Case No. 81390

In the Supreme Court of Nevada

TRUDI LEE LYTLE; and JOHN ALLEN LYTLE, as 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; DENNIS A. GEGEN AND JULIE S. GEGEN, Husband and wife, as joint tenants; ROBERT Z. DISMAN; and YVONNE A. DISMAN,

Respondents.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable TIMOTHY C. WILLIAMS, District Judge
District Court Case Nos. A-16-747800-C and A-17-765372-C

APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certify that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

Appellants Trudi Lee Lytle and John Allen Lytle, trustees of the Lytle Trust, are individuals.

Richard E. Haskin and Timothy P. Elson at Gibbs Giden Locher Turner Senet & Wittbrodt LLP represented the Lytle Trust in the district court. Joel D. Henriod, Daniel F. Polsenberg, and Dan R. Waite at Lewis Roca Rothgerber Christie LLP represent the Lytle Trust in the district court and before this Court.

Dated this 15th day of March, 2021.

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JURISDICTION

Trudi Lee Lytle and John Allen Lytle, as trustees of The Lytle Trust ("Lytles" or "the Lytle Trust"), appeal from an order holding the trust in contempt for purportedly violating a May 2018 injunction order, and awarding respondents penalties and expenses. (7 App. 1562.) Notice of entry of the contempt order was served on May 22, 2020, and the Lytle Trust timely appealed on Monday, June 22, 2020. (6 App. 1470.) Appellants then amended the appeal on July 31, 2020, to include an order ruling on a subsequent motion for clarification that was entered on July 15, 2020. (7 App. 1562.)

Appellants recognize that simple contempt orders generally are not appealable and instead must be contested via writ petition. *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000). An appeal will lie from a contempt order, however, if it "affect[s] the rights of some party to the action, growing out of the judgment previously entered." *See Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (citing NRAP 3A(b)(8)); *Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) ("if the contempt finding or sanction is included in an order that is otherwise

independently appealable, this court has jurisdiction to hear the contempt challenge on appeal"); c.*f., Detwiler v. Baker Boyer Nat'l Bank*, 2020 WL 2214148, *2, 462 P.3d 254 (Nev. 2020) (contempt order was not appealable because it "[did] not affect the judgment rights or liabilities of a party to the action"); *Saiter v. Saiter*, 2018 WL 2096288, 416 P.3d 1056 (2018) (dismissing appeal from order of contempt where appellant "d[id] not demonstrate that the order affect[ed] his rights arising from the final judgment (the divorce decree)").

Here, appellants contend the subject contempt order effectively amends the May 2018 injunction order to expand significantly the scope of activity enjoined and add a beneficiary. If this Court agrees with appellants' assessment,[1] the subject contempt order is appealable,

[1] In assessing appellate jurisdiction, this Court frequently looks beyond labels and examines the gravamen and effect of subject orders and other operative documents. For example, in *Gumm v. Mainor*, the Court permitted an appeal from a post-judgment order that, on its face, merely "distributed funds" because it substantively "affected plaintiff's right to distribution of judgment proceeds." *Id.* Regardless of the appealed order's title, this Court reasoned that "the order [was] analogous to orders adjudicating attorney liens and awarding attorney fees and costs," which are appealable. *Id.*, 118 Nev. at 919, 59 P.3d at 1225. Similarly, the Court has examined the contents of post-judgment motions to determine whether to deem them tolling "regardless of label." *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585,

either as "a special order" entered after the final May 2018 injunction order, pursuant to NRAP 3A(b)(8), or as an order granting new injunctive relief, pursuant to NRAP 3A(b)(3).[2] Determination of

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245 P.3d 1190, 1195 (2010).

[2]The Lytle Trust is prepared to contest the subject order holding them in contempt via writ petition if necessary. Where an order may be appealable, prudence calls for the aggrieved party to initiate an appeal. If appellants were to forego an appeal from the underlying order because it ostensibly is a simple contempt order and file a writ petition instead, and this Court were to determine the order is substantively appealable, this Court likely would deny the writ petition on the basis that the order is appealable. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (applying NRS 34.170). In that event, it would be too late to pursue an appeal. *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) ("the proper and timely filing of a notice of appeal is jurisdictional"). On the other hand, a petition for extraordinary relief is not subject to a jurisdictional deadline although the doctrine of laches applies. *Moseley v. Eighth Judicial Dist. Ct.*, 124 Nev. 654, 659 n. 6, 188 P.3d 1136, 1140 n. 6 (2008) (concluding laches did not bar consideration of a writ petition filed four months after contested order); *Widdis v. Second Jud. Dist. Ct.*, 114 Nev. 1224, 1227–28, 968 P.2d 1165, 1167 (1998) (concluding that laches did not bar consideration of a writ petition filed seven months after the district court entered its written order).

Were the contempt order to be deemed appealable, appellants also would risk it having issue-preclusive effect by foregoing any appeal. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015) ("the following factors are necessary for application of issue preclusion: "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; ... (3) the party against whom the judgment is asserted must have been a party or in privity

appellate jurisdiction, therefore, is intertwined with the merits of this appeal, as the Court observed previously in denying respondents' motion to dismiss. (Doc. no. 21-00620.)

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(7), but appellants contend that the Supreme Court should retain the case due to its institutional familiarity with the issues and several related cases involving these parties.

ISSUE PRESENTED

1. Where a judgment was entered against a nonprofit corporate entity—here a common-interest community—and the judgment creditor was enjoined from enforcing the judgment "directly" against the corporation's members (*i.e.*, the property owners) because they are "not parties" to the judgment, should that injunction be construed to preclude enforcement even against the judgment-debtor corporation, including seeking the appointment of a receiver over the judgment-

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with a party to the prior litigation"; and (4) the issue was actually and necessarily litigated").

debtor corporation, simply because it may lead the judgment-debtor corporation to seek funds from its members to satisfy the judgment?

STATEMENT OF THE CASE

This is an appeal an order holding appellants in contempt of court for allegedly violating an injunction, entered on May 22, 2020 by THE HONORABLE TIMOTHY WILLIAMS. Appellants maintain the district court substantively expanded the scope of the activity enjoined by the injunction order and then determined that appellants had violated it *ex post facto*. The district court's order also expands the scope of activity enjoined prospectively.

STATEMENT OF FACTS

Defendant-Appellants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, as trustees of THE LYTLE TRUST ("Lytles" or "the Lytle Trust") own a lot in a residential subdivision governed by the nonprofit corporation ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (the "Rosemere Association" or "Association"). The Association consists of nine lot owners. Plaintiff-respondents are four other property owners who also are members of the Association ("Property Owners").[3]

[3] The plaintiff-respondents are (1) SEPTEMBER TRUST, DATED MARCH 23, 1972; (2) GERRY R. ZOBRIST and JOLIN G. ZOBRIST, as trustees of the GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; (3) RAYNALDO G.

The Lytle Trust Procures Judgments Against the Rosemere Association

Through the Association, the Lytles' neighboring property owners waged vicious battles with them for more than a decade ("Rosemere Litigation"), resulting in entry of three judgments in favor of the Lytle Trust against the Association ("Rosemere Judgments"), which have a current combined balance of more than $1.8 million. (1 App. 206, 3 App. 540, 3 App. 550.) The Association's actions against them was so outrageous that the Lytle Trust's judgments include a punitive damage award in excess of $800,000. (3 App. 512.)

These judgments, the last of which was entered in 2017, have never been reversed or otherwise invalidated.

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 (4) DENNIS A. GEGEN and JULIE S. GEGEN.

The Lytle Trust is Enjoined from Enforcing the Judgments "Directly" Against the Association's Members

Although its judgments were against the "Rosemere Estates Property Owners Association," the Lytle Trust recorded abstracts of the judgment directly against all properties in the association aside from their own. (1 App. 206.) In various suits, consolidated in front of Judge Timothy C. Williams, some of the property owners sued the Lytle Trust seeking declaratory and injunctive relief to restrain the Lytle Trust from foreclosing on their properties, and to strike the abstracts of judgment clouding their titles. (4 App. 896.) The district court granted that relief in multiple orders, which were appealed and affirmed. (*See* Case nos. 73039 and 76198.) The district court also awarded fees to the various property owners arising from the injunction actions, which orders also were appealed and affirmed.[4] (Case nos. 77007 and 79753.)

The basis for the district court's permanent injunction in favor of the respondent Property Owners, entered on May 24, 2018 ("May 2018

[4] The district court recently entered an award of fees to these respondent Property Owners, which is the subject of another pending appeal, case no. 81689.

Order"), was twofold. First, the respondents were "not parties" in the Rosemere Litigation. (3 App. 709:1-4.) The judgment debtor is the Association, not the respondent Property Owners. (3 App. 710:5-9.) Second, the court concluded that the Association is not the kind of homeowners' association (common-interest community) that is subject to NRS 116.3117, which allows judgment creditors of an association to record abstracts of judgments directly against all association homeowners' properties. (3 App. 709:20-24.) In other words, NRS 116.3117's *exception to the general rule* that judgment creditors cannot execute against non-parties (outside the strictures of court-sanctioned collection procedures such as garnishment, *etc.*), did not apply.

Accordingly, the district court's May 2018 Order permanently enjoined the Lytle Trust from recording or enforcing its judgments directly against the non-party Property Owners:

> IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is permanently enjoined from recording and enforcing the Judgments obtained from the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other judgments obtained against the Association, against the September Property, Zobrist Property, Sandoval Property or Gegen Property.

> IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is permanently enjoined from taking ***any action*** in the future ***directly*** against the Plaintiffs or their properties upon the Rosemere Litigation I, Rosemere Litigation II, or Rosemere Litigation III.

(3 App. 712:10 (emphasis added).)

The district court never enjoined the Lytle Trust from enforcing its judgments against the judgment-debtor Association or otherwise restricted its right to collect the judgments lawfully. (*Id.*) Indeed, the Association is not even a party below. Nor, importantly, did the district court alleviate the respondent Property Owners of any duties they might owe *to the Association* to enable the Association to satisfy *its* debts under ordinary corporate, contract or statutory principles. (*Id.*)

This Court affirmed the district court's permanent injunction—as well as injunctions entered on behalf of other similarly situated Rosemere property owners—on the grounds that Property Owners were not parties to the Rosemere Judgments and that NRS 116.3117 does not apply to this association.[5]

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[5] As this Court articulated the basis for the injunctive relief and affirmance:

> …under the plain language of Chapter 116, limited purpose

Executing Against the Defunct Association, the Lytle Trust Petitions for Appointment of a Receiver

After the district court permanently enjoined the Lytle Trust from enforcing the judgments directly against the non-party Property Owners—chiding them for disregarding the Association's corporate form and status as an independent entity—the Lytle Trust focused its collection efforts on the actual judgment-debtor Association. Because the Association's officers had resigned and allowed the Association to become defunct after the Lytle Trust obtained their judgments,[6] the Lytle Trust commenced an action for appointment of a receiver to,

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> association are not subject to Chapter 116 outside of certain express statutory exceptions, and … NRS 116.3117 is not among those exceptions . . . [nor does] other Nevada law . . . allow them to record abstracts of judgment against homeowners who were not parties to the litigation against Rosemere and whose properties were not the subject of any lawsuit.

See March 2, 2020 "Order of Affirmance," Doc. # 20-08333, at 3-4 (4 App. 836-37).

[6] The Association funded its litigation expenses against the Lytle Trust through assessments imposed against and personal loans borrowed from the homeowners. (4 App. 846.) However, when the judgments started rolling-in in favor of the Lytle Trust against the Association, the board members (some of these very Plaintiffs-Respondents) resigned and rendered the Association defunct, failing to renew its status with the Nevada Real Estate Division or the Nevada Secretary of State. (4 App. 846.)

among other things, satisfy the judgments: *Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust v. Rosemere Estates Property Owners' Association*, Eighth Judicial District Court, case no. A-18-775843-C, pending before THE HONORABLE JOANNA S. KISHNER ("receivership action").

To ensure the receiver would be empowered to act on behalf of the Association with whatever authority a duly appointed executive of the Association otherwise would have, the petition moved the district court to authorize the receiver with broad powers. (4 App. 816.) The Lytle Trust envisioned that such powers might even include the Association issuing assessments to satisfy its debts and judgment obligations, as well as placing liens on properties of Association members who did not pay any lawful assessments. (*See* 4 App. 820.) The Lytles were aware of the Association having done so in the past. (4 App. 864-69.)

The Property Owners Claim the Lytle Trust Violated the May 2018 Order and Seek to Have them Held in Contempt

Respondent Property Owners reacted to the receivership action by reopening this case, in which Judge Williams had issued the May 2018 Order, and moving Judge Williams to hold the Lytle Trust in contempt

of court for violating it. (3 App. 736.) Although the receiver was appointed over the judgment-debtor Association, to facilitate payment of the Association's debt, the Property Owners argued the receivership petition violated the May 2018 Order *indirectly* because it would lead the Association to exercise its power to issue assessments to the Property Owners. (3 App. 742.)

The Lytle Trust opposed the motion, raising several points. (4 App. 845.) It is commonplace to appoint receivers over non-paying judgment debtors. (5 App. 1120, 1122) The Lytle Trust's effort to enforce the judgment against the Association was correct for the same reason its previous liens directly against the Property Owners had been misguided; the Association is the judgment debtor and an independent corporate entity separate and distinct from its property owner members. (5 App. 1121.) The May 2018 Order did not enjoin the Lytle Trust from lawfully enforcing its judgments against the judgment-debtor Association.[7] (3 App. 711-12.) And the Property Owners were

[7] The district court (Honorable Timothy C. Williams) did not issue any of the Lytle Trust's Rosemere Judgments against the Association, and the Association was not a party before Judge Williams.

not somehow immunized from consequences of their Association gathering funds to pay its debt merely because the Lytle Trust had been enjoined from *going around* the Association to lien their properties directly. (5 App. 1125.)

The Court Holds the Lytle Trust in Contempt for Violating the May 2018 Order "Indirectly"

The district court agreed with the Property Owners. (6 App. 1440.) The court did not dispute the legitimacy of the Lytle Trust's judgments against the Association, which are not stayed. (7 App. 1552.) Nor did the court address merits of whether this limited-purpose homeowners' association, a nonprofit corporation, would be within its rights to levy assessments to satisfy judgments against it. (7 App. 1559.)

The court's analysis was simple and straightforward. The court reasoned that "[t]he May 2018 Order's permanent injunction clearly precluded the Lytle Trust from doing *anything* as it *relates to* enforcing and recording the Rosemere Judgments against the [Property Owners[8]]

[8] Any conclusion in the Contempt Order that the 2018 Order involved the nominal-respondent Dismans is clear error. The Dismans bought their home from the Boulden Trust after the district court entered its 2017 Order, which is not at issue in this appeal (i.e., the Contempt

or their properties." (6 App. 1449:24-26] (emphasis added)). The court concluded "the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in *any way, shape, or form*." (*Id*. at 6 App. 1449:26-27].) As the court further explained in ruling on a motion for clarification, "any" action means "direct or *indirect*." (7 App. 1557:26].) Thus, even a collection effort against the judgment-debtor Association that "*results in* payment of the Judgments by the Plaintiffs" violates the May 2018 Order. (5 App. 709:10-11 (emphasis added).)

This appeal followed.

SUMMARY OF THE ARGUMENT

The district court abused its discretion by holding the Lytle Trust in contempt for violation of the May 2018 Order. The judgment-creditor

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Order does not find a violation of the 2017 Order). Neither the Boulden Trust nor the Dismans are mentioned in the 2018 Order's permanent injunction. Thus, while, *arguendo*, the Dismans stepped into the shoes of the Boulden Trust as it relates to the 2017 Order, the Dismans are not beneficiaries of the 2018 Order's permanent injunction. Indeed, the Dismans have no standing here because the Contempt Order specifically found a violation of only the 2018 Order. (6 App. 1451:5-8; *see also*, 7 App. 1557:19-20 ("[t]he Court did not hold the Lytle Trust in contempt for violating the April 2017 Order . . . .")).

Lytle Trust had a right to seek appointment of a receiver over the non-paying, corporate debtor. The May 2018 Order had enjoined the Lytle Trust from executing their judgments "directly" against the respondent Property Owners only because they were not parties to the lawsuit between the Lytle Trust and the Association, and the statutory (NRS 116.3117) exception to the rule that judgment liens cannot be recorded against non-party property owners did not apply.[9] Now, the court effectively has expanded the May 2018 order to enjoin the Lytle Trust from collecting the judgments *even against the Association* if that may lead the Association to exercise whatever rights it may have under the law and relevant agreements to procure funds from the respondent Property Owners, as that would constitute collecting the judgment from them "indirectly."[10] This improperly disregarded the separate identity between the Association and its members. Forbidding the Lytle Trust from exercising its judgment-creditor right to seek a receiver to enforce the judgment against the judgment-debtor Association was neither

[9] While the Lytle Trust disagrees with that order and appealed from it, it is law of the case.

[10] The association is not a party to this action.

expressly included in the May 2018 Order nor reasonably implied. Thus, the district court abused its discretion by attempting to expand the scope of activity enjoined nunc pro tunc and then deeming the Lytle Trust to have violated it ex post facto.

Beyond the impropriety of holding the Lytle Trust in contempt for an expanded order ex post facto, the Lytle Trust also is concerned about the prospective import of the underlying contempt order and the subsequent order on the Lytle Trust's motion for clarification, which could be deemed to operate as an injunction on the Lytle Trust from enforcing its judgment at all against the Association. To the extent the contempt order can be construed to enjoin such activity, the district court both abused its discretion and erred as a matter of law.[11] The district court performed no substantive analysis regarding whether this Association, whether by officers or a receiver acting in their shoes, could

[11] "This Court reviews the district court's decision to grant a permanent injunction for an abuse of discretion." *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 108, 294 P.3d 427, 433 (2013). "Purely legal questions surrounding the issuance of an injunction, however, are reviewed de novo." *Id.*

issue assessments to members in order to satisfy its debts under the Association articles or bylaws, or relevant law, etc., before issuing this sweeping injunction. Rather, the district court determined that the Lytle Trust cannot collect its judgments from the Association simply as a consequence of the May 2018 Order that precludes liens "directly" against the Association's members. The contempt order must be vacated.

ARGUMENT

I.
THE LYTLE TRUST'S REQUEST FOR THE APPOINTMENT OF A RECEIVER OVER THE JUDGMENT DEBTOR ASSOCIATION DID NOT VIOLATE THE MAY 2018 ORDER

The district court abused its discretion[12] by holding the Lytle Trust in contempt for violating the May 2018 Order. Judgment creditors have the right to seek receivership over nonpaying judgment debtors to facilitate payment of a judgment. The May 18 Order does not restrain the Lytle Trust from exercising any lawful execution remedies

[12] *In re Determination of Relative Rts. of Claimants & Appropriators of Waters of Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 907, 59 P.3d 1226, 1230 (2002) ("when reviewing a contempt order on a direct appeal, as opposed to considering a writ petition, we will overturn the contempt order only where there has been an abuse of discretion").

against the judgment-debtor Association, either in the plain language of the order or a clear implication.

A. Judgment Creditors have a Right to Seek Appointment of a Receiver Over a Non-Paying Judgment Debtor

A judgment creditor is not obligated to do anything to collect its judgment against the judgment debtor. To the contrary, "a judgment debtor is under a legal obligation to satisfy the judgment against him." *See U.S. v. Neidor*, 522 F.2d 916, 919 n.5 (9th Cir. 1975). Thus, a judgment debtor has the affirmative obligation to pay the judgment entered against it—and that obligation exists without demand, execution, garnishment, or any other action by the judgment creditor.

Correlatively, a judgment creditor has a right to collect its judgments and has various tools available to assist collection from a non-paying judgment debtor. One collection tool relevant here is the appointment of a receiver over the non-paying judgment debtor.

Indeed, every Nevada judgment creditor has the right to seek the appointment of a receiver over the judgment debtor: "A receiver may be appointed . . . [a]fter judgment . . . in proceedings in aid of execution . . . or when the judgment debtor refuses to apply the judgment debtor's

property in satisfaction of the judgment." NRS 32.010(4). "A receiver may be appointed . . . [i]n all other cases where receivers have heretofore been appointed by the usages of the courts of equity." NRS 32.010(6). "Since very early days, courts of equity have appointed receivers at the request of judgment creditors when execution has been returned unsatisfied." *Pittsburgh Equitable Meter Co. v. Paul C. Loeber & Co.,* 160 F.2d 721, 728 (7th Cir. 1947). In short, it is hornbook law that a "receivership may be an appropriate remedy for a judgment creditor." 12 Alan C. Wright & Arthur R. Miller, Federal Practice and Procedure §2983 (3d ed.).

B. On its Face, the May 2018 Order Does Not Limit the Lytle Trust's Right to Pursue the Judgment Debtor

The plain language of the May 2018 Order does not preclude the Lytle Trust's collection efforts against the Association. "An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him." *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 532 (2006), *quoting Cunningham v. Eighth*

Jud. Dist. Ct., 102 Nev. 551, 559–60, 729 P.2d 1328, 1333–34 (1986). "A court order which does not specify the compliance details in unambiguous terms cannot form the basis for a subsequent contempt order." *Div. of Child & Family Servs., Dep't of Human Res., State of Nevada v. Eighth Jud Dist. Ct.*, 120 Nev. 445, 454–55, 92 P.3d 1239, 1245 (2004); *c.f., Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 132, 252 P.3d 649, 656 (2011) ("A violation of an order granting a motion in limine may only serve as a basis for a new trial when the order is specific in its prohibition and the violation is clear.").

Permanent injunctions are no different. They too must be strictly construed for purposes of contempt proceedings. *FTC v. Kukendall*, 371 F.3d 745, 760 (10th Cir. 2004) (strictly construing a permanent injunction for purposes of a contempt proceeding). They must be read "intelligently and in context." DAN B. DOBBS, LAW OF REMEDIES § 2.8(7), 220 (2d ed.1993).

Here, the plain language of the May 2018 Order precludes the Lytle Trust from filing liens against properties of *nonparties* without leave of court, or otherwise pursuing them directly. It does not restrict the Lytle Trust's legal rights to avail itself of all collection remedies

against the judgment-debtor Association. Yet, the district court held the Lytle Trust in contempt for seeking the appointment of a receiver over the Association. The Lytle Trust did not seek appointment of a receiver over the respondents (the respondents were not even parties in the receivership action until they sought to intervene after Judge Kishner granted the receiver). Given the separate identity between the Association and its members, direct action against the Association is not direct action against its members. Thus, although the appointment of a receiver over the Association may indirectly impact the Association's members, it is not direct action against them.

The term "directly" in the May 2018 Order cannot be considered surplusage. "The maxim '*expressio unius est exclusio alterius*', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State." *Canarelli v. Eighth Jud. Dist. Ct.*, 136 Nev. Adv. Op. 29, 464 P.3d 114, 121 (2020). Thus, when the May 2018 Order expressly enjoined the Lytle Trust from taking any action "directly against" the respondents or their properties, it indicated the order did not necessarily preclude action that impacted them indirectly. By holding the Lytle Trust in contempt for "initiat[ing] an action against

the Association that included a prayer for appointment of a receiver" and because the Lytle Trust subsequently "applied for appointment of a receiver" over the Association (6 App. 1450:3-4), the district court disregarded the "directly against" term in the May 2018 Order.

C. Precluding the Lytle Trust from Executing its Judgments Against the Association is Not Even a Reasonable Implication of the May 2018 Order

As demonstrated above, the Lytle Trust cannot be deemed in violation of the May 2018 Order because their petition for receivership over the judgment debtor itself did not violate any "unambiguous terms" of the May 2018 Order that "specify the compliance details." *See Div. of Child & Family Servs.*, 120 Nev. at 454–55, 92 P.3d at 1245.

The Lytle Trust's actions do not even approach that line, because the May 2018 Order cannot reasonably be construed to imply a restriction on collection efforts against the judgment-debtor Association. To give effect to the intent of the court issuing the injunction, an injunction should be reasonably construed and read as a whole. *Norwest Mortgage, Inc. v. Ozuna*, 706 N.E.2d 984, 989 (Ill. App. 1998). "To ascertain the meaning of any part of an injunction, the entire injunction must be looked to; and its language, like that of all other

instruments, must have a reasonable construction with reference to the subject about which it is employed." *Old Homestead Bread Co. v. Marx Baking Co.*, 117 P.2d 1007, 1009–10 (Colo. 1941) (internal quotations omitted). In determining whether an action falls within the scope of an injunction one must look to the "injunction itself, read in view of the relief sought and the issues made in the case before the court which rendered it, and the injunction will not be given a wider scope than is warranted by such construction." *Arbuckle v. Robinson*, 134 So.2d 737, 741 (Miss. 1961). An injunction would not prohibit acts not within its terms as reasonably construed. *Citizens Against Range Expansion v. Idaho Fish and Game Dep't*, 289 P.3d 32, 37 (Idaho 2012).

1. The District Court Erroneously Disregarded the Separate Legal Identity of the Association

The contempt order completely ignores the judgment-debtor Association's separate legal identity from its members.

a. THE ASSOCIATION IS A LEGAL ENTITY SEPARATE AND DISTINCT FROM ITS MEMBERS

The Association is a corporation, an independent entity under the law. On February 25, 1997, the Association filed its "Non-Profit Articles of Incorporation (Pursuant to NRS 82)" with the Nevada

Secretary of State. (2 App. 391.) The stated purpose is to act as a "homeowners' association." *Id*. Thus, while the nature of the Association's business is a homeowners' association, the form it chose to conduct that business under is as an NRS 82 nonprofit corporation.

"A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities." *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003). Indeed, more than a century ago, this Court acknowledged that "the corporation [as] a separate entity in law is everywhere recognized." *Marymont v. Nevada State Banking Bd.*, 33 Nev. 333, 111 P. 295, 299 (1910).

The law is no different for nonprofit corporations. "A nonprofit corporation is a legal entity separate from its members." *Krystkowiak v. W.O. Brisben Companies, Inc.*, 90 P.3d 859, 866-67 (Colo. 2004); *accord, e.g., City Against Rezoning, Inc. v. St. Louis Cty.*, 563 S.W.2d 172, 173 (Mo. App. 1978) ("The not-for-profit corporation is a legal entity separate and apart from the persons who are members of the corporation."). As one court noted regarding a male member of a nonprofit corporation: "he is not the corporation, and the corporation is

not him." *The Beverly Foundation v. W.W. Lynch, San Marino, L.P.*, 301 S.W.3d 734, 736 n.1 (Tex. App. 2009).

b. ACTION AGAINST THE ASSOCIATION IS NOT ACTION AGAINST ITS MEMBERS (OR THEIR PROPERTY)

The judgment-creditor Lytle Trust sought (and obtained) the appointment of a receiver over the non-paying judgment debtor Association in the receivership action before Judge Kishner. Respondents here (intervenors in the receivership action) contended below and in the receivership action that both the mere request for a receiver over the Association and the resulting order appointing receiver procured by the Lytle Trust constituted violations of the district court's (Judge Williams's) May 2018 Order because seeking and obtaining a receiver constituted action against respondents and their property. Relevant to this appeal, however, "[a] judgment against a corporation is not a judgment against the shareholders and does not affect their property. . . . [Furthermore,] execution or other [collection] on a corporate judgment does not run against the shareholders or their property." 1 FLETCHER CYC. CORP. § 38 (Sept. 2020 update).

c. THE DISTRICT COURT ERRED BY DISREGARDING THE SEPARATE IDENTITY OF THE ASSOCIATION AND ITS MEMBERS

The contempt order disregards the separate legal identity of the Association. It concludes that "[t]he May 2018 Order's permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments against the Plaintiffs and Dismans or their properties." (6 App. 1449:24-26). It states "the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in any way, shape, or form." (*Id.* at 6 App. 1449:26-27.) The court reasoned that any effort by the receiver to pay the Association's judgments would necessarily impact the respondents since the Association has no source of revenue but from its members, like the respondents. And the court made this clear when its order denying the Lytle Trust's motion for clarification, stating "*any action* by the Lytle Trust to collect its Judgments against the Association *that results in* payment of the Judgments by the Plaintiffs is a violation of the May 2018 Order." (7 App. 1558:10-11 (emphasis added).)

The district court erroneously deemed action by the Lytle Trust to collect its judgment from the Association the same as action by the Lytle Trust against the Association's members. This was error. The Association's independent identity cannot be ignored. "The corporate cloak is not lightly thrown aside." *C.f., Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969) (regarding veil piercing).

d. THE PREJUDICE COULD NOT BE GREATER

The practical effect of the district court's ruling is to void the Lytle Trust's judgments and to strip it of all judgment-creditor rights. Indeed, given the nature of the Association—that it derives all income through member dues and assessments—virtually every action any creditor takes to collect a debt owed by the Association will directly impact the Association's members. Whether it is the Association's electrical bill to keep the entry gate operational, or the water bill to keep the entry and perimeter landscape alive, or the judgments owed by Association to the Lytle Trust, every Association obligation ultimately must be borne by the Association's members—the Association has no other source of revenue.

Yet, the Association and its members are separate and distinct from each other. Even the respondents recognized and relied upon this non-controversial position below.[13] In short, the district court's May 2018 Order does not preclude any action by the Association vis-à-vis its Property Owner members, nor could it because the Association is not a party below.

2. The Contempt Order Ignores the Context and Rationale Behind the May 2018 Order

The separate identity of the Association is not a mere technicality. Here, again, injunction orders must be read "intelligently and in context." DAN B. DOBBS, LAW OF REMEDIES § 2.8(7). First, the principle reason for the injunction in the May 2018 Order was the independent legal status of the Association, separate from its members. That is the significance of the respondent Property Owners having been nonparties

[13] 3 App. 594:13-14 ("The difference between the Association and the Plaintiffs [Respondents here] is paramount to this lawsuit."); *id.* at 3 App. 580:8-9 ("The Plaintiffs are not the Association"); *id.* at 3 App. 585:6-7 ("First and foremost, the Plaintiffs are not the Association"); and *id.* at 3 App. 585:13-14 ("The Plaintiffs are not the Association, it is that simple").]

to the judgments, even though many of them were the decision makers behind the Association's actions in its litigation against the Lytle Trust.

Second, the May 2018 Order did not alleviate the members from any obligations they might owe *to the Association* should it somehow call on them for funds to satisfy the judgment. That relief was not sought in 2018, and it could not have been given if it had.

Third, the wrong addressed by the May 2018 Order was not that the respondent Property Owners are nonparties to the Rosemere Judgments alone. It was that plus the fact the Lytle Trust had not availed itself of an appropriate legal mechanism to pursue the Property Owners directly. A judgment creditor may pursue assets held by nonparties of a judgment but must do so through legal channels. For example, a judgment creditor may seize assets of a nonparty to a judgment, which the nonparty owes (or may owe) to the judgment creditor *via* writs of garnishments, under NRS 21.120, or by judicial assignment of a judgment-debtor's chose in action (*see Malco v. Gallegos*, 255 P.3d 1287, 127 Nev. 579 (2011)), *etc*. But a judgment

creditor may not pursue the nonparty directly without leave of court or other lawful mechanism.[14]

Put simply, there is nothing in the context of the May 2018 Order that would suggest it precludes the Lytle Trust from pursuing the judgment-debtor Association, or that it would serve to forever shelter assets of Association members should the Association issue assessments to facilitate its payment obligation. The respondent Property Owners had no basis in law to assume otherwise.

D. District Court Revised the 2018 Order in 2020 and then Held the Lytle Trust in Contempt *Ex Post Facto*

As explained above, the Lytle Trust's petition for appointment of a receiver did not violate the express terms of the May 2018 Order, nor even a necessary implication of it. Instead, the district court effectively expanded the injunction before finding the Lytle Trust violated it.

[14] In 2018, the Lytle Trust believed NRS 116.3117 provided such a lawful mechanism. The district court disagreed and expunged the liens. This Court subsequently affirmed those decisions.

1. Contempt Cannot Be Based on Ex Post Facto Application of a Substantively New Directive

It is hornbook law that "[t]he original decree in a contempt proceeding cannot be amended in order to give it a retroactive or ex post facto effect." *See* 51B C.J.S. Labor Relations § 1526; *In re Chiles*, 89 U.S. 157, 169, 22 L. Ed. 819 (1874) ("To make an order now, and then punish for contempt or disregard of it before it was made, is ex post facto legislation and judicial enforcement at the same moment."); *Grady v. Grady*, 307 N.W.2d 780, 781 (Neb. 1981) ("one cannot be held in contempt of court for acts which became prohibited by a court order entered subsequent to their commission. A contrary ruling would have the effect of an ex post facto law").

"Even if the decree [can be] amended in the contempt proceedings, such an amendment [can] have no retroactive, or ex post facto, effect so as to reach back and become the predicate upon which to adjudge a litigant in contempt for the disregard of the commands of a decree that had not issued until after the issuance of the rule nisi in the contempt proceedings." *See Walling v. Crane*, 158 F.2d 80, 84 (5th Cir. 1946); *Maier v. Luce*, 215 P. 399, 401 (Cal. App. 1923) ("An order made nunc pro tunc, including therein requirements different from those expressed

in existing court records, cannot be made the basis of a contempt proceeding until after such changes in the order have been brought to the personal attention of the person thereby affected.").

2. The District Court Substantively Modified the 2018 Injunction

Prohibiting of the Lytle Trust from pursing the judgment-debtor Association due to its potential "indirect" impact on the nonprofit corporation's members was a substantive alteration of the May 2018 Order. (*See above*.) "The distinction between modification and clarification is that a clarification 'does not change the parties' original relationship, but merely restates that relationship in new terms.'" *See Mikel v. Gourley*, 951 F.2d 166, 169 (8th Cir.1991) ((quoting *Motorola Inc. v. Computer Displays Int'l, Inc.*, 739 F.2d 1149, 1155 (7th Cir.1984))); *Cunningham v. David Special Commitment Ctr.*, 158 F.3d 1035, 1037 (9th Cir. 1998) (recognizing that a modification of an injunction substantially alters the relationship of the parties); *Gon v. First State Ins. Co.*, 871 F.2d 863, 866 (9th Cir. 1989) (recognizing that a modification of an injunction "substantially change[s] the terms and force of the injunction").

Regardless of what the district court may have intended regarding its May 2018 Order, what it clearly precluded was "any action in the future directly against the Plaintiffs or their properties." (3 App. 712.) The order also precluded the Lytle Trust "from recording or enforcing [its three judgments] or any other judgments obtained against the Association, against the September Property, Zobrist Property, Sandoval Property or Gegen Property." (*Id.*) The May 2018 Order defines "Property" as each respondent's residential lot within the Association.

Seeking the appointment of a receiver over the Association was neither direct action against the Property Owners nor action against their "Property." Thus, it was reversible error to hold the Lytle Trust in contempt ex post facto for modifications announced in 2020 after the Lytle Trust sought and obtained appointment of a receiver over the Association.

3. The Amendment Also is Time-Barred

While "[c]lerical mistakes in judgments may be corrected by the district court at any time, NRCP 60(a); . . . the district court can substantively alter a judgment only within six months after the

judgment was entered." *Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 428, 836 P.2d 42, 45-46 (1992). A substantive alteration is one that is "attributed to the exercise of judicial consideration or discretion." *Id.* If the district court makes a substantive change after more than six months, the judgment "as corrected [is] void." *Id.* And that would hold true for an order granting an injunction, which constitutes a "final judgment" regardless of its label. *See* NRCP 54(a) ("'Judgment' as used in these rules includes a decree and any order from which an appeal lies") *and* NRAP 3A(b)(3) ("An appeal may be taken from the following judgments and orders of a district court in a civil action: … An order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.").

Here, the district court substantively revised the May 2018 Order when it held the Lytle Trust in contempt and then applied those revisions retroactively. Such became clear when, two months after holding the Lytle Trust in contempt, the district court denied the Lytle Trust's motion for clarification and stated that the May 2018 Order did not just preclude action taken "directly against" the Respondents, as expressed in the May 2018 Order, but also "indirect" action, though not

expressed in that order, including any action against the Association that "results in payment of the Judgments by the Plaintiffs." (7 App. 1557:26-27 and 1558:10-11.) Since the district court made this modification in 2020—two years after its May 2018 Order—the order, as modified, is void

II.

THE EXPANDED INJUNCTION IS UNSUSTAINABLE EVEN FOR PROSPECTIVE PURPOSES

Beyond the impropriety of holding the Lytle Trust in contempt for an expanded injunction ex post facto, the Lytle Trust also is concerned about the potential prospective import of the contempt order, which respondents already have contended (in the receivership action) operates to permanently enjoin the Lytle Trust from enforcing its judgment against the Association going forward. As the district court's recent expansion of the injunction lacks a sound legal basis, it must be vacated.

"This Court reviews the district court's decision to grant a permanent injunction for an abuse of discretion." *Sowers v. Forest Hills Subdivision*, 129 Nev. at 108, 294 P.3d at 433. "Purely legal questions

surrounding the issuance of an injunction, however, are reviewed de novo." *Id*. Such legal questions would include interpretation of the Association articles and other relevant agreements, as well as any application of statutes or case law. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) ("contract interpretation is a question of law and, as long as no facts are in dispute, this [C]ourt reviews contract issues de novo"); *State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Servs., Inc.*, 128 Nev. 362, 366, 294 P.3d 1223, 1226 (2012) (this Court reviews de novo "questions of statutory construction, including the meaning and scope of a statute" underling an injunction).

It does not matter, moreover, whether the expansion is deemed an entirely new order or a substantive amendment of the May 2018 Order. While this Court reviews a district court's order on a motion to alter or amend a judgment for an abuse of discretion, "deference is not owed to legal error." *J.E. Johns & Assocs. v. Lindberg*, 136 Nev. Adv. Op. 55, 470 P.3d 204, 207 (2020); *AA Primo Builders, LLC*, 126 Nev. at 589, 245 P.3d at 1197.

A. There is No Legal Basis of the Expanded Injunction for this Court to Review De Novo

The court performed no substantive analysis regarding whether this Association could issue assessments to members in order to satisfy its debts, whether by officers or a receiver acting in their shoes. Rather, the district court determined the Lytle Trust cannot petition for receivership of the Association simply as a consequence of the May 2018 Order. That is not hyperbole. To avoid misrepresenting the district court's reasoning, the Lytle Trust filed a motion to clarify after entry of the contempt order to ensure it understood the simplicity of the court's analysis accurately:

> **This Motion also Presents an Opportunity to the Court to Clarify its Own Record for Appeal**
>
> The Lytle Trust and undersigned counsel respect this Court. As we contemplate seeking appellate review of the Contempt Order, we wish to give the Court an opportunity to specify the order's meaning and explain its rationale, to avoid any misconstruction of that order in the Nevada appellate courts.
>
> Put simply, as we construe the Court's ruling and rationale, in light of all the briefing and discussion during the hearing, including a recognition that the Association is not a party here, it appears to us:

(1) The Court acknowledges that legitimate judgments have been entered in favor of the Lytle Trust against the Association, which are not stayed;

(2) The Court understands that where a judgment is entered against a business entity, like the Association, the judgment creditor may execute on the judgment against that judgment debtor entity, just as it could if the judgment debtor were a natural person;

(3) The Court has not ruled that it is impossible for all limited purpose associations, in general, or, more specifically, this limited purpose Association, to levy assessments to satisfy the Association's obligations;

(4) The Court has not ruled that appointment of a receiver over this Association is per se improper;

(5) The Court has not ruled that this Association could never levy assessments to satisfy a judgment against it;

(6) The Court agrees that no statute or case law was presented that shields the Association from imposition of a receiver to satisfy the Association's obligations; but yet

(7) The Court has ruled that the Lytle Trust may not impose on the Association in any manner that eventually might lead to the Association making assessments to satisfy its judgment obligation, which includes banning the Lytle Trust, in its capacity as a judgment creditor, from petitioning for appointment of a receiver over the Association for that purpose; and

(8) The reason the judgment-creditor Lytle Trust may not prompt or encourage the judgment-debtor Association to make assessments to satisfy its

> judgment obligation is because the Court had previously barred the Lytle Trust from executing on its judgment *directly* against the Association homeowners.
>
> Respectfully, if we misunderstand, we invite this Court to clarify before we make these representations to the Nevada Supreme Court.

(6 App. 1466-67.)

The district court did not disagree with that interpretation, either during the hearing on the motion for clarification or in its subsequent order. Rather, the order only highlights that the expansion rests on the broad definition of the sweeping term "any" in the May 2018 Order:

> …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.
>
> The broad and the plain meaning of the term "any action" means any action, whether direct or indirect.
>
> * * *
>
> . . . Therefore, any action by the Lytle Trust to collect its Judgments against the Association that results in payment of the Judgments by the Plaintiffs is a violation of the May 2018 Order.

(7 App. 1557:23-28, 1558:10-11.)

This Court cannot affirm an injunction that rests on no substantive legal or contractual basis for this Court to review de novo.

State, Dep't of Bus. & Indus., Fin. Institutions Div., 128 Nev. at 366, 294 P.3d at 1226 (this Court reviews de novo "questions of statutory construction, including the meaning and scope of a statute" underling an injunction); *Soro*, 131 Nev. at 739, 359 P.3d at 106 ("contract interpretation is a question of law and, as long as no facts are in dispute, this [C]ourt reviews contract issues de novo").

Even if the May 2018 Order could substitute for a legal basis, however, it cannot justify the expansion. (*See above*.) That is especially true where the context of the May 2018 Order, and the reasoning for its conclusion, hinged on the significance of party specificity, that the respondent Property Owners were not parties to the litigation between the Lytle Trust the Association.[15]

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[15] *Ozuna*, 706 N.E.2d at 989 (Ill. App. 1998) (an injunction should be reasonably construed and read as a whole); *Old Homestead Bread Co.*, 117 P.2d at 1009–10 ("too ascertain the meaning of any part of an injunction, the entire injunction must be looked to; and its language, like that of all other instruments, must have a reasonable construction with reference to the subject about which it is employed"); *Arbuckle*, 134 So.2d at 741 (the "injunction itself, read in view of the relief sought and the issues made in the case before the court which rendered it, and the injunction will not be given a wider scope than is warranted by such construction"); *Citizens Against Range Expansion*, 289 P.3d at 37 (an injunction would not prohibit acts not within its terms as reasonably construed).

B. The District Court Did Not Undertake the Type of Analysis That Warrants Deference to Discretion

The district court's expansion of the injunction to include new actions and a new beneficiary did not rest on any particular fact-finding, application of complicated legal factors—*e.g.*, whether the Association would be acting on its implied powers or ultra vires, *etc.*[16]—or any other inquiry beyond its "any means any" analysis, which would call for this Court's deference. A district court's failure to exercise its discretion constitutes an abuse of that discretion. *Massey v. Sunrise Hosp.*, 102 Nev. 367, 724 P.2d 208 (1986); *See also*, Rex A. Jemison, A Practical Guide to Judicial Discretion, 2 Nevada Civil Practice Manual § 29.05. An abuse of discretion can be an error of law in determining the factors that govern discretion. *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979).

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[16] *See, generally, In re McGill's Est.*, 52 Nev. 35, 280 P. 321, 323 (1929) ("It is settled law that a corporation has implied powers to do all acts that may be necessary to enable it to exercise the powers expressly conferred."); *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 643, 137 P.3d 1171, 1185 (2006), *abrogated on other grounds by Chur v. Eighth Jud. Dist. Ct.*, 136 Nev. 68, 458 P.3d 336 (2020), ("a corporate act is said to be ultra vires when it goes beyond the powers allowed by state law or the articles of incorporation," which entails a fact-specific inquiry).

The Lytle Trust set out numerous legal justifications that the Association might rely upon to gather the funds from its members to satisfy a judgment debt. (4 App. 857-64.) It referred the Court to instances in the past where the association had levied assessments to pay Association obligations and even recorded liens upon failure to pay. (4 App. 864-69.) None of that factored into the district court's orders, which were quite detailed and explicit in explaining the simplicity of the court's rationale. Put simply, the district court expanded injunction does not hang on any findings of fact or weighing of factors to which this Court would defer.

CONCLUSION

For the forgoing reasons, the district court's order holding the Lytle Trust in contempt, as well as the expanded injunction apparent in that order and the subsequent order on the Lytle Trust's motion for clarification, must be vacated.

Dated this 15th day of March, 2021.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2010 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 29(e) because it contains 7,518 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 15th day of March, 2021.

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I certify that on March 15, 2021, I submitted the foregoing "Appellants' Opening Brief" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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