

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

In the Matter of the Estate of Steven H. Harris ) Supreme Court No. 20160084  
----- ) Burleigh Co. No. 08-01-C-01442  
Bruce G. Harris, Petitioner and Appellant )  
v. )  
Mary K. Harris, Respondent and Appellee )

In the Trust of Steven H. Harris Testamentary ) Supreme Court No. 20160085  
Trust ) Burleigh Co. No. 08-10-P-00146  
----- )  
Bruce G. Harris, Petitioner and Appellant )  
v. )  
Mary K. Harris, Respondent and Appellee )

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**APPELLANT'S REPLY BRIEF**

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APPEAL FROM ORDER DENYING RULE 60(B) RELIEF  
SOUTH CENTRAL JUDICIAL DISTRICT  
BURLEIGH COUNTY, NORTH DAKOTA  
THE HONORABLE DAVID E. REICH

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## LAW AND ARGUMENT

[¶1] There are many areas contained in the Appellee's brief that Bruce Harris disputes. Many of the factual allegations are incorrect or misleading and a review of the record will show this. But the heart of this appeal does not revolve around these factual misstatements that go to the merits of why Bruce instituted this action in the first place. This appeal concerns whether the judgments entered, premised upon the stipulations signed, should be reversed for the reasons outlined in Bruce's initial brief.

[¶2] Bruce has set forth clear and convincing evidence through his testimony and affidavits that he signed the stipulations based upon misrepresentations of the opposing party. Bruce has maintained throughout that the Trustee has failed to provide the full version of the IRS Form 706 (including all attachments) and trust fund disbursement records. It was misrepresented that Bruce would be provided these documents. He was induced into signing the stipulations based on this misrepresentation. Bruce was also led to believe he could object to the stipulations within a set amount of time. App. 24-26, 129-30, 159-60. Other specific instances of misrepresentation and fraud are contained in Bruce's initial brief and will not be re-stated here. Evidence exists that the stipulations were obtained by fraud and misrepresentation.

[¶3] Bruce also signed the stipulations on the basis of the Affidavit of Terry Harris. App. 20-21. Yet all of the assets have been transferred into a non-trust partnership (the family limited partnership). Through five years of litigation on this matter, the Trustee has failed to supply any record of notifying the beneficiaries of the Trust that all Trust

assets were being transferred out of the Trust and into a family limited partnership, or why they did so which increased the tax burden of the Trust from a corporate structure, to a partnership structure.

[¶4] Equally as clear is the evidence presented to the District Court in Exhibit A of the Motion to Set Aside Trust Accountings and the Order of the Court denying Bruce any relief whatsoever. *See* Dkt. No. 87. The motion and exhibit was properly filed and served and completely discredits the misinformation provided to the Court by the Trustee that no assets had been transferred from the Trust. *Id.* Bruce's lack of assent and concern is demonstrated by his refusal to date the stipulations and by his statement to the district court during the hearing. Appellee Appendix p. 20, ll. 23 ff.

[¶5] The Trustee failed to present any response, only Terry Harris who is not the Trustee presented an Affidavit which is in the record and has been disproved through pleadings, exhibits, and testimony of Bruce Harris. The Trustee has not responded.

[¶6] The judgments should be vacated pursuant to N.D.C.C. § 59-18-01.1. There is a statutory presumption that any transaction between a trustee and a trust beneficiary is presumed to be entered by the trust's beneficiary under undue influence and without consideration. There is no exception to this if the parties are represented by legal counsel. And in this case, Bruce had previously limited his then counsel's authority. *See* Dkt. No. 28. The presumption must be rebutted by the Trust. *In re Estate of Bartelson*, 2015 ND 147, ¶ 16, 864 N.W.2d 441. There is no competent and admissible evidence rebutting the presumptions. While it is true that Bruce was represented, such does not automatically equate to rebutting the presumption of undue influence and lack of consideration.

[¶7] Here, evidence of undue influence is increased because the stipulations contain provisions that conflict with state law. Despite numerous requests made to the Trustee for documentation that is to be provided under N.D.C.C. § 59-16-13, Bruce can potentially be penalized under the stipulations. App. 24 (¶¶ 7, 9). The Trustee has also made references to Bruce having to pay a security guard if he reviews documents, pay a copying fee, and have his accountant sign a confidentiality agreement to review Trust documentation. This is not evidence of an even transaction. Contrary to the stipulations, neither the Will nor the law has a provision for yet another beneficiary of the Trust to “take over” when the current Trustee is unable to perform her duties. This proposed successor trustee arrangement in the stipulation would alter the Will provision of the life estate for Mary Harris instead of what is unambiguously written in the Will and potentially disinherit lawful beneficiaries from their inheritance under the Will. The notions contained in the Stipulations are simply absurd and contrary to the law and the Will. Paragraphs 7 and 9 of the Stipulation are contrary to N.D.C.C. § 59-16-13 and the entire contract is void because there is no severability clause.

### **CONCLUSION**

[¶8] For all the reasons set forth above, as well as in Appellant’s initial brief, this Court should reverse the district court’s decision to uphold the judgments entered under the stipulations and remand the matters for further proceedings.

Dated this 21st day of July, 2016.

**PEARCE DURICK PLLC**

A handwritten signature in black ink, appearing to read "Zachary E. Pelham", is written over a horizontal line.

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**AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF BURLEIGH )

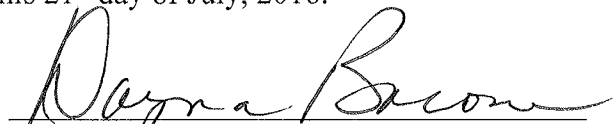
Annette Kirschenheiter, being first duly sworn, deposes and says that on the 21<sup>st</sup> day of July, 2016, she filed *Appellant's Reply Brief* electronically with the N.D. Supreme Court and served electronically a copy of the foregoing document on the following:

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Subscribed and sworn to before me this 21<sup>st</sup> day of July, 2016.

DAYNA BARONE  
Notary Public  
State of North Dakota  
My Commission Expires October 10, 2018

  
Notary Public