

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Case No. 86096

Electronically Filed  
Aug 28 2023 03:42 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

TODD ROBBEN,

Appellant,

vs.

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

Respondents.

**RESPONDENTS' APPENDIX**

# Volume 11

Tara Flanagan, as Personal Representative of the Estate of Thomas J.  
Harris and Trustee of the Thomas J. Harris Trust

By and through her Legal Counsel

Wallace & Millsap

F. McClure Wallace

Nevada Bar No. 10264

510 W. Plumb Lane, Suite A

Reno, Nevada 89509

(775) 683-9599

mcclure@wallacemillsap.com

Respondents, the Estate of Thomas J. Harris and the Thomas J. Harris Trust, by and through Tara Flanagan, in her capacity as the Personal Representative of the Estate of Thomas J. Harris and Trustee of the Thomas J. Harris Trust by and through her Legal Counsel hereby submits her Appendix in compliance with Nevada Rule of Appellate Procedure 30.

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TRANSCRIPT OF AUDIO-RECORDED  
HEARING IN THE MATTER OF  
TODD ROBBEN V. THE ESTATE OF THOMAS J. HARRIS & THOMAS  
J. HARRIS TRUST

CASE NO. PB-00116

JANUARY 6, 2023

Litigation Services Order Number: 1002142



## P R O C E E D I N G S

1

2 THE COURT: This is the time set for hearing in  
3 case PB-00119, [inaudible] Todd Robben versus the  
4 estate of Thomas J. Harris and the Thomas J. Harris  
5 Trust.

6 The record should reflect that the estate of  
7 Thomas Harris and the Thomas Trust or Thomas Harris  
8 Trust is represented by Mr. McClure, who is present,  
9 and appearing by Zoom is -- I presume you are Mr.  
10 Robben.

11 MR. ROBBEN: That's right.

12 THE COURT: All right, and you are not  
13 represented. Is that correct?

14 MR. ROBBEN: That is correct, yes, [inaudible].

15 THE COURT: All right. Mr. Robben, you filed a  
16 motion, uh, to have this case and all of the  
17 underlying motions decided on the case -- the -- your  
18 petition, uh, the -- all of the numerous motions be  
19 decided without oral argument. Is that correct?

20 MR. ROBBEN: I did put that in there and I also  
21 filed a motion to strike these, uh, motions to  
22 dismiss, motion for summary judgment and the  
23 objections [inaudible].

24 THE COURT: Well, that's not the question I asked  
25 you. You -- do you recall filing the motion to have

1 this case decided without oral argument?

2 MR. ROBBEN: I didn't request an oral argument  
3 and neither did the -- did the, uh, other party.

4 THE COURT: I can't hear you. You're going to --  
5 if you've got a microphone, you're going to have to  
6 speak into it.

7 MR. ROBBEN: I am speaking into it.

8 THE COURT: Well, speak louder.

9 MR. ROBBEN: The other party didn't request a  
10 hearing and neither did I, sir.

11 THE COURT: All right. Mr. McClure?

12 MR. MCCLURE: Yes, Your Honor.

13 THE COURT: Do you have any objection to this  
14 court proceeding on this case without oral argument?

15 MR. MCCLURE: Your Honor, I have no objection to  
16 the -- to this court deciding the motion -- the trust  
17 motion for summary judgment and the estate's motion to  
18 dismiss without oral argument.

19 We would object, and we filed the limited  
20 objection, stating we would object --

21 THE COURT: I -- I -- I am aware of that.

22 MR. MCCLURE: We would object to then this court  
23 deciding the underlying petition as both the trust and  
24 the estate have objected and denied all the  
25 allegations and claims for relief therein making it

1 potentially a contested matter.

2 So we would object to that. We would object to  
3 the court deciding the motion to strike, because there  
4 were new filings filed by Mr. Robben this week that we  
5 still have the opportunity to oppose.

6 But as to the dispositive motions, we have no  
7 objections to this court deciding those on the  
8 briefing.

9 THE COURT: All right. The first motion then that  
10 the court is going to address is the motion to dismiss  
11 the allegations against the state. That motion is  
12 granted and the reason is, it's [inaudible].

13 Uh, it's already been decided. It's already gone  
14 to the Supreme Court on appeal. It's been affirmed.  
15 The petitioner in that case was found by this court or  
16 by the ninth judicial district, to have no standing  
17 because Mr. Robben was not an interested party.

18 And like I say, that was affirmed by the Supreme  
19 Court, so the petition to dismiss is granted.  
20 Regarding the motion for summary judgment, well, let's  
21 -- let's do this. Let's do this another way.

22 MR. ROBBEN: Never even had my motion to strike  
23 considered. This is ridiculous. You're -- you're  
24 deciding this without considering my motion to  
25 [inaudible] their motion to dismiss because their

1 motion to dismiss was not filed properly.

2 You're not -- you're not even reading the  
3 motions. You don't know what's going on. This is  
4 crazy.

5 THE COURT: Well then the Court's [inaudible]  
6 judicial notice that the Supreme Court of the state of  
7 Nevada affirmed the finding by the court, by the ninth  
8 judicial court --

9 MR. ROBBEN: Yeah, that -- that's because I  
10 wasn't party, sir.

11 THE COURT: Don't interrupt me, Mr. Robben.

12 MR. ROBBEN: [inaudible]

13 THE COURT: That you were not an interested  
14 person in the will and that -- that issue is gone.  
15 It's already been decided and --

16 MR. ROBBEN: It wasn't decided, because I wasn't  
17 a party.

18 THE COURT: Don't interrupt me, Mr. Robben.

19 MR. ROBBEN: You said I wasn't an interested  
20 party.

21 THE COURT: Actually what this case is, with the  
22 foot high paper in it, uh, this is actually a -- a  
23 case of sound of fury signifying nothing.

24 Before -- before the petitioner in this case has  
25 any standing whatsoever to contest a will, which has

1 already been decided, or in this case the trust, you  
2 first have to -- the court first has to determine that  
3 you are an interested person pursuant to NRS 132.185  
4 which states that one whose right or interest under an  
5 estate or trust may be materially affected by the  
6 decision of a fiduciary or decision of the court.

7 If a party is an interested party, they may  
8 participate in a probate action. So --

9 MR. ROBBEN: That's where the Blackfoot case  
10 comes in, but you obviously didn't read anything and  
11 you're carrying on with the motion. You never even  
12 decided my motion to strike, sir. This is a kangaroo  
13 court. Um, I'm just going to go ahead and file my  
14 appeal.

15 THE COURT: Okay. Mr. Robbins -- Mr. Robbins  
16 don't interrupt this court again or I will tell you  
17 that you have nothing whatsoever to say, which in this  
18 case, since we're not having an argument, you don't  
19 have anything to say.

20 We're deciding this --

21 MR. ROBBEN: I object to you even -- I filed the  
22 motion to --

23 THE COURT: Okay.

24 MR. ROBBEN: -- you're not -- you're not  
25 considering my motions that I filed. You went right to

1     their motion to strike or to dismiss my -- my uh, uh,  
2     complaint without my motion to strike, because their  
3     complaint was not filed.

4             You -- you haven't read anything, sir, so, uh,  
5     it's a kangaroo court and, uh, as far as the Supreme  
6     Court of Nevada, it's not res judicata because I was  
7     never a party. They said I had to file the way I filed  
8     and if you read the Blackfoot case from California, I  
9     am an interested party.

10            So we'll go ahead and let the Nevada Supreme  
11     Court hear this and create that caselaw and that's why  
12     I filed everything I filed, so I've, uh, made my  
13     objections and this is just a kangaroo court, sir.

14            You haven't heard anything or read anything or  
15     discussed my motion to strike their motion to dismiss,  
16     so you went right into their motion to dismiss when it  
17     wasn't even filed properly.

18            So I -- it's just a kangaroo court. You didn't  
19     read anything and they didn't ask for this hearing. I  
20     objected to this hearing and it's just clear that you  
21     didn't read anything, sir. So, um, I'm going to appeal  
22     the whole thing.

23            And I never consented to a retiring judge anyhow.

24            THE COURT: I've heard enough, Mr. Robbins.

25            MR. ROBBEN: [inaudible] judicial [inaudible].

1           THE COURT: Turn his microphone or make him not  
2 speak over the speaker.

3           MALE 1: [inaudible]

4           THE COURT: This court finds regarding the trust  
5 that Mr. Robbins is not an interested person pursuant  
6 to Nevada law. He has no standing to object to the  
7 terms of the trust. He is not mentioned as a  
8 beneficiary in the trust.

9           So that's what makes him a non-interested person.  
10 Mr. Robbins has had months to produce evidence showing  
11 that he is an interested person. One of the ways that  
12 he could have done that was by showing that there was  
13 a previous trust in which he was a beneficiary.

14           He has not done that. There has been no evidence  
15 that he has been the beneficiary in a previous trust.  
16 In numerous motions, Mr. Robbins has claimed that he  
17 has evidence, but that has never been produced.

18           He is under the mistaken belief that if he simply  
19 declares unilaterally that there was fraud, that there  
20 was undue influence, that there was lack of capacity  
21 or any other -- any other fact that might negate the  
22 terms of the current trust that is before the court  
23 today to be sure.

24           He has alleged that he has witnesses that can  
25 testify to the terms of a previous will and/or I'm

1     sorry, will and trust in which he was a beneficiary.  
2     Those have not been produced in any evidentiary form  
3     other than by a mere allegation.

4             He is in the mistaken belief, pursuant to a  
5     California case cited as Barefoot, that all that is  
6     necessary is that someone say, in this case Mr.  
7     Robbens, that there was fraud, there was undue  
8     influence and therefore the -- the terms of the -- the  
9     trust are not valid.

10            But again, there is absolutely no evidence  
11     produced by Mr. Robbens to back up his claims. He does  
12     have exhibits to his petition, none of which establish  
13     that he is a beneficiary in any previous trust.

14            The case that he does cite, the Barefoot v.  
15     Jennings, I believe it is, that once he brings that up  
16     then the burden shifts to, in this case, the -- the  
17     trust with an almost impossible burden of clear and  
18     convincing to negate the allegations by, in this case,  
19     the petitioner.

20            Mr. Robbens misunderstands the California case,  
21     which is not binding on this court in any -- in any  
22     event. The Barefoot court said that, uh, essentially  
23     do not misread their opinion to be that anyone can  
24     oppose a will or a trust simply by saying that they're  
25     an interested party.



1           They used the terms that a well-pleaded  
2   allegations showing that they have an interest in a  
3   trust, which requires some modicum of proof from a  
4   petitioner.

5           Again, for the third time, Mr. Robbins had -- has  
6   produced no admissible competent evidence that he is a  
7   beneficiary to any of the -- the wills or estates or  
8   trusts in this case.

9           The court has found that Mr. Robbins is not an  
10   interested party in this case, which means that all of  
11   the -- all of the motions, all of the filings that he  
12   has made, are of no value to this court because Mr.  
13   Robbins has no standing to contest the will.

14          By extension, the motion for summary judgment is  
15   also granted even though the court has found that the  
16   original petition is -- does not concur standing or an  
17   interested person to Mr. Robbins.

18          And Mr. McClure, you're going to prepare the  
19   order.

20          MR. MCCLURE:   Very well, Your Honor. We'll --  
21   we'll --

22          THE COURT:   Do you have any questions?

23          MR. MCCLURE:   Your Honor, just to clarify that  
24   given the court's granting of the --

25          THE COURT:   Wait. Mr. McClure, speak up.

1 MR. MCCLURE: I apologize, Your Honor. Given the  
2 court's granting of the motion to dismiss and the  
3 motion for summary judgment, the order will reflect  
4 that all under -- other outstanding motion practice is  
5 denied as being moot, is that correct?

6 THE COURT: They are denied because this court  
7 has found that Mr. Robbins has no standing and so the  
8 -- the motions have -- have no legal validity.

9 MR. MCCLURE: Thank you, Your Honor. We will  
10 prepare the order, uh, in accordance with local rule.

11 THE COURT: Wait just a minute. You can turn Mr.  
12 Robbins back on if he wants to say anything. If he has  
13 any --

14 MR. MCCLURE: Your Honor, we would --

15 MR. ROBBEN: I'll be filing my notice of appeal,  
16 because [inaudible] their -- their -- my motion to  
17 strike their motion for summary judgment, motion to  
18 dismiss wasn't even considered in this.

19 That argued standing and I've got a great case,  
20 so we're going to go ahead and let the Supreme Court  
21 hear this and, uh, unconstitutional issues will, uh,  
22 take it all the way to the U.S. Supreme Court and I  
23 didn't consent to you anyhow.

24 You're a retired judge with no ethics. Very  
25 unethical. Probably a child molester like the rest.

1 THE COURT: Well, Mr. Robbens, do what you think  
2 you need to do.

3 MR. MCCLURE: Your Honor, if I may, before we --  
4 before we recess this proceeding?

5 THE COURT: Say it again?

6 MR. MCCLURE: If I may, before we recess this  
7 proceeding, in light of the history of this case, the  
8 filings in this case and the conduct in this case, the  
9 trust and the estate -- in light of this case, Your  
10 Honor, the filing history and the events of this  
11 hearing, the estate and the trust would like to make  
12 an oral motion to have Mr. Robben deemed a vexatious  
13 litigant pursuant to NRS 155.165.

14 THE COURT: What?

15 MR. MCCLURE: To have Mr. Robben deemed a  
16 vexatious litigant pursuant to NRS 155.165. The  
17 purpose of that is replete -- or I'm sorry, Judge.

18 The basis for that is replete through the filings  
19 of this case and through the conduct at the hearings  
20 in this case and is necessary because the filing of  
21 Mr. -- or the finding that Mr. Robben is a vexatious  
22 litigant will prevent him from continually serially  
23 filing additional and new cases which work to the  
24 detriment of the actual beneficiaries of this trust,  
25 who then must see the trust be funded to pay for legal

1 defense.

2 We feel it is necessary to protect the trust and  
3 estate. It is a necessary basis upon which we may  
4 request our attorney's fees and costs and it is also  
5 necessary to protect the trust from repetitive and  
6 serial filings.

7 And we request the court make that finding as  
8 part of this order in the conclusion of this case.

9 THE COURT: Well, it appears Mr. Robbins has  
10 left, so the order is granted.

11 MR. MCCLURE: Thank you, Your Honor.

12 THE COURT: Or motion, not your order. Court's in  
13 recess.

14 MALE 2: [inaudible]

15 BAILIFF: All rise.

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3 I, Chris Naaden, a transcriber, hereby declare  
4 under penalty of perjury that to the best of my  
5 ability the above 13 pages contain a full, true and  
6 correct transcription of the tape-recording that I  
7 received regarding the event listed on the caption on  
8 page 1.

9

10 I further declare that I have no interest in the  
11 event of the action.

12

13 July 11, 2023

14 Chris Naaden

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20 (Hearing in re: Robben v. The Estate of Thomas J.  
21 Harris & Thomas J. Harris Trust, 1-6-23)

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## 1 HEALTH INFORMATION PRIVACY &amp; SECURITY: CAUTIONARY NOTICE

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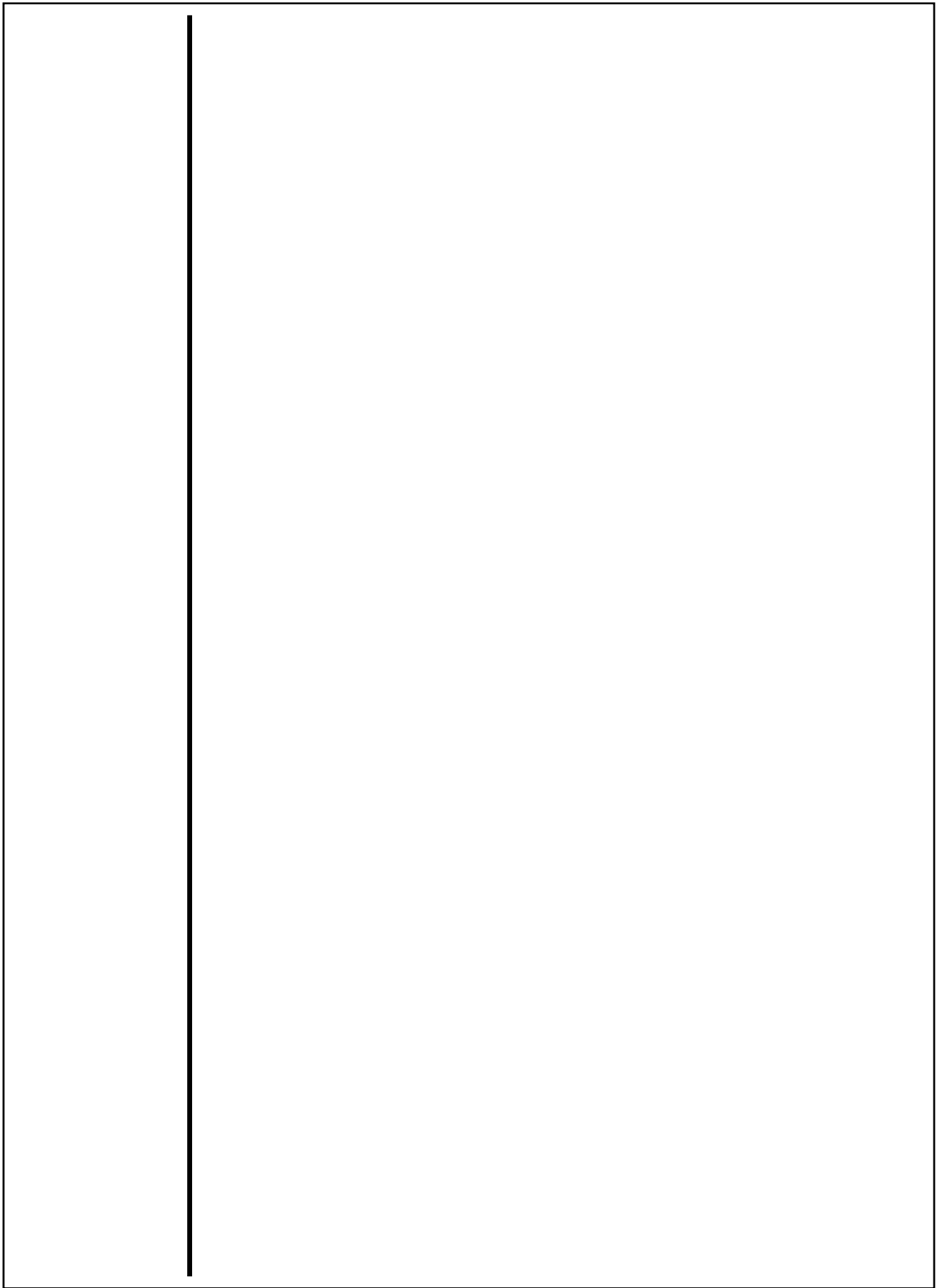


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Wallace & Millsap  
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

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DOBBIE R. WILLIAMS  
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Case No.: 22-PB-00119

JAN 10 2023

Dept. No.: II

Douglas County  
District Court Clerk

The undersigned affirms this document  
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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](mailto:mcclure@wallacemillsap.com)


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

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**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

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

LIST OF EXHIBITS

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



# Exhibit 1

# Exhibit 1

620

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

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8 TODD ROBBEN,

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Petitioner;

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vs.

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

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Respondents.

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

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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 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

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

3 **IV. The Court finds Petitioner is a vexatious litigant pursuant to NRS**  
4 **155.165.**

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

19 Similarly, the Petitioner sought to invalidate the Trust in this case based on  
20 allegations of undue influence. In addition, Petitioner made various claims of fraud,  
21 theft, embezzlement and mismanagement of the Trust. Petitioner never  
22 substantiated any of his allegations related to the Trust with any admissible  
23 evidence. In fact, Petitioner could not produce evidence to show he is an interested  
24 person in the Trust with standing to even levy the allegations he made related to the  
25 Trust. Therefore, the Court finds the Petitioner's tactic of forcing the Trust to expend  
26 significant resources responding to serial filings devoid of evidence, without  
27 preliminarily being able to establish standing to litigate any aspect of the Trust, to  
28 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.<sup>1</sup> 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 <sup>1</sup> 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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FEB 03 2023

Douglas County  
District Court Clerk

FILED

2023 FEB -3 PM 2:40

BOBBIE R. WILLIAMS  
CLERK

BY *Carla* 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

RECEIVED

FEB 03 2023

Douglas County  
District Court Clerk

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

2023 FEB -3 PM 2:40

INDICATE FULL CAPTION:

COBBIE R. WILLIAMS  
CLERK

TODD ROBBEN,

No. 2022-PB-0019 W. Williams 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.

Revised December 2015

632

RA - 815

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.

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**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.

635



**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.

636

**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

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RA - 821

**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

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**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:

640

(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

642

RA - 825

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Case No.: 22-PB-00119

FEB 08 2023

Dept. No.: II

Douglas County  
District Court Clerk

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2023 FEB -8 AM 11:57

DUDDIE 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.<sup>1</sup> However, the Court now holds, finds, and concludes  
26 Petitioner is barred as a vexatious litigant from filing any claims, petitions, motions,  
27

28 <sup>1</sup> 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.

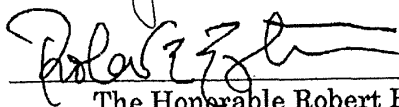
1 pleadings, complaints, or papers with the Court related to The Thomas J. Harris  
2 Trust, the Trustee of the Trust, the Will of Thomas J. Harris, the Estate of Thomas  
3 J. Harris, the Personal Representative of the Estate of Thomas J. Harris, and the  
4 Personal Representative's and Trust's Legal 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 8<sup>th</sup> day of February 2023.

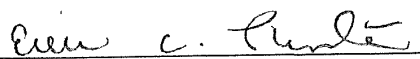
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22 The Honorable Robert Estes  
23  
24  
25  
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27  
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1 Copies served by mail on February 8<sup>th</sup>, 2023, addressed to:

2 Todd Robben  
3 P.O. Box 4251  
4 Sonora, California 95370

5 F. McClure Wallace, Esq.  
6 510 West Plumb Lane  
7 Reno, Nevada 89509

8   
9 Erin C. Plante

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

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FEB 16 2023

Douglas County  
District Court Clerk

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WILLIAMS  
F. SHOEMAKER

Case No.: 22-PB-00119

Dept. No.: II

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.

NOTICE OF ENTRY OF ORDER

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

AFFIRMATION

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

DATED this 13<sup>th</sup> day of February 2023.

WALLACE & MILLSAP



F. McClure Wallace, Esq., NSB 10264  
Patrick R. Millsap, Esq., NSB 12043  
510 W. Plumb Lane, Suite A  
Reno, Nevada 89509  
Ph: (775) 683-9599  
mcclure@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 13<sup>th</sup> day of February 2023.

  
Caroline Carter

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

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LIST OF EXHIBITS

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

# Exhibit 1

# Exhibit 1

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Case No.: 22-PB-00119

FEB 08 2023

Dept. No.: II

Douglas County  
District Court Clerk

2023 FEB -8 AM 11:57

BOLIVIA 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.

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HARRIS and THE THOMAS J.  
HARRIS TRUST,

Respondents.

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

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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 1. Regardless of when a transfer instrument is made, to the extent  
18 the court finds that a transfer was the product of fraud, duress or  
19 undue influence, the transfer is void and each transferee who is  
20 found responsible for the fraud, duress or undue influence shall  
21 bear the costs of the proceedings, including, without limitation,  
22 reasonable attorney's fees.
- 23 2. Except as otherwise provided in subsection 4 and NRS 155.0975,  
24 a transfer is presumed to be void if the transfer is to a transferee  
25 who is:
  - 26 (a) The person who drafted the transfer instrument;
  - 27 (b) A caregiver of the transferor who is a dependent adult;
  - 28 (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.<sup>1</sup> However, the Court now holds, finds, and concludes  
26 Petitioner is barred as a vexatious litigant from filing any claims, petitions, motions,

27  
28 <sup>1</sup> 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.

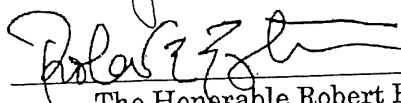
1 pleadings, complaints, or papers with the Court related to The Thomas J. Harris  
2 Trust, the Trustee of the Trust, the Will of Thomas J. Harris, the Estate of Thomas  
3 J. Harris, the Personal Representative of the Estate of Thomas J. Harris, and the  
4 Personal Representative's and Trust's Legal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

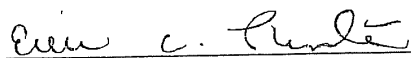
18  
19 Dated this 8<sup>th</sup> day of February 2023.

20   
21 The Honorable Robert Estes

1 Copies served by mail on February 8<sup>th</sup>, 2023, addressed to:

2 Todd Robben  
3 P.O. Box 4251  
4 Sonora, California 95370

5 F. McClure Wallace, Esq.  
6 510 West Plumb Lane  
7 Reno, Nevada 89509

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9 Erin C. Plante

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1 Your Name: Todd Robben  
2 Your Address: PO Box 4251  
3 City, State, Zip: Sonora, CA 95370  
4 Phone: 209-540-7713  
5 Email: \_\_\_\_\_

6 CASE NO. 2022-PB-00119  
7 DEPT. NO. 2

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DEC 28 2022

Douglas County  
District Court Clerk

FILED

2022 DEC 28 PM 2:39

BOBBIE R. WILLIAMS  
CLERK

BY Chalun DEPUTY

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

9 IN AND FOR THE COUNTY OF DOUGLAS

10 TODD ROBBER

11 \_\_\_\_\_,  
12 Plaintiff/Petitioner,

13 vs.

14 THOMAS J. HARRIS TRUST

15 \_\_\_\_\_,  
16 Defendant/Respondent.

REQUEST TO APPEAR REMOTELY VIA ZOOM  
FOR COURT APPEARANCE/HEARING

HEARING DATE: 01-06-2023

TIME OF HEARING: 9:00am

Todd Robben

17 (☐ check one) ☒ Plaintiff / ☐ Defendant (your name) \_\_\_\_\_

18 hereby submits their request to appear remotely via Zoom for the Court hearing currently scheduled for the (day)  
19 06 day of (month) January, 20 23.

20 I acknowledge that it is my responsibility to connect to Zoom at the date and time of the hearing  
21 using the instructions provided on the Douglas County District Court, Department I website. I also acknowledge  
22 that it is my responsibility to pre-test my audiovisual connection and camera equipment prior to the hearing and  
23 familiarize myself with the mute and camera functions of Zoom. If I fail to connect and appear at the time of my  
24 hearing, I acknowledge that it will be considered a failure to appear.

25 /s/ Todd Robben

26 Your Signature

27  
28 REQUEST TO APPEAR REMOTELY

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CERTIFICATE OF MAILING

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 December 28, 2022, 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 December 28, 2022

Submitted By: /s/ Stephen James Robben

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Submitted By: (your signature) \_\_\_\_\_

REQUEST TO APPEAR REMOTELY