

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

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

7 Vs.

8 ERIC L. NELSON, INDIVIDUALLY,
9 AND IN HIS CAPACITY AS
10 INVESTMENT TRUSTEE OF THE
11 ERIC L. NELSON NEVADA TRUST
12 DATED MAY 30, 2001,
13 Respondent/Cross-Appellant,

14 and

15 LYNITA SUE NELSON,
16 INDIVIDUALLY, AND IN HER
17 CAPACITY AS INVESTMENT
18 TRUSTEE OF THE LSN NEVADA
19 TRUST DATED MAY 30, 2001,
20 Respondent

Supreme Court No. 66772

District Court Case No. D111537

Electronically Filed
Jun 13 2016 10:09 a.m.

Tracie K. Lindeman
Clerk of Supreme Court

Consolidated With:

Supreme Court Case No. 68292

21 **RESPONDENT/CROSS APPELLANT ERIC NELSON'S**
22 **REPLY BRIEF**

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24 Nevada State Bar No. 009557
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28 Attorney for Eric Nelson

1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are
3 persons and entities as described in NRAP 26.1(a), and must be disclosed.
4

5 These representations are made in order that the judges of this court may
6 evaluate possible disqualification or recusal.
7

8 1. MARK A. SOLOMON, ESQ. and JEFFREY P. LUSZECK, ESQ.
9 Trial and Appellate Attorneys for Appellant MATT KLABACKA
10 DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA
11 TRUST DATED MAY 30, 2001.

12 2. RHONDA K. FORSBERG, ESQ.
13 Trial and Appellate Attorney for Appellant ERIC L. NELSON,
14 INDIVIDUALLY, AND IN HIS CAPACITY AS INVESTMENT
15 TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY
16 30, 2001.

17 3. ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST,
18 ESQ., and JOSEF M. KARACSONYI, ESQ.
19 Trial and Appellate attorneys for Appellant LYNITA S. NELSON,
20 INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT
21 TRUSTEE OF THE LSN NEVADA TRUST DATED MAY 30, 2001.

22 4. The law firms of ECKER KAINEN LAW GROUP, JIMMERSON
23 HANSEN, STEPHENS GOURLEY & BYWATER, and the WILLICK
24 LAW GROUP previously represented ERIC L. NELSON.

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1 inappropriately by bringing necessary parties is contrary to her position and
2 the District Court's position in joining the Trusts.
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4 Lynita has already stipulated that Eric and ELN Trust are separate
5 parties, and the District Court confirmed that at no point during the first 6
6 days of trial had Eric represented the interests of the ELN Trust.
7 V7:AAPP:1742-1746, V12:AAPP:2985:2-13. It is undisputed that it was
8 ELN Trust that purchased the Bella Kathryn residence. The purchase of that
9 property was not a violation of the joint preliminary injunction by Eric as he
10 did not purchase said property.
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14 The Decree of Divorce states that since ELN Trust was able to
15 purchase Wyoming Downs. "This leads the Court to believe that Mr. Nelson
16 was less than truthful about the extent and nature of the funds available in
17 the ELN Trust..." However, the Court later found that (1) Wyoming Downs
18 was financed through debt, V23:AAPP5558:7-17. Therefore not using funds
19 available in the ELN Trust. Further, Eric did not move the District Court to
20 dissolve the injunction regarding the \$1,568,000 to purchase Wyoming
21 Downs, it was the ELN Trust that requested such relief to conduct business
22 as usual.
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27 The District Court's statement that ELN Trust could transfer property
28 as a concern that Eric will not pay Mrs. Nelson periodic spousal support

1 payments again fails to recognize that Eric and ELN Trust are separate
2 parties.
3

4 It is undisputed that Lynita was and is the Investment Trustee of LSN
5 Trust. V2:AAPP:270:11-16. Being Investment Trustee came with specific
6 obligations. Lynita chose to have Eric assist in the trust that she controlled.
7 In managing her own financial affairs Lynita's choice to have Eric help her
8 or to seek management assistance from others is and was her option and
9 obligation as Investment Trustee of the LSN Trust, both prior to the divorce
10 and after the divorce.
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14 II.

15 ARGUMENT

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17 A. The District Court erred in granting alimony to Lynita

18 Lynita's contention that *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d
19 618 (1972) is on all fours with the instant case is false and misleading. In
20 *Sargeant*, Mr. Sargeant was 81 years of age and had a net personal worth of
21 \$3,000,000. The *Sargeant* case compared the life expectancies of the two
22 parties. Mr. Sargeant's life expectancy was 4.9 years and Ms. Sargeant's was
23 23.1 years. Here the parties are only 2 years and 9 months apart in age and
24 have a much greater life expectancy than *Sargeant*.
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1 In *Sargeant* this court held that “under NRS 125.150(3) the court may
2 set apart the husband’s *separate property* for the wife’s support when the
3 need is shown.” [Emphasis added] *Id* at 229. In *Sargeant*, the property was
4 Mr. Sargeant’s separate property, not property owned by a separate party. In
5 the instant case, neither party own the property at issue as all of the property
6 is owned by the respective trusts. The property is not Eric’s separate
7 property but owned by the ELN Trust. In addition, there is not a basis for an
8 alimony award as the District Court equalized the properties of the two
9 respective trusts, making both the LSN Trust and the ELN Trust have the
10 same earning potential. V19:AAPP:4739.

15 As both the LSN Trust and the ELN Trust primary business is buying
16 and selling properties, the instant case differs greatly from *Shydler v.*
17 *Shydler*, 114 Nev. 192, 954 P.2d 37 (1998). V1: AAPP:71:13-19, V1:
18 AAPP:74: 21-24, V1:AAPP:97:20-98:2. In *Shydler*, Ms. Shydler was going
19 to have to deplete her community property award to support herself while
20 Mr. Shydler was receiving income. In the present case, each of the parties is
21 supported by distributions from the respective trusts for which they are the
22 investment trustee. There is no community property division involved.
23 Evidence at trial showed that the distributions from the LSN Trust has been
24 supporting Lynita during the marriage. V13: AAPP:3085-3086,

1 V13:AAPP:3087:3, V13:3088-3089, V13:AAPP:3090, V13:AAPP:3092-
2 3093, V13:AAPP:3096:7-17, V13:AAPP:3101.
3

4 Lynita is incorrect when stating that there was no evidence at trial that
5 LYNITA was capable of supporting herself in the lifestyle to which she was
6 accustomed during marriage, or that LYNITA has supported herself during
7 the marriage. The Decree actually references that Mrs Nelson received
8 monthly disbursements in the amount of \$5,000, which was increased to
9 \$10,000 per month, and ultimately increased to \$20,000 per month dating
10 back to 2004. V19: AAPP:4728:10-13. Those disbursements were made to
11 her as the investment trustee of the LSN Trust. V13: AAPP:3085-3086,
12 V13:AAPP:3087:3, V13:3088-3089, V13:AAPP:3090, V13:AAPP:3092-
13 3093, V13:AAPP:3096:7-17, V13:AAPP:3101.
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18 In *Sargeant*, this Court was further concerned that future litigation
19 would be expensive for the Defendant because she was a resident of Florida.
20 Here both parties are residents of Nevada.
21

22 Lastly, the activities that the District Court states as the basis for
23 awarding a lump sum award are in error. Eric did not violate the joint
24 preliminary injunction as it was the ELN Trust that purchased Bella
25 Kathryn. Eric did not improperly bring forth the ELN Trust and LSN Trust
26 as litigants as the parties stipulated to them being added, and Eric actually
27
28

1 introduced the Trusts as exhibits on the second day of trial,
2 V2:AAPP:270:11-16. Eric did not move the court to dissolve the injunction
3 regarding the \$1,568,000 to purchase Wyoming Racing LLC as it was a
4 request by ELN Trust, and Eric did not transfer any of his assets to family
5 members.
6

7
8 **B. The Issue of Alimony Should be Remanded to another**
9 **District Court**

10 The errors the District Court made in this case are numerous,
11 substantial, prejudicial, and when viewed as a whole, demonstrate a clear
12 bias against Eric and the ELN Trust thereby warranting remand of this
13 matter to a different judge. These errors go far beyond the District Court
14 making understandable erroneous rulings based upon ambiguity in the law.
15 The District Court systematically ruled in favor of Lynita even when
16 required to ignore express Trust terms and clear Nevada Law. These
17 deliberate legal errors, not the unfavorable rulings themselves, are what
18 demonstrate that the District Court was biased against Eric. The District
19 Court has gone so far as to state that it will invalidate the trust on remand,
20 V21:AAPP:5178: 6-9, V22:AAPP:5299:19-21, V22:5304:4-9.
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1 **CONCLUSION**

2 In light of the foregoing, Eric respectfully requests the relief sought in
3
4 his Answering Brief and Opening Brief on Cross Appeal.

5 Respectfully submitted

6
7 RHONDA K. FORSBERG, CHARTERED

8 

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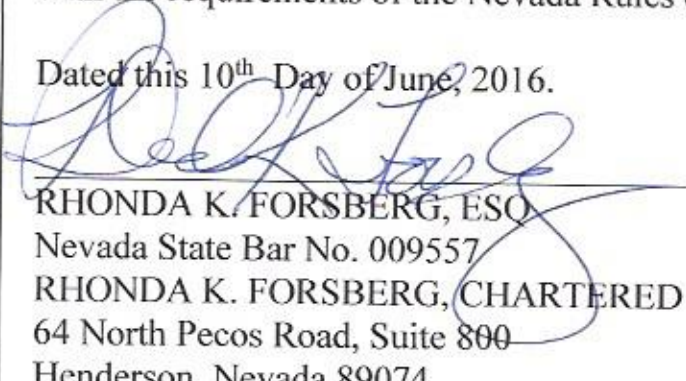
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1 with the requirements of the Nevada Rules of Appellate Procedure.

2 Dated this 10th Day of June, 2016.

3 
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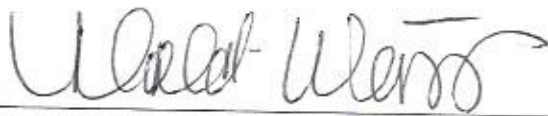
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CERTIFICATE OF SERVICE

I certify that I am an employee of RHONDA K. FORSBERG, CHARTERED, and that on this 10th day of June, 2016 I filed a true and correct copy of the forgoing RESPONDENT/CROSS APPELLANT ERIC NELSON'S REPLY BRIEF, with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

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