and NRCP 11(c) authorize the district court to sanction a party with attorney fees for filing a claim without reasonable grounds. Under NRCP 11(c)(1)(B), the district court is required to direct a party to show cause why it has not violated the rule and sanctions are not warranted. However, the district court did not cite to NRCP 11 as the basis for its sanction in this case, and it did not issue an order to show cause. Therefore, we conclude that NRCP 11 is inapplicable.

Analyzing the sanction under NRS 18.010(2)(b), that statute requires evidence in the record that the claim was groundless or brought to harass the other party. Kahn v. Morse & Mowbray, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005). The district court determines whether a party has a reasonable ground for a claim at the time the party files its claim, not after. Barozzi v. Benna, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996).

Patrick filed his petition pursuant to NRS 163.115(1)(f) and (3), which states that if a trustee commits a breach of trust, a beneficiary may petition the court to set aside acts of the trustee. The district court awarded the trustees attorney fees because Patrick's filings were "redundant, impertinent, immaterial, scandalous and [ ] should be stricken in violation of NRCP 12(f)" since the court had already ruled on the accountings. However, NRCP 12(f) does not authorize the court to award attorney fees as sanctions. Further, the district court's prior ruling

on the accountings does not prevent Patrick from petitioning the court if the trustee committed a breach. NRS 163.115(1)(f), (3). We conclude that the district court's evaluation of Patrick's petition as violating NRCP 12 was a decision based on the merits of the petition post-decision, not the grounds for the petition when Patrick filed it, and therefore the decision cannot be a basis for sanctions under NRS 18.010(2)(b). Therefore, we conclude that the district court did not have statutory authority to award sanctions.

B. The district court's inherent authority to sanction

The district court did have inherent authority to sanction Patrick for a pattern of behavior approaching abuse of litigation or harassment. A district court has inherent authority to manage its affairs, including making rules and carrying out "incidental powers when reasonable and necessary for the administration of justice." Halverson v. Hardcastle, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007) (internal quotation marks omitted). This includes issuing sanctions for litigation abuses. Id.

In November 2004, Judge Breen admonished Patrick that the district court could sanction him for excessive pages in motions and filings. In June 2005, Grant Thornton, the LFT's accountants, filed a motion for sanctions and a separate motion for a protective order against Patrick based on his excessive filings and discovery requests. Patrick had improperly served Grant Thornton, who was not a party to the litigation, with two separate discovery requests for a total of 93 documents. Patrick also served Grant Thornton with the petition to set aside accountings, which was 173 pages with 646 pages of exhibits.

Ultimately, on August 1, 2005, the district court denied Patrick's motion to compel discovery from Grant Thornton, and granted Grant Thornton's motion for protective order, but denied its motion for

sanctions against Patrick. However, the district court advised Patrick that he was "perilously close to sanctions" but did not grant them because Patrick is not an attorney. The district court also warned Patrick that any "further misuse" of discovery regarding Grant Thornton would result in sanctions.

In June 2005, Patrick filed an affidavit of disqualification against Judge Breen. In his answer, Judge Breen stated that the affidavit Patrick served on him was 24 pages long and contained 90 paragraphs. Judge Breen also listed the page lengths of Patrick's filings, which were 72, 71, 173, 13, 14, 47, 23, 34, and 316 pages. Although a previous district court ruling found Judge Breen to be unbiased, Breen cited 21 instances of Patrick's allegations and inappropriate behavior.

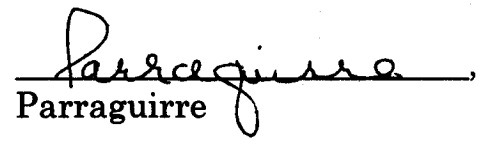
On August 1, 2005, the same day the district court denied Patrick's motion to compel discovery against Grant Thornton and warned him he was "perilously close" to sanctions, it also denied Patrick's petition to set aside accounting, awarded the trustees attorney fees as sanctions, and issued a case management order specifying page limits on all filings.

In sum, the district court admonished Patrick in November 2004 regarding the excessive length of his filings, yet Patrick continued to file excessively long documents. Patrick also continued to push the limits of proper conduct in litigation by abusing the discovery process and repeatedly accusing Judge Breen of bias. We conclude that because of Patrick's general abuse of the litigation process, the district court had inherent authority to sanction him. Thus, the district court did not abuse its discretion in awarding the trustees attorney fees as sanctions.

III. The doctrine of laches

Because we conclude that Patrick received adequate notice and he lacks standing to challenge the accountings, we do not address the portion of the district court's ordering regarding laches.

In conclusion, we affirm the district court's order because Patrick did not have standing to challenge the accountings, and the district court had the inherent power to sanction him. Accordingly, we ORDER the judgment of the district court AFFIRMED.



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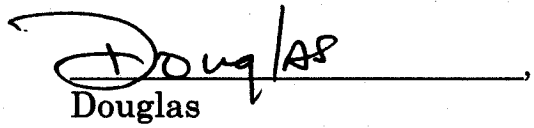

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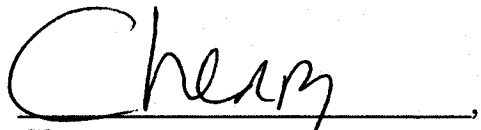

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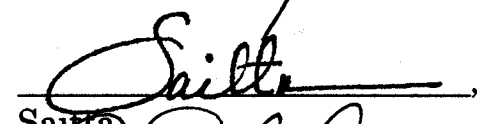

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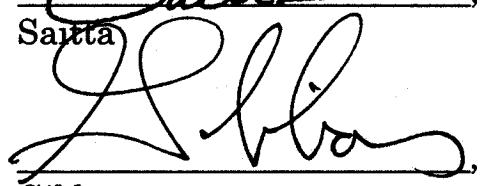

_____, J.
Gibbons

cc: Second Judicial District Court Dept. 7, District Judge
Holland & Knight LLP
Law Office of Lisa Rasmussen
Cooke Roberts & Reese
Morris Peterson/Reno
Washoe District Court Clerk