

ORIGINAL

FILED NO. 69945

Case No. CV-0930015

2016 MAR -8 PM 3:01

Dept. No. 1

LINCOLN COUNTY CLERK

DEPUTY

FILED

MAR 11 2016

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

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF LINCOLN

In re THE KENT AND JANE WHIPPLE TRUST,
Dated March 17, 1969, Jane Whipple, Co-Trustee
(erroneously named as Trustee), and amendments
thereto, JANE WHIPPLE,

Petitioner.

NOTICE OF APPEAL

Notice is hereby given that Warner Whipple Co-Trustee of the KENT AND JANE WHIPPLE TRUST, dated March 17, 1969, as amended, hereby appeals to the Court of Appeals of Nevada from the ORDER denying Co-Trustee Warner Whipple's Motion to Dismiss/Stay Petition Pending Mandatory Arbitration, entered in this action on the 16th day of February, 2016.

DATED this 7th day of March, 2016.

[Signature]
Nick A. Moschetti, Jr.

Nevada Bar No. 920

BINGHAM SNOW & CALDWELL

840 Pinnacle Court, Suite 202

Mesquite, Nevada 89027

Telephone: (702) 346-7300

Attorney for Warner Whipple Co-Trustee of the
KENT AND JANE WHIPPLE TRUST

RECEIVED

MAR 11 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORIGINAL

FILED

Case No. CV-0930015

Dept. No. 1

2016 MAR -8 PM 3:02

LINCOLN COUNTY CLERK
DEPUTY

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF LINCOLN**

**In re THE KENT AND JANE WHIPPLE TRUST,
Dated March 17, 1969, Jane Whipple, Co-Trustee
(erroneously named as Trustee), and amendments
thereto, JANE WHIPPLE,**

Petitioner.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

-Warner Whipple Co-Trustee of THE KENT AND JANE WHIPPLE TRUST, dated March 7, 1969, as amended is the appellant filing this case appeal statement.

2. Identify the judge issuing the decision, judgment, or order appealed from:

-The Honorable Steve L. Dobrescu issued the order appealed from.

3. Identify each appellant and the name and address of counsel for each appellant:

-Appellant name: Warner Whipple Co-Trustee of THE KENT AND JANE WHIPPLE TRUST, dated March 7, 1969, as amended.

-Name of counsel for appellant: Nick A. Moschetti, Jr. and Clifford Gravett of the BINGHAM SNOW & CALDWELL law firm.

-Address of counsel for appellant: 840 Pinnacle Court, Suite 202, Mesquite, Nevada 89027.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

-Respondent #1 name: Jane Whipple Co-Trustee of THE KENT AND JANE WHIPPLE TRUST, dated March 7, 1969, as amended.

-Respondent #2 name: Jane Whipple.

1 -Name of counsel for respondent #1 and #2: Alissa Engler of the JUSTICE LAW CENTER law firm.
2 -Address of counsel for respondent #1 and #2: 1100 S. Tenth Street, Las Vegas, Nevada 89101.

3 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to
4 practice law in Nevada and, if so, whether the district court granted that attorney permission to appear
5 under SCR 42 (attach a copy of any district court order granting such permission):

6 -All attorneys identified in above question 3 and 4 are licensed to practice law in Nevada.

7 6. Indicate whether appellant was represented by appointed or retained counsel in the district
8 court:

9 -Appellant was represented by retained counsel in the district court.

10 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

11 -Appellant is represented by retained counsel on appeal.

12 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of
13 entry of the district court order granting such leave:

14 -Appellant was not granted leave to proceed in forma pauperis in the district court proceedings.

15 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
16 indictment, information, or petition was filed):

17 -The proceedings were commenced in the district court on September 11, 2015 when the Petition For
18 Declaratory Relief was filed.

19 10. Provide a brief description of the nature of the action and result in the district court, including
20 the type of judgment or order being appealed and the relief granted by the district court:

21 -a)The pleadings filed in the district court, before this appeal, include:

22 (i) Petition For Declaratory Relief pursuant to NRS 30.030 and 30.040(1);

23 (ii) Motion to Dismiss Petition; Alternatively, To Stay Petition; And To Compel Arbitration;

24 (iii) Opposition To Motion To Dismiss/Stay Petition Pending Mandatory Arbitration;

(iv) Reply In Support Of Motion To Compel Arbitration;

(v) Request For Submission;

(vi) Errata To Opposition To Motion To Dismiss/Stay Petition Pending Mandatory Arbitration
with attached Affidavit of Jane Whipple [Affidavit was not served upon counsel for Co-
Trustee Warner Whipple until after Request for Submission];

(vii) Objection To Errata And Untimely Request For Oral Arguments;

(viii) Order denying Motion to Dismiss/Stay Petition and to Compel Arbitration.

-b)This action was commenced by one Co-Trustee, Jane Whipple, filing a Petition for Declaratory
Relief. That Petition stated that Share A and Share B of THE KENT AND JANE WHIPPLE TRUST
had never been funded. However, the Petitioner claimed that she individually and Share A with her as
one Co-Trustee of Share A owned and controlled all of the Trust property, including water rights
identified in the Petition.

1 -c)The other Co-Trustee, Warner Whipple, was not consulted regarding the filing of that Petition nor
2 was he consulted regarding the contents of that Petition; and the other Co-Trustee, Warner Whipple,
disagreed with the filing of that Petition and with the contents and allegations of ownership and
control contained in that Petition.

3 -d)Said Trust contains a mandatory arbitration provision for all disagreements between Co-Trustees
and requires unanimous agreement of all Co-Trustees for all Trust actions.

4 -e)Co-Trustee Jane Whipple has failed to provide the other Co-Trustee, Warner Whipple, with copies
5 of any tax returns and accountings which are required by the Trust to be given to all Co-Trustees and
to Trust beneficiaries. This is a further disagreement between the Co-Trustees that is required to be
6 arbitrated by the Trust provisions.

7 -f)The district court order appealed from stated "Here is it not disputed that the arbitration language in
the trust is valid. Although Jane does not dispute the validity of the arbitration agreement, she argues
8 that the scope of the clause does not encompass the relief she seeks in her petition".

9 -g)The relief sought in the Petition alleges more than ownership of water rights, it alleges specific
ownership in Trust Share A which by admission was never funded.

10 -h)The Errata and Affidavit of Jane Whipple and Warner Whipple's Opposition thereto filed after this
11 matter was submitted for decision was not addressed by the district court in its order here appealed.
That Errata and Affidavit are prejudicial to Co-Trustee Warner Whipple since he did not have the
12 opportunity to counter that Affidavit by evidence or affidavit and his opposition to that Errata and
Affidavit was not addressed by the district court. It is unknown if the district court did or did not rely
13 upon the content of that Errata and Affidavit, which content Warner Whipple disagrees with.

14 -i)The district court order appealed from denies a stay of the Petition and denies arbitration, which
order Co-Trustee Warner Whipple respectfully submits: fails to follow the authorities and specific
15 Trust language supporting and requiring a stay and arbitration of the Co-Trustees disagreements;
incorrectly affirms Co-Trustee Jane Whipple's position that she individually or as sole trustee of Share
16 A owns and controls the disputed water rights and other Trust property when by Jane Whipple's own
specific Petition admissions Trust Share A has never been funded; and, fails to state whether Jane
17 Whipple individually or as one Co-Trustee of Share A owns and controls disputed water rights and
other Trust Property.

18 11. Indicate whether the case has previously been the subject of an appeal to or original writ
19 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior
proceeding:

20 -This case has not previously been the subject of an appeal to or original writ proceeding in the
Supreme Court or in the Court of Appeals of Nevada.

21 12. Indicate whether this appeal involves child custody or visitation:

22 -This appeal does not involve child custody or visitation.


23 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRAP 25(d) I certify that I am an employee of Bingham Snow & Caldwell, and that on this day; I caused a true and correct copy of the foregoing document to be served, to the following:

ATTORNEYS/ PARTY OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
Alissa Engler JUSTICE LAW CENTER 1100 S. Tenth Street Las Vegas, Nevada 89101 alissaengler@justice-law-center.com	Jane Whipple Co-Trustee and Jane Whipple	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Mail

DATED this 9th day of March, 2016.


Michelle Thacker
An employee of Bingham Snow & Caldwell

Case #: CV-0930015

Judge: DOBRESCU, STEVE L.

Date Filed: 09/11/15 Department: 01

Case Type: CIVIL OTHER CIVIL

Title/Caption: IN RE THE KENT AND JANE WHIPPLE TRUST
DATED MARCH 17, 1969, JANE WHIPPLE,
TRUSTEE, AND AMENDMENTS THERETO, JANE
WHIPPLE.

Plaintiff(s) THE KENT & JANE WHIPPLE TRUST	Attorney(s) WHIPPLE, BRET O.
Plaintiff(s) WHIPPLE, JANE	Attorney(s) CARLING, MATTHEW D.
Plaintiff(s) WHIPPLE, KENT	Attorney(s) No "Attorney 1" Listed
Plaintiff(s) WHIPPLE, WARREN	Attorney(s) MOSCHETTI, NICK A.

Filings:

Date	Pty	Filing	Fees
9/11/15	P	F&R PETITION FOR DECLARATORY RELIEF (NRS 30.010 ET SEQ.).	235.00
9/21/15	P	F&R CERTIFICATE OF SERVICE.	
10/22/15	O	F&R NOTICE OF HEARING.	
11/09/15	P	F&R CERTIFICATE OF SERVICE.	
11/25/15	P	F&R PEREMPTORY CHALLENGE OF JUDGE.	450.00
11/25/15	P	F&R INITIAL APPEARANCE FEE DISCLOSURE.	188.00
11/25/15	P	F&R APPEARANCE OF RECORD.	
11/25/15	P	F&R NOTICE OF APPEARANCE.	
11/25/15	P	F&R MOTION TO DISMISS/STAY PETITION PENDING MANDATORY ARBITRATION.	
11/30/15	O	F&R NOTICE OF DEPARTMENT REASSIGNMENT.	
11/30/15	O	F&R CERTIFICATE OF SERVICE.	
12/11/15	P	F&R OPPOSITION TO MOTION TO DISMISS/STAY PETITION PENDING MANDATORY ARBITRATION.	
12/11/15	P	F&R SUBSTITUTION OF ATTORNEY.	
12/21/15	P	F&R LIS PENDENS.	
12/28/15	P	F&R REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION.	
12/28/15	P	F&R REQUEST FOR SUBMISSION.	
1/07/16	P	F&R ERRATA TO OPPOSITION TO MOTION TO DISMISS/STAY PETITION PENDING MANDATORY ARBITRATION.	
1/07/16	P	F&R SUBSTITUTION OF ATTORNEY.	
1/07/16	P	F&R REQUEST FOR ORAL ARGUMENT.	
1/11/16	P	F&R OBJECTION TO ERRATA AND UNTIMELY REQUEST FOR ORAL ARGUMENTS.	
2/16/16	O	F&R ORDER.	
2/17/16	O	F&R CERTIFICATE OF SERVICE.	
3/08/16	P	F&R NOTICE OF ENTRY OF ORDER.	
3/08/16	P	F&R NOTICE OF APPEAL.	24.00
3/08/16	P	F&R CASE APPEAL STATEMENT.	
3/08/16	P	F&R COST BOND ON APPEAL.	250.00

3/08/16 O F&R DELIVERY OF SUPREME COURT FILING FEE. 500.00
3/08/16 P F&R MOTION TO STAY PROCEEDINGS PENDING APPEAL (ORAL ARGUMENT
REQUESTED) .

DISTRICT COURT CIVIL COVER SHEET

Lincoln County, Nevada
 Case No. CV 0930D15
 (Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Jane Whipple
 4004 Whipple Ranch Rd.
 Hiko, NV 89017
 (702) 419-7330

Defendant(s) (name/address/phone):

Attorney (name/address/phone):

Matthew Carling
 1100 S. Tenth St.
 Las Vegas, NV 89101
 (702) 419-7330

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters <i>Petition for Declaratory Relief</i>

Business Court filings should be filed using the Business Court civil coversheet.

9-11-2015

Date

Matthew D. Carling
 Signature of initiating party or representative

See other side for family-related case filings.

FILED

2016 FEB 16 PM 3:28

LISA C. LLOYD
LINCOLN COUNTY CLERK

Case No. CV-0930015

Dept No. 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF LINCOLN

In re THE KENT AND JANE WHIPPLE
TRUST, dated March 17, 1969, Jane
Whipple, Co-Trustee (erroneously
names as Trustee), and amendments
thereto, JANE WHIPPLE,

Petitioner

ORDER

PROCEDURAL HISTORY

On September 11, 2015, Petitioner "Jane" filed a Petition for Declaratory Relief. On November 25, 2015, Warner Whipple "Warner" filed a Motion to Dismiss/Stay Petition Pending mandatory arbitration. Jane filed an opposition to the motion and Warner filed a Reply. Warner filed a Request for Submission on December 28, 2015. On January 7, 2016, Jane filed an "Errata to Opposition to Motion to Dismiss/Stay Petition Pending Mandatory Arbitration" and a Request for Oral Argument. On January 11, 2016, Warner filed an Opposition to Errata and Untimely Request for Oral Arguments. The court has reviewed the file and finds that additional briefing or argument is not necessary.





FACTUAL SUMMARY

For the purposes of deciding Warner's motion, the court finds the following facts to be undisputed.

On March 17, 1969, Kent and Jane Whipple, husband and wife, created a trust. Kent and Jane amended the trust on January 30, 1977. Subsequently, Kent died.

After Kent's death, the trust acquired water rights "permits" from the State Engineer. Prior to 2015, several of the permits were conveyed to the Kent Whipple Ranch, LLC. In January 2015, the Kent Whipple Ranch applied to the State Engineer to change the point of diversion, place of use and manner of use of a portion of one of the water permits. Betsy Whipple, a remainder beneficiary of the trust protested and the State Engineer stayed his consideration of the application.

On August 29, 2015, Keith Whipple, Co-Trustee of the Trust resigned. Pursuant to a Court order filed in Elko County in 1987, Warner would succeed Keith as Co-Trustee. On October 15, 2015, Warner confirmed his acceptance of appointment as successor Co-Trustee.

Jane's filing is styled as a "Petition for Declaratory Relief (NRS 30.010 et seq.)" Although not cited by Jane, NRS 30.060(1)(c) allows a Trustee to have a declaration of "rights or legal relations" to "determine any question arising in the administration of . . . the trust, including questions of construction" of the trust. In addition, various sections of NRS Chapter 164 provide for a trustee to petition a court for advice and instruction.



1 In her petition Jane seeks the following relief: A declaration that:

2
3 1. The Kent and Jane Whipple Trust dated March 17, 1969, remained in
4 effect in 1976 after the death of Kent Whipple;

5 2. Jane Whipple is a trustee of the Kent and Jane Whipple Trust dated
6 March 17, 1969;

7 3. The "A" and "B" trusts of the Kent and Jane Whipple Trust dated March
8 17, 1969, were never partitioned and funded;

9
10 4. Water right Permit 79132 was transferred to the Kent and Jane Whipple
11 Trust dated March 17, 1969, and the transfer is valid and said permit is an asset of said
12 Trust;

13 5. Water right Permits 28599, 55918, 55919, 55920, 79132 and Claim of
14 Vested right V-01394 were transferred to the Kent Whipple Ranch, LLC, by the Kent and
15 Jane Whipple Trust dated March 17, 1969, and the transfers are valid and said permits
16 and claim are assets of the Kent Whipple Ranch, LLC.

17
18 6. This Court confirm the appraisal (in 1976 dollars) of the Kent and Jane
19 Whipple Trust dated March 17, 1969;

20 7. The A trust (d/b/a Jane Whipple Family; Jane Whipple Trustee and/or
21 Kent Whipple Trust; Jane Whipple Trustee) is the rightful owner of the Kent Whipple
22 Ranch, LLC and that Jane Whipple has an absolute right to manage, sell; water right
23 Permits 28599, 55918, 55919, 55920, 79132 and Claim of Vested right V-01394.

24
25 8. The Kent and Jane Whipple Trust dated March 17, 1969, as the sole
26



1 owner of the Kent Whipple Ranch, LLC has and continues to have authority to manage,
2 sell, to otherwise convey water right Permits 28599, 55918, 55919, 55920, 79132 and
3 Claim of Vested right V-01394.
4

5 In the motion to compel arbitration, Warner argues that it is "unclear" if the
6 A and B trusts were funded; whether the water rights acquired after the death of Kent
7 Whipple are in the A trust or B trust, and whether the Kent Whipple Ranch is an entity
8 separate from the trust. It is alleged that these uncertainties have caused Warner
9 "considerable concern" and because the co-trustees have not unanimously agreed to the
10 transfer of the water rights or what the ownership interest is, arbitration is required. An
11 affidavit from Warner is attached as an exhibit in which Warner states "He has concerns
12 as a Co-Trustee of said Trust regarding the filing and contents of said Petition . . ."
13

14 The motion relies on section Ten of the Trust which provides as follows:
15

16 TEN: Upon the resignation, inability to act, or death of
17 JANE WHIPPLE, then KENT WHIPPLE shall act as the
18 sole Trustee. Upon the resignation, inability to act, or
19 death of KENT WHIPPLE, then JANE WHIPPLE and
20 KEITH MURRAY WHIPPLE shall act as Successor Co-
21 Trustees. Upon the resignation, inability to act, or death
22 of both the original Trustees, then KEITH MURRAY
23 WHIPPLE shall act as the sole Successor Trustee.
24 Upon the resignation, inability to act, or death of KEITH
25 MURRAY WHIPPLE, then the FIRST NATIONAL BANK
26 OF NEVADA shall act as the Successor Trustee.

The individual Successor Co-Trustees shall be
entitled to compensation for their services, which shall
be the compensation normally charged by corporate
trustees under similar circumstances. The individual
Trustees named herein shall serve without bond.



Each Successor Co-Trustee must at all times be fully informed of each and every official act performed by the other Trustees and must be furnished with an accounting of all income, expenditures and activities of the Trust at least quarterly. Each Co-Trustee at all times shall have the right to examine any and all Trust books of account, reports, filed and papers of every nature whatsoever. Any individual Co-Trustee shall have the right to demand a complete audit of the trust by an independent firm of Certified Public Accountants at the expense of the Trust at any time from time to time, without the consent of the other Co-Trustees, and this power shall not be subject to arbitration.

The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to act hereunder, when there are two (2) Co-Trustees. In the event of a disagreement at any time when there are only two (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance with the Uniform Arbitration Act of the State of Nevada.

Based on these facts and the trust language, Warner requests the Court to "compel the arbitration of the disagreements between Co-Trustee Jane and Co-Trustee Warner regarding their disputes relating to the petition and its contents."

In 2000, Nevada adopted the Uniform Arbitration Act (NRS 38.206 et seq). NRS 38.219 provides in part that an "agreement contained in a record to submit to arbitration any existing or subsequent controversy . . . is valid, enforceable and irrevocable . . ." The party moving to enforce an arbitration clause has the burden of persuading the district court that the clause is valid.¹

Here, it is not disputed that the arbitration language in the trust is valid.

¹
See D.R. Horton, Inc., v. Green, 120 Nev. 549 (2004).



1 Although Jane does not dispute the validity of the arbitration agreement, she argues that
2 the scope of the clause does not encompass the relief she seeks in her petition.
3

4 In her petition, Jane is in essence seeking judicial ratification of actions she
5 has taken as Trustee, and confirmation (or declaration) of her authority to act in the
6 future. Although somewhat non-specific, Warner disagrees with Jane's "proposed action"
7 and her claimed right of title (presumably to the water permits and the Kent Whipple
8 Ranch).
9

10 Whether a dispute arising under a contract is arbitrable is a matter of
11 contract interpretation, which is a question of law.² NRS 38.219(1) refers to arbitration of
12 "an existing or subsequent controversy" between the parties.
13

14 An examination of the arbitration language in Section Ten of the trust
15 reveals a focus on acts of a trustee. The relevant provisions provide that each Co-
16 Trustee "must at all times be fully informed of each and every official act performed by
17 the other Trustees [sic]. . . ." The section further provides that "the concurring vote of two
18 (2) Co-Trustees shall be necessary for the Trustees to act hereunder . . . " and "in the
19 event of a disagreement . . . the dispute shall be submitted to arbitration . . ."
20

21 On the record before the court, it appears that all of Warner's
22 disagreements or concerns relate to actions taken prior to the resignation of Warner's
23 predecessor Co-Trustee. Nothing in the record suggests that Warner's predecessor was
24 not "fully informed" or did not concur with Jane's action. Neither party cited any law to
25

26 ²
State Ex Rel. Masto v. Second Judicial District Court, 125 Nev. 37; 199 P.3d 828 (2009).



1 support Warner's authority to dispute actions taken before his appointment as Co-
2 Trustee.
3

4 Based on the foregoing, the Court finds that the "dispute" raised by Warner
5 is not arbitable under Section Ten of the trust.

6 Further, the issue of what authority a trustee has pursuant to the terms of
7 the trust is a question of law, and does not require a consideration of how a trustee
8 should exercise that authority. For example, a determination of the authority of the
9 trustees to allocate property between the A and B trusts, or the authority of either to
10 control the A or B trusts is a question of law based on the trust language. A dispute
11 between Trustees as to the existence of their authority is not a dispute as to the
12 existence of that authority. On the other hand, a dispute as to what particular property
13 should be allocated to each trust, or a dispute as to how property should be managed or
14 disposed of would clearly fall within the arbitration language.³
15
16

17 At the risk of redundancy, a further example may help illustrate the point. If
18 the court determined that the "concurring vote" language applies to actions regarding
19 either the A or B trust (or unallocated property in the original trust) any proposed action
20 by either trustee would be subject to arbitration in the event of a dispute. If however, the
21 court found that Jane has sole authority to act in regard to the A trust, Warner's
22 disagreement with her proposed action would not be subject to arbitration.
23

24 Overall, the court finds that Jane's petition and Warner's response does
25

26 ³

This point assumes of course, that the "concurring vote" language applies to the action proposed.



1 not present a dispute or disagreement that falls within the arbitration language of the
2 trust. Good cause appearing,
3

4 **IT IS HEREBY ORDERED** that Warner's Motion to Dismiss/Stay Petition
5 Pending Mandatory Arbitration is **DENIED**.

6 DATED this 11 day of February, 2016.
7

8 
9 _____
10 DISTRICT JUDGE

ORIGINAL

FILED

Case No. CV-0930015

2016 MAR -8 PM 3:01

Dept. No. 1

LISA C. LEE
LINCOLN COUNTY CLERK

DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LINCOLN

In re THE KENT AND JANE WHIPPLE TRUST,
Dated March 17, 1969, Jane Whipple, Co-Trustee
(erroneously named as Trustee), and amendments
thereto, JANE WHIPPLE,


NOTICE OF
ENTRY OF ORDER

Petitioner

PLEASE TAKE NOTICE that an ORDER denying Co-Trustee Warner Whipple's Motion to Dismiss/Stay Petition Pending Mandatory Arbitration was entered in the above-entitled matter on the 16th day of February, 2016.

A copy of the said Order is attached hereto as Exhibit 1.

DATED this 7th day of March, 2016.


Nick A. Moschetti, Jr.
Nevada Bar No. 920
BINGHAM SNOW & CALDWELL
840 Pinnacle Court, Suite 202
Mesquite, Nevada 89027
Telephone: (702) 346-7300
Attorney for Co-Trustee Warner Whipple

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRAP 25(e) I certify that I am an employee of Bingham Snow & Caldwell, and that on this day; I caused a true and correct copy of the foregoing document to be served, to the following:

ATTORNEYS/ PARTY OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
Alissa Engler JUSTICE LAW CENTER 1100 S. Tenth Street Las Vegas, Nevada 89101 alissaengler@justice-law-center.com	Jane Whipple Co-Trustee and Jane Whipple	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Mail

DATED this 8th day of March, 2016.



An employee of Bingham Snow & Caldwell

INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
1	Copy of ORDER denying Co-Trustee Warner Whipple's Motion to Dismiss/Stay Petition Pending Mandatory Arbitration	-8-

FILED

2016 FEB 16 PM 3:28

LISA C. LLOYD
LINCOLN COUNTY CLERK
LL

Case No. CV-0930015

Dept No. 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF LINCOLN

In re THE KENT AND JANE WHIPPLE
TRUST, dated March 17, 1969, Jane
Whipple, Co-Trustee (erroneously
names as Trustee), and amendments
thereto, JANE WHIPPLE,

Petitioner

ORDER

PROCEDURAL HISTORY

On September 11, 2015, Petitioner "Jane" filed a Petition for Declaratory Relief. On November 25, 2015, Warner Whipple "Warner" filed a Motion to Dismiss/Stay Petition Pending mandatory arbitration. Jane filed an opposition to the motion and Warner filed a Reply. Warner filed a Request for Submission on December 28, 2015. On January 7, 2016, Jane filed an "Errata to Opposition to Motion to Dismiss/Stay Petition Pending Mandatory Arbitration" and a Request for Oral Argument. On January 11, 2016, Warner filed an Opposition to Errata and Untimely Request for Oral Arguments. The court has reviewed the file and finds that additional briefing or argument is not necessary.





FACTUAL SUMMARY

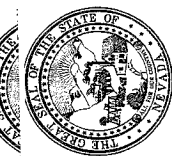
For the purposes of deciding Warner's motion, the court finds the following facts to be undisputed.

On March 17, 1969, Kent and Jane Whipple, husband and wife, created a trust. Kent and Jane amended the trust on January 30, 1977. Subsequently, Kent died.

After Kent's death, the trust acquired water rights "permits" from the State Engineer. Prior to 2015, several of the permits were conveyed to the Kent Whipple Ranch, LLC. In January 2015, the Kent Whipple Ranch applied to the State Engineer to change the point of diversion, place of use and manner of use of a portion of one of the water permits. Betsy Whipple, a remainder beneficiary of the trust protested and the State Engineer stayed his consideration of the application.

On August 29, 2015, Keith Whipple, Co-Trustee of the Trust resigned. Pursuant to a Court order filed in Elko County in 1987, Warner would succeed Keith as Co-Trustee. On October 15, 2015, Warner confirmed his acceptance of appointment as successor Co-Trustee.

Jane's filing is styled as a "Petition for Declaratory Relief (NRS 30.010 et seq.)" Although not cited by Jane, NRS 30.060(1)(c) allows a Trustee to have a declaration of "rights or legal relations" to "determine any question arising in the administration of . . . the trust, including questions of construction" of the trust. In addition, various sections of NRS Chapter 164 provide for a trustee to petition a court for advice and instruction.



1 In her petition Jane seeks the following relief: A declaration that:

2 1. The Kent and Jane Whipple Trust dated March 17, 1969, remained in
3 effect in 1976 after the death of Kent Whipple;

4 2. Jane Whipple is a trustee of the Kent and Jane Whipple Trust dated
5 March 17, 1969;

6 3. The "A" and "B" trusts of the Kent and Jane Whipple Trust dated March
7 17, 1969, were never partitioned and funded;

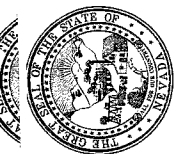
8 4. Water right Permit 79132 was transferred to the Kent and Jane Whipple
9 Trust dated March 17, 1969, and the transfer is valid and said permit is an asset of said
10 Trust;

11 5. Water right Permits 28599, 55918, 55919, 55920, 79132 and Claim of
12 Vested right V-01394 were transferred to the Kent Whipple Ranch, LLC, by the Kent and
13 Jane Whipple Trust dated March 17, 1969, and the transfers are valid and said permits
14 and claim are assets of the Kent Whipple Ranch, LLC.

15 6. This Court confirm the appraisal (in 1976 dollars) of the Kent and Jane
16 Whipple Trust dated March 17, 1969;

17 7. The A trust (d/b/a Jane Whipple Family; Jane Whipple Trustee and/or
18 Kent Whipple Trust; Jane Whipple Trustee) is the rightful owner of the Kent Whipple
19 Ranch, LLC and that Jane Whipple has an absolute right to manage, sell; water right
20 Permits 28599, 55918, 55919, 55920, 79132 and Claim of Vested right V-01394.

21 8. The Kent and Jane Whipple Trust dated March 17, 1969, as the sole
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Each Successor Co-Trustee must at all times be fully informed of each and every official act performed by the other Trustees and must be furnished with an accounting of all income, expenditures and activities of the Trust at least quarterly. Each Co-Trustee at all times shall have the right to examine any and all Trust books of account, reports, filed and papers of every nature whatsoever. Any individual Co-Trustee shall have the right to demand a complete audit of the trust by an independent firm of Certified Public Accountants at the expense of the Trust at any time from time to time, without the consent of the other Co-Trustees, and this power shall not be subject to arbitration.

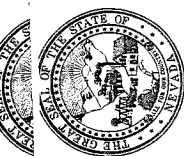
The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to act hereunder, when there are two (2) Co-Trustees. In the event of a disagreement at any time when there are only two (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance with the Uniform Arbitration Act of the State of Nevada.

Based on these facts and the trust language, Warner requests the Court to "compel the arbitration of the disagreements between Co-Trustee Jane and Co-Trustee Warner regarding their disputes relating to the petition and its contents."

In 2000, Nevada adopted the Uniform Arbitration Act (NRS 38.206 et seq). NRS 38.219 provides in part that an "agreement contained in a record to submit to arbitration any existing or subsequent controversy . . . is valid, enforceable and irrevocable . . ." The party moving to enforce an arbitration clause has the burden of persuading the district court that the clause is valid.¹

Here, it is not disputed that the arbitration language in the trust is valid.

¹
See D.R. Horton, Inc., v. Green, 120 Nev. 549 (2004).



1 support Warner's authority to dispute actions taken before his appointment as Co-
2 Trustee.

3
4 Based on the foregoing, the Court finds that the "dispute" raised by Warner
5 is not arbitable under Section Ten of the trust.

6 Further, the issue of what authority a trustee has pursuant to the terms of
7 the trust is a question of law, and does not require a consideration of how a trustee
8 should exercise that authority. For example, a determination of the authority of the
9 trustees to allocate property between the A and B trusts, or the authority of either to
10 control the A or B trusts is a question of law based on the trust language. A dispute
11 between Trustees as to the existence of their authority is not a dispute as to the
12 existence of that authority. On the other hand, a dispute as to what particular property
13 should be allocated to each trust, or a dispute as to how property should be managed or
14 disposed of would clearly fall within the arbitration language.³

15
16
17 At the risk of redundancy, a further example may help illustrate the point. If
18 the court determined that the "concurring vote" language applies to actions regarding
19 either the A or B trust (or unallocated property in the original trust) any proposed action
20 by either trustee would be subject to arbitration in the event of a dispute. If however, the
21 court found that Jane has sole authority to act in regard to the A trust, Warner's
22 disagreement with her proposed action would not be subject to arbitration.

23
24 Overall, the court finds that Jane's petition and Warner's response does

25
26 ³
This point assumes of course, that the "concurring vote" language applies to the action proposed.

Certification of Copy

STATE OF NEVADA,
COUNTY OF LINCOLN,

I, Kelbee Cheeney, the qualifying and acting Deputy Clerk of Lincoln County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original(s):

Notice of Appeal; Case Appeal Statement; District Court Docket Entries; District Court Civil Cover Sheet; Order; Notice of Entry of Order.

In re THE KENT AND JANE)
WHIPPLE TRUST, Dated)
March 17, 1969, Jane Whipple,)
Co-Trustee (erroneously named)
as Trustee), and amendments)
Thereeto, JANE WHIPPLE)

CV 0930015

IN WITNESS THEREOF, I have
hereunto set my hand and Affixed
seal of the Court at my office,
Pioche, Nevada, this 9th day of
March, 2016 A.D.

Kelbee Cheeney, DEPUTY CLERK

Kelbee Cheeney