

JOIN

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

Electronically Filed
Aug 15 2019 01:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Attorneys for Respondent Monte Reason

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of the

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.

JOINDER TO MOTION TO DISMISS

COMES NOW, Respondent MONTE REASON ("Respondent") by and through his
counsel of record, JOSEPH J. POWELL, ESQ., of RUSHFORTH LEE & KIEFER LLP, and
files this Joinder to Respondent JACQUELINE UTKIN's Motion to Dismiss filed by and

1 through her counsel, JERIMY L. KIRSCHNER, ESQ., of JERIMY KIRSCHNER &
2 ASSOCIATES, PLLC, on August 13, 2019 ("Motion"), which is on file herein.

3 This Joinder is made based upon the Motion's Memorandum of Point and authorities
4 and hereby incorporates the same by reference.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 Respondent hereby joins in Respondent Jacqueline Utkin's Motion and hereby
8 incorporates the same legal argument and authority found in her Motion by this reference.

9 Appellants' Susan Christian-Payne, Rosemary Keach and Raymond Christian
10 ("Appellants") Docketing Statement has identified the incorrect parties for this appeal and
11 purports to extend this Court's jurisdiction to individuals who are not parties to the
12 underlying action. Appellants have appealed an Eight Judicial District Court ("District
13 Court") order which confirmed a trustee's decision to incur an expense and to release
14 previously frozen funds to pay those expenses (the "Order Granting Payment"). As it pertains
15 to the legal fees and costs that Respondent incurred during his time as trustee of the Christian
16 Family Trust (the "Trust"), the expenses were agreed to and approved by Respondent
17 Jacqueline Utkin in her capacity as the then acting trustee for the Trust under the express
18 terms of the Trust. The motion to release the funds to pay expenses ("Motion Requesting
19 Payment") was also filed by Respondent by Respondent Utkin was the acting trustee for the
20 Trust. Significant time had passed between the filing of the Motion Requesting Payment to
21 entry of the Order Granting Payment. During that intervening time, Respondent Jacqueline
22 Utkin, was replaced as trustee by Frederick Waid, Esq. ("Trustee Waid").

23 Trustee Waid is the current, acting trustee for the Trust and has now paid the amounts
24 owing under the Appealed Order(s). Appellants do not list Trustee Waid anywhere in the
25
26

1 Docketing Statement and have instead identified Respondent only in his individual capacity.
2 Respondent is and has never been a party to this action in his individual capacity, and, thus,
3 should not be made part of this appeal. As a result, this appeal should be dismissed
4 unless/until Appellants cure the jurisdictional defect by amending their docketing statement
5 to include the Trust's current acting trustee, Trustee Waid.

6
7 **II. BRIEF STATEMENT OF FACTS**

8 As stated, at no point in this matter has Respondent appeared in an individual
9 capacity. Respondent has only appeared in his capacity as the acting trustee of the Trust or
10 as the former trustee of said Trust. Nevertheless, the Appellants have chosen to name
11 Respondent in his individual capacity, which is entirely inappropriate, for the same reasons
12 applicable to Respondent Utkin, as articulated in her Motion.

13 **III. ARGUMENT**

14 Respondent incorporates by reference the legal argument and authority expressed in
15 the Motion.

16 To repeat the discussion contained in the Motion, Appellants' Docketing Statement
17 identifies Respondent as "MONTE REASON", yet Respondent has never appeared in this
18 matter in the District Court in his individual capacity, and, further, Respondent is no longer
19 the acting trustee for the Trust. Thus, Respondent, as an individual has no standing to file a
20 brief, to speak on behalf of the Trust, or even to negotiate a settlement at a settlement
21 conference on behalf of the Trust. As stated in the Motion, the Appellants in this appeal are
22 really challenging the exercise of Trustee Waid's discretion and authority to pay Respondent's
23 counsel for services rendered to him in his former capacity as acting trustee of the Trust,
24 which he is no longer in such position. Thus, it is truly only Trustee Waid who is the real
25 party in interest, and the only one who can respond to the Appellants' appeal. Thus, as
26

1 Respondent is not a proper party to this appeal, the Appellants' appeal should be dismissed
2 unless and until they cure their defective naming of the incorrect parties. At a minimum,
3 Respondent should be dismissed from this Appeal.

4 As requested by Respondent Utkin, Respondent also requests, as a sanction, that
5 Appellants be made to pay the attorneys fees and costs incurred by Respondent as a result of
6 the need to file this Joinder to the Motion, which totals approximately \$1,740.

7
8 **IV. CONCLUSION**

9 Respondent has not appeared in the District Court action as an individual and is no
10 longer trustee of the Trust, and as such has no standing to defend this appeal. As a result,
11 Appellants have failed in their duty under NRAP 14 to file a correct docketing statement, and
12 have introduced a jurisdictional defect to this appeal. Respondent would request that this
13 Court dismiss him from this appeal and that Appellants be made to pay \$1,740 of his legal
14 fees and costs as a sanction.

15 Dated this 15th Day of August 2019.

16 RUSHFORTH LEE & KIEFER LLP

17
18 /s/ Joseph J. Powell
19 Joseph J. Powell
20 Nevada Bar No. 8875
21 1707 Village Center Circle, Suite 150
22 Las Vegas, NV 89134
23 Attorneys for Respondent Monte Reason
24
25
26

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 15th day of August, 2019, I caused to be served a true and correct copy of the foregoing JOINDER TO MOTION TO DISMISS on the following person(s) by the following method(s) by the following method(s):

X by MAIL: N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada to the following:

Tommy L. Christian
245 South Lemon, Apt C
Orange, OA 92566

Christopher A. Christian
560 W. 20th Street #12
San Bernardino, CA 92405

Cary Colt Payne, ESQ.
CARY COLT PAYNE, CHTD.
700 South Eighth Street
Las Vegas, Nevada 89101
Attorney for Susan Christian, Rosemary Keach, and
Raymond Christian, Jr., Appellants

Jerimy Kirschner, Esq.
JERIMY KIRSCHNER & ASSOCIATES, LTD.
5550 Painted Mirage Rd., Suite 320
Las Vegas, NV89149
Attorney for Jacqueline Utkin, a respondent

Tiffany S. Barney, Esq.
ANTHONY L. BARNEY LTD.
3317 W. Charleston Blvd.. Suite B
Las Vegas. NV 89102
Attorney for Nancy I. Christian (deceased)

Russel J. Geist, Esq.
HUTCHISON & STEFEN
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Fredrick P. Waid, acting trustee

Fredrick P. Waid
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

1 X BY E-MAILAND/OR ELECTRONIC MEANS: Pursuant to Eighth Judicial District
2 Court Administrative Order 14-2, Effective June 1. 2014, as identified in Rule 9 of the
3 N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic
4 means (Wiznet) to the e-mail address(es) of the addressee(s).

5 Jerimy Kirschner, Esq.
6 JERIMY KIRSCHNER & ASSOCIATES, LTD.
7 5550 Painted Mirage Rd., Suite 320
8 Las Vegas, NV89149
9 Email: jehmy@jkirschnerlaw.com
10 Attorney for Jacqueline Utkin, a respondent

11 Tiffany S. Barney, Esq.
12 ANTHONY L. BARNEY LTD.
13 3317 W. Charleston Blvd.. Suite B
14 Las Vegas. NV 89102
15 email: tiffany@anthonybamey.com
16 Attorney for Nancy I. Christian (deceased)

17 Cary Colt Payne, ESQ.
18 CARY COLT PAYNE, CHTD.
19 700 South Eighth Street
20 Las Vegas, Nevada 89101
21 e-mail: carycoltpaynechtd@yahoo.com>
22 Attorney for Susan Christian, Rosemary Keach, and
23 Raymond Christian, Jr., Appellants

24 Russel J. Geist, Esq.
25 HUTCHISON & STEFEN
26 Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
e-mail: RGeist@hutchlegal.com
Attorneys for Fredrick P. Waid, acting trustee

/s/ Kelly L. Meade

An Employee of Rushforth Lee & Kiefer LLP