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.: 81564 District Ct. Case No.: D411537

REPLY TO ANSWERS TO PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF

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A. EDCR 5.518 Applies To Any Party To A Divorce Action, Including, But Not Limited To, An Irrevocable Trust

In their Answers, Eric and ELN Trust argue that EDCR 5.518 is inapplicable to an entity or an irrevocable trust.. In that regard, Eric and ELN Trust go to great lengths to bolster their argument that Nevada law somehow "makes it clear that [EDCR 5.518] only applies to the husband and wife in a divorce proceeding." In an attempt to support such a claim, Eric and ELN Trust focus on the language of EDCR 5.102(j), which defines a party as "a party personally, if unrepresented, or that party's counsel of record, if represented." Eric and ELN Trust then incorrectly assert that "[n]either the ELN Trust nor the LSN Trust are 'persons,' but rather separate and distinct legal entities thereby rendering EDCR 5.518 inapplicable to the ELN Trust and the assets contained therein." This argument is completely contradicted by both Nevada law and the law of this case.

. . .

First, and contrary to Eric and ELN Trust's assertions, the term "person" is clearly defined under Nevada law as follows:

> Except as otherwise expressly provided in a particular statute or required by the context, "person" means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, **trust** or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government.

See NRS 0.039 (emphasis added).[1] Additionally, it is well-settled in Nevada that a trust is not a distinct legal entity, as asserted by Eric and ELN Trust, and can only act by and through its trustees. *Causey v. Carpenter So. Nevada Vacation Trust*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979) ("A party to litigation is either a natural or an artificial person. . . . It is the trustee, or trustees, rather than the trust itself that is entitled to bring suit."); *see also,* NRS 163.375 ("A fiduciary may compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle claims in favor of or against the estate or trust. . . ."); *see also,* NRS 163.023 ("A trustee has

[1] NRS 0.010 makes clear that the definition of "person" set forth in NRS 0.039 constitutes a "definition[] and declaration[] of legislative intent which appl[ies] to Nevada Revised Statutes as a whole."

the powers provided in the trust instrument [or] expressed by law . . . ."). Finally, this Court has further specifically found that "all persons materially interested in the subject matter of the suit [must] be made parties so that there is a complete decree to bind them all," and that a trust can be an indispensable party who should have been joined in an action because it held legal title to disputed property. *Gladys Baker Olsen Family Trust ex rel. Olsen v. Eighth Judicial District Court*, 110 Nev. 548, 552-54, 874 P.2d 778, 781-82 (1994).[2] In short, it is indisputable that an irrevocable trust such as the ELN Trust is a person under Nevada law.

Even if the ELN Trust were not considered a "person" pursuant to Nevada law – which it is – the plain language of EDCR 5.518 makes clear that it does not apply only to parties personally or acting in their individual capacity. EDCR 5.518(a)

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[2] While Eric and ELN Trust now baselessly asset in their footnote no. 4 that Lynita's reliance on *Gladys Baker Olsen Family Trust ex rel. Olsen v. Eighth Judicial District Court*, 110 Nev. 548, 874 P.2d 778 (1994), is unavailing because in that case the issue surrounded a revocable as opposed to an irrevocable trust governed by NRS 166," there is absolutely no legal authority to support such a claim. Further, when Eric filed his Motion to Join Necessary Party; or in the Alternative; to Dismiss Claims Against the Eric L. Nelson Nevada Trust Dated May 30, 2011 in the divorce action in 2011, he relied in large part on the *Gladys Baker Olsen* decision in seeking to have the ELN Trust joined in the divorce action as a necessary party. AAPP V7:1606-1661.

provides, in pertinent part, that "[u]pon the 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" taking certain actions. Emphasis added. While a husband or wife acting in their own individual capacity may have "agents, servants, employees, or a person in active concert or participation with them" as set forth in EDCR 5.518(a), they cannot have "officers." To the contrary, the word "officers" used in EDCR 5.518(a) makes clear that this Court contemplated the rule to apply to legal entities as well as to individual parties.[3]

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[3] Eric and ELN Trust also cite to the language of EDCR 5.85 (i.e., the predecessor of EDCR 5.518) in an attempt to bolster their position. Eric and ELN Trust argue that a review of the former rule confirms "that a JPI issued under the Eighth Judicial District Court rules only applies to 'both parties to the action,' *i.e.,* a husband and wife." In reality, however, Eric and ELN Trust's argument only serves to highlight the fact that this Court – in December of 2016 – repealed EDCR 5.85, and promulgated EDCR 5.517 (now EDCR 5.518) in its place. The language of EDCR 5.85, which could easily have been maintained in effect by this Court, was intentionally altered and expanded. Instead of providing that "at any time prior to the entry of a decree of divorce or final judgment and upon the request of either party in a family relations proceeding, a preliminary injunction will be issued by the clerk against both parties to the action," as did EDCR 5.85, the new EDCR 5.518 provides that "[u]pon the request of any party at any time prior to the entry of a decree of

Furthermore, the plain language of EDCR 5.518 makes clear that it applies to all parties to a divorce action, and not only "to the husband and wife," as argued by Eric and ELN Trust. EDCR 5.518(c) addresses the times at which a Joint Preliminary Injunction ("JPI") becomes effective against the parties as follows: "The JPI is automatically effective against the party requesting it at the time it is issued and effective upon all other parties upon service." Emphasis added. Clearly EDCR 5.518(c) contemplates that there could be more than two (2) parties to a divorce action, otherwise EDCR 5.518(c) would have provided that the JPI is effective upon "the other party upon service" instead of "all other parties upon service."

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

Eric and ELN Trust have consistently taken the position that ELN Trust is a party to the divorce action, and have consistently accepted the benefits that flow from such party status. By way of example, Eric filed a Motion to Join Necessary Party; Or In the Alternative; to Dismiss Claims Against The Eric L. Nelson Nevada

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divorce or final judgment, a preliminary injunction will be issued by the clerk against the parties to the action." Emphasis added.

Trust Dated May 30, 2011 on June 24, 2011, arguing extensively that ELN Trust had to be joined as a necessary party to the underlying divorce action pursuant to the provisions of Nevada Rules of Civil Procedure, Rule 19(a), which provides for "Persons to Be Joined if Feasible." AAPP V7:1606-1661. ELN Trust was ultimately joined as a party to the divorce action via the parties' Stipulation and Order filed August 9, 2011. AAPP V7:1744-1746. ELN Trust participated in the divorce trial, and thereafter took advantage of its position as a party to the divorce action in order to appeal the Decree of Divorce. AAPP V23:5576-5578, AAPP V25:6249-6250. The right to file such an appeal is specifically reserved for parties to a divorce action pursuant to NRS 125.185, which provides as follows: "No divorce from the bonds of matrimony heretofore or hereafter granted by a court of competent jurisdiction of the State of Nevada, which divorce is valid and binding upon each of the parties thereto, may be contested or attacked by third persons not parties thereto." ELN Trust has consistently benefitted from its status as a party in the divorce action, seeking and obtaining various relief and protection from both the district court and

this Court on appeal. Eric and ELN Trust cannot now be permitted to disavow their long-standing position and to assert that ELN Trust is not a party to the action in an attempt to avoid the imposition of a mandatory JPI pursuant to EDCR 5.518. This is precisely the type of situation to which the doctrine of judicial estoppel should be applied. In that regard, judicial estoppel is applicable when five (5) specific factors are met:

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

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

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

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

In its decision in *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017), 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.
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> 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). Tasked with the above, the district court on remand is required to trace – and to thereby establish the nature of – all of the property held in the ELN Trust and the LSN Trust. Further, until such time as such a tracing is completed by the district court, all assets held in the ELN Trust and the LSN Trust – per this Court's *Klabacka* decision – are subject to a claim of

community interest such that a JPI is appropriate.

In their Answers, Eric and ELN Trust attempt to argue against the imposition of a JPI against the ELN Trust by criticizing and discounting this Court's above-quoted *Klabacka* decision, and effectively trying to reargue such decision. In that regard, the Eric and ELN Trust argue that "[s]ince Eric cannot unilaterally remove any property and his distributions are subject to the discretionary approval of the 'distribution trustee,' it is a misnomer to characterize the property contained with the ELN Trust as [Eric's] separate property or community property." Eric and ELN Trust further argue that notwithstanding this Court's *Klabacka* decision, "There is no legal authority that allows a spouse to assert a community property interest in property not owned by the other spouse." (Emphasis in original). The plain language of the *Klabacka* decision, however, specifically addresses and dismisses these arguments raised by Eric and ELN Trust in their Answers.

First, and as quoted above, this Court explicitly held that there could be community property of the parties held in the parties' spendthrift trusts. *Klabacka,*

394 P.3d at 948. Further, in order to clarify such finding, this Court also noted in footnote 6 to the *Klabacka* decision, the following:

> To clarify: because the nonbeneficiary spouse retains a property interest in community property contained within the spendthrift trust, the restraints on the court-ordered alienation of spendthrift trust assets would not apply to the nonbeneficiary spouse's community property share of that property.

Id. at n. 6. In short, this Court recognized that a spouse cannot circumvent Nevada community property laws and defeat another spouse's community property interest in assets by simply transferring such assets into a self-settled spendthrift trust. Finally, it is important to note that ELN Trust made arguments identical to those made in their instant Answer on page 23 of its Opening Brief filed with this Court on December 1, 2015, in Case No. 66772. As this Court is aware, the *Klabacka* decision specifically disposed of all such additional arguments in footnote no. 9 thereto, which provided as follows: "We have considered the parties' other arguments and conclude they are without merit." *Id.* at n. 9.

Knowing full-well that such an attempt to reargue the *Klabacka* decision is inappropriate, Eric and ELN Trust thereafter begrudgingly "recognize[] that this

Court remanded this matter to the district court for the sole purpose of conducting a tracing 'to determine whether any community property exists within the trusts.'" Eric and ELN Trust nonetheless argue that it would be "inequitable to impose a JPI over the ELN Trust without requiring Lynita to make a prima facie showing that she has a community interest in the **assets at issue**." Emphasis added. As detailed above, however, this Court previously remanded this matter in order for the district court to "trace trust assets to determine whether any community property exists within the trusts." *Id*. Further, the Court noted that "[i]f community property exists within the trusts, the district court shall make an equal distribution of that community property." *Id*. These directives, as well as Eric's and ELN Trust's own admission that Lynita is seeking the imposition of a JPI against the "assets at issue," make clear that all of the assets of the parties are properly to be enjoined as they are subject to a claim of community interest.

In every divorce action filed in the Eighth Judicial District Court, EDCR 5.518 mandates that upon the request of any party a JPI is to be issued over "joint, common

or community property of the parties or any property that is the subject of a claim of community interest." Emphasis added. The rule contains absolutely no requirement that the party requesting the JPI make any prima facie showing that a community interest exists, but simply a requirement that such a claim has been made. This Court confirmed such a fact in *Nelson v. Nelson*, 136 Nev. Adv. Op. 36 (2020), as follows: "Joint preliminary injunctions issued pursuant to EDCR 5.517, on the other hand, require no showing of probable success or harm. Rather, the clerk of the court **must** issue such injunction upon the request of either party." *Id*. (emphasis added). In this case, Lynita has asserted a claim that virtually all of the assets held in the ELN Trust constitute community property. Accordingly, and until such time as the district court completes the tracing required by this Court's decision, it will remain unknown whether such community interest exists.[4]

[4] In their Answers, footnote 9, Eric and ELN Trust argue that it would be inequitable to impose a JPI over the ELN Trust because Lynita requested such JPI only after she "disposed of the majority of assets in the name of Lynita's Trust." To support such a claim, Eric and ELN Trust point to Lynita's sale of the real property located at 7065 Palmyra Avenue, Las Vegas, Nevada ("Palmyra Residence") on or around November 1, 2013. As Eric and ELN Trust well-know, however, the Palmyra Residence is the only asset that was owned at the time of the parties' divorce which was also owned by the parties at the time they entered into their Separate Property Agreement [SPA]

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

Eric and ELN Trust argue that "[i]mposing a JPI against the ELN Trust without requiring Lynita to make a preliminary showing that she possesses a community interest in the same and/or the stringent requirements in NRCP 65 or NRS 33 violates its due process rights." The plain language of NRCP 65(e)(1), however, specifically permits injunctions to be obtained in domestic cases without the formality required in other civil actions:

> (e) **Applicability**
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> (1) **When Inapplicable**. This 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.

In order to facilitate such injunctions in divorce actions, EDCR 5.518 was

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in 1993. The 1993 SPA provided that the Palmyra Residence would be Lynita's sole and separate property. AAPP V26:6273-6282. In other words, the Palmyra Residence is the only asset owned by either party that undisputably constituted separate property, and could not have been subject to any claim of community interest by Eric. For Eric and ELN Trust to now make this assertion shows the depths of their duplicity in this matter. The Palmyra Residence was also sold after the parties' divorce, but before this matter was remanded back to the district court. Lynita has not asked to exclude from the JPI any property currently held by LSN Trust.

promulgated and requires – upon the request of any party in a divorce action – the issuance of a joint preliminary injunction that prohibits all parties from "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 . . . ." The goal and purpose of this rule is to provide litigants in domestic relations actions with a streamlined process for obtaining injunctions. In fact, this Court has itself recognized such a purpose, noting that "[] NRCP 65(f) may be read to envision somewhat greater flexibility and less formality in domestic matters than in other litigation . . . ." *Turner v. Saka*, 90 Nev. 54, 63, 518 P.2d 608, 614, n.10 (1974).

Knowing full-well that the imposition of a JPI in this matter does not infringe on ELN Trust's due process rights, Eric and ELN Trust next argue that should a JPI be issued against real property owned by the parties in which a third party also owns an interest, it would infringe on the due process rights of such third parties. Eric and ELN Trust give only one example of such a property – i.e., the property located at

5220 East Russell Road, Las Vegas, Nevada, in which Eric's brother, Cal Nelson, purportedly owns a one-third interest. In that regard, Eric and ELN Trust argue that a JPI would "impede third-party Cal Nelson's ability to manage and potentially sell the property in which he has an interest, which is contrary to Nevada law."

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

Even if Eric and ELN Trust's said argument is considered by this Court, it is

clear that Lynita is seeking a JPI only against the properties – and interests in properties – owned by the parties and their trusts, all of whom are parties to the divorce action. The district court is entirely able to issue a JPI against ELN Trust's fractional interest in a property without in any way "impeding" the ability of a third party from selling his or her share of such property.

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

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

Burgess v. Storey Cnty. Bd. Of Com'rs, 116 Nev. 121, 992 P.2d 856, 859 (2000). The district court's JPI would not affect Cal Nelson's ownership interest in Russell Road, and would apply exclusively to the interest owned by the parties. Indeed, Cal Nelson would not be deprived of any property or liberty interest.

The JPI does not completely prohibit a party from selling, encumbering, or transferring property. Instead, it prohibits a party from selling, encumbering, or transferring property "without the written consent of the parties or the permission of the court." EDCR 5.518(a). If ELN Trust wanted to sell its interest in the Russell Road property, or desired to sell the entire interest in Russell Road with Cal Nelson, it would simply need to seek the approval of the other parties, or an order from the district court. This would give the parties and the court the opportunity to assess the legitimate need or purpose for selling the interest, and the ability to preserve any proceeds from such sale.

Accepting Eric's and ELN Trust's position would negate the efficacy of a JPI in countless divorce actions and create a tremendous burden on the district courts. In any action where a party owned a fractional interest in property, whether it be real property, a business (including stock in a publicly traded company), or any other asset, the JPI would not apply to such party's interest in property unless all other owners of the property were joined to the action. For example, the spouse of a party

owning IBM stock would be required to join all other shareholders of IBM for the JPI to preclude the sale of such stock. Likewise, the spouse of a partner in a real estate investment would be required to join all other owners of such investment in order for the JPI to be effective.[5] Such an absurd result cannot be permitted by the Court.

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

On page 19 of their Answers, Eric and ELN Trust disingenuously argue that "EDCR 5.518 does not mandate a JPI to be affirmed after a decree of final judgment are entered, even if ultimately remanded." As with their above due process argument, Eric and ELN Trust never before raised this argument in the district court, and cannot now be permitted to do so before this Court. *Old Aztec Mine Inc.*, 97 Nev. at 52. Additionally, while it is true that the parties' Decree of Divorce was

[5] To the extent a party's interest in a property could be sold without his or her consent, such as the interest of a limited partner with no decision-making authority in a partnership, or a minority shareholder with no control in a business, such a sale would be in the "ordinary course of business," and would not be a violation of the JPI. However, the JPI would certainly attach to, and serve to protect, any proceeds received from the sale.

entered by the Court on June 3, 2013, it is also true that all portions of the Decree of Divorce relating to the division of property and debts were vacated by this Court in the *Klabacka* decision, as follows:

> Given the complexity of the divorce decree (the decree), we conclude that (1) the dissolution of marital bonds between Eric and Lynita is affirmed, (2) the district court's alimony award is affirmed in part but vacated to the extent it is awarded against Eric's Trust instead of Eric in his personal capacity, (3) the district court's child support award is affirmed in part but vacated to the extent it is awarded against eric's Trust instead of Eric in his personal capacity, (4) **all other portions of the decree are vacated**, (5) the June 8, 2015, order, is vacated to the extent it enforces or implements portions of the divorce decree relating to assets in Eric's Trust and Lynita's Trust and affirmed in all other respects, and (6) **the case is remanded to the district court for further proceedings consistent with this opinion**.

Id., 394 P.3d at 943.

In addition to the above, in *Klabacka* this Court specifically instructed the district court on remand to "trace trust assets to determine whether any community property exists within the trusts." *Id.*, 394 P.3d at 948. Given the above-quoted conclusions and directive from the Court, it is absolutely clear that now on remand there is no "final judgment" in place with regard to the division of the parties' property. Further, it is undisputable that community property claims remain in

existence on remand, and that no division of property is even possible pending the completion of the required tracing. Accordingly, all of the reasons for issuing a JPI at the outset of the parties' divorce action – i.e., to assist the district court in preserving all property subject to a claim of community property – are once again applicable now on remand, and the mandatory terms of EDCR 5.518 remain applicable.

Similarly, Eric and ELN Trust attempt to muddy the waters and deny the mandatory nature of EDCR 5.518 by arguing that the district court has "discretion to modify or dissolve joint preliminary injunctions during the pendency of a divorce proceeding as it deems fit." While it is true that the district court would have such discretion after the JPI is already in place, these are not the facts that are before this Court and that are the basis of Lynita's Writ. As recognized by this Court in *Nelson v. Nelson*, 136 Nev. Adv. Op. 36 (2020), "the clerk of the court must issue such injunction upon the request of either party. EDCR 5.517(1); *see Natural Res. Def. Council, Inc. v. Perry*, 940 F.3d 1072, 1078 (9th Cir. 2019) ('The word 'will,' like

the word 'shall,' is a mandatory term, unless something about the context in which the word is used indicates otherwise.' (internal citation omitted))." *Id.* at 6. Notwithstanding the mandatory nature of EDCR 5.518, the district court in this matter refused to issue the JPI upon Lynita's request.

F. Eric And ELN Trust Seek An Improper Advisory Opinion Regarding The Actions It Can And Cannot Take Once A JPI Is Issued

On pages 20-21 of their Answers, Eric and ELN Trust again attempt to muddy the waters and to simultaneously try to obtain an improper advisory opinion from this Court as to the actions that would or would not be proper for the ELN Trust to take following entry of a JPI in the divorce action. In that regard, Eric and ELN Trust attempt to focus solely on the portion of Lynita's request that seeks for the JPI to remain in place pending the entry of a final judgment. As detailed above, however, Lynita seeks for the district court's order refusing to issue a JPI over all of the property held in the ELN Trust to be reversed, and for the district court to be required to enter the mandatory JPI. Lynita concedes that the JPI, if issued, will remain in effect as provided in EDCR 5.518(d) (i.e., "until a decree of divorce or

final judgment is entered, or until modified or dissolved by the court"), and Eric and ELN Trust's argument is therefore inapposite. Additionally, while Eric and ELN Trust appear to seek this Court's input as to the types of transfers and transactions that would be appropriate for ELN Trust to make under a JPI, such determinations are appropriately to be made by the district court in the divorce action. "This court will not render advisory opinions on moot or abstract questions. Decisions may be rendered only where actual controversies exist." *Applebaum v. Applebaum*, 97 Nev. 11, 12, 621 P.2d 1110 (1981).

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

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

. . .

While it is true that the district court denied Lynita's request to be awarded a 50% interest in Wyoming Downs, it simultaneously awarded Lynita $75,000 to compensate her for the monies taken from properties awarded to Lynita for the down payment for Wyoming Downs. AAPP V23:5553-5561; RAPP V6:1369:17-1370:17; RAPP V4:864-866. Lynita then appealed the district court's order denying her a fifty percent (50%) community property interest in Wyoming Downs.

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

required tracing, and would be denying Lynita's potential property rights in such property without the requisite tracing.

Unfortunately, on remand, the district court issued a Decision on October 16, 2018, finding that Wyoming Downs should not be included in the tracing on remand based on this Court's decision and ELN Trust's argument concerning the interpretation of same. PSAPP V3:514:23 - 516:3. Lynita sought relief from this Court as a result of such finding in her Petition for Writ of Mandamus or Other Extraordinary Relief filed on October 30, 2018, Supreme Court Case No. 77254, however, this Court denied such petition upon finding that extraordinary and discretionary intervention was not warranted. Lynita remains able to seek relief from this Court via an appeal following the entry of final judgment in the divorce action. Until such time, the JPI would not apply to such property since it cannot be subject to a claim of community property interest under the district court's current interpretation, or misinterpretation, of this Court's holdings. Therefore, Eric's and ELN Trust's argument concerning Wyoming Downs is not applicable and is simply

intended to have this Court opine on such issue before it is fully briefed and presented on appeal.

II.

CONCLUSION

For the reasons set forth above, this Court should reverse the district court's denial of Lynita's request for a general JPI and direct the district court to enter such a JPI.

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 Reply to Answer to Petition for Writ of Mandamus or Other Extraordinary Relief ("Reply") is verified by me as Petitioner's counsel because the facts set forth in the Reply 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 Reply and know the contents thereof. To the best of my knowledge, the Reply and the facts contained therein are true and correct.

. . .

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

Dated this 30th day of September, 2020

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

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Reply to Answers to Petition for Writ of Mandamus or Other Extraordinary Relief ("Reply") 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 Reply 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 Reply complies with the page or type-volume limits set forth in NRAP 21(d), as it contains 5,834 words.

3. I further certify that I have read this Reply, 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 Reply 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 30th day of September, 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 30th day of September, 2020, I filed a true and correct copy of the foregoing REPLY TO ANSWERS TO 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:

. . .

. . .

HONORABLE FRANK P. SULLIVAN
Eighth Judicial District Court, Department O
601 North Pecos Road
Las Vegas, Nevada 89101

/s/ Edwardo Martinez

An employee of The Dickerson Karacsonyi Law Group