

No. PRB014242

IN THE ESTATE OF  
MIKE ARNOLD NUSS,  
DECEASED

§ IN THE COUNTY COURT AT LAW  
§  
§ OF  
§  
§ BROWN COUNTY, TEXAS

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Application to appoint a Successor Administrator and for Letters of Independent Administration filed by Derek Ryan Crawford was heard on August 20, 2019, the Court's ruling was entered of record the same day, in relation to this proceeding the Court hereby makes the following findings of fact and conclusions of law:

1. The court previously appointed Judy Cain to serve as Dependent Administrator of the Estate. Judy Cain was blood kin to the Decedent and otherwise qualified to serve. Alan Byrd filed an Application to be Appointed Administrator on September 26, 2018. A hearing was held on January 31, 2019. At the conclusion of the hearing, the court denied Byrd's application to be appointed administrator finding that Judy Cain was higher on the order of persons qualified to serve as personal representative of the estate. TEX. ESTATES CODE § 304.001.

2. The right to serve as the personal representative of an estate is a "substantial right" and a denial of that right is a final and appealable order. *In re Estate of Vigen*, 970 S.W.2d 597, 599 (Tex.App.—Corpus Christi 1998, no pet.); *In re Estate of Boren*, 268 S.W.3d 841, 845 (Tex. App.—Texarkana 2008, pet. denied). Byrd did not appeal the order denying his application to serve as administrator, nor did he file any motions that would have extended the deadline to appeal.

3. On June 19, 2019, the Court heard the First Amended Application to Determine Heirship filed by Judy Cain in this cause and issued its ruling the same day.

4. Alan Byrd participated in the heirship hearing by and through his counsel of record

and had notice of the Court's ruling.

5. On June 19, 2019, the Court signed a Judgment Declaring Heirship finding that that Decedent, Mike Arnold Nuss, **died without a will distributing his estate** and that **Derek Ryan Crawford was the sole heir of the Estate of Mike Arnold Nuss, Deceased.** The Judgment Declaring Heirship was a final judgment. TEXAS ESTATES CODE § 202.202.

6. Alan Byrd did not appeal. Byrd did not file a motion for new trial or any other motion that would extend appellate deadlines on the Judgment Declaring Heirship.

7. After being named the sole heir of the estate, Crawford applied to be a successor Administrator of this estate. A hearing was set on his application for August 20, 2019. Crawford presented testimony of his qualifications to serve. Crawford is not disqualified to serve as an administrator. Crawford is a resident of this state. He is not incapacitated. He is not a convicted felon or under felony indictment. He is not indebted to the estate, and the court found him to be otherwise suitable to serve as administrator. TEX. ESTATES CODE § 304.003.

8. Alan Byrd's counsel had the opportunity to cross-examine Crawford and to call other witnesses concerning Crawford's qualifications. Byrd, however, failed to present any evidence showing that Crawford was disqualified to serve as personal representative of the estate. Thus, the Court overruled Alan Byrd's objections to Crawford serving as administrator.

9. Alan Byrd did not file another Application to be Appointed Administrator. Rather, he merely filed an objection to Crawford's appointment as personal representative. Alan Byrd did not personally attend the hearing on August 20, 2019. Rather, he appeared only through counsel. Accordingly, Byrd put on no testimony as to his qualifications to serve.

10. Even if Byrd had filed a second application to be appointed administrator of the estate and established that he was qualified, when two or more persons qualified to serve as

administrator seek appointment as personal representative, Texas Estates Code § 304.001 provides the order in which qualified applicants shall be appointed.

11. Derek Ryan Crawford is the Decedent's great nephew. He is the sole heir and next of kin because the Decedent was not married at the time of his death, his parents were deceased, and there are no other living descendants of the Decedent or the Decedent's parents. Texas Estates Code 201.001(e).

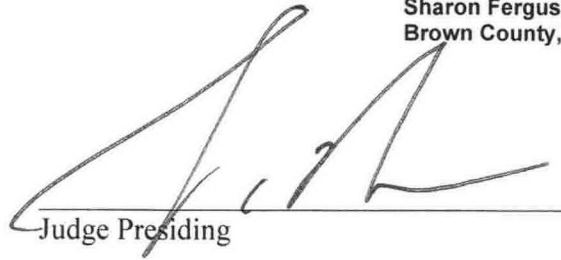
12. By contrast, Byrd is not blood kin of the decedent. Rather, he is a mere nephew of the Decedent's predeceased wife. Moreover, Byrd did not present a will naming him as either executor or devisee. Since Byrd is not related to the Decedent by blood, nor named as an executor or devisee of any will, Crawford is entitled to be appointed personal representative under the preferential order established by Texas Estate Code § 304.001.

13. Finally, as sole heir, Crawford also sought to convert the estate to an independent administration. Although Byrd offered a will, the proffered will did not name an executor or any devisees, as each executor and devisee predeceased the testator. Furthermore, the will did not have an anti-lapse provision, and the anti-lapse statute does not apply because the devisees named in the will, who were the Decedent's wife and brother-in-law, are not descendants of the testator or the testator's parents. TEX. ESTATES CODE 255.153. Accordingly, the Decedent's estate passes by intestacy. TEX. ESTATES CODE 255.152; *See also Swearingen v. Giles*, 565 S.W.2d 574, 576 (Tex. Civ. App.—Eastland 1978, writ ref'd n.r.e.), *Haile v. Holtzclaw*, 414 S.W.2d 916 (Tex.1967); *Carr v. Rogers*, 383 S.W.2d 383 (Tex.1964).

14. Since the Decedent's estate passes by intestacy and Derek Ryan Crawford is the sole heir, he is entitled to administer the estate as an independent administration. TEX. ESTATES CODE § 401.003.

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Brown County, Texas

Signed this 27 day of August, 2019.



Judge Presiding

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TIME 4:35 PM

AUG 27 2019

Sharon Ferguson, Brown County Clerk

Deputy Bernal