
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
Jun 22 2022 11:25 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

APPELLANTS' AMENDED OPENING BRIEF

JOEL D. HENRIOD (SBN 8492)
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellants

NRAP 26.1 DISCLOSURE

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

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

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

Dated this 22nd day of June, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Joel D. Henriod

JOEL D. HENRIOD (SBN 8492)

DANIEL F. POLSENBERG (SBN 2376)

DAN R. WAITE (SBN 4078)

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

(702) 949-8200

Attorneys for Appellants

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iv
JURISDICTION	v
ROUTING STATEMENT	v
ISSUE PRESENTED.....	vi
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS.....	1
<i>The Lytle Trust Procures Judgments Against the Association</i>	<i>2</i>
<i>The Lytle Trust is Enjoined from Enforcing the Judgments Directly Against the Association’s Members</i>	<i>2</i>
<i>This Court Affirms the Injunction</i>	<i>5</i>
<i>The District Court Holds the Lytle Trust in Contempt of the Injunction for Petitioning for Appointment of a Receiver</i>	<i>5</i>
<i>The District Court Awards Fees and Costs Based on the Contempt Order</i>	<i>8</i>
<i>The Contempt Order Currently is Under this Court’s Review.....</i>	<i>8</i>
SUMMARY OF ARGUMENT	9
ARGUMENT	9
A. A Fee Award Must Be Reversed When the Underlying Decision on Which it Is Predicated Is Reversed	9

B. A Portion of the Award of Fees and Costs is Attributable to the Contempt Order	10
CONCLUSION	11
CERTIFICATE OF COMPLIANCE.....	vii
CERTIFICATE OF SERVICE.....	viii

TABLE OF AUTHORITIES

Cases

<i>Bower v. Harrah's Laughlin, Inc.</i> , 124 Nev. 470, 215 P.3d 709 (2009)	9
<i>Doud v. Las Vegas Hilton Corp.</i> , 109 Nev. 1096, 864 P.2d 796 (1993)	10
<i>Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC</i> , 134 Nev. 570, 427 P.3d 104 (2018)	9

Statutes

NRS 22.100(3)	8, 10
NRS 116.3117	3, 5

JURISDICTION

Trudi Lee Lytle and John Allen Lytle, as trustees of The Lytle Trust (“Lyttles” or “the Lytle Trust”), appeal from an award of attorney fees and costs (6 App. 1327), which is appealable as “a special order entered after final judgment” pursuant to NRAP 3A(b)(8). Notice of entry of the order was served on August 11, 2020, and the Lytle Trust timely appealed on August 21, 2020. (6 App. 1338.)

The district court amended its rationale for the fee award (6 App. 1484) following an order of this Court granting limited remand (Doc. 21-10452). Notice of entry of that order was served on May 4, 2021 (6 App. 1481), after which the Lytle Trust amended its appeal to include it on June 3, 2021. (6 App. 1496.)

ROUTING STATEMENT

This appeal presumptively would be routed to the Court of Appeals because it contests a post-judgment award of fees and costs in a civil case, and the award is less than \$250,000 in amount. *See* NRAP 17(b)(5, 7). As a practical matter, however, the appeal should be routed to whichever court will resolve the pending writ proceeding in which

appellants are contesting the contempt order underlying this award of fees and costs, *Lytle v. Eighth Judicial District Court* (case no. 84538).

ISSUE PRESENTED

1. Must an award of attorney fees and costs be reversed when an underlying decision upon which the award was based is reversed?

STATEMENT OF THE CASE

This is an appeal from an order granting fees and costs entered by THE HONORABLE TIMOTHY WILLIAMS, in part for attorney time and expenses incurred in moving to hold defendant-appellants in contempt for allegedly violating an injunction order, which contempt order now is under review in case no. 84538.

STATEMENT OF FACTS

Defendant-appellants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, as trustees of THE LYTLE TRUST (“Lytles” or “the Lytle Trust”) own a lot in a residential subdivision governed by the nonprofit corporation ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (the “Association”). The Association consists of nine lot owners. Plaintiff-respondents are four of the nine property owners who also are members of the Association (these “Property Owners”).¹

¹ The plaintiff-respondents are (1) SEPTEMBER TRUST, DATED MARCH 23, 1972; (2) GERRY R. ZOBRIST and JOLIN G. ZOBRIST, as trustees of the GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; (3) RAYNALDO G. SANDOVAL and JULIE MARIE SANDOVAL GEGEN, as Trustees of the RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and (4) DENNIS A. GEGEN and JULIE S. GEGEN.

The subject order awards fees and costs in part for attorney time and expenses incurred while seeking to have the Lytles held in contempt of a permanent injunction.

***The Lytle Trust Procures Judgments
Against the Association***

Through the Association, the Lytles' neighbors waged vicious battles with them for more than a decade ("Rosemere Litigation"), resulting in entry of three judgments in favor of the Lytle Trust against the Association ("Rosemere Judgments"), which have a current combined balance of more than \$1.8 million. (3 App. 529, 3 App. 532, 3 App. 535.) The Association's actions against them were so outrageous that the Rosemere Judgments include a punitive damage award in excess of \$800,000. (3 App. 533.) These judgments, the last of which was entered in 2017, have never been reversed or otherwise invalidated.

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

Although its judgments were against the "Rosemere Estates Property Owners Association," the Lytle Trust recorded abstracts of the judgment directly against their neighbors' properties. (3 App. 529, 532.)

In various consolidated suits, some of the property owners sued the Lytle Trust seeking declaratory and injunctive relief to restrain the Lytle Trust from foreclosing on their properties, and to strike the abstracts of judgment clouding their titles. (3 App. 540, 624.) The district court granted that relief in multiple orders, which were appealed and affirmed. (*See* Case nos. 73039 and 76198.) The district court also awarded fees to the various property owners arising from the injunction actions, which orders also were appealed and affirmed. (Case nos. 77007 and 79753.)

The basis for the district court's (Judge Bailus's) permanent injunction in favor of the Property Owners, entered on May 24, 2018 ("May 2018 Order"), was twofold. First, the Property Owners were "not parties" in the Rosemere Litigation. (3 App. 630:1–4.) The judgment debtor is the Association, not the Property Owners. (3 App. 631:5–9.) Second, the Association is not the kind of homeowners' association that is subject to NRS 116.3117, which allows judgment creditors of an association to record judgments directly against all association homeowners' properties. (3 App. 630:20–24.)

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

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

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

(3 App. 633:10–19 (emphasis added).)

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

This Court Affirms the Injunction

The Lytle Trust appealed the May 2018 Order in case no. 73039. This Court affirmed that injunction specifically on the grounds that the Property Owners were not parties to the Rosemere Judgments and that NRS 116.3117 does not apply to this Association. *See* March 2, 2020 “Order of Affirmance,” Doc. # 20-08333, at 3-4 (1 App. 123–24.)

The District Court Holds the Lytle Trust in Contempt of the Injunction for Petitioning for Appointment of a Receiver

After the district court permanently enjoined the Lytle Trust from enforcing the judgments directly against the non-party, non-judgment-debtor Property Owners, the Lytle Trust focused its collection efforts on the judgment-debtor Association. Because the Association’s officers had resigned and allowed the Association to become defunct after the Lytle Trust obtained their judgments, the Lytle Trust commenced an action

for appointment of a receiver² to, among other things, satisfy the judgments.³

These Property Owners reacted to the receivership action by reopening the underlying case, and moving Judge Williams to hold the Lytle Trust in contempt for violating Judge Bailus's May 2018 Order. (3 App. 670.) Although the receiver was appointed over the judgment-debtor Association, the Property Owners argued the receivership petition violated the May 2018 Order *indirectly* because the Association would have to issue assessments against the Property Owners to satisfy the Rosemere Judgments. (3 App. 676.) Despite the Lytle's explanation of why appointment of a receiver over the judgment-debtor Association was perfectly consistent with the May 2018 injunction that precluded

² *Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust v. Rosemere Estates Property Owners' Association*, Eighth Judicial District Court, case no. A-18-775843-C, pending before THE HONORABLE JOANNA S. KISHNER ("receivership action").

³ To ensure the receiver would have the same powers the Association otherwise had, the petition sought to vest the receiver with broad powers. (3 App. 652.) These powers included issuing assessments to satisfy the Association's debts and judgment obligations, as well as placing liens on properties of Association members who did not pay. (See 3 App. 654.) The Lytles knew the Association had exercised these assessment and lien powers in the past. (3 App. 698.)

direct execution of their judgments against non-parties,⁴ the district court held the Lytles in contempt. The court reasoned that “[t]he May 2018 Order’s permanent injunction clearly precluded the Lytle Trust from doing *anything* as it *relates to* enforcing and recording the Rosemere Judgments against the [Property Owners] or their properties.” (1 App. 82 (emphasis added)). The court concluded “the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in *any way, shape, or form.*” (*Id.* at 1 App. 82.) As the court further explained in ruling on

⁴ As detailed in appellants’ writ petition pending before this Court in case no. 84538, the Lytle Trust opposed the motion on several grounds. It is commonplace to appoint receivers over non-paying judgment debtors. (Writ Petition at 7, case no. 84538.) The Lytle Trust’s effort to enforce the judgment against the Association was correct for the same reason its previous liens directly against the Property Owners had been misguided; the Association is the judgment debtor and an independent corporate entity separate and distinct from its property owner members. (*Id.*) Judge Bailus’s May 2018 Order did not enjoin the Lytle Trust from lawfully enforcing its judgments against the judgment-debtor Association. (3 App. 633.) And the May 2018 Order did not eliminate the Association’s obligation to pay its debts, or strip its power to assess its members to pay those debts, nor could the order do such because the Association was not a party to the action. In short, the Property Owners were not somehow immunized from the consequences of their Association gathering funds to pay its debts merely because the Lytle Trust had been enjoined from *going around* the Association to lien their properties directly. (3 App. 633.)

a motion for clarification, “any” action means “direct or *indirect*.” (Writ Petition at 9, case no. 84538.) Thus, the court extrapolated that even collection efforts aimed directly against the judgment-debtor Association that “*results in* payment of the Judgments by the Plaintiffs” violates the May 2018 Order. (*Id.* (emphasis added).)

The District Court Awards Fees and Costs Based on the Contempt Order

On August 11, 2020, the district court awarded respondents fees in the amount of \$76,304.67. (6 App 1336.) The district court also awarded costs in the amount of \$4,145.08. (6 App. 1337.) Part of the award stems from time and expenditures incurred prior to the contempt proceedings. But \$20,928.36 of it relates to respondents’ efforts to procure the Contempt Order pursuant to NRS 22.100(3). (1 App. 65; 2 App. 305; 6 App. 1330-33; 8 App. 1538–39.)

The Contempt Order Currently is Under this Court’s Review

The Lytles have sought this Court’s review of the contempt order. On April 11, 2022, they filed a “Petition for Writ of Mandamus or, Alternatively, Prohibition,” which initiated case no. 84538. *See* Doc. # 2022-11390. It remains pending.

This appeal followed.

SUMMARY OF ARGUMENT

The portion of the subject award of fees and costs attributable to the Contempt Order will have to be reversed when this Court determines the district court abused its discretion and grants the Lytle's writ petition in case no. 84538.

ARGUMENT

When this Court grants the Lytles' writ petition, the award of fees and costs attributable to the contempt order must be reversed as well.

A. A Fee Award Must Be Reversed When the Underlying Decision on Which it Is Predicated Is Reversed

If this Court reverses or remands a decision on which fees and costs subsequently have been granted, it likewise must reverse and remand that award of attorney fees and costs. *See 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 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.”).

**B. A Portion of the Award of Fees and Costs
is Attributable to the Contempt Order**

The subject award of fees and costs is based in significant part on the Contempt Order. Specifically, the district court awarded fees pursuant to NRS 22.100(3), which provides:

...if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

(*See* 6 App. 1350.) Thus, the portion of the award of fees and costs attributable to the contempt proceedings must be reversed when this Court grants the Lytles' pending writ petition.

CONCLUSION

For the forgoing reasons, the portion of the district court's order awarding fees and costs for time and expenditures to procure the Contempt Order must be reversed when this Court grants the Lytles' writ petition in case no. 84538.

Dated this 22nd day of June, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Joel D. Henriod

JOEL D. HENRIOD (SBN 8492)

DANIEL F. POLSENBERG (SBN 2376)

DAN R. WAITE (SBN 4078)

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

(702) 949-8200

Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

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

2. I certify that this brief complies with the type-volume limitations of NRAP 29(e) because it contains 1,967 words.

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

Dated this 22nd day of June, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Joel D. Henriod
JOEL D. HENRIOD (SBN 8492)
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that on June 22, 2022, I submitted the foregoing
“Appellants’ Amended Opening Brief” for filing *via* the Court’s eFlex
electronic filing system. Electronic notification will be sent to the
following:

Kevin B. Christensen
Wesley J. Smith
CHRISTENSEN JAMES & MARTIN
7740 W. Sahara Avenue
Las Vegas, Nevada 89117

*Attorneys for 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*

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