

# IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of the Estate of:

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

Deceased.

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THEODORE E. SCHEIDE, III,

Appellant,

v.

ST. JUDE CHILDREN'S RESEARCH  
HOSPITAL,

Respondent.

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No. 84279

District Court Case No.

P-14-082619-E

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## APPEAL

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### Appellant's Reply Brief

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## **RULE 26.1 DISCLOSURE STATEMENT**

The Appellant herein is an individual. The attorney who is representing, and will appear on behalf of, the Appellant in this case is BRADLEY J. HOFLAND, ESQ. There are no parent corporations.

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## **JURISDICTIONAL STATEMENT**

This is an appeal from of the Lower Court's adverse ruling to Appellant's motion to strike a fraudulently submitted Petition naming St. Jude's Research Hospital as Petitioner. The matter was decided by the Honorable Gloria Sturman on April 14, 2021. Respondent did not prepare the Order denying motion to strike and countermotion for attorney's fees and costs until January 11, 2022<sup>1</sup>. Notice of Entry of that Decision and Order was filed January 21, 2022. There were no tolling motions filed and on February 21, 2022, Appellant timely filed his Notice of Appeal.

## **ROUTING STATEMENT**

Pursuant to NRAP 17(b), this appeal is presumptively assigned to the Court of Appeals.

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<sup>1</sup> Respondent incorrectly referred to the hearing date as July 30, 2021.

## **INTRODUCTION**

The unifying theme of St. Jude’s Answering Brief is the recitation of facts and law selectively and deceptively drafted to give this Court the belief that fundamental issues of jurisdiction, standing, notice, and statutory mandates, can be discarded and ignored by this Court when they involve St. Jude. Respectfully, while St. Jude posits they can circumvent 1) having to establish jurisdiction, and 2) having to comply with express statutory mandates, through corporate resolution and/or mischaracterizations of fact and law, or simply through the passage of time, such a position is ill-judged and contrary to law.

St. Jude also violates its duty of candor to this Honorable Court with repeated misrepresentations of purported facts. For example, St. Jude’s claim the decedent was a “life-long contributor” is a brazen falsehood; earlier contributions were limited and not life-long at all. St. Jude also references an earlier appeal involving the parties—suggesting the issues of this instant appeal have already been reviewed. Review of this Court’s earlier decision confirms the issue previously addressed was limited to the probate/validity of a lost will and addressed for the first time how a proponent of a lost will sustains its burden. Notably, the issues of the instant appeal have never been considered or addressed by this Court.

## **STATEMENT OF FACTS**

St. Jude concedes the decedent, Theodore Ernest Scheide, Jr. (hereinafter “Theodore”), father of the appellant, Theodore E. Scheide, III (hereinafter “Chip”),

had prepared a “Last Will and Testament” in October 2012<sup>2</sup>. Pursuant to the terms of that will, his estate was to pass to his life partner, Velma G. Shay, and if she should predecease Theodore, his residuary estate was to pass to St. Jude<sup>3</sup>. Sadly, Ms. Shay passed away the following year.<sup>4</sup>

Following Ms. Shay’s death, Theodore reconciled with Chip and upon further research, Theodore determined he did not want his estate to be given to St. Jude. As a result, Theodore destroyed his Last Will and Testament (I ROA 207, 211-212, 241). This was confirmed by the Personal Representative, and it was determined Theodore’s estate should be distributed intestate (Id.)

On May 18, 2016, the Administrator of Theodore’s estate filed the First and Final Account, Report of Administration and Petition for Final Distribution of Theodore’s 2.6-million-dollar estate to Chip (1 ROA 42-47). Unhappy with Theodore’s change of heart, and corresponding loss of millions of dollars, St. Jude *commenced* litigation to dispossess Chip of his inheritance with the filing of a “Petition for Proof of Will” and related relief on September 13, 2016 (1 ROA 98-150).

Clearly, while St. Jude didn’t have any qualms commencing litigation to divest Chip of his inheritance if it meant they might reap the benefit of millions of

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<sup>2</sup> Answering Brief (hereinafter “AB”), pages 3-4.

<sup>3</sup> Id., page 4.

<sup>4</sup> Id.

dollars, they refused to comply with the law, specifically NRS §82.5234, that expressly prohibited them from engaging in such pursuit<sup>5</sup>.

Indeed, St. Jude does business in the state of Nevada *daily*. Such business includes St. Jude's expenditure of seemingly endless funds for the purchase of advertising on multiple television channels, for the thousands of ads they run each day, all year long, targeting the residents of Nevada in St. Jude's quest for money from *Nevada* residents—whether in the form of gifts, contributions, donations, or any other method that gets St. Jude money from Nevada residents. Further, in addition to their advertising, St. Jude promotes and participates in give aways, the purchase and selling of Henderson real estate, charitable events, and fund raising (4 ROA 707-08; 6 ROA 1368).

Faced with the inevitable determination that St. Jude does business within this state yet refuses to qualify to do business in this state, or any other state but Tennessee for that matter, St. Jude incredulously maintains they aren't doing business in this state<sup>6</sup>. That claim is unreasonable, illogical, and belied by the above referenced facts. Given the fatal impact of St. Jude's failure to follow and respect

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<sup>5</sup> See AB, pages 6, 18 (St. Jude admits they are not licensed or qualified to do business in any state other than Tennessee),

<sup>6</sup> AB, page 12.

the law, such a mischaracterization is understandable, but legally unsound and not binding on this Court<sup>7</sup>.

Because NRS §82.5234 clearly precludes St. Jude from commenc[ing] or maintain[ing] *any* action or proceeding in *any* court of this State until it has qualified to do business in this State,” St. Jude’s filing of the Petition to divest Chip of his inheritance was disallowed as a matter of law<sup>8</sup>.

In deciding to violate Nevada Law, St. Jude also violates NRCP 17, and defrauds the Court, by submitting the subject Petition being verified by an admitted separate corporate entity<sup>9</sup>, to wit: the American Lebanese Syrian Associated Charities (hereinafter “Lebanese Charities”) (1 ROA 107). St. Jude’s defends its circumvention and violation of law claiming entitlement if done through a “legal agent or authorized representative.”<sup>10</sup> However, the law provides no such exception.

More importantly, in St. Jude’s efforts to explain their violation of Nevada law and its rules of civil procedure, St. Jude *admits* that their filing of the petition

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<sup>7</sup> As this Court once observed, “Calling a duck a horse does not change the fact it is still a duck.” *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996); *see also Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009) (holding courts are not bound by definitions given by the parties).

<sup>8</sup> Notably, the legislature provided a means in which a foreign non-profit corporation could avail itself to the courts of this state, yet St. Jude steadfastly refuses to qualify to do business in any of the states it does business.

<sup>9</sup> AB, page 5.

<sup>10</sup> AB, page 18.

was *commencing* an action<sup>11</sup>. That admission St. Jude violated the law is fatal and renders all subsequent rulings void.

Not only did St. Jude violate NRS §82.5234 and NRCP 17, but St. Jude also violated the *mandate* of NRS §136.100—failing to provide the requisite notice to all necessary parties.

St. Jude is of the misguided belief that despite its multiple violations of law and rule, they can defraud the Court with impunity and without consequence. St. Jude is incorrect.

### **STANDARD OF REVIEW**

The standard of review of a lower court's decision to grant or deny a motion to strike is an abuse of discretion. *Reggio v. Eighth Judicial Dist. Ct. of Nev.*, 525 P.3d 350 (2023). Respectfully, the district court's failure to comply with the mandates of Nevada law was an abuse of discretion which mandates reversal.

St. Jude agrees that questions of statutory construction are reviewed by this Court on appeal de novo.<sup>12</sup> *See Marquis & Aurbach v. Eighth Judicial Dist. Court*, 122 Nev. 1147, 146 P.3d 1130 (2006). Additionally, "subject matter jurisdiction is a question of law subject to de novo review." *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). Subject matter jurisdiction "can be raised by the parties at any time, or *sua sponte* by a court of review, and cannot be conferred by the

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<sup>11</sup> AB, pages 7, 12, 15, and 18; *see also* fn. 17, *infra*.

<sup>12</sup> AB, page 13.

parties." *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) (internal quotation marks omitted); *Barber v. State*, 131 Nev. 1065 (2015). "[I]f the district court lacks subject matter jurisdiction, the judgment is rendered void." *Landreth, supra*. Subject matter jurisdiction cannot be waived nor ignored, regardless of the passage of time.

### LEGAL ARGUMENT/ANALYSIS

A. Because St. Jude violated NRS §82.5234 by unlawfully commencing litigation in this State, the lower court abused its discretion in not striking its Petition.

St. Jude admits it is a Foreign Non-Profit Corporation<sup>13</sup>. However, St. Jude argues it is not doing business in the State of Nevada and therefore doesn't have to qualify to do business in this State<sup>14</sup>. The facts prove otherwise. Further, the legal authority relied upon by St. Jude is misplaced.

St. Jude seeks refuge with NRS §§80.010, 80.015, 82.5234, claiming St. Jude is not doing business in this State and can therefore commence or maintain any action or proceeding in any court. The facts confirm St. Jude is mistaken. As set forth *supra*, St. Jude does business in the state of Nevada daily. Such business includes St. Jude's expenditure of seemingly endless funds for the purchase of advertising on multiple television channels, for the thousands of ads they run each day, all year long, targeting the residents of Nevada, seeking contributions. Further,

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<sup>13</sup> AB, page 5, 27, 31

<sup>14</sup> AB, page 30.

in addition to their advertising, St. Jude promotes and participates in give aways, the purchase and selling of Henderson real estate, charitable events, and fund raising (4 ROA 707-08; 6 ROA 1368). To argue such activities is not conducting business in this State is illogical, patently incorrect, and legally untenable.

Indeed, clearly such extensive and continuing activities in this State certainly constitutes doing business in this State. While St. Jude may wish to ignore such facts, and claim St. Jude’s activity in this state is “solely”<sup>15</sup> limited to divesting Chip of his father’s estate, this Court must not, indeed *cannot*, ignore such facts. As established above, St. Jude’s activities in this state extend far beyond the so-called singular involvement in the underlying probate matter. Thus, St. Jude is clearly doing business in this State, and thus, bound by the express legislative mandates—just like everyone else.

Continuing, St. Jude then advances the argument that it’s actions can be characterized as “maintain[ing], defend[ing], and settl[ing]” its suit<sup>16</sup>. As established above, this Court is not bound by the interpretation St. Jude places on its activities<sup>17</sup>, and more importantly, St. Jude’s definition is incorrect. In fact, St. Jude *admits*, on

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<sup>15</sup> AB, page 31.

<sup>16</sup> Id., by law, maintaining, *defending*, or settling any proceeding is not doing business in Nevada. NRS §80.015 Thus, *only* if a foreign nonprofit corporation is *defending* any action, suit, or proceeding in this State is the need for filing and qualifying to do business obviated. NRS §82.5234.

<sup>17</sup> See Fn. 6, *infra*.



multiple occasions, that it *commenced* litigation with the filing of the subject Petition<sup>18</sup>, an act which is expressly prohibited as a matter of law.

Clearly, St. Jude's presence in this State is not limited solely to their efforts to divest Chip of his father's estate. St. Jude is doing and engaging in considerable business in this State. St. Jude admits it is not registered with the Office of the Nevada Secretary of State<sup>19</sup> and not qualified to "do business in this State." With those undeniable and admitted facts, St. Jude was prohibited, as a matter of law, from "*commencing*" "*any* action or proceeding in *any* court of this State." NRS §82.5234.

Further, St. Jude's attempt to characterize their actions as not commencing litigation is belied not only by the nature of, and the Petition itself, but by their repeated admissions that they commenced litigation with the filing to the subject Petition. Accordingly, the Petition was impermissible and filed in violation of the law. Additionally, with St. Jude's action being unlawfully commenced, the lower court had no power to render decisions related thereto. Thus, the lower court abused

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<sup>18</sup> On page 7 of its Answering Brief, St. Jude states Lebanese Charities was its "agent or authorized representative *for St. Jude to commence the action.*" On page 12, St. Jude states it "was not barred from *commencing* a probate action." On page 15 St. Jude claims proper standing to "*commence*" the action. And on page 18, St. Jude again maintains the subject Petition was signed and verified by Lebanese Charities "for St. Jude to *commence* the action."

<sup>19</sup> AB, page 31.

its discretion when denying Chip’s motion to strike the unlawfully filed petition<sup>20</sup> and related relief.

B. Violation of NRS §136.100(2) divests the lower court of jurisdiction to admit a lost will pursuant to NRS §136.240.

The need for proper notice of a proceeding has long been recognized as a fundamental principle of procedural due process as guaranteed by the fourteenth amendment of the Federal Constitution. *See Swartz v. Adams*, 93 Nev. 240, 563 P.2d 74 (1977). In probate matters, the legislature has expressly codified to whom notice **must** be provided. Pursuant to NRS §136.100(2), St. Jude was **required** to provide notice to the Director of the Department of Health and Human Services, all creditors, the public (including creditors whose names and addresses are not readily ascertainable, and all persons named as personal representatives who are not petitioning. NRS §136.100(2), NRS §§155.010, 155.020.

Notably, this Court has long held that the statutory requirements concerning notice **must be strictly complied with**, and when proper notice is not given, the lower court lacks subject matter jurisdiction to enter an order admitting a will to probate—

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<sup>20</sup> NRS §80.055 expressly provides “every corporation which fails or neglects to comply with the provisions of NRS 80.010 to 80.040, inclusive, **may not commence or maintain any action or proceeding** in any court of this State until it has fully complied with the provisions of NRS 80.010 to 80.040, inclusive (emphasis provided) NRS §82.5234 expressly provides every foreign nonprofit corporation which is doing business in this State and which fails or neglects to qualify to do business in this State in accordance with the laws of this State **may not commence or maintain any action or proceeding in any court of this State** until it has qualified to do business in this State (emphasis provided).

thereby rendering its orders void. *In re Estate of Hegarty*, 45 Nev. 145, 199 P. 81 (1921),

Here, St. Jude only served Kim Boyer (special administrator of the estate) (1 ROA 6), Medicaid Estate Recovery, and Chip (through counsel) (1 ROA 108, 153). St. Jude *failed* to notice 1) the executor Patricia Bolen, 2) Nevada State Bank, 3) the Director of the Department of Health and Human Services, 4) any creditors, let alone all creditors, 5) the public (including creditors whose names and addresses are not readily ascertainable), and anyone else that may seek to diminish or challenge the financial gain they were seeking.

It is telling that St. Jude admits to having violated the law and not providing the statutorily mandated notice by describing its actions as having “substantially complied” with the notice requirements of NRS §136.100 and NRS §155.020.<sup>21</sup> While Chip disputes providing notice of just two of the mandated recipients of notice constitutes “substantial compliance”, even if that were the case, review of those statutes confirm there is no such exception to allow St. Jude to substitute mandated notices to all with “substantial compliance” to a selective couple.

Laws are not mere suggestions, and adherence is not discretionary—it is mandated. The lower court abused its discretion and committed judicial error when it dispensed of the mandated notice requirement and condoned St. Jude’s violation

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<sup>21</sup> AB, page 33.

of the law. Aside from the fact that the matter was not properly before the lower court, the absence of the mandated notices action divested the lower court of jurisdiction over St. Jude's petition and rendered all orders related thereto void *ab initio*<sup>22</sup>.

C. Lebanese Charities and its legal director lacked standing to file the unlawful petition and commence litigation in this State.

Notably, St. Jude does not dispute it and Lebanese Charities are separate corporate entities<sup>23</sup>. Nor does St. Jude dispute that each corporation is a distinct legal entity. *Canarelli v. Eighth Judicial Dist. Court*, 127 Nev. 808, 265 P.3d 673 (2011). St. Jude characterizes Lebanese Charities as its "official fundraising organization"<sup>24</sup>, but such association does not change the fact that the two corporations are distinct and separate legal entities. *See Viega GmbH v. Eighth Judicial Dist. Court of the State*, 130 Nev. 368, 328 P.3d 1152 (2014) (holding the mere existence of a relationship (parent/subsidiary corporation) does not subject parent corporation to jurisdiction); *See Surgical Supply Ctr. V. Industrial Comm'n Dep't of Emp't Sec.*, 118 Utah 632, 223 P.2d 593, 595 (1950); *see also Institutional*

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<sup>22</sup> Even if the Court did not find the absence of mandated notice to divest the lower court of subject matter jurisdiction, the resulting order(s) were such that the lower court had no power to render it. *See also Cheek v. Fnf Constr.*, 112 Nev. 1249, 924 P.2d 1347 (1996) (district court order vacated because of legally insufficient notice).

<sup>23</sup> *See* AB, page 5 ("St. Jude is a non-profit charitable organization and research hospital that is incorporated in Tennessee") and page 6 (ALSAC [Lebanese Charities] is domiciled in Illinois").

<sup>24</sup> AB, page 5.

*Laundry, Inc. v. Utah State Tax Comm'n*, 706 P.2d 1066, 1067-68 (1985) (holding that a subsidiary corporation was a separate legal entity obligated to pay sales taxes on services it provided to its parent corporation despite being wholly owned by the parent corporation and having an identical board of directors).

St. Jude admittedly *commenced* litigation to divest Chip of his father's inheritance by filing the subject unlawful and impermissible petition to receive Theodore's multi-million-dollar residual estate Theodore provided for prior to the death of the primary beneficiary of his Last Will and Testament and the reconciliation with Chip. Lebanese Charities has no legally recognizable interest independent of St. Jude in Theodore's residual estate.

Ironically, St. Jude concedes standing is necessary in every case.<sup>25</sup> Citing NRS §136.070, St. Jude claims it is an interested person and therefore has standing. St. Jude's reasoning is flawed, incomplete, and incorrect. First, St. Jude did not bring the action—but rather Lebanese Charities did so. As established above<sup>26</sup>, by doing business in this State and not complying with the statutory mandates, St. Jude was unable to commence litigation and file a Petition as a matter of law. In an attempt to circumvent the law, St. Jude allowed Lebanese Charities to commence litigation with the filing of the subject petition as well as the continued litigation of the action.

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<sup>25</sup> AB, page 26.

<sup>26</sup> See Legal Argument, Section A, *supra*.

However, the law is clear that in order to have standing, a party "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499, (1975). A plaintiff lacks standing to bring a suit of any kind based on harm done to others. *Id.*; *see also McCollum v. California Dep't of Corr. & Rehab.*, 647 F.3d 870, 879 (9th Cir. 2011); *Fleck & Assocs., Inc. v. City of Phx.*, 471 F.3d 1100, 1105 (9th Cir. 2006). And, "[a]part from the jurisdictional requirement" of standing to bring suit, courts have "developed a complementary rule of self-restraint . . . (not always clearly distinguished from the constitutional limitation) which ordinarily precludes a person from challenging the constitutionality of state action by invoking the rights of others." *Barrows v. Jackson*, 346 U.S. 249, 255, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953). *See also Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365, 369 (9th Cir. 1998).

Notably, *St. Jude* has the burden of establishing they have standing to raise the claims asserted. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Hawaii County Green Party v. Clinton*, 124 F. Supp 1173 (2000) "And when standing is questioned by a court or an opposing party, the litigant invoking the court's jurisdiction must do more than simply allege a nonobvious harm. To cross the standing threshold, the litigant must explain how the elements essential to standing are met." *Id.*

Nevada law does not allow corporations, including foreign non-profit corporations, to commence litigation in any court in Nevada if they are not registered and qualified to do business in this State. NRS §80.055; §82.5234. While Nevada provides a 45-day window for a corporation to file and become qualified to do business in this State in order to commence an action or proceeding if an extraordinary remedy is available pursuant to chapter 31 of NRS<sup>27</sup>, even under that scenario, failure to do so *requires the dismissal* of its action. NRS §80.055(3). Of course, St. Jude’s Petition *commencing* litigation to dispossess Chip of his father’s estate does not fall within NRS 31, et seq., and is therefore impermissible as a matter of law. Notwithstanding, even during the time the Nevada Legislature has determined to be adequate time to register and become qualified to do business in this State, to wit: 45 days, St. Jude refused to register and become qualified to do business in this State.

In the case at bar, St. Jude argues that the law can be circumvented, and that standing can be transferred, through corporate resolution with a third-party. More specifically, St. Jude submits that a corporate resolution allegedly made<sup>28</sup> on September 18, 2015, but not “signed” until June 22, 2016<sup>29</sup>, nine (9) months later by

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<sup>27</sup> NRS Chapter 31 is titled “Attachment, Garnishment and Other Extraordinary Remedies” and involves Attachment, Garnishment, Arrest and Bail, Discharge of Persons Imprisoned on Civil Process, and Claim and Delivery.

<sup>28</sup> The subject corporate resolution has never been introduced into evidence. (6 ROA 1358).

<sup>29</sup> (6 ROA 1358); AB, page 5.

the St. Jude Board of Governors somehow gave Lebanese Charities standing to commence and maintain litigation against Chip on St. Jude's behalf. St. Jude's argument is flawed and legally infirm on many fronts.

First, the "Resolution" was made *only* by St. Jude's Board. While Lebanese Charities (ALSAC) was referenced in the "resolution", Lebanese Charities was not a part of the "resolution", and more importantly, there is *no acceptance* or agreement of the resolution from Lebanese Charities. Thus, the resolution is meaningless.

Second, St. Jude misrepresents the language within the subject "resolution". St. Jude claims Lebanese Charities was "expressly authorized" by the Board; the resolution confirms that Lebanese Charities was merely designated (6 ROA 1358). Continuing, St. Jude asserts that merely designating (without any acceptance or agreement by Lebanese Charities) Lebanese Charities as St. Jude's "agent to receive, handle and administer all devises, bequests, and gifts of property of every kind and nature given, devised, and bequeathed" to aid and assist in St. Jude's mission<sup>30</sup>, somehow conferred standing upon Lebanese Charities to commence litigation against Chip.

Review of the subject language shows St. Jude's interpretation is a gross mischaracterization of the resolution. Indeed, noticeably *absent* from the resolution is any mention of litigation, let alone *commencing* litigation, of *any* sort in *any* court.

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<sup>30</sup> AB, pages 5-6.



Thus, St. Jude's linguistic exercise in semantics is flawed and insufficient to vest Lebanese Charities with standing or to enable St. Jude to circumvent/violate the law.

Further, while St. Jude choses to characterize Lebanese Charities as its "agent", St. Jude is unable to satisfy the requisite elements of an agency relationship between it and Lebanese Charities. In order for Lebanese Charities to be St. Jude's agent, there must be "(1) a manifestation by the principal that the agent shall act for him; (2) that the agent has accepted the undertaking; and (3) that there is an understanding between the parties that the principal is to be in control of the undertaking." *Jones v All Am. Auto Prot., Inc.*, 2015 U.S. Dist. LEXIS 158652 (Nev. 2015) *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 622 F. Supp. 2d 890, 899 (2000), 622 F.Supp.2d at 899 (citing Restatement (Third) of Agency § 1.01). A key requirement is that the principal is "in control" of the agent's actions. *See United States v. Bonds*, 608 F.3d 495, 506 (9th Cir.2010) ("To form an agency relationship, both the principal and the agent must manifest assent to the principal's right to control the agent.")(internal citations omitted).

As established herein, the "undertaking" of litigation was never mentioned, and therefore there was no manifestation of such, nor could Lebanese Charities have accepted such an undertaking. Lastly, there is also no understanding between St. Jude and Lebanese Charities that St. June is to be control of the "litigation". The

absence of any necessary elements renders St. Jude’s “agent” argument without merit—here St. Jude is unable to establish all three elements<sup>31</sup>.

Third, under Nevada law, an action must be commenced by the real party in interest (NRCp 17) and a party has standing to assert only its own rights and cannot raise the claims of a third-party absent statutory authorization. *High Noon at Arlington Ranch Homeowners Ass’n v. Eighth Judicial Dist. Court of Nev.*, 133 Nev. 500, 402 P.3d 639 (2017).

Fourthly, and more importantly, St. Jude fails to provide any legal authority in support of its argument that a foreign nonprofit corporation can circumvent the law by corporate resolution or through an accomplice. Such a position is legally unsound and would render the mandates and prohibitions established by our legislature in Chapters 80 and 82 meaningless. Indeed, neither chapter provides a nonregistered and nonqualified corporation the ability to commence litigation by simply having another corporation or entity “commence litigation on their behalf.”

Regardless of whether St. Jude had standing, St. Jude was prohibited by law to commence litigation. Lebanese Charities, on the other hand, claims to be qualified to do business in Nevada, but was not the real party in interest, nor had standing to

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<sup>31</sup> Aside from the fact that ALSAC is not a signatory to the “Resolution” wielded by St. Jude, equally damning to St. Jude’s position is the fact that the signatory of St. Jude’s Petition was “Fred E. Jones, Jr.; Director – Legal/ALSAC” (1 ROA 107) who is not one of the persons referenced or identified in the subject “Resolution”.

commence litigation against Chip. Lebanese Charities was nothing more than a third-party accomplice.

In sum, as affirmed by the U.S. District Court of Nevada in *Salman v. Rose*, 104 F. Supp. 2d 1255 (D Nev. 2000):

Standing is comprised of both constitutional and prudential elements limiting a courts authority to review certain issues (internal citation omitted) [and] [t]he jurisdictional element of ***standing must be met in every case.*** (Emphasis provided).

D. St. Jude's expectation of refuge from its violation of Nevada law and Court rules through waiver or other "equitable" defenses, is ill-judged and legally unavailable to prevent reversal and the dismissal of its Petition.

1. *Subject matter jurisdiction.*

St. Jude's Answering Brief is a rambling, disjointed, campaign designed to confuse, obscure, and misdirect this Court's attention to peripheral matters that have no application to the appeal at hand. Despite attempts to challenge the illegality of St. Jude's actions, the absence of standing, the lack of mandated notice, and the corresponding need to dismiss St. Jude's petition and to vacate all orders related or stemming therefrom, St. Jude postulates subject matter jurisdiction, as well as the above irrefutable violations of law and rule, can be waived. Such a proposition is legally unfounded and contrary to established precedent.

As noted above, this Court has long and repeatedly held subject matter jurisdiction cannot be waived nor ignored, regardless of the passage of time, and can be raised at any time. *See Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 276,

44 P.3d 506, 515-16 (2002); *Washoe Cty. v. Otto*, 128 Nev. 424, 282 P.3d 719 (2012)<sup>32</sup>. Indeed, jurisdiction is a question of law subject to de novo review. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009).

*2. Legislative mandates/prohibitions.*

(a) NRS §82.5234; NRS §80.055.

In this case, Nevada law clearly prohibited St. Jude from filing its Petition and commencing litigation against Chip. NRS §82.5234; NRS §80.055. St. Jude cannot simply pick and choose which statutes it will follow, nor can it ignore the legislative prohibition of commencing litigation in the absence of being properly registered and qualified to do business in this State. Review of the controlling law confirms the prohibition cannot be waived, or otherwise avoided, through the passage of time, with the enlistment of an accomplice, or through corporate resolution. This Court has long held “[i]t is never a matter of discretion for a court to follow the law or not as it sees fit. It is ever the duty of courts to apply the law.” *Floyd v. Sixth Judicial District Court*, 36 Nev. 349, 135 P. 922 (1913). Hence, the lower court abused its discretion when it failed to abide by, and enforce, the legislative prohibition precluding St. Jude from commencing litigation in this State.

Indeed, a foreign corporation’s ability to commence and maintain litigation in this State cannot be abridged by contract, agreement, corporate resolution, or

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<sup>32</sup> See also *Zalyual v. State*, 520 P.3d 345 (2022) (this Court holding a court’s lack of jurisdiction can be raised for the first time on appeal).

otherwise waived because to allow such would nullify the purpose of the statute and impermissibly thwart the legislative policies it was designed to effectuate<sup>33</sup>.

(b) NRS §136.100 and NRS §155.020.

Likewise, the lower court was required to dismiss St. Jude's petition based on its failure to comply with NRS §136.100's service requirements. This Court has long held statutory notice provisions to be a jurisdictional prerequisite. *See Davidsohn v. Doyle*, 108 Nev. 145, 825 P.2d 1227 (1992) (internal citations omitted); *Sanchez v. Pacific Powder Co.* 147 F.3d 1047 (9<sup>th</sup> Cir. Ct. of Appeals 1998)<sup>34</sup>. Because St. Jude did not satisfy NRS §136.100's service requirements, the lower court therefore lacked jurisdiction to consider the subject petition.

The fact St. Jude was required to serve and notice its petition to all individuals and entities identified in in accordance with NRS §136.100 and NRS §155.020 is made clear by the statute's use of the term "shall". *See Pasillas v. HSBC Bank USA*, 127 Nev. 462, 255 P.3d 1281 (2011) (explaining that the term "shall" means the

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<sup>33</sup> *See Bobish v. Election Board of Beaver County*, 64 Pa. D & C. 2d 34 (1973) (holding legislative mandate cannot be waived or dispensed with by the court, and therefore contention of substantial compliance is, therefore, "without merit"); *State v. Ercolano*, 762 A.2d 259 (2000) (holding no logical reason why a trial court's initial failure to comply with a legislative mandate should give the court authority to waive that mandate).

<sup>34</sup> *See also Pinson v. Perera*, 2020 U.S. Dist. LEXIS 116169 (2020) (holding notice requirement is a "jurisdictional precondition to filing suit" and required before any court action is *initiated*." (Empahsis original); *West v. Johnson*, 2009 U.S. Dist. LEXIS 77128 (9<sup>th</sup> Dist. 2009) (holding when a party does not comply with the notice requirements "the district court must dismiss the action as barred by the terms of the statute").

action is mandatory “unless the statute demands a different construction”). Failure to comply with mandatory service requirements fails to confer subject matter jurisdiction with the lower court and dismissal of the action is necessary.

Hence, as with notice, service requirements are also jurisdictional. *See Heat & Frost Insulators & Allied Workers Local 16 v. Labor Comm’r*, 134 Nev. 1, 408 P.3d 156 (2018). Because St. Jude admits, and the record confirms, St. Jude did not satisfy NRS §136.100’s service requirements, the lower court lacked jurisdiction to consider its petition. *See Heat, supra*.

### 3. *Standing*.

It is telling that St. Jude does not want this Court to address standing as an aspect of subject matter jurisdiction in the instant appeal. Of course, the only reason for St. Jude to ask this Court to literally *ignore* the issue, is because such an affirmation is fatal to St. Jude being able to obtain relief in this State in violation of the law and the absence of subject matter jurisdiction.

As a threshold matter, a party’s standing is a condition of subject matter jurisdiction. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000). Further, because standing is a jurisdictional requirement it cannot be waived or forfeited. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998); *Gonzalez v. Thaler*, 565 U.S. 134 (2012); *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945(2019); *Holmes v. Las Vegas Metropolitan Police Dep’t*, 2016 U.S. Dist. Lexis 191075 (Nev. 2016); *Nev. Dep’t of corr. v. Greene*, 648

F.3d 1014 (2011) (Actual injury is a jurisdictional requirement that flows from the standing doctrine and may not be waived). And, as a jurisdictional requirement, standing is subject to review at any stage of litigation. *National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994).

Moreover, because standing implicates subject matter jurisdiction, the United States Supreme Court has always “insist[ed] on strict compliance with this jurisdictional standing requirement. *Raines v. Byrd*, 521 U.S. 811, 819 (1977). (citation omitted). St. Jude’s reliance on *Superpumper, Inc. v. Leonard*, 137 Nev. 429, 495 P.3d 101 (2021), to suggest otherwise, is misplaced and inapposite. *Superpumper* merely confirmed state and federal courts share concurrent jurisdiction over certain core proceedings, that a bankruptcy trustee has standing to commence litigation in state court, and expressly *declined* to address whether standing and subject matter jurisdiction are distinct principals. In *Superpumper* the bankruptcy trustee did not violate state laws, nor was the fraudulent conveyance action commenced in violation of state law.

Accordingly, in light of the lack of precedent from this Court, coupled with the brazen violations of law on the part of St. Jude and Lebanese Charities, the need to address and affirm standing as a jurisdictional requirement is compelling. Notwithstanding, it is significant to note that this Court did affirm that if a lower court lacked jurisdiction, all judgments and orders related to the action are void. *Superpumper*, 495 P.3d at 104.

E. In the absence of jurisdiction, all resulting orders are void ab initio and must be set aside and vacated.

Notably, St. Jude provides *no* challenge that judgments of a court without subject matter jurisdiction are void. In *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348 (1920) the United States Supreme Court sagely declared courts “cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal.” (citation omitted).

In affirmation, this Court held:

*Any acts* which exceed the defined power of a court in *any instance*, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction<sup>35</sup>.

Because a void judgment has no effect on the parties, or their respective interests, “[t]here is no time limitation on asserting that [a] judgment is void<sup>36</sup>,” and the lack of subject matter jurisdiction can even be raised for the first time on appeal. See *Zalyaul v. State*, 128 Nev. 74, 520 P.3d 345 (2022). In the case at bar, St. Jude is

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<sup>35</sup> *Del Papa v. Steffen*, 112 Nev. 369, 915 P.2d 245 (1996) citing *Abelleira v. District Court of Appeal*, 17 Cal. 2d 280, 109 P.2d 942, 948 (1941) (emphasis supplied).

<sup>36</sup> *Rawson v. Ninth Judicial Dist. Court of Nev.*, 133 Nev. 309, 396 P.3d 842 (2017); *Douglas Milling & Power Co. v. Rickey*, 47 Nev. 148, 217 P. 590 (1923).



unable to sustain its burden of establishing the existence of subject matter jurisdiction<sup>37</sup>.

Without such authority and subject matter jurisdiction, all decisions, orders, and judgments related to, and flowing from, St. Jude's unlawful petition, are void<sup>38</sup>.

F. The lower court abused its discretion failing to make the requisite findings of facts needed to support the conclusions contained in its Order Denying Motion to Strike.

Notably, the April 14, 2021<sup>39</sup> hearing referenced in the appealed order filed January 11, 2022, was *not* an evidentiary hearing, was prepared by St. Jude's counsel, not supported by detailed minutes<sup>40</sup>, and not substantively supported by findings of fact.

Of note, the finding that St. Jude is not doing business in Nevada does not address the multitude of activities St. Jude conducts in this state in pursuit of revenue. The finding St. Jude's commencing an action is "[m]aintaining, defending

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<sup>37</sup> See, e.g., *Ex parte HealthSouth Corp.*, 974 So.2d 288 (2007) (setting forth the plaintiff's burden of demonstrating standing to bring an action, an issue of subject-matter jurisdiction); *Ex parte Ray–El*, 911 So.2d 1100 (2004) (placing the burden to “ ‘justify the jurisdiction of this court’ ” on the person bringing a habeas petition as a “next friend” (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 164, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990))).

<sup>38</sup> See *Walls v. Erupcion Min. Co.*, 6 P.2d 1021 (1931); see also *Kokkos v. Tsalikis*, 91 Nev. 24, 530 P.2d 756 (1975).

<sup>39</sup> The subject Order correctly lists the date and time of the hearing as April 14, 2021, at 10:30 a.m., but also incorrectly lists the date and time of the hearing as July 30, 2021, at 9:30 a.m. under the title of the order. There was no hearing on the latter date and time. (6 ROA 1385).

<sup>40</sup> 6 ROA 1384.

or settling any proceeding” with respect to Theodore’s estate, is not only a patently incorrect interpretation of St. Jude’s actions and contrary to the definitional meaning of the word(s) at issue and the clear statutory language, St. Jude expressly (and repeatedly) *admits* that their actions of filing the Petition was *commencing* litigation<sup>41</sup>—an act expressly prohibited by law<sup>42</sup>.

The finding that St. Jude can circumvent the law through corporate resolution is not supported by any legal authority, and in fact, is contrary to law. NRS chapter 82 does not allow the mandates to be violated through corporate resolution or agreement. Also, the corporate resolution does not reference “commencing litigation” nor mention the State of Nevada. Lastly, there is no finding that Lebanese Charities accepted and/or agreed to being an accomplice to the resolution, and St. Jude is unable to establish the elements of agency or show legal authority that evading the law through agency is available<sup>43</sup>.

Continuing, as established above, the findings that standing, notice, and/or subject matter jurisdiction are “waived”, “time-barred”, or subject to other equitable defenses is contrary to controlling precedent.

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<sup>41</sup>On page 7 of its Answering Brief, St. Jude states Lebanese Charities was its “agent or authorized representative *for St. Jude to commence the action.*” On page 12, St. Jude states it “was not barred from *commencing* a probate action.” On page 15 St. Jude claims proper standing to “*commence*” the action. And on page 18, St. Jude again maintains the subject Petition was signed and verified by Lebanese Charities “for St. Jude to *commence* the action.”

<sup>42</sup> NRS §82.5234; NRS §80.055.

<sup>43</sup> See Section “C”, *supra*.

## CONCLUSION

The district court committed judicial error and abused its discretion (1) finding St. Jude's *admitted* commencement of an action does not violate NRS §82.5234 and/or NRS §80.055; (2) ignoring and refusing to enforce the jurisdictional notice mandates found in NRS §136.100(2); (3) finding Lebanese Charities had standing to litigate in the place of St. Jude; and (4) failing to make the requisite and supported findings.

St. Jude and Lebanese Charities chose to ignore the mandates of court rules and the law; this Court must not condone such behaviors. Because of St. Jude's violation of Nevada's laws and rules of civil procedure, the lower court lacked the authority and jurisdiction to address the Petition that St. Jude caused to be filed in commencement of its action in this State. Given the absence of jurisdiction, all resulting orders are void ab initio and must be set aside and vacated.

DATED this 9<sup>th</sup> day of August 2023.

RESPECTFULLY SUBMITTED

*s/ Bradley Hofland*

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## Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[ X ] This brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2010 Times New Roman 14—point font**.

2. I further certify that this brief *complies* with the page or type -volume limitations of NRAP 32(a)(7). Excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is

6,570 Words

3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9<sup>th</sup> day of August 2023.

*s/ Bradley Hofland, Esq.*

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Bradley Hofland, Esq.  
*Counsel for Appellant  
Theodore E. Scheide III*

## Certificate of Service

### 1. Electronic Service:

I hereby certify that on this day, the 9<sup>th</sup> day of August 2023, I submitted for filing and service the foregoing **Appellant's Reply Brief** via the Court's eFlex electronic filing system and by via the Court FTP server. According to the electronic service list, notification will be served upon the following:

Todd L. Moody  
Russel J. Geist  
The Honorable Gloria Sturman

*/s/ Bradley Hofland, Esq.*

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Bradley Hofland, Esq.