

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE TRUST
AGREEMENT, 23 PARTNERS TRUST I, AN
IRREVOCABLE TRUST.

MICHAEL T. NEDDER; AND DOUGLAS
DELUCA,

Appellants/Cross-Respondents,

v.

JOANNE S. BRIGGS, AS PARENT AND
GUARDIAN OF JULIA ANN DELUCA AND
ALEXANDER IAN DELUCA, PRIMARY
BENEFICIARIES OF THE 23 PARTNERS
TRUST I,

Respondents/Cross-Appellants.

Supreme Court No: 82991

District Court Case No: P-20-104279-T

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APPELLANT'S REPLY AND RESPONSE 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(1), and must be disclosed:

MICHAEL T. NEDDER, Independent Trustee of the 23 PARTNERS TRUST I.

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These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 4th day of April, 2022.

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SUMMARY OF ARGUMENT

Appellees Joanne Briggs, Julia De Luca, and Alex De Luca (collectively, “Appellees” or “Cross-Appellants”)¹ contend that the district court’s contradictory order that finds no right to an accounting and no right to a copy of the Trust documents under both Nevada law and the Trust, but still orders the Trustees to provide an account of the Trust assets and requires the Trustees to provide actual copies of all Trust provisions that relate Appellees interests in the Trust is supported by law. Appellees, as Cross-Appellants, further contend that the district court’s order finding that Appellees have no right to an accounting or a right to a copy of the Trust was in error. Both contentions lack any support in Nevada law or the terms of the Trust.

In a word, Nevada law as set forth in in Chapters 65 and 63 of the Nevada Revised Statutes make it unequivocally clear that Trustees with sole, absolute, and unreviewable discretion have no obligation to provide any type of accounting or financial disclosures to the Trust’s discretionary beneficiaries and even limit the ability a district court has to review a Trustee’s discretionary decisions and actions.

¹ Julia De Luca was a minor at the time the underlying petition was filed but is not over eighteen. Alex De Luca remains a minor. Joanne Briggs originally petitioned the Court on behalf of Julia and Alex. For ease of reference, all three will be referred to as “Appellees” or “Cross-Appellants,” and individually and

Further, the language of the Trust provides no authority for Appellees' position. Although Nevada law provides that the statutory requirements of trust administration are subject to the express terms of the Trust, nothing in the Trust grants Appellees, who are unvested discretionary beneficiaries of both the principal and income of the Trust, a right to any accounting under the terms of the Trust.

Similarly, there is no statutory right for beneficiaries with discretionary interests to have a copy of the Trust documents and nothing in the Trust documents authorize the disclosure of a copy of the Trust despite identifying many other documents that should be disclosed. To the extent the district court wished to require disclosure of certain provisions of the trust document, the district court should and could have identified those provisions that the district court believed should be disclosed. Instead, the district court provided very broad and vague guidance that make it impossible for the Trust to determine which provisions to disclose without disclosing all or most of the Trust documents. Despite reaching the correct conclusion as to what rights Appellees have, the district court's ultimate ruling is untenable.

In their Cross-Appeal Appellees or Cross-Appellants creatively assert that they are entitled to a full accounting as required by statute based on the contention they NRS 165.1207(1)(b)(5) does not apply to them because they claim to have

"Julia," "Alex," and "Joanne."

other interests that are not discretionary. However, the other interests referred to are not interests as the term is used in NRS Chapter 165, which refers only to financial interests in distributions from the Trust, and never refers to interests in the broader sense defined in NRS 132.180. Cross-Appellants' argument, while creative, is not supported by any authority and certainly does not demonstrate that the district court erred in finding that Cross-Appellants have no statutory right to an accounting.

Similarly, the Cross-Appellants also creatively, but erroneously, contend that they are entitled to an accounting under Section 5.2 of the Trust based on their contention that their interest in the trust is a presently vested interest. However, these arguments are not supported by the law they cite, nor are they supported by the terms of the Trust. Just because Julia and Alex are the only currently living beneficiaries --- even the primary beneficiaries at this time --- and the only current progenitors of the Trustor does not make their interest in distributions vested. Their interest in distributions from the Trust is still entirely discretionary.

Importantly, Appellees' requests in this case, were they adopted by the Court, would threaten the Trustor's primary intent in creating the Trust. Ultimately, the primary intent of the Trustor was to ensure that both the principal and income of the Trust assets are protected and preserved for the discretionary

benefit of his future generations without the threat of becoming the vested benefit of any particular beneficiary and therefore subject to the creditors or liability of any particular beneficiary.

Appellees contend that without the protections they request, then a Trustee could run rampant without any checks from a Court. This is not an accurate. Indeed, Nevada law sets forth the basis for judicial review of the decisions and activities of a Trustee who has been granted sole, absolute and unreviewable discretion. NRS 163.419 provides that the actions of a Trustee can be subject to Court review where there has been dishonesty, bad faith and willful misconduct. Were the Trustee's actions to fall within the gambit of NRS 163.419, then the district court would be able to exercise its powers over the Trustee. There were no such allegations nor findings in the proceedings before the district court here.

Further, the Trust itself provides for a check to ensure that the Independent Trustee acts properly in its discretionary role by appointing Doug DeLuca as the family trustee to oversee and look after the Independent Trustee. There are checks and oversight on the independent trustee's power and discretion to ensure that Trust is properly followed. They just are not the checks and oversight that Appellees want.

The Court correctly found that Appellees had not rights to an accounting or to a complete copy of the Trust under Nevada law or the terms of the Trust documents. The Court only erred in instructing the Trust to provide what amounts to an accounting and to provide copies of certain provisions of the Trust after determining no right existed.

This Court should affirm the district court's findings and conclusions that Appellees are not entitled to an accounting under NRS 165.1207 or Section 5.2 of the Trust and that they are likewise not entitled to a complete copy of the Trust document. This Court should reverse the district court's order instructing the Trustee to provide a list of financial disclosures and instructing the Trustee to provide copies of certain provisions of the Trust document.

ARGUMENT IN REPLY TO RESPONSE BRIEF

I. Nevada law does not require the Trust to provide any accounting or even a “baseline” disclosure of financial information to the unvested beneficiaries of an absolute discretionary trust.

Nevada statute governing trust administration unequivocally state that trustees granted “sole, absolute, and unreviewable discretion” (*see* APP 242) or similar terms as set forth in NRS 163.4185(1)(c) state that trustees have no obligation to provide any accounting at all to beneficiaries whose sole interest is

subject to that sole, absolute and unreviewable discretion. *See* NRS

165.1207(1)(b)(5). Appellees have no response to this clear language.

Appellees contend, without any authority, that NRS 165.180 allows a Court to order any trustee, regardless of the level of discretion granted the trustee under the terms of the trust to require an accounting to an unvested, discretionary beneficiary essentially any time the district court wishes and in any manner the district court may direct. There are two problems with this argument. First, Appellees mis-state the plain language of the statute. Second, the statute must be read in conjunction with other statutes that govern the review of the actions of a trustee with sole, absolute, and unreviewable discretion, including the provisions of NRS 163.4185 and NRS 163.419.

When interpreting a statute, this Court first looks to the plain language of the statute. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011) (citing *Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 513-14 (2000)). As this Court has explained, “this court must give [a statute's] terms their plain meaning, considering its provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory.” *Id.* (quoting *Southern Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)).

Appellees mis-state the plan language of statute. NRS 165.180 only allows a “court of competent jurisdiction to require . . . trustees to file an inventory, to account, to exhibit the trust property or to give beneficiaries information or the privilege of inspection of trust records and papers, *at times other than those proscribed in this chapter.*” (emphasis added). Based on its plain language, NRS 165.180 only addresses the timing as to when a court may require a trustee to provide an accounting under NRS 165.1207 and does not authorize a district court to disregard the substantive basis for requiring an accounting. Further, NRS 165.180 also qualifies the district court’s authority by limiting it to granting relief “for good cause shown.” *See* NRS 165.180.

In interpreting NRS 165.180, the Court should also consider other Chapters of the Nevada Revised Statutes that govern the Court’s review of trustee action. For example, NRS 163.419 governs the review of a trustee’s discretion in this context. NRS 163.419(1) provides, “A beneficiary who has a discretionary interest in a trust *does not have* an enforceable right to a distribution from the trust, and a court may review a trustee’s exercise of discretion concerning a discretionary interest *only if* the trustee acts dishonestly, with bad faith or willful misconduct.” (emphasis added). Nevada law provides “trustee given discretion in a trust instrument that is described as sole, absolute, uncontrolled, unrestricted or

unfettered discretion, or with similar words, has no duty to act reasonably in the exercise of that discretion.” NRS 163.419(2). When read in context with NRS 163.419, the “for good cause shown” language would apply to the district court’s authority to require an accounting from a trustee with sole, absolute, and unreviewable discretion. The district court’s power to review a decision of a trustee whose powers are absolute and unreviewable, only arise where there is dishonesty, bad faith or willful misconduct on the part of the trustee.

Similarly, where an accounting is not required by statute, a district court may only order an accounting under conditions where there is some showing that the trustee is acting improperly or other similar good cause. These types of circumstances are congruent with a showing of “good cause” for a district court to require an accounting under conditions differing from those proscribed in Chapter 165. NRS 165.180 therefore does *not* grant a district court unfettered ability to require a trustee with sole, absolute, and unreviewable discretion to provide any account for the trust assets at the whim of beneficiary has an unvested discretionary interest in the Trust and no rights to demand support of distributions from the Trust. There must be some cause --- specifically a showing of dishonesty, bad faith or willful misconduct --- for requiring any account of assets before NRS 165.180 may be invoked.

Here, Appellees insist that this Court can approve the district court's order that flaunts its own conclusions and findings concerning the discretionary beneficiaries' rights under the Trust and Nevada law by ordering that the Trustees provide what the district court termed "baseline" financial information under NRS 165.180, without requiring any showing of cause.² Appellees provide no authority for their contention. Appellees did not provide any cause to the district court for invoking the authority of NRS 165.180. Appellees never asserted nor provided anything to suggest the Trustees were acting dishonestly, with bad faith or willful misconduct. Indeed, Appellees acknowledge that the Trustees were performing their duties by making discretionary distributions to both beneficiaries regularly for their benefit and comfort. Respondent/Cross-Appellants' Opening Brief (hereinafter the "Response Brief"), at p. 7.

Further, the district court did not invoke NRS 165.180 to authorize its order requiring the Trustees to account for the Trust assets to Appellees as unvested and discretionary beneficiaries. Indeed, the district could not invoke NRS 165.180 to justify its order requiring the Trustees to account for the Trust assets and transactions because the district court's authority under NRS 165.180 only relates

² The "baseline" of financial information identified by the Court really amounted to everything that would require be provided to "presently vested" beneficiaries, even though the Court found that Appellees were not presently vested. *See* Appellants' Opening Brief, at pp.9-10, 15; APP 123; 499-501.

to the timing of a required accounting. Other than timing of an accounting, the district court must find some good cause or, more specifically, a finding of dishonesty, bad faith, or willful misconduct under NRS 163.419 in to invoke the district court's power to review the Trustees' actions here.

II. The terms of the Trust do not require the Trustees to provide the financial information, accounting assets, and transaction records the Court ordered.

Because there is no statutory authority for the Court to order the trustees to make any account of the Trust assets to discretionary beneficiaries, yet alone a “baseline” disclosure of financial information, Appellees must rely solely on the language of the Trust to justify the Court's order instructing the Trustee to provide certain financial information to account for the Trust. Appellees acknowledge that the Court's order finds that Appellees have no right to an accounting under Section 5.2 of the Trust, but argue that the Trust, when taken as a whole, necessarily implies that Appellees should have the “baseline” information the Court ordered. Appellees contention, however, misconstrues this Court's methodology for determining the intent of the trustor set forth in *Sharp v. First National Bank of Nevada*, 75 Nev. 355, 343 P.2d 572 (1959) by broadening the narrow scope of necessarily implication to include improper and unnecessary conjecture.

Appellees acknowledge that “A court may not vary the terms of a will to conform to the court's views as to the true testamentary intent.” *Sharp*, 75 Nev. at 360, 343 P.2d at 574. Appellees further acknowledge that in construing express provisions of a trust, a court is “confined to a determination of the meaning of the words used.” *Id.* (internal citations omitted).

The *Sharp* Court provides an exception to this rule where there is no express provision to be construed. Under these limited circumstances, the intent of the grantor or trustor “may be derived from the entire instrument as a whole, from its general scheme, or from informal language used, by *necessary implication*, i.e., implication *not based on conjecture*, but *so strong* that a contrary intention cannot be supposed to have existed” in the mind of the trustor.” *Id.* (emphasis added). The *Sharp* Court further explained, however, that an “omission to express [an] intention cannot be supplied by conjecture,” and applying the principal of “necessary implication” may only be used where a reading of the entire document “produces a *conviction* that the [trustor] must necessarily have intended an interest to be given which is not bequeathed by express and formal words.” *Id.* at 361, 343 P.2d at 575 (emphasis added).

Here, Appellees’ argument expands the principle of “necessary implication” to pure conjecture by claiming that the only way an unvested discretionary

beneficiary might exercise its present rights of appointment or rights to remove an independent individual trustee in favor of a corporate or trust company trustee is if the discretionary beneficiary is able to obtain the Trust's tax returns, beginning and ending inventories, and annual summaries of financial transactions --- essentially an accounting --- in order to be informed sufficiently to exercise these rights

However, equally plausible if not more so is that the trustor intended these rights to be exercised based solely on the documents and information that are expressly authorized to be provided to the Appellees by the Trust, namely, the right to obtain copies of “all trust related instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc. as well as of a Trustee's resignation, removal, appointment and/or acceptance” FUS 29; *see* Response Brief, at p. 4. Further, the Trustor may have also intended that these powers be exercised based on the right to request or obtain the protected health information and medical information of the Trustee that is necessary to determine whether the Trustee is incapacitated. FUS 58; *see* Response Brief, at p. 5.

Even when reading the trust documents as a whole, there is simply not enough for a court to reach a “clear conviction” that requiring the Trustees to provide “baseline” financial information to these discretionary unvested beneficiaries as the district court ordered amounts to a “necessary implication” that

is “so strong that a contrary intention cannot be supposed to have existed” in the mind of the trustor. *Sharp*, 75 Nev. at 360, 343 P.2d at 574. Indeed, there is at least one other contrary intention if not more that can be supposed to have existed. Appellees’ purported “necessary implication” is nothing more than improper implication based on conjecture. As such, the district court’s order cannot be justified by any necessary implication revealed by reviewing the Trust documents as a whole. The Trust documents do not expressly require the disclosures required by the district court and a review of the Trust documents of a whole does not necessarily imply the court ordered financial disclosures.

III. If the district court believed certain provisions in the Trust documents should be provided to Appellees, the district court should have expressly identified them.

Appellees are incorrect in stating that the Trustees do not claim that the district court erred by ordering the Trustees to disclose copies of any portions of the Trust documents. Neither NRS Chapter 165 nor the terms of the Trust require the Trustees to provide a copy of the Trust documents. Indeed, the Trust documents expressly do not require disclosure of the Trust documents despite setting forth a detailed list of items that are to be disclosed. APP 499. The district court found that Trust’s specificity in identifying the documents and

information that were to be disclosed and the absence of any reference to the trust documents indicates that the trustor could not have intended that the Trust documents be disclosed. APP 499, 500. Therefore, the district court erred in requiring any specific sections of the actual Trust documents to be disclosed in the face of its conclusion concerning the terms of the Trust.

However, if the district court believed that Appellees needed to at least have certain terms or sections of the Trust to know their rights, which Appellees have set forth in their brief, the real district court still erred by providing broad, vague, and inadequate guidelines to the Trustees concerning which sections of the Trust needed to be disclosed. The guidelines are so broad as to make it impossible for the Trustees to be certain which sections should be disclosed and which can be withheld. The district court had reviewed all the Trust documents and received argument from Appellees counsel identifying every provision in the Trust that purported to grant any presently available right to Appellees. If the district court determined that any provisions of the trust documents should be disclosed, the district court could have, and should have, specifically identified those sections that it deemed necessary to be disclosed. Had the Court done so, then the Trustees could have either complied or appealed that order based on the specific sections, the Court identified. Instead the Court's broad and vague guidelines do not lend

themselves well to the Trustee's interpretation, yet alone this Court's review.

The district court erred by concluding that the Appellees are entitled copies of any portion of the Trust documents. However, if the district court found that Appellees should have copies of certain provisions of the Trust, then the district court should have identified those provisions rather than set forth vague guidelines subject to the interpretation of the Trustees.

ARGUMENT IN RESPONSE TO CROSS-APPEAL

I. Neither the trust nor Nevada law requires Trustees to provide an accounting.

Cross-Appellants contend that the district court erred in finding that Cross-Appellants have no right to obtain an accounting under NRS Chapter 165 or under Section 5.2 of the Trust. Cross-Appellants arguments, though creative, are not supported by Nevada law or the plain language of the Trust. Indeed, were Cross-Appellants to be granted the statutory rights to an accounting or the rights set forth in Section 5.2 of the Trust based on Cross-Appellants claim to be a presently vested beneficiary, the Trust would likely lose its status as a spendthrift trust and be subject to the claims of the Cross-Appellants' creditors, and otherwise subject to the Cross-Appellants' liabilities. Such a reading could not be the intent of the Trustor. The plain language of the Trust makes clear that the intent of the

Trustor was to create a discretionary trust that would not grant any vested rights to beneficiaries. The of the Trust is clear and unambiguous in stating the Trustor's intent that the Cross-Appellants are not vested beneficiaries and their interest in the Trust is discretionary. Under the language of the Trust and Nevada law, they do not have a right to an accounting under Chapter 165 or under Section 5.2 of the Trust.

A. The trust does not require any accounting to Cross-Appellants beneficiaries under Section 5.2.

Cross-Appellants erroneously contend that they are entitled to the financial and transactional disclosures that a Trustee is required to make under specified circumstances as set forth in Section 5.2 of the Trust. However, Appellees acknowledge that their entire argument hinges on their contention that they hold a presently vested interest in the Trust. *See* Response Brief, at 24; APP 123. As holders of a discretionary interest, Cross-Appellants are not and cannot hold presently vested interests in the Trust.

Cross-Appellants first erroneously contend that because they hold certain present rights of testamentary appointment, a right to remove individual independent trustees in favor of a bank or trust company, a right to copies of certain "trust related instruments, of amendment, revocation, exercise of power,

designation, release, disclaimer, etc., as well as of a Trustee's resignation, removal, appointment and/or acceptance," and the right to request and obtain the protected health information and medical information necessary to determine whether the Trustee has become incapacitated, that this makes their interest a presently vested interest. It would be accurate to state that these rights are not discretionary. But these rights have nothing to do with the beneficiaries' interests under NRS Chapter 165, which deal entirely with a beneficiary's financial interest in distributions of Trust property. *See infra* Argument in Response to Cross-Appeal, Part I.B.

Appellees argue further that because they are the primary and, currently the only beneficiaries, and the only future beneficiaries would be their progenitors for which they have the testamentary power of appointment, their financial interest must be vested in the Trust principal and income. This is because, Appellees contend, because there are no others except their own future progenitors that might be beneficiaries. Appellees argument is not supported by the law or the facts and would threaten the primary intent of the Trustor in establishing the Trust.

Both arguments fly in the face of the Trustor's intent to grant the Trustee's sole, absolute, and unreviewable discretion and to protect the Trust from the liabilities and creditors of the beneficiaries in order to preserve the Trust for future generations. No beneficiary interest is vested because the Trustee has sole and

absolute discretion in whether to make some distributions or no distributions to all, some, or none of the current or future beneficiaries. APP 242. Further, “a vested interest [is that] portion of the trust which was within the reach of creditors.”

Henderson v. Collins, 267 S.E.2d 202, 206 (Ga. 1980) (noting that a trust that ultimately requires a distribution whether currently or in the future is vested and subject to the claims of creditors). Indeed, for a trust to be truly discretionary and be beyond the reach of creditors, the terms of the trust must grant the “trustee absolute discretion as to the payment of principal and interest to beneficiaries.” *Id.* (citing Restatement, Second, Trusts s 155). Further, “where the beneficiary is ultimately entitled to whole or a specific part of the trust, the trustee cannot be said to have absolute discretion, and the trust is not a discretionary trust.” *Id.* (citing Restatement, Second, Trusts s 155, Comment c at 324 (1959)).

Here, Cross-Appellants’ contention that because Julia and Alex are currently the only beneficiaries (because there are no future generations) their interest must be vested destroys the Trustor’s clear intent in establishing a trust that would be available for future generations and not be subject to the creditors and liabilities of the two current beneficiaries even though they are the primary beneficiaries.

Assuming that Cross-Appellants’ assertion that Julia and Alex are currently the only beneficiaries is accurate, the fact that they currently are the only beneficiaries

does not transform their unvested discretionary financial interest in the Trust into a vested financial interest. Nor does it modify or restrict discretionary authority granted the Trustees under the Trust. The rights granted to Cross-Appellants under the terms of the Trust do not affect the Trustees' sole, absolute and unreviewable discretion concerning Appellees beneficial interest in distributions and therefore Appellees have no vested interest in receiving any distributions from the Trust and cannot claim a right to the information available under Section 5.2 of the Trust by its very terms.

Cross-Appellants cite *Matter of Brinley Amicon Property Trust*, 134 Nev. 954, 414 P.3d 812 (2018), an unpublished decision, for the contention that they have a vested present interest. However, in *Matter of Brinley Amicon Property Trust*, the trust at issue there provided for mandatory distributions of property once the beneficiary reached certain ages, meaning that there would be a time when a distribution would not be discretionary but mandatory. *Id.* at *1. Here, the Trust does not provide for mandatory distributions to either Julia or Alex at any time. Julia's and Alex's beneficiary interest are discretionary and not vested. Allowing their interests to be vested would destroy the primary purpose of the Trustor as set forth in Section 1.2 of the Trust and allow the Trust to be open to creditors and liabilities of Julia and Alex. See Sealed Exhibit 14 (identified as the *In Camera*

Submission).

Further, even though there was a mandatory distribution provision available upon the beneficiary reaching a certain age, the Nevada Supreme Court in *Matter of Brinley Amicon Property Trust* still determined that the beneficiaries interests were entirely discretionary and that they were not entitled to any accounting under NRS 165.1207(1)(b)(5). 134 Nev. 954, 414 P.3d 812, at *2.

B. Nevada law does not require an accounting for discretionary trusts.

Cross-Appellants acknowledge that NRS 165.1207(1)(b)(5) does not require Trustees who have sole, absolute, and unreviewable discretion in making distributions to make an accounting to beneficiaries whose sole interest is discretionary. *See* Response Brief, at pp. 30-31. Indeed, Cross-Appellants further acknowledge that Cross-Appellants rights to any distribution of Trust income or property is at the sole discretion of the Trustee. *Id.*

Cross-Appellants only argument is a creative but erroneous contention that because Cross-Appellants have rights that are not discretionary, none of which create any right to a distribution, then the exemption from providing an accounting under NRS 165.1207(1)(b)(5) does not apply. Appellees argue that because they hold purportedly non-discretionary rights to appointment, rights to remove the

Trustee in favor of a bank or corporate trustee, and a right to remove the Trustee without cause after they turn 33 years old means that their sole interest is not the discretionary right to distributions. They argue that NRS 165.1207(1)(b)(5) only exempts the duty to account where the beneficiaries' "sole" interest is a discretionary interest as defined in NRS 164.1485. Therefore, any other right would constitute an "interest" that would mandate an accounting under NRS 165.1207. Specifically, Appellees argue that the definition of "interest" set forth in NRS 132.180, which broadly defines "interest" to include the "power to appoint, consume apply or expend property," and "any other right, power, privilege or immunity relating to property."

First, the Court should not consider this argument because it was not raised with the district court. Indeed, Appellees do not cite the record to show where this argument was made below. A party may not raise "new issues, factual and legal, that were not presented to the district court ... that neither [the opposing party] nor the district court had the opportunity to address." *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 693, 290 P.3d 249, 252 (2012) (citing *Schuck v. Signature Flight Support*, 126 Nev. 434, 437-38, 245 P.3d 542, 545 (2010)).

Further, this argument is based on the erroneous assertion that definition of the term "interest" in Chapter 165 is the same as the definition in Chapter 132,

provided in NRS 132.180. NRS 132.180, however, defines “interest” in the context of determining who an “interested person” is under NRS 132.185 and NRS 132.390, which is a much broader terminology than the use of the term “interest” used in Chapter 165. Indeed, throughout NRS Chapter 165, the term “interest” always refers to beneficiaries right to receive distribution from a trust and never includes the other rights identified in NRS 132.180. *See, e.g.*, NRS 165.020(1)(g); NRS 165.1207(1)(b)(5); NRS 165.135(3). Each of these provisions use the word interest in the context of a beneficial right to distributions. There is no reference in Chapter 165 that refers to “interest” as meaning a right to remove a Trustee or even a right of testamentary appointment. These “rights” are not a “interest” as used in NRS Chapter 165. Therefore, Cross-Appellants “sole interest” under NRS Chapter 165 is its discretionary interest in receiving distributions from the Trust.

Simply put, if the Trustee is granted sole, absolute, and unreviewable discretion over distributions to any beneficiaries of the Trust, then that Trustee is exempt from the accounting requirements of NRS 165.135 as to those beneficiaries whose sole interest in distributions is subject to the Trustees’ discretion. Nevada law does not provide that a beneficiary who may have other non-discretionary rights, such as a special power of appointment, the power to remove an individual serving as an Independent Trustee in favor of a bank or trust company, the power

to remove the trustee after age 33, but whose sole interest in receiving distributions is discretionary, any rights to an accounting under NRS 165.1207. Under Nevada law, the Trustees are not required to provide an accounting to beneficiaries whose sole interest is discretionary. NRS 165.1207(1)(b)(5).

Indeed, this Court has addressed this issue in *Matter of Brinley Amicon Property Trust*, 134 Nev. 954, 414 P.3d 812 (2018), an unpublished decision cited by Appellees. In *Matter of Brinley Amicon Property Trust*, the Nevada Supreme Court found that an accounting was not required because the beneficiaries' sole interest was discretionary even where the Trust terms indicate that there would be some mandatory distributions in the future. The Court determined that the beneficiaries interests were entirely discretionary and that they were not entitled to any accounting under NRS 165.1207(1)(b)(5) even if there were some possibility that some portion of the remaining principal or income in the Trust that the Trustee would be required to distribute and some point in the future. *Id.* at *2.

II. Neither the trust nor Nevada law requires trustees to provide a full copy of the trust documents to Petitioners.

The district court recognized that the provisions of the Trust agreement did not support the request for a copy of the Trust agreement. APP 499-500. Indeed, specific language of the Trust agreement is the primary basis for the district court's

conclusion that the Beneficiaries were not entitled to a copy of the Trust agreement. APP 499. Section 5.1(C) does require the Trustees to provide a very specific list of documents that should be provided to a beneficiary, but a copy of the Trust agreement itself is not one of them. *See* Response Brief, at p. 34; Section 5.1(C); APP 499. The district court correctly noted that the fact that there is such a specific list of documents that should be provided to the beneficiaries affirms that the Trustor did not intend to require that the Cross-Appellants receive a copy of the entire Trust. APP 499.

Cross-Appellants argue that rather than the detailed list of documents that can be disclosed supporting a finding that no other documents should be disclosed, including the Trust documents, would instead indicate that it was just presumed that a copy of the Trust document itself would be disclosed. This argument does not make sense, especially where the Trust was very meticulously prepared and the documents to be disclosed were so specifically identified. It would have been so simple for the Trustor to ensure disclosure of a copy of the Trust document itself. The fact that it was left out certainly must be intentional.

Cross-Appellants only other argument in favor of granting the request for a complete copy of the Trust is a version of the “necessary implication” theory set forth above. *See supra* Argument in Reply to Response Brief, Part II. However,

as argued herein, the terms of the Trust do not necessarily implicate the need for Cross-Appellants to have a complete copy of the Trust. There are already many documents and information that the Trust does require be provided to the Cross-Appellants, and those documents are sufficient for the Cross-Appellants to be able to exercise their rights.

At best, Cross-Appellants may only need certain provisions of the Trust to direct their understanding of their rights, not a copy of the entire Trust, which was the intent of the district court's order. The better way for the district court to handle this is to specifically identify the specific provisions. Further, the Trustor intended to ensure that the Cross-Appellants had the information they needed by appointing a family trustee to be aware of what the beneficiaries might need without unnecessarily disclosing information that was not needed nor authorized for disclosure.

Finally, as a last resort Cross-Appellants argue that they are entitled to a copy of the entire Trust under NRS 165.147. However, NRS 165.147 only requires the disclosure of a copy of the Trust to those who are entitled to an accounting under NRS Chapter 165. This issue has already been addressed. Appellees are not entitled to an accounting under NRS Chapter 165 and therefore not entitled to a copy of the Trust under that chapter. *See infra* Argument in

Response to Cross-Appeal, Part I.B.

Cross-Appellants have not demonstrated any basis for requiring the Trustee provide Cross-Appellants with a complete copy of the Trust either under the terms of the Trust or Nevada law. There simply is no basis. To the extent the district court believed that there were some need for some provisions of the Trust to be provided to Cross-Appellants, the correct way for the district court to ensure necessary provisions are disclosed would have been to specifically identify the provisions it believed should be disclosed.

CONCLUSION

The district court correctly found that Appellees here have no rights to an accounting or to a complete copy of the Trust under Nevada law and the terms of the Trust. The district court only erred by instructing the Trustee to provide certain financial information that all but amounts to an accounting without any basis or authority to do so, and by determining that the Appellees had a right to obtain copies of certain, broadly and inadequately defined, section of the Trust document.

The district court correctly determined that there was no basis in Nevada law or in the terms of the Trust for Appellees to receive a full accounting under NRS 165.1207, nor under Section 5.2 of the Trust.

Appellees fears of the purported absence of checks on the Independent Trustees discretion in managing the Trust are unfounded. Nevada law does provide for review of trustee decisions whose decisions are solely and absolutely discretionary under NRS 163.419. Further, the Trust provided for a second family trustee to ensure that the Trust is being administered appropriately.

Finally, granting Appellees such rights where they only hold a unvested and solely discretionary interest in the Trust would likely destroy the primary intent of the Trustor in establishing the Trust --- to preserve the Trust principal and income for future generations without being subject to any of the potential creditors or liabilities of any particular beneficiaries.

This Court should affirm the district court's findings and conclusions that Appellees are not entitled to an accounting under NRS 165.1207 or Section 5.2 of the Trust and that they are likewise not entitled to a complete copy of the Trust document. This Court should reverse the district court's order instructing the

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Trustee to provide a list of financial disclosures and instructing the Trustee to provide copies of certain provisions of the Trust document.

DATED this 4th day of April, 2022.

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ATTORNEY'S CERTIFICATE

1. I certify that 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 it has been prepared in a proportionally spaced typeface using Word in 14 point Times New Roman font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 6047 words.

3. Finally, I certify that I have read this appellate 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 Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to

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be found. I understand that 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 4th day of April, 2022.

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CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the ***APPELLANT’S REPLY AND RESPONSE BRIEF*** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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DATED this 4TH day of April, 2022.

/s/ Bobbie Benitez

An employee of Hutchison & Steffen, PLLC