

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Appellant,

CAROLINE DAVIS,

Respondent.

) Case No: 68542
)
) Electronically Filed
) Eighth Judicial District May 17 2016 03:31 p.m.
) Court Tracie K. Lindeman
) Case No. P16-08880 Clerk of Supreme Court
) re: the Beatrice B. Davis
) Family Heritage Trust, dated
) July 28, 2000)
)
)
)
)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPELLANT'S REPLY BRIEF

19
20
21
22
23
24
25
26
27
28

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE.....iv

TABLE OF AUTHORITIESv

LEGAL ARGUMENT 1

 I. The District Court Erred in Issuing the Amended Order Because the
 First Amendment is Invalid And Therefore Denies This Court
 Jurisdiction Over the Trust
 1

 a. AUTC lacked authority as Trustee to consent to moving the
 situs
 2

 b. The Trustee never obtained advice of independent
 counsel.....6

 c. Tarja never gave her consent to moving situs of the
 Trust.....7

 II. As a party to the proceeding, Christopher clearly has standing under
 NRS 155.190(1) to appeal the DC’s
 Order.....10

 III. The DC Erred When it Assumed Personal Jurisdiction Over
 Christopher12

CONCLUSION 15

CERTIFICATE OF COMPLIANCE 17

1
2 **NRAP 26.1 DISCLOSURE**

3 The undersigned counsel of record certifies that the following are
4
5 persons and entities described in NRAP 26.1(a) and must be disclosed.

6 These representations are made in order that the Judges of this Court may
7
8 evaluate possible disqualification or recusal:

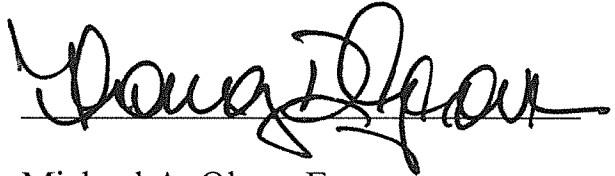
9
10 1) Beatrice B. Davis Family Heritage Trust

- 11 a. Trustees: Alaska Trust Company, Alaska USA Trust Company
12 b. Purported Trustee: Dunham Trust Company
13 c. Trust Protector: Stephen K. Lehnardt
14 d. Purported Investment Trust Advisor: Christopher D. Davis
e. Beneficiaries: Christopher D. Davis, Caroline Davis, Winfield
Davis, Ace Davis, Tarja Davis

15 2) FHT Holdings, LLC

- 16 a. Managing Member: Beatrice B. Davis Family Heritage Trust
17 b. Registered Agent: Registered Agent Solutions, Inc.
18 c. Officer: Christopher D. Davis

19 **GOODSELL & OLSEN, LLP**

20 
21

22 Michael A. Olsen, Esq.

23 Nevada Bar No. 6076

24 Thomas R. Grover, Esq.

25 Nevada Bar No. 12387

26 **GOODSELL & OLSEN, LLP**

27 *Attorneys for Apellant*
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

Dallinger v. Abel, 199 Ill. App. 3d 1057, 1059 (Ill. App. Ct. 3d Dist. 1990)..... 3

Dickerson v. Eighth Judicial Dist. Court, 82 Nev. 234, 236 (Nev. 1966) 11

Fink v. Markowitz (In re Estate of Black), 367 P.3d 416, 418 (Nev. 2016)..... 14

Lewis v. Hanson, 128 A.2d 819, 828 (Del. 1957)..... 13

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (U.S. 1980)..... 14

Statutes

AS 13.16.360..... 2

NRS 155.190(1)(h)..... 10, 11

NRS 163.5555 12-14

NRS 164.010 12, 13

Rules

NRAP 3(a) 11

Other Authorities

95 C.J.S. Wills § 578 (2011)..... 14

1 **LEGAL ARGUMENT**

2 **I. The District Court Erred in Issuing the Amended Order Because**
3 **the First Amendment is Invalid And Therefore Denies This Court**
4 **Jurisdiction Over the Trust**

5 The Amended Order does not, in fact, reflect the record or the
6 evidence. Without holding any kind of evidentiary hearing, the DC's
7 Amended Order accepts the validity of the First Amendment, particularly as
8 to change of situs of the Trust.

9 Under the terms of the Trust,
10 the situs of this agreement or any sub trust established hereunder may
11 be changed by the unanimous consent of all of the beneficiaries then
12 eligible to receive mandatory or discretionary distributions of net
13 income under this agreement or such sub trust, with the consent of any
14 then-acting Protector and the Trustee thereof, which shall be given
15 only after Trustee has obtained advice from counsel as to the tax and
16 other consequences of a change in situs.¹

17 To that end, the Amended Order rests entirely on three critical errors:
18 (1) that AUTC had authority to change the situs of the Trust even though it
19 had resigned as Trustee; (2) the Trustee never obtained advise of
20 independent counsel as to moving the situs of the Trust, as required by the
21 terms of the Trust; and (3) in direct contradiction of the terms of that Trust
that the consent of Mr. Davis' wife, Tarja, was not required in order to
change the situs.

¹ Article 14, Section 6 of the Trust, APPELL000110.

1 **a. AUTC lacked authority as Trustee to consent to moving the**
2 **situs**

3 The resignation of AUTC as Trustee of the Trust became “effective as
4 of December 5, 2013 or upon the acceptance of trusteeship by a successor
5 trustee, whichever occur[red] earlier.”² The First Amendment, which
6 changed the situs and named Dunham trustee, was executed on **February**
7 **24, 2014**, some three months after AUTC’s resignation became effective on
8 **December 5, 2013**.³

9 Nonetheless, Caroline argues “...the Resignation, Release,
10 Acknowledgment, Consent and Indemnification Agreement...expressly
11 provides that AUTC was the then-serving Trustee of the Trust on February
12 24, 2014, the date which the situs was transferred, and that AUTC, as
13 Trustee, expressly consented to the same.”⁴

14 Under Alaska law, an irrevocable trust may not be modified or
15 terminated without court approval.⁵ Under the original terms of the Trust,

16
17

² APPELL000747:23-25.

18 ³ APPELL000748.

19 ⁴ See, Respondent’s Answering Brief at pg. 9:5-10.

20 ⁵ AS 13.16.360.

1 the situs of the Trust is Alaska.⁶ Thus, in order to change (or modify) the
2 situs, the First Amendment would have needed to have been approved by an
3 Alaskan court. “Any proceedings to seek judicial instructions or a judicial
4 determination shall be initiated by my Trustee in the appropriate state court
5 having original jurisdiction of those matters relating to the construction and
6 administration of trusts.”⁷ “It is elementary that if the method of exercising
7 a power of modification is described in the trust instrument, the power can
8 be asserted only in that manner.”⁸ The Trustee never sought approval from
9 an Alaskan court as to the First Amendment. Therefore, the First
10 Amendment is void as a matter of law because it failed to conform with the
11 Article One Section 2 of the Trust.

12 To the extent that the DC relied upon NRS 47.240(2) to conclude
13 AUTC was still Trustee on February 24, 2014, it did so in error. Under NRS
14 47.240(2), a presumption as to the “The truth of the fact recited, from the
15 recital in a written instrument between the parties thereto...” (Emphasis
16 added). Whether or not AUTC was trustee on February 24, 2014 is a
17 question of law, not a question of fact. However, arguendo, if it were a

18 ⁶ Article One, Section 22 of the Beatrice B. Davis Family Heritage Trust,
APPELL000017.

19 ⁷ APPELL000069.

20 ⁸ Dallinger v. Abel, 199 Ill. App. 3d 1057, 1059 (Ill. App. Ct. 3d Dist. 1990).

1 question of fact, that question of fact could only be resolved through an
2 evidentiary hearing, the presumption notwithstanding.

3 Further, to the extent that AUTC may have been acting as trustee on
4 February 24, 2014, it did so only in an extremely limited capacity. Under
5 Article Eleven, Section 1 of the Trust,

6 [a]ny Trustee may resign by giving thirty days' written notice to me or
7 to my legal representative. If I am not living, the notice shall be
8 delivered to my Trustees, if any, and to all of the beneficiaries then
eligible to receive mandatory or discretionary distributions of net
income from any trust created under this agreement.⁹

9 There is no evidence that anyone, or any entity, assumed the office of
10 Trustee and was in authority to act and provide consent of the Trustee during
11 the period between the resignation of Alaska USA in December 2013, and
12 the purported first amendment attempting to change the situs and appointing
13 Dunham almost three months later. Counsel for Mr. Davis argued as
14 follows before the DC on April 22, 2015 while arguing Mr. Davis' Motion
15 to Dismiss:

16 Now, Your Honor, that begs the question: How could a Nevada
17 Trustee based in Nevada who could only operate within that situs be
18 the Trustee that referred to in the trust but had to receive counsel
before they made the change in situs that would also make the
amendment operative as a condition precedent and then go ahead and
sign on an amendment where they were only appointed in that same
amendment? It's impossible, Your Honor .

20 ⁹ APPELL000061.
21

1 Clearly, the trust envisioned that it was the Alaska Trustee that would
2 obtain advice and understanding from counsel before they agreed to
3 transfer the situs. Dunham Trust couldn't even agree to have it
4 transferred and administered under a situs other than Nevada because
5 they're only licensed in Nevada to administer this trust and clearly it
6 wasn't them.¹⁰

7 Caroline has previously argued, "As Mr. Barney is aware, a trustee's duties
8 as such do not terminate upon the submission of a resignation when no
9 successor trustee has been appointed and accepted."¹¹ However, under
10 Alaska law, in the interim between the resignation and appointment of the
11 successor trustee, the power of the resigned trustee is limited to "the powers
12 necessary to protect the trust property."¹² Clearly, executing an Amendment
13 which changes the situs of the Trust from Alaska to Nevada is not necessary
14 for the protection of Trust property. To the extent that Caroline maintains
15 otherwise, such a question must be resolved by an Alaskan court, as
16 discussed above. Further, if AUTC had intended to retain all trustee powers
17 until appointment of the successor trustee, their resignation wouldn't have
18 been the *earlier* of December 5, 2013, or appointment of the successor
19 trustee. Those terms clearly contemplate and accept the possibility of acting
20 as Trustee with limited capacity between December 5, 2013 and
21

¹⁰ APPELL000384:20- APPELL000385:9.

¹¹ APPELL000704:4-6.

¹² AS 13.36.077(1) (2015).

1 appointment of the successor trustee. The Trust Protector's own counsel has
2 conceded that a new Alaska successor Trustee should have been appointed
3 before Dunham:

4 So technically what should have happened, it appears now in
5 retrospect, is a new Alaska-based Trustee should have been appointed
6 in the interim for the purpose of consenting to the change of situs to
7 Nevada so that that Trustee could get the advice of counsel that was
8 called for in that paragraph to make sure that there were no adverse
consequences. So that appears to be the step that was missing and Mr.
Lehnardt's going to have to go back to the drawing board to determine
whether he needs to go now go appoint an Alaska Trustee and
whether it's then advisable to then move it down here to Nevada if all
beneficiaries consent to do so.¹³

9 Clearly, the First Amendment is void because it was executed in
10 contravention of both the terms of the Trust and Alaska law. Therefore, the
11 DC erred when it took jurisdiction of the Trust and confirmed the Trustee
12 and took personal jurisdiction over Mr. Davis.

13 **b. The Trustee never obtained advice of independent counsel**

14 There is no dispute between the parties that Dennis Brislawn was
15 counsel for the Trust Protector, not the Trustee. Rather, the parties dispute
16 whether the terms of the Trust allow the Trustee to rely on the advice of a
17 third party's counsel when consenting to a change of situs. Caroline argues
18 for a contorted interpretation of the terms of the Trust: "Article Fourteen,
19

20 ¹³ APPELL000391:18- APPELL000392:4.

1 Section 6, however, does **not** require AUTC to obtain an opinion from
2 ‘independent counsel’ retained by AUTC.”¹⁴ The obvious purpose of this
3 provision is to fully advise the Trustee of the effect of a change of situs upon
4 the Trust, particularly as it relates to the intent of the settlor, Beatrice Davis.
5 However, according to Mr. Brislawn, he only acted on behalf of the Trust
6 Protector, not the Trustee: “I was retained by Mr. Lehnardt, acting in his
7 capacity as Trust Protector, to provide limited support in changing trust
8 situs from Alaska (where I am also licensed to practice) to Nevada.”¹⁵
9 [Emphasis added]. Clearly, Mr. Brislawn didn’t represent the Trustee, and,
10 as such, could not fill the role of counsel to the Trustee as to the prudence of
11 changing the situs. For this reason, among others, the First Amendment is
12 invalid and therefore the DC was in error in taking jurisdiction of the Trust.

13 **c. Tarja never gave her consent to moving situs of the Trust**

14 Caroline incorrectly argues that, “...the DC properly found that, Tarja
15 was not a beneficiary of the Trust because she did not qualify as a "spouse"
16 under Article 14, Section 1(j) thereof (i.e. she has not been married to
17
18

19 ¹⁴ See, Respondent’s Answering Brief at pg. 10:4-5

20 ¹⁵ APPELL000758.
21

1 Christopher for the required 10 consecutive years), and, therefore, her
2 consent was not required.”¹⁶

3 While the Trust Agreement is a document of more than one hundred
4 pages, it is important that the terms of the Trust be interpreted in conjunction
5 with the entirety of all one hundred plus pages in order to avoid an absurd
6 result in its interpretation.

7 In the Trust, there are clearly three operational definitions for the term
8 “spouse” as it applies to a beneficiaries rights under the terms of the Trust.
9 Two of these definitions refer to the process by which a spouse may become
10 a qualified primary beneficiary, while the third definition refers to the
11 spousal ability to receive current discretionary distributions of a limited
12 nature (i.e. for health, education, maintenance and support) until that spouse
13 as a secondary or other beneficiary later qualifies as a vested primary
14 beneficiary (hereinafter “primary beneficiary”). The first definition of a
15 spouse is one that exists at the time the Trust was created. This definition
16 applies to Chris Davis’ first wife, Cheryl Davis (hereafter “Cheryl”). The
17 next definition is one that applies to a spouse that marries after the signing of
18 the Trust, and who may become a primary beneficiary after ten years or
19 sooner upon involuntary separation. The third definition refers to a spouse

20 ¹⁶ See, Respondent’s Answering Brief at pg. 8:12-19.
21

1 that is in the process of qualifying as a primary beneficiary and is entitled to
2 discretionary distributions solely from the share of the primary beneficiary
3 for health, education, maintenance and support only after the trustee meets
4 the needs of the beneficiary. This definition applies to Tarja. Article Eight,
5 Section 3(d) reads, “My Trustee may make distributions from the trust share
6 of the Primary Beneficiary to or for the health, education, maintenance and
7 support of the spouse of the Primary Beneficiary **if the spouse is living with**
8 **the Primary Beneficiary.**” [Emphasis added]. In simpler terms, in order to
9 become eligible for these discretionary distributions, the spouse only needs
10 to live with the Primary Beneficiary. Because Tarja lives with Mr. Davis,
11 she is a beneficiary of the Trust. Because Tarja is a beneficiary of the Trust,
12 her consent would have been required before executing the First
13 Amendment. Tarja did not execute the First Amendment and therefore, it is
14 invalid.

15 Caroline’s Answering Brief summarily dismisses these errors: “The
16 Amended Order does nothing more than to accurately reflect the record, and
17 properly assume jurisdiction over the Trust and confirm the fiduciaries
18 thereto.”¹⁷ As shown above, that simply isn’t true. The First Amendment
19 fails to follow the terms of the Trust or the laws of Alaska. The DC

20 ¹⁷ See, Respondent’s Answering Brief at pg. 44:5-7.

1 therefore erred when it confirmed the Trustee and took jurisdiction of the
2 trust in the Amended Order.

3 **II. As a party to the proceeding, Christopher clearly has standing**
4 **under NRS 155.190(1) to appeal the DC's Order**

5 Caroline argues that, "Christopher lacks standing to appeal under NRS
6 155. 190(1)(h)" because he is "not the Trustee."¹⁸ This argument mis-states
7 the class of persons entitled to appeal an order under NRS 155.190(1)(h),
8 which allows for appeal of any order "[i]nstructing or appointing a trustee."
9 In NRS 155.190(h), reference to appointment of the trustee limits the subject
10 of the type of order that may be appealed, not the class of persons with
11 standing to appeal it. There is no provision in NRS 155.190(1)(h)
12 specifically or NRS 155.190 generally which would limit the class of
13 persons entitled to appeal the DC's order to only Trustees. In fact, NRS
14 155.190 itself indicates that any party to the action has standing to appeal
15 any order which falls within the scope of NRS 155.190(1). Under NRS
16 155.190(2), "[i]f a party timely files," certain motions under the Nevada
17 Rules of Civil Procedure," the time for filing an appeal is stayed pending
18 entry of the NRCP motion. The use of "a party" explicitly contemplates that
19 **any party** has the right to appeal under NRS 155.190(1).

20 ¹⁸ See, Respondent's Answering Brief at pg. 18:1-2; 17:16.

1 Indeed, in similar circumstances, this Court has affirmed the right of a
2 party in a probate proceeding to appeal an order appointing an administrator
3 of an estate. Like an order appointing a trustee, an order appointing a
4 special administrator is appealable under NRS 155.190(1). In Dickerson v.
5 Eighth Judicial Dist. Court, 82 Nev. 234 (Nev. 1966), the heirs of an
6 intestate estate appealed an order appointing the Clark County Public
7 Administrator as administrator of the estate under NRS 155.190(1). The
8 heirs initially sought review through a writ of certiorari. The respondent, the
9 Clark County Public Administrator, sought dismissal of the writ arguing that
10 review could have only been obtained through an appeal under NRS
11 155.190(1). This Court excused the error of filing a writ instead of an
12 appeal, and in so doing implicitly affirmed the right of a party to appeal an
13 order appointing a fiduciary in a probate proceeding.¹⁹ To the extent that
14 Dickerson implies appellate standing of an heir/beneficiary, it also rebuts
15 Caroline’s argument that Christopher is not an “aggrieved party” within the
16 meaning of NRAP 3(A).

17 ///

18 ///

20 ¹⁹ Dickerson v. Eighth Judicial Dist. Court, 82 Nev. 234, 236 (Nev. 1966).

1 **III. The DC Erred When it Assumed Personal Jurisdiction Over**
2 **Christopher**

3 Caroline argues that “[u]pon his acceptance to serve as Investment
4 Trust Advisor, Christopher submitted to the jurisdiction of the State of
5 Nevada under NRS 163.5555.”²⁰

6 As a threshold matter, this argument assumes the First Amendment is
7 valid. However, as shown above, the First Amendment is not valid because
8 it does not comport with Alaska law or the terms of the Trust. Thus, it is
9 impossible for Nevada to take jurisdiction over Christopher in his purported
10 role as an Investment Trust Advisor. Insofar as the DC did, it erred.²¹

11 The DC assumed *in rem* jurisdiction of the Trust in the Amended
12 Order under NRS 164.010.²² This means that the Trust is the thing or the *res*
13 over which the Amended Order has asserted power.

14 The role of trust advisor derives its powers from the role of trustee
15 and has a smaller subset of the duties of the powers of a trustee. “...a trust
16 advisor is a fiduciary, somewhat in the nature of a co-trustee, and is
17

18 ²⁰ See, Respondent’s Answering Brief at pg. 21:15-16.

19 ²¹ APPELL000361- APPELL000362.

20 ²² APPELL001799-001807, Order Granting Motion to Amend May 19, 2015
21 Order and Denying Petition for Reconsideration, at pg. 7:2-3.

1 sometimes described as a quasi-trustee.”²³ As such, NRS 163.5555 must be
2 read in conjunction with NRS 164.010. Jurisdiction based on acceptance of
3 the role of an investment trust advisor is limited by NRS 163.5555 as that
4 role is strictly limited to the *res* which arises out of a decision made by a
5 trust advisor.

6 NRS 163.5555 does not authorize personal jurisdiction – it is derived
7 from in rem jurisdiction over the property which is under a trust advisors
8 control based on decisions made by the advisor in that role. For this reason,
9 “a trust protector or a trust adviser may be made a party to an action or
10 proceeding arising out of a decision or action of the trust protector or trust
11 adviser.”²⁴

12 Conversely, a trust advisor may not be made a party to an action
13 which does not arise out of a decision made by the advisor in that role.
14 Without establishing in personam jurisdiction over the trust advisor by
15 personal service of process, NRS 163.5555 grants only in rem jurisdiction
16 over the property affected by the trust advisor’s decisions or actions.

17 Caroline has argued that NRS 163.5555 grants in personam
18 jurisdiction allegedly based on the language that “the person submits to the

19 ²³ Lewis v. Hanson, 128 A.2d 819, 828 (Del. 1957).

20 ²⁴ NRS 163.5555

1 jurisdiction of the courts of this State,” by accepting an appointment as Trust
2 advisor. However, even if a trust advisor submits to the jurisdiction of the
3 court, the court may not exercise in personam jurisdiction without proper
4 service of process. To find in personam jurisdiction based on NRS 163.5555
5 where there has been no personal service would be clearly
6 unconstitutional.²⁵

7 Caroline argues that, “Christopher has failed to cite any applicable
8 statutory authority or case law requiring any other type of service [other than
9 by mail].”²⁶ However, personal jurisdiction is more than a question of
10 whether a party has been made aware of the proceedings. For example, in
11 Fink v. Markowitz (In re Estate of Black), 367 P.3d 416 (Nev. 2016) this
12 Court ruled that, “A court acquires personal jurisdiction over an adverse
13 party to a will contest by issuance of a citation. A will contestant's failure to
14 issue a citation on the decedent's personal representative deprives the court
15 of personal jurisdiction over the personal representative.”²⁷ Similarly, in this
16 matter, while the Court took *in rem* jurisdiction of the trust in the Amended

17 ²⁵ World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (U.S.
18 1980).

19 ²⁶ See, Respondent’s Answering Brief at pg. 31:19-20.

20 ²⁷ Fink v. Markowitz (In re Estate of Black), 367 P.3d 416, 418 (Nev. 2016)
21 quoting 95 C.J.S. Wills § 578 (2011).

1 Order, the mere fact that Mr. Davis was aware of the proceedings does not
2 constitution service or establish personal jurisdiction.²⁸

3 ///

4 ///

5 ///

6 ///

7 ///

8 CONCLUSION

9 The DC was in error in taking jurisdiction of the Trust because the
10 First Amendment is not valid. There was no Alaskan Trustee which
11 consented to the First Amendment and change of situs as required by both
12 Alaska law and the terms of the Trust. The Trustee was never advised by
13 it's own counsel, as required by the Trust, as to the proposed change of situs.
14 Finally, Tarja Davis, entitled to discretionary distributions from Chris Davis'
15 interest in the Trust, never provided her consent. Each of these deficiencies
16
17

18 ²⁸ Mr. Davis recognizes that NRS 164.010 has been amended, effective
19 October 1, 2015 to grant personal jurisdiction over certain individuals upon
20 granting certain petitions under NRS 164.010. However, because the
21 Amended Order clarifies the earlier order, only the older version of NRS
164.010 is applicable. Under that statute, the DC could only take in rem
jurisdiction over a trust.

1 are independently fatal, collectively they decisively show the error of the DC
2 in taking jurisdiction of the Trust.

3
4 DATED this ~~7th~~_{8th} day of May, 2016.

5 Respectfully Submitted,
6 **GOODSELL & OLSEN, LLP**

7 

8 Michael A. Olsen, Esq.

9 Nevada Bar No. 6076

10 Thomas R. Grover, Esq.

11 Nevada Bar No. 12387

12 **GOODSELL & OLSEN, LLP**

13 *Attorneys for Apellant*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21

[] It has been prepared in a monospaced typeface using Microsoft Word 2010 with 10 1/2 characters per inch of Courier New.

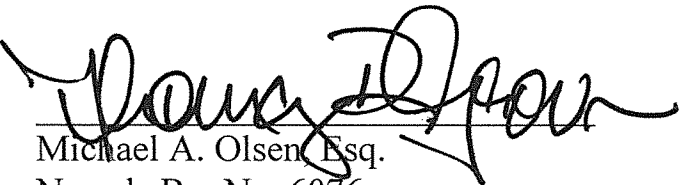
[] Does not exceed 15 pages.

Page 17 of 18

1 28(e)(1), which requires every assertion in the *Brief* regarding matters in the
2 record to be supported by a reference to the page and volume number, if any,
3 of the transcript or appendix where the matter relied on is to be found. I
4 understand that I may be subject to sanctions in the event that the
5 accompanying *Brief* is not in conformity with the requirements of the
6 Nevada Rules of Appellate Procedure.

7
8 Respectfully Submitted,

9 **GOODSELL & OLSEN, LLP**

10 

11 Michael A. Olsen, Esq.

12 Nevada Bar No. 6076

13 Thomas R. Grover, Esq.

14 Nevada Bar No. 12387

15 **GOODSELL & OLSEN, LLP**

16 *Attorneys for Appellant*