

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
MARY N. RANDOLPH.

No. 45841

WILLIAM JAMES BERRY, SR.,
Petitioner

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KATHY A. HARDCASTLE, DISTRICT
JUDGE,

Respondents,

and

WILLIAM JAMES BERRY, JR.,
DARIAN BERRY, AND MARIO BERRY,
Real Parties in Interest.

FILED

DEC 27 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING PETITION FOR WRIT OF CERTIORARI

This is a proper person original petition for a writ of certiorari challenging the district court's apparent failure to rule on petitioner's motion to vacate an order setting aside an estate without administration.

On December 1, 2004, real party in interest William James Berry, Jr. (William Jr.) filed the underlying petition to set aside the estate of his grandmother, Mary N. Randolph, without administration.¹ William

¹See NRS 146.070 and NRS 146.080 (providing for distribution of small estates).

Jr. alleged that the estate consisted of a pension trust fund containing \$31,000, and that the heirs to the estate were Mary's three grandsons, the real parties in interest. Petitioner William James Berry, Sr. (William Sr.), who is Mary's son, was not given notice of the petition. There being no objection to the petition, the district court granted it on December 17, 2004, and directed that the estate be set aside in equal shares to the real parties in interest.

On June 28, 2005, William Sr. filed a motion to vacate the December 17, 2004 order on the basis that he, as Mary's son, was the rightful heir to the estate, and that: (1) William Jr. had committed a fraud upon the court; (2) failure to give William Sr. notice violated his due process rights; and (3) the district court lacked jurisdiction to grant the petition because William Jr. had no legal right to enforce a claim to the estate.

It appeared that the district court did not initially rule on William Sr.'s motion, but rather "vacated" the motion on August 1, 2005. Consequently, William Sr. filed the instant original petition for extraordinary relief in which he sought a favorable ruling on his June 28, 2005 motion. He alleged that on July 27, 2005, he sent a letter of complaint to Judge Kathy Hardcastle because she had not ruled on his petition, and, in retaliation, she vacated/denied his motion on August 1, 2005.

Because it appeared that William Sr. might be entitled to a decision on his motion to vacate, and that his claim regarding lack of

notice might have merit, we directed the respondent and real parties in interest to file answers to the petition.²

Although no timely answers have been filed, recent submissions by William Sr., as well as our independent review of the district court docket entries, reveal that on November 15, 2005, the district court ruled favorably on William Sr.'s motion to vacate, thereby rendering this petition moot.³ Although William Sr. has not provided this court with a copy of the order, he represents that the order (1) vacates the order setting aside the estate without administration, (2) directs the real parties in interest to return the distributions that they received from the estate, and (3) directs all of the parties to file appropriate motions so that the court may determine the correct estate distribution. Because William Sr. obtained the relief he sought in this court, his writ petition is moot. Accordingly, we dismiss this petition.

Finally, although petitioner was not granted leave to file papers in proper person,⁴ we have considered the proper person documents received from petitioner and concluded that the relief requested is not warranted. In particular, petitioner's request that this court direct the district court to distribute the estate to him is premature. The district

²Because the real parties in interest are not represented by counsel, we granted them leave to file answers in proper person. See NRAP 46(b).

³See *NCAA v. University of Nevada*, 97 Nev. 56, 624 P.2d 10 (1981).

⁴See NRAP 46(b).

court is in the process of determining the proper estate distribution, and petitioner may appeal from any subsequent order of distribution, if aggrieved.⁵

It is so ORDERED.

Douglas, J.
Douglas

Rose, J.
Rose

Parraguirre, J.
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge
William James Berry, Sr.
William James Berry, Jr.
Darian Berry
Mario Berry
Attorney General
Clark County District Attorney
Clark County Clerk

⁵See NRS 155.190.