

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Docket No. 84279

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THEODORE E. SCHEIDE,
III,

Appellant.

v.
ST. JUDE CHILDREN'S
RESEARCH HOSPITAL,

Respondent.

RESPONDENT ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S
APPENDIX VOLUME 2

Eighth Judicial District Court
Honorable Gloria Sturman, District Judge
Civil Case No. P-14-082619-E

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(Chronological)

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CERTIFICATE OF SERVICE

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RESPONDENT ST. JUDE CHILDREN'S RESEARCH HOSPITAL'S
APPENDIX VOLUME 2 was served upon all counsel of record by
electronically filing the document using the Nevada Supreme Court's
electronic filing system.

Dated: June 26, 2023.

By: /s/ Madelyn Carnate-Peralata
An Employee of Hutchison & Steffen

1 Q Okay.

2 A A temporary guardianship is just for a very limited time and for
3 an emergent -- usually a specific purpose.

4 Q Okay. Is there a reason that a temporary guardianship would
5 be extended?

6 A If the reason for the temporary -- if the emergent situation
7 continues, then it would be extended.

8 Q Okay. Do you know was the temporary guardianship over the
9 decedent extended?

10 A It was extended.

11 Q Do you know how long it was extended for? You can -- yes,
12 you can --

13 A Can I look? Okay. It was extended through February 26th,
14 2014.

15 Q And which page are you looking at?

16 A I'm looking at page -- I just lost it. One zero eight.

17 Q Okay. And was the guardianship extended beyond that, that
18 you're aware of?

19 A Not that I'm aware -- was the --

20 Q Okay, I'll direct you to page 92.

21 A Okay. Yes, the order extending temporary guardianship.

22 Q Okay. And when was that extended until?

23 A Until March 26th, 2014.

24 Q Okay. Do you know if the guardianship was extended -- the
25 temporary guardianship was extended beyond that?

1 A The order appointing guardian was entered so when you say
2 temporary guardianship extended, the temporary would not have been
3 extended past that because an order was actually entered.

4 Q Okay, and an order entering -- an order was entered granting
5 what?

6 A General guardian of the person and estate.

7 Q And what's the difference between general guardianship and
8 temporary guardianship?

9 A Well temporary -- a temporary is a -- is for a limited time. The
10 -- and the powers are limited to what the emergent situation is. A
11 general guardianship is more broad.

12 Q Okay. Who was appointed the general guardian over the
13 decedent?

14 A Nevada Guardian Services.

15 Q And was that over his person and estate or person or estate?

16 A Person and estate.

17 Q Okay. Was that guardianship ever terminated?

18 A It was terminated upon his death.

19 Q Okay.

20 A Well after his death.

21 Q And do you know when Mr. Scheide died?

22 A August of 2014.

23 Q Okay. If I said August 17th, 2014, does that sound right?

24 A Yes.

25 Q Okay. So would you agree that from February 28th, 2014 to

1 his death, August 17th, 2014, Mr. Scheide was subject to a guardianship
2 that entire time?

3 A Yes.

4 Q Okay. And Nevada Guardian Services was the guardian over
5 Mr. Scheide that entire time as well?

6 A Yes.

7 Q Okay. Do you know if Mr. Scheide had any estate planning
8 documents? Well let me go back. Do you know what -- if I say estate
9 planning documents, do you know what I'm referring to?

10 A I'm -- when you say estate planning documents, I'm thinking
11 you're referring to broadly advance directives, powers of attorneys, will
12 and testament, trust.

13 Q Okay. Do you know did Mr. Scheide have estate planning
14 documents?

15 A Yes.

16 Q Do you know what estate planning documents he had?

17 A I -- well I know he had a power of attorney. He had an
18 advance directive and he had a will and testament.

19 Q Okay. How do you know that he had those documents?

20 A That was part of what was relayed to use by his attorney,
21 Kristin Tyler.

22 Q Okay. So you had knowledge that he had those?

23 A Yes.

24 Q Did you ever see any of those documents?

25 A I believe I did see the power of attorney and I did see a copy

1 of the will and testament.

2 Q And when you say you saw a copy of the will and you saw the
3 power of attorney, were those documents that -- where did you see
4 those?

5 A A copy of the will and testament was in his belongings and I --
6 the advance directive was part of the power of attorney for healthcare.

7 Q And the power of attorney for healthcare was in his
8 documents also?

9 A It was provided to us by Kristin Tyler, the power of attorney for
10 healthcare, because it had the advance directive --

11 Q Got it.

12 A -- inside and so we would want that for our --

13 Q So the only thing you saw --

14 A -- purposes.

15 Q -- in his possession was a copy of his --

16 MR. PAYNE: Your Honor, I -- I'm going to object. I don't think
17 there's been any foundation as to whether it's a copy, it's an original. I
18 mean --

19 THE COURT: Yeah, so I -- she saw a copy so I don't know
20 that it's a lack of foundation, but I do think we need to know how she
21 determined it was a copy. I think that's entirely correct.

22 BY MR. GEIST:

23 Q Okay. Do you know if it was a copy or an original?

24 A It was a copy.

25 Q How do you know it was a copy?

1 A It appeared to be a copy. It wasn't an original signature.

2 Q Okay.

3 A I don't -- I guess maybe I don't know, but it appeared to be a
4 copy.

5 Q To you it appeared to be a copy?

6 A To me it appeared to be a copy.

7 Q Okay. Do you know when it was that you saw these
8 documents, the copy of his will in his possessions?

9 A It would have been sometime during the guardianship, most
10 likely when his items were in transit between moves because we would
11 put them in our warehouse.

12 Q And when you put them in your warehouse, you hold them
13 there for the rest of the time?

14 A We would hold -- we hold them until he relocated, you know,
15 to another facility.

16 Q Okay, and then what would you do with those documents?

17 A If it was a permanent placement, then we would -- we returned
18 everything to him.

19 Q Okay. Did you take possession of his documents at that time?

20 A By possession, what do --

21 Q Did you take them from where he was living and put them in
22 your warehouse?

23 A We did. And then when he would go -- when he was placed
24 at senior residential, we returned everything to him.

25 Q Okay. Did you make an inventory of those items that you

1 received?

2 A We didn't make a specific detailed inventory, but we had a
3 basic these are the items that belong to Mr. Scheide. And then they're
4 marked on the warehouse and so that we know to get them back to him.

5 Q And when you make that inventory is it your typical practice to
6 not make a specific detailed inventory?

7 A It just depends on what is within the items, you know, so it just
8 really depends.

9 Q Okay. So how long were those documents in your
10 warehouse? Do you remember?

11 A I'm not able to recall. I'd have to look at his dates of stay at
12 the different facilities.

13 Q Did you create an inventory at that time of those documents?

14 A There was an inventory created but I don't know that it was
15 specific as to what documents were there.

16 Q Was there one inventory created?

17 A I know there was one inventory created and -- yes.

18 Q Was there more than one?

19 A By my office there was the one inventory.

20 Q Okay. After Mr. Scheide passed away, did you ever find an
21 original will?

22 A I did not.

23 Q Okay, after Mr. Scheide passed away did you ever find a copy
24 of Mr. Scheide's will?

25 A The -- yes.

1 Q Okay. How do you know it was a copy?

2 A It appeared to be a copy to me. I turned it over to my
3 attorney.

4 Q Okay. When did you find that?

5 A When the items were brought into the warehouse. So not --
6 probably August of 2014, most likely.

7 Q Okay. Where did you find that?

8 A Just among the things that were brought in. We would not
9 have boxed the items, the items would have been boxed up by the
10 facility. So we just send a runner to pick the items up and bring them to
11 our warehouse.

12 Q Okay. Do you recall seeing that copy before?

13 A I --

14 Q Or something similar to that copy?

15 A Something similar -- it was -- this is how I know it was that
16 copy, because he had written on the top and the writing on the top was
17 original ink because it was blue.

18 Q Okay. So the writing on the top of that was blue ink on the
19 copy?

20 A Yes, it was -- yeah, blue -- it was a different colored ink.

21 Q Okay.

22 A Yes.

23 Q And do you recall what the handwriting on that was?

24 A Updated.

25 Q It said updated?

1 A It said updated.

2 Q Did it say anything else that you recall --

3 A There was a date.

4 Q Do you recall the --

5 A I believe --

6 Q Do you recall the date?

7 A October 2nd or October 12th, 2012.

8 Q Okay. Was there anything else that was --

9 A On the --

10 Q -- in blue ink?

11 A On the side he had written that he was an organ donor.

12 Q Okay. If you could take a look at Proposed Exhibit 1?

13 MR. GEIST: Your Honor, I --

14 THE COURT: Okay.

15 MR. GEIST: -- know that you got that.

16 THE COURT: So that'll be in --

17 MR. GEIST: The very first volume.

18 THE COURT: Volume.

19 MR. GEIST: Yeah, volume one.

20 THE COURT: Got it.

21 MR. GEIST: Sorry to bounce around.

22 THE COURT: No problem.

23 THE WITNESS: Not these binders?

24 THE COURT: No.

25 MR. GEIST: Not those.

1 THE COURT: It's not going to be in either of those.

2 [Pause]

3 BY MR. GEIST:

4 Q Go ahead. If you could take a look at Proposed Exhibit 1.
5 And I believe there are 16 pages to it. Does that look familiar to you?

6 A Yes.

7 Q How does it look familiar to you?

8 A This looks familiar because it has the writing on the top or a --
9 has the right copy of the writing on the top and the writing on the side.

10 Q Okay, when you say the writing, you're referring to the writing -
11 -- the blue ink writing that you --

12 A Right.

13 Q -- remembered on the copy --

14 A Yes.

15 Q -- that you found after his passing?

16 A Yes.

17 Q Okay. Does this copy that you're looking at appear to be a
18 true and correct copy of that document that you retrieved after his
19 passing?

20 MR. PAYNE: Your Honor, my objection is, is that unless --
21 strike that. Unless she's been laid a foundation that she is a handwriting
22 expert, I don't think she can testify to the writing organ donor recorded et
23 cetera and the updated. To the extent that this -- and which copy are
24 you talking about? As Your Honor's aware, there's -- we're of the
25 opinion there's three copies in play. There's a copy that has hole

1 punches in it, there's a copy that doesn't have hole punches in it, and
2 then there's a copy obviously of Ms. Tyler's will. So I think she has to
3 make sure that we know we're talking about which copy and the
4 foundation has to be as to which one of these that she's talking about.

5 THE COURT: Okay, so you're not asking her to authenticate
6 handwriting.

7 MR. GEIST: I'm not.

8 THE COURT: It simply is does she recognize Exhibit 1 as a
9 will that she's previously seen and then more detail could be elaborated
10 as to --

11 MR. GEIST: That's correct, Your Honor.

12 THE COURT: Okay. So yeah, I'll allow her to identify if this is
13 something she's seen previously.

14 BY MR. GEIST:

15 Q Okay. After you received this copy of the will, did you do
16 anything with it?

17 A I turned it over to my attorney.

18 [Colloquy between counsel]

19 BY MR. GEIST:

20 Q I'm sorry, there was a question pending, does it appear to be a
21 true and accurate copy of the copy of the last will that you found among
22 Mr. Scheide's personal items after his passing?

23 A Yes it does.

24 Q Okay.

25 MR. GEIST: Your Honor, based on that, we would ask that

1 Exhibit 1 be admitted to evidence.

2 THE COURT: Okay.

3 MR. PAYNE: For purposes of a copy to compare it to --

4 THE COURT: No, for purposes of this is what she found in
5 what was -- she didn't do it, but somebody boxed them up and delivered
6 them as Mr. Scheide's --

7 MR. PAYNE: Let me --

8 THE COURT: -- room contents.

9 MR. PAYNE: If I --

10 THE COURT: So --

11 MR. PAYNE: If I may --

12 THE COURT: -- that's all she's saying is that --

13 MR. PAYNE: Your Honor, but --

14 THE COURT: No, I get to talk.

15 MR. PAYNE: I'm sorry.

16 THE COURT: As I understand Ms. Hoy's testimony, this is the
17 copy -- it's a copy of the copy that she found in a box that was delivered
18 from whatever that place was where he was staying. So that's all it is.
19 It's the copy that she found after Mr. Scheide's death in what was
20 purported to be his personal belongings I -- kind of was a long time
21 getting there but that's where I understand this for that she -- this is
22 where this is -- has showed up from.

23 MR. PAYNE: Your Honor, the -- I'm sorry.

24 THE COURT: Yeah. Okay.

25 MR. PAYNE: The originals are the key to this case. The

1 original documents need to be produced if they're going to be marked
2 and admitted into evidence, not copies of copies of copies. So if he's
3 got the original, they have the original, he needs to show her the
4 original, she needs to mark that and then ask the questions, not a copy
5 of a copy of a copy.

6 THE COURT: No. This is simply admitted as she has
7 testified about a document found in Mr. Scheide's possessions that as
8 delivered after is death. This is the copy that she found in his
9 possessions after his death. That's all it is.

10 MR. PAYNE: Your Honor, but it's a copy of a copy. It's --

11 THE COURT: Correct.

12 MR. PAYNE: Where's the original?

13 UNIDENTIFIED SPEAKER: That's all it is.

14 MR. GEIST: Your Honor, she's testified that she turned that
15 copy over to her attorney.

16 THE COURT: Right.

17 MR. GEIST: This copy that we're using --

18 THE COURT: Yeah.

19 MR. GEIST: -- if you'll see the Exhibit --

20 THE COURT: Yeah.

21 MR. GEIST: -- 2, that -- we pulled this from the petition in the
22 probate case. It was used by the administrator --

23 THE COURT: It's just -- yeah.

24 MR. GEIST: -- as a copy of --

25 THE COURT: So if what you're wanting, Mr. Payne, is the

1 actual document she provided to Ms. Boyer, why do we need that? All
2 we're getting from Ms. Hoy is that she found a document in Mr.
3 Scheide's possessions as delivered to her upon his death and this is a
4 copy --

5 MR. PAYNE: Copy of a copy.

6 THE COURT: -- of what she found in that --

7 MR. PAYNE: Copy of a copy.

8 THE COURT: Yeah. That's all we're saying.

9 MR. PAYNE: Nothing --

10 THE COURT: Okay.

11 MR. GEIST: Your Honor, and this is the best evidence that
12 we have of that copy.

13 THE COURT: Right. Okay.

14 MR. GEIST: So again we move for this to be admitted.

15 THE COURT: It's admitted.

16 MR. PAYNE: As a copy.

17 THE COURT: I think we've established that.

18 MR. GEIST: Okay.

19 [Petitioner's Exhibit 1 admitted]

20 BY MR. GEIST:

21 Q Sorry Ms. Hoy, is Exhibit 1 the copy of Mr. Scheide's will that
22 you included in your petition for appointment as administrator of his
23 estate?

24 A Yes.

25 Q Was there a different copy of Mr. Scheide's will that you used

1 for that petition?

2 A Not -- to my knowledge, it would be whatever I turned over to
3 my attorney.

4 Q Okay, so this -- from your knowledge, this is the only copy of
5 this document that's there? I mean and I'm not referring to every
6 specific copy but what you're looking at, that's the only version of this
7 document that you've seen that you used in your petition?

8 A Yes.

9 Q Okay. Did you ever find any other different copy of Mr.
10 Scheide's will among his personal possessions?

11 A No, I did not.

12 Q Okay. I think you testified that you prepared an inventory of
13 personal items for Mr. Scheide; is that correct?

14 A Yes.

15 Q Taking a look at pages 121 through 122, and that would be in
16 that volume three. Does that look familiar to you?

17 A No.

18 Q You've never seen that before?

19 A No.

20 Q Okay. Does it say Nevada Guardian Services at the top?

21 A Am I on the wrong page?

22 Q Perhaps.

23 A Okay. Oh, are we back to this?

24 Q Yeah, I'm sorry, volume three.

25 A Oh. Oh, I'm sorry, okay.

1 Q No, my fault if I didn't say it, I'm sorry.

2 A I just got a lot of binders here.

3 Q We do.

4 A Okay, 121. Yes, this -- yes, this looks familiar.

5 Q Okay. And how does it look familiar to you?

6 A This is our warehouse inventory form.

7 Q And what do you use that for?

8 A When something comes into the warehouse that's going to be

9 stored for an extended time, possibly extended time.

10 Q Can you tell me what the date of this particular form is?

11 A The date is 8/25/14.

12 Q Okay. And then flipping the page, there's handwriting on this.

13 Do you know who wrote that?

14 A I wouldn't know. I could name who possibly may have written

15 it --

16 Q We don't need to --

17 A Okay.

18 Q We don't need to speculate, but this -- was this part of that

19 warehouse inventory form?

20 A Yeah, this is the back side.

21 Q The back side of --

22 A Yes.

23 Q Okay. And what is that that's written on there?

24 A You want me to read that?

25 Q Well, no --

1 A Oh.

2 Q -- just in general.

3 A Oh, in general this is what is being held in the warehouse.

4 Q Okay. On behalf of --

5 A On behalf of --

6 Q -- the protected person?

7 A Yes.

8 Q Okay. Halfway down the list of things that are there, there's a

9 line that says University of PA diploma and other personal documents.

10 Do you see that?

11 A I do see that.

12 Q Okay. Did you list the will on this document other than those

13 personal documents?

14 A No.

15 Q Okay.

16 MR. PAYNE: Talking about the copy, right?

17 MR. GEIST: The copy that was found. Yeah. Exhibit 1. I'll

18 refer to it as Exhibit 1.

19 BY MR. GEIST:

20 Q And then down about five more pages (sic) there's another

21 line that says miscellaneous papers. Do you know that -- what either of

22 those refer to?

23 A I wouldn't know without going through --

24 Q Okay.

25 A -- through.

1 Q But it's your testimony that among his personal items was
2 found that Exhibit 1?

3 A Yes, and it would have been removed from the box and
4 placed into our file.

5 Q Okay, so it might not have even made it on this inventory at
6 that time is what you're saying?

7 A Right, because we would have removed estate planning
8 documents from the warehouse.

9 Q Okay. I see other personal items on there. Is there an
10 espresso maker on there anywhere?

11 A No.

12 Q Okay. Do you know if he had an espresso maker?

13 A I don't recall.

14 Q Okay. We'll move on. Did Mr. Scheide ever discuss his
15 estate planning with Nevada Guardian Services?

16 A No.

17 Q He never brought up the documents that he had?

18 A No.

19 Q Okay. Did he ever say to anybody at Nevada Guardian
20 Services that he wanted to change his estate plan?

21 A Not to my knowledge, no.

22 Q Okay. We've got -- you also produce in addition to the
23 documents that were in the file a stack of medical records in response to
24 our request for production. How were those records gathered?

25 A They could have been gathered a number of ways or for a

1 number of reasons. We had filed a long-term care claim through his
2 policy and so typically they want medical records. We typically will
3 request medical records from previous providers to ensure continuity of
4 care. So they would have been gathered for a number of different
5 reasons.

6 Q Okay, so the group of medical records that were separate
7 from your file were gathered and collected in the course of the
8 guardianship with Mr. Scheide?

9 A Yes.

10 Q And you had requested those on behalf of Mr. Scheide as the
11 guardian and received those on behalf of Mr. Scheide as the guardian
12 as well?

13 A My agency, yes.

14 Q Okay. Yeah, Nevada Guardian Services.

15 A Uh-huh.

16 Q If you could take a look at Proposed Exhibit 6?

17 A Which binder?

18 Q And that's -- I'm sorry, that is volume two. This will be --

19 A I don't know --

20 Q -- smaller hopefully.

21 A I don't have volume two.

22 THE COURT: Oh.

23 THE CLERK: You have them all now.

24 THE WITNESS: Do I have them all now? Okay.

25 MR. GEIST: You have a complete set.

1 THE WITNESS: I have a complete set. About right.

2 BY MR. GEIST:

3 Q Okay, taking a look at this Proposed Exhibit 6, does this look
4 familiar to you?

5 A Yes.

6 Q How does it look familiar to you?

7 A Well this is a MountainView Hospital face sheet.

8 Q And that's the first page on this Proposed Exhibit 6. The
9 whole exhibit, those pages, do those look familiar?

10 A Well these are his medical records that --

11 Q Okay.

12 A -- we had.

13 Q And are those the medical records that you collected in
14 conjunction with his guardianship?

15 A They would appear to be. Yes.

16 Q Okay.

17 MR. GEIST: Your Honor, we would move to admit Exhibit 6
18 for the same purposes that any records previously were used that would
19 be Exhibit 7.

20 THE COURT: Okay. And so, again, as raised by Ms. Boyer,
21 there are certain concerns that while it might be relevant here and used
22 here that as an exhibit, it should not be made public and is -- are we just
23 talking about -- and again, we would need to identify if it's just a certain
24 page or multiple pages.

25 MR. GEIST: On this I would stipulate to the entire exhibit

1 because I believe it is all medical records --

2 THE COURT: Okay.

3 MR. GEIST: -- for Mr. Scheide.

4 THE COURT: So with the understanding that as the HIPAA
5 authorized recipient, she obtained these records, she kept them in the
6 ordinary course of her business, but with the understanding that due to
7 the confidential nature they'll be sealed after the fact?

8 MR. GEIST: Uh-huh.

9 THE COURT: Okay, so that's -- is that -- that's all of --

10 MR. GEIST: That's my understanding.

11 THE COURT: Which exhibit?

12 THE WITNESS: Six.

13 MR. GEIST: All of 6.

14 THE COURT: All of -- so all of 6, okay. So admitted with that
15 limitation that it's to be sealed at a later -- afterwards. Because it can
16 still be looked at for anybody who has access to the file, it's just it
17 doesn't go out on -- in the public domain on the internet, et cetera.

18 [Petitioner's Exhibit 6 admitted]

19 MR. GEIST: We're fine with that.

20 THE COURT: Okay.

21 BY MR. GEIST:

22 Q Taking a look at page 79 in that Exhibit 6, do you know what
23 this document is?

24 MR. PAYNE: Your Honor, I'm just going to lay a standing
25 objection here because I think we're now going into the content of these.

1 THE COURT: Yeah, so --

2 MR. PAYNE: Well --

3 THE COURT: -- your objection is?

4 MR. PAYNE: It's hearsay.

5 THE COURT: Right. But as we -- as we've discussed, to the
6 extent that this is a business record and she's not opining on anything in
7 this, she's always stated she's not --

8 MR. PAYNE: So --

9 THE COURT: -- competent to do so, but that this is
10 something that she saw or used in her business as Mr. Scheide's
11 guardian, seems to me that that's --

12 MR. PAYNE: I don't know what they're offering these for.

13 THE COURT: Yeah. Well let's let them do that.

14 That's the question, Mr. Geist -- two things. Ms. Hoy has
15 already stated I'm not a medical professional so I can't I guess interpret
16 any medical records, but it is a business record. She was authorized to
17 have it. And so is the issue was she using this in her --

18 MR. GEIST: Did she rely on this in any regard in the --

19 THE COURT: Okay.

20 MR. GEIST: -- services that she provided to Mr. Scheide.

21 THE COURT: Okay. I think for business purposes that's all
22 it's being offered for that she relied on it for her business purposes, not
23 for the truth of the matter asserted. Okay. I mean it's contained in
24 there.

25 BY MR. GEIST:

1 Q Okay. Susie, on this page do you know what this is? Does it
2 look familiar to you?

3 A So look familiar. It's a history and physical.

4 Q Okay.

5 A So I mean I see them frequently.

6 Q And I'll point out the date. The date is November 7th, 2013.
7 This would have been before the guardianship was established, correct?

8 A Correct.

9 Q Okay. And so how did you come to be in possession of this
10 document?

11 A We would have -- I'm assuming that we would have sent a
12 request to MountainView Hospital for their records because it looks like
13 he had been admitted there at one time. So that's how we would have
14 come into possession.

15 Q And why would you have done that?

16 A We do that when we're developing our care plans. We look at
17 previous histories, previous care providers, previous hospitalizations,
18 medications, those -- we look at all of those and we determine our
19 current and ongoing care plan.

20 Q Okay, so you request these types of documents from a
21 hospital to create a care plan?

22 A Yes.

23 Q How do you use this to create a care plan? What do you look
24 at?

25 A So what we would look at is why he was admitted into the

1 hospital, what were some of the medications that he was on at the time,
2 what medications is he on like now, compare the two, what -- with the
3 history and physical that's -- that indicates to us when he first went into
4 the hospital so what caused the hospitalization is what we're looking at.
5 So when we're requesting the records we ask for all of those records,
6 you know, the history and physical, the discharge summary, any tests
7 that we -- that he may have had while in the hospital so that if he's
8 hospitalized again, you know, we're not putting him -- not putting any
9 protected person through multiple testing that he -- that may have
10 already been done.

11 Q Okay, and this particular document that you used for
12 MountainView, did you look at why he was admitted?

13 A Yes, we would have looked at why he was admitted.

14 Q Did you look at the medications and the care --

15 A Yes.

16 Q -- and the tests --

17 A Uh-huh.

18 Q Okay. And do you know why he was admitted at this time?

19 A I would have to read it again but --

20 Q No. Let's not take that time. Do you look at -- so you look at
21 past history of an individual when you're determining the care plan is
22 what you're saying?

23 A Yes.

24 Q Okay.

25 A Yes.

1 Q Taking a look at page 63 of this same volume, does that look
2 familiar to you?

3 A This would also be a history and physical.

4 Q Okay. And is this something that you would review in the
5 process of creating or maintaining a care plan for an individual?

6 A Yes.

7 Q Did you look at this document in maintaining care plan for Mr.
8 Scheide?

9 A I'm certainly that we did.

10 Q Okay. Taking a look at the -- do you know what hospital this
11 was by the way?

12 A This was Centennial Hills Hospital.

13 Q Okay. Do you know why he was hospitalized at Centennial
14 Hills at this time?

15 A The date indicates this would have been when we actually
16 facilitated that transfer to the hospital.

17 Q And why did you facilitate that transfer?

18 A When Judy went to do the visit with him and follow-up, he was
19 in distress so she called -- Judy Coulter, the social worker, so she called
20 911.

21 Q What does that mean he was in distress?

22 A I mean I was not there but she was very concerned for his
23 wellbeing.

24 Q Okay. In the history of present illness, is that something that
25 would refer to why he's in the hospital?

1 A Typically yes.

2 Q Okay. Taking a look at the fourth line down, most of the way
3 to end it says the patient. Can you read that? Do you see where I'm
4 referring to?

5 A Fourth line down?

6 Q Yeah, there's an and on the third line that's on its own so --
7 the patient apparently has been.

8 A Okay. Fourth line, one, two, three, four. The patient
9 apparently has been having some slurred speech and altered mental
10 status.

11 Q Okay. And next sentence?

12 A The patient is fairly confused.

13 Q Okay. Was that what the distress was? Do you know?

14 A I wasn't there --

15 Q Okay.

16 A -- Mr. Geist, but --

17 Q Yeah.

18 A -- I recall that Judy was very -- Ms. Coulter was very
19 concerned about him that day.

20 Q Okay. Was Mr. Scheide hospitalized after that?

21 A I'm certain that he was hospitalized after that, but I'd have to
22 review the file to be exact.

23 Q Okay. If you turn to page 99? Again same file. Can you tell
24 me what hospital that's from?

25 A MountainView Hospital.

1 Q Is this a document you would have received on Mr. Scheide's
2 behalf --

3 A Yes.

4 Q -- when creating a care plan or maintaining a care plan?
5 There's an admission date up in the upper left corner. Says May 21st,
6 2014; is that correct?

7 A Yes, that's what it says.

8 Q Was he in the hospital at MountainView at that time?

9 A He would have been, yes.

10 Q Okay. And do you know the reason that he came into the
11 hospital?

12 A Again I would have to read --

13 Q Okay, chief complaint is I think the first paragraph.

14 A So --

15 Q If you would just read that.

16 A The patient is an 86-year-old gentleman poor historian who
17 was sent from the assisted living facility due to worsening pain, swelling
18 and redness of both lower extremities.

19 Q So he was having problems -- pain problems?

20 A Yes, and so the caregivers most likely called 911.

21 Q Okay. Next paragraph, history of present illness, talking about
22 what -- do you know why they put that in there?

23 A Well --

24 Q If you don't, that's fine.

25 A -- again I'm not a medical person, but --

1 Q Yeah.

2 A -- I mean he's --

3 Q If you don't, that's fine.

4 A Okay.

5 Q About halfway through that paragraph at the end of the far
6 right side it starts his metabolic?

7 A Yes.

8 Q Can you read that sentence for me?

9 A His metabolic encephalopathy somehow resolved, but patient
10 has had progressively worsening dementia.

11 Q Okay. Were there other tests or other things that were done
12 on Mr. Scheide during this time when he was in the hospital?

13 A I would have to review the -- that particular hospitalization.

14 Q Okay, but you would have rely -- you would have -- you would
15 -- relied on this information to continue care plan once he was
16 discharged from the hospital?

17 A Yes.

18 Q Okay. Moving on to page 207.

19 MR. MOODY: Your Honor, I apologize. I touched the screen
20 and caused that black line.

21 THE COURT: Okay. Is that right there -- so the bottom right.

22 MR. MOODY: Thank you.

23 THE COURT: There we go.

24 [Colloquy between counsel]

25 MR. GEIST: Well we'll wrap that up.

1 BY MR. GEIST:

2 Q Can you identify the hospital that he was admitted to on this
3 document?

4 A MountainView Hospital.

5 Q Okay. And can you identify the date that he was admitted?

6 A The -- I don't know that I see the admission date, just the date
7 that the progress note was entered.

8 Q Okay. So on the left side there's patient, Theodore E.
9 Scheide, do you see that? And then account number?

10 A Yes.

11 Q Okay, and then if you go down maybe four lines or two -- I'm
12 sorry, two lines?

13 A Uh-huh.

14 Q ADM date. Could that have been an admission date?

15 A 207 right?

16 Q Yeah --

17 A Oh. Yes, two -- yes, 6/6.

18 Q Okay. So June --

19 A June 6th, 2014.

20 Q June 6th, 2014. Okay. So he was admitted to MountainView
21 Hospital on June 6th, 2014. Did Mr. Scheide's physicians at any of
22 these hospitalizations or any other meetings, did they ever recommend
23 that he no longer needed a guardian?

24 A Not to my knowledge, no.

25 Q Okay. When was the first time you spoke with Theodore E.

1 Scheide, III? Well first let me start off, do you know who Theodore E.
2 Scheide, III is?

3 A Yes.

4 Q And who is he?

5 A The son of Theodore Scheide, Jr.

6 Q Okay. When was the first time you spoke with him?

7 A I spoke with him during the probate administration.

8 Q Okay. Did he contact you?

9 A I believe that we had contacted him.

10 Q You reached out to him, and why did you contact him?

11 A I contacted him to advise him of the probate administration,
12 the proceedings.

13 Q And were you aware of Ms. Scheide, III before that contact?

14 A I was aware of him, yes.

15 Q Okay. But you hadn't contacted him before then?

16 A No I had not.

17 Q Okay. Did Mr. Scheide ever talked to anybody -- well did Mr.
18 Scheide ever talk to you about his son?

19 A Not about his son, no.

20 Q Do you know if Mr. Scheide talked to anybody at NGS about
21 his son?

22 A He did at one time mention him at a doctor's appointment --

23 Q Okay.

24 A -- to one of the case managers.

25 Q When you say he mentioned him, what did he say?

1 A He -- I was not there so I don't know exactly the context of the
2 conversation, but he gave --

3 Q Well then I would ask that you not mention --

4 A Okay.

5 Q -- because it's hearsay. Did -- do you know if Mr. Scheide
6 ever reached out to contact his son?

7 A I would not know that.

8 Q Okay. Do you know if Mr. Scheide ever told anybody at NGS
9 to contact his son?

10 A Again I was not there during the conversation.

11 Q Okay.

12 MR. GEIST: I will tender the witness, Your Honor.

13 THE COURT: Okay. Thanks very much.

14 Mr. Payne, do you want to start now or would you like a brief
15 break? We don't need take very much time, like --

16 MR. PAYNE: Whatever Your Honor would like --

17 THE COURT: -- just until 10 till maybe?

18 MR. PAYNE: Sure.

19 THE COURT: One last break and then we'll be ready to go.
20 Wrap it up. Thanks.

21 [Recess taken at 3:42 p.m.]

22 [Proceedings resumed at 3:53 p.m.]

23 THE COURT: Okay.

24 MR. PAYNE: So you're done?

25 THE COURT: So --

1 MR. GEIST: Yeah.

2 THE COURT: -- Mr. Payne --

3 MR. GEIST: Tender the witness.

4 THE COURT: -- did you want to wait for Ms. Boyer or are you

5 going to go --

6 MR. PAYNE: I think I'll let Ms. Boyer go.

7 THE COURT: Okay.

8 MR. PAYNE: Do you want to -- are you going to ask her any

9 questions?

10 THE COURT: You have any questions for your client?

11 MS. BOYER: No.

12 THE COURT: Okay. Great. Okay. Just wanted to offer that

13 opportunity because I did forget the last time, thanks.

14 CROSS-EXAMINATION

15 BY MR. PAYNE:

16 Q So Ms. Hoy, counsel was asking you about the volume three,

17 the Exhibit Number 117 (sic) which was the inventory. Do you recall

18 that?

19 A Yes.

20 Q Okay. And he walked you through some of the items that

21 were on there. Do you agree that one of the items is a shredder?

22 A I can refer, right?

23 Q Sure.

24 A I'm on the right --

25 Q I think it's volume three.

1 A It's volume three? Must be in the other volume three. Page
2 117?

3 Q One one seven Scheide or one two two.

4 A One two two. One two two.

5 Q Do you recall testifying to this?

6 A Yes I do.

7 Q Okay. And you would agree that one of the items that Mr.
8 Scheide had in his possession was a shredder?

9 A Yes.

10 Q And in fact I think if I understood your testimony at some point
11 you gave him back his shredder?

12 A I actually think that he purchased that during the guardianship.

13 Q Let's talk a little bit about the guardianship. You had
14 submitted a bill in the guardianship with very detailed records of your
15 accounting. Do you recall that?

16 A Yes.

17 Q And for purposes of the guardianship, these records were
18 used to document the time and the events that you were dealing with
19 Mr. Scheide?

20 A Yes.

21 Q During this -- the guardianship period?

22 A Yes.

23 Q Okay. And so those records would be pretty accurate
24 representations as to the things that you did with respect to Mr.
25 Scheide?

1 A Yes.

2 Q All right.

3 MR. PAYNE: Your Honor, I think just because mine is Exhibit

4 A, I'll have the --

5 THE COURT: So use yours as you've got to lay -- okay.

6 MR. PAYNE: Yeah --

7 THE COURT: It's going to --

8 THE WITNESS: So am I --

9 THE COURT: It's going to be organized a little bit differently.

10 MR. PAYNE: Yeah, exactly --

11 THE WITNESS: Okay, so I'm --

12 THE COURT: So --

13 MR. PAYNE: -- but it's the same --

14 THE WITNESS: -- switching binders?

15 THE COURT: So yeah.

16 MR. PAYNE: Yeah. And we'll have you turn --

17 THE COURT: Well why don't you leave those just because
18 we don't want to be dragging them back and forth --

19 MR. PAYNE: Oh yeah.

20 THE COURT: -- if we don't need to, because there's so many
21 of them. Okay.

22 BY MR. PAYNE:

23 Q If you would turn to Respondent's Exhibit A, ask you if you'd
24 ever seen that?

25 A Yes. The summary of account.

1 Q All right. And it's the accounting that was filed in the
2 guardianship matter?

3 A Yes.

4 Q Okay. And if you review through that, there is a detailed
5 breakout of your time starting at Bate stamp number 18; do you agree?

6 A Yes.

7 Q Okay. And so for the record this reflects the date that you did
8 a service?

9 A Yes.

10 Q The service that was rendered, the amount of time, and then
11 your billing for that, correct?

12 A That is correct.

13 Q And you've been doing guardianships now for how long?

14 A Ten years.

15 Q Okay. And this is a pretty standard billing for purposes of
16 guardianship court with the detail, et cetera?

17 A This was our standard.

18 Q Correct.

19 A Yes.

20 Q And if this information for example if we look at the -- let's just
21 look at the first date. The first entry is on 2/13/2014. Do you see that?

22 A Yes.

23 Q Okay. And you put down .5 for review petition for appointment
24 temporary guardian, petition to appoint general guardian, sign and return
25 to Kim Boyer's office. Do you see that?

1 A Yes.

2 Q If I understood your testimony, did Kristin Tyler tell you to start
3 a guardianship over Mr. Scheide?

4 A I don't know that she said start the guardianship. I think we
5 determined that this would be the best alternative --

6 Q But this was a result --

7 A -- since there was no agent --

8 Q -- a result of --

9 A -- to act.

10 Q -- Ms. Tyler's contacting your office?

11 A Yes, there was no agent to act as power of attorney and he
12 didn't have the capacity at that time to --

13 Q But you didn't know Mr. Scheide before that point, correct?

14 A Before February 13th?

15 Q Yes.

16 A No, we had seen him prior to --

17 THE COURT: Are you asking her personally --

18 MR. PAYNE: Yes.

19 THE WITNESS: Oh, I --

20 THE COURT: -- or Nevada Guardianship (sic)?

21 MR. PAYNE: Right.

22 THE COURT: Okay.

23 BY MR. PAYNE:

24 Q Asking you.

25 A Asking me personally?

1 Q Yes. Yes.

2 A I had never met him.

3 Q Okay. But I think your testimony was that Kristin Tyler brought
4 you and your organization in.

5 A That is correct.

6 Q And then you interviewed him and at some point you filed a
7 petition for guardianship?

8 A Yes.

9 Q Okay. And so was it Kristin Tyler that was one that was
10 pushing the guardianship?

11 A Well I don't know that anyone was really pushing the
12 guardianship, we just determined that it was the, you know -- the best
13 alternative method to provide him with some --

14 Q Well you're familiar with --

15 A -- advocate.

16 Q -- less restrictive alternatives, right, and that concept?

17 A I am familiar.

18 Q And in fact you served recently on the guardianship
19 commission?

20 A Yes.

21 Q And by all accounts did an excellent job and I do commend
22 you for listening and spending all of that time. Since that guardianship
23 commission has been around and since you have -- and made
24 recommendations to the supreme court, knowing what you know now,
25 would you have started that petition on February 13, 2014 for a full

1 general -- a plenary guardianship?

2 A I would have because he did not have the capacity to
3 nominate another agent at that time.

4 Q So it was your opinion that he lacked the ability to designate
5 somebody else?

6 A Well I'm not a medical person, but based on the records that
7 were provided to us in support of a guardianship, yes.

8 Q Now, if I understand these records, he was having telephone
9 calls with -- and you were having telephone calls, correct, with him and
10 with other people regarding him?

11 A Yes.

12 Q Okay. Was he -- did -- when you started the guardianship,
13 was he still driving?

14 A Not to my knowledge, no.

15 Q Did he still have a car?

16 A He did have a car.

17 Q Okay. Did -- you didn't take his keys away, did you?

18 A We didn't take his keys away, he didn't really express a desire
19 to drive.

20 Q Was he asking you for money?

21 A Yes.

22 Q You smiled.

23 A Yes, he was asking for money.

24 Q He wanted his money back?

25 A He wanted spending money.

1 Q Okay. So you were giving him money?

2 A We had purchased for him a spend card. So we weren't
3 giving him cash, we were -- we gave him a -- like a Visa debit card. We
4 do that for all of our clients.

5 Q And what was he using this cash for if you know?

6 A I really don't know. When we put in our budget personal
7 spending monies, we don't micromanage those -- that spending.

8 Q Now, just per reading these records, it would appear that you
9 had actually telephone calls with the ward.

10 A Yes, that is correct.

11 Q So did he have a cell phone?

12 A There was a phone available to him at the facility.

13 Q Okay. So he would -- he -- if he needed to get a hold of you,
14 he could call you?

15 A He could call the office, yes.

16 Q Didn't he at some point fire Kristin Tyler?

17 A He -- yes.

18 Q And in fact, he didn't want anything to do with this
19 guardianship, right?

20 A That --

21 Q He was quite adamant that he wanted out of this thing?

22 A He fired all of us, yes.

23 Q Now, it appears from these records that you were also paying
24 for his cable bill?

25 A Yeah, he may have had cable in the room at the assisted

1 living where he resided.

2 Q Okay.

3 A Let me look.

4 Q Did you attend -- did you accompany him to the doctor's
5 offices?

6 A Me personally or my agency?

7 Q You.

8 A Not me personally, no.

9 Q Okay, so the entry on Bate stamp 022, dated 4/14 --

10 A Okay.

11 Q I'm sorry, 4/11.

12 A Oh.

13 Q Travel to from Dr. Takasi (phonetic), attend and accompany
14 ward during appointment, it's got four hours. Was that you?

15 A That was not me. And since the guardianship commission
16 now we have the case manager's initials on our bills so we know who
17 would have attended that.

18 Q Okay. So but you didn't -- if I understand your testimony, you
19 didn't go to any of his doctor's appointments?

20 A I did not go to any of the doctor's appointments.

21 Q On 4/14, below that, do you see that it says email and
22 telephone correspondence with senior looks like residential care
23 administer regarding ward's outing.

24 A Okay.

25 Q You see that?

1 A Yes.

2 Q Were you in contact regarding a ward's outing?

3 A She would probably let us know if he went out -- if he went
4 out.

5 Q So during this period was he going out?

6 A He was. We had scheduled personal care attendants to
7 accompany him and take him shopping or out to eat or really, you know.

8 Q And during that period did he go to casinos?

9 A I would not know that.

10 Q Okay. During that period did he -- isn't it true that he -- didn't
11 he buy food for some of the other caregivers and that's -- was the other
12 reason he was asking for money?

13 A I was never informed of that.

14 Q Okay.

15 A Or if I was I forgotten that.

16 Q All right.

17 A He bought a lot of food.

18 Q And this was food for him?

19 A Yes, that was my understanding.

20 Q Direct your attention to Bate stamp 23, which is the next page,
21 there's an entry on 4/27/2014. Tell me when you're there.

22 A I'm there.

23 Q Telephone call from ward and caregiver Princes (phonetic) at
24 senior residential. Do you see that?

25 A I do.

1 Q So is that -- did he call you?

2 A He probably did call our office.

3 Q Okay. And -- now I think if I understand your testimony, there
4 was a discussion about his son with counsel earlier on and the medical
5 records seem to indicate that he was capable or strike that. Medical
6 records --

7 [Colloquy between counsel]

8 BY MR. PAYNE:

9 Q Medical records and this would be binder four, Bate stamp
10 1011 under Scheide. Doctor's visit form. Tell me when you're there.

11 A Okay. What was the page number again?

12 Q Bate stamp 1011 under Scheide or PNGS1019.

13 A One zero one nine, okay. Yes.

14 Q You familiar with that record?

15 A Yes.

16 Q And can you read under the comment section there?

17 A My copy's not that great.

18 Q Let me look.

19 A Discussed -- I think it says discussed with Marge but I can't
20 read the rest of that. PT podiatry, social worker dietician, discussed
21 address -- I can't read the rest of it. For delivery to NVG -- I mean I just
22 have a very poor copy, Mr. Payne. And then son, Chipper Scheide. I
23 think it says fifties and I can't read the rest of that.

24 Q Did --

25 A My copy is very poor.

1 Q -- Mr. Scheide tell you that he wanted to reinitiate contact with
2 his son?

3 A He did not tell me that personally. I was not there during --

4 Q Were you aware of a conversation --

5 A I was made aware of the conversation.

6 Q And when was this?

7 A This was right after this doctor's appointment.

8 Q And who was present?

9 A Diane Prosser (phonetic), guardian case manager.

10 Q And she works for you?

11 A Not any longer.

12 Q Okay, but she worked for you at the time?

13 A She did.

14 Q And what did she tell you?

15 A She said that at a -- she -- this is not verbatim because been
16 several years but she indicated --

17 MR. MOODY: I'm going to object. It's hearsay.

18 MR. PAYNE: It's not for the matter --

19 THE COURT: Sustained.

20 MR. PAYNE: So you --

21 THE COURT: So to the extent that she says it's not verbatim,
22 I did kind of have a worry about it being hearsay. But if she's got some
23 general knowledge that she took some action based on, that I think is
24 different so just to clarify how we're using this because --

25 MR. MOODY: So in other words, as long as it's not offered for

1 the truth of the matter --

2 THE COURT: Right, if she's just --

3 MR. MOODY: -- it's allowed.

4 THE COURT: -- like -- I'm not quoting her, but I understood
5 such and such and I took such action, that I think is an okay use of it.

6 So I think that's what you were doing.

7 MR. PAYNE: Exactly.

8 THE COURT: Okay.

9 BY MR. PAYNE:

10 Q So Diane told you?

11 A Diane did come to me. She said that at the appointment Mr.
12 Scheide had brought up his son and his ex-wife and that he believed
13 they lived in Pennsylvania and finding her -- if Diane could find her, then
14 she could find Chip.

15 Q You're represented by counsel here today, correct?

16 A Correct.

17 Q And you know who Kristin Tyler is?

18 A Yes I do.

19 Q And is Ms. Tyler your attorney too?

20 A She -- not in this matter, no.

21 Q Not in this matter but do you use Ms. Tyler in other matters?

22 A Yes.

23 Q Did you talk to Ms. Tyler -- excuse me, did you talk to Mrs.
24 Tyler about this conversation with her son?

25 A The conversation I had with Ms. Prosser?

1 Q Correct.

2 A No I did not.

3 Q Back to your invoice, Nevada Guardian Services, Exhibit
4 0024, when did you become aware of the size of this estate?

5 A Probably pretty -- probably right about the time of the
6 guardianship.

7 Q So back in February?

8 A Yes.

9 Q Okay. And in the guardianship you had to prepare an
10 inventory. Do you agree?

11 A Yes.

12 Q Okay. And on your billing records on 5/12/014 (sic) -- tell me
13 when you're there.

14 A I'm here.

15 Q All right. An entry says review, sign and return to Kim Boyer's
16 office the inventory appraisal and record of value. See that?

17 A Yes.

18 Q Okay, so at some point you filed an inventory in the
19 guardianship. Do you recall the value of that inventory?

20 A I would have to look at it.

21 Q Roughly?

22 A It was over two million.

23 Q And in an estate context for -- strike that. In guardianship
24 context, is that a large estate or small estate?

25 A That's a large estate.

1 Q Above that on 5/5/2014, do you see that?

2 A Yes.

3 Q Telephone calls with appraiser, Cheyenne Storage and
4 Clearview to schedule inventory of storage unit.

5 A Yes.

6 Q Counsel asked you early on as a professional guardian one of
7 your jobs is to inventory the contents, correct?

8 A Correct.

9 Q And you take great care to make sure that you do that; isn't
10 that correct?

11 A Yes.

12 Q And you take -- tell me just the steps that you direct your
13 people to inventory contents as an example.

14 A Contents of a storage of a home?

15 Q Well, walk us through the storage at home. How would you --
16 what would you do there?

17 A So --

18 Q Just big items?

19 A No. Everything in -- everything that's within the house or
20 within a storage unit is inventoried, and we don't typically -- if it's a
21 home, we don't do the inventory ourselves, we hire someone to do the
22 inventory and appraisal.

23 Q Okay. Now are you -- do you still have a storage unit?

24 A For --

25 Q For Mr. Scheide?

1 A No I do not.

2 Q Okay. And at some point did you search through the storage
3 unit?

4 A There was just very little in the storage unit so there was really
5 nothing to search. We met the certified appraiser there because we
6 didn't know what was inside and then we got his report there was -- well
7 I know there was nothing -- there was very little items inside.

8 Q Tell us the steps that you took to search for an original will.

9 A The steps. Well I knew that there -- well there was no longer
10 a storage unit. We went back and looked through all of the items that
11 were brought over from senior residential several times. There was talk
12 about a bag so we were concerned that this bag had been left either at
13 senior residential or at the original facility where he had been when we
14 first appointed but there were no personal items left there. The safe box
15 was empty.

16 Q Tell me what -- tell us what you were looking for.

17 A I was looking for an original will.

18 Q Okay. At some point did you file a petition in the probate
19 case?

20 A Yes.

21 Q Okay. And you brought a petition in fact specifically to open
22 up the safe deposit box?

23 A Yes.

24 Q Okay. Walk us through that process.

25 A Present the order to the bank and open up the safe deposit

1 box.

2 Q And what did you find?

3 A Nothing.

4 Q Completely empty?

5 A Completely empty.

6 Q Did you at some point bring a petition in the probate court to
7 declare what efforts you had done and to declare that he died intestate?

8 A Yes.

9 Q And you're represented by Ms. Boyer?

10 A Yes.

11 Q And you signed the verified petition?

12 A Yes.

13 Q And in fact you signed two petitions, correct? One that said --
14 the petition to open up the safe deposit box, correct?

15 A Correct.

16 Q Did Ms. Tyler ever tell you that she had an original will?

17 A Not from the date that we were -- not from the October 2012,
18 no.

19 Q Did she ever tell you that she had an original will of the June
20 will?

21 A No.

22 Q So you then bring a petition on for instruction. Do you recall
23 that?

24 A Yes.

25 Q Okay. So you brought your petition to open up the safe

1 deposit box, found out that there was nothing in there. Then what did
2 you do? Instructed your attorney to prepare a petition for instruction
3 explaining to the court what you did?

4 A Yes.

5 Q Okay. And in that process you laid out that you had done X, Y
6 and Z with respect to the original and you couldn't find it.

7 A Yes.

8 Q Fair characterization?

9 A (No audible response.)

10 Q And do you know whether St. Jude's received notice --

11 THE COURT: I'm sorry. We didn't get a verbal response.

12 MR. PAYNE: I'm sorry.

13 THE WITNESS: Oh. Yes.

14 THE COURT: You know, in our old courtroom we could see
15 but this one's so horizontal --

16 THE WITNESS: Okay.

17 THE COURT: -- we can't see you. So if you can just
18 remember.

19 THE WITNESS: I'll speak up.

20 THE COURT: Thanks.

21 BY MR. PAYNE:

22 Q When you went to the safe deposit box, you said there was
23 nothing in it. Did you -- how big a box was it?

24 A I do so many. Not very big.

25 Q Was anybody with you?

1 A No.

2 Q By yourself?

3 A The bank rep.

4 Q Bank rep, okay.

5 A Sorry.

6 Q And you communicated that to your attorney?

7 A Yes.

8 Q Now back to your billing records, on June 30th indicates that

9 there's travel to and from Check City. What does that indicate?

10 A That is the spend card that we use. We fund it through Check

11 City because there's no charge.

12 Q Okay, so you go --

13 A Well there's no charge on the Check -- on the spend card

14 side.

15 Q Okay. And says load funds on the Visa cards.

16 A Right.

17 Q And then travel to and from Wells Fargo to obtain personal

18 funds for the ward. You see that?

19 A I do.

20 Q Okay. So on June 30th, is this you or someone from your

21 office doing this?

22 A That would be someone from the office.

23 Q Okay, but someone from your office is traveling to Check City,

24 giving them I assume a check?

25 A Well, the entry's actually backwards.

1 Q Okay.

2 A It should be obtaining the funds first and then the cash is
3 loaded on to the spend card.

4 Q Okay. How do they decide how much cash that they're going
5 to give Mr. Scheide?

6 A We talk to -- talk to him, what his needs are, what he wants to
7 use the funds for, develop the budget and then how often the card is
8 going to be loaded.

9 Q So he's out --

10 A So just --

11 Q -- he's out of the -- he's not in the hospital at this point,
12 correct?

13 A Well I'd have to double check dates but I assume he's not in
14 the hospital at that point. We have those things on a schedule so --

15 Q Okay. Back to June 30th. So he's out of the hospital,
16 someone's going to -- he's -- is he calling you to tell you -- is this done
17 weekly, monthly?

18 A I'd have to really look to see how his was set up. It just
19 depends on the individual protected person's needs if it's weekly or
20 monthly or -- and their ability to handle the funds.

21 Q Okay. If you go to the beginning of this exhibit, Exhibit 16, do
22 you see that? Same exhibit it's --

23 A Yes.

24 Q -- Bate stamp --

25 A Uh-huh.

1 Q Okay. And it has personal monies. Do you see that?

2 A I do.

3 Q Okay. On 4/11 it looks like cash is being -- is that given or
4 taken out?

5 A That -- those are disbursements so those are the monies that
6 are taken out and loaded onto the spend card.

7 Q Okay. So you did that on 4/11, someone did it on 4/29,
8 someone did it on 5/13, someone did it on 5/26, 6/26 looks like twice,
9 and in fact at that point it's \$506 you see that?

10 A I do.

11 Q Okay, and then that has a debit card. Is this something
12 different?

13 A No, it's just whoever entered that into the system.

14 Q Okay. But it's \$506.95.

15 A He may have made a request for extra funds.

16 Q And he would have contacted you or someone in your
17 organization?

18 A Yes.

19 Q Okay. And then on 7/24 do you see that? Someone is giving
20 cash or is that --

21 A No, that would be the same, the debit card.

22 Q The debit card.

23 A Uh-huh.

24 Q And that debit card does it have -- does he have to produce
25 identification with this thing?

1 A No, it's just like your ATM card.

2 Q Okay. Now, above that -- on 5/13/2014, do you see that on
3 that same exhibit?

4 A Yes.

5 Q You -- someone's paying Allstate -- looks like -- is it Indemnity
6 or is it -- looks -- Allstate. Do you see that? One thousand --

7 A I do see that.

8 Q What was that paid for?

9 A There should be receipts. I'd have to look at the receipt.

10 Q Do you have any reason to believe that wasn't for his
11 insurance on his car?

12 A That could be the insurance for the car.

13 Q Now he was a veteran, right?

14 A Yes.

15 Q And in fact, it looks like on 7/31 the veteran -- Department of
16 Veteran Affairs was reimbursing him for med copay. Do you see that?

17 A No, that's a disbursement.

18 Q Okay.

19 A So that's us paying for a copay.

20 Q Okay. And these records then accurately would represent any
21 other payments on his behalf, correct?

22 A Correct.

23 Q Okay. It looks like you've got pharmacy medication. Do you
24 see that?

25 A Medication pharmacy, yes.

1 Q On both on April 8th and on June 6th, so he's taking
2 medications as far as you know?

3 A Yes.

4 Q Okay. Turn the page to 17. 7/24/2014 you see that
5 transaction cash to load money on the card?

6 A Yes.

7 Q Three hundred dollars?

8 A Uh-huh.

9 Q 8/14, do you see that?

10 A Yes.

11 Q There's an entry of Adoptive (sic) Comfort-Wear. What is
12 that?

13 A Adaptive Comfort-Wear is like they -- they'll deliver, you know,
14 personal need items; diapers, wipes --

15 Q So --

16 A -- things of that nature.

17 Q So on August 14th they're still delivering those things?

18 A Well it looks like it only happened one time, so without seeing
19 the bill I wouldn't really know what Adaptive Comfort-Wear provided to
20 him.

21 Q Okay. Now, the next category says professional fees. Do you
22 see that?

23 A Yes.

24 Q Okay. And on 5/14 there's an entry to David Arenas
25 (phonetic). Do you see that?

1 A Yes.

2 Q Scheide inventory?

3 A Uh-huh.

4 Q So you hired somebody to inventory Mr. Scheide's property?

5 A The storage unit. Yes.

6 Q And this was his own storage unit?

7 A That was our understanding. He had set -- well it was in his

8 name. He had set it up. So we weren't sure what was in the storage

9 unit.

10 Q Okay. So he had a storage unit that was different than -- you

11 didn't -- he didn't establish this after he was in the guardianship?

12 A No, it was established prior to the guardianship.

13 Q And how did you get into it?

14 A We would have provided our documents to the storage

15 company and then I believe we had to cut the lock off.

16 Q Did Mr. Scheide accompany you? Did he go with you to that?

17 A No, he did not.

18 Q Okay. At some point he wanted his items back, correct?

19 A What items?

20 Q He wanted his personal effects back. He wanted his bags, his

21 clothes, his scissors, some of the things you'd secured earlier.

22 A Yes, like when he would go back to the group home, it was

23 usually like within a couple hours he wanted all of his things.

24 Q He wanted his stuff back.

25 A Yes, he wanted -- yes, he wanted his things.

1 Q And it looks like if I'm reading your bills correctly he -- this
2 storage unit was maintained all through March and April, correct? And
3 May. Excuse me, March and April.

4 A Yes. Without looking at exact dates, I would assume that's
5 correct.

6 Q Now, utilities, gas, power, that entry on 6/7/2014, you see
7 that?

8 A I do.

9 Q Credit Bureau Central invoice, what is that?

10 A Well that -- Credit Bureau Central's a debt collector so that
11 might have been a debt, previous gas or power bill.

12 Q If you could turn to Bate number 028, SCHEIDE028, entry on
13 7/10/2014.

14 A 7/10? Okay.

15 Q Tell me when you're there.

16 A I'm there.

17 Q Entry for travel to and from Dr. Tasilki's (phonetic) office,
18 attend and accompany ward during doctor's appointment. Do you see
19 that?

20 A I do.

21 Q I think we -- and that was three hours but you weren't there?

22 A No.

23 Q But one of your caregivers was with him at the doctor's office
24 for three hours?

25 A One of the guardians would have been with him.

1 Q Guardians, correct, okay.

2 A Uh-huh.

3 Q And he didn't go by ambulance, right?

4 A No, he would not have went by ambulance.

5 Q So normally you would pick up Mr. Scheide, someone would

6 put him in your employee's cars?

7 A No, we use a personal care attendant company to do that.

8 Q So you hire somebody to pick him up?

9 A Right, and then we just meet at the doctor's office.

10 Q Okay. So you don't -- your people aren't instructed to be with

11 him the entire time so there's a period where he wouldn't be with you

12 guys --

13 A That's correct.

14 Q -- during that travel, right?

15 A That's correct.

16 Q Okay. And you didn't have any concerns about Mr. Scheide

17 slipping or falling or running away or some other incident?

18 A Well there's always a concern --

19 Q Right.

20 A -- for a slip or fall --

21 Q Right.

22 A -- but no, we didn't feel like he needed to be transported via

23 ambulance.

24 Q Next entry, 7/16, travel to and from the veteran's clinic, attend

25 and accompany the ward during the doctor, and three hours and 25

1 minutes. Do you see that?

2 A Yes.

3 Q So again, you would have sent a van to pick him up, your
4 agent would have met him there at the doctor's office, would have been
5 with him there for three hours --

6 A Yeah.

7 Q -- and then he would be transported back to the -- his home
8 facility?

9 A Yes.

10 Q Did you make any trips to Kristin Tyler's office to pick up any
11 documents?

12 A Not to pick up documents, but I did make a trip to Kristin
13 Tyler's office.

14 Q And the purpose of going to Ms. Tyler's office was to do what?

15 A Pick up his gun.

16 Q His gun. Okay. Did you discuss with Ms. Tyler anything
17 about Mr. Scheide other than the gun on that day?

18 A Not that I can recall.

19 Q So the entry on 7/28/2014, tell me when you're there.

20 A I'm there.

21 Q Travel to and from Attorney Kristin Tyler's office, obtain ward's
22 personal item.

23 A Yes.

24 Q Is that the gun?

25 A That was his gun.

1 Q Okay. Now, did you have any discussions with Kristin Tyler at
2 that point about Chip Scheide?

3 A No.

4 Q Did Mrs. Tyler ever tell you that we don't, we shouldn't, we
5 can't or will not notify Chip Scheide?

6 A No. She did not.

7 Q Did she ever tell you or indicate that you shouldn't give Mr.
8 Scheide notice of any proceedings?

9 A No, she did not.

10 Q The next entry on 8/1, travel to from the Check City to load
11 funds. Do you see that?

12 A I do.

13 Q Below that, telephone call with ward, August 4th. Did Mr.
14 Scheide have a -- if you're aware of a hearing impediment?

15 A I wouldn't be able to recall that specifically.

16 Q Okay, if you can look at 7/31/2014?

17 A Yes.

18 Q Tell me when you're there.

19 A I'm there.

20 Q Travel to and from the cardiologist office, attend and
21 accompany ward during doctor's appointment. So do you know when
22 he had a cardiologist appointment set up for his hearing?

23 A A cardiologist for his hearing?

24 Q I'm sorry. That's obviously a heart doctor.

25 A Heart doctor, yes.

1 Q Yes, I misspoke.

2 A That's okay.

3 Q I thought I saw -- oh, okay. Was there a -- there it is. August
4 11th, I apologize, on 30. Tell me when you're there.

5 A I'm there.

6 Q Telephone call with Margo from senior residential regarding
7 upcoming VA looks like audiogal (phonetic) --

8 A Audiology.

9 Q Thank you. Getting tired. So he had an appointment set up
10 for his hearing? You agree?

11 A It would appear, yes.

12 Q All right. In fact the next one below that, 8/12, travel to and
13 from the Veterans Hospital to attend the appointment. You see that?

14 A I do.

15 Q Now that one says ward did not attend. See that?

16 A I do.

17 Q What happened there?

18 A I was not the case manager -- obviously I wasn't the one
19 meeting him there, but he did not -- he refused to go. I mean that's what
20 the note says, but I remember that they waited thinking that he would go
21 eventually, because we were working towards getting him on the VA
22 homebound program through the -- because he was a veteran, it was a
23 benefit available to him and it would have saved a lot of doctor's
24 appointments. So --

25 Q So if I understand these records, and tell me if you disagree, it

1 looks like until literally August 16th or thereabouts, Mr. Scheide's still at
2 home, still setting doctor's appointments, still spending money --

3 A Yes.

4 Q Would you agree? And that for all essential purposes, he's,
5 for lack of a better word, capable and competent to do these kinds of
6 things?

7 A Well I don't -- I don't want to speak --

8 MR. MOODY: Objection.

9 THE COURT: Pardon?

10 MR. MOODY: Foundation.

11 THE COURT: She did testify that she doesn't have any
12 medical training herself. I mean she does rely on --

13 MR. PAYNE: I understand that. Mr. Geist --

14 THE COURT: -- recommendation (phonetic) for judges but --

15 MR. PAYNE: Mr. Geist spends all this time to establish this
16 guardianship that he's supposedly incompetent from this time period of
17 February 14th until he dies on August 17th. I think Ms. Hoy can say with
18 relatively degree of certainty whether or not the guardianship was
19 actually even needed.

20 THE COURT: I don't necessarily agree with you because I do
21 think that is ultimately a question for the judge.

22 MR. PAYNE: Okay.

23 THE COURT: Whoever that was that presided over that
24 guardianship. She never moved to close it down.

25 [Colloquy between counsel]

1 BY MR. PAYNE:

2 Q Did Mr. Scheide ask you for certain financial information
3 back?

4 A He asked to see his bank statements, yes.

5 Q Okay. When did he ask you for those bank statements?

6 A Typically when he would call in he would ask, you know, for
7 the statements.

8 Q Were you keeping him informed by giving him the bank
9 statements?

10 A Yes.

11 Q Okay. So he knew what -- generally speaking what money he
12 had, correct?

13 A Yes.

14 Q And he knew that he had a son, right? Chip Scheide?

15 A Yes.

16 Q Okay. And he was capable of communicating these sorts of
17 issues to people, you agree?

18 A Yes, he was capable of communicating.

19 Q Did you ever -- did he ever say don't pay this bill or I'm refuting
20 those charges and I don't want you to pay them?

21 A Not in those exact words, but he didn't like the amount that
22 was being paid at the facility. You know, he did not -- he didn't agree
23 that the car was under a lease, he thought it was a purchase. I mean
24 there was those types of disagreements.

25 THE COURT: Ms. Hoy, here here's some --

1 THE WITNESS: Oh.

2 THE COURT: -- in case you need them.

3 THE WITNESS: Thank you.

4 THE COURT: Thanks.

5 BY MR. PAYNE:

6 Q At some point Mr. Scheide passed away. You --

7 A Yes.

8 Q You agree? Okay, and I'm still looking at your billing records

9 and I see that on August 22nd, 2014 -- tell me when you're there.

10 A Okay.

11 Q Well let me back up. On August 19th, you -- there was a

12 telephone call exchange and email with Chip Scheide. You see that?

13 A Yes.

14 Q So you got a hold of Chip Scheide, correct?

15 A Well I don't know if that was me personally --

16 Q But your organization --

17 A -- but someone my organization, yes.

18 Q Okay. And do you know how they got a hold of him?

19 Googled him?

20 A I think they Googled him and we have a program that in the

21 office that we can do family search.

22 Q You would assume -- it's safe to say that it's not very difficult

23 to get a hold of Chip Scheide?

24 A It was not very difficult to get a hold of Chip Scheide.

25 Q On 8/22/2014, you indicate there was a telephone call with

1 Kristin Tyler, Attorney, provided ward's family contact information. Do
2 you see that?

3 A Yes I do.

4 Q Okay. So you're -- just so I understand, you're getting
5 information from Ms. Tyler or you're giving Ms. Tyler the information?

6 A It looks like we provided the information to Ms. Tyler.

7 Q Okay. Turning the page now we're into September. Entry on
8 9/4/24 -- '14, you see that?

9 A Yes.

10 Q Says fax letter to Cox Communications to cancel services.

11 A Uh-huh.

12 Q So it's safe to assume that Mr. Scheide still had cable at that
13 point?

14 A Yes.

15 Q Okay. Now on November 11th there's two -- two entries, the
16 first being a telephone call to Chip Scheide. Do you see that?

17 A I do.

18 Q Was that a telephone call you made?

19 A No.

20 Q Was that someone from your organization?

21 A Yes.

22 Q And what were they trying to determine?

23 A I'm -- it looks like interment. Maybe they were finalizing the
24 burial plans.

25 Q Okay. And then on that same day you have search personal

1 records for original last will and testament. You see that?

2 A Yes.

3 Q And is that something that you did or was it somebody else in
4 your organization?

5 A I did that. And there was two of us that day.

6 Q Okay. And an hour and half. Do you see that?

7 A Yes.

8 Q Now turning to Exhibit (sic) 38, these are records that
9 represent what?

10 A The bottom 38, page 38?

11 Q Yes, 38 and 39.

12 A Same binder?

13 Q Yes, same binder; 37, 38 and 39.

14 A This is Ms. Boyer's bill.

15 Q Okay. So this is a bill that she would have prepared for you or
16 the estate --

17 A Uh-huh.

18 Q -- or the guardianship which represents time served in these
19 matters; would you agree?

20 A Yes.

21 Q Okay. And drawing your attention to August 29th, 2014,
22 shows there a review of a last will and testament. You see that?

23 A Yes.

24 Q And if I understood your testimony, there was a copy that you
25 gave to your attorney?

1 A Yes.

2 Q In the guardianship matter, you had also prepared a petition --
3 excuse me, an inventory, correct?

4 A Yes.

5 Q And you prepared also a -- an inventory in the probate matter,
6 correct?

7 A Yes.

8 Q And both of those matters would require you to put down
9 personal property, you would agree?

10 A Yes, I would agree.

11 Q And you would agree that in the guardianship you put zero
12 down for personal property? In the guardianship matter, not petition.
13 Excuse me, on the inventory. I misspoke.

14 A I think it would be in one of these binders if I can look.

15 Q Well the -- I think I have an exhibit.

16 A Yes.

17 Q Okay. And where are you looking for the record?

18 A Volume three, page 52.

19 Q And that's --

20 A Oh I'm not looking in yours.

21 Q No, no, that's okay.

22 A I recognized where it would --

23 Q Stay there.

24 A -- be in here.

25 Q It's the same inventory -- you only filed one inventory in the

1 guardianship, correct?

2 A Correct.

3 Q All right. And this was on May 13th, 2014. Do you see that?

4 A Yes.

5 Q And miscellaneous personal property, do you see that line 23?

6 A Yes.

7 Q And you have none.

8 A I do.

9 Q Okay. And again, this would have been the contents of Mr.
10 Scheide's totality of his property during the guardianship period?

11 A Well, it wouldn't be during the guardianship period, it would be
12 on initial on appointment.

13 Q Okay.

14 A So --

15 Q So for the record, when you file the guardianship, you're
16 indicating to the court that there is no personal property?

17 A I did initially indicate --

18 Q Okay.

19 A -- to the court there's no personal property.

20 Q And in the estate when you filed your inventory, you filed an
21 estate inventory, correct?

22 A Yes, I believe so.

23 Q And give me one moment. Court has courtesy copies of these
24 and this is what was filed in inventory. Excuse me, in regard in probate
25 estate. And I apologize if you don't have that document in front of you.

1 MR. PAYNE: May I approach, Your Honor? To let -- to give
2 her this?

3 THE COURT: Sure. If Mr. Geist or Mr. Moody, I don't know,
4 is this your witness, Mr. Moody?

5 [Colloquy between counsel]

6 MR. PAYNE: Your Honor, I'm handing her what has been
7 identified as the inventory appraisal and record of value, Theodore
8 Scheide, P114082619.

9 BY MR. PAYNE:

10 Q You ever seen that document before?

11 A Yes, I have.

12 Q And that's the inventory you filed in the estate matter?

13 A Yes.

14 Q And that would represent the property that would have come
15 into your possession at the beginning of the estate or shortly thereafter,
16 correct?

17 A Correct.

18 Q And you list nothing for personal property? Except for some
19 household effects?

20 A Correct.

21 Q All right. And do you recall the petition for instructions the
22 date of that filed in the probate matter?

23 A I do not recall the date.

24 Q Do you have any reason to believe it wasn't May 6th, 2015?

25 A That sounds correct.

1 Q Okay. And you would have reviewed that petition before you
2 filed it?

3 A Yes.

4 Q And in that petition on page -- paragraph 6, the drafting
5 attorney gave the original will to the decedent. This is what you're
6 saying in your verified petition that the special administrator was
7 decedent's guardian prior to his death and no original estate planning
8 documents were received or found during the guardianship. The special
9 administrator believes that the decedent destroyed any original estate
10 planning documents he may have executed prior to his death. Do you
11 still agree with that?

12 A That is still my position.

13 Q And in fact you filed a second petition just recently, correct?

14 A Uh-huh.

15 Q And since you brought this petition in April of 2015 up until the
16 petition that you just filed or your counsel just filed for you I think was it
17 yesterday?

18 A I believe it was yesterday.

19 Q Yeah. There's nothing out there that would make you lead to
20 believe that you come to any other different conclusion at this point,
21 correct?

22 A That is correct. But it's clearly my position is, you know,
23 speculation. I don't know that to be a fact, I just --

24 Q But you never found the original will?

25 A Right.

1 Q And you made substantial efforts to try and find the original
2 will?

3 A Yes.

4 Q And you relied upon legal advice in filing these proceedings?

5 A Yes.

6 Q And since that matter has transcribed, are you -- you have
7 filed a petition to distribute the estate to Theodore Scheide, III, correct?

8 A I filed a petition -- I filed a first and final accounting and to
9 distribute the estate. Yes.

10 Q Right. And it was your intention when that petition was filed
11 that if it was granted, that Mr. Scheide, III was to take Mr. Scheide's
12 estate, correct?

13 A That is correct.

14 MR. PAYNE: Court's indulgence.

15 THE COURT: Uh-huh.

16 MR. PAYNE: Your Honor, I'm done with Ms. Hoy.

17 THE COURT: Okay. Thanks.

18 THE WITNESS: Mr. Payne.

19 MR. PAYNE: Yes. Oh.

20 THE COURT: Okay. Mr. Geist, any redirect?

21 MR. GEIST: Yes.

22 [Colloquy between counsel]

23 REDIRECT EXAMINATION

24 BY MR. GEIST:

25 Q Susie, you testified that you went to Kristin Tyler's office to

1 pick up Mr. Scheide's gun. Who asked you to do that?

2 A Kristin had indicated that -- Ms. Tyler indicated that she had
3 the gun in her possession and she preferred not to have it any longer.

4 Q Did you discuss that with Mr. Scheide beforehand?

5 A No I did not.

6 Q Did you discuss it with Mr. Scheide afterwards?

7 A No we did not.

8 Q Did you give that gun to Mr. Scheide?

9 A No we did not.

10 Q Okay. Little binder under tab A, this would be Mr. Payne's -- I
11 believe it's Exhibit A. Page 22 there's an entry about three-quarters of
12 the way down on April 16th, 2014, telephone call with Alzheimer's and
13 memory care group home owner regarding placement for ward. Did
14 someone from your office contact Alzheimer's and memory care group
15 home?

16 A Yes.

17 Q Okay. Flip to page 28. Second entry is July 9th, 2014.

18 There's again a telephone call with Ricky Lopez from Alzheimer and
19 memory care group home regarding ward's previously resident.

20 Someone from your office talked to Ricky Lopez?

21 A Uh-huh.

22 Q And who is Ricky Lopez?

23 A I believe he's the owner of the group home.

24 Q The Alzheimer and memory care --

25 A Yes.

1 Q -- group home? So during that time you were considering
2 moving Mr. Scheide to a Alzheimer and memory care group home?

3 A I think he might have lived there at one time, but I wouldn't
4 know without reviewing, you know, my whole file to see. I know he was
5 unhappy at senior residential so we had looked at some other options
6 for him.

7 Q Okay. Thank you. You testified that Mr. Scheide had a
8 shredder or acquired a shredder during the guardianship?

9 A Yes.

10 Q Okay, and have you ever found shredded documents among
11 his personal items?

12 A No. Not shredded documents, no.

13 Q Okay. When the guardianship started, let me make sure I
14 understand, you testified that you found a copy of his will with his
15 handwriting on it or hand -- I'm sorry, blue ink handwriting on it?

16 A Yes.

17 Q Okay, and after his death you also found a copy of the will
18 with blue ink handwriting on it?

19 MR. PAYNE: Objection; misstates her testimony.

20 [Pause]

21 THE COURT: Okay.

22 MR. GEIST: Let me start over, Your Honor.

23 THE COURT: Uh-huh.

24 BY MR. GEIST:

25 Q At the beginning of the guardianship, you testified that you

1 took an inventory of Mr. Scheide's personal items, correct?

2 A Correct.

3 Q And you testified previously that you found a copy of Mr.
4 Scheide's will with blue ink handwriting on it, Exhibit 1 that we admitted
5 today, correct?

6 A Correct.

7 Q And you also testified that after his passing you found a copy
8 of his will with blue ink handwriting on it, that Exhibit 1, correct?

9 A The same -- it was the same document.

10 Q It was the same document --

11 A Yes.

12 Q So isn't it true that he didn't shred that document that you
13 found at the beginning of the guardianship?

14 A Well he wouldn't have shredded it. We found it when he
15 passed away.

16 Q Okay. Thank you. You testified that you believe that Mr.
17 Scheide destroyed his original will. Did he tell you he destroyed his
18 original will?

19 A He did not.

20 Q Okay. On what basis do you believe that he destroyed his
21 original will?

22 A He was very angry at everybody that had been involved with
23 him, including up to us, our agency, and he didn't want anything to do
24 with anyone and he was constantly firing all of us. So I just assumed
25 that -- I just -- like I said it was a speculation that he most likely

1 destroyed it --

2 Q You assume but you --

3 A -- because of his anger.

4 Q Yeah.

5 A You know, he would --

6 Q You assume but you didn't know?

7 A Correct. He would call and he --you know, he would scream
8 and yell at me on the phone about everything and, you know, we would
9 give him copies of all of the bank statements because he insisted on
10 having them, you know, against our better judgment, but we never found
11 any of those copies that we had given him.

12 Q Okay.

13 A So --

14 Q Thank you.

15 MR. GEIST: No further questions.

16 THE COURT: Thank you.

17 Anything further?

18 MR. PAYNE: Nothing further, Your Honor.

19 THE COURT: Okay. So Ms. Hoy can step down?

20 You had no questions, Ms. Boyer, again? Just to confirm.

21 MS. BOYER: The only remaining issue is regarding the
22 sealing. I know that --

23 THE COURT: Okay.

24 MS. BOYER: -- you sealed all of 6 and we kind of left 7 open
25 if there's no objection to sealing that entire business record?

1 THE COURT: Okay. So if we can just have somebody gives
2 us an actual physical order, because the clerk's office has to have an
3 order in hand, that indicates -- and I -- that goes to the vault, right?
4 Because it's the -- it's evidence so the evidence vault has to have it.

5 THE CLERK: Uh-huh.

6 THE COURT: Okay. Yeah. So we need to know that
7 Exhibits 6 and 7 are to be sealed. Just that's all we need in an order.
8 Thanks.

9 MR. GEIST: Kim, do you want to prepare that since it
10 protects --

11 MS. BOYER: Yes.

12 MR. GEIST: -- Susie in this case?

13 MS. BOYER: I'm going to create it.

14 MR. GEIST: Okay.

15 THE COURT: Okay. Thanks.

16 THE WITNESS: Okay.

17 THE COURT: All right. Thank you, Ms. Hoy.

18 So is that for the evening?

19 MR. MOODY: Your Honor, we have one final witness and
20 she'll be very short, maybe five minutes.

21 THE COURT: Oh, okay.

22 MR. MOODY: I don't know. I can't speak for Ms. Payne
23 obviously.

24 THE COURT: Yeah. Okay.

25 MR. PAYNE: Who is it?

1 MR. MOODY: It is Jennifer. It's the representative from St.
2 Jude.

3 MR. PAYNE: Your Honor, she was not ever previously
4 identified as a witness in these proceedings. This is the first time I've
5 heard of her.

6 THE COURT: Okay. So counsel --

7 MR. GEIST: We disclosed her --

8 THE COURT: -- but you indicated you would call a
9 representative of St. Jude?

10 MR. GEIST: I'm sorry?

11 THE COURT: Did you indicate you'd be calling a
12 representative of St. Jude?

13 MR. GEIST: We did in our list of witnesses.

14 THE COURT: Okay. All right, then we'll accept her as the -- I
15 don't know how you named her.

16 MR. GEIST: By name.

17 THE COURT: Oh, okay. Okay, so Jennifer --

18 MR. PAYNE: Your Honor, they listed Fred Jones --

19 MR. GEIST: We did not.

20 MR. PAYNE: -- as -- Fred Jones is the person that signed the
21 petition. Fred Jones was the agent that was supposed to be here. I
22 wrote counsel letter and said why isn't Fred -- is Fred -- Fred Jones is
23 going to be here, right? And he writes back and says no, he's not
24 available. If he's a -- why is he unavailable? What kind of foundation
25 are they going to say to say wait a minute and now call her without any

1 disclosure of this later until last week?

2 MR. MOODY: Your Honor, I'm looking at our list of witnesses
3 that was filed June 12th and she's listed by name.

4 MR. PAYNE: June 12th. Your Honor, we had already
5 argued, this matter was been submitted and they're disclosing on June
6 12th. Today is what, the 15th?

7 THE COURT: Okay. If they had indicated they were going to
8 be bringing some sort of a representative of St. Jude, if the person -- I
9 don't know if Mr. Fred whatever his name was, was ever named, but
10 they indicated they were bringing somebody so -- I'm not sure what she
11 knows but we'll see. We'll take her testimony and see what she has to
12 say.

13 MR. PAYNE: We're doing this tomorrow?

14 THE COURT: No, right now --

15 MR. PAYNE: Oh.

16 THE COURT: -- and then they're going to rest.

17 MR. MOODY: That's correct.

18 THE COURT: Yeah. Okay. So we'll do this and then we'll
19 rest.

20 MR. PAYNE: Is there a reason why she can't be here
21 tomorrow?

22 THE COURT: Because they want to rest. They just want to
23 be rest then they're done.

24 MR. MOODY: Right.

25 THE CLERK: You'll please raise your right hand.

1 JENNIFER MAFFEO-MORRISSEY

2 [having been called as a witness and being first duly sworn, testified as
3 follows:]

4 THE CLERK: Please be seated and if you will state and spell
5 your name for the record, please?

6 THE WITNESS: Jennifer Maffeo Morrissey, Jennifer Maffeo
7 hyphen Morrissey.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION OF JENNIFER MAFFEO-MORRISSEY
10 BY MR. MOODY:

11 Q Okay if I call you Jennifer?

12 A Yes.

13 Q Jennifer, who's your employer?

14 A I am employed by ALSAC St. Jude Children's Research
15 Hospital.

16 Q And what is your title with St. Jude?

17 A Philanthropic Advisor.

18 Q What are your responsibilities as a philanthropic advisor?

19 A I work with donors specifically who have left the hospital in
20 their estate plan.

21 Q In a sentence or two can you tell the Court what St. Jude's is
22 and does?

23 A Yes. So at St. Jude Children's Research Hospital our mission
24 is twofold. St. Jude is leading the way the world treats, defeats and
25 understands childhood cancer. Research discoveries made at St. Jude

1 have brought what was previously thought to be an incurable disease
2 before the hospital opened in 1962 to 80 percent today.

3 The other half of our mission is that we provide care to
4 families at absolutely no expense, which means that a child and a
5 parent's treatment -- I'm sorry, the child's treatment and then the family's
6 travel, housing and food are all completely provided for while the child's
7 under our care to ensure that all a parent has to worry about is helping
8 their child live.

9 Q Very good. As a philanthropic advisor for St. Jude's, are you
10 familiar with philanthropists and their donation histories?

11 A Generally speaking, yes.

12 Q Okay. Are you familiar with Mr. Scheide's donation history?

13 A I am familiar with is donation history.

14 Q And did you hear the testimony of Kathy Longo earlier today
15 about in late 2013 about a check that she wrote on behalf of Mr. Scheide
16 to St. Jude?

17 A Yes.

18 Q And can you confirm that that donation was paid?

19 A Yes.

20 Q Do you recall how much that donation was for?

21 A The donation that she was referencing was for \$10,000.

22 Q Okay. Is that all he donated in 2013?

23 A No, he also made one additional gift of \$5,000.

24 Q All right. When was the last donation you received from Mr.
25 Scheide?

1 A It was the \$10,000 gift reference really (phonetic) 2013.

2 Q Can you tell the Court over how many years Mr. Scheide
3 donated to St. Jude?

4 A Mr. Scheide's first donation to St. Jude was made in 1993.

5 Q And over the next, if I -- my math is correct, about 20 years,
6 did he continue to be a regular donor?

7 A He did. Over the course of the 20 years that he was on -- that
8 he was actively contributing he sent St. Jude 22 gifts.

9 Q Okay. And did those gifts increase over time?

10 A Yes.

11 Q And when was the highest gift that you received from Mr.
12 Scheide?

13 A If my memory serves me correctly, it was the last one for
14 \$10,000.

15 Q Okay. That's all the questions I have.

16 MR. MOODY: Thank you, Your Honor.

17 THE COURT: Thank you.

18 Any cross-examination?

19 MR. PAYNE: No, Your Honor.

20 THE COURT: Okay. Thank you very much.

21 All right. You may step down. Appreciate it.

22 Oh, unless Ms. Boyer, I'm assuming you didn't have any
23 questions. No. Okay.

24 So with that, does the petitioner rest?

25 MR. GEIST: We do rest, Your Honor, and we would move for

1 a directed verdict. We believe that we've met our burden in this case.

2 THE COURT: Can we take the motions tomorrow?

3 MR. GEIST: We can.

4 THE COURT: Okay, I will need to start at 10 a.m. due to
5 another appointment. So we'll start at 10 in the morning and we'll hear
6 those motions at that time.

7 MR. CHRISTOPHERSON: Can we leave our stuff here?

8 THE COURT: Pardon?

9 MR. CHRISTOPHERSON: Do we need to leave -- do we
10 need take our stuff or?

11 MR. PAYNE: Let's take it.

12 THE COURT: Well it's up -- yeah, it's -- we lock the
13 courtroom, but our regular marshal's out of town and so I don't know
14 who will be opening up tomorrow.

15 MR. MOODY: Your Honor, is it possible to get an idea of who
16 else will be testifying tomorrow?

17 THE COURT: Well, certainly if you wish to speak to Mr.
18 Payne, you could do that. It would make things a little more efficient if
19 we all -- if we knew but -- so we'll be in recess. You guys can discuss
20 who's present tomorrow.

21 THE CLERK: Counsel, before you leave I just want to confirm
22 the exhibits that came in today. I've got 1 through 7.

23 MS. BECK: Yep.

24 THE CLERK: That's it?

25 MR. MOODY: That's it.

1 THE CLERK: Okay.
2 MS. BECK: That's correct.
3 THE CLERK: Mr. Payne?
4 MR. PAYNE: Yeah, I'm looking.
5 THE CLERK: My apologies. I don't have 4 coming in.
6 MR. PAYNE: That's --
7 THE CLERK: Oh no, it was -- it did come in, I'm sorry.
8 MS. BECK: It did.
9 THE CLERK: Yes.
10 MR. PAYNE: That's the affidavit?
11 THE CLERK: Yes, the affidavit of proof of lost will Dewalt.
12 MR. GEIST: Yes.
13 THE CLERK: Wait a minute.
14 MS. BECK: And Exhibit 5 was 1 through 350.
15 THE CLERK: Right.
16 MR. MOODY: And two are sealed.
17 MS. BECK: And 6 and 7 are sealed.
18 MR. MOODY: Yeah.
19 THE CLERK: I'm sorry? Six and seven --
20 MS. BECK: Six and 7 were going to be sealed.
21 THE CLERK: Yes.
22 MS. BOYER: And 6 and 7 will be the ones that will be
23 sealed --
24 MR. PAYNE: Correct.
25 MS. BOYER: -- and that encompasses the entire business

1 record.

2 MR. GEIST: Right. Right.

3 THE CLERK: Mr. Payne, were you okay with that?

4 MR. PAYNE: I am in agreement.

5 THE CLERK: Okay. Because if -- otherwise we can address
6 it again tomorrow morning if you'd like.

7 MR. PAYNE: Right. Sure.

8 THE COURT: Okay. Thank you.

9 [Proceedings concluded at 4:57 p.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the
22 audio/visual proceedings in the above-entitled case to the best of my
23 ability.

24 

25 Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber



1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 In the Matter of:

9 THEODORE SCHEIDE JR., deceased.

10 CASE#: P-14-082619-E

11 DEPT. XXVI

12
13 BEFORE THE HONORABLE GLORIA STURMAN,
14 DISTRICT COURT JUDGE

15 FRIDAY, JUNE 16, 2017

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
17 **NON-JURY TRIAL - DAY 2**

18 APPEARANCES:

19 For St. Jude Children's Research
20 Hospital:

RUSSEL J. GEIST, ESQ.
TODD L. MOODY, ESQ.

21 For Theodore E. Scheide:

CARY C. PAYNE, ESQ.

22
23
24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Friday, June 16, 2017

2
3 [Case called at 10:19 a.m.]

4 THE COURT: ... on the record Ms. Boyer is not returning
5 today as her client testified yesterday so we can proceed then.

6 MR. GEIST: Okay. Thank you, Your Honor. We had a
7 pending motion that I just presented before we closed yesterday.

8 THE COURT: Okay.

9 MR. GEIST: Your Honor, we believe that we have met our
10 burden under the statute and case law and as established by testimony
11 and evidence presented yesterday at the hearing and we would move
12 for a directed verdict to admit the will to probate.

13 THE COURT: Okay. Thanks.

14 Mr. Payne.

15 MR. PAYNE: Obviously oppose that, Your Honor, and I think
16 Your Honor's kind of ready for closing.

17 THE COURT: Well I mean if you want -- did you want to
18 oppose their motion or did you want to renew your motion?

19 MR. PAYNE: I want to renew my motion.

20 THE COURT: Okay. All right.

21 MR. PAYNE: And Your Honor, the motion for directed verdict
22 should be granted in this case for a bevy of reasons, but most
23 importantly because they haven't complied with the statute. When we
24 got here, I was under the impression that this was a probate of a lost will
25 and if you recall, Your Honor, when the petition was first brought, we

1 objected to the petition, said that as a matter of law it's insufficient, that it
2 doesn't comply with 136.230, if a will is lost by accident or destroyed by
3 fraud without the knowledge of the testator, the court may take proof of
4 the execution and the validity of the will and establish after notice is
5 given to all persons as prescribed for proof of will in these cases.

6 Now you could dismiss this case outright and you could
7 dismiss this petition outright for the failure to give Karen Hoagland or
8 Patricia Bolen (phonetic) notice, or Nevada State Bank. They were
9 required to be given personal notice and to be served with notice so you
10 could grant the petition to -- on that grounds alone.

11 Moreover, Your Honor, I want to go into -- maybe I'll reserve
12 that for closing, but I think that based upon what we saw in this case
13 there was no evidence of lost by accident or destroyed by fraud without
14 the knowledge of the testator. They had that burden to bring that
15 petition. Their petition was defective. It didn't state a claim. Your Honor
16 gave them time to do discovery. They did not amend their position. You
17 gave -- we came in here under the guise of *Doyle* and that that had a -- I
18 had to give them some time, Your Honor.

19 We then came back, they took the depositions of these parties
20 and the only two affidavits that they're relying upon in their petition are
21 Kristin Tyler and Diane Dewitt (sic throughout), and neither of these
22 affidavits state that it was lost by accident or destroyed by fraud. And in
23 fact, Kristin Tyler's affidavit is argument to the contrary that it was in
24 legal existence.

25 I don't think they get around 136.240 (sic) -- Your Honor,

1 you're the gatekeeper of these petitions. As the gatekeeper, the -- if this
2 would have been a more developed petition where they said that Mr.
3 Scheide had lost his will or that there was a fire, there was an
4 intervening act, maybe they would then have a burden to go and allege
5 that in their petition as to what happened. For example, Mr. Scheide
6 told me that he lost his original document and he went to Kristin Tyler
7 and Kristin Tyler said it's okay, Mr. Scheide, let's do another will or let's
8 confirm that these are still your last wishes and put that in writing and
9 have him confirm that. Could have done that. Didn't happen.

10 Mr. Scheide could have said I had a flood in my condo and the
11 will is gone and I can't find it. They had no evidence -- there's no
12 evidence in any of this petition that he couldn't find his will; that it was
13 lost or accidentally been destroyed. You didn't hear any evidence that
14 Mr. Scheide in this petition again, Your Honor, and I -- that's all I have to
15 go on. All we have to go on is their petition which says it was merely
16 lost.

17 How was it lost, Your Honor? How was it lost? They have no
18 facts in their petition to substantiate how it was lost. Was it a swarm of
19 locusts, was it termites that ate the original, was there a fire, did Mr.
20 Scheide drive his car down to the home where he was living and his car
21 combustibly exploded? They've got nothing. They've got -- the bare
22 bones of the affidavits Diane and Kirstin Tyler do not meet the standard
23 under 136.230. You're the gatekeeper of these kinds of claims.

24 Can you imagine how many people would be showing up at
25 this courthouse saying I've got a copy? Well, how did you get that

1 copy? They've got to lay out a foundation as to how it was lost or
2 whether it was intentionally destroyed by fraud without the knowledge of
3 the testator.

4 And in this case their pleadings don't make any allegations
5 against Mr. Scheide. Obviously he was in Pennsylvania. So -- there's
6 no allegations against Diane Dewitt that she did something with the will.
7 There's no allegations that Karen or Kathy Longo did anything. You
8 have to rely upon the two affidavits, Diane Dewitt -- Diane Dewitt didn't
9 even know he had died and never saw him after October. And she
10 submits an affidavit that says well -- the only thing she says is I further
11 attest that to my knowledge the decedent did not intentionally destroy or
12 revoke the last will. We asked her on the stand did you ever even have
13 any contact with him after October 2nd? Nope. She barely even knew
14 who he was.

15 So Your Honor, they don't meet the test, they haven't stated a
16 claim, they -- Your Honor can enter a directed verdict, and lastly, again
17 this provision that they rely upon in 5(a) applies to nontestamentary
18 trust. It's quite clear. So they must prove these allegations before they
19 can get on to the next part of this thing.

20 I was -- kept waiting for Kristin Tyler to tell Your Honor
21 something differently; that Mr. Scheide called me up and said, Kristin, I
22 can't find my will. Didn't happen. In fact, she had no contact with him
23 after that point.

24 And she had to come up with this in legal existence, okay?
25 When she took her deposition, she said after I handed him the original,

1 never saw it again, never saw the original again. Well how is that in
2 legal existence around the time that he died?

3 And this whole big challenge to his competency is irrelevant,
4 Your Honor. It's -- and if you don't grant this motion, I can talk a little bit
5 more about that. But --

6 THE COURT: Well there are a few issues that you've raised.
7 One is I think earlier you had raised the issue of the timing that St.
8 Jude's didn't bring this in a timely fashion, but I think it was -- you know, I
9 have some -- well, with respect to is that is a defense, I have some
10 problems with that in that how -- a lack of notice on their part. They -- I
11 am not clear that they were expecting a bequest. They knew Mr.
12 Scheide made substantial donations, you know, many thousands of
13 dollars every year up to right there at the end 10,000, so -- I mean they
14 knew he was a donor, but I don't have anything, you know, that would
15 tell me that they should have known they're -- we're supposed to be in a
16 will, here's a copy he sent to us and told us, you know, I'm leaving
17 everything to you, so they should have known and should have filed
18 sooner.

19 Until Ms. Tyler found out that this was being probated as
20 intestate and she knew -- even though she didn't see him, she knew that
21 Mr. Scheide still had a will because when he called her up and talked to
22 her about, you know, I don't like -- I don't want this person to be my
23 power of attorney anymore and she told him you -- well you need to fix
24 the will too, he said well just send me the power of attorney for right now
25 and so she didn't -- I grant you she did not see him. But he did not tell

1 her at that time I do or I don't have a will. I mean he didn't tell her
2 anything. He just said I'm going to revoke those powers of attorney.

3 So up to some point there was some sort of a will and -- and
4 Ms. Hoy doesn't know. I mean she's assuming he destroyed it. And I
5 appreciate your point that since he had the shredder and he would
6 always shred everything because he wanted Ms. Hoy to send him all of
7 his -- all financials records as they came and he shredded them, that he
8 has a shredder maybe he shredded his will.

9 Because he was always firing people. I think that's an
10 interesting question with respect to how does that affect this whole
11 argument? I mean if somebody in the early stages of dementia even --
12 or even a more advanced stage of dementia wants to destroy their
13 estate planning documents, is it effective? They lack capacity. Ms. Hoy
14 would have had to -- if you wanted to -- if he had discussion with Ms.
15 Hoy, she could have gone in and petitioned the court to change his
16 estate planning documents as his guardian if -- if she felt that he really
17 had that intent and he understood what he was doing and he wanted to
18 do it, I mean -- so that's why I kind of have some questions about it,
19 although I understand and I take as a good point the issue that neither
20 Ms. Tyler or Ms. Dewitt can actually say at any point he talked to them
21 again about it or showed it to it (sic) or said can we maybe change this
22 little paragraph? I mean he didn't know those kinds of things.

23 So I mean it's an interesting question and that's why I said in
24 the end, you know, a couple weeks ago I think you just have to put the
25 evidence on and see if anything else develops that we can figure out --

1 because it's really just a different interpretation of the same facts and
2 each side has a different interpretation of what those facts mean. But
3 we can't get over that nobody could find one in his personal effects
4 when he died, but I can't remember how many -- I was trying to add up
5 how many times he moved and how many times Ms. Hoy like took
6 possession of his belongings. At least twice took them and returned
7 them and took them and -- that was after he died. So -- she didn't do a
8 detailed inventory to say there was a will the first time and there is no
9 will the second time so we don't know. I mean -- and only Ms. Longo,
10 she's not sure if what she saw was an original or a copy when she
11 moved him into the home. She saw a will. She just doesn't know was it
12 an original or copy and I don't know -- I don't know that Ms. Tyler told us
13 if she stamps her copies on every page with a nice big copy so which is
14 always helpful.

15 So I don't know. To me, I have a problem at this point in time
16 think that if there is any more evidence, I'd like to -- I want to hear all the
17 evidence. I can't say for sure that with Mr. Geist's affirmative we have
18 proved it. I understand the will, because it says the first you have to do
19 is prove up the will. Okay. Validly executed, he was still competent, I've
20 got no problems with any of that.

21 But what happened to it? And that's my problem with it, so if
22 there's any more evidence, I just think we need to get all the evidence
23 on the record so that we -- there is no question that the Court didn't have
24 something, know something or consider something because we didn't
25 have a complete record before us so I would like -- if there's any further

1 evidence, I want to hear all of it before I make a ruling on this so that we
2 have a -- we know exactly what each side was contending.

3 And then yes, with respect to the facts that we've got all of our
4 facts out and then it is, purely it's a legal argument with respect to
5 whether the evidence meets the weight of the burden. But I think we
6 need to have a complete record on -- complete record, and if we have
7 the complete record now, then we can discuss and move on to closings
8 and make a ruling. But I just think that we need to make sure we've got
9 every single fact on the record and there's no question that I didn't
10 consider something somebody -- was somewhere in somebody's
11 pleadings or something because I -- at this point it's going to come down
12 to how those facts are interpreted by the court because the parties
13 disagree on their interpretation of those facts so just want to make sure
14 we've got every single thing in the record and we're ready to move on
15 then.

16 So I don't know, Mr. Payne, if you have any witnesses you
17 were planning on calling --

18 MR. PAYNE: No, it's --

19 THE COURT: -- or if it's just going to be --

20 MR. PAYNE: Your Honor, it's their burden and I think they've
21 rested if I understand their position.

22 THE COURT: Yes. I think they did rest and they made their
23 motion.

24 MR. PAYNE: Your Honor, the move to strike was the last
25 witness. They didn't disclose that. She referred to these documents

1 that supposedly Mr. Scheide had sent and I would move to strike her
2 and that entire testimony.

3 THE COURT: Okay.

4 MR. MOODY: Your Honor, I think we made it clear yesterday
5 with our pretrial disclosures that we did name Ms. Maffeo-Morrissey and
6 I don't know what documents she testified about --

7 THE COURT: She -- oh she just testified about reviewing --

8 MR. MOODY: Donations.

9 THE COURT: -- her own business records.

10 MR. MOODY: Exactly.

11 THE COURT: That the donation history that they have --

12 MR. MOODY: Exactly.

13 THE COURT: -- at St. Jude's.

14 MR. MOODY: She was here as a representative of St. Jude.
15 She testified very briefly about what they do and about the donations
16 that Mr. Scheide made. She was properly disclosed. Her testimony
17 should not be stricken.

18 THE COURT: Okay. Well --

19 MR. PAYNE: Your Honor, just they -- they didn't respond to
20 discovery. I sent discovery out said give me everything that you're going
21 to rely upon in this evidentiary hearing and they gave me nothing.

22 THE COURT: Okay. All right. Well, there were no records
23 that Ms. Morrissey brought with her. I mean this is just her own personal
24 knowledge working in that department. So I'm going to deny the motion
25 to strike and if we're -- if we're done then and ready to proceed then to

1 our closing arguments, I'd like to hear the closing arguments and we'll
2 take it from there.

3 MR. PAYNE: Fine.

4 MR. GEIST: Thank you, Your Honor.

5 THE COURT: So Mr. Geist, it's your burden of proof so you
6 get to go first.

7 MR. GEIST: Your Honor, our burden as petitioners was to
8 establish by a preponderance of the evidence, number one, to prove
9 that the lost will was in existence at the death of the person whose will it
10 is claimed to be or is shown to have been fraudulently destroyed in the
11 lifetime of that person. And number two, to clearly and distinctly prove
12 the provisions of the lost will by at least two credible witnesses and
13 that's from NRS 136.240 Subsection (3).

14 The term in existence in that statute has been interpreted by
15 the Nevada Supreme Court in the case *Estate of of Irvine versus Doyle*,
16 that's 101 Nevada 698, a 1985 case. And legal existence means a will
17 is said to be in legal existence if it has been validly executed and has not
18 been revoked by the testator; thus, a will lost or destroyed without the
19 testator's knowledge could be probated because it was in legal
20 existence at the testator's death.

21 The facts of the case I think are relevant to what we're
22 discussing today. In *Irvine*, the proponent of the lost will was prohibited
23 by the district court from putting on evidence, quote, to establish that the
24 deceased did in fact execute a valid will leaving the property to her and
25 that the document presented for probate was an accurate copy of that

1 will, unquote. The district court, quote, refused to allow any of this
2 testimony to be admitted on the ground that it was irrelevant to the issue
3 of whether the original will had been in actual physical existence at the
4 time of Irvine's death. The Nevada Supreme Court declared that the
5 decision of the district court in this case was based on an invalid
6 construction of NRS 136.240 Subsection (3) and must be reversed.

7 In this case, the opponent of the lost will, Theodore Chip
8 Scheide, III, the decedent's son who was specifically disinherited in the
9 October 2nd, 2012 will and the decedent's prior will, has repeatedly
10 claimed that St. Jude Children's Research Hospital must present proof
11 that someone saw the actual will at the death of Theo.

12 In this case, under Nevada law, a lost will may be admitted to
13 probate even if the original will cannot be found. What is a lost will?
14 Black's Law Dictionary says an executed will that cannot be found at the
15 testator's death. If I were to lose my car keys, how could I prove to you
16 that I lost them other than to say I can't find it? Thus, a lost will, the
17 proof of a lost will is we can't find it.

18 And the proof, as declared in *Irvine*, that St. Jude Children's
19 Research Hospital is required to prove is not that the original will had
20 been in actual physical existence at the time of Theo's death. St. Jude
21 Children's Research Hospital, as the proponent of Theo's lost will, bears
22 the burden of overcoming the presumption that the lost will was revoked
23 by destruction by the testator. However, this presumption is rebuttable.

24 All that St. Jude Children's Research Hospital is required to
25 prove that the testator did not revoke the lost or destroyed will during his

1 lifetime. That is straight from *Irvine versus Doyle*. Accordingly, we hold
2 that the words in existence and fraudulently destroyed taken together
3 convey the legislative intent to require the proponent of a lost or
4 destroyed will to prove that the testator did not revoke the lost or
5 destroyed will during his lifetime.

6 To overcome the presumption of revocation, a proponent of a
7 will has the burden of proving that the testator's will was more likely than
8 not left unrevoked at his death. Because the statute and the case law
9 do not set a burden of proof for the proponent, we have to rely on NRS
10 47.180 which describes the burden under presumptions generally. A
11 presumption -- under Subsection 1, a presumption under than a
12 presumption against the accused in a criminal action imposes on the
13 party against whom it is directed the burden of proving that the
14 nonexistence of the presumed fact is more probable than its existence.

15 Your Honor, we have provided substantial evidence to
16 overcome this burden. First of all, Theo carefully put his affairs in order,
17 solemnly committing his testamentary wishes to writing, by hiring Kristin
18 Tyler, a well-respected and experienced estate planning attorney, to
19 prepare his last will and testament. Kristin testified that Theo instructed
20 her to draft his will specifically to disinherit his son, Chip. Kristin testified
21 that Theo was estranged from Chip for 20 or more years.

22 Theo's October 2nd, 2012 will was signed by Theo in the
23 presence of two witnesses. Kristin Tyler and Diane Dewalt both testified
24 to the valid execution of the October 2012 will. Both Kristin and Diane
25 testified that they witnessed Theo sign the will, that they signed the will

1 in each other's presence as well as the presence of Theo and that they
2 believed Theo to be of sound mind at the time that he signed the will.

3 Both Kristin and Diane testified that they reviewed a copy of the will
4 which Kristin Tyler, the drafting attorney, retained in her files after
5 execution and it is identical to the will which they witnessed Theo sign.

6 We have demonstrated that Theo himself kept a copy of his
7 will on which he wrote October 2nd, 2012 updated includes a signature
8 that looks very much like Theo's signature on the will on the execution
9 page and notes in the margin which read, quote, note, organ donor
10 recorded on my drivers license.

11 Susie Hoy testified that that writing was wet ink original writing
12 on that copy. She testified that Theo's copy of his will with the
13 handwritten notes in blue ink stating October 2nd, 2012 updated was
14 found among his possessions at the start of the guardianship in
15 February 2014. Susie further testified that Theo's copy of the will was
16 also found among his possessions after his death.

17 Why would Theo keep a copy of his will with a note on it
18 indicating he was an organ donor? To notify whomever found Theo's
19 copy of his will after his death that he consents to the donation of his
20 organs as indicated on his drivers license.

21 Why would Theo keep a copy of his will with a note on it
22 indicating his will was updated October 2nd, 2012? To notify whomever
23 found Theo's copy after his death that his will was updated and
24 executed on October 2nd, 2012 as indicated in the copy.

25 Theo's copy is identical in all testamentary provisions to the

1 attorney's copy kept in Kristin's file. The handwritten notes in blue ink on
2 Theo's copy do not express any change to the attorney's will or its
3 provisions. Instead they appear to be notes which Theo himself kept as
4 a notice that he updated his will on October 2nd, 2012, and that he was
5 an organ donor as recorded on his drivers license.

6 Kristin also testified that Theo remained in contact with her
7 after the execution of the will for the next year and three months, asking
8 her for advice with various legal questions and issues. At no time during
9 this period did Theo tell Kristin that he wanted to revoke his October
10 2012 will. Theo knew how to revoke an estate planning document; he
11 revoked a power of attorney through Kristin before.

12 In fact, Theo reaffirmed to Kristin Tyler on August 22nd, 2013
13 that his desire was for his estate to be distributed to St. Jude Children's
14 Research Hospital as the beneficiary of his will. Susie Hoy testified that
15 Kristin remained Theo's attorney up to and through the guardianship of
16 Theo until his death.

17 Theo's stepdaughter, Kathy Longo, testified that in 2013 she
18 helped Theo pay his bills, do shopping and took him to lunch. In
19 October of 2013, she testified she helped Theo write a check for
20 \$10,000, what she believed, for what was -- for what he called was his
21 annual donation to St. Jude Children's Research Hospital.

22 Kathy testified that the last time she saw or heard from her
23 stepbrother, Chip, was back in the 1970s.

24 Kathy said that Theo's health decline was accompanied by
25 changes in behavior that were drastic and worrisome, including leaving

1 the keys to his house in the front door overnight and forgetting about
2 them. Theo's -- also Theo's request to keep his gun made her fearful for
3 the safety of others at the group home where he lived at the time.

4 Recall that Kathy also testified that Theo refused to let the
5 rehab facility and group home shower him or cut his hair. She felt
6 embarrassed to take him out in public because he insisted on wearing
7 pajamas and slippers to go to restaurants.

8 Kathy also testified that he pulled his pants down in a parking
9 lot and urinated next to her car at a store. She testified that all of this
10 was uncharacteristic for Theo and it wasn't the Theo that she knew.

11 As Theo needed more help than Kathy could give, Kathy was
12 willing to give, Kristin arranged for Theo to begin interviewing fiduciaries
13 to assist him. It was at one of these meetings with Theo in December
14 2013 that Kathy recalls hearing Theo say I'm leaving everything to St.
15 Jude's in Memphis, Tennessee.

16 Ultimately Theo settled on Nevada Guardian Services, who
17 was later appointed as the guardian of the person and the estate. Susie
18 testified that Nevada Guardian Services petitioned for a guardianship
19 after Theo was hospitalized in February 2014 for altered mental status.
20 The guardianship was established for the person and estate of Theo on
21 February 18th, 2014.

22 During the guardianship, Theo's health continued to decline as
23 he was transitioned from group home facility to hospital to rehabilitation
24 center to group home and back numerous times. Susie testified to the
25 documents that they received and relied on that showed as of May 21st,

1 2014 when he was hospitalized at MountainView Hospital, the doctor
2 indicated that Theo had progressively worsening dementia.

3 During the guardianship, that condition remained with him until
4 his death on August 17th, 2014. Even if Theo is presumed to have
5 testamentary capacity during the guardianship, we have presented
6 evidence to rebut such presumption and make his intentional revocation
7 of that will less likely during that time.

8 The Nevada Supreme Court has reaffirmed that testamentary
9 capacity is presumed and continues even after the testator has been
10 presumed incompetent to handle his affairs. That's from the case *In*
11 *Regarding the Estate of Blanchard*.

12 This presumption, however, is rebuttable by the party
13 challenging the will or the revocation by providing evidence that the
14 testator lacks such capacity. *Blanchard* establishes that.

15 In the *Blanchard* case, the Nevada Supreme Court considered
16 the following factors which supported determination that the testator in
17 that case lacked capacity to change his estate plan:

18 Number 1, the Nevada guardianship judge determined just a
19 few days after the execution of the will that the testator, age 94, was
20 incapacitated to the extent that a temporary guardian of the person and
21 the estate should be appointed.

22 Number 2, medical evidence in the form of a physician
23 statement supported the guardianship petition.

24 Number 3, in the new will, the testator gave his entire estate to
25 his two previously disinherited sons, a complete repudiation of the

1 testator's prior estate plan.

2 Number 4, one of the testator's disinherited sons took him
3 from his home in Las Vegas to California where the new will was
4 executed.

5 Five, the testator's estate plan was clearly established to
6 transfer assets by trust, not a will.

7 And finally, the testator died less than five months after
8 executing the new will while guardianship proceedings were still
9 pending.

10 As in the *Blanchard* case, substantial evidence shows that
11 Theo lacked testamentary capacity during the guardianship to revoke his
12 will. A Nevada guardianship judge determined in February of 2014 that
13 Theo, age 86, was incapacitated to the extent that a temporary guardian
14 of the person and the estate should be appointed. A general
15 guardianship was established about a month later.

16 Medical evidence in the form of the February 14th, 2017
17 physician statement from Dr. Man- -- Mardip (sic) Arora, M.D. supported
18 the guardianship petition. Additional medical evidence indicated that
19 three months after the establishment of the temporary guardianship,
20 Theo's dementia was, quote, progressively worsening.

21 Next, a revocation would pass Theo's estate to his disinherited
22 son, a complete repudiation of Theo's prior estate plan as evidence in
23 the copy of the will that he had in his possession and the prior original
24 will that he had executed and his attorney had held on to.

25 Next, Theo was transient during the guardianship, although

1 the disinherited son had no contact with Theo during this time. There
2 were numerous instances that his transition could have resulted in the
3 loss of the will.

4 Theo's estate plan was established to transfer assets by will,
5 not by intestate succession, hence the disinherited sole heir named in
6 the will.

7 And finally, Theo died while guardianship proceedings were
8 still pending almost six months after the establishment of the
9 guardianship. Therefore, it is less likely that the lost original 2012 will
10 was intentionally revoked after the establishment of the guardianship
11 and more likely that it was simply lost during that period.

12 You heard testimony from Susie Hoy that Theo was angry at
13 everyone, that he fired everyone. He fired Susie and Nevada Guardian
14 Services. He fired Kristin and her firm. But what you didn't hear was
15 that he ever fired St. Jude. He started making annual donations to St.
16 Jude clear back in 1993 and those donations continued and increased
17 until his last donation of \$10,000 in 2013. He never fired St. Jude and
18 the evidence and testimony has shown that until his death in August
19 2014, he intended to give his entire estate to St. Jude.

20 In the end, Susie Hoy testified that she assumed that he
21 destroyed the original will, that it was based on speculation and she
22 admitted that. No one has testified that Theo ever expressed his wish to
23 revoke his will. Although Theo had a shredder at the time during the
24 guardianship, he did not shred his copy of the will that he specifically
25 wrote on with post-death instructions. He kept it until his death.

1 Opposing counsel has provided no evidence which proves a
2 revocation in this. The *Irvine* court favorably cited the Colorado
3 Supreme Court's comment that, quote, there is no good reason a
4 testator should be decreed to have died intestate and his wishes
5 solemnly committed to writing be defeated by the loss or destruction of
6 what is after all merely the best and not the only evidence of his desires.
7 And that's from the case *Regarding Eder's Estate*, 94 Colorado 173,
8 1934, cited in *Irvine*.

9 The *Irvine* court further stated after that to ignore a testator's
10 desires when the testator has done all in his power to comply with the
11 laws concerning wills would be an injustice. We do not believe the
12 legislature intended such a result, close quote.

13 Theo's desires in leaving his estate to St. Jude Children's
14 Research Hospital must not be ignored. Your Honor, had Chip testified
15 that he spoke with his dad and that Ted said, son, I'm going to change
16 my will and make you the beneficiary, had Susie testified that she saw a
17 will, an original will in Ted's possession when she was appointed
18 guardian and it was gone after he died, or if we had a statute that said
19 no original, no will, we would be in a very different position. This case is
20 exactly why the statute provides for a rebuttable presumption.

21 St. Jude Children's Research Hospital has rebutted that
22 presumption and established that based on the evidence presented,
23 Theo left his last will and testament, dated October 2nd, 2012,
24 unrevoked at the time of his death as evidenced by the copy of the will
25 with his writing on it found in his possession at his death. And number

1 two, the provisions of the last will and testament dated October 2nd,
2 2012 are clearly and distinctly proved by at least two credible witnesses.

3 Theo's signature on that will can be interpreted as an
4 endorsement of the sentence that he put before that, October 2nd, 2012
5 updated. Therefore, Theo's October 2012 will should be admitted to
6 probate. Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. PAYNE: Your Honor, I'll just briefly comment about this
9 issue of the will, the previous Court's orders, because I don't think that
10 was really addressed. There was a petition brought that St. Jude's was
11 on notice to appoint Susie Hoy. They didn't appear at that hearing, they
12 didn't object. Susie Hoy asked the Court for time to look for an original
13 will. She presented a petition based upon the testimony of Kristin Tyler,
14 the estate planning lawyer, that she was advised the original was in his
15 possession. She had been his guardian at this point and there was no
16 evidence during that process that Mr. Scheide said, oh, I can't find my
17 will; where's my will, Susie? To the contrary, he remained quiet.

18 If St. Jude's would have came here to Your Honor and said,
19 oh, Mr. Scheide in the last weeks of his life had mailed a copy of this will
20 to us and we have it and we were going to mail it back to Ms. Kristin
21 Tyler so that she could probate it and somewhere somehow it
22 disappeared, we then would be talking about NRS 136.230, lost or
23 destroyed wills.

24 They bring a petition. The petition is based upon the affidavits
25 of Diane Dewitt and Kristin Tyler. Kristin Tyler's telling Your Honor that

1 this document is in existence based upon all speculation. She
2 speculates that her client would have called her; the client would have
3 told me he wanted somebody other than St. Jude's. There's one huge
4 problem. She quit communicating with her client.

5 Your Honor, they have in her file all of her correspondence
6 with her client. They made a big deal this is -- Ms. Tyler, this is your
7 complete file, yes, this is my complete file all of my correspondence with
8 my client. There's not one piece of evidence in that file, there's not one
9 letter that was written by Mrs. Tyler -- you got to remember, Your Honor.
10 Velma Shay died. The object of this will died. She died on January
11 31st. So he did the June will, did the October will.

12 Now you know that he -- that Karen Hoagland, the executor of
13 the June will, has quit, had a falling out, whatever describes it, and he
14 within three months, June, July, September, October, does a new will.
15 And he knows that Karen is out and that Patricia Bolen or somebody like
16 that is now going to be in.

17 The problem was and the evidence was is that Patricia Bolen
18 also quit. Or had a falling out. I think she was a housekeeper. The
19 testimony was that she got caught stealing and he wanted her out. And
20 in fact, she resigned; she sends a letter resigning.

21 Now what's interesting about that dichotomy, Your Honor, is
22 that she resigns only as to the power of attorney, but she's still the
23 executor under the October will. And again, Your Honor, I wouldn't
24 make this a big point except for the statutes make it a big point. Service
25 of a petition -- NRS 136.120, service of a petition presented by a person

1 other than the named personal representatives, which in this case would
2 be Karen and Patricia Bolen, if a petition for probate is presented by a
3 person other than the personal representative, which wasn't Susie Hoy,
4 named in the will or if presented by fewer than all the PRs, the petition
5 must be served upon the personal representative not joining in the
6 petition.

7 And the reason why that's in there, Your Honor, is the
8 personal that's the executor, the fiduciary of your estate is a big deal.
9 Okay? It was a big deal that he -- they couldn't find anybody take care
10 of him. They couldn't find - you heard lots of evidence they couldn't find
11 anybody that wanted to do this. Well we know Karen resigned, we know
12 Patricia resigned and we know Velma died. And you know what he
13 does? He rips up his will. That's a very natural circumstances based
14 upon what had gone on in his life.

15 Don't forget, Your Honor, you're the one that said there wasn't
16 enough evidence presented that he didn't rebut the -- let me back up.
17 Your Honor, the common law, as Your Honor is well aware, says that if
18 you can't find the original will, then presumed to be revoked. There's a
19 good reason why that is. There's a good reason why you need the
20 original document because we don't know what Mr. Scheide wrote on
21 the original.

22 Now we know he wrote on a copy. I don't think there was a
23 foundation laid as to his handwriting but he wrote on that I'm an organ
24 donor. In fact it makes as much sense to keep that copy around that I'm
25 an organ donor so that if somebody founds (sic) that, they can check his

1 drivers license, right? Oh he's an organ donor.

2 And he writes updated. Updated. That means there's another
3 document, or that this document has been changed. And that's the key
4 is why the courts need the original document is so that -- and Your
5 Honor knows that sitting in probate court you probably have seen
6 multiple copies that come through the courthouse that have lines on
7 them and scratches and scribbles and all kinds of notes, what have you.
8 Happens all the time. That's why we need the original.

9 Now the copy that was admitted can only be admitted as if
10 you had the original to compare it to. An unaltered copy, an -- excuse
11 me, an original. If you had the original, you could compare it to the copy
12 to see what's changed. The copy that was presented as evidence is not
13 an authenticated copy. They didn't even get their copy in properly.

14 The copy that they needed was the copy that Kim Boyer had,
15 or Susie Hoy. They never presented that to this Court with this alleged
16 blue handwriting on it. And if you also would have seen that, it's
17 highlighted. It's been altered. It's highlighted. If you look at these
18 exhibits and their copy of their will, it's been highlighted. So that
19 document has been altered and in order to admit a copy, you need the
20 original so that you can compare what was in the original to the copy
21 and that's why the statutes require originals.

22 Now, this presumption that they did not overcome has a very
23 -- and these facts with a man who did a will in June of 2012 and passes
24 in August of 2014 -- and you heard the testimony of Susie Hoy. Susie
25 Hoy was quite clear that this guy was not your typical guardian who was

1 bedridden. He was not your typical garden (sic) -- excuse me, propo- --
2 or ward that was in a bed with IVs, et cetera. Yes he was in and out of
3 the hospital which as we heard. And this really was not an issue of
4 competency when I brought up this motion to dismiss or the motion to --
5 excuse me, to object to this matter was -- and I think Your Honor was
6 there, said no, we're not going to have a competency test.

7 And in fact, Your Honor, we didn't really know where you were
8 going with this until you issued your minute order last week when you
9 said I need more evidence from Kristin Tyler. So when you were looking
10 at this two weeks ago, you must have been thinking well Ms. Kristin
11 Tyler is going to say -- going to have to say something about it was this
12 copy got lost and that's why we kept waiting for Kristin Tyler to say
13 something. Is it lost or do you know know?

14 Now, she took a legal position that it was in legal existence
15 based upon her affidavit, but again we asked her what is the basis of
16 that. I gave him the original in 2012. And so you never saw the original
17 document again? That's right. Okay.

18 Now, Ms. Tyler, who is a -- by all accounts a qualified, careful
19 estate planning lawyer, the problem is she had an agenda, Your Honor.
20 Her agenda was to help St. Jude's.

21 How hard or how difficult would it have been to have a letter in
22 her file that said dear Mr. Scheide, I understand that Velma has died and
23 it's okay because we have St. Jude's as the contingent beneficiary and if
24 you're in agreement with this, please sign and date this and return this to
25 my file? Boom. We wouldn't even be here, Your Honor. We wouldn't

1 be here.

2 One of the earlier letters that were submitted in the pleadings
3 in this matter was correspondence that I had with Ms. Tyler and I was
4 concerned about a letter that came back and reaffirmed these
5 documents. Any evidence that reaffirmed that after June 2012 or
6 October 2012, that in light of the things that had transpired in this guy's
7 life, that he didn't come back and say you know what, everything is
8 okay, maintain everything the way it is. Over a two-year window, there's
9 nothing in the file to confirm that and Kristin Tyler sat there under oath
10 and said I did not communicate with my client after January -- excuse
11 me, after December or January of 2013 (sic). She had no
12 communication with him. She was quite adamant about that.

13 How do you communicate with a client if you're not speaking
14 to them? How do you communicate with a client if you're not writing
15 letters? She didn't want to communicate with him, Your Honor. She
16 had him put in a guardianship without notice to her (sic) son, and Your
17 Honor, as an officer of the court, I have to tell you I've got to scratch my
18 head on this one. There was a petition for guardianship that was filed,
19 there were citations that were issued, there was notice of entry of an
20 order, there was an inventory that was filed, there was a guardianship
21 first and final accounting. Two seasoned attorneys, two seasoned
22 attorneys that do a lot of probate, a lot of guardianship and a lot of
23 estate planning should have said wait a minute, this petition is -- needs
24 to be noticed.

25 Kristin Tyler knew she had Chip Scheide around. You know,

1 he -- counsel here makes this huge deal that oh he wanted her (sic)
2 disinherited. Well Kristin Tyler should have said to Kim Boyer why isn't
3 Mr. Scheide on this petition. We know he has a son, the two of them
4 exchanged information.

5 And let me tell you about Susie Hoy. Susie Hoy was stuck in
6 the middle between Kristin Tyler and Kim Boyer. Susie Hoy admitted on
7 the stand that she uses Kristin Tyler as her attorney. Susie Hoy and
8 Kim Tyler -- and Kim Boyer got thrown under the bus. Kristin Tyler gives
9 her only the information that they want when it's convenient, doesn't say
10 anything after the petition has been filed and until he's dead, and then
11 two years later she pulls out a June will that she'd been sitting on in her
12 file. She'd been sitting on the original of the June will for two years and
13 she lodges it. She lodges the June will.

14 And you know why she -- Your Honor, there's a statute right
15 on point. 136.050, a person having possession of a will within 30 days --
16 excuse me, shall within 30 days after knowledge of the death of the
17 person who executed the will deliver to the clerk of the district court
18 which has jurisdiction. Any person named as a personal rep in a will
19 within 30 days after that sound mind blah blah blah present to the clerk.
20 Every person who neglects to perform any of these duties required in
21 subsections 1 and 2 without reasonable cause is liable to every person
22 interested in the will for damages the interested person may sustain by
23 reason of neglect.

24 Now, you can't tell me that Kristin Tyler -- excuse -- Kristin
25 Tyler didn't know he was dead. She's sending correspondence over to

1 Kim Boyer to pay her bills. Kristin Tyler can't sit there in good faith and
2 said I didn't know Mr. Scheide died, I just happened to be checking the
3 probate records two years later and oh, I see it's going to -- going to go
4 to Chip Scheide and I better do something about this.

5 She lodges the June will two years later. You know why she
6 didn't lodge that when he died? Because she knew it wasn't any good.
7 It was revoked as a matter of law by the October will. She knows she's
8 got an unrevoked document in her file, yet she lodges it?

9 And Your Honor, if you'd have looked at that petition that they
10 filed, that petition that they filed to probate the June will -- Your Honor's
11 done a lot of this. You look at that petition, they don't even reference the
12 October will. They don't reference what they had done previously when
13 they came to the court and said he died without a will, he died intestate,
14 they don't reference the petition for instructions.

15 And had nobody had seen that, including the probate
16 commissioner, that will would have been -- that petition would have been
17 granted. It's -- if I had not been involved in this case and told Mrs. Boyer
18 to take that off calendar, that petition would have been granted. That'd
19 been fraud on the court. That would have been fraud on you, that would
20 have been fraud on my client and would have been fraud on the court.

21 That petition is extremely misleading. And I strongly
22 recommend you take a look at it because you're going to look at it and
23 you're going to go there's something not right here. It was taken off
24 calendar. St. Jude's then says well, we want you, Kristin Tyler, to re-file
25 it. Excuse me, Ms. Boyer, want you re-file it. No, we're not going to

1 re-file it. I've got to remain neutral. Mr. Payne's on one side, St. Jude's
2 on the other, I've got to remain neutral.

3 St. Jude's then decides to file this petition in September, which
4 we pointed out earlier on is late on its face. And all's I have to go, Your
5 Honor, is -- and all Your Honor has to go by is what was presented in
6 this petition filed September 13th, 2016, petition for probate of lost will.
7 Goes through all this back story of who did what, why Susie Hoy did
8 what she did, why we did what we were going to do. They allege
9 jurisdiction under 136.012. That's the wrong provision. Jurisdiction is
10 under -- this case the lost will statute under 136.230 so this petition was
11 rushed to -- brought to Your Honor.

12 Based upon information and belief, but the only paragraph in
13 the entire petition that we really need to even talk about is paragraph 13.
14 The original will has not be found, but petitioner alleges that the October
15 2012 will is merely lost by accident. So they don't even go on the rest of
16 the statute which is or by -- or destroyed by fraud without the knowledge
17 of the testator.

18 So they're stuck with what they alleged in their petition, merely
19 lost. What does merely mean? Am I merely pregnant? It's either lost or
20 it's not.

21 Now, Your Honor, I sent them discovery and I said your
22 petition fails; it does tell me what lost means. And they send back in
23 their discovery -- and I asked them specifically in their interrogatory in
24 your petition for probate of lost will, you assert, and I put this in quotes,
25 that the October 2012 will is merely lost by accident. Please state with

1 specificity each fact and opinion upon which this contention is based and
2 state the identity of each person having witnessed this or has personal
3 knowledge or accept knowledge of the facts and provide a copy of each
4 document which contains information which tends to substantiate the
5 facts alleged in your petition.

6 Answer to interrogatory filed by St. Jude's on January 5th,
7 2017: Prior to filing the petition, St. Jude's obtained the affidavits of
8 Diane Dewalt and Kristin Tyler, witnesses to the October 2012 will, who
9 both attest to the best of their knowledge the decedent did not
10 intentionally destroy or revoke their will.

11 What knowledge did you have, Mrs. Diane Dewalt? I had no
12 knowledge after June -- October 2nd, I never saw this guy, barely even
13 remembered him.

14 Kristin Tyler, what knowledge do you have that the will's lost
15 by accident? She doesn't have any knowledge, Your Honor. Her
16 affidavit says that it's still in existence.

17 And that's why I brought the second motion for judgment on
18 the pleadings. You can go through this entire affidavit, it's three pages,
19 which if you recall, Your Honor, she changed. She changed her affidavit
20 and she took out the provision -- if you look at what she -- what she's
21 changed, it had to do with Mr. Theodore Chip Scheide, III. It -- she
22 wouldn't -- she was comfortable signing the magic language that he
23 wanted her -- that she could say that he wanted her (sic) disinherited.
24 She took that out. And she also took out that she couldn't say that he
25 didn't have any contact with her (sic) son.

1 You know why? She wasn't communicating with her client.
2 She put him into a bogus guardianship. She had -- and the testimony
3 wasn't crystal clear on that. Susie Hoy shows up at Kim Boyer's office,
4 signs this petition, puts him under guardianship, but Susie Hoy hedged
5 her bet a little bit, she wasn't sure if she'd spoke to Kristin Tyler or
6 whether she's talked to Kim Boyer, but there's real strong evidence
7 between the two that Kristin Tyler and Kim Boyer are having this
8 communications about Mr. Scheide and we need to bring this petition.

9 Your Honor, do you remember what the guardianship
10 commission -- one of the single reasons why the guardianship
11 commission was -- Justice Hardesty caught wind of this thing? It was
12 this isolation of people from their friends and family. You find an
13 individual that has no friends and family, you find an individual that has a
14 little bit of money and you isolate them. And you isolate the people that
15 their friends and family aren't in the state of Nevada. And this
16 guardianship commission listened to case after case after case of
17 people coming in there and these parents and family members are taken
18 away from them and put under guardianship and the -- and you, Your
19 Honor, as the new guardianship judge know how important notice is.
20 There's a citation that has to be issued. You don't think Ms. Tyler knows
21 about a citation process that has to be served on Mr. Scheide? You
22 don't think that Kim Boyer knows about a citation process that needs to
23 be served on Mr. Scheide, personally served?

24 My client, if he had been served, would have been on an
25 airplane in a minute out here to see his father. He was denied access to

1 his father, he was denied access to --

2 THE COURT: He didn't testify.

3 MR. PAYNE: I'm sorry?

4 THE COURT: He didn't testify.

5 MR. PAYNE: I understand that, Your Honor --

6 THE COURT: So don't quote --

7 MR. PAYNE: -- but I can make an offer of proof.

8 THE COURT: I mean he didn't testify, you need to move on.

9 He did not testify. He could have told the Court that, he didn't.

10 MR. PAYNE: Your Honor, fine. Bottom line is that these
11 people kept him isolated from his family. They didn't provide him notice.
12 The guardianship is void.

13 Now, I brought this issue up to you before and you said I don't
14 really think I have jurisdiction because he's dead. But I said, Your
15 Honor, I can move to set aside that guardianship at any time. If they
16 don't have the jurisdictional requirement, it's void as a matter of law.
17 And I think Your Honor has to void that guardianship in these
18 proceedings. I think Your Honor can and I think it's the right thing to do.

19 And the problem with that and the reason why they're not
20 going to want guardian voided because this was about fees. Kim Boyer
21 and Susie Hoy charged \$100,000 in fees in the guardianship case. Can
22 you imagine if that guardianship is set aside what's going to happen?
23 They're going to have to pay these fees back.

24 Why didn't they give notice of these proceedings -- it's bad
25 enough that St. Jude didn't give notice to Patricia and Karen and

1 Nevada State Bank, but Kim Boyer's office didn't give notice of the
2 personal representatives under these documents. There was a lot of
3 little things that were slipping through the cracks on this thing. A lot of
4 times notice wasn't given and you start after a while to recognize a
5 pattern and practice.

6 And they didn't give notice and whose fault is that? Is it the
7 lawyer's fault? We got two lawyers in this case. You had Susie Hoy in
8 the middle of this. Somebody's got some problems here, Your Honor.

9 Now, again, I'm sitting in this trial and I'm waiting for evidence
10 of a lost will or that it was (sic) been accidentally destroyed, and you're
11 the gatekeeper of that and in fact I think Your Honor was perplexed at
12 Mr. Geist's opening statement because I kept thinking he's going to go,
13 Your Honor, we've got all this great evidence that we found that Mr.
14 Scheide had lost his will and that he had told everybody about losing it
15 and he couldn't find it and I thought for sure, you know, you'd have some
16 evidence that Mr. Scheide said goddammit where's my will, Kristin Tyler,
17 I -- I've told you I can't find my will, I think Chip Scheide has stolen it --
18 and that's the purpose of that statute. That statute is designed for a
19 situation where somebody has lost their will by an intervening act.

20 And I told you that, Your Honor, I was a little confused by the
21 question that you asked at the hearing before. You said I don't get the
22 statute in existence at the time of death. Well it's got to be in existence
23 at the time died because of the normal -- the presumption that it's
24 revoked, but if you can prove it was in existence at the time of his death,
25 you've got to have somebody that said on or around August 17th, 2014

1 that I saw the document. That's the law, okay? In existence.

2 And then we had this side bet or side discussion whether you
3 need one or two. Remember, Your Honor, you need two credible
4 witnesses, two credible witnesses. We don't have one credible witness.

5 And Your Honor, the normal situation where -- is again where
6 somebody has Aunt Jilly -- Jill in Nevada and Aunt Jill did a will in
7 Minnesota and someone picks up the will in Minnesota after Aunt Jill
8 dies, mails it out here and the original gets lost or destroyed. And then
9 that's a very easy case where you come in and you say it was in
10 existence. In other words, I had the original before she died and I sent it
11 to Nevada and it didn't show up.

12 We don't have that in this case. We don't have proof -- again
13 that's -- Your Honor, I kept expecting this trial of a lost will. Well what it
14 was a trial of trying to -- and counsel did a very good job at obfuscating
15 the issues. You have to get over the issue of a -- of alleging -- it's fraud,
16 Your Honor. A lost will or is -- is a fraud case and their pleadings have
17 to allege with specificity, and that's what I said when I brought my first
18 motion said, Your Honor, I object to this motion, it doesn't have the
19 specificity of how the will was lost.

20 Oh, I got to give them time, Mr. Payne. You know, Your
21 Honor, you said to us, you said well how much time do I give these
22 guys? And you looked at Mr. Geist and you said well, how much time
23 do you need? You were on notice of the original petition, you didn't
24 react to that. You got the petition for instructions, you didn't act to that --
25 act for that. There's an order declaring it's gone intestacy, and now in

1 September they come back and say two years later that we've got this
2 story that we've created.

3 Karen Longo, Your Honor. Kathy Longo. She didn't know if it
4 was a copy or a will. She called him mean, she called him
5 embarrassing, she called him cruel. She didn't work. She told the story
6 about him supposedly going -- urinating in the public. She doesn't know
7 anything about this being lost or destroyed. She didn't even see the
8 original.

9 And in fact if you'd have read her deposition, she said I
10 thought -- strike that. If you would have listened to her, she's telling you
11 a story that doesn't make any sense. She was -- wanted to be his
12 guardian, she wanted to charge a fee and he didn't want anything to do
13 with her. She owed him money and if you look in Kristin Tyler's notes,
14 she wanted money from him. That's what she said. She said he
15 wouldn't -- he didn't want to pay me; I lived across town and he didn't
16 want to pay me. And we had this major misunderstanding, falling out,
17 whatever you want to call it. If they're going to go and rely upon Kathy
18 Longo, I think it's a very difficult road to travel.

19 I thought that Kathy Longo was going to come in and say,
20 Your Honor, I moved him, I saw the original will, I remember putting it in
21 an envelope, I remember putting it in a box, I very carefully took that box
22 to his rest home, we unpacked it, we put everything up in the bookshelf
23 and then he went into the hospital and I left it up on the bookshelf and
24 when he died we came back to look at it and it's now missing. That's a
25 lost will by accident, Your Honor, an intervening act.

1 And *Irvine versus Doyle* which they love to rely upon if you
2 recall, Your Honor, was an intervening act. That was a case when
3 Judge Pavlikowski didn't give them enough time and the supreme court
4 reversed it and said you need to have an evidentiary hearing on this,
5 and Your Honor picked up on that.

6 So -- and you don't know what the outcome was, you don't
7 know what the evidence of a lost will was in that case. You know there
8 was an intervening act, but you don't know whether they proved it. And
9 that case is not what applies to these facts.

10 Now Mr. Geist likes to talk about this other case that was
11 recently reversed I -- or was issued by the supreme court and that's a
12 case where I clearly argue that I think you still have testamentary
13 capacity during a guardianship. In fact Your Honor asked a really good
14 question. What's the legal effect of a guardianship? Once somebody's
15 in a guardianship, what's the legal effect?

16 And Your Honor said, you know, well, if Mr. Scheide would
17 have not wanted to do a new will, he would have contacted Susie Hoy.
18 Really? Well does Susie Hoy have some duty to say hey, Mr. Scheide, I
19 need to see your original will? Where is it? And if he says no because
20 by their very nature they're private. These are confidential documents.
21 And by their very nature they don't come into play until you die.
22 Remember it's a last will and testament, a testamentary document.

23 You think Mr. Scheide was going to go around -- you know, he
24 probably did, for sake of argument, I'm going to give it all to St. Jude's,
25 I'll give it to St. Jude's, I'll give it to whoever I want to, get out of my

1 house, don't tell me what to do. Well you heard the evidence he was an
2 angry guy, you know. He -- people were coming at him, but nobody
3 wanted to help him. You heard that over and over again, nobody
4 wanted to help him. Nobody gave a rat's ass including Kristin Tyler.

5 Kristin Tyler didn't communicate with her client. By her own
6 admission, she didn't write a letter and says this is what he wants. You
7 know, there wasn't a letter and said hey dear client, your -- Velma died,
8 I'm so sorry, but this will confirm that your will is still in place and that
9 should go to St. Jude's. I wouldn't even be here, Your Honor. I wouldn't
10 be making these arguments.

11 Your Honor, the law is so clear in this case. They don't have
12 the facts, so what do they do? They create a diversion. They don't
13 have a law, they don't have the law on their side so what do they do?
14 They argue this ridiculous more probable than not under paragraph 5(a)
15 of that statute.

16 They submit an unverified petition by a guy who knows
17 nothing about this case. They don't -- it's not even under penalties of
18 perjury. It's done in accordance with Tennessee law based upon
19 information and belief. Their petition is defective because they didn't
20 give notice to Patricia Bolen and Karen. Their affidavits don't meet the
21 burden of a lost will. Their evidence that they submitted to you was all
22 speculation, was all a bunch of well what about this and if he would only
23 have told me he didn't want St. Jude's.

24 Your Honor, how many people go around telling their clients --
25 what you don't know, Your Honor, is who he spoke to. He may have

1 spoken to Jasen Cassady. In fact, Kristin Tyler sat up there and said
2 well I got the file from Jasen Cassady. What was interesting about
3 Jasen Cassady's file and Kristin Tyler's file is it didn't even have the
4 previous will, the previous will that Velma was in, or a previous will that
5 her children were in.

6 So we don't know if he spoke to another attorney. We don't
7 know if he called up anybody and said how do I get rid of this will? What
8 do you think the attorney's going to say? He's going to say rip it up, tear
9 it up. That's how you get a -- destroy a will. You rip it up. I mean
10 almost everybody knows that.

11 I think they have abandoned their petition to probate the June
12 will. Your Honor, as a matter of law, Kristin Tyler October will revokes
13 that. That's out. June will's out as a matter of law. Only leaves the
14 October will. Statute says they need to prove that it's in existence the
15 time of the death. August 7th, at that time. Not one week later, not a
16 month earlier, not during the guardianship.

17 And Your Honor, there was more than ample opportunity for
18 Mr. Scheide to revoke this will. Patricia Bolen didn't want to do -- wrote
19 a letter says I'm out of here, you're fired, you were stealing from me, rips
20 it up. Velma Shay, his girlfriend, the object of this will, dies, rips it up.
21 The 2013 removal of Patricia Bolen which happened in 2013, Patricia
22 Bolen says I don't want anything to do with this guy, ripped it up.

23 What do you do if you can't communicate with your attorney?
24 He's Mr. Scheide. Kristin Tyler's not returning his phone calls. What
25 does he do? Kristin Tyler you're fired. You put me into this

1 guardianship. She's the one that was pushing on him to have these
2 interviews with Susie Hoy -- you heard all about this. And Susie Hoy
3 was involved in these meetings, she's pushing this guardianship, she's
4 pushing this guardianship. He's a mad, angry individual. What do you
5 think he did? He's going to take it out on somebody. Kristin Tyler's got
6 his original because that's the one that was done in the hospital. He's
7 got the October will. He rips it up. Kristin Tyler's not going to benefit
8 from this. I have a son. He tells people in the hospital he has a son.

9 Their case is based upon speculation, law that doesn't exist --

10 MR. CHRISTOPHERSON: And defective petition. And a bad
11 petition.

12 MR. PAYNE: And a bad petition. Thank you.

13 And at that point I will rest, Your Honor.

14 THE COURT: Thank you.

15 Okay. Mr. Geist.

16 MR. GEIST: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. GEIST: Counsel is right. The law is clear, Your Honor.

19 *Irvine versus Doyle* sets the standard upon which a lost will may be
20 admitted to probate. And it says -- if I can get to that. This is quoting
21 the *Fox* case in a New York court of appeals. In other words, all that
22 Section 143 in New York which the *Irvine* court indicates it is a corollary
23 to 136.240, all that section requires is proof that the testator himself had
24 not revoked the lost or destroyed will, proof that would overcome the
25 common law presumption of revocation. Accordingly we hold that the

1 words in existence and fraudulently destroyed taken together convey the
2 legislative intent to require the proponent of a lost or destroyed will to
3 prove that the testator did not revoke the lost or destroyed will during his
4 lifetime.

5 It does not say in there that the proponent has to prove an
6 intervening act. It does not say in there that the proponent of a lost or
7 destroyed will has to prove that will was physically in existence and if
8 you'll recall the facts of the case, that was what the district court had
9 decided, dismiss the case because the district court held you can't prove
10 that that will was physically in existence. The supreme court reversed.

11 The law is also clear, Your Honor, that an order declaring
12 intestacy is not a final act. It's not a final order. NRS 136.010 (sic) says
13 any other interested person may, at any time after the death of the
14 testator, petition the court having jurisdiction to have the will proved,
15 whether the will is in the possession of that person or not, or is lost or
16 destroyed, or is beyond the jurisdiction of the state.

17 NRS 141.050 describes the change in administration from one
18 administrator to another. In particular it says: If, after granting letters of
19 administration on the ground of intestacy, a will of the decedent is duly
20 proved and allowed by the court, the letters of administration must be
21 revoked and the power of the administrator ceases, and the
22 administrator shall render an account of his or her administration within
23 such time as the court directs.

24 Your Honor, this would not be the first case in a probate court
25 in Nevada where it began as an intestate administration, a will was

1 subsequently admitted and ended as a testate administration.

2 Your Honor, some of the statements by counsel are provably
3 false. He claims that the verification of St. Jude's petition was not done
4 under penalty of perjury, it fails. First of all, he claims it wasn't even
5 verified. There is a verification. Reading from the verification, Fred E.
6 Jones, Jr., on behalf of St. Jude Children's Research Hospital, being first
7 duly sworn under penalty of perjury.

8 Opposing counsel also stated numerous statements against
9 Kristin Tyler that just must be responded to. First of all, the guardianship
10 of Mr. Scheide was initiated by Kim Boyer as the attorney for Susie Hoy
11 and Nevada Guardian Services. Whether or not they knew about Theo
12 at the time, Kristin Tyler, in an email, May 19th, sent to Susie Hoy and
13 others at the office, said here are his estate planning documents, I
14 wondered what the status was, he has a son. Prior to that, when the
15 guardianship was established and she emailed those copies to Kim
16 Boyer she said the same thing. He has a son.

17 Susie Hoy of Nevada Guardian Services testified that she met
18 with Theo prior to the guardianship. Nevada Guardian Services was
19 involved. Judy Coulter (phonetic) from their office was involved with
20 that. There was no conspiracy.

21 Your Honor, the law is clear that the two credible witnesses
22 required for a proponent of the lost will are required to prove the
23 provisions of that lost will. Quoting from the statute, NRS 136.240
24 Subsection 3: In addition, no will may be proved as a lost or destroyed
25 will unless it is proved to have been in existence at the death of the

1 person whose will it is claimed to be, or is shown to have been
2 fraudulently destroyed in the lifetime of that person. That has been
3 interpreted by *Irvine versus Doyle*.

4 Now, comma, nor unless its provisions are clearly and
5 distinctly proved by at least two credible witnesses. It's common
6 practice when trying to admit a lost will that we don't have the original
7 that we get two witnesses to that will to testify that the provisions are
8 there. We don't even need to get there because we have a copy of that
9 decedent's will.

10 Finally regarding the petition for instructions that was filed in
11 this case, May of 2015, we don't believe Chip has standing to challenge
12 the lack of notice to the named executors. But if that issue were
13 properly raised, if notice were given and either of those executors from
14 the June will that he claims, Karen Hoagland, or Patricia Bolen from the
15 October will appeared in favor of admission, we would assume Chip
16 would likely have opposed them as well like he's opposing St. Jude.

17 Lack of notice of the petition then in this is a head fake. This
18 estate is ready to be closed. That was what prompted this was a
19 petition to approve the final accounting and distribute this. And it was
20 Kristin Tyler's notice that this was being administered contrary to Theo's
21 wishes in his will that prompted her to reach out to St. Jude Children's
22 Research.

23 Now regarding St. Jude's notice of the initial petition for
24 instructions May 5th -- or May 6th, 2015, looking at paragraph 4 of Ms.
25 Hoy's petition, it says due search and inquiry has been made to

1 ascertain if the decedent left a valid will and copy -- valid will, and a copy
2 of a last will and testament dated October 2nd, 2012 was located but the
3 original has not been found. See copy attached hereto.

4 That does not say that a copy was found with wet ink writing
5 from the testator on that copy. It just says a copy of the will. It did not
6 provide adequate facts for anybody to ascertain what the status of that
7 will was.

8 She further says in paragraph 6 the special administrator,
9 Susie Hoy, believes the decedent destroyed any original estate planning
10 documents he may have executed prior to his death. She's already
11 testified that that was based on mere speculation. She had no basis to
12 believe that other than he was angry at everybody and she speculated
13 that he destroyed it because of that.

14 St. Jude is properly before this Court with their petition to
15 admit the lost will. We have met the burden and we would ask that the
16 Court admit the will of the decedent.

17 THE COURT: Okay. Thanks. Well, I appreciate the time and
18 effort everybody put into this. As I said, I did want to hear for myself
19 what the witnesses had to say. So I'll take it under advisement and I'll
20 send you a decision.

21 [Colloquy between the Court and the Clerk]

22 THE COURT: My girl is to get it to you before August 15th, so
23 my two-month deadline.

24 MR. PAYNE: Thank you and your staff, Your Honor.

25 THE COURT: Okay, well thank you everybody. I appreciate

1 everybody coming and from, you know, Pennsylvania and Tennessee.
2 Appreciate the fact that all the witnesses took the time to be here and
3 Ms. Hoy and Ms. Tyler, their cooperation as well. This involved a lot of
4 people and a lot of documents.

5 I just want to make sure we've got it clear what the exhibits
6 were you -- you went over that yesterday --

7 THE CLERK: Yes.

8 THE COURT: -- I think I heard you doing? Uh-huh.

9 THE CLERK: And Mr. Payne confirmed this morning he's
10 okay with that.

11 THE COURT: Okay. All right. So we know what the exhibits
12 that are in evidence are and that's what we'll be sending you a decision
13 on in a few weeks. So thank you all very much.

14 MR. GEIST: Thank you, Your Honor.

15 MR. MOODY: Thank you, Your Honor.

16 THE COURT: Good to see you guys.

17 THE MARSHAL: All rise.

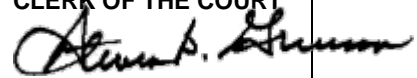
18 [Proceedings concluded at 11:38 a.m.]

19 * * * * *

20
21 ATTEST: I hereby certify that I have truly and correctly transcribed the
22 audio/visual proceedings in the above-entitled case to the best of my
23 ability.

24 

25 Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 IN THE MATTER OF:

) CASE#: P-14-082619-E

) DEPT. XXVI

9
10 THEODORE SCHEIDE, JR.,
11 Deceased.

12
13 BEFORE THE HONORABLE GLORIA STURMAN
14 DISTRICT COURT JUDGE

15 WEDNESDAY, APRIL 14, 2021

16 **RECORDER'S TRANSCRIPT OF PENDING MOTION**

17 APPEARANCES VIA BLUEJEANS:

18 For the Objector: RUSSEL J. GEIST, ESQ.
19 JOSEPH POWELL, ESQ.

20 For Theodore Scheide, III: CARY C. PAYNE, ESQ.

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23
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25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, April 14, 2021

2
3 [Case called at 10:29 a.m.]

4 THE COURT: P082619. We'll get the appearance first of the
5 Petitioner -- well, actually, I think it's the lawyers for the Petitioner, but
6 the Movant, and then we'll hear from the Claimant, St. Jude's.

7 MR. PAYNE: Thank you, Your Honor. Cary Colt Payne, 4357,
8 on behalf of the Chip Scheide, III.

9 MR. POWELL: Good morning, Your Honor. Joey Powell
10 appearing on behalf of St. Jude.

11 THE COURT: Okay. Mr. Powell. All right. Great.

12 So, Mr. Payne, this is the motion to strike the fraudulently
13 submitted petition in the name of St. Jude's Hospital, as Petitioner, and
14 for related relief.

15 MR. PAYNE: Good morning, Your Honor. This is a pretty
16 simple matter as far as I'm concerned. Your Honor was well aware of
17 what was alleged in the petition and what's interesting is St. Jude's does
18 not, essentially, deny what we have laid out in this petition.

19 Your Honor is well aware of all actions under NRCP 17(a)(1)
20 need to be brought by the real-party-in-interest. Your Honor, being a
21 prior interim [indiscernible - audio garbled] you know, the subrogation
22 issues and what have you. It appears that St. Jude's defense did not
23 read this petition. And it's undisputed that the petition was brought by
24 Lebanese Charities. I'll collectively refer to them as [indiscernible - audio
25 garbled] post St. Jude's opposition.

1 In their defense, they attach a corporate resolution that
2 somehow attempts to mitigate their not following Nevada law. St.
3 Jude's has not, for whatever reason, not registered to do business in the
4 State of Nevada, which is shocking in light of everything that they do in
5 the State of Nevada, including raffling off real estate in Henderson, and
6 raising money, millions of dollars, from Nevada residents. I don't want
7 to get into the gamey aspect of it too, because I don't think I need to.

8 But their sole defense appears to be this corporate resolution
9 that says to the effect that St. Jude's designates the Lebanese Charities
10 to -- and I'll read from it -- "receive, handle, administer all devices,
11 bequests, and gifts of property." It doesn't even say that they have the
12 authority to file a suit in the State of Nevada, and it's purportedly the
13 petition that was signed in this case was signed by somebody by the
14 name of Fred E. Jones, Director, Legal ALSAC. This resolution lists or
15 identifies five -- four individuals, and none of them are a Fred E. Jones,
16 Jr. We don't even know if Fred E. Jones, Jr., exists or what his position
17 is.

18 They have the burden of proof to establish standing. They
19 didn't submit a single affidavit in this opposition. They didn't -- they
20 submitted no admissible evidence to not substantiate what we've
21 alleged in our motion. Their burden of proof has not been met, and it is
22 not met under this opposition.

23 It's pretty straightforward, NRS 82.5234 says that if you want
24 to maintain an action, you got to register to do business. St. Jude's
25 chose not to do that. I suspect that they made a business decision that

1 they wanted to, quote/unquote, "promote wills and promote their
2 beneficial cause." And we applaud them, but if you dig down on this
3 relationship, it's the American Lebanese Syrian Associated Charities that
4 is doing all this on behalf of St. Jude's, and they acknowledge that
5 they're separate corporations, but they didn't file the petition, Your
6 Honor. It's undisputed that ALSAC filed this petition. They don't dispute
7 that. They just say that our defense is that we have the authority to do
8 that. And I don't think that's enough, Your Honor. And with that I'll rest.

9 THE COURT: Okay. So I'm looking here -- I may not be
10 looking at the same document you are, the September 13, 2016, petition
11 for probate of lost will, revocation of letters of administration, issuance
12 of letters testamentary. And so this is in the name of Petitioner, St. Jude
13 Children's Research Hospital, Inc., is the Petitioner, and they petitioned
14 the Court to probate the will.

15 So in the -- they didn't really -- I mean, in that original -- in
16 the first petition, didn't really, you know, say much other than they were,
17 you know, named in this will -- the lost will. And so decedent left the
18 2012 will, which Petitioner believes and alleges is duly executed and
19 should be probated.

20 So at some point in time is it your position that they then --
21 the verification on that document from the State of Tennessee is Fred E.
22 Jones, Jr., on behalf of St. Jude's Research Hospital? He's the agent
23 authorized to -- a representative for the Petitioner and signs in the
24 capacity of its director/legal, and then there's a backslash with the capital
25 letters A-L-S-A-C. So that's the document that you're referring to?

1 MR. PAYNE: Yes, Your Honor.

2 THE COURT: Because they don't really say anything about
3 capacity or anything else other than just they believe they were the heir
4 named under this lost will. They don't talk about [indiscernible -
5 simultaneous speaking]--

6 MR. PAYNE: Well, not that they were -- Yes, Your Honor.

7 THE COURT: Okay. All right. And so in order for --

8 MR. PAYNE: So they have -- so they have no standing, Your
9 Honor. It's as simple as that. ALSAC has no standing to bring this
10 petition.

11 THE COURT: Okay. And so what is your position that -- you
12 know, in the world of probate that a charitable -- I mean, because, you
13 know, individuals are individuals, but if a charity -- if money is being left
14 to a charitable organization, that that charitable organization should be
15 authorized to do business in the state in order to receive a bequest from
16 a resident?

17 MR. PAYNE: That's a good question, Your Honor, because
18 I've thought about this. If they were the -- if they were not the one
19 maintaining this action, and they were just a mere beneficiary, they
20 attempted to -- would have attempted to, quote/unquote, "not qualify or
21 qualifying and collect their money and leave the state if that would have
22 been the facts." But in this case, Susie Hoy was asked to bring a petition.
23 Susie Hoy did not bring the petition, ALSAC did. And that's the fraud on
24 the Court.

25 If they would have laid the [indiscernible - audio garbled] that

1 they had the authority to do this. That they were somehow not -- or
2 vested in this thing. And that's really the \$64,000 question. Where
3 would this money go if they were to collect this money? That's the fraud
4 on this Court. Under their documents, they're allowed to collect this
5 money and do whatever they want with it. They claim that they're going
6 to give it to St. Jude's, but that's the fraud, Your Honor.

7 THE COURT: Uh-huh. So the issue is that --

8 MR. PAYNE: If they were just a name --

9 THE COURT: Okay. So the issue is that ALSAC is acting as
10 the agent for St. Jude's. They sue in the name of St. Jude's, but they are
11 not themselves, St. Jude's. The will specifically left the money to St.
12 Jude's. Instead, this ALSAC entity appears and says, well, we are the
13 authorized agent for St. Jude's to file litigation in their behalf. And so --
14 you know, and to represent them in this litigation. We talked about who
15 can represent people a little earlier today.

16 So that there's no authority for this ALSAC entity in the State
17 of Nevada and that it's inadequate -- the record is inadequate to establish
18 that they were in fact authorized to act for St. Jude. We have no way of
19 knowing if they in fact are going to give the money to St. Jude's or not.

20 MR. PAYNE: Yes, Your Honor, that's part A. Part B is the --
21 part B is the alternative argument because they don't dispute it's ALSAC,
22 but part B would be if the petition was filed on behalf of St. Jude, St.
23 Jude's has not qualified under the non-profit statutes. It's very simple.
24 You register -- in fact, I was online yesterday with the Secretary of State,
25 and I acted like I was trying to register a non-profit. You type in the

1 name for your 50 or \$75 fee. Your name is then registered. Then you go
2 through and qualify with respect to the remaining statutes. And St.
3 Jude's, the research hospital, has refused to do that.

4 And so, like I said, the alternative argument is that St. Jude's
5 cannot, under NRS 82.5234, maintain an action. And they like to put a
6 twist on bringing a petition for probate of a lost will is in fact defending
7 an action. It's not. You were at the trial. They prosecuted this action.
8 They've taken the liberty of Nevada law when it fits their convenience.
9 But when the reality is, is that Nevada law applies, they want you to
10 ignore it, and that is wrong.

11 THE COURT: Okay. All right. Thanks. Mr. Powell.

12 MR. POWELL: Yes. Thank you, Your Honor. I would like to
13 be able to kind of go through a few of these key issues. So if you'll
14 indulge me, I would like to just put this forth to establish the record here.

15 Looking at Mr. --

16 MR. PAYNE: Now, just -- Your Honor, for the record --

17 THE COURT: Yes.

18 MR. PAYNE: -- for the record. Is Mr. Powell -- I'm kind of
19 confused. We have Mr. Geist -- I've never seen Mr. Powell's name on
20 any pleading. Are you still associated with the firm of Hutchinson &
21 Steffen? Who do you represent?

22 MR. POWELL: Well, they're the ones that sign my paycheck,
23 so I'm going to say yes. I am -- I don't know how much more clear I can
24 make it. I represent St. Jude on behalf of Hutchinson & Steffen.

25 THE COURT: And so, because Mr. Geist is also on the line,

1 I'm sure Mr. Payne just wants to make sure he's only going to be dealing
2 with one attorney here. And Mr. Powell is going to take the lead in the
3 argument, I'm assuming?

4 MR. GEIST: That's correct, Your Honor.

5 MR. POWELL: Exactly. Yes.

6 THE COURT: Got it. Okay. Thanks.

7 MR. PAYNE: So for the record, no one is representing
8 ALSAC in this proceeding.

9 MR. POWELL: That would be correct on my -- on our end.
10 But I would like to explain the situation, so --

11 THE COURT: All right. Thank you, Mr. Powell.

12 MR. POWELL: -- so we can address it.

13 THE COURT: Sure. Yeah. Thank you.

14 MR. POWELL: Yeah. Thank you, Your Honor. So I believe
15 the defining statement in the petition that's been brought by Mr.
16 Scheide, through Mr. Payne, is found on page 18. It states, "In the case
17 at bar, St. Jude is prohibited as a matter of law from commencing or
18 maintaining any action, in any court of this state."

19 So if -- so based on that and based on what Mr. Payne has
20 just represented a few minutes ago, if I'm understanding this argument
21 correctly, what the assertion essentially boils down to is that in order to
22 use Nevada's Probate Court to assert one's right to a distribution from an
23 estate, that a non-profit corporation must be pre-registered to qualify to,
24 quote/unquote, "do business in the State of Nevada."

25 As I'll explain, this is completely baseless, meritless, and it's

1 a preposterous position because it completely ignores NRS Chapter 12 in
2 the standing that sets forth therein. We have NRS 136.070, which is
3 titled, "persons qualified to petition for probate." Under subpart 1 it
4 states, "a personal representative or devisee named in a will, or any
5 other interested person may, at any time after the death of the testator,
6 petition the Court having jurisdiction to have the will proofed, whether
7 the will is in the possession of that person or not, or is lost or destroyed,
8 or is beyond the jurisdiction of the state."

9 So now we have to obviously parse through the defined
10 terms that comprised that subsection that I just read from. We have
11 definitions on all of these terms. NRS 132.185 titled, "interested person."
12 "Interested person means a person whose right or interest under an
13 estate or trust may be materially affected by a decision of a fiduciary or a
14 decision of the court. The fiduciary or court shall determine who is an
15 interested person according to the particular purposes of and matter
16 involved in a proceeding."

17 We then have person. What is a person? Well, a person is
18 defined under 132.260 as, quote, "includes a natural person,
19 organization, government, or a governmental subdivision, agency, or
20 instrumentality." So organization clearly is going to be the label that St.
21 Jude would have here. They're not, obviously, a natural person. They're
22 an organization, a charitable organization.

23 So now we move to what is a petition. A petition under
24 132.270, is defined as "a verified written request to the court for an
25 order."

1 Lastly, we have the definition of what is probate. 132.275,
2 says probate, quote/unquote, "used as a noun means a legal proceeding
3 in which the Court has jurisdiction to administer a payout and distribute
4 the assets of a decedent to the persons entitled to them, including,
5 devisees, heirs, creditors, and others."

6 So what's being completely missed about the point of this
7 standing is that we're going to some other sections, which deal with
8 corporations, whether for profit or non-profit, instead of going to where
9 standing is explicitly stated under the NRS, under what applies to this
10 Court, which is Chapter 12.

11 So we're going to -- we're trying to come up with doing
12 business as somehow utilizing this Court and, again, as I just established
13 what it is that we're talking about when we say petitioning for probate.
14 Yes, of course, as the Court just read from a few minutes ago, it was a
15 petition to probate a lost will that was filed in September of 2016.

16 So to go off on all these tangents and try to bootstrap this
17 and that about corporations and what you can do business from, this is
18 absurd. This is willfully ignoring how standing is established with this
19 Court. Who can use this Court? It doesn't have any limitation. There's
20 no limitation whatsoever that says, oh, you can use it, but you can't.
21 There's no differentiation between, again, an organization like St. Jude's
22 using the Court seeking a petition to probate this lost will or not.

23 So again we're going completely beyond the scope of trying
24 to poke a hole in the standing issue when we have standing right before
25 our face. It states explicitly -- the legislature states who it is that can

1 utilize this Court for the purpose that was utilized in this matter.

2 THE COURT: And so I kind of talked about two different
3 things with Mr. Payne. One was this question of does a charitable
4 organization, which is left to devise in a will or, you know, from a trust,
5 do they have to be qualified to do business as a non-profit in the State of
6 Nevada in order to not just receive it, because in this particular case it
7 wasn't so much a question of receiving it, it was a question of petitioning
8 to obtain that. And that was my question was, you know, where -- is
9 there anywhere that says that anybody, human or entity, has to be either
10 a resident of or operation to do business in the State of Nevada in order
11 to pursue a creditor, in order to pursue a claim in probate? Do they have
12 to be qualified to do business? I'm just -- you know, that just was kind of
13 a puzzle for me.

14 But the other question was this question of, you know, who
15 is the authorized agency -- agent? Do we know if they really are St.
16 Jude's. That in fact the intent of the testator is being satisfied because
17 this random entity that verified the -- it doesn't say anything about their
18 standing, or their capacity, or their authority, but some entity that says
19 they're filing on behalf of St. Jude. I mean, we have to assume that they
20 really are St. Jude or is there some proof that they are? I mean, that's a
21 detail --

22 MR. POWELL: And I'm happy to address that situation, Your
23 Honor.

24 I think as to the first question you just mentioned, you hit the
25 nail on the head. If there was a prohibition or a limitation on somehow

1 an entity -- an organization being treated that anybody else who is
2 named as the devisee under a will, that would have been clearly stated.
3 We all know, you know, what -- how a statute is supposed to be
4 interpreted. We don't create stuff when it's not there. If there was
5 intended to be an exclusion -- as we know the Nevada Supreme Court
6 has numerous cases where they cited to say that if an exclusion was
7 intended by the legislature, they would put it in there. We don't infer
8 things that aren't there. So I think you hit the nail on the head on that
9 issue.

10 Now to the second issue of, again, this -- essentially Mr.
11 Payne's argument here that we're dealing with two separate entities, and
12 this and that, we have explained in our response -- and if I could just
13 read quickly from it -- ALSAC, which stands for the American Lebanese
14 Syrian Associated Charities was founded by Danny Thomas in 1957, to
15 be the fundraising awareness organization for St. Jude's Children's
16 Research Hospital, and its sole mission is to raise the funds and
17 awareness necessary to operate and maintain the hospital. ALSAC is
18 responsible for raising the funds.

19 Now as we have included with the resolutions, which, again,
20 I have to also question here, what standing exactly would Mr. Payne's
21 client have to essentially say we don't necessarily believe that you have
22 the ability to sign a verification on behalf of St. Jude's. That would
23 obviously be a situation, wouldn't it, between St. Jude's and ALSAC?
24 And clearly we've established that they are related entities, and one
25 basically does this branch, essentially, of acting on behalf of them in

1 their interest.

2 Well, that's obviously between St. Jude and ALSAC, and
3 we've established, and I can read it into the record if you want, it's
4 already there, obviously, within the writings, that basically the powers
5 that St. Jude's has given to ALSAC to act on their behalf in many
6 different aspects. And we're now parsing words by Mr. Payne saying,
7 well, different actions. Well, again, we can read directly from what it
8 says. They're authorized to receive, handle, and administer all devises,
9 bequests, and gifts of property of every kind and nature given, devise
10 and bequeath to, and aiding and assisting such situation in furtherance
11 of its mission.

12 So to kind of try to split hairs here to say, well, we're not sure
13 that they can actually act on their behalf. Again, with all due deference,
14 why would that be something that Mr. Payne is able to raise here? What
15 standing would he have to say, well, prove to us that you're actually
16 allowing them to act on your behalf? The reality is it's a verified petition,
17 which is all that needs to be done. The law firm clearly represents St.
18 Jude's and St. Jude's interest in this.

19 So I don't know where, again -- this is something that Mr.
20 Payne has the ability to try to basically, essentially, look into the internal
21 operations and the relationships between the two entities when they
22 clearly are symbiotic. They work together on things like this. But, again,
23 as we've established, they clearly allow ALSAC to do what ALSAC is
24 doing, essentially, in a representative agency capacity.

25 I mean, if we're going to break down --

1 THE COURT: Okay. So let me ask you this. Because again
2 the point is I'm going to assume Mr. Scheide's interest here is that if this
3 is not a qualified beneficiary, they can't take under this will, then -- you
4 know, then what, it goes intestate? It escheats to the State? Well,
5 probably not. It would probably go to an intestate heir.

6 So I understand why he believes he standing to raise this
7 issue. But the issue is, you know, is the intent of the testator being
8 carried out? And so what's the order going to be to close this estate?
9 Issue a check payable to ALSAC? Well, ALSAC's, you know, a stranger
10 to this whole thing. We don't know who ALSAC is. Or is the order to be
11 distribution of the estate needs to go to St. Jude's? [Indiscernible -
12 simultaneous speaking]

13 MR. POWELL: It would go to St. Jude's, Your Honor. Yeah.
14 It would go to St. Jude's, just like anything else that would go to St.
15 Jude's. That would be the payee on essentially the distribution check
16 here.

17 THE COURT: Right. Uh-huh. Okay. All right.

18 MR. POWELL: You know, and obviously, going beyond that,
19 if again St. Jude's somehow doesn't get the funds that are paid out to
20 them, well, that's a completely different issue not relevant at all to this.
21 And we're putting the proverbial cart before the horse here where
22 there's an assumption that somehow St. Jude is not going to get these
23 funds, which, again, I'm at a loss for why that would be a concern of Mr.
24 Scheide here. Clearly, the designated beneficiary is that. ALSAC,
25 essentially, is an agent that acts on behalf. No one is saying anything

1 goes to ALSAC whatsoever.

2 So it's -- we've talked about standing, we've established
3 standing, and then now we're going back to, but how can we be sure
4 who's going to get the money and all this? Well, again, the check is
5 going to be payable to St. Jude's. So, beyond that, obviously, I don't
6 know what more concern Mr. Scheide would have out of this. It's going
7 to get to where it's designated, which is to St. Jude as is designated in
8 the will.

9 THE COURT: Okay. Anything else in response to --

10 MR. PAYNE: Your Honor, yes. Thank you, Your Honor.

11 MR. POWELL: Yeah, if I can finish, Your Honor.

12 THE COURT: Okay. Yes, Powell.

13 MR. POWELL: Can I still finish, Your Honor?

14 THE COURT: Yeah. Yes, Mr. Powell.

15 MR. POWELL: Thank you. So -- and, again, I appreciate it. I
16 just need to set the record straight because, obviously, you know, again
17 there needs to be a record of what the arguments are here too.

18 The other thing too that's being neglected in regard to Mr.
19 Payne's assertion about doing business in the state, as we've set forth
20 very clearly, we're also ignoring, again, NRS 80.015, which says what
21 activities do not constitute doing business in the State of Nevada. And
22 under 1A, "maintaining, defending, or settling any proceeding."

23 Again, we don't need to go there because I've already
24 established the standing rests under Chapter 12 from the statute I just
25 referred to. But I think it's important to note, again, this argument has no

1 basis to it because you're having -- you're ignoring -- willfully ignoring
2 the statute, which already says does not constitute doing business. So
3 appearing in a probate matter is not -- doing business in the state as
4 defined by the statute.

5 Lastly, Your Honor, too, the other troublesome thing here too
6 is this petition was filed four-and-a-half years ago. Why after this has
7 already gone up on appeal, the Supreme Court has rendered its ruling
8 and remanded it, why now are suddenly these issues being raised? This
9 is something that was in plain sight, clearly discoverable on the face of
10 the document in September of 2016. Why now is it suddenly becoming
11 an issue?

12 Well, obviously, it's becoming an issue because Mr. Scheide
13 lost on appeal, and it's now back down for the sole purpose of closing
14 this out and the Court ordering, obviously, the distribution to go to St.
15 Jude. So what we have here too, beyond all of the other arguments is
16 we have a laches problem. You can't just wait four-and-a-half years to
17 then somehow bring up a defect with something that you had the
18 opportunity to raise all along.

19 So that's the other aspect of this to put the cap on it is this
20 should have been brought -- if there was an issue with standing, this
21 should have been brought significantly in the past. You don't allow this
22 to go on appeal, and then when you lose the appeal to then argue, oh,
23 well, here -- we believe you never really had standing all along. That's
24 not how this is supposed to work, and laches is obviously there to deal
25 with this.

1 Inequitable doctrine, as we know, is intended to prevent
2 prejudice to a party, which clearly there would be prejudice to St. Jude
3 now that -- four-and-a-half years after having expended all of these fees
4 and having prevailed on appeal to now say, oh, you were never really
5 allowed to do this in the first place. That's not how this is supposed to
6 go.

7 THE COURT: Thank you. So, Mr. Payne.

8 MR. PAYNE: Your Honor, jurisdiction can be raised at any
9 time. You know, first of all, I object to these arguments that weren't even
10 in the pleadings with respect to the Title 12 issue. But let me address the
11 Title 12, because he puts a great deal of weight on that.

12 I would agree that had this been laid out in a petition, as we
13 all do we allege standing with jurisdiction or certain things that are
14 required to be put in the petition. None of this was in their petition. How
15 can we test the veracity of these -- all this other hearsay, basically, and
16 other comments of argument that aren't in the petition before Your
17 Honor?

18 So you can't rely upon a petition that is void that doesn't
19 have -- that has been therefore -- the Court didn't have the jurisdiction to
20 entertain it from the beginning. Had they laid this out, put us on notice
21 of these allegations, at least somebody could test the veracity of these
22 issues. But when they're not put in there from the beginning, how or
23 when would this ever have been raised?

24 So with respect to that, they haven't established anything,
25 Your Honor. The burden of proof is on them that they have standing.

1 They've submitted a resolution and that's it. And you have to go off of
2 what they've submitted, not these other arguments, because they went
3 way outside their pleadings and your arguments, Your Honor. With that
4 I'll rest unless you have any questions.

5 THE COURT: No. Thanks very much.

6 My initial question was, you know -- to me, I'm just -- I'm not
7 understanding the concept that this is doing business in the State of
8 Nevada. A charity which is left a sum of money by a Nevada resident
9 and comes into probate to say, okay, we're here to receive our request, if
10 we are going to request that -- require that every single one of those
11 charities show that they are registered with the State of Nevada, that
12 they're somehow authorized to conduct business in the State of Nevada
13 before they can receive their bequest, I just don't understand how that's
14 possible. That any creditor, whether an entity or an individual, who
15 comes into Probate Court and says, I'm owed money by that estate, are
16 they doing business in the State of Nevada?

17 Well, respectfully, I disagree. I do not believe that it is doing
18 business. I believe that it is in fact a -- you know, probate is a unique
19 world. And a beneficiary under a testamentary document who seeks to
20 enforce their rights, I do not believe it can be considered to be doing
21 business in the State of Nevada. They are -- they have standing by virtue
22 of the Chapter 12 statutes. That's what I asked originally is, you know,
23 where is there anything that tells the Court that you -- that any charity or
24 individual has to somehow qualify to receive a bequest from the State of
25 Nevada. I don't believe that's any requirement that they do so.

1 I did -- I did have a question about --

2 MR. PAYNE: Your Honor, can I just address that one point?

3 THE COURT: Sure. And then we'll go on to the next
4 question.

5 MR. PAYNE: I would agree with Your Honor, had they been
6 here, and been the recipient, and held their hand out and picked it up,
7 and scooped up the money and left. That's not the facts of this case.
8 They filed a formal petition, which they could not file under NRS 82.253
9 and maintain an action. That's the difference on your hypothetical. Had
10 they just been a named beneficiary, and scooped up the money, and ran
11 away, I would agree with Your Honor that they would not have been
12 qualified to do business, but that's not what happened here.

13 THE COURT: Okay. Okay. And again, as I said, I don't
14 believe that pursuing your rights, which the Chapter 12 allows you to do,
15 to -- if it requires filing a petition, I don't believe that's, quote, "doing
16 business." That's pursuing your rights under the probate statute. It's not
17 business.

18 So the other question though is this oddity that the petition
19 itself does not clearly state the agency, or the authority, or the
20 jurisdiction. And so, you know, I agree that is a -- it's -- the pleading
21 could be more clear that St. Jude's is, you know -- I think it says in there
22 that they were organized in the State of Tennessee, but that they are --
23 but they act through the charitable organization, whatever that charitable
24 organization is, ALSAC or whatever it is that has the authority to act for
25 them.

1 It does state here, "hereby petitions to admit the will," and
2 then it goes through this whole history of the alleged lost will and
3 information about the will, and so -- and all this stuff about discovery of
4 the will. It doesn't really state, you know, who is St. Jude's, how is it
5 organized? Did they operate through the offices of a charitable arm -- of
6 a business arm that they authorized to actually be the ones to pursue
7 and collect funds in their name? They sued in their name. They didn't
8 sue in the name of this A-L-S-A-C. It seems kind of odd that if you're
9 going to say that you -- you know, you authorize this entity to collect the
10 charitable donations that are bequests that are left to you then, you
11 know, who is that entity?

12 And how are they -- we have the verification that states that
13 he is an agent or authorized representative for the Petitioner, the
14 Petitioner being St. Jude's, and that he's read this and knows the
15 contents except that those matters stated under information and belief,
16 and then signed for St. Jude's Children Research Hospital. He signed his
17 name. Again, as you say, it doesn't tell us who Mr. Jones is. As director
18 for of legal for this A-L-S-A-C.

19 Well, who are all those people and/or entities? They don't
20 tell us. And with all due respect, I guess my question is, does it matter?
21 And that was my -- my question was, in the end, if the order that is
22 sought from the Court -- because again we're carrying out the intent --
23 you know, I thought it was different. You know, I was overruled by the
24 Supreme Court, so fine. It is what it is. And it's sent back here for then
25 the final distribution of the estate. And the order from the Court, as

1 clarified with Mr. Powell, is not to distribute funds to this stranger A-L-S-
2 A-C, the alleged agent. It is to distribute funds to St. Jude's.

3 And so if St. Jude's is the ultimate recipient of the funds, as
4 indicated in the will, then that's carrying out the intent of the testator and
5 that's what the Court is supposed to do.

6 So I would agree there might be a challenge if they were
7 seeking to have the funds flow to some third-party and claim, after the
8 fact, like, oh, yeah, well even though we sued the name St. Jude's, you
9 know, they don't actually collect any money. It all goes into this other
10 fund and, don't worry, we'll make sure they get it.

11 They're not telling us that. They're telling us that we
12 represent St. Jude. The individual who verified the petition was simply
13 verifying that he was authorized to act on behalf of St. Jude's to pursue
14 that litigation. That's how they managed their litigation. A lot of
15 corporations manage litigation through in-house entities, or outside law
16 firms, or -- you know, they operate how they operate.

17 So for that reason, my concern about who is ALSAC and, you
18 know, are they somehow a stranger, you know, imposing themselves,
19 interfering with the intention of Mr. Scheide? I don't believe they are.
20 The ultimate order would be the distribution to be made to St. Jude
21 and --

22 MR. PAYNE: Your Honor. Your Honor.

23 THE COURT: Yes.

24 MR. PAYNE: The Supreme Court order is very specific. Alls
25 it says is to admit the lost will. That's it.

1 THE COURT: Right.

2 MR. PAYNE: There are -- you can't jump steps.

3 THE COURT: Right. But that's what I'm saying --

4 MR. PAYNE: And so --

5 THE COURT: -- is ultimately what they have to do is they
6 have to file a petition seeking to approve the final accounting and to
7 make the distribution. And that was my question. Who would the
8 distribution be made payable to? Is it being made payable to some
9 random third-party, and we were advised, no, it's not. It's made payable
10 to St. Jude. If that's the ultimate intent, then I don't see how the fact that
11 the petition seeking to assert the rights of St. Jude was signed by an
12 agent who is some representative of some charitable organization.
13 Because in the end what we're concerned about here is doing what the
14 Supreme Court has told us to do, which is to admit this will and carry out
15 the intent of the testator.

16 So if this -- if we were told, well, you're going to have make it
17 payable to A-L-S-A-C, which, you know, you're right it's not the petition
18 before us today, I would have an issue. I don't know who they are.
19 They've not proven their right or capacity to receive these funds. The
20 will provides for St. Jude Children Research Hospital to receive these
21 funds. If this is the agent authorized to verify a complaint in their name,
22 fine. I don't believe that that is a) conducting business in their name, or,
23 as a fraud on the Court.

24 I don't believe that that -- that it amounts to that because the
25 representation is that the distribution will ultimately be made -- is

1 requested to be made to St. Jude's, not to the ALSAC. How they cash
2 the check, as was pointed out, if this entity somehow steals the money,
3 you know, that's a problem for somebody else for another day.

4 Mr. Scheide's standing to bring this issue is -- because the
5 request was to void this will because -- this order that, you know, the
6 funds go -- that the will be probated and the funds go to St. Jude,
7 because they are not properly qualified as a beneficiary to receive these
8 funds. With all due respect, I don't believe that any entity that is left
9 money -- any charitable entity left money in a will, a trust, whatever, has
10 to qualify to do business in the state to receive it. That's not in the
11 Probate Code. I don't believe that the fact that you file a petition to
12 enforce that right means you are doing business. It means you are
13 pursuing the rights that are given to you in the testamentary document
14 and the statute under Chapter 12.

15 So, as I said, my other concern was who is this ALSAC, and
16 are they somehow getting this money when Mr. Scheide said, no, it's
17 supposed to go to St. Jude? No, the order would be -- I'm sure they will
18 be petitioning to approve the accounting and to distribute funds. The
19 order is it goes to St. Jude. Not to some third-party entity that maybe is
20 authorized to file a lawsuit on their behalf. If they're authorized to sign
21 the check and deposit it, and it doesn't go to them, you know, that St.
22 Jude's claim of fraud at a later time. It's not for this Court. My only job
23 here is to make sure that Mr. Scheide's intentions are carried out. I
24 thought they were different. The Supreme Court has overruled me. It is
25 what it is.

1 So I'm going to deny this motion -- well, actually, like on
2 three grounds.

3 I appreciate the point that you can always raise standing, you
4 can always raise jurisdiction. So even though this is very late, I do
5 question when you have a final order from the Supreme Court saying
6 admit the will if it's still timely. And so that was my concern.

7 I know you can raise standing at any point in time. You can
8 raise jurisdiction at any point in time. But once you've got a final
9 decision it seems like -- I appreciate Mr. Powell's point. It seems like that
10 should be the end of it. That there shouldn't be any more right to raise
11 something like this after the fact. After a decision from the Supreme
12 Court. At some point the right raise standing, the right raise jurisdiction,
13 you know, has to stop, and I believe the Court has said probate the will.
14 So it's now too late to raise this.

15 The second question, are they doing business in the State of
16 Nevada by claiming a bequest left to them in a testamentary instrument?
17 I believe not. I don't believe there's anything that imposes an obligation
18 on a charity left funds by any trust or will in Nevada to, quote, "qualified
19 to do business," in order to file a petition to recover those funds. I don't
20 believe any entity would have to do that. So that's number two.

21 And then the third one is this question of this verification
22 being by some alleged third-party entity that is authorized to do -- it
23 purports to be an authorized agent. As I indicated, my only concern
24 would be if they were trying to claim they stood in the shoes of -- which
25 is the point you raised earlier, are they -- is this ALSAC standing in the

1 shoes of St. Jude and holding out their hand saying, give the money to
2 us? No, they're not. They're saying we are authorized to act in litigation
3 for St. Jude. The funds, ultimately, go to St. Jude.

4 So I don't believe that there's been a fraud in the name of
5 this entity coming in and purporting to represent St. Jude when they
6 don't. Any distribution under the will would be made payable to the
7 entity that the will says is to receive the funds. So I don't think that's
8 fraud on the Court. So for those three reasons, I would deny the petition.

9 Mr. Powell, I'm assuming you're going to do an order, and
10 you'll show that to Mr. Payne before you submit it?

11 MR. POWELL: Yes, Your Honor.

12 THE COURT: Thanks very much.

13 MR. POWELL: Just two housekeeping things, if I could real
14 quick.

15 Will the matter now, because, obviously, as you were
16 mentioning, you know, final accounting and all that, and then a final
17 order, will the estate matter now go back to Commissioner Yamashita's
18 calendar or will it stay with -- docket, I should say, or will it stay with
19 you?

20 THE COURT: It can. We could certainly refer it back to him
21 to be administered in the ordinary course.

22 MR. POWELL: I'm just thinking that it might be just -- for all
23 purposes the easier way to go, but I would defer to you on that.
24 Whatever your preference would be.

25 THE COURT: I think that's a question -- I mean, do we still --

1 is Ms. Hoy is still the special administrator.

2 MR. PAYNE: No, Your Honor.

3 THE COURT: So I believe she would need to -- pardon?

4 MR. PAYNE: No, she's not.

5 THE COURT: Has she been removed?

6 MR. GEIST: No, Your Honor. The funds were turned over to
7 Mr. Scheide to hold pending the appeal. And so I believe going
8 forward --

9 THE COURT: Okay. All right.

10 MR. GEIST: -- Ms. Hoy won't be involved. It's just going to
11 be accounting for Mr. Scheide and then our petition to close.

12 THE COURT: All right. So -- well, I didn't remember that.
13 Okay. Fine. So then at this point, yeah, I think you need to file a proper
14 petition and get that moving.

15 MR. GEIST: Do we need to do anything --

16 MR. PAYNE: [Indiscernible - simultaneous speaking] Mr.
17 Geist --

18 MR. GEIST: Do we need to do anything on the Court's
19 remand ordering the admittance of the will? I think that's what kind of
20 prompted this and prompted Mr. Scheide to file his motion. We never
21 really addressed that. I think we had a status hearing that we pushed --

22 THE COURT: Right.

23 MR. GEIST: -- off pending this motion.

24 THE COURT: Right. Yeah, once you -- because once we get
25 the remittitur and the appeal -- that's why my point about, you know, the

1 appeal is finally over. It's final. You know, it's not technically like a
2 judgment like we have in a personal injury case, but, you know, you
3 have a final decision by the Supreme Court, which is admit the will.

4 So we need a petition to admit the will and an order
5 admitting the will, and then proceeding under the will in the ordinary
6 course. It's like any other case.

7 MR. GEIST: Yeah, understood. So we've got our petition.
8 That's what ultimately was decided, and I believe the remittitur was
9 issued. So would you like us to then submit an order based on our
10 petition admitting the lost will?

11 THE COURT: Yeah. We now have an order saying admit the
12 will, so now the matter should -- and, again, like I said, you know, the
13 question is do you have to put that on calendar and allow parties an
14 opportunity to object? You know, it proceeds in the ordinary course like
15 you -- like it would at any other time. The order that comes back from
16 the Supreme Court remanding the case is to distribute the will.

17 MR. GEIST: So is that sufficient then for the admission of the
18 will, is what I'm asking?

19 THE COURT: I'm trying to get to the right order because
20 there was a bunch of them. Okay. So here we go.

21 So it's Decision 136, Advance Opinion 84, filed on December
22 31st of 2020, in which the -- okay. Here we go. So the conclusion is that
23 the statute allows the lost will to be probated and under these facts the
24 two witness requirement is met. We therefore reverse and remand with
25 instructions for the District Court to probate the lost will.

1 So Mr. Payne quoted it correctly. That is the order of the
2 Court. It's remanded with instruction for the Court to probate the lost
3 will. So we need an order probating the will. Admitting the will to
4 probate and taking the next step, and the next step, and the next step.

5 MR. GEIST: Understood, Your Honor.

6 THE COURT: So thanks very much.

7 MR. PAYNE: Thank you, Judge.

8 MR. POWELL: Your Honor, just one more clarification
9 question. Now the standing, obviously, with Mr. Scheide given the fact
10 that it will be admitted, that's obviously what the Supreme Court is
11 saying in the remand --

12 THE COURT: Right.

13 MR. POWELL: -- so from this point forward, I would assume
14 Mr. Scheide again has no further standing because the will disinherits
15 him. Obviously, as a disinherited party you no longer have standing
16 within the proceedings. So is that -- I'm assuming that's correct, that we
17 can go by that basis?

18 THE COURT: Well, he was the intestate heir, and so, as I
19 said, I think for purposes of this petition that he filed with respect to a
20 finding that, you know, St. Jude should be disqualified, his standing was
21 to disqualify St. Jude's within the -- that the will would -- that the request
22 would fail. And what would you do then, escheat to the State of Nevada
23 or to an intestate heir?

24 So even though -- a disinherited heir. So that's why I said I
25 thought he had standing to raise this issue, which was, is the beneficiary

1 under the will qualified. I believe they are.

2 MR. PAYNE: All right. Thank you, Your Honor.

3 THE COURT: Okay. Thanks very much.

4 MR. POWELL: Thanks for your time, Your Honor.

5 THE COURT: All right.

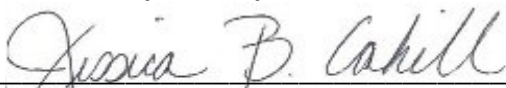
6 MR. GEIST: Thank you, Your Honor.

7 THE COURT: Thanks everybody. Good-bye.

8 MR. POWELL: Bye-bye.

9 [Proceedings concluded at 11:17 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
23 best of my ability.

24 

25 Maukele Transcribers, LLC

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