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May 25 2021 04:18 p.m.
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IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of:

THE DUCKWORTH FAMILY
TRUST,

Dated March 12, 2015.

Supreme Court No. 82314
District Court Case No.:
P-20-103183-T

RESPONDENT TRUSTEE
CARY
DUCKWORTH'S MOTION
TO DISMISS APPEAL

I INTRODUCTION

This appeal challenges a December 15, 2020, Order by the Probate Court Judge denying Appellant's objection to the Probate Commissioner's Report and Recommendations. Appellant is objecting to a factual finding she admitted in her pleading. For that reason and because this order is not an order to which an appeal may be taken under NRS 155.190 and does not "dispose of all the issues presented in this case, and leave nothing for future consideration of the court," it is not a final or an appealable order and, thus, this appeal must be dismissed. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000); NRAP 3A(b)(1).

I FACTUAL AND PROCEDURAL BACKGROUND

A. THE DUCKWORTH FAMILY TRUST

The Duckworth Family Trust ("Trust") was executed in Nevada on March 12, 2015, by George M. Duckworth ("George") and Maureen D. Duckworth ("Maureen") as ("Trustors" and "Trustees"). George and Maureen had three children together: Tara Duckworth Kassity ("Tara"), Cary Duckworth ("Cary") and Kyla Duckworth ("Kyla"). On June 16, 2018, Maureen died, leaving George as the remaining Trustee. During his tenure as Trustee, George executed two Amendments to the Trust. On January 23, 2019, George resigned as Trustee and named his son Cary as Successor Trustee. Ten months later, George died on November 18, 2019.

B. THE UNDERLYING LITIGATION

The underlying litigation relates to a challenge of the First and Second amendments to the Trust executed by George in 2019 as to their validity based upon Appellant Kyla's claim of incapacity and undue influence by Cary.

Moreover, Maureen left separate property she owned in England, including a house and bank account. With regard to the assets referred to as the assets of the English Estate, Cary alleges that Kyla's action of her refusal to provide relevant information relating to the value of the English assets and other assets belonging to the Trust, as well as initiating this lawsuit, goes against the No Contest clauses set forth in the Trust and the Amendments.

C. THE PROBATE COMMISSIONER'S REPORT AND RECOMMENDATIONS

On September 11, 2020, the Probate Commissioner confirmed Cary Duckworth as the Successor Trustee of the Trust. Moreover, the Commissioner recommended that Cary should conduct a valuation of the personal property, including jewelry and paintings, at the 1829 Corta Bella Drive residence.

Furthermore, the Commissioner recommended that Kyla provide an Affidavit as to what items she has in her possession that consisted of Maureen's separate personal

property, including financial statements regarding the value of the English bank accounts, tax returns, and any other documents related to the English Estate. The Probate Commissioner found that the contest relating to the validity of the First and Second Amendments to the Trust related to Kyla's claim of incapacity and undue influence by Cary. The Court found that Kyla's conduct relating to the English assets and her refusal to provide information relating to the English assets and assets that belong to the Trust brings would bring into play the no contest clauses set forth in the Trust and the Amendments and that the Court would consider this issue after deciding on the validity of the two Amendments. In finding No. 4 the Court found that "Kyla hired an English attorney who filed a "Caveat" in the English proceeding and alleged and claimed that Kyla was entitled to the English assets." ¹

On September 1, 2020, Cary replied to Kyla's Amended Supplement to Petition. Exhibit L to the Reply is the letter from Kyla's English attorneys dated October 11, 2018, attached to Respondent's September 1, 2020 Reply.² Since the English attorney was an agent of Kyla, the letter will be admissible in evidence. The English attorney stated he would claim not only the English residence but also the bank accounts in England he believed were also be intended to be given to Kyla.

¹ See Exhibit "A", Report and Recommendation entered October 6, 2020. The trial date was subsequently set to August 11, 2021

² See Exhibit "B", October 11, 2018 letter attached as Exhibit L to Cary's Reply dated September 1, 2020.

In addition, he filed a Caveat that put a hold on the English Estate (this is discussed in pages 9-12 in the Reply)³.

Although Kyla's Nevada attorney first claimed there was no Caveat on the English Estate, he attached the letter from Cary's previous attorney⁴ dated August 14, 2019 demanding the removal of the Caveat as Exhibit 32 to his Supplemental Brief filed August 21, 2020.⁵ On page 23 of the Supplemental Brief, Kyla's present attorney admitted that a Caveat had been placed on the English Estate.⁶ As a result the statement in the Report and Recommendation that a Caveat had been placed on the English Estate is not grounds for an Appeal to the Nevada Supreme Court.

Finally in the Report and Recommendation, the Commissioner set the trial date for April 14, 2021.

D. THE NOTICE OF ORDER DENYING OBJECTION TO PROBATE COMMISSIONER'S REPORT AND RECOMMENDATIONS

On December 3, 2020, the Probate Judge held a hearing on Appellant's appeal of the Probate Commissioner's Report and Recommendations. On December 9, 2020, the Court held that the Commissioner's findings and legal conclusions were not clearly erroneous thus, denying Appellant's objection to the Commissioner's Report and Recommendations⁷. On January 11, 2021, the Appellant filed her

³ See Exhibit "C", pages 9-12 of the Reply.

⁴ The attorney is deceased.

⁵ See Exhibit "D" August 14, 2019 letter.

⁶ See Exhibit "E", portions of the August 21, 2020 Supplemental Brief.

⁷ See Exhibit "F", Order Denying Objection to Probate Commissioner's Report and Recommendations

intention to appeal the Order Denying Objection to the Probate Commissioner's Report and Recommendations entered on December 15, 2020. Appellant is appealing only Finding No. 4 in the upheld Report and Recommendation, alleging that the Court improperly upheld the Commissioner's finding that Kyla had "hired an English attorney who filed a 'Caveat' in the English processing and alleged and claimed Kyla was entitled to the English assets."

I LEGAL ARGUMENT

"The right to appeal is statutory, and where no statute or rule authorizes an appeal, no right to appeal exists." *August H. v. State*, 105 Nev. 441, 443, 777 P.2d 901, 902 (1989). NRAP 3A(b)(1) mandates that "[a]n appeal may be taken . . . [f]rom a final judgment in an action or proceeding commenced in the court in which the judgment is rendered." A final judgment is "one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

Interlocutory orders are, by definition, not final, appealable orders because they do not resolve all issues before the court. However, NRAP 3A(b) sets forth the appealable probate orders. If the interlocutory probate order does not fall under NRAP 3A(b), the only recourse is by virtue of NRS 155.190, under which an appeal must be made within thirty days after the date of entry of the order appealed from. *Matter of Estate of Riddle*, 99 Nev. 632, 688 P.2d 290 (1983).

However, NRS 155.190 only allows an appeal from a probate order that is listed within the statute. *Matter of Paul D. Burhauer Revocable Living Tr.*, 465 P.3d 222 (Nev. App. 2020) (where the Court held it did not have jurisdiction to hear the appeal because an order temporarily removing the Appellant as trustee is not within the list of allowable appeals under NRS 155.190). Hence, this Court has repeatedly held that interlocutory orders are not appealable if they do not resolve the underlying issues of the case and do not fall under the exceptions of NRAP 3A(b) or NRS 155.190, and, thus, this Court cannot consider them. See *Sicor, Inc. v. Sacks*, 127 Nev.896, 266 P.3d 618 (2011).

Here, Kyla seeks to appeal the interlocutory order denying objection to the Probate Commissioner's Report and Recommendations. However, the Appellant does not cite a legal basis for this appeal. Notwithstanding that fact, there is no legal basis to vest this Court with jurisdiction over the interlocutory order at issue because this Court "determines the finality of an order or judgment by looking to what the order or judgment actually does, not what it is called." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). Oftentimes, this Court has looked past "labels in interpreting NRAP 3A(b)(1), and has instead taken a functional view of finality, which seeks to further the rule's main objective: promoting judicial economy by avoiding the specter of piecemeal appellate review." *Id.* at 444, 874 P.2d at 733.

The issues at the heart of this case are whether the First and Second Amendments to the Trust were valid and whether Kyla's actions give rise to the No-Contest clauses within the Trust and Amendments. The Order by the Probate Court Judge denying the objection to the Commissioner's findings does not dispose of any of the issues of this case and still leaves plenty for future consideration by the court.

The appealed finding in the ordered and adopted Report and Recommendations simply found, consistent with the pleadings and exhibits, that "Kyla hired an English attorney who filed a "Caveat" in the English proceeding and alleged and claimed that Kyla was entitled to the English assets."

The finding that Kyla hired an English attorney who filed a caveat does not resolve whether the Amendments are valid or whether the Court will determine that the No-Contest clause was violated. Since the Commissioner set a trial date for April 14, 2021 (now August 11, 2021), he found that his findings were not final to the ongoing litigation. The Court still has to consider whether the Amendments were valid and whether Kyla's admitted actions apply to the No-Contest clauses.

Finally, it is well established that a probate commissioner's ruling will be upheld unless a probate judge determines that his findings were clearly erroneous based on substantial evidence. Appellant is basing its appeal on a factual finding that the Probate Court Judge already ruled was not a clearly erroneous finding. Therefore, there are no more avenues of appeal left for the Appellant at this point. Since the issues

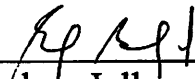
of this case have not been resolved, the order cannot be appealed, and, thus, this Court should deny this appeal.

V CONCLUSION

Because the interlocutory Order Denying Objection to Probate Commissioner's Report and Recommendations entered on December 15, 2020, is not a final, appealable order, this Court must dismiss this appeal.

Dated this 25 day of May, 2021.

Respectfully Submitted,

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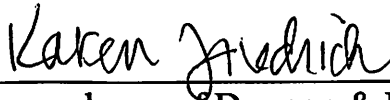
Certificate of Service

I hereby certify that the forgoing **Respondent Trustee, Cary Duckworth's Motion to Dismiss Appeal** was filed electronically with the Nevada Supreme Court on the 25th day of May 2021. Electronic Service of the forgoing documents shall be made in accordance with the Master Service List as follows:

Jerimy L. Kirschner, Esq. NSB #12012
Liane K. Wakayama, Esq. NSB #11313

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

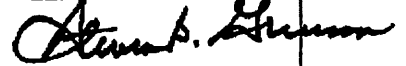
N/A



An employee of Dawson & Lordahl PLLC

Exhibit "A"

Exhibit "A"



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10 *Attorney for Cary Duckworth as Trustee*
11 *of the Duckworth Family Trust*

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

14 In the Matter of) Case No. P-20-103183-T
15) Dept No. 26
16 THE DUCKWORTH FAMILY TRUST)
17)
18 Dated March 12, 2015) **Hearing Date: September 11, 2020**
19) **Hearing Time: 9:30 a.m.**
20)

21 **REPORT AND RECOMMENDATIONS**

22 **Attorneys for Petitioner:** Kyla Duckworth – Jerimy Kirschner, Esq. of the law
23 firm Jerimy Kirschner & Associates, PLLC

24 **Attorneys for Respondent:** Cary Duckworth, Trustee – R. Gardner Jolley, Esq. of
25 the law firm Jolley Urga Woodbury & Holthus

26 **Appearance by Beneficiary:** Tara Duckworth

27 This matter came on for hearing on the 11th day of September 2020. The Probate
28 Commissioner having reviewed the Pleadings on file herein, considered the oral
arguments of Counsel and good cause appearing the Probate Commissioner Reports And
Recommends:

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///

L

FINDINGS

1. On March 12, 2015, the Duckworth Family Trust dated, March 12, 2015 ("Duckworth Trust" or "Trust") was executed by George M. Duckworth ("George") and Maureen D. Duckworth ("Maureen") as ("Trustors" and "Trustees").

2. Maureen died on June 16, 2018 and George continued to act as the remaining Trustee.

3. George retained an English attorney to open and administer an Estate in England regarding the separate assets of Maureen which were subject to English law.

4. Kyla hired an English attorney who filed a "Caveat" in the English proceeding and alleged and claimed that Kyla was to entitled to the English assets.

5. George resigned as Trustee and Cary Duckworth ("Cary") became Successor Trustee on January 23, 2019.

6. George died on November 18, 2019.

7. Ken Burns as attorney for the Estate opened a Probate and Mr. Kirschner on behalf of Kyla made an appearance in that matter.

8. Based upon the pleadings filed in this matter the Court has determined that there is a contest relating to the First and Second Amendments to the Trust executed by George in 2019 as to there validity based upon Kyla's claim of incapacity and undue influence by Cary.

9. Cary as the Successor Trustee has alleged that Kyla's conduct relating to the English assets and her refusal to provide information relating to the English assets

1 and assets that belong to the Trust brings into play the no contest clauses set forth in the
2 Trust and the Amendments. The Court will consider this issue after it makes a decision
3 as the validity of the two Amendments.
4

5 **II.**

6 **RECOMMENDATIONS**

7 1. The Court in rem takes jurisdiction over the Trust and the Trust is
8 domiciled in Nevada.
9

10 2. Cary is confirmed as the Successor Trustee of the Trust.

11 3. Cary shall obtain valuations of the personal property consisting of jewelry
12 and paintings at the residence located at 1829 Corta Bella Drive, Las Vegas, Nevada
13 ("Corta Bella Property").
14

15 4. Kyla will provide an Affidavit as to what items Kyla had in her possession
16 consisting of personal property of Maureen, financial statements, the value of the English
17 bank accounts and statements along with any English tax returns of Maureen relating to
18 her separate property which are needed to finalize the English Estate. After that
19 information is provided Cary will complete the accounting requested by Kyla. Cary will
20 complete the accounting within 60 days assuming that Kyla timely provides the
21 information regarding the assets and financial information relating to Maureen.
22

23 5. The Court has been advised that most of the personal property in question
24 is located in a storage unit and the garage which Kyla is welcome to take whatever she
25 wants since Cary and Tara were not making any claims to that property. The
26 Commissioner directed Mr. Kirschner to take that offer back to his client.
27
28

1 6. The Commissioner set a trial date for April 14, 2021 at 9:00 a.m.

2 7. The Commissioner advised counsel that they would have 180 days to
3 complete discovery.
4

5 8. A Status Check will be set for December 4, 2020 regarding Discovery and
6 the Response to the Recommendations.

7 DATED this 6 day of October, 2020.

8
9
10 
11 PROBATE COMMISSIONER

12 Respectfully submitted:

13 JOLLEY URGAL WOODBURY & HOLTHUS

14
15 /s/ R. Gardner Jolley
16 R. Gardner Jolley
17 330 S. Rampart Boulevard, Suite 380
18 Las Vegas, Nevada 89145
19 Attorney for Cary Duckworth as Trustee
20 of the Duckworth Family Trust

21 Approved to as to Form and Content

22 JERIMY KIRSCHNER & ASSOCIATES, PLLC

23
24 Jeremy L. Kirschner
25 550 Painted Mirage Rd., Suite 320
26 Las Vegas, Nevada 89149
27 Attorney for Petitioner
28

Exhibit "B"

Exhibit "B"



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Our Ref: PMD/FMG
Your Ref: SH/SH/20029

11 October 2018

Bramsdon & Childs
Solicitors
DX 2224 PORTSMOUTH



Dear Sirs

The Estate of the late Maureen Daphne Duckworth
Our client: Miss Kyla Michele Duckworth

We have been instructed by Miss Kyla Michele Duckworth, who is one of 3 children of Maureen Daphne Duckworth Deceased ("the Deceased").

We understand that you act in the administration of the Deceased's estate in England and Wales. Please note our interest for future correspondence.

In your letter of 21st September 2018 addressed (and sent by email) to our client you state that you have been instructed to represent the Deceased's husband (the father of our client and her two siblings). You state that her father is the Personal Representative of her mother's estate under the intestacy rules, and that the legal interest in all property owned by the Deceased in this jurisdiction vests in him.

Our client's father is aged 94, and due to health issues, he has not handled his own affairs for some time. There appears to be a serious question as to whether the Deceased's husband has capacity to administer the affairs of the Deceased's estate. We would enquire what steps have you taken to confirm the source of your instructions and whether the Deceased's husband has capacity to give those instructions to your firm?

Our client has no knowledge of an English Will.

Our client lived full-time with and cared for both of her parents for 4½ years before her mother's death. Our client sacrificed her home and her career to look after her parents, but in particular to care for her mother whose health was deteriorating badly. During this time, our client's brother Cary, and her sister Tara, had comparatively little to do with their parents



Partners:
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Ruth Twiney LL.B
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Berry King FCILEx
Emma Denton LL.B (Hons)
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Olivia Howard LL.B (Hons)

Practice Manager:
Lindy Vinue AMInstLM

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Quality Solicitors Large & Gibson is the trading name of Large & Gibson Solicitors. Authorised and regulated by the Solicitors Regulation Authority number 60451613. VAT Registration Number: 5100 5761 65. Service by fax and email not accepted. *Associate Member of Solicitors for the Elderly

The Deceased made it clear to our client, in various conversations and at various times in the last years of her life that she would inherit the Deceased's English estate including (but not limited to) her freehold property namely 40 Waverley Road, Southsea. According to our instructions, the Deceased also communicated her intentions to third parties who will, if necessary, attest to this.

Evidently, our client's siblings did not like the fact their mother had promised her estate in England to our client. Immediately following the death of the Deceased our client was ostracised by her siblings, and without recourse to any legal process, they summarily evicted her from the family home in which she had lived for the last 4½ years.

Our client intends to lay claim to the Deceased's estate in England. We are presently in the process of formulating the details of our client's claim against the estate. So far as the property namely 40 Waverley Road is concerned, her case is the property was held by the Deceased on trust for her by virtue of an implied, resulting or constructive Trust. Alternatively, our client will say she is entitled to the property by virtue of either proprietary or promissory estoppel. Our client acted to her detriment on the strength of the promise made to her by the Deceased that she would inherit the Deceased's estate in England.

In respect of the Deceased's cash, we understand the bulk of that cash was held in an account with Barclays Bank, in the joint names of the Deceased and our client. We understand the Deceased deliberately made the Barclays account a joint one, firstly so that our client might be able to access the money whilst her mother was alive and secondly that our client might inherit the balance of the account automatically by survivorship on her mother's death.

According to our instructions, the Deceased and her husband set up a family trust in which all or most of their US assets were held. It sounds as if this may be a discretionary trust of some description, possibly set up for tax reasons. It is our understanding that on the death of Maureen Duckworth all assets in the US family trust are held on trust for the benefit of George Duckworth during his lifetime, and thereafter for their 3 children in equal shares.

According to our client, she believes that, by virtue of the actions of her siblings and/or influence brought to bear by them upon their father (who is a vulnerable individual by virtue of age and infirmity) the terms of the US family trust may have been altered to her financial detriment.

We have already made the point that our client relied upon her parents for a home in which to live, and financial support given by her mother. Our client has significant health issues of her own. She is now to all intents and purposes homeless and currently without employment. She devoted the last 4 1/2 years to the care of her parents, and her mother in particular.

We understand the Deceased's husband is already well provided for financially.

In the circumstances, are also considering a claim by our client against the Deceased's English estate for reasonable provision under the Inheritance (Provision for Family and Dependents) Act 1975.

The purpose of this letter is to give early notification of a potential claim or claims against the Deceased's estate.

We would request the Personal Representative(s) of the Deceased's estate confirm to us in writing that there will be no distribution of the assets of the estate, save for payment of legitimate expenses, pending resolution of this matter, either by agreement, or adjudication by the court.

We look forward to hearing from you in response to this letter as soon as possible and in any event within the next 14 days.

Yours faithfully


QUALITY SOLICITORS LARGE & GIBSON

Direct Contact details:

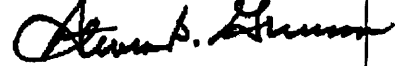
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In light of recent changes in data protection legislation, we have updated our Privacy Notice taking effect on 25 May 2018. This notice gives information about how we collect and use personal data from clients and contacts, how we safeguard it and the rights you may have, if we hold personal data for you. You can access a copy here: <https://bit.ly/2xbE2E1>.

Exhibit "C"

Exhibit "C"



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11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 In the Matter of) Case No. P-20-103183-T
14 THE DUCKWORTH FAMILY TRUST) Dept No. 26
15)
16 Dated March 12, 2015)
17)
18) Hearing Date: September 11, 2020
19) Hearing Time: 9:30 a.m.
20)

21 **REPLY OF CARY DUCKWORTH AS TRUSTEE OF THE DUCKWORTH FAMILY**
22 **TRUST DATED MARCH 12, 2015 TO THE SUPPLEMENT OF KYLA DUCKWORTH**

23 **I. Preface**

24 Ken Burns was the attorney for the Duckworth Trust and the Trustee. Ken died on
25 May 24, 2020 shortly after he had finished preparing the accounting demanded by Kyla.
26 The Trustee was not notified of the death until the early part of June. The Trustee, Cary
27 Duckworth contacted Gardner Jolley to represent he and the Trust. On June 10th Gardner
28 Jolley was advised that Mr. Kirschner was the attorney for Kyla and on January 11th, Mr.
Jolley wrote Mr. Kirschner to advise him that the Trustee contacted Mr. Jolley.
Unfortunately, Mr. Jolley was unaware that Mr. Kirschner had filed the Petition the day
before claiming the accounting was defective. After Mr. Jolley was retained and a
Substitution of Attorney was signed and filed, Mr. Jolley learned of the Petition and the

1 Hinson Street property which was to be valued \$144,000.00 and would be
2 considered as part of her one-third (1/3) distribution of the Trust Estate. This
3 is also reflected in Second Amendment which is part of Exhibit M.

4
5 These actions on the part of Kyla therefore bring into play the no contest
6 clauses, Secondly, her attorney renewed the "Caveat" challenging the Probate
7 in England (see Exhibit L, the August 14, 2019 letter from Ken Burns).

8
9 As reflected in the Inventory filed in George's Estate the only asset was the
10 assets in the United Kingdom, Exhibit P. It should be noted the First
11 Amendment and the Second Amendment were attached to the letter. The letter
12 informed Kyla's attorney that the Caveat would be construed as a "contest" of
13 the Trust and would result in her being eliminated as a beneficiary of the Trust.
14 George's English attorney can't close the Estate and distribute 75% of the
15 Estate that would go to George's Probate and then to the Trust. Furthermore,
16 there could be no distribution of the 25% to the three children pursuant to the
17 intestacy law in England. The letter went into the background of Mr. Burns'
18 position concluding that any further actions by Kyla would result her no longer
19 being a beneficiary of the Trust. A copy of that letter was sent to Kyla.
20 Neither the British attorney nor Kyla responded to that letter. Mr. Kirschner
21 who was the Nevada attorney then wrote Mr. Burns that he had received the
22 letter and that any further correspondence to Kyla should go to him (Exhibit
23
24
25
26
27
28

1 P). Mr. Kirschner did not respond to that letter as to the allegations made by
2 Mr. Burns that Kyla had violated the No Contest Clause.

3
4 It should be noted in the Supplement filed on August 21, 2020 that Kyla
5 alleged she did not claim the assets in England, yet she provided no
6 information regarding the Bank Accounts or the personal property of which
7 she had in her possession.
8

9 The First Amendment (Exhibit L dated January 23, 2019) also contained
10 language indicating in the Special Directives of George that Kyla would
11 receive subject to the \$350,000.00 advancement, a 1/3 share interest in the
12 Trust, along with the 50% interest in the Hinson Street, Las Vegas, Nevada
13 residence with the property be valued at \$144,000.00 and was to be an
14 advancement on her 1/3 distribution of the residuary Estate.
15
16

17 Because Kyla made a claim in the English Probate and refused to provide
18 information to George's Probate attorney in England, any distribution in
19 England has been prevented or the closing of the Estate as a result of Kyla's
20 conduct. By Kyla making a claim to all of the assets, George was prevented
21 from receiving his 75% interest in the English assets which would go into
22 George's Estate and then be distributed to the Trust. Based upon the above,
23 Kyla based upon the Amendments has forfeited her interest and is no longer a
24 beneficiary of the Trust.
25
26
27
28

1 8. George also executed a Codicil to his Will on January 23, 2019 whereby he
2 removed Kyla as an Executor appointing Cary as the Executor and Tara as the
3 Successor Executor. Ken Burns signed the codicil as a witness and pointed out
4 in the codicil that the witnesses believed George was competent and had the
5 capacity to execute the codicil (**Exhibit N**).
6

7
8 9. Kyla had her attorney file a "Caveat" which also prevented the administration
9 and the closing of the English Estate and continued to renew the Caveat. Until
10 the English Estate was closed, the 75% in the English assets could not be
11 transferred to George who was then living but on his death his Will transferred
12 all assets to the Trust (**Exhibit L**).
13

14
15 10. In March 2019, George requested Ken Burns prepare a Second Amendment to
16 the Trust, reaffirming what was in the First Amendment and referring to the
17 "United Kingdom" as the location of the Bank Accounts (**Exhibit M**).
18

19 **III. Kyla's Conduct Violates the No Contest Clauses**

20 NRS 163.00195 sets forth the Enforcement of the No Contest Clause. Paragraph
21 2. states "a No-contest clause must be construed to carry out the settlor's intent to the
22 extent such intent is clear and unambiguous . . . a beneficiary's share may be reduced or
23 eliminated under a no-contest clause based upon conduct that is set forth by the settlor in
24 the trust."
25
26

1 Such conduct such as Kyla's by refusing to provide information regarding the
2 Barclays Account, what personal property of Maureen was still in Kyla's possession and
3 her English attorney claiming Kyla was entitled to all of the English property, clearly
4 violated the Trust and the Amendments. Ken Burns advised Kyla's attorney in England
5 that she was violating the No Contest Clause with Kyla receiving a copy of that letter
6 (Exhibit L). Kyla's attorney, Mr. Kirschner, also received a copy of the letter from Kyla
7 and then wrote Mr. Burns to advise him to send all letters directly to him (Exhibit Q).
8
9 None of the three ever responded to Mr. Burns' letter which would lead one to believe
10 that Kyla was not giving up her claim to the English assets.

11
12 Cary as the Successor Trustee has the right to declare that Kyla was no longer a
13 beneficiary of the Trust or have an interest in the English Estate based upon Section 7.02
14 of the Trust and 7.05 of the First Amendment.

15
16 Section 7.02 Incontestability on page 15 of the Trust (Exhibit K) specifically
17 states that where a beneficiary asserts any claim or other right or interest against the
18 Trustor's Estate or properties of this Trust, other than pursuant to the express terms
19 hereof, or directly/indirectly contests, disputes or calls into question, before any of the
20 validity of this Trust Agreement then such beneficiary shall thereby absolutely forfeit any
21 and all beneficiary interest whatsoever (Emphasis added).

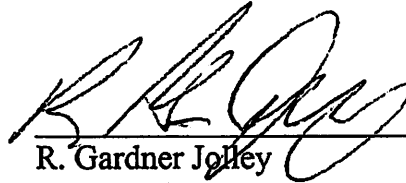
22
23 § 7.05 states:

24
25 For purposes of the Incontestability provisions of Section
26 7.02 above, any action commenced in the United Kingdom by
27 a beneficiary of this Trust with respect to property owned
28 there by the deceased Trustor, Maureen D. Duckworth, that

1 other beneficiaries, who did not join with him, sought no relief and had no voice in the
2 conduct of the case, should share the expense with the initiating beneficiary.”).

3 DATED this 1st day of September, 2020.
4

5 JOLLEY URGAL WOODBURY & HOLTHUS
6

7 
8

9 R. Gardner Jolley

10 Attorney #266

11 330 S. Rampart Boulevard, Suite 380

12 Las Vegas, Nevada 89145
13
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VERIFICATION

I, Cary Duckworth, declare under penalty of perjury of the State of Nevada that he is the Trustee of the Duckworth Family Trust, dated March 12, 2015 in the above matter; he has read the foregoing Reply of Cary Duckworth as Trustee of The Duckworth Family Trust Dated March 12, 2015 to the Supplement of Kyla Duckworth, knows the contents therein, and the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

DATED this 1st of September, 2020.

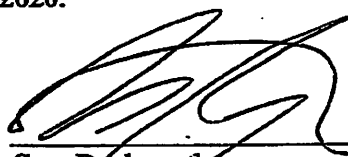

Cary Duckworth

Exhibit "D"

Exhibit "D"

KOLESAR & LEATHAM

ATTORNEYS AT LAW

400 SOUTH RAMPART BLVD., SUITE 400
LAS VEGAS, NEVADA 89145
702.362.7800
knevada.com

August 14, 2019

VIA EMAIL

Peter Dymock, Esq.
QUALITY SOLICITORS LARGE & GIBSON
Kent House
49 Kent Road
Portsmouth
PO8 3EJ

**Re: The Estate of the Late Maureen Daphne Duckworth
Our Client: George M. Duckworth**

Dear Sirs:

Our firm represents George M. Duckworth, father of your client, with respect to his trust and estate within the United States. We understand that you have filed (and renewed) a caveat on behalf of your client, Kyla Michele Duckworth, which prevents the intestate administration of Maureen Duckworth's estate in the United Kingdom. We are providing this information so that Kyla Duckworth is on notice of the consequences of her actions.

We are instructing our Solicitors, Bramsdon & Childs, to file a warning off on or about August 22, 2019, and it is our understanding that your client will have seven (7) days to respond to prevent the removal of the caveat. We wish to inform your client that her responding to prevent the caveat from being removed will be construed as a "contest" of the Duckworth Family Trust in the United States and will result in her being eliminated as a beneficiary of said trust.

We are enclosing a copy of the First Amendment to the Duckworth Family Trust from which provisions which do not apply to Kyla Duckworth have been redacted. A Section 7.05 United Kingdom Contest has been added to the terms of the trust to provide that any attempt to have Maureen's UK property distributed other than in the manner provided for by the intestacy laws of the United Kingdom shall be considered a contest of the trust and such proponent shall no longer be a beneficiary of the trust.

Other provisions of the first amendment include a specific bequest to Kyla of the trust's fifty percent (50%) interest in a residence at 1627 Hinson Street, which shall be valued for credit against her share based upon the appraised value at the time of her mother's death, with an allowance for a twenty percent (20%) discount of illiquidity. The amendment further provides that Kyla's one-third share shall be reduced by any funds from accounts of her mother over which

Peter Dymock, Esq.
QUALITY SOLICITORS LARGE & GIBSON
Page 2
August 14, 2019

KOLESAR & LEATHAM
ATTORNEYS AT LAW

Kyla had signature authority and that she received or withdrew after her mother's death. The amendment provides that if Kyla is not forthcoming with account statements her one-third share shall be reduced by \$350,000. A second amendment is also attached and its sole purpose was to clarify that the financial account referred to would include any held in the Isle of Man or elsewhere.

The contents of this letter and the attachments are specifically provided for the purpose of giving Kyla Duckworth notice that continuing her opposition to an orderly disposition of Maureen Duckworth's estate in the UK under the laws of intestacy shall eliminate her as a beneficiary in the U.S. While the filing of the caveat originally may be grounds to consider it a contest, the courts in the U.S. are reluctant to enforce "no contest" provisions if a potential beneficiary has no notice of such provisions. Any actions by Kyla Duckworth after this letter has been transmitted shall be considered to be actions taken to contest the trust and she will no longer be a beneficiary of the Duckworth Family Trust.

Since your firm is not licensed to practice in the State of Nevada where the trust is located, we are forwarding a copy of the letter and attachments to Kyla Duckworth at addresses known to my client that Kyla has used in the recent past.

Very truly yours,

KOLESAR & LEATHAM



Kenneth A. Burns, Esq.

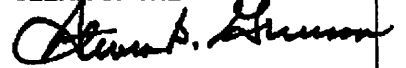
KAB/chk

Enclosures

cc: Ms. Kyla Duckworth (with Enclosures)

Exhibit "E"

Exhibit "E"



JERIMY L. KIRSCHNER, ESQ.
Nevada Bar No. 12012
JERIMY KIRSCHNER & ASSOCIATES, PLLC
5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149
Telephone: (702) 563-4444
Fax: (702) 563-4445
jerimy@jkirschnerlaw.com

Attorney for Kyla Duckworth

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the

THE DUCKWORTH FAMILY TRUST

Dated March 12, 2015

Case No.: P-20-103183-T
Dept: 26

**SUPPLEMENT TO PETITION TO COMPEL PROPER ACCOUNTING AND TO
COMPEL TURNOVER OF TRUST DOCUMENTS; AND RESPONSE TO COUNTER-
PETITION**

COMES NOW, Respondent Kyla Duckworth ("Petitioner"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby submits this Supplement To Petition To Compel Proper Accounting And To Compel Turnover Of Trust Documents; AND Response To Counter-Petition ("Response").

722, 725-26 (2006) (internal quotation marks omitted). Still, “[t]he law abhors a forfeiture.” *See, Organ v. Winnemucca State Bank & Trust Co.*, 55 Nev. 72, 77, 26 P.2d 237, 238 (1933). Therefore, “[a]lthough no contest clauses are enforceable and favored by the public policies of discouraging litigation and preserving the transferor’s intent, they are nevertheless strictly construed and may not be extended beyond their plainly intended function.” *See, Johnson*, 100 Cal.Rptr.3d 622, 217 P.3d at 1198; *See also Ivancovich v. Meier*, 122 Ariz. 346, 595 P.2d 24, 30 (1979); *Saier v. Saier*, 366 Mich. 515, 115 N.W.2d 279, 281 (1962).

Assuming arguendo they are valid, neither the First Amendment nor Second Amendment allude to a caveat as being grounds to invoke the “no contest” clause. The amendments state:

For purposes of the Incontestability provisions of Section 7.02 above, any action commenced in the United Kingdom by a beneficiary of this Trust with respect to property owned there by the deceased Trustor, MAUREEN D. DUCKWORTH, that seeks to have such property (or the proceeds of sale of such property) to be distributed in any manner other than provided for by the intestacy laws of the United Kingdom shall be considered a contest of the provisions of this Trust.

Petitioner has taken no action to have her mother’s property distributed in a way that deviates from intestacy laws. Instead Petitioner filed a “caveat” which was a hold, and she did so prior to even being made aware of the First Amendment. After the August 14, 2019 letter from Cary’s counsel reveal notifying her that a *renewal* of her “caveat” or disputing of the “warning off” would be deemed a contest, she took no further action. Cary has produced no evidence in his Opposition that shows her taking any further action after the August 14, 2019 letter was sent. Thus, she did not provoke the “no contest” clauses of the later, dubious, amendments.

WHEREAS, Petitioner request from this Court,

- A. An Order from this Court taking jurisdiction of the Trust
- B. An Order compelling Cary to give a full account of Trust assets
- C. An Order removing Cary and appointing an independent trustee;
- D. An Order declaring the First Amendment and Second Amendment to the Trust void;

- 1 E. An Order removing Cary as the Trustee and appointing Petitioner; alternative an Order
2 removing Cary and appointing an independent trustee;
3 F. An Order finding that Petitioner did not violate the “no contest” provisions of the later
4 amendments.
5 G. An Order for Cary to pay Petitioners Attorney Fees and Cost incurred in bringing this
6 matter;
7 H. An Order opening discovery and setting an evidentiary hearing; and
8 I. On Order for others such relief as the Court deems proper.

9
10 DATED this 21st day of August, 2020.

11 JERIMY KIRSCHNER & ASSOCIATES, PLLC

12
13 /s/Jerimy L. Kirschner, Esq.
14 JERIMY L. KIRSCHNER, ESQ.
15 Nevada Bar No. 12012
16 5550 Painted Mirage Rd., Suite 320
17 Las Vegas, NV 89149
18 Telephone:(702) 563-4444
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28

VERIFICATION

I, KYLA DUCKWORTH, declare that:

1. Supplement To Petition To Compel Proper Accounting And To Compel Turnover Of Trust Documents; AND Response To Counter-Petition

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.


Kyla Duckworth

Exhibit "F"

Exhibit "F"

Heather S. Smith
CLERK OF THE COURT

ORDER

R. Gardner Jolley, Esq. NSB #266
JOLLEY URG A WOODBURY & HOLTHUS
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
nt@juwlaw.com
Telephone: (702) 699-7500
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and

DAWSON & LORDAHL PLLC
Elizabeth Brickfield, Esq. NSB #6236
Melissa R. Douglas, Esq. NSB #9545
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Telephone: (702) 476-6440
Facsimile: (702) 476-6442
Ebrickfield@dlnevadalaw.com
Mdouglas@dlnevadalaw.com
Counsel for Cary Duckworth, Trustee

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of:

THE DUCKWORTH FAMILY TRUST,

Dated March 12, 2015.

Case No.: P-20-103183-T
Dept. No.: 26/PC-1

Date of Hearing: December 3, 2020
Time of Hearing: 9:30 AM

**ORDER DENYING OBJECTION TO PROBATE COMMISSIONER'S REPORT
AND RECOMMENDATIONS**

Attorneys for Objector:

Kyla Duckworth – Jerimy Kirschner, Esq. of the law
firm Jerimy Kirschner & Associates, PLLC

Attorneys for Opposition:

Cary Duckworth, Trustee – R. Gardner Jolley, Esq. of
the law firm Jolley Urga Woodbury & Holthus
and Elizabeth Brickfield, Esq. of the law firm Dawson
& Lordahl PLLC

Appearance by Beneficiary:

Tara Duckworth – Liane K. Wakayama, Esq. of the
law firm Hayes Wakayama

JOLLEY URG A WOODBURY & HOLTHUS
attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

1 This matter came on for hearing on the 3rd day of December 2020. The Probate
2 Judge having reviewed the Pleadings and papers on file herein, considered the oral
3 arguments of Counsel and good cause appearing, the Court finds that the Probate
4 Commissioner's findings of facts and conclusions of law were not clearly erroneous, the
5 Probate Commissioner Report and Recommendation shall be and is adopted by the Court
6 in its entirety as the finding and orders of the Court.
7

8 DATED this ____ day of December, 2020.
9

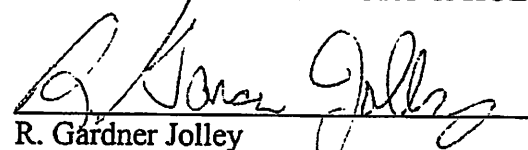
Dated this 9th day of December, 2020


PROBATE COURT JUDGE

D5B C17 3272 BE5F
Gloria Sturman
District Court Judge


14 Respectfully submitted:

15 JOLLEY URGAL WOODBURY & HOLTHUS

16 
17 R. Gardner Jolley
18 50 S. Stephanie Street, Suite 202
19 Henderson, Nevada 89012
20 Attorney for Cary Duckworth as Trustee
21 of the Duckworth Family Trust

22 Approved to as to Form and Content

23 JERIMY KIRSCHNER & ASSOCIATES, PLLC

24 
25 Jeremy L. Kirschner
26 550 Painted Mirage Rd., Suite 320
27 Las Vegas, Nevada 89149
28 Attorney for Petitioner

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 In the Matter of the Trust of: CASE NO: P-20-103183-T
7 The Duckworth Family Trust DEPT. NO. Department 26
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 12/9/2020

14 R. Gardner Jolley	rgj@juwlaw.com
15 Jerimy Kirschner	jerimy@jkirschnerlaw.com
16 Front Office	office@jkirschnerlaw.com
17 Sarah Mintz	Sarah@jkirschnerlaw.com
18 Melissa Douglas	mdouglas@dlnevadawalaw.com
19 Elizabeth Brickfield	ebrickfield@dlnevadawalaw.com
20 Karen Friedrich	kfriedrich@dlnevadawalaw.com
21 Liane Wakayama	lkw@hwlawnv.com
22 Julia Rodionova	julia@hwlawnv.com
23 Nancy Taylor	nt@juwlaw.com
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Cary Duckworth

caryduckworth@icloud.com