

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA,
DISTRIBUTION TRUSTEE OF
THE ERIC L. NELSON NEVADA
TRUST DATED MAY 30, 2001,
Appellant/Cross-Respondent,

) S.C. CASE NO.: 66772	Electronically Filed
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VS.

LYNITA SUE NELSON,
INDIVIDUALLY, AND IN HER
CAPACITY AS INVESTMENT
TRUSTEE OF THE LSN NEVADA
TRUST DATED MAY 30, 2001;
AND ERIC L. NELSON,
INDIVIDUALLY, AND IN HIS
CAPACITY AS INVESTMENT
TRUSTEE OF THE ERIC L.
NELSON NEVADA TRUST
DATED MAY 30, 2001,
Respondents/Cross-Appellant.

RESPONDENT/CROSS-APPELLANT, LYNITA SUE NELSON’S,
ANSWERING BRIEF TO RESPONDENT/CROSS-APPELLANT,
ERIC L NELSON’S, OPENING BRIEF ON CROSS-APPEAL

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1 NELSON (“LYNITA”), INDIVIDUALLY, AND IN HER CAPACITY AS
2 INVESTMENT TRUSTEE OF THE LSN NEVADA TRUST DATED MAY
3 30, 2001 (“LSN TRUST”).

4 D. HOWARD ECKER, ESQ. and EDWARD KAINEN, ESQ., of
5 ECKER & KAINEN, CHARTERED; DAVID ALLEN STEPHENS, ESQ. of
6 STEPHENS, GOURLEY & BYWATER; JAMES J. JIMMERSON, ESQ., and
7 SHAWN M. GOLDSTEIN, ESQ., of JIMMERSON HANSEN, PC; and
8 MARSHAL S. WILICK, ESQ. and KARI J. MOLNAR, ESQ., of WILICK
9 LAW GROUP, prior Attorneys for Respondent, ERIC L. NELSON.

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1 **JURISDICTIONAL STATEMENT**

2 This is an appeal from a final Decree of Divorce. The Court has
3 jurisdiction pursuant to NRAP 3A(b)(1). On September 22, 2014, notice of
4 entry of an order resolving a post-judgment motion made pursuant to NRCp
5 59 was served. On October 20, 2014, ELN TRUST filed its Notice of Appeal.
6 On October 21, 2014, ERIC filed his Notice of Appeal. On November 3, 2014,
7 LYNITA filed her Notice of Appeal.

8 **STATEMENT OF THE ISSUES PRESENTED**

9 LYNITA's Answering Brief on Appeal, and Opening Brief on Cross-
10 Appeal, filed March 2, 2016, identified 4 issues on cross-appeal. The
11 following additional issues are addressed in this Answering Brief to ERIC's
12 Opening Brief on Cross-Appeal:

13 1. Whether the district court erred in awarding lump sum alimony
14 to LYNITA, who was a stay-at-home mother during ERIC's and LYNITA's
15 nearly 30 year marriage, while ERIC worked and accumulated millions of
16 dollars of properties for the parties.

17 2. Whether the district court erred in finding that ERIC managed the
18 assets purportedly held in LSN TRUST where ERIC repeatedly admitted to
19 managing and controlling all of the parties' assets.

1 3. Whether the district court erred in finding ERIC in violation of the
2 Joint Preliminary Injunction after he spent in excess of \$1.8 million of the
3 parties' assets on a personal residence during the pendency of the divorce case.

4 4. Whether the district court erred in granting LYNITA the pre-
5 divorce income from properties awarded to her in the Decree of Divorce.

6 5. Whether the district court's division of debt was supported by
7 substantial evidence.

8 **STATEMENT OF THE CASE**

9 On May 6, 2009, ERIC initiated the underlying divorce proceeding
10 against LYNITA. AAPP V1:1-8. The district court conducted 6 days of trial
11 in 2010 during which ERIC repeatedly testified that all of the property held in
12 the name of either party or in the name of ELN TRUST or LSN TRUST, was
13 always managed, controlled, treated, held, and owned by the parties as
14 community/marital property over which ERIC had absolute control. AAPP
15 V1:40 - AAPP V6:1255.

16 During the 2010 trial proceedings, ERIC was the Investment Trustee of
17 ELN TRUST. Section 11.14 (Investment Trustee) of the ELN TRUST
18 agreement provides the Investment Trustee with "exclusive custody of the
19 entire Trust estate" as the "legal owner of the Trust estate." AAPP V26:6493.

1 Further, pursuant to Section 12.1(h) (“Investment Trustee’s Powers”), the
2 Investment Trustee is the only person authorized to represent and bind the trust
3 in legal proceedings. AAPP V26:6493.

4 On June 24, 2011, ERIC filed a motion seeking to join ELN TRUST as
5 a necessary party to the divorce action. Despite days of his sworn testimony
6 to the contrary, ERIC suggested for the first time that he and LYNITA had no
7 legal interest in the properties purportedly held in ELN TRUST. AAPP
8 V8:1606-1661. On August 9, 2011, ERIC and LYNITA stipulated to join ELN
9 TRUST and LSN TRUST as necessary parties to permit the district court to
10 accord complete relief. AAPP V8:1744-1746. On August 19, 2011, ELN
11 TRUST filed its Answer and Counterclaim and Crossclaim submitting itself
12 to the jurisdiction of the district court. AAPP V8:1770-1774. On September
13 30, 2011, LYNITA filed her Answer to ELN TRUST’s claims and asserted
14 additional claims for relief against ELN TRUST and other Third-Party
15 Defendants. AAPP V8:1818-1853. On November 7, 2011, ELN TRUST filed
16 a Motion to Dismiss LYNITA’s claims against ELN TRUST and all Third-
17 Party Defendants. AAPP V8:1885-1908. LYNITA opposed the Motion to
18 Dismiss. AAPP V9:2001-2095. On December 20, 2011, LYNITA filed her
19 First Amended Answer and Third-Party Complaint. AAPP V9:2140-2185. On

1 January 17, 2012, ELN TRUST filed a Motion to Dismiss LYNITA's
2 Amended Answer and Third Party Complaint. AAPP V9:2190-2224. The
3 district court dismissed all claims against third parties and ordered the case
4 would proceed to trial only as to LYNITA, ERIC, ELN TRUST, and LSN
5 TRUST. AAPP V19:4540-4550.

6 On July 16, 2012, trial resumed for the 7th trial day. AAPP V12:2930-
7 3180. Trial continued for 9 additional days during the months of July and
8 August 2012. AAPP V12:2930 -V19:4514. On June 3, 2013, the district court
9 issued a detailed 50-page Decree of Divorce ("Decree"). AAPP V19:4691-
10 4742. The Decree ordered an approximately equal division of the properties
11 held by ELN TRUST and LSN TRUST, which ERIC testified constituted the
12 community property of ERIC and LYNITA. The Decree also awarded
13 LYNITA \$800,000 for lump sum alimony, \$87,775 in child support arrears,
14 and \$144,967 for attorneys' fees and costs. AAPP V19:4740:10-4741:3.

15 On June 7, 2013, LYNITA filed her Motion to Amend or Alter
16 Judgment, for Declaratory and Related Relief, requesting, in part, that the
17 district court equally divide a Wyoming racetrack property ("Wyoming
18 Downs") not adjudicated in the Decree. AAPP V20:4755-4798. On May 30,
19 2014, an evidentiary hearing regarding Wyoming Downs was conducted.

1 AAPP V22:5348-5494. On September 18, 2014, the district court denied
2 LYNITA's request to be awarded a 50% interest in Wyoming Downs, but
3 awarded LYNITA \$75,000 for the monies taken for the down payment from
4 properties awarded to LYNITA. AAPP V23:5553-5561; RAPP V6:1369:17-
5 1370:17; RAPP V4:864-866.

6 STATEMENT OF FACTS

7 ERIC makes numerous "factual" statements throughout his Opening
8 Brief on Cross-Appeal that are not supported by the record on appeal. In this
9 Answering Brief, LYNITA will highlight some of the misrepresentations
10 contained within ERIC's Opening Brief on Cross-Appeal.

11 A. The Nelson's Marriage

12 LYNITA and ERIC were married on September 17, 1983. AAPP V1:2.
13 At the time the Decree was entered they had been married nearly 30 years and
14 had 5 children, 2 of whom were minors at the time of divorce. AAPP
15 V19:4694:12-16. By agreement of the parties, LYNITA had been a stay-at-
16 home mother and primary care giver for the children for their entire lives.
17 AAPP V19:4694:12-16; V19:4727:2-7. LYNITA's work in the home allowed
18 ERIC to hone his skills and become an extremely successful businessman
19 whose resumé included experience as a casino owner, casino investor, land

1 developer, commercial and residential landlord, and auctioneer. AAPP
2 V19:4726:25-4727:7. During their marriage the parties accumulated
3 substantial assets which ERIC repeatedly confirmed were community property.
4 AAPP V19:4695:2-4; V19:4698:15-4699:19.

5 B. Trusts Created During Marriage

6 1. ERIC Leads and LYNITA Submits

7 ERIC attempts to convince this Court that ERIC and LYNITA managed
8 the properties purportedly held in the trusts created during marriage, and that
9 each party was supported by the trust he or she managed and received no
10 assistance from the other party. Nothing could be further from the truth as
11 demonstrated by the district court's findings and ERIC's very own testimony.

12 Contrary to ERIC's false representations in his Opening Brief, it was
13 uncontroverted that during the parties' marriage, ERIC was responsible for
14 managing the parties' business and financial affairs, and LYNITA's role was
15 to care for the children. AAPP V18:4402:3-6. Where ERIC led, LYNITA
16 followed without question because that is what ERIC wanted. AAPP
17 V18:4404:10-22; 4405:1-13. LYNITA relied upon ERIC to manage the assets
18 held in the parties' trusts. AAPP V13:3063:15-22; AAPP V18:4406:2-17.
19 During the creation of the parties' estate plan, LYNITA relied upon ERIC and

1 Jeffrey Burr, Esq. ("Mr. Burr")¹ to act in a manner best for her and the
2 children. AAPP V17:4093:6-4094:2. LYNITA's understanding of what they
3 were doing and why they were doing it was consistent with ERIC's 2010
4 testimony; ERIC and LYNITA were protecting whatever they had, so that if
5 a third-party came after their assets, the assets in LYNITA's trust would
6 remain safe for the family. AAPP V17:4095:8-4096:20. LYNITA's
7 understanding was also consistent with the testimony of Mr. Burr, as further
8 set forth below.

9 2. The 1991 Family Trust

10 In early 1991, ERIC and LYNITA went to Mr. Burr for estate planning
11 purposes and the creation of a revocable family trust. AAPP V6:1443:8-14.
12 The family trust did nothing to alter the nature of the parties' community
13 property. AAPP V6:1445:11-14.

14 3. The 1993 Separate Property Agreements and Trusts

15 In 1993, ERIC decided to invest some of the family's assets in several
16 speculative gaming ventures. AAPP V7:1517:19-1518:6. Due to ERIC's
17 concern of exposing all the family's assets to creditors, ERIC and LYNITA

18 ¹ Mr. Burr created the parties' estate plan and advised the parties
19 with respect to same.

1 again went to Mr. Burr for estate planning purposes. AAPP V6:1446:7-18;
2 V7:1518:1-6. Mr. Burr's testimony during the 2010 trial proceedings
3 confirmed the sole purpose of ERIC and LYNITA's 1993 estate plan was
4 "protection from third-party creditors, but they still wanted to take care of each
5 other and - - and benefit each other basically." AAPP V6:1450:18-23. At no
6 time was the intent of ERIC or LYNITA to enter into their estate plan to avoid
7 division of the assets held by the parties in the event of a divorce. AAPP
8 V6:1448:4-6.

9 The 1993 estate plan equally divided ERIC's and LYNITA's assets
10 between 2 trusts. AAPP V6:1522:5-8. Though the 1993 trusts purported to
11 divide the parties' community property into two equal, separate property trusts,
12 the evidence confirmed that ERIC, LYNITA, and Mr. Burr understood and
13 intended for all property to remain available for the benefit of both ERIC and
14 LYNITA, and the purported separate nature of the trusts would not apply in a
15 divorce. AAPP V6:1450:18-23; AAPP V6:1448:4-6. Mr. Burr confirmed
16 ERIC was in sole control of funding both trusts (AAPP V6:1538:9-17), and
17 that ERIC was instructed to periodically level off and rebalance the trusts to
18 keep them roughly even. AAPP V6:1532:4-13. As late as 2004, ERIC was
19 leveling off trusts created by the parties through the advice and counsel of Mr.

1 Burr. RAPP V3:590.

2 4. The 2001 Spendthrift Trusts

3 In 2001, ERIC and LYNITA responded to a solicitation from Mr. Burr
4 to utilize self-settled spendthrift trusts layered on top of the other trusts to
5 “give more protection to them as a couple, as a family.” AAPP V7:1536:21-
6 1537:3. LYNITA did not totally understand what was going to happen with
7 the new trusts but again “trusted ERIC pretty much to make those kinds of
8 decisions.” AAPP V7:1543:2-15. LYNITA was told by Mr. Burr that “this
9 additional statute would provide an extra layer of protection for her, Eric and
10 the family from creditors.” AAPP V7:1544:7-16. Once again ERIC controlled
11 the funding of both parties’ trusts. AAPP V7:1544:22-1545:1. Consistent
12 with everything they had done before, ELN TRUST and LSN TRUST were
13 created as separate trusts, however, as Mr. Burr testified, “the tenor, the tone
14 all along was one of cooperation and mutually shared goal of trying to protect
15 their family from as – from creditors, frivolous lawsuits, that type of thing, but
16 a shared intent to look out for each other and the community at the same time.”
17 AAPP V6:1454:8-18. ELN TRUST was funded with the risky assets and LSN
18 TRUST was funded with the safe assets, so if all of the assets in ERIC’s trust
19 were taken by creditors, the assets in LYNITA’s trust would still be available

1 for the family. AAPP V6:1454:6-17. At the time of creation, Mr. Burr
2 explained to ERIC and LYNITA that even though these trusts were
3 irrevocable, “[I]rrevocable is kind of a term of art in the trust world. Any trust
4 can basically be revoked or amended by transferring all of the assets out of it
5 when it becomes unfunded and they have – each have the power to do that
6 pretty much as the investment trustee with the distribution trustee’s authority.”
7 AAPP V7:1546:22-1547:4. ERIC nominated his trusted employee, Lana
8 Martin (“Ms. Martin”), as the initial Distribution Trustee for both trusts
9 knowing he could thereby direct everything which occurred with the trusts.
10 AAPP V26:6477 and V26:6395.

11 The intent for the 2001 trusts, as well as all prior estate planning, could
12 not have been made any more clear than by Mr. Burr in his 2010 testimony:

13 Again, to be – I mean, to be clear, vis-a-vis themselves, this trust
14 – this planning was never meant to alter rights in the event of
15 dissolution or divorce. And that never was discussed. I mean,
16 the whole discussion focused on how can the family best protect
17 itself from potential liabilities to third parties. And so that was
18 basically what was discussed.

17 AAPP V7:1555:14-19 (emphasis added). ERIC’s testimony, Mr. Burr’s
18 testimony, and LYNITA’s testimony (RAPP V1:34:7-36:6 and V1:48:15-20)
19 were consistent and supported the district court’s findings.

1 C. ERIC'S Complete Control Of All Assets At All Times, Regardless Of
2 Any Purported Trusts

3 ERIC began his case-in-chief during the first 6 days of trial in 2010, and
4 confirmed that he had complete and unfettered control of all of the property
5 purportedly held in ELN TRUST and LSN TRUST, and that such property was
6 LYNITA's and ERIC's community property. During his opening statement,
7 ERIC's counsel, James J. Jimmerson, Esq., explained ERIC's proposal for an
8 equal division of all property purportedly held in ELN TRUST and LSN
9 TRUST:

10 You have before you a list of properties [Eric's Options A and B]
11 which I'll explain to you in just a minute, but to give you an
12 overview, give or take on cost basis, 18, 19 million dollars in
13 assets which would be divided under our proposals nine and nine
14 . . .

15 . . . each party, on a cost basis, is going to get approximately \$9
16 million in assets and on a real fair market value basis, something
17 considerably more. And more importantly, we're dividing
18 everything that these parties have, including their businesses, in
19 half plus or minus one or two adjustments. . .

16 If I could now ask you to briefly turn your attention to Options A
17 and B, I'd like to discuss this with you. The difference between
18 Option A and B is it just turns on two assets, okay? Option A is
19 an equal division of all assets and liabilities, Judge, except for the
cash that each of them have on their own, so we didn't divide the
cash Lynita has in her six or seven bank accounts and we didn't
divide Eric's cash that he has in his four or five bank accounts.

1 They take their own – they take their own cars, you know, the –
2 they take their own personal property, they take their own
furniture and furnishings that they have plus or minus some
things that could be exchanged.

3
4 . . . So the difference between A and B is A is everything divided
in half except for cash and for cars and B is everything divided in
5 half except for cash and cars except that Mississippi would go to
Husband and Russell would go to Wife.

6 AAPP V1:50-63

7 By his own admissions, the record conclusively established ERIC's sole
8 control of 100% of the parties' assets, as well as his intent for the district court
9 to equally divide all the assets held by the parties regardless of the existence
10 of any trusts. AAPP V19:4697:16-18. The following excerpts from ERIC's
11 testimony support the district court's findings as contained in the Decree:

12 AUGUST 30, 2010 TRIAL TESTIMONY

13 Direct examination of ERIC, questioning by Mr. Jimmerson:

14 A. **[T]hat's my primary focus is managing all my assets**
15 **and Lynita's assets so we manage our community**
assets, and that's where our primary revenue is driven.

16 AAPP V1:71:21-24 (emphasis added).

17 Q. **I just asked you, please tell the Court about the trusts**
18 –

19 A. LSN Trust –

1 Q. – how they came about.

2 A. Was designed and set up and my trust, ELN Trust, or **Eric**
3 **Nelson's Trust was for asset protection purposes.**

4 Q. Okay.

5 A. In the event that something happened to me, I didn't have
6 to carry life insurance. **I would put safe assets into her**
7 **property in her assets for her and the kids. My assets**
8 **were much more volatile, much more—I would say**
9 **daring; casino properties, zoning properties, partners**
10 **properties, so we maintained this and these – all these**
11 **trusts were designed and set up by Jeff Burr. [He] is an**
12 **excellent attorney and so I felt comfortable. This**
13 **protected Lynita and her children and it gave me the**
14 **flexibility because I do a lot of tax scenarios, to protect**
15 **her and the kids and me and we could level off yearly**
16 **by putting assets in her trust or my trust depending on**
17 **the transaction and protect – the basic bottom line is to**
18 **protect her.**

19 AAPP V1:83:21-84:16 (emphasis added).

Q (by the Court). So that's 1A [referencing ERIC's Exhibit 1A]?

14 A. – this is basically a way I felt to – **to easily explain the**
15 **assets, to simplify it for Joe [Leauanae], Bob**
16 **[Dickerson], and Melissa [Attanasio], Mr. [Bob]**
17 **Gaston, anyone else that'd look at our estate, and so I**
18 **listed the property – you'll see that these properties are**
19 **designated in somebody's trust; LSN Trust or Eric's**
Trust. The majority of them if it's a sub-company it's
going to flow up to my trust by design.

AAPP V1:87:1-8 (emphasis added).

1 . . . I'm confident that you're going to hear that the vast
2 majority of these can be sold and divided.

3 AAPP V1:88:10-11.

4 Q. [Indiscernible].

5 A. Okay, so, Your Honor, so I prepared this document to
6 allow us to anticipate who wanted some of the assets. **It is**
7 **so important that I get divorced that I'm willing to split**
8 **every asset 50/50. I want you to make that very clear.**

9 . . .

10 AAPP V1:91:2-6 (emphasis added).

11 Q. And [the tenancy for your office at Lindell] is on a month-
12 to-month?

13 A. **Well, we don't pay rent because we're managing all the**
14 **assets, so I don't pay myself to pay Lynita because we**
15 **– it's all community.**

16 AAPP V1:70:19-24 (emphasis added).

17 Q. Okay. So the last 10, then, are 10 lots owned 25 percent by
18 the Lynita Trust. **It's community property**, I understand

19 –

20 A. Yes.

21 Q. – but its owned by the Lynita Trust and three other guys?

22 A. Yes.

23 . . .

24 Q. **Eighty [lots] by the community?**

1 A. **Yes.**

2 AAPP V1:154:13-19 (discussing the Gateway Arizona lots) (emphasis added).

3 Q. Okay, so Dynasty Development Company, for the Court's
4 edification. . .

5 A. Yes.

6 Q. – is the name of the company that owns Lynita and Eric's
7 interests in Silver Slipper?

8 A. **Yes, under my trust.**

9 Q. All right.

10 A. Lynita's not a party to that, I mean, with the – with side of
11 the – the trust side of it.

12 Q. **The trust owns it and Eric Nelson –**

13 A. **The community – yes.**

14 Q. – **Trust, but she has a community interest, and that's**
15 **the entity –**

16 A. **Right.**

17 AAPP V1:195:17-196:7 (discussing Silver Slipper/Dynasty Development)
18 (emphasis added).

19 A. ...I said, guys – they wanted all the land that **we owned**
 down there, **Lynita and me, which was in my trust**, to go
 into the operation and the security. I refused. In fact I
 refused so much I said I'm **going to transfer a majority**
 of these properties into Lynita's trust to make sure

1 **they're fully aware that these properties aren't going**
2 **off. I'm going to do a leveling of the trusts.** I recorded
3 the deeds incorrectly. Lana typed them up. There were
 some verbiage problems when we transferred them to
 Lynita, they clouded the title.

4 AAPP V1:204:6-16 (discussing land deals in Mississippi) (emphasis added).

5 Q. And what do they pay Dynasty if they pay – **who is the**
6 **owner of the real estate that the RV park's on?**

7 A. **Well the, it's the community. It's under Lynita's trust**
8 **right now. It came from my trust into her trust.** It's
 clouded title. That's the property – the 70 or 60 or 70 acres
 that's in the Manise lawsuit....

9 AAPP V1:225:2-7 (emphasis added).

10 AUGUST 31, 2010 TRIAL TESTIMONY

11 Cross-examination of ERIC, questioning by Mr. Dickerson:

12 Q. You've given her \$500 since June of 2008, correct?

13 ...

14 A. Well, no, no, that - - that's its. **As community assets she**
15 **has 2.6-million where her flow of cash was 15,000 a**
 month. So if it's community, estate, she - -

16 ...

17 Q. Sir, do you understand my question?

18 A. – has had that. Yes, sir.

19 Q. Since June of 2008 - -

1 A. Yes, sir.

2 Q. - - you have given your wife Lynita a grand total of \$500,
3 correct?

4 Mr. Jimmerson: Objection to the form of the question.

5 A. Well, it's not true, Mr. Dickerson. **I've given her 2.6-**
6 **million of the community.**

7 AAPP V2:481:17-482:14 (emphasis added).

8 Q. How much were you giving her sir?

9 A. **I was giving her money that I would flow into the**
10 **Lindell account, even if we didn't collect rent, I'd put**
11 **additional money in it from Nelson Trust** so she would
12 get an additional 6000 periodically.

13 AAPP V3:501:4-8 (discussing payments from ELN Trust to Lynita) (emphasis
14 added).

15 Q. Well let me ask this if I may. **Other than Lynita's bank**
16 **accounts which over on the income section you don't**
17 **represent any income, you're in control of all of these**
18 **assets, isn't that true?**

19 A. No.

20 Q. Which assets are you -

21 A. Well, I manage them but she has an ownership in - in
22 -

23 Q. Well -

1 A. – whatever

2 Q. **You're in control of them. You're the one that is**
3 **receiving all this income that's being generated from**
4 **these assets; is that true?**

4 A. **And paying all the expenses.**

5 AAPP V3:511:16-512:5 (emphasis added).

6 Q. Now sir, don't you agree that you stopped paying any
7 rental income to Lynita since May 2009?

8 A. I don't know when the last thing, but **Lynita didn't ever**
9 **receive rental income, let's get that straight. She**
10 **received a check from me to assist in some areas of**
11 **whatever she needed assistance in. We never calculated**
12 **that she got some percentage of any rents or whatever.**
13 **That's not the way we do our business.**

11 AAPP V3:585:1-8 (emphasis added).

12 Q. Now, **in February of this year, you used community**
13 **cash to purchase an interest in this property; is that**
14 **correct?**

14 A. **Yes, sir.**

15 AAPP V3:587:18-21(discussing Russell Road property) (emphasis added).

16 Q. So roughly **we're looking then at you took \$2,777,861 –**

17 A. **Yes, sir.**

18 Q. **– of community cash?**

19 A. **Yes, sir.**

1 Q. And you gave that to your brother?

2 A. No, sir.

3 Q. **What'd you do with it?**

4 A. **I bought two-thirds of his building --**

5 AAPP V3:559:3-11 (emphasis added).

6 SEPTEMBER 1, 2010 TRIAL TESTIMONY

7 Cross-examination of ERIC, questioning by Mr. Dickerson:

8 Q. **Now you're the one that put title to those parcels that**
9 **we've talked about in the name of Dynasty, Bal Harbor,**
10 **Emerald Bay, Bay Harbor Beach Resorts and**
11 **(indiscernible) Financial Partnerships. Is that correct?**

12 A. **I believe so, yes.**

13 Q. **And you're the one that also put title in the name of --**
14 **all the remaining lots in the name of the LSN Nevada**
15 **Trust. Is that true?**

16 A. **Yes, sir.**

17 AAPP V3:711:20-712:4 (emphasis added).

18 Q. The height of the market was 18 months ago according to
19 your testimony?

20 A. No, no. But I'm just saying we could have -- the -- this
21 lawsuit's been pending for a while, sir. **We did these**
22 **deeds mistake -- if you can -- if you reference back to it,**
23 **it shows -- shows Dynas -- it's my --**

1 ...

2 A. **–company. It shows Eric Nelson. That’s my company.**
3 **We put them into Lynita’s for community protection,**
 and she would not cooperate.

4 Q. **You put them –**

5 A. **Yes, sir.**

6 Q. **– into Lynita’s?**

7 A. **Yes, sir.**

8 Q. **All right. For –**

9 A. **– for community wealth.**

10 AAPP V3:729:21-730:10 (discussing Mississippi land) (emphasis added).

11 Q. **Okay. And title then was put in the name of Lynita’s**
12 **trust at your –**

13 A. **Yes, sir.**

14 Q. **– at your behest, correct?**

15 A. **Yes, sir.**

16 Q. [] So you’re quibbling here as to whether you didn’t - - you
 purchased that home?

17 ...

18 A. **I paid off the mortgage. I didn’t buy the house from**
19 **her. I paid off the mortgage, put it in Lynita’s name for**

1 – so they would be comfortable and her sister wouldn't
2 think there was anything – any foul play going on.

3 AAPP V3:735:21-736:10 (discussing Pebble Beach house) (emphasis added).

4 A. **But it gave us more flexibility to level off the trusses**
5 **[sic] or level off this at divorce agreement.**

6 AAPP V3:742:22-23 (discussing Banone property division) (emphasis added).

7 OCTOBER 19, 2010 TRIAL TESTIMONY

8 Cross-examination of ERIC, questioning by Mr. Dickerson:

9 Q. And why did you do that [close the auction company], sir?

10 A. **... I was under water these businesses. ... to save as**
11 **much in our community estate, I was forced to lay**
12 **people off, generate cash flow so Lynita would have the**
13 **cash flow from these properties in the future.**

14 AAPP V4:875:16-876:2 (discussing business closures) (emphasis added).

15 Q. **Now you talk, sir, about you're initiating a lawsuit**
16 **against the Silver Slipper?**

17 A. **Yes, sir. I believe I'm going to.**

18 Q. **Now who is – who is – you personally, you as an**
19 **individual?**

 A. **Me personally, yes. ...**

 AAPP V4:888:18-23 (emphasis added).

 Q. **Well, but who's been damaged?**

1 A. **I believe myself and my – partners and Lynita.**

2 Q. Well, the stock – the stock is held in the name of Dynasty;
3 is that correct?

4 A. Yes, sir.

5 Q. **And there is some stock – or no, all the stock is held in**
6 **the name of Dynasty; is that true?**

7 A. Yes, sir.

8 Q. **It is owned by you?**

9 A. Yes, sir.

10 AAPP V4:889:4-13 (emphasis added).

11 Q. Okay. So in other words, it's just - - this is just one of Eric
12 Nelson's threats? I'm going to sue everybody or is there
13 something out there? Is it really - -

14 A. Maybe it's a strategy . . . And - - and if they had some
15 misgivings Mr. Dickerson, then possibly it would delay
16 some of those areas. **And so I'm trying to salvage**
17 **everything and anything I can in that investment for**
18 **this community.**

19 AAPP V4:890:23-891:9 (emphasis added).

20 Q. So it's just - - you don't believe that's important
21 information for us to know, whether a lot has been sold
22 and where that money is?

23 ...

24 A. - - let me just - - **she can have anything she wants 50/50.**

25

1 AAPP V4:906:7-17 (emphasis added).

2 Q. That is money, the \$45,500 [promissory note], is money
3 that is owed to Nelson & Associates by Emerald Bay
Mississippi, LLC, isn't that correct?

4 A. **All owned by Eric Nelson.**

5 Q. Pardon me?

6 A. **All owned by Eric Nelson.**

7 Q. So the answer to that is yes.

8 A. I'm going to pay myself.

9 AAPP V4:924:17-24 (emphasis added).

10 ERIC, by his own admissions, managed all the parties' assets, including
11 the properties in LSN TRUST. ERIC managed and controlled all the parties'
12 financial affairs, and LYNITA certainly did not financially support herself or
13 the family.

14 D. The District Court's Decree Of Divorce And Findings

15 As previously stated, the district court entered an extremely detailed, 50-
16 page Decree with numerous factual findings and conclusions of law. In the
17 Decree, the district court outlined the egregious and "deplorable" behavior
18 perpetrated by ERIC throughout the divorce proceedings to prevent the
19 administration of justice, and the numerous breaches of his fiduciary duties to

1 LYNITA prior to the divorce action. AAPP V19:4715:16-4717:18;
2 V19:4730:1-4731:16; V19:4734:1-4735:8. It is respectfully requested that the
3 Court review the Decree in its entirety (despite the fact that significant portions
4 are quoted or referenced herein), as a reading of same clearly shows the
5 abusive litigation tactics employed by ERIC and ELN TRUST throughout the
6 underlying divorce action, as well as the injustice that was sought by ERIC and
7 ELN TRUST in the underlying action.

8 In the Decree, the district court, in part, made the following relevant
9 findings:

10 (1) During the first phase of trial, ERIC, individually and as Trustor
11 and Investment Trustee of ELN TRUST, testified repeatedly that the assets
12 held by ELN TRUST and LSN TRUST were community property and should
13 be divided by the court. AAPP V19:4698:7-10, 24.

14 (2) After six (6) days of trial, Eric sought to have ELN TRUST and
15 LSN TRUST joined to the divorce action, not satisfied with the way the
16 proceedings were heading, and in a legal tactic intended to give him a second
17 chance to deny LYNITA a large share of the parties' community assets. AAPP
18 V19:4734:2-26.

19 ...

1 (3) In 2001 ERIC and LYNITA, upon the advice and counsel of Mr.
2 Burr, created the ELN TRUST and LSN TRUST. AAPP V19:4696:12-15, 20-

3 23. The testimony “clearly established that the intent of creating the
4 spendthrift trusts was to provide maximum protection from creditors and was
5 not intended to be a property settlement in the event that the parties divorced.”

6 AAPP V19:4697:16-18. In addition, the testimony of Mr. Burr corroborated
7 the fact that the purpose of creating the trusts was to “supercharge” the
8 protection afforded against creditors and was not intended to be a property
9 settlement between spouses. AAPP V19:4699:24-27.

10 (4) Attorney Burr suggested that the parties periodically level off or
11 equalize the property in ELN TRUST and LSN TRUST. AAPP V19:4700:2-4.
12 ERIC and LYNITA intended to maintain an equal allocation of assets between
13 the trusts as reflected in Minutes from an ELN TRUST Trust Meeting, dated
14 November 20, 2004, wherein it was stated that property was transferred from
15 the ELN TRUST to the LSN TRUST, in part, to “level off the trusts.” AAPP
16 V19:9-16; RAPP V3:590.

17 (5) On “numerous occasions, [ERIC] requested that [LYNITA] sign
18 documentation relating to the transfer of LSN Trust assets to the ELN Trust.”
19 AAPP V19:4701:2-4. LYNITA “rarely questioned [ERIC] regarding these

1 matters for two reasons: (1) [ERIC] would become upset if she asked questions
2 due to his controlling nature concerning business and property transactions;
3 and (2) she trusted him as her husband and adviser.” AAPP V19:4709:4-8.
4 “[T]hat [ERIC’s] behavior during the course of [the] extended proceedings .
5 . . corroborate[d] [LYNITA’s] assertions that [ERIC] exercises unquestioned
6 authority over property and other business ventures and loses control of his
7 emotions when someone questions his authority.” AAPP V19:4709:9-12.

8 (6) ERIC violated his fiduciary duties to LYNITA as both Investment
9 Trustee and Trust Adviser to LSN TRUST, and as LYNITA’s husband, by
10 failing to discuss the factors relating to the numerous transfers from LSN
11 TRUST to ELN TRUST. AAPP V19:4704:2-4; 4709:14-17; 4711:22-27.
12 ERIC was able to exercise control over properties in LSN TRUST and ELN
13 TRUST, and freely transfer same, under the “guise that [such] property
14 transfers benefitted the community,” and because he “assured [LYNITA] that
15 he managed the assets in the trusts for the benefit of the community.” AAPP
16 V19:4706:19-21; V19:4707:4-9. LYNITA “was not advised [by ERIC] that she
17 was not entitled to the benefit of assets transferred from the LSN Trust to the
18 ELN Trust under the direction of [ERIC] until the ELN Trust joined the case
19 as a necessary party.” AAPP V19:4706:26-4707:3.

1 (7) That ERIC failed to follow the formalities of ELN TRUST and
2 LSN TRUST, and had complete and unfettered access to the properties
3 contained within such trusts:

4 THE COURT FURTHER FINDS that the formalities outlined
5 within the ELN Trust and the LSN Trust were not sufficiently and
6 consistently followed. Article eleven, section 11.3, of both trusts
7 provides that Attorney Burr, as Trust Consultant, shall have the
right to remove any trustee, with the exception of [Eric] and
[Lynita], provided that he gives the current trustee ten days
written notice of their removal.

8 THE COURT FURTHER FINDS that Attorney Burr testified that
9 on February 22, 2007, at [Eric's] request, he removed [Eric's]
10 employee, Lana Martin, as Distribution Trustee of both the ELN
Trust and the LSN Trust and appointed [Eric's] sister, Nola
11 Harber, as the new Distribution Trustee for both trusts. Attorney
Burr further testified that he did not provide Ms. Martin with ten
12 days notice as specified in the trusts documents. In June 2011, at
[Eric's] request, Attorney Burr once again replaced the
Distribution Trustee for the ELN Trust, without providing ten
days notice, by replacing Nola Harber with Lana Martin.

13 THE COURT FURTHER FINDS that the ELN Trust and LSN
14 Trust documents require that a meeting of the majority of the
trustees be held prior to any distribution of trust income or
15 principal. During the meetings, the trustees must discuss the
advisability of making distributions to the ELN Trust Trustor,
16 [Eric], and the LSN Trust Trustor, [Lynita]. At that time, a vote
must take place and the Distribution Trustee must provide an
17 affirmative vote.

18 THE COURT FURTHER FINDS that the testimony of Lana
19 Martin and Nola Harber indicate that neither one of them ever
entered a negative vote in regards to distributions to [Eric] or

1 [Lynita]. The testimony also reflected that neither one of them
2 ever advised [Eric] or [Lynita] on the feasibility of making such
distributions.

3 THE COURT FURTHER FINDS that while Ms. Martin and Ms.
4 Harber testified that they had the authority to approve or deny the
5 distributions to [Eric] under the ELN Trust and to [Lynita] under
6 the LSN Trust, that despite literally hundreds of distributions
7 requests, they never denied even a single distribution request.
8 Therefore, Ms. Martin and Ms. Harber were no more than a
9 “rubber stamp” for [Eric’s] directions as to distributions to [Eric]
10 and [Lynita].

11 THE COURT FURTHER FINDS that while the ELN Trust
12 produced multiple Minutes of alleged meetings; this Court
13 seriously questions the authenticity of the submitted
14 documentation. Specifically, several of the Minutes were
15 unsigned, the authenticity of the signatures reflected on some of
16 the Minutes were questionable, and several of the Minutes
17 reflected that the meetings were held at the office of Attorney
18 Burr while the testimony clearly established that no such
19 meetings ever occurred at his law office.

20 THE COURT FURTHER FINDS that Daniel Gerety testified that
21 he had to make numerous adjustments to correct bookkeeping and
22 accounting errors regarding the two trusts by utilizing the entries
23 “Due To” and “Due From” to correctly reflect the assets in each
24 trust.

25 THE COURT FURTHER FINDS that the numerous bookkeeping
26 and accounting errors, in conjunction with the corresponding
27 need to correct the entries to accurately reflect the assets in each
28 trust, raises serious questions as to whether the assets of each
29 trust were truly being separately maintained and managed.

30 THE COURT FURTHER FINDS that the lack of formalities
31 further emphasizes the amount of control that [Eric] exerted over

1 both trusts and that he did indeed manage both trust[s] for the
2 benefit of the community.

3 AAPP V:19:4719:15-4721:12.

4 (8) Prior to the divorce action, millions of dollars worth of properties
5 were taken by ERIC from LSN TRUST and transferred to ELN TRUST
6 without compensation, and the retention of same by ERIC and ELN TRUST
7 would result in unjust enrichment and injustice. AAPP V19:4707:4-4715:7.

8 (9) ERIC lacked credibility, and during the divorce proceedings: (a)
9 “failed to answer questions in a direct and forthright manner,” (b) violated the
10 district court’s injunction; and (c) “misstated the ELN Trust’s financial
11 position, or at the very least was less than truthful with [the district court].” In
12 fact, the district court referenced ERIC’s lack of credibility, violation of orders,
13 and deplorable behavior during the divorce action throughout its Decree, and
14 even included a subsection concerning his lack of credibility. AAPP
15 V19:4715:8-4719:14: V19:4731:12-16.

16 Based upon the findings set forth in the Decree, the district court ordered
17 an approximately equal division of the properties held in ELN TRUST and
18 LSN TRUST and an award of lump sum alimony to LYNITA. The district
19 court’s division of property was accomplished by ordering properties

1 transferred between the Trusts, and imposing constructive trusts, without
2 specifically invalidating the Trusts.

3 The district court also found that ELN TRUST and LSN TRUST were
4 sham trusts and essentially ERIC's alter egos (based on the findings cited
5 above), and that it would have been wholly justified in invalidating such trusts:

6 THE COURT FURTHER FINDS that while the Court could
7 invalidate both Trusts based upon the lack of Trust formalities,
8 this Court is not inclined to do so since invalidation of the Trusts
9 could have serious implications for both parties in that it could
expose the assets to the claims of creditors, thereby, defeating the
intent of the parties to "supercharge" the protection of assets from
creditors.

10 AAPP V19:4721:13-18.

11 THE COURT FURTHER FINDS that while the Court could
12 invalidate the Trusts based upon Mr. Nelson's testimony as to the
13 community nature of the assets held by each Trust, the breach of
14 his fiduciary duty as a spouse, the breach of his fiduciary duty as
15 an investment trustee, the lack of Trust formalities, under the
16 principles of constructive trust, and under the doctrine of unjust
enrichment, the Court feels that keeping the Trusts intact, while
transferring assets between the Trusts to "level off the Trusts",
would effectuate the parties clear intentions of "supercharging"
the protection of the assets from creditors while ensuring that the
respective values of the Trusts remained equal.

17 AAPP V19:4736:9-17.

18 ...

19 ...

1 **SUMMARY OF THE ARGUMENT**

2 The district court did not abuse its discretion in awarding LYNITA lump
3 sum alimony. LYNITA was a stay-at-home mother during ERIC's and
4 LYNITA's nearly 30 year marriage, while ERIC became an accomplished
5 businessman who earned and accumulated in excess of \$17.5 million in assets
6 for the parties. The district court's findings that the parties had zero debts was
7 supported by substantial evidence, including a lack of documentation and
8 evidence of any debts, and the testimony of the neutral forensic accountant and
9 auditor appointed by the district court, Larry Bertsch, CPA ("Mr. Bertsch").

10 **ARGUMENT**

11 **A. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY**
12 **AWARDING LYNITA LUMP SUM ALIMONY**

13 As acknowledged by ERIC, a district court's award of alimony or
14 division of property is reviewed for an abuse of discretion. *Fletcher v.*
15 *Fletcher*, 89 Nev. 540, 542, 516 P.2d 103, 104 (1973); *Heim v. Heim*, 104 Nev.
16 605, 607, 763 P.2d 678, 679 (1988).

17 1. The District Court Did Not Err In The Amount Of Alimony
 Awarded

18 ERIC's challenge of the award of \$800,000 in alimony to LYNITA is
19 predicated on completely inaccurate portrayals of the record. First, ERIC

1 represents that “both parties have not held jobs, other than acting as investment
2 trustees” for ELN TRUST and LSN TRUST “since 2001,” and that LYNITA
3 “has been the investment trustee for [LSN TRUST] since its inception in May
4 2001.” These representations are made in an attempt to mislead the Court into
5 believing that the evidence in the district court was that LYNITA managed her
6 own financial affairs and was capable of earning her own living, and that each
7 of the parties had equal earning potential. These representations by ERIC
8 contradict his own testimony quoted above that he managed all of the parties’
9 community assets, and that he transferred assets between trusts based on the
10 volatility of the assets. In fact, the district court made extensive findings
11 regarding ERIC’s complete and unfettered control over the assets titled in the
12 name of LSN TRUST during marriage, which findings are discussed more
13 fully in paragraph B of this Argument section. Simply put, there was no
14 evidence that LYNITA managed her own financial affairs or was a
15 breadwinner for the family.

16 Next, ERIC completely misconstrues the evidence to suit his purposes
17 by stating at page 10 that LYNITA received \$2,020,097.41 in distributions
18 from LSN TRUST during the course of litigation from 2009-2011, and “that
19 is an average of \$673,365.80 per year income from LSN Trust to Lynita.” The

1 implication is that LYNITA was earning sufficient sums from the investment
2 of properties to support herself. The \$2,020,097.41, however, was not income
3 earned between 2009-2011 as ERIC would like the Court to believe. There
4 was simply no evidence that LYNITA was earning any income during the
5 divorce proceedings (or prior, as discussed below), other than very minimal
6 “dividend income” of \$282.20 over a three (3) year period. AAPP V10:2458.
7 To the contrary, LYNITA was being forced to liquidate assets in her control
8 and possession in order to support herself. From January 2009 through March
9 2012, LYNITA received \$2,091,178.64 for payment of her expenses including
10 \$826,935.22 in professional and legal fees. RAPP V1:213-221. Of the
11 \$2,091,178.64, \$1,828,534.65 or 87.4% was obtained from sales of
12 investments, and the remaining \$231,460.51 came from unknown deposits
13 (almost all of which was received in 2009). RAPP V1:216. Interestingly, from
14 January 2009 through the first 3.5 months of 2012, ELN TRUST (i.e., ERIC)
15 received \$13,880,124.60 total income. AAPP V:11:2686. In other words,
16 ERIC received \$11,788,945.96 more than LYNITA received during roughly
17 the same time period, or 6.64 times as much as LYNITA received.

18 ERIC next misrepresents at page 10 that “there was no evidence at trial
19 that Eric has supported Lynita during the marriage.” Again, ERIC’s

1 misrepresentation is contradicted by his own testimony that he managed the
2 parties' assets for the benefit of the community, and the district court's
3 extensive findings that ERIC managed all the parties' financial affairs,
4 including property and businesses. AAPP V19:4698:2-6; AAPP V19:4701:2-8,
5 9-13. In fact, the district court specifically found that ERIC supported
6 LYNITA during marriage:

7 THE COURT FURTHER FINDS . . . [LYNITA] solely relied on
8 [ERIC], as her husband and delegated investment trustee, to
9 acquire and manage properties to support her and the children,
10 and, as such, [LYNITA's] ability to support herself is essentially
11 limited to the property award that she receives via these divorce
12 proceedings.

13 AAPP V:19:4727:9-13. In reality, the exact opposite of what ERIC represents
14 is true: there was no evidence at trial that LYNITA financially contributed to
15 the support of ERIC and the parties' children during marriage, or that any of
16 the over \$17.5 million in assets accumulated during marriage resulted from
17 income and earnings generated by LYNITA, or management, investment, or
18 financial decisions made by LYNITA.

19 ERIC alleges at page 11, without referencing any support in the record,
that "[t]he parties' only source of income has been distributions from [ELN
TRUST and LSN TRUST] from rents and/or buying and selling properties."

1 This statement attempts to minimize ERIC's accomplishments during marriage
2 to convince the Court that once the district court divided the parties' assets, the
3 parties had "equal earning potential." As demonstrated by ERIC's own
4 testimony, he was/is an extremely accomplished businessman, and it was his
5 business prowess which allowed the parties to amass such significant wealth.
6 For example, ERIC started a company, Eric Nelson Auctioneering, which sold
7 over \$1 billion in bankrupt properties and repossessions. AAPP V1:71:8-17.
8 ERIC also developed a race track and made \$13 million from the sale of same.
9 AAPP V1:113:2-13. As the district court found, "[ERIC] has demonstrated
10 excellent business acumen as reflected by the large sums of monies generated
11 through his multiple business ventures and investments." AAPP V19:4726:26-
12 28. Meanwhile, [LYNITA] "only completed a year and a half of college and
13 gave up the pursuit of a career outside of the home to become a stay at home
14 mother to the couple's five children." AAPP V19:4726:28-4727:3. LYNITA's
15 last job outside the home was in 1986. AAPP V19:4727:5-7. There is no
16 support for the argument that the parties ever had, or ever could have, equal
17 earning potential.

18 In summary, ERIC's assignment of error is predicated entirely on the
19 aforementioned misconstrued and misrepresented allegations of fact, and

1 therefore should be rejected by this Court. *See Allianz Ins. Co. v. Gagnon*, 109
2 Nev. 990, 997, 860 P.2d 720, 725 (1993) (“This court need not consider the
3 contentions of an appellant where the appellant’s opening brief fails to cite to
4 the record on appeal.”). There was no evidence at trial that LYNITA was
5 capable of supporting herself in the lifestyle to which she had become
6 accustomed during marriage, or that LYNITA has supported herself during
7 marriage.

8 Finally, ERIC’s arguments are not only factually unsupported but legally
9 unsupported, as it would have been reversible error for the district court to
10 deny LYNITA alimony based on the division of property. *Shydler v. Shydler*,
11 114 Nev. 192, 197-98, 954 P.2d 37, 40 (1998) (holding that because property
12 and alimony differ in purpose and effect, property equalization does not serve
13 as a substitute for spousal support). This Court should affirm the district
14 court’s award of \$800,000 in alimony to LYNITA.

15
16 2. The District Court Did Not Abuse Its Discretion By Awarding
Alimony Lump Sum

17 The district court “may award such alimony to the wife or to the
18 husband, in a specified principal sum or as specified periodic payments, as
19 appears just and equitable.” NRS 125.150(1)(a). The district court relied upon

1 this Court's holding in *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618
2 (1972), in deciding to award alimony as a principal lump sum. In *Sargeant*,
3 the trial court found that a lump sum alimony award was appropriate based on
4 the poor health of the obligor spouse, and the obligor spouse's litigation
5 conduct which indicated "some possibility that he might attempt to liquidate,
6 interfere, hypothecate or give away his assets to avoid payment of any alimony
7 or support obligations." *Id.*, 88 Nev. at 228, 495 P.2d at 621. This Court
8 affirmed the trial court's award of lump sum alimony:

9 The dour attitude of the aged husband to his wife 20 years his
10 junior, despite her many years of care and affection before they
11 were married and after, together with the potential problems (she
12 lives in Florida) which would attend the possible litigious
13 harassment via the Nevada courts justify the trial court's exercise
14 of discretion that we will not disturb. The finding of fault by the
15 trial court predominated against the husband, the voluminous
16 testimony and evidence weighed in her favor. His bitterness
17 foretells future harassment.

18 *Id.*, 88 Nev. at 229, 495 P.2d at 622.

19 The Court's decision in *Sargeant* is on all fours with the instant case, as
evidenced by the following findings of the district court:

THE COURT FURTHER FINDS that [ERIC's] open and deliberate violation of the Joint Preliminary Injunction evidences his attitude of disregard for court order. The Court also takes notice of Bankruptcy Judge Olack's finding that [ERIC] attempted to deplete assets of Dynasty Development Group on the

1 eve of the bankruptcy filing, raising the concern that [ERIC] may
2 deplete assets of the ELN Trust precluding [LYNITA] from
receiving a periodic alimony award.

3 THE COURT FURTHER FINDS that [ERIC] has been less than
4 forthcoming as to the nature and extent of the assets of the ELN
Trust which raises another possible deterrent from [LYNITA]
5 receiving periodic alimony payments.”

6 THE COURT FURTHER FINDS that, as addressed hereinbefore,
the ELN Trust moved this Court to dissolve the injunction
7 regarding the \$1,568,000 because it “has an opportunity to
purchase Wyoming Racing LLC, a horse racing track and RV
8 park, for \$440,000.00; however, the ELN [TRUST] will be
unable to do so unless the Injunction is dissolved.”

9 THE COURT FURTHER FINDS that despite the representation
to the Court that the Injunction needed to be dissolved so that the
10 ELN Trust would be able to purchase Wyoming Downs, less than
a month after the hearing, the ELN Trust, with [ERIC] serving as
11 the investment trustee, completed the purchase of Wyoming
Downs. This leads this Court to believe that [ERIC] was less
12 than truthful about the extent and nature of the funds available in
the ELN Trust and such conduct on the part of [ERIC] raises
13 serious concerns about the actions that [ERIC] will take to
preclude [LYNITA] from receiving periodic spousal support
14 payments.

15 THE COURT FURTHER FINDS that [ERIC] alleged numerous
debts and liabilities worth millions of dollars, but forensic
16 accountant, Mr. Bertsch, found that these alleged debts and
liabilities were based solely on threats and speculations.

17 THE COURT FURTHER FINDS that [ERIC's] practice of
18 regularly transferring property and assets to family members, as
highlighted in the transactions involving the High Country Inn
19 and Russell Road properties, contributes to this Court's concern

1 that [ERIC] may deplete the assets of the ELN Trust via such
2 family transfers, and, thereby, effectively preclude [LYNITA]
from receiving a periodic spousal support award.

3 THE COURT FURTHER FINDS that [ERIC's] overall attitude
4 throughout the course of these proceedings illustrates the
5 possibility that he might attempt to liquidate, interfere,
6 hypothecate, or give away assets out of the ELN Trust to avoid
payment of his support obligations to [LYNITA], thereby
7 justifying a lump sum spousal support award to [LYNITA] based
on the factors addressed hereinabove and the rationale enunciated
in *Sargeant*.

8 AAPP V19:4730:2-4731:16.

9 In addition to the foregoing, ERIC's abrupt change in positions
10 concerning the parties' rights to property after two (2) years of litigation,
11 further supported the need for lump sum alimony:

12 THE COURT FURTHER FINDS that [ERIC], as the Investment
13 Trustee for the ELN Trust, was the person authorized to institute
legal action on behalf of the Trust.

14 THE COURT FURTHER FINDS that [ERIC] did not request that
15 the ELN Trust move to be added as a necessary party to these
16 proceedings until almost two years after initiating this action and
17 following the initial six days of trial. It is apparent to this Court
18 that [ERIC] was not satisfied with the tenor of the court's
preliminary "findings" in that it was not inclined to grant his
requested relief, and, consequently, decided to pursue a "second
bite at the apple" by requesting that the ELN Trust pursue being
added as a necessary party.

19 ...

1 THE COURT FURTHER FINDS that adding the ELN Trust as
2 a necessary party at this rather late stage of the proceedings,
3 resulted in extended and protracted litigation including re-
opening of Discovery, the recalling of witnesses who had testified
at the initial six days of trial, and serveral additional days of trial.

4 THE COURT FURTHER FINDS that [ERIC's] position that he
5 had a conflict of interest which prevented him from exercising his
6 authority to institute legal action on behalf of the ELN Trust was
7 not credible as he had appeared before this Court on numerous
occasions regarding community waste issues and the transfer of
assets from the ELN Trust and the LSN Trust and had never
raised an issue as to a conflict of interest.

8 THE COURT FURTHER FINDS that while both parties were
9 aware of the existence of the ELN and LSN Trusts from the onset
10 of this litigation, and, as such, [LYNITA] could have moved to
11 add the ELN Trust as a necessary party, [ERIC] had consistently
maintained throughout his initial testimony that the assets held in
the ELN Trust and the LSN Trusts were property of the
community.

12 THE COURT FURTHER FINDS that, while this Court fully
13 respects and supports a party's right to fully and thoroughly
14 litigate its position, [ERIC's] change in position as to the
15 character of the property of the ELN Trust and LSN Trust in an
16 attempt to get a "second bite of the apple", resulted in
unreasonably and unnecessarily extending and protracting this
litigation and additionally burdening this Court's limited judicial
resources, thereby justifying an award of reasonable attorney fees
and costs in this matter.

17 AAPP V19:4734:2 - 4735:8.

18 The district court did not abuse its discretion by awarding alimony in a
19 lump sum, and this Court should affirm the district court's award.

1 3. The District Court Did Not Err In Ordering Alimony To Be
2 Satisfied From Assets Titled In ELN TRUST

3 ERIC argues that Nevada's self-settled spendthrift trust laws do not
4 allow for the district court to order a distribution of assets held in ELN TRUST
5 to LYNITA to satisfy ERIC's obligations for alimony, and that the district
6 court erred in entering such an order. "[A] spendthrift trust is defined to be a
7 trust in which by the terms thereof a valid restraint on the voluntary and
8 involuntary transfer of the interest of the beneficiary is imposed." NRS
9 166.020. The testimony of ERIC and Mr. Burr conclusively established that
10 the parties, in creating the ELN TRUST and LSN TRUST, had no intention to
11 transfer their community property to trust and to divest themselves of such
12 property, other than in name only, nor did the parties intend to restrain their
13 ability to transfer the interests in such properties to themselves. AAPP
14 V19:4699:12-4700:16. In fact, the parties were advised by Mr. Burr that such
15 restraints were illusory because of the flexibility of such trusts, and that
16 transfer of property to the trusts would not affect their rights with regard to
17 same in the event of divorce. AAPP V7:1546:22; 1547:4; 1555:14-19. Under
18 these facts and circumstances, no valid trusts were created.

19 ...

1 Additionally, ERIC ignores the district court's detailed findings
2 concerning ERIC's failure to follow the formalities of ELN TRUST and LSN
3 TRUST, and ERIC's complete and unfettered access to distributions from such
4 trusts in contravention of the express terms of ELN TRUST and Nevada law
5 for the maintenance of a valid, self-settled spendthrift trust. *See* NRS 166.040.
6 The district court found that it would have been wholly justified in invalidating
7 the trusts, but decided not to do so because it believed substantial justice could
8 be afforded to the parties without invalidating such trusts. Any argument that
9 ERIC should be granted protections afforded by law to valid, self-settled
10 spendthrift trusts should be rejected by the Court.

11 Even if the ELN TRUST and LSN TRUST were valid, no property was
12 ever validly held in trust, and all property was held by ERIC and LYNITA as
13 community property. NRS 163.002 provides:

14 Creation Methods. Except as otherwise provided by specific
15 statute, a trust may be created by any of the following methods:

- 16 1. A declaration by the owner of property that he or she holds
 the property as trustee.
- 17 2. A transfer of property by the owner during his or her
 lifetime to another person as trustee.
- 18 3. A testamentary transfer of property by the owner to another
19 person as trustee.

1 4. An exercise of a power of appointment in trust.

2 5. An enforceable promise to create a trust.

3 “A trust is created **only if: 1. The settlor properly manifests an intention to**
4 **create a trust**; and 2. There is trust property, except as otherwise provided in
5 NRS 163.230.” NRS 163.003 (emphasis added). ERIC’s 2010 case-in-chief
6 conclusively established that a trust was never created and that property was
7 never actually transferred to trusts. All purported transfers were illusory
8 because ERIC and LYNITA intended to, and did, continue to hold all their
9 property as their own community property, despite any purported change in
10 title to the contrary. As the district court found, “while Mr. Nelson acted as the
11 investment trustee for both the ELN and LSN Trust respectively, **the**
12 **properties never effectively left the community.**” AAPP V19:4706:23-27
13 (emphasis added). Without an actual intention to transfer property into trust
14 for the benefit of others, no trusts were created and all property purportedly
15 held in trust remained the community property of the parties, which the district
16 court could properly use to satisfy ERIC’s lump sum alimony obligation.

17 Even if ELN TRUST was a valid trust, and the parties’ community
18 property was validly held in trust, the district court correctly ruled that it could
19 invade the trust principal to satisfy ERIC’s support obligation. Specifically,

1 the district court cited South Dakota and Wyoming statutes, and the decision
2 in *Gilbert v. Gilbert*, 447 So.2d 299 (Fla. 2d DCA 1984), as persuasive
3 authority supporting its ruling. AAPP V19:4732:5 - 4733:19.

4 THE COURT FURTHER FINDS that, while not binding on this
5 Court, [the Wyoming and South Dakota] statutes clearly
6 demonstrate that spouses entitled to alimony or maintenance are
7 to be treated differently than a creditor by providing that the
8 interest of a spendthrift trust beneficiary can be reached to satisfy
9 support of a child or a former spouse.

10 THE COURT FURTHER FINDS that in *Gilbert v. Gilbert*, 447
11 So.2d 299 [(Fla. 2d DCA 1983)], the Florida Court of Appeals
12 affirmed the district court's order that allowed the wife to garnish
13 husband's beneficiary interest in a spendthrift trust to satisfy the
14 divorce judgment regarding alimony payments.

15 THE COURT FURTHER FINDS that the *Gilbert* court found that
16 while "the cardinal rule of construction in trusts is to determine
17 the intention of the settler and give effect to his wishes . . . there
18 is a strong public policy argument which favors subjecting the
19 interest of the beneficiary of a trust to a claim for alimony." *Id.* at
301. The court went on to state that the dependents of the
beneficiary should not be deemed to be creditors as such a view
would "permit the beneficiary to have the enjoyment of the
income from the trust while he refuses to support his dependents
whom it is his duty to support." *Id.* The *Gilbert* court went on to
state that a party's responsibility to pay alimony "is a duty, not a
debt." *Id.*

THE COURT FURTHER FINDS that there is a strong public
policy argument in favor of subjecting the interest of the
beneficiary of a trust to a claim for spousal support and child
support, and, as such, [ERIC's] beneficiary interest in the ELN

1 Trust should be subjected to [LYNITA's] award of spousal
2 support and child support.

3 AAPP V19:4732:19 - 4733:19.

4 The district court was completely justified under the facts in its refusal
5 to provide any protections to ERIC and ELN TRUST. To the extent this Court
6 believes that the district court's specific reasoning for distributing trust assets,
7 and reference to foreign statutes, was in error, such errors would be clearly
8 harmless and should not provide a basis for relief to ERIC and ELN TRUST.

9 NRCP 61 provides:

10 No error in either the admission or the exclusion of evidence and
11 no error or defect in any ruling or order or in anything done or
12 omitted by the court or by any of the parties is ground for
13 granting a new trial or for setting aside a verdict or for vacating,
14 modifying or otherwise disturbing a judgment or order, unless
refusal to take such action appears to the court inconsistent with
substantial justice. The court at every stage of the proceeding
must disregard any error or defect in the proceeding which does
not affect the substantial rights of the parties.

15 (Emphasis added). The district court's Decree affords the parties substantial
16 justice based on the facts presented during 15 days of trial, and any errors by
17 the district court, if any are found to exist, did not affect the substantial rights
18 of the parties.

19 ...

1 **B. THE DISTRICT COURT CORRECTLY FOUND THAT ERIC**
2 **ACTED AS A FIDUCIARY AND INVESTMENT ADVISER AND**
3 **TRUSTEE OF LSN TRUST**

4 ERIC challenges the district court's finding that he acted as investment
5 trustee and trust advisor for LSN TRUST. ERIC cites NRS 163.5557 in
6 support of his argument, however, such section does not support his position.
7 Before analyzing the provisions of NRS 163.5557, it must first be noted that
8 NRS 163.5557 was not enacted and added to the Nevada Revised Statutes until
9 2009. At that time, the parties' divorce action had already been initiated, and
10 all the acts and omissions which formed the basis of the district court's
11 decision had already occurred.

12 "There is a general presumption in favor of prospective application of
13 statutes unless the legislature clearly manifests a contrary intent or unless the
14 intent of the legislature cannot otherwise be satisfied." *McKellar v. McKellar*,
15 110 Nev. 200, 871 P.2d 296, 298 (1994). There is no clear intent in NRS
16 163.5557 for such statute to apply retroactively, and the intent of such statute
17 would not be defeated by only applying the statute prospectively.

18 Assuming that NRS 163.5557 does apply to the instant case, such statute
19 does not support ERIC's position in the least. NRS 163.5557 provides, in
pertinent part:

1 1. An instrument may provide for the appointment of a person
2 to act as an investment trust adviser or a distribution trust adviser
 with regard to investment decisions or discretionary distributions.

3 2. An investment trust adviser may exercise the powers
4 provided to the investment trust adviser in the instrument in the
5 best interests of the trust. The powers exercised by an investment
6 trust adviser are at the sole discretion of the investment trust
 adviser and are binding on all other persons. The powers granted
 to an investment trust adviser may include, without limitation, the
 power to:

7 (a) Direct the trustee with respect to the retention,
8 purchase, sale or encumbrance of trust property and the
 investment and reinvestment of principal and income of the trust.

9 (b) Vote proxies for securities held in trust.

10 (c) Select one or more investment advisers, managers or
11 counselors, including the trustee, and delegate to such persons
 any of the powers of the investment trust adviser.

12 As can be seen, nothing contained in NRS 163.5557 would prevent ERIC from
13 being delegated duties to act as an investment adviser or trustee for LSN
14 TRUST, even if not specifically named in the trust agreement. Nor does NRS
15 163.5557 shield a party from liability for his or her acts as a trust adviser,
16 investment adviser, or investment trustee if he or she is not specifically named
17 in the trust agreement. NRS 163.5557 simply does not support ERIC's
18 position that the district court erred in finding that he acted as investment
19 adviser and trustee of LSN TRUST.

1 Under NRCP 52(a), findings of fact by the district court shall not be set
2 aside unless clearly erroneous. The district court did not err in finding that
3 ERIC acted as investment trustee and adviser to LSN TRUST. Due to
4 LYNITA's faith in ERIC as her husband, ERIC "had unfettered access to the
5 LSN Trust to regularly transfer assets from the LSN Trust to the ELN Trust to
6 infuse cash and other assets to fund its gaming and other risky investment
7 ventures." AAPP V19:4698:2-6. On numerous occasions, ERIC requested that
8 LYNITA sign documentation transferring assets from LSN TRUST to ELN
9 TRUST, and LYNITA rarely questioned ERIC because ERIC would become
10 upset "due to his controlling nature concerning business and property
11 transactions," and LYNITA trusted ERIC as her spouse and adviser. AAPP
12 V19:4701:2-8. ERIC did not regularly discuss with LYNITA the factors
13 pertaining to the transfer of assets from LSN TRUST to ELN TRUST. AAPP
14 V19:4701:14-17. ERIC exercised unquestioned authority over the parties'
15 property and business ventures, and lost control of his emotions when his
16 authority was questioned. AAPP V19:4701:9-13.

17 ERIC "continuously testified as to his role as the investment trustee for
18 both trusts." AAPP V19:4702:8-4703:9. "[W]hile the LSN Trust documents
19 expressly named [LYNITA] as investment trust adviser, the evidence clearly

1 established that [ERIC] exercised a pattern of continuous, unchallenged
2 investment and property-transfer decisions for both the ELN and the LSN
3 Trusts, thereby illustrating that [ERIC] acted as the investment trust adviser of
4 the LSN Trust from its inception.” AAPP V:19:4703:9-14. ERIC’s and
5 LYNITA’s testimony “clearly show[ed] that, pursuant to NRS 163.5557(2)(c),
6 [LYNITA] delegated the duties of investment trustee to her husband, [ERIC].”
7 ERIC transferred millions of dollars worth of property from LSN TRUST to
8 ELN TRUST without consideration. AAPP V19:4707:4-4715:7. In fact, the
9 district court found the total value of the property taken without compensation,
10 or loaned without repayment, was in excess of \$7,000,000. See V19:4707:4-
11 4715:7. The “lack of formalities [in the accounting of ELN TRUST and LSN
12 TRUST] further emphasize[d] the amount of control that [ERIC] exerted over
13 both trusts and that he did indeed manage both trusts for the benefit of the
14 community. AAPP V19:4721:10-13.

15 This Court should affirm the district court’s findings that ERIC acted as
16 investment trustee and adviser to LSN TRUST.

17 ...

18 ...

19 ...

1 **C. ERIC VIOLATED THE JOINT PRELIMINARY INJUNCTION**
2 **WHEN HE SPENT OVER \$1.8 MILLION ON A PERSONAL**
3 **RESIDENCE IN THE MIDDLE OF THE DIVORCE**
4 **PROCEEDINGS**

5 The district court found that ERIC deliberately violated the Joint
6 Preliminary Injunction issued on May 18, 2009, when he purchased a property
7 on Bella Kathryn, an adjoining lot, and with improvements, spent a total of
8 \$1,839,495 of the parties' property. AAPP V19:4717:13-18. ERIC does not
9 deny that he committed such deplorable acts during the pendency of the
10 divorce action, but instead argues that he could not be held liable for his acts
11 because he committed such acts as Investment Trustee of ELN TRUST and
12 "the court did not enjoin the ELN Trust . . . until April 30, 2012."

13 Even assuming for the sake of argument that ELN TRUST was a valid
14 trust under Nevada law, and that ERIC had properly followed all of the trust
15 formalities, ERIC's argument completely ignores the fact that ERIC was, and
16 has been, at all times, the Investment Trustee of ELN TRUST. At the time the
17 divorce action commenced through the beginning of trial in 2010, ERIC, as
18 Investment Trustee, was the only person authorized to represent and bind ELN
19 TRUST in legal proceedings. AAPP V26:6493. A trust is not a distinct legal
entity, and can only act by and through its trustees. *Causey v. Carpenters So.*

1 *Nevada Vacation Trust*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979) (“A party
2 to litigation is either a natural or an artificial person. . . . It is the trustee, or
3 trustees, rather than the trust itself that is entitled to bring suit.”). Accordingly,
4 service of the Joint Preliminary Injunction prevented ERIC, in any capacity,
5 including as Investment Trustee of ELN TRUST, from “transferring,
6 encumbering, concealing, selling or otherwise disposing of any of [the] joint,
7 common or community property of the parties, or any property which is the
8 subject of a claim of community interest.” AAPP V1:9. In fact, in his initial
9 pleading (Complaint for Divorce), ERIC specifically requested that the district
10 court “jointly restrain the parties herein in accordance with the terms of the
11 Joint Preliminary Injunction issued herewith.” AAPP V1:4:21-24. The Court
12 should affirm the district court’s ruling that ERIC violated the Joint
13 Preliminary Injunction by spending over \$1.8 million on his personal residence
14 during the divorce proceedings.

15
16 **D. THE DISTRICT COURT DID NOT ERROR IN AWARDING**
17 **LYNITA RENTAL MONIES RECEIVED BY ERIC AND ELN**
18 **TRUST DURING THE PENDENCY OF THE MATTER, AFTER**
19 **DETERMINING LYNITA’S RIGHTS TO PROPERTIES**

18 ERIC argues that the district court erred in awarding LYNITA certain
19 rental proceeds received prior to entry of the Decree. LYNITA first requested

1 that the district court order ERIC to provide her with financial support by the
2 filing of her Motion for Temporary Support on January 21, 2011. RAPP
3 V1:122-165. In such motion, LYNITA informed the district court that the sole
4 asset over which she had control and could draw upon for support and
5 litigation fees was her Charles Schwab/Capstone Capital investment account.
6 RAPP V1:127:24-26. In response to LYNITA's request to share in the income
7 produced by the parties' assets, the district court appointed Mr. Bertsch to trace
8 and document the parties' assets, and deferred ruling on LYNITA's request for
9 financial relief. RAPP V1:166 - 168.

10 As confirmed by Mr. Bertsch during the divorce trial, in 2009 ERIC
11 provided LYNITA with \$65,505.94 (\$47,922.00 in direct payments, and
12 \$17,583.94 in expenses paid on LYNITA's behalf). AAPP V:11:2678-2709.
13 In 2010, ERIC provided LYNITA with a mere \$13,003.58 (which consisted of
14 only \$2,300.00 in direct payments, and \$10,703.58 in expenses), and in 2011,
15 with a mere \$10,763.60 (\$5,750.00 in direct payments which were court
16 ordered attorneys' fees and mediation fees, and \$5,013.60 in expenses).
17 Shockingly, during the first three (3) months of 2012, ERIC gave LYNITA the
18 nominal sum of \$244.00 (which was simply a reimbursement for unreimbursed
19 medical expenses). AAPP V:11:2678-2709. Meanwhile, ERIC greatly reduced

(or attempted to reduce) the value of the total estate at issue by paying personal expenses totaling \$697,476, giving his family members (other than the parties' children) \$3,900,115, giving \$407,392 to the parties' children (of which \$333,501 was given to the adult children), and spending \$1,839,494 on his personal residence. AAPP V:11:2678-2709.

After the district court entered the Decree, LYNITA brought a motion requesting the rental monies collected by ERIC/ELN TRUST during the pendency of the action from the properties awarded to LYNITA. Prior to entry of the Decree, it would have been impossible for LYNITA to know which properties would ultimately be awarded to her, as ERIC was arguing that LYNITA had no interest in properties held in ELN TRUST. The district court entered an order awarding rents to LYNITA, presumably agreeing that such issue had not yet been litigated and decided by the district court.

E. THE DISTRICT COURT'S DETERMINATION THAT THERE WERE NO LIABILITIES WAS SUPPORTED BY SUBSTANTIAL EVIDENCE

ERIC challenges the district court's finding that there were no liabilities. ERIC alleges that the district court failed to adjudicate a 2005 IRS tax liability against ERIC and LYNITA, and a judgment against ERIC. In support of this assignment of error, ERIC references his 2010 testimony. Review of ERIC's

1 testimony reveals, however, that ERIC did not believe the purported tax
2 liability was valid, and intended to fight same, stating that the approximately
3 \$154,000 liability “does not include my attorney fees and accountant fees
4 that’ll go into that.” AAPP V2:306:20-307:12; V1:99:21-100:23. With regard
5 to the purported judgment, ERIC indicated that he was going to defend the
6 case and retain counsel, but that since it was going to cost more than it was
7 worth, he would probably just negotiate and pay the judgment after the
8 divorce. AAPP V2:297. This testimony was offered approximately 2 years
9 prior to the completion of trial, over 2 years before the district court entered its
10 Decree finding that no such liabilities existed, and before Mr. Bertsch’s
11 investigation into the assets and liabilities of the parties.

12 In addition, although there were exhibits admitted at trial related to these
13 purported liabilities, ERIC has not referenced such exhibits in his Brief, and
14 such exhibits do not appear to have been included as part of the record on
15 appeal. “When an appellant fails to include necessary documentation in the
16 record, [this Court] necessarily presume[s] that the missing portion supports
17 the district court’s decision.” *Cuzze v. Univ. & Community College System of*
18 *Nevada*, 123 Nev. 598, 172 P.3d 131, 135 (2007) (citing *Prabhu v. Levine*, 112
19 Nev. 1538, 1549, 980 P.2d 103, 111 (1996)).

1 The district court's findings in its Decree regarding liabilities were
2 supported by substantial evidence, including Mr. Bertsch's analysis that the
3 liabilities claimed by ERIC were not supported. AAPP V18:4319:8-4331:17;
4 V18:4334:21-4335:21. In the Decree, the district court detailed the conflicting
5 evidence before it regarding liabilities, and the reasoning for its determination:

6 THE COURT FURTHER FINDS that while [ERIC] argued that
7 he and the ELN Trust were subject to numerous liabilities, this
8 Court did not find any documented evidence to support such
9 claims except for the encumbrance attached to the newly
10 reacquired Wyoming Downs property.

11 THE COURT FURTHER FINDS that Mr. Bertsch's report
12 addresses several unsupported liabilities alleged by [ERIC].
13 Specifically, [ERIC] reported a contingent liability attached to the
14 property located in the Mississippi Bay, however, no value was
15 given to the liability.

16 THE COURT FURTHER FINDS that the Bertsch report
17 indicated that several of the liabilities were actually options held
18 by subsidiaries that [ERIC] owns or options held by relatives of
19 [ERIC], and, as such, were not true liabilities.

20 THE COURT FURTHER FINDS that while [ERIC] represented
21 that a \$3,000,000 lawsuit was threatened by a third-party in
22 regards to a transaction involving the Hideaway Casino, no
23 evidence was submitted to the Court that any such lawsuit had in
24 fact been filed.

25 THE COURT FURTHER FINDS that the only verified liability
26 is the loan attached to Wyoming Downs. As mentioned above,
27 [ERIC], via Dynasty Development Group, purchased Wyoming

1 Downs in December 2011 for \$440,000 and subsequently
2 obtained a loan against the property.

3 THE COURT FURTHER FINDS that outside of the encumbrance
4 attached to the Wyoming Downs property, the liabilities alleged
by [ERIC] have not been established as true liabilities and are
based on mere speculations and threats.

5 V19:4721:20-4722:21.

6 The district court further found that ERIC's and ELN TRUST's expert
7 accounting witness, Daniel Gerety, CPA, who testified as to alleged debts in
8 an attempt to contradict the testimony and information obtained from the court-
9 appointed expert, Mr. Bertsch, (1) relied repeatedly on information conveyed
10 to him by ERIC, (2) testified that he made numerous adjustments to the books
11 and records, and (3) offered testimony that was not reliable and which had
12 little probative value. AAPP V19:4718:2-26; V:19:4721:2-9.

13 “[I]t is the exclusive province of the court, sitting without a jury, to
14 determine facts on conflicting evidence and its findings, if supported by
15 substantial evidence, should not be disturbed on appeal.” *Larson v. B.R.*
16 *Enterprises, Inc.*, 104 Nev. 252, 254, 757 P.2d 354, 356 (1988). Questions of
17 witness credibility are left to the district court's sound discretion and will not
18 be reweighed on appeal. *Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042,
19 ...

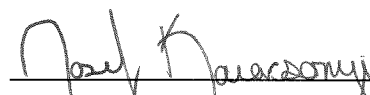
1 1046 (2004). Accordingly, the Court should affirm the district court's findings
2 regarding the liabilities of the parties, or lack thereof.

3 **CONCLUSION**

4 For the reasons set forth above, this Court should affirm the district
5 court's award of lump sum alimony to LYNITA and the division of property
6 and debts.

7 Respectfully submitted,

8 THE DICKERSON LAW GROUP

9 

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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that I have read this Answering Brief, and to the
3 best of my knowledge, information, and belief, it is not frivolous or interposed
4 for any improper purpose. I further certify that this brief complies with all
5 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),
6 which requires every assertion in the brief regarding matters in the record to
7 be supported by appropriate references to the record on appeal. I understand
8 that I may be subject to sanctions in the event that the accompanying brief is
9 not in conformity with the requirements of the Nevada Rules of Appellate
10 Procedure.

11 2. I further certify that this brief complies with the formatting
12 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5),
13 and the type style requirements of NRAP 32(a)(6) because this brief has been
14 prepared in a proportionally spaced typeface using WordPerfect X5 in 14 point
15 Time New Roman type style.

16 ...

17 ...


18 ...

19 ...

3. I further certify that this brief complies with the page and type-volume limitations of NRAP 28.1(e) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 11,905 words.

DATED this 4th day of May, 2016.

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