

Nos. 76198, 77007

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 26 2019 12:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

TRUDI LEE LYTLE; JOHN ALLEN LYTLE; AND
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' OPPOSITION TO APPELLANTS' MOTION TO
EXCEED TYPE-VOLUME LIMITATION AND COUNTERMOTION TO
STRIKE PORTIONS OF APPELLANTS' REPLY BRIEF**

WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718 Facsimile: (702) 255-0871
Attorneys for Respondents

Respondents file this brief Opposition and Countermotion to request that Appellants' Motion to Exceed be denied and that certain portions of the Reply Brief be stricken.

Rule 32(a)(D)(i) states that "the court looks with disfavor on motions to exceed the applicable page limit or type-volume limitation" and such motions will only be granted "upon a showing of diligence and good cause". The Lytle Trust asserts that good cause exists to exceed the page limit because the consolidated cases present different, complicated issues. The Respondents respectfully disagree.

In the Order Consolidating Appeals and Reinstating Briefing, this Court stated, "Given that the appeals in Docket Nos. 76198 and 77007 involve the same parties and counsel and arise from the same district court case, we consolidate the appeals for all appellate purposes." In doing so, the Court ordered that one single brief be filed during each stage of the appellate process. Appellants have already filed an Opening Brief in Case No. 76198, but were permitted to file another full length Opening Brief in Case No. 77007. Respondents filed one brief in response to both without exceeding the page or volume limitations.

On December 4, 2018, this Court entered an Order of Affirmance in Case No. 73039 involving the same Appellants, the same community association, the same subdivision, similarly situated homeowners, and the same legal issues, which

resolved most of the issues in this Consolidated Appeal. *Lytle v. Boulden*, No. 73039, 432 P.3d 167, 2018 WL 6433005 (Nev. Dec. 4, 2018) (unpublished). The Appellants have already conceded that the Order of Affirmance resolves the issues related to recording of the NRED 1 and 3 Judgments against the Respondents' properties. *See* Appellants' Opening Brief, No. 76198, January 15, 2019, at 21 ("Appellants will not address herein the matters already determined by the Supreme Court in Docket 73039. As set forth above, this docket applies to the NRED 1 Litigation, but the reasoning can equally apply to the NRED 3 Litigation."). Therefore, most of the issues in this consolidated appeal have already been resolved and need not be addressed endlessly by the Appellants.

The Appellants' Reply Brief presents the exact same arguments contained in the Opening Briefs except for pages 1-13 (and some other information that should be stricken as explained below), which new information does not exceed the page or type-volume limitation. Presenting the same information in the Reply Brief that is already contained in the Opening Briefs does not constitute "good cause" to exceed the page limitation. This should be especially true where the Appellants already filed two full length briefs to open the case. Appellants' request should be denied.

Finally, in exceeding their page volume limitation, the Appellants have presented issues that were not contained in their Opening Briefs or presented, argued, or considered in the Court below.

The well established rule of this Court is that issues not raised in the appellant's opening brief are deemed waived. *Powell v. Liberty Mut. Fire Ins. Co.*, 252 P.3d 668, 127 Nev. 156 (2011), *rehearing denied, rehearing en banc denied*; *See In the Matter of the Parental Rights as to T.L. v. Washoe County Department of Social Services*, 133 Nev. 790, 406 P.3d 494 (2017) (arguments not raised in an opening appellate brief are waived); *See also Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court ... is deemed to have been waived and will not be considered on appeal.”).

NRAP 28(c) provides that, “A reply brief . . . must be limited to answering any new matter set forth in the opposing brief.” Further, NRAP 28(e)(1) provides that, “Except as provided in Rule 28(e)(3), every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found.” Finally, NRAP 28(j) provides that, “All briefs under this Rule must be . . . free from burdensome, irrelevant, immaterial or scandalous matters.”

Appellants have raised issues in their Reply Brief that were not raised in their Opening Brief or in the district court. Specifically, the information presented

in Section 4, including the full paragraph on p. 24, footnote 7 and the first paragraph on p. 25 are new issues that are not supported by the record. In the sole citation to the record in Section 4, footnote 7, the Appellants reference the Order Granting Summary Judgment in the NRED 2 litigation. The paragraphs of this Order do not support the allegations of Section 4. Indeed, the cited paragraphs are about the malicious intent of the Association in filing liens, but do not contain any of the information presented by the Appellants in these paragraphs. Even if they had, the Appellants have not pointed to a single citation to the Record of the proceedings of the District Court in *this case* where the issues of the individuals' alleged involvement was considered by the District Court. At the very least, these unsupported and malicious allegations should be stricken from the Reply Brief even if this Court allows the Respondents to exceed their page or type limitation.

In summary, the Appellants' Reply Brief should be stricken in order to conform with the page limitation imposed by NRAP 32(a)(7)(A)(i) and (ii) and any information should be removed that relates to issues not presented in their Opening Briefs.

DATED this 26th day of August, 2019.

CHRISTENSEN JAMES & MARTIN

By: /s/ Laura J. Wolff, Esq.
Laura J. Wolff, Esq. (6869)
Wesley J. Smith, Esq. (11871)
7440 W. Sahara Avenue
Las Vegas, NV 89117
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this date, the 26th day of August, 2019, I submitted the foregoing RESPONDENTS' OPPOSITION TO APPELLANTS' MOTION TO EXCEED TYPE-VOLUME LIMITATION AND COUNTERMOTION TO STRIKE PORTIONS OF APPELLANTS' REPLY BRIEF 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:

Richard E. Haskin, Esq.
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144

/s/ Laura J. Wolff
Laura J. Wolff, Esq.