

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  
7   DATED MAY 30, 2001,

8                   Appellant,

9                   vs.

10   ERIC L. NELSON,  
11   INDIVIDUALLY, AND IN HIS  
12   CAPACITY AS INVESTMENT  
13   TRUSTEE OF THE ERIC L.  
14   NELSON NEVADA TRUST,  
15   DATED MAY 30, 2001, and  
16   MATT KLABACKA, AS  
17   DISTRIBUTION TRUSTEE OF  
18   THE ERIC L. NELSON  
19   NEVADA TRUST, DATED MAY  
20   30, 2001,

21                   Respondents.

Supreme Court Case No.:  
77473

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22                   **APPELLANT, LYNITA SUE NELSON'S, REPLY BRIEF**

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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,  
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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.  
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21 . . .

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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.  
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12 Respondent, ERIC L. NELSON.

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22 <sup>1</sup> KATHERINE L. PROVOST, ESQ. is now with the KAINEN LAW GROUP, PLLC.

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

NRAP 26.1 DISCLOSURE ..... i

TABLE OF CONTENTS ..... iii

TABLE OF AUTHORITIES ..... iv

ARGUMENT ..... 1

A. The Imposition Of A JPI In A Divorce Proceeding Is Mandatory  
..... 1

B. EDCR 5.517 Applies To Any Party To A Divorce Action, Including, But Not Limited To, An Irrevocable Trust ..... 3

C. Eric and ELN Trust Should Be Judicially Estopped From Taking The Position That ELN Trust Is Not A Party To The Underlying Action ..... 5

D. The Proceedings On Remand Must Be Deemed To Be Taking Place Prior To The Entry Of A Decree Of Divorce Or Final Judgment ..... 7

E. Lynita Has No Obligation To Make A Prima Facie Showing That She Has A Community Interest In The Assets "At Issue"  
..... 9

F. The Issuance Of A JPI Would Not Impact Eric's, ELN Trust's, Or Any Non-Party's Due Process Rights ..... 10

G. Neither The District Court, Nor This Court On Appeal, Have Found That Any Of The Properties Owned By The Parties Or Their Trusts Are Free From A Claim Of Community Interest  
..... 15

CONCLUSION ..... 17

CERTIFICATE OF COMPLIANCE ..... 18

CERTIFICATE OF SERVICE ..... 20

1 TABLE OF AUTHORITIES

2 CASES

3 *Anderson v. Sanchez*, 131 Nev. Adv. Op. 51, 355 P.3d 16 (Nev.App.  
2015) ..... 13

4

5 *Burgess v. Storey Cnty. Bd. Of Com’rs*, 116 Nev. 121, 992 P.2d 856  
(2000) ..... 13

6 *Causey v. Carpenters So. Nevada Vacation Trust*, 95 Nev. 609, 600 P. 2d  
244 (1979) ..... 4

7

8 *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 938 (1978)  
..... 12

9

10 *Gladys Baker Olsen Family Trust ex rel. Olsen v. Eighth Judicial District  
Court*, 110 Nev. 548, 874 P.2d 778 (1994) ..... 5

11 *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017) . 7, 8, 9, 16

12 *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 163 P.3d 462  
(2007) ..... 6

13

14 *Old Aztec Mine Inc., v. Brown*, 97 Nev. 49, 623 P.2d 981 (1981) .. 12

15 *Sengel v. IGT*, 116 Nev. 565, 2 P.3d 258 (2000) ..... 12

16 *State Emps. Ass’n v. Daines*, 108 Nev 15, 824 P.2d 276 (1992) .. 2, 3

17 *Turner v. Saka*, 90 Nev. 54, 518 P.2d 608 (1974) ..... 11

18

19 CONSTITUTIONS, STATUTES, AND COURT RULES

20 EDCR 5.102(j) ..... 4

21 EDCR 5.517 ..... 1, 3, 6, 7, 9, 11

22 EDCR 5.517(a) ..... 4, 14

1	EDCR 5.85	3, 4
2	NRCP 19(a)	5
3	NRCP 65	1, 10
4	NRCP 65(e)	1
5	NRCP 65(e)(1)	1, 2, 10, 11
6	NRS 33	10
7	NRS 125.050	1, 2, 3
8	NRS 162.023	4
9	NRS 163.120(1)	4

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11  
12  
13  
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1 ARGUMENT

2 A. The Imposition Of A JPI In A Divorce Proceeding Is Mandatory

3 In their Answering Briefs, Eric and ELN Trust argue that a joint  
4 preliminary injunction (“JPI”) in a divorce action is discretionary and  
5 not mandatory. In an attempt to support such a position, Eric and  
6 ELN Trust have intentionally ignored the entirely applicable language  
7 of EDCR 5.517, which makes it mandatory for the district court to  
8 issue a JPI upon the request of any party to a divorce action.  
9 Additionally, by selectively quoting portions of NRCP 65 and NRS  
10 125.050 out of context, Eric and ELN Trust have intentionally  
11 mischaracterized and misrepresented the language and import thereof.

12 With regard to NRCP 65(e) – incorrectly cited by Eric and ELN  
13 Trust by its former section (f) – Eric and ELN Trust quote the portion  
14 of the rule that states that the “court may make prohibitive or  
15 mandatory orders, with or without notice of bond as may be just,” and  
16 argue that this language makes the issuance of an injunction in a  
17 divorce case discretionary. When read in its entirety, however, it is  
18 clear that the purpose of NRCP 65(e) is simply to remove divorce and  
19 other domestic relations cases from the otherwise broad reach of the  
20 rule, and to ensure that injunctions in such cases need not meet the  
21 rigidity and formality of injunctions in any other type of case. The  
22 complete language of NRCP 65(e)(1) is as follows:

1 (e) **Applicability**

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

7 With regard to NRS 125.050, Eric and ELN Trust have again  
8 quoted only a portion thereof in an attempt to mislead this Court and  
9 to misrepresent the import of the statute. Eric and ELN Trust state on  
10 page 9 of their Answering Brief as follows:

11 Further, NRS 125.050 grants the district court  
12 discretion to enter a restraining order or preserve the  
13 status quo if “it is made to appear probable to the court  
14 that either party is about to do any act that would defeat or  
15 render less effectual any order which the court might  
16 ultimately make concerning the property or pecuniary  
17 interest.”

18 Answering Brief, page 9 (emphasis added). In reality, however, NRS  
19 125.050 is not a statute that provides the court with “discretion” to  
20 enter an injunction. The actual language of NRS 125.050 is as follows:

21 **NRS 125.050 Preliminary orders concerning property  
22 or pecuniary interests.** If, after the filing of the complain,  
it is made to appear probably 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 restraining order or other order as  
appears necessary to prevent the act or conduct and  
preserve the status quo pending final determination of  
the cause.

Emphasis added. This Court has long stated that “in statutes, ‘may’ is  
permissive and ‘shall’ is mandatory unless the statute demands a



1 different construction to carry out the clear intent of the legislature.”  
2 *State Emps. Ass’n v. Daines*, 108 Nev 15, 19, 824 P.2d 276, 278 (1992).  
3 Accordingly, the language of NRS 125.050 is unquestionably  
4 mandatory, and does not support Eric and ELN Trust’s baseless  
5 arguments.

6 B. EDCR 5.517 Applies To Any Party To A Divorce Action,  
7 Including, But Not Limited To, An Irrevocable Trust

8 In their Answering Briefs, Eric and ELN Trust argue that EDCR  
9 5.517 is inapplicable to an irrevocable trust. In that regard, Eric and  
10 ELN Trust first argue that “Nevada law makes it clear that [EDCR  
11 5.517] only applies to the husband and wife in a divorce proceeding.”  
12 In an attempt to support such a claim, and hoping to ignore the plain  
13 language of EDCR 5.517, Eric and ELN Trust instead cite to the  
14 language of EDCR 5.85 (i.e., the predecessor of EDCR 5.517). Eric  
15 and ELN Trust claim that the language of EDCR 5.85 “confirms that  
16 a JPI issued under the Eighth Judicial District Court rules only applies  
17 to ‘both parties to the action,’ i.e., a husband and wife.” In reality,  
18 however, Eric and ELN Trust’s argument only serves to highlight the  
19 fact that this Court – in December of 2016 – repealed EDCR 5.85, and  
20 promulgated EDCR 5.517 in its place. The language of EDCR 5.85,  
21 which could easily have been maintained in effect by this Court, was  
22 intentionally altered and expanded. Instead of providing that “at any

1 time prior to the entry of a decree of divorce or final judgment and  
2 upon the request of either party in a family relations proceeding, a  
3 preliminary injunction will be issued by the clerk against both parties  
4 to the action,” as did EDCR 5.85, the new EDCR 5.517(a) provides  
5 that “[u]pon the request of any party at any time prior to the entry of  
6 a decree of divorce or final judgment, a preliminary injunction will be  
7 issued by the clerk against the parties to the action.” Emphasis added.

8 In addition to the above, Eric and ELN Trust assert that EDCR  
9 5.102(j) defines a party as “a party personally, if unrepresented, or that  
10 party’s counsel of record, if represented,” and argue that ELN Trust is  
11 not a “person” who can be a party to a divorce action, but rather a  
12 “separate and distinct legal entit[y].” This argument is completely  
13 unsupported by both Nevada law and the law of this case.

14 It is well-settled that a trust is not a distinct legal entity, and can  
15 only act by and through its trustees. *Causey v. Carpenters So. Nevada*  
16 *Vacation Trust*, 95 Nev. 609, 610, 600 P. 2d 244, 245 (1979) (“A party  
17 to litigation is either a natural or an artificial person. . . . It is the  
18 trustee, or trustees, rather than the trust itself that is entitled to bring  
19 suit.”); *see also*, NRS 163.120(1) (providing that trustees may contract  
20 on behalf of a trust in capacity of representative); *see also*, NRS 163.023  
21 (“A trustee has the powers provided in the trust instrument [or]  
22 expressed by law . . . .). This Court has specifically found that “all

1 persons materially interested in the subject matter of the suit [must] be  
2 made parties so that there is a complete decree to bind them all,” and  
3 that a trust can be an indispensable party who should have been joined  
4 in an action because it held legal title to disputed property. *Gladys*  
5 *Baker Olsen Family Trust ex rel. Olsen v. Eighth Judicial District Court*, 110  
6 Nev. 548, 552-54, 874 P.2d 778, 781-82 (1994). In addition, and as  
7 detailed further below, Eric filed a Motion to Join Necessary Party; Or  
8 In the Alternative; to Dismiss Claims Against The Eric L. Nelson  
9 Nevada Trust Dated May 30, 2011 on June 24, 2011, arguing  
10 extensively that ELN Trust had to be joined as a necessary party to the  
11 underlying divorce action pursuant to the provisions of NRCP 19(a),  
12 which provides for “Persons to Be Joined if Feasible.” AAPP V7:1606-  
13 1661. ELN Trust was ultimately joined as a party to the divorce action  
14 via the parties’ Stipulation and Order filed August 9, 2011. AAPP  
15 V7:1744-1746. Thereafter, ELN Trust participated in the divorce trial,  
16 and appealed the Decree of Divorce to this Court.

17 C. Eric and ELN Trust Should Be Judicially Estopped From Taking  
18 The Position That ELN Trust Is Not A Party To The Underlying  
19 Action

20 As referenced above, Eric and ELN Trust have consistently taken  
21 the position that the ELN Trust is not only a party to the divorce  
22 action, but was required to be joined thereto as a necessary party  
pursuant to NRCP 19(a). ELN Trust has benefitted from its status as

1 a party in the divorce action, seeking and obtaining various relief and  
2 protection from both the district court and this Court on appeal. Eric  
3 and ELN Trust cannot now be permitted to disavow their long-  
4 standing position and to assert that ELN Trust is not a party to the  
5 action in an attempt to avoid the imposition of a mandatory JPI  
6 pursuant to EDCR 5.517. This is precisely the type of situation to  
7 which the doctrine of judicial estoppel should be applied. In that  
8 regard, judicial estoppel is applicable when five (5) specific factors are  
9 met:

10 (1) the same party has taken two positions; (2) the positions  
11 were taken in judicial or quasi-judicial administrative  
12 proceedings; (3) the party was successful in asserting the  
13 first position (i.e., the tribunal adopted the position or  
14 accepted it as true); (4) the two positions are totally  
15 inconsistent; and (5) the first position was not taken as a  
16 result of ignorance, fraud, or mistake.

14 *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 287, 163 P.3d  
15 462, 468-69 (2007)(internal quotations omitted). Eric and ELN Trust  
16 have taken two (2) entirely different positions vis-a-vis ELN Trust's  
17 status as a party in the divorce action. The two (2) positions were  
18 taken in judicial proceedings (i.e., the first position was taken in the  
19 underlying divorce action and the initial appeal, and the second  
20 position was taken for the first time in this appeal). Eric and ELN  
21 Trust were successful in asserting that ELN Trust was a party to the  
22 divorce action and both the district court and this Court on appeal

1 accepted such a position as true and accurate. The two (2) positions  
2 are entirely inconsistent, and, finally, there is no evidence that the  
3 initial position was taken as a result of ignorance, fraud or mistake.  
4 Based on the application of these five (5) factors, this Court should  
5 find that Eric and ELN Trust are judicially estopped from asserting the  
6 position that ELN Trust is not a party to the divorce action for  
7 purposes of avoiding the imposition of a mandatory JPI.

8 D. The Proceedings On Remand Must Be Deemed To Be Taking  
9 Place Prior To The Entry Of A Decree Of Divorce Or Final  
10 Judgment

11 In their footnote no. 5, Eric and ELN Trust disingenuously argue  
12 that EDCR 5.517 cannot be applied to the parties on remand because  
13 a final judgment was entered in this matter prior to the initial appeal,  
14 and the provisions of EDCR 5.517 specifically provide that a JPI is to  
15 be issued “prior to the entry of a decree of divorce or final judgment.”  
16 While it is true that the parties’ Decree of Divorce was entered by the  
17 Court on June 3, 2013, it is also true that all portions of the Decree of  
18 Divorce relating to the division of property and debts were vacated by  
19 this Court in the *Klabacka* decision, as follows:

20 Given the complexity of the divorce decree (the decree), we  
21 conclude that (1) the dissolution of marital bonds between  
22 Eric and Lynita is affirmed, (2) the district court’s alimony  
award is affirmed in part but vacated to the extent it is  
awarded against Eric’s Trust instead of Eric in his personal  
capacity, (3) the district court’s child support award is  
affirmed in part but vacated to the extent it is awarded  
against eric’s Trust instead of Eric in his personal capacity,

1           (4) all other portions of the decree are vacated, (5) the  
2           June 8, 2015, order, is vacated to the extent it enforces or  
3           implements portions of the divorce decree relating to assets  
4           in Eric’s Trust and Lynita’s Trust and affirmed in all other  
5           respects, and (6) the case is remanded to the district  
6           court for further proceedings consistent with this  
7           opinion.

8           *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940, 943 (2017)(emphasis  
9           added).

10           In addition to the above, in *Klabacka* this Court specifically  
11           instructed the district court on remand to “trace trust assets to  
12           determine whether any community property exists within the trusts.”  
13           *Id.*, 394 P.3d at 948. Given the above-quoted conclusions and directive  
14           from the Court, it is absolutely clear that now on remand there is no  
15           “final judgment” in place with regard to the division of the parties’  
16           property. Further, it is undisputable that community property claims  
17           remain in existence on remand, and that no division of property is even  
18           possible pending the completion of the required tracing. Accordingly,  
19           all of the reasons for issuing a JPI at the outset of the parties’ divorce  
20           action – i.e., to assist the district court in preserving all property subject  
21           to a claim of community property – are once again applicable now on  
22           remand.

...

...

...

1 E. Lynita Has No Obligation To Make A Prima Facie Showing That  
2 She Has A Community Interest In The Assets “At Issue”

3 In their Answering Briefs, Eric and ELN Trust argue that it would  
4 be “inequitable to impose a JPI over the ELN Trust without requiring  
5 Lynita to make a prima facie showing that she has a community  
6 interest in the assets **at issue.**” Emphasis added. As detailed above,  
7 this Court previously remanded this matter in order for the district  
8 court to “trace trust assets to determine whether any community  
9 property exists within the trusts.” *Id.* Further, the Court noted that  
10 “[i]f community property exists within the trusts, the district court  
11 shall make an equal distribution of that community property.” *Id.*  
12 These directives, as well as Eric’s and ELN Trust’s own admission that  
13 Lynita is seeking the imposition of a JPI against the “assets at issue,”  
14 make clear that all of the assets of the parties are properly to be  
15 enjoined as they are subject to a claim of community interest.

16 In every divorce action filed in the Eighth Judicial District Court,  
17 EDCR 5.517 mandates that upon the request of any party a JPI is to  
18 be issued over “joint, common or community property of the parties or  
19 any property that is the subject of a claim of community interest.”  
20 Emphasis added. The rule contains absolutely no requirement that the  
21 party requesting the JPI make any prima facie showing that a  
22 community interest exists, but simply a requirement that such a claim

1 has been made. In this case, Lynita has asserted a claim that virtually  
2 all of the assets held in the ELN Trust constitute community property.  
3 Accordingly, and until such time as the district court completes the  
4 tracing required by this Court's decision, it will remain unknown  
5 whether such community interest exists.<sup>2</sup>

6  
7 F. The Issuance Of A JPI Would Not Impact Eric's, ELN Trust's, Or  
8 Any Non-Party's Due Process Rights

9 Eric and ELN Trust argue that "[i]mposing a JPI against the ELN  
10 Trust without requiring Lynita to make a preliminary showing that she  
11 possesses a community interest in the same and/or the stringent  
12 requirements in NRCP 65 or NRS 33 violates its due process rights."  
13 As detailed above, however, the plain language of NRCP 65(e)(1)

14 ...

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15 <sup>2</sup> In their footnote no. 10, Eric and ELN Trust argue that it would  
16 be inequitable to impose a JPI over the ELN Trust because Lynita  
17 requested such JPI only after she "disposed of the majority of assets in  
18 the name of Lynita's Trust." To support such a claim, Eric and ELN  
19 Trust point to Lynita's sale of the real property located at 7065 Palmyra  
20 Avenue, Las Vegas, Nevada ("Palmyra Residence") on or around  
21 November 1, 2013. As Eric and ELN Trust well-know, however, the  
22 Palmyra Residence is the only asset that was owned by the parties at the  
time they entered into their Separate Property Agreement [SPA] in  
1993. When the parties entered into the SPA and formed their separate  
property trusts in 1993, the Palmyra Residence was transferred into  
Lynita's separate property trust. This fact is corroborated by the  
parties' own Decree of Divorce, which lists the assets held in each  
party's separate property trust at formation. AAPP V19:4691-4742. In  
other words, the Palmyra Residence is the only asset owned by either  
party that undisputably constituted separate property, and could not  
have been subject to any claim of community interest by Eric. For Eric  
and ELN Trust to now make this assertion shows the depths of their  
duplicity in this matter.



1 specifically permits injunctions to be obtained in domestic cases  
2 without the formality required in other civil actions:

3 (e) **Applicability**

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

9 In order to facilitate such injunctions in divorce actions, EDCR 5.517  
10 was promulgated and requires – upon the request of any party in a  
11 divorce action – the issuance of a joint preliminary injunction that  
12 prohibits all parties from “transferring, encumbering, concealing,  
13 selling, or otherwise disposing of any of the joint, common, or  
14 community property of the parties or any property that is subject of a  
15 claim of community interest . . . .” The goal and purpose of this rule  
16 is to provide litigants in domestic relations actions with a streamlined  
17 process for obtaining injunctions. In fact, this Court has itself  
18 recognized such a purpose, noting that “[ ] NRCP 65(f) may be read to  
19 envision somewhat greater flexibility and less formality in domestic  
20 matters than in other litigation . . . .” *Turner v. Saka*, 90 Nev. 54, 63,  
21 518 P.2d 608, 614, n.10 (1974).

22 Knowing full-well that the imposition of a JPI in this matter does  
not infringe on ELN Trust’s due process rights, Eric and ELN Trust  
next argue for the first time that should a JPI be issued against real

1 property owned by the parties in which a third party also owns an  
2 interest, it would infringe on the due process rights of such third  
3 parties. Eric and ELN Trust give only one example of such a property  
4 – i.e., the property located at 5220 East Russell Road, Las Vegas,  
5 Nevada, in which Eric’s brother, Cal Nelson, purportedly owns a one-  
6 third interest. In that regard, Eric and ELN Trust argue that a JPI  
7 would “impede third-party Cal Nelson’s ability to manage and  
8 potentially sell the property in which he has an interest, which is  
9 contrary to Nevada law.”

10 First and foremost, Eric and ELN Trust never before raised this  
11 argument in the district court, and cannot now be permitted to argue  
12 for the first time on appeal that the issuance of the JPI requested by  
13 Lynita would purportedly violate the rights of various third parties.  
14 “A point not urged in the trial court, unless it goes to jurisdiction of  
15 that court, is deemed to have been waived and will not be considered  
16 on appeal.” *Old Aztec Mine Inc., v. Brown*, 97 Nev. 49, 52, 623 P.2d  
17 981, 983(1981). In addition, Eric and ELN Trust have provided no  
18 legal support for such an argument, and such an argument should  
19 therefore not be considered by this Court. *Sengel v. IGT*, 116 Nev. 565,  
20 2 P.3d 258, 263 (2000); *Cunningham v. State*, 94 Nev. 128, 130, 575  
21 P.2d 936, 938 (1978).

22 . . .

1 Even if Eric and ELN Trust’s said argument is considered by this  
2 Court, it is clear that Lynita is seeking a JPI only against the properties  
3 – and interests in properties – owned by the parties and their trusts, all  
4 of whom are parties to the divorce action. The district court is entirely  
5 able to issue a JPI against ELN Trust’s fractional interest in a property  
6 without in any way “impeding” the ability of a third party from selling  
7 his or her share of such property.

8 First, Cal Nelson, or any other similarly situated third party,  
9 remains free to sell his or her fractional interest in the real property in  
10 question.

11 “The protections of due process attach only to deprivations  
12 of property or liberty interests.” *Tarkanian v. Nat’l Collegiate*  
13 *Athletic Ass’n*, 103 Nev. 331, 337, 741 P.2d 1345, 1349  
14 (1987); *Wedges/Ledges of California, Inc. v. City of Phoenix,*  
15 *Arizona*, 24 F.3d 56, 62 (9<sup>th</sup> Cir. 1994). A protected  
16 property interest exists when an individual has a reasonable  
17 expectation of entitlement derived from “existing rules or  
18 understandings that stem from an independent source such  
19 as state law.” *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92  
20 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

21 *Burgess v. Storey Cnty. Bd. Of Com’rs*, 116 Nev. 121, 992 P.2d 856, 859  
22 (2000). “Parties [to a divorce] may simply divide their interest in the  
property, leaving any interests of third parties undisturbed.” *Anderson*  
*v. Sanchez*, 131 Nev. Adv. Op. 51, 355 P.3d 16, 22 (Nev.App. 2015).

The district court’s JPI would not affect Cal Nelson’s ownership  
interest in Russell Road, and would apply exclusively to the interest

...

1 owned by the parties. Indeed, Cal Nelson would not be deprived of  
2 any property or liberty interest.

3 The JPI does not completely prohibit a party from selling,  
4 encumbering, or transferring property. Instead, it prohibits a party  
5 from selling, encumbering, or transferring property “without the  
6 written consent of the parties or the permission of the court.” EDCR  
7 5.517(a). If ELN Trust wanted to sell its interest in the Russell Road  
8 property, or desired to sell the entire interest in Russell Road with Cal  
9 Nelson, it would simply need to seek the approval of the other parties,  
10 or an order from the district court. This would give the parties and the  
11 court the opportunity to assess the legitimate need or purpose for  
12 selling the interest, and the ability to preserve any proceeds from such  
13 sale.

14 Accepting Eric’s and ELN Trust’s position would negate the  
15 efficacy of a JPI in countless divorce actions and create a tremendous  
16 burden on the district courts. In any action where a party owned a  
17 fractional interest in property, whether it be real property, a business,  
18 or any other asset, the JPI would not apply to such party’s interest in  
19 property unless all other owners of the property were joined to the  
20 action. For example, the spouse of a party owning IBM stock would be  
21 required to join all other shareholders of IBM for the JPI to preclude  
22 the sale of such stock. Likewise, the spouse of a partner in a real estate

1 investment would be required to join all other owners of such  
2 investment in order for the JPI to be effective.<sup>3</sup> Such an absurd result  
3 cannot be permitted by the Court.

4 G. Neither The District Court, Nor This Court On Appeal, Have  
5 Found That Any Of The Properties Owned By The Parties Or  
6 Their Trusts Are Free From A Claim Of Community Interest

7 Eric and ELN Trust finally argue that the JPI should not be  
8 expanded to include Wyoming Downs. To support such an argument,  
9 Eric and ELN Trust claim on pages 16-17 of their Answering Brief that  
10 the district court “previously found that Wyoming Downs was not  
11 community property, and said ruling was upheld by this Court.” That  
12 is simply not the case.

13 While it is true that the district court denied Lynita’s request to  
14 be awarded a 50% interest in Wyoming Downs, it simultaneously  
15 awarded Lynita \$75,000 to compensate her for the monies taken from  
16 properties awarded to Lynita for the down payment for Wyoming  
17 Downs. AAPP V23:5553-5561; RAPP V6:1369:17-1370:17; RAPP  
18 V4:864-866. Lynita then appealed the district court’s order denying  
19 ...

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20 <sup>3</sup> To the extent a party’s interest in a property could be sold  
21 without his or her consent, such as the interest of a limited partner with  
22 no decision-making authority in a partnership, or a minority  
shareholder with no control in a business, such a sale would be in the  
“ordinary course of business,” and would not be a violation of the JPI.  
However, the JPI would certainly attach to, and serve to protect, any  
proceeds received from the sale.

1 her a fifty percent (50%) community property interest in Wyoming  
2 Downs.

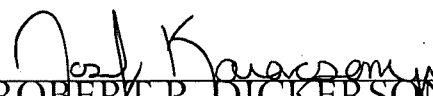
3 This Court's decision required a tracing of the properties in the  
4 ELN Trust and LSN Trust: "Accordingly, we conclude the district court  
5 erred by not tracing the assets contained within the trusts, either  
6 through a reliable expert or other available means." *Klabacka*, 394 P.3d  
7 at 948. This Court did not except from the tracing Wyoming Downs,  
8 which was held in the ELN Trust and purchased during Eric's and  
9 Lynita's marriage. To interpret this Court's decision otherwise would  
10 lead to an absurd result and a denial of Lynita's due process rights: the  
11 Court would be contradicting itself by holding that property held in  
12 trust would need to be traced for a community property interest, but  
13 excluding a piece of property without the required tracing, and would  
14 be denying Lynita's potential property rights in such property without  
15 the requisite tracing.

16 Unfortunately, on remand, the district court issued a Decision on  
17 October 16, 2018, finding that Wyoming Downs should not be  
18 included in the tracing on remand based on this Court's decision and  
19 ELN Trust's argument concerning the interpretation of same. PSAPP  
20 V3:514:23 - 516:3. Lynita sought relief from this Court as a result of  
21 such finding in her Petition for Writ of Mandamus or Other  
22 Extraordinary Relief filed on October 30, 2018, Supreme Court Case

1 No. 77254, however this Court denied such petition upon finding that  
2 extraordinary and discretionary intervention was not warranted.  
3 Lynita remains able to seek relief from this Court via an appeal  
4 following the entry of final judgment in the divorce action. Until such  
5 time, the JPI would not apply to such property since it cannot be  
6 subject to a claim of community property interest under the district  
7 court's current interpretation, or misinterpretation, of this Court's  
8 holdings. Therefore, Eric's and ELN Trust's argument concerning  
9 Wyoming Downs is not applicable and is simply intended to have this  
10 Court opine on such issue before it is fully briefed and presented on  
11 appeal.

12 **CONCLUSION**

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

17 Respectfully submitted,  
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20   
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22 LYNITA SUE NELSON

1 CERTIFICATE OF COMPLIANCE

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

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

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3. I further certify that this brief complies with the page and type-volume limitations of NRAP 32(a)(7)(A) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 4,294 words.

DATED this 24<sup>th</sup> day of July, 2019.

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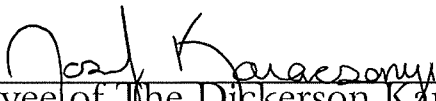
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 24<sup>th</sup> day of July, 2019, I filed a true and correct copy of the foregoing APPELLANT, LYNITA SUE NELSON'S, REPLY BRIEF, with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

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NEVADA TRUST DATED MAY 30, 2001

  
An employee of The Dickerson Karacsonyi Law Group