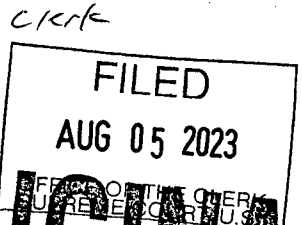


23-6027

NVSC No. 83342



THE SUPREME COURT OF THE UNITED STATES OF AMERICA

CHRISTY KAY SWEET,

Petitioner

vs.

KATHRYN K. SWEET and VANESSA JOHNSON,
Co-Special Administrators for The Estate
of Christopher William Hisgen, Deceased,

Respondents

PETITION FOR WRIT OF CERTIORARI

On Nevada State Supreme Court Decision of June 8, 2023,
(Denying Petition For Review)

Submitted by CHRISTY K. SWEET, *pro se*
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I QUESTIONS PRESENTED

1. Can a foreign will be admitted under NRS 133 if it fails to comply with the requirements of a foreign will as set forth in NRS 133A?
2. Can any will be properly admitted to probate without first holding a will contest 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?
3. Is the general rule favoring testacy over intestacy a sufficient basis for disregarding the rules of grammar and ignoring POST MORTEM 2020 alterations to the original translation and contents of a will executed in Portugal in 2006?
4. Is it not fraudulent when an argument as to intent is based on an added comma and changed term from the disregarded original 2006 English translation when Testator did not read, speak or write in Portuguese?
5. When is it acceptable to determine intent of the Testator when highly relevant information as to co-ownership of a condominium in Portugal –a nation with mandatory inheritance laws necessitating foreigners make wills to circumvent - was **never entered into a record** ?
6. Is it proper for a State Court to ratify a decision made by a probate commissioner who states plainly in a hearing that “I had my staff research...” an issue which is a violation of The Nevada Judicial Code of Ethics ?
7. Can the State Supreme Court court ratify a decision made by a probate commissioner in a thirteen minute hearing on an issue not before him as plainly stated within the report and recommendation, “the assets are not at issue...”

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III TABLE OF AUTHORITIES

1. LISTING OF PROCEEDINGS

1. Clark County Court , Nevada. Probate Court

P-20-103540-E IN THE MATTER OF MARILYN WEEKS SWEET, CHRISTY KAY SWEET vs.

CHRISTOPHER WILLIAM HISGEN (Deceased) Decision dated : **March 4, 2021**

2. Appeal to Eight District Court, Nevada Department 26

Decision to uphold probate finding dated; **July 14, 2021**

3. P-20-103540-E / Docketed # 83342 CHRISTY KAY SWEET vs. CHRISTOPHER

WILLIAM HISGEN

October 20, 2022 Nevada Supreme Court Decision to Deny Petition for Review dated

June 8, 2022

2. APPLICABLE CASE LAW

A. US Supreme Court *Colton v. Colton*, 127 U.S. 300 (1888) -----PAGE 12

The intention of a testator, as expressed in his will, is to prevail when not inconsistent with rules of law.

B. U.S. Supreme Court *Pulliam v. Allen*, 466 U.S. 522 (1984) ----- PAGE 12

No. 82-1432 466 U.S. 522 Held:

1. Judicial immunity is not a bar to prospective injunctive relief against a judicial officer, such as petitioner, acting in her judicial capacity. Pp. 466 U.S. 528-543.

"We simply recognize the long-standing legal principle, that a right does not, as a practical matter, exist **without a remedy for its enforcement.**"

C. Indiana Court of Appeals. 1934 *Beck v. Dickinson*, 99 Ind. App. 463, 464

The error assigned and relied upon for reversal is the ruling of the court upon each of said (1) That the decision of the court is not sustained by sufficient evidence; (2) the decision of the court is contrary to law.

D. Illinois Appeals Court. 1942 *White v. White*, 312 Ill. App. 628, -----PAGE 12

WILLS, § 261 — construction of wills, intention of testator. The paramount rule in construing a will is to ascertain and give effect to the intention of the testator, unless he has attempted to dispose of his property contrary to some rule of law or public policy.

3. APPLICABLE USC AND STATE STATUTES

NRS 133.060 (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.

NRS 136.210 If the will is in a foreign language the court shall certify to a correct translation thereof into English and the certified translation shall be entered in lieu of the original.

NRS 136.260 Probate of foreign wills: Procedure.

1. A will duly proved, allowed and admitted to probate outside of this State may be admitted to probate and recorded in the proper court of any county in this State in which the testator left any estate.
2. When a copy of the will and the order admitting it to probate, duly certified, are presented [truncated]
3. If, upon the hearing, it appears to the satisfaction of the court that the will has been duly proved and admitted to probate outside this State, and that it was executed according to the law of the place ..in which it was made, or in which the testator was at the time domiciled, or in conformity with the laws of this State, it must be admitted to probate with the same force and effect as the original probate of a domestic will.

NRS 137.020 Trial of contest: Jury; costs.

[truncated]

2. 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. [truncated]

USC Amendment 14 Section 1.4.1 Rights

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. PROFESSIONAL CODE VIOLATION

Judicial Code 2.9 (C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

5. RELATIVE CASES

1. . ONGOING Eighth District Court of Nevada, A-23-866672-C Legal Malpractice against attorneys; CHRISTY KAY SWEET vs. RYAN JOHNSON AND DAVID JOHNSON

2. SUBMITTED Dismissed with option to amend errors. Resubmitted October 29, 2023 now awaiting approval US District Court of Nevada 2:23-cv-00886-CDS-DJA former probate commissioner for failure to assure due process and equal protection. CHRISTY KAY SWEET vs. WESELY YAMASHITA.

IV STATEMENT OF JURISDICTION

1. These questions have profound public interest involving a State Supreme Court ignoring and ratifying fraud and violations of Judicial Ethical codes, disregarding state laws as to contests of wills, US Law regarding intent of a testator and Constitutional rights violation consisting of unequal protection and lack of due process occurring in Las Vegas, Clark County probate court. A very wealthy and populated county that has but one commissioner and hearing appointments are a four months wait.

2. This Petition is originally submitted by September 6, within 90 days of the Nevada State Supreme Court Order of June 8, 2023 denying Petition for Review. Revisions submitted by the November 11, 2021 deadline.

V FACTS

1. Marilyn W. Sweet, my Mother died February, 2020 without a US will. Her long time partner and husband of six months Christopher Hisgen was named as Personal Representative in Marilyn's estate in September 2020.

2. Marilyn's US estate was comprised of one parcel of real property—in Las Vegas, a home estimated to be worth approximately \$530,000.00 at the time of Decedent's passing and solely owned. It has since been auctioned off to pay the lawyers which I am resisting.

3. Respondent Christopher Hisgen filed a Petition for General Administration of Estate, Appointment of Personal Representative for Letters Testamentary and to Admit Will to Probate (the "Petition") on July 14, 2020. The will at issue in this case called a *Testamento Publico* is a foreign will, written in Portuguese and executed by Marilyn in May, 2006, after a February purchase of a vacation/investment condominium together with Mr Hisgen. (This fact of a condo never made it into any proceedings or record.)

4. Marilyn never resided in Portugal. The *Testamento Publico* states correctly that in 2006 her residence was in Maryland, USA. Marilyn did not read, write or speak Portuguese. The Will was done to counter that nation's laws regarding forced inheritance to children. That condo remains to this day in both Marilyn and Hisgen's names.

5. Hisgen passed away in January 2023 also without a US will and Hisgen's identical Portuguese will was also altered and has been entered into probate in Clark County, leaving his estate 'in Portugal' and now by fraudulent extension of altered text, ostensibly in US to my sister Kathryn and I. Mr Hisgen had no assets of his own and the original case was still underway when he passed.

6. It is my view all lawyers involved decided that all was OK since Hisgen named me in his will- and persuaded the State Supreme Court the original case was mooted somehow, and to deny the petition.

VI ARGUMENT

The text of Marilyn's *Testamento Publico* in original Portuguese;

***Institui herdeiro universal de todos os seus bens, direitos e acções em Portugal,
Christopher William Hisgen. . .***

The original 2006 translation was disregarded by the court despite being attached to a 2020 attestation and certification as authentic by an attorney in Portugal – Dr. Isabel Santos Marilyn's property attorney, who composed the 2006 translation for Marilyn to read and witnessed the signing. In Portugal, notaries compose, register and store wills.

The original English translation ; ***Establishes universal heir to all her assets, rights and shares in Portugal, Christopher William Hisgen. . .***

The 2020 translation NEVER CERTIFIED that Respondent Hisgen submitted added a comma after rights and altered shares into actions to read:

***She establishes as universal heir of all her goods, rights, and actions in Portugal,
Christopher William Hisgen. . .***

After adding a comma and changing a term Respondent argued extensively the added comma and changed term rendered it nonsense unless it was applicable in USA .

2. The translator Ms. Lori Piotrowski who changed the term and added a comma is a Las Vegas resident who is not certified in translations, as she informed me by email. She also provided an attestation in which she states that the document she translated was "the will of Marilyn Weeks Sweet in which she names Christopher Hisgen as her universal heir for all her goods in Portugal." This too was ignored.

3. The lower courts erred by ignoring the grammatical structure of the Will in both the original language AND the 2006 translation and, instead, interpreting the Will's 2020 translation that added a comma. The lower courts improperly interpreted the altered Will in the broadest manner possible so as to avoid intestacy, despite the Will's clear restrictive language "in Portugal". At no time in ANY court was that issue of alteration to the original will's translation considered. Court of Appeals, October 2022 opinion notes on PAGE 16 FOOTNOTE 13, the 2020 translation was not certified and this is a violation of state law. Oct 20, 2022 Court of Appeals Opinion Page 15 footnote 12 also notes this deficiency.

4. Opinion of Oct 20, 2022 PAGE 20 first paragraph shows the OPINION IS FORMED ON A FALSEHOOD that Marilyn's only assets were currently in Nevada- that is completely false.

5. ANOTHER FACT IGNORED was the original 2006 translation WAS certified, by the attorney Isabel Santos in Portugal who translated it in 2006 and sent it along with her September 2020 attestation to Hisgen's attorneys at the time. **The court chose the ALTERED and uncertified, 2020 translation by a Las Vegas resident - uncertified to perform translations.**

6. So many decisions based on well- placed inadequacies completely unchallenged BY MY OWN ATTORNEYS might even warrant a criminal investigation.

7. According to Mr Bruno Marcos, the notary in Tavira Portugal charged with keeping of such records, Marilyn's Will was also never 'opened' aka certified in Portugal, never admitted to probate outside Nevada.

NRS 136.260 Probate of foreign wills: Procedure.

1. A will duly proved, allowed and admitted to probate outside of this State may be admitted to probate and recorded in the proper court of any county in this State in which the testator left any estate.
2. When a copy of the will and the order admitting it to probate, duly certified, are presented [truncated]
3. If, upon the hearing, it appears to the satisfaction of the court that the will has been duly proved and admitted to probate outside this State, and that it was executed according to the law of the place ..in which it was made, or in which the testator was at the time domiciled, or in conformity with the laws of this State, it must be admitted to probate with the same force and effect as the original probate of a domestic will.

8. INTENT of TESTATOR

US Supreme Court Colton v. Colton, 127 U.S. 300 (1888)

The intention of a testator, as expressed in his will, is to prevail when not inconsistent with rules of law.

(Illinois Appeals Court 1942) White v. White, 312 Ill. App. 628, WILLS, § 261 — construction of wills, intention of testator. The paramount rule in construing a will is to ascertain and give effect to the intention of the testator, unless he has attempted to dispose of his property contrary to some rule of law or public policy.

This application of the Testamento Publico to USA probate was completely in opposition to the intent 'as written, in Portugal' as the Portuguese lawyer who translated and witnessed it, Dr. Isabel Santos has clearly stated to me in an email. This statement has never been entered into any proceeding which is a large part of why I am writing this- I

simply will not give up on reversing the State of Nevada dis-inheriting me UNDER FRAUDULENT PRETENSES and rushed proceedings.

This Petitioner was cheated, and deprived of Due Process and Equal Protection the fact my own lawyers were suspiciously deficient in ensuring my rights should make no difference. Mr Feder, the appointed pro Bono attorney informed me that anything that was not brought up in prior proceedings could not be used in an appeal to the State Supreme Court- so if one's own lawyers omit information, and fail to ensure proper process, and a probate commissioner is remiss, there is no remedy?

U.S. Supreme Court Pulliam v. Allen, 466 U.S. 522 (1984)

No. 82-1432 466 U.S. 522 Held:

1. Judicial immunity is not a bar to prospective injunctive relief against a judicial officer, such as petitioner, acting in her judicial capacity. Pp. 466 U. S. 528-543.

"We simply recognize the long-standing legal principle, that a right does not, as a practical matter, exist **without a remedy for its enforcement.**"

Let it be known being named in Hisgen's identical will I am now co heir to a greatly diminished estate since Chris Hisgen was somehow able to FRAUDULENTLY obtain a mortgage on Marilyn's solely owned Las Vegas home. Personal possessions of Marilyn's. I recall from my childhood have been 'liquidated'. Marilyn was a wealthy woman but her jewelry, art, gold coins, stocks and bonds vanished. A family real estate fund I received \$6000 a year from is now none existent and that loss impacted me greatly.

Nevada's own rules on foreign wills were violated.

(Following are portions of the Reply submitted by Mr. Michael Feder and Ms. Kerry Kleiman appointed pro bono by the Nevada Supreme Court)

The heart of the issue here is whether the Will complies with NRS 133A.060(2), which requires that an International Will be made “in the presence of two witnesses and of a person authorized to act in connection with international wills....” Respondent [Mr Hlsgen] claims that this requirement was met because the Will was signed by a notary or, alternatively, Respondent provided a declaration from a Portuguese attorney during the proceeding below. Neither of those circumstances comply with NRS 133A.060(2) much less show that the Will was signed by an “authorized person.”

NRS 133A.030 “Authorized person” defined. “Authorized person” and “person authorized to act in connection with international wills” mean 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.

NRS 133A.030 defines an “authorized person” as someone “empowered to supervise the execution of international wills.”

NRS 133A.120 Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency. Persons who have been admitted to practice law before the courts of this State and who are in good standing as active law practitioners in this State are hereby declared to be authorized persons in relation to international wills.

NRS 133.060(2) requires that an International Will be declared and executed in the presence of the “authorized person” who then attests to the will in front of the testator. That did not occur here and the post-mortem affidavit from Isabel Santos cannot, as a matter of law, serve as a substitute for having an authorized person present at the time of the Will’s creation as required by NRS 133A.060.

Similarly, NRS 133A does not explicitly state that a notary public in a foreign country qualifies as an “authorized person” empowered to supervise the execution of International Wills. Although it is certainly possible that a Portuguese Notary Public may be authorized

under Portuguese law to supervise the execution of an International Will, the record contains no information regarding that topic. The lower courts merely presumed that the signatures of two lay witnesses and a notary public were sufficient to meet the requirements of NRS 133A.060(2). That is not a proper presumption to make and, therefore, the Orders should be reversed and the matter remanded for further proceedings.

9. THE ORDERS CANNOT RELY ON EXTRAJUDICIAL RESEARCH

[Excerpt from initial brief of Appeal to Nevada State Court of Appeals]

The Probate Commissioner announced that he conducted his own research to determine the meaning of the term “universal heir,” which appears in the Will. This arguably violates Rule 2.9(C) of the Code of Judicial Conduct, which prohibits a judge from “investigatng facts in a matter independently.” The prohibition on independent judicial research and investigation ensures that litigants are afforded a meaningful opportunity to be heard, as required by **due process**.

Here, Appellant [Petitioner] was gravely prejudiced by the Probate Commissioner’s independent research because she was not given the opportunity to review this research or present the bench with any of her own arguments on the issue. In an attempt to avoid the clear prejudice caused to Appellant by the Probate Commissioner’s *sua sponte* research—and the additional information which Respondent included in the Commissioner’s R&R—Appellant improperly argues that Appellant has waived the right to challenge this research by failing to challenge it below. Respondent’s argument ironically embodies the problem: Appellant was deprived of the opportunity and due process right to challenge the Probate

Commissioner's independent research below because the Probate Commissioner, as well as the district court, deprived Appellant of any opportunity to respond to it.

Accordingly, if this Court is disinclined to consider the arguments and evidence that Appellant has raised regarding the use and applicability of the term "universal heir" in Portuguese law, then, at a minimum, the Court should remand this matter for further proceedings so that Appellant is not denied **due process**. [End excerpt]

VII WHY GRANT THIS PETITION

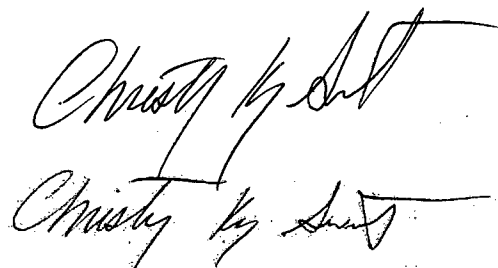
I told all attorneys involved that Marilyn co- owned the Portugal condo with Mr Hisgen, purchased February 2006, yet this fact never materialized in any filing or hearing as the false premise was perpetuated, fueled by altered text, as to what reason she had for making a May 2006 Portugal will if she did not mean for it to apply in USA.

An American testator's intent of a foreign will to apply in Portugal only to dispose of a co owned condo, to comply with mandatory inheritance avoidance procedures was superseded by fraudulent alterations, and an overworked court perpetuating violations of State and US law. That my own lawyer with 30 years experience in Nevada probate apparently forgot how to conduct a will contest should not matter but I do I feel this entire fiasco should be investigated as a conspiracy to defraud the court with the horrible nightmare of a consequence that the State of Nevada has determined my own Mother disinherited me some 14 years before her death.

Furthermore, another issue that merits addressing is the special medical circumstances regarding Chris Hisgen's culpability in Marilyn's shocking and ghastly demise were never addressed despite my informing all involved, a petition for medical records was denied, and factored in how last wish of equitable 1/3 each disbursement as the intestate law provides for this case between a spouse and her two daughters was completely disregarded based on fraudulent means. It is my belief that Marilyn- always unconventional, sought to remedy a 2014 US will that left Kathryn out over a silly political disagreement. Marilyn possessed a Juris Doctorate obtained in 1982 and knew she could not make a new US will that would survive a challenge to her in her diminished mental and physical state. Intestate cured that problem and explains her last minute marriage to her long time partner when she had refused for decades. I would please ask this court to order that lower court made an error, and should determine the will was not admissible, and that Marilyn Sweet died intestate.

VIII APPENDIX

- A. Advance Opinion of Nevada Court of Appeals, October 20, 2022
- B. Order by Nevada State Supreme Court denying June 8, 2023
- C. Petition for Review (denied)
- D. The *Testamento Publico* 2006 English translation



Respectfully submitted November 6 th 2023

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