

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

2 LYNITA SUE NELSON,
3 INDIVIDUALLY, AND IN HER
4 CAPACITY AS INVESTMENT
5 TRUSTEE OF THE LYNITA S.
6 NELSON NEVADA TRUST DATED
7 MAY 30, 2001,

8 Petitioner,

9 v.

10 EIGHTH JUDICIAL DISTRICT
11 COURT OF THE STATE OF
12 NEVADA, FAMILY DIVISION,
13 CLARK COUNTY; THE
14 HONORABLE FRANK P.
15 SULLIVAN,

16 Respondents,

17 ERIC L. NELSON, INDIVIDUALLY,
18 AND IN HIS CAPACITY AS
19 INVESTMENT TRUSTEE OF THE
20 ERIC L. NELSON NEVADA TRUST,
21 DATED MAY 30, 2001, and MATT
22 KLABACKA, DISTRIBUTION
23 TRUSTEE OF THE ERIC L.
24 NELSON NEVADA TRUST, DATED
25 MAY 30, 2001,

26 Real Parties in Interest.

Supreme Court Case No.:

Electronically Filed
District Ct. Case No. 2018-410027 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

27 **PETITIONER, LYNITA SUE NELSON'S, SUPPLEMENTAL**
28 **APPENDIX OF EXHIBITS TO PETITION FOR**
 WRIT OF MANDAMUS VOLUME 3

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1 MR. KARACSONYI: Yeah, if he wants to suggest one.
2 If you're going to do a third party, I think it'd be easiest
3 to let a mutual pick the third party and I'm fine with that.

4 THE COURT: You're comfortable with that, Mr. --

5 MR. BERTSCH: Take like Mike (indiscernible) or
6 someone that --

7 THE COURT: Are you okay with that, Mr. Bertsch, and
8 make a recommendation or do you --

9 MR. BERTSCH: Yeah, I can make a recommendation --

10 MR. KARACSONYI: No.

11 MR. BERTSCH: -- to --

12 MR. KARACSONYI: I think --

13 MR. BERTSCH: -- talk to him to the Court.

14 MR. KARACSONYI: Do you have any issue?

15 MR. LUSZECK: I'd -- I'd rather get -- maybe a list.
16 I'm -- I'm curious to see what these -- what they charge. I
17 don't even know if they --

18 THE COURT: Okay.

19 MR. LUSZECK: -- charge, so I think that's --

20 THE COURT: Okay. Why don't we get a couple like
21 they just said and they won't agree. And what happens if they
22 agree, great, if not, just submit names to me and I'll pick
23 one if i have to.

24 MR. LUSZECK: That too.

1 THE COURT: But at least I want to give them a
2 chance to talk about the fees would be, so --

3 MR. LUSZECK: Thank you.

4 THE COURT: -- fair enough. And then what happens
5 if they can't agree is just submit a --

6 MR. KARACSONYI: But if he has somebody he
7 recommends and if he wants to submit that to the Court, we're
8 fine. If he wants to tell the Court why he recommends this
9 person because if -- he probably knows people better than we
10 do in this business or I do.

11 MR. LUSZECK: Yeah, I'd like to know who it is --

12 MR. KARACSONYI: Yeah.

13 MR. LUSZECK: -- first before we --

14 MR. KARACSONYI: And what they charge. If he wants
15 to submit a recommendation to us, we'll consider it. I mean,
16 I would --

17 MR. LUSZECK: Yeah.

18 MR. KARACSONYI: -- consider it highly.

19 THE COURT: And if they can't agree, then I'll
20 decide on it.

21 MR. BERTSCH: I want to talk to them bef -- so I --

22 THE COURT: For the --

23 MR. BERTSCH: -- can explain what -- what --

24 THE COURT: What --

1 MR. BERTSCH: -- it's about.

2 THE COURT: -- they're getting into. What they're
3 stepping into, right?

4 MR. KARACSONYI: I understood.

5 THE COURT: All right. We'll make sure. It's good
6 to see everybody and hopefully you guys get this resolved
7 sometime, just peace of mind. I couldn't imagine being in
8 that situation from anybody. Thanks --

9 MR. KARACSONYI: Thank you, Your Honor.

10 THE COURT: -- Mr. Bertsch. Appreciate your
11 presence.

12 MR. BERTSCH: Thank you, Your Honor.

13 MR. LUSZECK: Do we -- do we have a general idea for
14 timeline just so the parties can annul, witness the order and
15 what the tracing just -- I'm not going to hold you to anything
16 --

17 THE COURT: Yeah, I think we can start.

18 MR. LUSZECK: -- but just a ballpark.

19 MR. BERTSCH: I will put this out there. Some
20 documents I see I need. It depends on the cooperation of the
21 parties so I can get the information.

22 MR. KARACSONYI: I trust Mr. Bertsch is working on
23 it diligently.

24 MR. LUSZECK: I don't doubt that. I'm -- I was just

1 asking for --
2 THE COURT: Do you want a status check in --
3 MR. KARACSONYI: Yeah, maybe a status check and --
4 THE COURT: -- 90 days, 120 days just to see --
5 MR. KARACSONYI: Do you want --
6 THE COURT: -- where we're at?
7 MR. KARACSONYI: -- 20 days?
8 MR. LUSZECK: 30 days.
9 MS. FORSBERG: 30 days.
10 MR. LUSZECK: Yeah.
11 MR. KARACSONYI: Yeah, a hundred and twenty days.
12 THE COURT: Yeah. Well, for now --
13 MS. FORSBERG: We need 120?
14 THE COURT: -- if it's just a status check --
15 MS. FORSBERG: That's a long time.
16 THE COURT: -- about a hundred and twenty days as to
17 -- as the tracing or see where we're at to -- to --
18 THE CLERK: Do you want this on a regular calendar
19 or --
20 THE COURT: No, not on a Wednesday. Wednesday's my
21 heavy day.
22 THE CLERK: Right.
23 THE COURT: So put it on either -- because when I
24 got my trial day it's like a Monday or a --

1 THE CLERK: Or a Thursday?

2 THE COURT: -- Tuesday -- or Tuesday if it's got a
3 Drug Court when Holly is doing Drug Court. I do mine. We're
4 alternating on Drug Court. So Tuesday afternoon when I got
5 some time.

6 (COUNSEL CONFER BRIEFLY)

7 THE COURT: Probably a Monday or Tuesday or Thursday
8 I could probably sneak it in.

9 MS. FORSBERG: Do you have a guess on how long we
10 should set a status check for? I mean, it seems like a
11 hundred and --

12 MR. BERTSCH: No --

13 MS. FORSBERG: -- twenty days --

14 MR. BERTSCH: -- a hundred and --

15 MS. FORSBERG: -- is a long way.

16 MR. BERTSCH: -- twenty days is fine. If we get --

17 MS. FORSBERG: It just seems a long way.

18 MR. BERTSCH: -- it done before, we can ask for --

19 THE CLERK: November 15th at 1:30.

20 MR. BERTSCH: -- shortening time.

21 THE COURT: November 15th at 1:30?

22 MR. KARACSONYI: That's good to me.

23 THE COURT: And again, if you move it up there, any
24 issue before the courts, I would suggest the date so it

1 doesn't go into the big void.

2 MR. LUSZECK: Actually, can we do -- I know I'm
3 going to be out of town that week because I just booked
4 something. Can we do the following week.

5 THE CLERK: The following week is Thanksgiving.

6 MR. LUSZECK: Or --

7 MS. FORSBERG: Do the week before?

8 MR. LUSZECK: Or the week before?

9 THE CLERK: November 8th at 1:30.

10 MR. KARACSONYI: Okay.

11 MR. LUSZECK: Okay. Thank you, Your Honor.

12 MR. KARACSONYI: Just one other thing, Your Honor.

13 We had stipulated earlier before you -- you even came in that
14 there is still some HOA and sewer and other utilities from the
15 BanOne properties that are in her name and they said they
16 would transfer those immediately.

17 MR. LUSZECK: We would.

18 MR. KARACSONYI: And then they said also that they
19 were having some kind of problem with the property taxes --

20 MS. FORSBERG: From the deed.

21 MR. KARACSONYI: -- from the recorder from the
22 deeds.

23 MR. LUSZECK: Yeah.

24 MR. KARACSONYI: So they may need an order from this

1 Court specifically listing the properties that you ordered to
2 be transferred back so that the receipt -- so that the
3 assessor can see that and we had no recording --

4 MR. LUSZECK: Yeah, and we'll --

5 MR. KARACSONYI: -- we have no problem with that.

6 MR. LUSZECK: -- we'll send a --

7 THE COURT: And you just have to --

8 MR. LUSZECK: -- stipulation and order to them and
9 then that will be (indiscernible).

10 MR. KARACSONYI: And just for the record.

11 MR. LUSZECK: Yeah.

12 THE COURT: Good to see you, Ms. Lynita.

13 MS. NELSON: Thank you.

14 THE COURT: Good to see you, Mr. Eric. Thanks,
15 Counsel, for your --

16 MR. LUSZECK: Thank you.

17 (PROCEEDINGS CONCLUDED AT 10:22:35)

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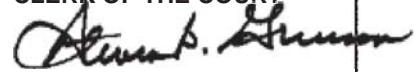
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ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the above-
entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano



**DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

Date of Hearing: 7/23/2018

DECISION

This matter was before the Court on July 23, 2018, pursuant to multiple Motions, Oppositions and Counter-motions, and Replies filed between May 25, 2018, and July 18, 2018. Present in Court were: Josef Karacsonyi, Esq., representing Lynita Nelson, who was also present; Jeffrey Luszeck, Esq.,

1
2 representing Matt Klabacka, Trustee of the ELN Trust; Rhonda Forsberg, Esq.,
3 representing Eric Nelson, who was also present; and Larry Bertsch, C.P.A.
4

5 **FINDINGS OF FACT and CONCLUSIONS OF LAW**

6 **A. Case D-09-411537-D and Case A-17-763004-C Cannot Be Consolidated**
7 **As They Do Not Share the Same Question of Law**

8 Nevada Rules of Civil Procedure (“NRCP”) Rule 42(a) states that, “[w]hen
9 actions involving a common question of law or fact are pending before the court,
10 it may...order all the actions consolidated...” Eric Nelson (“Mr. Nelson”) and
11 Lynita Nelson (“Ms. Nelson”) are currently involved in multiple cases regarding
12 the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita Sue Nelson
13 Nevada Trust (“LSN Trust”). Ms. Nelson is requesting that this Court consolidate
14 a divorce case, D-09-411537-D (“Divorce Proceeding”), and a case based on tort
15 relief, A-17-763004-C (“Tort Claim”).
16
17

18 The Divorce Proceeding is currently in its final stage, which revolves
19 around the tracing of property in both the ELN and LSN Trusts to determine if
20 any community property is being held within either Trust. Pending any further
21 Motions by the parties, there is no question of law remaining in the Divorce
22 Proceeding, with the only question of fact being the determination of property
23 ownership after the tracing is completed. The Tort Claim revolves around
24 questions of law and fact involving a, “Complaint for Breach of Fiduciary Duty,
25 Fraud, Deceit, and Intentional Misrepresentation, Conversion, Fraud in the
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1
2 Inducement, [and] Unjust Enrichment...”¹ As the Divorce Proceeding involves
3 the tracing of property and the Tort Claim involves questions of law and fact
4 regarding Breach of Fiduciary Duty, as well as other claims, this Court finds that
5 there is no current common question of law or fact between the two cases.
6

7 Additionally, on February 23, 2012, this Court declined to take jurisdiction
8 over tort claims in this case, including: (1) Breach of Fiduciary Duty; (2) Fraud,
9 Deceit, and Intentional Misrepresentation; (3) Conversion; (4) Fraud in the
10 Inducement; and (5) Unjust Enrichment.² Specifically, this Court stated that these
11 claims were “DISMISSED WITHOUT PREJUDICE so that the claims can be
12 brought in another tribunal.”³ Therefore, as this Court finds that there is no
13 common question of law or fact, and as this Court has previously declined to hear
14 the very same tort claims, this Court declines to consolidate the Divorce
15 Proceeding and the Tort Claim cases.
16
17

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19 B. A Joint Preliminary Injunction Shall Only Be Placed On the Banone, LLC
20 and Lindell Properties

21 Eighth Judicial District Court Rule (“EDCR”) 5.517 states that “[u]pon the
22 request of any party at any time prior to the entry of...final judgment, a
23 preliminary injunction will be issued by the clerk against the parties to the action
24 enjoining them and their officers, agents, servant, employees, or a person in
25
26

27
28 ¹ Amended Complaint, Case No. A-17-763004-C, Pg. 1, Filed Feb. 9, 2018.

² Answer and Counterclaim, Case No. D-09-411537-D, Pgs. 28-34, Filed Dec. 20, 2011.

³ Order from February 23, 2012 Hearing, Case No. D-09411537D, Pg. 6, Filed Aug. 29, 2012.

1
2 active concert or participation with them from: transferring, encumbering,
3 concealing, selling, or otherwise disposing of...any property that is the subject of
4 a claim of community interest...”⁴
5

6 In a Hearing on April 10, 2012, this Court found that the ELN Trust had a
7 right to defend itself during the proceedings.⁵ While this Court found that the
8 ELN Trust could defend itself, it did not confer party status to either Trust in this
9 action. The EDCR specifically states that upon “request of any party...a
10 preliminary injunction will be issued by the clerk against the parties to the
11 action...”⁶ In these proceedings, only Mr. and Ms. Nelson are considered parties,
12 not the Trusts. Therefore, as the ELN Trust is not a party to the case, this Court
13 finds that it is not required to place a JPI on a non-party’s property at the request
14 of a party.
15
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17

18 In its May 22, 2018 Decision, this Court Ordered that a Joint Preliminary
19 Injunction (“JPI”) to be placed over the Banone, LLC. and Lindell properties. To
20 clarify this Court’s Order, the JPI was granted on these properties solely due to
21 the fact that both the ELN and LSN Trusts have held an ownership stake in both
22 properties at some point during these proceedings. Given the contentious nature
23 of both the litigation and the ownership/management of the properties involved,
24 this Court finds that placing a JPI on the Banone, LLC. and Lindell properties
25
26
27

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⁴ EDCR 5.517(a).

⁵ All Pending Motions, Case No. D-09-411537-D, Hearing held April 10, 2018.

⁶ EDCR 5.517(a).

1
2 would protect both Mr. and Ms. Nelson, as well as the ELN and LSN Trusts, as
3 the properties had exchanged hands during these proceedings. Furthermore, this
4 Court finds that the only properties that require a JPI based on the history of this
5 case are the Banone, LLC. and Lindell properties.
6

7 C. A Lis Pendens Is Not Proper Because It Was Not Timely Filed
8

9 NRS 14.010 states that, “[i]n an action...affecting the title or possession of
10 real property , the plaintiff, at the time of filing the complaint, and the defendant,
11 at the time of filing his or her answer...shall record with the recorder of the
12 county in which the property...is situated, a notice of pendency of the action.”⁷ In
13 the plain language of the statute, a lis pendens must be filed with the complaint or
14 the answer in order to be valid.
15

16 The Complaint for divorce in the current proceeding was filed on May 6,
17 2009. The Answer and Counterclaim for this proceeding was filed on June 22,
18 2009. A notification for the pendency of the current action was filed on May 11,
19 2018, well after the filing date of both the Complaint and the Answer and
20 Counterclaim. Therefore, this Court finds that the lis pendens was untimely filed
21 and should be expunged.
22
23

24 D. A Third Party Shall Be Appointed To Manage the Lindell Property and Set
25 Market Rate Rent for Both Eric Nelson and Lynita Nelson
26
27
28

⁷ NRS 14.010(1).

1
2 In the July 23, 2018 Motion Hearing, this Court found that it was in the
3 best interest of both the parties, the Trusts, and the property, for the Lindell
4 property to be managed by a third party Property Manager. This Court finds that
5 based on the contentious nature of the litigation and to protect the property for
6 both Mr. and Ms. Nelson, as well as the ELN and LSN Trusts, that Larry Bertsch
7 shall appoint a third party Property Manager to manage the Lindell Property.
8
9

10 Additionally, the third party Property Manager selected by Mr. Bertsch
11 shall designate a market rate rent payment for tenants of the Lindell property. In
12 the event that either Mr. or Ms. Nelson are tenants of the Lindell property, the
13 market rate rent shall be applied to them in order to ensure that both Mr. and Ms.
14 Nelson, as well as the Lindell property, are protected from any financial harm.
15
16

17 E. A Bond Is Not Necessary At This Time

18 The ELN Trust requested that a Bond be placed on any properties that may
19 be placed under new JPIs. As this Court is not expanding the JPI to properties
20 other than the Banone, LLC. and the Lindell properties, no Bonds will be placed
21 on any additional properties at this time.
22

23 F. Wyoming Downs Is Property of the ELN Trust

24 On September 18, 2014, this Court filed an Order Determining Disposition
25 of Dynasty Development Management, Inc. aka Wyoming Downs. In this Order,
26 this Court ordered that, "neither Lynita S. Nelson nor the LSN Trust are entitled
27
28

1
2 to an interest in Dynasty Development Management, LLC aka Wyoming
3 Downs.”⁸ This Court also Ordered that “Dynasty Development Management,
4 LLC aka Wyoming Downs belongs to the ELN Trust.”⁹
5

6 On May 25, 2017, the Nevada Supreme Court filed their Decision
7 affirming in part, vacating in part, and remanding this Court’s June 8, 2015
8 Order. In its Decision, the Nevada Supreme Court made note that “an appeal
9 would be available to all parties upon the disposition of Wyoming Downs.”¹⁰ The
10 Nevada Supreme Court also made note that Wyoming Downs had been disposed
11 of by this Court, making its judgment final.¹¹ Finally, the Nevada Supreme Court
12 vacated the June 8, 2015 order, “to the extent it enforces or implements portions
13 of the divorce decree relating to assets in Eric’s Trust and Lynita’s Trust...”¹²
14
15

16 This Court disposed of the Wyoming Downs property on September 18,
17 2014. The only references to the Wyoming Downs Property in the June 8, 2015
18 Order involves providing documentation and income received, not a disposition
19 of any property.¹³ Therefore, as the Nevada Supreme Court’s Decision vacated
20 portions of the divorce decree relating to assets in the ELN and LSN Trust, and
21 the Wyoming Downs property was disposed of in this Court’s September 18,
22
23
24

25
26 ⁸ Order Determining Disposition of Dynasty Development Management, Inc. aka Wyoming Downs, Case No. D-09-411537-D, Pg. 5, Filed September 18, 2014.

27 ⁹ *Id.*

¹⁰ *Klabacka v. Nelson*, 394 P.3d 940, 945 n.2 (2017).

¹¹ *Klabacka*, 394 P.3d at 945.

28 ¹² *Id.* at 954.

¹³ Findings of Fact and Order, Case No. D-09-41537-D, Pg. 23, Filed June 8, 2015.

1
2 2014 Order, and not the June 8, 2015 Order, this Court finds that the ELN Trust
3 remains the owner of the Wyoming Downs Property.
4

5 **ORDER**

6 Based thereon:

7 **IT IS HEREBY ORDERED** the request to consolidate case D-09-
8 411537-D and A-17-763004-C is **DENIED**.
9

10 **IT IS FURTHER ORDERED** that request to expand the Joint
11 Preliminary Injunction to the entirety of the property, or any property other than
12 the Banone, LLC. and Lindell properties, within the Eric L. Nelson Nevada Trust
13 is **DENIED**.
14

15 **IT IS FURTHER ORDERED** that the request to terminate the Joint
16 Preliminary Injunction from the Banone, LLC. and Lindell properties is
17 **DENIED**.
18

19 **IT IS FURTHER ORDERED** that the request to expunge the Lis
20 Pendens Notices, filed on May 11, 2018, is **GRANTED** for the following
21 properties:
22

- 23 1. 3611 S. Lindell Road, Las Vegas, NV 89103
24 2. 1301 Heather Ridge Road, North Las Vegas, NV 89031
25 3. 6304 Guadalupe Avenue, Las Vegas, NV 89108
26 4. 4601 Concord Village Drive, Las Vegas, NV 89108
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5. 4133 Compass Rose Way, Las Vegas, NV 89108
6. 5317 Clover Blossom Court, North Las Vegas, NV 89031
7. 5113 Churchill Avenue, Las Vegas, NV 89107
8. 6301 Cambria Avenue, Las Vegas, NV 89108
9. 6213 Anaconda Street, Las Vegas, NV 89108
10. 2911 Bella Kathryn Circle, Las Vegas, NV 89117
11. 4412 Baxter Place, Las Vegas, NV 89108
12. 3301 Terra Bella Drive, Las Vegas, NV 89108
13. 4612 Sawyer Avenue, Las Vegas, NV 89108
14. 1608 Rusty Ridge Lane, Henderson, NV 89002
15. 5220 E. Russell Road, Las Vegas, NV 89122
16. 4820 Marnell Drive, Las Vegas, NV 89121

IT IS FURTHER ORDERED that both the request for Lynita Nelson to manage the Lindell property and the request for the Eric L. Nelson Nevada Trust to manage the Lindell property are **DENIED**.


IT IS FURTHER ORDERED that Larry Bertsch, CPA, shall select a third party Property Manager for the Lindell property. In the event that either Eric Nelson or Lynita Nelson are tenants of the Lindell property, they are to be charged a market value rent set by the third party Property Manager.


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2 **IT IS FURTHER ORDERED** that the request for a Bond on any new
3 properties being placed under Joint Preliminary Injunction is **DENIED** as this
4 Court is not expanding the Joint Preliminary Injunction to any additional
5 properties.
6

7 **IT IS FURTHER ORDERED** that Dynasty Development Management,
8 LLC aka Wyoming Downs belongs solely to the ELN Trust.
9

10 **IT IS FURTHER ORDERED** that all requests for Attorneys' Fees and
11 Costs are **DENIED**.
12

13 DATED this 16th day of October, 2018.

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16 Honorable Frank P. Sullivan
17 District Court Judge – Dept. O
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**DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

v.

Case No.: D-09-411537-D

Dept. No.: O

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

NOTICE OF ENTRY OF ORDER

TO:

Rhonda Forsberg, Esq.
E-Service

Robert Dickerson, Esq.
E-Service

Marc Solomon, Esq.
E-Service

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PLEASE TAKE NOTICE that the DECISION was duly entered in the above-referenced case on the 16th day of October, 2018.

DATED this 16 day of October, 2018.



Lori Parr
Judicial Executive Assistant
Dept. O

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**DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D
Dept. No.: O
Date of Hearing: 7/23/2018

DECISION

This matter was before the Court on July 23, 2018, pursuant to multiple
Motions, Oppositions and Counter-motions, and Replies filed between May 25,
2018, and July 18, 2018. Present in Court were: Josef Karacsonyi, Esq.,
representing Lynita Nelson, who was also present; Jeffrey Luszeck, Esq.,

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2 representing Matt Klabacka, Trustee of the ELN Trust; Rhonda Forsberg, Esq.,
3 representing Eric Nelson, who was also present; and Larry Bertsch, C.P.A.
4

5 **FINDINGS OF FACT and CONCLUSIONS OF LAW**

6 **A. Case D-09-411537-D and Case A-17-763004-C Cannot Be Consolidated**
7 **As They Do Not Share the Same Question of Law**

8 Nevada Rules of Civil Procedure (“NRCP”) Rule 42(a) states that, “[w]hen
9 actions involving a common question of law or fact are pending before the court,
10 it may...order all the actions consolidated...” Eric Nelson (“Mr. Nelson”) and
11 Lynita Nelson (“Ms. Nelson”) are currently involved in multiple cases regarding
12 the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita Sue Nelson
13 Nevada Trust (“LSN Trust”). Ms. Nelson is requesting that this Court consolidate
14 a divorce case, D-09-411537-D (“Divorce Proceeding”), and a case based on tort
15 relief, A-17-763004-C (“Tort Claim”).
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18 The Divorce Proceeding is currently in its final stage, which revolves
19 around the tracing of property in both the ELN and LSN Trusts to determine if
20 any community property is being held within either Trust. Pending any further
21 Motions by the parties, there is no question of law remaining in the Divorce
22 Proceeding, with the only question of fact being the determination of property
23 ownership after the tracing is completed. The Tort Claim revolves around
24 questions of law and fact involving a, “Complaint for Breach of Fiduciary Duty,
25 Fraud, Deceit, and Intentional Misrepresentation, Conversion, Fraud in the
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2 Inducement, [and] Unjust Enrichment...”¹ As the Divorce Proceeding involves
3 the tracing of property and the Tort Claim involves questions of law and fact
4 regarding Breach of Fiduciary Duty, as well as other claims, this Court finds that
5 there is no current common question of law or fact between the two cases.
6

7 Additionally, on February 23, 2012, this Court declined to take jurisdiction
8 over tort claims in this case, including: (1) Breach of Fiduciary Duty; (2) Fraud,
9 Deceit, and Intentional Misrepresentation; (3) Conversion; (4) Fraud in the
10 Inducement; and (5) Unjust Enrichment.² Specifically, this Court stated that these
11 claims were “DISMISSED WITHOUT PREJUDICE so that the claims can be
12 brought in another tribunal.”³ Therefore, as this Court finds that there is no
13 common question of law or fact, and as this Court has previously declined to hear
14 the very same tort claims, this Court declines to consolidate the Divorce
15 Proceeding and the Tort Claim cases.
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19 B. A Joint Preliminary Injunction Shall Only Be Placed On the Banone, LLC
20 and Lindell Properties

21 Eighth Judicial District Court Rule (“EDCR”) 5.517 states that “[u]pon the
22 request of any party at any time prior to the entry of...final judgment, a
23 preliminary injunction will be issued by the clerk against the parties to the action
24 enjoining them and their officers, agents, servant, employees, or a person in
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28 ¹ Amended Complaint, Case No. A-17-763004-C, Pg. 1, Filed Feb. 9, 2018.

² Answer and Counterclaim, Case No. D-09-411537-D, Pgs. 28-34, Filed Dec. 20, 2011.

³ Order from February 23, 2012 Hearing, Case No. D-09411537D, Pg. 6, Filed Aug. 29, 2012.

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2 active concert or participation with them from: transferring, encumbering,
3 concealing, selling, or otherwise disposing of...any property that is the subject of
4 a claim of community interest...”⁴
5

6 In a Hearing on April 10, 2012, this Court found that the ELN Trust had a
7 right to defend itself during the proceedings.⁵ While this Court found that the
8 ELN Trust could defend itself, it did not confer party status to either Trust in this
9 action. The EDCR specifically states that upon “request of any party...a
10 preliminary injunction will be issued by the clerk against the parties to the
11 action...”⁶ In these proceedings, only Mr. and Ms. Nelson are considered parties,
12 not the Trusts. Therefore, as the ELN Trust is not a party to the case, this Court
13 finds that it is not required to place a JPI on a non-party’s property at the request
14 of a party.
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18 In its May 22, 2018 Decision, this Court Ordered that a Joint Preliminary
19 Injunction (“JPI”) to be placed over the Banone, LLC. and Lindell properties. To
20 clarify this Court’s Order, the JPI was granted on these properties solely due to
21 the fact that both the ELN and LSN Trusts have held an ownership stake in both
22 properties at some point during these proceedings. Given the contentious nature
23 of both the litigation and the ownership/management of the properties involved,
24 this Court finds that placing a JPI on the Banone, LLC. and Lindell properties
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⁴ EDCR 5.517(a).

⁵ All Pending Motions, Case No. D-09-411537-D, Hearing held April 10, 2018.

⁶ EDCR 5.517(a).

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2 would protect both Mr. and Ms. Nelson, as well as the ELN and LSN Trusts, as
3 the properties had exchanged hands during these proceedings. Furthermore, this
4 Court finds that the only properties that require a JPI based on the history of this
5 case are the Banone, LLC. and Lindell properties.
6

7 C. A Lis Pendens Is Not Proper Because It Was Not Timely Filed
8

9 NRS 14.010 states that, “[i]n an action...affecting the title or possession of
10 real property , the plaintiff, at the time of filing the complaint, and the defendant,
11 at the time of filing his or her answer...shall record with the recorder of the
12 county in which the property...is situated, a notice of pendency of the action.”⁷ In
13 the plain language of the statute, a lis pendens must be filed with the complaint or
14 the answer in order to be valid.
15

16 The Complaint for divorce in the current proceeding was filed on May 6,
17 2009. The Answer and Counterclaim for this proceeding was filed on June 22,
18 2009. A notification for the pendency of the current action was filed on May 11,
19 2018, well after the filing date of both the Complaint and the Answer and
20 Counterclaim. Therefore, this Court finds that the lis pendens was untimely filed
21 and should be expunged.
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24 D. A Third Party Shall Be Appointed To Manage the Lindell Property and Set
25 Market Rate Rent for Both Eric Nelson and Lynita Nelson
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⁷ NRS 14.010(1).

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2 In the July 23, 2018 Motion Hearing, this Court found that it was in the
3 best interest of both the parties, the Trusts, and the property, for the Lindell
4 property to be managed by a third party Property Manager. This Court finds that
5 based on the contentious nature of the litigation and to protect the property for
6 both Mr. and Ms. Nelson, as well as the ELN and LSN Trusts, that Larry Bertsch
7 shall appoint a third party Property Manager to manage the Lindell Property.
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10 Additionally, the third party Property Manager selected by Mr. Bertsch
11 shall designate a market rate rent payment for tenants of the Lindell property. In
12 the event that either Mr. or Ms. Nelson are tenants of the Lindell property, the
13 market rate rent shall be applied to them in order to ensure that both Mr. and Ms.
14 Nelson, as well as the Lindell property, are protected from any financial harm.
15

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17 E. A Bond Is Not Necessary At This Time

18 The ELN Trust requested that a Bond be placed on any properties that may
19 be placed under new JPIs. As this Court is not expanding the JPI to properties
20 other than the Banone, LLC. and the Lindell properties, no Bonds will be placed
21 on any additional properties at this time.
22

23 F. Wyoming Downs Is Property of the ELN Trust

24 On September 18, 2014, this Court filed an Order Determining Disposition
25 of Dynasty Development Management, Inc. aka Wyoming Downs. In this Order,
26 this Court ordered that, "neither Lynita S. Nelson nor the LSN Trust are entitled
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2 to an interest in Dynasty Development Management, LLC aka Wyoming
3 Downs.”⁸ This Court also Ordered that “Dynasty Development Management,
4 LLC aka Wyoming Downs belongs to the ELN Trust.”⁹
5

6 On May 25, 2017, the Nevada Supreme Court filed their Decision
7 affirming in part, vacating in part, and remanding this Court’s June 8, 2015
8 Order. In its Decision, the Nevada Supreme Court made note that “an appeal
9 would be available to all parties upon the disposition of Wyoming Downs.”¹⁰ The
10 Nevada Supreme Court also made note that Wyoming Downs had been disposed
11 of by this Court, making its judgment final.¹¹ Finally, the Nevada Supreme Court
12 vacated the June 8, 2015 order, “to the extent it enforces or implements portions
13 of the divorce decree relating to assets in Eric’s Trust and Lynita’s Trust...”¹²
14
15

16 This Court disposed of the Wyoming Downs property on September 18,
17 2014. The only references to the Wyoming Downs Property in the June 8, 2015
18 Order involves providing documentation and income received, not a disposition
19 of any property.¹³ Therefore, as the Nevada Supreme Court’s Decision vacated
20 portions of the divorce decree relating to assets in the ELN and LSN Trust, and
21 the Wyoming Downs property was disposed of in this Court’s September 18,
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26 ⁸ Order Determining Disposition of Dynasty Development Management, Inc. aka Wyoming Downs, Case No. D-09-411537-D, Pg. 5, Filed September 18, 2014.

27 ⁹ Id.

¹⁰ Klabacka v. Nelson, 394 P.3d 940, 945 n.2 (2017).

¹¹ Klabacka, 394 P.3d at 945.

¹² Id. at 954.

¹³ Findings of Fact and Order, Case No. D-09-41537-D, Pg. 23, Filed June 8, 2015.

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2 2014 Order, and not the June 8, 2015 Order, this Court finds that the ELN Trust
3 remains the owner of the Wyoming Downs Property.
4

5 **ORDER**

6 Based thereon:

7 **IT IS HEREBY ORDERED** the request to consolidate case D-09-
8 411537-D and A-17-763004-C is **DENIED**.
9

10 **IT IS FURTHER ORDERED** that request to expand the Joint
11 Preliminary Injunction to the entirety of the property, or any property other than
12 the Banone, LLC. and Lindell properties, within the Eric L. Nelson Nevada Trust
13 is **DENIED**.
14

15 **IT IS FURTHER ORDERED** that the request to terminate the Joint
16 Preliminary Injunction from the Banone, LLC. and Lindell properties is
17 **DENIED**.
18

19 **IT IS FURTHER ORDERED** that the request to expunge the Lis
20 Pendens Notices, filed on May 11, 2018, is **GRANTED** for the following
21 properties:
22

- 23 1. 3611 S. Lindell Road, Las Vegas, NV 89103
24 2. 1301 Heather Ridge Road, North Las Vegas, NV 89031
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16. 4820 Marnell Drive, Las Vegas, NV 89121

IT IS FURTHER ORDERED that both the request for Lynita Nelson to manage the Lindell property and the request for the Eric L. Nelson Nevada Trust to manage the Lindell property are **DENIED**.


IT IS FURTHER ORDERED that Larry Bertsch, CPA, shall select a third party Property Manager for the Lindell property. In the event that either Eric Nelson or Lynita Nelson are tenants of the Lindell property, they are to be charged a market value rent set by the third party Property Manager.

1
2 **IT IS FURTHER ORDERED** that the request for a Bond on any new
3 properties being placed under Joint Preliminary Injunction is **DENIED** as this
4 Court is not expanding the Joint Preliminary Injunction to any additional
5 properties.
6

7 **IT IS FURTHER ORDERED** that Dynasty Development Management,
8 LLC aka Wyoming Downs belongs solely to the ELN Trust.
9

10 **IT IS FURTHER ORDERED** that all requests for Attorneys' Fees and
11 Costs are **DENIED**.
12

13 DATED this 16th day of October, 2018.

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15 
16 Honorable Frank P. Sullivan
17 District Court Judge – Dept. O
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