

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. NELSON
6 NEVADA TRUST, DATED MAY 30,
7 2001,

8 Appellant,

9 vs.

10 ERIC L. NELSON, INDIVIDUALLY,
11 AND IN HIS CAPACITY AS
12 INVESTMENT TRUSTEE OF THE ERIC
13 L. NELSON NEVADA TRUST, DATED
14 MAY 30, 2001, and MATT KLABACKA,
15 AS DISTRIBUTION TRUSTEE OF THE
16 ERIC L. NELSON NEVADA TRUST,
17 DATED MAY 30, 2001,

18 Respondents.

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Clerk of Supreme Court

**Supreme Court Case No. 77473
District Court Case No. D411537**

19 **RESPONSE TO LYNITA SUE NELSON'S**
20 **OPPOSITION TO MOTION TO DISMISS APPEAL**

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Nevada Trust dated May 30, 2001*

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1 **I. INTRODUCTION**

2 The ELN Trust respectfully requests that the instant appeal be dismissed
3 because this Court is without jurisdiction for two separate reasons: (1) the appeal was
4 untimely; and (2) the District Court's October 16, 2018 Order is not an appealable
5 order.

6 **II. LEGAL ARGUMENT**

7 A. Lynita's Appeal Is Untimely Under NRAP 4(a)(1)

8 Lynita's appeal should be dismissed because it is untimely. Indeed, as stated
9 in the Motion to Dismiss, Lynita failed to appeal the May 22, 2018 Order, wherein
10 the district court implicitly denied her request to impose a JPI over all properties
11 titled in the name of the ELN Trust. Lynita's contention that the May 22, 2018 Order
12 did not deny her request for the imposition of a JPI on all properties is false. Indeed,
13 if the district court had not denied the imposition of a JPI on all properties in its May
14 22, 2018 Order there would have been no reason for her to file a Motion for
15 Reconsideration. Lynita's failure to timely do so precludes her from appealing the
16 Order entered on October 16, 2018.¹

17 Lynita's request that the Motion for Reconsideration should be construed as a
18 NRCP 59(e) motion similarly fails because the May 22, 2018 Order cannot be subject

19 _____
20 ¹ The fact that Lynita may have timely filed her Notice of Appeal challenging
21 the district court's denial of her request of a JPI in the October 16, 2018 Order is of
no avail as she was required to appeal the May 22, 2018 Order on or before June 22,
2018.

1 to NRCP 59 relief as there was no trial or judgment entered. To the contrary, the
2 district court entered a preliminary pre-trial order on what properties would be
3 enjoined prior to trial. Consequently, EDCR 5.512(a), which unequivocally provides
4 that a motion for reconsideration “does not toll the period for filing a notice of
5 appeal,” applies in this instance.

6 Notwithstanding the foregoing, Lynita misconstrues this Court’s holding in *AA*
7 *Primo Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010) to support
8 her erroneous position. As an initial matter, *AA Primo* is factually distinguishable
9 because that case dealt with a post-judgment/trial issue, which is not present in this
10 matter. Further, EDCR 5.512(a), which was promulgated by this Court on August
11 27, 2017 (seven years after its ruling in *AA Primo*), expressly states that a motion for
12 reconsideration is not a tolling motion.² Consequently, Respondent respectfully
13 requests that this Court enforce the express language of EDCR 5.512.

14 B. Lynita Failed To Introduce Authority That The October 16, 2018 Order
15 Constitutes The Denial Of An Injunction Appealable Pursuant To NRAP
3A(b)(3).

16 As stated in the Motion to Dismiss, there is no statute or court rule that grants
17 this Court jurisdiction to hear an appeal from the denial of a joint preliminary
18 injunction pursuant to EDCR 5.517. While NRAP 3(A)(b)(3) grants this Court
19 jurisdiction over “[a]n order granting or refusing to grant an injunction or dissolving

20 ² EDCR 5.512’s reference to NRCP 50(b), 52(b), 59 and 60 is consistent with
21 the holding in *AA Primo* that this Court will imply that it is a tolling motion if it could
have been filed under a post-trial/post-judgment motion rule.

1 or refusing to dissolve an injunction,” there is no precedent that said rule applies to
2 the imposition of a joint preliminary injunction pursuant to EDCR 5.517.

3 Notwithstanding, Lynita contends in her Opposition that divorce matters are
4 exempt from NRCP 65. Said argument fails, however, because NRCP 65(f) provides
5 that in actions for divorce the court “may,” as opposed to “shall,” “make prohibitive
6 or mandatory orders, with or without notice or bond, as may be just.” Even if EDCR
7 5.517 requires the court clerk to issue a joint preliminary injunction “upon the request
8 of any party at any time prior to the entry of a decree or divorce or final judgment” as
9 Lynita contends, said rule is inconsistent with NRCP 65(f) thereby making it
10 inapplicable and unenforceable. *See e.g.*, NRCP 83(b) (“**Procedure When There Is**
11 **No Controlling Law.** In all cases not provided for by rule, the district courts may
12 regulate their practice in any manner not inconsistent with these rules.”).

13 As a final argument, Lynita contends that this Court found in *Turner v. Saka*,
14 90 Nev. 54, 63, 518 P.2d 608, 614, n. 10 (1974), that NRCP 65(f) provides for
15 “greater flexibility and less formality in domestic matters than in other litigation.”
16 Conveniently omitted from Lynita’s Opposition, however, is the following line
17 confirming that all evidentiary requirements set forth in NRCP 65(f) are not
18 dispensed of in divorce matters: “still we do not read it as dispensing with the
19 requirement that there be either notice or a showing of necessity before existing
20 custody rights are disturbed. An order entered without one or the other simply is not
21 just.”

1 For these reasons, the District Court's October 16, 2018 Order is not an
2 appealable order.

3 **III. CONCLUSION**

4 In light of the foregoing, the ELN Trust respectfully requests that its Motion to
5 Dismiss Lynita's appeal be granted because the appeal was untimely and the District
6 Court's October 16, 2018 Order is not an appealable order.

7 DATED this 19th day of July, 2019.

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9 By: 

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 19th day of July, 2019, I filed a true and correct
3 copy of the foregoing **RESPONSE TO OPPOSITION TO MOTION TO**
4 **DISMISS APPEAL** with the Clerk of the Court via the Court's E-flex electronic
5 filing system and notice shall be sent electronically by the Court to the following:

6
7 Josef Karacsonyi, Esq.
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