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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.:
77473 Electronically Filed
Jun 27 2019 04:16 p.m.
District Ct. Elizabeth A. Brown
D411537 Clerk of Supreme Court

APPELLANT, LYNITA SUE NELSON'S, OPPOSITION TO
MOTION TO DISMISS APPEAL

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1 **I. STATEMENT OF FACTS**

2 As detailed in Lynita’s Opening Brief, Lynita filed a
3 countermotion in the district court on July 31, 2017, wherein she
4 requested the district court reaffirm the Joint Preliminary Injunction
5 that had been entered pre-divorce (i.e., an injunction against all of the
6 property of the parties that was community property, or subject to a
7 claim of community property interest). SRAPP VI:138-152. In its
8 April 19, 2018 Decision, the district court failed to address any portion
9 of such request. SRAPP V2:336-344. Thereafter, on May 22, 2018,
10 the district court entered an order issuing a Joint Preliminary
11 Injunction as to two (2) specific properties (i.e., Banone, LLC and
12 Lindell properties), but failed to address the remainder of Lynita’s
13 request (i.e., that the Joint Preliminary Injunction apply to all other
14 properties as well). SRAPP V2:441-449.

15 On page 6 of their Motion to Dismiss Appeal, Eric and ELN
16 Trust falsely assert that “the district court denied Lynita’s request to
17 impose a JPI over all of the ELN Trust’s assets on May 22, 2018.”¹
18 Knowing full-well that this claim is not supported by the facts, Eric and
19 ELN Trust attempt to characterize the district court’s May 22, 2018
20 Order as having “implicitly denied said request by limiting the JPI to

21 _____
22 ¹ This assertion is made solely to support the claim that Lynita’s
appeal was not timely filed, but is not supported by the facts of the case.

1 the Banone, LLC and Lindell Properties.” Motion to Dismiss Appeal,
2 pg. 4, lines 8-9 (emphasis added). It is absolutely clear, however, that
3 the district court did not address the remainder of Lynita’s request
4 until the Order entered on October 16, 2018. In fact, the following
5 plain language of the May 22, 2018 Order – as quoted by Eric and
6 ELN Trust themselves – makes clear that the district court addressed
7 Lynita’s request only as to the Banone, LLC and Lindell Properties,
8 and did not address at all (neither granting nor denying), the remainder
9 of Lynita’s request:

10 C. A Joint Preliminary Injunction for the Banone, LLC,
11 and Lindell Properties is Appropriate Because Both
12 Properties Are Involved In A Claim of Community Property

13 In its April 19, 2018 Order, this Court did not address the
14 request for a Joint Preliminary Injunction for the
15 Banone, LLC, and Lindell Properties. Eighth Judicial
16 District Court Rule 5.517 states that “[u]pon the request of
17 any party at any time prior to the entry of . . . final
18 judgment, a preliminary injunction will be issued by the
19 clerk against the parties to the action enjoining them and
20 their officers, agents, servant, employees, or a person in
21 active concert or participation with them from: transferring,
22 encumbering, concealing, selling, or otherwise disposing of.
. . . any property that is the subject of a claim of community
interest. . .

Both the Banone, LLC, and Lindell Properties are subject to
a claim of community interest. As such, both properties are
entitled to a Joint Preliminary Injunction to ensure that the
properties remain intact prior to the completion of tracing
and the final judgment of this Court. However, while this
Court is aware that multiple Notices of Lis Pendens
regarding both properties have been filed, a Joint
Preliminary Injunction on the properties is appropriate and
will be granted...

21 SRAPP V2:437-438 (emphasis added). Based on the foregoing
22 findings, the district court went on to order:

1 IT IS FURTHER ORDERED that the request for a Joint
2 Preliminary Injunction on the Banone LLC. and Lindell
3 Properties to prevent the transfer, encumbrance,
4 concealment, sale, or otherwise disposition of the properties
5 is hereby GRANTED.

6 SRAPP V2:439 (emphasis in original).

7 Nowhere in the May 22, 2018 Order does the district court state
8 or even suggest it was denying any part of Lynita's request for a joint
9 preliminary injunction. See SRAPP V2:434-440. It was not until the
10 district court's Order of October 16, 2018 that the district court stated
11 it was denying the remainder of Lynita's request (i.e., that a Joint
12 Preliminary Injunction be issued against all the rest of the parties'
13 properties subject to a claim of community property interest). SRAPP
14 V3:614-625.

15 II. LEGAL ARGUMENT

16 A. Lynita's Appeal Was Timely Filed Pursuant To NRAP 4(a)(1)

17 Pursuant to Nevada Rules of Appellate Procedure, Rule 4(a)(1)
18 (2019), an appeal must be filed "no later than 30 days after the date
19 that written notice of entry of the judgment or order appealed from is
20 served."

21 1. The District Court Did Not Deny Lynita's Request For A 22 JPI To Issue Against All Property Subject To A Claim Of Community Property Until October 16, 2018

As detailed in the above Statement of Facts, the district court did
not enter an order denying Lynita's request for a Joint Preliminary

1 Injunction to issue against all of the parties' property until October 16,
2 2018.² On November 7, 2018 – a date well within the thirty (30) day
3 requirement of NRAP 4(a)(1) – Lynita filed her Notice of Appeal
4 challenging the district court's denial of her request for a JPI. SRAPP
5 V3:626-628. Accordingly, Lynita's appeal was timely filed.

6 2. In The Alternative, Even If This Court Finds That The
7 District Court Denied Lynita's Request For A Joint
8 Preliminary Injunction As Part Of Its May 22, 2018 Order,
9 Lynita's Appeal Was Still Timely Filed

10 Eric and ELN Trust argue in their Motion to Dismiss Appeal that
11 the district court "implicitly" denied Lynita's request for a Joint
12 Preliminary Injunction in its May 22, 2018 order. Consequently, Eric
13 and ELN Trust argue that Lynita had to file her appeal by no later than
14 June 21, 2018, and that the filing of her Motion for Reconsideration
15 and Clarification of the Court's Decision Entered May 22, 2018, on
16 June 5, 2018, did "not toll the period for filing a notice of appeal."
17 Eric and ELN Trust base this argument on the language of EDCR
18 5.512(a), which states, "A motion for reconsideration does not toll the
19 period for filing a notice of appeal." This Court has long held,
20 however, that motions for reconsideration can, in certain
21 circumstances, be afforded the status of a motion to alter or amend

22 ² The district court's prior order of May 22, 2018 addressed
Lynita's request for a Joint Preliminary Injunction solely with regard to
the Banone, LLC, and Lindell Properties, and did not address her
request vis-à-vis the remainder of the parties' property.

1 pursuant to NRCP 59(e). *AA Primo Builders LLC v. Washington*, 126
2 Nev. 578, 245 P.3d 1190, 1195 (2010) (“[W]e hold that so long as a
3 post-judgment motion for reconsideration is in writing, timely filed,
4 states its grounds with particularity, and ‘requests a substantive
5 alteration of the judgment, not merely the correction of a clerical error,
6 or relief of a type wholly collateral to the judgment,’ [citation omitted]
7 there is no reason to deny it NRCP 59(e) status, with tolling effect
8 under NRAP 4(a)(4)(C).”).³

9 Here, Lynita’s Motion for Reconsideration and Clarification of
10 the Court’s Decision Entered May 22, 2018 meets all of the
11 requirements enumerated by this Court in *AA Primo Builders LLC v.*
12 *Washington*. The motion was in writing, was timely filed, stated with
13 particularity the grounds upon which the Joint Preliminary Injunction
14 should be expanded, and sought a substantive alteration of the district
15 court’s judgment (i.e., an expansion of the Joint Preliminary Injunction

16 ³ NRAP 4(a)(4)(C) provides:

17 **(4) Effect of Certain Motions on a Notice of Appeal.** If
18 a party timely files in the district court any of the following
19 motions under the Nevada Rules of Civil Procedure, the
20 time to file a notice of appeal runs for all parties from entry
of an order disposing of the last such remaining motion, and
the notice of appeal must be filed no later than 30 days from
the date of service of written notice of entry of that order:

21 . . .

22 (C) a motion under Rule 59 to alter or amend the
judgment;

1 from two (2) specific properties to all of the properties listed in the
2 parties' June 3, 2013 Decree of Divorce). SRAPP V2:356-374.
3 Accordingly, even if this Court finds that the district court's May 22,
4 2018 Order constituted a denial of Lynita's request for a Joint
5 Preliminary Injunction, Lynita's Motion for Reconsideration and
6 Clarification of the Court's Decision Entered May 22, 2018 should be
7 construed as a NRCP 59(e) motion, and should be deemed to have
8 tolled the appeal period until such time as its denial in the district
9 court's October 16, 2018 Order. Lynita's Notice of Appeal was then
10 timely filed on November 7, 2018.

11 B. The District Court's October 16, 2018 Order Constitutes The
12 Denial Of An Injunction Appealable Pursuant To NRAP
13 3A(b)(3)

14 As detailed in Lynita's Opening Brief, this Court has jurisdiction
15 to review the order appealed from pursuant to NRAP 3A(b)(3), which
16 permits an appeal to be taken from "[a]n order granting or refusing to
17 grant an injunction or dissolving or refusing to dissolve an injunction."

18 In their Motion to Dismiss Appeal, Eric and ELN Trust argue the
19 Joint Preliminary Injunction the district court refused to grant in the
20 does not constitute an injunction within the meaning of NRAP
21 3A(b)(3) simply because it is based upon EDCR 5.517, instead of
22 NRCP 65. In that regard, Eric and ELN Trust argue on page 8 of their
Motion to Dismiss Appeal that because an injunction obtained

1 pursuant to EDCR 5.517 does not require “any evidence or analysis as
2 to [Lynita’s] likelihood of success of the merits, etc. . . . it is not the
3 type of injunction that can be appealed pursuant to NRAP 3(A)(b)(3)
4 (sic.)” Such an argument does not have any legal support whatsoever,
5 nor does it take into consideration the goals and purposes of NRCP
6 65(e)(1) (formerly NRCP 65(f)(1)) and EDCR 5.517 (formerly EDCR
7 5.85).

8 While it is true NRCP 65 addresses injunctions in the vast
9 majority of civil actions, divorce cases and other specified domestic
10 relations cases have specifically been excepted therefrom, as follows:

11 (e) **Applicability**

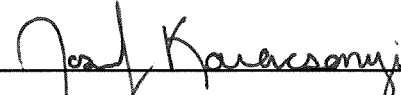
12 (1) **When Inapplicable.** This rule is not applicable
13 to actions for divorce, alimony, separate maintenance, or
14 custody of children. In such actions, the court may make
prohibitive or mandatory orders, with or without notice or
bond, as may be just.

15 NRCP 65(e)(1). As can be seen, the plain language of NRCP 65(e)(1)
16 specifically permits injunctions to be obtained in domestic cases
17 without the formality required in other civil actions. In order to
18 facilitate such injunctions in divorce actions, EDCR 5.517 was
19 promulgated and requires – upon the request of any party in a divorce
20 action – the issuance of a joint preliminary injunction that prohibits all
21 parties from “transferring, encumbering, concealing, selling, or
22 otherwise disposing of any of the joint, common, or community

1 property of the parties or any property that is subject of a claim of
2 community interest” The goal and purpose of these rules is
3 clearly not to prohibit litigants in domestic cases from appealing the
4 granting or denial of an injunction pursuant to NRAP 3A(b)(3), but
5 rather to provide such litigants with a streamlined process for obtaining
6 such injunctions. In fact, this Court has itself recognized such a
7 purpose, noting that “[] NRCP 65(f) may be read to envision
8 somewhat greater flexibility and less formality in domestic matters than
9 in other litigation” *Turner v. Saka*, 90 Nev. 54, 63, 518 P.2d 608,
10 614, n.10 (1974).

11 **III. CONCLUSION**

12 For the reasons set forth above, this Court should deny the relief
13 requested in Eric’s and ELN Trust’s Motion to Dismiss Appeal.

14 Respectfully submitted,
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