

No. 81390

Electronically Filed  
Dec 07 2020 03:39 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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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.

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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

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**REPLY TO APPELLANTS' OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

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## **REPLY TO APPELLANTS' OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

Appellants' are "prepared to contest the subject order holding them in contempt via writ petition if necessary." Opposition at 1. As explained in the Motion, this Court has held on numerous occasions that a writ petition is the appropriate procedural mechanism for review of an order of contempt. Whereas the Lytle Trust is ready, willing, and able to present this matter through a writ petition, the Court should grant the Motion to Dismiss. However, the Lytle Trust argues that the Contempt Order is appealable because it changed the legal rights of the parties. The Contempt Order did no such thing and a writ petition is the only appropriate avenue for review of this order of contempt.

### **A. The Motion to Dismiss Should be Decided Prior to Merits Briefing**

This Motion may be decided upon a jurisdictional review of the Docketing Statement, no merits briefing is necessary. This Court has decided jurisdictional issues prior to merits briefing. For example, in *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, where this Court stated it does not have jurisdiction over an appeal from a contempt order and that proper mode of review is by original writ petition, the Court decided the issue based on briefing in response to an order to show cause. 116 Nev. 646, 647, 5 P.3d 569, 570 (2000). Further, in *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220 (2002), in which the Court clarified what qualifies as a "special order made after final judgment" and upon which the

Appellant's rely, the Court stayed briefing pending its jurisdictional review. *See* Docket in *Gumm v. Mainor*, No. 38424, Order entered Feb. 11, 2002 ("We suspend the briefing schedule and preparation of transcripts pending further order of this court...pending completion of our jurisdictional review..."). The Docketing Statement includes all necessary documents for this Court to make a jurisdictional review, including the Contempt Order, Clarification Order, and May 2018 Order. Briefing on this Motion to Dismiss is sufficient to decide this threshold jurisdictional question and there is no need for further briefing on the matter.

**B. The Contempt Order is not an Expansion of the May 2018 Order**

The Contempt Order did not expand the permanent injunction. The Lytle Trust cleverly attempted to skirt the district court's orders when it sought special assessments through a receiver. Just because the Lytle Trust's interpretations turned out to be incorrect does not mean that the court expanded its orders or changed the parties' legal rights when it held the Lytle Trust in contempt for those actions. The Clarification Order (Ex. B) explains that the May 2018 Order, and the Contempt Order enforcing it, are based on the history of the case and previous court orders, including a similar injunction issued in April 2017 in favor of other similarly situated property owners. The Clarification Order explains:

5. The thrust and focus of all the Court's decisions in this matter are based upon the history of this case, including the April 2017 Order entered 3 years ago.

6. The April 2017 Order stating Defendants are permanently enjoined from taking “any action” in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation was also clear.

7. The broad and the plain meaning of the term “any action” means any action, whether direct or indirect.

Clarification Order, Exhibit B to Docketing Statement, 6:21-27. Other language in the Clarification Order emphasizes the court’s intent to enforce its prior orders, not change the rights of the parties. *See id.* at 7:1-11.<sup>1</sup> The Contempt Order did not expand or changes rights because the Court had already prohibited direct *and* indirect attempts to collect the judgments from the Respondents.

**C. The Main Purpose of the Receivership Action Was to Have the Association Make Special Assessments Against The Property Owners.**

The Lytle Trust argues that imposing assessments on the Respondents was merely an “indirect consequence” of the receivership action. However, collection of assessments to pay the Judgments was the driving force behind the Lytle Trust’s application. The May 2018 Order clearly concluded that: the Association is a “limited purpose association” as referenced in NRS 116.1201(2); the original CC&Rs govern because the Amended CC&Rs were void ab initio; and the judgments against the Association are not an obligation or debt of the Respondents. May 2018 Order, Ex. G to Docketing Statement, at 7-8. Neither the CC&Rs nor

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<sup>1</sup> Those Orders were affirmed by this Court following appeals by the Lytle Trust. *See Lytle v. Boulden*, No. 73039, 432 P.3d 167 (Table), 2018 WL 6433005 (Dec. 4, 2018); *Lytle v. Sept. Tr.*, No. 76198, 458 P.3d 361 (Table), 2020 WL 1033050 (Mar. 2, 2020).

the limited statutory powers of NRS 116.1201 grant the Association a power of special assessment.

The Contempt Order merely enforced these aspects of the May 2018 Order. The Contempt Order found that the Receivership Action was initiated because of “the Association’s refusal to pay the Rosemere Judgments, including its refusal to assess Association members, including the Plaintiffs, so the Association could pay the Rosemere Judgments.” Contempt Order, Ex. A to Docketing Statement, p. 7:8-19. The court found further that “The Order Appointing Receiver, drafted by the Lytle Trust, directs the Receiver to ‘[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust’s judgments against the Association’ [and] If an Association member does not pay an assessment then the Receiver may proceed to foreclose on said member’s ownership interest in the property.” *Id.* at 8:17-26 (citation omitted). Special assessments were not merely an indirect consequence of the Receivership Action, they were the intended result.

**D. The Corporation Analogy is Not Applicable to this Case.**

The Lytle Trust attempts to draw an analogy to enforcement of a judgment against a corporation. However, such an example is too simplistic and overlooks key issues unique to this case, including that the Association is not a typical business entity, but a limited purpose association governed by statute and CC&Rs that do not grant a special assessment power. Most importantly, the Association

was given the power to foreclose on the Respondents' real property (their primary residences), something that a corporation could not do to its shareholders.

### CONCLUSION

The Contempt Order is not an expansion of the May 2018 Order. As such, the Contempt Order does not qualify as a special order appealable under NRAP 3A(b)(8). The Court does not have jurisdiction over this appeal. The proper avenue for review is a writ petition under NRS 34. This appeal should be dismissed.

DATED this 7th day of December 2020.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this date, the 7th day of December 2020, I submitted the foregoing Reply to Appellants' Opposition to 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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