

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of the
JORDAN DANA FRASIER
FAMILY TRUST.

No. 77981

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District Court Case
Elizabeth A. Brown
Case No. PC16-00128
Clerk of Supreme Court

AMY FRASIER WILSON,
Appellant,

vs.

DINNY FRASIER; PREMIER
TRUST, INC.; JANIE L.
MULRAIN; NORI FRASIER;
AND BRADLEY L. FRASIER,
M.D.,
Respondents.

**APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE, DEPT. 15
THE HONORABLE DAVID HARDY**

**JANIE MULRAIN'S JOINDER TO RESPONDENT'S
ANSWERING BRIEF**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Janie Mulrain is an individual residing in California. She has been represented in this matter exclusively by Michael A. Rosenauer, Esq.

Ethos Fiduciary Services is the entity through which Ms. Mulrain does business. While not a Party to this action, Ethos Fiduciary Services is never-the-less an affiliated entity and is disclosed to insure the lack of an appearance of impropriety.

JANIE MULRAIN'S JOINDER TO RESPONDENT DINNY

FRASIER'S ANSWERING BRIEF¹

The matter before the Court involves multiple Respondents.

Pursuant to NRAP 28(i), Janie Mulrain hereby joins in the Answering Brief and the associated appendices filed by Dinny Frasier. Janie Mulrain's position is identical to that taken by Dinny Frasier because if Ms. Frasier is competent to execute the Amendments to the Frasier Family Trust, she is equally competent to sign a Power of Attorney making Janie Mulrain her attorney-in-fact.

The other observation of which the Court must keep in mind is that at trial, Appellant Amy Frasier Wilson had the laboring oar to prove that Dinny Frasier was incompetent. Dinny Frasier did not have the affirmative obligation to demonstrate her competence. The record is devoid of any expert proffered by Appellant addressing this element.² Dinny Frasier, on the other hand, provided no less than three opinions over a course of time opining that she indeed had both testamentary and contractual capacity. 1 AA 219-231; 3 AA 517-518; 6 AA 1201-1207.

¹ Counsel acknowledges the Court's Order of September 4, 2019. While Counsel read the heading, the contents did not register. As such, this brief is submitted as expeditiously as possible after Respondent Dinny Frasier's brief. Counsel offers this as an explanation and not an excuse. The Court's indulgence is requested.

² Hence, there can be no reference to the record.

In short, while Appellant asserted allegations regarding competence, she provided no evidence.

The Court will also find that Appellant provided no evidence at the October 11, 2018 hearing objecting to Ms. Mulrain's fee request.³ 7 AA 1438-1547 The Court entered its Order on the October 11, 2018 hearing on December 21, 2015 which affirmed Ms. Mulrain's fee request.⁴ 10 AA 2199 More particularly, and in keeping with the brevity of Ms. Mulrain's participation, the Court specifically pointed out that Appellant's objection to Ms. Mulrain's requested fees focused only on the qualitative and quantitative services provided by Ms. Mulrain. 10 AA 2210. The Court therefore concluded that Appellant did not carry her burden to a preponderance of the evidence in-so-far as her allegations to invalidate Ms. Frasier's contract with Ms. Mulrain or the requested remuneration. *Id.*

In sum, this Brief carries forward the manner in which Ms. Mulrain has approached this entire litigation. Appellant has the

³ While the matter was set for one day, it actually spanned several.

⁴ The Court will once again find that Ms. Mulrain does not consistently appear in the Record. This was not because she was not participating or in the Courtroom. It was because her strategy was to make the Frasier children carry their burden. So long as they were not presenting evidence traversing Ms. Mulrain's status as Dinny Frasier's Attorney-in-fact or fee request, the preponderance of the evidence would fall in her favor. The record will reflect that Ms. Mulrain's fee request is discussed at the very conclusion of the hearing, almost as an afterthought. Moreover, there was no objection from any party. Hence, the fee request was approved. 10 AA 2210

obligation to demonstrate the trial Court's error. The Trial Court bent over backward to insure that Dinny Frasier had both contractual and testamentary capacity. Dinny Frasier endured not one, but three evaluations, one from a differing physician who rendered the other two opinions. Appellant, on the other hand, proffered no expert testimony. Moreover, with respect to Janie Mulrain's contract and requested fees, there was no evidence of defalcation or excess.⁵

Much like proceeding below, Appellant has failed to point this Court to any kind of evidence below to sustain her assignments of error. It is correct that this Court affirm Judge Hardy's decision below and deny this Appeal. Dinny Frasier has now died and it is time to bring this litigation to a consistent end.

NRAP 28.2 ATTORNEY'S CERTIFICATE


I hereby certify this Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Century Schoolbook 14 point font.

⁵ In fact, Barnard Resnick confirmed that her fee request did not contain any double billings. Premier Trust stated no objection. Moreover, the Court recites that it reviewed the "detailed invoices". 10 AA 2210

I further certify this Brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is less than 30 pages.

Finally, I hereby certify I have read this Answering Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Civil Procedure, in particular NRAP 28(e)(1), which required every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand I may be subject to sanctions in the event the accompanying Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 12th day of September 2019.

By: 
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CERTIFICATE OF SERVICE

I certify that I am an employee of Michael A. Rosenauer, Ltd., and that on the 12th day of September, 2019, a true and correct copy of the above JOINDER TO RESPONDENT'S ANSWERING BRIEF was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

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DATED this 12th day of September 2019.



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