

IN THE SUPREME COURT OF THE STATE OF NEVADA

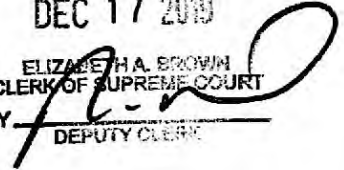
IN THE MATTER OF: THE CHRISTIAN
FAMILY TRUST U.A.D. 10/11/16

No. 75750

SUSAN CHRISTIAN-PAYNE;
ROSEMARY KEACH; AND RAYMOND
CHRISTIAN, JR.,
Appellants,
vs.
ANTHONY L. BARNEY, LTD; AND
FREDRICK P. WAID,
Respondents.

FILED

DEC 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING MOTION TO STRIKE AND CLARIFY

Appellants have filed a motion seeking three things: to strike the answering brief, clarification, and an extension of time for trustee substitution and response. Respondent Anthony L. Barney, Ltd., has filed an opposition, in which it asks this court to dismiss the appeal.

First, appellants seek to strike Barney, Ltd.'s answering brief because it refers to events that are outside the scope of the record, pointing to a reference as to the status of the trustee's position in the case, new arguments, and a request for judicial notice. The motion is denied. Post-appeal information may be relevant to Barney, Ltd.'s mootness argument and request for judicial notice, and this court will disregard anything that is not properly before it. NRAP 10(b); NRAP 30(b); *Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) ("We cannot consider matters not properly appearing in the record on appeal.").

Second, appellants seek clarification, arguing that Barney, Ltd., should not be allowed to participate in this appeal, as it was not a real party in interest below. The motion for clarification is denied. While

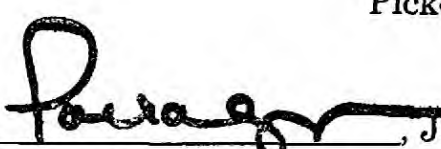
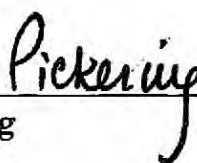
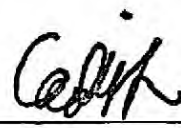
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appellants point to caselaw stating that a non-party may not appeal, they cite to nothing indicating that a non-party may not defend its judgment as a respondent to an appeal against it. Moreover, whether Barney, Ltd., had standing below is a question that goes to the merits of this appeal.

Third, to the extent appellants seek additional time to substitute in the current trustee and for him to respond, the motion is denied as moot. The motion requesting substitution was granted on November 20, 2019, and a briefing schedule with regard to the trustee was set.

Finally, Barney, Ltd., has improperly sought relief in the form of dismissal in the context of its opposition to appellants' motion, rather than in its own motion. *See* NRAP 27(a)(3)(B). Regardless, the request is denied. Barney, Ltd., has addressed its standing and mootness arguments in its answering brief, and those arguments will be considered in resolving this appeal after briefing is completed.

It is so ORDERED.

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

cc: Cary Colt Payne
Anthony L. Barney, Ltd.
Hutchison & Steffen, LLC/Las Vegas