

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant ,

v.

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 .

Supreme Court No.: 77007

District Court Case No.: A-17-765372-C

**MOTION FOR EXTENSION TO
FILE OPENING BRIEF**

Electronically Filed
Mar 13 2019 02:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
[Second Request]

Motion For Extension To File Opening Brief

(Docket 77007)

RICHARD HASKIN
Nevada Bar No. 11592
**GIBBS, GIDEN, LOCHER, TURNER,
SENET, & WITTBRODT, LLP**
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(702) 836-9800
Attorneys for Appellants

TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (the “Appellants”) hereby requests an additional extension of time of 30 days, up to and including April 27, 2019, to file and serve the Opening Brief in this Docket 77007. This is the second request for extension in this matter. Good cause exists for an additional extension because the district court, in this case, certified its intent to reconsider the attorney fee award that is the subject of this appeal, but before a written order could be entered, Judge Mark Bailus, stepped down from the bench.¹ A senior judge is now considering Judge Bailus’ order related to the foregoing certification.

On September 11, 2018, the Court granted Respondents’ Motion for Attorneys’ Fees and Costs. *See* Order Granting Fees and Costs, Exhibit A. Two day later, on September 13, 2018, the Nevada Supreme Court issued a published opinion in *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018), which opinion directly relates to the present case. Appellants filed a Notice of Appeal as to the Order Granting Attorneys’ Fees and Costs, which appeal is pending before the Nevada Supreme Court, Docket No. 77007.

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///

¹ Judge Mark Bailus lost in the November 2019 election to Judge Mary Kay Holthus, who was sworn on January 11, 2019.

Thereafter, Appellants filed a Motion to Reconsider the Order Granting Attorneys' Fees and Costs after filing the foregoing appeal. The district court heard the matter on November 27, 2018. During the hearing, the district court found that it ruled on the Motion for Attorneys' Fees and Costs prematurely and would not have granted and would have deferred ruling on the Motion for Attorneys' Fees and Costs pending determination of Nevada Supreme Court Docket No. 73039, which involves other parties to this consolidated litigation. Hearing Transcript ("Tran.") 18:13 – 25; 19:16 – 20:8, Exhibit B.

The district court, citing *Foster v. Dingwall*, 228 P.3d 453 (2010), EDRC 2.24, certified to the Nevada Supreme Court that it intended to reconsider the Motion for Attorneys' Fees and Costs and set a hearing thereon. Tran. 18:13 – 25; 19:16 – 20:8, Exhibit 2. This would allow the district court to consider the motion in light of the Nevada Supreme Court's ruling in *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018). Tran., 17:1 – 23, Exhibit B.

Appellants submitted a written order to the district court, but Judge Bailus was replaced, temporarily, by a senior judge to hear all matters related to this case. Appellants were just recently informed that the district court intends on discussing this matter at a hearing on April 3, 2019, at 9:00 a.m., before district court Judge Barker.

Appellants respectfully request an additional 30 days to file and serve their Opening Brief so that the district court can consider Judge Bailus' intent to certify to the Supreme Court the district court's intent to reconsider the award of attorneys' fees and costs to Respondents.

DATED this 13th day of March, 2019.

GIBBS, GIDEN, LOCHER, TURNER, SENET &
WITTBRODT, LLP

By: /s/ Richard E. Haskin

Richard E. Haskin

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Attorneys for Appellants

LIST OF EXHIBITS TO MOTION

Exhibit A	Order Granting Attorneys' Fees and Costs
Exhibit B	Transcript from November 27, 2018 Hearing

Certificate of Service

1. Electronic Service:

I hereby certify that on this date, the 12th day of February 2019, I submitted the foregoing **MOTION FOR EXTENSION TO FILE OPENING BRIEF (Docket 77007)** 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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2. Traditional Service:

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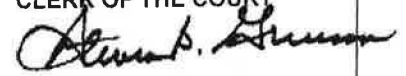

SHARA BERRY

EXHIBIT “A”



ORDR
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVIII

**ORDER REGARDING PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES
AND COSTS AND MEMORANDUM
OF COSTS AND DISBURSEMENTS
AND DEFENDANTS' MOTION TO
RETAKE AND SETTLE
MEMORANDUM OF COSTS**

Date: August 9, 2018
Time: 9:00 a.m.

**AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS**

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

Case No.: A-17-765372-C
Dept. No.: XXVIII

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs and
13 Memorandum of Costs and Disbursements (hereafter collectively "Plaintiffs' Motion") filed by
14 the September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G.
15 Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"),
16 Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and
17 Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992 ("Sandoval Trust"),
18 and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants ("Dennis & Julie
19 Gegen") (collectively the "Plaintiffs") in Case No. A-17-765372-C, and Defendants' Motion to
20 Retax and Settle Memorandum of Costs ("Defendant's Motion") filed by Trudi Lee Lytle and
21 John Allen Lytle, as Trustees of the Lytle Trust ("Lytle Trust") in Case No. A-17-765372-C,
22 which came on for hearing on July 26, 2018 at 9:00 a.m. and August 9, 2018 at 9:00 a.m. in
23 Department XVIII of the Eighth Judicial District Court, Clark County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the Plaintiffs
25 September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen. Richard Haskin,
26 Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of the Lytle
27 Trust. John M. Oakes, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B. Boulden,
28 Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996 ("Boulden

1 Trust”) and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe
2 Living Trust (“Lamothe Trust”). Christina H. Wang, Esq. of Fidelity Law Group appeared on
3 behalf of Robert Z. Disman and Yvonne A. Disman (“Robert & Yvonne Disman”).

4 The Court having considered the Plaintiffs’ Motion and exhibits and Defendant’s Motion
5 to Re-Tax and Exhibits, all Oppositions Replies and exhibits thereto, and having heard the
6 arguments of counsel, and with good cause appearing therefore, the Court hereby enters the
7 following Order:
8

9 **FINDINGS OF FACT**

10 In August and September of 2016, the Lytles recorded with the Clark County Recorder’s
11 office four (4) abstracts of the Final Judgment (“Abstracts of Judgment”) obtained against the
12 Rosemere Association on August 16, 2016 in Case No. A-09-593497-C, Department XII. The
13 Abstracts of Judgment were recorded against eight of the individual parcels or properties within
14 the Rosemere Subdivision, including properties owned by the Plaintiffs. The owners of the
15 encumbered properties were not Judgment Debtors under the Abstracts of Judgment.
16

17 On or about December 8, 2016, a case was filed against the Lytle Trust by the Bouldens,
18 who owned Parcel No. 163-03-313-008, 1960 Rosemere Court, and the Lamothes, who own
19 Parcel No. 163-03-313-002, 1830 Rosemere Court, each located in the Rosemere Subdivision, to
20 remove the Abstracts of Judgment and plead causes of action for Quiet Title, Declaratory Relief
21 and Slander of Title. On February 24, 2017, the Bouldens and Lamothes filed a Motion for
22 Partial Summary Judgment on their Quiet Title and Declaratory Relief causes of action, which
23 the Court granted on July 25, 2017 (“Order”).
24

25 In its Order, the Court found that, among other things, the Abstracts of Judgment were
26 improperly recorded and must be expunged and stricken from the record. Following the Court’s
27
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1 direction in the Order, the Lytle Trust released its liens against the Boulden and Lamothe
2 properties.

3 The Plaintiffs in this Action each own a property in the Rosemere Subdivision that was
4 encumbered by the Defendants' recording of the Abstracts of Judgment. Prior to initiating this
5 Action, on September 26, 2017, Plaintiffs sent a demand letter to Defendant's attorney
6 requesting that the Abstracts of Judgment be expunged from Plaintiffs' Properties as well, based
7 on the Court's Order and the identical factual and legal circumstances of the Plaintiffs'
8 properties. On several occasions, Plaintiffs' attorneys also spoke to the Lytle Trust's attorney
9 requesting that the Abstracts of Judgment be removed. The Plaintiffs requested to be placed in
10 the same position as the Bouldens and Lamothes, with the Appeal to continue and the
11 Defendants' appeal rights preserved. However, the Lytle Trust refused to release the Abstracts of
12 Judgment.
13

14 On November 30, 2017, the Plaintiffs filed a Complaint and Motion for Summary
15 Judgment in Case No. A-17-765372-C, Department XXVIII, requesting that the Lytle Trust's
16 Abstracts of Judgment be removed from their Properties, just as the Court had ordered for the
17 Bouldens and Lamothes. On February 21, 2018, Case No. A-17-765372-C was consolidated with
18 Case No. A-16-747900-C.
19

20 On February 9, 2018, the Defendants filed an Opposition to Motion for Summary
21 Judgment, Or, In the Alternative, Motion for Judgment on the Pleadings and Countermotion for
22 Summary Judgment ("Countermotion"). On February 21, 2018, Plaintiffs filed a Reply to the
23 Opposition and an Opposition to the Countermotion. On March 14, 2018, Defendants filed a
24 Reply to the Plaintiffs' Opposition to the Countermotion. The Motion and Countermotion came
25 on for hearing on March 21, 2018 and May 2, 2018, where the Court decided in the favor of the
26 Plaintiffs, adopting Judge Williams' prior Order as "law of the case."
27
28

CONCLUSIONS OF LAW

NRS 18.010(2)(b), provides that the court may make an allowance of attorney's fees to a prevailing party

Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

The Defendants had notice of the Order entered by Judge Williams in Case No. A-16-747900-C in favor of substantially similarly situated property owners as the Plaintiffs. After the Order was entered and prior to this Case being filed by the Plaintiffs, the Defendants were given opportunity to avoid this litigation and to preserve their legal arguments for appeal. As this Court has already held, Judge Williams' Order is *law of the case* and binding on this Court. Therefore, given the directive in NRS 18.010(b) to liberally construe the paragraph in favor of awarding attorney's fees, the Court finds that the Defendants' defense to this action was maintained without reasonable ground. An award of Attorney's Fees to the Plaintiffs is therefore warranted. Having prevailed in this Action, the Court finds that the Plaintiffs are also entitled to an award of Costs pursuant to NRS 18.020 and NRS 18.050.

In considering the reasonableness of the amount of the Plaintiffs' requested legal fees, the Court considered the factors set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), to wit: 1) The qualities of the advocate: his ability, his training, education, experience, professional standing and skill; 2) The character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and

1 the prominence and character of the parties where they affect the importance of the litigation; 3)
2 The work actually performed by the lawyer: the skill, time and attention given to the work; and
3 4) the result: whether the attorney was successful and what benefits were derived.

4 Having considered the *Brunzell* factors and the Defendants' Motion to Retax Costs, the
5 Court finds that the Plaintiffs are entitled to their attorney's fees and costs, but exercises its
6 discretion to reduce the legal fees and costs awarded. Accordingly, the Court awards Attorney's
7 Fees and Costs to the Plaintiffs in the following amounts:
8

9 Plaintiff	Attorney's Fees	Costs	Total
10 September Trust	\$13,513.26	\$250.87	\$13,764.13
11 Zobrist Trust	\$13,331.26	\$250.87	\$13,582.13
12 Sandoval Trust	\$12,616.26	\$250.87	\$12,867.13
13 Gegen	\$12,590.26	\$250.87	\$12,841.13
14 Totals	\$52,051.04	\$1,003.48	\$53,054.52

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18 **ORDER**

19
20 Based upon the Findings of Fact and Conclusions of Law above, and good cause
21 appearing therefore,

22 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for
23 Attorney's Fees and Costs and Memorandum of Costs and Disbursements are hereby granted in
24 part and denied in part, in that the Court is awarding attorney's fees and costs to the Plaintiffs but
25 in a reduced amount.
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1
2 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
3 Lytle Trust's Motion to Retax and Settle Memorandum of Costs is hereby granted in part and
4 denied in part, in that the Court is awarding costs to the Plaintiffs but in a reduced amount.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
6 Lytle Trust shall pay Thirteen Thousand Seven Hundred Sixty-Four and 13/100 Dollars
7 (\$13,764.13) to the September Trust for its attorney's fees and costs.
8

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
10 Lytle Trust shall pay Thirteen Thousand Five Hundred Eighty-Two and 13/100 Dollars
11 (\$13,582.13) to the Zobrist Trust for its attorney's fees and costs.

12 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
13 Lytle Trust shall pay Twelve Thousand Eight Hundred Sixty-Seven and 13/100 Dollars
14 (\$12,867.13) to the Sandoval Trust for its attorney's fees and costs.

15 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
16 Lytle Trust shall pay Twelve Thousand Eight Hundred Forty-One and 13/100 Dollars
17 (\$12,841.13) to Dennis & Julie Gegen for their attorney's fees and costs.
18

19 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the total
20 amount ordered to be paid by the Lytle Trust to the Plaintiffs collectively for attorney's fees and
21 costs is Fifty-Three Thousand Fifty-Four and 52/100 Dollars (\$53,054.52).
22

23 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
24 Lytle Trust is hereby ordered to pay the attorney's fees and costs as Ordered herein by certified
25 check made payable to "Christensen James & Martin Special Client Trust Account" in the
26 amount of Fifty-Three Thousand Fifty-Four and 52/100 Dollars (\$53,054.52) and delivered to
27 the Plaintiffs' attorneys within ten (10) days after the date of Notice of Entry of this Order.
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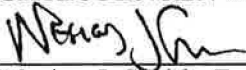
1 **IT IS SO ORDERED.**

2
3 Dated this ____ day of August, 2018.

4
5
6 _____
DISTRICT COURT JUDGE

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

9 

Wesley J. Smith, Esq.

10 Nevada Bar No. 11871

11 Laura J. Wolff, Esq.

12 Nevada Bar No. 6869

13 7440 W. Sahara Ave.

14 Las Vegas, NV 89117

15 Attorneys for Plaintiffs September Trust,

16 Zobrist Trust, Sandoval Trust, and

17 Dennis & Julie Gegen

18 **Approved as to Form and Content by:**

19 **FIDELITY NATIONAL LAW GROUP**

20 

CHRISTINA H. WANG, ESQ.

21 Nevada Bar No. 9713

22 Attorneys for Counter-Defendants/Cross-

23 Claimants Robert & Yvonne Disman

24 **FOLEY & OAKES, P.C.**

25 

DANIEL T. FOLEY, ESQ.

26 Nevada Bar No. 1078

27 Attorneys for Plaintiffs/Counter-

28 Defendants/Cross-Defendants Boulden Trust

and Lamothe Trust

GIBBS GIDEN LOCHER TURNER
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TIMOTHY P. ELSON, ESQ.

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Attorneys for Defendants/Counter-

Claimants Lytle Trust

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IT IS SO ORDERED.

Dated this ____ day of August, 2018.

DISTRICT COURT JUDGE


Submitted by:

CHRISTENSEN JAMES & MARTIN

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Laura J. Wolff, Esq.
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Attorneys for Plaintiffs September Trust,
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Dennis & Julie Gegen

Approved as to Form and Content by:

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Nevada Bar No. 11592
TIMOTHY P. ELSON, ESQ.
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Attorneys for Defendants/Counter-
Claimants Lytle Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 11 day of ~~August~~ ^{SEPTEMBER}, 2018.

4
5 
6 DISTRICT COURT JUDGE

L.P.

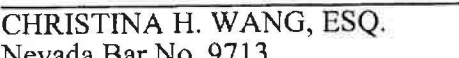
7 Submitted by:

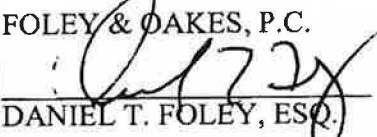
8 **CHRISTENSEN JAMES & MARTIN**

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12 Laura J. Wolff, Esq.
13 Nevada Bar No. 6869
14 7440 W. Sahara Ave.
15 Las Vegas, NV 89117
16 Attorneys for Plaintiffs September Trust,
17 Zobrist Trust, Sandoval Trust, and
18 Dennis & Julie Gegen

19 **Approved as to Form and Content by:**

20 **FIDELITY NATIONAL LAW GROUP**

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24 Attorneys for Counter-Defendants/Cross-
25 Claimants Robert & Yvonne Dismar

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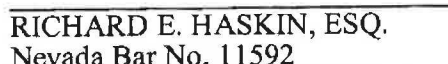
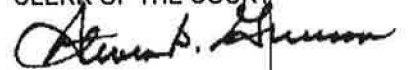

RICHARD E. HASKIN, ESQ.
Nevada Bar No. 11592
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Nevada Bar No. 11559
Attorneys for Defendants/Counter-
Claimants Lytle Trust

EXHIBIT “B”



1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 MARJORIE B. BOULDEN
9 TRUST,

10 Plaintiff,

11 vs.

12 TRUDI LYTLER,

13 Defendant.

CASE NO: A-16-747800-C

DEPT. XVIII

14 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE
15 TUESDAY, NOVEMBER 27, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **REQUEST OF COURT - CLARIFICATION OF ORDER: IN RE:**
18 **COMPETING ORDERS; DEFENDANTS' MOTION TO RECONSIDER**
19 **COURT'S RULING GRANTING PLAINTIFFS' ATTORNEYS' FEES**

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21 (Appearances on Page 2)

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25 RECORDED BY: ROBIN PAGE, COURT RECORDER

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APPEARANCES:

For September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen :	WESLEY J. SMITH, ESQ.
For Lytle Trust:	RICHARD E. HASKIN, ESQ.
For Robert & Yvonne Disman:	CHRISTINA H. WANG, ESQ.

1 Las Vegas, Nevada; Tuesday, November 27, 2018

2
3 [Proceeding commenced at 9:33 a.m.]

4 THE COURT: On page 19, Marjorie B. Boulden Trust versus
5 Trudi Lytle, et al, Case Number A-16-747800.

6 MR. HASKIN: Good morning, Your Honor, Richard Haskin on
7 behalf of Lytle Trust.

8 MR. SMITH: Wesley Smith on behalf of the September Trust,
9 Zobrist Trust, Sandoval Trust, and the Gegens.

10 MS. WANG: Christina Wang on behalf of the Dismans.

11 THE COURT: Thank you, Counsel.

12 The first matter -- it's on for two matters. The first matter is
13 request of the Court, me, for clarification of the order in that I received
14 competing orders; and then the second matter is on for Defendants'
15 motion to reconsider Court's ruling and granting Plaintiffs' attorneys'
16 fees.

17 I'm going to do the clarification of the order first. As counsel is
18 aware, I've received competing orders. Have counsel reviewed the
19 opposing parties' order that were submitted?

20 MR. HASKIN: Yes, Your Honor.

21 THE COURT: Each order?

22 MR. SMITH: Yes, Your Honor.

23 MS. WANG: Yes, Your Honor.

24 THE COURT: All right.

25 And I just want to make sure that I'm understanding this --

1 what occurred in this case. Initially, these matters were handled by
2 Judge Williams; isn't that correct?

3 MR. HASKIN: Correct.

4 THE COURT: And Judge Williams made certain rulings and
5 orders; is that correct?

6 MR. HASKIN: Correct.

7 THE COURT: And then those rulings are now up on a --
8 before the Nevada Supreme Court.

9 MR. HASKIN: Correct.

10 THE COURT: Okay. Then I receive the case and based on
11 Judge Williams' ruling, I determined that his rulings were the law of the
12 case; correct?

13 MR. HASKIN: Correct.

14 MS. WANG: Correct.

15 THE COURT: And then I granted summary judgment based
16 on the law of the case doctrine; is that correct?

17 MR. HASKIN: Your Honor, can I parse that out a little bit?
18 You granted summary judgment in favor of the Trust parties --

19 THE COURT: Right.

20 MR. HASKIN: -- Mr. Smith's clients.

21 THE COURT: I'm going to get there.

22 MR. HASKIN: Okay.

23 THE COURT: Okay. Based on the law of the case and then
24 -- then there was a subsequent motion for summary judgment by the --

25 MS. WANG: From my clients, the Dismans.

1 THE COURT: -- the Dismans. And I denied that motion.

2 MR. HASKIN: Correct.

3 THE COURT: Okay.

4 And that's the motion I've received competing orders in.

5 MR. HASKIN: Correct.

6 THE COURT: Okay.

7 MS. WANG: That's correct.

8 THE COURT: And here is my issue. In your competing
9 orders, you do findings of facts and conclusions of law. And that's
10 typically under Rule 56(c). When you grant a motion for summary
11 judgment it says an order granting -- the last sentence of subparagraph
12 (c) says, an order granting summary judgment shall -- shucks -- an order
13 granting summary judgment shall set forth the undisputed material facts
14 and legal determination on which the Court granted summary judgment.

15 I denied summary judgment. I believe Rule 56(d), not Rule
16 56(c), is the controlling subparagraph. And I'm not going to go through
17 -- it says if on the motion under the -- this rule judgement is not rendered
18 upon the whole case or for all the relief asked and a trial is necessary,
19 the Court at the hearing of the motion by examining the pleadings and
20 evidence before it and by interrogating counsel shall, if practical,
21 ascertain what material facts exist without substantial controversy and
22 what material facts are actually and in good faith controverted.

23 So it's always been my understanding that that's discretionary
24 with the Court. If the Court can make a determination as to what the
25 undisputed facts are and then what the disputed facts are, you can put it

1 in the order. And I know in Federal Court they actually allow for a
2 separate document that sets forth the undisputed facts and the disputed
3 facts and you have to refer to the record what each of those facts are.

4 Now, the undisputed facts don't have to be stipulated to, but if
5 I make a determination as to undisputed facts then it says, upon the trial
6 of the action the facts so specified shall be deemed established and the
7 trial shall be conducted accordingly. So I'm going to leave it to counsel.
8 I told you to prepare the order consistent with your opposition. That
9 doesn't mean I adopted everything in your opposition.

10 In other words, your argument basically was, there was
11 nothing for me to make a determination of -- I -- to me, it almost sounded
12 like a mootness argument, you know, that -- and I -- and it was my
13 understanding that the reason was based on Judge Williams' previous
14 order; correct?

15 MR. HASKIN: Correct.

16 THE COURT: And then I made an order --

17 MR. HASKIN: Correct.

18 THE COURT: -- that granted summary judgment.

19 And so what I thought you were arguing to me is based on
20 Judge Williams' order because your -- you purchased the property --

21 MS. WANG: From --

22 THE COURT: -- subsequently; correct? Your clients
23 purchased the property separate. If you look at my -- if you look at
24 Judge Williams' order, then you look at my order granting summary
25 judgment, the request that you were seeking for your declaratory relief

1 has been resolved. I've issued -- there's been two previous orders. So
2 that's --

3 MS. WANG: Resolved.

4 THE COURT: -- why I didn't grant summary judgment, is
5 because the orders go to the land, not to your client. Your clients were
6 subsequent purchasers. So that's what I thought I was ruling. It almost
7 was a mootness argument, like I said.

8 There's a case called *Personhood Nevada versus Bristol*, 126
9 Nevada Reports 599 and it basically says, a controversy must be
10 present through all stages of the proceeding. And even though a case
11 may present a live controversy at the beginning, subsequent events may
12 render the case moot.

13 So that was my thought process that I've already entered it,
14 Judge Williams entered an order that determined that to be law of the
15 case. You call it *NRED* I, II, III, I think the opposing counsel calls it
16 *Rosemere* I, II, III, but I thought my subsequent order resolved the issue
17 that you're seeking declaratory relief on. So that was the basis of my
18 order. So I needed to clarify that and you need, based on this
19 clarification, submit an order to me.

20 Now, if counsel cannot agree on what the undisputed facts are
21 and what the disputed facts and, you know, case law, that's fine. Then
22 put in there -- then track the language of NRCP -- NRCP -- Rule 56,
23 subparagraph (d) that it wasn't practical, you know, and then they -- then
24 we'll have to litigate it at trial.

25 MR. HASKIN: Understood, Your Honor.

1 THE COURT: So I did want to put this on for a clarification,
2 but basically my ruling was what you had put in your opposition. There
3 was really nothing for me to adjudicate at this stage. And since you
4 were the subsequent purchaser, I granted summary judgment, I believe,
5 as to the original purchaser and the order went to the land, preventing
6 them from various abstracts and things that you were requesting
7 declaratory relief on.

8 So I'll leave it up to counsel to submit the appropriate order.

9 MR. HASKIN: I'll -- Your Honor, I'll prepare a revised order
10 based on --

11 THE COURT: And don't take liberties. Let's keep it clean.

12 MS. WANG: Yes, Your Honor.

13 THE COURT: I don't want to put a lot in there that we don't
14 need to put in there.

15 MR. HASKIN: Understood.

16 THE COURT: This was a denial.

17 MR. HASKIN: Understood.

18 THE COURT: All right.

19 MS. WANG: Thank you for your clarification, Your Honor.

20 That was the gist of what we got from the Court's ruling that the issue
21 was moot before the Court and that was the substance of my proposed
22 order. I will attempt to work with counsel once again on synthesizing
23 them.

24 THE COURT: And it wasn't actually argued as mootness, he
25 didn't use the word moot, but that's pretty much what his argument was.

1 That there's nothing for me to adjudicate regarding declaratory relief
2 because of the previous orders entered in this case.

3 MS. WANG: Does such an order even require findings of fact
4 when there's already been subsequent orders?

5 THE COURT: Rule 56(d) on the denial. You can put in there
6 that it wasn't practical to make a determination and --

7 MR. HASKIN: I think that's what we'll do.

8 MS. WANG: That's what we will do.

9 THE COURT: That's fine.

10 MR. HASKIN: Yeah.

11 MS. WANG: I think that was a large part of our dispute.

12 THE COURT: Well, like I said --

13 MR. HASKIN: Well --

14 THE COURT: -- this is a legal term, but it's not a legal term.
15 Let's keep it clean.

16 MR. HASKIN: Okay, Your Honor.

17 THE COURT: It was a denial, all right.

18 MS. WANG: Thank you, Your Honor.

19 THE COURT: We have another matter on, the motion for
20 reconsideration. All right.

21 And I did look at EDCR Rule 2.24 -- you did it differently than I
22 always did it. I used to file a motion for leave and a motion for
23 reconsideration and then the Court would usually make a determination
24 of whether it was going to rehear the matter. And if it did rehear it, it
25 usually set argument for the motion for reconsideration, but if you look at

1 the local rule, you can do it all in one hearing.

2 You didn't really object to him filing it as a motion for
3 reconsideration so, theoretically, under Rule, I mean, not theoretically -- I
4 could view it under 2.20(e) subparagraph (e) that you waived any
5 procedural defect and you just wanted to argue the substantive aspect of
6 the case.

7 MR. SMITH: Well, I wouldn't agree with that, Your Honor.

8 First of all this was on a --

9 THE COURT: Well, you didn't oppose it. You only opposed
10 the substantive; you didn't say that he needed to do anything differently.

11 MR. SMITH: Well, what he brought was a motion for you to
12 certify it to the Supreme Court.

13 THE COURT: All right. Why the motion for reconsideration?

14 MR. SMITH: Yeah, but he also said directly in there that you
15 do not have jurisdiction over this matter because it's been appealed.

16 THE COURT: He filed a *Huneycutt* motion or he wants me --

17 MR. SMITH: Exactly.

18 THE COURT: -- versus he filed --

19 MR. SMITH: That's the procedure that we don't oppose. If it's
20 followed as the *Huneycutt* procedure, we're fine with that.

21 THE COURT: And that's what I will do, I will follow -- and just
22 as a trivia question, *Dingwall versus Foster* was my firm's case. Not --
23 my partner handled it, so I'm very familiar with the underlying facts in
24 *Dingwall versus Foster* and -- and that was relied upon by the parties.

25 Do you want to be heard in argument on the motion for

1 reconsideration?

2 MR. HASKIN: Your Honor, just very briefly.

3 I think we put everything in the brief, but, Your Honor, with
4 respect to the motion for reconsideration and I -- and I think we did
5 argue this at the underlying motion for attorneys' fees. But Your Honor's
6 prior ruling with respect to attorneys' fees hinges on the fact that the
7 Lytle's really affirmation and continuance with their answer and defense
8 in this case was done for the purpose -- was done either without
9 reasonable grounds or to harass the other party in this case. I think that
10 the *Fredric and Barbara Rosenberg Living Trust* case that was handed
11 down by the Supreme Court merely two days after Your Honor's prior
12 ruling clarifies what that really means.

13 And, I think, parallels the Lytle's case in a number of ways.
14 But the Lytle's in this case and in the prior case Judge Williams has
15 heard have really affirmed their basis for being able to collect upon the
16 Defendants, or, sorry, in this case the Plaintiff's property. And I think
17 that, without any question, there's some novelty in the law and there's
18 some ambiguity and, certainly, some gaps in the law with respect to
19 Chapter 116 and the ability to collect on a unit owner's property for a
20 limited purpose association. And that's what we have here, that's the
21 question in the law.

22 The Lytle's have steadfastly maintained that they have that
23 right; they're now pursuing that right before the Supreme Court. They
24 have not abandoned that right. And I don't think that the constant
25 affirmation of that right and seeking of clarity of the law is either without

1 reasonable grounds or designed to harass the other party. And I believe
2 that the recent Supreme Court case sheds light on the fact that a party,
3 even when that party is wrong, and even when the case law seems to
4 counter that party, there can be reasonable grounds for seeking
5 clarification of the law especially where there are novel concepts of the
6 law. I think that's exactly what we have in this case.

7 THE COURT: Do you have a copy of my order? I thought I'd
8 made a copy --

9 MR. HASKIN: I don't have a copy of your order.

10 THE COURT: -- of it and I don't have it.

11 MR. SMITH: I have a copy of it, Your Honor.

12 THE COURT: Can you approach. Let me just --

13 MR. SMITH: Yes. It was actually attached to Defendant's
14 motion.

15 THE COURT: Oh, okay. What exhibit? If it's attached to the
16 motion, I have the motion. What's the -- what's the exhibit number on
17 the motion?

18 MR. HASKIN: I believe it's the first exhibit in the motion.

19 MR. SMITH: Yeah, exhibit 1.

20 THE COURT: Motion for reconsideration. Okay. Let me see
21 it real quick. I apologize. Thank you. Approach please.

22 Anything further, Counsel?

23 MR. HASKIN: Nothing further from me. Your Honor.

24 THE COURT: You want to be heard in opposition?

25 MR. SMITH: I do, briefly.

1 I just want to make two important points and that's that if
2 they're doing a motion to reconsider under Rule 60(b) then you have to
3 find grounds under 60(b) to reconsider your prior opinion. There are no
4 grounds under 60(b) for new law that's been decided or for a change in
5 the law for a new case that's come out after the judgment. There's only
6 five enumerated points under 60(b) and none of them address that.

7 Now, it could be argued that you could do it under a 60(b)(5),
8 but the Supreme Court has actually rejected that, specifically. And *Ford*
9 *versus Branch Banking and Trust Company*, it's 353 P.3d 1200. And the
10 Court said, here we are asked to determine whether new or changed
11 precedent from this Court justifies NRCP 60(b)(5) relief. We include that
12 NRCP 60(b)(5) does not allow a District Court to set aside judgments
13 solely based on new or changed precedent. And this next sentence is
14 specifically addressed in the -- or to this case. Additionally, we conclude
15 that NRCP 60(b)(5) does not allow District Court to set aside monetary
16 judgments merely because new or changed precedent makes
17 enforcement inequitable.

18 So, first of all, you don't even have grounds under 60(b)(5) to
19 reconsider this order. But, secondly, if you want to look at this case
20 they've brought up, the *MacDonalds Highlands* case that was issued by
21 the Nevada Supreme Court recently; it doesn't actually give you grounds
22 for relief, either. Because it talks about how if there is no evidence that
23 the claim was brought with unreasonable grounds, then you shouldn't
24 grant attorneys' fees and costs.

25 It goes back to the rule itself, rule -- or to the statute itself NRS

1 18, but you specifically found when you issued your order on attorneys'
2 fees that there was no reasonable ground because, number one, they
3 had already argued the same arguments to Judge Williams and lost.
4 And they had notice of that. And number two, we approached them
5 before filing this case and gave them the opportunity to avoid this
6 litigation and preserve their appeal rights, which had already been taken
7 to the Supreme Court.

8 So these novel issues, by definition, cannot be novel because
9 they had already been argued and lost. And they were given the
10 opportunity --

11 THE COURT: Wait a minute --

12 MR. SMITH: -- to preserve those arguments for appeal.

13 THE COURT: -- I thought it was still pending. I thought the
14 William's appeal was still pending.

15 MR. SMITH: It is still pending, Your Honor.

16 MR. HASKIN: It is still pending.

17 THE COURT: Okay.

18 MR. SMITH: It's been submitted for decision.

19 THE COURT: So what did they argue and lose before Judge
20 Williams? You said they have argued and lost, I'm not clear on your
21 argument or what argument you're referencing.

22 MR. SMITH: All of these -- all of these arguments that he's
23 talking about for a change in NRS 116 or for clarifications of these
24 so-called loop holes in NRS 116. He's made those arguments to Judge
25 Williams; he lost that.

1 THE COURT: Correct. And now it's up on appeal.

2 MR. SMITH: It is up on appeal.

3 THE COURT: Okay. Thank you.

4 MR. SMITH: And our whole -- our whole approach to this
5 case was we will allow you to make those arguments on appeal. Let --
6 take your novel arguments to the Supreme Court, we understand that
7 you have those arguments. You can take them. The Nevada Supreme
8 Court will address those. You will have your day in court. And that will
9 be a binding precedent upon any other similarly situated homeowner in
10 this subdivision. They declined to do that, Your Honor.

11 And that is why it was unreasonable ground to proceed in this
12 matter. This is the same thing that we argued before; you specifically
13 found that. There is simply no reason to reconsider your prior order.

14 THE COURT: Okay.

15 MR. HASKIN: Your Honor, for clarification real quick, there is
16 a distinction. The -- Judge Williams only decided on what we phrase the
17 *NRED I* case; they call a *Rosemere I* case. The -- Your Honor decided
18 with respect to *NRED I, II, and III*. There were two other pieces of
19 litigation that were never before Judge Williams. Your Honor decided
20 those last two parts and Your Honor's most recent decision by applying
21 Judge Williams' reasoning to the other two parts.

22 We respectfully disagree with that, but that's what Your Honor
23 did. And that's the difference in these two cases. What Mr. Smith says
24 is right, only with respect to *NRED I*, there were two parts still
25 outstanding. We could not give up on those two parts of the case.

1 That's what this all came down to.

2 Those other two parts are distinct, Your Honor. They have
3 different facts. We argued with respect to *NRED II*, there was a
4 stipulation entered into between the underlying parties to that litigation
5 that said the amended CC&Rs were the governing document for that
6 case. We had an argument that was different with respect to that case
7 as opposed to *NRED I*, a very different argument. And Your Honor may
8 have decided against us with respect to that, but that was a novel issue.
9 That was an issue that Judge Williams never heard, Judge Williams
10 never decided and we could not agree on how to handle that with
11 respect to the appeal because it's not subject to appeal, it's not subject
12 to appeal.

13 THE COURT: All right. Well, I try to be clear on the record on
14 my ruling, so.

15 When you brought your motion for attorneys' fees and costs, it
16 was under NRS 18.010, I believe, subparagraph (2)(b), which provided
17 in pertinent part, with regard to the recovery sought, when the Court
18 finds that the claim, counterclaim, cross-claim, or third-party complaint or
19 defense of the opposing party was brought or maintained without
20 reasonable ground or to harass the prevailing party. And then it says,
21 the Court shall liberally construe the provisions of this paragraph in favor
22 of awarding attorneys' fees and all appropriate situations. It is the intent
23 of the legislature the Court award attorneys' fees pursuant to this
24 paragraph and impose sanctions. And then goes on further. So that
25 was the plain language of the statute.

1 After my ruling, the Nevada Supreme Court came down with
2 *Rosenberg versus* -- shucks -- *Rosenberg Living Trust versus*
3 *MacDonald Highlands Realty*. And I actually brought this to counsel's
4 attention, this case, because this portion of the decision is what I was
5 concerned about. And it says, though we agree that the evidence
6 produced and Nevada's current jurisprudence does not fully support the
7 Trust's suit, we disagree that the Trust lacked reasonable grounds to
8 maintain the suit, as it presented a novel issue in state law, which, if
9 successful, could have resulted in expansion of Nevada's case law
10 regarding restrictive covenants.

11 And then it cites to *Rodriguez versus Primadonna Company*,
12 standing for the proposition affirming the District Court's denial of
13 attorneys' fees under NRS 18.010, subparagraph (2)(b) where the claim,
14 quote, presented a novel issue in Nevada law concerning the potential
15 expansion of common law liability, closed quote, close paren. Though
16 we understand the legislatures desire to deter frivolous lawsuits, this
17 must be balanced with the need for attorneys to pursue novel legal
18 issues argued for clarification or modification of existing law.

19 And they cited as an example, *Stubbs v. Strickland*, standing
20 for the proposition determining a party did not file suit for an improper
21 purpose because you argued for a change or clarification of existing law.
22 Accordingly, we reverse the District Court's award of attorneys' fees and
23 costs to Malek.

24 And to be quite frank with you, Counsel, when we were in
25 court the last time, we were talking about the supersedeas bond. And

1 while you were making your argument, I kept thinking to myself, how is
2 this case up on appeal since I denied the countermotion for summary
3 judgment. So I pulled the appellate calendar and I've noticed that
4 they've issued an order show cause for you to explain how a granting of
5 a motion for attorneys' fees and costs can be appealed when the
6 ongoing case is still pending.

7 I mean, I have my opinion on what's going to happen. And so
8 what I may do today may be, you know, may not be necessary. This
9 case may be back before the District Court Judge on your motion for
10 reconsideration. What I'd be willing to do -- you asked that I, you know,
11 that I deny the motion for attorneys' fees and costs. I wouldn't have
12 been willing to do that if I'd had the subsequent case.

13 What I would have done and what I would be willing to certify
14 to the Nevada Supreme Court is I would have deferred ruling on the
15 motion for attorneys' fees and cost pending the appeal from Judge
16 Williams' decision. Because I base my granting of motions for summary
17 judgment based on his decisions being the law of the case. So I would
18 have deferred ruling until the appeal was completed. So I'd be willing to
19 certify to the Supreme Court that's what would have done. I would not
20 have granted the motion; I just would have just deferred the ruling to
21 conclusion of the appellate case.

22 I don't know if that is going to be meaningful or not because it
23 will be interesting to see, you know, if the Nevada Supreme Court
24 determines there's -- determines if there's a jurisdictional defect and
25 remands the case back to the District Court.

1 MR. HASKIN: Well, Your Honor, we -- the OSC gave us 30
2 days to respond. What -- ordinarily the motion for attorneys' fees would
3 be an appealable order because the granting of the summary judgment
4 because this case is consolidated with a case that's ongoing.

5 THE COURT: Okay. But again --

6 MR. HASKIN: That's --

7 THE COURT: -- you can't do it as a Rule 54(b) certification.
8 There are still parties involved.

9 MR. HASKIN: Only because of the consolidation, Your Honor.
10 Which is -- which is why, I think, Your Honor, after reading the case law,
11 I think what we're going to end up doing is dismissing that appeal;
12 voluntarily dismissing it, so I think it's going to come back to Your Honor.
13 I think you're right.

14 THE COURT: Well, it will come back to a new Judge.

15 MR. HASKIN: Correct.

16 THE COURT: So that's what I'd be willing to certify that the
17 Supreme Court -- I wouldn't have granted and I wouldn't have denied it.
18 I would have -- I wouldn't have granted it; I would have deferred ruling
19 until a determination was made by the Nevada Supreme Court,
20 regarding Judge Williams' orders and making a determination of what
21 the law was.

22 MR. HASKIN: Your Honor, just for -- to clarify that, I think,
23 wouldn't you have to grant it at least in part because you've already
24 made a ruling awarding them attorneys' fees.

25 THE COURT: I wouldn't have granted it, I would have --

1 based on the new decision, I would have deferred ruling until the -- until
2 a determination was made by the Nevada Supreme Court as to Judge
3 Williams' rulings because if Judge Williams' rulings were incorrect, then
4 my rulings on summary judgment would have been incorrect because I
5 based it on the law of the case.

6 So that would have required me then to revisit my rulings on
7 summary judgment. And if I didn't grant summary judgment then the
8 motions for attorneys' fees would not be appropriate.

9 MR. HASKIN: Okay.

10 I'm thinking out loud here, Your Honor, because I'm -- I'm --

11 THE COURT: This can be dangerous, thinking out loud.

12 MR. HASKIN: Well --

13 THE COURT: Because we're on the record.

14 MR. HASKIN: That's okay; I think I'm going to the right place.
15 Your Honor, if that's the case, then the award of attorneys' fees remains
16 intact; correct?

17 THE COURT: No. I can't make a ruling on your motion to
18 reconsider. That's what *Huneycutt and Dingwall versus Foster*. What I
19 can do is certify to the Supreme Court, and what I would be willing to
20 certify to the Supreme Court, that if I had had this subsequent decision, I
21 would not have granted the motion for attorneys' fees and costs. I would
22 have deferred ruling until such time as the Supreme Court made a
23 determination as to Judges -- Judge Williams' orders. Because my
24 rulings were based on his rulings as being law of the case.

25 MR. HASKIN: Correct. And I understand that, Your Honor.

1 So what would Your Honor do with respect to -- you've already awarded
2 attorneys' fees.

3 THE COURT: Okay.

4 MR. HASKIN: So what would you do with respect to the
5 already -- and the reason why I'm asking is because we have a bond.

6 THE COURT: Do you understand how *Huneycutt and*
7 *Dingwall versus Foster*? I make a certification.

8 MR. HASKIN: Yeah.

9 THE COURT: You understand in *Dingwall versus Foster* --

10 MR. HASKIN: Yeah. Yeah, I do, Your Honor.

11 THE COURT: -- we won in the District Court. The District
12 Court certified that if they would send it back, the Court would change its
13 ruling. In *Dingwall versus Foster*, the Supreme Court says, no, we're not
14 sending it back. We're going to uphold the --

15 MR. HASKIN: Yeah.

16 THE COURT: -- dismissal. So all I can do is make a
17 certification. I cannot make a ruling.

18 MR. HASKIN: Okay. I'll stop thinking out loud. I know where
19 I'm going with this, but --

20 THE COURT: Okay.

21 MR. SMITH: Your Honor, to be clear will you be preparing
22 that certification? Or do you expect --

23 THE COURT: No, he will.

24 MR. SMITH: Okay. So just to clarify --

25 THE COURT: And he's going to send it back, he's going to

1 provide it to you for approval as to content and form.

2 MR. SMITH: Absolutely.

3 So my understanding of that certification is you would be
4 saying what grounds you would be -- what grounds you would be
5 changing your position on; right?

6 THE COURT: Right.

7 MR. SMITH: And that would have to be under the rule --

8 THE COURT: I actually pulled the *Dingwall versus Foster*
9 certification.

10 MR. SMITH: Yes.

11 THE COURT: And it said, it is hereby ordered adjudged and
12 decreed that this Court will certify to the Supreme Court that if
13 jurisdiction is returned to the District Court, the District Court would order
14 a rehearing only of damages as to Yang, Chai, and Dingwall. That was
15 the certification.

16 So what I would certify is that I would have deferred ruling on
17 the motion until the -- whatever the Nevada Supreme Court case
18 number is regarding Judge Williams' order is resolved by the Nevada
19 Supreme Court.

20 MR. SMITH: Okay, Your Honor.

21 THE COURT: Because that would affect my underlying
22 motion -- granting of the motions for summary judgment.

23 So, obviously, if they uphold Williams, then the motion for
24 summary judgment would -- the order granting the summary judgment
25 would remain and then I would address the motion for attorneys' fees

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and costs.

MR. HASKIN: Which you've already granted, Your Honor.

So that's --

THE COURT: Okay.

MR. HASKIN: All right.

THE COURT: All right. That is what I'd be willing to certify to the Supreme Court.

MR. SMITH: Okay.

THE COURT: Anything further?


MR. HASKIN: No.

MR. SMITH: No, Your Honor.

[Proceeding concluded at 10:03 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


Robin Page
Court Recorder/Transcriber