

1 A. Yes, it is our client, Mr. Scheide, Jr.

2 Q. Who else was involved in those meetings?

3 A. Just our office and Mr. Scheide,

4 Q. Did all of those meetings take place at the care  
5 facility where he was?

6 A. Yes.

7 Q. Did you meet him in his room?

8 A. I did not meet with him. The social worker met  
9 with him.

10 Q. When was the first time you met with Mr. Scheide?

11 A. I never met with Mr. Scheide.

12 Q. But you met with your staff members who met with  
13 him --

14 A. Yes.

15 Q. -- and discussed the case? Okay.

16 At what point did Nevada Guardian Services --  
17 well, let me back up.

18 There was a petition for guardianship that was  
19 filed with Nevada Guardian Services as the petitioner;  
20 correct?

21 A. Correct.

22 Q. Who initiated that process of guardianship?

23 A. We discussed that -- that process with Mr.  
24 Scheide, Jr.'s attorney Kristin Tyler, spoke to Ms.  
25 Boyer about it.

1 Q. About when was that?

2 A. It would have probably been just a couple weeks  
3 prior to the filing of the petition.

4 Q. When you discussed the guardianship, was there  
5 any particular reason that you wanted to go down that  
6 path?

7 A. From what I can recall, the current agent that he  
8 had named in the power of attorney was refusing to act.

9 Q. Do you remember who that agent was?

10 A. I'm sorry. I do not.

11 Q. Okay. That's fine.

12 And as -- just as a side note. That's fine. If  
13 you don't recall, that's okay. I just want your best  
14 testimony. If it's I don't remember, that's okay.

15 A. Yeah, I don't want to guess, so I do not recall.

16 Q. Thank you.

17 And in these discussions about the guardianship  
18 with Kristin -- and you said Kristin was Mr. Scheide's  
19 attorney?

20 A. Mr. Scheide, Jr.'s attorney, yes.

21 Q. In those discussions, was there already a medical  
22 need for a guardianship determined, or was that  
23 something that you still needed to get?

24 A. Well, he had been hospitalized, and, you know, we  
25 were kind of running into barriers with staff and

1 different care providers and trying to coordinate what  
2 he needed.

3 Q. Because of the lack of power of attorney --

4 A. Because of the lack of the power of attorney and  
5 his questionable capacity at that time while he was ill.

6 Q. That's my question, I guess, is: Generally a  
7 power of attorney would only act if someone can't make  
8 decisions for themselves; correct?

9 A. Correct.

10 Q. And at this point, was he not able to make those  
11 decisions himself?

12 A. Well, there was one time -- and I'm not sure if  
13 it was before we filed or after we had first become  
14 appointed that Judy went out to see him, and she called  
15 9-1-1. I mean, he wasn't able to -- I mean, he was in  
16 very bad shape.

17 And so, of course, our concern went back to the  
18 current care home not recognizing and providing  
19 appropriate care. And then him not able to say, hey, I  
20 need some help here.

21 And then she went with him to the hospital, spent  
22 most of that day at the hospital with him until he was  
23 admitted.

24 So it was some of those types of incidents that,  
25 you know, kind of spoke to us that there was a need for

1 some type of advocacy.

Page 19

2 Q. So even if he recognized he had an emergent  
3 situation, apparently at this time, he wasn't able to  
4 get the help that he needed?

5 A. At that time.

6 Q. Was this --

7 MR. PAYNE: Hold on. Object. Assumes facts  
8 not in evidence.

9 BY MR. GEIST:

10 Q. Was this before or after the petition was filed?

11 A. I'm not able to recall the exact date of that.

12 Q. But would -- would care records indicate that  
13 discussion with Judy and him or the time that she called  
14 9-1-1?

15 A. Yes. Our -- yes.

16 Q. Okay. So in establishing a guardianship, as you  
17 know, the law requires a physician's certificate;  
18 correct?

19 A. Yes.

20 Q. Who was the physician that Mr. Scheide was seeing  
21 at the time he was in this care facility?

22 A. I'm not able to recall.

23 Q. Did you go to that physician to get a capacity  
24 evaluation?

25 A. I'm not able to recall that.



1 facility?

2 MR. PAYNE: Object. Assumes facts not in  
3 evidence.

4 THE WITNESS: Yes. He called the office  
5 frequently. He was generally dissatisfied with our  
6 office, with the group home. We set up caregivers to  
7 take him out shopping and take him to buy his own food,  
8 and he was generally unhappy with whatever caregiver we  
9 had set up. So he was generally unhappy.

10 BY MR. GEIST:

11 Q. Did he ever say he wanted to fire someone?

12 A. He would say he wanted to fire our office. He  
13 would say he wanted to fire Kristin Tyler. He wanted to  
14 fire the caregivers.

15 Q. And what was your response?

16 A. You know, we always try to kind of work it  
17 through with Mr. Scheide, Jr., and I think -- I'm pretty  
18 certain I had a conversation with Kristin about it.

19 Q. So in the process of the guardianship, who  
20 handled Mr. Scheide's finances?

21 A. Well, our office handled the finances. I mean,  
22 our office is set up -- I'm the only one with authority  
23 to sign any checks. So if there were bills to be paid,  
24 if the guardians entered that into our estate management  
25 system, it would be have to be approved through me.



**CARY COLT PAYNE, CHTD.**

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**EXHIBIT "B"**

114B

# SILVER HILLS HEALTHCARE CENTER

3450 N. Buffalo Drive  
Las Vegas, Nevada 89129  
Telephone (702)952-2273 Fax (702)952-2270

## HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME: SCHEIDE, THEODORE  
MEDICAL RECORD #: 6589  
DATE OF ADMISSION: FEBRUARY 20, 2014  
ATTENDING PHYSICIAN: SHEILA MIRANDA, MD

**HISTORY OF PRESENT ILLNESS:** This is an 86-year-old gentleman with history of dementia, chronic atrial fibrillation, ischemic cardiomyopathy, CHF and left second toe osteomyelitis. He came from an assisted living facility. He was transferred to Centennial Hills Hospital on 02/08/2014 for altered mental status. The patient was reported to have some slurred speech. He was confused and wandering around aimlessly and was only oriented to his name. The patient was admitted to the service of Dr. Mandip Arora. He was seen by neurologist, Dr. Janda. The patient underwent a neurological workup, which included a CT of the brain, which was negative for any acute findings and a CT angiogram of the head, which was negative for any aneurysm. He was not able to do a MRI due to him having an Automatic Implantable Cardioverter Defibrillator. He also had a carotid ultrasound, which was negative for hemodynamic stenosis. He was also seen by cardiologist, Dr. S. Khan because of the episodes of atrial fibrillation and mildly elevated troponins, but the troponins were reported to have come down. His rate was under control and, per cardiologist and neurologist notes the patient is a poor candidate for chronic anticoagulation due to his high risk for falls. He was recommended to continue aspirin and Plavix for now. His mental status did improve, as the encephalopathy was likely diagnosed as metabolic. He also had a chronic left second toe osteomyelitis and back in November 2013 there are records from Mountain View Rehabilitation that he had been treated there and at complex care for complications of left second toe osteomyelitis and cellulitis and was being treated with IV ceftriaxone. At Centennial he was seen by podiatrist, Dr. Biesinger and underwent left second toe amputation. Postprocedure the patient was doing fairly well. He was recommended to be transferred here for impaired mobility and ambulation and deconditioning.

Currently the patient denies any pain. He has no complaints.

**PAST MEDICAL HISTORY:** Includes history of dementia; TIA/CVA, which he reports two episodes of this; hypertension; chronic atrial fibrillation; AICD placed in 2007; osteomyelitis of the left second toe; iron deficiency anemia; ischemic cardiomyopathy; gout; dyslipidemia; abdominal aortic aneurysm status post endograft repair in 2000 at Arizona Heart Institute of Phoenix; the patient was hospitalized in December due to outpatient CT showing enlarging aneurysm, but there was no clarification at that time if there was any endovascular leak and he did have an aortogram and was discharged; also had cardiac angiogram on 06/01/2007, which

## HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME: SCHEIDE, THEODORE  
MEDICAL RECORD #: 6589  
DATE OF ADMISSION: FEBRUARY 20, 2014  
ATTENDING PHYSICIAN: SHEILA MIRANDA, MD

showed occluded RCA with collateral filling from the left side; diabetes mellitus; BPH; history of UTI.

**MEDICATIONS:** Previous home medications include mupirocin 2% ointment; Plavix 75 mg daily; potassium chloride 20 mEq daily; Lasix 40 mg daily; lisinopril 40 mg daily; metoprolol 50 mg in the morning and 25 mg at night; terazosin 5 mg q.h.s.; metformin 1,000 mg twice a day; aspirin 81 mg daily; atorvastatin 10 mg q.h.s.

Current inpatient medications include Tylenol p.r.n.; Dulcolax p.r.n.; Milk of Magnesia p.r.n.; Plavix 75 mg daily; potassium chloride 20 mEq b.i.d.; Lasix 40 mg daily; lisinopril 40 mg daily; metoprolol 50 mg q.a.m. and 25 mg q.p.m.; terazosin 5 mg p.o. q.h.s.; metformin 1,000 mg b.i.d.; aspirin 81 mg daily; atorvastatin 10 mg q.h.s.

**ALLERGIES:** No known drug allergies.

**SOCIAL HISTORY:** No tobacco, alcohol or drug use. The patient was living at Golden Sunshine Home prior to hospitalization.

**FAMILY HISTORY:** Both parents had a history of significant heart disease and died a sudden death; however, they were both of advanced age.

**REVIEW OF SYSTEMS:** The patient denies headaches, dizziness or visual changes. He denies any focal numbness or weakness. He does have occasional shortness of breath when he is anxious or has fear. He does admit to some occasional chest pain but does not complain of chest pain at this time. He denies any nausea, vomiting or abdominal pain. He does admit to constipation and last bowel movement was about two days ago. He denies any dysuria or difficulty with urination. The patient states he was ambulating prior to hospitalization, but he also mentioned he was falling as well. He denies any foot pain or leg pain. The rest of the 12 review of systems is negative.

### PHYSICAL EXAMINATION:

**GENERAL:** The patient is an elderly male of average weight in no acute distress.  
**VITAL SIGNS:** Blood pressure 138/72, temperature 98.2°, pulse 86, respiratory rate 18.  
**HEENT:** Pupils are equal, round, and reactive to light. Oropharynx is clear.  
Mucous membranes are dry.  
**NECK:** Supple. No JVD. No carotid bruits.  
**CARDIAC:** Irregular rhythm and normal rate. A 2/6 systolic murmur is heard.  
**LUNGS:** Clear to auscultation bilaterally, aerating well.

## HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME: SCHEIDE, THEODORE  
MEDICAL RECORD #: 6589  
DATE OF ADMISSION: FEBRUARY 20, 2014  
ATTENDING PHYSICIAN: SHEILA MIRANDA, MD

ABDOMEN: Normoactive bowel sounds, soft, nontender, nondistended. No organomegaly.  
EXTREMITIES: No clubbing, cyanosis, or edema. He does have left second toe amputation and hyperpigmentation of the bilateral lower extremities.  
NEUROLOGIC: The patient is alert and oriented to name, city, year and month. He is oriented to situation. He does have some memory deficits and hearing impairment. No facial asymmetry. Speech is clear. Motor strength in upper extremities is about 4/5 with good bilateral handgrip. Motor strength in the lower extremities is about 3/5 on the right and 2/5 on the left. Sensation is intact.  
PSYCHIATRIC: Mood and affect are appropriate. The patient has logical thought processes, and he does answer questions appropriately. He, at times, does answer questions and is joking during examination.  
SKIN: Warm and dry.

LABORATORY DATA: Glucose 79, BUN 11, creatinine 0.76, calcium 8.9, total bilirubin 0.8, magnesium 2.0, TSH 2, GFR 97, creatinine 0.76, WBC 6.9, hemoglobin 9, hematocrit 28.8, platelets 300.

IMAGING: Bilateral carotid ultrasound showed no hemodynamic stenosis. A venous bilateral ultrasound was negative for DVT. A CT angiogram of the head was negative for aneurysm. A CT of the brain without contrast was negative for any acute findings.

### ASSESSMENT:

1. METABOLIC ENCEPHALOPATHY AND LIKELY MULTIFACTORIAL ENCEPHALOPATHY, WHICH IS IMPROVED.
2. LEFT SECOND TOE OSTEOMYELITIS STATUS POST AMPUTATION OF THE LEFT SECOND TOE.
3. IMPAIRED MOBILITY AND AMBULATION WITH DECONDITIONING AND DISUSE MYOPATHY.
4. DEMENTIA REPORTED ON PREVIOUS RECORDS TO BE MILD.
5. HISTORY OF TRANSIENT ISCHEMIC ATTACKS VERSUS CEREBROVASCULAR ACCIDENTS TIMES TWO.
6. CHRONIC ATRIAL FIBRILLATION WITH CONTROLLED RATE.
7. ISCHEMIC CARDIOMYOPATHY WITH HISTORY OF AUTOMATIC IMPLANTABLE CARDIOVERTER DEFIBRILLATOR PLACEMENT IN 2007.
8. HISTORY OF CARDIAC CATHETERIZATION, WHICH SHOWED OCCLUDED RIGHT CORONARY ARTERY BUT COLLATERAL FILLING ON THE LEFT SIDE.

## HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME: SCHEIDE, THEODORE  
MEDICAL RECORD #: 6589  
DATE OF ADMISSION: FEBRUARY 20, 2014  
ATTENDING PHYSICIAN: SHEILA MIRANDA, MD

9. HISTORY OF ABDOMINAL AORTIC ANEURYSM STATUS POST ENDOGRAFT REPAIR IN 2000 IN PHOENIX, ARIZONA, WITH RECENT HOSPITALIZATION DUE TO CT SHOWING ENLARGING ANEURYSM STATUS POST ANGIOGRAM IN DECEMBER IN 2013.
10. ANEMIA DUE TO IRON DEFICIENCY AND CHRONIC DISEASE.
11. HISTORY OF URINARY TRACT INFECTION.
12. HISTORY OF BENIGN PROSTATIC HYPERTROPHY.
13. HISTORY OF DYSLIPIDEMIA.
14. HISTORY OF GOUT.
15. DIABETES MELLITUS TYPE 2.

**PLAN:** We will continue wound care. We will schedule follow-up visit with a podiatrist. We will place the patient on Senna due to constipation and continue bowel regimen. We will encourage frequent repositioning of patient and continue wound care. We will schedule a follow-up appointment with cardiologist. We will check iron levels, vitamin B12 and folic acid levels and monitor Accu-Cheks. We will continue aspirin and Plavix for now. Monitor CBC, renal function and electrolytes. We will also obtain more records from Centennial Hills Hospital, including urine culture that was reported; however, these results are not available in the chart at this time. The patient does have a public guardian. The patient, at this time, wishes to have no resuscitation, no intubation or heroic measures. I will discuss category 2 code status with public guardian and inform them of the patient's wishes for "Do Not Resuscitate" and "Do Not Intubate." The patient will also continue PT/OT.

---

SHEILA MIRANDA, MD  
SM/bc

D: 02/22/14  
T: 02/23/14  
#771



**CARY COLT PAYNE, CHTD.**

Attorney at Law

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**EXHIBIT "C"**

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DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
 )  
 )  
 THEODORE E. SCHEIDE, JR., ) CASE NO: P-14-082619-E  
 aka THEODORE ERNEST )  
 SCHEIDE, JR., ) DEPT NO: PCI  
 )  
 Deceased. )

DEPOSITION OF KRISTEN TYLER, ESQ.  
LAS VEGAS, NEVADA  
THURSDAY, FEBRUARY 16, 2017

REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926  
JOB NO.: 500366

## Nevada Court Reporting

**10080 Alta Drive, Suite 100  
Las Vegas, NV 89146  
Office: 702-480-3376  
Calendar@Nvreporting.com**

# NEVADA

COURT REPORTING

ROA000413



1 today, I've seen the physician's certificate. I recall  
2 that's what it was. I believe it was dated May of '12,  
3 which would be within six months of him signing  
4 documents in October of '12. That's kind of been my  
5 rule of thumb. If I have something from a doctor within  
6 six months, I'll honor it.

7 Q. So while you were his attorney, did it ever --  
8 did you ever come to an opinion that he didn't have  
9 capacity?

10 A. Not while I was working with him. He had  
11 physical impairments. He was mentally sharp the entire  
12 time I was dealing with him.

13 Q. That would include up to and through the  
14 guardianship?

15 A. Up -- he -- up until my last meeting with him  
16 before he was admitted to Centennial Hills. And then I  
17 don't know the specifics of what happened to him  
18 medically at that point in time.

19 Q. So did your opinion -- your opinion didn't  
20 change; you just don't have an opinion as to once the  
21 guardianship was --

22 A. I don't understand the question.

23 Q. Did -- if I understand your testimony, you didn't  
24 have any problem with his capacity?

25 A. Correct.

1 the Velma Shay estate matter?

2 A. Not that I recall.

3 Q. Did any other attorneys at Gordon Silver work on  
4 Mr. Scheide's bankruptcy issue?

5 A. I believe I had a paralegal look up the case  
6 number on it to try to figure out more details about  
7 what was going on. I don't recall speaking about it  
8 with another attorney.

9 Q. Did Mr. Scheide ever tell you that he wanted to  
10 fire you?

11 A. No.

12 Q. Did Mr. Scheide ever tell you he was not pleased  
13 with the work that you were doing?

14 A. Not that I recall.

15 Q. Did Mr. Scheide ever tell you he appreciated what  
16 you did for him?

17 A. I -- I recall him saying thank you, yes.

18 Q. When you met with him on or around January 2nd, I  
19 think was when that meeting was, what were your  
20 impressions of his capacity?

21 A. Mentally, he was still in control. Physically,  
22 he was deteriorating. He needed more help than I had  
23 ever seen him at any prior time to get around, do basic  
24 things.

25 Q. Were there ever any times before then that you

1 were concerned about his mental capacity?

2 A. No. I -- if I was, I would have asked for  
3 another updated doctor letter.

4 MR. GEIST: I'm going to -- if I may,  
5 introduce one more set of documents. This would be 10,  
6 Exhibit 10.

7 (Exhibit 10 was marked for identification.)

8 MR. GEIST: These are -- they would be under  
9 file -- or tab 5 in that. They're listed file 154 to  
10 181 from the documents you produced.

11 THE WITNESS: Okay.

12 BY MR. GEIST:

13 Q. They were listed as client documents.

14 Do you recognize those?

15 A. Yes.

16 Q. How do you recognize those?

17 A. They produced them with my file.

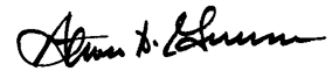
18 Q. So -- if I may. I apologize.

19 A. Uh-huh.

20 Q. Taking a look at -- and there's multiple copies  
21 of this. I do apologize. But it appears to be the same  
22 document over and over. We're going to --

23 A. There were a lot of duplicates in the file. We  
24 just produced them all to be fully transparent.

25 Q. So given that -- this is 161 through 164. Can



CLERK OF THE COURT

1 **MOT**  
Todd L. Moody (5430)  
2 Russel J. Geist (9030)  
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3 Peccole Professional Park  
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6 *Attorneys for St. Jude Children's*  
7 *Research Hospital*

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10  
11 In the Matter of the Estate of

Case No.: P-14-082619-E

12 THEODORE E. SCHEIDE JR. aka  
THEODORE ERNEST SCHEIDE JR.,

Dept No.: 26

13 Deceased.

14  
15 **ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S MOTION TO EXTEND**  
16 **DISCOVERY AND CONTINUE TRIAL DATE ON ORDER SHORTENING TIME**  
17 **(FIRST REQUEST)**

18 ST. JUDE CHILDREN'S RESEARCH HOSPITAL, INC. ("St. Jude Children's Research  
19 Hospital") respectfully moves this Honorable Court for an extension of the discovery deadlines and  
20 a continuance of the May 30, 2017 trial date because (i) discovery is not yet completed; (ii) St. Jude  
21 Children's Research Hospital has not received a medical release from the personal representative  
22 to permit it to obtain the Decedent's medical records; and (iii) Theodore E. Scheide, III has a  
23 Motion to Reconsider/Clarify, Etc. currently pending hearing before this Court, that, if successful,  
24 could greatly expand the scope of the matter and require additional discovery such that the current  
25 trial date will not allow sufficient time to file dispositive and other pre-trial motions based on  
26 additional pending discovery required.

27 ///

28 ///

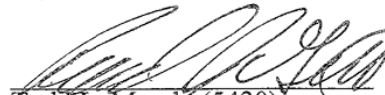
HUTCHISON & STEFFEN

A PROFESSIONAL LLC  
PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NV 89145

1 This motion is based upon EDCR 2.35, EDCR 7.30, the declaration of Russel J. Geist, the  
2 declaration of Todd L. Moody, the following memorandum of points and authorities, as well as the  
3 papers and pleadings on file in this matter, and any oral argument the Court may entertain on this  
4 motion.

5 DATED this 14 day of March, 2017.

6 HUTCHISON & STEFFEN

7 

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16 Attorneys for St. Jude Children's  
17 Research Hospital  
18  
19  
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**ORDER SHORTENING TIME**

TO: ALL INTERESTED PARTIES


Upon the Declaration of Russel J. Geist, Esq., and good cause appearing therefore, IT IS  
HEREBY ORDERED that the time for hearing **ST. JUDE CHILDREN'S RESEARCH  
HOSPITAL'S MOTION TO EXTEND DISCOVERY AND CONTINUE TRIAL DATE  
(FIRST REQUEST)** will be heard on the 20<sup>th</sup> day of March, 2017, at  
9:30 a.m./p.m. in Department 26, or as soon thereafter as counsel may be heard.

DATED this 15<sup>th</sup> day of March, 2017.

  
DISTRICT COURT JUDGE  


Submitted by:

HUTCHISON & STEFFEN

  
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*Attorneys for St. Jude Children's  
Research Hospital*

1     **DECLARATION OF RUSSEL J. GEIST IN SUPPORT OF ST. JUDE CHILDREN'S**  
2     **RESEARCH HOSPITAL'S MOTION TO EXTEND DISCOVERY AND CONTINUE**  
3     **TRIAL DATE ON ORDER SHORTENING TIME (FIRST REQUEST)**

4             1.     I am an attorney for Hutchison & Steffen, LLC and counsel for St. Jude Children's  
5     Research Hospital, Inc. ("St. Jude Children's Research Hospital") in the above-captioned matter,  
6     entitled *In the Matter of the Estate of THEODORE E. SCHEIDE JR. aka THEODORE ERNEST*  
7     *SCHEIDE JR.*, Case No. P-14-082619-E. Except where indicated below, I have personal  
8     knowledge of the factual matters of this litigation and am competent to make this declaration.

9             2.     I make this declaration in support of St. Jude Children's Research Hospital's Motion  
10    to Extend Discovery and Continue Trial Date (First Request) (the "Motion").

11            3.     On or about November 2, 2016, the Court held a hearing on St. Jude Children's  
12    Research Hospital's verified Petition for Probate of Lost Will (NRS 136.240); Revocation of  
13    Letters of Administration (NRS 141.050); Issuance of Letters Testamentary (NRS 136.090). In the  
14    course of the hearing, the Court set an evidentiary hearing for March 16-17, 2017 on the issue of  
15    fact regarding whether Theodore E. Scheide, Jr. did not revoke his last will and testament while  
16    he was still competent and had testamentary capacity to do so, during the time between when  
17    Theodore E. Scheide, Jr. signed his will and when he was determined to lack capacity during the  
18    guardianship.

19            5.     After the hearing, the parties met and conferred regarding a discovery schedule to  
20    be entered by stipulated order and discussed the proposed language of the order from the hearing.  
21    The parties were unable to agree on the language of the proposed order, and each submitted  
22    competing orders to the Court for consideration.

23            6.     St. Jude Children's Research Hospital requested that counsel for the personal  
24    representative prepare and sign a general release of medical and other records of the Decedent to  
25    enable St. Jude Children's Research Hospital to subpoena such records. However, upon  
26    information and belief, counsel for the personal representative indicated that she was  
27    uncomfortable preparing such release because counsel for Theodore E. Scheide, III objected to the  
28

1 scope of the release.

2 7. On or about December 19, 2016, St. Jude Children's Research Hospital noticed the  
3 deposition of Kristin Tyler, Esq. for January 11, 2017. Counsel for Theodore E. Scheide, III  
4 objected to the deposition of Ms. Tyler on that date because he was unavailable and indicated that  
5 he intended to ask Ms. Tyler questions at the deposition.

6 8. By agreement of the parties and the deponent, the deposition of Kristin Tyler was  
7 set for February 16, 2017. The deposition of Susan Hoy was also set for February 16, 2017.

8 9. The parties appeared before the court on February 1, 2017 for a status check wherein  
9 the parties indicated that the parties have not received notice from the Court of the issuance of an  
10 order setting discovery and an evidentiary hearing has been issued by the Court, and that there  
11 remained discovery, including depositions already rescheduled and medical records to be obtained.  
12 The Court reset the evidentiary hearing to a four week stack commencing on May 30, 2017.

13 10. At the time of the February 1, 2017 status check, the Court had signed the order  
14 setting the Close of Discovery on January 16, 2017 and the final date to file dispositive motions  
15 on February 7, 2017, which deadlines were already out-of-date because they were based on the  
16 evidentiary hearing going forward on March 16 -17, 2017.

17 11. On February 13, 2017, Theodore E. Scheide, III filed his Motion to  
18 Reconsider/Clarify, Etc., in which he asks the Court to expand its order to enlarge the relevant time  
19 period during which St. Jude Children's Research Hospital must demonstrate that the Decedent did  
20 not revoke his will by intentional destruction. Theodore E. Scheide, III's Motion is set to be heard  
21 on March 22, 2017, and, if successful, would require additional discovery beyond the scope set in  
22 the Court's original order dated January 31, 2017.

23 12. Kristin Tyler was deposed on February 16, 2017, during which she indicated the  
24 names of additional individuals who had contact with the Decedent in the period between the  
25 signing of his last will and testament and the establishment of a guardianship for him.

26 13. Susan Hoy was deposed as the person appearing on behalf of Nevada Guardian  
27 Services, LLC, and indicated that others from her office interacted with the Decedent prior to and  
28



1 after the establishment of a guardianship for him.

2 14. On or about February 16, 2017, counsel for the personal representative disclosed  
3 by email to the parties, "the medical records in the files of Nevada Guardian Services, LLC for Mr.  
4 Scheide" which appear to represent only those records from the Decedent's hospitalization around  
5 the time of the establishment of the guardianship and afterward.

6 15. Counsel for the personal representative has still not provided St. Jude Children's  
7 Research Hospital with a general medical records release to permit St. Jude Children's Research  
8 Hospital to obtain the Decedent's medical records for the full time period at issue.

9 16. Based on the deposition of Kristin Tyler, additional individuals have been identified  
10 as potentially having relevant information to the issue at fact, and may be deposed by St. Jude  
11 Children's Research Hospital if the Court extends discovery, specifically, Kathy Longo, Karen  
12 Hoagland, and the Decedent's medical providers if identifiable in his medical records.

13 17. Based on the deposition of Susan Hoy, St. Jude Children's Research Hospital will  
14 request the full guardianship file of the Decedent to identify additional individuals employed by  
15 the Guardian as potentially having relevant information to the issue at fact, and may be deposed  
16 by St. Jude Children's Research Hospital if the Court extends discovery.

17 18. An Evidentiary Hearing in this matter is currently set for the stack commencing on  
18 May 30, 2017.

19 19. Because discovery was initially set by order to conclude on January 16, 2017, and  
20 because of numerous delays in the discovery process, including the objections from Theodore E.  
21 Scheide, III which have caused the deposition of Kristin Tyler to be delayed and has prevented the  
22 general medical release from being issued to permit St. Jude Children's Research Hospital to issue  
23 subpoenas for the Decedent's medical records, the parties have had insufficient time to adequately  
24 conduct discovery to prepare for the evidentiary hearing now set for the stack commencing on May  
25 30, 2017.

26 20. If the Court grants an extension of discovery, and upon receipt of a general medical  
27 release for the Decedent's records, St. Jude Children's Research Hospital intends to issue  
28

1 subpoenas for the Decedent's medical records from the time of the signing of the Last Will and  
2 Testament. If Theodore E. Scheide, III is successful in his Motion to Reconsider/Clarify, Etc., St.  
3 Jude Children's Research Hospital intends to depose additional witnesses who were in contact with  
4 the Decedent during the guardianship. St. Jude Children's Research Hospital also reserves the  
5 right to conduct additional depositions of the individuals identified during the deposition of Kristin  
6 Tyler and in the records of Nevada Guardian Services, LLC who have been in contact with the  
7 Decedent since the signing of his last will and testament.

8 21. Therefore, St. Jude Children's Research Hospital requests that the Court extend  
9 discovery in this matter for an additional 90 days after entry of order extending such, and continue  
10 the trial currently set on May 30, 2017, to a later date in order to accommodate full briefing of  
11 dispositive motions and other pre-trial motions after the close of discovery.

12 22. St. Jude Children's Research Hospital requests that its Motion to Extend Discovery  
13 and Continue Trial Date (First Request) be set by the Court on an Order Shortening Time to be  
14 heard on March 22, 2017. Theodore E. Scheide, III's Motion to Reconsider/Clarify, Etc. is already  
15 set for March 22, 2017, therefore, the parties would not be burdened by appearing on that day for  
16 this Motion. Additionally, St. Jude Children's Research Hospital believes that additional discovery  
17 is necessary, and Theodore E. Scheide, III disagrees based on the Court's order which was out-of-  
18 date at the time it was signed. Because discovery was still pending when the Order was issued and  
19 St. Jude Children's Research Hospital still has not received a release from the personal  
20 representative of the Estate for the Decedent's medical records, this issue is ripe to be heard so that  
21 a new discovery and evidentiary hearing schedule can be set.

22 23. I declare the foregoing to be true under the penalty of perjury for the laws of the  
23 State of Nevada.

24 Dated: 3/14/2017

25   
Russel J. Geist

A PROFESSIONAL LLC  
PECCOLE PROFESSIONAL PARK  
0080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NV 89145

Todd L. Moody

## MEMORANDUM OF POINTS AND AUTHORITIES

## 1. Relevant Facts

THEODORE E. SCHEIDE JR., deceased (hereinafter "Decedent"), died on or about August 17, 2014, in Las Vegas, Nevada where he was a resident at the date of his death. A copy of the official death certificate has been filed previously with the **Ex Parte Petition for Appointment of Special Administrator**, filed on October 12, 2014 in this matter.

In the **Ex Parte Petition for Appointment of Special Administrator**, Susan M. Hoy, who was the guardian of the Decedent since February 18, 2014, indicated that a copy of the Decedent's Last Will and Testament dated October 2, 2012 was found, but that she was unable to find the original.<sup>1</sup> Susan M. Hoy ("Personal Representative") was appointed as the Special Administrator of the Decedent's Estate on October 2, 2014 with the authority to open the Decedent's safe deposit box and search for the original Last Will and Testament dated October 2, 2012 ("October 2012 Will").

After searching for the Decedent's original October 2012 Will, the Personal Representative petitioned the Court on January 29, 2015 to appoint her as the administrator of the Decedent's Estate with will annexed under full administration. However, the Petition was taken off calendar and withdrawn.

On May 6, 2015, the Personal Representative petitioned the Court for instructions regarding the lack of original October 2012 Will, and alleged to the Court the following:

- a) The safe deposit box was empty;
- b) The drafting attorney gave the original October 2012 Will to the Decedent;
- c) SUSAN M. HOY did not receive or find any original estate planning documents during the guardianship; and
- d) "[SUSANM. HOY] believes the Decedent destroyed any original estate planning

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<sup>1</sup> See **Ex Parte Petition for Appointment of Special Administrator**, filed on October 12, 2014, page 1 at ¶ 3.

documents he may have executed prior to his death.”<sup>2</sup>

The matter was heard on May 22, 2015, and the Court specifically:

ORDERED that the Petitioner [SUSAN M. HOY] be appointed Administrator of the intestate Estate of the Decedent and that Letters of Administration be issued to the Petitioner.

ORDERED that in the event the estate assets are liquidated, they be placed in the Durham Jones & Pinegar Trust Account.

The Personal Representative filed her **First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees** on May 18, 2016 and asked this Court to approve distribution of the Decedent’s estate by intestate succession to the Decedent’s sole heir, Theodore Scheide, III, the Decedent’s estranged son whom the Decedent had specifically excluded.

**Discovery of New Information About Decedent’s Will**

Upon information and belief, Kristin Tyler, the Decedent’s estate planning attorney and the drafter of the October 2012 Will, discovered in or around May 2016 that the Court determined on May 22, 2015 that the Decedent died intestate and that the Decedent’s estate was to be distributed to the Decedent’s estranged son whom the Decedent had specifically excluded in his estate planning documents.

Kristin Tyler then contacted St. Jude Children’s Research Hospital and informed St. Jude Children’s Research Hospital that she recalled speaking with the Personal Representative or her counsel after the Decedent’s death about the original October 2012 Will. Kristin Tyler recalled informing the Personal Representative or her counsel that the Decedent took the original with him, but that she had the original of the Decedent’s prior Last Will and Testament dated June 8, 2012 (“June 2012 Will”), the original of which has been filed with the clerk of the court on May 20, 2016 pursuant to NRS 136.050. The Decedent’s June 2012 Will was the same as the October 2012

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<sup>2</sup> See **Petition for Instructions**, filed on May 6, 2015, page 2 at ¶ 6.

1 Will, except the Decedent had nominated Karen Hoagland as his Executor in the June 2012 Will,  
2 whereas he nominated Patricia Bowlin as his Executor in the October 2012 Will.

3 After being presented with this information, the Personal Representative filed a **Petition**  
4 **for Proof of Will and For Issuance of Letters Testamentary Under Full Administration,**  
5 **Petition to Appoint Personal Representative, and Petition to Distribute and Close Estate** on  
6 May 25, 2016 asking the Court to admit the Decedent's June 2012 Will to probate. Concurrently,  
7 the Personal Representative filed her **Amended First and Final Account, Report of**  
8 **Administration and Petition for Final Distribution and Approval of Costs and Fees** on May  
9 25, 2016 and asked this Court to approve distribution of the Decedent's estate to St. Jude  
10 Children's Research Hospital, the ultimate beneficiary of the Decedent's will since Velma G. Shay  
11 had predeceased him.

12 Upon information and belief, counsel for Theodore Scheide, III met with counsel for the  
13 Personal Representative and contended that 1) it was improper for the Personal Representative to  
14 present such a petition arguing that the Personal Representative, as the personal representative of  
15 the Estate, must remain neutral in any such determination, and 2) neither of the Decedent's Wills  
16 may be admitted to probate to permit such determination until the prior Order on Petition for  
17 Instructions is "set aside". Thereafter, in a joint meeting with counsel for St. Jude Children's  
18 Research Hospital, the parties agreed that the Personal Representative would withdraw her Petition  
19 for Probate and Petition for Distribution and counsel for St. Jude Children's Research Hospital  
20 would prepare a petition to admit Decedent's Last Will and Testament to probate, which was filed  
21 by St. Jude Children's Research Hospital on September 13, 2016.

22 On or about November 2, 2016, this Court heard St. Jude Children's Research Hospital's  
23 verified Petition for Probate of Lost Will (NRS 136.240); Revocation of Letters of Administration  
24 (NRS 141.050); Issuance of Letters Testamentary (NRS 136.090). In the course of the hearing, the  
25 Court set an evidentiary hearing for March 16-17, 2017 on the issue of fact regarding whether  
26 Theodore E. Scheide, Jr. did not revoke his last will and testament while he was still competent and  
27 had testamentary capacity to do so, during the time between when Theodore E. Scheide, Jr. signed  
28

1 his will and when he was determined to lack capacity during the guardianship.

2 After the hearing, the parties met and conferred regarding a discovery schedule to be  
3 entered by stipulated order and discussed the proposed language of the order from the hearing.  
4 However, the parties were unable to agree on the language of the proposed order, and each  
5 submitted competing orders to the Court for consideration.

6 St. Jude Children's Research Hospital requested that counsel for the Personal  
7 Representative prepare and sign a general release of medical and other records of the Decedent to  
8 enable St. Jude Children's Research Hospital to subpoena such records. However, upon  
9 information and belief, counsel for the Personal Representative indicated that she was  
10 uncomfortable preparing such release because counsel for Theodore E. Scheide, III objected to the  
11 scope of the release.

12 On or about December 1, 2016, Theodore E. Scheide, III, sent St. Jude Children's Research  
13 Hospital his first set of Interrogatories and first set of Requests for Production in the matter.

14 On or about December 19, 2016, St. Jude Children's Research Hospital noticed the  
15 deposition of Kristin Tyler, Esq. for January 11, 2017. Counsel for Theodore E. Scheide, III  
16 objected to the deposition of Ms. Tyler on that date because he was unavailable on that date and  
17 indicated that he intended to ask Ms. Tyler questions at the deposition.

18 By agreement of the parties and the deponent, the deposition of Kristin Tyler was  
19 rescheduled for February 16, 2017. The deposition of Susan Hoy was also set for February 16,  
20 2017. Both of these dates were after the discovery deadline set in the proposed Order submitted  
21 to the Court. Notices of the depositions were served on January 11, 2017.

22 On January 18, 2017, St. Jude Children's Research Hospital issued a subpoena duces tecum  
23 to Kristin Tyler requesting a the Decedent's entire estate planning file.

24 The parties appeared before the court on February 1, 2017 for a status check wherein the  
25 parties indicated that they have not received notice from the Court of the issuance of an order  
26 setting discovery and an evidentiary hearing has been issued by the Court, and that there remained  
27 discovery, including depositions already rescheduled and medical records to be obtained. The

1 Court reset the evidentiary hearing to a four week stack commencing on May 30, 2017.

2 At the time of the February 1, 2017 status check, the Court had signed the order setting the  
3 Close of Discovery on January 16, 2017 and the final date to file dispositive motions on February  
4 7, 2017, which deadlines were already out-of-date because they were based on the evidentiary  
5 hearing going forward on March 16 -17, 2017.

6 On February 8, 2017, Kristin Tyler produced an electronic copy of the Decedent's Estate  
7 Planning file pursuant to the subpoena duces tecum.

8 On February 13, 2017, Theodore E. Scheide, III filed his Motion to Reconsider/Clarify,  
9 Etc., in which he asks the Court to expand its order to enlarge the relevant time period during  
10 which St. Jude Children's Research Hospital must demonstrate that the Decedent did not revoke  
11 his will by intentional destruction. Theodore E. Scheide, III's Motion is set to be heard on March  
12 22, 2017, and, if successful, would require additional discovery beyond the scope set in the Court's  
13 original order dated January 31, 2017.

14 Kristin Tyler was deposed on February 16, 2017, during which she indicated the names of  
15 additional individuals who had contact with the Decedent in the period between the signing of his  
16 last will and testament and the establishment of a guardianship for him.

17 Susan Hoy was deposed on February 16, 2017, appearing on behalf of Nevada Guardian  
18 Services, LLC, and indicated that other employees of Nevada Guardian Services, LLC interacted  
19 with the Decedent prior to and after the establishment of a guardianship for him.

20 On or about February 16, 2017, counsel for the personal representative disclosed by email  
21 to the parties, "the medical records in the files of Nevada Guardian Services, LLC for Mr. Scheide"  
22 which appear to represent records from the Decedent's hospitalization around the time of the  
23 establishment of the guardianship and afterward. **Counsel for the personal representative has  
24 still not provided St. Jude Children's Research Hospital with a general medical records  
25 release to permit St. Jude Children's Research Hospital to obtain the Decedent's medical  
26 records for the full time period at issue.**

27 Based on the deposition of Kristin Tyler, additional individuals have been identified as  
28



1 potentially having relevant information to the issue at fact, and may be deposed by St. Jude  
2 Children's Research Hospital if the Court extends discovery.

3 The Evidentiary Hearing in this matter is currently set for the stack commencing on May  
4 30, 2017. The parties have been working to complete all of the discovery in this matter, however,  
5 the initial deadline passed while discovery was still pending, in part because the parties were  
6 working to resolve scheduling differences with the initial depositions.

7 On February 27, 2017, counsel for Theodore E. Scheide, III inquired of St. Jude Children's  
8 Research Hospital whether there were additional depositions or discovery intended.<sup>3</sup> On March  
9 1, 2017, St. Jude Children's Research Hospital responded that additional potential witnesses have  
10 been identified in the now-concluded depositions, and that St. Jude Children's Research Hospital  
11 still has not been able to obtain the Decedent's complete medical record, and accordingly St. Jude  
12 Children's Research Hospital does not believe that discovery is completed in the matter.<sup>4</sup> On  
13 March 3, 2017, counsel for Theodore E. Scheide, III responded that (i) discovery closed as of  
14 January 16, 2017; (ii) no new discovery schedule has been stipulated to and approved by the Court;  
15 and (iii) Theodore E. Scheide, III is "not agreeable to extend any further discovery or the trial."<sup>5</sup>

## 16 2. Discussion

17 "Any party may, for good cause, move the court for an order continuing the day set for  
18 trial of any cause." EDCR 7.30(a). A motion for a continuance is addressed to the sound  
19 discretion of this Court. *See Southern Pacific Trans. Co. v. Fitzgerald*, 94 Nev. 241, 243 577  
20 P.2d 1234, 1235 (1978).

21 EDCR 2.35 permits parties to seek an extension of discovery deadlines so long as the

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23 <sup>3</sup> See correspondence from Cary Colt Payne, Esq. dated February 27, 2017, attached hereto  
24 as *Exhibit A*.

25 <sup>4</sup> See correspondence from Russel J. Geist, J.D., LL.M. dated March 1, 2017, attached  
26 hereto as *Exhibit B*.

27 <sup>5</sup> See correspondence from Cary Colt Payne, Esq. dated March 3, 2017, attached hereto as  
28 *Exhibit C*.

1 motion contains the following information:

- 2 (1) A statement specifying the discovery completed;
- 3 (2) A specific description of the discovery that remains to be completed;
- 4 (3) The reasons why the discovery remaining was not completed within the time  
limits set by the discovery order;
- 5 (4) A proposed schedule for completing all remaining discovery;
- 6 (5) The current trial date; and
- 7 (6) Immediately below the title of such motion or stipulation a statement indicating  
whether it is the first, second, third, etc., requested extension.

8 *See* EDCR 2.35(b).

9 **A. The parties have actively engaged in discovery to date**

10 This matter commenced on September 13, 2016, when St. Jude Children's Research  
11 Hospital filed its Petition to Probate Lost Will. Theodore E. Scheide, III filed his objection on  
12 October 4, 2016. Neither party produced his initial 16.1 disclosures as this action is exempt from  
13 such requirements under NRS 155.170 and EDCR 2.31. After this Court set an initial date for an  
14 evidentiary hearing, the parties jointly agreed to dates based on an evidentiary hearing set for march  
15 16-17, 2017, however, each party submitted separate proposed orders. The Court signed the order  
16 on January 31, 2017.

17 Theodore E. Scheide, III propounded his First Set of Interrogatories, and Requests for  
18 Production on February 1, 2016. St. Jude Children's Research Hospital responded to Theodore E.  
19 Scheide, III's discovery requests on January 5, 2017. Kristin Tyler produced an electronic copy  
20 of the Decedent's estate planning file on February 8, 2017. The deposition of Kristin Tyler and  
21 Susan Hoy went forward on February 16, 2017. St. Jude Children's Research Hospital has been  
22 unable to make its initial expert witness disclosure under the previously ordered deadline and  
23 before the close of discovery since St. Jude Children's Research Hospital has not received a  
24 release from the Personal Representative for the Decedent's medical records. Counsel for the  
25 Personal Representative has represented to counsel for St. Jude Children's Research Hospital that  
26 she is not comfortable doing so since, upon information and belief, counsel for Theodore E.  
27 Scheide, III has objected to the scope of the requested release.

1           **B.     Discovery remaining**

2           While the Personal Representative has provided the medical records she had available in  
3 her file, the records essentially begin at or around the time the guardianship was established and  
4 cover the time period thereafter to the Decedent's death. A complete medical record is required  
5 for St. Jude Children's Research Hospital to examine and consult with an expert witness regarding  
6 the Decedent's ability to make changes to his last will and testament. St. Jude Children's Research  
7 Hospital has been denied a release to obtain the Decedent's medical record. Upon examination of  
8 the full medical record, St. Jude Children's Research Hospital anticipates additional depositions  
9 and potentially identifying an expert witness.

10          Based on the depositions of Susan Hoy and Kristin Tyler on February 16, 2017, St. Jude  
11 Children's Research Hospital anticipates additional depositions of the following witnesses:

- 12               a. Kathy Longo;  
13               b. Karen Hoagland;  
14               c. Unidentified Nevada Guardian Services, LLC Employee(s); and  
15               d. Unidentified group home employees and care providers.

16          If Theodore E. Scheide, III's Motion to Reconsider/Clarify, Etc. is successful, St. Jude  
17 Children's Research Hospital anticipates that additional discovery would be required given the  
18 expanded scope Theodore E. Scheide, III argues for with respect to the time period within which  
19 St. Jude Children's Research Hospital must demonstrate that the Decedent was able to revoke his  
20 will by intentional destruction.

21           **C.     The reasons why the discovery remaining was not completed within the**  
22               **time limits set by the discovery order**

23          From the November 2, 2017 hearing, the parties have disagreed regarding the scope of the  
24 issues and discovery needed with each submitted competing Orders. Upon information and belief,  
25 counsel for Theodore E. Scheide, III has objected to the Personal Representative providing the  
26 necessary medical release covering the contested period and upon information and belief, counsel  
27 for the Personal Representative is unwilling to provide such. As a result, St. Jude Children's  
28

1 Research Hospital has been unable to obtain the Decedent's complete medical records, despite  
2 receiving a few medical records in the Personal Representative's file essentially beginning with the  
3 time period at or around the time the guardianship was established. Additionally, counsel for  
4 Theodore E. Scheide, III objected to the initial date noticed for the deposition of Kristin Tyler,  
5 which delayed her deposition and the subpoena of her records.

6 Much of the information St. Jude Children's Research Hospital needed to conduct discovery  
7 builds upon 1) Kristin Tyler's file and deposition, and 2) the Decedent's complete medical records,  
8 as well as other records pertaining to the guardianship of the Decedent if Theodore E. Scheide, III  
9 prevails on his Motion to Reconsider/Clarify, Etc. While attempts have been made to begin  
10 discovery, questions and objections regarding the scope of discovery from Theodore E. Scheide,  
11 III, have hampered and delayed the process.

12 **D. A proposed schedule for completing all remaining discovery**

13 St. Jude Children's Research Hospital proposes the following discovery continuance.

	Current	Proposed Deadline
15 Last day to complete discovery	1/16/2017	7/17/2017
16 Last day to file dispositive motions	2/7/2017	8/7/2017
17 Last day to submit pretrial motions for decision 18 (which must be no later than 30 calendar days before trial)	2/7/2017	8/7/2017

19 **E. Current Trial Date**

20 An evidentiary hearing is scheduled for the stack beginning May 30, 2016, at 9:30 a.m. St.  
21 Jude Children's Research Hospital respectfully requests that this matter be moved to a date in  
22 September 2017 or later to permit discovery to be completed and accommodate the schedule of  
23 counsel for St. Jude Children's Research Hospital based on the schedule proposed above.

24 ///

25 ///

26 ///

1 **3. Conclusion**

2 Based on the above, good cause exists to extend the current discovery deadlines and trial  
3 date. St. Jude Children's Research Hospital respectfully requests that discovery be continued as set  
4 forth above and that this matter be moved to a date in September 2017 or later on the Court's civil  
5 trial stack that is available based on the schedule proposed above.

6 Dated March 14, 2017.

7 HUTCHISON & STEFFEN

8 

9 Todd L. Moody (5430)  
10 Russel J. Geist (9030)  
11 10080 W. Alta Dr., Ste 200  
12 Las Vegas, NV 89145  
13 (702) 385-2500  
14 (702) 385-2086 Fax  
15 [tmoody@hutchlegal.com](mailto:tmoody@hutchlegal.com)  
16 [rgeist@hutchlegal.com](mailto:rgeist@hutchlegal.com)  
17 *Attorneys for St. Jude Children's*  
18 *Research Hospital*

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## EXHIBIT A

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**HUTCHISON & STEFFEN**  
A PROFESSIONAL LLC

ROA000435

**CARY COLT PAYNE, CHTD.**  
*Attorneys at Law*

CARY COLT PAYNE, ESQ.  
Admitted in Nevada & California

February 27, 2017  
Sent via email: [rgeist@hutchlegal.com](mailto:rgeist@hutchlegal.com)

Russel J. Geist, Esq.  
HUTCHINSON & STEFFEN  
Peccole Professional Park  
10080 W. Alta Drive, Suite 200  
Las Vegas, NV 89145

RE: Estate of Theodore E. Scheide JR.  
Case No.: P-14-082619-B

Dear Mr. Geist:

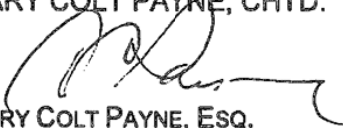
We previously corresponded to you on January 13, 2017, regarding the insufficiency of your discovery responses, for which we have still not received an adequate response. I also personally called your office and left a message. It should be noted that your client, while verifying pleadings, really is unlikely to have any independent knowledge in this matter. Please advise if you intend to revise and/or supplement your responses.

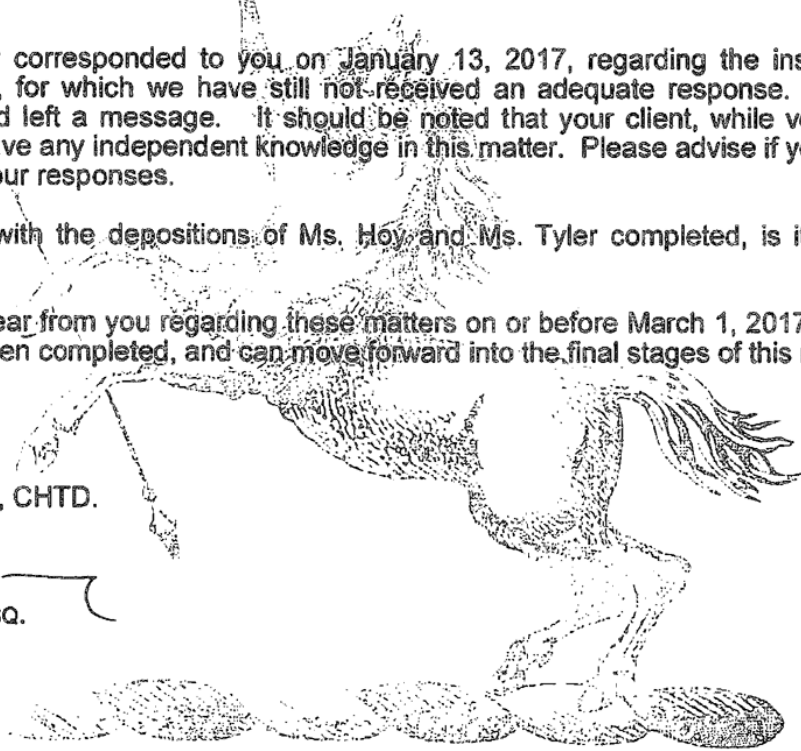
Further, now with the depositions of Ms. Hoy and Ms. Tyler completed, is it your intention to depose anyone else?

If we do not hear from you regarding these matters on or before March 1, 2017, we will conclude that discovery has been completed, and can move forward into the final stages of this matter.

Sincerely,

CARY COLT PAYNE, CHTD.

  
CARY COLT PAYNE, ESQ.  
CCP/ma  
cc: client  
Kim Boyer, Esq.



700 S. Eighth Street, Las Vegas, NV 89101  
Tel: 702.383.9010 • Fax: 702.383.9049  
Email: [carycoltpaynechtd@yahoo.com](mailto:carycoltpaynechtd@yahoo.com) • Web: [carycoltpaynechtd.com](http://carycoltpaynechtd.com)



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## EXHIBIT B

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

ROA000437





PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NEVADA 89145  
702.385.2500  
FAX 702.385.2086  
HUTCHLEGAL.COM

RUSSEL J. GEIST, J.D., LL.M.  
PARTNER  
RGEIST@HUTCHLEGAL.COM

OUR FILE No.: 6006-004

March 1, 2017

Via US Mail and email to  
carycoltpaynechtd@yahoo.com

Cary Colt Payne  
Cary Colt Payne, Chtd.  
700 S. Eighth Street  
Las Vegas, NV 89101

**Re: Estate of Theodore Scheide, Jr.**

Dear Mr. Payne:

We have received your correspondence dated February 27, 2017, although the letter was sent to our office on February 28, 2017. We will supplement our production with a privilege log covering communications between our client and our firm which are privileged as attorney-client communication as referred to in our Response to Request for Documents Nos. 6 and 8. All other documents in our client's possession which are responsive to the request have been produced.

You have also inquired regarding our intention for continuing discovery. We do intend to depose additional individuals identified as potential witnesses with relevant information in the documents produced by Kristin Tyler and in her deposition. Additionally, given that we have only just received as of February 16, 2017, the medical records produced by Susan Hoy, there are potentially additional witnesses which we reserve the right to depose. We also note that these medical records produced are records from the period of the guardianship and do not cover the entire relevant period to the inquiry, and that we still have not received a general release and waiver from the personal representative of the Estate which would permit us to subpoena the Decedent's medical records generated prior to the guardianship.

Given these additional steps necessary, we disagree that discovery is completed. We would ask for your cooperation in presenting a stipulated order extending discovery given these remaining discovery issues. It is our intention to proceed as necessary based on the information which has been received just this month.

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

Cary Colt Payne - ESTATE OF THEODORE E. SCHEIDE, JR.

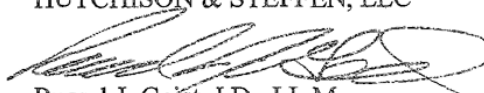
March 1, 2017

Page 2

Please contact me if you have any further questions.

Sincere regards,

HUTCHISON & STEFFEN, LLC

A handwritten signature in black ink, appearing to read "Russel J. Geist", written over the printed name.

Russel J. Geist, J.D., LL.M.

*For the Firm*

RJG/aa

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## EXHIBIT C

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

ROA000440

**CARY COLT PAYNE, CHTD.**  
Attorneys at Law

CARY COLT PAYNE, ESQ.  
Admitted in Nevada & California

March 3, 2017

Sent via email: [rgeist@hutchlegal.com](mailto:rgeist@hutchlegal.com)

Russel J. Geist, Esq.  
HUTCHINSON & STEFFEN  
Peccole Professional Park  
10080 W. Alta Drive, Suite 200  
Las Vegas, NV 89145

RE: Estate of Theodore E. Scheide JR.  
Case No.: P-14-082619-E

Dear Mr. Geist:

Thank you for your March 1, 2017 correspondence. While you "disagree" that discovery is completed, and desire to conduct further depositions, you have not identified who those individual(s) are. As a note, we both received the medical records from Ms. Boyer at the same time, which was two weeks ago not "just received". We look forward to your privilege logs, and expect same no later than March 10, 2017.

You had noticed the previous depositions prior to the discovery deadline, and they would have been held had the necessity of rescheduling same.

Nevertheless, after a review of the court order and the subsequent minutes, discovery closed as of January 16, 2017, and I do not believe that we have stipulated to a new discovery schedule, approved by the court, and especially with trial set to commence in seven weeks, we are not agreeable to extend any further discovery or the trial.


Therefore, since discovery is closed, no further depositions can be scheduled. As such, we will move forward into the final stages of this matter with our dispositive motions.

Based upon the depositions, documents pleadings, etc., you cannot provide any evidence to sustain a prima facie showing that the October 2012 will was not revoked. You stated in court on November 2, 2016 that the last time Kristen Tyler Esq. saw it was the day it was signed (see minutes). She re-stated this in her deposition, under oath. She has also confirmed it was not lost or accidentally destroyed.

If your client would like to discuss to resolve this matter, please let me know. If not, be advised that we intend to move forward, seeking attorneys fees, costs, etc.

Sincerely,

CARY COLT PAYNE, CHTD.

  
CARY COLT PAYNE, ESQ.  
CCP/ma  
cc: client  
Kim Boyer, Esq.



700 S. Eighth Street, Las Vegas, NV 89101  
Tel: 702.383.9010 • Fax: 702.383.9049  
Email: [carycoltpaynechtd@yahoo.com](mailto:carycoltpaynechtd@yahoo.com) • Web: [carycoltpaynechtd.com](http://carycoltpaynechtd.com)



ROA000441

**REGISTER OF ACTIONS****CASE NO. P-14-082619-E****In the Matter of: Theodore Scheide Jr., Deceased**§  
§  
§  
§  
§  
§  
§  
§Case Type: **Probate - Special Administration**Date Filed: **10/02/2014**Location: **Department 26**Cross-Reference Case Number: **P082619**Supreme Court No.: **76924  
84279****RELATED CASE INFORMATION****Related Cases**

W-16-010344 (Companion Case)

**PARTY INFORMATION**

			<b>Lead Attorneys</b>
<b>Decedent</b>	<b>Scheide Jr., Theodore Ernest</b>	Male DOD: 08/17/2014	
<b>Objector</b>	<b>St. Jude Children's Research Hospital</b>		<b>Todd L Moody</b> <i>Retained</i> 702-385-2500(W)
<b>Other</b>	<b>Scheide, Theodore, III</b> 6016 Wellesley AVE Pittsburgh, PA 15206		<b>Bradley J. Hofland</b> <i>Retained</i> 702-895-6760(W)
<b>Other</b>	<b>St. Jude Children's Research Hospital</b>		<b>Todd L Moody</b> <i>Retained</i> 702-385-2500(W)
<b>Petitioner</b>	<b>Hoy, Susan</b> 6625 S Valley View DR STE 216 Las Vegas, NV 89118	Female	<b>Kim Boyer</b> <i>Retained</i> 702-255-2000(W)
<b>Special Administrator</b>	<b>Hoy, Susan</b> 6625 S Valley View DR STE 216 Las Vegas, NV 89118	Female	<b>Kim Boyer</b> <i>Retained</i> 702-255-2000(W)

**EVENTS & ORDERS OF THE COURT**03/22/2017 [All Pending Motions](#) (9:30 AM) (Judicial Officer Sturman, Gloria)**Minutes**

03/22/2017 9:30 AM

- MOTION TO RECONSIDER: NOTICE OF MOTION AND MOTION TO RECONSIDER/CLARIFY, ETC...MOTION: ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S MOTION TO EXTEND DISCOVERY AND CONTINUE TRIAL DATE ON ORDER SHORTENING TIME (FIRST REQUEST) Upon Court's inquiry, Mr. Pane objected to an extension as this issue has been pending for two years. Court noted Ms. Boyer has no position either way as to an extension; Ms. Boyer concurred. Argument by Mr. Geist regarding him not receiving the full medical records. Court inquired as to why an extension is needed. Mr. Geist informed it is Mr. Scheide's position there is more discovery that is needed. COURT ORDERED, Motion to Extend Discovery GRANTED, for 60 days. COURT FURTHER ORDERED, Motion to Continue Trial Date on Order Shortening Time, DENIED. COURT ORDERED, HIPAA release be provided as to the names in the papers. Ms. Boyer has no objection to release the papers. Argument by Mr. Pane as to the language in the order being confusing. Argument by Mr. Geist stating the order is clear and correct. COURT FURTHER ORDERED, Motion

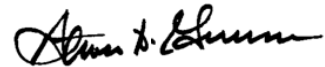
3/7/23, 3:20 PM

<https://www.clarkcountycourts.us/Secure/CaseDetail.aspx?CaseID=11525822&HearingID=192504268&SingleViewMode=Minutes>

to Reconsider DENIED. Mr. Geist renewed his motion for extending discovery as 60 days will not be enough time. COURT ORDERED, request to extend discovery more than 60 days, DENIED; Status Check SET. 05/10/17 9:30 AM STATUS CHECK

[Parties Present](#)

[Return to Register of Actions](#)



CLERK OF THE COURT

**ORDR**  
CARY COLT PAYNE, ESQ.  
Nevada Bar No. 4357  
CARY COLT PAYNE, CHTD.  
700 South Eighth Street  
Las Vegas, Nevada 89101  
(702) 383-9010  
carycoltpaynechtd@yahoo.com  
Attorney for Theodore E. Scheide III

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the Estate of	)	Case No.:	P-14-082619-E
	)	Dept. No.:	26
THEODORE E. SCHEIDE JR. a/k/a	)		
THEODORE ERNEST SCHEIDE JR.	)	Date:	3/22/17
	)	Time:	9:30 AM
Deceased.	)		
~~~~~	)		

**ORDER**

This matter coming on regularly for hearing on the Motion to Reconsider/Clarify, Esq., filed by Theodore E. Scheide III, having filed his opposition thereto, and not appearing personally and represented by his attorney, CARY COLT PAYNE, ESQ. of the law office of CARY COLT PAYNE, CHTD.; that St. Jude's Children's Research Hospital having filed a timely opposition thereto, not appearing personally and being represented by their attorney, RUSSEL J. GEIST, ESQ. of the law office of HUTCHINSON & STEFFEN; and the court, having reviewed all the pleadings and papers on file herein, and hearing the argument of counsel, and good cause appearing, the Court finds and orders as follows:

CARY COLT PAYNE, CHTD.  
700 South Eighth Street  
Las Vegas, Nevada 89101  
Tel: 702. 383.9010 • Fax 702. 383.9049





FINDINGS

1. That the court retains jurisdiction to reconsider any of its prior orders, and that sufficient cause has been shown, amend, correct, resettle, modify, vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding;

2. That the time period in question in this matter is from the date of execution of the October 2012 Last Will until the date of the decedent's death;

3. That the court ~~inadvertently misspoke or the~~ order contained additional language "after that date", in its prior order of February 2, 2017, ~~and takes the opportunity to clarify said order.~~

NOW THEREFORE, IT IS HEREBY

ORDERED, that the Motion to Reconsider/Clarify, Etc. is granted in part and that the Order filed February 2, 2017 is hereby modified as follows:

"ORDERED that St. Jude's Petition for Probate of Lost Will is granted to the extent that there is to be an Evidentiary Hearing, pursuant to Estate of Irvine v. Doyle, in that St. Jude's must prove the October 2012 will was not revoked during the decedent's lifetime from the period of the date of execution through to the date of decedent's death".

and it is further



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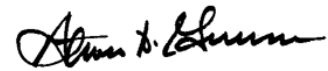
ORDERED that a status check is set for May 10, 2017 at 9:30 am.

DATED the 13 day of April 2017.

  
DISTRICT COURT JUDGE

Submitted by:

  
CARY COLT PAYNE, ESQ.  
Nevada Bar No. 4357  
CARY COLT PAYNE, CHTD.  
700 South Eighth Street  
Las Vegas, Nevada 89101  
(702) 383-9010  
Attorney for Theodore E. Scheide III



CLERK OF THE COURT

1 MSJD  
2 Todd L. Moody (5430)  
3 Russel J. Geist (9030)  
4 HUTCHISON & STEFFEN, LLC  
5 Peccole Professional Park  
6 10080 West Alta Drive, Suite 200  
7 Las Vegas, Nevada 89145  
8 (702) 385-2500  
9 (702) 385-2086  
10 [rgeist@hutchlegal.com](mailto:rgeist@hutchlegal.com)

11 *Attorneys for St. Jude Children's*  
12 *Research Hospital*

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

15 In the Matter of the Estate of

Case No.: P-14-082619-E

16 THEODORE E. SCHEIDE JR. aka  
17 THEODORE ERNEST SCHEIDE JR.,

Dept No.: 26

18 Deceased.

19 **ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S MOTION FOR**  
20 **PARTIAL SUMMARY JUDGMENT ON NON-REVOCATION OF WILL PRIOR TO**  
21 **THE DECEDENT'S GUARDIANSHIP AND ON DECEDENT'S TESTAMENTARY**  
22 **CAPACITY AFTER THE ESTABLISHMENT OF A GUARDIANSHIP**

23 ST. JUDE CHILDREN'S RESEARCH HOSPITAL, INC. ("St. Jude Children's Research  
24 Hospital") respectfully moves this Honorable Court for partial summary judgment on two issues  
25 and requests that an order be entered finding 1) that the it is more likely than not that the  
26 Decedent's last will and testament was unrevoked immediately prior to the establishment of a  
27 guardianship of the Decedent, and 2) that the Decedent lacked testamentary capacity to revoke his  
28 will after the establishment of a guardianship and during the pendency of the guardianship  
proceedings.

///

///

///

HUTCHISON & STEFFEN

A PROFESSIONAL LLC  
PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NV 89145

ROA000447

1 This motion is based upon EDCR 2.35, EDCR 7.30, the declaration of Russel J. Geist, the  
2 declaration of Todd L. Moody, the following memorandum of points and authorities, as well as the  
3 papers and pleadings on file in this matter, and any oral argument the Court may entertain on this  
4 motion.

5 DATED this 25<sup>th</sup> day of April, 2017.

6 HUTCHISON & STEFFEN

7 

8 Todd L. Moody (5430)  
9 Russel J. Geist (9030)  
10 HUTCHISON & STEFFEN, LLC  
11 Peccole Professional Park  
12 10080 W. Alta Dr., Ste 200  
13 Las Vegas, NV 89145

14 *Attorneys for St. Jude Children's*  
15 *Research Hospital*  
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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing **ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON NON-REVOCATION OF WILL PRIOR TO THE DECEDENT'S GUARDIANSHIP AND ON DECEDENT'S TESTAMENTARY CAPACITY AFTER THE ESTABLISHMENT OF A GUARDIANSHIP** on for hearing before this Honorable Court on the 31 day of May, 2017, at the hour of 9:30 a.m./~~p.m.~~ in Department 26, or as soon thereafter as counsel may be heard.

DATED this 25<sup>th</sup> day of April, 2017.

HUTCHISON & STEFFEN



Todd L. Moody (5430)  
Russel J. Geist (9030)  
HUTCHISON & STEFFEN, LLC  
Peccole Professional Park  
10080 W. Alta Dr., Ste 200  
Las Vegas, NV 89145

*Attorneys for St. Jude Children's  
Research Hospital*

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

St. Jude Children's Research Hospital, as the proponent of the lost will of the Decedent, THEODORE E. SCHEIDE, JR. ("Decedent"), is required to "prove that the testator did not revoke the lost or destroyed will during his lifetime" *Estate of Irvine v. Doyle*, 101 Nev. 698, 703, 710 P2d 1366, 1369 (1985). However, all that is required is *proof that the testator himself had not revoked the lost or destroyed will*, not that the will was in physical existence at the time of the testator's death. *Id.*

At issue in the instant matter, but not addressed in *Irvine v. Doyle* is the effect of the guardianship of the Decedent's person and estate on his ability to revoke his will by intentional destruction. THEODORE E. SCHEIDE, III ("Objector") argues generally that the common law presumption that the Decedent retained his capacity to change or revoke his will applies even after the establishment of the guardianship.

St. Jude Children's Research Hospital has filed its Motion for Partial Summary Judgment seeking an order from this Court that the evidence supports the judgment that, post-guardianship, the Decedent lacked the capacity to revoke his will.

## II. FACTUAL BACKGROUND

## A. Preparation of Decedent's Estate Planning Documents

On or about June 6, 2012, the Decedent, who was in a rehabilitation hospital at the time, retained his estate planning attorney, KRISTIN TYLER, Esq., to prepare his estate planning documents. Specifically, the Decedent wanted a last will and testament nominating Karen Hoagland, an accountant, as his executor and leaving his entire estate to Velma Shay, his life partner, if she were then living, or to St. Jude Children's Research Hospital, if she were not then living.<sup>1</sup> It was during the meetings prior to executing the will, that the Decedent told Kristin Tyler

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<sup>1</sup> See deposition transcript of Kristin Tyler, Esq., attached hereto as Exhibit 1 ("Tyler depo."), 21:1-2, 12-22; 33:15-16.

1 that he had a son but they were estranged for more than 20 years.<sup>2</sup> The Decedent also told Kristin  
2 Tyler that he and Velma “had agreed that if something happened to both of them, they wanted to  
3 benefit St. Jude Children’s Hospital because Mr. Scheide said he though it was a very worthwhile  
4 organization to help kids.”<sup>3</sup> The Decedent signed this will on June 8, 2012.

5 The Decedent again met with Kristin Tyler on October 2, 2012 to execute a new will  
6 changing the Executor to Patricia Bowlin, but kept the beneficiary designations the same.<sup>4</sup> In both  
7 the June 8, 2012 will and the October 2, 2012 will, the Decedent specifically excluded his son from  
8 the will.<sup>5</sup>

9 Velma Shay died the following year. The Decedent again contacted Kristin Tyler on June  
10 12, 2013 to change his power of attorney<sup>6</sup>. Kristin Tyler called the Decedent on August 27, 2013  
11 to check on him and the Decedent told her that he was in another rehab facility and that he was  
12 “[n]ot doing good from [a] physical health standpoint.”<sup>7</sup> It was during this call that the Decedent  
13 told Kristin Tyler that he “wants all to go to St. Jude when he dies.”<sup>8</sup> In addition to representing the  
14 Decedent as his estate planning attorney, Kristin Tyler also advised the Decedent on matters  
15 regarding personal property claimed by Velma Shay’s family members after her passing and  
16 communicated on his behalf to the family members’ attorney, Chris Phillips, Esq.<sup>9</sup>

17 On December 6, 2013, Kristin Tyler received a phone call from Kathy Longo, the  
18

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19 <sup>2</sup> See Tyler depo 32:16-25; 33:1-6.

20 <sup>3</sup> See Tyler depo 34:20-24; 146:3-9.

21 <sup>4</sup> See Tyler depo 49:16-18, 24-25.

22 <sup>5</sup> See Tyler depo 38:1-11; 49:7-21.

23 <sup>6</sup> See Tyler depo 53:10-23.

24 <sup>7</sup> See Tyler depo 56:24; 57:13-21.

25 <sup>8</sup> See Tyler depo 56:25; 57:1-7.

26 <sup>9</sup> See Tyler depo 58:3-5,22-24; 59:1.

1 Decedent's stepdaughter who was assisting him with day-to-day living activities, to tell Ms. Tyler  
2 that she was concerned that the Decedent had leased a car although he was medically unable to  
3 drive, that he kept a pistol in his home and shouldn't have it, and that he left his keys in his front  
4 door overnight.<sup>10</sup> Kristin also indicated in her notes that the Decedent was "outside of cell phone  
5 store, drops pants and pees in parking lot."<sup>11</sup>

6 It was around this time, December 9, 2013 in fact, that Kristin Tyler began discussing the  
7 need for a guardian for the Decedent.<sup>12</sup> Ms. Tyler and Ms. Longo met with the Decedent on  
8 December 10, 2013 to discuss the guardianship.<sup>13</sup>

9 On December 27, 2013, Ms. Tyler called the Decedent to discuss a bankruptcy notice he  
10 had received, and a desire to remove Kathy as potential fiduciary to help him.<sup>14</sup> Ms. Tyler then met  
11 with the Decedent in his group home in January 2014 to discuss him nominating a fiduciary under  
12 his power of attorney.<sup>15</sup> During these discussions with Kristin Tyler, the Decedent did not tell her  
13 that he wanted to change his estate plan beneficiaries.<sup>16</sup> At the January 2014 meeting, Kristin Tyler  
14 offered to have a staff investigator help him get in touch with his son.<sup>17</sup> Ms. Tyler asked the  
15 Decedent, "Do you want to get back in touch with your son? Do you want me to find out where he  
16 lives? I can find that out. And he said no."<sup>18</sup> The Decedent didn't even know the city or state where  
17

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18 <sup>10</sup> See Tyler depo 62:1-3.

19 <sup>11</sup> See Tyler depo 62:10-14.

20 <sup>12</sup> See Tyler depo 63:17-25;

21 <sup>13</sup> See Tyler depo 65:23-25; 66:1-25; 66:1-24.

22 <sup>14</sup> See Tyler depo 67:23-25; 68:1-17.

23 <sup>15</sup> See Tyler depo 108:18-19.

24 <sup>16</sup> See Tyler depo 69:6-9.

25 <sup>17</sup> See Tyler depo 160:7-19.

26 <sup>18</sup> *Id.*

1 his son lived.<sup>19</sup>

2 **B. Establishment of Guardianship**

3 On or about February 8, 2014, the Decedent was hospitalized at Centennial Hills Hospital  
4 with altered mental status, and slurred speech. Kristin Tyler was already coordinating with On  
5 February 14, 2014, Decedent's physician declared that the Decedent was "unable to respond to a  
6 substantial and immediate risk of physical or financial harm or to a need for immediate medical  
7 attention," that he was "unable properly to manage and take care of [Decedent's] person or  
8 property, or both", and that he was incapable of "living independently, with or without assistance."  
9 The **Physician's Statement** signed by Dr. Mardip Arora, M.D. filed in support of the need for a  
10 guardianship over the Decedent in Clark County Guardianship Case No. G-14-039853-A will be  
11 submitted in camera. The Decedent's physician further stated that the Decedent "does present a  
12 danger to himself or others, and the Decedent's capacity was limited by "Altered level of  
13 consciousness, dementia, chronic bifrontal strokes." See **Physician's Statement**. On February 19,  
14 2014, the Guardianship Court appointed to serve as the temporary guardian of the Decedent's  
15 person and estate, Nevada Guardian Services, LLC, of which Susan M. Hoy, is a private,  
16 professional guardian. A copy of the Ex Parte Order Appointing Temporary Guardian and For  
17 Issuance of Temporary Letters of Guardianship is attached as **Exhibit 2**. On March 19, 2014, the  
18 Guardianship Court appointed Susan M. Hoy to serve as the guardian of the Decedent's person and  
19 estate. A copy of the Order Appointing Guardian and For Issuance of Letters of Guardianship is  
20 attached as **Exhibit 3**.

21 **C. Opening Decedent's Estate**

22 Decedent died on or about August 17, 2014, in Las Vegas, Nevada where he was a resident  
23 at the date of his death. A copy of the official death certificate has been filed previously with the  
24 **Ex Parte Petition for Appointment of Special Administrator**, filed on October 12, 2014 in this  
25 matter. The Guardianship estate was closed in April 2015, and the Decedent's Estate was delivered  
26

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27 <sup>19</sup> *Id.*



1 to Susan M. Hoy as the personal representative of the Decedent's estate.

2 In the **Ex Parte Petition for Appointment of Special Administrator**, Susan M. Hoy  
3 indicated that a copy of the Decedent's Last Will and Testament dated October 2, 2012 was found,  
4 but that she was unable to find the original.<sup>20</sup> Susan M. Hoy ("Personal Representative") was  
5 appointed as the Special Administrator of the Decedent's Estate on October 2, 2014 with the  
6 authority to open the Decedent's safe deposit box and search for the original Last Will and  
7 Testament dated October 2, 2012 ("October 2012 Will").

8 After searching for the Decedent's original October 2012 Will, the Personal Representative  
9 petitioned the Court on January 29, 2015 to appoint her as the administrator of the Decedent's  
10 Estate with will annexed under full administration. However, the Petition was taken off calendar  
11 and withdrawn.

12 On May 6, 2015, the Personal Representative petitioned the Court for instructions regarding  
13 the lack of original October 2012 Will, and alleged to the Court the following:

- 14 a) The safe deposit box was empty;
- 15 b) The drafting attorney gave the original October 2012 Will to the Decedent;
- 16 c) SUSAN M. HOY did not receive or find any original estate planning documents  
17 during the guardianship; and
- 18 d) "[SUSAN M. HOY] believes the Decedent destroyed any original estate planning  
19 documents he may have executed prior to his death."<sup>21</sup>

20 The matter was heard on May 22, 2015, and the Court specifically:

21 ORDERED that the Petitioner [SUSAN M. HOY] be appointed  
22

23 <sup>20</sup> See **Ex Parte Petition for Appointment of Special Administrator**, filed on October  
24 12, 2014, page 1 at ¶ 3.

25  
26 <sup>21</sup> See **Petition for Instructions**, filed on May 6, 2015, page 2 at ¶ 6.  
27  
28

1 Administrator of the intestate Estate of the Decedent and that Letters  
2 of Administration be issued to the Petitioner.

3 ORDERED that in the event the estate assets are liquidated, they be  
4 placed in the Durham Jones & Pinegar Trust Account.

5 The Personal Representative filed her **First and Final Account, Report of Administration**  
6 **and Petition for Final Distribution and Approval of Costs and Fees** on May 18, 2016 and asked  
7 this Court to approve distribution of the Decedent's estate by intestate succession to the Objector  
8 who was the Decedent's sole heir and the Decedent's estranged son whom the Decedent had  
9 specifically excluded from his will. St. Jude Children's Research Hospital filed its petition to admit  
10 Decedent's Last Will and Testament to probate on September 13, 2016.

11 **D. Undisputed Facts**

12 The following facts are not in dispute:

- 13 1. The Decedent retained attorney Kristin Tyler, Esq. to create his last will and  
14 executed his October 12, 2012 last will and kept the original of this will.
- 15 2. The Decedent and Kristin Tyler spoke by phone and in person numerous times after  
16 the execution of the October 2012 last will, the last time being in or around January  
17 2014.
- 18 3. The Decedent reaffirmed that he wanted his entire estate is to be distributed to St.  
19 Jude's Children Research Hospital as late as August 27, 2013.
- 20 4. The Decedent did not tell Kristin Tyler that he wanted to change his will, although  
21 he did want to change his power of attorney as late as January 2014.
- 22 5. On February 12, 2014, the Decedent's physician declared that the was "unable to  
23 respond to a substantial and immediate risk of physical or financial harm or to a  
24 need for immediate medical attention," that he was "unable properly to manage and  
25 take care of [Decedent's] person or property, or both", and that he was incapable  
26 of "living independently, with or without assistance." The Decedent's physician  
27 further stated that the Decedent's capacity was limited by "Altered level of  
28

consciousness, dementia, chronic bifrontal strokes.”

6. The guardianship court appointed Nevada Guardian Services, LLC as the temporary guardian of the Decedent on February 18, 2014.

7. The guardianship court appointed Nevada Guardian Services, LLC as the guardian of the person and estate of the Decedent on March 19, 2014.

### III. LEGAL ARGUMENT

#### A. Summary Judgment Standard

The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the material facts before the court. *Northwest Motorcycle Ass'n v. Dep't of Agric.*, 18 F.3d 1468, 1471, (9<sup>th</sup> Cir.1994). “Summary judgment is appropriate and ‘shall be rendered forthwith’ when the pleadings, and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.’” *Wood v. Safeway*, 121 Nev. 724, 121 P.3d 1026 (2005) (citing NRCP 56(c); *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997)). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. *Lynn v. Sheet Metal Workers Int'l Ass'n*, 804 F.2d 1472, 1483 (9<sup>th</sup> Cir. 1986). “Rule 56 should not be regarded as a disfavored procedural shortcut but instead as an integral part of the [Nevada] Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.” *Id.* at 1030 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

As summary judgment allows a court to dispose of factually unsupported claims, the court construes the evidence in the light most favorable to the nonmoving party. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9<sup>th</sup> Cir.1996). However, once the moving party meets their burden, “[t]he opposing party must then present specific facts demonstrating that there is a factual dispute about a material issue.” *Zoslaw v. MCA Distributing Corp.*, 693 F.2d 870, 883 (9<sup>th</sup> Cir. 1982), cert. denied, 460 U.S. 1085 (1983). “A mere scintilla of evidence will not do, for a jury is permitted to

draw only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation.” *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9<sup>th</sup> Cir.19978). Conclusory allegations that are unsupported by factual data cannot defeat a motion for summary judgment. *Taylor v. List*, 80 F.2d 1040, 1045 (9<sup>th</sup> Cir.1989). The movant is entitled to summary judgment if the non-moving party, who bears the burden of persuasion, fails to designate “specific facts showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 324. Thus, in order to preclude a grant of summary judgment, the non-moving party must set forth “specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indust. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S.Ct. 1348 (1986)(quoting Fed. R. Civ. P. 56 (e)).

The non-moving party is no longer able to defeat a summary judgment motion by alleging the slightest doubt as to the operative facts. *See Wood v. Safeway* (overruling slightest doubt standard and adopting the U.S. Supreme Court’s standard outlined in *Anderson v. Liberty Lobby*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986)). Though inferences are to be drawn in favor of the party opposing the motion for summary judgment, when a proper motion for summary judgment has been made, “the nonmoving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.” *Wood v. Safeway* at 1030-31 (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002)). “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Id.* at 1031 (citing *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42, (1993)).

Based on the facts and law discussed herein, it is clear that St. Jude Children’s Research Hospital has met its burden in proving that the Decedent’s will was more likely than not left unrevoked as of his death and St. Jude Children’s Research Hospital is entitled to summary judgment.

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1 **B. Standard to prove a lost will was in legal existence at the death of the testator.**

2 *Irvine v. Doyle* requires the proponent of a lost will to prove that the lost will was in legal  
3 existence, i.e. the testator did not revoke the will during his lifetime.<sup>22</sup> The Court did not state  
4 whether the presumption of revocation may be rebutted by a preponderance of evidence<sup>23</sup> or by  
5 clear and convincing evidence<sup>24</sup>. More recently, the Mississippi Supreme Court held in *In re Estate*  
6 *of Leggett* that the evidence required to rebut the presumption is dependant upon the facts  
7 presented in the matter, and some cases may be decided by slight evidence:

8 It is difficult to lay down any general rule as to the nature of the  
9 evidence which is required to rebut the presumption of destruction:  
10 It depends to a considerable extent on the testator's property and his  
11 relations towards his family. Where the will makes a careful and  
12 detailed disposition of the testator's property, and nothing happens to  
13 make it probable that he wishes to revoke it, the presumption raised  
14 by the disappearance of the will may be rebutted by slight evidence,  
15 especially if it is shown that the access to the box, or other place of  
16 deposit where the will was kept, could be obtained by persons whose  
17 interest it is to defeat the will.<sup>25</sup>

18 <sup>22</sup> *Estate of Irvine v. Doyle*, at 703, 1369.

19 <sup>23</sup> See, e.g. *In re Estate of Glover*, 744 S.W.2d 939 (Tex.1988) ("The court of appeals  
20 correctly held that the standard by which the sufficiency of the evidence should be reviewed is by  
21 a preponderance of the evidence."); *In re Estate of Conley*, 753 N.W.2d 384 (N.D. 2008) ("the  
22 party petitioning for the probate of a missing will must demonstrate, by a preponderance of the  
23 evidence, that the will existed at the time of the testator's death, that the will was fraudulently  
24 destroyed in the lifetime of the testator, or by other evidence demonstrating the testator did not  
25 intend to revoke the missing will.")

26 <sup>24</sup> *In re Estate of Crozier*, 232 N.W.2d 554, 559 (Iowa 1975) ("Defendants concede the  
27 presumption of revocation may be rebutted but insist in order to establish a lost will the  
28 presumption of revocation by decedent during his lifetime must be overcome by clear, satisfactory  
and convincing evidence."); *In re Estate of Mitchell*, 623 So.2d 274 (Miss. 1993) ("Our later cases  
say it may be overcome only by "clear and convincing" evidence that the testator did not destroy  
it or that, if he did, he did so accidentally or otherwise without intending revocation." (citing *Estate*  
*of Willis*, 207 So.2d 348, 349 (Miss. 1968); *James v. Barber*, 244 Miss. 234, 142 So.2d 21, 27  
(1962) (but see *In re Estate of Leggett*, 584 So.2d 400, 403 (Miss. 1991), *infra* Footnote 35).

<sup>25</sup> *In re Estate of Leggett*, 584 So.2d 400, 403 (Miss. 1991).

1 NRS 136.240 does not set a standard of proof for overcoming the presumption created by  
2 the lost will. When no standard is set in a civil matter, a preponderance of evidence is all that is  
3 required to rebut a presumption. *See* NRS 47.180(1) (“A presumption, other than a presumption  
4 against the accused in a criminal action, imposes on the party against whom it is directed the  
5 burden of proving that the nonexistence of the presumed fact is more probable than its existence.”).  
6 The legislative history of NRS 136.240 supports this standard regarding the proof of lost wills with  
7 the amendment of the statute to add subsection 5(b) which states:

8 Notwithstanding any provision of this section to the contrary: (b) if  
9 the proponent of a lost or destroyed will makes a prima facie showing  
10 that it was more likely than not left unrevoked by the person whose  
will it is claimed to be before his or her death, then the will must be  
admitted to probate in absence of an objection.

11 According to NRS 136.240, a proponent of a lost or destroyed will must make a showing that “it  
12 was more likely than not left unrevoked”.

13 St. Jude Children’s Research Hospital has met the burden of showing that the Decedent’s  
14 will was more likely than not left unrevoked at the time of the Decedent’s illness which led to the  
15 declaration of incapacity and the establishment of a guardianship. Specifically, the Decedent’s  
16 wishes, expressed in his last will and reiterated to Kristin Tyler, that he wanted his entire estate to  
17 go to St. Jude Children’s Research Hospital is supported by the testimony of his attorney assisting  
18 him at the time with making changes to his power of attorney and helping him find a paid caregiver  
19 to assist him with his daily living tasks.

20 Kristin Tyler’s testimony that the Decedent refused to locate his son or reach out to him  
21 during this time emphasizes the Decedent’s continuing desire to not communicate or associate with  
22 his estranged son, whom he specifically disinherited in his will. As stated in *Leggett*, the  
23 Decedent’s “will makes a careful and detailed disposition of the testator’s property” and “his  
24 relations towards his family” make it extremely improbable that he would have revoked his will  
25 to entirely change his estate plan to pass his considerable property by intestate succession to the  
26 estranged, disinherited son.

1 The presumption that the Decedent intentionally revoked his will by destroying it has been  
2 overcome by competent evidence and the testimony of his estate planning attorney, who met with  
3 and advised the Decedent on matters relating to his estate and other issues until and through the  
4 guardianship. The Objector raised many hypotheticals about the Decedent hiring a different  
5 attorney, or a paralegal, or a shredding service, to destroy his will for him. However, nothing in  
6 the hypotheticals offered by the Objector has been supported by the facts or the evidence. The  
7 Objector merely rests on the presumption.

8 The Objector has no facts that overcome the evidence presented by St. Jude Children's  
9 Research Hospital to make the Decedent's will more likely to be revoked than not. The Objector  
10 hangs his entire case on whether or not the will was physically in existence, or whether it was seen  
11 by someone as of the time of the Decedent's death. This is a misstatement of the standard required  
12 by Irvine which only requires that the proponent of a lost will prove that the Decedent's will was  
13 unrevoked at the death of the Decedent.<sup>26</sup> This standard would allow for a will to have been  
14 misplaced, lost or destroyed by accident and does not require anyone to prove that they had seen  
15 the physical will at the death of the Decedent. St. Jude Children's Research Hospital has met this  
16 standard and is entitled to summary judgment.

17 **C. Mental capacity required to revoke a will.**

18 The standard of mental capacity required to revoke a will is the same as required to make  
19 a will.<sup>27</sup> A revocation of a will must To revoke a will by revocatory act, the testator must have  
20 intent to revoke (see § 4.1, Comment e). An intent to revoke is required to revoke a will by a  
21 revocatory act, and is only recognized as valid if the testator has mental capacity when performing  
22  
23  
24

25 <sup>26</sup> *Estate of Irvine v. Doyle*, at 703, 1369.

26 <sup>27</sup> *Restatement Third of Property*, § 8.1, comment c (2016) ("Although many statutes of  
27 wills do not expressly say that a testator must be "of sound mind" to revoke a will, the same  
28 requirement of mental capacity applies.")

1 the revocatory act.<sup>28</sup> A purported revocation of a will by a person who lacks the mental capacity  
2 to make a will is void.<sup>29</sup>

3 While there is a strong presumption at common law that a lost will was revoked by  
4 destruction by the testator, the Nevada Supreme Court has held that, 1) such presumption is  
5 rebuttable by the proponent of the lost will, and 2) the question of whether a will was revoked is  
6 a matter to be decided by the trier of fact after considering the evidence.<sup>30</sup> In order to prove a lost  
7 or destroyed will was either “in existence at the death of the person whose will it is claimed to be,  
8 or ... to have been fraudulently destroyed in the lifetime of that person”, the proponent needs to  
9 prove that “the will had not been destroyed during the testator’s lifetime or that, if destroyed during  
10 his lifetime, it had not been destroyed by him or by his authority.”<sup>31</sup>

11 The term “in existence” means legal existence and does not require a showing of proof that  
12 the will actually physically existed at the death of the testator.<sup>32</sup> The Nevada Supreme Court further  
13 determined that the legislative intent of NRS 136.240(3) only requires “the proponent of a lost or  
14 destroyed will to prove that the testator did not revoke the lost or destroyed will during his  
15 lifetime.”<sup>33</sup> With the Court’s clarification of the presumption, a testator could not have revoked the  
16 lost or destroyed will if he lacked the mental capacity to do so.

17 The Nevada Supreme Court indicated that “[t]estamentary capacity exists when the testator  
18 (1) understands the nature of the act he is doing, (2) recollects and understands the nature and  
19

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20 <sup>28</sup> *Id.* (“To revoke a will by revocatory act, the testator must have intent to revoke (see §  
21 4.1, Comment e). An intent to revoke is only recognized if the testator has mental capacity when  
22 performing the revocatory act.”)

23 <sup>29</sup> *Id.*

24 <sup>30</sup> *Estate of Irvine v. Doyle*, at 703, 1369.

25 <sup>31</sup> *Id.*

26 <sup>32</sup> *Id.*

27 <sup>33</sup> *Id.*



1 situation of his property, and (3) recognizes his relations to the persons who would inherit via  
2 intestacy.”<sup>34</sup> The Court also declared that testamentary capacity is presumed and continues even  
3 after the testator has been presumed incompetent to handle his affairs.<sup>35</sup> This presumption is  
4 rebuttable by the party challenging the will or the revocation by providing evidence that the testator  
5 lacked such capacity.<sup>36</sup>

6 The Court in *Blanchard* considered the evidence that clearly supported the determination  
7 of the testator’s testamentary capacity. The Court considered the following factors:

- 8 1.) The Nevada guardianship judge determined just a few days after the  
9 execution of the will, that the testator, age 94, was incapacitated to  
10 the extent that a temporary guardian of the person and the estate  
11 should be appointed.
- 12 2.) Medical evidence in the form of a physician’s statement supported  
13 the guardianship petition.
- 14 3.) In the new will, the testator gave his entire estate to his two  
15 previously-disinherited sons, a complete repudiation of the  
16 testator’s prior estate plan.
- 17 4.) One of the testator’s disinherited sons took him from his home in  
18 Las Vegas to California where the new will was executed.
- 19 5.) The testator’s estate plan was clearly established to transfer assets  
20 by trust, not a will.
- 21 6.) The testator died less than five months after executing the new will,  
22 while guardianship proceedings were still pending.

---

23 <sup>34</sup> *In re Estate of Blanchard*, 2016 WL 3584702 (NV Ct. App., 2016) (citing *In re*  
24 *Lingenfelter’s Estate*, 241 P.2d 990, 997 (Cal. 1952)).

25 <sup>35</sup> *Id.* (citing *Moore v. Anderson Ziegler Disharoon Gallagher & Gray, P.C.*, 135 Cal. Rptr.  
26 2d 888, 900 (Ct. App. 2003); 79 Am. Jur. 2d Wills § 90 (2016)).

27 <sup>36</sup> *Id.*

1 The Court held that this evidence clearly supports the conclusion that the testator lacked the  
2 capacity to execute any testamentary documents during the period in question, thus overcoming  
3 the presumption of capacity.

4 **D. The evidence presented supports the conclusion that the Decedent lacked the**  
5 **capacity to revoke his will after the establishment of the guardianship.**

6 The Decedent was 86 years old at the time the guardianship was established and was  
7 admitted to Centennial Hills Hospital with altered mental status, dementia, and what his physician  
8 described as “chronic bifrontal strokes” in the physician’s certification supporting the  
9 guardianship. The guardianship court appointed a temporary guardian over the Decedent on  
10 February 18, 2014, and a general guardian of the Decedent’s person and estate on March 19, 2014.  
11 The Decedent’s medical record shows repeated hospitalizations for physical problems, but the  
12 Decedent was never determined to regain capacity by any treating physician. In fact, the  
13 Decedent’s dementia was described as “progressively worsening” by his attending physician on  
14 May 21, 2014. A copy of the Decedent’s relevant medical records from his May 21, 2014  
15 admission to Mountain View Hospital will be submitted in camera for review. The guardianship  
16 was never terminated, and the Decedent died while the guardianship proceeding was pending  
17 almost 6 months to the day after the establishment of the guardianship.

18 The Decedent’s previous estate plan as indicated in his June 2012 and October 2012 wills  
19 was to give his estate to his life companion, Velma Shay if she survived him, or to St. Jude  
20 Children’s Research Hospital if she predeceased him. Additionally, both wills specifically  
21 disinherited the Decedent’s sole heir, the Objector. By contrast, a revocation of the Decedent’s will  
22 would be a complete repudiation of the Decedent’s prior estate plan.

23 ///

24 ///

25 ///

As in the *Blanchard* case, the clear, uncontroverted evidence supports the conclusion that the Decedent lacked the capacity to revoke his will after the establishment of the guardianship.

<i>In re Blanchard</i>	<i>Scheide</i>
Nevada guardianship judge determined just a few days after the execution of the will, that the testator, age 94, was incapacitated to the extent that a temporary guardian of the person and the estate should be appointed.	Nevada guardianship judge determined that the Decedent, age 86, was incapacitated to the extent that a temporary guardian of the person and the estate should be appointed. A general guardianship was established about a month later.
Medical evidence in the form of a physician's statement supported the guardianship petition.	Medical evidence in the form of the February 14, 2017 physician's statement from Dr. Mardip Arora, M.D. supported the guardianship petition.  Additional medical evidence indicated that 3 months after the establishment of the temporary guardianship, the Decedent's dementia was "progressively worsening."
In the new will, the testator gave his entire estate to his two previously-disinherited sons, a complete repudiation of the testator's prior estate plan.	A revocation would pass the Decedent's estate to his disinherited son, a complete repudiation of the Decedent's prior estate plan.
One of the testator's disinherited sons took him from his home in Las Vegas to California where the new will was executed.	The Decedent was transient during the guardianship, although the disinherited son had no contact with the Decedent during this time.
The testator's estate plan was clearly established to transfer assets by trust, not a will.	The Decedent's estate plan was established to transfer assets by will, not by intestate succession, hence the disinherited sole heir.
The testator died less than five months after executing the new will, while guardianship proceedings were still pending.	The Decedent died while guardianship proceedings were still pending almost six months after the establishment of the guardianship.

1 **IV. Conclusion**

2 While a lost or destroyed will creates the rebuttable presumption that the testator destroyed  
3 the will with the intent to revoke it, such presumption is rebuttable by a preponderance of evidence  
4 that the will was left unrevoked at the death of the Decedent. Such presumption does not require  
5 proof that the will was physically in existence at the Decedent's death, but only requires proof of  
6 "legal existence", i.e. unrevoked. St. Jude Children's Research Hospital has presented evidence that  
7 the Decedent's wishes as expressed in his last will remained unrevoked at the time the guardianship  
8 was established. The Objector has not and cannot provide any facts sufficient to create a genuine  
9 issue of material fact to preclude the granting of St. Jude Children's Research Hospital's Motion  
10 for Partial Summary Judgment on this issue of non-revocation at the point of the guardianship.

11 The presumption that a lost will was intentionally revoked by the testator cannot apply  
12 during periods in which the testator lacked the mental capacity to revoke such will. The Decedent  
13 was suffering from progressively worsening dementia and required a guardian of his person and  
14 estate for six months prior to his passing while the guardianship remained in effect. Such  
15 presumption of testamentary capacity cannot apply to the Decedent and no evidence has been  
16 presented that the Decedent regained capacity during the guardianship proceedings. The Objector  
17 has not and cannot provide any facts sufficient to create a genuine issue of material fact to preclude  
18 the granting of St. Jude Children's Research Hospital's Motion for Partial Summary Judgment on  
19 the issue of the Decedent's lack of capacity to revoke his will during the guardianship.  
20 Accordingly, St. Jude Children's Research Hospital respectfully request that this Court grant its  
21 motion in its entirety.

22 Dated April 25, 2017.

HUTCHISON & STEFFEN

23  
24 

25 Todd L. Moody (5430)  
26 Russel J. Geist (9030)  
27 10080 W. Alta Dr., Ste 200  
28 Las Vegas, NV 89145  
*Attorneys for St. Jude Children's  
Research Hospital*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, and that on this 25<sup>th</sup> day of April, 2017, I caused a true and correct copy of the above and foregoing **ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON NON-REVOCATION OF WILL PRIOR TO THE DECEDENT'S GUARDIANSHIP AND ON DECEDENT'S TESTAMENTARY CAPACITY AFTER THE ESTABLISHMENT OF A GUARDIANSHIP** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorney(s) or parties listed below at the address and/or facsimile number indicated below:

***Via E-Service***  
 Kim Boyer, Esq.  
 Durham Jones & Pinegar  
 10785 W. Twain Ave., Ste. 200  
 Las Vegas, NV 89135  
*Attorney for the Administrator*

***Via E-Service***  
 Cary Colt Payne, Esq.  
 700 S. 8<sup>th</sup> Street  
 Las Vegas, NV 89101  
*Attorney for Theodore "Chip" E. Scheide, III*

  
 An Employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

## EXHIBIT 1

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**HUTCHISON & STEFFEN**  
A PROFESSIONAL LLC

ROA000467

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4 In the Matter of the Estate of )  
5 )  
6 THEODORE E. SCHEIDE, JR., ) CASE NO: P-14-082619-E  
7 aka THEODORE ERNEST )  
8 SCHEIDE, JR., ) DEPT NO: PCI  
9 )  
10 Deceased. )  
11 )  
12  
13 DEPOSITION OF KRISTEN TYLER, ESQ.  
14 LAS VEGAS, NEVADA  
15 THURSDAY, FEBRUARY 16, 2017  
16  
17  
18  
19  
20  
21  
22  
23  
24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926  
25 JOB NO.: 500366

**Nevada Court Reporting**

10080 Alta Drive, Suite 100  
Las Vegas, NV 89146  
Office: 702-490-3376  
Calendar@Nvreporting.com



ROA000468

1 Q. He -- he called you, though, at the firm?

2 A. He called the law firm of Gordon Silver and asked  
3 for estate planning.

4 Q. When was the first time you met or spoke with Mr.  
5 Scheide?

6 MR. GEIST: And I'm going to refer to him as  
7 Mr. Scheide with deference to your client who is on the  
8 phone.

9 THE WITNESS: I believe it was sometime in  
10 2012.

11 BY MR. GEIST:

12 Q. Was it in person? Was it on the phone?

13 A. I first spoke with him on the phone, and then I  
14 recall it was an in-person meeting within a few days  
15 thereafter.

16 Q. In person in your office?

17 A. No.

18 Q. Where did you meet with him in person the first  
19 time?

20 A. At the time, he was in a rehab facility following  
21 hospitalization for a leg problem of some sort, and so  
22 he was at a rehab facility and asked to meet there.

23 Q. Was -- was Mr. Scheide looking to retain a  
24 lawyer?

25 A. Yes.



1 Q. That says -- your note says, "Velma diagnosed  
2 Alzheimer's" -- looks like about -- "January 2012"; is  
3 that correct?

4 A. That's what it says.

5 Q. Did you get that information from Mr. Scheide?

6 A. Yes.

7 Q. Skipping down about two-thirds of the way down,  
8 there's a note that says "not married."

9 I'm assuming that refers to Mr. Scheide; is that  
10 correct?

11 A. Correct.

12 Q. And then below that, could you read what that  
13 says?

14 A. Below that --

15 Q. The line immediately below that.

16 A. It says, "Theo has a son, but they are  
17 estranged."

18 Q. Did Mr. Scheide say they were estranged?

19 A. He did.

20 Q. Those were the words that he used?

21 A. Those were not the exact words he used. I don't  
22 recall the exact words he used.

23 Q. But that was your understanding?

24 A. (Nods head.)

25 Q. Did he say what his relationship with his son

1 was?

2 A. He said that he had not communicated with his son  
3 in -- in over 20 years, and he --

4 Q. Did he --

5 A. It may have been 25 or 30. I can't remember the  
6 number, but I know he said it was greater than 20 years.

7 Q. Did he tell you the circumstances of this  
8 estrangement at all?

9 A. No.

10 Q. Then skip down about six lines where it says  
11 "will."

12 A. Yes.

13 Q. Can you read what that says, "will" and then the  
14 line below that?

15 A. It says that for the will he wanted to name the  
16 beneficiary as Velma, meaning, or then St. Jude.

17 Q. Below that it says?

18 A. In regards to the executor of the will, it would  
19 be first Karen or then the alternate Nevada State Bank.

20 Q. And then the last line on that page.

21 A. He instructed me that he wanted Karen to review  
22 everything.

23 Q. Why did Mr. Scheide say he wanted Karen to review  
24 everything?

25 A. I don't -- I don't recall.

1 Q. Okay. He just said have her take a look at  
2 everything?

3 A. Yes.

4 Q. He trusted her?

5 A. Yes.

6 Q. Okay. Why did Mr. Scheide say he wanted to leave  
7 the estate to those beneficiaries listed?

8 MS. TURNER: I'm going to object to the  
9 extent it calls for speculation.

10 MR. GEIST: Okay.

11 BY MR. GEIST:

12 Q. Did he tell you why he wanted to leave that --  
13 that estate in that way?

14 A. He didn't have an express conversation about  
15 that. No, I take that back. I remember him obviously  
16 saying how much he cares about Velma and that was the  
17 most important person in his life and that they had  
18 agreement that they would leave their will to each other  
19 to make sure that the other person was taken care of for  
20 the rest of their life. And that they had agreed that  
21 if something had happened to both of them, they wanted  
22 to benefit St. Jude Children's Hospital because Mr.  
23 Scheide said he thought it was a very worthwhile  
24 organization to help kids.

25 Q. Velma wasn't a client of yours, was she?

1 Q. On page 1 of this will, does Mr. Scheide have any  
2 children listed?

3 A. He does.

4 Q. Who are his children?

5 A. Theodore E. Scheide, III.

6 Q. In this will does Mr. Scheide provide for his son  
7 as a beneficiary?

8 A. He does not.

9 Q. Do you know why he did not?

10 A. He -- as I stated earlier, he had been estranged  
11 from his son for a number of years.

12 Q. Flipping to page 3, which is article 3, can you  
13 tell me what this article does?

14 A. Article 3 gives the beneficiaries of the will the  
15 residuary estate, which in Theo's case meant the entire  
16 estate because he had no specific requests.

17 Q. To whom did Mr. Scheide leave his residuary  
18 estate?

19 A. He left it to Velma G. Shay, if she survived him,  
20 and if not, to St. Jude Children's Hospital located in  
21 Memphis, Tennessee.

22 Q. Do you know whom Mr. Scheide named as the  
23 executor of his estate?

24 A. Yes.

25 Q. Whom did he name?

1 A. It was signed by Mr. Scheide.

2 Q. How do you know it was signed by him?

3 A. I witnessed it.

4 Q. Was it witnessed by anybody else?

5 A. It was also witnessed by Diane DeWalt.

6 Q. Back to page 1, which is page 246 on that.

7 Does it list any children?

8 A. It states that Mr. Scheide has one child,  
9 Theodore Scheide, III.

10 Q. Does Mr. Scheide provide for his son as a  
11 beneficiary in the estate?

12 A. He does not.

13 Q. Page 3 or 248 in that stack.

14 Whom does Mr. Scheide name as the residual  
15 beneficiaries of the estate?

16 A. Residual beneficiary is Velma G. Shay, if she  
17 survives. If not, then to St. Jude Children's Hospital  
18 located in Memphis, Tennessee.

19 Q. Do you know why Mr. Scheide did not name his son  
20 as the beneficiary at this time?

21 A. He remained estranged from his son.

22 Q. Down at the bottom, whom did Mr. Scheide name as  
23 the executor of his estate?

24 A. He names -- the executor is Patricia Bowlin or  
25 then Nevada State Bank.

1 Q. Do you know when the next time you spoke with Mr.

2 Scheide was?

3 A. I don't know.

4 Q. So going back to Exhibit -- let's see, which  
5 exhibit is this? 2? Exhibit 2. Go to -- please turn  
6 to 143.

7 Do you recognize this?

8 A. These look like my notes in my handwriting.

9 Q. What is {sic} the dates that are written on this?

10 A. The first one is June 12, 2013, and then June 14,  
11 2013.

12 Q. Do you recall the circumstances that led you to  
13 take these notes?

14 A. Theo called me and wanted to remove Patty Bowlin  
15 as his power attorney.

16 Q. Your notes say "wants to 'kill Patty's POA.'"

17 A. Those were his words.

18 Q. Meaning he wanted to remove her authority as  
19 power of attorney?

20 A. Correct.

21 Q. And the next line says, "Mail form to revoke to  
22 Theo's address"?

23 A. Yes.

24 Q. Is that a note to him or is that a note to  
25 yourself or is that something he told you?

1 A. It says that I called Theo.

2 Q. They're not handwritten, but did you type this  
3 contemporaneous to the call to Theo?

4 A. Yes.

5 Q. What was the reason for this call to Theo?

6 A. Looks like we covered a variety of issues in the  
7 discussion.

8 Q. Okay.

9 A. It was mainly to check in on him and his  
10 wellbeing.

11 Q. Was he living at home at the time? Do you  
12 recall?

13 A. Based on the notes, it appears he was at Rock  
14 Springs at the time.

15 Q. Do you know what Rock Springs is?

16 A. I believe it's another type of rehab facility.

17 Q. Two lines below that, you typed, "Not doing good  
18 from physical health standpoint."

19 A. Correct.

20 Q. Was that what he relayed to you?

21 A. Yes.

22 Q. So he told you he's not doing good physically?

23 A. Correct. This was a phone call, so I couldn't  
24 see him.

25 Q. Two lines below that, he says, "He wants all to

1 go to St. Jude when he dies"; correct?

2 A. Correct.

3 Q. Did he tell you that's what he wanted?

4 A. Yes.

5 Q. Why did he not mention Velma at this point?

6 A. I don't know, but she may have, by this point,  
7 passed away.

8 Q. I'm sorry. I want to go -- I want to go up one  
9 line. "Get copies of discharge papers to give to their  
10 attorney."

11 Do you recall what that refers to?

12 A. I don't recall.

13 Q. Going down to, "He did not find jewelry yet. No  
14 objection to Dana and Duke going to Theo's house.  
15 Welcome to come over and go to Theo's house and take  
16 whatever they want."

17 Who are Dana and Duke?

18 A. Dana and Duke were family members of Velma. And  
19 I am now remembering that, yes, at this point in time,  
20 Velma had died. And Dana and Duke had been inquiring  
21 from Theo about some jewelry and other items that were  
22 Velma's family-type heirlooms that they wanted, and he  
23 had given me permission to tell them that they could go  
24 to the house and take whatever they wanted.

25 Q. So on Mr. Scheide's behalf, you had been -- or



1 you were going to be communicating with Dana and Duke  
2 this information?

3 A. I communicated this to their attorney.

4 Q. Who was their attorney?

5 A. I believe it was Chris Phillips.

6 Q. So during this, were you representing Mr. Scheide  
7 in this dispute over these personal items of Velma's?

8 MR. PAYNE: Objection. Leading.

9 THE WITNESS: I represented -- I was still  
10 representing Theo, in general, at this time.

11 BY MR. GEIST:

12 Q. Did you represent him in this dispute between  
13 Theo and Velma's family members?

14 MR. PAYNE: Same objection.

15 THE WITNESS: I don't really characterize it  
16 as a dispute. But I was an intermediary after Velma  
17 died, with Chris Phillips and Velma's family, to try to  
18 resolve issues about personal property.

19 BY MR. GEIST:

20 Q. When you say you're an "intermediary," what did  
21 you do?

22 A. I communicated back and forth to Mr. Phillips  
23 with questions and answers about where property was and  
24 coordinating for them to take things.

25 Q. Were you acting in an agency capacity?

1 A. I was acting as his attorney.

2 Q. Okay. Thank you.

3 Okay. Let's see, are you doing okay? Do you  
4 need a break?

5 A. I'm fine.

6 Q. Okay. If you could turn to -- and I think -- let  
7 me just double check before I go on. I believe this is  
8 in the same pack, 136.

9 A. Okay.

10 Q. And I apologize for the numbering. I think your  
11 files go in inverse chronological order.

12 A. Yes. Correct. That's typically how we keep it.

13 Q. Taking a look at this document, do you recognize  
14 it?

15 A. I do.

16 Q. Can you tell me what it is?

17 A. It's a document that Theo sent me because he  
18 received it in the mail, and he didn't understand what  
19 it meant to him legally.

20 Q. All right. Is there a date on this document?

21 A. The date at the top and the handwriting is  
22 September 21, 2013.

23 Q. Whose handwriting is that?

24 A. I believe it is Theo's.

25 Q. Okay. So he wrote, "received September 21, 2013,"

1 A. She was concerned that Theo had leased a car,  
2 concerned about him having a pistol, concerned that he  
3 left his keys in his front door overnight.

4 Q. Keys to his house, I'm assuming?

5 A. I would -- it says front door. I would presume.

6 Q. Any other concerns?

7 A. That he had urinated in public.

8 Q. Okay.

9 A. Recently.

10 Q. It says, "Outside of cell phone store, drops  
11 pants and pees in parking lot." Is that --

12 A. That is what she told me happened. I did not see  
13 it. That is what she told me. And she was concerned at  
14 that point in time that he was becoming incontinent.

15 Q. Down a little bit farther after -- after all of  
16 that, it says "Theo's son --

17 A. Yes.

18 Q. -- Pittsburgh." What does Pittsburgh refer to?

19 A. It refers to where she told me that Theo's son  
20 lived.

21 Q. What are your notes after that?

22 A. That she told me they "haven't talked in 25-plus  
23 years."

24 Q. And then Chipper is in quotes.

25 A. It says "Chipper." I think that must be a

1     nickname for him.

2           Q.   And then I'm not sure if the line below that goes  
3     to the next date, but can you tell me the next date?

4           A.   The next date is December 9, 2013.

5           Q.   What does that say right next to it?

6           A.   "Released yesterday, aneurysm may be leaking."

7           Q.   "Theo just taken to hospital, released yesterday,  
8     aneurysm may be leaking" is what you wrote; correct?

9           A.   Yes.

10          Q.   Do you know what this -- what kind of aneurysm?  
11     Do you know?

12          A.   I don't remember.

13          Q.   Flip to 134.

14          A.   I take that back. I think it was heart --  
15     something with his heart.

16          Q.   Thank you.

17               Flip to 134. Also dated December 9, 2013.

18          A.   Correct.

19          Q.   Was this a continuation of notes from that phone  
20     call?

21          A.   It -- I don't know. It may have been.

22          Q.   Okay. So about halfway through, you wrote, "She  
23     does not" -- and not is underlined -- "want to be G."

24               What is G?

25          A.   G is guardian.

1 line "Kathy Longo."

2 Was this a meeting with Theo? Or was it . . .

3 A. It was a meeting with Theo and Kathy, I believe.

4 Q. What did you discuss in this meeting?

5 A. Kathy said that she would agree to be a backup  
6 alternate on the power of attorney but that Theo still  
7 needed -- needed someone to be his primary agent to help  
8 him. Kathy felt she had too many other obligations in  
9 her life to be the primary person.

10 Q. And there's a question about bankruptcy that was  
11 brought up?

12 A. That would relate back to that -- the letter that  
13 he got in the mail.

14 Q. Okay.

15 A. And then we realized he was actually talking  
16 about a question about Duke and Dana.

17 Q. Duke and Dana meaning Velma Shay's relatives?

18 A. Correct.

19 Q. Then there's a quote: "Always let a sleeping dog  
20 lie."

21 A. That is what he said.

22 Q. Meaning, don't --

23 A. Meaning, we hadn't heard from Duke and Dana in a  
24 while, and -- and I asked if he wanted me to reach out  
25 to them and see if there was anything else they wanted

1 from Velma's property. And he said no, "always let a  
2 sleeping dog lie."

3 Q. Midway through there, there's a note that says  
4 "Jenna" and Schwab is circled.

5 Can you tell me what that's about?

6 A. About his contact person Jenna with his Schwab  
7 account.

8 Q. Okay. And it says, "emptied out stock account."

9 Do you know what that refers to?

10 A. I don't. I think he liquidated it.

11 Q. "He takes 8500 a month."

12 A. Correct.

13 Q. Does that just refer to the income that he gets?  
14 Did he tell you that?

15 A. He told me that he had -- based on his needs, he  
16 had directed Schwab to give him \$8500 a month for his  
17 living expenses at that time.

18 Q. He leases a "strong box" at U.S. Bank?

19 A. Yes.

20 Q. Do you know what -- did he tell you what he keeps  
21 in there?

22 A. I have written down that he said he put \$40,000  
23 cash in that box, and that's -- that's the only thing he  
24 told me he kept in there.

25 Q. All right. And then flip to page 129, if you

1 would, please.

2 A. Which page?

3 Q. 129.

4 A. Okay.

5 Q. The date of this is December 17. Is this --

6 these are your notes?

7 A. These are my notes.

8 Q. What are these notes from?

9 A. Appears to be a phone call from Kathy Longo.

10 Q. What did you discuss with her at this time?

11 A. She was getting ready to leave town for ten days,  
12 from December 20 to December 30.

13 Q. And then you've got Susan Hoy and a phone number  
14 written there.

15 A. I do. Then I have three potential candidates to  
16 speak to Theo about helping him as his primary power of  
17 attorney.

18 Q. Okay. Why -- why were you discussing this with  
19 Kathy at this time?

20 A. I don't know if I discussed it with her, or if  
21 these were just my notes to myself in the file that  
22 happened to be on the same page.

23 Q. Okay. If we can flip to 128.

24 A. Yes.

25 Q. The date of this is December 27, 2013.

1 Can you tell me what prompted you to take these  
2 notes?

3 A. I called Theo.

4 Q. Okay.

5 A. He was, at that point, living at a group home  
6 called Sunshine, something Sunshine. He told me he was  
7 mad at Kathy. "He was mad that Kathy gave keys to the  
8 home." I don't know who. And so he's going to "fire  
9 her."

10 Q. And that's what he told you "fire her"?

11 A. Yes.

12 I explained the bankruptcy paper to him. And  
13 basically just explained that I don't know what it is;  
14 that you can ignore it if you don't think these people  
15 owe you money. He apparently said he renewed his  
16 driver's license, and it was good until 1917. He told  
17 me to hold off on interviews until after he fires Kathy.

18 Q. Hold off on interviews with whom?

19 A. He had asked me to, at that point, set up some  
20 interviews with some of the different fiduciaries in  
21 town that could potentially help him.

22 Q. Okay.

23 A. He complained that the food is terrible at  
24 Sunshine. He said, "The cook is the only person west of  
25 the Mississippi who can ruin Corn Flakes." He told me



1 another joke about Obama, and he was overall very sharp  
2 on this phone call except for saying the year 1917.

3 Q. That's your comment afterwards, your note to  
4 yourself?

5 A. Yes.

6 Q. At any time during these discussions in December  
7 with Kathy and with Theo, did Theo ever say he wanted to  
8 change his estate plan beneficiaries?

9 A. No.

10 Q. Did Theo say he wanted --

11 MR. PAYNE: Hold on. Just object. Calls  
12 for speculation.

13 MR. GEIST: I'm asking if she -- if he asked  
14 her that. Did he discuss that?

15 BY MR. GEIST:

16 Q. Did he ever discuss changing the agents under his  
17 power of attorney?

18 MR. PAYNE: Same objection.

19 THE WITNESS: We -- we did discuss that.

20 BY MR. GEIST:

21 Q. And what suggestions did he offer when he  
22 discussed that?

23 A. He, at that point, didn't -- since Kathy Longo  
24 was not willing to be the agent, he didn't feel he had  
25 anyone else, you know, friend or family to turn to. And

1 October 2nd until his passing, you were in constant  
2 contact with your client?

3 MS. TURNER: Objection. That misstates what  
4 the document says.

5 MR. PAYNE: I'm just trying to figure out  
6 what she's alleging.

7 THE WITNESS: I'm alleging that I remained  
8 in contact with him or his caregivers until Nevada  
9 Guardian Services was appointed guardian.

10 BY MR. PAYNE:

11 Q. Just so I'm sure -- clear, how did you remain in  
12 contact?

13 A. From October of '12 through March of '14 or --

14 Q. Sure.

15 A. -- what time frame?

16 Q. Yes.

17 A. Between that time period, I would have phone  
18 calls from Theo, meetings with him. I believe last  
19 in-person meeting was probably January of '14.

20 Then shortly thereafter, I was contacted by a  
21 Centennial Hills Hospital social worker that his health  
22 had declined, and he was not able to talk by phone, and  
23 at that point, coordinated a care team to have Nevada  
24 Guardian Services become his guardian since he had not  
25 named a new power of attorney.

1 their place if they were not living.

2 BY MR. PAYNE:

3 Q. So is it your testimony that he did not want her  
4 heirs to take?

5 A. Correct. He wanted Velma, or if she was not  
6 living, then St. Jude's.

7 Q. And you discussed this with him thoroughly?

8 A. He -- he was very clear with his instruction that  
9 he wanted it to be Velma or St. Jude.

10 Q. I notice you don't have an estate plan  
11 questionnaire?

12 A. At that time, I didn't.

13 Q. Is it normal that you --

14 A. I -- I have a questionnaire. I use it for some  
15 cases; I use it for not others. I have the  
16 questionnaire pretty well memorized, so I can talk  
17 through the questions with the client. I never have a  
18 client fill it out. I -- the questionnaire is to the  
19 extent that -- something that I fill out when I'm  
20 meeting with a client. I don't expect a client to fill  
21 it out.

22 Q. You make a distinction about the power of  
23 attorney and the original.

24 Is it your -- did you maintain the originals of  
25 the power of attorney in the June will in your file?

1 what city he lived in. He didn't know what city or  
2 state he lived in.

3 Q. When did you ask him this?

4 A. In January of '14.

5 Q. So in January '14, you were asking him about the  
6 address of his son?

7 A. In January of '14 when he was in the group home  
8 not doing well and he -- we're trying to find someone to  
9 help him. I -- going back through reevaluating family,  
10 because I always -- I definitely want clients to work  
11 with family, if they have family.

12 I offered to him, I said, Theo -- at the time I  
13 was working at Gordon Silver, and we had an investigator  
14 on staff. And I told him, I said, Theo, we have an  
15 investigator on staff. Do you want to get back in touch  
16 with your son? Do you want me to find out where he  
17 lives? I can find that out. And he said no. And, you  
18 know, I said do you -- do you have any idea where --  
19 city or state where he lives, and he said no.

20 Q. As you sit here today, did you ever find out  
21 whether Theo and his father had -- or excuse me -- Theo  
22 Senior and Theo The Third had any contact?

23 A. At what point in time?

24 Q. After this January '14 letter?

25 A. I don't know if they did. It's possible. I

1 STATE OF NEVADA )  
 ) SS:  
2 COUNTY OF CLARK )

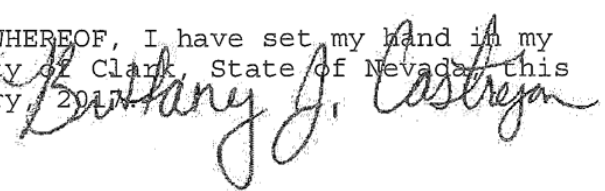
3 CERTIFICATE OF REPORTER

4 I, Brittany J. Castrejon, a Certified Court  
5 Reporter licensed by the State of Nevada, do hereby  
6 certify: That I reported the DEPOSITION OF KRISTEN  
7 TYLER, ESQ., on Thursday, February 16, 2017, at 9:05  
8 a.m.;

9 That prior to being deposed, the witness was duly  
10 sworn by me to testify to the truth. That I thereafter  
11 transcribed my said stenographic notes into written  
12 form, and that the typewritten transcript is a complete,  
13 true and accurate transcription of my said stenographic  
14 notes. That the reading and signing of the transcript  
15 was not requested.

16 I further certify that I am not a relative,  
17 employee or independent contractor of counsel or of any  
18 of the parties involved in the proceeding; nor a person  
19 financially interested in the proceeding; nor do I have  
20 any other relationship that may reasonably cause my  
21 impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my  
23 office in the County of Clark, State of Nevada, this  
24 24th day of February, 2017.

25   
Brittany J. Castrejon, CCR NO. 926

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## EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

ROA000491

1 **ORDR**  
KIM BOYER, CELA  
Nevada Bar #5587  
2 10785 W. Twain Ave., Suite 200  
Las Vegas, Nevada 89135  
3 (702) 255-2000  
Email: kimboyer@elderlawnv.com  
4 Attorney for Petitioner

  
CLERK OF THE COURT

5  
6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8  
9 In the Matter of the Guardianship of the  
Person and Estate of

Case No.: G-14-037853-A  
Dept. No.: E

10 THEODORE SCHEIDE,

11 An Adult.

12 **EX PARTE ORDER APPOINTING TEMPORARY GUARDIAN**  
13 **AND FOR ISSUANCE OF TEMPORARY LETTERS OF GUARDIANSHIP**

14 The Court having considered the verified Petition for Appointment of Temporary  
Guardian, Petition for Appointment of General Guardian submitted by NEVADA GUARDIAN  
15 SERVICES, LLC requesting appointment to act as Temporary Guardian of the Person and Estate  
16 of THEODORE SCHEIDE, adult Ward, and the Court having considered the same and  
17 examined the evidence, being fully advised in the premises, finds: (i) there is reasonable cause to  
18 believe the Proposed Ward is unable to respond to a substantial and immediate risk of financial  
19 loss or physical harm or to a need for immediate medical attention; (ii) a physician who is  
20 licensed to practice in the State of Nevada has signed a certificate stating that the proposed Ward  
is unable to respond to a substantial and immediate risk of financial loss or physical harm or to a  
21 need for immediate medical attention; (iii) Petitioner has actually notified, or in good faith has  
22 tried to notify, those persons entitled to notice pursuant to NRS 159.047, or that notice to those  
23 persons is not feasible under the circumstances; and (iv) a temporary guardianship of the Person  
24 and Estate of THEODORE SCHEIDE should be established.  
25  
26

GUARDIANSHIP

FEB 14 2014

RECEIVED

1           **IT IS HEREBY ORDERED** that NEVADA GUARDIAN SERVICES, LLC be  
2 and is hereby appointed as the Temporary Guardian of the Person and Estate of THEODORE  
3 SCHEIDE, an adult, and that Temporary Letters of Guardianship be issued to NEVADA  
4 GUARDIAN SERVICES, LLC to serve with assets blocked with the exception of all automatic  
5 withdrawals and deposits.

6           **IT IS FURTHER ORDERED** that any and all banks, financial institutions,  
7 brokerage or mutual fund firms shall immediately block the Ward's assets upon receipt of this  
8 order without the necessity of letters of guardianship, whether said accounts or records reflect the  
9 name of the Ward individually, or with one or more other persons. All ATM and bank card  
10 usage shall be suspended. Said assets and accounts shall remain blocked until further Order of  
11 the Court.

12           **IT IS FURTHER ORDERED** that NEVADA GUARDIAN SERVICES, LLC is  
13 hereby given full access to all historical and current financial information for the above-named  
14 Ward. Such information shall include, but not be limited to statements, cancelled checks,  
15 withdrawal authorizations and other information from banks, financial institutions, brokerage or  
16 mutual fund firms, creditors, lenders, the United States Social Security Administration and other  
17 persons and agencies which have engaged in transactions concerning the financial affairs of the  
18 Ward, whether said accounts or records reflect the name of the Ward individually, or with one or  
19 more other persons.

20           **IT IS FURTHER ORDERED** that NEVADA GUARDIAN SERVICES, LLC is  
21 authorized to request and receive information from any other person or agency, which is  
22 currently or has previously been obligated to pay money or other benefits to the above-named  
23 adult Ward.

24 ///

25 ///

26 ///




1                   **IT IS FURTHER ORDERED** that in receiving this appointment as Guardian,  
2 NEVADA GUARDIAN SERVICES, LLC is hereby given full access to any and all medical  
3 records and information concerning the condition and historical treatment of the Ward, including  
4 mental health records and information, which are or may be lodged with any persons, family  
5 members and friends, along with any and all medical providers, care facilities, insurers and/or  
6 institutions.

7                   **IT IS FURTHER ORDERED** that this Order suspends any Power of Attorney  
8 for Financial Matters executed prior to this General Guardianship, so long as the Guardianship of  
9 the Estate remains open.


10                  **IT IS FURTHER ORDERED** that this Order suspends any Power of Attorney  
11 for Health Care Decisions executed prior to this General Guardianship, so long as the  
12 Guardianship of the Person remains open. Pursuant to NRS 162A.800(2), the Guardian shall  
13 follow any provisions contained in the Power of Attorney for healthcare delineating the Ward's  
14 wishes for medical and end-of-life care.

15                  **IT IS FURTHER ORDERED** that a hearing of this matter shall be held on  
16 February 26, 2014 at the hour of 9:00 a.m., in Courtroom 7 at Family Court,  
17 601 North Pecos Road, Las Vegas, Nevada 89101-2417, at which time a determination shall be  
18 made concerning the necessity to extend this temporary guardianship proceeding.

19                  DATED this 28 day of February, 2014.

20  
21   
DISTRICT JUDGE

22 Respectfully submitted,

23  
24   
KIM BOYER, CELA  
Nevada Bar #5587  
25 10785 W. Twain Ave., Suite 200  
Las Vegas, Nevada 89135  
26 Attorney for Petitioner

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EXHIBIT PAGE ONLY

## EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

ROA000495

OAG  
KIM BOYER, C.E.L.A.  
Nevada Bar #5587  
10785 W. Twain Ave., Suite 200  
Las Vegas, Nevada 89135  
(702) 255-2000  
Email: kimboyer@elderlawnv.com  
Attorney for Petitioner

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Guardianship of the  
Person and Estate of

THEODORE SCHEIDE,  
An Adult.

Case No.: G-14-039853-A  
Dept. No.: E

Date of Hearing: March 19, 2014  
Time of Hearing: 9:00 a.m.

ORDER APPOINTING GUARDIAN OF THE PERSON AND ESTATE AND  
FOR ISSUANCE OF LETTERS OF GUARDIANSHIP

Upon the Petition for Appointment of General Guardian of the Person and Estate of THEODORE SCHEIDE, an adult Ward, submitted by NEVADA GUARDIAN SERVICES, LLC, having come on for hearing before the above-entitled Court this date, and the Court having considered the Petition and examined the evidence, being fully advised in the premises finds: (i) proper notice of the hearing was duly given as required by law; (ii) the facts alleged in the Petition are true and correct; (iii) THEODORE SCHEIDE is a resident of the State of Nevada; (iv) a licensed physician provided an assessment; (v) that THEODORE SCHEIDE was advised of the right to counsel; (vi) the Petition for Appointment of General Guardians of the Person and Estate of THEODORE SCHEIDE should be granted; and (vii) the address and telephone number of the guardian is NEVADA GUARDIAN SERVICES, LLC, c/o Boyer Law Group, 10785 W. Twain Ave., Suite 200, Las Vegas, Nevada 89135, (702) 255-2000.

GUARDIANSHIP

MAR 17 2014

RECEIVED

1           **IT IS HEREBY ORDERED** that a Guardianship of the Person and Estate of  
2 THEODORE SCHEIDE be established.

3           **IT IS FURTHER ORDERED** that NEVADA GUARDIAN SERVICES, LLC is  
4 hereby appointed as the General Guardian of the Person and Estate of THEODORE SCHEIDE,  
5 an adult Ward, and that Letters of Guardianship be issued to NEVADA GUARDIAN  
6 SERVICES, LLC upon taking the oath required by law to serve with assets blocked as specified  
7 herein.

8           **IT IS FURTHER ORDERED** that all of the Ward's income be placed into an  
9 unblocked guardianship checking account to be established by the Guardian at Wells Fargo Bank  
10 to be used to pay the Ward's expenses.

11           **IT IS FURTHER ORDERED** that a monthly release of funds in the amount of  
12 \$8,613.00 shall be release from the Ward Charles Schwab Account #7608-6113 and shall be  
13 deposited into the unblocked guardianship checking account to be established by the Guardian at  
14 Wells Fargo Bank to be used to pay the Ward's expenses.

15           **IT IS FURTHER ORDERED** that the Guardian is authorized to sign any and all  
16 documents required by the Division of Welfare and Supportive Services, or any other party, to  
17 establish or continue the Medicaid eligibility for the Ward, including but not limited to signing  
18 listing agreements or signing an income reduction trust.

19           **IT IS FURTHER ORDERED** that NEVADA GUARDIAN SERVICES, LLC  
20 will incur Guardian fees at an hourly rate and is hereby authorized to advance funds from the  
21 Ward's assets to pay guardian fees, subject to confirmation by the Court on a Petition.

22           **IT IS FURTHER ORDERED** that attorney's fees and costs are hereby  
23 authorized in the amount of \$4,500.00 to be paid from the Ward's Estate to Kim Boyer and shall  
24 be released from the blocked account.

25 ///

26 ///

1           **IT IS FURTHER ORDERED** that Kim Boyer will incur attorney's fees at an  
2 hourly rate and incur costs, Kim Boyer is hereby authorized to advance funds from the Ward's  
3 assets to pay attorney fees, subject to confirmation by the Court on a Petition.

4           **IT IS FURTHER ORDERED** that this Order suspends any Power of Attorney  
5 for Financial Matters executed prior to this General Guardianship, so long as the Guardianship of  
6 the Estate remains open.

7           **IT IS FURTHER ORDERED** that this Order suspends any Power of Attorney  
8 for Health Care Decisions executed prior to this General Guardianship, so long as the  
9 Guardianship of the Person remains open. Pursuant to NRS 162A.800(2), the Guardian shall  
10 follow any provisions contained in the Power of Attorney for healthcare delineating the Ward's  
11 wishes for medical and end-of-life care.

12           **IT IS FURTHER ORDERED** that to carry out the function of Guardian of the  
13 Estate of THEODORE SCHEIDE, NEVADA GUARDIAN SERVICES, LLC is vested with all  
14 the powers set forth in NRS 159.117 through NRS 159.175, inclusive.

15           **IT IS FURTHER ORDERED** that NEVADA GUARDIAN SERVICES, LLC is  
16 hereby given full access to all historical and current financial information for the above-named  
17 Ward and shall have the ability to close any such accounts, whether said accounts or records  
18 reflect the name of the Ward individually, or with one or more other persons. Such information  
19 shall include, but not be limited to statements, cancelled checks, withdrawal authorizations and  
20 other information from banks, financial institutions, brokerage or mutual fund firms, creditors,  
21 lenders, the United States Social Security Administration and other persons and agencies which  
22 have engaged in transactions concerning the financial affairs of the Ward, whether said accounts  
23 or records reflect the name of the Ward individually, or with one or more other persons.

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1           **IT IS FURTHER ORDERED** that NEVADA GUARDIAN SERVICES, LLC is  
2 authorized to gain access to any and all safe deposit box(es) located within this jurisdiction,  
3 which may bear the name of the adult Ward, individually or jointly with others, for the purpose  
4 of inventorying the contents thereof, said inventory to take place in the presence of a banking  
5 officer.

6           **IT IS FURTHER ORDERED** that NEVADA GUARDIAN SERVICES, LLC is  
7 authorized to request and receive information from any other person or agency, which is  
8 currently or has previously been obligated to pay money or other benefits to the above-named  
9 adult Ward.

10           **IT IS FURTHER ORDERED** that in receiving this appointment as Guardian,  
11 NEVADA GUARDIAN SERVICES, LLC is hereby given full access to any and all medical  
12 records and information concerning the condition and historical treatment of the Ward, including  
13 mental health records and information, which are or may be lodged with any persons, family  
14 members and friends, along with any and all medical providers, care facilities, insurers and/or  
15 institutions.

16           **IT IS FURTHER ORDERED** that the Ward has a mental defect (danger to self  
17 or others OR lacks capacity to contract or manage own affairs) and, pursuant to NRS 159.0593  
18 and 18 USC 922(d)(4), is prohibited from possessing a firearm. A record of this guardianship  
19 order shall be transmitted to the Central Repository for Nevada Records of Criminal History,  
20 along with a statement that the record is being transmitted for inclusion in each appropriate  
21 database of the National Instant Criminal Background Check System.

22           **IT IS FURTHER ORDERED** that the Guardian has filed a Guardian's  
23 Acknowledgment of Duties and Responsibilities.

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IT IS FURTHER ORDERED that a copy of this order shall be served upon the

adult Ward.

DATED this 1<sup>st</sup> day of March, 2014.

  
DISTRICT JUDGE

Respectfully submitted,

  
KIM BOYER, CELA  
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Las Vegas, Nevada 89135  
Attorney for Petitioner