Page 58

1 you were going to be communicating with Dana and Duke
2 this information?
3 A. I communicated this to their attorney.
4 Q. Who was their attorney?
5 A. I believe it was Chris Phillips.
6 Q. So during this, were you representing Mr. Scheide
7 in this dispute over these personal items of Velma's?
8 MR. PAYNE: Objection. Leading.
9 THE WITNESS: I represented -- I was still
10 representing Theo, in general, at this time.
11 BY MR. GEIST:
12 Q. Did you represent him in this dispute between
13 Theo and Velma's family members?
14 MR. PAYNE: Same objection.
15 THE WITNESS: I don't really characterize it
16 as a dispute. But I was an intermediary after Velma
17 died, with Chris Phillips and Velma's family, to try to
18 resolve issues about personal property.
19 BY MR. GEIST:
20 Q. When you say you're an "intermediary," what did
21 you do?
22 A. I communicated back and forth to Mr. Phillips
23 with questions and answers about where property was and
24 coordinating for them to take things.
25 Q. Were you acting in an agency capacity?

Page 59

1 A. I was acting as his attorney.
2 Q. Okay. Thank you.
3 Okay. Let's see, are you doing okay? Do you
4 need a break?
5 A. I'm fine.
6 Q. Okay. If you could turn to -- and I think -- let
7 me just double check before I go on. I believe this is
8 in the same pack, 136.
9 A. Okay.
10 Q. And I apologize for the numbering. I think your
11 files go in inverse chronological order.
12 A. Yes. Correct. That's typically how we keep it.
13 Q. Taking a look at this document, do you recognize
14 it?
15 A. I do.
16 Q. Can you tell me what it is?
17 A. It's a document that Theo sent me because he
18 received it in the mail, and he didn't understand what
19 it meant to him legally.
20 Q. All right. Is there a date on this document?
21 A. The date at the top and the handwriting is
22 September 21, 2013.
23 Q. Whose handwriting is that?
24 A. I believe it is Theo's.
25 Q. Okay. So he wrote, "received September 21,2013,"

Page 62

1 A. She was concerned that Theo had leased a car,
2 concerned about him having a pistol, concerned that he
3 left his keys in his front door overnight.
4 **Q. Keys to his house, I'm assuming?**
5 A. I would -- it says front door. I would presume.
6 **Q. Any other concerns?**
7 A. That he had urinated in public.
8 **Q. Okay.**
9 A. Recently.
10 **Q. It says, "Outside of cell phone store, drops**
11 **pants and pees in parking lot." Is that --**
12 A. That is what she told me happened. I did not see
13 it. That is what she told me. And she was concerned at
14 that point in time that he was becoming incontinent.
15 **Q. Down a little bit farther after -- after all of**
16 **that, it says "Theo's son --**
17 A. Yes.
18 **Q. -- Pittsburgh." What does Pittsburgh refer to?**
19 A. It refers to where she told me that Theo's son
20 lived.
21 **Q. What are your notes after that?**
22 A. That she told me they "haven't talked in 25-plus
23 years."
24 **Q. And then Chipper is in quotes.**
25 A. It says "Chipper." I think that must be a

Page 63

1 nickname for him.
2 Q. And then I'm not sure if the line below that goes
3 to the next date, but can you tell me the next date?
4 A. The next date is December 9, 2013.
5 Q. What does that say right next to it?
6 A. "Released yesterday, aneurysm may be leaking."
7 Q. "Theo just taken to hospital, released yesterday,
8 aneurysm may be leaking" is what you wrote; correct?
9 A. Yes.
10 Q. Do you know what this -- what kind of aneurysm?
11 Do you know?
12 A. I don't remember.
13 Q. Flip to 134.
14 A. I take that back. I think it was heart --
15 something with his heart.
16 Q. Thank you.
17 Flip to 134. Also dated December 9, 2013.
18 A. Correct.
19 Q. Was this a continuation of notes from that phone
20 call?
21 A. It -- I don't know. It may have been.
22 Q. Okay. So about halfway through, you wrote, "She
23 does not" -- and not is underlined -- "want to be G."
24 What is G?
25 A. G is guardian.

Page 65

1 line "Kathy Longo."
2 Was this a meeting with Theo? Or was it . . .
3 A. It was a meeting with Theo and Kathy, I believe.
4 Q. What did you discuss in this meeting?
5 A. Kathy said that she would agree to be a backup
6 alternate on the power of attorney but that Theo still
7 needed -- needed someone to be his primary agent to help
8 him. Kathy felt she had too many other obligations in
9 her life to be the primary person.
10 Q. And there's a question about bankruptcy that was
11 brought up?
12 A. That would relate back to that -- the letter that
13 he got in the mail.
14 Q. Okay.
15 A. And then we realized he was actually talking
16 about a question about Duke and Dana.
17 Q. Duke and Dana meaning Velma Shay's relatives?
18 A. Correct.
19 Q. Then there's a quote: "Always let a sleeping dog
20 lie."
21 A. That is what he said.
22 Q. Meaning, don't --
23 A. Meaning, we hadn't heard from Duke and Dana in a
24 while, and -- and I asked if he wanted me to reach out
25 to them and see if there was anything else they wanted

Page 66

1 from Velma's property. And he said no, "always let a
2 sleeping dog lie."
3 Q. Midway through there, there's a note that says
4 "Jenna" and Schwab is circled.
5 Can you tell me what that's about?
6 A. About his contact person Jenna with his Schwab
7 account.
8 Q. Okay. And it says, "emptied out stock account."
9 Do you know what that refers to?
10 A. I don't. I think he liquidated it.
11 Q. "He takes 8500 a month."
12 A. Correct.
13 Q. Does that just refer to the income that he gets?
14 Did he tell you that?
15 A. He told me that he had -- based on his needs, he
16 had directed Schwab to give him $8500 a month for his
17 living expenses at that time.
18 Q. He leases a "strong box" at U.S. Bank?
19 A. Yes.
20 Q. Do you know what -- did he tell you what he keeps
21 in there?
22 A. I have written down that he said he put $40,000
23 cash in that box, and that's -- that's the only thing he
24 told me he kept in there.
25 Q. All right. And then flip to page 129, if you

Page 67

1 would, please.
2 A. Which page?
3 Q. 129.
4 A. Okay.
5 Q. The date of this is December 17. Is this --
6 these are your notes?
7 A. These are my notes.
8 Q. What are these notes from?
9 A. Appears to be a phone call from Kathy Longo.
10 Q. What did you discuss with her at this time?
11 A. She was getting ready to leave town for ten days,
12 from December 20 to December 30.
13 Q. And then you've got Susan Hoy and a phone number
14 written there.
15 A. I do. Then I have three potential candidates to
16 speak to Theo about helping him as his primary power of
17 attorney.
18 Q. Okay. Why -- why were you discussing this with
19 Kathy at this time?
20 A. I don't know if I discussed it with her, or if
21 these were just my notes to myself in the file that
22 happened to be on the same page.
23 Q. Okay. If we can flip to 128.
24 A. Yes.
25 Q. The date of this is December 27, 2013.

Page 68

1 **Can you tell me what prompted you to take these**
2 **notes?**
3 A. I called Theo.
4 **Q. Okay.**
5 A. He was, at that point, living at a group home
6 called Sunshine, something Sunshine. He told me he was
7 mad at Kathy. "He was mad that Kathy gave keys to the
8 home." I don't know who. And so he's going to "fire
9 her."
10 **Q. And that's what he told you "fire her"?**
11 A. Yes.
12 I explained the bankruptcy paper to him. And
13 basically just explained that I don't know what it is;
14 that you can ignore it if you don't think these people
15 owe you money. He apparently said he renewed his
16 driver's license, and it was good until 1917. He told
17 me to hold off on interviews until after he fires Kathy.
18 **Q. Hold off on interviews with whom?**
19 A. He had asked me to, at that point, set up some
20 interviews with some of the different fiduciaries in
21 town that could potentially help him.
22 **Q. Okay.**
23 A. He complained that the food is terrible at
24 Sunshine. He said, "The cook is the only person west of
25 the Mississippi who can ruin Corn Flakes." He told me

Page 69

1 another joke about Obama, and he was overall very sharp
2 on this phone call except for saying the year 1917.
3 **Q. That's your comment afterwards, your note to**
4 **yourself?**
5 A. Yes.
6 **Q. At any time during these discussions in December**
7 **with Kathy and with Theo, did Theo ever say he wanted to**
8 **change his estate plan beneficiaries?**
9 A. No.
10 **Q. Did Theo say he wanted --**
11 MR. PAYNE: Hold on. Just object. Calls
12 for speculation.
13 MR. GEIST: I'm asking if she -- if he asked
14 her that. Did he discuss that?
15 BY MR. GEIST:
16 **Q. Did he ever discuss changing the agents under his**
17 **power of attorney?**
18 MR. PAYNE: Same objection.
19 THE WITNESS: We -- we did discuss that.
20 BY MR. GEIST:
21 **Q. And what suggestions did he offer when he**
22 **discussed that?**
23 A. He, at that point, didn't -- since Kathy Longo
24 was not willing to be the agent, he didn't feel he had
25 anyone else, you know, friend or family to turn to. And

Page 79

1 told him he was not named as a primary beneficiary. And
2 he asked if there would be a mechanism for him to
3 challenge that under Nevada law, and I said, "Yes. You
4 obviously need a different attorney to do that, though."
5 **Q. Did you discuss anything else with him?**
6 A. Not that I recall.
7 **Q. Have you ever spoken with anyone from St. Jude**
8 **Children's Research Hospital regarding Mr. Scheide?**
9 A. Yes.
10 **Q. Whom did you speak with?**
11 A. Fred Jones.
12 **Q. Who is Fred Jones?**
13 A. He is in their legal department.
14 **Q. When did you speak with him?**
15 A. It was last year sometime.
16 **Q. What were the circumstances of that conversation?**
17 A. I wanted to make sure that he was aware of Mr.
18 Scheide's estate proceedings and that St. Jude's would
19 be the primary beneficiary in light of the fact that
20 Velma predeceased Mr. Scheide, and to make sure that St.
21 Jude was aware of that to investigate their interests.
22 **Q. What was Mr. Jones's response?**
23 A. He thanked me for the call and said that he would
24 find local counsel to look into it.
25 **Q. Is there anything else you want to tell me?**

Page 108

1 October 2nd until his passing, you were in constant
2 contact with your client?
3 MS. TURNER: Objection. That misstates what
4 the document says.
5 MR. PAYNE: I'm just trying to figure out
6 what she's alleging.
7 THE WITNESS: I'm alleging that I remained
8 in contact with him or his caregivers until Nevada
9 Guardian Services was appointed guardian.
10 BY MR. PAYNE:
11 Q. Just so I'm sure -- clear, how did you remain in
12 contact?
13 A. From October of '12 through March of '14 or --
14 Q. Sure.
15 A. -- what time frame?
16 Q. Yes.
17 A. Between that time period, I would have phone
18 calls from Theo, meetings with him. I believe last
19 in-person meeting was probably January of '14.
20 Then shortly thereafter, I was contacted by a
21 Centennial Hills Hospital social worker that his health
22 had declined, and he was not able to talk by phone, and
23 at that point, coordinated a care team to have Nevada
24 Guardian Services become his guardian since he had not
25 named a new power of attorney.

Page 146

1 their place if they were not living.
2 BY MR. PAYNE:
3 Q. So is it your testimony that he did not want her
4 heirs to take?
5 A. Correct. He wanted Velma, or if she was not
6 living, then St. Jude's.
7 Q. And you discussed this with him thoroughly?
8 A. He -- he was very clear with his instruction that
9 he wanted it to be Velma or St. Jude.
10 Q. I notice you don't have an estate plan
11 questionnaire?
12 A. At that time, I didn't.
13 Q. Is it normal that you --
14 A. I -- I have a questionnaire. I use it for some
15 cases; I use it for not others. I have the
16 questionnaire pretty well memorized, so I can talk
17 through the questions with the client. I never have a
18 client fill it out. I -- the questionnaire is to the
19 extent that -- something that I fill out when I'm
20 meeting with a client. I don't expect a client to fill
21 it out.
22 Q. You make a distinction about the power of
23 attorney and the original.
24 Is it your -- did you maintain the originals of
25 the power of attorney in the June will in your file?

Page 160

1 what city he lived in. He didn't know what city or
2 state he lived in.
3 **Q. When did you ask him this?**
4 A. In January of '14.
5 **Q. So in January '14, you were asking him about the**
6 **address of his son?**
7 A. In January of '14 when he was in the group home
8 not doing well and he -- we're trying to find someone to
9 help him. I -- going back through reevaluating family,
10 because I always -- I definitely want clients to work
11 with family, if they have family.
12 I offered to him, I said, Theo -- at the time I
13 was working at Gordon Silver, and we had an investigator
14 on staff. And I told him, I said, Theo, we have an
15 investigator on staff. Do you want to get back in touch
16 with your son? Do you want me to find out where he
17 lives? I can find that out. And he said no. And, you
18 know, I said do you -- do you have any idea where --
19 city or state where he lives, and he said no.
20 **Q. As you sit here today, did you ever find out**
21 **whether Theo and his father had -- or excuse me -- Theo**
22 **Senior and Theo The Third had any contact?**
23 A. At what point in time?
24 **Q. After this January '14 letter?**
25 A. I don't know if they did. It's possible. I

Page 182

1 STATE OF NEVADA)
) SS:
2 COUNTY OF CLARK)

3 CERTIFICATE OF REPORTER

4 I, Brittany J. Castrejon, a Certified Court
5 Reporter licensed by the State of Nevada, do hereby
6 certify: That I reported the DEPOSITION OF KRISTEN
7 TYLER, ESQ., on Thursday, February 16, 2017, at 9:05
8 a.m.;

9 That prior to being deposed, the witness was duly
10 sworn by me to testify to the truth. That I thereafter
11 transcribed my said stenographic notes into written
12 form, and that the typewritten transcript is a complete,
13 true and accurate transcription of my said stenographic
14 notes. That the reading and signing of the transcript
15 was not requested.

16 I further certify that I am not a relative,
17 employee or independent contractor of counsel or of any
18 of the parties involved in the proceeding; nor a person
19 financially interested in the proceeding; nor do I have
20 any other relationship that may reasonably cause my
21 impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
23 24th day of February, 2017.

24

25 Brittany J. Castrejon, CCR NO. 926

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EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 In the Matter of the Estate of

5 THEODORE E. SCHEIDE, JR., aka THEODORE ERNEST

6 SCHEIDE, JR.,

7 Deceased.

CASE NO: P-14-082619-E

DEPT NO: PCI

8

9

10

11

12 DEPOSITION OF KATHY JOAN NICHOLS LONGO

13 LAS VEGAS, NEVADA

14 TUESDAY, APRIL 25, 2017

15

16

17

18

19

20

21

22

23

24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 500541

Page 22

1 A. (Nods head.)
2 **Q. Was she his housekeeper before he went to**
3 **Arizona?**
4 A. I don't know.
5 **Q. Do you know Patty's last name?**
6 A. No, I don't remember.
7 **Q. If I said Bowlin, would that sound familiar?**
8 A. Not really.
9 **Q. Okay.**
10 A. I don't remember.
11 **Q. When he was in the rehab, how would you describe**
12 **Ted's physical health?**
13 A. He was not the same person that I had remembered.
14 He was -- he would not have his hair cut. He wouldn't
15 have his hair washed. He wouldn't take a shower. He
16 was just not the same person that I knew from, you know,
17 prior years.
18 **Q. And so that was unusual for him?**
19 A. Yes.
20 **Q. Before he -- your -- would you say that he liked**
21 **to be clean?**
22 A. Oh, yes.
23 **Q. Well kept?**
24 A. He was very particular of his -- what he wore and
25 his appearance.

Page 25

1 A. Other than me, I would go up -- he would have me
2 come up to his house, and I would write his checks for
3 him.
4 **Q. When you say you "would write his checks," would**
5 **he -- how would he do that? Would he give you a bill?**
6 A. Yeah, we would go through his bills. This was
7 while he was at the house or in rehab or in the
8 hospital. And I would drive from my house up to
9 Summerlin and try and keep up with his day-to-day
10 business.
11 He would go through the checks -- or through the
12 bills and say, "Oh, yeah, here, we'll write a check."
13 And he would have me write the check, and then he would
14 sign it. And I would go into his office and get stamps
15 and then mail his bills for him. And the same when he
16 was in the hospital, I would come up there, like,
17 probably four times a week. And finally I said, "Ted,
18 you're going to have to pay me. You know, I can't --
19 you're cutting into too much of my personal life." So I
20 said, "I'm going to charge you $300 a week." And he
21 said, "That's fine." And he said, "You write yourself a
22 check." And I would record it in his checkbook, and he
23 would sign the check. And that's all I ever got out of
24 him, you know, for several months. I can't tell you how
25 many months he paid me.

Page 38

1 A. He said, "Oh, I'm going to have to call Marlo
2 Thomas and have lunch with her." I know that was not
3 going to happen. And he -- just his total demeanor, you
4 know, that he -- I don't know how to answer this.
5 **Q. Well, that's okay.**
6 A. He was not capable of having a gun at his house,
7 period.
8 **Q. Okay. Were there other concerns about Mr.**
9 **Scheide's behavior that you had? You had mentioned that**
10 **he urinated in public.**
11 A. Yes.
12 **Q. You mentioned that you were concerned about --**
13 **he -- I'm sorry. I'm going back. He went out in public**
14 **in his pajama bottoms, which seemed unusual for him.**
15 **Were there other concerns about his behavior that**
16 **you had?**
17 A. Yes, absolutely.
18 MR. PAYNE: Object to the extent it
19 mischaracterizes her testimony.
20 BY MR. GEIST:
21 **Q. What other concerns?**
22 A. When they were having the estate sale, I told
23 them I would be over there about 9:30, ten o'clock that
24 morning, Saturday morning. And I got over there, and
25 the girl that was running the sale said, "You won't

Page 39

1 believe what happened." She said, "Six -- or seven
2 o'clock in the morning the doorbell rang, and Ted went
3 to the door stark-naked and answered the door." Now, he
4 would never do that, you know, if he -- if he had his
5 full faculties.
6 **Q. Ms. Tyler testified that when she spoke with you,**
7 **you were concerned about Mr. Scheide leaving his keys in**
8 **his front door.**
9 A. Oh, yes, he did do that.
10 **Q. Do you remember talking --**
11 A. Yes.
12 **Q. -- with Kristin about that?**
13 A. We couldn't find his keys anywhere, and I said,
14 "Well, Ted, you came home last night. The keys have to
15 be here somewhere." This is prior to his moving out.
16 And I went everywhere, in the bathroom, in the kitchen,
17 in the refrigerator, and just looked everywhere.
18 Finally, I opened the front door, and there were the
19 keys. So he could not take care of himself.
20 **Q. Did you discuss him leaving the keys in the front**
21 **door with him at that time?**
22 A. No, I did not.
23 **Q. Okay.**
24 A. I just said, "I found the keys."
25 **Q. Are you aware that Ted had guardianship**

Page 45

1 Q. Did you ever contact Chip --
2 A. No.
3 Q. -- after Ted's death? Okay.
4 Have you spoken with anyone from St. Jude
5 Children's Research Hospital regarding Ted?
6 A. No.
7 Q. Did Ted ever talk to you about St. Jude
8 Children's Research Hospital?
9 A. Yes.
10 Q. When did he talk to you about St. Jude?
11 A. Probably in November, October/November of 2013.
12 It was -- well, he -- it was before he left his house.
13 He said, "I have to send a check to St. Jude. I send
14 them a check every year."
15 So he asked me to type a letter, cover letter,
16 and the amount was -- I can't remember exactly, if it
17 was 10 or 12, 15,000. It was at least that much. And
18 he said, "This is my annual contribution to St. Jude."
19 He gave me the address, the gentleman's name to send it
20 to. He had a copy there from correspondence with a
21 thank-you from the -- from the prior year. And that's
22 what I based the information on to address the letter.
23 Q. Did he say for how many years he had been making
24 that donation?
25 A. No, he did not.

Page 47

1 A. No.
2 **Q. Did you talk to him about these difficulties?**
3 A. No.
4 **Q. Do you remember calling Kristin Tyler on or about**
5 **December 6, 2013?**
6 A. I probably did, to tell her about the -- the gun
7 or the car keys. I don't remember exactly a date.
8 **Q. Okay. I'm sorry if I asked this before, but did**
9 **you ever talk to Ted about the guardianship?**
10 MR. PAYNE: Asked and answered.
11 THE WITNESS: Yes.
12 BY MR. GEIST:
13 **Q. When did you talk to Ted about the guardianship?**
14 A. At that meeting with Kristin at the group house.
15 **Q. When you say "that meeting" --**
16 A. The last meeting at the group house with Ted and
17 Kristin. He asked me if I would be his guardian, and I
18 said, "no."
19 **Q. Did Ted ask you to contact his son?**
20 A. No.
21 **Q. Did Ted ask you to get his will for him?**
22 A. No.
23 **Q. Did he tell you he wanted to change his estate**
24 **plan?**
25 A. No.

Page 51

1 STATE OF NEVADA)
) SS:
2 COUNTY OF CLARK)

3 CERTIFICATE OF REPORTER

4 I, Brittany J. Castrejon, a Certified Court
5 Reporter licensed by the State of Nevada, do hereby
6 certify: That I reported the DEPOSITION OF KATHY JOAN
7 NICHOLS LONGO, on Tuesday, April 25, 2017, at 12:58
8 p.m.;

9 That prior to being deposed, the witness was duly
10 sworn by me to testify to the truth. That I thereafter
11 transcribed my said stenographic notes into written
12 form, and that the typewritten transcript is a complete,
13 true and accurate transcription of my said stenographic
14 notes. That the reading and signing of the transcript
15 was not requested.

16 I further certify that I am not a relative,
17 employee or independent contractor of counsel or of any
18 of the parties involved in the proceeding; nor a person
19 financially interested in the proceeding; nor do I have
20 any other relationship that may reasonably cause my
21 impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this 3rd
23 day of May, 2017.

Brittany J. Castrejon

24

25 Brittany J. Castrejon, CCR NO. 926

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Electronically Filed
02/19/2014 10:51:58 AM

CLERK OF THE COURT

ORDR
KIM BOYER, CELA
Nevada Bar #5587
10785 W. Twain Ave., Suite 200
Las Vegas, Nevada 89135
(702) 255-2000
Email: kimboyer@elderlawnv.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Guardianship of the Person and Estate of THEODORE SCHEIDE, An Adult.	Case No.: G-14-039853-A Dept. No.: E

EX PARTE ORDER APPOINTING TEMPORARY GUARDIAN AND FOR ISSUANCE OF TEMPORARY LETTERS OF GUARDIANSHIP

The Court having considered the verified Petition for Appointment of Temporary Guardian, Petition for Appointment of General Guardian submitted by NEVADA GUARDIAN SERVICES, LLC requesting appointment to act as Temporary Guardian of the Person and Estate of THEODORE SCHEIDE, adult Ward, and the Court having considered the same and examined the evidence, being fully advised in the premises, finds: (i) there is reasonable cause to believe the Proposed Ward is unable to respond to a substantial and immediate risk of financial loss or physical harm or to a need for immediate medical attention; (ii) a physician who is licensed to practice in the State of Nevada has signed a certificate stating that the proposed Ward is unable to respond to a substantial and immediate risk of financial loss or physical harm or to a need for immediate medical attention; (iii) Petitioner has actually notified, or in good faith has tried to notify, those persons entitled to notice pursuant to NRS 159.047, or that notice to those persons is not feasible under the circumstances; and (iv) a temporary guardianship of the Person and Estate of THEODORE SCHEIDE should be established.

RECEIVED
FEB 14 2014
GUARDIANSHIP

IT IS HEREBY ORDERED that NEVADA GUARDIAN SERVICES, LLC be and is hereby appointed as the Temporary Guardian of the Person and Estate of THEODORE SCHEIDE, an adult, and that Temporary Letters of Guardianship be issued to NEVADA GUARDIAN SERVICES, LLC to serve with assets blocked with the exception of all automatic withdrawals and deposits.

IT IS FURTHER ORDERED that any and all banks, financial institutions, brokerage or mutual fund firms shall immediately block the Ward's assets upon receipt of this order without the necessity of letters of guardianship, whether said accounts or records reflect the name of the Ward individually, or with one or more other persons. All ATM and bank card usage shall be suspended. Said assets and accounts shall remain blocked until further Order of the Court.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is hereby given full access to all historical and current financial information for the above-named Ward. Such information shall include, but not be limited to statements, cancelled checks, withdrawal authorizations and other information from banks, financial institutions, brokerage or mutual fund firms, creditors, lenders, the United States Social Security Administration and other persons and agencies which have engaged in transactions concerning the financial affairs of the Ward, whether said accounts or records reflect the name of the Ward individually, or with one or more other persons.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is authorized to request and receive information from any other person or agency, which is currently or has previously been obligated to pay money or other benefits to the above-named adult Ward.

///

///

///

IT IS FURTHER ORDERED that in receiving this appointment as Guardian, NEVADA GUARDIAN SERVICES, LLC is hereby given full access to any and all medical records and information concerning the condition and historical treatment of the Ward, including mental health records and information, which are or may be lodged with any persons, family members and friends, along with any and all medical providers, care facilities, insurers and/or institutions.

IT IS FURTHER ORDERED that this Order suspends any Power of Attorney for Financial Matters executed prior to this General Guardianship, so long as the Guardianship of the Estate remains open.

IT IS FURTHER ORDERED that this Order suspends any Power of Attorney for Health Care Decisions executed prior to this General Guardianship, so long as the Guardianship of the Person remains open. Pursuant to NRS 162A.800(2), the Guardian shall follow any provisions contained in the Power of Attorney for healthcare delineating the Ward's wishes for medical and end-of-life care.

IT IS FURTHER ORDERED that a hearing of this matter shall be held on February 26, 2014 at the hour of 9:00 a.m., in Courtroom 7 at Family Court, 601 North Pecos Road, Las Vegas, Nevada 89101-2417, at which time a determination shall be made concerning the necessity to extend this temporary guardianship proceeding.

DATED this 28 day of February, 2014.

DISTRICT JUDGE

Respectfully submitted,

KIM BOYER, ESQ.
Nevada Bar #5587
10785 W. Twain Ave., Suite 200
Las Vegas, Nevada 89135
Attorney for Petitioner

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EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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CLERK OF THE COURT

OAG
KIM BOYER, CELA
Nevada Bar #5587
10785 W. Twain Ave., Suite 200
Las Vegas, Nevada 89135
(702) 255-2000
Email: kimboyer@elderlawnv.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Guardianship of the Person and Estate of THEODORE SCHEIDE, An Adult.	Case No.: G-14-039853-A Dept. No.: E Date of Hearing: March 19, 2014 Time of Hearing: 9:00 a.m.

ORDER APPOINTING GUARDIAN OF THE PERSON AND ESTATE AND FOR ISSUANCE OF LETTERS OF GUARDIANSHIP

Upon the Petition for Appointment of General Guardian of the Person and Estate of THEODORE SCHEIDE, an adult Ward, submitted by NEVADA GUARDIAN SERVICES, LLC, having come on for hearing before the above-entitled Court this date, and the Court having considered the Petition and examined the evidence, being fully advised in the premises finds: (i) proper notice of the hearing was duly given as required by law; (ii) the facts alleged in the Petition are true and correct; (iii) THEODORE SCHEIDE is a resident of the State of Nevada; (iv) a licensed physician provided an assessment; (v) that THEODORE SCHEIDE was advised of the right to counsel; (vi) the Petition for Appointment of General Guardians of the Person and Estate of THEODORE SCHEIDE should be granted; and (vii) the address and telephone number of the guardian is NEVADA GUARDIAN SERVICES, LLC, c/o Boyer Law Group, 10785 W. Twain Ave., Suite 200, Las Vegas, Nevada 89135, (702) 255-2000.

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GUARDIANSHIP

IT IS HEREBY ORDERED that a Guardianship of the Person and Estate of THEODORE SCHEIDE be established.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is hereby appointed as the General Guardian of the Person and Estate of THEODORE SCHEIDE, an adult Ward, and that Letters of Guardianship be issued to NEVADA GUARDIAN SERVICES, LLC upon taking the oath required by law to serve with assets blocked as specified herein.

IT IS FURTHER ORDERED that all of the Ward's income be placed into an unblocked guardianship checking account to be established by the Guardian at Wells Fargo Bank to be used to pay the Ward's expenses.

IT IS FURTHER ORDERED that a monthly release of funds in the amount of $8,613.00 shall be release from the Ward Charles Schwab Account #7608-6113 and shall be deposited into the unblocked guardianship checking account to be established by the Guardian at Wells Fargo Bank to be used to pay the Ward's expenses.

IT IS FURTHER ORDERED that the Guardian is authorized to sign any and all documents required by the Division of Welfare and Supportive Services, or any other party, to establish or continue the Medicaid eligibility for the Ward, including but not limited to signing listing agreements or signing an income reduction trust.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC will incur Guardian fees at an hourly rate and is hereby authorized to advance funds from the Ward's assets to pay guardian fees, subject to confirmation by the Court on a Petition.

IT IS FURTHER ORDERED that attorney's fees and costs are hereby authorized in the amount of $4,500.00 to be paid from the Ward's Estate to Kim Boyer and shall be released from the blocked account.

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IT IS FURTHER ORDERED that Kim Boyer will incur attorney's fees at an hourly rate and incur costs, Kim Boyer is hereby authorized to advance funds from the Ward's assets to pay attorney fees, subject to confirmation by the Court on a Petition.

IT IS FURTHER ORDERED that this Order suspends any Power of Attorney for Financial Matters executed prior to this General Guardianship, so long as the Guardianship of the Estate remains open.

IT IS FURTHER ORDERED that this Order suspends any Power of Attorney for Health Care Decisions executed prior to this General Guardianship, so long as the Guardianship of the Person remains open. Pursuant to NRS 162A.800(2), the Guardian shall follow any provisions contained in the Power of Attorney for healthcare delineating the Ward's wishes for medical and end-of-life care.

IT IS FURTHER ORDERED that to carry out the function of Guardian of the Estate of THEODORE SCHEIDE, NEVADA GUARDIAN SERVICES, LLC is vested with all the powers set forth in NRS 159.117 through NRS 159.175, inclusive.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is hereby given full access to all historical and current financial information for the above-named Ward and shall have the ability to close any such accounts, whether said accounts or records reflect the name of the Ward individually, or with one or more other persons. Such information shall include, but not be limited to statements, cancelled checks, withdrawal authorizations and other information from banks, financial institutions, brokerage or mutual fund firms, creditors, lenders, the United States Social Security Administration and other persons and agencies which have engaged in transactions concerning the financial affairs of the Ward, whether said accounts or records reflect the name of the Ward individually, or with one or more other persons.

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IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is authorized to gain access to any and all safe deposit box(es) located within this jurisdiction, which may bear the name of the adult Ward, individually or jointly with others, for the purpose of inventorying the contents thereof, said inventory to take place in the presence of a banking officer.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is authorized to request and receive information from any other person or agency, which is currently or has previously been obligated to pay money or other benefits to the above-named adult Ward.

IT IS FURTHER ORDERED that in receiving this appointment as Guardian, NEVADA GUARDIAN SERVICES, LLC is hereby given full access to any and all medical records and information concerning the condition and historical treatment of the Ward, including mental health records and information, which are or may be lodged with any persons, family members and friends, along with any and all medical providers, care facilities, insurers and/or institutions.

IT IS FURTHER ORDERED that the Ward has a mental defect (danger to self or others OR lacks capacity to contract or manage own affairs) and, pursuant to NRS 159.0593 and 18 USC 922(d)(4), is prohibited from possessing a firearm. A record of this guardianship order shall be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

IT IS FURTHER ORDERED that the Guardian has filed a Guardian's Acknowledgment of Duties and Responsibilities.

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IT IS FURTHER ORDERED that a copy of this order shall be served upon the adult Ward.

DATED this 19 day of March, 2014.

DISTRICT JUDGE

Respectfully submitted,

KIM BOYER, CELA
Nevada Bar #5587
10785 W. Twain Ave., Suite 200
Las Vegas, Nevada 89135
Attorney for Petitioner

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EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

W-16-010344

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CLERK OF THE COURT

Last Will and Testament of THEODORE E. SCHEIDE

I, THEODORE E. SCHEIDE, a resident of Clark County, Nevada, being of sound mind and disposing memory, hereby revoke any prior wills and codicils made by me and declare this to be my Last Will and Testament.

Article One
Family Information

I am unmarried.

I have one child, THEODORE E. SCHEIDE, III.

However, I am specifically disinheriting THEODORE E. SCHEIDE, III and his descendants. Therefore, for the purposes of my Will, THEODORE E. SCHEIDE, III and his descendants will be deemed to have predeceased me.

Article Two
Specific and General Gifts

Section 2.01 Disposition of Tangible Personal Property

I give all my tangible personal property, together with any insurance policies covering the property and any claims under those policies in accordance with a "Memorandum for Distribution of Personal Property" or other similar writing directing the disposition of the property. Any writing prepared according to this provision must be dated and signed by me.

If I leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date will control as to those items that are in conflict.

If the memorandum with the most recent date conflicts with a provision of this Will as to the specific distribution of any item of tangible personal property, the provisions of the memorandum with the most recent date control as to those items that are in conflict.

I intend that the writing qualify to distribute my tangible personal property under applicable state law.

Section 2.02 Contingent Distribution of Tangible Personal Property

Any tangible personal property not disposed of by a written memorandum, or if I choose not to leave a written memorandum, all my tangible personal property will be distributed as part of my residuary estate.

Section 2.03 Definition of Tangible Personal Property

For purposes of this Article, the term "tangible personal property" includes but is not limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia. The term does not include any tangible property that my Executor, in its sole and absolute discretion, determines to be part of any business or business interest that I own at my death.

Section 2.04 Ademption

If property to be distributed under this Article becomes part of my probate estate in any manner after my death, then the gift will not adeem simply because it was not a part of my probate estate at my death. My Executor will distribute the property as a specific gift in accordance with this Article. But if property to be distributed under this Article is not part of my probate estate at my death and does not subsequently become part of my probate estate, then the specific gift made in this Article is null and void, without any legal or binding effect.

Section 2.05 Incidental Expenses and Encumbrances

Until property distributed in accordance with this Article is delivered to the appropriate beneficiary or to the beneficiary's legal representative, my Executor will pay the reasonable expenses of securing, storing, insuring, packing, transporting, and otherwise caring for the property as an administration expense. Except as otherwise provided in my Will, my Executor will distribute property under this Article subject to all liens, security interests, and other encumbrances on the property.

Article Three
My Residuary Estate

Section 3.01 Definition of My Residuary Estate

All the remainder of my estate, including property referred to above that is not effectively disposed of, will be referred to in my Will as my "residuary estate."

Section 3.02 Disposition of My Residuary Estate

I give my residuary estate to VELMA G. SHAY, if she survives me.

If VELMA G. SHAY predeceases me, then I give my residuary estate to ST. JUDE CHILDREN'S HOSPITAL located in Memphis, Tennessee.

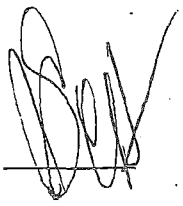
Article Four
Remote Contingent Distribution

If, at any time after my death, there is no person or entity then qualified to receive final distribution of my estate or any part of it under the foregoing provisions of my Will, then the portion of my estate with respect to which the failure of qualified recipients has occurred shall be distributed to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Nevada then in effect (other than THEODORE E. SCHEIDE, III and his descendants).

Article Five
Designation of Executor

Section 5.01 Executor

I name KAREN HOAGLAND as my Executor. If KAREN HOAGLAND fails or ceases to act as my Executor, I name NEVADA STATE BANK as my Executor.



Section 5.02 Guardian for Testator

If I should become mentally incompetent to handle my affairs prior to my demise, I request that KAREN HOAGLAND be appointed guardian of my estate and my person, to serve without bond. In the event that she is unable or unwilling to serve, then I request that a representative from NEVADA STATE BANK be appointed guardian of my estate and my person, to serve without bond.

Article Six
General Administrative Provisions

~~The provisions of this Article apply to my probate estate.~~

Section 6.01 No Bond

No Fiduciary is required to furnish any bond for the faithful performance of the Fiduciary's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety is required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

Section 6.02 Distributions to Incapacitated Persons and Persons Under Twenty-One Years of Age

If my Executor is directed to distribute any share of my probate estate to any beneficiary who is under the age of 21 years or is in the opinion of my Executor, under any form of incapacity that renders such beneficiary unable to administer distributions properly when the distribution is to be made, my Executor may, as Trustee, in my Executor's discretion, continue to hold such beneficiary's share as a separate trust until the beneficiary reaches the age of 21 or overcomes the incapacity. My Executor shall then distribute such beneficiary's trust to him or her.

While any trust is being held under this Section, my Independent Trustee may pay to the beneficiary for whom the trust is held such amounts of the net income and principal as the Trustee determines to be necessary or advisable for any purpose. If there is no Independent Trustee, my Trustee shall pay to the beneficiary for whom the trust is held such amounts of the net income and

principal as the fiduciary determines to be necessary or advisable for the beneficiary's health, education, maintenance or support.

Upon the death of the beneficiary, my Trustee shall distribute any remaining property in the trust, including any accrued and undistributed income, to such persons as such beneficiary appoints by his or her Will. This general power may be exercised in favor of the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate. To the extent this general power of appointment is not exercised, on the death of the beneficiary, the trust property is to be distributed to the beneficiary's then living descendants, *per stirpes*, or, if none, *per stirpes* to the living descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine, or if no such descendant is then living, to my then living descendants, *per stirpes*. If I have no then living descendants the property is to be distributed under the provisions of Article Four entitled "Remote Contingent Distribution."

Section 6.03 Maximum Term for Trusts

Notwithstanding any other provision of my Will to the contrary, unless terminated earlier under other provisions of my Will, each trust created under my Will will terminate 21 years after the last to die of the descendants of my maternal and paternal grandparents who are living at the time of my death.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If no beneficiary is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares *per stirpes*.

Section 6.04 Representative of a Beneficiary

The guardian of the person of a beneficiary may act for such beneficiary for all purposes under my Will or may receive information on behalf of such beneficiary.

Section 6.05 Ancillary Administration

In the event ancillary administration is required or desired and my domiciliary Executor is unable or unwilling to act as an ancillary fiduciary, my domiciliary Executor will have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may be either a natural person or a

corporation. My domiciliary Executor may delegate to such ancillary fiduciary such powers granted to my original Executor as my Executor may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate are to be paid over to the domiciliary Executor.

Section 6.06 Delegation of Authority; Power of Attorney

Any Fiduciary may, by an instrument in writing, delegate to any other Fiduciary the right to exercise any power, including a discretionary power, granted the Fiduciary in my Will. During the time a delegation under this Section is in effect, the Fiduciary to whom the delegation was made may exercise the power to the same extent as if the delegating Fiduciary had personally joined in the exercise of the power. The delegating Fiduciary may revoke the delegation at any time by giving written notice to the Fiduciary to whom the power was delegated.

The Fiduciary may execute and deliver a revocable or irrevocable power of attorney appointing any individual or corporation to transact any and all business on behalf of the trust. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that the Fiduciary could have exercised.

Section 6.07 Merger of Corporate Fiduciary

If any corporate fiduciary acting as my Fiduciary under my Will is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the position of my Fiduciary as if originally named my Fiduciary. No document of acceptance of the position of my Fiduciary shall be required.

Article Seven
Powers of My Fiduciaries

Section 7.01 Fiduciaries' Powers Act

My Fiduciaries may, without prior authority from any court, exercise all powers conferred by my Will or by common law or by Nevada Revised Statutes or other statute of the State of Nevada or any other jurisdiction whose law applies to my Will. My Executor has absolute discretion in exercising these powers. Except as

specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 7.02 Powers Granted by State Law

In addition to all of the above powers, my Executor may, without prior authority from any court, exercise all powers conferred by my Will; by common law; by the laws of the State of Nevada, including, without limitation by reason of this enumeration, each and every power enumerated in NRS 163.265 to 163.410, inclusive; or any other jurisdiction whose law applies to my Will. My Executor has absolute discretion in exercising these powers. Except as specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 7.03 Alternative Distribution Methods

My Fiduciary may make any payment provided for under my Will as follows:

Directly to the beneficiary;

In any form allowed by applicable state law for gifts or transfers to minors or persons under a disability;

To the beneficiary's guardian, conservator, agent under a durable power of attorney or caregiver for the benefit of the beneficiary; or

By direct payment of the beneficiary's expenses, made in a manner consistent with the proper exercise of the fiduciary's duties hereunder. A receipt by the recipient for any such distribution fully discharges my Fiduciary.

Article Eight
Provisions for Payment of Debts, Expenses and Taxes

Section 8.01 Payment of Debts and Expenses

I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death.

Section 8.02 No Apportionment

Except as otherwise provided in this Article or elsewhere in my will, my Executor shall provide for payment of all estate, inheritance and succession taxes payable by reason of my death ("death taxes") from my residuary estate as an administrative expense without apportionment and will not seek contribution toward or recovery of any death tax payments from any individual.

For the purposes of this Article, however, the term "death taxes" does not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable taxes imposed by any other taxing authority. Nor does the term include any generation-skipping transfer tax, other than a direct skip.

Section 8.03 Protection of Exempt Property

Death taxes are not to be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes. In addition, to the extent practicable, my Trustee should not pay any death taxes from assets that are exempt for generation-skipping transfer tax purposes.

Section 8.04 Protection of the Charitable Deduction

Death taxes are not to be allocated to or paid from any assets passing to any organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless my Executor has first used all other assets available to my Executor to pay the taxes.

Section 8.05 Property Passing Outside of My Will

Death taxes imposed with respect to property included in my gross estate for purposes of computing the tax and passing other than by my Will are to be apportioned among the persons and entities benefited in the proportion that the taxable value of the property or interest bears to the total taxable value of the property and interests received by all persons benefited. The values to be used for the apportionment are the values as finally determined under federal, state, or local law as the case may be.

Section 8.06 No Apportionment Between Current and Future Interests

No interest in income and no estate for years or for life or other temporary interest in any property or trust is to be subject to apportionment as between the

temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder are chargeable against the corpus of the property or trust subject to the temporary interest and remainder.

Section 8.07 Tax Elections

In exercising any permitted elections regarding taxes, my fiduciaries may make any decisions that they deem to be appropriate in any circumstances, and my fiduciaries are not required to make any compensatory adjustment as a consequence of any election. My Executor may also pay taxes or interest and deal with any tax refunds, interest, or credits as my Executor deems to be necessary or advisable in the interest of my estate.

My Executor, in his or her sole and absolute discretion, may make any adjustments to the basis of my assets authorized by law, including but not limited to increasing the basis of any property included in my gross estate, whether or not passing under my Will, by allocating any amount by which the basis of my assets may be increased. My Executor is not required to allocate basis increase exclusively, primarily or at all to assets passing under my Will as opposed to other property included in my gross estate. My Executor may elect, in his or her sole and absolute discretion, to allocate basis increase to one or more assets that my Executor receives or in which my Executor has a personal interest, to the partial or total exclusion of other assets with respect to which such allocation could be made. My Executor may not be held liable to any person for the exercise of his or her discretion under this Section.

Article Nine
Definitions and General Provisions

Section 9.01 Cremation Instructions

I wish that my remains be cremated and buried in accordance with my pre-paid funeral arrangements with Palm Mortuary in Las Vegas, Nevada.

Section 9.02 Definitions

For purposes of my Will and for the purposes of any trust established under my Will, the following definitions apply:

(a) Adopted and Afterborn Persons

A legally adopted person in any generation and his or her descendants, including adopted descendants, will have the same rights and will be treated in the same manner under my Will as natural children of the adopting parent, provided the person is legally adopted before attaining the age of 18 years. A person will be deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

A fetus *in utero* that is later born alive will be considered a person in being during the period of gestation.

(b) Descendants

The term "descendants" means any one or more person who follows in direct descent (as opposed to collateral descent) from a person, such as a person's children, grandchildren, or other descended individuals of any generation.

(c) Fiduciary

"Fiduciary" or "Fiduciaries" refer to my Executor. My "Executor" includes any executor, ancillary executor, administrator, or ancillary administrator, whether local or foreign, and whether of all or part of my estate, multiple Executors, and their successors.

Except as otherwise provided in this Last Will and Testament, a fiduciary has no liability to any party for action (or inaction) taken in good faith.

(d) Good Faith

For the purposes of this Last Will and Testament, a fiduciary has acted in good faith if (i) its action or inaction is not a result of intentional wrongdoing, (ii) the fiduciary did not make the decision with reckless indifference to the interests of the beneficiaries, and (iii) its action or inaction does not result in an improper personal pecuniary benefit to the fiduciary.

(e) Incapacity

Except as otherwise provided in my Will, a person is deemed to be incapacitated in any of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual is deemed to be incapacitated whenever, in the opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual is deemed to be restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual is deemed to be incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

(3) Detention, Disappearance or Absence

An individual is deemed to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence or detention under duress may be established by an affidavit of any fiduciary. The affidavit must describe the circumstances of an individual's detention under duress, disappearance, or absence and may be relied upon by any third party dealing in good faith with my fiduciary in reliance upon the affidavit.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of my Executor.

(f) Internal Revenue Code

References to the "Internal Revenue Code" or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the "Treasury Regulations," are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference will be deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in my Will. The same rule applies to references to the Treasury Regulations.

(g) Legal Representative

As used in my Will, the term "legal representative" means a person's guardian, conservator, personal representative, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

(h) Per Stirpes

Whenever a distribution is to be made to a person's descendants *per stirpes*, the distribution will be divided into as many equal shares as there are then-living children of that person and deceased children of that person who left then-living descendants. Each then-living child will receive one share and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.

(i) Primary Beneficiary

The Primary Beneficiary of a trust created under this agreement is the oldest Income Beneficiary of that trust unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

(j) Shall and May

Unless otherwise specifically provided in my Will or by the context in which used, I use the word "shall" in my Will to command, direct or require, and the word "may" to allow or permit, but not

require. In the context of my Trustee, when I use the word "may" I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in my Will.

(k) Trust

The term "trust," refers to any trusts created under the terms of my Will.

(l) Trustee

The term "my Trustee" refers to any person or entity that is from time to time acting as the Trustee and includes each Trustee individually, multiple Trustees, and their successors.

(m) Other Definitions

Except as otherwise provided in my Will, terms shall be as defined in Nevada Revised Statutes as amended after the date of my Will and after my death.

Section 9.03 Contest Provision

If any beneficiary of my Will or any trust created under the terms of my Will, alone or in conjunction with any other person engages in any of the following actions, the right of the beneficiary to take any interest given to the beneficiary under my Will or any trust created under the terms of my Will will be determined as it would have been determined as if the beneficiary predeceased me without leaving any surviving descendants.

Contests by a claim of undue influence, fraud, menace, duress, or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) my Will, (b) any trust created under the terms of my Will, or (c) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan, or insurance policy signed by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document;

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify, or set aside a Document or any of its provisions;

Files suit on a creditor's claim filed in a probate of my estate, against my estate, or any other Document, after rejection or lack of action by the respective fiduciary;

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document;

Files a petition to impose a constructive trust or resulting trust on any assets of my estate; or

Participates in any of the above actions in a manner adverse to my estate, such as conspiring with or assisting any person who takes any of the above actions.

My Executor may defend, at the expense of my estate, any violation of this Section. A "contest" includes any action described above in an arbitration proceeding, but does not include any action described above solely in a mediation not preceded by a filing of a contest with a court.

Section 9.04 Survivorship Presumption

If any beneficiary is living at my death, but dies within 90 days thereafter, then the beneficiary will be deemed to have predeceased me for all purposes of my Will.

Section 9.05 General Provisions

The following general provisions and rules of construction apply to my Will:

(a) Singular and Plural; Gender

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word "or" when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

(b) **Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and subsections used within my Will are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of my Will.

(c) **Governing State Law**

My Will shall be governed, construed and administered according to the laws of Nevada as from time to time amended. Questions of administration of any trust established under my Will are to be determined by the laws of the situs of administration of that trust.

(d) **Notices**

Unless otherwise stated, whenever my Will calls for notice, the notice will be in writing and will be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice will be effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice will be given to the parent or legal representative of the minor or incapacitated individual.

(e) **Severability**

The invalidity or unenforceability of any provision of my Will does not affect the validity or enforceability of any other provision of my Will. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of my Will are to be interpreted and construed as if any invalid provision had never been included in my Will.

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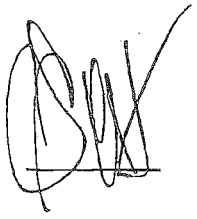

I, THEODORE E. SCHEIDE, sign my name to this instrument consisting of sixteen (16) pages on June 8, 2012, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

THEODORE E. SCHEIDE, Testator

Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned, Kristin M. Tyler and DIANE L. DeWALT, declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator, THEODORE E. SCHEIDE; that the testator subscribed the will and declared it to be his last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

Dated this 8 day of June, 2012.

Declarant 1	Declarant 2
Residing at:	Residing at:
541 Sierra Morena St	8209 Jo Marcy Drive
Las Vegas, NV 89144	Las Vegas, NV 89131

MAY 20 2016

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE

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EXHIBIT PAGE ONLY

EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

AFF
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Attorneys for St. Jude Children's Research Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of THEODORE E. SCHEIDE JR. aka THEODORE ERNEST SCHEIDE JR., Deceased.	Case No.: P-14-082619-E Dept No.: PCI

AFFIDAVIT OF PROOF OF LOST WILL

I, KRISTIN M. TYLER, being first duly sworn, do hereby declare to the undersigned authority that I was a Witness to the Last Will and Testament dated October 2, 2012 ("Last Will") of THEODORE E. SCHEIDE, JR., also sometimes known as THEODORE E. SCHEIDE ("Decedent") , and did sign as a witness on that Last Will. I can further attest that the Decedent signed and executed the instrument as his Last Will on October 2, 2012, and that he signed it willingly, and that he executed it as his free and voluntary act for the purposes therein expressed and to the best of my knowledge the Decedent was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

I further attest that the Decedent signed and executed the Last Will dated October 2, 2012 in the presence of myself and Diane DeWalt, and we both subscribed the Attestation to the Last Will in the presence of the Decedent.

I further attest that the Decedent contacted me as his estate planning counsel to

discuss changes in his wishes expressed in his previous Last Will and Testament dated June 8, 2012, which I had drafted as the attorney for the Decedent and was the Decedent's regular course of action when he wanted to change the wishes expressed in his prior estate planning documents. Specifically, the Decedent wanted to remove the nomination of KAREN HOAGLAND as the Executor under Article Five of the Last Will and Testament dated June 8, 2012, and instead appoint PATRICIA BOWLIN as the Executor.

I further attest that in discussing the preparation of Last Will dated October 2, 2012, the Decedent did not express any desire to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that I remained in contact with the Decedent after he executed his Last Will dated October 2, 2012, as his health and mental condition declined afterward, and

I further attest that I continued to represent and advise the Decedent as his estate planning counsel until NEVADA GUARDIAN SERVICES, LLC was appointed his temporary guardian on February 18, 2014 and his general guardian over his person and estate on March 19, 2014.

I can further attest that at no time after executing his Last Will dated October 2, 2012, did the Decedent express to me any intention to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that, to my knowledge, the Decedent did not intentionally destroy or revoke the Last Will dated October 2, 2012, and that to the best of my knowledge this was the Decedent's Last Will and Testament. I can further attest that, to the best of my knowledge, the Last Will dated October 2, 2012, was in existence at the death of the Decedent.

I further attest that, after the death of the Decedent, I was contacted by NEVADA GUARDIAN SERVICES, LLC or its counsel and asked if I had the original of

Last Will dated October 2, 2012. I informed NEVADA GUARDIAN SERVICES, LLC or its counsel that the Decedent chose to retain the original executed Last Will dated October 2, 2012, but that I had the original of the Decedent's Last Will and Testament dated June 8, 2012, which differed only in the nomination of the Executor. I was not asked for the original of the Decedent's Last Will and Testament dated June 8, 2012, nor was I contacted by NEVADA GUARDIAN SERVICES, LLC or its counsel regarding the Decedent's estate to provide an affidavit of lost will pursuant to NRS 136.240(4) regarding the Last Will dated October 2, 2012.

DATED this September 7, 2016.

KRISTIN M. TYLER

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Subscribed and Sworn to before me this 7th day of September, 2016.

Notary Public

CAROLINE TOFANELLI
Notary Public-State of Nevada
APPT. NO. 15-2302-1
My App. Expires July 07, 2019

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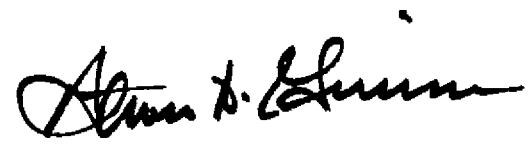

CLERK OF THE COURT

OPPS
CARY COLT PAYNE, ESQ.
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Attorney for Theodore E. Scheide III

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of THEODORE E. SCHEIDE JR. a/k/a THEODORE ERNEST SCHEIDE JR. Deceased. ~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~ ST. JUDE'S CHILDRENS RESEARCH HOSPITAL, Objector/Petitioner, -v- THEODORE E. SCHEIDE,III Respondent. ~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	)	Case No.: P-14-082619-E Dept. No.: 26 Date: 5/31/17 Time: 9:30 AM

RESPONDENT'S OPPOSITION
TO MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW, Respondent, Theodore E. Scheide III, son of the decedent, by and through his attorney, CARY COLT PAYNE, ESQ., of the lawfirm of CARY COLT PAYNE, CHTD., and hereby submits the within Respondent's Opposition to St. Jude's Motion for Partial Summary Judgment, Etc., which is made and based upon within Points and Authorities, Exhibits, as well as such argument and evidence as may be adduced upon the hearing of the within motion.

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POINTS & AUTHORITIES

A. Introduction

St. Jude's still has not articulated a legal theory as to why this court's two previously entered orders (10/6/14 & 5/26/15 attached), ruling Mr. Scheide died intestate should not be followed. In fact, they never made any sort of motion to set them aside at all. It also has not articulated why the statutory requirements of NRS 136.240(3) are inapplicable. Now St. Jude's asks this court to make a factual finding that Mr. Scheide was not competent during an eight (8) month period during guardianship. For all the reasons briefed in the previously filed pleadings in this matter, incorporated herein by reference as if stated fully herein, a motion for summary judgment is inappropriate.

B. "Legal Existence" v. Presumption & Capacity

The Nevada Supreme Court recognizes that "at common law", when an executed will could not be found after the death of a testator, there was a strong presumption that it was revoked by destruction by the testator", Estate of Irvine v. Doyle, 101 Nev. 698, 710 P.2d 1366 (Nev., 1985). In other words, all that NRS136. 240(3) requires is proof that the testator himself had not revoked the lost or destroyed will, proof that would overcome the common-law presumption of revocation.

NRS 136.240(3) codifies the common law rule and places the burden of overcoming the presumption on the proponent of a lost or destroyed will to prove it was fraudulently destroyed, and to require the proponent of a lost or destroyed will to prove that the testator did not *intentionally revoke* the lost or destroyed will during his lifetime. See, *Irvine, supra.*

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The words "legal existence" do not appear in NRS 136.240[1], simply the actual word **existence**. To overcome the presumption of revocation, St. Jude's is required to prove that:

> 1. The original document was in actual existence at the time of the decedent's death (actually seen by two (2) persons),
>
> 2. Or fraudulently destroyed (not voluntarily revoked by testator) during testator's lifetime. This would indicate some intervening act such as fire, theft, flood, or some other act that destroyed the document without Mr. Scheide's knowledge and/or permission.

Here, we do not even have any alleged intervening act(s) which would prove destruction, loss, etc. Therefore, St. Jude's must prove, by clear and convincing evidence, as this court stated on the record when this matter began, that Mr. Scheide simply did not voluntarily destroy the October 2012 Will. Without any sort of alleged intervening act(s) whatsoever, and no individual who can state that they physically saw the original document, even with a preponderance of more than likely than not, it is presumed that Mr. Scheide willingly destroyed the document.

If Mr. Scheide voluntarily destroyed the document (whether by burning, tearing, cancelling or obliterating the will), then it is no longer in legal existence, which brings us back to the presumption of revocation, and to questions of fact, which defeats any sort of summary judgment.

---

1 **NRS 136.240 Petition for probate; same requirement of proof as other wills; testimony of witnesses; rebuttable presumption concerning certain wills; prima facie showing that will was not revoked; order.**

3. In addition, no will may be proved as a lost or destroyed will ***unless it is proved to have been in existence at the death*** of the person whose will it is claimed to be, or is shown to have been fraudulently destroyed in the lifetime of that person, nor unless its provisions are clearly and distinctly proved by at least **two credible witnesses**. [emphasis added]

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No one has doubted that the October 2012 Will was executed, and was in legal existence at that moment in time (10/2/12). Not one individual, even Kristen Tyler, Esq., ever actually saw that original document ever again.

The issue becomes what occurred after that moment in time. Mr. Scheide was a physically ill man, as shown by the medical records provided. Susan Hoy testified that Mr. Scheide was put under guardianship because there was no one to "make" medical decisions, as his Health Care POA declined to serve. The actual medical and/or other evidence indicates Mr. Scheide could make various decisions on his own.

There was no indication by the guardian that she ever questioned Mr. Scheide's capacity, as he was given a cash spending card, given him his financial records to review at his request. Mr. Scheide routinely left his residence, to go shopping, order food whether live or o the phone, and pay for it himself. He insisted on seeing his financial statements for review, he even mentioned it to his doctors (Exhibit "C").

Kristin Tyler, Esq., testified that, she *never questioned the decedent's capacity*.

Depo- Kristin Tyler (**Exhibit "A"**) (page 128, lines 7-12):

> ·7· · · **Q.· So while you were his attorney, did it ever --**
> ·8· ·**did you ever come to an opinion that he didn't have**
> ·9· ·**capacity?**
> 10· · · A.· Not while I was working with him.· He had
> 11· ·physical impairments.· He was mentally sharp the entire
> 12· ·time I was dealing with him.

Depo- Kristin Tyler (page 174, line 18-page 175, line-19):

> **18· · · Q.· When you met with him on or around January 2nd, I**
> **19· ·think was when that meeting was, what were your**
> **20· ·impressions of his capacity?**
> 21· · · A.· Mentally, he was still in control.· Physically,
> 22· ·he was deteriorating. He needed more help than I had
> 23· ·ever seen him at any prior time to get around, do basic
> 24· ·things.

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> **25· · · Q.· Were there ever any times before then that you**
> Page 175
> **·1· ·were concerned about his mental capacity?**
> ·2· · · A.· No.· I -- if I was, I would have asked for
> ·3· ·another updated doctor letter.

It is submitted that the decedent's capacity was truly never in question during his lifetime, but rather his physical impairments which created the issue of guardianship.

St. Jude's is relying on the well criticized Guardianship medical certificate (2/12/14), which was executed at a time when Mr. Scheide was admitted to Centennial Hospital four (4) days prior to the certificate being signed.

Eight days later a medical doctor presented a more thorough report (**Exhibit "B"**), which indicated that while Mr. Scheide did have some dementia, it was mild. The reporting physician stated: "*His mental status did improve, as the encephalopathy was likely diagnosed as metabolic*", which would denote some physical causation for the mental "altered level of consciousness" in the certificate, rather than some sort of severe dementia, or the like. The medical reports since then only get to the point that he was confused, not too long before he died. Taken as a whole, in light of Mr. Scheide's own actions, the subsequent medical documentation, and Susan Hoy's testimony that the guardianship was actually for his physical medical conditions, this singular document becomes meaningless.

Since the Nevada Supreme Court, and the NRS all provide for any individual deemed incompetent or incapacitated to regain competent and/or capacital status. Competency is an overall state; capacity is the ability to perform an act.

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During the guardianship Mr. Scheide apparently acted, other than his physical limitations, quite normally – shopping, ordering food, calling on the phone to make an order, paying for it himself. These are not the actions of someone who has a lack of capacity. Mr. Scheide repeatedly demanded to see his financial statements to both the guardian and physicians (**Exhibit "C"** –any emphasis added). He knew what his assets were and able to communicate that fact.

As to the persistent allegation of estrangement, St. Jude's, their attorney, and not even Kristin Tyler, Esq., can truly state that Mr. Scheide was not seeking out or discussing his son. He apparently spoke with a physician about his son, who noted it in his report. See **Exhibit "D"** (any emphasis added), wherein the physician notes: "Son: Chipper Scheide 50's PA". Mr. Scheide was well aware of his son, his age, and where he lived. There must have been some conversation between the physician and Mr. Scheide for the doctor make the reference in his report.

In the State of Nevada, in order to have testamentary capacity, a testator must know what their assets are, know who their heirs are, and can communicate that fact. To use St. Jude's *own words*:

> "The Nevada Supreme Court indicated that: [t]estamentary capacity exists when the testator (1) understands the nature of the act he is doing, (2) recollects and understands the nature and situation of his property, and **(3) recognizes his relations to the persons who would inherit via intestacy**." The Court also declared that testamentary capacity is presumed and continues even after the testator has been presumed incompetent to handle his affairs. This presumption is rebuttable by the party challenging the will or the revocation by providing evidence that the testator lacked such capacity" *In re Estate of Blanchard*, 2016 WL 3584702 (NV Ct. App., 2016) (citing *In re Lingenfelter's Estate*, 241 P.2d 990, 997 (Cal. 1952))" [Emphasis added]

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The implications of Mr. Scheide's own actions has shown that he had testamentary capacity during his time under guardianship.

Susan Hoy testified that she never saw the original October 2012 will, only a copy, at the beginning of the guardianship. As she apparently went through/inventoried, etc., Mr. Scheide's belongings in February 2014, this is an indicator that the original document was already destroyed by Mr. Scheide prior to that time. Therefore the period guardianship and even Mr. Scheide's "capacity" is not even the issue.

Since Ms. Hoy never found the original in his documents in February 2014, it is more than likely than not that the original October 2012 Will was voluntarily revoked prior to the period of guardianship. When taken in conjunction with the fact that Ms. Tyler kept attempting to have Mr. Scheide execute "new" documents (Dec. 2013-Jan. 2014) and he was ignoring her on doing so, is another strong indication that the October 2012 Will was voluntarily destroyed by the testator and he did not want to make a new one.

We now know from the file provided by Ms. Hoy through her counsel, that Mr. Scheide owned a shredder (documents collectively (**Exhibit "E"**). These show handwritten inventory, a May 4th email, a May 12th letter indicating it was not in storage, and a June 9, 2016 Hospital Visit Form wherein Mr. Scheide was: "Still not happy with guardianship; wants his shredder and coffee maker replaced". While, apparently, his shredder was kept from him during what appears to be a good portion of the guardianship, he did own one, and was well aware of what he had, and what he wanted.

So, as to any issue of Mr. Scheide's capacity, there obviously are issues of fact which preclude summary judgment.

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St. Judes is intentionally attempting to change the nature of these proceedings and to steer this court into a red-herring situation, diverting away from the fact that they cannot overcome the presumption of revocation for a long period of time (Oct 2012-Aug 2014), almost two (2) years.

As to the Undisputed Fact section, St. Jude's makes certain statements, claiming them to be undisputed facts. Number 3: self serving statement that Mr. Scheide reaffirmed his wishes in August 2013, but offers no substantiation for this. Number 4: while it is agreed that the decedent did not speak with Ms. Tyler regarding changing or executing a new will, what there is, is a letter from Ms. Tyler dated 1/29/14, seeking to convince Mr. Scheide into executing new documents, which Mr. Scheide apparently ignored, since no new documents were signed. He told Ms. Hoy he wanted to fire Ms. Tyler. Number 5: Guardianship Certificate see discussion, *supra*.

St. Jude's made several speculative assertions that Kristen Tyler, Esq., was Mr. Scheide's only. She was his attorney in October 2012, but when Velma Shay died in January 2013, Mr. Scheide did not avail himself of her services. He filed, pro se, a petition regarding her burial. When her family members commenced an action regarding her trust, Mr. Scheide did not avail himself of her legal services, either. (See collective documents as **Exhibit "F"**. Kristin Tyler testified that she refused to represent Mr. Scheide over some issue he had with a car in mid 2013. We know for a fact that Jasen Cassady, Esq. was another attorney consulting with Mr. Scheide. So, St. Jude's cannot allege, with certainty, that Ms. Tyler was Mr. Scheide's exclusive attorney. Mr. Scheide apparently did without her services, refused to followher advice and wrote on the copies of his documents.

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B. Best Evidence Rule (Codified for many years NRS 136.240)

By all accounts, Mr. Scheide was known to shout, be grumpy and/or irascible and impulsive. His two appointed POA agents, both of whom no longer cared to help him (they quit).

The reason behind NRS 136.240 requirement that two witnesses to prove existence, is to mitigate fraud.

Susan Hoy used a photocopy of the October 2012 Will for Probate Court. As can be seen from that document, apparently Mr. Scheide had the habit of writing on his documents.

In this case, neither the court, nor anyone else for that matter, has any idea if Mr. Scheide wrote on his original, scratched items out, or provided for someone other than Velma Shay, the original object of the 2012 wills, after her death.

The best evidence rule has been codified in Nevada. See *Tomlinson v State*, 110Nev. 757, 878 P.2d 311 (1994). In essence, NRS 52.235 requires that the party trying to prove the contents of a written document, a recording or a photograph produce the original.

However, the proponent of any document must usually produce the original of the document in court. If the proponent does not do so with some good excuse, the document will not be admitted, no matter how authentic the copy of other rendition of the document may be. The common law best evidence rule requires the proponent to provide the original in court or show that the original cannot be produced for one of there reasons: (1) it has been lost or destroyed through no fault of the proponent; (2) it cannot be removed from its location by law; or (3) the original is in the custody and control of the opponent who refuses to produce it.

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If the lost original was held by the proponent, then the proponent is usually obliged to call one or more witnesses to show that the original was lost, destroyed or misplaced through no fault of the proponent.

In this matter, St. Jude's cannot even meet the first condition. St. Jude's has not even alleged they can meet the first requirement under *Irvine*, or NRS 136.240. They cannot prove the original was in existence at all at the time of the decedent's death.

CONCLUSION

The red herring deflection of capacity and the separate issue of during guardianship, when the standard is for St. Jude's to prove that two people actually saw the original document to rebut the presumption of revocation is just that - a deflection and/or diversion away from the fact that from all the testimony in depositions to date, no one can testify that they saw the original document since the day it was signed.

The presumption is that Mr. Scheide voluntarily revoked the October 2012 will, and St. Jude's obviously cannot prove otherwise; hence the deflection.

As presented, the motion for Summary Judgment fails as a matter of law. There are too many factual disputes on non-issues.

WHEREFORE, the Motion for Partial Summary Judgment should be denied in its' entirety.

Dated: May 12, 2017

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Nevada Bar No. 4357
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 18, 2017, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

___ **BY MAIL:** N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;

X **BY E-MAIL AND/OR ELECTRONIC MEANS:** Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

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ORDER

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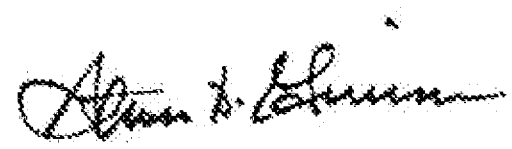

CLERK OF THE COURT

ORDR
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E-Mail: kimboyer@elderlawnv.com
Attorney for Estate

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of THEODORE E. SCHEIDE JR. aka THEODORE ERNEST SCHEIDE JR., Deceased.	Case No.: P-14-082619-E **ORDER ON PETITION FOR INSTRUCTIONS**

The Petition of SUSAN M. HOY for Instructions from the Court for the Estate of the above-named Decedent having this date come on for hearing before the undersigned, it appearing to the Court that notice of the hearing on the Petition was duly given; the Court finding that the Decedent at the time of his death left an estate in Clark County, Nevada, and was then a resident of Clark County, Nevada, good cause appearing therefor, it is hereby

ORDERED that the Petitioner be appointed Administrator of the intestate Estate of the Decedent and that Letters of Administration be issued to the Petitioner.

ORDERED that in the event the estate assets are liquidated, they be placed in the Durham Jones & Pinegar Trust Account.

ORDERED that no bond be required.

DATED this 22nd day of May, 2015.

DISTRICT JUDGE

LV_315624.1

KIM BOYER, ESQ.
Nevada Bar #5587
10785 W. Twain Avenue, Suite 200
Las Vegas, Nevada 89135
(702) 255-2000
Attorney for the Estate

 Location : Family Courts Finance Help

Register of Actions

Case No. P-14-082515-PT-E

In the Matter of: Theodore Scheide Jr., Deceased

Case Type:	Probate - Special Administration
Date Filed:	10/02/2014
Location:	
Cross-Reference Case Number:	P082515

Party Information

			Lead Attorneys
Decedent	Scheide Jr., Theodore Ernest	Male DOB 08/07/2014	
Petitioner	Hoy, Susan 6625 S Valley View DR STE 210 Las Vegas, NV 89118	Female	Kim Boyer *Retained* 702-255-0000(W)

Events & Orders of the Court

03/22/2015 Petition - HM (9:30 AM) (Magistrate Yamashita, Wesley)
Petition for Instructions

Minutes
03/22/2015 9:30 AM
- PETITION FOR INSTRUCTIONS COMMISSIONER STATED this matter had been left open to see if anyone came forward to produce a will or indicated they wanted to pursue it but nothing came forward. Further, it was the opinion of the Personal Representative that the will had been destroyed. Mr. VanAlstyne stated that is correct and confirmed that will is to proceed based upon the basis of an intestate estate. COMMISSIONER RECOMMENDED: PETITION GRANTED. The signed Order was provided to Mr. VanAlstyne.

Parties Present
Return to Register of Actions

CARY COLT PAYNE, CHTD.
Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "A"

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

In the Matter of the Estate of)
4)
)
5 THEODORE E. SCHEIDE, JR.,) CASE NO: P-14-082619-E
aka THEODORE ERNEST)
6 SCHEIDE, JR.,) DEPT NO: PCI
)
7 Deceased.)
)
8

9

10

11

12 DEPOSITION OF KRISTEN TYLER, ESQ.

13 LAS VEGAS, NEVADA

14 THURSDAY, FEBRUARY 16, 2017

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24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 500366

Page 128

1 today, I've seen the physician's certificate. I recall
2 that's what it was. I believe it was dated May of '12,
3 which would be within six months of him signing
4 documents in October of '12. That's kind of been my
5 rule of thumb. If I have something from a doctor within
6 six months, I'll honor it.
7 **Q. So while you were his attorney, did it ever --**
8 **did you ever come to an opinion that he didn't have**
9 **capacity?**
10 A. Not while I was working with him. He had
11 physical impairments. He was mentally sharp the entire
12 time I was dealing with him.
13 **Q. That would include up to and through the**
14 **guardianship?**
15 A. Up -- he -- up until my last meeting with him
16 before he was admitted to Centennial Hills. And then I
17 don't know the specifics of what happened to him
18 medically at that point in time.
19 **Q. So did your opinion -- your opinion didn't**
20 **change; you just don't have an opinion as to once the**
21 **guardianship was --**
22 A. I don't understand the question.
23 **Q. Did -- if I understand your testimony, you didn't**
24 **have any problem with his capacity?**
25 A. Correct.

Page 174

1 **the Velma Shay estate matter?**
2 A. Not that I recall.
3 **Q. Did any other attorneys at Gordon Silver work on**
4 **Mr. Scheide's bankruptcy issue?**
5 A. I believe I had a paralegal look up the case
6 number on it to try to figure out more details about
7 what was going on. I don't recall speaking about it
8 with another attorney.
9 **Q. Did Mr. Scheide ever tell you that he wanted to**
10 **fire you?**
11 A. No.
12 **Q. Did Mr. Scheide ever tell you he was not pleased**
13 **with the work that you were doing?**
14 A. Not that I recall.
15 **Q. Did Mr. Scheide ever tell you he appreciated what**
16 **you did for him?**
17 A. I -- I recall him saying thank you, yes.
18 **Q. When you met with him on or around January 2nd, I**
19 **think was when that meeting was, what were your**
20 **impressions of his capacity?**
21 A. Mentally, he was still in control. Physically,
22 he was deteriorating. He needed more help than I had
23 ever seen him at any prior time to get around, do basic
24 things.
25 **Q. Were there ever any times before then that you**

Page 175

1 **were concerned about his mental capacity?**
2 A. No. I -- if I was, I would have asked for
3 another updated doctor letter.
4 MR. GEIST: I'm going to -- if I may,
5 introduce one more set of documents. This would be 10,
6 Exhibit 10.
7 (Exhibit 10 was marked for identification.)
8 MR. GEIST: These are -- they would be under
9 file -- or tab 5 in that. They're listed file 154 to
10 181 from the documents you produced.
11 THE WITNESS: Okay.
12 BY MR. GEIST:
13 **Q. They were listed as client documents.**
14 **Do you recognize those?**
15 A. Yes.
16 **Q. How do you recognize those?**
17 A. They produced them with my file.
18 **Q. So -- if I may. I apologize.**
19 A. Uh-huh.
20 **Q. Taking a look at -- and there's multiple copies**
21 **of this. I do apologize. But it appears to be the same**
22 **document over and over. We're going to --**
23 A. There were a lot of duplicates in the file. We
24 just produced them all to be fully transparent.
25 **Q. So given that -- this is 161 through 164. Can**

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EXHIBIT "B"

114B

SILVER HILLS HEALTHCARE CENTER

3450 N. Buffalo Drive
Las Vegas, Nevada 89129
Telephone (702)952-2273 Fax (702)952-2270

HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME:	SCHEIDE, THEODORE
MEDICAL RECORD #:	6589
DATE OF ADMISSION:	FEBRUARY 20, 2014
ATTENDING PHYSICIAN:	SHEILA MIRANDA, MD

HISTORY OF PRESENT ILLNESS: This is an 86-year-old gentleman with history of dementia, chronic atrial fibrillation, ischemic cardiomyopathy, CHF and left second toe osteomyelitis. He came from an assisted living facility. He was transferred to Centennial Hills Hospital on 02/08/2014 for altered mental status. The patient was reported to have some slurred speech. He was confused and wandering around aimlessly and was only oriented to his name. The patient was admitted to the service of Dr. Mandip Arora. He was seen by neurologist, Dr. Janda. The patient underwent a neurological workup, which included a CT of the brain, which was negative for any acute findings and a CT angiogram of the head, which was negative for any aneurysm. He was not able to do a MRI due to him having an Automatic Implantable Cardioverter Defibrillator. He also had a carotid ultrasound, which was negative for hemodynamic stenosis. He was also seen by cardiologist, Dr. S. Khan because of the episodes of atrial fibrillation and mildly elevated troponins, but the troponins were reported to have come down. His rate was under control and, per cardiologist and neurologist notes the patient is a poor candidate for chronic anticoagulation due to his high risk for falls. He was recommended to continue aspirin and Plavix for now. His mental status did improve, as the encephalopathy was likely diagnosed as metabolic. He also had a chronic left second toe osteomyelitis and back in November 2013 there are records from Mountain View Rehabilitation that he had been treated there and at complex care for complications of left second toe osteomyelitis and cellulitis and was being treated with IV ceftriaxone. At Centennial he was seen by podiatrist, Dr. Biesinger and underwent left second toe amputation. Postprocedure the patient was doing fairly well. He was recommended to be transferred here for impaired mobility and ambulation and deconditioning.

Currently the patient denies any pain. He has no complaints.

PAST MEDICAL HISTORY: Includes history of dementia; TIA/CVA, which he reports two episodes of this; hypertension; chronic atrial fibrillation; AICD placed in 2007; osteomyelitis of the left second toe; iron deficiency anemia; ischemic cardiomyopathy; gout; dyslipidemia; abdominal aortic aneurysm status post endograft repair in 2000 at Arizona Heart Institute of Phoenix; the patient was hospitalized in December due to outpatient CT showing enlarging aneurysm, but there was no clarification at that time if there was any endovascular leak and he did have an aortogram and was discharged; also had cardiac angiogram on 06/01/2007, which

showed occluded RCA with collateral filling from the left side; diabetes mellitus; BPH; history of UTI.

MEDICATIONS: Previous home medications include mupirocin 2% ointment; Plavix 75 mg daily; potassium chloride 20 mEq daily; Lasix 40 mg daily; lisinopril 40 mg daily; metoprolol 50 mg in the morning and 25 mg at night; terazosin 5 mg q.h.s.; metformin 1,000 mg twice a day; aspirin 81 mg daily; atorvastatin 10 mg q.h.s.

Current inpatient medications include Tylenol p.r.n.; Dulcolax p.r.n.; Milk of Magnesia p.r.n.; Plavix 75 mg daily; potassium chloride 20 mEq b.i.d.; Lasix 40 mg daily; lisinopril 40 mg daily; metoprolol 50 mg q.a.m. and 25 mg q.p.m.; terazosin 5 mg p.o. q.h.s.; metformin 1,000 mg b.i.d.; aspirin 81 mg daily; atorvastatin 10 mg q.h.s.

ALLERGIES: No known drug allergies.

SOCIAL HISTORY: No tobacco, alcohol or drug use. The patient was living at Golden Sunshine Home prior to hospitalization.

FAMILY HISTORY: Both parents had a history of significant heart disease and died a sudden death; however, they were both of advanced age.

REVIEW OF SYSTEMS: The patient denies headaches, dizziness or visual changes. He denies any focal numbness or weakness. He does have occasional shortness of breath when he is anxious or has fear. He does admit to some occasional chest pain but does not complain of chest pain at this time. He denies any nausea, vomiting or abdominal pain. He does admit to constipation and last bowel movement was about two days ago. He denies any dysuria or difficulty with urination. The patient states he was ambulating prior to hospitalization, but he also mentioned he was falling as well. He denies any foot pain or leg pain. The rest of the 12 review of systems is negative.

PHYSICAL EXAMINATION:

GENERAL:	The patient is an elderly male of average weight in no acute distress.
VITAL SIGNS:	Blood pressure 138/72, temperature 98.2°, pulse 86, respiratory rate 18.
HEENT:	Pupils are equal, round, and reactive to light. Oropharynx is clear. Mucous membranes are dry.
NECK:	Supple. No JVD. No carotid bruits.
CARDIAC:	Irregular rhythm and normal rate. A 2/6 systolic murmur is heard.
LUNGS:	Clear to auscultation bilaterally, aerating well.

HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME: SCHEIDE, THEODORE
MEDICAL RECORD #: 6589
DATE OF ADMISSION: FEBRUARY 20, 2014
ATTENDING PHYSICIAN: SHEILA MIRANDA, MD

ABDOMEN: Normoactive bowel sounds, soft, nontender, nondistended. No organomegaly.

EXTREMITIES: No clubbing, cyanosis, or edema. He does have left second toe amputation and hyperpigmentation of the bilateral lower extremities.

NEUROLOGIC: The patient is alert and oriented to name, city, year and month. He is oriented to situation. He does have some memory deficits and hearing impairment. No facial asymmetry. Speech is clear. Motor strength in upper extremities is about 4/5 with good bilateral handgrip. Motor strength in the lower extremities is about 3/5 on the right and 2/5 on the left. Sensation is intact.

PSYCHIATRIC: Mood and affect are appropriate. The patient has logical thought processes, and he does answer questions appropriately. He, at times, does answer questions and is joking during examination.

SKIN: Warm and dry.

LABORATORY DATA: Glucose 79, BUN 11, creatinine 0.76, calcium 8.9, total bilirubin 0.8, magnesium 2.0, TSH 2, GFR 97, creatinine 0.76, WBC 6.9, hemoglobin 9, hematocrit 28.8, platelets 300.

IMAGING: Bilateral carotid ultrasound showed no hemodynamic stenosis. A venous bilateral ultrasound was negative for DVT. A CT angiogram of the head was negative for aneurysm. A CT of the brain without contrast was negative for any acute findings.

ASSESSMENT:

1. METABOLIC ENCEPHALOPATHY AND LIKELY MULTIFACTORIAL ENCEPHALOPATHY, WHICH IS IMPROVED.
2. LEFT SECOND TOE OSTEOMYELITIS STATUS POST AMPUTATION OF THE LEFT SECOND TOE.
3. IMPAIRED MOBILITY AND AMBULATION WITH DECONDITIONING AND DISUSE MYOPATHY.
4. DEMENTIA REPORTED ON PREVIOUS RECORDS TO BE MILD.
5. HISTORY OF TRANSIENT ISCHEMIC ATTACKS VERSUS CEREBROVASCULAR ACCIDENTS TIMES TWO.
6. CHRONIC ATRIAL FIBRILLATION WITH CONTROLLED RATE.
7. ISCHEMIC CARDIOMYOPATHY WITH HISTORY OF AUTOMATIC IMPLANTABLE CARDIOVERTER DEFIBRILLATOR PLACEMENT IN 2007.
8. HISTORY OF CARDIAC CATHETERIZATION, WHICH SHOWED OCCLUDED RIGHT CORONARY ARTERY BUT COLLATERAL FILLING ON THE LEFT SIDE.

PATIENT NAME: SCHEIDE, THEODORE
MEDICAL RECORD #: 6589
DATE OF ADMISSION: FEBRUARY 20, 2014
ATTENDING PHYSICIAN: SHEILA MIRANDA, MD

9. HISTORY OF ABDOMINAL AORTIC ANEURYSM STATUS POST ENDOGRAFT REPAIR IN 2000 IN PHOENIX, ARIZONA, WITH RECENT HOSPITALIZATION DUE TO CT SHOWING ENLARGING ANEURYSM STATUS POST ANGIOGRAM IN DECEMBER IN 2013.
10. ANEMIA DUE TO IRON DEFICIENCY AND CHRONIC DISEASE.
11. HISTORY OF URINARY TRACT INFECTION.
12. HISTORY OF BENIGN PROSTATIC HYPERTROPHY.
13. HISTORY OF DYSLIPIDEMIA.
14. HISTORY OF GOUT.
15. DIABETES MELLITUS TYPE 2.

PLAN: We will continue wound care. We will schedule follow-up visit with a podiatrist. We will place the patient on Senna due to constipation and continue bowel regimen. We will encourage frequent repositioning of patient and continue wound care. We will schedule a follow-up appointment with cardiologist. We will check iron levels, vitamin B12 and folic acid levels and monitor Accu-Cheks. We will continue aspirin and Plavix for now. Monitor CBC, renal function and electrolytes. We will also obtain more records from Centennial Hills Hospital, including urine culture that was reported; however, these results are not available in the chart at this time. The patient does have a public guardian. The patient, at this time, wishes to have no resuscitation, no intubation or heroic measures. I will discuss category 2 code status with public guardian and inform them of the patient's wishes for "Do Not Resuscitate" and "Do Not Intubate." The patient will also continue PT/OT.

SHEILA MIRANDA, MD
SM/bc

D: 02/22/14
T: 02/23/14
#771

CARY COLT PAYNE, CHTD.
Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "C"

RECORD OF VISIT

Date of Visit: 5/14/15

Name of Ward:

Address: (Facility) Ac Rehabilitation

Purpose: Monthly, Quarterly (1, 2, 3, 4)

Pre-Guardianship _____ Other _____

A. MENTAL CONDITION: (Describe orientation in 3x, communication capacity, major psychiatric symptoms):

Agitated - stayed up late last night - decreasing of Abx schedule best

B. PHYSICAL CONDITION: Weight: _____ Height: _____

1) Describe Overall Appearance:

look tired, unkept hair

2) Describe Chronic, Acute, or Specified Medical Conditions under Treatment:

Dementia, Diabetic

3) Describe Level of Medical Services Provided or Needed:

full care - was ward/depend

4) Medical Services: (Provide Dates of Last Service) Primary Care Physician: VM - Wilson

Dental Exam: _____ Physician Visits: _____

Eye Exam: _____ Lab Work: _____

Upcoming Appointments:

___/___/___

___/___/___

* Podiatry Visits: _____

Non compliant -

Other: (Specialist) Travis / Home Health

5) Hospitalization: (Record Most Recent)

DATE:	LOCATION:	REASON:
___/___/___		
___/___/___		
___/___/___		

6) Medication: Obtain copy of current MAR ☒

phone book

SCHEIDE1023

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

In the Matter of the Estate of)
4)
)
5 THEODORE E. SCHEIDE, JR.,) CASE NO: P-14-082619-E
aka THEODORE ERNEST)
6 SCHEIDE, JR.,) DEPT NO: PCI
)
7 Deceased.)
)
8

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10

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12 DEPOSITION OF SUSAN HOY

13 LAS VEGAS, NEVADA

14 THURSDAY, FEBRUARY 16, 2017

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22

23

24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 500367

Page 48

1 Q. How much reporting back did you do to Mr. -- with
2 Mr. Scheide?
3 A. Well, he would call frequently. He wanted his
4 brokerage statements, and he wanted to know how much
5 money he had.
6 Q. Did he ever direct you on how to invest his
7 money?
8 A. No, he did not.
9 Q. Did he ever direct you on how to spend his money?
10 A. Yes. He was not happy with what he was spending,
11 but he had a long-term care policy that reimbursed him.
12 So that seemed to alleviate that unhappiness. We were
13 able to get that going. And then we provided to him a
14 Spend Card, and he was able to call and check the
15 balance. So we would frequently get phone calls about
16 that too.
17 Q. So he was unhappy with the amount that was being
18 spent on his care?
19 A. Yes.
20 Q. And he expressed that to you?
21 A. Yes.
22 Q. Would he call you and tell you that?
23 A. Yes.
24 Q. How often would he call you and tell you that?
25 A. I spoke to him, to the best I'm able to recall,

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EXHIBIT "D"

NEVADA GUARDIAN SERVICES, LLC

DOCTOR VISIT FORM

Client: Scheide, Theodore

NGS Staff attending: Diane Prosser

Seen by Doctor: Dr. Tselikas at Tenaya

Doctor's Telephone # ( )

Date of Visit: 8 / 6 / 14

Other Person(s) attending: Margie [illegible]

Reason for Visit: Follow [illegible] 1:15 - 2:00 - 4:30

Any New Medications?

None

Adm Secretary 3:15

Any Changes to Medications: None

Report from Doctor: BP 223/[illegible] HR 124/[illegible] 80 pulse

Labs look good, [illegible] good - did not see blood

[illegible] Dr [illegible]

Anemia 2.3 now 1.5 past month

Renal function - stable

Comments: Doctor [illegible] PT [illegible]

[illegible]

[illegible]

[illegible]

Next appointment scheduled for: 10/30/14 [illegible]

[illegible] 1/19/14 2pm

SCHEIDE1011

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700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "E"

2 BLACK BOOKCASES.

GARMENT BAG (2) FULL OF CLOTHING

1 LAMP, SHOE HORNS

1 PILLOW ALARM CLOCK

~~CALCULATOR~~ CALCULATOR

HEATING PAD

SHAVER

RAZOR

HEAT PADS

EMPTY BLACK BINDER

REACHER

UNIVERSITY OF PA DIPLOMA & OTHER PERSONAL DOCUMENTS

PHOTO IN SMALL ALBUM & MISC LOOSE PICTURES

SUNGLASSES

BOOK

MISC. PAPERS

STAPLER / PAPERCLIPS

NAIL CLIPPERS

TELEPHONE

SCHEIDE0117

AA000828

Diane Prosser, NCG

> Nevada Guardian Services, LLC

> 6625 S. Valley View Blvd., Suite 216

> Las Vegas, NV 89118

> Office (702) 629-2017

> FAX (702) 631-7896

Change of group homes
S.R. Residential
Salendine to Alerion

> From: Beatrice Mercado Shimada [mailto:rnbeatrice@email.com]
> Sent: Sunday, May 04, 2014 11:51 PM
> To: Diane Prosser
> Subject: Fwd: When Theo meets Ruth

> Hi Diane,

> We moved Mr. Schiede on Friday. He loves the Alerion facility. He loves the bigger room and convinience of the bathroom as well. I am attaching a picture of him talking to our other resident.

> Did you want him in a private room? The cost for a shared room is $3,000. Most of the residents that go to our facility goes in to the shared room. If you would like Mr. Schide in the private room, the cost would remain the same. As a courtesy, what we can do is include an outing 2 times a week for up to 4 hours (that's about $200/week which we will waive).

> I already have him scheduled to go out in Tues and Thurs for lunch

> Sincerely,

Beatrice Shimada, RN

>
>

1. To confirm the cost for the private room is $3,000? I understand this is the large room with private bath, located to the left when you walk in.

The cost for a shared room is $3000.
The private will remain the same on what Theo is currently paying which is $4800 (it's usually more, but we will honor his current rate)
>
> 2. I will arrange for Home Instead to take Scheide out 3-4 times per week, but with very strict instructions (this time) regarding the limits of his outings. I understand he wants to attend church on Sundays. I would like you care staff (Marge is the best!) to attend his doctor's appointments for continuity of medications, concerns, etc. SEE BELOW.

Ok. I also included for him to go out 2 times a week with our staff. Can home instead just take him out every Sunday?
>
> 3. Scheide has a small storage unit and a few things here in our warehouse. Once we inventory the storage unit and look at those items he has, we'll bring these items to his large room. Marge told him he can have his espresso maker, shredder, office items, etc. which are being stored. Is this alright with you?

Sure, not a problem

>
> 4. He wants a land line in his room for this telephone service. Is this possible, and with what carrier? Do I arrange for the service to be installed, or should you arrange this? He has a telephone number for his cell which he wants to convert to a land line. Do you have spare telephones there, or should we purchase the phone? This is something he can do during one of his outings.

I will call the telephone company
>
> 5. Next appointments:
>
> · Lab work SW VA Clinic (no appointment made-just need to walk in) June 16 10 a.m. MUST FAST 12 HOURS! NOTHING BUT WATER AND MEDICATIONS
>
> · Podiatry: VA Hospital 6900 N. Pecos 7/11/14 1:00 p.m.
>
> · Dr. Watson: SW VA Clinic 7/16/14 1:30 p.m.
>
> · Dr. Tselikas, S. Tenaya Cardiology, 7/31/14 3:00 p.m.
>
>
>
> I'm happy he's pleased with the larger room. It is my goal to set it up with a small apartment feeling. Hopefully this will make him a happier person. Please let me know your thoughts. I'm copying Marge on this email as well, so she has the doctor's appointments in her schedule. I'll be stopping by the group home this week to discuss any issues with him he may have.

Sounds good. He is definitely much happier!

David Arenaz, CAGA
900 Las Vegas Blvd. So. Unit 1401
Las Vegas, NV 89101
Nevadacertifiedappraiser.com

May 12, 2014

Diane Prosser
Nevada Guardian Services
6625 S. valley View Blvd. Ste. B-215
Las Vegas, NV 89101

RE: Scheide Guardianship

Dear Diane,

I completed the Scheide inventory on 5/8/2014 at the mini-storage facility located at 8650 W. Cheyenne, Unit 563. There were only 4 pieces, 1 of which was a leased oxygen generator. All the items were in good condition and would be easy to liquidate. There does not seem to be a need ~~for a full report~~, so I will itemize the merchandise here. The fee is for one hour @ $75.00 per hour. I have waived the two hour minimum in this case.

1. Ultra-suede reclining chair. $60.00
2. Pr. Chrome desk lamps. $45.00
3. Small bookshelf. $10.00
4. Pacific Pulmonary Service Everflo oxygen generator. Leased equipment-no value.

Please let me know if you have any questions or concerns.

Very truly yours,

David Arenaz, CAGA

$75.00

NEVADA GUARDIAN SERVICES, LLC

HOSPITAL VISIT FROM

CLIENT: Theodore Scheide

FACILITY: JWA Vegas Rm 518

CASE MANAGER: Jennifer / Susan

PHONE NUMBER:

DATE: 6-9-14

TRANSFERRED FROM: St. Rosalind Mongr 702-202-9215

DOCTOR: Tatelman

ADMIT DATE:

ADMIT DIAGNOSIS: Cellulitis - Neuropathy -
Home Health - ~~Complete~~ - Angels Home Health
Hendrix

ACUTE TREATMENT:
edema w/ legs gone
He one day pain - Dr Malhotra - Cardiologist - Continue meds -
Consult - Dr. Tsalikian -
He says g here feelin. Cardiology Sign off.

MEDICATIONS: BNP - 450 for CHF - (Lasix)
ABX by mouth -
Will need brat meds to feel (b) -

REPORT FROM DOCTOR/NURSE:
Patient stable - Ready for DC - Recommendation is to skilled Rehab
He agreed wants to return to group home -

DISCHARGE PLAN:
Return to St. Rosalind - Dr. Tatelman Recommends skilled rehab
Dr Tatelman will complete Orders -
Referral to Blue Bell - Blue Ridge -

CHART REVIEW:
Skilled care with Dr PT - OT - Speech and Nut PT will be located
in 7th floor in two building - in the 8th floor referred to PT.

COMMENTS:
Life and Keeper of guardianship - Need for children's Hygiene
Relative cooperative

REVISED DATE: 8/01/2013

SCHEIDE1022

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Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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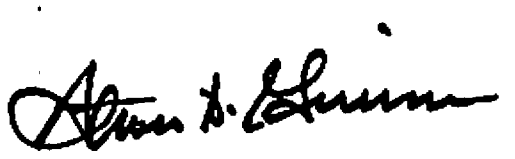
EXHIBIT "F"

Electronically Filed
03/13/2013 08:50:56 AM



CLERK OF THE COURT

NOH
CHRISTOPHER J. PHILLIPS, ESQ.
Nevada Bar No: 8224
PHILLIPS BALLENGER
3605 S. Town Center Drive, Suite B
Las Vegas, NV 89135
(702) 997-5701 Phone
(702) 997-5702 Fax
chris@phillipsballenger.com
Attorney for DUKE KULLMAN
and DANA COBERN-KULLMAN

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the VELMA SHAY 1990 TRUST.	CASE NO.: P-13-076907-T DEPT.: 26 (Probate) Date of Hearing: 03/29/13 Time of Hearing: 9:30 a.m.

NOTICE OF HEARING OF PETITION FOR THE COURT TO TAKE IN REM JURISDICTION OVER THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS; AND PETITION FOR RELEASE OF THE VELMA SHAY1990 TRUST AND ALL AMENDMENTS THERETO TO BENEFICIARIES DUKE AND DANA COBERN-KULLMAN

NOTICE IS HEREBY GIVEN to all persons interested in the foregoing estate that Friday, the 29th day of March, 2013, at the hour of 9:30 o'clock a.m. of said day, in the Courtroom of the above-entitled Court, in Department H, Family Courts and Services Center, Courtroom 9, 601 N. Pecos, Las Vegas, Nevada 89101, is hereby set as the time and place by the Court for the hearing on the **Petition for the Court to Take In Rem Jurisdiction Over the Velma Shay 1990 Trust and all Amendments; and Petition for Release of the Velma Shay 1990 Trust and all Amendments Thereto to Beneficiaries Duke and Dana Cobern-Kullman**, filed by DUKE KULLMAN and DANA COBER-KULLMAN, at which time all persons interested therein are notified then and there to appear and show cause, if any they have, why said petition should not be granted.

DATED this 12th day of March, 2013.

PHILLIPS BALLENGER

CHRISTOPHER J. PHILLIPS, Esq.
Nevada Bar No. 8224
3605 S. Town Center Drive, Suite B
Las Vegas, NV 89135

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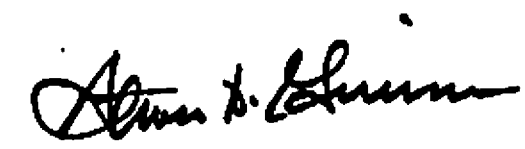
03/13/2013 10:30:59 AM



CLERK OF THE COURT

CERT
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Attorney for DUKE KULLMAN
and DANA COBERN-KULLMAN

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the VELMA SHAY 1990 TRUST.	CASE NO.: P-13-076907-T DEPT.: 26 (Probate) Date of Hearing: 03/29/13 Time of Hearing: 9:30 a.m.

CERTIFICATE OF MAILING

Date of Hearing: 03/29/13
Time of Hearing: 9:30 a.m.

The undersigned herby certifies that on the 13th day of March, 2013, a true and correct copy of the foregoing **Petition for the Court to Take In Rem Jurisdiction Over the Velma Shay 1990 Trust and all Amendments; and Petition for Release of the Velma Shay 1990 Trust and all Amendments Thereto to Beneficiaries Duke and Dana Cobern-Kullman,** along with a copy of the **Notice of Hearing** was duly served by sealing in an envelope and depositing in the U.S. Mail at Las Vegas, Nevada, first-class postage fully prepaid thereon, addressed to the following individual(s):

Medicaid Estate Recovery
1050 E. Williams Street, Suite 435
Carson City, NV 89701

Duke Kullman
Dana Cobern-Kullman
1079 E. Providencia Avenue
Burbank, CA 91501

Theo Scheide
2500 Sunup Drive
Las Vegas, NV 89134

Jasen E. Cassady
Cassady Law Offices, P.C.
7201 W. Lake Mead Blvd., Suite 500
Las Vegas, NV 89128

Diane Franks
Employee of PHILLIPS BALLENGER

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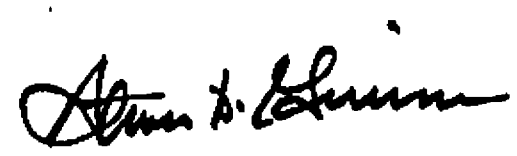
04/05/2013 03:32:02 PM



CLERK OF THE COURT

NEOJ
CHRISTOPHER J. PHILLIPS, ESQ.
Nevada Bar No: 8224
PHILLIPS BALLENGER
3605 S. Town Center Drive, Suite B
Las Vegas, NV 89135
(702) 997-5701 Phone
(702) 997-5702 Fax
chris@phillipsballenger.com
Attorney for DUKE KULLMAN
and DANA COBERN-KULLMAN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the VELMA SHAY 1990 TRUST.	CASE NO.: P-13-076907-T DEPT.: 26 (Probate) Date of Hearing: 03/29/13 Time of Hearing: 9:30 a.m.

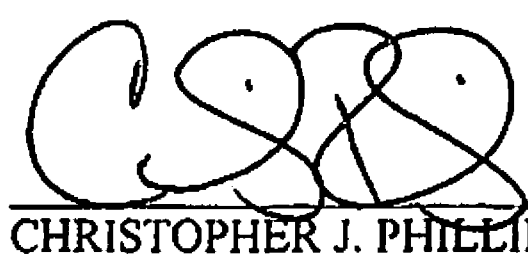
NOTICE OF ENTRY OF ORDER

TO: ALL PERSONS INTERESTED IN THE ABOVE-REFERENCED ESTATE

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE than an ORDER AUTHORIZING COURT TO TAKE IN REM JURISDICTION OVER THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS AND ORDER AUTHORIZING RELEASE OF THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS TO BENEFICIARIES DUKE AND DANA COBERN-KULLMAN, a copy of which is attached hereto and incorporated herein by reference, was entered by the Court on the 5 day of Apr., 2013.

DATED this 5 day of Apr., 2013.

PHILLILPS BALLENGER



CHRISTOPHER J. PHILLIPS, ESQ.
3605 S. Town Center Drive, Suite B
Las Vegas, Nevada 89135

I, the undersigned, an employee of the law firm of Phillips Ballenger, do hereby declare that on the 5 day of Apr., 2013, I placed in an envelope, postage pre-paid, first class mail thereon, a copy of the foregoing Notice of Entry of Order, to which a copy of

ORDER AUTHORIZING COURT TO TAKE IN REM JURISDICTION OVER THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS AND ORDER AUTHORIZING RELEASE OF THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS TO BENEFICIARIES DUKE AND DANA COBERN-KULLMAN was attached, addressed to the persons referenced herein and deposited the same in the Post Office at Las Vegas, Nevada.

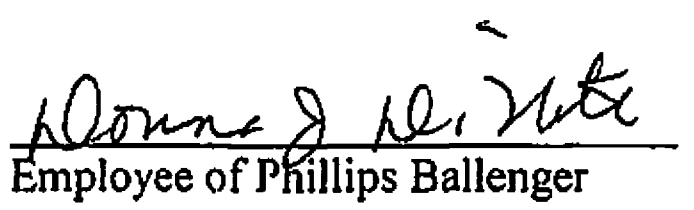
There is a regular communication by mail between the Post Office at Las Vegas, Nevada and the addresses to which the above-referenced documentation was mailed.

Medicaid Estate Recovery
1050 E. Williams Street, Suite 435
Carson City, NV 89701

Duke Kullman
Dana Cobern-Kullman
1079 E. Providencia Avenue
Burbank, CA 91501

Theo Scheide
2500 Sunup Drive
Las Vegas, NV 89134

Jasen E. Cassady
Cassady Law Offices, P.C.
7201 W. Lake Mead Blvd., Suite 500
Las Vegas, NV 89128



Employee of Phillips Ballenger

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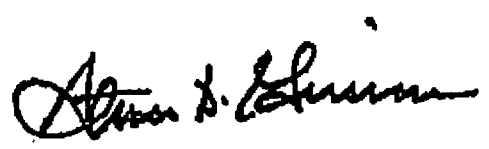

CLERK OF THE COURT

ORDR
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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the VELMA SHAY 1990 TRUST.	CASE NO.: P-13-076907-T DEPT.: 26 (Probate) Date of Hearing: 03/29/13 Time of Hearing: 9:30 a.m.

ORDER AUTHORIZING COURT TO TAKE IN REM JURISDICTION OVER THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS AND ORDER AUTHORIZING RELEASE OF THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS TO BENEFICIARIES DUKE AND DANA COBERN-KULLMAN

This matter having come on for hearing before the above entitled Court on the 29th day of March, 2013, upon the Petition for the Court to Take In Rem Jurisdiction Over the Velma Shay 1990 Trust and all Amendments; and Petition for Release of the Velma Shay 1990 Trust and all Amendments Thereto to Beneficiaries Duke and Dana Cobern-Kullman, filed by DUKE KULLMAN and DANA COBERN-KULLMAN; the Court having reviewed the same and having found that all allegations contained therein are true and correct, and good cause appearing therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court does hereby assume jurisdiction in rem over the Velma Shay 1990 Trust and any amendments thereto; and it is

FURTHER ORDERED that The Cassady Law Firm shall release copies of the Velma Shay 1990 Trust and all amendments thereto to DUKE KULLMAN and DANA COBERN-KULLMAN'S counsel; and it is

FURTHER ORDERED that any person in possession of any Trust, Wills, Revocations of Trust or other estate planning documents purporting to invalidate the VELMA SHAY 1990

TRUST, shall provide copies of those documents to DUKE KULLMAN and DANA COBERN-KULLMAN.

DATED and DONE this 5th day of April, 2013.

DISTRICT COURT JUDGE

PHILLIPS BALLENGER

CHRISTOPHER J. PHILLIPS, ESQ.
3605 S. Town Center Drive, Suite B
Las Vegas, NV 89135
Attorney for DUKE KULLMAN and
DANA COBERN-KULLMAN

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Steven D. Grierson
CLERK OF THE COURT

RPLY
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Attorney for Theodore E. Scheide III

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of THEODORE E. SCHEIDE JR. a/k/a THEODORE ERNEST SCHEIDE JR. Deceased. ~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~ ST. JUDE'S CHILDRENS RESEARCH HOSPITAL, Objector/Petitioner, -v- THEODORE E. SCHEIDE,III Respondent. ~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	)	Case No.: P-14-082619-E Dept. No.: 26 Date: 5/31/17 Time: 9:30 AM

REPLY TO ST. JUDE'S OPPOSITION TO
MOTION FOR JUDGMENT ON THE PLEADINGS (NRCP 12(c)), ETC.

COMES NOW, Respondent, Theodore E. Scheide III, son of the decedent, by and through his attorney, CARY COLT PAYNE, ESQ., of the lawfirm of CARY COLT PAYNE, CHTD., and hereby submits the within Reply to Opposition to Motion for Judgment on the Pleadings, Etc., which is made and based upon the attached Points and Authorities, Exhibits, pleadings on file to date, and any oral argument that the Court may allow at the time of the hearing.

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I. POINTS & AUTHORITIES

It is requested that this court take judicial notice of the Opposition to Motion for Partial Summary Judgment, filed on May 12, 2017, by Theodore Scheide III, as if fully set forth herein.

St. Jude's opposition to the Motion for Judgment on the Pleadings (NRCP 12(c)) fails to address their Petition to Admit Lost Will. The court, pursuant to *Estate of Irvine v. Doyle*, 101 Nev. 698, 710 P.2d 1366 (Nev., 1985) and NRS136.240(3) requires the pleadings allege that the testator himself had not revoked the lost or destroyed will, proof that would overcome the common-law presumption of revocation.

This means that two (2) individuals must actually physically have seen the original Last Will at the time of decedent's death to prove its actual existence. Parol or any other kind of evidence, or divergent theory, does not and cannot change these requirements.

Discovery will have closed as of May 22, 2017, by the time this motion is heard. St. Jude's was extended ample opportunities (extension of discovery) to prove that the original October 2012 Will was still in actual existence at the time of death, and/or that the decedent did not revoke said document voluntarily. This court's order filed April 17, 2017 clarified the court's prior order filed February 2, 2017:

> "ORDERED that St. Jude's Petition for Probate of Lost Will is granted to the extent that there is to be an Evidentiary Hearing, pursuant to *Estate of Irvine v. Doyle*, in that St. Jude's must prove the October 2012 will was not revoked during the decedent's lifetime from the period of the date of execution through to the date of decedent's death".

Irvine is inapplicable to the extent that in *Irvine*, there was a house fire, an intervening act. St. Jude's only witness testified there was no intervening acts (e.g.: flood, fire, etc.).

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St. Jude's pleadings fail to allege the statutory requirement, and they **must** prove that the October 2012 Will was not revoked by the decedent voluntarily. To date, no deposition testimony or any document has ever been proffered by St. Jude's to overcome the presumption of revocation.

Since St. Jude's has not even alleged in their pleadings that there are two (2) witnesses who actually saw the original October 2012 Will, they engage in the sleight of hand in their opposition (and their Motion for Partial Summary Judgment), segueing into their "legal existence" theory and their "more likely than not theory".

The words "legal existence" do not appear in NRS 136.240[1], simply the actual word "**existence**". To overcome the presumption of revocation, St. Jude's is required to prove that:

> 1. The original document was in actual existence at the time of the decedent's death (actually seen by two (2) persons),
>
> 2. Or fraudulently destroyed (not voluntarily revoked by testator) during testator's lifetime. This would indicate some intervening act such as fire, theft, flood, or some other act that destroyed the document without Mr. Scheide's knowledge and/or permission.

St. Jude's asserted by implication that paragraph 2 might be applicable, but never how it applies, and have abandoned this argument. (see Opposition)

---

1 **NRS 136.240 Petition for probate; same requirement of proof as other wills; testimony of witnesses; rebuttable presumption concerning certain wills; prima facie showing that will was not revoked; order.**

3. In addition, no will may be proved as a lost or destroyed will ***unless it is proved to have been in existence at the death*** of the person whose will it is claimed to be, or is shown to have been fraudulently destroyed in the lifetime of that person, nor unless its provisions are clearly and distinctly proved by at least **two credible witnesses**. [emphasis added]

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As has been stated throughout this case, Susan Hoy, the decedent's guardian and thereafter the personal representative of the estate, searched the safe deposit box, etc., found no original Last Will amongst Mr. Scheide's papers at the time she inventoried his belongings at both the commencement of guardianship and after his death. The only "copy" from Kristin Tyler's file has handwriting on it. Therefore, it is presumed that the document was revoked by the decedent prior to that time.

If Mr. Scheide voluntarily destroyed the document (whether by burning, tearing, cancelling or obliterating the will- NRS 133.120), then it is no longer in "legal" existence, as it is revoked, which circuitously brings us back to the presumption of revocation, and defeats St. Jude's argument. This is not a "more likely than not" argument. Either the document was in existence or it was not.

Kristin Tyler, Esq. knowing full well, as she drafted both documents, and testified that the June 2012 Will was definitely revoked by the October 2012 Will. She knowingly proffered and lodged a known revoked document to this court. In her deposition she testified Depo- Kristin Tyler (page 92, lines 15 – 19):

> **15· · · Q.· Now, you did the October will; correct?**
> 16· · · A.· Correct.
> **17· · · Q.· And the October will revokes the June will;**
> **18· ·correct?**
> 19· · · A.· Correct.

NRS 136.070 applies to a [party to bring a petition. St. Jude's reliance on NRS 141.050 is misplaced, and so is their interpretation of the statute. Does St. Jude's assert that Ms. Hoy's letters should be suspended because of a disability or substitution? The statute does not indicate that "the court may consider and allow the Decedent's Will to be proved"... In fact, the statute only states:

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> **NRS 141.050 Effect of subsequent probate.** If, after granting letters of administration on the ground of intestacy, *a will of the decedent is duly proved and allowed by the court,* the letters of administration must be revoked and the power of the administrator ceases, and the administrator shall render an account of his or her administration within such time as the court directs. [Emphasis added]

No where does these statutes authorize the court to initiate proceedings or utilize this statute to prove a lost will after an order was entered, and St. Jude's had notice. It only provides authority as it relates to new Letters of Administration, etc.

As to the reference of donations by the decedent to Mr. Scheide, and Kathy Longo's deposition, while Mr. Scheide may have made donations, what that segment of Ms. Longo's deposition (**Exhibit "A"** - page 45, lines 15-22) indicates is that since Mr. Scheide held on to last year's "thank you" letter, he was in the habit of keeping himself organized and a good record keeper.

Further, Ms. Longo testified that Mr. Scheide was belligerent Exhibit "A"- page 23, line 10-any emphasis added), as well as Mr. Scheide forging his doctor's name on a letter to let him keep driving (Exhibit "A"-page 23, lines 13-20-any emphasis added).

These are all indicators that Mr. Scheide did what he wanted to do. He owned a shredder, (see Opposition to Motion for Partial Summary Judgment), and kept what documents he wanted to keep. The fact that no original October Last Will was ever found, would indicate that Mr. Scheide no longer desired to keep it. He had revoked documents before.

There is a difference between St. Jude's assertions that everyone allegedly knew what was in the document, and the lack of evidence to support the burden of proof they are to show in these proceedings, which they cannot. Ms. Hoy, who, as the guardian, never found any original documents, and proceeded intestate, and this court entered an order which has not been requested to be or actually set aside.

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It is more likely than not that after the death of Velma Shay, Mr. Scheide voluntarily destroyed the original October 2012 Will. Maybe in the shredder he had. When Mr. Scheide was known for doing things others may have called belligerent, etc., he apparently was not a stupid man. He conversed with his physicians up until his death. He still ignored Kristin Tyler, Esq., in December and January when she wanted to appoint him a guardian, all the while she was lying to him telling him it was for an assistant position. He ignored her January 29, 2014 letter wanting him to sign new documents.

Neither of the Witnesses Have Personal Knowledge
And the Copy is Inadmissable

Original documents is defined in NRS 52.205, which states:

> **NRS 52.205 "Original" defined.**
> 1. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it.
> 2. An "original" of a photograph includes the negative or any print therefrom.
> 3. If data are stored in a computer or similar device, any printout or other output readable by sight, shown accurately to reflect the data, is an "original."

The original is required to prove its contents, pursuant to NRS 52.235:

> **NRS 52.235 Original required.** To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in this title.

In this case, the original October 2012 Will of the decedent is at issue. We know the purported copy of the October 2012 Will has been written on and specifies the word "updated" and "I am an organ donor", by what would otherwise appear to be Mr. Scheide's handwriting. Who is to say that Mr. Scheide did not otherwise write on the document, possibly changing the beneficiary? We also know that the object of the 2012 Will, Velma Shay predeceased Mr. Scheide.

The proponents of the will seek to rely upon inadmissible parol evidence, that fails to contradict.

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The *parol evidence rule* is a substantive common law rule in that prevents a party from presenting extrinsic evidence that discloses an ambiguity and clarifies it or adds to the written terms of the situation that appears to be whole.

A witness is not permitted to testify unless they have personal knowledge. NRS 50.025, which states:

> **NRS 50.025 Lack of personal knowledge.**
> 1. A witness may not testify to a matter unless:
> (a) Evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter; or
> (b) The witness states his or her opinion or inference as an expert.
>
> 2. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness.

St. Jude's, to date has not met their burden of proof of providing any witness who can state they saw the original document from the time it was executed until the time Mr. Scheide died. Not one.

Since St. Jude's pleadings do not allege their burden of proof, and they cannot meet the burden of proof as set by the court, they seek to deflect away from that fact, by interjecting alternative theories, which also fail.

Kathy Longo Testified Decedent had "Another" Will

Kathy Longo testified that the decedent had another will other than the June or October 2012 documents. In her deposition (Exhibit "A"-pages 41-44-any emphasis added). She testified she never saw the October Will, but remembered another will. This would infer the possibility of some other document.

We know that Mr. Scheide had contacted other attorneys than Kristen Tyler, Esq. Mr. Scheide had contact with Jasen Cassady, Esq., Bradley Richardson, Esq. and from the file received from Kristen Tyler, Esq., Adam Ganz, Esq.

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As was demonstrated in the exhibits to the motion, Mr. Scheide sought to fire Kristen Tyler, Esq. and clearly repeatedly ignored her legal correspondences and advice.

II. CONCLUSION

After being allowed the opportunity to prove same, despite semantics and the attempts to deflect the level of the burden of proof, no witness or documentary evidence can confirm that anyone actually, personally, saw the original October 2012 Will after the day it was signed or that it actually existed. The term "legal existence" is moot as if the testator destroyed the document, the testator destroyed "legal existence" via intentional revocation.

Despite full searches, many documents belonging to the decedent were found, but ***not*** the original October 2012 Will by the guardian at the time of the guardianship, when she had access to all decedent's documents.

The presumption is that the decedent, by whatever means, voluntarily revoked the October 2012 Will of his own accord, during his lifetime. St. Jude's cannot prove otherwise, whether by clear and convincing evidence or preponderance of the evidence.

The Petition to probate a "lost" or "destroyed" Will fails as a matter of law. There are not any, much less two (2) witnesses who can testify that they actually, personally saw the original October 2012 Will in existence at the time of Mr. Scheide's death.

St. Jude's deflection in an attempt to shift their burden of proof is disingenuous and improper.

It is requested that the court's order dated May 26, 2015 be enforced, and this motion be granted and the matter proceed to intestate distribution.

Dated: May 22, 2017

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Nevada Bar No. 4357
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 22, 2017, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

__ **BY MAIL:** N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;

X **BY E-MAIL AND/OR ELECTRONIC MEANS:** Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

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Todd L. Moody, Esq.
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EXHIBIT "A"

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 In the Matter of the Estate of)

5 THEODORE E. SCHEIDE, JR., aka THEODORE ERNEST) CASE NO: P-14-082619-E

6 SCHEIDE, JR.,) DEPT NO: PCI

7 Deceased.)

8

9

10

11

12 DEPOSITION OF KATHY JOAN NICHOLS LONGO

13 LAS VEGAS, NEVADA

14 TUESDAY, APRIL 25, 2017

15

16

17

18

19

20

21

22

23

24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 500541

Page 23

1 Q. Did you have any concerns about Ted at this time?
2 A. Yes.
3 Q. What were your concerns about?
4 A. Well, we were trying to get him into an assisted
5 living or someplace, have somebody come to the house to
6 help him. He was in and out of hospitals, rehabs, for
7 over a year, and he wasn't able to take care of himself.
8 Q. Did you talk to him about these concerns?
9 A. You would try to, and he didn't want to hear it.
10 He was very belligerent.
11 Q. What would he say if you brought up a concern
12 about his --
13 A. I said, "Ted, you shouldn't be driving." "Oh,
14 no, I can drive" and blah, blah, blah. And eventually,
15 I asked him about his -- the form that the -- he was
16 supposed to have his doctor sign saying that he could
17 drive. And he said, "Oh, I fooled them. I signed the
18 doctor's name myself." And I said, "Ted, you can't do
19 that." You know, he just didn't realize that he
20 shouldn't be driving anymore.
21 Q. Do you know what physical ailments he had, what
22 illnesses he was dealing with?
23 A. He was diabetic. He had heart problems. He had
24 the aneurysm, and I don't know what else.
25 Q. Do you know -- did these conditions get better or

Page 41

1 **Q. Did --**
2 A. I'm jumping the gun. I'm sorry.
3 **Q. That's all right. That's your job to jump the**
4 **gun and his job to object.**
5 **Do you know if Mr. Scheide had a will?**
6 A. Yes.
7 **Q. How do you know he had a will?**
8 A. When I was at the Sunup home, there was a will in
9 his office.
10 **Q. When you say it was at his office, where was it?**
11 A. In his -- in one of the bedrooms that he had set
12 up as an office.
13 **Q. Did he keep it on a desk? Did he keep it in a**
14 **file cabinet?**
15 A. It was on a shelf behind his desk.
16 **Q. What else was on that shelf?**
17 A. I don't remember.
18 **Q. Did you ever read the will?**
19 A. I glanced through it.
20 **Q. Did you talk to Ted about the will?**
21 A. No.
22 **Q. Did he ever tell you anything about his will?**
23 A. Yes.
24 **Q. What did he tell you about his will?**
25 MR. PAYNE: Objection. Time period.

Page 42

1 BY MR. GEIST:
2 **Q. You said he told you something about his will.**
3 A. Yes.
4 **Q. What did he tell you?**
5 A. He told me that when he died --
6 MR. PAYNE: Hold on. I'll object to the
7 extent it calls for hearsay.
8 MR. GEIST: Go ahead.
9 THE WITNESS: Everything is going to St.
10 Jude's.
11 BY MR. GEIST:
12 **Q. When did he tell you that?**
13 A. At that last meeting with he and Kristin Tyler at
14 the group home.
15 **Q. Did he tell you why everything was going to St.**
16 **Jude?**
17 MR. PAYNE: Objection. Calls for
18 speculation.
19 THE WITNESS: No.
20 MR. GEIST: I'm going to show you -- if you
21 could mark that as 2. It's his will, 2012, the October
22 will.
23 (Exhibit 2 was marked for identification.)
24 BY MR. GEIST:
25 **Q. If you could take a look at that. Feel free to**

Page 43

1 flip through the pages if you need to, to familiarize
2 yourself with it.
3 (Pause in proceedings.)
4 BY MR. GEIST:
5 Q. Have you had a chance to look at that?
6 A. Yes. But I don't think -- something's missing
7 here. Oh, okay. Okay. I see what I missed. Okay.
8 Q. Does that look familiar to you?
9 A. I really can't remember.
10 Q. Okay.
11 A. That was too many years ago.
12 Q. Okay. Do you know who is Theodore Scheide, III?
13 A. Yes.
14 Q. Who is that?
15 A. Ted's son, Chipper.
16 Q. Did Mr. Scheide have any other children?
17 A. No.
18 Q. Do you know what relationship Ted had with his
19 son?
20 A. Yes.
21 Q. How do you know?
22 A. Because I have been in his -- in Ted's presence
23 when he would talk about Chipper. I met Chipper when he
24 was 7 or 8 years old. We --
25 Q. How long ago was that?

Page 44

1 A. In probably 1971, 1970, approximately, '71. I
2 don't remember for sure. We were on Ted's boat in
3 Pittsburgh on the river, and that was before he married
4 my mother. Ted was about -- or Chipper was about 7
5 years old.
6 **Q. And --**
7 A. Did you --
8 **Q. Go ahead.**
9 A. And when Ted would talk about Chipper, he said,
10 "I want nothing to do with him. Every time he -- the
11 only time he contacts me is when he wants money."
12 **Q. So you met Chip when -- in about 1971.**
13 **Did you ever meet him after that?**
14 A. No, I did not.
15 **Q. You've never spoken with him after that?**
16 A. No.
17 **Q. When was the last time Ted said anything to you**
18 **about Chip?**
19 A. I can't remember.
20 **Q. Did Chip ever contact you while Ted was alive?**
21 A. No, never.
22 **Q. Did you ever contact Chip while Ted was alive?**
23 A. Nope.
24 **Q. Did Chip ever contact you after Ted's death?**
25 A. No.

Page 45

1 Q. Did you ever contact Chip --
2 A. No.
3 Q. -- after Ted's death? Okay.
4 Have you spoken with anyone from St. Jude
5 Children's Research Hospital regarding Ted?
6 A. No.
7 Q. Did Ted ever talk to you about St. Jude
8 Children's Research Hospital?
9 A. Yes.
10 Q. When did he talk to you about St. Jude?
11 A. Probably in November, October/November of 2013.
12 It was -- well, he -- it was before he left his house.
13 He said, "I have to send a check to St. Jude. I send
14 them a check every year."
15 So he asked me to type a letter, cover letter,
16 and the amount was -- I can't remember exactly, if it
17 was 10 or 12, 15,000. It was at least that much. And
18 he said, "This is my annual contribution to St. Jude."
19 He gave me the address, the gentleman's name to send it
20 to. He had a copy there from correspondence with a
21 thank-you from the -- from the prior year. And that's
22 what I based the information on to address the letter.
23 Q. Did he say for how many years he had been making
24 that donation?
25 A. No, he did not.

OCTOBER 2, 2012
UP-DATED

Last Will and Testament
of
THEODORE E. SCHEIDE

I, THEODORE E. SCHEIDE, a resident of Clark County, Nevada, being of sound mind and disposing memory, hereby revoke any prior wills and codicils made by me and declare this to be my Last Will and Testament.

Article One
Family Information

I am unmarried.

I have one child, THEODORE E. SCHEIDE, III.

However, I am specifically disinheriting THEODORE E. SCHEIDE, III and his descendants. Therefore, for the purposes of my Will, THEODORE E. SCHEIDE, III and his descendants will be deemed to have predeceased me.

Article Two
Specific and General Gifts

Section 2.01 Disposition of Tangible Personal Property

I give all my tangible personal property, together with any insurance policies covering the property and any claims under those policies in accordance with a "Memorandum for Distribution of Personal Property" or other similar writing directing the disposition of the property. Any writing prepared according to this provision must be dated and signed by me.

If I leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date will control as to those items that are in conflict.

EXHIBIT 2
WITNESS: Longo
DATE: 4/25/17
BRITTANY J. CASTREJON, CCR

EXHIBIT "2"

NOTE: ORGAN DONOR ... RECORDED ON MY DRIVERS LICENSE

If the memorandum with the most recent date conflicts with a provision of this Will as to the specific distribution of any item of tangible personal property, the provisions of the memorandum with the most recent date control as to those items that are in conflict.

I intend that the writing qualify to distribute my tangible personal property under applicable state law.

Section 2.02 Contingent Distribution of Tangible Personal Property

Any tangible personal property not disposed of by a written memorandum, or if I choose not to leave a written memorandum, all my tangible personal property will be distributed as part of my residuary estate.

Section 2.03 Definition of Tangible Personal Property

For purposes of this Article, the term "tangible personal property" includes but is not limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia. The term does not include any tangible property that my Executor, in its sole and absolute discretion, determines to be part of any business or business interest that I own at my death.

Section 2.04 Ademption

If property to be distributed under this Article becomes part of my probate estate in any manner after my death, then the gift will not adeem simply because it was not a part of my probate estate at my death. My Executor will distribute the property as a specific gift in accordance with this Article. But if property to be distributed under this Article is not part of my probate estate at my death and does not subsequently become part of my probate estate, then the specific gift made in this Article is null and void, without any legal or binding effect.

Section 2.05 Incidental Expenses and Encumbrances

Until property distributed in accordance with this Article is delivered to the appropriate beneficiary or to the beneficiary's legal representative, my Executor will pay the reasonable expenses of securing, storing, insuring, packing, transporting, and otherwise caring for the property as an administration expense. Except as otherwise provided in my Will, my Executor will distribute property under this Article subject to all liens, security interests, and other encumbrances on the property.

Article Three
My Residuary Estate

Section 3.01 Definition of My Residuary Estate

All the remainder of my estate, including property referred to above that is not effectively disposed of, will be referred to in my Will as my "residuary estate."

Section 3.02 Disposition of My Residuary Estate

I give my residuary estate to VELMA G. SHAY, if she survives me.

If VELMA G. SHAY predeceases me, then I give my residuary estate to ST. JUDE CHILDREN'S HOSPITAL located in Memphis, Tennessee.

Article Four
Remote Contingent Distribution

If, at any time after my death, there is no person or entity then qualified to receive final distribution of my estate or any part of it under the foregoing provisions of my Will, then the portion of my estate with respect to which the failure of qualified recipients has occurred shall be distributed to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Nevada then in effect (other than THEODORE E. SCHEIDE, III and his descendants).

Article Five
Designation of Executor

Section 5.01 Executor

I name PATRICIA BOWLIN as my Executor. If PATRICIA BOWLIN fails or ceases to act as my Executor, I name NEVADA STATE BANK as my Executor.

Section 5.02 Guardian for Testator

If I should become mentally incompetent to handle my affairs prior to my demise, I request that PATRICIA BOWLIN be appointed guardian of my estate and my person, to serve without bond. In the event that she is unable or unwilling to serve, then I request that a representative from NEVADA STATE BANK be appointed guardian of my estate and my person, to serve without bond.

Article Six
General Administrative Provisions

The provisions of this Article apply to my probate estate.

Section 6.01 No Bond

No Fiduciary is required to furnish any bond for the faithful performance of the Fiduciary's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety is required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

Section 6.02 Distributions to Incapacitated Persons and Persons Under Twenty-One Years of Age

If my Executor is directed to distribute any share of my probate estate to any beneficiary who is under the age of 21 years or is in the opinion of my Executor, under any form of incapacity that renders such beneficiary unable to administer distributions properly when the distribution is to be made, my Executor may, as Trustee, in my Executor's discretion, continue to hold such beneficiary's share as a separate trust until the beneficiary reaches the age of 21 or overcomes the incapacity. My Executor shall then distribute such beneficiary's trust to him or her.

While any trust is being held under this Section, my Independent Trustee may pay to the beneficiary for whom the trust is held such amounts of the net income and principal as the Trustee determines to be necessary or advisable for any purpose. If there is no Independent Trustee, my Trustee shall pay to the beneficiary for whom the trust is held such amounts of the net income and

principal as the fiduciary determines to be necessary or advisable for the beneficiary's health, education, maintenance or support.

Upon the death of the beneficiary, my Trustee shall distribute any remaining property in the trust, including any accrued and undistributed income, to such persons as such beneficiary appoints by his or her Will. This general power may be exercised in favor of the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate. To the extent this general power of appointment is not exercised, on the death of the beneficiary, the trust property is to be distributed to the beneficiary's then living descendants, *per stirpes*, or, if none, *per stirpes* to the living descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine, or if no such descendant is then living, to my then living descendants, *per stirpes*. If I have no then living descendants the property is to be distributed under the provisions of Article Four entitled "Remote Contingent Distribution."

Section 6.03 Maximum Term for Trusts

Notwithstanding any other provision of my Will to the contrary, unless terminated earlier under other provisions of my Will, each trust created under my Will will terminate 21 years after the last to die of the descendants of my maternal and paternal grandparents who are living at the time of my death.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If no beneficiary is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares *per stirpes*.

Section 6.04 Representative of a Beneficiary

The guardian of the person of a beneficiary may act for such beneficiary for all purposes under my Will or may receive information on behalf of such beneficiary.

Section 6.05 Ancillary Administration

In the event ancillary administration is required or desired and my domiciliary Executor is unable or unwilling to act as an ancillary fiduciary, my domiciliary Executor will have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may be either a natural person or a

corporation. My domiciliary Executor may delegate to such ancillary fiduciary such powers granted to my original Executor as my Executor may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate are to be paid over to the domiciliary Executor.

Section 6.06 Delegation of Authority; Power of Attorney

Any Fiduciary may, by an instrument in writing, delegate to any other Fiduciary the right to exercise any power, including a discretionary power, granted the Fiduciary in my Will. During the time a delegation under this Section is in effect, the Fiduciary to whom the delegation was made may exercise the power to the same extent as if the delegating Fiduciary had personally joined in the exercise of the power. The delegating Fiduciary may revoke the delegation at any time by giving written notice to the Fiduciary to whom the power was delegated.

The Fiduciary may execute and deliver a revocable or irrevocable power of attorney appointing any individual or corporation to transact any and all business on behalf of the trust. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that the Fiduciary could have exercised.

Section 6.07 Merger of Corporate Fiduciary

If any corporate fiduciary acting as my Fiduciary under my Will is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the position of my Fiduciary as if originally named my Fiduciary. No document of acceptance of the position of my Fiduciary shall be required.

Article Seven
Powers of My Fiduciaries

Section 7.01 Fiduciaries' Powers Act

My Fiduciaries may, without prior authority from any court, exercise all powers conferred by my Will or by common law or by Nevada Revised Statutes or other statute of the State of Nevada or any other jurisdiction whose law applies to my Will. My Executor has absolute discretion in exercising these powers. Except as

specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 7.02 Powers Granted by State Law

In addition to all of the above powers, my Executor may, without prior authority from any court, exercise all powers conferred by my Will; by common law; by the laws of the State of Nevada, including, without limitation by reason of this enumeration, each and every power enumerated in NRS 163.265 to 163.410, inclusive; or any other jurisdiction whose law applies to my Will. My Executor has absolute discretion in exercising these powers. Except as specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 7.03 Alternative Distribution Methods

My Fiduciary may make any payment provided for under my Will as follows:

Directly to the beneficiary;

In any form allowed by applicable state law for gifts or transfers to minors or persons under a disability;

To the beneficiary's guardian, conservator, agent under a durable power of attorney or caregiver for the benefit of the beneficiary; or

By direct payment of the beneficiary's expenses, made in a manner consistent with the proper exercise of the fiduciary's duties hereunder. A receipt by the recipient for any such distribution fully discharges my Fiduciary.

Article Eight
Provisions for Payment of Debts, Expenses and Taxes

Section 8.01 Payment of Debts and Expenses

I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death.

Section 8.02 No Apportionment

Except as otherwise provided in this Article or elsewhere in my will, my Executor shall provide for payment of all estate, inheritance and succession taxes payable by reason of my death ("death taxes") from my residuary estate as an administrative expense without apportionment and will not seek contribution toward or recovery of any death tax payments from any individual.

For the purposes of this Article, however, the term "death taxes" does not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable taxes imposed by any other taxing authority. Nor does the term include any generation-skipping transfer tax, other than a direct skip.

Section 8.03 Protection of Exempt Property

Death taxes are not to be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes. In addition, to the extent practicable, my Trustee should not pay any death taxes from assets that are exempt for generation-skipping transfer tax purposes.

Section 8.04 Protection of the Charitable Deduction

Death taxes are not to be allocated to or paid from any assets passing to any organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless my Executor has first used all other assets available to my Executor to pay the taxes.

Section 8.05 Property Passing Outside of My Will

Death taxes imposed with respect to property included in my gross estate for purposes of computing the tax and passing other than by my Will are to be apportioned among the persons and entities benefited in the proportion that the taxable value of the property or interest bears to the total taxable value of the property and interests received by all persons benefited. The values to be used for the apportionment are the values as finally determined under federal, state, or local law as the case may be.

Section 8.06 No Apportionment Between Current and Future Interests

No interest in income and no estate for years or for life or other temporary interest in any property or trust is to be subject to apportionment as between the

temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder are chargeable against the corpus of the property or trust subject to the temporary interest and remainder.

Section 8.07 Tax Elections

In exercising any permitted elections regarding taxes, my fiduciaries may make any decisions that they deem to be appropriate in any circumstances, and my fiduciaries are not required to make any compensatory adjustment as a consequence of any election. My Executor may also pay taxes or interest and deal with any tax refunds, interest, or credits as my Executor deems to be necessary or advisable in the interest of my estate.

My Executor, in his or her sole and absolute discretion, may make any adjustments to the basis of my assets authorized by law, including but not limited to increasing the basis of any property included in my gross estate, whether or not passing under my Will, by allocating any amount by which the basis of my assets may be increased. My Executor is not required to allocate basis increase exclusively, primarily or at all to assets passing under my Will as opposed to other property included in my gross estate. My Executor may elect, in his or her sole and absolute discretion, to allocate basis increase to one or more assets that my Executor receives or in which my Executor has a personal interest, to the partial or total exclusion of other assets with respect to which such allocation could be made. My Executor may not be held liable to any person for the exercise of his or her discretion under this Section.

Article Nine
Definitions and General Provisions

Section 9.01 Cremation Instructions

I wish that my remains be cremated and buried in accordance with my pre-paid funeral arrangements with Palm Mortuary in Las Vegas, Nevada.

Section 9.02 Definitions

For purposes of my Will and for the purposes of any trust established under my Will, the following definitions apply:

(a) **Adopted and Afterborn Persons**

A legally adopted person in any generation and his or her descendants, including adopted descendants, will have the same rights and will be treated in the same manner under my Will as natural children of the adopting parent, provided the person is legally adopted before attaining the age of 18 years. A person will be deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

A fetus *in utero* that is later born alive will be considered a person in being during the period of gestation.

(b) **Descendants**

The term "descendants" means any one or more person who follows in direct descent (as opposed to collateral descent) from a person, such as a person's children, grandchildren, or other descended individuals of any generation.

(c) **Fiduciary**

"Fiduciary" or "Fiduciaries" refer to my Executor. My "Executor" includes any executor, ancillary executor, administrator, or ancillary administrator, whether local or foreign, and whether of all or part of my estate, multiple Executors, and their successors.

Except as otherwise provided in this Last Will and Testament, a fiduciary has no liability to any party for action (or inaction) taken in good faith.

(d) **Good Faith**

For the purposes of this Last Will and Testament, a fiduciary has acted in good faith if (i) its action or inaction is not a result of intentional wrongdoing, (ii) the fiduciary did not make the decision with reckless indifference to the interests of the beneficiaries, and (iii) its action or inaction does not result in an improper personal pecuniary benefit to the fiduciary.

(e) **Incapacity**

Except as otherwise provided in my Will, a person is deemed to be incapacitated in any of the following circumstances.

(1) **The Opinion of Two Licensed Physicians**

An individual is deemed to be incapacitated whenever, in the opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual is deemed to be restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) **Court Determination**

An individual is deemed to be incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

(3) **Detention, Disappearance or Absence**

An individual is deemed to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence or detention under duress may be established by an affidavit of any fiduciary. The affidavit must describe the circumstances of an individual's detention under duress, disappearance, or absence and may be relied upon by any third party dealing in good faith with my fiduciary in reliance upon the affidavit.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of my Executor.

(f) **Internal Revenue Code**

References to the "Internal Revenue Code" or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the "Treasury Regulations," are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference will be deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in my Will. The same rule applies to references to the Treasury Regulations.

(g) **Legal Representative**

As used in my Will, the term "legal representative" means a person's guardian, conservator, personal representative, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

(h) **Per Stirpes**

Whenever a distribution is to be made to a person's descendants *per stirpes*, the distribution will be divided into as many equal shares as there are then-living children of that person and deceased children of that person who left then-living descendants. Each then-living child will receive one share and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.

(i) **Primary Beneficiary**

The Primary Beneficiary of a trust created under this agreement is the oldest Income Beneficiary of that trust unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

(j) **Shall and May**

Unless otherwise specifically provided in my Will or by the context in which used, I use the word "shall" in my Will to command, direct or require, and the word "may" to allow or permit, but not

require. In the context of my Trustee, when I use the word "may" I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in my Will.

(k) Trust

The term "trust," refers to any trusts created under the terms of my Will.

(l) Trustee

The term "my Trustee" refers to any person or entity that is from time to time acting as the Trustee and includes each Trustee individually, multiple Trustees, and their successors.

(m) Other Definitions

Except as otherwise provided in my Will, terms shall be as defined in Nevada Revised Statutes as amended after the date of my Will and after my death.

Section 9.03 Contest Provision

If any beneficiary of my Will or any trust created under the terms of my Will, alone or in conjunction with any other person engages in any of the following actions, the right of the beneficiary to take any interest given to the beneficiary under my Will or any trust created under the terms of my Will will be determined as it would have been determined as if the beneficiary predeceased me without leaving any surviving descendants.

Contests by a claim of undue influence, fraud, menace, duress, or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) my Will, (b) any trust created under the terms of my Will, or (c) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan, or insurance policy signed by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document;

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify, or set aside a Document or any of its provisions;

Files suit on a creditor's claim filed in a probate of my estate, against my estate, or any other Document, after rejection or lack of action by the respective fiduciary;

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document;

Files a petition to impose a constructive trust or resulting trust on any assets of my estate; or

Participates in any of the above actions in a manner adverse to my estate, such as conspiring with or assisting any person who takes any of the above actions.

My Executor may defend, at the expense of my estate, any violation of this Section. A "contest" includes any action described above in an arbitration proceeding, but does not include any action described above solely in a mediation not preceded by a filing of a contest with a court.

Section 9.04 Survivorship Presumption

If any beneficiary is living at my death, but dies within 90 days thereafter, then the beneficiary will be deemed to have predeceased me for all purposes of my Will.

Section 9.05 General Provisions

The following general provisions and rules of construction apply to my Will:

(a) Singular and Plural; Gender

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word "or" when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

(b) **Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and subsections used within my Will are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of my Will.

(c) **Governing State Law**

My Will shall be governed, construed and administered according to the laws of Nevada as from time to time amended. Questions of administration of any trust established under my Will are to be determined by the laws of the situs of administration of that trust.

(d) **Notices**

Unless otherwise stated, whenever my Will calls for notice, the notice will be in writing and will be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice will be effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice will be given to the parent or legal representative of the minor or incapacitated individual.

(e) **Severability**

The invalidity or unenforceability of any provision of my Will does not affect the validity or enforceability of any other provision of my Will. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of my Will are to be interpreted and construed as if any invalid provision had never been included in my Will.

REST OF PAGE INTENTIONALLY LEFT BLANK

I, THEODORE E. SCHEIDE, sign my name to this instrument consisting of sixteen (16) pages on October 2, 2012, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

THEODORE E. SCHEIDE, Testator

Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned, KRISTIN M. TYLER and DIANE L. DeWALT declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator, THEODORE E. SCHEIDE; that the testator subscribed the will and declared it to be his last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

Dated this 2 day of October, 2012.

Declarant 1 – Kristin M. Tyler

Residing at:

3960 Howard Hughes Parkway
9th Floor
Las Vegas, Nevada 89169

Declarant 2 – Diane L. DeWalt

Residing at:

3960 Howard Hughes Parkway
9th Floor
Las Vegas, Nevada 89169

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF THEODORE ERNEST SCHEIDE, JR. ST. JUDE CHILDREN'S RESEARCH HOSPITAL, Appellant, v. THEODORE E. SCHEIDE, III,, Respondent.	)))))))))))))))	Supreme Court No. 76924 District Case No. P082619

Electronically Filed
Jun 07 2019 06:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX TO
APPELLANT'S OPENING BRIEF
VOLUME IV of IX

Appeal from the Eighth Judicial District Court
Case No. P082619

HUTCHISON & STEFFEN, PLLC

Michael K. Wall (2098)
Russel J. Geist (9030)
Peccole Professional Park
10080 Alta Drive, Suite 200
Las Vegas, Nevada 89145

Attorneys for Appellant

Docket 76924 Document 2019-24923

Chronological Index

Doc No.	Description	Vol.	Bates Nos.
1	Ex Parte Petition for Appointment of Special Administrator; filed 10/02/2014	I	AA000001-000005
2	Ex Parte Order Appointing Special Administrator; filed 10/06/2014	I	AA000006
3	Letters of Special Administration; filed 10/13/2014	I	AA000007
4	Notice of Entry of Ex Parte Order Appointing Special Administrator; filed 01/12/2015	I	AA000008-000010
5	Petition for Appointment of Administrator of Intestate Estate Under Full Administration; filed 01/29/2015	I	AA000011-000030
6	Notice of Hearing for Appointment of Administrator with Will Annexed Under Full Administration; fled 01/29/2015	I	AA000031
7	Certificate of Mailing - Notice of Hearing for Appointment of Administrator with Will Annexed Under Full Administration; filed 01/29/2015	I	AA000032
8	Petition for Instructions; filed 05/06/2015	I	AA000033-000055
9	Notice of Hearing on Petition for Instructions; filed 05/06/2015	I	AA000056
10	Certificate of Mailing - Notice of Hearing on Petition for Instructions; filed 05/06/2015	I	AA000057

11	Court Minutes; issued 05/22/2015	I	AA000058-000059
12	Order on Petition for Instructions; filed 05/26/2015	I	AA000060-000061
13	Notice to Creditors; filed 05/27/2015	I	AA000062
14	Statement of Name and Permanent Address of Administrator; filed 05/27/2015	I	AA000063
15	Letters of Administration; filed 05/28/2015	I	AA000064
16	Affidavit of Publication; filed 06/11/2015	I	AA000065
17	Inventory, Appraisal and Record of Value; filed 03/28/2016	I	AA000066-000069
18	First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000070-000075
19	Notice of Hearing on First and Final Report and Accounting and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000076
20	Certificate of Mailing - Inventory, Appraisal and Record of Value and Notice of Hearing on the First and Final Account, Report of Administration, and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000077
21	Certificate of Mailing - Notice to Creditors; filed 05/18/2016	I	AA000078
22	Notice of Appearance - Hutchinson & Steffen; filed 05/20/2016	I	AA000079-000081

23	Petition for Proof of Will and for Issuance of Letters Testamentary Under Full Administration, Petition to Appoint Person Representative, and Petition to Distribute and Close Estate; filed 05/25/2016	I	AA000082-000104
24	Notice of Hearing on Petition for Proof of Will and for Issuance of Letters Testamentary Under Full Administration, Petition to Appoint Personal Representative, and Petition to Distribute and Close Estate; filed 05/25/2016	I	AA000105
25	Amended First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 05/25/2016	I	AA000106-000111
26	Last Will and Testament of Theodore E. Scheide; filed 05/31/2016	I	AA000112-000128
27	Notice of Withdrawal of Petition for Proof of Will and for Issuance of Letters Testamentary Under Full Administration, Petition to Appoint Personal Representative, and Petition to Distribute and Close Estate; filed 07/13/2016	I	AA000129
28	Notice of Withdrawal of Amended First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 07/13/2019	I	AA000130
29	Re-Notice of Hearing - First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 08/29/2016	I	AA000131-000138

30	Response to Theodore E. Scheide III's Re-Notice of Hearing on the First and Final Account, Report od Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 09/12/2016	I	AA000139-000140
31	Petition for Probate of Lost Will (NRS136.240); Revocation of Letters of Administration (NRS 141.050); Issuance of Letters Testamentary (NRS 136.090); filed 09/13/2016	I	AA000141-000193
32	Objection to First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 09/13/2016	II	AA000194-000238
33	Notice of Exercise of Right to Have Hearing Before Probate Court Judge; filed 09/14/2016	II	AA000239-000240
34	Order Scheduling Status Check; filed 10/03/2016	II	AA000241-000243
35	Objection to Petition for Proof of Lost Will (NRS 136.240), Issuance of Letters Testamentary, Etc. Counterpetition (Response to Objection) to Distribute Intestate Estate; filed 10/04/2016	II	AA000244-000287
36	Court Minutes; issued 10/12/2016	II	AA000288-000289
37	Reply in Support of Petition for Probate of Lost Will (NRS 136.240); Revocation of Letters of Administration (NRS 141.050); Issuance of Letters Testamentary (NRS 136.090); filed 10/26/2016	II	AA000290-000298
38	Court Minutes; issued 11/02/2016	II	AA000299-000300

39	Order Granting Petition for Probate of Lost Will (NRS 136.240); Revocation of Letters of Administration (NRS 141.050); Issuance of Letters Testamentary (NRS 136.090); filed 02/02/2017	II	AA000301-000303
40	Notice of Motion and Motion to Reconsider/Clarify, Etc.; filed 02/13/2017	II	AA000304-000398
41	Opposition to Motion to Reconsider/Clarify, Etc., filed 03/04/2017	II	AA000399-000424
42	Reply to Opposition to Motion to Reconsider; filed 03/14/2017	III	AA000425-000454
43	Court Minutes; issued 03/22/2017	III	AA000455-000456
44	Recorder's Transcript of Proceeding: Notice of Motion and Motion to Reconsider/Clarify, Etc. Motion: St. Jude Children's Research Hospital's Motion to Extend Discovery and Continue Trial Date on Order Shortening Time (First Request); filed 03/27/2017	III	AA000457-000484
45	Notice of Entry of Order; filed 04/18/2017	III	AA000485-000489
46	Notice of Motion and Motion for Judgment on the Pleadings (NRCP12 (c)); filed 04/21/2017	III	AA000490-000659
47	St. Jude Children's Research Hospital's Motion for Partial Summary Judgment on Non-Revocation of Will Prior to the Decedent's Guardianship and on Decedent's Testamentary Capacity After the Establishment of a Guardianship; filed 04/25/2017	IV	AA000660-000713

48	St. Jude Children's Research Hospital's Opposition to Motion for Judgment on the Pleadings (NRCP 12(c)); filed 05/08/2017	IV	AA000713-000795
49	Respondent's Opposition to Motion for Partial Summary Judgment; filed 05/12/2017	IV	AA000796-000839
50	Reply to St. Jude's Opposition to Motion for Judgment on the Pleadings (NRCP 12(c)), Etc.; filed 05/22/2017	IV	AA000840-000872
51	St. Jude Children's Research Hospital's Reply in Support of Motion for Partial Summary Judgment on Non-Revocation of Will Prior to the Decedent's Guardianship and on Decedent's Testamentary Capacity After the Establishment of a Guardianship; filed 05/23/2017	V	AA000873-000917
52	Respondent's Supplement Regarding Kristin Tyler's Testimony, Etc.; filed 06/01/2017	V	AA000918-000964
53	St. Jude Children's Research Hospital's Reply to Respondent's Supplement Regarding Kristin Tyler's Testimony, Etc.; filed 06/02/2017	V	AA000965-000970
54	Minute Order; served 06/06/2017	V	AA000971-000973
55	Respondent's Trial Brief; filed 06/12/2017	V	AA000974-001067
56	St. Jude Children's Research Hospital's Trial Brief; filed 06/13/2017	V	AA001068-001078
57	Petition for Instructions; filed 06/14/2017	V	AA001079-001081
58	Recorder's Transcript of Proceedings Non-Jury Trial - Day 1; 06/15/2017	VI, VII	AA001082-001363

59	Recorder's Transcript of Proceedings Non-Jury Trial - Day 2; 06/16/2017	VII	AA001364-001407
60	Order Sealing Trial Exhibits; filed 06/26/2017	VII	AA001408
61	Petition for Approval of Accounting and Report of Administration; Petition for Approval of Fees and Costs; filed 01/18/2018	VII	AA001409-001470
62	Decision and Order; filed 08/06/2018	VII	AA001471-001482
63	Notice of Entry of Decision and Order; filed 08/08/2018	VII	AA001483-001496
64	Notice of Appeal; filed 09/06/2018	VII	AA001497-001498
65	Trial Exhibit 1	VII	AA001499-001514
66	Trial Exhibit 2	VII	AA001515-001530
67	Trial Exhibit 3	VII	AA001531-001533
68	Trial Exhibit 4	VII	AA001534-001535
69	Trial Exhibit 5	VIII, IX	AA001536-001884

Alphabetical Index

Doc No.	Description	Vol.	Bates Nos.
16	Affidavit of Publication; filed 06/11/2015	I	AA000065
25	Amended First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 05/25/2016	I	AA000106-000111
20	Certificate of Mailing - Inventory, Appraisal and Record of Value and Notice of Hearing on the First and Final Account, Report of Administration, and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000077
21	Certificate of Mailing - Notice to Creditors; filed 05/18/2016	I	AA000078
7	Certificate of Mailing - Notice of Hearing for Appointment of Administrator with Will Annexed Under Full Administration; filed 01/29/2015	I	AA000032
10	Certificate of Mailing - Notice of Hearing on Petition for Instructions; filed 05/06/2015	I	AA000057
11	Court Minutes; issued 05/22/2015	I	AA000058-000059
36	Court Minutes; issued 10/12/2016	II	AA000288-000289
38	Court Minutes; issued 11/02/2016	II	AA000299-000300
43	Court Minutes; issued 03/22/2017	III	AA000455-000456

62	Decision and Order; filed 08/06/2018	VII	AA001471-001482
2	Ex Parte Order Appointing Special Administrator; filed 10/06/2014	I	AA000006
1	Ex Parte Petition for Appointment of Special Administrator; filed 10/02/2014	I	AA000001-000005
18	First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000070-000075
17	Inventory, Appraisal and Record of Value; filed 03/28/2016	I	AA000066-000069
26	Last Will and Testament of Theodore E. Scheide; filed 05/31/2016	I	AA000112-000128
15	Letters of Administration; filed 05/28/2015	I	AA000064
3	Letters of Special Administration; filed 10/13/2014	I	AA000007
54	Minute Order; served 06/06/2017	V	AA000971-000973
64	Notice of Appeal; filed 09/06/2018	VII	AA001497-001498
22	Notice of Appearance - Hutchinson & Steffen; filed 05/20/2016	I	AA000079-000081
63	Notice of Entry of Decision and Order; filed 08/08/2018	VII	AA001483-001496
45	Notice of Entry of Order; filed 04/18/2017	III	AA000485-000489
4	Notice of Entry of Ex Parte Order Appointing Special Administrator; filed 01/12/2015	I	AA000008-000010

33	Notice of Exercise of Right to Have Hearing Before Probate Court Judge; filed 09/14/2016	II	AA000239-000240
6	Notice of Hearing for Appointment of Administrator with Will Annexed Under Full Administration; fled 01/29/2015	I	AA000031
19	Notice of Hearing on First and Final Report and Accounting and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000076
9	Notice of Hearing on Petition for Instructions; filed 05/06/2015	I	AA000056
24	Notice of Hearing on Petition for Proof of Will and for Issuance of Letters Testamentary Under Full Administration, Petition to Appoint Personal Representative, and Petition to Distribute and Close Estate; filed 05/25/2016	I	AA000105
46	Notice of Motion and Motion for Judgment on the Pleadings (NRCP12 (c)); filed 04/21/2017	III	AA000490-000659
40	Notice of Motion and Motion to Reconsider/Clarify, Etc.; filed 02/13/2017	II	AA000304-000398
28	Notice of Withdrawal of Amended First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 07/13/2019	I	AA000130

27	Notice of Withdrawal of Petition for Proof of Will and for Issuance of Letters Testamentary Under Full Administration, Petition to Appoint Personal Representative, and Petition to Distribute and Close Estate; filed 07/13/2016	I	AA000129
13	Notice to Creditors; filed 05/27/2015	I	AA000062
32	Objection to First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 09/13/2016	II	AA000194-000238
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12	Order on Petition for Instructions; filed 05/26/2015	I	AA000060-000061
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60	Order Sealing Trial Exhibits; filed 06/26/2017	VII	AA001408
5	Petition for Appointment of Administrator of Intestate Estate Under Full Administration; filed 01/29/2015	I	AA000011-000030

61	Petition for Approval of Accounting and Report of Administration; Petition for Approval of Fees and Costs; filed 01/18/2018	VII	AA001409-001470
8	Petition for Instructions; filed 05/06/2015	I	AA000033-000055
57	Petition for Instructions; filed 06/14/2017	V	AA001079-001081
31	Petition for Probate of Lost Will (NRS136.240); Revocation of Letters of Administration (NRS 141.050); Issuance of Letters Testamentary (NRS 136.090); filed 09/13/2016	I	AA000141-000193
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30	Response to Theodore E. Scheide III's Re-Notice of Hearing on the First and Final Account, Report od Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 09/12/2016	I	AA000139-000140
14	Statement of Name and Permanent Address of Administrator; filed 05/27/2015	I	AA000063
47	St. Jude Children's Research Hospital's Motion for Partial Summary Judgment on Non-Revocation of Will Prior to the Decedent's Guardianship and on Decedent's Testamentary Capacity After the Establishment of a Guardianship; filed 04/25/2017	IV	AA000660-000713

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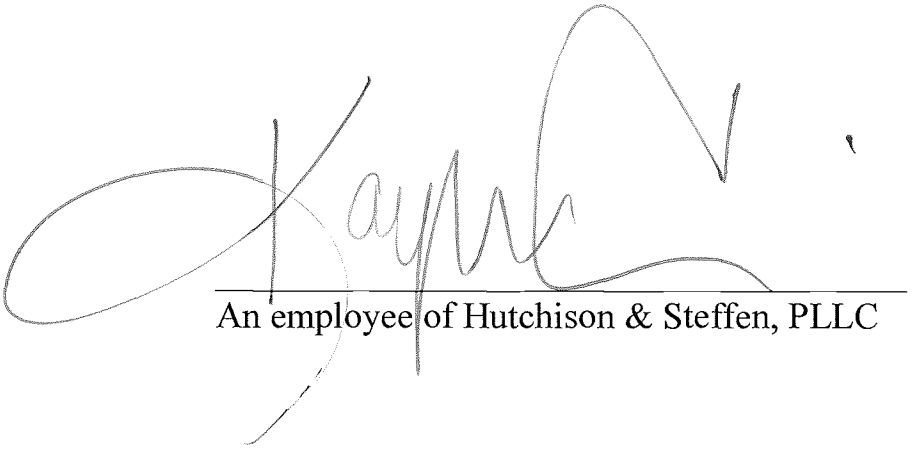
68	Trial Exhibit 4	VII	AA001534-001535
69	Trial Exhibit 5	VII, IX	AA001536-001884

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date **APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME IV of IX** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Cary Colt Payne, Esq.
700 S. 8th Street
Las Vegas, NV 89101
Attorney for Theodore "Chip" E. Scheide, III

DATED this 7th day of June, 2018.



An employee of Hutchison & Steffen, PLLC

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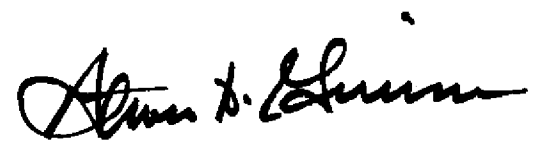

CLERK OF THE COURT

MSJD
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Attorneys for St. Jude Children's Research Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of THEODORE E. SCHEIDE JR. aka THEODORE ERNEST SCHEIDE JR., Deceased.	Case No.: P-14-082619-E Dept No.: 26

ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON NON-REVOCATION OF WILL PRIOR TO THE DECEDENT'S GUARDIANSHIP AND ON DECEDENT'S TESTAMENTARY CAPACITY AFTER THE ESTABLISHMENT OF A GUARDIANSHIP

ST. JUDE CHILDREN'S RESEARCH HOSPITAL, INC. ("St. Jude Children's Research Hospital") respectfully moves this Honorable Court for partial summary judgment on two issues and requests that an order be entered finding 1) that the it is more likely than not that the Decedent's last will and testament was unrevoked immediately prior to the establishment of a guardianship of the Decedent, and 2) that the Decedent lacked testamentary capacity to revoke his will after the establishment of a guardianship and during the pendency of the guardianship proceedings.

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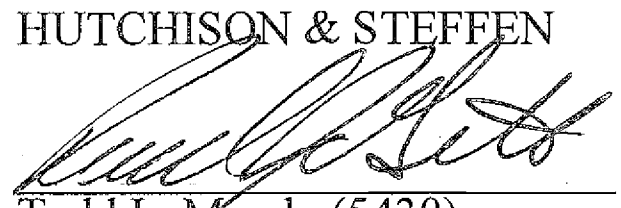
This motion is based upon EDCR 2.35, EDCR 7.30, the declaration of Russel J. Geist, the declaration of Todd L. Moody, the following memorandum of points and authorities, as well as the papers and pleadings on file in this matter, and any oral argument the Court may entertain on this motion.

DATED this 25th day of April, 2017.

HUTCHISON & STEFFEN



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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing **ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON NON-REVOCATION OF WILL PRIOR TO THE DECEDENT'S GUARDIANSHIP AND ON DECEDENT'S TESTAMENTARY CAPACITY AFTER THE ESTABLISHMENT OF A GUARDIANSHIP** on for hearing before this Honorable Court on the 31 day of May, 2017, at the hour of 9:30 a.m./~~p.m.~~ in Department 26, or as soon thereafter as counsel may be heard.

DATED this 25th day of April, 2017.

HUTCHISON & STEFFEN

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

St. Jude Children's Research Hospital, as the proponent of the lost will of the Decedent, THEODORE E. SCHEIDE, JR. ("Decedent"), is required to "prove that the testator did not revoke the lost or destroyed will during his lifetime" *Estate of Irvine v. Doyle*, 101 Nev. 698, 703, 710 P2d 1366, 1369 (1985). However, all that is required is *proof that the testator himself had not revoked the lost or destroyed will*, not that the will was in physical existence at the time of the testator's death. *Id.*

At issue in the instant matter, but not addressed in *Irvine v. Doyle* is the effect of the guardianship of the Decedent's person and estate on his ability to revoke his will by intentional destruction. THEODORE E. SCHEIDE, III ("Objector") argues generally that the common law presumption that the Decedent retained his capacity to change or revoke his will applies even after the establishment of the guardianship.

St. Jude Children's Research Hospital has filed its Motion for Partial Summary Judgment seeking an order from this Court that the evidence supports the judgment that, post-guardianship, the Decedent lacked the capacity to revoke his will.

II. FACTUAL BACKGROUND

A. Preparation of Decedent's Estate Planning Documents

On or about June 6, 2012, the Decedent, who was in a rehabilitation hospital at the time, retained his estate planning attorney, KRISTIN TYLER, Esq., to prepare his estate planning documents. Specifically, the Decedent wanted a last will and testament nominating Karen Hoagland, an accountant, as his executor and leaving his entire estate to Velma Shay, his life partner, if she were then living, or to St. Jude Children's Research Hospital, if she were not then living.[1] It was during the meetings prior to executing the will, that the Decedent told Kristin Tyler

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[1] *See* deposition transcript of Kristin Tyler, Esq., attached hereto as Exhibit 1 ("Tyler depo."), 21:1-2, 12-22; 33:15-16.

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that he had a son but they were estranged for more than 20 years.[2] The Decedent also told Kristin Tyler that he and Velma "had agreed that if something happened to both of them, they wanted to benefit St. Jude Children's Hospital because Mr. Scheide said he though it was a very worthwhile organization to help kids."[3] The Decedent signed this will on June 8, 2012.

The Decedent again met with Kristin Tyler on October 2, 2012 to execute a new will changing the Executor to Patricia Bowlin, but kept the beneficiary designations the same.[4] In both the June 8, 2012 will and the October 2, 2012 will, the Decedent specifically excluded his son from the will.[5]

Velma Shay died the following year. The Decedent again contacted Kristin Tyler on June 12, 2013 to change his power of attorney[6]. Kristin Tyler called the Decedent on August 27, 2013 to check on him and the Decedent told her that he was in another rehab facility and that he was "[n]ot doing good from [a] physical health standpoint."[7] It was during this call that the Decedent told Kristin Tyler that he "wants all to go to St. Jude when he dies."[8] In addition to representing the Decedent as his estate planning attorney, Kristin Tyler also advised the Decedent on matters regarding personal property claimed by Velma Shay's family members after her passing and communicated on his behalf to the family members' attorney, Chris Phillips, Esq.[9]

On December 6, 2013, Kristin Tyler received a phone call from Kathy Longo, the

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[2] *See* Tyler depo 32:16-25; 33:1-6.

[3] *See* Tyler depo 34:20-24; 146:3-9.

[4] *See* Tyler depo 49:16-18, 24-25.

[5] *See* Tyler depo 38:1-11; 49:7-21.

[6] *See* Tyler depo 53:10-23.

[7] *See* Tyler depo 56:24; 57:13-21.

[8] *See* Tyler depo 56:25; 57:1-7.

[9] See Tyler depo 58:3-5,22-24; 59:1.

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Decedent's stepdaughter who was assisting him with day-to-day living activities, to tell Ms. Tyler that she was concerned that the Decedent had leased a car although he was medically unable to drive, that he kept a pistol in his home and shouldn't have it, and that he left his keys in his front door overnight.[10] Kristin also indicated in her notes that the Decedent was "outside of cell phone store, drops pants and pees in parking lot."[11]

It was around this time, December 9, 2013 in fact, that Kristin Tyler began discussing the need for a guardian for the Decedent.[12] Ms. Tyler and Ms. Longo met with the Decedent on December 10, 2013 to discuss the guardianship.[13]

On December 27, 2013, Ms. Tyler called the Decedent to discuss a bankruptcy notice he had received, and a desire to remove Kathy as potential fiduciary to help him.[14] Ms. Tyler then met with the Decedent in his group home in January 2014 to discuss him nominating a fiduciary under his power of attorney.[15] During these discussions with Kristin Tyler, the Decedent did not tell her that he wanted to change his estate plan beneficiaries.[16] At the January 2014 meeting, Kristin Tyler offered to have a staff investigator help him get in touch with his son.[17] Ms. Tyler asked the Decedent, "Do you want to get back in touch with your son? Do you want me to find out where he lives? I can find that out. And he said no."[18] The Decedent didn't even know the city or state where

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[10] *See* Tyler depo 62:1-3.

[11] *See* Tyler depo 62:10-14.

[12] *See* Tyler depo 63:17-25;

[13] *See* Tyler depo 65:23-25; 66:1-25; 66:1-24.

[14] *See* Tyler depo 67:23-25; 68:1-17.

[15] *See* Tyler depo 108:18-19.

[16] *See* Tyler depo 69:6-9.

[17] *See* Tyler depo 160:7-19.

[18] *Id.*

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his son lived.[19]

B. Establishment of Guardianship

On or about February 8, 2014, the Decedent was hospitalized at Centennial Hills Hospital with altered mental status, and slurred speech. Kristin Tyler was already coordinating with On February 14, 2014, Decedent's physician declared that the Decedent was "unable to respond to a substantial and immediate risk of physical or financial harm or to a need for immediate medical attention," that he was "unable properly to manage and take care of [Decedent's] person or property, or both", and that he was incapable of "living independently, with or without assistance." The **Physician's Statement** signed by Dr. Mardip Arora, M.D. filed in support of the need for a guardianship over the Decedent in Clark County Guardianship Case No. G-14-039853-A will be submitted in camera. The Decedent's physician further stated that the Decedent "does present a danger to himself or others, and the Decedent's capacity was limited by "Altered level of consciousness, dementia, chronic bifrontal strokes." *See* **Physician's Statement**. On February 19, 2014, the Guardianship Court appointed to serve as the temporary guardian of the Decedent's person and estate, Nevada Guardian Services, LLC, of which Susan M. Hoy, is a private, professional guardian. A copy of the Ex Parte Order Appointing Temporary Guardian and For Issuance of Temporary Letters of Guardianship is attached as **Exhibit 2**. On March 19, 2014, the Guardianship Court appointed Susan M. Hoy to serve as the guardian of the Decedent's person and estate. A copy of the Order Appointing Guardian and For Issuance of Letters of Guardianship is attached as **Exhibit 3**.

C. Opening Decedent's Estate

Decedent died on or about August 17, 2014, in Las Vegas, Nevada where he was a resident at the date of his death. A copy of the official death certificate has been filed previously with the **Ex Parte Petition for Appointment of Special Administrator**, filed on October 12, 2014 in this matter. The Guardianship estate was closed in April 2015, and the Decedent's Estate was delivered

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[19] *Id.*

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to Susan M. Hoy as the personal representative of the Decedent's estate.

In the **Ex Parte Petition for Appointment of Special Administrator**, Susan M. Hoy indicated that a copy of the Decedent's Last Will and Testament dated October 2, 2012 was found, but that she was unable to find the original.[20] Susan M. Hoy ("Personal Representative") was appointed as the Special Administrator of the Decedent's Estate on October 2, 2014 with the authority to open the Decedent's safe deposit box and search for the original Last Will and Testament dated October 2, 2012 ("October 2012 Will").

After searching for the Decedent's original October 2012 Will, the Personal Representative petitioned the Court on January 29, 2015 to appoint her as the administrator of the Decedent's Estate with will annexed under full administration. However, the Petition was taken off calendar and withdrawn.

On May 6, 2015, the Personal Representative petitioned the Court for instructions regarding the lack of original October 2012 Will, and alleged to the Court the following:

> a) The safe deposit box was empty;
>
> b) The drafting attorney gave the original October 2012 Will to the Decedent;
>
> c) SUSAN M. HOY did not receive or find any original estate planning documents during the guardianship; and
>
> d) "[SUSAN M. HOY] believes the Decedent destroyed any original estate planning documents he may have executed prior to his death."[21]

The matter was heard on May 22, 2015, and the Court specifically:

> ORDERED that the Petitioner [SUSAN M. HOY] be appointed

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[20] *See* **Ex Parte Petition for Appointment of Special Administrator**, filed on October 12, 2014, page 1 at ¶ 3.

[21] *See* **Petition for Instructions**, filed on May 6, 2015, page 2 at ¶ 6.

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Administrator of the intestate Estate of the Decedent and that Letters of Administration be issued to the Petitioner.

ORDERED that in the event the estate assets are liquidated, they be placed in the Durham Jones & Pinegar Trust Account.

The Personal Representative filed her **First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees** on May 18, 2016 and asked this Court to approve distribution of the Decedent's estate by intestate succession to the Objector who was the Decedent's sole heir and the Decedent's estranged son whom the Decedent had specifically excluded from his will. St. Jude Children's Research Hospital filed its petition to admit Decedent's Last Will and Testament to probate on September 13, 2016.

D. Undisputed Facts

The following facts are not in dispute:

1. The Decedent retained attorney Kristin Tyler, Esq. to create his last will and executed his October 12, 2012 last will and kept the original of this will.
2. The Decedent and Kristin Tyler spoke by phone and in person numerous times after the execution of the October 2012 last will, the last time being in or around January 2014.
3. The Decedent reaffirmed that he wanted his entire estate is to be distributed to St. Jude's Children Research Hospital as late as August 27, 2013.
4. The Decedent did not tell Kristin Tyler that he wanted to change his will, although he did want to change his power of attorney as late as January 2014.
5. On February 12, 2014, the Decedent's physician declared that the was "unable to respond to a substantial and immediate risk of physical or financial harm or to a need for immediate medical attention," that he was "unable properly to manage and take care of [Decedent's] person or property, or both", and that he was incapable of "living independently, with or without assistance." The Decedent's physician further stated that the Decedent's capacity was limited by "Altered level of

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consciousness, dementia, chronic bifrontal strokes."

6. The guardianship court appointed Nevada Guardian Services, LLC as the temporary guardian of the Decedent on February 18, 2014.

7. The guardianship court appointed Nevada Guardian Services, LLC as the guardian of the person and estate of the Decedent on March 19, 2014.

III. LEGAL ARGUMENT

A. Summary Judgment Standard

The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the materials facts before the court. *Northwest Motorcycle Ass'n v. Dep't of Agric.,* 18 F.3d 1468, 1471, (9th Cir.1994). "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings, and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway,* 121 Nev. 724, 121 P.3d 1026 (2005) (citing NRCP 56(c); *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997)). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. *Lynn v. Sheet Metal Workers Int'l Ass'n,* 804 F.2d 1472, 1483 (9th Cir. 1986). "Rule 56 should not be regarded as a disfavored procedural shortcut but instead as an integral part of the [Nevada] Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Id.* at 1030 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

As summary judgment allows a court to dispose of factually unsupported claims, the court construes the evidence in the light most favorable to the nonmoving party. *Bagdadi v. Nazar,* 84 F.3d 1194, 1197 (9th Cir.1996). However, once the moving party meets their burden, "[t]he opposing party must then present specific facts demonstrating that there is a factual dispute about a material issue." *Zoslaw v. MCA Distributing Corp.*, 693 F.2d 870, 883 (9th Cir. 1982), cert. denied, 460 U.S. 1085 (1983). "A mere scintilla of evidence will not do, for a jury is permitted to

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draw only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation." *British Airways Bd. v. Boeing Co.,* 585 F.2d 946, 952 (9th Cir.19978). Conclusory allegations that are unsupported by factual data cannot defeat a motion for summary judgment. *Taylor v. List,* 80 F.2d 1040, 1045 (9th Cir.1989). The movant is entitled to summary judgment if the non-moving party, who bears the burden of persuasion, fails to designate "specific facts showing that there is a genuine issue for trial." *Celotex,* 477 U.S. at 324. Thus, in order to preclude a grant of summary judgment, the non-moving party must set forth "specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indust. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S.Ct. 1348 (1986)(quoting Fed. R. Civ. P. 56 (e)).

The non-moving party is no longer able to defeat a summary judgment motion by alleging the slightest doubt as to the operative facts. *See Wood v. Safeway* (overruling slightest doubt standard and adopting the U.S. Supreme Court's standard outlined in *Anderson v. Liberty Lobby*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986)). Though inferences are to be drawn in favor of the party opposing the motion for summary judgment, when a proper motion for summary judgment has been made, "the nonmoving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." *Wood v. Safeway* at 1030-31 (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002)). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Id.* at 1031 (citing *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42, (1993).

Based on the facts and law discussed herein, it is clear that St. Jude Children's Research Hospital has met its burden in proving that the Decedent's will was more likely than not left unrevoked as of his death and St. Jude Children's Research Hospital is entitled to summary judgment.

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B. Standard to prove a lost will was in legal existence at the death of the testator.

Irvine v. Doyle requires the proponent of a lost will to prove that the lost will was in legal existence, i.e. the testator did not revoke the will during his lifetime.[22] The Court did not state whether the presumption of revocation may be rebutted by a preponderance of evidence[23] or by clear and convincing evidence[24]. More recently, the Mississippi Supreme Court held in *In re Estate of Leggett* that the evidence required to rebut the presumption is dependant upon the facts presented in the matter, and some cases may be decided by slight evidence:

> It is difficult to lay down any general rule as to the nature of the evidence which is required to rebut the presumption of destruction: It depends to a considerable extent on the testator's property and his relations towards his family. Where the will makes a careful and detailed disposition of the testator's property, and nothing happens to make it probable that he wishes to revoke it, the presumption raised by the disappearance of the will may be rebutted by slight evidence, especially if it is shown that the access to the box, or other place of deposit where the will was kept, could be obtained by persons whose interest it is to defeat the will.[25]

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[22] *Estate of Irvine v. Doyle*, at 703, 1369.

[23] *See, e.g. In re Estate of Glover*, 744 S.W.2d 939 (Tex.1988) ("The court of appeals correctly held that the standard by which the sufficiency of the evidence should be reviewed is by a preponderance of the evidence."); In re Estate of Conley, 753 N.W.2d 384 (N.D. 2008) ("the party petitioning for the probate of a missing will must demonstrate, by a preponderance of the evidence, that the will existed at the time of the testator's death, that the will was fraudulently destroyed in the lifetime of the testator, or by other evidence demonstrating the testator did not intend to revoke the missing will.")

[24] *In re Estate of Crozier*, 232 N.W.2d 554, 559 (Iowa 1975) ("Defendants concede the presumption of revocation may be rebutted but insist in order to establish a lost will the presumption of revocation by decedent during his lifetime must be overcome by clear, satisfactory and convincing evidence."); *In re Estate of Mitchell*, 623 So.2d 274 (Miss. 1993) ("Our later cases say it may be overcome only by "clear and convincing" evidence that the testator did not destroy it or that, if he did, he did so accidentally or otherwise without intending revocation." (citing *Estate of Willis*, 207 So.2d 348, 349 (Miss. 1968); *James v. Barber*, 244 Miss. 234, 142 So.2d 21, 27 (1962) (but see *In re Estate of Leggett*, 584 So.2d 400, 403 (Miss. 1991), *infra* Footnote 35).

[25] *In re Estate of Leggett*, 584 So.2d 400, 403 (Miss. 1991).

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NRS 136.240 does not set a standard of proof for overcoming the presumption created by the lost will. When no standard is set in a civil matter, a preponderance of evidence is all that is required to rebut a presumption. *See* NRS 47.180(1) ("A presumption, other than a presumption against the accused in a criminal action, imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence."). The legislative history of NRS 136.240 supports this standard regarding the proof of lost wills with the amendment of the statute to add subsection 5(b) which states:

> Notwithstanding any provision of this section to the contrary: (b) if the proponent of a lost or destroyed will makes a prima facie showing that it was more likely than not left unrevoked by the person whose will it is claimed to be before his or her death, then the will must be admitted to probate in absence of an objection.

According to NRS 136.240, a proponent of a lost or destroyed will must make a showing that "it was more likely than not left unrevoked".

St. Jude Children's Research Hospital has met the burden of showing that the Decedent's will was more likely than not left unrevoked at the time of the Decedent's illness which led to the declaration of incapacity and the establishment of a guardianship. Specifically, the Decedent's wishes, expressed in his last will and reiterated to Kristin Tyler, that he wanted his entire estate to go to St. Jude Children's Research Hospital is supported by the testimony of his attorney assisting him at the time with making changes to his power of attorney and helping him find a paid caregiver to assist him with his daily living tasks.

Kristin Tyler's testimony that the Decedent refused to locate his son or reach out to him during this time emphasizes the Decedent's continuing desire to not communicate or associate with his estranged son, whom he specifically disinherited in his will. As stated in *Leggett*, the Decedent's "will makes a careful and detailed disposition of the testator's property" and "his relations towards his family" make it extremely improbable that he would have revoked his will to entirely change his estate plan to pass his considerable property by intestate succession to the estranged, disinherited son.

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The presumption that the Decedent intentionally revoked his will by destroying it has been overcome by competent evidence and the testimony of his estate planning attorney, who met with and advised the Decedent on matters relating to his estate and other issues until and through the guardianship. The Objector raised many hypotheticals about the Decedent hiring a different attorney, or a paralegal, or a shredding service, to destroy his will for him. However, nothing in the hypotheticals offered by the Objector has been supported by the facts or the evidence. The Objector merely rests on the presumption.

The Objector has no facts that overcome the evidence presented by St. Jude Children's Research Hospital to make the Decedent's will more likely to be revoked than not. The Objector hangs his entire case on whether or not the will was physically in existence, or whether it was seen by someone as of the time of the Decedent's death. This is a misstatement of the standard required by Irvine which only requires that the proponent of a lost will prove that the Decedent's will was unrevoked at the death of the Decedent.[26] This standard would allow for a will to have been misplaced, lost or destroyed by accident and does not require anyone to prove that they had seen the physical will at the death of the Decedent. St. Jude Children's Research Hospital has met this standard and is entitled to summary judgment.

C. Mental capacity required to revoke a will.

The standard of mental capacity required to revoke a will is the same as required to make a will.[27] A revocation of a will must To revoke a will by revocatory act, the testator must have intent to revoke (see § 4.1, Comment e). An intent to revoke is required to revoke a will by a revocatory act, and is only recognized as valid if the testator has mental capacity when performing

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[26] *Estate of Irvine v. Doyle*, at 703, 1369.

[27] *Restatement Third of Property*, § 8.1, comment c (2016) ("Although many statutes of wills do not expressly say that a testator must be "of sound mind" to revoke a will, the same requirement of mental capacity applies.")

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the revocatory act.[28] A purported revocation of a will by a person who lacks the mental capacity to make a will is void.[29]

While there is a strong presumption at common law that a lost will was revoked by destruction by the testator, the Nevada Supreme Court has held that, 1) such presumption is rebuttable by the proponent of the lost will, and 2) the question of whether a will was revoked is a matter to be decided by the trier of fact after considering the evidence.[30] In order to prove a lost or destroyed will was either "in existence at the death of the person whose will it is claimed to be, or … to have been fraudulently destroyed in the lifetime of that person", the proponent needs to prove that "the will had not been destroyed during the testator's lifetime or that, if destroyed during his lifetime, it had not been destroyed by him or by his authority."[31]

The term "in existence" means legal existence and does not require a showing of proof that the will actually physically existed at the death of the testator.[32] The Nevada Supreme Court further determined that the legislative intent of NRS 136.240(3) only requires "the proponent of a lost or destroyed will to prove that the testator did not revoke the lost or destroyed will during his lifetime."[33] With the Court's clarification of the presumption, a testator could not have revoked the lost or destroyed will if he lacked the mental capacity to do so.

The Nevada Supreme Court indicated that "[t]estamentary capacity exists when the testator (1) understands the nature of the act he is doing, (2) recollects and understands the nature and

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[28] *Id.* ("To revoke a will by revocatory act, the testator must have intent to revoke (see § 4.1, Comment e). An intent to revoke is only recognized if the testator has mental capacity when performing the revocatory act.")

[29] *Id.*

[30] *Estate of Irvine v. Doyle*, at 703, 1369.

[31] *Id.*

[32] *Id.*

[33] *Id.*

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situation of his property, and (3) recognizes his relations to the persons who would inherit via intestacy."[34] The Court also declared that testamentary capacity is presumed and continues even after the testator has been presumed incompetent to handle his affairs.[35] This presumption is rebuttable by the party challenging the will or the revocation by providing evidence that the testator lacked such capacity.[36]

The Court in *Blanchard* considered the evidence that clearly supported the determination of the testator's testamentary capacity. The Court considered the following factors:

1.) The Nevada guardianship judge determined just a few days after the execution of the will, that the testator, age 94, was incapacitated to the extent that a temporary guardian of the person and the estate should be appointed.

2.) Medical evidence in the form of a physician's statement supported the guardianship petition.

3.) In the new will, the testator gave his entire estate to his two previously-disinherited sons, a complete repudiation of the testator's prior estate plan.

4.) One of the testator's disinherited sons took him from his home in Las Vegas to California where the new will was executed.

5.) The testator's estate plan was clearly established to transfer assets by trust, not a will.

6.) The testator died less than five months after executing the new will, while guardianship proceedings were still pending.

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[34] *In re Estate of Blanchard*, 2016 WL 3584702 (NV Ct. App., 2016) (citing *In re Lingenfelter's Estate*, 241 P.2d 990, 997 (Cal. 1952)).

[35] *Id.* (citing *Moore v. Anderson Ziegler Disharoon Gallagher & Gray, P.C.*, 135 Cal. Rptr. 2d 888, 900 (Ct. App. 2003); 79 Am. Jur. 2d Wills § 90 (2016)).

[36] *Id.*

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The Court held that this evidence clearly supports the conclusion that the testator lacked the capacity to execute any testamentary documents during the period in question, thus overcoming the presumption of capacity.

D. The evidence presented supports the conclusion that the Decedent lacked the capacity to revoke his will after the establishment of the guardianship.

The Decedent was 86 years old at the time the guardianship was established and was admitted to Centennial Hills Hospital with altered mental status, dementia, and what his physician described as "chronic bifrontal strokes" in the physician's certification supporting the guardianship. The guardianship court appointed a temporary guardian over the Decedent on February 18, 2014, and a general guardian of the Decedent's person and estate on March 19, 2014. The Decedent's medical record shows repeated hospitalizations for physical problems, but the Decedent was never determined to regain capacity by any treating physician. In fact, the Decedent's dementia was described as "progressively worsening" by his attending physician on May 21, 2014. A copy of the Decedent's relevant medical records from his May 21, 2014 admission to Mountain View Hospital will be submitted in camera for review. The guardianship was never terminated, and the Decedent died while the guardianship proceeding was pending almost 6 months to the day after the establishment of the guardianship.

The Decedent's previous estate plan as indicated in his June 2012 and October 2012 wills was to give his estate to his life companion, Velma Shay if she survived him, or to St. Jude Children's Research Hospital if she predeceased him. Additionally, both wills specifically disinherited the Decedent's sole heir, the Objector. By contrast, a revocation of the Decedent's will would be a complete repudiation of the Decedent's prior estate plan.

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As in the *Blanchard* case, the clear, uncontroverted evidence supports the conclusion that the Decedent lacked the capacity to revoke his will after the establishment of the guardianship.

In re Blanchard	**Scheide**
Nevada guardianship judge determined just a few days after the execution of the will, that the testator, age 94, was incapacitated to the extent that a temporary guardian of the person and the estate should be appointed.	Nevada guardianship judge determined that the Decedent, age 86, was incapacitated to the extent that a temporary guardian of the person and the estate should be appointed. A general guardianship was established about a month later.
Medical evidence in the form of a physician's statement supported the guardianship petition.	Medical evidence in the form of the February 14, 2017 physician's statement from Dr. Mardip Arora, M.D. supported the guardianship petition. Additional medical evidence indicated that 3months after the establishment of the temporary guardianship, the Decedent's dementia was "progressively worsening."
In the new will, the testator gave his entire estate to his two previously-disinherited sons, a complete repudiation of the testator's prior estate plan.	A revocation would pass the Decedent's estate to his disinherited son, a complete repudiation of the Decedent's prior estate plan.
One of the testator's disinherited sons took him from his home in Las Vegas to California where the new will was executed.	The Decedent was transient during the guardianship, although the disinherited son had no contact with the Decedent during this time.
The testator's estate plan was clearly established to transfer assets by trust, not a will.	The Decedent's estate plan was established to transfer assets by will, not by intestate succession, hence the disinherited sole heir.
The testator died less than five months after executing the new will, while guardianship proceedings were still pending.	The Decedent died while guardianship proceedings were still pending almost six months after the establishment of the guardianship.

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IV. Conclusion

While a lost or destroyed will creates the rebuttable presumption that the testator destroyed the will with the intent to revoke it, such presumption is rebuttable by a preponderance of evidence that the will was left unrevoked at the death of the Decedent. Such presumption does not require proof that the will was physically in existence at the Decedent's death, but only requires proof of "legal existence", i.e. unrevoked. St. Jude Children's Research Hospital has presented evidence that the Decedent's wishes as expressed in his last will remained unrevoked at the time the guardianship was established. The Objector has not and cannot provide any facts sufficient to create a genuine issue of material fact to preclude the granting of St. Jude Children's Research Hospital's Motion for Partial Summary Judgment on this issue of non-revocation at the point of the guardianship.

The presumption that a lost will was intentionally revoked by the testator cannot apply during periods in which the testator lacked the mental capacity to revoke such will. The Decedent was suffering from progressively worsening dementia and required a guardian of his person and estate for six months prior to his passing while the guardianship remained in effect. Such presumption of testamentary capacity cannot apply to the Decedent and no evidence has been presented that the Decedent regained capacity during the guardianship proceedings. The Objector has not and cannot provide any facts sufficient to create a genuine issue of material fact to preclude the granting of St. Jude Children's Research Hospital's Motion for Partial Summary Judgment on the issue of the Decedent's lack of capacity to revoke his will during the guardianship. Accordingly, St. Jude Children's Research Hospital respectfully request that this Court grant its motion in its entirety.

Dated April 25, 2017.

HUTCHISON & STEFFEN

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Las Vegas, NV 89145
Attorneys for St. Jude Children's Research Hospital

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, and that on this 25th day of April, 2017, I caused a true and correct copy of the above and foregoing **ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON NON-REVOCATION OF WILL PRIOR TO THE DECEDENT'S GUARDIANSHIP AND ON DECEDENT'S TESTAMENTARY CAPACITY AFTER THE ESTABLISHMENT OF A GUARDIANSHIP** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or

☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

☐ to be hand-delivered;

to the attorney(s) or parties listed below at the address and/or facsimile number indicated below:

Via E-Service
Kim Boyer, Esq.
Durham Jones & Pinegar
10785 W. Twain Ave., Ste. 200
Las Vegas, NV 89135
Attorney for the Administrator

Via E-Service
Cary Colt Payne, Esq.
700 S. 8th Street
Las Vegas, NV 89101
Attorney for Theodore "Chip" E. Scheide, III

An Employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
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1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

In the Matter of the Estate of)
4)
)
5 THEODORE E. SCHEIDE, JR.,) CASE NO: P-14-082619-E
aka THEODORE ERNEST)
6 SCHEIDE, JR.,) DEPT NO: PCI
)
7 Deceased.)
)
8

9

10

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12 DEPOSITION OF KRISTEN TYLER, ESQ.

13 LAS VEGAS, NEVADA

14 THURSDAY, FEBRUARY 16, 2017

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22

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24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 500366

Page 21

1 **Q. He -- he called you, though, at the firm?**
2 A. He called the law firm of Gordon Silver and asked
3 for estate planning.
4 **Q. When was the first time you met or spoke with Mr.**
5 **Scheide?**
6 MR. GEIST: And I'm going to refer to him as
7 Mr. Scheide with deference to your client who is on the
8 phone.
9 THE WITNESS: I believe it was sometime in
10 2012.
11 BY MR. GEIST:
12 **Q. Was it in person? Was it on the phone?**
13 A. I first spoke with him on the phone, and then I
14 recall it was an in-person meeting within a few days
15 thereafter.
16 **Q. In person in your office?**
17 A. No.
18 **Q. Where did you meet with him in person the first**
19 **time?**
20 A. At the time, he was in a rehab facility following
21 hospitalization for a leg problem of some sort, and so
22 he was at a rehab facility and asked to meet there.
23 **Q. Was -- was Mr. Scheide looking to retain a**
24 **lawyer?**
25 A. Yes.

Page 32

1 Q. That says -- your note says, "Velma diagnosed
2 Alzheimer's" -- looks like about -- "January 2012"; is
3 that correct?
4 A. That's what it says.
5 Q. Did you get that information from Mr. Scheide?
6 A. Yes.
7 Q. Skipping down about two-thirds of the way down,
8 there's a note that says "not married."
9 I'm assuming that refers to Mr. Scheide; is that
10 correct?
11 A. Correct.
12 Q. And then below that, could you read what that
13 says?
14 A. Below that --
15 Q. The line immediately below that.
16 A. It says, "Theo has a son, but they are
17 estranged."
18 Q. Did Mr. Scheide say they were estranged?
19 A. He did.
20 Q. Those were the words that he used?
21 A. Those were not the exact words he used. I don't
22 recall the exact words he used.
23 Q. But that was your understanding?
24 A. (Nods head.)
25 Q. Did he say what his relationship with his son

Page 33

1 was?
2 A. He said that he had not communicated with his son
3 in -- in over 20 years, and he --
4 Q. Did he --
5 A. It may have been 25 or 30. I can't remember the
6 number, but I know he said it was greater than 20 years.
7 Q. Did he tell you the circumstances of this
8 estrangement at all?
9 A. No.
10 Q. Then skip down about six lines where it says
11 "will."
12 A. Yes.
13 Q. Can you read what that says, "will" and then the
14 line below that?
15 A. It says that for the will he wanted to name the
16 beneficiary as Velma, meaning, or then St. Jude.
17 Q. Below that it says?
18 A. In regards to the executor of the will, it would
19 be first Karen or then the alternate Nevada State Bank.
20 Q. And then the last line on that page.
21 A. He instructed me that he wanted Karen to review
22 everything.
23 Q. Why did Mr. Scheide say he wanted Karen to review
24 everything?
25 A. I don't -- I don't recall.

Page 34

1 Q. Okay. He just said have her take a look at
2 everything?
3 A. Yes.
4 Q. He trusted her?
5 A. Yes.
6 Q. Okay. Why did Mr. Scheide say he wanted to leave
7 the estate to those beneficiaries listed?
8 MS. TURNER: I'm going to object to the
9 extent it calls for speculation.
10 MR. GEIST: Okay.
11 BY MR. GEIST:
12 Q. Did he tell you why he wanted to leave that --
13 that estate in that way?
14 A. He didn't have an express conversation about
15 that. No, I take that back. I remember him obviously
16 saying how much he cares about Velma and that was the
17 most important person in his life and that they had
18 agreement that they would leave their will to each other
19 to make sure that the other person was taken care of for
20 the rest of their life. And that they had agreed that
21 if something had happened to both of them, they wanted
22 to benefit St. Jude Children's Hospital because Mr.
23 Scheide said he thought it was a very worthwhile
24 organization to help kids.
25 Q. Velma wasn't a client of yours, was she?

Page 38

1 Q. On page 1 of this will, does Mr. Scheide have any
2 children listed?
3 A. He does.
4 Q. Who are his children?
5 A. Theodore E. Scheide, III.
6 Q. In this will does Mr. Scheide provide for his son
7 as a beneficiary?
8 A. He does not.
9 Q. Do you know why he did not?
10 A. He -- as I stated earlier, he had been estranged
11 from his son for a number of years.
12 Q. Flipping to page 3, which is article 3, can you
13 tell me what this article does?
14 A. Article 3 gives the beneficiaries of the will the
15 residuary estate, which in Theo's case meant the entire
16 estate because he had no specific requests.
17 Q. To whom did Mr. Scheide leave his residuary
18 estate?
19 A. He left it to Velma G. Shay, if she survived him,
20 and if not, to St. Jude Children's Hospital located in
21 Memphis, Tennessee.
22 Q. Do you know whom Mr. Scheide named as the
23 executor of his estate?
24 A. Yes.
25 Q. Whom did he name?

Page 49

1 A. It was signed by Mr. Scheide.
2 **Q. How do you know it was signed by him?**
3 A. I witnessed it.
4 **Q. Was it witnessed by anybody else?**
5 A. It was also witnessed by Diane DeWalt.
6 **Q. Back to page 1, which is page 246 on that.**
7 **Does it list any children?**
8 A. It states that Mr. Scheide has one child,
9 Theodore Scheide, III.
10 **Q. Does Mr. Scheide provide for his son as a**
11 **beneficiary in the estate?**
12 A. He does not.
13 **Q. Page 3 or 248 in that stack.**
14 **Whom does Mr. Scheide name as the residual**
15 **beneficiaries of the estate?**
16 A. Residual beneficiary is Velma G. Shay, if she
17 survives. If not, then to St. Jude Children's Hospital
18 located in Memphis, Tennessee.
19 **Q. Do you know why Mr. Scheide did not name his son**
20 **as the beneficiary at this time?**
21 A. He remained estranged from his son.
22 **Q. Down at the bottom, whom did Mr. Scheide name as**
23 **the executor of his estate?**
24 A. He names -- the executor is Patricia Bowlin or
25 then Nevada State Bank.

Page 53

1 Q. Do you know when the next time you spoke with Mr.
2 Scheide was?
3 A. I don't know.
4 Q. So going back to Exhibit -- let's see, which
5 exhibit is this? 2? Exhibit 2. Go to -- please turn
6 to 143.
7 Do you recognize this?
8 A. These look like my notes in my handwriting.
9 Q. What is {sic} the dates that are written on this?
10 A. The first one is June 12, 2013, and then June 14,
11 2013.
12 Q. Do you recall the circumstances that led you to
13 take these notes?
14 A. Theo called me and wanted to remove Patty Bowlin
15 as his power attorney.
16 Q. Your notes say "wants to 'kill Patty's POA.'"
17 A. Those were his words.
18 Q. Meaning he wanted to remove her authority as
19 power of attorney?
20 A. Correct.
21 Q. And the next line says, "Mail form to revoke to
22 Theo's address"?
23 A. Yes.
24 Q. Is that a note to him or is that a note to
25 yourself or is that something he told you?

Page 56

1 A. It says that I called Theo.
2 Q. They're not handwritten, but did you type this
3 contemporaneous to the call to Theo?
4 A. Yes.
5 Q. What was the reason for this call to Theo?
6 A. Looks like we covered a variety of issues in the
7 discussion.
8 Q. Okay.
9 A. It was mainly to check in on him and his
10 wellbeing.
11 Q. Was he living at home at the time? Do you
12 recall?
13 A. Based on the notes, it appears he was at Rock
14 Springs at the time.
15 Q. Do you know what Rock Springs is?
16 A. I believe it's another type of rehab facility.
17 Q. Two lines below that, you typed, "Not doing good
18 from physical health standpoint."
19 A. Correct.
20 Q. Was that what he relayed to you?
21 A. Yes.
22 Q. So he told you he's not doing good physically?
23 A. Correct. This was a phone call, so I couldn't
24 see him.
25 Q. Two lines below that, he says, "He wants all to

Page 57

1 go to St. Jude when he dies"; correct?
2 A. Correct.
3 Q. Did he tell you that's what he wanted?
4 A. Yes.
5 Q. Why did he not mention Velma at this point?
6 A. I don't know, but she may have, by this point,
7 passed away.
8 Q. I'm sorry. I want to go -- I want to go up one
9 line. "Get copies of discharge papers to give to their
10 attorney."
11 Do you recall what that refers to?
12 A. I don't recall.
13 Q. Going down to, "He did not find jewelry yet. No
14 objection to Dana and Duke going to Theo's house.
15 Welcome to come over and go to Theo's house and take
16 whatever they want."
17 Who are Dana and Duke?
18 A. Dana and Duke were family members of Velma. And
19 I am now remembering that, yes, at this point in time,
20 Velma had died. And Dana and Duke had been inquiring
21 from Theo about some jewelry and other items that were
22 Velma's family-type heirlooms that they wanted, and he
23 had given me permission to tell them that they could go
24 to the house and take whatever they wanted.
25 Q. So on Mr. Scheide's behalf, you had been -- or

Page 58

1 you were going to be communicating with Dana and Duke
2 this information?
3 A. I communicated this to their attorney.
4 Q. Who was their attorney?
5 A. I believe it was Chris Phillips.
6 Q. So during this, were you representing Mr. Scheide
7 in this dispute over these personal items of Velma's?
8 MR. PAYNE: Objection. Leading.
9 THE WITNESS: I represented -- I was still
10 representing Theo, in general, at this time.
11 BY MR. GEIST:
12 Q. Did you represent him in this dispute between
13 Theo and Velma's family members?
14 MR. PAYNE: Same objection.
15 THE WITNESS: I don't really characterize it
16 as a dispute. But I was an intermediary after Velma
17 died, with Chris Phillips and Velma's family, to try to
18 resolve issues about personal property.
19 BY MR. GEIST:
20 Q. When you say you're an "intermediary," what did
21 you do?
22 A. I communicated back and forth to Mr. Phillips
23 with questions and answers about where property was and
24 coordinating for them to take things.
25 Q. Were you acting in an agency capacity?

Page 59

1 A. I was acting as his attorney.
2 Q. Okay. Thank you.
3 Okay. Let's see, are you doing okay? Do you
4 need a break?
5 A. I'm fine.
6 Q. Okay. If you could turn to -- and I think -- let
7 me just double check before I go on. I believe this is
8 in the same pack, 136.
9 A. Okay.
10 Q. And I apologize for the numbering. I think your
11 files go in inverse chronological order.
12 A. Yes. Correct. That's typically how we keep it.
13 Q. Taking a look at this document, do you recognize
14 it?
15 A. I do.
16 Q. Can you tell me what it is?
17 A. It's a document that Theo sent me because he
18 received it in the mail, and he didn't understand what
19 it meant to him legally.
20 Q. All right. Is there a date on this document?
21 A. The date at the top and the handwriting is
22 September 21, 2013.
23 Q. Whose handwriting is that?
24 A. I believe it is Theo's.
25 Q. Okay. So he wrote, "received September 21,2013,"

Page 62

1 A. She was concerned that Theo had leased a car,
2 concerned about him having a pistol, concerned that he
3 left his keys in his front door overnight.
4 **Q. Keys to his house, I'm assuming?**
5 A. I would -- it says front door. I would presume.
6 **Q. Any other concerns?**
7 A. That he had urinated in public.
8 **Q. Okay.**
9 A. Recently.
10 **Q. It says, "Outside of cell phone store, drops**
11 **pants and pees in parking lot." Is that --**
12 A. That is what she told me happened. I did not see
13 it. That is what she told me. And she was concerned at
14 that point in time that he was becoming incontinent.
15 **Q. Down a little bit farther after -- after all of**
16 **that, it says "Theo's son --**
17 A. Yes.
18 **Q. -- Pittsburgh." What does Pittsburgh refer to?**
19 A. It refers to where she told me that Theo's son
20 lived.
21 **Q. What are your notes after that?**
22 A. That she told me they "haven't talked in 25-plus
23 years."
24 **Q. And then Chipper is in quotes.**
25 A. It says "Chipper." I think that must be a

Page 63

1 nickname for him.
2 Q. And then I'm not sure if the line below that goes
3 to the next date, but can you tell me the next date?
4 A. The next date is December 9, 2013.
5 Q. What does that say right next to it?
6 A. "Released yesterday, aneurysm may be leaking."
7 Q. "Theo just taken to hospital, released yesterday,
8 aneurysm may be leaking" is what you wrote; correct?
9 A. Yes.
10 Q. Do you know what this -- what kind of aneurysm?
11 Do you know?
12 A. I don't remember.
13 Q. Flip to 134.
14 A. I take that back. I think it was heart --
15 something with his heart.
16 Q. Thank you.
17 Flip to 134. Also dated December 9, 2013.
18 A. Correct.
19 Q. Was this a continuation of notes from that phone
20 call?
21 A. It -- I don't know. It may have been.
22 Q. Okay. So about halfway through, you wrote, "She
23 does not" -- and not is underlined -- "want to be G."
24 What is G?
25 A. G is guardian.

Page 65

1 line "Kathy Longo."
2 **Was this a meeting with Theo? Or was it . . .**
3 A. It was a meeting with Theo and Kathy, I believe.
4 **Q. What did you discuss in this meeting?**
5 A. Kathy said that she would agree to be a backup
6 alternate on the power of attorney but that Theo still
7 needed -- needed someone to be his primary agent to help
8 him. Kathy felt she had too many other obligations in
9 her life to be the primary person.
10 **Q. And there's a question about bankruptcy that was**
11 **brought up?**
12 A. That would relate back to that -- the letter that
13 he got in the mail.
14 **Q. Okay.**
15 A. And then we realized he was actually talking
16 about a question about Duke and Dana.
17 **Q. Duke and Dana meaning Velma Shay's relatives?**
18 A. Correct.
19 **Q. Then there's a quote: "Always let a sleeping dog**
20 **lie."**
21 A. That is what he said.
22 **Q. Meaning, don't --**
23 A. Meaning, we hadn't heard from Duke and Dana in a
24 while, and -- and I asked if he wanted me to reach out
25 to them and see if there was anything else they wanted

Page 66

1 from Velma's property. And he said no, "always let a
2 sleeping dog lie."
3 **Q. Midway through there, there's a note that says**
4 **"Jenna" and Schwab is circled.**
5 **Can you tell me what that's about?**
6 A. About his contact person Jenna with his Schwab
7 account.
8 **Q. Okay. And it says, "emptied out stock account."**
9 **Do you know what that refers to?**
10 A. I don't. I think he liquidated it.
11 **Q. "He takes 8500 a month."**
12 A. Correct.
13 **Q. Does that just refer to the income that he gets?**
14 **Did he tell you that?**
15 A. He told me that he had -- based on his needs, he
16 had directed Schwab to give him $8500 a month for his
17 living expenses at that time.
18 **Q. He leases a "strong box" at U.S. Bank?**
19 A. Yes.
20 **Q. Do you know what -- did he tell you what he keeps**
21 **in there?**
22 A. I have written down that he said he put $40,000
23 cash in that box, and that's -- that's the only thing he
24 told me he kept in there.
25 **Q. All right. And then flip to page 129, if you**

Page 67

1 would, please.
2 A. Which page?
3 Q. 129.
4 A. Okay.
5 Q. The date of this is December 17. Is this --
6 these are your notes?
7 A. These are my notes.
8 Q. What are these notes from?
9 A. Appears to be a phone call from Kathy Longo.
10 Q. What did you discuss with her at this time?
11 A. She was getting ready to leave town for ten days,
12 from December 20 to December 30.
13 Q. And then you've got Susan Hoy and a phone number
14 written there.
15 A. I do. Then I have three potential candidates to
16 speak to Theo about helping him as his primary power of
17 attorney.
18 Q. Okay. Why -- why were you discussing this with
19 Kathy at this time?
20 A. I don't know if I discussed it with her, or if
21 these were just my notes to myself in the file that
22 happened to be on the same page.
23 Q. Okay. If we can flip to 128.
24 A. Yes.
25 Q. The date of this is December 27, 2013.

Page 68

1 **Can you tell me what prompted you to take these**
2 **notes?**
3 A. I called Theo.
4 **Q. Okay.**
5 A. He was, at that point, living at a group home
6 called Sunshine, something Sunshine. He told me he was
7 mad at Kathy. "He was mad that Kathy gave keys to the
8 home." I don't know who. And so he's going to "fire
9 her."
10 **Q. And that's what he told you "fire her"?**
11 A. Yes.
12 I explained the bankruptcy paper to him. And
13 basically just explained that I don't know what it is;
14 that you can ignore it if you don't think these people
15 owe you money. He apparently said he renewed his
16 driver's license, and it was good until 1917. He told
17 me to hold off on interviews until after he fires Kathy.
18 **Q. Hold off on interviews with whom?**
19 A. He had asked me to, at that point, set up some
20 interviews with some of the different fiduciaries in
21 town that could potentially help him.
22 **Q. Okay.**
23 A. He complained that the food is terrible at
24 Sunshine. He said, "The cook is the only person west of
25 the Mississippi who can ruin Corn Flakes." He told me

Page 69

1 another joke about Obama, and he was overall very sharp
2 on this phone call except for saying the year 1917.
3 **Q. That's your comment afterwards, your note to**
4 **yourself?**
5 A. Yes.
6 **Q. At any time during these discussions in December**
7 **with Kathy and with Theo, did Theo ever say he wanted to**
8 **change his estate plan beneficiaries?**
9 A. No.
10 **Q. Did Theo say he wanted --**
11 MR. PAYNE: Hold on. Just object. Calls
12 for speculation.
13 MR. GEIST: I'm asking if she -- if he asked
14 her that. Did he discuss that?
15 BY MR. GEIST:
16 **Q. Did he ever discuss changing the agents under his**
17 **power of attorney?**
18 MR. PAYNE: Same objection.
19 THE WITNESS: We -- we did discuss that.
20 BY MR. GEIST:
21 **Q. And what suggestions did he offer when he**
22 **discussed that?**
23 A. He, at that point, didn't -- since Kathy Longo
24 was not willing to be the agent, he didn't feel he had
25 anyone else, you know, friend or family to turn to. And

Page 108

1 **October 2nd until his passing, you were in constant**
2 **contact with your client?**
3 MS. TURNER: Objection. That misstates what
4 the document says.
5 MR. PAYNE: I'm just trying to figure out
6 what she's alleging.
7 THE WITNESS: I'm alleging that I remained
8 in contact with him or his caregivers until Nevada
9 Guardian Services was appointed guardian.
10 BY MR. PAYNE:
11 **Q. Just so I'm sure -- clear, how did you remain in**
12 **contact?**
13 A. From October of '12 through March of '14 or --
14 **Q. Sure.**
15 A. -- what time frame?
16 **Q. Yes.**
17 A. Between that time period, I would have phone
18 calls from Theo, meetings with him. I believe last
19 in-person meeting was probably January of '14.
20 Then shortly thereafter, I was contacted by a
21 Centennial Hills Hospital social worker that his health
22 had declined, and he was not able to talk by phone, and
23 at that point, coordinated a care team to have Nevada
24 Guardian Services become his guardian since he had not
25 named a new power of attorney.

Page 146

1 their place if they were not living.
2 BY MR. PAYNE:
3 **Q. So is it your testimony that he did not want her**
4 **heirs to take?**
5 A. Correct. He wanted Velma, or if she was not
6 living, then St. Jude's.
7 **Q. And you discussed this with him thoroughly?**
8 A. He -- he was very clear with his instruction that
9 he wanted it to be Velma or St. Jude.
10 **Q. I notice you don't have an estate plan**
11 **questionnaire?**
12 A. At that time, I didn't.
13 **Q. Is it normal that you --**
14 A. I -- I have a questionnaire. I use it for some
15 cases; I use it for not others. I have the
16 questionnaire pretty well memorized, so I can talk
17 through the questions with the client. I never have a
18 client fill it out. I -- the questionnaire is to the
19 extent that -- something that I fill out when I'm
20 meeting with a client. I don't expect a client to fill
21 it out.
22 **Q. You make a distinction about the power of**
23 **attorney and the original.**
24 **Is it your -- did you maintain the originals of**
25 **the power of attorney in the June will in your file?**

Page 160

1 what city he lived in. He didn't know what city or
2 state he lived in.
3 **Q. When did you ask him this?**
4 A. In January of '14.
5 **Q. So in January '14, you were asking him about the**
6 **address of his son?**
7 A. In January of '14 when he was in the group home
8 not doing well and he -- we're trying to find someone to
9 help him. I -- going back through reevaluating family,
10 because I always -- I definitely want clients to work
11 with family, if they have family.
12 I offered to him, I said, Theo -- at the time I
13 was working at Gordon Silver, and we had an investigator
14 on staff. And I told him, I said, Theo, we have an
15 investigator on staff. Do you want to get back in touch
16 with your son? Do you want me to find out where he
17 lives? I can find that out. And he said no. And, you
18 know, I said do you -- do you have any idea where --
19 city or state where he lives, and he said no.
20 **Q. As you sit here today, did you ever find out**
21 **whether Theo and his father had -- or excuse me -- Theo**
22 **Senior and Theo The Third had any contact?**
23 A. At what point in time?
24 **Q. After this January '14 letter?**
25 A. I don't know if they did. It's possible. I

Page 182

1 STATE OF NEVADA)
) SS:
2 COUNTY OF CLARK)

3 CERTIFICATE OF REPORTER

4 I, Brittany J. Castrejon, a Certified Court
5 Reporter licensed by the State of Nevada, do hereby
6 certify: That I reported the DEPOSITION OF KRISTEN
7 TYLER, ESQ., on Thursday, February 16, 2017, at 9:05
8 a.m.;
9 That prior to being deposed, the witness was duly
10 sworn by me to testify to the truth. That I thereafter
11 transcribed my said stenographic notes into written
12 form, and that the typewritten transcript is a complete,
13 true and accurate transcription of my said stenographic
14 notes. That the reading and signing of the transcript
15 was not requested.
16 I further certify that I am not a relative,
17 employee or independent contractor of counsel or of any
18 of the parties involved in the proceeding; nor a person
19 financially interested in the proceeding; nor do I have
20 any other relationship that may reasonably cause my
21 impartiality to be questioned.
22 IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada this
23 24th day of February, 2017.
24
25 Brittany J. Castrejon, CCR NO. 926

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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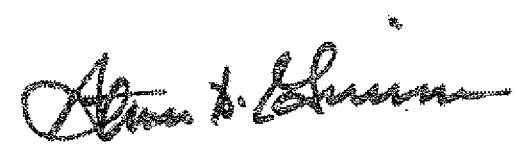


CLERK OF THE COURT

ORDR
KIM BOYER, CELA
Nevada Bar #5587
10785 W. Twain Ave., Suite 200
Las Vegas, Nevada 89135
(702) 255-2000
Email: kimboyer@elderlawnv.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Guardianship of the Person and Estate of THEODORE SCHEIDE, An Adult.	Case No.: G-14-039853-A Dept. No.: E

EX PARTE ORDER APPOINTING TEMPORARY GUARDIAN AND FOR ISSUANCE OF TEMPORARY LETTERS OF GUARDIANSHIP

The Court having considered the verified Petition for Appointment of Temporary Guardian, Petition for Appointment of General Guardian submitted by NEVADA GUARDIAN SERVICES, LLC requesting appointment to act as Temporary Guardian of the Person and Estate of THEODORE SCHEIDE, adult Ward, and the Court having considered the same and examined the evidence, being fully advised in the premises, finds: (i) there is reasonable cause to believe the Proposed Ward is unable to respond to a substantial and immediate risk of financial loss or physical harm or to a need for immediate medical attention; (ii) a physician who is licensed to practice in the State of Nevada has signed a certificate stating that the proposed Ward is unable to respond to a substantial and immediate risk of financial loss or physical harm or to a need for immediate medical attention; (iii) Petitioner has actually notified, or in good faith has tried to notify, those persons entitled to notice pursuant to NRS 159.047, or that notice to those persons is not feasible under the circumstances; and (iv) a temporary guardianship of the Person and Estate of THEODORE SCHEIDE should be established.

RECEIVED
FEB 14 2014
GUARDIANSHIP

IT IS HEREBY ORDERED that NEVADA GUARDIAN SERVICES, LLC be and is hereby appointed as the Temporary Guardian of the Person and Estate of THEODORE SCHEIDE, an adult, and that Temporary Letters of Guardianship be issued to NEVADA GUARDIAN SERVICES, LLC to serve with assets blocked with the exception of all automatic withdrawals and deposits.

IT IS FURTHER ORDERED that any and all banks, financial institutions, brokerage or mutual fund firms shall immediately block the Ward's assets upon receipt of this order without the necessity of letters of guardianship, whether said accounts or records reflect the name of the Ward individually, or with one or more other persons. All ATM and bank card usage shall be suspended. Said assets and accounts shall remain blocked until further Order of the Court.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is hereby given full access to all historical and current financial information for the above-named Ward. Such information shall include, but not be limited to statements, cancelled checks, withdrawal authorizations and other information from banks, financial institutions, brokerage or mutual fund firms, creditors, lenders, the United States Social Security Administration and other persons and agencies which have engaged in transactions concerning the financial affairs of the Ward, whether said accounts or records reflect the name of the Ward individually, or with one or more other persons.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is authorized to request and receive information from any other person or agency, which is currently or has previously been obligated to pay money or other benefits to the above-named adult Ward.

///

///

///

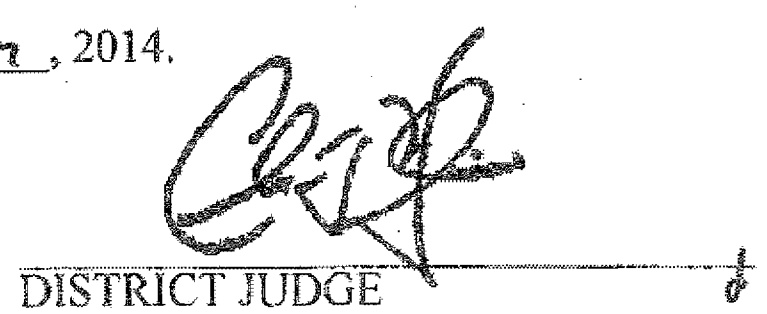
IT IS FURTHER ORDERED that in receiving this appointment as Guardian, NEVADA GUARDIAN SERVICES, LLC is hereby given full access to any and all medical records and information concerning the condition and historical treatment of the Ward, including mental health records and information, which are or may be lodged with any persons, family members and friends, along with any and all medical providers, care facilities, insurers and/or institutions.

IT IS FURTHER ORDERED that this Order suspends any Power of Attorney for Financial Matters executed prior to this General Guardianship, so long as the Guardianship of the Estate remains open.

IT IS FURTHER ORDERED that this Order suspends any Power of Attorney for Health Care Decisions executed prior to this General Guardianship, so long as the Guardianship of the Person remains open. Pursuant to NRS 162A.800(2), the Guardian shall follow any provisions contained in the Power of Attorney for healthcare delineating the Ward's wishes for medical and end-of-life care.

IT IS FURTHER ORDERED that a hearing of this matter shall be held on February 26, 2014 at the hour of 9:00 a.m., in Courtroom 7 at Family Court, 601 North Pecos Road, Las Vegas, Nevada 89101-2417, at which time a determination shall be made concerning the necessity to extend this temporary guardianship proceeding.

DATED this 28 day of February, 2014.



DISTRICT JUDGE

Respectfully submitted,

KIM BOYER, CELA
Nevada Bar #5587
10785 W. Twain Ave., Suite 200
Las Vegas, Nevada 89135
Attorney for Petitioner

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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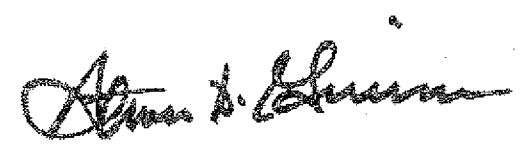

CLERK OF THE COURT

OAG
KIM BOYER, CELA
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(702) 255-2000
Email: kimboyer@elderlawnv.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Guardianship of the Person and Estate of THEODORE SCHEIDE, An Adult.	Case No.: G-14-039853-A Dept. No.: E Date of Hearing: March 19, 2014 Time of Hearing: 9:00 a.m.

ORDER APPOINTING GUARDIAN OF THE PERSON AND ESTATE AND FOR ISSUANCE OF LETTERS OF GUARDIANSHIP

Upon the Petition for Appointment of General Guardian of the Person and Estate of THEODORE SCHEIDE, an adult Ward, submitted by NEVADA GUARDIAN SERVICES, LLC, having come on for hearing before the above-entitled Court this date, and the Court having considered the Petition and examined the evidence, being fully advised in the premises finds: (i) proper notice of the hearing was duly given as required by law; (ii) the facts alleged in the Petition are true and correct; (iii) THEODORE SCHEIDE is a resident of the State of Nevada; (iv) a licensed physician provided an assessment; (v) that THEODORE SCHEIDE was advised of the right to counsel; (vi) the Petition for Appointment of General Guardians of the Person and Estate of THEODORE SCHEIDE should be granted; and (vii) the address and telephone number of the guardian is NEVADA GUARDIAN SERVICES, LLC, c/o Boyer Law Group, 10785 W. Twain Ave., Suite 200, Las Vegas, Nevada 89135, (702) 255-2000.

. . .

RECEIVED
MAR 17 2014
GUARDIANSHIP

IT IS HEREBY ORDERED that a Guardianship of the Person and Estate of THEODORE SCHEIDE be established.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is hereby appointed as the General Guardian of the Person and Estate of THEODORE SCHEIDE, an adult Ward, and that Letters of Guardianship be issued to NEVADA GUARDIAN SERVICES, LLC upon taking the oath required by law to serve with assets blocked as specified herein.

IT IS FURTHER ORDERED that all of the Ward's income be placed into an unblocked guardianship checking account to be established by the Guardian at Wells Fargo Bank to be used to pay the Ward's expenses.

IT IS FURTHER ORDERED that a monthly release of funds in the amount of $8,613.00 shall be release from the Ward Charles Schwab Account #7608-6113 and shall be deposited into the unblocked guardianship checking account to be established by the Guardian at Wells Fargo Bank to be used to pay the Ward's expenses.

IT IS FURTHER ORDERED that the Guardian is authorized to sign any and all documents required by the Division of Welfare and Supportive Services, or any other party, to establish or continue the Medicaid eligibility for the Ward, including but not limited to signing listing agreements or signing an income reduction trust.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC will incur Guardian fees at an hourly rate and is hereby authorized to advance funds from the Ward's assets to pay guardian fees, subject to confirmation by the Court on a Petition.

IT IS FURTHER ORDERED that attorney's fees and costs are hereby authorized in the amount of $4,500.00 to be paid from the Ward's Estate to Kim Boyer and shall be released from the blocked account.

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IT IS FURTHER ORDERED that Kim Boyer will incur attorney's fees at an hourly rate and incur costs, Kim Boyer is hereby authorized to advance funds from the Ward's assets to pay attorney fees, subject to confirmation by the Court on a Petition.

IT IS FURTHER ORDERED that this Order suspends any Power of Attorney for Financial Matters executed prior to this General Guardianship, so long as the Guardianship of the Estate remains open.

IT IS FURTHER ORDERED that this Order suspends any Power of Attorney for Health Care Decisions executed prior to this General Guardianship, so long as the Guardianship of the Person remains open. Pursuant to NRS 162A.800(2), the Guardian shall follow any provisions contained in the Power of Attorney for healthcare delineating the Ward's wishes for medical and end-of-life care.

IT IS FURTHER ORDERED that to carry out the function of Guardian of the Estate of THEODORE SCHEIDE, NEVADA GUARDIAN SERVICES, LLC is vested with all the powers set forth in NRS 159.117 through NRS 159.175, inclusive.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is hereby given full access to all historical and current financial information for the above-named Ward and shall have the ability to close any such accounts, whether said accounts or records reflect the name of the Ward individually, or with one or more other persons. Such information shall include, but not be limited to statements, cancelled checks, withdrawal authorizations and other information from banks, financial institutions, brokerage or mutual fund firms, creditors, lenders, the United States Social Security Administration and other persons and agencies which have engaged in transactions concerning the financial affairs of the Ward, whether said accounts or records reflect the name of the Ward individually, or with one or more other persons.

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IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is authorized to gain access to any and all safe deposit box(es) located within this jurisdiction, which may bear the name of the adult Ward, individually or jointly with others, for the purpose of inventorying the contents thereof, said inventory to take place in the presence of a banking officer.

IT IS FURTHER ORDERED that NEVADA GUARDIAN SERVICES, LLC is authorized to request and receive information from any other person or agency, which is currently or has previously been obligated to pay money or other benefits to the above-named adult Ward.

IT IS FURTHER ORDERED that in receiving this appointment as Guardian, NEVADA GUARDIAN SERVICES, LLC is hereby given full access to any and all medical records and information concerning the condition and historical treatment of the Ward, including mental health records and information, which are or may be lodged with any persons, family members and friends, along with any and all medical providers, care facilities, insurers and/or institutions.

IT IS FURTHER ORDERED that the Ward has a mental defect (danger to self or others OR lacks capacity to contract or manage own affairs) and, pursuant to NRS 159.0593 and 18 USC 922(d)(4), is prohibited from possessing a firearm. A record of this guardianship order shall be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

IT IS FURTHER ORDERED that the Guardian has filed a Guardian's Acknowledgment of Duties and Responsibilities.

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IT IS FURTHER ORDERED that a copy of this order shall be served upon the adult Ward.

DATED this 18 day of March, 2014.

DISTRICT JUDGE

Respectfully submitted,

KIM BOYER, CELA
Nevada Bar #5587
10785 W. Twain Ave., Suite 200
Las Vegas, Nevada 89135
Attorney for Petitioner

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Attorneys for St. Jude Children's Research Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of THEODORE E. SCHEIDE JR. aka THEODORE ERNEST SCHEIDE JR., Deceased.	Case No.: P-14-082619-E Dept No.: 26

ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS (NRCP 12(c))

ST. JUDE CHILDREN'S RESEARCH HOSPITAL, INC. ("St. Jude Children's Research Hospital") respectfully submits this Opposition to Theodore E. Scheide III's Motion for Judgment on the Pleadings (NRCP 12(c)) ("Motion"). Theodore E. Scheide III's Motion should be denied because (1) St. Jude Children's Research Hospital is explicitly permitted by statute to file its Petition for Probate of Lost Will under NRS 136.070(1); (2) Theodore E. Scheide III has repeatedly misstated the burden St. Jude Children's Research Hospital carries to prove the Decedent's lost will remained unrevoked at his death; and (3) the facts support a reasonable conclusion that the Decedent's October 2012 will remained unrevoked at his death, although noone was able to locate the original. Furthermore, Theodore E. Scheide III has attached to his Motion depositions, correspondence, emails and other documents obtained after the initial Petition for Probate of Lost Will was filed, which must be considered outside the pleadings and therefore, should not be considered in the Motion, or if considered, the Motion should be treated as a motion for summary

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judgment pursuant to NRCP 12(c).

I. INTRODUCTION

Theodore E. Scheide III again alleges that St. Jude Children's Research Hospital, as the proponent of the lost will of the Decedent, Theodore E. Scheide, Jr. ("Decedent"), is time barred from filing the Petition for Probate of Lost Will; is required to prove that the Decedent's last will physically existed at the time of his death; and that the legal presumption that the Decedent's lost will has been revoked is a matter of law which cannot be overcome without direct proof that someone saw the actual will in physical existence at the time of the Decedent's death. In support of his Motion, Theodore E. Scheide III misstates or fabricates facts and misstates the applicable law regarding these issues.

Rather than being barred by laches or estoppel from filing the Petition for Probate of Lost Will, St. Jude Children's Research Hospital was explicitly permitted by Nevada law to do so. As the proponent of the Decedent's lost will, St. Jude Children's Research Hospital carries the burden to prove that the Decedent did not intentionally revoke his last will, not that the Decedent's last will was physically in existence at the time of the Decedent's death nor that there were witnesses who directly saw the Decedent's last will at the time of his death.

The facts presented by the Decedent's estate planning attorney, Kristin Tyler, and the Decedent's step-daughter, Kathy Longo, present a far different story of the Decedent's testamentary wishes leading up to his death, and demonstrates that there are material factual issues to weigh in this matter and that judgment on the pleadings is not warranted. Therefore, Theodore E. Scheide III's Motion should be denied.

II. FACTUAL BACKGROUND

A. Preparation of Decedent's Estate Planning Documents

On or about June 6, 2012, the Decedent, who was in a rehabilitation hospital at the time, retained his estate planning attorney, KRISTIN TYLER, Esq., to prepare his estate planning documents. Specifically, the Decedent wanted a last will and testament nominating Karen Hoagland, an accountant, as his executor and leaving his entire estate to Velma Shay, his life

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partner, if she were then living, or to St. Jude Children's Research Hospital, if she were not then living.[1] It was during the meetings prior to executing the will, that the Decedent told Kristin Tyler that he had a son but they were estranged for more than 20 years.[2] The Decedent also told Kristin Tyler that he and Velma "had agreed that if something happened to both of them, they wanted to benefit St. Jude Children's Hospital because Mr. Scheide said he though it was a very worthwhile organization to help kids."[3] The Decedent had already established pattern of giving sizeable annual gifts to St. Jude Children's Research Hospital.[4] The Decedent signed this will on June 8, 2012.

The Decedent again met with Kristin Tyler on October 2, 2012 to execute a new will changing the Executor to Patricia Bowlin, but kept the beneficiary designations the same.[5] In both the June 8, 2012 will and the October 2, 2012 will, the Decedent specifically excluded his son from the will.[6]

Velma Shay died the following year. The Decedent again contacted Kristin Tyler on June 12, 2013 to change his power of attorney[7]. Kristin Tyler called the Decedent on August 27, 2013 to check on him and the Decedent told her that he was in another rehab facility and that he was "[n]ot doing good from [a] physical health standpoint."[8] It was during this call that the Decedent

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[1] *See* deposition transcript of Kristin Tyler, Esq., attached hereto as **Exhibit 1** ("Tyler depo."), 21:1-2, 12-22; 33:15-16.

[2] *See* Tyler depo 32:16-25; 33:1-6.

[3] *See* Tyler depo 34:20-24; 146:3-9.

[4] *See* deposition transcript of Kathy Longo, attached hereto as **Exhibit 2** ("Longo depo."), 45:11-22.

[5] *See* Tyler depo 49:16-18, 24-25.

[6] *See* Tyler depo 38:1-11; 49:7-21.

[7] *See* Tyler depo 53:10-23.

[8] *See* Tyler depo 56:24; 57:13-21.

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told Kristin Tyler that he "wants all to go to St. Jude when he dies."[9] In addition to representing the Decedent as his estate planning attorney, Kristin Tyler also advised the Decedent on matters regarding personal property claimed by Velma Shay's family members after her passing and communicated on his behalf to the family members' attorney, Chris Phillips, Esq.[10]

On December 6, 2013, Kristin Tyler received a phone call from Kathy Longo, the Decedent's stepdaughter who was assisting him with day-to-day living activities, to tell Ms. Tyler that she was concerned that the Decedent had leased a car although he was medically unable to drive, that he kept a pistol in his home and shouldn't have it, and that he left his keys in his front door overnight.[11] Kristin also indicated in her notes that the Decedent was "outside of cell phone store, drops pants and pees in parking lot."[12]

It was around this time, December 9, 2013 in fact, that Kristin Tyler began discussing the need for a guardian for the Decedent.[13] Ms. Tyler and Ms. Longo met with the Decedent on December 10, 2013 to discuss the guardianship.[14]

On December 27, 2013, Ms. Tyler called the Decedent to discuss a bankruptcy notice he had received, and a desire to remove Kathy as potential fiduciary to help him.[15] Ms. Tyler then met with the Decedent in his group home in January 2014 to discuss him nominating a fiduciary under his power of attorney.[16] During these discussions with Kristin Tyler, the Decedent did not tell her

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[9] *See* Tyler depo 56:25; 57:1-7.

[10] *See* Tyler depo 58:3-5,22-24; 59:1.

[11] *See* Tyler depo 62:1-3.

[12] *See* Tyler depo 62:10-14.

[13] *See* Tyler depo 63:17-25;

[14] *See* Tyler depo 65:23-25; 66:1-25; 66:1-24.

[15] *See* Tyler depo 67:23-25; 68:1-17.

[16] *See* Tyler depo 108:18-19.

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that he wanted to change his estate plan beneficiaries.[17] At the January 2014 meeting, Kristin Tyler offered to have a staff investigator help him get in touch with his son.[18] Ms. Tyler asked the Decedent, "Do you want to get back in touch with your son? Do you want me to find out where he lives? I can find that out. And he said no."[19] The Decedent didn't even know the city or state where his son lived.[20]

During 2013, the Decedent's step-daughter, Kathy Longo was helping the Decedent out by writing checks for the Decedent to pay his bills and would occasionally take him out to lunch or to go shopping.[21] In October or November 2013, Ms. Longo helped the Decedent pay what he described as his annual donation to St. Jude Children's Research Hospital by typing a cover letter to accompany a check indicating a substantial donation of about $10,000 to $15,000[22]. The cover letter was based off of an acknowledgment letter the Decedent received from St. Jude Children's Research Hospital for the donation he made the year before.[23]

During the time she was helping him, Ms. Longo observed the Decedent behaving in ways that were out of character and caused concern, such as the Decedent failing to groom himself[24], urinating in public[25], answering the door completely naked when he was expecting help which he

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[17] *See* Tyler depo 69:6-9.

[18] *See* Tyler depo 160:7-19.

[19] *Id.*

[20] *Id.*

[21] *See* Longo depo, 25:1-25; 46:9-16.

[22] *See* Longo depo, 45:11-22.

[23] *Id.*

[24] *See* Longo depo, 22:11-19.

[25] *See* Longo depo, 38:8-11.

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had hired to sell his personal items from the house[26], and leaving his keys in his front door all night[27]. At the December 10, 2013 meeting with Kristin Tyler and the Decedent at the group home where the Decedent was living, the Decedent asked Ms. Longo if she would serve as the guardian for the Decedent, however, she declined.[28]

B. Establishment of Guardianship

On or about February 8, 2014, the Decedent was hospitalized at Centennial Hills Hospital with altered mental status, and slurred speech. Kristin Tyler was already coordinating with Nevada Guardian Services, LLC to assist the Decedent with his financial, health and personal affairs since the Decedent's condition had deteriorated to the point that he was unable to handle his own affaris, even while living in a group home or assisted living facility. On February 14, 2014, Decedent's physician declared that the Decedent was "unable to respond to a substantial and immediate risk of physical or financial harm or to a need for immediate medical attention," that he was "unable properly to manage and take care of [Decedent's] person or property, or both", and that he was incapable of "living independently, with or without assistance." The **Physician's Statement** signed by Dr. Mardip Arora, M.D. filed in support of the need for a guardianship over the Decedent in Clark County Guardianship Case No. G-14-039853-A will be submitted in camera. The Decedent's physician further stated that the Decedent "does present a danger to himself or others, and the Decedent's capacity was limited by "Altered level of consciousness, dementia, chronic bifrontal strokes." *See* **Physician's Statement**. On February 19, 2014, the Guardianship Court appointed to serve as the temporary guardian of the Decedent's person and estate, Nevada Guardian Services, LLC, of which Susan M. Hoy, is a private, professional guardian. A copy of the Ex Parte Order Appointing Temporary Guardian and For Issuance of Temporary Letters of Guardianship is attached as **Exhibit 3**. On March 19, 2014, the Guardianship Court appointed Susan M. Hoy to

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[26] *See* Longo depo, 38-21-25 through 39:1-5.

[27] *See* Longo depo, 39:6-24.

[28] *See* Longo depo, 47:13-18; 40:7-22.

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serve as the guardian of the Decedent's person and estate. A copy of the Order Appointing Guardian and For Issuance of Letters of Guardianship is attached as **Exhibit 4**.

C. Opening Decedent's Estate

Decedent died on or about August 17, 2014, in Las Vegas, Nevada where he was a resident at the date of his death. A copy of the official death certificate has been filed previously with the **Ex Parte Petition for Appointment of Special Administrator**, filed on October 12, 2014 in this matter. The Guardianship estate was closed in April 2015, and the Decedent's Estate was delivered to Susan M. Hoy as the personal representative of the Decedent's estate.

In the **Ex Parte Petition for Appointment of Special Administrator**, Susan M. Hoy indicated that a copy of the Decedent's Last Will and Testament dated October 2, 2012 was found, but that she was unable to find the original.[29] Susan M. Hoy ("Personal Representative") was appointed as the Special Administrator of the Decedent's Estate on October 2, 2014 with the authority to open the Decedent's safe deposit box and search for the original Last Will and Testament dated October 2, 2012 ("October 2012 Will").

After searching for the Decedent's original October 2012 Will, the Personal Representative petitioned the Court on January 29, 2015 to appoint her as the administrator of the Decedent's Estate with will annexed under full administration. However, the Petition was taken off calendar and withdrawn.

On May 6, 2015, the Personal Representative petitioned the Court for instructions regarding the lack of original October 2012 Will, and alleged to the Court the following:

a) The safe deposit box was empty;

b) The drafting attorney gave the original October 2012 Will to the Decedent;

c) SUSAN M. HOY did not receive or find any original estate planning documents during the guardianship; and

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[29] *See* **Ex Parte Petition for Appointment of Special Administrator**, filed on October 12, 2014, page 1 at ¶ 3.

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d) "[SUSAN M. HOY] believes the Decedent destroyed any original estate planning documents he may have executed prior to his death."[30]

The matter was heard on May 22, 2015, and the Court specifically:

> ORDERED that the Petitioner [SUSAN M. HOY] be appointed Administrator of the intestate Estate of the Decedent and that Letters of Administration be issued to the Petitioner.
>
> ORDERED that in the event the estate assets are liquidated, they be placed in the Durham Jones & Pinegar Trust Account.

The Personal Representative filed her **First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees** on May 18, 2016 and asked this Court to approve distribution of the Decedent's estate by intestate succession to Theodore E. Scheide III who was the Decedent's sole heir and the Decedent's estranged son whom the Decedent had specifically excluded from his will.

D. Discovery of New Information About Decedent's Will

Upon information and belief, Kristin Tyler, the Decedent's estate planning attorney and the drafter of the October 2012 Will, discovered in or around that the Court determined on May 22, 2015 that the Decedent died intestate and that the Decedent's estate was to be distributed to the Decedent's estranged son whom the Decedent had specifically excluded in his estate planning documents. Kristin Tyler then contacted St. Jude Children's Research Hospital to inform them of the proceedings in light of the Decedent's wishes expressed in his last will[31].

Kristin Tyler then lodged the Decedent's prior Last Will and Testament dated June 8, 2012 ("June 2012 Will"), the original of which has been filed with the clerk of the court on May 20,

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[30] *See* **Petition for Instructions**, filed on May 6, 2015, page 2 at ¶ 6.

[31] *See* Tyler depo, :79:17-21.

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2016 pursuant to NRS 136.050.[32] A copy of the filed June 2012 Will is attached as **Exhibit 5**. The Decedent's June 2012 Will was the same as the October 2012 Will, except the Decedent had nominated Karen Hoagland as his Executor in the June 2012 Will, whereas he nominated Patricia Bowlin as his Executor in the October 2012 Will.

After being presented with this information, Susan M. Hoy filed a Petition for Proof of Will and For Issuance of Letters Testamentary Under Full Administration, Petition to Appoint Personal Representative, and Petition to Distribute and Close Estate on May 25, 2016 asking the Court to admit the Decedent's June 2012 Will to probate. Concurrently, Susan M. Hoy filed her **Amended First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees** on May 25, 2016 and asked this Court to approve distribution of the Decedent's estate to St. Jude Children's Research Hospital, the ultimate beneficiary of the Decedent's will since Velma G. Shay had predeceased him.

Upon information and belief, counsel for Theodore Scheide, III met with counsel for Susan M. Hoy and contended that 1) that it was improper for Susan M. Hoy to present such a petition arguing that Susan M. Hoy, as the personal representative of the Estate, must remain neutral in any such determination, and 2) neither of the Decedent's Wills may be admitted to probate to permit such determination until the prior Order on Petition for Instructions is "set aside". Thereafter, in a joint meeting with counsel for St. Jude Children's Research Hospital, the parties agreed that Susan M. Hoy would withdraw her Petition for Probate and Petition for Distribution and counsel for St. Jude Children's Research Hospital would prepare a petition to admit Decedent's Last Will and Testament to probate.

St. Jude Children's Research Hospital filed its Petition for Probate of Lost Will to probate on September 13, 2016.

E. Undisputed Facts

The following facts are not in dispute:

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[32] *See* **Affidavit of Proof of Lost Will** signed by Kristin Tyler, a copy of which is attached as **Exhibit 6**.

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1. The Decedent retained attorney Kristin Tyler, Esq. to create his last will and executed his October 12, 2012 last will and kept the original of this will.
2. The Decedent and Kristin Tyler spoke by phone and in person numerous times after the execution of the October 2012 last will, the last time being in or around January 2014.
3. The Decedent reaffirmed that he wanted his entire estate is to be distributed to St. Jude's Children Research Hospital to Kristin Tyler as late as August 27, 2013 and to Kathy Longo as late as December 10, 2013 at the meeting with Kristin Tyler when Kathy declined being guardian.[33]
4. The Decedent did not tell Kristin Tyler that he wanted to change his will, although he did want to change his power of attorney as late as January 2014.
5. On February 12, 2014, the Decedent's physician declared that the was "unable to respond to a substantial and immediate risk of physical or financial harm or to a need for immediate medical attention," that he was "unable properly to manage and take care of [Decedent's] person or property, or both", and that he was incapable of "living independently, with or without assistance." The Decedent's physician further stated that the Decedent's capacity was limited by "Altered level of consciousness, dementia, chronic bifrontal strokes."
6. The guardianship court appointed Nevada Guardian Services, LLC as the temporary guardian of the Decedent on February 18, 2014.
7. The guardianship court appointed Nevada Guardian Services, LLC as the guardian of the person and estate of the Decedent on March 19, 2014.

III. LEGAL ARGUMENT

"A motion for judgment on the pleadings, like a motion for summary judgment, should be granted only if there is no issue of material fact and if the pleadings show that the moving party is

[33] See Tyler depo, 64:23-25 through 65:1-9

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entitled to prevail as a matter of law." *Whetstine v. Stroud*, 99 Nev. 721, 722, 669 P.2d 252, 253 (1983). A defendant "will not succeed on a motion under Rule 12(c) if there are allegations in the plaintiff's pleadings that, if proved, would permit recovery." *Duff v. Lewis,* 114 Nev. 564, 568, 958 P.2d 82, 85 (1998) citing *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987).

"A motion under this rule 'has utility only when all material allegations of fact are admitted *in the pleadings* and only questions of law remain.'" *Id.* at 568 (emphasis added). Judgment on the pleadings is improper when the district court goes beyond the pleadings to resolve an issue, such as considering the depositions, correspondence and emails obtained in discovery, and other documents obtained after the initial Petition for Probate of Lost Will was filed, all of which Theodore E. Scheide, III's Motion relies on. *See Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990)(interpreting the identical federal rule).

Theodore E. Scheide, III's Motion includes as exhibits the deposition of Kristin Tyler; the deposition of Susan Hoy; correspondence from Kim Boyer, Esq. dated July 11, 2016; correspondence from Kristin Tyler dated January 29, 2014; emails between Kristin Tyler and Judy Coulter; emails between Kristin Tyler and Susan Hoy; and discovery responses from St. Jude Children's Research Hospital. None of these documents were included in the Petition for Probate of Lost Will or Theodore E. Scheide, III's Objection thereto.

The Motion may not properly be decided on these included documents as they are outside of the pleadings. As discussed below, the issues of law raised by the Motion can all be resolved in favor of proceeding with St. Jude Children's Research Hospital's Petition for Probate of Lost Will.

A. Nevada Law Expressly Permits the Petition for Probate of Lost Will

The Petition to Probate the Lost Will may be considered despite the prior order granting letters of administration on the ground of intestacy. Theodore E. Scheide, III, claims without support that there is some unspecified "time period" within which St. Jude Children's Research Hospital was required to "assert its rights". Theodore E. Scheide, III argues that St. Jude Children's Research Hospital is estopped from bringing their Petition to Probate the Lost Will and are barred

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by laches.

However, Nevada law expressly provides that a petition to prove a will may occur at any time after the death of the testator. In fact, St. Jude Children's Research Hospital is explicitly permitted under NRS 136.070(1) to file the Petition to have the Will proved without any limitation on the time to do so. ("A personal representative or devisee named in a will, or any other interested person, may, **at any time after the death of the testator**, petition the court having jurisdiction to have the will proved, whether the will is in the possession of that person or not, or is lost or destroyed, or is beyond the jurisdiction of the State." (emphasis added)) NRS 141.050 also indicates that the Court may consider and allow the Decedent's Will to be proved, even after "after granting letters of administration on the ground of intestacy." In such case, "the letters of administration must be revoked and the power of the administrator ceases." *Id.*

Further, Theodore E. Scheide, III has not stated any actions of St. Jude Children's Research Hospital upon which he has relied to his detriment which would cause it to be estopped from proceeding with its Petition to Probate the Lost Will. These "legal issues" raised in the Motion amount to nothing. Theodore E. Scheide, III's Motion should be denied.

B. Standard to Prove a Lost Will Was in Legal Existence at the Death of the Testator.

St. Jude Children's Research Hospital, as the proponent of the lost will of the Decedent, is required to "prove that the testator did not revoke the lost or destroyed will during his lifetime" *Estate of Irvine v. Doyle*, 101 Nev. 698, 703, 710 P2d 1366, 1369 (1985). However, all that is required is *proof that the testator himself had not revoked the lost or destroyed will*, not that the will was in physical existence at the time of the testator's death. *Id.*

Irvine v. Doyle requires the proponent of a lost will to prove that the lost will was in legal existence, *i.e.* the testator did not revoke the will during his lifetime.[34] Proof of physical existence

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[34] *Estate of Irvine v. Doyle*, at 703, 1369. (" 'By requiring proof that a lost or destroyed will was either "in existence at the time of the testator's death, or was fraudulently destroyed in his lifetime", the Legislature merely intended to require proof that either the will had not been destroyed during the testator's lifetime or that, if destroyed during his lifetime, it had not been destroyed by him or by his authority. In other words, all that section 143 requires is proof that the

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of the will at the testator's death is a different standard expressly rejected by the Court in *Irvine*. Despite this, Theodore E. Scheide, III mistakenly continues to argue that the Court must dismiss St. Jude Children's Research Hospital's Petition for Probate of Lost Will because "no witness or documentary evidence can confirm that anyone actually, personally, saw the original October 2012 Will after the day it was signed." *See* **Motion for Judgment on the Pleadings (NRCP 12(c))**, filed April 21, 2017, 18:18-19.

Additionally, the *Irvine* Court did not state whether the presumption of revocation may be rebutted by a preponderance of evidence[35] or by clear and convincing evidence[36]. More recently, the Mississippi Supreme Court held in *In re Estate of Leggett* that the evidence required to rebut the presumption is dependant upon the facts presented in the matter, and some cases may be decided by slight evidence:

> It is difficult to lay down any general rule as to the nature of the evidence which is required to rebut the presumption of destruction: It depends to a considerable extent on the testator's property and his relations towards his family. Where the will makes a careful and detailed disposition of the testator's property, and nothing happens to

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testator himself had not revoked the lost or destroyed will, proof that would overcome the common-law presumption of revocation.' **We agree with this statement**." (citing *In re Fox' Will*, 9 N.Y.2d 400, 214 N.Y.S.2d 405, 411, 174 N.E.2d 499, 504 (1961) (emphasis added).)

[35] *See, e.g. In re Estate of Glover*, 744 S.W.2d 939 (Tex.1988) ("The court of appeals correctly held that the standard by which the sufficiency of the evidence should be reviewed is by a preponderance of the evidence."); In re Estate of Conley, 753 N.W.2d 384 (N.D. 2008) ("the party petitioning for the probate of a missing will must demonstrate, by a preponderance of the evidence, that the will existed at the time of the testator's death, that the will was fraudulently destroyed in the lifetime of the testator, or by other evidence demonstrating the testator did not intend to revoke the missing will.")

[36] *In re Estate of Crozier*, 232 N.W.2d 554, 559 (Iowa 1975) ("Defendants concede the presumption of revocation may be rebutted but insist in order to establish a lost will the presumption of revocation by decedent during his lifetime must be overcome by clear, satisfactory and convincing evidence."); *In re Estate of Mitchell*, 623 So.2d 274 (Miss. 1993) ("Our later cases say it may be overcome only by "clear and convincing" evidence that the testator did not destroy it or that, if he did, he did so accidentally or otherwise without intending revocation." (citing *Estate of Willis*, 207 So.2d 348, 349 (Miss. 1968); *James v. Barber*, 244 Miss. 234, 142 So.2d 21, 27 (1962) (but see *In re Estate of Leggett*, 584 So.2d 400, 403 (Miss. 1991), *infra* Footnote 35).

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> make it probable that he wishes to revoke it, the presumption raised by the disappearance of the will may be rebutted by slight evidence, especially if it is shown that the access to the box, or other place of deposit where the will was kept, could be obtained by persons whose interest it is to defeat the will.[37]

NRS 136.240 does not set a standard of proof for overcoming the presumption created by the lost will. When no standard is set in a civil matter, a preponderance of evidence is all that is required to rebut a presumption. *See* NRS 47.180(1) ("A presumption, other than a presumption against the accused in a criminal action, imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence."). The legislative history of NRS 136.240 supports this standard regarding the proof of lost wills with the amendment of the statute to add subsection 5(b) which states:

> Notwithstanding any provision of this section to the contrary: (b) if the proponent of a lost or destroyed will makes a prima facie showing that it was more likely than not left unrevoked by the person whose will it is claimed to be before his or her death, then the will must be admitted to probate in absence of an objection.

According to NRS 136.240, a proponent of a lost or destroyed will must make a showing that "it was more likely than not left unrevoked".

St. Jude Children's Research Hospital has met the burden of showing that the Decedent's will was more likely than not left unrevoked at the time of the Decedent's illness which led to the declaration of incapacity and the establishment of a guardianship. Specifically, the Decedent's wishes, expressed in his last will and reiterated to Kristin Tyler, that he wanted his entire estate to go to St. Jude Children's Research Hospital are supported by the testimony of his attorney assisting him at the time with making changes to his power of attorney and helping him find a paid caregiver to assist him with his daily living tasks. The Decedent's wishes are further supported by the testimony of Kathy Longo, the Decedent's stepdaughter who was assisting him at the time his capacity was diminished to the point of needing a guardianship.

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[37] *In re Estate of Leggett*, 584 So.2d 400, 403 (Miss. 1991).

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Kristin Tyler's testimony that the Decedent refused to locate his son or reach out to him during this time emphasizes the Decedent's continuing desire to not communicate or associate with his estranged son, whom he specifically disinherited in his will. As stated in *Leggett*, the Decedent's "will makes a careful and detailed disposition of the testator's property" and "his relations towards his family" make it extremely improbable that he would have revoked his will to entirely change his estate plan to pass his considerable property by intestate succession to the estranged, disinherited son. Additionally, Theodore E. Scheide, III has presented "nothing ...to make it probable that he wishes to revoke it."

In fact, St. Jude Children's Research Hospital has established that the Decedent confirmed his testamentary wishes to Kristin Tyler and Kathy Longo. It is more likely that the Decedent's last will was merely lost than that he intentionally revoked it knowing that such action would (1) defeat his intent to benefit St. Jude Children's Research Hospital, which was (a) the organization which he and Velma Shay agreed that they intended to benefit if something happened to both of them, and (b) the benefactor of his significant lifetime gifts prior to his death; and (2) leave his entire estate to his son from whom he was estranged for over 20 years, and had no desire to reach out to and find or notify when he was ill and discussing a guardianship.

Theodore E. Scheide, III dismissively refers to St. Jude Children's Research Hospital as merely a "contingent beneficiary". However, it was the Decedent's express testamentary wishes in the lost will that St. Jude Children's Research Hospital be the contingent beneficiary if his life partner, Velma Shay, were to predecease him, a fact that was a distinct possibility given her declining health at the time of the execution of the October 2012 will. The fact that the Decedent continued to give sizeable lifetime gifts to St. Jude Children's Research Hospital even at the end of 2013 only strengthens the facts that the Decedent never revoked his wishes to benefit St. Jude Children's Research Hospital with his estate prior to his death.

The presumption that the Decedent intentionally revoked his will by destroying it has been overcome by competent evidence and the testimony of his estate planning attorney, who met with and advised the Decedent on matters relating to his estate and other issues until and through the

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guardianship. Theodore E. Scheide, III has raised many hypotheticals about the Decedent hiring a different attorney, or a paralegal, or a shredding service, to destroy his will for him. However, nothing in the hypotheticals offered by Theodore E. Scheide, III has been supported by the facts or the evidence. Theodore E. Scheide, III merely rests on the presumption that St. Jude Children's Research Hospital has rebutted by the facts.

Theodore E. Scheide, III has no facts that overcome the evidence presented by St. Jude Children's Research Hospital to make the Decedent's will more likely to be revoked than not. Instead, Theodore E. Scheide, III hangs his entire case on whether or not the will was physically in existence, or whether it was seen by someone as of the time of the Decedent's death. This is a misstatement of the legal standard of proving a lost will. The only standard required by *Irvine* is that the proponent of a lost will prove that the Decedent's will was unrevoked at the death of the Decedent.[38] This standard would allow for a will to have been misplaced, lost or destroyed by accident and does not require anyone to prove that they had seen the physical will at the death of the Decedent. St. Jude Children's Research Hospital has met this standard.

Despite Theodore E. Scheide, III claiming otherwise, the presumption of revocation of a lost will is a rebuttable presumption.[39] Such presumption may be overcome by a preponderance of evidence[40] that the Decedent's will remained unrevoked at his death, regardless of whether a witness can "confirm that anyone actually, personally saw the original October 2012 Will after the day it was signed." *See* **Motion for Judgment on the Pleadings (NRCP 12(c))**, 18:18-19.

IV. Conclusion

While a lost or destroyed will creates the rebuttable presumption that the testator destroyed the will with the intent to revoke it, such presumption is rebuttable by a preponderance of evidence that the will was left unrevoked at the death of the Decedent. Such presumption does not require

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[38] *Estate of Irvine v. Doyle*, at 703, 1369.

[39] *Id.*

[40] NRS 47.180(1).

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proof that the will was physically in existence at the Decedent's death, but only requires proof of "legal existence", i.e. unrevoked. St. Jude Children's Research Hospital has presented evidence that the Decedent's wishes as expressed in his last will remained unrevoked at the time the guardianship was established. Theodore E. Scheide, III has not and cannot provide any facts sufficient to create a genuine issue of material fact to prevail on his Motion for Judgment on the Pleadings (NRCP 12(c)) and the Motion should be dismissed in its entirety.

Dated May 8, 2017.

HUTCHISON & STEFFEN

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, and that on this 8th day of May, 2017, I caused a true and correct copy of the above and foregoing **ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS (NRCP 12(c))** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;** and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorney(s) or parties listed below at the address and/or facsimile number indicated below:

Via E-Service
Kim Boyer, Esq.
Durham Jones & Pinegar
10785 W. Twain Ave., Ste. 200
Las Vegas, NV 89135
Attorney for the Administrator

Via E-Service
Cary Colt Payne, Esq.
700 S. 8th Street
Las Vegas, NV 89101
Attorney for Theodore "Chip" E. Scheide, III

An Employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
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1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 In the Matter of the Estate of)
)
)
5 THEODORE E. SCHEIDE, JR.,) CASE NO: P-14-082619-E
aka THEODORE ERNEST)
6 SCHEIDE, JR.,) DEPT NO: PCI
)
7 Deceased.)
)

8

9

10

11

12 DEPOSITION OF KRISTEN TYLER, ESQ.

13 LAS VEGAS, NEVADA

14 THURSDAY, FEBRUARY 16, 2017

15

16

17

18

19

20

21

22

23

24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 500366

Page 21

1 Q. He -- he called you, though, at the firm?
2 A. He called the law firm of Gordon Silver and asked
3 for estate planning.
4 Q. When was the first time you met or spoke with Mr.
5 Scheide?
6 MR. GEIST: And I'm going to refer to him as
7 Mr. Scheide with deference to your client who is on the
8 phone.
9 THE WITNESS: I believe it was sometime in
10 2012.
11 BY MR. GEIST:
12 Q. Was it in person? Was it on the phone?
13 A. I first spoke with him on the phone, and then I
14 recall it was an in-person meeting within a few days
15 thereafter.
16 Q. In person in your office?
17 A. No.
18 Q. Where did you meet with him in person the first
19 time?
20 A. At the time, he was in a rehab facility following
21 hospitalization for a leg problem of some sort, and so
22 he was at a rehab facility and asked to meet there.
23 Q. Was -- was Mr. Scheide looking to retain a
24 lawyer?
25 A. Yes.

Page 32

1 Q. That says -- your note says, "Velma diagnosed
2 Alzheimer's" -- looks like about -- "January 2012"; is
3 that correct?
4 A. That's what it says.
5 Q. Did you get that information from Mr. Scheide?
6 A. Yes.
7 Q. Skipping down about two-thirds of the way down,
8 there's a note that says "not married."
9 I'm assuming that refers to Mr. Scheide; is that
10 correct?
11 A. Correct.
12 Q. And then below that, could you read what that
13 says?
14 A. Below that --
15 Q. The line immediately below that.
16 A. It says, "Theo has a son, but they are
17 estranged."
18 Q. Did Mr. Scheide say they were estranged?
19 A. He did.
20 Q. Those were the words that he used?
21 A. Those were not the exact words he used. I don't
22 recall the exact words he used.
23 Q. But that was your understanding?
24 A. (Nods head.)
25 Q. Did he say what his relationship with his son

Page 33

1 was?
2 A. He said that he had not communicated with his son
3 in -- in over 20 years, and he --
4 Q. Did he --
5 A. It may have been 25 or 30. I can't remember the
6 number, but I know he said it was greater than 20 years.
7 Q. Did he tell you the circumstances of this
8 estrangement at all?
9 A. No.
10 Q. Then skip down about six lines where it says
11 "will."
12 A. Yes.
13 Q. Can you read what that says, "will" and then the
14 line below that?
15 A. It says that for the will he wanted to name the
16 beneficiary as Velma, meaning, or then St. Jude.
17 Q. Below that it says?
18 A. In regards to the executor of the will, it would
19 be first Karen or then the alternate Nevada State Bank.
20 Q. And then the last line on that page.
21 A. He instructed me that he wanted Karen to review
22 everything.
23 Q. Why did Mr. Scheide say he wanted Karen to review
24 everything?
25 A. I don't -- I don't recall.

Page 34

1 Q. Okay. He just said have her take a look at
2 everything?
3 A. Yes.
4 Q. He trusted her?
5 A. Yes.
6 Q. Okay. Why did Mr. Scheide say he wanted to leave
7 the estate to those beneficiaries listed?
8 MS. TURNER: I'm going to object to the
9 extent it calls for speculation.
10 MR. GEIST: Okay.
11 BY MR. GEIST:
12 Q. Did he tell you why he wanted to leave that --
13 that estate in that way?
14 A. He didn't have an express conversation about
15 that. No, I take that back. I remember him obviously
16 saying how much he cares about Velma and that was the
17 most important person in his life and that they had
18 agreement that they would leave their will to each other
19 to make sure that the other person was taken care of for
20 the rest of their life. And that they had agreed that
21 if something had happened to both of them, they wanted
22 to benefit St. Jude Children's Hospital because Mr.
23 Scheide said he thought it was a very worthwhile
24 organization to help kids.
25 Q. Velma wasn't a client of yours, was she?

Page 38

1 Q. On page 1 of this will, does Mr. Scheide have any
2 children listed?
3 A. He does.
4 Q. Who are his children?
5 A. Theodore E. Scheide, III.
6 Q. In this will does Mr. Scheide provide for his son
7 as a beneficiary?
8 A. He does not.
9 Q. Do you know why he did not?
10 A. He -- as I stated earlier, he had been estranged
11 from his son for a number of years.
12 Q. Flipping to page 3, which is article 3, can you
13 tell me what this article does?
14 A. Article 3 gives the beneficiaries of the will the
15 residuary estate, which in Theo's case meant the entire
16 estate because he had no specific requests.
17 Q. To whom did Mr. Scheide leave his residuary
18 estate?
19 A. He left it to Velma G. Shay, if she survived him,
20 and if not, to St. Jude Children's Hospital located in
21 Memphis, Tennessee.
22 Q. Do you know whom Mr. Scheide named as the
23 executor of his estate?
24 A. Yes.
25 Q. Whom did he name?

Page 49

1 A. It was signed by Mr. Scheide.
2 **Q. How do you know it was signed by him?**
3 A. I witnessed it.
4 **Q. Was it witnessed by anybody else?**
5 A. It was also witnessed by Diane DeWalt.
6 **Q. Back to page 1, which is page 246 on that.**
7 **Does it list any children?**
8 A. It states that Mr. Scheide has one child,
9 Theodore Scheide, III.
10 **Q. Does Mr. Scheide provide for his son as a**
11 **beneficiary in the estate?**
12 A. He does not.
13 **Q. Page 3 or 248 in that stack.**
14 **Whom does Mr. Scheide name as the residual**
15 **beneficiaries of the estate?**
16 A. Residual beneficiary is Velma G. Shay, if she
17 survives. If not, then to St. Jude Children's Hospital
18 located in Memphis, Tennessee.
19 **Q. Do you know why Mr. Scheide did not name his son**
20 **as the beneficiary at this time?**
21 A. He remained estranged from his son.
22 **Q. Down at the bottom, whom did Mr. Scheide name as**
23 **the executor of his estate?**
24 A. He names -- the executor is Patricia Bowlin or
25 then Nevada State Bank.

Page 53

1 Q. Do you know when the next time you spoke with Mr.
2 Scheide was?
3 A. I don't know.
4 Q. So going back to Exhibit -- let's see, which
5 exhibit is this? 2? Exhibit 2. Go to -- please turn
6 to 143.
7 Do you recognize this?
8 A. These look like my notes in my handwriting.
9 Q. What is {sic} the dates that are written on this?
10 A. The first one is June 12, 2013, and then June 14,
11 2013.
12 Q. Do you recall the circumstances that led you to
13 take these notes?
14 A. Theo called me and wanted to remove Patty Bowlin
15 as his power attorney.
16 Q. Your notes say "wants to 'kill Patty's POA.'"
17 A. Those were his words.
18 Q. Meaning he wanted to remove her authority as
19 power of attorney?
20 A. Correct.
21 Q. And the next line says, "Mail form to revoke to
22 Theo's address"?
23 A. Yes.
24 Q. Is that a note to him or is that a note to
25 yourself or is that something he told you?

Page 56

1 A. It says that I called Theo.
2 Q. They're not handwritten, but did you type this
3 contemporaneous to the call to Theo?
4 A. Yes.
5 Q. What was the reason for this call to Theo?
6 A. Looks like we covered a variety of issues in the
7 discussion.
8 Q. Okay.
9 A. It was mainly to check in on him and his
10 wellbeing.
11 Q. Was he living at home at the time? Do you
12 recall?
13 A. Based on the notes, it appears he was at Rock
14 Springs at the time.
15 Q. Do you know what Rock Springs is?
16 A. I believe it's another type of rehab facility.
17 Q. Two lines below that, you typed, "Not doing good
18 from physical health standpoint."
19 A. Correct.
20 Q. Was that what he relayed to you?
21 A. Yes.
22 Q. So he told you he's not doing good physically?
23 A. Correct. This was a phone call, so I couldn't
24 see him.
25 Q. Two lines below that, he says, "He wants all to

Page 57

1 go to St. Jude when he dies"; correct?
2 A. Correct.
3 Q. Did he tell you that's what he wanted?
4 A. Yes.
5 Q. Why did he not mention Velma at this point?
6 A. I don't know, but she may have, by this point,
7 passed away.
8 Q. I'm sorry. I want to go -- I want to go up one
9 line. "Get copies of discharge papers to give to their
10 attorney."
11 Do you recall what that refers to?
12 A. I don't recall.
13 Q. Going down to, "He did not find jewelry yet. No
14 objection to Dana and Duke going to Theo's house.
15 Welcome to come over and go to Theo's house and take
16 whatever they want."
17 Who are Dana and Duke?
18 A. Dana and Duke were family members of Velma. And
19 I am now remembering that, yes, at this point in time,
20 Velma had died. And Dana and Duke had been inquiring
21 from Theo about some jewelry and other items that were
22 Velma's family-type heirlooms that they wanted, and he
23 had given me permission to tell them that they could go
24 to the house and take whatever they wanted.
25 Q. So on Mr. Scheide's behalf, you had been -- or