

1 2630  
2 DON L. ROSS  
3 NEVADA BAR NO. 3802  
4 JASON MORRIS  
5 NEVADA BAR NO. 10689  
6 LAUREN D. BERKICH  
7 NEVADA BAR NO. 12357  
8 **WOODBURN AND WEDGE**  
9 6100 Neil Road, Suite 500  
10 Post Office Box 2311  
11 Reno, Nevada 89505  
12 Telephone: (775) 688-3000  
13 Facsimile: (775) 688-3088  
14 Attorneys for Roger Hillygus

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
11 IN AND FOR WASHOE COUNTY

12 In the Matter of the

Case No. PR14-00025

13 HILLYGUS FAMILY TRUST,

Dept. No. PR

14 Dated August 17, 1993

Hearing Date: June 19, 2014

Hearing Time: 8:15 a.m.

16 \_\_\_\_\_ /  
17 **OBJECTION TO PETITION REGARDING**  
18 **ADMINISTRATION OF REVOCABLE TRUST**

19 Roger E. Hillygus, by and through his attorneys Don L. Ross and Lauren D. Berkich  
20 of the law firm Woodburn and Wedge, hereby submits his Objection to Petition Regarding  
21 Administration of Revocable Trust filed by Stephen Moss purportedly on behalf of H. Eugene  
22 Hillygus. This Objection is based upon the following Memorandum of Points and  
23 Authorities.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 H. Eugene Hillygus (hereafter "Gene") and Susan L. Hillygus (hereafter "Sue")  
26 executed the trust agreement for the Hillygus Family Trust on August 17, 1993, attached  
27 hereto as Exhibit "1." Section 9.1.2. of the Trust Agreement provides as follows:  
28

1           9.1.2. If either H. EUGENE HILLYGUS or SUSAN L. HILLYGUS  
2 shall die, or shall for any reason fail to qualify or cease to act as Trustee, the  
3 remaining named individual shall act as Trustee. On the death of both  
4 Settlers, or upon the incapacity of the Surviving Settlor, ROGER H.  
5 HILLYGUS is appointed as Successor Trustee. In the event the above  
6 identified [sic] Successor Trustee is unable or unwilling to serve as Successor  
7 Trustee, ROBIN R. HILLYGUS-RENWICK shall serve as Successor Trustee.

8 Although the language of this Section is poorly drafted, Section 9.1.2 manifests Gene's and  
9 Sue's clear intent that in the event neither of them is able to act as a Trustee of the trust then  
10 their son, Roger H. Hillygus (hereafter "Roger"), is to serve as the Successor Trustee of the  
11 trust. Gene's and Sue's intent in this regard was verbally confirmed by them in a meeting  
12 held with their children and Mr. Moss while in Mr. Moss' office on October 2, 2013.

13           The various players in this unfortunate family drama and their counsel are all aware  
14 that Gene suffers from dementia and that Sue suffers from the effects of Alzheimer's disease.  
15 That situation was, in part, the reason for the Hillygus family to meet with Mr. Moss in  
16 October of 2013.

17           On December 11, 2013, Mr. Moss drafted a letter to Dr. Kent Elliott, M.D. of the  
18 Renown Medical Group. In his letter, Mr. Moss states, in pertinent part, as follows (emphasis  
19 added):

20           As Gene's physician, I respectfully request on behalf of the Trust a  
21 written certification that addresses whether he is incapacitated as defined  
22 above and able to properly handle his affairs; ie., manage the Trust. This  
23 certification will also determine whether Gene is able to make appropriate  
24 decisions about his healthcare.

25           Gene signed a Health-Care [sic] Power of Attorney that designates  
26 Roger E. Hillygus as his attorney-in-fact for health-care decisions in the event  
27 Gene and his wife Susan are incapacitated. A copy of the signed power of  
28 attorney for healthcare decisions is enclosed with this letter. *I believe that  
Gene and Susan are incapacitated and unable to make healthcare decisions  
for Gene. Therefore, Roger E. Hillygus is authorized to make healthcare  
decisions for Gene.*

29           In response to Mr. Moss' request, Dr. Elliott evaluated Gene on December 13, 2013.

30 In a letter to Mr. Moss of that same date Dr. Elliott stated as follows: "It is my medical

1 opinion that Herbert Hillygus suffers from an irreversible and progressive vascular dementia.  
2 As a result he does not have the capacity to properly make his own healthcare decisions, nor is  
3 he able to properly handle his financial and legal affairs, including handling his family trust.”

4 Inexplicably, within about two weeks following Mr. Moss’ receipt of Dr. Elliott’s  
5 letter, Mr. Moss prepared an amendment to the Trust Agreement to be signed by Gene despite  
6 Dr. Elliott’s determination of Gene’s incapacity. With Mr. Moss’ assistance Gene signed the  
7 amendment on January 3, 2014. That amendment is now the subject of the instant petition in  
8 which Mr. Moss, purportedly on Gene’s behalf, seeks to enforce the terms of the amendment.

9 Prior to the previously scheduled hearing on the petition, Mr. Moss and Gordon Muir,  
10 Esq. (who is counsel for Sue) met with the undersigned counsel for Roger. Among other  
11 things, it was agreed that both Sue and Gene would be further evaluated by a neurologist.  
12 Gene had previously refused to keep two appointments with Dr. Jonathon Spivak, a  
13 neurologist who was to further evaluate Gene. So the agreement among counsel was to be  
14 sure that each of Gene and Sue would be evaluated within a certain time frame and that the  
15 original hearing in this matter would be vacated.

16 Gene was finally evaluated three times during the month of April, 2014, by Dr. Debra  
17 Fredericks, a psychologist. Gene was accompanied at each of those visits by his daughter,  
18 Robin. Dr. Fredericks determined that Gene “has a Vascular Dementia” and is not  
19 “competent to make decisions about managing [his] personal financial affairs, including  
20 changing successor trustees and amending distribution of [his] estate.”  
21

22 So, in light of a determination of incapacity immediately *prior* to Gene’s execution of  
23 the amendment and a determination of incapacity shortly *after* Gene’s execution of the  
24 amendment, one has to ask how it is that Mr. Moss can claim that Gene had sufficient  
25 capacity to execute the amendment? We also need to ask why we are exhausting this family’s  
26 *very* limited resources to litigate this issue? It simply makes no sense.  
27  
28

1 Sue was out of town and was not consulted regarding the amendment to Gene's and  
2 Sue's joint trust, nor was Roger Hillygus ever consulted. Roger is the person who is  
3 appointed to act as Sue's attorney-in-fact pursuant to a validly executed power of attorney  
4 prepared by Mr. Moss. Article 4 of the Trust Agreement provides, in pertinent part, as  
5 follows:  
6

7 **4. RIGHT AMEND OR REVOKE [sic].** The Settlor may by a  
8 written instrument, signed, acknowledged and delivered to the Trustees during  
9 the Settlor's life, revoke this Agreement in whole or in part and amend it from  
10 time to time in any respect . . .

11 This language requires that an amendment be signed by *both* Settlor. Nowhere in the Trust  
12 Agreement does it say that during the Settlor's joint lifetimes one Settlor can amend the Trust  
13 Agreement. This is standardly the case. It is a joint trust and all amendments must be made  
14 *jointly* while both spouses are alive.

15 After Gene moved out of the marital residence Roger and his wife, Debbie, moved in  
16 so that they could care for Sue. Sue prefers to live in her home and it has been suggested that  
17 maintaining her routine and having stability is beneficial to her. Roger and Debbie selflessly  
18 left their home in Dayton to move to Reno to assist Sue. Roger had been commuting from  
19 Dayton, Nevada, on a regular basis for several months to provide care and assistance to his  
20 parents. Rather than be thankful for this family support of Sue, Robin and Gene began a  
21 campaign against Roger and Debbie which eventually resulted in Roger and Debbie being  
22 evicted from the marital residence. Sue was then left alone in the home by Gene and Robin  
23 and ultimately had a breakdown and ended up in the hospital after Roger found her lying on  
24 the floor of the residence.

25 Throughout this period Mr. Moss repeatedly advocated Gene's position that Roger  
26 could not live in the home to care for Sue, that Sue should leave the marital residence and that  
27 the home should be sold. Therefore, notwithstanding Mr. Moss' original representation of  
28

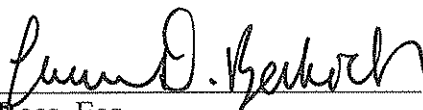
1 both Gene and Sue, since mid-December 2013 Mr. Moss has undertaken to represent Gene  
2 alone without regard to Sue's interests or desires. Because of his prior representation of *both*  
3 Gene and Sue, Mr. Moss had an ethical duty to withdraw from representing either of them at  
4 the moment Sue's and Gene's interests diverged. Mr. Moss has never obtained or, to the best  
5 of Roger's information and belief, even attempted to obtain a signed waiver from Sue or her  
6 counsel which would permit him to continue to represent Gene in matters that are adverse to  
7 Sue's interests. Mr. Moss was reminded of his duty to withdraw by the undersigned in mid-  
8 January 2014 and again in February of 2014.

10 Once both Gene and Sue had been deemed incompetent by two doctors, Roger  
11 assumed his duties as Trustee. *See*, Notice Confirming Appointment of Successor Trustee,  
12 attached hereto as Exhibit "2." Gene and Roger's relationship improved over the last few  
13 months and Gene has decided that Roger should be confirmed as the successor Trustee.  
14 However, Mr. Moss, without his clients' authority still persists in his frivolous attempts to  
15 confirm the Amendment with the result that the Hillygus family's limited resources continue  
16 to be needlessly squandered on legal fees.

18 Roger respectfully requests that this Court deny the petition. Roger and his wife  
19 Debbie have tirelessly cared for Sue. Roger is committed to responsibly serving as successor  
20 trustee of the trust.

21 The undersigned affirms that this document contains no social security numbers.

22 Dated this 18 day of June, 2014.

23  
24  
25 By   
26 Don Moss, Esq.  
27 Lauren D. Berkich, Esq.  
28 Attorneys for Roger Hillygus,  
Successor Trustee

1 **AFFIDAVIT OF ROGER HILLYGUS**

2 STATE OF NEVADA )  
3 ) ss.  
4 COUNTY OF WASHOE )

5 I, Roger Hillygus, being first duly sworn, depose and state as follows:

6 1. I am the Trustee in the above-captioned action and make this affidavit of my own  
7 personal knowledge.

8 2. I have read the accompanying Objection to Petition Regarding Administration of  
9 Revocable Trust and know the contents thereof; that the same is true of my own knowledge,  
10 except as to those matters which are therein stated on information and belief, and as to those  
11 matters, I believe them to be true.

12 I swear under penalty of perjury that the foregoing statements in this affidavit are true.

13 The undersigned affirms that this document contains no social security numbers.

14 Dated this 18<sup>th</sup> day of June, 2014.

15  
16  
17  
18  
19 Roger Hillygus

20  
21 Subscribed and sworn to before me  
this 18<sup>th</sup> day of June, 2014.

22  
23 Michelle L. Nobach  
24 Notary Public



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF DELIVERY VIA E-FLEX

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Road, Suite 500, Reno, Nevada 89511, and that on the 18<sup>th</sup> day of June, 2014, I electronically filed the foregoing document with the Clerk of the Court system, which will send an automatic notice of electronic filing to the following:

Stephen C. Moss, Esq.

Todd L. Torvinen, Esq.

Gordon Muir, Esq.

DATED this 18<sup>th</sup> day of June, 2014.

Sharon Bradley

INDEX OF EXHIBITS

<u>Number</u>	<u>Description</u>	<u># of pages</u>
1	Hillygus Family Trust	11
2	Notice Confirming Appointment of Successor Trustee	38