

In the Supreme Court of the State of Nevada

IN THE MATTER OF THE CHRISTIAN)
FAMILY TRUST u.a.d. 10/11/16)
~~~~~ )  
SUSAN CHRISTIAN-PAYNE, )  
ROSEMARY KEACH AND )  
RAYMOND CHRISTIAN, JR. )

Appellants, )

-vs- )

ANTHONY L. BARNEY, LTD. and )  
JACQUELINE UTKIN, )  
Respondents. )  
~~~~~ )

ANTHONY L. BARNEY, LTD.,)
Cross-Appellant,)

-vs-)

SUSAN CHRISTIAN-PAYNE,)
ROSEMARY KEACH AND)
RAYMOND CHRISTIAN, JR.)

Cross-Respondents,)

and)
JACQUELINE UTKIN,)
Respondent.)
~~~~~ )

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Case No.: 75750

**APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 13a**

*Filed by:*

*/s/ Cary Colt Payne, Esq.*

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| <i><b>DATE</b></i>               | <i><b>DOCUMENT</b></i>                                                                                                                                                          | <i><b>NUMBERED</b></i> |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <i><b>APPENDIX VOLUME 1:</b></i> |                                                                                                                                                                                 |                        |
| 7/13/17                          | Petition to Assume Jurisdiction of Trust;<br>Confirm Trustees; Instructions, etc.                                                                                               | APP-ROA--001-72        |
| 8/17/17                          | Notice of Motion and Motion to Dismiss<br>Pursuant to NRCP 12(b)(1) and NRCP 12 (b)(5)                                                                                          | APP-ROA—73-97          |
| 8/22/17                          | Errata to Notice of Motion and Motion to<br>Dismiss Pursuant to NRCP 12(b)(1) and<br>NRCP 12(b)(5)                                                                              | APP-ROA—98-101         |
| 9/15/17                          | Supplement and Addendum to Petition to Assume<br>Jurisdiction of Trust; confirm Trustees'<br>Instructions, etc. Alternatively to Reform<br>Trust Agreement                      | APP-ROA--102-105       |
| 9/15/17                          | Petitioner's Opposition to Motion to Dismiss                                                                                                                                    | APP-ROA--106-115       |
| <i><b>APPENDIX VOLUME 2:</b></i> |                                                                                                                                                                                 |                        |
| 10/4/17                          | Reply to Petitioner's Opposition to Motion<br>to Dismiss                                                                                                                        | APP-ROA--116-156       |
| 10/13/17                         | Response to Petition to Assume Jurisdiction<br>of Trust; Confirm Trustees; Instrutions, Etc.<br>and Joinder in Motion to Dismiss Pursuant<br>to NRCP 12(b)(1) and NRCP 12(b)(5) | APP-ROA--157-165       |
| 10/25/17                         | Accounting                                                                                                                                                                      | APP-ROA--166-173       |
| 10/25/17                         | Inventory and Record of Value                                                                                                                                                   | APP-ROA--174-184       |
| 10/31/17                         | Notice of Entry of Order                                                                                                                                                        | APP-ROA--185-193       |

| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                                           | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 3:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/3/17                           | Joint Petition for Review of Former Trustees<br>Refusal to Provide a Proper Accounting<br>Pursuant to NRS 165.143                                                                                                                                                                                                                                | APP-ROA--194-222       |
| <i><b>APPENDIX VOLUME 4a:</b></i> |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/13/17                          | Joint Objection to Petition Jurisdiction Etc.<br>Part 1                                                                                                                                                                                                                                                                                          | APP-ROA--223-298       |
| <i><b>APPENDIX VOLUME 4b:</b></i> |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/13/17                          | Joint Objection to Petition Jurisdiction Etc.<br>Part 2                                                                                                                                                                                                                                                                                          | APP-ROA--299-373       |
| <i><b>APPENDIX VOLUME 5:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 12/4/17                           | Petitioner's Opposition to Motion for<br>Review/Proper Accounting                                                                                                                                                                                                                                                                                | APP-ROA--374-413       |
| 12/14/17                          | Petitioner's Opposition to Joint Counterpetition<br>to Confirm/Breach of Fiduciary Duty, Etc.<br>Request for Discovery                                                                                                                                                                                                                           | APP-ROA--414-428       |
| <i><b>APPENDIX VOLUME 6:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 12/12/17                          | Motion for Compliance with and Enforcement<br>of Court Order, and for Sanctions Relating<br>Thereto, for Order to show cause why Former<br>Trustees should not be held in Contempt,<br>for Order Compelling Former Trustees to<br>Account, and for Access to and Investment<br>Control of Trust Funds Belonging to the<br>Christian Family Trust | APP-ROA--429-452       |

| <b><i>DATE</i></b> | <b><i>DOCUMENT</i></b>                                                                                                                                                      | <b><i>NUMBERED</i></b> |
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| 1/4/18             | Notice of Suggestion of Death                                                                                                                                               | APP-ROA--453-454       |
| 1/11/18            | Opposition to Motion for Compliance, Enforcement Sanctions, Contempt, Etc.; Counterpetition for Distribution and Vacating all Pending Matters and Dismiss Trust Proceedings | APP-ROA--455-508       |

***APPENDIX VOLUME 7a:***

|         |                                                 |                  |
|---------|-------------------------------------------------|------------------|
| 1/26/18 | Petition to Confirm Successor Trustee<br>Part 1 | APP-ROA--509-539 |
|---------|-------------------------------------------------|------------------|

***APPENDIX VOLUME 7b:***

|         |                                                 |                  |
|---------|-------------------------------------------------|------------------|
| 1/26/18 | Petition to Confirm Successor Trustee<br>Part 2 | APP-ROA--540-569 |
|---------|-------------------------------------------------|------------------|

***APPENDIX VOLUME 8:***

|         |                                                                                                            |                  |
|---------|------------------------------------------------------------------------------------------------------------|------------------|
| 2/6/18  | Amended Notice of Entry-Omnibus Order                                                                      | APP-ROA--570-576 |
| 2/8/18  | Petition for Fees and Costs                                                                                | APP-ROA--577-659 |
| 2/23/18 | Notice of Non-Opposition and Limited Joinder to the Petition for Fees and Costs for Anthony L. Barney, LTD | APP-ROA--660-663 |
| 2/23/18 | Opposition to Petition to Confirm Successor Trustee; Counterpetition for Reinstatement of Petitioners      | APP-ROA--664-735 |
| 3/8/18  | Monte Reason's Application for Reimbursement of Administrative Expenses                                    | APP-ROA--736-741 |

| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                    | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 9:</b></i>  |                                                                                                                                           |                        |
| 3/9/18                            | Petitioners Combined Opposition to (1) Barney Firm Petition For Fees, Etc. (2) Monte Reason's Application for Reimbursement               | APP-ROA--742-840       |
| <i><b>APPENDIX VOLUME 10:</b></i> |                                                                                                                                           |                        |
| 3/12/18                           | Reply to Opposition to Petition to Confirm Successor Trustee; and Opposition to Counter-Petition for Reinstatement of Petitioners         | APP-ROA--841-848       |
| 3/13/18                           | Response to Opposition to Monte Reason's Application for Reimbursement of Administrative Expenses                                         | APP-ROA--849-863       |
| 3/13/18                           | Reply to Petitioner's Combined Opposition to (1) Barney Firm Petition for Fees, Etc., (2) Monte Reason's Application for Reimbursement    | APP-ROA--864-894       |
| 3/15/18                           | Minutes of Hearing – 4/4/18                                                                                                               | APP-ROA--895-898       |
| 3/29/18                           | Motion (1) to Expunge Lis Pendens and/or Strike Pleading; and (2) for Preliminary Injunction                                              | APP-ROA--899-921       |
| <i><b>APPENDIX VOLUME 11:</b></i> |                                                                                                                                           |                        |
| 3/30/18                           | Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); Request for Evidentiary Hearing, Reopening Discovery | APP-ROA--922-960       |

| <i><b>DATE</b></i>                 | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                               | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 12:</b></i>  |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/2/18                             | Motion for Turnover of Assets and to Dissolve the Injunction Over Christian Family Trust Assets                                                                                                                                                                                                                      | APP-ROA--961-998       |
| 4/3/18                             | Countermotion 1) to Strike Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); request for Evidentiary Hearing, and Reopening Discovery; 2) To Find the Former Trustees to be Vexatious Litigants, and 3) For sanctions Against Cary Colt Payne Pursuant to NRS 7.085 and EDCR 7.60 | APP-ROA--999-1036      |
| <i><b>APPENDIX VOLUME 13a:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 1                                                                                                                                                                                                                                                                                            | APP-ROA-1037-1061      |
| <i><b>APPENDIX VOLUME 13b:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 2                                                                                                                                                                                                                                                                                            | APP-ROA-1062-1186      |
| <i><b>APPENDIX VOLUME 13c:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 3                                                                                                                                                                                                                                                                                            | APP-ROA-1087-1111      |
| <i><b>APPENDIX VOLUME 13d:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 4                                                                                                                                                                                                                                                                                            | APP-ROA-1112-1134      |

| <i><b>DATE</b></i>                 | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                    | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 14a:</b></i> |                                                                                                                                                                                                                                                                                                                           |                        |
| 4/10/18                            | Motion for (1) Fees Pursuant to NRS 165.148<br>(2) Compliance with and Enforcement of<br>Court Order and Sanctions; (3) for Order<br>to Show Cause Why Former Trustees<br>Should Not be Held in Contempt, and<br>(4) for Extension of Discovery<br>Part 1                                                                 | APP-ROA-1135-1279      |
| <i><b>APPENDIX VOLUME 14b:</b></i> |                                                                                                                                                                                                                                                                                                                           |                        |
| 4/10/18                            | Motion for (1) Fees Pursuant to NRS 165.148<br>(2) Compliance with and Enforcement of<br>Court Order and Sanctions; (3) for Order<br>to Show Cause Why Former Trustees<br>Should Not be Held in Contempt, and<br>(4) for Extension of Discovery<br>Part 2                                                                 | APP-ROA-1180-1224      |
| <i><b>APPENDIX VOLUME 15:</b></i>  |                                                                                                                                                                                                                                                                                                                           |                        |
| 4/12/18                            | Notice of Entry of Order (Barney Petition Fees)                                                                                                                                                                                                                                                                           | APP-ROA-1225-1232      |
| 4/19/18                            | Petitioner's Combined Opposition to (1) Motion<br>to Turnover Assets and Dissolve Injunction over<br>Trust Assets; (2) Motion to 1. Expunge Lis<br>Pendens and 2. Preliminary Injunction and<br>Counter-motion for Distribution/ Termination of Trust;<br>Alternatively for Stay/ Set Bond and Set Evidentiary<br>Hearing | APP-ROA-1233-1254      |
| 4/19/18                            | Opposition to Motion for (1) fees, (2) compliance,<br>(3) for Order to Show Cause and (4) Extension<br>of Discovery, counter-motion to Distribute Trust<br>Property (2nd request)                                                                                                                                         | APP-ROA-1255-1292      |

| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                          | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 16:</b></i> |                                                                                                                                                                                                                                                                                                                                 |                        |
| 5/8/18                            | Response to Combined Opposition to (1) Motion to Turnover Assets and Dissolve Injunction Over Trust Assets; (2) Motion to 1. Expunge Lis Pendens and 2. Preliminary Injunction and Opposition to Countermotion or Distribution/Termination of Trust; Alternatively for Stay, Set Bond and Set Evidentiary Hearing               | APP-ROA-1293-1333      |
| 5/11/18                           | Supplement to response to Combined Opposition to (1) Motion to Turnover Assets and Dissolve Injunction Over Trust Assets; (2) Motion to 1. Expunge Lis Pendens and 2. Preliminary Injunction and Opposition to Countermotion for Distribution/Termination of Trust; Alternatively for Stay/Set Bond and Set Evidentiary Hearing | APP-ROA-1334-1337      |
| 5/16/18                           | Hearing Transcript                                                                                                                                                                                                                                                                                                              | APP-ROA-1338-1390      |
| <i><b>APPENDIX VOLUME 17:</b></i> |                                                                                                                                                                                                                                                                                                                                 |                        |
| 6/1/18                            | Notice of Entry of Order (Utkin suspension)                                                                                                                                                                                                                                                                                     | APP-ROA-1391-1401      |
| 10/8/18                           | Notice of Entry – Probate Commissioner R&R (Hearing re Utkin removal)                                                                                                                                                                                                                                                           | APP-ROA-1402-1408      |
| 11/13/18                          | Notice of Entry – Order Affirming Probate Commissioner R&R (Utkin removal)                                                                                                                                                                                                                                                      | APP-ROA-1409-1414      |



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SEP 13 2018

*Ann L. Johnson*  
CLERK OF COURT

ORIGINAL

1 TRANS

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4  
5 EIGHTH JUDICIAL DISTRICT COURT  
6 FAMILY DIVISION  
7 CLARK COUNTY, NEVADA  
8  
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10 IN THE MATTER OF THE )  
11 TRUST OF: )

12 THE CHRISTIAN FAMILY )  
13 TRUST, U.A.D. 10/11/16 )

CASE NO. P-17-092512-T

DEPT. PROBATE

14  
15 BEFORE THE HONORABLE VINCENT OCHOA  
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: PETITION

18 WEDNESDAY, APRIL 4, 2018  
19  
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P-17-092512-T CHRISTIAN FAMILY TRUST 04/04/2018 TRANSCRIPT  
VERBATIM REPORTING & TRANSCRIPTION, LLC (520) 303-7356

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APPEARANCES:

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1 LAS VEGAS, NEVADA

WEDNESDAY, APRIL 4, 2018

2

P R O C E E D I N G S

3

(THE PROCEEDINGS BEGAN AT 02:00:22)

4

5

MR. KIRSCHNER: -- Your Honor.

6

THE COURT: How are we doing?

7

8

MR. KIRSCHNER: I'm doing pretty good. How have you been?

9

THE COURT: Not too good today.

10

MR. KIRSCHNER: Not too good. We're the Plaintiff today, but if you want, we'll just sit -- sit in the same place as we always sit.

13

THE COURT: Well, I wish you would sit instead of the jumping around we did last time. Are we on?

15

THE CLERK: We're on.

16

THE COURT: This is on the matter of Christian Family Trust. Everyone can have a seat. We'll start off with the show you guys put on last time. It was not very pretty, not acceptable for Nevada lawyers to act that way. I don't expect it to happen today. That leaves me to the pleadings that were filed. And I enjoy your insults as much as anyone else, but that's not acceptable, is it?

23

So let's discuss your client's case. Let's discuss Nevada law. Let's discuss the facts of this case without

24

1 insulting each other. I don't appreciate it. I'm going to  
2 take action either with the State Bar or in the courtroom if  
3 that continues. Let's try to resolve this case as quickly as  
4 possible.

5 Both Trustors have -- are deceased. So let's start  
6 -- why can't we distribute the assets? Who would like to  
7 answer that? I don't know why we just can't move forward and  
8 close this case out.

9 MR. KIRSCHNER: Well, I -- as a starting point, Your  
10 Honor, if -- if we're looking at basically the status of where  
11 we're at, first and foremost the --

12 THE COURT: Because I thought the trust was very  
13 clear and that's what we hear from this side all the time. So  
14 if it's very clear, we should just follow what the trust tells  
15 us to do.

16 MR. KIRSCHNER: Well, as a starting point, one of  
17 the things that you need to do as a trustee and as a trust.  
18 You need to fine out whether or not -- what the assets of the  
19 trust were. Now we've had two accounting inventories that had  
20 been prepared and submitted. Both of them are incorrect.  
21 This is a problem. And here is how the --

22 THE COURT: Who filed those?

23 MR. KIRSCHNER: That would be the -- the former  
24 trustees. Here is the problem with that, Your Honor. Under

1 the 20 -- so -- so I'm going to refer to them as the --

2 THE COURT: So you -- if they're incorrect then you  
3 -- you know what the correct version is.

4 MR. KIRSCHNER: No, that's not --

5 THE COURT: No?

6 MR. KIRSCHNER: -- quite it. But --

7 THE COURT: Not --

8 MR. KIRSCHNER: -- here -- to get to it. The 2017  
9 inventory and accounting which is one that was filed in  
10 October 2017, I'm going to refer to them colloquial as the  
11 2017 accounting, 2018 accounting. Okay.

12 In the 2017 accounting, we now know that even though  
13 it was verified under oath that the statements contained  
14 within are incorrect. Here's how we know. When compare  
15 against the 2018 account, which I want to be very clear with  
16 this -- this was in response to the Court's order that they  
17 provide the accounting along with substantiation in the form  
18 of bank -- bank accounts, bank statements, receipts, invoices  
19 for the stuff that was done. This was this Court's order.  
20 They miss the 45 day deadline.

21 Then when they did file it, we found out for the  
22 first time there's a hundred and fifty-thousand dollar asset  
23 in Wells Fargo. Well, this is a problem because their 2017  
24 accounting did not list this asset.

1           So now what we have is -- and by the way, that  
2 disclosure occurred -- we sent out a subpoena.

3           THE COURT: Okay. So I --

4           MR. KIRSCHNER: We --

5           THE COURT: -- I --

6           THE WITNESS: We --

7           THE COURT: The accounting is incorrect and what's  
8 the other reasons?

9           MR. KIRSCHNER: The accounting is incorrect, but I  
10 want to point out that the -- that the disclosure of the Wells  
11 Fargo account was preceded four days previous by us issuing a  
12 subpoena to Wells Fargo bank for any information they may have  
13 on accounts. Four days later, we see the new accounting come  
14 in and the new accounting has the disclosure of a Wells Fargo  
15 bank account.

16           Now we are required to have this information in  
17 advance. Just statutorily, they're required to give all  
18 information about all assets to the trust. The demand was  
19 made by the prior beneficiary, Nancy. The demands and a  
20 requirement has been made by this Court.

21           We shouldn't have to continue to come to the Court  
22 and say give us the more information. Not only that, but  
23 their most recent accounting that was filed, the one in 20 --  
24 2018, it does not go back to the original date they became

1 trustees. So once again, we do not have the image of what  
2 happened when they became trustees.

3 This Court's order was explicit. You go back to the  
4 day you became trustee on October 11th, 2016. There's no  
5 ambiguity in this Court's order about that.

6 What they did in the most recent accounting is refer  
7 to our prior inventory.

8 THE COURT: When the trust was created, they don't  
9 keep an inventory of what -- what is put into the trustee?

10 MR. KIRSCHNER: That is the fundamental problem that  
11 we have. We need to know what that inventory was. The proper  
12 accounting under NRS 165 --

13 THE COURT: Is that --

14 MR. KIRSCHNER: -- 135 --

15 THE COURT: Is that the trustee's obligation or --

16 MR. KIRSCHNER: Yes.

17 THE COURT: -- the trustor's?

18 MR. KIRSCHNER: That is -- that is the -- they were  
19 the -- they became trustees on that instant. When the trust  
20 was formed, they became trustees. The accounting that's been  
21 requests by the prior settlor when she was alive and requested  
22 by this Court is for them to go back to October 11th, 2016.  
23 All of this -- these -- these battles that are going on right  
24 now is because of a fundamental breakdown that they won't

1 account for that period of time. And they're statutorily  
2 required to account for it. And they're required by this  
3 Court's order to account for it.

4 Now what we stated and was absolutely -- we -- we  
5 kept to our word. We said we wouldn't do any discovery until  
6 we got in or we had the 45 days past for them to provide this  
7 accounting. They didn't do it. And then when they did submit  
8 it, there's no bank statements. There's no receipts, no  
9 invoices.

10 At this point, we have to start conducting  
11 discovery, because they're not giving us information,  
12 information not only are we entitled to, but this Court is  
13 ordering.

14 So when we're talking about discipline before the  
15 Court, I'm looking at we have a court order we're asking for  
16 them to abide by. In the absence of us coming here doing  
17 filing after filing after filing, we're going to send out some  
18 general subpoenas to find out what assets there are.

19 THE COURT: Could -- could I get your name and who  
20 you represent?

21 MR. KIRSCHNER: My apology, Your Honor. Jerimy  
22 Kirschner here on behalf of the Trustee Jacqueline Utkin.

23 THE COURT: Okay. What do you estimate -- since I  
24 guess it's an estimate, the size of this estate?



1           MR. KIRSCHNER: The current size of the estate with  
2 assets excluding the Wells Fargo was approximately \$800,000.  
3 Now there is a -- with the Wells Fargo account, it added --  
4 and we just -- as we said, this was disclosed on March 20th.  
5 So last 14 days.

6           THE COURT: So that puts you up to 950?

7           MR. KIRSCHNER: Puts it up to 950. And once  
8 again --

9           THE COURT: That should be just enough to pay the  
10 attorneys. So what's going to be left for anybody else?

11          MR. KIRSCHNER: Your Honor, I want to be clear on  
12 this. We have made every effort to come forward and say just  
13 do your job as the former trustees who provided your  
14 disclosures. And I want to be clear, under NRS 165.148, the  
15 fact that they didn't do their proper accounting, they're  
16 personally liable for the attorney's fees that are being  
17 incurred after this point. The trust isn't liable. They have  
18 a personal liability statutorily.

19          And so what we're saying is -- what -- what -- we're  
20 trying not to get -- we're not trying to get as aggressive and  
21 super ugly going after personal liability for these former  
22 trustees, but we need this information. That's what it boils  
23 down to. We need this information. It's been required. We  
24 need an appro -- appropriate viewing of what the assets are.

1 And if they're not -- if they're ignoring statute and they're  
2 ignoring this Court's order, that was explicit, then we have  
3 to conduct discovery to find out what exactly is there.

4 We can't have this blind spot in the trust which  
5 we're not required --

6 THE COURT: What do you suggest is the best approach  
7 besides -- before we get to the discovery and before they  
8 becomes personally liable for the expenses to determine what's  
9 in the estate?

10 MR. KIRSCHNER: Well, Your Honor, the most simplest  
11 answer is abide by your order that was entered on February 5th  
12 of 2018. I mean, frankly if the -- the clearest point is  
13 follow the order. You do that and that eliminates this work.

14 THE COURT: So right now do you suspect there is  
15 more to this estate dismissing or --

16 MR. KIRSCHNER: Yes, I do expect that there may be  
17 more to the estate at this point. What -- at a minimum, we  
18 know that we have the Wells Fargo accounts. We're also -- we  
19 -- and we saw an affidavit from -- I'm trying to remember the  
20 gentleman's name that said there may be additional assets. I  
21 don't necessarily believe that, but at least --

22 THE COURT: The -- the --

23 MR. KIRSCHNER: -- we need to find out --

24 THE COURT: -- question I --

1 MR. KIRSCHNER: -- what he said.

2 THE COURT: -- started with that was presented to me  
3 was who is the trustee and whether the removal of the three  
4 trustees was appropriate under the trust.

5 MR. KIRSCHNER: Right.

6 THE COURT: Do we have to answer that question or do  
7 we -- can we proceed without answering that question?

8 MR. KIRSCHNER: I think that question has already  
9 been answered. The order that this Court signed has been  
10 entered on the docket. The notice of entry of order was  
11 entered a few minutes ago confirming that the language of the  
12 trust is clear and unambiguous and that my client --

13 THE COURT: It is clear --

14 MR. KIRSCHNER: -- is the current trustees.

15 THE COURT: -- but let me put it this way. If I say  
16 I want to go to St. George, Utah from downtown Las Vegas,  
17 that's clear. And if I say I'm going to be driving south on  
18 I-15, that's clear. But it's obviously wrong. So to -- when  
19 I looked at the trust, and I'll be very straightforward, it  
20 looks like Nancy -- is that her name?

21 MR. KIRSCHNER: It would -- yes, it would be Nancy,  
22 Your Honor.

23 THE COURT: Was supposed to ask for -- for  
24 additional sums and they had total discretion to grant it.

1 And if they didn't grant it, you're telling me Nancy could  
2 terminate them.

3 MR. KIRSCHNER: I'm saying that the clear and --

4 THE COURT: That's what the trust -- that's what  
5 your interpretation of the trust is.

6 MR. KIRSCHNER: It's not --

7 THE COURT: So what's the purpose of giving them  
8 total discretion to do one thing and if she doesn't like their  
9 answer, they terminate?

10 MR. KIRSCHNER: Well, I think you're answering your  
11 question, Your Honor, that if they abuse their discretion  
12 according to the person who's the beneficiary of the estate  
13 has the ability to terminate them. That trustee had the  
14 ability to terminate them which was under the clear language  
15 of the trust and that's just what she did.

16 THE COURT: Who prepared this trust?

17 MR. KIRSCHNER: My understanding is Grant Morris  
18 Dodds was the ones who had prepared the trust.

19 THE COURT: Who is the individual?

20 MR. KIRSCHNER: I don't know the specific attorney,  
21 but I --

22 MR. PAYNE: David Grant.

23 MR. KIRSCHNER: -- will tell you it wasn't the  
24 attorneys --

1 THE COURT: What?

2 MR. PAYNE: David Grant.

3 MR. KIRSCHNER: It wasn't the attorneys who are  
4 before this Court now.

5 THE COURT: Are we going to take his deposition?

6 MR. KIRSCHNER: I think that there's an issue, one,  
7 with whether or not there is a waiver of attorney/client  
8 privilege for that. And secondarily --

9 THE COURT: So --

10 MR. KIRSCHNER: -- it doesn't --

11 THE COURT: I'm -- I'm ready to start addressing  
12 those issues so we can get his -- his opinion on file.

13 MR. KIRSCHNER: Secondarily, Your Honor, with this  
14 Court's ruling about the clear and unambiguous language of the  
15 trust, we don't get to extrinsic evidence, including extrinsic  
16 evidence of the drafter of the trust, unless we have an  
17 ambiguity there. We don't have ambiguity as to the trustee.  
18 We don't have ambiguity as to the termination power and --

19 THE COURT: The language --

20 MR. KIRSCHNER: -- selection power.

21 THE COURT: -- is clear.

22 MR. KIRSCHNER: Right.

23 THE COURT: But there might be a little word missing  
24 like not.

1           MR. KIRSCHNER: That is a dispositive change that  
2 would be subject to extrinsic evidence which would be barred  
3 under the four corners of the document and the fact that  
4 there's no ambiguity there.

5           THE COURT: Well --

6           MR. KIRSCHNER: The threshold --

7           THE COURT: -- that will be up for the Supreme Court  
8 to review then.

9           MR. KIRSCHNER: And it's one that's subject to the  
10 noble review. Whether the threshold issue of the clear terms  
11 of the trust let's an extrinsic evidence that follows  
12 traditional contract law and we --

13          THE COURT: If you --

14          MR. KIRSCHNER: -- agreed to --

15          THE COURT: -- look at the trust and you read it  
16 from start to finish, 95 percent I think, or 90 percent, goes  
17 to these three trustees. Whether they had undue influence, I  
18 don't know, but that's what the trust says. And five percent  
19 goes to another individual. Of all the people in the world  
20 she could have selected as trust -- trustee, who did she  
21 select? The one person that is limited to five percent in the  
22 trust. And he doesn't even get the five percent. He gets it  
23 through another trust.

24          MR. KIRSCHNER: So we're bleeding over into a

1 multiple -- multitude of issues. And I want to make sure that  
2 I know which one we're addressing as we're talking. First, we  
3 were talking about authority for the trust to select --

4 THE COURT: I'm trying to resolve this matter as  
5 soon as possible because we have \$960,000, maybe, maybe a  
6 little bit more and maybe a -- a little bit less, but the  
7 individuals that are in the trust that are supposed to get  
8 this sum are never going to get it at this rate. It's going  
9 to disappear in discovery, legal fees, cross fees, cross  
10 actions, everything.

11 MR. KIRSCHNER: To that, Your Honor, I would say  
12 that one of the things that I've -- we've done -- Jacqueline  
13 Utkin has done, as we've become trustees, is we've gave every  
14 opportunity for them to abide by this Court's order, abide by  
15 the statutory duties.

16 THE COURT: Well, I'm going to help you try to find  
17 this -- the size of this estate. I'm going to draw a stat as  
18 we go along soon.

19 MR. KIRSCHNER: So -- and -- and what we've done is  
20 we've only sought to establish the traditional controls that a  
21 trustee has, control of the assets, we're not talking about  
22 doing distributions to Monte or trying to increase anything.  
23 I will tell you that we've put on -- been put on notice of two  
24 potential problems. One, is that when Mr. Payne said in this

1 open court that my client sat at the table and drafted the  
2 instrument, now Mr. Monte has declared that there might be a  
3 problem with the drafting of the instrument, because under 155  
4 you have a presumption of undue influence that can only be  
5 overcome by clear and convincing evidence. That's not allowed  
6 to include their testimony. They haven't pursued that.

7 And frankly, as long as they don't pursue it, it  
8 doesn't matter to the trust. I'm going to continue doing  
9 distributions.

10 THE COURT: So who --

11 MR. KIRSCHNER: They also --

12 THE COURT: -- who are the parties? Are you --  
13 you're going to be out?

14 MR. BARNEY: I'm going to be out once my fees are  
15 paid, yeah. I'm --

16 THE COURT: Okay.

17 MR. KIRSCHNER: So --

18 THE COURT: Who do you represent?

19 MR. POWELL: I represent Monte --

20 THE COURT: You've met --

21 MR. POWELL: -- Reason.

22 THE COURT: -- Monte Reason, right?

23 MR. POWELL: Monte Reason.

24 THE COURT: But he's -- he's the trustee who's no



1 longer the trustee and maybe shouldn't have been the trustee  
2 but he was for awhile because the settlor made him the  
3 trustee.

4 MR. POWELL: I represent now Monte Reason in his  
5 capacity as trustee of the Nancy Christian Trust and also he  
6 is the nominated representative of Nancy Christian's estate.  
7 And if I can address the Court for a few minutes, I think I  
8 can summarize for you of what the issues are as to your  
9 inquiry as to why this isn't just -- why aren't we done and  
10 why can't we just be done. And I can explain that to you if  
11 the Court would indulge me for --

12 THE COURT: Okay.

13 MR. POWELL: -- for a few minutes.

14 THE COURT: Are you done, sir?

15 MR. KIRSCHNER: Unless the Court had any additional  
16 questions, I will add on the -- the fees --

17 THE COURT: I'm sorry.

18 MR. KIRSCHNER: -- in addition to that.

19 THE COURT: I do want one -- I forgot.

20 MR. KIRSCHNER: Yes.

21 THE COURT: I asked already who do you represent?

22 MR. KIRSCHNER: Jerimy Kirschner, trustee -- Jerimy  
23 Kirschner, I represent the trustee Jacqueline Utkin.

24 THE COURT: Okay. The new trustee.

1 MR. KIRSCHNER: Yes, Your Honor.

2 THE COURT: Appointed by the old trustee who may not  
3 have been properly appointed.

4 MR. KIRSCHNER: I think the clear and unambiguous  
5 terms of the trust allow for the appointment, not allow for  
6 appointment authorized --

7 THE COURT: Well, that's the --

8 MR. KIRSCHNER: -- to occur.

9 THE COURT: -- whole issue before me. If -- if it  
10 was that, we would just --

11 MR. KIRSCHNER: If -- if we're going to venture into  
12 seeing --

13 THE COURT: I thought that was their whole claim.

14 MR. KIRSCHNER: Well, the -- the -- a little bit of  
15 a fact based problem that we have, Your Honor, is that the  
16 originally settlor was demanding trust, was demanding  
17 distributions from them as trustees which they were denied.  
18 And during that same period of time, they were taking funds  
19 from the trust from themselves as former reimbursements and  
20 then they were taking memorial trips at the cost of the trust  
21 while telling her you have to justify why you're getting  
22 distribution.

23 Well, taken memorial trips are not authorized by the  
24 trust and the reimbursements you got to have an accounting

1 for.

2           So they didn't -- they couldn't provide her money  
3 while she was demanding it. So she removed them. After she  
4 removed them, she sought to get access to her money through  
5 the new trustee saying give me a distribution. But those  
6 funds were once again blocked by having them locked up inside  
7 of Mr. Payne's trust account to where this trustee, the  
8 settlor of the trust, died being unable to access her money.

9           So the problem we have, we have another potential  
10 claim that's at least being asserted by the estate for Nancy  
11 that they're -- I -- I'm going to say upset is a mild term.  
12 But they have a problem with the fact that she couldn't access  
13 her funds even when she's replaced the trustee afterwards.  
14 It's something that needs to be -- I'm sure they're going to  
15 be talking about that, but that's something that needs to be  
16 resolved.

17           When we're talking about equities, you keep hearing  
18 this is all of our money, this is all of our money, we're the  
19 three beneficiaries. Well, in reality, there was a living  
20 beneficiary who was denied the access to her funds during her  
21 life because somebody decided that they want to go on trips --  
22 to memorial trips, or they want to spend and -- and reimburse  
23 themselves without any receipts and then block her from using  
24 her money after she got a new trustee.

1 THE COURT: Do you represent her?

2 MR. KIRSCHNER: I represent the trust, Your Honor.

3 THE COURT: Okay.

4 MR. KIRSCHNER: And the trust had an obligation to  
5 provide for its beneficiaries even after they were removed,  
6 while they were in power and after --

7 THE COURT: What was --

8 MR. KIRSCHNER: -- they were removed.

9 THE COURT: What amount was she asking for?

10 MR. KIRSCHNER: I believe she was asking for  
11 approximately \$5,000 a month.

12 THE COURT: And how many months did she live after  
13 that?

14 MR. POWELL: 14, Your Honor. 14 months.

15 MR. KIRSCHNER: 14 months. But Your Honor, there's  
16 a fun -- I'll let them make that argument. But at -- at a  
17 minimum, Your Honor, there is approximately \$5,000 a month  
18 that she was requesting is my understanding.

19 THE COURT: Okay.

20 MR. POWELL: Good afternoon, Your Honor. Joseph  
21 Powell on behalf of Monte Reason. I'd like to explain to you  
22 what the issue is. The issue is is that you had a trust  
23 formed in October of 2016 between a married couple. Mr. -- he  
24 goes by Tyrone (ph). Tyrone Christian and Nancy Christian.

1 This is a joint trust formed by a married couple who put  
2 assets into that trust including a house that they owned in  
3 joint tenancy that was put into the trust. So the -- there's  
4 a claim by Mr. Payne's clients that --

5 THE COURT: Which house -- what -- what house are  
6 you talking about?

7 MR. POWELL: This was --

8 THE COURT: And which house was sold before --

9 MR. POWELL: Correct, Your Honor.

10 THE COURT: -- Raymond died?

11 MR. POWELL: That was Dancing Vines. That was  
12 owned. If -- and -- and the record is exceedingly clear on  
13 this and you can look it up easily on the assessor side, it  
14 shows that that home before the creation of this trust was  
15 owned by Raymond -- Raymond, Sr., Tyrone, and Nancy Christian  
16 as joint tenants. They were a married couple. They formed  
17 the trust in October of 2016. Mr. Payne says in open court by  
18 the way, my client's actively participated in drafting this  
19 trust.

20 Well, there's a statute, Your Honor, which says that  
21 if you actively participate in the drafting of the trust,  
22 there's a presumption that something nefarious was going on  
23 and you drafted it in a way that benefits you. So that's one  
24 issue, Your Honor.

1 But the heart of this matter, where this stemmed  
2 from, and you have to keep in mind, the -- this was -- Nancy  
3 passed away in December, Your Honor. When she formed --

4 THE COURT: Of 2017.

5 MR. POWELL: 2017. Correct. When she formed the  
6 trust along with her husband, Tyrone, this was in October of  
7 2016. From October of 2016 when she puts her assets in there  
8 and -- and their joint assets in -- in that trust, she doesn't  
9 get a red cent, Your Honor, of her own money for 14 months.  
10 She dies without ever having received a cent from that trust.

11 THE COURT: What -- what --

12 MR. POWELL: She made --

13 THE COURT: What --

14 MR. POWELL: -- the --

15 THE COURT: Where do you start the 14 months from?

16 MR. POWELL: From October of 2016.

17 THE COURT: And the trust was formed.

18 MR. POWELL: And the trust was formed. It was 14  
19 months, Your Honor. She passed --

20 THE COURT: But --

21 MR. POWELL: -- away in --

22 THE COURT: -- Raymond --

23 MR. POWELL: -- in December --

24 THE COURT: -- didn't --

1 MR. POWELL: -- I believe.

2 THE COURT: Raymond didn't die until January of --

3 MR. POWELL: Correct.

4 THE COURT: -- 2017.

5 MR. POWELL: Correct. Raymond was in bad health  
6 though, very bad health, already in that October period when  
7 the trust was formed --

8 THE COURT: So maybe her claim --

9 MR. POWELL: -- which is -- that's another issue.

10 THE COURT: -- maybe goes to February of 2017?

11 MR. POWELL: I'm sorry, Your Honor?

12 THE COURT: Why wouldn't her claim start after his  
13 death and not be -- not before?

14 MR. POWELL: She was -- she was a beneficiary -- she  
15 was a creator of the trust and a beneficiary of that trust on  
16 the moment of formation. It was a joint trust.

17 THE COURT: And did she make --

18 MR. POWELL: This is a husband and wife.

19 THE COURT: Did she make any requests at -- for any  
20 money at that time?

21 MR. POWELL: She did, Your Honor. She did.

22 THE COURT: Before January?

23 MR. POWELL: I -- I couldn't tell you precisely,  
24 because I wasn't in the case at that point and I never

1 represented Nancy Christian.

2 THE COURT: Because I thought the claim started  
3 after Raymond was deceased maybe a month or two after that.

4 MR. POWELL: I couldn't tell you with -- with  
5 precision on that. I --

6 THE COURT: All right.

7 MR. POWELL: I don't know. But what I can tell you  
8 is from the moment of formation, that trust was supposed to  
9 benefit her and Tyrone. It's their assets, Your Honor. You  
10 have to understand a trust is no different than a business  
11 formation effectively in entity. You setup an company, you  
12 put it in an LLC, it's still your company. You're -- you --  
13 you -- they're still your assets. You've just put them into a  
14 structure. Well, that's what a trust is. Instead of owning  
15 it outside of the trust, it's -- it -- they're still your  
16 assets. That's still your home that you owned that you're  
17 putting into the trust. You're putting in there for a couple  
18 reasons, for management, for also probate avoidance, to  
19 simplify things.

20 The issue we have here Your Honor is that Nancy got  
21 nothing from the trust. She made a demand and said hey, I put  
22 you in a trustees but you're managing this for me. You're  
23 managing this for me and my husband, my husband is now passed  
24 away. It's -- they're my assets. The trust is exceedingly



1 clear that this is for the benefit of her. And again, it  
2 contains her assets. There was a joint home put into there.  
3 The trust is exceedingly clear. And it doesn't just say it's  
4 for Nancy. It says it's for the survivor.

5 Let's say for instance Nancy forms a trust in  
6 October and she happens to predecease Tyrone even though  
7 Tyrone wasn't --

8 THE COURT: Well, let's not --

9 MR. POWELL: -- himself.

10 THE COURT: -- go into that because we've already  
11 got enough problems with --

12 MR. POWELL: I -- I understand.

13 THE COURT: -- the actual facts.

14 MR. POWELL: But I'm just trying to set the table  
15 for you because I think this is part of the --

16 THE COURT: Nancy --

17 MR. POWELL: -- issue you're having.

18 THE COURT: -- was a survivor. We all agree on that  
19 at least.

20 MR. POWELL: Sure. Sure. But this -- this goes to  
21 what the claims are and the fact that the claims don't just go  
22 away because Nancy has now passed. Your Honor, you know this.  
23 There's a car accident. Somebody dies in the car accident.  
24 Their estate then has the right to go sue whoever caused the