IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF THEODORE ERNEST SCHEIDE, JR., DECEASED

THEODORE E. SCHEIDE, III,

Appellant,

VS.

ST. JUDGE CHILDREN'S RESEARCH HOSPITAL,

Respondent.

Electronically Filed
Mar 13 2023 04:42 PM
Elizabeth A. Brown
Supreme Court No. Class Supreme Court

District Court Case No. P-14-082619-E

APPEAL

APPEAL FROM DECISION AND ORDER FROM 04/14/21 HEARING

APPENDIX

VOL. 3

Bradley J. Hofland, Esq. HOFLAND & TOMSHECK 228 S. 4th Street, First Floor Las Vegas, Nevada 89101 702-895-6760 Attorney for Appellant

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

CARY COLT PAYNE, CHTD.

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OPPS 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

CLERK OF THE COURT

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: 5/31/17 Time: 9:30 AM Deceased. ST. JUDE'S CHILDRENS RESEARCH HOSPITAL. Objector/Petitioner,) THEODORE E. SCHEIDE.III Respondent.

RESPONDENT'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW, Respondent, Theodore E. Scheide III, son of the decedent, by and through his attorney, CARY COLT PAYNE, Esq., of the lawfirm of CARY COLT PAYNE, CHTD., and hereby submits the within Respondent's Opposition to St. Jude's Motion for Partial Summary Judgment, Etc., which is made and based upon within Points and Authorities, Exhibits, as well as such argument and evidence as may be adduced upon the hearing of the within motion.

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POINTS & AUTHORITIES

A. Introduction

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St. Jude's still has not articulated a legal theory as to why this court's two previously entered orders (10/6/14 & 5/26/15 attached), ruling Mr. Scheide died intestate should not be followed. In fact, they never made any sort of motion to set them aside at all. It also has not articulated why the statutory requirements of NRS 136.240(3) are inapplicable. Now St. Jude's asks this court to make a factual finding that Mr. Scheide was not competent during an eight (8) month period during guardianship. For all the reasons briefed in the previously filed pleadings in this matter, incorporated herein by reference as if stated fully herein, a motion for summary judgment is inappropriate.

B. "Legal Existence" v. Presumption & Capacity

The Nevada Supreme Court recognizes that "at common law", when an executed will could not be found after the death of a testator, there was a strong presumption that it was revoked by destruction by the testator", Estate of Irvine v. Doyle, 101 Nev. 698, 710 P.2d 1366 (Nev., 1985). In other words, all that NRS136. 240(3) requires is proof that the testator himself had not revoked the lost or destroyed will, proof that would overcome the common-law presumption of revocation.

NRS 136.240(3) codifies the common law rule and places the burden of overcoming the presumption on the proponent of a lost or destroyed will to prove it was fraudulently destroyed, and to require the proponent of a lost or destroyed will to prove that the testator did not intentionally revoke the lost or destroyed will during his lifetime. See, Irvine, supra.



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The words "legal existence" do not appear in NRS 136.240¹, simply the actual word existence. To overcome the presumption of revocation, St. Jude's is required to prove that:

- 1. The original document was in actual existence at the time of the decedent's death (actually seen by two (2) persons).
- 2. Or fraudulently destroyed (not voluntarily revoked by testator) during testator's lifetime. This would indicate some intervening act such as fire, theft, flood, or some other act that destroyed the document without Mr. Scheide's knowledge and/or permission.

Here, we do not even have any alleged intervening act(s) which would prove destruction, loss, etc. Therefore, St. Jude's must prove, by clear and convincing evidence, as this court stated on the record when this matter began, that Mr. Scheide simply did not voluntarily destroy the October 2012 Will. Without any sort of alleged intervening act(s) whatsoever, and no individual who can state that they physically saw the original document, even with a preponderance of more than likely than not, it is presumed that Mr. Scheide willingly destroyed the document.

If Mr. Scheide voluntarily destroyed the document (whether by burning, tearing, cancelling or obliterating the will), then it is no longer in legal existence, which brings us back to the presumption of revocation, and to questions of fact, which defeats any sort of summary judgment.

^{3.} In addition, no will may be proved as a lost or destroyed will unless it is proved to have been in existence at the death of the person whose will it is claimed to be, or is shown to have been fraudulently destroyed in the lifetime of that person, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses. [emphasis added]



NRS 136.240 Petition for probate; same requirement of proof as other wills; testimony of witnesses; rebuttable presumption concerning certain wills; prima facie showing that will was not revoked; order.

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No one has doubted that the October 2012 Will was executed, and was in legal existence at that moment in time (10/2/12). Not one individual, even Kristen Tyler, Esq., ever actually saw that original document ever again.

The issue becomes what occurred after that moment in time. Mr. Scheide was a physically ill man, as shown by the medical records provided. Susan Hoy testified that Mr. Scheide was put under guardianship because there was no one to "make" medical decisions, as his Health Care POA declined to serve. The actual medical and/or other evidence indicates Mr. Scheide could make various decisions on his own.

There was no indication by the guardian that she ever questioned Mr. Scheide's capacity, as he was given a cash spending card, given him his financial records to review at his request. Mr. Scheide routinely left his residence, to go shopping, order food whether live or o the phone, and pay for it himself. He insisted on seeing his financial statements for review, he even mentioned it to his doctors (Exhibit "C").

Kristin Tyler, Esq., testified that, she never questioned the decedent's capacity. Depo- Kristin Tyler (Exhibit "A") (page 128, lines 7-12):

·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.

Depo- Kristin Tyler (page 174, line 18-page 175, line-19):

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.

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25· · · Q.· Were there ever any times before then that you Page 175

- ·1· ·were concerned about his mental capacity?
- ·2· · · A.· No.· I -- if I was, I would have asked for
- ·3· ·another updated doctor letter.

It is submitted that the decedent's capacity was truly never in question during his lifetime, but rather his physical impairments which created the issue of guardianship.

St. Jude's is relying on the well criticized Guardianship medical certificate (2/12/14), which was executed at a time when Mr. Scheide was admitted to Centennial Hospital four (4) days prior to the certificate being signed.

Eight days later a medical doctor presented a more thorough report (Exhibit "B"), which indicated that while Mr. Scheide did have some dementia, it was mild. reporting physician stated: "His mental status did improve, as the encephalopathy was likely diagnosed as metabolic", which would denote some physical causation for the mental "altered level of consciousness" in the certificate, rather than some sort of severe dementia, or the like. The medical reports since then only get to the point that he was confused, not too long before he died. Taken as a whole, in light of Mr. Scheide's own actions, the subsequent medical documentation, and Susan Hoy's testimony that the guardianship was actually for his physical medical conditions, this singular document becomes meaningless.

Since the Nevada Supreme Court, and the NRS all provide for any individual deemed incompetent or incapacitated to regain competent and/or capacital status. Competency is an overall state; capacity is the ability to perform an act.



During the guardianship Mr. Scheide apparently acted, other than his physical limitations, quite normally – shopping, ordering food, calling on the phone to make an order, paying for it himself. These are not the actions of someone who has a lack of capacity. Mr. Scheide repeatedly demanded to see his financial statements to both the guardian and physicians (Exhibit "C" –any emphasis added). He knew what his assets were and able to communicate that fact.

As to the persistent allegation of estrangement, St. Jude's, their attorney, and not even Kristin Tyler, Esq., can truly state that Mr. Scheide was not seeking out or discussing his son. He apparently spoke with a physician about his son, who noted it in his report. See **Exhibit "D"** (any emphasis added), wherein the physician notes: "Son: Chipper Scheide 50's PA". Mr. Scheide was well aware of his son, his age, and where he lived. There must have been some conversation between the physician and Mr. Scheide for the doctor make the reference in his report.

In the State of Nevada, in order to have testamentary capacity, a testator must know what their assets are, know who their heirs are, and can communicate that fact. To use St. Jude's *own words*:

"The Nevada Supreme Court indicated that: [t]estamentary capacity exists when the testator (1) understands the nature of the act he is doing, (2) recollects and understands the nature and situation of his property, and (3) recognizes his relations to the persons who would inherit via intestacy." The Court also declared that testamentary capacity is presumed and continues even after the testator has been presumed incompetent to handle his affairs. This presumption is rebuttable by the party challenging the will or the revocation by providing evidence that the testator lacked such capacity" In re Estate of Blanchard, 2016 WL 3584702 (NV Ct. App., 2016) (citing In re Lingenfelter's Estate, 241 P.2d 990, 997 (Cal. 1952))" [Emphasis added]



The implications of Mr. Scheide's own actions has shown that he had testamentary capacity during his time under guardianship.

Susan Hoy testified that she never saw the original October 2012 will, only a copy, at the beginning of the guardianship. As she apparently went through/inventoried, etc., Mr. Scheide's belongings in February 2014, this is an indicator that the original document was already destroyed by Mr. Scheide prior to that time. Therefore the period guardianship and even Mr. Scheide's "capacity" is not even the issue.

Since Ms. Hoy never found the original in his documents in February 2014, it is more than likely than not that the original October 2012 Will was voluntarily revoked prior to the period of guardianship. When taken in conjunction with the fact that Ms. Tyler kept attempting to have Mr. Scheide execute "new" documents (Dec. 2013-Jan. 2014) and he was ignoring her on doing so, is another strong indication that the October 2012 Will was voluntarily destroyed by the testator and he did not want to make a new one.

We now know from the file provided by Ms. Hoy through her counsel, that Mr. Scheide owned a shredder (documents collectively (Exhibit "E"). These show handwritten inventory, a May 4th email, a May 12th letter indicating it was not in storage, and a June 9, 2016 Hospital Visit Form wherein Mr. Scheide was: "Still not happy with guardianship; wants his shredder and coffee maker replaced". While, apparently, his shredder was kept from him during what appears to be a good portion of the guardianship, he did own one, and was well aware of what he had, and what he wanted.

So, as to any issue of Mr. Scheide's capacity, there obviously are issues of fact which preclude summary judgment.



St. Judes is intentionally attempting to change the nature of these proceedings and to steer this court into a red-herring situation, diverting away from the fact that they cannot overcome the presumption of revocation for a long period of time (Oct 2012-Aug 2014), almost two (2) years.

As to the Undisputed Fact section, St. Jude's makes certain statements, claiming them to be undisputed facts. Number 3: self serving statement that Mr. Scheide reaffirmed his wishes in August 2013, but offers no substantiation for this. Number 4: while it is agreed that the decedent did not speak with Ms. Tyler regarding changing or executing a new will, what there is, is a letter from Ms. Tyler dated 1/29/14, seeking to convince Mr. Scheide into executing new documents, which Mr. Scheide apparently ignored, since no new documents were signed. He told Ms. Hoy he wanted to fire Ms. Tyler. Number 5: Guardianship Certificate see discussion, *supra*.

St. Jude's made several speculative assertions that Kristen Tyler, Esq., was Mr. Scheide's only. She was his attorney in October 2012, but when Velma Shay died in January 2013, Mr. Scheide did not avail himself of her services. He filed, pro se, a petition regarding her burial. When her family members commenced an action regarding her trust, Mr. Scheide did not avail himself of her legal services, either. (See collective documents as **Exhibit "F"**. Kristin Tyler testified that she refused to represent Mr. Scheide over some issue he had with a car in mid 2013. We know for a fact that Jasen Cassady, Esq. was another attorney consulting with Mr. Scheide. So, St. Jude's cannot allege, with certainty, that Ms. Tyler was Mr. Scheide's exclusive attorney. Mr. Scheide apparently did without her services, refused to followher advice and wrote on the copies of his documents.



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B. Best Evidence Rule (Codified for many years NRS 136.240)

By all accounts, Mr. Scheide was known to shout, be grumpy and/or irascible and impulsive. His two appointed POA agents, both of whom no longer cared to help him (they quit).

The reason behind NRS 136.240 requirement that two witnesses to prove existence, is to mitigate fraud.

Susan Hoy used a photocopy of the October 2012 Will for Probate Court. As can be seen from that document, apparently Mr. Scheide had the habit of writing on his documents.

In this case, neither the court, nor anyone else for that matter, has any idea if Mr. Scheide wrote on his original, scratched items out, or provided for someone other than Velma Shay, the original object of the 2012 wills, after her death.

The best evidence rule has been codified in Nevada. See <u>Tomlinson v State</u>, 110Nev. 757, 878 P.2d 311 (1994). In essence, NRS 52.235 requires that the party trying to prove the contents of a written document, a recording or a photograph produce the original.

However, the proponent of any document must usually produce the original of the document in court. If the proponent does not do so with some good excuse, the document will not be admitted, no matter how authentic the copy of other rendition of the document may be. The common law best evidence rule requires the proponent to provide the original in court or show that the original cannot be produced for one of there reasons: (1) it has been lost or destroyed through no fault of the proponent; (2) it cannot be removed from its location by law; or (3) the original is in the custody and control of the opponent who refuses to produce it.



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If the lost original was held by the proponent, then the proponent is usually obliged to call one or more witnesses to show that the original was lost, destroyed or misplaced through no fault of the proponent.

In this matter, St. Jude's cannot even meet the first condition. St. Jude's has not even alleged they can meet the first requirement under Irvine, or NRS 136,240. They cannot prove the original was in existence at all at the time of the decedent's death,

CONCLUSION

The red herring deflection of capacity and the separate issue of during guardianship, when the standard is for St. Jude's to prove that two people actually saw the original document to rebut the presumption of revocation is just that - a deflection and/or diversion away from the fact that from all the testimony in depositions to date, no one can testify that they saw the original document since the day it was signed.

The presumption is that Mr. Scheide voluntarily revoked the October 2012 will, and St. Jude's obviously cannot prove otherwise; hence the deflection.

As presented, the motion for Summary Judgment fails as a matter of law. There are too many factual disputes on non-issues.

WHEREFORE, the Motion for Partial Summary Judgment should be denied in its' entirety.

Dated: May / 2017

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 Theorore E. Scheide III



CARY COLF PAYNE, CHTD.

700 South Eighth Street Lac Vegas, Norada 89101 Tet 702, 383,9010 • Fac 702, 383,9049

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 10, 2017, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

BY MAIL: N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;

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BY E-MAIL AND/OR ELECTRONIC MEANS: Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service. I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

KIM BOYER, ESQ.

10785 W. Twain Avenue, Suite 200

Las Vegas, NV 89135

Email: kimboyer@elderlawnv.com

Todd L. Moody, Esq.

Email: tmoodyt@hutchlegal.com

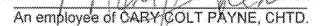
Russel J. Geist, Esq.

Email: rgeist@hutchlegal.com **HUTCHINSON & STEFFEN**

Peccole Professional Park

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ORDER

1 2 3 4 5	ORDR KIM BOYER, ESQ. Nevada Bar #5587 10785 W. Twain Avenue, Suite 200 Las Vegas, Nevada 89135 (702) 255-2000 E-Mail: kimboyer@elderlawnv.com Attorney for Estate	CLERK OF THE COURT	
8	DISTRIC	CT COURT	
8	CLARK COUNTY, NEVADA		
9	In the Matter of the Estate of	Case No.: P-14-082619-E	
10	THEODORE E. SCHEIDE JR. aka THEODORE ERNEST SCHEIDE JR.,	ORDER ON PETITION FOR INSTRUCTIONS	
12	Deceased.		
13	The Petition of SUSAN M. HOY for Instructions from the Court for the Estate of		
14	the above-named Decedent having this date come on for hearing before the undersigned, it		
15	appearing to the Court that notice of the hearing on the Petition was duly given; the Court		
16	finding that the Decedent at the time of his death left an estate in Clark County, Nevada, and was		
17	then a resident of Clark County, Nevada, good cause appearing therefor, it is hereby		
18			
19 20		be appointed Administrator of the intestate Estate	
21	of the Decedent and that Letters of Administration be issued to the Petitioner.		
22	ORDERED that in the event the estate assets are liquidated, they be placed in the		
23	Durham Jones & Pinegar Trust Account.		
24	ORDERED that no bond be rec	quired.	
25	DATED this 22nd day of	May , 2015.	
26		000/7	
27 28		DISTRICT JUDGE	

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REGISTER OF ACTIONS Cast No. P-14-082619-E.

in the Matter of: Theodore Scheide Jr., Deceased

Case type: Probate - Special Administration Date Filed 1002/2014 Location Cross-Reference Case Number: P682619

Party Information

Denadest

Scheide Jr., Theodore Braest

2580m

Lead Attorneys

Petitioner

May Sosan

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6625 S Valley Viga DR \$78 215 Las Vegas, by/ 89119

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Kim Bayes Retained 702-255-2000(V)

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Petition for teampetions

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CARY COLT PAYNE, CHTD.

Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "A"

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Page 1
 1
                           DISTRICT COURT
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                        CLARK COUNTY, NEVADA
 3
     In the Matter of the Estate of )
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 5
     THEODORE E. SCHEIDE, JR.,
                                      ) CASE NO: P-14-082619-E
     aka THEODORE ERNEST
 6
     SCHEIDE, JR.,
                                      ) DEPT NO: PCI
 7
                      Deceased.
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                 DEPOSITION OF KRISTEN TYLER, ESQ.
13
                         LAS VEGAS, NEVADA
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                    THURSDAY, FEBRUARY 16, 2017
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     REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926
25
         JOB NO.: 500366
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Nevada Court Reporting, LLC. 702-490-3376 10080 Alta Drive, Suite 100 Las Vegas, NV 89145

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

Page 174

- 1 the Velma Shay estate matter?
- 2 A. Not that I recall.
- 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.
- 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.
- 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.
- Q. Were there ever any times before then that you

Page 175

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



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EXHIBIT "B"

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

PAGE 1 OF 4

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.

PAGE 2 OF 4

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:

- METABOLIC ENCEPHALOPATHY AND LIKELY MULTIFACTORIAL ENCEPHALOPATHY, WHICH IS IMPROVED.
- 2. LEFT SECOND TOE OSTEOMYELITIS STATUS POST AMPUTATION OF THE LEFT SECOND TOE.
- IMPAIRED MOBILITY AND AMBULATION WITH DECONDITIONING AND DISUSE MYOPATHY.
- DEMENTIA REPORTED ON PREVIOUS RECORDS TO BE MILD.
- 5. HISTORY OF TRANSIENT ISCHEMIC ATTACKS VERSUS CEREBROVASCULAR ACCIDENTS TIMES TWO.
- 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.

PAGE 3 OF 4

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.
- ANEMIA DUE TO IRON DEFICIENCY AND CHRONIC DISEASE.
- HISTORY OF URINARY TRACT INFECTION.
- HISTORY OF BENIGN PROSTATIC HYPERTROPHY.
- 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

PAGE 4 OF 4



CARY COLT PAYNE, CHTD.

Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "C"

RECORD OF VISIT

ate of Visit: 2 1 14 1 15 ame of Ward: ddress: (Facility)	Purpose: Monthly, Quarterly (1, 2, 3, 4) Pre-GuardianshipOther
Therm	
MENTAL CONDITION; (Describe orientation in symptoms):	n 3x, communication capacity, major psychlatric
of Afterlier Stayl	y the last right - demarks
PHYSICAL CONDITION; Weight: 1) Describe Overall Appearance; LOOK 17004, U.	Helght:
2) Describe Chronic, Acute, or Specified.	Medical Conditions under Treatment:
3) Describe Level of Medical Services Pro	ovided or Needed: - UBLS USINGAL Depunt
4) Medical Services:(Provide Dates of La	sst Service) Primary Care Physician: レオーレイへん
Dental Exam:	
N. P. (20) (VO) (V	Physician Visits:
Eye Exam:	Physician Visits: Lab Work:
Eye Exam: Upcoming Appointments:	Physician Visits:
Eye Exam: Upcoming Appointments: Upon Complexet	Physician Visits: Lab Work: ———————————————————————————————————
Eye Exam: Upcoming Appointments:	Physician Visits: Lab Work: ** Podlatry Visits: ##med July 15
Eye Exam: Upcoming Appointments: The Complexed - 1	Physician Visits: Lab Work: ** Podlatry Visits: ##med July 15
Eye Exam: Upcoming Appointments: (NON COmply # -) Other: (Specialist) TRAVIS 7 5) Hospitalization: (Record Most Recent	Physician Visits: Lab Work: ———————————————————————————————————
Eye Exam: Upcoming Appointments: (NON COmply # -) Other: (Specialist) TRAVIS 7 5) Hospitalization: (Record Most Recent	Physician Visits: Lab Work: ** Podlatry Visits: #***********************************
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Eye Exam: Upcoming Appointments: (161 Completed of Security of S	Physician Visits: Lab Work: ** Podlatry Visits: ###################################

SCHEIDE1023

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I
                           DISTRICT COURT
 2
                        CLARK COUNTY, NEVADA
 3
     In the Matter of the Estate of )
 4
 S
     THEODORE E. SCHEIDE, JR.,
                                       CASE NO: P-14-082619-E
     aka THEODORE ERNEST
 6
     SCHEIDE, JR.,
                                       DEPT NO: PCI
 7
                     Deceased.
 8
9
10
11
12
                      DEPOSITION OF SUSAN HOY
13
                        LAS VEGAS, NEVADA
                   THURSDAY, FEBRUARY 16, 2017
14
15
16
17
18
19
20
21
22
23
     REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926
24
25
         JOB NO.: 500367
```

Nevada Court Reporting

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



							Page 48
1	Q.,	How much	reporting	back did	you do	to Mr.	

- 2 Mr. Scheide?
- A. Well, he would call frequently. He wanted his
- 4 brokerage statements, and he wanted to know how much
- 5 money he had.
- 6 Q. Did he ever direct you on how to invest his
- 7 money?
- 8 A. No, he did not.
- 9 Q. Did he ever direct you on how to spend his money?
- 10 A. Yes. He was not happy with what he was spending,
- 11 but he had a long-term care policy that reimbursed him.
- 12 So that seemed to alleviate that unhappiness. We were
- 13 able to get that going. And then we provided to him a
- 14 Spend Card, and he was able to call and check the
- 15 balance. So we would frequently get phone calls about
- 16 that too.
- Q. So he was unhappy with the amount that was being
- 18 spent on his care?
- 19 A. Yes.
- 20 Q. And he expressed that to you?
- 21 A. Yes.
- Q. Would he call you and tell you that?
- 23 A. Yes.
- Q. How often would he call you and tell you that?
- 25 A. I spoke to him, to the best I'm able to recall,



CARY COLT PAYNE, CHTD.

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(702) 383-9010 • Fax (702) 383-9049

EXHIBIT PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "D"

DOCTOR VISIT FORM

Client: Scheide, Theodore	NGS Staff attending: <u>Diane Prosser</u>
Seen by Doctor: <u>Dr. Tselikas</u> at Tenaya	Doctor's Telephone # [] -
Date of Visit:8_/_6_/14 Reason for Visit:	Other Person(s) attending: Macq field Cr.
Any New Medications?	上上
Dan	Film Schamer 3:11
Any Changes to Medications: γ/τ~ν	
Libration - Salar	
Sicre Works & Breeze Comment.	Lo NVG-VA Subabb Sana
Sm. Organ Scarley D. 1	
~	<u>Chromatica de l'Espa</u>
3 march 19 119/11	2015 SCHEIDE1011



CARY COLT PAYNE, CHTD.

Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "E"

2 BLACK BOOKERSOS. CARMENT BAS (2) FULL OF GOTH Y LAMP, Shoe Hours CHECULATOR CALCULATOR HUATICS PAD PINOW Alana clack SHOWLDER PAZOR EMPTY BLACK B'-DER HEAT PARS REACHEN UNDERSITY OF PA DIPLORA & OTHER PROSER DECUMENTS PHOTOGIN SNAM ALBUMN & MIGE LOOSE DIETURES SURSIASSES 130014 MISC, PAPERS STAPILA / PAPORLCIPS NAZ CLIPPENS TELEPHONE

```
Diane Prysser, NCG
 > Nevada Guardian Services, LLC
> 6625 S. Valley View Blvd., Suite 216
                                                                 Change of group homes
SR Pesiterbial
Salentino to alexión
 > Las Vegas, NV 89118
> Office (702) 629-2017
> FAX (702) 631-7896
>
S
> From: Beatrice Mercado Shimada [mailto:mbeatrice@gmuit.com]
Sent: Sunday, May 04, 2014 11:51 PM
> To: Diane Prosser
> Subject: Fwd: When Theo meets Ruth
>
> Hi Diane,
> We moved Mr. Schiede on Friday. He loves the Alerion facility. He loves the bigger room and convinience
of the bathroom as well. I am attaching a picture of him talking to our other resident,
>
>
> Did you want him in a private room? The cost for a shared room is $3,000. Most of the residents that go to
our facility goes in to the shared room. If you would like Mr. Schide in the private room, the cost would
remain the same. As a courtesy, what we can do is include an outing 2 times a week for up to 4 hours (that's
about $200/week which we will waive).
5
>
> I already have him scheduled to go out in Tues and Thurs for lunch
>
1
>
\sim
> Sincerely,
  Beatrice Shimada, RN
```

1. To confirm the cost for the private room is \$3,0007 I understand this is the large room with private ath, located to the left when you walk in.

The cost for a shared room is \$3000,

The private will remain the same on what Theo is currently paying which is \$4800 (it's usually more, but we will honor his current rate)

> 2. I will arrange for Home Instead to take Scheide out 3-4 times per week, but with very strict instructions (this time) regarding the limits of his outings. I understand he wants to attend church on Sundays. I would like you care staff (Marge is the beat!) to attend his doctor's appointments for continuity of medications, concerns, etc. SEE BELOW.

Ok. I also included for him to go out 2 times a week with our staff. Can home instead just take him out every Sunday?

> 3. Scheide has a small storage unit and a few things here in our warehouse. Once we inventory the storage unit and look at those items he has, we'll bring these items to his large room. Marge told him he can have his espresso maker, shredder, office items, etc. which are being stored. Is this slright with you?

Sure, not a problem

8

30

1

.

35

> 4. He wants a land line in his room for this telephone service. Is this possible, and with what carrier? Do I rrange for the service to be installed, or should you arrange this? He has a telephone number for his cell which se wants to convert to a land line. Do you have spare telephones there, or should we purchase the phone? This is something he can do during one of his outings.

I will call the telephone company

- > 5. Next appointments:
- Lab work SW VA Clinic (no appointment made-just need to walk in) June 16 10 a.m. MUST FAST 12 HOURS! NOTHING BUT WATER AND MEDICATIONS
- > Podiatry: VA Hospital 6900 N. Pecos 7/11/14 1:00 p.m.
- > Dr. Watson: SW VA Clinic 7/16/14 1:30 p.m.
- > Dr. Tselikas, S. Tenaya Cardiology, 7/31/14 3:00 p.m.

> I'm happy he's pleased with the larger room. It is my goal to set it up with a small apartment feeling. Hopefully this will make him a happier person. Please let me know your thoughts. I'm copying Marge on this email as well, so she has the doctor's appointments in her schedule. I'll be stopping by the group home this week to discuss any issues with him he may have.

lounds good. He is definitely much happier!

2



David Arenaz, CAGA 900 Lcs Vegas Blvd. So. Unit 1401 Las Vegas, NV 89101 Nevadacertifiedappraiser.com

May 12, 2014

Diane Prosser
Nevada Guardian Services
6625 S. valley View Blvd. Ste. B-215
Las Vegas, NV 89101

RE: Scheide Guardlanship

Dear Diane,

I completed the Scheide inventory on 5/8/2014 at the mini-storage facility located at 8650 W. Cheyenne, Unit 563. There were only 4 pieces, 1 of which was a leased oxygen generator. All the items were in good condition and would be easy to liquidate. There does not seem to be a need for a full report, so I will itemize the merchandise here. The fee is for one hour \$\alpha\$75.00 per hour. I have waived the two hour minimum in this case.

- 1. Ultra-suede reclining chair. \$60.00
- 2. Pr. Chrome desk lamps. \$45.00
- 3. Small bookshelf. \$10.00
- 4. Pacific Pulmonary Service Everflo oxygen generator. Leased equipment-no value.

Please let me know if you have any questions or concerns.

Very truly yours,

David Arenaz, CAGA

HOSPI	TAL VISIT FROM
CHEMI: Theodore Seleide	FACULTY TWO VALUE LOS SIS
CASE MANAGER: Jesuju - / Susas	PHONE NUMBER:
DATE: 6-9-14	TRANSFERRED FROM S. Frankist 2003/215
boctor Textalou-	ADMIT DATE
ADMIT DIAGNOSIS. CLEVILLES - resolved	
Home Houth - George - argela Ho	re Health.
acutetreatment.	
The more deal pair - Dr Mal	kotro " Conductiel" Contineo 1200 -
The Segre of Least Jestin - Court	(Here)
MEDICATIONS: BUP 4 50 for CHF ABX by months. Will need but some to Leel (
Will need this promise pull	
REPORT FROM DOCTORNURSE: TRESENSELY STEELS - RESLY for DC -	Resonation in I skill Retile
No referred works to retire I	Resoundation for to skelled Rebell
DISCHARGE PLAN:	
Return to Jr. Residential - D.	Totalete leconomic skilled relation
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CHART REVIEW:	
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COMMENTS:	
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	KSYSED DATE 9m20013

SCHEIDE1022



CARY COLT PAYNE, CHTD.

Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

EXHIBIT PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "F"

Electronically Filed 03/13/2013 08:50:56 AM

	1
1	NOH CHRISTOPHER J. PHILLIPS, ESQ.
2	Nevada Bar No: 8224
3	PHILLIPS BALLENGER 3605 S. Town Center Drive, Suite B
4	Las Vegas, NV 89135 (702) 997-5701 Phone
	(702) 997-5702 Fax
5	chris@phillipsballenger.com Attorney for DUKE KULLMAN
6	and DANA COBERN-KULLMAN DISTRICT COURT
7	CLARK COUNTY, NEVADA
8	In the Matter of the VELMA SHAY 1990) CASE NO.: P-13-076907-T
9	TRUST.) DEPT.: 26 (Probate) Date of Hearing: 03/29/13 Time of Hearing: 9:30 a.m.
10	· · · · · · · · · · · · · · · · · · ·
11	NOTICE OF HEARING OF PETITION FOR THE COURT TO TAKE IN REM JURISDICTION OVER THE VELMA SHAY 1990 TRUST AND ALL
12	AMENDMENTS; AND PETITION FOR RELEASE OF THE VELMA SHAY1990 TRUST AND ALL AMENDMENTS THERETO TO BENEFICIARIES DUKE AND
13	DANA COBERN-KULLMAN
14	NOTICE IS HEREBY GIVEN to all persons interested in the foregoing estate
15	that Friday, the 29th day of March, 2013, at the hour of 9:30 o'clock a.m. of said day, in the
16	Courtroom of the above-entitled Court, in Department H, Family Courts and Services Center,
17	Courtroom 9, 601 N. Pecos, Las Vegas, Nevada 89101, is hereby set as the time and place by the
18	Court for the hearing on the Petition for the Court to Take In Rem Jurisdiction Over the
19	Velma Shay 1990 Trust and all Amendments; and Petition for Release of the Velma Shay
20	1990 Trust and all Amendments Thereto to Beneficiaries Duke and Dana Cobern-Kullman,
21	filed by DUKE KULLMAN and DANA COBER-KULLMAN, at which time all persons
22	interested therein are notified then and there to appear and show cause, if any they have, why
23	said petition should not be granted.
24	DATED this 12 day of March, 2013.
25	PHILLIPS BALDENOER
26	
27	CHRISTOPHER J. PHILLIPS, Esq. Nevada Bar No. 8224
28	3605 S. Town Center Drive, Suite B Las Vegas, NV 89135

Electronically Filed 03/13/2013 10:30:59 AM

	1	•
1	CERT CHRISTOPHER J. PHILLIPS, ESQ.	Alun & Chum
2	Nevada Bar No: 8224 PHILLIPS BALLENGER	CLERK OF THE COURT
3	3605 S. Town Center Drive, Suite B Las Vegas, NV 89135	
4	(702) 997-5701 Phone (702) 997-5702 Fax	
5	chris@phillipsballenger.com Attorney for DUKE KULLMAN	
6	and DANA COBERN-KULLMAN	T COURT
7	II	NTY, NEVADA
8	In the Matter of the VELMA SHAY 1990) CASE NO.: P-13-076907-T
9	TRUST.) DEPT.: 26 (Probate)) Date of Hearing: 03/29/13) Time of Hearing: 9:30 a.m.
10		
11	CERTIFICAT	E OF MAILING
12	Date of Hear Time of Hear	ing: 03/29/13 ring: 9:30 a.m.
13	The undersigned herby certifies that on t	he 13th day of March, 2013, a true and
14	соггесt copy of the foregoing Petition for the C	ourt to Take In Rem Jurisdiction Over the
15	Velma Shay 1990 Trust and all Amendments	and Petition for Release of the Velma Shay
16	1990 Trust and all Amendments Thereto to B	eneficiaries Duke and Dana Cobern-Kullman,
17	along with a copy of the Notice of Hearing was	duly served by sealing in an envelope and
18	depositing in the U.S. Mail at Las Vegas, Nevad	a, first-class postage fully prepaid thereon,
19	addressed to the following individual(s):	
20	Medicaid Estate Recovery	Duke Kullman
21	1050 E. Williams Street, Suite 435 Carson City, NV 89701	Dana Cobern-Kullman 1079 E. Providencia Avenue
22		Burbank, CA 91501
23	Theo Scheide 2500 Sunup Drive	Jasen E. Cassady
24	Las Vegas, NV 89134	Cassady Law Offices, P.C. 7201 W. Lake Mead Blvd., Suite 500
25		Las Vegas, NV 89128
26		. 1
27		Man tranks
28		Employee of PHILLIPS BALLENGER
- 1	1	

Electronically Filed 04/05/2013 03:32:02 PM

	•
1	NEOJ CHRISTOPHER J. PHILLIPS, ESQ.
2	Nevada Bar No: 8224 PHILLIPS BALLENGER CLERK OF THE COURT
3	3605 S. Town Center Drive, Suite B Las Vegas, NV 89135
4	(702) 997-5701 Phone (702) 997-5702 Fax
5	chris@phillipsballenger.com Attorney for DUKE KULLMAN
6	and DANA COBERN-KULLMAN DISTRICT COURT
7	CLARK COUNTY, NEVADA
8	
9	In the Matter of the VELMA SHAY 1990 TRUST. Output Output DEPT.: 26 (Probate) Date of Hearing: 03/29/13
10	Time of Hearing: 9:30 a.m.
11	NOTICE OF ENTRY OF ORDER
12 13	TO: ALL PERSONS INTERESTED IN THE ABOVE-REFERENCED ESTATE
14	YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE than an ORDER
15	AUTHORIZING COURT TO TAKE IN REM JURISDICTION OVER THE VELMA SHAY
16	1990 TRUST AND ALL AMENDMENTS AND ORDER AUTHORIZING RELEASE OF THE
17	VELMA SHAY 1990 TRUST AND ALL AMENDMENTS TO BENEFICIARIES DUKE AND
18	DANA COBERN-KULLMAN, a copy of which is attached hereto and incorporated herein by
19	reference, was entered by the Court on the
20	DATED this
21	PHILLILPS BALLENGER
22	
23	CUDISTORIUS I BUSINES ESO
24	CHRISTOPHER J. PHILLIPS, ESQ. 3605 S. Town Center Drive, Suite B Las Vegas, Nevada 89135
25	
26	I, the undersigned, an employee of the law firm of Phillips Ballenger, do hereby declare
27	that on the 5 day of 4., 2013, I placed in an envelope, postage pre-paid,
28	first class mail thereon, a copy of the foregoing Notice of Entry of Order, to which a copy of
	1

ORDER AUTHORIZING COURT TO TAKE IN REM JURISDICTION OVER THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS AND ORDER AUTHORIZING RELEASE OF THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS TO BENEFICIARIES DUKE AND DANA COBERN-KULLMAN was attached, addressed to the persons referenced herein and deposited the same in the Post Office at Las Vegas, Nevada.

There is a regular communication by mail between the Post Office at Las Vegas, Nevada and the addresses to which the above-referenced documentation was mailed.

Medicaid Estate Recovery	
1050 E. Williams Street, Suite 435	5
Carson City, NV 89701	

Theo Scheide 2500 Sunup Drive Las Vegas, NV 89134 Duke Kullman Dana Cobern-Kullman 1079 E. Providencia Avenue Burbank, CA 91501

Jasen E. Cassady Cassady Law Offices, P.C. 7201 W. Lake Mead Blvd., Suite 500 Las Vegas, NV 89128

Employee of Phillips Ballenger

6 7

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CLERK OF THE COURT

CHRISTOPHER J. PHILLIPS, ESQ. Nevada Bar No: 8224 PHILLIPS BALLENGER 3605 S. Town Center Drive, Suite B Las Vegas, NV 89135 (702) 997-5701 Phone

ORDR

(702) 997-5702 Fax chris@phillipsballenger.com Attorney for DUKE KULLMAN and DANA COBERN-KULLMAN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the VELMA SHAY 1990 TRUST.

CASE NO.: P-13-076907-T DEPT .: 26 (Probate) Date of Hearing: 03/29/13 Time of Hearing: 9:30 a.m.

ORDER AUTHORIZING COURT TO TAKE IN REM JURISDICTION OVER THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS AND ORDER AUTHORIZING RELEASE OF THE VELMA SHAY 1990 TRUST AND ALL AMENDMENTS TO BENEFICIARIES DUKE AND DANA COBERN-KULLMAN

This matter having come on for hearing before the above entitled Court on the 29th day of March, 2013, upon the Petition for the Court to Take In Rem Jurisdiction Over the Velma Shay 1990 Trust and all Amendments; and Petition for Release of the Velma Shay 1990 Trust and all Amendments Thereto to Beneficiaries Duke and Dana Cobern-Kullman, filed by DUKE KULLMAN and DANA COBERN-KULLMAN; the Court having reviewed the same and having found that all allegations contained therein are true and correct, and good cause appearing therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court does hereby assume jurisdiction in rem over the Velma Shay 1990 Trust and any amendments thereto; and it is

FURTHER ORDERED that The Cassady Law Firm shall release copies of the Velma Shay 1990 Trust and all amendments thereto to DUKE KULLMAN and DANA COBERN-KULLMAN'S counsel; and it is

FURTHER ORDERED that any person in possession of any Trust, Wills, Revocations of Trust or other estate planning documents purporting to invalidate the VELMA SHAY 1990

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TRUST, shall provide copies of those documents to DUKE KULLMAN and DANA COBERN-KULLMAN. DISTRICT COURT JUDGE PHILLIPS BALLENGER CHRISTOPHER J. PHILLIPS, ESQ. 3605 S. Town Center Drive, Suite B Las Vegas, NV 89135 Attorney for DUKE KULLMAN and DANA COBERN-KULLMAN

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carycoltpaynechtd@yahoo.com

Attorney for Theodore E. Scheide III

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: P-14-082619-E In the Matter of the Estate of Dept. No.: THEODORE E. SCHEIDE JR. a/k/a 5/31/17 THEODORE ERNEST SCHEIDE JR. Date: 9:30 AM Time: Deceased. ST. JUDE'S CHILDRENS RESEARCH HOSPITAL, Objector/Petitioner, THEODORE E. SCHEIDE, III Respondent.

REPLY TO ST. JUDE'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS (NRCP 12(c)), ETC.

COMES NOW, Respondent, Theodore E. Scheide III, son of the decedent, by and through his attorney, CARY COLT PAYNE, Esq., of the lawfirm of CARY COLT PAYNE, CHTD., and hereby submits the within Reply to Opposition to Motion for Judgment on the Pleadings, Etc., which is made and based upon the attached Points and Authorities, Exhibits, pleadings on file to date, and any oral argument that the Court may allow at the time of the hearing.



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I. POINTS & AUTHORITIES

It is requested that this court take judicial notice of the Opposition to Motion for Partial Summary Judgment, filed on May 12, 2017, by Theodore Scheide III, as if fully set forth herein.

St. Jude's opposition to the Motion for Judgment on the Pleadings (NRCP 12(c)) fails to address their Petition to Admit Lost Will. The court, pursuant to *Estate of Irvine v.* Doyle, 101 Nev. 698, 710 P.2d 1366 (Nev., 1985) and NRS136.240(3) requires the pleadings allege that the testator himself had not revoked the lost or destroyed will, proof that would overcome the common-law presumption of revocation.

This means that two (2) individuals must actually physically have seen the original Last Will at the time of decedent's death to prove its actual existence. Parol or any other kind of evidence, or divergent theory, does not and cannot change these requirements.

Discovery will have closed as of May 22, 2017, by the time this motion is heard. St. Jude's was extended ample opportunities (extension of discovery) to prove that the original October 2012 Will was still in actual existence at the time of death, and/or that the decedent did not revoke said document voluntarily. This court's order filed April 17, 2017 clarified the court's prior order filed February 2, 2017:

"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".

Irvine is inapplicable to the extent that in Irvine, there was a house fire, an intervening act. St. Jude's only witness testified there was no intervening acts (e.g.: flood, fire, etc.).



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St. Jude's pleadings fail to allege the statutory requirement, and they must prove that the October 2012 Will was not revoked by the decedent voluntarily. To date, no deposition testimony or any document has ever been proffered by St. Jude's to overcome the presumption of revocation.

Since St. Jude's has not even alleged in their pleadings that there are two (2) witnesses who actually saw the original October 2012 Will, they engage in the sleight of hand in their opposition (and their Motion for Partial Summary Judgment), sequeing into their "legal existence" theory and their "more likely than not theory".

The words "legal existence" do not appear in NRS 136.240¹, simply the actual word "existence". To overcome the presumption of revocation, St. Jude's is required to prove that:

- 1. The original document was in actual existence at the time of the decedent's death (actually seen by two (2) persons),
- 2. Or fraudulently destroyed (not voluntarily revoked by testator) during testator's lifetime. This would indicate some intervening act such as fire, theft, flood, or some other act that destroyed the document without Mr. Scheide's knowledge and/or permission.

St. Jude's asserted by implication that paragraph 2 might be applicable, but never how it applies, and have abandoned this argument. (see Opposition)



¹ NRS 136.240 Petition for probate; same requirement of proof as other wills; testimony of witnesses; rebuttable presumption concerning certain wills; prima facie showing that will was not revoked: order.

^{3.} In addition, no will may be proved as a lost or destroyed will unless it is proved to have been in existence at the death of the person whose will it is claimed to be, or is shown to have been fraudulently destroyed in the lifetime of that person, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses. [emphasis added]

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As has been stated throughout this case, Susan Hoy, the decedent's guardian and thereafter the personal representative of the estate, searched the safe deposit box, etc., found no original Last Will amongst Mr. Scheide's papers at the time she inventoried his belongings at both the commencement of guardianship and after his death. The only "copy" from Kristin Tyler's file has handwriting on it. Therefore, it is presumed that the document was revoked by the decedent prior to that time.

If Mr. Scheide voluntarily destroyed the document (whether by burning, tearing, cancelling or obliterating the will- NRS 133.120), then it is no longer in "legal" existence, as it is revoked, which circuitously brings us back to the presumption of revocation, and defeats St. Jude's argument. This is not a "more likely than not" argument. Either the document was in existence or it was not.

Kristin Tyler, Esq. knowing full well, as she drafted both documents, and testified that the June 2012 Will was definitely revoked by the October 2012 Will. She knowingly proffered and lodged a known revoked document to this court. In her deposition she testified Depo- Kristin Tyler (page 92, lines 15 – 19):

15· · · Q.· Now, you did the October will; correct?

16· · · A.· Correct.

17· · · Q. · And the October will revokes the June will;

18··correct?

19· · · A. · Correct.

NRS 136.070 applies to a [party to bring a petition. St. Jude's reliance on NRS 141.050 is misplaced, and so is their interpretation of the statute. Does St. Jude's assert that Ms. Hoy's letters should be suspended because of a disability or substitution? The statute does not indicate that "the court may consider and allow the Decedent's Will to be proved"... In fact, the statute only states:

No where does these statutes authorize the court to initiate proceedings or utilize this statute to prove a lost will after an order was entered, and St. Jude's had notice. It only provides authority as it relates to new Letters of Administration, etc.

As to the reference of donations by the decedent to Mr. Scheide, and Kathy Longo's deposition, while Mr. Scheide may have made donations, what that segment of Ms. Longo's deposition (Exhibit "A" - page 45, lines 15-22) indicates is that since Mr. Scheide held on to last year's "thank you" letter, he was in the habit of keeping himself organized and a good record keeper.

Further, Ms. Longo testified that Mr. Scheide was belligerent Exhibit "A"- page 23, line 10-any emphasis added), as well as Mr. Scheide forging his doctor's name on a letter to let him keep driving (Exhibit "A"-page 23, lines 13-20-any emphasis added).

These are all indicators that Mr. Scheide did what he wanted to do. He owned a shredder, (see Opposition to Motion for Partial Summary Judgment), and kept what documents he wanted to keep. The fact that no original October Last Will was ever found, would indicate that Mr. Scheide no longer desired to keep it. He had revoked documents before.

There is a difference between St. Jude's assertions that everyone allegedly knew what was in the document, and the lack of evidence to support the burden of proof they are to show in these proceedings, which they cannot. Ms. Hoy, who, as the guardian, never found any original documents, and proceeded intestate, and this court entered an order which has not been requested to be or actually set aside.



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It is more likely than not that after the death of Velma Shay, Mr. Scheide voluntarily destroyed the original October 2012 Will. Maybe in the shredder he had. When Mr. Scheide was known for doing things others may have called belligerent, etc., he apparently was not a stupid man. He conversed with his physicians up until his death. He still ignored Kristin Tyler, Esq., in December and January when she wanted to appoint him a guardian, all the while she was lying to him telling him it was for an assistant position. He ignored her January 29, 2014 letter wanting him to sign new documents.

Neither of the Witnesses Have Personal Knowledge And the Copy is Inadmissable

Original documents is defined in NRS 52.205, which states:

NRS 52.205 "Original" defined.

- 1. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it.
 - 2. An "original" of a photograph includes the negative or any print therefrom.
- 3. If data are stored in a computer or similar device, any printout or other output readable by sight, shown accurately to reflect the data, is an "original."

The original is required to prove its contents, pursuant to NRS 52.235:

NRS 52.235 Original required. To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in this title.

In this case, the original October 2012 Will of the decedent is at issue. We know the purported copy of the October 2012 Will has been written on and specifies the word "updated" and "I am an organ donor", by what would otherwise appear to be Mr. Scheide's handwriting. Who is to say that Mr. Scheide did not otherwise write on the document, possibly changing the beneficiary? We also know that the object of the 2012 Will, Velma Shay predeceased Mr. Scheide.

The proponents of the will seek to rely upon inadmissible parol evidence, that fails to contradict.



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The parol evidence rule is a substantive common law rule in that prevents a party from presenting extrinsic evidence that discloses an ambiguity and clarifies it or adds to the written terms of the situation that appears to be whole.

A witness is not permitted to testify unless they have personal knowledge. NRS 50.025, which states:

NRS 50.025 Lack of personal knowledge.

- 1. A witness may not testify to a matter unless:
- (a) Evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter; or
 - (b) The witness states his or her opinion or inference as an expert.
- Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness.

St. Jude's, to date has not met their burden of proof of providing any witness who can state they saw the original document from the time it was executed until the time Mr. Scheide died. Not one.

Since St. Jude's pleadings do not allege their burden of proof, and they cannot meet the burden of proof as set by the court, they seek to deflect away from that fact, by interjecting alternative theories, which also fail.

Kathy Longo Testified Decedent had "Another" Will

Kathy Longo testified that the decedent had another will other than the June or October 2012 documents. In her deposition (Exhibit "A"-pages 41-44-any emphasis added). She testified she never saw the October Will, but remembered another will. This would infer the possibility of some other document.

We know that Mr. Scheide had contacted other attorneys than Kristen Tyler, Esq. Mr. Scheide had contact with Jasen Cassady, Esq., Bradley Richardson, Esq. and from the file received from Kristen Tyler, Esq., Adam Ganz, Esq.



Las Vegas, Nevada 89101 Tel: 702, 383,9010 • Fax 702, 383,9049

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As was demonstrated in the exhibits to the motion, Mr. Scheide sought to fire Kristen Tyler, Esq. and clearly repeatedly ignored her legal correspondences and advice.

II. CONCLUSION

After being allowed the opportunity to prove same, despite semantics and the attempts to deflect the level of the burden of proof, no witness or documentary evidence can confirm that anyone actually, personally, saw the original October 2012 Will after the day it was signed or that it actually existed. The term "legal existence" is moot as if the testator destroyed the document, the testator destroyed "legal existence" via intentional revocation.

Despite full searches, many documents belonging to the decedent were found, but not the original October 2012 Will by the guardian at the time of the guardianship, when she had access to all decedent's documents.

The presumption is that the decedent, by whatever means, voluntarily revoked the October 2012 Will of his own accord, during his lifetime. St. Jude's cannot prove otherwise, whether by clear and convincing evidence or preponderance of the evidence.

The Petition to probate a "lost" or "destroyed" Will fails as a matter of law. There are not any, much less two (2) witnesses who can testify that they actually, personally saw the original October 2012 Will in existence at the time of Mr. Scheide's death.

St. Jude's deflection in an attempt to shift their burden of proof is disingenuous and improper.

It is requested that the court's order dated May 26, 2015 be enforced, and this motion be granted and the matter proceed to intestate distribution.

Dated: May 27, 2017

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



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 22, 2017, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

BY MAIL: N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;



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BY E-MAIL AND/OR ELECTRONIC MEANS: Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

KIM BOYER, ESQ.

10785 W. Twain Avenue, Suite 200

Las Vegas, NV 89135

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Todd L. Moody, Esq.

Email: tmoodyt@hutchlegal.com

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An employee of CARY COLT

PAYNE, CHTD.



CARY COLT PAYNE, CHTD.

Attorney at Law 700 S. Eighth Street • Las Vegas, Nevada 89101 (702) 383-9010 • Fax (702) 383-9049

EXHIBIT PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "A"

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                           DISTRICT COURT
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                        CLARK COUNTY, NEVADA
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     In the Matter of the Estate
     THEODORE E. SCHEIDE, JR.,
                                    ) CASE NO: P-14-082619-E
     aka THEODORE ERNEST
 6
     SCHEIDE, JR.,
                                      DEPT NO: PCI
 7
                     Deceased.
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              DEPOSITION OF KATHY JOAN NICHOLS LONGO
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                         LAS VEGAS, NEVADA
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                     TUESDAY, APRIL 25, 2017
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     REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926
         JOB NO.: 500541
```

Nevada Court Reporting

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



Page 23

- 1 Q. Did you have any concerns about Ted at this time?
- A. Yes.
- 3 Q. What were your concerns about?
- 4 A. Well, we were trying to get him into an assisted
- 5 living or someplace, have somebody come to the house to
- 6 help him. He was in and out of hospitals, rehabs, for
- 7 over a year, and he wasn't able to take care of himself.
- 8 Q. Did you talk to him about these concerns?
- 9 A. You would try to, and he didn't want to hear it.
- 10 He was very belligerent.
- 11 Q. What would he say if you brought up a concern
- 12 about his --
- A. I said, "Ted, you shouldn't be driving." "Oh,
- 14 no, I can drive" and blah, blah, blah. And eventually,
- 15 I asked him about his -- the form that the -- he was
- 16 supposed to have his doctor sign saying that he could
- 17 drive. And he said, "Oh, I fooled them. I signed the
- 18 doctor's name myself." And I said, "Ted, you can't do
- 19 that." You know, he just didn't realize that he
- 20 shouldn't be driving anymore.
- Q. Do you know what physical ailments he had, what
- 22 illnesses he was dealing with?
- 23 A. He was diabetic. He had heart problems. He had
- 24 the aneurysm, and I don't know what else.
- Q. Do you know -- did these conditions get better or

	-			Page 41	
^	201			_	

Q. Did --

1

- 2 A. I'm jumping the gun. I'm sorry.
- Q. That's all right. That's your job to jump the
- 4 gun and his job to object.
- 5 Do you know if Mr. Scheide had a will?
- 6 A. Yes.
- 7 Q. How do you know he had a will?
- 8 A. When I was at the Sunup home, there was a will in
- 9 his office.
- 10 Q. When you say it was at his office, where was it?
- 11 A. In his -- in one of the bedrooms that he had set
- 12 up as an office.
- Q. Did he keep it on a desk? Did he keep it in a
- 14 file cabinet?
- 15 A. It was on a shelf behind his desk.
- 16 Q. What else was on that shelf?
- 17 A. I don't remember.
- 18 Q. Did you ever read the will?
- 19 A. I glanced through it.
- Q. Did you talk to Ted about the will?
- 21 A. No.
- Q. Did he ever tell you anything about his will?
- 23 A. Yes.
- Q. What did he tell you about his will?
- 25 MR. PAYNE: Objection. Time period.

Page 42 BY MR. GEIST: 1 2 You said he told you something about his will. 3 Α. Yes. What did he tell you? 4 Q. 5 He told me that when he died --MR. PAYNE: Hold on. I'll object to the 6 7 extent it calls for hearsay. 8 MR. GEIST: Go ahead. 9 THE WITNESS: Everything is going to St. 10 Jude's. BY MR. GEIST: 11 12 When did he tell you that? 13 A. At that last meeting with he and Kristin Tyler at 14 the group home. 15 Q. Did he tell you why everything was going to St. 16 Jude? 17 MR. PAYNE: Objection. Calls for 18 speculation. 19 THE WITNESS: No. MR. GEIST: I'm going to show you -- if you 20 21 could mark that as 2. It's his will, 2012, the October 22 will. 23 (Exhibit 2 was marked for identification.) BY MR. GEIST: 24 25 If you could take a look at that. Feel free to

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Page 43
 1
     flip through the pages if you need to, to familiarize
     yourself with it.
 3
                  (Pause in proceedings.)
 4
     BY MR. GEIST:
 5
            Have you had a chance to look at that?
 6
                  But I don't think -- something's missing
 7
     here.
            Oh, okay. Okay. I see what I missed.
                                                      Okay.
 8
            Does that look familiar to you?
        Q.
 9
            I really can't remember.
10
        Q.
            Okay.
11
            That was too many years ago.
12
            Okay. Do you know who is Theodore Scheide, III?
        Q.
13
        Α.
            Yes.
            Who is that?
14
        0.
15
        Α.
            Ted's son, Chipper.
16
        0.
            Did Mr. Scheide have any other children?
17
        Α.
            No.
18
        0.
            Do you know what relationship Ted had with his
19
     son?
20
        Α.
            Yes.
21
        ٥.
            How do you know?
22
           Because I have been in his -- in Ted's presence
23
     when he would talk about Chipper. I met Chipper when he
24
     was 7 or 8 years old. We --
25
           How long ago was that?
        Q.
```

Ĺ	ONGO,	KATHY on 04/25/2017 Page 44
	1	Page 44 A. In probably 1971, 1970, approximately, '71. I
	2	don't remember for sure. We were on Ted's boat in
	3	Pittsburgh on the river, and that was before he married
	4	my mother. Ted was about or Chipper was about 7
	5	years old.
	6	Q. And
	7	A. Did you
	8	Q. Go ahead.
	9	A. And when Ted would talk about Chipper, he said,
	10	"I want nothing to do with him. Every time he the
	11	only time he contacts me is when he wants money."
	12	Q. So you met Chip when in about 1971.
	13	Did you ever meet him after that?
	14	A. No, I did not.
	15	Q. You've never spoken with him after that?
	16	A. No.
	17	Q. When was the last time Ted said anything to you
	18	about Chip?
	19	A. I can't remember.
	20	Q. Did Chip ever contact you while Ted was alive?
	21	A. No, never.
	22	Q. Did you ever contact Chip while Ted was alive?
	23	A. Nope.
	24	Q. Did Chip ever contact you after Ted's death?

No.

A.

25

LONGO	, KATHY on 04/25/2017 Page 45
1	Q. Did you ever contact Chip
2	A. No.
3	Q after Ted's death? Okay.
4	Have you spoken with anyone from St. Jude
5	Children's Research Hospital regarding Ted?
6	A. No.
7	Q. Did Ted ever talk to you about St. Jude
8	Children's Research Hospital?
9	A. Yes.
10	Q. When did he talk to you about St. Jude?
11	A. Probably in November, October/November of 2013.
12	It was well, he it was before he left his house.
13	He said, "I have to send a check to St. Jude. I send
14	them a check every year."
15	So he asked me to type a letter, cover letter,
16	and the amount was I can't remember exactly, if it
17	was 10 or 12, 15,000. It was at least that much. And
18	he said, "This is my annual contribution to St. Jude."
19	He gave me the address, the gentleman's name to send it
20	to. He had a copy there from correspondence with a
21	thank-you from the from the prior year. And that's
22	what I based the information on to address the letter.
23	Q. Did he say for how many years he had been making
24	that donation?

A. No, he did not.

NOTE: ORGAN DONOR ... RECORDED ON MY DIENES LICENSE

Last Will and Testament

THEODORE E. SCHEIDE

I, THEODORE E. SCHEIDE, a resident of Clark County, Nevada, being of sound mind and disposing memory, hereby revoke any prior wills and codicils made by me and declare this to be my Last Will and Testament.

Article One Family Information

I am unmarried.

I have one child, THEODORE E. SCHEIDE, III.

However, I am specifically disinheriting THEODORE E. SCHEIDE, III and his descendants. Therefore, for the purposes of my Will, THEODORE E. SCHEIDE, III and his descendants will be deemed to have predeceased me.

Article Two Specific and General Gifts

Section 2.01 Disposition of Tangible Personal Property

I give all my tangible personal property, together with any insurance policies covering the property and any claims under those policies in accordance with a "Memorandum for Distribution of Personal Property" or other similar writing directing the disposition of the property. Any writing prepared according to this provision must be dated and signed by me.

If I leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date will control as to those items that are in conflict.

Last Will and Testament of THEODORE E. SCHEIDE Page 1

EXHIBIT "2"

BRITTANY J. CASTREJON, CC.

If the memorandum with the most recent date conflicts with a provision of this Will as to the specific distribution of any item of tangible personal property, the provisions of the memorandum with the most recent date control as to those items that are in conflict.

I intend that the writing qualify to distribute my tangible personal property under applicable state law.

Section 2.02 Contingent Distribution of Tangible Personal Property

Any tangible personal property not disposed of by a written memorandum, or if I choose not to leave a written memorandum, all my tangible personal property will be distributed as part of my residuary estate.

Section 2.03 Definition of Tangible Personal Property

For purposes of this Article, the term "tangible personal property" includes but is not limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia. The term does not include any tangible property that my Executor, in its sole and absolute discretion, determines to be part of any business or business interest that I own at my death.

Section 2.04 Ademption

If property to be distributed under this Article becomes part of my probate estate in any manner after my death, then the gift will not adeem simply because it was not a part of my probate estate at my death. My Executor will distribute the property as a specific gift in accordance with this Article. But if property to be distributed under this Article is not part of my probate estate at my death and does not subsequently become part of my probate estate, then the specific gift made in this Article is null and void, without any legal or binding effect.

Section 2.05 Incidental Expenses and Encumbrances

Until property distributed in accordance with this Article is delivered to the appropriate beneficiary or to the beneficiary's legal representative, my Executor will pay the reasonable expenses of securing, storing, insuring, packing, transporting, and otherwise caring for the property as an administration expense. Except as otherwise provided in my Will, my Executor will distribute property under this Article subject to all liens, security interests, and other encumbrances on the property.

Last Will and Testament of THEODORE E. SCHEIDE Page 2

Article Three My Residuary Estate

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Section 3.01 Definition of My Residuary Estate

All the remainder of my estate, including property referred to above that is not effectively disposed of, will be referred to in my Will as my "residuary estate."

Section 3.02 Disposition of My Residuary Estate

I give my residuary estate to VELMA G. SHAY, if she survives me.

If VELMA G. SHAY predeceases me, then I give my residuary estate to ST. JUDE CHILDREN'S HOSPITAL located in Memphis, Tennessee.

Article Four Remote Contingent Distribution

If, at any time after my death, there is no person or entity then qualified to receive final distribution of my estate or any part of it under the foregoing provisions of my Will, then the portion of my estate with respect to which the failure of qualified recipients has occurred shall be distributed to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Nevada then in effect (other than THEODORE E. SCHEIDE, III and his descendants).

Article Five Designation of Executor

Section 5.01 Executor

I name PATRICIA BOWLIN as my Executor. If PATRICIA BOWLIN fails or ceases to act as my Executor, I name NEVADA STATE BANK as my Executor.

Last Will and Testament of THEODORE E. SCHEIDE

Section 5.02 Guardian for Testator

If I should become mentally incompetent to handle my affairs prior to my demise, I request that PATRICIA BOWLIN be appointed guardian of my estate and my person, to serve without bond. In the event that she is unable or unwilling to serve, then I request that a representative from NEVADA STATE BANK be appointed guardian of my estate and my person, to serve without bond.

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Article Six General Administrative Provisions

The provisions of this Article apply to my probate estate.

Section 6.01 No Bond

No Fiduciary is required to furnish any bond for the faithful performance of the Fiduciary's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety is required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

Section 6.02 Distributions to Incapacitated Persons and Persons Under Twenty-One Years of Age

If my Executor is directed to distribute any share of my probate estate to any beneficiary who is under the age of 21 years or is in the opinion of my Executor, under any form of incapacity that renders such beneficiary unable to administer distributions properly when the distribution is to be made, my Executor may, as Trustee, in my Executor's discretion, continue to hold such beneficiary's share as a separate trust until the beneficiary reaches the age of 21 or overcomes the incapacity. My Executor shall then distribute such beneficiary's trust to him or her.

While any trust is being held under this Section, my Independent Trustee may pay to the beneficiary for whom the trust is held such amounts of the net income and principal as the Trustee determines to be necessary or advisable for any purpose. If there is no Independent Trustee, my Trustee shall pay to the beneficiary for whom the trust is held such amounts of the net income and

Last Will and Testament of THEODORE E. SCHEIDE Page 4

principal as the fiduciary determines to be necessary or advisable for the beneficiary's health, education, maintenance or support.

Upon the death of the beneficiary, my Trustee shall distribute any remaining property in the trust, including any accrued and undistributed income, to such persons as such beneficiary appoints by his or her Will. This general power may be exercised in favor of the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate. To the extent this general power of appointment is not exercised, on the death of the beneficiary, the trust property is to be distributed to the beneficiary's then living descendants, per stirpes, or, if none, per stirpes to the living descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine, or if no such descendant is then living, to my then living descendants, per stirpes. If I have no then living descendants the property is to be distributed under the provisions of Article Four entitled "Remote Contingent Distribution."

Section 6.03 Maximum Term for Trusts

Notwithstanding any other provision of my Will to the contrary, unless terminated earlier under other provisions of my Will, each trust created under my Will will terminate 21 years after the last to die of the descendants of my maternal and paternal grandparents who are living at the time of my death.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If no beneficiary is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares per stirpes.

Section 6.04 Representative of a Beneficiary

The guardian of the person of a beneficiary may act for such beneficiary for all purposes under my Will or may receive information on behalf of such beneficiary.

Section 6.05 Ancillary Administration

In the event ancillary administration is required or desired and my domiciliary Executor is unable or unwilling to act as an ancillary fiduciary, my domiciliary Executor will have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may be either a natural person or a

Last Will and Testament of THEODORE E. SCHEIDE Page 5

corporation. My domiciliary Executor may delegate to such ancillary fiduciary such powers granted to my original Executor as my Executor may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate are to be paid over to the domiciliary Executor.

Section 6.06 Delegation of Authority; Power of Attorney

Any Fiduciary may, by an instrument in writing, delegate to any other Fiduciary the right to exercise any power, including a discretionary power, granted the Fiduciary in my Will. During the time a delegation under this Section is in effect, the Fiduciary to whom the delegation was made may exercise the power to the same extent as if the delegating Fiduciary had personally joined in the exercise of the power. The delegating Fiduciary may revoke the delegation at any time by giving written notice to the Fiduciary to whom the power was delegated.

The Fiduciary may execute and deliver a revocable or irrevocable power of attorney appointing any individual or corporation to transact any and all business on behalf of the trust. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that the Fiduciary could have exercised.

Section 6.07 Merger of Corporate Fiduciary

If any corporate fiduciary acting as my Fiduciary under my Will is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the position of my Fiduciary as if originally named my Fiduciary. No document of acceptance of the position of my Fiduciary shall be required.

Article Seven Powers of My Fiduciaries

Section 7.01 Fiduciaries' Powers Act

My Fiduciaries may, without prior authority from any court, exercise all powers conferred by my Will or by common law or by Nevada Revised Statutes or other statute of the State of Nevada or any other jurisdiction whose law applies to my Will. My Executor has absolute discretion in exercising these powers. Except as

Last Will and Testament of THEODORE E. SCHEIDE Page 6 specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 7.02 Powers Granted by State Law

In addition to all of the above powers, my Executor may, without prior authority from any court, exercise all powers conferred by my Will; by common law; by the laws of the State of Nevada, including, without limitation by reason of this enumeration, each and every power enumerated in NRS 163.265 to 163.410, inclusive; or any other jurisdiction whose law applies to my Will. My Executor has absolute discretion in exercising these powers. Except as specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 7.03 Alternative Distribution Methods

My Fiduciary may make any payment provided for under my Will as follows:

Directly to the beneficiary;

In any form allowed by applicable state law for gifts or transfers to minors or persons under a disability;

To the beneficiary's guardian, conservator, agent under a durable power of attorney or caregiver for the benefit of the beneficiary; or

By direct payment of the beneficiary's expenses, made in a manner consistent with the proper exercise of the fiduciary's duties hereunder. A receipt by the recipient for any such distribution fully discharges my Fiduciary.

Article Eight Provisions for Payment of Debts, Expenses and Taxes

Section 8.01 Payment of Debts and Expenses

I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death.

Last Will and Testament of THEODORE E. SCHEIDE Page 7

Section 8.02 No Apportionment

Except as otherwise provided in this Article or elsewhere in my will, my Executor shall provide for payment of all estate, inheritance and succession taxes payable by reason of my death ("death taxes") from my residuary estate as an administrative expense without apportionment and will not seek contribution toward or recovery of any death tax payments from any individual.

For the purposes of this Article, however, the term "death taxes" does not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable taxes imposed by any other taxing authority. Nor does the term include any generation-skipping transfer tax, other than a direct skip.

Section 8.03 Protection of Exempt Property

Death taxes are not to be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes. In addition, to the extent practicable, my Trustee should not pay any death taxes from assets that are exempt for generation-skipping transfer tax purposes.

Section 8.04 Protection of the Charitable Deduction

Death taxes are not to be allocated to or paid from any assets passing to any organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless my Executor has first used all other assets available to my Executor to pay the taxes.

Section 8.05 Property Passing Outside of My Will

Death taxes imposed with respect to property included in my gross estate for purposes of computing the tax and passing other than by my Will are to be apportioned among the persons and entities benefited in the proportion that the taxable value of the property or interest bears to the total taxable value of the property and interests received by all persons benefited. The values to be used for the apportionment are the values as finally determined under federal, state, or local law as the case may be.

Section 8.06 No Apportionment Between Current and Future Interests

No interest in income and no estate for years or for life or other temporary interest in any property or trust is to be subject to apportionment as between the

Last Will and Testament of THEODORE E. SCHEIDE Page 8

temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder are chargeable against the corpus of the property or trust subject to the temporary interest and remainder.

Section 8.07 Tax Elections

In exercising any permitted elections regarding taxes, my fiduciaries may make any decisions that they deem to be appropriate in any circumstances, and my fiduciaries are not required to make any compensatory adjustment as a consequence of any election. My Executor may also pay taxes or interest and deal with any tax refunds, interest, or credits as my Executor deems to be necessary or advisable in the interest of my estate.

My Executor, in his or her sole and absolute discretion, may make any adjustments to the basis of my assets authorized by law, including but not limited to increasing the basis of any property included in my gross estate, whether or not passing under my Will, by allocating any amount by which the basis of my assets may be increased. My Executor is not required to allocate basis increase exclusively, primarily or at all to assets passing under my Will as opposed to other property included in my gross estate. My Executor may elect, in his or her sole and absolute discretion, to allocate basis increase to one or more assets that my Executor receives or in which my Executor has a personal interest, to the partial or total exclusion of other assets with respect to which such allocation could be made. My Executor may not be held liable to any person for the exercise of his or her discretion under this Section.

Article Nine Definitions and General Provisions

Section 9.01 Cremation Instructions

I wish that my remains be cremated and buried in accordance with my pre-paid funeral arrangements with Palm Mortuary in Las Vegas, Nevada.

Section 9.02 Definitions

For purposes of my Will and for the purposes of any trust established under my Will, the following definitions apply:

Last Will and Testament of THEODORE E. SCHEIDE

(a) Adopted and Afterborn Persons

A legally adopted person in any generation and his or her descendants, including adopted descendants, will have the same rights and will be treated in the same manner under my Will as natural children of the adopting parent, provided the person is legally adopted before attaining the age of 18 years. A person will be deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

A fetus in utero that is later born alive will be considered a person in being during the period of gestation.

(b) Descendants

The term "descendants" means any one or more person who follows in direct descent (as opposed to collateral descent) from a person, such as a person's children, grandchildren, or other descended individuals of any generation.

(c) Fiduciary

"Fiduciary" or "Fiduciaries" refer to my Executor. My "Executor" includes any executor, ancillary executor, administrator, or ancillary administrator, whether local or foreign, and whether of all or part of my estate, multiple Executors, and their successors.

Except as otherwise provided in this Last Will and Testament, a fiduciary has no liability to any party for action (or inaction) taken in good faith.

(d) Good Faith

For the purposes of this Last Will and Testament, a fiduciary has acted in good faith if (i) its action or inaction is not a result of intentional wrongdoing, (ii) the fiduciary did not make the decision with reckless indifference to the interests of the beneficiaries, and (iii) its action or inaction does not result in an improper personal pecuniary benefit to the fiduciary.

(e) Incapacity

Except as otherwise provided in my Will, a person is deemed to be incapacitated in any of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual is deemed to be incapacitated whenever, in the opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual is deemed to be restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual is deemed to be incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

(3) Detention, Disappearance or Absence

An individual is deemed to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence or detention under duress may be established by an affidavit of any fiduciary. The affidavit must describe the circumstances of an individual's detention under duress, disappearance, or absence and may be relied upon by any third party dealing in good faith with my fiduciary in reliance upon the affidavit.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of my Executor.

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(f) Internal Revenue Code

References to the "Internal Revenue Code" or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the "Treasury Regulations," are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference will be deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in my Will. The same rule applies to references to the Treasury Regulations.

(g) Legal Representative

As used in my Will, the term "legal representative" means a person's guardian, conservator, personal representative, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

(h) Per Stirpes

Whenever a distribution is to be made to a person's descendants per stirpes, the distribution will be divided into as many equal shares as there are then-living children of that person and deceased children of that person who left then-living descendants. Each then-living child will receive one share and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.

(i) Primary Beneficiary

The Primary Beneficiary of a trust created under this agreement is the oldest Income Beneficiary of that trust unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

(j) Shall and May

Unless otherwise specifically provided in my Will or by the context in which used, I use the word "shall" in my Will to command, direct or require, and the word "may" to allow or permit, but not

require. In the context of my Trustee, when I use the word "may" I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in my Will.

(k) Trust

The term "trust," refers to any trusts created under the terms of my Will.

(l) Trustee

The term "my Trustee" refers to any person or entity that is from time to time acting as the Trustee and includes each Trustee individually, multiple Trustees, and their successors.

(m) Other Definitions

Except as otherwise provided in my Will, terms shall be as defined in Nevada Revised Statutes as amended after the date of my Will and after my death.

Section 9.03 Contest Provision

If any beneficiary of my Will or any trust created under the terms of my Will, alone or in conjunction with any other person engages in any of the following actions, the right of the beneficiary to take any interest given to the beneficiary under my Will or any trust created under the terms of my Will will be determined as it would have been determined as if the beneficiary predeceased me without leaving any surviving descendants.

Contests by a claim of undue influence, fraud, menace, duress, or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) my Will, (b) any trust created under the terms of my Will, or (c) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan, or insurance policy signed by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document;

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify, or set aside a Document or any of its provisions;

Files suit on a creditor's claim filed in a probate of my estate, against my estate, or any other Document, after rejection or lack of action by the respective fiduciary;

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document;

Files a petition to impose a constructive trust or resulting trust on any assets of my estate; or

Participates in any of the above actions in a manner adverse to my estate, such as conspiring with or assisting any person who takes any of the above actions.

My Executor may defend, at the expense of my estate, any violation of this Section. A "contest" includes any action described above in an arbitration proceeding, but does not include any action described above solely in a mediation not preceded by a filing of a contest with a court.

Section 9.04 Survivorship Presumption

If any beneficiary is living at my death, but dies within 90 days thereafter, then the beneficiary will be deemed to have predeceased me for all purposes of my Will.

Section 9.05 General Provisions

The following general provisions and rules of construction apply to my Will:

(a) Singular and Plural; Gender

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word "or" when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

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(b) Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and subsections used within my Will are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of my Will.

(c) Governing State Law

My Will shall be governed, construed and administered according to the laws of Nevada as from time to time amended. Questions of administration of any trust established under my Will are to be determined by the laws of the situs of administration of that trust.

(d) Notices

Unless otherwise stated, whenever my Will calls for notice, the notice will be in writing and will be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice will be effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice will be given to the parent or legal representative of the minor or incapacitated individual.

(e) Severability

The invalidity or unenforceability of any provision of my Will does not affect the validity or enforceability of any other provision of my Will. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of my Will are to be interpreted and construed as if any invalid provision had never been included in my Will.

REST OF PAGE INTENTIONALLY LEFT BLANK

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I, THEODORE E. SCHEIDE, sign my name to this instrument consisting of sixteen (16) pages on October 2, 2012, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

THE TOUR F. SOME IDE, Testator

Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned, KRISTIN M. TYLER and DIANE L. DeWALT declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator, THEODORE E. SCHEIDE; that the testator subscribed the will and declared it to be his last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

Dated this 2 day of October, 2012.

Declarant 1 - Kristin M. Tyler

Declarant 2 - Diane L. DeWalt

Residing at:

Residing at:

3960 Howard Hughes Parkway

9th Floor

Las Vegas, Nevada 89169

3960 Howard Hughes Parkway

9th Floor

Las Vegas, Nevada 89169

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Attorneys for St. Jude Children's Research Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of

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

Deceased.

Case No.: P-14-082619-E

Dept No.: 26

Date of hearing: May 31, 2017 Time of hearing: 9:30a.m.

ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S REPLY IN SUPPORT OF 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

ST. JUDE CHILDREN'S RESEARCH HOSPITAL, INC. ("St. Jude Children's Research Hospital") respectfully submits this Reply in Support of 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 ("Motion").

Theodore E. Scheide, III's fragile Opposition to Motion for Partial Summary Judgment ("Opposition"), fails to "present specific facts demonstrating that there is a factual dispute about a material issue." *Zoslaw v. MCA Distributing Corp.*, 693 F.2d 870, 883 (9th Cir. 1982), cert. denied, 460 U.S. 1085 (1983). Instead Mr. Scheide relies on general allegations and conclusions, not facts, to cast doubt on the operative facts. Mr. Scheide's frequent response that, "We do not know for certain ..." falls well short of designating "specific facts". Instead, Mr. Scheide's opposition merely alleges the slightest doubt as to the operative facts in an attempt to overcome

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the facts presented. *Wood v. Safeway*, 121 Nev. 724, 121 P.3d 1026 (2005) (overruling the 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)).

In some sections of the Opposition, particularly by alleging that the Decedent retained capacity, Mr. Scheide helps St. Jude's cause. Both Kristin Tyler and Kathy Longo testified that the Decedent confirmed to them his wishes that his entire estate was to go to St. Jude Children's Research Hospital at his death, discussing the matter as late as December 10, 2013. The Decedent not only reaffirmed his testamentary wishes to both Kristin Tyler and Kathy Longo, but also directed Kathy Longo to help him send his generous annual donation by typing a cover letter to accompany a check indicating a substantial donation of about \$10,000 to \$15,000 to St. Jude Children's Research Hospital in October or November 2013. The cover letter was based off of an acknowledgment letter the Decedent received from St. Jude Children's Research Hospital for the donation he made the year before. The Opposition presents no specific facts to dispute these actions taken by the Decedent which support the likelihood that the Decedent did not revoke his Will prior to his death. The Decedent's reaffirmation of his testamentary wishes to his attorney and caregiver, remain undisputed facts.

Mr. Scheide's Opposition again misstates the operative law (NRS 136.240(3) as interpreted by the Nevada Supreme Court in *Estate of Irvine v. Doyle*, 101 Nev. 698, 710 P2d 1366 (1985)) regarding the standard to prove the existence of Decedent's lost will. Mr. Scheide claims that St. Jude's case fails because there is no proof that the will physically existed at the death of the

¹ See deposition transcript of Kristin Tyler, Esq., attached hereto as **Exhibit 1** ("Tyler depo."), 56:25; 57:1-7; deposition transcript of Kathy Longo, attached hereto as **Exhibit 2** ("Longo depo."), 41:5 and 42:1-19.

² See Longo depo, 45:11-22.

 $^{^{3}}$ Id.

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Decedent, and that "legal existence" is not applicable. However, Mr. Scheide is arguing against the Nevada Supreme Court's interpretation of the term "existence" to mean legal existence as opposed to "physical existence". For months, Mr. Scheide has hammered the applicability of Irvine v. Doyle to the instant case. However, now that Irvine does not suit him, Mr. Scheide conveniently ignores the specific ruling which defines "existence" in NRS 136.240(3) to be "legal existence". The district court that issued the order being reviewed in Irvine rendered an opinion similar to the position taken by Mr. Scheide that, "the only relevant inquiry was whether the purported lost will had been in actual physical existence at the time of [Decedent's] death." The Court in Irvine did not sustain the order of the district court.⁶ The Court stated, "The decision of the district court in this case was based on an invalid construction of NRS 136.240(3), and must be reversed. Bynum attempted, but was not allowed, to prove that Decedent had executed a valid will which was destroyed prior to his death without his knowledge. ... Accordingly, this case is reversed and remanded for a new hearing."7

Irvine v. Doyle establishes the standard that a proponent of a lost will is not required to prove actual, physical existence of the will at the death of the Decedent. Rather, legal existence, or proof "that the testator did not revoke the lost or destroyed will during his lifetime" is what is required by the statute.8 St. Jude Children's Research Hospital has provided evidence of such by the specific testimony of the Decedent's attorney and caregiver. Mr. Scheide cannot provide specific evidence to the contrary.

⁴ See Respondent's Opposition to Motion for Partial Summary Judgment, 3:1-2 ("The words "legal existence do not appear in NRS 136.240, simply the actual word existence.") (emphasis in original); 10:12-13 ("when the standard is for St. Jude's [sic] to prove that two people actually saw the original document to rebut the presumption of revocation...").

Estate of Irvine v. Doyle, at 704, 1369.

Id. at 704, 1370; (emphasis added).

Id.

Id. at 703, 1369.

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Here, Mr. Scheide admits that the will was validly executed, and was in legal existence9. The Decedent even kept a copy of the October 2012 Will up until his death. It was this copy of the Will which Susan Hoy found among his personal items at the last facility in which he was living. 10 A copy of the October 2, 2012 Last Will with the Decedent's handwritten notes is attached as **Exhibit 4.** Significantly, the Decedent kept this copy of his executed will with him as he moved from facility to facility, and from hospital to group home, until his death when it was received by Susan Hoy who gave it to her attorney.

Based on the Decedent's actions of keeping this copy, it is more likely than not that the Decedent lost, misplaced or accidentally destroyed the original will in the numerous moves from group home to hospital to group home, etc., and intended his will to remain in effect by keeping his copy until his death. If the Decedent, whom Mr. Scheide admits "had the habit of writing on his documents", had actually intended to revoke his October 2012 Will, he likely would have written his intent to revoke on the copy he kept. But he didn't. If the Decedent had actually intended to revoke his October 2012 Will by shredding it, he likely would have shredded the copy he kept as well. But he didn't.

This copy of the October Will is identical to the Will verified by the two witnesses to the will by sworn affidavit stating that the copy of the will is the same as the original to which they affixed their signature as requested by the Decedent on October 2, 2012 upon execution. A copy of the Affidavits of witnesses Kristin Tyler and Diane DeWalt are attached as **Exhibit 5**. The copy of the October 2012 Will in the Decedent's possession and its contents have been clearly and distinctly proved by two witnesses in satisfaction of NRS 136.240(3).

Mr. Scheide's arguments regarding the "best evidence" are misplaced, because the law

See Opposition, 4:1-2.

See deposition transcript of Susan Hoy, attached hereto as Exhibit 3 ("Hoy depo."), 42:7-11. (Ms. Hoy testified that the document had "Revoked" handwritten on the title page, but she has since clarified through her attorney that this document received was actually the document presented with the Petition for Instructions, and has a handwritten date of "October 2, 2012" and "UPDATED" written on the title page.)

specifically provides for admission of a lost or destroyed will (i.e., a will not physically in existence) to probate. *Irvine* establishes that the statutory requirement that a proponent of a lost or destroyed will (i.e, a will not physically in existence) "prove the provisions of the will clearly and distinctly by at least two credible witnesses under NRS 136.240(3)...will adequately protect against the probate of spurious wills."

Again, Mr. Scheide raises hypothetical changes to the Decedent's will, hypothetical shredding of the Decedent's will, but no proof that the Decedent's actually changed or revoked it. Interestingly, Mr. Scheide claims that the Decedent "owned" a shredder and insinuates that the Decedent used it to shred his Will. However, the Opposition admits that the Decedent did not have possession of the shredder, and requested that his shredder be replaced. ¹¹

Mr. Scheide also insinuates that the Decedent's recitation to a doctor of his son's name, rough age, and assumed state of residence is somehow proof of Mr. Scheide's claim that the Decedent changed his mind to specifically disinherit his son from his estate. This offer of proof is tenuous at best. The Decedent clearly knew his son's name because he specifically disinherited him in his Will. Further, the Decedent reporting his son's name, rough age, and assumed state of residence to his physician is not specific evidence that the Decedent sought to establish contact with his son. Mr. Scheide can offer no such proof, only general allegations that the Decedent may have, possibly, had "some conversation" about his son. Such speculation is not specific facts proving that the Decedent revoked his will.

Ultimately, the facts remain undisputed by specific evidence, (1) that the Decedent left a copy of the October 2012 Will which was in his possession at the time of his death; (2) that the copy of the October 2012 Will in the Decedent's possession was the same copy as that witnessed by Kristin Tyler and Diane DeWalt, except for the Decedent's handwritten notes; (3) that the Decedent made prior statements to Kristin Tyler and Kathy Longo that he intended his estate to go to St. Jude Children's Research Hospital at his death; (4) that the Decedent told Kristin Tyler that

¹¹ See **Opposition**, 7:19-21.

HUTCHISON & STEFFEN

he had agreed with Velma Shay that upon the death of the survivor, they both intended that their respective Estates were to go to St. Jude Children's Research Hospital; and (5) that the Decedent had established an annual donation to St. Jude Children's Research Hospital. All of this establishes that it is more likely than not that the Decedent left his last will unrevoked at the time of his death. Theodore E. Scheide, III has not and cannot provide specific facts to challenge these facts; only general allegations to the operative facts to create the slightest doubt, which is insufficient. This Court should grant St. Jude Children's Research Hospital's Motion and admit the Decedent's will to probate.

Dated May 22, 2017.

HUTCHISON & STEFFEN

Todd L. Moody (5430) Russel J. Geist (9030) 10080 W. Alta Dr., Ste 200 Las Vegas, NV 89145

Attorneys for St. Jude Children's Research Hospital

¹² *Wood v. Safeway* at 1030-31.

TEFFE UTCHISON

PECCOLE PROFESSIONAL PLC PECCOLE PROFESSIONAL PARK 10000 WEST ALA DRIVE, SUITE 200 LAS VEGAS, NV 89145

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, and that on this 31 day of May, 2017, I caused a true and correct copy of the above and foregoing ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S REPLY IN SUPPORT OF 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 \boxtimes 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:

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

Cary Colt Payne, Esq. 700 S. 8th Street Las Vegas, NV 89101 Attorney for Theodore "Chip" E. Scheide, III

An Employee of Hutchison & Steffen, LLC

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EXHIBIT 1



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

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Page 56

- A. It says that I called Theo.
- Q. They're not handwritten, but did you type this
- 3 contemporaneous to the call to Theo?
- 4 A. Yes.
- 5 O. What was the reason for this call to Theo?
- 6 A. Looks like we covered a variety of issues in the
- 7 discussion.
- 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.
- Q. Was that what he relayed to you?
- 21 A. Yes.
- Q. So he told you he's not doing good physically?
- A. Correct. This was a phone call, so I couldn't
- 24 see him.
- Q. Two lines below that, he says, "He wants all to

Page 57

- 1 go to St. Jude when he dies"; correct?
- 2 A. Correct.
- Q. Did he tell you that's what he wanted?
- 4 A. Yes.
- 5 Q. Why did he not mention Velma at this point?
- 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.
- 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.
- Q. So on Mr. Scheide's behalf, you had been -- or

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Page 182
     STATE OF NEVADA )
                         SS:
 2
     COUNTY OF CLARK )
 3
                      CERTIFICATE OF REPORTER
            I, Brittany J. Castrejon, a Certified Court
 4
     Reporter licensed by the State of Nevada, do hereby
 5
     certify: That I reported the DEPOSITION OF KRISTEN
 6
 7
     TYLER, ESQ., on Thursday, February 16, 2017, at 9:05
 8
     a.m.;
            That prior to being deposed, the witness was duly
 9
     sworn by me to testify to the truth. That I thereafter
10
     transcribed my said stenographic notes into written
11
     form, and that the typewritten transcript is a complete,
12
     true and accurate transcription of my said stenographic
13
             That the reading and signing of the transcript
14
     notes.
15
     was not requested.
            I further certify that I am not a relative,
16
17
     employee or independent contractor of counsel or of any
     of the parties involved in the proceeding; nor a person
18
19
     financially interested in the proceeding; nor do I have
     any other relationship that may reasonably cause my
20
21
     impartiality to be questioned.
            IN WITNESS WHEREOF, I have set my hand i
22
     office in the County
     24th day of February
23
24
25
                       Brittany J. Castrejon, CCR NO.
```

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EXHIBIT 2



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1
                           DISTRICT COURT
 2
                        CLARK COUNTY, NEVADA
 3
     In the Matter of the Estate
 4
 5
     THEODORE E. SCHEIDE, JR.,
                                        CASE NO:
                                                 P-14-082619-E
     aka THEODORE ERNEST
 6
     SCHEIDE, JR.,
                                        DEPT NO:
                                                 PCI
 7
                      Deceased.
 8
 9
10
11
              DEPOSITION OF KATHY JOAN NICHOLS LONGO
12
                         LAS VEGAS, NEVADA
13
                      TUESDAY, APRIL 25, 2017
14
15
16
17
18
19
20
21
22
23
     REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926
24
25
         JOB NO.: 500541
```

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LONG	O, KATHY or	1 04/25/2017 Page 41	
1	Q.	Page 41 Did	
2	Α.	I'm jumping the gun. I'm sorry.	
3	Q.	That's all right. That's your job to jump the	
4	4 gun and his job to object.		
5		Do you know if Mr. Scheide had a will?	
6	A.	Yes.	
7	Q.	How do you know he had a will?	
8	A.	When I was at the Sunup home, there was a will in	
9	his of	fice.	
10	Q.	When you say it was at his office, where was it?	
1 1	A.	In his in one of the bedrooms that he had set	
12	up as	an office.	
13	Q.	Did he keep it on a desk? Did he keep it in a	
14	file c	eabinet?	
15	Α.	It was on a shelf behind his desk.	
16	Q.	What else was on that shelf?	
17	A.	I don't remember.	
18	Q.	Did you ever read the will?	
19	Α.	I glanced through it.	
20	Q.	Did you talk to Ted about the will?	
21	A.	No.	
22	Q.	Did he ever tell you anything about his will?	
23	Α.	Yes.	
24	Q.	What did he tell you about his will?	
25		MR. PAYNE: Objection. Time period.	

	Page 42
1	BY MR. GEIST:
2	Q. You said he told you something about his will.
3	A. Yes.
4	Q. What did he tell you?
5	A. He told me that when he died
6	MR. PAYNE: Hold on. I'll object to the
7	extent it calls for hearsay.
8	MR. GEIST: Go ahead.
9	THE WITNESS: Everything is going to St.
10	Jude's.
11	BY MR. GEIST:
12	Q. When did he tell you that?
13	A. At that last meeting with he and Kristin Tyler at
14	the group home.
15	Q. Did he tell you why everything was going to St.
16	Jude?
17	MR. PAYNE: Objection. Calls for
18	speculation.
19	THE WITNESS: No.
20	MR. GEIST: I'm going to show you if you
21	could mark that as 2. It's his will, 2012, the October
22	will.
23	(Exhibit 2 was marked for identification.)
24	BY MR. GEIST:
25	Q. If you could take a look at that. Feel free to

- Q. Did you ever contact Chip --
- 2 A. No.
- Q. -- after Ted's death? Okay.
- 4 Have you spoken with anyone from St. Jude
- 5 Children's Research Hospital regarding Ted?
- 6 A. No.
- 7 Q. Did Ted ever talk to you about St. Jude
- 8 Children's Research Hospital?
- 9 A. Yes.
- 10 Q. When did he talk to you about St. Jude?
- 11 A. Probably in November, October/November of 2013.
- 12 It was -- well, he -- it was before he left his house.
- 13 He said, "I have to send a check to St. Jude. I send
- 14 them a check every year."
- 15 So he asked me to type a letter, cover letter,
- 16 and the amount was -- I can't remember exactly, if it
- 17 was 10 or 12, 15,000. It was at least that much. And
- 18 he said, "This is my annual contribution to St. Jude."
- 19 He gave me the address, the gentleman's name to send it
- 20 to. He had a copy there from correspondence with a
- 21 thank-you from the -- from the prior year. And that's
- 22 what I based the information on to address the letter.
- Q. Did he say for how many years he had been making
- 24 that donation?
- 25 A. No, he did not.

	Days 54
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 KATHY JOAN
7	NICHOLS LONGO, on Tuesday, April 25, 2017, at 12:58
8	p.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 kand in my office in the County of Clark, State of Nevada, this 3rd
23	office in the County of Clark, State of Nevadar this 3rd day of May, 2017.
24	
25	Brittany J. Castrejon, CCR NO. 926

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EXHIBIT 3



```
1
                           DISTRICT COURT
 2
                        CLARK COUNTY, NEVADA
 3
     In the Matter of the Estate of )
 4
     THEODORE E. SCHEIDE, JR.,
 5
                                         CASE NO: P-14-082619-E
     aka THEODORE ERNEST
 6
     SCHEIDE, JR.,
                                        DEPT NO: PCI
 7
                      Deceased.
 8
 9
10
11
                       DEPOSITION OF SUSAN HOY
12
                         LAS VEGAS, NEVADA
13
                    THURSDAY, FEBRUARY 16, 2017
14
15
16
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21
22
23
     REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926
24
25
         JOB NO.: 500367
```

Nevada Court Reporting

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Page 42

- 1 A. Yes, the date was handwritten.
- Q. So it was revoked, date, and that was all
- 3 handwritten?
- 4 A. Yes.
- Q. And then title of the document, I'm assuming?
- A. Yeah, it was on the first page of that document.
- Q. And when did you find this copy of this document?
- 8 A. When we obtained his personal items from his last
- 9 facility, from the HIRC home that he had been living in.
- 10 After he had passed away, we went and picked up all of
- 11 the items that he had there.
- 12 Q. Do you still have this copy of the will?
- 13 A. I have given that to Ms. Boyer.
- 14 O. And you don't recall the date?
- 15 A. I don't.
- 16 O. That's fine.
- 17 A. I don't want to give you a wrong date.
- 18 Q. And I appreciate that.
- 19 Have you found any other documents that had that
- 20 kind of notation on it, "revoked"?
- 21 A. No, I have not.
- Q. Had you found any documents of Mr. Scheide's that
- 23 had lines drawn through the text, handwritten lines?
- A. Not that I'm able to recall, no.
- Q. Have you ever spoken with Theodore Scheide, III,

no1, 3	Page 32
1	Page 52 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 SUSAN HOY,
7	on Thursday, February 16, 2017, at 1:18 p.m.;
8	That prior to being deposed, the witness was duly
9	sworn by me to testify to the truth. That I thereafter
10	transcribed my said stenographic notes into written
11	form, and that the typewritten transcript is a complete,
12	true and accurate transcription of my said stenographic
13	notes. That the reading and signing of the transcript
14	was not requested.
15	I further certify that I am not a relative,
16	employee or independent contractor of counsel or of any
17	of the parties involved in the proceeding; nor a person
18	financially interested in the proceeding; nor do I have
19	any other relationship that may reasonably cause my
20	impartiality to be questioned.
21	IN WITNESS WHEREOF, I have set my hand in my
22	office in the County of Clark, State of Nevada, this 22nd day of February, 2017.
23	Birthany J. Castrejan
24	Brittany J. Castrejon, CCR NO. 926
25	

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EXHIBIT 4



Last Will and Testament
of
THEODORE E. SCHEIDE

I, THEODORE E. SCHEIDE, a resident of Clark County, Nevada, being of sound mind and disposing memory, hereby revoke any prior wills and codicils made by me and declare this to be my Last Will and Testament.

Article One Family Information

I am unmarried.

MOTE: ORGAN DONOR ... RECORDED ON MY DONORS U

I have one child, THEODORE E. SCHEIDE, III.

However, I am specifically disinheriting THEODORE E. SCHEIDE, III and his descendants. Therefore, for the purposes of my Will, THEODORE E. SCHEIDE, III and his descendants will be deemed to have predeceased me.

Article Two Specific and General Gifts

Section 2.01 Disposition of Tangible Personal Property

I give all my tangible personal property, together with any insurance policies covering the property and any claims under those policies in accordance with a "Memorandum for Distribution of Personal Property" or other similar writing directing the disposition of the property. Any writing prepared according to this provision must be dated and signed by me.

If I leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date will control as to those items that are in conflict.

Last Will and Testament of THEODORE E. SCHEIDE Page 1

EXHIBIT "A"

If the memorandum with the most recent date conflicts with a provision of this Will as to the specific distribution of any item of tangible personal property, the provisions of the memorandum with the most recent date control as to those items that are in conflict.

I intend that the writing qualify to distribute my tangible personal property under applicable state law.

Section 2.02 Contingent Distribution of Tangible Personal Property

Any tangible personal property not disposed of by a written memorandum, or if I choose not to leave a written memorandum, all my tangible personal property will be distributed as part of my residuary estate.

Section 2.03 Definition of Tangible Personal Property

For purposes of this Article, the term "tangible personal property" includes but is not limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia. The term does not include any tangible property that my Executor, in its sole and absolute discretion, determines to be part of any business or business interest that I own at my death.

Section 2.04 Ademption

.,,

If property to be distributed under this Article becomes part of my probate estate in any manner after my death, then the gift will not adeem simply because it was not a part of my probate estate at my death. My Executor will distribute the property as a specific gift in accordance with this Article. But if property to be distributed under this Article is not part of my probate estate at my death and does not subsequently become part of my probate estate, then the specific gift made in this Article is null and void, without any legal or binding effect.

Section 2.05 Incidental Expenses and Encumbrances

Until property distributed in accordance with this Article is delivered to the appropriate beneficiary or to the beneficiary's legal representative, my Executor will pay the reasonable expenses of securing, storing, insuring, packing, transporting, and otherwise caring for the property as an administration expense. Except as otherwise provided in my Will, my Executor will distribute property under this Article subject to all liens, security interests, and other property.

Article Three My Residuary Estate

()

Section 3.01 Definition of My Residuary Estate

All the remainder of my estate, including property referred to above that is not effectively disposed of, will be referred to in my Will as my "residuary estate."

Section 3.02 Disposition of My Residuary Estate

I give my residuary estate to VELMA G. SHAY, if she survives me.

If VELMA G. SHAY predeceases me, then I give my residuary estate to ST. JUDE CHILDREN'S HOSPITAL located in Memphis, Tennessee.

Article Four Remote Contingent Distribution

If, at any time after my death, there is no person or entity then qualified to receive final distribution of my estate or any part of it under the foregoing provisions of my Will, then the portion of my estate with respect to which the failure of qualified recipients has occurred shall be distributed to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Nevada then in effect (other than THEODORE E. SCHEIDE, III and his descendants).

Article Five Designation of Executor

Section 5.01 Executor

I name PATRICIA BOWLIN as my Executor. If PATRICIA BOWLIN fails or ceases to act as my Executor, I name NEVADA STATE BANK as my Executor.

Section 5.02 Guardian for Testator

If I should become mentally incompetent to handle my affairs prior to my demise, I request that PATRICIA BOWLIN be appointed guardian of my estate and my person, to serve without bond. In the event that she is unable or unwilling to serve, then I request that a representative from NEVADA STATE BANK be appointed guardian of my estate and my person, to serve without bond.

()

Article Six General Administrative Provisions

The provisions of this Article apply to my probate estate.

Section 6.01 No Bond

No Fiduciary is required to furnish any bond for the faithful performance of the Fiduciary's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety is required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

Section 6.02 Distributions to Incapacitated Persons and Persons Under Twenty-One Years of Age

If my Executor is directed to distribute any share of my probate estate to any beneficiary who is under the age of 21 years or is in the opinion of my Executor, under any form of incapacity that renders such beneficiary unable to administer distributions properly when the distribution is to be made, my Executor may, as Trustee, in my Executor's discretion, continue to hold such beneficiary's share as a separate trust until the beneficiary reaches the age of 21 or overcomes the incapacity. My Executor shall then distribute such beneficiary's trust to him or her.

While any trust is being held under this Section, my Independent Trustee may pay to the beneficiary for whom the trust is held such amounts of the net income and principal as the Trustee determines to be necessary or advisable for any purpose. If there is no Independent Trustee, my Trustee shall pay to the beneficiary for whom the trust is held such amounts of the net income and

principal as the fiduciary determines to be necessary or advisable for the beneficiary's health, education, maintenance or support.

Upon the death of the beneficiary, my Trustee shall distribute any remaining property in the trust, including any accrued and undistributed income, to such persons as such beneficiary appoints by his or her Will. This general power may be exercised in favor of the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate. To the extent this general power of appointment is not exercised, on the death of the beneficiary, the trust property is to be distributed to the beneficiary's then living descendants, per stirpes, or, if none, per stirpes to the living descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine, or if no such descendant is then living, to my then living descendants, per stirpes. If I have no then living descendants the property is to be distributed under the provisions of Article Four entitled "Remote Contingent Distribution."

Section 6.03 Maximum Term for Trusts

Notwithstanding any other provision of my Will to the contrary, unless terminated earlier under other provisions of my Will, each trust created under my Will will terminate 21 years after the last to die of the descendants of my maternal and paternal grandparents who are living at the time of my death.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If no beneficiary is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares per stirpes.

Section 6.04 Representative of a Beneficiary

The guardian of the person of a beneficiary may act for such beneficiary for all purposes under my Will or may receive information on behalf of such beneficiary.

Section 6.05 Ancillary Administration

In the event ancillary administration is required or desired and my domiciliary Executor is unable or unwilling to act as an ancillary fiduciary, my domiciliary Executor will have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may be either a natural person or a

corporation. My domiciliary Executor may delegate to such ancillary fiduciary such powers granted to my original Executor as my Executor may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate are to be paid over to the domiciliary Executor.

Section 6.06 Delegation of Authority; Power of Attorney

Any Fiduciary may, by an instrument in writing, delegate to any other Fiduciary the right to exercise any power, including a discretionary power, granted the Fiduciary in my Will. During the time a delegation under this Section is in effect, the Fiduciary to whom the delegation was made may exercise the power to the same extent as if the delegating Fiduciary had personally joined in the exercise of the power. The delegating Fiduciary may revoke the delegation at any time by giving written notice to the Fiduciary to whom the power was delegated.

The Fiduciary may execute and deliver a revocable or irrevocable power of attorney appointing any individual or corporation to transact any and all business on behalf of the trust. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that the Fiduciary could have exercised.

Section 6.07 Merger of Corporate Fiduciary

If any corporate fiduciary acting as my Fiduciary under my Will is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the position of my Fiduciary as if originally named my Fiduciary. No document of acceptance of the position of my Fiduciary shall be required.

Article Seven Powers of My Fiduciaries

Section 7.01 Fiduciaries' Powers Act

My Fiduciaries may, without prior authority from any court, exercise all powers conferred by my Will or by common law or by Nevada Revised Statutes or other statute of the State of Nevada or any other jurisdiction whose law applies to my Will. My Executor has absolute discretion in exercising these powers. Except as

specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 7.02 Powers Granted by State Law

In addition to all of the above powers, my Executor may, without prior authority from any court, exercise all powers conferred by my Will; by common law; by the laws of the State of Nevada, including, without limitation by reason of this enumeration, each and every power enumerated in NRS 163.265 to 163.410, inclusive; or any other jurisdiction whose law applies to my Will. My Executor has absolute discretion in exercising these powers. Except as specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 7.03 Alternative Distribution Methods

My Fiduciary may make any payment provided for under my Will as follows:

Directly to the beneficiary;

In any form allowed by applicable state law for gifts or transfers to minors or persons under a disability;

To the beneficiary's guardian, conservator, agent under a durable power of attorney or caregiver for the benefit of the beneficiary; or

By direct payment of the beneficiary's expenses, made in a manner consistent with the proper exercise of the fiduciary's duties hereunder. A receipt by the recipient for any such distribution fully discharges my Fiduciary.

Article Eight Provisions for Payment of Debts, Expenses and Taxes

Section 8.01 Payment of Debts and Expenses

I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death.

Section 8.02 No Apportionment

Except as otherwise provided in this Article or elsewhere in my will, my Executor shall provide for payment of all estate, inheritance and succession taxes payable by reason of my death ("death taxes") from my residuary estate as an administrative expense without apportionment and will not seek contribution toward or recovery of any death tax payments from any individual.

For the purposes of this Article, however, the term "death taxes" does not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable taxes imposed by any other taxing authority. Nor does the term include any generation-skipping transfer tax, other than a direct skip.

Section 8.03 Protection of Exempt Property

Death taxes are not to be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes. In addition, to the extent practicable, my Trustee should not pay any death taxes from assets that are exempt for generation-skipping transfer tax purposes.

Section 8.04 Protection of the Charitable Deduction

Death taxes are not to be allocated to or paid from any assets passing to any organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless my Executor has first used all other assets available to my Executor to pay the taxes.

Section 8.05 Property Passing Outside of My Will

Death taxes imposed with respect to property included in my gross estate for purposes of computing the tax and passing other than by my Will are to be apportioned among the persons and entities benefited in the proportion that the taxable value of the property or interest bears to the total taxable value of the property and interests received by all persons benefited. The values to be used for the apportionment are the values as finally determined under federal, state, or local law as the case may be.

Section 8.06 No Apportionment Between Current and Future Interests

No interest in income and no estate for years or for life or other temporary interest in any property or trust is to be subject to apportionment as between the

temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder are chargeable against the corpus of the property or trust subject to the temporary interest and remainder.

Section 8.07 Tax Elections

In exercising any permitted elections regarding taxes, my fiduciaries may make any decisions that they deem to be appropriate in any circumstances, and my fiduciaries are not required to make any compensatory adjustment as a consequence of any election. My Executor may also pay taxes or interest and deal with any tax refunds, interest, or credits as my Executor deems to be necessary or advisable in the interest of my estate.

My Executor, in his or her sole and absolute discretion, may make any adjustments to the basis of my assets authorized by law, including but not limited to increasing the basis of any property included in my gross estate, whether or not passing under my Will, by allocating any amount by which the basis of my assets may be increased. My Executor is not required to allocate basis increase exclusively, primarily or at all to assets passing under my Will as opposed to other property included in my gross estate. My Executor may elect, in his or her sole and absolute discretion, to allocate basis increase to one or more assets that my Executor receives or in which my Executor has a personal interest, to the partial or total exclusion of other assets with respect to which such allocation could be made. My Executor may not be held liable to any person for the exercise of his or her discretion under this Section.

Article Nine Definitions and General Provisions

Section 9.01 Cremation Instructions

I wish that my remains be cremated and buried in accordance with my pre-paid funeral arrangements with Palm Mortuary in Las Vegas, Nevada.

Section 9.02 Definitions

For purposes of my Will and for the purposes of any trust established under my Will, the following definitions apply:

(a) Adopted and Afterborn Persons

A legally adopted person in any generation and his or her descendants, including adopted descendants, will have the same rights and will be treated in the same manner under my Will as natural children of the adopting parent, provided the person is legally adopted before attaining the age of 18 years. A person will be deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

A fetus in utero that is later born alive will be considered a person in being during the period of gestation.

(b) Descendants

The term "descendants" means any one or more person who follows in direct descent (as opposed to collateral descent) from a person, such as a person's children, grandchildren, or other descended individuals of any generation.

(c) Fiduciary

"Fiduciary" or "Fiduciaries" refer to my Executor. My "Executor" includes any executor, ancillary executor, administrator, or ancillary administrator, whether local or foreign, and whether of all or part of my estate, multiple Executors, and their successors.

Except as otherwise provided in this Last Will and Testament, a fiduciary has no liability to any party for action (or inaction) taken in good faith.

(d) Good Faith

For the purposes of this Last Will and Testament, a fiduciary has acted in good faith if (i) its action or inaction is not a result of intentional wrongdoing, (ii) the fiduciary did not make the decision with reckless indifference to the interests of the beneficiaries, and (iii) its action or inaction does not result in an improper personal pecuniary benefit to the fiduciary.

(e) Incapacity

Except as otherwise provided in my Will, a person is deemed to be incapacitated in any of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual is deemed to be incapacitated whenever, in the opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual is deemed to be restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual is deemed to be incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

(3) Detention, Disappearance or Absence

An individual is deemed to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence or detention under duress may be established by an affidavit of any fiduciary. The affidavit must describe the circumstances of an individual's detention under duress, disappearance, or absence and may be relied upon by any third party dealing in good faith with my fiduciary in reliance upon the affidavit.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of my Executor.

)

(f) Internal Revenue Code

References to the "Internal Revenue Code" or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the "Treasury Regulations," are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference will be deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in my Will. The same rule applies to references to the Treasury Regulations.

(g) Legal Representative

As used in my Will, the term "legal representative" means a person's guardian, conservator, personal representative, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

(h) Per Stirpes

Whenever a distribution is to be made to a person's descendants per stirpes, the distribution will be divided into as many equal shares as there are then-living children of that person and deceased children of that person who left then-living descendants. Each then-living child will receive one share and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.

(i) Primary Beneficiary

The Primary Beneficiary of a trust created under this agreement is the oldest Income Beneficiary of that trust unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

(j) Shall and May

Unless otherwise specifically provided in my Will or by the context in which used, I use the word "shall" in my Will to command, direct or require, and the word "may" to allow or permit, but not

require. In the context of my Trustee, when I use the word "may" I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in my Will.

(k) Trust

The term "trust," refers to any trusts created under the terms of my Will.

(l) Trustee

The term "my Trustee" refers to any person or entity that is from time to time acting as the Trustee and includes each Trustee individually, multiple Trustees, and their successors.

(m) Other Definitions

Except as otherwise provided in my Will, terms shall be as defined in Nevada Revised Statutes as amended after the date of my Will and after my death.

Section 9.03 Contest Provision

If any beneficiary of my Will or any trust created under the terms of my Will, alone or in conjunction with any other person engages in any of the following actions, the right of the beneficiary to take any interest given to the beneficiary under my Will or any trust created under the terms of my Will will be determined as it would have been determined as if the beneficiary predeceased me without leaving any surviving descendants.

Contests by a claim of undue influence, fraud, menace, duress, or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) my Will, (b) any trust created under the terms of my Will, or (c) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan, or insurance policy signed by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document;

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify, or set aside a Document or any of its provisions;

Files suit on a creditor's claim filed in a probate of my estate, against my estate, or any other Document, after rejection or lack of action by the respective fiduciary;

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document;

Files a petition to impose a constructive trust or resulting trust on any assets of my estate; or

Participates in any of the above actions in a manner adverse to my estate, such as conspiring with or assisting any person who takes any of the above actions.

My Executor may defend, at the expense of my estate, any violation of this Section. A "contest" includes any action described above in an arbitration proceeding, but does not include any action described above solely in a mediation not preceded by a filing of a contest with a court.

Section 9.04 Survivorship Presumption

If any beneficiary is living at my death, but dies within 90 days thereafter, then the beneficiary will be deemed to have predeceased me for all purposes of my Will.

Section 9.05 General Provisions

The following general provisions and rules of construction apply to my Will:

(a) Singular and Plural; Gender

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word "or" when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

(b) Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and subsections used within my Will are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of my Will.

(c) Governing State Law

My Will shall be governed, construed and administered according to the laws of Nevada as from time to time amended. Questions of administration of any trust established under my Will are to be determined by the laws of the situs of administration of that trust.

(d) Notices

Unless otherwise stated, whenever my Will calls for notice, the notice will be in writing and will be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice will be effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice will be given to the parent or legal representative of the minor or incapacitated individual.

(e) Severability

The invalidity or unenforceability of any provision of my Will does not affect the validity or enforceability of any other provision of my Will. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of my Will are to be interpreted and construed as if any invalid provision had never been included in my Will.

REST OF PAGE INTENTIONALLY LEFT BLANK



I, THEODORE E. SCHEIDE, sign my name to this instrument consisting of sixteen (16) pages on October 2, 2012, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

THE COOKE I. SOUBIDE, Testator

Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned, KRISTIN M. TYLER and DIANE L. DeWALT declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator, THEODORE E. SCHEIDE; that the testator subscribed the will and declared it to be his last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

Dated this 2 day of October, 2012.

Declarant 1 - Kristin M. Tyler

Declarant 2 - Diane L. DeWalt

Residing at:

Residing at:

3960 Howard Hughes Parkway

9th Floor

Las Vegas, Nevada 89169

3960 Howard Hughes Parkway

9th Floor

Las Vegas, Nevada 89169

Last Will and Testament of THEODORE E. SCHEIDE Page 16

13.7.2

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EXHIBIT 5



AFF
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Russel J. Geist (9030)
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Las Vegas, Nevada 89145
(702) 385-2500
(702) 385-2086
rgeist@hutchlegal.com

Attorneys for St. Jude Children's Research Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of
THEODORE E. SCHEIDE JR. aka

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

Deceased.

Case No.: P-14-082619-E

Dept No.: PCI

AFFIDAVIT OF PROOF OF LOST WILL

I, KRISTIN M. TYLER, being first duly sworn, do hereby declare to the undersigned authority that I was a Witness to the Last Will and Testament dated October 2, 2012 ("Last Will") of THEODORE E. SCHEIDE, JR., also sometimes known as THEODORE E. SCHEIDE ("Decedent"), and did sign as a witness on that Last Will. I can further attest that the Decedent signed and executed the instrument as his Last Will on October 2, 2012, and that he signed it willingly, and that he executed it as his free and voluntary act for the purposes therein expressed and to the best of my knowledge the Decedent was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

I further attest that the Decedent signed and executed the Last Will dated October 2, 2012 in the presence of myself and Diane DeWalt, and we both subscribed the Attestation to the Last Will in the presence of the Decedent.

I further attest that the Decedent contacted me as his estate planning counsel to

discuss changes in his wishes expressed in his previous Last Will and Testament dated June 8, 2012, which I had drafted as the attorney for the Decedent and was the Decedent's regular course of action when he wanted to change the wishes expressed in his prior estate planning documents. Specifically, the Decedent wanted to remove the nomination of KAREN HOAGLAND as the Executor under Article Five of the Last Will and Testament dated June 8, 2012, and instead appoint PATRICIA BOWLIN as the Executor.

I further attest that in discussing the preparation of Last Will dated October 2, 2012, the Decedent did not express any desire to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that I remained in contact with the Decedent after he executed his Last Will dated October 2, 2012, as his health and mental condition declined afterward, and

I further attest that I continued to represent and advise the Decedent as his estate planning counsel until NEVADA GUARDIAN SERVICES, LLC was appointed his temporary guardian on February 18, 2014 and his general guardian over his person and estate on March 19, 2014.

I can further attest that at no time after executing his Last Will dated October 2, 2012, did the Decedent express to me any intention to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that, to my knowledge, the Decedent did not intentionally destroy or revoke the Last Will dated October 2, 2012, and that to the best of my knowledge this was the Decedent's Last Will and Testament. I can further attest that, to the best of my knowledge, the Last Will dated October 2, 2012, was in existence at the death of the Decedent.

I further attest that, after the death of the Decedent, I was contacted by NEVADA GUARDIAN SERVICES, LLC or its counsel and asked if I had the original of

Last Will dated October 2, 2012. I informed NEVADA GUARDIAN SERVICES, LLC or its counsel that the Decedent chose to retain the original executed Last Will dated October 2, 2012, but that I had the original of the Decedent's Last Will and Testament dated June 8, 2012, which differed only in the nomination of the Executor. I was not asked for the original of the Decedent's Last Will and Testament dated June 8, 2012, nor was I contacted by NEVADA GUARDIAN SERVICES, LLC or its counsel regarding the Decedent's estate to provide an affidavit of lost will pursuant to NRS 136.240(4) regarding the Last Will dated October 2, 2012.

DATED this September 7, 2016.

KRISTIN M. TYLER

STATE OF NEVADA
)
COUNTY OF CLARK

Subscribed and Sworn to before me this 7th day of September, 2016.

Notary Public



HUTCHISON & STEFFEN

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PECCOLE PROFESSIONAL COBO WEST ALTA DRIVE, SU LAS VECAS, NV 8914

1	AFF
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6	Marchael annichment of frame of march and an income and adjustment of the marchael and an annichment of the second
7	Attorneys for St. Jude Children's Research Hospital
8	

DISTRICT COURT CLARK COUNTY, NEVADA

In the Matter of the Estate of

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

Deceased.

Case No.: P-14-082619-E

Dept No.: PCI

AFFIDAVIT OF PROOF OF LOST WILL

I, DIANE L. DeWALT, being first duly sworn, do hereby declare to the undersigned authority that I was a Witness to the Last Will and Testament dated October 2, 2012 ("Last Will") of THEODORE E. SCHEIDE, JR., also sometimes known as THEODORE E. SCHEIDE ("Decedent"), and did sign as a witness on that Last Will. I can further attest that the Decedent signed and executed the instrument as his Last Will on October 2, 2012, and that he signed it willingly, and that he executed it as his free and voluntary act for the purposes therein expressed and to the best of my knowledge the Decedent was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

I further attest that the Decedent signed and executed the Last Will dated October 2, 2012 in the presence of myself and THEODORE E. SCHEIDE, and we both subscribed the Attestation to the Last Will in the presence of the Decedent.

HUTCHISON & STEFFEN

I further attest that, to my knowledge, the Decedent did not intentionally destroy or revoke the Last Will, dated October 2, 2012, and that to the best of my knowledge this was the Decedent's Last Will and Testament.

DATED this July 26, 2016.

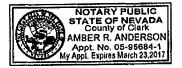
Diane L Destalt
DIANE L. DEWALT

STATE OF NEVADA

ss.

COUNTY OF CLARK

Subscribed and Sworn to before me this 26 day of July, 2016.



Uniford Notary Public

OBJ 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 8 9 In the Matter of the Estate of 10 THEODORE E. SCHEIDE JR. a/k/a 11 THEODORE ERNEST SCHEIDE JR. 12 700 South Eighth Street Las Vegas, Nevada 89101 Tel: 702, 383,9010 • Fax 702, 383,9049 CARY COLT PAYNE, CHTD. Deceased. 13 ST. JUDE'S CHILDRENS 14 RESEARCH HOSPITAL, Objector/Petitioner,) 15 16 THEODORE E. SCHEIDE, III 17 Respondent. 18 19 20 21 22 23 24 25 26 27 28

Electronically Filed 5/30/2017 9:51 AM Steven D. Grierson CLERK OF THE COURT

Attorney for Theodore E. Scheide III

DISTRICT COURT CLARK COUNTY, NEVADA

Dept. No.: 26 Date: 5/31/17 Time: 9:30 AM

P-14-082619-E

Case No.:

SUPPLEMENTAL COURTESY COPY

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621 P.2d 489 96 Nev. 905 HOWARD HUGHES MEDICAL INSTITUTE, Appellant,

v.

June GAVIN, Special Administratrix of the Estate of Annette Gano Lummis, Deceased, Respondent. No. 12416. Supreme Court of Nevada. Dec. 29, 1980.

Fahrenkopf, Mortimer, Sourwine, Mousel & Sloane, Reno, Sherwin J. Markman and Joseph M. Hassett, Hogan & Hartson, Washington, D. C., for appellant.

[96 Nev. 906] Echeverria & Osborne, Chartered, Reno, Morse-Foley, Las Vegas, Andrews, Kurth, Campbell & Jones, Houston, Tex., for respondent.

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OPINION

BATJER, Justice:

Howard R. Hughes, Jr., died on April 5, 1976. To date, no will executed by Hughes has been found. The appellant, Howard Hughes Medical Institute (HHMI), seeks to establish the terms of a lost will leaving most of the Hughes estate to HHMI.

[96 Nev. 907] HHMI filed its petition to probate a lost or destroyed will of Howard Hughes on January 12, 1977. Respondent, the estate of one of Hughes' next-of-kin, contested the probate. Following extensive discovery and will-search activities, respondent moved for summary judgment, which was granted on February 1, 1980.

As grounds for reversal of the trial court's action, appellant claims:

- (a) that alleged declarations of the testator may be considered testimony of one of the two credible witnesses required under NRS 136.240 to prove the contents of a lost will:
- (b) that declarations of a deceased person who had personal knowledge of the contents of a lost will can also be considered as testimony of one credible witness required under NRS 136.240; and
- (c) that summary judgment was improperly granted.

In this state, a will may not be proved as a lost or destroyed will unless it was in existence at the death of the testator and unless its provisions can be clearly and distinctly proved by at least two credible witnesses.¹

The evidence in the record on appeal tends to show that Hughes may have executed a will in 1925, although only an unexecuted, unconformed draft has been found. There are also indications that other wills were drafted in 1930, 1938 and sometime during the 1940's. It is claimed that all alleged wills benefited medical research.

Only John T. Pettit, whose deposition was presented to the trial court, allegedly read a will signed by Hughes, which left all his estate to HHMI. The trial court, in granting respondent's motion for summary judgment, reasoned that the failure to show the existence of the two testifying witnesses required by NRS 136.240(3) entitled the respondent to judgment as a matter of law.

 HHMI argues that declarations made by Hughes, and others with personal knowledge of the alleged will, may be substituted for the second credible witness. We do not agree.

[96 Nev. 908] While NRS 51.105(2) ² makes hearsay evidence admissible relative to



the execution, revocation, identification or terms of the declarant's will, the testator's declarations cannot be used to supply one of the credible witnesses required by NRS 136,240(3). Courts in jurisdictions with statutes similar to NRS 136.240(3) have required that each of the two witnesses be able to testify from his or her personal knowledge, not from the declarations of others. This court, in In re Duffill's Estate, 57 Nev. 224, 61 P.2d 985 (1936), rejected one testimony because his only knowledge of the contents of the will was based upon statements of the deceased. See e. g., In re Estate of Gardner, 69 Wash.2d 229, 417 P.2d 948 (1966); Lov v. Lov, 246 S.W.2d 578 (Ky. 1952); Day v. Williams, 184 Okl. 117, 85 P.2d 306 (1938); see also 3 Page on Wills (3d ed. 1961) §§ 29.157, 29.161.

The strict statutory requirements for executing a valid will would be rendered ineffectual if a deceased's declarations were sufficient to dispose of his estate. NRS 133.040. While a testator's declarations

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may be useful in interpreting ambiguous terms of an established will or in corroborating other competent evidence, they cannot be substituted for one of the witnesses required by NRS 136.240(3).

2. HHMI contends that declarations of a deceased person who had knowledge of the contents of a lost will should be considered testimony of one of the two credible witnesses required by NRS 136.240 to prove the contents of a lost will. HHMI asserts that statements by Hughes' attorneys Cook and Andrews should be admissible under NRS 51.315 ³ because they were made under circumstances free from any motivation to lie and they are necessary to prove the contents of the will. See e. g. Johnstone v. State, 92 Nev. 241, 548 P.2d 1362 (1976).

We cannot agree. NRS 136.240 ⁴ requires living witnesses or signed, sworn testimony reduced to writing.

[96 Nev. 909] Strict compliance with the requirements of NRS 136.240 precludes proof of the contents of a lost will by hearsay declarations of deceased people, unless the declarant's testimony is written and signed by the declarant. While declarations not in this form may be admissible for other purposes, if trustworthy and necessary, they are not sufficient to prove a lost will under the statute.

3. Summary judgment is proper when the moving party is entitled to judgment as a matter of law. Harvey's Wagon Wheel v. MacSween, 96 Nev. 215, 606 P.2d 1095 (1980). In reviewing a summary judgment, this court must accept as true the allegations and reasonable inferences favorable to the position of the non-moving party. Round Hill Gen. Improvement v. B-Neva, 96 Nev. 181, 606 P.2d 176 (1980).

HHMI claims that Dan Newburn ⁵ may change his mind and testify as a second necessary witness at the trial and therefore a factual issue exists precluding summary judgment. Neither mere conjecture nor hope of proving the allegations of a pleading is sufficient to create a factual issue. See NRCP 56(e); Garvey v. Clark County, 91 Nev. 127, 532 P.2d 269 (1975).

HHMI has failed to provide evidence sufficient to support its petition to probate the lost will, and summary judgment was properly granted.

Because of the requirement of strict compliance with NRS 136.240, the existence of a draft of a will allegedly executed by Hughes in 1925, without more, does not create a factual issue which would preclude summary judgment.

Affirmed.



FONDI, ⁶ District Justice, [96 Nev. 910] THOMPSON.

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J., ZENOFF, ⁷ Senior Justice, and GREGORY, ⁸ Senior District Justice, concur.

1 NRS 136.240(3) provides:

No will shall be allowed to be proved as a lost or destroyed will unless the same shall be proved to have been in existence at the death of the person whose will it is claimed to be, or be shown to have been fraudulently destroyed in the lifetime of such person, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses.

2 NRS 51.105(2) provides:

A statement of memory or belief to prove the fact remembered or believed is inadmissible under the hearsay rule unless it relates to the execution, revocation, identification or terms of declarant's will.

3 NRS 51.315 provides:

- A statement is not excluded by the hearsay rule if:
- (a) Its nature and the special circumstances under which it was made offer strong assurances of accuracy; and
- (b) The declarant is unavailable as a witness.
- The provisions of NRS 51.325 to 51.355, inclusive, are illustrative and not restrictive of the exception provided by this section.

4 NRS 136.240 provides:

 The petition for the probate of a lost or destroyed will must state, or be accompanied by a written statement of, the testamentary words, or the substance thereof. If the will is established the provisions thereof must be set forth in the order admitting the will to probate, and the order must be so entered at length in the minutes or a written order signed, filed and recorded.

- The testimony of each witness must be reduced to writing; signed by him and filed, and shall be admissible in evidence in any contest of the will, if a witness has died or has permanently removed from the state.
- 3. No will shall be allowed to be proved as a lost or destroyed will unless the same shall be proved to have been in existence at the death of the person whose will it is claimed to be, or be shown to have been fraudulently destroyed in the lifetime of such person, nor unless is provisions shall be clearly and distinctly proved by at least two credible witnesses.
- 5 In April, 1978, Newburn purportedly told representatives of the Hughes estate that he had read an executed copy of Hughes' will. He refused to be deposed, claiming the news media privilege. See Newburn v. Howard Hughes Med. Institute, 95 Nev. 368, 594 P.2d 1146 (1979).
- 6 Chief Justice John Mowbray voluntarily disqualified himself and took no part in this decision. The Governor, pursuant to art. 6, § 4, of the Constitution, designated Judge Michael E. Fondi of the First Judicial District to sit in his stead.
- 7 The Chief Justice designated the Honorable David Zenoff, Senior Justice, to sit in the place of the Honorable E. M. Gunderson, who voluntarily disqualified himself in this case. Nev.Const. art. 6, § 19; SCR 10.
- 8 Mr. Justice Noel Manoukian voluntarily disqualified himself and took no part in this decision. The Governor, pursuant to art. 6, § 4, of the Constitution, designated the Honorable Frank B. Gregory, Senior District Judge, to sit in his stead.



Electronically Filed 6/1/2017 2:44 PM Steven D. Grierson

SUPP

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 CLERK OF THE COURT

DISTRICT COURT **CLARK COUNTY, NEVADA**

Case No.: P-14-082619-E In the Matter of the Estate of Dept. No.: THEODORE E. SCHEIDE JR. a/k/a THEODORE ERNEST SCHEIDE JR. Date: 5/31/17 Time: 9:30 AM Deceased. ST. JUDE'S CHILDRENS RESEARCH HOSPITAL, Objector/Petitioner,) THEODORE E. SCHEIDE,III Respondent.

RESPONDENT'S SUPPLEMENT REGARDING KRISTIN TYLER'S TESTIMONY, ETC.

COMES NOW, Respondent, Theodore E. Scheide III, son of the decedent, by and through his attorney, CARY COLT PAYNE, ESQ., of the lawfirm of CARY COLT PAYNE, CHTD., and hereby submits the within Supplement.



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POINTS AND AUTHORITIES

At the hearing held on May 31, 2017, the court advised that there was to be a review of the testimony of Kristin Tyler, Esq. This testimony cannot be reviewed in a vacuum. There are issues to be explored at trial which were not part of either motion heard on May 31, 2017. Opposing counsel is free to provide the court with their own interpretation.

During the hearing, counsel FOR St. Jude's asserted that documents (or copies thereof) were not received from Kristin Tyler. Such is not the case. Exhibit "A" is a copy of an email provided by Kristin Tyler, Esq. forwarding copies of the documents in question to counsel for Ms. Hoy at the time the guardianship commenced.

The purpose of this supplement is to provide the court with issues surrounding Kristin Tyler's testimony, and how it conflicts with other testimony. The deposition of Susan Hoy, already provided to the court indicate discrepancies. Both depositions, in full provided as exhibits to the Motion for Judgment on the Pleadings. Also see matrix as Exhibit "B", pointing out some of the inconsistencies. Susan Hoy testified that the decedent fired Ms. Tyler.

There are differentiating versions of where the decedent kept some of his papers a box versus a bag. Ms. Tyler stated she had little contact with the decedent, guardian or her attorney during guardianship; yet later she stated she had updates. Further she knew about the box where the guardian had located the decedent's documents, rather than the bag in her notes. She later contradicts herself (page 74-75) in that the box is now a bag.



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Ms. Tyler testified regarding the telephone call with Theodore Scheide III (son) in August 2014. Depo- 79:20 - 80:4) This is somewhat different than what she had in her notes (Exhibit "C"). More disturbing, she was aware of the respondent, and failed to provide that information to the guardian or her counsel for due process notice in the guardianship.

After a telephone conversation early on in this matter the undersigned had a conversation with Ms. Tyler, and forwarded correspondence confirming what she advised. (Exhibit "D")

Ms. Tyler (depo at 108:17 & 129:7), states that the decedent was unable to talk on the phone; yet, Susan Hoy testified that the decedent called her offices repeatedly, called for take-out food, etc., and even to fire Ms. Tyler.

On such an important matter, accuracy is imperative. A simple reading of the words, without the opportunity to cross-examine on the stand, are two different occurrences. There are many questions to ask as a result of the deposition for live testimony, which were not yet part of the court's record, intended for trial.

For example, correspondence provided by Kim Boyer, Esq. (Exhibit "E"-any emphasis added) to the undersigned wherein she indicated that Ms. Tyler "would not be surprised if the decedent had destroyed it", when speaking of the October 2012 Last Will.

As to Ms. Tyler's actual affidavit in this matter (Exhibit "F" -any emphasis added), "to the best of my knowledge" is insufficient for evidentiary value of legal existence. It appears this affidavit was "negotiated", via emails with Mr. Geist. (Exhibit "G" -any emphasis added) Ms. Tyler refused to agree to sign language that Mr. Scheide disinherited his son.



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The January 29, 2014 letter from Ms. Tyler to the decedent (previously provided) apparently reiterates what she has already told him earlier in December 2013 and January 2014, and appears insistent that he execute new documents. The decedent obviously did not decide to take her up on that offer. Further, in 2013, when Velma Shay died, the decedent chose to represent himself (Exhibit "H" -any emphasis added). Again, in January 2014, Ms. Tyler sought to remind him about income taxes on her estate (Exhibit "I" -any emphasis added). When asked about the decedent following her advice. Ms. Tyler testified that "he didn't follow it". (depo 158:19-20)

Ms. Tyler admittedly did not have constant contact. Just because the decedent did not express desires to change documents to her, does not necessarily mean he did not have his own intentions. Further, Ms. Tyler's billing statements are conspicuously missing for any contact for October 2012 period, including the execution ceremony.

This matter can hinge on the credibility of witnesses. Ms. Tyler apparently has a vested interest as she now personally represents St. Jude's in other matters (depo pages 121-122). Ms. Tyler's testimony of what the decedent told her is not only hearsay but inadmissible. The fact that she now represents St. Jude's should give a strong pause. There is some level of obvious conflict of interest on Ms. Tyler's part, giving rise to the appearance of impropriety, and therefore potential credibility factors, which should be avoided at all costs.

CONCLUSION

In summary, Nevada law is clear, and presumes the decedent revoked the October 2012 Will. St. Jude's burden of proof was to show that he did not. No one has been able to submit any evidence that they actually saw the original document after the date of execution in October 2012, or to prove that the document was destroyed without the testator's knowledge or consent. St. Jude's proffers alternate theories (capacity,

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guardianship, content of document), deflecting away from their burden of proof, which they have now tried to shift the burden of proof, which is solely belongs to them.

The May 31, 2017 hearing contained much hearsay, innuendo, speculation of what Mr. Scheide may or may not have said to anyone. Ms. Tyler's uncorroborated statements, whom the decedent fired and was not listening to, are still speculation and/or hearsay. Evidence should be of a very cogent character, and should be allowed only in cases fairly free from doubt or suspicion. Then we have the above issue of St. Jude's being her client, and all that could infer.

In between all alleged dates that the decedent supposedly made statements to Ms. Tyler and Kathy Longo (which counsel for St. Jude's states they are not relying upon), there are still quite a number of days, weeks, etc. in between. There was no one hovering over the decedent 24/7 to rebut the presumption that he did not revoke (destroy, etc.) the October 2012 document. There are still pleadings on file in this matter, and Ms. Hoy's deposition wherein she stated that she found ripped up/shredded docs in the decedent's papers. There is still the glaring issue that St. Jude's received notice in the beginning of the probate matter that it could proceed intestate, and they waived their right by being silent.

Therefore, just because someone allegedly heard a statement from the decedent in September 2013, December 2013, January 2014, etc., it is also possible that the decedent, who did not have a universally pleasant temperament, told them what they wanted to hear. He could have destroyed that document at any time, especially after Velma Shay died. Apparently there was some issue as to her estate, wherein members of her family believed they were the beneficiaries of her estate. (see Exhibit "A")

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Given Ms. Hoy's testimony, the original was not there to find at the commencement of the guardianship; hence, odds are, as the law provides, that it was destroyed by the decedent prior to that time.

Opposing counsel repeatedly invoked <u>Irvine v. Doyle</u>. It must be remembered that in Ivrine, there was an intervening act. HHMI v Gavins stands for the proposition that the decedent's own words are not admissible.

St. Jude's, through counsel, conceded numerous facts that they do not know whether or not the original October 2012 Will was lost or accidentally destroyed. They make no argument to this portion of their initial petition. No evidence has been proffered or produced which would give rise to some intervening act (fire, etc.), which would allow for the lost or accidentally destroyed theorem, which would provide the underlayment to rebut the presumption of revocation.

Opposing counsel's argument of "more likely than not" cuts both ways. It should be noted that it appears St. Jude's is borrowing the spirit of the law from NRS 136.(5)(b), which is not applicable in this matter as there is an objection.

The presence of two individuals who can state that the document was executed is one thing; the ability to cover all the various periods of time (24/7), wherein the decedent had the opportunity to destroy the original document, in between statements to others, over a period of 18 months or so, also can come to the conclusion that more likely than not the decedent did, in fact, destroy the original October 2012 Will. The decedent had plenty of time to do so - no one was hovering over him. No one can testify they actually saw the original document after October 2012; hence the legal presumption of revocation has not been overcome. The two theories are mutually exclusive. Statutes must be strictly construed, see Estate of Prestie, 122 Nev. 70, 138 P.3d 520 (2006)



There is numerous references to reasonable doubt, and as such, the presumption

of revocation must be upheld as a matter of law.

Dated: June _____, 2017

CARY COLT PAYNE, ESQ. Nevada Bar No. 4357 CARY COLT PAYNE, CHTD. 700 South Eighth Street Las Vegas, Nevada 89101

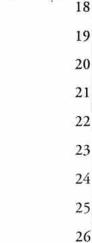
(702) 383-9010

Attorney for Theodore E. Scheide III



CARY COLT PAYNE, CHTD.

Las Vegas, Nevada 89101 Tel: 702, 383,9010 • Fax 702, 383,9049 700 South Eighth Street





The undersigned hereby certifies that on June _______, 2017, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

BY MAIL: N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;



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BY E-MAIL AND/OR ELECTRONIC MEANS: Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

KIM BOYER, ESQ.

10785 W. Twain Avenue, Suite 200

Las Vegas, NV 89135

Email: kimboyer@elderlawnv.com

Russel J. Geist, Esq.

Email: rgeist@hutchlegal.com **HUTCHINSON & STEFFEN**

Peccole Professional Park

10080 W. Alta Drive, Suite 200

Las Vegas, NV 89145

An employee of CARY COLT PAYNE, CHTD.



27



CARY COLT PAYNE, CHTD.

Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

EXHIBIT PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "A"

From: To: Cc: Kristin M. Tyler

<u>"Bover, Kim"</u> Jennifer A. Birtwell

Subject: Date: RE: Guardianship of Theodor Scheide
Wednesday, February 26, 2014 12:54:35 PM

Attachments: image001.png 1680341.pdf

image001.png 1680341.pdf 1680340.pdf 1680339.pdf 1966519.pdf

Letter of Relinguishment from Patricia Bowlin.pdf

Hi Kim -

Attached you will find:

1 - Theo's will dated 10-2-12.

2 - HCPOA dated 10-2-12. It names Patricia Bowlin as agent, with alternate as Nevada State Bank. (I counseled him to name someone besides the bank, but he was insistent as you will soon learn.)

2/26/14

- 3 DPOA dated 10-2-12. It names Patricia Bowlin as agent, with alternate as Nevada State Bank.
- 4 Termination of Agent's Authority signed by Theo on 6-13-13 "firing" Patricia as financial agent.
- 5 Letter from Patricia Bowlin relinquishing her power of attorney for medical decisions over Theo dated 2/24/14.

This leaves Nevada State Bank nominated to act on his behalf. To the best of my knowledge, Theo doesn't have a relationship with the bank. My best guess is Nevada State Bank will decline to act in any capacity for Theo.

Patricia Bowlin is Theo's longtime friend and cleaning lady. They had a falling out last summer, not exactly sure why. The phone number I have for Patty is 702-910-3060. Her last known address is:

Patricia Bowlin 7800 Clarksdale Dr., #102 Las Vegas, Nevada 89128

I encouraged him to name new agents in a letter dated 1-29-14 as I was very concerned about his health and well-being. I met with him several times December -January trying to help him find someone to hire to help him. His needs have increased so much that he basically burned out all of his friends trying to help him. I introduced him to Judy Coulter of Susan Hoy's office (and one other professional guardian) in hopes that he would choose to hire someone to help.

Duke and Dana were never named in any of Theo's documents and he would not want them making decisions for him in any circumstances. Duke and Dana are Velma Shay's relatives – not Theo's relatives. Theo has no family, other than an estranged son who he told me he hasn't spoken to in over 20 to 25 years. The son's name is Theodore E. Scheide, III. Kathy Longo is his step-daughter.

Regarding Chris Phillips, I hadn't heard from him about Velma Shay's estate in months. They were named beneficiaries in a trust which was unfunded at the time of her death. Velma set up joint accounts which automatically passed to Theo. I can continue to handle negotiations with Chris.

I have some fees for the work I did on Theo's behalf in December and January. Should I submit an invoice to your office or to Susan Hoy?

From: Boyer, Kim [mailto:kim@elderlawnv.com] Sent: Wednesday, February 26, 2014 10:42 AM

To: Kristin M. Tyler

Subject: Guardianship of Theodor Scheide

Kristin,

The guardianship court extended the temporary guardianship. Chris Phillips made an appearance on behalf of his clients Duke Coleman and his wife. He said that they are beneficiaries under the trust and he has been in negotiations with you. He did not see who was named in the powers of attorney and he reserved the right that if his client is named in the documents, that they may file a petition for guardianship.

We do need to give notice to the persons named as agents under any powers of attorney. If you want to keep the documents private, can you please write a letter stating who is named and their addresses. Thank you.

Sincerely,

Kim Boyer

Certified Elder Law Attorney

BOYER LAW GROUP

10785 W. Twain Ave., Suite 200 Las Vegas, NV 89135 (702) 255-2000 Telephone (702) 255-2012 Fax

Email: kim@elderlawnv.com

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Kim Boyer Certified Elder Law Attorney Borreficios

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EXHIBIT "B"

CONFLICTING TESTIMONY--DEPOSITIONS:

KRISTIN TYLER SAID

SUSAN HOY SAID

Phone call ability:

Depo- Kristin Tyler page 129 lines 1-11):

- 1· · · Q.· And at some point, he then went into a
- ·2· ·guardianship?
- ·3· · · A.· Correct.
- ·4· · · Q.· But you didn't have any concerns after the
- ·5· ·guardianship because you talked to him?
- ·6· · · · A.· He from my understanding, he was, for whatever
- ·7· reason, not able to talk on the phone.
- ·8· · · Q.· He what?
- ·9· · · A.· He physically -- because of his physical
- 10 · · impairments, he was not able to communicate by phone
- 11 · · anymore.

Depo- Susan Hoy (page 48 lines 1- 5):

- ·1· · · Q.· How much reporting back did you do to Mr. -- with
- ·2· ·Mr. Scheide?
- ·3· · · A.· Well, he would call frequently. · He wanted his
- ·4· ·brokerage statements, and he wanted to know how much
- ·5· ·money he had.

Depo- Susan Hoy (page 49 lines 15-18):

- 15· · · Q. · Would he go get the fast food?
- 16· · · A. · Sometimes he would go out with the personal care
- 17· ·attendant, and sometimes he would call and have it
- 18 · delivered to the group home.

Last Will:

Depo-Kristin Tyler(pg74line25-pg75 lines 1-7)

25· · · Q.· Do you know where the original is? **Page 75**

- ·1· · · A.· He kept it, and he told me it was in a box where
- ·2· ·he kept his other -- or a bag that he kept his other
- ·3· ·papers in.· He carried it with him to the group home.
- ·4· ·When he would go to the hospital, he took it there. I
- ·5· ·joked with him that he needed to upgrade his briefcase
- ·6· ·because it was like a plastic bag, a white plastic bag,
- ·7· ·and he kept everything important there.

Depo-Susan Hoy (pg 34 line 2-pg 36 line 7-12):

·2· · · Q.· What kind of things did he keep close?

- ·3· · · A.· He had a box with, you know, personal papers.
- ·4· ·items.· There's a photo album, just a small little photo
- ·5· ·album.· I think he might have been a barber at one time.
- ·6· ·There was some scissors and different things that caused
- ·7· ·quite a commotion at the facility.· So -- those types of
- ·8· ·items.· And his clothing, of course.
- ·9· · · Q.· How big was the box that he kept with him?
- 10· · · A. · Like a medium-size box.
- 11··· Q. Was that all of his possessions, everything he 12··had?
- 13· · · A.· No.· He -- he had a couple of bookshelves.· He 14· ·had a recliner, a nightstand, very minimal.

CONFLICTING TESTIMONY--DEPOSITIONS:

KRISTIN TYLER SAID

SUSAN HOY SAID

PHONE CALL ABILITY:

Depo- Kristin Tyler page 129 lines 1-11):

- 1· · · Q.· And at some point, he then went into a
- ·2· ·guardianship?
- ·3· · · A.· Correct.
- ·4· · · Q.· But you didn't have any concerns after the
- ·5· ·guardianship because you talked to him?
- ·6· · · A.· He -- from my understanding, he was, for whatever
- ·7· ·reason, not able to talk on the phone.
- ·8· · · Q. · He what?
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- 11 · anymore.

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- 16· · · A.· Sometimes he would go out with the personal care
- 17· attendant, and sometimes he would call and have it
- 18 · ·delivered to the group home.

LAST WILL:

Depo-Kristin Tyler(pg74line25-pg75 lines 1-7)

25· · · Q.· Do you know where the original is? **Page 75**

- ·1··· A.· He kept it, and he told me it was in a box where
- ·2· ·he kept his other -- or a bag that he kept his other
- ·3· ·papers in.· He carried it with him to the group home.
- ·4· ·When he would go to the hospital, he took it there. I
- ·5· ·joked with him that he needed to upgrade his briefcase
- ·6· ·because it was like a plastic bag, a white plastic bag,
- ·7· ·and he kept everything important there.

Depo-Kristin Tyler(pg 87 line17-pg 88 line 11:

- Q. When was the last time you saw the October will?
- $18 \cdot \cdot \cdot A \cdot \cdot It$ would have been the -- I believe he signed it,
- 19 · · and he was -- I don't remember where it

Depo-Susan Hoy (pg 34 line 2-pg 36 line 7-12):

- ·2· · · Q.· What kind of things did he keep close?
- ·3· · · A.· He had a box with, you know, personal papers,
- ·4··items.· There's a photo album, just a small little photo
- ·5· ·album.· I think he might have been a barber at one time.
- $\cdot 6 \cdot$ There was some scissors and different things that caused
- ·7· ·quite a commotion at the facility.· So -- those types of
- ·8· ·items. · And his clothing, of course.
- •9• •• Q.• How big was the box that he kept with him?
- 10· · · A. · Like a medium-size box.
- 11 \cdots Q. Was that all of his possessions, everything he
- 12· ·had?
- 13· · · A.· No.· He -- he had a couple of bookshelves.· He
- 14 had a recliner, a nightstand, very minimal.
- 15· · · Q.· Would you say he was -- well, let me scratch

was signed, if

- 20· ·it was at our office or somewhere else. · We would
- 21. have -- if it was signed at the office, we would have
- 22 · made a copy, and he would have taken it with him that
- 23· ·day.· If it was signed somewhere else, I would have
- 24 · taken it back to the office with me to scan it, make a
- 25 · ·copy, and return it to him.

Page 88

- ·1· · · Q.· So walk me through it.· Did you give him the
- ·2· ·original?
- ·3· · · A.· At the end of our processing, internally
- ·4· ·scanning, copying, yes.
- ·5· · · Q.· On October 2nd?
- ·6· · · A.· Yes.
- $\cdot 7 \cdot \cdot \cdot \cdot Q$. So as you sit here today, that's the last time
- ·8· ·you ever saw that document --
- ·9· · · A.· Yes.
- 10· · · Q. · -- physically; correct?
- 11· · · A.· Yes.

Depo- Kristin Tyler (page 91, lines 10- 20):

10· · · Q. · Did you ever give Theo any verbal instruction as

11. to where to keep the originals?

- 12· · · A.· Yes, we did talk about that.
- 13····· I told him he needed to keep it in a safe place.
- $14 \cdot \cdot \hat{I}$ knew he had a safety deposit box and a storage unit.
- 15. He told me he planned to keep them in that bag that he
- 16· ·kept with him, because he wanted them close to him. · And
- 17 · he thought that was the best and safest place for them.

18· · · Q.· So for the record those are the October

19 · · documents?

20· · · A.· Yes.

- 16· ·that.
- 17···· Did he ever give things away to anybody?
- 18· · · A.· Not that we were ever made aware of.
- 19· · · Q.· So did you -- you had said that you didn't come
- 20· ·into possession of the estate planning documents other
- 21. than copies until after his death?
- 22··· A.· No.· I think -- no, I think that I said when he
- 23· ·was hospitalized and we picked up all of his belong
- 24 · things, then we did make copies of those things.

25· · · Q. · Okay. · So when he was hospitalized at Centennial

- **Page 35**
- ·1· ·Hills?
- ·2· · · A.· Yes.
- ·3· · · Q. · Do you recall what -- what documents were copied?
- ·4· · · A.· There was a power of attorney, and then there was
- $\cdot 5 \cdot$ also the last will and testament, a copy of the last
- ·6· ·will and testament.
- ·7· · · Q.· Do you remember on the power of attorney, who was
- ·8· ·named as the agent?
- ·9· · · A.· I'm not able to recall.
- 10· · · Q.· On the last will and testament, do you remember
- 11 ⋅ who was named as the administrator or executor?
- 12· · · A.· I'm not able to recall.
- 13· · · Q. · Where did you get those documents or copies? · Did
- 14· ·you say you got those from Kristin Tyler?
- 15· · · A. · No, no.
- 16 · · · Q. · Okay.
- 17. · · A. · Initially, we did get them in his -- in his
- 18 · things, in between -- when he was hospitalized, and we
- 19 · went to where he was staying and picked up all of his
- 20· ·belongings, because we already kind of determined he
- 21. would not be able to return there.
- 22··· Q.· Did you ever find any of his documents torn up?

<u>Depo- Kristin Tyler (page 168, lines 11-page 169, line-19):</u>

- 11· · · Q.· Just so I'm clear, you never saw the October will
- 12· ·ever again or -- up until the time he died, August 17,
- 13 · · 2014?
- 14· · · A.· I may have seen it when I met with him in January
- 15 at the Sunshine Home when he had his bag of documents
- 16 · and he showed me where he kept his documents. · I -- I
- 17· have a visual memory in my mind of seeing that white bag
- 18 · · of documents that day, and I know that's where he kept
- 19 · · the will.
- 20· · · Q.· You have a vague recollection?
- 21· · · A.· I have a visual memory of sitting at the round
- 22· table with him at that home, seeing that bag, and him
- 23. showing me this is where he kept his documents.
- 24· · · Q. · Was this in an envelope?
- 25· · · A.· It I don't remember. · It may have been, but I
- **Page 169**
- ·1· know it was in that white bag that he kept everything
- ·2· ·in.
- ·3· · · Q. · But you didn't physically see it?
- ·4· · · A.· I may have that day, Is what I'm trying to sav.
- ·5· · · Q. · But you said it was in an envelope?
- ·6· · · · · · · · MS. TURNER: No. · That misstates her
- ·7· ·testimonv.
- ·8· ·BY MR. PAYNE:
- ·9· · · Q.· Well, what is your testimony?
- 10· · · A. · If it was in an envelope, he would have taken it
- 11 · out of the envelope to show me where he was keeping his
- 12 documents.
- 13· · · Q.· What would be the purpose of that?

- 23· · · A. · There was paperwork torn in the bottom of the
- 24 · · box.
- 25· · · Q.· When you say "paperwork . . ."
 Page 36
- ·1· · · A.· Like, it was EOBs, different shreds of paper.

Depo- Susan Hoy (pg 41line 2-pg 42 line 13):

1···· Did you discuss the probate with Kristin Tyler?

- ·2· · · A.· Yes, I did.
- ·3· · · Q.· What did you discuss?
- ·4· · · A.· I'm not able to recall exactly what was
- ·5· ·discussed, but I discussed, of course, locating the
- ·6· ·original will and also, you know, discussed who would
- ·7· ·serve as the administrator.
- ·8· · · Q.· And what was her response?
- $\cdot 9 \cdot \cdot \cdot$ A. To the best that I'm able to recall, she had no
- $10 \cdot \cdot$ objections with me filing, and she said that Mr.
- 11 · · Scheide, Jr., had the original will on him.
- 12· · · Q.· Okay.
- 13 · · · A. · Or he was given the original will.
- 14· · · Q. · Did you ever see the original will?
- 15 · · · A.· I did not ever see the original will.
- 16· · · Q.· Did you ever find any documents that Mr. Scheide
- 17· ·had that had "revoked" written on them?
- 18· · · A.· Yes.
- 19. Q. What documents were those?
- 20· · · A.· It was a copy of a will.
- 21· · · Q. · What date was that will?
- 22· · · A.· I'm -- I'm not able to recall the exact date of
- 23. that will, but I think after the words "revoked," there
- 24 · was a date written.
- 25· · · Q.· Was the date handwritten?
 Page 42
- ·1· · · A.· Yes, the date was handwritten.
- ·2· · · Q.· So it was revoked, date, and that was all
- ·3· ·handwritten?
- ·4· · · A.· Yes.
- ·5· · · Q.· And then title of the document, I'm assuming?

- 14· · · A.· I was concerned about him and wanted to make sure
- 15. that he was taking measures to safeguard his documents.
- 16· ·And -- I don't recall specifics, but I -- I may have
- 17 · · said, do you want me to hold that now? · And he said, no,
- 18 · I've got it in my bag here with my other documents; I
- 19 · want to keep them in my bag with my papers, which at
- 20· ·that time he was mentally competent to make that
- 21 · · decision, so I had to respect that.
- 22· · · Q. · Again, this was when?
- 23· · · A.· January of '14.· Most likely around the time
- 24· ·period of that January 2nd or 3rd meeting.

Depo- Kristin Tyler (page 181 lines 2 - 9):

- ·2· · · Q.· Just so I don't -- I don't want to misunderstand
- ·3· ·what you're saying.
- ·4· · · · You saw a bag Theo brought to you?
- ·5· · · A.· Uh-huh.
- ·6· · · Q.· You may have saw a document, may or may not have
- ·7· ·been in an envelope, which you think is the original
- ·8· ·will?
- ·9· · · A.· Yes.

- ·6· · · A.· Yeah, it was on the first page of that document.
- ·7· · · Q.· And when did you find this copy of this document?
- ·8· · · A.· When we obtained his personal items from his last
- ·9· ·facility, from the HIRC home that he had been living in.
- 10 · · After he had passed away, we went and picked up all of
- 11. the items that he had there.
- 12· · · Q.· Do you still have this copy of the will?
- 13· · · A.· I have given that to Ms. Boyer.

Decedent Firing:

Depo- Kristin Tyler (page 174 lines 9-14):

- $\cdot 9 \cdot \cdot \cdot Q. \cdot$ 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.

Depo- Susan Hoy (pg 47 lines 11-18:

- 11· · · Q.· Did he ever say he wanted to fire someone?
- $12\cdot \cdot \cdot A. \cdot$ 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.



Attorney at Law 700 S. Eighth Street • Las Vegas, Nevada 89101 (702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "C"

8/20/14	Theo Scheide - Son
	1 The die 8-17-14
	412-243-3145
	7/2-2-7/- 2/
	101 S. Cexhelon Are
	101 S. Cexhylon Are Pitsburgh PA 15208
•	Asked about Theo's former Lovice who
	dildabort 10 yo ago.
	doldabort 10 go ago. asked if her children were provided for - no.
	provided to - no.
	asked who is executive.
8/20/14	Diane-Nevada Grandian Services Voicemail
	Verlemail



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EXHIBIT "D"

Attorneys at Law

CARY COLT PAYNE, ESQ. Admitted in Nevada & California

June 24, 2016 Sent via email: ktyler@gtg.legal

Kristin M. Tyler, Esq. Garman Turner Gordon LLP 650 White Drive, Suite 100, Las Vegas, NV 89119

RE:

Estate of Theodore E. Scheide Jr.

Case No.: P-14-082619-E

Dear Ms. Tyler:

Thank you for taking the time to speak with the on June 3, 2016, wherein we discussed Theodore Scheide, Jr., regarding events during his lifetime, the creation of the two Last Wills in June and October 2012, the subsequent guardianship, etc.

You related information regarding Mr. Scheide on a number of subjects.

- 1. You had known Mr. Scheide for a number of years, that prior to your involvement as his attorney, that Jasen Cassidy Esq. had done wills for both Mr. Scheide and Velma Shay; that you visited with him a number of times in different places over the years. You indicated that Mr. Scheide could become angry over situations, and changed fiduciary appointments, etc., at his whim.
- 2. That in June 2012, you prepared a Last Will, which Mr. Scheide executed, and while you usually give the original to the client, you retained this original as he was ill and in the hospital.
- 3. That in October 2012, you were contacted by Mr. Scheide to prepare a new Last Will. That he had expressed to you that he changed his mind about the executor, etc. At that time you had him evaluated for capacity, and he was deemed to have capacity to execute a Last Will at that time. That Mr. Scheide took the original October Last Will with him.
- 4. That Velma Shay died 1/31/13, and there was some dispute between Mr. Scheide and Velma's children over some jewelry, leaving Mr. Scheide somewhat angry over the situation.
- 5. That during these time periods you were quite busy with work, and your own personal matters, and admittedly did not have any excess time for Mr. Scheide.
- That you only had brief telephone calls with either Kim Boyer, Esq., and/or Susan Hoy when the guardianship commenced and when Mr. Scheide died.





Kristen Tyler, Esq. June 24, 2016 Page 2

- 7. That at that time you informed them that Mr. Scheide kept his important papers in a duffel type bag.
 - 8. That once in guardianship, Mr. Scheide started to decline.
- 9. That there is nothing in your files (correspondence, or other document) which could be construed as any intent to revive the June 2012 Last Will.
- 10. That you had not even recalled that the original June 2012 Last Will was even in your files, until after Mr. Scheide died. In fact, it was fairly recently you were reminded due to your seeing on television a reference for St. Jude's Hospital. That you did not contact Susan Hoy regarding this. That you looked up the case on Oddessy, saw that a final petition had been filed, and contacted St. Jude's legal counsel, and located the original June 2012 Last Will in your file.

It would appear to me that much of what you have revealed to me, and upon information and belief, Russel Geist, Esq., as related to me, would have fallen under attorney/client privileges, said privilege is currently held by his estate.

Sincerely.

CARY COLT PAYNE, CHTD.

CARY COLT PAYNE, ESQ.

CCP/ma

cc: client

Kim Boyer, Esq.







Attorney at Law
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EXHIBIT "E"

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10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
(702) 385-2500
(702) 385-2086
recist@hutchlegal.com

Attorneys for St. Jude Children's Research Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of

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

Deceased.

Case No.: P-14-082619-E

Dept No.: PCI

AFFIDAVIT OF PROOF OF LOST WILL

I, KRISTIN M. TYLER, being first duly sworn, do hereby declare to the undersigned authority that I was a Witness to the Last Will and Testament dated October 2, 2012 ("Last Will") of THEODORE E. SCHEIDE, JR., also sometimes known as THEODORE E. SCHEIDE ("Decedent"), and did sign as a witness on that Last Will. I can further attest that the Decedent signed and executed the instrument as his Last Will on October 2, 2012, and that he signed it willingly, and that he executed it as his free and voluntary act for the purposes therein expressed and to the best of my knowledge the Decedent was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

I further attest that the Decedent signed and executed the Last Will dated October 2, 2012 in the presence of myself and Diane DeWalt, and we both subscribed the Attestation to the Last Will in the presence of the Decedent.

I further attest that the Decedent contacted me as his estate planning counsel to

Page 1 of 3

discuss changes in his wishes expressed in his previous Last Will and Testament dated June 8, 2012, which I had drafted as the attorney for the Decedent and was the Decedent's regular course of action when he wanted to change the wishes expressed in his prior estate planning documents. Specifically, the Decedent wanted to remove the nomination of KAREN HOAGLAND as the Executor under Article Five of the Last Will and Testament dated June 8, 2012, and instead appoint PATRICIA BOWLIN as the Executor.

I further attest that in discussing the preparation of Last Will dated October 2, 2012, the Decedent did not express any desire to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that I remained in contact with the Decedent after he executed his Last Will dated October 2, 2012, as his health and mental condition declined afterward, and

I further attest that I continued to represent and advise the Decedent as his estate planning counsel until NEVADA GUARDIAN SERVICES, LLC was appointed his temporary guardian on February 18, 2014 and his general guardian over his person and estate on March 19, 2014.

I can further attest that at no time after executing his Last Will dated October 2, 2012, did the Decedent express to me any intention to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that, to my knowledge, the Decedent did not intentionally destroy or revoke the Last Will dated October 2, 2012, and that to the best of my knowledge this was the Decedent's Last Will and Testament. I can further attest that, to the best of my knowledge, the Last Will dated October 2, 2012, was in existence at the death of the Decedent.

I further attest that, after the death of the Decedent, I was contacted by NEVADA GUARDIAN SERVICES, LLC or its counsel and asked if I had the original of

Last Will dated October 2, 2012. I informed NEVADA GUARDIAN SERVICES, LLC or its counsel that the Decedent chose to retain the original executed Last Will dated October 2, 2012, but that I had the original of the Decedent's Last Will and Testament dated June 8, 2012, which differed only in the nomination of the Executor. I was not asked for the original of the Decedent's Last Will and Testament dated June 8, 2012, nor was I contacted by NEVADA GUARDIAN SERVICES, LLC or its counsel regarding the Decedent's estate to provide an affidavit of lost will pursuant to NRS 136.240(4) regarding the Last Will dated October 2, 2012.

DATED this September 7, 2016.

KRISTIN M. TYCER

STATE OF NEVADA
COUNTY OF CLARK

ss.

Subscribed and Sworn to before me this 7th day of September, 2016.

CAROLINE TOFANELLI Notary Public-State of Nevada APPT. NO. 15-2302-1 My App. Expires July 07, 2019

Page 3 of 3



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EXHIBIT "F"

KIM BOYER

CERTIFIED ELDER LAW ATTORNEY VA ACCREDITED ATTORNEY OF COUNSEL TO DURHAM JONES & PINEGAR



10785 W. TWAIN AVENUE SUITE 200 LAS VEGAS, NEVADA 89135 702.255.2000 702.255.2012 FAX

kim@elderlawnv.com www.elderlawnv.com

July 11, 2016

CATHERINE M. MARQUEZ
LEAD GUARDIANSHIP PARALEGAL
JO SMITH
PROBATE PARALEGAL
HOLLY JEFFRIES
ELDER LAW PARALEGAL
LUISA HEIZER
CERTIFIED PARALEGAL
TINA BETTSTELLER
MARKETING & EDUCATION LIAISON
DANIELLE COULTER
ELDER LAW PARALEGAL
JUDY TZANETOPOULOS
LEGAL ASSISTANT

Cary Colt Payne, CHTD. 700 S. Eighth Street Las Vegas, Nevada 89101

Re: Estate of Theodore Scheide Our File No. 48490.2

Dear Cary:

During our last meeting, I said I would write you a letter to clarify a couple of items in your letters.

In your letter to Russel J. Geist, Esq. of Hutchison & Steffen dated June 13, 2016, you state: "Ms. Hoy advised my client that she found the original October 2012 will torn up in pieces, in the decedent's bag." That statement is not accurate. Please see Petition for Instructions dated April 30, 2015 regarding the October 2012 Will.

In your letter to me dated June 28, 2016, you stated: "Finally, as part of our discussions, you indicated that Ms. Tyler stated that she knew that the October 2012 will was, in fact, destroyed." Ms. Tyler indicated to me to check a white plastic bag for the original October 2012 Will, and something to the effect that she would not be surprised if the decedent had destroyed it.

Very truly yours,

Kim Boyer, Esq.

KB/js



Attorney at Law 700 S. Eighth Street • Las Vegas, Nevada 89101 (702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "G"

Kristin Tyler

From:

Kristin Tyler

Sent:

Wednesday, September 7, 2016 11:31 AM

To:

'Russel Geist' Carie Tofanelli

Cc:

Subject:

RE: Evidentiary Privilege

Attachments:

Affidavit of Proof of Lost Will (Scheide).pdf

See attached. This is what I am comfortable signing at this time. Would you like me to mail you the original?

to Son

Kristin M. Tyler

Letiner

enco. 120 x22 5/000 | Para 725 777 3102

GASMIN | TIRMES | GORDON THE PURITE DAMES THAT THE LAS YERAS, LOT COLLE

Wile us online a www.pig.fr.est

From: Russel Geist [mailto:RGeist@hutchlegal.com]

Sent: Thursday, August 25, 2016 4:44 PM To: Kristin Tyler < ktyler@Gtg.legal> Subject: RE: Evidentiary Privilege

Kristin,

Were you able to complete an affidavit of witness of lost will for this? I'm hoping to get a petition on file soon.

Thanks. Russel

From: Kristin Tyler [mailto:ktyler@Gtg.legal] Sent: Monday, July 25, 2016 10:34 AM To: Russel Geist < RGeist@hutchlegal.com>

Subject: FW: Evidentiary Privilege

FYI, my testimony would clearly fall into exception 2 below relating to any communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by intervivos transaction.

ΚT

From: Alan Freer [mailto:afreer@sdfnvlaw.com]

Sent: Monday, July 25, 2016 10:01 AM

To: Kristin Tyler < ktyler@Gtg.legal > Subject: Evidentiary Privilege

NRS 49.115 Exceptions. There is no privilege under NRS 49.095 or 49.105:

- If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.
- As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.
- As to a communication relevant to an issue of breach of duty by the lawyer to his or her client or by the client to his or her lawyer.
- As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness.
- As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

Alan D, Freer Solomon Dwiggins & Freer, Ltd. 9060 W. Cheyenne Ave. Las Vegas, Nevada 89129-8932 (702) 853-5483 (702) 589-3555 (direct) (702) 853-5485 (fax)



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Russel Geist Attorney



HUTCHISON & STEFFEN, LLC (702) 385-2500 hutchlegal.com

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rgeist@hutchlegal.com

Attorneys for St. Jude Children's Research Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of

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

Deceased.

Case No.: P-14-082619-E

Dept No.: PCI

AFFIDAVIT OF PROOF OF LOST WILL

I, KRISTIN M. TYLER, being first duly sworn, do hereby declare to the undersigned authority that I was a Witness to the Last Will and Testament dated October 2, 2012 ("Last Will") of THEODORE E. SCHEIDE, JR., also sometimes known as THEODORE E. SCHEIDE ("Decedent"), and did sign as a witness on that Last Will. I can further attest that the Decedent signed and executed the instrument as his Last Will on October 2, 2012, and that he signed it willingly, and that he executed it as his free and voluntary act for the purposes therein expressed and to the best of my knowledge the Decedent was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

I further attest that the Decedent signed and executed the Last Will dated October 2, 2012 in the presence of myself and Diane DeWalt, and we both subscribed the Attestation to the Last Will in the presence of the Decedent.

I further attest that the Decedent contacted me as his estate planning counsel to

Page 1 of 3

discuss changes in his wishes expressed in his previous Last Will and Testament dated June 8, 2012, which I had drafted as the attorney for the Decedent and was the Decedent's regular course of action when he wanted to change the wishes expressed in his prior estate planning documents. Specifically, the Decedent wanted to remove the nomination of KAREN HOAGLAND as the Executor under Article Five of the Last Will and Testament dated June 8, 2012, and instead appoint PATRICIA BOWLIN as the Executor.

I further attest that in discussing the preparation of Last Will dated October 2, 2012, the Decedent did not express any desire to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that I remained in contact with the Decedent after he executed his Last Will dated October 2, 2012, as his health and mental condition declined afterward, and

I further attest that I continued to represent and advise the Decedent as his estate planning counsel until NEVADA GUARDIAN SERVICES, LLC was appointed his temporary guardian on February 18, 2014 and his general guardian over his person and estate on March 19, 2014.

I can further attest that at no time after executing his Last Will dated October 2, 2012, did the Decedent express to me any intention to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that, to my knowledge, the Decedent did not intentionally destroy or revoke the Last Will dated October 2, 2012, and that to the best of my knowledge this was the Decedent's Last Will and Testament. I can further attest that, to the best of my knowledge, the Last Will dated October 2, 2012, was in existence at the death of the Decedent.

I further attest that, after the death of the Decedent, I was contacted by NEVADA GUARDIAN SERVICES, LLC or its counsel and asked if I had the original of

 Last Will dated October 2, 2012. I informed NEVADA GUARDIAN SERVICES, LLC or its counsel that the Decedent chose to retain the original executed Last Will dated October 2, 2012, but that I had the original of the Decedent's Last Will and Testament dated June 8, 2012, which differed only in the nomination of the Executor. I was not asked for the original of the Decedent's Last Will and Testament dated June 8, 2012, nor was I contacted by NEVADA GUARDIAN SERVICES, LLC or its counsel regarding the Decedent's estate to provide an affidavit of lost will pursuant to NRS 136.240(4) regarding the Last Will dated October 2, 2012.

DATED this September 7, 2016.

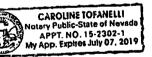
KRISTIN M. TYLER

STATE OF NEVADA
COUNTY OF CLARK

) ss.

Subscribed and Sworn to before me this 7th day of September, 2016.

Notary Public



Page 3 of 3

1 2 Todd L. Moody (5430) Russel J. Geist (9030) HUTCHISON & STEFFEN, LLC 3 Peccole Professional Park 4 10080 West Alta Drive, Suite 200 Las Vegas, Nevada 89145 (702) 385-2500 5 (702) 385-2086 rgeist@hutchlegal.com 6 7 Attorneys for St. Jude Children's Research Hospital 8 9 10 In the Matter of the Estate of 11 12

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DISTRICT COURT
CLARK COUNTY, NEVADA

THEODORE E. SCHEIDE JR. aka THEODORE ERNEST SCHEIDE JR..

Deceased.

Case No.: P-14-082619-E

Dept No.: PCI

AFFIDAVIT OF PROOF OF LOST WILL

I, KRISTIN M. TYLER, being first duly sworn, do hereby declare to the undersigned authority that I was a Witness to the Last Will and Testament dated October 2, 2012 ("Last Will") of THEODORE E. SCHEIDE, JR., also sometimes known as THEODORE E. SCHEIDE ("Decedent"), and did sign as a witness on that Last Will. I can further attest that the Decedent signed and executed the instrument as his Last Will on October 2, 2012, and that he signed it willingly, and that he executed it as his free and voluntary act for the purposes therein expressed and to the best of my knowledge the Decedent was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

I further attest that the Decedent signed and executed the Last Will dated October 2, 2012 in the presence of myself and Diane DeWalt, and we both subscribed the Attestation to the Last Will in the presence of the Decedent.

I further attest that the Decedent contacted me as his estate planning counsel to

Page 1 of 3

Some Share

 discuss changes in his wishes expressed in his previous Last Will and Testament dated June 8, 2012, which I had drafted as the attorney for the Decedent and was the Decedent's regular course of action when he wanted to change the wishes expressed in his prior estate planning documents. Specifically, the Decedent wanted to remove the nomination of KAREN HOAGLAND as the Executor under Article Five of the Last Will and Testament dated June 8, 2012, and instead appoint PATRICIA BOWLIN as the Executor.

I further attest that in discussing the preparation of Last Will dated October 2, 2012, the Decedent did not express any desire to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL.

I further attest that the Decedent always maintained his intent to disinherit THEODORE E. SCHEIDE, III, his son from whom he was estranged for many years, and that the Decedent would not have intended his estate to be distributed by intestate succession.

I further attest that I remained in contact with the Decedent after he executed his Last Will dated October 2, 2012, as his health and mental condition declined afterward, and

I further attest that I continued to represent and advise the Decedent as his estate planning counsel until NEVADA GUARDIAN SERVICES, LLC was appointed his temporary guardian on February 18, 2014 and his general guardian over his person and estate on March 19, 2014.

I can further attest that at no time after executing his Last Will dated October 2, 2012, did the Decedent express to me any intention to change the disposition of his residuary estate which was then designated to VELMA G. SHAY, if living, otherwise to ST. JUDE CHILDREN'S RESEARCH HOSPITAL. Neither did the Decedent express to me any intention to include THEODORE E. SCHEIDE, III, his son from whom he was estranged for many years, in the disposition of his estate.

I further attest that, to my knowledge, the Decedent did not intentionally destroy or revoke the Last Will dated October 2, 2012, and that to the best of my knowledge this was

Rannel Ram

Page 2 of 3

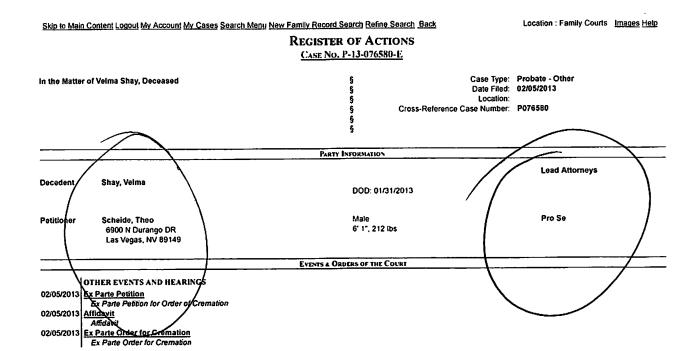
l the Decedent's Last Will and Testament. I can further attest that, to the best of my 2 knowledge, the Last Will dated October 2, 2012, was in existence at the death of the 3 Decedent. 4 I further attest that, after the death of the Decedent, I was contacted by 5 NEVADA GUARDIAN SERVICES, LLC or its counsel and asked if I had the original of 6 Last Will dated October 2, 2012. I informed NEVADA GUARDIAN SERVICES, LLC or 7 its counsel that the Decedent chose to retain the original executed Last Will dated October 8 2, 2012, but that I had the original of the Decedent's Last Will and Testament dated June 8, 9 2012, which differed only in the nomination of the Executor. I was not asked for the original 10 of the Decedent's Last Will and Testament dated June 8, 2012, nor was I contacted by 11 NEVADA GUARDIAN SERVICES, LLC or its counsel regarding the Decedent's estate to 12 provide an affidavit of lost will pursuant to NRS 136.240(4) regarding the Last Will dated 13 October 2, 2012. 14 DATED this July _____, 2016. 15 KRISTIN M. TYLER 16 17 STATE OF NEVADA 18 COUNTY OF CLARK 19 Subscribed and Sworn to before me this 25th day of July, 2016. 20 21 Notary Public 22 23 24 25 26 27 28 Page 3 of 3



Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "H"



	Electronically Filed
l	02/05/2013 01:53:46 PM
	Atun to Chim
	CLERK OF THE COURT
/ ¹	THEO SCHEIDE
2	Name 2500 Swarp AR-
3	Address NV 87134
4	City, State, Zip Code
5	702-733-3233 Telephone number/E-mail Address
6	IN PROPER PERSON
7	DISTRICT COURT
1	
	CLARK COUNTY, NEVADA
9	In the Matter of the Estate of:) Case No. P-13-076580-E
10	\\cappa a a (-a RA) \in \text{TAU} \)
11	Dept. No. PC-1
12)
13	
14	EX PARTE PETITION FOR ORDER OF CREMATION
15	Petitioner, The SCHEIDE
16	appearing in Proper Person, respectfully alleges and shows as
17	follows:
18	
19	1. Petitioner is the TUEND (how related) of
20	Decedent VELMA GIBBLE SHAY (decedent's name) and resides
21	at 2500 Surve OR, LAS VERAS, NV 87134
22	2. Decedent died on the 31 day of Japunay, 2013.
23	in Liture (printy and, on the date of death, Decedent
25	was a resident of Clark County, Nevada.
26	3. The names, relationships, ages of minors and residence
27	addresses of all the devisees, legatees, heirs, and next-of-kin
28	of Decedent, so far as known to Petitioner, are: (see next page)
	Page 1 of 3
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(Below Must Include: Legally Married Spouse And All Children, Even If Estranged or out
of state and was a mount
of State And You as Petitioner Stating All Relationships, adult or minor and
Addresses (if unknown put last address or unknown)
Name : Relationship/Age : Address :
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2. SONE
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6.
4. Petitioner is Decedent's closest living relative
and/or personal representative and has a right to control the
disposition of the Decedent's human remains.
5. There are no objections to cremation of the Decedent's
human remains.
WHEREFORE, Petitioner prays:
1. That the Court make and enter its order directing the
and that I to order directing the
cremation of the human remains of VELMA GIBBLE SHAY
(decedent's name);
2. For such other and further relief as the Court deems
just and proper.
DATED THIS 5 day of FEBRUARY, 20 13/
Want VIII '
Signature of Metationer
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Page 2 of 3 T:\PACKETS\FORM Cremation Petition.doc

1	VERIFICATION
2	STATE OF NEVADA)
3	COUNTY OF CLARK)
4	
5	THEO SCHEIDE, being first duly sworn, declares
6	under penalty of perjury as follows:
7	I am the Petitioner in the above-entitled action. I have
8 9	read the foregoing Ex Parte Petition for Order of Cremation, and
10	know the contents thereof. The Petition is true of my own
11	knowledge except as to those matters that are stated on
12	information and belief, and as to those matters, I believe them
13	to be true.
14	DATED THIS 5th day of FEBRUARY 2013
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19	Signature of Petitioner
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Page 3 of 3

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Attorney at Law
700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "I"



Kristin M. Tyler, Esq. ktyler@gordonsilver.com

January 15, 2014

VIA U.S. MAIL

Theodore E. Scheide 8333 Jeremiahs Lodge Avenue Las Vegas, NV 89131

Re:

Estate of Velma Shav

103655-002

Dear Theo,

A new year is upon us and that means we are at the start of "tax season." As such, I would like to take this opportunity to remind you about your tax responsibilities related to the Estate of Velma Shay.

The executor (or anyone who is in charge of the decedent's property) is responsible for filing a final individual income tax return(s) when due. You may also be responsible for filing an income tax return on behalf of the estate. We strongly recommend that you consult with a CPA as soon as possible about any tax obligations and preparing a decedent's final return and/or estate return. If you need assistance finding a CPA, feel free to give me a call and I can send you some names.

Please feel free to contact me if I can be of assistance. You can reach me at (702) 796-5555.

Cordially,

Kristin M. Tyler

3960 Howard Hughes Parkway, Ninth Floor | Las Vegas, Nevada 89169 T: 702.796.5555 | F: 702.369.2666 gordonsilver.com

SCHEIDE0465

NO TOWNS

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ORDR

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GLORIA J. STURMAN DISTRICT JUDGE DEPT XXVI LAS VEGAS, NV 89155

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of:

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

Deceased.

CASE NO.: P-14-082619-E

DEPT NO.: XXVI

DECISION AND ORDER

The above captioned matter came on for evidentiary hearing on June 15 and 16, 2017, on St. Jude Research Hospital's petition to admit Decedent's October 2, 2012, Will. Susan Hoy, Special Administrator, was represented by Counsel Kim Boyer of Durham Jones & Pinegar; Respondent Theodore E. Scheide III, was represented by counsel Cary Colt Payne and Objector/Petitioner St. Jude Children's Research Hospital, was represented by counsel Todd Moody and Russel Geist of Hutchison & Steffen. After hearing the testimony of witnesses, receiving evidence introduced at the evidentiary hearing, and considering argument of the parties, the matter was taken under advisement.

Upon consideration of the arguments, testimony, exhibits in evidence, in addition to the pleadings and papers on file the Court finds as follows:

FACTS

Decedent Theodore Scheide, Jr., ("Decedent" or "Theo") passed away August 17, 2014. His only statutory heir is his estranged son, Theodore Scheide, III (known as "Chip"). Decedent and his first wife, the mother of his only child, Theodore III, had been divorced for some time; Decedent had only sporadic contact with his son after the

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GLORIA J. STURMAN divorce. A second marriage ended in 1999, but he remained in contact with his step-daughter Kathy Longo; although, they did not see each other on a regular basis. Decedent and Velma Shay were companions for many years and, although they were never married, they made complementary estate plans providing for one another. Decedent was not married at the time of his death.

In June 2012 Decedent executed a Will, <u>disinheriting his son</u> and leaving his estate to Velma Shay; if she predeceased him (she did), then to St. Jude Children's Hospital. In October 2012 Decedent revoked the June 2012 Will with a new October 2012 Will that only changed the Executor. Velma passed away in February, 2013, at which time Theo advised Kristin Tyler, Esq., his estate planning attorney, that everything would now go to St. Jude Children's Hospital. There is no evidence that Theo prepared a new will after Velma's passing.

Decedent had been appointed a guardian, Susan Hoy, in February 2014 due to his dementia and strokes. See G-14-039853-A. After Decedent passed away, his guardian, Susan Hoy, was appointed as Special Administrator of his Estate. Hoy found a copy of the October 2012 Will, but was not able to find the original.

In May 2016 after Hoy filed her First and Final Account, Attorney Kristin Tyler, Decedent's estate planning attorney and drafter of the October 2012 Will, discovered that the Court determined in May 2015 that decedent died intestate.

Ms. Tyler had maintained the original June 2012 Will in her files, but Decedent took the original October 2012 Will with him after executing the document. Ms. Tyler lodged the June 2012 Will with the Court. See W-16-010344.

This litigation was initiated with the Petition of the Special Administrator for Proof of the Will and Issuance of Letters Testamentary; Ms. Hoy later withdrew her Petition. Subsequently St. Jude filed its Petition for Probate of the Will and Revocation of Letters of Administration, and Issuance of Letters Testamentary. The Petition for Probate of the Lost Will was granted with the burden of proof on the proponent to prove

the testator did not revoke the lost or destroyed will during his lifetime. See, Estate of Irvine v Doyle, 101 Nev. 698. 710 P.2d 1366 (1985). Further, since the Decedent had been appointed a guardian in February 2014, he lacked testamentary capacity to revoke his will as of the date of adjudication of the Petition for Guardianship.

Ms. Tyler testified to the preparation and contents of the July and October 2012 Wills. In addition to the October 2012 copy, the original Will, dated June 2012, was also presented to the court. (The "June 2012 Original"). The October 2012 copy was annotated with the word "updated" written by the Decedent. Under the terms of both wills, St. Jude is listed as the beneficiary; neither Will listed Decedent's son as a beneficiary.

Ms. Tyler described the steps she always takes when a client comes to her office to sign a will. In October 2012 Theo confirmed that he understood the contents of his Will, and that no one was forcing him to make the will. Ms. Tyler and her assistant, Diane DeWalt, witnessed Theo sign his Will.

After a search of Decedent's storage facility, no one could find an original version of the October 2012 Will or the document that the guardian recalls being packed and placed in storage. There was no evidence that the Decedent ever visited his storage facility, and he was not capable of transporting himself whereby he could have obtained possession of any of the above-referenced Wills. After the appointment of Ms. Hoy as his Guardian, Decedent would have lacked capacity to have effectively revoked his Will.

BACKGROUND

Approximately six (6) months prior to his death, Decedent was placed under the care of a guardian as a result of a medical/mental examination. After the appointment of the guardian, Decedent was moved into a nursing home and the majority of his belongings were moved to a storage facility. Before his items were placed in storage, the guardian recalls seeing a Will with the words "updated October 2012" printed on it

GLORIA J. STURMAN DISTRICT JUDGE DEPT XXVI LAS VEGAS, NV 89155 followed by Decedent's signature, and believes that document was packed with Decedent's personal effects to be placed in storage. The Guardian, Susan Hoy, testified she believed Decedent destroyed his estate planning documents as none could be located after his death.

Decedent maintained his relationship with Kathy Longo, his step-daughter from a 25-year marriage that ended in 1999 with death of his second wife. After Kathy moved to Las Vegas she visited Theo and at his request began assisting him with some of his needs, such as writing checks. As these activities were time consuming (four trips per week from the other side of town), Kathy charged Theo for her time. Kathy refused to take on the responsibility of guardianship as she was not in town on a full time basis. While helping Theo pack up his home office in preparation to move to assisted living, Kathy saw a will on a shelf. Kathy does not know if that document was an original or a copy. Theo originally agreed to the move to assisted living, then he changed his mind. Kathy only saw the will in the Decedent's office prior to his admission into the nursing home and before he was appointed a Guardian. Kathy did not read it, nor could she testify to the date the will she saw was executed. However, the Decedent did inform her that he intended to leave his estate to St. Jude. Theo never talked to her about his son Chip. Kathy also testified that after Theo moved into the nursing home, he told her that his important papers were in storage.

In December 2013 Kathy went out of town for the holidays and notified Ms. Tyler she would not be able to continue and someone else would need to assist Theo. Kathy testified that Theo's behavior the last time she saw him prompted her resignation. Theo was diabetic and refused care; when Kathy arrived at the rehab facility to pick him up, he was unkempt (wearing pajamas, no socks). Kathy testified that Theo's behavior was embarrassing; he had no bladder or bowel control and relieved himself in the bushes at the rehabilitation hospital. That was the last time Kathy saw him.

ORIA J. STURMAN DISTRICT JUDGE DEPT XXVI S VEGAS, NV 89155 Decedent's apparent testamentary intent to leave his estate to St. Jude is further supported by the fact that he donated approximately \$130,000.00 over 20 years to the organization, with his last donation in the amount of \$10,000.00 made in 2013. Kathy recalled being asked to prepare that check for Theo's signature.

Decedent's mental condition prior to death was such that he lacked testamentary capacity. Just days before he passed, Decedent became agitated and attempted to fire those who were responsible for his care, including the guardian.

At the hearing to determine if Decedent's estate would pass by intestate succession or through a testamentary will, the Decedent's son Chip argued that the original October 2012 Will was in Decedent's possession prior to his death, and he intentionally destroyed/revoked it prior to the determination that he was in need of a guardian and lacked capacity.

LEGAL ISSUES

I. Alternative Theories Under Nevada Law

Under common law, a presumption exists that a missing will was revoked and/or destroyed by the testator.¹ NRS 136.240 provides a mechanism to overcome this presumption whereby a lost or destroyed will can be probated when the petitioner is able to provide: (1) two or more credible witnesses that provide clear and distinct testimony concerning the will's provisions, and was (a) in legal existence at the time of the testator's death, or (b) fraudulently destroyed during the testator's lifetime. But a testator's declarations "cannot be substituted for one of the witnesses required by NRS 136.240".²

In addition to NRS 136.240, the doctrine of dependent relative revocation has been recognized in Nevada to nullify a prior will's revocation if it was made "in connection

¹ See Estate of Irvine v. Doyle, 710 P.2d 1366, 1369 (1985).

² See Howard Hughes Medical Institute v. Gavin, 621 P.2d 489, 491 (1980).

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GLORIA J. STURMAN DISTRICT JUDGE DEPT XXVI LAS VEGAS, NV 89155 with an attempt to achieve a dispositive objective that fails under applicable law" OR because of a false belief/assumption that is either recited in the revoking instrument or established by clear and convincing evidence.³ The Nevada Supreme Court stated a "crucial distinction" of the dependent relative revocation doctrine is "that it does not revive a revoked will; rather, it renders a revocation ineffective."

II. Application of Nevada Law to the Facts

In order to prevail in its efforts to probate the October 2012 copy, Petitioner/Objector (St. Jude) must establish that the original Will was in legal existence at the time of Decedent's death and produce two witnesses who can provide "clear and distinct" evidence of the Will's provisions. NRS 136.240⁵

- 1. The petition for the probate of a lost or destroyed will must include a copy of the will, or if no copy is available state, or be accompanied by a written statement of, the testamentary words, or the substance thereof.
- 2. If offered for probate, a lost or destroyed will must be proved in the same manner as other wills are proved under this chapter.
- 3. In addition, no will may be proved as a lost or destroyed will unless it is proved to have been in existence at the death of the person whose will it is claimed to be, or is shown to have been fraudulently destroyed in the lifetime of that person, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.
- 4. The testimony of each witness must be reduced to writing, signed by the witness and filed, and is admissible in evidence in any contest of the will if the witness has died or permanently moved from the State
 - 5. Notwithstanding any provision of this section to the contrary:
- (a) The production of a person's lost or destroyed will, whose primary beneficiary is a nontestamentary trust established by the person and in existence at his or her death, creates a rebuttable presumption that the will had not been revoked.
- (b) If the proponent of a lost or destroyed will makes a prima facie showing 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. If such prima facie showing has been made, the court shall accept a copy of such a will as sufficient proof of the terms thereof without requiring further evidence in the absence of any objection.

³ See In re Melton, 272 P.3d 668, 671 (2012) where the Nevada Supreme Court formally adopted the doctrine of dependent relative revocation and distinguished it from the doctrine of revival that is expressly prohibited under NRS 133.130. The statute provides that revocation of a subsequent will does not revive the prior will unless there is an express term/provision of the testator's intention to revise the prior will within the revoking document.

⁴ See In re Melton at 679, citing to Restatement (Third) of Prop.: Wills and Other Donative Transfers §4.3.
⁵ NRS 136.240 Petition for probate; same requirement of proof as other wills; testimony of witnesses; rebuttable presumption concerning certain wills; prima facie showing that will was not revoked; order.

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Q GLORIA J. STURMAN DISTRICT JUDGE

DEPT XXVI LAS VEGAS, NV 89155 The record is clear that after moving to the nursing home Decedent was not in physical possession of the October 2012 Will such that he could have "revoked" it by destroying or otherwise tearing it up. The evidence supports a finding that the original version of the October 2012 Will was in his home office and at some point was lost. What is less clear is whether Decedent destroyed the Will before leaving his home, or if it was misplaced in the process of packing the contents of Decedent's home and placing his belongings into storage. No evidence was introduced to establish Decedent visited his storage facility or that he instructed anyone to bring him the original version of the October 2012 Will.

Even if Theo did manage to retrieve the original Will, he lacked the mental capacity to "revoke" the October 2012 Will after February 2014 until his death in August. No evidence was introduced to establish that Theo lacked capacity prior to the date he was appointed a guardian. There is no evidence to establish Theo had possession of the original October 201 Will after moving to assisted living. These facts provide a basis to examine the remaining evidence introduced to prove the October 2012 Will was in legal existence at the time of Decedent's death. ⁶

Petitioners were required to offer the testimony of two witnesses who could provide "clear and distinct" evidence of the provisions of the October 2012 Will.⁷ The drafting attorney had a clear recollection of drafting the Will and was in possession of a copy of the Will. The second witness to the Will, Diane DeWalt, the legal assistant to the drafting attorney, recalled she prepared the Will and served as a witness, but she did not

⁶ NRS 136.240 states in part: "(t)he petition for the probate of a lost or destroyed will must include a copy of the will ... [and] ... no will may be proved as a lost or destroyed will unless it is proved to have been in existence at the death of the person whose will it is claimed to be, or is shown to have been fraudulently destroyed in the lifetime of that person, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses..."

⁷ Estate of Irvine v. Doyle, 710 P.2d 1366 (1985) – The Nevada Supreme Court held that a proponent of a lost or destroyed will is required to prove that testator did not revoke the lost or destroyed will, but such proof is not that the will was in "actual" existence at the time of testator's death, only that it was in "legal" existence. To combat "spurious wills", the Court also noted that a proponent must prove the provisions of the will by at least two credible witnesses that can provide clear and distinct testimony as to its provisions.

GLORIA J. STURMAN DISTRICT JUDGE DEPT XXVI LAS VEGAS, NV 89155 recall the specific terms of the Will. The remaining witness, Decedent's stepdaughter Kathy Longo, testified that the decedent told her about his testamentary intent, which was to leave his estate to St. Jude's. She also confirmed seeing the Will in the decedent's home office; but she did not read the Will and thus could not confirm the provisions, nor did she know the date the Will she saw was executed.

Under Nevada law the testator's declarations cannot be substituted for one of the witnesses required under NRS 136.240. See, <u>In re Duffill's Estate</u>, 61 P.2d 985 (1936) and <u>Howard Hughes Medical Inst. v. Gavin</u>, 621 P.2d 489 (1980).

In re Duffill's Estate, 61 P.2d 985 (1936) is the case establishing the requirements for proving a lost will. The Nevada Supreme Court upheld the lower court's judgment that decedent's mother failed to prove the existence of a lost will leaving her \$200,000.00. The mother produced four witnesses to support the lost will. The first witness actually signed the will as a subscribing witness but testified his only knowledge of its terms was based on the decedent's statements, which the court noted was not sufficient as decedent could not be substituted as one of the two witnesses required to probate a lost will. The other three witnesses all testified to the contents of the will and that their knowledge was gained during separate conversations with the decedent about his failing health and that decedent prompted them to read the will. The trial court rejected the testimony of these three witnesses as not being trustworthy.

In <u>Howard Hughes Medical Inst. v. Gavin</u>, 621 P.2d 489 (1980) the Nevada Supreme Court again noted that a testator's declarations cannot be substituted for one of the witnesses required by the Lost Will Statute, NRS 136.240. The Court found that strict compliance with NRS 136.240 "precludes proof of the contents of a lost will by hearsay declarations of deceased people, unless the declarant's testimony is written and signed by the declarant." Id. at 491. Therefore, Theo's statements to Kathy cannot overcome the statutory requirements.

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GLORIA J. STURMAN DISTRICT JUDGE DEPT XXVI LAS VEGAS, NV 89155 In the instant matter Decedent's long time estate planning attorney Kristin Tyler has a very distinct recollection of the terms of Theo's final October 2012 Will. The Will was consistent with Theo's historical estate plans, his beneficiary designations did not vary over time, nor did he ever leave anything to his son Chip. Therefore, it can be assumed Theo understood the need to specifically disinherit his only child, as well as the outcome if he failed to leave a Will that did so.

While the testimony of the other witnesses about Theo's stated testamentary intention is credible and consistent, this Court cannot accept the hearsay declarations of the decedent. The <u>Hughes</u> case provides a possible exception if the declarant's testimony is signed. Here Decedent did hand write and sign the words "October 2, 2012 Up-dated." The handwritten statement on the copy of the October 2012 Will does not clarify what provisions were "up-dated"; the statement appears simply to reference the date the Will was executed. This is not sufficient to satisfy the <u>Hughes</u> exception. The Hughes case stands for the principal that strict compliance with the requirements of the statute is necessary. Here, only one witness, the drafting attorney, provided testimony sufficient to satisfy the statute.

III. Dependent Relative Revocation

An alternative theory presented by these facts is whether the June 2012 original Will can be revived, or its revocation under the October 2012 copy deemed ineffective. NRS 133.130 limits the revival of a prior will to only those instances where the revocation occurred with intent to revive or the prior will is reexecuted. Nothing within the above factual background supports either of these situations. In re Melton, 272 P.3d

⁸ NRS 133.130 Effect of revocation of subsequent will.

If, after the making of any will, the testator executes a valid second will that includes provisions revoking the first will, the destruction, cancellation or revocation of the second will does not revive the first will unless:

^{1.} It appears by the terms of the revocation or the manner in which the revocation occurred that it was the intention to revive and give effect to the first will; or

^{2.} After the destruction, cancellation or revocation, the first will is reexecuted;

^{6.} If the will is established, its provisions must be set forth specifically in the order admitting it to probate, or a copy of the will must be attached to the order.

668 (2012) dependent relative revocation does not revive a revoked will, but only applies where a revocation was ineffective. As with revival, the above factual background does not include any basis upon which the October 2012 copy and its revocation of the June 2012 Original was ineffective.

In <u>Melton</u> the Nevada Supreme Court distinguished NRS 133.130 and its restriction against a revoked will's revival from the doctrine of *dependent relative revocation*. The court found that the "doctrine of dependent relative revocation ... 'does not revive a revoked will; rather, it renders a revocation ineffective.'" Therefore, the Nevada Supreme Court expressly adopted the doctrine of dependent relative revocation, but declined to apply it because the revocation of a prior will, and its disinheritance provision, was not impacted or made conditional by a subsequent holographic will that involved a different dispositive scheme.

The Melton decision is consistent with the longstanding California rule. See, In re Lopes, 152 Cal.App.3d 302 (1984). The fact pattern in Lopes is very similar to the background outlined above and petitioner attempts to argue that all provisions of a lost will, including revocation of a prior will, should be nullified. The appellate court held that a copy of a 1979 will could not be probated because it could not be shown to be in existence on the date of death. Petitioner therefore argued that all provisions found within the 1979 will failed, including the provision that revoked a prior will executed in 1977. The court noted that a will can be revoked by any writing and does not need to meet the standards for proving a lost will and also noted that dependent relative revocation offered an appropriate method to address revocations based upon a false assumption of the effectiveness of a subsequently executed will.

Here the June 2012 Will was expressly revoked by the October 2012 Will, and there is no evidence that revocation was ineffective in its express terms. Subsequently the October 2012 Will was either lost or destroyed, however, there is no evidence it was revoked in writing. Lacking sufficient evidence to prove the October 2012 "lost" will, the

Court finds it is presumed to have been destroyed. Given the absence of a writing to establish the October 2012 Will was revoked with the intent to revive the June 2012 Will, the doctrine of dependent relative revocation cannot revive the June 2012 Will.

CONCLUSION

St. Jude's failed to meet its burden of proof that the Will was not revoked during Decedent's lifetime (while Decedent was competent). The lost will statute must be strictly construed, and here only one witness provided clear and distinct testimony about the contents of the October 2012 Will. None of the witnesses who saw a will in Decedent's home prior to him entering assisted living could testify that the will they saw was the Original of the October 2012 Will. While Decedent was not determined to lack capacity until February 2014, his behavior during the time he was preparing to move to assisted living was increasingly erratic. Decedent had been a careful planner and seems to have understood the need to specifically disinherit his son, and alternatively, the fact that without a will his son would inherit. Although he did not make a formal change to his estate planning documents, he could simply have changed his mind and destroyed the original will in his possession.

WHEREFOR, based on of testimony at trial, the exhibits, and the law that applies in this case as set forth above, the Petitioner/Objector St. Jude Children's Hospital Petition to admit Decedent's lost will dated October 2, 2012, is hereby DENIED.

DATED: This 3 day of August, 2018

GLORIA J. STURMAN District Court Judge, Dept. XXVI

Counsel for Respondent is directed to prepare a Notice of Entry of Decision and Order.

GLORIA J. STURMAN DISTRICT JUDGE DEPT XXVI LAS VEGAS, NV 89155

CERTIFICATE OF SERVICE

I hereby certify that on the date signed, a copy of the Foregoing Order was electronically served on all parties registered in P-14-082619.

Linda Denman,
Judicial Executive Assistant

GLORIA J. STURMAN DISTRICT JUDGE DEPT XXVI LAS VEGAS, NV 89155

HUTCHISON & STEFFEN

PROFESSIONAL LLC
ILE PROFESSIONAL PARK
EST ALTA DRIVE, SUITE 20
5 VEGAS, NV 89145

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9/6/2018 10:41 AM Steven D. Grierson **CLERK OF THE COURT** 1 **NOAS** Todd L. Moody (5430) Russel J. Geist (9030) HUTCHISON & STÉFFEN, PLLC 3 Peccole Professional Park 10080 West Alta Drive, Suite 200 Las Vegas, Nevada 89145 (702) 385-2500 5 (702) 385-2086 rgeist@hutchlegal.com 6 Attorneys for St. Jude Children's 7 Research Hospital 8 DISTRICT COURT 9 CLARK COUNTY, NEVADA 10 In the Matter of the Estate of Case No.: P-14-082619-E 11 Dept No.: 26 THEODORE E. SCHEIDE JR. aka 12 THEODORE ERNEST SCHEIDE JR., 13 Deceased. 14 NOTICE OF APPEAL 15 Notice is given that ST. JUDE CHILDREN'S RESEARCH HOSPITAL, INC., petitioner in 16 the above-captioned matter, appeal to the Supreme Court of Nevada from the Decision and Order 17 entered by the district court on August 6, 2018, and from any other order of the district court 18 rendered final and appealable by the district court's Judgment of August 6, 2018. 19 Dated September 5, 2018. 20 HUTCHISON & STEFFEN, PLLC 21 22 Todd L. Moody (5430) Russel J. Geist (9030) 23 10080 W. Alta Dr., Ste 200 Las Vegas, NV 89145 24 Attorneys for St. Jude Children's Research Hospital 25 26 27

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<u>CERTIFICATE OF SERVICE</u>
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, and that on this \(\begin{aligned} \text{day of September, 2018, I caused a true and correct copy of the above and } \) foregoing **NOTICE OF APPEAL** 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:

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

Cary Colt Payne, Esq. 700 S. 8th Street Las Vegas, NV 89101 Attorney for Theodore "Chip" E. Scheide, III

An Employee of Hutchison & Steffen, LLC

Electronically Filed 3/12/2021 9:05 AM Steven D. Grierson CLERK OF THE COURT

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In the Matter of::

THEODORE SCHEIDE JR., Deceased

DISTRICT COURT CLARK COUNTY, NEVADA

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CASE NO.: P-14-082619-E

DEPARTMENT 26

NOTICE OF HEARING and INSTRUCTIONS for BLUEJEANS VIDEOCONFERENCE

The hearing set in the above-referenced case for the 18TH day of MARCH, 2021, at the hour of 9:30AM is scheduled for a Bluejeans Videoconference. To appear in person at the Regional Justice Center, 200 Lewis Avenue, Department 26, 10th Floor, Courtroom 10D, you must make special arrangements with the Department. Check with Odyssey the day before the scheduled hearing to see if it is still on calendar; as the Court may have continued, issued an advance decision, or taken the matter under advisement.

You may join the meeting 15 minutes prior to your start time. If a hearing is in progress, mute your phone and wait for your case to be called. When called, starting with plaintiff/petitioner's counsel, state your name, bar number, and the party you represent for the record. State your name each time you speak for recording purposes and do not speak over other parties.

Audio/Video URL Link: https://bluejeans.com/387099146

Dial In: 1.408.419.1715

387 099 146 **Meeting ID:**

Linda <u>Denman,</u>