IN THE SUPREME COURT OF THE STATE 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; and DENNIS A. GEGEN AND JULIE S. GEGEN, husband and wife, as joint tenants,

Respondents.

No. 81390

Appeal from the Eighth Judicial District Court, Clark County, Nevada
The Honorable Timothy C. Williams, District Court Judge
District Court Case Nos. A-16-747800-C and A-17-765372-C

RESPONDENTS' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

In accordance with NRAP 26.1, the undersigned counsel of record certifies 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 disqualifications or recusal.

Respondents 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 (collectively the "Respondents"), are individuals and trusts that are not affiliated with any corporation.

Wesley J. Smith and Laura J. Wolff at Christensen James & Martin, Chtd. represent the Respondents in the district court and before this Court.

Dated this 14th day of May 2021. CHRISTENSEN JAMES & MARTIN, CHTD.

By: */s/ Wesley J. Smith*

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

JURISDICTIONAL STATEMENT

The Lytle Trust appeals from a post-judgment order of contempt entered by the district court on May 22, 2020 ("Contempt Order"). The Court does not have jurisdiction over this appeal because there is no rule or statute which authorizes a direct appeal from an order of contempt.[1] *See* NRAP 3A(b); NRS 22. Contempt orders may only be challenged by an original writ petition pursuant to NRS 34, not by direct appeal. *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 647, 5 P.3d 569, 569 (2000). As this 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.

Id., 116 Nev. at 649-50, 5 P.3d at 571. The Court further held that "the standard of review in a writ petition is appropriate to the review of a contempt order." *Id.*

The Lytle Trust concedes that "simple contempt orders generally are not appealable and instead must be contested via writ petition," but argues that because the subject Contempt Order allegedly expands the May 2018 injunction Order this Court has jurisdiction pursuant to NRAP 3A(b)(8) for "a special order entered after

[1] Respondents previously filed a Motion to Dismiss for lack of jurisdiction. The Motion to Dismiss was denied because the jurisdictional issue appeared to be intertwined with the merits of the appeal. *See* Order dated January 8, 2021 (Doc. 21-00621). The Court stated that the "parties may raise the jurisdictional issue in their briefs, if warranted." *Id.*

final judgment" or pursuant to NRAP 3A(b)(3) as an order granting "new" injunctive relief.[2] Appellant's Br. ix-xi.

NRAP 3A(b)(8) is not a catchall to overcome the presumption that the Contempt Order must be contested via writ petition. A "special order" under NRAP 3A(b)(8) "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered." *Gumm v. Mainor*, 118 Nev. 912, 913–14, 59 P.3d 1220, 1221 (2002). 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. The Order being appealed affected "Gumm's right to receive his judgment proceeds" in a way the original order had not. *Id*. Alternatively, an order which merely clarifies or defines the party's rights under prior orders does not qualify as a special order. *See Vaile v. Porsboll*, 128 Nev. 27, 32, 268 P.3d 1272, 1276 (2012); *see also Detwiler v. Baker Boyer Nat'l Bank*, 462 P.3d 254 (Table), 2020 WL 2214148, *2 (Nev. 2020) (unpublished) (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));

[2] This allegation regarding "new injunctive" relief was not in the Lytle Trust's docketing statement. Although NRAP 14(a)(4) provides that the docketing statement "is not binding on the [appellate] court and the parties' briefs will determine the final issues on appeal", when "attorneys do not take seriously their obligations under NRAP 14 to properly and conscientiously complete the docketing statement, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate." *KDI Sylvan Pools, Inc. v. Workman,* 107 Nev. 340, 810 P.2d 1217 (1991). "We issue this opinion so that all state bar members are on notice that sanctions may result if the docketing statement is not fully and accurately completed, with all required documentation attached." *Moran v. Bonneville Square Assoc.*, 117 Nev. 525, 25 P.3d 898 (2001).

Brazell v. Brazell, 133 Nev. 989, 393 P.3d 1075 (Table), 2017 WL 1855087 *1 (May 2017) (unpublished) (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); *Saiter v. Saiter*, 134 Nev. 1006, 416 P.3d 1056 (Table) 2018 WL 2096288, *1 (Nev. 2018) (unpublished) (appeal was dismissed because appellant failed to show how the order affected his rights arising from the final judgment).

"[A]n order modifies the original decree when it actually changes the legal relationship of the parties to the decree." *Birmingham Fire Fighters Ass'n 117 v. Jefferson Cty.*, 280 F.3d 1289, 1293 (11th Cir. 2002). "[A] district court's interpretation of an injunction modifies it...only when that interpretation is blatantly or obviously wrong.... [i.e.] the misinterpretation…leaps from the page." *Id.*; *see also Mikel v. Gourley*, 951 F.2d 166, 168 (8th Cir. 1991) (a "clarification" does not change the parties' original relationship, but merely restates that relationship in new terms, while a "modification" alters the legal relationship between parties or substantially changes the terms and force of the injunction).

The Contempt Order did not alter or adjust the rights or responsibilities of the parties originally set forth in the Injunction Orders. The Contempt Order merely enforced the substantive relief granted in the May 2018 Order that was sought in the Respondents' complaint. Therefore, the Contempt Order did not infringe upon, affect, or change the Lytle Trust's legal or substantive rights. The district court simply took the post-Injunction Order actions of the Lytle Trust and applied the findings of fact and conclusions of law in the May 2018 Order to that

behavior, enforcing the clear requirement that the Lytle Trust not take any action against the Respondents or their properties related to the Rosemere Judgments. The Lytle Trust cannot explain how their effort to have a receiver make assessments on Respondents' properties for the purpose of paying the Rosemere Judgments did not fall within the express prohibition of the Injunction Orders. Therefore, 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* and there is no direct appeal right from the Contempt Order. The only proper result is dismissal of this Appeal.[3]

NRAP 3A(b)(3) provides that "[a]n appeal may be taken from...[a]n order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction," but there is no injunction that may be appealed here. *See* NRAP 3A(b)(3). In interpreting NRAP 3A(b)(3), this Court held that "injunctions are governed by NRCP 65, which sets forth the procedure for seeking an injunction and the form that an order granting an injunction must take." *Nelson v. Nelson*, 466 P.3d 1249, 136 Nev. Adv. Op. 36 (2020) (*citing Peck v. Crouser*, 129 Nev. 120, 124, 295 P.3d 586, 588 (2013)).

The only injunctions issued by the district court were contained in the July 2017 Order and the May 2018 Order. Those Orders, including the injunctions

[3] The Lytle Trust presents several arguments on the doctrine of laches and issue preclusion with regard to their decision to file an appeal rather than a Writ. Respondents do not address these arguments because they are only applicable if this Appeal is dismissed.

contained therein, were already appealed and affirmed by this Court. *Lytle v. Boulden*, No. 73039, 134 Nev. 975, 432 P.3d 167, 2018 WL 6433005 (Nev. 2018) (Table); *Lytle v. Sept. Tr., Dated Mar. 23, 1972*, No. 76198, 458 P.3d 361, 2020 WL 1033050 (Nev. 2020) (Table)). The law of the case prevented the district court from altering the Injunction Orders in the Contempt Order. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007) ("The doctrine of the law of the case provides that the law or ruling of a first appeal must be followed in all subsequent proceedings, both in the lower court and on any later appeal").

The Contempt Order does not cite to or even mention Rule 65 or issue "new" injunctive relief in any manner. The Lytle Trust disagrees with the district court's interpretation of its Injunction Orders, but that does not mean that "new" injunctive relief has been imposed. The Contempt Order did not grant, deny or dissolve an injunction to provide jurisdiction over this appeal under NRAP 3A(b)(3). It merely recognized the obvious—that seeking to collect the Rosemere Judgments from the respondents through the appointment of a receiver violated the district court's Order, which permanently enjoins the Lytle Trust "from taking any action in the future directly against the Plaintiffs or their properties based upon the Rosemere Litigation…" 3 App. 712:10-19.

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) or NRAP 3A(b)(3). This Court should not reward the Lytle Trust by effectively granting it a second appeal simply because it chose to cynically and

intentionally violate the district court's May 2018 injunction Order. This Appeal must be dismissed for lack of jurisdiction.

STATEMENT OF THE ISSUE

Whether the district court properly held the Lytle Trust in contempt of the May 2018 Order when, after being permanently enjoined from enforcing the Rosemere Judgments against the Respondents or their properties because the Respondents are not debtors under those Judgments, the Lytle Trust sought to indirectly achieve the same result by requesting appointment of a receiver in a separate case, without informing the receivership court of the July 2017 Order or May 2018 Order, all in an effort to force the limited purpose association to impose special assessments against the Respondents or their properties to pay the Rosemere Judgments.

STATEMENT OF THE CASE

The Lytle Trust's history of circumventing the district court's orders culminated in the entry of the Contempt Order, which is the subject of this Appeal. The district court explained:

> **This case has a history**, such as the filing of the *lis pendens* against the Boulden Trust and Lamothe Trust properties after the Court had ordered the expungement of the Abstracts of Judgment and continued enforcement of the Abstracts of Judgment against the September Trust, Zobrist Trust, Sandoval Trust, and Gegens' properties after entry of the July 2017 Order, **that demonstrates that the Lytle Trust does not respect this Court's Orders**.

6 App. 1448:1 (emphasis added). A review of the case history and the complete language of the district court's orders demonstrates that the district court did not abuse its discretion when it held the Lytle Trust in contempt.

On July 27, 2017 ("July 2017 Order"),[4] the district court permanently enjoined the Lytle Trust from taking "any action[5] in the future against the [Bouldens or Lamothes][6] or their properties" based upon the judgments ("Rosemere Judgments") that the Lytle Trust had obtained against the Rosemere Estates Property Owners Association (the "Association"). 1 App. 72:4-7; 7 App. 1557:6. The district court's injunction was clear enough to this Court when it

[4] The July 2017 Order has been referred to as the April 2017 Order in prior proceedings because it was originally entered on April 26, 2017 and subsequently modified on July 27, 2017 in a way that is not material to this appeal. 6 App. 1493:8-13; 7 App. 1556 n.1.

[5] The words "any action" were in the July 2017 Order and May 2018 Order despite the Lytle Trust's argument that they were a new addition in the Contempt Order. Appellants' Br. 31-32.

[6] Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust ("Boulden"), and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust ("Lamothe"), were property owners in the Rosemere Subdivision.

stated: "Determining that the Lytles improperly clouded title, the district court ordered the abstracts of judgment expunged from the properties' titles and entered a permanent injunction enjoining the Lytles from enforcing the judgment or any related abstracts against the Boulden or Lamothe properties." *Lytle v. Boulden*, 2018 WL 6433005, *1.

An Order entered on May 24, 2018 ("May 2018 Order") contains nearly identical Findings of Fact, Conclusions of Law, and Orders, including a permanent injunction prohibiting the Lytle Trust from taking "any action" to enforce or collect the Rosemere Judgments from the Respondents or their properties. 3 App. 712:10-19; 7 App. 1558:8-11.

Both the July 2017 Order and the May 2018 Order (which hereinafter may be referred to collectively as "Injunction Orders") were affirmed by this Court. 7 App. 1556:15, 6 App. 1445:10; *see Lytle v. Boulden*, 2018 WL 6433005; *Lytle v. Sept. Tr.,* 2020 WL 1033050.

Undeterred by the district court's express prohibition against taking "any action" to enforce or collect the Rosemere Judgments from the Respondents or their properties, the Lytle Trust determined it would try another approach. Two weeks after entry of the May 2018 Order, the Lytle Trust filed a new action ("Receiver Action") seeking the appointment of a receiver to do the very thing that the Injunction Orders forbade – enforce the Rosemere Judgments against the Respondents' properties. 6 App. 1450:1-8. The Lytle Trust named the Association as the sole defendant, failed to even mention its related litigation with the Respondents and did not disclose that the Injunction Orders prohibited the Lytle

Trust from seeking payment of the Rosemere Judgments from the property owners or their properties. *Id*. The Lytle Trust made materially false representations to the Receivership Court that the Amended CC&Rs governed and allowed for special assessments to pay the Rosemere Judgments, despite direct language to the contrary in the Rosemere Judgments themselves, the Injunction Orders, and this Court's Orders of Affirmance. 6 App. 1446:8-1447:16.

On December 18, 2019, based on the Lytle Trust's Application and as drafted by the Lytle Trust, an Order Appointing a Receiver of Defendant Rosemere Property Owners Association ("Order Appointing Receiver") was entered in the Receivership Action, which purported to authorize a receiver to collect special assessments from the Respondents to pay the Rosemere Judgments in direct violation of the Injunction Orders. 6 App. 1447:17-25, 1450:1-10. Whereas the Lytle Trust had already obtained all the Association's assets, the primary purpose of the Receivership Action could be nothing other than to enforce the Rosemere Judgments by collecting from the Respondent property owners and their properties through special assessment. 4 App. 820:14-18.

Once they learned of the improper Receiver Action, the Respondents filed a motion for contempt, arguing that the effort to appoint a receiver for the purpose of making assessments against the Respondents and their properties to pay the Rosemere Judgments both directly and indirectly violated the Injunction Orders. 3 App. 736-841. Applying the language of the Injunction Orders to the Lytle Trust's actions, the district court correctly found that the Lytle Trust was in contempt of the Injunction Orders because its actions were merely an indirect attempt to

achieve the same objective the Court had already forbidden – imposing the obligations of the Rosemere Judgments on the property owners. 6 App. 1437-1453. The district court denied the Lytle Trust's Motion for Clarification, stating that the Injunction Orders were sufficiently clear and that the Contempt Order was a necessary and mandatory result of the Lytle Trust's actions proscribed by the Injunction Orders. 7 App. 1538:13-20. The Lytle Trust appealed.

STATEMENT OF FACTS

"All of the Court's decisions in this case, including the May 2018 Order and the Contempt Order, *are based upon the history of this case*", and "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." 7 App. 1556: ¶ 14 (emphasis added); 1557: ¶ 5 (emphasis added). Recounting the case history here, largely ignored by the Lytle Trust, is paramount to understanding the district court's wise use of discretion in issuing the Contempt Order.

A. The original CC&Rs govern and created a limited purpose association.

Each of the Respondents and the Lytle Trust own one of nine lots in the Rosemere Subdivision ("Subdivision"). 3 App. 705:10-706:3. The properties are subject to and governed by the CC&Rs recorded January 4, 1994 ("CC&Rs"). 3 App. 705:25-27. All property owners, the property owners committee, and any formal association entity must follow the CC&Rs. *Id*.

The obligations imposed and rights granted by the CC&Rs are few. 3 App. 706:10-17; 5 App. 1098 ¶ 3. Among them, property owners "shall on an equal

basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider." 1 App. 167 at ¶ 19. Property owners also "shall assume responsibility to maintain walls erected by subdivider." *Id.* at ¶ 20. Paragraph 21 of the CC&Rs calls for the formation of a "property owners committee" to fulfill four express duties: maintain exterior planters; maintain exterior perimeter and frontage walls; maintain the entrance gate; and maintain the private drive and sewer system thereunder. *Id*. at ¶ 21. The cost of this maintenance is to be shared equally among the nine lots. *Id* at ¶ 21(a).

There is no express assessment right and no express lien right granted to the owners committee or any other entity or individual under the CC&Rs. 1 App. 165-168. The Lytle Trust has admitted that the Association has no power of assessment as a limited purpose association under the CC&Rs. 5 App. 1083:16-19 ("The property owners recognized that the Association did not have powers granted to it other than those granted by the Original CC&Rs. For example, the Association had no power to assess, fine, issue rules and regulations, or undertake other actions commonly reserved for homeowners' associations"). There are no other duties or obligations imposed on the owners committee or any association entity by the CC&Rs.

Contrary to the Lytle Trust's assertion, there is no obligation pursuant to the CC&Rs to pay judgments owed by the Association to any other homeowner. Cf. Appellant's Br. 23. In fact, the property owners committee is not expressly granted the right to sue or be sued, but instead each owner is granted the individual right to enforce the CC&Rs "upon any other owner or owners," including the right of any

owner to initiate "any appropriate judicial proceeding" against any other owner or owners. 1 App. 168 at ¶ 24. Thus, if any individual had committed an actionable offense against the Lytle Trust, acting in any capacity, the CC&Rs provided a remedy that the Lytle Trust elected not to pursue. Appellant's Br. 25 ("[T]he Lytle Trust had not availed itself of an appropriate legal mechanism to pursue the Property Owners directly.").

It is because of these limited rights and obligations that this Court has repeatedly discussed that the Association is a limited purpose association under NRS 116.1201(2)(a). *See Lytle v. Boulden*, 2018 WL 6433005, *2; *Lytle v. Sept. Tr.*, 2020 WL 1033050, *1. Therefore, the statutory powers granted to the Association are expressly limited. *Id.* Like the CC&Rs, NRS 116.1201(2)(a) does not incorporate any power to make special assessments on the property owners to pay judgments against the Association. *See* NRS 116.1201(2)(a) (setting forth enumerated statutes governing).

B. <u>The Amended CC&Rs are *void ab initio*.</u>

In 1997, the property owners committee formed the Association to hold a bank account to conduct the business enumerated in the CC&Rs. 1 App. 179-182; 4 App. 822:13-16; 5 App. 1076-1079. In 2007, the Association adopted Amended CC&Rs that attempted to greatly expand the Association's powers and restrict owner rights. 1 App. 89:1-15; 2 App. 393-431; 4 App. 823:20-23. Notably, the Amended CC&Rs would have converted the Association from a limited purpose association to a full-fledged association subject to the entirety of NRS 116. 2 App. 393-431; 3 App. 624; 4 App. 823:20-23. Further, the Amended CC&Rs expressly

granted the Association: ownership of the common elements (Article 3.1); power to make special assessments against each property to pay judgments (Article 10.2(c)); power to lien each property for assessments and fines (Article 10.3); power to hold individual property owners personally liable for assessments (Article 10.11); and power to take legal action against owners (Article 16). 2 App. 366:6-16, 393-431; 4 App. 826:6-23, 5 App. 1060:11-23. The Amended CC&Rs also granted each property owner a right of action against the Association. 2 App. 427, ¶ 16.1.

As this Court has previously discussed, through the Lytle Trust's deliberate and intentional efforts in its litigation against the Association, the Amended CC&Rs were declared *void ab initio* and do not govern the Rosemere subdivision. *See Lytle v. Sept. Tr.*, 2020 WL 1033050, *1. Despite this and despite its previous admission that the Association has no special assessment power (5 App. 1083:16-19), the Lytle Trust argued to the Receivership Court that the Amended CC&Rs granted the Association the right to make special assessments against the property owners to pay the Rosemere Judgments. 4 App. 826:4-26; 6 App. 1447:3-11.

C. The Lytle Trust obtained judgments against the Association, not the individual property owners.

The Lytle Trust initiated a series of lawsuits against the Association related to the Amended CC&Rs. 1 App. 89:24-91:21, 122:9-125:22; 3 App. 706:4-709:15. Judgments were issued against the Association in favor of the Lytle Trust (collectively the "Rosemere Judgments"), many as a result of default or uncontested motions. 3 App. 574:5-575:16. It is undisputed that the Respondents

were not parties to those actions and the Lytle Trust does not have a judgment against any property owner. Appellant's Br. 4. Despite this, the Lytle Trust recorded Abstracts of Judgment against each of the other properties in the Subdivision, a clear violation of law. 3 App. 710:1-23. As explained below, this Court found the Lytle Trust's actions were improper. *See Lytle v. Boulden*, 2018 WL 6433005; *Lytle v. Sept. Tr.*, 2020 WL 1033050.

D. <u>The July 2017 Order made clear that the Lytle Trust could not take *any action* against the Property Owners or their properties to collect the Rosemere Judgments.</u>

Boulden and Lamothe filed suit against the Lytle Trust in December 2016, Case No. A-16-747800-C, to expunge the Rosemere Judgments from their properties and enjoin the Lytle Trust from its collection efforts. 1 App. 5-12; 3 App. 708:22-709:3. In the July 2017 Order,[7] the District Court granted summary judgment in favor of Boulden and Lamothe and issued a permanent injunction against the Lytle Trust, which included the following Findings of Fact:

> 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

[7] The Lytle Trust only mentions the July 2017 Order in a footnote stating, "it is not at issue in this appeal", Appellant's Br. 9 n.8, even though: the May 2018 Order cites to the July 2017 Order and recites nearly identical findings of fact and conclusions of law and held that it was law of the case (3 App. 703-716); this Court affirmed the July 2017 Order making it law of the case (*Lytle v. Boulden*, 2018 WL 6433005); the Contempt Order incorporates the April 2017 Order and referenced it repeatedly (6 App. 1442:8-1443:24); and the district court held that "[t]he 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." (7 App. 1557:21-22). It cannot be ignored.

7. None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that term is found in Section 25 of the Original CC&Rs.

8. The Defendants obtained a Summary Judgment for Declaratory Relief from the District Court in the Rosemere LPA Litigation, which found and ruled as follows:

> a. The Association is a limited purpose association under NRS 116.1201, is not a Chapter 116 unit-owners' association," and is relegated to only those specific duties and powers set forth in Paragraph 21 of the Original CC&Rs and NRS 116.1201.
>
> b. The Association did not have any powers beyond those of the "property owners committee" designation in the Original CC&Rs -simply to care for the landscaping and other common elements of Rosemere Estates as set forth in Paragraph 21 of the Original CC&Rs.
>
> c. Consistent with the absence of a governing body, the Developer provided each homeowner the right to independently enforce the Original CC&Rs against one another.
>
> d. The Amended and Restated CC&Rs recorded with the Clark County Recorder's Office as Instrument #20070703-0001934 (the "Amended CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

9. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the Association because it is a limited purpose association….

1 App. 67:23-68:15. The July 2017 Order then made the following Conclusions of Law:

> 1. The Association is a "limited purpose association" as referenced in NRS 116.1201(2).
>
> 2. As a limited purpose association, NRS 116.3117 is not applicable to the Association.
>
> 3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.
>
> 4. The Plaintiffs were not parties to the Rosemere LPA Litigation.

> 5. The Plaintiffs were not "losing parties" in the Rosemere LPA Litigation as per Section 25 of the Original CC&Rs.
>
> 6. The Final Judgment in favor of the Defendants is not against, and is not an obligation of, the Plaintiffs.
>
> 7. The Final Judgment against the Association is not an obligation or debt owed by the Plaintiffs.

1 App. 69:12-23. The July 2017 Order concludes with this permanent injunction:

> IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are *permanently enjoined from recording and enforcing* the Final Judgment from the Rosemere LPA Litigation or any abstracts related thereto *against the Boulden Property or the Lamothe Property.*
>
> IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are *permanently enjoined from taking any action in the future against the Plaintiffs or their properties* based upon the Rosemere LPA Litigation.

1 App. 72:1-6 (emphasis added).

As clearly stated in the July 2017 Order, the Lytle Trust was permanently enjoined from taking *any action* against Boulden and Lamothe *or their properties*. Thus, action against the individual properties was also expressly prohibited.

Although ignored by the Lytle Trust, the history of the July 2017 Order was an important consideration and was incorporated by reference in the Contempt Order. As explained by the Court:

> 14. All of the Court's decisions in this case, including the May 2018 Order and the Contempt Order, are based upon the history of this case, and more specifically, the [April 2017 Order] against the Lytle Trust. The April 2017 Order is hereby incorporated by reference.
>
> 15. The April 2017 Order has been the ruling of this Court for over three years, was subject to review by the Nevada Supreme Court, and withstood appellate scrutiny.

16. The May 2018 Order referenced the April 2017 Order and borrowed its Findings of Fact and Conclusions of Law.

…

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.

8. The April 2017 Order must be looked at in its entirety to determine its thrust, scope and impact with respect to what kind of action can be taken by the Lytle Trust with regard to collecting on its Judgments against the Association.

9. The April 2017 Order made clear that the Rosemere Judgments are not against the Plaintiffs or an obligation or debt owed by the Plaintiffs.

10. The April 2017 Order also made clear that the Lytle Trust cannot take any action against the Plaintiffs to attempt to collect its Judgments against the Association.

11. The May 2018 Order contains nearly identical Findings of Fact, Conclusions of Law, and Orders.

7 App. 1556:1-9, 1557:21-1558:9.

Despite the permanent injunction issued in 2017, the Lytle Trust immediately filed *lis pendens* against the properties. 1 App. 51:24-52:15. Following a motion for contempt, the district court ordered the Lytle Trust to remove the *lis pendens* immediately. 1 App. 52:18-54:4. The district court further enjoined the Lytle Trust from "taking recording or enforcing" the Rosemere

Judgments "against the Boulden Property or Lamothe Property" or "taking any action in the future against the Plaintiffs, the Lamothe Property, or the Boulden Property based upon the Rosemere Litigation…including but not limited to, filing or recording any court awards, judgments, court orders, liens, abstracts, *lis pendens*, encumbrances, clouding documents, slanderous documents or any other documents or instruments." 1 App. 53:12-23.

The district court found that the Lytle Trust had violated the permanent injunction but did not hold the Lytle Trust in contempt at that time. The district court warned the Lytle Trust to not take any further action based on the Rosemere Judgments against the properties. 1 App. 34:12-35:6. The district court found this case history to be crucial to understanding the scope of the Injunction Orders when it issued the Contempt Order. 6 App. 1354:18-1355:9, 1366:9-1367:4, 1443:8-15, 1448:19-23.

The Lytles appealed the July 2017 Order and this Court issued an Order of Affirmance on December 4, 2018 in Case No. 73039. *Lytle v. Boulden*, 2018 WL 6433005. The Court affirmed that "because Boulden and the Lamothes were not parties to the previous litigation and the Association was limited in purpose and not subject to NRS 116.3117's mechanism by which judgments against a homeowners' association may be recorded against properties therein, *Boulden and the Lamothes were not obligated under the Lytle's judgment*." *Id.* at *1 (emphasis added). The Court unequivocally rejected the Lytle Trust's "attempt to piece together a solution that would allow them to enforce a judgment lien against property owners who

were not parties to the Lytles' complaint against Rosemere Estates, and whose property interests had never been subject of any suit." *Id.* at *2.

E. <u>The May 2018 Order was required because the Lytle Trust refused to remove encumbrances asserted against the Respondents' properties.</u>

Although the Lytle Trust removed the abstracts of judgment against the Boulden and Lamothe properties, they refused to do so for the Respondents. Respondents were forced to duplicate the action taken by Boulden and Lamothe by filing suit against the Lytle Trust in November 2017, Case No. A-17-765372-C. The two cases were consolidated in February 2018. Summary judgment was promptly granted for the Respondents in the May 2018 Order. 3 App. 700-716.

Findings of fact in the May 2018 Order are similar to those in the July 2017 Order, including that the Respondents were not parties to the Rosemere Litigation, the Association is a limited purpose association under NRS 116.1201, the Association is limited by those powers set forth in the original CC&Rs, each property owner was granted an independent right to enforce the original CC&Rs against one another, and the Amended CC&Rs were *void ab initio*. 3 App. 706:6-22.

The May 2018 Order found that the July 2017 Order was the law of the case and included key conclusions of law consistent with the July 2017 Order, including: the Association is a limited purpose association under NRS 116.1201(2); NRS 116.3117 is not applicable to the Association; the Amended CC&Rs were judicially declared *void ab initio* in the Rosemere Litigation; the Respondents were not parties to the Rosemere Litigation; the Rosemere Judgments

are not against and are not an obligation of the Respondents; and the Rosemere Judgments are not an obligation or debt owed by the Respondents to the Lytle Trust. 3 App. 709:16-710:9.

The district court found that recording the Rosemere Judgments against the Respondents' properties was improper and ordered that the abstracts of judgment be expunged. 3 App. 710:10-712:9. The Court then went further and issued this permanent injunction similar to the July 2017 Order:

> 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* based upon the Rosemere Litigation I, Rosemere Litigation II or Rosemere Litigation III.

3 App. 712:10-19 (emphasis added). Each of the findings of fact and conclusions of law contained in the May 2018 Order are essential to understanding the meaning of the injunction language. The district court explained:

> 5. Each paragraph, each finding of fact, and each conclusion of law in the May 2018 Order must be given its plain meaning, and each paragraph of that Order's permanent injunction must be obeyed by the Lytle Trust.
>
> 6. As a result of the Findings of Fact and Conclusions of law, there were specific orders which are not mutually exclusive. Each issue ordered by the Court should be given its meaning, and they are not in conflict.

6 App. 1449:5-10.

The district court further explained that "[t]he May 2018 Order referenced the April 2017 Order and borrowed its Findings of Fact and Conclusions of Law." 7 App. 1556:8-9. Thus, the district court discussed the July 2017 Order extensively in the Contempt Order (6 App. 1493:8-1494:24) and the Order Denying the Motion for Clarification (7 App. 1556:1-1557:3, 1557:19-1558:9). Together, the district court found that the Injunction Orders clearly prohibited the Lytle Trust from taking "any action" against the property owners or their properties related to the Rosemere Judgments. 6 App. 1449:19-22; 7 App. 1558:14-15.

F. <u>This Court again affirmed that the Lytle Trust's actions were improper, and the Respondents are not obligated under the Rosemere Judgments.</u>

Following the Lytle Trust's appeal, this Court affirmed the May 2018 Order on March 2, 2020. *Lytle v. Sept. Tr.*, 2020 WL 1033050. The Court recited important points from its prior decisions related to the Rosemere Judgments, as follows:

> Importantly, the lower court in NRED 1 determined the association was a limited purpose association as defined by NRS 116.1201 and not a Chapter 116 unit-owners association, and that the amended CC&Rs, which would have substantially increased the scope and complexity of the governing CC&Rs, were *void ab initio*. We affirmed that decision…. The district court order in NRED 2 likewise recognized that the amended CC&Rs were *void ab initio* and the association was not a Chapter 116 unit-owners association.

Id. at *1 (citations omitted). The Court then recited its holding from the prior Order of Affirmance in *Boulden*, as follows:

> We explained that under the plain language of Chapter 116, limited purpose associations are not subject to Chapter 116 outside of certain express statutory exceptions, and that NRS 116.3117 is not among those exceptions. Moreover, we were not persuaded by the Lytles'

> arguments that other Nevada law, notably equitable principles or the general principles of common-interest communities, would allow them to record abstracts of judgment against homeowners who were not parties in the litigation against Rosemere and whose properties were not the subject of any lawsuit.

Id. Afterward, this Court again rejected the Lytle Trust's statutory and equitable arguments. *Id.* at *2. The Court explained that the "amended CC&Rs were *void ab initio*, meaning those documents never had any force or effect" and could not be used as a basis for collecting the judgments against the Respondents or extending the express limitations on limited purpose associations under NRS 116.1201(2). *Id.* Additionally, the Court found that the Lytle Trust's refusal to remove the abstracts of judgment from Respondents' properties after entry of the July 2017 Order was improper and affirmed the award of fees and costs in favor of Respondents under NRS 18.010(2)(b). *Id.* at *3.

G. The Lytle Trust initiated the Receivership Action to circumvent the Injunction Orders.

Undeterred by the district court's rejection of the Lytle Trust's unlawful recording of the Rosemere Judgments, entry of the Injunction Orders, and the district court's warnings to not violate the Injunction Orders further, the Lytle Trust devised a plan. Appellant's Br. 6 ("After the district court permanently enjoined the Lytle Trust from enforcing the judgments directly against the non-party Property Owners...[,] the Lytle Trust focused its collection efforts on the actual judgment-debtor Association….[and] the Lytle Trust commenced an action for appointment of a receiver to…satisfy the judgments."). Just two weeks after the May 2018 Order was entered, the Lytle Trust initiated a new case to seek

appointment of a receiver to impose special assessments on the properties for payment of the Rosemere Judgments by the property owners. 4 App. 820:3-18, 821:11.

The Lytle Trust was not forthcoming to the Receivership Court about the case history and its previous attempts to collect from the property owners. 4 App. 816-832 (Motion for Appointment of Receiver). The district court explained:

> 16. The Lytle Trust did not inform the Receivership Court about this Case, the July 2017 Order, May 2018 Order, or the Orders of Affirmance. The Lytle Trust did not inform the Receivership Court that this Court had issued permanent injunctions against the Lytle Trust relating to enforcement of the Rosemere Judgments against the Plaintiffs, the Boulden Trust, the Lamothe Trust, the Dismans, or their properties.

6 App. 1447:12-16. This failure to inform the Receivership Court was a key reason why the district court held the Lytle Trust in contempt of the Injunction Orders:

> 12. The Plaintiffs have demonstrated by clear and convincing evidence that the Lytle Trust violated the clear and specific terms of the permanent injunction found in the May 2018 Order when it initiated an action against the Association that included a prayer for appointment of a receiver, applied for appointment of a receiver, and argued that the Association, through the Receiver, could make special assessments on the Plaintiffs' and other property owners for the purpose of paying the Rosemere Judgments, *all while failing to inform the Receivership Court of this Case, this Court's Orders, or that the Lytle Trust had been enjoined from enforcing the Rosemere Judgments* against the Plaintiffs, the Boulden Trust, the Lamothe Trust, and the Dismans, or their properties.

6 App. 1450:1-8 (emphasis added).

The Lytle Trust also attempted to use the Amended CC&Rs, which were *void ab initio*, as authority for the Receiver to make assessments on the Respondents' properties to pay the Rosemere Judgments:

> 15. [T]he Lytle Trust further argued in the Application that the *Amended CC&Rs provide authority for a receiver to make special assessments on the Plaintiffs' and other owners' properties to collect funds to pay the Rosemere Judgments*....

6 App. 1447:3-11 (citations omitted); 4 App. 826:4-828:17, 832:1-9. The Lytle Trust made these allegations to the Receivership Court even though it had argued the opposite in the Rosemere Litigation. 5 App. 1059:6-1061:4, 1083:16-17, 1103:14-17 (Lytle Trust arguing that the Association does not have the power to assess fines pursuant to the original CC&Rs). As previously discussed, the Injunction Orders clearly stated that the Amended CC&Rs were *void ab initio*, following the express findings in the Rosemere Judgments drafted by the Lytle Trust. The district court found this illegitimate attempt to give the receiver a special assessment power violated the May 2018 Order:

> 14. Any references to the power of assessment exercised by the Association, or the Receiver on behalf of the Association, against the individual homeowners for payment of the Rosemere Judgments in the Order Appointing Receiver, as advocated for and drafted by the Lytle Trust, directly and indirectly violates the May 2018 Order.

6 App. 1450:11-14.

By intentionally failing to disclose the prior litigation and Injunction Orders and by affirmatively arguing for powers granted in the Amended CC&Rs, which the Lytle Trust knew had been declared *void ab initio*, the Lytle Trust obtained an order purporting to grant broad powers to a receiver in excess of those authorized by the original CC&Rs and NRS 116.1201(2) for the purpose of making special assessments intended to compel the property owners to pay the Rosemere Judgments. 6 App. 1440-1453. In other words, the Lytle Trust purposefully and

deceitfully attempted to have another court do what the district court had already forbidden – impose the Rosemere Judgment obligations on the Respondents.

The primary goal in seeking the Order Appointing Receiver was for the Lytle Trust to circumvent the Injunction Orders and have special assessments made on the properties to force the Respondents to pay the Rosemere Judgments, as explained by the district court:

> 12. The Complaint in the Receivership Action alleges…that "the Association has not paid known creditors of the Association, which includes…the Lytles, which hold multiple judgments against the Association." Complaint at ¶ 21.
>
> 13. …the Lytle Trust asserts that one reason for a Receiver over the Association was due to the Association's refusal to pay the Rosemere Judgments, including its refusal to assess Association members…so the Association could pay the Rosemere Judgments….
>
> 17. On December 18, 2019, based on the Lytle Trust's Application, the Receivership Court entered an Order Appointing a Receiver …. 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." Order Appointing Receiver at 2:19-20. It further empowers the Receiver with "the authority to assess all Association unit owners…to pay for judgments against the Association. 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 6:4-7.
>
> 18. …Plaintiffs and the Dismans each received a letter from…the Receiver…. stat[ing] that "[t]he appointment of the receivership is predicated on judgments against the HOA in the approximate amount of $1,481,822 by the Lytle family ("the Plaintiff")…. These judgments need to be paid and the Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the judgments…. We would like to meet with title holding members of the HOA…[to] share three ideas we have to pay these judgments."

6 App. 1446:3-1448:7. In summary, the Lytle Trust sought and obtained an Order to enable the Receiver to do what the Association could not do on its own and what the Lytle Trust had been prohibited from doing in the Injunction Orders.

H. The Lytle Trust's direct violations of the Injunction Orders left the court with no alternative but to hold the Lytle Trust in contempt.

In their Contempt Motion, the Respondents argued that the appointment of a receiver to make assessments compelling Respondents to pay the Rosemere Judgments *clearly* and *directly* violated the Injunction Orders. 3 App. 738:19-23 ("direct violations of the permanent injunction"); 3 App. 742:3-4 ("direct violation"); 3 App. 743:17-20 ("clear violation"); 3 App. 745:12-13 ("direct orders…clearly violation"); 3 App. 746:15-17 ("in clear violation"); 3 App. 747:3-5 ("This directly contradicts the May 2018 Order."); 3 App. 748: 20-21 ("unquestionably prohibited by the May 2018 Order from taking any action"). Respondents argued that they had "established with clear and convincing evidence that the May 2018 Order has been violated. The violations are so direct and intentional, that there cannot possibly be an argument that the Lytle Trust made good faith reasonable efforts to comply with the terms of the permanent injunction and has substantially complied." 3 App. 750:7-12. The district court agreed, finding:

> 10. The 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.
>
> 13. The Lytle Trust's actions, as stated in the Findings of Fact and set forth herein, *directly and indirectly* violated the May 2018 Order.

> 14. Any references to the power of assessment exercised by the Association, or the Receiver on behalf of the Association, against the individual homeowners for payment of the Rosemere Judgments in the Order Appointing Receiver, as advocated for and drafted by the Lytle Trust, *directly and indirectly* violates the May 2018 Order.
> ...
> 16. The Lytle Trust has failed to demonstrate *how its actions did not violate the clear and specific terms* of the May 2018 Order.

6 App. 1449:23-1450:17 (emphasis added).

The district court concluded that the Lytle Trust cannot enforce the Rosemere Judgments against the property owners by having the Association levy assessments on the property owners' properties. 6 App. 1440-1452. The district court reached this conclusion based on the history of the case and addressed the direct versus indirect issue in denying the Lytle Trust's Motion for Clarification, stating:

> 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.

7 App. 1557:23-27. The Lytle Trust claimed a right to narrowly interpret the Injunction Orders, focusing on single words and phrases (i.e. "directly"), but ignoring the rest of the language. However, the district court emphasized that:

> 5. Each paragraph, each finding of fact, and each conclusion of law in the May 2018 Order must be given its plain meaning and each paragraph of that Order's permanent injunction must be obeyed by the Lytle Trust.
>
> 6. As a result of the Findings of Fact and Conclusions of Law in the May 2018 Order, there were specific orders which are not mutually

> exclusive. Each issue ordered by the Court should be given its meaning, and they are not in conflict.
>
> 7. The Court's factual determinations and conclusions of law culminated with the permanent injunction language…

6 App. 1449:5-12. Thus, in considering the entirety of the Injunction Orders and the history of the case, the district court found that the "Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the [Respondents] or Dismans in any way, shape, or form." 6 App. 1449:26-28.

I. The Lytle Trust still has creditor rights against the Association.

In denying the Lytle Trust's motion to clarify, the district court explained that it did not strip the Lytle Trust of its lawful creditor's rights against the Association but refused to allow the Lytle Trust to collect the Rosemere Judgments from the property owners. 7 App. 1557:5-1558:15. Therefore, the Lytle Trust can engage in any lawful action that does not result in payment from the property owners - including execution and garnishment of Association property. The Lytle Trust has already made use of those rights against the Association. 4 App. 820:14-18 ("the Lytle Trust garnished $2,622.27 from the Association's bank account").

STATEMENT OF THE STANDARD OF REVIEW

As set forth in the Jurisdictional Statement, *supra*, this appeal is improper. The correct procedural mechanism for review of a contempt order is an original writ petition. *Pengilly*, 116 Nev. at 649, 5 P.3d at 571. This appeal is not a writ petition. Should the Court determine that it has jurisdiction over this direct appeal from an order of contempt, the standard of review is abuse of discretion. *Lewis v. Lewis*, 132 Nev. 453, 456, 373 P.3d 878, 880 (2016).

A district court has "inherent power to protect dignity and decency in its proceedings, and to enforce its decrees." *In re Water Rights of the Humboldt River*, 118 Nev. 901, 906, 59 P.3d 1226, 1229 (2002) ("*Humboldt River*"). Because a district court has intimately observed the proceedings and is deeply familiar with the intent of its own orders, it "generally has particular knowledge of whether a person has committed contempt." *Id.*; *see also Pengilly*, 116 Nev. at 649, 5 P.3d at 571 ("Whether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court's order should not lightly be overturned."). Because of this, the "discretionary standard gives proper deference to the district court's intricate knowledge of the proceedings, and affords the district court sufficient leeway to exercise its inherent power." 118 Nev. at 907, 59 P.3d at 1229-30.

"An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). A district court abuses its discretion when it "bases its decision on a clearly erroneous factual determination or it disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016); *see also Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993), *superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017) (holding that a decision made "in clear disregard of the guiding legal principles [can be] an abuse of discretion"); *Franklin v. Bartsas Realty*, 95 Nev. 559, 562, 598 P.2d 1147, 1149 (1979) (holding that preliminary injunctions are

reviewed for an abuse of discretion and will not be disturbed when supported by substantial evidence).

De novo review only applies to the *granting* of an injunction. *See Secretary of State v. Give Nevada A Raise*, 120 Nev. 481, 486 n. 8, 96 P.3d 732, 735 n. 8 (2004) (Reviewing the district court's judgment de novo of declaratory and permanent injunctive relief); *State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nev. 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" underlying an injunction). Since the Injunction Orders at issue here have already been affirmed on appeal and no new injunction has been issued, de novo review does not apply. However, the court does apply a de novo review when considering the applicability of the law of the case doctrine. *Estate of Adams By & Through Adams v. Fallini*, 132 Nev. 814, 818, 386 P.3d 621, 624 (2016).

SUMMARY OF THE ARGUMENT

The Lytle Trust has not disputed the district court's findings of fact, but instead argues its actions were proper indirect action that was not prohibited by the Injunction Orders. This argument, however, requires the Court to disregard the history of this case and the language of the Injunction Orders as a whole.

The district court properly reviewed the undisputed facts regarding the Lytle Trust's application for a receiver over the Association for the purpose of making assessments on the Respondents' or their properties. The district court thoughtfully and carefully considered the complete language of the May 2018 Order, the orders

that preceded it, the law of the case, and the history of the case. The district court found that the May 2018 Order clearly and directly prohibited the Lytle Trust from taking "any action" against the Respondents or their properties to collect the Rosemere Judgments. The district court further concluded that the Lytle Trust's effort to appoint a receiver violated the May 2018 Order because it was an action, both direct and indirect, against the Respondents or their properties. In so holding, the district court did not abuse its discretion.

The Lytle Trust's argument relies on an improperly narrow reading of the May 2018 Order, paying too much attention to individual phrases without any analysis of the whole order and history of the case. Once the whole Injunction Orders and case history are considered, the Lytle Trust's position crumbles. This is not a case of unwitting violation of an ambiguous order, but a knowing attempt to circumvent multiple Injunction Orders to achieve a result that had been expressly and repeatedly prohibited. The fact remains, as already determined by both the district court and this Court, that the Respondents are not judgment debtors of the Lytle Trust and they are under no obligations related to the Rosemere Judgments.

The Lytle Trust's argument is further undermined by its own efforts in litigation with the Association. By the Rosemere Judgments (and as reiterated in the Injunction Orders), the Association's powers were extremely limited to those set forth in the CC&Rs and NRS 116.1201(2). The Amended CC&Rs, which granted a power of special assessment, are *void ab initio*. As a result, the Association has no power of special assessment. The Lytle Trust was well aware of this fact, admitted it in litigation with the Association, but still sought appointment

of a Receiver with a special assessment power in direct violation of the Court's Orders and outside the limits of the CC&Rs and NRS 116.1201(2).

The Injunction Orders prohibit "any action" against the Respondents or their properties related to the Rosemere Judgments, including any action that would result in the property owners paying the Rosemere Judgments. The Lytle Trust took action to have a receiver make special assessments against the Respondents or their properties to pay the Rosemere Judgments. This intentional direct action by the Lytle Trust clearly violated the Injunction Orders.

The Lytle Trust argues that the Injunction Orders did not prohibit "indirect" action or action directly against the Association. But "any action" means any action. Just because the Injunction Orders did not expressly prohibit the Lytle Trust from seeking appointment of a receiver does not mean that the Injunction Orders did not prohibit that behavior. Where the Injunction Orders prohibited "any action" against the Respondents or their properties related to the Rosemere Judgments, that naturally and clearly includes an action that would result in the Respondents or their properties being required to pay the Rosemere Judgments.

The district court saw through the Lytle Trust's effort to circumvent the Injunction Orders. The Contempt Order did not expand the Injunction Orders, but merely applied the Injunction Orders to the Lytle Trust's post-order actions and found them to be in contempt. The Lytle Trust's justification that action against the Association is not action against the Respondents only further implicates the Lytle Trust's intentional effort to skirt the Injunction Orders. The Lytle Trust applied for a receiver with the goal of obtaining payment from the Respondents for the

Rosemere Judgments. The district court had already told the Lytle Trust that it could not obtain payment from the Respondents or their properties. The district court's enforcement of its Injunction Orders was reasonable and was not an abuse of discretion.

The Lytle Trust's argument that it is effectively without a remedy is simply not true. The law upon which the district court based its decisions was in no small part set in motion by the Lytle Trust's own litigation decisions. The Lytle Trust had a remedy, pursued it, and is now upset with the *quality* of the remedy. That is not the Respondents' or the Court's problem, nor is it an issue that can be addressed in this appeal. The Contempt Order must be upheld.

ARGUMENT

A. The Contempt Order was based on clear and unambiguous written permanent injunction orders that must be read as a whole.

The Contempt Order was based on written, clear, and unambiguous Injunction Orders. This Court explained that:

> [t]he need for clarity and lack of ambiguity are especially acute in the contempt context. 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.

See State, Div. of Child & Family Servs. v. Eighth Jud. Dist. Ct., 120 Nev. 445, 454-55, 92 P.3d 1239, 1245 (2004); *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 532 (2006) (*citing Cunningham v. Eighth Jud. Dist. Ct.*, 102 Nev. 551, 559–60, 729 P.2d 1328, 1333–34 (1986)).

An injunction should be read "intelligently and in context." Dan B. Dobbs, *Law of Remedies* § 2.8(7), 220 (2d ed. 1993). "Like any other written instrument, an injunction is to be reasonably construed, as a whole, so as to give effect to the intention of the issuing court." *Norwest Mortgage, Inc. v. Ozuna*, 706 N.E.2d 984, 989 (Ill. App. Ct. 1998); *Pennington v. Employer's Liab. Assur. Corp.*, 520 P.2d 96, 97 (Alaska 1974); *Rodgers v. Williamson*, 489 S.W.2d 558, 560 (Tex. 1973); 1 Freeman, *Judgments* § 76 (5th ed.). "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) (*quoting* 32 CJ 370, § 624); *see also Arbuckle v. Robinson*, 134 So.2d 737, 741 (Miss. 1961) (*citing* 28 Am.Jur. *Injunctions* § 324) (injunction must be "read in view of the relief sought and the issues made in the case before the court which rendered it."). "Effect must be given not only to that which is expressed, but also to that which is unavoidably and necessarily implied in the judgment or decree." *Winter v. Winter*, 387 N.E.2d 695, 698 (Ill. App. Ct. 1978); *Anderson v. Anderson*, 585 P.2d 938, 944 (Haw. 1978).

The district court understood this rule of judicial construction. The court stated that "[e]ach paragraph, each finding of fact, and each conclusion of law in the May 2018 Order must be given its plain meaning, and each paragraph of that Order's permanent injunction must be obeyed by the Lytle Trust. As a result of the Findings of Fact and Conclusions of law, there were specific orders which are not mutually exclusive. Each issue ordered by the Court should be given its meaning,

and they are not in conflict." 6 App. 1449:5-10. The Lytle Trust, however, continues to pretend to not understand this. Its hyper-focus on individual words and phrases (i.e. "directly") to the exclusion of all else (i.e. "any action") is not appropriate and must be rejected.

The Injunction Orders, a combined eighteen pages, set forth detailed findings of fact and conclusions of law leading to explicit injunction order language. 1 App. 66-72; 3 App. 703-716. Many of these findings and conclusions are set forth in the Statement of Facts *supra*. Reading the *whole* Injunction Orders, one is left with the unmistakable conclusion that the Association is a limited purpose association under NRS 116.1201(2) (1 App. 7:17-19; 3 App. 709:20-21), the Amended CC&Rs are *void ab initio* (1 App. 8:23-26; 3 App. 709:24-27), the property owners are not liable for and have no obligation to pay the Rosemere Judgments (1 App. 8:27-9:7; 3 App. 710:1-9), and "any action" by the Lytle Trust to enforce the Rosemere Judgments against the property owners or their properties or to obtain payment from the property owners for the Rosemere Judgments is forbidden (1 App. 10:23-11:3; 3 App. 712:10-19).

The findings of fact and conclusions of law in the Injunction Orders set forth the historical framework in which the district court issued the injunctions. When it is understood that the Lytle Trust was at least twice informed in binding district court orders that the Respondents were not parties to the Rosemere Litigation, are not judgment debtors under the Rosemere Judgments, and that the Lytle Trust did not have a reasonable or rational legal basis on which to attempt collection from the Respondents' properties, it is easy to see why the district court took action to

protect the Respondents from the Lytle Trust's unlawful collection efforts. On the other hand, to make its arguments on appeal the Lytle Trust willfully ignores most of the May 2018 Order and all the July 2017 Order.

When the May 2018 Order is read in context, its meaning is clear and does not support the Lytle Trust's improperly narrow construction. The Lytle Trust was foreclosed from collecting the Rosemere Judgments from the Respondents or their properties. By its plain meaning, the May 2018 Order did not prohibit the Lytle Trust from enforcing the Rosemere Judgments lawfully against the Association. However, the Lytle Trust could not take "any action" that would result in the Rosemere Judgments being enforced against the Respondents or their properties, including any action that would result in the Respondents or their properties being forced to pay the Rosemere Judgments.

The whole Orders are not only relevant for context, but each paragraph causally relates to the limitations placed on the Lytle Trust, the powers of the Association, and the protections afforded the property owners. Because the Injunction Orders found that the Amended CC&Rs were *void ab initio*, the original CC&Rs governed, and the Association was a limited purpose association, there was no contractual or statutory grant of a special assessment power that would support the Receiver Action in the first place. Therefore, the Lytle Trust's actions in seeking appointment of a receiver for the purpose of collecting from the Respondents through special assessment would have violated the Injunction Orders even in the absence of the express prohibition against "any action." The Lytle Trust could not seek a special assessment against the property owners or their

properties to the pay the Rosemere Judgments because that would result in the property owners paying the Rosemere Judgments, which is a result not allowed under the Association's original CC&Rs or NRS 116.1201(2)(a), which do not recognize a such special assessment power.

B. <u>The district court was in the best position to interpret its own Orders.</u>

A district court has the inherent power to interpret and enforce its own orders. *Humboldt River*, 118 Nev. at 906, 59 P.3d at 1229. If the Lytle Trust "was unsure as to the applicability of the prior injunction, it could have petitioned the court for a modification or clarification of the order. By in effect making its own determination as to what the injunction meant, [the Lytle Trust] acted at its peril." *Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1373 (9th Cir. 1981) (citing *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 15 (1945)).

"District courts have broad equitable power to order appropriate relief in civil contempt proceedings." *S.E.C. v. Hickey*, 322 F.3d 1123, 1128 (9th Cir.), *opinion amended on denial of reh'g*, 335 F.3d 834 (9th Cir. 2003). "Further, courts have the inherent power to prevent injustice and to preserve the integrity of the judicial process...." *Halverson v. Hardcastle*, 123 Nev. 245, 262, 163 P.3d 428, 440 (Nev. 2007).

"Great deference is due the interpretation placed on the terms of an injunctive order by the court who issued and must enforce it." *Alabama Nursing Home Ass'n v. Harris*, 617 F.2d 385, 388 (5th Cir. 1980). "Proper deference" must be given "to the district court's intricate knowledge of the proceedings." *Humboldt River*, 118 Nev. at 907, 59 P.3d at 1229. The district court has "particular

knowledge of whether a person has committed contempt." *Id.*, 118 Nev. at 906, 59 P.3d at 1229. "Whether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court's order should not lightly be overturned." *Pengilly*, 116 Nev. at 650, 5 P.3d at 571. In *Chorney v. Chorney*, 383 P.2d 859 (Wyo. 1963), the court was tasked with reviewing a contempt order. The court found the trial judge's interpretation of its order to be "quite persuasive" because:

> [I]n final analysis, disposition of the instant case is largely dependent upon the meaning to be given to the terms of the decree. In this we are indeed aided by the trial court. It so happens that the judge rendering the decision here is the same judge who presided at the trial of the divorce case, approved the agreement providing support for the minor daughters, and entered the divorce decree. Under such circumstances his conclusions in the matter are quite persuasive.

Id. at 860–61.

Here, the same district court judge who issued the Contempt Order presided over this litigation in 2016 when Boulden and Lamothe filed their complaint.[8] When it came time to determine whether the Lytle Trust had violated the Injunction Orders, the district court judge was in the best position to interpret the Orders and make that determination. In doing so, the district court relied upon the history of this case, the whole Injunction Orders, and this Court's Orders of Affirmance. The district court's reasoning and recitation of this history is found in the Contempt Order and its Order Denying the Lytle Trusts' Motion for

[8] Judge Timothy Williams was initially assigned to this case and entered the July 2017 Order. Judge Mark Bailus presided from approximately January 2018 to December 2018 and entered the May 2018 Order, based on the decision already made by Judge Williams in the July 2017 Order. This case was reassigned to Judge Williams in April 2019.

Clarification. 6 App. 1440-1452; 7 App. 1552-1559. The district court also provided substantial explanation during the contempt hearings. 6 App. 1331-1398; 7 App. 1518-1548. The Lytle Trust's fundamental disagreement with the Injunction Orders and the district court's interpretation thereof does not mean that the district court expanded or modified the Injunction Orders when it held the Lytle Trust in contempt. The district court's reading, interpretation, and application of the Injunction Orders was reasonable and this Court should defer to the findings and conclusions reached by the district court.

C. The district court was bound to follow the law of the case.

Pursuant to the law of the case doctrine, "[w]hen an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal." *Wickliffe v. Sunrise Hosp.*, 104 Nev. 777, 780, 766 P.2d 1322, 1324 (1988). This doctrine "is designed to ensure judicial consistency and to prevent the reconsideration, during the course of a single continuous lawsuit, of those decisions which are intended to put a particular matter to rest." *U.S. v. Real Prop. Located at Incline Vill.*, 976 F.Supp. 1327, 1353 (D. Nev. 1997).

The Lytle Trust concedes that the May 2018 Order "is law of the case." Appellant's Br. 11 n.9. The district court acknowledged at two different hearings that the court was bound by law of the case and could not change its prior decisions. For instance, the district court explained:

> So why would you attempt to collect a debt owed -- allegedly owed by the plaintiffs *when I have ruled as a matter of law* that, quote, the final judgment against the Association is not an obligation or debt owed by plaintiffs. I mean that's pretty clear to me. *And understand this: I can't change that right now....* And so at the end of the day, *this is what I ruled as a matter of law* in this case, and I don't know how it can be any clearer than this.

7 App. 1538:13-20 (emphasis added); *see also* 6 App. 1394:22-1395:1 ("There is an appellate history to this case, and so when it comes to Plaintiff's Motion for an Order to Show Cause…, I'm going to grant the motion."). The court expressly acknowledged the Orders of Affirmance in the Contempt Order. 6 App. 1494:15-18; 6 App. 1496:1-6; 6 App. 1498:12-16. Then in denying the Lytle Trust's Motion for Clarification, the district court explained:

> 14. All of the Court's decisions in this case, including the May 2018 Order and the Contempt Order, are based upon the history of this case, and more specifically, the…April 2017 Order…against the Lytle Trust.
>
> 15. The April 2017 Order has been the ruling of this Court for over three years, *was subject to review by the Nevada Supreme Court, and withstood appellate scrutiny.*
>
> 16. The May 2018 Order referenced the April 2017 Order and borrowed its Findings of Fact and Conclusions of Law.
>
> 17. The April 2017 Order states clearly what actions can and cannot be taken by the Lytle Trust, as follows:
>
> 18. IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation.

7 App. 1556:6-14 (emphasis added).

The law of the case doctrine prevents the Lytle Trust from relitigating the Injunction Orders, which restrained the Lytle Trust from exercising certain

execution remedies against the Respondents and their properties or from enforcing the Rosemere Judgments in a way that would impact the Respondents or their properties. The district court was not free to enter a contrary ruling (nor was the Lytle Trust free to even seek a contrary ruling) because the Injunction Orders have been affirmed by this Court.

Under the law of the case doctrine, the district court could not permit actions which would result in the Respondents paying the Rosemere Judgments, because the Injunction Orders clearly and unequivocally stated that the "Rosemere Judgments…are not against, and are not an obligation of the [Respondents] to the Lytle Trust. [The] Rosemere Judgments…are not an obligation or debt owed by the [Respondents] to the Lytle Trust." 3 App. 710:1-9.

In the same way, the district court was not free to allow the Lytle Trust to take any action seeking assessment under the Amended CC&Rs because the Injunction Orders clearly and unequivocally stated that the "Amended CC&Rs are invalid and have no force and effect and were declared *void ab initio*." 3 App. 709:25-27.

The district court could not allow assessment under NRS 116 because the Injunction Orders clearly and unequivocally stated that the "Association is a 'limited purpose association' as referenced in NRS 116.1201(2)." 3 App. 709:20-24. As such, there is no statutory special assessment power to pay judgments that is granted to limited purpose associations under NRS 116.1201(2).

Finally, the district court could not allow the Lytle Trust's actions seeking a receiver to assess Respondents and their properties to pay the Rosemere Judgments

because the Injunction Orders clearly and unequivocally prohibited the Lytle Trust from "enforcing the Judgments…against the [Respondents' properties]" or "taking any action in the future directly against the [Respondents] or their properties based upon the Rosemere [Judgments]." 3 App. 712:10-19.

The district court explained that "[t]he Court made its intentions clear at the April 22, 2020 hearing when it stated 'I stripped the Lytle Trust of their ability and right to enforce those judgments *vis-a-vis* the homeowners in this case.'" 7 App. 1557:5-7. The court explained further in its Order:

> 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.
>
> 8. The April 2017 Order must be looked at in its entirety to determine its thrust, scope and impact with respect to what kind of action can be taken by the Lytle Trust with regard to collecting on its Judgments against the Association.
>
> 9. The April 2017 Order made clear that the Rosemere Judgments are not against the Plaintiffs or an obligation or debt owed by the Plaintiffs.
>
> 10. The April 2017 Order also made clear that the Lytle Trust cannot take any action against the Plaintiffs to attempt to collect its Judgments against the Association.
>
> 11. The May 2018 Order contains nearly identical Findings of Fact, Conclusions of Law, and Orders.

> 12. 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. 1557:21-1558:11.

In summary, the May 2018 Order clearly precluded any action against the Respondents or their properties related to the Rosemere Judgments. A special assessment here would be an action against the Respondents' properties. *See In re Foster*, 435 B.R. 650, 662 (B.A.P. 9th Cir. 2010) (discussing how association assessments run with the land), *abrogated on other grounds by Goudelock v. Sixty-01 Ass'n of Apartment Owners*, 895 F.3d 633 (9th Cir. 2018) (distinguishing *in rem* actions from *in personam* obligations expressly granted by the CC&Rs). The May 2018 Order *does* preclude action by the Association *vis-à-vis* the property owners to pay the Rosemere Judgments because it expressly forbade enforcement of the Rosemere Judgment against the properties. Cf. Appellant's Br. 24. The Lytle Trust, fully aware of the Injunction Orders, commenced the Receiver Action, failed to advise the judge overseeing the Receiver Action of the existence of the Injunction Orders, and sought to cause the Association, through a receiver, to assess the Respondents' properties to pay the Rosemere Judgments. On these facts, the district court had no choice but to enforce its orders and hold the Lytle Trust in contempt for violating the Injunction Orders.

The district court did what was required by the law of the case to give effect to its prior orders and this Court's Orders of Affirmance. Any action taken by the Lytle Trust must comply with those orders, including actions taken against the Association. As a matter of law, the district court was not free to let the Lytle Trust

collect the Rosemere Judgments from the property owners or allow special assessment in contravention of the original CC&Rs and NRS 116.1201.

1. The law of the case applies to the May 2018 Order both explicitly and by necessary implication.

The law of the case doctrine applies to issues decided explicitly or by necessary implication to the court's prior ruling. *Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014); *Hanna Boys Ctr. v. Miller*, 853 F.2d 682, 687 (9th Cir. 1988) (*citing Liberty Mut. Ins. Co. v. E.E.O.C.*, 691 F.2d 438, 441 (9th Cir. 1982)); *see Sidney v. Zah*, 718 F.2d 1453, 1458 (9th Cir. 1983). The law of the case operates to preclude reconsideration of issues on remand, even if the issues were not explicitly discussed, if the appellate order necessarily or implicitly resolved them adversely to the party now seeking to reargue them. *Lehrman v. Gulf Oil Corp.*, 500 F.2d 659, 664–65 (5th Cir. 1974) (emphasis added). "The law of the case doctrine, therefore, serves important policy considerations, including judicial consistency, finality, and protection of the court's integrity." *Hsu*, 123 Nev. at 629, 173 P.3d at 728 (citations omitted).

In *Mack-Manley*, an initial custody order stated: "Neither party shall do anything which may estrange the children from the other parent or impair the natural development of the children's love and respect for the other parent." 122 Nev. at 858-859, 138 P.3d at 532. That language did not expressly prohibit one parent from making bad faith allegations to authorities that the other had abused or neglected the children. *Id.* However, the Court had no trouble affirming the district court's decision to hold the mother in contempt for doing just that. *Id.*

A similar situation is presented here. The Lytle Trust argues that the plain language of the May 2018 Order does not preclude collection from the Association or seeking a receiver. Respondents concede both points. The Injunction Orders do not expressly prohibit the Lytle Trust from execution on the Association's assets (something the Lytle Trust has already done). Additionally, the May 2018 Order does not prohibit the appointment of a receiver. This makes sense because the Association was not a party in the action below and the Lytle Trust did not file an action to seek appointment of a receiver until two weeks after the May 2018 Order was entered. The district court cannot be faulted for not seeing the future.

What the Injunction Orders expressly disallow is "any action" by the Lytle Trust to enforce the Rosemere Judgments against the property owners or their properties or to obtain payment from the property owners for the Rosemere Judgments. 1 App. 10:23-11:3; 3 App. 712:10-19. This injunction, coupled with the clear conclusions that: the property owners are not liable for and have no obligation to pay the Rosemere Judgments (1 App. 8:27-9:7; 3 App. 710:1-9); the Association is a limited purpose association under NRS 116.1201(2) (1 App. 7:17-19; 3 App. 709:20-21); and the Amended CC&Rs are *void ab initio* (1 App. 8:23-26; 3 App. 709:24-27), clearly prohibit any action against the Association that would result in payment of the Rosemere Judgments by the Respondents or a receiver making assessments against the Respondents' properties to pay the Rosemere Judgments.

Quite simply, just because the Injunction Orders did not expressly address the exact actions that the Lytle Trust devised in an effort to circumvent them does

not mean that the Injunction Orders were ambiguous or that they do not prohibit those actions by necessary implication. The intent of the Injunction Orders was clear. The Injunction Orders imposed an affirmative duty on the Lytle Trust to cease efforts to collect the Rosemere Judgments from the Respondents or their properties. The Lytle Trust was simply undeterred.

Reading the Injunction Orders "intelligently and in context" would require at least that the entire orders be *read*. But the Lytle Trust does not seem to have been able to accomplish even that. Instead, they focused on one word in the May 2018 Order – "directly" – as the basis for their entire strategy to continue to attempt collection from the Respondents' properties "indirectly" through a receiver. The district court saw straight through this charade, explaining that when the entire order is read it is clear that both direct and indirect action were prohibited. The court directed "It's important to read the entire order," reiterated several of the paragraphs, and then concluded:

> And then number 7, a final judgment against the Association is not an obligation or debt owed by the Plaintiffs. It seems pretty clear to me. Then you couple that with, quote: It is hereby ordered -- hereby further ordered, adjudged, and decreed that the defendants are permanently enjoined from taking any action in the future against the plaintiffs or their properties based upon the Rosemere LPA Litigation.
>
> I don't know how I could be any clearer than that. Because remember, you can't read this in one line of the order. You have to read the total order to determine what its impact is because I made some conclusion here as a matter of law, they can't take any action.
>
> In fact, it goes even further than that. It says the final judgment in favor of defendants is not against and is not an obligation of the plaintiffs. So maybe hypothetically if they won the lottery, maybe they could go against the Association. But they better not go against the plaintiffs in any way. I don't mind saying that.

> And to be clear, permanently enjoined from taking any action in the future against the plaintiffs or their property.

7 App. 1537:9-1538:20, 1539:23-1541:3, 1546:19-1547:3.

Like in *Mack-Manley*, the district court here had to interpret how the Lytle Trust's unforeseen actions were impacted by the Injunction Orders, just as the *Mack-Manley* court had to interpret how one parent's unforeseen actions were impacted by the child custody order. Even though the custody order did not explicitly state that alleging abuse violated the order, the *Mack-Manley* court upheld the contempt finding.

Here, the district court did not abuse its discretion because the Court's Injunction Orders implicitly cover the Lytle Trust's actions. Even though the Injunction Orders did not explicitly state that the Lytle Trust could not seek the appointment of a receiver to do what they were prohibited from doing in the May 2018 Order, the May 2018 Order implicitly resolved the issue by recounting the history of the case and stating that the Lytle Trust was prevented from taking "any action" against the property owners for payment of the Rosemere Judgments. The district court's Orders were clear and unambiguous, even if the word receiver was not explicitly used.

2. The law of the case cannot be circumvented by the Lytle Trust's attempt to make a more focused argument.

The Lytle Trust's attempt to appoint a receiver to collect the Rosemere Judgments is a mere technical variation from the actions this Court prohibited when it upheld the Injunction Orders. The law of the case doctrine bars new legal

arguments that are not actually presented on direct appeal but that are based on "substantially the same facts" as the argument made on appeal. *See Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797 (1975). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *Id.*, 91 Nev. at 316, 535 P.2d at 799.

Recall that the Injunction Orders were issued after the Lytle Trust had directly recorded abstracts of judgment, and then *lis pendens*, related to the Rosemere Judgments against the property owners' properties. This Court affirmed the Injunction Orders, making them law of the case. The Lytle Trust explained its next actions: "After the district court permanently enjoined the Lytle Trust from enforcing the judgments directly against the non-party Property Owners...[,] the Lytle Trust focused its collection efforts on the actual judgment-debtor Association….[and] the Lytle Trust commenced an action for appointment of a receiver to…satisfy the judgments." Appellant's Br. 6. That new action sought a receiver to make special assessments against the property owners' properties to obtain payment from the Respondents for the Rosemere Judgments, thereby seeking to achieve the same objective that the district court had banned. In the end, the Lytle Trust has merely concocted a "more focused argument subsequently made after reflection upon the previous proceedings." But this more focused argument that the Lytle Trust can accomplish indirectly what it cannot do directly has already been precluded by Injunction Orders and the Orders of Affirmance. The intent of the Injunction Orders—to protect the Respondents from the Lytle

Trust and the Rosemere Judgments—was exceptionally clear. The Lytle Trust may not use a receiver to do something that the Lytle Trust has been forbidden to do by this Court. *Regal Knitwear Co.*, 324 U.S. at 14 (parties "may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding").

The Lytle Trust argues that the May 2018 Order did not insulate the Respondents from "any obligations they might owe to the Association should it somehow call on them for funds to satisfy the Judgment." Appellants' Br. 25. This wrongly assumes that the Association could call on the Respondents to pay the Rosemere Judgments. The May 2018 Order was clear that the Respondents had no liability for the Rosemere Judgments. The Injunction Orders also made clear, applying legal conclusions from the Lytle Trust's own Rosemere Judgments, that the limited purpose Association is governed by the CC&Rs and NRS 116.1201(2) and that the Amended CC&Rs, which had an assessment power, were *void ab initio*.

A receiver takes only "the rights, causes and remedies...which were available to those whose interests the receiver was appointed to represent..." *Gravel Resources of Arizona v. Hills*, 170 P.3d 282, 287 (Ariz. Ct. App. 2007) (*citing* 65 Am.Jur.2d *Receivers* § 100). "Generally, a receiver stands in the shoes of a corporation and can assert only those claims which the corporation itself could have asserted." *Banco De Desarrollo Agropecuario, S.A. v. Gibbs*, 709 F. Supp. 1302, 1305 (S.D.N.Y. 1989) (*citing Lank v. N.Y.S.E*, 548 F.2d 61, 67 (2d Cir. 1977). Thus, the Receiver could not do more than the Association was permitted to

do under the CC&Rs and NRS 116.1201(2). There is no contractual or statutory special assessment power to support the Association making special assessments against the Respondents' properties to pay the Rosemere Judgments. Regardless of how the Lytle Trust tries to go around it, as a matter of law they are prevented from enforcing the Rosemere Judgments against the Respondents or their properties, collecting the Rosemere Judgments from the Respondents or their properties, or taking any action related to the Rosemere Judgments against the Respondents or their properties.

D. <u>The Association is not an ordinary corporation.</u>

While the parties seem to agree that the Association is a legal entity separate and distinct from its members and that the Rosemere Judgments are not against the Respondents, the Lytle Trust seems to think it can bypass that legal and factual separation, essentially piercing the corporate veil, and require the Respondents to contribute funds to the Association to pay its debts. Note that piercing the corporate veil requires that "(1) The corporation must be influenced and governed by the person asserted to be its alter ego[;] (2) There must be such unity of interest and ownership that one is inseparable from the other; and (3) The facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice." *Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 807, 963 P.2d 488, 496 (1998) (citations omitted). The Lytle Trust has not alleged or proven any of these factors or otherwise afforded the Respondents with due process of law. *See Callie v. Bowling*, 123 Nev. 181, 185, 160 P.3d 878, 881 (2007) ("A party who wishes to assert an alter ego claim must do so in an

independent action against the alleged alter ego with the requisite notice, service of process, and other attributes of due process."). And the Injunction Orders prohibit the Lytle Trust from taking "any action" against the Respondents that is related to the Rosemere Judgments.

The Lytle Trust further suggests that there is nothing to prohibit the Association from calling for funds from its members to satisfy the Rosemere Judgments. Appellants' Br. 25. This, however, is based on two false premises: that the Association has the power to issue a special assessment on the property owners to pay a judgment against the Association; and that the Injunction Orders do not prohibit a special assessment on the property owners to pay the Rosemere Judgments.

First, this Association has no power to make special assessments. Long ago, the Rosemere Judgments included language that the Association was limited by the CC&Rs and the statutes regarding limited purpose associations. This was confirmed in the Injunction Orders. Any assessment must be done in accordance with the CCR&S and NRS 116.1201(2), under which no special assessment power is granted. The CC&Rs could have granted the Association such power (see the void Amended CC&Rs) but did not. The Lytle Trust purposefully eliminated the Amended CC&Rs and the special assessment power when it obtained the Rosemere Judgments. The very Judgments establishing the obligation the Lytle Trust seek to collect precludes any sort of special assessment on the Respondents.

Second, even if such power did exist, a special assessment to pay the Rosemere Judgments is an action on the Respondents' property, which is expressly

prohibited by the Injunction Orders. Pursuant to the CC&Rs, the members of the Association are only members by virtue of their title to real property subject to the CC&Rs. If the Association had any power of assessment (which the Respondents dispute), it would be a power of assessment on the property because assessments covenants run with the land. *In re Foster*, 435 B.R. at 662. But the Injunction Orders prohibit enforcement of the Rosemere Judgments against the property owners' properties. 1 App. 10:24-27; 3 App. 712:10-14. Further, the Injunction Orders prohibited "any action" against the property owners' properties based on the Rosemere Judgments. 1 App. 11:1-3; 3 App. 712:16-19.

There is no question that it was the Lytle Trust who applied for appointment of a receiver and advocated for an express power to make special assessments to pay the Rosemere Judgments. Even if the Association is not prohibited from acting independently by the Injunction Orders, the Lytle Trust's actions cannot be ignored in this process.

The Injunction Orders are also explicit that the Rosemere Judgments are not an obligation or debt of the property owners, yet payment of a special assessment would result in the property owners paying that liability in direct perversion of the Injunction Orders which this Court has affirmed.

E. The Contempt Order is not on an ex post facto application of a substantively new directive.

The Lytle Trust argues that the May 2018 Order was substantively modified by the Contempt Order ex post facto and cites cases standing for the proposition that injunctions cannot be applied retroactively. Appellant's Br. 27-29. *See Grady*

v. Grady, 307 N.W.2d 780, 781 (Neb. 1981) (the court refused to hold the appellant in contempt for actions that were in violation but occurred prior to the date of the injunction); *Walling v. Crane*, 158 F.2d 80, 84 (5th Cir. 1946) (holding that a person may not be held in contempt of court in advance of an order requiring them to pay a sum certain). These cases are inapplicable here.

The Lytle Trust engaged in the contemptable conduct *after* the Injunction Orders were entered. Specifically, the district court entered the May 2018 Order and then the Lytle Trust attempted to circumvent it by filing the Receiver Action two weeks later. The district court did not retroactively change the Injunction Orders when deciding how they applied to the Lytle Trust's subsequent conduct. Under the Lytle Trust's interpretation, a contempt order would always be an ex post facto application. On the contrary, the district court exercised its inherent power to enforce its orders and appropriately followed the law of the case. In presenting its substantive analysis and application at the hearings and in the written orders, the district court demonstrated that it did not alter the May 2018 Order, but merely applied the existing injunctions to the Lytle Trust's new actions.

F. The Contempt Order does not strip the Lytle Trust of all its judgment creditor rights.

The Lytle Trust exclaims that the Contempt Order has effectively stripped it of all judgment creditor rights. Appellant's Br. 23. However, the Lytle Trust concedes that the Contempt Order "does not restrict the Lytle Trust's legal right to avail itself of all collection remedies against the judgment-debtor Association."

Appellant's Br. 16-17. Even at the hearing on the Motion for Clarification, the Lytle Trust stated:

> And by signing the Plaintiff's proposed order, it appears the Court has answered that question in the negative; that no, the Court has not stripped the Lytle Trust of all of its judgment creditor rights....
>
> [T]hen my assumption would be all other judgment creditor rights would be against the permanent injunction, but that does not appear to be the case in light of the Court's entry of the Plaintiff's proposed order.

7 App. 1524:18-22, 1525:24-1526:2. In fact, the Lytle Trust has availed itself of execution and garnishment, clearing the Association's bank account years ago. 4 App. 820:16.

The Lytle Trust is upset with two problems of its own making. First, the Lytle Trust wants to collect the Rosemere Judgments from the Respondents, but that has been prohibited and the Lytle Trust has no judgment against the Respondents. The CC&Rs expressly grant a right of action between property owners as the *exclusive* remedy for violations of the CC&Rs (1 App. 168 at ¶ 24), which the Lytle Trust concedes that it has not done. Appellant's Br. 25. ("[T]he Lytle Trust had not availed itself of an appropriate legal mechanism to pursue the Property Owners directly."). To allow indirect collection would circumvent this express remedy and subject Respondents to liability without due process of law.

Second, the Lytle Trust is upset that the Association does not have assets to pay the Rosemere Judgments. That is a common problem encountered by many creditors, but it does not mean that the creditor has no creditor rights. A debtor

with no assets does not magically allow the creditor to collect its judgment from someone else.

Many years ago, the Lytle Trust elected its remedies and was successful in obtaining the relief it sought against the Association, including judgments declaring the Amended CC&Rs *void ab initio* and the Association a limited purpose association. Perhaps the Lytle Trust is disappointed by the legal effect its own strategy has had on its ability to collect damages, but the Court cannot save the Lytle Trust from its own litigation decisions.

CONCLUSION

The Injunction Orders, as affirmed by this Court, clearly and unambiguously precluded the Lytle Trust from enforcing the Rosemere Judgments against the Respondents or their properties. Seeking a receiver to make assessments on the Respondents' properties to pay the Rosemere Judgments clearly violated this prohibition. Based on the foregoing, the district court did not abuse its discretion when it found the Lytle Trust in contempt. For the foregoing reasons, the Contempt Order should be upheld.

Dated this 14th day of May 2021. CHRISTENSEN JAMES & MARTIN, CHTD.

By: */s/ Wesley J. Smith*

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Respondents' Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because the brief was prepared in a proportionally spaced typeface using Microsoft Word 365, Times New Roman, size 14-point font.

2. I further certify that this Respondents' Answering Brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 13,857 words.

3. I hereby certify that I have read this Respondents' Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript of appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of May 2021.

CHRISTENSEN JAMES & MARTIN

By: */s/ Wesley J. Smith*
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CERTIFICATE OF SERVICE

I hereby certify that on this date, the 14th day of May 2021, I submitted the foregoing **RESPONDENTS' ANSWERING BRIEF (Docket 81390)** 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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