
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;
DENNIS A. GEGEN AND JULIE S. GEGEN,
HUSBAND AND WIFE, AS JOINT TENANTS,

Respondents.

No. 81689

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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

RESPONDENTS' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

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 disqualification or recusal.

Respondents are September Trust dated March 23, 1972 (“September Trust”), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust (“Zobrist 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 (“Sandoval Trust”), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants (“Gegens”) (collectively “Respondents”). The Respondents are trusts and/or individuals. They have no parent corporation and no publicly held company owns stock in any of them.

Attorneys Kevin B. Christensen, Wesley J. Smith and Laura J. Wolff of the firm Christensen James & Martin, Chtd., have appeared for and represented the Respondents throughout this litigation.

Dated this 19th day of July 2022. CHRISTENSEN JAMES & MARTIN, CHTD.

By: /s/ Wesley J. Smith
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STATEMENT OF FACTS

The issue presented—whether a fees award should be reversed when the underlying decision on which the fees award was based is reversed¹—requires consideration of very few facts to resolve. These facts are limited to the following:

- By a written order issued on May 22, 2020, the district court held the Lytle Trust in contempt of violating an Injunction affirmed by this Court. (1 App. 70-86.)²
- On August 11, 2020, the district court issued an order awarding fees to the Respondents in the amount of \$76,304.67. (6 App. 1336.)
- The Fees Order was amended on May 4, 2021, without changing the amount of fees awarded. (6 App. 1481-95.)
- \$20,928.36 of the fees awarded 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 Lytle Trust filed an appeal of the Contempt Order on August 11, 2020, initiating Case No. 81390, which was dismissed by the Supreme Court on February 18, 2022 (Doc. # 2022-05423), thus leaving the Contempt Order in force.

¹ As shown below, this Court has previously decided this issue and an appeal is not required to accomplish the desired result, demonstrating that this Appeal was completely unnecessary.

² The Injunction upon which the Contempt Order is based was affirmed on March 2, 2020, in *Lytle v. September*, Nos. 76198 & 77007, Doc. 2020-08333, 458 P.3d 361 (Table), 2020 Nev. Unpub. LEXIS 237, *3 (Nev. 2020).

- The Lytle Trust filed a Petition for Writ of Mandamus or Alternatively, Prohibition (“Writ Petition”) seeking extraordinary relief from the Contempt Order on April 11, 2022, which initiated Case No. 84538.
- The Respondents filed an Answer to the Writ Petition in Case No. 84538 as Real Parties in Interest on June 9, 2022 (Doc. # 2022-18349), wherein they opposed issuance of an extraordinary writ.
- As of the date of filing this brief, no decision has been entered on the Writ Petition, and the Contempt Order remains in full force and effect.

ARGUMENT

It is not proper to reverse the Fees Order because the Contempt Order from which it sprung remains in full force. Even if the Contempt Order is reversed, which is not the subject of this Appeal, the proper mechanism for addressing the Fees Order is a motion for relief from the Fees Order under NRCP 60(b)(5). Therefore, this Appeal is both premature and procedurally improper and should be dismissed.

A. The district court’s award of fees for contempt was proper under NRS 22.100(3).

The Lytle Trust’s sole argument on appeal is that the fees award must be reversed when the Contempt Order is reversed. *See* Appellants’ Amended Opening Brief, Doc. 2022-19702. There are no other grounds argued for reversal. *Id.* Thus, the Lytle Trust agrees that the district court properly awarded fees for contempt under NRS 22.100(3), so long as the underlying Contempt Order is undisturbed. The Contempt Order has not been reversed as of the date of filing this answering brief. Thus, this Appeal is moot and must be dismissed.

B. The petition for extraordinary relief does not affect the Contempt Order or provide grounds for reversal of the Fees Order until it is actually decided by the reviewing court.

The Lytle Trust appealed the Contempt Order and that appeal was dismissed by this Court. *See* Case No. 81390, Doc. # 2022-05423. The fact that the Lytle Trust has now filed a petition for extraordinary relief from the Contempt Order does not affect the Contempt Order or Fees Order in any way unless and until the Writ Petition is decided *in their favor*. This is long-settled black letter law.

An injunction duly issuing out of a court of general jurisdiction...must be obeyed...however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.

Howat v. Kansas, 258 U.S. 181, 190, 42 S. Ct. 277, 281 (1922); *People v. Nance*, 189 Ill. 2d 142, 145, 244 Ill. Dec. 1, 3, 724 N.E.2d 889, 891 (2000) (“An injunction remains in full force and effect, however, until it has been vacated or modified by the court which granted it or until the order or decree awarding it has been set aside on appeal. Unless it has been overturned or modified by orderly processes of review, an injunction must be obeyed, even if it is erroneous.”).³

³ The Writ Petition did not stay the Contempt Order. *See Nken v. Holder*, 556 U.S. 418, 129 S.Ct. 1749, 1760-61 (2009) (The grant of a stay pending appeal is “not a matter of right” but rather “an exercise of judicial discretion” and “the party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.”); NRAP 8(a)(1)(C) (a party must move the district court for “an order suspending, modifying, restoring or granting an injunction while an appeal or original writ petition is pending.”).

Therefore, this Appeal is based on the mere possibility of a future event, and it fails this Court's test for justiciability:

Generally, we will not decide moot cases. *Nat'l Collegiate Athletic Ass'n v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981). A case is moot if it "seeks to determine an abstract question which does not rest upon existing facts or rights." *Id.* Mootness is a question of justiciability. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). The dispute must continue through all of the controversy's phases. *Id.* A case may become moot due to later occurrences despite the existence of a "live controversy" at the beginning of the litigation. *Id.*

Newman v. State, 132 Nev. 340, 344, 373 P.3d 855, 857 (2016); *see also Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 568, 170 P.3d 989, 991 (2007) (courts lack jurisdiction to rule on issues that are not yet ripe for decision). Because there has been no decision vacating the Contempt Order, there is no "live controversy" upon which this Appeal may be maintained. The Court cannot decide this Appeal in the Appellant's favor based on the mere possibility of a future event. If this Appeal is decided prior to decision on the Writ Petition, the Appeal must be dismissed as either premature or moot.

C. The most likely outcome is denial of the Writ Petition, which would result in no grounds for reversal of the Fees Order.

The underlying Injunction was affirmed by this Court and the Appellants' first attempt to reverse the Contempt Order already failed. The possibility of reversal of the Contempt Order as a result of the Writ Petition is highly improbable.⁴ The relief

⁴ This Appeal is not the vehicle for substantive review of the Contempt Order, which can now only be addressed in the Writ Petition. To the extent that the Court determines that it must look at the merits of the Writ Petition to decide this Appeal,

sought by Appellants in the Writ Petition is called extraordinary for a reason. Its consideration is “purely discretionary,” *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991), and is subject to the challenging “manifest abuse of discretion” standard of review. *Pengilly v. Rancho Santa Fe Homeowners Ass’n*, 116 Nev. 646, 650, 5 P.3d 569, 571-72 (2000). “Proper deference” must be given “to the district court’s intricate knowledge of the proceedings.” *In re Water Rights of the Humboldt River*, 118 Nev. 901, 907, 59 P.3d 1226, 1229 (2002). Contempt orders “should not lightly be overturned” because “[w]hether a person is guilty of contempt is generally within the particular knowledge of the district court.” *Pengilly*, 116 Nev. at 650, 5 P.3d at 571. For these reasons, Respondents believe that the Writ Petition will be denied. In that circumstance, the Fees Order cannot be reversed on this Appeal because there are no other grounds argued by the Appellants.

D. This Appeal is unnecessary and procedurally improper.

In the unlikely event that the Writ Petition is granted and the Contempt Order is reversed, the Nevada Rules of Civil Procedure provide a mechanism for addressing the Fees Order with the district court. Under NRCP 60(b)(5), the Lytle Trust could move for relief from the Fees Order because it would be “based on an earlier judgment that has been reversed or vacated.” A separate appeal is a waste of this Court’s resources because Rule 60(b) provides a complete and adequate procedure under the circumstances.

the Respondents hereby request that the Court take judicial notice of their Answer of Real Parties in Interest to Petition for Writ of Mandamus, or Alternatively, Prohibition, filed on June 9, 2022 in Case No. 84538, Doc. 2022-18349, which Respondents hereby incorporate by reference.

The cases cited by the Appellants do not require a different result or justify this Appeal. In each instance, the Court reversed the judgment and the resulting fee award in the same order. *See Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 579–80, 427 P.3d 104, 112 (2018) (in a consolidated appeal, the Court reversed judgment as to a particular claim and the associated fees award in the same order); *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 495–96, 215 P.3d 709, 726 (2009) (in a consolidated appeal, the Court reversed summary judgment and an award of attorney fees and costs in the same order); *Doud v. Las Vegas Hilton Corp.*, 109 Nev. 1096, 1106, 864 P.2d 796, 802 (1993)) (the Court reversed summary judgment and fees award in same case and order). There is no authority cited by the Appellants justifying deviation from the procedural mechanism found in Rule 60 here. If anything, these cases demonstrate that the district court is extremely likely to grant a Rule 60(b) motion for relief from the Fees Order if the Writ Petition results in vacation of the Contempt Order. Most importantly, requiring the Appellants to utilize Rule 60 instead of proceeding with this Appeal avoids the issues of justiciability discussed above.

E. This Appeal was maintained for an improper purpose.

As shown above, binding Nevada case law already requires reversal of a fees award if the underlying ruling on which the award was based is reversed. Controlling Court Rules direct the Appellants to bring a motion to the district court to obtain that result. This, coupled with the fact that the Lytle Trust offered no argument for reversal of the Fees Order itself (arguing only that if the Writ Petition is granted the fees award must be reversed) proves that this Appeal can provide no benefit to the

Appellants independent of the separate Writ Petition already on file. In other words, this Appeal is wholly frivolous. It could only have been maintained to force Respondents to incur yet additional fees. *See* NRAP 28.2(2) (requiring a certificate from an attorney representing that every appeal brief is “not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or *needless increase in the cost of litigation*” (emphasis added)); NRAP 38(a) (“If the Supreme Court or Court of Appeals determines that an appeal is frivolous, it may impose monetary sanctions”).

CONCLUSION

Appellants present a seemingly uncontroversial issue for the Court’s consideration – reversal of a fees order if the underlying contempt order is reversed. But the Contempt Order has not been reversed, which shows that the entire basis for this Appeal of the Fees Order is fantasy. If, prior to the time for decision of this Appeal, the Writ Petition is denied, then the portion of the Fees Order pertaining to contempt must be affirmed. On the other hand, if the Writ Petition is granted, this Appeal should be dismissed to allow Appellants to pursue the proper mechanism for obtaining relief from the Fees Order from the district court under NRCP 60(b)(5) .

Dated this 19th day of July 2022.

CHRISTENSEN JAMES & MARTIN, CHTD.

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CERTIFICATE OF COMPLIANCE

1. I hereby 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 365 with a proportionally spaced typeface, Times New Roman, size 14-point font.
2. I further certify that this brief complies with the 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 2,086 words.
3. I hereby certify under NRAP 28.2(a) that I have read this 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). I understand that I may be subject to sanctions if it does not.

DATED this 19th day of July 2022.

CHRISTENSEN JAMES & MARTIN

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

I hereby certify that on this date, the 19th day of July 2022, I submitted the foregoing **RESPONDENTS' ANSWERING BRIEF** 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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