

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**

OCT 23 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER REGARDING PARTIES TO APPEAL*

This is an appeal from a district court order allowing the partial payment of a claim for attorney fees to Anthony L. Barney, Ltd., in a trust action.

*Anthony L. Barney, Ltd.*

In April 2019, appellants filed a motion to strike Barney, Ltd.'s combined answering brief on appeal and opening brief on cross-appeal, arguing that Barney, Ltd., was not a proper party below or, therefore, before the appellate courts. When Barney, Ltd., failed to respond to the motion, this court entered an order on May 7, 2019, striking the brief, dismissing the appeal as to Barney, Ltd., and dismissing Barney, Ltd.'s cross-appeal in whole. Upon further review, we conclude that our May 7 order contains an error, in that it improperly dismissed the appeal as to Barney, Ltd., when appellants' motion did not seek such relief and no rule precludes Barney, Ltd., from participating as a respondent to the appeal. Accordingly, we reinstate the appeal as to Barney, Ltd. The clerk of this court shall modify the caption on this docket to include Anthony L. Barney, Ltd., as a respondent.

As Barney, Ltd.'s combined brief was properly stricken in light of the dismissed cross-appeal, Barney, Ltd., shall have 14 days from the date of this order to file and serve a new answering brief on appeal. Appellants shall have 14 days from when the answering brief is served to file and serve any reply brief. No extensions of time will be permitted absent extreme and unforeseeable circumstances.

*Jacqueline Utkin, Trustee*

When the notice of appeal was filed, this court entered an order modifying the caption to include Jacqueline Utkin, as Trustee, as a respondent to this appeal. Although our order gave the parties time to notify this court if the caption did not reflect the status of the parties to this matter, no response was filed. Thereafter, Utkin's counsel moved to withdraw, explaining that Utkin had been removed as trustee. When asked to inform this court whether Utkin remained a party, Barney, Ltd., responded that Utkin was a respondent based solely on her capacity as trustee, and since she was no longer trustee, the new trustee, not Utkin, was interested in the matter. Appellants did not file a motion to substitute in the new trustee, *see* NRAP 43, however, but instead insisted that Utkin remain an interested party to this appeal. In light of the parties' disagreement, this court entered an order stating that Utkin would remain a party at that time and directed her to obtain counsel or proceed in pro se by filing an answering brief or informing this court that she does not intend to file a brief. Utkin responded by "opting out" and asking to be removed as a party, and this court entered an order acknowledging that the matter would be decided without her answering brief.

Upon further review of appellants' opening brief and the other documents filed in this appeal, we conclude that Utkin is no longer a proper

party to this appeal. The order appealed from notes that Utkin, as trustee, approved the attorney fees that the court then allowed to be paid from a blocked trust account and directs her to pay the fees; it in no way addresses any claims against her individually. Thus, Utkin's participation in this matter, both below and on appeal, was premised solely on her capacity as trustee, and as she is no longer trustee, we hereby dismiss the appeal as to her. Appellants shall have 7 days from the date of this order to file any motion to substitute the current trustee in her place.

It is so ORDERED.

Pickering, J.  
Pickering

Parraguirre, J.  
Parraguirre

Cadish, J.  
Cadish

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