Case No. 87572

IN THE SUPREME COURT OF NEVADA

In the MATTER OF THE JORDAN DANA FRASIER FAMILY TRUST

AMY FRASIER WILSON,

Appellant,

v.

U.S. BANK WEALTH MANAGEMENT; BRADLEY L. FRASIER, M.D.; NORI FRASIER; STANLEY H. BROWN, JR., Special Administrator, ESTATE OF DINNY FRASIER; CHAPMAN UNIVERSITY; TEMPLE BETH SHOLOM OF ORANGE COUNTY, INC.; IRVINE COMMUNITY ALLIANCE FUND; AMERICAN SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS; ST. JUDE CHILDREN'S RESEARCH HOSPITAL, INC.; SARA CADY; DANIELLE FRASIER AROESTE; ELIOT CADY; ELISSA CADY; and BRENDAN FRASIER,

Respondents.

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Clerk of Supreme Court

APPEAL
from the Second Judicial District Court, Washoe County
The Honorable Tammy Riggs, District Judge
District Court Case No. PR16-00128

APPELLANT'S OPENING BRIEF

Alexander G. LeVeque (SBN 11183)
Roberto M. Campos (SBN 15189)
SOLOMON DWIGGINS FREER & STEADMAN, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485
aleveque@sdfnvlaw.com
rcampos@sdfnvlaw.com

Attorneys for Appellant

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons or entities as described in NRAP 26.1(a), and must be disclosed:

1. Appellant, Amy Wilson Frasier, is an individual.

2. Alexander G. LeVeque and Roberto M. Campos, of the law firm Solomon Dwiggins Freer & Steadman, Ltd., currently represent Appellant in the District Court and have appeared before this Court.

3. Mark G. Simons, of the law firm Simons Hall Johnston PC, represented Appellant in the District Court and is believed to have appeared before this Court.

4. Kerry St. Clair Doyle, of the law firm Doyle Law Office, represented Appellant in Case No. 77981, and has appeared, before this Court.

5. Aaron B. Fricke, of the law firm Fricke Law Ltd., represented Appellant in the District Court and may have appeared before this Court.

6. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated this 22nd day of April, 2024.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Alexander G. LeVeque

Alexander G. LeVeque, Esq. (SBN 11183)
Roberto M. Campos, Esq. (SBN 15189)

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JURISDICTIONAL STATEMENT

The appeal arises from the *Order Granting in Part the Joint Petition to Confirm Settlement Agreement* entered on October 4, 2023 ("10-4 Order"), and the *Order Granting Instruction* entered on October 16, 2023 ("10-16 Order," and collectively with the 10-4 Order, "Orders"), by the Second Judicial District Court, Department 3, the Honorable Tammy Riggs, District Court Judge. APP939-45, 950-54. A Notice of Appeal, and entry of the Orders, was also filed on November 2, 2023. APP955.

The 10-4 Order is a final order as it finds and orders *inter alia* approval over a part of a settlement agreement but denies approval of the part of the agreement modifying a trust instrument to enable outright distribution to the beneficiary for which a trust was to be formed. As such, the 10-4 Order is appealable under NRAP 3A(b)(1) as it constitutes a "final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." The 10-4 Order is also appealable under NRS § 155.190(1), including subsections (l), (m) and (n) thereunder. The 10-4 Order is further appealable under NRS § 164.030, as an order that is final and conclusive as to all matters thereby determined and binding *in rem* upon the trust estate and upon the interests of all beneficiaries. A timely notice of appeal on the 10-4 Order was filed on November 2, 2023. NRAP 4(a)(1). APP955.

The 10-16 Order is also a final order as it finds and orders *inter alia* instructions to a trustee as the distribution of certain personal property held by a trust. As such, the 10-16 Order is appealable under NRAP 3A(b)(1) as it constitutes a "final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." The 10-16 Order is also appealable under NRS § 155.190(1), including subsections (h), (l), and (m) thereunder. The 10-16 Order is further appealable under NRS § 164.030, as an order that is final and conclusive as to all matters thereby determined and binding *in rem* upon the trust estate and upon the interests of all beneficiaries. A timely notice of appeal on the 10-16 Order was filed on November 2, 2023. NRAP 4(a)(1). APP955.

ROUTING STATEMENT

The appeal arises from the administration of a trust where the corpus has a value that is less than $5,430,000.00. The matter therefore is presumptively assigned to the Court of Appeals. *See* NRAP 17(b)(14). Appellant, however, requests that the Supreme Court hear the matter because the question of whether or not Nevada law permits modification of an irrevocable trust containing a spendthrift provision, and if so under what conditions, is both an issue of first impression and of public policy importance in Nevada.

Moreover, this Court has previously heard an appeal in this matter – Nevada Supreme Court Case No. 77981 – which resulted in a published decision: *Matter of the Jordan Dana Frasier Family Trust*, 136 Nev. 486, 471 P.3d 742 (2020). APP264-69.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred by ruling that Nevada law precludes it from ever modifying a spendthrift provision in an irrevocable trust.

2. Whether the District Court abused its discretion in declining to approve a settlement agreement to modify an irrevocable trust share when circumstances had changed (including such share's sole vested beneficiary's status), in ways unanticipated by the settlors when executing the trust instrument decades ago.

3. Whether the District Court erred in declining to approve a settlement agreement to modify an irrevocable trust (split into three shares), because the beneficiaries of two shares of such trust, which were not diminished or otherwise affected by such agreement, were not parties to the agreement.

4. Whether the District Court erred by deeming personal property, appointed under a survivor's trust, as belonging to an exemption trust (both trusts arising under a family trust), and if so, whether the District Court erred in approving a settlement of the survivor's trust under which a party thereto had bargained for such property but would not now be receiving it.

STATEMENT OF THE CASE

This case is a dispute mainly among three adult children over their parents' family trust formed long ago and the subsequent trusts arising thereunder, and amendments thereto. The dispute stretches back to 2016 when the matter originated in the District Court of Washoe County, Nevada, which then assumed jurisdiction over the trusts. The dispute centered on the surviving parent's capacity and free will to execute various amendments to her survivor's trust. In 2019, the oldest child, Amy Frasier Wilson ("Amy" or "Appellant") appealed the dispute to this Court and obtained in 2020 a remand for an evidentiary hearing on the issue of such capacity.

In 2023, before such hearing, the estate of the mother (deceased in interim), and the vested beneficiaries under the competing amendments to the survivor's trust, *i.e.*, Appellant and certain charities, entered into a settlement, which they petitioned for court approval. Appellant now appeals the District Court's declination to approve the settlement portion that would have modified a family trust instrument to allow her to receive her equal share of a children's trust (including exemption trust) not subject to a spendthrift restriction on her share, but outright, just like her siblings will receive their shares, and thereby terminating the children's trust (and years of litigation). Indeed, the purpose of the restriction inserted decades ago into family trust amendments, has since faded, but now risks contravening the parents' main purpose to leave to Appellant and her siblings the children's trust in equal shares.

Appellant also appeals the District Court's erroneous allocation among the trusts of personal property for which she materially bargained as part of the settlement, but would not now be receiving under the District Court's order.

STATEMENT OF FACTS

A. PARENTS FORM THE FAMILY TRUST TO, UPON THEIR DEATHS, DISTRIBUTE AN EQUAL SHARE OUTRIGHT, FROM CHILDREN'S SUB-TRUST (INCLUDING EXEMPTION TRUST), TO EACH OF AMY, BRAD, AND NORI, UPON EACH CHILD REACHING 35 YEARS OLD, AND THEREBY TERMINATING THE CHILDREN'S AND EXEMPTION SUB-TRUSTS.

In 1980, Jordan ("Joe") and Dinny ("Dinny") Frasier as co-settlors formed the Jordan Dana Frasier Family Trust, a revocable trust ("Family Trust"). APP013, 033. Under its terms, upon the death of Joe or Dinny, the Family Trust was to divide essentially into: (i) an irrevocable trust for the decedent settlor's community property share and any of his or her separate property ("Exemption Trust"); and (ii) a revocable trust for the survivor settlor's community property share and any of his or her separate property ("Survivor's Trust"). APP014-15 (§ B(1)(a-b)). On the survivor's death, the Survivor's Trust would become irrevocable and any of its unappointed property would go to the Exemption Trust, which would be divided into "equal shares" and fully distributed outright to Joe and Dinny's three children, *i.e.*, (i) Amy, (ii) Bradley Frasier, M.D. ("Brad"), and (iii) Nori Frasier ("Nori"), at each child's attainment of 35 years of age ("Provision for Equal & Outright Distribution by Age 35"), thereby then terminating the Exemption Trust. APP003 (¶ 18), APP019

(§ (C)(1)), 020 (¶ 4).

The Family Trust was amended in 1984 and 1987, though not affecting the Provision for Equal & Outright Distribution by Age 35. APP042 (¶ 4), 051, 053.

B. AMY DEVELOPS PHYSICAL LIMITATIONS; PARENTS AMEND THE FAMILY TRUST, TO HOLD AMY'S SHARE BEYOND HER TURNING 35 YEARS OF AGE.

In the 1990s, Amy developed physical limitations (she was diagnosed with prolactinoma, a pituitary tumor). APP06 (¶ 7). On September 21, 1999, Joe and Dinny amended the Family Trust, via its Third Amendment, maintaining the Provision for Equal & Outright Distribution by Age 35 as to Brad and Nori, but not quite to Amy as explained below. APP067 (¶¶ 6-7), 096. The Third Amendment did maintain that, upon the survivor's death, the "trustee shall divide the remaining trust estate," *i.e.*, the "Children's Trust" holding assets of the Exemption Trust and any other unappointed assets of the Survivor's Trust, "into as many *equal shares* as there are children of settlors then living," with "[e]ach share" to be administered "in a separate trust." (Italics added.) APP064 (§ C), 065-66 (¶ 3).

But the Third Amendment, and the final and Fifth Amendment to the Family Trust executed months later on June 7, 2000,[1] provided that the equal share of the Children's Trust to Amy ("Amy's Trust Share") would, not go to her outright, but be held in trust for her, then age 45, due to her condition, need for medical care, and

[1] The Fourth Amendment was executed on March 15, 2000. APP098-99.

to not diminish her ability to obtain any public assistance ("Provision for Amy"):

> 7. The trustee desires that the fund set aside for Amy [] shall last her lifetime so that the trustee will not rapidly dissipate the corpus of this share by distributing the principal and interest of the trust to her. It is the Settlors' desire that the trustee be mindful of the fact that *Amy []* ***has physical limitations*** that prevent her from obtaining gainful employment, *and may have certain spendthrift disabilities, although they do not amount to any legal disability, or a sufficient disability at this time to qualify for public programs*. *In the event that she does qualify for public assistance*, the trustee shall have the absolute discretion whether or not to distribute income or principal to her at the trustee's unfettered discretion. In making the foregoing decisions, Amy [] shall not participate as a trustee. The trustee shall have unlimited authority to expend funds *for her medical care, any therapy that she should ever need, any medical treatment, and other related matters* in the trustee's discretion. The settlors are mindful of the subjective nature of determinations required, and the burden on the trustee, and the anguish that the recipient may have in withholding funds, and the difficulty of making an absolutely correct and perfect decision in making the trust funds last over her lifetime which is not predictable, but has the confidence in the trustee, that the trustee from time to time will try to exercise such good faith and judgment as the trustee deems to be in the interest of Amy [], and that the settlors would have made had they been in the position to make such a decision. ***Amy [] is the primary beneficiary of her trust and the settlors' hope that she will not need public assistance, public benefits, but in the event that she does qualify for such benefits, these trust funds are intended to supplement and not to diminish the benefits these programs provide***, so the trustee is authorized to utilize trust funds for therapies, supplies, recreation, special food, travel, insurance, transportation, and other items in the trustee's discretion that do not, or are not provided for public benefits *that would not, to the extent feasible and possible, diminish the beneficiary's right to public benefits and public programs*. The trustee is further authorized to buy a suitable residence and keep such title in the name of the trust for the benefit of Amy

> [] and to pay such expenses. The trustee is to be mindful that it is *the settlors desire that this trust fund be preserved primarily for the benefit of Amy [], and not for any remainder beneficiaries*. With that in mind, notwithstanding anything else to the contrary, as part of the share that Amy[] shall receive … she shall receive … the settlors' primary residence ….
>
> *The primary beneficiary of this trust is Amy [], and she is to be preferred to more remote beneficiaries*. Upon Amy[]'s death, the proceeds of this trust, *if any*, shall be distributed to the settlors' then living grand children and great grand children, if any, or the further remote issue, with each such then living grandchild, great grandchild, receiving one (l) equal share of the proceeds.[2] [APP107-09 (¶ 7) (emphases added), 115.]

C. TIME PASSES, JOE DIES, AND DINNY AMENDS THE SURVIVOR'S TRUST.

Decades passed. In 2010, the Affordable Care Act ("ACA") became law, facilitating Amy's access to medical insurance. Later, on October 22, 2014, Joe died. APP002 (¶ 8). On May 29, 2015, Dinny executed the First Amendment and Restatement to the Survivor's Trust, naming herself and Premier Trust, Inc. ("Premier") as Co-Trustees, and Amy as successor trustee. APP446, 450 (§ 4), 515. The Restatement also disinherited Brad and Nori (and her descendants). APP447 (§ 5(c)). Instead, it names, upon Dinny's death, Amy as sole beneficiary of the Survivor's Trust's residue, to be held in a "Family Sentry Trust" arising thereunder, a "fully discretionary spendthrift trust," and contains a "Spendthrift Protection"

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[2] This language is quoted is from the Fifth Amendment to the Family Trust, a near duplicate to the same provision in the Third Amendment thereto.

section. APP466-67, 506 (§ 6), 512 (¶ h).

On March 2, 2016, Dinny and Premier petitioned the Second Judicial District Court to: (i) confirm them as co-trustees of the Family Trust and of trusts thereunder including the Exemption Trust and the Survivor's Trust; and (ii) guide them on a dispute over whether money provided to Brad from the Family Trust for the purchase of a medical building was a gift, loan, or equity investment. APP001, 006, 265.

On June 24, 2016, Dinny executed the Second Amendment to the Survivor's Trust, disinheriting Brad's descendants, leaving Amy as sole beneficiary. APP520. On August 29, 2016, the District Court assumed jurisdiction of the trusts pursuant to NRS § 164.010, and confirmed Dinny and Premier as trustees. APP116-121.

D. DINNY'S CAPACITY AND SUSCEPTIBILITY TO UNDUE INFLUENCE BECOME ISSUES, YET MORE AMENDMENTS ARE MADE TO THE SURVIVOR'S TRUST.

On November 29, 2016, Premier sought court instructions on how to handle Dinny's children's allegations because "each of the children has, at one time or another, questioned Dinny's competency." APP122, 125 (¶ 25). The petition noted, on information and belief, "in late July [2016], Dinny fell in her home, fractured her leg/hip, hit her head in the fall and lost consciousness." APP126 (¶ 38). It also noted that on November 3, 2016, "Nori wrote to Nicole Shrive [Premier] and informed her that Dinny 'will have a new attorney who will take over the Will and Trust.'" APP128 (¶ 61).

On January 27, 2017, Premier, Dinny (nearly 88 years old), and her children,

reached settlement wherein Brad would get the medical building, and Amy and Nori would get other properties, and upon Dinny's death, equalization payments (to offset the medical building's value) from the Survivor's Trust ("2017 Settlement"). APP144-47. The settlement "was contingent … only on Nevada probate court approval with an implied condition precedent of confirmation of Dinny's capacity." APP134 (lines 1-2, internal quotations omitted). On April 14, 2017, Dinny, via her new counsel, including Barnet Resnick, Esq., moved to approve and enforce the 2017 Settlement ("2017 Motion"). APP133.

On April 27, 2017, the Third Amendment to the Survivor's Trust was executed, which now disinherited Amy, and diverted the Survivor's Trust's residue after Dinny's death as follows: 1/3 to the Irvine Community Alliance Fund; 1/3 to Chapman University; 1/9 to the American Society for the Prevention of Cruelty to Animals (ASPCA); 1/9 to Temple Beth Sholom of Orange County, Inc.; and 1/9 to St. Jude Children's Research Hospital (collectively, "Charities"). APP530-31, 548.

On May 31, 2017, Premier filed another supplemental petition for instructions noting "extreme[] concern[] about Dinny's welfare and multiple strange events that have occurred in the past seven months involving both Dinny personally and her finances." APP148, 150 (¶ 20). Moreover, though Dinny was then co-trustee, "Mr. Resnick now indicates that Dinny [] refuses to speak with [co-Trustee] Premier[] or trust counsel at all, even if Mr. Resnick is present." APP150 (¶ 19). The petition

detailed more concerns, *e.g.*, "Dinny's signature on this check [for $10,000 retaining Mr. Resnick on November 25, 2016] appears to be forged," and when specifically asked on January 6, 2017, "if Barry Resnick was her attorney and she [Dinny] replied 'No.'" APP153-54 (¶¶ 41-45). The petition further notes that when asked if she recalled writing him a $10,000 retainer check, "Dinny responded that she did not write the check." APP154 (¶ 47).[3]

E. THE DISTRICT COURT APPROVES MODIFICATION OF THE SURVIVOR'S TRUST ALLOWING DISTRIBUTIONS TO BE MADE OUTRIGHT TO AMY.

On July 6, 2017, the District Court entered an order noting its "concern[] about [Dinny]'s cognition and capacity, and the external influences that have been excluded from and introduced into [Dinny]'s life." APP172. Nonetheless, it granted the 2017 Motion and entered an Order approving and enforcing the 2017 Settlement. APP174. Thus, the District Court ordered that the "Settlement Agreement shall therefore be enforced as written, subject only to the clarifications that all equalization payments shall occur upon Dinny Frasier's death, and that Amy [] shall receive the Mission Viejo property and her equalizing payment(s) *outright and free of trust*." APP178 (italics added). On July 6, 2017, the District Court also ordered Dinny to appear in person for observation as to her capacity. APP172-73.

On October 15, 2018, the District Court entered an *Order Modifying the Trust*

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[3] *See also* APP241-43 (expert's opinion that check signature was "simulation").

to Effectuate Terms of the Settlement Agreement, finding the 2017 Settlement "requires [Dinny] to execute a trust instrument to distribute the properties to her Children in accordance with the [2017 Settlement]," while uncertainty remained on Dinny's capacity to execute the same, and that "[i]n such instances, the Court has statutory authority to provide the relief codified in NRS 153.031," including "to modify a trust instrument under NRS 153.031(n)." APP244, 246 (lines 10-15).

Thus, on November 13, 2018, the Fourth Amendment to the Survivor's Trust was executed to effectuate at least part of the 2017 Settlement, but maintaining that the remainder of the Survivor's Trust go to the Charities. APP552-53, 558-59. And on December 4, 2018, the final and Fifth Amendment to the Survivor's Trust was executed to correct a mathematical error in the prior amendment. APP563, 565.

F. Appeal to This Court Follows, Resulting in Remand for Evidentiary Hearing on Dinny's Capacity as to Amendments.

On December 21, 2018 and January 15, 2019, the District Court entered orders ("2018 and 2019 Orders"), which, combined, *inter alia* confirmed the validity of the Third, Fourth and Fifth Amendments to the Survivor's Trust. APP248-63. Amy, contesting the validity of these last three Amendments ("Contested Amendments") based on Dinny's incapacity, appealed the 2018 and 2019 Orders. APP267.

On May 3, 2019, during the appeal's pendency, Dinny died. APP278 (¶ 26). On August 27, 2020, this Court issued its opinion reversing the 2018 and 2019

Orders, and remanding for an evidentiary hearing as to whether or not Dinny had capacity to execute the Contested Amendments. APP264, 269.

G. Dinny's Estate, the Charities, and Amy Settle and Petition for District Court Approval of Same, Including Modifying Amy's Trust Share to Allow Her to Receive Her Share Outright.

On March 6, 2023, before said hearing set for March 27, 2023, Dinny's Estate, the Charities, and Amy executed a Settlement Agreement ("2023 Settlement") subject to approval by the District Court. APP401 (lines 20-24). The 2023 Settlement as to the Survivor's Trust provided that: (i) the real property held therein, including 31521 Paseo Campeon, San Juan Capistrano, California ("SJC Home"), would be sold; (ii) all personal property held in the Survivor's Trust would be distributed outright to Amy; (iii) certain payments would be made therefrom to the Exemption Trust in furtherance of the equalization payments as required by the 2017 Settlement; and (iv) the Survivor's Trust residue would be distributed outright 55% to the Charities and 45% to Amy (in exchange for her foregoing her contest of the Contested Amendments). APP278 (¶ 31), 430-433 (¶¶ 1-6). The 2023 Settlement also provided that Amy's Trust Share, under the Children's Trust (including the Exemption Trust), be distributed to Amy outright instead of held in trust. APP398 (lines 8-11).

On June 26, 2023, Dinny's Estate, the Charities, and Amy petitioned the District Court to approve the 2023 Settlement. APP396. On June 30, 2023, U.S.

Bank, as Successor Trustee of the trusts ("Trustee") objected to any property being distributed to Amy outright. APP568. On August 8, 2023, Brad and Nori joined the objection. APP592. On August 15, 2023 a hearing was held on the matter. APP661, 665. On August 23, 2023, Brad filed a notice of his 'position' on the 2023 Settlement (consistent with his joinder), and on September 13, 2023, his children, *i.e.*, Danielle Frasier Aroeste and Brendan Fraser, and Nori's children, *i.e.*, Eliot Cady, Dr. Sara Cady, and Elissa Cady ("Grandchildren"), filed a joinder to such position. APP801, 834. On September 19, 2023, a second hearing on the matter was held. APP845, 855.

H. THE DISTRICT COURT CLEARLY ERRS IN ITS 10-4 AND 10-16 ORDERS.

On October 4, 2023, the District Court entered its Order ("10-4 Order") approving the 2023 Settlement as to the Survivor's Trust, but declining to approve it to allow for outright distribution to Amy of Amy's Trust Share (under the Children's Trust). APP939, 944 (¶ 13). The District Court's reasons on the latter were that: (i) "[Brad] and Nori[] were not parties to the Settlement Agreement wherein the Estate [] and []Amy [] agreed to modify the Tax-Exempt Trust to require distribution of Amy[]'s share of the Tax-exempt Trust to her outright"; and (ii) "Nevada law precludes the Court from modifying a spendthrift provision in a trust." APP944 (¶ 13).

The District Court thus rejected the assertions that the spendthrift provision was intended only "to allow [Amy] to qualify for public assistance programs

designed to support her physical limitations," but that "since … 2000," Amy "does not take aid or rely upon any public aid or assistance … to accommodate her physical limitations." APP404 (lines 12-16). Thus, "the point of holding [her share] in trust on June 7, 2000 is no longer applicable, relevant, or purposeful … thereby obviating the need for the []Trust." *Id.* (lines 16-19). There were now "changed circumstance[s]," also including ACA ("Obama care") as "an intervening event." *Id.* (lines 27-28); *see also* APP698 (line 5).

The District Court also underweighted the petition's emphasis that Amy's share was under the Children's Trust terms "primarily" for Amy, *i.e.*, the "preferred" beneficiary, "not for any remainder beneficiaries." APP404 (lines 21-24). Indeed, the District Court itself held that "the grandchildren are only entitled to the remainder of [Amy's Trust Share] *if there be a remainder*, following [Amy]'s death." APP945 (¶ 16, italics added).

The District Court also found that "[p]ursuant to the previously approved accounting … filed by … Premier [], the only personal property identified in the Survivor's Trust is the 2007 Cadillac and the electric golf cart" ("Vehicles"), and that any "remaining personal property is deemed an asset of the [Exemption] Trust and shall be distributed to [Brad] and Nori[]." APP944-45 (¶ 15). But said accounting shows an additional $81,500 of personal property belonging to the Survivor's Trust not yet under Premier's custody, and thus excluded in the

accounting's inventory listing only the Vehicles as personal property of the Survivor's Trust.[4]

On October 16, 2023, the District Court entered an Order Granting Instruction ("10-16 Order," and with the 10-4 Order, "Orders") wherein relevant part it found that, apart from the Vehicles, "[a]ny and all remaining personal property located at the SJC House is deemed an asset of the Tax Exempt Trust [Exemption Trust]." APP950, 953 (¶ 3). The District Court's basis for the same was its reading that the Fifth Amendment to the Family Trust, at page 7, at paragraph 3, "allocates tangible personal property to the" Exemption Trust. APP953 (¶ 3). But that provision, as provided in relevant part below, applies to unappointed property, if any, of the Survivor's Trust:

> 3. Upon the death of the surviving settlor, the trustee shall hold, administer and distribute the tax exemption trust, the marital trust (or, if divided, both the qualified and nonqualified marital trust, *and the remaining and unappointed trust estate, if any, of*

[4] Premier filed a *Supplemental Response to Objection to Accounting* on September 17, 2018, APP181, which the District Court references in its 10-16 Order, at APP953 (¶ 3), attaching to it *inter alia* accountings for the period ending June 30, 2018 for: (i) the Survivor's Trust, identifying the Vehicles as personal property at APP195, but indicating at APP197, on Note 4, that "[t]he trust received an allocation of $81,500 in personal property assets from the 706. However, the trustee never took custody of or received an inventory of the assets. The $81,500 is not included in the initial contributions to the trust;" and (ii) the Exemption Trust, showing no personal property at APP207, but indicating at APP209, on Note 4, that "[t]he trust received an allocation of $8,000 in personal property assets from the 706. However, the trustee never took custody of or received an inventory of the assets. The $8,000 is not included in the initial contributions to the trust."

> *the survivor's trust*), as the case may be as follows: the trustee shall distribute the tangible personal property as set forth on Schedule B attached hereto. The trustee shall allocate the settlors' principal residence (or the proceeds thereof if it has been sold) to the trust for Amy []. The trustee shall divide the remaining trust estate into as many equal shares as there are children of settlors then living, and children deceased leaving living issue. [APP106 (italics added).]

As such, and due to another misreading of the same instrument, at page 9, at paragraph 7, APP108, the 10-16 Order misdirected the remaining personal property at the SJC House to be distributed to Nori and Brad, not to Amy. APP950.

Finally, since this appeal was noticed, Mr. Resnick has filed several pleadings in the District Court on behalf of the Trustee, *e.g.*, opposing former trustee Premier's supplemental accounting, showing his continued involvement, since 2016, in this matter, though no longer representing Dinny. APP966, 973, 980, 986.[5]

SUMMARY OF ARGUMENT

> *[T]he supposed 'dilemma of whether to enforce the testator's intent or to modify the terms of the will* [or trust] *in accordance with changed conditions since his death is often a false one. A policy of rigid adherence to the letter of the donative instrument is likely to frustrate both the donor's purposes and the efficient use of resources*.'[6]

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[5] Mr. Resnick also continues to file pleadings after Amy moved to disqualify him as trial counsel, pursuant to Nevada Rule of Professional Conduct 3.7(a), and after he agreed to serve only as the Trustee's "administrative counsel." APP270.

[6] RESTATEMENT (THIRD) OF TRUSTS § 66, comment *a*, quoting Richard A. Posner, *Economic Analysis of Law* 556 (5th ed. 1998).

In its 10-4 Order, the District Court clearly erred by not recognizing certain circumstances, including changed circumstances present here, under which it could and should have modified and/or terminated Amy's Trust Share under the Children's Trust (including the Exemption Trust), as set forth in the Fifth Amendment to the Family Trust. Indeed, a Nevada district court sitting in equity may allow, approve, and even "direct the modification or termination of [a] trust." NRS § 153.031(1)(n).

This Court too has long repeatedly recognized the District Court's power to do the same. *See, e.g.*, *Matter of Frei Irrevocable Trust dated October 29, 1996*, 133 Nev. 50, 51, 390 P.3d 648 (2017) (modification and/or termination of an irrevocable trust after a settlor's death); *Ambrose v. First Nat. Bank of Nev.*, 87 Nev. 114, 119, 482 P.2d 828, 831 (1971) (trust modification and/or termination permitted if its continuance is not necessary to carry out a material purpose of the trust); and *Barringer v. Gunderson*, 81 Nev. 288, 304, 402 P.2d 470, 478 (1965) (trust termination warranted when its, or its settlor's, main purpose had been frustrated).

And contrary to the 10-4 Order, the presence of a spendthrift provision in a trust, as here in Amy's Trust Share, in no way abridges such court power. Moreover, the District Court did just that *in this very matter* in 2018 when it ordered the modification of the Survivor's Trust (arising under the same Family Trust), which included a spendthrift provision, though the survivor's capacity was an open issue, *i.e.*, without her confirmed intent, akin to modifying an irrevocable trust.

Here, the spendthrift Restriction in Amy's Trust Share—providing that, unlike her two siblings who could receive their respective shares of the Children's Trust, after their parents' deaths, outright upon turning 35 years old, Amy's share would be held in trust for her life, and thereafter any residue would be distributed to the settlors' grandchildren—has become obsolete. The Restriction was not part of the original Family Trust in 1980, which treated the three children equally. It was adopted in 1999, only after a much younger Amy developed certain physical limitations requiring certain medical care that were expected *at that time* to likely cause rapid depletion of her share, and to prevent her from being disqualified from obtaining public assistance for her physical limitations.

Decades have since passed, as has the time for which the Restriction could have provided meaningful benefit. Moreover, Amy is now over age 70 and there is growing risk that continuance of the Restriction will leave her with less than her full and equal share of the Children's Trust, thereby contravening the settlors' main purpose and motivations—to leave, after their deaths, each of their children to enjoy and benefit from an equal and full share of the Children's Trust.

Further, the District Court clearly erred when ruling that Brad and Nori were required parties to the 2023 Settlement portion as to the modification of Amy's Trust Share—while at the same time finding that neither Brad's or Nori's respective shares

under the Children's Trust would not be affected or diminished by any modification or termination of Amy's Trust Share.

Finally, the 10-4 Order, and the 10-6 Order, both clearly erred when misreading the Fifth Amendment to the Family Trust, at page 7, at paragraph 3, and deeming certain personal property of the Survivor's Trust, that had already been appointed, as belonging to the Exemption Trust, and thus diverting property that Amy had bargained for as part of the 2023 Settlement to go instead to Brad and Nori.[7]

ARGUMENT

A. STANDARD OF APPELLATE REVIEW

The issues here require interpretation of statutes, caselaw, trusts, and a settlement agreement. Therefore, the standard of review is *de novo*, initially. *See Matter of W. N. Connell and Marjorie T. Connell Living Trust*, 133 Nev. 137, 139, 393 P.3d 1090, 1092 (Nev. 2017) (reviewing trust interpretation de novo); and *Klabacka v. Nelson*, 133 Nev. 164, 175, 394 P.3d 940, 949 (N*ev.* 2017) (questions of law, including statutory interpretation, are reviewed *de novo*). The standard of

[7] The 10-4 Order also erred in needlessly ruling that "the Third, Fourth, and Fifth Amendments to the Survivor's Trust, the Third, Fourth, and Fifth Amendments to the Survivor's Trust are the operative instruments governing the Survivor's Trust." APP941 (lines 22-25). Instead, the Survivor's Trust was settled, via the 2023 Settlement, by its contesting beneficiaries, *i.e.*, Amy versus the Charities.

review is thereafter 'abuse of discretion' to determine whether or not the District Court abused its discretion in applying statutory and caselaw to the facts here. *See*, *Matter of Guardianship of D.M.F.*, 139 Nev. Adv. Op. 39, 535 P.3d 1154 (2024) (abuse of discretion occurs when the court, *inter alia*, "exceeds the bounds of law or reason" or "disregards controlling law"); *e.g.*, *Barringer*, 81 Nev. at 304, 402 P.2d at 478 ("order acclerating the termination of the trust" "was within the judgment and discretion of the court under the existing facts … there was no abuse of such discretion"); *see also, Imperial Credit v. Eigth Jud. Dist. Ct.*, 130 Nev. 558, 331 P.3d 862 (2014) ("trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner") (internal quotations and citation omitted).

B. THE DISTRICT COURT CLEARLY ERRED IN RULING THAT NEVADA LAW PRECLUDES IT FROM MODIFYING A SPENDTHRIFT PROVISION IN A TRUST OR TERMINATING SUCH TRUST, AND ABUSED ITS DISCRETION HERE.

i. The District Court May Modify or Terminate an Irrevocable Trust.

"[E]quity has original and complete jurisdiction over trusts and will enforce the rights of a beneficiary because they arise out of a trust." GEORGE G. BOGERT, ET AL., THE LAW OF TRUSTS AND TRUSTEES § 870 (updated June 2023). As such, upon a trust beneficiary's petition, a Nevada district court sitting in equity may allow, approve, and even "direct the modification or termination of [a] trust." NRS § 153.031(1)(n). *See also* NRS § 164.040(2) ("court may enter any order or take any

other action necessary or proper to dispose of the matters presented by a petition" in a trust proceeding.). Indeed, in 2018, the District Court, relying on NRS § 153.031(1)(n), to effectuate the 2017 Settlement, modified the Survivor's Trust because Dinny's capacity to amend the same remained unresolved. *See* APP244-47.

This Court too has "allowed modification of irrevocable trusts in certain circumstances." *Frei*, 133 Nev. at 51, 390 P.3d at 648. The common law provides similarly:

> [T]he court possesses and frequently exercises the power, on the application of the trustee or one or more beneficiaries, to modify the terms of the trust in order to effectuate the accomplishment of the purposes of the settlor.

BOGERT'S § 994. As such, this Court has rejected "the arbitrary view"—that a court will not modify or terminate a trust, *e.g.*, prior to its stated expiration, because it 'would be contrary to the settlor's intent'—"when applied automatically and without regard to all of the settlor's underlying motives." *Ambrose*, 87 Nev. at 119, 482 P.2d at 831.

ii. The District Court May Modify or Terminate an Irrevocable Trust When Its Purpose Has Been Obviated, or When its Main Purpose is Frustrated, As Here, and Thus, Should Have Done So Here.

a. The Restriction Is Now Obsolete and so the District Court Should Have Permitted Amy's Trust Share to be Distributed Outright.

Nevada law has long provided that a district court may terminate an irrevocable trust, after its settlor's death, before the period fixed for its duration has

expired "if continuance of the trust is not necessary to carry out a material purpose" of the trust. *Ambrose*, 87 Nev. at 116, 482 P.2d at 829 (citing RESTATEMENT (SECOND) OF TRUSTS § 337, Comment *a*); *see also*, BOGERT'S, § 1002 ("a trust may terminate by virtue of the fact that the trust purpose has been accomplished, the accomplishment of the trust purpose has become impossible or impracticable, or the trust purpose has become illegal or unlawful").[8]

Further, a "spendthrift clause, in and of itself, does not prevent modification" or termination of an irrevocable trust. *Frei*, 133 Nev. at 54, 390 P.3d at 650. Again, the common law of trusts holds similarly. *See* BOGERT'S § 1002 ("The existence of a spendthrift clause may or may not indicate a continuing purpose of the trust that precludes termination of the trust.").[9] *See, e.g., Fewell v. Republic Nat. Bank*, 513 S.W.2d 596 (Tex. Civ. App. 1974) ("the trust had purposes other than the protection of the settlor-beneficiary's interest through the spendthrift provisions").

Here, *because* Dinny's capacity to amend the Survivor's Trust remained unresolved, the District Court stepped in and modified the same in 2018 *and* ordered that property go to Amy "outright, and free of the Trust." APP245. Such

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[8] *See also*, Uniform Trust Code ("UTC"), § 410(a) (trust termination permitted *inter alia* when "no purpose of the trust remains to be achieved").

[9] *See also*, UTC, § 411(c) (a "spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust").

modification was akin to modifying, without settlor intent, an irrevocable trust, with a spendthrift provision no less, as it overrode the "Spendthrift Protection" section of the Survivor's Trust (and the Family Sentry Trust for Amy). APP506, 512.

The 'spendthrift' restriction within the Provision for Amy ("Restriction") has over decades now become obsolete. Indeed, Joe and Dinny formed the Family Trust to leave, after the survivor's death, the assets essentially remaining in the Exemption Trust, to their three children, Amy, Brad, and Nori, *equally*. The settlors also intended for nearly two decades that upon attaining 35 years of age, each child would receive her or his distribution outright, without further restriction, delay, or expense.

In the interim, Amy developed physical limitations raising the risk that her eventual share of the Children's Trust (including the Exemption Trust) would be rapidly eaten up by medical bills, insurance, and the like. Moreover, any outright distribution to her might also disqualify her from obtaining, or diminish her ability to access, any necessary public assistance or programs. Her condition would make medical care insurance for her more costly, if even possible.

As such, via the Third Amendment to the Family Trust in 1999, Joe and Dinny first placed the Restriction on the share, *i.e.*, Amy's Trust Share, that was always to go to Amy and no one else.[10] Joe and Dinny knew if they both passed away shortly

[10] The restriction was maintained through the Fifth Amendment to the Family Trust, executed months after the Third Amendment to the Family Trust.

thereafter (both over 70 years old), their daughter of relatively young age, then 45 years of age, would be better able to qualify for and obtain beneficial medical care and public assistance without sacrificing her inheritance under the Children's Trust.

25 years have since passed, Joe and Dinny died years ago, and it is now Amy that is over 70 years old. The Restriction never came into play. And for what remains of Amy's life, the Restriction is not expected to confer any meaningful benefit to her, precisely because the lengthy time period has passed during which it could have meaningfully provided such benefit. As such, the Restriction is no longer necessary to carry out its material purpose within the Children's Trust which remains to provide, upon the survivor's death, to each of Amy, Brad, and Nori, *equally*.

Moving forward, the record does not show that Amy would require or benefit from such Restriction any more than Brad or Nori, both also over 65 years old. In fact, Amy has not required or obtained any public assistance. And, the hurdles for her to obtain medical insurance have fallen. In sum, the purpose of the Restriction has faded, permanently, and is no longer necessary or helpful for the material purpose of the Children's Trust (including the Exemption Trust): equal, full, and outright distribution to the settlors' children.

b. The Spendthrift Restriction Now Risks Frustrating the Settlors' Main Purpose of Distributing the Children's Trust Equally; as such, the District Court Should Have Allowed Amy's Trust Share be Distributed Outright to Ensure She Receives Her Equal and Full Share.

Similar to when a trust purpose or feature has been obviated, termination is

warranted when the trust's continuance would frustrate its (and the settlors') *main purpose*. *See, e.g.*, *Barringer*, 81 Nev. at 304, 402 P.2d at 478 (affirming ruling that "the main purpose" of a testamentary trust had been frustrated, warranting trust termination, and distribution of the property outside of the trust "would better serve the desire of the testator"). To determine such main purpose, courts must consider the trust as a whole. *See, Matter of 23 Partners Trust I*, 138 Nev. Adv. Op. 134, 521 P.3d 1190, 1194 (2022) ("To ascertain the grantor's intent, we apply contract principles, considering the trust as a whole and seeking 'the most fair and reasonable interpretation of the trust's language.'" (quoting *Matter of W.N. Connell & Marjorie T. Connell Living Trust, dated May 18, 1972*, 134 Nev. 613, 616, 426 P.3d 599, 602 (2018)).

Here, the Restriction has never been more than a means subordinate to the Settlors' main purpose, expressed in the Fifth Amendment to the Family Trust, to naturally leave behind *equal* and full shares of the Children's Trust to each child.

Indeed, there is no stand-alone 'Amy Frasier Spendthrift Trust Agreement' instrument. Instead, the Restriction is found only in ¶ 7 under § "C. Children's Trust" of Article Two of the Fifth Amendment to the Family Trust. APP105-09.

Moreover, the Family Trust, as modified by its Amendments repeatedly prescribes the beneficial shares, under *the Children's Trust*, to be distributed equally:

> The trustee shall divide the remaining trust estate into as many *equal shares* as there are children of settlors then living, and

> children deceased leaving living issue. The trustee shall allocate one (1) such *equal share* to each living child of settlors and one (1) such *equal share* to each group composed of the living issue of a deceased child of the settlors. Each share allocated to a group composed of the living issue of a deceased child of settlors shall be distributed to such issue, *by right of representation* …. Each share allocated to a living child of settlors shall be retained and administered by the trustee in a separate trust hereinafter provided.

Fifth Amendment, Article Two, § C, ¶ 3. APP106. *See also*, Third Amendment, Article Four, § F (at termination of any trust governed thereunder, the default distribution is to be "in *equal shares*" to its beneficiaries), APP093-94 (italics added), and *Id.*, at § H, ¶ 5 (distributions to be made by "right of representation" shall be made "in *equal shares*"), APP095-96 (italics added).

Yet, the Restriction's overstay, far from benign, increasingly risks Amy not receiving her "equal share" of the Children's Trust as *always* intended by the settlors, since the formation of the Family Trust 45 years ago. Worse, the Restriction will likely exacerbate the inequality because any assets remaining in Amy's Trust Share would, upon her death, go to the settlors' descendants, *i.e.*, Brad's and Nori's respective children. Thus, each of Brad's and Nori's respective family lines would get even more of the Children's Trust than Amy's line. Amy would be shortchanged simply because, though when the Restriction was first adopted she very well could have had children to receive a slice of her share upon her death, now she has no, and is unlikely ever to have any, children (or descendants).

There is also risk of further dissipation of Amy's Trust Share via prolonged litigation, after already seven years of the same. Indeed, Brad's and Nori's respective children, as unnamed members of the unascertained class of "grandchildren" to receive the remainder of *Amy*'s Trust Share "if there be a remainder" after Amy's death as the District Court put it, have already tried thwarting Amy in ensuring her receipt of *her* equal share. It is one thing to be positioned to perhaps receive a sliver of any residue of a trust share intended fully and solely for your aunt, in the unintended event she does not receive her full share during her life, while your parent received her or his full and equal share of a children's trust. It is another thing to aggrandize your minimal yet happenstance position by filing pleadings opposing your aunt's efforts to ensure *her receipt of her full and equal share* of the trust.

In sum, such scenario would contravene the settlors' main and long unwavering purpose of distributing the Children's Trust to their children, *equally*. As such, outright distribution of Amy's Trust Share to Amy, and termination of the Children's Trust (including Exemption Trust) would better serve Joe's and Dinny's main desires and motivations. *See Barringer*, 81 Nev. at 304, 402 P.2d at 478.

iii. The District Court May Modify or Terminate an Irrevocable Trust Due to Change in Circumstances, Unanticipated by the Settlor, While Still Furthering the Settlor's or Trust's Purposes, and Thus, Should Have Done the Same Here.

Under the common law, an irrevocable trust may be terminated when its purpose becomes impossible or impractical due to a *change of circumstances or*

status of the beneficiary, unanticipated by the settlor when executing the trust:

> The same result [trust termination] ensues if the purpose which the settlor sought to reach through the trust has now become impossible of accomplishment due to a change in circumstances or status of the parties. The continuance of a trust would bring no intended advantage to the beneficiaries …

BOGERT'S § 1002. Nevada too recognizes that a change in circumstances or beneficiary's status, unanticipated by the settlor at the time of the irrevocable trust's execution, may warrant its termination. *See, e.g., Barringer*, 81 Nev. at 304, 402 P.2d at 478 (affirming that a testamentary trust's main purpose had been frustrated due to later discovery of testator's son, *i.e.*, a fact "not contemplated by the testator at the time he executed his will," thus, trust termination and distribution via the estate and not the trust "would better serve the desire of the testator").[11]

The RESTATEMENT (THIRD) OF TRUSTS ("Third Restatement") § 66, holds similarly as to a court's power to modify a trust's dispositive provisions:

> The court may modify an adminsitrative provision or distributive provision of a trust, or direct the trustee to deviate from an adminsitrative or distributive provision, if because of circumstances not anticipated by the settlor the modification or deviation will further the purposes of the trust.

Id. Such modification does not require consent of all the trust beneficiares. *See* Third

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[11] *See also* UTC , § 412 ("The court may modify … dispositive terms of a trust or terminate the trust if … circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.").

Restatement, § 65 ("Termination or Modification by Consent of Beneficiares"), General Comment *a* ("With the rule of this Section *contrast* the rule of § 66, which depends upon a finding of unanticipated circumstances but does not require beneficiary consent"). *E.g., Saunders v. Muratori*, 251 P.3d 550 (Colo. App. 2010) (affirming approval of trust settlement over a beneficiary's objection).

Here, when the Restriction was adopted in 1999 and 2000, Amy, then only 45 years old, was expected to live for decades to come, had developed physical limitations requiring certain medical care, and due to the same, had difficulty obtaining medical insurance coverage at reasonable rates, if at all.

In the decades since then, ACA was enacted, paving the way to put such insurance coverage within Amy's reach. The spendthrift concerns held by Joe and Dinny simply did not materialize during the last 25 years. The record also shows no evidence of Amy requiring or obtaining public assistance during such time. Nor does it show that Amy could not or did not care for her own needs, or otherwise displayed qualities that required or could be aided by the Restriction. Moreover, Amy, now over 70 years old, is no longer expected to live for decades to come.

Given Amy's condition, Joe and Dinny perhaps did not contemplate that Amy would even live to 70 years old. The settlors could not contemplate ACA. Nor did they likely contemplate that in the coming decades Amy would not need any public assistance. The settlors are also hardly expected to have anticipated that their Family

Trust would have resulted in litigation spanning seven years (or more). Much has changed in 25 years, much that Joe and Dinny could not or (likely) did not anticipate.

What never changed is the settlors' main purpose and motivation that all three of their children, including Amy, receive a complete and "equal share" of the Children's Trust (including the Exemption Trust) upon the settlors' deaths, and at a time when each child could enjoy and benefit from such share.

C. THE DISTRICT COURT CLEARLY ERRED IN DECLINING TO MODIFY OR TERMINATE THE EXEMPTION TRUST BECAUSE BRAD AND NORI WERE NOT PARTIES TO THE 2023 SETTLEMENT, AND ABUSED ITS DISCRETION HERE.

The District Court had the authority to modify "the Tax-Exempt Trust" to permit Amy to receive her share thereof outright, without Brad's or Nori's consent, for any of the reasons above. *See supra*, § B(i-iii). Indeed, no beneficiary's consent is required at all to modify or settle a trust for the reasons in § B(i-iii) above.

Also, Nevada law allows for "all indispensable parties" to settle a trust without court approval, to the extent the settlement agreement does not violate "a material purpose of the trust" or includes terms and conditions that could not be approved by a court sitting in probate. NRS § 164.940(1-2). Settlement may resolve matters such as the "addition, deletion or modification of a term or condition of the trust" or "termination of the trust." NRS § 164.940(3)(c) and (o). NRS § 164.942(5) defines *indispensable parties* as "all interested persons, as defined in NRS 132.185, whose consent would be required in order to achieve a binding settlement were the

settlement to be approved by the court." In turn, an interested person is in part anyone whose trust interest *may be materially affected* by a court's ruling. NRS § 132.185.

Here, the District Court found the trust modification to allow Amy to receive her share of the Children's Trust (including the Exemption Trust) outright would not affect—less so, materially—Brad's or Nori's interests under the Children's Trust: "The requested modification would not have diminished or affected Dr. Bradley Frasier's and Nori Frasier's respective shares of the Tax-Exempt Trust." APP943 (lines 25-27).

As such, under NRS § 132.185, neither Nori or Brad can be interested persons as to the "separate trust" set apart for Amy, APP106 (¶ 3), *i.e.*, Amy's Trust Share (of the Children's Trust) or, put differently, as to Amy's portion of the Exemption Trust. In turn, neither Brad or Nori can be indispensable parties under NRS § 164.942(5). So, pursuant to NRS § 164.940(1), neither Brad or Nori were required to consent to the 2023 Settlement as to the modification of Amy's Trust Share.[12]

D. THE DISTRICT COURT CLEARLY ERRED AND/OR ABUSED ITS DISCRETION IN DEEMING PERSONAL PROPERTY AT SJC HOUSE AS BELONGING TO THE EXEMPTION TRUST AND NOT THE SURVIVOR'S TRUST.

A "court should not revise a contract …." *All Star Bonding v. State*, 119 Nev. 47, 49, 62 P.3d 1124, 1125 (2003). Neither "a court of law nor a court of equity can

[12] Indisputably, Brad and Nori are not interested persons to the Survivor's Trust.

interpolate in a contract what the contract does not contain." *Id*; *see also, Reno Club v. Young Inv. Co*., 64 Nev. 312, 324, 182 P.2d 1011, 1016 (1947).

As the Survivor's Trust's sole beneficiary via its uncontested Second Amendment, Amy agreed to forego challenging the Contested Amendments to the same in exchange for *inter alia*: (i) a 45% share of the Survivor's Trust residue, with 55% going to the Charities as the Contested Amendments' beneficiaries; and (ii) all the personal property of the Survivor's Trust.[13] Amy's receipt of all such personal property is a material term to the 2023 Settlement, evidenced by said instrument *and* the "Material Terms of Settlement Agreement" ("Term Sheet"), attached to, and "incorporated and adopted herein by reference" in, the 2023 Settlement, at page 8.

Amy relied also on Premier's accounting (referenced in the Orders), noting $81,500 of personal property belonging to the Survivor's Trust (versus $8,000 in Exemption Trust property) that had not yet come under Premier's custody. APP197, 209. Amy relied too on an appraisal upon Dinny's death of personal property at the SJC House, held in the Survivor's Trust, valued at $32,381, excluding (i) sentimental value that Amy attaches to said items and (ii) the Vehicles. APP297.

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[13] *See* APP433, "5. **REMAINING PERSONAL PROPERTY IN THE SURVIVOR'S TRUST**. The Charities agree and consent to the Trustee distributing the beneficial interest for all personal property and non-real property in the Survivor's Trust as of March 6, 2023, excluding stock, equities, cash, cash equivalents, and investment property … to Ms. Wilson."

Notwithstanding, the Orders noted the Vehicles as the only personal property of the Survivor's Trust (to go to Amy pursuant to the 2023 Settlement). Both Orders "deemed" any "remaining personal property," including "[a]ny and all remaining property located at the SJC House" as an Exemption Trust asset. APP945, 953 (¶ 3). This was based on a misreading of the Fifth Amendment to the Family Trust, at page 7, at paragraph 3, allocating remaining "tangible personal property as set forth on Schedule B, attached [t]hereto," to the Children's Trust (including the Exemption Trust). APP106. Yet paragraph 3 applies only to property already in the Exemption Trust, the marital trust(s) if so created (not here), any "remaining and *unappointed* trust estate, if any, of the survivor's trust." *Id.*(italics added).

Here, the personal property was appointed via the 2015 Restatement to the Survivor's Trust, wherein Dinny appointed all its assets, including all personal property, to herself for her life, and thereafter, to Amy. APP457, 466. Thus, there was no remaining, unappointed Survivor's Trust estate. Hence, the Survivor's Trust's property cannot be deemed part of the Exemption Trust (or the Children's Trust including the same). Under the 2023 Settlement, the property should go to Amy outright.

Had Amy known she would not get the Survivor's Trust personal property, and its sentimental and monetary value, but that Nori and Brad would get it, the 2023 Settlement would have looked much different. Even as to the Charities, who attach

only monetary value to the property at issue, Amy would have bargained for significantly more than the 45% of the Survivor's Trust residue.

In sum, the 10-4 Order approving the 2023 Settlement as to the Survivor's Trust, and the 10-16 Order as to the Survivor's Trust personal property, cannot stand.

CONCLUSION

For the reasons herein, Amy requests that this Court hold the following (and reverse anything to the contrary in the District Court's 10-4 Order and 10-16 Order):

A. The circumstances in which a District Court in Nevada may modify or terminate an irrevocable trust with a spendthrift provision include the following: (i) when the trust's purpose has become obsolete, unnecessary, inapplicable, or impossible to achieve; (ii) when a purpose or feature of the trust frustrates or contravenes the trust's (or the settlor's) main purpose and motivations; or (iii) when circumstances, unanticipated by the settlor, change, and trust modification or termination will further the trust's purpose;

B. The District Court here abused its discretion by not modifying and/or terminating the portion of the Fifth Amendment to the Family Trust, Article Two, § C (Children's Trust, including Exemption Trust), ¶¶ 3 and 7, to allow Amy Frasier Wilson's share thereunder to be distributed outright, free of trust;

C. The modification and/or termination referenced in paragraph B directly above does not require the consent of Bradley Frasier, M.D., or Nori Frasier; and

D. The District Court clearly erred in deeming certain personal property of the Survivor's Trust, including the personal property at the SJC House, as belonging to the Exemption Trust; thus, the District Court's Order approving the 2023 settlement agreement as to the Survivor's Trust must be vacated.

DATED this 22nd day of April, 2024.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

By: */s/ Alexander G. LeVeque*
Alexander G. LeVeque, Esq. (SBN 11183)
aleveque@sdfnvlaw.com
Roberto M. Campos, Esq. (SBN 15189)
rcampos@sdfnvlaw.com

Attorneys for Appellant

ATTORNEY'S CERTIFICATE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word in 14-point Times New Roman font.
2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains approximately 9,056 words.
3. Finally, I certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is

//

not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 22nd day of April, 2024.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

By: */s/ Roberto M. Campos*
Alexander G. LeVeque, Esq. (SBN 11183)
aleveque@sdfnvlaw.com
Roberto M. Campos, Esq. (SBN 15189)
rcampos@sdfnvlaw.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that I am an employee of SOLOMON DWIGGINS FREER & STEADMAN, LTD. and that on the 22nd day of April, 2024, **APPELLANT'S OPENING BRIEF** ("Brief"), and **APPELLANT'S APPENDIX (VOLUMES 1-6)** ("Appendix") were filed electronically with the Clerk of the Nevada Supreme Court, and that I caused a true and correct copy of the Brief and Appendix to the following in the manner set forth below:

Via:

[XXX] E-Service by eFlex:

Patricia Halstead, Esq.
HALSTEAD LAW OFFICES
615 S. Arlington Avenue
Reno, Nevada 89509
Counsel for U.S. Bank Wealth Management, Trustee

Patrick Millsap, Esq.
WALLACE & MILLSAP
510 W. Plumb Lane, Ste. A
Reno, Nevada 89509
Attorneys for Stanley Brown, Special Administrator, Estate of Dinny Frasier

Ryan J. Earl, Esq.
LAW OFFICES OF RYAN J. EARL
548 W. Plumb Lane, Suite B
Reno, Nevada 89509
Counsel for Chapman University; Temple Beth Sholom of Orange County, Inc.; Irvine Community Alliance Fund; American Society for Prevention of Cruelty to Animals; and St. Jude Children's Research Hospital

G. David Robertson, Esq.
Richard Williamson, Esq.
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 W. Liberty St., Ste 600
Reno, Nevada 89501
Attorney for Premier Trust, Inc. former Trustee

[XXX] U.S. Mail, Postage Prepaid:

Elissa Cady
3735 Quimby Road
San Jose, California 95148

Bradley L. Frasier, M.D.
3609 Vista Way
Oceanside, California 92056

Nori Frasier
4372 Pacifica Way, Unit 3
Oceanside, California 92056

Eliot Cady
23 Cynthia Lane
Hollis Center, Maine 04042

Danielle Frasier Aroeste
7232 Sitio Arago
Carlsbad, California 92009

Brendan Fraiser
3585 Brook Street, Apartment 7
Lafayette, California 94549

Mark G. Simons
Simons Hall Johnston PC
690 Sierra Rose Dr
Reno, Nevada 89511

Dr. Sara Cady
1181 Reading Drive, Apartment 5308
Montgomery, Illinois 60538

The Honorable Tammy Riggs
Second Judicial District Court, Dept. 3
75 Court Street
Reno, Nevada 89501

/s/ Terrie L. Maxfield
An Employee of SOLOMON DWIGGINS FREER & STEADMAN, LTD.