

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

GINA R. DAPRA,

Petitioner,

S. Ct. Case No.

vs.

Dist. Ct. Case No. DV20-01349

SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF WASHOE, THE
HONORABLE LINDA M. GARDNER,
SENIOR DISTRICT JUDGE,
FAMILY COURT DIVISION, DEPT. 16,

Respondent,

and

SCOTT A. ELKINS,

Real Party in Interest.

ORIGINAL PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

SILVERMAN KATTELMAN SPRINGGATE, CHTD.
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NRAP 26.1 DISCLOSURE

I hereby certify that the following are the persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that Judges of this Court may evaluate possible disqualifications or recusal.

1. Michael V. Kattelman, Esq.
2. Silverman Kattelman Springgate, Chtd.

There are no applicable disclosures regarding corporations S or stock ownership. There are no corporations or other entities with any ownership interest in Silverman Kattelman Springgate, Chtd.

The following attorneys or entities have appeared on behalf of
Petitioner:

1. Michael V. Kattelman, Esq.
2. Silverman Kattelman Springgate, Chtd.

Dated this 16 day of May 2022.

SILVERMAN KATTELMAN SPRINGGATE, CHTD.



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PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

Comes now Petitioner, Gina R. Dapra, through counsel, Silverman Kattelman Springgate, Chtd., and petitions this Court for a writ of mandamus or prohibition.

I. NRAP 17(a) STATEMENT

This matter concerns a discovery dispute in a bifurcated divorce action. It is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(10). However, the issue of the effect of a bifurcated decree of divorce upon discovery matters is one of statewide public importance of which the Supreme Court may decide to retain the issue for decision pursuant to NRAP 17(a)(12).

RELIEF SOUGHT

Petitioner seeks a writ of mandamus or prohibition compelling the Respondent district court to:

- (i) Vacate its order improperly quashing Petitioner's subpoena duces tecum by which Petitioner seeks information to finally resolve the bifurcated, jurisdictionally retained, and unresolved issue of the inventory and division of personal property in the parties' divorce action;
- (ii) Deny Real Party in Interests' motion to quash subpoena duces by

which Petitioner seeks information to finally resolve the bifurcated, jurisdictionally retained, and unresolved issue of the inventory and division of personal property in the parties' divorce action.

ISSUES PRESENTED

Whether the Respondent district court improperly granted Real Party in Interest's ("RPI's") motion to quash subpoena *duces tecum* by which Petitioner seeks discovery for the purpose of finally adjudicating the bifurcated, jurisdictionally retained, and unresolved issue of the inventory and division of personal property in the parties' divorce action.

Petitioner avers Respondent committed error in confusing (i) the division and assignment of the existing balance of a Greater Nevada Credit Union account to RPI by way of a bifurcated settlement with (ii) Petitioner's right to *obtain information* from the account to complete the inventory and division of personal property over which jurisdiction is retained for final adjudication.

FACTS

1. Petitioner filed her Complaint for Divorce (without Children) against Real Party in Interest on October 2, 2020. (Petitioner's Appendix, hereinafter "PA," PA001-PA004). Petitioner's Second Claim for Relief, II.A., seeks division and award to each party of the community property pursuant to law. PA0002.

2. The Order After Case Management Conference entered by the trial court

provides as to the discovery plan that, “Discovery shall close 45 days before trial.” *Order After Case Management Conference*, filed March 17, 2021, page 4, line 8. PA0008.

3. Following a settlement conference on April 30, 2021, a partial settlement agreement was reached between the parties resulting in the entry of the Court’s bifurcated *Findings of Fact, Conclusions of Law, and Decree of Divorce*, filed August 26, 2021. PA0010-PA0028. As set forth within the *Decree*, “The parties have not fully resolved their personal property disputes. The parties are obligated to cooperate to divide any remaining personal property with the Court retaining jurisdiction over the same.” See page 7, lines 21-25. PA0016.

4. Trial with respect to the personal property issues between the parties has not been set. Accordingly, discovery is not closed on these assets reserved to be divided equally between the parties. NRS 125.150(1)(b). It remains incumbent upon the Court to allow (or insist upon for trial purposes) a full inventory for the Court to satisfy the equal division of property, including personal property. *Id.* Petitioner did not and has not waived her discovery rights as to the personal property over which the Court retains jurisdiction to inventory and divide.

5. On December 8, 2021, Petitioner filed and served her Notice of

Subpoena Duces Tecum. PA0029-PA0037. It provides: “YOU WILL PLEASE TAKE NOTICE that pursuant to NRCP 45(c)(2)(A), Plaintiff, GINA R. DAPRA, through counsel, have issued and will serve the following subpoena duces tecum upon **GREATER NEVADA CREDIT UNION** a copy of which is attached hereto as Exhibit ‘1’. The inventory, location, and division of the entirety of the personal property remains for resolution, as set forth in the *Findings of Fact, Conclusions of Law, and Decree of Divorce*. As the inventory and division of all of the community personal property remains unresolved, and as Defendant wrote substantial checks and made significant cash resolves which are untraceable to the assets already divided between the parties, a review of these checks and cash withdrawals is necessary. Review of the bank statements received by the Petitioner highlighted that in determining what other items exist, Petitioner identified \$121,712 in large cash withdrawals and \$73,749 in recurring checks which were issued from RPI accounts over the years of marriage to unknown sources, with a total unaccounted of approximately \$195,461. PA0108-PA0109. This Subpoena Duces Tecum is necessary to account for community property that remains undivided between the parties.” PA0029. The subpoena requests “copies of all checks and check images” since the date of marriage. PA0037. Petitioner had previously received copies of bank statements from Great Nevada Credit Union, but those statements did not and do not identify the payee of specific large

and recurring checks written Real Party in Interest. PA0090 (last paragraph); PA0109, lines 1-13; PA0110-PA0112; PA0188-0189. Respondent was specifically informed that the subpoena is for the purpose of getting copies of checks not previously provided by Greater Nevada Credit Union to determine whether funds went to unaccounted for items of personal property. PA0090 (last paragraph); PA0109, lines 1-13; PA0110-PA0112; PA0188-0189.

6. On December 14, 2021, Real Party in Interest filed his Objection to Subpoena and Motion for Protective Order. PA0038-PA0105.

7. On December 29, 2021, Petitioner filed her Opposition to the Objection to Subpoena and Motion for Protective Order. PA0106-PA0167.

8. On January 3, 2022, Real Party in Interest filed his Reply in Support of Objection to Subpoena and Motion for Protective Order. PA0168-PA0175.

9. On January 14, 2022, the district court, District Judge Aimee Banales presiding, issued its Order Setting Hearing, directing “notice that the purpose of the hearing will be to address the singular issue of whether Ms. Dapra’s subpoena is appropriate under the Court’s reservation of jurisdiction to divide items of personal property consistent with the terms of settlement; or whether it is an impermissible attempt to engage in post-decree discovery without seeking leave of court. The subpoena shall be stayed un the interim until this matter is heard.” PA0177.

10. The hearing was held on March 21, 2022, with Respondent, Senior District Judge Linda M. Gardner, presiding as a result of the emergency absence of District Judge Banales. PA0182-PA0183.

11. Respondent issued its *Order After Hearing* on March 22, 2022, granting Real Party in Interest's Motion for Protective Order from the subpoena *duces tecum* on the grounds "that the parties' GNCU account was adjudicated at settlement and is not within the purview of unresolved personal property." PA0205-PA0206.

12. Respondent's *Order* confuses (i) the division and assignment of the existing balance of the GNCU account to RPI by way of settlement with (ii) Petitioner's right to *obtain information* from the account to complete the inventory and division of personal property over which jurisdiction is retained. PA0188-PA0189; PA0205-PA0206. There is no dispute that the *Decree of Divorce* awards to RPI the existing balance in *Greater Nevada Credit Union* account no. 6842 as of April 30, 2021. PA0023. The same was recognized by Petitioner at the hearing. PA0188-PA0189. The question is whether funds from the account were spent on personal property items that have not been disclosed by RPI and currently exist as community property, whether in the form of cryptocurrency, gold, silver, rare automobiles and parts (of which RPI has been collecting), etc. PA0188-PA0189; PA0025. A review of the *statements* received by Petitioner highlighted that in

determining what other personal property items exist, Petitioner identified \$121,712 in cash withdrawals and large checks being issued from RPI accounts during the marriage to unknown sources. RPI was asked - and given opportunities via an easy route -- to explain the \$121,712 in large cash withdrawals through March 25, 2021 (before the date of divorce and while the community was legally intact) and provide Petitioner with an authorization to obtain *copies of the checks* to confirm those items did not go to personal property items. PA0106-PA0167; PA0109. The burden and expense of getting the checks upon receipt of the authorization would be Petitioner's to bear, so RPI would not be prejudiced in Petitioner securing and reviewing the check copies as obtained from an authorization. PA0111. Several of the larger monetary transactions are not traceable into accounts disclosed during the divorce proceedings. PA0111-0112. If the funds went to personal property items, the same needs to be disclosed, identified, explained, and then divided.

13. By confusing the award of the existing GNCU asset balance through settlement with the *information* held by the account relating to issues reserved for future adjudication, Respondent's *Oder After Hearing* improperly restricts Petitioner's right to discovery to obtain all information necessary to (i) final an inventory of the personal property acquired during marriage and (ii) fully adjudicate a division of that personal property, the subject matter of which was

explicitly and by agreement of the parties bifurcated for separate adjudication from the *Decree*, and jurisdictionally retained for future adjudication by the *Decree*.

V. POINTS AND LEGAL AUTHORITIES

A. **Writ Relief is the Appropriate Means to Challenge an Improperly Issued Order for Protection Which Intends to Quash a *Subpoena Duces Tecum* on Issues Pending Adjudication.**

This court has original jurisdiction to issue writs of mandamus or prohibition. Nev. Const. art. 6, § 4(1). A writ of mandamus may be issued to compel the district court to vacate or modify a discovery order. *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. Adv. Rep. 26, 467 P.3d 1 (2020).

The *Findings of Fact, Conclusions of Law, and Decree of Divorce* identifies that the “parties have not fully resolved their personal property disputes” and specifically retains the jurisdiction of the Court to adjudicate the inventory and division of their personal property. PA0016, lines 21-25. The division of personal property is bifurcated by the *Decree of Divorce* and no final judgment as to the division of personal property has been issued by the Court. The complaint remains open as to the division of personal property. The trial date has not been set given the outstanding discovery to be complete. Discovery is ordered to close 45 days before trial. PA0008. Respondent could not and did not find that discovery is closed as to the bifurcated issue, but made error in confusing (i) the division and

assignment of the existing balance of the GNCU account to RPI by way of the April 2021 settlement with (ii) Petitioner's right to *obtain information* from the account to complete the inventory and division of personal property over which jurisdiction is retained, and which remains an issue for trial or further settlement proceedings.

Respondent's *Order After Hearing* is not subject to appeal because it is not a final judgment. *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000).

Discovery continues on the matter, as no final order divides all personal property; the Decree reserves jurisdiction for final orders to be entered upon trial or settlement of the property division now at issue. PA0016, lines 21-25. A final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court. *Id.* Where the parties have stipulated to a bifurcated trial, the Court may enter an interlocutory decree of divorce on matters resolved by the parties and court orders, but leave specific issues for a separate trial. *Ellett v. Ellett*, 94 Nev. 34, 573 P.2d 1179 (1978).

While bifurcated proceedings are not favored, they are upheld where entered into upon the agreement of the parties. *Smith v. Smith*, 100 Nev. 610, 691 P.2d 428 (1984).

As there has been no settlement, trial, or final judgment with respect to the division of all of the parties' personal property, Petitioner has no other plain,

speedy, or adequate remedy at law except beyond relief by a writ of mandamus or prohibition. A final judgment is one that disposes of the issues presented in the case and leaves nothing for the future consideration of the court. *Id.*; *Alper v. Posin*, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961); *Magee et al. v. Whitacre et al.*, 60 Nev. 202, 96 P.2d 201 (1939); *Perkins v. Sierra Nevada S.M. Co.*, 10 Nev. 405 (1876). An order bifurcating trial is not appealable and a writ is proper to arrest the proceedings of the inferior tribunal acting in excess of its jurisdiction. *Gojack v. Second Judicial District Court*, 95 Nev. 443, 596 p.2d 237 (1979). Here, Respondent's unsupported denial of Petitioner's discovery rights under NRCP 26 causes Petitioner to be unable to complete discovery to properly adjudicate the issue specifically reserved for adjudication by the district court's *Decree*.

A writ is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *International Game Tech. v. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; *Smith v. District Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

B. A Bifurcated *Decree of Divorce* Does Not Terminate Discovery as to the Bifurcated Issues Remaining for Adjudication.

In a divorce proceeding, any party may obtain discovery into any matter opened by the complaint for divorce by one or more methods provided in the Nevada Rules of Civil Procedure 26 through 36, commencing 30 days after service of the summons and complaint. NRCP 16.2(e)(1). The trial court is charged with setting forth the deadline for discovery to close within its Case Management Conference Order. NRCP 16.2(j)(4)(A)(v). Here, the Court's Order provides that discovery shall close on any unresolved and unadjudicated issues 45 days before trial. PA0008. As trial on the bifurcated personal property issues of which no judgment has been entered has not been set, discovery remains ongoing.

Respondent fails to cite or include any legal authorities within the *Order* at issue to support the position that the division and assignment of an account to one party via a bifurcated Decree of Divorce precludes a moving party from obtaining information *from* that account necessary to the adjudication of the other bifurcated property issues. PA0205-PA0206; PA0180-PA0203.

At hearing, Petitioner informed Respondent:

- a. The discovery at issue pertains to the personal property issues not yet resolved by trial or settlement. PA0184-PA0185.
- b. The discovery at issue is relevant to ensuring all personal property has

been accounted for in “this age if crypto currency, gold, silver, firearms and things of other value,” valuable automobile parts, gems, etc. PA0184-PA0185. RPI received several historic vehicles in the divorce and a division of firearms remains at issue. PA0014-PA0016.

c. The Nevada Supreme Court in both *Smith v. Smith* and *Lee v. GNLV* direct that the complaint remains open and discovery proceeds through trial or settlement on a bifurcated issue in a divorce proceedings. PA0185-PA0186.

d. That Respondent was incorrect in stating the entire case settled in April 2021, as and because jurisdiction was reserved for the resolution of the division of personal property which need be accounted for in its entirety. The issue has not yet been resolved by trial or settlement. PA0206.

C. Respondent’s Order Fails to Meet the Requirements of NRCP 26(b) in Granting the Protective Order.

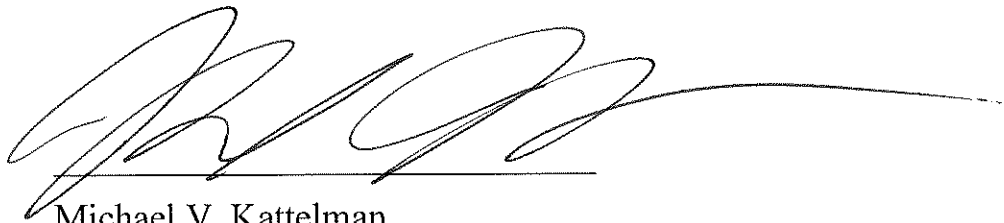
NRCP 26(b) provides that a party may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be

admissible in evidence to be discoverable. *Id.* Here, the Respondent did not conclude the checks and copies sought were (i) privileged; (ii) irrelevant; (iii) unproportional; (iv) burdensome to RPI; (v) costly to RPI; or (vi) in any way impactful of RPI's resources. PA0205-PA0206. Accordingly, Respondent's analysis fails to support the granting of a protection order. NRCP 26(b), NRCP 26(c); *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 224-29, 467 P.3d 1, 5-8 (Ct. App. 2020). The Respondent's outright conclusion that the division of an account by way of Court order precludes discovery into the information held in the account's records about other property which remains to be adjudicated, and the failure to conduct a good-cause analysis, results in an arbitrary exercise of discretion. *Id.* A writ of this Court should now issue thereon.

Dated this 16 day of May, 2022.

Respectfully submitted,

SILVERMAN KATTELMAN SPRINGGATE, CHTD.

A large, stylized handwritten signature in black ink, appearing to read 'Michael V. Kattelman', is written over a horizontal line.

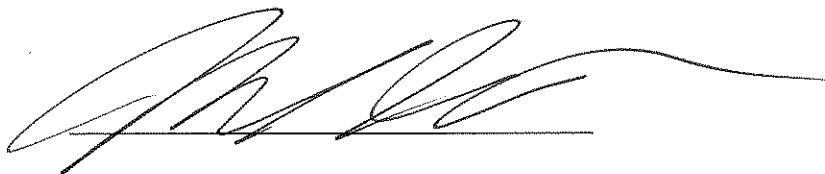
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VERIFICATION

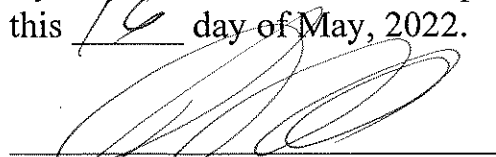
STATE OF NEVADA)
 : SS
COUNTY OF WASHOE)

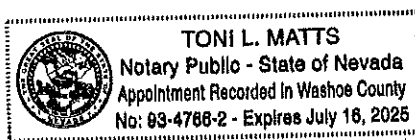
COMES NOW, Michael V. Kattelman, being first duly sworn under penalty of perjury and deposes and says:

1. I am Petitioner, Gina R. Dapra's counsel herein.
2. I make this Verification of my own personal knowledge, information and belief.
3. I have read the foregoing Petition for Writ of Mandamus or Prohibition and know the contents thereof, and the same is true of my own knowledge, except those matters therein stated upon information and belief, and as to those matters I believe them to be true.
4. I do hereby swear under penalty of perjury that the assertions set forth in this Verification are true.



Subscribed and sworn to before me
By Michael V. Kattelman, Esq.
this 16 day of May, 2022.



Notary Public in and for
said county and state

ATTORNEY'S CERTIFICATE

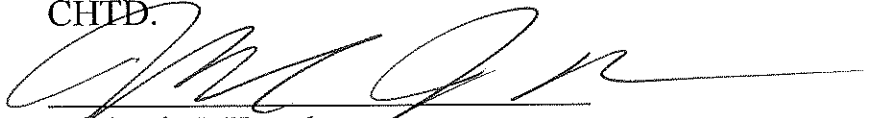
1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman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

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 2833 words.

3. Finally, I hereby certify that I have read this appellate brief, 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 brief complies with all applicable Nevada Rules of Appellate Procedure. 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 16 day of May 2022.

SILVERMAN KATTELMAN SPRINGGATE,
CHTD.



Michael V. Kattelman

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Silverman Kattelman Springgate, Chtd, and on the date set forth below, I caused to be served a true copy of the foregoing Petition for Writ of Mandamus or Prohibition on the party(ies) identified below by:

 X Placing an original or true copy thereof in a sealed envelope,
postage prepaid for collection and mailing in the United States
Mail at Reno, Nevada

 Personal Delivery

 Electronically, using Supreme Court's ECF system

Addressed to:

Second Judicial District Court
State of Nevada, Family Division
Department 16
Senior Judge Linda Gardner
75 Court Street (mailing)
One South Sierra St.
Reno, NV 89501

Clerk of the Court
Second Judicial District Court
75 Court Street
Reno, NV 89501

Law Offices of Andriea Aden
Andriea Aden, Esq.
243 Stewart Street
Reno, Nevada 89501

Dated this 14 day of May, 2022.

