

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 12 2021 06:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

In the Matter of the Estate of Jack Slovak.

NO. 83085

Tyler Slovak,

Appellant,

DISTRICT COURT NO.

vs.

PR17-00458

Lynn Valerie Wheeler, formerly Slovak,

Respondent.

MOTION FOR 1-DAY EXTENSION OF TIME

Appellant, by and through his undersigned counsel, Tory M. Pankopf (“Counsel”) move, pursuant to Rule 31(b)(3) of the Nevada Rules of Appellate Procedure, this Court for an order extending time to file his docketing statement one day.

Based thereon, Counsel declares and states:

1. Appellant’s docketing statement was due yesterday, August 11, 2021;
2. I was distracted from timely filing the request yesterday because of another clients’ file I was working on. Namely a response to a motion for summary

judgment in the Contra Costa Superior Court of California. I filed the docketing statement this morning at about 8:15 a.m. but the filing was rejected because it need to be accompanied by this request for extension of time.

3. Counsel was unable to obtain a response as to whether respondents would stipulate to the 1-day extension;
4. The docketing statement is complete and is filed concurrently herewith as an attachment;
5. Based thereon, Appellants respectfully request an additional 1-day extension to Thursday, August 12, 2021, to file his docketing statement opening brief.

Counsel declares under penalty of perjury under the laws of the state of Nevada the foregoing statements are true and correct.

AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

Dated: August 12, 2021

By: s/Tory M. Pankopf
Tory M. Pankopf Ltd
748 S Meadows Pkwy, Suite 244
Reno, Nevada 89521
(775) 384-6956
Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

In the Matter of the Estate of Jack P. Slovak

TYLER SLOVAK,

Appellant,

vs.

LYNN VALERIE WHEELER formerly SLOVAK,

Respondent.

Supreme Court No. 83085

DOCKETING STATEMENT CIVIL APPEALS

District Court Case No. PR17-00458

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District SECOND Department PR

County WASHOE Judge LYNN K. SIMONS

District Ct. Case No. PR17-00458

2. Attorney filing this docketing statement:

Attorney TORY M. PANKOPF Telephone (775) 384-6956

Firm TORY M. PANKOPF LTD.

Address 748 S Meadows Pkwy, Ste 244
RENO, NV 89521

Client(s) TYLER SLOVAK

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney PATRICK MILLSAP Telephone (775) 853-0883

Firm WALLACE & MILLSAP

Address 510 W PLUMB LN STE A
RENO, NV 89509

Client(s) LYNN VALERIE WHEELER formerly SLOVAK

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Order approving settlement & transfer of asset</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Prior case: Supreme Court Case Nos. 82631 & 82897

Case Name: ESTATE OF JACK SLOVAK

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Probate of the Estate of Jack Slovak. Motion to preclude Tyler Slovak's contesting of the will and pleading extrinsic fraud with the particularity required by NRCP 9(b) because he failed to timely file a court ordered more definite statement.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether Tyler Slovak was provided notice of the motion/order given he resides in New Zealand where notice to him was provided via regular U.S. Mail/First Class rather than via international mail without international postage having been paid.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised: N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Supreme Court may assign case to the Court of Appeals.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
NO.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from May 18, 2021.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served May 18, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed June 17, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Respondent's filed motion to dismiss case and court entered order dismissing case without leave to amend.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Appellant: Tyler Slovak

Respondent: Lynn Wheeler.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant: Will submitted did not comply with the laws of New Zealand and is therefore invalid.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Tyler Sarge
Name of appellant

Tory M. Pankopf
Name of counsel of record

8/11/2021
Date

s/Tory M. Pankopf
Signature of counsel of record

Washoe, NV
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 11th day of August, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

9468 Double R Bl Ste A
Reno, NV 89521

Dated this 11th day of August, 2021

s/Tory M. Pankopf
Signature

1 **\$2200**

2 *F. McClure Wallace, Esq.*
3 Nevada Bar No.: 10264
4 *Patrick R. Millsap, Esq.*
5 Nevada Bar No.: 12043
6 *Wallace & Millsap*
7 510 W Plumb Ln., Ste. A
8 Reno, Nevada 89509
9 (775) 683-9599
10 mcclure@wallacemillsap.com
11 patrick@wallacemillsap.com
12 Attorneys for LYNN VALERIE SLOVAK

13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR THE COUNTY OF WASHOE**

15 **IN THE MATTER OF THE ESTATE**

Case No.: PR17-00458

16 **OF**

Dept. No.: PR

17 **JACK P SLOVAK, also known as JOHN**
18 **PAUL SLOVAK JR, and JOHN PAUL**
19 **SLOVAK.**

20 **LYNN VALERIE SLOVAK'S MOTION FOR SUMMARY JUDGMENT AGAINST**
21 **TYLER SLOVAK**

22 Lynn Valerie Slovak (hereinafter "Ms. Slovak") respectfully moves this Court for
23 summary judgment against Tyler Slovak and the claims alleged in his Objection and
24 Counter-Petition contesting the Will of Jack P. Slovak lodged with this Court.

25 This Motion is based on the following Memorandum of Points & Authorities, the
26 Exhibits attached thereto, any oral argument presented to this Court, and the papers and
27 pleadings on file before this Court.

28 Dated this 2nd day of April, 2021

By: /s/ Patrick R. Millsap & F. McClure Wallace.

Attorneys for Lynn Valerie Slovak

MEMORANDUM OF POINTS & AUTHORITIES

STATEMENT OF THE ISSUES

Ms. Lynn Slovak respectfully requests the Court grant her summary judgment against Tyler Slovak's Will Contest filed in his Objection and Counter-Petition dated February 12, 2019. Ms. Slovak requests summary judgment against Tyler Slovak's Objection and Counter-Petition because Tyler Slovak's Will contest is time barred by NRS 137.080 and, alternatively, is subject to dismissal for want of prosecution under NRCP 41(e)(2)(A).

More specifically, NRS 137.080 required Tyler Slovak to file his Will contest within three months from the date the Court admitted the Will to probate. Tyler Slovak failed to contest the validity of the Will within three months of the Court admitting the Will to probate and, therefore, his Will contest is time barred by NRS 137.080's statute of limitations.

Tyler Slovak attempted to circumvent the statute of limitations by alleging Ms. Slovak engaged in extrinsic fraud. The Court ordered Tyler Slovak to file a more definite statement substantiating his extrinsic fraud claims in the Court's October 1, 2019 Order. Tyler Slovak did not file a more definite statement regarding his allegations of extrinsic fraud against Ms. Lynn Slovak as ordered by the Court. Therefore, Tyler Slovak's Objection and Counter-Petition are time barred by NRS 137.080, and there is insufficient evidence of extrinsic fraud to circumvent the applicable statute of limitations, thereby entitling Lynn Slovak to summary judgment against Tyler Slovak's Will contest.

Alternatively, NRCP 41(e)(2)(A) required Tyler Slovak to bring his Will contest to trial within two years of commencing the action on February 12, 2019. Two years have lapsed since Tyler Slovak commenced his Will contest in February of 2019. During the two-year period since commencing his Will contest, Tyler Slovak has not performed any interrogatories, requests for admissions, requests for production, depositions, or subpoenaed discovery from any third parties in furtherance of his claims. Thus, Tyler Slovak has done nothing to prosecute his Will contest to trial within two years of

1 commencing the action, rendering summary judgment against his Will contest appropriate
2 under NRCP 41(e)(2)(A) for want of prosecution.

3 Consequently, Ms. Lynn Slovak respectfully requests the Court grant her summary
4 judgment on the issue of the Will's validity, because no interested person has timely filed
5 or prosecuted a Will contest, thereby permitting Ms. Slovak to proceed with administration
6 of the Will lodged with the Court in order to conclude this Estate proceeding.

7
8 **STATEMENT OF CASE PROCEDURE**

9 Ms. Slovak initiated this probate matter by filing a Petition for Probate of Will,
10 Appointment of Personal Representative, and for Issuance of Letters Testamentary on
11 August 10, 2017 (the "Probate Petition"). See Court Docket. Ms. Slovak noticed a
12 hearing to consider the Probate Petition for October 11, 2017. *Id.* Ms. Slovak duly noticed
13 the hearing by publication in the Sparks Tribune on August 23, 2017, August 30, 2017
14 and September 6, 2017. See September 11, 2017 Proof of Publication.

15 On October 11, 2017, Ms. Slovak lodged the Will of John Paul Slovak (also known
16 as John P Slovak Jr. and as Jack Paul Slovak), dated June 3, 2016, with the Court (the
17 "Will"). See Court Docket. Then on October 12, 2017 the Court granted Ms. Slovak's
18 Probate Petition in its Order Admitting Will to Probate, Appointing Personal
19 Representative and for Issuance of Letters Testamentary. *Id.* Shortly thereafter, Letters
20 Testamentary were issued to Lynn Valerie Slovak on October 19, 2019. *Id.*

21 Ms. Slovak filed a Notice to Creditors on March 13, 2018 allowing all creditors of
22 the Estate 90 days after the mailing or the first publication of the Notice to Creditors to file
23 a claim. *Id.* Additionally, Ms. Slovak mailed the Notice to Creditors to all known creditors
24 on March 14, 2018. See Affidavit of Mailing on file with the Court. Ms. Slovak also
25 published the Notice to Creditors in the Sparks Tribune on March 21, 28, and April 4,
26 2018. See Proof of Publication on file with the Court.

27 On September 12, 2018, Ms. Slovak filed a Request to Waive Accounting and a
28 separate Inventory & Appraisement. See Court Docket. Thereafter, on September 28,

1 2018, Ms. Slovak filed her Petition for Approval of Waiver of Accounting, Final Distribution
2 and for Approval of Attorney's Fees (the "Distribution Petition"). See Court Docket. A
3 hearing on the Distribution Petition was scheduled for December 5, 2018. See Notice of
4 Hearing on file with the Court.

5 Prior to the hearing to consider the Distribution Petition, Interested Parties Tyler
6 Slovak, Juanita Slovak and Robert Slovak appeared on December 4, 2018, by and
7 through their attorney Sharon M. Jannuzzi, Esq. See Notice of Appearance on file with
8 the Court. The Parties stipulated to continue the hearing on the Distribution Petition to
9 February 13, 2019. See the Stipulation to Continue on file with the Court as well as the
10 Court's Minutes filed on December 6, 2018.

11 On February 8, 2019, Courtney Miller O'Mara, Esq. and Wade Beaver, Esq. of
12 FENNEMORE CRAIG, P.C. substituted for Ms. Jannuzzi as Tyler Slovak's attorneys of
13 record. See Substitution of Counsel of file with the Court.

14 Juanita Slovak filed a General Claim for spousal support against the Estate on
15 February 12, 2019. See General Claim on file with the Court. Robert Slovak also filed a
16 General Claim against the Estate and an Objection to Lynn Slovak's Petition on February
17 12, 2019.

18 Separately, Tyler Slovak filed a Verified Objection to Lynn Slovak's Distribution
19 Petition (the "Objection") on February 12, 2019. See Court Docket. The Objection
20 contests the validity of the Will lodged with the Court. See *generally* the Objection. In
21 support of Tyler Slovak's Objection and Counter-Petition, he obtained a Declaration from
22 Scott Johannessen, which he filed alongside his Objection and Counter-Petition on
23 February 12, 2019. *Id.* Robert Slovak also filed a Declaration in support of Tyler Slovak's
24 Objection.

25 A hearing was held regarding the Distribution Petition on February 13, 2019 in front
26 of Probate Commissioner Robin Wright. See the Court's Minutes filed on February 14,
27 2019. On February 14, 2019, the Probate Commissioner referred this matter to Probate
28 Judge David A. Hardy for all further proceedings. See Commissioner's Recommendation

1 on file with the Court. The Honorable David A. Hardy filed an Order of Recusal Directing
2 Random Assignment. See Court Docket. The Clerk of the Court then randomly
3 reassigned this case to Department 6 before Your Honor. *Id.*

4 The Parties scheduled a Status Conference for May 7, 2019 at the Court's
5 directive. See Order to Set Status Conference and Application for Setting on file with the
6 Court. At the May 7, 2019 Status Conference, Patrick Millsap, Esq. of Wallace & Millsap
7 LLC appeared on behalf of Ms. Slovak and informed the Court Wallace & Millsap LLC
8 would be substituting in as Ms. Slovak's Counsel of Record in place of Linda Bowman,
9 Esq. Ms. Slovak then moved to dismiss Tyler Slovak's Objection and Counter-Petition
10 based on the applicable statute of limitations.

11 The Court denied Ms. Slovak's Motion to Dismiss, however, in doing so required
12 Tyler Slovak to meet certain conditions to continue prosecution of his Objection and
13 Counter-Petition. Namely, the Court required Tyler Slovak to file a more definite
14 statement regarding his allegations of extrinsic fraud committed by Ms. Slovak within 30
15 days of October 1, 2019. See October 1, 2019 Pretrial Case Management Order After
16 Hearing. Shortly thereafter on October 17, 2019, Fennemore Craig withdrew as Tyler
17 Slovak's Counsel of Record.

18 As a result of Fennemore Craig withdrawing on behalf of Tyler Slovak, Lynn Slovak
19 stipulated to permit Tyler Slovak until December 30, 2019 to file his more definite
20 statement as a courtesy. See October 23, 2019 Stipulation and Order to Modify Pretrial
21 Case Management Order. Then in December of 2019, Ms. Jannuzzi moved to withdraw
22 as Counsel of Record for Robert Slovak. Consequently, both Tyler and Robert Slovak
23 became pro per litigants in this matter.

24 Tyler Slovak did not file his more definite statement by December 30, 2019 as
25 ordered by the Court. Rather, Robert and Tyler Slovak filed a motion to extend the time
26 for Tyler Slovak to file a more definite statement on December 31, 2019. Robert and
27 Tyler Slovak filed yet another motion to extend the time for Tyler Slovak to file a more
28 definite statement on March 2, 2020. Ultimately, the Court granted Tyler Slovak until

1 March 31, 2020 to file a more definite statement regarding his allegations of extrinsic
2 fraud against Lynn Slovak. See March 6, 2020 Order. Tyler Slovak violated the Court's
3 March 6, 2020 Order and never filed a more definite statement regarding his allegations
4 of extrinsic fraud against Ms. Slovak, meriting summary judgment against his Objection
5 and Counter-Petition contesting the Will of Jack Slovak lodged with the Court.

6
7 **STATEMENT OF UNDISPUTED FACTS**

8 1. Ms. Slovak filed a Petition for Probate of the Will on August 10, 2017. See Court
9 Docket.

10 2. Ms. Slovak lodged the Will with the Court on October 11, 2017. See Court Docket.

11 3. The Court then admitted the Will to probate via Court Order on October 12, 2017,
12 thereby triggering the 3-month period of limitations to contest the Will codified in NRS
13 137.080. See October 12, 2017 Order of the Court.

14 4. Tyler Slovak failed to contest the Will within 3 months of October 12, 2017. See
15 Court Docket.

16 5. No interested person in the Estate of Jack P. Slovak filed a Will contest within three
17 months of October 12, 2017, as required by NRS 137.080. See Court Docket. In other
18 words, no interested person in the Estate of Jack P. Slovak filed a timely Will contest in
19 accordance with applicable statute of limitations codified in NRS 137.080.

20 6. Tyler Slovak filed his Will contest on February 12, 2019. See February 12, 2019
21 Objection and Counter-Petition filed by Tyler Slovak.

22 7. Tyler Slovak was a co-administrator of Jack Slovak's New Zealand Estate. See
23 Tyler Slovak's Objection filed February 12, 2019, p. 6, Ins. 17-19.

24 8. Tyler Slovak disclaimed his right to serve as Executor in this Probate Action on
25 May 22, 2017. See Tyler Slovak's Objection filed February 12, 2019, p. 7, Ins. 26-27.

26 9. Despite participating as a co-administrator of Jack Slovak's Estate in New Zealand,
27 and expressly disclaiming his right to serve as Co-Executor of this Estate Proceeding,
28

1 Tyler Slovak alleged Ms. Slovak committed extrinsic fraud in order to circumvent the
2 statute of limitations in NRS 137.080.

3 10. The Court ordered Tyler Slovak to file a more definite statement to substantiate his
4 allegations of extrinsic fraud against Ms. Slovak in its October 1, 2019 Order.

5 11. Tyler Slovak did not file a more definite statement substantiating any allegation of
6 extrinsic fraud against Lynn Slovak. See Court Docket.

7 12. It has now been more than 2 years since Tyler Slovak initiated his Will contest
8 against Lynn Slovak on the date of February 12, 2019.

9 13. Tyler Slovak has not performed any discovery in furtherance of his Will contest
10 claim during the two-year period since he initiated his Will contest on February 12, 2019.

11 In light of these undisputed facts, Ms. Slovak moves for summary judgment against
12 Tyler Slovak and in her favor holding the Will lodged with the Court is valid and operable
13 as no interested person has timely contested the Will's validity in accordance with the
14 applicable statute of limitations codified in NRS 137.080. Ms. Lynn Slovak will then
15 proceed with concluding the Estate based on the operable terms of the Will lodged before
16 the Court.

17 18 LAW & ARGUMENT

19 **I. The Court should grant Ms. Slovak summary judgment against Tyler**
20 **Slovak's Will contest because NRS 137.080 and NRCP 41(e)(2)(A) entitle Ms.**
21 **Slovak to judgment as a matter of law.**

22 NRCP 56(a) states "[t]he court shall¹ grant summary judgment if the movant
23 shows...there is no genuine dispute as to any material fact and the movant is entitled to
24 judgment as a matter of law." When construing the summary judgment standard, the
25 Nevada Supreme Court adopted the United States Supreme Court's holdings in *Liberty*
26

27
28 ¹ "The word 'shall' is generally regarded as mandatory." *Markowitz v. Saxon Special Servicing*, 129 Nev.
660, 665, 310 P.3d 569, 572 (2013).

1 Lobby, Celotex, and Matsushita dictating when summary judgment is required. *Wood v.*
2 *Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

3 In *Celotex*, the United States Supreme Court held "summary judgment procedure
4 is properly regarded...as an integral part of the...Rules as a whole, which are designed
5 to secure the just, speedy and inexpensive determination of every action." *Celotex Corp.*
6 *v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed. 2d 265 (1986). Therefore,
7 Rule 56 must be construed with due regard for the rights of persons opposing claims and
8 defenses with no factual basis. *Id.*

9 In order to dispose of baseless claims, the Court held summary judgment is
10 mandatory against a claimant who cannot establish an essential element of the claim he
11 or she must prove at trial. *Id.* at 322, 2552. "[A] summary judgment motion may properly
12 be made in reliance solely on the pleadings, depositions, answers to interrogatories, and
13 admissions on file." *Id.* at 324, 2553. In response, if the claimant fails to demonstrate an
14 essential element of its claim, there is no genuine issue of material fact regarding the
15 claim, because a complete failure of proof concerning an essential element of the claim
16 renders all other facts immaterial. *Id.* at 322-323, 2552. As such, the moving party is
17 entitled to a judgment as a matter of law whenever the claimant fails to make a sufficient
18 showing on an essential element of a claim on which he or she has the burden of proof
19 at trial. *Id.* at 323. Interpreting Rule 56 in this fashion serves Rule 56's principal purpose
20 to isolate and dispose of factually unsupported claims. *Id.* at 323-324, 2553.

21 Of note, "the mere existence of some alleged factual dispute between the parties
22 will not defeat an otherwise properly supported motion for summary judgment; the
23 requirement is...there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby,*
24 *Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). As to
25 materiality, the substantive law will identify which facts are material. *Id.* at 248. A fact is
26 only material if it might affect the outcome of the suit under the governing substantive law.
27 *Id.* Irrelevant or unnecessary factual disputes do not preclude summary judgment
28

1 because they are immaterial. *Id.* The substantive law governs which facts are material
2 and which facts are irrelevant. *Id.*

3 In addition to the requirement of materiality, factual disputes must be "genuine" or
4 else summary judgment is mandatory. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
5 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986). Consequently, when
6 the moving party has carried its burden under Rule 56, the nonmoving party must do more
7 than show there is some metaphysical doubt as to the material facts. *Id.* The language
8 of Rule 56 requires the nonmoving party to come forward with specific facts showing there
9 is a "genuine" issue for trial or else have summary judgment entered against it. *Id.* at
10 587. As such, "[w]here the record taken as a whole could not lead a rational trier of fact
11 to find for the non-moving party, there is no genuine issue for trial." *Id.*

12 In consideration of the United States Supreme Court's holdings in *Liberty Lobby*,
13 *Celotex*, and *Matsushita*, the Nevada Supreme Court required entry of summary
14 judgment whenever "the pleadings, depositions, answers to interrogatories, admissions,
15 and affidavits, if any, that are properly before the court demonstrate that no genuine issue
16 of material fact exists, and the moving party is entitled to judgment as a matter of law."
17 *Wood v. Safeway, Inc.*, 121 Nev. at 731, 121 P.3d at 1031. Nevada substantive law
18 controls which factual disputes are material and will preclude summary judgment; other
19 factual disputes are irrelevant. *Id.* A factual dispute is only genuine if a rational trier of
20 fact could return a verdict for the nonmoving party when considering the evidence. *Id.*
21 "The nonmoving party is not entitled to build a case on the gossamer threads of whimsy,
22 speculation, and conjecture." *Id.* at 732.

23 Procedurally, the "party moving for summary judgment bears the initial burden of
24 production to show the absence of a genuine issue of material fact." *Cuzze v. Univ. &*
25 *Cnty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). "If such a
26 showing is made, then the party opposing summary judgment assumes a burden of
27 production to show the existence of a genuine issue of material fact." *Id.* The manner in
28

1 which each party may satisfy its burden of production depends on which party will bear
2 the burden of persuasion on the challenged claim at trial." *Id.*

3 If the moving party will bear the burden of persuasion at trial, that party must
4 present evidence that would entitle it to a judgment as a matter of law in the absence of
5 contrary evidence. *Id.* However, if the nonmoving party will bear the burden of persuasion
6 at trial, the party moving for summary judgment may satisfy its burden of production by
7 either (1) submitting evidence that negates an essential element of the nonmoving party's
8 claim, or (2) pointing out there is an absence of evidence to support the nonmoving party's
9 case. *Id.* at 602-603. The nonmoving party must then transcend the pleadings and, by
10 affidavit or other admissible evidence, introduce specific facts that show a genuine issue
11 of material fact for trial or else summary judgment is mandatory. *Id.* at 603.

12 In this case, Tyler Slovak will bear the burden of persuasion at trial to prove the
13 Will is invalid. Since Tyler Slovak will bear the burden of persuasion at trial, Lynn Slovak
14 may meet her burden of production to seek summary judgment by negating an essential
15 element of Tyler Slovak's case, or pointing out there is an absence of evidence to support
16 Tyler Slovak's case. Consequently, Lynn Slovak respectfully moves this Court for
17 summary judgment against Tyler Slovak because there is an absence of evidence to
18 support Tyler Slovak's Will contest.

- 19 **a. There is an absence of evidence to support Tyler Slovak's allegations**
20 **of extrinsic fraud because he failed to file a more definite statement**
21 **ordered by the Court detailing his allegations of extrinsic fraud against**
22 **Ms. Slovak, thereby time-barring his will contest under NRS 137.080.**

23 NRS 137.080 clearly and unambiguously establishes the period in which an
24 interested person must contest a will admitted to probate. Specifically, NRS 137.080
25 states the following:

26 After a will has been admitted to probate, any interested
27 person other than a party to a contest before probate or a
28 person who had actual notice of the previous contest in time
to have joined therein may, at any time within **3 months** after

1 the order is entered admitting the will to probate, contest the
2 admission or the validity of the will.

3 NRS 137.080. (emphasis added).

4 In this case, Tyler Slovak did not file a petition contesting the validity of the Will
5 within 3 months of the Court's Order admitting the Will to Probate. See Court Docket.
6 Therefore, Ms. Lynn Slovak moved to dismiss Tyler Slovak's Objection and Counter-
7 Petition as time barred in her June 14, 2019 Motion to Dismiss. Tyler Slovak argued his
8 Counter-Petition was not time barred because he alleged extrinsic fraud against Ms.
9 Slovak, which tolled application of the statute of limitations for a will contest. Ms. Slovak
10 responded by pointing out Tyler Slovak had no evidence of extrinsic fraud, and the
11 allegations of fraud were not plead with sufficient particularity to overcome the Motion to
12 Dismiss. The Court denied Ms. Slovak's Motion to Dismiss under Nevada's liberal
13 pleading standard requiring the Court to accept every allegation in the Counter-Petition
14 as true. See September 18, 2019 Court Order. However, the Court required Tyler Slovak
15 to file a more definite statement to substantiate his allegations of extrinsic fraud against
16 Ms. Lynn Slovak. See October 1, 2019 Court Order.

17 Tyler Slovak has not filed a more definite statement substantiating his barren and
18 false allegations of extrinsic fraud in violation of the Court's October 1, 2019 Order.
19 Additionally, Tyler Slovak has not performed any discovery in prosecution of his Will
20 contest. Consequently, Tyler Slovak has not secured any evidence of extrinsic fraud, nor
21 has he pled his extrinsic fraud claim in compliance with the Court's October 1, 2019 Order.
22 Therefore, Ms. Lynn Slovak is entitled to summary judgment against Tyler Slovak's Will
23 contest because there is insufficient evidence of extrinsic fraud to overcome NRS
24 137.080's conclusive time bar of Tyler Slovak's untimely Will contest.

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1 **b. The Court should dismiss Tyler Slovak's Will Contest because he**
2 **failed to bring his claims to trial for more than two years as required**
3 **by NRCP 41.**

4 NRCP 41(e)(2)(A) states "[t]he court may dismiss an action for want of prosecution
5 if a plaintiff fails to bring the action to trial within 2 years after the action was filed." Tyler
6 Slovak failed to bring his Will contest to trial within 2 years of filing the action on February
7 12, 2019. Tyler Slovak failed to prosecute his Will contest because he did not engage in
8 any discovery. Therefore, Tyler Slovak failed to prosecute his Will contest in any manner,
9 and has violated an Order requiring him to provide a more definite statement regarding
10 his Will contest in the course of his failure to prosecute his Will contest. Therefore, the
11 Court should dismiss Tyler Slovak's Objection and Counter-Petition contesting the Will of
12 Jack P. Slovak lodged before the Court for want of prosecution pursuant to NRCP
13 41(e)(2)(A) because Tyler Slovak did not bring his Will contest to trial within two years of
14 filing the action.

15 **CONCLUSION & REQUESTED RELIEF**

16 Pursuant to the preceding facts, law, and argument, Lynn Slovak respectfully
17 requests this Court enter summary judgment in favor of Lynn Slovak and against Tyler
18 Slovak and the claims alleged in his Objection and Counter-Petition contesting the Will of
19 Jack P. Slovak lodged with this Court.

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1 Ms. Slovak further requests summary judgment in her favor holding the Will lodged
2 with the Court is valid and operable as no party has lawfully contested the Will, which will
3 permit Ms. Slovak to proceed upon that document to conclude the Estate of Jack Slovak.

4 **AFFIRMATION**

5 The undersigned affirms this document does not contain the social security
6 number or legally private information of any person.

7 **DATED** this 2nd day of April, 2021.

8 By: /s/ F. McClure Wallace & Patrick R. Millsap.

9 F. McClure Wallace, Esq.
10 Nevada Bar No. 10264
11 Patrick R. Millsap, Esq.
12 Nevada Bar No.: 12043
13 Wallace & Millsap
14 Attorneys for Lynn Valerie Slovak
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CERTIFICATE OF SERVICE

The undersigned Counsel certifies the foregoing Motion for Summary Judgment was served upon Interested Party Robert Slovak via the Court's electronic filing system "eFlex" on the date shown below. The undersigned Counsel certifies the foregoing Motion for Summary Judgment was served upon Interested Party Juanita Slovak, by and through her Legal Counsel of Record, the law firm of WOODBURN AND WEDGE via the Court's electronic filing system "eFlex" on the date shown below. The undersigned Counsel certifies the foregoing Motion for Summary Judgment was deposited for mailing with the United States Postal Service on the date shown below for service upon Tyler Slovak at the address of 101 Tremaine Ave., Lot 7 DP, Palmerston North 493664, New Zealand.

DATED this 2nd day of April, 2021.

By: /s/ Patrick R. Millsap.

Patrick R. Millsap, Esq.
Nevada Bar No.: 12043
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Reno, Nevada 89509
Ph: (775) 683-9599
Fax: (775) 683-9597
patrick@wallacemillsap.com
Attorneys for Lynn Valerie Slovak

1 **CODE:**

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4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

5 **IN AND FOR THE COUNTY OF WASHOE**

6
7 **IN THE MATTER OF THE ESTATE**

8 **OF**

9 **JACK P SLOVAK, also known as JOHN**
10 **PAUL SLOVAK JR, and JOHN PAUL**
11 **SLOVAK.**

Case No.: PR17-00458

Dept. No.: PR

12 **ORDER GRANTING SUMMARY JUDGMENT**

13 Ms. Lynn Slovak filed a Petition for Probate of the Will on August 10, 2017. Ms.
14 Slovak lodged a Will with the Court on October 11, 2017. The Court admitted the Will to
15 probate via Court Order on October 12, 2017, thereby triggering the 3-month period of
16 limitations codified in NRS 137.080 to contest the Will lodged with the Court.

17 Tyler Slovak did not contest the Will within 3 months of October 12, 2017 as
18 required by NRS 137.080. No other interested person in the Estate of Jack P. Slovak
19 filed a contest to the Will within three months of October 12, 2017 as required by NRS
20 137.080.

21 Subsequent to the NRS 137.080 period of limitations, Tyler Slovak filed a contest
22 to the Will on February 12, 2019 alleging fraud against Ms. Slovak. However, Tyler Slovak
23 admits he was a co-administrator of Jack Slovak's New Zealand Estate. See Tyler
24 Slovak's Objection filed February 12, 2019, p. 6, Ins. 17-19. Tyler Slovak further admits
25 he disclaimed his right to serve as Executor of this Probate Action on May 22, 2017. See
26 Tyler Slovak's Objection filed February 12, 2019, p. 7, Ins. 26-27. Despite participating
27 as a co-administrator of Jack Slovak's Estate in New Zealand, and expressly disclaiming
28 his right to serve as Co-Executor of this Estate Proceeding, Tyler Slovak alleged Ms.

1 Slovak committed extrinsic fraud, thereby rendering the period of limitations in NRS
2 137.080 inapplicable to his Will contest.

3 Ms. Slovak moved to dismiss Tyler Slovak's contest of the Will based on the
4 allegation of extrinsic fraud. The Court did not dismiss the Will contest but, instead,
5 required Tyler Slovak to file a more definite statement regarding his fraud allegations
6 against Ms. Slovak. The Court permitted Tyler Slovak to file his more definite statement
7 within 30 days of the Court's October 1, 2019 Pretrial Case Management Order.

8 Tyler Slovak did not file the Court-Ordered more definite statement within 30 days
9 of the Court's October 1, 2019 Order. Rather, Tyler Slovak requested an extension of time
10 to file his more definite statement. The Court granted Tyler Slovak's request for additional
11 time to file his more definite statement, and permitted Tyler Slovak until December 30,
12 2019 to file his more definite statement.

13 Once again, Tyler Slovak did not file the Court-Ordered more definite statement by
14 December 30, 2019, and requested additional time to file the more definite statement.
15 The Court granted Tyler Slovak's second request for additional time to file his more
16 definite statement and set a filing deadline of March 31, 2020. Tyler Slovak never filed a
17 more definite statement regarding his allegations of extrinsic fraud against Lynn Slovak.

18 It has now been more than 2 years since Tyler Slovak initiated his Will contest
19 against Lynn Slovak on the date of February 12, 2019. Tyler Slovak has not performed
20 any discovery in furtherance of his Will contest claim during the two-year period since he
21 initiated his Will contest on February 12, 2019. Specifically, Tyler Slovak has taken no
22 depositions, served no interrogatories, served no requests for admissions, served no
23 requests for production, and produced no evidence to substantiate his allegations of
24 extrinsic fraud against Lynn Slovak. In other words, Tyler Slovak engaged in no
25 evidentiary activity in prosecution of his claim, in addition to violating the Court's order to
26 provide a more definite statement substantiating his allegations of fraud.

27 In light of these undisputed facts, Ms. Slovak moved for summary judgment against
28 Tyler Slovak and in her favor holding the Will lodged with the Court is valid and operable

1 because no interested person timely contested the Will's validity in accordance with the
2 applicable statute of limitations codified in NRS 137.080. Ms. Slovak's summary
3 judgment motion also sought dismissal of Tyler Slovak's Will contest based on the two-
4 year period of limitations for Tyler Slovak to bring his claim to trial codified in NRCP
5 41(e)(2)(A). The Motion was served upon Tyler Slovak at the address of 101 Tremaine
6 Ave., Lot 7 DP, Palmerston North 493664, New Zealand, the address Tyler Slovak
7 identified as his own in documents he filed with the Court in proper person. Tyler Slovak
8 did not oppose the Motion for Summary Judgment. No other interested person in the
9 Estate opposed the Motion for Summary Judgment.

10 There being no opposition to the Motion for Summary Judgment, and good cause
11 appearing to grant the Motion based on Tyler Slovak's failure to bring his Will contest to
12 trial within 2 years in accordance with NRCP 41(e)(2)(A), as well as, his failure to plead
13 allegations of extrinsic fraud with the particularity required by NRCP 9(b) in the absence
14 of the Court-ordered more definite statement, the Court orders as follows:

- 15 1. Lynn Slovak's Motion for Summary Judgment is **GRANTED**.
- 16 2. The Will lodged with the Court is operable and enforceable because no interested
17 person in the Estate has contested the Will in accordance with Nevada law.

18
19 **IT IS SO ORDERED.**

20
21 **DATED** this 17th day of May, 2021

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23 By: _____

24 The Honorable Lynne K. Simons

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F. MCCLURE WALLACE, ESQ.
PATRICK MILLSAP, ESQ.
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ROBERT SLOVAK

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Attorneys for LYNN VALERIE SLOVAK

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF THE ESTATE
OF

Case No.: PR17-00458
Dept. No.: PR

JACK P SLOVAK, also known as
JOHN PAUL SLOVAK JR, and
JOHN PAUL SLOVAK.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on May 18, 2021, this Court entered an Order Granting Summary Judgment, a copy of which is attached hereto as **Exhibit 1.**

AFFIRMATION

The undersigned affirms this document does not contain the social security number or legally private information of any person.

DATED this 18th day of May 2021.

WALLACE & MILLSAP

/s/ Patrick R. Millsap

F. McClure Wallace, Esq.

Patrick R. Millsap, Esq.

Counsel for Lynn Valerie Slovak

CERTIFICATE OF SERVICE

The undersigned is an employee of Wallace & Millsap and certifies the foregoing ***Notice of Entry of Order*** was filed on the date shown below using the Court's electronic filing system "eFlex" and was served upon Interested Party Juanita Slovak, by and through her Legal Counsel of Record, the law firm of WOODBURN AND WEDGE and Interested Party Robert Slovak via the Court's electronic filing system eflex, and upon Interested Party Tyler Slovak via USPS First Class International Mail at the address of 101 Tremaine Avenue, Lot 7 DP, Palmerston North, 493664 New Zealand,

DATED this 18th day of May, 2021.

By: /s/ Caroline Carter.
Employee of Wallace & Millsap

EXHIBIT LIST

Exhibit 1 - Order Granting Summary Judgment

Exhibit 1

Exhibit 1

1 **CODE:**

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5 **IN AND FOR THE COUNTY OF WASHOE**

6
7 **IN THE MATTER OF THE ESTATE**

8 **OF**

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Case No.: PR17-00458

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- 15 1. Lynn Slovak's Motion for Summary Judgment is **GRANTED**.
- 16 2. The Will lodged with the Court is operable and enforceable because no interested
17 person in the Estate has contested the Will in accordance with Nevada law.

18
19 **IT IS SO ORDERED.**

20
21 **DATED** this 17th day of May, 2021

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23 By: _____

24 The Honorable Lynne K. Simons

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