

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CHRISTIAN
FAMILY TRUST U.A.D. 10/11/16

No. 75750

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

Appellants,

vs.

JACQUELINE UTKIN,

Respondent.

FILED

JUN 18 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION

This is an appeal from a district court order allowing the partial payment of a claim for attorney fees in a trust action. When appellants filed their notice of appeal and docketing statement, they named Anthony L. Barney, Ltd. as respondent, and Barney subsequently filed a cross-appeal. On June 13, 2018, this court, *sua sponte*, added Jacqueline Utkin as a respondent to both the appeal and cross-appeal. This was not contested by appellants or Barney.

On April 10, 2019, appellants filed a motion to dismiss Barney's cross-appeal and to strike Barney's combined answering brief on appeal and opening brief on cross-appeal, arguing that Barney was not a party to the proceedings below and lacked standing to bring a cross-appeal and to participate in the appeal. Barney did not oppose the motion. Accordingly, on May 7, 2019, this court entered an order granting the motion, based on Barney's failure to oppose, and dismissing Barney's cross-appeal and striking the combined brief.

Barney has now filed a motion for sanctions and attorney fees, arguing that appellants frivolously took and pursued this appeal against

Barney when they knew that Barney was not a proper respondent. Appellants have filed an opposition and counter-motion to strike Barney's motion and for sanctions, and Barney has filed a reply. Prior to this court's order striking Barney's brief and dismissing its cross-appeal, Barney did not challenge the fact that it was named as a respondent in this appeal. Further, appellants' motion to dismiss its appeal as to Barney does not demonstrate that an appeal was taken or processed in a frivolous manner, that an appeal was taken for purposes of delay, or that this court's appellate processes have otherwise been misused. *See* NRAP 38. This court declines to strike Barney's motion and declines to impose sanctions or award fees to Barney or appellants.

It is so ORDERED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Cadish, J.
Cadish

cc: Cary Colt Payne
Jacqueline Utkin
Anthony L. Barney, Ltd.