

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF LITVAK TRUST  
DATED MARCH 12, 2001.

No. 45778

PHYLLIS MAGON LITVAK,  
Appellant,  
vs.  
DEBI RODDEN AND STEVEN LITVAK,  
Respondents.

**FILED**

MAR 09 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting a writ of execution for summary eviction.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

In the underlying action, the district court, acting on the probate commissioner's report and recommendation, entered an order that, among other things, directed appellant Phyllis Magon Litvak to return all income and principal that had been removed from the Lois Litvak Trust assets. The district court's order included a directive to transfer title to the subject residence, located on Paine Court in Las Vegas, to the Lois Litvak Trust. Notice of the order's entry was served on

---

<sup>1</sup>Although the district court styled the writ as one of execution, the writ was necessarily a writ of restitution. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this case.

March 21, 2005, and, on April 27, 2005, Phyllis appealed from that order. This court dismissed the appeal as untimely.<sup>2</sup>

In the meantime, because Phyllis continued to remain on the Paine Court property despite the district court's order directing her to transfer title to the Lois Litvak Trust, respondents Debi Roden and Steve Litvak, the successor trustees to the Trust, posted on the Paine Court residence's door a "Three Day Notice to Quit Pursuant to NRS 40.255." Phyllis filed a motion to strike the notice, and respondents then filed an application for summary eviction to enforce the court's March 21, 2005 order. At a July 29, 2005 hearing, the district court, among other things, granted respondents' motion for summary eviction, directing Phyllis to vacate the Paine Court premises by August 15, 2005. Phyllis petitioned this court for mandamus relief, challenging the summary eviction, which this court denied.<sup>3</sup> Meanwhile, on August 2, 2005, the district court entered a written order for a writ of execution on the summary eviction, and Phyllis timely filed the instant notice of appeal from that order.<sup>4</sup> Phyllis did not obtain a stay of eviction under NRS 40.380.

On appeal, Phyllis argues that the district court's writ of execution for summary eviction was improper because (1) her appeals to

---

<sup>2</sup>See In the Matter of the Litvak Trust, Docket No. 45152 (Order Dismissing Appeal, July 6, 2005).

<sup>3</sup>See In The matter of the Litvak Trust, Docket No. 45722 (Order Denying Petition for Writ of Mandamus, August 11, 2005).

<sup>4</sup>Although Debi and Steve filed a motion to dismiss this appeal, this court, on May 22, 2006, denied the motion, noting that, under NRS 40.380, any party may, within ten days, appeal from a summary eviction.

this court divested the district court of jurisdiction,<sup>5</sup> (2) the notice to quit was ineffective because it was not properly served upon her, (3) she is not subject to removal under NRS 40.255, and (4) the district court's finding that Debi and Steve would suffer irreparable harm was unsupported.

Steve and Debi respond, arguing, among other things, that Phyllis's contentions are moot, since she vacated the premises before August 15, 2005, and thus, there is no controversy and no relief that could be carried into effect. Phyllis replies, conceding that she vacated the premises, but arguing that she left only because the "Constable arrived to lock her out of [the residence]." Phyllis maintains that public policy concerns over whether a district court is required to follow enacted laws and procedures for eviction render this issue live and reviewable.

"[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it."<sup>6</sup> Upon

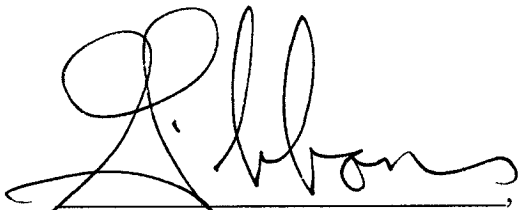
---

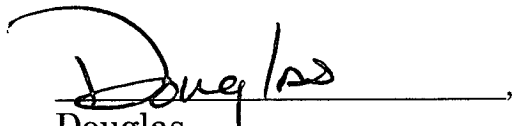
<sup>5</sup>In addition to the April 27, 2005 appeal noted above, Phyllis filed a notice of appeal on May 31, 2005, from the district court's "Order Regarding Stay and Supersedeas Bond," which this court dismissed on May 23, 2006, since the designated order was not substantively appealable. See In the Matter of the Litvak Trust, Docket No. 45367 (Order Dismissing Appeal, May 23, 2006).

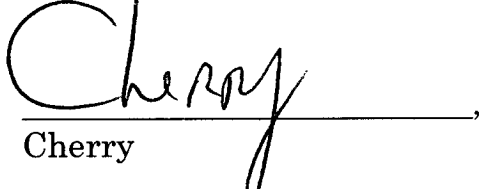
<sup>6</sup>NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). While an exception to the mootness doctrine applies in cases involving important public policy issues that are capable of repetition, yet evading review, see Traffic Control Servs. v. United Rentals, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004), in the present case, Phyllis raises issues that are factually specific to her case and are therefore not of the character considered capable of repetition, see Langston v. State, Dep't of Mtr. Vehicles, 110 Nev. 342, 871 P.2d 362 (1994).

review of the record and consideration of the parties' arguments, we agree with Steve and Debi that this appeal is moot. The March 21 order finally determined the premise's ownership. Thus, although Phyllis argues that the eviction was improper, since she vacated the premises while her appeal was pending in this court and, after March 21, 2005, she had no meritorious legal basis on which to assert any right of current possession thereto, there is no longer any issue for this court to decide.<sup>7</sup> Accordingly, we dismiss this appeal as moot.<sup>8</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

---

<sup>7</sup>See Marshall v. Housing Auth. City San Antonio, 198 S.W.3d 782, 787 (Tex. 2006) (explaining, in the context of a forcible detainer action, that when a party relinquishes possession of a property, and that party presents no meritorious legal basis for claiming a right to current possession of the property, the issue of possession becomes moot for purposes of appeal); Miller v. West, 88 Nev. 105, 109-110, 493 P.2d 1332, 1334 (1972) (recognizing that, when there is no judicable controversy presented and, therefore, no effective relief could be granted, this court must dismiss the matter as moot).

<sup>8</sup>In light of this order, we decline to address Phyllis's argument concerning whether the district court judge should have been recused.

cc: Hon. Kathy A. Hardcastle, District Judge  
Howard Roitman, Settlement Judge  
Herbert Sachs  
Lionel Sawyer & Collins/Las Vegas  
Eighth District Court Clerk