

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE FUND FOR THE
ENCOURAGEMENT OF SELF RELIANCE,
AN IRREVOCABLE TRUST

DOAN L. PHUNG,
Appellant,
vs.
THU-LE DOAN,
Respondent

Case No. 74964

Electronically Filed
Jun 01 2018 12:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX OF DOCUMENTS
VOLUME VI of VII

Michael R. Mushkin, Esq.
Nevada Bar No. 2421
L. Joe Coppedge, Esq.
Nevada Bar No. 4954

MUSHKIN CICA COPPEDGE

4495 South Pecos Road
Las Vegas, Nevada 89121
(702) 386-3999 Telephone
(702) 454-3333 Facsimile
michael@mccnvlaw.com
jcoppedge@mccnvlaw.com

*Attorneys for Respondent,
Doan L. Phung*

APPELLANTS' APPENDIX OF DOCUMENTS

**In the Matter of the Fund for the Encouragement of Self Reliance an Irrevocable Trust
Doan L. Phung, Appellant
Thu-Le Doan, Respondent
Case No. 74964**

Volume	Document	Bates No.
I	Acceptance of Service	AA 000797
I	Acknowledgement	AA 000814
I	Affidavit of Mailing	AA 000795 – AA 000796
I	Affidavit of Peter Co., Esq. in Support of Ex Parte Application for Order Shortening Time on Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000804 – AA 000806
II	Affidavit of Service	AA 000861 – AA 000862
III	Affidavit of Service	AA 001039 – AA 001040
IV	Affidavit of Service	AA 001117 – AA 001119
IV	Affidavit of Service	AA 001133 – AA 001135
I	Affidavit of Service	AA 000812 – AA 000813
I	Affidavit of Service	AA 000845 – AA 000846
IV	Affidavit of Service	AA 001090 – AA 001092
IV	Affidavit of Service	AA 001193 – AA 001195
V	Affidavit of Service	AA 001289 – AA 001291
VI	Affidavit of Service	AA 001330 – AA 001332
VI	Affidavit of Service	AA 001364 – AA 001366
VI	Case Appeal Statement	AA 001335 – AA 001338
III	Certificate of Service	AA 001031 – AA 001032

Volume**Document****Bates No.**

I	Citation	AA 000790 – AA 000792
IV	Count Minutes re 04/28/2017 Hearing - Request for Place (1) Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust and (2) Petition for Declaratory Judgment on Probate Commissioner's Calendar for Decision	AA 001131 – AA 001132
III	Court Minutes re 01/20/2017 Hearing – Petition for Declaratory Judgment	AA 001076 – AA 001077
IV	Court Minutes re 02/10/2017 Hearing – Respondent's Objection to Probate Commissioner's Report and Recommendation and Request for Judicial Review	AA 001099 – AA 001100
VI	Court Minutes re 02-22-2018 Hearing – Motion to Stay Proceedings	AA 001363
I	Court Minutes re 10/04/2016 Hearing – Petition HM	AA 000842 – AA 000844
V	Court Minutes re 10/12/2017 Hearing – Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001311 – AA 001312
I	Ex Parte Application for Order Shortening Time on Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000798 – AA 000803
VI	Motion to Stay Proceedings on Order Shortening Time	AA 001339 – AA 001348
VI	Notice of Appeal	AA 001333 – AA 001334
VI	Notice of Entry of Order Denying Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-	AA 001321 – AA 001329

Volume**Document****Bates No.**

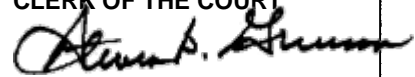
	Trustees and to Modify Trust and Request for Judicial Review	
IV	Notice of Entry of Order Granting Respondent's Object to Probate Commissioner's Report and Recommendation in Part, and Remanding Case to Probate Commissioner for Decision Consistent with this Order	AA 001103 – AA 001106
I	Notice of Entry of Order Shortening Time to Hearing Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000809 – AA 000811
IV	Notice of Entry of Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Finding of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust	AA 001185 – AA 001192
II	Notice of Entry of Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Confirming Co-Trustee and to Modify Trust	AA 000853 -AA 000860
IV	Notice of Entry of Stipulation and Order to Continued April 21, 2017 Hearing to April 28, 2017	AA 001114 – AA 001116
III	Notice of Hearing for Petition for Declaratory Judgment	AA 001030
I	Notice of Hearing for Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000793 – AA 000794
V	Notice of Hearing Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001279 – AA 001280

Volume	Document	Bates No.
IV	Notice of Non-Opposition to Respondent's Object to Probate Commissioner's Report and Recommendation	AA 001087 – AA 001089
VI	Notice of Submission of Proposed Order	AA 001367 – AA 001372
VI	Opposition to Motion to Stay Proceedings on Order Shortening Time	AA 001379 – AA 001362
III	Opposition to Petition for Declaratory Judgment	AA 001033 – AA 001038
V	Order Denying Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001313 – AA 001320
IV	Order Granting Respondent's Object to Probate Commissioner's Report and Recommendation in Part, and Remanding Case to Probate Commissioner for Decision Consistent with this Order	AA 001101 – AA 001102
I	Order Shortening Time to Hearing Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000807 – AA 000808
III	Petition for Declaratory Judgment	AA 000962 – AA 001029
I	Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000743 – AA 000789
I	Petitioner's Reply to Objection to Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust, Request Discovery and to Consolidate Matters	AA 000817 – AA 000841
III	Reply Brief in Support of Petition for Declaratory Judgment	AA 001041 – AA 001075

Volume**Document****Bates No.**

V	Reply Brief in Support of Respondent's Objection to Probate Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust, and Request for Judicial Review	AA 001292 – AA 001310
IV	Reply in Support of Respondent's Objection to Probate Commissioner's Report and Recommendation	AA 001093 – AA 001098
III	Reply to Respondent Phung's Objection to Probate Commissioner's Report and Recommendation and Request for Judicial Review	AA 001078 – AA 001083
V	Reply to Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001281 – AA 001288
IV	Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Finding of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust	AA 001179 – AA 001184
II	Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Confirming Co-Trustee and to Modify Trust	AA 000847 – AA 000852
IV	Request for Place (1) Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust and (2) Petition for Declaratory Judgment on Probate Commissioner's Calendar for Decision	AA 001107 – AA 001111
IV	Request to Transfer Petition for Declaratory Judgment to Probate Judge	AA 001084 – AA 001086
II	Respondent Phung's Objection to Probate Commissioner's Report and Recommendation and Request for Judicial Review	AA 000863 – AA 000961

Volume	Document	Bates No.
V	Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001196 – AA 001278
I	Respondent's Objection to Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust, Request Discovery and to Consolidate Matters	AA 000815 – AA 000836
IV	Response to Petitioner's Supplement to Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 001136 – AA 001178
IV	Stipulation and Order to Continued April 21, 2017 Hearing to April 28, 2017	AA 001112 – AA 001113
IV	Supplement to Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 001120 – AA 001130
VII	Transcript re April 28, 2017 Hearing – Petition HM	AA 001429 – AA 001448
VI	Transcript re February 1, 2017 Hearing - Respondent's Objection to Probate Commissioner's Report and Recommendations and Request for Judicial Notice	AA 001401 – AA 001428
VII	Transcript re February 22, 2018 Hearing – Motion to Stay Proceedings on Order Shortening Time	AA 001479 – AA 001492
VII	Transcript re October 12, 2017 Hearing – Objection to Referee's Report and Recommendation	AA 001449 – AA 001478
VI	Transcript re October 14, 2016 Hearing re – Petition HM	AA 001373 – AA 001400



1 CODE:NEO
2 GOLDSMITH & GUYMON, P.C.
3 Dara J. Goldsmith, Esq.
4 Nevada Bar No. 4270
5 Email: dgoldsmith@goldguylaw.com
6 Peter Co, Esq.
7 Nevada Bar No. 11938
8 Email: pco@goldguylaw.com
9 2055 Village Center Circle
10 Las Vegas, Nevada 89134
11 Telephone:(702) 873-9500
12 Facsimile:(702) 873-9600
13 Attorneys for Thu-Le Doan,
14 Trustor of the FUND FOR
15 THE ENCOURAGEMENT OF SELF RELIANCE

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 In the Matter of the)
12 FUND FOR THE ENCOURAGEMENT OF) Case No. P-16-089638-T
13 SELF RELIANCE) Department PC1
14 An Irrevocable Trust.)

15 NOTICE OF ENTRY OF ORDER DENYING RESPONDENT, DOAN L. PHUNG'S
16 OBJECTION TO PROBATE COMMISSIONER'S REPORT AND RECOMMENDATION AND
17 ORDER GRANTING TRUSTEE THU-LE DOAN TO DECANT THE ASSETS OF THE FUND
18 FOR THE ENCOURAGEMENT OF SELF RELIANCE AKA CENTER FOR THE
19 ENCOURAGEMENT OF RELIANCE PURSUANT TO NRS 163.556


20 TO ALL PARTIES IN INTEREST:

21 YOU ARE HEREBY NOTICED that the above-entitled Order, filed on
22 December 27, 2017, was entered herein on December 28, 2017. A copy of
23 said Order is attached hereto.

24 DATED this 28th day of December, 2017.

25 SUBMITTED BY:

26 GOLDSMITH & GUYMON, P.C.

27 By: 
28 Dara J. Goldsmith, Esq.
Nevada Bar No. 4270
Peter Co, Esq.
Nevada Bar No. 11938
2055 Village Center Circle
Las Vegas, Nevada 89134
(702) 873-9500



1 **ORD**

2 Dara J. Goldsmith, Esq.
3 Nevada Bar No. 4270
4 dgoldsmith@goldguylaw.com
5 Peter Co, Esq.
6 Nevada Bar No. 11938
7 pco@goldguylaw.com
8 2055 Village Center Circle
9 Las Vegas, Nevada 89134
10 Telephone: (702) 873-9500
11 Fax: (702) 873-9600
12 *Attorneys for Petitioner, Thu-Le Doan*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the matter of the

11 FUND FOR THE ENCOURAGEMENT OF
12 SELF RELIANCE,

13 An Irrevocable Trust.

Case No.: P-16-089638-T

Dept.: 26

Date of Hearing: October 12, 2017

Time of Hearing: 9:30 a.m.

14
15 **ORDER DENYING RESPONDENT, DOAN L. PHUNG'S OBJECTION TO PROBATE**
16 **COMMISSIONER'S REPORT AND RECOMMENDATION AND ORDER GRANTING**
17 **TRUSTEE THU-LE DOAN TO DECANT THE ASSETS OF THE FUND FOR THE**
18 **ENCOURAGEMENT OF SELF RELIANCE AKA CENTER FOR THE**
19 **ENCOURAGEMENT OF RELIANCE PURSUANT TO NRS 163.556**

20 This matter came on for hearing on October 12, 2017 before the Honorable Gloria Sturman
21 on Respondent, Doan L. Phung's Objection to Probate Commissioner's Report and
22 Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume
23 Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law, Confirming Co-
24 Trustees and to Modify Trust entered on August 4, 2017. Respondent was present and represented
25 by Michael R. Mushkin, Esq. and L. Joe Coppedge, Esq. of the law firm MUSHKIN CICA
26 COPPEDGE. Petitioner, Thu-Le Doan was present and represented by Dara Goldsmith, Esq. and
27 Peter Co, Esq. of the law firm Goldsmith & Guymon, P.C. The Court, having reviewed the
28

1 Objection, Petitioner's Reply thereto and Respondent's Reply Brief in support of the Objection, and
2 having heard oral arguments from counsel, finds as follows.

- 3 1. That the Fund for the Encouragement of Self Reliance aka Center for the Encouragement
4 of Reliance ("FESR") was created in Nevada, domiciled in Nevada and is subject to
5 Nevada law.
- 6 2. That Thu-Le Doan and Doan L. Phung were Co-Trustees of FESR when Thu-Le Doan
7 filed her Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify
8 Trust on September 22, 2016.
- 9 3. That a trustee has a legal right to decant a trust under NRS 163.556 if the following two
10 prong test is met: (1) "[A] trustee with discretion or authority to distribute trust income or
11 principal to or for a beneficiary of the trust may exercise such discretion or authority in
12 favor of a second trust as provided in this section." NRS 163.556(1) and (2) "A trustee
13 may not appoint property of the original trust to a second trust if: (a) Appointing the
14 property will reduce any income interest of any income beneficiary of the original trust if
15 the original trust is:...(2) A trust for which a charitable deduction has been taken for
16 federal or state income, gift or estate tax purposes..." NRS 163.556(3).
- 17 4. That NRS 163.556 does not state that a trustee has an "absolute right" to decant a trust
18 and that although the Probate Commissioner had incorrectly used the term "absolute
19 right", the Probate Commissioner correctly analyzed NRS 163.556 in finding that
20 Petitioner, Thu-Le Doan, had a right to decant FESR.
- 21 5. That the Probate Commissioner fully analyzed NRS 163.556 and correctly found that
22 Petitioner as Co-Trustee of FESR met the two prong test: (1) that Petitioner had the
23 power of invasion of principal of the trust assets and (2) that there is no reduction of any
24 income interest of any income beneficiary of the trust; and as such has the right to decant
25 FESR.
26
27
28

- 1 6. That Petitioner as Co-Trustee of FESR had the legal right to decant FESR when she
2 initially filed her Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and
3 to Modify Trust on September 22, 2016, and that whether or not Petitioner was
4 subsequently removed as Co-Trustee of FESR, does not affect Petitioner's ability to
5 proceed with her petition to decant FESR.
- 6 7. That the Probate Commissioner refused to enjoin FESR from continuing to act, and as the
7 trust continued to act, Petitioner was removed as a Co-Trustee for her failure to
8 participate.
- 9 8. That the Court did not address whether removing Petitioner as a Co-Trustee was wrong
10 as the Court does not believe that it has to look at that since Petitioner had the right to
11 decant FESR when she initiated the action.
- 12 9. That although the parties Marital Settlement Agreement limited a trustee's discretion to
13 make distributions in excess of \$5,000.00, unless agreed to in writing by both trustees,
14 such a limitation did not affect the purpose of FESR which was to provide "micro loans"
15 at favorable interest rates for the purpose of enabling individuals to pursue a trade or
16 business.
- 17 10. That Petitioner, Thu-Le Doan, as Co-Trustee of FESR has a legal right to decant FESR.
- 18 11. That as a matter of law, the Probate Commissioner did not err in applying NRS 163.556,
19 that the Probate Commissioner came to the right conclusion, but used the incorrect term
20 "absolute right" versus "right".
- 21 12. That Respondent, Doan L. Phung's Objection to the Probate Commissioner's Report and
22 Recommendation is denied.
- 23 13. That all of the assets of FESR should be divided equally and Thu-Le Doan's portion is to
24 be decanted into Thu-Le Doan's separate irrevocable charitable trust with Thu-Le Doan
25 serving as sole trustee of her separate irrevocable charitable trust and Doan L. Phung's

1 portion can either remain in FESR with Doan L. Phung serving as the sole Trustee of
2 FESR OR Doan L. Phung's portion may be decanted into a new separate irrevocable
3 charitable trust with Doan L. Phung serving as the sole Trustee of his new separate
4 irrevocable charitable trust.

5 14. That all the assets of FESR including but not limited to: Fidelity accounts x4784, x4840,
6 x9909, x9921, x2574 & x2575; Bank of America account x2956; and any and all real or
7 personal property owned by FESR shall be divided equally and Thu-Le Doan's portion
8 shall be distributed to Thu-Le Doan as Trustee of her separate irrevocable charitable trust
9 and Doan L. Phung's portion can either remain in FESR with Doan L. Phung serving as
10 the sole Trustee of FESR OR Doan L. Phung's portion may be distributed to Doan L.
11 Phung as Trustee of his new separate irrevocable charitable trust.

12
13 15. That a certified copy of this Order may be presented to effectuate any such transfers.

14 16. That if one party violates the Charter and causes a tax effect upon the other party, the
15 violating party shall indemnify the other party and make good of it.

16
17 17. That the VIETNAMESE-AMERICAN SCHOLARSHIP FUND case no. P-16-089637-T
18 and the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE case no. P-16-
19 089638-T should not be consolidated.

20 18. That this Court should relinquish jurisdiction in accordance with NRS 164.010(3) after
21 the requested relief is granted and proof of the decanting and funding is provided to the
22 Court by Thu-Le Doan.

23
24 19. That the Petition to Assume Jurisdiction of Trust, Confirm Trustee, and to Modify Trust
25 ought to be granted.

26 ...

27 ...

28 ...

1 Based on the foregoing findings, it is hereby

2 **ORDERED, ADJUDGED AND DECREED** that the Fund for the Encouragement
3 of Self Reliance aka Center for the Encouragement of Reliance ("FESR") was created in Nevada,
4 domiciled in Nevada and is subject to Nevada law;

5 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Thu-Le Doan
6 and Doan L. Phung were Co-Trustees of FESR when Thu-Le Doan filed her Petition to Assume In
7 Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust on September 22, 2016;

8 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that a trustee has a
9 legal right to decant a trust under NRS 163.556 if the following two prong test is met: (1) "[A]
10 trustee with discretion or authority to distribute trust income or principal to or for a beneficiary of
11 the trust may exercise such discretion or authority in favor of a second trust as provided in this
12 section." NRS 163.556(1) and (2) "A trustee may not appoint property of the original trust to a
13 second trust if: (a) Appointing the property will reduce any income interest of any income
14 beneficiary of the original trust if the original trust is:...(2) A trust for which a charitable deduction
15 has been taken for federal or state income, gift or estate tax purposes..." NRS 163.556(3);

16 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that NRS 163.556
17 does not state that a trustee has an "absolute right" to decant a trust and that although the Probate
18 Commissioner had incorrectly used the term "absolute right", the Probate Commissioner had
19 correctly analyzed NRS 163.556 in finding that Petitioner, Thu-Le Doan, had a right to decant
20 FESR;

21 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Probate
22 Commissioner fully analyzed NRS 163.556 and correctly found that Petitioner as Co-Trustee of
23 FESR met the two prong test: (1) that Petitioner had the power of invasion of principal of the trust
24 assets and (2) that there is no reduction of any income interest of any income beneficiary of the trust;
25 and as such has the right to decant FESR;

1 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Petitioner as
2 Co-Trustee of FESR had the legal right to decant FESR when she initially filed her Petition to
3 Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust on September 22, 2016,
4 and that whether or not Petitioner was subsequently removed as Co-Trustee of FESR, does not affect
5 Petitioner's ability to proceed with her petition to decant FESR;

6 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Probate
7 Commissioner refused to enjoin FESR from continuing to act, and as the trust continued to act,
8 Petitioner was removed as a Co-Trustee for her failure to participate.

9 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Court did
10 not address whether removing Petitioner as a Co-Trustee was wrong as the Court does not believe
11 that it has to look at that since Petitioner had the right to decant VASF when she initiated the action.

12 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that although the
13 parties Marital Settlement Agreement limited a trustee's discretion to make distributions in excess of
14 \$5,000.00, unless agreed to in writing by both trustees, such a limitation did not affect the purpose of
15 FESR which was to provide "micro loans" at favorable interest rates for the purpose of enabling
16 individuals to pursue a trade or business;

17 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Petitioner, Thu-
18 Le Doan, as Co-Trustee of FESR has a legal right to decant FESR;

19 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that as a matter of
20 law, the Probate Commissioner did not err in applying NRS 163.556, that the Probate Commissioner
21 came to the right conclusion, but used the incorrect term "absolute right" versus "right";

22 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Respondent,
23 Doan L. Phung's Objection to the Probate Commissioner's Report and Recommendation is denied;

24 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that all of the assets
25 of FESR should be divided equally and Thu-Le Doan's portion is to be decanted into Thu-Le Doan's
26

1 separate irrevocable charitable trust with Thu-Le Doan serving as sole trustee of her separate
2 irrevocable charitable trust and Doan L. Phung's portion can either remain in FESR with Doan L.
3 Phung serving as the sole Trustee of FESR OR Doan L. Phung's portion may be decanted into a new
4 separate irrevocable charitable trust with Doan L. Phung serving as the sole Trustee of his new
5 separate irrevocable charitable trust;

6 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that all the assets of
7 FESR including but not limited to: Fidelity accounts x4784, x4840, x9909, x9921, x2574 & x2575;
8 Bank of America account x2956; and any and all real or personal property owned by FESR shall be
9 divided equally and Thu-Le Doan's portion shall be distributed to Thu-Le Doan as Trustee of her
10 separate irrevocable charitable trust and Doan L. Phung's portion can either remain in FESR with
11 Doan L. Phung serving as the sole Trustee of FESR OR Doan L. Phung's portion may be distributed
12 to Doan L. Phung as Trustee of his new separate irrevocable charitable trust;
13

14 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that a certified copy
15 of this Order may be presented to effectuate any such transfers;
16

17 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that if either party
18 violates the Charter and causes a tax effect upon the other party, the violating party shall indemnify
19 the other party and make good of it;

20 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the
21 VIETNAMESE-AMERICAN SCHOLARSHIP FUND case no. P-16-089637-T and the FUND FOR
22 THE ENCOURAGEMENT OF SELF RELIANCE case no. P-16-089638-T should not be
23 consolidated;
24

25 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that this Court
26 should relinquish jurisdiction in accordance with NRS 164.010(3) after the requested relief is
27 granted and proof of the decanting and funding is provided to the Court by Thu-Le Doan; and
28


1 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Petition to
2 Assume Jurisdiction of Trust, Confirm Trustee, and to Modify Trust ought to be granted.

3 Dated this 21st day of December, 2017

4
5 
6 _____
7 DISTRICT COURT JUDGE


8 Submitted by:

9 GOLDSMITH & GUYMON, P.C.

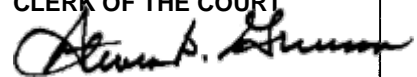
10 
11 _____
12 Dara J. Goldsmith, Esq.
13 Nevada Bar No. 4270
14 Peter Co, Esq.
15 Nevada Bar No. 11938
16 2055 Village Center Circle
17 Las Vegas, NV 89134
18 *Attorneys for Petitioner, Thu-Le Doan*

19 Approved as to form and content by:

20 MUSHKIN OICA COPPEDGE

21 
22 _____
23 Michael R. Mushkin, Esq.
24 Nevada Bar No. 2421
25 L. Joe Coppedge, Esq.
26 Nevada Bar No. 4954
27 4775 South Pecos Road
28 Las Vegas, NV 89121
Attorneys for Respondent, Doan L. Phung

W:\DJG\AT\1833-2 Doan\Order Denying Objection to RAR FESR.docx



1 CODE: AOS
2 GOLDSMITH & GUYMON, P.C.
3 Dara J. Goldsmith, Esq.
4 Nevada Bar No. 4270
5 Email: dgoldsmith@goldguylaw.com
6 Peter Co, Esq.
7 Nevada Bar No. 11938
8 Email: pco@goldguylaw.com
9 2055 Village Center Circle
10 Las Vegas, Nevada 89134
11 Telephone: (702) 873-9500
12 Facsimile: (702) 873-9600
13 Attorneys for Thu-Le Doan,
14 Trustor of the FUND FOR
15 THE ENCOURAGEMENT OF SELF RELIANCE

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 In the Matter of the)
13 FUND FOR THE ENCOURAGEMENT OF) Case No. P-16-089638-T
14 SELF RELIANCE) Department PC1
15 An Irrevocable Trust.)

16 AFFIDAVIT OF SERVICE

17 STATE OF NEVADA)
18) ss.
19 COUNTY OF CLARK)

20 Meredith Delaney, being first duly sworn, on oath, according to
21 law, deposes and says:

22 I am and was, when the herein-described mailing took place, a
23 citizen of the United States, over 18 years of age, and not a party
24 to, nor interested in, the within action.

25 On this 28th day of December, 2017, I deposited in the United
26 States Mail at Las Vegas, Nevada, three (3) copies of the ORDER
27 DENYING RESPONDENT, DOAN L. PHUNG'S OBJECTION TO PROBATE
28 COMMISSIONER'S REPORT AND RECOMMENDATION AND ORDER GRANTING TRUSTEE
THU-LE DOAN TO DECANT THE ASSETS OF THE FUND FOR THE ENCOURAGEMENT OF

1 SELF RELIANCE AKA CENTER FOR THE ENCOURAGEMENT OF RELIANCE PURSUANT TO
2 NRS 163.556 and the NOTICE OF ENTRY thereon, each enclosed in a sealed
3 envelope, mailed regular mail, upon which first-class postage was
4 fully prepaid, addressed to:

5 Thu-Le Doan
6 c/o Marshal Willick, Esq.
7 3591 E. Bonanza Rd.,
Suite 200
Las Vegas, NV 89110

8 Office of the Attorney General
9 Carson City Office
10 100 North Carson Street
Carson City, NV 89701

11 Office of the Attorney General
12 Attn: Sandie Geyer
100 North Carson Street
Carson City, NV 89701

13 and there is regular communication by mail between the place of
14 mailing and places so addressed.

15 I also filed the ORDER DENYING RESPONDENT, DOAN L. PHUNG'S
16 OBJECTION TO PROBATE COMMISSIONER'S REPORT AND RECOMMENDATION AND
17 ORDER GRANTING TRUSTEE THU-LE DOAN TO DECANT THE ASSETS OF THE FUND
18 FOR THE ENCOURAGEMENT OF SELF RELIANCE AKA CENTER FOR THE
19 ENCOURAGEMENT OF RELIANCE PURSUANT TO NRS 163.556 (Filed and E-Served
20 on 12/27/2017) and the NOTICE OF ENTRY (Filed and E-Served on
21 12/28/2017) thereon, electronically via ODYSSEY, the Court's
22 electronic filing system, pursuant to EDCR 8.05, and electronically
23 served the following parties:

24 Joe Coppedge, Esq.
25 jcopp7116@gmail.com
Attorney for Doan L. Phung

26 Michael Mushkin, Esq.
27 michael@mushlaw.com

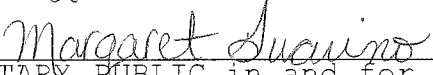
28 These parties are deemed to have consented to electronic

1 service of all pleadings and other documents through their
2 registration with ODYSSEY, summons and subpoenas excepted.

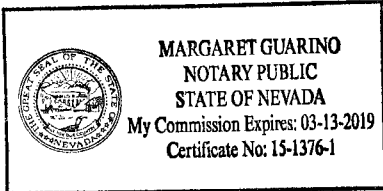
3
4 DATED this 28th day of December, 2017.

5
6 
7 Meredith Delaney PC

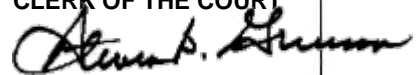
8
9 SUBSCRIBED AND SWORN to before me
10 this 28th day of December, 2017.

11 
12 NOTARY PUBLIC in and for said
County and State.

13 W:\DJG\AT\1833-2 Doan\1833-2.FESR.aos10.wpd



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



1 NOAS
2 Michael R. Mushkin, Esq.
3 Nevada Bar No. 2421
4 L. Joe Coppedge, Esq.
5 Nevada Bar No. 4954
6 MUSHKIN CICA COPPEDGE
7 4475 South Pecos Road
8 Las Vegas, Nevada 89121
9 (702) 386-3999 Telephone
(702) 454-3333 Facsimile
michael@mccnvlaw.com
jcoppedge@mccnvlaw.com
Attorneys for Respondent,
Doan L. Phung

10 EIGHTH JUDICIAL DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 In the Matter of the:

Case No.: P-16-089638-T

13 FUND FOR THE ENCOURAGEMENT OF
14 SELF RELIANCE,

Dept. No.: 26

14 An Irrevocable Trust.

15 NOTICE OF APPEAL

16 Notice is hereby given that Doan L. Phung, Respondent in the above entitled matter, hereby
17 appeals to the Supreme Court of Nevada from the Order Denying Respondent, Doan L. Phung's
18 Objection to Probate Commissioner's Report and Recommendation and Order Granting Trustee
19 Thu-Le Doan to Decant the Assets of the Fund for the Encouragement of Self Reliance pursuant to
20 NRS 163.556 entered on December 27, 2018.

21 DATED this 19 day of January, 2018

22 MUSHKIN CICA COPPEDGE

23 
24 MICHAEL R. MUSHKIN, ESQ.

25 Nevada Bar No. 2421

26 L. JOE COPPEDGE, ESQ.

27 Nevada Bar No. 4954

28 4495 S. Pecos Road

Las Vegas, Nevada 89121

Attorneys for Respondent,

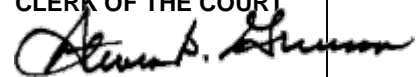
Doan L. Phung

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Notice of Appeal* was submitted electronically for filing and/or service with the Eighth Judicial District Court on this 19 day of January, 2018. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list.


An Employee of
MUSHKIN CICA COPPEDGE



1 ASTA
2 Michael R. Mushkin, Esq.
3 Nevada Bar No. 2421
4 L. Joe Coppedge, Esq.
5 Nevada Bar No. 4954
6 **MUSHKIN CICA COPPEDGE**
7 4475 South Pecos Road
8 Las Vegas, Nevada 89121
9 (702) 386-3999 Telephone
10 (702) 454-3333 Facsimile
11 michael@mccnvlaw.com
12 jcoppedge@mccnvlaw.com
13 Attorneys for Respondent,
14 Doan L. Phung

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 In the Matter of the:

Case No.: P-16-089638-T

13 FUND FOR THE ENCOURAGEMENT OF
14 SELF RELIANCE,

Dept. No.: 26

15 An Irrevocable Trust.

16 **CASE APPEAL STATEMENT**

17 Doan L. Phung, by and through his undersigned attorneys and for Case Appeal Statement,
18 states as follows:

19 1. Name of appellant filing this case appeal statement:

20 Doan L. Phung

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

22 The Honorable Gloria Sturman.

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

24 Doan L. Phung, Appellant

25 Michael R. Mushkin, Esq.
26 Nevada State Bar No. 2421
27 Mushkin Cica Coppedge
28 4495 South Pecos Road
Las Vegas, Nevada 89121

1 L. Joe Coppedge, Esq.
2 Nevada State Bar No. 4954
3 Mushkin Cica Coppedge
4 4495 South Pecos Road
5 Las Vegas, Nevada 89121

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

9 Thu Le Doan, Respondent

10 Respondent's appellate counsel is unknown. Trial counsel was:

11 Dara J. Goldsmith, Esq.
12 Nevada Bar No. 4270
13 Goldsmith & Guyman
14 2055 Village Center Circle
15 Las Vegas, Nevada 89134

16 Peter Co, Esq.
17 Nevada Bar No. 11938
18 Goldsmith & Guyman
19 2055 Village Center Circle
20 Las Vegas, Nevada 89134

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

25 The attorneys identified above are licensed to practice law in Nevada.

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

28 Appellant was represented by retained counsel.

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

Appellant is represented by retained counsel.

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

1 No

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

4 The Petition was filed on September 22, 2016.

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

7 Respondent, Thu Le Doan filed a Petition in the District Court for Clark County,
8 Nevada as Case No. P-16-089638-T on September 22, 2016, requesting that the assets of the Fund
9 for the Encouragement of Self Reliance ("FESR") be divided equally into separate irrevocable
10 charitable trusts or, in the alternative, that the assets be divided equally and Petitioner's portion be
11 decanted into her own charitable trust. The District Court entered an Order Denying Respondent,
12 Doan L. Phung's Objection to Probate Commissioner's Report and Recommendation and Order
13 Granting Trustee Thu-Le Doan to Decant the Assets of the Vietnamese-American Scholarship
14 Fund Pursuant to NRS 163.556 on December 27, 2018. Respondent appeals from that Order.

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

18 This case has **not** been previously been the subject of an appeal to or original writ
19 proceeding in the Supreme Court.

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

21 This case does **not** involve child custody or visitation.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

Settlement is unlikely.

DATED this 19 day of January, 2018

MUSHKIN CICA COPPEDGE

MICHAEL R. MUSHKIN, ESQ.

Nevada Bar No. 2421

L. JOE COPPEDGE, ESQ.

Nevada Bar No. 4954

4475 S. Pecos Road

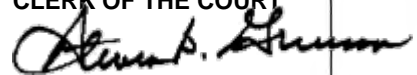
Las Vegas, Nevada 89121

Attorneys for Respondent, Doan L. Phung

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Case Appeal Statement** was submitted electronically for filing and/or service with the Eighth Judicial District Court on this 19 day of January, 2018. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list.

An Employee of
MUSHKIN CICA COPPEDGE



MOT

Michael R. Mushkin, Esq.

Nevada Bar No. 2421

L. Joe Coppedge, Esq.

Nevada Bar No. 4954

MUSHKIN CICA COPPEDGE

4475 South Pecos Road

Las Vegas, Nevada 89121

(702) 386-3999 Telephone

(702) 454-3333 Facsimile

michael@mccnvlaw.com

jcoppedge@mccnvlaw.com

Attorneys for Respondent,

Doan L. Phung

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the:

Case No.: P-16-089638-T

FUND FOR THE ENCOURAGEMENT OF
SELF RELIANCE,

Dept. No.: 26

An Irrevocable Trust.

Date of Hearing: February 22, 2018

Time of Hearing: 9:30 am

MOTION TO STAY PROCEEDINGS ON ORDER SHORTENING TIME

Defendant, Doan L. Phung, by and through his counsel, Michael R. Mushkin and L. Joe Coppedge of Mushkin Cica Coppedge, submits this Motion to Stay Proceedings on Order Shortening Time. This motion is made pursuant to NRCP 62(d) and NRAP 8(a), and based upon the papers and pleadings on file herein, the points and authorities attached hereto, and any arguments made by counsel at the hearing of this motion.

DATED this 13 day of February, 2018

MUSHKIN CICA COPPEDGE



MICHAEL R. MUSHKIN, ESQ.

Nevada Bar No. 2421

L. JOE COPPEDGE, ESQ.

Nevada Bar No. 4954

4475 S. Pecos Road

Las Vegas, Nevada 89121

[illegible]

IT IS HEREBY ORDERED that the time for hearing the foregoing motion be and the same hereby is shortened, and said motion will be heard by the Honorable Gloria Sturman in Dept. 26 on the ____ day of February, 2018 at the hour of 9:30 a.m. or as soon thereafter as counsel can be heard.

DISTRICT COURT JUDGE

MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421
L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954
4475 S. Pecos Road
Las Vegas, Nevada 89121

I, L. Joe Coppedge, declare and state, under penalty of perjury, as follows:

2. On December 27, 2017, this Court entered the Order Denying Respondent, Doan L. Phung's Objection to Probate Commissioner's Report and Recommendation and Order Granting Trustee Thu-Le Doan to Decant the Assets of the Fund for the Encouragement of Self Reliance AKA Center for the Encouragement of Reliance Pursuant to NRS 163.556 (the "Order").

1 3. Notice of Entry of the Order was made on December 28, 2017.

2 4. Among other provisions, the Order provides, "[t]hat Petitioner, Thu-Le Doan, as
3 Co-Trustee of FESR has a legal right to decant FESR." *See* Order, p. 3 at ¶10.

4 5. The Order further states in part, "[t]hat all of the assets of FESR should be divided
5 equally and Thu-Le Doan's portion is to be decanted into Thu-Le Doan's separate irrevocable
6 charitable trust with Thu-Le Doan serving as sole trustee of her separate irrevocable charitable
7 trust . . ." *See* Order, pp. 3-4 at ¶13

8 6. I am advised and understand that after the entry of the Order, Petitioner attempted
9 to transfer half of the Trusts' assets into her own trust(s).

10 7. When it was brought to the attention of Petitioner's counsel that the request to
11 transfer funds violated the provisions of Rule 62, I am advised that Petitioner caused the transfer to
12 be reversed.

13 8. Respondent filed a Notice of Appeal of the Order on January 19, 2018.

14 9. I have consulted with Petitioner's counsel, Peter Co, and have discussed the terms
15 of a stay of this action pending the appeal. However, we have been unable to come to an
16 agreement regarding the terms of a stay.

17 10. It is my understanding that the trust funds in accounts with Fidelity bank are
18 presently frozen, which has caused some donation checks to be dishonored.

19 11. Accordingly, there is in sufficient time to have this motion heard in the ordinary
20 course.

21 12. Respondent respectfully requests that the motion be heard on an order shortening
22 time at the earliest available date.

23 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
24 true and correct.

25 Executed on this 13 day of February, 2018.

26

27

28


L. JOE COPPEDGE

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Respondent, Doan L. Phung respectfully requests that this Court grant this motion and
4 issue an order staying the proceedings until his appeal is resolved by the Nevada Supreme Court.
5 As this Court will recall, Petitioner, Thu Le Doan filed two separate Petitions on September 22,
6 2016, requesting that the assets of the Vietnamese American Scholarship Fund ("VASF") and the
7 Fund for the Encouragement of Self-Reliance ("FESR") be divided equally into separate
8 irrevocable charitable trusts or, in the alternative, that the assets be divided equally and Petitioner's
9 portion be decanted into her own charitable trust. Respondent filed an Objection on October 12,
10 2016, and the matter was initially heard on an order shortening time by the Probate Commissioner
11 on October 14, 2016. Following the entry of the initial Report and Recommendations, Respondent
12 filed a timely objection. That objection was heard by this Court on February 1, 2017. At the
13 hearing, this Court made the following findings, (1) it is unclear from the record and Report and
14 Recommendation whether the Probate Commissioner considered whether there are any questions
15 of fact that will impact or militate a different relief under the Decanting Statute, and (2) it is
16 unclear from the record and Report and Recommendation the analysis that the Probate
17 Commissioner went through to reach his conclusion to decant.

18 Based on the those findings, the Court remanded this matter to the Probate Commissioner
19 to consider and clarify certain questions, including (1) whether there are any questions of fact
20 which are material to an analysis under the Decanting Statute, (2) whether the Probate
21 Commissioner ascertained those material facts, and if so, what are the material facts and how did
22 the Probate Commissioner consider them in his analysis, (3) whether the Probate Commissioner
23 determined there are material facts not in dispute, and if so, what are the material facts that are not
24 in dispute, and (4) whether there are material facts that support a different relief other than
25 decanting.

26 Following a hearing on April 28, 2017, the Probate Commissioner issued new findings and
27 recommendations, which were entered on August 4, 2017. Again, those findings and
28 recommendations were not supported by the facts or law, which resulted in a second objection to

1 Probate Commissioner's Report and Recommendation Confirming Prior Report and
2 Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings
3 of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust. Following a
4 hearing on October 12, 2017, this Court entered the Order on December 27, 2017. Among other
5 provisions, the Order indicated that the Probate Commissioner incorrectly used the term "absolute
6 right", but determined that the Probate Commissioner had correctly analyzed NRS 163.556 in
7 finding that Petitioner had a right to decant FESR. Based upon that and other findings, this Court
8 ordered that Petitioner had a legal right to decant FESR.

9 Respondent filed a Notice of Appeal of the Order on January 19, 2018.

10 **II. LEGAL ARGUMENT**

11 **A. Defendant is entitled to a stay as a matter of right.**

12 NRCP 62(d) governs stays pending appeal and provides:

13 (d) *Stay Upon Appeal.* When an appeal is taken the appellant by giving a
14 supersedeas bond may obtain a stay subject to the exceptions contained in
15 subdivision (a) of this rule. The bond may be given at or after the time of
16 filing the notice of appeal. The stay is effective when the supersedeas
bond is filed.

17 NRCP 62(d) is substantially based on its federal counterpart, FRCP 62(d). Most federal
18 courts interpreting the rule generally recognize that FRCP 62(d) allows an appellant to obtain a
19 stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment
20 amount, but that courts retain the inherent power to grant a stay in the absence of a full bond.
21 *Nelson v. Heer*, 122 P.3d 1252, 121 Nev. 832 (2005). In *Nelson*, the Nevada Supreme Court noted
22 that the purpose of security for a stay pending appeal is to protect the judgment creditor's ability to
23 collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the
24 creditor arising from the stay. *Id.* However, a supersedeas bond should not be the judgment
25 debtor's sole remedy, particularly where other appropriate, reliable alternatives exist. Thus, the
26 focus is properly on what security will maintain the status quo and protect the judgment creditor
27 pending an appeal. As set forth below, reliable mechanisms exist that will protect both parties
28 during the pendency of the appeal, maintain the status quo, and allow the trusts to continue their

1 good work, which should be the overriding focus of both parties.

2 **B. This Court has the inherent authority to stay of this matter pending the appeal.**

3 NRAP 8(a)(1), provides in pertinent part:

4 A party must ordinarily move first in the district court for a stay of the
5 judgment or order of, or proceedings in, a district court pending appeal or
6 resolution of a petition to the Supreme Court or Court of Appeals for an
extraordinary writ

7 This court has broad discretion to stay matters pending before it. The United States
8 Supreme Court has held:

9 The power to stay proceedings is incidental to the power inherent in every
10 court to control the disposition of the causes on its docket with economy
11 of time and effort for itself, for counsel, and for litigants. How this can
12 best be done calls for the exercise of judgment which must weigh
competing interests and maintain an even balance.

13 *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163 (1936). The Nevada Supreme
14 Court echoed *Landis* in *Maheu v. District Court*, 89 Nev. 214, 510 P.2d 627 (1973). As such, this
15 court has the inherent authority to stay these proceedings.

16 **C. The NRAP 8(c) factors weigh in favor of issuing a stay.**

17 Because the rules do not set forth specific factors for the district court's consideration,
18 Respondent directs this Court to NRAP 8(c), which identifies four factors that the Supreme Court
19 generally considers when deciding whether to issue a stay:

20 (1) Whether the object of the appeal or writ petition will be defeated if the
21 stay is denied; (2) Whether appellant/petitioner will suffer irreparable or
22 serious injury if the stay is denied; (3) Whether respondent/real party in
23 interest will suffer irreparable or serious injury if the stay is granted; and
24 (4) Whether appellant/petitioner is likely to prevail on the merits in the
appeal or writ petition.

25 *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986
26 (Nev. 2000) (citing NRAP 8(c) and *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (Nev. 1948)).

27 First, the object of Defendant's appeal will be defeated if the stay is denied because the
28 Petitioner will be allowed to transfer approximately \$8,000,000 to her own trust(s). The

1 Commissioner's finding that he relied on the ability and rights of the trustee to the exclusion of the
2 parties' contract rights was not only a clear error as to the parties' intent, but it ignored unrefuted
3 evidence that Petitioner is not qualified to serve as a trustee over a separate trust consisting of
4 approximately \$8,000,000 in assets. It is unrefuted that Petitioner never actively participated as a
5 trustee on behalf of the Trusts. Moreover, her fitness to serve as a trustee of the Trusts is in
6 question and will have to be addressed by the Supreme Court before the funds should be
7 transferred to her own trust(s).

8 From 2012 until July 2016, Petitioner was the chairperson of TTKKTL, a charitable trust in
9 Vietnam that is not the subject of these proceedings. Respondent discovered after Thu-Le's
10 resignation as chairperson that certain transition documents revealed some loss of funds. The City
11 of Hue Inspector found that during the time Mr. Phan Van Hai ("Phan") worked under the
12 direction of Petitioner, both he and the Petitioner committed some questionable acts. Case in point:
13 Petitioner caused Phan to misappropriate \$20,000.00 for her under the pretense her family donated
14 the money without her approval. In the process of doing that, Phan stole more than \$80,000.00 for
15 himself. Petitioner's documented neglect of her Trustee duties, her conclusive incapacity to serve
16 as a Trustee and questionable handling of other trust funds are issues that must be addressed
17 through competent evidence. For the Probate Commissioner to state that he was relying on the
18 ability of Petitioner to serve as a trustee, and not even inquire about her unrefuted incapacity to
19 serve and her questionable conduct with respect to another charitable trust mandates that this
20 matter be stayed pending the appeal. There can be no reasonable question that the object of the
21 appeal will be defeated if a stay is not entered, and Thu-Le is permitted to transfer half of the trust
22 funds to her own trust account.

23 Under the same analysis, the risk of serious injury to the trusts cannot reasonably be
24 questioned. The unrefuted facts regarding Thu-Le's neglect of her duties as trustee, her incapacity
25 to serve as a Trustee and mishandling of other trust funds demonstrates the great risk of serious
26 injury to the Trusts and requires that a stay be issued. By the same token, a reasonably crafted stay
27 will allow the good work of the Trusts to continue, and absolutely no harm will come to Petitioner.

28 Moreover, based upon the relevant law and undisputed facts, Respondent has more than a

1 reasonable likelihood of prevailing in the appeal of this matter. Without rearguing the entire case,
2 Respondent respectfully reminds the Court that the Probate Commissioner, and ultimately this
3 Court, erred by not following the applicable court rule. EDCR 4.17(a) provides in part, “[i]n
4 contested matters before the Probate Commissioner involving disputed issues of material fact, the
5 Probate Commissioner shall set an evidentiary hearing date and a discovery schedule after
6 receiving input from the attorneys for the parties and any unrepresented parties. Such settings shall
7 be made at the time of the hearing on the initial petition commencing the litigation or at the request
8 of any party thereto. . .” (Emphasis added).

9 As set forth in the pleadings and papers filed in this matter, there are numerous disputed
10 issues of material fact which mandate the setting of an evidentiary hearing and a discovery
11 schedule. Moreover, in his court filings and at the time of all hearings, Respondent requested that
12 the Probate Commissioner and this Court establish a discovery schedule and set an evidentiary
13 hearing. The failure to follow the applicable court rule, establish a discovery schedule and set an
14 evidentiary hearing is an error, which provides Respondent with a more than reasonable likelihood
15 of prevailing on appeal.

16 Further, the Probate Commissioner’s revised findings and recommendations and the Order
17 are not supported by the limited evidence, introduced at the initial and subsequent hearings, on the
18 Petition, and are contrary to the law. The Order, which adopts the Probate Commissioner’s
19 reasoning that the only material facts for the court to find in applying NRS 163.556 is whether a
20 trustee has the power of invasion of principal and if there is no reduction of any income interest of
21 any income beneficiary, is contrary to the facts and to Nevada law.

22 As set forth in the Charter and MSA, which were expressly adopted as a part of the Divorce
23 Decree entered April 12, 2012, Petitioner does not have unlimited discretion or authority to
24 distribute trust income or principal. The parties agreed that Phung would manage both Trust
25 accounts; that much is clear and not subject to dispute. See MSA at Section 14.1. Moreover, both
26 Trustees are limited to making contributions, expenditures and grants in amounts not more than
27 \$5,000. Any contribution, expenditure or grant exceeding \$5,000 must be agreed to in writing by
28 both Petitioner and Respondent. Such a limitation was agreed to at the time of the divorce so

1 neither party could misuse or waste Trust assets.

2 Since the Trust assets cannot be moved or transferred without the express written
3 permission of both Trustees, Petitioner is not a trustee with discretion or authority to distribute
4 trust income or principal, and does not have the power to invade the principal of the Trust.
5 Accordingly, she cannot exercise discretion or authority she does not have and, thus, she does not
6 have the necessary authority to decant by appointing the Trust assets to a second trust. These
7 undisputed facts alone provide Respondent with a reasonable likelihood of prevailing on appeal
8 which requires the entry of a stay.

9 Previously, the Probate Commissioner, in his first Report and Recommendation filed herein
10 on December 16, 2016, established a workable procedure for the management and distribution of
11 pending applications. Specifically, the Probate Commissioner found,

12 . . . (ix) that at this time there are pending scholarship applications before
13 the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE aka
14 CENTER FOR THE ENCOURAGEMENT OF RELIANCE, that the
15 scholarship program should continue and both parties must agree in
16 granting the pending scholarships; (x) that upon the Court's inquiry
17 whether the parties could work together on the scholarship program or
18 whether a substantial bond be required, the parties agreed to work together
on the scholarship program; (xi) that all pending scholarship applications
be provided to Thu-Le Doan's counsel Dara J. Goldsmith, Esq. for an
honest and impartial review by Thu-Le Doan as to acceptability; . . .

19 *See* Report and Recommendation dated December 16, 2016, pp. 3-4.

20 Respondent respectfully suggests that such a framework provides the most reasonable
21 requirements for a stay pending appeal. Neither party wants the good work of the trusts to cease
22 pending the appeal. Certainly, Respondent does not, and he reasonably believes that Thu-Le agrees
23 with this statement. Any distributions that either party wishes to make from the trusts can be
24 provided to the other with appropriate back up, through counsel, and after a reasonable time,
25 perhaps thirty (30) days, if no objection is made, then the distribution will be deemed approved. If
26 there is an objection to a distribution, which seems unlikely, then the matter could be brought to
27 the court's attention for prompt resolution. Under this proposal, the good work of the trusts
28 continues, and neither party, nor the Trusts are harmed pending appeal.

1 **III. CONCLUSION**

2 As set forth above, Respondent is entitled to a stay pending appeal as a matter of
3 right upon such terms as the Court deems reasonable under these circumstances. Moreover, all
4 relevant factors mandate that a stay of these proceedings be entered during the pendency of the
5 appeal. Based on the foregoing, Respondent respectfully requests this Honorable Court grant his
6 motion, and issue an order that stays this proceeding during the pendency of the appeal.

7 DATED this 13 day of February, 2018

8 MUSHKIN CICA COPPEDGE

9
10 
11 MICHAEL R. MUSHKIN, ESQ.

12 Nevada Bar No. 2421

13 L. JOE COPPEDGE, ESQ.

14 Nevada Bar No. 4954

15 4475 S. Pecos Road


16 Las Vegas, Nevada 89121

17 Attorneys for Respondent,

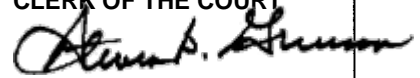
18 Doan L. Phung

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that the foregoing **Motion to Stay Proceedings on Order Shortening**
21 **Time** was submitted electronically for filing and/or service with the Eighth Judicial District Court
22 on this 16 day of February, 2018. Electronic service of the foregoing document shall be upon all
23 parties listed on the Odyssey eFileNV service contact list.

24
25 
26 An Employee of

27 MUSHKIN CICA COPPEDGE
28



CODE: OPP
GOLDSMITH & GUYMON, P.C.
Dara J. Goldsmith, Esq.
Nevada Bar No. 4270
Email: dgoldsmith@goldguylaw.com
Peter Co, Esq.
Nevada Bar No. 11938
Email: pco@goldguylaw.com
2055 Village Center Circle
Las Vegas NV, 89134
Telephone: (702) 873-9500
Attorneys for Petitioner, Thu-Le Doan

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of the

FUND FOR THE ENCOURAGEMENT OF
SELF RELIANCE,

An Irrevocable Trust.

Case No.: P-16-089638-T

Dept.: 26

Date of Hearing: February 22, 2018
Time of Hearing: 9:30 a.m.

OPPOSITION TO MOTION TO STAY PROCEEDINGS ON
ORDER SHORTENING TIME

COMES NOW, Thu-Le Doan (“Petitioner” or “Thu-Le”), by and through counsel, Dara J. Goldsmith, Esq. and Peter Co, Esq., of the law firm of GOLDSMITH & GUYMON, P.C., hereby files her Opposition to Motion to Stay Proceedings on Order Shortening Time. This Opposition is made and based upon the Memorandum of Points and Authorities filed herewith, the pleadings and papers filed in this matter and any oral argument of counsel that this Court may allow.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Doan L. Phung’s (“Phung” or “Appellant”) *Motion for Stay* is predicated on the misconception that he is entitled to a stay as a matter of right. See Motion for Stay p. 5, line 11. In probate and trust litigation, there is no automatic stay or entitlement to a stay. See NRS 155.195 (“Unless otherwise ordered by the court, an appeal pursuant to NRS 155.190 *does not stay* any order or proceeding in the estate or trust.”); see also Nelson v. Heer, 121 Nev. 832, 834,

1 122 P.3d 1252, 1253 (NRCP 62(d) governs stays pending appeal, providing that the appellant
2 *may* obtain a stay subject to exceptions by giving a supersedeas bond) (citing NRCP 62(d))
3 (emphasis added).

4 Phung is required to “present a substantial case on the merits when a serious legal
5 question is involved and show that the balance of equities weighs *heavily in favor of granting the*
6 *stay.*” Fritz Hansen A/S v. District Court, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (quoting
7 Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. 1981)) (emphasis added). A stay should not be
8 granted “*unless it appears to be necessary to prevent irreparable injury or a miscarriage of*
9 *justice.*” Kress v. Corey, 65 Nev. 1, 16-17, 189 P.2d 352, 360 (1948) (citing 4 C.J.S., Appeal
10 and Error § 636) (emphasis added).

11 The purpose of the Fund for the Encouragement of Self Reliance aka Center for the
12 Encouragement of Reliance (“FESR”) “is to encourage the pursuit of self-reliance within the
13 meaning of Section 501(c)(3) of the Internal Revenue Code.” Examples of activities “that
14 encourage self-reliance include, but are not limited to: (1) assisting organizations that loans
15 micro amounts of money at favorable interest rates for the purpose of enabling individuals to
16 pursue a trade or business; (2) paying micro amounts of money to individuals who are qualified
17 as above but are nevertheless unable to meet the loan criteria; to individuals from a
18 disadvantaged background who are qualified to attend Vietnamese or American institutions of
19 training but because of their financial need have difficulty in so doing; or (3) contributions to any
20 charitable organizations, trust, community chest, fund or foundation which at the time of the
21 contribution by Trustees is one of those organizations specified in the Internal Revenue Code,
22 contributions to which are deductible for income tax purposes.”

23 Upon the decanting of FESR, Thu-Le intends to continue FESR’s charitable purpose with
24 the new decanted charitable trust, thus there is no *irreparable injury or a miscarriage of justice*
25 in denying Phung’s request for a stay. In fact, granting a stay of Thu-Le’s new decanted
26 charitable trust will harm the organizations and people that Thu-Le intends to assist.

27 ///

28 ///

1 **II. LEGAL ARGUMENT**

2 **A. THE APPELLANT IS NOT ENTITLED TO A STAY UNDER NRAP 8(c).**

3 **1. Standard Governing Stay Pending Appeal.**

4 NRAP 8(a)(1)(A) requires that the Appellant first move this Court for a stay of the orders
5 requiring the decanting of one-half of the FESR assets to the newly created charitable trust,
6 pending appeal of such orders. See NRAP 8(a)(1)(A)¹. The Supreme Court, when ruling on a
7 similar motion, will generally consider four factors to determine whether a stay is necessary. See
8 NRAP 8(c). This Court should weigh the same four factors in determining whether to grant the
9 stay requested by Appellant. These factors include:

10 (1) whether the object of the appeal or writ petition will be defeated if the stay
11 or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or
12 serious injury if the stay or injunction is denied; (3) whether respondent/real
13 party in interest will suffer irreparable or serious injury if the stay or injunction
is granted; and (4) whether appellant/petitioner is likely to prevail on the merits
in the appeal or writ petition.

14 NRAP 8(c); see also Hansen, 116 Nev. at 657, 6 P.3d at 987 (citing Kress v. Corey, 65 Nev. 1,
15 189 P.2d 352 (1948)).

16 The Nevada Supreme Court has “not indicated that any one factor carries more weight
17 than the others, although Fritz Hansen A/S v. District Court [citation omitted] recognizes that if
18 one or two factors are especially strong, they may counterbalance other weak factors.” Mikohn
19 Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing Hansen, 116 Nev. at
20 659, 6 P.3d at 987). The Appellant has failed to demonstrate that a stay is necessary or that the
21 balancing of equities weighs heavily in favor of granting a stay. After weighing the four factors
22 set forth below, the Court should deny the Appellant’s *Motion for Stay*.

23 **1. The Appellant is not Likely to Prevail on the Merits of His Appeal.**

24 The most important factor for this Court to consider is that the Appellant will not likely
25 prevail on the merits of his appeal. Both the Probate Commissioner and this Court found that a

26 ¹ See also Nelson, 121 Nev. at 836, 122 P.3d at 1254 (“NRAP 8(a) requires that an application for a stay pending
27 appeal be made to the district court in the first instance. This requirement is grounded in the district court’s vastly
28 greater familiarity with the facts and circumstances of the particular case. Additionally, the district court is better
positioned to resolve any factual disputes concerning the adequacy of any proposed security, while this court is ill
suited to such a task.”)

1 trustee has a legal right to decant a trust under NRS 163.556 if the following two prong test is
2 met: (1) “[A] trustee with discretion or authority to distribute trust income or principal to or for a
3 beneficiary of the trust may exercise such discretion or authority in favor of a second trust as
4 provided in this section.” NRS 163.556(1); and (2) “A trustee may not appoint property of the
5 original trust to a second trust if: (a) Appointing the property will reduce any income interest of
6 any income beneficiary of the original trust if the original trust is:...(2) A trust for which a
7 charitable deduction has been taken for federal or state income, gift or estate tax purposes...”
8 NRS 163.556(3).

9 Appellant alleges that the Court erred by not following EDCR 4.17(a) as Appellant
10 asserts that there were disputed issues of material fact and an evidentiary hearing and discovery
11 schedule should have been set. However, both the Probate Commissioner and this Court found
12 that the only material facts for the Court to consider in applying NRS 163.556 are: (1) whether a
13 trustee has the power of invasion of principal; and (2) that there is no reduction of any income
14 interest of any income beneficiary of the trust.

15 Thu-Le again denies the false and irrelevant allegations made by Appellant against her
16 regarding Trung Tam Khuyen Khich Tu Lap (“TTKKTL”), and as stated in previous pleadings
17 “since TTKKTL is not before this Court, Thu-Le will not waste this Court’s time in correcting
18 Phung’s false allegations that aren’t relevant to the instant matter.” See Reply to Respondent,
19 Doan L. Phung's Objection to Probate Commissioner's Report and Recommendation Confirming
20 Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making
21 Additional Findings of Fact and Conclusions of Law, Confirming Co-trustees and to Modify
22 Trust, and Request for Judicial Review filed on September 12, 2017 (“Reply to Objection to
23 RAR”) page 5, lines 7-11. Thu-Le has never neglected her duties as a trustee, nor has she ever
24 mishandled trust funds.

25 Appellant also alleges that the Court erred in finding that Thu-Le had met the first prong
26 of the test because Thu-Le did not have unlimited discretion or authority to distribute trust
27 income or principal, but rather Thu-Le was limited by the Marital Settlement Agreement
28 (“MSA”) to making contributions, expenditures and grants in amounts not more than \$5,000

1 unless agreed to in writing by both parties. As this Court has previously considered, NRS
2 163.556 does not require a trustee to have unlimited discretion or authority to distribute trust
3 income or principal to decant a trust and both the Probate Commissioner and this Court found
4 that although the Parties' MSA limited a trustee's discretion to make distributions in excess of
5 \$5,000.00, unless agreed to in writing by both trustees, such a limitation did not affect the
6 purpose of FESR which was to provide "micro loans" at favorable interest rates for the purpose
7 of enabling individuals to pursue a trade or business.
8

9 **3. The Object Of The Appeal Will Not Be Defeated If A Stay Is Denied.**

10 The Appellant is neither barred, nor will his appeal be defeated, if the Appellant's request
11 for a stay is denied and Thu-Le's one-half portion is decanted from FESR. See Wheeler Springs
12 Plaza, LLC. v. Beemon, 119 Nev. 260, 265, 71 P.3d 1258, 1261 (2003) (wherein the Nevada
13 Supreme Court agrees with jurisdictions that hold that a "judgment debtor does not waive the
14 right to appeal or render the controversy moot by payment or satisfaction of the judgment under
15 coercion, unless the judgment creditor demonstrates that the payment or satisfaction was
16 intended to compromise or settle the matter."); see also NRAP 8(c)(1).

17 The objective of the appeal is to disallow the decanting of FESR. If a stay is not imposed
18 and Thu-Le is allowed to proceed with decanting her portion of FESR, the Appellant could still
19 pursue his appeal without prejudice. If the Appellant was successful on appeal, the decanted
20 assets would return back to the Trust.

21 **4. The Appellant Will Not Suffer Irreparable Harm If A Stay Is Denied.**

22 Neither the Appellant nor the Trust will suffer irreparable harm if the request for a stay is
23 denied. The Appellant alleges that "[t]he unrefuted facts regarding Thu-Le's neglect of her
24 duties as trustee, her incapacity to serve as a Trustee and mishandling of other trust funds
25 demonstrates the great risk of serious injury to the Trusts and requires that a stay be issued. See
26 *Motion for Stay*, p. 7, lines 24-26.

27 First, Thu-Le denies Appellant's allegations that she has neglected her duties as trustee
28 and mishandled other trust funds and she has always refuted such false claims made by

1 Appellant. See Petition To Assume In Rem Jurisdiction Of Trust, Confirm Trustee And To
2 Modify Trust filed on September 22, 2016 page 3, lines 9-14; and Opposition To Petition For
3 Declaratory Judgment filed on January 13, 2017 page 4, lines 10-24.

4 Second, any injury in terms of money, however substantial, is not enough to show
5 irreparable harm. See Hansen, 116 Nev. at 658, 6 P.3 at 986-7 (citing Dixon v. Thatcher, 103
6 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987) (noting that with respect to injunctive relief,
7 irreparable harm is harm for which compensatory damages would be inadequate, such as the sale
8 of a home at trustee's sale, because real property is unique); Wisconsin Gas Co. v. F.E.R.C., 758
9 F.2d 669, 674 (D.C. Cir. 1985) (noting that "[m]ere injuries, however substantial, in terms of
10 money, time and energy necessarily expended in the absence of a stay are not enough' to show
11 irreparable harm.")) (emphasis added).

12 The alleged harm is purely monetary. It is not enough to simply allege that Thu-Le "is
13 not qualified to serve as a trustee over a separate trust consisting of approximately \$8,000,000.00
14 in assets." The Appellant must show that he or the Trust will suffer *irreparable* harm if the
15 decanting is allowed. Monetary harm is neither irreparable harm, nor sufficient to support the
16 Appellant's request for a stay. See Wisconsin Gas Co., 758 F.2d at 674.

17 Finally, upon the decanting of FESR, Thu-Le intends to continue the charitable purpose
18 of FESR with her new decanted charitable trust, thus there is no harm to the intended charitable
19 beneficiaries of FESR.

20 **5. The Charitable Beneficiaries and Respondent are the Only Parties**
21 **Harmed if a Stay is Granted.**

22 The intended charitable beneficiaries and Thu-Le are the only parties harmed if a stay is
23 granted. Thu-Le and the intended charitable beneficiaries are harmed by being limited to the
24 \$5,000 Thu-Le can distribute to a charitable beneficiary. Certain charitable projects require
25 more than \$5,000 to achieve its full charitable potential and the \$5,000 monetary limit severely
26 limits the charitable purpose of FESR. The \$5,000 limit is a product of the MSA and the parties'
27 contentious divorce, and was never a part of the charter of FESR.

28 ///

1 The intended charitable beneficiaries and Thu-Le will also suffer irreparable or serious
2 injury due to the Appellant's investment strategy of the Trust funds. The Appellant has been
3 investing the Trust assets under the "most aggressive" strategy and was also trading on margin
4 accounts which made the investments even riskier. Due to the current stock market volatility,
5 the intended charitable beneficiaries and Thu-Le are at risk of serious financial injury. This
6 aggressive investing behavior has been addressed by Thu-Le but continues. See Counsel's letter
7 dated January 17, 2018 attached as Exhibit 1. Although the loss to the new decanted trust
8 includes monetary damages, the inability of the decanted Trust to meet its charitable purpose,
9 damage to its reputation in the communities it serves, as well as its inability to make distributions
10 to its intended charitable beneficiaries which has historically included: financially disadvantaged
11 recipients of micro loans to become self-reliant; projects to build restroom facilities in open
12 marketplaces and schools; providing warm clothes to financially disadvantaged children;
13 assisting flood victims; providing financial assistance to the elderly and disabled; collaborating
14 with other organizations to bolster common heritage ties and to build the foundation for
15 sustainable improvement in the livelihood of communities; and collaborating with other
16 organizations on Anti Human-Trafficking projects to prevent human trafficking and to assist the
17 victims of human trafficking.

18 **B. IF THE COURT FINDS A STAY IS NECESSARY, THE COURT SHOULD**
19 **REQUIRE SEPARATE ACCOUNTS FOR THU-LE AND THE**
20 **APPELLANT'S PORTIONS FOR A RELIABLE ALTERNATIVE TO A**
21 **BOND.**

22 The purpose of a supersedeas bond in this matter would be to protect Thu-Le and the new
23 decanted charitable trust—not the Appellant. See Nelson v. Heer, 121 Nev. 832, 835-36, 122
24 P.3d 1252, 1254 (2005), *as modified* (Jan. 25, 2006). A supersedeas bond provides security for
25 the prevailing party to collect on the judgment if it is affirmed, "by preserving the status quo and
26 preventing prejudice" to the prevailing party arising from the stay. *Id.* When a judgment is
27 stayed pending appeal, the court "is entitled to take appropriate action to preserve the status quo
28 or the effectiveness of its judgment." Wells Fargo Bank N.A. v. Rogers, 239 Ariz. 106, 110, 366
P.3d 583, 587 (Ct. App. 2016) *review denied* (Sept. 20, 2016). "In a practicable sense, what this

1 means is a superior court may ensure that, pending the appeal of the stayed judgment, the
2 appellee will not lose the benefits of its judgment and thereby suffer real, not hypothetical or
3 speculative, harm.” Id. The judgment in this case was to decant the Trust into two, funding each
4 trust equally. This is what ought to occur to effectuate this Court’s Order.

5 Nelson gives this Court the discretion to allow a “reliable alternative,” for security other
6 than bond that will “maintain the status quo and protect the judgment creditor pending an
7 appeal.” Nelson, 121 Nev. at 835-36, 122 P.3d at 1254. An alternative framework was proposed
8 by Appellant. See Motion for Stay, p. 9, lines 9-28. Appellant’s alternative is unacceptable to
9 Thu-Le as it was previously agreed to by the parties at the October 14, 2016 hearing before the
10 Probate Commissioner, wherein the Probate Commissioner inquired whether Thu-Le and
11 Appellant could work together on the scholarship program or whether a substantial bond be
12 required, both Thu-Le and Appellant had represented to the Probate Commissioner that they
13 agreed to work together on the scholarship program, yet the very next day On October 15, 2016,
14 Appellant held a meeting to remove Thu-Le as Co-Trustee. Additionally, the Appellant’s
15 alternate framework does not address the risk of harm caused by Appellant’s “most aggressive”
16 investment strategy.

17 In the event this Court is persuaded that the Trust will be endangered if the Trust is
18 decanted, Thu-Le proposes that the Trust assets be divided equally and Thu-Le’s portion be
19 placed in her separate FESR account and the Appellant’s portion be placed in his separate FESR
20 account, that only Thu-Le manage the investments for her portion held in her separate account,
21 that only Appellant manage the investments for his portion held in his separate account, that
22 Thu-Le may make charitable distributions from her portion of up to \$100,000.00 per year, that
23 Phung may make charitable distributions from his portion of up to \$100,000.00 per year, that
24 Phung cannot make any charitable distributions from Thu-Le’s portion, and that Thu-Le cannot
25 make any charitable distributions from Phung’s portion.

26 Ultimately, the status quo is still maintained if the \$100,000 annual restriction is imposed,
27 because the charitable distributions will continue to be made, and the assets are preserved from
28 both the Appellant’s perspective and Thu-Le’s perspective. Thu-Le’s proposed alternate

1 framework is the least restrictive to the parties and it alleviates Thu-Le's concerns of Appellant's
2 risky investment strategy that is being utilized on FESR's assets at this time. Alternatively, if
3 this Court is persuaded that pending the appeal the \$5,000 provision of the MSA ought to apply,
4 then this Court could limit both the original and decanted trusts to be subject to that limitation.

5 **III. CONCLUSION**

6 NRS 155.190 does not stay any order in a trust. Pursuant to NRS 155.195, this Court has
7 discretion whether to order a stay or not. The legislature's use of the word "may" makes it clear
8 that the granting of a stay is discretionary in titles 12 and 13 as the provisions apply to Trusts and
9 Estates. Accordingly, this Court has discretion to deny the stay, as well as, craft an alternative.

10 After weighing the factors set forth in NRAP 8(c), this Court should deny the stay of the
11 appealed Orders and allow FESR to be decanted. The Appellant has failed to demonstrate that a
12 stay is necessary to prevent irreparable harm during the pendency of his appeal, or that he will
13 likely prevail on the merits of his appeal. The only harm imposed by a stay is to the intended
14 charitable beneficiaries, the newly decanted charitable trust, and Thu-Le, not the Appellant.
15 Thus, the Motion for Stay ought to be denied.

16 Further, a stay is also not required to prevent any "squandering" of the assets during the
17 pendency of the appeal, because alternatively, if this Court decides to act in an abundance of
18 caution, this Court can order the division of the Trust assets equally and direct that Thu-Le's
19 portion be placed in her separate FESR account and the Appellant's portion be placed in his
20 separate FESR account, that only Thu-Le manage the investments for her portion held in her
21 separate account, that only Appellant manage the investments for his portion held in his separate
22 account, that Thu-Le may make charitable distributions from her portion of up to \$100,000.00
23 per year, that Phung may make charitable distributions from his portion of up to \$100,000.00 per
24 year, that Phung cannot make any charitable distributions from Thu-Le's portion, and that Thu-
25 Le cannot make any charitable distributions from Phung's portion. It is Court believes that the
26 foregoing limitation of \$100,000 per year is insufficient, then this Court may consider adding the
27 \$5,000 limit per donee, although the undersigned submits that such a limitation actually thwarts
28 the purpose of FESR.

1 Additionally, this Court should look to protect the decanted charitable trust and the
2 recipients of its grants such that this Court's Order is effectuated while the appeal is pending.
3 The granting of a stay will irreparably harm the Trust, its reputation, the Trustee's reputation and
4 will deny the recipients the keys to unlock their future and betterment of their society where they
5 reside.

6 Finally, in order to implement the actual decanting of the FESR or whatever this Court's
7 instruction may be, this Court's Order should include a clear instruction not only to the Parties,
8 but to Fidelity Investments, Bank of America, and any other entity holding assets of FESR so
9 that this Court's Order may be effectuated by the institutions holding assets belonging to FESR.

10 DATED this 21st day of February, 2018.

11 
12

13 Thu-Le Doan

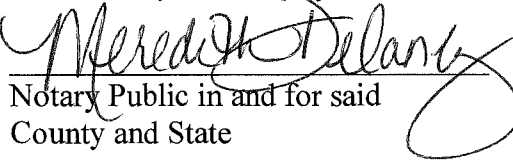
14 STATE OF NEVADA)
15)ss.
16 COUNTY OF CLARK)

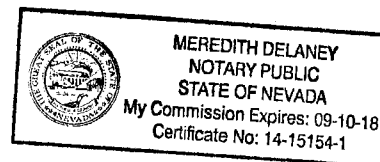
17 The undersigned, being first duly sworn on oath, according to law, deposes and says:

18 I am the Respondent in the foregoing Opposition; I have read the same and know the
19 contents thereof; and the same are true to the best of my own personal knowledge, except for
20 those statements made upon information and belief; and, as to those statements, I believe them to
21 be true.

22 
23 Thu-Le Doan

24 SUBSCRIBED AND SWORN to before me
25 this 21st day of February, 2018.

26 
27 Notary Public in and for said
28 County and State



1 Submitted by:

2 **GOLDSMITH & GUYMON, P.C.**

3 

4 Dara J. Goldsmith, Esq.

5 Nevada Bar No. 4270

6 Peter Co, Esq.

7 Nevada Bar No. 11938

8 2055 Village Center Circle

9 Las Vegas NV, 89134

10 Telephone: (702) 873-9500

11 *Attorneys for Thu-Le Doan*

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

Exhibit 1

GOLDSMITH & GUYMON

A Professional Law Corporation

Dara J. Goldsmith, Esq. ★
Marjorie A. Guymon, Esq. ★★
Peter Co, Esq. ★★★
Erin M. Houston, Esq.
Brooke A. Luna, Esq.
John F. Schneringer, Esq.

Also admitted in Arizona, California & Hawaii ★
Also admitted in Utah ★★
Also admitted in California ★★★

January 17, 2018

Via E-Mail: Joe@mushlaw.com; jcopp7116@gmail.com;

Joe Coppedge, Esq.
MUSHKIN CICA COPPEDGE
4475 S. Pecos Rd.
Las Vegas, NV 89121

Re: Vietnamese American Scholarship Fund and Fund for Encouragement of Self Reliance
Case No. P-16-089637-T and P-16-089638-T
Our File No. 1833-2

Dear Joe:

This letter is in regards to your recent inquiry on whether the parties can come to an agreement while an appeal is pending to stay the enforcement of the Court Orders granting the decanting of the VASF and FESR assets entered on December 28, 2017 ("Decanting Orders").

Our client, Thu-Le Doan ("Thu-Le"), will agree to an agreement with Doan L. Phung ("Phung") if the following conditions are met:

1. That the assets of the Trusts be divided equally and Thu-Le's portion be placed in separate accounts.
2. That only Thu-Le manage the investments for her portion held in her separate accounts.
3. That Phung may manage the investments for his portion held in his separate accounts.
4. That Thu-Le may make charitable distributions from her portion of up to \$100,000.00 per year.
5. That Phung may make charitable distributions from his portion of up to \$100,000.00 per year.
6. That Phung cannot make any charitable distributions from Thu-Le's portion.
7. That Thu-Le cannot make any charitable distributions from Phung's portion.

Joe Coppedge, Esq.
January 17, 2018
Page 2

Due to the fact that Phung changed the investment strategy of the two charitable Trusts to "most aggressive" and was also trading on margin accounts which made the investments even riskier, Thu-Le will only agree to an agreement if the above conditions are agreed to by the parties. We look forward to hearing from you.

Sincerely,

GOLDSMITH & GUYMON, P.C.


Dara J. Goldsmith, Esq.

DJG/pc

cc: Thu-Le Doan & Marshal S. Willick, Esq.

W:\DJG\AT\1833-2 Doan\1833-2.coppedge.ltr.1.17.18.wpd

P-16-089638-T In the Matter of the Trust of:
Fund for the Encouragement of Self Reliance

February 22, 2018 09:30 AM Motion to Stay

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Shell, Lorna

PARTIES PRESENT:

**Fund for the Encouragement of Self Reliance,
Trust, Not Present**

Thu Le Doan, Petitioner, Present

Dara J Goldsmith, Attorney, Present

Peter Co, Attorney, Present

Doan L Phung, Respondent, Present

L. JOE COPPEDGE, Attorney, Present

Michael R. Mushkin, Attorney, Present

JOURNAL ENTRIES

Mr. Mushkin argued to preserve the status quo during the appeal, that this was about the decanting and who had the right to decant, that there was a contract regarding disbursements, and that there had been no hearing or evidence to establish harm to continue operating. Mr. Mushkin further argued the opposing party had never actively managed the trust.

Ms. Goldsmith argued it would cause irreparable harm if Respondent was allowed to continue decanting to parties he selects, that her client had not been able to continue her 501(3)(c) giving, that the Respondent gives scholarships and that her client gives differently, that her clients wants to invest the money more conservatively, and that the money was currently invested in an aggressive funds.

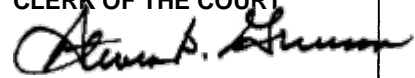
Following further arguments by counsel COURT ORDERED, Temporary Stay GRANTED until April 12, 2018 pending appeal; counsel to submit separate proposals to protect the assets and the Court will decide which one to implement; Hearing SET.

04/05/18 9:30 AM HEARING

INTERIM CONDITIONS:

FUTURE HEARINGS:

Apr 05, 2018 9:30AM Motion to Stay
Motion to Stay Proceedings on Order Shortening Time
RJC Courtroom 10D Sturman, Gloria



1 CODE: AOS
2 GOLDSMITH & GUYMON, P.C.
3 Dara J. Goldsmith, Esq.
4 Nevada Bar No. 4270
5 Email: dgoldsmith@goldguylaw.com
6 Peter Co, Esq.
7 Nevada Bar No. 11938
8 Email: pco@goldguylaw.com
9 2055 Village Center Circle
10 Las Vegas, Nevada 89134
11 Telephone: (702) 873-9500
12 Facsimile: (702) 873-9600
13 Attorneys for Thu-Le Doan,
14 Trustor of the FUND FOR
15 THE ENCOURAGEMENT OF SELF RELIANCE

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 In the Matter of the)
19) Case No. P-16-089638-T
20 FUND FOR THE ENCOURAGEMENT OF)
21 SELF RELIANCE) Department PC1
22)
23 An Irrevocable Trust.)
24)

25 AFFIDAVIT OF SERVICE

26 STATE OF NEVADA)
27) ss.
28 COUNTY OF CLARK)

29 Meredith Delaney, being first duly sworn, on oath, according to
30 law, deposes and says:

31 I am and was, when the herein-described mailing took place, a
32 citizen of the United States, over 18 years of age, and not a party
33 to, nor interested in, the within action.

34 On this 23rd day of February, 2018, I deposited in the United
35 States Mail at Las Vegas, Nevada, three (3) copies of the OPPOSITION
36 TO MOTION TO STAY PROCEEDINGS ON ORDER SHORTENING TIME thereon, each
37 enclosed in a sealed envelope, mailed regular mail, upon which first-
38 class postage was fully prepaid, addressed to:

1 Thu-Le Doan
2 c/o Marshal Willick, Esq.
3 3591 E. Bonanza Rd.,
4 Suite 200
5 Las Vegas, NV 89110

6 Office of the Attorney General
7 Carson City Office
8 100 North Carson Street
9 Carson City, NV 89701

10 Office of the Attorney General
11 Attn: Sandie Geyer
12 100 North Carson Street
13 Carson City, NV 89701

14 and there is regular communication by mail between the place of
15 mailing and places so addressed.

16 I also filed the OPPOSITION TO MOTION TO STAY PROCEEDINGS ON
17 ORDER SHORTENING TIME (Filed and E-Served on 02/21/2018) thereon,
18 electronically via ODYSSEY, the Court's electronic filing system,
19 pursuant to EDCR 8.05, and electronically served the following
20 parties:

21 Joe Coppedge, Esq.
22 jcopp7116@gmail.com
23 Attorney for Doan L. Phung

24 Michael Mushkin, Esq.
25 michael@mushlaw.com

26 These parties are deemed to have consented to electronic
27 service of all pleadings and other documents through their
28 registration with ODYSSEY, summons and subpoenas excepted.

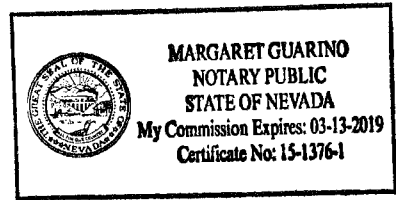
DATED this 23rd day of February, 2018.

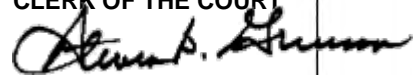
29 
Meredith Delaney

1 SUBSCRIBED AND SWORN to before me
2 this 23rd day of February, 2018.

3 Margaret Guarino
4 NOTARY PUBLIC in and for said
County and State.

W:\DJG\AT\1833-2 Doan\1833-2.FESR.aos11.wpd





1 Michael R. Mushkin, Esq.
2 Nevada Bar No. 2421
3 L. Joe Coppedge, Esq.
4 Nevada Bar No. 4954
5 **MUSHKIN CICA COPPEDGE**
6 4475 South Pecos Road
7 Las Vegas, Nevada 89121
8 (702) 386-3999 Telephone
9 (702) 454-3333 Facsimile
10 michael@mccnvlaw.com
11 jcoppedge@mccnvlaw.com
12 *Attorneys for Respondent,*
13 *Doan L. Phung*

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 In the Matter of the:

Case No.: P-16-089638-T

12 FUND FOR THE ENCOURAGEMENT OF
13 SELF RELIANCE,

Dept. No.: 26

14 An Irrevocable Trust.

15 **NOTICE OF SUBMISSION**
16 **OF PROPOSED ORDER**

17 Respondent, Doan L. Phung, by and through his counsel, Michael R. Mushkin and L. Joe
18 Coppedge of Mushkin Cica Coppedge, pursuant to the request of the Court, hereby submits his
19 proposed Order in regard to the hearing of February 22, 2018, a copy of which is attached hereto as
20 Exhibit A.

21 DATED this 30 day of March, 2018

22 MUSHKIN CICA COPPEDGE

23 
24 MICHAEL R. MUSHKIN, ESQ.

25 Nevada Bar No. 2421

26 L. JOE COPPEDGE, ESQ.

27 Nevada Bar No. 4954

28 4475 S. Pecos Road

Las Vegas, Nevada 89121

Attorneys for Respondent, Doan L. Phung

- 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

_____ d


An Employee of
MUSHKIN CICA COPPEDGE

EXHIBIT “A”

1 Michael R. Mushkin
Nevada Bar No. 2421
2 L. Joe Coppedge
Nevada Bar No. 4954
3 Michael R. Mushkin & Associates
4 4495 South Pecos Road
Las Vegas, Nevada 89121
5 (702) 386-3999 Telephone
(702) 454-3333 Facsimile
6 Michael@mushlaw.com
7 joe@mushlaw.com

8 *Attorneys for Respondent, Doan L. Phung*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11
12 In the Matter of the
13 FUND FOR THE ENCOURAGEMENT OF
SELF-RELIANCE
14
15 An Irrevocable Trust.

CASE NO.: P-16-089638-T

DEPT: 26

16 **ORDER GRANTING RESPONDENT, DOAN L. PHUNG'S**
17 **MOTION TO STAY PROCEEDINGS**

18 This matter came on for hearing on April 5, 2018 before the Honorable Gloria Sturman on
19 Respondent, Doan L. Phung's Motion to Stay Proceedings (the "Motion"). Respondent was present
20 and represented by Michael R. Mushkin and L. Joe Coppedge. Petitioner, Thu Le Doan was present
21 and represented by Dara Goldsmith and Peter Co. The Court, having reviewed the Motion to Stay
22 Proceedings and the Opposition finds as follows.

- 23 1. Petitioner has expressed concern over how the trust assets are invested;
- 24 2. Respondent has expressed the need to maintain the status quo pending a resolution
25 of the appeal filed herein;
- 26 3. This is a unique legal question and it is appropriate to have a stay pending a
27 resolution of the appeal filed herein;
- 28 4. A stay under this statute requires more than just a bond;

1 5. A bond is only part of the proposal, but this is not the type of a case where a bond is
2 appropriate;

3 6. The trust assets in the accounts at Fidelity have been frozen; and

4 7. Distributions from the FESR are to need people who work to be self-reliant and
5 organizations that help become self-reliant. Most distributions are in the form of challenge grants.
6 Recipients should do what they can to meet the challenge to receive the distribution.

7 Based on the foregoing findings, this Court orders this action shall be stayed pending the
8 appeal filed herein upon the following conditions,

9 1. The trust assets in accounts at Fidelity shall be unfrozen immediately upon the entry
10 of this order;

11 2. Respondent shall post a cash bond in the sum of \$10,000.00

12 3. The trust assets in accounts at Fidelity shall not be transferred and shall remain in the
13 same accounts;

14 4. Each account of the trust assets shall be divided into two sub-accounts of equal parts.
15 One sub-account shall be invested in conservative investments as recommended by Petitioner. The
16 other sub-account shall be invested as determined by Respondent;

17 5. The conservative sub-accounts shall be transferred to Petitioner's decanted trusts in
18 the event the Order is affirmed on appeal;

19 6. Respondent shall continue to manage the trust accounts as decreed by the court order
20 of April 12, 2012;

21 7. Distributions from the trust accounts shall continue as historically performed and
22 shall be drawn from both parts of the trust assets equally;

23 8. Both parties shall continue to adhere to the goals of the trust charters, receiving and
24 reviewing applications by students, scholars, schools, education programs of civic and civil groups,
25 needy people who try to be self-reliant and organizations that help people be self-reliant.

26 9. All applications for distribution from the trust assets received by either party shall be
27 provided to the other party with the required documentations. Reviews shall be conducted within
28 two (2) weeks as historically performed.

1 10. In the event Petitioner seeks approval of an application for distribution from the
2 trust, she shall submit such application for distribution through counsel, which shall be reviewed by
3 the Board of Trustees within two (2) weeks. If the Board of Trustees does not provide a written
4 objection to the application within two weeks through counsel, then the application for distribution
5 will be deemed approved. If the Board rejects the application, and if the parties, acting through
6 counsel, cannot resolve the issue, the issue can be brought to the court on an expedited basis for
7 resolution.

8 11. Decisions to approve applications by the Board or by Respondent shall be made
9 known to Petitioner through counsel. Since time is of the essence, Petitioner shall provide any
10 written objection within one (1) week of receipt through counsel. If Petitioner does not provide a
11 written objection to the application within one (1) week through counsel, then the application will
12 be deemed approved. If there is an objection and if the Board does not provide a response to the
13 objection within one (1) week through counsel, then the objection will be deemed concurred. If the
14 Board provides a timely response to Petitioner's objection and if the parties, acting through counsel
15 cannot resolve the issue, the issue can be brought to the court on an expedited basis for resolution.

16 IT IS SO ORDEERED.

17 Dated this _____ day of April, 2018

18
19 _____
20 DISTRICT COURT JUDGE

21 Submitted by:
22 MICHAEL R. MUSHKIN & ASSOCIATES

 Approved as to form and content by:
 GOLDSMITH & GUYMON, P.C.

23 By: _____
24 Michael R. Mushkin, Esq.
25 Nevada Bar No. 2421
26 L. Joe Coppedge, Esq.
27 Nevada Bar Number 4954
28 4495 South Pecos Road
 Las Vegas, Nevada 89121
 Attorneys for Respondent, *Doan L. Phung*

 By: _____
 Dara J. Goldsmith, Esq.
 Nevada Bar No. 4270
 Peter Co, Esq.
 Nevada Bar No. 11938
 2055 Village Center Circle
 Las Vegas, Nevada 89134
 Attorneys for *Thu-Le Doan*

1 TRANS

FILED
NOV 10 2016

2 ORIGINAL

Ann L. Johnson
CLERK OF COURT

3
4 EIGHTH JUDICIAL DISTRICT COURT
5 FAMILY DIVISION
6 CLARK COUNTY, NEVADA
7
8
9

10 In the Matter of the Trust of:) CASE NO. P-16-089637-T
11 VIETNAMESE AMERICAN) DEPT. PROBATE
12 SCHOLARSHIP FUND.)
13 _____)

14 In the Matter of the Trust of:) CASE NO. P-16-089638-T
15 FUND FOR THE ENCOURAGEMENT) DEPT. PROBATE
16 OF SELF RELIANCE.)
17 _____)

18 BEFORE THE HONORABLE WESLEY YAMASHITA,
19 COMMISSIONER

20 TRANSCRIPT RE: PETITION HM

21 FRIDAY, OCTOBER 14, 2016
22
23
24

1 APPEARANCES:

2 Petitioner: THU LE DOAN

3 For Petitioner: DARA GOLDSMITH, ESQ.
4 PETER CO, ESQ.
5 Goldsmith & Guymon PC
 2055 Village Center Circle
 Las Vegas, Nevada 89134

6 MARSHAL WILICK, ESQ.
7 Willick Law Group
 3591 East Bonanza Road #200
 Las Vegas, Nevada 89110

9 Respondent: DOAN PHUNG

10 For Respondent: MIKE MUSHKIN, ESQ.
11 Michael R. Mushkin & Associates
12 4475 South Pecos Road
 Las Vegas, Nevada 89121

13 L. JOE COPPEDGE, ESQ.
14 3800 Howard Hughes Parkway
 Las Vegas, Nevada 89169

15

16

17

18

19

20

21

22

23

24

1 LAS VEGAS, NEVADA

FRIDAY, OCTOBER 14, 2016

2 P R O C E E D I N G S

3 (THE PROCEEDING BEGAN AT 10:31:41.)

4 THE COURT: I'm going to hear pages 99 and 100 together,
5 which are the Vietnamese American Scholarship Fund and the
6 Fund for the Encouragement of Self Reliance.

7 MR. MUSHKIN: Good morning, Your Honor. Mike Mushkin and
8 Joe Coppedge on behalf of Respondent.

9 MS. GOLDSMITH: Good morning, Your Honor. Dara
10 Goldsmith, Bar No. 427, on behalf of Thu Le Doan. Along with
11 me is Attorney Peter Co.

12 Your Bar No?

13 MR. CO: 11938.

14 MR. WILLICK: Marshal Willick, Bar No. 2515.

15 THE COURT: And, Mr. Willick, you're here as?

16 MR. WILLICK: I am here as Thu Le Doan's primary counsel
17 in the other pending matters that have been raised in the
18 opposition --

19 THE COURT: Okay.

20 MR. WILLICK: -- to the pending request.

21 THE COURT: Okay.

22 (Indicating) This side, you don't come to discovery
23 often.

1 I've read everything through, okay. So what I need
2 to know -- I guess your position is this is a revocable and
3 you can't do a darn thing to it, and we needed to go forward
4 and get this thing changed --

5 UNIDENTIFIED SPEAKER: (Indiscernible) the Court.

6 THE COURT: -- (indiscernible) is.

7 I mean, do you understand the principles of
8 decanting? Do you understand The Court can make even
9 irrevocables changeable upon proper conditions and proper
10 reasons why?

11 MR. MUSHKIN: Certainly, Your Honor, but those reasons
12 obviously haven't been met.

13 Today, extensionally what you have is an injunction
14 without bond. And the...the trust by its charter cannot be
15 modified under -- obviously under certain standards of law it
16 can. The statute calls for an evidentiary hearing in order
17 for this matter to be resolved. So I believe that's what
18 ultimately The Court would need to do today.

19 THE COURT: Okay.

20 MR. MUSHKIN: And then the --

21 THE COURT: And I understand. Okay? But to me -- let me
22 just tell you where I'm going and leading at this point.
23 Okay?

24

1 MR. MUSHKIN: Sure.

2 THE COURT: It is obvious to me, because they got
3 divorced, that these parties, at this point, unworkable
4 together.

5 Now, you may have some sessions and there's claims
6 every which way, and I -- we're not going to get into that
7 part. I'll reserve that for Mr. Willick down at the Family
8 Court. Okay?

9 Part of the function of any kind of a trust such as
10 this is the ability to function together to achieve its
11 charitable purposes. Okay?

12 MR. MUSHKIN: Absolutely.

13 THE COURT: And, while not, because it was formed in
14 Tennessee, not technically community, but it was at least --
15 has a marital aspect to it, a marital-interest aspect to the
16 (indiscernible).

17 MR. MUSHKIN: None whatsoever.

18 THE COURT: Okay.

19 MR. MUSHKIN: There is no marital aspect whatsoever.

20 Your Honor, by law, upon the creation of the trust
21 some six years ago, the last contribution was over six years
22 ago. I believe the first was far before that. But there is
23 no community property in this matter.

24

1 When community property is given to a trust, it
2 ceases to become community property as a matter of law and
3 becomes trust property. And so the trust owns these assets.
4 There's no community aspect to it whatsoever. There's no
5 question that over the course of time the community property
6 of the marriage was used to fund the trust. That's not --

7 THE COURT: Okay.

8 MR. MUSHKIN: -- an argument.

9 THE COURT: Okay. Yeah --

10 MR. MUSHKIN: One less comment, Judge.

11 THE COURT: All right.

12 MR. MUSHKIN: So the trust by its terms calls for not
13 more than five trustees. For the last few years, my client's
14 tried to appoint another trustee so there wouldn't be this
15 problem. This is a problem that's created by the petitioner.
16 There is no problem. There is no merit. These same
17 allegations were raised in the Family Court. So now they've
18 come because they were --

19 THE COURT: Well --

20 MR. MUSHKIN: -- not successful there --

21 THE COURT: -- because the trust --

22 MR. MUSHKIN: -- they to come to you.

23 THE COURT: -- because this is the proper forum for
24

1 trusts.

2 MR. MUSHKIN: For administration issues.

3 THE COURT: Right.

4 MR. MUSHKIN: And my position to The Court would be that
5 it's a real simple fix. We need a second tr -- I mean, a
6 third trustee.

7 THE COURT: But why -- if we don't want to do it -- and
8 you're worried about what each is doing that may disqualify
9 the entire trust, why don't we just make it simple and say we
10 don't want to it in each oth -- we all just need -- because we
11 had our divorce, don't want to deal with each other, why don't
12 we just go ahead and split this thing and allow each other to
13 decant and have their own control of their own thing and then
14 we don't have to deal with each other.

15 MR. MUSHKIN: Because that's --

16 THE COURT: I mean, why do you want to keep yoke to each
17 other.

18 MR. MUSHKIN: Your Honor, I don't want to yoke to the
19 trustee. The petitioner could appoint someone else to act as
20 trustee if they don't want to be around the other trustee.
21 They have the right during their lifetime to appoint another
22 trustee.

23 These trusts were created to be administered by my
24

1 client as a trustee, by his ex-wife as a trustee, and for
2 other trustees. Under no circumstances do we believe there is
3 merit, either in law or in fact, to decant or to somehow
4 separate them. I've never heard of such a thought when the
5 easiest solution of all is just to appoint a neutral trustee.
6 Simple.

7 THE COURT: I don't see that as being easy. You're still
8 going to have the conflicts. I -- again, I still don't
9 understand why anybody, when they have the opportunity to
10 fully divest and get apart, why you'd want to maintain any
11 kind of connection.

12 MR. MUSHKIN: Well, I --

13 THE COURT: (Indiscernible.)

14 MR. MUSHKIN: Certainly.

15 MS. GOLDSMITH: Your Honor, I absolutely agree with you.
16 I'm -- I think that, honestly, the easiest solution in this
17 case is (indiscernible) wants to do it the easiest is to
18 appoint one non-profit to one side, one trust to one side, and
19 one trust to the other side, and allocate the assets evenly
20 and have them go on their merry way if they want to change the
21 names.

22 They have the 501(c)(3) status that they can retain.
23 They can either retain the name or change the name.
24

1 My client is amenable to any of these solutions,
2 whether it's decanting into a new trust, having her create a
3 new trust and -- or, you know, probably the easiest is to
4 allocate one to each. They have their 501(c)(3) status.
5 She's entitled to decant. These were -- these are assets that
6 are sitting there. They're both the trustors. The -- I
7 absolutely agree that there's no reason to appoint somebody
8 else to help these people live out the mission of charitable
9 giving that they both intended to have and probably still do
10 have with regard to their lifetime.

11 Allow them to both take their charitable trusts and
12 go ahead and do their charitable giving and not waste time,
13 money or resources with regard to limiting what's going to the
14 charity to fight out any type of personal issues they have
15 between themselves.

16 The reality is the issue about the number of
17 trustees. That's easily solvable by each of them. And, in
18 fact, I would argue to you that it's been waived because
19 there's been no change since the resignation in 2011 with
20 regard to the other two trustees in the other trust, which --
21 one which is created under Nevada Law hasn't had trustees,
22 hasn't had additional trustees.

23 So the mechanism is, these people have -- that's
24

1 been operated individually for their giving and it does not
2 make sense for them to be required to bring someone in neutral
3 who's going to be playing, you know, officer of the court or
4 march back before Your Honor on an ongoing basis. There's no
5 reasonable basis not to decant these trusts and allow these
6 people to go on with their individual charitable giving.

7 MR. MUSHKIN: Your Honor, if I could. The reply is kind
8 of unique, because they apply sort of abandons all of the mud
9 that was thrown on the wall, and says, well, there doesn't
10 need to be any discovery, there doesn't need to be any
11 evidence taken. That's not the standard of law. And then to
12 get to decanting, to get to some kind of split, there has to
13 be evidence, there has to be something with which to base it
14 upon. And, respectfully, all this is is a retread of issues
15 that were brought up in the Family Court that were disproven.

16 THE COURT: Okay.

17 MR. MUSHKIN: So we vehemently deny --

18 UNIDENTIFIED SPEAKER: (Indiscernible) waiting.

19 MR. MUSHKIN: -- every single factual allegation they've
20 made.

21 THE COURT: But again, okay, I hope you understand that
22 one of the reasons -- and I could care less who gave what to
23 whom, okay? To me it's obvious that the administration of
24

1 this trust is at loggerheads. Even if they -- and I'd be
2 (indiscernible) hard-pressed to find a neutral that they can
3 both agree upon who's going to be then, going to have to go,
4 oh, geez, it's (indiscernible) do here, and (indiscernible)
5 the full circumstances and the weight of it all, or they
6 might, well, man, I've got to get somebody -- some assistance
7 or -- yeah. It just -- just to me it just says, why not --

8 MR. MUSHKIN: Because -- I'm sorry, Judge.

9 THE COURT: -- why not just split things and just say --

10 MR. MUSHKIN: Because they have no right.

11 THE COURT: -- you go your way, you go their way.

12 MR. MUSHKIN: There's no law, there's no fact, there's no
13 right to just say, let's just split them. It's not community
14 property, Judge. They're not. They don't have a legal right
15 to that.

16 Now, sometimes in life we want to take the easy way
17 out. But if the easy way out is not the right way, then we
18 have a problem. I can name at least one -- and I'm not
19 prepared to argue the entire case today, Judge, because I
20 think we need to put on evidence -- but I can name one very
21 serious reason. When these trusts were formed years and years
22 ago tax benefits were taken. And if you were to now put them
23 in separate administration and one of the trusts were somehow
24

1 used improperly and there were tax consequences, those tax
2 consequences would go to someone you have divested of any
3 ability to manage or watch the trust. And he would then be
4 dependent upon the goodwill, as would she be dependant upon
5 the goodwill of the other trust. That's not the facts.

6 The facts are they're both trustees, they both enjoy
7 a right to appoint during their lifetime. And if they appoint
8 trustees, then if there is a real dispute --

9 THE COURT: But, I mean, I know --

10 MR. MUSHKIN: -- (indiscernible) trustees can handle it.

11 THE COURT: -- I know you got all this thing. Why? Why
12 do you want to keep together? I just don't understand that.

13 MR. MUSHKIN: Because --

14 THE COURT: And yet you make the stand, you say, let's
15 just get -- let's just literally cut the sheets and go away
16 from each other, we don't have to deal with each other
17 anymore, we don't want to deal (indiscernible) more. It just
18 seems to me, why do you want to keep doing it?

19 MR. MUSHKIN: Because that was the mission of my client
20 when he created these trusts, to be able to manage these
21 assets for the benefit of charities.

22 Now, I don't want to start making factual
23 allegations, Your Honor, but we have information that there's
24

1 already been a gift problem done by the petitioner. I don't
2 want to spend a lot of time explaining it to you now, but
3 there was a gift given from one of these trusts to another
4 trust that she's the chairman of. Now there's suspicion that
5 the way that gift was used by that trust inappropriate. It's
6 not the proper forum, that trust is not before The Court. But
7 we have our reasons and we have a right. There simply is not
8 cause to do this. There simply is not cause to say, no more
9 gifts can be given.

10 Just as an example, Judge, there's sixty applicants,
11 approximately sixty applicants this go-around. Petitioner
12 trustee hasn't attended the last two meetings. We just move
13 on. If she chooses not to participate, we have --

14 THE COURT: Because of --

15 MR. MUSHKIN: -- to move on with our purpose.

16 THE COURT: -- because of the atmosphere there or knowing
17 that you (indiscernible) end up arguing, why wouldn't she not
18 show up? That shows me more of a reason why we -- this is
19 just administratively --

20 MR. MUSHKIN: Well, but you're --

21 THE COURT: -- impossible to --

22 MR. MUSHKIN: -- you're hearing one side --

23 THE COURT: -- (indiscernible).
24

1 MR. MUSHKIN: -- Judge. There's no allegation on our
2 side that there's a problem working with the petitioner. This
3 petitioner had the same issues in Family Court.

4 THE COURT: Well, I understand that. But even if it's
5 perceived -- I mean --

6 MR. MUSHKIN: No, Judge.

7 THE COURT: -- again, I just don't understand why you
8 want to stay together. I don't want --

9 MR. MUSHKIN: Your Honor --

10 THE COURT: -- to hear this (indiscernible).

11 MR. MUSHKIN: -- my client is adamant that he wants to
12 maintain his status as trustee in both trusts so that he can
13 see that there's proper administration of both trusts. He was
14 the grantor. He was the one that worked for this money. It
15 was community property when it was submitted. There was a
16 divorce. And there is no authority for the relief that they
17 seek. There simply is no statutory authority, there's no case
18 law authority.

19 The only thing that I can see that This Court is
20 compelled to do is take evidence and let them prove-up these
21 allegations. Because we will be able to show you clearly and
22 convincingly that they are false allegations only trying to
23 cause harm, not good. Not trying to protect the charitable
24

1 purpose, trying to cause harm to the trustee.

2 So respectfully, Judge --

3 THE COURT: So your understanding is he's going to assert
4 rights to the entire corpus of the trust as opposed to saying
5 we each have rights to -- fifty percent undivided, of course,
6 but we have --

7 MR. MUSHKIN: Your Honor --

8 THE COURT: -- claims (indiscernible) --

9 MR. MUSHKIN: -- neither one of these parties have any
10 right to the corpus. They are charitable, irrevocable trusts.
11 The trusts own the property. There is no community interest.
12 There is no authority to give one to the one and one to the
13 other. The authority would have to be that one trustee acted
14 in bad faith, reached his fiduciary duty or her fiduciary
15 duty, then The Court could take some sort of action.

16 I just don't quite understand how you retread an
17 argument made in Family Court and come to the conclusion that
18 we're going to give one trust to one and one trust to the
19 other. Respectfully, Judge, I understand the personalty side
20 to it. But what if that's not the truth, what if that's a
21 one-sided argument?

22 MS. GOLDSMITH: And, Your Honor, if I may. These are
23 trusts that were established by both of them. He's not the
24

1 sole trustor, he's not the sole grantor. It was established
2 by both of them. It was established with marital assets back
3 --

4 THE COURT: But he was also given management and
5 trusteeship.

6 MS. GOLDSMITH: He was given management and trusteeship,
7 and that was -- but this is an issue that, as you know,
8 oftentimes the Family Court at -- you know, prefers that these
9 issues come before This Court as the appropriate court to deal
10 with trust issues. This Court clearly has the ability to
11 decant these trusts. There --

12 I don't believe that you need to have an evidentiary
13 hearing to assert that the -- you know, whether they get along
14 or don't get along. The reality is, both of these trustees --

15 THE COURT: So why did he raise that in his petition
16 then? I mean, if -- I mean (indiscernible) he did this and he
17 did that, but that's not --

18 MS. GOLDSMITH: She didn't --

19 THE COURT: -- a basis for --

20 MS. GOLDSMITH: -- she can't get along. But I don't
21 think we need to have an evidentiary hearing to show that they
22 can or cannot get along.

23 The fact that one party perceives that they don't
24

1 get along I don't think you have to disprove that. I think
2 that the issue is, looking at the greater good and the
3 charitable giving, both of these people clearly have
4 charitable intent, that whether you want to go ahead and push
5 down the assets so they can have -- decant them into separate
6 trusts, clearly This Court has authority to do that. It
7 doesn't require that there be an evidentiary hearing with
8 regard to the issues that Mr. Mushkin is addressing, the fact
9 that she perceives that these issues are there and that it's
10 an issue that needs to be addressed in order to have the
11 management of the charitable giving continue.

12 This Court definitely has jurisdiction, despite the
13 fact -- I mean, if we're going to have an evidentiary hearing,
14 I think that it's difficult to put -- to envision that the
15 solution would be to bring others in to manage this trust.

16 I think the solution at the end of the day is going
17 to be either to have new trusts created, decant these trusts,
18 or allocate the trusts and the assets among the two trustors
19 who created these trusts for charitable giving to provide
20 scholarships, to provide people the resources to become self-
21 reliant, to address the concerns that these people have had
22 over the years.

23 The fact that Mr. Mushkin's client believes that
24

1 he's the one who generated these monies and he's the one who's
2 entitled to making the allocations only makes it more clear
3 why my client is not comfortable attending these meetings. My
4 client is not in a position where she feels she can
5 participate safely.

6 She's had issues with regard to -- any whether
7 perception or reality --

8 THE COURT: I don't even want to get into that. Okay.
9 And my --

10 MS. GOLDSMITH: And I don't think you need to. I'm just
11 addressing -- because I think that Mr. Mushkin was raising
12 these issues. I think you clearly have the ability to do
13 this.

14 THE COURT: Okay.

15 MR. MUSHKIN: Very briefly, Judge?

16 THE COURT: I'm ready to --

17 Does Mr. Willick got some comment or --

18 MR. WILLICK: I did. The only reason I'm here, Your
19 Honor, is in case a false representation was made as to the
20 course of conduct in the Family Court. And when I heard it,
21 and with respect, Mr. Mushkin wasn't there, I was only going
22 to interrupt for clarity of the record.

23 The image in the opposition about how wonderful and
24

1 giving and cooperative Mr. Phung is is simply false. If that
2 was anything close to an accurate depiction, we wouldn't have
3 court minutes from a year ago talking about, at great length,
4 continuing discussion of Defendant's abuse of the charities
5 and potential liability to my client (indicating), then I
6 wouldn't be sitting on nine hundred thousand dollars in my
7 trust account that he's already been sanctioned --

8 THE COURT: Okay.

9 MR. WILLICK: -- for what happened in that case.

10 My point is, they cannot agree as to which villages
11 should get things. He won't allow charities to --

12 THE COURT: Yeah. And I understand. Okay? And I
13 understand once a divorce occurs, frankly, to get spouses to
14 agree on hardly anything -- ex-spouses I should say -- is
15 practically impossible.

16 Now, I'm going to put this in form of Report and
17 Recommendation just to see if the Judge will uphold me. But
18 I'm going to find that I take jurisdiction of these trusts. I
19 will recognize and confirm trustees.

20 I will state that ultimately because the
21 administrative issues, the functional purposes of the trust
22 really can't be accomplished. And that in order to accomplish
23 and not have to worry about what each side is doing, and each
24

1 side may or may not be controlling over, that it is
2 appropriate to decant. I will say that I will -- my
3 recommendation is I would decant into a new one on this side
4 (indicating). This side (indicating) make choices
5 (indiscernible) decant or retain the old one. Okay? The...

6 I think is it also important that both sides --
7 taxes that -- (indiscernible) a long time ago. But the
8 question may be that I think that also needs to be an
9 understanding that if one side does something that it violates
10 the charger, so to speak, and thus causes potential tax affect
11 upon the other party, that they are to indemnify and to make
12 good if it does come about.

13 MR. MUSHKIN: And you're doing this without an
14 evidentiary hearing, Judge?

15 THE COURT: I am -- I'm saying I find that it's just
16 unworkable. The way it is right now is unworkable. And the
17 (indiscernible) be accomplished. I believe that it's
18 sufficient reason for me to do this. So -- and I'm going to
19 do that on based on a Report and Recommendation so that you
20 may explain these to the Judge to see if she will or not so
21 agree.

22 MS. GOLDSMITH: Your Honor, while the Report and
23 Recommendation is pending and waiting to come into order, will
24

1 you leave in affect the order that no action be taken with
2 regard to either of the charities?

3 MR. MUSHKIN: If you do that --

4 MS. GOLDSMITH: As set forth in your prior order.

5 MR. MUSHKIN: -- if you do that, Your Honor, I would
6 request bond in the amount of sixteen million dollars. That's
7 what's in these trusts. This is just -- and I want The Court
8 to understand what's pending right now.

9 There's sixty applications. Two things, Judge,
10 before you finish. What I wanted to say before was, if you
11 were to take evidence, the evidence would show that all of the
12 work for all of the time on all -- both of these trusts has
13 been done by my client. That the petitioner's been a passive
14 participant. That's what the record would show.

15 The record would also show that the recommen -- the
16 allegation that was just raised, that they can't agree on what
17 village is a completely false allegation because her village
18 has received substantial gifts.

19 And finally, that there are sixty applications
20 waiting for scholarships, and this is the sixth year of the
21 scholarship program. So if you stop it, then for whatever
22 period of time that this matter is going to be involved in the
23 litigation, then no charitable purpose can take place. I

24

1 don't think that's what The Court wants and I don't think
2 that's appropriate. If they want to stop the good then they
3 must bond it, because we've got sixty people that are waiting
4 for their scholarships. This is just --

5 THE COURT: Well, I understand.

6 My question is, if these are legitimate scholarships
7 and whatever else, then we ought to proceed with
8 (indiscernible) continuing of that program. And I need to
9 understand that part. Okay?

10 MS. GOLDSMITH: Yeah. Your Honor, I think it would be
11 necessary for us to review those scholarship applications and
12 to make that determination. I don't believe that they've been
13 provided.

14 MR. MUSHKIN: They have. They've been provided just like
15 every other year, Judge.

16 THE COURT: Okay. I will stay it, okay, that given the
17 direction right now that they're to use all caution, I will
18 say also that as of this point, if he wishes to grant any
19 scholarships that may come out of what ultimately may be split
20 as his half.

21 (Indiscernible) that your percentages are applied in
22 and all that kind of thing. But at this point, okay, that's
23 what I'm going to say.

24

1 MR. MUSHKIN: And you're going to do that without a bond
2 being posted?

3 THE COURT: That -- they are to encourage and to look at
4 if they are continuation of scholarships, okay, then they are
5 -- I think that part needs to be looked at. If it's just
6 money given for re -- I don't know (indiscernible), but it's
7 (indiscernible) issues, okay, and then genuine scholarship
8 issues, then those need to be examined and to be given and
9 continuing. Anything that other nature, because of the sides
10 here I cannot issue any kind of injunction without some type
11 of a bond. Okay?

12 So the question is, can we work together in
13 determining or am I going to have to require a substantial
14 bond...in the interim?

15 MR. COPPEDGE: If I can, Your Honor...

16 MS. GOLDSMITH: Your Honor, I'd ask that my office be
17 provided with a copy of the scholarship applications that are
18 pending and we'll see if we can reach an agreement on those.
19 An alternative would be to allocate all those distributions to
20 his portion -- his half of the equation and have them
21 allocated from his side of the charitable trusts. That would
22 work as well.

23 MR. COPPEDGE: If I understand, Your Honor, I think the
24

1 process is that Dr. Phung receives applications. It's not
2 just scholarships. But he receives applications for donations
3 every year.

4 THE COURT: Sure.

5 MR. COPPEDGE: He goes through them and then he reviews
6 them and then he decides who's going to get what from those
7 applications. And each year he's provided information to the
8 petitioner each year, and that's been the process.

9 And so as part of his review, we would provide that
10 to them again this year and allow them to like review the
11 petitions or the requests --

12 THE COURT: Okay.

13 MR. COPPEDGE: -- and then --

14 THE COURT: I think at this point, since we only have the
15 two and we're sitting with two, scholarship program continues
16 but it must be agreed upon by both.

17 MR. COPPEDGE: So if I understand, we would complete the
18 review of the applications, we'd submit to them, and then they
19 would say yes or --

20 THE COURT: And they must look at it honestly, without
21 partiality, and give a review if it is acceptable. And I --
22 and for the most part, the continuation of the scholarship-
23 type things and I see no reason to lie.

24

1 MS. GOLDSMITH: And, Your Honor --
2 MR. MUSHKIN: If we have a problem --
3 MS. GOLDSMITH: -- Your Honor --
4 MR. MUSHKIN: -- we'll bring it back to you --
5 THE COURT: Yes.
6 MR. MUSHKIN: -- Judge?
7 THE COURT: Yes.
8 MS. GOLDSMITH: Your Honor, I think that they -- not just
9 the applications that are approved by Dr. Phung should be
10 given to my client. My client should receive copies of all
11 applications, because she may have an application that he has
12 that she would be inclined --
13 THE COURT: That's fair.
14 MR. MUSHKIN: We don't have a problem --
15 MS. GOLDSMITH: -- just the same way.
16 MR. MUSHKIN: -- with that, Judge.
17 THE COURT: That's fair.
18 MS. GOLDSMITH: I think that --
19 THE COURT: That's fair.
20 MR. MUSHKIN: We have no problem with that.
21 THE COURT: That's fair.
22 MR. WILLICK: May I ask that all of these go through her
23 (indicating) office rather than my office --
24

1 MS. GOLDSMITH: Yes.

2 MR. WILLICK: -- for purposes of this review?

3 THE COURT: Sure.

4 MR. WILLICK: Thank you, Your Honor.

5 MR. MUSHKIN: We have no problem with that either, Judge.

6 THE COURT: Okay.

7 MS. GOLDSMITH: I'll prepare the Report --

8 THE COURT: Ms. Goldsmith --

9 MS. GOLDSMITH: -- and Recommendation.

10 THE COURT: -- will prepare an R and R. You'll get a

11 chance to review it. You may submit it (indiscernible)

12 whether feel a need to.

13 MS. GOLDSMITH: And, Your Honor, will be two RAR's

14 because of the two cases.

15 THE COURT: Right.

16 MR. COPPEDGE: I thank The Court --

17 MR. MUSHKIN: And, Judge, do you just --

18 MR. COPPEDGE: -- for your time.

19 MR. MUSHKIN: -- consolidate things so we can do it all

20 as one?

21 MS. GOLDSMITH: They can't be. I don't think they can

22 (indiscernible) --

23 THE COURT: With trusts I like to keep them separate.

24

1 MR. MUSHKIN: Okay. We'll have two orders.
2 MR. WILLICK: Thank you for --
3 MS. GOLDSMITH: Report and --
4 MR. WILLICK: -- the time, Your Honor.
5 MS. GOLDSMITH: -- recommendations.
6 MR. MUSHKIN: Two Reports and Recommendations --
7 THE COURT: (Indiscernible.)
8 MR. MUSHKIN: -- (indiscernible) will submit it up.
9 Thank you, Your Honor.
10 THE COURT: (Indiscernible.)
11 MS. GOLDSMITH: Thank you, Your Honor.

12 (COUNSEL CONFER.)

13

14 (THE PROCEEDING ENDED AT 10:57:54.)

15


16 * * * * *

17 ATTEST: I do hereby certify that I have truly and
18 correctly transcribed the digital proceedings in the above-
entitled case to the best of my ability.

19

20

21

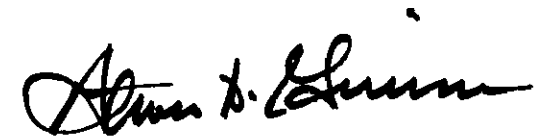


SHELLY AJOUB,
Transcriber II

22

23

24



CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 In the Matter of the Trusts of:)

8 VIETNAMESE AMERICAN)
9 SCHOLARSHIP FUND and FUND FOR)
10 THE ENCOURAGEMENT OF SELF)
11 RELIANCE)
12

CASE NO. P-089637
P-089638

DEPT. XXVI

13 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

14 WEDNESDAY, FEBRUARY 1, 2017

15 **RECORDER'S TRANSCRIPT OF PROCEEDING:**
16 **MOTION: RESPONDENT, DOAN L. PHUNG'S OBJECTION TO PROBATE**
17 **COMMISSIONER'S REPORT AND RECOMMENDATIONS AND REQUEST FOR**
18 **JUDICIAL REVIEW**

19 APPEARANCES:

20 For the Petitioner:

DARA J. GOLDSMITH, ESQ.
PETER KO, ESQ.

22
23 For the Respondent:

MIKE MUSHKIN, ESQ.
JOE L. COPPEDGE, ESQ.

24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

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

ALSO APPEARING:

MARSHALL S. WILLICK, ESQ.

1 WEDNESDAY, FEBRUARY 1, 2017 AT 10:14 A.M.

2
3 THE COURT: The Matter of the Trust for Vietnamese American
4 Scholarship Fund and 089638 which is the Trust for Encouragement of Self
5 Reliance.

6 MR. MUSHKIN: Good morning, Your Honor, Mike Mushkin, Bar No.
7 2421. With me is Joe Coppedge and our client, Dr. Phung.

8 THE COURT: Okay.

9 MS. GOLDSMITH: Good morning, Your Honor, Dara Goldsmith, Bar No.
10 4270, along with Attorney Peter Ko and our, our client Thu Le.

11 THE COURT: Thank you. All right. Have a seat. All right. Thanks. So
12 this is – there are two items, two matters. These are not consolidated. So
13 with respect to both of them it looks like – though they're pretty much the
14 same objection. And so, Mr. Mushkin, what – in objecting to the Report and
15 Recommendations that the Commissioner ruled on this without allowing any
16 discovery; what is it that you would look for in discovery?

17 MR. MUSHKIN: Your Honor, they have made a series of allegations
18 regarding the administration of the Trust and the ability for the Trust to
19 continue to be administrated. We believe we have provided evidence to the
20 Court that that is in dispute. We would like to take some discovery, specifically
21 the deposition of the other Trustee, and some interrogatories and request to
22 produce.

23 We believe 90 days is all that was required and then we'd ask for
24 an evidentiary hearing pursuant to 4.17(a). I would, from a procedural
25 standpoint, Your Honor, think it would make a lot of sense to combine the

1 cases, that really is no necessity to have them separate. And we would also
2 ask to combine the Petition for Declaratory Relief, which we filed, so that the
3 Court would just have everything, all at once, and we could be able to resolve
4 it. We think –

5 THE COURT: Now so, and because it was unclear to me if the – if the
6 discovery was intended to prove the conclusion that the Commissioner reached,
7 which is that the parties are unable to work together to administer these trusts
8 jointly and that they – that they should be just distributed, decanted and
9 reformed, whatever. Or was it a question of –

10 MR. MUSHKIN: Yes.

11 THE COURT: -- who should get how much out of which one, because
12 there's –

13 MR. MUSHKIN: No, these are charitable –

14 THE COURT: -- some applications about – about breach of fiduciary duty.
15 Were you looking to somehow rebalance the amounts in there or –

16 MR. MUSHKIN: No, Your Honor, this is not about dollars this is about
17 trustees.

18 THE COURT: Because yeah, that was one objection that was made, is
19 that this is really just relitigating the divorce and institute --

20 MR. MUSHKIN: No. And, and part of the problem, Judge, is that there's
21 the mixing of apples and oranges.

22 THE COURT: Uh-huh.

23 MR. MUSHKIN: These trusts have been around and made distributions
24 for probably 18, 20 years. And certain things have happened in the divorce
25 matter, they're on appeal; they stand on their own two feet.

1 THE COURT: Uh-huh.

2 MR. MUSHKIN: The Petitioner seeks to try and boot strap; somehow,
3 that argument that this is simply separate and apart. These are charitable trusts
4 that now, all of a sudden, because they couldn't get this issue handled in the
5 Family Court --

6 THE COURT: Uh-huh.

7 MR. MUSHKIN: -- they want to have this Court rewrite the Marital
8 Settlement Agreement and rewrite the trusts. And, with all due respect to the
9 Commissioner, the decision that was made is not supported by the record. And
10 the statute requires a hearing. You can't decant willy nilly, it's inappropriate.
11 So, we don't think any of their allegations are true. We tried to show that it
12 was done on an order shortening time and then shortened further; it's just
13 preposterous. It violates the rule on its face.

14 THE COURT: So the purpose is to get to the issue that he actually ruled
15 on which is, you know, can these parties -- well it seems to sort of beg the
16 question, I mean, the fact that they filed the petition seems to sort of say --

17 MR. MUSHKIN: Well --

18 THE COURT: -- we can't get along so.

19 MR. MUSHKIN: -- and they skipped right over the remedy that's written.

20 THE COURT: Okay.

21 MR. MUSHKIN: There's a contractual remedy.

22 THE COURT: Uh-huh.

23 MR. MUSHKIN: She has the right to appoint another trustee. There's
24 limits on what anyone can do without both approving. This was just a rush
25 and, and I don't know what else to say, except it was not well reasoned.

1 THE COURT: Okay.

2 MR. MUSHKIN: It's gone on for 20 years, Judge. All of a sudden they
3 can't be administered. It is administered. It was administered, and it will
4 continue to be administered. He – there was no injunction, there's no
5 extraordinary grounds for relief, just a rush through a shortened time to
6 somehow decant these trusts, because one party wants to.

7 THE COURT: Okay. Thank you.

8 MS. GOLDSMITH: Your Honor, the petitions were filed to decant, these
9 parties can't get along. It's fully appropriate. Nevada statute's clear, under
10 153, that we can decant, we can divide a trust. We have one of the best trust
11 statutes in the country and it's designed to do that. These two cannot get
12 along. If just looking at the dearth of the pleadings in this – these two files, it's
13 clear.

14 The reality is, these Trusts should be decanted into two separate
15 Trusts. We said if he – if he wants – if we want to decant them into – decant
16 each one into another one or, or separate them into two – whatever -- we'll,
17 we'll do whatever, but our client cannot work with their – with the other
18 Trustee. In fact, it's so clear that she can't work with the other Trustee.

19 I think the Petition for Declaratory Relief, which is not before you, it
20 makes that clear. Because there was an order issued by the Commissioner that
21 said, "There will be no more meetings." That was part of the OST, was to
22 prevent the meetings. And until this is finally resolved, you're not going to
23 have a meeting. Yet, they have a meeting and they remove her as a Trustee.

24 So it's clear, even if you just go back through the pleadings in this
25 case, the reality is, there's no reason to waste the assets of the Trust on these

1 individuals with regard to this issue. Each of them should just go – they both
2 have charitable concerns. Each of them should just go on their merry way.
3 And whether the Court says: Okay, we're going to decant each of these
4 Trusts, and 50 percent of the assets is going to go into a new Charitable
5 Remainder Trust created by Thu Le; and the other half is going to go into
6 another charitable trust created by Thu Le, that's fine, we'll – we'll do
7 whatever.

8 But the Commissioner did not err. It's clear these parties don't get
9 along. It's almost like no fault. If you say the Trustees – they can't be forced
10 to try to work together. And, in fact, our Trust Statutes are clear. They try to
11 argue that you don't – that you have to have the un – what was the word you
12 used? Un – I'm sorry. On the discretion. That – and the Trustees have the
13 discretion. It doesn't have to be unfettered or, or anything of that – I'm sorry –

14 MR. KO: Unlimited.

15 MS. GOLDSMITH: Unlimited to, to decant. This Court decants all the
16 time. If every married couple who created charitable trusts or islets or any
17 other irrevocable trust that this Court deals with on a daily basis, had to remain
18 as co-trustees with one another it, it would be an unmanageable situation. This
19 is certainly something that the Family Court can punt – can say, "We're not –
20 we're not going to address. We don't want to address all the difficult issues in
21 the Trusts. We don't deal with charitable trusts down here." This is
22 appropriately before this Court. The reasons for the OST were, in part, because
23 of the timing.

24 The Petition for Declaratory Relief is not – the timing of the meeting
25 being set for October 15th, so we needed a court date originally before that.

1 And, you know, it's clear that the other Trustee violated the order of this Court
2 by even having the meeting when there's a clear order that was entered by this
3 – that was filed on 10/5 that says" No, no meetings. No further actions until
4 there's – until this is resolved." This matter's not resolved. So the reality is,
5 we have a Report and Recommendation, the parties don't get along. To have
6 an evidentiary hearing to show that the parties don't get along. In fact, if there
7 was any question, I think you can take judicial notice of everything that's gone
8 on with these people.

9 The remedy being there is not in the best interest. She's – my client
10 does not want to have to try to to work with him. She's -- she's fearful of him.
11 They have a very litigious case. To force two people who are in litigation with
12 one another to work through a charity, is ridiculous when there's a remedy. We
13 can go ahead and decant. They each can have their own charity. They
14 continue the fabulous work that they're doing in Vietnam and for the
15 Vietnamese people, and allow this, allow us to button this up. There's no
16 reason to go forward.

17 THE COURT: Well, Mr. Mushkin's concern that is raised in the Petition is
18 that it doesn't appear that the Commissioner looked for any less burdensome –
19 I understand the concept is this is – this is the less burdensome approach, but
20 there are other alternatives available, and why were none of those sought,
21 explored, or considered. The Commissioner just immediately went to the most
22 extreme option decanting the Trust, because, you know – I mean this is why –
23 this is why the statute's there and why the provision is there.

24 But, were there any steps that the Commissioner missed that he,
25 short of an evidentiary hearing, that he should have looked at before saying,

1 "Okay, well, decant." That's, you know, one of the issues, I think is raised by
2 this Petition, that I – I agree, it seems somewhat beg the question as to – what
3 would discovery show? They don't get along, but are there less restrictive
4 means to, you know, if you have additional trustees appointed, if there are
5 other people who can work with them. I – because I don't know if there's any,
6 any merit to keeping them all together. Value to having the larger fund, the 16
7 million as opposed to two separate 8 million; I don't know.

8 So I guess that's one of the issues is, is it not so much a question
9 of: If what would discovery show us as to what other remedies are there, short
10 of this ultimate death nail to the – to the Trust as it -- they currently stand?
11 Was anything else discussed by the Commissioner and looked at by the
12 Commissioner?

13 MR. MUSHKIN: No, Your Honor.

14 THE COURT: Heard by the Commissioner?

15 MS. GOLDSMITH: No. The Commissioner did not discuss. He just felt
16 that these two -- they do have the opportunity to name other board members.

17 THE COURT: Uh-huh.

18 MS. GOLDSMITH: But that that, you know, that the reality is, with our
19 Decanting Statute, that that was – that was an appropriate – that was an
20 appropriate remedy --

21 THE COURT: Okay.

22 MS. GOLDSMITH: -- and, and that it doesn't; that these scholarships
23 don't continue. And whatever the work they're doing, whether it be with water
24 or scholarships can continue, and that there – that there is no reason not, not
25 to decant. But there was no – he didn't discuss other options –

1 THE COURT: Uh-huh.

2 MS. GOLDSMITH: -- and the Court had ruled that there would be no
3 meetings, which has been violated.

4 THE COURT: Okay. So -- and so the --

5 MR. MUSHKIN: Your Honor, I have to -- I have to address that, I'm sorry,
6 Judge.

7 THE COURT: Okay. Then I'll --

8 MR. MUSHKIN: That is absolutely --

9 THE COURT: -- make a note to ask my question later.

10 MR. MUSHKIN: -- not the case. The Court specifically said there is no
11 injunction. There was one meeting that was discussed by the Court. There is
12 no injunction and this -- there were three meetings missed by the Trustee, not
13 one, three. And so, the notion that somehow this is prohibited, and counsel
14 knows this, it was discussed. There is no injunction. We sent them the
15 scholarship applications. Once again, they didn't respond.

16 This notion that they can't get along is just one sided, Judge. And
17 one last comment. The notion that you can look at the pleadings and make a
18 no-fault decanting is beyond any stretch of our Decanting Statute. I'm
19 offended by it. Counsel knows better. There is an evidentiary standard, it has
20 not been met. My client has the right to put on evidence. And I -- it's just
21 wrong.

22 MS. GOLDSMITH: Your Honor.

23 THE COURT: Okay.

24 MR. MUSHKIN: They will not -- I'm, I'm sorry. They will not and they
25 cannot show this notion of theirs that someone is afraid. I want evidence that

1 somehow there's a fear. This is just pandering. The Petition not to have a
2 meeting -- I want them to show us a pleading -- show me in a pleading -- show
3 me in an order that it says not to have meetings, that the activities of these
4 Trusts are enjoined. It does not exist, Judge.

5 MS. GOLDSMITH: Your Honor --

6 THE COURT: Okay.

7 MS. GOLDSMITH: -- I would like to address that specifically in regard to
8 the order electronically filed. At least with regard to the Fund for
9 Encouragement of Self Reliance on October 5th, 2016, at 5:26 p.m. The order
10 specifically states: Order that no further meetings may be called by Doan Le
11 Phung in regards to the Fund for the Encouragement of Self Reliance, AKA
12 Center for Encouragement of Reliance, and that Doan Phung take no further
13 action in regards to the Fund for the Encouragement of Self Reliance Center
14 until this matter is resolved by the Court. This is an order --

15 MR. MUSHKIN: And it was.

16 MS. GOLDSMITH: -- of the Court, Your Honor.

17 THE COURT: Uh-huh. Okay.

18 MS. GOLDSMITH: That order appears in both files. So I take issue with
19 Mr. Mushkin setting forth that there's nothing in the record, because that is not
20 true.

21 MR. MUSHKIN: It's a subsequent order.

22 MS. GOLDSMITH: And are we -- are we truly looking at having an
23 evidentiary hearing whether someone has fear, or someone has concerns --
24 someone has fear? That's an internal emotion, Your Honor. Someone can feel
25 sad or happy or fear, it's not that we need an evidentiary hearing on.

1 THE COURT: Okay. So in looking at the Decanting Statute, 163.556, it
2 does talk about, in paragraph 5:

3 "That the trustee should have – you can't increase
4 distributions from one trust to the other trust. To remove a
5 trustee of the original trust or replace a trustee described in
6 paragraph A of subsection 4, are limited by an ascertainable
7 standard. Provisions do not prohibit a trustee who is not a
8 beneficiary. Trustee may give notice of the action, the trust
9 instrument. I'm just like – I'm struggling to see where there is
10 some sort of a burden on the Court here that hasn't been met."

11 MR. MUSHKIN: It's also in 4.17, Your Honor.

12 THE COURT: It talks about ascertainable standards. And so, I
13 understand that we've got ascertainable standards, but I am not sure where the
14 Commissioner failed to follow ascertainable standards. Because I just, I – that's
15 why I – my, my first question was, you know, what are we trying to prove
16 through discovery? Because it – I mean, it just seems to – the existence of the
17 Petition seems to sort of beg the question of, you know, we cannot get along –
18 provided affidavits, you know, we cannot get along.

19 You know, I was subjected to some sort of like a police
20 interrogation. I, you know, I feel that this was all brought on me by, you know,
21 the other Trustee. I don't want to work with him. Okay. So what's the
22 standard the Commissioner's supposed to apply under those circumstances?

23 MR. MUSHKIN: 4.17 says, "shall have a hearing." Now what you have,
24 Judge, is a contract. Let's go back to the beginning. You have a divorce, you
25 have a Settlement Agreement for that divorce, and in that they contract to

1 manage and operate these trusts. And the trusts don't have unlimited
2 discretion. That's where you were looking in, in 163 –

3 THE COURT: Right.

4 MR. MUSHKIN: -- 551, 550, yeah, 556, sorry. They don't have
5 unlimited discretion. One can only give five thousand without the other, so
6 there's not unlimited discretion; there's no argument about that. So now the
7 standard is, how do you – what do you have to do? Well, we get to look first,
8 Judge, to the contract. Because the contract says that they have the right to
9 appoint another trustee; so she already has a contract remedy. If she doesn't
10 want to work with him she can appoint a trustee and that trustee can do her
11 bidding, end of problem.

12 That was completely looked over, ignored. The contract right of my
13 client ignored. An evidentiary hearing to establish the standard for decanting
14 ignored. It's just, I'm afraid, I don't want to do it.

15 THE COURT: What's the standard for decanting? What's the evidentiary
16 standard for that? Where –

17 MS. GOLDSMITH: Your Honor.

18 THE COURT: -- did he – where – where is that?

19 MR. MUSHKIN: Your Honor, there – if, if the facts in a petition are
20 disputed then you have a hearing, because they say it doesn't make it so. This
21 isn't a no-fault – where does the statute say no fault?

22 THE COURT: Rule 416, Contested Matters. At the time of the hearing,
23 the Probate Commissioner shall consider the matters set to be heard. The
24 Probate Commissioner may, as appropriate, hear the matter, continue the
25 matter, impose a briefing schedule, set a discovery schedule as set forth under

1 Rule 417, direct the parties to a settlement conference, and/or otherwise
2 proceed. He's got a – he's got a range of options. He doesn't have to set an
3 evidentiary hearing in every single contested matter. He's not required to. It's
4 -- it's not automatic.

5 MR. MUSHKIN: Well, 417(a) says the Commissioner, "shall set an
6 evidentiary hearing date and a discovery schedule after receiving input from the
7 attorneys, and when the facts are so contested."

8 I don't know how else to describe it except it says, "shall".

9 THE COURT: Uh-huh.

10 MR. MUSHKIN: Now, if it's not contested I wouldn't have a problem, but
11 you're going to invoke a Decanting Statute without having evidence? I just
12 don't – I don't understand how that – that just doesn't – doesn't make any
13 sense, because now one person with – on an order shortening time, with the
14 evidence thrown before them, is going to make a decision on 8 million dollars?
15 No, I don't think so. That cannot be the statutory scheme. We do not delegate
16 that kind of authority. That's a taking. It's a violation of my client's contract
17 rights without a hearing, without evidence.

18 So respectfully, Judge, I don't think so. Now what I'm requesting
19 is pretty straightforward. I want you to take a look. We filed the Petition for
20 Declaratory Relief because she won't even appoint another trustee. This
21 divorce was five years ago. This Trust's been going on for five years. What
22 happened all of a sudden?

23 THE COURT: Uh-huh.

24 MR. MUSHKIN: The Court has to look through the smoke and see where
25 the fire is. What did they do? How has this Trust run for 20 years? How

1 much has she participated? I want the Court to know.

2 THE COURT: What does that have -- I'm trying to figure out -- this is --
3 this is my original question is, you know, we're not relitigating the divorce.

4 MR. MUSHKIN: Correct.

5 THE COURT: We're not relitigating -- I mean we, we can't. The issue --
6 the relief specifically requested is to decant the Trust. So what's the
7 evidentiary issue that's relevant to that?

8 MR. MUSHKIN: Well, why?

9 THE COURT: Under the -- under the -- under the --

10 MR. MUSHKIN: We have a contract that says, "no". We have a contract
11 that says, "This cannot be modified unless both parties agree."

12 THE COURT: All right. Uh-huh.

13 MR. MUSHKIN: And we have a default provision. If they -- if for some
14 reason there's a problem with the Trustee, they have a right to appoint.

15 THE COURT: Well, so, but this is why I said, "Doesn't it beg the
16 question, when one party comes in and says, "I can't get along with this
17 person, I -- I do not want to work with this person, please grant me this relief."
18 What -- what kind of discovery would disprove that?

19 MR. MUSHKIN: Well, let me --

20 THE COURT: You can't get along with him?

21 MR. MUSHKIN: -- let me try -- let me try and give you some.

22 THE COURT: Because I'm not, I'm not --

23 MR. MUSHKIN: All right.

24 THE COURT: -- following. This is what --

25 MR. MUSHKIN: Let me try and tell you --

1 THE COURT: First question. What are you going to try to prove with
2 discovery?

3 MR. MUSHKIN: I'll tell, they're not telling the truth.

4 THE COURT: Okay.

5 MR. MUSHKIN: First, that they're not telling the truth. Second, that the
6 Trust has been administered, just like it always has, uninterrupted for the last
7 20 years. Three, that my client contracted for the rights that he enjoys and
8 they cannot be removed under this standard.

9 THE COURT: What standard? That's why -- that's why I asked: What's
10 the evidentiary standard? Where are you telling me there's some evidentiary
11 standard that the --

12 MR. MUSHKIN: No, no, if you -- if --

13 THE COURT: -- Commissioner has violated?

14 MR. MUSHKIN: -- you're going to invoke a Decanting Statute, right?
15 What's the standard? There's got to be a standard of proof.

16 THE COURT: Uh-huh.

17 MR. MUSHKIN: I would suggest to the Court that the standard of proof is
18 either preponderance of the evidence or a clear and convincing. We can argue
19 that, we can brief that for you, but there is a standard of proof. If you're going
20 to invoke a Nevada statute and somehow decant somebody's property, it can't
21 be, "I'm sorry, I don't like what I contracted for."

22 THE COURT: Uh-huh.

23 MR. MUSHKIN: I know of no such case, I know of no such application of
24 the rule. I understand decanting, it's there for a purpose; it's not there to be
25 used willy-nilly. There's standards set out in the statute.

1 THE COURT: Uh-huh.

2 MR. MUSHKIN: And you asked, "Why do we want a hearing? Because
3 we contest their allegations. I will disprove them with some brief discovery. I
4 think both parties depositions should be taken. If there's this allegation we
5 need to know. You're talking about a one particular portion of their Petition
6 that doesn't even involve my client. It's somehow because she got interviewed
7 it's his fault. Don't you want to draw – don't you think the evidentiary links
8 have to be hooked together? Because you're invoking a significant property
9 distribution right. You're, you're trying – if anyone's trying to relitigate it's
10 them.

11 THE COURT: Right.

12 MR. MUSHKIN: Five years ago the divorce. What happened, when,
13 how? What's the problem? When did it occur? Why did it occur just now?
14 How is it related to the appeal that's on for the Nevada Supreme Court over a
15 whole separate issue? Who's punishing who? I think those are issues the
16 Court has to have. Evidence has to be had. A very limited amount of discovery
17 regarding the prior scholarships and grants that have been given, will show
18 who's participated and who hasn't --

19 THE COURT: Uh-huh.

20 MR. MUSHKIN: -- and how this matter has been run for the last 20 years
21 and whether or not there's any truth to the allegation that she is afraid. That
22 she can't work with him, and any of the other underpinnings of their petition.
23 We've had a lot of things said that were not true. This Court did not grant a
24 preliminary injunction. That order, subsequent to that order, there's a hearing,
25 there's a recommendation, a not enjoining, and then there's notices. So we

1 want to put it on so the Court understands. We're not sandbagging. We're
2 not trying to do anything but what the paperwork says.

3 If she can't come to a meeting, she has never said so. When you
4 send something, no response.

5 THE COURT: Uh-huh.

6 MR. MUSHKIN: Not, "We can't work together." It's just not being
7 presented to the Court, and I want the Court to have evidence.

8 THE COURT: Okay.

9 MR. MUSHKIN: That's why we're here.

10 THE COURT: So, so what you're saying is that the discovery that you
11 believe should have been allowed by the Commissioner is discovery – as I, as I
12 keep saying -- and Mr. Willick is here. I don't know why he's here. This case
13 isn't about the divorce. I've got –

14 MR. MUSHKIN: Correct.

15 THE COURT: -- no idea why he's here.

16 MR. MUSHKIN: To – to –

17 THE COURT: Nothing to contribute to this as far as I'm concerned.

18 MR. MUSHKIN: -- to make further misrepresentations to the Court.

19 THE COURT: He's got nothing to contribute as far as I'm concerned.

20 MR. MUSHKIN: Thank you.

21 THE COURT: It's not about the divorce.

22 MR. MUSHKIN: I agree 100 percent.

23 THE COURT: So –

24 MR. MUSHKIN: We don't think you can do what he did without having
25 evidence and a hearing. It was contested. There -- we believe that this Court

1 should set a hearing now. If you don't think we need discovery – if they don't
2 think we need discovery – I – I think the parties should be deposed. I think
3 there should be some stuff that is clearly gone on in the last two or three years
4 put forward so that there's a timeline, and then the Court can have a brief
5 evidentiary hearing and you can determine it.

6 THE COURT: This is like any other – a motion for sum – this is why I
7 keep saying, you know, "What's the evidence?" In any Motion for Summary
8 Judgment – in any case we've got, there is no rule that tells a judge or a
9 hearing officer: You have to have a hearing in every single case. If there's no
10 material question of fact -- it's the same motion for summary judgment standard
11 as anything else, and it's a matter of law –

12 MR. MUSHKIN: Not –

13 THE COURT: -- you can rule on.

14 MR. MUSHKIN: -- I 100 percent agree. We had disputed –

15 THE COURT: So –

16 MR. MUSHKIN: -- every single fact, showed the Court the discrepancies.
17 Showed the Court – how we – their allegations were false and the Court said,
18 "I don't need a hearing because they don't get along." That's just, Judge, if
19 that's the standard, what's a contract mean?

20 THE COURT: Okay, fine. So I'll let Ms. Goldsmith address this and then
21 you can have a final word, it's your motion – your Petition, so thanks.

22 MS. GOLDSMITH: Just –

23 THE COURT: Yeah.

24 MS. GOLDSMITH: -- a few simple things. I'll respond to why Mr. Willick
25 is here. I – I invited him in case the Court had a question that I wasn't able to

1 answer.

2 THE COURT: I have no questions --

3 MS. GOLDSMITH: it was --

4 THE COURT: -- about the divorce.

5 MS. GOLDSMITH: -- and perfect.

6 THE COURT: I don't care about the divorce.

7 MS. GOLDSMITH: Wonderful. And, but that's the -- that is the only
8 reason, Your Honor. And I would submit to you that NRS 163.556. It's -- it's a
9 question of law that we're dealing with. We're not dealing with, really questions
10 of fact. And realistically, we have no material issue of fact. What my client
11 believes is she, she can't -- she can't work with him. You don't need an
12 evidentiary hearing to show that. And 556 -- 163.556 is clear. It says,

13 "A Trustee with discretion or authority to distribute trust
14 income or principal to or for beneficiary of the trust, and may
15 exercise such discretion by appointing the property, subject to such
16 discretion or authority, in favor or a second trust, as provided in this
17 Trust."

18 That's the decanting. It's a question of whether you have authority
19 to appoint. He has the authority to appoint. He has the authority to appoint.
20 That is what is necessary to decant in this -- in this case. It's not a question of
21 fact, it's merely a question of law.

22 So this truly is, going forward, like a Motion for Summary
23 Judgment. Commissioner Yamashita didn't feel that he needed to have an
24 evidentiary hearing. Commissioner Yamashita felt competent in that. He's not
25 required to have an evidentiary hearing where there's no issue of material fact

1 on – on if – if someone raises a small scintilla issue, he doesn't have to have an
2 evidentiary hearing, Your Honor. And I think that he acted well within the
3 scope of his authority and his duties to the Probate Court. And I think that is
4 appropriate for this Court to uphold his Report and Recommendation and enter
5 it as an order.

6 THE COURT: Thanks. Okay, thanks. Mr. Mushkin, in conclusion.

7 MR. MUSHKIN: Your Honor, the critical finding that he makes, I think is
8 that they're at loggerheads. There's a statement that he made on the record
9 that these parties are obviously at loggerheads. Show me the evidence, Judge.
10 One side says, "I can't get along with him." The other side says, "I've been
11 doing this for 20 years. She participates a little bit, not much, and this is just
12 being done to punish." There's no loggerheads. That's a disputed fact.

13 THE COURT: Uh-huh.

14 MR. MUSHKIN: It's the ultimate fact. And we have a right to put on
15 evidence to show that that is a misrepresentation to the Court.

16 THE COURT: And that's why I, I keep asking: Evidence about what?
17 Evidence about the fact that –

18 MR. MUSHKIN: Three things.

19 THE COURT: -- she doesn't want to work with him. What -- who cares?

20 MR. MUSHKIN: But that's not the – that's not enough.

21 THE COURT: I mean, that's -- that's – what is that?

22 MR. MUSHKIN: Judge, if there's a can – if there's a con – if there's a
23 contract.

24 THE COURT: Okay. But here's my – what I'm trying to say. Is there
25 something in either this Trust or the statute that your client can prove, through

1 discovery that says, "Here's how this can work, should work, and will continue
2 to work –

3 MR. MUSHKIN: Yes.

4 THE COURT: -- and getting around the fact that she doesn't want to
5 work with him?"

6 MR. MUSHKIN: Yes.

7 THE COURT: Okay, and what's that?

8 MR. MUSHKIN: Would you like me to know –

9 THE COURT: Yeah. Yeah.

10 MR. MUSHKIN: -- exactly how?

11 THE COURT: Yeah.

12 MR. MUSHKIN: First, we'll show how it has happened for the last 18
13 years. Second, we'll show the contractual obligation that exists. That there is
14 a mechanism in place. If she has a problem she gets to appoint a successor
15 trustee. And third, we will show that the administration of the Trust is not at
16 loggerheads, has never been at loggerheads, and has continued uninterrupted.
17 There isn't – and the record so reflects the Trustee – I mean, the Commissioner
18 didn't issue an injunction. So those three things will lead to, there is no
19 justification for decanting.

20 There is a contract here on how this is to be handled. It's that
21 simple.

22 THE COURT: Okay. Thanks. All right. Thanks. Well, here's what I'm
23 going to do. I'm granting this in part because I – what I believe the
24 Commissioner did here, is treat this under, essentially a Motion for Summary
25 Judgment standard. That he sought no material question of fact that would

1 affect the legal issue which is our Decanting Statute. That there's no question
2 of fact, because what I keep asking is, you know, what are we going to do
3 discovery on?

4 I am not convinced that discovery on the issues that Mr. Mushkin
5 just outlined, specifically would change this conclusion. Because Mr. Mushkin
6 remains focused on 417, but you first have to get through -- past Rule 416, and
7 that is, on a contested matter, he has all this range of discretion. He can -- ask
8 for briefing. He can send it to a Settlement Conference. He can hear it, he can
9 take whatever relief he wants to take if he thinks he can deal with it as briefed.

10 What's not clear in this Report and Recommendation is: Did he
11 consider that? Are -- what -- are there any questions of fact here that will
12 impact or militate a different relief under the Decanting Statute? I think that's
13 what we need him to address because he got to the ultimate conclusion, which
14 is, we're just going to decant this. And he may -- he may have gone through
15 that whole analysis but we don't know. It's not anywhere in the record. It's
16 not in the, in the Report and Recommendation.

17 Are there any material questions of fact that would in any way
18 change the legal interpretation, under this statute? And Mr. Mushkin keeps
19 talking about a standard. It's not there, I mean, there's nothing that tells him
20 that he has to apply any specific evidentiary standard that he has to take
21 testimony on it, that he has to have a hearing. It's not there. There is no
22 requirement, either in the local rules or in the Decanting Statute that says
23 you've got to have an evidentiary hearing on the following matters and reach
24 the -- and find the following level of proof; it's not there.

25 So how did he get there? That's what's missing. Is there's --

1 there's no analysis that takes – that says, "I looked at all the evidence that was
2 in the written record before me. I considered whether these are – there are any
3 questions of fact raised that would result – because it's got to be a material
4 question of fact. It's not any question of fact, it is – is it a material question of
5 fact that's going to change the legal outcome? His legal analysis. That's
6 what's missing here from, how did he get from point A to point D? Which is,
7 you got to decant the stat – these trusts.

8 So I'm going to send it back to him to clarify whether he feels, if he
9 looks at it from that viewpoint, does he think there are questions of fact that he
10 does need discovery on? If he does then great, he can proceed. And as he's
11 allowed to under Rule 416, set a Briefing Schedule, set a Discovery Schedule,
12 send you to a Settlement Conference. He can do anything he wants but I, you
13 know, I can't say that he is wrong in his outcome, because the very Petition
14 seems to beg the question. I can't get along with him, I'm done. Well, and
15 maybe you're right, maybe this is – because I keep saying, "We can't get into
16 that divorce, we cannot, it – it's got to be something that is about the Trust."

17 MR. MUSHKIN: So –

18 THE COURT: And so that's my, my concern here. Did he take a look at
19 this and say, "There are no questions about how this Trust is operated, should
20 be operated, that lead me to any other conclusion than to can't?" And that's
21 just what – in the analysis that's just like missing. How did he get from that
22 initial point of, yeah, she comes in and says she can't work with him, okay,
23 fine. How does that affect our legal analysis? Because it's a legal question
24 under, under this legal – applying the statute as it exists: Is there any other
25 result than decant? And that's this – to me that was what was missing here in

1 the record; I just can't tell.

2 MR. MUSHKIN: And, Your Honor, the part that I keep turning back to,
3 and I ask for the Court's guidance. These are property rights. And in order to
4 affect someone's property rights, there's a requirement; and under contract
5 rights, similar requirements. We all remember the *Marathon Oil* case that shut
6 down the bankruptcy court. An argument over whether an article – a Non-
7 Article III Court could make a, a decision on contract rights. Congress had to
8 change the Bankruptcy Statute to make it fit.

9 So I can't – I will do my best to cite to you, specifically, why a
10 Decanting Statute that affects property rights, is held to the same standard that
11 any other statute that affects property rights, is held to. And I'll try and make
12 sure that's presented to both the Commissioner and yourself, because I don't
13 think that, that 163 can operate without that, that background.

14 THE COURT: Okay.

15 MR. MUSHKIN: It's a taking.

16 THE COURT: All right. Well, it's a – the statute exists, as was pointed
17 out, exists for a reason. And the question is: How should it be interpreted? It
18 is to me a legal question, and the question is: Are there any facts that affect
19 reaching a conclusion under that statute? That's what we can't tell from this
20 record because he made a determination. And so, did he consider the facts to
21 find -- were there any of them that are material and would affect or require a
22 different outcome, under this statute?

23 It's not in the record, so that's why I'm sending it back, is for the
24 Commissioner to clarify. I'm not telling him he has to have an evidentiary
25 hearing. I'm asking him to consider and clarify, for the record for this Court:

1 Did he consider whether there are any questions of fact which are material to
2 an analysis under the Decanting Statute? If he did, what are they? How did
3 they come out? Did he determine that they are not – there's – they're not in
4 dispute? Because, you know, I'm not sure how – how you can – how some of
5 these things could be disputed. They are what they are.

6 And they're really isn't a dispute, there's a disagreement, maybe,
7 about who was doing what to whom, but that's not, you know –

8 MR. MUSHKIN: But isn't that the –

9 THE COURT: It doesn't get to – that's not something the Commissioner
10 can consider. I mean, we can't deal with the divorce and whether it was fair --

11 MR. MUSHKIN: Oh, no, you --

12 THE COURT: -- you can't.

13 MR. MUSHKIN: -- you have to deal with the administration of the Trust --

14 THE COURT: Right.

15 MR. MUSHKIN: -- and the evidence of that.

16 THE COURT: Uh-huh. Yeah.

17 MR. MUSHKIN: And – but don't we ultimately end up back with you,
18 Judge?

19 THE COURT: Well, I, you may, I don't know. The – he may say, "Okay,
20 I didn't look at it from that viewpoint and maybe I do need to take some
21 testimony." I don't know what he's going to do. But, I don't see in this record,
22 that he made that process of saying, "If we look at this that this is ultimately a
23 question of law. We have to apply this statute. Are there facts that exist
24 which are in dispute, that would affect the analysis of the statute?

25 MR. MUSHKIN: The ability to grant the decanting?

1 THE COURT: I – you know, I see where he came from and it makes
2 perfect sense to me, but I – and I'm not telling him he has to have a hearing or
3 that a hearing is required under the statute. I'm just saying that, if you're going
4 to apply the statute and say, "There is no question of fact which would affect
5 any other outcome than applying the statute and saying, 'Yes, these need to be
6 decanted.'" And that – moving clearly from A to B to C is what's missing for
7 me.

8 He just went right to – right to decanting, and I – and I'm not
9 saying he's wrong. I – I am absolutely not ruling that he is wrong. I am just
10 asking that he clarify, for the parties and for this Court, whether he did go
11 through that analysis. And, is it his determination that there are no material
12 facts that we require any kind of analysis as you read the Decanting Statute? If
13 there aren't and that's what his ruling is then, you know, maybe you're going to
14 want to object to that one again, but for right now, I can't say that he was
15 wrong or not.

16 MS. GOLDSMITH: So, Your Honor, the two instructions go back to the
17 Commissioner is when: Are there facts that exist that, or that may exist, that
18 in – and with regard to other options other than decanting? So that's –

19 THE COURT: Well it – yeah, analyzing – analyzing under the Decanting
20 Statute, right.

21 MS. GOLDSMITH: And is there any – are there any material facts that he
22 feels would be helpful of him in that analysis? I guess it was the two.

23 THE COURT: Were the – did he consider that every --

24 MS. GOLDSMITH: Did he?

25 THE COURT: -- in considering this record, did he see any – did he

1 consider facts which should have been analyzed under the Decanting Statute?
2 Did he find that they were not in conflict? Was there no material disputed facts
3 that might result in any kind of a different analysis under that Decanting
4 Statute? If he's already – if he considered those and it's just not in the record,
5 what were they?

6 MS. GOLDSMITH: All right.

7 THE COURT: And how did he – how did he analyze it, and how did he
8 get to the point of saying: There are no material questions of fact for us here?
9 This is not a matter – under Rule 416, I can act on it. I don't have to go to
10 Rule 417 and say it's contested and needs an evidentiary hearing. I don't find
11 that these are contested. He needs to explain why. Why did he find that it
12 wasn't contested and he went immediately to decanting? That's the thing, that
13 for me, is missing because Mr. Mushkin is hung up on a Rule 417.

14 I think under Rule 416 he can take this action. If he says: I don't
15 see that there's any contested fact that would change my analysis under the
16 Decanting Statute. He just needs to lay it out for us, and maybe Mr. Mushkin
17 will say: Oh, now I understand, no problems, we're going to go forward. Or
18 maybe he'll say: No, I need to have an evidentiary hearing. Or maybe Mr.
19 Mushkin will be right back here saying he did it all wrong, but we need that.
20 And I don't see that that's in this record.

21 MR. MUSHKIN: I'll prepare an order --

22 THE COURT: How he – how he got to those --

23 MR. MUSHKIN: -- and run it by counsel.

24 THE COURT: -- how he got to the – to that ultimate conclusion. I'm not
25 saying he's wrong or right in his conclusion. I'm simply saying, "The record's

1 deficient in showing us how he got to it." And I –

2 MR. MUSHKIN: I'll run it by her.

3 THE COURT: -- may or may not see you guys you back again, good luck.

4 MR. MUSHKIN: It's nice seeing you, Judge.

5 THE COURT: Best wishes. All right. Thanks for coming.

6
7 [Proceeding concluded at 10:54 a.m.]
8
9
10
11
12
13
14
15
16
17
18
19
20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/visual recording in the above entitled case to the best of my ability.

23 

24 Kerry Esparza, Court Recorder/Transcriber
25 District Court, Department XXVI