

1 LAS VEGAS, NEVADA

MONDAY, NOVEMBER 22, 2010

2 PROCEEDINGS

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Tracie K. Lindeman
Clerk of Supreme Court

3 (THE EXCERPT BEGAN AT 15:18:30 WITH CONTINUING)

4 DIRECT EXAMINATION OF JEFF BURR BY MR. JIMMERSON)

5
6 JEFF BURR

7 called as a witness on behalf of the Plaintiff, testified as
8 follows on:

9 DIRECT EXAMINATION CONTINUED

10 THE COURT: It's just important that you don't put
11 those documents over the microphone, because we have trouble
12 with the books covering it and apparently they couldn't hear
13 us.

14 UNIDENTIFIED VOICE: Is the microphone working now?

15 MR. JIMMERSON: Judge, I know I finished my direct.
16 I'd just like to ask to introduce 235, 234, 233, 232, and 231.
17 BY MR. JIMMERSON:

18 Q These are trusts for the children of Eric and
19 Lynita; is that true?

20 A Yes.

21 Q They have modest properties or cash in them, but
22 they're set up for the kids to have their own trusts?

23 A Yes.

24 Q Okay. Now when we talk in terms of trusts, are we

1 talking about irrevocable trusts or are we talking about
2 revocable trusts?

3 A These are irrevocable trusts.

4 Q Irrevocable also.

5 A Yes.

6 Q So do they follow the asset protection trust concept
7 that we discussed in Exhibits 80 and 81?

8 A They are asset protected, but for a different
9 reason.

10 Q All right. Then what's that?

11 A These aren't -- these aren't self-settled in the
12 sense that Lynita or Eric aren't beneficiaries. So they have
13 their own set of rules. We have a spendthrift clause in here
14 that protects them from creditors. Where if you create a
15 trust and remain a beneficiary you have to fall under the
16 self-settled spendthrift trust provision. So yes, they are
17 creditor protected, but for a whole different reason.

18 Q And under these trusts, who are the people who
19 control the assets of the trust? If you'd just take one;
20 let's say the Angel Face Trust, June 14th, 2007, Exhibit 235.

21 A It appears Eric and Lynita are the trustees.

22 Q Okay. So they -- they decide how the monies are to
23 be spent, that kind of thing; monies for college, monies for
24 trips or expenses, that type of thing?

1 A Yes.

2 MR. JIMMERSON: Judge, I'd also like to introduce as

3 respective exhibits the kids' trusts.

4 MR. DICKERSON: I have no objection. Is there

5 really a reason, though, that we're inundating the record with

6 --

7 MR. JIMMERSON: Well, the answer is because we're

8 (indiscernible) --

9 MR. DICKERSON: -- (indiscernible) with less than

10 \$2500 (indiscernible)?

11 MR. JIMMERSON: -- assets that we've agreed are

12 owned by the trusts.

13 MR. DICKERSON: I have no objection, just --

14 THE COURT: Okay. They're hereby admitted.

15 MR. JIMMERSON: Those (indiscernible) to which those

16 assets belong.

17 THE COURT: The numbers that are being admitted, the

18 kids' trusts?

19 THE CLERK: 231 through 235.

20 THE COURT: 231 through 235 are hereby admitted

21 without objection.

22 (Plaintiff's Exhibits 231 through 235 admitted)

23 MR. JIMMERSON: Thank you, Judge. I don't have any

24 further questions.

1 THE COURT: Okay.

2 MR. JIMMERSON: And thank you, Mr. Dickerson.

3 CROSS EXAMINATION

4 BY MR. DICKERSON:

5 Q All right. Mr. Burr, how are you, sir?

6 A Good.

7 Q Do you -- you -- in addition to being a licensed
8 attorney in Nevada, California and I believe you said Arizona,
9 you're also a certified public accountant; is that correct?

10 A Yes.

11 Q And how long have you been a CPA?

12 A I believe I got my certificate in 1983.

13 Q Okay. Now, do you recall -- do you have Exhibit
14 236A in front of you? That's the Eric L. Nelson and Lynita
15 Sue Nelson Family Trust dated May 23rd, 1991?

16 A No, Mr. --

17 Q Jimmerson.

18 A -- Jimmerson, sorry. I'm getting old. Mr.
19 Jimmerson took them back.

20 MR. JIMMERSON: They're with the clerk.

21 BY MR. DICKERSON:

22 Q If I can show you then that trust that's been
23 admitted into evidence as Exhibit 236A.

24 A Okay.

1 Q This document then which takes us back to 1991, May
2 of 1991; is that correct?

3 A Yes.

4 Q Now, what relationship, if any, did you have with
5 either Eric Nelson or Lynita Nelson prior to 1991? Did you
6 have any at all?

7 A None that I recall, no.

8 Q And so the first time you ever met either Eric or
9 Lynita was in early 1991?

10 A To the best of my recollection.

11 Q And how did that -- who did you meet first and how
12 did it come about?

13 A I believe they both came together to my office for
14 estate planning.

15 Q All right. Now, this trust that we're looking at
16 that's Exhibit 236A, is really quite -- simply put, it's your
17 typical AB-type trust that is created for estate tax planning;
18 is that correct?

19 A Yes.

20 Q And by way of this trust it's a revocable trust,
21 correct?

22 A Yes.

23 Q And it's just a way of putting the assets into the
24 trust, married couple's assets into a trust so that you could

1 take full advantage of the marital deduction and the -- well,
2 you could take full advantage of, what do they call it, that
3 -- you --

4 A The exemption --

5 Q -- call it the unified credit, what did they call it
6 in those days?

7 A The exemption amount, the -- the exemption
8 equivalent amount or unified credit.

9 Q The unified credit. Now, the unified credit, do you
10 recall what it was in 1991?

11 A I believe it was 600,000.

12 Q Okay. So in other words, a married couple could
13 transfer -- actually, they could transfer up to a hundred --
14 \$1.2-million; is that correct? Double that amount?

15 A At death.

16 Q Yes.

17 A Yeah, at death they could have a \$1.2-million estate
18 free of -- well, actually, you know, you protected 600,000
19 under the exemption and the rest went to the spouse and it got
20 the unlimited marital deduction, so there's no estate tax on
21 the first death.

22 Q Okay. So essentially the plan is let's take the
23 first \$600,000 of say one of the -- the party's separate
24 property, well, or share of community property, put it into

1 the -- the family trust, and give the rest to the survivor's
2 trust; is that correct?

3 A Yeah, but it -- more correct in our trust it's
4 called the exemption trust.

5 Q Okay.

6 A But yes, 600,000 the exemption trust, the rest to
7 the survivor.

8 Q And again, the purpose of that then is deferring any
9 estate tax until the death of the second party?

10 A Yes.

11 Q Okay. So the purpose of this trust, nothing really
12 was changed. The parties continued to own community property
13 together; is that true?

14 A Yes.

15 Q Now, we move then to the year 1993.

16 MR. DICKERSON: And if I may see Exhibits 222 and
17 211, please? And also Exhibit 210.

18 (Pause)

19 BY MR. DICKERSON:

20 Q Mr. Burr, if I may show you, if you'd take a look at
21 Exhibit 210. This is the document entitled separate property
22 agreement and it is dated April 28th of 1993; is that correct?
23 But it appears as if it was signed by the parties on July 13th
24 of 1993?

1 A Yes.

2 Q Is there a -- a reason for the difference in that
3 date?

4 A I just now noticed that. Probably prepared at that
5 time but then not certified until later and maybe just didn't
6 get the date changed on the front page.

7 Q Okay. Now, isn't it true that -- do you recall how
8 it came about that you were contacted with respect to the
9 issues that were being discussed for the purpose of this
10 separate property agreement in say the spring of 1993?

11 A Yeah, the parties again came to see me.

12 Q Both of them?

13 A Both of them.

14 Q Okay.

15 A And there was concern about liability associated
16 with some of the investments that Eric wanted to make and they
17 basically discussed trying to protect some of the assets from
18 potential creditors.

19 Q So is it true, Mr. Burr, that really the sole
20 purpose of you putting together this separate property
21 agreement that's been admitted into evidence as Exhibit 210
22 was simply and solely for the purposes of asset protection
23 from creditors?

24 MR. JIMMERSON: Objection, that misstates his

1 earlier testimony.

2 MR. DICKERSON: I'm allowed to ask a question.

3 MR. JIMMERSON: I'm not saying you can't ask the
4 question, I'm just making an objection.

5 THE COURT: Overruled. You can answer.

6 THE WITNESS: The purpose of this agreement was to
7 protect them from creditors, yes.

8 BY MR. DICKERSON:

9 Q Now, vis-a-vis each other, with respect to the
10 agreement between Eric Nelson and Lynita Nelson, was their
11 inten -- there an intent on their part to actually separate
12 their property so that neither of them would have any rights
13 in the other people's -- other person's property, correct?

14 MR. JIMMERSON: Objection to the form of the
15 question, Your Honor. He can't possibly understand a
16 unilateral state of mind. The question what words they say, I
17 have no objection, but to say what their intent is, he can't
18 read a mind any more than a judge can.

19 MR. DICKERSON: Well, we're talking about the intent
20 that he discussed earlier. Do you know what their intent was
21 with --

22 MR. JIMMERSON: We're talking about the words.

23 THE COURT: Do you understand why they came to your
24 -- or the purpose of you said to protect assets from

1 creditors? Is there anything else that you understood to be
2 the purpose of the parties coming before you for the separate
3 property agreement?

4 THE WITNESS: That was the sole purpose. There was
5 no discussion about protecting each other from each other or
6 dissolution or anything.

7 BY MR. DICKERSON:

8 Q And in fact, wasn't there discussion of the fact
9 that there would be no different -- that for example, the --
10 the assets that are going to Lynita, if Eric lost every one of
11 his assets because of the risks involved and he lost every one
12 of his assets, was it the intent that he have no interest in
13 the assets that are being distributed to Lynita?

14 A The intent was Lynita would take care of him and
15 further their community.

16 Q Now, if we take a look then at the two -- the trusts
17 that were created on July 13th, 1993, the same day that this
18 document was signed by the parties, that's Exhibit 222 and
19 236A.

20 A Actually, I've got 222 and 211.

21 Q Okay. I'm sorry, I got the wrong -- you're right.
22 2 -- yeah, 236A was the --

23 THE DEFENDANT: 1991.

24 MR. DICKERSON: -- was the 19 --

1 BY MR. DICKERSON:

2 Q So we've got 211 and 222. 2111 is the Eric Nelson
3 Separate Property Trust and 222 is the Nelson Trust; is that
4 correct?

5 A Yes.

6 Q And the Nelson Trust is Lynita's trust?

7 A Yes.

8 Q Now, are these trusts identical? Are they mirror --
9 the same documents, just one's for Eric and one's for Lynita?

10 A Yes.

11 Q So let's start with -- let's start with Lynita's.

12 A Okay.

13 Q Who is the -- now these were -- who is the Trustee?
14 Is this a revocable trust or irrevocable?

15 A This is revocable.

16 Q Okay. So who is -- Lynita's the grantor, correct?

17 A Yes.

18 Q And who is the Trustee?

19 A Lynita.

20 Q Who is designated as the successor trustee upon
21 Lynita's death?

22 A Successor trustee is Eric.

23 Q Okay. And who are the beneficiaries under this
24 trust? Who's the lifetime beneficiary?

1 A Eric is the primary beneficiary in the event of
2 Lynita's passing. And then once -- once he's deceased, the
3 children are the secondary or remainder beneficiaries.

4 Q Okay. So with respect to Exhibit 211, which is
5 Eric's trust, is it -- who's the grantor?

6 A The grantor of Eric's trust is Eric.

7 Q And Eric is also the trustee?

8 A Yes.

9 Q Who is the successor trustee?

10 A Lynita.

11 Q And who are the beneficiaries upon Eric's death?

12 A Lynita is the beneficiary on his death, and then on
13 her death it'd be the children.

14 Q Okay. Now, are these two documents drafted
15 consistent with what your understanding was as what the
16 parties' intent with respect to their property?

17 A Yes.

18 Q Okay. And again, vis-a-vis each other as affecting
19 their rights against each other, what was their intent?

20 A Again, my understanding of the intent and the
21 discussions we had related to protection from third-party
22 creditors, but they still wanted to take care of each other
23 and -- and benefit each other basically.

24 MR. DICKERSON: Now, if I may next take a look at

1 Exhibit 81, please?

2 (Whispered conversation)

3 BY MR. DICKERSON:

4 Q Mr. Nelson, I'm showing you what's been --

5 MR. JIMMERSON: You mean Mr. Burr?

6 MR. DICKERSON: What'd I say?

7 MR. JIMMERSON: Mr. Nelson.

8 UNIDENTIFIED VOICE: Mr. Nelson.

9 MR. DICKERSON: Sorry. Mr. Burr --

10 MR. JIMMERSON: It was a compliment, don't worry

11 about it.

12 MR. DICKERSON:

13 Q Showing you what has been admitted into evidence as

14 Exhibits 80 and 81. Now, Exhibit 80 is -- well, these are --

15 Exhibit 80 is Eric Nelson's trust and Exhibit 81 is Lynita

16 Nelson's trust, correct?

17 A Yes.

18 Q And these are the two trusts that you created in

19 light of the -- Chapter 166 in Nevada Revised Statutes, these

20 being the asset protection trusts; is that correct?

21 A Yes.

22 Q Now, these two trusts you've indicated are

23 irrevocable?

24 A Yes.

1 Q Now, prior to the enactment of the -- by the Nevada
2 Legislature of Chapter 166, in order for a trust to be truly
3 irrevocable so that it is getting assets out of a party's
4 estate, the grantor could not be the trustee, isn't that
5 correct?

6 A In order for creditor protection to be achieved, the
7 grantor couldn't be the trustee.

8 Q So prior to --

9 A Let me back up, I'm sorry. I have to give you a
10 technical answer.

11 Q Okay.

12 A Grantor could not be a beneficiary of the trust, but
13 the grantor could be a trustee if the grantor was not a
14 beneficiary. I mean, for asset protection purposes. So I'm
15 -- maybe I'm giving you too much detail.

16 Q Okay.

17 A But a grantor could not be a beneficiary and have
18 him be protected from creditors unless and until the statute
19 passed.

20 Q How about for taxation purposes? If a party was
21 attempting to take a particular asset out of their estate and
22 give it to their children say you would do -- you could do
23 that in the form of an irrevocable trust; is that correct?

24 A Yes.

1 Q And in that situation if you're trying to prevent
2 being taxed on it, could the grantor be the trustee?

3 A As long as that trustee was limited by what's known
4 as an ascertainable standard, as long as the trustee had real
5 strict distribution rules associated with the trusteeship.

6 Q Okay. So let's take a look then at the Nevada law
7 that went into effect in 1999, the -- the self-settled
8 Spendthrift Trust Act. What it changed is it allowed for
9 asset protection purposes an irrevocable trust to be created
10 where the grantor could also be a beneficiary; is that
11 correct?

12 A Yes.

13 Q Okay. And that's what you attempted to do at this
14 time to allow them to take advantage of that Act and to have
15 better asset protection?

16 A Yes.

17 Q Okay. So again, in 19 -- in year 2001 when -- do
18 you know how it came about, the discussion on this? Did Eric
19 Nelson come to you or did they both come together or do you
20 recall?

21 A I init --

22 Q Oh, I think -- I think you indicated that, that you
23 initiated this; is that right?

24 A I initiated the discussion. I think Eric and I

1 talked alone first, but ultimately Lynita came also.

2 MR. JIMMERSON: There was a solicitation now that I
3 recall started.

4 THE WITNESS: Right. Information letter.

5 MR. JIMMERSON: To all my former clients. Come
6 back.

7 BY MR. DICKERSON:

8 Q Now again, at the point in time that they -- in May
9 of 2001, when Eric Nelson and Lynita Nelson entered into their
10 respective trusts, Exhibit 80 and 81, did you have discussions
11 with the parties as to what their intent was with respect to
12 each other, vis-a-vis each other, affecting their community
13 property rights or their interest in all their property?

14 A I have to say that yes, the tenor, the tone all
15 along was one of cooperation and a mutually shared goal of
16 trying to protect their family from as -- from creditors,
17 frivolous lawsuits, that type of thing, but a shared intent to
18 look out for each other and the community at the same time.

19 Q So isn't it true in doing that, sir, what the
20 parties wanted to do and their intent was to take all of the
21 assets in which there was any risk involved and put those in
22 Eric Nelson's trust; is that correct?

23 A Back -- yes. Back in the initial phase of this and
24 continuing forward, that was one of the goals as I understood

1 it.

2 Q Okay. And the other goal was to take all of the
3 assets that are safe that are owned free and clear and put
4 those in Lynita Nelson's trust, correct?

5 A Best of my recollection, yes.

6 Q Okay. So did the parties discuss with your -- you
7 their intent or were you aware of what their intent was, if
8 all of the assets that were in Eric Nelson's trust went down
9 the drain, they failed, the creditors took them away, what was
10 going to happen with respect to the remaining assets, the safe
11 assets, in Lynita Nelson's trust?

12 A Well again, if that happened the hope was that only
13 Eric's assets again would be gone and that would leave the
14 rest of the assets available for the family.

15 Q Now is that consistent with the intent that was
16 expressed to you by Mr. and Mrs. Nelson when they first met
17 with you in 1991?

18 A Yes.

19 MR. DICKERSON: Now if I may see Exhibit 213,
20 please.

21 (Pause)

22 BY MR. DICKERSON:

23 Q Mr. Burr, Exhibit 213 is the waiver of conflict that
24 has been admitted into evidence. You prepared this document;

1 is that correct?

2 A Yes.

3 Q And it indicates in here the last sentence of the
4 waiver of conflicts says this waiver was given orally to Mr.
5 Burr on March 4, 2008.

6 A Yes.

7 Q Yet it was signed by Eric Nelson in October of 2008?

8 A Yes.

9 Q Why did you not have a written waiver form in March
10 of 2008?

11 A Just the relationship I felt was such that, you
12 know, kind of transcended attorney/client privilege and I was
13 asked to come in as a friend/attorney and I just wasn't as
14 careful as I should have been and technical. And so, I'd been
15 asked to do this earlier but I just didn't get around to
16 preparing --

17 Q Okay.

18 A -- the conflict later till that -- conflict later
19 until later.

20 Q Mr. Burr, is it fair to state that what your role
21 really was was the role of a mediator?

22 MR. JIMMERSON: Objection, that misstates his
23 testimony entirely. He was a lawyer.

24 MR. DICKERSON: I'm asking him a question.

1 BY MR. DICKERSON:

2 Q Isn't it true, sir, that your --

3 THE COURT: Lawyers can be mediators. You can ask
4 what -- you can answer the question, over -- you can answer
5 the question what you perceived your role as being.

6 THE WITNESS: I perceived my role as one, trying to
7 bring two parties together without trying to basically
8 represent one or the other. Just trying to come up with a
9 solution that was fair to both.

10 BY MR. DICKERSON:

11 Q And at some point in time Bryce Duckworth became
12 involved representing Lynita; is that correct?

13 A Yes.

14 Q Do you know how he came about being Lynita's lawyer?
15 Did you refer --

16 A I referred Mr. Duckworth.

17 Q And what was the purpose of that? Why was Mr.
18 Duckworth brought in?

19 A Lynita had I think, I don't know about Eric, but
20 Lynita had said hey, is there an attorney you know that's
21 really kind of lower -- has -- is low key and be someone that
22 could foster a settlement and, you know, I think both Eric and
23 Lynita were of that mind at that time and I thought Mr.
24 Duckworth's personality would fit the situation and also, at

1 that point in time I just felt like both parties could benefit
2 from divorce counsel or family law counsel representing them.

3 Q Okay. Now, you indicated in your waiver of conflict
4 form, it says I have been -- this is Eric Nelson's signing. I
5 have been informed that I should seek separate counsel to
6 advise me in regards to the dissolution of my marriage to
7 Lynita Sue Nelson. Heretofore I have waived that right and
8 have decided to represent myself in the matter of the
9 dissolution. This waiver -- okay.

10 So, leaving it at that. Did you discuss with Eric
11 Nelson your -- did you recommend that he get an attorney?

12 A Yes.

13 Q And what did he tell you?

14 A He just felt like because of his extensive business
15 dealings and negotiation abilities and that, that he could do
16 it on his own and was hopeful that he wouldn't have to hire
17 counsel.

18 Q Now, Mr. Burr, you'd indicated that you charged 550
19 an hour for your services in doing what you were doing at this
20 point in time to assist the parties; is that correct?

21 A Yes.

22 Q Isn't it true that your bills were paid by Eric
23 Nelson?

24 A To the best of my knowledge, yes. I sent the bill,

1 I -- I sent the -- I don't know, can I clarify that or --

2 THE COURT: Yeah, you can clarify if you'd like.

3 MR. JIMMERSON: You said something quite different.

4 THE WITNESS: Well --

5 MR. JIMMERSON: To my question. You said that you
6 sent his bills and you thought it was paid by Lynita.

7 THE COURT: Well, why don't you clarify your
8 question.

9 MR. JIMMERSON: How much did you charge Lynita;
10 answer, several --

11 MR. DICKERSON: It's my --

12 MR. JIMMERSON: -- thousand of dollars was the
13 answer.

14 THE WITNESS: I was never asked who paid the bills.

15 THE COURT: Let him clarify.

16 BY MR. DICKERSON:

17 Q Who paid the bill?

18 A I -- I did send them -- I mean, it was prepared --
19 my recollection was Eric paid the initial bills that I sent,
20 that's my recollection.

21 MR. DICKERSON: Now, if I may have Exhibits 220,
22 221, 236B and 223.

23 (Pause)

24 BY MR. DICKERSON:

1 Q Mr. Burr, you next indicate that in February of 2009
2 you rendered further estate planning services to Lynita
3 Nelson; is that correct?
4 A Yes.
5 Q And if you take a look at Exhibit 220, that is the
6 last will and testament of Lynita Nelson that you prepared?
7 A Yes.
8 Q And 221 is the exercise a power of appointment?
9 A Yes.
10 Q What is purpose of the exercise a power of
11 appointment? What does that do?
12 A That is the procedure used to amend the irrevocable
13 trust basically.
14 Q Okay. And so you can amend a revocable (sic) trust,
15 correct? Well, we've already --
16 A Yes, I mean, it's a type of amendment, it's actually
17 called an exercise a power of appointment but it's a way of
18 changing the terms of a trust, yes.
19 Q And Exhibit 225, that's change of beneficiary of
20 trustee? You prepared that in February of -- actually, it
21 appears that this was done in January.
22 A 225. Oh here it -- I've got 220, 223 and 221.
23 Q Do you have 225 there?
24 A Oh wait, I don't have 225.

1 MR. DICKERSON: Sorry, Lori. I did that. I gave
2 you the wrong number.

3 BY MR. DICKERSON:

4 Q Exhibit 225 is the change of distribution trust
5 (indiscernible) correct?

6 A Okay. Yes.

7 Q And you prepared this on your own; is that right?

8 A Yes.

9 Q Were you aware that Lana Martin (ph) was not the
10 distribution trustee at that -- at this time?

11 A I must not have been, no.

12 Q Okay. Does it really matter? What -- did Lynita
13 indicate to you who she preferred to be her distribution
14 trustee?

15 A Yes.

16 Q Okay. If the distribution trustee was Nola Harber
17 (ph) at the time that you signed this document, can you tell
18 us who's the distribution trustee now? Is this going to be
19 effective to change it or not?

20 A If she didn't sign a resignation, then the
21 distribution -- the trust consultant should go through the
22 formality of removing her. You could make the technical
23 argument that she would still continue to serve with Connie
24 Jan -- Van Boren (ph) because she had --

1 Q Okay.

2 A -- not yet been removed or submitted a resignation.

3 Q For future purposes is there a way that that can be

4 fixed --

5 A Yes.

6 Q -- so that Connie Van Boren and Reed Van Boren (ph)

7 are the distribution trustees?

8 A Yes, that's easily done.

9 Q All right. So was it ever brought to your attention

10 that Nola Harber was substituted at some point in time?

11 A It could have been. I -- we may have just

12 overlooked it in our office.

13 Q Do you believe you even prepared those forms or

14 could they have been prepared by somebody else?

15 A I just don't recall.

16 Q All right. Exhibit 236B, that is the total

17 amendment and restatement of the -- of the Nelson Trust dated

18 July 13th, 1993?

19 A Yes.

20 Q Now, help me on this. Because we go back and we see

21 that the trust in 1993 that was created is Exhibit 222; is

22 that right or do you still have 222 up there?

23 A I don't.

24 MR. DICKERSON: 222 again, please.

1 BY MR. DICKERSON:

2 Q Exhibit 222 is the Nelson Trust dated July 13th,
3 1993?

4 A Yes.

5 Q Okay. Was that agreement really even in effect or
6 was that trust even in effect in 2009 when all this was done?

7 A Not that I had -- I - we felt it wasn't in effect,
8 but we were concerned that if there was some asset discovered
9 later that was in the trust name that we might have a probate
10 situation and so, just out of exercise of caution just
11 prepared this amendment.

12 Q Now whatever these documents -- taking all of these
13 documents that you've prepared for Lynita Nelson in early
14 2009, January and February of 2009, isn't it true, sir, that
15 the legal effect simply is, is that Lynita Nelson can only
16 give away half of the community property?

17 A Yes.

18 Q So the other half of any community property is Eric
19 Nelson's, she could never give that away; is that correct?

20 A Correct.

21 Q So, all she was doing by way of these documents that
22 you prepared in early 2009 was simply taking her share of the
23 community property and saying she wanted it to go to her
24 children; is that correct?

1 MR. JIMMERSON: Objection, that calls for a legal
2 conclusion, unless they had such a conversation, which I
3 doubt.

4 MR. DICKERSON: He prepared the documents.
5 BY MR. DICKERSON:

6 Q What do they accomplish, sir?

7 THE COURT: Overruled. He can understand what his
8 understanding -- well, his opinion doesn't make it a legal
9 opinion.

10 BY MR. DICKERSON:

11 Q Is it true, sir, that --

12 MR. JIMMERSON: I would object to lack of
13 foundation, Your Honor.

14 THE COURT: Overruled. You can answer.

15 THE WITNESS: Again, they were involved in these
16 proceedings and there were major issues about community
17 property and assets and all that. Whatever Lynita was
18 ultimately entitled to or would be deemed to be the owner of,
19 this was meant to take care of that. Whether it was her half
20 of the community or otherwise.

21 BY MR. DICKERSON:

22 Q And her intent was that it go to her children; is
23 that correct?

24 A Yes.

1 Q Now, can you -- you were asked the questions about
2 the -- what could be done with respect to -- well, let's go
3 back a second.

4 The intent since 1991 as you've stated as I
5 understand it is to take -- put in Eric Nelson's Trust the
6 various trusts that had been created, all the risky assets; is
7 that correct?

8 A Since 1993.

9 Q Since 1993.

10 A Yes.

11 Q Okay. All the risky assets, correct?

12 A Well, let me back up. Again, it was important that
13 we have a balance.

14 Q Okay.

15 A So there may have been assets put in Eric's side
16 that weren't quote unquote risky, but the risky ones were to
17 reside there.

18 Q All right. And the safe ones were to reside in
19 Lynita's; is that correct?

20 A That was the general idea, yes.

21 Q Can you tell me, the Utah property that was owned by
22 the property -- the parties, in -- the Brianhead, Utah, what
23 we've called their cabin that both of them have valued in the
24 neighborhood of \$3-million. That property's owned free and

1 clear, isn't it, sir?

2 MR. JIMMERSON: Objection. Mr. Nelson's not valued

3 it at \$3-million. He said he thought it'd be worth less now.

4 THE COURT: As far as value, but are you aware of a

5 cabin that they own in --

6 THE WITNESS: Yes.

7 THE COURT: -- Brianhead?

8 THE WITNESS: Yes.

9 THE COURT: Why don't you ask the follow-up

10 question?

11 BY MR. DICKERSON:

12 Q And you're aware of that. That asset originally was

13 put in Lynita Nelson's trust; is that correct?

14 A I could tell you real -- I think you took that

15 schedule away from me, so I'd have to have the separate

16 property schedule would have it on there.

17 Q Oh, and what schedule is that?

18 A The separate property agreement, the schedule is

19 attached that shows --

20 Q I don't believe we have one. I don't believe that

21 -- I don't bel --

22 A I was shown a schedule by Mr. Jimmerson. I don't

23 know --

24 (Pause)

1 THE WITNESS: It actually listed separate -- each
2 separate trust and what assets they were receiving.

3 BY MR. DICKERSON:

4 Q So that would be -- if you take -- do you have a
5 separate property agreement there?

6 THE COURT: Yeah, that was only -- he has the
7 separate property agreement, the A and B schedules were not
8 attached to the trusts as I recall.

9 THE WITNESS: Yeah, they weren't attached to the
10 trusts, just the separate property agreement.

11 MR. JIMMERSON: And may I say, Judge, I think that
12 it should have been attached to those trusts but as we
13 physically produced them to you, we don't have it attached.

14 THE CLERK: Mr. Dickerson.

15 (Pause)

16 BY MR. DICKERSON:

17 Q Showing you what's been marked as Exhibit 210. This
18 is a document that's dated 1993, that's the --

19 A Okay. Yeah, if you go to --

20 Q I don't bel -- do you have -- do you see the Utah
21 property in there?

22 A Let's see.

23 (Whispered conversation)

24 A 1167 Pine Ridge, Panguitch, Utah is there.

1 MR. JIMMERSON: Judge, I think the parties will
2 stipulate that that is not the cabin and asset they were
3 talking about today.

4 MR. DICKERSON: Right. Right.

5 BY MR. DICKERSON:

6 Q The property that we're talking about --

7 MR. JIMMERSON: That was out of -- a cabin by itself
8 that the parties owned in 1993.

9 MR. DICKERSON: Sure.

10 BY MR. DICKERSON:

11 Q The Utah we're referencing, sir, was purchased after
12 1993.

13 A Oh.

14 Q Do you have -- are you aware or do you have personal
15 knowledge or have any knowledge at all that that property was
16 originally put 100 percent in Lynita Nelson's trust?

17 A I'd have to review the schedules I'd seen earlier,
18 because I -- my recollection right now is foggy.

19 Q Okay. The pro -- the office building that the
20 properties own on Lindell, do you know anything about that
21 asset?

22 A Yes.

23 Q Do you know that that property is owned free and
24 clear?

1 A My recollection is yes.

2 Q Okay. And do you know, sir, that that asset

3 originally was put 100 percent in Lynita Nelson's Trust?

4 A I again don't recall. I wish I could, but I don't.

5 Q So assuming for the moment that both those assets,

6 the Utah property and the Lindell property, were originally

7 put in Lynita Nelson's trust, are you aware of why in the 2007

8 time frame I believe it was that those properties were

9 transferred 50 percent to Eric Nelson's trust?

10 A Well again, can I ask who -- did I -- did my office

11 participate in a transfer?

12 Q I don't know, sir. And I'm sorry, I don't know.

13 A Okay.

14 Q I don't believe so.

15 A Again, my opinion would be that -- I don't know -- I

16 really -- I really don't know except the fact that each asset

17 that they owned was to be equally -- ultimately equally

18 divided, it might be one reason why it was done.

19 Q All right. Let's talk a bit about that -- the --

20 the tax loss carry forward that is applying to the asset known

21 as the Silver Slipper Casino. It -- first of all, sir, a

22 married couple can file a separate return as a married

23 individual, correct?

24 A Yes.

1 Q That doesn't mean that everything they own is their
2 separate property, does it, sir?

3 A Right.

4 Q In fact, you could take community property and have
5 a complete community property existence and the married couple
6 can file separately; is that true?

7 A Yes.

8 Q All right. So the fact that parties file separate
9 -- married couples file separate return, does that have
10 anything to do with the ownership of their property?

11 A Ultimately it may be one factor if you're trying to
12 decide, you know, what the character is -- but ultimately no,
13 the filing of a tax return doesn't go to the source or the
14 character of the property, it just can be one -- one fact that
15 might -- might be relevant.

16 Q So isn't it true, sir, that regardless of whether
17 Eric Nelson in this case files a separate tax return and
18 claims all the losses relating to the Silver Slipper property,
19 isn't it true that under federal law that capital loss carry
20 forward follows the asset?

21 A The -- well, basically it does follow the asset.

22 Q Okay.

23 A You have to determine whether the asset was separate
24 or community.

1 Q Okay. So if this Court determines that all of the
2 assets that are owned by Mr. and Mrs. Nelson is community
3 property, it would not be necessary for the Nelsons to file
4 amended returns for the years 2005, 2006, 2007, 2008, 2009; is
5 that correct? Or 2010?

6 A It would not be absolutely necessary, no. I think
7 it'd be a good idea, but --

8 Q Okay. You're just saying that you, as trying to dot
9 the I's and cross the T's, would recommend filing amended
10 returns; is that correct?

11 A Right. Right.

12 Q But under federal law, and you know that there's
13 other opinions out there, it is not absolutely necessary that
14 that be done; is that correct?

15 A Yes.

16 MR. JIMMERSON: Objection, there's lack of
17 foundation as to the witness' ability to answer that question,
18 Judge.

19 MR. DICKERSON: He's already an -- you already
20 established his ability to answer that.

21 THE COURT: Do you feel comfortable answering that
22 question --

23 THE WITNESS: Yes.

24 THE COURT: -- based on your CPA and your

1 experience?

2 THE WITNESS: Yes.

3 BY MR. DICKERSON:

4 Q Now, with respect to the deeds to the Mississippi
5 property, when you were involved in this case, you are aware
6 that there was a lawsuit pending in Mississippi with respect
7 to the way the property was titled, isn't that true?

8 A Yes.

9 Q Okay. And are you aware that that suit was a suit
10 filed by a gentleman by the name of McManus (ph)?

11 A No.

12 Q You were aware that Eric Nelson was being
13 represented by counsel in Mississippi?

14 A To the best of my recollection, yes.

15 Q Okay. Do you know whether Lynita was being
16 represented by counsel in Mississippi?

17 A Not that I'm aware of.

18 Q Do you know anything about those lawsuits in
19 Mississippi?

20 A Not -- no more than just what Eric had told me.

21 Q Okay. So isn't it true, sir, that the deeds that
22 Mr. Jimmerson referenced were actually prepared by Eric Nelson
23 and not anyone from your office?

24 A Typically Eric would prepare deeds and we would

1 prepare entities.

2 Q Okay. And isn't it true that Mr. Nelson simply came
3 to you and asked you to prepare the necessary paperwork to
4 create Nevada LLCs so that he could have transfer -- title to
5 those properties transferred to the Nevada LLCs?

6 A Yes.

7 Q Now, you were asked the question of based upon all
8 the scheduled that Mr. Nelson provided to you during the
9 period of time that you were trying to mediate and assist
10 these parties in reaching agreement that you were unaware of
11 anything that he was hiding?

12 A Right.

13 Q Let me ask you, sir, at any time on any schedule
14 that Mr. Nelson provided to you did he tell you -- did he tell
15 you that he had a -- he personally, Eric Nelson, had a note
16 payable to him by Grotta Financial Partnership in the amount
17 of \$3,025,000?

18 A We discussed various notes associated with the
19 property.

20 Q Do you --

21 A I don't know --

22 Q Do you --

23 A -- you know, which ones were disclos -- I mean, he
24 -- we discussed in detail --

1 Q Are you familiar with the Grotta Group?

2 MR. JIMMERSON: Excuse me, can we have the last
3 answer please?

4 THE COURT: Do you want to finish -- were you
5 finished?

6 THE WITNESS: I just don't recall the details, but
7 he had discussed various notes. He discussed the fact there
8 were some notes associated with the property, but I just don't
9 recall the amounts or who -- who they --
10 BY MR. DICKERSON:

11 Q Do you recall any schedule that he gave to you that
12 listed on that schedule that he had a personal note receivable
13 from Grotta Financial Group payable to him in the amount of
14 \$3,025,000?

15 A I'd just have to go back and review my schedules.

16 Q And where would those be?

17 A In my office.

18 Q Okay. How about, sir, did he ever tell you that --
19 did he ever tell you that Emerald Bay LLC -- Emerald Bay
20 Mississippi LLC owed him on a personal note \$45,500?

21 A I don't recall.

22 Q Sir, do you ever -- did he ever tell you that -- did
23 he ever tell you that his nephew Chad Ramos owed him \$261,675
24 for monies that he had lent to him?

1 A He did talk about certain family notes, but I don't
2 recall that one specifically. I'd have to look at my
3 documents.

4 Q Did -- on any schedule that he gave to you, did he
5 tell you that his nephew Jessie Harber (ph) had borrowed
6 \$47,000 from him that was owed?

7 A Again, I'd have to refer to my notes.

8 Q And how -- his -- did he ever tell you that he had
9 lent his nephew Brock Nelson \$10,000 that was owed to the
10 parties?

11 A Again, I can't recall.

12 Q Okay. Sir, did he ever mention to you that the
13 Silver Slipper Casino had management fees that had yet to be
14 paid to him, that there were accrued management fees?

15 A I do recall that there were management fees, but I
16 don't recall if they were in arrears or not, but I know there
17 were management fees.

18 Q Do you recall if he ever told you about any money
19 that he took from the safe in the parties' home?

20 A He definitely didn't tell me about a safe.

21 Q Did he provide you with a value of what he believed
22 the Silver Slipper Casino was worth?

23 A Yes, he did, and I just don't have the notes in
24 front of me so I couldn't recall the amount, but I do have it

1 written down.

2 Q Did he provide you with a separate value as to what
3 he believed all the property in Mississippi, the real property
4 in Mississippi, was worth?

5 A He did guesstimate, you know, what he thought the
6 values were.

7 Q And do you recall that -- what that was?

8 A No.

9 Q Now, did you do any independent investigation to
10 determine whether there were any assets that Eric Nelson had
11 put -- provided to you by way of his schedules to determine
12 whether there'd been a full disclosure?

13 A No.

14 Q Were you simply relying upon what Eric Nelson told
15 you?

16 A Yes.

17 (Pause)

18 MR. DICKERSON: I have nothing further, Your Honor.

19 THE COURT: Redirect.

20 MR. JIMMERSON: Just a few minutes in questions.

21 Thank you, Mr. Burr.

22 REDIRECT EXAMINATION

23 BY MR. JIMMERSON:

24 Q Did Lynita Nelson or Eric Nelson tell you about her

1 removal of more than \$50,000 from the same safe in cash?

2 MR. DICKERSON: Timing; we object to the form of the
3 question. We're dealing with timing, whether it was even done
4 at that point in time.

5 MR. JIMMERSON: Well, it's the same time.

6 THE COURT: Well --

7 MR. JIMMERSON: The same --

8 THE COURT: It -- overruled.

9 MR. JIMMERSON: -- time she took the money.

10 THE COURT: Did either one -- you know anything
11 about either one taking property out of a safe?

12 THE WITNESS: No.

13 THE COURT: All right.

14 BY MR. JIMMERSON:

15 Q In dealing with Mr. -- and in listening to the
16 questions of Mr. Dickerson, have you heard anything that is at
17 odds with the veracity of my client and his discussions with
18 you in terms of disclosures of what the parties owned or he
19 owned?

20 A I have no reason to doubt the veracity of either
21 party.

22 Q Okay. When you talk in terms of that you're -- that
23 Burr -- asset protection trusts do not protect one spouse
24 versus another spouse's rights, that's what you said, correct?

1 A I'm sorry, would you repeat that?

2 Q Your form trusts, Exhibits 80 and 81, the
3 irrevocable trusts under the asset protection trusts do not
4 protect rights between spouses, correct?

5 A I -- I'm not 100 percent sure. All I can tell you
6 is what the intent is.

7 Q Okay. And the intent in every case as far as you
8 know in preparing them is not to protect or defeat a spouse's
9 rights?

10 A Every one we've done between husband and wife, yes.

11 Q And how many hundreds have you done?

12 A Over 500.

13 Q So in all of those cases as far as you know, there
14 was never an effort to defeat a spouse's rights?

15 A Not that I'm aware of.

16 Q All right. Fair enough. And so would I conclude
17 that that would also include that the spouses would each be
18 responsible for one half of the liabilities attached to these
19 assets?

20 A In a dissolution setting I would -- it's gotta work
21 both ways.

22 Q So the answer's yes?

23 A Yes.

24 Q So the liabilities of Mississippi if it is a --

1 going to be treated as a joint or community asset would also
2 flow to Mrs. Nelson, correct?

3 A In the sense of between the part --

4 Q In a dissolution.

5 A Between the parties.

6 MR. JIMMERSON: And Mr. Dickerson, you'll stipulate
7 to that, right?

8 MR. DICKERSON: I'll stipulate to that, sure.

9 THE WITNESS: Okay.

10 BY MR. JIMMERSON:

11 Q So therefore, the whole purpose of a trust is
12 defeated in a dissolution matter; understand? In other words,
13 all that Jeff Burr has tried to accomplish with these parties
14 to protect assets doesn't apply in a divorce setting.

15 A Not necessarily, no. I disagree with that.

16 Q Why do you disagree?

17 A Because in a -- in an amicable setting that a
18 dissolu -- a property settlement agreement can be fashioned in
19 a way that the trusts maintain their integrity.

20 Q Okay. And now we don't have an amicable setting, we
21 have a setting that gets back to (indiscernible) that Mr.
22 Dickerson and Mrs. Nelson is trying to lead the Court into a
23 legal error by trying to compel something that --

24 MR. DICKERSON: To which I object, Your Honor, and I

1 object to the characterization of the question.

2 THE COURT: I don't need any help to compel me to
3 legal errors. I make enough of them on my own, so -- so I
4 don't need any help.

5 BY MR. JIMMERSON:

6 Q Okay. But do you understand my point? If you -- if
7 you are trying to in the Nelson case, Mrs. Nelson says I'm not
8 crazy about gaming, I'm not crazy about liquor establishments,
9 I'm not crazy about that type of business investments. My
10 husband is hell bent on doing it so I want to -- as part of
11 Lynita's goals in 1993 I want to seprate them, right? Okay.
12 Then they reaffirm that same type of intent in 2001 with the
13 irrevocable trust under NRS 166. Are you with me?

14 A Yes.

15 Q But now Jeff Burr says that the liabilities
16 associated with the assets that are risky fall upon the wife
17 in a divorce setting.

18 A Well, (indiscernible) distinguish that if they can.

19 Q Well, (indiscernible) can?

20 A Well, because basically one party's still -- is not
21 a guarantor perhaps of a loan or a co-signer or a co-borrower,
22 so it does alter the obligations that one party might have
23 towards an outside lender, third-party lenders.

24 Q I'm not ask -- I'm not asking you an outside lender.

1 You've already told me it's asset protection to the extent
2 there's not a personal guarantee. I understand personal
3 guarantees change all. Your assets (sic) can't possibly
4 defeat a creditor's rights if they've got a personal
5 guarantee, right? Or a deed of trust. But vis-a-vis an
6 unsecured creditor, like a lawsuit you're talking about, it
7 does defeat it?

8 A No.

9 Q What doesn't?

10 A It doesn't -- I mean, dissolution would not defeat
11 it. If the Court is able to fashion a division of property
12 which I think would be in its authority in a way that the
13 assets didn't come outside the trust, but that the assets were
14 -- were divided and kept within the umbrella of the trust, it
15 still should protect the assets from outside creditors.

16 Q Right. Which means leaving the trust intact,
17 correct?

18 A Yes.

19 Q Which means not setting aside four years of tax
20 returns, correct?

21 A The -- the tru --

22 MR. DICKERSON: Two different issues, Your Honor. I
23 object to the form of the question; two different issues.

24 MR. JIMMERSON: I'll revise the question.

1 BY MR. JIMMERSON:

2 Q Which means not setting aside the separate property
3 trusts, correct?

4 A Not setting aside the trust, right.

5 Q It's a judicial leveling off?

6 A Right.

7 Q And it's your determination that if I give Eric
8 Nelson assets in the Eric Nelson Trust, I want to make sure
9 that the assets I give to wife somehow measure up?

10 A Right.

11 Q But you don't attack or set aside the trust?

12 A That would be my -- my hope in that case.

13 Q And that's because of the nature in which the trusts
14 were created, correct?

15 A Right.

16 Q And that was also consistent with Lynita and Eric's
17 intent in 1993 and in 2001 again, correct?

18 A For asset protection, yes.

19 MR. JIMMERSON: Nothing further, sir. I am -- I do
20 -- actually, I'm sorry. There was one other question I wanted
21 to go to. 81A. Could I ask for 81A, please?

22 THE CLERK: It's in the books.

23 BY MR. JIMMERSON:

24 Q Mr. Dickerson asked you this line of questions. He

1 says -- even suggested that you had no role in this I think.
2 erroneously mistaken, but he asked you were you aware that
3 there was a different distribution trustee after Lana Martin
4 and before the Van Borens. Do you recall Mr. Dickerson asked
5 those questions?

6 A Yes.

7 Q And you said you weren't sure. He asked you in
8 fact, you don't even know if you prepared it, you said I don't
9 remember.

10 A Right.

11 Q Let me show you proposed Exhibit 81A and ask if this
12 might refresh your recollection that you in fact did prepare
13 the change in distribution trustee for Lynita Nelson in her
14 separate property trust.

15 A Yes, I did prepare this.

16 Q If you'd turn to page 2 do you see your signature as
17 trust consultant?

18 A Yes.

19 Q Accepting that role and then you have below that
20 Nola Harber's taking over as distribution trustee?

21 A Yes.

22 Q All prepared by your staff and your (indiscernible),
23 correct?

24 A Yes.

1 MR. JIMMERSON: Your Honor, I'll move for admission
2 of Exhibit 81A into evidence.

3 MR. DICKERSON: No objection.

4 THE COURT: It is hereby admitted.

5 (Plaintiff's Exhibit 81A admitted)

6 BY MR. JIMMERSON:

7 Q So the record now with refreshment of recollection
8 is that you in fact were part of that change for Lynita
9 Nelson, correct?

10 A Yes.

11 Q Now, Mr. Dickerson kind of made this comment, he
12 said well, if you can change the distribution trust you can
13 amend an irrevocable trust. Remember that line -- that
14 question?

15 A Yes.

16 Q But that's really not a good example of an amendment
17 of an irrevocable trust like this, is it?

18 A It --

19 Q Just changing a trustee, you're not changing the
20 terms of the trust?

21 A Right.

22 Q You're not distributing assets by force, you're
23 doing so by will, because the -- the agreement itself allows
24 you to do that, the agreement itself allows you to change

1 distribution trustees.

2 MR. DICKERSON: Object to the form of the question.
3 Which one does he want him to answer?

4 MR. JIMMERSON: I'll start with one.

5 BY MR. JIMMERSON:

6 Q The agreement allows you to change distribution
7 trustees?

8 A Allows the trust protector --

9 Q Trust pro -- right.

10 A -- to do that. Yes.

11 Q In this case, Lynita Nelson, right?

12 A No, that'd actually be me.

13 Q Be you, okay. So now, can Lynita Nelson force you
14 to change distribution trustee?

15 A No.

16 Q Okay. So you're an independent person.

17 A Right.

18 Q Can Judge Sullivan order you to change distribution
19 trustee in a forced order?

20 A No.

21 Q Okay. So that's why it's an irrevocable trust,
22 correct? That's the protection --

23 A Yes.

24 Q -- of an irrevocable trust. That's the whole

1 purpose for NRS 166, correct?

2 A Yes.

3 Q To avoid things like garnishment issued by judges
4 against assets contained in a trust like this, correct?

5 A Yes.

6 Q Okay. All right.

7 MR. JIMMERSON: Did I admit, Ms. Parr, 81A into
8 evidence? I think I did.

9 THE CLERK: It's already been admitted.

10 MR. JIMMERSON: Okay.

11 BY MR. JIMMERSON:

12 Q And the deed that -- both sides, I asked you about
13 it, Mr. Dickerson asked you -- in Mississippi. Were deeds
14 that you believe may have been prepared by Mr. Nelson pursuant
15 to LLCs prepared by yourself, correct?

16 A That's my recollection.

17 Q To avoid conflict in ownerships involving this man
18 Maness; is that right?

19 MR. DICKERSON: Object to the form of the question.
20 How would he know what the intent was.

21 BY MR. JIMMERSON:

22 Q Were you involved in the -- as the lawyer for your
23 client, Mrs. Nelson, were you -- were you knowing that she had
24 physical possession of deeds in Mississippi regarding

1 Mississippi property?

2 MR. DICKERSON: And object to the form of the
3 question.

4 MR. JIMMERSON: Okay. Do you know what the deeds --
5 do you know anything about the deeds?

6 MR. DICKERSON: He didn't do that as her lawyer. He
7 did that at his direction.

8 THE COURT: Did you know anything about the deeds --
9 you said that you thought Mr. Nelson had prepared the deeds.
10 You did the LLCs to put the deeds into, but --

11 THE WITNESS: Looking at the schedules provided,
12 there were some deeds in land in Lynita's trust and I believe
13 some in Eric's trust, and this was an attempt to consolidate
14 those into LLCs.

15 BY MR. JIMMERSON:

16 Q And those original deeds prepared by Mr. Nelson were
17 delivered to you who in turn delivered them to Lynita, isn't
18 that true?

19 A Best of my recollection.

20 Q And you did so when you were the lawyer for Lynita,
21 isn't that true?

22 A Yes.

23 Q Okay. And I guess you said that you sent a bill to
24 Mrs. Nelson who was your client and then you were asked the

1 question by Mr. Dickerson, but Mr. Nelson paid it; do you
2 recall that?

3 A Yes.

4 MR. DICKERSON: Object to the form of the question.
5 He's mischaracterizing.

6 MR. JIMMERSON: That's exactly what the man said.

7 MR. DICKERSON: He was asked a question how much did
8 you bill Mrs. Nelson and he said how much he billed and --

9 THE COURT: 550 an hour several thousand, yeah.

10 MR. DICKERSON: -- he didn't ask the next logical
11 question is who did you send it to?

12 THE WITNESS: Might have been sent to Eric, I'm not
13 sure. I --

14 MR. JIMMERSON: He said he sent it to his client.

15 THE WITNESS: Well, I just don't re --

16 MR. DICKERSON: He never said that.

17 MR. JIMMERSON: He said he sent it to Lynita.

18 THE WITNESS: I just don't recall. I don't --

19 THE COURT: Yeah --

20 MR. JIMMERSON: He did. I asked him specifically
21 that.

22 MR. DICKERSON: You didn't ask him that.

23 THE WITNESS: Don't do my --

24 THE COURT: I believe he said he charged 550 an hour

1 and there were several thousands in billings on that, but that
2 I don't think -- he never specifically said if he sent that
3 bill to Ms. Lynita. You said Eric paid it you think, but do
4 you remember where you sent the bill?

5 MR. JIMMERSON: Let me ask the next --

6 THE COURT: Do you remember where you sent the bills
7 to?

8 THE WITNESS: No, because I don't do that at my
9 office, I apologize.

10 THE COURT: Okay.

11 MR. JIMMERSON: Let me ask the next logical
12 question.

13 BY MR. JIMMERSON:

14 Q If my client paid your bill, if you sent the bill to
15 my client, did that make my client your client?

16 A No.

17 MR. DICKERSON: Object to the argumentative nature
18 of what counsel --

19 BY MR. JIMMERSON:

20 Q Who was your client when you sent the bill to
21 whoever you sent it to?

22 A My understanding is it was Lynita.

23 Q Thank you, sir. I (indiscernible) your time.

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1 non-existent entity that -- that didn't exist in the state of
2 Mississippi?

3 A I wasn't aware of that, no.

4 Q And so do you understand that the problem they're
5 trying to cure there is to figure out how to get the property
6 transferred out of a non-existent entity in Mississippi?

7 A I can't recall that particular part of the problem.

8 Q All right. Now, sir, with respect to this Exhibit
9 81A, can you -- again, not that it matters, but what is the
10 legal effect now that apparently a mistake was made in the --
11 the one change of distribution trustee that you did in
12 February of 2 -- or January of 2009; is that -- would you
13 agree?

14 A Yes.

15 Q Is Nola Harber technically now a distribution
16 trustee? Is she still distribution trustee?

17 A If she wanted to exercise her right as such, she
18 possibly could be designated as such, so I'd like to have an
19 opportunity to correct that. But it appears to be an error on
20 my part.

21 Q And you understand that Nola Harber is Eric Nelson's
22 sister?

23 A I believe, yes.

24 Q All right. Now, let's go back to the question about

1 what this Court can do and the issue of the liability. The --
2 let's take the Silver Slipper Casino. The Silver Slipper
3 Casino, the parties' interest in the Silver Slipper Casino is
4 -- is recognized by 34,820 Class B shares that have been
5 issued in the name of Dynasty LLC, do you understand that?

6 MR. JIMMERSON: Objection, Your Honor. Without some
7 foundation, we've each pushed this witness to the limit. This
8 is very unfair to him and I'd say if I was sitting on the
9 other side of the table he can't possibly be speaking to
10 issues like this about the Silver Slipper, unless he says he
11 knows everything about Class A and B stock.

12 THE COURT: Yeah, do you know any -- do you know
13 anything about --

14 MR. DICKERSON: I tell you what, I'll ask him in the
15 form of a hypothetical.

16 THE COURT: Do you know anything about the shares?

17 BY MR. DICKERSON:

18 Q Do you know how many shares or --

19 A I don't recall how many shares were --

20 Q If I'm to represent to you that, and I'll give you a
21 hypothetical, that -- that the parties own an interest of the
22 Silver Slipper Casino by way of 34,820 shares of Class B stock
23 that is held in the name of Dynasty LLC, and Dynasty LLC is an
24 asset that Eric Nelson has transferred to the Eric L. Nelson

1 Nevada Trust.

2 A Okay.

3 Q Eric Nelson is a party to this action in which the
4 Court has jurisdiction over. Couldn't this Court order Eric
5 Nelson to distribute half of the 34,820 shares to Lynita
6 Nelson?

7 MR. JIMMERSON: Let's make sure I understand the
8 question, Your Honor. (Indiscernible) it's a fair question.
9 It's certainly where I want to go.

10 If I'm ordering the trustee of the irrevocable
11 separate property trusts to make a distribution of stock,
12 that's what the question is.

13 BY MR. DICKERSON:

14 Q Eric Nelson is the individual --

15 A Yes.

16 Q -- and these trusts are -- how -- how are these
17 trusts treated? Are they treated as --

18 A Well again, I -- this is real important. You have
19 to go back and you have to determine who the grantors of these
20 trusts were. If in fact since '93 when we had this property
21 agreement there's been community property that's come about,
22 the dealings of the parties, and now Lynita Nelson is a
23 grantor, a deemed grantor if this Court were to determine that
24 -- that in fact some of the property put in that trust were

1 in any liability that would be imposed against Eric Nelson,
2 would you agree?

3 A Yes.

4 Q And if that were to be done, isn't it true that none
5 of the assets, none of the safe assets that are still in
6 Lynita Nelson's trust, would be subject to execution for any
7 of that liability?

8 A Those assets should still be protected if -- if it's
9 the determination of the parties and the Court that the trust
10 is kept intact part and parcel of the settlement agreement.

11 Q So what this trust could do is this trust could take
12 assets that are held in Lynita Nelson's trust --

13 MR. JIMMERSON: What do you mean by trust? I'm
14 confused. Objection to the form of the question.

15 BY MR. DICKERSON:

16 Q Assets that are held in the name ~~of Lynita Nelson's~~
17 trust, this Court could enter an order ~~directing Lynita Nelson~~
18 to transfer the -- transfer half of an ~~interest~~ in any of
19 those assets to Eric Nelson as an individual, would you agree?

20 A Or to his trust.

21 Q Or to his trust. But if he wants to protect that
22 asset, would it be wise not to distribute it to his trust?

23 A Okay. If the trust is not a guarantor or a co-
24 signer, then I would say he'd want those properties

1 rightfully belonged a portion of that to her, then the Court
2 could make such an order.

3 Because you look at the very source of what the
4 trust owns. Now, if it were found that this property, if this
5 Court were to find that this property was purely Eric's
6 separate property, no, I don't think the Court can make the
7 order. But if you go back to the source of the property you'd
8 have to look at who the grantor was.

9 Because I could -- I could create a trust and say
10 I'm the grantor. If I'm putting Bob Dickerson's property in
11 it, certainly a court can come in and say hey, that's Bob
12 Dickerson's property, we're going to make an order as to what
13 happens to Bob Dickerson's property.

14 So in this case if some of that property in his
15 trust was Lynita's property, clearly the Court could make an
16 order as to that property, in my view, in my opinion.

17 Q And so the Court would determine that the assets are
18 community property and he is directed to distribute to her her
19 share of the community property; do you agree?

20 A Yes.

21 Q Now, with respect to any liability that may be
22 associated with any of those assets that the Court orders Eric
23 Nelson to distribute from his trust to Lynita Nelson, the
24 Court could also order that Lynita Nelson is to share equally

1 transferred to his trust. They both -- whatever the
2 settlement is or the property settlement is, keep it under the
3 umbrella of the trust. By doing so you should have asset
4 protection against unsecured creditors.

5 Q Okay. And then same thing then, the Court could
6 direct Eric Nelson to transfer half of any asset that the
7 Court directed him to transfer to either Lynita Nelson
8 individually or to her trust, would you agree?

9 A Yes.

10 Q Now, the reason the Court couldn't enter an order
11 directing you to do anything is because you're not a party to
12 this action, are you, sir?

13 A No.

14 Q Thank you.

15 MR. DICKERSON: I have no further questions.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. JIMMERSON:

18 Q If one of the parties quit claimed by deed a piece
19 of property in favor of another and you're still saying that
20 the Court can direct somebody to change it back?

21 A If that property they're quit claiming is not their
22 property. That's the whole point.

23 Q Well, what if it is?

24 A If it's found that that is the sole and separate

1 property of the tru -- I mean, is -- is the sole and separate
2 property of the trustor, the grantor of the trust and belongs
3 to the trust, then it was -- it's an irrevocable trust and
4 there -- you shouldn't be able to dictate where the property
5 goes.

6 Q The way to -- to render one of these trusts
7 essentially ineffective is to voluntarily have the investment
8 trustee and the distribution trustee voluntarily transfer
9 assets away from the trust, correct?

10 A That's one way, yes.

11 Q Because there's not a termination provision that is
12 -- in other words, a judge can't order the dissolution of an
13 irrevocable trust.

14 A They could.

15 Q How?

16 A Just as I described. I mean, you've got all kinds
17 of factors here. I mean, to the extent the Court were to
18 determine that the property inside that trust didn't belong to
19 the trustor, certainly the Court could order that property be
20 transferred out to the rightful owner. I -- I'm just kind of
21 splitting hairs a little bit, but if -- that's -- that's the
22 basis on which I think the Court would be able in a
23 dissolution setting to be able to split the assets equally and
24 fairly between the parties, because of the character of

1 ownership, the fact that the property in that trust belonged
2 to -- was community property and belonged to both spouses and
3 not just one spouse.

4 So in that sense, I feel the Court would have the
5 power to -- to take property out and distribute it to the
6 other spouse.

7 Q So you have -- you are comfortable that this Court
8 can ignore the separate property trust provisions and the way
9 the parties have performed them if the Court found that a
10 property was community property?

11 A Yes.

12 Q Thank you.

13 MR. DICKERSON: Nothing further, Your Honor.

14 THE COURT: Thank you, Mr. Burr.

15 THE WITNESS: Thanks.

16 THE COURT: It was a pleasure to meet you and I'm
17 sure sorry to keep you here for your whole afternoon. I'm
18 sure you had something better to do and now you know why you
19 don't practice family law.

20 THE WITNESS: I'm going back to my estate planning.

21 THE COURT: Go back to estate -- thanks again and
22 you have a very good reputation within the legal community.

23 (THE REQUESTED PORTION CONCLUDED AT 16:23:51)

24

1 ATTEST: I do hereby certify that I have truly and
2 correctly transcribed the digital proceedings in the
3 above-entitled case to the best of my ability.

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6 Kimberly C. McCright, CET
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1 TRANS

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3 EIGHTH JUDICIAL DISTRICT COURT

CLERK

URT

4 FAMILY DIVISION

5 CLARK COUNTY, NEVADA

6 ERIC L. NELSON,

7 Plaintiff,

8 vs.

9 LYNITA NELSON,

10 Defendant.

CASE NO. D-09-411537-D

DEPT. O

11 BEFORE THE HONORABLE FRANK P. SULLIVAN
12 DISTRICT COURT JUDGE

13 PARTIAL TRANSCRIPT RE: NON-JURY TRIAL

14 MONDAY, NOVEMBER 22, 2010

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