

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

19                   **RESPONDENT'S OPPOSITION TO APPELLANT'S RESPONSE TO**  
20                   **JANUARY 27, 2020 ORDER TO SHOW CAUSE**

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Distribution Trustee of the Eric L. Nelson  
Nevada Trust, dated May 30, 2001*

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.**

3   **INTRODUCTION**

4                   Respondent Matt Klabacka (“Respondent), Distribution Trustee of the Eric  
5 L. Nelson Nevada Family Trust (“ELN Trust”), dated May 30, 2001, by and  
6 through his Counsel of Record, the law firm of Solomon, Dwiggins, & Freer, Ltd.,  
7 hereby opposes Appellant Lynita Sue Nelson’s Response to January 27, 2020  
8 Order to Show Cause because Appellant has failed to show that the district court’s  
9 order is appealable.  
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12   **II.**

13   **PROCEDURAL BACKGROUND**

14                   Eric and Lynita Nelson were married on September 7, 1983 and divorced  
15 by the Decree of Divorce (“Decree”) entered by the district court on June 3, 2013.  
16 AAPP V19:4691-4742<sup>1</sup>. The Decree and other orders were appealed to this Court.  
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19  
20                   <sup>1</sup> NRAP 30(b) provides as follows: “Except as otherwise required by this  
21 Rule, all matters not essential to the decision of issues presented by the appeal  
22 shall be omitted. Brevity is required; the court may impose costs upon parties or  
23 attorneys who unnecessarily enlarge the appendix.” Given that this matter has  
24 previously been the subject of a number of appeals that were heard by this Court  
25 (Case No. 66772, consolidated with Case No. 68292), in the interest of brevity,  
26 documents referenced herein which were included in the prior appendices have  
27 been cited in the same manner to which they were cited in the prior appeal (*i.e.*,  
28 AAPP or RAPP). Citations to Lynita’s appendix will be cited to as “SRAPP”. In  
the event this Court desires the ELN Trust to include the additional documents  
required by NRAP 30(b)(2) (which documents were already included in the  
appendices filed in Case No. 66772) it will immediately do so.

1 AAPP V23:5576-5578, AAPP V25:6249-6250, and SRAPP V1:5-8.

2 On May 25, 2017, this Court rendered its decision in *Klabacka v. Nelson*,  
3 133 Nev. 164, 394 P.3d 940, 949 (2017), which decision “[a]ffirmed in part,  
4 vacated in part” the Decree, and “remand[ed] this matter for further proceedings  
5 consistent with this opinion.”  
6

7 On July 31, 2017, after this matter had been remanded to the district court,  
8 Lynita filed a countermotion requesting, *inter alia*, that the district court  
9 “expressly affirm the Joint Preliminary Injunction [“JPI”] previously  
10 entered...EDCR 5.517 [EDCR 5.518, as of January 1, 2020].” SRAPP V1:  
11  
12 146:18-22.  
13

14 At the August 8, 2017 hearing on the countermotion for the JPI the district  
15 court stated, in part:  
16

17 I’m really not inclined to freeze everything and start all  
18 over again... To be honest, I’m really not inclined to  
19 reissue the JPI and freeze all that. ... I’m really not  
inclined to put a stay on everything. SRAPP V1:201-241.

20 At the January 31, 2018 hearing the District Court stated, in part:  
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22 As far as the instituting a joint preliminary injunction,  
23 that’s all that these trusts do is buy and sell property. So  
24 when you say they should conduct business as usual, by  
25 putting in – that in place and not allowing them to sell  
26 things, that’s what they do. So that would be – it’s a  
27 severe burden that I think when – the fact that the  
28 Supreme Court has already ruled what needs to go back  
to the ELN Trust and I don’t think we should be  
encumbering a business running and moving forward.  
These – that’s how both sides function. So I think that we

1                   can't lose sight of that. SRAPP V2:270-335.

2   On April 19, 2018, the district court entered its Order but it did not address the  
3   request for a JPI.

4                   On May 5, 2018, Lynita filed her Motion for Reconsideration and  
5   Clarification of the Court's Decision Entered on April 19, 2018, wherein she again  
6   requested the imposition of a JPI against Eric and, or, the ELN Trust.  
7

8                   On May 22, 2018, the district court entered its Order Granting a JPI for two  
9   particular properties because they are subject to a claim of community interest,  
10   which provides, in part: "A Joint Preliminary Injunction for the Banone, LLC and  
11   Lindell Properties is appropriate because both properties are involved in a claim of  
12   community property." SRAPP V2:441-449. Lynita never appealed this Order.  
13

14                   Still unhappy with the Order, on June 5, 2018, Lynita filed a Motion for  
15   Reconsideration and Clarification of it, wherein she requested for the third time  
16   that the district court reconsider said Order and expand the JPI to all assets titled  
17   in the name of the ELN Trust. SRAPP V2:450-457.  
18

19                   On October 16, 2018, the district court entered its Decision on the Motion  
20   for Reconsideration and Clarification of the Court's Decision Entered on May 22,  
21   2018, confirming that a JPI "shall only be placed on the [two particular  
22   properties]." SRAPP V2:614-625.  
23

24                   On November 7, 2018, Lynita filed this appeal. Although Lynita had  
25   before acquiesced to having the JPI limited to the property awarded to her in the  
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1 decree, SRAPP V2:299-300, the appeal demands that the JPI be expanded to “*all*  
2 property which is subject to a claim of community property interest.” (emphasis  
3 added).

4  
5 On June 6, 2019, the ELN Trust, later joined by Eric, filed before this Court  
6 a Motion to Dismiss Appeal alleging that Lynita’s appeal was untimely and that  
7 this Court lacks subject matter jurisdiction. Lynita filed her Opposition to said  
8 Motion on June 27, 2019, and Respondent filed his Response thereto on July 19,  
9 2019.

10  
11 On August 6, 2019, this Court denied the Motion to Dismiss stating:

12  
13 Appellant timely filed the notice of appeal from the order  
14 entered October 16, 2018, in which the district court  
15 resolved her motion for reconsideration and denied her  
16 request for a preliminary injunction...[Also],  
17 respondents’ argument regarding the appealability of the  
18 denial of a preliminary injunction under NRAP 65 or  
EDCR 5.517 appear to go to the merits of the appeal and  
are not appropriate for disposition in a motion to dismiss.

19 On January 27, 2020, this Court issued an Order to Show Cause why this  
20 “appeal from a district court order denying a request for a joint preliminary  
21 injunction involving spendthrift trusts in a family law matter ... should not be  
22 dismissed for lack of jurisdiction.”

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24 **III.**

25 **ARGUMENT**

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27 The Nevada Supreme Court “is a court of limited appellate jurisdiction.”  
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1 *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994).

2 It has jurisdiction to entertain an appeal “only where an appeal is authorized by  
3 statute or court rule.” *Id.* Where there is no authority for a party to appeal, there  
4 exists no right to appeal. *See Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev.  
5 207, 209, 678 P.2d 1152, 1153 (1984). Moreover, this Court in *State v. State*  
6 *Bank & Trust Co.*, 36 Nev. 526, 137 P. 400, 403 (1913) has emphasized that its  
7 jurisdictional authority must be *clear* as a matter of law:  
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10 *It is a question of jurisdiction, and this jurisdiction is one*  
11 *with which this court cannot invest itself, however*  
12 *anxious the court might be so to do or however urgent the*  
13 *matter might be. No order ... can authorize this court to*  
14 *take cognizance of a matter on appeal, unless the **right of***  
***appeal clearly appears as a matter of law.*** (Emphases  
added.)

15 **A. No Statute or Rule Confers Jurisdiction on a Joint Preliminary**  
16 **Injunction Under EDCR 5.517.**

17 The district court’s order is not appealable because there simply is no  
18 statute or court rule authorizing this Court with jurisdiction to hear “an appeal  
19 from a district court order denying a request for a *joint preliminary injunction*  
20 *involving spendthrift trusts in a family law matter.*” (Order to Show Cause)  
21 (emphases added). Indeed, the Order to Show Cause itself was entered precisely  
22 because this Court found “a potential jurisdictional defect in that it appears that  
23 th[is] district court’s order is not appealable.” (citing NRAP 3A(b)).  
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27 This Court’s guidance in *Nev. Gaming Comm’n v. Byrens*, 76 Nev 374, 355  
28

1 P.2d 176 (1960) proves helpful here. There, a party seeking to appeal an order  
2 denying a motion to dismiss a petition for writ of certiorari containing an  
3 injunction (to desist from further proceeding in the matter to be reviewed) invoked  
4 NRCP 72(b)(2), the predecessor to NRAP 3A(b)(3), which authorized appeals  
5 from an order granting an injunction. In dismissing the appeal, this Court stated  
6 that NRCP 72(b) “states *precisely* what determinations are appealable,” and  
7 emphasized that it “**does not include** ...an order to dismiss a petition for writ of  
8 certiorari...” (*Byrens*, 76 Nev. at 375, 355 P.2d at 177) (emphases added).  
9 Likewise, here, neither NRAP 3A(b) nor any other statute or rule grants this Court  
10 jurisdiction to hear this appeal from a district court order denying expansion of a  
11 joint preliminary injunction either under EDCR 5.517 or otherwise involving a  
12 family law matter.  
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17 **B. NRAP 3A(b)(3) Does Not Confer Jurisdiction on Joint Preliminary**  
18 **Injunctions Under EDCR 5.517 because NRCP 65 does not apply**  
19 **thereto.**

20 NRAP 3A(b)(3) grants this Court jurisdiction over “[a]n order granting or  
21 refusing to grant an injunction or dissolving or refusing to dissolve an injunction,”  
22 however, there is no precedent that said rule applies to the imposition of a joint  
23 preliminary injunction pursuant to EDCR 5.517 or otherwise involving a family  
24 law matter. Yes, NRAP 3A(b)(3) pertains to injunctions. And, in turn,  
25 injunctions are denied and/or granted pursuant to NRCP 65. But, subsection (e)  
26 therein expressly states that NRCP 65 is “not applicable to actions for divorce,  
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1 alimony, separate maintenance, or custody of children,” *i.e.*, “preliminary  
2 injunction[s] involving ... family law matter[s]” (Order to Show Cause).

3 Indeed, unlike injunctions governed under NRCP 65, in divorce (family  
4 law) actions and pursuant to EDCR 5.517, a court may issue a joint preliminary  
5 injunction without: (1) notice; (2) bond; (3) “[e]vidence that goes beyond the  
6 unverified allegations of the pleadings and motion papers...” (*see Hospitality Int’l*  
7 *Group v. Gratitude Group, LLC*, 387 P.3d 208 at \* 2 (2016)); (4) a showing of  
8 movant’s “likelihood of success on the merits” (*Id.*); and (5) a showing “that the  
9 nonmoving party’s conduct, should it continue, would cause irreparable harm for  
10 which there is no adequate remedy at law.” *Id.*

14 It is thus apparent that a joint preliminary injunction pursuant to EDCR  
15 5.517 is not governed by NRCP 65 and differs substantively and substantially  
16 from an injunction governed thereunder.<sup>2</sup> Joint preliminary injunctions under  
17 EDCR 5.517 simply do not invoke the same quantum of finality or imposition as  
18 injunctions under NRCP 65. And because a joint preliminary injunction arises in  
19 the family law context, district courts are equipped with greater flexibility and  
20 fewer formal requirements to readily and quickly grant or deny them and to  
21 modify or dissolve them as the court deems warranted. *See, Turner v. Saka*, 90

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25 <sup>2</sup> Also, a district court’s order denying reconsideration of its prior  
26 denial to expand an EDCR 5.517 joint preliminary injunction is yet further  
27 removed from an “order granting or refusing to grant an injunction” as required  
28 under NRAP 3A(b)(3) to sustain subject matter jurisdiction here.



1 Nev. 54, 63, 518 P.2d 608, 614, n. 10 (1974). Indeed, if issued and unless  
2 modified or dissolved by the court they remain in effect “until a decree of divorce  
3 or final judgment is entered.” EDCR 5.517.  
4

5 Appellant’s main argument as to why this Court should hear her appeal is  
6 that because NRAP 3A(b) relates to *injunctions*, her appeal of a court order  
7 denying expanding a joint preliminary injunction should be heard. But,  
8 analogously, this Court has stated that it has “consistently looked past labels in  
9 interpreting” the rule governing appealability of a final judgment (NRAP  
10 3A(b)(1)), and “has instead taken a functional view of finality, which seeks to  
11 further the rule’s main objective: promoting judicial economy by avoiding the  
12 specter of piecemeal appellate review.” *Bally’s Grand Hotel v. Casino Reeves*,  
13 112 Nev. 1487, 1488, 929 P.2d 936, 937 (1996).  
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17 This Court’s guidance in *Byrens* (*supra*, p. 5) is on point, again. In denying  
18 appealability there, this Court further concluded that “the injunction feature of the  
19 writ ... is not the type of injunction contemplated by [the predecessor to NRAP  
20 3A(b)(3)].” (*Byrens*, 76 Nev. at 376, 355 P.2d at 177). Likewise, here the joint  
21 preliminary injunction under EDCR 5.517 is not the type of injunction  
22 contemplated by NRAP 3A(b)(3). The joint preliminary injunction here is thus  
23 not appealable via NRAP 3A(b)(3).  
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26 Appellant next contends that by this Court referring to NRAP 3A(b)(3) in  
27 its Order denying Respondents’ Motion to Dismiss, the Court has already  
28

1 determined appealability. But this Court precisely issuing the Order to Show  
2 Cause belies Appellant’s presumption of any such determination. Once again, the  
3 Order to Show Cause not only suggests, but explicitly shows, the determination is  
4 going against appealability (“[o]ur review of the case reveals a potential  
5 jurisdictional defect...”). Further, this Court’s previous Order denying  
6 Respondent’s Motion to Dismiss merely mentions NRAP 3A(b)(3) when  
7 considering a different issue—whether the notice of appeal was timely filed.<sup>3</sup>  
8  
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10 Appellant also states in her Response to the Order to Show Cause (p. 6) that  
11 the “goal and purpose” of NRCPP 65(e) and EDCR 5.517 is to provide such  
12 litigants with a streamlined process for obtaining such injunctions. But this  
13 differentiation only further distinguishes joint preliminary injunctions thereunder  
14 from injunctions appealable under NRAP 3A(b)(3).  
15  
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17 Finally, Appellant argues that if the district court’s order denying to  
18 reconsider expanding a joint preliminary injunction is not substantively  
19 appealable, she would not have “a speedy and adequate remedy at law” to seek  
20 review of such order. But, Appellant *can* have just as speedy and adequate a  
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23 <sup>3</sup> While this Court’s denial of Respondent’s Motion to Dismiss appears  
24 to be based on its conclusion that the notice of appeal from the Order entered  
25 October 16, 2018 was timely filed, Respondent respectfully maintain the notice  
26 was not timely filed as to the May 22, 2018 district court order denying  
27 Appellant’s request for a joint preliminary injunction. Should the Court decide to  
28 revisit or clarify its Order or any rulings thereunder it may of course do so *sua*  
*sponte*.

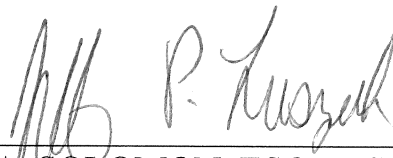
1 remedy in equity by, as she concedes, filing a writ petition to this Court.<sup>4</sup>

2 **IV.**

3 **CONCLUSION**

4 For the foregoing reasons, Respondent respectfully requests that this Court:  
5  
6 (i) find that Appellant has not demonstrated that this Court has jurisdiction to hear  
7 this appeal under NRAP 3A(b), and, therefore, (ii) dismiss the appeal for lack of  
8 subject matter jurisdiction.  
9

10 Respectfully submitted this 12<sup>th</sup> day of March, 2020.

11  
12 

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24 *Distribution Trustee of the Eric L. Nelson*

25 *Nevada Trust, dated May 30, 2001*

26 <sup>4</sup> Appellant further argues that if she had filed such writ petition,  
27 Respondents “likely would have argued” that the denial of a joint preliminary  
28 injunction is substantively appealable under NRAP 3A(b)(3) and that this Court  
may agree with Respondents, etc...Such string of presumptions is simply  
unwarranted.


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**CERTIFICATE OF SERVICE**

Pursuant to NRAP. 5(b), I hereby certify that I am an employee of the law firm of Solomon Dwiggins & Freer, Ltd., and that on March 12, 2020, I filed a true and correct copy of the foregoing **RESPONDENT'S OPPOSITION TO APPELLANT'S RESPONSE TO JANUARY 27, 2020 ORDER TO SHOW CAUSE**, with the Clerk of the Court through the Court's e-flex electronic filing system and notice will be sent electronically by the Court to the following:

Josef Karacsonyi, Esq.  
DICKERSON KARACSONYI LAW GROUP  
*Attorneys for Appellant, LYNITA SUE NELSON*

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An employee of SOLOMON DWIGGINS & FREER, LTD.