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. ~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	Case No.: 75750	Electronically Filed Jan 10 2019 08:13 a.m. Elizabeth A. Brown Clerk of Supreme Court

APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 17

Filed by:

/s/ Cary Colt Payne, Esq.

_____

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DATE	*DOCUMENT*	*NUMBERED*
APPENDIX VOLUME 14a:		
4/10/18	Motion for (1) Fees Pursuant to NRS 165.148 (2) Compliance with and Enforcement of Court Order and Sanctions; (3) for Order to Show Cause Why Former Trustees Should Not be Held in Contempt, and (4) for Extension of Discovery Part 1	APP-ROA-1135-1279
APPENDIX VOLUME 14b:		
4/10/18	Motion for (1) Fees Pursuant to NRS 165.148 (2) Compliance with and Enforcement of Court Order and Sanctions; (3) for Order to Show Cause Why Former Trustees Should Not be Held in Contempt, and (4) for Extension of Discovery Part 2	APP-ROA-1180-1224
APPENDIX VOLUME 15:		
4/12/18	Notice of Entry of Order (Barney Petition Fees)	APP-ROA-1225-1232
4/19/18	Petitioner's Combined Opposition to (1) Motion to Turnover Assets and Dissolve Injunction over Trust Assets; (2) Motion to 1. Expunge Lis Pendens and 2. Preliminary Injunction and Countermotion for Distribution/ Termination of Trust; Alternatively for Stay/ Set Bond and Set Evidentiary Hearing	APP-ROA-1233-1254
4/19/18	Opposition to Motion for (1) fees, (2) compliance, (3) for Order to Show Cause and (4) Extension of Discovery, countermotion to Distribute Trust Property (2nd request)	APP-ROA-1255-1292

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Steven D. Grierson
CLERK OF THE COURT

NEOJ

DISTRICT COURT
CLARK COUNTY, NEVADA
***

IN THE MATTER OF: **THE CHRISTIAN FAMILY TRUST**	**Case No.: P-17-092512-T** **Department S**

NOTICE OF ENTRY OF ORDER

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

Dated: This 1st day of June, 2018.

DENIECE LOPEZ

Deniece Lopez
Judicial Executive Assistant
Department S

CERTIFICATE OF SERVICE

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

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

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

Jerimy Kirschner, Esq.
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DISTRICT JUDGE
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LAS VEGAS, NV 89155

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

SUSAN CHRISTIAN-PAYNE, ROSEMARY KEACH, AND RAYMOND CHRISTIAN PETITIONERS, v. NANCY I. CHRISTIAN, RESPONDENT	)	Case No.: P-17-092512-T Dept No.: S

ORDER

I. PROCEDURAL HISTORY

The following facts are not the Court's "finding of facts" but nevertheless are the facts as presented by the parties in their pleading and court arguments.

This is a case about a prolonged dispute flowing from a family Trust following the removal of the Petitioners as co-Trustees after Petitioners denied a request for additional funds made by settlor Nancy Christian. The Trustees had sole discretion to make this denial of the request.

The Christian Family Trust was created by grantors Raymond T. Christian and Nancy Christian on October 11, 2016. The Petitioners SUSAN CHRISTIAN-PAYNE, ROSEMARY CHRISTIAN-KEACH, AND RAYMOND T.CHRISTIAN JR. were the original named Trustees. Grantor Raymond Christian died on January 31, 2017. The remaining grantor Nancy Christian, a month after the death of Raymond Christian, requested on or about late February, 2017, that the Trustees pay her an additional sum of $5,000 per month from the Trust. The Trustees had the sole discretion to pay additional

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

Thereafter, on or about June 13, 2017, grantor Nancy Christian removed the Petitioners as Trustees and appointed her son, Monte Reason, as the sole Trustee of the Trust. Monte Reason is a limited beneficiary under the Trust and his interest was to be placed in a Trust.

The Trust provides that Monte Reason was to receive, in Trust, ten percent of the net proceeds from the sale of property known as 1060 Dancing Vine Avenue, Las Vegas Nevada. The petitioners and former Trustees SUSAN CHRISTIAN-PAYNE, ROSEMARY CHRISTIAN-KEACH, AND RAYMOND T.CHRISTIAN JR. were to receive eighty percent (80%) of the net proceeds from the sale of said property.

Thereafter, the petitioners SUSAN CHRISTIAN-PAYNE, ROSEMARY CHRISTIAN-KEACH, AND RAYMOND T.CHRISTIAN JR. (original named Trustees) were to receive 100% of the remainder – each one third (1/3) of the remaining estate outright.

Petitioners requested this court to resolve the issue as to whether the remaining grantor Nancy Christian had the authority in the Trust to replace the petitioners with her son, Monte Reason, (NRS 153.031, NRS 164.015) and whether there was exploitation and/or undue influence by Monte Reason on his mother/grantor Nancy Christian. See Petition filed July 31, 2017, page 6-7, Motion to Dismiss filed August 17, 2017, and Response to Petition filed October 13, 2017. Both parties have made claims of undue influence against the other party. The first legal scrimmage was whether Petitioners had the standing/right to bring their action and the jurisdiction of the court. The Court found

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standing for Petitioners to raise the issues as presented in their petition and the Court accepted jurisdiction of the Trust to "help resolve their issues." Court's decision filed Oct. 31, 2017.

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

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

II. ANALYSIS

Petitioners requested in their motion filed April 19, 2018 that the Trust assets be distributed and the Trust terminated. NRS 153.031. Everyone is in agreement that the

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Trust after paying any valid creditor claims,the Trust should be distributed and closed. There may be claims by the estate of Nancy Christian and Monte Reason.

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

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

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

The declaration speaks clearly for itself. The declaration has been described as Jacqueline Utkin expressing that the Petitioners directly contributed to the death of grantor Raymond Christian. (See page three, lines 1-2 of Objection and Counter Petition

filed Nov 13, 2017 and page 3-4 of Declaration of Jacqueline Utkin.) Jacqueline Utkin accuses the Petitioners/major beneficiaries of misuse of the Trust assets and abusive actions towards the settlors. (See Utlin's Declaration page three, lines 1-20 , Page 4, lines11-28 and page 5:1-16; and Objection and Counter Petition filed Nov 13, 2017, page 3-5S.) There are irreconcilable conflicts between Ms. Utkin and the main beneficiaries of the Trust and her partiality towards one minor interest beneficiary of the Trust may disqualify Ms. Utkin from acting as Trustee. See Utlin's Declaration page 6-7. **Matter of W.N. Connell & Marjorie T. Connell Living Tr.**, 393 P.3d 1090, 1094 (Nev. 2017), *see Hearst v. Ganzi,* 145 Cal.App.4th 1195, 52 Cal.Rptr.3d 473, 481 (2006) (recognizing a trustee's duty to treat all beneficiaries equally); *see also In re Duke,* 305 N.J.Super. 408, 702 A.2d 1008, 1023–24 (1995) (explaining that a trustee may not advocate for either side in a dispute between beneficiaries.)

In addition, Ms. Utkin's declaration makes it clear that she would not be the best choice to defend the Trust from potential claims from Nancy Christian's estate or from Monte Reason. Ms. Utkin's irreconcilable conflicts between her personal beliefs and the Trust's major beneficiaries raise serious question as to her choice as Trustee to distribute the assets and defending the potential lawsuits as Trustee. Getty v. Getty, 252 Cal. Rptr. 342, 345 (Ct. App. 1988). The purpose of removing a Trustee is not to inflict a penalty for past action, but to preserve the Trust assets. (Moore v. Bowes (1937) 8 Cal.2d 162, 165, 64 P.2d 423.) "The question in each case is whether the circumstances are such that the continuance of the Trustee in office would be detrimental to the Trust," (2 Scott on Trusts (4th ed. 1987) The Trustee, § 107, p. 104.) A Trustee does not serve for his or her own interest, and instead must act to implement the Trustor's intent and to protect the

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interests of others. The court has a substantial interest in ensuring proper administration of the Trust and that assets are preserved for the beneficiaries as intended by the Trustor.

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

The Trust is clear as to distribution and it is time to distribute the assets of the Trust as expressed by the grantors. The other option is to let the flames of litigation consume the remaining assets by authorizing the addition of further fuel to this blaze. The primary goal in litigation regarding a trust is to effectuate the apparent intent of the settlor(s). *See, e.g.*, **Klabacka v. Nelson,** 133 Nev., Adv. Op. 24, 394 P.3d 940, 947 (2017) ("[C]ourts look first and foremost to the language in the trust and interpret that language to effectuate the intent of the settlers.") (internal quotation marks and citation omitted).

Cases and statutes consistently state that a Trustee may be removed where there is a conflict of interest between the Trustee's interests and those of the Trust. (See Estate of Keyston (1951) 102 Cal.App.2d 223, 227–228, 227 P.2d 17 and Getty v. Getty, 252 Cal. Rptr. 342, 346 (Ct. App. 1988) see also In re Malone's Estate, 42 Colo.App. 353, 597 P.2d 1049 (1979) (hostility and friction between the Trustee and the beneficiaries are

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proper grounds for removal of Trustee even if misconduct is not proved); Restatement (Third) of Trusts § 37 cmt. f(1) (2003). In re Estate of Klarner, 98 P.3d 892, 898 (Colo. App. 2003), rev'd, 04SC214, 2005 WL 1322969 (Colo. 2005).

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

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

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

This court has broad equitable powers to supervise the administration of a Trust and an estate. NRS 164.015. The court has the responsibility "to protect the estate and

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ensure its assets are properly protected for the beneficiaries." (Estate of Ferber (1998) 66 Cal.App.4th 244, 253.) The court has the inherent equitable power to "take remedial action" and to intervene to prevent harmful acts to the Trust and its beneficiaries. (Schwartz v. Labow (2008) 164 Cal.App.4th 417, 427.) See also Rest.2d Trusts, § 107, p. 235 [the court has reasonable discretion to remove a Trustee "if his continuing to act as Trustee would be detrimental to the interests of the beneficiary"].)

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

III. ORDER

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

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distribution of the Trust.

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

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

Vincent Ochoa

Honorable VINCENT OCHOA
District Court Judge, Department S

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

NOTICE OF ENTRY

TO: ALL PERSONS INTERESTED IN THE WITHIN MATTER;

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Probate 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.
Nevada Bar No.: 4357
CARY COLT PAYNE, CHTD.
700 South Eighth Street
Las Vegas, Nevada 89101
(702) 383-9010

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Tel: 702. 383.9010 • Fax 702. 383.9049

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:

Y **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

Y **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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Steven D. Grierson
CLERK OF THE COURT

RAR

DISTRICT COURT
CLARK COUNTY, NEVADA

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

PROBATE COMMISSIONER'S REPORT AND RECOMMENDATIONS

This matter having come on for hearing on the District Court's remand to the Probate Commissioner to decide the issue of removal of trustee; and the Petitioners/primary beneficiaries, Susan Christian Payne and Raymond Christian, Jr. personally appearing, with Rosemary Keach not appearing (collectively, the "Petitioners"), and being represented by CARY COLT PAYNE, ESQ., of the CARY COLT PAYNE, CHTD. law firm; and Jacqueline Utkin not personally appearing and 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 law firm; and the Court having reviewed the papers and pleadings on file herein, upon arguments of counsel and being fully apprised in the premises; and Good Cause appearing therefor, the court finds:

I. REPORT/FINDINGS OF FACT

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 "Settlors") were the settlors and initial trustees.

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

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

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

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

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

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

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

[1] Reason's appointment, and subsequent nomination of Utkin as trustee, is still being contested by Petitioners.

a. For nearly three years prior to Tyrone's last hospital stay, Petitioners had virtually no contact with Nancy or Tyrone but Reason would check with them and see to their needs.

b. Sensing their opportunity to seize control of Nancy and Tyrone's assets, the [Petitioner's] roared back into Nancy and Tyrone's life.

c. [Petitioner's] began isolating Nancy and Tyrone from family and friends.

d. I would frequently hear the [Petitioners], usually Susan screaming at Tyrone or Nancy.

e. During the time that the [Petitioners] were supposed to be caring for Nancy and Tyrone, their health deteriorated. I believe this was due to the poor treatment provided by the [Petitioners].

f. The [Petitioners] would yell at Nancy and curse at her for refusing to eat the unhealthy food they were trying to force upon her. One such instance led to Nancy being kicked out of the home by the [Petitioners].

g. [Petitioners] spent Trust money to travel to California, to rent extravagant beach house, and to even enjoy a cruise when Tyrone passed away.

h. [Petitioners] have refused to provide Nancy with any money from the Trust, yet they have spent Trust money extravagantly for their own benefit.

i. Raymond Christian Jr. expressed his desire that she go and die already and told her that he will "piss on her grave."

j. Based on my conversations with Tyrone, I am concerned that Tyrone was manipulated or threatened to put the [Petitioners] in charge of the Trust. Tyrone made me promise to help Nancy after his death and to try and prevent the abuse and exploitation of Nancy by the [Petitioners].

k. [G]iven the abuse detailed herein and the continued abuse by the [Petitioners] through the litigation they are now pursuing, and in order to keep the promise I made to my brother, I am providing this declaration to ensure that Nancy is not subject to continued abuse and exploitation.

9. Utkin's counsel argued, among other things, that the Declaration was known to the District Court when it appointed Utkin as trustee.

10. The Declaration evidences Utkin's inability to be impartial and act fairly to all Trust beneficiaries.

II. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

III. RECOMMENDATIONS

IT IS HEREBY RECOMMENDED as follows:

1. That Jacqueline Utkin be permanently removed as Trustee of The Christian Family Trust, effective immediately;

2. That an independent trustee is required, and Fred Waid be appointed as Trustee, effectively immediately.

Dated this 3 day of [illegible] 2018.

WESLEY YAMASHITA
Probate Commissioner

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11/13/2018 10:33 AM
Steven D. Grierson
CLERK OF THE COURT

NEOJ

DISTRICT COURT
CLARK COUNTY, NEVADA
***

In the Matter of the Trust of: The CHRISTIAN FAMILY TRUST	Case No.: P-17-092512-T Department S

NOTICE OF ENTRY OF ORDER

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.

Dated: This 9th day of November, 2018.

/S/ Deniece Lopez
Judicial Executive Assistant
Department S

CERTIFICATE OF SERVICE

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

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

Cary Colt Payne, Esq.
Joey Powell, Esq.
Frederick Waid, Esq.

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

VINCENT OCHOA.
DISTRICT JUDGE
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Tommy L. Christian
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DISTRICT JUDGE
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DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

In the Matter of: THE CHRISTIAN FAMILY TRUST, Dated October 11, 2016.	Case No.: P-17-092512-T DEPT. NO. S DATE OF HEARING: 11/02/2018 TIME OF HEARING: 3:00 PM

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.

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MERITS

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

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

Following the special master's hearing, the master must submit a report to the district court, including findings of fact and conclusions of law. NRCP 53(e)(1). In cases not tried before a jury, "the court shall accept the master's findings of fact unless clearly erroneous." NRCP 53(e)(2). If any party makes an objection within ten days after being served with the master's findings, the district court, "after [a] 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." *Id.*

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

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

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

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

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

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

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

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

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

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

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

Vincent Ochoa

Honorable VINCENT OCHOA
District Court Judge, Department S

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DISTRICT JUDGE
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