Case No. _____

In the Supreme Court of Nevada

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

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and THE HONORABLE TIMOTHY C. WILLIAMS, District Judge,

Respondents,

and

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

Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION

With Supporting Points and Authorities

District Court Case Nos. A-16-747800-C and A-17-765372-C

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PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION

As set out fully in the statement of facts and procedural history and argument on the merits that follow, petitioners aver:

1. Petitioners TRUDI LEE LYTLE and JOHN ALLEN LYTLE, as Trustees of THE LYTLE TRUST ("Lytles" or "the Lytle Trust"), bring this petition to contest an order of the respondent judge, the HONORABLE TIMOTHY C. WILLIAMS, holding them in contempt of court and awarding real parties in interest penalties and expenses. (7 App. 1562.)

The Underlying Injunction Allegedly Violated

2. The Lytle Trust won judgments against their homeowners' association, the "Rosemere Estates Property Owners Association," a nonprofit corporation.

3. In May 2017, the Lytle Trust recorded abstracts of the judgments directly against properties of the other Association members, including the real parties in interest ("Property Owners"). (1 App. 58, 206.) Although the Property Owners were not judgment debtors, the Lytles believed that NRS 116.3117 entitled them to lien the properties.

4. The Property Owners filed suit to clear their titles and to

enjoin petitioners from executing their judgments against them directly, commencing the underlying action, Consolidated cases A-16-747800-C and A-17-765372-C. (See 1 App. 55.)

5. On May 24, 2018, the Honorable Mark Bailus granted the requested relief, permanently enjoining the Lytle Trust from "taking any action in the future *directly* against the Plaintiffs or their properties[.]" (3 App. 712:10 (emphasis added).) Judge Bailus reasoned that NRS 116.3117 did not apply to associations of this sort and, therefore, did not provide an exception to the general rule that judgment creditors may record or otherwise execute judgements only against named judgment debtors. (3 App. 709) And the Property Owners were not parties to the Lytles' lawsuits against the Association. (3 App. 710.) When the Lytles appealed from the May 2018 order (6 App. 1470), this Court affirmed, agreeing with both its conclusion and rationale. (4 App. 834.)

6. The district court did not invalidate petitioners' judgments, however, or enjoin execution efforts upon the judgment-debtor Association.

Lytles Petition for Receivership Over the Association

7. On October 24, 2019, having been told to execute their judgments only against the judgment-debtor Association, the Lytle Trust proceeded to commence an action for appointment of a receiver over the Association to, among other things, satisfy the judgments, as officers had resigned and allowed it to become defunct after the Lytles obtained their judgments. (*See* 4 App. 816.)

The Injunction Case is Reopened, and the Court Holds the Petitioners in Contempt

8. On March 4, 2020, the Property Owners returned to the district court to reopen the underlying injunction case and moved to have the Lytles held in contempt of the May 2018 Order. (3 App. 736.) Although the receiver was appointed over the judgment-debtor Association, the Property Owners contended the receivership affected them *indirectly* because the Association likely would attempt to issue assessments against them to satisfy the judgments.

9. On May 22, 2020, Judge Timothy Williams entered the subject order holding the Property Owners in contempt of the May 2018 Order. 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." (6 App. 1449:24-26] (emphasis added)). The court concluded "the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans[1] in *any way, shape, or form*." (*Id*. at 6 App. 1449:26-27].) As the district court further explained in ruling on a motion for clarification, "any" action means "direct ***or indirect***." (7 App. 1557:26].) 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. (5 App. 709:10-11 (emphasis added).)

[1] Any conclusion in the Contempt Order that the May 2018 Order involved the Dismans is clear error. The Dismans bought their home from the Boulden Trust after the district court entered its 2017 Order, which is not at issue in this petition. Neither the Boulden Trust nor the Dismans are mentioned in the 2018 Order's permanent injunction. Thus, while, *arguendo*, the Dismans stepped into the shoes of the Boulden Trust as it relates to the 2017 Order, the Dismans are not beneficiaries of the 2018 Order's permanent injunction. Indeed, the Dismans have no standing here because the Contempt Order specifically found a violation of only the 2018 Order. (6 App. 1451:5-8; *see also*, 7 App. 1557:19-20 ("[t]he Court did not hold the Lytle Trust in contempt for violating the April 2017 Order . . . " that concerned the Dismans.)).

The Lytles Appealed from the Contempt Order, which this Court Dismissed for Lack of Jurisdiction

10. On June 22, 2020, petitioners appealed from the Contempt Order, commencing Case No. 81390. (6 App. 1470.)

11. The Property Owners moved to dismiss the appeal, pointing out that an order holding one in contempt of court is not appealable but rather is contestable by a writ petition. (7 App. 1628.) Petitioners opposed the motion, candidly explaining that they had appealed (as opposed to filing a writ petition) because they understood the contempt order might be construed effectively to expand the scope of the May 2018 Order (as opposed to simply misapplying it), which would render it appealable:

> Appellants Trudi Lytle and John Lytle, Trustees of the Lytle 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. (7 App. 1638–

39, Doc. 2020-43367 at 1.)

And undersigned counsel also 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[2]:

> 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* … (7 App. 1641–42 , Doc. 2020-43367 at 4.)

This Court denied the motion to dismiss, acknowledging the jurisdictional conundrum, noting "the determination of the jurisdictional issue appears to be intertwined with the merits of this appeal." (Doc. 21-00620.)

12. This Court eventually dismissed the appeal after reviewing

[2] Petitioners repeated this rationale transparently in the jurisdictional statement of it its opening brief. (7 App. 1683–86.)

the briefs on the merits. (8 App. 1826, Doc. 22-05423.) The Court concluded it did not have jurisdiction because the subject contempt order did not actually alter the parties' "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 by holding appellants in contempt.[3] The Court explained the Contempt Order would need to be challenged by a writ petition. (*See id.*)

13. Remittitur issued on March 15, 2022.

Now, therefore, petitioners ask this Court to exercise its discretionary jurisdiction to enter a writ of mandamus directing the court to vacate the subject Contempt Order, along with the subsequent, related order denying clarification. The Court has determined the Contempt Order will not be construed to have expanded the May 2018 Order. Through this writ petition, the Court should address the merits

[3] Having determined the Contempt Order was not appealable, the Court did not address the merits of whether the district court abused its discretion by holding petitioners in contempt. Indeed, a ramification of that determination is the Court lacked "the very power" to weigh on the merits. *See Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000) ("Jurisdictional rules go to the very power of this court to act. * * * We conclude this court does not have jurisdiction over an appeal from a contempt order.").

of the Contempt Order, and hold the district court misapplied the May 2018 Order and abused its discretion by holding the Lytles in contempt for violating it.

Dated this 11th day of April, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Joel D. Henriod*
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VERIFICATION

STATE OF NEVADA)
COUNTY OF CLARK)

Under penalty of perjury, I declare that I am counsel for the petitioners in the foregoing petition and know the contents thereof; that the pleading is true of my own knowledge, except as to those matters stated on information and belief; and that as to such matters I believe them to be true. I, rather than petitioners, make this verification because the relevant facts are procedural and thus within my knowledge as petitioners' attorney. This verification is made pursuant to NRS 15.010.

Dated this 11th day of April, 2022.

/s/ Joel D. Henriod
Joel D. Henriod

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.

Petitioners TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, are individuals who bring this writ petition in their capacities as trustees of THE LYTLE TRUST.

Petitioners have been represented in this litigation by Joel D. Henriod and Dan R. Waite of LEWIS ROCA ROTHGERBER CHRISTIE, LLP

Dated this 11th day of April, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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ROUTING STATEMENT

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

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ISSUE PRESENTED

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

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Defendants-Petitioners 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. Plaintiffs-Real Parties in

Interest are four of the nine property owners who also are members of the Association ("Property Owners").

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. (1 App. 206, 3 App. 540, 3 App. 550.) 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. 512.)

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. (1 App. 206.) 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. (4 App. 896.) The district court granted that relief in multiple orders, which were appealed and affirmed. (*See* Case nos. 73039 and 76198.) The district court also awarded fees to the various property owners arising from the injunction actions, which orders also were appealed and affirmed.[4] (Case nos. 77007 and 79753.)

The basis for the district court's (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. 709:1-4.) The judgment debtor is the Association, not the Property Owners. (3 App. 710:5-9.) 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. 709:20-24.)

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

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

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

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

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

This Court affirmed the district court's permanent injunction on the grounds that Property Owners were not parties to the Rosemere Judgments and that NRS 116.3117 does not apply to this Association.[5]

The Lytle Trust Petitions for Appointment of a Receiver Over the Association

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 receiver to, among other things, satisfy the

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

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

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

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

To ensure the receiver would have the same powers the Association otherwise had, the petition sought to vest the receiver with broad powers. (4 App. 816.) 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* 4 App. 820.) The Lytles knew the Association had exercised these assessment and lien powers in the past. (4 App. 864-69.)

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

The 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. 736.) 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. 742.)

The Lytle Trust opposed the motion, raising several points. (4 App. 845.) It is commonplace to appoint receivers over non-paying judgment debtors. (5 App. 1120, 1122.) The Lytle Trust's effort to enforce the judgment against the Association was correct for the same reason its previous liens directly against the Property Owners had been misguided; the Association is the judgment debtor and an independent corporate entity separate and distinct from its property owner members. (5 App. 1121.) Judge Bailus's May 2018 Order did not enjoin the Lytle Trust from lawfully enforcing its judgments against the judgment-debtor Association. (3 App. 711-12.) 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. (5 App. 1125.)

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

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

The court's analysis was simple and straightforward. The court reasoned that "[t]he May 2018 Order's permanent injunction clearly precluded the Lytle Trust from doing *anything* as it *relates to* enforcing and recording the Rosemere Judgments against the [Property Owners[6]] or their properties." (6 App. 1449:24-26] (emphasis added)). The court concluded "the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in *any*

[6] The Contempt Order's reference to the Dismans was clear error, as the the May 2018 Order did not involve them. See above at n. 6.

way, shape, or form." (*Id*. at 6 App. 1449:26-27].) As the court further explained in ruling on a motion for clarification, "any" action means "direct or *indirect*." (7 App. 1557:26].) Thus, 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. (5 App. 709:10-11 (emphasis added).)

This writ petition followed.

WHY THE WRIT SHOULD ISSUE

The Lytles seek a writ of mandamus compelling the district court to vacate its holding the Lytle Trust in contempt for purportedly violating a May 2018 Order, and awarding real parties in interest penalties and expenses. (7 App. 1562.) As this Court noted in its recent order dismissing the Lytles' appeal from the contempt order (doc. 22-05423), the contempt order is reviewable by original writ. *Pengilly v. Rancho Santa Fe Homeowners*, 116 Nev. 646, 647, 5 P.3d 569, 569 (2000). Specifically, "a writ of mandamus is available to control a manifest abuse of discretion—for example, when the order purportedly violated does not clearly prohibit the conduct engaged in by the contemnor." *Id.*, 116 Nev. at 650, 5 P.3d at 571; *Mack–Manley v.*

Manley, 122 Nev. 849, 859, 138 P.3d 525, 532 (2006). That is what occurred here.

The Timing is Appropriate

The Lytles have sought this Court's review diligently. The Property Owners may claim this petition is barred by laches because approximately two years have passed since notice of entry of the contempt order was served on May 22, 2020. (6 App. 1437.) Although writ relief is subject to laches, it cannot apply here.

"Laches implies more than mere lapse of time in asserting a right; it requires some actual or presumable change of circumstances rendering it inequitable to grant relief." *Miller v. Walser*, 42 Nev. 497, 181 P. 437, 443 (1919); *Home Sav. Ass'n v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989) ("Laches is more than mere delay in seeking to enforce one's rights, it is delay that works a disadvantage to another."). "It is well-established that especially strong circumstances must exist to sustain the defense of laches when the statute of limitations has not run." *Bigelow*, 105 Nev. at 496, 779 P.2d at 86. It applies only where (1) "there was an inexcusable delay in seeking the petition," (2) "an implied waiver arose from the petitioner's knowing acquiescence in

existing conditions," and (3) "there were circumstances causing prejudice to the respondent." *State v. Eighth Jud. Dist. Ct.*, 118 Nev. 140, 147–48, 42 P.3d 233, 238 (2002).

None of those circumstances exist here. Petitioners contested the Contempt Order via appeal within 30 days of its entry because it plausibly might be interpreted to imply a substantive expansion of the limitations imposed by the May 2018 Order, which would have rendered the Contempt Order appealable.[7] And where "appellate jurisdiction is proper, writ relief is inappropriate." *Guerin v. Guerin*, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998); NRS 34.170 (stating that a writ of mandamus may only issue if there is no other adequate and speedy remedy). When the Property Owners moved to dismiss the appeal a few months after it was filed, the Lytles candidly apprised the Court that "to be prudent . . . they pursue[d] the appeal first because the order holding them in contempt appear[ed] to fall within a jurisdictional gray

[7] *See Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (citing NRAP 3A(b)(8)); *Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) ("if the contempt finding or sanction is included in an order that is otherwise independently appealable, this court has jurisdiction to hear the contempt challenge on appeal").

area" because of how it might be construed. (__ App.__.) And this Court seemly approved of that wait-and-see approach under the circumstances, denying the motion to dismiss because "the determination of the jurisdictional issue appears to be intertwined with the merits of this appeal." (Doc. 21-00620.) The Lytles now have filed this petition within 30 days of this Court's remittitur. Put simply, petitioners did not sit on their rights.

Moreover, because the Lytles have made clear their intent to contest the Contempt Order one way or another since it was entered, the Property Owners could not reasonably assume the Lytles would ever forgo their right to seek review of the Contempt Order by this Court. There can be no claim of prejudice from surprise.

ARGUMENT

The district court abused its discretion by holding the Lytle Trust in contempt for violation of the May 2018 Order. The judgment-creditor Lytle Trust had a right to seek appointment of a receiver over the non-paying, corporate debtor. That order had enjoined the Lytle Trust from recording and executing their judgments "directly" against the respondent Property Owners only because they were not parties to the

lawsuit between the Lytle Trust and the Association, and the statute (NRS 116.3117) allowing judgment liens to be recorded against non-party property owners did not apply. The district court now has held Lytle Trust in contempt of that order for enforcing its judgments *against the judgment-debtor* Association merely because of the effect it might have on the Property Owners "indirectly."

Filing the receivership action comes nowhere near the requisite showing for contempt—*to wit* that "the order purportedly violated … clearly prohibit[s] the conduct engaged in by the contemnor." *Pengilly*, 116 Nev. 646, 647, 5 P.3d 569, 569 (2000). That action was not precluded by the May 2018 Order either on its face nor by any reasonable implication. Much less is there "proof beyond a reasonable doubt that the conduct was contemptuous," as would be necessary to justify the penalties imposed by the district court. *Hicks v. Feiock*, 485 U.S. 624, 631–32 (1988); *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 893–94, 784 P.2d 974, 979 (1989). The contempt order therefore must be vacated for manifest abuse of discretion.

I.

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

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

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

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

Indeed, "[a] receiver may be appointed . . . [a]fter judgment . . . in proceedings in aid of execution . . . or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment." NRS 32.010(4). In short, it is hornbook law that a "receivership may be

an appropriate remedy for a judgment creditor." 12 Alan C. Wright & Arthur R. Miller, Federal Practice and Procedure §2983 (3d ed.).

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

The plain language of the May 2018 Order does not preclude the Lytle Trust's collection efforts against the Association. "An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him." *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 532 (2006), *quoting Cunningham v. Eighth Jud. Dist. Ct.*, 102 Nev. 551, 559–60, 729 P.2d 1328, 1333–34 (1986). "A court order which does not specify the compliance details in unambiguous terms cannot form the basis for a subsequent contempt order." *Div. of Child & Family Servs., Dep't of Human Res., State of Nevada v. Eighth Jud Dist. Ct.*, 120 Nev. 445, 454–55, 92 P.3d 1239, 1245 (2004); *c.f., Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 132, 252 P.3d 649, 656 (2011) ("A violation of an order granting a motion in limine may only serve as a basis for a new trial when the order is specific in its prohibition and the violation is clear.").

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

1. The Order Does Not Enjoin the Lytle Trust from Executing Against the Correct Judgment Debtor

Here, the plain language of the May 2018 Order does not strip the Lytle Trust of any collection rights against the judgment-debtor Association. Yet, the district court held the Lytle Trust in contempt for pursuing its judgment creditor right to seek the appointment of a receiver over the Association. The Lytle Trust did not seek appointment of a receiver over the Property Owners (they were not even parties in the receivership action until they sought to intervene after Judge Kishner granted the receiver). Given the separate identity between the Association and its members, direct action against the Association is not direct action against its members. Thus, although

the appointment of a receiver over the Association may indirectly impact the Association's members, it is not direct action against them.

2. The Terms "Directly" and "Action" Cannot Be Construed to Mean their Opposite

The term "directly" in the May 2018 Order cannot be considered surplusage. "The maxim '*expressio unius est exclusio alterius*', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State." *Canarelli v. Eighth Jud. Dist. Ct.*, 136 Nev. Adv. Op. 29, 464 P.3d 114, 121 (2020). Thus, when the May 2018 Order expressly enjoined the Lytle Trust from taking any action "directly against" the respondents or their properties, it indicated the order did not necessarily preclude action that impacted them indirectly. By holding the Lytle Trust in contempt for "initiat[ing] an action against the Association that included a prayer for appointment of a receiver" and because the Lytle Trust subsequently "applied for appointment of a receiver" over the Association (6 App. 1450:3-4), the district court disregarded the "directly against" term in the May 2018 Order.

If "any action" really meant "any action, whether direct or indirect," then the injunction would read like this: "[T]he Lytle Trust is

permanently enjoined from taking *[any action, whether direct or indirect]* 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.) This head-spinning interpretation suggests that the district court's order enjoined the Lytle Trust from taking indirect action directly against the Property Owners. The Lytle Trust could not have known that when the district court enjoined any action "directly" against the Property Owners that it also meant the opposite, and that any action "indirectly" against the property owners was enjoined as well. *See Div. of Child & Fam. Servs. v. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004) ("The need for clarity and lack of ambiguity are especially acute in the contempt context.").

The district court's "direct or indirect" interpretation also ignores that "action" is a term with legal significance, especially in the context of collecting a debt. *See, e.g.*, NRS 40.430(6)(a) (providing, in the context of the one-action rule for collecting on a secured debt, that "an 'action' does not include any act or proceeding . . . [t]o appoint a receiver for, or obtain possession of, any real or personal collateral for the debt");

see also NRS 11.190 (setting forth the periods of limitation for various "action[s]"). "An action is a legal prosecution by a party complainant against a party defendant, to obtain the judgment of the court in relation to some rights claimed to be secured, or some remedy claimed to be given by law to the party complaining." *Haley v. Eureka County Bank*, 21 Nev. 127, 26 P. 64, 67 (1891). An "action" requires two parties in opposing positions seeking adjudication from the court. *See State v. Yellow Jacket Silver Min. Co.*, 14 Nev. 220, 244 (1879) ("Every action is based upon some primary right by the plaintiff, and upon a duty resting upon the defendant corresponding to such right."). The most reasonable interpretation of "action," then, is what the Lytle Trust describes in plain English as seeking "direct" recovery from the Property Owners for the judgment against the Association. In fact, the May 2018 Order expressly limits the type of action enjoined to those that are "directly against" the Property Owners. (3 App. 712.)

If the meaning of "action" was as broad and plain as the district court and the Property Owners now assert, it would not be necessary for the court to explain its meaning by adding modifiers like "direct or indirect," (*see* 7 AA 1557 (order denying clarification of contempt order),

or to say action is prevented "in any way, shape, or form," *see* 6 AA 1449 (contempt order)). In reality, by interpreting "action" to also include steps taken that might *indirectly* affect the Property Owners, the district court changed the legal understanding of "action." It also ignored that the injunction only expressly prohibited actions "directly against" the Property Owners. The May 2018 Order therefore only clearly and unambiguously enjoins the Lytle Trust from taking any action directly against the Property Owners to collect the judgments against the Association.

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

As demonstrated above, the Lytle Trust cannot be deemed in violation of the May 2018 Order because their petition for receivership over the judgment debtor itself did not violate any "unambiguous terms" of the May 2018 Order that "specify the compliance details." *See Div. of Child & Family Servs.*, 120 Nev. at 454–55, 92 P.3d at 1245. The Lytle Trust's actions do not even approach that line, because the May 2018 Order cannot reasonably be construed to imply a restriction on collection efforts against the judgment-debtor Association.

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

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

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

The Association is a corporation, an independent entity under the law. On February 25, 1997, the Association filed its "Non-Profit Articles of Incorporation (Pursuant to NRS 82)" with the Nevada Secretary of State. (2 App. 391.) The stated purpose is to act as a "homeowners' association." *Id.* Thus, while the nature of the Association's business is a homeowners' association, the form it chose to conduct that business under is as an NRS 82 nonprofit corporation.

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

The law is no different for nonprofit corporations. "A nonprofit corporation is a legal entity separate from its members." *Krystkowiak v. W.O. Brisben Companies, Inc.*, 90 P.3d 859, 866-67 (Colo. 2004); *accord, e.g., City Against Rezoning, Inc. v. St. Louis Cty.*, 563 S.W.2d 172, 173 (Mo. App. 1978) ("The not-for-profit corporation is a legal entity separate and apart from the persons who are members of the corporation."). As one court noted regarding a male member of a nonprofit corporation: "he is not the corporation, and the corporation is not him." *The Beverly Foundation v. W.W. Lynch, San Marino, L.P.*, 301 S.W.3d 734, 736 n.1 (Tex. App. 2009).

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

The judgment creditor Lytle Trust sought (and obtained) the appointment of a receiver over the non-paying judgment debtor Association in the receivership action before Judge Kishner. The Property Owners contended as plaintiffs below and as intervenors in the receivership action that both the Lytle Trust's mere request for a receiver over the Association and the resulting order appointing receiver constituted violations of the district court's May 2018 Order because seeking and obtaining a receiver constituted action against

them and their property. Relevant to this petition, however, "[a] judgment against a corporation is not a judgment against the shareholders and does not affect their property. . . . [Furthermore,] execution or other [collection] on a corporate judgment does not run against the shareholders or their property." 1 FLETCHER CYC. CORP. § 38 (Sept. 2020 update).

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

The contempt order disregards the separate legal identity of the Association. It concludes that "[t]he May 2018 Order's permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments against the Plaintiffs and Dismans or their properties." (6 App. 1449:24-26). It states "the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in any way, shape, or form." (*Id.* at 6 App. 1449:26-27.) The court reasoned that any effort by the receiver to pay the Association's judgments would necessarily impact the Association's members since the Association has no source of revenue but from its members, like the Property Owners.

And Judge Williams made this clear after he held the Lytles in contempt and "subsequently entered an order clarifying that [Judge Bailus's] injunction prohibited the Lytles from taking *any action* against the association *that would result in* the homeowners paying the Lytles' judgments against the association." (8 App. 1827) (emphasis added).

To be clear, the Lytle Trust is not seeking to hold the Property Owners *liable* for the Association's judgments, which is what the May 2018 Order prohibited. Rather, the Association itself is now seeking to satisfy its obligations by looking to its members to the extent of its authority to do so. While that may *affect* the Property Owners as members of the Association, it is materially distinct from the Lytle Trust executing their judgments against them—in the same way that piercing a corporate veil to execute a judgment directly against shareholders, members, directors, etc., is different from any internal consequence a judgment may cause those people by way of a capital call, lost dividends, diminishment of share value, etc.

The district court erroneously equated action by the Lytle Trust to collect its judgment from the Association with action by the Lytle Trust against the Association's members. This was error. The Association's

independent identity cannot be ignored. "The corporate cloak is not lightly thrown aside." *C.f., Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969) (regarding veil piercing).

d. THE PREJUDICE COULD NOT BE GREATER

The practical effect of the district court's ruling is to void the Lytle Trust's judgments and to strip it of all judgment-creditor rights. Indeed, given the nature of the Association—that it derives all income through member dues and assessments—every action any creditor takes to collect a debt owed by the Association will impact the Association's members.[8] Whether it is the Association's electrical bill to keep the entry gate operational, or the water bill to keep the entry and perimeter landscape alive, or the judgments owed by Association to the Lytle Trust, every Association obligation must ultimately be borne by

[8] By ruling that May 2018 Order precludes the Lytle Trust from executing against the judgment-debtor Association, the Contempt Order significantly prejudices the Lytle Trust vis-à-vis every other Association creditor. No other Association creditor is precluded from enforcing their rights against the Association. All other creditors are free to exercise their collection rights against the Association despite the indirect impact such will have on the Property Owners. The Contempt Order does not explain what makesthe Lytle Trust special.

the Association's members—the Association has no other source of revenue.

Yet, the Association and its members are separate and distinct from each other. Even the real parties in interest recognized and relied upon this non-controversial position below.[9] In short, the May 2018 Order does not preclude or even address any action by the Association vis-à-vis its members, nor could it because the Association is not a party below.

2. Judge Williams's Contempt Order Ignores the Context and Rationale Behind Judge Bailus's May 2018 Order

The separate identity of the Association is not a mere technicality. Injunction orders must be read "intelligently and in context." DAN B. DOBBS, LAW OF REMEDIES § 2.8(7). First, the principle reason for the injunction in the May 2018 Order was the legal separateness of the

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

Association from its members. That is, none of the Association's members were parties to the judgments.

Second, the May 2018 Order did not free the members from any obligations owed *to the Association*. That relief was not sought in 2018, and it could not have been given, even if requested, since the Association was not a party.

Third, the wrongs addressed by the May 2018 Order were (1) the Property Owners were nonparties to the Rosemere Judgments, and (2) the Lytle Trust had not used an appropriate legal mechanism to pursue the Property Owners directly. While a judgment creditor may pursue collection from those not obligated to pay the judgment, it must do so through authorized legal channels. For example, a judgment creditor may seize assets of a nonparty, which the nonparty owes to the judgment creditor, *via* writs of garnishments under NRS 21.120, or by judicial assignment of a judgment-debtor's chose in action (*see Malco v. Gallegos*, 255 P.3d 1287, 127 Nev. 579 (2011)), *etc*. But a judgment creditor may not pursue the nonparty directly without leave of court or other lawful mechanism.[10]

[10] In 2018, the Lytle Trust believed NRS 116.3117 provided such a

Put simply, there is nothing in the context of the May 2018 Order suggesting (1) it precludes the Lytle Trust from pursuing their judgment-creditor rights directly against the judgment-debtor Association, or (2) the Association members could forever disregard (with impunity and without consequence) paying Association dues or assessments imposed to facilitate paying Association obligations. Indeed, without dues or assessments, the Association could not pay any of its debts since these are the only sources of revenue to the Association. The Property Owners had no basis in fact, law, or common sense to assume otherwise.

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lawful mechanism. The district court disagreed and expunged the liens. This Court subsequently affirmed those decisions.

CONCLUSION

For the forgoing reasons, the district court manifestly abused its discretion in order holding the Lytle Trust in contempt of the May 2018 Order. The contempt order, along with the related order denying clarification, must be vacated.

Dated this 11th day of April, 2022.

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CERTIFICATE OF COMPLIANCE

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

2. I certify that this brief complies with the type-volume limitations of NRAP 29(e) because it contains 6,913 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 11th day of April, 2022.

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CERTIFICATE OF SERVICE

I certify that on April 11, 2022, I submitted the foregoing "Petition for Writ of Mandamus or, Alternatively, Prohibition" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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I further certify that I caused a copy of this document to be served via hand delivery to the following:

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