IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF: SOO K. SONG TRUST, DATED APRIL 28, 2016, AS AMENDED ON NOVEMBER 12, 2019.

CHRISTINE PORI, AS A TRUSTEE OF THE TRUST,
Appellant,
vs.
SUSAN E. SONG AND CHRISTINE PORI, IN THEIR CAPACITIES AS CO-SPECIAL ADMINISTRATORS OF THE ESTATE OF SOO K. SONG JAMES SEUNGWON SONG; AND SUSAN E. SONG,[1]
Respondents.

No. 82768-COA

FILED

MAR 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Christine Pori appeals from a district court order denying her petition to assume jurisdiction over a nontestamentary trust. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Trust settlor Soo K. Song is the mother of Christine and respondents James Seungwon Song and Susan E. Song.[2] At the time of these events, Soo, James, and Christine were residents of Las Vegas, while

[1]We direct the clerk of this court to amend the caption on this court's docket to conform with the caption on this order.

[2]We do not recount the facts except as necessary to our disposition.

Susan resided in Minnesota. As relevant here, both the "Trust Agreement of the Soo K. Song Trust" and the first amendment to that trust expressly disinherited Christine, James, and Susan in favor of three of Soo's grandchildren, including Christine's son and daughter, and James' son. However, the trust agreements appointed Christine to serve concurrently with Soo as cotrustee of the trust.

In the beginning of 2020, Soo—who was in her mid-eighties at the time—began experiencing health problems and was diagnosed with stomach cancer. After receiving radiation treatment for her stomach cancer in Las Vegas, Soo traveled to Minnesota to receive a second opinion at the Mayo Clinic regarding her treatment options. Christine contends that Soo was supposed to attend a few doctors' appointments there and immediately return home to Nevada. However, upon arrival in Minnesota, Soo canceled her return trip, began residing with Susan, and scheduled surgery to treat her stomach cancer.

Two days after being released from the hospital for complications following surgery, Soo executed a "Second Amendment to the Trust Agreement of the Soo K. Song Trust," which substantially changed the provisions of the trust.[3] Roughly two weeks after receiving the second amendment, Christine filed a petition in Nevada district court requesting

[3]Among other things, the second amendment provided that Soo, James, Christine, and Susan were all cotrustees of the trust, and notably, it names James and Susan as beneficiaries for the first time, giving 50 percent of the trust property to James, 20 percent to Susan, and the remaining 30 percent to the grandchildren who were the original beneficiaries of the trust. Christine received none of the trust property.

the court: "(1) to assume in rem jurisdiction over the Soo K. Song trust, dated April 28, 2016, as amended on November 12, 2019; (2) to confirm trustees; (3) to declare second amendment invalid; (4) for an accounting; and (5) for a temporary restraining order." As relevant here, Christine alleged in her petition that Soo lacked testamentary capacity to execute the second amendment, and also alleged that James and Susan exercised undue influence on Soo to induce her to modify the trust for their benefit.

Shortly thereafter—but before the probate commissioner could hold a hearing on Christine's petition—Soo signed the "Complete and Superseding Trust Agreement of Soo K. Song" (superseding trust), which purported to revoke the 2016 trust in its entirety. This new trust agreement kept the changes to the beneficiary status as explained in footnote 2 but removed Christine as a cotrustee of the trust and changed the situs of the trust from Nevada to Minnesota. Around this time, James and Susan also commenced litigation in Minnesota related to the superseding trust, although the Minnesota court stayed that action pending the determination of jurisdiction in Nevada.

Following a hearing, the probate commissioner entered a report and recommendation denying Christine's petition. The commissioner based his decision on an affidavit of a Minnesota estate planning attorney that stated Soo appeared to have testamentary capacity, and the fact that, on January 14, 2021, Soo, James, and Susan commenced litigation in Minnesota for confirmation of the superseding trust. The commissioner also found that, while Christine may have initially had standing when she brought her petition under NRS 164.010(1), she no longer had standing to

maintain the petition because she was no longer a trustee in light of the superseding trust. Confusingly, despite having determined that Christine was no longer trustee, which necessarily assumes the validity of the superseding trust, the probate commissioner expressly declined to rule on the issue of whether the estate planning documents were valid or expressly determine whether Soo had testamentary capacity.

Christine timely objected to the report and recommendation, arguing that the probate commissioner erred when he declined to exercise jurisdiction over the petition and when he refused to hold an evidentiary hearing to determine the issue of Soo's capacity. After full briefing and a hearing on the objection, the district court adopted the commissioner's report and recommendation in full. This appeal followed.

As an initial matter, because the Minnesota district court appeared to have assumed jurisdiction over the trust in this matter with an intent to proceed to trial after the district court denied Christine's petition,[4] we issued an order to show cause directing the parties to address whether this court should dismiss this appeal as moot based on the events unfolding in the Minnesota district court. After full consideration of the parties'

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[4]Although the Minnesota court's order was not part of the district court record, we nonetheless take judicial notice of that order. *See* NRS 47.150(1) (providing that a court may take judicial notice sua sponte); *see also* NRS 47.130(2) (providing that a judicially-noticed fact must be "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"); *Mack v. Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98, 106 (2009) (holding that our appellate courts can take judicial notice of other court proceedings when a valid reason presents itself).

responses, we conclude this matter is not moot and decline to dismiss the appeal on this basis.

Our supreme court has acknowledged that, if one court "is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*." *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev. 314, 317, 302 P.3d 1103, 1105 (2013) (quoting *Marshall v. Marshall*, 547 U.S. 293, 311 (2006)). But this holding does not limit our ability to review this matter because Nevada, as an independent sovereign state, has the ability to regulate property within its borders. *See* 16A Am. Jur. 2d *Constitutional Law* § 221 (February 2023 update) (collecting cases and providing that "[a] state may validly regulate activities, persons, and property within its jurisdiction, with knowledge that it will thereby influence matters beyond such jurisdiction, and that the influence will be far-reaching, where such regulation is vital to the welfare of the state's inhabitants, and where external consequences are but incidental to the solution of internal problems, so long as its regulation does not violate a valid federal statute" (footnote omitted)). Because Nevada district courts have authority to assume jurisdiction over trust matters, *see e.g.*, NRS 164.010, we conclude that the courts of this state necessarily have jurisdiction to consider whether our exercise of jurisdiction is appropriate within the bounds of the Full Faith and Credit Clause of the United States Constitution, our own statutes created by our Legislature, as well as principles of comity. *See In re Parental Rights as to S.M.M.D.*, 128 Nev. 14, 20, 272 P.3d 126, 130 (2012) (recognizing that courts have inherent jurisdiction to determine jurisdiction); *Donlan v. State*, 127 Nev. 143, 146,

249 P.3d 1231, 1233 (2011) (recognizing that application of the Full Faith and Credit Clause of the United States Constitution is not automatic and "does not compel a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate" (internal quotation marks omitted)); *Mianecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983) (defining comity as "a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect" but noting that the application of this principle is not automatic). And here, where Christine filed her petition in Nevada prior to the commencement of any other actions, we conclude that this matter has not been rendered moot by Minnesota's apparent exercise of jurisdiction over the superseding trust, and therefore we turn to the merits of this appeal.

On appeal, Christine argues that the district court abused its discretion when it denied her objection to the probate commissioner's report and recommendation and concluded that she lacked standing to pursue the petition in light of the superseding trust. We agree.

This court reviews issues of statutory construction de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014). "[W]hen a statute's language is plain and its meaning clear, the courts will apply that plain language." *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007). As relevant here, NRS 164.010(1) states:

> Upon petition of any person appointed as trustee of an express trust by any written instrument other than a will, . . . the district court . . . shall assume jurisdiction of the trust as a proceeding in rem

> unless another court has properly assumed continuing jurisdiction in rem in accordance with the laws of that jurisdiction and the district court determines that it is not appropriate for the district court to assume jurisdiction under the circumstances.

In this case, the parties do not dispute that the mandatory language of NRS 164.010 imposes a duty on the district court to assume *in rem* jurisdiction over a trust, assuming that no other jurisdiction has properly assumed continuing jurisdiction over that trust. *See* NRS 0.025(1)(d) (stating that the word "shall" in a statute "imposes a duty to act"). Further, it is undisputed that at the time Christine filed her petition in Nevada, no other state had exercised jurisdiction over the nontestamentary trust. Instead, the primary focus of the parties' dispute is whether a person appointed as cotrustee of an express trust must remain a cotrustee throughout the litigation in order for the district court to assume and maintain jurisdiction over the trust.[5]

Examining the text of NRS 164.010(1), we conclude that the plain language of the statute demonstrates that the decisive moment for

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[5]Although NRS 164.010(1) uses the term "trustee," we note that it is generally understood that this term also applies to joint or cotrustees. *See* NRS 132.355 (defining "Trustee" as including "an original, additional or successor trustee, whether or not appointed or confirmed by a court"); NRS 164.005 (applying the provisions of Chapter 132 to matters under Chapter 164)*; see also Trustee*, *Black's Law Dictionary* (11th ed. 2019) (defining "cotrustee" as "[o]ne of two or more persons in whom the administration of a trust is vested" and providing that "[t]he cotrustees form a collective trustee and exercise their powers jointly").

determining standing of a trustee, or in this case a cotrustee, is at the time a purported trustee of a trust files the petition seeking to have the court assume jurisdiction over the trust. NRS 164.010(1) provides that the action is initiated and the district court must assume jurisdiction "[u]pon petition of any person appointed as trustee of an express trust by any written instrument other than a will." The term "upon" is commonly understood as a preposition "indicat[ing] a time frame during which something takes place . . . or an instant, action, or occurrence when something begins or is done."[6] Assigning "upon" its ordinary meaning, the district court must look to the trustee's status at the time the purported trustee filed the petition, not at a later date, to determine whether the purported trustee has standing to bring the petition (in other words, whether the purported trustee was, in fact, a trustee at the time the petition was filed). This position finds additional support in NRS 164.010(5)(a), which specifies that, when a court assumes jurisdiction pursuant to this section, the court "[h]as jurisdiction of the trust as a proceeding in rem as of the date of the filing of the petition," indicating that the district court's authority to review any such matter begins at the time of the filing of the petition and cannot be modified afterwards. *See Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (stating that we "construe statutes to give meaning

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[6]*See Upon, Merriam-Webster's Collegiate Dictionary* (11th ed. 2020) (defining "upon" as "on"); *On, Merriam-Webster's Collegiate Dictionary* (11th ed. 2020) (defining "on"); *see also Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012) ("When a term goes undefined in a statute, we give the term its ordinary meaning.").

to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation" (internal quotation marks omitted)).

Moreover, even though it is arguably unnecessary to consider additional sources of support for this interpretation given the plain language of the statute, we note that this interpretation serves an important public policy purpose by protecting Nevada trustees' ability to properly raise issues before Nevada courts. Indeed, adopting an interpretation of NRS 164.010(1) that allowed the defendants in a trust dispute to eliminate a trustee's standing to bring or maintain the petition after the petition has been filed would necessarily allow parties in trust matters to obstruct litigation in Nevada simply by creating a competing trust instrument in another state. *See Tate v. State, Bd. of Med. Exam'rs*, 131 Nev. 675, 678, 356 P.3d 506, 508 (2015) (stating that "[s]tatutes should be construed so as to avoid absurd results"); *see also Matter of Sommer Family Living Tr., Dated February 13, 1996*, No. 73464, 2019 WL 3469400 (Nev. July 22, 2019) (Order of Reversal and Remand) (interpreting the previous discretionary version of NRS 164.010 and stating that if jurisdiction could be removed following proper petition to the court, "[a party] could defeat Nevada probate jurisdiction *in every case*—regardless of the trust's former ties to Nevada and even when Nevada beneficiaries contest the succession—simply by decamping with the trust assets from Nevada before those affected could act").

Accordingly, under NRS 164.010(1), if a purported trustee of an express trust petitions the court to assume in rem jurisdiction over that

trust, the district court must first look to the purported trustee's status at the time of the filing of the petition to determine whether the purported trustee has standing to bring the petition. If the trustee has standing (because he or she was actually a trustee at the time of the petition's filing), the court must then determine whether another court has properly assumed jurisdiction over the same trust and must likewise consider whether Nevada's exercise of jurisdiction would nonetheless be appropriate. *Id.* Finally, if no other court has properly assumed jurisdiction, the court shall take jurisdiction over the trust as a proceeding in rem. *Id.*

In the context of this appeal, the record demonstrates that Christine was a cotrustee of the trust at the time she filed the petition. We therefore conclude that the district court erred when it found that, at the time Christine filed the petition, she did not have standing to pursue the petition under NRS 164.010. And because under NRS 164.010(5)(a), the district court would have assumed jurisdiction at the time of the filing of the petition, the district court had authority to assume jurisdiction over the trust regardless of the subsequent trust amendments. Accordingly, we reverse the district court's decision.[7]

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[7]In their answering brief, James and Susan assert that Christine was not a cotrustee under the second amendment of the trust because she failed to sign and return a declaration regarding the trust within ten business days. However, our review of the record reveals no such limitation within the text of the second amendment, suggesting that Christine was appointed cotrustee of the second amendment without limitation. Accordingly, we determine that this assertion is without merit and caution respondents' counsel to provide accurate references to the record in future cases. *See*

Nevertheless, because the record before this court suggests that the Minnesota court may have subsequently assumed jurisdiction over the trust while this matter was pending on appeal, we instruct the district court on remand to conduct the prerequisite jurisdictional analysis to determine whether the Minnesota court "properly assumed continuing jurisdiction in rem in accordance with the laws of that jurisdiction" and, if so, whether or not Nevada's exercise of jurisdiction would be appropriate given the circumstances of this case and principles of comity. *See* NRS 164.010(1).[8]

It is so ORDERED.[9]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

NRAP 28(e)(1) ("[E]very assertion in briefs regarding matters in the record shall 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.").

[8]In light of this disposition, we need not address Christine's arguments related to her undue influence claims. However, we remind the district court that, if Nevada's continuing jurisdiction is proper, "an evidentiary hearing is required on the factual question raised in the challenge under NRS 164.015." *See In re Jordan Dana Frasier Family Tr.*, 136 Nev. 486, 492, 471 P.3d 742, 746 (2020).

[9]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Gloria Sturman, District Judge
Eleissa C. Lavelle, Settlement Judge
Solomon Dwiggins & Freer, Ltd.
Jolley Urga Woodbury Holthus
Eighth District Court Clerk