

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL VALER COLEMAN AND
THE COLEMAN FAMILY
REVOCABLE LIVING TRUST,

Appellant,

vs.

TONYA COLLIER,

Respondent.

CASE NO. 76950
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Elizabeth A. Brown
Clerk of Supreme Court

Appeal

From the Eighth Judicial District Court
The Honorable Nancy L. Allf, District Judge

**APPELLANTS' REPLY TO RESPONDENTS ANSWERING OPENING
BRIEF**

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2 **I. REPLY**

3 Appellants is not surprised with the position that Respondent took in her
4 opposition as the entire basis seems to be that Chari *never* performed any
5 affirmative act to restore the Ex-Husband's statutorily revoked beneficial interest
6 despite being free to do so. This was never disputed by Appellant. What
7 respondent does not address is the fact that Chari had no legal knowledge and was
8 not aware of the fact that this act needed to be performed or the expertise to
9 exercise such. It was always Chari and Paul's understanding that he would inherit
10 the house upon her death.
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14 **II. STATEMENT OF ISSUES PRESENTED**

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16 1. Is NRS 111.781 overbroad and therefore unconstitutional in this case
17 since it resulted in depriving a surviving spouse, who had continued to
18 remain living together as husband and wife with his spouse, and who had
19 obtained their divorce for reasons other than to live apart, of the marital
20 residence that had been placed in their family trust and specifically
21 bequeathed to the surviving spouse?
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23 2. NRS 111.781 has no application because even assuming the Trust is set
24 aside, there would then be no basis for Collier, a secondary beneficiary,
25 to have rights to the Property or the Trust.
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III. STATEMENT OF FACTS

Chari Ann Colman ("Chari") and Paul Valer Colman ("Paul") created the Colman Family Trust ("Trust") while they were married, specifically on June 23, 2011. Prior to the marriage, Chari owned the real property located 5988 Turtle River Avenue, Las Vegas, NV ("Property") which became their marital residence, as her sole and separate property. On June 30, 2011, Chari transferred the Property via quitclaim to the Trust, naming her and Paul as primary beneficiaries of the Trust and the Grantors.

Pursuant to the Trust, Chari and Paul were the primary beneficiaries during their life. Tonya Collier, ("Tonya") was the couple's next-door neighbor and was listed as an alternate beneficiary of the Trust. Page 8, paragraph 5.2 states;

"Upon the death of the last Grantor of this Trust, the trust estate shall be distributed as follows, The Trustee shall distribute the real property located at 5988 Turtle River, Las Vegas, Nevada to Tonya Collier. The real property in South Dakota shall be sold to Robert Booth of Ridgeview, South Dakota and Daniel Booth Jr. of Timber Lake, South Dakota. The rest, residue and reminder of the estate shall be distributed to Jessica Diane Colman, pursuant to Article VI herein.

The Trust provides that the surviving spouse is the beneficiary of the assets of the Trust, including the Property. Chari and Paul at all times resided in the Property as their marital residence. Chari and Paul made all of the mortgage payments for the house, provided general upkeep, paid the taxes and treated the property as their marital residence.

1 Chari became very ill shortly after and was in need of medical coverage to
2 help pay for her medical treatment. Unable to qualify for medical assistance as a
3 married couple, Chari and Paul decided to obtain a divorce in order that Chari
4 would then qualify for the medical treatment she needed. This was sole reason
5 according to Paul for the divorce, as he and Chari continued to reside in the marital
6 residence after the divorce and after Chari qualified for the medical benefits as a
7 single person. See (Declaration of Paul Colman).
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10 On August 29, 2017, Chari and Paul filed a Joint Petition for Summary
11 Decree of Divorce ("Divorce"). The Divorce stated that there "is no community
12 property to divide" and that they have discloses all community assets and debts and
13 that there are no other community assets to divide. Chari and Paul had previously
14 quitclaimed the Property that they used as their marital residence into their Trust,
15 believing that it would survive the Divorce, unaware as laymen that a Nevada
16 statute passed by the legislature loomed out there that could their neighbor to take
17 title to the marital residence while Paul was still alive.
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21 As stated, the divorce the couple obtained was solely based on Chari trying
22 to ensure she had medical coverage to address her condition. Absolutely nothing
23 changed with respect to any other aspect of the Chari and Paul's lives after the
24 divorce. They continued to reside in the residence as husband and wife in the
25 common law sense. Paul paid for all of the bills he had paid prior and cared for
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1 Chari as his “wife” throughout her treatment. They both believed that the Divorce
2 had not changed their status as it related to the marital residence since they had
3 created a Trust to cover that asset.
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5 Unfortunately, Chari died suddenly on October 18, 2017 as a result of her
6 medical condition. See a copy of death certificate, attached to Collier’s Petition as
7 exhibit #4). Paul buried his wife and thereafter continued living in the Property
8 after she passed, taking care of all of the upkeep, taxes and bills associated with it
9 and continues to do so to date.
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12 Collier subsequently swooped in after Chari died, successfully using NRS
13 111.781 to wrest title from Paul of the Property based upon the fact that statute
14 allows for an individual to set aside a valid trust if the parties to the trust obtained a
15 divorce thereafter but continued to live together as they had prior. Collier filed her
16 Petition to Assume Jurisdiction of Trust, and for Confirmati0on of Beneficiary of
17 Real Property on November 13, 2107. Collier argued in her Petition that “Paul
18 understood the Real Property was not his, and once the Decree was filed, he began
19 the process of moving out of the Real Property. Unfortunately, Chari dies before
20 he completed his move.” See Collier Petition, p.3 llns. 19-22. However, this is
21 directly contrary to the facts as established by Paul in his Declaration as he never
22 began the process of moving out of the marital residence, and “understood the
23 Property was not his”.
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1 Paul always believed that the Property was his as a result of the Trust and
2 the fact he and Chari had always lived there as husband and wife, even after the
3 Divorce. Paul was never aware that a statute intended to avoid a spouse from
4 forgetting to remove their ex from a trust or insurance policy would be used
5 against him and Chari, to defeat the intent of both of them. There was no evidence
6 put forth that Paul ever began moving out of the residence or knew he was no
7 longer the owner. There was also no evidence that Collier ever contributed to the
8 expenses for the Property as Paul and Chari had, and as Paul did after Chari's
9 death. It would be a complete windfall for Collier to be awarded the Property, at
10 least during the life of Paul. There was no evidence that Chari knew, or would
11 expect that Paul, both before and after their divorce, would be kicked out of their
12 marital residence after she died by her neighbor simply because of a statute that
13 neither party would have been aware.

18 IV. LEGAL ARGUMENT

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20 A. THE DENIAL OF PETITIONER'S OBJECTION TO
21 CONFIRM HIM AS BENEIFCIARY OF REAL PROPERTY
22 WAS IMPROPER AS IT WAS BASED ON NRS 111.781,
23 WHICH IS OVERBROAD AND VAGUE IN ITS
24 APPLICATION, THUS PRODUCING AN
UNCONSTITUITONAL RESULT.

25 The Due Process Clauses of the United States and Nevada Constitutions
26 protect individuals from state actions that deprive them of life, liberty, or property
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1 without due process of law. U.S. Const. Amend XIV, sec. 1; Nev. Const. art. 1,
2 sec 8(5); see also Lugar v. Edmondson Oil Co., 457 U.S. 922, 936 (1982).

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4 NRS 111.781(1)(a)(1) states, in relevant part;

5 Except as otherwise provided by the express terms of a governing
6 instrument, a court order or a contract relating to the division of the
7 marital estate made between the divorced persons before or after the
8 marriage, divorce or annulment, the divorce or annulment of a
9 marriage, revokes any revocable disposition or appointment of
property made by a divorced person to his or her former spouse in a
governing instrument.

10 Whether or not a statute is overbroad depends upon the extent to which it
11 lends itself to improper application to protected conduct. *N.Nev. Co. Menicucci*,
12 96 Nev. 533, 536, 611 P.2d 1068, 1069 (1980). Specifically, the overbreadth
13 doctrine invalidates laws that infringe upon Constitutional rights. *Silvar v. Eighth*
14 *Judicial Dist. Court*, 122 Nev. 289, 297, 129 P.3d 682, 687 (2006). Nevada has
15 held that the overbreadth doctrine is strong medicine and that a statute should not
16 be void unless it is substantially overbroad in relation to the statutes plainly
17 legitimate sweep. *Id* at 298, 129 P.3d at 688

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19 Paul Valer Colman was married to Chari Colman on December 15, 2009.
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21 At that time, they decided to reside in Chari's house located at 5988 Turtle River
22 Avenue, Las Vegas, NV 89156, ("the Property"). Prior to and following the
23 marriage the Colman's, as a married couple, made all of the mortgage payments
24 for the house, provided general upkeep, paid the taxes and treated the property as
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1 their marital residence. See Petitioners Objection to Petition to Assume
2 Jurisdiction of Trust, exhibit #1. The couple never had any discussions between
3 them about Chari believing the property should be her sole and separate property
4 after the marriage. They treated the property much like any other couple would
5 when they get married and one spouse already has a personal residence, they
6 believed it was both of theirs. Id at p. #3.
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9 The Colman's both continued to maintain the property and later on June 23,
10 2011, Chari and Paul executed the Trust documents, in conjunction with their
11 respective wills and Powers of Attorneys. (See Objections, ex. 2, Paul Colman
12 Declaration, p 4) Because they treated the Property as their marital residence,
13 equally owned by them, the Colman's transferred the property into the Colman
14 Trust by Quitclaim Deed filed on June 30, 2011. Id at ex. 3, Colman Declaration
15 p. 5.
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19 The statute in question revokes a former spouse's rights to a beneficial
20 disposition made by the ex-spouse and was clearly intended to cure a situation
21 where after a divorce, when the parties actually separate their lives both financially
22 and physically, one forgets that their ex is still listed as a beneficiary under a life
23 insurance policy or trust. The legislative intent is filled with examples of a party
24 that years later learned that their ex was still listed as a beneficiary, in spite of the
25 fact that both sides had moved on from the marriage. The statute presumed that
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1 every divorce is sought for the purposes of ending a relationship in its entirety, and
2 that the ex-spouse would not want their ex to continue to be the beneficiary of real
3 property or other asset. This is a presumption that is not always true, as this case
4 illustrates.
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6 By simply relying on the Divorce alone, the lower court ignored the intent of
7 Chari, and Paul. In fact, their intent undermined. To the extent that Paul, though
8 his counsel at the hearing on the Petition failed to establish that he and Chari did
9 not intend to defeat the terms of the Trust and still lived together as if they were
10 married, Paul would ask this court to remand the matter for further proceedings to
11 establish facts to support Chari's intent. Paul's Declaration does attempt to
12 establish that he and Chari only obtained the divorce for financial reasons in an
13 effort to secure sufficient insurance coverage for Chari. There are no facts that
14 were established, other than the Divorce decree, to support the presumption that
15 Chari did not intend the Trust to be enforced and for Paul to continue to be able to
16 reside in the Property.
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21 In fact, after their marriage the Colman's both continued to maintain the
22 Property and on June 23, 2011, Chari and Paul executed the Trust documents, in
23 conjunction with their respective wills and Power of Attorney. They never altered
24 the Trust with respect to the Property, even after they obtained the divorce in 2017.
25 After the divorce they both continued to reside together in the Property as they had
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1 before, treating each other as husband and wife. Had Chari wanted to alter the
2 Trust directives that listed each of them as beneficiary with respect to the
3 residence, she could have included the Property in the divorce and demanded that
4 it return to her as her separate property. Clearly, she never did that, leaving the
5 Property out of the Divorce because she assumed it would go to Paul if she pre-
6 deceased him, because to assume she was aware of NRS 111.781 and its possible
7 effect on her Trust is highly unlikely given her layperson status.
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10 It is reasonable to assume that the Colman's did not include the Property as
11 an asset or community property because it had already been placed in the Trust.
12 Even though they were going to be legally divorced they still considered it
13 property of the Trust, which they both were Primary Beneficiaries of. (See
14 Colman Declaration). As Paul stated in his Declaration, it was their desire to have
15 the property remain in the Trust. This was done primarily because they did not
16 want to deal with the uncertainties in transferring the Property if something should
17 happen to them. Tragically, an event for which they had planned, but did not
18 anticipate coming so soon, occurred when Chari passed away on October 18, 2017.
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23 Collier and the lower court assumed that because the Property was formerly
24 separate property before it was transferred to the Trust, that NRS 111.781 dictates
25 it is again separate property. Though NRS 123.130 presumes that all property
26 brought into the marriage is separate property, that character can be lost. The
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1 Nevada Supreme Court has consistently held that conveying title to a spouse
2 creates a presumption of a gift;

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4 We have consistently held that a spouse to spouse conveyance of title
5 to real property creates a presumption of gift that can only be
6 overcome by clear and convincing evidence. *Graham v. Graham*,
7 104 Nev. 472, 760 P.2d 772 (1988); *Todkill v. Todkill*, 88 Nev. 231,
8 495 P.2d 629 (1972); *Peardon v. Peardon*, 65 Nev. 717, 201 P.2d 309
9 (1948).

10 In this case the transfer of Property to the Trust was unequivocal, and there
11 was no evidence to support that Chari intended for the property to be withdrawn
12 from the Trust, despite the divorce proceeding. The transfer of title to the Property
13 would have been a gift to Paul, which was held by the Trust. The only conclusive
14 evidence of Chari's intent were the Trust documents and the quitclaim deed of
15 property to the Trust, without any additional evidence, that would be considered
16 clear and convincing proof of her intent. Because the statute in question violated
17 the only clear evidence of Chari's intent with respect to the Property after her
18 death, and because NRS 111.781 was construed and applied in contradiction of
19 that intent, it must be found to be overbroad and unconstitutional.
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22 **B. NRS 111.781 HAS NO APPLICATION BECAUSE EVEN ASSUMING**
23 **THE TRUST IS SET ASIDE, THERE IS NO BASIS FOR COLLIER,**
24 **A SECONDARY BENEFICIARY, TO HAVE ANY RIGHTS TO**
25 **THE PROPERTY OR THE TRUST.**

26 By claiming that NRS 111.781 applies in this case, that contention likewise
27 should have destroyed any credible argument that she had an interest in the
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1 property because she is only associated with the property by being named a
2 secondary beneficiary if both Paul and Cheri die. If Collier claims that NRS
3 111.781 has any effect, such contention likewise destroys any credible argument
4 that she had an interest in the Property because she is only associated with the
5 property by the Trust.
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8 Prior to NRS 111.781 passage in 2011, it was held that a party had to
9 specifically revoke a specific transfer of property within the divorce decree and
10 general statements were not sufficient:
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12 Prior to the 2011 enactments of NRS 111.781, this Court held that only
13 explicit language in a divorce decree ...divested a former spouse of his or
14 her rights as designated beneficiary. “ *Redd. V. Brooke*, 96 Nev. 9, 12, 604
15 P.2d 360, 362 (1980)(evaluating whether a divorce decree divested a
16 designated beneficiary of a life insurance policy). As such, “general
17 expressions or clauses in [the divorce decree] were not construed as
18 including an assignment or renunciation of expectancies.” *Id.* At 11, 604
19 P.2d at 361;

20 *Stanford v. Browne*, 402 P.3d 1253 (Nev. 2017).

21 This followed Nevada Court’s well-founded rule that “this Court should
22 require explicit language in divorce decrees to divest a former spouse of his or her
23 rights as designated beneficiary .” *Redd v. Brooke*, 96 Nev. 9, 11-12, 604 P.2d
24 360, 362 (1980). As such, without any specific and explicit language in the
25 Colman divorce decree, Paul was not divested of his rights to the Property as
26 outlined in the Trust. Therefore, Collier was forced to rely on NRS 111.781.
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1 NRS 111.781 does not aid Collier's argument that she was entitled to relief
2 for her Petition because it eliminated the Trust. If it is argued that the statute
3 eliminates the terms and conditions in the Trust which gave Paul his property
4 rights to the Property, then it also eliminated any rights that Collier would have
5 had. Therefore, the lower court should have looked to the divorce decree to
6 determine if it that explicitly eliminated Paul's rights to the Property. Even
7 assuming that the Trust is unwound, negating the implication of NRS 111.781 for
8 both parties, Collier cannot prove that the Decree of divorce specifically removed
9 the property from the Trust or rightful ownership of Paul. As described above,
10 Nevada has long considered the explicit language is required to remove property
11 from the former spouse, which closes her argument. See *Stanford v. Browne*, 402
12 P.3d 1253 Nev. At 11-12. Collier is trying to take advantage of the unfortunate
13 situation in that the Colman's were unaware that the statute in question existed.
14 Even though she is not a primary beneficiary under the Trust that she claims has no
15 effect as a result of NRS 111. 781, she attempts to assert her rights under the same
16 Trust. If the Trust is invalid as to Paul, it should also be invalid as to her.
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22 The text of the Trust provides that Collier is only a beneficiary if and when
23 both Chari and Paul are deceased. Section 5.2 states as follows;
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25 5.2 Distribution of Assets Upon Death of Grantors
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1 Upon the death of the last Grantor [Chari Colman and Paul Colman] of this
2 Trust, the trust estate shall be distributed as follows; The Trustee shall
3 distributed the real property located at 5988 Turtle River, Las Vegas,
4 Nevada, to TONYA COLLIER.....

5 Collier's filing of *a lis pendens* for property in which she was not a
6 beneficiary of at the time was premature. Pursuant to section 5 .2 of the Trust, Mr.
7 Colman has a lifelong interest in the Property. Collier had no beneficiary status or
8 any rightful claim to the Property until Paul's demise, and her Petition should have
9 been dismissed and/or Colman's Objections should have been sustained. Collier
10 had no standing to bring the Petition before Paul's demise because she had no legal
11 interest in the Trust if as he argued that NRS 111.781 invalidated the Trust. If the
12 Trust is valid in spite of the statute, then her interests under the trust only comes to
13 fruition if Paul also dies, and her general interest is not enough to prove standing.
14 See *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73, 382 P.3d 886, 894 (2016)("To have
15 standing, the party seeking relief must have a sufficient interest in the litigation so
16 as to ensure the litigant will vigorously and effectively present his or her case
17 against an adverse party"). The party must show a personal injury, not just a
18 general interest. Id.
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23 As stated, Collier never put any money into the property, and still hasn't.
24 There was no evidence that Chari wanted her to have a legal interest in the
25 Property before her and Paul deceased. She will not suffer a personal injury from
26 this case if denied the property before Paul dies, she has no tie to the Property other
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1 than being Chari's neighbor; The property to her is only a windfall, one
2 undeserved and unearned.
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4 It is not in dispute that NRS 111.781 was construed and applied so as to
5 defeat the purpose of the Colman Family Trust to the extent it had clearly
6 bequeathed the Property to Paul. Since the only standing that Collier had to seek
7 title to the Property was that of her inclusion as a secondary beneficiary of the
8 Trust, and the Trust was displaced by the statute, then Collier's rights under the
9 Trust should have also been revoked.
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12 **CERTIFICATE OF SERVICE**

13
14 Pursuant to NRAP 25(c)(1), I hereby certify that on this 2nd day of July,
15 2019, service of the foregoing **APPELLANTS' REPLY TO RESPONDENTS**
16 **OPENING BRIEF** was made by submission to the electronic filing service for
17 the Nevada Supreme Court upon all registered users to the email addresses on file:
18
19

20 /s/ Eric Tucker
21 An employee of TCM Law

22 **CERTIFICATE OF COMPLIANCE**

23 Pursuant to NRAP 32(a)(9), I hereby certify that this reply complies with
24 the typeface and type style requirements of Rule 32(a)(4)-(6), by using 14 point
25 Times New Roman style font, and the 15 page limit for the Brief
26

27 /s/ Thomas C. Michaelides, Esq.
28