

*In the Supreme Court of Nevada*

IN THE MATTER OF: THE W.N.  
CONNELL AND MARJORIE T.  
CONNELL LIVING TRUST, DATED  
MAY 18, 1972,

JACQUELINE M. MONTOYA; AND  
KATHRYN A. BOUVIER,

Appellants,

vs.

ELEANOR C. AHERN A/K/A  
ELEANOR CONNELL HARTMAN  
AHERN,

Respondent.

Supreme Court Case No. 69737

Electronically Filed

Feb 19 2016 03:36 p.m.

District Court Case No. K. Lindeman  
P-09-066425-T Clerk of Supreme Court

Appeal from the Eighth Judicial  
District Court, The Honorable  
Gloria Sturman Presiding

**REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(E)**

Appellants/movants, Jacqueline M. Montoya and Kathryn A. Bouvier, (the “Beneficiaries”) hereby provide their reply in support of their Emergency Motion Under NRAP 27(e) (the “Motion”), which responds to Eleanor C. Ahern’s (the “Former Trustee”) Response to Emergency Motion Under NRAP 27(e) filed on February 18, 2016 (the “Opposition”).

///

///

///

///

///

## MEMORANDUM OF POINTS AND AUTHORITIES

There are two things that the parties agree on: (1) the proposed payments under the Distribution Order<sup>1</sup> are advances (i.e. unsecured loans)<sup>2</sup> and (2) the Former Trustee owes the Beneficiaries a significant amount of money.<sup>3</sup> In other words, the Former Trustee admits that she has no present right to distributions from the Trust because there is an outstanding liability. Regardless of life expectancy (and any other variable the Former Trustee hopes this Court will examine through a glass ball), the trial court erred by ordering the judgment creditors (the Beneficiaries) to extend a series of unsecured loans to their judgment debtor (the Former Trustee). Besides, if the Former Trustee is truly destitute, the Beneficiaries suggest she reveal the location of the millions of dollars in Trust assets she wrongfully withheld.

### **I. The Parties Familial Relationship Is of No Consequence.**

The Opposition would have this Court rule based on the parties' relationship (i.e. mother/daughters). In essence, the Opposition argues that the theft of \$2.5 million is excusable if the victim is blood related. Undersigned counsel is aware of no authority—whether in this jurisdiction, or another—which sanctions a defense to a breach of a trustee's fiduciary duty based on familial ties. In fact, common sense would dictate the opposite—you should be held more accountable for wronging a close family member.

---

<sup>1</sup> All capitalized terms not herein defined are ascribed the meaning provided in the Motion.

<sup>2</sup> See Opposition at p. 1 and 3.

<sup>3</sup> See *id.* at p. 8, n. 5. To counteract the Motions clear evidence that the Former Trustee is the Beneficiaries' judgment debtor to the tune of at least \$2.5 million, the Former Trustee contends that she has repaid \$1,000,000 to the Interim Trustee. Even if this is true (which the Beneficiaries refute), the Former Trustee still owes the Beneficiaries a minimum of \$1.5 million.

## **II. The Opposition Provides a Variety of Contradictory and Misleading Arguments**

### **A. The Former Trustee's Age**

The Opposition jabs at the Beneficiaries for expressing concern that the Former Trustee may not live long enough to repay her debt through Trust distributions. Opposition at p. 9. Yet, the first sentence of her introduction reminds the Court that she is a “79 year old mother.” Either the Former Trustee’s age is relevant or it is not. It cannot be relevant only for the purpose of garnering sympathy.

### **B. One Provision of the MSJ Order Cannot Be Enforced in a Vacuum.**

The Opposition argues that the Former Trustee just wants to “enforce the [MSJ Order] and require the Interim Trustee [to] distribute part of [the Former Trustee’s] 35% stake.” At p. 2. However, the Opposition fails to mention that the MSJ Order also requires the Former Trustee to “reimburse and pay to [the Beneficiaries] any portion of their 65% share of [applicable Trust income] which was not distributed to them.” *See* Exhibit 1 of Motion. The Former Trustee cannot pick and choose which portions of the MSJ Order to enforce, especially when doing so would defeat the entire purpose of the order as a whole.

### **C. A Stay May Be Sought in this Court, If It Would Be Futile to Apply to the District Court**

The Opposition makes a big deal of the fact that the Beneficiaries applied to this Court before applying to the trial court. Opposition at p. 5. In support of this argument they point the Court to NRAP 8(a)(1). *Id.* However, the Former Trustee

cites only a portion of the applicable rule. NRAP 8(a)(2) allows a movant to apply directly to this Court if the movant can “show that moving in the district court would be impracticable.” Section D of the NRAP 27 Certificate in the Motion addresses the futility of bringing this Motion in the lower court.

### **III. The Opposition Fails to Address Critical Arguments Raised in the Motion.**

The Opposition does not attempt to address the following issues presented in the Motion:

- The Interim Trustee’s common law right to setoff.
- The Interim Trustee’s Discretion under NRS 163.419.
- The trial court’s inappropriate award of attorneys’ fees.
- The complete dearth of authority recognizing a right to counsel in a civil matter.
- The mountain of legal authority recognizing that unrecoverable money damages constitute “irreparable harm.”

///

///

///


///

///

The Former Trustee's failure to respond to these arguments must act as a waiver and admission. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n. 3, 252 P.3d 668, 672 n. 3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

Respectfully submitted this 19<sup>th</sup> day of February 2016.

**THE RUSHFORTH FIRM, LTD.**

By:   
JOSEPH J. POWELL  
State Bar No. 8875  
DANIEL P. KIEFER  
State Bar No. 12419  
P. O. Box 371655  
Las Vegas, NV 89137-1655  
Telephone (702) 255-4552  
fax: (702) 255-4677  
e-mail: probate@rushforthfirm.com

*Attorney for Appellants and Movants,  
Jacqueline M. Montoya and Kathryn  
A. Bouvier*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on the 19th day of February, 2016, electronic service of the foregoing REPLY shall be made in accordance with the Master Service List as follows:

BROWNSTEIN HYATT FARBER SCHRECK  
Tamara Peterson, Esq.  
State Bar #5218  
100 N. City Pkwy., #1600  
Las Vegas, Nevada 89106

  
\_\_\_\_\_

An employee of The Rushforth Firm, Ltd.