

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.

FREDRICK P. WAID, Trustee,  
ANTHONY L. BARNEY, LTD.

## Respondents.

## ANSWERING BRIEF

Anthony L. Barney, Ltd. (hereinafter ALB, Ltd.) by and through its attorney Anthony L. Barney, Esq., hereby files its Response to the Motion for Clarification (“Response”) and Opposition to Appellants’ Motion to Strike Barney Answering Brief filed November 19, 2019 (“Opposition”). The Response and Opposition are based upon the following legal points and authorities and evidence:

## LEGAL POINTS AND AUTHORITIES

ALB, Ltd hereby incorporates all of its points and authorities in its Motion For Sanctions filed May 10, 2019, and its Answering Brief filed November 6, 2019.

### A. Request For Clarification Regarding Current Trustee is Moot

By order dated November 20, 2019, this Court rendered moot the Appellants' request for clarification, by ordering a response from "current trustee Fredrick P. Waid, whose counsel filed a notice of appearance in this appeal on February 13, 2019." *See Order dated 11/20/2019 at Page 1.* Therefore, the request for clarification should be denied as moot.

1       **B. Request for Clarification: Supreme Court ordered participation of**  
2       **Anthony L. Barney, Ltd.**

3       This Court *sua sponte* ordered Anthony L. Barney, Ltd. back into this appeal  
4 based upon its order dated September 23, 2019 stating, “We conclude that our May  
5 7 order contains an error, in that it improperly dismissed the appeal as to Barney,  
6 Ltd.,...and no rule precludes Barney, Ltd. from participating as a respondent to the  
7 appeal.” *See Order dated 10/23/2019 at Page 1.* Appellants offer NRCP 17 and  
8 24, which specifically do not preclude ALB, Ltd. from participating in the appeal.  
9 ALB, Ltd. had standing as a party to the contract signed by Nancy Christian, and  
10 the amounts owing under that contract approved by Trustees Monte Reason  
11 (“Reason”) and Jacqueline Utkin (“Utkin”). Appellants simply argue that this  
12 Court’s *sua sponte* recognition of its own error is itself an error, which would  
13 require a motion for reconsideration, not a motion to strike. The law of this case is  
14 that no rule precludes Barney, Ltd. from participating as a respondent.  
15

16       **C. Appellants Improper Attempts to Add New Issues**

17       While attempting to introduce new findings into the appellate record themselves,  
18 the Appellants curiously object to any information relating to Mr. Waid as current  
19 trustee. Compare Motion at Page 3, Second Paragraph to Page 7, Part 1. Appellants  
20 simply fail to understand that events subsequent to the district court's decision can  
21 be considered and can even render an appeal moot. See *Univ. & Cmty. Coll. Sys. of*  
22 *Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004);  
23 See also *State v. Alvogen, Inc.*, Nos. 77100, 77365, 2019 Nev. Unpub. LEXIS  
24 1153, at \*3 (Oct. 21, 2019). Notwithstanding the Appellants allegations, all of the  
25 materials presented to this Court are part of the appellate court record, and  
26 therefore are proper for this Court’s consideration.  
27

28       **D. ALB, Ltd.’s Fees Were Already Approved By Utkin**

1 ALB, Ltd. did not need to submit a creditor's claim to the Trust, because their  
2 fees had already been approved under the terms of the Christian Family Trust by  
3 the Successor Trustees of the Christian Family Trust ("CFT"), and the only  
4 obstacle preventing payment was an injunction that was subsequently lifted by the  
5 District Court during the pendency of this appeal. Furthermore, unless or until  
6 these fees are denied by the current trustee, there is no requirement for ALB, Ltd.  
7 to file a creditor's claim. Furthermore, the amounts being sought are not being  
8 sought pursuant to an attorney lien, but as the contractual amount due and owing  
9 by Nancy Christian. Therefore, Appellants reliance upon ALB, Ltd.'s election to  
10 file a protective creditor's claim, upon the denial of its unapproved additional  
11 claims to the current trustee, is wholly unrelated to subsequent removal of the  
12 injunction by the District Court; which is the focus of this appeal.

13  
14 **E. Appellants Lack Legal Standing To Object Without Having Objected**  
15 **To The Absolute Discretion of the Trustees**

16 As set forth in ALB, Ltd.'s answering brief, **the Appellants have no legal**  
17 **standing to object to the payment of ALB, Ltd.'s receipt of payment as a third**  
18 **party without first objecting to the exercise of discretion of Reason and Utkin**  
19 **under the terms of the CFT.** The Appellants failed to acknowledge that all of  
20 their arguments are impotent when applied under the terms of the CFT. By failing  
21 to object to the exercise of the Trustee's discretion, they waived their right to  
22 object to the exercise of that discretion in favor of a third party. Even if the  
23 Appellants could convince this Court that the spendthrift provision applied to  
24 Nancy's creditors (which it did not), they still fail to explain how a spendthrift  
25 provision can protect monies that have already been approved and paid out by  
26 Successor Trustees' Reason and Utkin, and are therefore no longer assets of the  
27 CFT. Appellants failed to object to the exercise of the absolute fiduciary discretion  
28 provided to Reason and Utkin and are prohibited from doing so now. Appellants

1 cannot now allege that Successor Trustee Utkin was wrong in making payment  
2 under the temporary lifting of the injunction.

3 **F. Utkin Not Subject To Confession For The Christian Family Trust**

4 Utkin, as an individual, could not represent the CFT on appeal in her individual  
5 capacity, and therefore could not confess anything on behalf of the CFT. In *Salman*  
6 *v. Newell*, this Court held that “no rule or statute permits a [non-lawyer] to  
7 represent any other person, a company, a trust or any other entity” in either the  
8 district court or the Nevada Supreme Court. 110 Nev. 1333, 1336, 885 P.2d 607,  
9 608 (1994). Additionally, an entity such as a trust may not proceed in proper  
10 person before this court. See *Id.*; *Guerin v. Guerin*, 116 Nev. 210, 214, 993 P.2d  
11 1256, 1258 (2000). The Court determined that “Utkin’s participation in this  
12 matter...was premised solely on capacity as trustee.” See *Order dated October 23,*  
13 *2019 at Page 3*. Therefore, Appellants arguments must necessarily fail as it relates  
14 to any binding effect of a confession of error on behalf of the CFT or the discretion  
15 that Utkin exercised as Successor Trustee.<sup>1</sup>  
16

17 **G. Deadline For Suggestion of Death Not Triggered**

18 Appellants next offer a new argument alleging new facts and evidence in  
19 contravention of their own argument against the admission of such new facts and  
20 evidence that their filing of a notice of suggestion of death triggered a hard ninety  
21 (90) day deadline for ALB, Ltd. to enter the litigation in the event it is successful  
22 in appointing a personal representative for the Estate. The very case cited by the  
23 Appellants holds contrary to this assertion. While it is true that in *McNamee*, this  
24 Court overruled (nearly a month after the filing of the Probate Petition in this  
25 matter) prior case law which required the party serving a notice of suggestion of  
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27 <sup>1</sup> Appellants never raised a claim of breach of fiduciary duty in the District Court  
28 prior to the lifting of the injunction by the District Court.

1 death to identify the deceased party's successor or representative. This Court also  
2 recognized that the case law before October 17, 2019 clearly made the  
3 identification of the deceased party's successor or representative a requirement in  
4 order to trigger the ninety (90) day deadline. More importantly, this Court declined  
5 to apply its ruling retroactively holding that "McNamee, however, cannot rely on  
6 our new construction of the rule to assert that the suggestion of death filed by his  
7 counsel triggered the 90-day period." See *McNamee v. Eighth Judicial Dist. Court*,  
8 No. 76904, 2019 Nev. LEXIS 64, at \*9 (Oct. 17, 2019). This Court, therefore,  
9 refused to issue a writ compelling the lower court to dismiss an action based on the  
10 ninety (90) day deadline explaining that the old case law was still in effect when  
11 the notice of death was issued and because it failed to name a successor or  
12 representative, it did not trigger the ninety (90) day deadline.  
13

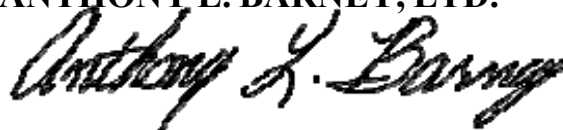
14 Here, as in *McNamee*, the Appellants issued a notice of suggestion of death that  
15 failed to identify the successor or representative of Nancy Christian. This was done  
16 approximately two years before *McNamee* would overrule prior case law without  
17 making its ruling retroactive. Therefore, under the *Barto* line of cases, the  
18 Appellants' notice of suggestion of death is invalid to trigger a ninety (90) day  
19 deadline. See *Barto v. Weishaar*, 101 Nev. 27, 29, 692 P.2d 498, 499 (1985).  
20

### 21 REQUEST FOR RELIEF

22 Based upon the foregoing, ALB, Ltd. respectfully requests that this Court deny  
23 the Appellants requested relief in its entirety as moot and in the alternative dismiss  
24 them from this appeal due to lack of legal standing which, in effect, removes  
25 jurisdiction of this Court.

26 DATED this 26th day of November 2019.

27 Respectfully Submitted,  
28 ANTHONY L. BARNEY, LTD.




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