IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman
Clerk of Supreme Court

IN THE MATTER OF THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, DATED MAY 18, 1972, AN INTER VIVOS IRREVOCABLE TRUST,	Supreme Court No.: 67782 District Court Case No.: P-09-066425-T
ELEANOR C. AHERN A/K/A ELEANOR CONNELL HARTMAN AHERN Appellant, vs. JACQUELINE M. MONTOYA; AND KATHRYN A. BOUVIER, Respondents.	Appeal from the Eighth Judicial District Court, The Honorable Gloria Sturman Presiding

MOTION TO CONSOLIDATE RELATED APPEALS

Eleanor C. Ahern a/k/a Eleanor Connell Hartman Ahern, by and through her counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby files this Motion to Consolidate Related Appeals. Ms. Ahern maintains three appeals before this Court arising out of the same underlying action: Case No. 66231 ("First Appeal"), Case No. 67782 ("Second Appeal"), and Case No.

Docket 67782 Document 2015-23857

68046 ("Third Appeal"). Ms. Ahern filed these appeals at different stages of the case. It is now apparent that resolution of the issues before the Court in each appeal are intertwined, and that resolution of issues in one appeal will directly impact and/or dispose of issues in other appeals. In order to further the efficient administration of the business and affairs of this Court, Ms. Ahern respectfully requests that the appeals be consolidated.

This Motion is made pursuant to NRAP 27 and is supported by the attached Memorandum of Points and Authorities.

Dated this 7th day of August, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

This case centers around the interpretation of the W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972, an inter vivos irrevocable trust (the "Trust"). Ms. Ahern was both the trustee and beneficiary of the Trust. Ms. Montoya and Ms. Bouvier (the "Sisters") are Ms. Ahern's daughters.

On September 27, 2013, the Sisters petitioned the district court for a declaration regarding the correct interpretation of certain Trust provisions regarding entitlement to income generated by oil, gas and mineral interests located in Upton County, Texas (the "Oil Income"), which was previously the sole and separate property of Ms. Ahern's father, W.N. Connell. The Sisters assert they are entitled to 65% of the Oil Income. Ms. Ahern asserts she is the sole beneficiary of the Trust entitled to 100% of the Oil Income.

First Appeal

On July 7, 2014, the district court issued a preliminary injunction requiring Ms. Ahern to distribute 65% of the Oil Income to the Sisters each month (during the pendency of the litigation), but required the Sisters to post a security bond in order to receive the funds. Ms. Ahern appealed the district court's order (the First Appeal) arguing that the elements of a preliminary

injunction had not been established, and that a delay in the trial date did not constitute "changed circumstances" justifying reconsideration of a prior denial of the same request for injunctive relief.

Second Appeal

On April 1, 2015, the district court removed Ms. Ahern as trustee based on a finding that she breached her fiduciary duty to the Sisters, and appointed a temporary trustee to oversee the Trust administration during the pendency of this dispute. Ms. Ahern appealed the district court's order (the Second Appeal), arguing that, as the sole beneficiary of the Trust pursuant to the plain language of the Trust documents, she owed no fiduciary duties to the Sisters and, as such, there was no basis to appoint a new trustee.

Third Appeal

On April 16, 2015, the district court granted *Summary Judgment* in favor of the Sisters and, on April 20, 2015, issued an *Order Regarding The Accounting, Breach of Fiduciary Duty Claims and Award of Attorneys' Fees*. The district court adopted the Sisters' view of the Oil Income rights based on the equitable principle of laches, finding the Sisters are entitled to 65% of the income while Ms. Ahern is entitled to 35%. The District Court also found that Ms. Ahern had breached her fiduciary duty as trustee, and therefore is personally liable for all of the Sisters' attorneys' fees and costs in this matter pursuant to

NRS 153.031(3)(b). In an order entered on June 30, 2015, the district court awarded the full amount of requested fees totaling $269,733.80 for Ms. Montoya and $122,260.00 for Ms. Bouvier. In the Third Appeal, Ms. Ahern appeals the district court's interpretation of the Trust documents and the orders ancillary thereto, including the breach of fiduciary duty and award of attorneys' fees.

Ms. Ahern requests that the three appeals on file be consolidated so that the Court can address these interrelated issues most efficiently and at minimal cost to the Court and the parties.

II. ARGUMENT

Nevada Rule of Appellate Procedure 3(b) governs "Joint or Consolidated Appeals" and states in relevant as follows:

> **(b) Joint or Consolidated Appeals.**
> (1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.
> (2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Supreme Court upon its own motion or upon motion of a party.

Although on its face NRAP 3(b) appears to address only situations in which "two or more parties" have filed separate appeals, NRAP 1(c) provides that the "Rules shall be liberally construed to secure the proper and efficient administration of the business and affairs of the court and to promote and

facilitate the administration of justice by the court." Moreover, there is "power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment which must weigh competing interests and maintain an even balance." Maheu v. Eighth Judicial Dist. Court In & For Clark Cnty., Dep't No. 6, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (quoting Landis v. North American Co., 299 U.S. 248, 254-255, 57 S.Ct. 163 (1936) (internal quotations omitted).

Here, Ms. Ahern moves this Court to consolidate her appeals for the very reasons set forth in NRAP 1(c)—efficiency and to promote and facilitate the administration of justice. The issues in the three appeals are dependent and intertwined. For example, the issues raised in the Second and Third Appeals both center on the district court's interpretation of the parties' respective rights and duties under the Trust. Resolution of the issues regarding the parties' respective rights and duties (Third Appeal) will directly impact the district court's appointment of a new trustee (Second Appeal).

The First Appeal (regarding the preliminary injunction) is also intertwined. Should the Supreme Court overturn the district court's grant of summary judgment (and decline to grant Ms. Ahern's cross-motion), the issues raised in the First Appeal regarding insufficient basis for a preliminary

injunction will be relevant on remand. Combined briefing and argument on the issues raised in the three appeals will result in the most efficient resolution of this case for both the Court and the parties.

III. CONCLUSION

Should this Court find that consolidation of all or any of Ms. Ahern's appeals on file herein would promote efficiency and the administration of justice, Ms. Ahern respectfully requests that the Court grant this Motion and enter an order consolidating Case Nos. 66231, 67782, and 68046.

Dated this 7th day of August, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed and served the foregoing **MOTION TO CONSOLIDATE RELATED APPEALS** with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on August 7, 2015. upon the following:

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I hereby certify that on August 7, 2015., I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

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