

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 MATT KLABACKA,
3 DISTRIBUTION TRUSTEE OF
4 THE ERIC L. NELSON NEVADA
TRUST DATED MAY 30, 2001,

5 Appellant/Cross-Respondent,

6 and

7 LYNITA SUE NELSON,
8 INDIVIDUALLY, AND IN HER
CAPACITY AS INVESTMENT
9 TRUSTEE OF THE LSN NEVADA
TRUST DATED MAY 30, 2001,
10 AND ERIC L. NELSON,
INDIVIDUALLY,
11 AND IN HIS CAPACITY AS
INVESTMENT TRUSTEE OF THE
ERIC L. NELSON NEVADA
12 TRUST DATED MAY 30, 2001,

13 Respondents/Cross-Appellants.

SUPREME COURT CASE NO.: 66772

Consolidated Case No. 68292

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15 RESPONDENT/CROSS-APPELLANT, LYNITA SUE NELSON'S, REPLY TO
16 OPPOSITIONS TO MOTION FOR CLARIFICATION OF THE ORDER
17 CONSOLIDATING APPEALS AND GRANTING STAY CONDITIONED
18 UPON POSTING OF BOND, TO DISSOLVE STAY OF PROCEEDINGS AND
19 ORDERS NOT SUBJECT TO APPEAL, TO ALLOW FOR PROTECTION
20 AGAINST HARASSMENT AND DOMESTIC VIOLENCE, AND TO FULLY
21 DEFINE AMOUNT OF BOND

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27 NEVADA TRUST dated May 30, 2001
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On July 23, 2015, Respondent/Cross-Appellant, LYNITA SUE NELSON
4 (“Lynita”), filed her instant Motion for Clarification of the Order Consolidating
5 Appeals and Granting Stay Conditioned Upon Posting of Bond, to Dissolve Stay of
6 Proceedings and Orders Not Subject to Appeal, to Allow for Protection Against
7 Harassment and Domestic Violence, and to Fully Define Amount of Bond
8 (“Motion”). After receiving extensions of time from this Court, Appellant/Cross-
9 Respondent, MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L.
10 NELSON NEVADA TRUST DATED MAY 30, 2001 (“ELN Trust”), and
11 Respondent/Cross-Appellant, ERIC L. NELSON (“Eric”), filed their respective
12 Oppositions to Lynita’s Motion. After receiving the Oppositions, Lynita, through
13 counsel, also requested and was granted an extension of time to file her reply briefs.
14 The Court ordered that Lynita would have until August 25, 2015, to file a single reply
15 to the Oppositions filed by Eric and the ELN Trust. On August 24, 2015, before the
16 deadline for Lynita’s reply, the Court entered an Order denying Lynita’s Motion.
17 Although the Court has already entered an Order on the Motion, Lynita respectfully
18 requests that the Court consider this timely-filed reply and determine whether to grant
19 or deny Lynita’s Motion.

20 **II. LYNITA’S MOTION IS NOT A REQUEST FOR REHEARING OR**
21 **RECONSIDERATION**

22 In their Oppositions, Eric and the ELN Trust argue that Lynita’s Motion is a
23 request for rehearing under NRAP 40. Notwithstanding the fact that NRAP 40
24 appears to apply only to final dispositions of appeals, and not to decisions on motions
25 pending appeal, Lynita’s request is not for rehearing or reconsideration. Instead,
26 Lynita seeks to have an exact determination of the amount of bond which
27 accomplishes this Court’s stated purpose of protecting Lynita from any potential
28 prejudice stemming from this appeal. Lynita also requests clarification of the scope

1 of the stay granted by the Court, since the stay could be construed as staying
2 proceedings unrelated to the instant appeals, or in the alternative, that the Court
3 dissolve the stay to the extent it applied to such unrelated proceedings and orders.
4 Finally, Lynita requests that this Court allow the district court to make necessary
5 orders to protect Lynita from domestic violence and harassment, which the district
6 court attempted to do when it ordered Eric to vacate the Lindell Property.

7 **III. THE COURT SHOULD DEFINE THE AMOUNT OF BOND REQUIRED**

8 As anticipated, the ELN Trust took advantage of the lack of clarity of this
9 Court's July 8, 2015 Order Consolidating Appeals and Granting Stay Conditioned
10 Upon Posting of Bond ("Order Granting Stay") – specifically the absence of a defined
11 amount for the required bond – and posted a bond in the amount of \$408,593.53.
12 Said amount is *insufficient* to protect Lynita pending the final determination in this
13 appeal.

14 In the Decree of Divorce, Lynita was awarded a 1/3 interest in the Russell Road
15 promissory note and deed of trust, which 1/3 interest was valued at \$2,265,113.50.
16 (Exhibit A to Motion, pg 47, line 25). The district court's Findings of Fact and Order
17 entered June 8, 2015 ("June 8, 2015 Order") sought to enforce Lynita's right to 1/3
18 of the Russell Road note by requiring the ELN Trust to pay to Lynita \$26,694.66 "as
19 payment for 1/3 of the profits from the Russell Road property for the period of June
20 1, 2013 through June 30, 2014," and "1/3 of the monthly profits for the Russell Road
21 property from July of 2014 and every month thereafter." (Exhibit F to Motion, pg. 21,
22 lines 15-23). The \$408,593.53 bond does not provide any security to Lynita for any
23 additional profits or payments received from the Russell Road note after July of 2014.
24 Additionally, and contrary to the ELN Trust's argument, Eric's and the ELN Trust's
25 1/2 interest in the Brianhead cabin, which 1/2 interest was valued at \$491,250 in the
26 Decree of Divorce, is clearly insufficient to secure over \$2 million that could
27 potentially be received from the Russell Road note during the pendency of this
28 appeal. If this Court makes no further orders, Eric and the ELN Trust will be

1 permitted to continue to receive and spend Lynita's portion of said note under the
2 Decree of Divorce without providing additional or completely sufficient security to
3 Lynita. Accordingly, the Court should either (a) increase the amount of the bond to
4 include the full value of the Russell Road note, or (b) require the bond to be increased
5 as additional payments are made towards the Russell Road note. If the Court is not
6 inclined to grant either of those requests, the Court should, at the very least, enjoin
7 the ELN Trust and Eric from spending Lynita's portion of the proceeds of the Russell
8 Road note awarded in the Decree of Divorce during the pendency of the appeal.¹

9 The Decree of Divorce also awarded Lynita "Mississippi Property" and
10 "Emerald Bay Miss. Prop.," with a combined total value of \$1,431,093. (Exhibit A
11 to Motion, pg 47, lines 21-23). The June 8, 2015 Order required Eric and the ELN
12 Trust to execute "four (4) Quitclaim Deeds required to transfer the [remaining]²
13 Mississippi property" to Lynita. (Exhibit F to Motion, pg. 23, lines 2-5). The bond
14 posted by the ELN Trust does not account for the value of those Mississippi
15 properties.

16 As can be seen, the ELN Trust has used the lack of clarity of the amount of
17 bond required to its advantage to defeat this Court's stated intention of preventing
18 any prejudice to Lynita pending appeal.

19 **IV. ERIC NEVER REQUESTED, AND IS NOT ENTITLED TO, A STAY**

20 In her Motion, Lynita requested that the Court lift the stay to the extent that the
21 stay can be read to stay proceedings/orders which have not been challenged on appeal
22 by Eric, and for which no stay was requested by Eric. Eric's Opposition does not
23 provide any legal analysis or authority for why he should receive a stay of orders
24 entered against him individually only which have not been appealed, and/or for which
25 he never requested a stay.

26 ¹ Lynita's Motion at pages 9-10 requested an additional bond or injunction.

27 ² Several of the parcels were already held by Lynita or transferred to Lynita
28 prior to entry of the June 8, 2015 Order.

1 **V. CONCLUSION**

2 For the reasons set forth above and in Lynita's Motion, Lynita respectfully
3 requests that this Honorable Court (1) clarify that the Order Granting Stay does not
4 stay proceedings and enforcement of orders in the district court which have not been
5 challenged on appeal, or in the alternative, dissolve the stay to the extent it can be
6 read to apply to such proceedings and orders, (2) allow the district court to make
7 necessary orders to protect Lynita from domestic violence and harassment, and (3)
8 clarify the amount of the bond required by the Order Granting Stay by establishing
9 a more definitive bond amount, or mechanism to determine such amount, which fully
10 protects Lynita from any potential prejudice stemming from this appeal.

11 DATED this 25th day of August, 2015.

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