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ROWE HALES YTURBIDE

DOUGLAS COUNTY RECORDERS
Karen Ellison - Recorder

Page: 1 of 8 Fee: \$ 21.00

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Deputy sg

**RECORDING REQUESTED BY AND
MAIL TO:**

✓ MICHAEL SMILEY ROWE, ESQ.
1638 Esmeralda Avenue
Minden, NV 89423

Pursuant to NRS 239B.030(4), I affirm that
the instrument contained below (or attached
hereto) does not contain the social
security number of any person

ORDER

COPY

1 CASE NO. 13-PB-0017

2 DEPT. NO. I

RECEIVED

FILED

JUL 10 2013

2013 JUL 10 AM 9:55

3 The undersigned affirms
4 that this document contains
5 no Social Security Number

**DOUGLAS COUNTY
DISTRICT COURT CLERK**

TED THUAN
CLERK
BY **K. WILFERT** DEPUTY

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

9 In the Matter of the
10 Guardianship

ORDER

11 of

12 ADOLPH JOSEPH DYMESICH,

13 Adult Ward.
14 _____ /

15 **THIS MATTER** came on before the Court on 10 July 2013 on the Douglas County Public
16 Guardian's Petition Contesting the Validity of Trust Agreement and Petition for Order Reinstating
17 Ward's 2007 Trust, As Amended ("Petition"). Present in Court were the Petitioner, CLAUDETTE
18 SPRINGMEYER, Douglas County Public Guardian, together with her counsel, MICHAEL SMILEY
19 ROWE, ESQ. of ROWE HALES YTURBIDE, LLP. Also present was John Giomi, SAFE Coordinator.
20

21 Neither Michael Allen nor Denise Allen appeared at the time of the hearing.

22 Good cause appearing, the Court hereby finds as a matter of fact, concludes as a matter of law
23 and Orders as follows:

24 **I.
STATEMENT OF THE CASE**

25 As noted, this matter came on before the Court on the Petition which was filed 28 June 2013.
26 Relevant to the Petition is the Court's earlier Order Assuming Jurisdiction over the Ward's Trust, which
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1 Order was entered 12 March 2013. In the Court's Order Assuming Jurisdiction over the Ward's Trust,
2 the Petitioner was appointed as the Successor Trustee of that Trust, and the Court terminated a power
3 of attorney executed by the Ward appointing Denise Allen as his agent.

4 Also filed on 28 June 2013 was the Petitioner's Motion for Order Shortening Time for
5 Response and for Hearing. The Court entered its Order Shortening time on 3 July 2013 wherein the
6 Court ordered that a response to the Guardian's Petition was shortened to 5 July 2013, and the Court
7 ordered that the time for the hearing on the Petition would be 10 July 2013 at 9:00 a.m.

8
9 **II.**
10 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 1. The Court finds as a matter of fact, and concludes as a matter of law, that Petitioner is
12 the Court-confirmed Successor Trustee of the Ward's Trust; Petitioner having been confirmed as the
13 Successor Trustee by this Court pursuant to NRS 164.010(2).

14 2. The Court finds, and concludes, pursuant to NRS 164.010(2) that it is appropriate for
15 this Court to grant its advice and instructions to the Petitioner as set forth hereinbelow.

16 3. The Court finds that the Ward's Trust is a non-testamentary trust, and, as such,
17 Petitioner, as the Successor Trustee, is an interested person concerned with the internal affairs of the
18 Trust.
19

20 4. The Court finds as a matter of fact, and concludes as a matter of law, that Petitioner has
21 standing to challenge the validity of the Declaration of Revocable Living Trust Establishing the A.
22 Joseph Dymesich Revocable Living Trust which the Ward executed on 22 October 2012. The Court
23 concludes that NRS 164.015(4) allows the Petitioner to challenge the October 2012 Declaration of
24 Revocable Living Trust due to the competency of the Settlor to make a Trust, the freedom of the Settlor
25 from duress, menace, fraud or undue influence at the time of the execution of the Trust, and to challenge
26 the October 2012 Declaration of Trust wherein the Ward provided that Michael Allen and Denise Allen
27
28

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would be beneficiaries of the Ward's Trust.

5. The Court finds that on 8 November 2012 Michael Suglia, Esq. authored a letter which he entitled "Status of Independent Review for A. Joseph Dymesich", a copy of which has been supplied to the Court as Exhibit "B" to the Petition to Assume Jurisdiction over the Ward's Trust and Petition for the Court to Terminate Power of Attorney which was granted by Order filed on 12 March 2013. As Mr. Suglia sets forth:

"After meeting Joseph, I left with concerns about Joseph's ability to reason and remember."

Mr. Suglia also stated:

"I am unable to provide a Certificate of Independent Review because of Joseph's lack of memory about his current living arrangements, his possible remorse about his drinking and improper conduct with Denise, and a general concern about the lack of financial stability with the Allens."

6. Based upon the record previously supplied to the Court in this proceeding, specifically Exhibit "A" to the originating Petition filed on 1 March 2013, the Court finds that Brittany Mirrasoul, State of Nevada, Department of Health and Human Services, Aging and Disability Services Division, reported that Elder Protective Services had been involved with the Ward as early as 9 December 2011 when a home visit was conducted during which the Ward indicated he had short term memory impairment. Ms. Mirrasoul quotes Denise Allen as stating that the Ward "was not doing well", and that she found the Ward in his closet confused. Ms. Mirrasoul delineates her visits with the Ward and the Ward's apparent mental state; all of which visits occurred prior to the execution of the October 2012 Declaration of Revocable Living Trust.

7. In addition, on 19 May 2013 the Court received the SAFE Report from Lori Hibbett. At page 6 of her report, Ms. Hibbett refers to the Ward's discharge diagnosis from Carson Tahoe Regional Healthcare as of 7 September 2012. The discharge diagnosis related that the Ward suffers

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from "dementia" and "chronic mental illness".

Based upon all of the exhibits previously supplied to the Court, all of which are referred to in the Petition, the Court finds as a matter of fact, and concludes as a matter of law, that the Ward was not competent to execute the Declaration of Revocable Living Trust Establishing the A. Joseph Dymesich Revocable Living Trust u.t.d. 22 October 2012, and that the Ward's Declaration of Trust of 22 October 2012 should be invalidated in its entirety.

8. At the hearing conducted on 10 July 2013, the Court accepted into evidence a document recorded in the Douglas County Nevada Recorder's Office as Document No. 0818668, found at Book 0213, Page 5502. The document, in the preamble paragraph, purports to revoke the A. Joseph Dymesich Living Trust dated 7 August 2007. The document was recorded on 20 February 2013. The document was apparently signed by the Ward and signed by Michael G. Allen.

Based upon the previous findings and conclusions set forth above within this Order, the Court finds and concludes that the purported revocation of the Ward's 7 August 2007 Trust is invalid, should be stricken from the records, and expunged from the official records of the Douglas County, Nevada Recorder. The Court notes that the purported revocation of the Ward's 2007 Trust was executed and recorded a scant few days prior to this Court's Order Appointing a Temporary Guardian of the Person and Estate of the Ward on 1 March 2013. Because the Ward has been found to incompetent to execute the October 2012 Declaration of Trust, the Court also finds and concludes that the Ward was not competent to execute a revocation of the Ward's 2007 Trust on 20 February 2013.

9. The Court finds as a matter of fact that the Ward had previously entered into a Declaration of Revocable Living Trust Establishing the A. Joseph Dymesich Living Trust on 7 August 2007. A copy of the 2007 Trust Agreement is attached as Exhibit "A" to the Petition. The Ward amended the 7 August 2007 Declaration of Trust on 2 November 2009, a copy of such amendment being attached as Exhibit "B" to the Petition. In addition, and also on 2 November 2009, the Ward executed

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a Last Will and Testament, a copy of which is found as Exhibit "C" to the Petition.

10. There is no evidence in the record or before the Court which would suggest that the Ward was incompetent either on 7 August 2007 or on 2 November 2009. Accordingly, the Court finds that the Ward was competent on both of these dates, and that the 2007 Declaration of Trust and its amendment from 2009, and the Last Will and Testament of the Ward executed on 2 November 2009, are found to be the last, competent statement of the Ward's intentions with respect to his estate. Accordingly, the Court finds as a matter of fact, and concludes as a matter of law, that the Ward's 7 August 2007 Declaration of Trust, its amendment dated 2 November 2009 and the Ward's Last Will and Testament dated 2 November 2009 should be, and hereby are, found to be the Ward's valid estate plan and should be reinstated as the Ward's direction with regard to the distribution of his estate.

11. In her Petition, the Petitioner has requested that the Petitioner be confirmed as the Successor Trustee of the Ward's 7 August 2007 Declaration of Revocable Living Trust, as amended. The Court finds as a matter of fact, and concludes as a matter of law, that Claudette Springmeyer, Douglas County Public Guardian, should be confirmed as the Successor Trustee of the Declaration of Revocable Living Trust Establishing the A. Joseph Dymesich Revocable Living Trust, u.t.d. 7 August 2007, as amended 2 November 2009.

12. The Court finds as a matter of fact and concludes as a matter of law, as set forth on the certificate of service attached to the Petition, that all those interested in this guardianship matter have been provided notice of the hearing. The Court further finds and concludes that, pursuant to the certificate of service attached to the Motion for Order Shortening Time for Response and for Hearing, that all those interested in this guardianship matter were provided with a copy of the Motion for Order Shortening Time.

In open Court, counsel for the Petitioner represented to the Court, and the Court so finds, that the Order Shortening Time was e-mailed or served by facsimile to counsel appointed for

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Denise Allen and Michael Allen in the criminal proceedings. Counsel further advised the Court that Jamie Henry, Esq. contacted counsel and advised that she had received the Motion and Order, however, she is not representing Michael Allen in these proceedings.

**III.
ORDER**

Based upon the above-stated findings of fact and conclusions of law, it is hereby the Order of the Court as follows:

1. **IT IS HEREBY ORDERED** that the Ward's Declaration of Revocable Living Trust Establishing the A. Joseph Dymesich Revocable Living Trust, u.t.d. 22 October 2012 shall be, and the same is hereby, declared **INVALID**.

2. **BE IT FURTHER ORDERED** that the Ward's Declaration of Revocable Living Trust Establishing the A. Joseph Dymesich Revocable Living Trust, u.t.d. 7 August 2007, its amendment dated 2 November 2009, and the Ward's Last Will and Testament dated 2 November 2009, shall be and the same is hereby, declared to be **VALID**.

3. **BE IT FURTHER ORDERED** that Claudette Springmeyer, Douglas County Public Guardian, shall be, and she is hereby, confirmed as the Successor Trustee of the 2007 Declaration of Revocable Living Trust Establishing the A. Joseph Dymesich Revocable Living Trust, u.t.d. 7 August 2007, as amended 2 November 2009.

4. **BE IT FURTHER ORDERED** that the 20 February 2013 purported revocation of the Declaration of Revocable Living Trust Establishing the A. Joseph Dymesich Living Trust, u.t.d. 7 August 2007, as amended 2 November 2009, shall be, and the same is hereby, declared **INVALID**.

5. **BE IT FURTHER ORDERED** that Document No. 0818668, found at Book 0213, Page 5502, purporting to revoke the Ward's 2007 Declaration of Trust, shall be, and the same is hereby, **EXPUNGED** from the official records of the Douglas County, Nevada Recorder. A certified copy of

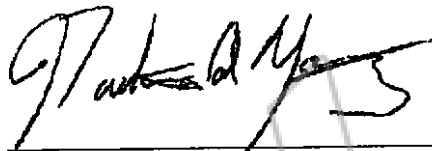
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this Order shall be recorded to impart notice that the document has been expunged.

Dated this 10th day of July, 2013.



NATHAN TOD YOUNG
DISTRICT COURT JUDGE

ROWE HALES YTURBIDE, LLP



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CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original in file and of record in my office.

DATE

7/10/13

TED THRAN Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas,

By  Deputy