

**In the Supreme Court of Nevada**

TRUDI LEE LYTLE and JOHN ALLEN  
LYTLE, as trustees of the Lytle  
Trust,

Appellants,

*vs.*

SEPTEMBER TRUST, DATED MARCH  
23, 1972; GERRY R. ZOBRIST AND  
JOLIN G. ZOBRIST, as trustees of the  
GERRY R. ZOBRIST AND JOLIN G.  
ZOBRIST FAMILY TRUST; RAYNALDO  
G. SANDOVAL AND JULIE MARIE  
SANDOVAL GEGEN, as Trustees of  
the RAYNALDO G. AND EVELYN A.  
SANDOVAL JOINT LIVING AND  
DEVOLUTION TRUST DATED MAY 27,  
1992; DENNIS A. GEGEN AND JULIE  
S. GEGEN, husband and wife, as  
joint tenants,

Respondents.

Electronically Filed  
Apr 04 2022 08:47 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION FOR EXTENSION  
TO FILE OPENING BRIEF AND APPENDIX**

Appellants Trudi Lee Lytle and John Allen Lytle, as trustee of the Lytle Trust, request to extend the deadline for filing the opening brief and appendix by 30 days, until May 4, 2022. NRAP 31(b)(3). This is the first request to extend the deadline for this brief since the Court

stayed briefing pending resolution of Docket No. 81390 (doc. 22-03671).<sup>1</sup>

Without an extension, the brief would be due April 4, 2022.

This is an appeal from an order awarding attorney fees. NRAP 3A(b)(8). A significant portion of those fees relate to proceedings that culminated in an order holding appellants in contempt of court. Appellants intend to contest that order via writ petition in the next few days. *See Pengilly v. Rancho Santa Fe Homeowners Ass’n.*, 116 Nev. 646, 649-50, 5 P.3d 569, 571 (2000) (explaining that contempt orders that seek to ensure “compliance with the district court’s orders” are appropriately challenged via writ petition). As the underlying contempt order soon will be under review itself, the opening brief in this case will refer heavily to the anticipated writ proceeding because reversal of the contempt order would necessitate reversing the portion of this fee award attributable to those contempt proceedings. *Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 579–80, 427 P.3d 104, 112 (2018) (concluding an award of attorney

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<sup>1</sup> Prior to the parties’ joint motion to stay, appellants extended the opening brief and appendix by motions from June 14, 2021, to September 13, 2021, pursuant to NRAP 31(b)(3).

fees and costs must necessarily be reversed when the underlying decision upon which the award was based is reversed); *Bower v. Harrah's Laughlin, Inc.*, 124 Nev. 470, 495–96, 215 P.3d 709, 726 (2009) (citing *Doud v. Las Vegas Hilton Corp.*, 109 Nev. 1096, 1106, 864 P.2d 796, 802 (1993)) (“Notably, if we reverse the underlying decision of the district court that made the recipient of the costs the prevailing party, we will also reverse the costs award.”).

The procedural timing is odd. Normally, an appeal from an order granting attorney fees under NRAP 3A(b)(8) would follow an appeal from the underlying judgment under NRAP 3A(b)(1). And this appeal had followed the appeal from the underlying contempt order (Docket No. 81390) until recently, when it was dismissed on the jurisdictional basis that the contempt order would need to be challenged by a writ petition instead of an appeal.<sup>2</sup> (See Doc. 22-05423.) The remittitur in

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<sup>2</sup> As appellants explained in their candid opposition to a motion to dismiss the appeal from the contempt order (no. 81390), they appealed—as opposed to filing a writ petition—because they understood the contempt order might be construed *effectively* to expand the scope of the order they were accused of violating, which would render it appealable:

Appellants Trudi Lytle and John Lytle, Trustees of the Lytle

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Trust, oppose the motion to dismiss this appeal. The Lytles are prepared to contest the subject order holding them in contempt via writ petition if necessary. To be prudent, however, they pursue this appeal first because the order holding them in contempt appears to fall within a jurisdictional gray area. While the contempt order purports merely to enforce a judgment granting injunctive relief, the Lytles contend the district court effectively altered the terms of the underlying injunction in order to find they violated it. Thus, should this Court agree with appellants' interpretation of the contempt order and the injunction the Lytles allegedly violated, those conclusions would render the contempt order appealable.

(Doc. 2020-43367 at 1.) And they noted the practical concern that where an order *may* be appealable, prudence dictates that the aggrieved party first attempt an appeal, and then petition for a writ in the event the order is deemed not appealable:

If appellants were to forego an appeal from the underlying order because it ostensibly is a simple contempt order and file a writ petition instead, and this Court were to determine the order is substantively appealable, this Court likely would deny the writ petition on the basis that the order is appealable. *See Pan v. Eighth Judicial Dist. Court* ... In that event, it would be too late to pursue an appeal. *Rust v. Clark Cty. Sch. Dist.* ... On the other hand, a petition for extraordinary relief is not subject to a jurisdictional deadline although the doctrine of laches applies. *Mosley v. Eighth Judicial Dist. Court* ...

(Doc. 2020-43367 at 4.) This Court acknowledged the jurisdictional conundrum in its order denying the motion to dismiss, noting “the determination of the jurisdictional issue appears to be intertwined with the merits of this appeal.” (Doc. 21-00620.)

On February 18, 2022, the Court dismissed the appeal, concluding the contempt order did not *actually* alter appellants' “rights arising from the final judgment.” (Doc. 22-05423 at 2.) Of course, the Court did not reach the merits of whether the district court abused its discretion in holding appellants in contempt. The Court explained the contempt order would need to be challenged by a writ petition. (*See Id.*)

case No. 81390 issued on March 15, 2022. Appellants will file the writ petition before April 14, which will put the horse back in front of the cart.

Therefore, appellants move the Court for an extension of 30 days in which to file their opening briefing in this appeal from the order granting fees, until May 4, 2022, to allow for the arguments that will rely on the anticipated writ proceeding. *See Frederic & Barbara Rosenberg Living Tr.*, 134 Nev. at 579, 427 P.3d at 112; *Bower*, 124 Nev. at 495, 215 P.3d at 726.

Counsel appreciate this Court's courtesy.

Dated this 4th day of April, 2022.

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By: /s/Joel D. Henriod

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## CERTIFICATE OF SERVICE

I certify that on April 4, 2022, I submitted the foregoing “Motion for Extension to File Opening Brief and Appendix” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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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*

/s/ Jessie M. Helm  
An Employee of Lewis Roca Rothgerber  
Christie LLP