

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 75750

SUSAN CHRISTIAN-PAYNE;
ROSEMARY KEACH; AND RAYMOND
CHRISTIAN, JR.,

Appellants,

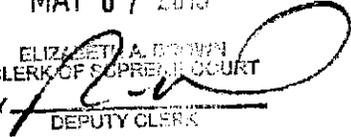
vs.

JACQUELINE UTKIN,

Respondent.

FILED

MAY 07 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

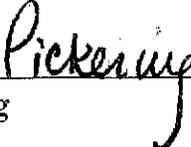
*ORDER DISMISSING APPEAL IN PART
AND DISMISSING CROSS-APPEAL*

This is an appeal and cross-appeal from a district court order allowing the partial payment of a claim for attorney fees in a trust action. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

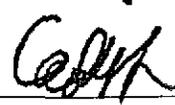
Appellants/cross-respondents have filed a motion seeking to strike respondent/cross-appellant Anthony L. Barney, Ltd.'s combined answering brief on appeal and opening brief on cross-appeal filed on March 27, 2019, and to dismiss Barney's cross-appeal. Appellants/cross-respondents argue that Barney was not a party to the action below and, therefore lacks standing to participate in the appeal and to pursue its cross-appeal. Additionally, appellants argue that respondent Jaqueline Utkin has refused to participate in the appeal, and such refusal should be construed as a confession of error. The motion was served electronically on Barney and by mail on Utkin on April 10, 2019. See NRAP 25(c), (d); NEFCR 9. To date neither Barney nor Utkin have opposed the motion. See NRAP 27(a)(3)(A) (allowing a party 7 days from service of a motion to file a response).

This court concludes that Barney's and Utkin's failure to oppose the motion constitutes an admission that the motion is meritorious, see *Foster v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010), and grants the motion. Appellants/cross-respondents' appeal is dismissed as to Anthony L. Barney, Ltd. only. Anthony L. Barney, Ltd's cross-appeal is dismissed in its entirety, and the clerk shall strike its combined brief filed on March 27, 2019. On March 18, 2019, in response to this court's February 14, 2019, order directing her to retain counsel or notify this court if she will be proceeding in pro se, Ms. Utkin filed a document, dated March 12, 2019, stating "I'm opting out—Please remove me." Accordingly, this appeal will be resolved on the opening brief and appendix filed January 9, 2019, and without an answering brief from Ms. Utkin. This court may treat Ms. Utkin's failure to file an answering brief as a confession of error. See NRAP 31(d)(2). The clerk shall amend the caption in this appeal to conform to the caption on this order.

It is so ORDERED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Cadish

cc: Hon. Vincent Ochoa, District Judge
Carolyn Worrell, Settlement Judge
Cary Colt Payne
Jacqueline Utkin
Anthony L. Barney, Ltd.
Eighth District Court Clerk