

No. 81390

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 29 2020 04:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 Timothy C. Williams, District Court Judge;
District Court Case No. A-17-765372-C

RESPONDENTS' MOTION TO DISMISS

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POINTS AND AUTHORITIES

I. Introduction

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 (hereafter “Gegen”) (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be collectively referred to as “Respondents”), hereby file this Motion to Dismiss pursuant to NRAP 14(f), which states that if respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss.

There is a jurisdictional defect because this is an Appeal from an order of contempt and there is no rule or statute which authorizes an appeal from an order of contempt. *See* NRAP 3A(b) (listing orders which may be appealed); NRS Chapter 22 (concerning grounds and procedure for imposing contempt sanctions). In fact, contempt orders must be challenged by an original petition pursuant to NRS Chapter 34.

Whereas this is a jurisdictional issue, it may be raised at any time and should be decided now. *See Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) (“whether a court lacks subject matter jurisdiction can be raised by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties.”) (citation and quotation omitted). This Appeal should be dismissed for lack of jurisdiction.

II. Statement of Relevant Facts

The Respondents filed suit against the Appellants the Lytle Trust in November 2017. On May 24, 2018, summary judgment (“May 2018 Order”), was granted to the Respondents against the Lytle Trust in Case No. A-17-765372-C (consolidated with Case No. A-16-747800-C). On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada Supreme Court, Case No. 76198. The Supreme Court entered its Order affirming the May 2018 Order on March 2, 2020 (“Order of Affirmance”) (also available at *Lytle v. Sept. Tr., Dated Mar. 23, 1972*, No. 76198, 458 P.3d 361 (Table), 2020 WL 1033050 (Nev. Mar. 2, 2020).

On May 22, 2020, the district court entered the order appealed from in this Case, the Order Granting Plaintiffs’ Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, concluding that the Lytle Trust had violated the May 2018 Order and holding the Lytle Trust in contempt (the “Contempt Order”). *See* Exhibit A to Docketing

Statement. On June 22, 2020, the Lytle Trust filed its Notice of Appeal of the Contempt Order. On August 5, 2020, the Lytle Trust filed its Amended Notice of Appeal and Docketing Statement. In the Docketing Statement, the Lytle Trust denotes that the nature of the disposition below is an “Order of contempt.” Docketing Statement at 3, Response to Question 4. The Lytle Trust further states that the statute granting this Court jurisdiction to review the Contempt Order is NRAP 3A(b)(8) and explaining “This is an appeal from a post-judgment order finding appellants in contempt and awarding penalties, attorneys’ fees and costs pursuant to NRAP 3A(b)(8).” Docketing Statement at 8, Response to Question 21.

III. Argument

The issue in this Motion to Dismiss is simple. This Court does not have jurisdiction to decide this Appeal because it concerns an order of contempt. This Court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). “Jurisdictional rules go to the very power of this court to act.” *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987); accord *Phillips v. Welch*, 11 Nev. 187, 188 (1876) (“Every court is bound to know the limits of its own jurisdiction, and to keep within them.”). “[W]here no statutory authority to appeal is granted, no right exists.” *Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 209, 678 P.2d 1152 (1984) (citing *Kokkos v. Tsalikis*, 91 Nev. 24,

530 P.2d 756 (1975)). As explained below, the Contempt Order is not appealable and does not otherwise qualify as a special order under NRAP 3A(b)(8).

A. *Pengilly* Prevents Appeal of the Contempt Order.

Unless expressly authorized by rule or statute, there is no right to appeal from an order of contempt. *Pengilly v. Rancho Santa Fe Homeowners Ass’n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000). In *Pengilly*, the Court explained at the beginning of its opinion a procedural posture very similar to this Case:

This appeal concerns the issue of the appropriate form of review of an order of contempt—a direct appeal or an original petition for relief pursuant to NRS Chapter 34. We take this opportunity to clarify a troublesome area of this court’s jurisdictional case law. We conclude that, as no rule or statute authorizes an appeal from a contempt order, this court does not have jurisdiction over an appeal from such an order. Accordingly, the proper mode of review is by an original writ petition.

116 Nev. at 647, 5 P.3d at 569. The Court ultimately concluded “that this court does not have jurisdiction over an appeal from a contempt order where no rule or statute provides for such an appeal” and dismissed the appeal. 116 Nev. at 649-50, 5 P.3d at 571-72. Here, because the Contempt Order is very plainly an order of contempt and there is no statute or rule authorizing appeal, this Court does not have jurisdiction and this Appeal must be dismissed.

The *Pengilly* Court concluded further that “contempt orders must be challenged by an original petition pursuant to NRS Chapter 34.” 116 Nev. at 649, 5 P.3d at 571. The Court explained:

Writ petitions are also more suitable vehicles for review of contempt orders. Particularly where the purpose of the contempt order is to coerce compliance with the district court's orders, it appears preferable for the district court to be able to modify its orders to meet changing circumstances. A writ petition permits the district court this flexibility because the court retains jurisdiction over the order during the pendency of the writ petition. In contrast, the district court would be divested of jurisdiction to modify or vacate the contempt order once a notice of appeal had been filed.

116 Nev. at 650, 5 P.3d at 571 (citation omitted).

Since *Pengilly* was decided, numerous appeals from contempt orders have been dismissed for lack of jurisdiction (only a few of which are cited here). *See, e.g., Nelson v. Nelson*, 136 Nev. Adv. Op. 36, 466 P.3d 1249, 1252–53 (2020) (citing *Pengilly*); *Alper v. Eighth Jud. Dist. Ct.*, 131 Nev. 430, 432–33, 352 P.3d 28, 30 (2015) (same); *Leverly & Assocs. Law, Chtd. v. Exley*, 466 P.3d 1287 (Table), 2020 WL 4035174, *1 (Nev. 2020) (unpublished disposition) (same); *Goudie v. Packard-Keane*, 406 P.3d 959 (Table), 2017 WL 5956827, *1 (Nev. 2017) (unpublished disposition) (same); *Leavitt v. Abbatangelo*, 404 P.3d 411 (Table), 2017 WL 4950058, *1 (Nev. 2017) (unpublished disposition) (same); *Detwiler v. Baker Boyer Nat'l Bank*, 462 P.3d 254 (Table), 2020 WL 2214148, *2 (Nev. 2020) (unpublished disposition) (same). While many of these dispositions are “unpublished,” they are cited to demonstrate the frequency with which similar appeals are dismissed for lack of jurisdiction.

Since *Pengilly*, the Court has found some exceptions to the general rule that a contempt order is not appealable. For instance, the Court found jurisdiction of contempt orders when they are included with an order that is otherwise independently appealable. *See Yu v. Yu*, 133 Nev. 737, 739, 405 P.3d 639, 640–41 (2017) (appeal allowed to proceed where it also concerned, in addition to order of contempt, order that a party was a vexatious litigation); *Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) (appellate jurisdiction proper where appellant challenged order or contempt and post-judgment order concerning child support).

The Court has also noted instances where a statute expressly grants a right of appeal of an order of contempt. *In re Determination of Relative Rights of Claimants & Appropriators of Waters of Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 906, 59 P.3d 1226, 1229 (2002) (NRS 533.22 granted right of appeal and noting that “*Pengilly* relied on the fact that, in general, there is no statutory authority to appeal a contempt order”). The Court also found jurisdiction when the contempt order was not ancillary to a prior order, but was the entire relief sought in the action and was subject to statutory authority. *See Las Vegas Police Prot. Ass’n Metro, Inc. v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 122 Nev. 230, 237, 130 P.3d 182 (2006) (“In *Pengilly*, we concluded that a contempt order arising from within an underlying district court action is not

appealable but challengeable only through a writ petition. But in this case, the district court's order was not ancillary to any other district court action; rather, the citizen review board applied for relief directly under NRS 289.390(2), which governs enforcement actions.”)

None of the exceptions are applicable here. Appellants have appealed an order of contempt following their failure to abide by previous orders in the case. There is no other independently appealable order included as part of this Appeal.¹ The contempt statute, NRS 22, under which the Lytle Trust was sanctioned, does not grant an appeal right. In short, this Court does not have jurisdiction to decide the Contempt Order and this Appeal should be dismissed.

B. The Contempt Order is Not a Special Order Entered After Final Judgment.

NRAP 3A(b)(1-8) lists the instances when an appeal may be taken from the judgments and orders of a district court in a civil action. Here, Appellants try to avoid having to file a writ by alleging that their petition falls under “a special order entered after final judgment” pursuant to NRAP 3A(b)(8). However, as *Pengilly* clearly precludes appeal of an order of contempt, the Appellants must demonstrate that the Contempt Order affects their rights arising from the final judgment. *See*

¹ Appellants have separately appealed the award of attorney's fees and costs related to the Contempt Order. Case No. 81689. The Court has previously found that an order awarding attorney fees as a sanction for contempt are not independently appealable. *Goudie v. Packard-Keane*, 406 P.3d 959 (Table), 2017 WL 5956827, *1 (Nev. 2017) (unpublished disposition); *Leavitt v. Abbatangelo*, 404 P.3d 411 (Table), 2017 WL 4950058, *1 (Nev. 2017) (unpublished disposition).

Saiter v. Saiter, 416 P.3d 1056 (Table) 2018 WL 2096288, *1 (Nev. 2018) (unpublished disposition) (appeal was dismissed because appellant failed to show how the order affected his rights arising from the final judgment).

In *Gumm v. Mainor*, 118 Nev. 912, 913–14, 59 P.3d 1220, 1221 (2002), the Court stated the standard: “[T]o be appealable ... a special order made after final judgment must be an order affecting the rights of some party to the action, growing out of the judgment previously entered.” The Contempt Order did not change any rights, but only enforced the prior order which has already been appealed and affirmed by this Court. There is a difference between orders enforcing a judgment (i.e. contempt orders subject to the *Pengilly* rule), which by their nature do not change the rights given in the judgment, and orders affecting (read: changing or altering) the rights of the parties previously established in the case. In *Gumm*, “The district court’s order deprived *Gumm* of part of his judgment and distributed that money to others who claimed a right to it.” 118 Nev. at 919, 59 P.3d at 1225. Here, the Contempt Order only enforced the rights and obligations of the parties previously set in the May 2018 Order, and did not affect, change, or alter the rights of any party. Thus, the Contempt Order does not “affect the rights of some party to the action” for purposes of NRAP 3A(b)(8) under the standard stated in *Gumm*. See also *Detwiler*, 2020 WL 2214148, *2 (order awarding attorney fees as a sanction unrelated to the judgment between the parties did not qualify as a special

order appealable under NRAP 3A(b)(8)); *Brazell v. Brazell*, 393 P.3d 1075 (Table), 2017 WL 1855087 *1 (May 2017) (unpublished disposition) (order of contempt was a mere enforcement of appellant's obligations under the divorce decree and did not qualify as a special order appealable under NRAP 3A(b)(8)).

IV. Conclusion

Thus, the Contempt Order is not appealable under the clear language of *Pengilly*, and does not otherwise qualify as a special order appealable under NRAP 3A(b)(8). The Court does not have jurisdiction. The proper avenue for review is a writ petition under NRS 34. Accordingly, this Appeal should be dismissed.

DATED this 29th day of October 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the 29th day of October 2020, I submitted the foregoing RESPONDENTS' MOTION TO DISMISS 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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