
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Electronically Filed
Mar 14 2019 09:19 a.m.
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

**RESPONSE TO MOTION FOR EXTENSION TO FILE OPENING BRIEF
[SECOND REQUEST]**

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Respondents file this Response to Appellant's Motion for Extension to File Opening Brief [Second Request]. When the Court granted a second extension of time in consolidated Case No. 76198 on December 27, 2018, it stated that additional extensions would only be granted on showing extraordinary circumstances and extreme need. These cases were then consolidated and a revised briefing schedule set. Appellants then moved for and obtained another extension on February 12, 2019. Again, the Court stated that "No further extensions of time shall be permitted, except upon motion clearly demonstrating good cause." The Appellants have again moved for an extension, but as explained below, have not demonstrated good cause. No further extensions are necessary in this case.

A. Respondents Have Not Received Notice of Any Hearing Concerning the Motion to Reconsider

The Respondents are not aware of any hearing concerning the Motion to Reconsider and are not aware of any written order submitted to the district court. If the Appellants have submitted a written order, requested such a hearing, or a hearing has been set, it has been without seeking input from or providing proper notice to the Respondents. As discussed *infra*, any proposed written order should have been submitted to Respondents' counsel.

Further, the hearing on the Motion to Reconsider happened in November 2018. Certainly, at the time when the Appellants asked for an extension of the deadlines on February 12, 2019, they were aware of the issues presented in the

current motion to extend. They certainly knew that a certification order had not been issued by Judge Bailus. And they knew that Judge Bailus was no longer on the bench and could not issue such a ruling. Yet, the Appellants did not inform the Court or take any action to correct the matter.

B. This Appeal is not Affected by the District Court's Ruling on the Motion to Reconsider

The hearing on the Motion to Reconsider was held on November 27, 2018, wherein Judge Bailus stated:

What I would have done and what I would be willing to certify to the Nevada Supreme Court is I would have deferred ruling on the motion for attorneys' fees and cost pending the appeal from Judge Williams' decision [Supreme Court Case No. 73039]. Because I base my granting of motions for summary judgment based on his decisions being the law of the case. So I would have deferred ruling until the appeal was completed. So I'd be willing to certify to the Supreme Court that's what would have done. I would not have granted the motion; I just would have just deferred the ruling to conclusion of the appellate case.

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

See Exhibit A at 18:13-25, attached to the Motion For Extension. In summary, Judge Bailus would have deferred ruling on the motion for fees until after the Supreme Court made it clear if the Judge Williams summary judgment order was correctly decided.

One week later, this Court issued an Order affirming Judge William's decision. *See* December 4, 2018 Order of Affirmance in Case No. 73039. Thus, because this Court had determined that Judge Williams' decision was good law, the offer of certification by Judge Bailus became instantly moot.

Perhaps this is why the Appellants never followed through on Judge Bailus' direction to prepare the proposed certification order, present it to Respondents' counsel, and submit it to chambers. *See* Exhibit A at 21:21–22:2. There has been no certification order entered in the underlying case or presented to this Court. Further, the Judge who heard the Motion is no longer available to consider a proposed certification order. Thus it has also become stale.

Being both moot and stale, it cannot possibly have an impact on the present matter and is not good cause for further delay of these proceedings.

Conclusion

The entire premise of Judge Bailus' oral decision was that there was still a pending appeal of Judge Williams' order in Case No. 73039. However, that case was decided a week later, making Judge Bailus' oral decision moot. A written certification order at this point would be pointless – it could only advise the Supreme Court that the District Court was waiting for something to happen, which thing has now happened. The matter has also become stale because Appellants' failed to present the proposed certification order, and no such order was issued,

prior to Judge Bailus' end of term. We simply do not have any idea what the District Court would do now that Case No. 73039 has been decided. This Case has waited several months to be briefed. There is no reason for further delay. The Motion should be denied.

DATED this 13th day of March, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the 13th day of March, 2019, I submitted the foregoing **RESPONSE TO MOTION FOR EXTENSION TO FILE OPENING BRIEF [SECOND REQUEST]** 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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