

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

Electronically Filed
Jul 29 2013 02:04 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

CASE NO. 63545

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.

19 **REQUEST FOR RULING ON EMERGENCY MOTION UNDER NRAP**
20 **27(e) FILED BY THE ELN TRUST ON JULY 9, 2013**

21 **I. INTRODUCTION**

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23 On July 22, 2013, while awaiting this Court's ruling on Petitioner's, Eric L.
24 Nelson Nevada Trust dated May 30, 2001 ("ELN Trust"), Emergency Motion for
25 Stay, the District Court has once again exceeded its jurisdiction by ruling that the
26 Divorce Decree is a final order on one hand and then on the other hand, re-
27 opening discovery and scheduling an evidentiary hearing on the disposition of
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1 Wyoming Downs, a known asset at the time of trial and specifically identified in
2 the Divorce Decree. In so doing the District Court has made it impossible for the
3 ELN Trust to file an appeal on any of the issues stemming from its June 3, 2013,
4 Divorce Decree until December 2013 after an evidentiary hearing on the
5 disposition of Wyoming Downs. In the meantime the District Court continues to
6 exceed its jurisdiction by enforcing the Divorce Decree against the ELN Trust for
7 the benefit of Lynita Nelson (“Lynita”).
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11 Most recently on July 22, 2013, the District Court has ordered that Eric
12 Nelson (“Eric”), in his capacity as Investment Trustee of the ELN Trust, to
13 execute deeds transferring 100% of the ELN Trust’s interest in commercial
14 property located at 3611 Lindell Road (“Lindell Property”) and 15 residential
15 rental properties owned by Banone, LLC (which are wholly owned by the ELN
16 Trust) on or before 5:00 p.m. on July 31, 2013. Upon information and belief, if
17 the deeds are not executed Lynita will seek to hold Eric and/or the ELN Trust in
18 contempt and/or seek an order requesting the Clerk of the Court to execute such
19 deeds. For these reasons the ELN Trust requests that this Court immediately grant
20 the Emergency Motion for stay that was filed by the ELN Trust on July 9, 2013.
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25 **II. STATEMENT OF FACTS**

26 The facts underlying this matter are set forth in detail in the Petition for
27 Writ of Prohibition filed on behalf of the ELN Trust on July 9, 2013. Due to the
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1 page limit imposed by NRAP 27(d)(2), the facts salient to this emergency motion
2 are as follows:
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4 On June 3, 2013, the District Court issued the Divorce Decree. Although it
5 purports to be a final decree, the District Court admittedly failed to dispose of all
6 of the assets at issue in the Divorce Decree, including, but not limited to, whether
7 Lynita has an interest in the ELN Trust's ownership interest in Wyoming Downs:
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10 THE COURT FURTHER FINDS that as to the repurchase of
11 Wyoming Downs by the ELN Trust via the Dynasty Development
12 Group, this Court is without sufficient information regarding the
13 details of the repurchase of the property, the value of the property and
14 the encumbrances on the property to make a determination as to the
15 disposition of the property, and, accordingly, is not making any
16 findings or decisions as to the disposition of the Wyoming Downs
17 property at this time. *See* Appx. 1 at 45:23 – 46: 2.

18 On July 9, 2013, the ELN Trust filed its Petition for Writ of Prohibition and
19 Emergency Motion for Stay requesting a stay of the portions of the Divorce
20 Decree which transfer the following properties from the ELN Trust to the LSN
21 Trust pending resolution of its Petition for Writ of Prohibition: the ELN Trust's
22 100% interest in the Lindell Property, the rental properties owned by Banone,
23 LLC, and JB Ramos Trust Note Receivable, and 50% interest in the Russell Road
24 Property.
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26 On July 10, 2013, this Court recognized that the Divorce Decree was “not a
27 final judgment because the district court has not disposed of all the assets,
28 including the disposition of the Wyoming Downs property,” *see* Order Directing

1 Supplement to Petition and Directing Answer at 2, previously filed July 10, 2013,
2 and that it was going to “defer ruling on petitioner’s motion for a stay at this
3 time.” *See id.* at 3. As directed by this Court on July 10, 2013, the ELN Trust
4 filed its supplement to its Petition for Writ of Prohibition demonstrating that it
5 would sustain irreparable injury by the loss of its real property and businesses
6 before an appeal could be entertained by this Court to redress the District Court’s
7 erroneous decree entered in excess of its jurisdiction.
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11 At the July 22, 2013, hearing on Lynita’s Motion to Amend or Alter
12 Judgment, for Declaratory and Related Relief, Lynita requested that the District
13 Court rule that the Divorce Decree is a final order and treat the Wyoming Downs
14 property as an undisclosed asset under *Amie v. Amie*, 106 Nev. 541, 796 P.2d 233
15 (1990).¹ *See* Court Minutes from July 22, 2013, hearing attached hereto as
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17 **Exhibit 1.** Despite the fact that Wyoming Downs is not an undisclosed asset, as
18 evidence was introduced regarding Wyoming Downs at trial and the Divorce
19 Decree specifically references such asset, incredibly the District Court granted
20 Lynita’s request and held that the Divorce Decree was a final order and that he
21 would address Wyoming Downs “under *Aime* as an undisclosed asset.” *See id.* In
22 fact, the District Court initially found that it would be improper to treat Wyoming
23 Downs as an undisclosed asset under *Aime*; however, after some urging from
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28 ¹ The ELN Trust will provide a complete copy of the hearing transcript upon receipt.

1 Lynita's Counsel the District Court held that it would treat Wyoming Downs as an
2 undisclosed asset and proceeded to reopen discovery on Wyoming Downs and
3 scheduled an evidentiary hearing regarding the disposition of such asset for
4 December 11, 2013. *See id.*

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7 At the same hearing, the District Court ordered Eric to execute deeds
8 transferring 100% of its interest in the Lindell Property and 15 residential rental
9 properties owned by Banone, LLC on or before 5:00 p.m. on July 31, 2013, *see*
10 *id.*, and scheduled a compliance hearing for August 1, 2013, to ensure compliance.

11 **III. LEGAL ARGUMENT**

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14 The District Court's most recent ruling is further impeding the ELN Trust's
15 ability to file an appeal on the portions of the Divorce Decree transferring certain
16 properties from the ELN Trust to the LSN Trust. Indeed, now that the District
17 Court has reopened discovery the ELN Trust is unable to appeal the Divorce
18 Decree until at least December 2013, during which time Lynita can sell, lease or
19 encumber the real property that the District Court ordered in excess of its
20 jurisdiction to be transferred based upon its "theory" that it could force Eric and
21 Lynita, as divorcing parties, to "equalize" the assets owned by the ELN Trust and
22 LSN Trust despite the fact that there is no legally enforceable agreement and
23 neither Eric nor Lynita possess a community or separate property interest in the
24 assets owned by such irrevocable spendthrift trusts.
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1 The District Court once again exceeded its jurisdiction and erred as a matter
2 of law by considering the Divorce Decree final judgment and at the same time
3 treating Wyoming Downs as an undisclosed asset under *Amie v. Amie*, 106 Nev.
4 541, 542, 796 P.2d 233 (1990). Indeed, in *Amie* this Court allowed a subsequent
5 proceeding regarding an undisclosed asset because the property “was simply
6 omitted from the consideration of the parties in the decree.” Here, Wyoming
7 Downs was not “omitted” from the Divorce Decree but rather was admittedly
8 considered. Indeed, evidence regarding Wyoming Downs was introduced prior to
9 and during trial, and as a result of such evidence, the District Court found that it
10 did not have enough “sufficient information regarding the details of the
11 repurchase of the property, the value of the property and the encumbrances on the
12 property to make a determination as to the disposition of the property. . .” *See*
13 *Appx. 1 at 45:23 – 46: 2.*

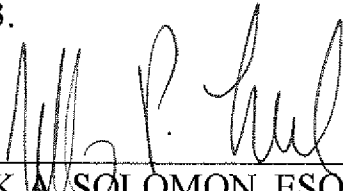
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19 As this Court correctly noted in its Order Directing Supplement to Petition
20 and Directing Answer previously filed on July 10, 2013, a trial court lacks
21 authority to enter a final divorce decree without contemporaneously disposing of
22 the parties’ community property. *See Gojack v. Second Judicial Dist. Court*, 95
23 Nev. 443, 596 P.2d 237 (1979). Notwithstanding, this is exactly what the District
24 Court has done by holding that the Divorce Decree is a final judgment while re-
25 opening discovery on an asset that Lynita claims a community property interest.
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1 Such ruling was improper, and as a result, this Court should stay the execution of
2 the deeds as requested in the ELN Trust's Emergency Motion for Stay filed
3 July 9, 2013.
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5 **IV. CONCLUSION**
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7 For these reasons, the ELN Trust respectfully requests that this Court grant
8 the ELN Trust's Emergency Motion for Stay as requested on July 9, 2013,
9 staying the portions of the Divorce Decree which transfer the following properties
10 from the ELN Trust to the LSN Trust pending resolution of its Petition for Writ of
11 Prohibition: the ELN Trust's 100% interest in the Lindell Property, the rental
12 properties owned by Banone, LLC, and JB Ramos Trust Note Receivable, and
13 50% interest in the Russell Road Property. The ELN Trust also asks that this
14 Court act by 5:00 p.m. on Tuesday, July 30, 2013, so that the ELN Trust and/or
15 Eric will know whether the deeds must be executed by 5:00 p.m. on July 31, 2013.
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19 DATED this 29th day of July, 2013.
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23 _____
24 MARK A. SOLOMON, ESQ., NSB 0418
25 JEFFREY P. LUSZECK, ESQ., NSB 9619
26 **SOLOMON DWIGGINS & FREER, LTD.**
27 9060 W. Cheyenne Avenue
28 Las Vegas, Nevada 89129
Attorneys for Petitioner, Nola Harber as
Distribution Trustee of the ELN Nevada Trust

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 29, 2013, I
4 filed a true and correct copy of the foregoing *Request for Ruling on Emergency*
5 *Motion Under NRAP 27E Filed by the ELN Trust on July 9, 2013*, 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:
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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 deposited in the
21 United States Postal Service by first class mail, postage prepaid to the following:
22

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

26 DATED: July 29, 2013

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

EXHIBIT 1

EXHIBIT 1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

July 22, 2013

D-09-411537-D Eric L Nelson, Plaintiff.
 vs.
 Lynita Nelson, Defendant.

July 22, 2013 2:00 PM Motion

HEARD BY: Sullivan, Frank P.**COURTROOM:** Courtroom 05**COURT CLERK:** Paul D. Donahue**PARTIES:**

Carli Nelson, Subject Minor, not present	
Eric Nelson, Plaintiff, Counter Defendant, present	Rhonda Forsberg, Attorney, present
Garett Nelson, Subject Minor, not present	
Joan Ramos, Other, not present	Jeffrey Luszeck, Attorney, present
Lana Martin, Cross Claimant, not present	Mark Solomon, Attorney, present
Lynita Nelson, Defendant, Counter Claimant, present	Robert Dickerson, Attorney, present
Rochelle McGowan, Other, not present	Jeffrey Luszeck, Attorney, present

JOURNAL ENTRIES

- MOTION: EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE WHY ERIC NELSON SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATIONS OF JUNE 3, 2013 DECREE OF DIVORCE AND JUNE 19, 2013 ORDER AND MOTION FOR A FINDING OF CONTEMPT, FOR IMPLEMENTATION OF THE PENALTIES OF CONTEMPT, FOR FEES AND COSTS AND FOR OTHER RELATED RELIEF. MOTION: DEFT'S MOTION TO AMEND OR ALTER JUDGMENT, FOR DECLARATORY AND RELATED RELIEF. ORDER TO SHOW CAUSE: ORDER TO SHOW CAUSE.

Court noted the court has also reviewed the Opposition.

Attorney Dickerson noted exhibit A attached to their Motion filed on June 17 setting out specific orders they would like included for the 2 parcels and Mississippi properties should remain in or transferred to the ELN Trust which is 50 parcels to be amended or altered. Exhibit B prepared Deeds

PRINT DATE:	07/25/2013	Page 1 of 9	Minutes Date:	July 22, 2013
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by Mississippi Counsel to be signed and title transferred to ELN Trust in which Opposition has no objection to signing the deed.

Attorney Solomon stated they do not object to the relief request except page 6 line 5 and page 8 line 17 in the Motion they represent they are asking for quit claim deeds which some are grant bargain deeds requires warranties.

Attorney Provost stated she contacted Mississippi Counsel who advised her grant bargain sale deed is entitled grant bargain sale deed because that is how chain of title has been made to Mr. Nelson in the past.

All parties stated as to the grant bargain sale deed they are in agreement waiving warranties for a clean title which can be signed right away.

Attorney Solomon noted a quit claim deed should work and if they want a grant bargain deed without warranty is fine. Attorney Solomon requested to review and sign deeds by the end of the month.

COURT ORDERED, 13 Quit Claim Deeds for the Banjuan property and 1 Quit Claim deed for Lindel property by July 31, 2013 on or before business 5:00 pm.

Attorney Dickerson stated next issue is \$151,166. Attorney Dickerson requested the payment to be issued by Eric Nelson to Lynita Nelson.

Attorney Solomon stated Mr. Nelson does not have the authority to transfer distributions out.

Court FINDS, Mr. Eric Nelson went to pay for property and has been controlling all distributions and property transfers. Mr. Nelson sold it to Keith Little possibly benefiting Banjuan properties without thorough accounting. COURT ORDERED, Promissory Note and deed of trust \$88,166 transferred to Lynita Nelson trust \$63,000 payable by Mr. Nelson one time cash payment forthwith by end of July 31, 2013 on or before business 5:00 pm. 8 percent interest should be included from June and July.

Attorney Dickerson noted the final issue is dealing with the race track and requested 50 percent interest fee to be divided into trusts or the other option is to reopen the issue and to have a trial on the issue.

Court stated not being inclined to approve due to not having enough information from where the money came.

Attorney Dickerson stated he was given the Opposition this morning. Attorney Dickerson noted an history of the court order that was given on June 19, 2013 and Mr. Nelson has nothing pending in front of the Supreme Court.

Attorney Forsberg stated the trust all includes the children and the court was specific when ordering the funds.

Attorney Dickerson requested the order from June 19, 2013 to remain. Attorney Dickerson stated he can appear telephonically for the Evidentiary Hearing.

Following argument, Court FINDS, Considering Divorce Decree is the final order and address the matter under Amy as undisclosed asset. Court needs full accounting at the Status Check. COURT ORDERED, Evidentiary Hearing and Status Check SET. Discovery cut off before November 22, 2013 at 5:00 pm. June 19, 2013 ORDER TO REMAIN.

INTERIM CONDITIONS:

FUTURE HEARINGS:

*Canceled: August 01, 2013 10:00 AM Motion
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Elliott, Jennifer
Courtroom 09
Vinson, Debra*

August 01, 2013 4:00 PM Order to Show Cause
Courtroom 05
Sullivan, Frank P.

August 01, 2013 4:00 PM Status Check
Courtroom 05
Sullivan, Frank P.

Canceled: August 15, 2013 11:00 AM Motion

September 17, 2013 10:00 AM Motion
Elliott, Jennifer
Courtroom 09
Vinson, Debra

December 11, 2013 1:30 PM Evidentiary Hearing
Courtroom 05
Sullivan, Frank P.