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

4 CHRISTOPHER D. DAVIS,

5 Appellant,

6 v.

7 CAROLINE DAVIS,

8 Respondent.  
9  
10

Case No.: 68542 Electronically Filed  
Mar 07 2016 11:03 a.m.  
Eighth Judicial District Court, Lindeman  
Case No.: P-15-08386-1, Clerk of Supreme Court  
the Beatrice B. Davis Family Herit  
age Trust, dated July 28, 2000)

11 **RESPONDENT'S APPENDIX**  
12 **VOLUME 3**  
13 **TO**  
14 **RESPONDENT'S ANSWERING BRIEF**

15 SOLOMON DWIGGINS & FREER, LTD.  
16 Mark A. Solomon, Esq. Bar No. 0418  
17 Joshua M. Hood, Esq., Bar No. 12777  
18 9060 West Cheyenne Avenue  
19 Las Vegas, Nevada 89129  
20 Telephone: 702/853-5483  
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22 This Respondents' Appendix is provided in accordance with NRCP 30(b)(3).

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Vol 3	Notice of Taking Deposition of Christopher D. Davis (electronically served August 6, 2015)	10	RAPP 109-111

27

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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE BEATRICE  
B. DAVIS FAMILY HERITAGE TRUST,  
DATED JULY 28, 2000, AS AMENDED  
ON FEBRUARY 24, 2014.

No. 68542 ✓

CHRISTOPHER D. DAVIS,  
Appellant,

vs.

CAROLINE DAVIS; DUNHAM TRUST  
COMPANY; STEPHEN K. LEHNARDT;  
TARJA DAVIS; WINFIELD B. DAVIS;  
ACE DAVIS; AND FHT HOLDINGS  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Respondents.

**FILED**

OCT 22 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

CHRISTOPHER D. DAVIS,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
GLORIA STURMAN, DISTRICT  
JUDGE,  
Respondents,  
and  
CAROLINE DAVIS,  
Real Party in Interest.

No. 68948

*ORDER*

The appeal in Docket No. 68542 and the original petition in  
Docket No. 68948 challenge the same district court order that, in part, (1)

granted a petition to assume jurisdiction over Christopher D. Davis as an investment trust advisor, without prejudice; (2) confirmed Dunham Trust Company as directed trustee; (3) granted a petition for disclosure of documents and information from Christopher; and (4) denied Christopher's motion to dismiss the petition to assume jurisdiction over him.

There are several requests pending before this court. In both matters, Christopher has requested a stay of the district court proceedings.<sup>1</sup> In the appeal, respondent Caroline Davis has opposed the motion for stay and also filed a motion for remand under *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.3d 585 (1978), and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453 (2010). Attached to the motion for remand is copy of a certification indicating that the district court is inclined to modify the order being challenged on appeal (and thus the order being challenged in the writ proceeding, as well).

Having reviewed the documents on file herein, we conclude that a temporary stay is warranted pending our consideration of the supplemental filings directed below. See NRAP 8(c). Accordingly, we stay the district court proceedings pending further order of this court. Within 11 days from the date of this order, Caroline shall file a supplement to the motion for remand addressing the effect any remand would have on the writ proceeding.<sup>2</sup> Within 11 days from service of such supplement,

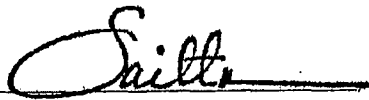
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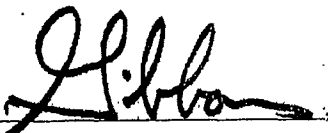
<sup>1</sup>To the extent Christopher requests "affirmative relief" related to the merits of the appeal, such relief is denied at this time.

<sup>2</sup>The certification attached to the motion for remand does not contain the file-stamp of the district court clerk; Caroline shall attach a file-stamped copy of the certification to her supplement.

Christopher shall file a single response to the motion for remand and the supplement thereto.

It is so ORDERED.

 J.  
Saitta

 J.  
Gibbons

 J.  
Pickering

cc: Hon. Gloria Sturman, District Judge  
Anthony L. Barney, Ltd.  
Roland Law Firm  
Ace Davis  
Lee, Hernandez, Landrum, Garofalo  
Clear Counsel Law Group  
Solomon Dwiggins & Freer, Ltd.  
Tarja Davis  
Winfield B. Davis  
Eighth District Court Clerk

1 **NOTC**

2 Mark A. Solomon, Esq.  
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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.

20 **NOTICE OF TAKING DEPOSITION OF CHRISTOPHER D. DAVIS**

21 PLEASE TAKE NOTICE that CAROLINE DAVIS, by and through her attorneys, the law  
22 offices of SOLOMON DWIGGINS & FREER, LTD., will take the deposition of  
23 CHRISTOPHER DAVIS, Investment Trust Advisor and Manager of FHT Holdings, LLC, on the  
24 3<sup>rd</sup> day of September, 2015, beginning at 10:00 a.m., at the law office of SOLOMON DWIGGINS  
25 & FREER, LTD., 9060 West Cheyenne Avenue, Las Vegas, Nevada 89129. The deposition will  
26  
27  
28

///

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///

///

///

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9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
TELEPHONE (702) 853-5483  
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1 take place upon oral examination pursuant to Rules 26 and 30 of the Nevada Rules of Civil  
2 Procedure, before a Notary Public or before some other officer authorized by law to administer  
3 oaths and by videographer.

4 You are invited to attend and cross examine.

5 DATED this 6th day of August, 2015.

7 SOLOMON DWIGGINS & FREER, LTD.

8  
9 By: 

10 Mark A. Solomon, Esq.  
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20 *Attorneys for Caroline Davis, Petitioner*  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6<sup>th</sup>, 2015, pursuant to NRCP 5(b)(2)(B), I placed a true and correct copy of the following NOTICE OF TAKING DEPOSITION OF CHRISTOPHER D. DAVIS, in the United States Mail, with first-class postage prepaid, addressed to the following, at their last known address, and, pursuant to Rule 9 of N.E.F.C.R., caused an electronic copy to be served via Odyssey, to the email address noted below:

Mail only:

Tarja Davis  
3005 North Beverly Glen Circle  
Los Angeles, California 90077

Ace Davis  
c/o WINFIELD B. DAVIS  
366-6 Habu Aridagawa Arida  
Wakayama 643-0025  
JAPAN

and

514 West 26<sup>th</sup> Street, #3E  
Kansas City, Missouri 64108

Winfield B. Davis  
366-6 Habu Aridagawa Arida  
Wakayama 643-0025  
JAPAN


And did mail via US Mail and email Via the Court's electronic system, WizNet pursuant to Rule 9 of NEFCR at the email address noted to the following:

Harriet Roland, Esq.  
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2470 E. St. Rose Parkway, #105  
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Attorneys for Dunham Trust

  
An employee of Solomon Dwiggin & Freer, Ltd.





SOLOMON | DWIGGINS | FREER<sup>LTD</sup>  
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Alan D. Freer  
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Direct Dial (702) 589-3500  
Email [msolomon@sdfnlaw.com](mailto:msolomon@sdfnlaw.com)

December 14, 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  
District Court Case No. P-15-083867-T  
Supreme Court Case No. 68542 and 68948  
Amended Order**

Dear Judge Sturman:

As you are aware, Christopher D. Davis ("Christopher") filed his Notice Of Appeal and Case Appeal Statement on July 30, 2015 (the "Appeal"), appealing this Court's Order, dated May 19, 2015 (the "May 19, 2015 Order"),<sup>1</sup> to the Nevada Supreme Court. A copy of the May 19, 2015 Order is enclosed herewith for your review. Essentially, Christopher asserts, *inter alia*, that: (1) the Eighth Judicial District Court's (the "District Court") assumption of jurisdiction over the Trust<sup>2</sup> as a "constructive trust" was improper as a "constructive trust" is a remedy and not a basis for assuming *in rem* jurisdiction; (2) and the District Court lacks *in personam* jurisdiction over Christopher, as Investment Trust Advisor and as the sole Manager of FHT Holdings, LLC, a Nevada limited liability company which is wholly owned by the Trust, so as to compel Christopher to disclose documents and information which are in his possession, custody, or control in such capacities.

---

<sup>1</sup> The May 19, 2015 Order was filed with this Court on June 24, 2015, and Notice of Entry of said Order was subsequently filed on July 1, 2015.

<sup>2</sup> The Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014 (the "Trust").

The Honorable Gloria J. Sturman

RE: The Beatrice B. Davis Family Heritage Trust

District Court Case No. P-15-083867-T

Supreme Court Case No. 68542 and 68948

Amended Order

December 14, 2015

Page 2

On September 2, 2015, you heard oral arguments on Christopher's Petition For Reconsideration<sup>3</sup> and Caroline D. Davis' ("Ms. Davis") Motion To Amend<sup>4</sup> filed pursuant to Huneycutt v. Huneycutt and Foster v. Dingwall.<sup>5</sup> On October 14, 2015, you executed the Certification Of Intent To Amend Order, certifying that if this matter is remanded back to the District Court, the District Court intends to amend the May 19, 2015 Order to assume jurisdiction over the Trust "as a proceeding *in rem* pursuant to NRS 164.010, as we as grant any and all additional relief as the District Court deems proper."<sup>6</sup>

On October 19, 2015, Ms. Davis filed her Motion For Remand To The Eighth Judicial District Court (the "Motion For Remand"), requesting that the Supreme Court remand this matter back to the District Court consistent with the Certification Of Intent To Amend Order. On December 9, 2015, the Supreme Court filed an Order (the "December 9, 2015 Order"), granting the Motion For Remand "for the limited purpose of allowing the [D]istrict [C]ourt to enter its amended order." A copy of the December 9, 2015 Order is enclosed herewith for your review. Pursuant to the December 9, 2015 Order, the District Court has "30 days from the date of this order to enter its written decision and to transmit a certified copy of that decision to [the Supreme Court]." As such, the Amended Order must be filed and transmitted to the Nevada Supreme Court on or before January 8, 2016.

As Ms. Davis' counsel, we have prepared a proposed "Order Granting Motion To Amend May 19, 2015 Order And Denying Petition For Reconsideration, (the "Amended Order") for your review, execution, and transmittal to the Nevada Supreme Court. In accordance with the Supreme Court's directive that the District Court provide its "most updated explanation for its decision", the Amended Order specifically sets forth a detailed explanation (i.e. the Findings) concerning the District Court's basis for amending the May 19, 2015 Order. The Amended Order is made and based upon the pleadings and papers on file, all exhibits thereto, and findings made by this Court, specifically: (1) that the First Amendment to the Trust was validly executed

<sup>3</sup> See, 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, filed with this Court on July 14, 2015 (the "Petition For Reconsideration").

<sup>4</sup> See, Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3), filed with this Court on August 8, 2015 (the "Motion To Amend").

<sup>5</sup> Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978) and Foster v. Dingwall, 126 Nev. 49, 228 P.3d 453 (2010).

<sup>6</sup> See, Certification Of Intent To Amend Order, filed with this Court on October 23, 2015.

SOLOMON | DWIGGINS | FREER <sup>LTD</sup>

TRUST AND ESTATE ATTORNEYS

The Honorable Gloria J. Sturman

RE: The Beatrice B. Davis Family Heritage Trust

District Court Case No. P-15-083867-T

Supreme Court Case No. 68542 and 68948

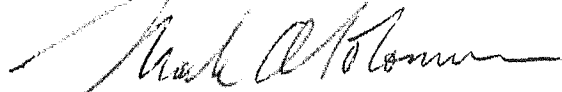
Amended Order

December 14, 2015

Page 3

pursuant to the terms of the Trust; (2) that all necessary and interested persons consented to and executed of the First Amendment; (3) that the Trust's situs was effectively transferred from Alaska to Nevada pursuant to the terms of the Trust; and (4) that, based upon the foregoing, the District Court has authority to: (i) assume jurisdiction over the Trust as a proceeding *in rem* pursuant to NRS 164.010; (ii) to confirm the Trust's fiduciaries; and (iii) to compel the disclosure of Trust documents and information to which Ms. Davis is entitled to. As such, Ms. Davis respectfully requests that you review and execute the enclosed proposed Amended Order consistent with this Court's findings and the Certification Of Intent To Amend Order.

Thank you,

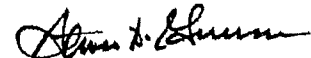


Mark A. Solomon

MAS/

Enclosure: (As Stated)

cc: Charlene N. Renwick, Esq.; Harriet H. Roland, Esq.; Jonathan W. Barlow, Esq.; and Anthony L. Barney, Esq., via email and U.S. Mail.

  
CLERK OF THE COURT

NOTICE  
HARRIET H. ROLAND, ESQ.  
Nevada Bar No. 5471  
ROLAND LAW FIRM  
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Henderson, Nevada 89074  
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Email: hroland@rolandlawfirm.com  
Attorney for Christopher D. Davis

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of

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


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

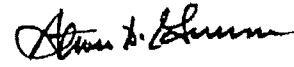
NOTICE OF ENTRY OF ORDER

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the *Order* was entered  
by the Court on June 24, 2015 in the above-entitled matter, a copy of which is attached hereto.

DATED this 1st day of July, 2015.

ROLAND LAW FIRM

  
HARRIET H. ROLAND, ESQ.  
Nevada Bar No. 5471  
Attorney for Christopher D. Davis



CLERK OF THE COURT

1 HARRIET H. ROLAND, ESQ.  
2 NV Bar No. 5471  
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10 Nevada Bar No. 8366  
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12 Nevada Bar No. 9754  
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18 *Attorneys for Christopher D. Davis*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

19 In the matter of:

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

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

**ORDER**

23 This matter came before the Court for hearing on the 22<sup>nd</sup> day of April, 2015 at 9:00  
24 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP  
25 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family  
26 Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction  
27 over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution  
28

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  
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.

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 <sup>custody or control</sup> in his role as Investment Trust Advisor, <sup>and on his</sup>  
6 <sup>role as manager of FHY Holdings</sup>

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.

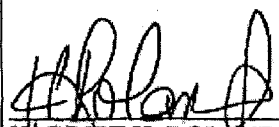
11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 DATED this 15<sup>th</sup> day of May, 2015.

13  
14  
15  
16   
DISTRICT COURT JUDGE

17  
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  
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25 Henderson, NV 89074  
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Approved as to Form and Content:

  
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*Attorneys for Dunham Trust Company*

Approved as to Form and Content:

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Facsimile: (702) 853-5485  
*Attorneys for Caroline D. Davis*



IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE BEATRICE  
B. DAVIS FAMILY HERITAGE TRUST,  
DATED JULY 28, 2000, AS AMENDED  
ON FEBRUARY 24, 2014.

CHRISTOPHER D. DAVIS,  
Appellant,

vs.

CAROLINE DAVIS; DUNHAM TRUST  
COMPANY; STEPHEN K. LEHNARDT;  
TARJA DAVIS; WINFIELD B. DAVIS;  
ACE DAVIS; AND FHT HOLDINGS  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Respondents.

CHRISTOPHER D. DAVIS,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
GLORIA STURMAN, DISTRICT  
JUDGE,  
Respondents,  
and  
CAROLINE DAVIS,  
Real Party in Interest.

No. 68542

**FILED**

DEC 09 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

No. 68948

*ORDER*

The appeal in Docket No. 68542 and the original petition in  
Docket No. 68948 challenge the same district court order that, in part: (1)  
granted a petition for the district court to assume jurisdiction over

SUPREME COURT  
OF  
NEVADA

(0) 1947A

15-31627

Christopher D. Davis as an investment trust advisor, without prejudice; (2) confirmed Dunham Trust Company as directed trustee; (3) granted a petition for disclosure of documents and information from Christopher; and (4) denied Christopher's motion to dismiss the petition to assume jurisdiction over him.

Christopher previously requested a stay of the district court proceedings pending resolution of these matters. In the appeal, respondent Caroline Davis opposed the motion for stay and also filed a motion for remand under *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453 (2010). We entered a temporary stay pending our consideration of additional briefing on the motion for remand, which has now been filed.

In the motion for remand and supplement thereto, Caroline has demonstrated that the district court has certified its inclination to grant a motion to amend the order being challenged in these proceedings. It appears the district court's intended amendments, which only slightly modify its conclusion that it does indeed have jurisdiction over Christopher, will not render these challenges moot. Indeed, the parties' briefing on the motion for remand debates the merits of the challenge and the district court's amendment. In order to ensure that this court has before it the district court's most updated explanation for its decision, we grant the motion and remand this matter to the district court pursuant to its certification for the limited purpose of allowing the district court to enter its amended order. The district court shall have 30 days from the

date of this order to enter its written decision and to transmit a certified copy of that decision to this court.<sup>1</sup>

We note that it is unclear whether this court's authority to consider the challenge to the district court's order exists by way of appeal or writ proceeding. In his docketing statement in the appeal, Christopher asserts that the district court order is appealable under NRS 155.190(1)(h), which allows for an appeal from an order appointing a trustee. In the writ proceeding, Christopher admits that an investment trust advisor such as himself is not identified in the pertinent statutes as a trustee, and that "case law seems to indicate that a trust advisor is something less than a trustee or a quasi-trustee," and thus Christopher filed the writ petition to the extent that the challenged order is not appealable.

We conclude that while it appears the order at issue may be appealable to the extent that it confirms Dunham Trust Company as a directed trustee, we have not had occasion to address the proper scope of such an interlocutory appeal, that is, whether only the appointment of the trustee may be challenged in such an appeal or whether a party can also challenge related interlocutory rulings in an appeal from such an order.<sup>2</sup> Accordingly, at this time, we conclude that the appeal in Docket No. 68542 may proceed, but that these matters should be consolidated and the parties should address jurisdiction in their briefing, as set forth below.


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<sup>1</sup>Besides the entry of the amended order as authorized here, the stay entered on October 22, 2015, shall remain in effect until further order of this court.

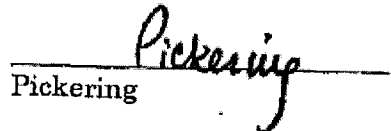
<sup>2</sup>Christopher's challenges to the district court's order go beyond appointment of Dunham Trust Company as trustee.

The clerk shall consolidate these matters for all appellate purposes. As noted above, the district court shall have 30 days from the date of this order to enter its amended order pursuant to its certification and to transmit a copy of that order to this court. Appellant/petitioner Christopher Davis shall have 60 days from the date of this order to file and serve a supplemental opening brief addressing the district court's amended order and shall address, with argument and citation to pertinent authorities, whether, and to what extent, the district court's order is appealable under NRS 155.190(1)(h) and/or any other statute or court rule. Each respondent/real party in interest shall have 30 days from service of the supplemental opening brief to file and serve an answering brief that responds to the writ petition, opening brief, and supplemental opening brief, and includes argument on the jurisdictional issue set forth above. Appellant/petitioner shall then have 30 days from service of the combined answering brief and answer to file and serve any reply brief.

It is so ORDERED.

 J.  
Saitta

 J.  
Gibbons

 J.  
Pickering

cc: Hon. Gloria Sturman, District Judge  
Anthony L. Barney, Ltd.  
Roland Law Firm  
Ace Davis  
Lee, Hernandez, Landrum, Garofalo  
Clear Counsel Law Group  
Solomon Dwiggins & Freer, Ltd.  
Tarja Davis  
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Eighth District Court Clerk

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**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 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



Amendment”), and did not provide its consent to execution of the First Amendment or the transfer in situs; and

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

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

- (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in Reno, Nevada (“Dunham”); and the Trust’s beneficiaries, namely, (i) Christopher D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the execution of the First Amendment and to the transfer of the Trust’s situs from Alaska to Nevada;
- (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company resigned as Trustee;
- (c) Based upon such good faith reliance of the validity of the First Amendment, Dunham had been administering the Trust in Nevada for more than one (1) year;
- (d) Based upon a good faith reliance of the validity of the First Amendment, Christopher D. Davis accepted his appointment as Investment Trust Advisor pursuant to NRS 163.5543;
- (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to NRS 163.5537;
- (f) Dunham thereafter created FHT Holdings, LLC, a Nevada limited liability company wholly owned by the Trust, and appointed Christopher D. Davis as the sole Manager thereof;
- (g) Christopher D. Davis has been acting as Investment Trust Advisor since his acceptance of such position;





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).

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

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

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

10 21. On December, 9, 2015, the Nevada Supreme Court filed an Order (the "December  
11 9, 2015 Order") granting the Motion For Remand for the limited purpose of allowing the District  
12 Court to enter its Amended Order.

13 **ORDER**

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

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

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



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.

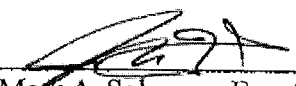
10           **IT IS HEREBY FURTHER ORDERED** that the Christopher D. Davis shall forthwith  
11 produce to Caroline D. Davis' counsel any and all information in his possession, custody, or  
12 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,  
13 LLC.

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 \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

17  
18  
19           \_\_\_\_\_  
DISTRICT COURT JUDGE

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

23             
24           \_\_\_\_\_  
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26           9060 West Cheyenne Avenue  
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