IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER D. DAVIS,

Appellant,

Vs.

CAROLINE DAVIS,

Respondent.

Case No: 68542

Eighth Judicial District Court Case No. P-15-083867-T (In re: the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000)

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APPEAL

APPELLANT'S PETITION FOR REHEARING

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TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE.. iii

TABLE OF AUTHORITIES iv

LEGAL ARGUMENT 1

I. **IMPLIED CONSENT IS INSUFFICIENT TO ESTABLISH PERSONAL JURISDICTION UNDER NRS 163.5555** 2

a. **Asserting Personal Jurisdiction by Implied Consent Has Been Superseded by Analysis of Minimum Contacts** 2

b. **Implied Consent Requires Specific Limitations to Comply with Due Process** 6

II. **NRS 163.5555 REQUIRES ANALYSIS OF MINIMUM CONTACTS** 10

a. **NRS 163.5555 Has a Constitutional Interpretation** 10

b. **Christopher Is Not Subject to Personal Jurisdiction in Nevada**......12

III. **Due Process Requires Proper Service**................16

CERTIFICATE OF COMPLIANCE 21

CERTIFICATE OF SERVICE 23

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

1) Beatrice B. Davis Family Heritage Trust
    a. Trustees: Alaska Trust Company, Alaska USA Trust Company
    b. Purported Trustee: Dunham Trust Company
    c. Trust Protector: Stephen K. Lehnardt
    d. Purported Investment Trust Adviser: Christopher D. Davis
    e. Beneficiaries: Christopher D. Davis, Caroline Davis, Winfield Davis, Ace Davis, Tarja Davis
2) FHT Holdings, LLC
    a. Managing Member: Beatrice B. Davis Family Heritage Trust
    b. Registered Agent: Registered Agent Solutions, Inc.
    c. Officer: Christopher D. Davis

GOODSELL & OLSEN, LLP

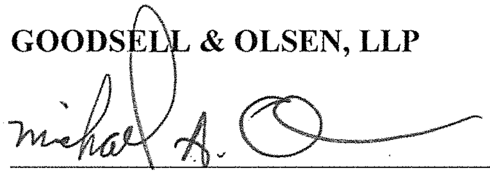

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TABLE OF AUTHORITIES

Constitutional Provisions

U.S. CONST. amend. XIV, § 1 1

Cases

Arbella Mut. Ins. Co. v. Eighth Judicial District Court, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006) 13

Burnham v. Superior Court of California, 274 U.S. 352, 617–18, 47 S. Ct. 632 (1990) ... 4

C.H.A. Venture v. G.C. Wallace Consulting Engineers, Inc., 106 Nev. 381, 384, 794, P.2d 707, 709 (1990) 17

Fulbright & Jaworski LLP v. Eighth Judicial District Court, 131 Nev. Adv. Op. 5, 342 P.3d 997, 1001 (2015) 5, 13, 17

Gladjie v. Darwish, 113 Cal. App. 4th 1331, 1343–44 (2003) 8

Hallwood Realty Partners, L.P. v. Gotham Partners, L.P., 104 F. Supp. 2d 279, 281–82 (S.D.N.Y. 2000) 3, 4

Hess v. Pawloski, 47 S. Ct. 632, 274 U.S. 352, 356 (1927) 7, 8, 9, 10

In re Beatrice B. Davis Family Heritage Trust, 133 Nev. Adv. Op. 4 (2017) 5, 8, 9, 19

In re Estate of Black, 132 Nev. Adv. Op. 7, 367 P.3d 416, 418 (2016) 18

In re Estate of Kordon, 137 P.3d 16, 18 (Wash. 2006) 18

International Shoe v. State of Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) 5

Leven v. Frey, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) 12

Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565 (1878) 3

Shaffer v. Heitner, 97 S. Ct. 2569, 2585, 433 U.S. 186, 215 (1977) 13

State v. Castaneda, 126 Nev. Adv. Op. 45, 245 P.3d 550, 552 12

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United States v. Jin Fuey Moy, 36 S. Ct. 658, 241 U.S. 394, 401 (1916) 12
Viega GmbH v. Eighth Judicial District Court, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1156 (2014) 13
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (U.S. 1980) 18
Young v. Nevada Title Co., 103 Nev. 436, 442, 744 P.2d 902 (1987) 17

Statutes

NRS 111.1031 10
NRS 14.065(1) 1
NRS 14.065(2) 18
NRS 143.110 9
NRS 153.041 9
NRS 155.010 .... 9, 17
NRS 163.5555 .... passim
NRS 163.5557 8

Rules

NRAP 40(a)(2) 1
NRAP 40(c)(2)(A)–(B) 1
NRCP 4 .... 2, 16

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LEGAL ARGUMENT

A petition for rehearing "shall state briefly and with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present."[1] Thus, a petition for rehearing allows for redress "[w]hen the court has overlooked or misapprehended a material fact in the record or a material question of law in the case" or "[w]hen the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case."[2]

Appellant Christopher Davis ("Christopher") seeks rehearing of the Court's Opinion dated January 26, 2017 (hereafter "January 2017 Opinion") to preserve the protections of due process afforded by the Fourteenth Amendment.[3] Part of the Fourteenth Amendment due process protection serves to prevent an individual from being hailed into distant courts absent minimum contacts with the forum. Neither the challenged district court orders nor the January 2017 Opinion have conducted any analysis to

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[1] NRAP 40(a)(2).
[2] NRAP 40(c)(2)(A)–(B).
[3] U.S. CONST. amend. XIV, § 1 ("[N]or shall any state deprive any person of life, liberty, or property, without due process of law . . . ."); NRS 14.065(1) ("A court of this state may exercise jurisdiction over a party to a civil action on any basis **not inconsistent with . . . the Constitution of the United States**." (emphasis added)).

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demonstrate that sufficient minimum contacts exist to permit Nevada courts to exercise personal jurisdiction over Christopher.

Another aspect of due process is the requirement of personal service of process rather than mere notice. Service of process is the action required for a court to assert personal jurisdiction. It is distinct and separate from the consideration of whether personal jurisdiction is proper. Pursuant to the law as it stood prior to the January 2017 Opinion, service of process in an estate matter required a citation (the equivalent of the summons required in a general civil matter), but otherwise service of process pursuant to NRCP 4 applied to either type of matter.

I. IMPLIED CONSENT IS INSUFFICIENT TO ESTABLISH PERSONAL JURISDICTION UNDER NRS 163.5555

a. Asserting Personal Jurisdiction by Implied Consent Has Been Superseded by Analysis of Minimum Contacts

Personal jurisdiction over Christopher has been affirmed improperly based on the inapplicable implied consent doctrine, which has been superseded by minimum contacts analysis.[4] Reliance on implied consent is a misapplication of law. The implied consent doctrine allowed personal jurisdiction to extend to nonresidents in an era when the precedent of the US

[4] See Appellant's Opening Brief, at 21:5–20; Appellant's Supplemental Opening Brief, at 18:14–19:4; 30:4–5 (raising the controlling law of minimum contacts and arguing that automatic application of *in personam* jurisdiction would violate due process).

Supreme Court in Pennoyer would have limited a court's ability to exercise jurisdiction over a nonresident, even one who had taken specific actions within the forum.[5]

> In response, the Supreme Court began to proffer several new theories. It developed first the notion of implied consent. If a defendant conducted certain activities in the forum state, he or she was found impliedly to have consented to the jurisdiction of the courts of that state. This approach began to address situations not covered by the older territorial view, as it permitted a state court to exercise personal jurisdiction over a defendant who had not been served in the state, but who nonetheless had conducted significant activities there. Nevertheless, **the implied consent theory ultimately proved unsatisfactory**. As a legal fiction, it provided **no rigorous way to create principled constitutional limitations on jurisdiction**. The doctrine therefore continued to evolve.[6]

Thus, although implied consent was developed as an explanation for circumstances when personal jurisdiction should arise, it was superseded and replaced by the test of "minimum contacts" that seeks to ensure "traditional notions of fair play and substantial justice" are met when personal jurisdiction is exercised. Minimum contacts analysis more adequately addresses the "Fourteenth Amendment's restrictions on the sovereign powers of the states in a federal system" and the "view of the Fourteenth

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[5] See Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565 (1878).
[6] Hallwood Realty Partners, L.P. v. Gotham Partners, L.P., 104 F. Supp. 2d 279, 281–82 (S.D.N.Y. 2000) (emphasis added).

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1 Amendment as protecting a defendant's liberty interest in not being forced to
2 litigate in a forum with which he has no ties."[7]
3 The Supreme Court of the United States has confirmed that the theory
4 of implied consent has given way to minimum contacts. The Court—after
5 detailing the historical development leading to application of the implied
6 consent doctrine to allow assertion of personal jurisdiction by virtue of
7 statutory enactment—explained:
8
9 > We initially upheld these laws under the Due Process Clause on grounds that they complied with Pennoyer's rigid requirement of either "consent," . . . or "presence," . . . . As many observed, however, the consent and presence were purely fictional. . . . Our opinion in International Shoe **cast those fictions aside**, and made explicit the underlying basis of these decisions: due process does not necessarily require the States to adhere to the unbending territorial limits on jurisdiction set forth in Pennoyer. The validity of assertion of jurisdiction over a nonconsenting defendant who is not present in the forum **depends upon whether "the quality and nature of [his] activity" in relation to the forum . . . renders such jurisdiction consistent with "traditional notions of fair play and substantial justice**."[8]
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16 Implied consent based on a legislative enactment does not present an
17 alternative method of establishing personal jurisdiction over a nonresident.
18 Implementation of the minimum contacts test through International Shoe and
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[7] Id., at 282.
[8] Burnham v. Superior Court of California, 274 U.S. 352, 617–18, 47 S. Ct. 632 (1990) (emphasis added) (citations omitted).

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its progeny cast aside the fiction of implied consent.[9] Accordingly, personal jurisdiction obtained over a nonresident not served with process in the state must be based on the nonresident's minimum contacts with the forum.[10]

The January 2017 Opinion, after reciting the first line of NRS 163.5555, held that "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."[11] This ruling fails to consider minimum contacts as required under International Shoe. Because minimum contacts has superseded the doctrine of personal jurisdiction by implied consent, NRS 163.5555 must be deemed to violate due process if it mandates personal jurisdiction as a matter of implied consent with no minimum contacts analysis.

Due process requires a minimum contacts analysis proving that a court has personal jurisdiction over a nonresident under traditional notions

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[9] See International Shoe v. State of Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945).

[10] See also Fulbright & Jaworski LLP v. Eighth Judicial District Court, 131 Nev. Adv. Op. 5, 342 P.3d 997, 1001 (2015) ("Under the Fourteenth Amendment's Due Process Clause, a **nonresident** defendant **must have sufficient 'minimum contacts'** with the forum state so that subjecting the defendant to the state's jurisdiction will not 'offend traditional notions of fair play and substantial justice.'"(emphasis added)).

[11] In re Beatrice B. Davis Family Heritage Trust, 133 Nev. Adv. Op. 4 (2017). Citation to only line one of NRS 163.5555 demonstrates that a material question of law has been overlooked and misapprehended. See Appellant's Supplemental Opening Brief, at 15:20–16:24; Appellant's Reply Brief, at 13:6–11 (explaining how line two of NRS 163.5555 allowed the statute to have a constitutional interpretation).

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of fair play and substantial justice. If the plain reading ascribed to NRS 163.5555 in the January 2017 Opinion is its only interpretation, that statute is rendered unconstitutional.

b. Implied Consent Requires Specific Limitations to Comply with Due Process

Even assuming that the implied consent doctrine could be used to assert personal jurisdiction—ignoring the constitutional protections of minimum contacts analysis—it requires more than a statute deeming a nonresident to have consented to personal jurisdiction.

Hess v. Pawloski was a seminal case finding implied consent before that theory of personal jurisdiction was superseded by minimum contacts. Hess determined whether a statute allowing a secretary of state to receive service of process on behalf of a nonresident contravened the due process clause of the Fourteenth Amendment. The Court carefully reviewed the language of the statute before determining that personal jurisdiction was appropriate.

> Motor vehicles are dangerous machines, and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest, the state may make and enforce regulations reasonable [sic] calculated to promote care on the part of all, residents and nonresidents alike, who use its highways. The measure in question operates to require a nonresident to answer for his **conduct in the state** where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights. Under the statute, the implied consent is

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limited to proceedings **growing out of accidents or collisions** on a highway in which the nonresident may be involved. It is required that he shall actually receive and receipt for notice of the **service and a copy of the process**.[12]

Thus, in Hess the Court found personal jurisdiction to arise from implied consent in relation to a legislative enactment. However, the Court did not simply allow the Massachusetts legislature to dispense of the due process right protected by the doctrine of personal jurisdiction. Rather, the Court analyzed the statute to ensure that it was consistent with due process in that it required a significant relationship or interaction with the state.

The Massachusetts statute was only applicable to a nonresident's specific conduct within the state, namely proceedings growing out of accidents or collisions. Thus, a nonresident would have to actually travel within the state and be involved in a traffic accident to fall within the ambit of the statute. Furthermore, the statute provided a special procedure that was sufficient to ensure that service of process was made in a fair and just way.

In the present matter, Christopher has been deemed to have given his implied consent to personal jurisdiction in the State of Nevada by virtue of the first line of NRS 163.5555. Implied consent was never explicitly argued by any party prior to issuance of the January 2017 Opinion, which fails to

[12] Hess v. Pawloski, 47 S. Ct. 632, 274 U.S. 352, 356 (1927) (emphasis added).

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identify any limitations in the statute that would have allowed it to conform with due process under the old implied consent doctrine outlined in Hess. In other words there has been no analysis of Christopher's actual actions within the state.

As recited above, the January 2017 Opinion, after reciting the first line of NRS 163.5555 simply states that "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."[13] There is no analysis of limitations within the statute that would have allowed it to conform to due process as required under Hess. Indeed, the reliance on only the first sentence of NRS 163.5555 indicates tacit approval of virtually no limitation at all. Apparently, a trust protector or trust adviser need only accept an appointment to serve a trust subject to the laws of Nevada to be subjected to personal jurisdiction.[14] Although a trust adviser can be given relatively broad power over decisions on management of investment funds in trust, he does not have the power held by a trustee, who holds legal title to trust property.[15]

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[13] In re Beatrice B. Davis Family Heritage Trust, 133 Nev. Adv. Op. 4 (2017).
[14] See NRS 163.5555, sentence one.
[15] Compare NRS 163.5557 with Gladjie v. Darwish, 113 Cal. App. 4th 1331, 1343–44 (2003) ("Legal title to property owned by a trust is held by the trustee, and common law viewed the trustee as the owner of the trust's property.").

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1 This broad application of the language of NRS 163.5555 is
2 inconsistent with the limited reading given to statutes allowed under the old
3 implied consent doctrine as seen in Hess. Hess found exercise of personal
4 jurisdiction appropriate only after finding that the statute in question only
5 implied consent to personal jurisdiction for very specific and narrow conduct
6 that by the terms of the statute had to occur within the jurisdiction.
7 Furthermore, the statute laid out precise regulations regarding service of
8 process to ensure that every nonresident subjected to personal jurisdiction
9 thereby would have his due process rights protected.
10 NRS 163.5555, as interpreted, has no additional protections to ensure
11 that service of process would conform to due process—indeed it has been
12 approved with less than normal service of process.[16] Thus, this Court's
13 interpretation of NRS 163.5555 only requires that a trust adviser accept a
14 position with a trust whose situs is deemed to be Nevada regardless of how
15 limited his powers might be or how those powers are actually exercised. A
16 trust adviser is not a trustee, who holds legal title to trust assets. And the
17 settlor of a trust determines its situs. The first sentence of NRS 163.5555 has
18 been read to give personal jurisdiction over a trust adviser in Nevada even if
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[16] In re Beatrice B. Davis Family Heritage Trust, 133 Nev. Adv. Op. 4, n.3 (2017). Compare NRS 155.010; NRS 153.041; NRS 143.110.

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he has taken no action of any sort in the state. Even under Hess, this interpretation of the statute does not satisfy due process and is a misapplication of law. Accordingly, the statute as interpreted is unconstitutional.

II. NRS 163.5555 Requires Analysis of Minimum Contacts

a. NRS 163.5555 Has a Constitutional Interpretation

Focusing exclusively on line one of NRS 163.5555 to find personal jurisdiction renders the statute unconstitutional on its face and ignores the legislature's intent in drafting the second sentence of the statute, requiring a minimum contacts analysis.[17] But the statute can be read in its entirety in a manner that is consistent with due process under the Fourteenth Amendment. Indeed, given Nevada's efforts to attract businesses and estate planning, it seems unlikely that the legislature ever intended a limitless application of personal jurisdiction when it enacted NRS 163.5555, as such would chill estate planning in the state.[18] The full text of NRS 163.5555 indicates that the statute was framed so that minimum contacts analysis would apply.

[17] Appellant's Opening Brief, at 21:5–20; Appellant's Supplemental Opening Brief, at 15:20–16:24; 18:14–19:4; 30:4–5; Appellant's Reply Brief, at 13:6–11.
[18] See, e.g., NRS 111.1031 (enacting a 365 year wait-and-see approach to the rule against perpetuities, which permits dynasty trusts).

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NRS 163.5555 Trust protector and trust adviser: Submission to jurisdiction of courts of this State. 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. A trust protector or a trust adviser may be made a party to an action or proceeding **arising out of a decision or action of the trust protector or trust adviser**.[19]

Appellant respectfully submits that NRS 163.5555 only requires a trust adviser or protector to submit to the Court's *in rem* authority over a trust whose situs is Nevada. The first line of NRS 163.5555 inhibits a trust adviser or protector's ability to prevent a Nevada court from assuming jurisdiction of a Nevada trust. This is, of course, different than causing a trust protector or adviser to become a "party" to an action or appear personally and take action, hence the second provision of the statute.

NRS 163.5555 provides that a trust protector or adviser may be made a party to an action ONLY based on decisions and actions taken by him. This Court's interpretation of NRS 163.5555, based solely on line one of the statute, renders the second sentence superfluous as it no longer has any meaning or significance, which flies directly in the face of prior precedent of

[19] NRS 163.5555 (emphasis added).

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this Court.[20] A "statute should be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts on that score."[21]

Isolating the first line of NRS 163.5555 to exercise personal jurisdiction over Christopher and make him a party based on implied consent violates his due process right not to be forced into court in a state where he has no minimum contacts.

The Court's interpretation of NRS 163.5555 should reconcile all language of the statute and prefer a constitutional interpretation over one that is not. NRS 163.5555 specifies that a trust protector or adviser can be made a party to litigation—i.e. be subjected to personal jurisdiction—based on his decisions or actions, not mere acceptance to act.

b. Christopher Is Not Subject to Personal Jurisdiction in Nevada

The constitutional interpretation of NRS 163.5555, requiring analysis of minimum contacts, shows that Christopher is not subject to personal jurisdiction in Nevada.

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[20] Leven v. Frey, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) ("[S]tatutory interpretation should not render any part of a statute meaningless, and a statute's language 'should not be read to produce absurd or unreasonable results.'").

[21] United States v. Jin Fuey Moy, 36 S. Ct. 658, 241 U.S. 394, 401 (1916); see also State v. Castaneda, 126 Nev. Adv. Op. 45, 245 P.3d 550, 552 ("[W]e adhere to the precedent that 'every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.'").

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"When a nonresident defendant challenges personal jurisdiction, the plaintiff bears the burden of showing that jurisdiction exists."[22] To fulfill this burden, the party asking the court to assert personal jurisdiction must make "a prima facie showing with competent evidence of essential facts that, if true, would support jurisdiction."[23] Thus, the party asking the court to assert personal jurisdiction over a nonresident must demonstrate that the nonresident has "sufficient 'minimum contacts' with the forum state so that subjecting the defendant to the state's jurisdiction will not 'offend traditional notions of fair play and substantial justice.'"[24]

Accordingly, where certain sufficient minimum contacts to a forum state exist, a non resident may be subjected to personal jurisdiction there.

> But we have rejected the argument that, if a State's law can properly be applied to a dispute, its courts necessarily have jurisdiction over the parties to that dispute. [The State] does not acquire . . . jurisdiction by being the "center of gravity" of the controversy, or the most convenient location for litigation. The issue is personal jurisdiction, not choice of law.[25]

Using legal tools to designate the applicable law does not automatically establish sufficient minimum contacts with a forum whose law has been

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[22] Fulbright & Jaworski, LLP v. Eighth Judicial District Court, 131 Nev. Adv. Op. 5, 342 P.3d 997, 1001 (2015).
[23] Viega GmbH v. Eighth Judicial District Court, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1156 (2014) (citations omitted).
[24] Id. (citing Arbella Mut. Ins. Co. v. Eighth Judicial District Court, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006)).
[25] Shaffer v. Heitner, 97 S. Ct. 2569, 2585, 433 U.S. 186, 215 (1977) (citation omitted).

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chosen. Any nonresident being hailed into the courts of the forum must have sufficient minimum contacts to comply with the requirements of due process.

The original decision by the district court to exercise personal jurisdiction over Christopher provided no substantive evaluation of any competent evidence. Indeed, the district court was quite opaque in its ruling:

> I appreciate this argument that it's all invalid [referring to the transfer of Trust Situs] and so Mr. Davis can't be sued, but my problem with that is he's been acting here, I have to **assume** because **stuff has been going on**, apparently giving instruction to Dunham and I just think that means he's consented to the jurisdiction of this Court.[26]

Despite the burden on Caroline to provide competent evidence that the Court has personal jurisdiction over Christopher, no specific competent evidence was identified. The district court relied on assumptions, not evidence. The district court did nothing to identify sufficient minimum contacts had been shown in either of the challenged orders, which simply asserted personal jurisdiction was based on the choice of law provision of the trust and the state of organization of a non-party limited liability company.[27]

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[26] APPELL000425–426 (emphasis added).
[27] APPELL000435–439; RAPP53–61.

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Furthermore, the minimum contacts suggested by Caroline are insufficient to establish personal jurisdiction over Christopher. Although Caroline has pointed to several "actions" that she ascribes to Christopher, the ultimate basis for her argument that Christopher has sufficient minimum contacts relies on choice of law determinations.[28] She argues sufficient minimum contacts arise because the FHT situs was designated as Nevada and FHT Holdings, LLC, is a Nevada limited liability company for which Christopher is sole manager.[29]

The designation of situs for FHT and formation of FHT Holdings, LLC represent a decision regarding the law that should govern those entities. Choosing Nevada law to govern those entities does not automatically establish sufficient minimum contacts over any individual working with the entities.

Caroline has attempted to bolster the lack of sufficient minimum contacts by depicting an extensive list of duties she ascribes to Christopher. However, the only tie these duties have to the jurisdiction is the choice of law decision, which cannot alone serve as a basis for sufficient minimum contacts. Caroline thus continues casting about to discover some action to

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[28] Respondent's Answering Brief, at 22:4–23:21.
[29] Id., at 21:6-13; 23:6-10.

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establish minimum contacts. "As manager of FHT Holdings [a non-party], Christopher has **presumably** filed **federal** tax returns on behalf of said entity."[30] Again, the only possible relevance a **federal** tax return would have to Nevada is an entity's decision to be governed by the laws of Nevada, which is a choice of law issue. It is not an issue of personal jurisdiction.

It is the trustee's duty (not Christopher's) "to prepare or to arrange for the preparation of the tax returns of the trust."[31] Sufficient minimum contacts have not been shown, and the burden of proving that sufficient minimum contacts existed has not been met. Accordingly, the Court cannot exercise personal jurisdiction over Christopher without violating his due process.

III. Due Process Requires Proper Service

Service of process continues to be a vital aspect of due process, but has not been fully accounted for in the January 2017 Opinion.[32] Service of process is the procedural mechanism used by a court to exercise personal jurisdiction over an individual, make the individual a party to an action, and require that the individual appear or take other action.[33] Moreover, "notice is not a substitute for service of process. Personal service or a legally provided

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[30] Id., at pg. 22:13-14 (emphasis added).
[31] APPELL000135.
[32] Appellant's Opening Brief, at 13:27–28; Appellant's Reply Brief, 14:7–15:2.
[33] See NRCP 4.

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substitute **must still occur in order to obtain jurisdiction over a party**."[34] Personal jurisdiction must be obtained to exercise authority over an individual by entering a judgment or ordering the individual to take or abstain from action.[35]

NRS 155.010 requires actual notice of certain probate matters to be sent to each "interested person" to make him aware of actions that could potentially affect his rights. Such notice does not give the court jurisdiction over such an individual. Rather, it requires notice of the Court's actions in regard to trust and estate assets. As shown by In re Estate of Black and C.H.A. Venture, NRS Titles 12 and 13 require service of process with a citation to make an individual a party to a Title 12 or 13 proceeding and compel him to submit to court orders.

The party arguing for the exercise of personal jurisdiction "must satisfy the requirements of Nevada's long-arm statute and show that jurisdiction does not offend principles of due process."[36]

Nevada's long-arm statute indicates that service of process must be used to properly exercise personal jurisdiction.[37] To find in personam

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[34] C.H.A. Venture v. G.C. Wallace Consulting Engineers, Inc., 106 Nev. 381, 384, 794, P.2d 707, 709 (1990).
[35] See Young v. Nevada Title Co., 103 Nev. 436, 442, 744 P.2d 902 (1987).
[36] Fulbright & Jaworski, LLP v. Eighth Judicial District Court, 131 Nev. Adv. Op. 5, 342 P.3d 997, 1001 (2015).

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jurisdiction based on NRS 163.5555 where there has been no personal service would be clearly unconstitutional.[38]

This Court recently held:

> A citation in a will contest is equivalent to a civil summons in other civil matters. See In re Estate of Kordon, 137 P.3d 16, 18 (Wash. 2006). As **defective service of process deprives a court of personal jurisdiction**, see Gassett v. Snappy Car Rental, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995), superseded by rule on other grounds as stated in Fritz Hansen A/S v. Eighth Judicial Dist Court, 116 Nev. 650, 654-56, 6 P.3d 982, 984-85 (2000), **so too does a failure to issue citations** in a will contest, see In re Estate of Kordon, 137 P.3d at 18 (holding that a "failure to issue a citation deprives the court of personal jurisdiction over the party denied process"); see also 95 C.J.S. Wills § 578 (2011) ("A court acquires personal jurisdiction over an adverse party to a will contest by issuance of a citation. A will contestant's failure to issue a citation on the decedent's personal representative deprives the court of personal jurisdiction over the personal representative.")[39]

The Court's recent decision in In re Estate of Black based its reasoning on In re Estate of Kordon, which correctly recited the proposition that a "citation is the process designated by the statute in probate proceedings for bringing adverse parties into court. It is the counterpart of the summons in ordinary civil proceedings."[40] Thus, personal jurisdiction is

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[37] See NRS 14.065(2).

[38] World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (U.S. 1980).

[39] In re Estate of Black, 132 Nev. Adv. Op. 7, 367 P.3d 416, 418 (2016) (emphasis added).

[40] In re Estate of Kordon, 137 P.3d 16, 18 (Wash. 2006).

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only properly exercised pursuant to NRCP 4, NRS 14.065, and In re Estate of Black after personal service of process, which in an estate matter requires a citation.

The January 2017 Opinion appears to create a disparity in the requirements needed to fulfill due process. Footnote three states: "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."[41]

The January 2017 Opinion contradicts the distinction, upheld by this Court, between service of process and notice of proceedings. To obtain jurisdiction over Christopher, he must first be served with process. This due process protection, observed in probate court by issuing a citation, goes beyond simply notifying an interested person that the Court is exercising *in rem* jurisdiction over assets that may affect the interested person. Service of process is how the Court asserts its authority over a nonresident. Because service of process was never made on Christopher, due process has not been met.

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[41] In re Beatrice B. Davis Family Heritage Trust, 133 Nev. Adv. Op. 4, n.3 (2017).

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CONCLUSION

Personal jurisdiction forms an important part of due process under the Fourteenth Amendment. Although implied consent permitted the assertion of personal jurisdiction in the past, application of minimum contacts analysis to ensure that traditional notions of fair play and substantial justice are kept must be made to exercise personal jurisdiction. The lack of minimum contacts in this matter, and the failure to provide sufficient service of process, provides grounds for a rehearing. This matter should be reheard to address these Constitutional concerns, which are overlooked by the January 2017 Opinion.

DATED this 27th day of February 2017.

Respectfully Submitted,

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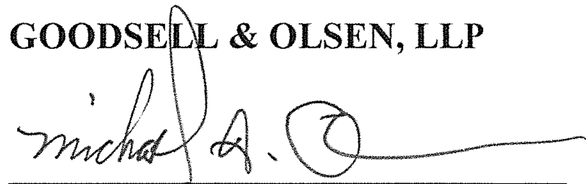

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[x] It has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in font-size 14 of Times New Roman; or

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2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40 because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains less than 4,667 words; or

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[ ] Does not exceed 10 pages.

3. Further, I hereby certify that I have read this petition for rehearing, and to the best of my knowledge, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP

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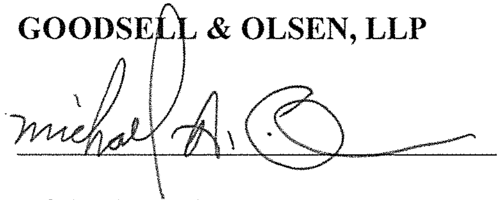
40, which requires every assertion in the petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully Submitted,

GOODSELL & OLSEN, LLP



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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE ABRAMS LAW FIRM, LLC, and on the 6th day of May, 2016, service of a copy of the foregoing *APPELLANT'S REPLY BRIEF* was sent via first class mail, postage prepaid and addressed as follows:

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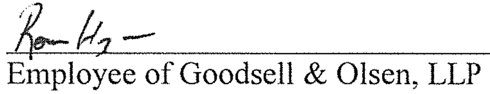

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