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Elizabeth A. Brown
Clerk of Supreme Court

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 REACH; 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 REACH; AND
RAYMOND
CHRISTIAN, JR.,
Cross-Respondents,

and

JACQUELINE UTKIN,
Respondent.

Supreme Court No. 75750

District Ct. Case No: P-17-092512-T

**MOTION TO WITHDRAW AS
COUNSEL OF RECORD**

MOTION TO WITHDRAW AS COUNSEL OF RECORD

Comes Now, Jerimy Kirschner & Associates, PLLC. ("JKA"), and hereby files this Motion To Withdraw As Counsel Of Record ("Motion").

This Motion is made based on the following Memorandum of Points and Authorities, the exhibits thereto, the papers and pleadings already on file herein and any oral argument the Court may permit at a hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF STATEMENT OF FACTS

1. On June 13, 2018, this Court entered an Order adding Jacqueline Utkin ("Utkin"), the then existing trustee for the Christian Family Trust, Dated October 11, 2016 ("Trust") as respondents to this matter as a result of the counter-appeal from Anthony L. Barney, Ltd..

2. On November 8, 2018, the District Court entered an order removing Utkin as trustee for the Trust and appointing Fred Waid, Esq. ("Mr. Waid") as an independent trustee. *See, Exhibit A – November 8, 2018 Order.*

3. Mr. Waid has not retained JKA to prosecute this appeal.

4. On information and belief, Mr. Waid is represented by the firm of Hutchison and Steffen through Russel Geist, Esq..

5. On January 9, 2019, Appellants Susan Christian Payne, Raymond Christian, and Rosemary Reach (collectively, "Appellants") filed their opening brief.

6. A responsive brief is due on February 9, 2019.

II. ARGUMENT

Nevada Supreme Court Rule 46 provides:

The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon consent of the attorney, approved by the client.
2. Upon the order of the court or judge thereof on the application of the attorney or the client.

After judgment or final determination, an attorney may withdraw as attorney of record at any time upon the attorney's filing a withdrawal, with or without the client's consent.

1 The undersigned counsel now moves for leave to withdraw as attorney of record on the basis
2 that (1) Jacquelin Utkin is no longer the trustee for the Trust, and is not the real party in interest able
3 to speak for its interest in this appeal; and (2) JKA has not been retained by the new trustee for the
4 Trust, and thus has not authority to speak on behalf of, or represent, the Trust as is required by
5 Nevada Supreme Court Rule 45. As a result there is an irreconcilable conflict.

6 The last known contact for Mr. Waid and Utkin are as follows:

7 Fred Waid, Esq.
8 Hutchison and Steffen
9 Attn: Russel Geist, Esq.
10 10080 West Alta Drive, Suite 200
11 Las Vegas, Nevada 89145

Jacqueline Utkin
445 Seaside Ave Apt 4005
Honolulu Hawaii 96815

12 III. CONCLUSION

13 JKA respectfully request that it be permitted to withdraw as counsel of record.

14 DATED this 15TH day of JANUARY, 2019.

15 JERIMY KIRSCHNER & ASSOCIATES, PLLC

16 /s/Jerimy L. Kirschner, Esq.
17 JERIMY L. KIRSCHNER, ESQ.
18 Nevada Bar No. 12012
19 3333 E. Serene Ave., Suite 150
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21 Telephone:(702) 563-4444
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**AFFIDAVIT OF JERIMY L. KIRSCHNER, ESQ..
IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL OF RECORD**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, JERIMY L. KIRSCHNER, ESQ., being first duly sworn, deposes and says:

1. I am an attorney licensed to practice and practicing in the State of Nevada.

2. I am an attorney with the law firm of JERIMY KIRSCHNER & ASSOCIATES, PLLC. ("JKA").

3. I make this declaration of my own personal knowledge, except where made on information and belief, and I am competent to testify to the things stated herein.

4. The law firm of JKA appeared in P-17-092512-T ("Probate Matter") on behalf of Jacqueline Utkin ("Utkin") in her role as successor trustee for the Christian Family Trust, Dated October 11, 2016 ("Trust").

5. On April 4, 2018, Utkin was confirmed as trustee for the Trust by Order of the District Court in the Probate Matter.

6. On June 13, 2018, this Court entered an Order adding Utkin as respondent for the Trust in this matter while also adding JKA as counsel for Utkin.

7. On November 8, 2018, the District Court entered an order removing Utkin as trustee for the Trust and appointing Fred Waid, Esq. ("Mr. Waid") as trustee.

8. Mr. Waid has not retained JKA to prosecute this appeal.

9. On information and belief, Mr. Waid is represented by the firm of Hutchison and Steffen through Russel Geist, Esq. ("Mr. Geist").

10. This belief is based upon Mr. Geist's appearances on behalf of Mr. Waid in the Probate Matter.

11. On January 9, 2019, Appellants Susan Christian Payne, Raymond Christian, and Rosemary Reach (collectively, "Appellants") filed their opening brief.

12. A responsive brief is due on February 9, 2019.

13. The undersigned has been unsuccessful in obtain a substitution of counsel for this appellate matter.

14. The undersign is unable to communicate or represent the position of the Trust in this appeal as the undersigned does not represent the real party in interest, which is the Trust through Mr. Waid.

15. There has been no final determination in this appeal.

16. Reasonable motive of my intention to seek permission from the court to withdraw from representation will be given to counsel for other parties.

17. The last known contact for Mr. Waid and Utkin are as follows:

Fred Waid, Esq.
Hutchison and Steffen
Attn: Russel Geist, Esq.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Jacqueline Utkin
445 Seaside Ave Apt 4005
Honolulu Hawaii 96815

18. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


JERIMY L. KIRSCHNER, ESQ.

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

Subscribed to and sworn before me
This 15 day of January, 2019


NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing MOTION TO WITHDRAW AS COUNSEL OF RECORD to be served by electronic means to those on record with the court as having consented to such, or by US Mail on this 15TH day of January:

CARY COLT PAYNE, CHTD.
700 South Eighth Street
Las Vegas, Nevada 89101
carycoltpaynechtd@yahoo.com
Attorney for Susan Christian-Payne, Rosemary Keach and Raymond Christian, Jr.

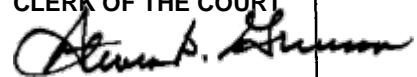
RUSHFORTH LEE & KIEFER LLP
1707 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
Attorney for Monte Reason

HUTCHISON AND STEFFEN
Attn: Russel Geist, Esq.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorney for Fred Waid, Esq., Successor Trustee for the Christian Family Trust, Dated October 11, 2016

Jacqueline Utkin
445 Seaside Ave Apt 4005
Honolulu Hawaii 96815

/s/ Sarah Mintz
An Employee of Jerimy Kirschner & Associates, PLLC

EXHIBIT A



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).

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).*

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.*

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
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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.” NRCP 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).

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

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

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