

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,

                                  Petitioner,

v.

8 EIGHTH JUDICIAL DISTRICT COURT  
9 OF THE STATE OF NEVADA, FAMILY  
10 DIVISION, CLARK COUNTY; THE  
11 HONORABLE FRANK P. SULLIVAN

                                  Respondent,

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

                                  Real Parties in Interest.

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**Supreme Court Case No. 81564  
District Court Case No. D411537**

20                                    **ANSWER TO PETITION FOR WRIT OF MANDAMUS**  
21                                    **OR OTHER EXTRAORDINARY RELIEF**

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1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are persons as  
3 described in NRAP 26.1(a), and must be disclosed. These representations are made in  
4 order that the judges of this court may evaluate possible disqualification or recusal.

5 Real Party in Interest, Matt Klabacka, Distribution Trustee of the Eric L.  
6 Nelson Nevada Trust dated May 30, 2001, is not a corporation and therefore does not  
7 have any parent corporations and there are no publicly held companies owning 10%  
8 or more of its stock. Further, the law firm Solomon Dwiggins and Freer, Ltd., and  
9 attorneys Mark A. Solomon, Esq. and Jeffrey P. Luszeck, Esq., have appeared for  
10 Matthew Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated  
11 May 30, 2001 in the underlying District Court case and will appear for the same  
12 before the Nevada Supreme Court in the instant Appeal.

13 DATED this 16<sup>th</sup> day of September, 2020.

14 SOLOMON DWIGGINS & FREER, LTD.

15 /s Jeffrey P. Luszeck

16 By: \_\_\_\_\_

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1 **ROUTING STATEMENT**

2 The instant Writ should be assigned to the Court of Appeals pursuant to NRAP  
3 17(b) (“The Court of Appeals shall hear and decide only those matters assigned to it  
4 by the Supreme Court and those matters within its original jurisdiction”) because it  
5 includes the following “case categories” “family law matters,” NRAP 17(b)(10), and  
6 “challenging the grant or denial of injunctive relief.” NRAP 17(b)(12). The ERIC L.  
7 NELSON NEVADA TRUST dated May 30, 2001 (“ELN Trust”) does not believe  
8 that this matter should be assigned to the Supreme Court of the State of Nevada  
9 pursuant to NRAP 17(a)(11)-(12) because it is not a “[m]atter [] raising as a principal  
10 issue of question of first impression involving the United States or Nevada  
11 Constitutions or common law,” or a “[m]atter [] raising as a principal issue a question  
12 of statewide public importance.

13 As such, the ELN Trust contends that this Writ should be assigned to the Court  
14 of Appeals in accordance with NRAP 17(b)(10) and (13).

15 **COUNTERSTATEMENT OF ISSUES PRESENTED**

16 The issues presented are more accurately stated as follows:

- 17 1. Whether the district court, in denying Lynita S. Nelson’s (“Lynita”) request to affirm the Joint Preliminary Injunction entered in or around May 2009  
18 (“JPI”), erred in finding that the ELN Trust and LYNITA S. NELSON NEVADA  
19 TRUST dated May 30, 2001 (“LSN Trust”) are not a “parties” as defined under NRS  
20 125.050 and EDCR 5.102(j) over which a JPI can be imposed.

1 2. Whether the denial of the LSN Trust’s request to “expressly affirm the  
2 JPI previously entered” was an arbitrary or capricious exercise of the district court’s  
3 discretion when EDCR 5.518 grants the district court authority to dissolve or modify  
4 said JPI prior to the entry of a decree of divorce or final judgment.

5 **COUNTERSTATEMENT OF THE FACTS**

6 Lynita’s Statement of Facts gives a narrow view of the circumstances before  
7 this Court. For this reason, the ELN Trust is compelled to supplement with its own  
8 Counterstatement of the Facts.

9 Eric L. Nelson (“Eric”) and Lynita were married on September 7, 1983.<sup>1</sup>

10 **A. CREATION AND IMPLEMENTATION OF THE SEPARATE  
11 PROPERTY AGREEMENT AND SEPARATE PROPERTY TRUSTS.**

12 “In 1993, Eric and Lynita entered into the [Separate Property Agreement] in  
13 order to transmute the family’s community assets into the parties’ respective separate  
14

15 \_\_\_\_\_  
16 <sup>1</sup> NRAP 30(b) provides: “[e]xcept as otherwise required by this Rule, all matters  
17 not essential to the decision of issues presented by the appeal shall be omitted.  
18 Brevity is required; the court may impose costs upon parties or attorneys who  
19 unnecessarily enlarge the appendix.” Due to the fact that this matter has been the  
20 subject of prior appeals that were heard by this Court (Case No. 66772, consolidated  
21 with Case No. 68292), documents referenced in this Writ, which were included in the  
prior appendices, have been cited in the same manner to which they were cited in the  
prior appeals (*i.e.*, AAPP or RAPP). Citations to Lynita’s Supplemental Appendix to  
Petition for Writ of Mandamus or Other Extraordinary Relief 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 property.” *See Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940, 953 (Nev. 2017).<sup>2</sup>  
2 “The SPA equally divided the parties’ assets into two separate property trusts.” *Id.*  
3 “Both parties consulted counsel prior to signing the document, and Lynita consulted  
4 additional outside counsel prior to her signing.” *Id.*

5 **B. CREATION AND IMPLEMENTATION OF SELF-SETTLED**  
6 **SPENDTHRIFT TRUSTS.**

7 “In 2001, Eric and Lynita converted their separate property trusts into the ELN  
8 Trust and the LSN Trust, respectively, and funded the SSSTs with the separate  
9 property contained within the separate property trusts.” *Id.* “The trust agreements  
10 for the ELN Trust and the LSN Trust are nearly identical.” *Id.* “Both trust  
11 agreements are in writing and establish an irrevocable trust.” *Id.* “Each trust has a  
12 spendthrift provision...” *Id.*

13 **C. ENTRY OF DIVORCE DECREE.**

14 Eric filed for divorce from Lynita in 2009. *Id.* at 167, 944.  
15 On June 3, 2013, the district court issued its Decree of Divorce (“decree”). *Id.*  
16 *See also* AAPP V19:4691-4742. “The decree disposed of all property, with the  
17 exception of Wyoming Downs, an asset purchased during the pendency of the  
18 divorce.” *Id.* at 168, 945. The decree provides, in part, “that the SPA was valid and  
19 the parties SSSTs were validly established and funded with separate property.” *Id.* at

---

20 <sup>2</sup> The “SPA states that “the parties hereto desire to split the community estate  
21 into the sole and separate property of each spouse in accordance with and for the  
purposes contained in NRS 123.130 through 123.170, inclusive.”” *Id.*

1 168, 945.

2 **D. INITIATION AND DISPOSITION OF FIRST APPEAL.**

3 Following the entry of the Wyoming Downs order the decree became final  
4 and the ELN Trust filed its first notice of appeal,” *id.* at 169, 945, and Lynita filed a  
5 cross-appeal (hereinafter referred to as “First Appeal”). *Id.* at 164, 942.

6 On May 25, 2017, this Court rendered its decision in *Klabacka v. Nelson*, 133  
7 Nev. 164, 394 P.3d 940, 949 (2017), which decision “[a]ffirmed in part, vacated in  
8 part” the decree, and “remand[ed] this matter for further proceedings consistent with  
9 this opinion.” In short, this Court held that “the district court must trace those trust  
10 assets to determine whether any community property exists within the trusts...” and  
11 also “concluded” the remaining arguments were “without merit.” *Id.* at fn. 9. *See*  
12 *also, Nelson v. Nelson*, 136 Nev. Adv. Op. 36, 466 P.3d 1249, 1251 (2020) (“We  
13 concluded that the ELN Trust and LSN Trust were funded with separate property and  
14 therefore remanded for the district court to conduct proper tracing to determine  
15 community interests.”).

16 **E. THE DISTRICT COURT GRANTS A LIMITED AFFIRMATION OF  
THE JPI ON REMAND.**

17 On July 31, 2017, after this matter had been remanded to the district court,  
18 Lynita filed a countermotion requesting, *inter alia*, that the district court “expressly  
19 affirm the [JPI] previously entered.” SRAPP V1: 146:18-22.

20 At the August 8, 2017 hearing on the countermotion for JPI the district court  
21

1 stated, in part:

2 I'm really not inclined to freeze everything and start all over  
3 again...We kinda went through that route at the beginning to try to get  
4 that all done so I'm not inclined to stop that and go back to square  
5 one. SRAPP V1:209.

6 To be honest, I'm really not inclined to reissue the JPI and freeze all  
7 that. I did the same thing when you guys had argued about our  
8 transferring all the property to her. You guys opposed that, I said we  
9 can always transfer it back, which I did, just told them that they  
10 wouldn't be able to see anything on that so that we could preserve  
11 that. So, I'm really not inclined to put a stay on everything. SRAPP  
12 V1:225.

13 At the January 31, 2018 hearing the District Court stated in part:

14 As far as the instituting a joint preliminary injunction, that's all that  
15 these trusts do is buy and sell property. So when you say they should  
16 conduct business as usual, by putting in – that in place and not  
17 allowing them to sell things, that's what they do. So that would be –  
18 it's a severe burden that I think when – the fact that the Supreme  
19 Court has already ruled what needs to go back to the ELN Trust and I  
20 don't think we should be encumbering a business running and moving  
21 forward. These – that's how both sides function. So I think that we  
can't lose sight of that. SRAPP V2:308.

As stated in the Writ, although the ELN Trust argued against the affirmation of the  
JPI over all assets titled in the name of the ELN Trust, counsel for the ELN Trust  
indicated that he believed the ELN Trust would stipulate not to transfer the Banone or  
Lindell Properties to third-parties. SRAPP V1:228. No formal stipulation was ever  
entered into.

On April 19, 2018, the district court entered its order; however, said order did  
not address the request for an affirmation of the JPI. SRAPP V2:345-355.

1 On May 5, 2018, Lynita filed her Motion for Reconsideration and Clarification  
2 of the Court’s Decision Entered on April 19, 2018, wherein she again requested the  
3 imposition of a JPI against Eric and/or the ELN Trust. SRAPP V2:356-374. Within  
4 a week after filing the May 5, 2018 Motion for Reconsideration Lynita filed lis  
5 pendens on all real property titled in the name of the ELN Trust. SRAPP V2:375-  
6 424.

7 On May 22, 2018, the district court entered its Order entitled Decision  
8 Affirming the Date of Tracing; Denying a Separate Blocked Account for \$720,000;  
9 and Granting a JPI for the Banone, LLC and Lindell Properties, which provides in  
10 part:

11 A Joint Preliminary Injunction for the Banone, LLC and Lindell  
12 Properties is Appropriate Because Both Properties Are Involved In A  
13 Claim of Community Property

14 In its April 19, 2018 Order, this Court did not address the request for a  
15 Joint Preliminary Injunction for the Banone, LLC. and Lindell  
16 Properties. Eighth Judicial District Court Rule 5.517 states that  
17 “[u]pon the request of any party at any time prior to the entry  
18 of...final judgment, a preliminary injunction will be issued by the  
19 clerk against the parties to the action enjoining them and their officers,  
20 agents, servant, employees, or a person in active concert or  
21 participating with them from: transferring, encumbering, concealing,  
selling or otherwise disposing of...any property that is the subject of a  
claim of community interest...

Both the Banone, LLC. and Lindell Properties are subject to a claim  
of community interest. As such, both properties are entitled to a Joint  
Preliminary Injunction to ensure that the properties remain intact prior  
to the completion of tracing and the final judgment of this Court.  
However, while this Court is aware that multiple Notices of Lis  
Pendens regarding both properties have been filed, a Joint Preliminary

1 Injunction on the properties is appropriate and will be granted...  
2 SRAPP V2:441-449.

3 Contrary to Lynita's contention in her Writ that the district court's "May 22,  
4 2018 Order failed to address the remainder of Lynita's request (*i.e.*, that the JPI apply  
5 to all other properties as well)," the district court implicitly, but clearly in context,  
6 denied said request by limiting the JPI to the Banone, LLC and Lindell Properties.  
7 SRAPP V2:441-449.

8 Unhappy with the May 22, 2018 Order, on June 5, 2018, Lynita filed a Motion  
9 for Reconsideration and Clarification of the Court's Decision Entered on May 22,  
10 2018 wherein she requested **for the third time** that the district court reconsider its  
11 order and expand the JPI to all assets titled in the name of the ELN Trust. SRAPP  
12 V2:450-457 ("Based on the foregoing, Lynita respectfully requests that the Court  
13 reconsider its Decision entered May 22, 2018, and order that the JPI issued is not  
14 limited to the Banone, LLC and Lindell Properties.").

15 On October 16, 2018, the district court entered its Decision on the Motion for  
16 Reconsideration and Clarification of the Court's Decision Entered on May 22, 2018,  
17 confirming that a JPI "shall only be placed on the Banone, LLC and Lindell  
18 Properties:

19 In its May 22, 2018 Decision, this Court Ordered that a Joint  
20 Preliminary Injunction ("JPI") to be placed over the Banone, LLC and  
21 Lindell Properties. 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

1 Properties would protect both Mr. and Mrs. Nelson, as well as the  
2 ELN Trust and LSN Trusts, as the properties had exchanged hands  
3 during these proceedings. Furthermore, this Court finds that the only  
4 properties that require a JPI based on the history of this case are the  
5 Banone, LLC and Lindell Properties. SRAPP V3: 607-608.

6 On November 7, 2018, Lynita filed an appeal in Case No. 77473 (“Second  
7 Appeal”). Although Lynita had previously acquiesced to having the JPI limited to  
8 the property awarded to her in the decree, SRAPP V2:299-300, the appeal demanded  
9 that the JPI be expanded to “all property which is subject to a claim of community  
10 property interest” (whatever that means as she has not delineated which assets should  
11 be subject to the JPI).

12 On July 9, 2020, this Court dismissed Lynita’s Second Appeal:

13 We hold that joint preliminary injunctions under EDCR 5.517 are not  
14 subject to NRCP 65 and therefore orders denying or granting  
15 injunctions under EDCR 5.517 are not appealable under NRAP  
16 3A(b)(3). The district court’s order regarding the joint preliminary  
17 injunction was accordingly not appealable, and we dismiss the appeal  
18 for lack of jurisdiction.

19 *Nelson v. Nelson, et al.*, 466 P.3d 1249, 1253, 136 Nev. Adv. Op. 36 (2020).

### 20 STANDARD OF REVIEW

21 “A writ of prohibition is an extraordinary remedy...” *Daane v. Dist. Ct.*, 127  
Nev. Adv. Op. 59, 261 P.3d 1086, 1087 (2011). “The writ may be issued . . . in all  
cases where there is not a plain, speedy and adequate remedy in the ordinary course  
of law.” NRS 34.330; *see also Daane*, 261 P.3d at 1087. Petitioner bears the burden  
of demonstrating that extraordinary relief is warranted.” *Id.* The right to appeal is  
generally considered an adequate legal remedy that precludes extraordinary relief.



1 *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d  
2 556, 558 (2008). A divorce decree is appealable as a final judgment when it finally  
3 resolves all issues pertaining to the dissolution of the parties' marriage, including the  
4 division of property. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.3d 416, 417  
5 (2000) (recognizing that a final judgment is one that disposes of all issues presented  
6 and leaves nothing for the court's future consideration, except for certain post-  
7 judgment issues).

8 Lynita has failed to enunciate the standard of review that should be applied in  
9 this instance, which is surprising as this Court made it clear in its Order Dismissing  
10 Appeal that "a writ petition would be the appropriate vehicle to seek review of the  
11 district court's order for an arbitrary or capricious exercise of its discretion." *See*  
12 *Nelson*, 466 P.3d at 1253 *citing Int'l Game Tech., Inc. v. Second Judicial Dist. Court*,  
13 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

14 "In the context of mandamus, this court considers whether the district court's  
15 evidentiary ruling was a manifest abuse or arbitrary or capricious exercise of its  
16 discretion." *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931–32, 267 P.3d 777, 780  
17 (2011) *citing* NRS 34.160. "An arbitrary or capricious exercise of discretion is one  
18 "founded on prejudice or preference rather than on reason," *id.* *citing* Black's Law  
19 \*932 Dictionary 119 (9th ed. 2009) (defining "arbitrary"), or "contrary to the  
20 evidence or established rules of law," *id.* at 239 (defining "capricious").

21

1 **SUMMARY OF THE ARGUMENT**

2 The district court did not arbitrarily or capriciously abuse its discretion in  
3 refusing to affirm a JPI over any and all assets listed in the decree. As will be shown  
4 herein, the ELN Trust is not a “party” over which a JPI can be imposed pursuant to  
5 EDCR 5.518.<sup>3</sup> Further, contrary to Lynita’s contention, a district court has authority  
6 to modify or dissolve the same (a fact which is not addressed in the Writ). Finally, if  
7 EDCR 5.518 is in fact applicable to this matter, the requested JPI cannot be granted  
8 as to any particular property without some showing that a community property  
9 interest likely exists therein, and it cannot extend to assets over which the district  
10 court found, and this Court confirmed, Lynita does not have a community property  
11 interest.

12 **ARGUMENT**

13 **A. EDCR 5.518 DOES NOT MANDATE THE IMPOSITION OF A JOINT  
PRELIMINARY INJUNCTION ON AN IRREVOCABLE TRUST.**

14 A JPI cannot and should not be imposed on an entity or irrevocable trust  
15 because Nevada law makes it clear that it only applies to the husband and wife in a  
16 divorce proceeding. Specifically, NRS 125.050 provides that the imposition of an  
17 injunction applies to “either party” in a divorce proceeding. Further, while EDCR  
18 5.518 seems to apply to “any party at the time prior to the entry of a decree of divorce  
19 or final judgment,” said rules define a “party” as follows: “Party. Unless the context

20  
21 <sup>3</sup> As this Court is certainly aware, EDCR 5.518 was formerly EDCR 5.517.

1 indicates otherwise, “a party” means a party personally, if unrepresented, or that  
2 party’s counsel of record, if represented.” EDCR 5.102(j). *See also*, EDCR 5.85, the  
3 predecessor to EDCR 5.518, confirming that a JPI issued under the Eighth Judicial  
4 District Court rules only applies to “both parties to the action,” *i.e.*, a husband and  
5 wife.

6 Neither the ELN Trust nor the LSN Trusts are “persons,” but rather separate  
7 and distinct legal entities thereby rendering EDCR 5.518 inapplicable to the ELN  
8 Trust and the assets contained therein. Notwithstanding, Petitioner misconstrues the  
9 district court’s ruling by stating that the ELN Trust is not a party to the underlying  
10 action, which is inaccurate as the ELN Trust concedes that it was joined as a  
11 necessary party in the underlying action in or around August 2011. AAPP V7:1744-  
12 1746.

13 Under either EDCR 5.518, its predecessor EDCR 5.85, or NRS 125.050, a JPI  
14 can only be imposed over “the parties,” which once again is defined as a husband or  
15 wife, or a party personally, of which the ELN Trust is not. Because the ELN Trust  
16 does not meet the technical definition of a “party” under either NRS 125.050 or the  
17 Eighth Judicial District Court Rules, the district court was not required to affirm the  
18 JPI over all assets titled in the name of the ELN Trust.

19 **B. IT WOULD BE INAPPROPRIATE TO IMPOSE A JPI OVER THE ELN  
20 TRUST BECAUSE NEITHER ERIC NOR LYNITA HAVE A  
21 COMMUNITY PROPERTY INTEREST IN THE ELN TRUST OR LSN  
TRUST AS A MATTER OF LAW.**

Nevada law is clear that when property is transferred to an irrevocable

1 spendthrift trust<sup>4</sup> the rights of the transferor are terminated, and the rights of all  
2 persons are determined only as provided in the trust agreement. Indeed, Chapter 166  
3 of the Nevada Revised Statutes defines a spendthrift trust as “a trust in which by the  
4 terms thereof a valid restraint on the voluntary and involuntary transfer of the interest  
5 of the beneficiary is imposed.” NRS 166.020. Since Eric cannot unilaterally remove  
6 any property and his distributions are subject to the discretionary approval of the  
7 “distribution trustee,”<sup>5</sup> it is a misnomer to characterize the property contained with  
8 the ELN Trust as his separate property or community property. “A beneficiary of a  
9 spendthrift trust has no legal estate in the capital, principal or corpus of the trust  
10 estate...” NRS 166.130. As such, Eric’s property rights under the ELN Trust are  
11 limited to that of a beneficiary with a “discretionary interest,” as defined in NRS  
12 163.4185(1)(c), and Nevada law limits his enforceable rights. There is no legal  
13 authority that allows a spouse to assert a community property interest in property not  
14 owned by the other spouse.

15 While the ELN Trust recognizes that this Court remanded this matter to the  
16 \_\_\_\_\_

17 <sup>4</sup> Lynita’s reliance upon *Gladys Baker Olsen Family Trust v. Eighth Judicial*  
18 *Dist. Court*, 110 Nev. 548, 874 P.2d 778, 782 (1994) is unavailing because in that  
19 case the issue surrounded a revocable as opposed to an irrevocable trust governed by  
20 NRS 166.

21 <sup>5</sup> See, e.g., ELN Trust at Article III, Section 3.3 (“Distributions to Trustor.  
Notwithstanding anything above to the contrary, any decision to make a distribution  
to the Trustor may not be made by the Trustor, even though the Trustor may be  
serving as a Trustee hereunder...”). AARP: V26:6479.

1 district court for the sole purpose of conducting a tracing “to determine whether any  
2 community property exists within the trusts,” *Klabacka*, 133 Nev. at 174, 394 P.3d at  
3 948, it is inequitable to impose a JPI over the ELN Trust without requiring Lynita to  
4 make a prima facie showing that she has a community interest in the assets at issue,  
5 especially given this Court’s prior findings regarding the funding of the ELN Trust.  
6 Specifically, as indicated *supra* this Court previously found that the ELN Trust was  
7 funded with Eric’s sole and separate property. *See id.* at 166, 943 (“[i]n 2001, Eric  
8 and Lynita converted their separate property trusts into [the ELN Trust] and [the LSN  
9 Trust], respectively, and funded the SSSTs with the separate property contained  
10 within the separate property trusts.”).<sup>6</sup> *See also, Nelson*, 136 Nev. Adv. Op. 466 P.3d  
11 at 1251 (“We concluded that the ELN Trust and LSN Trust were funded with  
12 separate property and therefore remanded for the district court to conduct proper  
13 tracing to determine community interests.”).

14 Said findings were based upon evidence, which included but is not limited to  
15 the SSSTs themselves,<sup>7</sup> which Lynita executed upon the advice of counsel.

16 \_\_\_\_\_  
17 <sup>6</sup> *See also, id.* at 173, 948 (“The parties contest whether the assets within the  
18 SSSTs remained separate property or whether, because of the many transfers of  
19 property between the trusts, the assets reverted back to community property.”).

20 <sup>7</sup> *See e.g.*, the ELN Trust at Article 12, Section 12.13 (“Separate Property. Any  
21 Property held in trust and any income earned by the trusts created hereunder shall be  
the separate property (in distinction with community property, joint tenancy property,  
tenancy in common, marital property, quasi-community property or tenancy by the  
entirety) of the beneficiaries of such trusts. Additionally, any distribution to or for  
the benefit of any beneficiary shall be and remain the sole and separate property and

1 Consequently, Lynita must prove “[t]ransmutation from separate to community  
2 property...by clear and convincing evidence.”<sup>8</sup> *See also Barrett v. Franke*, 46 Nev.  
3 170, 208 P. 435, 437 (Nev. 1922) (“the right of the spouses in their separate property  
4 is as sacred as is the right in their community property, and when it is once made to  
5 appear that property was once of a separate character, it will be presumed that it  
6 maintains that character until some direct evidence to the contrary is made to  
7 appear.”).

8 Notwithstanding the foregoing, Lynita demands the imposition of a JPI over  
9 all assets titled in the name of the ELN Trust even though she has failed to make a  
10 preliminary showing that she is entitled to a community property interest over the  
11 assets titled in the name of the ELN Trust. Further, it would be inequitable to impose  
12 a JPI over the ELN Trust because Lynita only made said request after she disposed of  
13 the majority of assets titled in the name of the LSN Trust.<sup>9</sup> Indeed, for example and  
14

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15 estate of the beneficiaries.”). AAPP V26:6499. *See also*, AAPP V26:6351-6381,  
16 AAPP V26:6382, AAPP V26:6383, amend the LSN Trust, AAPP V26:6350, AAPP  
17 V26:6351-6352, AAPP V26:6462-6468, AAPP V26:6469-6474 and AAPP  
18 V26:6384-6388 (Lynita’s Last Will and Testament wherein Lynita disinherited Eric  
19 from Lynita’s Trust, which she represented was her separate property and/or property  
20 in which Eric had no legal interest).

18 <sup>8</sup> *See Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 287 (Nev. 1994)  
19 citing *In re Marriage of Weaver*, 224 Cal.App.3d 478, 273 Cal. Rptr. 696, 701  
20 (1990).

20 <sup>9</sup> *See, e.g., Mining & Engr. Co. v. Pollak*, 59 Nev. 145, 85 P.2d 1008, 1012  
21 (Nev. 1939) (In Nevada, it “is well settled that a person shall not be allowed at once

1 by no means of limitation, on or around November 1, 2013 Lynita’s Trust sold real  
2 property located at 7065 Palmyra Avenue, Las Vegas, Nevada 89117 for  
3 \$829,000.00. AAPP V19:4691-4742. As such, it would be inequitable to impose a  
4 JPI over the ELN Trust.

5 **C. IMPOSING A JPI OVER THE ELN TRUST’S ASSETS WOULD BE**  
6 **UNCONSTITUTIONAL AND VIOLATE THE DUE PROCESS RIGHTS**  
7 **OF THE ELN TRUST AND OTHER THIRD-PARTIES.**

8 The automatic imposition of a JPI over any and all assets titled in the ELN  
9 Trust would violate its due process rights guaranteed by the Fourteenth Amendment  
10 of the United States Constitution and Article 1, Section 8 of the Nevada Constitution.  
11 As this Court is certainly aware, “[i]njunctive relief is extraordinary relief.”<sup>10</sup> It is for  
12 this reason that a moving party must meet the following requirements prior to a court  
13 granting injunctive relief: (1) a likelihood of success on the merits; and (2) a  
14 reasonable probability that the moving party will suffer irreparable injury for which  
15 compensatory damages is an inadequate remedy if the conduct of the parties against  
16 whom the injunction is being sought is allowed to continue.<sup>11</sup> Further, a district court

17 to benefit by and repudiate an instrument, but, if he chooses to take the benefit which  
18 it confers, he shall likewise take the obligations or bear the onus which it imposes.”).

19 <sup>10</sup> See *Department of Conservation and Natural Resources, Div. of Water Resources v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (Nev. 2005) (holding that parties were not entitled to a preliminary injunction).

20 <sup>11</sup> See NRS 33.010. See also, *Cameo, Inc. v. Baker*, 133 Nev. 512, 516, 936 P.2d  
21 829, 831 (Nev. 1997) quoting *Dixon v. Thatcher*, 103 Nev. 414,415, 742 P.2d 1029,  
1029 (Nev. 1987).

1 “may issue a preliminary injunction or a temporary restraining order only if the  
2 movant gives security in an amount that the court considers proper to pay the costs  
3 and damages sustained by any party found to have been wrongfully enjoined or  
4 restrained.” NRCPC 65(c). Imposing a JPI against the ELN Trust without requiring  
5 Lynita to make a preliminary showing that she possesses a community interest in the  
6 same and/or the stringent requirements in NRCPC 65 or NRS 33 violates its due  
7 process rights.<sup>12</sup>

8       The imposition of a JPI would also adversely impact the due process rights of  
9 individuals/entities that are not parties to this litigation. For example, and by no  
10 means of limitation, the ELN Trust possesses a 66.67% interest in real property  
11 located 5220 East Russell Road, Las Vegas, Nevada (“Russell Road Property”).  
12 AAPP V19:4691-4742. The remaining 33.33% is owned by Eric’s brother, Cal  
13 Nelson. AAPP V19:4691-4742. It is undisputed that Cal Nelson is not a party to this  
14 action. Notwithstanding, imposing an injunction over the Russell Road Property  
15 would impede third-party Cal Nelson’s ability to manage and potentially sell the  
16 property in which he has an interest, which is contrary to Nevada law.

17       Indeed, “[c]ourts of equity have long observed the general rule that a court may  
18 not enter an injunction against a person who has not been made a party to the case

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19 <sup>12</sup> See e.g., *Dangberg Holdings Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty.*  
20 *Comm’rs*, 115 Nev. 129, 146, 978 P.2d 311, 321–22 (1999) (court found due process  
21 rights were not violated when moving party showed likelihood of success on merits  
and irreparable harm).



1 before it.”<sup>13</sup> Said rule is consistent with the policy that “[j]udgments at law or decrees  
2 in equity affecting the rights of parties to property cannot affect the rights of third  
3 parties not before the court.”<sup>14</sup> “The consistent constitutional rule has been that a  
4 court has no power to adjudicate a personal claim or obligation unless it has  
5 jurisdiction over the person of the defendant.”<sup>15</sup> “Without a proper basis for  
6 jurisdiction, or in the absence of proper service of process, the district court has no  
7 power to render any judgment against the defendant's person or property unless the  
8 defendant has consented to jurisdiction or waived the lack of process.”<sup>16</sup>

9 Finally, a JPI may impede the ELN Trust’s ability to manage and invest its  
10 assets in the ordinary course of business pursuant to Article III, Section 3.1 and

11 \_\_\_\_\_  
12 <sup>13</sup> *Additive Controls & Measurement Systems, Inc. v. Flowdata, Inc.*, 96 F.3d  
13 1390, 1394 (Fed.Cir.1996). *See also, In re Infant Formula Antitrust Litigation*, MDL  
14 878 v. *Abbott 20 Laboratories*, 72 F.3d 842, 842-43 (11th Cir. 1995) (court lacks  
15 subject matter jurisdiction to issue 21 preliminary or permanent injunctions against  
16 non-party); *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832-833 (2nd Cir. 1930)  
17 (holding that district court was not authorized to issue an injunction against non-party  
18 to the underlying action).

19 <sup>14</sup> *Rutherford v. Union Land & Cattle Co.*, 47 Nev. 21,213 P. 1045, 1047 (1923).

20 <sup>15</sup> *In re Janssen*, 213 B.R. 558,566 (B.A.P. 8th Cir. 1997) (court concluded that  
21 the IRS may not, as it claims, reach the assets titled in REJ in order to satisfy the  
individual tax liabilities of the party, for the simple reason that REJ has not been  
named as a party in these proceedings) (citation omitted).

<sup>16</sup> *SEC v. Ross*, 504 F.3d 1130, 1138-39 (9th Cir. 2007) (court held that the  
district court lacked jurisdiction to enter a disgorgement order over money held by a  
nonparty who had allegedly violated securities laws but had not been personally  
served or named in a summons and complaint).

1 Article XII, Section 12.1(b), Section 12.1(e), Section 12.1 (f), Section 12. 1(o), Section  
2 12.1 (t), Section 12. 1(v) and Section 12.1(aa) of the ELN Trust. AAPP V26:6475-  
3 V:27:6508. In addition to the terms of the ELN Trust, Nevada statutes<sup>17</sup> and  
4 treatises<sup>18</sup> impose a duty on trustees to invest trust assets so as to make them  
5 productive.

6 **D. A DISTRICT COURT HAS GREAT FLEXIBILITY AND ABILITY TO**  
7 **MODIFY OR DISSOLVE A JOINT PRELIMINARY INJUNCTION.**

8 Even if the district court erred in refusing to affirm the JPI over any and all  
9 assets titled in the name of the ELN Trust as Lynita alleges, said decision does not  
10 rise to the level of arbitrary or capricious because EDCR 5.518(d) states that a JPI  
11 remains in effect “until a decree of divorce or final judgment is entered or until  
12 modified or dissolved by the court,” a fact which the Writ ignores. (Emphasis  
13 Added).

14 Here, the decree was entered on June 3, 2013, and on “September 22, 2014, the

15 <sup>17</sup> See NRS 164.715 (“A trustee shall invest and manage the trust property solely  
16 in the interest of the beneficiaries”); NRS 164.740 (duty to comply with prudent  
investor rule); NRS 164.750 (“A trustee shall diversify the investments of the  
trust...”).

17 <sup>18</sup> See 76 Am. Jur. 2d Trusts§ 435 (“Under the general law ... [a trustee] must  
18 exercise his or her independent discretion and judgment in reference to the  
investment of funds, even where broad discretionary power of investment is given,  
19 although provisions enlarging his or her power to invest are strictly construed.”); G.  
Bogert, The law of Trusts and Trustees§ 611 (3rd ed. 2010) (“The duty to invest and  
20 make the trust property productive must be performed within a reasonable time,  
considering the difficulty or ease of finding an appropriate investment and other  
21 circumstances.”).

1 district court disposed of Wyoming Downs, thereby making its judgment final.”  
2 *Klabacka*, 133 Nev. at 169, 394 P.3d at 945. Although this Court “[a]ffirmed in part,  
3 vacated in part” the decree, and “remand[ed] this matter for further proceedings  
4 consistent with this opinion,” *id.* at 182, 954, EDCR 5.518 does not mandate a JPI to  
5 be affirmed after a decree or final judgment are entered, even if ultimately remanded,  
6 and Lynita has failed to introduce any legal support for said proposition.

7 Further, the district court did not err by refusing to affirm the JPI over all  
8 assets titled in the name of the ELN Trust because it has discretion to modify or  
9 dissolve joint preliminary injunctions during the pendency of a divorce proceeding as  
10 it deems fit. *See* EDCR 5.518 (“Once issued, the JPI will remain in effect ... until  
11 modified or dissolved by the court.”); *Nelson*, 136 at \* 6, 466 P.3d at 1252 (“Because  
12 of the greater flexibility and ability for the district court to modify or dissolve joint  
13 preliminary injunctions, those injunctions also do not invoke the same finality as  
14 injunctions under NRCP 65.”).

15 Lynita’s Writ is devoid of any allegations and/or argument as to how the  
16 district court acted arbitrarily and/or capriciously in refusing to affirm the JPI.  
17 Lynita’s inability to do so comes as no surprise as the district court is intimately  
18 familiar with the facts and circumstances regarding this matter. Indeed, the divorce  
19 was filed in 2009 (over 11 years ago) and the district court oversaw nearly three (3)  
20 weeks of trial and dozens of hearings in this matter. Further, the district court  
21 affirmed the JPI over the Banone and Lindell properties after meticulous briefing,

1 SRAPP V1:139-152, SRAPP V2:356-374, SRAPP V2:450-457, and four (4) separate  
2 hearings over the period of a year. SRAPP V2:270-335; SRAPP V2:299-300;  
3 SRAPP V3:543-544. At one such hearing on January 31, 2018, the district court  
4 made it clear that it was not going to affirm the JPI over all assets titled in the name  
5 of the ELN Trust because of the severe burden that it would impose on the ELN  
6 Trust. SRAPP V1: 210; SRAPP V2:270-335.<sup>19</sup>

7 Finally, the district court has made it clear throughout the underlying  
8 proceeding that “both the ELN and LSN Trusts have sufficient assets to offset any  
9 deficiencies ultimately found once a final balance and distribution amount has been  
10 determined,” *see* SRAPP V2:450-457, thereby rendering Lynita’s argument that she  
11 will not be made whole absent the imposition of a JPI moot.

12 For these reasons, it is readily apparent that the district court’s refusal to affirm  
13 the JPI is not a decision it took lightly and/or acted arbitrarily and/or capriciously,  
14 thereby warranting the denial of Lynita’s Writ.

15 **E. A JPI DOES NOT PRECLUDE THE ELN TRUST FROM**  
16 **TRANSFERRING AND/OR SELLING THE ASSETS IN ITS NORMAL**  
**COURSE OF BUSINESS.**

17 The Writ is also fatally flawed as it requests that this Court “direct[] the district  
18 court to vacate and reverse its denial of Lynita’s request for a general Joint  
19 Preliminary Injunction pending final judgment and adjudication of Eric and Lynita’s

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20 <sup>19</sup> While Lynita may be correct that “burden caused by a JPI is not a  
21 consideration under the law” to impose a JPI it certainly can serve as a factor to  
modify or dissolve a JPI.

1 community property rights,” despite the fact that EDCR 5.518(a)(1) specifically  
2 allows the ELN and LSN Trusts from “transferring, encumbering, concealing, selling,  
3 or otherwise disposing of any joint, common, or community property...in the usual  
4 course of business.” In other words, Lynita is asking that this Court enforce the first  
5 half of EDCR 5.518(a)(1) and disregard the section half of the same section.

6 Not only is the relief request contrary to EDCR 5.518(a)(1) and EDCR  
7 5.518(d), but enjoining all assets titled in the name of the ELN Trust “pending final  
8 judgment” would cause extreme financial hardship and impede its ability to operate  
9 “in the usual course of business,” such as selling the rental properties titled in the  
10 name of the ELN Trust when it is financially appropriate to do so and to prevent a  
11 loss in value. Further, the relief requested would prevent the Trust from managing its  
12 assets for its beneficiaries, which include the children of Eric and Lynita.

13 As this Court noted in the Second Appeal, one distinguishing factor between  
14 an injunction pursuant to NRCP 65 and a JPI under EDCR 5.518 is that a JPI has  
15 “great flexibility and ability” to be modified by the district court and do not have the  
16 “same finality as injunctions under NRCP 65.” *Nelson*, 136 at \* 6, 466 P.3d at 1252.  
17 Notwithstanding, the Writ demands that the JPI have the same finality as an  
18 injunction under NRCP 65 even though she has failed to show a likelihood of success  
19 on the merits, post a bond and/or comply with any additional requirements set forth  
20 in the rule. As such, the relief requested in the Writ is inappropriate, contrary to  
21 Nevada law and should be summarily rejected.

1 **F. THE REQUESTED JPI CANNOT EXTEND TO ASSETS OVER**  
2 **WHICH THE DISTRICT COURT FOUND, AND THIS COURT**  
3 **CONFIRMED, LYNITA DOES NOT HAVE A COMMUNITY**  
4 **PROPERTY INTEREST.**

5 As a final matter, increasing the scope of the JPI to properties over which the  
6 district court found, and this Court confirmed, that Lynita does not have a community  
7 property interest would constitute gross error. Specifically, the JPI cannot and should  
8 not encompass Wyoming Downs because the district court previously found that  
9 Wyoming Downs was not community property, AAPP V23:5553-5561, and said  
10 ruling was upheld by this Court.

11 As this Court recognized in its May 25, 2017 Opinion, the decree disposed of  
12 all of the assets owned by the ELN Trust and the LSN Trust, with the exception of  
13 Wyoming Downs. *See Klabacka*, 133 Nev. at 168, 394 P.3d at 945. Indeed, after a  
14 separate evidentiary hearing on Wyoming Downs on May 30, 2014, the district court  
15 entered the following findings and orders:

16 **THE COURT FURTHER FINDS** that Dynasty Development  
17 Management, LLC (“Dynasty”) was organized as a Nevada LLC on  
18 April 26, 2011, with the ELN Trust as its sole member, and with Eric  
19 L. Nelson as its manager.

20 **THE COURT FURTHER FINDS** that in or around November 2011,  
21 Banone LLC loaned \$75,000 to Dynasty, which Dynasty utilized as an  
earnest money deposit toward the purchase of Wyoming Downs.

**THE COURT FURTHER FINDS** that Wyoming Downs was  
purchased around November 16, 2011, by Dynasty for \$440,000,  
which represented a purchase price of \$400,000 and a buyer’s  
premium of \$40,000.

1 **THE COURT FURTHER FINDS** that Dynasty’s purchase of  
2 Wyoming Downs was financed through debt by Henderson Capital  
Group, LLC (“Henderson Capital”), a hard money lender.

3 **THE COURT FURTHER FINDS** that the ELN Trust entered into a  
4 promissory note in favor of Henderson Capital in the amount of  
\$700,000. Out of the \$700,000 borrowed \$100,000 was taken out for  
5 prepayment of fees and interest. The remaining \$600,000 in loan  
proceeds, plus \$175.46 for tax reimbursement, and the \$75,000  
6 earnest money deposit (for a total of \$675,175.46), was applied at  
closing as follows: \$400,000 for the purchase price, \$40,000 for the  
7 buyer’s premium, \$30,389 in settlement charges, and \$10,000 for an  
extension fee FOR A TOTAL OF \$480,839.00. Accordingly, at  
8 closing a total of \$194,336.46 (\$675,175.46-\$480,839.00) of equity  
was available to pull out. Eric L. Nelson testified that from the  
9 \$194,336.46, \$75,000 was paid back to Banone, LLC, leaving new  
money of \$119,336.46.

10 **THE COURT FURTHER FINDS** that although Wyoming Downs  
was acquired by the ELN Trust during the pendency of the marriage  
11 between Eric L. Nelson and Lynita S. Nelson, the Court does not find  
12 it to be community property as it was clearly purchased through  
Dynasty, an entity wholly owned by the ELN Trust and the Court  
maintained the ELN Trust. The Court found no facts leading it to  
13 conclude Lynita S. Nelson or the LSN Trust has an interest in  
Wyoming Downs. The Court maintained the integrity of the ELN  
14 Trust and LSN Trust for the reasons set forth in the Divorce Decree.

15 **THE COURT FURTHER FINDS** that there was no transmutation of  
Wyoming Downs from separate property to community property,  
16 even assuming that Wyoming Downs was separate property of Eric L.  
Nelson, and not the property of the ELN Trust, separate and distinct  
17 from Eric L. Nelson. AAPP V23:5553-5561.

18 Lynita appealed the district court’s finding that she did not possess a  
19 community property interest in Wyoming Downs. Indeed, Lynita identified the  
20 following “Issue[] on Appeal” in her Docketing Statement:

21 Whether the district court erred in denying Lynita a one-half (1/2)

1 interest in Wyoming Downs, which was purchased during the  
2 pendency of Eric's and Lynita's divorce proceedings. *See* LSN Trust's  
3 Docketing Statement at 4:10-12 filed on November 25, 2014 in the  
4 First Appeal, Case No. 66772.<sup>20</sup>

5 Although this Court affirmed and vacated portions of the decree, it is  
6 imperative to note that this Court upheld, as opposed to overturned, the September  
7 22, 2014 Order:

8 Accordingly, we affirm in part and vacate in part the district court's  
9 decree of divorce, affirm in part and vacate in part the district court's  
10 June 8, 2015, order modifying and implementing the divorce decree,  
11 and remand this matter for further proceedings consistent with this  
12 opinion. *See Klabacka*, 133 Nev. at 182, 394 P.3d at 954.<sup>21</sup>

13 *See id.* at fn. 9 (“[w]e have considered the parties’ other arguments [which would  
14 have included Lynita’s argument with respect to Wyoming Downs] and conclude  
15 they are without merit.”). *See also* SRAPP: V3:610 (“Therefore, as the Nevada  
16 Supreme Court’s Decision vacated portions of the divorce decree relating to assets in  
17 the ELN and LSN Trust, and the Wyoming Downs property was disposed of in this  
18 Court’s September 18, 2014 Order, and not the June 8, 2015 Order, this Court finds  
19 that the ELN Trust remains the owners of the Wyoming Downs Property.”).

20 \_\_\_\_\_  
21 <sup>20</sup> *See also*, Lynita’s Answering Brief and Opening Brief on Cross-Appeal at p.  
48:21-22 filed on March 2, 2016 in Case No. 66772 (“The district court’s division of  
property was equal based on the property that remained at the time of trial, with the  
exception of Wyoming Downs.”) pp. 52-53 (“The district court erred by not equally  
dividing Wyoming Downs, which was acquired during the pendency of the divorce  
litigation.”).

<sup>21</sup> The only reference to Wyoming Downs in the June 8, 2015 Order involves  
providing documentation and income received, not a disposition of property. SRAPP  
V3: 604-613.



1           Upon information and belief, the reason why this Court did not overturn and/or  
2 vacate the September 22, 2014 Order is because the district court had already traced  
3 the assets utilized to purchase Wyoming Downs and found that said property was not  
4 community property. AAPP V23:5553-5561. Consequently, it was unnecessary to  
5 remand the issue to the district court for additional tracing.

6           Notwithstanding, Lynita demands that this Court increase the scope of a JPI to  
7 include any and all assets titled in the name of the ELN Trust, which would  
8 presumably include Wyoming Downs.

9           This is not the first time that Lynita has sought to have this Court revisit its  
10 ruling regarding Wyoming Demands in contravention of NRAP 40(a)(1). Indeed,  
11 Lynita's Petition for Writ of Mandamus or Other Extraordinary Relief filed in  
12 Supreme Court Case No. 77254, presented the following issue: "[w]hether this Court  
13 affirmed the district court's decision regarding Wyoming Downs and excluded such  
14 property from the tracing to be conducted by the district court, even though Wyoming  
15 Downs was not expressly excluded from the tracing of assets within the SSSTs." *See*  
16 *Petition for Writ of Mandamus at 2:4-7 filed on October 30, 2018, in Case No.*  
17 *77254.* This Court denied Lynita's Petition for Writ of Mandamus on December 13,  
18 2018. *See Order Denying Petition for a Writ of Mandamus filed on December 13,*  
19 *2018, in Case No. 77254.* Lynita's desperate attempt to litigate this issue in her Writ  
20 in 2018, and again now, is inappropriate and contrary to Nevada law.

21           In light of the foregoing, and the fact that Lynita did not appeal the portion of

1 the October 16, 2018 Order that upheld Wyoming Downs as an asset of the ELN  
2 Trust,<sup>22</sup> it would be an error to enter a JPI and/or litigate any issue relating to  
3 Wyoming Downs.

4 **CONCLUSION**

5 In light of the foregoing, the ELN Trust respectfully requests that this Court  
6 deny the Writ in its entirety. Alternatively, if this Court finds that the district court  
7 somehow erred by not affirming the JPI over all properties, the ELN Trust  
8 respectfully requests that this Court confirm that the district court has authority to  
9 modify and/or dissolve the JPI as set forth in EDCR 5.518(d), and that the ELN Trust  
10 may transfer, encumber, sell or otherwise dispose of said assets “in the usual course  
11 of conduct.” *See* EDCR 5.518(a)(1). Finally, the ELN Trust respectfully requests  
12 that this Court deny Lynita’s request for the imposition of a JPI over Wyoming  
13 Downs, which the district court funds, and this court confirmed, Lynita does not have

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19 <sup>22</sup> *See* SRAPP V3: 604-613. (“Therefore, as the Nevada Supreme Court’s  
20 Decision vacated portions of the divorce decree relating to assets in the ELN and  
21 LSN Trust, and the Wyoming Downs property was disposed of in this Court’s  
September 18, 2014 Order, and not the June 8, 2015 Order, this Court finds that the  
ELN Trust remains the owner of the Wyoming Downs Property.”).

1 a community property interest in.

2 DATED this 16<sup>th</sup> day of September, 2020.

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4 /s/ Jeffrey P. Luszeck

By: \_\_\_\_\_

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10 *Nevada Trust dated May 30, 2001*

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**CERTIFICATE OF COMPLIANCE**

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2       1. I hereby certify that this brief complies with the formatting  
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and  
4 the type style requirements of NRAP 32(a)(6) because this brief has been prepared  
5 in a proportionally spaced typeface using Microsoft Office Word in 14 point Times  
6 New Roman type style.

7       2. I further certify that this brief complies with the page or type-volume  
8 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by  
9 NRAP 32(a)(7)(C), it is not proportionately spaced, has a typeface of 14 points, and  
10 contains 7,299 words.

11       3. Finally, I hereby certify that I have read this appellate brief, and to the  
12 best of my knowledge, information and belief, it is not frivolous or interposed for any  
13 improper purpose. I further certify that this brief complies with all applicable Nevada  
14 Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every  
15 assertion in the brief regarding matters in the record to be supported by appropriate  
16 references to page and volume number, if any, of the transcript or appendix where the  
17 matter relied on is to be found. I understand that I may be subject to sanctions in the  
18 event that the accompanying brief is not in conformity with the requirements of the

19 / / /  
20 / / /  
21 / / /



1 Nevada Rules of Appellate Procedure.

2 DATED this 16<sup>th</sup> day of September, 2020.

3 SOLOMON DWIGGINS & FREER, LTD.

4 /s/ Jeffrey P. Luszeck

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16<sup>th</sup> day of September, 2020, I filed a true and  
3 correct copy of the foregoing **ANSWER TO PETITION FOR WRIT OF**  
4 **MANDAMUS OR OTHER EXTRAORDINARY RELIEF** with the Clerk of the  
5 Court via the Court's E-flex electronic filing system and notice shall be sent  
6 electronically by the Court to the following:

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8 Josef Karacsonyi, Esq.  
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10 *Attorneys for Appellant, LYNITA SUE NELSON*

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*/s/ Gretta McCall*

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