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Personal Representative for the
Estate of Thomas J. Harris, and
as Successor Trustee of the
Thomas J. Harris Trust

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Mar 22 2023 11:00 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE
OF THOMAS JOSEPH HARRIS,
DECEASED,

Supreme Court Case No.
86096

District Court Case No.
2022-PB-00119

TODD ROBBEN,

Appellant,

vs.

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

Respondents.

RESPONDENTS' MOTION TO DISMISS APPEAL

The Estate of Thomas J. Harris, by and through its Personal Representative, the Honorable Tara M. Flanagan (the "Estate"), and the Thomas J. Harris Trust, by and through its Successor Trustee, Ms. Flanagan, (the "Trust") jointly move this Court for an order dismissing Todd Robben's Appeal pursuant to NRAP 3A(a), 4(a)(1), 14(f), and 27(a). This Motion is based upon the following Memorandum of Points & Authorities, the exhibits attached to this Motion, any oral argument this Court wishes to entertain on the Motion, and the papers and orders on file before the Court in this Appeal.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

This Appeal originates from Todd Robben's attempt to appeal "the decision, orders and judgment from Retired Judge Robert E. Estes on January 06, 2023 . . ." made in District Court Case No. 2022-PB-00119. See Notice of Appeal attached as **Exhibit 1**. Specifically, at the conclusion of a hearing conducted on January 6, 2023 before Department II of the Ninth Judicial District Court (the "District Court"), the Honorable Robert E. Estes orally pronounced his decision to grant dispositive motions filed by the Estate and the Trust, dismissing in full

the underlying case initiated by Mr. Robben. *See* Minutes of January 6, 2023 Hearing attached as **Exhibit 2**.

In response to the District Court's oral pronouncements at the conclusion of the January 6, 2023 hearing, Mr. Robben filed his Notice of Appeal on February 3, 2023. *See* **Exhibit 1**. Thereafter, the District Court issued its written Order Granting Motion for Summary Judgment; Motion to Dismiss; & Deeming Petitioner a Vexatious Litigant on February 8, 2023 (the "Order"), codifying its oral pronouncements from the January 6, 2023 hearing. *See* February 8, 2023, District Court Order attached as **Exhibit 3**.

NRAP 14(f) states "[i]f [a] respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss." With regard to motions, NRAP 27(a)(1) directs "[a]n application for an order or other relief is made by motion . . ." Thus, the rules direct the Trust and Estate to address the jurisdictional defects to Mr. Robben's Appeal by filing this Motion.

The Trust and Estate seek dismissal of Mr. Robben's Appeal on two separate jurisdictional grounds: 1) Mr. Robben has failed to properly and timely file a notice of appeal, and 2) Mr. Robben is not an interested

person to the Trust or Estate, and as such has no standing to bring an appeal before this Court.

II. RELEVANT PROCEDURAL HISTORY AND FACTS

Mr. Robben initiated the matter of Todd Robben, Petitioner vs. The Estate of Thomas J. Harris and the Thomas J. Harris Trust, Respondents, bearing Ninth Judicial District Court Case Number 22-PB-00119 (the “District Court Case”) on July 22, 2022, by filing his Petition to Invalidate the Will and Trust of Thomas J. Harris; Petitioner’s Request for Appointment of Counsel Pursuant to NRS ¶ 136.200; Emergency Request for Stay of Final Distribution; Peremptory Challenge to Judge Nathan Tod Young before the Ninth Judicial District Court of the State of Nevada (the “Petition”). Mr. Robben’s Petition sought to contest the validity of the Last Will and Testament of Thomas J. Harris, and to also contest the validity of the Thomas J. Harris Trust.

The Estate filed a Motion to Dismiss the Petition on October 6, 2022. Likewise, the Trust filed a Motion for Summary Judgment seeking dismissal of the Petition on October 6, 2022. Both the Estate’s Motion to Dismiss and the Trust’s Motion for Summary Judgment were fully briefed and submitted to the District Court for decision. Separately, the

Estate and Trust both timely filed Objections to the Petition in accordance with NRS 155.160, each denying all allegations presented through the Petition.

The District Court ordered oral argument on the Estate's Motion to Dismiss as well as the Trust's Motion for Summary Judgment for January 6, 2023. *See Exhibit 4.* At the conclusion of the January 6, 2023 hearing, the District Court orally pronounced its decision to grant the Estate's Motion to Dismiss as well as the Trust's Motion for Summary Judgment. The District Court also granted an oral motion made during the hearing determining Mr. Robben to be a vexatious litigant pursuant to NRS 155.165. *See Exhibit 2.*

After the January 6, 2023 hearing, but before the entry of a written order by the Court, Mr. Robben filed his Notice of Appeal on February 3, 2023. *See Exhibit 1.* Then, *after* Mr. Robben filed his Notice of Appeal, on February 8, 2023, the District Court entered its written order granting the dispositive motions filed by the Trust and Estate. *See Exhibit 3.* Notice of Entry of the District Court's Order was served upon Mr. Robben

on February 13, 2023 via USPS First Class Mail and was filed with the District Court on February 16, 2023.¹ See **Exhibit 5**.²

As set forth below, Mr. Robben has no standing related to the Estate or Trust and is not an aggrieved party who may bring an appeal before this Court.

III. LAW & ARGUMENT

a. Mr. Robben Failed to Timely File a Notice of Appeal

NRAP 4(a)(1) addresses the time for filing a notice of appeal in a civil case. NRAP 4(a)(1) states, a notice of appeal “must be filed *after*

¹ Filing of the Notice of Entry of Order was delayed because the Ninth Judicial District Court does not have e-filing capability and the Notice of Entry of Order was mailed to the Court for filing.

² On a separate but related note, the Trust and Estate remind this honorable Court of relevant history related to the Estate. Specifically, the Estate of Thomas J. Harris was probated before Department I of the Ninth Judicial District Court in case number 2021-PB-00034 (the “Estate Case”). In the Estate Case, Mr. Robben also appeared seeking to contest the validity of the Will of Thomas J. Harris. The District Court in the Estate Case found Mr. Robben to not be an interested person to the Estate and ruled Mr. Robben lacked standing to appear in the Estate Case. Mr. Robben appealed, and his appeal in that case was assigned case number 84948. Mr. Robben’s appeal in the Estate Case was dismissed under NRAP 3(A)(a) because Mr. Robben was not an aggrieved party in the Estate Case since he was not an interested person in the Estate and lacked standing to appear or participate in those proceedings. See **Exhibit 6**.

entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served.” (emphasis added).

In this matter, Mr. Robben filed a Notice of Appeal after the January 6, 2023 hearing before the District Court. However, Mr. Robben’s Notice of Appeal was filed *before* the District Court issued its written and final Order on February 8, 2023, which Mr. Robben seeks to appeal. Mr. Robben was served with Notice of Entry of the District Court’s February 8, 2023 Order on February 13, 2023. More than 30 days have passed since Mr. Robben was served with Notice of Entry of the District Court’s February 8, 2023 Order, and Mr. Robben has never filed a subsequent or amended Notice of Appeal. Therefore, Mr. Robben is in violation of NRAP 4(a)(1) because he has failed to file a timely Notice of Appeal of the Court’s written order dismissing the underlying Case.

This Court has made clear “[f]iling a timely notice of appeal is jurisdictional and an untimely appeal may not be considered.” *See Zugel by Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983). “Jurisdictional rules go to the very power of this Court to act.” *See Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

As such, they “must be clear and absolute in order to give all fair notice of what is required to bring a matter properly before this Court. Indeed, a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this Court.” *Id.*; citing *Wilmurth v. District Court*, 80 Nev. 337, 393 P.2d 302 (1964). Therefore, Mr. Robben’s premature Notice of Appeal fails to vest jurisdiction in this Court. *Id.* This is so because “prior to entry of a final [order] the district court remains free to reconsider and issue a written [order] different from its oral pronouncement.” *Id.* Thus, “[t]he point at which jurisdiction is transferred must be clearly delineated.” *Id.* at 688-689.³

After being served with written notice of the District Court’s Order on February 13, 2023, Mr. Robben failed to file a proper and timely Notice of Appeal. The deadline for Mr. Robben to do so has now expired resulting in a jurisdictional defect to his Appeal requiring its dismissal.

b. Mr. Robben Lacks Standing

NRAP 3A(a) states “[a] party who is aggrieved by an appealable judgment or order may appeal from that judgment or order . . .” Thus,

³ “The district court’s oral pronouncement from the bench, the clerk’s minute order, and even an unfiled written order are ineffective for any purpose and cannot be appealed.” *Id.* at 689.

NRAP 3A(a) allows only an aggrieved party to appeal. Whether an appellant is an aggrieved party is a jurisdictional issue for this Court.

In relation to probate and trust proceedings, a party is only aggrieved by action of the probate court when either a personal right or right of property is adversely and substantially affected.” *See Hughes’ Estate v. First Nat. Bank of Nevada*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980).

NRS 132.185 defines an interested person as someone “whose right or interest under an estate or trust may be materially affected by a decision of a fiduciary or a decision of the court. The fiduciary *or the court* shall determine who is an interested person according to the particular purposes of, and matter involved in, a proceeding.” NRS 132.185 (emphasis added); *see also* NRS 132.390.


Here, the District Court ruled Mr. Robben is not an “interested person” to either the Estate or Trust. *See Exhibit 3* at pgs. 4 & 7. As a result, Mr. Robben lacks standing to contest any aspect of the Estate or Trust or to otherwise have initiated the Case at all. *See generally Exhibit 3*. Thus, a jurisdictional defect exists in Mr. Robben’s Appeal of this Case because Mr. Robben has been determined to not be an

interested person to the Estate or Trust under NRS 132.185. Stated differently, Mr. Robben has no personal rights nor any right of property in the Estate or Trust which were adversely or substantially affected by the District Court's Order. *See Hughes' Estate v. First Nat. Bank of Nevada*, 96 Nev. at 180. As such, Mr. Robben was not aggrieved by the District Court's Order. NRAP 3A(a). Accordingly, the Respondents respectfully submit this honorable Court lacks jurisdiction and Mr. Robben's Appeal is appropriately dismissed.

IV. CONCLUSION & REQUESTED RELIEF

The Estate respectfully requests the Court dismiss Todd Robben's Appeal pursuant to NRAP 3A(a) and/or NRAP 4(a)(1).

DATED this 22nd day of March 2023.

By: .
F. McClure Wallace, Esq.
Nevada State Bar No.: 10264
Patrick R. Millsap, Esq.
Nevada Bar No.: 12043
Wallace & Millsap
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am an employee of *WALLACE & MILLSAP* that I am over the age of eighteen (18) years, and that I am not a party to, nor interested in this action. On this date, I caused to be served a true and correct copy of the foregoing document on all parties to this action by placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada postage paid, following the ordinary course of business practices as follows:

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

The foregoing document was also served upon Todd Robben through the Nevada Supreme Court's e-filing system.

DATED this 22nd day of March 2023.

By: /s/ Caroline Carter.
Employee of Wallace & Millsap

LIST OF EXHIBITS

- Exhibit 1 - February 3, 2023 - Notice of Appeal
- Exhibit 2 – Minutes of January 6, 2023 Hearing
- Exhibit 3 – February 8, 2023 - District Court Order Granting
Motion for Summary Judgment; Motion to Dismiss; &
Deeming Petitioner a Vexatious Litigant
- Exhibit 4 - November 30, 2022 – Order Setting Hearing
- Exhibit 5 Notice of Entry of Order (signed and served on
February 13, 2023, and filed on February 16, 2022
- Exhibit 6 - July 8, 2022, Order Dismissing Appeal

Exhibit 1

Exhibit 1

RECEIVED

FEB 03 2023

Douglas County
District Court Clerk

FILED

2023 FEB -3 PM 2:40

BOBBIE R. WILLIAMS
CLERK

BY *Archie* 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 ROB BEN,

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)."
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Respectfully,



/s/ Todd Robben

02-03-2023

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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

3

Exhibit 2

Exhibit 2

CASE NO: 2022-PB-00119

DEPT NO. II

DATE: 01/06/2023

Todd Robben vs. The Estate of Thomas Joseph Harris; Thomas J. Harris Trust

JUDGE: Senior Judge Robert E. Estes

CLERK: Courtni Walker

COURT REPORTER: Not Reported

PETITIONER'S COUNSEL: Not Present

LAW CLERK: Not Present

BAILIFFS: Eric Lindsay/Jeff Schemenauer

OTHERS PRESENT:

The above-entitled matter was before the Court this being the time set for ORAL ARGUMENT. The petitioner was present in court (via Zoom) in proper person. The respondent was not present in court but was represented by counsel.

Mr. Robben offered no objection to the pending motions being decided by the Court without oral argument.

Mr. McClure concurred.

The Court finds as follows:

- * Mr. Robben is not an interested party or beneficiary in the probate matter;
- * The respondent's Motion to Dismiss is granted;
- * The respondent's Motion for Summary Judgment is granted;
- * All other pending filings submitted by the petitioner are dismissed.

Mr. McClure requested to have Mr. Robben deemed as a vexatious litigant.

The Court granted the request.

Mr. McClure will prepare the order.

Exhibit 3

Exhibit 3

RECEIVED

FILED

Case No.: 22-PB-00119

FEB 08 2023

Dept. No.: II

Douglas County
District Court Clerk

2023 FEB -8 AM 11:57

BOBBIE R. WILLIAMS
CLERK

F. SHOEMAKER

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.

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

Petitioner Todd Robben (the "Petitioner") initiated this case by filing his Petition to Invalidate the Will and Trust of Thomas J. Harris signed on July 20, 2022. Both the Estate of Thomas J. Harris (the "Estate") and The Thomas J. Harris Trust (the "Trust") filed written Objections to the Petition. In addition to objecting to the Petition, the Estate moved to dismiss the Petition (the "Motion to Dismiss") and the Trust moved for summary judgment against the Petition (the "Motion for Summary Judgment"). The Petitioner filed Oppositions to both the Trust's Motion for Summary Judgment and the Estate's Motion to Dismiss. In addition, the Petitioner attempted to supplement his Oppositions without leave of court in various filings, and also moved to strike both the Trust's Motion for Summary Judgment and the Estate's Motion to Dismiss. The Court considered all of the briefings, together with the Petition and the Objections thereto, and ordered oral argument on the Motion for 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.

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]
from making his own decisions regarding his will

25 Bethurem, 129 Nev. At 877.

26 The Supreme Court has also held that "[a] presumption of undue influence
27 arises when a fiduciary relationship exists and the fiduciary benefits from the
28 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.

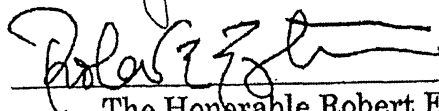
1 pleadings, complaints, or papers with the Court related to The Thomas J. Harris
2 Trust, the Trustee of the Trust, the Will of Thomas J. Harris, the Estate of Thomas
3 J. Harris, the Personal Representative of the Estate of Thomas J. Harris, and the
4 Personal Representative's and Trust's Legal Counsel. 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.

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21 

22 The Honorable Robert Estes
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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

Exhibit 4

Exhibit 4

RECEIVED FILED

Case No. 2022-PB-00119

NOV 30 2022 NOV 30 PM 4:20

Dept. No. II

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

E.A. WILLIAMS DEPUTY

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

TODD ROBBEN,

Petitioner,

vs.

ORDER SETTING HEARING

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

Respondent.

The above-entitled matter is set for:

(XX) Oral Argument: Motion for Summary Judgment; Motion to Dismiss; and Petitioner Todd Robben's Verified Petition to Invalidate the Thomas J. Harris Will and Trust; Petitioner's Request for Appointment of Counsel Pursuant to NRS 136.200; Emergency Request for Stay of Final Distribution; Peremptory Challenge to Judge Nathan Tod Young

Time Allowed: 2 hours

TO COMMENCE on Friday, January 6, 2023 at the hour of 9:00 a.m.¹

DATED this 30th day of November, 2022.

/s/ Robert E. Estes

ROBERT E. ESTES
SENIOR JUDGE

¹ Parties, counsel and witnesses shall appear in-person except as provided by Nevada Supreme Court Rule Part IX.

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P.O. Box 4251
Sonora, California 95370

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

Erin C. Plante
Erin C. Plante

Exhibit 5

Exhibit 5

RECEIVED

FEB 16 2023

FILED

1 Case No.: 22-PB-00119

Douglas County
District Court Clerk

2023 FEB 16 PM 4:38

2 Dept. No.: II

BOBBIE R. WILLIAMS

F. SHOEMAKER

4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF DOUGLAS

6
7 TODD ROBBEN,

8 Petitioner;

NOTICE OF ENTRY OF ORDER

9 vs.

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

13 Respondents.

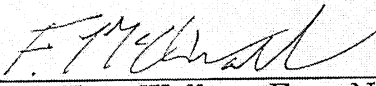
14
15 PLEASE TAKE NOTICE that on February 8, 2023, this Court entered an
16 Order Granting Motion for Summary Judgment; Motion to Dismiss and Deeming
17 Petitioner a Vexatious Litigant, a copy of which is attached hereto as **Exhibit 1**.

18 AFFIRMATION

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

21 DATED this 13th day of February 2023.

22 WALLACE & MILLSAP


23 
24 F. McClure Wallace, Esq., NSB 10264
25 Patrick R. Millsap, Esq., NSB 12043
26 510 W. Plumb Lane, Suite A
27 Reno, Nevada 89509
28 Ph: (775) 683-9599
mclure@wallacemillsap.com
patrick@wallacemillsap.com
Attorneys for Executor, Tara M. Flanagan

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b)(2)(B), I hereby certify that I am an employee of WALLACE & MILLSAP counsel for Tara M. Flanagan, Executor of the Estate of Thomas Joseph Harris and that I caused to be served the foregoing document upon the following:

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

Dated this 13th day of February 2023.


Caroline Carter

LIST OF EXHIBITS

Exhibit 1 - Order Granting Motion for Summary Judgment; Motion to Dismiss; &
Deeming Petitioner a Vexatious Litigant

Exhibit 1

Exhibit 1

RECEIVED

FILED

Case No.: 22-PB-00119

FEB 08 2023

Dept. No.: II

Douglas County
District Court Clerk

2023 FEB -8 AM 11:57

BOBBIE R. WILLIAMS
CLERK

F. SHOEMAKER,
BY DEPUTY

**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.

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

Petitioner Todd Robben (the "Petitioner") initiated this case by filing his Petition to Invalidate the Will and Trust of Thomas J. Harris signed on July 20, 2022. Both the Estate of Thomas J. Harris (the "Estate") and The Thomas J. Harris Trust (the "Trust") filed written Objections to the Petition. In addition to objecting to the Petition, the Estate moved to dismiss the Petition (the "Motion to Dismiss") and the Trust moved for summary judgment against the Petition (the "Motion for Summary Judgment"). The Petitioner filed Oppositions to both the Trust's Motion for Summary Judgment and the Estate's Motion to Dismiss. In addition, the Petitioner attempted to supplement his Oppositions without leave of court in various filings, and also moved to strike both the Trust's Motion for Summary Judgment and the Estate's Motion to Dismiss. The Court considered all of the briefings, together with the Petition and the Objections thereto, and ordered oral argument on the Motion for 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.

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]
from making his own decisions regarding his will

25 Bethurem, 129 Nev. At 877.

26 The Supreme Court has also held that "[a] presumption of undue influence
27 arises when a fiduciary relationship exists and the fiduciary benefits from the
28 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
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5 In addition, the Petitioner made various allegations regarding undue
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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
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26 Moreover, the Probate Court determined Petitioner was not an interested person in
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28 Probate Case. Despite the Probate Court ruling Petitioner is not an interested person

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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.

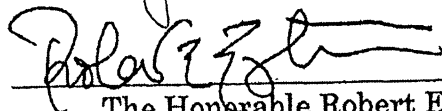
1 pleadings, complaints, or papers with the Court related to The Thomas J. Harris
2 Trust, the Trustee of the Trust, the Will of Thomas J. Harris, the Estate of Thomas
3 J. Harris, the Personal Representative of the Estate of Thomas J. Harris, and the
4 Personal Representative's and Trust's Legal Counsel. 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**.

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17 **IT IS SO ORDERED.**

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19 Dated this 8th day of February 2023.

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21 The Honorable Robert Estes
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Copies served by mail on February 8th, 2023, addressed to:

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Sonora, California 95370

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

Erin C. Plante
Erin C. Plante

Exhibit 6

Exhibit 6

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
THOMAS JOSEPH HARRIS,
DECEASED.

No. 84948

TODD ROBBEN,

Appellant,

vs.

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

Respondent.

FILED

JUL 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order entered in a probate matter. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Review of the notice of appeal and documents before this court reveals a jurisdictional defect. NRAP 3A(a) allows only an aggrieved party to appeal. Generally, a party is a person who has been named as a party to the lawsuit and who has been served with process or appeared. *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 447, 874 P.2d 729, 734 (1994). It does not appear that appellant was named as a party in the proceedings below. And while any "interested person" may participate in probate actions, an "interested person" is defined as someone "whose right or interest under an estate or trust may be materially affected by a decision of a fiduciary or a decision of the court. The fiduciary or court shall determine who is an interested person according to the particular purposes of, and matter involved in, a proceeding." NRS 132.185; *see also* NRS 132.390.

Here, the district court determined that appellant was not an interested person in the underlying matter under NRS 132.185 and thus lacked standing to object to the probate petition or otherwise appear in the proceedings. Under these circumstances, it appears appellant lacks standing to appeal under NRAP 3A(a). Accordingly, this court lacks jurisdiction and

ORDERS this appeal DISMISSED.

Silver, J.
Silver

Cadish, J.
Cadish

Pickering, J.
Pickering

cc: Hon. Nathan Tod Young, District Judge
Todd Robben
Wallace & Millsap LLC
Douglas County Clerk