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, Petitioner, v. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, FAMILY DIVISION, CLARK COUNTY; THE HONORABLE FRANK P. SULLIVAN, Respondents, 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, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST, DATED MAY 30, 2001. Real Parties in Interest.	Supreme Court Case No.: District Ct. Case No.: D411537

PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF

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NRAP 21(a)(3)(A) ROUTING STATEMENT

NRAP 21(a)(3)(A) requires that a Writ Petition state "whether the matter falls in one of the categories of cases retained by the Supreme Court pursuant to NRAP 17(a) or presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)." This case technically falls into one of the categories of cases presumptively assigned to the Court of Appeals pursuant to NRAP 17(b), i.e., "cases involved family law matters other than termination of parental rights or NRS Chapter 432B proceedings." Petitioner, LYNITA SUE NELSON ("Lynita"), believes, however, that this case should be retained by the Supreme Court for all of the following reasons:

(1) This case involves trust and estate matters with a corpus in excess of $5,430,000.

(2) The Court has previously heard an appeal in this matter – Nevada Supreme Court Case No. 66772 – which resulted in a published decision: *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017). The *Klabacka* decision defined the district court's obligation and responsibility to identify and divide community

property that may be held in trust. Specifically, the *Klabacka* Court stated that "[i]n a divorce involving trust assets, the district court must trace those trust assets to determine whether any community property exists within the trusts – as discussed below, the parties' respective separate property in the [self-settled spendthrift trusts] would be afforded the statutory protections against court-ordered distribution, while any community property would be subject to the district court's equal distribution." *Id.*, 394 P.3d at 948. Based on the above, it is clear that until such time as the required tracing is completed, the property held in the self-settled spendthrift trusts remains subject to a claim of community interest. Accordingly, the mandatory protections of Eighth Judicial District Court Rules ("EDCR"), Rule 5.518 (formerly EDCR 5.517) – which permits any party to request the issuance of a preliminary injunction freezing and protecting "any property that is the subject of a claim of community interest"– must apply. The district court on remand, however, has refused to extend the mandatory protection of EDCR 5.517 (now renamed EDCR 5.518) to all of the assets held in the ELN Trust.

(3) The issue of whether a district court in a family law matter is required to apply the protections of EDCR 5.518 to property held in trust represents a question of first impression involving common law pursuant to NRAP 17(a)(11), and question of statewide public importance pursuant to NRAP 17(a)(12).

NRAP 26.1 DISCLOSURE

Pursuant to Rule 26.1 of the Nevada Rules of Appellate Procedure, Petitioner states that she has no parent corporations and no publicly held company owns 10% or more of Petitioner's stock. The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order for each Justice of this Court to evaluate possible disqualification or recusal.

A. MARK A. SOLOMON, ESQ., JEFFREY P. LUSZECK, ESQ., and CRAIG D. FRIEDEL, ESQ., of SOLOMON DWIGGINS & FREER, LTD., Trial and Appellate Attorneys for Real Party in Interest, MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001 ("ELN Trust").

B. DAWN R. THRONE, ESQ., of THRONE & HAUSER, Trial And Appellate Attorney for Real Party in Interest, ERIC L. NELSON ("Eric"), INDIVIDUALLY, AND IN HIS CAPACITY AS INVESTMENT TRUSTEE OF

THE ELN TRUST.

C. ROBERT P. DICKERSON, ESQ., JOSEF M. KARACSONYI, ESQ., and KATHERINE L. PROVOST, ESQ., of THE DICKERSON KARACSONYI LAW GROUP,[1] Trial and Appellate Attorneys for Petitioner, LYNITA SUE NELSON ("Lynita"), INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LSN NEVADA TRUST DATED MAY 30, 2001 ("LSN Trust").

D. HOWARD ECKER, ESQ., and EDWARD KAINEN, ESQ., of ECKER & KAINEN, CHTD.; DAVID ALLEN STEPHENS, ESQ. of STEPHENS, GOURLEY & BYWATER; JAMES J. JIMMERSON, ESQ., and SHAWN M. GOLDSTEIN, ESQ., of JIMMERSON HANSEN, PC; MARSHAL S. WILLICK, ESQ. and KARI J. MOLNAR, ESQ., of WILLICK LAW GROUP, and RHONDA K. FORSBERG, ESQ., of RHONDA K. FORSBERG, CHARTERED, prior Attorneys for Real Party in Interest, ERIC L. NELSON.

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[1] KATHERINE L. PROVOST, ESQ. is now with the KAINEN LAW GROUP, PLLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS, STATUTES, AND COURT RULES

I.

STATEMENT OF RELIEF SOUGHT

Petitioner seeks a writ of mandamus directing the district court to enter as an order a Joint Preliminary Injunction pursuant to EDCR 5.518 (formerly EDCR 5.517) over all property subject to a claim of community property interest, including, but not limited to, all property held in the ELN Trust.

II.

STATEMENT OF ISSUES PRESENTED

1. Whether the district court, in denying Lynita's request for a Joint Preliminary Injunction pursuant to EDCR 5.517, erred in finding that the ELN Trust and LSN Trust are not parties to the action and that only Lynita and Eric are parties to the action.

2. Whether the district court erred in refusing to enter a Joint Preliminary Injunction over all property which is subject to a claim of community property . . .

interest, as required by EDCR 5.517 (now EDCR 5.518), simply because such property is held in trust.

III.

STATEMENT OF FACTS

A. Background

Lynita and Eric were married on September 17, 1983. By agreement, Lynita was a stay-at-home mother and primary care giver for the parties' children throughout their lives. AAPP V19:4694:12-16; 4727:2-7.[2] Lynita's work in the home allowed Eric to become an extremely successful businessman whose resume included experience as a casino owner, casino investor, land developer, commercial

[2] NRAP 30(b) provides as follows: "Except as otherwise required by this Rule, all matters not essential to the decision of issues presented by the appeal shall be omitted. Brevity is required; the court may impose costs upon parties or attorneys who unnecessarily enlarge the appendix." Given that this matter has previously been the subject of a number of appeals that were heard by this Court (Case No. 66772, consolidated with Case No. 68292), and that voluminous appendices were filed in those appeals, including, but not limited to, Appellant's Record on Appeal (AAPP), and Respondent/Cross-Appellant, Lynita Sue Nelson's Appendix (RAPP), Lynita is filing only a Supplemental Appendix with this Petition. In the interest of brevity, documents referenced in this Petition which were included in the prior appendices have been cited in the same manner to which they were cited in the prior appeal (i.e., AAPP or RAPP). Lynita's current supplemental appendix will be cited to as "SRAPP". In the event this Court desires for Lynita to include the additional documents required by NRAP 30(b)(2) (which documents were already included in the appendices filed in Case No. 66772) in her Supplemental Appendix, Lynita will immediately do so.

and residential landlord, and auctioneer. AAPP V19:4726:25-4727:7. During Lynita's and Eric's nearly thirty (30) years of marriage, they amassed a substantial amount of wealth. AAPP V19:4695:3.

1. Separate Property Agreement and Trusts

Eric and Lynita entered into a Separate Property Agreement ("SPA") on July 13, 1993. AAPP V19:4695:9-11; AAPP V26:6273-6282. Contemporaneously with the SPA, the Eric L. Nelson Separate Property Trust and the Lynita S. Nelson Separate Property Trust (collectively referred to as the "1993 Trusts") were created. AAPP V19:4695; AAPP V26:6283-6342. Pursuant to the SPA, Eric and Lynita divided their community estate into two separate property trusts, each purportedly containing assets with one-half (½) the total value of the parties' estate. AAPP V26:6273-6282. The specific assets with which the parties' Separate Property Trusts were funded are listed on Schedule "A" and "B" of the SPA. AAPP V26:6277-6282.

2. Self-Settled Spendthrift Trusts

On May 30, 2001, approximately eight (8) years after the SPA and 1993

Trusts, the ELN Trust and LSN Trust – self-settled spendthrift trusts (collectively referred to as the "SSSTs") – were formed by the parties in accordance with NRS 166.020. AAPP V19:4696; AAPP V26:6395-6427; AAPPV26:6475-V27:6508; RAPP V3:0512-0544. Properties held in the 1993 Trusts on May 30, 2001, which were not the same as the properties listed in the SPA, were transferred to the SSSTs. AAPP V19:4695-4697; V27:6564-6565.

3. Eric's and Lynita's Divorce

On May 6, 2009, Eric filed his Complaint for Divorce against Lynita. AAPP V1:1-8. On May 18, 2009, pursuant to former EDCR 5.85, the district court issued a Joint Preliminary Injunction ("JPI") against the parties. AAPP V1:9-10. On June 9, 2011, the Court entered an Order that specifically extended the JPI to monies received by Eric from an asset held in the ELN Trust. SRAPP V1:1-4. On June 24, 2011, Eric filed a motion seeking to join ELN Trust as a necessary party to the divorce action. AAPP V7:1606-1661. On August 9, 2011, Eric and Lynita stipulated to join ELN Trust and LSN Trust as necessary parties in the action, "as complete

relief cannot be accorded among the parties" without ELN Trust and LSN Trust being named. AAPP V7:1744-1746.

On November 29, 2011, ELN Trust filed a motion seeking to dissolve the injunction previously entered by the district court on June 9, 2011. AAPP V8:1916-1999. The district court entered its Findings of Fact and Order on January 31, 2012, denying ELN Trust's motion to dissolve, and specifically making the following findings:

> THE COURT FURTHER FINDS that EDCR 5.85 provides that the Clerk may issue a JPI that enjoins both parties to the action from taking any action that disposes of community property *or any property which is the subject of a claim of community interest*, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court.
>
> THE COURT FURTHER FINDS that while the ELN Trust argues that EDCR 5.85 is inapplicable in the instant matter because a JPI is designed to prevent only the divorcing parties from taking any of the prohibited actions, the ELN Trust and the assets contained therein are subject to a community interest claim by Ms. Nelson which the Court has yet to rule upon.
>
> THE COURT FURTHER FINDS that NRS 125.050 states that the Court is obligated to make any orders that are necessary to preserve the status quo of the property and any other pecuniary interests to ensure that each party receives his and her equitable share of the marital estate.

AAPP V10:2264-2272.

On June 3, 2013, after more than four (4) years and sixteen (16) days of trial, the district court entered the Decree of Divorce in this matter. AAPP V19:4691-4742.

4. The Supreme Court's Decision on Appeal

Following entry of the parties' Decree of Divorce, this matter was appealed to this Court. AAPP V23:5576-5578, AAPP V25:6249-6250. On May 25, 2017, this Court rendered its decision in *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017), which decision, *inter alia*, vacated the equal division of property in the LSN Trust and ELN Trust, and remanded the matter back to the district court in order for the district court to conduct a tracing of the trust assets. Specifically, this Court held as follows:

> *Tracing trust assets*
> The parties contest whether the assets within the SSSTs remained separate property or whether, because of the many transfers of property between the trusts, the assets reverted back to community property. In a divorce involving trust assets, the district court must trace those trust assets to determine whether any community property exists within the trusts – as discussed below, the parties' respective separate property in the SSSTs would be afforded the statutory protections against court-ordered distribution, while any community property would be subject to the district court's equal distribution. We conclude the district court

did not trace the assets in question.

> Eric's Trust retained a certified public accountant to prepare a report tracing the assets within the two trusts. However, as noted by the district court, the certified public accountant maintained a business relationship with Eric and Eric's Trust for more than a decade. Although the certified public accountant's report concluded that there was "no evidence that any community property was transferred to Eric's Trust or that any community property was commingled with the assets of Eric's Trust," the district court found the report and corresponding testimony to be unreliable and of little probative value. We recognize that the district court is in the best position to weigh the credibility of witnesses, and we will not substitute our judgment for that of the district court here. [Citation omitted]. However, the subject of the certified public accountant's report – the tracing of trust assets, specifically any potential commingling of trust assets with personal assets – must still be performed. *See Schmanski v. Schmanski*, 115 Nev. 247, 984 P.2d 752 (1999) (discussing transmutation of separate property and tracing trust assets in divorce). Without proper tracing, the district court is left with only the parties' testimony regarding the characterization of the property, which carries no weight. *See Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976) ("The opinion of either spouse as to whether property is separate or community is of no weight whatsoever."). Accordingly, we conclude the district erred by not tracing the assets contained within the trusts, either through a reliable expert or other available means. Separate property contained within the spendthrift trusts is not subject to attachment or execution, as discussed below. However, if community property exists within the trusts, the district court shall make an equal distribution of that community property. *See* NRS 125.150(1)(b).

Klabacka, 394 P.3d at 948 (emphasis added).

B. Lynita's Request For Affirmation Or Issuance Of A JPI

Following the remand of this case to the district court, Lynita filed a

countermotion requesting, *inter alia*, that the district court affirm the JPI that had previously been entered on May 18, 2009. SRAPP V1:139-152. During the hearing that was held on August 8, 2017, the district court asserted that the key issue to be resolved on remand was that of tracing. SRAPP V1:210. Lynita's counsel agreed with such an assessment, and argued that affirmation/issuance of a JPI was therefore necessary:

> Mr. Karacsonyi: [T]he key issue is what's community property and what's separate property. And the problem you have is that the District – the Supreme Court certainly didn't prevent this Court from doing – from following standard divorce procedures and making sure that you can give effect to your ultimate judgment.
>
> The Court is required to issue a Joint Preliminary Injunction in any divorce matter. Just because these parties hold property in trust that's subject to a community claim, does not prevent the Court from, from issuing the Joint Preliminary Injunction.
>
> In fact, if it was the Court's policy or the Court's procedure that Joint Preliminary Injunctions didn't apply in cases where parties had property in trust, then there would be a large percentage of, of parties who were treated differently in this Court than other litigants, and who would be basically exempt from the Joint Preliminary Injunction and the ability of the Court to preserve the status quo pending a final determination.

SRAPP V1:210. In response to such arguments, the Court indicated that it was "not inclined to reissue the JPI and freeze all that." SRAPP V1:225. Lynita's counsel

then argued as follows:

> Mr. Karacsonyi: [B]ut these things are, again, this is community property, there's a claim of community property. The Court is required to maintain the status quo. Here's what's gonna happen: if you transfer all this property back to them without any, any type of Joint Preliminary Injunction, which is standard in every divorce case, then you have somebody who's gonna go transfer, sell, spend, get rid of, encumber all the property. You absolutely will have no ability to give effect to your Judgment.
>
> So, it's just standard that at lease (sic.), and regardless of what the Court's decision is, on transferring property back and forth again, that the Court at least put in a Joint Preliminary Injunction preventing everybody from making transfers.

SRAPP V1:227-228.

For its part, ELN Trust objected to the affirmation or issuance of a JPI to all properties, but offered to stipulate not to transfer two (2) specific items of property that ELN Trust was requesting be transferred back to it, as follows:

> Mr. Luszeck: Your Honor, I think with respect to Lindell and Banone, if those are transferred to the ELN Trust, I think the ELN Trust will stipulate not to transfer those assets to a third party so they would be here within the jurisdiction of this Court.
>
> The Court: Okay, I can put that right in the Order.

SRAPP V1:228.

. . .

Another hearing was held in the district court on January 31, 2018, at which time the parties continued to argue regarding the issuance of a JPI:

> Mr. Karacsonyi: Here's the other issue and it – and this is really important. We had a request to reinstate or to just reaffirm the JPI. You – this Court and the courts sitting in divorce actions, are required to maintain some status quo during the pendency of the matter. And if you have a transfer of property back to them without any JPI in place that look, you're not going to encumber, sell, dispose of any of this property, you're putting at risk any final judgment that you may ultimately enter.
>
> I mean, it's vitally important that no matter what you do, that you put in place a JPI to protect the parties. And this protects both parties, because we don't know how it will turn out, to protect both parties to ensure that your final judgment can be enforced. So we'd ask –
>
> THE COURT: When I transferred that initially I put that into it to make sure to protect –
>
> Mr. Karacsonyi: You did.
>
> THE COURT: – her interest so they couldn't be sold or otherwise encumbered without a court order if I remember.
>
> Mr. Karacsonyi: That's absolutely true. You – you actually put a freeze on – you put a freeze on a couple things. You put a freeze on everything that was transferred to her that she couldn't get rid of it without your approval and you also put a freeze on anything that was awarded to her, and I believe that included the Russell Road property that they couldn't get rid of that. So – without your approval.
>
> So that's the issue. So we need to, at least to the extent that – I mean, at the very least, and I think is a minimum, put a – put – you – put the JPI over everything that was awarded to her so you at least know that

> you got half if everything turns out to be community property. But I think really, putting a JPI in place for all property that's subject to a claim of community property, and right now that's everything, putting a JPI in place, and it's not – it's not that burdensome.

SRAPP V2:299-300.

The district court then indicated that it would be taking the matter under advisement and issuing a written decision. Lynita's counsel confirmed that the issue of the JPI would be addressed at that time:

> Mr. Karacsonyi: And you'll address the JPI then at the same time?
>
> The Court: Absolutely. Absolutely.
>
> Mr. Karacsonyi: Because those go hand in hand.
>
> The Court: Absolutely. And I would be issuing a JPI, the same thing I did before on that, making sure it's not encumbered or sold until we get it ultimately resolved, but not make it more narrow so it doesn't hinder the operation of the property that has nothing to do with this matter that's clearly not community property.

SRAPP V2:324-325.

On April 19, 2018, the district court served notice of entry of an order addressing all issues pending before it, with the exception of the JPI issue, on which it was entirely silent. SRAPP V2:345-355. As a result of the district court's

omission, Lynita was forced to file a motion again seeking issuance of the previously-requested JPI. SRAPP V2:356-374.

On May 22, 2018, the district court served notice of entry of a Decision granting Lynita's request for a JPI on two (2) specific properties (i.e., Banone, LLC and Lindell properties), as "[b]oth the Banone, LLC, and Lindell Properties **are subject to a claim of community interest**." SRAPP V2:441-449 (emphasis added). At approximately that same time, Lynita recorded Notices of Lis Pendens against sixteen (16) properties held in the names of the parties and/or the SSST's. SRAPP V2:375-424.

While the district court's May 22, 2018 Decision provided protection for certain of the properties in question, it failed to address the entirety of Lynita's request (i.e., that the JPI apply to all other properties held by the parties and/or their self-settled spendthrift trusts). SRAPP V2:441-449. Accordingly, on June 5, 2018, Lynita filed her Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018, wherein she requested the district court address her

request for a Joint Preliminary Injunction over all properties in which there was a claim of community interest. SRAPP V2:450-457.

A hearing was held in the matter on July 23, 2018, at which time Lynita's counsel again argued that the protections of a JPI were vitally important, particularly in a case such as the instant one where substantial assets are held in trust:

> Mr. Karacsonyi: The bottom line is in every divorce you may have – you're going to have trusts, especially with people of some affluence and they're going to have property in trust. And those people are entitled to the same protections as anybody else who appears before this Court.
>
> Just because you were reversed on appeal and we're sitting here 10 years later and people are a little worn out and this has been going on a long time doesn't mean that she's not entitled to the same protection today that she was entitled to on day one. And so we're asking for those same protections that she was entitled to on day one because that's really where we find ourselves as far as a tracing goes.

SRAPP V3:543-544.

On October 16, 2018, the district court served on the parties notice of entry of a Decision denying Lynita's request to expand the JPI to all property subject to a claim of community property interest. SRAPP V3:614-625. The Decision set forth . . .

a number of grounds for such a denial, all of which are subject to arguments of error detailed in the Argument section, below.

First and foremost, the Decision by the district court included the following finding:

> In a Hearing on April 10, 2012, this Court found that the ELN Trust had a right to defend itself during the proceedings. While this Court found that the ELN Trust could defend itself, **it did not confer party status to either Trust in this action**. The EDCR specifically states that upon "request of any party ... a preliminary injunction will be issued by the clerk against the parties to the action..." **In these proceedings, only Mr. and Mrs. Nelson are considered parties, not the Trusts. Therefore, as the ELN Trust is not a party to the case, this Court finds that it is not required to place a JPI on a non-party's property at the request of a party**.

SRAPP V3:619 (emphasis added). In reality, however, and as detailed above in this Statement of Facts, both the ELN Trust and the LSN Trust have been parties to this action since August 9, 2011, at which time Eric and Lynita stipulated to – and the district court ordered – the joinder of the SSST's. AAPP V8:1744-1746.

In addition to the above, the district court claimed in its Decision to clarify its prior May 22, 2018 Decision – wherein it had specifically noted that Lynita's request for a JPI was being granted with regard to the Banone, LLC and Lindell properties

as "[b]oth the Banone, LLC, and Lindell Properties are subject to a claim of community interest." SRAPP V2:441-449. Ignoring its prior rationale for granting the partial JPI, and by way of purported clarification, the district court stated in its Decision the following:

> To clarify this Court's Order, the JPI was granted on these properties solely due to the fact that both the ELN and LSN Trusts have held an ownership stake in both properties at some point during these proceedings. Given the contentious nature of both the litigation and the ownership/management of the properties involved, this Court finds that placing a JPI on the Banone, LLC. and Lindell properties would protect both Mr. and Mrs. Nelson, as well as the ELN and LSN Trusts, as the properties had exchanged hands during these proceedings.

SRAPP V3:619-620.

Finally, the district court included in its Decision one final justification for limiting the scope of the JPI to just the Banone, LLC and Lindell properties:

> Furthermore, this Court finds that the only properties that require a JPI based on the history of this case are the Banone, LLC. and Lindell properties.

SRAPP V3:620.

None of the above grounds for refusing to extend the JPI to all of the property subject to a claim of community property interest are based on legal authority, and

they, in fact, run contrary to all legal authority cited in the Argument section, below. To make matters worse, and to effectively strip all protections from the property subject to claims of community property interest, the district court in its Decision likewise found Lynita's Notices of Lis Pendens to be untimely filed and ordered them expunged. SRAPP V3:620.

On November 7, 2018, Lynita filed her Notice of Appeal challenging the district court's denial of her request for a JPI. SRAPP V3:626-628. On July 9, 2020, this Court issued its opinion dismissing Lynita's appeal on the basis that "orders granting or denying injunctions pursuant to EDCR 5.517 are not appealable under NRAP 3A(b)(3)." *Nelson v. Nelson*, 136 Nev. Adv. Op. 36, 6 (2020). This Court noted, however, that Lynita "may file a writ petition," and that, "[g]iven the mandatory language in EDCR 5.517, a writ petition would be the appropriate vehicle to seek review of the district court's order for an arbitrary or capricious exercise of its discretion." *Id.*, at 6-7.

. . .

IV.

REASONS WHY WRIT SHOULD ISSUE

A. Standard For Issuance Of Writ

"A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). In this matter, a writ of mandamus is necessary to compel the district court to enter as an order a Joint Preliminary Injunction pursuant to EDCR 5.518 (formerly EDCR 5.517) over all property subject to a claim of community property interest, including, but not limited to, all property held in the ELN Trust.

While it is true that a writ of mandamus constitutes extraordinary relief, it is also true that a writ "shall be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law." NRS 34.170 (emphasis added). In addition, this Court has also determined to exercise its discretion to consider a

writ petition when "there are either urgent circumstances or important legal issues that need clarification in order to promote judicial economy and administration." *Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867, 869, 124 P.3d 550, 552 (2005). In this case, both of these factors are applicable, as follows:

1. Lynita Does Not Have A Plain, Speedy, And Adequate Remedy In The Ordinary Course Of Law

Lynita seeks the instant writ relief as she believes the district court's decision to deny the entry of a Joint Preliminary Injunction against all of the property held in the ELN Trust is incorrect. Generally speaking, this Court has held that the right to appeal constitutes an adequate and speedy legal remedy that would preclude the issuance of a writ. *See, e.g., D.R. Horton v.. Eighth Judicial Dist. Court*, 123 Nev. 468, 168 P.3d 731, 736 (2007). As detailed in te above Statement of Facts, however, Lynita has already attempted to appeal this issue, and has had her appeal dismissed by this Court on the basis that an order denying an injunction pursuant to EDCR 5.517 is not appealable under NRAP 3A(b)(3). *Nelson* , 136 Nev. Adv. Op. 36, 6 (2020). Accordingly, it is clear that Lynita has no plain, speedy, and adequate

remedy in the ordinary course of law, and this Court itself has noted that Lynita is entitled to file a writ petition in this matter. *Id.*

2. Urgent Circumstances Exist In This Case And There Are Important Legal Issues That Need Clarification In Order To Promote Judicial Economy And Administration

As detailed in the above Statement of Facts, the district court has refused to enter as an order a Joint Preliminary Injunction pursuant to EDCR 5.517 (now 5.518) against all of the property held in the ELN Trust and LSN Trust, notwithstanding the fact that such property remains subject to a claim of community interest. This has created an urgent situation in that ELN Trust and Eric are, and remain, free to transfer, encumber, conceal, sell, or otherwise dispose of property held in the ELN Trust prior to the time that the district court has completed its required tracing of assets held in the ELN Trust and prior to the entry of a final judgment in the matter. If any such actions are taken by ELN Trust and Eric, and property so disposed of are later determined by the district court to have constituted the community property of Eric and Lynita, the interests of judicial economy and administration will not have been served and the district court will be forced to attempt to remedy such a

situation. Accordingly, the issues raised in this writ petition constitute important legal issues that need clarification in order to promote judicial economy and administration.

B. The District Court Erred In Refusing To Re-Issue The JPI Against The ELN Trust And LSN Trust Under The Mistaken Belief That They Were Not Parties To The Action

In its Decision, the district court found:

> In these proceedings, only Mr. and Mrs. Nelson are considered parties, not the Trusts. Therefore, as the ELN Trust is not a party to the case, this Court finds that it is not required to place a JPI on a non-party's property at the request of a party.

SRAPP V3:607. Respondents, ELN Trust and Eric, will not argue that the ELN Trust and LSN Trust are not parties to this action. It would be impossible for anyone to argue that ELN Trust and LSN Trust are not parties to this action. MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001 (i.e., "ELN Trust"), and LYNITA SUE NELSON, AS INVESTMENT TRUSTEE OF THE LSN NEVADA TRUST DATED MAY 30, 2001 (i.e., "LSN Trust"), are named parties to this action. On August 9, 2011, Eric and Lynita stipulated to join ELN Trust and LSN Trust as necessary parties in the

action, "as complete relief cannot be accorded among the parties" without ELN Trust and LSN Trust being named. AAPP V7:1744-1746. ELN Trust thereafter participated in the divorce trial, and appealed the Decree of Divorce to this Court. This Court recognized the district court's jurisdiction over the ELN Trust and LSN Trust and the properties held therein in the *Klabacka* decision: "the family court [has] subject-matter jurisdiction over all claims brought in the Nelson's divorce, including those relating to property held within the SSSTs." *Id.*, 394 P.3d at 946. The district court clearly erred in denying Lynita's request for a JPI on the basis that the ELN Trust and LSN Trust are not parties to the action.

C. The District Court Erred In Disregarding The Mandatory Nature Of EDCR 5.517

It is the policy of this State to preserve property subject to a claim of community property interest in a divorce until a final judgment is entered, and to ensure that a party is not deprived of his or her property rights during the pendency of the divorce. Nevada Revised Statutes, Section 125.050, provides:

> **Preliminary orders concerning property or pecuniary interests.** If, after the filing of the complaint, it is made to appear probable 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.

NRCP 65 provides rules and procedures for obtaining an injunction in civil matters, however, the "rule is not applicable to actions for divorce, alimony, separate maintenance, or custody of children. In such actions, the court may make prohibitive or mandatory orders, with or without notice or bond, as may be just." NRCP 65(e)(1). Protecting parties' property interests and claims during divorce is of such vital importance that parties are entitled to a joint preliminary injunction upon request, without notice or hearing, and without a showing of irreparable harm or likelihood of success on the merits. EDCR 5.518 (formerly EDCR 5.517) provides:

> **Rule 5.518. Joint preliminary injunction (JPI).**
>
> (a) Upon request of any party at any time prior to the entry of a decree of divorce or final judgment, a preliminary injunction will be issued by the clerk against the parties to the action enjoining them and their officers, agents, servants, employees, or a person in active concert or participation with them from:

. . .

> (1) Transferring, encumbering, concealing, selling, or otherwise disposing of any of the joint, common, or community property of the parties or any property that is subject of a claim of community interest, except in the usual course of conduct or for the necessities of life or for retention of counsel for the case in which the JPI is obtained; or cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of:
>
> (A) Any retirement benefits or pension plan held for the benefit (or election or benefit) of the parties or any minor child; or
>
> (B) Any insurance coverage, including life, health, automobile, and disability coverage;
>
> without the written consent of the parties or permission of the court.
>
> . . .
>
> (c) The JPI is automatically effective against the party requesting it at the time it is issued and effective upon all other parties upon service. Service of the JPI will be construed as satisfying all requirements for notice of entry of the JPI. The JPI shall be treated as a court order and is enforceable by all remedies provided by law, including contempt.
>
> (d) Once issued, the JPI will remain in effect until a decree of divorce or final judgment is entered or until modified or dissolved by the court.

As can be seen, issuance of the JPI is mandatory (an injunction "will be issued) at any time prior to "final judgment." The JPI does not apply to specific properties, but instead applies to "community property of the parties or any property that is subject of a claim of community interest." The district court was required to

issue Lynita a JPI on remand pending final judgment over all community property or property subject to a claim of community interest. Instead, the district court denied Lynita's request for a JPI generally, and issued an injunction over only two (2) specific properties subject to a claim of community property interest.

As Lynita argued below, it is not uncommon for parties to hold property in trust, especially parties of affluence. SRAPP V3:543-544. Where a trust claims ownership and title to property in dispute, the trust must be joined as a party. *Gladys Baker Olsen Family Trust v. Eighth Judicial Dist. Court*, 110 Nev. 548, 874 P.2d 778, 782 (1994). Accordingly, where property held in an irrevocable trust is in dispute in a divorce action, the trust is required to be named as a party in order to adjudicate the parties' rights to such property. *Id.* EDCR 5.518 enjoins "parties" to the action, rather than "spouses" or "domestic partners," from "[t]ransferring, encumbering, concealing, selling, or otherwise disposing of any of the joint, common, or community property of the parties or any property that is subject of a claim of community interest." The rule implicitly contemplates that a party may be

other than a "spouse" or "domestic partner." To hold otherwise, would deny parties who have prepared an estate plan, or whose spouse or partner has transferred community property to, or acquired community property in, a trust, the equal protection of the law as guaranteed by the Fourteenth Amendment of the United States Constitution and Article 4, Section 21, of the Nevada Constitution.

Finally, to the extent the district court found or ELN Trust argued that a JPI is a burden on ELN Trust's ability to conduct business, the burden caused by a JPI is not a consideration under the law. As stated above, the issuance of a JPI is mandatory because the importance of preserving community property in a divorce is so great, and certainly outweighs any perceived burden by the parties. Any prohibition on a party's ability to transfer, sell, borrow against, gift, or otherwise dispose of property during a divorce proceeding can be arguably burdensome. But the prohibition is not absolute, and a party can still transfer property by agreement of the parties or approval of the court. EDCR 5.518(a)(1).

. . .

V.

CONCLUSION

For the reasons set forth above, this Court should issue a writ of mandamus directing the district court to vacate and reverse its denial of Lynita's request for a general Joint Preliminary Injunction pending final judgment and adjudication of Eric's and Lynita's community property rights.

Respectfully submitted,

THE DICKERSON KARACSONYI
LAW GROUP

/s/ Josef Karacsonyi
ROBERT P. DICKERSON, ESQ.
JOSEF M. KARACSONYI, ESQ.
Attorneys for Petitioner, LYNITA SUE NELSON

VERIFICATION BY DECLARATION

I, JOSEF M. KARACSONYI, ESQ., declare under penalty of perjury under the law of the State of Nevada that the following statement is true and correct:

1. I am a partner at The Dickerson Karacsonyi Law Group, Counsel for Petitioner. I am over the age of eighteen (18) years, and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those facts, I believe them to be true.

2. This Petition for Writ of Mandamus or Other Extraordinary Relief ("Petition") is verified by me as Petitioner's counsel because the facts set forth in the Petition are within my personal knowledge and/or are supported by the citations to the district court record.

3. I have participated in the drafting and reviewing of this Petition and know the contents thereof. To the best of my knowledge, the Petition and the facts contained therein are true and correct.

. . .

4. I certify and affirm that this Petition is made in good faith and not for purposes of delay.

Dated this 31st day of July, 2020

/s/ Josef Karacsonyi
Josef M. Karacsonyi, Esq.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition for Writ of Mandamus or Other Extraordinary Relief ("Petition") complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this Petition has been prepared in a proportionally spaced typeface using WordPerfect X5 in 14 point Times New Roman type style.

2. I further certify that this Petition complies with the page or type-volume limits set forth in NRAP 21(d), as it contains 5,580 words.

3. I further certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the

matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 31st day of July, 2020.

THE DICKERSON KARACSONYI
LAW GROUP

/s/ Josef Karacsonyi

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CERTIFICATE OF SERVICE

I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 31st day of July, 2020, I filed a true and correct copy of the foregoing PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF, 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.
SOLOMON DWIGGINS & FREER, LTD.
Attorneys for Respondent, MATT KLABACKA

I further certify that on this day a copy of the foregoing document will also be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage is prepaid, in Las Vegas, Nevada, addressed to the following:

. . .

. . .

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/s/ Marie Jorczak
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