

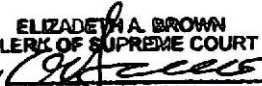
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE TRUST OF:  
PAUL D. BURGAUER REVOCABLE  
LIVING TRUST.

No. 80466-COA

FILED

SEP 23 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

STEVEN BURGAUER, A FORMER  
TRUSTEE OF PAUL D. BURGAUER  
MARITAL TRUST,

Appellant,

vs.

MARGARET BURGAUER; and  
PREMIER TRUST,

Respondents.

No. 82067-COA

STEVEN BURGAUER,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
TREVOR L. ATKIN, DISTRICT JUDGE,

Respondents,

and

MARGARET BURGAUER; AND  
PREMIER TRUST,

Real Parties in Interest.

*ORDER GRANTING PETITION (DOCKET NO. 82067-COA), VACATING  
(DOCKET NO. 80466-COA) AND REMANDING*

These are a consolidated original petition for a writ of prohibition and mandamus, and appeal from a district court order granting petition for distribution of trust property. Eighth Judicial District Court, Clark County; Trevor L. Atkin, Judge.

Paul and Margaret Burgauer were married and had two sons, James and Steven Burgauer, all of whom were residents of Illinois.<sup>1</sup> In 1987, Paul executed a revocable living trust originally domiciled in and subject to the laws of the state of Illinois. The trust was set up to terminate upon his death, at which time the trust mandated that successor trustee, Steven, would dispose of trust property into two separate trusts: a marital trust and a residuary trust. Under the marital trust, net income accrued from the trust property would be distributed to Margaret Burgauer, during her life, and any such principal as she requested in writing for her support, comfort, and medical needs.<sup>2</sup>

Three years later, Paul created a separate life insurance trust that would contain the proceeds of his and Margaret's life insurance policies, available for distribution upon their deaths. For the life insurance trust, Paul named Steven and James as co-trustees. At some point, Paul also named Steven as the executor of his will and provided him with a power of attorney.

In 2003, Paul fell ill and died. Two days before his death, Steven, exercising his power of attorney, amended the trust so that Margaret was only entitled to the net income of the marital trust and revoked her power to request distributions from the principal. Following Paul's death, Steven administered the marital trust for over a decade without conflict.

In 2012, Steven relocated to Florida. Shortly thereafter, Margaret also expressed a desire to move to Florida. Using marital trust

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<sup>1</sup>We do not recount the facts except as necessary for our disposition.

<sup>2</sup>No information about the residuary trust is provided in the record. This pour-over trust is not at issue in the instant petition and appeal.



funds, Steven had a home built for Margaret in Florida, and in 2015 she moved in. James moved to Las Vegas that same year.

Relations subsequently deteriorated between Steven and Margaret. Margaret accused Steven of unlawfully withholding distributions due to her from the marital trust. Steven accused Margaret of spending her trust distributions on gambling, alcohol, and improperly providing financial support to James. Margaret eventually relocated to Las Vegas and pursued legal action in the district court. Margaret petitioned to remove Steven as trustee, appoint a new trustee, compel distributions under the marital trust, and for a temporary restraining order, among other things.<sup>3</sup>

Steven initially made a limited appearance to petition for dismissal of Margaret's case for lack of personal jurisdiction over him as trustee. The district court denied the petition, relying solely on NRS 164.010 as a basis for exercising personal jurisdiction over Steven. The district court did not conduct a minimum contacts analysis in its order denying Steven's petition to dismiss. At the hearing on the motion, the court concluded

Under NRS 164.010 it appears to this Court's satisfaction that we can assume jurisdiction over this trust as one or more beneficiaries of the trust reside in this state. Further, unless I missed it somewhere, I didn't see where any other state has confirmed Steven as trustee. And so *I'm assuming that I have the jurisdiction to confirm him as the trustee and thereby acquire in personam jurisdiction over him as well.* That's the order of the Court today. The Court finds that Nevada, under the statute, specifically NRS 164.010(2)(e), has jurisdiction; that

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<sup>3</sup>James brought a similar petition, as a separate cause of action, against Steven regarding the life insurance trust. In that action, the district court concluded that it had personal jurisdiction over Steven. However, this case is not before us on appeal.

the Court is also going to confirm . . . Steven as trustee.

The district court subsequently entered an order denying the petition to dismiss, concluding

under NRS 164.010, it appears to the satisfaction of the Court that Nevada can assume jurisdiction over the Marital Trust as [ ] one or more beneficiaries of the Marital Trust resides in this state. Accordingly, the Court assumes in rem jurisdiction over the Marital Trust and its assets pursuant to NRS 164.010.

The order made an additional conclusion regarding personal jurisdiction over Steven: "Steven Burgauer shall be confirmed as the Trustee of the Marital Trust and the Court thereby acquires in personam jurisdiction over Steven Burgauer."<sup>4</sup> The district court additionally issued a temporary restraining order, enjoining Steven from making any transfers or distributions from the marital trust. This restraining order was never revisited during the litigation that ensued and appears to have remained a temporary order.

After substantial motion practice, the district court removed Steven as trustee, without an evidentiary hearing, and appointed Premier Trust as temporary trustee. Premier discovered that the marital trust owned two brokerage accounts—one with Ameriprise and another with Morgan Stanley. Shortly after Margaret filed her petition, Steven made several

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<sup>4</sup>It appears that the district court exercised its discretion to confirm Steven as trustee in order to leverage personal jurisdiction over him without fully understanding that Steven was a foreign trustee over whom personal jurisdiction would have to be first obtained. The court, of course, did not need to confirm Steven as trustee because he was already designated as trustee, and thus confirmation was unnecessary. Further, Margaret's petition did not request that he be confirmed as trustee but instead that he be *removed* from that position.



transfers, aggregating to \$337,875, from the Ameriprise account to Burgauer-Albrecht Holdings, Incorporated—a Wyoming corporation created by Steven, where he acts as the sole board member and officer—and withdrew \$50,000 cash. Premier also discovered that Steven previously transferred \$435,632.15 in total legal fees from the Morgan Stanley account to various law firms over the years, including his Nevada counsel. Finally, Premier discovered that Steven transferred the Florida property to 12375 Holding, LLC—a Wyoming limited liability company controlled by Steven that eventually merged with Burgauer-Albrecht.

Based on these findings, Premier and Margaret jointly moved for a return of the trust assets and money that Steven transferred out of the marital trust to these other entities. The district court granted the motion in part, ordering Steven to convey the Florida property back to the marital trust and to liquidate the property. The Florida property eventually sold for an unknown amount. Premier and Margaret then jointly moved to distribute the proceeds to Margaret. The district court granted the motion and ordered that Steven distribute \$117,000 to Margaret, among other smaller distributions to various law firms involved with the litigation and sale of the Florida property. Steven now appeals the district court's order distributing the proceeds from the sale of the Florida property.

Margaret next filed an ex parte application for an order to show cause why Steven should not be held in contempt in the district court, claiming that Steven siphoned marital trust funds and assets in direct violation of the existing temporary restraining order—which at that time had not been revisited for over two years. Margaret also requested attorney fees. Steven opposed, again claiming that the Nevada district court lacked

personal jurisdiction over him, as he had throughout the entirety of the underlying litigation.

At this time, the district court concluded it had personal jurisdiction over Steven pursuant to the effects test under *Calder v. Jones*, 465 U.S. 783 (1984), and *Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 440 P.3d 645 (2019), due to his defamatory remarks and other torts directed at Margaret in Nevada, based on the order conferring personal jurisdiction over Steven in the life insurance trust case, and under subsections (2) and (5)(b) of NRS 164.010. The district court imposed a \$500 sanction for each of the 83 alleged violations of the restraining order, in addition to awarding attorney fees to Margaret. Steven now petitions for a writ of prohibition and mandamus, challenging the district court's jurisdiction over him, among other things. This court issued an order consolidating the petition and appeal.

In this consolidated original writ petition and direct appeal, we consider whether the district court's exercise of personal jurisdiction over Steven for over three years was proper.<sup>5</sup> Steven contends that the district court acted without personal jurisdiction over him because he lacked sufficient minimum contacts with Nevada. Specifically, Steven claims that the district court relied on his alleged tortious conduct against Margaret,

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<sup>5</sup>This is our first occasion to address the merits of Steven's personal jurisdiction claims. See *In re Burgauer Revocable Living Tr.*, Docket No. 78872-COA (Order Dismissing Appeal, Ct. App., June 23, 2020) (dismissing for lack of appellate jurisdiction); *In re Burgauer Revocable Living Tr.*, Docket No. 76650-COA (Order Dismissing Appeal, Ct. App., April 23, 2020) (same); *In re Burgauer v. Eighth Judicial Dist. Court*, Docket No. 76691 (Order Denying Petition, September 14, 2018) (declining to address the petition on the merits).



none of which was pleaded in the underlying petition to remove him as trustee, which are non-suit-related actions.<sup>6</sup> Steven additionally challenges the district court's exercise of in rem jurisdiction over the marital trust because it is an Illinois-based trust.

Margaret and Premier (hereafter collectively referred to as respondents) do not allege that the district court had general personal jurisdiction over Steven and limit their arguments to specific personal jurisdiction. Respondents counter that Steven's conduct was directly aimed at Margaret in Nevada, sufficient to satisfy the tort-based effects test under *Calder*, 465 U.S. at 789, and *Tricarichi*, 135 Nev. at 91, 440 P.3d at 650. We disagree.

#### *Standard of Review*

We have discretion to consider a writ petition. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). We may issue a writ of prohibition when a district court acts without or in excess of its jurisdiction. NRS 34.320. This is an "appropriate remedy" when the district court erroneously asserts personal jurisdiction over a defendant. *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000).<sup>7</sup> Writ relief is only available when a petitioner has no "plain, speedy[,] and adequate remedy in the ordinary course of law." NRS 34.330; see also *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 225, 88 P.3d 840, 841 (2004). Even if there is an adequate remedy at law, we retain "discretion to intervene under circumstances of urgency or strong necessity, or when an

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<sup>6</sup>Margaret sued Steven in a Florida state court for these alleged torts.

<sup>7</sup>As we conclude that prohibition provides an appropriate remedy in this matter, we need not consider the alternate request for a writ of mandamus.

important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition.” *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008) (internal quotation marks omitted).

Because Steven challenges the district court’s ruling regarding personal jurisdiction, we elect to exercise our discretion and consider this writ petition. *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014). We review issues of statutory interpretation and jurisdiction de novo. *In re Aboud Inter Vivos Tr.*, 129 Nev. 915, 921, 314 P.3d 941, 945 (2013); *Viega*, 130 Nev. at 374, 328 P.3d at 1156.

#### *The Law of Trusts in Nevada*

When a trustee is a nonresident, jurisdiction over the trustee may be proper through service of process when the situs of the trust resides in the forum where the underlying litigation takes place. George G. Bogert, et al., *Remedies of the Beneficiary and Trustee*, Bogert’s *The Law of Trusts and Trustees* § 870 (2d Rev. Ed. 1995). For example, in *In re Davis Family Heritage Trust*, a Nevada district court had proper specific personal jurisdiction over a foreign trust advisor when he knowingly accepted an appointment and the situs of the trust property was in Nevada. 133 Nev. 190, 195, 394 P.3d 1203, 1208 (2017); *see also* NRS 163.5555. Additionally, a court may exercise jurisdiction over a domestic trust through an in rem proceeding. Bogert, et al., *supra*, § 870. However, “[a] nonresident trustee may not” typically “be called upon to defend in an action involving [a] trust unless [the trustee] has ‘minimal contacts’ with the state in which the suit is brought.” 76 Am. Jur. 2d *Trusts* § 306 (2d Ed. 2016) (citing *First Am. Bank of Va. v. Reilly*, 563 N.E.2d 142 (Ind. Ct. App. 1990)); *see generally* *Hanson v. Denckla*, 357 U.S. 235 (1958) (explaining that a state court lacks in personam jurisdiction over a foreign trustee concerning a trust established in another



state, and consequently lacks power to bind the trustee in an action that the trustee has been constructively served but has not appeared).

Nevada's statute on assumption of in rem jurisdiction over a foreign trust differs from the norm. The trust jurisdictional statute is codified under NRS 164.010, which provides, among other things,

[u]pon . . . petition of a . . . beneficiary of the trust, the district court of the county in which any *trustee resides or conducts business* at the time of the filing . . . or in which the trust [situs] has been *domiciled* as of the time of the filing . . . *shall assume jurisdiction of the trust as a proceeding in rem* unless another court has properly assumed continuing jurisdiction in rem.

NRS 164.010(1) (emphases added). The statute goes on to provide several grounds for a trust to be considered "domiciled" in Nevada for the purposes of assuming in rem jurisdiction over a foreign trust. NRS 164.010(2). When a beneficiary of a foreign trust resides in Nevada, the district court *shall* assume in rem jurisdiction over the trust property because it is deemed domiciled in Nevada. NRS 164.010(2)(e). And when the district court assumes jurisdiction over a trust, it is additionally "deemed to have personal jurisdiction over *any trustee confirmed by the court* and any person appearing in the matter, unless such an appearance is made solely for the purpose of objecting to the jurisdiction of the court . . ." NRS 164.010(5)(b) (emphases added). Thus, although the statute does not specifically address jurisdiction over a foreign trustee, it certainly contemplates that jurisdiction may be challenged.

#### *Jurisdiction Over Steven as Trustee—In Personam Jurisdiction*

As a preliminary matter, there is a distinction between in rem and in personam jurisdiction, as well as judgments. In rem jurisdiction concerns the rights and interests of designated property within the forum

state. *Hanson*, 357 U.S. at 245. An in rem judgment determines the rights and liabilities associated with the property “against the whole world.” *Chapman v. Deutsche Bank Nat’l Tr. Co.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106 (2013); Restatement (Second) of Judgments § 6 (1982) (“[T]he court undertakes to determine all claims that anyone has to the thing in question.”). “By comparison, an in personam judgment acts upon the persons who are parties to the suit . . .” *Chapman*, 129 Nev. at 318, 302 P.3d at 1106.

Consequently, when a court has in rem jurisdiction<sup>8</sup> over property, it does not have automatic personal jurisdiction over interested persons. For a court to render judgments against persons who have interests in property subject to the court’s proper in rem jurisdiction, it must comport with due process and have sufficient minimum contacts over those interested persons—essentially meaning that the court must have personal jurisdiction. *See Shaffer v. Heitner*, 433 U.S. 186, 207-08 (1977). Such circumstances are akin to quasi in rem jurisdiction. *See Freeman v. Second Judicial Dist. Court*, 116 Nev. 550, 556, 1 P.3d 963, 967 (2000).

We recognize that NRS 164.010(5) grants district courts *automatic personal jurisdiction* over the trustee when the court confirms a trustee, without referring to Nevada’s long-arm statute, NRS 14.065, or comporting with principles of due process. But, while this statute provides a

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<sup>8</sup>We note that under the plain language of NRS 164.010(1) and NRS 164.010(2)(e), the district court was required to assume in rem jurisdiction because Margaret was a beneficiary who resided in Nevada. *See* NRS 164.010(1) (explaining that the district court “shall assume jurisdiction of the trust as a proceeding in rem . . .” when a beneficiary resides in Nevada). But this is a separate determination from whether personal jurisdiction over the trustee is proper in order for the court to enforce its orders regarding the administration of the trust.



statutory basis for asserting personal jurisdiction, Nevada courts must nevertheless adhere to the requirements of due process provided for in Nevada's long-arm statute, because "[w]henver possible, we will interpret a statute in harmony with other rules and statutes." *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 827, 192 P.3d 730, 734 (2008).

Under Nevada's personal jurisdiction jurisprudence, "[w]hen a nonresident defendant challenges personal jurisdiction, the plaintiff bears the burden of demonstrating that Nevada's long-arm statute grants jurisdiction over the defendants and that the exercise of that jurisdiction comports with the principles of due process." *Tricarichi*, 135 Nev. at 90, 440 P.3d at 649. "Due process requires that a nonresident defendant must have sufficient minimum contacts with the forum state so that subjecting the defendant to the state's jurisdiction will not offend traditional notions of fair play and substantial justice." *Id.* at 91, 440 P.3d at 649 (internal quotation marks omitted). There are sufficient minimum contacts over a nonresident defendant under a theory of specific personal jurisdiction when the defendant (1) purposefully availed itself to the privilege of acting in, or purposefully directed its conduct towards, the forum state, and (2) the cause of action arose from that purposeful contact, thereby making district court's exercise of personal jurisdiction reasonable.<sup>9</sup> *Id.* at 91, 440 P.3d at 650.

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<sup>9</sup>Courts evaluate "reasonableness" by considering several factors:

- (1) the burden on the defendant of defending an action in the foreign forum,
- (2) the forum state's interest in adjudicating the dispute,
- (3) the plaintiffs interest in obtaining convenient and effective relief,
- (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and
- (5) the shared interest of the

A nonresident defendant directs his conduct towards the forum when his or her “suit-related conduct” creates “a substantial connection with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis added). Suit-related conduct is created only by the defendant; “contacts between the plaintiff (or third parties) and the forum” are insufficient. *Id.*; see also *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) (“[The] unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction”).

If the underlying case is in the pleading or pretrial motion stage, the plaintiff need only make a prima facie showing of personal jurisdiction to defeat a motion to dismiss. *Tricarichi*, 135 Nev. at 90, 440 P.3d at 649. Later, the district court may determine the full merits of personal jurisdiction at an evidentiary hearing or trial. *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 693, 857 P.2d 740, 744 (1993).

Aside from NRS 164.010 and NRS 14.065, there are no other Nevada statutes or other authority that determine when a district court may constitutionally assert personal jurisdiction over a foreign trustee dealing with a foreign trust, if at all. However, the United States Supreme Court in *Hanson v. Denckla*, held that a Florida court lacked specific personal jurisdiction over a foreign trustee, who administered a foreign trust, because the trustee’s only contact with the forum was that the settlor relocated to the forum state to exercise powers of appointment and that numerous appointees

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several States in furthering fundamental substantive social policies.

*Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458-59, 282 P.3d 751, 755 (2012) (internal quotations omitted).



and beneficiaries happened to reside there. 357 U.S. 235, 254 (1958). The *Hanson* court concluded that these contacts were insufficient for the Florida court to acquire personal jurisdiction. *Id.* Without personal jurisdiction over the trustee, the underlying Florida litigation could not proceed because the trustee was a necessary and indispensable party. *Id.* at 245; *see also* FRCP 19(b) (explaining that if a necessary party may not be joined, the court must consider if dismissal of the case is proper); *cf.* NRCP 19(b) (same). In a later case, the Court recognized that such attenuated contacts with a forum provide “no clear notice” to a nonresident trustee that he or she “is subject to suit in the forum and thus no opportunity to alleviate the risk of burdensome litigation there.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 n.17 (1985) (internal quotation marks omitted); *see also* *Walden*, 571 U.S. at 284, (reaffirming *Hanson*); *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). We thus conclude that we are bound by *Hanson* and that district courts must conduct a minimum contact analysis over foreign trustees in order to determine if there is proper personal jurisdiction over the trustee.

Throughout the underlying proceedings in this case, two orders addressed personal jurisdiction: the order denying Steven’s petition to dismiss for lack of jurisdiction and the contempt order. Each order makes a summary conclusion that Nevada courts have personal jurisdiction over Steven. However, neither order addresses the reasonableness factors, as required by *Consipio Holding*, 128 Nev. at 458-59, 282 P.3d at 755, and the contempt order only provides a limited minimum contacts analysis.

Regarding the order denying Steven’s petition to dismiss, the district court failed to undertake any minimum contact analysis, relying solely on NRS 164.010(2)(e). However, there is no language in that subsection of the statute to assert personal jurisdiction over a foreign trustee;

the plain language does not legally support this conclusion. This subsection concerns in rem jurisdiction over the corpus of the trust.

Asserting personal jurisdiction solely under NRS 164.010 is antithetical to Nevada's long-arm statute and the constitutional mandates requiring minimum contacts. *See Int'l Shoe*, 326 U.S. at 318. The district court's petition essentially concludes that NRS 164.010 trumps the Fourteenth Amendment to the Constitution, and by asserting in rem jurisdiction over the corpus of a trust, the court also has automatic personal jurisdiction over a foreign trustee regardless of his or her contacts with Nevada. We recognize that at first glance perhaps this is what the statute suggests. However, this line of reasoning is not in accord with due process and would directly conflict with the United States Constitution. *Cf. Hillsborough Cty., v. Automated Med. Lab'ys, Inc.*, 471 U.S. 707, 712 (1985) (explaining that under the Supremacy Clause of the United States Constitution, federal law supersedes state law); *see also* U.S. Const., Art. VI, cl. 2 ("The Laws of the United States . . . shall be the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). Therefore, the district court erred in asserting personal jurisdiction over Steven without any discussion on Steven's minimum contacts with Nevada.

Turning to the contempt order, which was incorrectly characterized as civil contempt, the district court attempted to engage in a specific personal jurisdiction analysis—after several hearings and various motion practice. The court concluded that Steven's alleged defamation and other torts—which were not pleaded in Margaret's initial petition to assume jurisdiction—were directly aimed at Nevada, sufficient to satisfy the effects test. However, the effects test concerns tort cases, not trust or probate



matters. *See Tricarichi*, 135 Nev. at 91, 440 P.3d at 650; *see also Calder*, 465 U.S. at 789. This test was first delineated in *Calder* (and later adopted by the Nevada Supreme Court in *Tricarichi*) for a libel action against a nonresident publication that circulated defamatory articles in the forum state of California. *Calder*, 465 U.S. at 789. This alleged tortious conduct was sufficient to meet the effects test and for the California court to assert jurisdiction over the foreign publication. *Id.* Respondents admit in their answer that the effects test applies in tort cases and cite no authority for the proposition that the effects test may be used in trust matters against a trustee. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

The district court also relied on an order conferring personal jurisdiction over Steven in a separate case involving the life insurance trust. However, this reliance is misplaced. The life insurance trust case is *separate* from the marital trust case and concerns conduct not related to marital trust case—that is, non-suit-related conduct. *See Walden*, 571 U.S. at 284. And, the district court declined to consolidate these cases except for discovery purposes. Respondents cite no authority to suggest that personal jurisdiction is transferrable between cases. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Such a rule would go against the rules requiring that the “defendant’s suit-related conduct . . . create a substantial connection with the forum State” for purposes of specific personal jurisdiction. *See, e.g., Walden*, 571 U.S. at 284.

Lastly, the contempt order cited NRS 164.010(5)(b) as an additional basis for assuming personal jurisdiction over Steven. To reiterate,

while this may have given the district court a statutory basis for asserting personal jurisdiction, it did not provide a constitutional basis that comports with due process for a foreign trustee. Without a constitutional basis for personal jurisdiction over Steven, the district court could not properly adjudicate Margaret's claims because her requested relief involved possible judgments against Steven in his capacity as trustee.


We find *Hanson* to be dispositive in this matter. In that case, the United States Supreme Court reversed a Florida court's exercise of personal jurisdiction over a nonresident trustee where the settlor relocated there and several beneficiaries resided. *See Hanson*, 357 U.S. at 254. Here, there are even *fewer contacts*. Only a single beneficiary resides in Nevada, compared to the multiple beneficiaries and the settlor in *Hanson*, thereby making Steven's alleged contacts with the forum even more attenuated than the insufficient contacts in the *Hanson* case. *See id.* And similar to the *Hanson* case, Steven, as trustee, is a necessary and indispensable party to respondents' requested relief. *See id;* cf. NRCP 19(b). Without jurisdiction over Steven, the court cannot render any judgment against Steven or oversee administration of the trust because Steven is a necessary and indispensable party to this dispute. Thus, the district court acted in excess of jurisdiction with regard to any order, including contempt, affecting Steven.


Based on the foregoing, we


ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION instructing the district court to vacate its order denying petitioner's petition to dismiss and to enter an order granting petitioner's petition to dismiss (Docket No. 82067-COA), AND VACATE all other orders issued in the underlying litigation (Docket No. 80466-COA) and REMAND to the district court to return the trust to the



status quo before litigation commenced in Nevada, to the extent feasible, including returning the proceeds of the Florida sale back to the marital trust and vacating the orders removing Steven as trustee and appointing Premier as temporary trustee.<sup>10</sup>

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

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<sup>10</sup>In light of our disposition on the jurisdictional issue, we need not address any of Steven's remaining contentions in his petition or direct appeal as they are unnecessary to resolve this case. *See Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that this court need not address issues that are unnecessary to resolve the case at bar). We do note, however, that we are necessarily reversing the contempt sanctions and attorney fees awarded against Steven.

We additionally take this opportunity to call on the Legislature to clarify NRS 164.010(5)(b). As written, this statute makes no reference to Nevada's long-arm statute or minimum contacts, but requires the court to assume in rem jurisdiction over a foreign trust, and by virtue of that exercise, the district court also has personal jurisdiction over any trustee. This automatic grant of personal jurisdiction does not appear to comport with principles of due process and minimum contacts. While we recognize the statute contemplates a trustee's ability to challenge jurisdiction, the required compliance with Nevada's long-arm statute for personal jurisdiction over a foreign trustee is not included within the statutory provisions, thereby failing to recognize the constitutional importance of a challenge to personal jurisdiction. This places district courts in a position where they assume that they are required to exercise jurisdiction over a foreign trustee, even where the trustee lacks sufficient minimum contacts with Nevada. Such a construction could render NRS 164.010(5)(b) unconstitutional; however, we need not reach this issue in light of our disposition.

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Department 8  
Howard & Howard Attorneys PLLC  
Melissa A. Edwards  
The Powell Law Firm  
Eighth District Court Clerk