

1 NOAS
2 GWEN RUTAR MULLINS, ESQ.
3 Nevada Bar No. 3146
4 THOMAS W. DAVIS II, ESQ.
5 Nevada Bar No. 2531
6 **HOWARD & HOWARD ATTORNEYS PLLC**
7 3800 Howard Hughes Pkwy., Ste. 1000
8 Las Vegas, Nevada 89169
9 Telephone: (702) 257-1483
10 Facsimile: (702) 567-1568
11 Email Address: grm@h2law.com
12 *Attorneys for Brian Holiday*

Electronically Filed
Jan 24 2019 09:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of
ELLA E. HORST REVOCABLE TRUST,
u/a/d 05/21/1991

CASE NO.: P-18-095314-T

DEPARTMENT 26

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that BRIAN HOLIDAY, by and through his attorneys
Gwen Rutar Mullins, Esq. and Thomas W. Davis II, Esq. of the law firm of HOWARD &
HOWARD ATTORNEYS PLLC, hereby appeals to the SUPREME COURT OF NEVADA
from the Order Granting Petition to Confirm Trust filed in this action on December 26, 2018.

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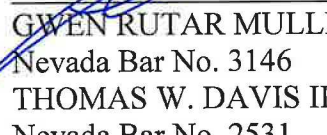
///

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 fax

1 A Notice of Entry of Order Granting Petition to Confirm Trust was entered and served
2 electronically via the Court's ECF system on December 27, 2018. An Amended Notice of
3 Entry of Order Granting Petition to Confirm Trust was e-served via the Court's ECF system
4 on January 9, 2019.
5

6 DATED this 14th day of January, 2019.

7 **HOWARD & HOWARD ATTORNEYS PLLC**

8
9
10 
11 GWEN RUTAR MULLINS, ESQ.
12 Nevada Bar No. 3146
13 THOMAS W. DAVIS II, ESQ.
14 Nevada Bar No. 2531
15 3800 Howard Hughes Pkwy., Ste. 1000
16 Las Vegas, NV 89169
17 Attorneys for Brian Holiday

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 15th day of January, 2019, I served a true and correct copy
20 of the foregoing NOTICE OF APPEAL by placing the above referenced document in the US
21 Mail first class, postage prepaid, addressed to the following:

22 Kirk D. Kaplan, Esq.
23 Crest Key, Prof., L.L.C.
24 6980 O'Bannon Drive, Ste. 100
Las Vegas, NV 89117
Attorneys for Petitioner Patricia L. Horst

William "Bill" R. Horst
7475 W. Rosada Way
Las Vegas, NV 89149

25 Blaine Holiday
26 1747 Orchard Drive
27 Woodbury, MN 55125

Kent Holiday
2402 Cedar Court
Cody, WY 82414

28 Dawn Holiday Blanchard
3247 E. 81st N.
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Kristi Horst
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1 Jill Holiday Linford
2 1298 Eastridge Circle
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7 Gail Holiday Herr
8 10630 E. Realgar Place
9 Tucson, AZ 85747

Steven Holiday
602 N. Beaufort Avenue, Unit B
Lubbock, TX 79416

10 Nathan Holiday
11 45 Radiance Lane
12 Las Flores, CA 92688

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

15 I further certify that on the 15th day of January, 2019, I also served a true and correct
16 copy of the foregoing NOTICE OF APPEAL electronically via the Court's ECF system on the
17 following parties and/or counsel listed on the electronic service list:

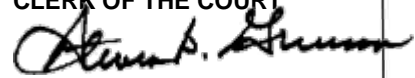
18 *Attorneys for Patricia L. Horst, Trustee of Ella E. Horst:*

19 Kirk Kaplan (kirk@crestkey.com)
20 Jason Sadow (jason@crestkey.com)
21 Melissa Valenzuela (melissa@crestkey.com)

22 

23 Amy Galenski, an Employee of
24 HOWARD & HOWARD ATTORNEYS PLLC

25 4843-1975-0276, v. 1
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27
28



ASTA
GWEN RUTAR MULLINS, ESQ.
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Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email Address: grm@h2law.com
Attorneys for Brian Holiday

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Estate of
ELLA E. HIRST REVOCABLE TRUST,
u/a/d 05/21/1991

CASE NO.: P-18-095314-T

DEPARTMENT 26

CASE APPEAL STATEMENT

BRIAN HOLIDAY ("Brian"), by and through his attorneys Gwen Rutar Mullins, Esq. and Thomas W. Davis II, Esq. of the law firm of HOWARD & HOWARD ATTORNEYS PLLC, hereby submits the Case Appeal Statement for his appeal from the Order Granting Petition to Confirm Trust ("Order") filed on December 26, 2018 and entered on December 27, 2018, and served thereafter electronically via the Court's ECF system in the above-mentioned matter and states as follows:

1. **Name of Appellant filing this Case Appeal Statement:** Brian Holiday.

1 2. **Identify the Judge Issuing the Decision, Judgment or Order Appealed**
2 **From:** Honorable Judge Gloria Sturman of the Eighth Judicial District Court in Clark
3 County, Nevada, issued the Order from which this appeal is taken.
4

5 3. **Identify each Appellant and the name and address of counsel for each**
6 **Appellant:**

7 Brian Holiday, Appellant
8 Gwen Rutar Mullins, Esq.
9 Thomas W. Davis II, Esq.
10 Howard & Howard Attorneys PLLC
11 3800 Howard Hughes Pkwy., Ste. 1000
12 Las Vegas, Nevada 89169

13 4. **Identify each Respondent and the name and address of Appellate counsel,**
14 **if known, for each Respondent (if the name of Respondent's Appellate counsel is**
15 **unknown, indicated as much and provide the name and address of that Respondent's**
16 **trial counsel.)**

17 Appellate Counsel is unknown but the counsel representing Respondent before the
18 district court is as follows:

19 Patricia L. Horst, Trustee of the
20 Ella E. Horst Revocable Trust u/a/d 05/21/1991, Respondent
21 Kirk D. Kaplan, Esq.
22 6980 O'Bannon Drive, Ste. 100
23 Las Vegas, Nevada 89117

24 Ella E. Horst Revocable Trust u/a/d 05/21/1991, Respondent
25 Kirk D. Kaplan, Esq.
26 6980 O'Bannon Drive, Ste. 100
27 Las Vegas, Nevada 89117

28 5. **Indicate whether any attorney identified above in Response to Question 3**
or 4 is not licensed to practice law in Nevada, and if so, whether the district court
granted that attorney permission to appear under SCR 42 (attach a copy of any district

1 **court order granting such permission):** All attorneys are licensed to practice law in
2 Nevada.

3 6. **Indicate whether Appellant was represented by appointed or retained**
4 **counsel in the district court:** Appellants were represented by retained counsel in district
5 court.
6

7 7. **Indicate whether Appellant was represented by appointed or retained**
8 **counsel on appeal:** Appellants are represented by retained counsel on appeal.

9 8. **Indicate whether Appellant was granted leave to proceed in *forma***
10 ***pauperis*, and the date of entry of the district court order granting such leave:** Appellants
11 were not granted leave to proceed in *forma pauperis*.
12

13 9. **Indicate the date the proceedings commenced in district court (*e.g.*, date**
14 **complaint, indictment, information, or petition was filed):** Petition to Assume *In Rem*
15 Jurisdiction over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petition for
16 Instructions; and Petition for Removal of *In Rem* Jurisdiction over Trust was filed on May 9,
17 2018.
18

19 10. **Provide a brief description of the nature of the action and result in the**
20 **district court, including the type of judgment or order being appealed and the relief**
21 **granted by the district court:** This is a trust action. During her lifetime, Ella E. Horst
22 (“Ella”) created a revocable trust, namely Ella E. Horst Revocable Trust u/a/h 05/21/1991
23 (“Trust”). Ella died on October 26, 2016. Upon her death, Patricia L. Horst (“Patricia”)
24 became the Successor Trustee of the Trust and has been administering the Trust since October
25 26, 2016. On January 27, 2017, Patricia provided Notice to Beneficiaries, Heirs and Interested
26 Persons of Irrevocable Trust pursuant to NRS 164.021 (“Notice to Beneficiaries”) and
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28

1 included represented that the Trust consisted of the initial trust dated May 21, 1991, the First
2 Amendment to the Trust dated March 6, 1998, Second Amendment to the Trust dated March
3 16, 2004 and Third Amendment to the Trust dated September 26, 2005. More than a year
4 after the Notice to Beneficiaries was served, Patricia, on May 9, 2018, filed a Petition to
5 Assume *In Rem* Jurisdiction over Trust; Petition to Confirm Trust; Petition to Confirm
6 Trustee; Petition for Instructions; and Petition for Removal of *In Rem* Jurisdiction over Trust
7 (“Patricia’s Petition”). Among other things, Patricia’s Petition sought to have a handwritten
8 note confirmed as the “Fourth” Amendment to the Trust. Brian filed his objection to Patricia’s
9 Petition and a counter-petition to remove Patricia as Successor Trustee, compel accounting
10 and impose personal liability under NRS 165.138 and for instructions. Among other things,
11 Brian’s counter-petition questioned Patricia’s administration of the Trust, alleged that undue
12 influence was exerted relative the execution of the handwritten note which Patricia asserts is
13 an amendment to the Trust, as well as the Second and Third Amendment to the Trust, and that
14 undue influence and/or fraud may have played a part in the alleged significant depletion of
15 Ella’s Trust. The district court entered an order confirming the initial trust and the three
16 amendments to the Trust and finding that the challenge of the Second and Third Amendment
17 to the Trust was barred pursuant to NRS 164.021. The district court’s order is an appealable
18 order pursuant to NRS 164.030(4).

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23 11. **Indicate whether the case has previously been the subject of an appeal to**
24 **or original writ proceeding in the Supreme Court and, if so, the caption and Supreme**
25 **Court docket number of the prior proceedings:** This case has not previously been the
26 subject of an appeal or original writ proceeding.
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12. **Indicate whether this appeal involves child custody or visitation.** This case does not involve child custody or visitation.

13. **If this is a civil case, indicate whether this appeal involves the possibility of settlement:** At this time, it is unknown whether settlement is a possibility in this case.

DATED this 14th day of January, 2019.

HOWARD & HOWARD ATTORNEYS PLLC



GWEN RUTAR MULLINS, ESQ.

Nevada Bar No. 3146

THOMAS W. DAVIS II, ESQ.

Nevada Bar No. 2531

3800 Howard Hughes Pkwy., Ste. 1000

Las Vegas, NV 89169

Attorneys for Brian Holiday

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 2019, I served a true and correct copy of the foregoing CASE APPEAL STATEMENT by placing the above referenced document in the US Mail first class, postage prepaid, addressed to the following:

Kirk D. Kaplan, Esq.
Crest Key, Prof., L.L.C.
6980 O'Bannon Drive, Ste. 100
Las Vegas, NV 89117
Attorneys for Petitioner Patricia L. Horst

William "Bill" R. Horst
7475 W. Rosada Way
Las Vegas, NV 89149

Blaine Holiday
1747 Orchard Drive
Woodbury, MN 55125

Kent Holiday
2402 Cedar Court
Cody, WY 82414

Dawn Holiday Blanchard
3247 E. 81st N.
Idaho Falls, ID 83401

Kristi Horst
1000 S. Williams St. #35
Westmont, IL 60559

Jill Holiday Linford
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Logan, UT 84321

Craig Holiday
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Robert Holiday
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10630 E. Realgar Place
Tucson, AZ 85747

Steven Holiday
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Lubbock, TX 79416

Nathan Holiday
45 Radiance Lane
Las Flores, CA 92688

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

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I further certify that on the 15th day of January, 2019, I also served a true and correct copy of the foregoing CASE APPEAL STATEMENT electronically via the Court's ECF system on the following parties and/or counsel listed on the electronic service list:

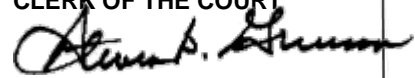
Attorneys for Patricia L. Horst, Trustee of Ella E. Horst:

Kirk Kaplan (kirk@crestkey.com)
Jason Sadow (jason@crestkey.com)
Melissa Valenzuela (melissa@crestkey.com)



Amy Galenski, an Employee of
HOWARD & HOWARD ATTORNEYS PLLC

4847-6677-1588, v. 2



1 **NPP**
2 GWEN RUTAR MULLINS, ESQ.
3 Nevada Bar No. 3146
4 THOMAS W. DAVIS II, ESQ.
5 Nevada Bar No. 2531
6 **HOWARD & HOWARD ATTORNEYS PLLC**
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8 Las Vegas, Nevada 89169
9 Telephone: (702) 257-1483
10 Facsimile: (702) 567-1568
11 Email Address: grm@h2law.com
12 *Attorneys for Brian Holiday*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 In the Matter of the Estate of
16 ELLA E. HORST REVOCABLE TRUST,
17 u/a/d 05/21/1991

CASE NO.: P-18-095314-T

DEPARTMENT 26

18 **NOTICE OF POSTING BOND FOR COSTS ON APPEAL**

19 **Date: N/A**

20 **Time: N/A**

21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

22 PLEASE TAKE NOTICE that BRIAN HOLIDAY, by and through his attorneys,
23 Gwen Rutar Mullins Esq. and Thomas W. Davis II, Esq. of the law firm of HOWARD &
24 HOWARD ATTORNEYS PLLC has posted a cash bond (Receipt No. 2019-03003-CCCLK)
25 in the amount of \$500.00 for costs on appeal pursuant to N.R.A.P. 7. A copy of the Receipt of
26
27
28

1 deposit of the cash bond for costs of appeal is attached hereto as Exhibit 1 and incorporated
2 herein by this reference.

3 DATED this 15 day of January, 2019.

4 **HOWARD & HOWARD ATTORNEYS PLLC**

5
6
7 
8 GWEN RUTAR MULLINS, ESQ.

9 Nevada Bar No. 3146

10 THOMAS W. DAVIS II, ESQ.

11 Nevada Bar No. 2531

12 3800 Howard Hughes Pkwy., Ste. 1000

13 Las Vegas, NV 89169

14 Attorneys for Brian Holiday

15 **CERTIFICATE OF SERVICE**

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17 of the foregoing NOTICE OF POSTING BOND FOR COSTS ON APPEAL by placing the
18 above referenced document in the US Mail first class, postage prepaid, addressed to the
19 following:

20 Kirk D. Kaplan, Esq.
21 Crest Key, Prof., L.L.C.
22 6980 O'Bannon Drive, Ste. 100
23 Las Vegas, NV 89117
Attorneys for Petitioner Patricia L. Horst

William "Bill" R. Horst
7475 W. Rosada Way
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45 Radiance Lane
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and that there is regular communication by mail between the place of mailing and the places so addressed.

I further certify that on the 15th day of January, 2019, I also served a true and correct copy of the foregoing NOTICE OF POSTING BOND FOR COSTS ON APPEAL electronically via the Court's ECF system on the following parties and/or counsel listed on the electronic service list:

Attorneys for Patricia L. Horst, Trustee of Ella E. Horst:

Kirk Kaplan (kirk@crestkey.com)
Jason Sadow (jason@crestkey.com)
Melissa Valenzuela (melissa@crestkey.com)


Amy Galenski, an Employee of
HOWARD & HOWARD ATTORNEYS PLLC

4827-1103-8084, v. 2

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
Howard & Howard Attorneys PLLC

Receipt No.
2019-03003-CCCLK

Transaction Date
01/15/2019

Description	Amount Paid
-------------	-------------

On Behalf Of Holiday, Brian
P-18-095314-T
In the Matter of the Trust of: Ella E. Horst Revocable Trust u/a/d 05/21/1991
Registry and Trust Account-Probate
Probate Trust Deposit
SUBTOTAL

500.00
500.00

PAYMENT TOTAL **500.00**

Check (Ref #8020) Tendered 500.00
Total Tendered 500.00
Change 0.00

01/15/2019
12:40 PM

Cashier
Station RJCC1





Audit
36350722

OFFICIAL RECEIPT

CASE SUMMARY**CASE NO. P-18-095314-T****In the Matter of the Trust of:
Ella E. Horst Revocable Trust u/a/d 05/21/1991**§
§
§
§
§Location: **Family Domestic**
Judicial Officer: **Judge Sturman, Probate**
Filed on: **05/09/2018**
Cross-Reference Case Number: **P095314****CASE INFORMATION**Case Type: **Probate -
Trust/Conservatorships**
Subtype: **Individual Trustee**
Case Flags: **Appealed to Supreme Court****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number: P-18-095314-T
Court: Family Domestic
Date Assigned: 05/09/2018
Judicial Officer: Judge Sturman, Probate**PARTY INFORMATION**










		<i>Lead Attorneys</i>
Petitioner	Horst, Patricia L.	Kaplan, Kirk D <i>Retained</i> 702-202-4153(W)
Trustee	Horst, Patricia L.	Kaplan, Kirk D <i>Retained</i> 702-202-4153(W)
Trust	Ella E. Horst Revocable Trust u/a/d 05/21/1991	Kaplan, Kirk D <i>Retained</i> 702-202-4153(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**


05/09/2018	 Petition to Assume Jurisdiction of Trust Filed by: Trustee Horst, Patricia L. <i>Petition to Assume In Rem Jurisdiction Over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust</i>
05/09/2018	 Initial Appearance Fee Disclosure Filed by: Trustee Horst, Patricia L. <i>Initial Appearance Fee Disclosure</i>
05/09/2018	 Notice of Hearing Filed by: Trustee Horst, Patricia L. <i>Notice of Hearing</i>
05/10/2018	 Certificate of Mailing Filed by: Trustee Horst, Patricia L. <i>Certificate of Mailing</i>

CASE SUMMARY



CASE NO. P-18-095314-T

05/22/2018	 Notice of Hearing Filed by: Other Holiday, Brian <i>Notice of Appearance and Request Pursuant to E.D.C.R. 4.08 to Have the Matter Heard Before a Probate Judge</i>
05/31/2018	 Order <i>Order Scheduling Status Check</i>
07/16/2018	 Affidavit of Mailing Filed by: Other Holiday, Brian <i>Affidavit of Mailing of (a) Notice of Hearing on Brian Holiday's Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) For Instructions; and (b) Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions and Petition for Removal of in Rem Jurisdiction Over Trust and Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) For Instructions</i>
07/16/2018	 Objection Filed by: Other Holiday, Brian <i>Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions, and Petition for Removal of In Rem Jurisdiction Over Trust and Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) For Instructions</i>
07/17/2018	 Initial Appearance Fee Disclosure Filed by: Other Holiday, Brian <i>Brian Holiday's Initial Appearance Fee Disclsoure</i>
07/18/2018	 Notice of Hearing Filed by: Other Holiday, Brian <i>Notice of Hearing on Brian Holiday's Counter-Petition to (1) Removie Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions</i>
08/02/2018	 Stipulation and Order Filed by: Trustee Horst, Patricia L.; Trust Ella E. Horst Revocable Trust u/a/d 05/21/1991 <i>Stipulation and Order to Continue Hearing</i>
08/10/2018	 Response Filed by: Trustee Horst, Patricia L. <i>Response to Brian Holiday's Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions, and Petition for Removal of in Rem Jurisdiction Over Trust and Objection to Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions</i>
08/31/2018	 Reply Filed by: Other Holiday, Brian <i>Reply in Support of Brian Holiday's Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) For Instructions</i>
09/24/2018	 Recorders Transcript of Hearing Party: Other Holiday, Brian <i>Recorder's Transcript of Petition Opposition & Countermotion: Opposition to Horst's Petition; Counter-Petition</i>

CASE SUMMARY
CASE NO. P-18-095314-T

10/05/2018	 Order <i>Order Scheduling Status Check</i>
10/17/2018	 Order Filed by: Other Holiday, Brian <i>Order on Patricia A. Horst's Petition, Opposition to Patricia A. Horst's Petition and Counter-Petition</i>
10/18/2018	 Notice of Entry Filed by: Other Holiday, Brian <i>Notice of Entry of Order on Patricia A. Horst's Petition, Opposition to Patricia A. Horst's Petition and Counter-Petition</i>
11/08/2018	 Recorders Transcript of Hearing Party: Other Holiday, Brian <i>Recorder's Transcript of Proceedings, Status Check: Discovery Conference, Wednesday, October 17, 2018:</i>
11/27/2018	 Joint Case Conference Report Filed by: Other Holiday, Brian <i>Joint Case Conference Report</i>
12/26/2018	 Order <i>Order Granting Petition to Confirm Trust</i>
12/27/2018	 Notice of Entry of Order <i>Notice of Entry of Order</i>
01/09/2019	 Amended <i>Amended Notice of Entry of Order</i>
01/15/2019	 Notice of Appeal Filed by: Other Holiday, Brian <i>Notice of Appeal</i>
01/15/2019	 Case Appeal Statement Filed by: Other Holiday, Brian <i>Case Appeal Statement</i>
01/15/2019	 Notice of Posting Bond Filed By: Other Holiday, Brian <i>Notice of Posting Bond for Costs on Appeal</i>



HEARINGS

05/25/2018	 Petition - HM (9:30 AM) (Hearing Master: Yamashita, Wesley) <i>Petition to Assume In Rem Jurisdiction Over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust</i>
06/14/2018	 Status Check (9:30 AM) (Judicial Officer: Sturman, Gloria)
09/13/2018	Petition (9:30 AM) (Judicial Officer: Sturman, Gloria)

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. P-18-095314-T

09/13/2018	Opposition & Countermotion (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Opposition to Horst's Petition; Counter-Petition</i>
09/13/2018	 All Pending Motions (9:30 AM) (Judicial Officer: Sturman, Gloria)
10/17/2018	 Status Check (10:30 AM) (Judicial Officer: Sturman, Gloria) <i>Discovery Conference</i>

DATE	FINANCIAL INFORMATION
	Other Holiday, Brian Total Charges 500.00 Total Payments and Credits 500.00 Balance Due as of 1/17/2019 0.00
	Trustee Horst, Patricia L. Total Charges 537.50 Total Payments and Credits 537.50 Balance Due as of 1/17/2019 0.00
	Other Holiday, Brian Registry and Trust Account-Probate Balance as of 1/17/2019 500.00

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
FAMILY COURT COVER SHEET**

P-18-095314-T

Clark District Family Domestic

CASE NO. _____ (To be assigned by the Clerk's Office)

Do you or any other party in this case (including any minor child) have any other current case(s) or past case(s) in the Family Court or Juvenile Court in Clark County?

☐ YES ☐ NO

If yes, complete the other side of this form

PARTY INFORMATION (Please Print)

Plaintiff/Petitioner		Defendant/Respondent/Co-Petitioner/Ward/Decedent	
Last Name: Horst		Last Name: Horst	
First Name: Patricia	Middle Name: L.	First Name: Ella	Middle Name: E.
Home Address: 7475 W. Rosada Way		Home Address: 7475 W. Rosada Way	
City, State, Zip: Las Vegas, NV 89149		City, State, Zip: Las Vegas, NV 89149	
Mailing Address:		Mailing Address:	
City, State, Zip:		City, State, Zip:	
Phone #: (702) 336-5633	Date of Birth:	Phone #:	Date of Birth:
Attorney Information		Attorney Information	
Name: Kirk D. Kaplan	Bar No. 5685	Name:	Bar No:
Address: 6980 O'Bannon Drive, Suite 100		Address:	
City, State, Zip: Las Vegas, Nevada 89117		City, State, Zip:	
Phone #: (702) 202-4153		Phone #:	

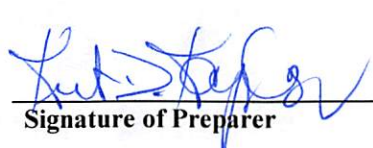
(Check one box only for the type of case being filed with this cover sheet)

DOMESTIC	MISC. DOMESTIC RELATIONS PETITIONS	GUARDIANSHIP	PROBATE
Marriage Dissolution <input type="checkbox"/> Annulment <input type="checkbox"/> Divorce –No minor child(ren) <input type="checkbox"/> Divorce –With minor child(ren) <input type="checkbox"/> Foreign Decree <input type="checkbox"/> Joint Petition –No minor child(ren) <input type="checkbox"/> Joint Petition – With minor child(ren) <input type="checkbox"/> Separate Maintenance	<input type="checkbox"/> Adoption –Minor <input type="checkbox"/> Adoption –Adult <input type="checkbox"/> Mental Health <input type="checkbox"/> Name Change <input type="checkbox"/> Paternity <input type="checkbox"/> Permission to Marry <input type="checkbox"/> Temporary Protective Order (TPO) <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Child Support/Custody <input type="checkbox"/> Other (identify) _____	Guardianship of an Adult <input type="checkbox"/> Person <input type="checkbox"/> Estate <input type="checkbox"/> Person and Estate Guardianship of a Minor <input type="checkbox"/> Person <input type="checkbox"/> Estate <input type="checkbox"/> Person and Estate <input type="checkbox"/> Guardianship Trust	<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input checked="" type="checkbox"/> Trust/Conservatorships <input checked="" type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate
MISC. JUVENILE PETITIONS		DA CHILD SUPPORT PETITIONS	
<input type="checkbox"/> Emancipation	<input type="checkbox"/> DA – UIFSA <input type="checkbox"/> DA - Child Support In State		

List children involved in this case (If more than 3 children, please enter the information on the reverse side)

Last Name	First Name	Middle Name	Date of Birth	Relationship
1.				
2.				
3.				

Kirk D. Kaplan, Esq.
Printed Name of Preparer


Signature of Preparer

May 7, 2018
Date

Revised 04/21/09
Nevada AOC – Research & Statistics Unit
Pursuant to NRS 3.275

Supply the following information about any other proceeding (check all that apply):

- ☐ Divorce ☐ Temporary Protective Orders (TPO) ☐ Custody/Child Support
☐ UIFSA/URESA ☐ Paternity ☐ Juvenile Court ☐ Other

Please Print

List full name of all adult parties involved			Case number of other proceeding(s)	Approximate date of last order in other proceeding(s)
Last Name	First Name	Middle Name		
1.				
2.				
3.				
4.				

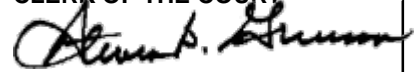
If children were involved (other than those listed on front page), please provide:

Last Name	First Name	Middle Name	Date of Birth	Relationship
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

Children involved in this case (continuation from front page)

Last Name	First Name	Middle Name	Date of Birth	Relationship
4.				
5.				
6.				
7.				
8.				

**THIS INFORMATION IS REQUIRED BY
NRS 3.025, NRS 3.223, NRS 3.227, NRS 3.275,
NRS 125.130, NRS 125.230,
And will be kept in a confidential manner by the Clerk's Office.**



ORDR

Kirk D. Kaplan, Esq.
Nevada Bar No.: 005685
Jason M. Sadow
Nevada Bar No.: 14112
CREST KEY, PROF., L.L.C.
6980 O'Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Telephone: (702) 202-4153
Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorneys for Petitioner, Patricia L. Horst

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of

ELLA . HORST REVOCABLE TRUST,
u/a/d 05/21/1991.

Date of Hearing: Wednesday, October 17, 2018
Time of Hearing: 10:30 AM

Case No.: P-18-095314-T
Dept. No.: 26

ORDER GRANTING PETITION TO CONFIRM TRUST

The Petition of Patricia L. Horst (hereinafter referred to as "Petitioner") to Confirm Trust, having this date come on for hearing, it appearing to the Court that:

Procedural Background

1. Petitioner filed the Petition, with other Petitions on Friday, May 9, 2018, for a hearing on May 25, 2018.

2. Gwen Rutar Mullins, Esq. filed on May 23, 2018 on behalf of Brian Holiday (herein after referred to as "Objector"), a Notice of Appearance and Request Pursuant to EDCR 4.08 to Have Matter Heard Before a Probate Judge.

3. At the hearing on May 25, 2018, the Probate Commissioner referred the matter to a Probate Judge.

4. On July 16, 2018, Objector filed an Objection to Petitioner petitions referred to in item 1 herein.

5. This Court set this matter for a hearing on August 2, 2018.

6. On July 31, 2018, Petitioner's and Objector's legal counsels submitted a Stipulation

CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive - Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

1 and Order to Continue Hearing. This Court reset the hearing to September 13, 2018 at 9:30 AM.

2 7. Petitioner filed on August 8, 2018, a Response to Objector's Objections referred to
3 in Averment 4.

4 8. Objector filed a Reply on August 31, 2018 on his Counter-Petitions.

5 9. The Petition, the Objection, Response, and Reply, were initially heard before this
6 Court on September 13, 2018, which resulted in the Order on Patricia A Horst's Petition,
7 Opposition to Patricia A Horst's Petition, and Counter Petition, court-clerk filed stamped October
8 17, 2018. In the Order this Court, among other matters assumed jurisdiction over the trust, and
9 confirmed Petitioner as trustee and opened discovery. During the hearing the Court deferred on
10 ruling on confirming the Second and Third Amendments to the Trust for the parties to resolve the
11 dispute over the same.

12 10. The Court issued on October 5, 2018, an Order Scheduling Status Check for October
13 17, 2018, at 10:30 AM revolving the Second and Third Amendments to the Initial Trust.

14 Issue Presented

15 11. Whether NRS §164.021(4) bars a challenge to a trust and amendment after a proper
16 notice of irrevocability was provided, where after the expiration of the 120-day notice period a hand
17 written note is asserted to be an amendment via a petition for instructions?

18 Legal Authority

19 12. NRS §164.021 (2009) provides:

20 Notice by trustee to beneficiary concerning change of revocable trust to irrevocable
21 trust; contents of notice; limitation of action to contest validity of trust.

- 22 1. When a revocable trust becomes irrevocable because of the death of a settlor or
23 by the express terms of the trust, the trustee may, after the trust becomes
24 irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of
25 the settlor or to any other interested person.
- 26 2. The notice provided by the trustee must contain:
- 27 (a) The identity of the settlor of the trust and the date of execution of the trust
28 instrument;
- (b) The name, mailing address and telephone number of any trustee of the trust;
- (c) Any provision of the trust instrument which pertains to the beneficiary or
notice that the heir or interested person is not a beneficiary under the trust;
- (d) Any information required to be included in the notice expressly provided by
the trust instrument; and
- (e) A statement set forth in a separate paragraph, in 12-point boldface type or an
equivalent type which states: "You may not bring an action to contest the
trust more than 120 days from the date this notice is served upon you."

3. The trustee shall serve the notice pursuant to the provisions of NRS 155.010.
4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon the person, unless the person proves that he or she did not receive actual notice.

Facts Presented

13. Ella E. Horst (the "Deceased") died on October 26, 2016. At the date of death, she was resident of Clark County, Nevada.

14. Deceased created a trust named "Ella E. Horst Revocable Trust" on May 21, 1991, (hereinafter referred to as the "Initial Trust").

15. Deceased created a first amended on March 6, 1998.

16. Deceased created a second amendment on March 16, 2004

17. Deceased created a Third amendment on September 26, 2005. The Trust and the first, second and third amendments may hereinafter be referred to as the "Trust."

18. Objector is a beneficiary of the Trust.

19. On January 27, 2017, pursuant to §164.021 provided Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust regarding the Initial Trust and included the first, second and third amendments (hereinafter maybe referred to as the "Notice").

20. No dispute exists as to whether the Notice complied with NRS §164.021, or whether Objector received actual notice.

21. The 120-day challenge period in NRS §164.021(4) expired on or about May 17, 2017.

22. As stated in item one above, On May 9, 2018, Petitioner filed a pleading that included a Petition to Confirm Trust, which requested the Court to confirm the Initial Trust, the first, second, and third amendments.

23. In the same pleading, Petitioner brought a Petition for Instructions, which asserted:

NRS §164.030(1) provides "any trustee...may petition the court for instructions in the administration of the trust or for a construction of the trust instrument." The relevant averments in the Petition for Instructions are provided:

- a. NRS §153.031(1)(b) and (d) provides that Petitioner as trustee "may petition

1 the court regarding any aspect of the affairs of the trust, including:

2 . . .

- 3 (b) Determining the construction of the trust instrument;
4 (d) Determining the validity of a provision of the trust;
5

6 b. On October 11, 2011, Ella E. Horst handwrote a letter to the Trust which
7 reads, "I purchased Stella Adkins interest in the property at 7475 W Rosada Way – Las Vegas
8 Nevada 89149. This share is to be added to my other share and go to Patricia Horst." This letter
9 was witnessed by Elizabeth A. Mendre.

10 c. Petitioner believes the letter is an amendment to the Trust, because it refers
11 to the Trust, describes the Property subject to the Trust, and describes the distribution of the
12 Property.

13 d. Thus, Petitioner believes this Honorable Court's confirmation of the addition
14 of the one-quarter (25%) acquired interest to the original one-half (50%) interest to create a three-
15 quarter (75%) interest in the Property and distribution to Patricia Lynn Horst of the undivided
16 three-quarter (75%) interest of the trust in and to the Property is appropriate.

17 24. No dispute exists over the Initial Trust and the first amendment.

18 25. Objector filed his objection on July 16, 2018, to the second and third amendments.

19 Legal Arguments

20 26. Objector asserts the Petition for Instructions is a notice under §164.021, and thus
21 renews or starts a 120-day challenge period thereunder for the Trust and all amendments, and as
22 such, his objection is proper and the second and third amendment should not be confirmed. In
23 support of Objector's claim, he asserts had he known of the handwritten letter, he would have
24 surely challenged the second and third amendments.

25 27. Petitioner asserts the Petition for Instructions is not a Notice under §164.021, but
26 instead is a request for construction and verification of a provision of trust; that proper notice was
27 given to Objector for the Initial Trust, first, second and third amendments; his filed Objection on
28 July 16, 2018, was after May 17, 2017, the end of the 120-day challenge period provided under
§164.021(4), and thus the initial trust, first, second and third amendments should be confirmed.

Findings

28. There is no dispute as to the Initial Trust and the First Amendment.

29. The only one exception to §164.021(4) is where a beneficiary has not received actual notice. In the case at bar, the Objector did not assert he lacked actual notice, as such, Objector is found to have possessed actual knowledge.

30. There is no case law interpreting whether the 120-day challenge period under NRS §164.021(4), as Objector asserts, starts another 120-day notice period to challenge all documents previously provided pursuant NRS §164.021, where a petition for instructions is presented introducing a proposed additional amendment.

Order

NOW THEREFORE, good cause appearing, it is hereby:

ORDERED the Ella E. Horst Revocable Trust" on May 21, 1991 is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the First Amendment, dated on March 6, 1998, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the the Second Amendment, dated March 16, 2004, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED that the Third Amendment, dated September 26, 2005, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.


IT IS FURTHER ORDERED this Court's finding 8 in the Order On Patricia A. Horst's Petitions, Opposition to Patricia A. Horst's Petition and Counter Petition dated October 17, 2018, that "[d]iscovery is needed regarding the Second and Third Amendment to the Trust" is deleted in its entirety and replaced with the following language: Discovery is needed regarding issues related to the October 2011 letter and undue influence."

/// (This Order continues to and ends on the next page.)

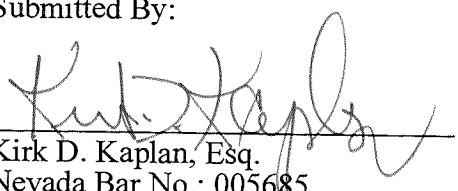
CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive - Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

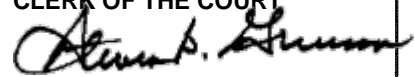
1 **IT IS FURTHER ORDERED** where the Order states "[t]hat the decision regarding the
2 Second and Third Amendment is CONTINUED as it appears that the further discovery is needed"
3 is deleted in its entirety and replaced with the following language: Discovery is allowed, including
4 the Second and Third Amendments, but pursuant to §164.021(4) no action may be brought to
5 contest the Trust and Amendments confirmed herein.

6 Dated: 5th day of Nov ~~October~~, 2018.


District Court Judge

7
8 Submitted By:

9 
10
11 Kirk D. Kaplan, Esq.
12 Nevada Bar No.: 005685
13 Jason M. Sadow
14 Nevada Bar No.: 14112
15 CREST KEY, PROF., L.L.C.
16 6980 O'Bannon Drive, Suite 100
17 Las Vegas, Nevada 89117
18 Telephone: (702) 202-4153
19 Facsimile: (702) 837-1879
20 Kirk@CrestKey.com
21 *Attorneys for Petitioner, Patricia L. Horst*
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1 **NEOJ**
2 Kirk D. Kaplan, Esq.
3 Nevada Bar # 5685
4 CREST KEY, PROF., L.L.C.
5 6980 O'Bannon Drive, Suite 100
6 Las Vegas, Nevada 89117
7 Telephone: (702) 202-4153
8 Facsimile: (702) 837-1879
9 Kirk@CrestKey.com
10 *Attorney for Petitioner, Patricia L. Horst*

DISTRICT COURT
CLARK COUNTY, NEVADA

8 In the Matter of the
9 ELLA E. HORST REVOCABLE TRUST
10 u/a/d 05/21/1991

Hearing Date: Wednesday, October 17, 2018
Hearing Time: 10:30 a.m.

Case No.: P-18-095314-T
Dept. No.: 26

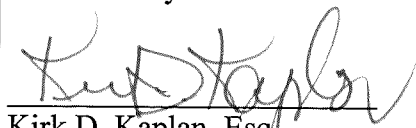
NOTICE OF ENTRY OF ORDER

11 TO: ALL PERSONS INTERESTED IN THE ABOVE-REFERENCED ESTATE

12 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Granting
13 Petition to Confirm Trust, a copy of which is attached hereto and incorporated herein by reference
14 as Exhibit "A", was entered by the Court on the 27th day of December, 2018.

15 Dated this 27th day of December, 2018.

16 Submitted by:

17 

18 Kirk D. Kaplan, Esq.
19 Nevada Bar # 5685
20 CREST KEY, PROF., L.L.C.
21 6980 O'Bannon Drive, Suite 100
22 Las Vegas, Nevada 89117
23 Telephone: (702) 202-4153
24 Facsimile: (702) 837-1879
25 Kirk@CrestKey.com
26 *Attorney for Petitioner, Patricia L. Horst*

CREST KEY PROF., L.L.C.
6980 O' Bannon Drive - Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

CERTIFICATE OF MAILING

I HEREBY CERTIFY that service of the Order Granting Petition to Confirm Trust was made this 27 day of December, 2018, by depositing a copy of the same in the U.S. Mail, postage prepaid by first class mail, addressed to the following:

Nathan Holiday
45 Radiance Lane
Las Flores, CA 92688

William "Bill" R. Horst
7475 W. Rosada Way
Las Vegas, NV 89149

Kristi Horst
1000 S. Williams St., #35
Westmont, IL 60559

Robert Holiday
6878 W. Ainsley Circle
Highland, UT 85002

Blaine Holiday
1747 Orchard Dr.
Woodbury, MN 55125

Jill Holiday Linford
1298 Eastridge Circle
Logan, UT 84321

Gail Holiday Herr
10630 E. Realgar Place
Tucson, AZ 85747

Kent Holiday
2402 Cedar Court
Cody, WY 82414

Craig Holiday
2299 Orange Cove Avenue
La Crascenta, CA 91214

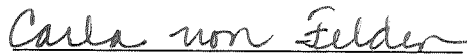
Brian Holiday
c/o Gwen Rutar Mullins
3800 Howard Hughes Pkwy, #1000
Las Vegas, NV 89169

Dawn Holiday Blanchard
3247 E. 81st N.
Idaho Falls, ID 83401

Blake Holiday
5403 Rise Bend Lane
Katy, TX 77494

Steven Holiday
602 N. Beaufort Ave., Unit B
Lubbock, TX 79416

Dated this 27 day of December, 2018.


An employee
of CREST KEY PROF., L.L.C.

CREST KEY PROF., L.L.C.
6980 O' Bannon Drive—Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

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EXHIBIT "A"
ORDER GRANTING PETITION TO CONFIRM TRUST



1 **ORDER**

2 Kirk D. Kaplan, Esq.
3 Nevada Bar No.: 005685
4 Jason M. Sadow
5 Nevada Bar No.: 14112
6 CREST KEY, PROF., L.L.C.
7 6980 O'Bannon Drive, Suite 100
8 Las Vegas, Nevada 89117
9 Telephone: (702) 202-4153
10 Facsimile: (702) 837-1879
11 Kirk@CrestKey.com
12 *Attorneys for Petitioner, Patricia L. Horst*

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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of
ELLA . HORST REVOCABLE TRUST,
u/a/d 05/21/1991.

Date of Hearing: Wednesday, October 17, 2018
Time of Hearing: 10:30 AM
Case No.: P-18-095314-T
Dept. No.: 26

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ORDER GRANTING PETITION TO CONFIRM TRUST

The Petition of Patricia L. Horst (hereinafter referred to as "Petitioner") to Confirm Trust, having this date come on for hearing, it appearing to the Court that:

Procedural Background

1. Petitioner filed the Petition, with other Petitions on Friday, May 9, 2018, for a hearing on May 25, 2018.
2. Gwen Rutar Mullins, Esq. filed on May 23, 2018 on behalf of Brian Holiday (herein after referred to as "Objector"), a Notice of Appearance and Request Pursuant to EDCR 4.08 to Have Matter Heard Before a Probate Judge.
3. At the hearing on May 25, 2018, the Probate Commissioner referred the matter to a Probate Judge.
4. On July 16, 2018, Objector filed an Objection to Petitioner petitions referred to in item 1 herein.
5. This Court set this matter for a hearing on August 2, 2018.
6. On July 31, 2018, Petitioner's and Objector's legal counsels submitted a Stipulation

1 and Order to Continue Hearing. This Court reset the hearing to September 13, 2018 at 9:30 AM.

2 7. Petitioner filed on August 8, 2018, a Response to Objector's Objections referred to
3 in Averment 4.

4 8. Objector filed a Reply on August 31, 2018 on his Counter-Petitions.

5 9. The Petition, the Objection, Response, and Reply, were initially heard before this
6 Court on September 13, 2018, which resulted in the Order on Patricia A Horst's Petition,
7 Opposition to Patricia A Horst's Petition, and Counter Petition, court-clerk filed stamped October
8 17, 2018. In the Order this Court, among other matters assumed jurisdiction over the trust, and
9 confirmed Petitioner as trustee and opened discovery. During the hearing the Court deferred on
10 ruling on confirming the Second and Third Amendments to the Trust for the parties to resolve the
11 dispute over the same.

12 10. The Court issued on October 5, 2018, an Order Scheduling Status Check for October
13 17, 2018, at 10:30 AM revolving the Second and Third Amendments to the Initial Trust.

14 Issue Presented

15 11. Whether NRS §164.021(4) bars a challenge to a trust and amendment after a proper
16 notice of irrevocability was provided, where after the expiration of the 120-day notice period a hand
17 written note is asserted to be an amendment via a petition for instructions?

18 Legal Authority

19 12. NRS §164.021 (2009) provides:

20 Notice by trustee to beneficiary concerning change of revocable trust to irrevocable
21 trust; contents of notice; limitation of action to contest validity of trust.

- 22 1. When a revocable trust becomes irrevocable because of the death of a settlor or
23 by the express terms of the trust, the trustee may, after the trust becomes
24 irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of
25 the settlor or to any other interested person.
26 2. The notice provided by the trustee must contain:
27 (a) The identity of the settlor of the trust and the date of execution of the trust
28 instrument;
(b) The name, mailing address and telephone number of any trustee of the trust;
(c) Any provision of the trust instrument which pertains to the beneficiary or
notice that the heir or interested person is not a beneficiary under the trust;
(d) Any information required to be included in the notice expressly provided by
the trust instrument; and
(e) A statement set forth in a separate paragraph, in 12-point boldface type or an
equivalent type which states: "You may not bring an action to contest the
trust more than 120 days from the date this notice is served upon you."

3. The trustee shall serve the notice pursuant to the provisions of NRS 155.010.
4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon the person, unless the person proves that he or she did not receive actual notice.

Facts Presented

13. Ella E. Horst (the "Deceased") died on October 26, 2016. At the date of death, she was resident of Clark County, Nevada.

14. Deceased created a trust named "Ella E. Horst Revocable Trust" on May 21, 1991, (hereinafter referred to as the "Initial Trust").

15. Deceased created a first amended on March 6, 1998.

16. Deceased created a second amendment on March 16, 2004

17. Deceased created a Third amendment on September 26, 2005. The Trust and the first, second and third amendments may hereinafter be referred to as the "Trust."

18. Objector is a beneficiary of the Trust.

19. On January 27, 2017, pursuant to §164.021 provided Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust regarding the Initial Trust and included the first, second and third amendments (hereinafter maybe referred to as the "Notice").

20. No dispute exists as to whether the Notice complied with NRS §164.021, or whether Objector received actual notice.

21. The 120-day challenge period in NRS §164.021(4) expired on or about May 17, 2017.

22. As stated in item one above, On May 9, 2018, Petitioner filed a pleading that included a Petition to Confirm Trust, which requested the Court to confirm the Initial Trust, the first, second, and third amendments.

23. In the same pleading, Petitioner brought a Petition for Instructions, which asserted:

NRS §164.030(1) provides "any trustee...may petition the court for instructions in the administration of the trust or for a construction of the trust instrument." The relevant averments in the Petition for Instructions are provided:

- a. NRS §153.031(1)(b) and (d) provides that Petitioner as trustee "may petition

1 the court regarding any aspect of the affairs of the trust, including:

- 2 ...
3 (b) Determining the construction of the trust instrument;
4 (d) Determining the validity of a provision of the trust;
5

6 b. On October 11, 2011, Ella E. Horst handwrote a letter to the Trust which
7 reads, "I purchased Stella Adkins interest in the property at 7475 W Rosada Way - Las Vegas
8 Nevada 89149. This share is to be added to my other share and go to Patricia Horst." This letter
9 was witnessed by Elizabeth A. Mendre.

10 c. Petitioner believes the letter is an amendment to the Trust, because it refers
11 to the Trust, describes the Property subject to the Trust, and describes the distribution of the
12 Property.

13 d. Thus, Petitioner believes this Honorable Court's confirmation of the addition
14 of the one-quarter (25%) acquired interest to the original one-half (50%) interest to create a three-
15 quarter (75%) interest in the Property and distribution to Patricia Lynn Horst of the undivided
16 three-quarter (75%) interest of the trust in and to the Property is appropriate.

17 24. No dispute exists over the Initial Trust and the first amendment.

18 25. Objector filed his objection on July 16, 2018, to the second and third amendments.

19 Legal Arguments

20 26. Objector asserts the Petition for Instructions is a notice under §164.021, and thus
21 renews or starts a 120-day challenge period thereunder for the Trust and all amendments, and as
22 such, his objection is proper and the second and third amendment should not be confirmed. In
23 support of Objector's claim, he asserts had he known of the handwritten letter, he would have
24 surely challenged the second and third amendments.

25 27. Petitioner asserts the Petition for Instructions is not a Notice under §164.021, but
26 instead is a request for construction and verification of a provision of trust; that proper notice was
27 given to Objector for the Initial Trust, first, second and third amendments; his filed Objection on
28 July 16, 2018, was after May 17, 2017, the end of the 120-day challenge period provided under
§164.021(4), and thus the initial trust, first, second and third amendments should be confirmed.

Findings

28. There is no dispute as to the Initial Trust and the First Amendment.

29. The only one exception to §164.021(4) is where a beneficiary has not received actual notice. In the case at bar, the Objector did not assert he lacked actual notice, as such, Objector is found to have possessed actual knowledge.

30. There is no case law interpreting whether the 120-day challenge period under NRS §164.021(4), as Objector asserts, starts another 120-day notice period to challenge all documents previously provided pursuant NRS §164.021, where a petition for instructions is presented introducing a proposed additional amendment.

Order

NOW THEREFORE, good cause appearing, it is hereby:

ORDERED the Ella E. Horst Revocable Trust" on May 21, 1991 is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the First Amendment, dated on March 6, 1998, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the the Second Amendment, dated March 16, 2004, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED that the Third Amendment, dated September 26, 2005, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED this Court's finding 8 in the Order On Patricia A. Horst's Petitions, Opposition to Patricia A. Horst's Petition and Counter Petition dated October 17, 2018, that "[d]iscovery is needed regarding the Second and Third Amendment to the Trust" is deleted in its entirety and replaced with the following language: Discovery is needed regarding issues related to the October 2011 letter and undue influence."

/// (This Order continues to and ends on the next page.)

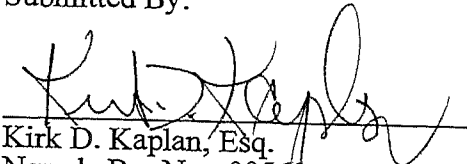
CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive - Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

1 **IT IS FURTHER ORDERED** where the Order states "[t]hat the decision regarding the
2 Second and Third Amendment is CONTINUED as it appears that the further discovery is needed"
3 is deleted in its entirety and replaced with the following language: Discovery is allowed, including
4 the Second and Third Amendments, but pursuant to §164.021(4) no action may be brought to
5 contest the Trust and Amendments confirmed herein.

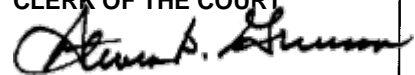
6 Dated: 5th day of Nov ~~October~~, 2018.


District Court Judge

7
8
9 Submitted By:



10
11 Kirk D. Kaplan, Esq.
12 Nevada Bar No.: 005685
13 Jason M. Sadow
14 Nevada Bar No.: 14112
15 CREST KEY, PROF., L.L.C.
16 6980 O'Bannon Drive, Suite 100
17 Las Vegas, Nevada 89117
18 Telephone: (702) 202-4153
19 Facsimile: (702) 837-1879
20 Kirk@CrestKey.com
21 *Attorneys for Petitioner, Patricia L. Horst*
22
23
24
25
26
27
28



1 **NEOJ**
2 Kirk D. Kaplan, Esq.
3 Nevada Bar # 5685
4 CREST KEY, PROF., L.L.C.
5 6980 O'Bannon Drive, Suite 100
6 Las Vegas, Nevada 89117
7 Telephone: (702) 202-4153
8 Facsimile: (702) 837-1879
9 Kirk@CrestKey.com
10 *Attorney for Petitioner, Patricia L. Horst*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 In the Matter of the
12
13 ELLA E. HORST REVOCABLE TRUST
14 u/a/d 05/21/1991

Hearing Date: Wednesday, October 17, 2018
Hearing Time: 10:30 a.m.

Case No.: P-18-095314-T
Dept. No.: 26

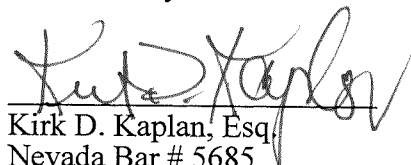
AMENDED NOTICE OF ENTRY OF ORDER

15 TO: ALL PERSONS INTERESTED IN THE ABOVE-REFERENCED ESTATE

16 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Granting
17 Petition to Confirm Trust, a copy of which is attached hereto and incorporated herein by reference
18 as Exhibit "A", was entered by the Court on the 26th day of December , 2018.

19 Dated this 9th day of January, 2019.

20 Submitted by:



21 Kirk D. Kaplan, Esq.
22 Nevada Bar # 5685
23 CREST KEY, PROF., L.L.C.
24 6980 O'Bannon Drive, Suite 100
25 Las Vegas, Nevada 89117
26 Telephone: (702) 202-4153
27 Facsimile: (702) 837-1879
28 Kirk@CrestKey.com
Attorney for Petitioner, Patricia L. Horst

CREST KEY PROF., L.L.C.
6980 O' Bannon Drive - Suite 100
Las Vegas, Nevada 89117
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CREST KEY PROF., L.L.C.
6980 O' Bannon Drive - Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879


CERTIFICATE OF MAILING

I HEREBY CERTIFY that service of the Order Granting Petition to Confirm Trust was made this 9th day of January, 2019, by depositing a copy of the same in the U.S. Mail, postage prepaid by first class mail, addressed to the following:

Steven Holiday
13968 Knoll Point Drive
Northport, AL 35475

Blake Holiday
3938 Summerwood Drive
Billings, MT 59106

Dated this 9th day of January, 2019.


An employee
of CREST KEY PROF., L.L.C.

CREST KEY PROF., L.L.C.
6980 O' Bannon Drive – Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

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EXHIBIT "A"
ORDER GRANTING PETITION TO CONFIRM TRUST

Steven D. Grierson

1 **ORDER**

2 Kirk D. Kaplan, Esq.
3 Nevada Bar No.: 005685
4 Jason M. Sadow
5 Nevada Bar No.: 14112
6 CREST KEY, PROF., L.L.C.
7 6980 O'Bannon Drive, Suite 100
8 Las Vegas, Nevada 89117
9 Telephone: (702) 202-4153
10 Facsimile: (702) 837-1879
11 Kirk@CrestKey.com
12 *Attorneys for Petitioner, Patricia L. Horst*

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 In the Matter of the Estate of

11 ELLA . HORST REVOCABLE TRUST,
12 u/a/d 05/21/1991.

Date of Hearing: Wednesday, October 17, 2018
Time of Hearing: 10:30 AM

Case No.: P-18-095314-T
Dept. No.: 26

13 **ORDER GRANTING PETITION TO CONFIRM TRUST**

14 The Petition of Patricia L. Horst (hereinafter referred to as "Petitioner") to Confirm Trust,
15 having this date come on for hearing, it appearing to the Court that:

16 **Procedural Background**

17 1. Petitioner filed the Petition, with other Petitions on Friday, May 9, 2018, for a
18 hearing on May 25, 2018.

19 2. Gwen Rutar Mullins, Esq. filed on May 23, 2018 on behalf of Brian Holiday (herein
20 after referred to as "Objector"), a Notice of Appearance and Request Pursuant to EDCR 4.08 to
21 Have Matter Heard Before a Probate Judge.

22 3. At the hearing on May 25, 2018, the Probate Commissioner referred the matter to a
23 Probate Judge.

24 4. On July 16, 2018, Objector filed an Objection to Petitioner petitions referred to in
25 item 1 herein.

26 5. This Court set this matter for a hearing on August 2, 2018.

27 6. On July 31, 2018, Petitioner's and Objector's legal counsels submitted a Stipulation
28

1 and Order to Continue Hearing. This Court reset the hearing to September 13, 2018 at 9:30 AM.

2 7. Petitioner filed on August 8, 2018, a Response to Objector's Objections referred to
3 in Averment 4.

4 8. Objector filed a Reply on August 31, 2018 on his Counter-Petitions.

5 9. The Petition, the Objection, Response, and Reply, were initially heard before this
6 Court on September 13, 2018, which resulted in the Order on Patricia A Horst's Petition,
7 Opposition to Patricia A Horst's Petition, and Counter Petition, court-clerk filed stamped October
8 17, 2018. In the Order this Court, among other matters assumed jurisdiction over the trust, and
9 confirmed Petitioner as trustee and opened discovery. During the hearing the Court deferred on
10 ruling on confirming the Second and Third Amendments to the Trust for the parties to resolve the
11 dispute over the same.

12 10. The Court issued on October 5, 2018, an Order Scheduling Status Check for October
13 17, 2018, at 10:30 AM revolving the Second and Third Amendments to the Initial Trust.

14 Issue Presented

15 11. Whether NRS §164.021(4) bars a challenge to a trust and amendment after a proper
16 notice of irrevocability was provided, where after the expiration of the 120-day notice period a hand
17 written note is asserted to be an amendment via a petition for instructions?

18 Legal Authority

19 12. NRS §164.021 (2009) provides:

20 Notice by trustee to beneficiary concerning change of revocable trust to irrevocable
21 trust; contents of notice; limitation of action to contest validity of trust.

- 22 1. When a revocable trust becomes irrevocable because of the death of a settlor or
23 by the express terms of the trust, the trustee may, after the trust becomes
24 irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of
25 the settlor or to any other interested person.
26 2. The notice provided by the trustee must contain:
27 (a) The identity of the settlor of the trust and the date of execution of the trust
28 instrument;
(b) The name, mailing address and telephone number of any trustee of the trust;
(c) Any provision of the trust instrument which pertains to the beneficiary or
notice that the heir or interested person is not a beneficiary under the trust;
(d) Any information required to be included in the notice expressly provided by
the trust instrument; and
(e) A statement set forth in a separate paragraph, in 12-point boldface type or an
equivalent type which states: "You may not bring an action to contest the
trust more than 120 days from the date this notice is served upon you."

3. The trustee shall serve the notice pursuant to the provisions of NRS 155.010.
4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon the person, unless the person proves that he or she did not receive actual notice.

Facts Presented

13. Ella E. Horst (the "Deceased") died on October 26, 2016. At the date of death, she was resident of Clark County, Nevada.

14. Deceased created a trust named "Ella E. Horst Revocable Trust" on May 21, 1991, (hereinafter referred to as the "Initial Trust").

15. Deceased created a first amended on March 6, 1998.

16. Deceased created a second amendment on March 16, 2004

17. Deceased created a Third amendment on September 26, 2005. The Trust and the first, second and third amendments may hereinafter be referred to as the "Trust."

18. Objector is a beneficiary of the Trust.

19. On January 27, 2017, pursuant to §164.021 provided Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust regarding the Initial Trust and included the first, second and third amendments (hereinafter maybe referred to as the "Notice").

20. No dispute exists as to whether the Notice complied with NRS §164.021, or whether Objector received actual notice.

21. The 120-day challenge period in NRS §164.021(4) expired on or about May 17, 2017.

22. As stated in item one above, On May 9, 2018, Petitioner filed a pleading that included a Petition to Confirm Trust, which requested the Court to confirm the Initial Trust, the first, second, and third amendments.

23. In the same pleading, Petitioner brought a Petition for Instructions, which asserted: NRS §164.030(1) provides "any trustee...may petition the court for instructions in the administration of the trust or for a construction of the trust instrument." The relevant averments in the Petition for Instructions are provided:

- a. NRS §153.031(1)(b) and (d) provides that Petitioner as trustee "may petition

1 the court regarding any aspect of the affairs of the trust, including:

2 ...

- 3 (b) Determining the construction of the trust instrument;
4 (d) Determining the validity of a provision of the trust;
5

6 b. On October 11, 2011, Ella E. Horst handwrote a letter to the Trust which
7 reads, "I purchased Stella Adkins interest in the property at 7475 W Rosada Way – Las Vegas
8 Nevada 89149. This share is to be added to my other share and go to Patricia Horst." This letter
9 was witnessed by Elizabeth A. Mendre.

10 c. Petitioner believes the letter is an amendment to the Trust, because it refers
11 to the Trust, describes the Property subject to the Trust, and describes the distribution of the
12 Property.

13 d. Thus, Petitioner believes this Honorable Court's confirmation of the addition
14 of the one-quarter (25%) acquired interest to the original one-half (50%) interest to create a three-
15 quarter (75%) interest in the Property and distribution to Patricia Lynn Horst of the undivided
16 three-quarter (75%) interest of the trust in and to the Property is appropriate.

17 24. No dispute exists over the Initial Trust and the first amendment.

18 25. Objector filed his objection on July 16, 2018, to the second and third amendments.

19 Legal Arguments

20 26. Objector asserts the Petition for Instructions is a notice under §164.021, and thus
21 renews or starts a 120-day challenge period thereunder for the Trust and all amendments, and as
22 such, his objection is proper and the second and third amendment should not be confirmed. In
23 support of Objector's claim, he asserts had he known of the handwritten letter, he would have
24 surely challenged the second and third amendments.

25 27. Petitioner asserts the Petition for Instructions is not a Notice under §164.021, but
26 instead is a request for construction and verification of a provision of trust; that proper notice was
27 given to Objector for the Initial Trust, first, second and third amendments; his filed Objection on
28 July 16, 2018, was after May 17, 2017, the end of the 120-day challenge period provided under
§164.021(4), and thus the initial trust, first, second and third amendments should be confirmed.

Findings

28. There is no dispute as to the Initial Trust and the First Amendment.

29. The only one exception to §164.021(4) is where a beneficiary has not received actual notice. In the case at bar, the Objector did not assert he lacked actual notice, as such, Objector is found to have possessed actual knowledge.

30. There is no case law interpreting whether the 120-day challenge period under NRS §164.021(4), as Objector asserts, starts another 120-day notice period to challenge all documents previously provided pursuant NRS §164.021, where a petition for instructions is presented introducing a proposed additional amendment.

Order

NOW THEREFORE, good cause appearing, it is hereby:

ORDERED the Ella E. Horst Revocable Trust" on May 21, 1991 is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the First Amendment, dated on March 6, 1998, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the the Second Amendment, dated March 16, 2004, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED that the Third Amendment, dated September 26, 2005, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED this Court's finding 8 in the Order On Patricia A. Horst's Petitions, Opposition to Patricia A. Horst's Petition and Counter Petition dated October 17, 2018, that "[d]iscovery is needed regarding the Second and Third Amendment to the Trust" is deleted in its entirety and replaced with the following language: Discovery is needed regarding issues related to the October 2011 letter and undue influence."

/// (This Order continues to and ends on the next page.)

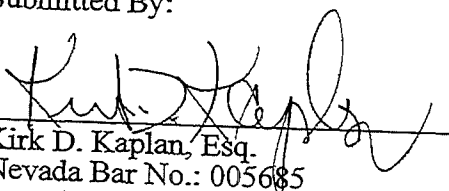
CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive - Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

1 IT IS FURTHER ORDERED where the Order states "[t]hat the decision regarding the
2 Second and Third Amendment is CONTINUED as it appears that the further discovery is needed"
3 is deleted in its entirety and replaced with the following language: Discovery is allowed, including
4 the Second and Third Amendments, but pursuant to §164.021(4) no action may be brought to
5 contest the Trust and Amendments confirmed herein.

6 Dated: 5th day of Nov October, 2018.

7
8
9 Submitted By:


District Court Judge

10 
11 Kirk D. Kaplan, Esq.
12 Nevada Bar No.: 005685
13 Jason M. Sadow
14 Nevada Bar No.: 14112
15 CREST KEY, PROF., L.L.C.
16 6980 O'Bannon Drive, Suite 100
17 Las Vegas, Nevada 89117
18 Telephone: (702) 202-4153
19 Facsimile: (702) 837-1879
20 Kirk@CrestKey.com
21 Attorneys for Petitioner, Patricia L. Horst
22
23
24
25
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27
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

May 25, 2018

P-18-095314-T In the Matter of the Trust of:
Ella E. Horst Revocable Trust u/a/d 05/21/1991

May 25, 2018 9:30 AM Petition - HM

HEARD BY: Yamashita, Wesley **COURTROOM:** RJC Courtroom 17A

COURT CLERK: Sharon Chun

PARTIES:

Brian Holiday, Other, not present	Gwen Rutar Mullins, Attorney, present
Ella E. Horst Revocable Trust u/a/d 05/21/1991, Trust, not present	Kirk Kaplan, Attorney, present
Patricia Horst, Petitioner, Trustee, not present	Kirk Kaplan, Attorney, present

JOURNAL ENTRIES

- Petition to Assume In Rem Jurisdiction Over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust

Pursuant to the "Notice of Appearance And Request Pursuant To EDCR 4.08 To Have the Matter Heard Before A Probate Judge", COMMISSIONER RECOMMENDED, MATTER REFERRED TO JUDGE STURMAN in Department 26.

Counsels were advised they will be notified of a hearing date by the Department 26 Judicial Executive Assistant.

CLERK'S NOTE: A "Referral To District Court Judge" has been distributed to Department 26 - Judge Sturman.

INTERIM CONDITIONS:

PRINT DATE:	01/17/2019	Page 1 of 8	Minutes Date:	May 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

FUTURE HEARINGS:

PRINT DATE:	01/17/2019	Page 2 of 8	Minutes Date:	May 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

June 14, 2018

P-18-095314-T In the Matter of the Trust of:
Ella E. Horst Revocable Trust u/a/d 05/21/1991

June 14, 2018 9:30 AM Status Check

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

PARTIES:

Brian Holiday, Other, not present	Gwen Rutar Mullins, Attorney, present
Ella E. Horst Revocable Trust u/a/d 05/21/1991, Trust, not present	Kirk Kaplan, Attorney, present
Patricia Horst, Petitioner, Trustee, not present	Kirk Kaplan, Attorney, present

JOURNAL ENTRIES

- Ms. Mullins stated she needed 30 days to oppose the motion as her client was out of the country; however she would accept this Court taking jurisdiction over the trust.

Following colloquy, COURT ORDERED, Hearing SET.

Mr. Kaplan requested the Court not make and rulings until the hearing.

08/02/18 9:30 AM PETITION TO ASSUME IN REM JURISDICTION OVER TRUST; PETITION TO CONFIRM TRUST; PETITION TO CONFIRM TRUSTEE; PETITION FOR INSTRUCTIONS; AND PETITION FOR REMOVAL OF IN REM JURISDICTION OVER TRUST

INTERIM CONDITIONS:

FUTURE HEARINGS:

PRINT DATE:	01/17/2019	Page 3 of 8	Minutes Date:	May 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

PRINT DATE:	01/17/2019	Page 4 of 8	Minutes Date:	May 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

September 13, 2018

P-18-095314-T	In the Matter of the Trust of: Ella E. Horst Revocable Trust u/a/d 05/21/1991
---------------	--

September 13, 2018 9:30 AM All Pending Motions

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

PARTIES:

Brian Holiday, Other, not present	Gwen Rutar Mullins, Attorney, not present
Ella E. Horst Revocable Trust u/a/d 05/21/1991, Trust, not present	Kirk Kaplan, Attorney, present
Patricia Horst, Petitioner, Trustee, not present	Kirk Kaplan, Attorney, present

JOURNAL ENTRIES

- PETITION .. OPPOSITION TO HORST'S PETITION; COUNTER-PETITION

Mr. Davis argued Patricia Horst had been successor trustee for two years and never provided any information. Mr. Davis argued his client was told the estate was worth approximately \$3 million; however the balance sheet indicated \$750,000, a \$19,000 loan to the trustee, and a mortgage that was not previously listed. Mr. Davis requested an independent trustee be appointed and an independent audit conducted.

Court inquired regarding the allegation of undue influence. Mr. Davis stated the granddaughter lived with the decedent for 15 years prior to her death and there could be undue influence.

Mr. Kaplan argued they missed the 120 days to challenge the second and third amendments; therefore they stand. Mr. Kaplan further argued the \$19,000 was spent on the residence and if the court were to find Patricia Horst doesn't receive the residence then the funds would be paid back, and that the mortgage was discovered after the fact.

PRINT DATE:	01/17/2019	Page 5 of 8	Minutes Date:	May 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

Mr. Davis stated he'd heard more answers today than he'd been given in two years, that Mr. Kaplan never indicated the tax returns were in his office and available for review, and that by negligence or concealing things an independent audit and trustee were needed.

Court stated concern regarding the 2011 letter and what affect it had on the trust, the issue of undue influence, and the breach of fiduciary duty. COURT THEREFORE ORDERED, Forensic Accounting DENIED; decision regarding the second and third amendments CONTINUED as it appeared discovery was needed, Mr. Kaplan to file an accounting within 60 days; Court RETAINS JURISDICTION over the trust, Trustee CONFIRMED.

INTERIM CONDITIONS:

FUTURE HEARINGS:

PRINT DATE:	01/17/2019	Page 6 of 8	Minutes Date:	May 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

October 17, 2018

P-18-095314-T In the Matter of the Trust of:
Ella E. Horst Revocable Trust u/a/d 05/21/1991

October 17, 2018 10:30 AM Status Check

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

PARTIES:

Brian Holiday, Other, not present	Gwen Rutar Mullins, Attorney, present
Ella E. Horst Revocable Trust u/a/d 05/21/1991, Trust, not present	Kirk Kaplan, Attorney, present
Patricia Horst, Petitioner, Trustee, not present	Kirk Kaplan, Attorney, present

JOURNAL ENTRIES

- Mr. Kaplan stated he wanted to conform the first, second, third, and fourth amendments to the trust.

Ms. Mullins stated they objected to all assets being directed toward Patricia Horst as they should be going to all three kids and argued that Ms. Horst had access to all documentation and wouldn't disclose.

Mr. Kaplan argued that adding another document or amendment to the trust did not allow a challenge for the entire trust, that the beneficiaries didn't object to the first and second amendments and now they were challenging the third; however they must challenge within 120 days.

Court stated the trust became irrevocable upon the death of Ella Horst, that any challenges must be done within the 120 days and further inquired if the amendment dates were set out anywhere or if they happened over a number of years.

Mr. Davis argued notice must be included for any change of the trust, that notice was faulty since it didn't include all parts that effected his client, and that it was sent piece by piece.

PRINT DATE:	01/17/2019	Page 7 of 8	Minutes Date:	May 25, 2018
-------------	------------	-------------	---------------	--------------

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

Mr. Kaplan argued he didn't have to include the entire trust in the notice.

Court stated notice must contain any information or provision of the trust that pertains to the beneficiary or that the heir was not a beneficiary.

Mr. Kaplan stated the parties only had the ability to challenge the fourth amendment of the trust.

Court stated the evolution of the trust was important.

Mr. Kaplan argued they were requesting to challenge the second and third amendments and that they were time barred; however they could conduct discovery on the rest.

Mr. Davis argued they took a little more with each amendment to the trust and that each one had an additional 120 days to object.

COURT FINDS the second and third amendments cannot be challenged as the 120 days ran; however later amendments were discoverable regarding how the trust evolved and how the fourth amendment happened AND THEREFORE ORDERED, Discovery allowed; however no challenge to the second and third amendments as they were time barred; Mr. Kaplan to prepare the order.

INTERIM CONDITIONS:

FUTURE HEARINGS:

PRINT DATE:	01/17/2019	Page 8 of 8	Minutes Date:	May 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

GWEN RUTAR MULLINS, ESQ.
3800 HOWARD HUGHES PKWY., STE. 1000
LAS VEGAS, NV 89169

DATE: January 17, 2019
CASE: P-18-095314-T

RE CASE: In the Matter of the Trust of: ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991

NOTICE OF APPEAL FILED: January 15, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING BOND FOR COSTS ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PETITION TO CONFIRM TRUST; NOTICE OF ENTRY OF ORDER; AMENDED NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

In the Matter of the Trust of:

ELLA E. HORST REVOCABLE TRUST,
u/a/d 05/21/1991,

Case No: P-18-095314-T

Dept No: FAMILY DOMESTIC

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 17 day of January 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk