

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 CHRISTOPHER D. DAVIS,

3 Appellant,

4 v.

5 CAROLINE DAVIS,

6 Respondent.

Case No.: 68542
68948

Eighth Judicial District
Court
Case No.: P-15-083867-J (In re the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000)
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Nov 17, 2015 01:24 p.m.
Priscilla K. Lindeman
Clerk of Supreme Court

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8 **CAROLINE D. DAVIS' REPLY TO CHRISTOPHER D. DAVIS'S**
9 **RESPONSE TO CAROLINE DAVIS'S MOTION TO REMAND**
10 **AND SUPPLEMENT THERETO**

11 Caroline D. Davis ("Ms. Davis"), by and through her counsel, the law firm
12 of Solomon Dwiggins & Freer, Ltd., hereby files her Reply To Christopher D.
13 Davis's Response To Caroline Davis's Motion To Remand And Supplement
14 Thereto (the "Reply"). This Reply is based upon the Memorandum Of Points
15 And Authorities, all attached exhibits, the pleadings and papers on file in Case
16 Nos. #68542 and #68948, the underlying case, and any oral argument that this
17 honorable Court may entertain at the time of hearing.
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20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 Notwithstanding Christopher D. Davis' ("Christopher") contention to the
22 contrary, Ms. Davis has submitted sufficient and satisfactory evidence to the
23 District Court ("DC") that the First Amendment and transfer of situs from Alaska
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1 to Nevada were completed in accordance with the terms of the Trust.¹ As fully
2 set forth in Ms. Davis' Motion For Remand and Supplement thereto, once the
3 matter is remanded and the DC assumes jurisdiction over the Trust in its entirety,
4 the DC may properly grant the relief it deems necessary and proper, including
5 compelling the Christopher² to comply with the terms of the Trust and applicable
6 law. Indeed, NRS 153.031 specifically permits a beneficiary to "petition the
7 court regarding aspects of the affairs of the trust, including...compelling
8 compliance with the terms of the trust or applicable law."
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11 Christopher claims that "[p]ursuant to NRS 166.170, [Ms. Davis] cannot
12 even bring a claim against Christopher as a purported advisor to the Trust...."³
13 Christopher's reliance on NRS 166.170 is misplaced. NRS 166.170 does not
14 preclude Ms. Davis from requesting the DC to compel Christopher's compliance
15 with the terms of the Trust and the law. Rather, NRS 166.170 is intended to
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21 ¹ See, Ms. Davis' Response To Emergency Writ, filed on October 19, 2015, at
22 Ex. T, wherein Judge Sturman specifically stated that she is "more convinced
23 than ever that [Nevada] is where jurisdiction is because [she] believe[s] that the
24 trust was properly changed to a Nevada trust with full notice to the people who
25 were entitled to get it...").

26 ² See, First Amendment, at pages 2 through 3, Art. Thirteen, 2.d, SECOND,
27 attached as Exhibit A to Ms. Davis' Response To Christopher's Emergency
28 Motion Under.

³ Christopher D. Davis's Response To Caroline Davis's Motion For Remand And
Supplement Thereto, filed with this Court on November 9, 2015 (the
"Response"), at p. 2:8-11.

1 preclude actions by persons asserting claims concerning **property** transferred to a
2 spendthrift trust.⁴

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4 Christopher, as a Fiduciary and the sole individual under the Trust with the
5 power and responsibility of managing all investments, has or should have in his
6 possession, custody, or control, all relevant and necessary information and
7 documentation related to the Trust, irrespective of when certain transactions
8 occurred, and Christopher cannot avoid his duty of full disclosure. “It has been
9 observed that a fiduciary has a duty to make full and fair disclosure of all facts
10 which materially affect the rights and interests of the parties...” Golden Nugget,
11 Inc. v. Ham, 95 Nev. 45, 49, 589 P.2d 173, 175-76 (Nev. 1979) (Internal
12 quotations omitted) (Internal citations omitted). Christopher cannot argue in
13 good faith that the fiduciary duties conferred upon a trustee are not also conferred
14 upon him as a Fiduciary under NRS 163.554.⁵

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20 ⁴ See, Bill Summary for Assembly Bill 469, 70th Regular Session Of The Nevada
21 Legislature, a true and correct copy of which is attached hereto as **Exhibit 6**.
22 (providing that NRS 166.170 was intended to “provide[] a statute of limitations
23 for a creditor bringing an **action concerning the transfer of property to a**
spendthrift trust.” (Emphasis added).

24 ⁵ “[A] trustee [or fiduciary] owes the beneficiaries the duty of full and accurate
25 disclosure of the trustee’s files regarding the administration of the trust estate.”
26 Lasky, Haas, Cohler & Munter v. Superior Court, 172 Cal.App.3d 264, 280, 218
27 Cal.Rptr. 205, 214 (Cal. Ct. App. 1985). (Internal quotations omitted) (Internal
28 citations omitted); see also, In re Marriage of Petrie, 105 Wash.App. 268, 275, 19
P.3d 443, 447 (Wash. Ct. App. 2005) (stating the duty of full disclosure “includes
the responsibility to inform the beneficiaries fully of all facts that would aid them
in protecting their interests. Failure to report can be a breach of fiduciary duty.”).

1 Christopher's also claim that Ms. Davis "has failed to plead claims,
2 decisions or acts that Christopher performed or make a prima facie case as to
3 general or specific jurisdiction requirements in order to obtain *in personam*
4 jurisdiction over Christopher..."⁶ To the contrary, Ms. Davis has consistently
5 pled that Christopher is the Investment Trust Advisor of a **Nevada trust** and is
6 the sole Manager of FHT Holdings, LLC, **a Nevada limited liability company**.⁷
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8 Indeed, Ms. Davis specifically alleged that Christopher acted as Investment Trust
9 Advisor "by directing the creation of FHT Holdings, LLC and [] transfer[ing] the
10 Policy to such entity."⁸ Additionally, during the September 2, 2015 hearing on
11 Christopher's Petition For Rehearing, the DC found that "Christopher has been
12 directing the trust in Nevada..."⁹ As such, the DC may properly assume *in*
13 *personam* jurisdiction over Christopher since he submitted to the jurisdiction of
14 the State of Nevada upon accepting his position as Investment Trust Advisor
15 pursuant to NRS 163.5555, and has purposefully availed himself of the laws of
16 Nevada by serving as sole Manager of a Nevada limited liability company.
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23 ⁶ See, Response, at p. 1:27 through p.2:7.

24 ⁷ See, Respondent's Appendix To Response To Christopher D. Davis'
25 Emergency Motion Under NRAP 27(e), at Volume 9, Exhibit C, ¶ 26; Volume 8,
26 Exhibit R, p.4:3-8; p.7:1-11 (explaining that Christopher's service as Investment
27 Trust Advisor and Sole Manager of FHT Holdings, LLC, which currently holds
28 the Trust's primary asset, are "inextricably intertwined" and the DC has
jurisdiction over Christopher as the sole acting Manager of FHT Holdings, LLC).

⁸ *Id.*, at Volume 7, Exhibit W, p. 13:23-25. (Emphasis added).

⁹ *Id.*, at Volume 8, Exhibit T, p. 67:16-18.

1 Christopher's arguments concerning the assumption of jurisdiction under
2 the theory of "constructive trust" or "de facto trust" are without merit as the DC
3 has indicated that it will assume jurisdiction over the Trust in its entirety upon
4 remand. Christopher, as Investment Trust Advisor, submitted to the jurisdiction
5 of Nevada pursuant to NRS 163.5555, and notice was properly provided pursuant
6 to NRS 155.010. Christopher's service as a Fiduciary to a Nevada trust and as
7 the sole Manager of a Nevada limited liability company satisfies the minimum
8 contacts needed to assert *in personam* jurisdiction. Assuming arguendo that NRS
9 163.5555 and notice pursuant to NRS 155.010 are insufficient to acquire *in*
10 *personam* jurisdiction, the DC may still properly assume jurisdiction over the
11 Trust under NRS 164.010. If the DC then determines that personal service is
12 required to compel Christopher's compliance, such service can be effectuated
13 after the matter is remanded to the DC.

14 Therefore, Ms. Davis respectfully requests that this Court remand this
15 matter to the DC to grant the relief requested in Ms. Davis' Motion To Amend.

16 DATED this 17th day of November, 2015.

17 SOLOMON DWIGGINS & FREER, LTD.

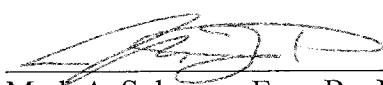
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19 Mark A. Solomon, Esq., Bar No. 00418
20 Joshua M. Hood, Esq., Bar No. 12777
21 9060 West Cheyenne Avenue
22 Las Vegas, Nevada 89129
23 Telephone: 702.853.5483
24 Facsimile: 702.853.5485
25 Attorneys for Caroline D. Davis
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Exhibit 6

Exhibit 6



RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

ASSEMBLY BILL 469

Assembly Bill 469 changes the provisions relating to spendthrift trusts. The bill provides a statute of limitations for a creditor bringing an action concerning a transfer of property to a spendthrift trust. The statute of limitations for a person who is a creditor when the transfer is made is two years after the transfer or six months after discovering the transfer, whichever is later. If a person becomes a creditor after the transfer is made, the statute of limitations is two years.

The bill also allows a person to create a spendthrift trust for himself under certain requirements. These requirements are that the trust be irrevocable, that there is no requirement that any part of the income or principal of the trust be distributed to the person creating it, and that the trust was not intended to hinder, delay, or defraud known creditors.

Assembly Bill 469 also changes the provisions governing the construction, operation, and enforcement of spendthrift trusts. The bill requires that if the person creating the trust is a beneficiary of the trust, at least one trustee of the trust must be a natural person who resides and has his domicile in this state; a trust company that maintains an office in this state for the transaction of business; or a bank that possesses and exercises trust powers and maintains an office in this state for the transaction of business. Further, the bill expands the provisions governing spendthrift trusts to include any such trust created in or outside this state that is administered in this state and has at least one trustee based in Nevada who has the power to maintain records and prepare income tax returns for the trust.

Finally, the bill revises the provisions governing the period of time for the continuation of a spendthrift trust to clarify that such a trust may not continue for a period longer than allowed by the Uniform Statutory Rule Against Perpetuities.

Background Information

Assembly Bill 469 expands the law governing spendthrift trusts to increase estate tax revenue and attract assets to Nevada by providing benefits to very wealthy persons. A spendthrift trust is a device to provide a stream of income for a person who is considered incapable of prudently managing his own financial affairs, while protecting the principal not only from the spendthrift's creditors, but from the spendthrift himself.