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Mark A. Solomon, Esq.
Nevada Bar No. 418
msolomon@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

THIS COURT FINDS that the Order dated May 19, 2015, Re: Petition to Assume Jurisdiction over the Beatrice B. Davis Family Trust is currently on appeal, so this Court lacks



1 jurisdiction to amend the Order at this time. However, pursuant to Huneycutt v. Huneycutt, 94
2 Nev. 79, 575 P.2d 585, (1978):

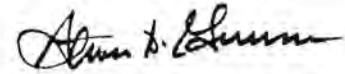
3 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
4 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
5 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
6 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
7 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
8 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
9 as grant any and all additional relief as the District Court deems proper.

10 DATED this 14th day of October 2015.

11 
12 _____
13 DISTRICT COURT JUDGE

ATTACHMENT 3

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN THE MATTER OF THE TRUST OF:)
THE BEATRICE DAVIS HERITAGE)
TRUST)
_____)

CASE NO: P-15-083867-T
DEPT NO: XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

**MOTION TO COMPEL: CAROLINE D. DAVIS'S MOTION TO COMPEL
HARRIET ROLAND, ESQ. TO PRODUCE DOCUMENTS RESPONSIVE TO
SUBPOENA DUCES TECUM; FOR ATTORNEY'S FEES AND COSTS
MOTION: CAROLINE D. DAVIS'S MOTION TO HOLD CHRISTOPHER D.
DAVIS IN CONTEMPT AND FOR ATTORNEYS' FEES AND COSTS**

WEDNESDAY, SEPTEMBER 30, 2015

APPEARANCES:

FOR THE PETITIONERS: DANA DWIGGINS, ESQ.
JOSHUA HOOD, ESQ.

FOR THE RESPONDENTS: ANTHONY BARNEY, ESQ.
HARRIET ROLAND, ESQ.

RECORDED BY KERRY ESPARZA, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1 But I did review the hearing last week, or not -- or
2 I'm sorry, the hearing from the last hearing, as well as the
3 pleadings, and I think the jurisdictional issue has been beat
4 to death. I understand he objects to your findings. He has
5 filed an appeal. You have already indicated your intent to
6 certify full jurisdiction. So to be quite candid, I'm not
7 sure why we're still arguing about jurisdiction.

8 As Mr. Solomon also pointed out at the last hearing,
9 NRS 163.5555 specifically gives this Court in personam
10 jurisdiction over anyone that has assumed the role as an
11 investment trust advisor. So again, I'm not sure why we're
12 talking about jurisdiction.

13 I know he dedicates a significant portion of his
14 brief to whether or not your delineations into the order were
15 the word "or" or "in" and the different meanings. My
16 understanding is that's a moot issue. But when I read the
17 order, to me it was pretty clear it was or. And then
18 obviously he addresses the procedural issues in regard to the
19 affidavit, which I think we resolved that matter, and then
20 obviously we just discussed the different judge.

21 I think consistent with the order that you made in
22 connection with the subpoena of Ms. Roland last month, it's
23 clear that the time for compliance of the order isn't from the
24 date in which he became the investment advisor or the manager,
25 which was in February of 2014, but in fact goes back to 2007,

1 These folks -- why it always surprises me, these folks don't
2 seem to get along, so I don't know what that is.

3 MR. BARNEY: So you're not issuing the order today
4 is my understanding.

5 THE COURT: No. I'm continuing it. Continue it.
6 My only order today is that initial disclosures are due on
7 October 23, so we can discuss at the status check on this
8 hearing. And with respect to Ms. Roland, we can discuss on
9 the 28th and set a discovery plan.

10 MR. BARNEY: Your Honor, also a point in clarity
11 with one of the things that Ms. Dwiggins raised, she said that
12 you certified an order. I've not seen a certification of the
13 order.

14 MS. DWIGGINS: I don't believe I said that, and if I
15 did I misspoke. My understanding was you said you were intent
16 to certify if it came to that point with the Supreme Court.

17 THE COURT: They asked for a Honeycutt order.

18 MS. DWIGGINS: Yes.

19 MR. HOOD: Right.

20 MS. DWIGGINS: Because we had filed a Honeycutt
21 motion.

22 THE COURT: We discussed Honeycutt order, if we
23 would need a Honeycutt order.

24 MS. DWIGGINS: Correct.

25 MR. BARNEY: And no order's been issued.

1 MS. DWIGGINS: Correct.

2 THE COURT: Oh, no. Absolutely. The Supreme Court
3 has not --

4 MS. DWIGGINS: My understanding is you had indicated
5 your intent to do so if one is requested.

6 THE COURT: Right. If requested.

7 MS. DWIGGINS: Yes.

8 THE COURT: If requested to do a Honeycutt order, we
9 would certainly do a Honeycutt order.

10 MS. DWIGGINS: Yes. That's all I meant to state, so
11 if it came out wrong, I apologize.

12 MR. BARNEY: I just don't know the -- I don't know
13 the extent of what Honeycutt order that would be, I guess.

14 THE COURT: Yeah. And that's why I said we --

15 MR. BARNEY: We're flying blind still.

16 THE COURT: It's only if it's requested, if the
17 court says, you know, we need to know if the Supreme Court
18 would take up such and such issue, then certainly we'll
19 respond to that. That's all we were talking about, I think,
20 the last time.

21 MR. BARNEY: Thank you, Your Honor. Thank you for
22 bearing with me.

23 THE COURT: Yes. Thank you.

24 MR. BARNEY: I'm not in tip-top shape today.

25 THE COURT: No. Go home and go back to bed, and

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

KARR REPORTING, INC.
Aurora, Colorado


KIMBERLY LAWSON

KARR Reporting, Inc.

Exhibit 50

Anthony L. Barney, M.S., J.D., LL.M.
Attorney at Law
Licensed in Nevada and Idaho

Tiffany S. Barney, J.D.
Attorney at Law
Licensed in Nevada

Mary L. Martell, J.D.
Law Clerk

ANTHONY L. BARNEY, LTD.
A Nevada Professional Law Corporation

3317 W. Charleston Boulevard, Suite B
Las Vegas, Nevada 89102-1835
Receptionist: 702-438-7878
Fax: 702-259-1116

Zachary D. Holyoak
Law Clerk
Neva Liebe
Administrative Assistant

Website Address
www.anthonybarney.com

E-mail Address
office@anthonybarney.com

December 15, 2015

Honorable Judge Gloria J. Sturman
Department 26
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

Joshua M. Hood, Esq.
Mark A. Solomon, Esq.
Solomon Dwiggins Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: The Beatrice B. Davis Family Heritage Trust ("Trust");
Case No. P-15-083867-T
Our Client: Christopher D. Davis

SENT VIA FACSIMILE AND HAND DELIVERY

Dear Judge Sturman and Mr. Hood/Solomon,

This letter follows my previous letter dated October 19, 2015, and is in response to the proposed order claiming to grant Caroline's motion to amend and deny Christopher's petition for reconsideration. In my previous letter I expressed concerns about the differences in the certification of intent as submitted and the certification of intent as it was later signed. I have attached that letter for your review as Attachment I. I have a number of additional concerns with the new proposed order which I hope the court can address.

First, I am extremely concerned that this new proposed order is far beyond the scope provide by the Supreme Court. The Supreme Court lifted the stay on this case "for the limited purpose of allowing the district court to enter its amended order."¹ However, Mr. Solomon's proposed order appears to grant subsequent motions and deny subsequent petitions. Not only is the proposed order beyond the scope provided by the Supreme Court, but it also claims to grant Caroline's motion to amend and deny Christopher's petition for reconsideration. This is contrary to what the Supreme Court directed. Further, the only motion to amend of which I am aware is

¹ See Supreme Court order filed December 9, 2015 page 2 last paragraph, attached to Mr. Solomon's letter to Judge Sturman dated December 14, 2015

Caroline's motion to amend or modify order pursuant to NRCP 60(b)(3).² The claimed legal basis of this motion was that Christopher was alleged to have fraudulently advanced legal arguments. It should be noted that Caroline's counsel subsequently withdrew many of the statements made in the motion to amend and other pleadings under threat of NRCP 11 request for sanctions. More importantly, the court never indicated that there was any such fraud behind Christopher's legal arguments.

Ironically, the misrepresentations of Caroline's counsel do in fact provide a basis for amending the order based on NRCP 60(b)(3). Caroline's counsel misrepresented at the original hearing that a constructive trust was a vehicle whereby the court could assume jurisdiction. Caroline's counsel has continually misrepresented that a de-facto trust is a vehicle whereby the court could assume jurisdiction. There is no evidence of fraud by Christopher or his counsel, however the misrepresentations of the law by Caroline's counsel provide a basis for NRCP 60(b)(3) modifications against Caroline. The court did not allow Christopher to brief either of the theories of jurisdiction by constructive trust or de-facto trust, therefore, no findings were made regarding the misrepresentations by Caroline's counsel. In short this Court never made any findings which would justify a rule 60(b)(3) modification to the June 24, 2015 order.

Because Caroline has not made another motion to amend under a different legal theory, the order could only be modified based on the legal argument presented in Christopher's petition for reconsideration. This Court will recall that Christopher's petition for reconsideration specifically pointed out that it was a clear error of law for the court to assume jurisdiction based on a theory of a constructive trust.³ It is telling that in nearly all of her subsequent pleadings Caroline has defended the constructive trust argument or has attempted to re-brand it as a de facto trust. The proposed order submitted yesterday afternoon does the same. The simple fact remains that it was Christopher's petition which provided the legal basis for amending the order. For the preceding reasons Caroline's motion to amend does not provide a valid legal basis to amend the order.

My next concern is regarding Caroline's apparent attempt to backfill the order with findings that are not part of the oral or written record. As you know Caroline has not provided any evidence of any specific actions taken by Christopher in his alleged roles as investment advisor or manager of the FHT Holdings LLC. Yet, Mr. Solomon's proposed order makes the finding that "Christopher D Davis has been acting as investment trust advisor since his acceptance of the position."⁴ Additionally, Mr. Solomon's proposed order makes the findings that "Christopher D. Davis has been acting as sole manager of FHT Holdings, LLC since his appointment of such position."⁵ These two findings are not supported by the record as there is no allegation or finding of any specific action or decision made by Christopher in either of his alleged roles.

² See Motion to amend or modify order pursuant to NRCP 60(b)(3) attached hereto and incorporated as Attachment 2

³ See the relevant pages of Christopher's petition for reconsideration attached hereto and incorporated as Attachment 3

⁴ See proposed order page 3 lines 26-27 attached to attorney Solomon's letter to Judge Gloria Sturman dated December 14, 2015.

⁵ Id at page 4 lines 1-2.

Another example of a finding in the proposed order which is unsupported and is actually contradicted by the record, is the finding that "Christopher did not present sufficient new evidence or legal basis to reconsider the May 19, 2015 Order." The reality is that Christopher presented the legal argument that a constructive trust is not a vehicle for obtaining jurisdiction. This Court clearly stated that "I was wrong in accepting Mr. Solomon's description of that as a constructive trust. Technically you're right. It's not a constructive trust."⁶ Additionally, this court stated that the affidavit presented by Tarja Davis was "helpful" new evidence.⁷ Clearly Christopher did present sufficient new evidence and a legal basis for reconsideration of the order.

Finally, as mentioned above, I am concerned that the findings of fact in Mr. Solomon's original proposed certification of intent (which this court opted not sign) and the proposed order are strikingly similar to this most recently proposed order. I have attached the original proposed order, original certification of intent, and the certification of intent as signed as Attachments 4, 5, and 6 respectively. This court rejected the original certification of intent, in favor of a second version (submitted ex-parte), which corrected only the constructive trust defect. This court must have felt that the original certification of intent and proposed order were not accurate regarding its findings, because it did not sign it. However, the court is now presented with a nearly identical order to the one it apparently rejected initially.

Based on the above, I have attached a competing order for your review. It follows the certification of intent which this court previously signed and properly attributes the changes to the legal argument made in the petition to reconsider and not the motion to amend based upon Caroline's allegation of fraud of which this Court clearly did not make a finding.

I appreciate your consideration of this matter.


Sincerely,



ANTHONY L. BARNEY

Attorney at Law

anthony@anthonybarney.com



HARRIET ROLAND

Attorney at Law

ROLAND LAW FIRM

cc: Via U.S. Mail:

Client

Mark A. Solomon, Esq.

Joshua M. Hood, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

⁶ See transcript of hearing dated September 2, 2015, page 59 lines 23-25.

⁷ Id at page 18 line 24.

ATTACHMENT 1

Anthony L. Barney, M.S., J.D., LL.M.
Attorney at Law
Licensed in Nevada and Idaho

Tiffany S. Barney, J.D.
Attorney at Law
Licensed in Nevada

Mary L. Martelli, J.D.
Law Clerk

ANTHONY L. BARNEY, LTD.
A Nevada Professional Law Corporation

3317 W. Charleston Boulevard, Suite B
Las Vegas, Nevada 89102-1835
Receptionist: 702-438-7878
Fax: 702-259-1116

Zachary D. Holyoak
Law Clerk
Neva Liebe
Administrative Assistant

Website Address
www.anthonybarney.com

E-mail Address
office@anthonybarney.com

October 20, 2015

Honorable Judge Gloria J. Sturman
Department 26
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

Joshua M. Hood, Esq.
Mark A. Solomon, Esq.
Solomon Dwiggin Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: The Beatrice B. Davis Family Heritage Trust ("Trust");
Case No. P-15-083867-T
Our Client: Christopher D. Davis

SENT VIA FACSIMILE AND HAND DELIVERY

Dear Judge Sturman and Mr. Hood and Mr. Solomon:

We are in receipt of the Motion for Remand to the Eighth Judicial District Court ("Motion") filed with the Nevada Supreme Court on October 19, 2015 whereupon attached as Exhibit 3 to the documents is a Certification of Intent to Amend Order ("Certification"). The Motion and Exhibits are enclosed herewith as Attachment 1. Caroline's September 14, 2015 correspondence is enclosed as Attachment 2. During the hearing on September 30, 2015, the following exchange occurred:

Dana Dwiggin: "...You have already indicated your intent to certify full jurisdiction.... (Page 9:5-6)

Mr. Barney: "...I've not seen a certification of the order...." (Page 40:12-13)

Ms. Dwiggin: "My understanding is you had indicated your intent to do so if one is requested." (Page 41:4-5)

The Court: "If requested to do a Honeycutt order, we would certainly do a Honeycutt order."

Mr. Barney: "I just don't know the—I don't know the extent of what Honeycutt order that would be, I guess." (Page 41:12-13).

The Court: "Yeah. And that's why I said we —...It's only if it's requested, if the court says, you know, we need to know if the Supreme Court would take up such and such issue, then certainly

October 20, 2015

Page 2 of 2

we'll respond to that..." (Page 41:1-4, 16-19). These transcript pages are enclosed herein as Attachment 3.

The proposed certification that was submitted on September 14, 2015 with a letter to this Court and copied upon Christopher's counsel was six pages in length. The certification submitted to Supreme Court had been revised to two pages by Caroline's counsel and signed by this Court on October 14, 2015.⁶ Based upon the previous concerns that we expressed regarding the order dated July 1, 2015,⁶ and the corresponding ex-parte correspondence to this Court from Caroline's counsel, we again express our concerns to this Court.

This Court indicated that it would only do a certification (Honeycutt order) if it was requested [by the Supreme Court]. (See Transcript, Page 41:1-4, 16-19). None of the attorneys besides Caroline's counsel made such a request, and the previous request by Caroline's attorney on September 14, 2015 provided a substantially different proposed certification than the one that was signed by the Court on October 14, 2015. Even if Caroline later alleges there was no ex-parte communications that accompanied the revised certification that was signed by this Court on October 14, 2015 [and not provided to Christopher's counsel until it was served with the Motion, how would Caroline's counsel have known to submit a revised certification from the one previously submitted to the Court with their correspondence dated September 14, 2015?

We are respectfully requesting that we be provided with a copy of Caroline's request or a letter detailing verbal discussions that accompanied the revised certification [later signed by this Court on October 14, 2015] which was submitted to the Court. Thank you for your anticipated response in this regard.

Sincerely,



ANTHONY L. BARNEY

Attorney at Law

anthony@anthonybarney.com



HARRIET ROLAND

Attorney at Law

ROLAND LAW FIRM

cc: Via U.S. Mail:

Client

Harriet Roland, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

⁶ See Order dated May 19, 2015 and filed June 24, 2015 enclosed as Exhibit 1 to Attachment 1.

ATTACHMENT 2

1 Mark A. Solomon, Esq., Bar No. 418
msolomon@sdfnlaw.com
2 Joshua M. Hood, Esq. Bar No. 12777
jhood@sdfnlaw.com
3 SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
4 Las Vegas, Nevada 89129
Telephone: 702.853.5483
5 Facsimile: 702.853.5485

6 *Attorneys for Caroline Davis, Petitioner*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 In the Matter of:

Case No.: P-15-083867-T
Dept.: Probate (26)

10 The BEATRICE B. DAVIS FAMILY
11 HERITAGE TRUST, dated July 28, 2000, as
12 amended on February 24, 2014

Hearing Date: August 12, 2015
Hearing Time: 9:00 A.M.

13 **MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3)**

14 Caroline D. Davis ("Ms. Davis"), as beneficiary of the Beatrice B. Davis Family Heritage
15 Trust, dated July 28, 2000, as amended February 24, 2014, by and through her counsel, the law
16 firm of Solomon Dwiggins & Freer, Ltd., hereby files this Motion To Amend Or Modify Order
17 Pursuant to NRCP 60(b)(3) (the "Motion"). The foregoing Motion is made and based on the
18 pleadings and papers on file in this action, the attached Memorandum Of Points And Authorities,
19 all attached exhibits, and any oral argument that this honorable Court may entertain at the time of
20 hearing.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

From this inception of this matter, Christopher D. Davis ("Christopher") has continued to present misrepresentation after misrepresentation to this Court. Indeed, it is apparent that from the first pleading Christopher filed with this Court, he has taken it upon himself to conceal the true nature of the facts and circumstances related to the transfer of the Trust's situs from Alaska to Nevada. Specifically, Christopher has knowingly misidentified the true beneficiaries of the Trust, has perpetually misrepresented that there was no acting Trustee during the time in which the Trust's situs was transferred, has concealed the fact that consent was provided by the then-serving Trustee to transfer the situs, and has blatantly lied about the fact that legal advice was obtained by the Trustee prior to transferring the situs. Based upon the facts and evidence discovered throughout the duration of this matter, it is obvious that Christopher and his counsel have dissembled the true and correct facts, have exhibited a complete lack of candor to this Court, to Ms. Davis, and the other interested parties.

Indeed, Christopher's fraudulent misrepresentations with respect to the First Amendment caused this Court to enter an order assuming jurisdiction over the Trust based upon the theory of "constructive trust." As fully set forth below, the First Amendment is valid in its entirety and the transfer of the Trust's situs is proper under the terms of the Trust. As such, this Court should amend or modify its June 24, 2015 Order, and assume jurisdiction over the Trust in its entirety as a proceeding *in rem* pursuant to NRS 164.010.

II. Factual Background.

Beatrice B. Davis ("Beatrice") created the Trust on July 28, 2000, naming Alaska Trust Company ("Alaska") as the initial Trustee and Stephen K. Lehnardt ("Mr. Lehnardt") as Trust Protector. As fully set forth in the prior pleadings before this Court, the primary asset that was held in the Trust is an Ashley Cooper Life Insurance Policy (the "Policy"), with a face cover value of \$35,000,000.00 and a revolving line of credit for \$4,000,000.

1 Pursuant to Article Three of the Trust, during Beatrice's lifetime, the primary beneficiaries
2 were Christopher, Ms. Davis, and Christopher's son, Winfield Davis ("Winfield). On August 2,
3 2011, Mr. Lehnardt, as Trust Protector, removed Alaska as Trustee and appointed Alaska USA
4 Trust Company ("Alaska USA"). During Alaska and Alaska USA's tenure as Trustee, certain
5 loans were taken against the Policy and further distributed to Christopher in his individual
6 capacity, his capacity as Trustee of the Beatrice B. Davis Revocable Living Trust, dated April 4,
7 1990, as amended (the "Revocable Trust"), and his capacity as Manager of the Davis Family
8 Office, a Missouri limited liability company (the "Davis Family Office").

9 On October 30, 2013, Alaska USA executed a "Resignation of Trustee", indicating that
10 the effective date of such resignation was intended to be "December 5, 2013 or upon the
11 acceptance of trusteeship by a successor, whichever occurs earlier." Dunham Trust Company
12 ("Dunham") was thereafter appointed and accepted tenure as successor Trustee of the Trust on
13 February 24, 2014. Contemporaneously with the appointment and acceptance of trusteeship by
14 Dunham, Mr. Lehnardt, by and through the authority vested in him as Trust Protector, transferred
15 the situs of the Trust from Alaska to Nevada. The transfer of the Situs was acknowledged and
16 consented to by Ms. Davis, Christopher, and Winfield.

17 Pursuant Article One, Section 2 of the First Amendment, the Trust situs is now Nevada,
18 and the Trust and all trusts created thereunder are governed by Nevada law. Article Thirteen,
19 Section 2.d. of the First Amendment, appointed Dunham as the "Directed Trustee" pursuant to
20 NRS §163.553 et. seq. Article Thirteen, Section 2.d. of the First Amendment, further appointed
21 Christopher as the "Investment Trust Advisor" pursuant to NRS §163.5543, and designated him
22 as a "Fiduciary" under NRS §16.554. Pursuant to the First Amendment, Christopher is provided
23 the "full power to manage the investments and reinvestments of the trust", and Dunham, as
24 Directed Trustee, has no authority act or interfere with the actions of Christopher, as the
25 Investment Trust Advisor, unless otherwise directed. Article Thirteen, Section 2.d. of the First
26 Amendment, appointed Mr. Lehnardt, in his capacity as the Trust Protector of the Trust, as the
27 "Distribution Trust Advisor" pursuant to NRS §163.5537, and designated him as "Fiduciary"
28 pursuant to NRS §163.554.

1 Shortly after Dunham's appointment as Directed Trustee and Christopher's appointment
2 as Investment Trust Advisor, Dunham created FHT Holdings, LLC, a Nevada limited liability
3 company, to which the Policy was transferred. Christopher is currently serving as the sole
4 Manager FHT Holdings, LLC.

5 Although Ms. Davis has attempted to acquire the documentation and information related
6 to the Policy and the related loans without court intervention, Christopher has consistently
7 stonewalled Ms. Davis and refused to provide information regardless of the fact that: (1)
8 Christopher is acting as a Fiduciary of the Trust, and (2) Ms. Davis is a beneficiary of the Trust
9 entitled to such information.

10 III. Procedural Background

11 This Court will recall that Ms. Davis filed her Original Petition, on February 10, 2015,¹
12 requesting that this Court: (1) assume jurisdiction over the Trust² as a proceeding *in rem*; (2)
13 assume jurisdiction over Christopher as Investment Trust Advisor; (3) assume jurisdiction over
14 Stephen K. Lehnardt ("Mr. Lehnardt") as Distribution Trust Advisor; (4) confirm Dunham Trust
15 Company ("Dunham") as Directed Trustee; and (5) require Christopher, as Investment Trust
16 Advisor and as Manager of FHT Holdings, LLC, to disclose any and all documentation and
17 information related to the Trust with specific reference to certain loans that were taken against the
18 Trust's primary asset (i.e. the Policy with a face cover value of \$35,000,000.00).³

19 On March 3, 2015, Christopher filed his Motion To Dismiss,⁴ contending that Ms. Davis:
20 (1) failed to join necessary parties; (2) failed to provide requisite notice to proper parties; and (3)

22 ¹ Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As
23 Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor
24 And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed Trustee;
And For Immediate Disclosure Of Documents And Information From Christopher D. Davis, filed with this Court on
February 10, 2015 (the "Original Petition").

25 ² The Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014 (the
26 "Trust"), a true and correct copy of which is attached to the Original Petition, at Ex. 1.

27 ³ See, Original Petition at p. 9, ¶¶ 1-5.

28 ⁴ See, Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) And NRCP 16, previously filed
with this Court on March 3, 2015.

1 further claimed that the Court lacked subject matter jurisdiction.⁵ Christopher's Motion To
2 Dismiss hinged upon his a blatant misrepresentation that the First Amendment, which transferred
3 situs of the Trust from Alaska to Nevada, was invalid and that the validity of such document must
4 first be determined before the Court could assume jurisdiction.⁶

5 In response, Ms. Davis filed her Opposition to the Motion To Dismiss on April 13, 2015.⁷
6 In her Opposition to the Motion To Dismiss, Ms. Davis argued that the Court may properly
7 assume jurisdiction over the Trust and respective parties and grant the relief requested in the
8 Original Petition.⁸ Additionally, Ms. Davis set forth arguments as to why the prior trustees,
9 Alaska and Alaska USA, are not necessary or indispensable parties,⁹ and that Ms. Davis properly
10 served all interested parties.¹⁰ Christopher filed a Reply to Ms. Davis' Opposition to the Motion
11 To Dismiss on April 20, 2015.¹¹ It is important to note, however, that Ms. Davis and her counsel
12 were not served with a copy of Christopher's Reply until after the hearing regarding the
13 Original Petition, the Motion To Dismiss, and related pleadings was held on April 22, 2015
14 (the "Hearing").

15 This Court will also recall that Christopher's counsel, Mr. Barney, for the first time at the
16 Hearing, attempted to make several factual arguments not presented in his Motion To Dismiss.
17 First, Mr. Barney argued that Christopher's wife, Tarja Davis ("Tarja"), was a beneficiary of the
18 Trust and did not provide the requisite consent to the transfer of the Trust's situs from Alaska to
19

20
21 ⁵ *Id.*

22 ⁶ *Id.*, at p. 11:7-8.

23 ⁷ See, Opposition To Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) and NRCP 19,
24 previously filed with this Court on April 13, 2015.

25 ⁸ *Id.*, at Section II.

26 ⁹ *Id.*, at Section III.

27 ¹⁰ *Id.*, at Section IV.

28 ¹¹ See, Christopher D. Davis' Reply To Caroline Davis' Opposition To His Motion To Dismiss Pursuant To
NRCP 12(b) And NRCP 19, previously filed with this Court on April 20, 2015.

1 Nevada.¹² Indeed, raising such argument at the Hearing was completely contrary to the
2 facts presented to this Court in Christopher's Motion To Dismiss. Specifically, Christopher
3 identified: (1) himself; (2) his son, Winfield; and (3) Ms. Davis as the "three descendants [that]
4 are the current beneficiaries of the Trust."¹³ Christopher and Mr. Barney, however, are fully
5 aware, and have always been fully aware, that Tarja does not qualify as a "spouse", and otherwise
6 is not entitled to receive mandatory or discretionary distributions under the Trust; therefore, her
7 consent was not required to effectuate the transfer of situs.

8 Second, Mr. Barney also argued, for the first time at the Hearing, that there was not "an
9 acting Alaska Trustee at the point to consent to the transfer" of the Trust's situs.¹⁴ As Mr. Barney
10 is well aware, a trustee's duties do not terminate upon the submission of a resignation when no
11 successor trustee has been appointed and accepted. Furthermore, and illustrative of Christopher
12 and Mr. Barney's dissembling to this Court, the Resignation, Release, Acknowledgement,
13 Consent And Indemnification Agreement, attached as Exhibit 1 to Christopher's Motion To
14 Dismiss, which was executed by Christopher, expressly provides that Alaska USA was the
15 then-serving Trustee of the Trust on the date on which the situs was transferred to Nevada, and
16 that Alaska USA consented to the same. As Such, Christopher had full and complete knowledge
17 that: (1) Alaska USA was serving as trustee at the point when the situs was changed; and (2)
18 Alaska USA provided its consent to transfer the Trust's situs. Notwithstanding the same,
19 Christopher and his counsel have continuously misrepresented the same to this Court by arguing
20 to the contrary. Indeed, both of Christopher and Mr. Barney's fabricated arguments at the
21 Hearing are patently false.

22 Notwithstanding such misrepresentation, after hearing oral arguments of the parties'
23 respective counsel, this Court issued its Findings and Orders (the "Order"), which was
24

25
26 ¹² See, Hearing transcript at p. 8:10-11, a true and correct copy of which is attached hereto as Exhibit 1.

27 ¹³ See, Motion To Dismiss, at p. 3:14-18. (Emphasis added).

28 ¹⁴ See, Ex. 1, at lines 12-13.

1 subsequently filed on June 24, 2015, and notice of entry Order was filed on July 1, 2015.¹⁵

2 Pursuant to the Order, the Court found that:

3 "...since the first amendment, Christopher has been directing the trust in Nevada,
4 and that everyone involved relied on this amendment as being proper.

5 ...the Court has no affidavit that another beneficiary existed at the time the first
6 amendment was signed.

7 ...the Court has jurisdiction as a constructive trust because action on behalf of the
8 trust has been taken in Nevada."¹⁶

9 Additionally, the Court ordered that: (1) the Original Petition be granted without
10 prejudice;¹⁷ (2) the court would not assume jurisdiction over Mr. Lehnardt, as Distribution Trust
11 Advisor, "until a more definite statement is made";¹⁸ (3) Dunham be confirmed as Directed
12 Trustee;¹⁹ (4) that Christopher is required to disclose "all information in his possession, custody,
13 or control, as Investment Trust Advisor, and in his role as Manager of FHT Holdings, LLC";²⁰ (5)
14 that Christopher's Motion To Dismiss is denied;²¹ and (6) and that the Court "retain[ed]
15 jurisdiction and all matters will be heard by the probate judge."²²

16 On July 14, 2015, Christopher filed and noticed his Petition For Reconsideration, which
17 was scheduled to be heard before this Court on August 19, 2015. Notwithstanding the fact that
18 this Court already addressed each of Christopher's arguments set forth in his Motion To Dismiss,
19 Christopher asserted that this Court improperly assumed jurisdiction over the Trust because: (1)

20
21 ¹⁵ See, Order, previously filed with this Court on June 24, 2015, and Notice Of Entry of Order, previously filed
with this Court on July 1, 2015.

22 ¹⁶ See, Order, at p. 2:13-19.

23 ¹⁷ *Id.*, at p. 2:21-24.

24 ¹⁸ *Id.*, at p. 2:25-28.

25 ¹⁹ *Id.*, at p. 3: 1-2.

26 ²⁰ *Id.*, at p. 3: 3-6.

27 ²¹ *Id.*, at p. 3: 7-8.

28 ²² *Id.*, at p. 3:9-10.

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
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1 lack of subject matter jurisdiction due to the absence of conditions precedent to the change of the
2 Trust's situs from Alaska to Nevada as provided for in the First Amendment;²³ (2) the failure to
3 add indispensable parties;²⁴ and (3) the failure to provide notice and/or service to requisite
4 parties.²⁵ The Petition For Reconsideration was nothing more than a regurgitation of the
5 misrepresented facts presented in Christopher's prior pleadings and his oral argument before the
6 Court on April 22, 2015.

7 In addition to his recapitulation misrepresented facts, Christopher's Petition For
8 Reconsideration also boldly misstates that Alaska did not receive an opinion of counsel with
9 respect to transferring the situs of the Trust from Alaska to Nevada. As set forth below, Mr.
10 Lehnardt, as Trust Protector, retained the services of Dennis Brislawn, Esq. ("Mr. Brislawn") in
11 2014, to provide support with the transition of the Trust from Alaska to Nevada. Mr. Brislawn
12 communicated with Mr. Lehnardt, Dunham Trust, and Alaska USA, and provided an opinion of
13 counsel regarding the transfer of the Trust's situs to Nevada. Indeed, as set forth in Mr.
14 Lehnardt's billing records, Christopher was integrally involved with the transfer of situs and met
15 with or conferred with Mr. Lehnardt to discuss the same. Each and every allegation made by
16 Christopher and Mr. Barney in Christopher's Motion To Dismiss and his Petition For
17 Reconsideration regarding the "invalidity" of the transfer of situs are false, and they have
18 continued to perpetuate these material misrepresentations to this Court in an effort to avoid
19 providing the required information to Ms. Davis pursuant to the June 24, 2015 Order.

20 Ms. Davis filed her Objection And Counterpetition For Sanctions on July 31, 2015,²⁶
21 wherein Ms. Davis argued, among other things, that the Petition For Reconsideration is
22

23 ²³ See, Petition For Reconsideration, at p. 6:19-20.

24 ²⁴ *Id.*, at p. 15:17-18, p. 21:10-11, and p. 23:6-7.

25 ²⁵ *Id.* at p. 15:17-18, and p. 19:11-12.

26 ²⁶ See, Objection To Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume
27 Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24,
28 2014, To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As
Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate
Disclosure Of Documents And Information From Christopher D. Davis; And Counterpetition For Sanctions, filed on
July 31, 2015 (the "Objection And Counterpetition").

1 procedurally improper as it does not present new evidence or facts, does not identify a change in
2 controlling law, and does not identify any clear error made by this Court.²⁷ Additionally, Ms.
3 Davis presented evidence that Christopher and/or his counsel has continued to make material
4 misrepresentations to this Court.

5 Specifically, Ms. Davis provided evidence that Christopher's wife, Tarja, is not a
6 "spouse" under the terms of the Trust since she and Christopher have not been married for ten
7 (10) continuous years as required by Article Fourteen, Section 1(j) of the Trust.²⁸ As such, Tarja
8 is not a "beneficiary then eligible to receive mandatory or discretionary distributions" pursuant to
9 Article 8, Section 3(d), and, therefore, her consent is not required to transfer situs under Article
10 Fourteen, Section 6.²⁹

11 Second, and notwithstanding Christopher and Mr. Barney's representation to the contrary,
12 Ms. Davis provided evidence that Alaska USA was the then-serving Trustee of the Trust when the
13 First Amendment was executed, and that Alaska USA did consent to the transfer of situs from
14 Alaska to Nevada pursuant to Article Fourteen, Section 6 of the Trust.³⁰ Lastly, and in
15 contradiction to Christopher and Mr. Barney's false representation to this Court, Ms. Davis
16 presented evidence that Alaska USA did receive advice of counsel pursuant to Article Fourteen,
17 Section 6 of the Trust³¹ prior to transferring the Trust's situs.

18 On July 30, 2015, Christopher also filed a Notice Of Appeal and Case Appeal Statement,³²
19 appealing the Court's June 24, 2015 Order pursuant to NRS 155.190(h) to the Nevada Supreme
20 Court. Although Mr. Barney may argue that this Court does not have the authority to entertain
21

22
23 ²⁷ *Id.*, at § II(A).

24 ²⁸ *Id.*, at § II(B).

25 ²⁹ *Id.*

26 ³⁰ *Id.*, at § II(C).

27 ³¹ *Id.*, at § II(D).

28 ³² *See*, Notice Of Appeal and Case Appeal Statement, previously filed with this Court on July 30, 2015.

1 arguments related to the Petition For Reconsideration, this Court does have the authority to
2 entertain collateral or independent matters involved in the same case or controversy. Ms. Davis'
3 Motion To Amend Or Modify Order Pursuant to NRCP 60(b)(3) is a collateral matter, involving
4 the same facts and circumstances, that this Court may entertain.³³

5 III. LEGAL ARGUMENT

6 NRCP 60(b), in relevant part, provides that "[o]n motion and upon such terms as are just,
7 the court may relieve a party...from a final judgment, order, or proceeding for the following
8 reasons...(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or
9 other misconduct of an adverse party." Further, pursuant to Foster v. Dingwall, 228 P.3d 453,
10 455 (Nev. 2010), "a party seeking to alter, vacate, or otherwise change or modify an order or
11 judgment challenged on appeal should file a motion for relief from the order of judgment in the
12 district Court."

13 As such, and for the reasons set forth herein, Ms. Davis hereby requests that this Court: (1)
14 amend or modify its Order assuming jurisdiction over the trust under the theory of "constructive
15 trust"; (2) assume jurisdiction over the trust in its entirety as a proceeding *in rem* pursuant to NRS
16 164.010; and (3) make a specific finding that the transfer of the Trust's situs Alaska to Nevada
17 was consistent with the terms of the Trust. Additionally, if this Court is inclined to amend or
18 modify its Order, Ms. Davis further requests that this Court certify its intent to grant the relief so
19 that this matter may be remanded back "to the district court for entry of an order granting the
20 requested relief." *Id.* Such certification would render the issues currently raised on appeal moot.

21 A. Christopher Fraudulently Misrepresented That Tarja's Consent To 22 The First Amendment And The Change In Situs Was Required.

23 In his Petition For Reconsideration, Christopher's contends that "all the facts and evidence
24 prove the change of situs (a condition precedent) was invalid and not permitted under the terms of
25 the [Trust]"³⁴ is without merit. Christopher relies heavily on the fact that his current wife, Tarja,

26
27 ³³ See, Foster v. Dingwall, 228 P.3d 453 (Nev. 2010).

28 ³⁴ See, Petition For Reconsideration, at p. 7:6-8.



1 did not consent to the transfer in situs.³⁵ Christopher, however, knew that Tarja's consent to the
2 change in situs was not required to effectuate the same. Indeed, Christopher and his counsel
3 Anthony L. Barney, Esq. ("Mr. Barney") and Harriet H. Roland, Esq. ("Ms. Roland") each have a
4 copy of the trust, and are familiar with the terms and provision thereof, including (1) the provision
5 defining "spouse",³⁶ (2) the provision related to distributions to a "spouse",³⁷ and (3) the
6 provision related to the transfer of situs and the requirements therefor.³⁸

7 Specifically, Article Fourteen, Section 6 of the Trust provides, in relevant part, as follows:

8 "Except as expressly provided herein, the situs of this agreement or any subtrust
9 established hereunder may be changed by the **unanimous consent of all**
10 **beneficiaries then eligible to receive mandatory or discretionary distributions**
11 of net income under this agreement or such subtrust, with the consent of any then-
12 acting Protector and the Trustee thereof, which shall be given only after the
13 Trustee has obtained advice from counsel as to the tax and other consequences of
14 a change in situs."³⁹

15 While Article 8, Section 3(d) permits a trustee to "make distributions from the trust share
16 of a Primary Beneficiary to or for the health, education, maintenance and support of the spouse of
17 the Primary Beneficiary,"⁴⁰ such person must first qualify as a "spouse" pursuant to the express
18 terms of the Trust.

19 Article Fourteen of the Trust, entitled "Definitions and General Provisions", provides that
20 "[f]or purposes of this agreement, the following words and phrases shall be defined as follows."⁴¹
21 Section 1(j), defines "Spouses":

22 "An individual is a 'spouse' if such individual is the then current spouse of a child
23 of mine on the signing date of this trust. If an individual enters into a valid

24 ³⁵ *Id.*, at p.8:17-21.

25 ³⁶ *See*, Original Petition, at Ex. 1, Art. 14, §1(j).

26 ³⁷ *Id.*, at Ex. 1, Art 8, §3(d).

27 ³⁸ *Id.*, at Ex. 1, Art 14, §6.

28 ³⁹ *Id.*, at Ex. 1, Art. 14, § 6. (Emphasis added).

⁴⁰ *Id.*, at Ex. 1, Art. 8, §3(d). (Emphasis added).

⁴¹ *Id.*, at Ex. 1, Art 14, § 1.

marital union, as defined in paragraph a. of this section, with a child of mine or a beneficiary of mine following the signing of this trust, then such individual may qualify as a 'spouse' if that if the (sic) marital union exists continuously for a period of ten years, and that individual is not legally separated from the person under a decree of divorce or separate maintenance."⁴²

According to the Declaration Of Tarja Davis, a true and correct copy of which is attached hereto as **Exhibit 1**, Christopher and Tarja did not get married until February 22, 2012. As Christopher and Tarja were only married for a little over two (2) years at the time the situs was transferred, February 24, 2014, Tarja did not meet the ten (10) year criteria as set forth in the Trust and, therefore, did not qualify as a "spouse" thereunder. Indeed, pursuant to the terms of the Trust, Tarja still does not qualify as a "spouse". Consequently, and despite Christopher's intentional misrepresentation of the facts, Tarja is not, and was not, a "beneficiary then eligible to receive mandatory or discretionary distributions"⁴³ and her consent was not required to transfer the situs from Alaska to Nevada. As such, Christopher's contention that Tarja's consent was necessary is meritless.

B. Christopher Fraudulently Misrepresented that Alaska USA Was Not The Then-Acting Trustee At The Point In Time In Which The Trust's Situs Was Changed And Did Not Consent To Such Transfer Of Situs.

Replete throughout Christopher's pleadings before this Court, and from Christopher's counsel's oral arguments at the April 22, 2015 Hearing, Christopher has continued to materially misrepresent the facts related to the validity of the transfer of situs from Alaska to Nevada. Indeed, Christopher has continued to falsely represent to this Court that "there was no acting Trustee to provide informed consent to the change in situs."⁴⁴ Christopher fabricated this contention because Alaska USA tendered its resignation as of December 5, 2013, and the First Amendment effectuating the change in situs was executed on February 24, 2014. As Christopher's counsel, Mr. Barney and Ms. Roland are clearly aware, simply submitting a

⁴² *Id.*, at Ex. 1, Art 14, §1(j). (Emphasis added).

⁴³ *Id.*, at Ex. 1, Art. 14, § 6.

⁴⁴ *See*, Petition For Reconsideration, at p. 8:13-14.

1 resignation of trusteeship does not, in and of itself, obviate a trustee of its duties to act, nor does it
2 automatically remove the trustee from its role as such.⁴⁵ Indeed, pursuant to the Declaration Of
3 Janet K. Tempel, Senior Trust Officer at Alaska USA, because “[a] successor trustee was not
4 designated on or before December 5, 2013, [] Alaska USA retained the duties of trustee and
5 powers necessary to protect the trust property pursuant to Alaska law...Pursuant to the
6 [Resignation, Release, Acknowledgement, Consent And Indemnification Agreement], Alaska
7 USA effectively resigned as Trustee of the Trust on February 24, 2014, as Dunham Trust
8 Company was contemporaneously appointed as successor Trustee.”⁴⁶

9 Moreover, pursuant to the recitals set forth in the Resignation, Release,
10 Acknowledgement, Consent And Indemnification Agreement (the “Release”), which was signed
11 by Christopher, Alaska USA was still serving as Trustee of the Trust on February 24, 2014, the
12 date the First Amendment was executed. Specifically, the pertinent recital of the Release
13 provides as follows: “WHEREAS, AUTC⁴⁷ is the currently serving trustee of the Trust...”⁴⁸
14 NRS 47.240, entitled “Conclusive presumptions” provides that “[t]he truth of the fact recited,
15 from the recital in a written instrument between the parties thereto...” is presumed
16 conclusive. Therefore, contrary to Christopher’s misplaced assertion, there was an acting Trustee
17 (i.e. Alaska USA) acting on behalf of the Trust to transfer the situs from Alaska to Nevada on
18 February 24, 2014.

22 ⁴⁵ Alaska has codified such principle in Alaska Statutes, Section 13.36.077(1), which provides that “unless a
23 co-trustee remains or the court otherwise orders, and until the trust property is delivered to a successor trustee or
24 another qualified person entitled to the trust property, a trustee who has resigned or been removed has the duties of
a trustee and the powers necessary to protect the trust property.”

25 ⁴⁶ See, Declaration Of Janet K. Tempel, Senior Trust Officer, a true and correct copy of which is attached
hereto as Exhibit 2, at ¶¶ 5 and 7. (Emphasis added).

26 ⁴⁷ See, Resignation, Release, Acknowledgement, Consent And Indemnification Agreement, a true and correct
27 copy of which is attached hereto as Exhibit 3 (defining Alaska USA Trust Company of Anchorage, Alaska as
“AUTC”).

28 ⁴⁸ *Id.* (Emphasis added).

Christopher's assertion that "the change in situs under the purported First Amendment must be presumed invalid until such evidence of an acting Trustee's consent can be produced"⁴⁹ is without merit. Another well-known tenet of trust law is that a trust or amendment thereto is presumed to be valid unless proven otherwise, and the burden of proving the invalidity of such instrument rests upon the person so claiming.⁵⁰ Notwithstanding the burden of proof resting upon Christopher's shoulders, Christopher has not produced a single piece of evidence to support his position that Alaska USA did not consent to the transfer of situs, which he so adamantly contends. Indeed, the fact that Alaska USA executed the Release, which includes within it a provision entitled "Consent to Change of Situs and Amendment of Trust", is sufficient evidence that Alaska USA, as the "the currently serving trustee of the Trust", expressly consented to the transfer of the Trust's situs from Alaska to Nevada. Section 1 of the Release, in relevant part, specifically provides that "AUTC (Alaska USA) and the Protector hereby consent to the changing of the situs of the Trust from Alaska to Nevada."⁵¹ Given the facts and circumstances regarding the transfer in situs (i.e. the First Amendment and Release), it cannot reasonably be argued that Alaska USA did not provide the requisite consent for such action. Notwithstanding the clear evidence and Christopher's knowledge of such evidence, Christopher continues to fraudulently misrepresent the fact that Alaska USA was serving as Trustee of the Trust and consented to the transfer of the Trust's situs on February 24, 2014.

C. Christopher Fraudulently Misrepresented That Alaska USA Did Not Receive Advice Of Counsel.

Notwithstanding Christopher's intimate involvement throughout the drafting and execution of the First Amendment, the appointment of Dunham Trust as Directed Trustee, and the facts and circumstances regarding the transfer of the Trust's situs, Christopher continually

⁴⁹ See, Petition For Reconsideration, at p. 11:19-20.

⁵⁰ See, *In re Melter*, 167 Wash.App. 285, 298, 273 P.3d 991, 998 (Wash.App. 2012) (providing that unless proven otherwise, "[a] will [or trust] is presumed to be valid. It may be disregarded when a will [or trust] contestant presents clear, cogent and convincing evidence" that it is invalid).

⁵¹ See, Ex. 3, at ¶ 1, p. 2.

represents to this Court that “[a]ny amendment to change the situs of the [Trust] would require the opinion of legal counsel as to its effect...[and that] [t]here is simply no evidence to suggest that such an opinion was obtained...”⁵². **Such representation is patently false.** Indeed, Alaska USA received a legal opinion from Mr. Brislawn regarding the transfer of the Trust’s situs from Alaska to Nevada.⁵³ Specifically, Mr. Brislawn was retained by Mr. Lehnardt, as Trust Protector, “to provide limited support in changing trust situs from Alaska (where [he] is also licensed to practice) to Nevada.”⁵⁴ In so doing, Mr. Brislawn “communicated with **both trust companies** (referring to Dunham and Alaska USA) in documenting the transfer...[and] **provided an opinion of counsel** with documentation supporting trust protector action.”⁵⁵

Christopher’s contention that Alaska USA did not obtain advice of counsel is a gross misrepresentation of the facts to this Court. A review of several of Mr. Lehnardt’s billing invoices indicates that Christopher was deeply aware of the facts and circumstances regarding the transfer of the Trust’s situs and Mr. Brislawn’s involvement:

- (a) 12/23/2013 – Emails from and to D Brislawn regarding change of trustee and capital and surplus issue, **telephone call to C Davis regarding the same**,⁵⁶
- (b) 01/07/2014 – telephone call to D Brislawn (msg) regarding AK Trust modification, **Telephone call from C Davis regarding trustee change and multiple related items, discussion of Dunham trust and modification**,⁵⁷
- (c) 01/15/2014 – **Telephone calls from C Davis regarding transfer of trustee...email to D Brislawn regarding same**,⁵⁸

⁵² See, Petition For Reconsideration, at p. 14:25-15:1; 15:3-4.

⁵³ See, Email communication from Dennis Brislawn, Esq. to Joshua M. Hood, Esq., dated August 22, 2014, a true and correct copy of which is attached hereto as Exhibit 4.

⁵⁴ *Id.*

⁵⁵ *Id.* (Emphasis added).

⁵⁶ See, Lehnardt & Lehnardt, LLC invoices, true and correct copies of which are attached hereto as Exhibit 5.

⁵⁷ *Id.*

⁵⁸ *Id.*

- (d) 01/17/2014 – Emails from and to D Brislawn regarding transfer of trustee, **Telephone call from C Davis regarding trustee**, Telephone call to D Brislawn to discuss trustee transfer and modification of trust document;⁵⁹
- (e) 01/24/2014 – Emails to D Brislawn and S. Coressel regarding trustee transfer and LLC items, Telephone call from J Tempel regarding transfer of trustee status, **telephone call to C Davis regarding the same**;⁶⁰
- (f) 02/04/2014 – Telephone call from C Davis regarding trustee change, telephone call from D Brislawn regarding same, review documents, **telephone call to C Davis regarding same**;⁶¹
- (g) 02/18/2014 – Prepare for and Meeting with C Davis, discuss with D Brislawn regarding Trust Distribution Advisor and trustee changes;⁶²

Based upon the fact that: (1) Tarja's consent was not required to transfer situs; (2) Alaska USA was acting as Trustee at the time the situs was transferred and consented to such transfer; and (3) Alaska USA did obtain advice of counsel regarding the transfer of situs, the Trust was properly and validly transferred from Alaska to Nevada.

III. Conclusion

Notwithstanding Christopher's continued intentional and fraudulent misrepresentation to this Court that Tarja's consent is required in order to effectively amend the Trust or to transfer situs, the First Amendment is valid, and the steps required to effectuate the transfer of the Trust's situs were properly executed. As fully set forth above, Tarja does not qualify as a "spouse" under the terms of the Trust, she was not entitled to receive distributions from the Trust, and her consent was not required to transfer the situs from Alaska to Nevada.

Article Fourteen, Section 6, in relevant part, requires "the unanimous consent all of the beneficiaries then eligible to receive mandatory or discretionary distributions." As evidenced by the "Acknowledgment And Consent Of Beneficiary" attached to the First Amendment, each of

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

1 the beneficiaries then eligible to receive distributions from the Trust, namely: (1) Ms. Davis; (2)
2 Christopher; and (3) Winfield, provided their consent. Moreover, Ms. Davis, Christopher, and
3 Winfield each executed the Release, which contain a provision entitled "Consent to Change Of
4 Situs and Amendment of Trust". Said provision, in relevant part, provides that "[t]he
5 Beneficiaries hereby unanimously consent to changing the situs of the Trust from Alaska to
6 Nevada..."⁶³

7 Article Fourteen, Section 6, in relevant part, further requires that the Trustee provide its
8 consent to the transfer of situs, "which shall be given only after the Trustee has obtained advice of
9 counsel..." As fully set forth above, Alaska USA was the "then-acting" trustee, and provided its
10 express consent to the transfer of situs after receiving the advice of Dennis Brislawn, Esq.

11 In conclusion, Christopher's blatant and fraudulent misrepresentations of fact regarding
12 the validity of the First Amendment and the transfer of the Trust's situs caused this Court to
13 mistakenly assume jurisdiction over the Trust under the theory of "constructive trust". But for
14 Christopher's intentional misrepresentations, this Court would have properly assumed jurisdiction
15 over the Trust in its entirety as a proceeding *in rem* pursuant to NRS 164.010. Therefore, Ms.
16 Davis respectfully requests that this Court enter an Order amending or modifying the June 24,
17 2014 Order and assume jurisdiction over the Trust as a proceeding *in rem*. Ms. Davis further
18 requests that, if this Court is inclined to grant such relief, this Court certify its intent to grant the
19 relief so that this matter may be remanded back "to the district court for entry of an order granting
20 the requested relief" pursuant to Nevada Supreme Court case Foster v. Dingwall, 228 P.3d 453,
21 455 (Nev. 2010).

22 **WHEREFORE**, Caroline Davis respectfully request that:

23 (1) This Court Order amending or modifying the June 24, 2014 Order and assume
24 jurisdiction over the Trust as a proceeding *in rem*; and

25 ///

26 ///

27 _____

28 ⁶³ See, Ex. 3, at ¶ 1. (Emphasis added).

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNV/LAW.COM



1 (2) if this Court is inclined to grant such relief, that this Court certify its intent to grant
2 the relief so that this matter may be remanded back "to the district court for entry of an order
3 granting the requested relief" pursuant to Nevada Supreme Court case Foster v. Dingwall.

4 Dated this 6th day of August, 2015.

5 SOLOMON DWIGGINS & FREER, LTD

6 

7 Mark A. Solomon, Esq. (Bar No. 418)

8 Joshua M. Hood, Esq. (Bar No. 12777)

9 9060 Cheyenne Avenue

10 Las Vegas, Nevada

11 Telephone: (702) 853-5483

12 Facsimile: (702) 853-5485

13 Attorneys for Caroline D. Davis

ATTACHMENT 3

1 HARRIET H. ROLAND, ESQ.
2 NV Bar No. 5471
3 ROLAND LAW FIRM
4 2470 E. St. Rose Pkwy, Ste. 105
5 Henderson, NV 89074
6 Telephone: (702) 452-1500
7 Facsimile: (702) 920-8903
8 hroland@rolandlawfirm.com

9 ANTHONY L. BARNEY, ESQ.
10 Nevada Bar No. 8366
11 TIFFANY S. BARNEY, ESQ.
12 Nevada Bar No. 9754
13 ANTHONY L. BARNEY, LTD.
14 3317 W. Charleston Blvd., Suite B
15 Las Vegas, NV 89102
16 Telephone: (702) 438-7878
17 Facsimile: (702) 259-1116
18 *Attorneys for Christopher D. Davis*

13 EIGHTH JUDICIAL DISTRICT COURT
14 CLARK COUNTY, NEVADA

16 In the matter of:

17 The BEATRICE B. DAVIS FAMILY HERITAGE
18 TRUST, dated July 28, 2000, as amended on
19 February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

22
23 NOTICE OF PETITION AND PETITION FOR RECONSIDERATION OF THE
24 ORDER DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION
25 OVER THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST DATED JULY
26 28, 2000, AS AMENDED ON FEBRUARY 24, 2014, TO ASSUME
27 JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST
28 ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR,
TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE, AND
FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION
FROM CHRISTOPHER D. DAVIS;

1 especially in light of the fact that proper service has not been effectuated on them for an order or
2 judgment to be rendered against them in this matter.

3 Curiously, Caroline then requests the Court to seek relief from Christopher individually
4 if the Court does find that Alaska and Alaska USA are indispensable parties. She wrongfully
5 asks the court to order Christopher to provide the documents that are in the possession of Alaska
6 and Alaska USA's without gaining proper jurisdiction over him individually. She wrongfully
7 alleges that such a request would allegedly not be prejudicial to Christopher and allegedly
8 would be an adequate remedy, although the requested documents would be in the Trustee's
9 possession.
10

11 She also falsely alleges that Alaska cannot allegedly assume jurisdiction over
12 Christopher, erroneously citing NRCP 19(b) for this proposition.²⁷ With proper service to
13 Christopher, Caroline could obtain jurisdiction over Christopher in Alaska if Alaska has
14 jurisdiction over the FHT.²⁸
15

16 Joinder of Alaska and Alaska USA, Inc., is necessary as previously explained in
17 Christopher's Motion to Dismiss and herein. If their joinder is not feasible, then this matter
18 must be dismissed, because they are necessary and indispensable parties to this matter.
19

20 **G. The Court Cannot Assume Jurisdiction based on the Remedy of Constructive Trust**
21 **as Jurisdiction is Subject to Statutory and Due Process Limitations**
22

23
24 ²⁷ See Caroline's Opposition, Page 9, lines 14-15 and fn 24.

25 ²⁸ See AS 13.36.375. Trustee Advisor: (a) A trust instrument may provide for the appointment of a person to act as
26 an advisor to the trustee with regard to all or some of the matters relating to the property of the trust. (b) Unless the
27 terms of the trust instrument provide otherwise, if an advisor is appointed under (a) of this section, the property and
28 management of the trust and the exercise of all powers and discretionary acts exercisable by the trustee remain
vested in the trustee as fully and effectively as if an advisor were not appointed, the trustee is not required to follow
the advice of the advisor, and the advisor is not liable as or considered to be a trustee of the trust or a fiduciary
when acting as an advisor to the trust.; See also AS 13.36.035 (a) The court has exclusive jurisdiction of
proceedings initiated by interested parties concerning the internal affairs of trusts, including trusts covered by (c) of
this section. Except as provided in (c) and (d) of this section, proceedings that may be maintained under this section

1 The Nevada Supreme Court reviews jurisdictional issues de novo.²⁹ In rem jurisdiction only
2 allows the Court to enter judgment against specific property.³⁰ NRS § 164.010 provides that the
3 court may take in rem jurisdiction over a trust statutorily if requisite evidence is found by the
4 Court to exist. NRS 164.010 provides in pertinent part that:

5
6 1. Upon petition of any person appointed as trustee of an express trust by any written
7 instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district
8 court of the county in which the trustee resides or conducts business, or in which the trust has
9 been domiciled, shall consider the application to confirm the appointment of the trustee and
10 specify the manner in which the trustee must qualify. Thereafter the court has jurisdiction of the
11 trust as a proceeding in rem.
12

13 2. If the court grants the petition, it may consider at the same time any petition for
14 instructions filed with the petition for confirmation.
15

16 3. At any time, the trustee may petition the court for removal of the trust from continuing
17 jurisdiction of the court.

18 4. As used in this section, "written instrument" includes, without limitation, an electronic
19 trust as defined in NRS 163.0015.
20

21 However, this Court took jurisdiction not based upon the statutory prerequisites set forth in
22 NRS § 164.010, but purportedly upon the theory of constructive trust.

23 Without even determining whether Christopher resides or conducts business here in the
24 capacity of a trustee, the Court reasoned that purportedly since action has been taken here, the
25

26 are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of
27 other matters involving trustees and beneficiaries of trusts.

28 ²⁹ *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, (2000).

³⁰ *Chapman v. Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103, 1106 (2013).

1 Court had the power to construct a trust and take jurisdiction. However, a constructive trust is a
2 remedy the court can pronounce after establishing jurisdiction, not a means to obtain it.

3 In order to create a constructive trust the court must first have jurisdiction over the property.
4 Here, the Court has no valid basis for jurisdiction over the Trust property. The change in situs is
5 facially deficient because it does not have unanimous consent of all beneficiaries nor does it
6 have the consent of an Alaska trustee provided after obtaining an opinion of counsel.
7 Additionally, the sole asset of the trust, the Ashley Cooper Life Insurance Policy, is not within
8 the state of Nevada. Finally, with an invalid change in situs the trust is still an Alaska trust, the
9 role of investment trust advisor does not exist, and there is no connection whatsoever to Nevada.
10 Alaska has jurisdiction over the trust and has the power to create a constructive trust over any
11 property in Nevada. This Court simply did not have jurisdiction to create a constructive trust
12 and therefore cannot exercise jurisdiction over the Trust or Christopher D. Davis based on the
13 theory of constructive trust.
14

15
16
17 Even improbably assuming *arguendo* that there is some basis for *in rem* jurisdiction, where a
18 state statute authorizes consent to jurisdiction based upon a finding of *in rem* jurisdiction, that
19 statute is still subject to the requirements of federal due process.³¹ Federal due process requires
20 that the defendant has purposely developed substantial minimum contacts with the forum state
21 and that the assumption of jurisdiction does not violate traditional notions of justice and fair
22 play.³² NRS §163.5555 provides that:

23
24 If a person accepts an appointment to serve as a trust protector or a trust adviser of a trust
25 **subject to the laws of this State**, the person submits to the jurisdiction of the courts of this
26 State, regardless of any term to the contrary in an agreement or instrument. A trust protector

27 ³¹ *Doe v. Unocal Corp.*, 248 F.3d 915, 922, (9th Cir. 2001)

28 ³² *Id.*

1 or a trust adviser may be made a party to an action or proceeding arising out of a
2 decision or action of the trust protector or trust adviser.³³ (emphasis added).

3 Assuming the untenable position that this Court had jurisdiction to create a constructive
4 trust, this fact standing alone does not provide a basis for jurisdiction over Christopher D. Davis.
5 NRS § 163.5555 provides jurisdiction over trust advisors, however the trust adviser may only be
6 made a party to an action or proceeding based upon a determinative decision or action.
7

8 In order to understand the extent of jurisdiction granted under NRS § 163.5555, several
9 factors must be considered. First, this statute must be read in conjunction with NRS § 164.010
10 which only provides the court limited *in rem* jurisdiction over trusts. Therefore, jurisdiction
11 under NRS 164.010 acts a condition precedent to a finding of jurisdiction under NRS
12 §163.5555, where the powers of an advisor are simply a subset of the overall fiduciary powers
13 granted to a trustee, who may be confirmed under NRS 164.010.
14

15 Second, in order for NRS § 163.5555 to provide for jurisdiction over the trust adviser, it
16 must comply with the requirements of federal due process. These requirements include a finding
17 that the defendant has sufficient minimum contacts with the forum state, that the defendant
18 purposefully availed himself of the laws of the forum state and that the assumption of
19 jurisdiction does not offend traditional notions of justice and fair play. This court made no
20 findings of minimal contacts, purposeful availment, or whether jurisdiction would offend
21 notions of justice and fair play. The statute itself highlights that fact that a “trust adviser may be
22 made a party to an action or proceeding arising out of a decision or action.” Clearly, if the
23 decision or action causing sufficient minimum contacts with the Trust in the state of Nevada is
24 absent, there can be no jurisdiction over the trust adviser. This means, in effect, that liability is
25
26
27

28 ³³ Nev. Rev. Stat. § 163.5555

1 tied to the decisions made by the advisor in the capacity of trust advisor. Therefore, this Court's
2 exercise of jurisdiction over Christopher in his purported role as investment adviser is improper,
3 as there is no evidence of any decision or action with the Trust in the state of Nevada.
4

5 This Court also lacks jurisdiction over Christopher as manager of FHT holdings. Assuming
6 the court finds that the change in situs was not deficient or that it can legitimately assume
7 jurisdiction over the Trust based on a theory of constructive trust and that NRS § 163.5555
8 allows the court to assume jurisdiction over Chris as investment trust adviser, the Court still did
9 not properly establish jurisdiction over Christopher in his role as manager of the FHT. There is
10 no statute that grants *in rem* jurisdiction individually over the manager of an LLC solely based
11 on his or her acceptance of an officer's position. Additionally, as discussed above, due process
12 requires a finding of minimum contacts, purposeful availment and that jurisdiction does not
13 offend the notions of justice and fair play. Again this court entered no such findings to justify
14 jurisdiction over Christopher as manager of the LLC. Christopher respectfully requests that this
15 Court reconsider its order and grant his requested relief.
16
17

18 III. CONCLUSION

19 For the foregoing reasons, Christopher respectfully requests the Court do the following.

- 20 1. Reconsider the Order filed June 24, 2015, and grant Christopher D. Davis's motion to
21 dismiss pursuant to NRCP 12(b) and NRCP 19;
22
- 23 2. Reconsider the Order filed June 24, 2015, and vacate its finding of jurisdiction over
24 Christopher D. Davis in his role as investment trust advisor and in his role as manager of
25 FHT Holdings, LLC;
26
- 27 3. Reconsider the Order filed June 24, 2015, and find that this Court lacks jurisdiction over
28 the Trust and over Christopher D. Davis based on the lack of condition precedent in the

1 form of a failure to procure unanimous consent by the Trust beneficiaries to change the
2 Trust situs purportedly effectuated by the First Amendment dated February 24, 2014,
3 and/or alternatively, based upon lack of statutory prerequisites as defined under NRS
4 §164.010 to form a basis for jurisdiction and/or lack of determinative action or decision
5 under NRS §163.5555 by the purported trust adviser.
6

7 DATED this 14 day of July, 2015.

8 Respectfully Submitted,
9 ROLAND LAW FIRM

10 
11 Harriet H. Roland, Esq.
12 NV Bar No. 5471
13 2470 E. St. Rose Pkwy, Ste. 105
14 Henderson, NV 89074
15 Telephone: (702) 452-1500
16 Facsimile: (702) 920-8903
17 hroland@rolandlawfirm.com

18 *Attorney for Christopher D. Davis*
19
20
21
22
23
24
25
26
27
28

ATTACHMENT 4

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
L.L.P.
1811 MAGNOLIA / TORO

1 **ORDER**

2 Mark A. Solomon, Esq.
3 Nevada Bar No. 418
4 msolomon@sdfnlaw.com
5 Joshua M. Hood, Esq.
6 Nevada Bar No. 12777
7 jhood@sdfnlaw.com
8 SOLOMON DWIGGINS & FREER, LTD.
9 9060 West Cheyenne Avenue
10 Las Vegas, Nevada 89129
11 Telephone: 702.853.5483
12 Facsimile: 702.853.5485

13 *Attorneys for Caroline Davis, Petitioner*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 In the Matter of:

Case No.: P-15-083867-T
Dept.: Probate (26)

17 The BEATRICE B. DAVIS FAMILY
18 HERITAGE TRUST, dated July 28, 2000, as
19 amended on February 24, 2014

Hearing Date: September 2, 2015
Hearing Time: 9:00 A.M.

20 **ORDER ON HEARING OF SEPTEMBER 2, 2015**
21 **AND AMENDING ORDER DATED MAY 19, 2015**

22 This matter came on for hearing on September 2, 2015 on Christopher D. Davis'
23 PETITION FOR RECONSIDERATION OF THE ORDER DATED MAY 19, 2015 RE:
24 PETITION TO ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
25 HERITAGE TRUST, DATED JULY 28, 2000, AS AMENDED ON FEBRUARY 24, 2014; TO
26 ASSUME JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST
27 ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR, TO
28 CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE; AND FOR
IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION FROM
CHRISTOPHER D. DAVIS (the "PETITION FOR RECONSIDERATION") and Caroline D.
Davis' MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3)
("MOTION TO AMEND"). Counsel for Caroline D. Davis, Mark A. Solomon, Esq. and Joshua

1 M. Hood, Esq.; counsel for Christopher D. Davis, Anthony L. Barney, Esq. and Harriet H.
2 Roland, Esq.; and counsel for Dunham Trust Company, Charlene N. Renwick, Esq. were present.

3 The Court having reviewed the pleadings, examined the evidence, and heard the
4 arguments of counsel, and for good cause appearing makes the following Findings and Orders:

5 **FINDINGS**

6 1. Due and legal notice of the time and place of the hearing has been given in this
7 matter as required by law.

8 2. On April 22, 2015, a hearing was held on Caroline D. Davis' Petition To Assume
9 Jurisdiction, filed on February 10, 2015, and Christopher D. Davis' Motion To Dismiss, filed on
10 March 3, 2015.

11 3. In his Reply to Caroline D. Davis' Opposition to the Motion To Dismiss, which
12 was filed only two (2) days before the April 22, 2015 hearing, Christopher D. Davis first raised
13 the following issues:

14 (a) Tarja Davis, Christopher D. Davis' wife, was a beneficiary of the Beatrice B.
15 Davis Family Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent
16 to the execution of the First Amendment or the transfer in situs;

17 (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of
18 the First Amendment to the Trust, dated February 24, 2014 (the "First
19 Amendment"), and did not provide its consent to execution of the First
20 Amendment or the transfer in situs; and

21 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
22 execution of the First Amendment.

23 4. The Court, at the April 22, 2015 Hearing, assumed jurisdiction over the Trust
24 under the theory of "constructive trust", more accurately called a "de facto trust", because:

25 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
26 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher
27 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
28

1 execution of the First Amendment and to the transfer of the Trust's situs from
2 Alaska to Nevada;

3 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
4 accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company
5 resigned as Trustee;

6 (c) Based upon such good faith reliance of the validity of the First Amendment,
7 Dunham had been administering the Trust in Nevada for more than one (1) year;

8 (d) Based upon a good faith reliance of the validity of the First Amendment,
9 Christopher D. Davis accepted his appointment as Investment Trust Advisor
10 pursuant to NRS 163.5543;

11 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
12 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
13 NRS 163.5537;

14 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
15 LLC, a Nevada limited liability company wholly owned by the Trust, and
16 appointed Christopher D. Davis as the sole Manager thereof;

17 (g) Christopher D. Davis has been acting as Investment Trust Advisor since his
18 acceptance of such position;

19 (h) Christopher D. Davis has been acting as sole Manager of FHT Holdings, LLC
20 since his appointment of such position;

21 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
22 as Directed Trustee in Nevada; and

23 (j) The Court had no evidence before it, namely an affidavit of any other purported
24 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
25 therefore entitled to notice or that such beneficiary's consent was required to
26 Transfer of the Trust's situs from Alaska to Nevada.

27 5. The Court noted that it was appropriate to assume jurisdiction over the Trust and
28 its fiduciaries, Dunham and Christopher D. Davis, as all parties consented to the execution of the

1 First Amendment and to the transfer of the Trust's situs from Alaska to Nevada, and all parties
2 before the Court acted upon a good faith reliance with respect to the validity of the First
3 Amendment.

4 6. The Court's Order, dated May 19, 2015, which was subsequently filed on June 24,
5 2015 (the "May 19, 2015 Order"), assumed jurisdiction over the Trust to ensure that the Trust was
6 properly within a competent jurisdiction, and further to ensure that the Trust was not adrift in that
7 it would be left without a trustee.

8 7. The May 19, 2015 Order confirmed Christopher D. Davis as Investment Trust
9 Advisor and further required the production of all information in his possession, custody or
10 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
11 LLC, a Nevada limited liability company wholly owned by the Trust.

12 8. The Court has been presented with evidence in the form of a Declaration of Tarja
13 Davis, Christopher D. Davis' wife, indicating that Tarja Davis was married to Christopher D.
14 Davis on February 22, 2012, and that they were married on February 24, 2014, that date the First
15 Amendment was executed.

16 9. In response to the issues raised by Christopher D. Davis' in his Reply and the
17 PETITION FOR RECONSIDERATION, Caroline D. Davis submitted the following to this
18 Court:

- 19 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
20 and requires the marital union of a beneficiary and his or her spouse, if entered into
21 after the signing date of the Trust, to exist continuously for a period of ten (10)
22 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
23 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
24 were married after the signing date of the Trust, and have not been married for ten
25 (10) continuous years;
- 26 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
27 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
28 was the currently serving Trustee on the date the First Amendment was executed

and that Alaska USA Trust Company, as the Trustee, expressly consented to the transfer of situs from Alaska to Nevada and that such RECITAL is presumed conclusive under NRS 47.240(2);

(c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood, Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt, Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of the Trust, indicating that he had communicated with both Alaska USA Trust Company and Dunham and provided an opinion of counsel; and

(d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14, Section 6 of the Trust, indicating that Nevada met the requirements of an appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior state for jurisdiction at the time.

10. Christopher D. Davis did not present sufficient new evidence or legal basis to reconsider the May 19, 2015 Order.

11. Sufficient evidence has been submitted to the Court that the First Amendment, and consequently the transfer of the Trust's situs, was valid.

12. Upon submission of Caroline D. Davis' evidence regarding the validity of the First Amendment and the proper transfer of the Trust's situs giving rise to this Court's authority to assume jurisdiction, the burden to prove the invalidity of the First Amendment and the improper transfer of situs became Christopher D. Davis' burden to overcome.

13. Christopher D. Davis has not presented any evidence to support his contentions regarding the invalidity of the First Amendment raised in his Reply and in his PETITION FOR RECONSIDERATION.

14. Because Christopher D. Davis did not provide sufficient cause, the PETITION FOR RECONSIDERATION should be denied.

15. *In personam* jurisdiction over Christopher D. Davis, as Manager of FHT Holdings, LLC, was also proper under Fulbright & Jaworski v. Eighth Jud. Dist. Ct., 342 P.3d 997 (Nev. 2015) and Viega GmbH v. Eighth Jud. Dist. Ct., 328 P.3d 1152 (Nev. 2014), as he is the current

1 sole Manager of FHT Holdings, LLC, a Nevada limited liability company, doing business in
2 Clark County, Nevada, whose membership interest is wholly owned by the Trust and under
3 management by Christopher D. Davis, as Investment Trust Advisor.

4 16. Because sufficient evidence supporting the validity of the First Amendment, as
5 well as the proper transfer of the Trust's situs from Alaska to Nevada has been submitted, the
6 Court certified its intent to assume jurisdiction over the Trust as a proceeding *in rem* pursuant to
7 NRS 164.010 should the matter be remanded from the Supreme Court back to the District Court.

8 17. The Court clarified the interlineations contained in the May 19, 2015 Order, and
9 the provision containing such interlineations should read as follows: "IT IS FURTHER
10 ORDERED, ADJUDGED AND DECREED that the Petition for Immediate Disclosure of
11 Documents and Information From Christopher D. Davis is granted as to all information in his
12 possession, custody, or control in his role as Investment Trust Advisor, and in his role as Manager
13 of FHT Holdings, LLC."

14 ORDER

15 As the Nevada Supreme Court has now remanded this matter back to the Eighth Judicial
16 District Court,

17 **IT IS HEREBY ORDERED** that Christopher D. Davis' *Petition for Reconsideration of*
18 *the Order Dated May 19, 2015 Re: Petition to Assume Jurisdiction over the Beatrice B Davis*
19 *Family Heritage Trust Dated July 28, 2000, as Amended on February 24, 2014, to Assume*
20 *Jurisdiction over Christopher D Davis as Investment Trust Advisor, Stephen K. Lehnardt as*
21 *Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for*
22 *Immediate Disclosure of Documents and Information from Christopher D Davis* is **DENIED** in
23 its entirety.

24 **IT IS HEREBY FURTHER ORDERED** that the Court assumes jurisdiction over the
25 Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014,
26 as a proceeding *in rem* pursuant to NRS 164.010.

27 **IT IS HEREBY FURTHER ORDERED** that Dunham Trust Company is confirmed as
28 the Directed Trustee.

9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLVNLAW.COM

SOLOMON
DWIGGINS & FREER
ATTORNEYS
IN FIDELITY



1 IT IS HEREBY FURTHER ORDERED that Christopher D. Davis is confirmed as the
2 Investment Trust Advisor.

3 IT IS HEREBY FURTHER ORDERED that the Court shall abstain from assuming
4 jurisdiction over Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, until such
5 time that Petitioner provides a more definite statement or otherwise asserts a demand or claim for
6 relief against Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, at which time
7 this Court may assume personal jurisdiction over him.

8 IT IS HEREBY FURTHER ORDERED that the Christopher D. Davis shall forthwith
9 produce to Caroline D. Davis' counsel any and all information in his possession, custody, or
10 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
11 LLC.

12 IT IS HEREBY FURTHER ORDERED all further matters will be heard by the probate
13 judge.

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9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
LAW FIRM
P.O. BOX 15,477 A, DENV, CO 80215

1 IT IS HEREBY FURTHER ORDERED that this Order shall amend the Court's Order
2 of May 19, 2015 consistent herewith.

3 Dated this ____ day of September, 2015.

4
5 DISTRICT COURT JUDGE

6 Prepared and submitted by:
7 SOLOMON DWIGGINS & FREER, LTD.

Approved as to Form and Content:
LEE HERNANDEZ LANDRUM &
GAROFALO

8
9 Mark A. Solomon, Esq. (Bar No. 0418)
10 Joshua M. Hood, Esq. (Bar No. 12777)
11 9060 West Cheyenne Avenue
12 Las Vegas, Nevada 89129
13 Telephone: (702) 853-5483
14 Facsimile: (702) 853-5485
15 *Attorneys for Caroline D. Davis*

Charlene N. Renwick, Esq. (Bar No. 10165)
7575 Vegas Drive, Ste. 150
Las Vegas, Nevada 89128
Telephone: (702) 880-9750
Facsimile: (702) 314-1210
Attorney for Dunham Trust Company

16
17 Approved as to Form and Content
18 ANTHONY L. BARNEY, LTD.

Approved as to Form and Content:
ROLAND LAW FIRM

19 Anthony L. Barney, Esq. (Bar No. 8366)
20 Tiffany S. Barney, Esq. (Bar No. 9754)
21 3317 West Charleston Boulevard, Ste. B
22 Las Vegas, Nevada 89102
23 Telephone: (702) 438-7878
24 Facsimile: (702) 259-1116
25 *Attorney for Christopher D. Davis*

Harriet H. Roland, Esq. (Bar No. 5471)
ROLAND LAW FIRM
2470 East Saint Rose Parkway, Ste. 105
Henderson, Nevada 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
Attorney for Christopher D. Davis

ATTACHMENT 5

9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
ATTORNEYS AT LAW

CERT

Mark A. Solomon, Esq.
Nevada Bar No. 418
msolomon@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

1. Caroline D. Davis ("Ms. Davis") filed her *Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, As Amended On February 24, 2014; Petition To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K.*

9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-3483
FACSIMILE (702) 853-3485
WWW.SOFNLAW.COM

SOLOMON
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TRUST AND ESTATE ATTORNEYS

[Signature]

1 *Lehnardt As Distribution Trust Advisor; Petition To Confirm Dunham Trust Company As*
2 *Directed Trustee; And Petition For Immediate Disclosure Of Documents And For Information*
3 *From Christopher D. Davis* on February 10, 2015 (the "Petition To Assume Jurisdiction").

4 2. Christopher D. Davis ("Christopher") filed his *Motion To Dismiss Pursuant To*
5 *NRCP 12(b) And NRCP 19* on March 4, 2015 (the "Motion To Dismiss"). Thereafter, Ms. Davis
6 filed her Opposition to the Motion To Dismiss on April 13, 2015.

7 3. On April 20, 2015, two (2) days before the hearing on Ms. Davis' Petition To
8 Assume Jurisdiction and Christopher's Motion To Dismiss, Christopher filed his Reply to Ms.
9 Davis' Objection to the Motion To Dismiss.

10 4. In his Reply, Christopher first raised the following issues:

11 (a) Tarja Davis, Christopher's wife, was a beneficiary of the Beatrice B. Davis Family
12 Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent to the
13 execution of the First Amendment or the transfer in situs;

14 (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of
15 the First Amendment to the Trust, dated February 24, 2014 (the "First
16 Amendment"), and did not provide its consent to execution of the First
17 Amendment or the transfer in situs; and

18 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
19 execution of the First Amendment.

20 5. On April 22, 2015, a hearing was held on Ms. Davis' Petition To Assume
21 Jurisdiction and Christopher's Motion To Dismiss. Because the Court did not have sufficient
22 evidence before it regarding the issues raised by Christopher in his Reply, the Court assumed
23 jurisdiction over the Trust under the theory of "constructive trust", more accurately called a "de
24 facto trust", because:

25 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
26 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher;
27 (ii) Ms. Davis; (iii) and Winfield B. Davis, all consented to the execution of the
28



- 1 First Amendment to the Trust, dated February 24, 2014 (the "First Amendment")
2 and to the transfer of the Trust's situs from Alaska to Nevada;
- 3 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
4 accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company
5 resigned as Trustee;
- 6 (c) Based upon such good faith reliance of the validity of the First Amendment,
7 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 8 (d) Based upon a good faith reliance of the validity of the First Amendment,
9 Christopher accepted his appointment as Investment Trust Advisor pursuant to
10 NRS 163.5543;
- 11 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
12 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
13 NRS 163.5537;
- 14 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
15 LLC, a Nevada limited liability company wholly owned by the Trust, and
16 appointed Christopher as the sole Manager thereof;
- 17 (g) Christopher has been acting as Investment Trust Advisor since his acceptance of
18 such position;
- 19 (h) Christopher has been acting as sole Manager of FHT Holdings, LLC since his
20 appointment of such position;
- 21 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
22 as Directed Trustee in Nevada; and
- 23 (j) The Court had no evidence before it, namely an affidavit of any other purported
24 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
25 therefore entitled to notice or that such beneficiary's consent was required to
26 Transfer of the Trust's situs from Alaska to Nevada.
- 27 6. The Court noted that it was appropriate to assume jurisdiction over the Trust and
28 its fiduciaries, Dunham and Christopher, as all parties consented to the execution of the First

1 Amendment to the Trust and to the transfer of the Trust's situs from Alaska to Nevada, and all
2 parties before the Court acted upon a good faith reliance with respect to the validity of the First
3 Amendment.

4 7. The Order, dated May 19, 2015, filed on June 24, 2015, was thereafter entered on
5 July 1, 2015 (the "May 19, 2015 Order"), assuming jurisdiction over the Trust under the theory of
6 "constructive trust" (more accurately called a "de facto trust").

7 8. Christopher Filed his Petition For Reconsideration on July 14, 2015, setting forth
8 the same arguments contained in his Reply. *See*, ¶ 4 above.

9 9. Christopher then filed his Notice Of Appeal and Case Appeal Statement, appealing
10 the May 19, 2015 Order, on July 30, 2015.

11 10. Christopher's appeal divested the Court of jurisdiction to modify the May 19, 2015
12 Order unless remanded pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev. Adv. Op. 5 (Nev.
13 2010) (also known as a "Huneycutt Motion").

14 11. On August 10, 2015, Ms. Davis filed her Motion To Amend (Huneycutt Motion),
15 wherein she requested that the District Court amend or modify its May 19, 2015 Order and
16 assume jurisdiction over the Trust in its entirety as a proceeding *in rem*; and further requested
17 that, if the District Court is inclined to grant such relief, that the District Court certify to the
18 Nevada Supreme Court its intent to do so.

19 12. On September 2, 2015, the District Court heard oral arguments on Christopher's
20 Petition For Reconsideration and Ms. Davis' Motion To Amend.

21 13. The District Court was presented with evidence (a Declaration Of Tarja Davis,
22 filed on July 28, 2015) regarding Christopher's contention that Tarja Davis, Christopher's wife,
23 was a purported beneficiary of the Trust, and that Tarja Davis did not consent to the First
24 Amendment or to the transfer of the Trust's situs from Alaska to Nevada.

25 14. In response to Christopher's Petition For Reconsideration, Ms. Davis introduced
26 the following evidence to the District Court to support her Motion To Amend:

27 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
28 and requires the marital union of a beneficiary and his or her spouse, if entered into

1 after the signing date of the Trust, to exist continuously for a period of ten (10)
2 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
3 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
4 were married after the signing date of the Trust, and have not been married for ten
5 (10) continuous years;

6 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
7 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
8 was the currently serving Trustee on the date the First Amendment was executed
9 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
10 transfer of situs from Alaska to Nevada and that such RECITAL is presumed
11 conclusive under NRS 47.240(2);

12 (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood,
13 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
14 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
15 the Trust, indicating that he had communicated with both Alaska USA Trust
16 Company and Dunham and provided an opinion of counsel; and

17 (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant to Article 14,
18 Section 6 of the Trust, indicating that Nevada met the requirements of an
19 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
20 state for jurisdiction at the time.

21 15. Based upon the foregoing, the Court found that sufficient evidence had now been
22 submitted to the Court's satisfaction that the Trust's situs was properly transferred from Alaska to
23 Nevada pursuant to the terms of the Trust, and that upon submission of such evidence, the burden
24 to prove the invalidity of the First Amendment and the improper transfer of situs became
25 Christopher's burden, which he failed to overcome.

26 16. Accordingly, the limited basis upon which this Court assumed jurisdiction under
27 the theory of "constructive trust" should be expanded and jurisdiction should be assumed over the
28 Trust de jure as a proceeding *in rem* pursuant to NRS 164.010.

7060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

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EAST AND WEST ATTORNEYS



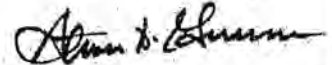
1 Good cause appearing therefore,

2 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
3 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
4 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
5 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
6 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
7 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
8 as grant any and all additional relief as the District Court deems proper.

9 DATED this ____ day of _____, 2015.

10
11 _____
12 DISTRICT COURT JUDGE
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ATTACHMENT 6



CLERK OF THE COURT

CERT

Mark A. Solomon, Esq.
Nevada Bar No. 418
msolomon@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

THIS COURT FINDS that the Order dated May 19, 2015, Re: Petition to Assume Jurisdiction over the Beatrice B. Davis Family Trust is currently on appeal, so this Court lacks

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDRNLAW.COM

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TRUST AND ESTATE ATTORNEYS



1 jurisdiction to amend the Order at this time. However, pursuant to Huneycutt v. Huneycutt, 94
2 Nev. 79, 575 P.2d 585, (1978):

3 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
4 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
5 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
6 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
7 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
8 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
9 as grant any and all additional relief as the District Court deems proper.

10 DATED this 14th day of October 2015.

11 
12 _____
13 DISTRICT COURT JUDGE

1 HARRIET H. ROLAND, ESQ.
2 NV Bar No. 5471
3 **ROLAND LAW FIRM**
4 2470 E. St. Rose Pkwy, Ste. 105
5 Henderson, NV 89074
6 Telephone: (702) 452-1500
7 Facsimile: (702) 920-8903
8 hroland@rolandlawfirm.com

9 ANTHONY L. BARNEY, ESQ.
10 Nevada Bar No. 8366
11 TIFFANY S. BARNEY, ESQ.
12 Nevada Bar No. 9754
13 **ANTHONY L. BARNEY, LTD.**
14 3317 W. Charleston Blvd., Suite B
15 Las Vegas, NV 89102
16 Telephone: (702) 438-7878
17 Facsimile: (702) 259-1116
18 *Attorneys for Christopher D. Davis*

19 **EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 In the matter of:

22 The BEATRICE B. DAVIS FAMILY HERITAGE
23 TRUST, dated July 28, 2000, as amended on
24 February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: September 2, 2015

Hearing Time: 9:00 a.m.

25 **AMENDED ORDER**

26 This matter initially came before the Court for hearing on the 22nd day of April, 2015 at
27 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and
28 NRCP 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis
Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume
Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as

1 Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for
2 Immediate Disclosure of Documents and Information from Christopher D. Davis. Christopher
3 D. Davis was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L.
4 Barney, Esq., of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by
5 Mark Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K.
6 Lehnardt was represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law
7 Group; and Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law
8 office of Lee Hernandez Landrum & Garofalo.
9

10
11 The Court order in the above hearing was entered on June 24, 2015. Christopher D.
12 Davis subsequently filed an appeal on the order and the Supreme Court later granted a stay on
13 all proceedings. Caroline D. Davis filed a motion to remand and this Court entered a signed
14 certification of intent on October 23, 2015. On December 9, 2015 the Supreme Court filed an
15 order which granted Caroline's motion to remand "for the limited purpose of allowing the
16 district court to enter its amended order." Pursuant to its inherent powers to manage litigation,
17 this Court having determined that the assumption of jurisdiction based on a constructive trust
18 was a clear error of law, and having been satisfied that jurisdiction over the Trust pursuant to
19 NRS 164.010 is now proper, hereby amends its June 24, 2015 order to read as follows:
20

21 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
22 Nevada, and that everyone involved relied on this amendment as being proper.
23

24 IT IS FURTHER FOUND that the Court has jurisdiction over the Beatrice B. Davis
25 Family Heritage Trust as a proceeding in rem pursuant to NRS 164.010.
26

27 IT IS SO FOUND.
28


1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
2 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.

3 IT IS SO ORDERED, ADJUDGED AND DECREED.
4

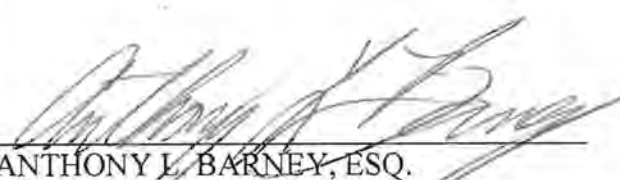
5
6 DATED this _____ day of _____, 2015.
7

8
9 _____
DISTRICT COURT JUDGE

10
11 Respectfully Submitted by the Following:

12
13 
14 HARRIET H. ROLAND, ESQ.
NV Bar No. 5471

15 **ROLAND LAW FIRM**
2470 E. St. Rose Pkwy, Ste. 105
16 Henderson, NV 89074
Telephone: (702) 452-1500
17 Facsimile: (702) 920-8903
18 *Attorney for Christopher D. Davis*
19

20
21 
22 ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366

23 TIFFANY S. BARNEY, ESQ.
24 Nevada Bar No. 9754
ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
25 Las Vegas, NV 89102
Telephone: (702) 438-7878
26 Facsimile: (702) 259-1116
27 *Attorneys for Christopher D. Davis*
28

Exhibit 51

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS




ORDR

Mark A. Solomon, Esq.
Nevada Bar No. 418
msolomon@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept.: Probate (26)

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

Hearing Date: September 2, 2015
Hearing Time: 9:00 A.M.

**ORDER GRANTING MOTION TO AMEND MAY 19, 2015 ORDER AND DENYING
PETITION FOR RECONSIDERATION**

This matter initially came on for hearing on April 22, 2015 on Caroline D. Davis' *Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition To Assume Jurisdiction") and Christopher D. Davis' *Motion To Dismiss Pursuant to NRCP 12(b) And NRCP 19* (the "Motion To Dismiss"). Counsel for Caroline D. Davis, Mark A. Solomon, Esq. and Joshua M. Hood, Esq.; counsel for Christopher D. Davis, Anthony L. Barney, Esq. and Harriet H. Roland, Esq.; counsel for Dunham Trust Company, Charlene N. Renwick, Esq., and counsel for Stephen K. Lehnardt, Jonathan W. Barlow, Esq., were present at the April 22, hearing.

This matter subsequently came on for hearing on September 2, 2015 on Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration") and Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant to NRCP 60(b)(3)* (the "Motion To Amend May 19, 2015 Order"). Counsel for Caroline D. Davis, Mark A. Solomon, Esq. and Joshua M. Hood, Esq.; counsel for Christopher D. Davis, Anthony L. Barney, Esq. and Harriet H. Roland, Esq.; and counsel for Dunham Trust Company, Charlene N. Renwick, Esq. were present at the September 2, 2015 hearing.

The Court having reviewed the pleadings, examined the evidence, and heard the arguments of counsel, and for good cause appearing makes the following Findings and Orders:

FINDINGS

1. Due and legal notice of the time and place of the aforementioned hearings has been given in this matter as required by law.

2. On April 22, 2015, a hearing was held in the Eighth Judicial District Court (the "District Court") on Caroline D. Davis' *Petition To Assume Jurisdiction*, filed on February 10, 2015, and Christopher D. Davis' *Motion To Dismiss*, filed on March 3, 2015.

3. In his Reply to Caroline D. Davis' *Opposition to the Motion To Dismiss*, which was filed only two (2) days before the April 22, 2015 hearing, Christopher D. Davis first raised the following issues:

- (a) Tarja Davis, Christopher D. Davis' wife, was a beneficiary of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent to the execution of the First Amendment or the transfer in situs;
- (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of the First Amendment to the Trust, dated February 24, 2014 (the "First

- 1 Amendment”), and did not provide its consent to execution of the First
2 Amendment or the transfer in situs; and
- 3 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
4 execution of the First Amendment.
- 5 4. The District Court, at the April 22, 2015 Hearing, assumed jurisdiction over the
6 Trust under the theory of “constructive trust”, more accurately called a “*de facto trust*”, because:
- 7 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
8 Reno, Nevada (“Dunham”); and the Trust’s beneficiaries, namely, (i) Christopher
9 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
10 execution of the First Amendment and to the transfer of the Trust’s situs from
11 Alaska to Nevada;
- 12 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
13 accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company
14 resigned as Trustee;
- 15 (c) Based upon such good faith reliance of the validity of the First Amendment,
16 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 17 (d) Based upon a good faith reliance of the validity of the First Amendment,
18 Christopher D. Davis accepted his appointment as Investment Trust Advisor
19 pursuant to NRS 163.5543;
- 20 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
21 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
22 NRS 163.5537;
- 23 (f) Dunham thereafter created FHT Holdings, LLC, a Nevada limited liability
24 company wholly owned by the Trust, and appointed Christopher D. Davis as the
25 sole Manager thereof;
- 26 (g) Christopher D. Davis has been acting as Investment Trust Advisor since his
27 acceptance of such position;
- 28

1 (h) Christopher D. Davis has been acting as sole Manager of FHT Holdings, LLC
2 since his appointment of such position;

3 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
4 as Directed Trustee in Nevada; and

5 (j) The Court had no evidence before it, namely an affidavit of any other purported
6 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
7 therefore entitled to notice or that such beneficiary's consent was required to
8 Transfer of the Trust's situs from Alaska to Nevada.

9 5. The District Court noted that it was appropriate to assume jurisdiction over the
10 Trust and its fiduciaries, Dunham and Christopher D. Davis, as all parties consented to the
11 execution of the First Amendment and to the transfer of the Trust's situs from Alaska to Nevada,
12 and all parties before the Court acted upon a good faith reliance with respect to the validity of the
13 First Amendment.

14 6. The District Court's Order, dated May 19, 2015, which was subsequently filed on
15 June 24, 2015 (the "May 19, 2015 Order"), assumed jurisdiction over the Trust to ensure that the
16 Trust was properly within a competent jurisdiction, and further to ensure that the Trust was not
17 adrift in that it would be left without a trustee.

18 7. The May 19, 2015 Order confirmed Christopher D. Davis as Investment Trust
19 Advisor and further required the production of all information in his possession, custody or
20 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
21 LLC, a Nevada limited liability company wholly owned by the Trust.

22 8. The District Court has now been presented with evidence in the form of a
23 Declaration of Tarja Davis, Christopher D. Davis' wife, indicating that Tarja Davis was married
24 to Christopher D. Davis on February 22, 2012, and that they were married on February 24, 2014,
25 that date the First Amendment was executed.

26 9. In response to the issues raised by Christopher D. Davis' in his Reply and the
27 Petition For Reconsideration, Caroline D. Davis submitted the following to the District Court:
28

- 1 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term “spouse”,
2 requiring the marital union of a beneficiary and his or her spouse, if entered into
3 following the signing date of the Trust, to exist continuously for a period of ten
4 (10) years before such beneficiary’s spouse can qualify as a “spouse” under the
5 Trust;
- 6 (b) The Declaration Of Tarja Davis indicating that Tarja Davis and Christopher were
7 married following the signing date of the Trust, and have not been married for ten
8 (10) continuous years;
- 9 (c) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
10 February 24, 2014, with “RECITALS” providing that Alaska USA Trust Company
11 was the currently serving Trustee on the date the First Amendment was executed
12 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
13 transfer of situs from Alaska to Nevada, which RECITAL is conclusively
14 presumed true under NRS 47.240(2);
- 15 (d) An Email from Dennis Brislawn, Esq. to: (i) Ms. Davis’ counsel, Joshua M. Hood,
16 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
17 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
18 the Trust, indicating that he had communicated with both Alaska USA Trust
19 Company and Dunham and provided an opinion of counsel; and
- 20 (e) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14,
21 Section 6 of the Trust, indicating that Nevada met the requirements of an
22 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
23 state for jurisdiction at the time.

24 10. Christopher D. Davis did not present sufficient new evidence or legal basis to
25 reconsider the May 19, 2015 Order.

26 11. Sufficient evidence has been submitted to the District Court that the First
27 Amendment, and consequently the transfer of the Trust’s situs, was valid.
28

12. Upon submission of Caroline D. Davis' showing regarding the validity of the First Amendment and the proper transfer of the Trust's situs giving rise to the District Court's authority to assume jurisdiction, the burden shifted to Christopher D. Davis to prove the invalidity of the First Amendment and the transfer of situs.

13. Christopher D. Davis has not presented any evidence to support his contentions regarding the invalidity of the First Amendment raised in his Reply and in his Petition For Reconsideration.

14. Because Christopher D. Davis did not provide sufficient cause, the Petition For Reconsideration should be denied.

15. *In personam* jurisdiction over Christopher D. Davis, as Manager of FHT Holdings, LLC, was also proper under Fulbright & Jaworski v. Eighth Jud. Dist. Ct., 342 P.3d 997 (Nev. 2015) and Viega GmbH v. Eighth Jud. Dist. Ct., 328 P.3d 1152 (Nev. 2014), as he is the current sole Manager of FHT Holdings, LLC, a Nevada limited liability company, doing business in Clark County, Nevada, whose membership interest is wholly owned by the Trust and under management by Christopher D. Davis, as Investment Trust Advisor.

16. The Court clarified the interlineations contained in the May 19, 2015 Order, and the provision containing such interlineations should read as follows: "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for Immediate Disclosure of Documents and Information From Christopher D. Davis is granted as to all information in his possession, custody, or control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings, LLC."

17. On July 30, 2015, Christopher D. Davis filed his Notice Of Appeal and Case Statement, divesting the District Court of jurisdiction to further entertain any motions. Notwithstanding, the District Court retains limited jurisdiction to entertain a party's motion to alter, vacate or modify an order, hold a hearing on any such motions, and to certify its intent to grant such requested relief if the matter is subsequently remanded pursuant to Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978) and Foster v. Dingwall, 126 Nev. 49, 228 P.3d 453 (2010).

18. Because sufficient evidence supporting the validity of the First Amendment, as well as the proper transfer of the Trust's situs from Alaska to Nevada has been submitted, the District Court certified its intent to assume jurisdiction over the Trust as a proceeding *in rem* pursuant to NRS 164.010 should the matter be remanded from the Supreme Court back to the District Court.

19. The District Court executed its Certification Of Intent To Amend Order on October 14, 2015, which was subsequently filed with the District Court on October 23, 2015.

20. On October 19, 2015 Caroline D. Davis filed her Motion For Remand To The Eighth Judicial District Court (the "Motion For Remand").

21. On December, 9, 2015, the Nevada Supreme Court filed an Order (the "December 9, 2015 Order") granting the Motion For Remand for the limited purpose of allowing the District Court to enter its Amended Order.

ORDER

As the Nevada Supreme Court has now remanded this matter back to the District Court for the purpose of allowing the District Court to amend the May 19, 2015 Order, the District Court hereby, grants the Motion To Amend May 19, 2015 Order, and amends the May 19, 2015 Order as follows:

IT IS HEREBY ORDERED that Christopher D. Davis' *Petition for Reconsideration of the Order Dated May 19, 2015 Re: Petition to Assume Jurisdiction over the Beatrice B Davis Family Heritage Trust Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction over Christopher D Davis as Investment Trust Advisor, Stephen K. Lehnardt as Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate Disclosure of Documents and Information from Christopher D Davis* is **DENIED** in its entirety.

IT IS HEREBY FURTHER ORDERED that the Court assumes jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, as a proceeding *in rem* pursuant to NRS 164.010.

1 IT IS HEREBY FURTHER ORDERED that Dunham Trust Company is confirmed as
2 the Directed Trustee.

3 IT IS HEREBY FURTHER ORDERED that Christopher D. Davis is confirmed as the
4 Investment Trust Advisor.

5 IT IS HEREBY FURTHER ORDERED that the Court shall abstain from assuming
6 jurisdiction over Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, until such
7 time that Caroline D. Davis provides a more definite statement or otherwise asserts a demand or
8 claim for relief against Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, at
9 which time this Court may assume personal jurisdiction over him.

10 IT IS HEREBY FURTHER ORDERED that the Christopher D. Davis shall forthwith
11 produce to Caroline D. Davis' counsel any and all information in his possession, custody, or
12 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
13 LLC.

14 IT IS HEREBY FURTHER ORDERED that this Order shall amend the Court's Order
15 of May 19, 2015 consistent herewith.

16 Dated this 25th day of December, 2015.

17
18 
19 DISTRICT COURT JUDGE

20
21 Prepared and submitted by:
22 SOLOMON DWIGGINS & FREER, LTD.

23 
24 Mark A. Solomon, Esq. (Bar No. 0418)
25 Joshua M. Hood, Esq. (Bar No. 12777)
26 9060 West Cheyenne Avenue
27 Las Vegas, Nevada 89129
28 Telephone: (702) 853-5483
Facsimile: (702) 853-5485
Attorneys for Caroline D. Davis

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

3
4 CHRISTOPHER D. DAVIS,

5
6 Appellant,

7 vs.

8 CAROLINE DAVIS,

9 Respondent.

10
11 CHRISTOPHER D. DAVIS

12 Petitioner,

13 v.

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

18 Respondents,

19 and

20 CAROLINE DAVIS,

21 Real Party in Interest.

Electronically Filed
Feb 05 2016 01:48 p.m.
Case No.: 68542
Trace K. Lindeman
Clerk of Supreme Court
Eighth Judicial District Court
Case No.: P-15-083867-T (In re
the Beatrice B. Davis Family
Heritage Trust, dated July 28,
2000)

Case No. 68948

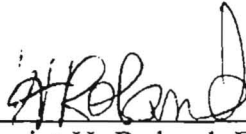
22
23 **APPELLANT'S SUPPLEMENTAL APPENDIX**
24 **VOLUME XI**

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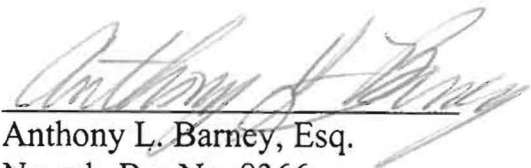
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Respectfully Submitted,
ROLAND LAW FIRM



Harriet H. Roland, Esq.
Nevada Bar No. 5471
2470 E. St. Rose Pkwy, Ste. 105
Henderson, NV 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com
Attorney for Christopher D. Davis

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.



Anthony L. Barney, Esq.
Nevada Bar No. 8366
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
office@anthonybarney.com
Attorney for Christopher D. Davis

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Cheryl Davis 5403 West 134 Terrace, Unit 1525 Overland Park, KS 66209	First Class US Mail
Tarja Davis 3005 North Beverly Glen Circle Las Angeles, California 90077 And 514 West 26 th Street, #3E Kansas City, Missouri 64108	First Class US Mail
Winfield B. Davis Skyline Terrace Apts. 930 Figueroa Terr. Apt. 529 Los Angeles, California 90012-3072	First Class US Mail
Ace Davis c/o Winfield B. Davis Skyline Terrace Apts. 930 Figueroa Terr. Apt. 529 Los Angeles, California 90012-3072	First Class US Mail
Christopher D. Davis 3005 North Beverly Glen Circle Los Angeles, California 90077 And 514 West 26 th Street, #3E Kansas City, Missouri 64108	First Class US Mail

1 Registered Agent Solutions, Inc. First Class US Mail
2 Registered Agent for FHT Holdings, LLC,
3 a Nevada Limited Liability Company
4 4625 West Nevso Drive, Suite 2
Las Vegas, Nevada 89103

5 JONATHAN W. BARLOW, ESQ. First Class US Mail
6 CLEAR COUNSEL LAW GROUP
7 50 Stephanie Street, Suite 101
8 Henderson, Nevada 89012
9 Jonathan@clearcounsel.com
Attorneys for Stephen K. Lenhardt

10 Mark Solomon, Esq. First Class US Mail
11 Joshua Hood, Esq.
12 **SOLOMON DWIGGINS & FREER, LTD.**
13 9060 W. Cheyenne Ave.
14 Las Vegas, NV 89129
Attorney for Petitioner Caroline Davis

15 DUNHAM TRUST COMPANY First Class US Mail
16 SHANNA CORESSAL, CTFA
17 c/o Charlene Renwick, Esq.
18 Lee, Hernandez, Landrum & Garofalo
19 7575 Vegas Drive, #150
Las Vegas, Nevada 89128

20 Honorable Judge Sturman First Class US Mail
21 Dept. 26, Eighth Judicial Dist. Court
22 Regional Justice Center
23 200 Lewis Ave.
Las Vegas, NV 89101

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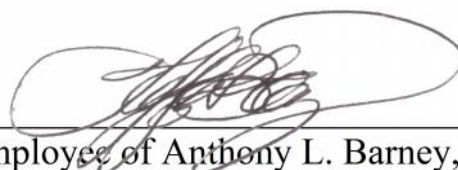

Employee of Anthony L. Barney, Ltd.

Exhibit 49

Anthony L. Barney, M.S., J.D., LL.M.
Attorney at Law
Licensed in Nevada and Idaho

Tiffany S. Barney, J.D.
Attorney at Law
Licensed in Nevada

Mary L. Martell, J.D.
Law Clerk

ANTHONY L. BARNEY, LTD.
A Nevada Professional Law Corporation

3317 W. Charleston Boulevard, Suite B
Las Vegas, Nevada 89102-1835
Receptionist: 702-438-7878
Fax: 702-259-1116

Zachary D. Holyoak
Law Clerk
Neva Liebe
Administrative Assistant

Website Address
www.anthonybarney.com

E-mail Address
office@anthonybarney.com

October 20, 2015

Honorable Judge Gloria J. Sturman
Department 26
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

Joshua M. Hood, Esq.
Mark A. Solomon, Esq.
Solomon Dwiggin Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: The Beatrice B. Davis Family Heritage Trust ("Trust");
Case No. P-15-083867-T
Our Client: Christopher D. Davis

SENT VIA FACSIMILE AND HAND DELIVERY

Dear Judge Sturman and Mr. Hood and Mr. Solomon:

We are in receipt of the Motion for Remand to the Eighth Judicial District Court ("Motion") filed with the Nevada Supreme Court on October 19, 2015 whereupon attached as Exhibit 3 to the documents is a Certification of Intent to Amend Order ("Certification"). The Motion and Exhibits are enclosed herewith as Attachment 1. Caroline's September 14, 2015 correspondence is enclosed as Attachment 2. During the hearing on September 30, 2015, the following exchange occurred:

Dana Dwiggin: "...You have already indicated your intent to certify full jurisdiction.... (Page 9:5-6)

Mr. Barney: "...I've not seen a certification of the order...." (Page 40:12-13)

Ms. Dwiggin: "My understanding is you had indicated your intent to do so if one is requested." (Page 41:4-5)

The Court: "If requested to do a Honeycutt order, we would certainly do a Honeycutt order."

Mr. Barney: "I just don't know the—I don't know the extent of what Honeycutt order that would be, I guess." (Page 41:12-13).

The Court: "Yeah. And that's why I said we —...It's only if it's requested, if the court says, you know, we need to know if the Supreme Court would take up such and such issue, then certainly

October 20, 2015

Page 2 of 2

we'll respond to that..." (Page 41:14, 16-19). These transcript pages are enclosed herein as Attachment 3.

The proposed certification that was submitted on September 14, 2015 with a letter to this Court and copied upon Christopher's counsel was six pages in length. The certification submitted to Supreme Court had been revised to two pages by Caroline's counsel and signed by this Court on October 14, 2015. Based upon the previous concerns that we expressed regarding the order dated July 1, 2015,¹ and the corresponding ex-parte correspondence to this Court from Caroline's counsel, we again express our concerns to this Court.

This Court indicated that it would only do a certification (Honeycutt order) if it was requested [by the Supreme Court]. (See Transcript, Page 41:14, 16-19). None of the attorneys besides Caroline's counsel made such a request, and the previous request by Caroline's attorney on September 14, 2015 provided a substantially different proposed certification than the one that was signed by the Court on October 14, 2015. Even if Caroline later alleges there was no ex-parte communications that accompanied the revised certification that was signed by this Court on October 14, 2015 [and not provided to Christopher's counsel until it was served with the Motion, how would Caroline's counsel have known to submit a revised certification from the one previously submitted to the Court with their correspondence dated September 14, 2015?

We are respectfully requesting that we be provided with a copy of Caroline's request or a letter detailing verbal discussions that accompanied the revised certification [later signed by this Court on October 14, 2015] which was submitted to the Court. Thank you for your anticipated response in this regard.

Sincerely,



ANTHONY L. BARNEY

Attorney at Law

anthony@anthonybarney.com



HARRIET ROLAND

Attorney at Law

ROLAND LAW FIRM

cc: Via U.S. Mail:

Client

Harriet Roland, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

¹ See Order dated May 19, 2015 and filed June 24, 2015 enclosed as Exhibit 1 to Attachment 1.

ATTACHMENT 1

Mark A. Solomon, Esq. (Bar No. 418)
msolomon@sdfnlaw.com
Joshua M. Hood, Esq. (Bar No. 12777)
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Electronically Filed
Oct 19 2015 09:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Attorneys for Caroline Davis, Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of:

Sup. Ct. Case No.: 68542

Dist. Ct. Case No.: P-15-083867-T

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014.

**MOTION FOR REMAND TO THE
EIGHTH JUDICIAL DISTRICT COURT**

Caroline D. Davis, as beneficiary of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014, by and through her counsel, the law firm of Solomon Dwiggin & Freer, Ltd., moves this Court, pursuant to *Foster v. Dingwall*, 228 P.3d 453, 126 Nev. Adv. Op. 5 (Nev. 2010), for an Order remanding this matter back to the Eighth Judicial District Court because the District Court has certified its intent to amend the Order from which this appeal lies in a manner that would affect the issues on appeal. This Motion is based upon the Memorandum Of Points And Authorities, all attached exhibits, and any oral argument that this honorable Court may entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural Background.

On February 10, 2015, Caroline D. Davis ("Ms. Davis") filed her *Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition To Assume Jurisdiction"). Christopher D.

Davis ("Christopher") then filed his *Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19* on March 4, 2015 (the "Motion To Dismiss") contending, inter alia, that Ms. Davis: (1) failed to join necessary parties; (2) failed to provide requisite notice to proper parties; and (3) further claimed that the Court lacked subject matter jurisdiction.

In response, Ms. Davis filed her *Opposition To Christopher D. Davis' Motion To Dismiss Pursuant to NRCP (12)(b) And NRCP 16* on April 13, 2015 (the "Opposition To Motion To Dismiss"), contending that the Court may properly assume jurisdiction over the Trust and respective parties and grant the relief requested in the Petition To Assume Jurisdiction. Additionally, Ms. Davis set forth arguments as to why the prior trustees, Alaska Trust Company and Alaska USA Trust Company ("Alaska USA"), are not necessary or indispensable parties, and that Ms. Davis properly served all interested parties. On April 20, 2015, just two (2) days before the hearing on Ms. Davis' Petition To Assume Jurisdiction and Christopher's Motion To Dismiss, Christopher filed the *Christopher D. Davis' Reply To Caroline D. Davis' Opposition To His Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19* (the "Reply").

In his Reply, Christopher raised for the first time the following issues: (1) Tarja Davis, Christopher's wife, was a beneficiary of the Trust and did not consent to the execution of the First Amendment or to the transfer of the Trust's situs from Alaska to Nevada; (2) Alaska USA resigned prior to the execution of the First Amendment and there was no acting trustee to provide the requisite consent to the transfer of situs; and (3) that no advice of counsel was obtained for Alaska USA prior to the transfer of situs.

On April 22, 2015, the District Court heard oral arguments on Ms. Davis' Petition To Assume Jurisdiction and Christopher's Motion To Dismiss. As the District Court did not have sufficient evidence to grant Christopher's Motion To Dismiss and the Court was not aware of Christopher's Reply,¹ the District Court, based upon the fact that all parties before the Court had been relying on the validity of the First Amendment and the proper transfer of the Trust's situs.

¹ See, Transcript of April 22, 2015 Hearing, at p. 24:9, a true and correct copy of which is attached hereto as Exhibit 1, wherein the Court stated "I have no Reply from Mr. Baney (sic)."

1 assumed jurisdiction over the Trust under the theory of "constructive trust", more accurately
2 called a "de facto trust" for the following reasons:

- 3 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
4 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher
5 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
6 execution of the First Amendment and to the transfer of the Trust's situs from
7 Alaska to Nevada;
- 8 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
9 accepted tenure as Directed Trustee of the Trust and Alaska USA resigned as
10 Trustee;
- 11 (c) Based upon such good faith reliance of the validity of the First Amendment,
12 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 13 (d) Based upon a good faith reliance of the validity of the First Amendment,
14 Christopher accepted his appointment as Investment Trust Advisor pursuant to
15 NRS 163.5543;
- 16 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
17 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
18 NRS 163.5537;
- 19 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
20 LLC, a Nevada limited liability company wholly owned by the Trust, and
21 appointed Christopher D. Davis as the sole Manager thereof;
- 22 (g) Christopher has been acting as Investment Trust Advisor since his acceptance of
23 such position;
- 24 (h) Christopher has been acting as sole Manager of FHT Holdings, LLC since his
25 appointment of such position;
- 26 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
27 as Directed Trustee in Nevada; and
28

(j) The Court had no evidence before it, namely an affidavit of any other purported beneficiary, that any other beneficiary was entitled to take under the Trust, and, therefore entitled to notice or that such beneficiary's consent was required to Transfer of the Trust's situs from Alaska to Nevada.

Thereafter, an Order, dated May 19, 2015, was filed on June 24, 2015, and subsequently entered on July 1, 2015 (the "May 19, 2015 Order"). A true and correct copy of the May 19, 2015 Order is attached hereto as **Exhibit 2**. The May 19, 2015 Order assumed jurisdiction over the Trust as a "constructive trust" to ensure that the Trust was properly within a competent jurisdiction, and to further ensure that the Trust was not adrift in that it would be left without a trustee.

On July 14, 2015, Christopher filed his *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: The Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust. Dated July 28, 2000, As Amended On February 24, 2014, To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"). The Petition For Reconsideration sets forth the same arguments as provided in his Motion To Dismiss and his Reply.

Shortly thereafter, Christopher filed his Notice Of Appeal and Case Appeal Statement on July 30, 2015. Upon filing his Notice Of Appeal and Case Appeal Statement, Christopher divested the District Court of jurisdiction to modify the May 19, 2015 Order unless remanded pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev.Adv.Op. (Nev. 2010) (also known as a "Huneycutt Motion"). As such, Ms. Davis filed her *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* on August 10, 2015 (the "Motion To Amend") wherein she requested that the District Court Amend or Modify the May 19, 2015 Order and assume jurisdiction over the Trust as a proceeding *in rem*, and further requested that, if the District Court is inclined to grant such relief, that the District Court certify to the Nevada Supreme Court its intent to do so.

1 On September 2, 2015, the District Court, after having reviewed Ms. Davis' Motion to
2 Amend and Christopher's Petition For Reconsideration and papers and exhibits before the Court,
3 held oral arguments on said pleadings. During such hearing, the District Court was presented
4 with a Declaration Of Tarja Davis, which indicated that Tarja Davis was married to Christopher
5 on February 22, 2012, that they were married on the date the First Amendment was executed, and
6 further alleging that Tarja Davis is a beneficiary of the Trust. In response to Christopher's
7 contentions raised in his Petition For Reconsideration, and in light of the Declaration Of Tarja
8 Davis, Ms. Davis submitted the following evidence to the District Court:

- 9 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
10 and requires the marital union of a beneficiary and his or her spouse, if entered into
11 after the signing date of the Trust, to exist continuously for a period of ten (10)
12 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
13 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
14 were married after the signing date of the Trust, and have not been married for ten
15 (10) continuous years;
- 16 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
17 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
18 was the currently serving Trustee on the date the First Amendment was executed
19 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
20 transfer of situs from Alaska to Nevada and that such RECITAL is presumed
21 conclusive under NRS 47.240(2);
- 22 (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood,
23 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
24 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
25 the Trust, indicating that he had communicated with both Alaska USA Trust
26 Company and Dunham and provided an opinion of counsel; and
- 27 (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14,
28 Section 6 of the Trust, indicating that Nevada met the requirements of an

1 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
2 state for jurisdiction at the time.

3 Based upon the evidence presented by Ms. Davis, the District Court found that sufficient
4 evidence had now been submitted to the District Court's satisfaction that the Trust's situs was
5 properly transferred from Alaska to Nevada pursuant to the terms of the trust, and Christopher
6 failed to meet the burden to prove the invalidity of the First Amendment and the transfer of situs
7 to Nevada was improper. Although the District Court is currently without jurisdiction to modify
8 the May 19, 2015 Order, the Honorable Judge Gloria J. Sturman stated her intention to amend the
9 May 19, 2015 Order and "enter an order to assume jurisdiction over the [Trust] de jure as a
10 proceeding *in rem* pursuant to NRS 164.010, as well as grant any additional relief the District
11 Court deems proper" if the case is remanded back to the District Court. *See*, Certification Of
12 Intent To Amend Order (the "Certification Of Intent"). A true and correct copy of the
13 Certification of Intent is attached hereto was **Exhibit 3**.

14 **II. Legal Argument.**

15 Christopher's filing of the notice of appeal "divest[ed] the district court of jurisdiction to
16 act and vests jurisdiction in [the Nevada Supreme Court]." *Foster v. Dingwall*, 228 P.3d 453, 445-
17 445, 126 Nev. Adv. Op. __ (citing *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529
18 (2006) (quoting *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382
19 (1987)). The District Court, however, retains limited jurisdiction to entertain a party's motion to
20 "alter, vacate or otherwise change or modify an order" if such party, prior to filing a motion for
21 remand, "file[s] a motion for relief from the order or judgment in the district court." *Foster*, 228
22 P.3d, at 455 (citing *Mack-Manley*, 122 Nev. at 855-56, 138 P.3d at 529-30; *Huneycutt v.*
23 *Huneycutt*, 94 Nev. 97, 80-81, 575 P.2d 585, 585-86 (Nev. 1978).

24 The limited jurisdiction retained by the District Court permits such court to "direct
25 briefing on the motion, hold a hearing regarding the motion, and enter an order denying the
26 motion, but [the District Court] lacks jurisdiction to enter an order granting such motion." *Foster*,
27 228 P.3d, at 455 (citing *Huneycutt*, 94 Nev., at 80-81, 575 P.2d, at 585-86). When the District
28 Court exercises this limited jurisdiction, "if the district court is inclined to grant the requested

1 relief, then it may certify its intent to do so.” Foster, 228 P.3d, at 455 (citing Mack–Manley, 122
2 Nev., at 855, 138 P.3d, at 530; Huneycutt, 94 Nev., at 81, 575 P.2d, at 586.). Once the District
3 Court has certified its intent to grant the requested relief to alter, vacate or otherwise change or
4 modify an order, it is “appropriate for the moving party to file a motion (to which the district
5 court’s certification of its intent to grant relief is attached) with this court seeking a remand to the
6 district court for an entry of an order granting the requested relief.” Foster, 228 P.3d, at 455
7 (citing Mack–Manley, 122 Nev., at 855-56, 138 P.3d, at 530; Huneycutt, 94 Nev., at 81, 575 P.2d,
8 at 586.).

9 Christopher appealed the May 19, 2015 Order. Thereafter, Ms. Davis sought the District
10 Court’s certification of intent to amend the May 19, 2015 Order to assume jurisdiction over the
11 Trust as a proceeding *in rem*, as well as grant any further relief the District Court deemed proper.
12 The District Court certified its intent to grant the relief requested by Ms. Davis. *See*, Ex. 3.

13 Based upon the foregoing, Ms. Davis respectfully requests that this Court exercise its
14 discretion and remand this matter back to the Eight Judicial District Court so that the District
15 Court may amend the May 19, 2015 Order.

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Solo SOLOMON
DWIGGINS & FREER
(BUS) AND ESTATE ATTORNEYS
9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

This matter is appropriate for remand based upon the holding in Foster and Huneycutt, *supra*. The Honorable Judge Gloria J. Sturman has certified her intent to amend the May 19, 2015 Order consistent with the facts, evidence, and circumstances of this matter with respect to the First Amendment and the transfer of the Trust's situs from Alaska to Nevada, which was accomplished pursuant to the terms of the Trust. As such, this Court should remand the matter back to the District Court to permit the District Court to grant the relief requested in Ms. Davis' Motion To Amend, as well as grant any further relief as the District Court deems proper.

Dated this 16th day of October, 2015.

SOLOMON DWIGGINS & FREER, LTD

Mark A. Solomon, Esq. (Bar No. 418)

msolomon@sdfnvlaw.com

Joshua M. Hood, Esq. (Bar No. 12777)

jhood(@)sdfnvlaw.com

SOLOMON DWIGGINS & FREER, LTD.

9060 Cheyenne Avenue

Las Vegas, Nevada

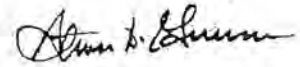
Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for Caroline D. Davis

Exhibit 1

Exhibit 1


CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

IN THE MATTER OF THE TRUST OF: } CASE NO. P-15-082867
THE BEATRICE DAVIS HERITAGE } DEPT. NO. XXVI
TRUST. } Transcript of Proceedings

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

MOTION TO DISMISS: MOTION ON CHRISTOPHER DAVIS' MOTION TO
DISMISS PURSUANT TO NRCP 12(B) AND NRCP 19; PETITION TO
ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
TRUST, ASSUME JURISDICTION OVER CHRISTOPHER DAVID AS
INVESTMENT TRUST ADVISOR AND STEPHEN K. LEHNARDT AS
DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY
AS DIRECTED TRUSTEE, AND FOR IMMEDIATE DISCLOSURE OF
DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS

WEDNESDAY, APRIL 22, 2015

APPEARANCES:

For Caroline Davis: MARK ALAN SOLOMON, ESQ.
JOSHUA M. HOOD, ESQ.
For Christopher Davis: ANTHONY L. BARNEY, ESQ.
For Stephen Lehnardt: JONATHAN W. BARLOW, ESQ.
For Dunham Trust Company: CHARLENE N. RENWICK, ESQ.

RECORDED BY: KERRY ESPARZA, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 opposition to --

2 MR. SOLOMON: I don't think he --

3 MR. HOOD: -- our petition.

4 MR. SOLOMON: Counsel alluded to a Reply. I
5 haven't seen a Reply.

6 THE COURT: I saw your Reply.

7 MR. SOLOMON: Yes. But I have not seen a Reply by
8 Mr. Barney --

9 THE COURT: I have no Reply from Mr. Barney.

10 MR. SOLOMON: -- but he alluded in his argument
11 that, you know, they specified the grounds for invalidity
12 in this motion and then reinforced them in the Reply. They
13 didn't. All they said is: We have the burden to prove the
14 validity of the first amendment before we could move
15 forward and our response was: Well, take a look at NRS
16 47.250 subsection 18(c). There's a rebuttal for resumption
17 that it's valid. And then we said: Nobody has suggested
18 any particular grounds of invalidity.

19 And then I pointed out that Chris, who is the only
20 person challenging it, expressly consented to it. Not
21 once, but twice in two different documents you just looked
22 at. So how can he raise it? I don't think he can even
23 raise this issue he's now trying to raise with respect to
24 some other party, especially when he consented to it and
25 then he took repeated actions.

1 CERTIFICATION

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4 I certify that the foregoing is a correct transcript from
5 the audio-visual recording of the proceedings in the
6 above-entitled matter.
7

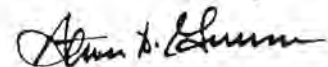
8 AFFIRMATION

9
10 I affirm that this transcript does not contain the social
11 security or tax identification number of any person or
12 entity.
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22 KRISTEN LUNKWITZ
23 INDEPENDENT TRANSCRIBER
24
25

Exhibit 2

Exhibit 2



CLERK OF THE COURT

HARRIET H. ROLAND, ESQ.
NV Bar No. 5471
ROLAND LAW FIRM
2470 E. St. Rose Pkwy, Ste. 105
Henderson, NV 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com

ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366
TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754

ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
Attorneys for Christopher D. Davis

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the matter of:

The BEATRICE B. DAVIS FAMILY HERITAGE
TRUST, dated July 28, 2000, as amended on
February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

ORDER

This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

13 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
14 Nevada, and that everyone involved relied on this amendment as being proper.

15 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
16 at the time the first amendment was signed.

18 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
19 action on behalf of the trust has been taken in Nevada.

20 IT IS SO FOUND.

21 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
22 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
23 granted without prejudice.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
26 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
27 more definite statement is filed.
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
5 all information in his possession ^{custody or control} in his role as Investment Trust Advisor, *and on his*
6 *role as manager of FHR Holdings*

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.

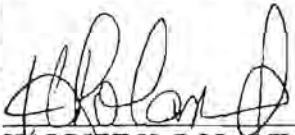
11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 DATED this 15th day of May, 2015.

13
14
15
16 
17 DISTRICT COURT JUDGE

18 Respectfully Submitted by the Following:

Approved as to Form and Content:

19
20 
21 HARRIET H. ROLAND, ESQ.
22 NV Bar No. 5471
23 **ROLAND LAW FIRM**
24 2470 E. St. Rose Pkwy, Ste. 105
25 Henderson, NV 89074
26 Telephone: (702) 452-1500
27 Facsimile: (702) 920-8903
28 *Attorney for Christopher D. Davis*


JONATHAN W. BARLOW, ESQ.
NV Bar No. 9964
CLEAR COUNSEL LAW GROUP
50 South Stephanie Street, Ste. 101
Henderson, Nevada 89012
Telephone: (702) 476-5900
Facsimile: (702) 924-0709
Attorney for Stephen K. Lehnardt

Approved as to Form and Content:

ANTHONY L. BARNEY, ESQ.

Nevada Bar No. 8366

TIFFANY S. BARNEY, ESQ.

Nevada Bar No. 9754

ANTHONY L. BARNEY, LTD.

3317 W. Charleston Blvd., Suite B

Las Vegas, NV 89102

Telephone: (702) 438-7878

Facsimile: (702) 259-1116

Attorneys for Christopher D. Davis

CHARLENE RENWICK, ESQ.

LEE, HERNANDEZ, LANDRUM,

GAROFALO, ATTORNEYS AT LAW

7575 Vegas Drive, Suite 150

Las Vegas, Nevada 89128

Telephone: (702) 880-9750

Facsimile: (702) 314-1210

Attorneys for Dunham Trust Company

Approved as to Form and Content:

MARK A. SOLOMON, ESQ.

NV Bar No. 0418

JOSHUA M. HOOD, ESQ.

NV Bar No. 12777

SOLOMON DWIGGINS & FREER, LTD.

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for Caroline D. Davis

Exhibit 3

Exhibit 3

CERT

Mark A. Solomon, Esq.
Nevada Bar No. 418
msolomon@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

THIS COURT FINDS that the Order dated May 19, 2015, Re: Petition to Assume Jurisdiction over the Beatrice B. Davis Family Trust is currently on appeal, so this Court lacks

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

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1 jurisdiction to amend the Order at this time. However, pursuant to Huneycutt v. Huneycutt, 94
2 Nev. 79, 575 P.2d 585, (1978):

3 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
4 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
5 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
6 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
7 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
8 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
9 as grant any and all additional relief as the District Court deems proper.

10 DATED this 14th day of October 2015.

11
12 
13 _____
14 DISTRICT COURT JUDGE

ATTACHMENT 2



Mark A. Solomon
Dana A. Dwigginis
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
*Christopher J. Fowler

*Licensed only in Florida

Direct Dial (702) 589-3500
Email msolomon@sdfnvlaw.com

September 14, 2015

Via Hand Delivery

The Honorable Gloria J. Sturman
Regional Justice Center
Dept. XXVI, Courtroom 3H
200 Lewis Avenue
Las Vegas, Nevada 89155 00

**RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: September 2, 2015**

Dear Judge Sturman:

This office is in receipt of the correspondence sent to you on September 10, 2015 (the "September 10 Letter") from Anthony L. Barney, Esq. and Harriet H. Roland, Esq., counsel for Christopher D. Davis (hereinafter "Opposing Counsel"). Having reviewed Opposing Counsel's September 10 Letter, we feel that the terms and provisions contained within the "Certification Of Intent" and the proposed "Amended Order", provided to you via hand delivery on September 9, 2015, are consistent with your express and implied findings.

As a point of clarification, Opposing Counsel, in footnote "1" of their September 10 Letter, incorrectly states that "[t]he parties that appear to have not been provided with a copy of the September 9th Letter and attached pleadings include, Tarja Davis, Ace Davis Winfield Davis, Registered Agent Solutions, Inc. (FIHT Holdings, LLC)." Indeed, Caroline D. Davis' ("Ms. Davis") counsel provided the aforementioned parties with a copy of the correspondence with accompanying enclosures. See, Certificate Of Service Of Copy Of Correspondence To Judge Sturman With Enclosures Dated September 9, 2015, a true and correct copy is enclosed herewith for your review.

As an additional point of clarification, Ms. Davis' counsel did **not** request that Your Honor execute the proposed Amended Order. Ms. Davis' counsel is well aware that the District Court is divested of jurisdiction to execute and/or enter such order at this time. Opposing

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The Honorable Gloria J. Sturman
RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: September 2, 2015

Page 2
September 14, 2015

Counsel's contention or implication that Ms. Davis' counsel requested the proposed Amended Order be executed is misleading and patently false.

Therefore, Ms. Davis respectfully requests that Your Honor execute the **Certification Of Intent**. Upon execution of the Certification Of Intent, Ms. Davis' counsel further requests that they be notified so that the same may be retrieved by this office.

Sincerely,



Mark A. Solomon

MAS/

Enclosure: (As Stated)

cc: Charlene N. Renwick, Esq.; Harriet H. Roland, Esq.; Jonathan W. Barlow, Esq.; and Anthony L. Barney, Esq.

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM



NOTC

Mark A. Solomon, Esq., Bar No. 418
msolomon@sdfnlaw.com
Joshua M. Hood, Esq. Bar No. 12777
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of:

Case No.: P-15-083867-T
Dept.: 26

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

**CERTIFICATE OF SERVICE OF COPY OF CORRESPONDENCE TO JUDGE
STURMAN WITH ENCLOSURES DATED SEPTEMBER 9, 2015**

I hereby certify that on the 9th day of September 2015, I mailed a true and correct copy of the
above and foregoing Correspondence to the following persons at their last known address, by
depositing a copy of the same in the United States Mail, addressed as follows

Tarja Davis
3005 North Beverly Glen Circle
Los Angeles, California 90077 and
514 West 26th Street, ##F
Kansas City, Missouri 64108

WINFIELD B. DAVIS
Skyland Terrace Apts.
930 Figueroa Terr., Apt. 529
Los Angeles, California 90012-3072

ACE DAVIS c/o
WINFIELD B. DAVIS
Skyland Terrace Apts.
930 Figueroa Terr., Apt. 529
Los Angeles, California 90012-3027

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM



Cheryl Davis
5403 West 134 Terrace, #1525
Overland Park, Kansas 66209

Registered Agent Solutions, Inc
Registered Agent for FHT Holdings, LLC,
A Nevada Limited Liability Company
4625 W. Nevso Drive, Suite 2
Las Vegas, Nevada 89103


An Employee of SOLOMON DWIGGINS & FREER, LTD.



Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
*Christopher J. Fowler

*Licensed only in Florida

Direct Dial (702) 589-3500
Email insolomon@sdfnlaw.com

September 9, 2015

Via Hand Delivery

The Honorable Gloria J. Sturman
Regional Justice Center
Dept. XXVI, Courtroom 3H
200 Lewis Avenue
Las Vegas, Nevada 89155

**RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: September 2, 2015**

Dear Judge Sturman:

This matter came on for hearing on Caroline D. Davis' ("Ms. Davis") Motion Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3) (the "Motion To Amend") and Christopher D. Davis' Petition For Reconsideration Of The Order Dated May 19, 2015, etc. (the Petition For Reconsideration") on September 2, 2015. As you are aware, jurisdiction was originally assumed over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014 (the "Trust") under the theory of "constructive trust". This was subsequently confirmed in the Order, dated May 19, 2015, which was filed on June 24, 2015. During the September 2, 2015, hearing you indicated that sufficient evidence was now presented demonstrating that the First Amendment and the transfer of the Trust's situs were completed in compliance with Article 14, Section 6 of the Trust, and that jurisdiction over the Trust under NRS 164.010 was proper. You further indicated that you would certify your intent to enter an order to that effect should this matter be remanded back to the District Court.

Pursuant to your statement at the September 2, 2015 hearing, enclosed for your review are: (1) a Certification Of Intent; and (2) a proposed Amended Order to be entered if the Supreme Court remands the matter. If the terms and provisions of both documents are to your satisfaction, please execute the Certification Of Intent. Additionally, please let us know when the Certification Of Intent has been executed so that we may retrieve the same.

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The Honorable Gloria J. Sturman
RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: September 2, 2015

Page 2
September 9, 2015

Thank you,

A handwritten signature in black ink, appearing to read "Mark A. Solomon". The signature is fluid and cursive, with the first name "Mark" being more prominent.

Mark A. Solomon

MAS/

Enclosure: (As Stated)

cc: Charlene N. Renwick, Esq.; Harriet H. Roland, Esq.; Jonathan W. Barlow, Esq.; and Anthony L. Barney, Esq.

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS


ORDR

Mark A. Solomon, Esq.
Nevada Bar No. 418
msolomon@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of:

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

Case No.: P-15-083867-T
Dept.: Probate (26)

Hearing Date: September 2, 2015
Hearing Time: 9:00 A.M.

**ORDER ON HEARING OF SEPTEMBER 2, 2015
AND AMENDING ORDER DATED MAY 19, 2015**

This matter came on for hearing on September 2, 2015 on Christopher D. Davis' PETITION FOR RECONSIDERATION OF THE ORDER DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST, DATED JULY 28, 2000, AS AMENDED ON FEBRUARY 24, 2014; TO ASSUME JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE; AND FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS (the "PETITION FOR RECONSIDERATION") and Caroline D. Davis' MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3) ("MOTION TO AMEND"). Counsel for Caroline D. Davis, Mark A. Solomon, Esq. and Joshua

1 M. Hood, Esq.; counsel for Christopher D. Davis, Anthony L. Barney, Esq. and Harriet H.
2 Roland, Esq.; and counsel for Dunham Trust Company, Charlene N. Renwick, Esq. were present.

3 The Court having reviewed the pleadings, examined the evidence, and heard the
4 arguments of counsel, and for good cause appearing makes the following Findings and Orders:

5 **FINDINGS**

6 1. Due and legal notice of the time and place of the hearing has been given in this
7 matter as required by law.

8 2. On April 22, 2015, a hearing was held on Caroline D. Davis' Petition To Assume
9 Jurisdiction, filed on February 10, 2015, and Christopher D. Davis' Motion To Dismiss, filed on
10 March 3, 2015.

11 3. In his Reply to Caroline D. Davis' Opposition to the Motion To Dismiss, which
12 was filed only two (2) days before the April 22, 2015 hearing, Christopher D. Davis first raised
13 the following issues:

14 (a) Tarja Davis, Christopher D. Davis' wife, was a beneficiary of the Beatrice B.
15 Davis Family Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent
16 to the execution of the First Amendment or the transfer in situs;

17 (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of
18 the First Amendment to the Trust, dated February 24, 2014 (the "First
19 Amendment"), and did not provide its consent to execution of the First
20 Amendment or the transfer in situs; and

21 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
22 execution of the First Amendment.

23 4. The Court, at the April 22, 2015 Hearing, assumed jurisdiction over the Trust
24 under the theory of "constructive trust", more accurately called a "de facto trust", because:

25 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
26 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher
27 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
28

- 1 execution of the First Amendment and to the transfer of the Trust's situs from
2 Alaska to Nevada;
- 3 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
4 accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company
5 resigned as Trustee;
- 6 (c) Based upon such good faith reliance of the validity of the First Amendment,
7 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 8 (d) Based upon a good faith reliance of the validity of the First Amendment,
9 Christopher D. Davis accepted his appointment as Investment Trust Advisor
10 pursuant to NRS 163.5543;
- 11 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
12 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
13 NRS 163.5537;
- 14 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
15 LLC, a Nevada limited liability company wholly owned by the Trust, and
16 appointed Christopher D. Davis as the sole Manager thereof;
- 17 (g) Christopher D. Davis has been acting as Investment Trust Advisor since his
18 acceptance of such position;
- 19 (h) Christopher D. Davis has been acting as sole Manager of FHT Holdings, LLC
20 since his appointment of such position;
- 21 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
22 as Directed Trustee in Nevada; and
- 23 (j) The Court had no evidence before it, namely an affidavit of any other purported
24 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
25 therefore entitled to notice or that such beneficiary's consent was required to
26 Transfer of the Trust's situs from Alaska to Nevada.
- 27 5. The Court noted that it was appropriate to assume jurisdiction over the Trust and
28 its fiduciaries, Dunham and Christopher D. Davis, as all parties consented to the execution of the

1 First Amendment and to the transfer of the Trust's situs from Alaska to Nevada, and all parties
2 before the Court acted upon a good faith reliance with respect to the validity of the First
3 Amendment.

4 6. The Court's Order, dated May 19, 2015, which was subsequently filed on June 24,
5 2015 (the "May 19, 2015 Order"), assumed jurisdiction over the Trust to ensure that the Trust was
6 properly within a competent jurisdiction, and further to ensure that the Trust was not adrift in that
7 it would be left without a trustee.

8 7. The May 19, 2015 Order confirmed Christopher D. Davis as Investment Trust
9 Advisor and further required the production of all information in his possession, custody or
10 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
11 LLC, a Nevada limited liability company wholly owned by the Trust.

12 8. The Court has been presented with evidence in the form of a Declaration of Tarja
13 Davis, Christopher D. Davis' wife, indicating that Tarja Davis was married to Christopher D.
14 Davis on February 22, 2012, and that they were married on February 24, 2014, that date the First
15 Amendment was executed.

16 9. In response to the issues raised by Christopher D. Davis' in his Reply and the
17 PETITION FOR RECONSIDERATION, Caroline D. Davis submitted the following to this
18 Court:

19 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
20 and requires the marital union of a beneficiary and his or her spouse, if entered into
21 after the signing date of the Trust, to exist continuously for a period of ten (10)
22 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
23 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
24 were married after the signing date of the Trust, and have not been married for ten
25 (10) continuous years;

26 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
27 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
28 was the currently serving Trustee on the date the First Amendment was executed

1 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
2 transfer of situs from Alaska to Nevada and that such RECITAL is presumed
3 conclusive under NRS 47.240(2);

4 (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood,
5 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
6 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
7 the Trust, indicating that he had communicated with both Alaska USA Trust
8 Company and Dunham and provided an opinion of counsel; and

9 (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14,
10 Section 6 of the Trust, indicating that Nevada met the requirements of an
11 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
12 state for jurisdiction at the time.

13 10. Christopher D. Davis did not present sufficient new evidence or legal basis to
14 reconsider the May 19, 2015 Order.

15 11. Sufficient evidence has been submitted to the Court that the First Amendment, and
16 consequently the transfer of the Trust's situs, was valid.

17 12. Upon submission of Caroline D. Davis' evidence regarding the validity of the First
18 Amendment and the proper transfer of the Trust's situs giving rise to this Court's authority to
19 assume jurisdiction, the burden to prove the invalidity of the First Amendment and the improper
20 transfer of situs became Christopher D. Davis' burden to overcome.

21 13. Christopher D. Davis has not presented any evidence to support his contentions
22 regarding the invalidity of the First Amendment raised in his Reply and in his PETITION FOR
23 RECONSIDERATION.

24 14. Because Christopher D. Davis did not provide sufficient cause, the PETITION
25 FOR RECONSIDERATION should be denied.

26 15. *In personam* jurisdiction over Christopher D. Davis, as Manager of FHT Holdings,
27 LLC, was also proper under Fulbright & Jaworski v. Eighth Jud. Dist. Ct., 342 P.3d 997 (Nev.
28 2015) and Viega GmbH v. Eighth Jud. Dist. Ct., 328 P.3d 1152 (Nev. 2014), as he is the current

1 sole Manager of FHT Holdings, LLC, a Nevada limited liability company, doing business in
2 Clark County, Nevada, whose membership interest is wholly owned by the Trust and under
3 management by Christopher D. Davis, as Investment Trust Advisor.

4 16. Because sufficient evidence supporting the validity of the First Amendment, as
5 well as the proper transfer of the Trust's situs from Alaska to Nevada has been submitted, the
6 Court certified its intent to assume jurisdiction over the Trust as a proceeding *in rem* pursuant to
7 NRS 164.010 should the matter be remanded from the Supreme Court back to the District Court.

8 17. The Court clarified the interlineations contained in the May 19, 2015 Order, and
9 the provision containing such interlineations should read as follows: "IT IS FURTHER
10 ORDERED, ADJUDGED AND DECREED that the Petition for Immediate Disclosure of
11 Documents and Information From Christopher D. Davis is granted as to all information in his
12 possession, custody, or control in his role as Investment Trust Advisor, and in his role as Manager
13 of FHT Holdings, LLC."

14 ORDER

15 As the Nevada Supreme Court has now remanded this matter back to the Eighth Judicial
16 District Court,

17 **IT IS HEREBY ORDERED** that Christopher D. Davis' *Petition for Reconsideration of*
18 *the Order Dated May 19, 2015 Re: Petition to Assume Jurisdiction over the Beatrice B Davis*
19 *Family Heritage Trust Dated July 28, 2000, as Amended on February 24, 2014, to Assume*
20 *Jurisdiction over Christopher D Davis as Investment Trust Advisor, Stephen K. Lehnardt as*
21 *Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for*
22 *Immediate Disclosure of Documents and Information from Christopher D Davis* is **DENIED** in
23 its entirety.

24 **IT IS HEREBY FURTHER ORDERED** that the Court assumes jurisdiction over the
25 Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014,
26 as a proceeding *in rem* pursuant to NRS 164.010.

27 **IT IS HEREBY FURTHER ORDERED** that Dunham Trust Company is confirmed as
28 the Directed Trustee.

1 **IT IS HEREBY FURTHER ORDERED** that Christopher D. Davis is confirmed as the
2 Investment Trust Advisor.

3 **IT IS HEREBY FURTHER ORDERED** that the Court shall abstain from assuming
4 jurisdiction over Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, until such
5 time that Petitioner provides a more definite statement or otherwise asserts a demand or claim for
6 relief against Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, at which time
7 this Court may assume personal jurisdiction over him.

8 **IT IS HEREBY FURTHER ORDERED** that the Christopher D. Davis shall forthwith
9 produce to Caroline D. Davis' counsel any and all information in his possession, custody, or
10 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
11 LLC.

12 **IT IS HEREBY FURTHER ORDERED** all further matters will be heard by the probate
13 judge.

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1 IT IS HEREBY FURTHER ORDERED that this Order shall amend the Court's Order
2 of May 19, 2015 consistent herewith.

3 Dated this ____ day of September, 2015.

4
5 DISTRICT COURT JUDGE

6 Prepared and submitted by:
7 SOLOMON DWIGGINS & FREER, LTD.

Approved as to Form and Content:
LEE HERNANDEZ LANDRUM &
GAROFALO

8
9 Mark A. Solomon, Esq. (Bar No. 0418)
10 Joshua M. Hood, Esq. (Bar No. 12777)
11 9060 West Cheyenne Avenue
12 Las Vegas, Nevada 89129
13 Telephone: (702) 853-5483
14 Facsimile: (702) 853-5485
15 *Attorneys for Caroline D. Davis*

Charlene N. Renwick, Esq. (Bar No. 10165)
7575 Vegas Drive, Ste. 150
Las Vegas, Nevada 89128
Telephone: (702) 880-9750
Facsimile: (702) 314-1210
Attorney for Dunham Trust Company

16
17 Approved as to Form and Content
18 ANTHONY L. BARNEY, LTD.

Approved as to Form and Content:
ROLAND LAW FIRM

19 Anthony L. Barney, Esq. (Bar No. 8366)
20 Tiffany S. Barney, Esq. (Bar No. 9754)
21 3317 West Charleston Boulevard, Ste. B
22 Las Vegas, Nevada 89102
23 Telephone: (702) 438-7878
24 Facsimile: (702) 259-1116
25 *Attorney for Christopher D. Davis*

Hartiet H. Roland, Esq. (Bar No. 5471)
ROLAND LAW FIRM
2470 East Saint Rose Parkway, Ste. 105
Henderson, Nevada 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
Attorney for Christopher D. Davis

CERT

Mark A. Solomon, Esq.
Nevada Bar No. 418
msolomon@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

1. Caroline D. Davis ("Ms. Davis") filed her *Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, As Amended On February 24, 2014; Petition To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K.*

1 *Lehnardt As Distribution Trust Advisor; Petition To Confirm Dunham Trust Company As*
2 *Directed Trustee; And Petition For Immediate Disclosure Of Documents And For Information*
3 *From Christopher D. Davis* on February 10, 2015 (the "Petition To Assume Jurisdiction").

4 2. Christopher D. Davis ("Christopher") filed his *Motion To Dismiss Pursuant To*
5 *NRCP 12(b) And NRCP 19* on March 4, 2015 (the "Motion To Dismiss"). Thereafter, Ms. Davis
6 filed her Opposition to the Motion To Dismiss on April 13, 2015.

7 3. On April 20, 2015, two (2) days before the hearing on Ms. Davis' Petition To
8 Assume Jurisdiction and Christopher's Motion To Dismiss, Christopher filed his Reply to Ms.
9 Davis' Objection to the Motion To Dismiss.

10 4. In his Reply, Christopher first raised the following issues:

- 11 (a) Tarja Davis, Christopher's wife, was a beneficiary of the Beatrice B. Davis Family
12 Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent to the
13 execution of the First Amendment or the transfer in situs;
- 14 (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of
15 the First Amendment to the Trust, dated February 24, 2014 (the "First
16 Amendment"), and did not provide its consent to execution of the First
17 Amendment or the transfer in situs; and
- 18 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
19 execution of the First Amendment.

20 5. On April 22, 2015, a hearing was held on Ms. Davis' Petition To Assume
21 Jurisdiction and Christopher's Motion To Dismiss. Because the Court did not have sufficient
22 evidence before it regarding the issues raised by Christopher in his Reply, the Court assumed
23 jurisdiction over the Trust under the theory of "constructive trust", more accurately called a "de
24 facto trust", because:

- 25 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
26 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher;
27 (ii) Ms. Davis; (iii) and Winfield B. Davis, all consented to the execution of the
28

- 1 First Amendment to the Trust, dated February 24, 2014 (the "First Amendment")
2 and to the transfer of the Trust's situs from Alaska to Nevada;
- 3 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
4 accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company
5 resigned as Trustee;
- 6 (c) Based upon such good faith reliance of the validity of the First Amendment,
7 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 8 (d) Based upon a good faith reliance of the validity of the First Amendment,
9 Christopher accepted his appointment as Investment Trust Advisor pursuant to
10 NRS 163.5543;
- 11 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
12 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
13 NRS 163.5537;
- 14 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
15 LLC, a Nevada limited liability company wholly owned by the Trust, and
16 appointed Christopher as the sole Manager thereof;
- 17 (g) Christopher has been acting as Investment Trust Advisor since his acceptance of
18 such position;
- 19 (h) Christopher has been acting as sole Manager of FHT Holdings, LLC since his
20 appointment of such position;
- 21 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
22 as Directed Trustee in Nevada; and
- 23 (j) The Court had no evidence before it, namely an affidavit of any other purported
24 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
25 therefore entitled to notice or that such beneficiary's consent was required to
26 Transfer of the Trust's situs from Alaska to Nevada.
- 27 6. The Court noted that it was appropriate to assume jurisdiction over the Trust and
28 its fiduciaries, Dunham and Christopher, as all parties consented to the execution of the First

1 Amendment to the Trust and to the transfer of the Trust's situs from Alaska to Nevada, and all
2 parties before the Court acted upon a good faith reliance with respect to the validity of the First
3 Amendment.

4 7. The Order, dated May 19, 2015, filed on June 24, 2015, was thereafter entered on
5 July 1, 2015 (the "May 19, 2015 Order"), assuming jurisdiction over the Trust under the theory of
6 "constructive trust" (more accurately called a "de facto trust").

7 8. Christopher Filed his Petition For Reconsideration on July 14, 2015, setting forth
8 the same arguments contained in his Reply. *See*, ¶ 4 above.

9 9. Christopher then filed his Notice Of Appeal and Case Appeal Statement, appealing
10 the May 19, 2015 Order, on July 30, 2015.

11 10. Christopher's appeal divested the Court of jurisdiction to modify the May 19, 2015
12 Order unless remanded pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev. Adv. Op. 5 (Nev.
13 2010) (also known as a "Huneycutt Motion").

14 11. On August 10, 2015, Ms. Davis filed her Motion To Amend (Huneycutt Motion),
15 wherein she requested that the District Court amend or modify its May 19, 2015 Order and
16 assume jurisdiction over the Trust in its entirety as a proceeding *in rem*; and further requested
17 that, if the District Court is inclined to grant such relief, that the District Court certify to the
18 Nevada Supreme Court its intent to do so.

19 12. On September 2, 2015, the District Court heard oral arguments on Christopher's
20 Petition For Reconsideration and Ms. Davis' Motion To Amend.

21 13. The District Court was presented with evidence (a Declaration Of Tarja Davis,
22 filed on July 28, 2015) regarding Christopher's contention that Tarja Davis, Christopher's wife,
23 was a purported beneficiary of the Trust, and that Tarja Davis did not consent to the First
24 Amendment or to the transfer of the Trust's situs from Alaska to Nevada.

25 14. In response to Christopher's Petition For Reconsideration, Ms. Davis introduced
26 the following evidence to the District Court to support her Motion To Amend:

- 27 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
28 and requires the marital union of a beneficiary and his or her spouse, if entered into

1 after the signing date of the Trust, to exist continuously for a period of ten (10)
2 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
3 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
4 were married after the signing date of the Trust, and have not been married for ten
5 (10) continuous years;

6 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
7 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
8 was the currently serving Trustee on the date the First Amendment was executed
9 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
10 transfer of situs from Alaska to Nevada and that such RECITAL is presumed
11 conclusive under NRS 47.240(2);

12 (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood,
13 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
14 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
15 the Trust, indicating that he had communicated with both Alaska USA Trust
16 Company and Dunham and provided an opinion of counsel; and

17 (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant to Article 14,
18 Section 6 of the Trust, indicating that Nevada met the requirements of an
19 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
20 state for jurisdiction at the time.

21 15. Based upon the foregoing, the Court found that sufficient evidence had now been
22 submitted to the Court's satisfaction that the Trust's situs was properly transferred from Alaska to
23 Nevada pursuant to the terms of the Trust, and that upon submission of such evidence, the burden
24 to prove the invalidity of the First Amendment and the improper transfer of situs became
25 Christopher's burden, which he failed to overcome.

26 16. Accordingly, the limited basis upon which this Court assumed jurisdiction under
27 the theory of "constructive trust" should be expanded and jurisdiction should be assumed over the
28 Trust de jure as a proceeding *in rem* pursuant to NRS 164.010.

1 Good cause appearing therefore,

2 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
3 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
4 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
5 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
6 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
7 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
8 as grant any and all additional relief as the District Court deems proper.

9 DATED this ____ day of _____, 2015.

10
11 _____
12 DISTRICT COURT JUDGE
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NOW SEE THE EX-PARTE ORDER (CERTIFICATION OF INTENT TO AMEND ORDER) THAT WAS APPARENTLY SUBMITTED TO COURT AND SIGNED RECENTLY ON OCTOBER 14, 2015.

THE CERTIFICATION ORDER SIGNED ON OCTOBER 14, 2015 IS 2 PAGES, WHILE THE CERTIFICATION ORDER COPIED TO COUNSEL BACK ON SEPTEMBER 14, 2015 IS 6 PAGES. THIS ORDER WAS CLEARLY SUBMITTED, AND SIGNED WITHOUT CIRCULATING IT TO COUNSEL.

DURING THE SEPTEMBER 30, 2014, IT CLEAR THAT THE COURT WOULD DO A HONEYCUTT ORDER IF THE NEVADA SUPREME COURT REQUESTED IT. (SEE TRANSCRIPT DATED 10/13/2015 AT PAGE 41). WE HAVE NOT RECEIVED ANY REQUEST FROM THE NEVADA SUPREME COURT FOR CERTIFICATION, AND THE ORDER SIGNED WAS PREPARED EX-PARTE WITHOUT NOTICE TO ANY OTHER COUNSEL BY CAROLINE'S ATTORNEYS, NOT THE NEVADA SUPREME COURT.

Mark A. Solomon, Esq. (Bar No. 418)
msolomon@sdfnlaw.com
Joshua M. Hood, Esq. (Bar No. 12777)
jhood@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Electronically Filed
Oct 19 2015 09:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Attorneys for Caroline Davis, Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of:

Sup. Ct. Case No.: 68542

Dist. Ct. Case No.: P-15-083867-T

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014.

**MOTION FOR REMAND TO THE
EIGHTH JUDICIAL DISTRICT COURT**

Caroline D. Davis, as beneficiary of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014, by and through her counsel, the law firm of Solomon Dwiggin & Freer, Ltd., moves this Court, pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev. Adv. Op. 5 (Nev. 2010), for an Order remanding this matter back to the Eighth Judicial District Court because the District Court has certified its intent to amend the Order from which this appeal lies in a manner that would affect the issues on appeal. This Motion is based upon the Memorandum Of Points And Authorities, all attached exhibits, and any oral argument that this honorable Court may entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural Background.

On February 10, 2015, Caroline D. Davis ("Ms. Davis") filed her *Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition To Assume Jurisdiction"). Christopher D.

Davis ("Christopher") then filed his *Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19* on March 4, 2015 (the "Motion To Dismiss") contending, inter alia, that Ms. Davis: (1) failed to join necessary parties; (2) failed to provide requisite notice to proper parties; and (3) further claimed that the Court lacked subject matter jurisdiction.

In response, Ms. Davis filed her *Opposition To Christopher D. Davis' Motion To Dismiss Pursuant to NRCP (12)(b) And NRCP 16* on April 13, 2015 (the "Opposition To Motion To Dismiss"), contending that the Court may properly assume jurisdiction over the Trust and respective parties and grant the relief requested in the Petition To Assume Jurisdiction. Additionally, Ms. Davis set forth arguments as to why the prior trustees, Alaska Trust Company and Alaska USA Trust Company ("Alaska USA"), are not necessary or indispensable parties, and that Ms. Davis properly served all interested parties. On April 20, 2015, just two (2) days before the hearing on Ms. Davis' Petition To Assume Jurisdiction and Christopher's Motion To Dismiss, Christopher filed the *Christopher D. Davis' Reply To Caroline D. Davis' Opposition To His Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19* (the "Reply").

In his Reply, Christopher raised for the first time the following issues: (1) Tarja Davis, Christopher's wife, was a beneficiary of the Trust and did not consent to the execution of the First Amendment or to the transfer of the Trust's situs from Alaska to Nevada; (2) Alaska USA resigned prior to the execution of the First Amendment and there was no acting trustee to provide the requisite consent to the transfer of situs; and (3) that no advice of counsel was obtained for Alaska USA prior to the transfer of situs.

On April 22, 2015, the District Court heard oral arguments on Ms. Davis' Petition To Assume Jurisdiction and Christopher's Motion To Dismiss. As the District Court did not have sufficient evidence to grant Christopher's Motion To Dismiss and the Court was not aware of Christopher's Reply,¹ the District Court, based upon the fact that all parties before the Court had been relying on the validity of the First Amendment and the proper transfer of the Trust's situs,

¹ See, Transcript of April 22, 2015 Hearing, at p. 24:9, a true and correct copy of which is attached hereto as Exhibit 1, wherein the Court stated "I have no Reply from Mr. Baney (sic)."

1 assumed jurisdiction over the Trust under the theory of "constructive trust", more accurately
2 called a "de facto trust" for the following reasons:

- 3 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
4 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher
5 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
6 execution of the First Amendment and to the transfer of the Trust's situs from
7 Alaska to Nevada;
- 8 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
9 accepted tenure as Directed Trustee of the Trust and Alaska USA resigned as
10 Trustee;
- 11 (c) Based upon such good faith reliance of the validity of the First Amendment,
12 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 13 (d) Based upon a good faith reliance of the validity of the First Amendment,
14 Christopher accepted his appointment as Investment Trust Advisor pursuant to
15 NRS 163.5543;
- 16 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
17 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
18 NRS 163.5537;
- 19 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
20 LLC, a Nevada limited liability company wholly owned by the Trust, and
21 appointed Christopher D. Davis as the sole Manager thereof;
- 22 (g) Christopher has been acting as Investment Trust Advisor since his acceptance of
23 such position;
- 24 (h) Christopher has been acting as sole Manager of FHT Holdings, LLC since his
25 appointment of such position;
- 26 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
27 as Directed Trustee in Nevada; and
28

1 (j) The Court had no evidence before it, namely an affidavit of any other purported
2 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
3 therefore entitled to notice or that such beneficiary's consent was required to
4 Transfer of the Trust's situs from Alaska to Nevada.

5 Thereafter, an Order, dated May 19, 2015, was filed on June 24, 2015, and subsequently
6 entered on July 1, 2015 (the "May 19, 2015 Order). A true and correct copy of the May 19, 2015
7 Order is attached hereto as **Exhibit 2**. The May 19, 2015 Order assumed jurisdiction over the
8 Trust as a "constructive trust" to ensure that the Trust was properly within a competent
9 jurisdiction, and to further ensure that the Trust was not adrift in that it would be left without a
10 trustee.

11 On July 14, 2015, Christopher filed his *Petition For Reconsideration Of The Order Dated*
12 *May 19, 2015 Re: The Petition To Assume Jurisdiction Over The Beatrice B. Davis Family*
13 *Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014, To Assume Jurisdiction*
14 *Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution*
15 *Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate*
16 *Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For
17 Reconsideration"). The Petition For Reconsideration sets forth the same arguments as provided
18 in his Motion To Dismiss and his Reply.

19 Shortly thereafter, Christopher filed his Notice Of Appeal and Case Appeal Statement on
20 July 30, 2015. Upon filing his Notice Of Appeal and Case Appeal Statement, Christopher
21 divested the District Court of jurisdiction to modify the May 19, 2015 Order unless remanded
22 pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev.Adv.Op. (Nev. 2010) (also known as a
23 "Huneycutt Motion"). As such, Ms. Davis filed her *Motion To Amend Or Modify Order Pursuant*
24 *To NRCP 60(b)(3)* on August 10, 2015 (the "Motion To Amend") wherein she requested that the
25 District Court Amend or Modify the May 19, 2015 Order and assume jurisdiction over the Trust
26 as a proceeding *in rem*, and further requested that, if the District Court is inclined to grant such
27 relief, that the District Court certify to the Nevada Supreme Court its intent to do so.

On September 2, 2015, the District Court, after having reviewed Ms. Davis' Motion To Amend and Christopher's Petition For Reconsideration and papers and exhibits before the Court, held oral arguments on said pleadings. During such hearing, the District Court was presented with a Declaration Of Tarja Davis, which indicated that Tarja Davis was married to Christopher on February 22, 2012, that they were married on the date the First Amendment was executed, and further alleging that Tarja Davis is a beneficiary of the Trust. In response to Christopher's contentions raised in his Petition For Reconsideration, and in light of the Declaration Of Tarja Davis, Ms. Davis submitted the following evidence to the District Court:

- (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse", and requires the marital union of a beneficiary and his or her spouse, if entered into after the signing date of the Trust, to exist continuously for a period of ten (10) years before such beneficiary's spouse can qualify as a "spouse" under the Trust, and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher were married after the signing date of the Trust, and have not been married for ten (10) continuous years;
- (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company was the currently serving Trustee on the date the First Amendment was executed and that Alaska USA Trust Company, as the Trustee, expressly consented to the transfer of situs from Alaska to Nevada and that such RECITAL is presumed conclusive under NRS 47.240(2);
- (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood, Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt, Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of the Trust, indicating that he had communicated with both Alaska USA Trust Company and Dunham and provided an opinion of counsel; and
- (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14, Section 6 of the Trust, indicating that Nevada met the requirements of an

appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior state for jurisdiction at the time.

Based upon the evidence presented by Ms. Davis, the District Court found that sufficient evidence had now been submitted to the District Court's satisfaction that the Trust's situs was properly transferred from Alaska to Nevada pursuant to the terms of the trust, and Christopher failed to meet the burden to prove the invalidity of the First Amendment and the transfer of situs to Nevada was improper. Although the District Court is currently without jurisdiction to modify the May 19, 2015 Order, the Honorable Judge Gloria J. Sturman stated her intention to amend the May 19, 2015 Order and "enter an order to assume jurisdiction over the [Trust] *de jure* as a proceeding *in rem* pursuant to NRS 164.010, as well as grant any additional relief the District Court deems proper" if the case is remanded back to the District Court. *See*, Certification Of Intent To Amend Order (the "Certification Of Intent"). A true and correct copy of the Certification of Intent is attached hereto was **Exhibit 3**.

II. Legal Argument.

Christopher's filing of the notice of appeal "divest[ed] the district court of jurisdiction to act and vests jurisdiction in [the Nevada Supreme Court]." Foster v. Dingwall, 228 P.3d 453, 445-445, 126 Nev. Adv. Op. __ (citing Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (quoting Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987))). The District Court, however, retains limited jurisdiction to entertain a party's motion to "alter, vacate or otherwise change or modify an order" if such party, prior to filing a motion for remand, "file[s] a motion for relief from the order or judgment in the district court." Foster, 228 P.3d, at 455 (citing Mack-Manley, 122 Nev. at 855-56, 138 P.3d at 529-30; Huneycutt v. Huneycutt, 94 Nev. 97, 80-81, 575 P.2d 585, 585-86 (Nev. 1978).

The limited jurisdiction retained by the District Court permits such court to "direct briefing on the motion, hold a hearing regarding the motion, and enter an order denying the motion, but [the District Court] lacks jurisdiction to enter an order granting such motion." Foster, 228 P.3d, at 455 (citing Huneycutt, 94 Nev., at 80-81, 575 P.2d, at 585-86). When the District Court exercises this limited jurisdiction, "if the district court is inclined to grant the requested

1 relief, then it may certify its intent to do so.” Foster, 228 P.3d, at 455 (citing Mack–Manley, 122
2 Nev., at 855, 138 P.3d, at 530; Huneycutt, 94 Nev., at 81, 575 P.2d, at 586.). Once the District
3 Court has certified its intent to grant the requested relief to alter, vacate or otherwise change or
4 modify an order, it is “appropriate for the moving party to file a motion (to which the district
5 court’s certification of its intent to grant relief is attached) with this court seeking a remand to the
6 district court for an entry of an order granting the requested relief.” Foster, 228 P.3d, at 455
7 (citing Mack–Manley, 122 Nev., at 855-56, 138 P.3d, at 530; Huneycutt, 94 Nev., at 81, 575 P.2d,
8 at 586.).

9 Christopher appealed the May 19, 2015 Order. Thereafter, Ms. Davis sought the District
10 Court’s certification of intent to amend the May 19, 2015 Order to assume jurisdiction over the
11 Trust as a proceeding *in rem*, as well as grant any further relief the District Court deemed proper.
12 The District Court certified its intent to grant the relief requested by Ms. Davis. *See*, Ex. 3.

13 Based upon the foregoing, Ms. Davis respectfully requests that this Court exercise its
14 discretion and remand this matter back to the Eight Judicial District Court so that the District
15 Court may amend the May 19, 2015 Order.

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9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDENVLAW.COM

Dated this 16th day of October, 2015.

Mark A. Solomon, Esq. (Bar No. 418)

msolomon@sdfnvlaw.com

Joshua M. Hood, Esq. (Bar No. 12777)

jhood@sdfnvlaw.com

SOLOMON DWIGGINS & FREER, LTD.

9060 Cheyenne Avenue

Las Vegas, Nevada

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

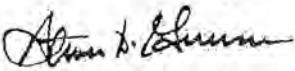
Attorneys for Caroline D. Davis

Exhibit 1

Exhibit 1

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

* * * * *

IN THE MATTER OF THE TRUST OF:) CASE NO. P-15-082867
THE BEATRICE DAVIS HERITAGE) DEPT. NO. XXVI
TRUST.)
Transcript of Proceedings
BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

MOTION TO DISMISS: MOTION ON CHRISTOPHER DAVIS' MOTION TO
DISMISS PURSUANT TO NRCP 12(B) AND NRCP 19; PETITION TO
ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
TRUST, ASSUME JURISDICTION OVER CHRISTOPHER DAVID AS
INVESTMENT TRUST ADVISOR AND STEPHEN K. LEHNARDT AS
DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY
AS DIRECTED TRUSTEE, AND FOR IMMEDIATE DISCLOSURE OF
DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS

WEDNESDAY, APRIL 22, 2015

APPEARANCES:

For Caroline Davis: MARK ALAN SOLOMON, ESQ.
JOSHUA M. HOOD, ESQ.
For Christopher Davis: ANTHONY L. BARNEY, ESQ.
For Stephen Lehnartdt: JONATHAN W. BARLOW, ESQ.
For Dunham Trust Company: CHARLENE N. RENWICK, ESQ.

RECORDED BY: KERRY ESPARZA, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 opposition to --

2 MR. SOLOMON: I don't think he --

3 MR. HOOD: -- our petition.

4 MR. SOLOMON: Counsel alluded to a Reply. I
5 haven't seen a Reply.

6 THE COURT: I saw your Reply.

7 MR. SOLOMON: Yes. But I have not seen a Reply by
8 Mr. Barney --

9 THE COURT: I have no Reply from Mr. Baney.

10 MR. SOLOMON: -- but he alluded in his argument
11 that, you know, they specified the grounds for invalidity
12 in this motion and then reinforced them in the Reply. They
13 didn't. All they said is: We have the burden to prove the
14 validity of the first amendment before we could move
15 forward and our response was: Well, take a look at NRS
16 47.250 subsection 18(c). There's a rebuttal for resumption
17 that it's valid. And then we said: Nobody has suggested
18 any particular grounds of invalidity.

19 And then I pointed out that Chris, who is the only
20 person challenging it, expressly consented to it. Not
21 once, but twice in two different documents you just looked
22 at. So how can he raise it? I don't think he can even
23 raise this issue he's now trying to raise with respect to
24 some other party, especially when he consented to it and
25 then he took repeated actions.

1
2
3
4 CERTIFICATION

5 I certify that the foregoing is a correct transcript from
6 the audio-visual recording of the proceedings in the
7 above-entitled matter.

8 AFFIRMATION

9
10 I affirm that this transcript does not contain the social
11 security or tax identification number of any person or
12 entity.
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21


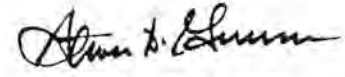
22 
23 KRISTEN LUNKWITZ
24 INDEPENDENT TRANSCRIBER
25

Exhibit 2

Exhibit 2



CLERK OF THE COURT

HARRIET H. ROLAND, ESQ.
NV Bar No. 5471
ROLAND LAW FIRM
2470 E. St. Rose Pkwy, Ste. 105
Henderson, NV 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com

ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366
TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754
ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
Attorneys for Christopher D. Davis

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the matter of:

The BEATRICE B. DAVIS FAMILY HERITAGE
TRUST, dated July 28, 2000, as amended on
February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

ORDER

This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

11
12 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
13 Nevada, and that everyone involved relied on this amendment as being proper.

14
15 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
16 at the time the first amendment was signed.

17
18 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
19 action on behalf of the trust has been taken in Nevada.

20 IT IS SO FOUND.

21
22 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
23 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
24 granted without prejudice.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
26 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
27 more definite statement is filed.
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
5 all information in his possession ^{Custody or control} in his role as Investment Trust Advisor, ^{and on his}
6 ^{role as manager of FHR Holdings}

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.


11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 DATED this 1st day of May, 2015.

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15
16 
17 DISTRICT COURT JUDGE

18 Respectfully Submitted by the Following:

Approved as to Form and Content:

19 
20
21 HARRIET H. ROLAND, ESQ.
22 NV Bar No. 5471
23 **ROLAND LAW FIRM**
24 2470 E. St. Rose Pkwy, Ste. 105
25 Henderson, NV 89074
26 Telephone: (702) 452-1500
27 Facsimile: (702) 920-8903
28 Attorney for Christopher D. Davis


JONATHAN W. BARLOW, ESQ.
NV Bar No. 9964
CLEAR COUNSEL LAW GROUP
50 South Stephanie Street, Ste. 101
Henderson, Nevada 89012
Telephone: (702) 476-5900
Facsimile: (702) 924-0709
Attorney for Stephen K. Lehnardt

///

///

Approved as to Form and Content:

ANTHONY L. BARNEY, ESQ.

Nevada Bar No. 8366

TIFFANY S. BARNEY, ESQ.

Nevada Bar No. 9754

ANTHONY L. BARNEY, LTD.

3317 W. Charleston Blvd., Suite B

Las Vegas, NV 89102

Telephone: (702) 438-7878

Facsimile: (702) 259-1116

Attorneys for Christopher D. Davis

CHARLENE RENWICK, ESQ.

LEE, HERNANDEZ, LANDRUM,

GAROFALO, ATTORNEYS AT LAW

7575 Vegas Drive, Suite 150

Las Vegas, Nevada 89128

Telephone: (702) 880-9750

Facsimile: (702) 314-1210

Attorneys for Dunham Trust Company

Approved as to Form and Content:

MARK A. SOLOMON, ESQ.

NV Bar No. 0418

JOSHUA M. HOOD, ESQ.

NV Bar No. 12777

SOLOMON DWIGGINS & FRIER, LTD.

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for Caroline D. Davis

Exhibit 3

Exhibit 3