

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
MAURICE UCHITEL.

No. 43323

ARTHUR EVRY,
Appellant,
vs.
MURRAY ANTMIN AND COLLEEN
CLABBY,
Respondents.

FILED

SEP 27 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order denying an NRCP 60(b) motion for relief from a judgment in a probate matter. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

In May 2000, respondents filed a petition to admit the last will and testament of Maurice Uchitel, dated September 14, 1998, to probate. The district court granted that petition and admitted the September 1998 will to probate. In June 2000, appellant filed a petition to admit to probate a proposed will dated January 8, 2000. A lengthy will contest ensued concerning the authenticity of the January 2000 will.

On September 19, 2003, the district court dismissed appellant's petition to admit the January 2000 will to probate and dismissed the will contest because appellant, a licensed California attorney proceeding in proper person, failed wholly to comply with the Nevada Rules of Civil Procedure and was undeterred by sanctions. The district court found that appellant, among other things, failed to do the

following: respond to respondents' discovery requests concerning expert witnesses and reports, appear at scheduled depositions, exchange witness and exhibit lists, file a pretrial memorandum, and appear at the calendar call. The district court determined that dismissal with prejudice was warranted.¹

Five months later, appellant filed a motion for relief from the dismissal order under NRCPP 60(b). The district court denied the motion on the basis that it was not brought within a reasonable time and that appellant had not demonstrated excusable neglect. This timely appeal followed. Appellant did not seek a stay of the probate proceedings.

Respondents have moved to dismiss this appeal as moot because the estate assets have been distributed, a discharge has been entered, and the probate case is closed. In particular, on May 26, 2006, the district court entered an order approving the final account and directing final distribution of the estate assets. Appellant did not timely appeal after notice of that order's entry was served. Additionally, on July 10, 2006, the district court entered an order of final discharge. Appellant has not filed any opposition to respondents' dismissal motion.

We have held that "the duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before

¹See Young v. Johnny Ribeiro Building, 106 Nev. 88, 787 P.2d 777 (1990) (setting forth the factors a court may consider before dismissing an action with prejudice as a discovery sanction).

it.”² A case may become moot by events that take place after the initial controversy.³

Here, we conclude that this appeal is moot. The probate case has been closed, and there are no assets left in the estate. Appellant did not timely appeal from the final order of distribution, or seek a stay of the probate proceedings or the property distribution pending appeal. Thus, the procedural posture of this case precludes us from granting relief to appellant, who seeks to probate a proposed will that contains numerous bequests entirely different from the will actually probated. Accordingly, we grant respondents’ motion, and we dismiss this appeal.

It is so ORDERED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

²NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981).

³See Bd. of Cty. Comm’rs. v. White, 102 Nev. 587, 589, 729 P.2d 1347, 1349 (1986).

cc: Eighth Judicial District Court Dept. 11, District Judge
Arthur Evry
Kolesar & Leatham, Chtd.
Clark County Clerk