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Electronically Filed
Aug 13 2019 04:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Attorney for Respondent Jacqueline Utkin

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of
THE CHRISTIAN FAMILY TRUST u.a.d,
10/11/16

Supreme Court No: 79167
District Court Case. No: P-17-092512-T

SUSAN CHRISTIAN-PAYNE.
ROSEMARY KEACH AND
RAYMOND CHRISTIAN
Petitioners,
-vs
JACQUELINE UTKIN and
MONTE REASON,
Respondents.

MOTION TO DISMISS

COMES NOW, Respondent JACQUELINE UTKIN ("Respondent") by and through her counsel of record, JERIMY KIRSCHNER, ESQ., of the law firm JERIMY KIRSCHNER & ASSOCIATES, PLLC., and files this Motion to Dismiss("Motion").

This Motion 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Appellants' Susan Christian-Payne, Rosemary Keach and Raymond Christian ("Appellants") Docketing Statement has identified the incorrect parties for this appeal and purports to extend this court's jurisdiction to individuals not parties to the underlying court. Appellants have appealed an Eight Judicial District Court ("District Court") order which confirmed a trustee's decision to incur an expense and to release frozen funds to pay those expenses (the "Order Granting Payment"). The expenses were agreed to and approved by Respondent in her capacity as trustee for the Christian Family Trust (the "Trust") under the express terms of the Trust. The motion to release the funds to pay expenses ("Motion Requesting Payment") was also filed while she was trustee for the Trust. Approximately eight months passed between the filing of the Motion Requesting Payment to entry of the Order Granting Payment. During that intervening time, Jacqueline Utkin, was replaced as trustee by Frederick Waid, Esq. ("Trustee Waid").

Trustee Waid is the acting trustee for the Trust and has now paid the amounts owing under the Appealed Order. Appellants do not list Trustee Waid anywhere in the Docketing Statement and have instead identified Respondent in her individual capacity. Respondent is a stranger to this action in her individual capacity and has no business being a part of this appeal. As a result, this appeal should be dismissed unless/until Appellants cure the jurisdictional defect by amending their docketing statement to include the Trust's current trustee, Trustee Waid.

II. BRIEF STATEMENT OF FACTS

1. On or about January 15, 2018, Respondent filed A Notice of Substitution As the Real Party in Interest in the District Court, stating "JACQUELINE UTKIN has agreed to accept the appointment as successor trustee [for the Trust]... Pursuant to Nevada Rule of Civil Procedure 17(a), she is now the real party in interest *as the Trustee for the Trust*, and hereby substitutes into this matter, taking the place of the former Trustee MONTE BRIAN REASON." *See, Exhibit A – Notice of Substitution of Real Party in Interest* (emphasis added).

2. The underlying action in the District Court was hotly contested on every front and lead to Respondent filing a motion to confirm her position as trustee.

3. On April 4, 2018, the District Court entered its order confirming Respondent as the trustee for the Trust. *See, Exhibit B – Order Confirming Trustee.*

4. On October 23, 2018, the Motion for Payment was filed which sought release of frozen funds to pay Trust expenses. *See, Exhibit C – Motion Requesting Payment.*¹

5. Subsequently, the District Court entered its Order appointing Trustee Waid as a court-appointed trustee for the Trust. *See, Exhibit D – Order Appointing Trustee Waid.*

6. On June 13, 2019, the Order Granting Payment was entered by the District Court and which *directed the Trust* to pay its professional expenses. *See, Exhibit E – Order Granting Payment.*

7. On July 30, 2019, Trustee Waid issued the check making payment pursuant to the Order Granting Payment. *See, Exhibit F – Receipt of Check.*

8. On August 2, 2019, Appellants filed their docketing statement in which they identified Respondent, in her individual capacity, as the responsive party to the appeal (“Docketing Statement”). *See, Exhibit G – Docketing Statement.*²

III. ARGUMENT

A party seeking an appeal before this Court must file a docketing statement. *See, NRAP 14(a)(1).* The docketing statement is required to be completed fully and accurately, with failure to provide to provide complete and accurate information being grounds for sanctions. *See, NRAP 14(c).* In addition, failure to file a docketing statement can also be grounds for dismissal of the appeal. *Id.* A respondent who believes there is a jurisdictional defect in the docketing statement may file a motion to dismiss. *See, NRAP 14(f) & NRCP 27(a)(1).*

This Court has adopted the modern legal standard that a person's representative capacity is distinguished from their individual capacity, and the differing ‘capacities are generally treated as ... two different legal personages.’” *See, Mona v. Eighth Judicial Dist. Court of State in & for Cty. of Clark*, 132 Nev. Adv. Op. 72, 380 P.3d 836, 842 (2016) (citing cases and legislative support in support of modern approach). Thus, a person in their representative capacity as a trustee is a different person from themselves in an individual capacity. *Id.* (“Rhonda in her representative capacity is a different legal personage than Rhonda in her individual capacity, NRCP 34 and NRS

¹ Exhibits Excluded.

² Exhibits Excluded.

21.270 may not be used to compel Rhonda to produce documents or answer questions concerning her personal finances and affairs because she, in her individual capacity, is a third party to the underlying action”)

Appellants’ Docketing Statement identifies the respondent as “JACQUELINE UTKIN;” however, Respondent has never appeared in the District Court her individual capacity and Respondent is no longer trustee for the Trust. Respondent, as an individual, has no standing to file a brief, to speak on behalf of the Trust or even negotiate a settlement at a settlement conference on behalf of the Trust. Appellants, through this appeal, are challenging a trustee exercise of their discretion to retain and pay counsel. This is a fight between the Trust and beneficiaries; it is not a fight between the beneficiaries and Respondent the individual. The only individual with standing to oppose the appeal is its current trustee, Trustee Waid, thus he is the real party in interest and the correct respondent for this appeal. *See*, NRCP 17(a)(1)(E)(“The following may sue in their own names without joining the person for whose benefit the action is brought... a trustee of an express trust”). Appellants’ Docketing Statement is incorrect and introduces a jurisdictional defect in that this Court does not have jurisdiction over Respondent in her individual capacity. As such, Appellants’ appeal should be dismissed unless or until the defect is cured, *i.e.* naming Trustee Waid as the respondent and removing Respondent Jacqueline Utkin as a party.

In addition, Respondent would request, as a sanction, that Appellants be made to pay the attorneys fees and costs incurred by her as a result of responding to this matter, which is approximately two thousand eight hundred and thirty-five dollars (\$2,835.00).

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1 **IV. CONCLUSIONS**

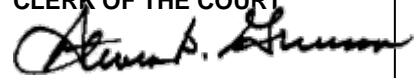
2 Respondent has not appeared in the District Court action as an individual and is no longer
3 trustee of the Trust with standing to defend this appeal. As a result, Appellants have failed in their
4 duty under NRAP 14 to file a correct docketing statement, and have introduced a jurisdiction defect
5 to this appeal. Respondent would request that this Court dismiss her from this appeal and that
6 Appellants be made to pay two thousand eight hundred and thirty-five dollars (\$2,835.00) of her
7 legal fees and costs as a sanction.

8
9 Dated this 13th Day of August 2019.

10 JERIMY KIRSCHNER & ASSOCIATES, PLLC

11
12 /s/ Jerimy L. Kirschner, Esq.
13 JERIMY L. KIRSCHNER, ESQ.
14 Nevada Bar No. 12012
15 5550 Painted Mirage Road, Suite 320
16 Las Vegas, Nevada 89149
17 *Attorney for Jacqueline Utkin*
18
19
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23
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27
28

EXHIBIT A



JERIMY L. KIRSCHNER, ESQ.
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*Attorney for Jacqueline Utkin,
Successor Trustee to the Christen 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.: (PC-1) 26

NOTICE OF SUBSTITUTION OF REAL PARTY IN INTEREST

COMES NOW, Jacqueline Utkin, Successor Trustee to the Christen Family Trust Dated October 11, 2016 ("Trustee"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby submits this NOTICE OF SUBSTITUTION OF REAL PARTY IN INTEREST pursuant to Nevada Rule of Civil Procedure 17(a).

1. On October 11, 2016, NANCY CHRISTIAN, also known as NANCY I. CHRISTIAN, established, along with her late husband, RAYMOND T. CHRISTIAN, also known as RAYMOND T. CHRISTIAN, SR., a revocable Trust entitled the "CHRISTIAN FAMILY TRUST" (the "Trust")

2. On June 12, 2017 NANCY CHRISTIAN executed a “Modification and Designation of Trustee and Successor Trustee” (“ Modification”) which expressly removed the then serving co-trustees ROSEMARY K. CHRISTIAN-KEACH, RAYMOND T. CHRISTIAN, JR., and SUSANG. CHRISTIAN-PAYNE and in their place, NANCY CHRISTIAN designated MONTE BRIAN REASON to serve as trustee of the Trust.

3. MONTE BRIAN REASON has sought to resign as the Trustee of the Trust.

4. Pursuant to the Modification’s order of succession, MONTE BRIAN REASON sought to designate Wells Fargo Bank as the successor.

5. On December 22, 2017, Wells Fargo Bank declined the appointment, and has executed a Declination to Act as Successor Trustee. **Exhibit 1.**

6. Thereafter, and pursuant to Section 9.3 and Section 8.1 of the Trust, MONTE BRIAN REASON has nominated JACQUELINE UTKIN to serve as the successor trustee, and has done through his Resignation Of Trustee And Nomination Of Successor Trust. **Exhibit 2**

7. JACQUELINE UTKIN has agreed to accept the appointment as successor trustee, and has executed a Certificate of Incumbency to reflect the acceptance. **Exhibit 3.**

8. Pursuant to Nevada Rule of Civil Procedure 17(a), she is now the real party in interest as the Trustee for the Trust, and hereby substitutes into this matter, taking the place of the former Trustee MONTE BRIAN REASON.

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1 9. In doing so, JACQUELINE UTKIN, also substitutes Trust counsel for her attorney,
2 the undersigned.

3
4 DATED this 15th day of January, 2018.

5
6 JERIMY KIRSCHNER & ASSOCIATES, PLLC

7
8 /s/ Jerimiy L. Kirschner, Esq.
JERIMY L. KIRSCHNER, ESQ.

9 Nevada Bar No. 12012
10 5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149
Telephone: (702) 563-4444
11 *Attorney for Jacqueline Utkin,*
Successor Trustee to the Christen Family Trust
12 *Dated October 11, 2016*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Jerimy Kirschner & Associates, PLLC, and on January 15, 2018, I caused a copy of the foregoing NOTICE OF SUBSTITUTION OF REAL PARTY IN INTEREST to be served through the electronic court filing system or via first class, US mail, postage prepaid upon the following persons/entities:

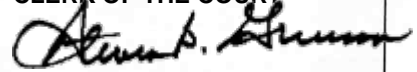
Cary Colt Payne, Esq.
Cary Colt Payne, Chtd.
700 S. 8th St.
Las Vegas, NV 89101

*Attorney for Susan Christian-Payne,
Rosemary Keach and Raymond Christian, Jr.*

Joey Powell, Esq.
Rushforth, Lee & Kiefer LLP
1707 Village Center Circle, Suite 150
Las Vegas, NV 89134
Attorney for Monte Reason

/Jeremy L. Kirschner, Esq.
An Employee of JERIMY KIRSCHNER & ASSOCIATES, PLLC

EXHIBIT B



4/03
4/04
odma

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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.: (PC-1) 26

**ORDER GRANTING PETITION TO CONFIRM SUCCESSOR TRUSTEE AND DENYING
COUNTER-PETITION FOR REINSTATEMENT OF CO-PETITIONERS**

This matter having come before this Court on March 15, 2018 ("Hearing"), In the Matter of THE CHRISTIAN FAMILY TRUST Dated October 11, 2016 ("Action"), for the Christian Family Trust Dated October 11, 2016 ("Trust") this Court having reviewed all pending motions, petitions, and oppositions, including:

(1) PETITION TO CONFIRM SUCCESSOR TRUSTEE; AND

(2) COUNTER-PETITION FOR REINSTATEMENT OF CO-PETITIONERS

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1 Jeremy Kirschner, Esq. having appeared on behalf of Jacqueline Utkin, Trustee of The Christian
2 Family Trust Dated October 11, 2016; Cary C. Payne, Esq. having appeared on behalf of Susan
3 Christian Payne, Raymond Christian, and Rosemary Keach ("Counter-Petitioners"); Joey Powell,
4 Esq. and Danels Kiefer, Esq. having appeared on behalf of Monte Brian Reason, beneficiary, and
5 trustee to the Nancy Christian Trust and executor to the Nancy Christian Estate ("Monte"); and
6 Zachary Holyoak, Esq. and Anthony L. Barney having appeared on behalf of creditor Anthony L.
7 Barney, Ltd. ("creditor"); this Court having considered papers and pleadings on file, the statements
8 of counsel, and for good cause appearing:

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

11 **THE COURT FURTHER FINDS THAT:** Trustor Nancy Christian's modification to
12 name Monte Reason trustee was permitted pursuant to the clear and unambiguous terms of the
13 Trust.

14 **THE COURT FURTHER FINDS THAT:** Monte Reason's nomination of Jacqueline
15 Utkin to serve as successor trustee was permitted pursuant to the clear and unambiguous terms of
16 the Trust.

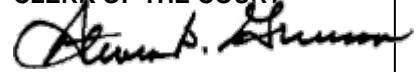
17 **THE COURT FURTHER FINDS THAT:** Jacqueline Utkin has accepted the appointment
18 to serve as successor trustee to the Trust.

19 **THE COURT FURTHER FINDS THAT:** Jacqueline Utkin is the successor trustee to the
20 Trust.

21 **THE COURT FURTHER ORDERS THAT:** Jacqueline Utkin petition confirming her as
22 Successor Trustee of the Trust is **GRANTED**.

23 **THE COURT FURTHER ORDERS THAT:** the Counter-Petition For Reinstatement Of
24 Co-Petitioners Susan Christian Payne, Raymond Christian, and Rosemary Keach is **DENIED**.

EXHIBIT C



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Attorney for Jacqueline Utkin

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

MOTION REQUESTING PAYMENT

Jacqueline Utkin (“Utkin”), by and through her counsel of record, Jerimy Kirschner, Esq. of Jerimy Kirschner & Associates, PLLC, hereby submits his Motion Requesting Payment (“Motion”) from time serving as counsel for the “Christian Family Trust”, dated October 11, 2016 (the “Trust”).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Utkin files this Motion requesting payment of attorney fees incurred on behalf of the Trust while she was trustee, incurred while she was defending her position as trustee, and incurred as part of providing a beneficiary requested Accounting. Utkin files this motion in compliance with this Court's order entered February 4, 2018.

II. STATEMENT OF FACTS

1. The Trust authorizes its trustee to retain and pay professionals including attorneys. See, **Exhibit 1** – Trust, Section 10.1 (n).

2. Utkin served as the trustee of the Trust from January 12, 2018 until she was suspended on July 25th, 2018. *See*, Order Confirming Successor Trustee entered April 4, 2018; *See Also*, Order entered July 25, 2018.

3. Utkin retained the firm of Jeremy Kirschner & Associates, PLLC (“JKA”) to represent her as trustee for the Trust.

4. During this time, the Trust was engaged in hotly contested litigation involving the former trustees, and included an attempt to uncover undisclosed Trust assets and liabilities.

5. Utkin received monthly invoices from her counsel and has approved the amounts owed from her time as trustee. *See*, **Exhibit 2- Invoices from Jeremy Kirschner & Associates, PLLC**.

6. Utkin's counsel also noticed and perfected a retaining lien on the file pursuant to NRS 18.015.

7. Jeremy Kirschner & Associates, PLLC (“JKA”) has provided notice to Utkin pursuant to NRS 18.015 as well as to CFT beneficiaries. *See, Exhibit 3 – Letter to Jacqueline Utkin; See Also, Exhibit 4 – Letter to Counsel for Petitioners and Monte Reason.*

8. JKA has expressly asserted a lien on the papers and files left in its possession. *See, NRS 18.015(1)(b); See Also, Exhibit 3 & 4..*

9. The lien was for an amount undisputed, agreed upon amount of attorney fees by the trustee through written retainer. *See, NRS 18.015(2).*

10. Notice was given via certified mailing notice of the retaining lien and the amount of the lien. *See, NRS 18.015(3). See, Exhibit 5 – Certified Mailing Receipts for Utkin, Counsel for Petitioners & Monte Reason.*

11. As a result, JKA’s retention lien has been perfected pursuant to statute.

12. After her suspension, Utkin contested the grounds for her suspension at an evidentiary hearing.

13. After the hearing, beneficiaries Rayment Christian Jr., Rosemary Keach and Susan Christian-Payne (“RRS Beneficiaries”) made a statutory demand for an accounting, which was completed with the assistance of counsel. **Exhibit 6 – August 27, 2018 Letter from Cary Payne, Esq.**

14. On October 4, 2018, Counsel for RRS Beneficiaries, after receiving the accounting, made a demand for documents and files subject to the undersigned’s retaining lien. **Exhibit 7 – August 27, 2018 Letter from Cary Payne, Esq..**

15. On October 19, 2018, RRS Beneficiaries filed a formal objection to the accounting citing a number of alleged defects.

16. As a result of RRS Beneficiaries objection, Utkin was again forced to incur attorney fees to respond to the allegations therein.

17. This Court has ordered that any payment of attorney fees be preceded by a request to the Court for payment. *See*, February 4, 2018, Omnibus Order.

18. As such, Utkin submits this Motion seeking payment of fees for her counsel.

III. REQUEST FOR PAYMENT

In total, JKA performed legal services for Utkin (in her capacity as trustee) in the amount of \$121,421.50 (legal fees) and incurred costs in the amount of \$2,792.35, with \$5,000 having been paid, leaving a remaining balance of \$119,004.85. These are a contractual obligation of the Trust and are not presented herein as being subject to *Brunzell's* factors. Broken down further,

- From the time Utkin was nominated as Trustee by Monte Reason on January 4th, 2018 to the time she was suspended as Trustee on July 25th, 2018, the attorney's fees and costs totaled at \$107,477.59.
- From July 25th, 2018 until the August 22nd Evidentiary Hearing, the attorney's fees and costs totaled at \$9,042.26.
- From August 28, 2018 until billing on October 4, 2018, the attorney's fees and costs totaled approximately \$7,485.00.¹

Although not necessary, JKA has provided a detailed breakdown of its time, including billing statements which identified the person billing, the amount for each task, and a description of each task performed. In addition, JKA has a retaining lien upon the Trust's file which they are prepared to turn over to the incoming trustee pending payment of legal fees.

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¹ NRS 165.1214(5) requires the Trust to bear the cost of completing the accounting.

IV. CONCLUSION/PRAYER

Utkin hereby requests that this Court direct payment of JKA's outstanding attorney fees by the CFT from its Chase Account ending #4818.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jeremy L. Kirschner, Esq.
JERIMY L. KIRSCHNER, ESQ.
Nevada Bar No. 12012
5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149

VERIFICATION OF
MOTION REQUESTING PAYMENT

Under penalties of perjury under the laws of the State of Nevada, I declare that:

1. I approve of the submission of the above Motion Requesting Payment (the "Motion") and state that it is being filed for a legitimate purpose.
2. I have reviewed the Motion and know its content and factual assertions. I know the content and factual assertions in the Motion to be true of my own knowledge, except for those matters stated on information and belief.

Jacqueline Utkin

Date

1 **IV. CONCLUSION/PRAYER**

2 Utkin hereby requests that this Court direct payment of JKA's outstanding attorney fees by
3 the CFT from its Chase Account ending #4818.

4 **JERIMY KIRSCHNER & ASSOCIATES, PLLC**

5 /s/ Jeremy L. Kirschner, Esq.

6 **JERIMY L. KIRSCHNER, ESQ.**

7 Nevada Bar No. 12012

8 5550 Painted Mirage Rd., Suite 320

9 Las Vegas, NV 89149

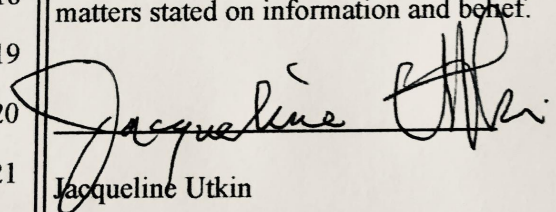
10 **VERIFICATION OF**

11 **MOTION REQUESTING PAYMENT**

12 Under penalties of perjury under the laws of the State of Nevada, I declare that:

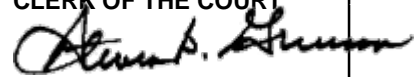
13 1. I approve of the submission of the above Motion Requesting Payment (the "Motion") and
14 state that it is being filed for a legitimate purpose.

15 2. I have reviewed the Motion and know its content and factual assertions. I know the
16 content and factual assertions in the Motion to be true of my own knowledge, except for those
17 matters stated on information and belief.
18

19 
20 Jacqueline Utkin

21 Oct 23, 2018
22 Date

EXHIBIT D



1 **ORDER**

2 Todd L. Moody (5430)
3 Russel J. Geist (9030)
4 HUTCHISON & STEFFEN, PLLC
5 10080 West Alta Drive, Suite 200
6 Las Vegas, NV 89145
7 (702) 385-2500
8 (702) 385-2086 Fax
9 tmoody@Hutchlegal.com
10 rgeist@Hutchlegal.com

11 *Attorneys for Fredrick P. Waide*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 In the matter of
15
16 THE CHRISTIAN FAMILY TRUST,
17
18 dated October 11, 2016,

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

19 **ORDER**

20 The Court upon the oral motion of Fredrick P. Waide for an order reaffirming his authority
21 as Trustee, hereby finds that it is necessary for the Court to issue an order confirming that Fredrick
22 P. Waide is the Trustee of the Christian Family Trust.

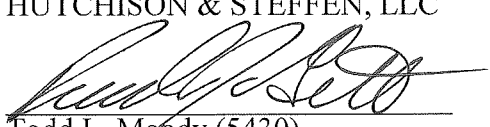
23 THEREFORE IT IS HEREBY ORDERED, JUDGED, AND DECREED that Fredrick P.
24 Waide is confirmed as the Trustee of the Christian Family Trust, with sole authority to act
25 thereunder.

26 Dated this May 24th, 2019.

27 
28 District Court Judge

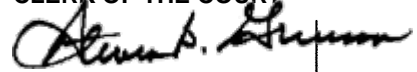
Submitted by:

HUTCHISON & STEFFEN, LLC

29 
30 Todd L. Moody (5430)
31 Russel J. Geist (9030)
32 10080 W. Alta Dr., Ste 200
33 Las Vegas, NV 89145

34 *Attorneys for Fredrick P. Waide*

EXHIBIT E



1 **NEOJ**
2 JOSEPH J. POWELL
3 State Bar No. 8875
4 RUSHFORTH LEE & KIEFER LLP
5 1707 Village Center Circle, Suite 150
6 Las Vegas, NV 89134
7 Telephone: (702) 255-4552
8 Email: probate@rlklegal.com
9 Attorneys for Monte B. Reason
10
11

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 In the Matter of the

10 **THE CHRISTIAN FAMILY TRUST**
11 **u.a.d. 10/11/16**

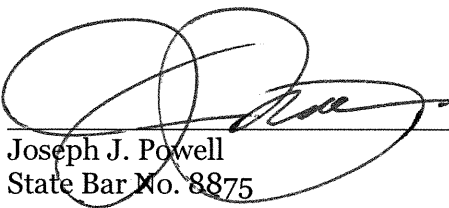
Case No. P-17-092512-T
Department B/Judge Marquis
(Probate) Clark District
Family Domestic

12 **NOTICE OF ENTRY OF ORDER**

13 **NOTICE IS HEREBY GIVEN THAT:**

14 The Notice of Entry of Order was entered in the above entitled matter on June 11, 2018, a copy
15 of which is attached hereto.
16

17 Respectfully submitted by:

18 
19
20 Joseph J. Powell
21 State Bar No. 8875
22
23
24
25
26

6/13/19
DATE



ORDER

JOSEPH J. POWELL
State Bar No. 8875
RUSHFORTH LEE & KIEFER LLP
1707 Village Center Circle, Suite 150
Las Vegas, NV 89134-0597
Telephone: (702) 255-4552
Fax: (702) 255-4677
Email: probate@rlklegal.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of

THE CHRISTIAN FAMILY
TRUST u.a.d. 10/11/16

Case No. P- 17-092512-T
Department B/Judge Marquis
(Probate) Clark District
Family Domestic

Hearing date: May 24, 2019
Hearing time: 1:30 P.M.

ORDER

This matter came before the above-entitled court on May 24, 2019 at 1:30pm and pertained to "Monte Reason's Application for Reimbursement of Administrative Expenses" which was filed with this Court on March 8, 2018 and the "Supplemental Brief Regarding Obligation of Trust for Payment of Legal Fees and Costs to Rushforth Lee & Kiefer LLP" which was filed with this Court on May 22, 2019.

Present at the hearing on behalf of Rushforth Lee & Kiefer LLP ("RLK") was Joseph J. Powell, Esq. Also present at the hearing were Jerimy Kirschner, Esq., Cary Payne, Esq., on behalf of Susan Christian, Rosemary Christian-Keach, and Raymond Christian, Jr., with Mrs. Christian and Mr. Christian, Jr., present with Attorney Payne, along with Fredrick P. Waid, trustee of the Christian Family Trust, dated October 11, 2016, and his counsel, Russel J. Geist, Esq.

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**DISTRICT COURT
DEPT B**



ORDER

IT IS HEREBY ORDERED THAT RLK's request for payment of its legal fees and costs totaling the sum of \$52,940 from funds belonging to the Christian Family Trust, dated October 11, 2016 is hereby GRANTED.

IT IS HEREBY FURTHER ORDERED THAT a certified check in the amount of \$52,940 shall be issued by the Christian Family Trust, dated October 11, 2016, from its Chase Account ending in #4818.

IT IS SO ORDERED, ADJUDGED AND DECREED

June 10, 2019
DISTRICT COURT JUDGE LINDA MARQUIS

[Signature]
LINDA MARQUIS

Respectfully submitted by:

RUSHFORTH LEE & KIEFER LLP

APPROVED/DISAPPROVED

[Signature]
JOSEPH J. POWELL, ESQ.
State Bar No. 8875
1707 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

[Signature]
RUSSEL J. GEIST, ESQ.
HUTCHISON & STEFFEN PLLC
10080 W Alta Dr, Suite 200
Las Vegas, Nevada 89145

APPROVED/DISAPPROVED

APPROVED/DISAPPROVED

Declined to sign (see attached e-mail from Mr. Payne dated May 30, 2019)

[Signature]
JERIMY L. KIRSCHNER, ESQ.
JERIMY KIRSCHNER & ASSOCIATES PLLC
5550 Painted Mirage Road, Suite 320
Las Vegas, Nevada 89149

[Signature]
CARY COLT PAYNE, ESQ.
CARY COLT PAYNE, CHTD.
700 S. 8th Street
Las Vegas, Nevada 89101



ORDER

IT IS HEREBY ORDERED THAT RLK's request for payment of its legal fees and costs totaling the sum of \$52,940 from funds belonging to the Christian Family Trust, dated October 11, 2016 is hereby GRANTED.

IT IS HEREBY FURTHER ORDERED THAT a certified check in the amount of \$52,940 shall be issued by the Christian Family Trust, dated October 11, 2016, from its Chase Account ending in #4818.

IT IS SO ORDERED, ADJUDGED AND DECREED

DISTRICT COURT JUDGE

DATE

Respectfully submitted by:

RUSHFORTH LEE & KIEFER LLP

APPROVED/DISAPPROVED

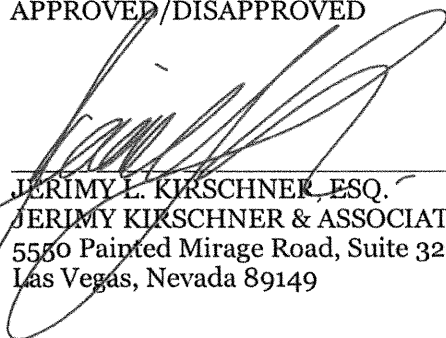
JOSEPH J. POWELL, ESQ.
State Bar No. 8875
1707 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

RUSSEL J. GEIST, ESQ.
HUTCHISON & STEFFEN PLLC
10080 W Alta Dr, Suite 200
Las Vegas, Nevada 89145

APPROVED/DISAPPROVED

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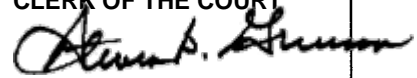
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EXHIBIT F



Todd L. Moody (5430)
Russel J. Geist (9030)
HUTCHISON & STEFFEN, PLLC
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(702) 385-2500
(702) 385-2086 Fax
tmoody@Hutchlegal.com
rgeist@Hutchlegal.com

Attorneys for Fredrick P. Waid

DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of

THE CHRISTIAN FAMILY TRUST,


dated October 11, 2016,

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

RECEIPT OF CHECK

Receipt of check number 0015410503 in the amount of \$119,004.85 is hereby
acknowledged this 30 day of July, 2019.

KIRSCHNER & ASSOCIATES



Jeremy Kirschner, Esq.
5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

EXHIBIT G



In the Supreme Court of the State of Nevada

Electronically Filed
Aug 02 2019 10:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

INDICATE FULL CAPTION:

In the Matter of the)

Supreme Court No. : 79167

THE CHRISTIAN FAMILY)

TRUST u.a.d. 10/11/16)

~~~~~ )  
SUSAN CHRISTIAN, )

ROSEMARY KEACH AND )

RAYMOND CHRISTIAN )

Appellants, )

EJDC Case No.:

P-17-092512-T

-vs- )

JACQUELINE UTKIN and MONTE REASON )

Respondents. )

~~~~~ )  
DOCKETING STATEMENT

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1 Judicial District: EIGHTH Department: B County: CLARK
Judge: LINDA MARQUIS District Ct. Docket No. N/A

2 **Attorney filing this docket statement:**

Attorney CARY COLT PAYNE, ESQ **Telephone** (702) 383-9010
Firm CARY COLT PAYNE, CHTD.
Address 700 S. EIGHTH STREET, LAS VEGAS, NV 89101
Client(s) SUSAN CHRISTIAN, ROSEMARY KEACH,
RAYMOND CHRISTIAN, JR.

A joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by certification that they concur in the filing of this statement.

3 **Attorney(s) representing respondent(s):**

Attorney JERIMY L. KIRSCHNER, ESQ. **Telephone** (702) 563-4444
Address 5550 PAINTED MIRAGE RD., SUITE 320
LAS VEGAS, NV 89149
Client(s) JACQUELINE UTKIN

Attorney JOSEPH POWELL, ESQ. **Telephone** (702) 255-4552
Firm RUSHFORTH, LEE & KIEFER, LLP
Address 1701 VILLAGE CENTER CIRCLE, SUITE 150
LAS VEGAS, NV 89145
Client(s) MONTE REASON

4 **Nature of disposition below (check all that apply):**

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Grant/Denial of declaratory relief |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Review of agency determination |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Lack of jurisdiction | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Failure to state a claim | <input checked="" type="checkbox"/> Other disposition (specify) |
| <input type="checkbox"/> Failure to prosecute | Trust Administration-Petition for |
| <input type="checkbox"/> Other (specify) _____ | Attorney Fees, etc. |

5. **Does this appeal raise issues concerning any of the following:** **NO**
- | | |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input type="checkbox"/> Grant/denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |
6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:
Christian Family Trust; Susan Christian et.al v. Jacqueline Utkin
Case No: 75750
7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
NOT APPLICABLE
8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:
TRUST ADMINISTRATION – District Court’s interpretation of trust and an award of attorney’s fees to removed trustee, and former nominated trustee without benefit to the trust.
9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:
- (1) Did the District Court err and/or abuse its discretion by not considering Brunzell factors or other similar factors in awarding attorney’s fees in a trust matter?
- (2) Did the District Court err and/or abuse its discretion by making an award of attorneys fees and costs without any findings as to the reasonableness of any fees or the actual benefits to the trust, and summarily decided;
- (3) Did the District Court err and/or abuse its discretion by making an award of attorney’s fees and costs after the trustee was removed for cause?
- (4) Was it error to permit an unqualified trustee to nominate another trustee?
- (5) Was it error to permit an improper trustee a violation of trust terms an award of attorneys fees?

(6) Does a trustee (appointed) who did not marshal trust assets or was not named in the trust agreement have any right to engage counsel at the expense of a trust?

(7) Did the District Court err in not confirming a trustee then make an award of attorney's fees from trust assets?

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: N/A

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A X Yes _____ No _____ *If not, explain* _____

12. **Other issues.** Does this appeal involve any of the following issues? N/A

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain _____

13. **Trial.** If this action proceeded to trial, how many days did the trial last?
Bench Decision. Was it a bench or jury trial? Neither

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?
NOT APPLICABLE

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from:

June 10, 2019 (Utkin fees) and June 11, 2019 (Reason fees)

Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: NOT APPLICABLE

16. Date written notice of entry of judgment or order served:

June 10, 2019 (Utkin fees) and June 13, 2019 (Reason fees)

Attach a copy, including proof of service, for each order or judgment appealed from. (a) Was service by delivery ____; by mail ____; electronic service X

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),

NOT APPLICABLE

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP 50(b) ____ Date served ____ By delivery ____ or by mail ____ Date of filing ____

NRCP 52(b) ____ Date served ____ By delivery ____ or by mail ____ Date of filing ____

NRCP 59 ____ Date served ____ By delivery ____ or by mail ____ Date of filing ____

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion _____. Attach a copy.

(c) Date written notice of entry of order resolving motion served _____. Attach a copy, including proof of service.

(i) Was service by delivery _____ or by mail _____ (specify).

18. Date notice of appeal was filed : July 10, 2019

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other NRAP 4(a) ; NRS 155.190.

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1) ___ NRS 155.190 ___ X (specify subsection) (h) (j) (l) (n)
NRAP 3A(b)(2) ___ NRS 38.205 ___ (specify subsection) ___
NRAP 3A(b)(3) ___ NRS 703.376 ___
Other (specify) _____

Explain how each authority provides a basis for appeal from the judgment or order:

Specifically appealable by NRS

COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION. Attach separate sheets as necessary. N/A

21. List all parties involved in the action in the district court:

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.

NOT APPLICABLE

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:

Yes _____ No X

25. If you answered "No" to the immediately previous question, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below: Same parties

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes _____ No X If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes _____ No X

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Order implements appealable matters pursuant to NRS 150.190 (h), (j), (n), (l)

27. Attach file-stamped copies of the following documents:

- The latest filed complaint, counterclaims, cross-claims and third party claims;
- Any tolling motion(s) and order(s) resolving tolling motions;
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third party claims asserted in the action or consolidated action below, even if not at issue on appeal;
- Any other order challenged on appeal;
- Notices of entry for each attached order.

| | <i>Date filed</i> | <i>Description</i> |
|-------------|-------------------|---|
| Exhibit "A" | 3/8/18 | Monte Reason's Application for Reimbursement |
| Exhibit "B" | 3/9/18 | Combined Opposition to Fees and Costs
(sans exhibits as they do not relate to
Monte Reason's Application) (Payne) |
| Exhibit "C" | 3/9/18 | Monte Reason's Response to Opposition to
Application for Reimbursement |
| Exhibit "D" | 10/23/18 | Motion Requesting Payment (Utkin/Kirschner) |
| Exhibit "E" | 10/31/18 | Supplemental Objection to Utkin Accounting (Payne) |
| Exhibit "F" | 11/20/18 | Opposition to Utkin Motion for Fees (Payne) |
| Exhibit "G" | 5/22/19 | Supplemental Brief re RLK Fees (Payne) |
| Exhibit "H" | 5/22/19 | Supplemental Brief re Keifer Fees (Rushforth) |
| Exhibit "I" | 6/10/19 | Notice of Entry of Order (Kirschner) |
| Exhibit "J" | 6/13/19 | Notice of Entry of Order (Rushforth) |

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Submitted by:



CARY COLT PAYNE, ESQ.

Nevada Bar No.: 4357

CARY COLT PAYNE, CHTD.

700 S. Eighth Street

Las Vegas, NV 89101

(702) 383-9010

Attorney for Appellants

Susan Christian

Rosemary Keach

Raymond Christian, Jr.

Date: August 2, 2019


CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 2ND day of August, 2019, I have served to the following copy of the foregoing via electronic filing by electronic filing through the Court's E-Flex System:

Russel J. Geist, Esq.
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Email: rgeist@Hutchlegal.com
Attorneys for Fredrick P. Waid (current trustee)

Jerimy Kirschner, Esq.
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Attorney for Jacqueline Utkin

Joseph Powell, Esq.
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Las Vegas, NV 89134
email: joey@rlklegal.com
Attorney for Monte Reason



An employee of CARY COLT PAYNE, CHTD.