

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

Electronically Filed
Feb 26 2020 08:51 p.m.

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

22 **APPELLANT, LYNITA SUE NELSON'S, RESPONSE TO**
 JANUARY 27, 2020 ORDER TO SHOW CAUSE

THE DICKERSON KARACSONYI LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
YASNAI RODRIGUEZ-ZAMAN, ESQ.
Nevada Bar No. 014605
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 I. STATEMENT OF FACTS

2 As detailed in Appellant, Lynita Sue Nelson’s (“Lynita”), Opening
3 Brief, Lynita and Eric were married on September 17, 1983, and
4 divorced by a Decree of Divorce on June 3, 2013. AAPP V19:4691-
5 4742. As part of the relief granted in the Decree of Divorce, the district
6 court equally divided all property held in the parties’ self-settled
7 spendthrift trusts - the LSN Trust and the ELN Trust. AAPP
8 V19:4739. Following the entry of the parties’ Decree of Divorce, the
9 Decree and other orders were appealed to this Court. AAPP V23:5576-
10 5578, AAPP V25:6249-6250, and SRAPP VI:5-8. On May 25, 2017,
11 this Court rendered its decision in *Klabacka v. Nelson*, 133 Nev. 164,
12 394 P.3d 940, 949 (2017), which vacated the equal division of property
13 in the LSN Trust and ELN Trust, and remanded the matter back to the
14 district court for the district court to conduct a tracing of the trust
15 assets.

16 Lynita filed a counter-motion in the district court on July 31,
17 2017, wherein she requested the district court reaffirm the Joint
18 Preliminary Injunction that had been entered pre-divorce (i.e., an
19 injunction against all of the property of the parties that was community
20 property, or subject to a claim of community property interest). SRAPP
21 VI:138-152. In its April 19, 2018 Decision, the district court failed to
22 address any portion of Lynita’s request. SRAPP V2:336-344.

1 Thereafter, on May 22, 2018, the district court entered an order issuing
2 a Joint Preliminary Injunction as to two (2) specific properties (i.e.,
3 Banone, LLC and Lindell properties), but failed to address the
4 remainder of Lynita's request (i.e., that the Joint Preliminary Injunction
5 apply to all other properties as well). SRAPP V2:441-449.

6 On June 5, 2018, Lynita filed her Motion for Reconsideration and
7 Clarification of the Court's Decision Entered May 22, 2018, wherein
8 she requested the district court address her request for a Joint
9 Preliminary Injunction over all properties to which there is a claim of
10 community interest. SRAPP V2:450-457.

11 On October 16, 2018, the district court served on the parties
12 notice of entry of a Decision denying Lynita's request to expand the
13 Joint Preliminary Injunction to all property subject to a claim of
14 community property interest. SRAPP V3:614-625.

15 On November 7, 2018, Lynita filed her Notice of Appeal of the
16 district court's denial of the Joint Preliminary Injunction over all
17 properties subject to a community property interest. SRAPP V3:626-
18 628.

19 On June 6, 2019, Respondent, ELN Trust, filed a Motion to
20 Dismiss Appeal before this Court alleging that this Court did not have
21 jurisdiction to hear the underlying appeal. Later that day, Respondent,
22 Eric L. Nelson ("Eric"), filed a Joinder to the Motion to Dismiss Appeal.

1 On June 27, 2019, Lynita filed her Opposition to Respondents'
2 Motion. On August 6, 2019, this Court issued an Order Denying
3 Motion, finding and ordering as follows:

4 Respondent Matt Klabacka filed a motion to dismiss this
5 appeal on the grounds that the notice of appeal was untimely
6 filed and the order appealed from is not appealable.
Respondent Eric L. Nelson, both individually and as
investment trustee of the Eric L. Nelson Trust, joined in the
7 motion. Appellant opposes the motion. Respondents
Klabacka and Nelson have filed a reply.

8 **This court has considered the arguments of the parties,
9 and denies the motion to dismiss. Appellant timely
10 filed the notice of appeal from the order entered
11 October 16, 2018, in which the district court resolved
12 her motion for reconsideration and denied her request
13 for a preliminary injunction. NRAP 3A(b)(3); *see also*
NRAP 4(a)(4); *AA Primo Builders v. Washington*, 126 Nev.
578, 245 P.3d 1190 (2010) (eliminating the distinction
between an NRCP 59(e) motion to alter or amend and a
motion to reconsider). In addition, respondents' argument
regarding the appealability of the denial of a preliminary
injunction under NRAP 65 [sic] or EDCR 5.517 appear to
go on the merits of the appeal and are not appropriate for
disposition in a motion to dismiss. *See Taylor v. Barringer*, 75
Nev. 409, 410, 344 P.2d 676, 676 (1959).**

14 IT IS SO ORDERED.

15 Order Denying Motion, pages 1-2 (emphasis added).

16 On January 27, 2020, this Court issued an Order to Show Cause,
17 stating that a potential jurisdictional defect may exist because "it
18 appears that the district court's order is not appealable." Order to Show
19 Cause, page 1, line 4. This Court granted Lynita thirty (30) days to
20 show cause as to why the underlying appeal should not be dismissed.

21 . . .

22 . . .

1 **II. LEGAL ARGUMENT**

2 “This Court has jurisdiction to consider an appeal only when the
3 appeal is authorized by statute or court rule.” *Peck v. Crouser*, 129 Nev.
4 120, 295 P.3d 586, 587 (2013). NRAP 3A(b) sets forth the judgments
5 and orders from which an appeal may be taken. NRAP 3A(b)(3)
6 provides as follows:

7 (b) Appealable Determinations. An appeal may be taken
8 from the following judgments and orders of a district court
in a civil action:

9 . . .

10 **(3) An order granting or refusing to grant an
injunction or dissolving or refusing to dissolve an
injunction.**

11

12 Emphasis added. NRAP 3A(b)(3) is clear and unambiguous that “[a]n
13 order granting or refusing to grant an injunction or dissolving or
14 refusing to dissolve an injunction” is appealable.

15 An injunction is “a court order commanding or preventing an
16 action.” *Peck*, 295 P.3d at 588 (quoting *Black’s Law Dictionary* 800 (8th
17 ed.2004)). NRAP 3A(b)(3) does not except injunctions entered in
18 family law matters, whether entered pursuant to NRCP 65 or EDCR
19 5.517. It is a well-settled rule of statutory and contract construction
20 that where language is clear and unambiguous it should be given its
21 plain meaning. *See, e.g., Saticon Bay LLC v. Fed. Nat’l Mortg. Ass’n*, 134
22 Nev. 270, 417 P.3d 363, 366 (2018) (addressing statutory

1 interpretation); *see also*, *Farmers Ins. Exchange v. Young*, 108 Nev. 328,
2 330, 332, 832 P.2d 376, 377-78 (1992) (addressing contract
3 interpretation). To find that an order in a family law matter denying
4 a joint preliminary injunction is not an appealable order would require
5 this Court to read into NRAP 3(A)(b)(3) an exception that does not
6 exist.

7 In the Order Denying Motion, this Court specifically cited to
8 NRAP 3(A)(b)(3) in denying Respondents' request to dismiss, stating:
9 "Appellant timely filed the notice of appeal from the order entered
10 October 16, 2018, in which the district court resolved her motion for
11 reconsideration and denied her request for a preliminary injunction.
12 **NRAP 3A(b)(3)**" Order Denying Motion, pages 1-2 (emphasis
13 added). As can be seen, the Court has already determined that the
14 October 16, 2018 Order denying Lynita's request for a joint preliminary
15 injunction falls under the auspices of NRAP 3(A)(b)(3) and is an
16 appealable order thereunder.

17 In the Motion to Dismiss Appeal, Respondents argued that
18 because an injunction obtained pursuant to EDCR 5.517 does not
19 require "any evidence or analysis as to [Lynita's] likelihood of success
20 of the merits, etc. . . . it is not the type of injunction that can be
21 appealed pursuant to NRAP 3(A)(b)(3) (sic.)" Such an argument does
22 not have any legal support whatsoever, nor does it take into

1 consideration the goals and purposes of NRCP 65(e)(1) (formerly
2 NRCP 65(f)(1)) and EDCR 5.517 (formerly EDCR 5.85).

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

6 (e) **Applicability**

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

12 NRCP 65(e)(1). As can be seen, the plain language of NRCP 65(e)(1)
13 specifically permits injunctions to be obtained in domestic cases without
14 the formality required in other civil actions. In order to facilitate such
15 injunctions in divorce actions, EDCR 5.517 was promulgated and
16 requires – upon the request of any party in a divorce action – the
17 issuance of a joint preliminary injunction that prohibits all parties from
18 “transferring, encumbering, concealing, selling, or otherwise disposing
19 of any of the joint, common, or community property of the parties or
20 any property that is subject of a claim of community interest” The
21 goal and purpose of these rules is clearly not to prohibit litigants in
22 domestic cases from appealing the granting or denial of an injunction
pursuant to NRAP 3A(b)(3), but rather to provide such litigants with
a streamlined process for obtaining such injunctions. In fact, this Court

1 has itself recognized such a purpose, noting that “[] NRCP 65(f) may
2 be read to envision somewhat greater flexibility and less formality in
3 domestic matters than in other litigation” *Turner v. Saka*, 90 Nev.
4 54, 63, 518 P.2d 608, 614, n.10 (1974).

5 Finally, if the district court’s denial of the Joint Preliminary
6 Injunction is not substantively appealable, Lynita would not have a
7 speedy and adequate remedy at law to seek review of such order, and
8 would have to file a writ petition. If she had filed such a petition,
9 however, Respondents likely would have argued – and the Court may
10 agree – that the denial of the Joint Preliminary Injunction is
11 substantively appealable under NRAP 3(A)(b)(3), and that writ relief is
12 therefore not appropriate. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222,
13 224, 88 P.3d 840, 841 (2004) (“[T]he right to appeal is generally an
14 adequate legal remedy that precludes writ relief.”). If the Court agreed,
15 then there would be zero remedy under the law for parties to a family
16 law proceeding to challenge the denial of the joint preliminary
17 injunction mandated by EDCR 5.517 until after a final judgment, when
18 the “preliminary” injunction would no longer serve a purpose and the
19 issue would be moot.

20 . . .

21 . . .

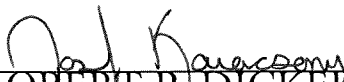
22 . . .

1 **III. CONCLUSION**

2 For the reasons set forth above, this Court should find that it has
3 jurisdiction over this appeal pursuant to the express language of NRAP
4 3(A)(b)(3).

5 Respectfully submitted,

6 THE DICKERSON KARACSONYI
LAW GROUP

7 
8 ~~ROBERT P. DICKERSON, ESQ.~~
9 JOSEF M. KARACSONYI, ESQ.
YASNAI RODRIGUEZ-ZAMAN, ESQ.
Attorneys for Appellant,
LYNITA SUE NELSON

10
11
12
13
14
15
16
17
18
19
20
21
22


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

CERTIFICATE OF SERVICE

I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 26th day of February, 2020, I filed a true and correct copy of the foregoing APPELLANT, LYNITA SUE NELSON'S, RESPONSE TO JANUARY 27, 2020 ORDER TO SHOW CAUSE, 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:

DAWN R. THRONE, ESQ .
THRONE & HAUSER
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