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IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD ROBBEN,

Petitioner,

vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS TRUST; AND THOMAS J. HARRIS
TRUST,

Respondents,

Electronically Filed
Feb 24 2023 12:35 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 2022-PB-00119

RECORD ON APPEAL
VOLUME 5

COPIES OF ORIGINAL PLEADINGS
PAGES 599-657

TODD ROBBEN
P.O. BOX 4251
SONORA, CALIFORNIA 95370

PETITIONER IN PROPER PERSON

F. MCCLURE WALLACE, ESQ
510 W. PLUMB LANE, SUITE A
RENO, NEVADA 89509

COUNSEL FOR RESPONDENTS

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JAN - 3 2023

Douglas County
District Court Clerk

FILED

2023 JAN -3 AM 10:41

BOBBIE R. WILLIAMS
CLERK

BY Wah DEPUTY

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Sonora, CA 95370
Robben.ty@gmail.com
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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,
Petitioner

CASE NO.: 2022-PB-00119

Vs.

PETITIONER'S FIRST AMENDED
REPLY IN SUPPORT OF MOTION TO
STRIKE RESPONDENT'S
OBJECTIONS, MOTION TO DISMISS
AND MOTION FOR SUMMARY
JUDGMENT

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,
Deceased,
Respondent.

Petitioner, Todd Robben¹, requests leave to file an amended reply in
support of his motion to strike at the discretion of the court and pursuant to
NRCP Rule §§15. The amended filing corrects a typo identifying FRCP Rule

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389, 402 (2008).

1 12(f) and corrects a factual statement about the Trustee and/or Trust
2 filing/standing issue as an interested person or interested party.

3 "Respondent arguing as the "Trust", and not the Trustee, the Trust is not an
4 interested party, or interested person and therefore lacked standing to file and/or
5 argue in this instant case and filed a fugitive filing(s)."

7 The amended filing also adds a point of authority that Respondent did not
8 provide the mandated notice pursuant to NRCP Rule §§ 6 and DCR §§ 13
9 .Motions: "All motions and similar moving documents, unless made during a
10 hearing or trial, shall be in writing, and if requiring testimony, shall comply with
11 the notice requirements of(a) NRCP 6(c)."

13 The Respondents objections are pleadings pursuant to NRCP Rule §§ 8
14 since the objections answer the complaint/petition.

16 The Respondent is not made prejudice because they can still file any
17 opposition by seeking leave or at the January 06,2022 hearing – it there is even
18 a hearing to be had since the Respondent did not request a hearing (or provide
19 notice) pursuant to NRCP Rule §§ 6 and DCR §§ 13.

21 In an abundance of caution Petition will file a second motion to strike on
22 the factual issues and the lack of notice issue to allow the Respondent to file any
23 opposition.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 The amended filing corrects a typo identifying FRCP Rule 12(f) and
26 corrects a factual statement about the Trustee and/or Trust filing/standing issue
27

1 as an interested person or interested party. The word responding is changed to
2 arguing.

3 "Respondent arguing as the "Trust", and not the Trustee, the Trust is not an
4 interested party, or interested person and therefore lacked standing to file and/or
5 argue in this instant case and filed a fugitive filing(s)."

6
7 In Dawes v. State, 881 P. 2d 670 - Nev: Supreme Court 1994 "Trial courts
8 have broad discretion in deciding whether terms within an instruction should be
9 further defined." See Pena v. Ludwig, 766 S.W.2d 298, 305 (Tex.Ct.App. 1989); 75B
10 Am.Jur.2d Trial § 1237 (1992). Words used in an instruction in their ordinary sense
11 and which are commonly understood require no further defining instructions. See
12 State v. Smith, 160 Ariz. 507, 774 P.2d 811 (1989) ("knowingly" need not be
13 defined); State v. Barnett, 142 Ariz. 592, 594-95, 691 P.2d 683, 685-86 (1984)
14 (failure to define "intentionally" not error); 75B Am. Jur.2d Trial § 1237 (collecting
15 numerous cases holding that "gross and willful misconduct," "knowingly,"
16 "corroboration," "deliberately" and "conspiracy" need no definition)." Id.

17
18 "However, when a phrase has a technical legal meaning, that phrase should be
19 defined so that a jury is not misled or confused into applying the plain language as
20 commonly understood. See McBride v. Woods, 124 Colo. 384, 238 P.2d 183, 186
21 (1951) ("unavoidable accident"); see also 75B Am.Jur.2d Trial § 1237 (collecting
22 cases holding that some terms requiring definition include "premeditation and
23 deliberation" in first degree murder cases, "mental incapacity," and procedural
24 phrases)." Dawes v. State, supra.

1 "Perhaps this argument ...is merely semantic, but in law semantics are rarely
2 properly characterized as mere. If words mean things, and if we should mean the
3 words that we use" Youngblood v. GC Services Ltd. Partnership, 186 F. Supp. 2d
4 695 - Dist. Court, WD Texas 2002.

6 The Respondent did not comply with the District Court Rule DCR 13(1) and the
7 Respondent arguing as the "Trust", and not the Trustee, the Trust is not an
8 interested party, or interested person and therefore lacked standing to file and/or
9 argue in this instant case and filed a fugitive filing(s).

11 The amended filing also adds a point of authority that Respondent did not
12 provide the mandated notice pursuant to NRCP Rule 6 and DCR 13 .Motions:
13 "All motions and similar moving documents, unless made during a hearing or
14 trial, shall be in writing, and if requiring testimony, shall comply with the notice
15 requirements of NRCP 6(a)."

17 "Motions filed in the district court "shall contain a notice of motion. . . with due
18 proof of the service of the same." District Court Rule 13. Hamilton's inquiries did not
19 satisfy the requirements for a motion as they did not contain a notice of motion"
20 Hamilton v. State, Nev: Court of Appeals 2018.

22 Shall is mandatory - "This court has stated that in statutes, "may" is
23 permissive and "shall" is mandatory unless the statute demands a different
24 construction to carry out the clear intent of the legislature." Givens v. State, 99
25 Nev. 50, 54, 657 P.2d 97, 100 (1983). The "use of 'shall' is mandatory unless a
26 rule's construction demands a different interpretation to carry out the rule's
27

1 purpose." Moseley v. Eighth Judicial Dist. Ct., 188 P. 3d 1136 - Nev: Supreme
2 Court 2008.

3 "The court is to strike "fugitive documents," which are those papers "not
4 allowed" by the Local or Federal Rules." See Reiger v. Nevens, No. 3:12-cv-00218-
5 MMD-VPC, 2014 WL 537613, at *3 (D. Nev. Feb. 14, 2014). Jones v. Skolnik, Dist.
6 Court, D. Nevada 2015 No. 3:10-cv-00162-LRH-VPC.

7
8 Respondent requests the court to ignore NRS 2.120 (Such rules shall not
9 abridge, enlarge or modify any substantive right and shall not be inconsistent with
10 the Constitution of the State of Nevada) and the enabling act of the Nevada [Chapter
11 40, Statutes of Nevada 1951; now NRS 2.120] - AN ACT relating to rules of civil
12 practice and procedure, and authorizing the supreme court to prescribe such rules
13 for all courts.
14

15 (Approved February 28, 1951)

16
17 NRS 2.120 Adoption of rules for government of courts and State Bar of
18 Nevada; adoption of rules for civil practice and procedure.

19 1. The Supreme Court may make rules not inconsistent with the
20 Constitution and laws of the State for its own government, the government
21 of the district courts, and the government of the State Bar of Nevada.
22 Such rules shall be published promptly upon adoption and take effect on a
date specified by the Supreme Court which in no event shall be less than
30 days after entry of an order adopting such rules.

23 2. The Supreme Court, by rules adopted and published from time to
24 time, shall regulate original and appellate civil practice and procedure,
25 including, without limitation, pleadings, motions, writs, notices and forms of
26 process, in judicial proceedings in all courts of the State, for the purpose
27 of simplifying the same and of promoting the speedy determination of
litigation upon its merits. **Such rules shall not abridge, enlarge or
28 modify any substantive right and shall not be inconsistent with the
Constitution of the State of Nevada.** Such rules shall be published

1 promptly upon adoption and take effect on a date specified by the
2 Supreme Court which in no event shall be less than 60 days after entry of
3 an order adopting such rules.

4 The Nevada Rules of Civil Procedure (NRCP) 12(f) are analogous to their
5 Federal counterparts. While Federal Rule of Civil Procedure (FRCP) 12(f) provides
6 authority for the court to strike "redundant, immaterial, impertinent, or scandalous
7 matter" from a pleading, it does not authorize the court to strike material contained in
8 other documents filed with the court. See Fed. R. Civ. P. 12(f). Courts, however,
9 have inherent powers to control their dockets, see Ready Transp., Inc. v. AAR Mfg.,
10 Inc., 627 F.3d 402, 404 (9th Cir. 2010) (citations omitted), and to "achieve the
11 orderly and expeditious disposition of cases." Chambers v. Nasco, Inc., 501 U.S. 32,
12 43 (1991). "This includes the power to strike items from the docket as a sanction for
13 litigation conduct." Ready, 627 F.3d at 404 (citations omitted) (emphasis added); see
14 also Wallace v. U.S.A.A. Life General Agency, Inc., 862 F.Supp.2d 1062, 1068 (D.
15 Nev. 2012) (citing Ready, 627 F.3d at 404). "Such power is indispensable to the
16 court's ability to enforce its orders, manage its docket, and regulate insubordinate ...
17 conduct." Id. (citing Mazzeo v. Gibbons, No. 2:08-cv-01387-RLH-PAL, 2010 WL
18 3910072, at * 2 (D. Nev. Sept. 30, 2010)).

19 Nevada, like the federal court counterparts allow the court's inherent power to
20 "control the disposition of the causes on its docket with economy of time and effort
21 for itself, for counsel, and for litigants. See Maheu v. Eighth Judicial Dist. Court, 89
22 Nev. 214, 217, 510 P.2d 627, 629 (1973) (recognizing the court's inherent power to
23 "control the disposition of the causes on its docket with economy of time and effort
24
25
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1 for itself, for counsel, and for litigants"); see also Yong v. Immigration and
2 Naturalization Service, 208 F.3d 1116, 1119 (9th Cir.2000) (holding that a court has
3 the inherent authority to control its own docket and calendar)." Johnson v. State,
4 Nev: Court of Appeals 2019 No. 77886-CO.

5
6 NRS 47.040(1)(a) requires a party who objects to the admission of evidence to
7 make "a timely objection or motion to strike..., stating the specific ground of
8 objection." The "failure to specifically object on the grounds urged on appeal
9 preclude[s] appellate consideration on the grounds not raised below." Pantano v.
10 State, 122 Nev. 782, 795 n. 28, 138 P.3d 477, 486 n. 28 (2006). "This rule is more
11 than a formality," since an objection educates both the trial court and the opposing
12 party, who is entitled to revise course according to the objections made. 1 Stephen
13 A. Saltzburg, Michael M. Martin & Daniel J. Capra, Federal Rules of Evidence
14 Manual § 103.02[9], at 103-18 (9th ed. 2006).

15
16
17 The Respondent, the Trustee or its lawyers have not even attempted to correct
18 their mistake by amending their pleadings, motions ,objections, etc. The Respondent
19 has conceded and therefore the Petitioner has prevailed in this action on the merits
20 and requests the relief requested in the petition.

21
22 Respectfully signed under penalty of perjury,

23
24 

25 /s/ Todd Robben

26 January 03, 2023

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CERTIFICATE OF SERVICE

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on January 03, 2023, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED January 03, 2023

Submitted By: /s/ Stephen James Robben

FILED

Todd Robben
In Pro per
PO Box 4251
Sonora, CA 95370
Robben.ty@gmail.com
(209)540-7713

RECEIVED

JAN - 4 2023

Douglas County
District Court Clerk

2023 JAN -4 AM 8:18

BOBBIE R. WILLIAMS
CLERK

BY  DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROB BEN,
Petitioner

Vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,
Deceased,
Respondent.

CASE NO.: 2022-PB-00119

NOTICE OF PETITIONER'S EX
PARTE MOTION TO RECONSIDER
ORDER DENYING REMOTE ZOOM
APPEARANCE AND PETITIONER'S
EX PARTE MOTION TO
RECONSIDER ORDER DENYING
REMOTE ZOOM APPEARANCE

Petitioner, Todd Robben¹, gives notice and moves for an *ex parte* order setting aside the order the appear in person when that cannot be done. The Petitioner received a letter from the court on January 3, 2023 and an order denying the Petitioner's remote appearance despite the earlier order stating the parties court appear remotely pursuant to SCR Rule IX. The Petitioner is out of time to remedy the

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389, 402 (2008).

1 situation other than this ex parte motion. This motion is made out of necessity to have
2 a reasonable accommodation to secure the Petitioner's State and Federal
3 Constitutional rights to access to the court, due-process and equal protection.
4

5 The Petitioner cannot travel from Sonora, CA to Minden, NV on January 06,
6 2023 because he does not have reliable transportation or money to afford to travel
7 since he is currently unemployed and struggling to find housing and survive under the
8 conditions. The Petitioner is indigent.

9 The judge, Robert E. Estes offered a remote appearance via pursuant to SCR
10 Rule IX and the Petitioner took the offer and is now being subjected to an impossible
11 situation in violation of the Petitioner due-process and equal-protection pursuant to
12 U.S. Fourteenth Amendment and Nevada Constitution Article 1, Section 1 & 8(2) &
13 Section 1 & 8(3).
14






15 This Petitioner also has safety and security concerns based on the fraud and
16 his complaints of criminal wrongdoing by the lawyers for the Trust and disgruntled
17 persons that may try to retaliate against the Petitioner with violence.
18

19 The Petitioner has an auto immune disease and is now ordered to court in
20 person and subjected to COVID-19 and other flu viruses and unsafe conditions as he
21 is recovering from a winter cold and revering from COVID-19 symptoms including a
22 cough, lack of energy and mental fogginess.
23

24 The Petitioner made arrangements with his two witnesses to attended remotely
25 via telephone or zoom.

26 Travel is going to be unsafe eve if the Petitioner could travel, there is a
27 storm warning for the remainder of the week.
28

EXTENDED 10 DAY FORECAST TEXT

Today JANUARY 3	Tomorrow JANUARY 4	Thursday JANUARY 5	Friday JANUARY 6	Saturday JANUARY 7
				
Snow Showers Late	Snow	Snow	Partly Cloudy	Snow Showers
Low 19°F	High 38°F	High 34°F	High 35°F	High 37°F
Chance of precip / 36%	Low 29°F	Low 17°F	Low 15°F	Low 24°F
	Chance of precip / 86%	Chance of precip / 84%	Chance of precip / 17%	Chance of precip / 58%

The court has not assigned counsel to the Petitioner who is denied further Constitutional due-process and statutory rights by not having counsel appointed. Furthermore, the Petitioner U.S. First Amendment access to the court is usurped.

MEMORANDUM OF POINTS AND AUTHORITIES

This Petitioner did not request a hearing and neither did the Respondent. The Petitioner has moved to strike the Respondents motions to dismiss and motion for summary judgment in addition to the two Objections.

The Respondent did not comply with the rules and statutes or even notice the court or the Petitioner of any hearing. The Petitioner has filed a motion to strike the Respondents filings for various rules and statutory violations.

The Petitioner did not request a hearing and moved a judgment on the pleadings. Consider the Respondent's filings should be stuck, there is no opposition and the Responded has essentially defaulted.

1 The judge, Robert E. Estes offered a remote appearance via pursuant to SCR
2 Rule IX and the Petitioner took the offer and is now being subjected to an impossible
3 situation in violation of the Petitioner due-process and equal-protection pursuant to
4 U.S. Fourteenth Amendment and Nevada Constitution Article 1, Section 1 & 8(2) &
5 Section 1 & 8(3).
6

7 "[t]he fundamental requirement of due process is the opportunity to be heard at
8 a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319,
9 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).
10

11
12 PART IX-B:

13 (A) RULES GOVERNING APPEARANCE BY TELEPHONIC
14 TRANSMISSION EQUIPMENT FOR CIVIL AND FAMILY COURT
15 PROCEEDINGS²

16 Rule 1. Definitions. In these rules, unless the context or subject
17 matter otherwise requires:

18 1. "Telephonic transmission equipment" means a conference
19 telephone or other electronic device that permits all those appearing or
20 participating to hear and speak to one another, provided that all
21 statements of all parties are audible to all persons present.

22 2. "Court" means a proceeding before a judicial officer, judge,
23 master, or commissioner for all civil proceedings in the State of Nevada.

24 3. "Party" shall include the plaintiff, defendant, petitioner,
25 respondent, applicant, adverse party, obligee, or obligor and also apply to
26 each party's attorney of record.

27 4. "Witness" shall mean a party or other person testifying in the court
28 proceeding.

5. "Shall" is mandatory and "may" is permissive.

² https://www.leg.state.nv.us/division/legal/lawlibrary/courtrules/SCR_AudTranEquip.html

1
2 [Added; effective July 1, 2013.]

3 Rule 2. Policy favoring telephonic transmission equipment
4 appearances. The intent of this rule is to promote uniformity in the
5 practices and procedures relating to telephonic transmission equipment
6 appearances. To improve access to the courts and reduce litigation costs,
7 courts shall permit parties, to the extent feasible, to appear by telephonic
8 transmission equipment at appropriate proceedings pursuant to these
9 rules.

10 [Added; effective July 1, 2013.]

11 Rule 3. Application. These rules apply to all civil cases and family
12 court proceedings pursuant to Chapters 122 through 130 of the Nevada
13 Revised Statutes.

14 [Added; effective July 1, 2013.]

15 Rule 4. Appearance by telephonic transmission equipment.

16 1. Circumstances in which appearance by telephonic transmission
17 equipment shall be allowed. Except as provided in Rule 4(3), parties shall
18 be allowed to appear before a judicial officer or judge, master,
19 commissioner, or special master using telephonic transmission equipment
20 in the following matters:

21 (a) Case management conferences, provided the party has made a
22 good faith effort to meet and confer and has timely served and filed a case
23 management statement before the conference date;

24 (b) Trial setting conferences;

25 (c) Hearings on law and motion, except motions in limine;

26 (d) Hearings on discovery motions, except where the hearing master
27 determines that it is necessary for parties or attorneys to meet personally
28 regarding discovery disputes or scheduling matters;

(e) Status conferences, including conferences to review the status of
an arbitration or a mediation;

(f) Hearings to review the dismissal of an action;

(g) Any other hearing that is scheduled for not more than 15 minutes;
and

1
2 (h) Any matters stipulated to by the parties and approved by the court.

3 2. All other matters require personal appearances or appearances
4 by use of simultaneous audiovisual transmission equipment.

5 3. Court discretion to modify rule.

6 (a) Applicable cases. In exercising its discretion under this
7 provision, the court should consider the general policy favoring telephonic
8 transmission equipment.

9 (b) Court may require personal appearances. Upon a showing of
10 good cause either by motion of a party or upon its own motion, the court
11 may require a party or witness to appear in person at a proceeding listed
12 in Rule 4(1) if the court determines on a hearing-by-hearing basis that a
13 personal appearance would materially assist in the resolution of the
14 particular proceeding or that the quality of the telephonic transmission
15 equipment is inadequate.

16 4. Need for personal appearance. If, at any time during a
17 proceeding conducted by telephonic transmission equipment, the court
18 determines that a personal appearance is necessary, the court may
19 continue the matter and require a personal appearance by a party or
20 witness.

21 5. Notice by party.

22 (a) A party choosing to appear by telephonic transmission equipment
23 at a proceeding under this rule must either:

24 (1) Place the phrase "Telephonic Transmission Equipment
25 Appearance" below the title of the moving, opposing, or reply papers; or

26 (2) At least 5 court days before the appearance, notify the court
27 and all other parties of the party's intent to appear by telephonic
28 transmission equipment. If the notice is oral, it must be given either in
person or by telephonic transmission equipment. If the notice is in writing,
it must be given by filing a "Notice of Intent to Appear by Telephonic
Transmission Equipment" with the court at least 5 court days before the
appearance and by serving the notice at the same time on all other parties
by personal delivery, fax transmission, express mail, by electronic service
through the court's online docketing system (if available), or other means
reasonably calculated to ensure delivery to the parties no later than the
close of the next business day. Copies of any exhibits that a party
participating telephonically intends to present at the hearing shall be

1 delivered to the court and all parties by at least noon on the court day prior
2 to any such proceeding.

3 (b) If after receiving notice from another party as provided under Rule
4 4(5)(a) a party that has not given notice also decides to appear by
5 telephonic transmission equipment, the party may do so by notifying the
6 court and all other parties that have appeared in the action, no later than
7 noon on the court day before the appearance, of its intent to appear by
8 telephonic transmission equipment. Copies of any exhibits that the party
intends to present at the hearing shall be delivered to the court and all
parties by at least noon on the court day prior to the scheduled hearing.

9 (c) If a party that has given notice that it intends to appear by
10 telephonic transmission equipment under Rule 4(5)(a) subsequently
11 chooses to appear in person, the party must so notify the court and all
other parties that have appeared in the action by telephonic transmission
equipment at least 2 court days before the appearance.

12 (d) The court, on a showing of good cause, may permit a party to
13 appear by telephonic transmission equipment at a proceeding even if a
14 party has not given the notice required under Rule 4(5)(a) or (b) and may
15 permit a party to appear in person even if the party has previously given
16 the notice required in Rule 4(5)(c), provided that the party agrees to pay
the applicable cancellation fee to the court or third-party provider of the
telephonic transmission equipment.

17 6. Notice by court. After a party has requested a telephonic
18 transmission equipment appearance under Rule 4(5), if the court requires
19 the personal appearance of the party, the court must give reasonable
20 notice to all parties before the hearing and may continue the hearing if
21 necessary to accommodate the personal appearance. The court may
direct the court clerk, a court-appointed vendor, a party, or an attorney to
provide the notification.

22 7. Private vendor; charges for service. A court may provide
23 telephonic transmission equipment for court appearances by entering into
24 a contract with a private vendor. The contract may provide that the vendor
25 may charge the party appearing by telephonic transmission equipment a
26 reasonable fee, specified in the contract, for its services. The court or the
27 vendor may impose a cancellation fee to a party that orders services and
thereafter cancels them on less than 48 hours' notice. A court, by local
rule, may designate a particular conference call provider that must be
used for telephonic transmission equipment appearances.

28 8. Audibility and procedure.

1 (a) The court must ensure that the statements of participants are
2 audible to all other participants and the court staff and that the statements
3 made by a participant are identified as being made by that participant.

4 (b) Upon convening a telephonic proceeding, the judge shall:

5 (1) Recite the date, time, case name, case number, names and
6 locations of parties and counsel, and the type of hearing;

7 (2) Ascertain that all statements of all parties are audible to all
8 participants; and

9 (3) Give instructions on how the hearing is to be conducted,
10 including notice that in order to preserve the record, speakers must
11 identify themselves each time they speak.

12 9. Reporting. All proceedings involving telephonic transmission
13 equipment appearances must be reported to the same extent and in the
14 same manner as if the participants had appeared in person.

15 10. Information on telephonic transmission equipment appearances.
16 The court must publish a notice providing parties with the particular
17 information necessary for them to appear by telephonic transmission
18 equipment at proceedings in that court under this rule.

19 11. Public access. The right of public access to court proceedings
20 must be preserved in accordance with law.

21 [Added; effective July 1, 2013.]

22 RELIEF REQUEST

23 There was no request to even have a hearing by both parties and the
24 Respondent has not complied with the laws, rules and statutes to even provide the
25 required notice of a hearing as argued in the Petitioner's motion to strike. The
26 Petitioner's U.S. and Nevada Constitutional rights to due-process and access to the
27 court is usurped for no reason when the judge install stated the parties could attend
28 remotely despite no hearing even being requested.

1 If the hearing is to occur on January 06, 2023 at 9:00am as this Petitioner was
2 told by the court clerk, the Petitioner can only attend via zoom or telephone along
3 with his witnesses.
4

5 The Petitioner has filed motions to strike which should render any hearing moot
6 since the Respondents motion to dismiss and motion for summary judgment must be
7 stricken for failure to comply.
8

9
10
11 Respectfully signed under penalty of perjury,

12 
13

14 /s/ Todd Robben

15 January 3, 2023
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1
2
3 **CERTIFICATE OF SERVICE**

4 I, Stephen James Robben, declare under penalty of perjury under the law of the
5 State of Nevada that the following is true and correct copy of the filed document. That
6 on January 3, 2023 service of the document was made pursuant to NRCP 5(b) by
7 depositing a email to: F. McClure Wallace, counsel for Respondent,
8 mcclure@wallacemillsap.com

9 DATED January 3, 2023

10
11 Submitted By: /s/ Stephen James Robben
12
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Wallace & Millsap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

RECEIVED

FILED

Case No.: 22-PB-00119

JAN 10 2023

Dept. No.: II

Douglas County
District Court Clerk

2023 JAN 10 PM 4:30

DOBBIE R. WILLIAMS
CLERK

BY  DEPUTY

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

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.
HARRIS and THE THOMAS J.
HARRIS TRUST,

Respondents.

SUBMISSION OF PROPOSED
ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT; MOTION TO
DISMISS; & DEEMING PETITIONER
A VEXATIOUS LITIGANT

In accordance with NJDCR 12(b), the Respondents to this matter submit their
proposed order as directed by the Presiding Judge at the conclusion of the hearing in
this matter conducted on January 6, 2023. In accordance with NJDCR 12(b), the
proposed order attached hereto as Exhibit 1 is submitted to the Court Clerk, and
served upon the Petitioner.

DATED this 9th day of January 2023.

By:




F. McClure Wallace, Esq.
Nevada State Bar No. 10264
WALLACE & MILLSAP
510 W. Plumb Lane, Suite A
Reno, Nevada 89509
Ph: (775) 683-9599
mcclure@wallacemillsap.com

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing Opposition was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Opposition was placed in the mail for service on the date shown below.

Dated this 9th day of January 2023.

By: 
Caroline Carter, Paralegal

LIST OF EXHIBITS

Exhibit 1 - Proposed Order Granting Motion For Summary Judgment; Motion To Dismiss; & Deeming Petitioner A Vexatious Litigant

Wallace & Millar
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

Exhibit 1

Exhibit 1

1 Case No.: 22-PB-00119

2 Dept. No.: II

3
4
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF DOUGLAS

7 TODD ROBBEN,

8
9 Petitioner;

10 vs.

11 THE ESTATE OF THOMAS J.
12 HARRIS and THE THOMAS J.
13 HARRIS TRUST,

14 Respondents.

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT; MOTION TO
DISMISS; & DEEMING PETITIONER
A VEXATIOUS LITIGANT

15 Petitioner Todd Robben (the "Petitioner") initiated this case by filing his
16 Petition to Invalidate the Will and Trust of Thomas J. Harris signed on July 20, 2022.
17 Both the Estate of Thomas J. Harris (the "Estate") and The Thomas J. Harris Trust
18 (the "Trust") filed written Objections to the Petition. In addition to objecting to the
19 Petition, the Estate moved to dismiss the Petition (the "Motion to Dismiss") and the
20 Trust moved for summary judgment against the Petition (the "Motion for Summary
21 Judgment"). The Petitioner filed Oppositions to both the Trust's Motion for Summary
22 Judgment and the Estate's Motion to Dismiss. In addition, the Petitioner attempted
23 to supplement his Oppositions without leave of court in various filings, and also
24 moved to strike both the Trust's Motion for Summary Judgment and the Estate's
25 Motion to Dismiss. The Court considered all of the briefings, together with the
26 Petition and the Objections thereto, and ordered oral argument on the Motion for
27 Summary Judgment and Motion to Dismiss on January 6, 2023 commencing at 9 a.m.
28

1 In advance of the oral argument, Petitioner filed papers with the Court
2 requesting the Court decide the Motion for Summary Judgment and Motion to
3 Dismiss *without* oral argument. In other words, Petitioner effectively moved to
4 vacate the oral argument ordered by the Court on each Motion. The Court did not
5 vacate the hearing date, and required the Trust, the Estate, and the Petitioner to
6 appear for the hearing.

7 The oral argument commenced on January 6, 2023 at 9 a.m. as scheduled. The
8 Court allowed Petitioner to appear by Zoom pursuant to his own request filed with
9 the Court. The Trust and the Estate, by and through its Counsel F. McClure Wallace,
10 appeared in person at the oral argument. At the inception of the argument, the Court
11 reconfirmed Petitioner's request to decide the Motion for Summary Judgment and
12 Motion to Dismiss the Petition without oral argument. In addition to the Petitioner
13 requesting the Court decide the Motion for Summary Judgment and Motion to
14 Dismiss without oral argument, the Court confirmed the Estate and Trust had no
15 objection to determining both Motions without oral argument. Having personally
16 confirmed the Petitioner requested decision on each Motion absent oral argument,
17 and considering the papers and pleadings on file before the Court, the Court finds
18 good cause to **GRANT** the Trust's Motion for Summary Judgment and Estate's
19 Motion to Dismiss based on the findings and conclusions of law stated below.

20 **I. Petitioner's Motions to Strike the Motion for Summary Judgment and**
21 **Motion to Dismiss are DENIED.**

22 The Petitioner moved to strike both the Motion for Summary Judgment and
23 Motion to Dismiss the Petition based on alleged violations of D.C.R. 13 and the Rules
24 of Civil Procedure. More specifically, the Petitioner seemingly argues the Motion for
25 Summary Judgment and Motion to Dismiss should be stricken from the record
26 because the Motions do not contain a "notice of motion" as required by D.C.R. 13(1).
27 Petitioner's argument is wrong. D.C.R. 5 makes clear the Local Rules of the Ninth
28 Judicial District Court ("NJDCR") apply even when inconsistent with the D.C.R.

1 Therefore, NJDCR supersedes the D.C.R. when they contain inconsistent provisions.
2 NJDCR 6 contains no "notice of motion" requirement. In fact, NJDCR 6 states
3 motions shall be decided without oral argument unless oral argument is ordered by
4 the Court or requested by the Parties.

5 In this case, no Party requested oral argument. The Court ordered oral
6 argument on its own initiative. Therefore, the Court finds the Motion for Summary
7 Judgment and Motion to Dismiss were not required to contain a notice of motion
8 contemplated by D.C.R. 13 because NJDCR 6 states the Motions will be decided
9 without oral argument unless ordered by the Court. The Court ordered oral
10 argument, Petitioner received lawful notice of the oral argument ordered by the
11 Court, Petitioner filed briefs in regard to the oral argument, including requesting the
12 Court decide the Motions without oral argument, and then Petitioner appeared at the
13 oral argument. Therefore, the Court finds Petitioner had lawful notice of the oral
14 argument hearing scheduled on January 6, 2023. The Court finds the Motion for
15 Summary Judgment and Motion to Dismiss were not required to contain a "notice of
16 motion" or some type of notice of the hearing under NJDCR 6 since the Court ordered
17 oral argument on its own initiative after the Motions had been filed. Consequently,
18 Petitioner's Motions to Strike the Motion for Summary Judgment and Motion to
19 Dismiss are **DENIED**. Having determined the Motion for Summary Judgment and
20 Motion to Dismiss are properly before the Court, the Court addresses each Motion in
21 turn.

22 **II. The Estate's Motion to Dismiss the Petition is GRANTED.**

23 The Estate moved to dismiss the Petition to invalidate the Will of Thomas J.
24 Harris in this case. The Estate argues the Petitioner is not an interested person in
25 the Will and Estate under NRS 132.185 and, therefore, lacks standing to contest the
26 validity of the Will. Additionally, the Estate contends the Court previously
27 determined Petitioner was not an interested person in the Will and Estate in a prior
28

1 action, implicating the doctrine of claim preclusion. The Court finds the Estate's
2 arguments persuasive.

3 More specifically, the Estate of Thomas J. Harris was previously administered
4 before the Ninth Judicial District Court of the State of Nevada, In and For the County
5 of Douglas, as Case No. 2021 PB 00034 (the "Probate Case"). Petitioner appeared in
6 the Probate Case and made various allegations of misconduct and fraud in
7 administration of the Estate and formation of the Will. Petitioner therefore requested
8 the Court continue approval of the Estate's request for final distribution of the Estate
9 to permit Petitioner additional time to produce evidence substantiating his
10 allegations. The Estate opposed the request because Petitioner was not an interested
11 person in the Will or Estate with standing to litigate the validity of the Will or
12 administration of the Estate. The Court granted Petitioner a continuance to produce
13 evidence demonstrating he is an interested person in the Will and/or Estate.
14 Petitioner produced no admissible evidence demonstrating he is an interested person
15 in the Will or Estate in the Probate Case. Petitioner produced no admissible evidence
16 reflecting fraud, theft, or embezzlement from the Estate in the Probate Case.
17 Consequently, the Court in the Probate Case approved the Estate's final accounting
18 and request for final distribution of the Estate, and in so doing, determined Petitioner
19 was not an interested person in the Estate and/or Will. *See* Order filed in the Probate
20 Case on June 22, 2022. Petitioner appealed this finding to the Nevada Supreme
21 Court, who dismissed the Petitioner's appeal. Therefore, this Court finds the Probate
22 Court determined Petitioner is not an interested person in the Estate and/or Will,
23 thereby precluding Petitioner from contesting the Will. More specifically, the Court
24 finds the Petition is barred by the elements of both the doctrine of claim preclusion,
25 as well as issue preclusion. Thus, the Petition to Invalidate the Will is barred by the
26 doctrine of claim preclusion, or in the alternative, is barred by the doctrine of issue
27 preclusion.

1 Further, even if the Petitioner were an interested person in the Decedent's
2 Estate, which he is not, this Court did not oversee the Probate Case. As such, this
3 Court lacks subject matter jurisdiction over the Decedent's Will per NRS 137.080.

4 Therefore, the Motion to Dismiss the Petition to Invalidate the Will of Thomas
5 J. Harris is **GRANTED**.

6 **III. The Trust's Motion for Summary Judgment is GRANTED.**

7 Analogous to the Will, Petitioner must be an interested person in the Trust to
8 contest its validity. See NRS 164.015. The Trust moved for summary judgment
9 against the Petition to Invalidate the Trust because Petitioner is not an interested
10 person in the Trust under NRS 132.185 and NRS 132.390(1)(d). Once the Trust
11 moved for summary judgment by pointing out an absence of evidence to support the
12 Petitioner's claims, the burden of production shifted to Petitioner to refute the Motion
13 for Summary Judgment with admissible evidence creating a genuine issue of fact
14 regarding whether Petitioner is an interested person in the Trust. Petitioner failed
15 to produce any admissible evidence demonstrating he is an interested person in the
16 Trust as a current or prior beneficiary of the Trust; current, prior, or alternate trustee
17 of the Trust; holder of a power of appointment, prior holder of a power of appointment,
18 or heir of the Estate should the entire Trust be invalidated.

19 In addition, the Petitioner made various allegations regarding undue
20 influence, fraud, theft, embezzlement and unlawful administration of the Trust.
21 Petitioner produced no evidence to substantiate any of these allegations related to
22 administration of the Trust. Consequently, the Court finds Petitioner's allegations
23 of undue influence, fraud, theft, embezzlement, and unlawful administration of the
24 Trust are devoid of evidence and without merit, further warranting summary
25 judgment against Petitioner's unsubstantiated allegations in the Petition and papers
26 filed before the Court. Hence, the Court finds Petitioner failed to meet his burden to
27 refute summary judgment and concludes the Petitioner is not an interested person in
28 the Trust with standing to contest the validity or administration of the Trust based

on evidentiarily devoid claims. As such, the Trust's Motion for Summary Judgment against the Petition to Invalidate the Trust is **GRANTED**.

IV. The Court finds Petitioner is a vexatious litigant pursuant to NRS 155.165.

NRS 155.165 permits the Court to find Petitioner is a vexatious litigant if Petitioner has filed petitions and motions without merit, or that were designed to harass the Trustee. The Court may also consider whether the Petitioner filed pleadings in a prior case that were without merit when determining if Petitioner is a vexatious litigant. *Id.* In that regard, the Court finds the Petitioner made various allegations in the Probate Case related to the Estate, the Will of Thomas J. Harris and the Trust of Thomas J. Harris. Those allegations were unsubstantiated. Moreover, the Probate Court determined Petitioner was not an interested person in the Estate, and, therefore, lacked standing to litigate any allegations he made in the Probate Case. Despite the Probate Court ruling Petitioner is not an interested person in the Estate with standing to litigate his allegations related to the Will, which was affirmed on appeal to the Nevada Supreme Court, Petitioner filed a Petition to Invalidate the Will in this case in an apparent attempt to circumvent the Order of the Probate Court. The Court finds this tactic vexatious.

Similarly, the Petitioner sought to invalidate the Trust in this case based on allegations of undue influence. In addition, Petitioner made various claims of fraud, theft, embezzlement and mismanagement of the Trust. Petitioner never substantiated any of his allegations related to the Trust with any admissible evidence. In fact, Petitioner could not produce evidence to show he is an interested person in the Trust with standing to even levy the allegations he made related to the Trust. Therefore, the Court finds the Petitioner's tactic of forcing the Trust to expend significant resources responding to serial filings devoid of evidence, without preliminarily being able to establish standing to litigate any aspect of the Trust, to be vexatious.

1 In addition, Petitioner has filed various papers with the Court outside the
2 bounds of permissible procedure absent leave of court. Considering the rogue filings
3 in this case mounted against the backdrop of the Probate Court previously holding
4 Petitioner is not an interested person in the Estate, the Court finds Petitioner's serial
5 filings to be vexatious.

6 Out of procedural fairness to Mr. Robben, who is representing himself in proper
7 person, the Trust and Estate have not requested Mr. Robben pay any of its prior
8 attorney's fees incurred in responding to his filings prior to entry of this Order under
9 NRS 155.165. Therefore, the Court is not entering an award for attorney's fees and
10 costs incurred by the Trust or Estate in responding to Petitioner's prior filings in this
11 case pursuant to NRS 155.165.¹ However, the Court now holds, finds, and concludes
12 Petitioner is barred as a vexatious litigant from filing any claims, petitions, motions,
13 pleadings, complaints, or papers with the Court related to The Thomas J. Harris
14 Trust, the Trustee of the Trust, the Will of Thomas J. Harris, the Estate of Thomas
15 J. Harris, the Personal Representative of the Estate of Thomas J. Harris, and the
16 Personal Representative's and Trust's Legal Counsel. Should the Petitioner violate
17 this Order, the Court will award fees and sanctions against Petitioner consistent with
18 NRS 155.165, the common law, and the inherent powers of the Court to administer
19 the proceedings before it. The Petitioner's right to appeal this Order and its findings
20 is excluded from the Court's vexatious litigant findings in order to respect Petitioner's
21 right to due process of law in appealing this Order.

22 **V. Petitioner's Requests for Relief in the Petition and related filings are**
23 **DENIED, and the Petition is dismissed with prejudice.**

24 Having concluded Petitioner is not an interested person in the Trust, Estate,
25 or Will of Thomas J. Harris, the Petition is dismissed with prejudice and all claims
26
27

28 ¹ This finding does not preclude the Trust or Estate from moving for its fees or costs incurred in this matter from its inception under a separate statute, including but not limited to NRS 18.010.

1 for relief in the Petition, or any related filings brought forth by Petitioner in this Case,
2 are **DENIED**.

3
4 **IT IS SO ORDERED.**

5
6 Dated this _____ day of _____ 2023.

7
8 _____
The Honorable Robert Estes

9 Submitted by:
10 F. McClure Wallace
11 Nevada Bar No.: 10264
12 Wallace & Millsap
13 510 W. Plumb Lane, Suite A
14 Reno, Nevada 89509
15 (775) 683-9599
16 mcclure@wallacemillsap.com
17 Attorneys for Respondents
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RECEIVED

FEB 03 2023

Douglas County
District Court Clerk

FILED

2023 FEB -3 PM 2:40

BOBBIE R. WILLIAMS
CLERK

BY *[Signature]* DEPUTY

Todd Robben
In Pro per
PO Box 4251
Sonora, CA 95370
Robben.ty@gmail.com
(209)540-7713

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBZEN,

Petitioner,

Vs.

CASE NO.: 2022-PB-00119

NOTICE OF APPEAL

DEPARTMENT: 2

RET. JUDGE: Robert E. Estes

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,

Deceased,
Respondent.

TARA FLANAGAN, IN HER CAPACITY
AS THE COURT APPOINTED
PERSONAL REPRESENTATIVE,

Real Party in Interest.

1 Petitioner, Todd C. Robben appeals the decision, orders and judgment from
2 Retired Judge Robert E. Estes on January 06, 2023 denying Petitioner counsel,
3 denying Petitioner's motion to strike Respondents motion to dismiss and motion for
4 summary judgment and granting the Respondent' motion to dismiss and motion for
5 summary judgment and request to declare Petitioner a vexatious litigant.

6 To date as of February 03, 2023 no written order has issued and Appellant
7 files notice to preserve his appeal rights if no written issues.

8 This appeal is made pursuant to NRS §§ 155.190 and pursuant to Valley Bank
9 of Nevada v. Ginsburg, 874 P. 2d 729 - Nev: Supreme Court 1994 "This court
10 determines the finality of an order or judgment by looking to what the order or
11 judgment actually does, not what it is called. Taylor v. Barringer, 75 Nev. 409, 344
12 P.2d 676 (1959). More precisely, a final, appealable judgment is "one that disposes of
13 the issues presented in the case... and leaves nothing for the future consideration of
14 the court." Alper v. Posin, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961); accord O'Neill
15 v. Dunn, 83 Nev. 228, 230, 427 P.2d 647, 648 (1967)."
16
17
18

19 Respectfully,

20 
21

22 /s/ Todd Robben

23 02-03-2023
24
25
26
27
28

CERTIFICATE OF MAILING

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on 02-03-2023, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED this 02-03-2023

Submitted By: /s/ Stephen James Robben

RECEIVED

FEB 03 2023

FILED

Douglas County
District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

2023 FEB -3 PM 2:40

INDICATE FULL CAPTION:

DOBBIE R. WILLIAMS
CLERK

TODD ROBBEN,

No. 2022-PB-00119 *Wah* DEPUTY

DOCKETING STATEMENT
CIVIL APPEALS

Vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Ninth Department 2
County Douglas Judge Retired Robert Estes
District Ct. Case No. 22-PB-00119

2. Attorney filing this docketing statement:

Attorney Todd Robben in pro se Telephone 209-540-7713
Firm self
Address PO Box 4251 Sonora, CA 95370

Client(s) THE ESTATE OF THOMAS JOSEPH HARRIS; THOMAS J. HARRIS TRUST

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

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

Attorney McClure Wallace Telephone (775) 683-9599
Firm Wallace Millsap
Address 510 West Plumb Lane
Reno, NV, 89509
United States

Client(s) THE ESTATE OF THOMAS JOSEPH HARRIS; THOMAS J. HARRIS TRUST

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

TODD ROBBEN, Vs. THE ESTATE OF THOMAS JOSEPH HARRIS; THOMAS J. HARRIS TRUST, Ninth Judicial District case 22-PB-00119, Ninth Judicial District - 2021-PB-00034, Nevada Supreme Court case Case 84948.

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

TODD ROBBEN, Vs. THE ESTATE OF THOMAS JOSEPH HARRIS; THOMAS J. HARRIS TRUST, Ninth Judicial District case 22-PB-00119, Ninth Judicial District - 2021-PB-00034, Nevada Supreme Court case Case 84948.

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

Will, trust, estate probate issues. The trial court wrongfully claims issue preclusion when the Appellant was not a party to the order case, the previous case was not decided on the merits.

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

There is no published Nevada case law directly addressing the standing of previous beneficiaries and disinherited beneficiaries to contest a trust, will and estate because of undue influence and fraud. The California Supreme Court recently addressed the issue with the on-point case *Barefoot v. Jennings*, 456 P. 3d 447 - 2020 - Cal: Supreme Court. Compare NRS 132.050 with the California equivalent Section 17200, Section 24, subdivision (c) which like NRS 132.050 defines a beneficiary for trust purposes, as a person who has any present or future interest, vested or contingent. In *Barefoot v. Jennings*, supra. the court agreed appellant the appellant "has a present or future interest, making her a beneficiary permitted to petition the probate court under section 17200."

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

In Nevada Supreme Court case Case 84948 the court denied review because the Appellant was not a named party and thus lacked standing. Here, the Appellant remedied the standing issue by filing a collateral attack with his name as the Petitioner. The other issues of being an "interested person" and a "beneficiary" were not decided in the prior cases on the merits, and this Appellant was not a party, there cannot be claim preclusion or issue preclusion.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain: Appellant was entitled to court appointed counsel pursuant to NRS 136.200 as an out of county resident. The Court denied Appellant counsel and thus denied U.S. 1st and 14th amendment access to the court and due-process. Also see Nevada Constitution Art 1, Sec 8. "No person shall be deprived of life, liberty, or property, without due process of law."

Nevada victims of undue influence in probate must have due-process.

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

Because this case is a public policy issue and matter of first impression the Supreme Court should decide the case.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0

Was it a bench or jury trial? 0

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

01-06-2023

16. Date of entry of written judgment or order appealed from _____

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

The judge was not issued a written order and the appeal is filed to preserve any and all rights.

17. Date written notice of entry of judgment or order was served _____ Not served.

Was service by:

☐ Delivery

☐ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed _____

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

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

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRS 155.190(1) NRS 137.140; (2), NRS 151.160; (3), NRS 164.015(6)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This court reviews an order granting an NRCP 12 (b)(5) motion to dismiss de novo, accepting all factual allegations in the complaint as true and drawing all inferences in the plaintiffs favor.- in IN THE MATTER OF COLBY GORMLEY IRISH IRREVOCABLE TRUST, 2021 citing Buzz Stew, LLC v. City of N. Las Vegas, 181 P. 3d 670 - Nev: Supreme Court 2008.

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." We review a district court order granting summary judgment de novo, viewing all evidence in a light most favorable to the nonmoving party. Wood v. Safeway, Inc., 121 P. 3d 1026 - Nev: Supreme Court 2005

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

(a) Parties:

Todd Robben Petitioner and Appellant.

Thomas J. Harris Trust; Tara Flanagan, Trust Administrator, Real Party in Interest

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

All parties are involved on appeal.

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

Appellant asserts he is an interested person/party and a beneficiary entitled to due-process to attack the Thomas J. Harris Trust on grounds of presumed undue influence, undue influence and fraud. Respondent asserts Appellant lacks standing and is not an interested person/party, issue & claim preclusion and vexatious litigation.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

The order granting Motion to Dismiss and Motion for Summary Judgment is independently appealable under NRAP 3A(b).

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

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

VERIFICATION

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

Todd Robben

Name of appellant

02-03-2023

Date

Tuolumne County, California.

State and county where signed

Name of counsel of record

/s/Todd Robben

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 3 day of February, 2023, I served a copy of this completed docketing statement upon all counsel of record:

☒ By personally serving it upon him/her; or

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

email: mcclure@wallacemillsap.com

Dated this 3 day of February, 2023

/s/ Stephen Robben

Signature

1 Case No.: 22-PB-00119

RECEIVED

FILED

2 Dept. No.: II

FEB 08 2023

2023 FEB -8 AM 11:57

3 Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

4
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF DOUGLAS

7 TODD ROBBEN,

8 Petitioner;

9 vs.

10
11 THE ESTATE OF THOMAS J.
12 HARRIS and THE THOMAS J.
13 HARRIS TRUST,

14 Respondents.

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT; MOTION TO
DISMISS; & DEEMING PETITIONER
A VEXATIOUS LITIGANT

15
16 Petitioner Todd Robben (the "Petitioner") initiated this case by filing his
17 Petition to Invalidate the Will and Trust of Thomas J. Harris signed on July 20, 2022.
18 Both the Estate of Thomas J. Harris (the "Estate") and The Thomas J. Harris Trust
19 (the "Trust") filed written Objections to the Petition. In addition to objecting to the
20 Petition, the Estate moved to dismiss the Petition (the "Motion to Dismiss") and the
21 Trust moved for summary judgment against the Petition (the "Motion for Summary
22 Judgment"). The Petitioner filed Oppositions to both the Trust's Motion for Summary
23 Judgment and the Estate's Motion to Dismiss. In addition, the Petitioner attempted
24 to supplement his Oppositions without leave of court in various filings, and also
25 moved to strike both the Trust's Motion for Summary Judgment and the Estate's
26 Motion to Dismiss. The Court considered all of the briefings, together with the
27 Petition and the Objections thereto, and ordered oral argument on the Motion for
28 Summary Judgment and Motion to Dismiss on January 6, 2023 commencing at 9 a.m.

1 In advance of the oral argument, Petitioner filed papers with the Court
2 requesting the Court decide the Motion for Summary Judgment and Motion to
3 Dismiss *without* oral argument. In other words, Petitioner effectively moved to
4 vacate the oral argument ordered by the Court on each Motion. The Court did not
5 vacate the hearing date, and required the Trust, the Estate, and the Petitioner to
6 appear for the hearing.

7 The oral argument commenced on January 6, 2023 at 9 a.m. as scheduled. The
8 Court allowed Petitioner to appear by Zoom pursuant to his own request filed with
9 the Court. The Trust and the Estate, by and through its Counsel F. McClure Wallace,
10 appeared in person at the oral argument. At the inception of the argument, the Court
11 reconfirmed Petitioner's request to decide the Motion for Summary Judgment and
12 Motion to Dismiss the Petition without oral argument. In addition to the Petitioner
13 requesting the Court decide the Motion for Summary Judgment and Motion to
14 Dismiss without oral argument, the Court confirmed the Estate and Trust had no
15 objection to determining both Motions without oral argument. Having personally
16 confirmed the Petitioner requested decision on each Motion absent oral argument,
17 and considering the papers and pleadings on file before the Court, the Court finds
18 good cause to **GRANT** the Trust's Motion for Summary Judgment and Estate's
19 Motion to Dismiss based on the findings and conclusions of law stated below.

20 **I. Petitioner's Motions to Strike the Motion for Summary Judgment and**
21 **Motion to Dismiss are DENIED.**

22 The Petitioner moved to strike both the Motion for Summary Judgment and
23 Motion to Dismiss the Petition based on alleged violations of D.C.R. 13 and the Rules
24 of Civil Procedure. More specifically, the Petitioner seemingly argues the Motion for
25 Summary Judgment and Motion to Dismiss should be stricken from the record
26 because the Motions do not contain a "notice of motion" as required by D.C.R. 13(1).
27 Petitioner's argument is wrong. D.C.R. 5 makes clear the Local Rules of the Ninth
28 Judicial District Court ("NJDCR") apply even when inconsistent with the D.C.R.

1 Therefore, NJDCR supersedes the D.C.R. when they contain inconsistent provisions.
2 NJDCR 6 contains no "notice of motion" requirement. In fact, NJDCR 6 states
3 motions shall be decided without oral argument unless oral argument is ordered by
4 the Court or requested by the Parties.

5 In this case, no Party requested oral argument. The Court ordered oral
6 argument on its own initiative. Therefore, the Court finds the Motion for Summary
7 Judgment and Motion to Dismiss were not required to contain a notice of motion
8 contemplated by D.C.R. 13 because NJDCR 6 states the Motions will be decided
9 without oral argument unless ordered by the Court. The Court ordered oral
10 argument, Petitioner received lawful notice of the oral argument ordered by the
11 Court, Petitioner filed briefs in regard to the oral argument, including requesting the
12 Court decide the Motions without oral argument, and then Petitioner appeared at the
13 oral argument. Therefore, the Court finds Petitioner had lawful notice of the oral
14 argument hearing scheduled on January 6, 2023. The Court finds the Motion for
15 Summary Judgment and Motion to Dismiss were not required to contain a "notice of
16 motion" or some type of notice of the hearing under NJDCR 6 since the Court ordered
17 oral argument on its own initiative after the Motions had been filed. Consequently,
18 Petitioner's Motions to Strike the Motion for Summary Judgment and Motion to
19 Dismiss are **DENIED**. Having determined the Motion for Summary Judgment and
20 Motion to Dismiss are properly before the Court, the Court addresses each Motion in
21 turn.

22 **II. The Estate's Motion to Dismiss the Petition is GRANTED.**

23 The Estate moved to dismiss the Petition to invalidate the Will of Thomas J.
24 Harris in this case. The Estate argues the Petitioner is not an interested person in
25 the Will and Estate under NRS 132.185 and, therefore, lacks standing to contest the
26 validity of the Will. Additionally, the Estate contends the Court previously
27 determined Petitioner was not an interested person in the Will and Estate in a prior
28

1 action, implicating the doctrine of claim preclusion. The Court finds the Estate's
2 arguments persuasive.

3 More specifically, the Estate of Thomas J. Harris was previously administered
4 before the Ninth Judicial District Court of the State of Nevada, In and For the County
5 of Douglas, as Case No. 2021 PB 00034 (the "Probate Case"). Petitioner appeared in
6 the Probate Case and made various allegations of misconduct and fraud in
7 administration of the Estate and formation of the Will. Petitioner therefore requested
8 the Court continue approval of the Estate's request for final distribution of the Estate
9 to permit Petitioner additional time to produce evidence substantiating his
10 allegations. The Estate opposed the request because Petitioner was not an interested
11 person in the Will or Estate with standing to litigate the validity of the Will or
12 administration of the Estate. The Court granted Petitioner a continuance to produce
13 evidence demonstrating he is an interested person in the Will and/or Estate.
14 Petitioner produced no admissible evidence demonstrating he is an interested person
15 in the Will or Estate in the Probate Case. Petitioner produced no admissible evidence
16 reflecting fraud, theft, or embezzlement from the Estate in the Probate Case.
17 Consequently, the Court in the Probate Case approved the Estate's final accounting
18 and request for final distribution of the Estate, and in so doing, determined Petitioner
19 was not an interested person in the Estate and/or Will. *See* Order filed in the Probate
20 Case on June 22, 2022. Petitioner appealed this finding to the Nevada Supreme
21 Court, who dismissed the Petitioner's appeal. Therefore, this Court finds the Probate
22 Court determined Petitioner is not an interested person in the Estate and/or Will,
23 thereby precluding Petitioner from contesting the Will. More specifically, the Court
24 finds the Petition is barred by the elements of both the doctrine of claim preclusion,
25 as well as issue preclusion. Thus, the Petition to Invalidate the Will is barred by the
26 doctrine of claim preclusion, or in the alternative, is barred by the doctrine of issue
27 preclusion.
28

1 Further, even if the Petitioner were an interested person in the Decedent's
2 Estate, which he is not, this Court did not oversee the Probate Case. As such, this
3 Court lacks subject matter jurisdiction over the Decedent's Will per NRS 137.080.

4 Therefore, the Motion to Dismiss the Petition to Invalidate the Will of Thomas
5 J. Harris is **GRANTED**.

6 **III. The Trust's Motion for Summary Judgment is GRANTED.**

7 The Petitioner, Todd Robben, has moved this Court to declare him an
8 "Interested Person" pursuant to NRS 132.185, and thereby standing to challenge the
9 Thomas J. Harris Trust. Petitioner contends that he has made a *prima facie* showing
10 of "undue influence" upon the testator and as a result, the Respondent Trustee has
11 the burden of rebutting the validity of the Trust provisions by clear and convincing
12 evidence. Petitioner cites to In re Estate of Bethurem, 129 Nev. 869, 871, (2013),
13 which states, "A rebuttable presumption of undue influence is raised if the testator
14 and the beneficiary shared a fiduciary relationship, but undue influence may also be
15 proved without raising this presumption." Petitioner also attempts to invoke, without
16 citing to, NRS 155.097, which provides in pertinent part:

- 17
- 18 1. Regardless of when a transfer instrument is made, to the extent
19 the court finds that a transfer was the product of fraud, duress or
20 undue influence, the transfer is void and each transferee who is
21 found responsible for the fraud, duress or undue influence shall
22 bear the costs of the proceedings, including, without limitation,
23 reasonable attorney's fees.
 - 24 2. Except as otherwise provided in subsection 4 and NRS 155.0975,
25 a transfer is presumed to be void if the transfer is to a transferee
26 who is:
 - 27 (a) The person who drafted the transfer instrument;
 - 28 (b) A caregiver of the transferor who is a dependent adult;
 - (c) A person who materially participated in formulating the
dispositive provisions of the transfer instrument or paid
for the drafting of the transfer instrument; or
 - (d) A person who is related to, affiliated with or subordinate
to any person described in paragraph (a), (b) or (c).
 3. The presumption created by this section is a presumption
concerning the burden of proof and may be rebutted by proving,

1 by clear and convincing evidence that the donative transferee was
2 not the product of fraud, duress or undue influence.

3 Petitioner has declared that he has successfully raised a rebuttable
4 presumption of the undue influence by citing Bethurem and the other categories of
5 those capable of actionable undue influence (NRS 155.097(2)(a)-(d)). He has failed to
6 demonstrate and asserts, "as a matter of law," that he is an interested person.
7 However, Petitioner has failed to demonstrate that the above-cited authority apply
8 to the facts of this case or statute; a legal issue cannot be raised by doing nothing
9 more than quoting a case statute, it must be supported by some admissible,
10 competent, and relevant evidence.

11 In Bethurem, supra, two stepsisters challenged a will, amended, removing
12 them as beneficiaries. They alleged that an aunt had, by undue influence, caused the
13 decedent to disfavor them and remove them from the will. The aunt became a
14 beneficiary. Other evidence showed that the aunt had admitted to being a caretaker,
15 that there was ill-will between the aunt and the stepsisters, and that the aunt
16 induced another to draft the amended will. Neither the probate master nor the trial
17 court shifted the burden of proof to the respondent to rebut by clear and convincing
18 evidence the presumption of undue influence.

19 After trial, the court found that undue influence caused the revision of the will
20 and reinstated the petitioners as beneficiaries. The Supreme Court reversed holding
21 that:

22 ...influence resulting merely from [a] family relationship is not by
23 itself unlawful, and there is no indication in the record that any
24 influence [which] may have [been] exercised prevented [the testator]
25 from making his own decisions regarding his will

26 Bethurem, 129 Nev. At 877.

27 The Supreme Court has also held that "[a] presumption of undue influence
28 arises when a fiduciary relationship exists and the fiduciary benefits from the
questioned transaction." Bethurem, at 874, quoting In re Jane tiffany Living Trust

1 2001. 124 Nev. 74, 78 (2008) (addressing undue influence in the context of an attorney
2 receiving an inter vivos transfer from a client). Thus, the shift in the burden of proof
3 contemplated by NRS 155.097(3) may occur when a challenger establishes the
4 existence of a fiduciary or confidential relationship, and some evidence, at least, of
5 undue influence.

6 In the instant case, the Petitioner has produced no evidence that any other
7 beneficiary of the Thomas Harris Trust was the decedent's caretaker, fiduciary,
8 drafter of the transfer instrument, or materially participated in formulating any
9 dispositive provisions of the transfer instrument. See 155.097(2). Petitioner has
10 submitted no evidence to this Court whatsoever that the testator was incompetent,
11 infirm, needed a caretaker, or any other condition that might make him susceptible
12 to undue influence. Indeed, there is no evidence in the entire record of any fiduciary
13 relationship, caretakers, infirmity, or incompetency. The Petitioner has stated in his
14 petition that he can produce two, and possibly three, witnesses (which includes
15 himself) to show that he was a beneficiary of the a previous will or trust, and that
16 there was animosity between himself and his brother (a deceased beneficiary to the
17 Harris Trust). For approximately fifteen months he has failed to produce any
18 evidence that he was a previous beneficiary of any will or trust. Petitioner has failed
19 to demonstrate the existence of any of the relationships described above between the
20 testator and a beneficiary of the Harris Trust, he has likewise failed to establish a
21 presumption of undue influence for the respondent to rebut.

22 As the Supreme Court stated in Bethurem at 876, "in the absence of a
23 presumption, a will contestant must establish the existence of undue influence by a
24 preponderance of proof." Petitioner has also failed to make such a showing. He has
25 failed to demonstrate that he was a beneficiary of any previous trust, and has failed
26 to produce any admissible evidence at all.

27 Accordingly, this Court finds that Petitioner, Todd Robben, is not an interested
28 person and has no standing to contest the Thomas J. Harris Trust. While the finding

1 that Petitioner has no standing to contest the Harris Trust may make a motion for
2 summary judgment moot, the Court will nevertheless address Respondent's motion.

3 Procedurally, the "party moving for summary judgment bears the initial
4 burden of production to show the absence of a genuine issue of material fact." *Cuzze*
5 *v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).
6 "If such a showing is made, then the party opposing summary judgment assumes a
7 burden of production to show the existence of a genuine issue of material fact." *Id.*
8 The manner in which each party may satisfy its burden of production depends on
9 which party will bear the burden of persuasion on the challenged claim at trial." *Id.*

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

21 Analogous to the Will, Petitioner must be an interested person in the Trust to
22 contest its validity. *See* NRS 164.015. The Trust moved for summary judgment
23 against the Petition to Invalidate the Trust because Petitioner is not an interested
24 person in the Trust under NRS 132.185 and NRS 132.390(1)(d). Once the Trust
25 moved for summary judgment by pointing out an absence of evidence to support the
26 Petitioner's claims, the burden of production shifted to Petitioner to refute the Motion
27 for Summary Judgment with admissible evidence creating a genuine issue of fact
28 regarding whether Petitioner is an interested person in the Trust. Petitioner failed

1 to produce any admissible evidence demonstrating he is an interested person in the
2 Trust as a current or prior beneficiary of the Trust; current, prior, or alternate trustee
3 of the Trust; holder of a power of appointment, prior holder of a power of appointment,
4 or heir of the Estate should the entire Trust be invalidated.

5 In addition, the Petitioner made various allegations regarding undue
6 influence, fraud, theft, embezzlement and unlawful administration of the Trust.
7 Petitioner produced no evidence to substantiate any of these allegations related to
8 administration of the Trust. Consequently, the Court finds Petitioner's allegations
9 of undue influence, fraud, theft, embezzlement, and unlawful administration of the
10 Trust are devoid of evidence and without merit, further warranting summary
11 judgment against Petitioner's unsubstantiated allegations in the Petition and papers
12 filed before the Court. Hence, the Court finds Petitioner failed to meet his burden to
13 refute summary judgment and concludes the Petitioner is not an interested person in
14 the Trust with standing to contest the validity or administration of the Trust based
15 on evidentiarily devoid claims. As such, the Trust's Motion for Summary Judgment
16 against the Petition to Invalidate the Trust is GRANTED.

17 **IV. The Court finds Petitioner is a vexatious litigant pursuant to NRS**
18 **155.165.**

19 NRS 155.165 permits the Court to find Petitioner is a vexatious litigant if
20 Petitioner has filed petitions and motions without merit, or that were designed to
21 harass the Trustee. The Court may also consider whether the Petitioner filed
22 pleadings in a prior case that were without merit when determining if Petitioner is a
23 vexatious litigant. *Id.* In that regard, the Court finds the Petitioner made various
24 allegations in the Probate Case related to the Estate, the Will of Thomas J. Harris
25 and the Trust of Thomas J. Harris. Those allegations were unsubstantiated.
26 Moreover, the Probate Court determined Petitioner was not an interested person in
27 the Estate, and, therefore, lacked standing to litigate any allegations he made in the
28 Probate Case. Despite the Probate Court ruling Petitioner is not an interested person

1 in the Estate with standing to litigate his allegations related to the Will, which was
2 affirmed on appeal to the Nevada Supreme Court, Petitioner filed a Petition to
3 Invalidate the Will in this case in an apparent attempt to circumvent the Order of
4 the Probate Court. The Court finds this tactic vexatious.

5 Similarly, the Petitioner sought to invalidate the Trust in this case based on
6 allegations of undue influence. In addition, Petitioner made various claims of fraud,
7 theft, embezzlement and mismanagement of the Trust. Petitioner never
8 substantiated any of his allegations related to the Trust with any admissible
9 evidence. In fact, Petitioner could not produce evidence to show he is an interested
10 person in the Trust with standing to even levy the allegations he made related to the
11 Trust. Therefore, the Court finds the Petitioner's tactic of forcing the Trust to expend
12 significant resources responding to serial filings devoid of evidence, without
13 preliminarily being able to establish standing to litigate any aspect of the Trust, to
14 be vexatious.

15 In addition, Petitioner has filed various papers with the Court outside the
16 bounds of permissible procedure absent leave of court. Considering the rogue filings
17 in this case mounted against the backdrop of the Probate Court previously holding
18 Petitioner is not an interested person in the Estate, the Court finds Petitioner's serial
19 filings to be vexatious.

20 Out of procedural fairness to Mr. Robben, who is representing himself in proper
21 person, the Trust and Estate have not requested Mr. Robben pay any of its prior
22 attorney's fees incurred in responding to his filings prior to entry of this Order under
23 NRS 155.165. Therefore, the Court is not entering an award for attorney's fees and
24 costs incurred by the Trust or Estate in responding to Petitioner's prior filings in this
25 case pursuant to NRS 155.165.¹ However, the Court now holds, finds, and concludes
26 Petitioner is barred as a vexatious litigant from filing any claims, petitions, motions,
27

28 ¹ This finding does not preclude the Trust or Estate from moving for its fees or costs incurred in this
matter from its inception under a separate statute, including but not limited to NRS 18.010.

1 pleadings, complaints, or papers with the Court related to The Thomas J. Harris
2 Trust, the Trustee of the Trust, the Will of Thomas J. Harris, the Estate of Thomas
3 J. Harris, the Personal Representative of the Estate of Thomas J. Harris, and the
4 Personal Representative's and Trust's Legal Counsel. Should the Petitioner violate
5 this Order, the Court will award fees and sanctions against Petitioner consistent with
6 NRS 155.165, the common law, and the inherent powers of the Court to administer
7 the proceedings before it. The Petitioner's right to appeal this Order and its findings
8 is excluded from the Court's vexatious litigant findings in order to respect Petitioner's
9 right to due process of law in appealing this Order.

10 **V. Petitioner's Requests for Relief in the Petition and related filings are**
11 **DENIED, and the Petition is dismissed with prejudice.**

12 Having concluded Petitioner is not an interested person in the Trust, Estate,
13 or Will of Thomas J. Harris, the Petition is dismissed with prejudice and all claims
14 for relief in the Petition, or any related filings brought forth by Petitioner in this Case,
15 are **DENIED**.

16
17 **IT IS SO ORDERED.**

18
19 Dated this 8th day of February 2023.

20
21 

22 The Honorable Robert Estes
23
24
25
26
27
28

Copies served by mail on February 8th, 2023, addressed to:

Todd Robben
P.O. Box 4251
Sonora, California 95370

F. McClure Wallace, Esq.
510 West Plumb Lane
Reno, Nevada 89509

Erin C. Plante
Erin C. Plante

Form 2. Case Appeal Statement

No. 2022-PB-00119

Dept. No. II

NO. _____
FILED 2/9/2023
BOBBIE R. WILLIAMS
CLERK OF COURT
BY [Signature]
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE
OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner,

vs

THE THOMAS J. HARRIS TRUST et al,

Respondant.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
Todd Robben
2. Identify the Judge issuing the decision, judgment, or order appealed from:
Honorable Nathan Tod Young.
3. Identify each appellant and the name and address of counsel for each appellant:
Todd Robben, PO Box 4251 Sonora, CA 95370 – In Proper Person
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent=s appellate counsel is unknown, indicate as much and provide the name and address of that respondent=s trial counsel):
The Thomas J. Harris Trust, represented by F. Wallace McClure, 510 W. Plumb Lane.
Suite A Reno, Nevada 89509.
5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):
N/A.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: N/A
7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
Unrepresented.
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:
Granted July 26, 2022
9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):
The Petition was filed July 22, 2022.
10. Provide a brief description of the nature of the action and result in the district court,

including the type of judgment or order being appealed and the relief granted by the Court: This is a probate matter in which the Motion to Strike was filed on December 23, 2022.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

No.


12. Indicate whether this appeal involves child custody or visitation:

No.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

N/A.

Dated this 9th day of February 2023



Deputy Clerk

P.O. Box 218

Minden, Nevada 89423

775-782-9820

RECEIVED

FEB 17 2023

Douglas County
District Court Clerk

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

2023 FEB 17 PM 4:58

IN THE MATTER OF THE ESTATE OF R. WILLIAMS No. 86096
THOMAS JOSEPH HARRIS,
DECEASED.

CLERK

DEPUTY

FILED

FEB 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

TODD ROBBEN,
Appellant,

vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS; AND THOMAS J. HARRIS
TRUST,
Respondents.

ORDER DIRECTING TRANSMISSION OF RECORD

Having reviewed the documents on file in this pro se appeal, this court concludes that review of the complete record is warranted. NRAP 10(a)(1). Accordingly, within 30 days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the trial court record in District Court Case No. 2022-PB-00119. See NRAP 11(a)(2) (providing that the complete "record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court," as well as "any previously prepared transcripts of the proceedings in the district court"). The record shall not include any exhibits filed in the district court. NRAP 11(a)(1).

It is so ORDERED.


[Signature], C.J.

cc: Todd Robben
Wallace & Millsap LLC
Douglas County Clerk

STATE OF NEVADA)
)
COUNTY OF DOUGLAS) ss

I, BOBBIE R. WILLIAMS, Clerk of the Ninth Judicial District Court, State of Nevada, in and for the said County of Douglas; said Court being a Court of Record, having common law jurisdiction, and a Clerk and a Seal, do hereby certify that the foregoing are the full, true copies of the original pleadings filed in Case No. 2022-PB-00119 TODD ROBBEN vs. THE ESTATE OF THOMAS JOSEPH HARRIS TRUST.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Minden, in said County and State this 23RD day of February, A.D., 2023.



Clerk of Court

Victor

Apprentice Court Clerk