IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERTO BAGNASACCO, Appellant, vs. THE ESTATE OF UTE WISHAN BAGNASACCO, AND STANLEY H. GREEN, EXECUTOR OF THE ESTATE OF UTE WISHAN BAGNASACCO, Respondents.	No. 34701 FILED NOV 09 2001 JANETTE M. BLOOM CLERK OF SUPREME COURT BY [signature] CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting summary judgment in a civil action challenging the rejection of a creditor's claim by the estate in a probate matter.

Appellant contends that the notice period never began running on his creditor's claim because he was never properly served with the notice to creditors. He contends that respondents were required under NRS 147.040 and NRS 155.020 to serve him by mailing a copy of the notice, rather than through publication of the notice. Appellant argues that respondents knew his identity and address and therefore he was entitled to receive notice by mail rather than publication. He asserts that, even though he did not affirmatively come forward initially as a creditor (but as a spouse and potential legatee), his name and address were known. Further, he contends that he became a known creditor through conversations his counsel had with counsel for the estate, during which time the estate's counsel did not disclose that the publication period was running.

NRCP 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings . . . and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." This court reviews de novo an order granting summary

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judgment.[1] Reviewing the evidence in the light most favorable to the non-moving party, this court must determine whether the pleadings and proof offered below created any genuine issues of fact.[2] This court will afford a litigant "the right to a trial where the slightest doubt as to the facts exists."[3]

Reviewing the evidence in the light most favorable to appellant, we conclude that summary judgment was properly granted. The record shows that appellant was an unknown creditor at the time of publication. Although appellant's name and address were known to respondents at the time the notice to creditors was filed, appellant at that time had not come forward as a creditor, but only as a spouse of the deceased claiming spousal rights, community property rights, and rights under one of the wills. The record reveals nothing which would have provided respondents a basis at that time for concluding that appellant might also be a creditor. Accordingly, we conclude that appellant was in fact an unknown creditor at the time of publication and therefore properly given notice by publication.

Further, we conclude that publication was properly made in accordance with the then-existing versions of NRS 155.010 and NRS 155.020; that the deadline for the filing of creditor's claims was September 24, 1998 (ninety days after the first publication); and that appellant did not file his claim until after the deadline had passed. We conclude that the plain language[4] of the notice statutes was thereby fully satisfied and, as a matter of law, respondents correctly denied appellant's creditor's claim as untimely. Accordingly, respondents were entitled to summary judgment since they did in fact fully comply with the statutory notice requirements.

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[1]See Tore, Ltd. v. Church, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

[2]Id.

[3]Oak Grove Inv. v. Bell & Gossett Co., 99 Nev. 616, 623, 668 P.2d 1075, 1079 (1983), disapproved on other grounds by Calloway v. City of Reno, 116 Nev. 250, 264, 993 P.2d 1259, 1268 (2000).

[4]See Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 503, 797 P.2d 946, 949 (1990) (stating that this court will not look beyond the statute if its language is plain and unambiguous), overruled on other grounds by Calloway, 116 Nev. at 267, 993 P.2d at 1270.

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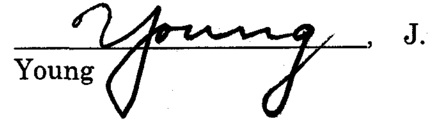
Having considered all of appellant's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



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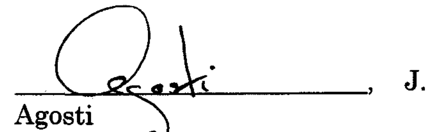
Young



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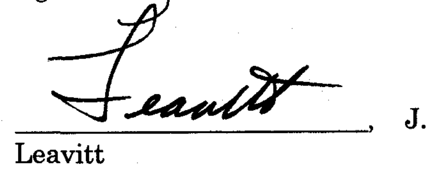

_______________, J.
Leavitt

cc: Hon. Nancy M. Saitta, District Judge
Evans & Associates
Frances-Ann Fine
Clark County Clerk

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