

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 Electronically Filed
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Elizabeth A. Brown
District Court Clerk of Supreme Court
2022-PB-00119

TODD ROBBEN,

Appellant,

vs.

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

Respondents.

REPLY IN SUPPORT OF RESPONDENTS' MOTION FOR

RECONSIDERATION

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

The Respondents, 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 present this Reply in support of their previously filed Motion for Reconsideration of the Court's June 30, 2023

Order Regarding Motions (the “Order”), specifically the Estate and Trust (collectively referred to as the “Respondents”) request reconsideration of the Order Denying the Respondents Motion to Dismiss.

As background, the Estate and Trust filed their Motion to Dismiss Mr. Robben’s Appeal on March 22, 2023. The Motion seeks dismissal of Mr. Robben’s Appeal, in part, because Mr. Robben has no standing to bring an appeal before this Court as he is not an interested person to the Trust or Estate. After briefing of the Motion to Dismiss, the Court entered its Order denying the Respondents Motion to Dismiss on June 30, 2023. After entry of the Order, the Respondents timely filed their Motion for Reconsideration on July 7, 2023 (the “Motion”). Thereafter, on July 20, 2023 Mr. Robben filed his Objection to the to the Motion for Reconsideration.¹ The Respondents now timely present this Reply in support of their Motion for Reconsideration.

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¹ NRAP 27(4) allows 7 days in which to file a response to a Motion. Mr. Robben was electronically served with the Motion for Reconsideration on July 7, 2023, and Mr. Robben filed his Objection 13 days later on July 20, 2023. Thus, Mr. Robben’s Objection is untimely pursuant to NRAP 27(4).

II. LAW & ARGUMENT

a. THE COURT'S JUNE 30, 2023 ORDER WARRANTS RECONSIDERATION

The Respondents request reconsideration of the Court's June 30, 2023 Order Regarding Motions (the "Order") because the Court's ruling is premised upon an error of fact. Specifically, in response to the Respondents' arguments about Mr. Robben's lack of standing to bring this appeal, the Court stated it "is not convinced that appellant lacks standing where respondent filed the underlying district court petition." See **Exhibit 1** to Motion, at pg. 1. However, the Respondents did not file the "underlying district court petition" as the Order erroneously states. Instead, it was Mr. Robben who filed the underlying district court petition. See **Exhibit 2** to Motion. Thus, the Court's sole basis for finding Mr. Robben could have standing is founded in error, and absent this material error there is no basis upon which this Court could find Mr. Robben has standing to bring this appeal.²

Mr. Robben's Objection to the Respondents' Motion for Reconsideration argues the error addressed by the Motion is merely a

² Mr. Robben's Objection to the Respondents' Motion for Reconsideration admits he filed the "underlying district court petition." *Id.*

“clerical error.” *See* Mr. Robben’s Objection, at pg. 2. Mr. Robben’s argument is incorrect. With all respect and deference to the Court, the language in the Order makes clear the error of fact regarding who filed the underlying district court petition served as the sole basis for the Court’s ruling on the issue of standing. As such, correction of the error removes the only basis upon which the Court found Mr. Robben could have standing to bring this appeal, thereby requiring dismissal of his appeal. Accordingly, the error in the Order is not clerical, but material to the Order itself. Stated otherwise, correction of the error in the Court’s Order will directly affect the outcome of the Order, and therefore warrants reconsideration by this honorable Court.

b. THIS COURT HAS ALREADY RULED MR. ROB BEN LACKS STANDING

The Court’s Order now at issue in this Motion also stands in direct contrast to the Court’s prior ruling in Case Number 84948, wherein this Court upheld the ruling of the District Court finding Mr. Robben was “not an interested person [in the Estate] under NRS 132.185 and thus lacked standing” to object or otherwise appear in proceedings related to the Estate. *See Exhibit 5* to Motion. Thus, Mr. Robben was previously found by both the District Court and this Court to not be an interested person

to the Estate, and as such to lack standing to bring proceedings related to the Estate. *See Exhibits 3 and 5* to Motion.

Consistently, the District Court in this matter held Mr. Robben has no present or future interest in the Estate or Trust, as such he is not an interested person to the Estate or Trust and has no standing to have brought the underlying district court case. *See Exhibit 3* to Motion. Stated differently, Mr. Robben has no personal rights nor any right of property in the Trust or Estate. *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 dismissing the underlying district court case and lacks standing to bring an appeal. NRAP 3A(a). Therefore, Mr. Robben did not have standing to initiate the underlying district court case and does not have standing to bring this appeal.

c. MR. ROBBEN MAKES INCORRECT STATEMENTS IN HIS OBJECTION

Mr. Robben's Motion makes numerous unsupported arguments, incorrect statements of law, incorrect statements as to the procedural history of this matter, and makes additional statements and argument irrelevant to the issue addressed by the Respondents' Motion for Reconsideration. In an abundance of caution, the Respondent's deny all

statements of law or fact, all arguments, as well as the incorrect procedural history presented by Mr. Robben in his Objection.

Moreover, Mr. Robben makes numerous statements regarding the District Court and Counsel replete with “irrelevant, immaterial, or scandalous matters.” *See* NRAP 28(j); *see* Mr. Robben’s Objection, pgs. 9-10. In doing so, Mr. Robben’s Objection directly violates NRAP 28(j) and merits this Court’s courts consideration of the sanctions available under NRAP 28(j), including the striking or disregard of Mr. Robben’s Objection.

III. CONCLUSION

The Respondents respectfully identify the Court’s June 30, 2023 Order contains a material error. Therein, the Court determined the sole basis upon which Mr. Robben might be found to have standing was because the Respondents filed the underlying district court petition.” However, it was Mr. Robben who filed the underlying district court petition initiating this matter before the District Court. As such, there is no basis upon which Mr. Robben could be found to have standing to bring this appeal, and his appeal is properly dismissed.

*** SIGNATURE PAGE ***

DATED this 25th day of July 2023.

By: /s/ F. McClure Wallace.

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Personal Representative for the

Estate of Thomas J. Harris, and

as Successor Trustee of the

Thomas J. Harris Trust

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 25th day of July 2023.

By: /s/ Caroline Carter.

Employee of Wallace & Millsap