
IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; JOHN ALLEN LYTLE; AND
LYTLE TRUST,
Appellants,

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Elizabeth A. Brown
Clerk of Supreme Court

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 ORDER TO SHOW CAUSE AND
DENYING MOTION**

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POINTS AND AUTHORITIES

I. Introduction

To be clear, the Respondents believe that this Appeal, Case No. 77007, as well as the related appeal in Case No. 76198, should be dismissed as a frivolous waste of time and resources, especially in light of this Court's Order of Affirmance in Case No. 73039, which was just issued on December 4, 2018. The Order of Affirmance addresses the substantive law that was at issue in the consolidated cases below and should be dispositive of Case No. 76198 and Case No. 77007. Respondents have expressly requested that the Appellants stipulate to dismiss the Appeals. However, Appellants have not yet determined if they will dismiss either appeal. Therefore, the Respondents feel it necessary to address the Court's Order to Show Cause to prevent the prejudice and injustice that they will suffer in piecemeal resolution of their cases if Case No. 77007 is dismissed without prejudice to refiling upon final judgment in Case No. A-16-747800-C below.

II. Pertinent Facts

The Appellants have obtained at least three judgments against the Rosemere Estates Property Owners' Association. There are 9 residential lots with the Rosemere Estates subdivision, each owned by different individuals or trusts. The Appellants unlawfully recorded the abstracts of judgment against each of the residential lots, thus giving rise to the consolidated cases below.

The first case was filed on December 8, 2016 in the Eighth Judicial District Court, Case No. A-16-747800-C, by Boulden and Lamothe, each owner (at the time) of a lot in the Rosemere Estates subdivision. Boulden/Lamothe filed their lawsuit to remove the Abstracts of Judgment and plead causes of action for Quiet Title, Declaratory Relief and Slander of Title. On July 25, 2017, the District Court granted partial summary judgment in favor of the Boulden/Lamothe on the quiet title and declaratory relief causes of action (the slander of title claim was not decided). That partial summary judgment order was appealed as Case No. 73039 (which the Court recently affirmed, discussed further below).

The Respondents also own lots in the Rosemere Estates subdivision, title to which was clouded by Appellants. Respondents filed suit against the Appellants in the Eighth Judicial District Court, Case No. A-17-765372-C, in order to have the wrongfully recorded liens removed. The Respondents' case was similar to the Boulden/Lamothe case, except it did not include a Slander of Title cause of action. The two cases were consolidated on February 21, 2018.

On May 24, 2018, the District Court, following the Order previously entered in favor of Boulden/Lamothe, granted complete summary judgment in favor of the Respondents on all issues and claims asserted in the Respondents' case. *See* Docketing Statement, Appeal No. 76198, filed by Appellants on July 24, 2018.. Following entry of judgment in favor of the Respondents, the District Court

awarded fees and costs to Respondents. Although issues remain in the Boulden/Lamothe Case, there are no outstanding issues in the Respondents' Case.

The Appellants have filed three separate appeals from the District Court's Orders in the consolidated cases below. The first appeal is from the order granting partial summary judgment to Boulden/Lamothe, Case No. 73039. The second appeal is from the order granting complete summary judgment to Respondents, Case No. 76198. The third appeal is from the award of fees and costs in favor of Respondents, Case No. 77007.

Appellants and Respondents filed a joint motion to consolidate Case No. 76198 (summary judgment appeal) and Case No. 77007 (attorney's fees appeal). Whereas the Court granted injunctive relief, Case No. 76198 may proceed under NRAP 3A(b)(3). However, on November 15, 2018, this Court entered its Order to Show Cause and Denying Motion ("Order") in Case No. 77007, which questions whether the attorney's fees award is an appealable determination because claims asserted by other parties remain pending in the lead consolidated case. Although the Respondents' Case was consolidated with the Boulden/Lamothe Case, all claims and issues pending in the Respondents' Case and concerning the Respondents have been fully and finally adjudicated on the merits. Neither of the pending claims in the Boulden/Lamothe Case are related to the Respondents or this Appeal.

If Case No. 77007 is dismissed without prejudice to refiling once a final order is entered in Case No. A-16-747800-C, and Case No. 76198 is retained, the Respondents will be subjected to piecemeal litigation on their claims. That would directly contradict and frustrate the purpose of the consolidation. So long as the Court retains the appeal in Case No. 76198 and the Appellants retain appeal rights in the attorney's fee award, this Court should retain jurisdiction of Case No. 77007 so that all the issues involving the Respondents may be resolved expeditiously.

Further, both Case No. 76198 and 77007 may be quickly resolved. On December 4, 2018, this Court entered its Order of Affirmance in Case No. 73039 affirming the District Court's Order in the Boulden/Lamothe case. A true and correct copy of the Order is attached hereto as Exhibit 1. There, this Court found that the Appellants had no legal basis on which to record the abstracts of judgment against the individual properties in the Rosemere Estates subdivision. The Court's legal analysis will be precedential and dispositive in Case No. 76198 because the relevant facts and circumstances are exactly the same, which should make review of the attorney's fees award straightforward and simple as well.

III. Argument

The Court cites to *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 797 P.2d 978 (1992), for the proposition that the Attorney's Fees Order is not yet appealable

because of the outstanding issues in the Boulden/Lamothe Case. In *Mallin*, 106 Nev. at 609, this Court held that:

The district court is clearly in the best position to determine whether allowing an appeal would frustrate the purpose for which the cases were consolidated. We hold, therefore, when cases are consolidated by the district court, they become one case for all appellate purposes.

However, in *Hall v. Hall*, 584 U.S. —, 138 S.Ct. 1118, 200 L.Ed.2d 399 (2018), the United States Supreme Court held that when one of multiple cases consolidated is finally decided, that ruling confers upon the losing party the right to an immediate appeal, regardless of whether any of the other consolidated cases remain pending. In fact, the Court stated that when “one of several consolidated cases is finally decided, a disappointed litigant is free to seek review of that decision in the court of appeals” even if one of the other consolidated cases remains pending. *Hall*, 138 S.Ct. at 1131.

Although the cases at issue were consolidated under the Nevada Rules of Civil Procedure and not the Federal Rules of Civil Procedure, NRCP 42(a) mirrors FRCP 42(a). NRCP 42(a) states:

Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

FRCP 41(a) states:

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

The Advisory Committee's Note to NRCP 42 states: "Further revised in 1971 in accordance with the federal amendment, effective July 1, 1966." Therefore, the state statute was intentionally made to mirror the federal statute. This Court has acknowledged that FRCP 42(a) and NRCP 42(a) are identical. *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 286, 163 P.3d 462, 467-468 (2007).

In a procedural posture similar to here, at least one state court has adopted the rational of *Hall* because of the similarity between the state and federal statute. In *Nettles v. Rumberger, Kirk & Caldwell, P.C.*, No. 1170162, 2018 WL 4174681, (Ala. Aug. 31, 2018), the Alabama Supreme Court, following the rational of *Hall*, overruled its prior cases and concluded that "Once a final judgment has been entered in a case, it is immediately appealable, regardless of whether it is consolidated with another still pending case." *Id.* at *5. This Court should do the same since the applicable Nevada statute intentionally follows the federal statute.

Though there remain outstanding claims in the Boulden/Lamothe case, the Respondents' case has no outstanding issues. Therefore, this Court should apply the rationale of *Hall* to NRCP 42(a) and find that the Attorney's Fees Order is

appealable and consolidate this matter with Case No. 76198. Doing so will allow all the outstanding issues in the Respondents' District Court Case to be resolved together for efficiency and complete resolution.

IV. CONCLUSION

Obviously, the Respondents do not wish to disturb the District Court's decisions below. However, to the extent that the Appeal in Case No. 76198 continues, the Respondents believe that Case No. 77007 should also continue and the Cases should be decided together. The Court has the benefit of its Order of Affirmance in Case No. 73039, which addresses the substantive law at issue in Case No. 76198 and should streamline the disposition. Based upon the foregoing, the Respondents respectfully request that the Appeal not be dismissed, unless it is dismissed with prejudice.

DATED this 13th day of December, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the 13th day of December 2018, I submitted the foregoing **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE AND DENYING MOTION (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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