

No. 76198

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF THE
LYTLE TRUST,
Appellants,

vs.

SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST AND
JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND
JOLIN G. ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND
JULIE MARIE SANDOVAL GEGEN, AS TRUSTEES OF THE RAYNALDO G.
AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST
DATED MAY 27, 1992; AND DENNIS A. GEGEN AND JULIE S. GEGEN,
HUSBAND AND WIFE, AS JOINT TENANTS,
Respondents.

On Appeal from an Order of the Eighth Judicial District Court, Clark
County, Nevada; The Honorable Mark B. Bailus, District Court Judge;
District Court Case No. A-17-765372-C

**RESPONDENTS' RESPONSE TO APPELLANTS' MOTION TO
CONSOLIDATE APPEALS**

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Electronically Filed
Oct 23 2018 04:26 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

September Trust, dated March 23, 1972 (“September Trust”), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust (“Zobrist Trust”), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 (“Sandoval Trust”), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants (“Gegen”) (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be collectively referred to as “Respondents”), by and through their attorneys, Christensen James & Martin, hereby respond to Appellants’ Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust’s (“Appellants”) Motion to Consolidate Appeals (“Motion”).

RESPONSE

On October 16, 2018, the Appellants filed a Motion to Consolidate Appeals, requesting that this case be consolidated with Case No. 73039. Respondents oppose the Appellants’ Motion to Consolidate Appeals for the same reasons articulated by Marjorie B. Boulden, Trustee of the Marjorie Boulden Trust (“Boulden”) and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust (Lamothe”) in their Response to Appellants’ Motion to Consolidate Appeals (“Response”) filed in Case No. 73039 on October 19, 2018, a copy of which is attached hereto as Exhibit 1. The Respondents incorporate

and adopt by this reference all points and authorities, arguments and contentions made by the Boulden's and Lamothe's in their Response, any exhibits attached thereto and any supplemental papers filed in support thereof, and any oral argument that may be entertained by the Court at the time of any hearing on this matter.

DATED this 23rd day of October, 2018.

CHRISTENSEN JAMES & MARTIN

By: /s/ Wesley J. Smith, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the 23rd day of October 2018, I submitted the foregoing RESPONDENTS' RESPONSE TO APPELLANTS' MOTION TO CONSOLIDATE APPEALS (**Docket 76198**) for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 73039

Electronically Filed
Oct 19 2018 10:53 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF
THE LYTLE TRUST,**

Appellant,

vs.

**MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE BOULDEN
TRUST; LINDA LAMOTHE; AND JACQUES LAMOTHE, TRUSTEES OF
THE JACQUES & LINDA LAMOTHE LIVING TRUST**

Respondents.

District Court Case No. A-16-747800-C

Respondents' Response to Appellants' Motion to Consolidate Appeals

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Comes now Respondents MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE BOULDEN TRUST; LINDA LAMOTHE; AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST (“Respondents Boulden and Lamothe”) by and through their attorneys Foley & Oakes, PC and hereby Respond to Appellants’ TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST’S (the “Lytle”) Motion to Consolidate Appeals.

INTRODUCTION

Respondents Boulden and Lamothe oppose the Lytles’ Motion to Consolidate Appeals for five (5) reasons. First, the Briefing in Case No. 73039 was been completed on April 27, 2018 and the briefing in the case to be consolidated, Case number 76198, had not yet begun. Second, this Court in Case 73039 issued its Order Submitting the Appeal for Decision without Oral Argument on September 13, 2018. Third, the Lytles have not presented “good cause” for their Motion nor have they shown a reasonable excuse for their delay in bringing this Motion. Fourth, Respondents Boulden and Lamothe were the Plaintiffs in the District Court and the case including this appeal remains a cloud on the titles to their properties. Extending the date of this Court’s decision in Case 73039 will greatly prejudice the Respondents Boulden and Lamothe who are all of retirement age and are unable to move on with their lives. Fifth, the entire case, including

Case 76198 will be expedited by this Court ruling on Case 73039 as soon as possible.

FACTS

1. The Lytles filed their Opening Brief in Case 73039 on January 24, 2018. Extensions were granted to each set of Respondents. Respondents Boulden and Lamothe filed an Answering Brief on March 9, 2018. Respondents Robert and Yvonne Disman filed an Answering Brief on March 13, 2018. Amicus Curiae filed an Amicus Brief on March 19, 2018. Following two stipulations/joint motions for extension of time, the Lytles filed a Reply Brief on April 27, 2018. This April 27, 2018 Reply Brief concluded the briefing in Case 73039.

2. On September 13, 2018, this Court issued its Order in Case 73039 Submitting the Appeal for Decision Without Oral Argument. Presumably, this Court will issue a final Order in in Case 73039 before the end of the year.

3. The Lytles filed a Motion for Leave to File a Reply to the Amicus Brief in Case 73039 on June 10, 2018 which was denied by this Court as the Lytles failed to present good cause for the late filing of a Reply Brief at that stage in the proceedings.

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4. The Lytles filed their appeal in Case 76198 on June 19, 2018.

5. In their Motion to Consolidate, the Lytles fail to mention this Court's September 13, 2018 Order Submitting the Appeal for Decision without Oral Argument in Case 73039 and fail to present any excuse for their four (4) month delay in filing this Motion to Consolidate these Appeals.

ARGUMENT

THE MOTION TO CONSOLIDATE IS UNTIMELY

The Lytles filed their appeal in Case 76198 on June 19, 2018. In their Docketing Statement, the Lytles specifically list Case 73039 as a related pending proceeding before this Court. Yet, the Lytles have now waited 4 months after the filing the appeal to seek consolidation. Nothing has happened since June 19, 2018 to trigger the need for consolidation, other than perhaps this Court's September 13, 2018 Order Submitting the Appeal for Decision without Oral Argument in Case 73039. The fact that Case 73039 is to be ruled upon shortly without oral argument does not in any way support or warrant the consolidation with a case that hasn't had any briefing yet. The Lytles do not offer any excuse for their delay in filing the Motion to Consolidate.

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NRAP Rule 2, the only legal citation in the Motion to Consolidate, provides “[o]n the court’s own or a party’s motion, the court may — **to expedite its decision or for other good cause** — suspend any provision of these Rules in a particular case and order proceedings as the court directs, except as otherwise provided in Rule 26(b).” (emphasis added) The Lytles do not, and cannot argue that consolidation will expedite the proceedings. In fact, it will undoubtedly delay that decision by several months at a minimum as briefing has not even commenced in Case 76198. Contrary to the Lytles’ unsupported statement that consolidation is warranted and necessary for the effective disposition of these matters, presumably a “good cause” assertion by the Lytles, the opposite is true. Disposition of Case 73039 will effectively dispose of the appeal in Case 76198. Further, consolidation will only serve to delay disposition of both cases. Otherwise, as set forth below, there is no good cause for the consolidation.

**THE LYTLES HAVE NOT ALLEGED OR SHOWN GOOD CAUSE TO
CONSOLIDATE THE CASES**

The Lytles previously sought Leave of Court to file an additional Reply Brief in Case 73039, which this Court denied. This untimely Motion to Consolidate, was conspicuously filed after this Court issued its Order Submitting the Appeal for Decision without Oral Argument in Case 73039 on September 13, 2018, and appears to be nothing more than a second and even more untimely effort to supplement the Lytles’ briefing in Case 73039. Making a second effort to

supplement their Reply brief in Case 73039 is not good cause and in fact the Lytles should be sanctioned for this effort.

All the Lytles offer in their Motion is that the two cases are “identical” (pages 7 and 8 of the Motion to Consolidate), the essential and determinative facts are the same (page 8 of the Motion to Consolidate), and this Court’s decision in Case 73039 will impact Case 76198 as most of the legal issues will be decided therein (page 8 of the Motion to Consolidate). All of these statements by the Lytles are true; however, none of them support a Motion to Consolidate. If anything, for the sake of judicial economy, a decision in Case 73039, which ever way the Court rules, will render Case 76198 moot and result in a dismissal of that appeal.

Again, it is plain to see that the Lytles simply want to file the supplemental reply brief that this Court previously refused to allow them to do. Case 73039 is ripe for a decision and the proper thing to do for the parties and judicial economy is to rule on that case without delay.

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CONSOLIDATION WILL PREJUDICE THE RESPONDENTS

Given the fact that this Court is ready to rule in Case 73039 without oral argument, a delay of several months will prejudice Respondents Boulden and Lamothe. The Respondents Boulden and Lamothe were Plaintiffs in the underlying case who sought and obtained relief removing slanderous recordings against their title. Given the fact that the case is continuing on appeal, clouds still exist against the titles as potential buyers are reluctant to buy into litigation just as the Dismans did. The Lamothes are all of retirement age and it is extremely important to have their case resolved so they can freely sell or encumber their home.

On the other hand, the Lytles will suffer no harm if the cases are not consolidated. The Lytles have had every chance to fully brief their case. In fact, as the Lytles argue in the Motion to Consolidate, regardless of who prevails in the appeal of the 73039, the issues in the two cases are the same and most if not all questions in Case 76198 will be resolved. Accordingly, the best way to expedite these appeals is to not consolidate and let this Court issue its ruling in Case 73039 as soon as possible.

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CONCLUSION

There is absolutely no justification for filing this Motion to Consolidate Appeals at this time. The briefing is completed and the Court is prepared to rule without oral argument. The Lytles last minute effort is simply a second desperate effort to supplement their briefing. The Motion to Consolidate Appeals should be denied.

Dated this October 19, 2018

FOLEY & OAKES, PC

/s/ Daniel T. Foley

Daniel T. Foley, Esq.

Nevada Bar No. 1078

1210 S. Valley View Blvd. Ste 208

Las Vegas, Nevada 89102

Attorneys for Respondents Boulden and
Lamothe

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an employee of Foley & Oakes, PC, and that on the 19th day of October 2018, I served the following document(s):

Respondents' Response to Appellant's Motion to Consolidate Appeals

I served the above-named document(s) by the following means to the person s as listed below:

☒ **By Electronic Transmission through the ECF System:**

Richard E. Haskin, Esq. GIBBS, GIDEN, LOCHER, TURNER, SENET & WHITTBRODT, LLP 1140 N. Town Center Drive, Suite 300 Las Vegas, NV 89144 Attorneys for Trudi Lee Lytle and John Allen, as Trustees	Christina Wang, Esq. FIDELITY NATIONAL LAW GROUP 1701 Village Center Circle, #110 Las Vegas, Nevada 89134 Attorneys for Counterdefendants/Cross- Claimants Robert Dizman and Yvonne Dizman
Kevin B. Christensen, Esq. Wesley Smith, Esq. Laura J. Wolff, Esq. CHRISTENSEN JAMES & MARTIN 7440 West Sahara Avenue Las Vegas, Nevada 89117 Attorneys for September Trust, Zobrist Trust, Sandoval Trust and Dennis and Julie Gegen	

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

/s/ Liz Gould

An employee of FOLEY & OAKES, PC