

In the Supreme Court of the State of Nevada

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

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

-vs- )

ANTHONY L. BARNEY, LTD. and )  
FREDRICK P. WAID, Trustee, )  
Respondents. )  
~~~~~ )

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Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 75750

**APPELLANT’S MOTION TO REISSUE ORDER AS A
PUBLISHED DECISION PURSUANT TO NRAP 36(F)**

COMES NOW, the Appellants, by and through their attorney, CARY COLT PAYNE, ESQ., of the CARY COLT PAYNE, CHTD. lawfirm, and hereby submits the within motion to reissue the unpublished Order of Reversal and Remand issued by this Honorable Court on April 16, 2020, as a published opinion in the Nevada Reports. This motion is made pursuant to NRAP 36(f) and is supported by the memorandum of points and authorities below.

Dated the 29 day of April, 2020.



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MEMORANDUM OF POINTS AND AUTHORITIES

I. Criteria for Publication.

Pursuant to NRAP 36(f)(3), publication is proper if the Order satisfies one or more of NRAP 36(c)(1)'s three criteria. Specifically, publication is proper if the Order:

- (A) Presents an issue of first impression;
- (B) Alters, modifies, or significantly clarifies a rule of law previously announced by the court; or
- (C) Involves an issue of public importance that has application beyond the parties.

NRAP 36(c) further explains that an "unpublished disposition, while publicly available, does not establish mandatory precedent except in a subsequent stage of a case in which the unpublished disposition was entered, in a related case, or in any case for purposes of issue or claim preclusion or to establish law of the case." NRAP 36(c)(2).

For the reasons explained below, Appellants believe that this Order is appropriate for publication because the reasoning set forth in the unpublished Order has precedential value as an issue of first impression.

Furthermore, it clarifies an issue of public importance in the fields of trust law, creditors and payment of attorney's fees and costs.

Given the scarcity of precedent concerning trust laws, creditors and/or attorney's fees under a non-testamentary trust, a published opinion will guide both the public and members of the legal profession. It is respectfully requested that this Order be published as an opinion in the *Nevada Reports*.

II. The Case is Appropriate for Publication.

The Order is appropriate for publication because it "significantly clarifies a rule of law previously announced by the court." NRAP 36(c)(1)(B).

The Order specifically emphasizes the necessity of a creditor process as to the timing of their claim the necessity of a creditor under NRS 164.025 in trust proceedings, as well as pursuing its claim under the estate process (NRS Chapter 147) and the ability of a creditor to reach a possessory interest in trust assets unless the decedent's estate actually has an interest in a trust.

The Order also focuses on the issues of strict interpretation to trust provisions.

This involves an issue of public importance that has application beyond the parties.

As background, Nevada is widely considered the establishment and administrations of trusts as a "trust friendly" jurisdiction where an ever-growing number of trusts are established. Accordingly, Nevada's case law on trusts and trustees should be robust. But there is presently an inadequate number of published opinions interpreting Nevada trust law (NRS Chapter 163 and/or 164). Often, Nevada courts are forced to look to other jurisdictions for guidance in evaluating the actions of trustees take in relation to trusts governed by Nevada law.

Although the instant trust was not established as a Nevada Domestic Asset Protection Trust (DAPT), by publishing this Order, the Court will make a meaningful addition to the reservoir of Nevada common law concerning trust administration as well as creditors claiming payment from a trust, and removes some potential grey areas. See e.g., *Klabacka v. Nelson*, 133 Nev. Adv. Op. 24 (2017).

Publishing the Order will provide precedential Nevada common law on this important matter, reducing the need to look to persuasive authority from some other jurisdiction. Relevant Nevada case law is essential to clarify existing Nevada statutes like NRS 165.025, NRS Chapter 147 as it pertains to creditors and payment.

B. An Issue of Public Importance.

Publication is proper if the opinion "Involves an issue of public importance that has application beyond the parties." NRAP 36(c). Nevada's public interest is uniquely served by enhancing its brand as a "trust friendly" jurisdiction. In doing so, the importance of clarity, certainty, and confidence in trust law cannot be overstated. Here, the Order provides clarity on an issue that affects both estate planners as well as probate and trust litigation as to interests, claims and the process to allow for payment in trusts, where there are instances where some are stymied by the lack of legal precedent. Given the relative recentness of Nevada trust (testamentary as well as non-testamentary) law, there are a number of legal vagaries and pitfalls associated with their usage. While a Nevada court resolving a dispute over property transferred to a

Nevada trust, they would be bound by NRS Chapters 163, 164, and even Chapter 166 (spendthrift trusts), it is unclear whether or not courts in other states would have to follow Nevada law.

Trusts (non-testamentary) are more often designed to carry out the wishes and desires of a decedent after death, and the effects of any creditor. Without certainty, clarity, and confidence in the application of a statute this preparation is speculative at best—often only aided by a piecemeal tapestry of decisions from other jurisdictions.

Nevadans deserve to plan their affairs with as much certainty as possible. Publishing this Order provides additional assurances and certainty regarding dispositions and the ability of beneficiaries, attorneys, creditors, to seek a source of recovery from trust property.

In short, publishing this Order provides for more competent, clear, and certain Nevada trust and estate law. Clear law leads to less ambiguity and better administrations. Nevada is considered a top-ten state in the areas of DAPT, etc., which were enacted in 1999. See NRS Chapter 166) Better administration reduces the need for expensive litigation. Publishing the Order would assist all trust-related actors in Nevada to better accomplish their objectives under the auspices of controlling case law.

III. Conclusion

Pursuant to NRAP 36(f)(3), the Order offers clarity to an established rule of law that has not previously been addressed in a published opinion, and it concerns a rule of law that is of great public importance. Therefore, publication of the Order is warranted. Based upon the foregoing, the Firm respectfully requests that this Honorable Court reissue the unpublished Order filed on April 16, 2020, as an opinion to be published in the *Nevada Reports*.

Dated the _____ day of April, 2020.



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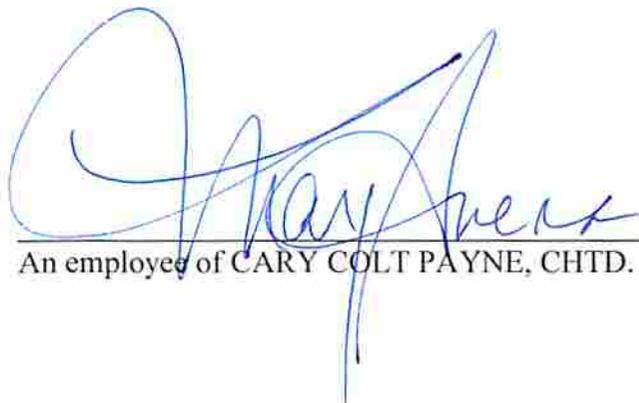
CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 29 day of April, 2020, I have served to the following a copy of the previously filed Motion to Substitute Party as follows:

X via electronic filing by electronic filing through the Court's E-Flex System:

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