

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

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APPELLANT'S APPENDIX OF DOCUMENTS

VOLUME VII of VII

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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**

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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
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VI	Affidavit of Service	AA 001330 – AA 001332
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VI	Case Appeal Statement	AA 001335 – AA 001338
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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
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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
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TRANS

FILED

MAY 10 2017

John J. Blum
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

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

In the Matter of the Trust of:) CASE NO. P-16-089638-T
) DEPT. PROBATE
FUND for the ENCOURAGEMENT)
of SELF RELIANCE.)

BEFORE THE HONORABLE WESLEY YAMASHITA, PROBATE COMMISSIONER

TRANSCRIPT RE: PETITION - HM

FRIDAY, APRIL 28, 2017

1 APPEARANCES:

2 Petitioner: THU LE DOAN
3 For the Petitioner: DARA J. GOLDSMITH, ESQ.
4 PETER CO, ESQ.
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6 2055 North Village Center Circle
7 Las Vegas, Nevada 89134

8 MARSHALL SHAWN WILICK, ESQ.
9 3591 E. Bonanza Rd., Suite 200
10 Las Vegas, Nevada 89110

11 Respondent: DOAN PHUNG
12 For the Respondent: MICHAEL R. MUSHKIN, ESQ.
13 L. JOE COPPEDGE, ESQ.
14 Michael R. Mushkin & Associates
15 4475 S. Pecos Road
16 Las Vegas, Nevada 89121

1 LAS VEGAS, NEVADA

FRIDAY, APRIL 28, 2017

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

3 (THE PROCEEDING BEGAN AT 10:15:38.)

4 THE COURT: But they are together. This is the Matter of
5 the Vietnamese American Scholarship Fund, as well as the Fund
6 for the Encouragement...

7 MR. COPPEDGE: Your Honor, if I can...

8 THE COURT: ...of Self Reliance.

9 MR. COPPEDGE: I apologize. Mr. Mushkin has been
10 delayed. Could we trail this for just a moment, for a short
11 time?

12 THE COURT: Okay. Is that gonna mess up your parking,
13 Ms. Goldsmith?

14 MS. GOLDSMITH: Are -- will -- will we be trailed to the
15 end or just trailed...

16 THE COURT: We will trail...

17 MS. GOLDSMITH: ...till Mr. Mushkin arrives?

18 THE COURT: There's not that much other that's gonna take
19 a lot. So they'll probably gonna go to the end.

20 MS. GOLDSMITH: All right. We'll probably go make
21 accommodations...

22 THE COURT: Go stick another...

23 MS. GOLDSMITH: ...at the parking...

24 THE COURT: ...dollar in there?

1 MS. GOLDSMITH: Correct. Thank you, Your Honor.

2 THE COURT: Okay.

3 (Whereupon the matter was trailed at
4 10:16:17 and recalled at 10:54:08.)

5 UNIDENTIFIED SPEAKER: Good morning.

6 THE COURT: Okay. Let's go ahead and enter appearances
7 first.

8 MR. MUSHKIN: Mike Mushkin, Bar Number 2421, along with
9 Joe Coppedge, Bar Number...

10 MR. COPPEDGE: 4954.

11 MR. MUSHKIN: Dr. Phung is also with is.

12 MR. CO: Peter Co, Bar Number 11938.

13 MS. GOLDSMITH: Dara Goldsmith, Bar Number 4270, along
14 with our client, Thu Le Doan...

15 THE COURT: Okay.

16 MS. GOLDSMITH: ...as well as...

17 MR. WILICK: Marshal Willick, Bar Number 2515.

18 THE COURT: Okay. As I read the order and understand
19 from what happened up with Judge Sturman, she sent this back
20 down to indicate whether I have facts in question or whether
21 there are question in facts that require some type of hearing
22 or further matters or whether this a matter of -- of law or a
23 matter of fact. Is that -- I mean, that's kind of what I'm
24 saying. I -- I'm not sure what the full directive was.

1 MR. MUSHKIN: Your Honor, if I may.

2 THE COURT: Okay.

3 MR. MUSHKIN: Judge Thurman -- Sturman's order
4 (indiscernible) from the record, the Probate Commissioner
5 considered whether there were questions of fact would impact
6 or mitigate a different relief under the decanting statutes.
7 The Court felt it was unclear on the record the analysis that
8 you went through to reach the conclusion to decant. So the
9 Court sent us back.

10 Our pleadings and our request of the Court follows
11 as we argued last time, that the administration of the trust
12 are not at loggerheads. And they -- there is no evidence to
13 support a finding that the trustees cannot function together.
14 There's no evidence that the trust isn't continuing to operate
15 the way it has for the past 20-plus years. In fact, the
16 evidence is to the contrary. So there is clearly a disputed
17 issue of material fact that mandates discovery and an
18 evidentiary hearing.

19 The functional purposes of the trust cannot be
20 accomplished and are unworkable. That's the second prong.
21 And the trust had been operating since formation. There's no
22 evidence supporting any finding that the trust can't be
23 accomplished. In fact, the only evidence is that the trust is
24 operating.

1 Third -- the third element, is there sufficient
2 reason? And is the -- it appropriate to decant? And, of
3 course, our position is, what's the reason? What is the
4 evidence that supports that? Then the next step is how could
5 you determine what to decant or how to -- you know, why
6 equally? What is the factual basis to divide equally? This
7 is not community property. These trusts were created and have
8 their own existence.

9 You asked whether the parties could work together on
10 the scholarship program or whether a substantial bond would be
11 required. The parties agreed to work together on the
12 scholarship program. The applications were provided to Ms.
13 Le's counsel. And there was no response. All pending actions
14 -- applications were provided for, as you stated, an honest
15 and impartial review. We don't know because there was no
16 response.

17 There are allegations that due to an administrated
18 issue, the functional purposes of the trust are unworkable.
19 What evidence is there to support that? There's no evidence.
20 What are the findings that functional purposes of the trust
21 are unworkable? There are no findings because, in fact, the
22 trust continues to work the way it has for 20 years. Again,
23 as Judge Sturman put forth, there has to be facts to support
24 findings.

1 So, Judge, our request is same as it was last time.
2 Set us down for a hearing. I will defer to the other side as
3 to how much and how long they need for any sort of discovery.
4 But I think that with the contested facts, the rules require,
5 as we stated earlier, there shall be a hearing.

6 MS. GOLDSMITH: Your Honor, I would respectfully disagree
7 with the analysis that's been set forth by Mr. Mushkin. I
8 think that the Court was clear in its direction and it gave
9 you four questions when we came back.

10 I think it's also -- it's important to note that the
11 Court is interested to know whether there's any material
12 questions of fact, which are material to an analysis under the
13 decanting statute. That's the first question. And so that --
14 that leads you to look at the decanting statute. And -- and
15 realistically, the ability to decant -- under the decanting
16 statute is the ability to appoint income, principal, which the
17 trust -- that -- that clearly comes from the decanting
18 statute. One question that's been...

19 THE COURT: Now are we applying Tennessee or are we
20 applying Nevada?

21 MS. GOLDSMITH: Well, we have one trust that was created
22 under -- under Nevada -- under Tennessee law. We have one
23 trust created under Nevada law. They have been -- creation
24 were there. But they've both been administered pursuant to --

1 pursuant to Nevada law.

2 THE COURT: Okay.

3 MS. GOLDSMITH: And so realistically under Nevada law
4 when you're looking at the decanting statute, our decanting
5 statute is one of the most broad in the country, and it solely
6 looks to you -- one, you don't even have to come to court;
7 two, you -- there's broad discretion. There isn't a stand-
8 necessarily a standard of review. The reality comes down to,
9 is there -- is there ability to appoint income? Is there
10 ability to appoint the principal? And in one fif- 163.556,
11 clearly this Court has the discretion to do that. You don't
12 have to show...

13 THE COURT: So -- so we went on and on about all these...

14 MS. GOLDSMITH: What -- it...

15 THE COURT: ...but we can't get along. That -- that's
16 irrelevant?

17 MS. GOLDSMITH: Well, I think -- I think it's important
18 because what's being asked is -- I think that you have the --
19 always have the ability to decant. I think that what many
20 people over the years have always come to -- have thought,
21 that irrevocable meant irrevocable. And in Nevada it doesn't
22 mean that. It -- it doesn't -- it means you can come in and
23 you can modify.

24 And I think it's important that they don't -- that

1 they don't get along. But I don't necessarily think that you
2 need an evidentiary hearing with regard to that. If one side
3 is in fear of another or one side doesn't want to get along, I
4 think that -- that can be pretty clear. Realistically, we
5 have a situation where our statute allows for it.

6 And so the Judge wanted to know, once you get there,
7 so is it -- is it material under the decanting statute? I
8 would say, it's not. But even if it were material, even if --
9 even if you had to have facts to show that you say that they
10 can't work together, that when one person has that feeling,
11 I'm fearful of, you know, hypothetically, I'm afr- I'm fearful
12 of Marshal, I don't think I have to prove that's in my mind.
13 And -- and perception is reality. And -- and this is a
14 situation dealing with -- with personal -- with personal
15 nature. So I think that even if you get to the point...

16 THE COURT: But do we have to even get there?

17 MS. GOLDSMITH: I -- I...

18 THE COURT: If -- if what you're saying...

19 MS. GOLDSMITH: ...don't think you have to. I -- I don't
20 think you have to.

21 THE COURT: Then we waste our time puttin' those in our R
22 and R when it really wasn't necessary is what we're sayin'?

23 MS. GOLDSMITH: I'm not necessarily saying that it's --
24 that it's not -- that it's not helpful. I think that the

1 statute doesn't -- doesn't require it. And the Court is also
2 asking -- the Court wants to know what material facts that you
3 -- you determined. And did you consider those in the
4 analysis? And I think that your analysis, and correct me if
5 I'm wrong, was just as I stated. If someone doesn't want to
6 have to work with somebody or has a fear, that -- that's
7 sufficient to come in to have a decant -- to decant.

8 THE COURT: Do they even have to have that?

9 MS. GOLDSMITH: Pursuant to our statute, I'd submit, you
10 don't. I don't think you -- I don't think you have to have
11 that. I think that you can -- you can come in and say, I have
12 this authority under this -- under the trust. And you can --
13 you can decant realistically. Unless you have an individual,
14 a beneficiary who is vested, and the beneficiary is going to
15 have a modification that's to their detriment, and it's
16 invested, it's not discretionary, that's when you can't
17 decant.

18 But here we have all of the charitable
19 beneficiaries, scholarship recipients and whatnot, are all
20 discretionary. And so I -- I do believe it's appropriate for
21 this Court -- this Court to decant.

22 Judge Sturman also asked whether the Probate
23 Commissioner determined that there are material facts not in
24 dispute. So are there material facts that are not -- that are

1 not in dispute? You know, I -- I'm not sure that there are
2 material facts that are not in dispute because the question --
3 it comes down to a question of law.

4 The statute enables us to decant. The statute's
5 clear that we can decant. We have -- we have issues as to --
6 we have facts that we've presented how they don't get along.
7 I -- I don't necessarily know that the Court even has to
8 consider them. And did the Court consider -- do the -- do --
9 any material facts?

10 So did the Court consider any other relief that
11 would be available other than decanting? And I think that the
12 Court did consider other relief that -- that could occur other
13 than decanting. The statute sets forth that both of the
14 trustors can appoint others to serve.

15 But it does ultimately result in a loggerhead
16 because you would end up with each side appointing one other
17 to make four. And then they're supposed to agree on the
18 fifth. And -- and, Your Honor, these -- these people
19 simply...

20 THE COURT: So does the statute require I look at less...

21 MS. GOLDSMITH: I -- I don't -- I...

22 THE COURT: ...quote, unquote, less onerous...

23 MS. GOLDSMITH: I don't believe that you're required to
24 look at less onerous restriction. I think that the statute is

1 clear that you can decant these trusts, that you don't have to
2 look at these things.

3 And -- and -- and I think that even if you had any
4 scintilla of -- of concern that maybe these two could get
5 along, the day after we appeared before Your Honor, and the
6 reason we were on an OST is because there was a meeting that
7 was scheduled and apparently at that meeting, which although
8 didn't become evident until the annual list was filed months
9 later, our client was removed from the board of directors.

10 This Court had inquired. This Court had said, well,
11 we want you to maintain the status quo; but we want you to go
12 forward and do these scholarship applications.

13 What we had asked for is we had asked for a summary,
14 a list of the applications he was inclined to accept and the
15 amounts. And what we -- what our client received was -- not
16 to us, but directly to her, were all the applications, which
17 were -- which caused her computer system to crash. But that
18 wasn't what we were to be given.

19 So, Your Honor, I would submit, this Court can
20 decant just on its own. On its own accord, it can decant that
21 we don't have to have these facts; but we do have facts. And
22 I think that you can go forward under 163.556 and decant this
23 trust in a manner that you deem equitable or appropriate and
24 go forward with -- whether it's one trust, two trusts, the

1 trusts that we proffered, however it is. I think this Court
2 has discretion and doesn't have to go through these
3 machinations of -- of assessing the facts.

4 MR. MUSHKIN: Your Honor, I have to admit that I am
5 stunned. Why someone gets to come to court and say that
6 they're fill -- fearful to say it, and perception is reality,
7 and as a result, the contract that's entered into that sets
8 forth the rights of the parties that's approved by the Court
9 in the divorce, is somehow subordinate to a decanting statute.
10 I -- I just don't understand it.

11 All of the facts are in dispute, particularly the
12 material facts that have been alleged. I think you're right,
13 Judge. I think you actually have to apply Tennessee law to
14 one of the trusts and Nevada law to the other. I'm not sure
15 that it matters particularly in this case because of that
16 contract issue.

17 We don't just have irrevocable trusts. We have a
18 contract issue between these parties. The -- the notion that
19 one side doesn't want to get along is somehow justification
20 for implementing the most severe of remedies under a decanting
21 statute, cannot be the law. It's preposterous. There's a lot
22 of other relief that the Court could order. The Court could
23 order one independent trustee. There's a myriad of things.

24 But I think what the Court is compelled to order

1 under the rules is an evidentiary hearing. I don't see any
2 way around it. Respectfully, Judge, I again ask the Court to
3 set us down for evidence. If the other side needs some
4 discovery, we'd be happy to cooperate, whatever the -- the
5 Court deems appropriate.

6 MR. WILICK: May I be heard very, very briefly?

7 THE COURT: Okay.

8 MR. WILICK: The only reason that I'm present for these
9 proceedings is that Mr. Coppedge has made the unfortunate
10 choice in asking for relief from this Court and misrepresent
11 the findings and orders of a different Court, as to which the
12 Court could take judicial notice pursuant to holdings of the
13 Nevada Supreme Court in terms of whether one party or the
14 other has a history of making false statements.

15 I suggest to the Court that as of September 2015
16 there is a finding that only one party to any of these
17 proceedings has ever been found to be a liar under oath. And
18 that liar is Mr. Phung. He was specifically found on
19 September...

20 MR. MUSHKIN: Here we go again, Judge.

21 MR. WILICK: ...of 2015...

22 THE COURT: Well, my question is, how is any of this
23 relevant if -- if under this -- the -- the concept?

24 MR. WILICK: It's only relevant if the Court is inclined

1 to take any of the filings from the other side at face value
2 as to the parties' actions and proceedings. Because he's
3 specifically been found to have given false testimony under
4 oath in court and to be totally non-credible, the Court should
5 take that into consideration when weighing the competing
6 request by the parties as to whether or not they have the
7 ability to coexist and what has happened since we left here.

8 Representations were made in this court for
9 maintaining the status quo. And within 24 hours, he took
10 actions to sua sponte dispossess her of any contact with these
11 charities. The charities had been involved in the family
12 court litigation for some period of time. But Mr. Phung has
13 made repeated false assertions in court that have caused at
14 least one other judicial officer and orders of which this
15 Court can take judicial notice to make express findings that
16 he has lied repeatedly about material things in litigation.
17 And the Court should take that into...

18 THE COURT: All right.

19 MR. WILICK: ...consideration when deciding what...

20 THE COURT: Your...

21 MR. WILICK: ...to do (indiscernible)...

22 THE COURT: Your point is taken.

23 MR. WILICK: Thank you.

24 MS. GOLDSMITH: Your Honor, I would specifically like to

1 address the inquiry you made with regard to the application of
2 Tennessee law. And we have cited to the Tennessee statute on
3 our Petition to Assume In Rem Jurisdiction, filed on September
4 22nd, 2016, in the 637 case. And specifically, Tennessee Code
5 Annotated 35-15-816(b), as in boy, (27) provides very similar
6 terms for decanting, as does Nevada, dealing with...

7 MR. MUSHKIN: Isn't that what I just said?

8 MS. GOLDSMITH: ...the ability to appoint the principal
9 and income.

10 THE COURT: Okay. When we first heard this, I think I
11 had a hundred and something on my calendar. So I did not go
12 into as much depth as -- as what I have now, being I had the
13 time. I'm only at -- only at 118 this week. So I had more
14 time to get into it. Okay.

15 As I get into the statutes and get in there and --
16 and check into this, okay, it appears to me, both under NRS
17 163, as well as the Tennessee Annotated 35-15-816, that this
18 appears to be an absolute right vested in the trustee with the
19 only requirement that I find is that they have the power of
20 invasion of principal.

21 It does not appear anywhere to say that I have to
22 make specific reason why, nor does it say -- that's why I say,
23 have we got any other because I frankly didn't get in and look
24 at it that much. I will -- it was perhaps illuminating. But

1 it was not directive. And I -- I don't think that I have to
2 depend upon specific evidence or instances of evidence of why
3 things may or may not be workable and all these kind of
4 things.

5 It appears from both statutes, and I've gone to it,
6 this an absolute right of a trustee who has that power. And
7 so I have to make that finding if it has that power. That is
8 the only finding I would truly have to make. Well, and then
9 it doesn't affect an income interest -- I mean, a fixed income
10 interest. So -- and so -- and since it's all discretionary,
11 the (indiscernible) doesn't affect that. And then you find
12 the -- it would have to be two like kind beneficiary. The
13 beneficiary will be essentially the same. In this instance,
14 we -- it can be done.

15 The ma- the major difference between Tennessee and
16 Nevada is Tennessee says part or all and Nevada just says --
17 and it doesn't even say that. It just says to a second trust.
18 So that -- that's the major difference. I don't know what
19 that means. Okay? Whether under Tennessee you can say, okay,
20 a certain portion we'll direct to a second trust. And we'll
21 make that. And we'll leave the other one still effective?
22 And under Nevada, you have to take the whole thing and take it
23 into -- in different ones. That's -- that's a confusing part.
24 Okay?

1 I believe that to make it workable and to make -- to
2 make it fall within what I think can and ought to be able to
3 be done -- because it appears that we have that ability. You
4 have the ability overall. And that's why it says all or part.
5 I -- I think that -- that she -- she can make that
6 determination under Tennessee, all or part. And she's
7 determined half.

8 Now under the second one, it's not as clear. But I
9 think the implication is that you can do -- when you call
10 second, I think that this requires not just a second but two
11 seconds as -- and -- and the original would be taken out.
12 Okay? But I believe that that is all the material facts that
13 I have to find.

14 The other I -- it says, I went into it and got on
15 there because I didn't have a chance to review this as deeply
16 as I could have. And -- and I do not believe that -- and I
17 don't know how that works with my R and R. But my -- I'm
18 going to amend the R and R, I guess, to state that -- that
19 those facts although may have been illuminating as to
20 conditions, are not -- what's the word, determining of the
21 ultimate resolution, which is an absolute right given to a
22 trustee who holds that power.

23 MR. MUSHKIN: And, Your Honor, you -- you're gonna have
24 to have an order.

1 THE COURT: Right. We're gonna have to have a...

2 MR. MUSHKIN: Would you like to write the order, 'cause I
3 have a problem because they have ignored the contract? These
4 parties have a separate contract.

5 THE COURT: Right. I understand that.

6 MR. MUSHKIN: And that's somehow lost.

7 THE COURT: What I want to see is -- is let's -- let's go
8 to Report and Recommendation on that. Okay? As -- as a
9 rewrite of -- of what I'm finding, this and that. And then
10 put specifically that I feel that the issue of the -- of the
11 irrevocability of the trust is in effect. And -- and the
12 trust statutes come into play. And that that is where we're
13 at. I'm relying upon the trustee. I'm trusting the ability
14 and the rights of the trustee.

15 MR. MUSHKIN: To the exclusion of the...

16 THE COURT: Yes.

17 MR. MUSHKIN: ...contract rights?

18 THE COURT: Yes. And -- and so that will give you
19 something you can bring up to the Judge.

20 MR. MUSHKIN: Thank you very much, Your Honor. They'll
21 write the order and run it by us?

22 THE COURT: Yes.

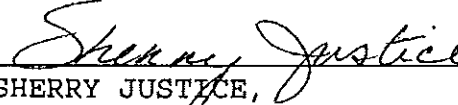
23 MS. GOLDSMITH: It will be a Report and Recommendation.

24 THE COURT: Report and Recommendation.

1 MR. MUSHKIN: I -- I...
2 MS. GOLDSMITH: I don't believe (indiscernible)...
3 THE COURT: Yeah.
4 MS. GOLDSMITH: ...an order.
5 THE COURT: Yes.
6 MR. MUSHKIN: Report and Recommendation. Sorry, Your
7 Honor.
8 MS. GOLDSMITH: Thank you, Your Honor.
9 MR. MUSHKIN: Thank you, Judge.
10 THE COURT: Thank you.
11 MR. CO: Thank you, Your Honor.
12 MR. WILICK: Thank the Court for it's time.
13 (THE PROCEEDING ENDED AT 11:16:24.)
14

15 * * * * *

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

18 
19 SHERRY JUSTICE,
20 Transcriber II
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1 TRAN

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6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 In the Matter of the Trust of:

9 VIETNAMESE AMERICAN
10 SCHOLARSHIP FUND

11 } CASE NO. P-16-089637-T
12 }
13 } DEPT. XXVI

14 BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

15 THURSDAY, OCTOBER 12, 2017

16 **TRANSCRIPT OF PROCEEDINGS**

17 **OBJECTION TO REFEREE'S REPORT & RECOMMENDATION: RESPONDENT**
18 **DOAN L. PHUNG'S OBJECTION TO PROBATE COMMISSIONER'S REPORT**
19 **AND RECOMMENDATION CONFIRMING PRIOR REPORT AND**
20 **RECOMMENDATION GRANTING PETITION TO ASSUME JURISDICTION OF**
21 **TRUST, MAKING ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF**
22 **LAW, CONFIRMING CO-TRUSTEES AND TO MODIFY TRUST, AND REQUEST**
23 **FOR JUDICIAL REVIEW**

24 **APPEARANCES:**

25 For the Petitioner:

DARA J. GOLDSMITH, ESQ.
PETER CO, ESQ.
MARSHALL WILLOCK, ESQ.

For the Respondent:

MICHAEL R. MUSHKIN, ESQ.
L. JOE COPPEDGE, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

-1-

1 Thursday, October 12, 2017 at 10:25 a.m.

2
3 THE COURT: -- Fund, which are 089638 and 089637.

4 Okay. We will take appearances.

5 MS. GOLDSMITH: Good morning, Your Honor. Dara Goldsmith, Bar number
6 4270, along with our client, Thu Le Doan, along with Attorneys Peter Co as well as
7 Marshall Willick.

8 THE COURT: Thank you.

9 MR. MUSHKIN: Good morning, Your Honor.

10 THE CLERK: Bar number?

11 MR. MUSHKIN: Mike Mushkin, Bar number 2421 --

12 THE COURT: Sorry.

13 MR. MUSHKIN: -- along with Joe Coppedge, Dr. Phung.

14 THE COURT: Okay. We'll get Bar numbers from everybody because that
15 went a little fast. Can everybody give us a Bar number? Because it went a little --

16 MR. CO: Oh, Peter Co, Bar number 11938.

17 MR. WILLICK: Marshall Willick, 2515.

18 MR. COPPEDGE: And Joe Coppedge, 4954, Your Honor.

19 THE COURT: Okay. Great. So we have --

20 MR. MUSHKIN: Two four two one in case you missed it.

21 THE COURT: All right. We have objections to report and recommendations.
22 There are two different cases technically because there are two different trusts or
23 funds. However it seemed like the issues were pretty much identical so there -- I
24 didn't see any significant differences in the two issues.

25 MS. GOLDSMITH: There's no significant difference --

1 THE COURT: Okay.

2 MS. GOLDSMITH: -- Your Honor.

3 THE COURT: Okay.

4 MS. GOLDSMITH: The only difference is that the Vietnamese American
5 Scholarship Fund charter was chartered under Tennessee law, but the statutes are
6 -- are basically identical. So we had the same statutes --

7 THE COURT: Right.

8 MS. GOLDSMITH: -- that we're applying, but we have one that's established
9 under Tennessee law and one that's established under Nevada law.

10 THE COURT: Because the issues -- the actual issues seem to be pretty
11 similar in both cases so if you just want to consider it we're addressing both of them,
12 if there's an area where you think that the different charter, the different state is
13 relevant, you can let me know. Otherwise I just thought we should do them as one
14 whole.

15 MR. MUSHKIN: And we should, Your Honor. We have treated it that way
16 throughout the case.

17 THE COURT: Okay. Okay, great. We're all on the same page.

18 All right. So if we're ready to proceed?

19 MR. MUSHKIN: Yes, Your Honor.

20 Your Honor, this is a rather interesting set of facts and I suppose where
21 I should start is under no circumstances are they undisputed. That's where we start.

22 It appears that the probate commissioner relied solely on NRS
23 163.35556, excuse me, 163.556 to decant the assets of the charitable trust. In so
24 doing, he misapplied the express language of the statute, failed to properly address
25 the inquiries from this Court following the February 1st, 2017 hearing.

1 This Court asked that the following be addressed: Whether there are
2 questions of fact that are material to a decanting analysis, whether the probate
3 commissioner ascertained and considered those material facts, whether the probate
4 commissioner determined there are material facts not in dispute and whether there
5 are materials facts that support a different relief than decanting.

6 The probate commissioner ignored all the material facts and
7 recommended that there's an absolute right to decant. This misapplication of
8 163.556 not only serves as -- as an injustice to the respondent, but such flawed
9 reasoning would lead to an avalanche of frivolous decanting lawsuits.

10 Further, in continuing to ignore material facts repeatedly raised by the
11 respondent both verbally and in writing, the -- the probate commissioner has
12 violated EDCR 4.17.

13 The relevant facts or questions that should be ascertained in the
14 application of 163.556 include the following:

15 Does it apply -- does 163.556 apply to a charitable trust that is
16 registered as a 501(c)(3) and whose beneficiaries are 100 percent the public?

17 Two, what is the original intent of the settlors trustors of the trusts?

18 Does a trustee have unrestricted authority to appoint income and
19 principal of the trust?

20 Does the decanting of the trust abridge the right of other trustees who
21 have power to appoint property which arises under any other law?

22 Will decanting reduce any income interest of any income beneficiary
23 originally intended by the FESR settlors or the -- I forget the other four initials,
24 Judge.

25 Is the trust for which a charitable deduction has been taken for federal

1 or state income tax purposes subject to these decantings?

2 Can 163.556 ignore the intent of the parties as set forth in the
3 court-approved contract that establishes the managerial authority and distribution
4 limitations of the parties?

5 Your Honor, in this case, the trustee does not have an absolute right,
6 nor do I know of any case where a trustee has an absolute right to decant as the
7 commissioner has found. Nowhere in 163.556 does the word absolute appear. If
8 anything the opposite is true.

9 Specifically, a trustee can only exercise such discretion as he or she is
10 provided in the trust document itself. Thus, it is imperative that the trust document
11 be examined to ascertain the intent. An act the probate commissioner failed to do.

12 The probate commissioner failed to inquire and analyze the following
13 material facts that are in dispute between the party (sic):

14 The petitioner has argued multiple manufactured facts, each of which
15 has been proved wrong by the respondent. Among these manufactured facts are
16 that respondent has used the trust funds to support political groups. Never been
17 proven.

18 Petitioner has -- petitioner was afraid of respondent for her safety. No
19 independent proof.

20 The trustees were at loggerheads in the business of the trust. The
21 evidence is to the contrary.

22 The divorce was contentious. Again there was a settlement agreement
23 entered into between the parties.

24 And that the petitioner was -- was a significant income earner of PAI
25 Corporation which donated money to the fund -- to the trust. Petitioner has no

1 record to prove those claims while respondent has hundreds of records to prove the
2 opposite.

3 The probate commissioner failed to analyze and recognize the rights to
4 conduct the affairs of the trusts in accordance with their charters. Section six of the
5 charter of FESR prescribes the number of trustees allowed to sit on the board and
6 the manner with which trustees were elected and/or removed. The report and
7 recommendation treats FESR as a community property asset between two trustees
8 which is not by definition of its charitable 501(c)(3) charter.

9 It's interesting in this case, Judge, because the petitioner has tried to
10 quash notice of a board meeting scheduled for October 15th of 2016 to review
11 ongoing activities and make decisions regarding future donations.

12 In the hearing of October 14th, petitioner failed to obtain the injunction
13 to stop the meeting. During that meeting at the public library at North Buffalo Las
14 Vegas trust -- in Las Vegas, Trustee Holly N-g-o -- I'm not real sure how to say it,
15 but No (phonetic) was elected pursuant to the FESR charter by her competence and
16 dedication to charity work over a period of 30 years.

17 Among other issues, the board discussed the fact that the petitioner has
18 abandoned virtually all activities of the trusts since approximately 2011. Petitioner
19 has failed to respond to notices to attend board meetings, has missed three
20 consecutive properly-noticed meetings and is therefore conclusively deemed
21 incompetent to serve as the trustee per -- per the clear language of the trust charter.
22 She was voted to be removed from the board pursuant to the express language and
23 intent of the charter. The probate commissioner erred by failing to recognize and
24 analyze petitioner's lack of legal standing in the April 28th, 2017 hearing.

25 Your Honor, I don't want to gloss over this one point because it's really

1 important. It's really important because the -- the commissioner completely ignored
2 other remedies. The petitioner enjoys to this day the right to appoint a trustee. If
3 she has a problem, whether manufactured or otherwise, we don't know, she's to
4 appoint someone else to be the trustee. This decanting is absurd.

5 Specifically in the findings the commissioner failed to consider how
6 decanting abridges respondent's right to appoint trustees, to manage the assets and
7 to -- to participate in the trust. It also abridges the -- the rights of Trustee Holly Ngo
8 to appoint and to manage as well. And as of this date, Ms. Ngo has also donated
9 money to the trust.

10 The commissioner failed entirely to -- to recognize or analyze that the
11 petitioner has never demonstrated that she meets the ascertained standards
12 required by 163.556 subsection 18, and in fact, the opposite is true that she is not
13 capable of managing and handling the assets of this trust.

14 Judge, I -- we've put in our opposition significant facts regarding the
15 conduct of the petitioner trustee as it relates to another trust and the activities of this
16 trust. I don't particularly care to go over them one by one again. They appear on
17 page 5 and go through a series of transactions that happened that are more in the
18 line of evidence that should have been taken in this case. And that's really the -- the
19 essence of why we're here today and the basis of the objection.

20 Both 162 -- I'm sorry, 163.556 and 4.17 set out a procedure and it just
21 wasn't followed. This absolute right to decant is nowhere in any case that we've
22 ever seen. So I'm here to answer any further questions that you might have, but
23 respectfully, the -- the discovery -- I mean the probate commissioner has erred and
24 this matter should be sent back for an evidentiary hearing.

25 I would probably make one other request, Judge, and I don't know that

1 if the Court will entertain it, but I would rather you do it. I think that the discovery
2 commissioner has sort of evidenced a preconceived approach to this matter and it's
3 not even close. My client's contract rights, my client's due process rights have been
4 entirely ignored, and respectfully, Judge, that just can't happen. I'll answer any
5 questions the Court might have.

6 THE COURT: Well you mentioned -- you mentioned the timing in this whole
7 thing because the -- the first time you were here was on the objection to the findings
8 from January. You were here on -- on February 1st or maybe that was actually --
9 okay. No, I think it was -- the objection was to -- October 14th. And it was granted
10 in part and denied in part and -- and the instructions in sending it back were for the
11 commissioner to take a look at, you know, very specific things and -- and actually to
12 review and clarify if there are any questions of material fact that in any way changes
13 the legal interpretation of the statute.

14 So that was the question was he needed to look at the questions of fact
15 and see if any of them changed his determination of law. If they were in fact, as you
16 point out, material and would require as the evidentiary hearing as you had
17 requested, you know, that you felt that this should have been set for an evidentiary
18 hearing and that since it was not, that was somehow a procedural error on his part.

19 So in sending it back all I said was determine whether this was indeed
20 something -- material facts that would require an evidentiary hearing or that would --
21 would otherwise change your legal interpretation and so it seems to me that when it
22 came back when the second report and recommendation was done after -- after the
23 hearing in April, that it -- it laid out, you know, basic facts and the -- so looks like the
24 legal issue that remains -- I -- I -- are you -- are you still saying there are questions
25 of fact which you didn't consider because the big --

1 MR. MUSHKIN: Yes.

2 THE COURT: -- thing seems to be that he made a legal error and that was
3 his absolute right. It's kind of two different things.

4 MR. MUSHKIN: Exactly, Your Honor, there are two things that are wrong.

5 THE COURT: Okay.

6 MR. MUSHKIN: First, there are factual issues that were never considered
7 and second, there is a legal error that was made. You are absolutely right.

8 THE COURT: So -- and the factual issues are in dispute and require a
9 hearing?

10 MR. MUSHKIN: Exactly.

11 THE COURT: Okay, great. All right, great. Okay, thanks.

12 All right. So Ms. Goldsmith.

13 MS. GOLDSMITH: Your Honor, I think that Mr. Mushkin places the -- places
14 the error in the wrong order because the first issue is pursuant to the law, are there
15 material facts that need to be considered and that was the question you presented
16 and the court came back and said no, there's not, because the decanting statute has
17 two prongs and those two prongs are a trustee has a right to decant a trust with the
18 only requirements being the trustee has the power of invasion of principal and
19 there's no reduction of any income interest of any income beneficiary. And the court
20 determined that's the situation with regard to both the Tennessee and the Nevada
21 trust and that being the case, the trusts ought to be decanted. And -- and are
22 decanted and that -- and that's what's occurred.

23 Realistically, that's the order and I think that this Court can enter that
24 order. It's not a mistake of law. Our legislature has been clear. I do want to point
25 out that --

1 THE COURT: Can I just ask real quickly? We don't yet have everything
2 renumbered under the most recent --

3 MS. GOLDSMITH: I'm going to address that a bit.

4 THE COURT: -- statute so I -- I just want to know if there were any changes
5 to the statute.

6 MS. GOLDSMITH: There is a change. Mr. Mushkin has addressed NRS
7 163.556.18 which actually is removed in the new statute.

8 THE COURT: Yeah.

9 MS. GOLDSMITH: That was a definition of ascertainable standard and that
10 ascertainable standard is now addressed in 19(a). So sections -- so --

11 THE COURT: So it's still in there. It's not like they took it out in its --

12 MS. GOLDSMITH: No.

13 THE COURT: -- entirety. So --

14 MS. GOLDSMITH: No, it's just his -- his cross-reference is -- is in -- is
15 incorrect and in that it's the definition of ascertainable standard is this -- 18 becomes
16 19(a).

17 THE COURT: Okay. So I just want to make it really clear for the record that
18 even though the statute which took effect on October 1st changed, the only change
19 was 18 has been moved to 19(a). It's still there.

20 MS. GOLDSMITH: Correct.

21 THE COURT: It's still the same standard. So we aren't looking at a different
22 standard, we aren't applying law that wasn't in effect at the time. It's just in a
23 different place.

24 MS. GOLDSMITH: Correct, and -- and I would submit to the Court that NRS
25 163.556 Sections 1 through 16 have had no changes and no changes in numbering,

1 so this is from -- basically the renumbering has been through AB314 --

2 THE COURT: Yeah.

3 MS. GOLDSMITH: -- although it's not in publication, it's in publication on the
4 website so that is the most --

5 THE COURT: Yeah.

6 MS. GOLDSMITH: -- up-to-date number so I just want to make sure the
7 Court's clear on that.

8 THE COURT: Yeah, no, and I just -- I just --

9 MR. MUSHKIN: I apologize. I didn't know.

10 THE COURT: No, no, no, that -- I just want to make it really clear so we have
11 in -- in the record really clearly that the standard Mr. Mushkin is talking about it's still
12 there, it's been moved, we aren't looking at this today under any different law than
13 was in effect when the commissioner looked at this the two previous times. It's the
14 same law just slightly renumbered in the newest version of the statutes.

15 MS. GOLDSMITH: And that's --

16 THE COURT: I didn't -- I didn't want to make it feel like --

17 MS. GOLDSMITH: And -- and that's --

18 THE COURT: -- we were looking at something different.

19 MS. GOLDSMITH: Right, and that's in dealing with just an ascertainable
20 standard --

21 THE COURT: Right.

22 MS. GOLDSMITH: -- and I think what we --

23 THE COURT: Right.

24 MS. GOLDSMITH: -- come down to in this in 163.556 is that we're looking at
25 -- the beginning sections we're looking at 1 and 2, we're going forward and -- and

1 the trust -- the trust is clear that -- our -- our state law is clear, the law of the State of
2 Tennessee is clear that there is this right to decant.

3 I do want to point out that Mr. Mushkin has argued that as after the
4 hearing that we had in August -- in October on October 14th of 2016 that a meeting
5 was held the next day where my client was removed. The court had already
6 determined at that point that the decanting should occur, yet the -- the report and
7 recommendation had not been drafted nor approved or -- or gone forward.

8 So I would submit to you that at this time probably for clarity if the Court
9 is inclined to confirm the report and recommendation, that this Court enter its order
10 with all of the terms in one order because we would be dealing with financial
11 institutions in order to make these -- this decanting occur appropriately.

12 THE COURT: Okay. All right, so the commissioner uses the term absolute
13 right and so I guess my -- my question to you and I think this is the issue that Mr.
14 Mushkin takes issue with this concept that it's an absolute right because it does say
15 may exercise such discretion. So since it's not --

16 MS. GOLDSMITH: There -- there is -- there is no --

17 THE COURT: -- absolute, I mean --

18 MS. GOLDSMITH: -- there is -- there is no qualitative requirement other than
19 meeting these two prongs.

20 THE COURT: Right.

21 MS. GOLDSMITH: It is --

22 THE COURT: (Indiscernible) my question was even though it uses the term
23 may and it doesn't say has the absolute right to, those -- those are like the
24 commissioner's words, there's nothing in the statute that qualifies or -- or shows that
25 there's some -- some standard they have to meet in order to do this other than those

1 two steps --

2 MS. GOLDSMITH: Correct.

3 THE COURT: -- that they have to go through.

4 MS. GOLDSMITH: Correct. And he -- and he has determined that and his
5 words are those are an absolute right. There's no other clarification, there's no other
6 requirement that -- that that occur.

7 THE COURT: Okay. Just want to make it clear. All right, thanks.

8 All right. So then the -- the question being with respect to both of these,
9 those are the things I had written down was that the -- the actual act of holding the
10 meeting did not -- in your view was not effective because the commissioner had
11 already ruled that she had the right, so it's not effective to have the day -- the day
12 after gone on ahead and removed her.

13 MS. GOLDSMITH: Correct.

14 THE COURT: But there's another point to that and that's what Mr. Mushkin
15 went on to say; furthermore, just under the terms of the trust itself, she hadn't been
16 participating. She had missed without excuse properly-noticed meetings, therefore
17 she had to be removed because that's the terms of the trust. That's her not -- not
18 acting improperly or in violation of the -- of the -- any findings of the commissioner,
19 that she had been removed for a reason because she violated the terms of the trust
20 in not showing up and Mr. Willick who I know has been involved in this much longer
21 than any of us might be better if you wish to pass it to him to answer --

22 MS. GOLDSMITH: And it may be for Mr. Willick to address. I can address
23 the fact that at the time she was still -- when we were -- went into court, she was still
24 appropriately on that -- on the board and I think that even if you were going to deal
25 with decanting, those rights that she had as a trustee under the trust looking at

1 163.556 would not have been issues that would have resulted in her inability to -- to
2 execute the decanting. But I will pass the other issues to Mr. Willick.

3 THE COURT: Right, because that's really kind of a -- almost a corporate law
4 question.

5 Thank you, Mr. Willick.

6 MR. WILLICK: I -- I -- I really -- I was thinking you were going to make a
7 strictly legal ruling and therefore I wasn't going to suggest this at all, but there were
8 two errors of fact that one of which I'll simply state and the other one of which I think
9 the Court can take judicial notice of in Mr. Mushkin's presentation.

10 First as to the contentiousness of the divorce, it's still in litigation five
11 years later. We have a hearing scheduled before the Nevada Supreme Court the
12 next 90 days. So --

13 THE COURT: That didn't to me seem like a -- a major --

14 MR. WILLICK: -- I -- I didn't --

15 THE COURT: -- factor for the commissioner to consider --

16 MR. WILLICK: I don't think so.

17 THE COURT: -- but I was interested about this concept of sort of the
18 corporate concept of --

19 MR. WILLICK: Sure.

20 THE COURT: -- if you miss board meetings you can be removed.

21 MR. WILLICK: Every notice of meeting was in fact responded to by me
22 personally.

23 THE COURT: Okay.

24 MR. WILLICK: So no, there was --

25 THE COURT: There were no unexcused absences?

1 MR. WILLICK: No. Every single time a meeting was to be held and there
2 were actions to be taken, she attempted to -- we have an extensive history of
3 litigation in the divorce file in front of Judge Pomrenze of attempts to stop him from
4 doing what he was doing to the corporate trust assets and with Ms. Doan attempting
5 to act in the best interest of the trusts to fulfill their missions. And this went on in a
6 series of maybe five hearings with at least three different law firms on the other side
7 over a period of about two years.

8 THE COURT: Okay. So I -- I just -- that's what I -- I had questions about, Mr.
9 Mushkin, was the -- it seemed to me like if there were corporate issues -- I'm -- I'm
10 calling them corporate. It's a trust, but it seemed to me --

11 MR. MUSHKIN: Sure.

12 THE COURT: -- that those were --

13 MR. MUSHKIN: Procedural.

14 THE COURT: -- procedural issues that, you know, I wasn't sure had really
15 been considered and --

16 MR. MUSHKIN: And --

17 THE COURT: -- so I just want to know what the --

18 MR. MUSHKIN: -- as much as --

19 THE COURT: -- what the relevance of that is.

20 MR. MUSHKIN: -- Mr. Willick would like you to think otherwise, no such thing
21 is true and in fact, they raised these issues before the commissioner trying to enjoin
22 any further actions and he said I will not enjoin the actions of these trusts.

23 The petitioner has not participated. They can show you no document,
24 they can show you nothing that will prove that. They can say it, which is what
25 they've done throughout this case, but they can't prove it. And that's the standard,

1 Judge. You can't just say it. These issues are in dispute and you have to prove it.

2 THE COURT: Okay. My next question is that I -- that was an interesting point
3 to me. I hadn't really thought about that before. What's the relevance to that to the
4 analysis? If they have already -- and the commissioner, you're right, didn't stop
5 them from going forward with any actions, but where a trustee who at the time they
6 file does have this status, what's the effect of her being removed just through regular
7 process --

8 MR. MUSHKIN: Process. And let's go back and look for a moment. Both
9 counsel want you to believe that this trustee has -- may exercise such discretion --
10 you -- you brought it up. But let's look at the trust document, what discretion does
11 the trustee have? Less than \$5,000. I don't understand how we got here. There's
12 no rights. This absolute right to decant? Judge, if that's the case, my client's
13 contract rights mean nothing.

14 Now I -- we've looked, we've looked in almost every jurisdiction to try
15 and find something to guide us. I only found one thing that helped guide me and I
16 was a young lawyer at the time and perhaps you remember a case called *Marathon*
17 *Oil* that shut the bankruptcy court down across the street because they were -- they
18 were adjudicating contract rights in a bankruptcy court that wasn't an Article III court.
19 Judge came out with his bowtie on and no robe; we're shut down until congress can
20 fix this and now adversary proceedings go to district court if they have constitutional
21 implications.

22 These folks signed a contract that gave them both rights. Neither one
23 could give away more than 5,000 without the other one. What invasion rights? The
24 public are beneficiaries to a 501(c)(3).

25 THE COURT: Right.

1 MR. MUSHKIN: This just doesn't fit, Judge.

2 THE COURT: Okay.

3 MR. MUSHKIN: So respectfully, the report and recommendation is wrong,
4 should be overturned and this Court should order evidence and I would request if
5 the Court can that you do it so that my client's constitutionally-protected rights are
6 protected.

7 THE COURT: Okay. Thanks.

8 That's one of the few hang-ups I -- I have in this thing. I -- the
9 commissioner looks to have gone through and ticked off the points about the issue
10 of -- that were raised in the -- in the -- because this is on -- this is on -- the second
11 time it's up here on a report and recommendation so you kind of have to look at this
12 whole record and what the court specifically said was go back and get them to
13 answer these questions; are there material questions of fact here that affect your
14 legal analysis and as -- as Ms. Goldsmith has pointed out, the legal -- his legal
15 analysis is there's no such -- there isn't an absolute right.

16 That's his language for it. The -- it's -- it's a pretty vague statute. I
17 understand that it's -- may only be \$5,000 at a time, but it does say that you -- you
18 have the -- as a trustee, you have the ability and discretion to make appointments of
19 the property and -- and they do. So the question was do any of those questions of
20 fact change that analysis and the -- the only thing really that I don't know and I don't
21 even know if this was raised or if you -- you talked about this before the
22 commissioner is this concept of well what if through the ongoing process of -- the
23 corporate process there is a -- some action is taken against the person who is
24 seeking to do this, does that interrupt their right to because they exercised that right
25 when they filed their petition when they were in -- in a status that the commissioner

1 says that meets the standard, that gives you what he calls -- and again this is his
2 term, it's not in the statute -- absolute right.

3 That to me is an interesting question and because as you pointed out,
4 there -- the -- the trust was never enjoined from taking proper procedural action
5 against the trustee. Since they weren't enjoined, does she lose her right that she
6 had when she filed her petition? She had that right at the time she filed the petition.
7 So --

8 MR. MUSHKIN: Certainly there's no --

9 THE COURT: -- can they --

10 MR. MUSHKIN: -- final order of -- of -- there is certainly no final order of --

11 THE COURT: Yeah.

12 MR. MUSHKIN: -- decantment at the time she's removed.

13 THE COURT: And see that's my -- my question is can you -- and this is
14 where I kind of get into an equitable issue. Can you -- when they have the right
15 when they file, but -- and I'm going to accept this just as undisputed, I mean the --
16 because Mr. Willick admits she didn't attend. He says there's reasons it was not
17 unexcused, we always responded to every order -- every notice so they dispute that
18 it was proper to remove him. Remove her. Beg your pardon, remove her. But
19 technically they were not enjoined from doing so. Does that deprive her of her trust
20 rights?

21 MS. GOLDSMITH: And Your Honor --

22 THE COURT: She had them when she filed.

23 MS. GOLDSMITH: And -- she had them when she filed and I would submit to
24 you that as part of what he directed was that with regard to the activities of the
25 organization that she was to be provided through my office all the scholarships that

1 were to be -- to be looked at, that was all part of that -- that prior report and
2 recommendation. So -- and so these things are supposed -- these things are
3 supposed to occur.

4 There is nothing that she had -- she had the right at the time she filed
5 for -- to do the decant to request the decanting. She had the right to obtain the
6 decanting. She's been -- she's received two reports and recommendations now
7 which say those -- those trusts are to be decanted, both of them are to be decanted
8 and they either can occur one of two ways. You can either decant into two new
9 trusts or you can pour 50 percent of the assets into another trust.

10 My client doesn't care which way it goes. It -- it's really up to -- it's really
11 up to the respondents how they want to have that handled. But the reality is the way
12 our statutes are drafted that the trust should be decanted, needs to be decanted in --
13 each trust into two --

14 THE COURT: Okay, I understand.

15 All right. So Mr. Mushkin, anything in final because I -- I'm going to tell
16 you what I --

17 MR. MUSHKIN: Judge, I -- I'm --

18 THE COURT: -- my ultimate rule is.

19 MR. MUSHKIN: -- I'm absolutely mystified at how anyone can get that this
20 trustee has the rights that are necessary for decanting. They -- the trustee can't
21 take one penny. The trustee can't direct any penny to a specific beneficiary without
22 the consent of my client by a contract that was made a part of a court order. They
23 simply --

24 THE COURT: And that's the settlement agreement in the divorce action or --

25 MR. MUSHKIN: That's the -- yes.

1 THE COURT: Which I don't know if that's really -- is that -- I don't know what
2 the status is of -- of the divorce and --

3 MR. MUSHKIN: No, the -- the --

4 THE COURT: -- what the settlement agreement was.

5 MR. MUSHKIN: -- the issue that Mr. Willick raises has to do with an
6 administration issue where there's been a finding against my client that we don't
7 think is fair or -- or -- or proper. That's on appeal. No question about it. And Mr.
8 Willick has made numerous references to the -- the money is sitting in his trust
9 account. That's not the issue, Judge.

10 THE COURT: Okay. Right.

11 MR. MUSHKIN: The issue here is really quite simple. Have they met the
12 standard for decanting? We say no. Is there an absolute right to decant? We say
13 no, because there are contract rights that impede any right to decant that were
14 entirely ignored. That's the -- you went through the five items. We went through
15 them and he did not address whether there are questions of fact that are material to
16 a decanting analysis. No. He said absolute right.

17 It's preposterous, Judge. Of course there are facts, some of which are
18 the contents of that mandatory settlement agreement and whether or not this
19 individual meets the ascertainable standards to take on these responsibilities.
20 Completely ignored.

21 THE COURT: Okay.

22 MR. MUSHKIN: Whether the probate commissioner ascertained and
23 considered those material facts. Obviously he did not.

24 Whether the probate commissioner determined there are material facts
25 not in dispute. Virtually every fact is in dispute.

1 Whether there are material facts that support a different relief than
2 decanting. That was the one thing I wanted to make sure I addressed one last time.
3 She still has a right to appoint a trustee. She has other remedies. This notion of
4 abridging all of my client's rights because she wants that? I just -- it's just not the
5 standard, Judge. There's no case that they can point to, no law they can point to
6 that says that's the standard.

7 So respectfully, Judge, we should overturn the recommendations and
8 set an evidentiary hearing.

9 THE COURT: Thanks. Okay.

10 MR. WILLICK: My only clarification in case I was unclear because I don't
11 want to misrepresent the record, we spent about two years arguing about control of
12 the -- the charitable work for these trusts before Judge Pomrenze after a series of
13 hearings issued an order saying that because of the phrasing of the divorce decree
14 and the settlement agreement that was part of the divorce decree, she was not
15 going to enter any orders relevant to the control of the spending of the trusts or
16 holding him in contempt for violating the terms which we had also requested and
17 suggested that this court deal with those issues.

18 So it's not a matter of -- of nonparticipation. We were in active litigation
19 on the issues of custody and control of the trust assets and whether he was abusing
20 his authority for I think two and a half years before these proceedings began. I -- I
21 could give you the exact time, but the Court can take judicial notice of the register of
22 actions in the --

23 THE COURT: Sure, in the --

24 MR. WILLICK: -- in the family court action.

25 THE COURT: Right. Yeah.

1 MR. WILLICK: And I'll answer any questions obviously that you have about
2 that litigation.

3 THE COURT: Thank you. Okay, thank -- I appreciate that. Final --

4 MS. GOLDSMITH: And -- and Your Honor, a final comment is that, you know,
5 the area of dealing with decanting trusts is probably something that most domestic
6 lawyers don't deal with all the time --

7 THE COURT: Right.

8 MS. GOLDSMITH: -- and that Nevada's on the cutting edge with regard to its
9 decanting statutes in the country. So it's -- it's, you know, not to -- realistically it's --
10 it's -- it's very possible that all the counsel and parties here didn't understand all the
11 rights that were existing, as well as -- as well as Judge Pomrenze with regard to the
12 statutes --

13 THE COURT: Right.

14 MS. GOLDSMITH: -- and with regard to decanting.

15 THE COURT: Okay.

16 MS. GOLDSMITH: So I think that once we're in this courtroom, we're in the
17 right place, we have the abilities, we have a Judge that's familiar with -- with Chapter
18 163 which isn't something that everyone uses on a day-to-day basis --

19 THE COURT: Sure.

20 MS. GOLDSMITH: -- that it's important to go forward with pursuant to the
21 statutes.

22 THE COURT: Right. Okay. Well, since I think we need to move on, no
23 offense, I'm going to deny the objection, but I want to make the following findings
24 that -- so it's clear what my basis for denying the objection is, because I -- I think
25 these are areas where we need to know how the -- how the supreme court or

1 whoever you take this to -- not saying you should -- interprets this.

2 As has been pointed out by Mr. Mushkin, the statute does not say a
3 party has an absolute right to decant. That's a term used by the commissioner I'm --
4 and I think it may have sent us off on a -- on a -- chasing a red herring, because
5 nowhere in the statute does it say you have an absolute right.

6 You do have to meet paragraphs 1 and 2(a) and -- (a), (b) and (c) of
7 that statute and once you do, then you have a right. Is it an absolute right? No, I
8 mean you have to meet a test. So that term of art as he uses it, I think it's maybe
9 distracted us from the real point. So even though he uses that term absolute right, I
10 think he properly analyzed the statute.

11 I -- I understand you object to him using that term and that it makes it
12 appear that he has ignored the facts and hasn't done a full analysis. I think he did. I
13 think the term absolute right is an unfortunate language choice because I agree with
14 you, I don't read this as being an absolute right. But when you read the statute, it
15 looks like he went through that analysis of parts 1 and 2, all their subparts. It's not
16 an absolute right. You're correct. But I think he properly applied the statutes there.
17 I don't think he just said you -- no matter what you've got or you've got a right to
18 decant.

19 I -- so I think that's number one. In using that term, has -- I think that's
20 incorrect. I don't think it is an absolute right. I think however he did analyze it in
21 accordance with the statute and then said so she's got the right. And he -- he -- I -- I
22 truly believe he put us off on the -- on -- on a wrong trail with that concept. It's not
23 absolute. But if you can meet the statute, do you have the right? Yes, you do. So
24 -- and I think that's what he applied.

25 The thing that has been a concern for me as -- as I sit here is this idea

1 of what corporate principles govern the right -- the rights of the -- of the trustees?
2 We have this whole area of litigation that Mr. Willick's talked about that is on a
3 different track that is this whole issue from domestic relations and then -- and a
4 commissioner -- which Judge Pomrenze said I'm not going to go into all that. The
5 commissioner refused to enjoin the -- the trusts from continuing to act. As they
6 continued to act, they removed her for failure to participate and the question is does
7 that interfere then with her rights under the statute.

8 As I would analyze that, I don't believe it does because did she have
9 the right when she initiated the action. She did. And I'm not saying that removing
10 her was wrong. I don't think we have to look at that. She has been removed. That
11 is a fact because they weren't enjoined from doing so, but does it affect her right to
12 ask for the relief she's asking for and I don't think it does because she had -- at the
13 time she filed this action, she had the right if she could meet the terms of the statute
14 which she did, so the commissioner found she could -- she was granted the relief.

15 The fact that she has since been removed from the trust, I'm not
16 understanding how that would affect her right to seek this and I don't think that she
17 still has to be a trustee in order to proceed because she had the right when she
18 filed. If she failed to live up to her -- her duties under the trust and they could
19 remove her for -- for cause after the fact and they weren't enjoined from doing so,
20 fine. But it -- it doesn't affect her ability to go forward with -- with the relief she's
21 seeking.

22 So for those two reasons, I felt that the report and recommendation as it
23 came back I -- with all due respect, I disagree, Mr. Mushkin, that he didn't address
24 the issues. I just -- I -- I just think this use of absolute right has distracted us from
25 the real point which is can you meet the -- the -- the standard under the statute as it

1 then existed.

2 And again just for the record, the -- the standard that you're supposed
3 to apply now appears in 19(a), previously appeared in 18. So just for the record for
4 anybody looking at this after the fact, we are not applying any new law, it's just a
5 renumbered statute. They -- the test has been moved to a new -- to a new section
6 of the statute. It's otherwise --

7 MR. MUSHKIN: Your Honor --

8 THE COURT: -- it's the same statute.

9 MR. MUSHKIN: -- I would just ask that you address one specific issue in your
10 findings and because you -- you brought it up that the trustee may exercise such
11 discretion. Well what discretion does this trustee have? You have to make a finding
12 that she had the discretion to do what is sought and -- and that's been our position
13 all along --

14 THE COURT: Right.

15 MR. MUSHKIN: -- that the statute can't apply if she doesn't have the
16 discretion necessary. So you have to tell us.

17 THE COURT: Right. Okay, thank you. That -- you're right. I have to say one
18 other thing and then I have to address that.

19 Just for the record again, these cases are not consolidated so this
20 same order should be in -- in both cases, it's the same minutes, it's going to be the
21 same order in both cases because there's really no difference other than one is
22 Tennessee law and one is -- is Nevada law, but I did not see, as Ms. Goldsmith has
23 pointed out, a significant difference in the Tennessee statute from the Nevada
24 statute --

25 MS. GOLDSMITH: Your Honor, I'll cite to the Tennessee statute which is --

1 THE COURT: Right. So Tennessee statute is 35 dash 15 dash 816
2 Tennessee Code --

3 MS. GOLDSMITH: Yeah.

4 THE COURT: -- 35 dash 15 dash eighteen six (sic).

5 So the point that -- that Mr. Mushkin has raised is that the test is does
6 the trustee have discretion or authority to distribute trust income or principal to or for
7 any beneficiary of the trust -- may exercise discretion. I grant you they were very
8 frugal with these trust funds. They -- I didn't see the ability to just give it all away to
9 somebody. You -- you're correct about that. But they had the right to ascertain in
10 very small little -- little mini grants, little micro grants that may seem small in relation
11 to the total amount of the trust, but to the people who are receiving them can be
12 life-changing. I mean \$5,000 for some people --

13 MR. MUSHKIN: Who's --

14 THE COURT: -- is huge.

15 MR. MUSHKIN: Who's the beneficiary, Judge? Who do they get to give it to?

16 THE COURT: They -- they give it to -- let me see because the -- the -- the
17 way the trusts are defined is very interesting and it tells you who they can give it to.

18 Okay. The Vietnamese American Scholarship Fund, so if there are
19 people who -- and I don't think it was -- was specifically -- I don't think it was limited
20 to people of --

21 MR. MUSHKIN: So if I may, Judge?

22 THE COURT: -- Asian descent, was -- I don't think it was. It was just the -- to
23 people who -- it had a standard for how you --

24 MR. MUSHKIN: Correct.

25 THE COURT: -- how you would satisfy that standard --

1 MR. MUSHKIN: And -- and Judge, what you're doing is you're taking one
2 provision, but when you look at the --

3 THE COURT: Right.

4 MR. MUSHKIN: -- trust, it has a series of provisions that determine how funds
5 are disbursed.

6 THE COURT: Right.

7 MR. MUSHKIN: Neither trustee has discretion; that's the point. They have to
8 go to the other, they have to go through this process. I have said repeatedly --

9 THE COURT: Right.

10 MR. MUSHKIN: -- that the commissioner has not analyzed the law as it --

11 THE COURT: Okay.

12 MR. MUSHKIN: -- impacts my client's contract rights. There is not the
13 discretion necessary. Where does it even say that this applies to a charitable trust?

14 One last comment. If she makes a mistake and blows the tax status of
15 this trust, my client has no remedy.

16 THE COURT: Okay.

17 MR. MUSHKIN: This was done -- these were deductions taken. This is not a
18 community asset.

19 THE COURT: Right.

20 MS. GOLDSMITH: Your Honor, they're going to proceed as -- as -- as
21 charitable trusts --

22 THE COURT: Okay.

23 MS. GOLDSMITH: -- and whether --

24 THE COURT: Right.

25 MS. GOLDSMITH: -- and whether his client wants to have his own fresh start

1 with a new 501(c)(3) --

2 THE COURT: Right.

3 MS. GOLDSMITH: -- or continue the other, that -- that's fine and pursuant to
4 a court order for the action to decant these trusts, the IRS would certainly look to
5 that and whatever happens on the other side of the decanted trust that my client
6 receives, he's not going to be responsible based on -- based on this Court's order
7 decanting the trusts.

8 THE COURT: Right. Okay, so he specifically asked me if I can finish this
9 question -- want to answer Mr. Mushkin's question. What do I see as the right to
10 distribute and I -- I knew it was in here and -- and that's why I -- I just -- I -- this is
11 really a great purpose. I'm -- I'm so impressed by the charitable intent behind this --
12 this -- these trusts as they're set up. They're -- they're meant to go great things.

13 Okay. In the FESR Fund for Encouragement of Self-Reliance, the --
14 the -- assisting organizations that loan micro amounts -- that's where I got the micro
15 amounts -- that loan micro amounts of money at favorable interest rates for the
16 purpose of enabling individuals to pursue a trade or business, paying micro amounts
17 of money to individuals who are qualified as above but nevertheless unable to meet
18 the loan criteria, to individuals from disadvantaged backgrounds who are qualified to
19 attend Vietnamese or American institutions of training, and then the one is
20 contributions to any charitable organization, trust, community chest or foundation
21 that, you know, basically meets that same standard and is charitable.

22 So I mean to me that's what it was set up to do, these little micro
23 amounts, and yes, she can't make huge distributions and they need to do it together,
24 but the purpose was specifically set up for micro amounts. So the fact that it's just
25 \$5,000 at a time is the purpose of the trust. It was meant to do these micro grants.

1 As I said, in the total amount of this trust, they may be miniscule at any one --

2 MR. MUSHKIN: So how does my client ensure that is done, Your Honor?

3 THE COURT: I think --

4 MR. MUSHKIN: You've -- if you decant these trusts, you take his rights -- his
5 contract rights away based upon a hearing in front of a discovery commissioner
6 where no evidence is taken. How is that possible?

7 THE COURT: Okay, as a matter of law, that's -- it's a legal right under the
8 statutes to do so and the question of how the tax -- tax advantages are maintained
9 is a question for the parties to deal with so that they can maintain their tax
10 advantages. That's their problems, not mine. I am -- I'm not here to tell them how to
11 handle maintaining the 501(c)(3) status. I'm just saying that as a matter of law, I
12 don't see that the commissioner made an error, but I want to acknowledge the
13 concerns that I had that you had raised where I think that the commissioner came to
14 the right conclusion, may have used the wrong terminology in doing so and I think
15 that set us off in a wrong direction. It's -- so if -- if you would write that -- it's two
16 separate orders because they've got to be in separate cases and then you can
17 proceed as you wish.

18 MS. GOLDSMITH: And Your Honor, as I stated previously, I -- I have the
19 intention of placing all of it in one order. I find it difficult when you're referring back
20 to report and recommendation -- one separate order for each case --

21 THE COURT: Correct.

22 MS. GOLDSMITH: -- and not referring back to the report and
23 recommendation because it makes it very difficult going forward to either one if you
24 need to produce that (indiscernible) --

25 THE COURT: Right.

1 MS. GOLDSMITH: -- service or whatever the case may be.

2 THE COURT: Right.

3 MR. MUSHKIN: You'll have -- she'll run it by us, Judge?

4 THE COURT: Absolutely.

5 MS. GOLDSMITH: Of course.

6 THE COURT: Absolutely. Interesting. Thank you very much.

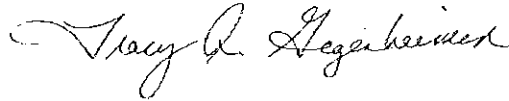
7 MS. GOLDSMITH: Thank you, Your Honor.

8 MR. MUSHKIN: Thanks, Judge.

9 MR. WILLICK: Thank you for the time, Your Honor.

10 [Proceedings concluded at 11:13 a.m.]

11 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
12 proceedings in the above-entitled case to the best of my ability.

13 

14 Tracy A. Gegenheimer, CER-282, CET-282
15 Court Recorder/Transcriber



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 & FUND FOR
10 THE ENCOURAGEMENT OF SELF
11 RELIANCE
12

CASE NO. P-16-089637-T &
P-16-089638-T

DEPT. XXVI

13 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

14 THURSDAY, FEBRUARY 22, 2018

15 **RECORDER'S TRANSCRIPT OF PROCEEDING:**
16 **MOTION TO STAY: MOTION TO STAY PROCEEDINGS ON ORDER**
17 **SHORTENING TIME**

18 APPEARANCES:

19
20 For Petitioner:
21 Thu Le Doan

DARA J. GOLDSMITH, ESQ.
PETER CO, ESQ.

22 For Respondent:
23 Doan L. Phung

MICHAEL MUSHKIN, ESQ.
JOE COPPEDGE, ESQ.

24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Thursday, February 22, 2018

2
3 (Case called at 11:25 a.m.)

4 MR. MUSHKIN: Perhaps I can make this easier for everybody.

5 THE COURT: Yeah.

6 MR. MUSHKIN: If that's what --

7 THE COURT: Because it's -- that's my problem, Mr. Mushkin, is --

8 MR. MUSHKIN: If that's what they need to hold everything still --

9 THE COURT: Right.

10 MR. MUSHKIN: -- is to have some less aggressive management. If
11 they can provide us with what they're after.

12 THE COURT: That was my, my concern is that, under this statute,
13 if we can figure out some conditions --

14 MR. MUSHKIN: So.

15 THE COURT: -- because there's -- I think Ms. Goldsmith has
16 addressed like, I think, like three things; because I'm inclined to grant the stay.
17 This is a unique issue of law. This is making law in the State of Nevada. I
18 think it's deserving of a stay, because Commissioner and I are kind of pushing
19 the envelope here. So we are -- we think this is where the law is going. So I'm
20 sorry but we, you know, we do. That's, that's the -- where we see the law of
21 trust is moving towards these kind of rights.

22 The -- but my problem here is, it's not just status quo. I mean,
23 there have got to be conditions that protect the interests that the Petitioner was
24 seeking to accomplish by asking for this relief; and that's what needs to be
25 protected.

1 MR. MUSHKIN: So perhaps --

2 THE COURT: And I appreciate the idea that we -- that there would
3 be some sort of a bond posted, I think for each of them, but the problem is
4 conditions. Because it's, it's more than just -- like in a civil case it's just: Am I
5 going to be able to collect on my judgment? And if there's a piece of property
6 sitting there, we can sell the property and recover so we don't need a bond.
7 This is a little -- this is a little different, and that's what my problem has been in
8 deciding this --

9 MR. MUSHKIN: So perhaps, Judge.

10 THE COURT: -- is, how do we make this work?

11 MR. MUSHKIN: Perhaps the best thing that we can do is try and
12 propose an order to you.

13 THE COURT: Because --

14 MR. MUSHKIN: And I'll -- and we'll work together --

15 THE COURT: I don't --

16 MR. MUSHKIN: -- to try and address --

17 THE COURT: -- I got to tell you, I don't think it's just a cash bond,
18 although, I think a cash bond is part of it.

19 MS. GOLDSMITH: Your Honor, I, I think that maybe it would be
20 helpful if we -- because there are a lot of issues here. We're on an OST.

21 THE COURT: Uh-huh.

22 MS. GOLDSMITH: If we have the opportunity to maybe formulate
23 some things to bring back to you, because I would submit to you --

24 THE COURT: When, when is your bond due to be? I mean we
25 could -- what we could do is, is like post a temporary stay pending the

1 determination if it's possible --

2 MS. GOLDSMITH: Well --

3 THE COURT: -- under 155, to frame a stay pending the entire
4 appeal.

5 MS. GOLDSMITH: And right now they're actually --

6 THE COURT: That might be the way to go.

7 MS. GOLDSMITH: They're actually right now --

8 THE COURT: It's been like 30 days.

9 MS. GOLDSMITH: -- in sort of a stay because Fidelity's frozen the
10 account.

11 THE COURT: Okay.

12 MS. GOLDSMITH: So Fidelity has frozen -- has frozen the
13 accounts.

14 THE COURT: And you know, that might be -- that's actually,
15 maybe the way to go is to just say: Because under the statute we have to go
16 beyond just a stay --

17 MS. GOLDSMITH: So --

18 THE COURT: -- pending with a bond. You have these conditions
19 that we're supposed to be addressing. And I think there are conditions here,
20 Mr. Mushkin, that should be addressed.

21 MR. MUSHKIN: I think that's fair, Judge. I think we should try and
22 work it out if you want to have us come back in --

23 THE COURT: Because I -- because I'm going to grant a stay --

24 MR. MUSHKIN: -- in a week or --

25 THE COURT: -- if we can make it work.

1 MS. GOLDSMITH: Your, Your Honor, I'd submit to you that
2 possibly the monies could be carved into two accounts and blocked releasing
3 \$200,000 so each of them can do --

4 THE COURT: Because that was your concern is --

5 MS. GOLDSMITH: -- donations and --

6 THE COURT: -- you didn't want the funds going into her trust
7 account.

8 MR. MUSHKIN: Yeah, we're not -- we're not interested in her
9 making donations that we don't have participation in --

10 THE COURT: Yeah. Exactly.

11 MR. MUSHKIN: -- and we don't want to make donations that she
12 doesn't have participation in.

13 THE COURT: Yeah.

14 MR. MUSHKIN: We want to administer the trust the way they have
15 been.

16 THE COURT: Okay. And, and it --

17 MR. MUSHKIN: What we are willing to do is --

18 THE COURT: -- it may be possible.

19 MR. MUSHKIN: -- put restrictions. If they're worried about
20 aggressive trading, which has gone on for 30 years.

21 THE COURT: Yeah.

22 MR. MUSHKIN: But if that's a problem --

23 THE COURT: Okay.

24 MR. MUSHKIN: -- Judge, like I said, "I think we can frame an
25 order, run it by you, if you're comfortable or you need to add something."

1 THE COURT: I think there needs to --
2 MS. GOLDSMITH: Your Honor, I think I'd have to agree to that --
3 THE COURT: There has to --
4 MS. GOLDSMITH: -- and I am not comfortable --
5 THE COURT: Right.
6 MS. GOLDSMITH: -- with anything he's saying.
7 THE COURT: Exactly. Because while I believe, as I said: We -- this
8 is -- this is law, new law in the State of Nevada. But it's a really important
9 issue. And because the kind of things --
10 MR. MUSHKIN: I agree.
11 THE COURT: -- it's becoming a big deal. So we need to know
12 what the law in Nevada is. So I think that a stay -- I understand why a stay is
13 requested and may be appropriate. But we have different considerations than
14 just the pure, "Can we protect the judgment with cash?" In this particular case
15 I -- with all due -- I don't think you can. There's no way to determine what her
16 -- it's not about her cash damages. It's not what it is. Is a cash bond
17 appropriate? Absolutely it is. Well, a bond. Is a bond appropriate? That's
18 number one, yes, I think it is.
19 But how do we as, as Ms. Goldman pointed out -- Goldsmith
20 pointed out. Our problem is the -- what is being appealed is not a monetary
21 judgment. What is being appealed is the control over trust funds and what her
22 client would have the right to do and we're holding her up from doing. So how
23 do we address those issues? She's raised one which is the volatility of
24 investments.
25 I understand why she wants her investments held differently than

1 he does, so that's one issue. Is there some way -- and I don't know if that's
2 cash or an agreement to maybe put it in a different kind of account that's --

3 MR. MUSHKIN: They can propose what --

4 THE COURT: -- less aggressive.

5 MR. MUSHKIN: -- however they want it held.

6 THE COURT: So that's one. That's one.

7 MS. GOLDSMITH: And Your Honor, we've proposed it -- carved it
8 -- split them in half and have, have one conservatively managed.

9 THE COURT: Okay. Yeah, so --

10 MS. GOLDSMITH: And their -- his, his half, whatever he wants.

11 THE COURT: -- take a look. Here's -- but here's how we get there.
12 I think we have to have a temporary stay in place so that we can determine if
13 we can address the conditions necessary to protect the Petitioner who was
14 granted the relief she sought. It's more than just the cash bond, bond. It's --
15 we need a bond on each of them, but that's why my request was, was there
16 different purposes under each of the trusts that need to be protected? That's
17 where I see them differing a little bit.

18 So one issue is the investments, but the other -- and, and the
19 proposal that your client made, which is, we'll continue the scholarships. But
20 there are other interests that Ms. Goldsmith's client has that aren't necessarily
21 scholarships but are some other sort of appropriate 501(c) distributions. What
22 are those? How do we work on making sure that they are handled? Is it better
23 to handle them separately? Each party just does their own thing on their issue,
24 or is it better to have an agreement?

25 Mr. Mushkin believes very strongly that it's better to have an

1 agreement, and each party has to participate in what the other one wants to
2 do. I don't know how that's going to work --

3 MS. GOLDSMITH: And, and --

4 THE COURT: -- because you don't want to do the same things.

5 MS. GOLDSMITH: -- and Your Honor, some of the difficult there --

6 THE COURT: So if there's a way to address it.

7 MS. GOLDSMITH: -- is, our client is no longer a trustee of either of
8 these two trusts that fund controls with another trustee. Our client's no longer
9 a trustee. She's been removed --

10 THE COURT: Yeah. Exactly.

11 MS. GOLDSMITH: -- by him.

12 THE COURT: And that, that was my question is: How is this
13 scholarship thing going to work, because who's got voting rights?

14 MR. MUSHKIN: Your Honor.

15 THE COURT: So that --

16 MS. GOLDSMITH: Our client according to them --

17 THE COURT: -- there's got to be a proposal.

18 MS. GOLDSMITH: -- has none.

19 THE COURT: That's got to be --

20 MR. MUSHKIN: Your Honor.

21 THE COURT: -- that's got to be a proposal.

22 MR. MUSHKIN: Your Honor.

23 THE COURT: That's the way to term the proposal.

24 MR. MUSHKIN: Your Honor, again, this is just not factually correct.

25 THE COURT: Okay. I don't care if it's correct.

1 MR. MUSHKIN: She enjoys the right to appoint a trustee. You
2 have to understand, Judge, the whole reason she petitioned. She said she
3 couldn't get along with this gentleman. After 30 years of managing this – now
4 all of a sudden.

5 THE COURT: Uh-huh.

6 MR. MUSHKIN: So she still has the right to appoint a trustee. She
7 could reappoint herself --

8 THE COURT: Okay.

9 MR. MUSHKIN: -- but she has to show up at the meetings.

10 THE COURT: Okay. All right. If you would kindly please allow me
11 to make my ruling.

12 MR. MUSHKIN: Certainly. Sorry, Judge.

13 THE COURT: That's what you're here for. I would like to have a
14 stay pending appeal, because I do recognize this is really unique law. We need
15 to know what the law in Nevada is because this is – this is a big issue. So I
16 understand why a stay might be appropriate. But my problem is, achieving a
17 stay under the statute requires more than just a bond. The – I think a bond is
18 part of any proposal, so if you want to – provide, provide me your separate
19 proposals and I can pick one, I'll do that.

20 But if you can't agree you're better off, because somebody's going
21 to be mad at me whichever way I go. But if you can agree on terms then you
22 at least get part of what you want. So if you can negotiate the terms that will
23 protect these interests, because I – the proposal that we had maintained status
24 quo, and we'll agree on which of these scholarships to grant, is ok. But there's
25 got to be some protection for the relief that she successfully obtained. That's

1 what's got to be protected. So, it's not just your client's right to continue to
2 do what he wants to do. He didn't win. He did not win.

3 MR. MUSHKIN: And thus, the appeal.

4 THE COURT: I have to protect – I have to protect the person who
5 did win. So that's why your client –

6 MR. MUSHKIN: And the four factors are right there.

7 THE COURT: -- that's why you and your clients need to work with
8 the Petitioner's Counsel to figure out how you're going to protect what she
9 won pending your appeal saying I'm wrong. And I'm okay with that. I just – I
10 just want to know what the law is so.

11 MR. MUSHKIN: We will do so, Your Honor.

12 THE COURT: So you could – it's your option. If you can't get
13 something put together in 10 days then you each submit your own and I'll pick.

14 MR. MUSHKIN: Thanks, Judge.

15 THE COURT: So we – the temporary stay is 30 days. And what
16 would that – when would that mean you'd be back? Oh, I don't – I want to
17 make sure we avoid that week I'm out of town. So we're – so we're going to
18 have to go what 45 – 45 days?

19 COURT CLERK: Yeah.

20 THE COURT: 45 days?

21 COURT CLERK: About 45 days.

22 THE COURT: If we go out – the stay 45 days and have a hearing,
23 but then – and when I – so the stay's till April 5th and the probate day before
24 that, so I can pick, is the 29th? Okay. Okay. So we're going to have a 45 day
25 stay because I'm gone the week we wanted to bring you guys back. So are

1 you going to be here on the 29th?

2 MS. GOLDSMITH: I don't believe so, Your Honor, I believe that's
3 Clark County School District's Spring Break.

4 THE COURT: It is.

5 MS. GOLDSMITH: I am not here the 29th, Your Honor.

6 THE COURT: Okay. So I'm trying to figure out how we -- well, we
7 may need to move this day out even another week then. If you're back on the
8 5th. Mr. Mushkin, will you be in town on the 5th?

9 MR. MUSHKIN: Of?

10 THE COURT: Of April.

11 MR. MUSHKIN: Yes, I will.

12 THE COURT: Because I have to -- we have to avoid school break
13 for school break parents and my wonderful education in Reno.

14 MR. MUSHKIN: I still have -- I, I want you to know that I think
15 there were some profiling that just went on, Judge. I still have one in school.
16 [Laughs].

17 THE COURT: Okay. So you understand -- are they -- if they're in
18 school district that's the week you guys --

19 MR. MUSHKIN: That's what I get for having the gray hair. They
20 just --

21 THE COURT: I'm not interfering.

22 MR. MUSHKIN: -- assume they're all out of school.

23 THE COURT: I'm not interfering in -- on the -- on school break too if
24 I can possibly avoid it. So the stay's going to go till the 12th so we can have a
25 hearing on the 5th and that's the deal. Is 10 days enough to see if you can

1 agree on something since we're going out a little further? Or would you like a
2 little bit more time, like what the -- because we need -- everything in the -- for
3 the hearing on the 12th -- on the 5th so, yeah, I mean, we would need to have --
4 if you want two weeks we -- two weeks to see if you can agree on an order if
5 you -- and then we don't have to have the hearing.

6 But if you can't --

7 MR. MUSHKIN: Whatever Counsel would like, Your Honor.

8 THE COURT: If you can't agree on that --

9 MR. MUSHKIN: I'm good either way.

10 THE COURT: -- then we would need to know by the 30th what your
11 competing proposals are for the hearing on the 5th. And that gives you time for
12 -- before the stay terminates.

13 MS. GOLDSMITH: So you --

14 MR. MUSHKIN: Perfect.

15 MS. GOLDSMITH: -- you want us to have the order -- the joint
16 order by --

17 MR. MUSHKIN: Two weeks.

18 MS. GOLDSMITH: -- if we're within --

19 THE COURT: The 9th?

20 MS. GOLDSMITH: -- two weeks which would be --

21 THE COURT: That'll be the 9th?

22 MS. GOLDSMITH: March 9th.

23 THE COURT: Yeah. And if, if you can't, and that's fine, then you
24 just have until -- again, the problem is that's the -- that's the break week, but
25 Friday the 30th.

1 MR. MUSHKIN: So –

2 THE COURT: Hearing on the 5th and the stay would terminate on
3 the 12th otherwise -- and it just may lapse. I mean, I – you know, that's the
4 risk you run, it just may lapse. And for the – at the moment for the temporary
5 stay I'm not going to impose a bond. But the point is, if we – one element of
6 any – of any order will be a bond. There will be a bond. I just am trying to
7 figure out what the other conditions would be and what you think the bond
8 should be.

9 MR. MUSHKIN: We'll try and work it out, Judge.

10 THE COURT: Okay. Thanks very much. And hopefully --

11 MR. MUSHKIN: Thank you.

12 THE COURT: -- you won't have to come in on the 5th. Thank you
13 all.

14 MR. COPPEDGE: So the dates are -- you gave a lot of dates. Two
15 weeks to agree on an order. When's the next --

16 THE COURT: Yeah, that would be the 9th.

17 MR. COPPEDGE: -- or the 30th for the disputed orders.

18 THE COURT: Yeah. That -- if you're -- if you have an agreed upon
19 order I need it by the 9th. And then we -- then we vacate any future hearing
20 because, you know, if it's agreed, it's agreed, and you're just going forward
21 with your stay. If you cannot agree, then by the 30th we need separate order,
22 and we'll have the hearing on the 5th which gives us one week, till the 12th,
23 before your stay expires. And as I'm saying, if I decide I can't do it, it just may
24 lapse. So it's -- I hope we can figure out some way to make this work.

25 MR. MUSHKIN: We'll do our best, Judge. Thank you.

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THE COURT: Good to see everybody again.

MS. GOLDSMITH: Thank you, Your Honor.

MR. CO: Thank you, Your Honor.

[Hearing concluded at 11:38 a.m.]

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


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