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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP)	Supreme Court No. 82935
OF THE PERSON AND ESTATE OF: MAE R.)	District Court Case No. G054599
BROWN, ADULT PROPOSED PROTECTED)	
PERSON)	
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SHAWNTINA BROWN-PALMORE,)	
Appellant,)	
vs.)	
MAE R. BROWN, AND TYRESE BROWN,)	
Respondents.)	
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APPELLANTS RESPONSE

TO ORDER TO SHOW CAUSE:

RE. MOOTNESS DUE TO DEATH

Appellant, SHAWNTINA BROWN-PALMORE, by and through their counsel of record, BOWEN LAW OFFICES, hereby comes by Order of the Court to file this Response to the Court's Order to Show Cause why the above captioned case should not be deemed moot¹ by this Honorable Court.

The sum of Appellant's argument is as follows:

¹The Proposed Protected Person did in fact decease on June 11, 2021. Due to autopsy complications, a Final Death Certificate has not been issued. Counsel does and did intend to seek leave to file a formal Suggestion of Death upon the receipt of the same.

- 1) An Injury-in-Fact remains in controversy as the failure to appoint a Guardian in Case **G-21-054599-A** resulted in improper administration of and substantial loss to the Estate of Mae R. Brown by an Alleged Power of Attorney;
- 2) Where an Injury-in-Fact remains in dispute, *Brass v. State*,² proscribes the appointment of a Personal Representative within 90-days after filing of a Suggestion of Death³ on the record;
- 3) Arguendo, The facts contained in the underlying Case are important matters of Nevada policy, are not unique to the Petitioner, and are exceedingly likely to be capable of repetition yet evade this Court's review;
- 4) The legal standard espoused by the District Court involves a matter of widespread importance possibly affecting the outcome of dozens if not hundreds of similar cases a year of similarly vulnerable persons.

Appellant therefore requests this Court hold that the matter remains ripe for consideration -- or if it is deemed moot, that it may still be considered -- and grant Appellant leave to file a formal Suggestion of Death and a timely Motion for Appointment of Personal Representative into the District Court Case **G-21-054599-A** as proscribed by *Brass v. State*.

I. RELEVANT FACTS

- Appellant Shawntina Brown-Palmore brought a Petition in case number **G-21-054599-A** on March 31, 2021, requesting: 1) the Appointment of a Guardian and; 2) Reimbursement to the Estate of Mrs. Mae R. Brown.

²129 Nev. 527, 530, 306 P.3d 393, 394-95 (2013)

³It is ordinarily the duty of the Attorney for the Deceased to file such documentation. Because of the nature of the action and the Legal Aid Center's role in it, undersigned counsel requests leave to file it on their behalf.

- The District Court dismissed the matter at a Hearing on May 6, 2021 (Order entered May 14, 2021). Therein the presiding judge stated she lacked the authority to do anything *but* dismiss the matter because Petitioner was unable to obtain a Physician's Certificate pursuant to **NRS 159.044**. This ruling was made despite Petitioner's arguments that the document was not "reasonably obtainable" without the Court's Discovery Powers which Plaintiff had Requested in a Reply brief filed May 5, 2021.
- Notice of Appeal was timely filed June 3, 2021.
- Proposed Protected Person, Mrs. Mae R. Brown, deceased on June 11, 2021. No Final Death Certificate has yet been issued.
- In a Docketing Statement filed June 21, 2021, Undersigned Counsel in an attempt at full candor with the Court indicated "(Deceased)" in Sections 3 and 4. Concurrently, on June 15, 2021, a Notice and Order of Voluntary Dismissal was filed in case **G-21-054970-A**
- The Court filed its Order to Show Cause for why the matter should not be deemed moot on July 13, 2021.

II. LEGAL ARGUMENT

As the Court accurately states, the Court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment. *NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Thus, a controversy must be present through all stages of the proceeding, *see Arizonans for Official English v. Arizona*, 520 U.S. 43, 67, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997); *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 476-78, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990), and even though a case may present a live controversy at its beginning, subsequent events may render the case moot. *See University Sys. v. Nevadans for Sound Gov't*, 120

1 Nev. 712, 720, 100 P.3d 179, 186 (2004); *Wedekind v. Bell*, 26 Nev. 395, 413-15, 69 P. 612, 613-14
2 (1902).

3 **A) A Claim remains ripe for cosideration if any Injury-in-Fact remains which may be**
4 **resolved by an Enforcible Judgement of an Appellate Court.**

5 However, a case may explicitly survive an ordinarily moot-worthy event if even a small
6 interest remains in dispute. The most notable example is where the Parties interests in Damages
7 persists at the time of a High Court's review of the Appeal. *See Memphis Light, Gas & Water Div.*
8 *v. Craft*, 98 S. Ct. 1554, 1560 (1978) ("Respondents' claim for actual and punitive damages arising
9 from MLG&W's terminations of service saves this cause from the bar of mootness"). Upon a finding
10 that at least some issues were not moot, the *Memphis* Court then reached even issues which had been
11 rendered moot by interceding events in its final Opinion.

12 Appellant contends that an enforceable judgement could be rendered here; there remain rights
13 and responsibilities of the Parties which were raised by the pleadings and papers at the District
14 Court. Specifically, Petitioner Shawntina Brown-Palmore alleged financial abuse and exploitation
15 by Respondent and Alleged Power of Attorney Tyrese Brown in her March 31, 2021 Petition. Such
16 Claims were re-raised in the Reply before the District Court filed May 2, 2021, wherein an injury
17 to the Financial Estate of Mae R. Brown of over \$10,000 was alleged. Therein, Appellant invoked
18 the District Court's authority to hold an Alleged Power of Attorney aiable for such abuses under
19 **NRS 162A**. These injuries persist to this day, and a Remand from this Court could result in an
20 Enforcible Judgement as it relates to those Financial Damages.

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1 **B) Where an interest of a Litigant survives their Death, it is Nevada Law to substitute a**
2 **Personal Representative to continue Appellate Legislation on their behalf.**

3 The Nevada Supreme Court in *Brass v. State*,⁴ citing NRAP 43, adopted Nevada's preferred
4 approach to the death of a Party to an Appeal, indicating that a Substitution of their surviving interest
5 in the Case should be submitted by Motion within 90-days of the Suggestion of Death on the Record.
6 *Cf. State v. Salazar*, 123 N.M. 778, 945 P.2d 996, 1003-04 (1997) (noting that appellate courts may
7 consider "the best interests of [a] decedent's estate, [any] remaining parties, or society" in
8 determining whether an appeal may continue after an appellant's death). In matters when who
9 should serve as the Personal Representative may be in dispute, the filing of a Motion for Substitution
10 is properly done in the District Court as the Supreme Court is "not a fact-finding Court."

11 Here, formal notice of a Suggestion of Death has not been filed due to a lack of Death
12 Certificate. If given leave by this Court, Appellant intends to do so with all due haste upon its proper
13 receipt. It is upon information and the firmest of belief that one Mr. Keith Allen Brown, Appellant's
14 brother and the deceased's preferred "executor," will then be filing a Motion to Substitute as a
15 Personal Representative into this Appeal. Due to the contentious nature of the family dynamic at
16 present, Appellant believes such filing would properly belong in District Court.

17 In the event Counsel has miscalculated -- and informal suggestion of death is sufficient to
18 trigger **NRAP 43** -- then the first instance of ANY statement "suggesting" Mrs. Mae R. Brown's
19 death in the record would be June 15th of 2021 whereon a Notice and Order of Voluntary Dismissal
20 was entered into Case **G-21-054970-A**. Upon this analysis, Mr. Kieth Allen Brown would still have
21 until Monday, September 13, 2021 for a Motion for Substitution to be timely.

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26 ⁴129 Nev. 527, 530, 306 P.3d 393, 394-95 (2013)

1 **C) Arguendo if moot , the Matter is of such character as to be “capable of repetition yet**
2 **evading review” under Nevada precedent.**

3 Even when an appeal is moot, however, the Court may consider it if it involves a matter of:
4 i) widespread importance that is; ii) capable of repetition, yet; iii) evading review. *Traffic Control*
5 *Servs. v. United Rentals*, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004) (recognizing that the
6 capable-of-repetition-yet-evading-review exception to the mootness doctrine applies when the
7 duration of the challenged action is "relatively short" and there is a "likelihood that a similar issue
8 will arise in the future" (citing *Binegar v. District Court*, 112 Nev. 544, 548, 915 P.2d 889, 892
9 (1996) (noting that the matter must be important), and *Langston*, 110 Nev. at 344, 871 P.2d at 363
10 (pointing out that facts unique to a particular party will not give rise to the mootness exception))).

11 Appellant contends that in the event the court still finds the matter moot, then this exception
12 to the mootness doctrine applies to the present matter. The Proposed Protected Person, Mrs. Mae
13 R. Brown was an elderly and vulnerable person at the end of life, with a child holding an Alleged
14 Power of Attorney and the need for Guardianship to protect her from and reimburse her for abuses
15 of that Power of Attorney. The fact pattern is so common and generic that nearly anyone could
16 eventually find themselves in it. By being so non-unique, this case's fact pattern should survive the
17 *Langston* element of the test.

18 Further, the challenged action is necessarily brief. As Guardianships of vulnerable elderly
19 adults, the overwhelming majority of Proposed Protected Persons similarly situated have a limited,
20 if not entirely finite life expectancy. The action of allegedly sequestering the Proposed Protected
21 Person away, obstructing access to documentation, and negligently failing to provide adequate
22 medical care and squandering the Proposed Protected Persons resources could be done quickly
23 enough (as here) to never properly make it before the Supreme Court for review. Yet, the action
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1 itself is relatively easy to execute, and even easier to expedite to manufacture “mootness” through
2 the alleged bad acts of a Respondent⁵.

3 **D) Matters evading review may and should be heard when they contain a matter of great**
4 **Public Importance.**

5 Lastly the Matter is gravely important, and touches on a District Court’s misapplication of
6 its own jurisdiction. Protecting Elder Abuse through medical and financial exploitation is a
7 compelling state interest. The Eighth Judicial District Court hears hundreds (perhaps thousands) of
8 Similar cases each year. The Trial Court **did not exercise discretion** in its ruling, instead stating
9 on the record that she **lacked authority** to do anything *but* dismiss the matter. The adoption of such
10 a narrow view on **NRS 159.044** can, will, and does prevent hundreds of individuals whom the State
11 Legislature intended to protect from receiving guardianships to ensure adequate protections from
12 exploitive family members. Indeed, the Eighth Judicial’s practice of funneling Guardianship Cases
13 through only a few judges, paired with this overly narrow ruling is hobbling to the entire
14 Guardianship process of Southern Nevada.

15
16 **CONCLUSION**

17 Appellant therefore requests this Court hold that the matter remains ripe due to a surviving
18 Injury-in-Fact to the Estate. Thereupon, the Court should grant Appellant leave to file a formal
19 Suggestion of Death and a timely Motion for Appointment of Personal Representative into the
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23 ⁵ While not directly found in case law as it relates to mootness, Counsel herein promotes the
24 Equitable concept of Jurisprudence in the concept of “bad-faith.” Namely that a “bad-faith” actor
25 should not benefit from conduct when considered for evidentiary or procedural matters.

26 Here, an appeal should equitably not be rendered moot because the person exercising care and
control over that person (Respondant Tyrese Brown) expedited and/or caused that Party’s death.

See for instance Chambers v. NASCO, Inc., 111 S. Ct. 2123 (1991) (“courts’ inherent power to
impose sanctions for bad-faith conduct is not displaced by scheme of statute and rules;”)

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1 District Court Case G-21-054599-A as proscribed by *Brass v. State*. The Court should then reinstate
2 a Briefing Schedule to hear the matter upon the Personal Representative's proper Substitution.

3 Arguendo, this Court should find that if the matter is moot, it is so important, and capable
4 of repetition and evading review, that the matter should be heard as a benchmark case to ensure
5 conformity of the Guardianship process in Nevada in keeping with the Nevada Legislature's intent.
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7 RESPECTFULLY SUBMITTED
8 AND DATED this 12th day of August, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2021, Motion for Extension of Time for
Docketing Statement was made by E-service and addressed as follows:

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