

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, )  
ROSEMARY KEACH AND )  
RAYMOND CHRISTIAN, JR. )

Appellants, )

-vs- )

FREDRICK P. WAID, Trustee )  
ANTHONY L. BARNEY, LTD. )  
Respondent. )  
~~~~~ )

Electronically Filed
Nov 19 2019 03:20 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 75750

**APPELLANTS' MOTION TO STRIKE BARNEY ANSWERING BRIEF;
ALTERNATIVELY CLARIFY COURT'S ORDER; REQUEST
EXTENSION OF TIME FOR TRUSTEE SUBSTITUTION AND RESPONSE**

COMES NOW Appellants, Susan Christian (formerly Susan Christian-Payne), Rosemary Keach and Raymond Christian Jr., by and through their attorney, CARY COLT PAYNE, ESQ., of the lawfirm of CARY COLT PAYNE, CHTD., hereby submits this Motion pursuant to NRAP 27.

POINTS AND AUTHORITIES

REQUEST FOR CLARIFICATION, ETC.

Pursuant to this Court's October 23, 2019 order, Appellant's filed their motion (10/29/19) for the substitution of Fredrick Waid, as current Trustee of the Christian Family Trust (hereinafter "CFT"). Mr. Waid as Trustee, should at least be afforded the time and/or opportunity to respond.

The Court's Order is not clear to the extent Appellants seek clarification. The Order states:

“Upon further review, we conclude that our May 7 order contains an error, in that it improperly dismissed the appeal as to Barney, Ltd., when appellants' motion did not seek such relief and no rule precludes Barney, Ltd., from participating as a respondent to the appeal. [Emphasis added]

It is respectfully submitted there are rules, and aspects of said conclusion are both factually incorrect and not the state of this court's previous rulings. See NRCPP Rules 17 and 24.

Appellants did seek such relief in the Motion to Strike, Etc. (filed 4/10/19- **Exhibit “1”**- page 5), wherein it was argued that the Anthony L. Barney Ltd. (hereinafter “Barney”), as a mere, self styled unsecured “creditor” (of a deceased client), had no standing to participate as they were not a party in interest, and only counsel to a deceased party below.

This court's Order filed May 7, 2019 (**Exhibit “2”**) was clear and unambiguous, wherein it stated: “*Appellants/cross-respondents argue that Barney was not a party to the action below and, therefore lacks standing to participate in the appeal...*”. The original motion had been unopposed by both Barney and Utkin, and this Court thereafter granted the motion in its entirety, ordering that the appeal will be resolved on the opening brief and appendix.

In Adjudicating Barney's Motion for Sanctions, etc., this Court, in its order filed June 18, 2019 on page 1, also acknowledged that Appellants' motion included argument as to the ability of Barney to "cross-appeal and to participate in the appeal".

This appeal deals with the issue of an unsecured creditor (Barney) seeking attorneys fees/costs from a (deceased client's) discretionary/spendthrift trust, the CFT. The Trust by its very terms excludes Nancy Christian's creditors from seeking payment through the trust. At that time, Barney had not filed any formal creditor claim in Nancy's estate (NRS Chapter 147). Barney has recently (9/26/19) filed "claim(s)" in both Nancy's estate and to the CFT, conceding this error (see discussion below).

This Court's May 7, 2019 Order (Exhibit "2") also considered Utkin's decision to not participate as a "confession of error", the definition of which: "is a party's admission, express or implied, made on appeal, that the court below committed an *error* in his favor, or prejudicial to the rights of an adverse party." The confession of error, as the rule of the case, binds all involved in that the District Court erred in allowing Utkin's "decision", as Trustee, to agree to pay the Barney's fees. The then Trustee was the real party in interest, and has now confessed error. Therefore, what remains is that the Trustee could not agree/approve to pay any of Nancy Christian's creditors, including Barney. Barney relies on Utkin's "approval", which Utkin has voluntarily concedes was error, providing no basis for Barney's argument.

Nancy Christian died December 18, 2017, her estate has been opened. An undecided Petition for Administration appointing Monte Reason (Nancy's son) as Personal Representative remains pending (Case No.: P-17-093928-E). Mr. Reason was appointed as a Special Administrator (with Letters issued). (**Exhibit "3"**)

Noteworthy is the fact that a Notice of Suggestion of Death (Nancy Christian) was filed January 4, 2018 by Appellants. Under the prior NRCP Rule 25, which was in effect at that time, anyone seeking to represent the Estate of Nancy Christian in this Trust matter, would have been required to be appointed as the personal representative of her estate, and then file a motion to be substituted in this trust matter within the proscribed 90 days. The Notice of Suggestion of Death triggers the 90 day deadline, confirmed by the Nevada Supreme Court in *McNamee v. EJDC*, 135 Nev. Adv, Op 52 (10/17/19). Any issues regarding what may or may not be part of Nancy Christian's estate should have been made by Petition filed in the Christian Trust matter by the personal representative who should have been substituted for Nancy Christian within the 90 day period proscribed by NRCP 25. Neither had been done, and even if anyone becomes appointed at this point, the time to substitute in these matters for Nancy has passed over a year ago and is time barred.

It is asserted that Clarification is required as to Barney's renewed and/or continued participation, was argued in the prior motion, that as Barney was and still is not a party in the case below¹, and does not have standing to participate in the appeal. Barney failed to make any timely application under NRCP Rules 24 or 25. Barney is merely an unsecured claimant awaiting the outcome of this appeal between interested parties.

For more confusion, as related to the CFT matter noted above, Barney has filed another petition for further fees (filed 9/26/09), despite his agreement of a reduction on the prior amount in the record, and the subject of this appeal. In Nancy Christian's estate (P-17-093928-E), Barney in the capacity as creditor, has filed (9/26/19) a petition to admit the will and for appointment of someone named Daniel Lay as the personal representative. (**Exhibit "4"**) Barney has conceded that it previously not done so and committed further errors.

There is a long case law history that supported the Appellant's arguments that only a real party in interest had standing in an appeal. Barney was not a party, but only a law firm which represented a (now deceased) client, and has, to date, never addressed the issue. His client was never a Trustee of the Christian Family Trust, nor was she a direct beneficiary, and was only a mere discretionary income beneficiary.

¹ In *Albert D. Massi Ltd v. Bellmyre*, 111 Nev. 1520, 908 P.2d 705 (1995) (an appeal from an order determining an attorney lien; the court specifically determined that an attorney representing a client in a case is not a party to the action and does not have standing to appeal).

It was then argued and is again stated (see Exhibit “1” herein) that only parties in the District Action below (those who were served with due process) have standing to participate. To this point, Barney has not addressed that they are not a real party in interest, nor are they an aggrieved party, by definition. At best, Barney, as an unperfected creditor of their deceased client, has the right to attempt to perfect a lien interest/claim (or other claim) in her personal estate (NRS Chapter 147). Barney has never attempted to perfect a lien rights pursuant to NRS 18.015, nor has offered an explanation of why it is exempt from the attorney lien process. See also, NRCP Rule 54.

If Barney wanted to participate as a party, and not only a former attorney for a former dead client, then they should have, long before now, filed a timely motion to intervene to become a party pursuant to NRCP 24. There has been no such motion, and again Barney simply remains a prior attorney for a deceased client, and does not have standing. Barney has not followed the rules and now is seeking to re-start a District Court process with requests for further fees, billed to a dead client, as it pertains to the subject matter of this appeal.

MOTION TO STRIKE-ANSWERING BRIEF, ETC.

Barney’s Answering Brief seeks to divert this court’s attention away from the central issues of this appeal. It introduced alleged facts, occurrences, misrepresentations, etc., which were and are not part of the District Court’s record.

Further, the presentation of any new material, whether it be facts, or documents which occurred after the Appeal commenced are new issues and trial level argument (motion practice), not appropriate for the Appellate Court (NRAP 27(j)). The Appellate Court is a review court, not a trial level court, and any such new material(s) has no bearing on the District Court's decision/order which is the subject of the appeal. Barney's improper portions of the brief seeks to expand the role of the Appellate Court.

See also Carson Ready Mix, Inc., v. First Nat'l Bank of Nev., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981)(providing that the appellate court cannot consider materials that are not part of the record on appeal)

A. Barney's Brief contains matters not in the Record or outside scope of Record.

Barney's Answering Brief has made numerous references to matters outside the Record. For example, in the Answering Brief, at page 3, Barney states:

"Waid declined to voluntarily enter the appeal as current trustee of the CFT, or take a position concerning the appeal, but did confirm that he had "not delegated any fiduciary duty to pursue any claims on behalf of the Christian Family Trust to any party to the underlying trust matter... matter...and...[he]Waid will defer to the District Court who previously hearing the matter and the Nevada Supreme Court who will hear the pending appeal to determine who has appropriate standing to pursue claims raised in these matters." That same day, Waid had also declared that he was "not taking any position as to such rights of any beneficiary or prior trustee regarding the appeal." He further claimed that he, "was not pursuing any claimed rights by such individuals in his fiduciary capacity or using trust assets and resources to assist them in their claims,...".

For this, Barney references footnotes 8 and 9, which were:

8 See RESAPP IV: 000767 Letter dated March 26, 2019 from Russel J. Geist, Esq. to Tiffany S. Barney, Esq.

9 See RESAPP IV: 000768 Letter dated March 26, 2019 from Russel J. Geist, Esq. to Tiffany S. Barney, Esq.

These arguments and references to such “Exhibits”, are matters occurring almost a year after the Notice of Appeal was filed with the District Court (4/26/18) is improper.

The Record for an appeal, pursuant to NRAP 10(a) states: “**(a) The Trial Court Record.** The trial court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.”

Extraneous documents, which could be considered mere exhibits, and not part of the District Court Record of the case are improper to be included, and should be stricken pursuant to NRAP 27(a)(1) as not having been presented in the District Court first.

Moreover, Barney repeatedly purports to have “spoken for” the current Trustee, Fredrick Waid. Only Mr. Waid or his counsel, Russell Geist, Esq., may speak to the Trustee’s position. Such alleged “discussions” are also improper.

Barney also does not “speak” for the “Nancy Christian estate” regarding this matter, argument(s) or other, all of which are improper. See NRCP 25 argument *supra*.

Further, Barney’s asserting new arguments, for the first time, which have nothing to do with the issue on appeal, which were not brought up in the original District Court matter on the issue of: (1) his fees being paid, and (2) could the Trustee permit or the Trust allow same to be paid, is improper, and outside scope. This would

include funding sub trusts, what was Nancy's alleged property (Brief page 25), attributing actions to various parties, (Answering Brief-pg 7, ln 12-20), which was and is not part of this appeal.

Also of note is Barney's request for judicial notices of another exhibit. See page 25, footnote 90:

90 RESAPP III: 000583 - 000586; This Court can take judicial notice pursuant to NRS §47.130 that the DV was jointly owned by Nancy and Raymond Christian from the filing of the Grant Bargain and Sale Deed recorded as Instrument# 20161019-0000692 on October 19, 2016 in Clark County, Nevada.

Barney has willfully and knowingly argued matters not in the Record, violating NRAP Rules. NRAP 27(j) provides the authority to strike a Brief which are not "free from burdensome, irrelevant, immaterial or scandalous matters", which states:

(j) Sanctions for Inadequate Briefs. All briefs under this Rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions.

CONCLUSION

It is requested that the court provide further clarification of its order filed October 23, 2019. It is also respectfully submitted that the Supreme Court lacks jurisdiction to entertain argument from a non-party, and the latest Answering Brief should be stricken in its entirety, or alternatively that Barney be ordered to comply with NRAP 27(j). That as a non-party to the case below, Barney admits error in that it now has presented new claims to the Nancy Christian Estate and the CFT.

Alternatively, to the extent that the Brief cites to matters/documents that are not supported by the District Court Record, must all be stricken.

Dated: November 19, 2019

Filed by:



CARY COLT PAYNE, ESQ.

Nevada Bar No.: 4357

CARY COLT PAYNE, CHTD.

700 S. Eighth Street

Las Vegas, NV 89101

(702) 383-9010

carycoltpaynechtd@yahoo.com

CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 19th day of November, 2019, I have served to the following a copy of the previously filed Motion to Substitute Party as follows:

X via electronic filing by electronic filing through the Court's E-Flex System:


Russel J. Geist, Esq.
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Attorney for Monte Reason



An employee of CARY COLT PAYNE, CHTD.



CARY COLT PAYNE, CHTD.

Attorney at Law

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EXHIBIT PAGE INTENTIONALLY LEFT BLANK

EXHIBIT “1”

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.

Electronically Filed
Apr 10 2019 02:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 75750

**APPELLANT/CROSS-RESPONDENTS'
MOTION TO STRIKE COMBINED ANSWERING BRIEF/CROSS APPEAL
OPENING BRIEF
DISMISS CROSS APPEAL, ETC.,
AND STAY OF BRIEFING PENDING RESOLUTION**

COMES NOW Appellants, Susan Christian (formerly Susan Christian-Payne), Rosemary Keach and Raymond Christian Jr., by and through their attorney, Cary Colt Payne, Esq., of the lawfirm of CARY COLT PAYNE, CHTD., hereby submits this Motion pursuant to NRAP 27.

POINTS AND AUTHORITIES

I. Statement of Facts

Appellants filed their Notice of Appeal April 26, 2018 as it related to an award of attorneys fees/costs to Nancy Christian's prior attorney, Anthony L. Barney, Ltd.

The Court modified the caption in this matter by order filed June 13, 2018, specifically noting Jacqueline Utkin (as Trustee of the CFT) as a Respondent. (**Exhibit "1"**)

Anthony L. Barney, Ltd. ("The Barney Firm") (non-party) filed its Notice of Appeal (cross-appeal) and Case Appeal Statement May 8, 2018. (**Exhibit "2"**)

The Court reinstated Briefing by order filed October 12, 2018. (**Exhibit "3"**)

Prior attorney for Respondent Jacqueline Utkin moved to withdraw as Utkin's counsel of record, which was granted by Order January 24, 2019. The order also requested responses from the other parties as to whether or not Utkin should remain a party.

The court in its Order filed February 14, 2019, ordered that Jacqueline Utkin remain a necessary party to the appeal, and ordered a briefing schedule. (**Exhibit "4"**)

On March 18, 2019, the Supreme Court received and filed what appears as the 2/14/19 Order with a handwritten notation from Utkin stating: "I'm opting out. Please remove." (**Exhibit "5"**)

The Barney Firm, represents itself, and filed their Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal March 27, 2019.

II. Argument

Utkin was the interested and necessary party when the original Petition for Fees (APP-ROA-V8-577-pleading as Exhibit "A") was filed in this matter. Utkin asserted same in her Notice of Substitution of Real Party in Interest (NRCP 17), filed in the court below on January 15, 2018 (APP-ROA-V18-1415-Exhibit "B"). She was the purported trustee who then, according to Respondent Barney firm, joined and filed a Notice of Non-Opposition and Limited Joinder on February 23, 2018 (APP-ROA-V8-660-Exhibit "C") to the Respondent Barney firm Petition for Fees and Costs. This matter was cited to the District Court (4/4/18) and basis for such award.

Pursuant to this court's order (2/14/19), Utkin remained a necessary party and ordered she should file an answering brief. Instead, she simply informed that she was "opting out"; therefore she did not comply with the court's order. As Utkin was the then trustee, her failure to file any sort of response in this matter represents a confession of error. In fact, Utkin as a named party below, is the only party to this appeal who would have any standing to respond to the Appellants' position.

NRAP 31(d)(2) states: *"If a respondent fails to file an answering brief, respondent will not be heard at oral argument except by permission of the court. The failure of respondent to file a brief may be treated by the court as a confession of error*

and appropriate disposition of the appeal thereafter made.” Also see Melvin L. Lukins & Sons v. Kast, 91 Nev. 116, 532 P.2d 602(1975); Summa Corp. v. Brooks Rent-a-Car, 95 Nev. 779, 602 P.2d 192 (1979); State v. Prins, 96 Nev. 565, 613 P.2d 408 (1980).

Respondent Barney Firm, again only representing itself, filed a cross-appeal (5/8/18) and filed their Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal March 27, 2019.

The Barney Firm was not a named party in the court below, was never served with a Petition/Complaint naming itself as a party or served with process as a party. Their only role was as attorney of record for Nancy Christian (prior to her demise - one of the original Trustors).

This court has routinely held dismissing such an appeal or cross-appeals. See Albany v. Arcata Assoc, Inc., 106 Nev. 6888, 799 P.2d 566 (1990) (sole issue whether an order imposing sanctions upon a non-party is appealable, deciding such an order is not appealable); Albert D. Massi Ltd v. Bellmyre, 111 Nev. 1520, 908 P.2d 705 (1995) (an appeal from an order determining an attorney lien; the court specifically determined that an attorney representing a client in a case is not a party to the action and does not have standing to appeal).

Where no statutory authority to appeal is granted, no right to appeal exists. Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975). The court lacks jurisdiction

NRAP 3A(a) states that "[a]ny party aggrieved" may appeal from an appealable judgment or order in a civil action or proceeding. It also requires that a party to an appeal be a party below and aggrieved.

In this matter, The Barney Firm has no right of appeal/cross appeal because they are not a party to the underlying civil action –they were the attorneys for a (deceased) party only, yet styles themselves as a "judgment creditor". See generally, Whitley v. State, 79 Nev. 406, 386 P.2d 93 (1963). Also see Aetna Life & Cas. Ins. Co. v. Rowan, 107 Nev. 362, 363, 812 P.2d 350,351 (1991)(holding a non-party may not appeal from an order denying its motion to intervene).

Moreover, as a non-party in the case below, The Barney Firm does not have standing to file an Answering Brief to Appellant's appeal. They are a non-party, who seeks to represent themselves in this appeal, not in any representative capacity for any client.

The only party who has standing to participate in this appeal and/or argue against Appellant's appeal and/or position is the then trustee, Jacqueline Utkin. She has intentionally refuses to participate, and upon whom The Barney Firm relies. (See Combined Brief pages 17-18)

In fact The Barney Firm's combined brief is arguing potentially Utkin's position, which Utkin intentionally refuses to do. The Barney Firm has no standing to argue another party's positions.

Finally, that until this motion is decided, etc. that the remainder of any briefing should be stayed.

CONCLUSION

It is submitted that the Supreme Court lacks jurisdiction to hear the cross-appeal of The Barney Firm, and same should be dismissed in its entirety. That as a non-party to the case below, The Barney Firm lacks standing to participate in the appeal as a party and their Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal March 27, 2019 should be stricken.

Dated: April 16, 2019

Filed by:



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CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 10th day of April, 2019, I have served to the following copy of the foregoing as follows:


X via electronic filing by electronic filing through the Court's E-Flex System:

Anthony L. Barney, Esq.
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Joseph Powell, Esq.
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Attorney for Monte Reason

X via U.S. Mail to the parties last known address:

Jacqueline Utkin
445 Seaside Avenue, Apt. 4005
Honolulu, HI 96815



An employee of
CARY COLT PAYNE, CHTD.

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,

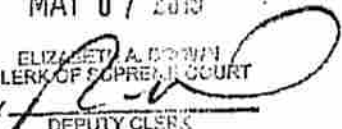
vs.

JACQUELINE UTKIN,

Respondent.

FILED

MAY 07 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER DISMISSING APPEAL IN PART
AND DISMISSING CROSS-APPEAL*


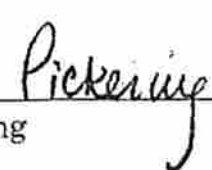
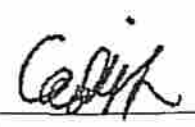
This is an appeal and cross-appeal from a district court order allowing the partial payment of a claim for attorney fees in a trust action. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

Appellants/cross-respondents have filed a motion seeking to strike respondent/cross-appellant Anthony L. Barney, Ltd.'s combined answering brief on appeal and opening brief on cross-appeal filed on March 27, 2019, and to dismiss Barney's cross-appeal. Appellants/cross-respondents argue that Barney was not a party to the action below and, therefore lacks standing to participate in the appeal and to pursue its cross-appeal. Additionally, appellants argue that respondent Jaqueline Utkin has refused to participate in the appeal, and such refusal should be construed as a confession of error. The motion was served electronically on Barney and by mail on Utkin on April 10, 2019. See NRAP 25(c), (d); NEFCR 9. To date neither Barney nor Utkin have opposed the motion. See NRAP 27(a)(3)(A) (allowing a party 7 days from service of a motion to file a response).

19-20035

This court concludes that Barney's and Utkin's failure to oppose the motion constitutes an admission that the motion is meritorious, see *Foster v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010), and grants the motion. Appellants/cross-respondents' appeal is dismissed as to Anthony L. Barney, Ltd. only. Anthony L. Barney, Ltd's cross-appeal is dismissed in its entirety, and the clerk shall strike its combined brief filed on March 27, 2019. On March 18, 2019, in response to this court's February 14, 2019, order directing her to retain counsel or notify this court if she will be proceeding in pro se, Ms. Utkin filed a document, dated March 12, 2019, stating "I'm opting out—Please remove me." Accordingly, this appeal will be resolved on the opening brief and appendix filed January 9, 2019, and without an answering brief from Ms. Utkin. This court may treat Ms. Utkin's failure to file an answering brief as a confession of error. See NRAP 31(d)(2). The clerk shall amend the caption in this appeal to conform to the caption on this order.

It is so ORDERED.

| | | |
|---|---|--|
| 
_____, J.
Parraguirre | 
_____, J.
Pickering | 
_____, J.
Cadish |
|---|---|--|

cc: Hon. Vincent Ochoa, District Judge
Carolyn Worrell, Settlement Judge
Cary Colt Payne
Jacqueline Utkin
Anthony L. Barney, Ltd.
Eighth District Court Clerk



CARY COLT PAYNE, CHTD.

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

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EXHIBIT "2"

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

MAY 07 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK


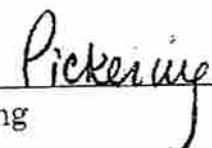
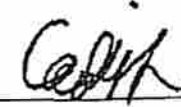
*ORDER DISMISSING APPEAL IN PART
AND DISMISSING CROSS-APPEAL*

This is an appeal and cross-appeal from a district court order allowing the partial payment of a claim for attorney fees in a trust action. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

Appellants/cross-respondents have filed a motion seeking to strike respondent/cross-appellant Anthony L. Barney, Ltd.'s combined answering brief on appeal and opening brief on cross-appeal filed on March 27, 2019, and to dismiss Barney's cross-appeal. Appellants/cross-respondents argue that Barney was not a party to the action below and, therefore lacks standing to participate in the appeal and to pursue its cross-appeal. Additionally, appellants argue that respondent Jaqueline Utkin has refused to participate in the appeal, and such refusal should be construed as a confession of error. The motion was served electronically on Barney and by mail on Utkin on April 10, 2019. See NRAP 25(c), (d); NEFCR 9. To date neither Barney nor Utkin have opposed the motion. See NRAP 27(a)(3)(A) (allowing a party 7 days from service of a motion to file a response).

This court concludes that Barney's and Utkin's failure to oppose the motion constitutes an admission that the motion is meritorious, see Foster v. Dingwall, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010), and grants the motion. Appellants/cross-respondents' appeal is dismissed as to Anthony L. Barney, Ltd. only. Anthony L. Barney, Ltd.'s cross-appeal is dismissed in its entirety, and the clerk shall strike its combined brief filed on March 27, 2019. On March 18, 2019, in response to this court's February 14, 2019, order directing her to retain counsel or notify this court if she will be proceeding in pro se, Ms. Utkin filed a document, dated March 12, 2019, stating "I'm opting out—Please remove me." Accordingly, this appeal will be resolved on the opening brief and appendix filed January 9, 2019, and without an answering brief from Ms. Utkin. This court may treat Ms. Utkin's failure to file an answering brief as a confession of error. See NRAP 31(d)(2). The clerk shall amend the caption in this appeal to conform to the caption on this order.

It is so ORDERED.

| | | |
|---|--|--|
| 
_____, J.
Parraguirre | 
_____, J.
Pickering | 
_____, J.
Cadish |
|---|--|--|

cc: Hon. Vincent Ochoa, District Judge
Carolyn Worrell, Settlement Judge
Cary Colt Payne
Jacqueline Utkin
Anthony L. Barney, Ltd.
Eighth District Court Clerk



CARY COLT PAYNE, CHTD.

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

EXHIBIT PAGE INTENTIONALLY LEFT BLANK

EXHIBIT “3”

Steven D. Grierson

1 **LSA**
JOSEPH J. POWELL
2 State Bar No. 8875
RUSHFORTH LEE & KIEFER LLP
3 1707 Village Center Circle, Suite 150
Las Vegas, NV 89134-0597
4 Telephone: (702) 255-4552
Email: probate@rlklegal.com
5 Attorneys for Monte B. Reason

6
7 **DISTRICT COURT**
CLARK COUNTY, NEVADA

8 In the Matter of the Estate

9 of

10 **NANCY CHRISTIAN,**

11 Deceased.

Case No. P-17-093928-E
Department PC1
(Probate) Clark District
Family Domestic

12
13 **LETTERS OF SPECIAL ADMINISTRATION**
14

15 On January 18, 2018, an Order was entered appointing Monte B. Reason as Special
16 Administrator of the Estate of Nancy Christian. Monte B. Reason is granted the limited authority to
17 take possession of the ashes of Nancy Christian from Simple Cremation.

18 The requirement of bond is waived, due to the limited scope of power granted to Monte B.
19 Reason as Special Administrator.

20 In testimony of which I have this date signed these letters and affixed the seal of this Court.

21 Steven D. Grierson, Court Executive Officer
22

23 By: *[Signature]*
24 Deputy Clerk *[Signature]*

JAN 19 2018

DATE

THE RUSHFORTH LEE & KIEFER
FIRM, LTD.
1707 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
(702) 255-4552

OATH OF MONTE B. REASON

I, Monte B. Reason, whose mailing address is 304 Orland Street #39, Las Vegas, NV 89130, solemnly affirm that I will faithfully perform, according to law, the duties of Special Administrator, as expressly granted to me pursuant to the aforementioned order.

Monte B. Reason
Monte B. Reason

STATE OF NEVADA

}

ss.

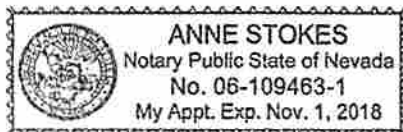
COUNTY OF CLARK

}

This instrument was acknowledged before me on JAN 15 2018 by Monte B. Reason.

WITNESS my hand and official seal.

ANNE STOKES
NOTARY PUBLIC





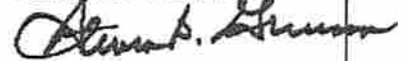
CARY COLT PAYNE, CHTD.

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EXHIBIT "4"



1 ANTHONY L. BARNEY, ESQ.
2 NV State Bar No. 8366
3 ZACHARY D. HOLYOAK, ESQ.
4 NV State Bar No. 14217
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10 E-Mail: office@anthonybarney.com

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 In the Matter of the Estate of:

Case Number: P-17-093928-E

Dept.: PC1

14 NANCY CHRISTIAN

15 Deceased

16 **PETITION TO PROVE THE DECEDENT'S WILL, AND**
17 **FOR ISSUANCE OF LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED**

18 Petitioner Anthony L. Barney, Ltd., ("ALB, Ltd." and "Petitioner"), creditor of Nancy
19 Christian ("Decedent"), by and through its attorneys at Anthony L. Barney, Ltd., hereby
20 petitions the Court for an order Proving the Decedent's Will, and for Issuance of Letters of
21 Administration with the Will Annexed to Daniel Lay. In support of this Petition, the Petitioner
22 respectfully states the following:

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **FACTS PRESENTED**

- 25 1. In February 2017, Nancy Christian came to ALB, Ltd., because she was gravely
26 concerned about some issues she was having with her children, Susan Christian-Payne
27 ("Susan"), Raymond Christian, Jr. ("Raymond Jr."), and Rosemary Keach ("Rosemary")
28 (collectively referred to as the "Former Trustees"), who essentially forced their way back



Marj Arena <marja.carycoltpayne@gmail.com>

Notification of Service for Case: P-17-093928-E, In the Matter of: Nancy Christian, Deceased for filing Petition - PET (PRB), Envelope Number: 4968378

1 message

efilingmail@tylerhost.net <efilingmail@tylerhost.net>

Thu, Sep 26, 2019 at 12:58 PM

To: marja.carycoltpayne@gmail.com



Notification of Service

Case Number: P-17-093928-E

Case Style: In the Matter of: Nancy Christian, Deceased

Envelope Number: 4968378

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

| Filing Details | |
|----------------------------------|---|
| Case Number | P-17-093928-E |
| Case Style | In the Matter of: Nancy Christian, Deceased |
| Date/Time Submitted | 9/26/2019 12:57 PM PST |
| Filing Type | Petition - PET (PRB) |
| Filing Description | Petition to Prove the Decedent's Will and for Administration with Will Annexed |
| Filed By | Anthony Barney |
| Service Contacts | <div>Monte B Reason:
Joseph Powell, Esq. (joey@riklegal.com)

Other Service Contacts not associated with
Cary Payne, Esq. (carycoltpaynechtd@yahoo.com)
Marj Arena, Paralegal (marja.carycoltpayne@gmail.com)
Zachary Holyoak (zach@anthonybarney.com)
Anthony Barney (anthony@anthonybarney.com)
Russell Geist (rgeist@hutchlegal.com)
Jeremy Kirschner (jerimy@jkirschnerlaw.com)</div> |
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1 into Nancy and her husband's life in 2016 after being estranged from Nancy and her
2 husband, Raymond T. Christian ("Raymond Sr.") for several years.

- 3
4 2. In October 2016, the Former Trustees caused the Christian Family Trust dated October
5 11, 2016 (the "CFT") to be drafted without review by Nancy of any drafts prior to its
6 execution.
- 7
8 3. By their own admission, Former Trustees sat at the table and they negotiated the terms
9 of the CFT on behalf of the Trustors, Nancy and Raymond Sr.¹
- 10
11 4. After they obtained control of the bulk of Nancy and Raymond Sr.'s assets through the
12 CFT the Former Trustees began their scheme to keep Nancy away from her own money.
- 13
14 5. Immediately after execution of the CFT, the Former Trustees started moving money
15 from the Trustors' bank accounts, selling and buying properties, changing beneficiary
16 designations to themselves on retirement accounts, and taking lavish vacations to
17 California with CFT funds to the exclusion of Nancy.
- 18
19 6. After meeting with Tiffany Barney, Esq., and having its terms explained to her by an
20 attorney who was independent of the Former Trustees in February 2017, Nancy
21 expressed that the CFT did not represent her or her husband's wishes and that neither she
22 nor her husband understood the terms of the CFT when it was signed.
- 23
24 7. From the time the CFT was executed in October 2016 until her passing in December
25 2017, Nancy Christian did not receive even one penny from the CFT.
- 26
27 8. Based, in part, upon the Former Trustees' abusive treatment, Nancy chose to exercise
28 her rights under the CFT to change Trustees pursuant to Article 9.3, which gives her this
absolute power.²

¹ See Video Transcript of October 19, 2017 hearing in Case No. P-17-092512-T at 2:33 p.m.

- 1 9. Nancy exercised her rights under the CFT to remove the Former Trustees and appoint
2 Monte Reason as successor trustee of the CFT.
- 3 10. ALB, Ltd., drafted the Modification and Designation of Trustee and Successor Trustee
4 in accordance with Nancy's request.³
- 5 11. Nancy's action to replace the Former Trustees was then reviewed by an independent
6 attorney, Sean Tanko, Esq., who also serves as the Probate Commissioner *Pro Tem*.
- 7 12. Mr. Tanko provided a certificate of independent review pursuant to NRS 155.0975
8 wherein he certified that the action was not the product of fraud, duress, or undue
9 influence.⁴
- 10 13. This written instrument replacing the Former Trustees was provided to the Former
11 Trustees on June 13, 2017.⁵
- 12 14. On June 13, 2017, after the Former Trustees refused to provide Nancy with any CFT
13 funds, Nancy, through counsel, informed the Former Trustees they had been removed as
14 successor trustees of the CFT on June 12, 2017 pursuant to the clear language of the
15 CFT.⁶
- 16 15. Through counsel, Nancy further requested the CFT funds be safeguarded and transferred
17 to the new successor trustee.⁷
- 18
19
20
21
22

23 ² See Exhibit A of the Former Trustees' Petition filed July 31, 2017 in Case No. P-17-092512-T at section 9.3
24 stating in part; "After the Death of the first Trustor to die, the surviving Trustor shall have the power to change the
25 Trustee or Successor Trustee of the Trust by an instrument in writing signed by the surviving Trustor and delivered
26 to the Trustee." Notably, there is no limitation on this power and there is no language in the Trust which prevents
27 Nancy from changing the Trustee of the Trust.

28 ³ See Modification and Designation of Trustee and Successor Trustee attached and incorporated as Exhibit G to
Joint Objection and Joint Counterpetition filed on November 13, 2017 in Case No. P-17-092512-T.

⁴ See Certificate of Independent Review attached as Exhibit H to Joint Objection and Joint Counterpetition filed on
November 13, 2017 in Case No. P-17-092512-T.

⁵ See Letter dated June 13, 2017 with Modification and Designation of Trustee and Successor Trustee attached as
Exhibit C to Nancy's Motion to Dismiss filed on August 17, 2017 in Case No. P-17-092512-T.

⁶ *Id.*

⁷ *Id.*

1 16. At that point, ALB, Ltd., was in contact with retained counsel for the Former Trustees.
2 ALB, Ltd. sent extensive correspondence requesting the Former Trustees safeguard and
3 deliver trust funds to the new successor trustee.
4
5 17. However, the Former Trustees actively prevented the successor trustee from being able
6 to further the terms of the CFT by wrongfully withdrawing CFT funds without authority
7 and placing it into their attorney's IOLTA account without court authority.
8
9 18. By this point, Nancy indicated her desire to take what few assets of hers (that the Former
10 Trustees and their attorney⁸ who drafted the CFT) had not transferred into the CFT and
11 assure that those few assets would be distributed in accordance with her wishes after her
12 death.
13
14 19. At Nancy's direction, ALB, Ltd., prepared a new estate plan for Nancy which included
15 the Nancy Christian Trust ("NCT") and a pour over will to the NCT.⁹
16
17 20. Again, Nancy met with Mr. Tanko regarding the NCT and related documents.
18
19 21. Mr. Tanko certified that the NCT reflected Nancy's wishes and was not the product of
20 undue influence, fraud, or duress.¹⁰
21
22 22. Nancy executed the NCT and pour over Will on July 21, 2017.
23
24 23. Unfortunately, after several demands that the Former Trustees turn over the assets of the
25 CFT to its new Trustee, the Former Trustees initiated litigation in a bid to claim that
26 Nancy was not authorized to remove them, despite clear and unambiguous language to
the contrary in the CFT.

27 ⁸ See email from Susan Payne dated September 6, 2017 attached as Exhibit A to Petitioner's Opposition to Motion
28 to Dismiss filed September 15, 2017 in Case No. P-17-092512-T, wherein Susan Payne refers to David Grant as
"our attorney" and she refers to the CFT as "our trust."

⁹ See the Last Will and Testament lodged with the court as W-18-014220 a copy of which is attached hereto and
incorporated herein as Exhibit A.

1 24. The Former Trustees were successful in convincing the Court (at the time the Honorable
2 Judge Vincent Ochoa) to freeze the assets of the CFT so that Nancy's chosen successor
3 trustee could not have access to it during her life or pay her attorneys for their services
4 on her behalf.
5

6 25. Despite a court order to freeze the funds or place the funds in a frozen account, Mr.
7 Payne and/or the Former Trustees refused to do so, despite numerous requests, until they
8 were forced to do so by a second court order.¹¹
9

10 26. Tragically on December 13, 2017, with a pending petition in which Nancy pled several
11 serious causes of action against the Former Trustees, Nancy passed away
12 unexpectedly.¹²
13

14 27. After Nancy's death, ALB Ltd. submitted a request for payment to the then acting
15 successor trustee of the CFT for its unpaid attorney's fees incurred on Nancy's behalf.
16

17 28. Monte Reason ("Mr. Reason"), as successor trustee of the CFT approved ALB, Ltd.'s
18 requested fees.
19

20 29. Shortly thereafter, Mr. Reason resigned as successor trustee of the CFT and Jaqueline
21 Utkin ("Ms. Utkin") was nominated to act as successor trustee of the CFT.
22

23 30. ALB, Ltd. incurred additional fees and costs between the approval by Mr. Reason and
24 Ms. Utkin's appointment, and therefore submitted a request that Ms. Utkin acknowledge
25 the prior approval of fees by Mr. Reason and approve payment from the CFT for the
26 increased amount incurred under their engagement agreement with Nancy.
27

28 ¹⁰ See Certificate of Independent Review by Sean Tanko, Esq., attached hereto and incorporated herein as Exhibit B.

¹¹ See Pg. 7, lines 11-15 of Decision filed on October 31, 2017 and Order from January 17th Hearing in Case No. P-17-092512-T.

¹² See a redacted copy of the Nancy's Death Certificate attached hereto and incorporated herein as Exhibit C

1 31. Ms. Utkin acknowledged the prior approval by Monte and approved the marginal
2 increase incurred under the engagement agreement.

3 32. Unfortunately, due to the Former Trustees' improper sequestration of the assets of the
4 CFT, and the Court's freeze order related to the assets, neither Mr. Reason nor Ms. Utkin
5 were able to pay the fees which they approved from the CFT.
6

7 33. The Court required ALB, Ltd. to file a petition to unfreeze the assets of the CFT in or to
8 pay the approved fees.

9 34. ALB, Ltd. filed such a petition and the Court granted a partial portion of the fees and
10 costs to be unfrozen at that time in the approximate amount \$53,000.00 of Trust funds
11 although the fees approved by the successor trustees were approximately \$66,000.00.
12

13 35. The Former Trustees filed an appeal of the order partially unfreezing a portion of the
14 CFT funds, which, in effect, was rendered moot by this Court releasing all of the CFT
15 funds after the appeal was filed.
16

17 36. However, the appeal was initially directed only at ALB, Ltd. as a respondent or the real
18 party in interest.¹³ The Former Trustees and their counsel, Cary Colt Payne, Esq. swore
19 under penalty of perjury that ALB, Ltd. was the proper respondent or real party in
20 interest.¹⁴
21

22 37. ALB, Ltd. was unaware that this Court had unfrozen all of the CFT funds, because these
23 were not noticed on this Court's order and therefore in order to preserve ALB, Ltd.'s
24 rights and protect its interests it filed a cross-appeal to request the Court to unfreeze
25 sufficient assets to pay all of ALB's approved fees.
26

27
28 ¹³ The Former Trustees and their counsel certified on several occasions that ALB, Ltd., was the respondent or real party in interest regarding the appeal.

¹⁴ See Appellant's Docketing Statement filed June 7, 2018 in Nevada Supreme Court No. 75750.

1 38. Briefing commenced in the appeal and the Supreme Court on its own motion added Ms.
2 Utkin as a real party in interest to the appeal.
3
4 39. The Former Trustees filed their brief and argued among other things that ALB, Ltd.
5 should have sought its fees through Nancy's Estate rather than the Trust.
6
7 40. ALB, Ltd. filed its responsive brief and addressed the substantive arguments raised by
8 the Former Trustees including the fact that payment of its fees may be sought from the
9 Trust of a settlor and/or from the deceased settlor's Estate.
10
11 41. Thereafter, apparently fearing the substance of the arguments set forth by ALB, Ltd., the
12 Former Trustees reversed course and argued instead in their motion to dismiss that ALB,
13 Ltd. was not a real party in interest.
14
15 42. This argument was not specifically not opposed by ALB, Ltd., because ALB, Ltd.
16 learned that all CFT funds had been unfrozen at this time, making their cross-appeal
17 moot. The Supreme Court dismissed the appeal as to ALB, Ltd. and dismissed ALB,
18 Ltd's cross-appeal finding that ALB, Ltd. was not the real party in interest, despite the
19 Former Trustees initial designation under penalty of perjury that ALB, Ltd. was a proper
20 real party in interest as a respondent.
21
22 43. During the pendency of the appeal and immediately after the dismissal, ALB, Ltd.,
23 reached out to Frederick Waid ("Mr. Waid") the current court appointed trustee of the
24 CFT in an attempt to determine whether Mr. Waid intended to honor the agreement by
25 his predecessors to pay the full amount of the fees incurred by ALB, Ltd.
26
27 44. The CFT has refused to definitively approve or reject the requests of ALB, Ltd. made on
28 the CFT.

1 45. Based on the dismissal of ALB, Ltd.'s cross appeal pursuant to the Former Trustees
2 reversal and purposefully late admission that ALB, Ltd. was not the proper respondent to
3 the appeal, and based on the CFT's refusal to approve or reject the claims for payment
4 by ALB, Ltd., the firm seeks to preserve its rights as Nancy's creditor through its current
5 petition.¹⁵
6

7 46. Even with the amount which has been paid to ALB Ltd., from the CFT, ALB, Ltd. is still
8 owed approximately \$10,615.22, including interest, based on the amount previously
9 approved by the CFT, and an additional approximately \$72,000.00, including interest,
10 which has been incurred as a result of ALB, Ltd's efforts to collect its fees in the face of
11 frivolous opposition from the Former Trustees, which amount is collectable by ALB,
12 Ltd. under the terms of the engagement agreement with Nancy.
13

14 47. It appears that Mr. Reason has previously filed a petition to be appointed as the executor
15 of the Estate of Nancy Christian, which was opposed by the Former Trustees.
16

17 48. It appears that Mr. Reason's petition was never adjudicated and there appears to be no
18 pending hearing on the matter.

19 49. Unfortunately, the CFT's refusal to affirmatively approve or reject the requests for
20 payment by ALB. Ltd., necessitate ALB, Ltd. filing the instant petition to preserve its
21 rights in the event the CFT rejects ALB, Ltd.'s requests for payment and the Court
22 adjudicates the matter without payment to ALB, Ltd.
23

24 50. There are pending claims raised by Nancy in the CFT case for which no legal
25 representative of Nancy has been appointed to adjudicate.
26
27

28

¹⁵ ALB Ltd., does not waive any claims it has against the CFT, its Former Trustees both as fiduciaries and individually, or its current Trustee, or any other parties related to this issue.

1 51. Therefore ALB Ltd., as a creditor of Nancy, seeks the appointment of Daniel Lay as
2 Administrator with the Will annexed over the Estate of Nancy Christian so that the
3 claims belonging to Nancy Christian and raised by her prior to her death can be
4 adjudicated.
5

6 52. This will allow the Firm as a Creditor of Nancy to obtain payment of the amounts due
7 under its contract with her in the event the CFT and the Court determine that full
8 payment cannot or should not be made from the CFT
9

10 LEGAL ARGUMENT

11 **A. Nancy's last will and testament dated July 21, 2017 is a valid self-proving will**
12 **which was certified by an independent attorney to have been executed free to undue**
13 **influence and should be proven and accepted by the court.**

14 On July 21, 2017 Nancy executed her last will and testament ("Will"). The Will was
15 witnessed by two parties whose signature was notarized (although the notary stamp was
16 inadvertently left off the document). Pursuant to NRS 133.050 the Will is self-proving.¹⁶ It
17 appears that the Former Trustees have previously raised arguments that the witnesses to the Will
18 are not competent because they are creditors of the Estate. This argument is a sanctionable
19 contradiction of the statute. NRS 133.070 provides that "A mere charge on the estate of the
20 testator for the payment of debts shall not prevent the creditors of the testator from being
21 competent witnesses to his or her will." It should also be noted that the witnesses themselves are
22 not creditors of the testator, rather ALB Ltd. is the creditor. Therefore, even if a creditor was not
23 a competent witness due to its claim against the decedent (which is clearly not true), the
24 witnesses to Nancy's Will are not creditors and would still be competent to testify as to the
25 execution of the Will.
26
27
28

1 It also appears that the Former Trustees have argued that Nancy's Will was the product
2 of undue influence. This argument is also sanctionably contradictory to the facts and applicable
3 statute. Prior to executing the document as part of her overall estate plan which centered on the
4 Nancy Christian Trust dated July 21, 2017, Nancy met with Sean Tanko, Esq. ("Mr. Tanko") as
5 an independent attorney pursuant to NRS 155.0975. Mr. Tanko certified under NRS 155.0975
6 that the estate plan executed by Nancy represented her wishes and was not, in his independent
7 opinion, the product of undue influence, fraud, or duress. NRS 155.0975 provides that a transfer
8 instrument is not invalid for undue influence if it was reviewed by an independent attorney who
9 reviews the document and intent of the client and certifies that the transfer is not the product of
10 undue influence. In this case Mr. Tanko provided such a certification.

13 Based on the foregoing, Nancy's last will and testament dated July 21, 2017 should be
14 proven and accepted by this Court as the valid Will of Nancy.

15 **B. Monte Reason and all other interested parties with priority have failed to appear**
16 **and qualify for appointment as the personal representative of the Estate of Nancy**
17 **Christian**

18 Nancy's last will and testament appoints Monte Reason ("Mr. Reason") as the executor
19 of her Estate and Rosemary Keach ("Ms. Keach") as the alternate executrix. Although Mr.
20 Reason has filed a petition to seek his own appointment, there appears to have been no hearing
21 on the matter and there appears to be no hearing currently scheduled. Ms. Keach apparently has
22 not sought appointment despite filing an objection to Mr. Reason's petition for appointment.

24 Pursuant to NRS 138.020(2) "if all persons so named [as executors] are disqualified or
25 renounce their right to act, or fail to appear and qualify, letters of administration with the will
26 annexed must issue." Furthermore, NRS 138.060(2) provides that "[a] petition may also be filed
27

28 ¹⁶ A will that is not self-proving may still be proved by testimony from the ascribing witnesses, both of whom are

1 for the issuance of letters of administration, with the will annexed, in all proper cases.” Finally,
2 under NRS 138.090(3)

3 [p]ersons and their nominees and appointees are entitled to appointment as
4 administrators with the will annexed in the same order of priority as in the appointment
5 of administrators, except that: (a) An heir who has been eliminated as a beneficiary or as
6 a fiduciary under the terms of the will is not qualified to serve as an administrator with
the will annexed

7 Here, Mr. Reason and Ms. Keach have failed to appear and qualify as executor/executrix
8 of the Estate of Nancy Christian. It is unclear why Mr. Reason has failed to do so, however, it is
9 believed that Ms. Keach has intentionally failed to seek appointment in an effort to prevent
10 claims which could should be pursued by Nancy’s Estate against her and the Former Trustees of
11 the CFT and to delay and/or prevent ALB, Ltd. from obtaining payment of its creditor’s claim
12 against Nancy’s Estate. While both Mr. Reason and Ms. Keach have failed to appear and
13 qualify, only Ms. Keach (and the other Former Trustees) is affirmatively disqualified from
14 acting as executrix due to conflict of interest. ALB Ltd. has attached pleadings relative to the
15 CFT wherein Nancy, prior to her death raised claims against the Former Trustees. Ms. Keach is
16 in direct conflict with the Estate because Nancy’s claims survive her death and become claims
17 of the Estate.
18
19

20 In addition to the clear conflict of interest plaguing the other Former Trustees, they are
21 also specifically excluded under Nancy’s will to act as executor/executrix. Therefore, under
22 NRS 138.090, Susan Payne and Raymond Christian Jr., are both unqualified to serve as personal
23 representatives of Nancy’s Estate. Unless Mr. Reason appears and qualifies as executor of the
24 Estate, it appears that no other family member meets the requirements to serve.
25
26
27
28

willing to testify as to the execution of the document if necessary.

1 **C. ALB Ltd., as a creditor of the Estate is authorized to serve as Personal**
2 **Representative**

3 With limited exception, NRS 138.090(3)(b) provides that the court should follow the
4 priority detailed in NRS 139.040 in determining the appointment of an administrator with the
5 will annexed. NRS 139.040 provides the following order of priority for the appointment an
6 administrator:
7

- 8 (a) The surviving spouse.
9 (b) The children.
10 (c) A parent.
11 (d) The brother or the sister.
12 (e) The grandchildren.
13 (f) Any other of the kindred entitled to share in the distribution of the estate.
14 (g) The public administrator.
15 (h) Creditors who have become such during the lifetime of the decedent.
16 (i) Any of the kindred not above enumerated, within the fourth degree of consanguinity.
17 (j) Any person or persons legally qualified.

18 Here, Nancy has no surviving spouse, her children are either disinherited under her Will
19 and conflicted or have otherwise not appeared and qualified to act as executor/administrator or
20 are incompetent (Tommy Christian has been represented by both Mr. Reason and the Former
21 Trustees to be lacking mental capacity). Nancy's parents predeceased her, the Petitioner is
22 unaware of any brothers or sisters who may have survived her. Upon information and belief, all
23 of Nancy's grandchildren are minors or otherwise unqualified to serve. Based on Nancy's will,
24 there are no other kindred of Nancy's who are entitled to share in a distribution of Nancy's
25 Estate. The public administrator is being provided notice of this action and may seek
26 appointment herein if he so chooses, however, the Petitioner does not believe he will do so.
27 Finally, ALB Ltd., as a creditor who became a creditor during Nancy's lifetime and is still owed
28 a total of approximately \$72,016.63, of which approximately \$4,000.00 was incurred during
Nancy's lifetime, is the next party with priority for appointment. ALB Ltd. nominates Daniel

1 Lay, to serve as administrator with the will annexed to issue notice to creditors and move
2 forward with the administration of the Nancy's Estate. Mr. Reason having failed to appear and
3 qualifies for appointment as the executor, and the public administrator also having failed to
4 appear and qualify, there is no other party with higher priority, who is not conflicted, to serve as
5 administrator with the will annexed, of which the Petitioner is aware.
6

7 **RELIEF REQUESTED**

8 Wherefore, the Petitioner respectfully requests that this court issue the following orders:
9

- 10 1. Proving Nancy Christian's Last Will and Testament dated July 21, 2017;
- 11 2. Finding that the named Executors under the will have failed to appear and qualify;
- 12 3. Finding that Rosemary Keach, Susan Payne, and Raymond Christian Jr. are in a conflict
13 of interest based on the Estate's legal claims against them;
- 14 4. Appointing Daniel Lay, as Administrator of the Estate with the Will annexed
- 15 5. Waiving any bond pursuant to the terms of the Will;
- 16 6. Requiring any liquid assets to be deposited into the Attorney Client Trust Account with
17 Anthony L. Barney, Ltd., until further order of the Court;
18
19

20 ///

21 ///

22 ///

23 ///

1 7. Authorizing Daniel Lay to pursue claims filed by Nancy Christian before her death in
2 Case No: P-17-092512-T; and,

3 8. Granting any other relief, the court deems necessary and appropriate.
4

5 Dated this 26th day of September 2019.

6 Respectfully Submitted

7
8 /s/Zachary D. Holyoak, Esq.

9 ANTHONY L. BARNEY, ESQ.

10 NV State Bar No. 8366

11 ZACHARY D. HOLYOAK, ESQ.

12 NV State Bar No. 14217

13 ANTHONY L. BARNEY, LTD.

14 3317 W. Charleston Boulevard, Suite B

15 Las Vegas, NV 89102-1835

16 Telephone: (702) 438-7878

17 Facsimile: (702) 259-1116

18 E-Mail: office@anthonybarney.com
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd. and not a party to the
3 above-entitled action. I further certify that on September 26, 2019 I served the foregoing
4 **PETITION TO PROVE THE DECEDENT'S WILL, AND FOR ISSUANCE OF**
5 **LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED** on the following
6 parties via electronic service through the Eighth Judicial District Court filing system, addressed
7 as follows:

8 Cary Colt Payne, Esq.
9 Cary Colt Payne, Chtd.
10 700 S. 8th St.
11 Las Vegas, NV 89101
12 *Attorney for Susan Christian-Payne,*
13 *Rosemary Keach and Raymond Christian, Jr.*

14 Jerimy L. Kirschner, Esq.
15 Jerimy Kirschner & Associates, Ltd. Office
16 5550 Painted Mirage Rd, #320
17 Las Vegas, NV 89149
18 *Attorney for Jacqueline Utkin, Former*
19 *Successor Trustee of the CFT*

20 Joseph J. Powell, Esq.
21 Rushforth Lee & Kiefer, LLP
22 1707 Village Center Circle, Suite 150
23 Las Vegas, NV 89134
24 *Attorney for Monte Reason, Former Trustee*
25 *of the Nancy Christian Trust*

26 Russel J. Geist, Esq.
27 10080 West Alta Drive, Suite 200
28 Las Vegas, Nevada 89145
Attorney for Fredrick P. Waid, Successor
Trustee

s/Zachary D. Holyoak/s
An employee of Anthony L. Barney, Ltd.

EXHIBIT A

JUN 29 2018

Clerk of Court

Last Will and Testament of Nancy Christian

SECTION 1. DECLARATIONS

I, the Testatrix herein, state the following:

1.1 Declaration: I declare that this is my Will, and I revoke all Wills and Codicils that I have previously made.

1.2 Name: My name is Nancy Christian.

1.3 Residence: I reside in Clark County, Nevada.

1.4 Marital Status: I am not currently married, and any future husband shall not serve as fiduciary and shall not receive any distribution from my estate, except as provided in a valid Codicil to this Will.

1.5 Children: The names and birth dates of my children are:

| <u>Name</u> | <u>Date of Birth</u> |
|-----------------------------|----------------------|
| Monte Brian Reason | March 27, 1969 |
| Rosemary K. Christian-Keach | October 31, 1960 |
| Raymond T. Christian, Jr., | October 25, 1962 |
| Tommy L. Christian, | March 1, 1964 |
| Susan G. Christian-Payne | October 1965 |

1.6 Living Trust: The sole beneficiary of this Will is the Trust designated as the "Nancy Christian Trust" established earlier this day and bearing the same date as this Will, of which I am the Settlor. All references herein to "my living trust" or to the "Nancy Christian Trust" are references to said trust. My intent is to have all my assets administered under my living trust, preferably without prior administration in my probate estate.

1.7 Intentional Omission: I have intentionally omitted Raymond T. Christian, Jr., Tommy L. Christian, and Susan G. Christian-Payne, and neither they nor their issue shall be entitled to any distribution from either my trust estate or probate estate. Neither Raymond T. Christian, Jr., Tommy L. Christian, Susan G. Christian-Payne nor their issue shall serve as a Trustee or other fiduciary of my trust estate or probate estate. For all purposes of the administration of my trust estate, and if required, the administration of the probate estate, and the distributions of the income and principal thereof, Raymond T. Christian, Jr., Tommy L. Christian, and Susan G. Christian-Payne, shall be deemed to have died without issue prior to the execution of the "Nancy Christian Trust."

SECTION 2. APPOINTMENT OF FIDUCIARIES

2.1 **Fiduciaries for Estate:** I appoint the person then acting as the trustee of my living trust (referred to in subsection 1.6 herein) as my personal representative and — if and when a conservator of the estate is required — as my conservator. If said appointment is for any reason ineffective, I appoint the persons named below as my personal representative and — if and when a conservator is required — as my conservator:

- 1) Monte Brian Reason; otherwise,
- 2) Rosemary K. Christian-Keach.

2.2 **Guardian of Person:** I appoint the persons named below as the guardian of my person, to serve if and when a guardian of the person is required:

- 1) Monte Brian Reason; otherwise,
- 2) Rosemary K. Christian-Keach.

2.3 **Bond; Order of Service:** The fiduciaries designated herein shall serve without bond in the order named. A designated successor shall act only if each predecessor fails to qualify or ceases to act. If persons are serving jointly as cofiduciaries and either cofiduciary fails or ceases to act, the other one may serve alone.

SECTION 3. DISPOSITIVE PROVISIONS

3.1 **Distribution to Trust:** I give my entire estate to the "Nancy Christian Trust." My heirs, including my issue and any future husband, shall be provided for, if at all, under the terms of said Trust, and I have intentionally made no provision for them in this Will.

3.2 **Administration:** When my estate is added to the assets of my living trust, it shall be delivered to the then current Trustee and shall become part of the trust estate, to be allocated, administered, and distributed according to the terms of the trust instrument, including any amendments made thereto prior to my death .

3.3 **Incorporation by Reference to Create Testamentary Trust:** If the distribution to my living trust fails for any reason, I incorporate herein the terms of the trust instrument, as most recently amended (or, failing that, as it was constituted at the time of the execution of this Will), and I appoint my personal representative designated hereunder as Trustee thereof. The residue of my estate shall thereupon be administered and distributed pursuant to the provisions of said Trust.

SECTION 4. GENERAL PROVISIONS

4.1 **General Powers:** My personal representative and other fiduciaries designated in this Will to hold and administer property shall have the power to:

- (a) Sell any estate asset at a public or private sale, with or without notice.
- (b) Serve as personal representative in an ancillary proceeding; appoint some other person or entity to serve; or remove a personal representative who is serving with or without cause.
- (c) Elect the most simplified type of estate administration proceeding permitted by law in each jurisdiction in which part of my estate is being administered, including "independent" or "unsupervised" administration. Notwithstanding the foregoing, the final account of any fiduciary shall be judicially settled if it shortens the statute of limitations for claims against me, my estate, or the beneficiaries of my estate.
- (d) Make elections and exercise options permitted under federal tax laws, including income, gift, estate, and generation-skipping tax laws as directed by the Trustee of the Trust referred to in subsection 1.6, or, in the absence of such direction, to exercise good faith discretion in behalf of my estate and its beneficiaries with respect to such elections and options.

4.2 Guardian of Person: Subject to any contrary provisions of any durable power of attorney for health care or other written directive signed by me, the Guardian of my person shall have full authority to act with respect to my health care, organ donations, and the disposition of my mortal remains.

4.3 Statutory Powers: In addition to other powers granted herein and by law, my personal representative and other fiduciaries designated in this Will shall have all of the powers set forth in Nevada Revised Statutes §§ 163.265 through 163.410, which are incorporated herein by this reference.

4.4 Allocation of Income: The income received by personal representative shall be allocated to the residue of my estate, to be expended or distributed therewith except to the extent allocated otherwise:

- (a) By a court of competent jurisdiction;
- (b) Under the terms of my living trust; or, to the extent my living trust is silent,
- (c) By the trustee of my living trust consistent with the trustee's discretionary powers granted under the terms of the governing trust instrument or by law.

4.5 Apportionment of Taxes, Debts, and Expenses: To the extent not paid from other sources, my personal representative is directed to pay all taxes, debts, and expenses that are required by law to be paid from my probate estate (such as death taxes, expenses of my last illness, funeral and burial expenses, estate administration expenses, my personal debts, and claims against my estate) from the residue of my probate estate, except to the extent allocated otherwise:

- (a) By a court of competent jurisdiction;
- (b) Under the terms of my living trust; or, to the extent my living trust is silent,
- (c) By the trustee of my living trust consistent with the trustee's discretionary powers granted under the terms of the governing trust instrument or by law.

4.6 **Miscellaneous Definitions:** Except as specifically provided otherwise in this Will, the following provisions shall govern the construction and interpretation of the words and phrases (and all variants thereof) that are used in this document.

(a) "Conservator" refers to the "guardian of the estate" or other fiduciary appointed by a court of competent jurisdiction to manage a person's property and financial affairs at any time the person is an incompetent (as defined by law).

(b) "Death taxes" include all estate, inheritance, and succession taxes imposed by any foreign country, by the federal government, or by any state, district or territory, and occasioned or payable by reason of my death or by reason of any transfer of assets at my death.

(c) A "descendant" of a person is a member of that person's lineal posterity, and the plural term "descendants" has the same meaning as "issue."

(d) "Estate" is used interchangeably with "probate estate" unless modified by a qualifying adjective or phrase, such as "taxable estate" which refers to all assets to the extent subject to death taxes. My probate estate excludes nonprobate assets.

(e) The term "issue" refers to a person's lineal posterity.

(f) "Nonprobate assets" include all assets which are not subject to administration, whether passing by right of survivorship, by contractual provisions, by beneficiary designation, in trust (including "Totten" or tentative trusts), or otherwise.

(g) References to my "personal representative" are references to the person or persons appointed by a court of competent jurisdiction to administer my estate and to carry out the provisions of this Will, whether male, female, or plural, and the term includes any executor/executrix or an administrator/administratrix with the will annexed, as well as the plural forms of those titles.

(h) "Probate estate" means all property that is subject to administration in probate or intestacy proceedings in any jurisdiction.

(i) "Property," "property interests," and "assets" are used interchangeably to refer to all property and ownership rights, and include fractional shares, undivided interests, and pecuniary amounts determined by reference to a specific amount or to a formula.

(j) The "residue" of my estate shall consist of my probate estate (subject to existing liens and encumbrances), plus accrued income, excluding:

(1) Income that has been otherwise distributed or allocated pursuant to the provisions of this instrument (such as under subsection 4.4);

(2) Any taxes and other expenses paid from the estate as required by the probate court or as authorized under subsection 4.5; and

(3) Assets distributed pursuant to nonresiduary dispositive provisions, including subsection 3.1.

(k) Reference to any "tax" includes any penalty, interest, or late charge which becomes due in conjunction therewith, and my personal representative shall not be personally liable therefor in the absence of gross negligence or fraud.

(l) References to a group or class (such as "children," "issue," and "descendants") include those members of that group or class who are born, conceived, or adopted as minors after the execution of this Will. When a provision of this Will provides for an allocation or distribution to a class or group as of a date or event, the members of that class or group shall include those who are born, conceived, or adopted as minors prior to the date or event triggering the allocation or distribution.

4.7 Arbitration: Pursuant to NRS 164.930, and NRS 38.206 through NRS 38.248, the Testator hereby requires that any and all applicable disputes be resolved through mandatory arbitration. Except as modified herein, the arbitration shall be governed by the rules of the American Arbitration Association ("AAA"). Any specific modifications of rules contained herein shall supercede any inconsistent rules of the AAA. Mandatory arbitration may be waived only by the Executor/Executrix in its sole and absolute discretion. For any disputes which are not subject to mandatory arbitration, it is the Testator's desire that the parties agree to, and participate in Arbitration under the same terms provided herein.

(a) Specific Modifications to the rules:

(1) Arbitration shall occur in a county in which jurisdiction of the estate may properly be taken pursuant to NRS 136.010.

(2) By unanimous agreement, the parties to a dispute may select an arbitrator of their choosing without regard for the arbitrator's affiliation with any association or entity. In the absence of a unanimous agreement, the selection of any arbitrator(s) shall be governed by the rules of the AAA.

(3) Any arbitrator(s) shall be a licensed attorney with a minimum of 2 years of experience in litigation and administration of estates and Trusts.

4.8 Duplicate Originals: This Will has been prepared in duplicate, each copy of which has been executed as an original. One of these executed copies is in my possession and the other is deposited for safekeeping with my estate-planning attorney, ANTHONY L. BARNEY, who is with ANTHONY L. BARNEY, LTD. and who may be contacted via e-mail at anthony@anthonybarney.com, by phone at (702) 438-7878 or by postal mail at 3317 W. Charleston Boulevard, Suite B, Las Vegas, Nevada 89102-1835.

(a) Either of these Wills is to be considered as the original. My Will must be changed only by codicil or by replacement Will, and any markings, obliterations, or other apparent modifications to either original of this Will or any copy hereof shall neither modify nor eliminate any provision hereof. If only one copy of this Will can be found, then it shall be considered as the original, and the missing copy will be presumed inadvertently lost.

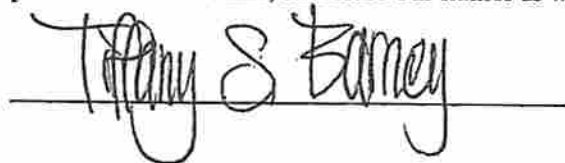
(b) Any clarifications or instructions concerning this Will may be obtained by calling my estate-planning attorney who is requested to do everything necessary to implement the provisions of this Will. The location of the duplicate original and the designation of my estate-planning attorney may be changed by me at any time without formal modification of this Will.

(c) Nothing herein obligates my personal representative to retain my estate-planning attorney to handle the administration of my probate estate.

I subscribe my name to this Will (consisting of 7 pages, including the attestation of the witnesses and the self-proving affidavit) this JUL 21 2017.


NANCY CHRISTIAN

On the date last above written, Nancy Christian declared to us, the undersigned, that the foregoing instrument, was her Will and requested us to act as witnesses to it. Thereafter, she signed this Will in our presence, all of us being present at the same time. We now, at her request, in her presence and in the presence of each other, subscribe our names as witnesses.



Residing at:

8324 Vickers Canyon St.
Las Vegas, NV 89131



Residing at:

3317 W. Charleston
Bld., Ste. B
Las Vegas, NV 89102

SELF-PROVING AFFIDAVIT

STATE OF NEVADA

COUNTY OF CLARK

}
}ss.
}

Tiffany S. Barney

and Zachary D. Holyoake

personally appeared, who being duly sworn, depose and say: That they witnessed the execution of the within Will of the within named Testatrix, Nancy Christian; that said Testatrix subscribed said Will and declared the same to be her Will in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testatrix and in the presence of each other and at the request of said Testatrix; that said Testatrix, at the time of the execution of said Will, appeared to them to be of full age and of sound mind and memory; that they make this affidavit at the request of said Testatrix.

[Signature]

[Signature]

SUBSCRIBED and SWORN to before
me this JUL 21 2017

Nava Liebo

NOTARY PUBLIC

EXHIBIT B

CERTIFICATE OF INDEPENDENT REVIEW

I, Sean M. Tanko, Esq., under penalty of perjury, have reviewed the Nancy Christian Trust ("Instrument") and have counseled my client, Nancy Christian, on the nature and consequences of the transfer or transfers of property to the beneficiary(ies) of the Nancy Christian Trust contained in the transfer Instrument. I am disassociated from the interest of the transferee to the extent that I am in a position to advise my client independently, impartially and confidentially as to the consequences of the transfer. On the basis of this counsel, I conclude that the transfer or transfers of property in the transfer instrument that otherwise might be invalid pursuant to NRS 155.097 are valid because the transfer or transfers are not the product of fraud, duress or undue influence.

DATED this 21st day of July, 2017.


SEAN M. TANKO, ESQ.

EXHIBIT C

STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF PUBLIC AND BEHAVIORAL HEALTH VITAL STATISTICS

CERTIFICATE OF DEATH

CASE FILE NO. 3993620

2017023656
STATE FILE NUMBER

TYPE OR
PRINT IN
PERMANENT
BLACK INK

DECEDENT

IF DEATH
OCCURRED IN
INSTITUTION SEE
HANDBOOK
REGARDING
COMPLETION OF
RESIDENCE
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF
DEATH

CONDITIONS IF
ANY WHICH
GAVE RISE TO
IMMEDIATE
CAUSE
STATING THE
UNDERLYING
CAUSE LAST

| | | | | | |
|--|--|---|--|--|--|
| 1a. DECEASED-NAME (FIRST,MIDDLE, LAST,SUFFIX)
Nancy | | 2. DATE OF DEATH (Mo/Day/Year)
December 13, 2017 | | 3a. COUNTY OF DEATH
Clark | |
| 3b. CITY, TOWN, OR LOCATION OF DEATH
Las Vegas | | 3c. HOSPITAL OR OTHER INSTITUTION - Name (If not either, give street address)
University Medical Center | | 4. SEX
Female | |
| 5. RACE (Specify)
White, Hawaiian | | 6. Hispanic Origin? Specify
No - Non-Hispanic | | 7a. AGE-Last birthday (Years)
78 | |
| 7b. UNDER 1 YEAR
MOB | | 7c. UNDER 1 DAY
DAYS | | 7d. UNDER 1 HOUR
HOURS | |
| 7e. UNDER 1 MINUTE
MIN | | 8. DATE OF BIRTH (Mo/Day/Yr)
July 20, 1939 | | 9. SURVIVING SPOUSE'S NAME (Last name prior to first marriage)
Intensive Care Unit (ICU) | |
| 10a. STATE OF BIRTH (If not US/CA, name country)
Hawaii | | 10b. CITIZEN OF WHAT COUNTRY
United States | | 10c. EDUCATION
12 | |
| 11. MARITAL STATUS (Specify)
Widowed | | 12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage) | | 13. SOC. SEC. NUMBER | |
| 14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Year)
Bus Aide | | 14b. KIND OF BUSINESS OR INDUSTRY
Transportation - Public | | 14c. Ever in US Armed Forces? No | |
| 15a. RESIDENCE - STATE
Nevada | | 15b. COUNTY
Clark | | 15c. CITY, TOWN OR LOCATION
Las Vegas | |
| 15d. STREET AND NUMBER
304 Orland Street #39 | | 15e. INSIDE CITY LIMITS (Specify Yes or No)
Yes | | 16. FATHER/PARENT - NAME (First Middle Last - Suffix)
David IOKA | |
| 17. MOTHER/PARENT - NAME (First Middle Last - Suffix)
Helen | | 18a. INFORMANT - NAME (Type or Print)
Monte REASON | | 18b. MAILING ADDRESS (Street or R.F.D. No., City or Town, State, Zip)
304 Orland Street #39 Las Vegas, Nevada 89107 | |
| 19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify)
Cremation | | 19b. CEMETERY OR CREMATORY - NAME
La Paloma Funeral Services | | 19c. LOCATION - City or Town - State
Las Vegas Nevada 89122 | |
| 20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such)
RYAN BOWEN | | 20b. FUNERAL DIRECTOR LICENSE NUMBER
FD810 | | 20c. NAME AND ADDRESS OF FACILITY
Simple Cremation and Burial Services
3820 N Rancho Drive #101 Las Vegas - NV 89130 | |
| 21. TRADE CALL - NAME AND ADDRESS | | | | | |
| 21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated (Signature & Title)
BRIAN L. DELMONACO MD | | | 21b. DATE SIGNED (Mo/Day/Yr)
December 19, 2017 | | |
| 21c. HOUR OF DEATH
03:55 | | | 21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print) | | |
| 22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated (Signature & Title) | | | 22b. DATE SIGNED (Mo/Day/Yr) | | |
| 22c. HOUR OF DEATH | | | 22d. PRONOUNCED DEAD (Mo/Day/Yr) | | |
| 22e. PRONOUNCED DEAD AT (Hour) | | | 23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print)
Brian L. Delmonaco MD 1800 W Charleston Blvd Las Vegas, NV 89102 | | |
| 23b. LICENSE NUMBER
15502 | | | 24a. REGISTRAR (Signature)
NANCY BARRY | | |
| 24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr)
December 19, 2017 | | | 24c. DEATH DUE TO COMMUNICABLE DISEASE
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> | | |
| 25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).) | | | | | |
| PART I: (a) Cardiopulmonary Arrest | | | | | |
| (b) Metabolic Encephalopathy | | | | | |
| (c) Hepatorenal Syndrome | | | | | |
| (d) Hepatic Cirrhosis | | | | | |
| PART II: OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I. | | | | | |
| 26a. ACC. SUICIDE, HOMICIDE, OR PENDING INVEST. (Specify) | | 26b. DATE OF INJURY (Mo/Day/Yr) | | 26c. HOUR OF INJURY | |
| 26d. DESCRIBE HOW INJURY OCCURRED | | 27. AUTOPSY (Specify Yes or No)
No | | | |
| 28a. INJURY AT WORK (Specify Yes or No) | | 28b. PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify) | | 28c. LOCATION STREET OR R.F.D. No. CITY OR TOWN STATE | |

STATE REGISTRAR

VRS-Rv-20120523a

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents authorized by the State Board of Health pursuant to NRS 440.175.

DATE ISSUED: **JAN 30 2018**

Registrar of Vital Statistics

By: *[Signature]*

This Copy not valid unless prepared on engraved border displaying date, seal and signature of Registrar.
SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702-759-1010 • Tax ID # 88-0151573

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE





CARY COLT PAYNE, CHTD.

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101
(702) 383-9010 • Fax (702) 383-9049

EXHIBIT PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "5"

Notification of Service for Case: P-17-092512-T, In the Matter of the Trust of:Christian Family Trust U A D 10/11/16 for filing Petition - PET (PRB), Envelope Number: 4968321

1 message

efilingmail@tylerhost.net <efilingmail@tylerhost.net>
To: marja.carycoltpayne@gmail.com

Thu, Sep 26, 2019 at 12:52 PM



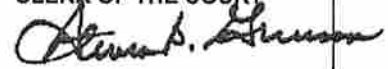
Notification of Service

Case Number: P-17-092512-T
Case Style: In the Matter of the Trust of:Christian Family Trust U
A D 10/11/16
Envelope Number: 4968321

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

| Filing Details | |
|---------------------|---|
| Case Number | P-17-092512-T |
| Case Style | In the Matter of the Trust of:Christian Family Trust U A D 10/11/16 |
| Date/Time Submitted | 9/26/2019 12:50 PM PST |
| Filing Type | Petition - PET (PRB) |
| Filing Description | Petition for Payment of Unpaid Amount Previously Approved by Prior Trustee, and to Adjudicate Creditor's Claim Which the Current Trustee has not Approved or Rejected |
| Filed By | Anthony Barney |
| Service Contacts | <p>Other Service Contacts not associated with a party on the case:</p> <p>Amber Anderson-Reynolds (aanderson@hutchlegal.com)</p> <p>Cary Payne, Esq. (carycoltpaynechtd@yahoo.com)</p> <p>Marj Arena, Paralegal (marja.carycoltpayne@gmail.com)</p> <p>Joseph Powell, Esq. (joey@rushforth.net)</p> <p>Fredrick Waid (fwaid@hutchlegal.com)</p> <p>Jeremy Kirschner, Esq. (jeremy@jkirschnerlaw.com)</p> <p>Sarah Mintz (sarah@jkirschnerlaw.com)</p> <p>Russel Geist (rgeist@hutchlegal.com)</p> <p>Zachary Holyoak (zach@anthonybarney.com)</p> <p>Anthony Barney (anthony@anthonybarney.com)</p> |

| Document Details | |
|----------------------------------|-------------------|
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1 ANTHONY L. BARNEY, ESQ.
2 NV State Bar No. 8366
3 ZACHARY D. HOLYOAK, ESQ.
4 NV State Bar No. 14217
5 ANTHONY L. BARNEY, LTD.
6 3317 W. Charleston Boulevard, Suite B
7 Las Vegas, NV 89102-1835
8 Telephone: (702) 438-7878
9 Facsimile: (702) 259-1116
10 E-Mail: office@anthonybarney.com
11 Prior Attorneys for Nancy Christian,
12 Creditors of The Christian Family Trust

13 EIGHTH JUDICIAL DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 In the Matter of the

Case Number: P-17-092512-T

16 THE CHRISTIAN FAMILY TRUST

Dept.: B

17 Dated October 11, 2016

18 **PETITION FOR PAYMENT OF UNPAID AMOUNT PREVIOUSLY APPROVED BY**
19 **PRIOR TRUSTEE, AND TO ADJUDICATE CREDITOR'S CLAIM WHICH THE**
20 **CURRENT TRUSTEE HAS NOT APPROVED OR REJECTED**

21 Anthony L. Barney, Ltd. ("ALB, Ltd."), creditor of The Christian Family Trust dated
22 October 11, 2016 ("CFT"), who were the attorneys for the late Nancy Christian ("Nancy" or
23 "Trustor"), hereby files their petition. This Petition is based upon the pleadings and papers on
24 file herein, the memorandum of points and authorities and exhibits attached hereto, and any oral
25 arguments presented at the time of the hearing.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. Facts Presented:**

28 On or around September 29, 2017 Nancy Christian entered into a valid contract with ALB,
Ltd., which provided for, among other things, the firm to collect attorney's fees for its efforts to
collect on the contract. Unfortunately, Nancy Christian passed away unexpectedly on December

redacted 10/1/2019

1 14, 2017. Immediately after Nancy's death, ALB, Ltd., submitted a request for payment to the
2 then serving Trustee of the CFT, Monte Reason ("Mr. Reason"). Mr. Reason approved the
3 request for payment; however, the CFT funds were frozen or otherwise outside his control and
4 so no payment could be made at that time. Subsequently, after ALB, Ltd. wrapped up its legal
5 work on Nancy's behalf, it submitted an updated request for payment to the then serving
6 successor trustee of the CFT, Jaqueline Utkin ("Ms. Utkin"). Ms. Utkin approved the updated
7 request for payment; however, she was unable to pay any amount because the CFT funds
8 remained frozen or otherwise outside of her control.
9

10
11 The firm was directed by Judge Vincent Ochoa ("Judge Ochoa") to file a petition to
12 unfreeze funds. On February 8, 2018 the firm filed its petition to that effect. The Petition was
13 granted in part and Judge Ochoa, by order dated April 12, 2018 released an amount of
14 \$50,000.00 for attorney's fees and \$3,031.97, for costs to be paid to the firm.¹ This left
15 \$9,073.67 which had been approved by the then serving Trustee Ms. Utkin but which remained
16 unpaid.
17

18 Susan Christian-Payne, Rosemary Keach, and Raymond Christian Jr., ("Collectively
19 referred to as the "Payne Parties") appealed the April 12, 2018 order and named ALB, Ltd., as
20 the respondent and real party in interest. Based on the fact that the Payne Parties had named
21 ALB, Ltd., in the appeal, ALB, Ltd. cross appealed seeking as its sole relief for the District
22 Court to unfreeze the entire amount approved by Utkin for payment from the CFT to ALB, Ltd.²
23

24 Before briefing was submitted, Ms. Utkin was replaced as Trustee by Mr. Waid in a rather
25 unusual process initiated by Judge Ochoa. ALB, Ltd., reached out to Mr. Waid, through his
26

27
28 ¹ See Order dated April 12, 2018

² The entire funds would later be unfrozen, at the request of the current trustee, however ALB, Ltd. limited was not noticed on this order and was unaware of this fact when they filed their cross-appeal briefing.

1 counsel, in an effort to understand his position regarding the appeal and cross appeal, since Ms.
2 Utkin was legally prohibited from representing the CFT. Mr. Waid, through counsel, indicated
3 that he would not take a position regarding the appeal or cross-appeal. This position was
4 confirmed through several letters throughout the appeal process.³

5
6 Based on the CFT's expressed neutrality in the appeal and cross appeal, ALB, Ltd., was left
7 to shoulder the burden of upholding the Court's April 12, 2018 Order as a named party to the
8 appeal. After ALB, Ltd. filed its briefing addressing the specious arguments raised by the Payne
9 Parties and supporting its cross appeal, the Payne Parties filed a motion to dismiss in the appeal
10 arguing that ALB, Ltd., despite being named by the Payne Parties, was really not a real party in
11 interest. ALB, Ltd. then discovered that Mr. Waid had sought, and had obtained the same relief
12 sought by ALB, Ltd. through its cross appeal, i.e., relief from the freeze order and the successor
13 trustee's control of the CFT's assets which would allow for payment of the remaining unpaid
14 approved amounts from the CFT to the Firm.⁴

15
16
17 With the successor trustee having obtained the sole relief sought by ALB, Ltd. in its cross
18 appeal, and with the admission by the Payne Parties that their appeal did not affect the legal
19 rights of the firm, ALB, Ltd. declined to respond to the Payne Parties' motion to dismiss. The
20 Supreme Court then accepted the Payne Parties admission that ALB, Ltd. was improperly
21 named and was not a party to the appeal. The Supreme Court dismissed the Payne Parties'
22 appeal as to ALB, Ltd., thereby confirming that the Payne Parties appeal may not affect the
23
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25

26 ³ See letter from Russel Geist dated March 26, 2019 attached hereto and incorporated herein as Exhibit A

27 ⁴ See Order dated February 6, 2019 ordering "the Chase Savings account No. XXX4816, and Chase checking
28 account No. XXX6040 both frozen by prior order of this Court shall be hereafter unfrozen," and further authorizing
Mr. Waid to conduct Trust business with the access to the accounts. It is noted that despite all other parties notice
of the relief sought by ALB, Ltd., in its cross-appeal, the firm was not provided notice of this order, had notice been
provided, the firm would have voluntarily withdrawn its cross appeal as moot.

1 rights of ALB, Ltd. The Supreme Court also dismissed the ALB, Ltd.'s cross-appeal, which
2 seemed appropriate in light of the District Court's unfreezing of all of the CFT funds.

3 ALB, Ltd. has sought payment from the CFT on several occasions both for the unpaid but
4 approved amounts and for the amounts generated after approval. The CFT has refused to make a
5 definitive determination on the matter. This refusal to make a determination on the requests for
6 payment have increased the fees ALB, Ltd. was required to expend to collect under its
7 engagement agreement with Nancy Christian.⁵

8
9 On August 28, 2019 the Firm submitted a creditor's claim to the Trustee for the unpaid but
10 approved amounts as well as additional amount incurred to collect the debt owed by Nancy,
11 under the terms of the engagement agreement with Nancy. ALB, Ltd. submitted an errata and
12 supplement to the creditor's claim on September 26, 2019.⁶ The CFT has neither approved nor
13 rejected this creditor's claim. The CFT's refusal to approve or reject payment has necessitated
14 the instant motion as well as the Petition which will be filed by ALB, Ltd. in the Estate of
15 Nancy Christian to preserve its rights therein as may be necessary.

16
17
18 **A. Legal Authority and Argument**

19 **A. *The CFT is estopped from refusing to pay the previously approved amounts to the Firm***

20 The CFT, through its prior successor trustees approved payment of a total of 62,105.64
21 from the CFT directly to the ALB, Ltd. The District Court unfroze only a portion of this amount
22 leaving \$10,615.22 (with interest) of this approved amount unpaid. ALB, Ltd. can find no
23 instance in the record where the CFT has ever taken a position contrary to the approval of
24 62,105.64 as payment directly from the CFT to ALB, Ltd.

25
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27
28 ⁵ See signed engagement agreement attached hereto and incorporated herein as Exhibit B which provides for the
firm to obtain its attorney's fees to collect any amount due under the contract. The contract also provides that the
firm is entitled to charge interest in an amount of 1.5% per month on any unpaid amounts.

1 NRS 47.240(3) provides an estoppel theory couched in terms of a conclusive
2 presumption; it states, "Whenever a party has, by his or her own declaration, act or omission,
3 intentionally and deliberately led another to believe a particular thing true and to act upon such
4 belief, the party cannot, in any litigation arising out of such declaration, act or omission, be
5 permitted to falsify it."

7 Here, the CFT affirmatively represented that ALB, Ltd. would be paid from the CFT an
8 amount of \$62,105.64.⁷ The only reason cited by the Trustee(s) as to CFT's inability to comply
9 with ALB, Ltd. requests was because the court had frozen the assets of the CFT and/or the
10 assets were otherwise outside of the control of the CFT's legal representative at the time.⁸ It
11 appears that the CFT is conclusively prohibited from now can take a position that the CFT
12 should not pay the remaining \$10,615.22 (with interest) to the firm after its affirmative
13 representation that it would pay the entire amount. It also appears that the CFT is conclusively
14 prohibited from arguing that it would be improper to pay the creditors of Nancy from the CFT
15 as was previously done and approved by the court.

18 The CFT may not rely on the court's April 12, 2018 order to avoid payment because
19 nothing in that order limits or prevents the CFT from paying the full approved amount, rather
20 that order simply limited the amount of money released from the court's freeze order to pay the
21 firm's approved amounts. Therefore, ALB, Ltd. respectfully requests this Court to compel the
22 CFT to pay the remaining approved amount, plus interest to ALB, Ltd. (\$9,073.67 plus 1.5%
23 interest per month from the date of approval [\$1,541.55], totals \$10,615.22)
24

27 ⁶ See Creditor's claim and Supplement to Creditor's claim attached hereto and incorporated herein as Exhibit C

28 ⁷ See Approval letters from Monte Reason and Jaqueline Utkin attached hereto and incorporated herein as Exhibit D

⁸ Id.

1 B. The Court should require the CFT to pay the additional amounts incurred by ALB, Ltd.,
2 in its efforts to protect its rights as a creditor and to obtain payment

3 ALB. Ltd.'s creditor's claim against the CFT for additional amounts incurred in its
4 efforts to protect and collect its previously approved amounts should also be paid or otherwise
5 adjudicated. NRS 164.025 contemplates creditors of a settlor of CFT seeking and obtaining
6 payment for debts owed by the settlor from the settlor's trust. In reference to creditor's claims
7 submitted after the publication and mailing of a notice to creditors for the trust, NRS 164.025(3)
8 provides that any creditor with a claim against the trust or the settlor shall file a claim within
9 ninety (90) days. Additionally, NRS 164.033(1)(c) provides that an interested person may
10 petition the court if "property of the Trust is subject to a claim of a creditor of the Trust." These
11 statutes quite clearly authorize a creditor to seek payment directly from a trust for claims against
12 the settlor of the CFT.
13

14
15 The Payne Parties have admitted in their Supreme Court filings, (contrary to their
16 allegation in the district court) that at least half of the proceeds of the Dancing Vines Property
17 belonged to Nancy Christian.⁹ This amounts to approximately \$190,000.00 and is part of the
18 value of the CFT. Because the spendthrift provision of the CFT specifically excludes the settlors
19 from application of the spendthrift provision, the approximately \$190,000.00 which was
20 admittedly contributed to the CFT by Nancy is subject to the claims of her creditors.
21

22
23 The engagement agreement between Nancy and the ALB, Ltd. provides for ALB, Ltd. to
24 be paid for its efforts to collect payment. It also provides that ALB, Ltd. can charge interest at
25 an annual rate of 18%. This was a valid contract between ALB, Ltd. and Nancy which allows
26

27
28 ⁹ See Payne Parties opening brief filed January 9, 2019 in Supreme Court case No. 75750 stating "Other than the Dancing Vines real property, which was in the process of being sold, all "cash" funding of the CFT came from the

1 ALB, Ltd. to seek payment from the CFT under NRS 164.033 and consistent with NRS 164.025
2 ALB, Ltd. has submitted a creditor's claim to the CFT for the unpaid amounts incurred by ALB,
3 Ltd. in its effort to collect payment. Unfortunately, the CFT has not approved or rejected the
4 creditor's claim. While the motivation to delay a determination of the creditor's claim appears to
5 be an effort to remain neutral, the effect (absent the relief requested herein) is likely to result in
6 some sort of settlement among all the other parties which excludes ALB, Ltd. and requires it to
7 sue each party individually to collect what is owed under the firm's contract with Nancy. Based
8 on this delay, ALB, Ltd. seeks to have the Court adjudicate its creditor's claim so that it can
9 resolve its involvement in this matter or seek alternative means of collection as may be
10 necessary.
11
12

13 **B. Conclusion:**

14 Based on the foregoing points and authorities, ALB, Ltd., respectfully requests the Court
15 to grant the following:
16

- 17 1. Find that the CFT is conclusively prohibited from refusing to pay or arguing against
18 payment of the remaining unpaid but approved amounts to ALB, Ltd.;
- 19 2. Order that the Fred Waid, as acting trustee for the CFT pay \$10,615.22 ALB, Ltd., as
20 ~~amounts previously approved yet unpaid and the interest accrued thereon;~~
- 21 3. Adjudicate the remaining Creditor's Claim as supplemented, in an additional amount of
22 against the CFT for the un-approved and unpaid amounts;
23

24 ///

25 ///

26 ///

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28

separate property assets of Ray, Sr." See also deed of Dancing vines property showing joint ownership in Nancy

1 4. Order payment from the CFT of the amounts determined by the Court in satisfaction of
2 the Creditor's claim; and

3 5. Any other relief this court deems necessary and proper.
4

5 DATED this 26th day of September 2019.

6 Respectfully Submitted,
7 ANTHONY L. BARNEY, LTD.

8 /s/Zachary D. Holyoak, Esq.,
9 ANTHONY L. BARNEY, ESQ.
10 NV State Bar No. 8366
11 ZACHARY D. HOLYOAK, ESQ.
12 NV State Bar No. 14217
13 3317 W. Charleston Boulevard, Suite B
14 Las Vegas, NV 89102-1835
15 (702) 438-7878
16 *Creditors of the Nancy Christian Trust*
17
18
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28

and Raymond Christian Senior attached hereto and incorporated herein as Exhibit E.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Anthony L. Barney, Ltd. and not a party to the above-entitled action. I further certify that on September 26, 2019 I served the foregoing **PETITION FOR PAYMENT OF UNPAID AMOUNT PREVIOUSLY APPROVED BY PRIOR TRUSTEE, AND TO ADJUDICATE CREDITOR'S CLAIM WHICH THE CURRENT TRUSTEE HAS NOT APPROVED OR REJECTED** on the following parties via electronic service through the Eighth Judicial District Court filing system, addressed as follows:

Cary Colt Payne, Esq.
Cary Colt Payne, Chtd.
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*Attorney for Susan Christian-Payne,
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*Attorney for Monte Reason, Former Trustee
of the Nancy Christian Trust and Personal
Representative of the Estate of Nancy
Christian*

Russel J. Geist, Esq.
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*Attorney for Fredrick P. Waid, Successor
Trustee*

s/Zachary D. Holyoak/s
An employee of Anthony L. Barney, Ltd.