

**In the Supreme Court of the State of Nevada**

IN THE MATTER OF THECHRISTIAN )  
FAMILY TRUST u.a.d. 10/11/16 )

~~~~~ )  
SUSAN CHRISTIAN, )  
ROSEMARY KEACH AND )  
RAYMOND CHRISTIAN, JR. )  
Appellants, )

-vs- )

FREDERICK P. WAID, Trustee, )  
Respondent. )  
~~~~~ )

Electronically Filed  
Oct 29 2019 10:18 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No.: 75750

**APPELLANT'S MOTION FOR SUBSTITUTION OF PARTY**

*Filed by:*

\_\_\_\_\_  
CARY COLT PAYNE, ESQ.  
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## POINTS AND AUTHORITIES

On October 11, 2016, Raymond Christian, Sr., and Nancy Christian (collectively as “Trustors”, or individually as “Ray Sr.” and “Nancy”), created The Christian Family Trust (“CFT”). (APP-ROA-V1-032-062) The Trustors were not the trustees of the CFT. Their children, Appellants, Susan Christian, Rosemary Keach and Raymond Christian, Jr., were the original co-trustees. (“Appellants”)

Prior to much being decided, Nancy Christian died December 14, 2017. A notice of Suggestion of Death was filed with the District Court January 4, 2018. (APP-ROA-V1-453-454)

To date, no party within the 90 day time frame prescribed by NRCP 25, in effect at that time, has either been appointed as the personal representative of her estate, nor has petitioned the District Court to be substituted for her individually. Monte Reason had applied and was denied appointment, and Nancy Christian’s prior attorney, Anthony L. Barney Ltd. (who has alleged creditor status under this appeal) has petitioned for appointment as a creditor of Nancy Christian’s estate (P-17-093928-E).

At the time of Nancy Christian’s death, Monte resigned as trustee of the Christian Family Trust, and nominated Jacqueline Utkin. (APP-ROA-V7b-560) Utkin petitioned the District Court to confirm her as successor trustee. (APP-ROA-V7a-509)

Jacqueline Utkin was the trustee at the time this appeal was filed. Jacqueline Utkin was thereafter removed for cause with a conflict of interest (Probate Commissioner Report and Recommendations-**Exhibit "A"**, and Order -**Exhibit "B"**), and Frederick P. Waid was appointed as Trustee of the Christian Family Trust, who filed his Notice of Appearance, through counsel, in this appeal on February 13, 2019. (Notice of Appearance as **Exhibit "C"**)

It is therefore requested that under NRAP 25, that the current Trustee, Frederick P. Waid be substituted for Jacqueline Utkin in this matter.

Dated: October 29, 2019

*Respectfully Submitted,*

A handwritten signature in cursive script, appearing to read 'Cary Colt Payne', written over a horizontal line.

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Nevada Bar No.: 4357  
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## CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 29<sup>th</sup> day of October, 2019, I have served to the following an electronic filing copy of this Brief by electronic filing to the Court's E-Flex System:

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Attorneys for Fredrick P. Waid



An employee of CARY COLT PAYNE, CHTD.



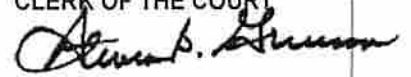
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**EXHIBIT "A"**



1 RAR

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5 In the Matter of ) Case No.: P-17-092512-T  
6 ) Dept. No.: S (Probate)  
7 THE CHRISTIAN FAMILY )  
8 TRUST u.a.d. 10/11/16 ) Date: August 22, 2018  
9 ) Time: 9:00 AM  
10 ~~~~~ )

11 **PROBATE COMMISSIONER'S REPORT AND RECOMMENDATIONS**

12 This matter having come on for hearing on the District Court's remand to the Probate  
13 Commissioner to decide the issue of removal of trustee; and the Petitioners/primary beneficiaries,  
14 Susan Christian Payne and Raymond Christian, Jr. personally appearing, with Rosemary Keach  
15 not appearing (collectively, the "Petitioners"), and being represented by CARY COLT PAYNE, ESQ.,  
16 of the CARY COLT PAYNE, CHTD. law firm; and Jacqueline Utkin not personally appearing  
17 and being represented by her attorney Jerimy Kirschner, Esq.; and Monte Reason (not personally  
18 appearing) and being represented by his attorney, Joseph Powell, Esq., of the RUSHFORTH LEE  
19 AND KIEFER law firm; and the Court having reviewed the papers and pleadings on file herein,  
20 upon arguments of counsel and being fully apprised in the premises; and Good Cause appearing  
21 therefor, the court finds:

22 **I. REPORT/FINDINGS OF FACT**

23  
24 1. This dispute involves the administration of the Christian Family Trust, dated October 11,  
25 2016. wherein Raymond T. Christian, Sr. ("Tyrone") and Nancy Christian ("Nancy" and together  
26 with Tyrone, the "Settlers") were the settlors and initial trustees.  
27  
28

1 2. Currently, Jacqueline Utkin ("Utkin") is the acting trustee having been nominated by  
2 Monte Reason ("Reason"), who was appointed by Nancy during her lifetime to be the trustee.<sup>1</sup>

3 3. On July 24, 1018, the District Court entered an order suspending Jacqueline Utkin  
4 ("Utkin") as Trustee of the above referenced trust and remanded the matter to the undersigned  
5 Probate Commissioner to "review and make a final ruling on the sole issue of the removal of  
6 Jacqueline Utkin as Trustee."

7 4. At the hearing on remand to determine whether Utkin should be permanently removed as  
8 Trustee, the Probate Commissioner took notice that the Trustee, a Hawaii resident, was not present  
9 nor did she seek leave to appear telephonically.  
10

11 5. Furthermore, the record reflects that Utkin failed to attend a hearing on May 16, 2018,  
12 notwithstanding that she was in Las Vegas, Nevada at the time of the hearing, which involved  
13 multiple motions/pleadings seeking the court's decision regarding a litany of issues, including  
14 (i) compliance with a previous court order and request for sanctions, (ii) turnover of trust assets,  
15 (iii) dissolution of an injunction involving trust assets, (iv) expungement of lis pendens, and  
16 (v) distribution/termination of the trust, etc.  
17

18 6. A review of the record in this case reveals a declaration made by Utkin under penalty of  
19 perjury, dated October 17, 2017 (the "Declaration"), and is attached as Exhibit A to a Joint  
20 Objection to Petition to Assume Jurisdiction of Trust; Confirm Trustees; Instructions, etc., et al.,  
21 filed on November 13, 2017, with the court.  
22

23 7. The Declaration provides that it is made and based upon the personal knowledge of Utkin,  
24 except those statements made upon information and belief.  
25

26 8. In the Declaration, Utkin sets forth the following statements as her personal knowledge:  
27

28 <sup>1</sup> Reason's appointment, and subsequent nomination of Utkin as trustee, is still being contested by Petitioners.

- 1 a. For nearly three years prior to Tyrone's last hospital stay, Petitioners had virtually no  
2 contact with Nancy or Tyrone but Reason would check with them and see to their needs.
- 3 b. Sensing their opportunity to seize control of Nancy and Tyrone's assets, the [Petitioner's]  
4 roared back into Nancy and Tyrone's life.
- 5 c. [Petitioner's] began isolating Nancy and Tyrone from family and friends.
- 6 d. I would frequently hear the [Petitioners], usually Susan screaming at Tyrone or Nancy.
- 7 e. During the time that the [Petitioners] were supposed to be caring for Nancy and Tyrone,  
8 their health deteriorated. I believe this was due to the poor treatment provided by the  
9 [Petitioners].
- 10 f. The [Petitioners] would yell at Nancy and curse at her for refusing to eat the unhealthy  
11 food they were trying to force upon her. One such instance led to Nancy being kicked out  
12 of the home by the [Petitioners].
- 13 g. [Petitioners] spent Trust money to travel to California, to rent extravagant beach house,  
14 and to even enjoy a cruise when Tyrone passed away.
- 15 h. [Petitioners] have refused to provide Nancy with any money from the Trust, yet they have  
16 spent Trust money extravagantly for their own benefit.
- 17 i. Raymond Christian Jr. expressed his desire that she go and die already and told her that he  
18 will "piss on her grave."
- 19 j. Based on my conversations with Tyrone, I am concerned that Tyrone was manipulated or  
20 threatened to put the [Petitioners] in charge of the Trust. Tyrone made me promise to help  
21 Nancy after his death and to try and prevent the abuse and exploitation of Nancy by the  
22 [Petitioners].
- 23 k. [G]iven the abuse detailed herein and the continued abuse by the [Petitioners] through the  
24 litigation they are now pursuing, and in order to keep the promise I made to my brother, I  
25 am providing this declaration to ensure that Nancy is not subject to continued abuse and  
26 exploitation.
- 27 9. Utkin's counsel argued, among other things, that the Declaration was known to the District  
28 Court when it appointed Utkin as trustee.
10. The Declaration evidences Utkin's inability to be impartial and act fairly to all Trust  
beneficiaries.

## II. CONCLUSIONS OF LAW

11. A district court judicial officer has the requisite authority to revisit their prior orders whether by the request of a party or upon the court's own motion. *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975): "a court may for sufficient cause shown, amend, correct, resettle, modify, vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding."

12. NRS 53.045 permits any document to be sworn to under the penalties of perjury, rather than a notarization, and as such, under NRS 52.165, is presumed to be authentic.

13. The Declaration is not hearsay as the Court is not swayed by whether the statements made therein are truthful, but instead, believes the Declaration supports a finding that Utkin is biased against the Petitioners. Notwithstanding, the Declaration also falls under the statutory hearsay exceptions found in NRS 51.315 and 51.345 due to the strong assurances of the Declaration's accuracy combined with Utkin's unavailability as a witness and is a statement against the position she now seeks to take.

14. Documents filed in the course of a case, and included in the pleadings, either under the penalty of perjury or notarized, are part of the record, and relevant to the matter. The court has the authority to deem any relevant evidence as admissible pursuant to NRS 48.025.

15. A Trustee has various requisite duties as it relates to impartiality, avoidance of conflicts, etc., in their trust administration and any necessary relations with a trust's beneficiaries. See *In re W.N. Connell and Marjorie T. Connell Living Trust*, 393 P.3d 1090 (Nev. 2017), citing to *Riley v. Rockwell*, 747 P.2d 903 (Nev. 1987); *Hearst v. Ganzi*, 145 Cal.App.4<sup>th</sup> 1195 (2006); and *In re*

1 *Duke*, 702 A.2d 1008 (N.J. 1995) for the proposition that a trustee's duty is to treat all  
2 beneficiaries equally and may not advocate for either side in a dispute between beneficiaries.

3 16. Given the clear overall intent of Utkin's position in her Declaration against the primary  
4 beneficiaries of the Trust, Utkin cannot be impartial and has conflicts of interest, and grounds exist  
5 to remove Utkin as Trustee.  
6

### 7 III. RECOMMENDATIONS

8 IT IS HEREBY RECOMMENDED as follows:

- 9 1. That Jacqueline Utkin be permanently removed as Trustee of The Christian Family  
10 Trust, effective immediately;  
11  
12 2. That an independent trustee is required, and Fred Waid be appointed as Trustee,  
13 effectively immediately.  
14

15 Dated this 3 day of October 2018.

16  
17   
18 WESLEY YAMASHITA  
19 Probate Commissioner  
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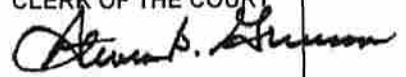
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**EXHIBIT “B”**



DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-17-092512-T  
DEPT. NO. S

THE CHRISTIAN FAMILY TRUST,

DATE OF HEARING: 11/02/2018  
TIME OF HEARING: 3:00 PM

Dated October 11, 2016.

**ORDER**

The Court, having considered the papers and pleadings on the file herein, considering singularly the law and the premises, the cause having been submitted for decision and judgment, the Court, being fully advised in the premises:

**NRCP 53 (2) In Non-Jury Actions provides:**

In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

**PROCEDURE**

The Probate Commissioner's Report and Recommendations was filed on Oct 8, 2018. Notice of Entry was filed on the same date. The Notice of Entry was served by E-mail and or Electronic Means. The Objection to the Probate Report and Recommendation was filed on Oct 22, 2018.

1 **MERITS**

2 A special master's findings of fact are given deference and reviewed under the  
3 clearly erroneous standard. *See, Venetian Casino Resort, LLC v. Eighth Judicial Dist.*  
4 *Court of State ex rel. County of Clark*, 118 Nev. 124, 132, 41 P.3d 327, 331-32 (2002.);  
5 *See Also, NRCP 53(e)(2)*. The district court's review of a probate commissioner's reports  
6 and recommendations are "confined to the record, together with the specific written  
7 objections." EDCR 4.07(a).  
8

9 Conclusions of law, on the other hand, require de novo review by the district  
10 court. A special master's conclusions of law are reviewed de novo. *See, Farmers Ins.*  
11 *Exc. v. Neal*, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003) (noting review questions of law  
12 de novo); *Venetian*, 118 Nev. at 132, 41 P.3d at 331-32 (noting the district court reviews  
13 the special master's conclusions of law de novo).  
14

15 Following the special master's hearing, the master must submit a report to the  
16 district court, including findings of fact and conclusions of law. NRCP 53(e)(1). In cases  
17 not tried before a jury, "the court shall accept the master's findings of fact unless clearly  
18 erroneous." NRCP 53(e)(2). If any party makes an objection within ten days after being  
19 served with the master's findings, the district court, "after [a] hearing[,] may adopt the  
20 report or may modify it or may reject it in whole or in part or may receive further  
21 evidence or may recommit it with instructions." *Id.*  
22

23 Prior to the hearing Jacqueline Utkin was giving notice of the factual and legal  
24 reasons for the hearing on her removal as Trustee by the district judge. See Order filed  
25 June 1, 2018. Jacqueline Utkin requested a due process evidentiary hearing. Said hearing  
26  
27  
28

1 was set and Jacqueline Utkin was given notice of the hearing. See Notice filed July 7,  
2 2018. The hearing was set for August 22, 2018.

3 Her attorney filed a pre-trial memorandum on August 17, 2018 regarding the  
4 issues to be addressed at the hearing. Her attorney appeared at the hearing on August 22,  
5 2018, but Jacqueline Utkin did not appear at the hearing nor did she seek leave to appear  
6 telephonically. Monte Reason was represented by his attorney Joseph Powell.

7  
8 In cases not tried before a jury, "the court shall accept the master's **findings of**  
9 **fact** unless clearly erroneous." NRCP 53(e)(2). The record does not include any  
10 indication that the findings of facts in the report are clearly erroneous.

11 The Probate Commissioner's Report is legally correct that the Court has inherent  
12 power to "amend, correct, resettle, modify, or vacate, as the case may be, an order  
13 previously made and entered on motion in the progress of the cause or proceeding." *Trail*  
14 *v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). District courts have inherent  
15 power to reconsider interlocutory orders and reopen any part of a case before entry of a  
16 final judgment. *Rochow v. Life Ins. Co. of North America*, 737 F.3d 415 (6th Cir. 2013).

17  
18 "Law of the case directs a court's discretion, it does not limit the tribunal's  
19 power." *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 75 L.Ed.2d 318  
20 (1983)). "Under law of the case doctrine, as now most commonly understood, it is not  
21 improper for a court to depart from a prior holding if convinced that it is clearly  
22 erroneous and would work a manifest injustice." *Id.* at 618, 103 S.Ct. 1382 n. 8." *Harlow*  
23 *v. Children's Hosp.*, 432 F.3d 50, 55 (1st Cir. 2005). See *Geffon v. Micrion Corp.*, 249  
24 F.3d 29, 38 (1st Cir.2001) (reviewing a district court's reconsideration of its own prior  
25 ruling on summary judgment motion for abuse of discretion).  
26  
27  
28


1 On an objection to a master's Report, we cannot simply re-weigh the factual  
2 evidence. The court's role on review of an objection under the limited clearly erroneous  
3 standard is to determine whether the findings made by the Probate Commissioner were  
4 not clearly erroneous. So long as the findings made by the Probate Commissioner were  
5 properly supported by one version of the conflicting evidence, the Probate Commissioner  
6 report is not clearly erroneous.  
7

8 **WHEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED**  
9 The District Court will accept and adopt the Probate Commissioner's Report and  
10 Recommendations filed on October 8, 2018.

11 **IT IS FURTHER ORDERED** that Jacqueline Utley is removed as Trustee of the  
12 Christian Family Trust.

13 **IT IS FURTHER ORDERED** that Fred Waid is appointed as an independent  
14 trustee of the Christian Family Trust.  
15

16 **IT IS SO ORDERED** this 8th day of November 2018.

17  
18   
19 Honorable VINCENT OCHOA  
20 District Court Judge, Department S  
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22  
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25  
26  
27  
28



**CARY COLT PAYNE, CHTD.**

Attorney at Law

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**EXHIBIT "C"**

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 REACH; AND  
RAYMOND CHRISTIAN, JR.,

Appellants,

v.

ANTHONY L. BARNEY, LTD.; AND  
JACQUELINE UTKIN

Respondents.

ANTHONY L. BARNEY, LTD.

Cross-Appellant,

v.

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

Cross-Respondents,

and

JACQUELINE UTKIN,

Respondent.

) Supreme Court No. E-75750 Electronically Filed  
) District Case No. Feb 18 2019 10:08:00 a.m.  
) Elizabeth A. Brown  
) Clerk of Supreme Court

NOTICE OF APPEARANCE

Please take notice that Russel J. Geist of Hutchison & Steffen, PLLC, enters his appearance in the above-captioned matter as attorney for Fredrick P. Waid, Court-appointed trustee of THE CHRISTIAN FAMILY TRUST.

It is respectfully requested that all future documents in this action be served upon Russel J. Geist of Hutchison & Steffen, PLLC on behalf of THE CHRISTIAN FAMILY TRUST.

Respectfully submitted this 12 day of February, 2019.

HUTCHISON & STEFFEN, PLLC

A handwritten signature in black ink, appearing to read 'Russel J. Geist', is written over a horizontal line.

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*Attorneys for Fredrick P. Waid*

### CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date **NOTICE OF APPEARANCE** was filed electronically with the Clerk of the Nevada Supreme Court, and service was made in accordance with the master service list as follows:

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*Attorney for Susan Christian-Payne,  
Rosemary Keach, and  
Raymond Christian, Jr.*

#### U.S. Mail

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*Attorneys for Monte Reason*

DATED this 12 day of February, 2019.

  
\_\_\_\_\_  
An employee of Hutchison & Steffen, PLLC