

133 Nev., Advance Opinion 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE BEATRICE  
B. DAVIS FAMILY HERITAGE TRUST,  
DATED JULY 28, 2000, AS AMENDED  
ON FEBRUARY 24, 2014.

CHRISTOPHER D. DAVIS,  
Appellant,

vs.

CAROLINE DAVIS; DUNHAM TRUST  
COMPANY; STEPHEN K. LEHNARDT;  
TARJA DAVIS; WINFIELD B. DAVIS;  
ACE DAVIS; AND FHT HOLDINGS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Respondents.

CHRISTOPHER D. DAVIS,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
GLORIA STURMAN, DISTRICT  
JUDGE,

Respondents,

and

CAROLINE DAVIS,  
Real Party in Interest.

No. 68542

FILED

JAN 26 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
CHIEF DEPUTY CLERK

No. 68948

Consolidated appeal from an order confirming appointment of a trustee and original petition for a writ of prohibition or mandamus in a trust matter. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

*Appeal dismissed; petition denied.*

Goodsell & Olsen and Michael A. Olsen and Thomas R. Grover, Las Vegas,  
for Christopher D. Davis.

Solomon Dwiggin & Freer, Ltd., and Joshua M. Hood and Mark A.  
Solomon, Las Vegas,  
for Caroline Davis.

Lee, Hernandez, Landrum, Garofalo and Charlene N. Renwick, Las Vegas,  
for Dunham Trust Company.

Clear Counsel Law Group and Jonathan W. Barlow, Henderson,  
for Stephen K. Lehnardt.

FHT Holdings, LLC,  
in Pro Se.

Ace Davis, Wakayama, Japan,  
in Pro Se.

Tarja Davis, Los Angeles, California,  
in Pro Se.

Winfield B. Davis, Wakayama, Japan,  
in Pro Se.

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BEFORE THE COURT EN BANC.<sup>1</sup>

*OPINION*

By the Court, GIBBONS, J.:

In this matter, we are asked to interpret several statutes related to a district court order accepting jurisdiction over a trust with a situs in Nevada and finding personal jurisdiction over the investment

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<sup>1</sup>The Honorable Lidia S. Stiglich, Justice, did not participate in the decision of this matter.

trust advisor; specifically, (1) whether NRS 155.190(1)(h) grants this court appellate jurisdiction over all matters in an order instructing or appointing the trustee or if the statute only grants this court appellate jurisdiction over the instruction or appointment of the trustee, and (2) whether NRS 163.5555 provides the district court with personal jurisdiction over persons accepting an appointment as an investment trust advisor for a trust with a situs in Nevada. We conclude (1) NRS 155.190(1)(h) only grants this court appellate jurisdiction over the portion of an appealed order instructing or appointing a trustee, and (2) persons accepting an appointment as an investment trust advisor for a trust with a situs in Nevada impliedly consent to personal jurisdiction in Nevada under NRS 163.5555. Accordingly, we dismiss Christopher Davis' appeal and deny his writ petition.

#### *FACTS AND PROCEDURAL HISTORY*

On July 28, 2000, Beatrice Davis, a Missouri resident, established the Beatrice B. Davis Family Heritage Trust (the FHT), under Alaska law, with the trust situs in the state of Alaska. The FHT was initially funded with a \$35 million life insurance policy. Beatrice Davis died in January of 2012.

On October 30, 2013, the trustee, Alaska USA Trust Company (AUTC), sent a letter of resignation indicating that its resignation would become official on December 5, 2013, or upon the appointment of a new trustee, whichever was earlier. On February 24, 2014, the trust protector executed the first amendment to the FHT, which transferred the trust situs to the state of Nevada and appointed appellant/petitioner Christopher Davis, Beatrice Davis' son, as the investment trust advisor (ITA). At the same time, AUTC signed a letter acknowledging that it was currently serving as trustee and agreeing to the transfer of situs and the appointment of the Dunham Trust Company (DTC) as the successor

trustee.<sup>2</sup> Thereafter, the FHT created a Nevada limited liability corporation (FHT Holdings) and appointed Christopher as the sole manager.

On August 26, 2014, respondent and real party in interest Caroline Davis, Christopher's sister and a beneficiary of the FHT, requested information related to the activities of the FHT and FHT Holdings. When Christopher failed to produce the information in his role as the ITA and manager of FHT Holdings, Caroline filed a petition for the district court to assume jurisdiction over the FHT. The district court issued an order assuming jurisdiction over the FHT under a constructive trust theory, assuming jurisdiction over Christopher as ITA, and confirming DTC as trustee. Christopher filed a notice of appeal. Thereafter, Caroline filed a motion to amend or modify the initial order, and the district court later certified its intent that, if remanded, it would assume jurisdiction over the FHT and Christopher as the ITA. Christopher then filed an emergency writ petition. This court issued an order remanding the appeal to the district court to amend its order.

On December 31, 2015, the district court issued an amended order, which clarified that in its initial order it assumed jurisdiction over the FHT and found that, because the first amendment was properly executed, the trust situs is in Nevada. The amended order assumed jurisdiction over the FHT under NRS 164.010, found that the court had personal jurisdiction over Christopher as ITA and as the manager of FHT Holdings, and confirmed DTC's appointment as trustee and Christopher's

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<sup>2</sup>Despite the lapse in time between AUTC's resignation and the execution of the first amendment, we conclude the parties consented to the transfer of FHT's situs from Alaska to Nevada.

appointment as ITA. Finally, the amended order required Christopher to produce the requested documents and all the information in his possession, custody, or control as the ITA and manager of FHT Holdings.

### *DISCUSSION*

Christopher challenges the district court's exercise of jurisdiction over him under NRS 163.5555 through both his appeal and writ petition. In his appeal, we must interpret NRS 155.190(1)(h), the statute on which Christopher bases his appeal, to determine whether we have jurisdiction to consider the issues that Christopher raises in his appeal. In his writ petition, we interpret NRS 163.5555's grant of personal jurisdiction over ITAs. This court reviews questions of statutory interpretation de novo. *Zohar v. Zbiegien*, 130 Nev., Adv. Op. 74, 334 P.3d 402, 405 (2014).

*Christopher's appeal of the district court's order assuming jurisdiction over the FHT and over Christopher is beyond the scope of NRS 155.190(1)(h)*

First, we consider the scope of our jurisdiction in an appeal from an order instructing or appointing a trustee under NRS 155.190(1)(h). Christopher argues that, in addition to considering the district court's confirmation of DTC as trustee in the amended order, in an appeal under NRS 155.190(1)(h), we may also consider other issues addressed in the order: here, the district court's assumption of jurisdiction over the FHT and over Christopher as the ITA and as a manager of FHT Holdings, and its order directing Christopher to make the requested disclosures. We disagree.

NRS 155.190(1)(h) provides that "an appeal may be taken to the appellate court of competent jurisdiction . . . within 30 days after the notice of entry of an order: . . . [i]nstructing or appointing a trustee." This court has not yet addressed whether an appeal under NRS 155.190(1)(h) grants this court jurisdiction over all matters included in an order that

instructs or appoints a trustee or if such an appeal grants this court jurisdiction only over the instruction or appointment of the trustee. Based on a plain reading of NRS 155.190(1)(h), we conclude that nothing in NRS 155.190(1)(h) expressly grants this court the authority to address the district court's findings of fact or conclusions of law beyond the instruction or appointment of a trustee. In his appeal, Christopher argues that the district court erred in assuming jurisdiction over the trust and over Christopher, and erred in its order directing Christopher to make the requested disclosures. We conclude that such matters are beyond the scope of our appellate jurisdiction under NRS 155.190(1)(h). See *Bergenfield v. BAC Home Loans Servicing, LP*, 131 Nev., Adv. Op. 68, 354 P.3d 1282, 1283 (2015) ("This court's appellate jurisdiction is limited to appeals authorized by statute or court rule."). Therefore, Christopher's appeal is dismissed.

*Christopher's writ petition is denied because Christopher accepted a position as an ITA and therefore submitted to personal jurisdiction in Nevada under NRS 163.5555*

Next, we consider Christopher's writ petition, challenging whether a person accepting an appointment as a trust advisor under NRS 163.5555 submits to personal jurisdiction in Nevada. Christopher contends that the district court's exercise of jurisdiction over him as ITA is an abuse of discretion warranting extraordinary writ relief.<sup>3</sup>

This court has original jurisdiction to issue writs of mandamus. Nev. Const. art. 6, § 4. "A writ of mandamus is available to

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<sup>3</sup>Christopher also argues Caroline's mailed notice under NRS 155.010 did not comport with due process. We disagree and conclude Christopher was properly served. We also conclude that the district court's conclusion that it had personal jurisdiction over Christopher as manager of FTC Holdings was not in error.

compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion.” *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 61, 331 P.3d 876, 878 (2014); *see also* NRS 34.160. A writ of prohibition, in turn, may be available “when the district court exceeds its jurisdiction.” *Las Vegas Sands*, 130 Nev., Adv. Op. 61, 331 P.3d at 878; *see also* NRS 34.320. “Neither form of relief is available when an adequate and speedy legal remedy exists.” *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 639, 289 P.3d 201, 204 (2012). However, even if an adequate legal remedy exists, this court will consider a writ petition if an important issue of law needs clarification. *See Diaz v. Eighth Judicial Dist. Court*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000). We have not previously interpreted NRS 163.5555 and conclude this is an important issue of law in need of clarification. Accordingly, we exercise our discretion to consider this issue in Christopher’s writ petition.

Christopher argues that the district court may not exercise personal jurisdiction over Christopher because, despite accepting a position as an ITA for a trust with a situs in Nevada, he is a nonresident and doing so would offend traditional notions of fair play and substantial justice.

NRS 163.5555 provides, in relevant part:

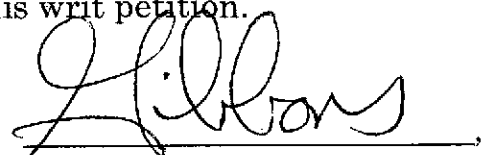
If a person accepts an appointment to serve as a trust protector or a trust adviser of a trust subject to the laws of this State, the person submits to the jurisdiction of the courts of this State, regardless of any term to the contrary in an agreement or instrument.

Based on a plain reading of NRS 163.5555, we conclude that by accepting a position as an ITA for a trust with a situs in Nevada, the ITA impliedly consents to personal jurisdiction in Nevada. Accordingly, Christopher, as

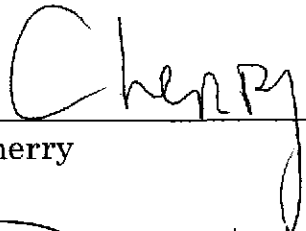
ITA for FHT, submitted to personal jurisdiction in Nevada, and the district court did not err in concluding that it had personal jurisdiction over him. Accordingly, we deny Christopher's writ petition.

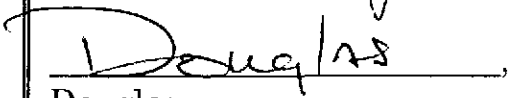
*CONCLUSION*

We conclude that (1) NRS 155.190(1)(h) only grants this court appellate jurisdiction over the instruction or appointment of a trustee, and (2) NRS 163.5555 grants personal jurisdiction over persons accepting an appointment as an ITA for a trust with a situs in Nevada. Therefore, we dismiss Christopher's appeal and deny his writ petition.

  
\_\_\_\_\_, J.  
Gibbons

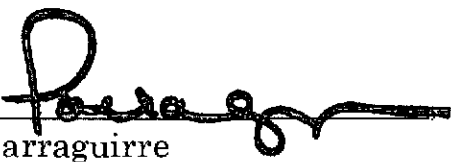
We concur:

  
\_\_\_\_\_, C.J.  
Cherry

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre