

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF MARGARET FISHER
KATZIN TRUST.

DAVID KATZIN,
Appellant,

vs.

MICHAEL KATZIN AND ROBERT KATZIN,
Respondents.

DAVID KATZIN,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, THE
HONORABLE GENE T. PORTER, DISTRICT
JUDGE; AND THE HONORABLE WILLIAM
O. VOY, DISTRICT JUDGE, FAMILY
COURT DIVISION,

Respondents,

and

MICHAEL KATZIN AND ROBERT KATZIN,
AS BENEFICIARIES OF THE MARGARET
FISHER KATZIN TRUST, AND AS
TRUSTEES OF THE MARGARET FISHER
KATZIN TRUST; MICHAEL KATZIN, AS
ATTORNEY-IN-FACT FOR THE
MARGARET FISHER KATZIN TRUST; AND
JACK FIELDS, AS THE COURT-
APPOINTED GUARDIAN OF MARGARET
FISHER KATZIN, AN ADULT WARD,
Real Parties in Interest.

No. 38143

FILED

DEC 04 2003

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

No. 40301

ORDER DISMISSING APPEAL (DOCKET NO. 38143) AND
DISMISSING IN PART AND DENYING IN PART
PETITION FOR WRIT OF MANDAMUS, PROHIBITION, OR
CERTIORARI (DOCKET NO. 40301)

Docket No. 38143 is an appeal from a district court order denying a petition to appoint independent counsel and to vacate an order that granted a petition for instructions in a proceeding concerning the administration of a nontestamentary trust. Docket No. 40301 is an original petition for a writ of certiorari or, in the alternative, mandamus or prohibition, challenging the same district court order as well as an order entered in a related guardianship proceeding. Respondents/real parties in interest Michael and Robert Katzin ("Respondents") have moved to dismiss the appeal for lack of jurisdiction.

Respondents filed a petition for instructions concerning their mother's, Margaret Fisher Katzin's, nontestamentary trust under NRS 164.015 and NRS 153.031(g). On November 13, 2000, the probate court granted the petition for instructions, and allowed respondents, as trustees, to distribute the property as outlined in their petition. Appellant/petitioner David Katzin (Appellant), respondents' brother, then filed a petition to vacate the probate court's order and sought the appointment of independent counsel to represent Margaret. On February 13, 2001, the probate court denied appellant's petition, concluding that appellant was not an interested person in the trust, was not entitled to notice, and had no standing to bring the petition. Appellant filed the instant appeal and writ petition challenging that order.

Having reviewed respondents' motion to dismiss this appeal, as well as the parties' responses to our two show cause orders, we conclude that appellant was not aggrieved by the probate court's order and thus lacks standing to challenge the order through either his appeal or writ petition. In order to have standing to challenge an order, a party must be aggrieved by it.¹ This court has held that "a party is aggrieved by the action of a probate court when either a personal right or right of property is adversely and substantially affected."²

Even though the probate court denied his petition to vacate, appellant had no personal or property right that was adversely and substantially affected by the probate court's order. Through this appeal and writ petition, appellant seeks to have the probate court's order set aside and all of his mother's assets returned to the trust. But appellant concedes that he is not a beneficiary under the trust. Thus, appellant does

¹See NRAP 3A(a) (providing that only an aggrieved party may appeal); Besnilian v. Wilkinson, 117 Nev. 519, 521 n.1, 25 P.3d 187, 189 n.1 (2001) (noting that cross-appellants lacked standing to challenge the interlocutory denial of their summary judgment motion where they were not aggrieved by the final judgment); see also NRS 34.030 (stating that an application for writ of certiorari must be made by a party beneficially interested); NRS 34.170 (mandamus); NRS 34.330 (prohibition); Electrical Products Corp. v. District Court, 55 Nev. 8, 11, 23 P.2d 501, 503 (1933) (providing that a party beneficially interested is one whose rights were adversely and injuriously affected by the proceedings).

²Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980).

not have a property right in or claim against the trust.³ Additionally, appellant's concern for his mother's well being is not a personal or property right that was affected by the probate court's order.⁴ Appellant is not his mother's guardian and has no legal authority to act on her behalf.⁵ Accordingly, this court cannot grant any relief that would affect appellant's interest, as he has no interest in the trust assets. Further, we reject appellant's argument that the family court's orders entered in the guardianship proceeding gave him standing in the nontestamentary trust matter. Neither of the family court's orders expressly required that

³See, e.g., Washoe Broadcasting Co. v. Neuhoff, 102 Nev. 464, 466-67, 726 P.2d 338, 339-40 (1986) (providing that an appellant with no interest in the estate lacked standing to compel the sale of an estate asset in either the district court or appellate court); In re Ray's Estate, 68 Nev. 355, 233 P.2d 393 (1951) (holding that executors were not aggrieved by an order directing distribution of an estate because the executors' personal or property rights were not affected by the order); Estate of Thorne, 704 A.2d 315, 318 (Me. 1997) (stating that participation in a probate proceeding is limited to those who possess an interest in the estate); Estate of Miles v. Miles, 994 P.2d 1139, 1145-46 (Mont. 2000) (holding that heirs of the decedent, who had no property right or claim against the estate, had no standing in the probate proceedings).

⁴See In re Estate of Juppier, 81 S.W.3d 699 (Mo. Ct. App. 2002) (holding that a party without a financial interest in a guardianship estate lacked standing to appeal an order denying a challenge to the guardians).

⁵See generally Ray v. Barringer, 73 Nev. 212, 314 P.2d 378 (1957) (holding that a parent had no standing to represent a minor in a dispute concerning the minor's interest in an estate since the minor was represented by counsel).

appellant be notified of matters in the trust proceeding. Consequently, we dismiss appellant's appeal (Docket No. 38143) and dismiss that portion of his writ petition (Docket No. 40301) challenging the probate court's order that denied his petition to vacate and appoint independent counsel.

In his writ petition, appellant also challenges the family court's order denying his petition to clarify prior orders in the guardianship proceeding. Appellant sought clarification concerning what effect the family court's orders had on the nontestamentary trust matter, and he requested the appointment of independent counsel for Margaret. The family court denied appellant's petition for clarification.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,⁶ or to control an arbitrary or capricious exercise of discretion.⁷ This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings exceed the district court's jurisdiction.⁸ Mandamus and prohibition are extraordinary remedies, and it is within the discretion of this court to

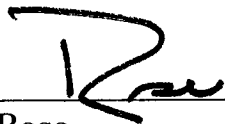
⁶NRS 34.160.


⁷See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁸NRS 34.320.

determine if a petition will be considered.⁹ Having reviewed appellant's arguments, we conclude that the family court did not manifestly abuse its discretion or exceed its jurisdiction in denying appellant's petition for clarification. Thus, our intervention by way of extraordinary relief is not warranted. Accordingly, we deny that portion of the writ petition challenging the family court's order denying clarification.¹⁰

It is so ORDERED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

⁹Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Additionally, this court dismissed David's appeal from the order because it was not a final judgment. Thus, David has no adequate legal remedy. See NRS 34.170; NRS 34.330.

¹⁰We note that, in their motion to dismiss, respondents challenge the timeliness of the notice of appeal rather than standing. In light of our conclusions, we deny respondents' motion to dismiss as moot. We further deny as moot appellant's motion to expedite filed in Docket No. 40301.

cc: Hon. Gene T. Porter, District Judge
Hon. William O. Voy, District Judge
Persi J. Mishel, Settlement Judge
Beckley Singleton, Chtd./Las Vegas
Lionel Sawyer & Collins/Las Vegas
Jack H. Fields
Clark County Clerk