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Electronically Filed
Jun 19 2018 04:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUELINE UTKIN, Successor Trustee to the
Christian Family Trust, Dated October 11, 2016

Petitioner

And

SUSAN CHRISTIAN-PAYNE, ROSEMARY
KEACH, RAYMOND CHRISTIAN, JR,
MONTE REASON, TOMMY L. CHRISTIAN,
CHRISTOPHER A. CHRISTIAN

Real Parties in Interest

v.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK AND
THE HONORABLE VINCENT OCHOA,

Respondents

Supreme Court No. 76053

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

**EMERGENCY MOTION
UNDER NRAP27(e) TO
STAY PROCEEDINGS
IN THE DISTRICT COURT
PENDING DECISION ON
CONCURRENTLY FILED
PETITION FOR WRIT OF
PROHIBITION OR
MANDAMUS RE JUNE 1ST 2018
INDEPENDENT TRUSTEE ORDER**

**RELIEF NEEDED ON OR
BEFORE JUNE 27, 2018**

Comes Now, Petitioner Jacqueline Utkin, Successor Trustee to the Christian Family Trust
dated October 11, 2016 ("Petitioner"), by and through counsel, Jeremy Kirschner & Associates,
PLLC., and hereby files this Emergency Motion Under NRAP 27(E) To Stay Proceedings In The
District Court Pending Decision On Concurrently Filed Petition For Writ Of Prohibition Or

1 Mandamus Re June 1st 2018 Independent Trustee Order with Request for Relief before June 27,
2 2018. ("Motion").

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

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Petitioner seeks this emergency relief after having unsuccessfully first attempted to secure a
9 stay in the lower court. The lower court issued an order denying the request for stay which fails to
10 address any of the factors laid out in the petition. ("Order Denying Stay"). **Exhibit 1 – Order**
11 **Denying Stay.** As such, Petitioner respectfully moves this Court for a stay of the lower court
12 proceeding pending resolution of her Petition for Writ of Mandamus or, in the Alternative, Writ Of
13 Prohibition ("Petition for Writ")

14 **II. BRIEF STATEMENT OF FACTS AND PROCEDURAL HISTORY.**

15 1. On October 31, 2018 lower court issued an order confirming jurisdiction over the
16 Trust and "freezing" the assets of the Trust as requested by Susan Christian-Payne, Rosemary
17 Keach, and Raymond Christian Jr. ("Former Trustees"), but did not require the Former Trustees to
18 post a bond as a condition of the injunction ("Freeze Order"). **Exhibit 2 – Freeze Order.**

19 2. The Freeze Order is still in effect over assets of the Christian Family Trust, dated
20 October 11, 2016 ("Trust").

21 3. On June 1, 2018, the lower court entered an order pertaining to Petitioner and upon
22 which review has been sought ("June 1st Order"). **Exhibit 3 - June 1st Order.**

23 4. The June 1st Order set a hearing for removal of Petitioner as trustee and appointment
24 of an independent trustee for June 28, 2018 ("June 28th Hearing"). **Exhibit 4 – Docket of Lower**
25 **Court Action.**

26 5. On June 12, 2018, Petitioner filed her Petition for Writ. **Exhibit 5 – Petition for**
27 **Writ.**
28

6. On June 18, 2018 at 12:30PM, Petitioner filed and sought to serve an emergency petition for stay with the lower court ("Petition for Emergency Stay"). **Exhibit 6 – File Submitted Email, Envelope No. 2715964, and Petition for Emergency Stay.**¹

7. The Petition for Emergency Stay has not been docketed, nor was a hearing set for it as of the time of this Motion. *See*, Exhibit 4.

8. On June 19, 2018, just prior to filing this Motion, Petitioner reviewed the lower court docket and discovered that the Order Denying Stay had been filed, but not noticed to the parties.

III. ARGUMENT

A party must ordinarily move first in the District Court for a stay of judgment, or proceedings in district court pending resolution of a petition for writ. *See*, NRAP 8(a)(1)(A). However, a motion for NRAP 8(a)(1)(A) relief made by made directly to this Court if the motion shows (i) "that moving first in the district court would be impracticable;" or "state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action." *See*, NRAP 8(2)(A)(i)-(ii). "The court may condition relief on a party's filing a bond or other appropriate security in the district court." *See*, NRAP 8(2)(E).

A. THE LOWER COURT HAS DENIED THE REQUEST RELIEF WHICH ALLOWS PETITION TO SEEK RELIEF IN THIS COURT.

Petitioner attempted to move for a stay first in the lower court, but the request has been denied. *See*, Exhibit 1. The Order Denying Stay has limited findings, mostly pertaining to the June 1st Order, stating:

THE COURT FINDS that The Court Memorandum of June 1, 2018 only orders that there would be a court hearing on June 28, 2018 where the parties would meet with the Court to discuss the replacement of Jacqueline Utkin as acting trustee.

THE COURT FURTHER FINDS that the Order of June 1, 2018 further requested the parties be prepared to discuss setting an evidentiary hearing

¹ On June 13, 2018, Petitioner had had caused to be delivered to the lower court an ex parte request for an order shorting time to hear a petition or stay pending resolution of the Petition for Writ, but the same was never returned by the court, filed by Petition or otherwise docketed. The substance of that OST request was the same as the later Petition for Emergency Stay.

on the issue of replacement of Ms. Utkin if one or both parties requested a hearing.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Petition for say is DEINED.

Id. (emphasis in original).

The motion having been made before the district court² and denied, Petition now moves this Court for an emergency stay pursuant to NRAP 8.

B. PETITIONER’S REQUEST FOR AN EMERGENCY STAY SHOULD BE GRANTED

In deciding whether to issue a stay pending resolution of writ, this Court generally considers the following factors:

- (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;
- (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

See, Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004);

Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). This Court has not indicated that any one factor carries more weight than others, but “recognizes that if one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

Herein, all four factors weigh heavily in Petitioner’s favor as set forth below.

1. The Purpose of the Request for Writ is defeated if a stay is denied.

The purpose of the Petition for Writ was to arrest the actions of the lower court which were a violation of the procedural due process rights of Petitioner and which would be further aggravated at the June 28th Hearing. As stated in the Petition for Writ, the lower court arrived at a predetermine

² The Emergency Petition for Stay is still undocketed as of the time of this Motion.

conclusion after having engaged in independent fact finding and then implicitly threatened Petitioner should she object. Any determinations, conclusions, or orders from the lower court reached at the June 28th Hearing would be tainted by the specter of an tribunal lacking impartiality along with the unshakable question that the June 1st Order acted as prior restraint on meritorious objections to its actions. The lower court's predetermination that Petitioner will be removed is an affront to due process and a subsequent appeal will do nothing to resolve the significant loss of rights in the interim.

2. Petitioner will suffer irreparable harm of a near certain violation of her constitutional rights if the stay is denied.

For injunctive relief, irreparable harm is harm for which compensatory damages would be inadequate. Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029, 1029–30 (1987). There should also be a “reasonable probability that real injury will occur if the injunction does not issue.” Berryman v. Int'l Bhd. Elec. Workers, 82 Nev. 277, 280, 416 P.2d 387, 389 (1966). “[L]itigation expenses... are neither irreparable nor serious.” Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 116 Nev. 650, 658, 6 P.3d 982, 986–87 (2000)

Petitioner has already suffered real injury and stands to suffer further irreparable harm if a stay is not granted. First, the lower court engaged in independent fact finding against her outside the court room in order to reach its conclusion about Mr. Fred Waid, Esq..³ See, Exhibit 3, Pg. 7, 13-16. Moreover, the lower court's predetermination regarding objections constitutes a prior restraint. *Id.* at 6, Ln. 9-12. The effect of the June 1st Order is a fundamental loss of notice and opportunity to be heard in a fact-finding matter and is an actual injury in the form of a violation of Petitioners constitutional rights. The June 1st Order makes clear that proceedings opposing removal are a hollow formality. Allowing the June 28th Hearing to proceed would be an irreparable injury and justifies a stay.

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³ No disrespect is intended towards Mr. Waid by mention of his name herein. Petitioner only intends to point out that he was not previously involved in the action, nor is mention of his name anywhere in the record.

3. The Respondents/Real Parties in interest will not suffer irreparable harm or serious injury of the stay is granted.

Although the lower court has declared itself interested in the administration of the trust, (Exhibit 1, Pg. 6, Ln. 1-2) it has no financial interest nor is there an easily discernible injury which would be caused by maintain the status quo until this court provides a determination on the Petition for Writ.

The real parties in interest face injury if the stay is denied, not if it is granted. If the lower court, acting *sua sponte*, appoints a third party to be independent trustee, the result will be a dramatic increase in cost to the Trust as the result of “starting the process over again.” Moreover, the third party will face the exact same problems facing Petitioner: getting an accurate accounting, paying creditor claims, defending the trust (if necessary) and distributing property. The beneficiaries and Petitioner are parties actually interested in the dispute and are the only ones to be hurt by the lack of a stay.

The lack of a discernible injury to the respondent or real parties in interest as the result of a stay weighs heavily in favor of Petitioner being granted a stay.

4. Petitioner is likely to prevail on the merits in the Petition for Writ

“Although, when moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits, the movant must ‘present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.’” Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (quoting, Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir.1981))

Petitioner’s Petition for Writ has raised significant legal questions as to whether lower court has properly afford the parties their procedural due process rights. The language of the June 1st Order, which predisposes with objections in advance of arguments or facts, suggests a very serious matter in need of review prior to the lower court making any further actions in the underlying matter.

Finally, the lower court’s findings in the Order Denying Stay are of concern. Rather than reach the merits of Petitioner’s request for stay, the order appears to try and reframe are rehabilitate

the June 1st Order which is up on petition for writ. The Order Denying Stay will therefore need to be supplement to the original appendix, could serve to cloud this Court's record on review.

As such, this factor weighs in Petitioner's favor.

**C. THE STAY SHOULD BE GRANTED WITHOUT BOND, OR ALTERNATIVELY
ORDER THE LOWER COURT TO RELEASE THE TRUST FUNDS TO PETITION
TO POST BOND**

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay. *See, Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005); *See also, Gottwals v. Rencher*, 60 Nev. 35, 46, 92 P.2d 1000, 1004 (1939) (indicating that on principles of equity and justice a "bond is necessary to protect an appellee against damages he may sustain by reason of an unsuccessful appeal"). Accordingly, posting security protects a party from damages incurred as a result of a wrongful injunction, but it is not meant to protect "from damages existing before the injunction was issued." *Am. Bonding Co. v. Roggen Enters.*, 109 Nev. 588, 591, 854 P.2d 868, 870 (1993).

In *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005), as modified (Jan. 25, 2006) this Court adopted the 7th circuit's framework for determine whether a bond may be waived and/or alternate security substituted, specifically laying out five factors:

- (1) the complexity of the collection process;
- (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
- (3) the degree of confidence that the district court has in the availability of funds to pay the judgment;
- (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and
- (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id. (citing, *Dillon v. City of Chicago* 866 F.2d 902 (7th Cir.1988)).

1 As an initial consideration, Petitioner concedes that she likely cannot post a bond because the
2 lower court issued a bondless injunction over Trust assets. *See*, Exhibit 2. The Freeze Order is almost
3 eight months old and remains in place despite Petitioner having been confirmed as trustee. Petitioner
4 has been acting in good faith to investigate Trust assets and do basic Trust administration with the
5 expectation of reimbursement. However, a bond issued as part of this stay would likely exceed her
6 personal assets unless she was allowed to use Trust assets for any bond. In effect, the lower court has
7 locked Petitioner out of the assets needed to post a bond pending resolution of the Petition for Writ.

8 Moving on, the *Nelson* factors weigh in favor of this Court not requiring a bond as a
9 condition of the stay. The Petition for Writ does not involve collection of a monetary judgment,
10 rather it is about a preservation of rights. The Trust and its assets are before the lower court after
11 the lower court having taken *in rem* jurisdiction, thus collection would be easy. An accounting for
12 costs would be procedurally simple given that the assets are available for collection. At a bare
13 minimum, the Trust has real property located at 2848 Bluff Point Drive, Las Vegas, Nevada 89134,
14 and which has an approximate value of three hundred eighteen thousand dollars (\$318,000.00).

15 **Exhibit 7 – Estimate of Value for Bluff Point Property.** The value of this asset alone should
16 greatly exceed the cost of the Petition for Writ should it be denied, therefore there is little risk of
17 insolvency. As such the Court should grant the stay without bond.

18 As a final point, if this Court should require a bond as a condition of the stay, then Petitioner
19 would request that the Court order the Freeze Order to be modified to allow Petitioner to post the
20 bond from assets of the Trust. NRS 18.090 provides that,

21 In an action prosecuted or defended by an executor, administrator, trustee
22 of express trust, or a person expressly authorized by statute, costs may be
23 recovered as in an action by and against a person prosecuting and defending
24 in his or her own right; but such costs shall, by the judgment, be made
25 chargeable only upon the estate, fund, or party represented...

26 Petitioner should not be forced to dip into her personal funds to defend the Trust when statute and
27 Trust itself allows for Trust funds to be used.
28

III. CONCLUSION

Petitioner hereby requests an emergency stay of the lower court's enforcement of the June 1st Order.

DATED this 14TH day of JUNE, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/Jerimy L. Kirschner, Esq.

JERIMY L. KIRSCHNER, ESQ.

Nevada Bar No. 12012

3333 E. Serene Ave., Suite 150

Henderson, NV 89074

Telephone:(702) 563-4444

*Attorney for Petitioner Jacqueline Utkin,
Successor Trustee*

**VERIFICATION AND NRAP 27(e)
CERTIFICATE OF NEED FOR EMERGENCY RELIEF**

1. I, Jerimy L. Kirschner, Esq., declare as follows:
2. I am counsel for the Petitioner Jacqueline Utkin, trustee for the Christian Family Trust, Dated October 11, 2016.
3. I verify I have read the foregoing EMERGENCY MOTION UNDER NRAP27(e) TO STAY PROCEEDINGS IN THE DISTRICT COURT PENDING DECISION ON CONCURRENTLY FILED PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE JUNE 1ST 2018 INDEPENDENT TRUSTEE ORDER - RELIEF NEEDED ON OR BEFORE JUNE 27, 2018; that the same is true to my own knowledge, except for those matter therein stated on information and belief, and as to those matters, I believe them to be true.
4. I certify emergency relief is needed because the district court has set a June 28, 2018 hearing on a contested matter, and the object of the Petition will be defeated if that hearing goes forward before the Honorable Vincent Ochoa.
5. The names, telephone numbers, and office addresses of the attorneys for the other parties is a follows: The contact information (including telephone number) for the other attorneys in this case is:

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.
(702) 383-9010

RUSHFORTH LEE & KIEFER LLP
1707 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
Attorney for Monte Reason, Real Party in Interest
(702) 255-4552
6. The attorneys in the preceding paragraph were given written notice of this motion on June 19, 2018, and will be hand served or emailed with a copy of this motion as soon as it is filed.

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7. I declare the foregoing under penalty of perjury under the laws of the State of Nevada.

/s/Jerimy L. Kirschner, Esq.
JERIMY L. KIRSCHNER, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing EMERGENCY MOTION UNDER NRAP27(e) TO STAY PROCEEDINGS IN THE DISTRICT COURT PENDING DECISION ON CONCURRENTLY FILED PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE JUNE 1ST 2018 INDEPENDENT TRUSTEE ORDER RELIEF NEEDED ON OR BEFORE JUNE 27, 2018 to be served by electronic means to those on record with the court as having consented to such, or by US Mail on this 19TH day of June:

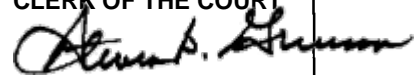
The Honorable Judge Vincent Ochoa
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

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

/s/ Jeremy L. Kirschner, Esq.
An Employee of Jeremy Kirschner & Associates, PLLC

EXHIBIT 1



**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

IN THE MATTER OF) Case No.: P-17-092512-T
)
THE CHRISTIAN FAMILY TRUST) Dept No.: S
)
)
)
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:

The request for Stay Pending Writ of Mandamus/Writ of Prohibition is denied.

THE COURT FINDS that The Court Memorandum of June 1, 2018 only orders that there would be a court hearing on June 28, 2018 where the parties would meet with the Court to discuss the replacement of Jacqueline Utkin as acting trustee.

THE COURT FURTHER FINDS that the Order of June 1, 2018, further requested the parties be prepared to discuss setting an evidentiary hearing on the issue of replacement of Ms. Utkin if one or both parties requested a hearing.

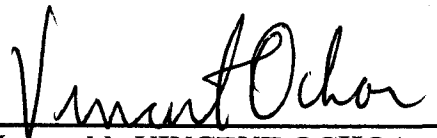
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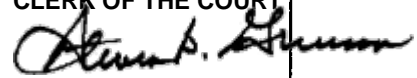
1 **WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**
2 that the Petition for Stay is DENIED.

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4 **IT IS SO ORDERED this 15th day of June, 2018.**

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6 _____
7 **Honorable VINCENT OCHOA**
8 **District Court Judge, Department S**

9 VINCENT OCHOA
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EXHIBIT 2



**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

SUSAN CHRISTIAN-PAYNE,
ROSEMARY KEACH, AND
RAYMOND CHRISTIAN
PETITIONERS,

Case No.: P-17-092512-T
Dept No.: S

v.

NANCY I. CHRISTIAN,
RESPONDENT

DECISION

This matter came before the Court for a Status Check on October 19, 2017. After reviewing the oral arguments and pleadings, reviewing exhibits and documents on file herein, the Court makes the following findings of fact and orders:

I. Statement of the Case

This is a dispute regarding a family trust following the removal of Petitioners as co-trustees and Respondent Nancy Christian's appointment of Monte Reason as the successor trustee.

II. Issues

1. Standing of Petitioners
2. Jurisdiction of the Court over the trust

III. Finding of Facts

1. One year ago, Raymond T. Christian (hereinafter "Raymond") and Nancy I. Christian (hereinafter "Nancy") executed The Christian Family Trust (hereinafter "the trust") on October 11, 2016.
2. Susan Christian-Payne, Rosemary Keach, and Raymond Christian (hereinafter "Petitioners") were the original individuals named co-trustees and accepted the Trusteeship of the Trust at the time of its initial execution in October 2016. The names of the four (4) now living children from the Grantors' marriage are Rosemary Christian-Keach, Raymond T. Christian, Jr., Tommy L. Christian, and Susan Christian-Payne.
3. In January 2017, the residence at 1060 Dancing Vines was listed for sale by Petitioners. On or about January 18, 2017, Petitioners accepted a contract on the Dancing Vines property. The property was sold on February 13, 2017.
4. Grantor Raymond Christian died on January 31, 2017. Grantor Nancy Christian is currently 77 years old.
5. About a month after Raymond died and after the property closed, Nancy Christian sought to be paid an additional \$5,000 per month from the trust.
6. The Trust provides at Article 4.3(a) that: "the Trustee, in Trustees' sole discretion may pay to the Survivor all of the net Income of the Trust estate, as the Trustee may determine necessary, In the Trustee's sole discretion for the health, education and maintenance of the survivor . . ."
7. Nancy was informed as to the trust terms and net income payments by correspondence dated June 3, 2017. Within 10 days thereafter, Nancy, executed documents to remove Petitioners as co-trustees and appoint Monte Reason.

- 1 8. The Grantors resided in Clark County, Nevada; the Trust is being administered in
2 Clark County, Nevada; the Trust is believed to own property in Clark County,
3 Nevada; and the Trust is governed by the laws of the State of Nevada.
4
5 9. Petitioners claim that upon Raymond's death, the trust was to be divided into a
6 survivor's trust and a decedent's trust.
7
8 10. As written, the trust provides Nancy with the authority to change the trustee or
9 successor trustee after Raymond's death. *See* Trust Article 9.3.
10
11 11. Petitioners allege that the trust was not intended to be revocable as to the trustees and
12 that Article 9.3 contained at least one scrivener's or other similar type of error.
13
14 12. Monte Reason, the successor trustee, is Nancy's child from a previous marriage.
15 Monte Reason has past child support arrears and criminal issues including drug
16 issues. His share was to be ten percent of the trust and was to be held in a trust to be
17 distributed in the sole discretion of the trustee Susan G. Christian-Payne. *See* Trust
18 Sec. 6.1 (f) and (g). Petitioners were to each receive twenty percent of the proceeds
19 from the sale of the home outright and free of trust. *See* Trust Sec. 6.1 In addition,
20 Petitioners were to receive each one third of any remaining property. *See* Sec.6.2
21
22 13. The Trust provides in Section 6.1 "Upon the death of **both** Trustors, the Trustee shall
23 first sell the Trustors' primary residence located at 1060 Dancing Vines, Las Vegas,
24 Nevada, and the proceeds from the sale of such home shall be distributed..."
25 *Emphasis added.* However, Sec 6.1 (g) provides "Moreover, in the event the home
26 referred to in this Section 6.1 was sold prior to the Survivor's death, then an amount
27 equal to the net proceeds from such earlier sale shall be set aside to be held and
28 distributed pursuant to the above terms of this Section 6.1."

1 **IV. Law and Analysis**

2 Pursuant to the trust, the Trustees had the “sole discretion” to use the net income
3 to support the surviving trustor. Furthermore, if in the “opinion” of the Trustees the
4 income from the trust was not sufficient to support the survivor, the Trustees could use
5 the trust principal to support the needs of the survivor. *See* Trust Article 4.3.
6

7 After payments of decedent expenses following death of one of the trustors, any
8 remaining property in the trust was to be transferred to the Survivor Trust. *See* Trust
9 Article 4.3. Nancy claims that the trust provided that if she asked for more funds and the
10 Trustees, in their sole discretion, did not agree, she had the authority to replace the
11 Trustees. Nancy and the original co-trustees seek to litigate whether Nancy can remove
12 and replace Petitioners pursuant to the interpretation of the language in the Trust. Sec.9.3.
13 In addition, since the real property at 1060 Dancing Vines has been sold there is the
14 question of using those proceeds for Nancy or setting the proceeds “aside to be held and
15 distributed pursuant to the terms of” the trust.
16

17 In addition, there is the question of exploitation, fraud, duress, or undue influence
18 by the newly appointed trustee Monte Reason over his mother, Nancy. Petitioners are the
19 original trustees and the children of the grantors. *See* Trust Sec. 1.2. Moreover they were
20 to receive sixty percent of “the net proceeds from . . . sale” of the home at 1060 Dancing
21 Vines. *See* Trust Sec. 6.1 (g).
22

23 Nancy cites Linthicum v. Rudi, 122 Nev. 1452, 148 P.3d 746 (2006) to support
24 her assertion that the Court lacks jurisdiction over this case. However, there are several
25 distinctions between Linthicum and the present case. First, in Linthicum, the petitioners
26 were only beneficiaries of the trust. Here, Petitioners were formerly trustees of the trust.
27
28

1 Second, the petitioners in Linthicum sought relief because they were removed as
2 beneficiaries of the trust. Here, Petitioners were removed as trustees of the trust; their
3 status as beneficiaries of the trust has not been modified or questioned. Furthermore,
4 Petitioners allege that they were removed as trustees because of undue influence and
5 duress.
6

7 Significantly, Linthicum deals exclusively with a revocable inter vivos trust with
8 a sole grantor. Here, the Christian Family Trust was created as a revocable inter vivos
9 trust by co-grantors. Upon the death of Raymond, the trust became irrevocable. *See* Trust
10 Sec. 9.2. Furthermore, a discretionary survivor's trust was created. *See* Trust Sec. 4.3.
11 The language of Linthicum is clear that it refers only to revocable inter-vivos trusts:

12 "However, neither of these statutes directly addresses revocable inter vivos trusts,
13 such as the trust in this case. [...] Nevada statutes do not contemplate beneficiaries
14 to a revocable inter vivos trust challenging the trust until the settlor's death."
15

16 Nevada law provides the court discretion to accept jurisdiction and to decide who
17 is an interested party. "Interested person" means a person whose right or interest under an
18 estate or trust may be materially affected by a decision of a fiduciary or a decision of the
19 court. The fiduciary or court shall determine who is an interested person according to the
20 particular purposes of, and matter involved in, a proceeding. NRS 132.185 .
21

22 Here, Petitioners were co-trustees of the trust and had fiduciary responsibility to
23 protect the interests of Nancy and the assets of the Christian family trust. They had sole
24 discretionary power of the assets of the trust and allege that they were removed as
25 trustees for exercising this discretion. Petitioners further allege that appointment of
26 Monte Reason as trustee will result in abuse or misuse of trust assets.
27
28

1 Nevada law provides that trustees may petition the court regarding any aspect of
2 the trust including appointing or removing a trustee. NRS 153.031(k). Moreover, Nevada
3 law allows the Court to take jurisdiction of cases in matters involving fraud or duress.

4 “The court has exclusive jurisdiction of proceedings initiated by the petition of an
5 interested person concerning the internal affairs of a non-testamentary trust, including a
6 revocable living trust while the settlor is still living if the court determines that the settlor
7 cannot adequately protect his or her own interests or if the interested person shows that
8 the settlor is incompetent or susceptible to undue influence.” NRS 164.015(1)
9

10 The Court finds that Petitioners, as the original co-trustees and the children of the
11 Grantors, as well as beneficiaries of the trust, are interested person as defined in NRS
12 132.185. Petitioners have standing to question whether Nancy properly removed them
13 from the role of trustees. NRS 164.015, (1) (3) and (4).
14

15 This Court has jurisdiction over the trust. NRS 164.010 (2). In fact, both
16 sides have questions regarding the holding and setting aside of net proceeds of the sale of
17 real property, breach of fiduciary duty, and interpretation of the trust instrument. The
18 Court has jurisdiction to review the trust to resolve these issues. NRS 164.033.
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1 **V. CONCLUSION**

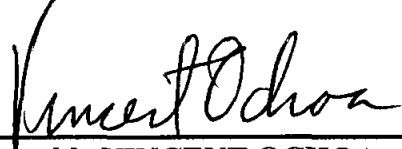
2 The Petitioners are "interested persons" as defined in NRS 132.185 and have standing to
3 pursue their petition. The Court has jurisdiction to review the trust to help resolve their issues.
4 NRS 164.033. It is the Court's intention to refer this matter for a conference with a Senior
5 Judge.
6

7 **WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**
8 **THAT** Nancy shall file an Answer/Responding Pleading pursuant to statute.

9 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED THAT** all
10 trust assets shall be frozen until further order of the Court.

11 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED THAT** the
12 assets withdrawn from the trust by Petitioners shall be placed in to an account and frozen.
13 Petitioners shall provide proof of the location of these assets to Nancy and the Court within 10
14 days.
15

16 **IT IS SO ORDERED this 31 day of October, 2017**

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

22 **VINCENT OCHOA**
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EXHIBIT 3

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V.

ORDER

1 sums to Nancy. On June 3, 2017, the Trustees informed Nancy they would not pay the
2 additional sum. NRS 163.419 (2) and N.R.S. 166.110.

3 Thereafter, on or about June 13, 2017, grantor Nancy Christian removed the
4 Petitioners as Trustees and appointed her son, Monte Reason, as the sole Trustee of the
5 Trust. Monte Reason is a limited beneficiary under the Trust and his interest was to be
6 placed in a Trust.
7

8 The Trust provides that Monte Reason was to receive, in Trust, ten percent of the
9 net proceeds from the sale of property known as 1060 Dancing Vine Avenue, Las Vegas
10 Nevada. The petitioners and former Trustees SUSAN CHRISTIAN-PAYNE,
11 ROSEMARY CHRISTIAN-KEACH, AND RAYMOND T. CHRISTIAN JR. were to
12 receive eighty percent (80%) of the net proceeds from the sale of said property.
13

14 Thereafter, the petitioners SUSAN CHRISTIAN-PAYNE, ROSEMARY
15 CHRISTIAN-KEACH, AND RAYMOND T. CHRISTIAN JR. (original named Trustees)
16 were to receive 100% of the remainder – each one third (1/3) of the remaining estate
17 outright.

18 Petitioners requested this court to resolve the issue as to whether the remaining
19 grantor Nancy Christian had the authority in the Trust to replace the petitioners with her
20 son, Monte Reason, (NRS 153.031, NRS 164.015) and whether there was exploitation
21 and/or undue influence by Monte Reason on his mother/grantor Nancy Christian. See
22 Petition filed July 31, 2017, page 6-7, Motion to Dismiss filed August 17, 2017, and
23 Response to Petition filed October 13, 2017. Both parties have made claims of undue
24 influence against the other party. The first legal scrimmage was whether Petitioners had
25 the standing/right to bring their action and the jurisdiction of the court. The Court found
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1 standing for Petitioners to raise the issues as presented in their petition and the Court
2 accepted jurisdiction of the Trust to “help resolve their issues.” Court’s decision filed
3 Oct. 31, 2017.

4 The parties have moved on to litigate many issues except the foremost central
5 issue presented to the court related to Nancy’s authority to remove the original Trustees
6 and replacement of the Trustees. Now the parties have moved on to additional litigation
7 related to Monte Reason appointing another Trustee. Since the main issue of determining
8 the proper Trustee has not been resolved, most actions by the parties relate to the
9 administration of the Trust and Trust assets because the initiation of this litigation is built
10 upon a foundation of quicksand and temporary orders. Monte Reason has not been
11 confirmed as the Trustee by this Court.

12 Both settlors are now deceased. Grantor Raymond Christian died on January 31,
13 2017. Grantor Nancy Christian died on December 14, 2017. However, the litigation
14 created by the beneficiaries over the Trust lives on. This never ending litigation was not
15 the intention of the settlors in creating this Trust. Attorney fees exceeding fifty thousand
16 dollars have been generated already, part of the case is on appeal and the primary issue
17 before the court has not been set for trial as discovery continues forward. The estate is a
18 minor estate that cannot continue to bleed this litigation cost. Said attorney fees may well
19 exceed over fifty per cent (50%) of the Trust assets.

20 **II. ANALYSIS**

21 Petitioners requested in their motion filed April 19, 2018 that the Trust assets be
22 distributed and the Trust terminated. NRS 153.031. Everyone is in agreement that the
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1 Trust after paying any valid creditor claims, the Trust should be distributed and closed.

2 There may be claims by the estate of Nancy Christian and Monte Reason.

3 The Trust needs to be distributed before its entire assets end up being used only
4 for paying attorneys. Both settlors are deceased. The Trust is clear as to the grantor's
5 intent in distribution of the Trust. It is also clear that all of the beneficiaries have a real
6 and vested interest in not having Trust assets further utilized for unlimited expensive
7 litigation which does not further the intent of the Trust.

9 Jacqueline Utkin was selected as successor Trustee by successor Trustee Monte
10 Brian Reason, while Mr. Reason's own claim to be successor Trustee is still in litigation.
11 On Feb 23, 2018, Petitioners filed an objection to the appointment of Ms. Utkin as
12 Trustee due to her serious conflicts with the main beneficiaries of the Trust. Under NRS
13 153.031(1) (f), a trust's beneficiary may petition the district court to review "the acts of
14 the trustee, including the exercise of discretionary powers[.]"

16 More importantly, Ms. Utkin (an out- of- State party who resides in Hawaii) has
17 expressed a serious dislike for the major beneficiaries of the Trust and a positive bias
18 towards Monte Reason, a limited beneficiary. Declarations of Jacqueline Utkin, filed
19 Nov 13, 2017 page 4-5 as Exhibit A to Objection and Counter Petition, filed Nov 13,
20 2017. The fiduciary obligations of a trustee are great. A trustee should do everything in
21 his power to avoid a conflict of interest. **Bank of Nevada v. Speirs**, 95 Nev. 870, 603
22 P.2d 1074 (1979). See **Riley v. Rockwell**, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987)

24 The declaration speaks clearly for itself. The declaration has been described as
25 Jacqueline Utkin expressing that the Petitioners directly contributed to the death of
26 grantor Raymond Christian. (See page three, lines 1-2 of Objection and Counter Petition
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1 filed Nov 13, 2017 and page 3-4 of Declaration of Jacqueline Utkin.) Jacqueline Utkin
2 accuses the Petitioners/major beneficiaries of misuse of the Trust assets and abusive
3 actions towards the settlors. (See Utlin's Declaration page three, lines 1-20 , Page 4,
4 lines 11-28 and page 5:1-16; and Objection and Counter Petition filed Nov 13, 2017, page
5 3-5S.) There are irreconcilable conflicts between Ms. Utkin and the main beneficiaries of
6 the Trust and her partiality towards one minor interest beneficiary of the Trust may
7 disqualify Ms. Utkin from acting as Trustee. See Utlin's Declaration page 6-7. **Matter of**
8 **W.N. Connell & Marjorie T. Connell Living Tr.**, 393 P.3d 1090, 1094 (Nev. 2017),
9 *see Hearst v. Ganzi*, 145 Cal.App.4th 1195, 52 Cal.Rptr.3d 473, 481 (2006) (recognizing
10 a trustee's duty to treat all beneficiaries equally); *see also In re Duke*, 305 N.J.Super. 408,
11 702 A.2d 1008, 1023-24 (1995) (explaining that a trustee may not advocate for either
12 side in a dispute between beneficiaries.)
13

14
15 In addition, Ms. Utkin's declaration makes it clear that she would not be the best
16 choice to defend the Trust from potential claims from Nancy Christian's estate or from
17 Monte Reason. Ms. Utkin's irreconcilable conflicts between her personal beliefs and the
18 Trust's major beneficiaries raise serious question as to her choice as Trustee to distribute
19 the assets and defending the potential lawsuits as Trustee. *Getty v. Getty*, 252 Cal. Rptr.
20 342, 345 (Ct. App. 1988). The purpose of removing a Trustee is not to inflict a penalty
21 for past action, but to preserve the Trust assets. (*Moore v. Bowes* (1937) 8 Cal.2d 162,
22 165, 64 P.2d 423.) "The question in each case is whether the circumstances are such that
23 the continuance of the Trustee in office would be detrimental to the Trust," (2 Scott on
24 Trusts (4th ed. 1987) The Trustee, § 107, p. 104.) A Trustee does not serve for his or her
25 own interest, and instead must act to implement the Trustor's intent and to protect the
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1 interests of others. The court has a substantial interest in ensuring proper administration
2 of the Trust and that assets are preserved for the beneficiaries as intended by the Trustor.

3 On April 19, 2018, Petitioner made a request that the assets of the Trust be
4 distributed as there is no adequate protection from the expenses of this ongoing litigation
5 for the beneficiaries of the Trust. See NRS 153.031. To reduce litigation cost and follow
6 the intent of the settlors, the Court's suggestion is the appointment of Fredrick Waid Esq.
7 as Trustee to distribute the assets of the Trust as spelled out in the Trust and bring this
8 litigation to a close. NRS 153.031(1) (k) and NRS 164.010 (5) (d). There is no good
9 purpose or rationale to object to appointing a neutral Trustee in light of the litigation
10 history in this case.
11

12 The Trust is clear as to distribution and it is time to distribute the assets of the
13 Trust as expressed by the grantors. The other option is to let the flames of litigation
14 consume the remaining assets by authorizing the addition of further fuel to this blaze.
15 The primary goal in litigation regarding a trust is to effectuate the apparent intent of the
16 settlor(s). *See, e.g., Klabacka v. Nelson*, 133 Nev., Adv. Op. 24, 394 P.3d 940, 947
17 (2017) (“[C]ourts look first and foremost to the language in the trust and interpret that
18 language to effectuate the intent of the settlers.”) (internal quotation marks and citation
19 omitted).
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21

22 Cases and statutes consistently state that a Trustee may be removed where there is
23 a conflict of interest between the Trustee's interests and those of the Trust. (See *Estate of*
24 *Keyston* (1951) 102 Cal.App.2d 223, 227–228, 227 P.2d 17 and *Getty v. Getty*, 252 Cal.
25 Rptr. 342, 346 (Ct. App. 1988) see also *In re Malone's Estate*, 42 Colo.App. 353, 597
26 P.2d 1049 (1979) (hostility and friction between the Trustee and the beneficiaries are
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1 proper grounds for removal of Trustee even if misconduct is not proved); Restatement
2 (Third) of Trusts § 37 cmt. f(1) (2003). In re Estate of Klarnner, 98 P.3d 892, 898 (Colo.
3 App. 2003), rev'd, 04SC214, 2005 WL 1322969 (Colo. 2005).

4 The appointment and removal of Trustees is a matter of the trial court's discretion.
5 Chicago Title & Trust Co. v. Chief Wash Co., 368 Ill. 146, 156, 13 N.E.2d 153, 157
6 (1938). Obviously, the appropriateness of the appointment or removal of a Trustee
7 depends on the particular facts and circumstances of each case. Id. In re Estate of
8 Mercier, 961 N.E.2d 958, 962 (Ill. App. Ct. 2011). Prior to his or her removal, a Trustee
9 must be given notice that the Trusteeship is in jeopardy and allowed an opportunity to be
10 heard. People v. Powell, 353 Ill. 582, 592–93, 187 N.E. 419, 423–24 (1933).

11 The Court will hold a hearing to determine if any of the parties object to the
12 appointment of Fredrick Waid, Esq. as Trustee. Fredrick Waid, Esq. having no conflict
13 of interest is in a better position to guide the Trust through distribution and potential
14 litigation. The court has given prior notice of this resolution to the parties.

15 The parties are again provided this reasonable notice that the court is considering
16 such an order. Courts have long had the equity power to remove a Trustee where
17 necessary to preserve the Trust or to preserve the original intentions of the Trustor.
18 (Stewart v. Towse (1988) 203 Cal.App.3d 425, 249 Cal.Rptr. 622, 623, citing Adams v.
19 Cook (1940) 15 Cal.2d 352, 358, 361, 101 P.2d 484.) In the case at bar the appointment
20 of Fredrick Waid, Esq. as Trustee is a modification to preserve the Trust assets. Getty v.
21 Getty, 252 Cal. Rptr. 342, 347 (Ct. App. 1988).

22 This court has broad equitable powers to supervise the administration of a Trust
23 and an estate. NRS 164.015. The court has the responsibility “to protect the estate and
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1 ensure its assets are properly protected for the beneficiaries.” (Estate of Ferber (1998) 66
2 Cal.App.4th 244, 253.) The court has the inherent equitable power to “take remedial
3 action” and to intervene to prevent harmful acts to the Trust and its beneficiaries.
4 (Schwartz v. Labow (2008) 164 Cal.App.4th 417, 427.) See also Rest.2d Trusts, § 107,
5 p. 235 [the court has reasonable discretion to remove a Trustee “if his continuing to act as
6 Trustee would be detrimental to the interests of the beneficiary”].)

8 A court motion hearing will be held to discuss this appointment of a Trustee to
9 distribute the assets of the Trust pursuant to Nevada law after notice to creditors. Parties
10 have a right to request a prompt evidentiary hearing at said court hearing. Litigants
11 should be aware that the Trust will not bear the initial cost of any further litigation and
12 the Trust might possibly not bear the ultimate fees of such litigation. NRS 153.031
13 (3)(b). See **Riley v. Rockwell**, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987);
14 Restatement (Third) of Trusts § 79 (2007). **Matter of W.N. Connell & Marjorie T.**
15 **Connell Living Tr.**, 393 P.3d 1090, 1094 (Nev. 2017).

17 **III. ORDER**

18 It is ordered that a court motion hearing will be held on **June 28**, 2018 at 3:00 pm
19 to discuss whether Ms. Utkin should be removed as Trustee to the Christian Family Trust
20 and the appointment of Fredrick Waid, Esq., an independent Trustee, for the
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1 distribution of the Trust.

2 Parties have a right to request a prompt evidentiary hearing at said court hearing.

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4 IT IS SO ORDERED this 1st day of June, 2018.

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7 Honorable VINCENT OCHOA
8 District Court Judge, Department S
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EXHIBIT 4

CASE No. P-17-092512-T

Case Type: **Probate - Trust/Conservatorships**
Date Filed: **07/31/2017**
Location: **Department S**
Cross-Reference Case Number: **P092512**
Supreme Court No.: **75750**

www.pearsoned.com

PARTY INFORMATION

Other	Christian, Nancy	Lead Attorneys Tiffany S. Barney Retained 702-438-7878(W)
Petitioner	Christian Payne, Susan	Cary C. Payne, ESQ Retained 702-383-9010(W)
Petitioner	Christian, Raymond	Cary C. Payne, ESQ Retained 702-383-9010(W)
Petitioner	Keach, Rosemary	Cary C. Payne, ESQ Retained 702-383-9010(W)
Trust	The Christian Family Trust u.a.d. 10/11/16	Cary C. Payne, ESQ Retained 702-383-9010(W)
Trustee	Utkin, Jacqueline	Jerimy L Kirschner Retained 702-563-4444(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS	
07/31/2017	Petition to Assume Jurisdiction of Trust <i>Petition to Assume Jurisdiction of Trust</i>
07/31/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
08/01/2017	Notice of Hearing <i>Notice of Hearing</i>
08/03/2017	Certificate of Service <i>Certificate of Service</i>
08/16/2017	Notice of Taking Deposition <i>Notice of Taking Deposition</i>
08/17/2017	Receipt of Copy <i>Receipt Of Copy</i>
08/17/2017	Motion to Dismiss <i>Notice of Motion and Motion to Dismiss NRCP 12(b)(1) and NRCP 12(b)(5)</i>
08/21/2017	Notice <i>Notice of Exercise of Right to Have Hearing Before Probate Court Judge</i>
08/22/2017	Errata <i>Errata to Notice of Motion and Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)</i>
08/25/2017	Petition - HM (9:30 AM) (Magistrate Yamashita, Wesley) <i>Petition to Assume Jurisdiction of Trust</i> Parties Present
	Result: Referred to Probate Judge
08/30/2017	Order <i>Order Scheduling Status Check</i>
08/31/2017	Peremptory Challenge <i>Notice of Peremptory Challenge of Judge</i>
09/01/2017	Motion - HM (9:30 AM) (Magistrate Yamashita, Wesley)

	<i>Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)</i>
	Result: Off Calendar
09/01/2017	Notice of Department Reassignment <i>Notice of Department Reassignment</i>
09/15/2017	Supplement <i>Supplement and Addendum to Petition to Assume Jurisdiction of Trust; Confirm Trustees; Instructions, Etc.; Alternatively to Reform Trust Agreement</i>
09/15/2017	Opposition to Motion to Dismiss <i>Petitioner's Opposition to Motion to Dismiss</i>
09/26/2017	Notice of Taking Deposition <i>Notice of Taking Depositions</i>
09/28/2017	Notice of Taking Deposition <i>Notice of Taking Deposition</i>
10/04/2017	Reply to Opposition <i>Reply to Petitioner's Opposition to Motion to Dismiss</i>
10/13/2017	Response <i>Response to Petition to Assume Jurisdiction of Trust; confirm Trustees; instructions, Etc. And Joinder in Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)</i>
10/16/2017	Stipulation and Order <i>Stipulation and Order</i>
10/16/2017	Notice of Entry of Order <i>Notice of Entry on Stipulation and Order</i>
10/19/2017	Status Check (2:00 PM) (Judicial Officer Ochoa, Vincent) Parties Present <i>09/07/2017 Reset by Court to 10/11/2017</i> <i>10/11/2017 Reset by Court to 10/19/2017</i>
	Result: Under Advisement
10/25/2017	Inventory <i>Inventory, Record of Value</i>
10/25/2017	Accounting <i>Accounting</i>
10/31/2017	Decision <i>Decision</i>
10/31/2017	Notice of Entry of Order <i>Notice of Entry of Decision</i>
11/03/2017	Petition <i>Joint Petition for Review of Former Trustees Refusal to Provide Proper Accounting Pursuant to NRS 165.143</i>
11/03/2017	Notice of Hearing <i>Notice of Hearing</i>
11/13/2017	Objection <i>Joint Objection to Petition to Assume Jurisdiction of Trust; Confirm Trustees; Instructions, Etc. and Joint Counterpetition to Assume Jurisdiction in rem of the Trust, to Confirm Trustee, to find Breach of Fiduciary Duty, Conversion, and Fraud Against Former Trustees, to Invalidate all Transfers to the Former Trustees as the Product of Undue Influence, to Order the Immediate Delivery of all Trust Assets, and to Impose a Constructive Trust</i>
11/14/2017	Notice <i>Notice of Blocked Funds, Etc.</i>
11/14/2017	Notice of Hearing <i>Notice of Hearing</i>
11/17/2017	Receipt of Copy <i>Receipt Of Copy</i>
11/20/2017	Notice <i>Notice of Exercise of Right to Have Hearing Before Probate Court Judge</i>
12/04/2017	Opposition to Motion <i>Petitioner's Opposition to Motion forReview/Proper Accounting</i>
12/08/2017	Petition - HM (9:30 AM) (Magistrate Yamashita, Wesley) <i>Joint Petition for Review of Former Trustees Refusal to Provide Proper Accounting Pursuant to NRS 165.143</i> Parties Present
	Result: Referred to Probate Judge
12/12/2017	Notice of Hearing <i>Notice of Hearing</i>
12/12/2017	Motion <i>MOTION FOR COMPLIANCE WITH AND ENFORCEMENT OF COURT ORDER, AND FOR SANCTIONS RELATING THERETO, FOR ORDER TO SHOW CAUSE WHY FORMER TRUSTEES SHOULD NOT BE HELD IN CONTEMPT, FOR ORDER COMPELLING FORMER TRUSTEES TO ACCOUNT, AND FOR ACCESS TO AND INVESTMENT CONTROL OF TRUST FUNDS BELONGING TO THE CHRISTIAN FAMILY TRUST</i>
12/14/2017	Opposition <i>Petitioner's Opposition to Joint Counterpetition to Confirm/Breach of Fiduciary Duty, Etc., Request for Discovery</i>
12/14/2017	Notice of Hearing <i>Notice of Hearing</i>
12/15/2017	CANCELED Petition - HM (9:30 AM) (Magistrate Yamashita, Wesley) <i>Vacated</i> <i>Joint Objection to Petition to Assume Jurisdiction of Trust; Confirm Trustees; Instructions, Etc. and Joint Counterpetition to Assume Jurisdiction in rem of the Trust, to Confirm Trustee, to find Breach of Fiduciary Duty, Conversion, and Fraud Against Former Trustees, to Invalidate all Transfers to the Former Trustees as the Product of Undue Influence, to Order the Immediate Delivery of all Trust Assets, and to Impose a Constructive Trust</i>
12/15/2017	Notice of Hearing <i>Amended Notice of Hearing</i>
01/02/2018	Affidavit of Publication <i>Affidavit of Publication</i>
01/04/2018	Notice <i>Notice of Suggestion of Death</i>

01/04/2018 **Notice of Hearing**
NOTICE OF HEARING ON MOTION FOR COMPLIANCE WITH AND ENFORCEMENT OF COURT ORDER, AND FOR SANCTIONS RELATING THERETO, FOR ORDER TO SHOW CAUSE WHY FORMER TRUSTEES SHOULD NOT BE HELD IN CONTEMPT, FOR ORDER COMPELLING FORMER TRUSTEES TO ACCOUNT, AND FOR ACCESS TO AND INVESTMENT CONTROL OF TRUST FUNDS BELONGING TO THE CHRISTIAN FAMILY TRUST

01/04/2018 **Certificate of Mailing**
Certificate of Mailing

01/10/2018 **Notice of Lis Pendens**
Notice of Pendency of Action (Lis Pendens)

01/10/2018 **Certificate of Service**
Certificate of Service

01/11/2018 **Opposition**
Opposition to Motion for Compliance, Enforcement, Sanctions, Contempt, Etc.; Counterpetition for Distribution and Vacating All Pending Matters and Dismiss Trust Proceedings

01/15/2018 **Notice of Substitution of Parties**
Notice Of Substitution Of Real Party In Interest

01/16/2018 **Notice of Substitution of Parties**
Substitution of Real Party in Interest Pursuant to NRCP 17

01/17/2018 **Petition** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Joint Petition for Review of Former Trustees Refusal to Provide Proper Accounting
01/11/2018 Reset by Court to 01/17/2018

Result: Matter Heard

01/17/2018 **Motion** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Motion for Compliance with and Enforcement of Court Order, and for Sanctions Relating Thereto, for Order to Show Cause Why Former Trustees Should not be Held in Contempt, for Order Compelling Former Trustees to Account, and for Access to and Investment Control of Trust Funds Belonging to the Christian Family Trust
Result: Matter Heard

01/17/2018 **Opposition & Countertermotion** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Joint Objection to Petition to Assume Jurisdiction of Trust; Confirm Trustees; Instructions, Etc. and Joint Counterpetition to Assume Jurisdiction in rem of the Trust, to Confirm Trustee, to find Breach of Fiduciary Duty, Conversion, and Fraud Against Former Trustees, to Invalidate all Transfers to the Former Trustees as the Product of Undue Influence, to Order the Immediate Delivery of all Trust Assets, and to Impose a Constructive Trust
01/11/2018 Reset by Court to 01/17/2018

Result: Matter Heard

01/17/2018 **All Pending Motions** (2:00 PM) (Judicial Officer Ochoa, Vincent)
[Parties Present](#)
Result: Matter Heard

01/26/2018 **Petition to Confirm**
Petition To Confirm Successor Trustee

01/30/2018 **Notice of Intent**
Notice of Intent to Appear by Telephone

01/31/2018 **Notice of Hearing**
Notice of Hearing

02/01/2018 **Notice**
Notice of Scheduling Settlement Conference -NSSC

02/05/2018 **Notice of Entry of Order**
Notice of Entry of Order

02/05/2018 **Order**
Omnibus Order

02/05/2018 **Notice**
Notice of Exercise of Right to Have Hearing Before Probate Court Judge

02/06/2018 **Amended Notice of Entry of Order**
Amended Notice of Entry of Order

02/08/2018 **Petition for Fees**
Petition for Fees and Costs

02/08/2018 **Notice of Hearing**
Notice of Hearing

02/23/2018 **Notice of Non Opposition**
Notice of Non-Opposition and Limited Joinder to the Petition for Fees and Costs for Anthony L Barney, LTD.

02/23/2018 **Opposition and Countertermotion**
Opposition to Petition to Confirm Successor Trustee; Counterpetition for Reinstatement of Co-Petitioners

03/01/2018 **Order Shortening Time**
Order Shortening Time to Hear Petition to Confirm Successor Trustee

03/01/2018 **Ex Parte Application**
Ex Parte Application for Order Shortening Time to Hear Petition to Confirm Successor Trustee

03/08/2018 **Application**
Monte Reason's Application for Reimbursement of Administrative Expenses

03/09/2018 **Opposition**
Petitioners Combined Opposition to (1) Barney Firm Petition for Fees, Etc. (2) Monte Reason's Application for Reimbursement

03/12/2018 **Reply to Opposition**
Reply to Opposition to Petition to Confirm Successor Trustee; and Opposition to Counter-Petition for Reinstatement of Co-Petitioners

03/13/2018 **Response**
Response to Opposition to Monte Reason's Application for Reimbursement of Administrative Expenses

03/13/2018 **Reply**
Reply to Petitioner's Combined Opposition to 1) Barney Firm Petition for Fees, Etc., 2) Monte Reason's Application for Reimbursement

03/15/2018 **Petition** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Petition To Confirm Successor Trustee
03/28/2018 Reset by Court to 03/15/2018

Result: Granted

03/15/2018 **Opposition & Counter-motion** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Opposition to Petition to Confirm Successor Trustee; Counterpetition for Reinstatement of Co-Petitioners
03/28/2018 Reset by Court to 03/15/2018

Result: Matter Heard

03/15/2018 **Motion** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Monte Reason's Application for Reimbursement of Administrative Expenses on OST

Result: Matter Heard

03/15/2018 **All Pending Motions** (2:00 PM) (Judicial Officer Ochoa, Vincent)
[Parties Present](#)

Result: Matter Heard

03/20/2018 **Accounting**
Account and Response to Court Hearing/Decision dated 1/17/18, Etc.

03/29/2018 **Motion**
Motion to Expunge Lis Pendens and/or Strike Pleading; and for Preliminary Injunction

03/30/2018 **Certificate of Service**
Certificate of Service for: Bank of America, N.A., Stiefel, Nicolaus & Co., Inc., Nevada State Bank, JPMorgan Chase Holdings, LLC, Bank of America, N.A.

03/30/2018 **Supplement to Response and Opposition**
Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); Request for Evidentiary Hearing and Reopening Discovery

03/30/2018 **Stricken Document**
Partial Strike of Supplement to Response and Opposition per minute order 4/4/18

04/02/2018 **Certificate of Service**
Certificate of Service - Motion to Expunge Lis Pendens and/or Strike Pleading; and for Preliminary Injunction

04/02/2018 **Motion**
Motion for Turnover of Assets and to Dissolve the Injunction over Christian Family Trust Assets

04/03/2018 **Settlement Conference** (10:00 AM) (Judicial Officer Becker, Nancy)

Result: No Ruling

04/03/2018 **Certificate of Service**
Certificate of Service

04/03/2018 **Certificate of Service**
Certificate of Service - SUBPOENAS FOR: SUN CITIES FINANCIALS, WELLS FARGO BANK, N.A., SAM S CLUB, BANK OF AMERICA, N.A., JPMORGAN CHASE HOLDINGS, LLC, NEVADA STATE BANK, STIEFEL, NICOLAUS & CO., INC., U.S. BANK, N.A.

04/03/2018 **Counter-motion**
Counter-motion 1) to Strike Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); Request for Evidentiary Hearing and Reopening Discovery; 2) to Find the Former Trustees to be Vexatious Litigants; and 3) For Sanctions Against Cary Colt Payne Pursuant to NRS 7.085 and EDCR 7.60

04/04/2018 **Petition** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Petition for Fees and Costs
[Parties Present](#)

Result: Granted

04/04/2018 **Order**
Order Granting Petition to Confirm Successor Trustee and Denying Counter-Petition for Reinstatement of Co-Petitioners

04/04/2018 **Notice of Entry of Order**
Notice of Entry of Order for Order Granting Petition to Confirm Successor Trustee and Denying Counter-Petition for Reinstatement of Co-Petitioners

04/05/2018 **Certificate of Service**
Certificate of Service

04/06/2018 **Certificate of Service**
Certificate of Service - Subpoena for Sun Cities Financial Group

04/10/2018 **Motion**
Motion for (1) Fees Pursuant to NRS 165.148 (2) Compliance with and Enforcement of Court Order and Sanctions; (3) for Order to Show Cause Why Former Trustees Should Not be Held in Contempt, and (4) for an Extension of Discovery

04/11/2018 **Certificate of Service**
Certificate of Service for Motion for Fees, Compliance, Order to Show Cause, and Extension of Discovery

04/12/2018 **Order**
Order

04/12/2018 **Notice of Entry of Order**
Notice Of Entry Of Order

04/18/2018 **Certificate of Service**
Certificate of Service

04/19/2018 **Opposition and Counter-motion**
Petitioner s Combined Opposition to: (1) Motion To Turnover Assets And Dissolve Injunction Over Trust Assets; (2) Motion To 1. Expunge Lis Pendens and 2. Preliminary Injunction ; And Counter-motion For Distribution/Termination of Trust; Alternatively For Stay/ Set Bond And Set Evidentiary Hearing

04/19/2018 **Opposition and Counter-motion**
Opposition to Motion for (1) Fees, (2) Compliance, (3) For Order to Show Cause And (4) Extension of Discovery; Counter-motion To Distribute Trust Property (2nd Request)

04/20/2018 **Certificate of Service**
Certificate of Service for Subpoena for Sun Cities Financial Group

04/26/2018 **Certificate of Service**
Certificate of Service for JPMorgan Chase Bank and Securities

04/26/2018 **Notice of Appeal**
Notice of Appeal

04/26/2018 **Case Appeal Statement**
Case Appeal Statement

05/07/2018 **Stipulation and Order**
Stipulation and Order to Continue Hearings

05/08/2018 **Notice of Entry**
Notice of Entry of Order for Stipulation and Order to Continue Hearings

05/08/2018 **Case Appeal Statement**
Case Appeal Statement

05/08/2018 **Notice of Appeal**
Notice of Appeal

05/08/2018 **Reply**
Reply

05/10/2018 **Notice of Filing Cost Bond**
Notice of Posting Cost Bond

05/11/2018 **Supplement**
Supplement for Response to Combined Opposition to (1) Motion to Turnover Assets and Dissolve Injunction over Trust Assets; (2) Motion to 1. Expunge Lis Pendens and 2. Preliminary Injunction; and Opposition to Counter-Motion for Distribution/Termination of Trust; Alternatively, for Stay/Set Bond and Set Evidentiary Hearing

05/14/2018 **Certificate of Service**
Certificate of Service

05/16/2018 **Motion** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Motion (1) to Expunge Lis Pendens and/or Strike Pleading and (2) for Preliminary Injunction
05/02/2018 Reset by Court to 05/14/2018
05/14/2018 Reset by Court to 05/16/2018
 Result: Decision Made

05/16/2018 **Motion - HM** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Motion for Turnover of Assets and to Dissolve the Injunction over Christian Family Trust Assets
05/14/2018 Reset by Court to 05/16/2018
 Result: Decision Made

05/16/2018 **Status Check** (2:00 PM) (Judicial Officer Ochoa, Vincent)
05/14/2018 Reset by Court to 05/16/2018
 Result: Matter Heard

05/16/2018 **Motion** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Motion for (1) Fees Pursuant to NRS 165.148(2) Compliance with and Enforcement of Court Order and Sanctions (3) for Order to Show Cause Why Former Trustees Should not be Held in Contempt and (4) for an Extension of Discovery
 Result: Decision Made

05/16/2018 **Opposition & Countermotion** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Petitioner s Combined Opposition to: (1) Motion To Turnover Assets And Dissolve Injunction Over Trust Assets; (2) Motion To 1. Expunge Lis Pendens and 2. Preliminary Injunction ; And Countermotion For Distribution/Termination of Trust; Alternatively For Stay/ Set Bond And Set Evidentiary Hearing
05/14/2018 Reset by Court to 05/16/2018
 Result: Decision Made

05/16/2018 **Opposition & Countermotion** (2:00 PM) (Judicial Officer Ochoa, Vincent)
Opposition to Motion for (1) Fees, (2) Compliance, (3) For Order to Show Cause And (4) Extension of Discovery; Countermotion To Distribute Trust Property (2nd Request)
 Result: Decision Made

05/16/2018 **All Pending Motions** (2:00 PM) (Judicial Officer Ochoa, Vincent)
[Parties Present](#)
 Result: Matter Heard

05/22/2018 **Notice of Deposition**
Notice of Deposition for Michael Payne

05/22/2018 **Notice of Deposition**
Notice of Deposition for Rosemary Keach

05/22/2018 **Notice of Deposition**
Notice of Deposition for Susan Christian-Payne

05/22/2018 **Notice of Deposition**
Notice of Deposition for Raymond Christian Jr.

05/25/2018 **Brief**
Brief

05/29/2018 **Certificate of Service**
Certificate of Service

06/01/2018 **Order**
Order

06/01/2018 **Notice of Entry of Order**
Notice of Entry of Order

06/01/2018 **Order**
Order

06/01/2018 **Order**
Order

06/04/2018 **Notice of Entry of Order**
Notice of Entry of Order

06/04/2018 **Certificate of Service**
Certificate of Service

06/13/2018 **Notice**
Notice of Petition for Writ

06/15/2018 **Estimate of Transcript**
Hearing date May 16, 2018

06/18/2018 **Request for Special Notice**
Request for Special Notice

06/19/2018 **Order**
Order

FINANCIAL INFORMATION

		Attorney Barney, Tiffany S.		
		Total Financial Assessment		12.00
		Total Payments and Credits		12.00
		Balance Due as of 06/19/2018		0.00
11/13/2017	Transaction Assessment			12.00
11/13/2017	Payment (Window)	Receipt # 2017-34593-FAM	Barney, Tiffany S.	(12.00)
		Other Christian, Nancy		
		Total Financial Assessment		486.00
		Total Payments and Credits		486.00
		Balance Due as of 06/19/2018		0.00
09/01/2017	Transaction Assessment			450.00
09/01/2017	Efile Payment	Receipt # 2017-68988-CCCLK	Christian, Nancy	(450.00)
05/09/2018	Transaction Assessment			24.00
05/09/2018	Efile Payment	Receipt # 2018-31413-CCCLK	Christian, Nancy	(24.00)
05/17/2018	Transaction Assessment			12.00
05/17/2018	Payment (Window)	Receipt # 2018-14382-FAM	Counter Transaction	(12.00)
		Petitioner Christian Payne, Susan		
		Total Financial Assessment		584.50
		Total Payments and Credits		584.50
		Balance Due as of 06/19/2018		0.00
08/01/2017	Transaction Assessment			537.50
08/01/2017	Efile Payment	Receipt # 2017-61481-CCCLK	Christian Payne, Susan	(537.50)
01/10/2018	Transaction Assessment			3.00
01/10/2018	Payment (Window)	Receipt # 2018-02391-CCCLK	Cary Colt Payne	(3.00)
04/20/2018	Transaction Assessment			10.00
04/20/2018	Payment (Window)	Receipt # 2018-27465-CCCLK	Anthony L. Barney LTD	(10.00)
04/27/2018	Transaction Assessment			24.00
04/27/2018	Efile Payment	Receipt # 2018-28835-CCCLK	Christian Payne, Susan	(24.00)
05/14/2018	Transaction Assessment			10.00
05/14/2018	Payment (Window)	Receipt # 2018-32564-CCCLK	Nationwide Legal Nevada LLC	(10.00)

EXHIBIT 5

Electronically Filed
Jun 12 2018 09:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUELINE UTKIN, Successor Trustee
to the Christian Family Trust, Dated
October 11, 2016

Petitioner

And

SUSAN CHRISTIAN-PAYNE,
ROSEMARY KEACH, RAYMOND
CHRISTIAN, JR, MONTE REASON,
TOMMY L. CHRISTIAN,
CHRISTOPHER A. CHRISTIAN

Real Parties in Interest

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK
AND THE HONORABLE VINCENT
OCHOA,

Respondents

Supreme Court No.

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

**PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE,
WRIT OF PROHIBITION**

COMES NOW, Jacqueline Utkin ("Petitioner"), Successor Trustee to The Christian Family Trust, Dated October 11, 2016 ("CFT"), by and through her attorneys of record, Jerimy Kirschner & Associates, PLLC., and respectfully petitions this Honorable Court pursuant to NRS 34.150, NRS 34.320, and Nev. R. App. P. 21(a), *et. seq.* to issue a Writ of Mandamus or, in the Alternative, Writ of Prohibition in the underlying action.

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III. NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

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the Christian Family Trust, Dated October 11, 2016.*

THE HONORABLE VINCENT OCHOA,
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IV. JURISDICTIONAL STATEMENT

This petition for Writ of Mandamus or alternatively for Writ of Prohibition (“Writ”) arises from an Order entered June 1, 2018 (1 App. 001-009). This Court has jurisdiction pursuant to NRS 34.150, NRS 34.320 and NRAP 21(a).

V. ROUTING STATEMENT PURSUANT TO NEV. R. APP. P. 28(a)(5)

This case is not subject to a presumptive retention by the Supreme Court under Nev. R. App. P. 17(a). This case is not presumptively assigned to the Court of Appeals. *See* Nev. R. App. P. 17(b).

Specifically, this is a Writ of Mandamus, or alternatively, Writ of Prohibition in a trust and estate matter, and thus falls outside of Nev. R. App. P. 17(b)(5) and Nev. R. App. P. 17(b)(9).

VI. INTRODUCTION

The lower court lacked authority to file a petition to itself to remove a trustee and appoint an independent trustee when no party had sought such relief. In addition, the lower court engages in independent fact finding and predetermines the outcome of any challenges to the court's petition without taking evidence or having given the Parties a meaningful opportunity to be heard. The lower court further suppresses meritorious opposition by announcing, in advance of the hearing on its motion, that there could be no reasonable objections to the lower court's petition. The lower court's order contains the implicit threat that any objections would be frivolous, vexatious and would subject the lower court's opponent to sanctions. In doing so the lower court violates the Petitioner's rights to due process and as such Petitioner files this Writ for an order by this Court prohibiting the lower from enforcing its June 1, 2018 order pertaining to appointment of an "independent trustee" ("Independent Trustee Order")¹ and an Order requiring the lower court to cease attempts to appoint an independent trustee itself, and order to Vacate the Independent Trustee Order, and to afford the Petitioner due process

¹ See, 1 App. 0001-0009.

VII. RELIEF SOUGHT BY PETITIONERS

A.1. An Order prohibiting District Court Judge Vincent Ochoa from enforcing the June 1, 2018 Order pertaining to the appointment of an Independent Trustee Order² for The Christian Family Trust, Dated October 11, 2016 (“Trust”).

A.2. An Order for the lower court to vacate the Independent Trustee Order.

A.3. An Order requiring the to cease attempts to remove Petitioner as trustee and appoint an independent trustee.

² See, 1 App. 0001-0009.

VIII. ISSUES PRESENTED

B.1. Can the lower court move for appointment of an “independent trustee” when neither the trustee nor beneficiaries have requested such relief?

B.2. Can the lower court engage in independent fact finding in order to nominate a stranger to the action to be the “independent trustee” and then, without an evidentiary basis, prequalify that individual as “having no conflict of interest” and determine that the stranger is “in a better position to guide the Trust”?

B.3. Has the lower court violated the procedural due process rights of Petitioner by announcing that there could be “no good purpose or rationale to object” to the appointment of the “independent trustee” prior to briefing, hearing, or taking any evidence?

B.4. Does the Independent Trustee Order, which asserts grounds for removal of Petitioner and declare conflicts to exist, constitute *de facto* findings of facts arrived at without having a hearing, having briefing from the parties, or having taken evidence?

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///

**IX. FACTS NECESSARY TO UNDERSTAND THE ISSUES
PRESENTED BY THE PETITION**

A. FORMATION AND TRUSTEE SUCCESSION

1. On October 11, 2016, Nancy I. Christian and her husband Raymond T. Christian, Sr. executed a revocable Trust entitled the "Christian Family Trust Dated October 11, 2016 (the "Trust").³

2. The Trust beneficiaries were the settlors during their lifetime,⁴ with their six children being beneficiaries afterwards.⁵

3. The Trust is a testamentary instrument and its settlors were not its initial trustees.⁶

4. Initially, three of the settlors six children served as trustees, Susan Christian-Payne, Rosemary Keach, and Raymond Christian Jr. ("Former Trustees").⁷

5. On January 31, 2017, trustor Raymond Christian died, leaving the surviving settlor as Nancy Christian.⁸

³ See, 1 App. 0010-0040

⁴ See, 1 App. 0013, Section 2.1

⁵ See, 1 App. 0015-0020

⁶ See, 1 App. 0012

⁷ *Id.*

⁸ See, 1 App. 0080

6. On June 12, 2017, Nancy Christian executed a Modification which removed the Former Trustees and replaced them with another child Monte Reason (the “Modification”),⁹ and which was supported by a certificate of an independent attorney.¹⁰

7. On June 30, 2017, the Former Trustees transferred four hundred twenty-eight thousand, eight hundred twenty-eight dollars and ninety-three cents (\$428,828.93) in Trust funds out of a Trust account and deposited the funds into their attorney’s IOLTA account.¹¹

8. On July 31, 2017, the Former Trustees filed the underlying contest challenging Nancy Christian’s authority to remove them as trustees and asking that the assets of the Trust be frozen pending resolution (the “Action”).¹²

9. On August 17, 2017, Nancy Christian filed a verified pleading in which she accused the Former Trustees of evicting her from her home,¹³ denying

⁹ See, 1 App. 042-043

¹⁰ See, 1 App. 044

¹¹ See, 1 App. 049

¹² See, 1 App. 052, 061. 1 App. 067-081 have been redacted since they appear to be associated with a matter under seal. Petitioner shall submit them separately under cover.

¹³ See, 1 App. 126, ¶8 & 10

her access to her dying husband,¹⁴ failing to involve her in his funeral,¹⁵ and improperly denying her distributions from the Trust.¹⁶

10. On October 31, 2017, the lower court issued an order confirming jurisdiction over the Trust and “freezing” the assets of the Trust, but did not require the Former Trustees to post a bond as a condition of the injunction (“Freeze Order”).¹⁷

11. On December 14, 2017, settlor Nancy Christian died.

12. On January 16, 2018, Monte Brian Reason resigned as the then existing trustee and appointed Petitioner as the new Successor Trustee.¹⁸

B. CONFIRMATION OF PETITIONER AS TRUSTEE

13. On January 26, 2018, Petitioner filed a petition pursuant to NRS 153.031 (b), (d), and (k) seeking to confirm the construction of the Trust which lead to her appointment, to determine the validity of the Trust terms, and to confirm her as the successor trustee (“Petitioner to Confirm Trustee”).¹⁹

¹⁴ See, 1 App. 127, ¶12

¹⁵ See, 1 App. 127, ¶16-18

¹⁶ See, 1 App. 127, ¶21

¹⁷ See, 1 App. 154.

¹⁸ See, 1 App. 155-156; *See also*, 1 App. 157-159

¹⁹ See, 1 App. 160-220

14. On February 23, 2018, the Former Trustees filed an opposition and a counter-petition to have themselves reinstated as trustees.²⁰

15. On April 4, 2018, the Court entered its order confirming Petitioner as the successor trustee to the Trust (“Order Confirming Trustee”), stating in pertinent part:

THE COURT HEREBY FINDS THAT: the language of The Christian Family Trust Dated October 11, 2016 (“Trust”) is clear and unambiguous.

THE COURT FURTHER FINDS THAT: Trustor Nancy Christian’s modification to name Monte Reason trustee was permitted pursuant to the clear and unambiguous terms of the Trust. THE COURT FURTHER FINDS THAT: Monte Reason’s nomination of Jacqueline Utkin to serve as successor trustee was permitted pursuant to the clear and unambiguous terms of the Trust.

THE COURT FURTHER FINDS THAT: Jacqueline Utkin has accepted the appointment to serve as successor trustee to the Trust.

THE COURT FURTHER FINDS THAT: Jacqueline Utkin is the successor trustee to the Trust.²¹

16. No party to the action appealed the Order Confirming Trustee within thirty (30) days or otherwise filed a motion which would extend the time to appeal.²²

²⁰ See, 2 App. 221-292

²¹ See, 2 App. 293-295

²² See, Docket for Action, 2 App. 299-301

C. MAY 16, 2018 HEARING

17. On May 16, 2018, the lower court held a hearing (“Hearing”) on multiple pending motions.

18. At no point prior to the Hearing had the Petitioner or beneficiaries requested an independent trustee to be appointed.

19. At the Hearing, the District Court, acting *sua sponte*, suggested the appointment of an “independent trustee,” and also invited counsel for the Former Trustees to argue in favor of it at least three times.^{23 24}

20. In response, counsel for the Former Trustees opposed stating to the lower court “You’re gonna...potentially restart the whole process over again.”²⁵

21. At the end of the Hearing, the lower court stated that it was “considering an independent trustee.”²⁶

22. Petitioner requested a full evidentiary hearing, and for the lower court to identify the grounds for Petitioner’s removal.²⁷

²³ See, 2 App. 302, Hearing Video Time 02:46:14-02:46:17 (“Do we appoint an independent trustee to handle this”); Hearing, Video Time 02:46:36-02:46:39 (“Do we appoint an independent trustee to avoid this litigation..”); Hearing, Video Time 02:46:57-02:47:14 (“If we can do it with this trustee, fine. If we cannot do it with this trustee, this is your chance to say why not...”).

²⁴ A transcript of the proceeding could not be prepared in time for this Writ, therefore Petitioner is providing the video from the hearing and will supplement her appendix with the transcript at a later date.

²⁵ See, 2 App. 302, Hearing Video Time 02:47:13-02:47:16

²⁶ See, 2 App. 302, Hearing Video Time 02:58:30-02:58:32

²⁷ See, 2 App. 302, Hearing Video Time 02:58:55-02:58:57

23. The Court instructed Petitioner to “file your authority to request a full hearing.”

24. Petitioner stated her anticipated objection to any order removing her based on a “lack of due process, lack of hearing, lack of opportunity...”²⁸ with the Court interjecting to state, “file your reason why you think [a] lack of due process.”²⁹

25. On May 25, 2018, Petitioner filed a brief outlining why the lower court was required to provide her meaningful notice and a meaningful opportunity to be heard prior to her removal.³⁰

D. JUNE 1, 2018 INDEPENDENT TRUSTEE ORDER

26. On June 1, 2018, the lower court filed its Independent Trustee Order³¹ which is the primary subject of this Writ.

27. No party to the action had requested – whether by written petition, oral motion, or otherwise – the appointment of an independent trustee.

28. No notice was provided to any party in advance of the Hearing that the lower court was considering an independent trustee and no grounds for such an appointment were provided.

²⁸ See, 2 App. 302, Hearing Video Time 02:59:02-02:59:05

²⁹ See, 2 App. 302, Hearing Video Time 02:59:05-02:59:08

³⁰ See generally, 2 Appx. 300, “Brief” filed May 25, 2018.

³¹ See, 1 App. 001-009

29. The Independent Trustee Order starts with the preface “[t]he following facts are not the Court’s ‘finding of facts’ but nevertheless are the facts as presented by the parties in their pleading and court arguments.”³²

30. The lower court then states, “[t]he parties have moved on to litigate many issues except the foremost central issue presented to the court related to Nancy’s authority to remove the original Trustees and replacement of the Trustees...the main issue of determining the proper Trustee has not been resolved.”³³ *C.f., supra* ¶14.

31. The lower court finds the Petitioner “has expressed a serious dislike for the major beneficiaries of the Trust and a positive bias towards Monte Reason, a limited beneficiary,”³⁴ and that “[t]here are irreconcilable conflicts between Ms. Utkin and the main beneficiaries of the Trust.”³⁵

32. The lower court arrived at its finding from an affidavit filed in support of the settlor Nancy Christian’s November 13, 2017 objection to the court assuming jurisdiction of the trust and the settlor’s countermotion to find the Former Trustees in breach of fiduciary duties, for conversion, and to invalidate impermissible transfers to the Former Trustees.³⁶

³² See, Independent Trustee Order, 1 App. 001 Ln. 12-14. (Emphasis added)

³³ See, 1 App. 003, Ln. 4-10

³⁴ See, 1 App. 004, Ln. 16-18.

³⁵ See, 1 App. 005, Ln. 5-6

³⁶ See, 1 App. 004– 005

33. This perceived conflict was raised in the Former Trustees' February 23, 2018 objection to Petitioner's request to be appointed as trustee³⁷ which preceded the April 4, 2018 Order confirming her as trustee ("Order Confirming Trustee").³⁸

34. The Independent Trustee Order further states the lower court was interested,³⁹ that it was "suggest[ing] [] the appointment of Fred Waid Esq. as Trustee"⁴⁰ and that it would set a "court motion" to discuss the appointment.⁴¹

35. The lower court found that Fredrick Waid, Esq. ("Mr. Waid") had no conflict of interest and was "in a better position to guide the Trust through distribution and potential litigation."⁴²

36. There is no trace of Mr. Waid's name appearing anywhere in the record for the Action prior to the June 1, 2018 Independent Trustee Order.

37. There has been no hearing or evidence taken on Mr. Waid's qualifications nor whether he had a potential conflict with any party to this action.

38. The lower court goes on to state that a "hearing will be held to discuss this appointment of a Trustee."⁴³

³⁷ See, 1 App. 004, Ln. 11-13.

³⁸ See, 1 App. 293-295

³⁹ See, 1 App. 006, Ln. 1-2.

⁴⁰ See, 1 App. 006, Ln. 7-8.

⁴¹ See, 1 App. 008, Ln. 8-9.

⁴² See, 1 App. 007, Ln. 13-16.

⁴³ See, 1 App. 007, Ln. 13-16; *See Also*, 1 App. 008, Ln. 18-21.

39. The purpose of the hearing was “to determine if any of the parties object to the appointment of Fredrick Waid, Esq. as Trustee”⁴⁴ and that the parties had “a right to request a prompt evidentiary hearing at said court hearing.”⁴⁵

40. Albeit, the lower court announced in its order that “[t]here is no good purpose or rationale to object to appointing a neutral Trustee in light of the litigation history in this case.”⁴⁶

41. The Independent Trustee Order ends with the threat that “[l]itigants should be aware that the Trust will not bear the initial cost of any further litigation and the Trust might possibly not bear the ultimate fees of such litigation.”⁴⁷

X. REASONS WHY THE WRIT SHOULD ISSUE

A. STANDARD FOR ISSUANCE OF A WRIT

A Writ of Mandamus will issue to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, and where there is no plain, speedy, and adequate remedy in the ordinary course of law. *See, Oxbow Constr. v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 86, 335 P.3d 1234, 1238 (2014); *See Also, Hickey v. District Court*, 105 Nev. 729, 782 P.2d 1336 (1989); NRS 34.160. “A writ of mandamus is available to, among

⁴⁴ *See*, 1 App. 007, Ln. 12-13

⁴⁵ *See*, 1 App. 008, Ln. 9-11.

⁴⁶ *See*, 1 App. 006, Ln. 9-12 (emphasis added)

⁴⁷ *See*, 1 App. 008, Ln. 10-13.

other things, control an arbitrary or capricious exercise of discretion.” *See, Oxbow Constr.*, at 1238 (internal quotation omitted). The writ is the appropriate remedy to compel performance of a judicial act. *See, Solis-Ramirez v. Eighth Judicial Dist. Court ex rel. County of Clark*, 112 Nev. 344, 913 P.2d 1293 (1996). “When seeking such extraordinary relief, the petitioners bear the burden of demonstrating that an exercise of this court's discretion to that end is warranted.” *Id.* The Court can use its “discretion to consider such writ petitions when “an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.” *See, Oxbow Constr.*, at 1238.

Similarly, the purpose of a Writ of Prohibition is not to correct errors, but to prevent courts from transcending their jurisdiction, and they are issued to arrest the proceedings of a district court exercising its judicial functions when those proceedings are in excess of the jurisdiction of that court; it also is to issue where there is no plain, speedy, and adequate remedy at law. *See, Guerin v. Guerin*, 114 Nev. 127, 953 P.2d 716 (1998); *Gladys Baker Olsen Family Trust v. District Court*, 110 Nev. 548, 874 P.2d 778 (1994); NRS 34.320; NRS 34.330. The writ is the correct mechanism for prohibiting the use of enforcement orders effectuating an underlying order that was issued without jurisdiction. *See, Golden v. Averill*, 31 Nev. 250, 101 P. 1021 (1909).

As to both varieties of writs, they are intended to resolve legal, not factual disputes. *See, Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). The Court may in its discretion treat a petition for writ of ,andamus as one for prohibition, vice versa, or treat a notice of appeal interchangeably as a Petition for a Writ. *See, Messner v. District Court*, 104 Nev. 759, 766 P.2d 1320 (1988); *See, In re Temporary Custody of Five Minors*, 105 Nev. 441, 777 P.2d 901 (1989).

Herein, the lower court has petitioned itself for a relief exclusive to the parties while simultaneously predetermining the results without a hearing, evidence or an opportunity for the parties to be heard. The lower court went further by announcing that any opposition to the court's motion would lack good purpose or rationale. The result puts Petitioner in direct conflict with the court while the court intimidates the Petitioner into silence under an implicit threat that opposition would be frivolous or vexations and thus subject to sanctions. Petitioner faces the irreparable harm of having a matter heard before an tribunal lacking impartiality and which has laid the groundwork for sanctions against her before a single pleading has been filed or evidence taken.

An appeal is not a plain, speedy, and adequate remedy when the lower court is conducting independent investigations of fact while announcing so clearly in advance of a hearing that it intends to violate the procedural due

process rights of a party. Furthermore, judicial economy suggests that a writ should issue to arrest the lower court and forestall a substantial violation of civil rights which may spawn an action under 42 U.S.C. § 1983 or later appeals to this Court.

The only disputes are as to matters of law, going both to a duty to act, and a duty to refrain from acting, both of which have been violated by the lower court, and requiring an order by way of an extraordinary writ from this Court. The lower court has exceeded its jurisdiction and a writ is needed to refrain it from acting to violate Petitioner's procedural due process rights.

B. THE LOWER COURT'S DOES NOT HAVE A LEGAL BASIS FOR MOVING ITSELF TO APPOINT AN INDEPENDENT TRUSTEE

1. The authority cited by the lower court did not authorize it to initiate a petition to remove a trustee.

No party to the Action was seeking appointment of an independent trustee, and the confirmation of Petitioner as trustee had become final as a matter of law. The lower court has declared itself interested, and then petitioned itself to seek removal of the Petitioner,⁴⁸ however, there is no authority for it to do so. The authority the lower court cites is reserved for parties themselves, and there is no petition for an independent trustee anywhere in the record.

⁴⁸ *supra* ¶33

The lower court references the Former Trustees' February 23, 2018 opposition to Petitioners' confirmation as trustee and counter-motion ("Opposition/Counter-motion to Confirmation")⁴⁹ and then cites NRS 153.031(1)(f) as authority for the court to review "the acts of the trustee, including the exercise of discretionary powers." However, a review of the entire Opposition/Counter-motion to Confirmation reveals that no such relief was requested by the Former Trustees.⁵⁰ This is not a form over substance argument; there is no reference to NRS 153.031(1)(f) anywhere in the Opposition/Counter-motion to Confirmation and there is no reference to acts that the Former Trustees were asking the lower court to review. The Opposition/Counter-motion to Confirmation was filed in response to Petitioner requesting the lower court to confirm the construction of the Trust, determine the validity of its terms, and to confirm her as trustee pursuant to NRS 153.031(b),(d) and (k).⁵¹ That petition was granted and Former Trustee's Opposition/Counter-motion to Confirmation was denied.⁵²

The Order Confirming Trustee was entered on April 4, 2018, and no party appealed.⁵³ The Order Confirming Trustee became final and conclusive on all

⁴⁹ See, 1 App. 004, Ln. 11-15.

⁵⁰ See, 2 App. 221-229.

⁵¹ See, 1 App. 164

⁵² See, 1 App. 293-294

⁵³ See, Docket for Action, 2 App. 296-301

parties as a matter of law after thirty days. *See*, NRS 155.190(1)(h) (Any order “Instructing or appointing a trustee” may be appealed within 30 days of the notice of entry of order.); *See Also*, Matter of Estate of Miller, 111 Nev. 1, 6, 888 P.2d 433, 436 (1995) (“[U]nless appeal is taken within 30 days, an order of the kinds mentioned in NRS 155.190 is not thereafter subject to attack”) (citing, Luria v. Zucker, 87 Nev. 471, 488 P.2d 1159 (1971)) (emphasis added); NRS 153.080 (“An order entered under the provisions of this chapter, when it becomes final, is conclusive upon all interested persons, whether or not they are competent or in being”); *See Also*, NRS 164.015(6) (For matters under this section and NRS 153.031, “[t]he order is final and conclusive as to all matters determined and is binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be taken from the order within 30 days after notice of its entry by filing notice of appeal with the clerk of the district court”). The lower court could not resurrect the opposition to attack the Order Confirming Trustee after it had become final, rather the parties themselves would have had to do it stating new and independent grounds for removal.

Next, the lower court transitions from arbiter to advocate, providing “the Court’s suggestion is the appointment of Fredrick Waid, Esq.” while citing NRS 153.031(1)(k) and NRS 164.010 (5)(d).⁵⁴ However, NRS 153.031 is for trustees and beneficiaries, not the court, and none of those parties filed a petition after the Order Confirming Trustee became final. NRS 164.010 (2)(d)⁵⁵ is closer to the mark when read in conjunction with NRS 164.010 (1), but even that is predicated upon an application of the trustee, settlors or beneficiaries. NRS 164.010 (2)(d) permits the court to consider “granting orders” on other matters relating to the trust, which necessarily implies one of the parties requested an order. Examples of relief are illustrated in the statute’s citations to NRS 30.040, NRS 153.031 or NRS 164.015, however, all of these are predicated upon motions by the parties themselves, not the court acting *sua sponte*.

Going on, none of the cases cited by the lower court in the Independent Trustee Order provides it independent authority to remove the Petitioner. Moreover, not one of the cases suggested the lower court could declare a conflict of interest to have existed without having a hearing or having taken evidence.

⁵⁴ See, 1 Appx. 6, Ln. 6-7.

⁵⁵ The cite to NRS 164.010 (5)(d) appears to be a *scrivener’s* error as that statute does not exist, and it is presumed the Court intended NRS 164.010 (2)(d).

Taken together, the lower court has not cited any legal authority allowing the court to make itself an advocate in the Action, and it follows that the lower court's Independent Trustee Order constitutes the court acting outside of its jurisdiction.

2. The lower court also misstates the procedural posture of the case which is significant because of how review is initiated.

The lower court stated, “[t]he parties have moved on to litigate many issues except the foremost central issue presented to the court related to Nancy’s authority to remove the original Trustees and replacement of the Trustees...the main issue of determining the proper Trustee has not been resolved.”⁵⁶ However, this is indirectly contradicted by the Order Confirming Trustee which found that the Trust’s clear and unambiguous terms allowed for the removal of the Former Trustees and the subsequent appointment of Petitioner.⁵⁷ After all the parties failed to appeal within thirty (30) days, the order was no longer subject to attack. The Independent Trustee Order is effectively a new “petition” filed by the court, after the Order Confirming Trustee had become final, but which presents no new questions of fact or law.

⁵⁶ 1 App. 003, Ln. 4-10

⁵⁷ See, 2 App. 293-295

The result is lower court is acting outside of its jurisdiction. As such, a Writ of Mandamus should be issued to the lower court ordering it to vacate its Independent Trustee Order.

C. THE DISTRICT COURT HAS NOT AFFORDED THE PARTIES DUE PROCESS

“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” Mathews v. Eldridge, 96 S. Ct. 893, 901 (1976). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 902 (quoting, Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965)); *See Also*, Zinermon v. Burch, 110 S. Ct. 975, 984 (1990) (Usually, the “Constitution requires some kind of a hearing before the State deprives a person of liberty or property.”). At minimum, due process requires “*some* kind of notice and ... *some* kind of hearing.” Goss v. Lopez, 419 U.S. 565, 579, 95 S.Ct. 729, 738, 42 L.Ed.2d 725 (1975) (emphasis in original).

In addition, an “impartial decision maker is essential” to due process. Goldberg v. Kelly, 397 U.S. 254, 271, 90 S. Ct. 1011, 1022, 25 L. Ed. 2d 287

(1970). While there is no “required” list of procedures for due process, Judge Henry Friendly’s influential list provides, by relative priority:

1. An unbiased tribunal.
2. Notice of the proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision.

See, Judge Henry J. Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1267, 1279-1295 (1975); cited with approval by State v. Beaudion, 131 Nev. Adv. Op. 48, 352 P.3d 39, 44 (2015); *See Also*, Mathews v. Eldridge, 424 U.S. 319, 343, 348, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

1. There can be no meaningful opportunity to be heard when results are preconceived, especially when the results must have been reached by the lower court engaging in independent fact finding.

The lower court’s Independent Trustee Order strongly implies that the upcoming hearing would not be before an impartial tribunal. The lower court has predetermined that it will select Mr. Waid to be the independent trustee while simultaneously adjudicating him as having no conflicts and being in the

best position to lead the Trust.⁵⁸ The lower court’s selection and determinations did not come from the parties, the pleadings, or the evidence before the court, so this this would be a factual finding independent of the record. However, a court is prohibited from engaging in an independent investigation of the fact. *See*, Nev. R. Jud. Can 2.9(5)(C) (“A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed”). The lower court’s selection and prequalification of an outsider without notice to the parties is eerily similar to the type of conduct which led to significant restructuring in the guardianship courts here in Nevada.⁵⁹ A party cannot challenge an investigation it does not know about, and a fact finding by the court, conducted outside of the courtroom, cannot satisfy due process. This is true especially when the lower court only announces its findings after its investigation had been completed.

Notwithstanding the forgoing, the lower court invites the parties to oppose the court’s own petition to appoint Mr. Waid and for the parties to request an evidentiary hearing –which the lower court would then decide. However, the lower court has determined in advance that, “[t]here is no good purpose or rationale to object to appointing a neutral Trustee in light of the litigation

⁵⁸ *See*, 1 App. 007, Ln. 13-16.

⁵⁹ *See Generally*, <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>

history in this case.”⁶⁰ This is insurmountable bias and the specific use of “no good purpose or rationale to object” predisposes any objection as sanctionable. NRS 155.165 (“The court may find that a person is a vexatious litigant if the person files a petition, objection, motion or other pleading which is without merit...”)) The lower court caps it with a threat that Petitioner would not be reimbursed her legal fees should she fight for her position, which she is permitted to do under the terms of the Trust.⁶¹

To summarize, the results reached outside the courtroom are fixed, resistance is futile, and resistance will be punished. This is not a meaningful opportunity to be heard. . Moreover, the Independent Trustee Order reveals a lower court that fully intends on violating the procedural due process rights of Petitioner, and as such Petitioner seeks a Writ of Prohibition arresting the lower court from taking such actions.

2. The Court Cannot Make Findings of Fact without having taken evidence, or given the parties notice and an opportunity to be heard.

The Independent Trustee Order causes substantial confusion on a procedural level because it makes findings of fact, while simultaneously saying it is not making findings of fact. The lower court starts its order by saying, “[t]he

⁶⁰ See, 1 App. 006, Ln. 9-12 (emphasis added)

⁶¹ See, 1 App. 008, Ln. 10-13.

following facts are not the Court's 'finding of facts' but nevertheless are the facts as presented by the parties in their pleading and court arguments,"⁶² and then goes on to make a number of *de facto* findings of fact about a conflict of interest.⁶³ Notably, the lower court does not reference any actions that Petitioner took while acting as trustee which would demonstrate a conflict of interest. Instead, the lower court declares Petitioner as having a disqualifying conflict of interest,⁶⁴ based on a preconfirmation detail which was known to the Court. Effectively, the lower court is reconsidering the grounds of a final order without any party moving it to do so, and without new law or facts. The result is an unmistakable transition from arbitrator to advocate.

Next, the lower court makes findings that attack the scope of the litigation and the fees incurred⁶⁵ without giving the parties a chance to defend themselves. This is significant because there have been astonishingly good grounds for fighting this matter on behalf of the Trust. For example, fees were incurred:

- i. by the *settlor* to defend her removal of the Former Trustees;⁶⁶

⁶² See, 1 Appx. 1, Ln. 12-14.

⁶³ The Court prefaced its order with a statement that these were not findings of facts, perhaps to avoid procedural due process issues, however the "analysis" then relies upon the section as if it were factual findings.

⁶⁴ *supra*, ¶31-32.

⁶⁵ 1 App. 003 Ln. 4-22

⁶⁶ 2 App. 296, "Motion to Dismiss"; 2 App. 296, "Response to Petition to Assume Jurisdiction of Trust; confirm Trustees; instructions, Etc. And Joinder in Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)"

- ii. by the *settlor* to evict the Former Trustees out of her home that they had evicted her from;⁶⁷
- iii. by the *settlor* and Trustee Monte Reason to force the Former Trustees to provide a proper accounting, which was renewed by the Petitioner when she became trustee;⁶⁸
- iv. by the *settlor* and Trustee Monte Reason for conversion of Trust assets by the Former Trustee;⁶⁹
- v. by Petitioner to hold the Former Trustees in contempt for failing to comply with the District Court's express order for them to turn over receipts and statements supporting their accounting;⁷⁰
- vi. by *settlor* and Petitioner seeking to dissolve the bondless injunction over trust assets;⁷¹ and
- vii. by Petitioner to confirm construction of the trust and that Petitioner was the successor trustee.⁷²

⁶⁷ See generally, Las Vegas Justice Court Case No. 17C023096, Nancy Christian, Monte Reason, Christian Family Trust, Plaintiff(s) vs. Raymond Christian, Jr., Defendant(s)

⁶⁸ See, 2 Appx. 297, "Motion for Compliance with and Enforcement of Court Order, and for Sanctions Relating Thereto, for Order to Show Cause Why Former Trustees Should Not be Held in Contempt, for Order Compelling Former Trustees to Account, and for Access to and Investment Control of Trust Funds Belonging to The Christian Family Trust;" See Also, 2, App. 298, "Joint Petition for Review of Former Trustees Refusal to Provide Proper Accounting;"

⁶⁹ 2 App. 297, "Joint Objection to Petition to Assume Jurisdiction of Trust; Confirm Trustees; Instructions, Etc. and Joint Counterpetition to Assume Jurisdiction in rem of the Trust, to Confirm Trustee, to find Breach of Fiduciary Duty, Conversion, and Fraud Against Former Trustees, to Invalidate all Transfers to the Former Trustees as the Product of Undue Influence, to Order the Immediate Delivery of all Trust Assets, and to Impose a Constructive Trust"

⁷⁰ See, 2 App. 299, "Motion for (1) Fees Pursuant to NRS 165.148 (2) Compliance with and Enforcement of Court Order and Sanctions; (3) for Order to Show Cause Why Former Trustees Should Not be Held in Contempt, and (4) for an Extension of Discovery"

⁷¹ See, 2 App. 297, "Motion for Turnover of Assets and to Dissolve the Injunction over Christian Family Trust Assets"

⁷² See, 2 App. 298, "Petition To Confirm Successor Trustee"

Every single one of the petitions filed were necessitated by the Former Trustee's conduct, not because the Trust wanted to waste its assets on attorney fees. The administration of the Trust has heavily involved the lower court because of the Former Trustee's petitions and also because of the lower court's Freeze Order. Petitioner was not given an opportunity to present these arguments, because they were not provided proper notice, which is a deprivation of procedural due process.

In conclusion, the lower court is making *de facto* findings of fact while saying it is not, and then relying upon those *de facto* findings of fact to reconsider a prior order and remove the Petitioner. All this is accomplished without a pleading from the parties, or adequate notice and opportunity to be heard. This is a violation of Petitioner's procedural due process rights and a Writ of Prohibition should issue to arrest the lower court's actions.

XI. CONCLUSION

It is respectfully submitted that the lower court's rationalizations for initiating a removal of Petitioner in favor of a stranger to the action are inadequate and that a Writ of Mandamus should enter directing the lower court to vacate its Independent Trustee Order.

In addition, the lower court has demonstrated that it has violated the procedural due process rights of Petitioner and will to do so at an upcoming hearing. Therefore, a Writ of Prohibition should enter directing the lower court arrest all efforts to carry out its removal of Petitioner through its Independent Trustee Order.

DATED this 11th day of June, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jerimy L. Kirschner, Esq._____

JERIMY L. KIRSCHNER, ESQ.

Nevada Bar No. 12012

5550 Painted Mirage Rd., Suite 320

Las Vegas, NV 89149

Attorney for Jacqueline Utkin, Successor Trustee to the Christian Family Trust

Dated October 11, 2016

XII. VERIFICATION

1. I, Jerimy L. Kirschner, Esq., declare:
2. I am the attorney, for the Petitioner herein;
3. I verify, pursuant to Nev. R. App. P. 21 (a)(5), that I have read the foregoing PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION, that the same is true in my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.
4. I declare under penalty of perjury of the laws of Nevada, that the foregoing is true and correct.

Dated June 11th, 2018

/s/ Jerimy L. Kirschner, Esq.
Jerimy L. Kirschner, Esq.

XIII. CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5) and the type style requirements of Nev. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2016 in size 14 font in Times New Roman. I further that I have read this brief complies with the page or type-volume limitations of Nev. R. App. P. 32(a)(7) because, excluding the parts of the brief exempted by Nev. R. App. P. 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and 5,681 words.

Finally, I hereby certify that to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 11th day of June, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jeremy L. Kirschner, Esq.
JERIMY L. KIRSCHNER, ESQ.
5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149
Attorney for Petitioner

XIV. CERTIFICATE OF SERVICE

That this 11th day of June, and pursuant to Nev. R. App. P. 25 and Nev. R. App. P. 21(a)(1) I certify that I am an employee of JERIMY KIRSCHNER & ASSOCIATES, PLLC; that, in accordance therewith, I caused a copy of the PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION to be served, in a sealed envelope, on the date and to the addressee(s) shown below:

The Honorable Judge Vincent Ochoa
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

CARY COLT PAYNE, ESQ.
Nevada Bar No. 4357
CARY COLT PAYNE, CHTD.
700 South Eighth Street
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Attorney for Susan Christian-Payne, Rosemary Keach and Raymond Christian, Jr.

/s/ Jerimy L. Kirschner, Esq.
An employee of Jerimy Kirschner & Associates, PLLC

EXHIBIT 6

Filing Submitted for Case: P-17-092512-T; In the Matter of the Trust of:The Christian Family Trust u.a.d. 10/11/16; Envelope Number: 2715964

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To: jerimy@jkirschnerlaw.com

Mon, Jun 18, 2018 at 12:31 PM



Filing Submitted

Envelope Number: 2715964

Case Number: P-17-092512-T

Case Style: In the Matter of the Trust of:The Christian Family Trust u.a.d. 10/11/16

Filing Details	
Court	Eighth Judicial District Court
Date/Time Submitted	6/18/2018 12:30 PM PST
Filing Type	Motion to Stay - MSTY (PRB)
Filing Description	Emergency Petition For Stay Pending Writ Of Mandamus/Writ Of Prohibition
Type of Filing	EFileAndServe
Filed By	Jerimy Kirschner
Filing Attorney	Jerimy Kirschner

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*Attorney for Jacqueline Utkin,
Successor Trustee to the Christian Family Trust
Dated October 11, 2016*

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the

THE CHRISTIAN FAMILY TRUST

Dated October 11, 2016

Case Number: P-17-092512-T

Dept.: S

**EMERGENCY PETITION FOR STAY PENDING WRIT OF MANDAMUS/WRIT OF
PROHIBITION**

COMES NOW, Jacqueline Utkin ("Trustee Utkin"), Successor Trustee to The Christian Family Trust, Dated October 11, 2016 ("CFT"), by and through her attorneys of record, Jerimy Kirschner & Associates, PLLC., and hereby files this EMERGENCY PETITION FOR STAY PENDING WRIT OF MANDAMUS/WRIT OF PROHIBITION. ("Petition").

This Petition 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.

NOTICE OF MOTION

Please take notice that the undersigned will bring the above-entitled EMERGENCY PETITION FOR STAY PENDING WRIT OF MANDAMUS/WRIT OF PROHIBITION for hearing before Department S of the District Court on the ____ day of _____, 201____, at the hour of _____, or as soon thereafter as counsel can be heard.

DATED this 18th day of June, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jerimy L. Kirschner, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Trustee Utkin filed her Petition for a Writ of Mandamus or in the alternative, Writ of Prohibition to the Nevada Supreme Court, Case No. 76053 (“Request for Writ”), pertaining to this Court’s order entered at 2:57PM on June 1, 2018 (“June 1st Order”). Trustee Utkin seeks a stay of enforcement of the Order as well as a stay of the hearing currently set for June 28, 2018 until the Nevada Supreme Court renders a ruling on the Request for Writ.

II. BRIEF STATEMENT OF FACTS AND PROCEDURE

1. On June 12, 2018, Trustee Utkin filed her Request for Writ. **Exhibit 1 – Request for Writ.**
2. The Request for Writ pertained to the June 1st Order, which is the subject of the hearing set by this Court for June 28, 2018.

3. The Request for Writ requested, in part,

- A.1. An Order prohibiting District Court Judge Vincent Ochoa from enforcing the June 1, 2018 Order pertaining to the appointment of an Independent Trustee Order for The Christian Family Trust, Dated October 11, 2016 (“Trust”).

- A.2. An Order for the lower court to vacate the [June 1st Order].

- A.3. An Order requiring [this court] to cease attempts to remove Petitioner as trustee and appoint an independent trustee.

See, Exhibit 1, Pg 11 (Internal footnote omitted).

4. The assets of the Trust continue to be under the effect of this Court’s October 31, 2017 order freezing assets (“Freeze Order”).

III. ARGUMENT

District courts have the authority to stay judgment pending appeal. Liu Jui-Kwa Chen v. Eighth Judicial Dist. Court of State in & for Cty. of Clark, 390 P.3d 166, 2017 WL 881880, Case No. 70113 (Nev., February 27, 2017) (Unpublished Disposition);¹ *See Also*, NRCP 62(a) and (d);

¹ NRAP 36(C)

(2) 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.

(3) A party may cite for its persuasive value, if any, an unpublished disposition issued by this court on or after January 1, 2016. When citing an unpublished disposition to this court, the party must cite an electronic database, if available,

NRAP 8(a)(1)(A). In addition, the district court may require the posting of a supersedes bond as a condition of the stay. NRCP 62(d).

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay. Nelson v. Heer, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005); see also Gottwals v. Rencher, 60 Nev. 35, 46, 92 P.2d 1000, 1004 (1939) (indicating that on principles of equity and justice a “bond is necessary to protect an appellee against damages he may sustain by reason of an unsuccessful appeal”). Accordingly, posting security protects a party from damages incurred as a result of a wrongful injunction, but it is not meant to protect “from damages existing before the injunction was issued.” Am. Bonding Co. v. Roggen Enters., 109 Nev. 588, 591, 854 P.2d 868, 870 (1993).

In Nelson v. Heer, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005), as modified (Jan. 25, 2006) the Nevada Supreme Court adopted the 7th circuit’s framework for determine whether a bond may be waived and/or alternate security substituted, specifically laying out five factors:

(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position

Id. (citing, Dillon v. City of Chicago 866 F.2d 902 (7th Cir.1988)).

Herein, a stay of the June 1st Order and the June 28, 2018 Hearing (“Hearing”) is warranted pending resolution of the Request for Writ. First, a ruling on the Request for Writ in favor of Trustee Utkin would subsume the entirety of the June 1st Order and the Hearing and also involve a significant waste of judicial resources if any decisions must be unwound. Secondly, the Request for Writ involves significant questions of procedural due process and whether the Hearing would

and the docket number and filing date in this court (with the notation “unpublished disposition”). A party citing an unpublished disposition must serve a copy of it on any party not represented by counsel.

exacerbate a violation of Trustee Utkin's rights. Preservation of judicial resources and avoidance of irreparable harm weigh in favor of a stay.

Furthermore, the *Nelson* factors weigh in favor of this Court not requiring a bond as a condition of the stay. The Request for Writ does not involve collection of a monetary judgment, rather it is about a preservation of rights. The Trust and its assets are before the Court after this Court having taken *in rem* jurisdiction, thus collection would be easy. An accounting for costs would be procedurally simple given that the assets are available for collection. At a minimum, the Trust has real property located at 2848 Bluffpoint Drive, Las Vegas, Nevada 89134, which has an approximate value of three hundred eighteen thousand dollars (\$318,000.00), which should greatly exceed the cost of the writ should it be denied, therefore there is little risk of insolvency. As such the Court should grant the stay without bond.

Finally, if the Court should require a bond as a condition of the stay, then Trustee Utkin would request that the Court modify the Freeze Order to allow Trustee Utkin to post the bond from assets of the Trust. NRS 18.090 provides that,

In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting and defending in his or her own right; but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented...

Thus, if the Court should require a bond to be posted for the stay pending resolution of the writ, then Trustee Utkin is entitled to post the bond from the assets of the Trust.

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IV. CONCLUSION

Trustee Utkin requests that this Court issue a stay of the Court's June 1st Order, including a stay of the hearing currently set for June 28, 2018, without bond. If a bond is required, Trustee Utkin would request that it be minimal, and that the Court modify its October 31, 2018 Freeze Order to allow Trustee Utkin to access Trust assets and to post the bond from those assets.

DATED this 18th day of June, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jerimy L. Kirschner, Esq.

JERIMY L. KIRSCHNER, ESQ.

Nevada Bar No. 12012

5550 Painted Mirage Rd., Suite 320

Las Vegas, NV 89149

Attorney for Jacqueline Utkin, Successor Trustee to the Christian Family Trust Dated October 11, 2016

**VERIFICATION OF JACQUELINE UTKIN FOR EMERGENCY PETITION FOR STAY
PENDING WRIT OF MANDAMUS/WRIT OF PROHIBITION**

I, JACQUELINE UTKIN, declare that:

1. I am submitting a EMERGENCY PETITION FOR STAY PENDING WRIT OF
MANDAMUS/WRIT OF PROHIBITION.
2. I know the contents of the Petition, which I know to be true of my own knowledge, except
for those matters stated on information and belief.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
and correct.

Date

Jacqueline Utkin

Jeremy Kirschner & Associates, PLLC

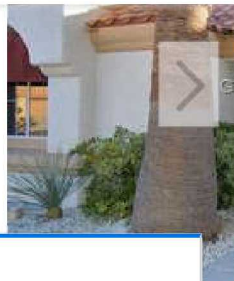
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EXHIBIT 7



2848 Bluff Point Dr,
Las Vegas,
NV 89134

2 beds · 2 baths ·
1,653 sqft

PENDING

\$318,000

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Est. Mortgage:

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Email

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☐ I want financing information

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