

BOOK 444 PAGE 131-140  
OFFICIAL RECORDS -  
RECORDED AT THE REQUEST OF  
Wilson Barrows & Salyer  
2006 OCT 10 PM 2:55

EUREKA COUNTY, NEVADA  
M.N. REBALEATI, RECORDER  
FILE NO. FEES \$23.00

**206340**

APN 005-010-31 (Eureka County)

**Mailing Address of Grantee or Other Person Requesting Recording:**

Wilson Barrows & Salyer  
442 Court Street  
Elko, Nevada 89801

**Mail Tax Statements to:**

Name: Patricia Bates  
Address: 24661 Kim Circle  
City/State/Zip: Laguna Hills, CA 92653

**Social Security Number Affirmation Statement:**

☒ In accordance with NRS 239B.030, the undersigned person recording this document hereby affirms that this document does not contain the social security number of any person;

**-OR-**

☐ In accordance with NRS 239B.030, the undersigned person recording this document hereby affirms that this document does contain the social security number of a person.

Brandy J. Putman

Name

Legal Assistant

Title

Brandy J. Putman  
Signature

**Title of Document Recorded:**

**ORDER TO SET ASIDE AN ESTATE WITHOUT ADMINISTRATION**

WILSON BARROWS & SALYER  
ATTORNEYS AT LAW  
442 Court St.  
ELKO, NEVADA 89801

1 No. 9571

2 Dept. 01

2006 OCT -3 PM 12:14  
MARY ANN GRAY  
DIST. COURT CLERK

3  
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5  
6 IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF LANDER

8 In the Matter of the Estate of  
9 **ROBERT GORDON BATES** also  
10 known as **ROBERT G. BATES**, fka  
11 **ROBERT G. BATZ,**

12  
13 Deceased.  
14  
15

**ORDER TO SET ASIDE AN ESTATE  
WITHOUT ADMINISTRATION**

16 Patricia Bates filed her Petition to Set Aside an Estate Without  
17 Administration on May 25, 2006. Notice of the Petition and hearing was given according to  
18 law. The children of the Decedent appeared on June 20, 2006, the date scheduled for  
19 uncontested hearing, and verbally objected to the Petition. The Court continued the  
20 hearing. On July 5, 2006, the Court entered its Order Setting Hearing which set the  
21 contested hearing for September 19, 2006. The Order also ordered: "That any persons  
22 desiring to contest this matter must file with the Clerk of the Court written objections with  
23 points and authorities setting for the grounds of their objection, and serve the same upon  
24 Richard G. Barrows, attorney for Petitioner, on or before August 31, 2006."

1           On August 31, 2006, all four of Decedent's children, Sandra Thiesen,  
2 Celeste Bishop, Mark E. Bates and Linda Lowman (Contestants), appeared in this  
3 proceeding through their legal counsel, Robert J. Wines, by filing a Brief in Opposition to  
4 Petition to Set Aside, supported by affidavits of the Contestants.

5           On the date scheduled, the Petitioner appeared in person with her legal  
6 counsel, Richard G. Barrows. Two of the Contestants, Sandra Thiesen and Linda  
7 Lowman, appeared in person and all four Contestants appeared through their legal  
8 counsel, Robert J. Wines.

9           At the outset of the hearing the Petitioner made an oral motion for judgment  
10 on the pleadings. The Petitioner argued that the pleadings consisted of the Petition and  
11 Brief in Opposition, as the responsive pleading, and that the pleadings were closed; that  
12 the responsive pleading effectively denied ¶s 20 – 23 of the Petition and admitted ¶s 1 –  
13 19 of the Petition by not objecting to or denying them, and that Petitioner was entitled to  
14 judgment as a matter of law under uncontested ¶s 1 – 19 of the Petition, pursuant to NRS  
15 146.070(1). Petitioner argued that under NRS 146.070(1), the estate must not be  
16 administered upon and the Court is obligated to set aside the whole estate to the  
17 Petitioner as the surviving spouse.

18           The Contestants opposed the Motion on three grounds: (1) NRS 146.070(1)  
19 does not say that "gross value of the estate" is limited to assets within the State of  
20 Nevada; (2) under NRS 146.070(1), the Court can set aside the income from the Nevada  
21 property for the support of the Petitioner as surviving spouse, and the residue to the

1 Decedent's children; and (3) the Decedent's mother lacked the capacity to amend the  
2 Trust (See ¶6 of the Petition) by "writing the Contestants out of the Trust" and giving all  
3 Trust assets to the Decedent.

4           The Petitioner responded to the Contestants' argument that Nevada probate  
5 statutes can legally apply only to real estate located in Nevada and Nevada probate  
6 courts have jurisdiction only with respect to real estate located in Nevada. As a result,  
7 when NRS 146.070(1) refers to the "gross value of the estate" that must, as a matter of  
8 law, be limited to assets within the State of Nevada. As a result, the Motion for Judgment  
9 on the Pleading must be granted even if the Decedent left a million dollars to Petitioner in  
10 his state of domicile, the State of California. The Court responded that the purpose of  
11 NRS 146.070(1) is to provide for the support of the surviving minor children and/or  
12 spouse, and if the Decedent left Petitioner a million dollars estate in California, she would  
13 not need the Nevada property for her support and subsection one of NRS 146.070 should  
14 not apply. Counsel for Petitioner replied that the statute does not say that the assets must  
15 be set aside to the surviving spouse if she needs them for her support; it says if the assets  
16 are under \$75,000.00, they must be set aside for the support of the surviving spouse.

17           The Petitioner further responded to the Contestants' argument that the  
18 pleadings were closed and the Contestants, having failed to timely allege the incapacity of  
19 the Decedent's mother, may not do so now. The Court ordered that the pleadings were  
20 closed and the issues outside them would not be considered.

1 The Court stated that it was not prepared to grant the Motion in view of the  
2 fact that there was an issue about the Decedent's assets in California and the Petitioner's  
3 need for the Nevada property for her support. The Petitioner requested leave of Court to  
4 present evidence limited to the issues of the Decedent's assets in California and the  
5 Petitioner's need for the Nevada property for her support. The Court allowed such  
6 evidence to be taken. Having received such evidence, the Court ruled that the Petition  
7 should be granted. ACCORDINGLY,

8 THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

9 1. Decedent's parents, Elmer L. Batz and Lillian E. Batz (Creators)  
10 created the Batz Family Trust (Trust), an amendable and revocable, living trust, by Trust  
11 Agreement dated February 22, 1988 (Trust Agreement), a copy of which is attached to the  
12 Petition as Exhibit A and made a part hereof by this reference.

13 2. At the time of the execution of the Trust Agreement, the Trust  
14 Creators conveyed legal title to the following Property located in Eureka and Lander  
15 Counties, to the Trust by Deeds recorded in the Eureka and Lander County Recorder's  
16 Offices:

17 Township 31 North, Range 48 East, MDM

18 Section 17: NE $\frac{1}{4}$

19 Section 19: Lots 3, 4, 5 and 6

20  
21 Containing 292.5 acres of land, more or less, including all  
22 lakes, streams, canals, waterways, dikes, roads, streets,  
23 alleys, easements and rights of way, on, within, or  
24 adjoining the lands above described.  
25

1 TOGETHER WITH all improvements situate thereon.

2  
3 TOGETHER WITH the tenements, hereditaments and  
4 appurtenances thereunto belonging or in anywise  
5 appertaining, and the reversion and reversions, remainder  
6 and remainders, rents, issues, and profits thereof.

7  
8 A.P.N. 010-540-03, Lander County  
9 005-010-31, Eureka County

10  
11 3. To this date the record legal title to the Property remains in the Trust.

12 4. The Trust Agreement provided in Paragraph 6.7 that the Trust would  
13 terminate on the death of the survivor of the two Trust Creators and the Trust Estate  
14 would then be distributed free of trust in equal 1/5 shares to the Decedent and his four  
15 children, Celeste Bishop, Linda Schultz, Sandra C. Theisen also known as Cathy Bates,  
16 and Mark Bates.

17 5. One of the Trust Creators, Elmer L. Batz, thereafter died on March 3,  
18 1990.

19 6. Pursuant to Paragraph 4.2 of the Trust Agreement, on July 2, 1993,  
20 the surviving Creator, Lillian E. Batz, exercised her right to amend the Trust Agreement  
21 by: (A) appointing the Decedent, Robert Batz (aka Robert Bates), as Successor Trustee  
22 upon the her death; and (B) amending Paragraph 6.7 of the Trust Agreement to provide  
23 that upon her death the entire Trust Estate was to be distributed free of trust to the  
24 Decedent, Robert Bates, unless she made a different disposition by power of appointment  
25 in her Will. A true copy of the July 2, 1993, Amendment is attached to the Petition as  
26 Exhibit B and made a part hereof by this reference.

1           7.     The surviving Trust Creator, Lillian E. Batz, thereafter died on  
2 December 3, 1998, without revocation, or further amendment, of the Trust Agreement.

3           8.     The surviving Trust Creator did not make an appointment in a Will  
4 which would alter the Trust distribution to the Decedent, Robert Bates, as provided in the  
5 Amendment.

6           9.     As a result, on the death of the surviving Trust Creator, the Trust  
7 Agreement, as amended, provided in Paragraph 6.7, that the Trust would then terminate  
8 and the Trust Estate would then be distributed free of trust to the Decedent, Robert Bates.

9           10.    However, for reasons now unknown, Decedent, as Successor Trustee  
10 of the Trust, did not convey the Property to himself after the death of the surviving Trust  
11 Creator as provided by Paragraph 6.7 of the Trust Agreement, as amended.

12          11.    Nevertheless, by reason of the above circumstances, the Decedent,  
13 Robert Bates, was at the time of his death, the owner of the equitable title and entitled to  
14 the Property, although the legal title remained in the Batz Family Trust, subject to the  
15 obligation of the Successor Trustee to convey the legal title to him.

16          12.    Petitioner is the surviving spouse of the Decedent, Robert Bates, fka  
17 Robert Batz, the son of the Trust Creators.

18          13.    Decedent died on the 26<sup>th</sup> day of November, 2003, in Santa Ana,  
19 California, as shown by the copy of the Certificate of Death attached to the Petition as  
20 Exhibit C, before conveying legal title to the Property as Successor Trustee of the Trust to  
21 himself as sole beneficiary of the Trust.

1           14. Decedent died leaving an estate in the Counties of Lander and  
2 Eureka, State of Nevada.

3           15. Decedent's interest in the Property was all of the fee title as his sole  
4 and separate Property.

5           16. There are no liens and mortgages of record upon the Property of  
6 record at the date of the death of Decedent.

7           17. The gross value of Decedent's interest in the Nevada Property at the  
8 time of death of the Decedent did not exceed \$75,000.00, after deducting any  
9 encumbrances, and is estimated to be \$27,962.86, based upon the 2006/2007 assessed  
10 valuations of the Property. Copies of the Tax Bills from Eureka and Lander Counties are  
11 attached to the Petition as Exhibit D and made a part hereof by this reference.

12           18. The gross value of Decedent's interest in all his assets in California  
13 was negligible at the time of death of the Decedent.

14           19. The gross value of Decedent's interest in all property and assets in  
15 the world at the time of death of the Decedent did not exceed \$75,000.00, after deducting  
16 any encumbrances.

17           20. The Petitioner needs the Nevada Property for her support.

18           21. There are no debts of Decedent within the State of Nevada so far as  
19 known to Petitioner.

20           22. Decedent died with a surviving spouse, but no minor children.



23. Decedent died testate leaving a contested Will, a copy of which is attached to the Petition as Exhibit E and made a part hereof by this reference. A transcription of the Will is also attached to the Petition as Exhibit F and made part hereof by this reference.

24. The names, ages, relationships, and residences of the heirs at law and next of kin of the Decedent are as follows:

NAME	AGE	RELATIONSHIP	ADDRESS
Mark E. Bates	Adult	Son	18537 Blue Hills Drive Yelm, WA 95897
Celeste Bishop	Adult	Daughter	14301 127 <sup>th</sup> Ave SE Snohmish, WA 92890
Linda Schultz	Adult	Daughter	5483 Fide Hill Sun Valley, NV 89433
Cathy Bates, aka Sandra C. Theisen	Adult	Daughter	Unknown

25. The names and residences of the devisees named in the Will of the Decedent, the age of any who is a minor, and the relationship of the devisees to the Decedent, so far as known to Petitioner are as follows:

NAME	AGE	RELATIONSHIP	ADDRESS
Patricia Bates	Adult	Spouse	24661 Kim Circle Laguna Hills, CA 92653
Victoria Rogers, fka Victoria Lanard	Adult	Stepdaughter	15 Anacapa Court Foothill Ranch, CA 92610
Peggy Miller	Adult	Sister-in-law	1674 Casale Road Pacific Palisades, CA 90272

1                   26.    The Estate should therefore not be administered upon in the State of  
2 Nevada, but rather, the whole thereof should be assigned and set apart to the Petitioner,  
3 Patricia Bates, as the surviving spouse of Decedent, for her support pursuant to NRS  
4 146.070(1).

5                   IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

6                   1.    Decedent's interest in the above described Nevada property be, and  
7 the same is hereby, set aside to Patricia Bates; and

8                   2.    A certified copy of this order be recorded in the Lander and Eureka  
9 County Recorder's Offices to transfer the title to the Nevada property as above ordered.

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Dated: Sept-28, 2006

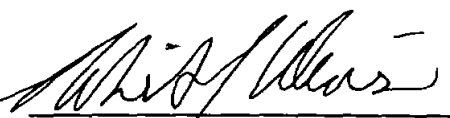
  
DISTRICT JUDGE

This Order prepared by:

Reviewed by:

Wilson Barrows & Salyer

By:   
Attorneys for Petitioner

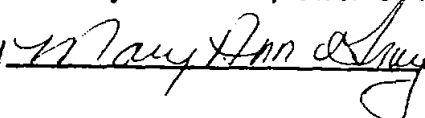
By:   
Robert J. Wines  
Attorney for Contestants

06090412.wpd  
September 22, 2006

**CERTIFIED COPY**

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

DATE: October 3, 2006  
Gladys Burris, County Clerk and Clerk of the Sixth Judicial District County, in and for the County of Lander, State of Nevada.

By:  Deputy

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

a. 005-010-31  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

a. ☐ Vacant Land      b. ☐ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
Other \_\_\_\_\_

**FOR RECORDER'S OPTIONAL USE ONLY**

Book: 444 Page: 131-140  
Date of Recording: 10-10-06  
Notes: 206340

3. a. Total Value/Sales Price of Property \$ \_\_\_\_\_  
b. Deed in Lieu of Foreclosure Only (value of property) ( \_\_\_\_\_ )  
c. Transfer Tax Value: \$ \_\_\_\_\_  
d. Real Property Transfer Tax Due \$ \_\_\_\_\_

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 5  
b. Explain Reason for Exemption: Transfer of title between persons  
within the first degree of affinity or consanguinity.

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Robert M. Bates Capacity Attorney

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: Robert Gordon Bates  
Address: Deceased  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: Patricia Bates  
Address: 24661 Kim Circle  
City: Laguna Hills  
State: CA Zip: 92653

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: Richard G. Barrows, Esq Escrow #: \_\_\_\_\_  
Address: WILSON BARROWS & SALYER, 442 Court Street  
City: Elko State: NV Zip: 89801

**AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED**