

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE VON ERNST  
FAMILY TRUST

No. 39478

DARRELL K. VON ERNST.

Appellant,

vs.

VON ERNST FAMILY TRUST;  
JANELLE NORRIS; TERRY ERNST;  
LINDA FREEMAN; JANE ERNST; AND  
JENNIFER LEISTIKOW,  
Respondents.<sup>1</sup>

FILED

MAY 16 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting a petition to remove a trustee, to appoint a replacement trustee, and for an accounting of an inter vivos trust. In January 2002, respondents Janelle Norris, Terry Ernst, Linda Freeman, and Jennifer Leistikow filed the underlying petition to remove appellant as trustee of the Von Ernst Family Trust, to appoint a replacement trustee, for an accounting, and for attorney fees and costs. Respondents contended that appellant had failed to distribute the trust assets, was diverting or mismanaging trust assets, and had failed to provide an accounting, contrary to his legal duty. Appellant did not file an opposition. After

<sup>1</sup>The clerk of this court shall amend the caption on this court's docket so that it is consistent with the caption on this order.

conducting a hearing, the district court granted the petition and removed appellant as trustee.

If a trustee commits or threatens to commit a breach of the trust, the beneficiaries may petition the court to compel the trustee to perform his duties or to remove the trustee.<sup>2</sup> The district court, upon hearing the matter, shall enter any order it deems appropriate.<sup>3</sup> The beneficiaries may also petition the court to require the trustee to provide an accounting.<sup>4</sup> When a trustee fails to perform his legal duties, he may be removed.<sup>5</sup>

Here, the beneficiaries supported their petition with the affidavits of Linda Freedman and Janelle Norris, who averred that they had not received the full distributions to which they were entitled. They further averred that appellant's representations of the trust's value were inconsistent, and that appellant had refused to provide an accounting despite their requests for one. The record contains no contrary evidence. Appellant did not file a written opposition to the petition. Further, the hearing was not reported and appellant did not provide a statement of the proceedings.<sup>6</sup> This court has repeatedly held that it is the appellant's responsibility to provide this court with an adequate appellate record, and

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<sup>2</sup>NRS 163.115(1)(e); NRS 164.015; see also NRS 153.031(1)(k).

<sup>3</sup>NRS 164.015(3); see also NRS 164.040(2).

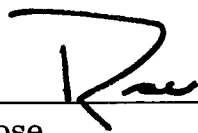
<sup>4</sup>NRS 165.135; NRS 165.190.

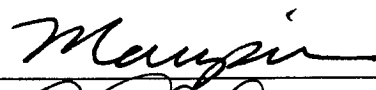
<sup>5</sup>NRS 165.200.

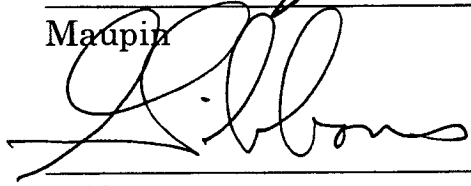
<sup>6</sup>See NRAP 9(d).

that “[w]hen evidence upon which the lower court’s judgment rests is not included in the record, it is assumed that the record supports the district court’s decision.”<sup>7</sup> Here, we must assume that the record supports the district court’s order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

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

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<sup>7</sup>M & R Investment Co. v. Mandarin, 103 Nev. 711, 718, 748 P.2d 488, 493 (1987); see also Schouweiler v. Yancey Co., 101 Nev. 827, 712 P.2d 786 (1985); Carson Ready Mix v. First Nat’l Bk., 97 Nev. 474, 635 P.2d 276 (1981).

<sup>8</sup>In light of our decision to affirm, we deny as moot respondents’ motion to dismiss this appeal based on a procedurally defective notice of appeal. See Scott v. Dep’t of Commerce, 104 Nev. 580, 587, 763 P.2d 341, 345 (1988).

Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him.

cc: Hon. Andrew J. Puccinelli, District Judge  
Darrell K. Von Ernst  
Hale Lane Peek Dennison Howard & Anderson/Reno  
Elko County Clerk