

In the Supreme Court of the State of Nevada

Electronically Filed
Aug 19 2019 04:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

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

Appellants, )

-vs- )

JACQUELINE UTKIN, MONTE REASON )  
Respondents. )  
~~~~~ )

Case No.: 79167

**APPELLANT’S OPPOSITION TO MOTION TO DISMISS
AND JOINDER THERETO**

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 Opposition to Motion to Dismiss and Joinder Thereto.

POINTS AND AUTHORITIES

A. Motion to Dismiss Untimely

Respondent Jacqueline Utkin (hereinafter “Utkin”) filed the Motion to Dismiss August 13, 2019, pursuant to NRAP 14(f) as it relates to a response of a Respondent if the Respondent disagrees with the jurisdictional statement in the Docketing Statement.

NRAP 14(f) states:

(f) Response by Respondent(s). Respondent, within 7 days after service of the docketing statement, may file an original and 1 copy of a single-page response, together with proof of service on all parties, if respondent strongly disagrees with appellant’s statement of the case or issues on appeal. If respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss. In cases involving more than one respondent, any number of respondents may join in a single response. Multiple respondents are encouraged to consult with each other and, whenever possible, file only one response.

Respondent Monte Reason (hereinafter “Reason”) filed a Joinder to the Motion to Dismiss August 15, 2019.

NRAP 14(f) indicates that any such response/motion is to be filed within 7 days after service of the docketing statement.

The Docketing Statement was served August 2, 2019. In computing, NRAP 26 states in pertinent part:

RULE 26. COMPUTING AND EXTENDING TIME

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any appellate court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Computation in this instance would be: not counting the day triggering the event (electronic service on 8/2/19), 7 days, including, the intermediate Saturday and Sunday, (commencing the computation on August 3, 2019) and including the last day of the period, the last day to file pursuant to NRAP 14(f) would be Friday, August 9, 2019. Utkin's Motion under NRAP 14(f) filed on August 13, 2019 is untimely and the motion and joinder should be so dismissed in its entirety.

Utkin/Reason's reference to NRAP 27(a)(1) provides no additional timeframe within which to file the within motion.

B. Docketing Statement

Should the motion not be dismissed as untimely, the following argument is submitted:

At the time of the litigation in question in the District Court, the parties involved were the Appellants, Respondent Utkin and Respondent Reason. Current Trustee, Fred Waid, was not a party or involved in that particular portion of the litigation. As can be seen by Utkin's Exhibit D, Mr. Waid was appointed by order filed May 28, 2019.

While Mr. Waid was not involved in the District Court regarding fees, but as he is the current trustee, he, through counsel, was served with the Docketing Statement, as well as the Notice of Appeal in this matter in the District Court.

Second, at the time of the litigation regarding Utkin's attorney's fees, she was already suspended as trustee, and formally removed as trustee. Reason was the trustee prior to Utkin. Neither were an acting as trustee (as admitted by Utkin in her motion), and Utkin and Reason were referred to under their name. This does not make the Docketing Statement insufficient or cause for dismissal of the appeal. The Docketing Statement at page 2 thereof simply seeks identification of the attorney and the name of the client.

Utkin, through counsel, must defend her own actions under the order awarding Utkin/her counsel attorney fees on the underlying motion made by Utkin. It was Utkin's actions, Utkin's motion for fees and Utkin is the proper Respondent to defend herself, and her actions.

The same holds true for Reason's responsibility to defend his own actions.

The current trustee has no personal knowledge and was not involved in the underlying motion in District Court and he cannot defend Utkin's or Reason's actions.

Should the court desire an amended docketing statement to denote the current trustee as real party in interest there is no opposition to doing so.

C. Exhibits and Other Assertions in Motion

It is noted that Utkin attaches her underlying motion for fees, a copy of the order awarding Reason/his attorney fees (not hers), documents denoting when she was appointed and their receipt of payment, indicating at one time, Utkin was trustee.

The timeline of events regarding this are:

June 10, 2019 Order awarding Utkin fees filed

July 10, 2019 Appellants filed Notice of Appeal (District Court)

July 22, 2019 Appellants filed a Motion for Stay
(to be heard 8/22/19- District Court)

July 30, 2019 Utkin/Her attorney received payment per receipt filed.

August 2, 2019 Appellants file Docketing Statement (Supreme Court)

August 6, 2019 Appeal assigned to Settlement Conference

Utkin conveniently did not provide the interim orders which suspended her, thereafter removing her for cause, in breaching her fiduciary duty with her conflict of interest. Attached as Exhibits “A” through “D” are:

- Exhibit “A” Notice of Entry of Order and Order Suspending Utkin (6/1/18)
- Exhibit “B” Notice of Entry of Order and Order 6/28/18 hearing (7/24/18)
- Exhibit “C” Notice of Entry of Order and of the Probate Commissioner’s Report and Recommendations after Evidentiary Hearing Removing Utkin (10/8/18)
- Exhibit “D” Notice of Entry of Order and Order Affirming the Probate Commissioner Report and Recommendation (11/13/18)

Utkin and Reason were parties to the District Court action at the time, Reason remains a party as a beneficiary. Utkin is not currently an active participant. Yet both seek the payment of their attorney’s fees for the time period when they were respectively Trustees, and therefore are the rightful parties to discuss settlement as it relates to said fees.

The appeal is not about Trustee Waid’s discretion to pay, but rather an appeal of court orders issued without any examination of the pertinent facts, underlying documentation Brief due 7 days before,, reasonableness or benefit to the trust, entailed in same, ordering payment, without allowing for trustees discretion.

Finally, the Request for Sanctions and/or Attorneys fees cites no authority under the NRAP under which such relief may be granted.

CONCLUSION

This motion is untimely and frivolous.

Should the Settlement Conference fail, this matter should be heard on the merits, as the court orders approving fees are woefully deficient pursuant to Nevada law and precedent.

WHEREFORE, it is respectfully submitted that the Motion to Dismiss, Joinder, and the Request for Sanctions therein be denied in its entirety.

Dated: August 16, 2019

Filed by:



CARY COLT PAYNE, ESQ.

Nevada Bar No.: 4357

CARY COLT PAYNE, CHTD.

700 S. Eighth Street

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Attorney for Appellants

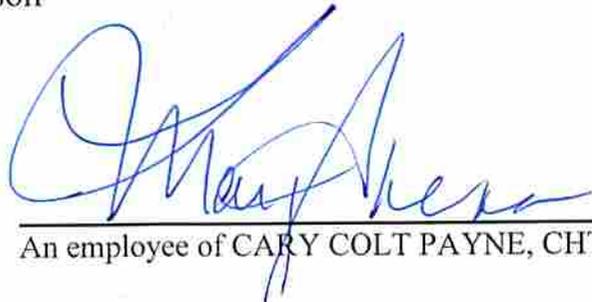
CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 19th day of August, 2019, I have served to the following copy of the foregoing via electronic filing by electronic filing through the Court's E-Flex System:

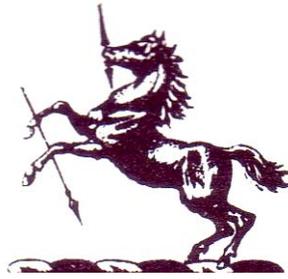
Russel J. Geist, Esq.
HUTCHISON & STEFFEN, PLLC
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Email: rgeist@Hutchlegal.com
Attorneys for Fredrick P. Waid (current trustee)

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Attorney for Monte Reason



An employee of CARY COLT PAYNE, CHTD.



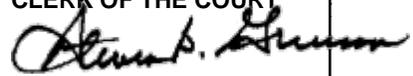
CARY COLT PAYNE, CHTD.

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EXHIBIT “A”



1 NEOJ

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 ***

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8 IN THE MATTER OF:
9 THE CHRISTIAN FAMILY TRUST

10 Case No.: P-17-092512-T
11 Department S

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14 NOTICE OF ENTRY OF ORDER

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16 Please take notice that the Order from the 1st day of June, 2018 was entered in
17 the foregoing action and the following is a true and correct copy thereof.

18

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20 Dated: This 1st day of June, 2018.

21

22 **DENIECE LOPEZ**

23

24 Deniece Lopez
25 Judicial Executive Assistant
26 Department S

27

28

29 **CERTIFICATE OF SERVICE**

30

31 I hereby certify that on or about the above file stamp date, a copy of the
32 foregoing Notice of Entry of Order was:

33

34

35 E-served pursuant to NEFCR 9 or placed a copy in the appropriate attorney
36 folder located in the Clerk's Office at the RJC:

37

38

39

40 E-served pursuant to NEFCR 9, or mailed, via first-class mail, postage fully
41 prepaid, to:

42

43

44 Jerimy Kirschner, Esq.
45 3550 Painted Mirage Road Ste. 320
46 Las Vegas, NV 89149

47

48

49

50

51

1 Cary Payne, Esq.
2 700 S. 8th Street
3 Las Vegas, NV 89101

4 **DENIEGE LOPEZ**

5 Deniece Lopez
6 Judicial Executive Assistant
7 Department S

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1 sums to Nancy. On June 3, 2017, the Trustees informed Nancy they would not pay the
2 additional sum. NRS 163.419 (2) and N.R.S. 166.110.

3 Thereafter, on or about June 13, 2017, grantor Nancy Christian removed the
4 Petitioners as Trustees and appointed her son, Monte Reason, as the sole Trustee of the
5 Trust. Monte Reason is a limited beneficiary under the Trust and his interest was to be
6 placed in a Trust.
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8 The Trust provides that Monte Reason was to receive, in Trust, ten percent of the
9 net proceeds from the sale of property known as 1060 Dancing Vine Avenue, Las Vegas
10 Nevada. The petitioners and former Trustees SUSAN CHRISTIAN-PAYNE,
11 ROSEMARY CHRISTIAN-KEACH, AND RAYMOND T. CHRISTIAN JR. were to
12 receive eighty percent (80%) of the net proceeds from the sale of said property.
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14 Thereafter, the petitioners SUSAN CHRISTIAN-PAYNE, ROSEMARY
15 CHRISTIAN-KEACH, AND RAYMOND T. CHRISTIAN JR. (original named Trustees)
16 were to receive 100% of the remainder – each one third (1/3) of the remaining estate
17 outright.

18 Petitioners requested this court to resolve the issue as to whether the remaining
19 grantor Nancy Christian had the authority in the Trust to replace the petitioners with her
20 son, Monte Reason, (NRS 153.031, NRS 164.015) and whether there was exploitation
21 and/or undue influence by Monte Reason on his mother/grantor Nancy Christian. See
22 Petition filed July 31, 2017, page 6-7, Motion to Dismiss filed August 17, 2017, and
23 Response to Petition filed October 13, 2017. Both parties have made claims of undue
24 influence against the other party. The first legal scrimmage was whether Petitioners had
25 the standing/right to bring their action and the jurisdiction of the court. The Court found
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1 standing for Petitioners to raise the issues as presented in their petition and the Court
2 accepted jurisdiction of the Trust to "help resolve their issues." Court's decision filed
3 Oct. 31, 2017.

4 The parties have moved on to litigate many issues except the foremost central
5 issue presented to the court related to Nancy's authority to remove the original Trustees
6 and replacement of the Trustees. Now the parties have moved on to additional litigation
7 related to Monte Reason appointing another Trustee. Since the main issue of determining
8 the proper Trustee has not been resolved, most actions by the parties relate to the
9 administration of the Trust and Trust assets because the initiation of this litigation is built
10 upon a foundation of quicksand and temporary orders. Monte Reason has not been
11 confirmed as the Trustee by this Court.

12 Both settlors are now deceased. Grantor Raymond Christian died on January 31,
13 2017. Grantor Nancy Christian died on December 14, 2017. However, the litigation
14 created by the beneficiaries over the Trust lives on. This never ending litigation was not
15 the intention of the settlors in creating this Trust. Attorney fees exceeding fifty thousand
16 dollars have been generated already, part of the case is on appeal and the primary issue
17 before the court has not been set for trial as discovery continues forward. The estate is a
18 minor estate that cannot continue to bleed this litigation cost. Said attorney fees may well
19 exceed over fifty per cent (50%) of the Trust assets.

20 **II. ANALYSIS**

21 Petitioners requested in their motion filed April 19, 2018 that the Trust assets be
22 distributed and the Trust terminated. NRS 153.031. Everyone is in agreement that the
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1 Trust after paying any valid creditor claims, the Trust should be distributed and closed.

2 There may be claims by the estate of Nancy Christian and Monte Reason.

3 The Trust needs to be distributed before its entire assets end up being used only
4 for paying attorneys. Both settlors are deceased. The Trust is clear as to the grantor's
5 intent in distribution of the Trust. It is also clear that all of the beneficiaries have a real
6 and vested interest in not having Trust assets further utilized for unlimited expensive
7 litigation which does not further the intent of the Trust.

9 Jacqueline Utkin was selected as successor Trustee by successor Trustee Monte
10 Brian Reason, while Mr. Reason's own claim to be successor Trustee is still in litigation.
11 On Feb 23, 2018, Petitioners filed an objection to the appointment of Ms. Utkin as
12 Trustee due to her serious conflicts with the main beneficiaries of the Trust. Under NRS
13 153.031(1) (f), a trust's beneficiary may petition the district court to review "the acts of
14 the trustee, including the exercise of discretionary powers[.]"

16 More importantly, Ms. Utkin (an out-of-State party who resides in Hawaii) has
17 expressed a serious dislike for the major beneficiaries of the Trust and a positive bias
18 towards Monte Reason, a limited beneficiary. Declarations of Jacqueline Utkin, filed
19 Nov 13, 2017 page 4-5 as Exhibit A to Objection and Counter Petition, filed Nov 13,
20 2017. The fiduciary obligations of a trustee are great. A trustee should do everything in
21 his power to avoid a conflict of interest. **Bank of Nevada v. Speirs**, 95 Nev. 870, 603
22 P.2d 1074 (1979). See **Riley v. Rockwell**, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987)

24 The declaration speaks clearly for itself. The declaration has been described as
25 Jacqueline Utkin expressing that the Petitioners directly contributed to the death of
26 grantor Raymond Christian. (See page three, lines 1-2 of Objection and Counter Petition
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1 filed Nov 13, 2017 and page 3-4 of Declaration of Jacqueline Utkin.) Jacqueline Utkin
2 accuses the Petitioners/major beneficiaries of misuse of the Trust assets and abusive
3 actions towards the settlors. (See Utlin's Declaration page three, lines 1-20 , Page 4,
4 lines 11-28 and page 5:1-16; and Objection and Counter Petition filed Nov 13, 2017, page
5 3-5S.) There are irreconcilable conflicts between Ms. Utkin and the main beneficiaries of
6 the Trust and her partiality towards one minor interest beneficiary of the Trust may
7 disqualify Ms. Utkin from acting as Trustee. See Utlin's Declaration page 6-7. **Matter of**
8 **W.N. Connell & Marjorie T. Connell Living Tr.**, 393 P.3d 1090, 1094 (Nev. 2017),
9 *see Hearst v. Ganzi*, 145 Cal.App.4th 1195, 52 Cal.Rptr.3d 473, 481 (2006) (recognizing
10 a trustee's duty to treat all beneficiaries equally); *see also In re Duke*, 305 N.J.Super. 408,
11 702 A.2d 1008, 1023-24 (1995) (explaining that a trustee may not advocate for either
12 side in a dispute between beneficiaries.)
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15 In addition, Ms. Utkin's declaration makes it clear that she would not be the best
16 choice to defend the Trust from potential claims from Nancy Christian's estate or from
17 Monte Reason. Ms. Utkin's irreconcilable conflicts between her personal beliefs and the
18 Trust's major beneficiaries raise serious question as to her choice as Trustee to distribute
19 the assets and defending the potential lawsuits as Trustee. *Getty v. Getty*, 252 Cal. Rptr.
20 342, 345 (Ct. App. 1988). The purpose of removing a Trustee is not to inflict a penalty
21 for past action, but to preserve the Trust assets. (*Moore v. Bowes* (1937) 8 Cal.2d 162,
22 165, 64 P.2d 423.) "The question in each case is whether the circumstances are such that
23 the continuance of the Trustee in office would be detrimental to the Trust," (2 Scott on
24 Trusts (4th ed. 1987) The Trustee, § 107, p. 104.) A Trustee does not serve for his or her
25 own interest, and instead must act to implement the Trustor's intent and to protect the
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1 interests of others. The court has a substantial interest in ensuring proper administration
2 of the Trust and that assets are preserved for the beneficiaries as intended by the Trustor.

3 On April 19, 2018, Petitioner made a request that the assets of the Trust be
4 distributed as there is no adequate protection from the expenses of this ongoing litigation
5 for the beneficiaries of the Trust. See NRS 153.031. To reduce litigation cost and follow
6 the intent of the settlors, the Court's suggestion is the appointment of Fredrick Waid Esq.
7 as Trustee to distribute the assets of the Trust as spelled out in the Trust and bring this
8 litigation to a close. NRS 153.031(1) (k) and NRS 164.010 (5) (d). There is no good
9 purpose or rationale to object to appointing a neutral Trustee in light of the litigation
10 history in this case.
11

12 The Trust is clear as to distribution and it is time to distribute the assets of the
13 Trust as expressed by the grantors. The other option is to let the flames of litigation
14 consume the remaining assets by authorizing the addition of further fuel to this blaze.
15 The primary goal in litigation regarding a trust is to effectuate the apparent intent of the
16 settlor(s). *See, e.g., Klabacka v. Nelson*, 133 Nev., Adv. Op. 24, 394 P.3d 940, 947
17 (2017) (“[C]ourts look first and foremost to the language in the trust and interpret that
18 language to effectuate the intent of the settlors.”) (internal quotation marks and citation
19 omitted).
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22 Cases and statutes consistently state that a Trustee may be removed where there is
23 a conflict of interest between the Trustee's interests and those of the Trust. (See *Estate of*
24 *Keyston* (1951) 102 Cal.App.2d 223, 227–228, 227 P.2d 17 and *Getty v. Getty*, 252 Cal.
25 *Rptr.* 342, 346 (Ct. App. 1988) see also *In re Malone's Estate*, 42 Colo.App. 353, 597
26 P.2d 1049 (1979) (hostility and friction between the Trustee and the beneficiaries are
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1 proper grounds for removal of Trustee even if misconduct is not proved); Restatement
2 (Third) of Trusts § 37 cmt. f(1) (2003). In re Estate of Klarnner, 98 P.3d 892, 898 (Colo.
3 App. 2003), rev'd, 04SC214, 2005 WL 1322969 (Colo. 2005).

4 The appointment and removal of Trustees is a matter of the trial court's discretion.
5 Chicago Title & Trust Co. v. Chief Wash Co., 368 Ill. 146, 156, 13 N.E.2d 153, 157
6 (1938). Obviously, the appropriateness of the appointment or removal of a Trustee
7 depends on the particular facts and circumstances of each case. Id. In re Estate of
8 Mercier, 961 N.E.2d 958, 962 (Ill. App. Ct. 2011). Prior to his or her removal, a Trustee
9 must be given notice that the Trusteeship is in jeopardy and allowed an opportunity to be
10 heard. People v. Powell, 353 Ill. 582, 592-93, 187 N.E. 419, 423-24 (1933).

11 The Court will hold a hearing to determine if any of the parties object to the
12 appointment of Fredrick Waid, Esq. as Trustee. Fredrick Waid, Esq. having no conflict
13 of interest is in a better position to guide the Trust through distribution and potential
14 litigation. The court has given prior notice of this resolution to the parties.

15 The parties are again provided this reasonable notice that the court is considering
16 such an order. Courts have long had the equity power to remove a Trustee where
17 necessary to preserve the Trust or to preserve the original intentions of the Trustor.
18 (Stewart v. Towse (1988) 203 Cal.App.3d 425, 249 Cal.Rptr. 622, 623, citing Adams v.
19 Cook (1940) 15 Cal.2d 352, 358, 361, 101 P.2d 484.) In the case at bar the appointment
20 of Fredrick Waid, Esq. as Trustee is a modification to preserve the Trust assets. Getty v.
21 Getty, 252 Cal. Rptr. 342, 347 (Ct. App. 1988).

22 This court has broad equitable powers to supervise the administration of a Trust
23 and an estate. NRS 164.015. The court has the responsibility "to protect the estate and
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1 ensure its assets are properly protected for the beneficiaries.” (Estate of Ferber (1998) 66
2 Cal.App.4th 244, 253.) The court has the inherent equitable power to “take remedial
3 action” and to intervene to prevent harmful acts to the Trust and its beneficiaries.
4 (Schwartz v. Labow (2008) 164 Cal.App.4th 417, 427.) See also Rest.2d Trusts, § 107,
5 p. 235 [the court has reasonable discretion to remove a Trustee “if his continuing to act as
6 Trustee would be detrimental to the interests of the beneficiary”].)

8 A court motion hearing will be held to discuss this appointment of a Trustee to
9 distribute the assets of the Trust pursuant to Nevada law after notice to creditors. Parties
10 have a right to request a prompt evidentiary hearing at said court hearing. Litigants
11 should be aware that the Trust will not bear the initial cost of any further litigation and
12 the Trust might possibly not bear the ultimate fees of such litigation. NRS 153.031
13 (3)(b). See **Riley v. Rockwell**, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987);
14 Restatement (Third) of Trusts § 79 (2007). **Matter of W.N. Connell & Marjorie T.**
15 **Connell Living Tr.**, 393 P.3d 1090, 1094 (Nev. 2017).

17 **III. ORDER**

18 It is ordered that a court motion hearing will be held on **June 28, 2018** at 3:00 pm
19 to discuss whether Ms. Utkin should be removed as Trustee to the Christian Family Trust
20 and the appointment of Fredrick Waid, Esq., an independent Trustee, for the
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1 distribution of the Trust.

2 Parties have a right to request a prompt evidentiary hearing at said court hearing.

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IT IS SO ORDERED this 1st day of June, 2018.

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Honorable VINCENT OCHOA
District Court Judge, Department S

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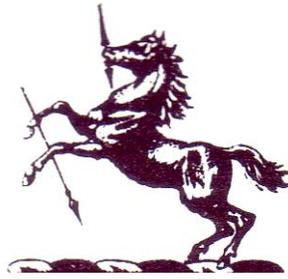
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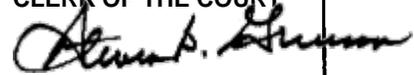
CARY COLT PAYNE, CHTD.

Attorney at Law

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

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EXHIBIT “B”



1 **NOE**
2 CARY COLT PAYNE, ESQ.
3 Nevada Bar No. 4357
4 CARY COLT PAYNE, CHTD.
5 700 South Eighth Street
6 Las Vegas, Nevada 89101
7 (702) 383-9010
8 carycoltpaynechtd@yahoo.com
9 Attorney for Petitioners

**DISTRICT COURT
CLARK COUNTY, NEVADA**

9 In the Matter of) Case No.: P-17-092512-T
10) Dept. No.: S (Probate)
11 THE CHRISTIAN FAMILY)
12 TRUST u.a.d. 10/11/16)
13 ~~~~~)
14 SUSAN CHRISTIAN-PAYNE,)
15 ROSEMARY KEACH AND)
16 RAYMOND CHRISTIAN)
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Petitioners,)
-vs-)
NANCY I CHRISTIAN, MONTE)
REASON and JACQUELINE UTKIN,)
Respondents.)
~~~~~ )

**NOTICE OF ENTRY**

20 **TO: ALL PERSONS INTERESTED IN THE WITHIN MATTER;**

21 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order, a copy of  
22 which is attached hereto and incorporated herein by reference, was entered by the court  
23 on July 24, 2018.

24 Dated: July 25, 2018

26 /s/ CARY COLT PAYNE, ESQ.  
27 CARY COLT PAYNE, ESQ.  
28 Nevada Bar No.: 4357  
CARY COLT PAYNE, CHTD.  
700 South Eighth Street  
Las Vegas, Nevada 89101  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 25, 2018, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

**BY MAIL:** N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;

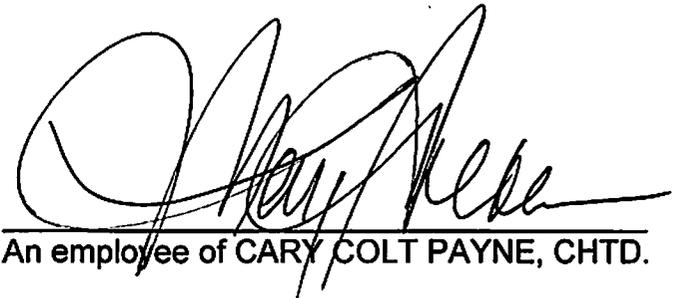
Tommy L. Christian  
245 South Lemon, Apt C  
Orange, CA 92566

Christopher A. Christian  
560 W. 20th Street #12  
San Bernardino, CA 92405

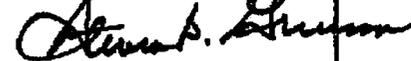
**BY E-MAIL AND/OR ELECTRONIC MEANS:** Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

Jerimy Kirschner, Esq.  
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Las Vegas, NV 89134  
*email: joey@rushforth.com*  
Attorney for Monte Reason

  
An employee of CARY COLT PAYNE, CHTD.





1 **ORDR**  
2 **CARY COLT PAYNE, ESQ.**  
3 **Nevada Bar No. 4357**  
4 **CARY COLT PAYNE, CHTD.**  
5 **700 South Eighth Street**  
6 **Las Vegas, Nevada 89101**  
7 **(702) 383-9010**  
8 **carycoltpaynechtd@yahoo.com**  
9 **Attorney for Petitioners**

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

10 In the Matter of )  
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**Case No.: P-17-092512-T**  
**Dept. No.: S (Probate)**

**THE CHRISTIAN FAMILY**  
**TRUST u.a.d. 10/11/16**

**SUSAN CHRISTIAN-PAYNE,**  
**ROSEMARY KEACH AND**  
**RAYMOND CHRISTIAN**  
**Petitioners,**

**Date: 6/28/18**  
**Time: 3:00 pm**

**-vs-**

**NANCY I CHRISTIAN, MONTE**  
**REASON and JACQUELINE UTKIN,**  
**Respondents.**

**ORDER**

This matter having come before the court by the Order of the Court entered June 1, 2018; and the Petitioners, Susan Christian-Payne (personally appearing) Rosemary Keach (not personally appearing) and Raymond Christian, Jr. (personally appearing), and being represented by their attorney, Cary Colt Payne, Esq., of the CARY COLT PAYNE CHTD. lawfirm; and Jacqueline Utkin (not personally appearing), being represented by her attorney Jerimy Kirschner, Esq.; and Monte Reason (not personally appearing) and being represented by his attorney, Joseph Powell, Esq., of the RUSHFORTH, LEE AND KIEFER lawfirm; and the court having reviewed all the pleadings and papers on file, and argument of counsel, the Court hereby *FINDS*:

**CARY COLT PAYNE, CHTD.**  
700 South Eighth Street  
Las Vegas, Nevada 89101  
Tel: 702.383.9010 • Fax 702.383.9049





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1. A trustee may be removed in accordance with the terms of the trust (The Christian Family Trust, Article 8.1), or for cause by a proper court. Restatement (Third) of Trusts, §37 (2003). A beneficiary of the trust may maintain a proceeding to remove the trustee. NRS 163.115(1)(c) and NRS 153.031(1)(k).

2. That the court has, by virtue of its general jurisdiction over trusts, authority to remove fraudulent, dishonest or incompetent trustees and appoint others to perform the duties of the trust, in order to avoid a failure thereof..." Golden v. Averill, 31 Nev. 250, 101 P 1021 (Nev. 1909)

3. That this matter was not a situation where the grantor of the trust named Utkin as a trustee. Untkin was temporarily appointed by the court under a temporary position until such further time as the underlying litigation as to Monte Reason and interpretation of the trust was resolved (transcript 3/15/18 hearing, page 24, line 35, etc.)

4. That this court had previously continued Petitioners' request to be re-appointed as trustees (filed 2/23/18), distribute trust property and/or terminate the trust (filed 1/11/18). That the court at the hearing held May 16, 2018 announced it was taking the various matters under advisement.

5. That the court entered its memorandum/decision on June 1, 2018, providing ~~ample~~ reasoning as to the potential suspension and/or removal of Jacqueline Utkin as trustee, including but not limited to the apparent hostility of the trustee towards the beneficiaries, and ~~failure to distribute trust assets as the court had noted, which would warrant removal.~~ The Court also set a hearing for June 28, 2018 to consider further arguments thereon.

6. That the case law cited in the June 1, 2018 order demonstrated that failure for a trustee to exercise her duties and/or responsibilities may lead to removal. Also see NRS 163.115.

✓  
✓

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7. That NRS 163.180, 163.185, 163.187(2) and 163.190, 165.200, provides the court with the authority to suspend and/or remove a trustee.

8. That during the June 28, 2018 hearing the court noted the extended time period of the case and advised that it was time to dispose of the trust, and the current distrust of the present trustee, as well as the trustee residing in Hawaii and the ability to fulfill the position.

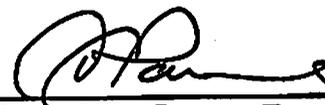
NOW, THEREFORE, for good cause appearing, *IT IS HEREBY*

*ORDERED* that good cause and/or grounds exist for the suspension and/or removal as Trustee, and Jacqueline Utkin be and hereby is suspended as Trustee of The Christian Family Trust, effective immediately as of the date of this hearing (6/28/18), and that no further action shall be taken whatsoever by either Ms. Utkin or her attorney; and it is further

*ORDERED* that based upon the pleadings, and the June 1, 2018 memorandum/orders of the court, the matter is shall be set for a hearing before the Probate Commissioner to review and make a final ruling on the sole issue of the removal of Jacqueline Utkin as Trustee.

Dated this 19 day of July, 2018.

  
DISTRICT COURT JUDGE *KW*

Submitted by:  
  
CARY COLT PAYNE, ESQ. (NV Bar 4357)  
CARY COLT PAYNE, CHTD.  
700 South Eighth Street  
Las Vegas, Nevada 89101  
Attorney for Petitioners





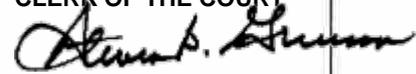
**CARY COLT PAYNE, CHTD.**

Attorney at Law

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

***EXHIBIT PAGE INTENTIONALLY LEFT BLANK***

**EXHIBIT “C”**



1 NOE  
2 CARY COLT PAYNE, ESQ.  
3 Nevada Bar No. 4357  
4 CARY COLT PAYNE, CHTD.  
5 700 South Eighth Street  
6 Las Vegas, Nevada 89101  
7 (702) 383-9010  
8 carycoltpaynechtd@yahoo.com  
9 Attorney for Petitioners

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 In the Matter of )

Case No.: P-17-092512-T  
Dept. No.: S (Probate)

11 THE CHRISTIAN FAMILY )  
12 TRUST u.a.d. 10/11/16 )  
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16 SUSAN CHRISTIAN-PAYNE, )  
17 ROSEMARY KEACH AND )  
18 RAYMOND CHRISTIAN )  
19 Petitioners, )

20 -vs-

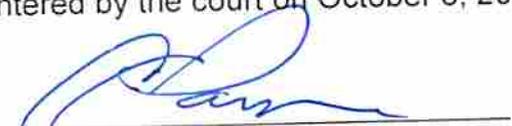
21 NANCY I CHRISTIAN, MONTE )  
22 REASON and JACQUELINE UTKIN, )  
23 Respondents. )  
24 ~~~~~ )

25 NOTICE OF ENTRY

26 TO: ALL PERSONS INTERESTED IN THE WITHIN MATTER;

27 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Probate  
28 Commissioner's Report and Recommendations, a copy of which is attached hereto and  
incorporated herein by reference, was entered by the court on October 8, 2018.

Dated: October 8, 2018

  
CARY COLT PAYNE, ESQ.  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 8, 2018, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

BY MAIL: N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;

Tommy L. Christian  
245 South Lemon, Apt C  
Orange, CA 92566

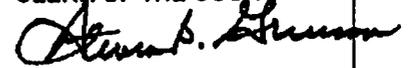
Christopher A. Christian  
560 W. 20th Street #12  
San Bernardino, CA 92405

BY E-MAIL AND/OR ELECTRONIC MEANS: Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

Jeremy Kirschner, Esq.  
JERIMY KIRSCHNER & ASSOCIATES, LTD.  
5550 Painted Mirage Rd., Suite 320  
Las Vegas, NV 89149  
Email: jerimy@jkirschnerlaw.com  
Attorney for Jacqueline Utkin

Joseph Powell, Esq.  
RUSHFORTH, LEE & KIEFER, LLP  
1701 Village Center Circle, Suite 150  
Las Vegas, NV 89134  
email: joey@rushforth.com  
Attorney for Monte Reason

An employee of CARY COLT PAYNE, CHTD.



1 RAR

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

4

5 In the Matter of )  
6 THE CHRISTIAN FAMILY )  
7 TRUST u.a.d. 10/11/16 )  
8 ----- )

Case No.: P-17-092512-T  
Dept. No.: S (Probate)  
Date: August 22, 2018  
Time: 9:00 AM

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**PROBATE COMMISSIONER'S REPORT AND RECOMMENDATIONS**

10

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

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

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

3 3. On July 24, 2018, the District Court entered an order suspending Jacqueline Utkin  
4 ("Utkin") as Trustee of the above referenced trust and remanded the matter to the undersigned  
5 Probate Commissioner to "review and make a final ruling on the sole issue of the removal of  
6 Jacqueline Utkin as Trustee."

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

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

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

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

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

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

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

## II. CONCLUSIONS OF LAW

1  
2 11. A district court judicial officer has the requisite authority to revisit their prior orders  
3 whether by the request of a party or upon the court's own motion. *Trail v. Faretto*, 91 Nev. 401,  
4 536 P.2d 1026 (1975): "a court may for sufficient cause shown, amend, correct, resettle, modify,  
5 vacate, as the case may be, an order previously made and entered on the motion in the progress of  
6 the cause or proceeding."  
7

8 12. NRS 53.045 permits any document to be sworn to under the penalties of perjury, rather  
9 than a notarization, and as such, under NRS 52.165, is presumed to be authentic.  
10

11 13. The Declaration is not hearsay as the Court is not swayed by whether the statements made  
12 therein are truthful, but instead, believes the Declaration supports a finding that Utkin is biased  
13 against the Petitioners. Notwithstanding, the Declaration also falls under the statutory hearsay  
14 exceptions found in NRS 51.315 and 51.345 due to the strong assurances of the Declaration's  
15 accuracy combined with Utkin's unavailability as a witness and is a statement against the position  
16 she now seeks to take.  
17

18 14. Documents filed in the course of a case, and included in the pleadings, either under the  
19 penalty of perjury or notarized, are part of the record, and relevant to the matter. The court has the  
20 authority to deem any relevant evidence as admissible pursuant to NRS 48.025.  
21

22 15. A Trustee has various requisite duties as it relates to impartiality, avoidance of conflicts,  
23 etc., in their trust administration and any necessary relations with a trust's beneficiaries. See *In re*  
24 *W.N. Connell and Marjorie T. Connell Living Trust*, 393 P.3d 1090 (Nev. 2017), citing to *Riley v.*  
25 *Rockwell*, 747 P.2d 903 (Nev. 1987); *Hearst v Ganzi*, 145 Cal.App.4<sup>th</sup> 1195 (2006); and *In re*  
26  
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1 *Duke*, 702 A.2d 1008 (N.J. 1995) for the proposition that a trustee's duty is to treat all  
2 beneficiaries equally and may not advocate for either side in a dispute between beneficiaries.

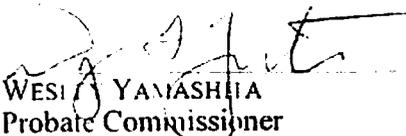
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4 16. Given the clear overall intent of Utkin's position in her Declaration against the primary  
5 beneficiaries of the Trust, Utkin cannot be impartial and has conflicts of interest, and grounds exist  
6 to remove Utkin as Trustee.

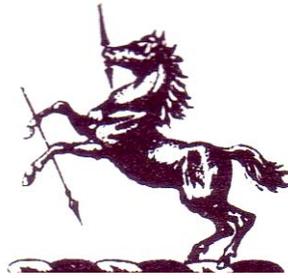
7 **III. RECOMMENDATIONS**

8 IT IS HEREBY RECOMMENDED as follows:

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

14  
15 Dated this 3 day of October 2018.

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18 WESI YAMASHITA  
19 Probate Commissioner  
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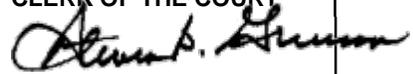
**CARY COLT PAYNE, CHTD.**

Attorney at Law

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

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**EXHIBIT “D”**



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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In the Matter of the Trust of:

Case No.: P-17-092512-T  
Department S

7

The CHRISTIAN FAMILY TRUST

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**NOTICE OF ENTRY OF ORDER**

10

Please take notice that the Order from the 8th day of November, 2018 was entered in the foregoing action and the following is a true and correct copy thereof.

11

12

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Dated: This 9th day of November, 2018.

14

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16

/S/ Deniece Lopez

17

Judicial Executive Assistant  
Department S

18

**CERTIFICATE OF SERVICE**

19

20

I hereby certify that on or about the above file stamp date, a copy of the foregoing Notice of Entry of Order was:

21

22

E-served pursuant to NEFCR 9 or placed a copy in the appropriate attorney folder located in the Clerk's Office at the RJC:

23

Cary Colt Payne, Esq.

24

Joey Powell, Esq.

25

Frederick Waid, Esq.

26

27

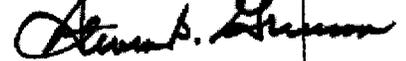
E-served pursuant to NEFCR 9, or mailed, via first-class mail, postage fully prepaid, to:

28

1 Tommy L. Christian  
2 245 S. Lemon Apt. C  
3 Orange, CA 92405

4 Christopher A. Christian  
5 560 W. 20<sup>th</sup> Street Apt 12  
6 San Bernadino, CA 92405

7  
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10 /S/ Deniece Lopez  
11 Judicial Executive Assistant  
12 Department S  
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DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

In the Matter of:

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

THE CHRISTIAN FAMILY TRUST,

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

Dated October 11, 2016.

**ORDER**

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

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

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

**PROCEDURE**

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

1 **MERITS**

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

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

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

23 Prior to the hearing Jacqueline Utkin was giving notice of the factual and legal  
24 reasons for the hearing on her removal as Trustee by the district judge. See Order filed  
25 June 1, 2018. Jacqueline Utkin requested a due process evidentiary hearing. Said hearing  
26  
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1 was set and Jacqueline Utkin was given notice of the hearing. See Notice filed July 7,  
2 2018. The hearing was set for August 22, 2018.

3 Her attorney filed a pre-trial memorandum on August 17, 2018 regarding the  
4 issues to be addressed at the hearing. Her attorney appeared at the hearing on August 22,  
5 2018, but Jacqueline Utkin did not appear at the hearing nor did she seek leave to appear  
6 telephonically. Monte Reason was represented by his attorney Joseph Powell.  
7

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

11 The Probate Commissioner’s Report is legally correct that the Court has inherent  
12 power to “amend, correct, resettle, modify, or vacate, as the case may be, an order  
13 previously made and entered on motion in the progress of the cause or proceeding.” *Trail*  
14 *v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). District courts have inherent  
15 power to reconsider interlocutory orders and reopen any part of a case before entry of a  
16 final judgment. *Rochow v. Life Ins. Co. of North America*, 737 F.3d 415 (6th Cir. 2013).  
17

18 “Law of the case directs a court’s discretion, it does not limit the tribunal’s  
19 power.” *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 75 L.Ed.2d 318  
20 (1983)). “Under law of the case doctrine, as now most commonly understood, it is not  
21 improper for a court to depart from a prior holding if convinced that it is clearly  
22 erroneous and would work a manifest injustice.” *Id.* at 618, 103 S.Ct. 1382 n. 8.” *Harlow*  
23 *v. Children’s Hosp.*, 432 F.3d 50, 55 (1st Cir. 2005). *See Geffon v. Micrion Corp.*, 249  
24 F.3d 29, 38 (1st Cir.2001) (reviewing a district court’s reconsideration of its own prior  
25 ruling on summary judgment motion for abuse of discretion).  
26  
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1 On an objection to a master's Report, we cannot simply re-weigh the factual  
2 evidence. The court's role on review of an objection under the limited clearly erroneous  
3 standard is to determine whether the findings made by the Probate Commissioner were  
4 not clearly erroneous. So long as the findings made by the Probate Commissioner were  
5 properly supported by one version of the conflicting evidence, the Probate Commissioner  
6 report is not clearly erroneous.  
7

8 **WHEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

9 The District Court will accept and adopt the Probate Commissioner's Report and  
10 Recommendations filed on October 8, 2018.

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

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

16 **IT IS SO ORDERED** this 27 day of November 2018.

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19 Vincent Ochoa  
20 **Honorable VINCENT OCHOA**  
21 **District Court Judge, Department S**  
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