


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

Case No.: 75750
Electronically Filed
Oct 14 2020 07:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

The law office of Anthony L. Barney, Ltd. (“ALB Ltd.”), hereby files its Motion to Reissue Order as a Published Opinion pursuant to the Nevada Rules of Appellate Procedure (“NRAP”) 36 regarding the Order of Affirmance filed September 30, 2020.

DATED this 14th day of October 2020.


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The Order cites to and clarifies a number of trust related statutes, including NRS 163.5559(1), NRS 164.025, NRS 166.120, and NRS 163.115. Practitioners researching these statutes are provided very few opinions that address each statute. The lack of precedential law addressing these statutes is evident by the Order itself, which does not cite to past precedential cases on several analyses provided. The Order provides much needed case law and explanation regarding the above

1 statutes and the interplay between them relates to the deference afforded to the
2 settlor's intent in their respective trust.
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4 **LEGAL AUTHORITY AND ARGUMENT**

5 *I. The Court may publish its opinion if it involves an issue of public*
6 *importance that has application beyond the parties.*

7 NRAP 36(f) provides that an interested party may file a motion to request
8 that the Court reissue its order as a published opinion. Such a motion must
9 articulate that the order either: "(A) Presents an issue of first impression;
10 (B) Alters, modifies, or significantly clarifies a rule of law previously announced
11 by either the Supreme Court or the Court of Appeals; or, (C) Involves an issue of
12 public importance that has application beyond the parties." See NRAP 36(f) and
13 NRAP 36(c).
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17 The undersigned has discussed the Order and the analyses contained therein
18 with the honorable Probate Commissioner for the Eighth Judicial District Court.
19 After this discussion, the undersigned has determined to seek publication of the
20 Order because it involves an issue of public importance that has application
21 beyond the parties.
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24 This Court's ruling addresses the rights of a creditor of the settlor of a trust
25 as it regards claims against the Trust. The ruling also addresses the procedure for
26 making a valid creditor's claim against a Trust for debts owed by the settlor to the
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1 creditor. This Order also addresses the discretion has been authorized in favor of a
2 fiduciary to make payment for a creditor's claims, which promotes further reliance
3 and assurance upon the statutes as codified currently in the NRS. These two
4 issues, in particular, are common issues that creditors, Trustees, beneficiaries, and
5 their respective attorneys frequently face during the administration of Trusts.
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8 The Order addresses a third and final issue concerning the deference that
9 this Court will afford Nevada settlors in expressing their intent which may or may
10 not conflict with the NRS.
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12 Although Nevada is one of the preeminent statutory jurisdictions in the
13 nation for trusts, it does not yet have a fully developed body of law encompassing
14 Titles 12 and 13 of the NRS. Based on the undersigned's research on the first two
15 issues, it appears that there are no reported cases in Nevada which provide a
16 comparable discussion regarding the rights of a creditor of the settlor of a trust and
17 the procedure for submitting creditor's claims in context of a trust administration.
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21 The undersigned has been unable to find any caselaw in Nevada that
22 addresses this Court's analysis and determination when the intent of the settlor is
23 counter to the NRS in a matter of non-public policy. This Court's analysis giving
24 deference to the settlor's intent when not specifically prohibited by statute follows
25 the precedent set forth in sister jurisdictions, but until this Order, had not been
26 enunciated in Nevada. See *NRS § 163.023* (A trustee has the powers provided in
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1 the trust instrument,..., as necessary or appropriate to accomplish a purpose of the
2 trust, but the court may not grant a power expressly prohibited by the trust
3 instrument); See also *In re Kragness*, 58 B.R. 939, 942 (Bankr. D. Or. 1986)
4 (“The intent of the testator must be carried out unless the objective is illegal or
5 impossible. Courts generally have no power to frustrate the testator’s intent and
6 substitute a different scheme.”); See also *Campbell v. Kawanānakoā*, 34 Haw.
7 333, 341 (1973) (“It has been so often judicially declared that the will of the
8 testator is the law of the case that it has become a legal maxim.”). This Court’s
9 Order, if published, would provide valuable case law to address issues which
10 impact a significant number of Nevada settlors and their respective trusts and will
11 likely provide additional insights to legal practitioners across the country that seek
12 to utilize Nevada as a preeminent jurisdiction for trust formation.
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DATED this 14th day of October 2020.

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