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IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNITA SUE NELSON,
INDIVIDUALLY, AND IN HER
CAPACITY AS INVESTMENT
TRUSTEE OF THE LYNITA S.
NELSON NEVADA TRUST
DATED MAY 30, 2001,

Appellant,

vs.

ERIC L. NELSON,
INDIVIDUALLY, AND IN HIS
CAPACITY AS INVESTMENT
TRUSTEE OF THE ERIC L.
NELSON NEVADA TRUST,
DATED MAY 30, 2001, and
MATT KLABACKA, AS
DISTRIBUTION TRUSTEE OF
THE ERIC L. NELSON
NEVADA TRUST, DATED MAY
30, 2001,

Respondents.

) Supreme Court Case No.:
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) District Ct. Case No. Elizabeth A. Brown
D411537 Clerk of Supreme Court

APPELLANT, LYNITA SUE NELSON'S, OPENING BRIEF

THE DICKERSON KARACSONYI LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702)388-8600
Facsimile: (702)388-0210
Email: info@thedklawgroup.com
Attorneys for Appellant, LYNITA SUE NELSON

1 NRAP 26.1 DISCLOSURE

2 Pursuant to Rule 26.1 of the Nevada Rules of Appellate
3 Procedure, Appellant states that she has no parent corporations and no
4 publicly held company owns 10% or more of Appellant's stock. The
5 undersigned counsel of record certifies that the following are persons
6 and entities as described in NRAP 26.1(a), and must be disclosed.
7 These representations are made in order for each Justice of this Court
8 to evaluate possible disqualification or recusal.

9 A. MARK A. SOLOMON, ESQ., JEFFREY P. LUSZECK,
10 ESQ., and CRAIG D. FRIEDEL, ESQ., of SOLOMON, DWIGGINS
11 & FREER, LTD., Trial and Appellate Attorneys for Respondent,
12 MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L.
13 NELSON NEVADA TRUST DATED MAY 30, 2001 ("ELN Trust").

14 B. RHONDA K. FORSBERG, ESQ., of RHONDA K.
15 FORSBERG, CHARTERED, Trial and Appellate Attorney for
16 Respondent, ERIC L. NELSON ("Eric"), INDIVIDUALLY, AND IN
17 HIS CAPACITY AS INVESTMENT TRUSTEE OF THE ERIC L.
18 NELSON NEVADA TRUST DATED MAY 30, 2001.

19 C. ROBERT P. DICKERSON, ESQ., JOSEF M.
20 KARACSONYI, ESQ., and KATHERINE L. PROVOST, ESQ., of THE

21 ...

1 DICKERSON KARACSONYI LAW GROUP,¹ Trial and Appellate
2 Attorneys for Appellant, LYNITA SUE NELSON (“Lynita”),
3 INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT
4 TRUSTEE OF THE LSN NEVADA TRUST DATED MAY 30, 2001
5 (“LSN Trust”).

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

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¹ KATHERINE L. PROVOST, ESQ. is now with the KAINEN LAW GROUP, PLLC.

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JURISDICTIONAL STATEMENT

This is an appeal from an order refusing to grant an injunction. The Court has jurisdiction to review the order appealed from pursuant to NRAP 3A(b)(3), which permits an appeal to be taken from an order of the district court in a civil action granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction. On October 16, 2018, notice of entry of a Decision denying Lynita's request to expand and/or issue a Joint Preliminary Injunction over all property subject to a claim of community property interest was served. On November 7, 2018, Lynita filed her Notice of Appeal.

NRAP 28(a)(5) ROUTING STATEMENT

NRAP 28(a)(5) requires that an appellant's opening brief must set forth "whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and citing the subparagraph(s) of the Rule under which the matter falls." This case technically falls into two (2) of the categories of cases presumptively assigned to the Court of Appeals pursuant to NRAP 17(b), i.e., "[c]ases involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings," and "[c]ases challenging the grant or denial of injunctive relief." Appellant, LYNITA SUE NELSON ("Lynita"), believes, however, that this case ...

1 should be retained by the Supreme Court for all of the following
2 reasons:

3 (1) This case involves trust and estate matters with a corpus in
4 excess of \$5,430,000.

5 (2) The Court has previously heard an appeal in this matter –
6 Nevada Supreme Court Case No. 66772 – which resulted in a
7 published decision: *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940
8 (2017). The *Klabacka* decision defined the district court’s obligation
9 and responsibility to identify and divide community property that may
10 be held in trust. Specifically, the *Klabacka* Court stated that “[i]n a
11 divorce involving trust assets, the district court must trace those trust
12 assets to determine whether any community property exists within the
13 trusts – as discussed below, the parties’ respective separate property in
14 the [self-settled spendthrift trusts] would be afforded the statutory
15 protections against court-ordered distribution, while any community
16 property would be subject to the district court’s equal distribution.” *Id.*,
17 394 P.3d at 948. Based on the above, it is clear that until such time
18 as the required tracing is completed, a claim for a community property
19 interest in property held in trust exists. Accordingly, the mandatory
20 protections of Eighth Judicial District Court Rules (“EDCR”), Rule
21 5.517 (2019) – which permits any party to request the issuance of a
22 preliminary injunction freezing and protecting “any property that is the

1 subject of a claim of community interest”– must apply. The district
2 court on remand, however, has refused to extend the mandatory
3 protection of EDCR 5.517 to the assets held in the ELN Trust.

4 (3) The above-described issue of whether a district court in a
5 divorce action is required to apply the protections of EDCR 5.517 to
6 property held in trust represents a question of statewide public
7 importance pursuant to NRAP 17(a)(12), which likewise should be
8 heard and decided by this Court.

9 **STATEMENT OF ISSUES PRESENTED**

10 1. Whether the district court, in denying Lynita’s request for
11 a Joint Preliminary Injunction to issue pursuant to EDCR 5.517, erred
12 in finding that the ELN Trust and LSN Trust are not parties to the
13 action and that only Lynita and Eric are parties to the action.

14 2. Whether the district court erred in refusing to issue a Joint
15 Preliminary Injunction over all property which is subject to a claim of
16 community property interest, as required by EDCR 5.517, simply
17 because such property is held in trust.

18 **STATEMENT OF THE CASE**

19 Lynita and Eric were married on September 17, 1983, and
20 divorced by Decree of Divorce on June 3, 2013. AAPP V19:4691-
21 ...
22 ...

1 4742.² As part of the relief granted in the Decree of Divorce, the
2 district court equally divided all property held in the parties' self-settled
3 spendthrift trusts – the LSN Trust and the ELN Trust. AAPP
4 V19:4739. Following entry of the parties' Decree of Divorce, the
5 Decree and other orders were appealed to this Court. AAPP V23:5576-
6 5578, AAPP V25:6249-6250, and SRAPP V1:5-8. On May 25, 2017,
7 this Court rendered its decision in *Klabacka v. Nelson*, 133 Nev. 164,
8 394 P.3d 940, 949 (2017), which decision, *inter alia*, vacated the equal
9 division of property in the LSN Trust and ELN Trust, and remanded
10 the matter back to the district court in order for the district court to
11 conduct a tracing of the trust assets.

12 On July 31, 2017, after the matter had been remanded to the
13 district court, Lynita filed a countermotion requesting, *inter alia*, that

14 2

15 NRAP 30(b) provides as follows: "Except as otherwise required by this
16 Rule, all matters not essential to the decision of issues presented by the
17 appeal shall be omitted. Brevity is required; the court may impose costs
18 upon parties or attorneys who unnecessarily enlarge the appendix."
19 Given that this matter has previously been the subject of a number of
20 appeals that were heard by this Court (Case No. 66772, consolidated
21 with Case No. 68292), and that voluminous appendices were filed in
22 those appeals, including, but not limited to, Appellant's Record on
Appeal (AAPP), and Respondent/Cross-Appellant, Lynita Sue Nelson's
Appendix (RAPP), Lynita is filing only a Supplemental Appendix with
this Opening Brief. In the interest of brevity, documents referenced in
this Opening Brief which were included in the prior appendices have
been cited in the same manner to which they were cited in the prior
appeal (i.e., AAPP or RAPP). Lynita's current supplemental appendix
will be cited to as "SRAPP". In the event this Court desires for Lynita
to include the additional documents required by NRAP 30(b)(2) (which
documents were already included in the appendices filed in Case No.
66772) in her Supplemental Appendix, Lynita will immediately do so.

1 the district court reaffirm the Joint Preliminary Injunction that had
2 been entered pre-divorce. SRAPP V1:138-152. On May 22, 2018, the
3 district court served notice of entry of an order granting Lynita's
4 request for a Joint Preliminary Injunction on two (2) specific properties
5 (i.e., Banone, LLC and Lindell properties), as "[b]oth the Banone, LLC,
6 and Lindell Properties are subject to a claim of community interest."
7 SRAPP V2:441-449. The district court's May 22, 2018 order failed to
8 address the remainder of Lynita's request (i.e., that the Joint
9 Preliminary Injunction apply to all other properties as well).³ SRAPP
10 V2:441-449. Accordingly, on June 5, 2018, Lynita filed her Motion for
11 Reconsideration and Clarification of the Court's Decision Entered May
12 22, 2018, wherein she requested the district court address her request
13 for a Joint Preliminary Injunction over all properties in which there was
14 a claim of community property interest. SRAPP V2:450-457.

15 On October 16, 2018, the district court served on the parties
16 notice of entry of an order denying Lynita's request to expand the Joint
17 Preliminary Injunction to all property subject to a claim of community
18 property interest. SRAPP V3:614-625. On November 7, 2018, Lynita
19 filed her Notice of Appeal. SRAPP V3:626-628.

20 . . .

21 ³ The May 22, 2018 order neither granted nor denied Lynita's
22 request for a JPI generally over all properties.

1 with which the parties' Separate Property Trusts were funded are listed
2 on Schedule "A" and "B" of the SPA. AAPP V26:6277-6282.

3 2. Self-Settled Spendthrift Trusts

4 On May 30, 2001, the ELN Trust and LSN Trust – self-settled
5 spendthrift trusts (collectively referred to as the "SSSTs") – were
6 formed by the parties in accordance with NRS 166.020. AAPP
7 V19:4696; AAPP V26:6395-6427; AAPP V26:6475-V27:6508; RAPP
8 V3:0512-0544. Properties held in the 1993 Trusts on May 30, 2001,
9 which were not the same as the properties listed in the SPA, were
10 transferred to the SSSTs. AAPP V19:4695-4697; V27:6564-6565.

11 3. Eric's and Lynita's Divorce

12 On May 6, 2009, Eric filed his Complaint for Divorce against
13 Lynita. AAPP V1:1-8. On May 18, 2009, pursuant to former EDCR
14 5.85, the district court issued a Joint Preliminary Injunction ("JPI")
15 against the parties. AAPP V1:9-10. On June 9, 2011, the Court
16 entered an Order that specifically extended the JPI to monies received
17 by Eric from an asset held in the ELN Trust. SRAPP V1:1-4. On June
18 24, 2011, Eric filed a motion seeking to join ELN Trust as a necessary
19 party to the divorce action. AAPP V7:1606-1661. On August 9, 2011,
20 Eric and Lynita stipulated to join ELN Trust and LSN Trust as
21 necessary parties in the action, "as complete relief cannot be accorded

22 . . .

1 among the parties” without ELN Trust and LSN Trust being named.
2 AAPP V7:1744-1746.

3 On November 29, 2011, ELN Trust filed a motion seeking to
4 dissolve the injunction previously entered by the district court on June
5 9, 2011. AAPP V8:1916-1999. The district court entered its Findings
6 of Fact and Order on January 31, 2012, denying ELN Trust’s motion
7 to dissolve, and specifically making the following findings:

8 THE COURT FURTHER FINDS that EDCR 5.85 provides
9 that the Clerk may issue a JPI that enjoins both parties to
10 the action from taking any action that disposes of
11 community property or any property which is the subject of a
12 claim of community interest, except in the usual course of
13 business or for the necessities of life, without the written
14 consent of the parties or the permission of the court.

11 THE COURT FURTHER FINDS that while the ELN Trust
12 argues that EDCR 5.85 is inapplicable in the instant matter
13 because a JPI is designed to prevent only the divorcing
14 parties from taking any of the prohibited actions, the ELN
15 Trust and the assets contained therein are subject to a
16 community interest claim by Ms. Nelson which the Court
has yet to rule upon.

14 THE COURT FURTHER FINDS that NRS 125.050 states
15 that the Court is obligated to make any orders that are
16 necessary to preserve the status quo of the property and
any other pecuniary interests to ensure that each party
receives his and her equitable share of the marital estate.

17 AAPP V10:2264-2272.

18 On June 3, 2013, after more than four (4) years, and sixteen (16)
19 days of trial, the district court entered the Decree of Divorce in this
20 matter. AAPP V19:4691-4742.

21 ...
22 ...

1 4. The Supreme Court's Decision on Appeal

2 Following entry of the parties' Decree of Divorce, this matter was
3 appealed to this Court. AAPP V23:5576-5578, AAPP V25:6249-6250,
4 On May 25, 2017, this Court rendered its decision in *Klabacka v.*
5 *Nelson*, 133 Nev. 164, 394 P.3d 940, 949 (2017), which decision, *inter*
6 *alia*, vacated the equal division of property in the LSN Trust and ELN
7 Trust, and remanded the matter back to the district court in order for
8 the district court to conduct a tracing of the trust assets. Specifically,
9 this Court held as follows:

10 *Tracing trust assets*

11 The parties contest whether the assets within the SSSTs
12 remained separate property or whether, because of the
13 many transfers of property between the trusts, the assets
14 reverted back to community property. In a divorce
15 involving trust assets, the district court must trace those
16 trust assets to determine whether any community property
17 exists within the trusts – as discussed below, the parties'
18 respective separate property in the SSSTs would be
19 afforded the statutory protections against court-ordered
20 distribution, while any community property would be
21 subject to the district court's equal distribution. We
22 conclude the district court did not trace the assets in
 question.

 Eric's Trust retained a certified public accountant to
 prepare a report tracing the assets within the two trusts.
 However, as noted by the district court, the certified public
 accountant maintained a business relationship with Eric
 and Eric's Trust for more than a decade. Although the
 certified public accountant's report concluded that there
 was "no evidence that any community property was
 transferred to Eric's Trust or that any community property
 was commingled with the assets of Eric's Trust," the district
 court found the report and corresponding testimony to be
 unreliable and of little probative value. We recognize that
 the district court is in the best position to weigh the
 credibility of witnesses, and we will not substitute our
 judgment for that of the district court here. [Citation
 omitted]. However, the subject of the certified public

1 accountant's report – the tracing of trust assets, specifically
2 any potential commingling of trust assets with personal
3 assets – must still be performed. *See Schmanski v. Schmanski*,
4 115 Nev. 247, 984 P.2d 752 (1999) (discussing
5 transmutation of separate property and tracing trust assets
6 in divorce). Without proper tracing, the district court is
7 left with only the parties' testimony regarding the
8 characterization of the property, which carries no weight.
See *Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716
(1976) ("The opinion of either spouse as to whether
property is separate or community is of no weight
whatsoever."). Accordingly, we conclude the district erred
by not tracing the assets contained within the trusts, either
through a reliable expert or other available means. Separate
property contained within the spendthrift trusts is not
subject to attachment or execution, as discussed below.
However, if community property exists within the trusts,
the district court shall make an equal distribution of that
community property. See NRS 125.150(1)(b).

9 *Klabacka*, 394 P.3d at 948 (emphasis added).

10 B. Lynita's Request For Affirmation Or Issuance Of A JPI

11 Following the remand of this case to the district court, Lynita
12 filed a countermotion requesting, *inter alia*, that the district court affirm
13 the JPI that had previously been entered on May 18, 2009. SRAPP
14 VI:139-152. During the hearing that was held on August 8, 2017, the
15 district court asserted that the key issue to be resolved on remand was
16 that of tracing. SRAPP VI:210. Lynita's counsel agreed with such an
17 assessment, and argued that affirmation/issuance of a JPI was therefore
18 necessary:

19 Mr. Karacsonyi: [T]he key issue is what's community
20 property and what's separate property. And the problem
21 you have is that the District – the Supreme Court certainly
22 didn't prevent this Court from doing – from following
standard divorce procedures and making sure that you can
give effect to your ultimate judgment.

1 The Court is required to issue a Joint Preliminary
2 Injunction in any divorce matter. Just because these parties
3 hold property in trust that's subject to a community claim,
4 does not prevent the Court from, from issuing the Joint
5 Preliminary Injunction.

6 In fact, if it was the Court's policy or the Court's procedure
7 that Joint Preliminary Injunctions didn't apply in cases
8 where parties had property in trust, then there would be a
9 large percentage of, of parties who were treated differently
10 in this Court than other litigants, and who would be
11 basically exempt from the Joint Preliminary Injunction and
12 the ability of the Court to preserve the status quo pending
13 a final determination.

14 SRAPP VI:210. In response to such arguments, the Court indicated
15 that it was "not inclined to reissue the JPI and freeze all that." SRAPP
16 VI:225. Lynita's counsel then argued as follows:

17 Mr. Karacsonyi: [B]ut these things are, again, this is
18 community property, there's a claim of community
19 property. The Court is required to maintain the status quo.
20 Here's what's gonna happen: if you transfer all this
21 property back to them without any, any type of Joint
22 Preliminary Injunction, which is standard in every divorce
case, then you have somebody who's gonna go transfer, sell,
spend, get rid of, encumber all the property. You absolutely
will have no ability to give effect to your judgment.

So, it's just standard that at lease (sic.), and regardless of
what the Court's decision is, on transferring property back
and forth again, that the Court at least put in a Joint
Preliminary Injunction preventing everybody from making
transfers.

SRAPP VI:227-228.

For its part, ELN Trust objected to the affirmation or issuance of
a JPI to all properties, but offered to stipulate not to transfer two (2)
specific items of property that ELN Trust was requesting be transferred
back to it, as follows:

...

1 Mr. Luszeck: Your Honor, I think with respect to Lindell
2 and Banone, if those are transferred to the ELN Trust, I
3 think the ELN Trust will stipulate not to transfer those
4 assets to a third party so they would be here within the
5 jurisdiction of this Court.

6 The Court: Okay, I can put that right in the Order.

7 SRAPP VI:228.

8 Another hearing was held in the district court on January 31,
9 2018, at which time the parties continued to argue regarding the
10 issuance of a JPI:

11 Mr. Karacsonyi: Here's the other issue and it – and this is
12 really important. We had a request to reinstate or to just
13 reaffirm the JPI. You – this Court and the courts sitting in
14 divorce actions, are required to maintain some status quo
15 during the pendency of the matter. And if you have a
16 transfer of property back to them without any JPI in place
17 that look, you're not going to encumber, sell, dispose of any
18 of this property, you're putting at risk any final judgment
19 that you may ultimately enter.

20 I mean, it's vitally important that no matter what you do,
21 that you put in place a JPI to protect the parties. And this
22 protects both parties, because we don't know how it will
turn out, to protect both parties to ensure that your final
judgment can be enforced. So we'd ask –

THE COURT: When I transferred that initially I put that
into it to make sure to protect –

Mr. Karacsonyi: You did.

THE COURT: – her interest so they couldn't be sold or
otherwise encumbered without a court order if I remember.

Mr. Karacsonyi: That's absolutely true. You – you actually
put a freeze on – you put a freeze on a couple things. You
put a freeze on everything that was transferred to her that
she couldn't get rid of it without your approval and you
also put a freeze on anything that was awarded to her, and
I believe that included the Russell Road property that they
couldn't get rid of that. So – without your approval.

So that's the issue. So we need to, at least to the extent
that – I mean, at the very least, and I think is a minimum,

1 put a – put – you – put the JPI over everything that was
2 awarded to her so you at least know that you got half if
3 everything turns out to be community property. But I
4 think really, putting a JPI in place for all property that's
5 subject to a claim of community property, and right now
6 that's everything, putting a JPI in place, and it's not – it's
7 not that burdensome.

8 SRAPP V2:299-300.

9 The district court then indicated that it would be taking the
10 matter under advisement and issuing a written decision. Lynita's
11 counsel confirmed that the issue of the JPI would be addressed at that
12 time:

13 Mr. Karacsonyi: And you'll address the JPI then at the
14 same time?

15 The Court: Absolutely. Absolutely.

16 Mr. Karacsonyi: Because those go hand in hand.

17 The Court: Absolutely. And I would be issuing a JPI,
18 the same thing I did before on that, making sure it's not
19 encumbered or sold until we get it ultimately resolved, but
20 not make it more narrow so it doesn't hinder the operation
21 of the property that has nothing to do with this matter
22 that's clearly not community property.

SRAPP V2:324-325.

On April 19, 2018, the district court served notice of entry of an
order addressing all issues pending before it, with the exception of the
JPI issue, on which it was entirely silent. SRAPP V2:345-355. As a
result of the district court's omission, Lynita was forced to file a motion
again seeking issuance of the previously-requested JPI. SRAPP V2:356-
374.

1 On May 22, 2018, the district court served notice of entry of a
2 Decision granting Lynita's request for a JPI on two (2) specific
3 properties (i.e., Banone, LLC and Lindell properties), as "[b]oth the
4 Banone, LLC, and Lindell Properties are subject to a claim of
5 community interest." SRAPP V2:441-449. (emphasis added). At
6 approximately that same time, Lynita recorded Notices of Lis Pendens
7 against sixteen (16) properties held in the names of the parties and/or
8 the SSST's. SRAPP V2:375-424.

9 While the district court's May 22, 2018 Decision provided
10 protection for certain of the properties in question, it failed to address
11 the entirety of Lynita's request (i.e., that the JPI apply to all other
12 properties held by the parties and/or their self-settled spendthrift
13 trusts). SRAPP V2:441-449. Accordingly, on June 5, 2018, Lynita filed
14 her Motion for Reconsideration and Clarification of the Court's
15 Decision Entered May 22, 2018, wherein she requested the district
16 court address her request for a Joint Preliminary Injunction over all
17 properties in which there was a claim of community interest. SRAPP
18 V2:450-457.

19 A hearing was held in the matter on July 23, 2018, at which time
20 Lynita's counsel again argued that the protections of a JPI were vitally
21 important, particularly in a case such as the instant one where
22 substantial assets are held in trust:

1 Mr. Karacsonyi: The bottom line is in every divorce you
2 may have – you're going to have trusts, especially with
3 people of some affluence and they're going to have property
4 in trust. And those people are entitled to the same
5 protections as anybody else who appears before this Court.

6 Just because you were reversed on appeal and we're sitting
7 here 10 years later and people are a little worn out and this
8 has been going on a long time doesn't mean that she's not
9 entitled to the same protection today that she was entitled
10 to on day one. And so we're asking for those same
11 protections that she was entitled to on day one because
12 that's really where we find ourselves as far as a tracing goes.

13 SRAPP V3:543-544.

14 On October 16, 2018, the district court served on the parties
15 notice of entry of a Decision denying Lynita's request to expand the JPI
16 to all property subject to a claim of community property interest.

17 SRAPP V3:614-625. The Decision set forth a number of grounds for
18 such a denial, all of which are subject to arguments of error detailed in
19 the Argument section, below.

20 First and foremost, the Decision by the district court included the
21 following finding:

22 In a Hearing on April 10, 2012, this Court found that the
ELN Trust had a right to defend itself during the
proceedings. While this Court found that the ELN Trust
could defend itself, it did not confer party status to either
Trust in this action. The EDCR specifically states that
upon "request of any party ... a preliminary injunction will
be issued by the clerk against the parties to the action..." In
these proceedings, only Mr. and Mrs. Nelson are
considered parties, not the Trusts. Therefore, as the
ELN Trust is not a party to the case, this Court finds
that it is not required to place a JPI on a non-party's
property at the request of a party.

SRAPP V3:619 (emphasis added). In reality, however, and as detailed
above in this Statement of Facts, both the ELN Trust and the LSN

1 Trust have been parties to this action since August 9, 2011, at which
2 time Eric and Lynita stipulated to – and the district court ordered – the
3 joinder of the SSST’s. AAPP V8:1744-1746.

4 In addition to the above, the district court claimed in its Decision
5 to clarify its prior May 22, 2018 Decision – wherein it had specifically
6 noted that Lynita’s request for a JPI was being granted with regard to
7 the Banone, LLC and Lindell properties as “[b]oth the Banone, LLC,
8 and Lindell Properties are subject to a claim of community interest.”
9 SRAPP V2:441-449. Ignoring its prior rationale for granting the
10 partial JPI, and by way of purported clarification, the district court
11 stated in its Decision the following:

12 To clarify this Court’s Order, the JPI was granted on these
13 properties solely due to the fact that both the ELN and LSN
14 Trusts have held an ownership stake in both properties at
15 some point during these proceedings. Given the contentious
16 nature of both the litigation and the ownership/management
of the properties involved, this Court finds that placing a JPI
on the Banone, LLC, and Lindell properties would protect
both Mr. and Mrs. Nelson, as well as the ELN and LSN
Trusts, as the properties had exchanged hands during these
proceedings.

17 SRAPP V3:619-620.

18 Finally, the district court included in its Decision one final
19 justification for limiting the scope of the JPI to just the Banone, LLC
20 and Lindell properties:

21 Furthermore, this Court finds that the only properties that
22 require a JPI based on the history of this case are the
Banone, LLC, and Lindell properties.

1 SRAPP V3:620.

2 None of the above grounds for refusing to extend the JPI to all of
3 the property subject to a claim of community property interest are
4 based on legal authority, and they, in fact, run contrary to all legal
5 authority cited in the Argument section, below. To make matters
6 worse, and to effectively strip all protections from the property subject
7 to claims of community property interest, the district court in its
8 Decision likewise found Lynita's Notices of Lis Pendens to be untimely
9 filed and ordered them expunged. SRAPP V3:620.

10 On November 7, 2018, Lynita filed her Notice of Appeal
11 challenging the district court's denial of her request for a JPI. SRAPP
12 V3:626-628.

13 SUMMARY OF THE ARGUMENT

14 The district court clearly erred when it found that the ELN Trust
15 and LSN Trust were not parties to the action, and denied Lynita's
16 request for a JPI as a result of such finding. No one did, can, or will
17 argue that the ELN Trust and LSN Trust are not parties to this action
18 as they were specifically joined to afford complete relief in the action.

19 Additionally, EDCR 5.517 required the district court to issue the
20 JPI requested by Lynita prior to final judgment to prevent dissipation
21 of any property subject to a claim of community property interest, and
22 to ensure the district court could give effect to its final judgment.

1 2011, Eric and Lynita stipulated to join ELN Trust and LSN Trust as
2 necessary parties in the action, “as complete relief cannot be accorded
3 among the parties” without ELN Trust and LSN Trust being named.
4 AAPP V7:1744-1746. ELN Trust thereafter participated in the divorce
5 trial, and appealed the Decree of Divorce to this Court. This Court
6 recognized the district court’s jurisdiction over the ELN Trust and LSN
7 Trust and the properties held therein in the *Klabacka* decision: “the
8 family court [has] subject-matter jurisdiction over all claims brought in
9 the Nelson’s divorce, including those relating to property held within
10 the SSSTs.” *Id.*, 394 P.3d at 946. The district court clearly erred in
11 denying Lynita’s request for a JPI on the basis that the ELN Trust and
12 LSN Trust are not parties to the action.

13
14 B. The District Court Erred In Disregarding The Mandatory Nature
Of EDCR 5.517

15 It is the policy of this State to preserve property subject to a claim
16 of community property interest in a divorce until a final judgment is
17 entered, and to ensure that a party is not deprived of his or her
18 property rights during the pendency of the divorce. Nevada Revised
19 Statutes, Section 125.050, provides:

20 **Preliminary orders concerning property or pecuniary**
21 **interests.** If, after the filing of the complaint, it is made to
22 appear probable to the court that either party is about to do
any act that would defeat or render less effectual any order
which the court might ultimately make concerning the
property or pecuniary interests, the court shall make such

1 restraining order or other order as appears necessary to
2 prevent the act or conduct and preserve the status quo
pending final determination of the cause.

3 NRCP 65 provides rules and procedures for obtaining an
4 injunction in civil matters, however, the "rule is not applicable to
5 actions for divorce, alimony, separate maintenance, or custody of
6 children. In such actions, the court may make prohibitive or
7 mandatory orders, with or without notice or bond, as may be just."
8 NRCP 65(e)(1). Protecting parties' property interests and claims
9 during divorce is of such vital importance that parties are entitled to a
10 joint preliminary injunction upon request, without notice or hearing,
11 and without a showing of irreparable harm or likelihood of success on
12 the merits. EDCR 5.517 provides:

13 **Rule 5.517. Joint preliminary injunction (JPI).**

14 (a) Upon request of any party at any time prior to the
15 entry of a decree of divorce or final judgment, a preliminary
16 injunction will be issued by the clerk against the parties to
the action enjoining them and their officers, agents,
servants, employees, or a person in active concert or
participation with them from:

17 (1) Transferring, encumbering, concealing, selling,
18 or otherwise disposing of any of the joint, common, or
community property of the parties or any property that is
19 subject of a claim of community interest, except in the
usual course of conduct or for the necessities of life or for
retention of counsel for the case in which the JPI is
obtained; or cashing, borrowing against, canceling,
20 transferring, disposing of, or changing the beneficiaries of:

21 (A) Any retirement benefits or pension plan
held for the benefit (or election or benefit) of the parties or
any minor child; or

22 . . .

1 (B) Any insurance coverage, including life,
2 health, automobile, and disability coverage;

3 without the written consent of the parties or permission of
4 the court.

5 ...

6 (c) The JPI is automatically effective against the party
7 requesting it at the time it is issued and effective upon all
8 other parties upon service. Service of the JPI will be
9 construed as satisfying all requirements for notice of entry
10 of the JPI. The JPI shall be treated as a court order and is
11 enforceable by all remedies provided by law, including
12 contempt.

13 (d) Once issued, the JPI will remain in effect until a
14 decree of divorce or final judgment is entered or until
15 modified or dissolved by the court.

16 As can be seen, issuance of the JPI is mandatory (an injunction
17 “will be issued) at any time prior to “final judgment.” The JPI does not
18 apply to specific properties, but instead applies to “community
19 property of the parties or any property that is subject of a claim of
20 community interest.” The district court was required to issue Lynita
21 a JPI on remand pending final judgment over all community property
22 or property subject to a claim of community interest. Instead, the
district court denied Lynita’s request for a JPI generally, and issued an
injunction over only two (2) specific properties subject to a claim of
community property interest.

As Lynita argued below, it is not uncommon for parties to hold
property in trust, especially parties of affluence. SRAPP V3:543-544.
Where a trust claims ownership and title to property in dispute, the
trust must be joined as a party. *Gladys Baker Olsen Family Trust v. Eighth*

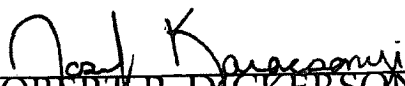
1 *Jud. Dist. Ct.*, 110 Nev. 548, 874 P.2d 778, 782 (1994). Accordingly,
2 where property held in an irrevocable trust is in dispute in a divorce
3 action, the trust is required to be named as a party in order to
4 adjudicate the parties' rights to such property. *Id.* EDCR 5.517
5 enjoins "parties" to the action, rather than "spouses" or "domestic
6 partners," from "[t]ransferring, encumbering, concealing, selling, or
7 otherwise disposing of any of the joint, common, or community
8 property of the parties or any property that is subject of a claim of
9 community interest." The rule implicitly contemplates that a party
10 may be other than a "spouse" or "domestic partner." To hold
11 otherwise, would deny parties who have prepared an estate plan, or
12 whose spouse or partner has transferred community property to, or
13 acquired community property in, a trust, the equal protection of the
14 law as guaranteed by the Fourteenth Amendment of the United States
15 Constitution and Article 4, Section 21, of the Nevada Constitution.

16 Finally, to the extent the district court found or ELN Trust
17 argued that a JPI is a burden on ELN Trust's ability to conduct
18 business, the burden caused by a JPI is not a consideration under the
19 law. As stated above, the issuance of a JPI is mandatory because the
20 importance of preserving community property in a divorce is so great,
21 and certainly outweighs any perceived burden by the parties. Any
22 prohibition on a party's ability to transfer, sell, borrow against, gift, or

1 otherwise dispose of property during a divorce proceeding can be
2 arguably burdensome. But the prohibition is not absolute, and a party
3 can still transfer property by agreement of the parties or approval of the
4 court. EDCR 5.517(a)(1).

5 CONCLUSION

6 For the reasons set forth above, this Court should reverse the
7 district court's denial of Lynita's request for a general JPI pending final
8 judgment and adjudication of Eric's and Lynita's community property
9 rights.

10 Respectfully submitted,
11 THE DICKERSON KARACSONYI
12 LAW GROUP
13 
14 ROBERT P. DICKERSON, ESQ.
JOSEF M. KARACSONYI, ESQ.
Attorneys for Appellant,
LYNITA SUE NELSON

CERTIFICATE OF COMPLIANCE

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


2. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in Arrus BT typeface (a proportionally spaced typeface) in 14 point font using WordPerfect X5.

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1 3. I further certify that this brief complies with the page and
2 type-volume limitations of NRAP 28.1(e) because, excluding the parts
3 of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30
4 pages.

5 DATED this 10th day of April, 2019.

6 THE DICKERSON
7 KARACSONYI LAW GROUP

8 
9 JOSEF M. KARACSONYI, ESQ.
10 Nevada Bar No. 010634
11 1745 Village Center Circle
12 Las Vegas, Nevada 89134
13 Telephone: (702) 388-8600
14 Attorneys for Appellant
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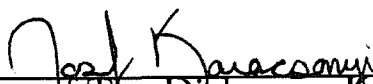
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 10th day of April, 2019, I filed a true and correct copy of the foregoing APPELLANT, LYNITA SUE NELSON'S, OPENING 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:

RHONDA K. FORSBERG, ESQ.
FORSBERG LAW OFFICE
Attorneys for Respondent, ERIC L. NELSON

MARK A. SOLOMON, ESQ.
JEFFREY P. LUSZECK, ESQ.
Attorneys for Respondent, MATT KLABACKA,
DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON
NEVADA TRUST DATED MAY 30, 2001


An employee of The Dickerson Karacsonyi Law Group