

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
WILLIAM POWELL LEAR.

No. 44768

CHRISTIAN WILLIAM LEAR,
Appellant,
vs.
ESTATE OF WILLIAM POWELL LEAR,
Respondent.

FILED

JUL 06 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order determining the lawful issue of a primary beneficiary in a probate matter. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Christian William Lear Hale (Christian) contends that the district court erred when it determined that Christian was no longer the "lawful issue" of his natural father William P. Lear, Jr. (Lear Jr.), for the purposes of William P. Lear Sr.'s (Lear Sr.) testamentary trust. The district court held that Christian was no longer the lawful issue of Lear Jr. as a result of Christian's foreign adoption.

When interpreting a testamentary devise, courts normally look to the objective intent of the testator. "An appellate court generally is not bound by the interpretation accorded a will by a district court; instead, the appellate court undertakes an independent appraisal of the

will.”¹ Therefore, we review the district court’s interpretation of Lear Sr.’s testamentary trust agreement de novo.

The fifth paragraph of Lear Sr.’s trust agreement provides:

Upon the death of a primary beneficiary, the principal and undistributed net income of his or her trust shall be paid to his or her lawful issue, in equal shares, or if there is no such issue then living, to grantors’ then lawful issue, except John Olsen Lear, distribution in either case to be made in accordance with the principle of representation.

One of the named primary beneficiaries is Lear Jr., Lear Sr.’s natural son and Christian’s natural father. This devise appears to bestow a class gift to Lear Jr.’s “lawful issue,” to take effect “[u]pon the death of [Lear Jr.],” or, in other words, to take effect at Lear Jr.’s death.

When a class gift has been made to the issue of a named individual, “the [settlor] has said in effect that he wants the property distributed as the law would distribute it if the named person died intestate. Accordingly, the normal time for applying the statute of descent or distribution is at the death of the named individual.”² This is because “at the testator’s death there are no ‘heirs’ (in the primary sense) of the

¹Matter of Estate of Chong, 111 Nev. 1404, 1408, 906 P.2d 710, 713 (1995) (quoting Matter of Estate of Meredith, 105 Nev. 689, 691, 782 P.2d 1313, 1315 (1989)).

²In Re Liddle’s Estate, 328 P.2d 35, 42 (Cal. Ct. App. 1958) (quoting LEWIS M. SIMES & CHESTER H. SMITH, THE LAW OF FUTURE INTERESTS, § 732 (2nd ed. 1956)). See also Restatement (Second) of Property (Donative Transfers) § 29.1 (1988) (where a gift is made to a class described as the “heirs” of a designated person, or by a similar class gift term, intestate succession statutes are used to determine which persons come within the primary meaning of the class gift).

living life tenant; and the date of their ascertainment at the latter's death coincides with the date when they are entitled to possession."³

The class of Lear Jr.'s lawful issue closes at Lear Jr.'s death. Consequently, the determination of whether Christian is a member of the class of Lear Jr.'s lawful issue must ultimately be made not at Lear Sr.'s death, but at Lear Jr.'s death. Lear Jr. is still alive, so the class has not yet closed. Nonetheless, the parties dispute Christian's current status as Lear Jr.'s "lawful issue," for the purpose of determining whether the trustees owe Christian any duties as a potential remainder beneficiary under the trust. Therefore, we review Christian's current status under the trust, as if the class had closed today, for the purposes of resolving the parties' dispute.

The trust agreement does not define "lawful issue," therefore, we must construe the terms of the trust according to their plain meaning⁴ to determine the manifested intent of the settlor.⁵ When construing the manifested intent of the settlor, we:

"may not vary the terms of a will to conform to the court's views as to the true testamentary intent. The question before us is not what the testator actually intended or what [the testator] meant to

³Id. at 43 (quoting William W. Ferrier, Jr., Gifts to "Heirs" in California, 26 CAL. L. REV. 413 (1938)).

⁴See Chong, 111 Nev. at 1408, 906 P.2d at 713.

⁵See NRS 164.700(2).

write. Rather it is confined to a determination of the meaning of the words used by [the testator].”⁶

After reviewing the language used in the trust agreement, we reject Christian’s contention that Lear Sr.’s manifested intent was that all of his natural grandchildren were to inherit regardless of their legal relationship to the named beneficiaries. If this were Lear Sr.’s intent, he could have used the language “bodily issue,” “natural issue,” “natural heirs,” or “issue of the primary beneficiary’s body,” or a number of other terms that would have expressed an objective intent to provide a benefit to all of the named beneficiaries’ natural issue; instead of to the named beneficiaries’ “lawful” or “legal” issue. Consequently, we conclude that the language “lawful issue,” as employed in Lear Sr.’s trust agreement, refers to legal issue. As such, “lawful issue” would only include those individuals who are the legal issue of the named beneficiaries.

To determine whether Christian’s foreign adoption eliminated his legal relationship with Lear Jr., we turn to Nevada’s rules of intestate succession for adopted persons.⁷ NRS 134.190 provides that, “[a]n adopted child and his adoptive parents or their relatives shall inherit as provided in NRS 127.160.” NRS 127.160, Nevada’s adoption statute, provides in part:

⁶Chong, 111 Nev. at 1408, 906 P.2d at 713 (quoting Meredith, 105 Nev. at 691, 782 P.2d at 1315 (quoting Jones v. First Nat. Bank, 72 Nev. 121, 123, 296 P.2d 295, 296 (1956))).

⁷See Newman v. Wells Fargo Bank, N.A., 926 P.2d 969, 973-74 (Cal. 1996) (where child was adopted out of the family, and the terms “child” or “issue” in the testamentary devise were ambiguous as to whether the adopted child was intended to take as a beneficiary under the trust, the court looked to California’s rules of intestate succession to resolve the ambiguity).

Upon the entry of an order of adoption, the child shall become the legal child of the persons adopting him, and they shall become his legal parents with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption he shall inherit from his adoptive parents or their relatives the same as though he were the legitimate child of such parents.

....

The child shall not owe his natural parents or their relatives any legal duty nor shall he inherit from his natural parents or kindred.

Thus, when a son is adopted by his stepfather, the adoption creates a new legal relationship between the son and the adoptive father replete with rights of inheritance, while completely severing the legal relationship between the adopted son and his natural father, cancelling all rights of inheritance between them, regardless of whether the adopted son is a minor or an adult.⁸ An adoption also appears to have a similar effect under Swiss law.⁹

In the eyes of the law, Christian's Swiss adoption severed his familial relationship with his natural father.¹⁰ Thus, based on the aforementioned statutes, we hold that Christian is no longer the lawful


⁸See NRS 127.160; NRS 127.190.

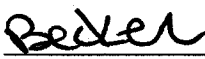
⁹Code civil Suisse [Cc][Civil Code], April 1, 1973, art. 267 (Switz.).

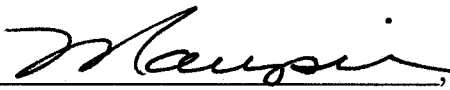
¹⁰We also note that the purpose of Christian's Swiss adoption was apparently to benefit himself and/or his mother and stepfather by qualifying them for an inheritance that they would otherwise not qualify for. It is disingenuous for Christian to now argue that the adoption that created a new, beneficial legal relationship between himself and his stepfather should not sever the legal relationship with his natural father.

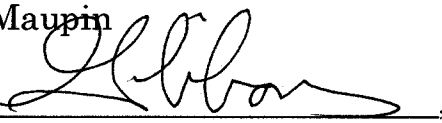
issue of Lear Jr. Consequently, Christian does not currently enjoy any rights as a remainder beneficiary under Lear Sr.'s trust. As for Christian's remaining contentions, we hold they are without merit. Accordingly, we


ORDER the judgment of the district court AFFIRMED.¹¹

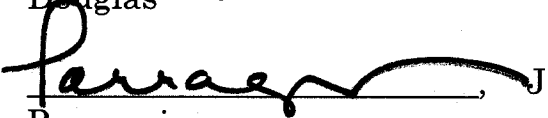

_____, C.J.
Rose


_____, J.
Becker


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Parraguirre

cc: Second Judicial District Court Dept. 7, District Judge
Christian William Lear
Cooke Roberts & Reese
Washoe District Court Clerk

¹¹The Honorable James W. Hardesty, Justice, voluntarily recused himself from participation in the decision of this appeal.