

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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3 NOLA HARBER, as Distribution Trustee
4 of the ERIC L. NELSON NEVADA
5 TRUST dated May 30, 2001

6 Petitioners,

7 vs.

8 EIGHTH JUDICIAL DISTRICT COURT
9 OF THE STATE OF NEVADA, CLARK
10 COUNTY, and THE HONORABLE
11 FRANK P. SULLIVAN, DISTRICT
12 JUDGE

13 Respondents,

14 and

15 ERIC L. NELSON and LYNITA S.
16 NELSON, individually, and LSN
17 NEVADA TRUST dated May 30, 2001.

18 Real Parties in Interest.

Electronically Filed
Jul 15 2013 03:11 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

CASE NO. 63545

19 **SUPPLEMENT TO PETITION FOR WRIT OF PROHIBITION**
20 **PURSUANT TO JULY 10, 2013, ORDER DIRECTING SUPPLEMENT**

21 Petitioner is being and will be irreparably harmed because the District Court
22 will not stay its June 3, 2013, Divorce Decree, which grants Respondents the
23 ability and power to take title, possession and control of real property belonging to
24 Petitioner before Petitioner has been afforded the ability to challenge the Divorce
25 Decree on appeal. The Divorce Decree grants Respondents the ability to
26 irrevocably alter Petitioner's ownership rights in the real property because it
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1 allows them to grant and alter leases, and encumber and/or sell the real property
2 that the District Court, in excess of its jurisdiction, transferred from Petitioner to
3 Respondents. As this Court has previously recognized, “real property and its
4 attributes are considered unique and loss of real property rights generally results in
5 irreparable harm.” *Dixon v. Thatcher*, 103 Nev. 414, 415-16, 742 P.2d 1029,
6 1029-30 (1987); *see also Hansen v. Eighth Judicial Dist. Court ex rel. County of*
7 *Clark*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000) providing that trustee’s sale
8 of a house as an example of irreparable harm warranting the imposition of a stay
9 pending appeal; *Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533 P.2d
10 471 (1975) (denial of injunction to stop foreclosure reversed because legal remedy
11 inadequate).

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17 Indeed, Respondents are presently and actively seeking to alter Petitioners
18 rights in the real property. For example, and by no means of limitation,
19 Respondents have already contacted some or all of the tenants of certain real
20 property owned by Petitioner that was transferred to the LSN Trust pursuant to the
21 Divorce Decree, advising said tenants to make all future rental payments directly
22 to Respondents, and to possibly enter into a new lease with Respondents.¹
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25 Further, Respondents are actively seeking to evict Petitioner, a fifteen year tenant
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28 ¹ *See* Correspondence from Katherine L. Provost, Esq. dated June 7, 2013, to
the current tenant of 2209 Farmouth Circle, attached as Exhibit 5 to the Appendix.

1 of the real property located at 3611 S. Lindell Road, Suite 201, Las Vegas,
2 Nevada 89103 (“Lindell Property”), unless Petitioner enters into a “binding lease
3 agreement” with Respondents.² The Lindell Property is where Petitioner conducts
4 business and would be irreparably harmed if it is forced to vacate its office
5 location pending the resolution of the instant Petition for Writ of Prohibition
6 and/or appeal. If Respondents successfully evict Petitioners they will undoubtedly
7 lease said office space to another tenant thereby hindering and/or precluding
8 Petitioner’s ability to move back into such property if it is successful on appeal.
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12 This Court has identified one of the major problems with the District
13 Court’s June 3, 2013, Divorce Decree: the Divorce Decree is not a final judgment
14 because the District Court has not disposed of all of the assets, including the
15 disposition of the Wyoming Downs property, which is the subject of Respondents
16 NRCP 59 motion. As such, Petitioner is unable to file an appeal. Further, the
17 District Court has denied Petitioner’s request to stay enforcement of the Divorce
18 Decree pending this Court’s ruling upon Petitioner’s Petitioner for Writ of
19 Prohibition and/or appeal. To make matters worse, it is unclear when Petitioners
20 will be able to file an appeal because Respondents are seeking to re-open
21 discovery and have another trial on the Wyoming Downs transaction:
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28 ² See Correspondence from Robert P. Dickerson, Esq. dated June 10, 2013,
and Thirty Day Notice of Termination of Tenancy, attached as Exhibit 6 to the
Appendix.

1 re-open this case and permit discovery concerning the transaction
2 involving Dynasty Development Management, LLC, Wyoming
3 Racing, LLC, and the purchase an interest in Wyoming Racing, LLC a
4 horse racing track and RV park for \$440,000.00 which occurred in or
5 about January 2013, as well as the current status of this asset, so that a
6 separate trial date can be set to make a determination as to the
7 disposition of this asset. *See* Defendant's Motion to Amend or Alter
Judgment, for Declaratory and Related Relief at 10:23-11:5, attached
as Exhibit 7 to the Appendix.

8 If such relief is granted, it could be another year before the Divorce Decree
9 becomes final and Petitioner is afforded the opportunity to file an appeal.
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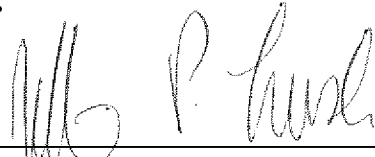
11 This case is analogous to *State ex rel. Milchem Inc. v. Third Judicial Dist.*
12 *Court In & For Lander Cnty.*, 84 Nev. 541, 544, 445 P.2d 148, 149 (1968),
13 wherein this Court issued a writ of prohibition based upon its belief that the value
14 of property could be destroyed pending an appeal:
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17 When the motions to dismiss and the motion for a preliminary
18 injunction were denied by the lower court after a presentation of the
19 arguments herein urged, the petitioners were left with no other plain,
20 speedy, and adequate remedy. Their claim is that the statute upon
21 which respondents seek to act is unconstitutional. The respondents are
22 in possession of the property and are able to mine the limited supply
23 of minerals. They are thus able virtually to destroy the mining value
24 of the land. Petitioners have no assurance that they will ever be
adequately compensated for any damage done to their land. The slow
process of appeal would not provide an adequate remedy under such
circumstances. Prohibition is a proper remedy.

25 Just like in *Milchem*, Petitioner is left with no plain, speedy and adequate
26 remedy because Respondents can encumber, grant and enter into leases and/or sell
27 the real property before Petitioner even has the ability to file an appeal. Simply
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1 put, since Respondents are in possession of the real property there is no guarantee
2 that Petitioner will be able to recoup the real property, or the diminution of rights
3 associated with that real property, if successful on appeal. For these reasons, and
4 those set forth in Petitioner's Petition for Writ of Prohibition, extraordinary relief
5 is appropriate because an adequate legal remedy does not exist for Petitioner.
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7 Consequently, extraordinary relief is warranted.
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10 DATED this 15th day of July, 2013.

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12 

13 MARK A. SOLOMON, ESQ., NSB 0418
14 JEFFREY P. LUSZECK, ESQ., NSB 9619
15 **SOLOMON DWIGGINS & FREER, LTD.**
16 9060 W. Cheyenne Avenue
17 Las Vegas, Nevada 89129
18 Attorneys for Petitioner, Nola Harber as
19 Distribution Trustee of the ELN Nevada Trust
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1 **CERTIFICATE OF COMPLIANCE (BASED UPON NRAP FORM 9)**

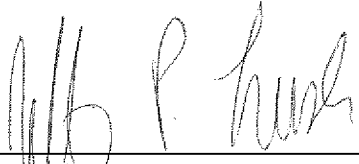
2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
4 the type style requirements of NRAP 32(a)(6) because this brief has been prepared
5 in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point
6 Times New Roman type style.
7

8
9 2. I further certify that this brief complies with the page or type-volume
10 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted
11 by NRAP 32(a)(7)(C), it is not proportionately spaced, has a typeface of 14 points,
12 and contains 1,524 words.
13
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15 3. Finally, I hereby certify that I have read this Supplement to Petition
16 for Writ of Prohibition Pursuant to July 10, 2013 Order Directing Supplement, and
17 to the best of my knowledge, information and belief, it is not frivolous or
18 interposed for any improper purpose. I further certify that this Supplement to
19 Petition for Writ of Prohibition complies with all applicable Nevada Rules of
20 Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion
21 in the brief regarding matters in the record to be supported by appropriate
22 references to page and volume number, if any, of the transcript or appendix where
23 the matter relied on is to be found. I understand that I may be subject to sanctions
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1 in the event that the accompanying brief is not in conformity with the
2 requirements of the Nevada Rules of Appellate Procedure.
3

4 Dated this 15th day of July, 2013.



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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. App. P. 5(b), I hereby certify that I am an employee of
3 the law firm of Solomon Dwiggin & Freer, Ltd., and that on July 15, 2013, I
4 filed a true and correct copy of the foregoing *Supplement To Petition For Writ Of*
5 *Prohibition Pursuant To July 10, 2013, Order Directing Supplement*, WITH THE
6 Clerk of the Court through the Court's eFlex electronic filing system and notice
7 will be sent electronically by the Court to the following:
8

9
10
11 Robert P. Dickerson, Esq.
12 Katherine L. Provost, Esq. Counsel for Lynita S. Nelson, defendant
13 THE DICKERSON LAW GROUP in District Court
14 1745 Village Center Circle
15 Las Vegas, Nevada 89134
info@dickersonlawgroup.com

16 Radford J. Smith, Chartered
17 Rhonda K. Forsberg, Esq. Counsel for Eric L. Nelson, real party in
18 64 N. Pecos Road, Suite 700 interest
19 Henderson, Nevada 89074
rforsberg@radfordsmith.com

20 I also hereby certify that the foregoing document will be hand-delivered on
21 this date to the following:
22

23 Hon. Frank P. Sullivan, Department O
24 Robert P. Dickerson, Esq.
25 Rhonda K. Forsberg, Esq.

26 DATED: July 15, 2013

27 
28 _____
An employee of Solomon Dwiggin & Freer, Ltd.