

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,

Appellants/Cross-Respondents,
v.

MATT KLABACKA, as Distribution
Trustee of the Eric L. Nelson Nevada
Trust dated May 30, 2001 and ERIC
NELSON,

Respondents/Cross-Appellant,
and
ERIC NELSON,
Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court
Supreme Ct. No.: 8024
District Ct. No: D-09-411537-D

**RESPONDENT ERIC NELSON'S OPPOSITION TO MOTION FOR STAY
OF ENFORCEMENT OF JUDGMENT PENDING APPEAL**

On July 27, 2023, the district court entered an order awarding Eric Nelson attorney's fee of \$155,528.15 against Lynita Individually, and against the LSN Trust. *See* Exhibit "1." Eric was also awarded costs of \$13,580.06 against Lynita, Individually, and the LSN Trust. On August 25, 2024, the LSN Trust and Lynita, filed a Notice of Appeal. Regarding Eric, Lynita and the LSN Trust appealed the order awarding Eric attorney's fees and cost. Post the filing of the appeal, there has been motion practice work before the district court.

On September 18, 2023, the ELN Trust filed its “Motion for Order Allowing Examination of Judgement Debtor, Lynita S. Nelson, Individually, and in her Capacity as Investment Trustee of the Lytina S. Nelson Nevada Trust dated May 30, 2001. *See* Exhibit “2.” On October 2, 2023, the LSN Trust filed its “Opposition to Motion For Order Allowing Examination of Judgement Debtor Lynita S. Nelson, Individually, and in Her Capacity as the Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001, and Countermotion to Stay Execution of Judgement Pursuant to NRAP 8.” *See* Exhibit “3.” On October 9, 2023, the ELN Trust filed its Reply to the LSN Trust’s Opposition. *See* Exhibit “4.”

As discussed in the ELN Trust’s Reply, Lynita did not file an opposition to the ELN Trust’s underlying Motion for a Judgment Debtor Exam, nor did she file a countermotion to stay the matter. *See* Exhibit “4” at page 3 lines 7 through 10. Although Lynita was on notice as of October 9, 2023, that she had not sought a stay, Lynita has not cured this defect and sought a stay in the district court.

**LYNITA DID NOT REQUEST A STAY FROM THE DISTRICT COURT
AS REQUIRED ACCORDING TO NRAP 8(a)(1).**

NRAP 8(a)(1) required Lynita, Individually, to first move for a stay in the district court. The Countermotion filed on October 9, 2023, was filed solely on behalf of the LSN Trust. *See* Exhibit 3 at page 2 lines 5 through 8. Moreover, the Declaration was filed on behalf of the LST Trust.

The Declaration filed in support of the LSN Trust's Opposition and Countermotion states:

Matthew D. Whittaker, being first duly sworn, deposes and says:

That I have been recently retained by Lynita Nelson on behalf of the Lynita S. Nelson Nevada Trust dated May 30, 2001. I have read the OPPOSITION TO MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001, AND COUNTERMOTION TO STAY EXECUTION OF JUDGMENT PURSUANT TO NRAP 8, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

The countermotion filed by the LSN Trust was confusing, mixing arguments made solely on behalf of the LSN Trust, and then at times meandering into arguments made on behalf of Lynita, despite it being clear the countermotion was filed solely on behalf of the LSN Trust. In part, it was because of this, that the countermotion for stay was denied by the district court and they were allowed to file a motion for reconsideration to cure these defects, which they never did.

As Lynita has not requested a stay before the district court, Lynita's request before this court should be summarily denied.

LYNTIA HAS NOT COMPLIED WITH NRAP 8(2).

NRAP(2) allows a party to seek a stay before this court if (1) there is a showing that moving for a stay before the district court would be impracticable; or

(2) state that the motion having been made, the district court denied the motion or failed to afford the relief requested. *See* NRAP (2)(A)(i) and (ii). Here, as discussed *infra*, Lynita did not move the district court to stay the proceedings, only the LSN Trust made a convoluted motion. Lynita in her pending Motion to Stay did not address whether the filing of a motion before the district court would be impracticable. Thus, Lynita's requested relief should be denied.

THE FACTORS OUTLINED IN NRAP 8 DO NOT SUPPORT LYNITA'S REQUEST.

(1) *Whether the object of the appeal or writ petition will be defeated if the stay is denied;*

The object of the appeal will not be defeated if a stay is denied. Lynita argues that the appeal will be defeated if a stay is denied because the district court granted a motion for equitable offset which was grounded in well-settled law and the law of the case. Beyond this, Lynita does not provide any information as to how the appeal would be defeated if she is required to pay the monies due and owing to the ELN Trust. The failure of Lynita to address this should be construed as an admission that there is no concern by Lynita that the object of the appeal would be defeated.

(2) *Whether the appellant/petitioner will suffer irreparable or serious injury if stay is denied;*

“Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay.” *Mikohn Gaming Corp v. McCrea*, 120 Nev 258, 89 P.3d 36, 40 (2004). The

LSN Trust and Lynita will not suffer irreparable or serious injury if the stay is denied. It is well settled in Nevada that the potential loss of money is not enough to show irreparable harm. *See e.g. Hanson v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982, 987 (2000).

In part, it appears that the LSN Trust and/or Lynita have argued that they will be harmed if the judgment debtor exam proceeds forward. Although this concern is not raised in the body of the motion, these arguments are raised in the declaration attached to their underlying motion. *See* pages 12 through 13.

As discussed in the order entered on January 23, 2024, Lynita individually did not oppose ELN's Motion to Conduct a Judgment Debtor Exam. *See* Exhibit "5." The order specifically finds that the LSN Trust filed an opposition to the ELN's Trust motion for a judgment debtor exam. Since Lynita never filed an opposition to the ELN Trust's motion, Lynita cannot now before this court claim she will be irreparably harmed if the judgment debtor exam proceeds forward.

It appears that the LSN Trust and/or Lynita are asserting that the judgment debtor exam runs afoul of NRCP 16.2 and NRCP 16.21(c). *See NRAP 27(e) Certificate page 12 lines 21 through 28.* As Lynita never filed an opposition, she should not be allowed now to raise this issue.

The LSN Trust should also be barred from raising this issue. In the opposition filed by the LSN Trust on October 9, 2023, this argument was never

raised by the LSN Trust. Thus, the LSN Trust should not be allowed to raise this issue before this court.

The Judgement Debtor Exam was ordered by the district court according to NRS 21.270 which specifically allows a creditor to examine a judgment debtor. This includes Lynita and the LSN Trust being required to appear and provide documents and answer questions under oath to determine the true condition of the property or business affairs of Lynita and the LSN Trust. *See Hagerman v. Tong Lee*, 12 Nev. 331 (1877).

The assertions by Lynita and the LSN Trust regarding the judgment debtor exam being conducted on March 20, 2024, have never been raised until the instant motion before this court. According to EDCR 5.501, Lynita and the LSN Trust have an affirmative duty to resolve any issues with counsel before filing a motion. Although the NRAPs do not have the same requirements as EDCR 5.501, before making their claims before this court, Lynita and the LSN Trust should have first attempted to resolve their concerns with the ELN Trust.

(3) *Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted;*

Eric and the ELN Trust will suffer irreparable harm if the stay is granted. Lynita and the LSN Trust have not thoroughly discussed this issue in their motion. The only argument made is “If Mr. Nelson prevails on his appeal, the district court has already ordered equitable offset that satisfied Mr. Nelson’s judgments against

Ms. Nelson.” *See* motion page 10 lines 7 through 10. There is no discussion as to whether the ELN Trust would be harmed, or what further harm would incur.

The ELN Trust has judgments against Lynita in her capacity for \$1,748,279.06. These judgments cannot be used to offset any monies Eric may owe to Lynita. *See Klabacka v. Nelson*, 133 Nev. 164, 177, 394 P.3d 940, 950 (2017).

Lynita also has a judgment against her for \$563,293.71 for attorney’s fees and costs incurred by her prior counsel for litigating the matter post-remand. *See* Exhibit “6.”

If a stay is granted, it will be unlikely that the ELN Trust or Eric will be able to collect against Lynita as she already has a judgment that is subject to attachment.

(4) *Whether appellant/petitioner is likely to prevail on the merits of the in the appeal or writ petition.*

Neither Lynita nor the LSN Trust will prevail on the merits of its appeal. Lynita and the LSN Trust in part, are appealing the order awarding the ELN Trust and Eric attorney’s fees according to NRS 18.010(2)(b) and EDCR 5.219(a) and (b). The district court did not abuse its discretion when awarding attorney’s fees.

The decision to award attorneys’ fees under NRS 18.010(2)(b) is “within the sound discretion of the district court.” *Kahn v. Morse & Mowbray*, 117 P.3d. 227, 238 (2005). A district court’s award of attorney fees will not be disturbed on appeal absent a ***manifest abuse of discretion***. *Nelson v. Peckham Plaza Partnerships*, 110

Nev. 23, 26, 886 P.2d 1138, 1139-40 (1994). The district court is required by statute to “liberally construe the provisions of NRS 18.010 in favoring an award of attorney’s fees in all appropriate situations and to punish and deter frivolous or vexatious claims and defenses. *See* NRS 18.010(2)(b).

To determine whether the defenses were maintained without reasonable grounds, the Court must inquire whether those defenses were eventually supported by any credible evidence. *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995-95, 860 P.2d 720, 724 (1993). Bad faith includes conduct “aimed at unwarranted delay or disrespectful of truth and accuracy.” *Id.*

NRS 18.010(2) was amended in 2003 by the Nevada Legislature. After the amendment, NRS 18.010(2)(b) provides that attorneys' fees may be awarded to a prevailing party: Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or **maintained** without reasonable ground or to harass the prevailing party. [Emphasis Added]

While the rule in Nevada used to be that “if an action is not frivolous when it is initiated, then the fact that it later becomes frivolous will not support an award of fees” (*Duff v. Foster*, 110 Nev. 1306, 1309, 885 P.2d 589, 591 (1994)), the rule was changed by the 2003 amendment. NRS 18.010(2)(b).

The order entered by the district court awarding Eric and the ELN Trust attorneys' fees contained extensive findings. Specifically, the ELN Trust filed a motion for summary judgment before the commencement of the trial, which although denied, placed the LSN Trust and Lynita on notice they could not meet their legal burden. Despite the district court providing the LSN Trust and Lynita with a framework as to the deficiencies of their evidence, and how to cure these deficiencies, they proceeded to trial with essentially the same evidence, causing a judgment to be granted in favor of the ELN Trust and Eric, under NRCP 52(c). Thus, the district court did not err in awarding the ELN Trust and Eric attorney's fees for defending against Lynita and the LSN Trust's decision to maintain its positions without reasonable grounds to do so.

**LYNITA AND THE LSN TRUST SHOULD BE REQUIRED TO POST A
SUPERSUADES BOND.**

NRAP8(a)(2)(E) provides the court may condition the relief on a party filing a bond. In *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005) this Court clarified its prior opinion of *McCulloch v. Jeankins*,¹ which allowed for alternate security (other than a supersedeas bond), only in “unusual circumstances.” As to when a supersedes bond can be waived and/or alternate security substituted, this Court

¹ *McCulloch v. Jeankins*, 99 Nev. 122, 659 P.2d 302 (1983).

adopted a five-factor analysis outlined in *United States Seventh Circuit Court in Dillion v. City of Chicago*.²

In the pending motion before this Court, the LSN Trust and Lynita have not addressed the factors as required. Thus, Eric cannot formulate a meaningful response. It should be noted, in the Countermotion filed before the district court, the LSN Trust stated:

Ms. Nelson will post a supersedes bond pursuant to NRCP 62 should the court grant the stay of execution. *See* Exhibit “3” at page 5 lines 21-22.

Now, however the LSN Trust and/or Lynita is asking this Court to waive the requirement to post a supersedes bond, and issue that was never presented in the district court.

For these reasons, this Court should deny the Appellant’s Motion for Stay.

DATED this 27th day of February, 2024.

HAUSER FAMILY LAW

By:/s/ Michelle A. Hauser
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Eric Nelson, individually

² *United States Seventh Circuit Court in Dillon v. City of Chicago*, 866 F.2d 902 (7th Cir. 1988).

CERTIFICATE OF SERVICE

Pursuant to NRAP 14(b), the undersigned hereby certifies that on February 27, 2024, a copy of **RESPONDENT ERIC NELSON'S OPPOSITION TO EMERGENCY MOTION UNDER NRAP 27(e) TO STAY PROCEEDINGS**, was filed with the Clerk of the Court through the Court's E-Flex electronic filing system with notice sent electronically by the Court to the following:

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EXHIBIT “1”

TO

OPPOSITION TO

MOTION FOR STAY

OF ENFORCEMENT

OF JUDGMENT

PENDING APPEAL

ORDR
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**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

Case No.: D-09-411537-D
Dept.: O

LYNITA SUE NELSON, MATT KLABACKA, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated May
30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**ORDER AFTER HEARING GRANTING ERIC NELSON'S, IN HIS PERSONAL
CAPACITY, REQUEST FOR ATTORNEY'S FEES AND VERIFIED MEMORANDUM
COSTS**

THIS MATTER having come before the District Court for oral argument on May 30, 2023
and then for a Decision on its Chambers Calendar on July 24, 2023, on Eric Nelson, in his
Individual Capacity, "Eric Nelson's Verified Memorandum of Costs" filed on February 6, 2023,

1 and “Eric Nelson’s, In His Individual Capacity, Motion for Attorney’s Fees.” filed on February
2 21, 2023.

3 **FINDINGS OF FACT**

4 1. Eric (“Eric”) and Lynita (“Lynita”) Nelson were married on September 17, 1983.

5 2. In 1993, Eric and Lynita entered into a valid separate property agreement (the
6 “SPA”) which transmuted their community property into each Parties’ respective separate
7 property.
8

9 3. The property equally divided by the SPA contemporaneously funded each Parties’
10 1993 separate property trust. Eric’s Separate Property Trust is hereinafter referred to as “Eric’s
11 SPT,” and Lynita’s Separate Property Trust is hereinafter referred to as “Lynita’s SPT.”

12 4. In 2001, Eric and Lynita converted each of their respective 1993 separate property
13 trusts into valid self-settled spendthrift trusts – respectively, the Eric L. Nelson Nevada Trust
14 (“ELN Trust”) and the Lynita S. Nelson Nevada Trust (“LSN Trust”) (collectively, the “Trusts”).

15 5. On May 6, 2009, Eric filed his Complaint for Divorce in the instant matter.

16 6. On June 24, 2011, Eric filed a motion seeking to join the ELN Trust as a necessary
17 party in the instant matter.
18

19 7. On June 3, 2013, over five years after the original Complaint for Divorce was filed,
20 a Decree of Divorce (“Decree”) was entered after multiple trials and hearings on the matter.
21 After the entry of the Decree, the ELN Trust filed a Notice of Appeal to the Nevada Supreme
22 Court on October 20, 2014.
23

24 8. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to
25 the pending issues before this Court, the Nevada Supreme Court held:

26 Both the [separate property agreement] and the parties’ respective SSSTs
27 were signed, written agreements. We hold the written instruments at
28 issue here are all valid and the terms therein are unambiguous.

...

1 We conclude the [separate property agreement] is a valid transmutation
2 agreement, and the plain terms of the [separate property agreement]
3 indicate it remains in effect during divorce.

4 . . .

5 We conclude the [separate property agreement] is a valid transmutation
6 agreement and the parties' community property was converted into
7 separate property.

8 . . .

9 [W]e conclude the [separate property agreement] was valid, and the
10 parties' property was validly separate into their respective separate
11 property trusts.

12 . . .

13 [W]e hold that the SSSTs are valid and the trusts were funded with
14 separate property stemming from a valid separate property agreement.

15 . . .

16 The parties contest whether the assets within the SSSTs remained
17 separate property or whether, because of the many transfers of property
18 between the trusts, the assets reverted back to community property. In a
19 divorce involving trust assets, the district court must trace those assets to
20 determine whether any community property exists within the trusts – as
21 discussed below, the parties' respective separate property in the SSSTs
22 would be afforded the statutory protections against court ordered
23 distribution, while any community property would be subject to the
24 district court's equal distributions. We conclude the district court did not
25 trace the assets in question. . . . Without proper tracing, the district court
26 is left with only the parties' testimony regarding the characterization of
27 the property, which carries no weight.

28 . . .

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.

. . .

Having concluded the district court had subject- matter jurisdiction, the
written instrument at issue are valid, and the district court must trace trust
assets to determine whether any community property exists within the
trusts.

9. The language in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d
270, 274-75 (2021) likewise reiterates the holding in *Klabacka v. Nelson*, 133 Nev. 164 (2017).
Specifically, in *Nelson v. Eighth Jud. Dist. Ct.*, the Nevada Supreme Court specifically stated:

1 we also recognized assets within the trusts **may** contain community property and remanded the
2 case so that the district court could conduct proper tracing of the trust assets to determine whether
3 any community property was transferred into or commingled within the trusts. *Id.* at 274.
4 [Emphasis Added]

5 10. Lynita had the burden of proving by clear and convincing evidence that separate
6 property had been transmuted into community property. This legal issue was disputed by Lynita
7 for a minimum of two years post-remand.
8

9 11. Lynita continued for the next two years litigating the date the tracing period should
10 commence. Lynita's request was repeatedly denied by this Court. After the Court denied Lynita's
11 request, Lynita filed a Petition for A Writ of Mandamus or Prohibition with the Nevada Supreme
12 Court on the issue of the applicable period for tracing between the two Trusts, which was denied.
13

14 12. After this matter was remanded by the Nevada Supreme Court, the ELN Trust
15 immediately requested confirmation that both Eric and Lynita would retain individual experts.
16 Lynita refused to retain her own expert and demanded Bertsch be appointed as a Special Matter.
17

18 13. On August 22, 2017, Lynita argued that this Court "should re-appoint Mr. Bertsch
19 to update the prior forensic accounting through the present date. *See* Lynita's Reply to Opposition
20 to Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the
21 Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property
22 Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial
23 Information, and for Sale of Property for Payment of Attorneys' Fees and Costs, filed with this
24 Court on August 22, 2017, at p. 11:27-28.
25

26 14. Eric disputed any transmutation occurred; he was ordered to financially assist
27 Lynita's efforts to meet her burden that could not be met based upon the history of the Parties'
28 trusts by paying one-half of Mr. Bertsch's fees. This Court later removed Mr. Bertsch on October

1 27, 2020 (after it became clear that he was not serving in a neutral capacity, and was not meeting
2 the deadlines imposed by the Court), significant costs were incurred by Eric and the ELN Trust.

3 15. The ELN Trust filed a Motion for Burden of Proof at Trial on May 18, 2020, to
4 clarify the scope of the issues pending before this Court and the Parties' burdens of proof.

5 16. On October 27, 2020, the Court issued its Decision and Order wherein it reiterated
6 the direction provided by the Nevada Supreme Court, and held that the burden of proof by the
7 party asserting that separate property was transmuted into community property lies with the
8 moving party and that Lynita had the burden of proof to establish that transmutation occurred.

9 17. Lynita filed a Writ to the Nevada Supreme Court, which was denied.

10 18. Subsequent to Mr. Bertsch's removal from the case, Lynita utilized Anthem
11 Forensics ("Anthem"), to serve as her expert witnesses in this matter. Even though Anthem's
12 principal – Joe Leauanae – had testified at his deposition on July 27, 2010, that "we've completed
13 most of the forensic accounting analysis," no expert report was produced by Lynita until April
14 30, 2021.

15 19. The ELN Trust filed a motion seeking summary judgment on June 21, 2021. As
16 argued in this motion, Anthem's report did not complete a tracing analysis and was unable to
17 identify any specific assets that had been transmuted. The report also stated Lynita denied her
18 expert access to documents that were available to her such as the Parties' joint tax returns for tax
19 years 2001, 2002, and 2003.

20 20. Judge Sullivan's October 2021 order was further discussed at the hearing conducted
21 on October 25, 2021. Judge Sullivan specifically stated:

22
23
24
25 My intent on that summary judgment thing was to show, from what I've
26 seen, looking at that light, I was seeing transfers from trust to trust. I wasn't
27 seeing anything that was showing that there was a community property
28 interest or her claim of that basis on that report. See October 25, 2021
hearing at 54:14.

1 21. After hearing arguments on October 12, 2021, this Court issued its order indicating
2 that Lynita had not met her burden (“MSJ Order”).

3 22. This Court’s findings in the MSJ Order also provided Lynita with a framework
4 regarding what Lynita was required to prove at the trial in this matter.

5 23. The October 12, 2021, “Decision” regarding the ELN Trust “Motion for Summary
6 Judgment, or Alternatively, Motion to Strike and/or Motion to Extend Deadline to File Rebuttal
7 Expert Report and to Continue Trial.” Although in this Decision, the District Court denied the
8 ELN Trust Motion for Summary Judgement, it identified concerns regarding the Defendant’s
9 expert report as it relates to Defendant(s) claim there was a transmutation of separate property to
10 community property. The District Court provided a ten-page analysis of the issues with the state
11 of Defendant(s) evidence.
12

13 24. On page 19 of the “Decision,” the District Court stated,
14

15 Therefore, this Court presumes that the following assets held by the SSSTs
16 are characterized as the separate property of their respective trusts: (a) the
17 Russel Road Property; (b) Lindell Office; (c) High Country Inn; (d) Tierra
18 del Sol; (e) Tropicana Avenue Property; (f) Flamingo Property; (g) Brian
19 Head Cabin; (h) Wyoming Horse Racing, Inc.; (i) the rental income
20 attributed to Silver Slipper RV Park; and (j) the rental income attributable
21 to the real property in Greenville, Mississippi.

22 25. Lynita elected to proceed forward to trial and essentially presented the same
23 evidence outlined in Anthem’s Report that the Court already indicated would not meet her burden
24 of proof.

25 26. Rather than completing a tracing analysis, or withdrawing her claims that were not
26 supported by the evidence in this case, Lynita elected to engage in costly litigation filing the
27 following motions:
28

1. October 26, 2021, Defendant, Lynita S. Nelson’s, Motion to Correct,
Clarify, Alter or Amend, and/or Reconsider Decision on Motion for
Summary Judgement Entered on October 21, 2021.

1 2. December 21, 2021, Reply in Support of Motion to Correct, Clarify,
2 Alter or Amend, and/or Reconsider Decision on Motion for Summary
3 Judgement Entered on October 21, 2021 and Opposition to
4 Countermotion in Limine.

5 3. January 7, 2022, Defendant, Lynita S. Nelson's, Status Report for
6 January 11, 2022.

7 4. January 13, 2022, Defendant, Lynita S. Nelson's, Motion Regarding
8 Management of the Lindell Property.

9 5. February 1, 2022, Defendant, Lynita S. Nelson's Emergency Motion
10 for an Order to Show Cause to Issue Against Eric L. Nelson and Matt
11 Klabacka for Egregious Violation of JPI in Selling Ten Banone
12 Properties, for Funds from Sale to be Deposited into Blocked Account
13 and Frozen, for Sanctions of Contempt and Attorney's Fees, and For
14 Related Relief.

15 27. The trial commenced on March 28, 2022, with Lynita having five years post-
16 remand to gather evidence regarding her transmutation claims.

17 28. After Lynita and the LSN Trust rested her case-in-chief, this Court issued an order
18 on June 29, 2022, granting ELN Trust/Eric's Motion for Judgment on Partial Findings pursuant
19 to NRCP 52(c) after hearing evidence over 8 days of testimony.

20 29. After the Court issued its order on June 29, 2022 ("June 29, 2022 Order"),
21 Lynita/the LSN Trust continued to file motions.

22 30. On July 4, 2022, Lynita/the LSN Trust filed a Motion to Correct, Clarify, Alter or
23 Amend, and/or Reconsider Decision and Order entered June 29, 2022, which this Court denied in
24 an Order entered on January 31, 2023.

25 31. In the Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision and
26 Order entered June 29, 2022, Lynita/the LSN Trust requested the Court find that tax returns from
27 2001 and 2002 be deemed community property.

28 32. This Court found that the issue "was merely mentioned during trial," and Lynita/the
LSN Trust's own expert had failed to conduct any tracing investigation regarding this issue. *See*

1 Decision Denying Defendant's Motion to Correct, Clarify, Alter or Amend, and/or Reconsider
2 Decision and Order entered June 29, 2022.

3 33. On January 31, 2023, the District Court entered its "Decision Regarding the
4 Characterization of Management Fees" and "Decision Denying Plaintiff's Motion to Correct,
5 Clarify, Alter, or Amend; and Denying Defendant's Motion to Correct, Clarify, and/or
6 Reconsider."

7
8 34. The District Court's "Decision and Order" entered on June 29, 2022, and January
9 31, 2023, was entered after nine days of an evidentiary hearing. The District Court heard evidence
10 on March 28, 2022, March 29, 2022, March 30, 2022, March 31, 2022, April 1, 2022, April 6,
11 2022, April 7, 2022, April 27, 2022, and April 28, 2022.

12 35. Pursuant to the Court's "Decision and Order" entered on June 29, 2022, the Court
13 determined there was no community property and there was never a transmutation of community
14 property in the properties and businesses known as Wyoming Downs, Cleopatra, Hacienda Casita,
15 Evanston Horse Racing Inc, and Wyoming Downs Rodeo, Russell Road, Lindell Office, High
16 Country Inn, Tierra Del Sol, Tropicana Avenue Property, Flamingo Property, Brian Head Cabin,
17 and Harbor Hills.

18
19 36. The "Decision and Order" was entered on June 29, 2022, with the filing of a Notice
20 of Entry of Order.

21
22 37. On January 31, 2023, a Notice of Entry of Order was filed with the District Court
23 regarding "Decision Regarding the Characterization of Management Fees." In this Decision, the
24 District Court found that Defendant(s) had not met their legal burden by clear and convincing
25 evidence regarding Management Fees for Silver Slipper and Lindell. The Court further found the
26 Defendant(s) did not show by clear and convincing evidence that the management fees were Eric
27 Nelson's personal income.
28

1 Based upon the findings of the District Court, the Court ordered the management fees for
2 Silver Slipper and Lindell Professional Plaza were deemed to be the separate property of the ELN
3 Trust.

4 38. The entry of the “Decision and Order” on June 29, 2022, and the “Decision
5 Regarding the Characterization of Management Fees” entered on January 31, 2023, all issues
6 presented at the evidentiary hearing conducted over ten days were resolved.

7
8 39. On February 6, 2023, Eric filed his “Eric Nelson’s Verified Memorandum of
9 Costs.” On February 21, 2023, Eric filed his “Eric Nelson’s, In his Individual Capacity, Motion
10 for Attorney’s Fees.”

11 40. On March 22, 2023, Defendant filed her “Defendant/Cross-Defendant, Lynita S.
12 Nelson's, Opposition to ELN Trusts and Eric Nelsons Motions for Attorney’s Fees” and “Appendix
13 of Exhibits in Support of Defendant/Cross-Defendant, Lynita S. Nelson's, Opposition to ELN
14 Trusts and Eric Nelsons Motions for Attorney’s Fees.

15
16 41. On April 28, 2023, The ELN Trust and Eric Nelson, in his Individual Capacity
17 filed, “Joint Reply to "Defendant/Cross-Defendant Lynita S. Nelson's Opposition to ELN Trust's
18 and Eric Nelson's Motion for Attorney's Fees."

19 42. On February 9, 2023, Defendant filed her “Defendant, Lynita S. Nelson’s, Motion
20 to Retax.”

21
22 43. On February 24, 2023, Eric Nelson filed “Eric Nelson’s Opposition to Defendant,
23 Lynita S. Nelson’s Motion to Retax.” On February 27, 2023, the ELN Trust filed its “Joinder to
24 Eric Nelson’s Opposition to Defendant, Lynita S. Nelson’s Motion to Retax.”

25 44. The Verified Memorandum of Costs filed by Eric requested the Court award Eric
26 costs in the amount of \$13,507.06. Pursuant to NRS 18.005, Eric attached the relevant
27 documentation supporting his request for cost including invoices and cancel checks for the cost
28

1 incurred.

2 45. The District Court considered all papers and pleadings filed and the oral arguments
3 of counsel.

4 46. If any of these findings of fact are more appropriately designated Conclusions of
5 law, they shall be so deemed.

6 **CONCLUSIONS OF LAW**

7
8 1. This Court has subject matter jurisdiction and personal jurisdiction over the parties
9 to this action.

10 2. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to
11 the pending issues before this Court, the Nevada Supreme Court held:

12 Both the [separate property agreement] and the parties' respective SSSTs
13 were signed, written agreements. We hold the written instruments at
14 issue here are all valid and the terms therein are unambiguous.

15 . . .

16 We conclude the [separate property agreement] is a valid transmutation
17 agreement, and the plain terms of the [separate property agreement]
18 indicate it remains in effect during divorce.

19 . . .

20 We conclude the [separate property agreement] is a valid transmutation
21 agreement and the parties' community property was converted into
22 separate property.

23 . . .

24 [W]e conclude the [separate property agreement] was valid, and the
25 parties' property was validly separate into their respective separate
26 property trusts.

27 . . .

28 [W]e hold that the SSSTs are valid and the trusts were funded with
separate property stemming from a valid separate property agreement.

. . .

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 assets to

1 determine whether any community property exists within the trusts – as
2 discussed below, the parties’ respective separate property in the SSSTs
3 would be afforded the statutory protections against court ordered
4 distribution, while any community property would be subject to the
5 district court’s equal distributions. We conclude the district court did not
6 trace the assets in question.⁷ . . . Without proper tracing, the district court
7 is left with only the parties’ testimony regarding the characterization of
8 the property, which carries no weight.

9 . . .

10 Separate property contained within the spendthrift trusts is not subject to
11 attachment or execution, as discussed below. However, if community
12 property exists within the trusts, the district court shall make an equal
13 distribution of that community property.

14 . . .

15 Having concluded the district court had subject- matter jurisdiction, the
16 written instrument at issue are valid, and the district court must trace trust
17 assets to determine whether any community property exists within the
18 trusts.

19 3. NRS 18.110 (4) provides:

20 Within 3 days after service of a copy of the memorandum, the adverse party
21 may move the court, upon 2 days’ notice, to retax and settle the costs, notice
22 of which motion shall be filed and served on the prevailing party claiming
23 costs. Upon the hearing of the motion the court or judge shall settle the
24 costs.

25 4. Pursuant to NRS 18.110(4), LSN had until February 9, 2023, to file a
26 memorandum/motion to retax and settle the costs. The “Motion To Retax” filed on February 9,
27 2023, was filed by Lynita in her individual capacity.

28 5. As the “Decision and Order” entered on June 29, 2022, and the “Decision
Regarding the Characterization of Management Fees” entered on January 31, 2023, noted, the ELN
Trust was represented by Counsel at the evidentiary hearing in this manner. The LSN Trust was
represented by the same counsel as the Defendant, Lynita Nelson, in her Individual Capacity.

6. As the LSN Trust was represented by Counsel, the LSN Trust should have filed a
timely motion to retax as required by NRS 18.110 (4). The LSN Trust did not file a motion to
retax as required by NRS 18.110 (4).

1 7. EDCR 5.503 (b) provides: failure of an opposing party to serve and file a written
2 opposition may be construed as an admission that the motion is meritorious and a consent that it
3 be granted. Although a “Verified Memorandum of Cost” as required pursuant to NRS18.110 (4)
4 may not be a “motion,” the language in NRS 18.110(4) requires a party to respond by filing a
5 motion to retax. LSN’s failure to file a motion to retax acts similarly to a party failing to oppose a
6 motion.
7

8 Thus, pursuant to EDCR 5.503(b) LSN’s failure to file a motion to retax is an admission
9 that Eric’s “Verified Memorandum of Costs” is meritorious and consent to the granting of the
10 “Verified Memorandum of Costs.”

11 8. As LSN did not file a timely motion/memorandum to retax, LSN has waived any
12 objections to the costs requested by the Eric.

13 9. Based upon the Nevada Supreme Court’s decision (and consistent with *Sprenger v.*
14 *Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 286 (1994), *Lake v. Bender*, 18 Nev. 361, (1884);
15 *Carlson v. McCall*, 70 Nev. 437 (1954); *Zahringer v. Zahringer*, 76 Nev. 21 (1960); *Kelly v. Kelly*,
16 86 Nev. 301 (1970); *Todkill v Todkill*, 88 Nev. 231 (1972); *Burdick v. Pope*, 90 Nev. 28 (1974);
17 *Cord v. Cord*, 98 Nev. 210 (1982); *Forrest v. Forrest*, 99 Nev. 602 (1983); *Pryor v. Pryor*, 103
18 Nev. 148, at 150, 734 P.2d 718 (1987); and *Verheyden v. Verheyden*, 104 Nev. 342 (1988)) it was
19 clear that Lynita/the LSN Trust had the burden to prove by clear and convincing evidence that
20 separate property had been transmuted into community property.
21

22 10. NRCF 54(d)(2) provides in relevant part:
23

24 **(2) Attorney Fees.**

25 **(A) Claim to Be by Motion.**

26 A claim for attorney fees must be made by motion. The court may decide a
27 postjudgment motion for attorney fees despite the existence of a pending
28 appeal from the underlying final judgment.

29 **(B) Timing and Contents of the Motion.**

30 Unless a statute or a court order provides otherwise, the motion must:

31 (i) be filed no later than 21 days after written notice of entry of judgment is

1 served;

2 (ii) specify the judgment and the statute, rule, or other grounds entitling the
3 movant to the award;

4 (iii) state the amount sought or provide a fair estimate of it;

5 (iv) disclose, if the court so orders, the nonprivileged financial terms of any
6 agreement about fees for the services for which the claim is made; and

7 (v) be supported by:

8 (a) counsel's affidavit swearing that the fees were actually and
9 necessarily incurred and were reasonable;

10 (b) documentation concerning the amount of fees claimed; and

11 (c) points and authorities addressing the appropriate factors to be
12 considered by the court in deciding the motion.

13 11. EDCR 5.219 provides:

14 Sanctions may be imposed against a party, counsel, or other person, after
15 notice and an opportunity to be heard, for unexcused intentional or negligent
16 conduct including but not limited to:

17 (a) Presenting a position that is obviously frivolous, unnecessary, or
18 unwarranted;

19 (b) Multiplying the proceedings in a case so as to increase costs
20 unreasonably and vexatiously;

21 (c) Failing to prepare for a proceeding;

22 (d) Failing to appear for a proceeding;

23 (e) Failing or refusing to comply with these rules; or

24 (f) Failing or refusing to comply with any order or directive of the court.

25 12. A party may seek attorneys' fees when allowed by an agreement, rule, or statute.

26 See NRS 18.010 (governing awards of attorney fees); *RTTC Communications, LLC v. The*
27 *Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (noting that "a court may not award
28 attorney fees absent authority under a specific rule or statute").

13 13. A court may additionally grant an award of attorneys' fees to a prevailing party
14 when (a) the prevailing party's recovery is not more than \$20,000; or (b) when the court finds that
15 the claim, cross-claim, third party complaint, or defense was brought by the opposing party without
16 a reasonable ground or to harass the prevailing party. NRS 18.010(2)(b)

17 14. NRS 18.010(2)(b) provides that:

18 The Court shall liberally construe the provisions of this paragraph in favor
19 of awarding attorney's fees in all appropriate situations. It is the intent of
20 the Legislature that the court award attorney's fees pursuant to this
21 paragraph . . . in all appropriate situations to punish for and deter frivolous

1 or vexatious claims and defenses because such claims and defenses
2 overburden limited judicial resources, hinder the timely resolution of
3 meritorious claims and increase the costs of engaging in business and
4 providing professional services to the public.

5 15. Black's Law Dictionary 1145 (7th ed. 1999) defines "prevailing party" as a "[a]
6 party in whose favor a judgment is rendered, regardless of the amount of damages awarded. A
7 party can be a "prevailing party," under the general attorney fee statute, it if succeeds on any
8 significant issue in litigation which achieves some of the benefit it sought in bringing suit. N.R.S.
9 18.010, subd. 2(a). *Women's Federal Sav. and Loan Ass'n of Cleveland v. Nevada Nat. Bank*, 1985,
10 623 F.Supp. 469.

11 16. "[t]he Nevada Supreme Court has concluded that a prevailing party on a motion
12 may be entitled to an award of attorney's fees." *Love v. Love*, 114 Nev 527, (Nev. 1998).

13 17. In *Romano v. Romano*, the Nevada Court upheld an award of attorney's fees
14 awarded in a post-divorce motion hearing. *Romano v. Romano*, 138 Nev. Adv. Op. 1, 501 P.3d
15 980, 986 (2022).

16 18. A court may not award attorney fees or costs unless authorized to do so by a statute,
17 rule, or contract. *U.S. Design & Const. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 462, 50
18 P.3d 170, 173 (2002).

19 19. "In determining the amount of fees to award, the [district] court is not limited to
20 one specific approach; its analysis may begin with any method rationally designed to calculate a
21 reasonable amount, so long as the requested amount is reviewed in light of the" *Brunzell* factors.
22 Logan v. Abe, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (citing *Haley v. Eighth Judicial*
23 *Dist. court*, 128 Nev. 171, 273 P.3d 855, 860 (internal quotations omitted)). The Supreme Court
24 in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969) gave
25 guidance on how a court is to determine the reasonable value of the work performed by a movant's
26 counsel. *Brunzell* directs courts to consider the following when determining a reasonable amount
27
28

1 of attorney fees to award: (1) the qualities of the advocate: his ability, his training, education,
2 experience, professional standing and skill; (2) the character of the work to be done: its difficulty,
3 its intricacy, its importance, time and skill required, the responsibility imposed and the prominence
4 and character of the parties where they affect the importance of the litigation; (3) the work actually
5 performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the
6 attorney was successful and what benefits were derived. *Id.* (internal quotation marks omitted). In
7 addition to the Brunzell factors, the court must evaluate the disparity of income between parties to
8 family law matters. *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). The
9 court has been unable to make this consideration as Plaintiff has refused to participate in these
10 proceedings. The court can follow any rational method so long as it applies the *Brunzell* factors; it
11 is not confined to authorizing an award of attorney fees exclusively from billing records or hourly
12 statements. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Shuette v. Beazer*
13 *Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (approving awards based on
14 a “lodestar” amount, as well as a contingency fee arrangement). Although the court must
15 “expressly analyze each factor”, no single factor should be given undue weight. *Logan v. Abe*, 131
16 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33. After
17 determining the reasonable value of an attorney’s services analyzing the factors established in
18 *Brunzell*, the court must then provide sufficient reasoning and findings concerning those factors in
19 its order. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005).
20 The court’s decision must be supported by “substantial evidence”. *Logan v. Abe*, 131 Nev. 260,
21 266, 350 P.3d 1139, 1143 (2015). Substantial evidence supporting a request for fees must be
22 presented to the court by “affidavits, unsworn declarations under penalty of perjury, depositions,
23 answers to interrogatories, [or] admissions on file”. The Supreme Court has confirmed that the
24 Brunzell factors must be presented by affidavit or other competent evidence. *Miller v. Wilfong*,
25
26
27
28

1 121 Nev. 619, 624, 119 P.3d 727, 730 (2005); *Katz v. Incline Vill. Gen. Improvement Dist.*, 452
2 P.3d 411 (Nev. 2019), cert. denied, 141 S. Ct. 253, 208 L. Ed. 2d 26 (2020) (citing *Herbst v.*
3 *Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762, 765 (1989) (holding that an
4 affidavit documenting the hours of work performed, the length of litigation, and the number of
5 volumes of appendices on appeal was sufficient evidence to enable the court to make a reasonable
6 determination of attorney fees, even in the absence of a detailed billing statement); *Cooke v. Gove*,
7 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding an award of attorney fees based on, among
8 other evidence, two depositions from attorneys testifying about the value of the services
9 rendered)). An award that is not based on such substantial evidence is subject to reversal, as the
10 court will have no factual basis on which to base its decision. *Beattie v. Thomas*, 99 Nev. 579, 668
11 P.2d 268 (1983).

12
13 20. In *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274- 75
14 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit through its
15 trustee.
16

17 21. A District Court may award attorney fees to a prevailing party when it finds that
18 the opposing party brought or maintained a claim without reasonable grounds. NRS 18.010(2)(b).
19 The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's
20 fees in all appropriate situations. See Nev. Rev. Stat. Ann. § 18.010.
21

22 For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible
23 evidence to support it. *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684,
24 687-88 (1995).

25 22. While the District Court has discretion to award attorney fees under NRS
26 18.010(2)(b), there must be evidence supporting the District Court's finding that the claim or
27 defense was unreasonable or brought to harass." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470,
28

1 493, 215 P.3d 709, 726 (2009), holding modified by *Garcia v. Prudential Ins. Co. of Am.*, 129
2 Nev. 15, 293 P.3d 869 (2013). A claim is frivolous or groundless if there is no credible evidence
3 to support it. *Capanna v. Orth*, 134 Nev. Adv. Op. 108, 432 P.3d 726, 734 (2018).

4 23. NRS 18.020 provides: Costs must be allowed of course to the prevailing party
5 against any adverse party against whom judgment is rendered, in the following cases:
6

7 1. In an action for the recovery of real property or a possessory right
8 thereto.

9 2. In an action to recover the possession of personal property, where
10 the value of the property amounts to more than \$2,500. The value must be
11 determined by the jury, court or master by whom the action is tried.

12 3. In an action for the recovery of money or damages, where the
13 plaintiff seeks to recover more than \$2,500.

14 4. In a special proceeding, except a special proceeding conducted
15 pursuant to NRS 306.040.

16 5. In an action which involves the title or boundaries of real estate, or
17 the legality of any tax, impost, assessment, toll or municipal fine, including
18 the costs accrued in the action if originally commenced in a Justice Court.
(Emphasis Added).

19 24. A party prevails in an action “if it succeeds on any significant issue in litigation,”
20 it need not prevail on all claims to be the prevailing party. *Las Vegas Metro. Police Dep’t v.*
21 *Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (emphasis omitted) (quoting
22 *Valley Elec. Assn v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)).
23

24 25. On remand the issues that the Court adjudicated fall squarely within NRS 18.020.
25 Specifically, Lynita/LSN were seeking: (1) “recovery of real property or a possessory right
26 thereto,” see NRS 18.020(1), (2) personal property in excess of \$2,500, see NRS 18.020(2), (3)
27 recovery of money or damages in excess of \$2,500. See NRS 18.020(3).
28

29 26. Although this case “was initiated as a divorce proceeding under NRS Chapter 125,”
30 the Court must still apply the Nevada Rules of Civil Procedure, Titles 12 and 13, etc. as it relates
31 to matters outside of the scope of NRS 3.223 and NRS 125.

32 ...

1 27. An argument has been presented by Lynita that the LSN Trust was not a party to
2 the action and therefore, cannot be responsible for any of the attorney's fees. This argument belies
3 the record before the District Court. The LSN Trust was represented by Counsel at the Evidentiary
4 Hearing as provided for in the District Court's orders entered on June 29, 2022, and January 31,
5 2023. The procedural postulate of this case makes it clear the LSN Trust was a party to the action
6 and was represented at the evidentiary hearing.
7

8 Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274- 75
9 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit through its
10 trustee. In her Writ to the Nevada Supreme Court, Lynita argued both trusts are parties to this
11 underlying action. This was also denoted in the Nevada Supreme Court's decision resolving the
12 Writ. The Nevada Supreme Court specifically wrote: Lynita argues both trusts are parties to this
13 action, and moreover, the trusts may be parties to an action under EDCR 5.518.
14

15 28. Eric filed a timely motion pursuant to NRCP 54(d)(2).

16 29. In reviewing the *Klabacka v. Nelson*, 133 Nev. 164 (2017) the Nevada Supreme
17 Court never stated the District Court had to conduct a tracing of the assets as argued by the
18 Defendant(s). To the contrary, the Nevada Supreme Court found the SSST's were legally valid
19 instruments, and thus, the property contained with the ELN Trust was funded with Eric's separate
20 property. The Supreme Court further found the assets were the separate property of each respective
21 trust thereby upholding the validity of the SSST's, and if any party wanted to allege there was
22 community property in either trust, a proper tracing under *Schmanski v. Schmanski*, 115 Nev. 247,
23 984 P.2d 752 (1999) needed to be conducted.
24

25 Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274-75
26 (2021) the Supreme Court reiterated the holding in *Klabacka v. Nelson*, 133 Nev. 164 (2017).
27 Specifically, in *Nelson v. Eighth Jud. Dist. Ct.*, the Nevada Supreme Court specifically stated:
28

1 we also recognized assets within the trusts **may** contain community property and remanded the
2 case so that the district court could conduct proper tracing of the trust assets to determine whether
3 any community property was transferred into or commingled within the trusts. Id. at 274.
4 [Emphasis Added]

5 Nothing in the Supreme Court's decision required the District Court to conduct tracing of
6 the assets. This was the decision of either of the parties to make based upon the information they
7 received during the discovery process.
8

9 30. Eric is entitled to an award of attorney's fees as the LSN Trust and Lynita pursuant
10 to EDCR 5.219 (a) and (b). After the District Court entered its order in October 2021, providing
11 a detailed explanation as why The LSN Trust and Lynita had not met its legal burden, the LSN
12 Trust and Lynita unilaterally decided to continue to litigate the matter, knowing it could not make
13 its legal burden.
14

15 Moreover, as discussed in the pleadings filed before the District Court, at the original trial
16 conducted in 2012, the ELN Trust proffered expert testimony that "no evidence that any
17 community property was transferred to [Eric's Trust] or that any community property was
18 commingled with the assets of [Eric's Trust]. See *Klabacka v. Nelson*.

19 By the time of the evidentiary hearing/trial in 2022, the Defendant's had possession of the
20 ELN Trust expert report which was presented during the 2012 trial for a decade. In fact, on the
21 first day of the evidentiary hearing, the Defendant(s) called the 2012 expert as their first witness
22 in its case in chief.
23

24 In reviewing the testimony from the Defendant(s) first witness, Dan Gerety, Mr. Gerety
25 testified he provided all of the source documentation to support his 2012 report during the trial
26 2012, by handing Mr. Dickerson a thumb drive with all of the documents used to complete his
27 report.
28

1 31. In reviewing the *Klabacka v. Nelson*, 133 Nev. 164 (2017) the Nevada Supreme
2 Court never stated the District Court had to conduct a tracing of the assets as argued by the
3 Defendant(s).

4 32. Despite the 2012 expert report and this Court's decision of October 2021, the
5 Defendant(s) proceeded to trial, knowing they could not meet their legal burden. This was in
6 violation of EDCR 5.219 (a) and (b).
7

8 33. Pursuant to NRS 18.010(2)(b) allows the District Court to award attorney's fees
9 when it finds the claim, counterclaim, cross-claim or third-party complaint or defense of the
10 opposing party was brought or maintained without reasonable ground or to harass the prevailing
11 party. The court shall liberally construe the provisions of this paragraph in favor of awarding
12 attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award
13 attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada
14 Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious
15 claims and defenses because such claims and defenses overburden limited judicial resources,
16 hinder the timely resolution of meritorious claims and increase the costs of engaging in business
17 and providing professional services to the public.
18

19 As discussed *infra*, Defendant(s) undertook a claim to an evidentiary hearing/trial knowing
20 they could not prevail. For the same reasons Eric is entitled to fees pursuant to EDCR 5.219 (a)
21 and (b), Eric is entitled to fees pursuant to NRS NRS 18.010(2)(b).
22

23 34. The Defendant(s) have alleged Eric is not entitled to an award of fees as he did not
24 file a General Financial Disclosure Form. In reviewing the procedural postulate of this case, it is
25 unclear how the filing of a GFDF would assist the Court in resolving the pending issue before the
26 District Court, as neither party owns property or has been "employed." The fact the parties own
27 no assets or have no income has been the heart of the litigation for over a decade. Thus, any GFDF
28

1 filed by Eric would show he owns no property and has no income.

2 35. Eric's counsel filed its *Brunzell* Affidavit as part of its underlying motion for
3 attorney's fees filed on February 21, 2023. Thus, analysis required under *Brunzell v. Golden Gate*
4 *Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983);
5 *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), *Wright v. Osburn*, 114 Nev.
6 1367, 1370, 970 P.2d 1071, 1073 (1998), and EDCR 5.219 have been satisfied.

7
8 36. The fees charged by Eric's counsel in this matter were necessary to the matter and
9 are reasonable in the marketplace, given the experience and qualities of the advocates in the
10 amount granted by the court.

11 37. Eric's counsel provided the court with the following sworn testimony and other
12 evidence in its "*Brunzell* Declaration of Michael P. Carman, Esq" and "Declaration of Counsel
13 Pursuant to *Brunzell* in Support of Plaintiff's Motion for Attorney's Fees" filed by Michelle A.
14 Hauser.
15

16 **A. The Qualities of the Advocate.**

17 Mr. Carman and Ms. Hauser are well respected within the legal community. Both counsels
18 were members of the Nevada Family Law Section Executive Council. Both attended the Family
19 Law Trial Advocacy Institution in May 2008. Both counsels are part of the Family Law Bench
20 Bar committee. Both counsels have taught Continuing Legal Education. Both counsels have
21 served in other committees. Both counsels have been licensed for more than 20 years.
22

23 **B. Character of Work Performed.**

24 The character of the work of Ms. Hauser and Mr. Carman performed was important and
25 necessary. The underlying facts of this case presented an issue regarding whether the ELN Trust
26 held any community property.
27

28 . . .

C. Work Performed

The work performed in this matter included, but is not limited to:

1. Preparing for and attend a multi-day evidentiary hearing;
2. Preparing for and conduct depositions of Anthem Forensics;
3. Preparing for and conducting the deposition of Lynita Nelson;
4. Preparing a Pre-Trial Memorandum;
5. Reviewing and responding to multiple motions filed by Lynita and the LSN Trust;
6. Attending the deposition of ELN Trust's expert witness; and
7. Addressing discovery issues.

The detailed billing invoices provided by Eric outline a significant amount of work which was necessary given the nature of the issues before the Court. Moreover, it was noted by the District Court, Ms. Hauser and Mr. Carman did not "double bill" their hourly rate when they appeared jointly at hearings, etc. Oftentimes, Eric was only billed for one counsel's hourly rate, or a discounted rate was applied when both counsel appeared.

D. Result

The quality and outcome of Mr. Carman's and Ms. Hauser's representation is reflected in this Court's June 29, 2022 Order and January 31, 2023 Order as Eric was a prevailing party.

38. The District Court also reviewed the Billing Statements provided by Eric and found the billing statements to be fair and reasonable. The District Court also found the billing rates given the experience of Counsel to be fair and reasonable.

39. Pursuant to the October 2021 "Decision," Lynita and the LSN Trust were on notice they were unable to meet their burden of proof as discussed in the District Court's Findings. Despite knowing this well in advance of the evidentiary hearing, the LSN Trust and Lynita elected to proceed forward with the evidentiary hearing.

1 40. Ultimately, after hearing all of the evidence, Lynita and the LSN Trust did not
2 prevail on any of the issues heard during the evidentiary hearing. As indicated above, this was
3 known to Lynita and the LSN Trust well in advance of the evidentiary hearing, and yet, they
4 elected to proceed to trial.

5 41. Eric was the prevailing party, as defined by *Las Vegas Metro. Police Dep't v.*
6 *Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (emphasis omitted) (quoting
7 *Valley Elec. Assn v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)).

8 42. The decision to proceed to a trial/evidentiary, knowing you cannot meet your
9 evidentiary basis is the definition of a frivolous or a groundless claim.

10 43. The costs incurred by Eric were fair and reasonable.

11 **BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF**
12 **LAW,**

13 **IT IS HEREBY ORDERED** that Eric Nelson's Motion for Attorneys' Fees is GRANTED
14 in the total amount of \$155,528.15.

15 **IT IS FURTHER ORDERED** a judgment shall be entered in favor of Eric Nelson and
16 against the LSN Trust in the amount of \$155,528.15 as and for an award of attorney's fees, which
17 fees represent the fees billed since the October 21, 2021 Order. The amount of \$155,528.15 is
18 reduced to judgment, shall collect interest at the legal rate, and shall be collectible by any lawful
19 means.

20 **IT IS FURTHER ORDERED** a judgment shall be entered in favor of Eric Nelson and
21 against Lynita Nelson, individually in the amount of \$155,528.15 as and for an award of attorney's
22 fees. The amount of \$155,528.15 is reduced to judgment, shall collect interest at the legal rate,
23 and shall be collectible by any lawful means.

24 ...
25
26
27
28

1 **IT IS HEREBY ORDERED** that Eric Nelson's Memorandum of Costs is GRANTED in
2 the total amount of \$13,570.06.

3 **IT IS FURTHER ORDERED** a judgment shall be entered in favor of Eric Nelson and
4 against the LSN Trust in the amount of \$13,570.06 as and for an award of costs. The amount of
5 \$13,570.06 is reduced to judgment, shall collect interest at the legal rate, and shall be collectible
6 by any lawful means.
7

8 **IT IS FURTHER ORDERED** a judgment shall be entered in favor of Eric Nelson and
9 against Lynita Nelson, individually in the amount of \$13,570.06 as and for an award of costs. The
10 amount of \$13,570.06 is reduced to judgment, shall collect interest at the legal rate, and shall be
11 collectible by any lawful means.
12

Dated this 27th day of July, 2023



8A1 B8F BE23 5A4B
Regina M. McConnell
District Court Judge

LS

13
14
15
16
17
18 RESPECTFULLY SUBMITTED BY:
19 **HAUSER FAMILY LAW**

20 /s/ MICHELLE A. HAUSER

21 Michelle A. Hauser, Esq.
22 Nevada State Bar No. 7738
23 1489 West Warm Springs Road, Suite 110
24 Henderson, Nevada 89014
25 702-867-8313
26 Email: michelle@hauserfamilylaw.com
27 Attorneys for Plaintiff
28 Eric Nelson

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eric L Nelson, Plaintiff

CASE NO: D-09-411537-D

7 vs.

DEPT. NO. Department O

8 Lynita Nelson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/27/2023

15 Jeffrey Luszeck

jluszeck@sdfnvlaw.com

16 Sherry Curtin-Keast

skeast@sdfnvlaw.com

17 "James J. Jimmerson, Esq." .

jjj@jimmersonlawfirm.com

18 "Rhonda K. Forsberg, Esq." .

Rforsberg@forsberg-law.com

19 Kimberly Stewart .

ks@jimmersonlawfirm.com

20 Larry Bertsch .

larry@llbcpa.com

21 Mandi Weiss- Legal Assistant .

Mweiss@Forsberg-law.com

22 Nick Miller .

nick@llbcpa.com

23 Shahana Polselli .

sp@jimmersonlawfirm.com

24 Shari Aidukas .

shari@dickersonlawgroup.com

25 The Dickerson Karacsonyi Law Group .

info@thedklawgroup.com

26
27
28

1	Natalie Karacsonyi	Natalie@thedklawgroup.com
2	Josef Karacsonyi	Josef@thedklawgroup.com
3	Info info email	info@thedklawgroup.com
4	Stacy Howlett	stacy@michaelsonlaw.com
5	Josef Karacsonyi	Josef@thedklawgroup.com
6	Curtis Rawlins	curtis@pecoslawgroup.com
7	Lynita Nelson	sunnysidelscn@gmail.com
8	Grayson Moulton	grayson@shumwayvan.com
9	Edwardo Martinez	edwardo@thedklawgroup.com
10	Efiling Email	efiling@jimmersonlawfirm.com
11	Matthew Whittaker	matthew@michaelsonlaw.com
12	Dorie Williams	dorie@thedklawgroup.com
13	Michelle Ekanger	michelle@michaelsonlaw.com
14	Amber Pinnecker	amber@michaelsonlaw.com
15	Michelle Hauser	michelle@hauserfamilylaw.com
16	Susan Pinjuv	susan@hauserfamilylaw.com
17	Efile Notice	efilenotification@hauserfamilylaw.com
18		
19		
20		
21		
22		
23		
24	James Jimmerson	415 South Sixth St., Ste 100
25		Las Vegas, NV, 89101
26		
27		
28		

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 7/28/2023

EXHIBIT “2”

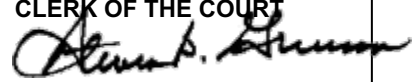
TO

OPPOSITION TO

MOTION FOR STAY

OF ENFORCEMENT

OF JUDGMENT



Jeffrey P. Luszeck, Esq. (#9619)
jluszeck@sdfnlaw.com
SOLOMON DWIGGINS FREER & STEADMAN, LTD.
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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D
Dept.: O

Oral Argument Requested?

☒ Yes ☐ No

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO
THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE
THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14
DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A
WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14
DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE
REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT
HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

**MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT
DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER
CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON
NEVADA TRUST DATED MAY 30, 2001**

Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001 (the “ELN Trust” or “Judgment Creditor”), hereby moves this Court pursuant to NRS 21.270 for an order requiring, Lynita S. Nelson, individually, and in her capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”) (hereinafter collectively referred to as “Judgment Debtor”), to appear before the Judgment Creditor’s attorneys, to bring documents, and to answer questions under oath regarding (1) the full nature, extent, and location of Judgment Debtor’s property and assets, and (2) the other topics for examination set forth below. This Motion is based on the following Memorandum of Points and Authorities, the Declaration of Jeffrey P. Luszeck, Esq. and the papers and pleadings on file.

DATED this 18th day of September, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

By: _____

Jeffrey P. Luszeck, Esq. (#09619)

jluszeck@sdfnvlaw.com

9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
Trust dated May 30, 2001*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BRIEF STATEMENT OF FACTS

1. On June 8, 2023, this Court entered an *Order Granting in Part Motion for Immediate Payment of Funds Belonging to ELN Trust* in favor of the ELN Trust against Judgment Debtor, in the amount of \$493,216.00. See, June 8, 2023 Order, a true and correct copy of which is attached hereto as **Exhibit 1**.

2. On July 27, 2023, this Court entered an *Order After Hearing Denying Lynita S. Nelson's Motion to Retax Costs; and Order Awarding ELN Trust's Memorandum of Costs* in favor of the ELN Trust against Judgment Debtor, in the amount of \$62,935.08. See, July 27, 2023 Order, a true and correct copy of which is attached hereto as **Exhibit 2**.

3. On July 27, 2023, this Court entered an *Order After Hearing Granting ELN Trust's Request for an Award of Attorney's Fees* in favor of the ELN Trust against Judgment Debtor, in the amount of \$239,772.30. See, July 27, 2023 Order, a true and correct copy of which is attached hereto as **Exhibit 3**.

4. On August 2, 2023, this Court entered an *Order After Hearing Granting ELN Trust's Request for an Award of Attorney's Fees* in favor of the ELN Trust against Judgment Debtor, in the amount of \$952,355.86 (BANONE, LLC: \$435,260 in principal and \$177,601.10 in interest; Lindell Office: \$147,667.90 in principal and \$60,253.58; Repayment of \$324,000.00: \$132,203.13 in interest). See, August 2, 2023 Order, a true and correct copy of which is attached hereto as **Exhibit 4**.

1 5. To date, the Judgement Debtor has not paid any amount towards
2 pursuant to the Orders entered Court.
3

4 **II. LEGAL ARGUMENT**

5 The Court should grant Judgment Creditor's Motion because it has a judgment
6 against the Judgment Debtor, which remains unpaid. NRS 21.270 allows for the
7 examination of a judgment debtor:
8

- 9 1. A judgment creditor, at any time after the judgment is entered, is
10 entitled to an order from the judge of the court requiring the
11 judgment debtor to appear and answer upon oath or affirmation
12 concerning his or her property, before:
 - 12 (a) The judge or a master appointed by the judge; or
 - 13 (b) An attorney representing the judgment creditor, at a time
14 and place specified in the order. No judgment debtor may
15 be required to appear outside the county in which the
16 judgment debtor resides.
- 15 2. If the judgment debtor is required to appear before any person
16 other than a judge or master:
 - 17 (a) The oath or affirmation of the judgment debtor must be
18 administered by a notary public; and
 - 19 (b) The proceedings must be transcribed by a court reporter or
20 recorded electronically. The transcript or recording must
21 be preserved for 2 years.
- 20 3. A judgment debtor who is regularly served with an order issued
21 pursuant to this section, and who fails to appear at the time and
22 place specified in the order, may be punished for contempt by the
23 judge issuing the order.

23 During a judgment debtor examination, the Judgment Creditor is entitled to ascertain
24 the true condition of the property or business affairs of the judgment debtor.
25
26 *Hagerman v. Tong Lee*, 12 Nev. 331 (1877). At such time, the judge or master may
27
28

1 order any non-exempt property of the judgment debtor be applied toward satisfaction
2 of the judgment. NRS 21.320.

3
4 Here, Judgment Creditor has a judgment against Lynita and/or the LSN Trust
5 that has not been satisfied. Therefore, pursuant to NRS 21.270, Judgment Creditor
6 is entitled to an order requiring Lynita, individually, and in her capacity as Investment
7 Trustee of the LSN Trust, to appear before the Judgment Creditor's attorneys, to bring
8 documents, and to answer questions under oath regarding (1) the full nature, extent,
9 value, and location of property and assets belonging to the Judgment Debtor, and (2)
10 the other topics for examination as follows:
11

- 12 1. All statements for any and all financial, money, and investment
13 accounts in the name of Judgment Debtor for the period of
14 January 1, 2020 to Present.
- 15 2. A copy of Judgment Debtor's credit card billings/statements
16 from January 1, 2020 to Present.
- 17 3. All state and federal income tax and any other tax returns filed
18 by or on behalf of Judgment Debtor for tax years 2020 to present
19 including all exhibits, schedules, forms, and other documents
20 referenced in or attached to those tax returns.
- 21 4. A copy of all documents, including, but not limited to paystubs
22 or other pay records, evidencing all compensation that Judgment
23 Debtor received from January 1, 2020 to Present.
- 24 5. A copy of all documents evidencing any distributions that Lynita
25 received from the LSN Trust from January 1, 2020 to Present.
- 26 6. All deeds, records, or other documents that identify or relate to
27 real property in which Judgment Debtor currently owns or claims
28 an interest, or did own or claim an interest from January 1, 2020
to present.
7. All documents that identify or relate to any items of personal
property in which Judgment Debtor currently owns or claims and

1 interest with a value (or, if the actual value is unknown, with a
2 believed value) of \$500 or more.

- 3 8. All documents, items, and things that refer in any way, directly
4 or indirectly, to any and all accounts (business or personal bank,
5 checking savings, credit union, or retirement) in which Judgment
6 Debtor has an interest, including monthly statements (or other
7 period if issued less frequently) from January 1, 2020 to present.
- 8 9. All documents that identify any interest Judgment Debtor has or
9 claims in any business, partnership (limited or general),
10 corporation, limited liability company, limited liability
11 partnership, or joint venture (collectively the "Business
12 Records"), including, but not limited to:
- 13 a. Southern Magnolia LLC; and
 - 14 b. Pink Peonies, LLC.
- 15 10. The Articles of Organization, Operating Agreement, list of
16 members, list of managers, meeting minutes, resolutions, and
17 other documentary evidence of corporate/LLC action taken since
18 the formation of each entity identified in para. 9, to the extent not
19 previously produced.
- 20 11. All documents that identify assets held by (1) the LSN Trust, and
21 (2) any other trust in which Judgment Debtor claims or has an
22 interest as a beneficiary or otherwise.

23 Due to significant concerns that Judgment Debtor, has not, and will not
24 produce, any and all documents evidencing the past and current financial status of
25 herself, individually, or the LSN Trust, the above-requested financial documentation
26 is warranted and necessary to conduct a meaningful judgment debtor examination.

27 **III. CONCLUSION**

28 Based upon the foregoing, the ELN Trust respectfully requests that this Court
grant the instant Motion for Order Allowing Examination of Judgment Debtor, Lynita

1 S. Nelson, individually, and in her capacity as Investment Trustee of the Lynita S.
2 Nelson Nevada Trust dated May 30, 2001, in its entirety.

3
4 DATED this 18th day of September, 2023.

5 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

6 /s/ Jeffrey P. Luszeck

7 By:

8 Jeffrey P. Luszeck, Esq. (#09619)

9 jluszeck@sdfnlaw.com

10 9060 West Cheyenne Avenue
11 Las Vegas, Nevada 89129

12 *Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
Trust dated May 30, 2001*

13 **DECLARATION OF JEFFREY P. LUSZECK IN SUPPORT OF MOTION**
14 **FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR,**
15 **LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS**
16 **INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST**
17 **DATED MAY 30, 2001**

18 I, Jeffrey P. Luszeck, Esq. state and declare as follows:

19 1. I am a partner at the law firm of Solomon Dwiggin Freer & Steadman,
20 Ltd. ("SDFS"), Counsel of Record for Matt Klabacka, the Distribution Trustee of the
21 ELN Trust in the above-captioned matter, and have personal knowledge of the facts
22 stated herein, except those stated on information and belief, and as to those matters,
23 I believe them to be true.

24
25 2. This declaration is in support of MOTION FOR ORDER ALLOWING
26 EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON,
27 INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF
28

1 THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001.

2 3. On June 8, 2023, this Court entered an Order Granting in Part Motion
3 for Immediate Payment of Funds Belonging to ELN Trust in favor of the ELN Trust
4 against Judgment Debtor, in the amount of \$493,216.00.
5

6 4. On July 27, 2023, this Court entered an Order After Hearing Denying
7 Lynita S. Nelson's Motion to Retax Costs; and Order Awarding ELN Trust's
8 Memorandum of Costs in favor of the ELN Trust against Judgment Debtor, in the
9 amount of \$62,935.08.
10

11 5. On July 27, 2023, this Court entered an Order After Hearing Granting
12 ELN Trust's Request for an Award of Attorney's Fees in favor of the ELN Trust
13 against Judgment Debtor, in the amount of \$239,772.30.
14

15 6. On August 2, 2023, this Court entered an Order After Hearing Granting
16 ELN Trust's Request for an Award of Attorney's Fees in favor of the ELN Trust
17 against Judgment Debtor, in the amount of \$952,355.86 (BANONE, LLC: \$435,260
18 in principal and \$177,601.10 in interest; Lindell Office: \$147,667.90 in principal and
19 \$60,253.58; Repayment of \$324,000.00: \$132,203.13 in interest).
20

21 7. To date, the Judgement Debtor has not paid any amount towards
22 pursuant to the Orders entered Court.
23

24 8. For these reasons, Matt Klabacka, the Distribution Trustee of the ELN
25 Trust, re requests that this Court, pursuant to NRS 21.270, grant an order requiring,
26 Lynita S. Nelson, individually, and in her capacity as Investment Trustee of the
27
28

Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”) (hereinafter collectively referred to as “Judgment Debtor”), to appear before me, to bring documents, and to answer questions under oath regarding (1) the full nature, extent, and location of Judgment Debtor’s property and assets, and (2) the other topics for examination set forth in the proposed Order.

DATED this 18th day of September, 2023.

/s/ Jeffrey P. Luszeck

Jeffrey P. Luszeck

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on September 18, 2023, I caused to be served a true and correct copy of the **MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001** to the following in the manner set forth below:

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | Hand Delivery |
| <input type="checkbox"/> | U.S. Mail, Postage Prepaid |
| <input type="checkbox"/> | Certified Mail, Return Receipt Request |
| <input checked="" type="checkbox"/> | E-Service through Odyssey eFileNV as follows: |

Michelle A. Hauser, Esq.
HAUSER FAMILY LAW
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
michelle@hauserfamilylaw.com

Stacy Howlett, Esq.
Michael Whittaker, Esq.
Michaelson Law
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Las Vegas, Nevada 89134
info@thedklawgroup.com

/s/ Alexandra Carnival

An Employee of SOLOMON DWIGGINS FREER
& STEADMAN, LTD.

EXHIBIT 1

EXHIBIT 1

Heather S. Smith
CLERK OF THE COURT

ORDER

Jeffrey P. Luszeck, Esq. (#9619)

jluszeck@sdfnvlaw.com

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

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Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

*Attorneys for Matt Klabacka, Distribution
Trustee of the ELN Trust*

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendant.

MATT KLABACKA, Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: **D-09-411537-D**

Dept. No.: **O**

HEARING DATE: May 30, 2023
HEARING TIME: 1:30 pm

**ORDER GRANTING IN PART MOTION FOR IMMEDIATE PAYMENT
OF FUNDS BELONGING TO ELN TRUST**

The Motion for Immediate Payment of Funds Belonging to ELN Trust (the
“Motion”) was heard on Tuesday, May 31, 2023. Jeffrey P. Luszeck, Esq. of
SOLOMON DWIGGINS FREER & STEADMAN, LTD. appeared on behalf of Matt
Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30,



2001 (“ELN Trust”); Michelle A. Hauser, Esq. of HAUSER FAMILY LAW appeared on behalf of Eric L. Nelson, in his individual capacity; Curtis R. Rawlings, Esq. of Pecos Law Group in an “Unbundled Capacity” appeared on behalf of Lynita S. Nelson, individually, and as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”). After reviewing pleadings on file, listening to the arguments of Counsel and good cause appearing, the Court hereby makes the following findings, conclusions of law and orders.

A. FINDINGS

1. That on or around February 21, 2023, the ELN Trust filed its Motion for Immediate Payment of Funds Belonging to ELN Trust wherein it requested that the District Court order Lynita/the LSN Trust to repay the ELN Trust the following:

- a. The rents collected from BANONE, LLC in the amount of \$502,623.00 plus interest in the amount of \$210,798.47, for a total of \$713,421.47;
- b. The rents collected from the Lindell Office in the amount of \$225,743.23 plus interest in the amount of \$70,638.61, for a total of \$296,381.84;
- c. The \$324,000.00 paid on June 4, 2014, plus interest in the amount of \$171,074.25, for a total of \$495,074.025;
- d. Security deposit paid on September 19, 2014, in the amount of \$6,050.00 plus interest in the amount of \$3,101.33, for a total of \$9,151.33;
- e. \$75,000.00 paid on June 30, 2014, plus interest in the amount of \$39,320.04, for a total of \$114,320.04; and

1 f. Farmouth Promissory Note in the amount of \$88,166.00 plus
2 interest in the amount of \$39,361.90, for a total of \$127,527.90.

3 2. The Court finds that in light of the Nevada Supreme Court's decision on
4 May 25, 2017, entitled *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017),
5 Lynita/the LSN Trust must repay the ELN Trust for the following:

6
7 a. \$324,000.00
8 b. \$6,050.00
9 c. \$75,000.00
10 d. \$88,166.00
11 **TOTAL: \$493,216.00**

12 3. In regards to the real property owned by BANONE, LLC and the Lindell
13 Office, the Parties may submit briefs regarding the expenses that Lynita/the LSN
14 Trust contend are associated with the BANONE, LLC and the Lindell Office. Said
15 briefs are due on Tuesday, June 20, 2023, and any responses to the briefs are due on
16 Tuesday, June 27, 2023.

17 4. The Court is deferring its decision on whether the ELN Trust is entitled
18 to interest on the aforementioned amounts.

19
20 Good Cause Appearing Therefore,

21 **IT IS HEREBY ORDERED** that the MOTION FOR IMMEDIATE
22 PAYMENT OF FUNDS BELONGING TO ELN TRUST is GRANTED, in part, for
23 the reasons stated herein.

24
25 **IT IS HEREBY FURTHER ORDERED** that Lynita S. Nelson/the Lynita
26 S. Nelson Trust dated May 30, 2001 shall repay the Eric L. Nelson Trust dated May
27

1 30, 2001, \$493,216.00. The amount of \$493,216.00 is hereby reduced to judgment
2 in favor of the Eric L. Nelson Trust dated May 30, 2001, and against Lynita S.
3 Nelson and the Lynita S. Nelson Trust dated May 30, 2001, and shall bear interest
4 at the legal rate and is collectible by all lawful means;
5

6 **IT IS HEREBY FURTHER ORDERED** that if they so desire to further
7 brief the issue, the Parties have until June 20, 2023, to file briefs regarding the rents
8 collected from BANONE, LLC and the Lindell Office;
9

10 **IT IS HEREBY FURTHER ORDERED** that the Parties will have until July
11 5, 2023, to file responses to briefs regarding rents collected from the BANONE, LLC
12 and the Lindell Office; and
13

14 ...

15 ...

16 ...

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21 ...

22 ...

23 ...

24 ...

25 ...

1 **IT IS HEREBY FURTHER ORDERED** that undersigned Counsel will
2 decide upon a mutually agreeable date for a hearing on the remaining issues, namely
3 the rents collected from BANONE, LLC, the Lindell Office and interest requested
4 by the ELN Trust.
5

6 Dated this 8th day of June, 2023

7 
8

9 Respectfully submitted by:

Approved by:  LS
Regina M. McConnell
District Court Judge
HAUSER FAMILY LAW

10 SOLOMON DWIGGINS FREER & STEADMAN,
11 LTD.

12 /s/ Jeffrey P. Luszeck

/s/ Michelle A. Hauser

13 By: _____
Jeffrey P. Luszeck, Esq.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

14 By: _____
Michelle A. Hauser, Esq.
1489 W. Warm Springs Road, 110
Henderson, Nevada 89014

15 *Attorneys for Eric L. Nelson, Investment*
16 *Trustee of the ELN Trust*

Attorneys for Defendant, Eric Nelson
Individually

17 PECOS LAW GROUP

18 *Refused to Sign*

19 By: _____
Curtis R. Rawlings, Esq.
8925 South Pecos Road, Suite 14a
Henderson, Nevada 89074
20
21
22
23
24
25
26
27
28

EXHIBIT 2

EXHIBIT 2

Jeffrey P. Luszeck, Esq. (#9619)
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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

Case No.: D-09-411537-D
Dept.: O

LYNITA SUE NELSON, MATT KLABACKA,
as Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated May
30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**ORDER AFTER HEARING DENYING LYNITA S. NELSON'S MOTION TO RETAX
COSTS; AND ORDER AWARDING ELN TRUST'S MEMORANDUM OF COSTS**

THIS MATTER having come before the District Court for oral argument on May 30, 2023
and then for a Decision on its Chambers Calendar on July 24, 2023, on MATT KLABACKA,

DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001 (“ELN TRUST”), Verified Memorandum of Costs filed on February 6, 2023.

FINDINGS OF FACT

THE COURT HEREBY FINDS on October 12, 2021, the District Court entered a “Decision” regarding the ELN Trust’s “Motion for Summary Judgment, or Alternatively, Motion to Strike and/or Motion to Extend Deadline to File Rebuttal Expert Report and to Continue Trial” (“Motion for Summary Judgment”). Although in this Decision, the District Court denied the ELN Trust’s Motion for Summary Judgment, it identified concerns regarding the Defendants’ expert report as it relates to Defendant(s) claim there was a transmutation of separate property to community property. The District Court provided a ten-page analysis of the issues with the state of Defendants’ evidence and/or lack thereof.

On page 19 of the “Decision,” the District Court stated,

Therefore, this Court presumes that the following assets held by the SSSTs are characterized as the separate property of their respective trusts: (a) the Russel Road Property; (b) Lindell Office; (c) High Country Inn; (d) Tierra del Sol; (e) Tropicana Avenue Property; (f) Flamingo Property; (g) Brian Head Cabin; (h) Wyoming Horse Racing, Inc.; (i) the rental income attributed to Silver Slipper RV Park; and (j) the rental income attributable to the real property in Greenville, Mississippi.

THE COURT FURTHER FINDS on page 21 of the “Decision” the District Court also found:

N.R.S. § 123.180 provides that all property acquired by a child by gift, bequest, devise, or descent is the child’s own separate property, and neither parent is entitled to any interest therein. A minor child’s earnings and accumulations of earnings are the community property of the child’s parents unless relinquished to the child. *Id.*

This Court presumes that the payments made on behalf of the parties’ children from various business accounts held by the ELN Trust were transfers by the companies to the children.

This Court further presumes that prior to any of the companies making payments on behalf of the children, the money used to pay for the children’s expenses were the sole separate property of the respective companies held by the ELN Trust.

1 Since N.R.S. § 123.180 provides that “all property provided to a
2 child by gift, bequest, devise, or descent” is the child’s own separate
3 property, this Court presumes that the children held separate property
4 interests in the money received from the companies held by the ELN Trust.

5 **THE COURT FURTHER FINDS** although the District Court outlined the issues with
6 Defendants evidence and denied the Motion for Summary Judgment, it allowed Defendants to elect
7 to proceed to trial and hear all of the evidence. Although the District Court denied the ELN Trust’s
8 Motion for Summary Judgment, the ultimate decision to proceed to a protracted trial, was the sole
9 decision of Defendants, Lynita and the LSN Trust.

10 **THE COURT FURTHER FINDS** on January 31, 2023, the District Court entered its
11 “Decision Regarding the Characterization of Management Fees” and “Decision Denying Plaintiff’s
12 Motion to Correct, Clarify, Alter, or Amend; and Denying Defendant’s Motion to Correct, Clarify,
13 and/or Reconsider.” The District Court previously entered its “Decision and Order” on June 29,
14 2022.

15 **THE COURT FURTHER FINDS** the District Court’s “Decision and Order” entered on
16 June 29, 2022, was entered after nine days of an evidentiary hearing. The District Court heard
17 evidence on March 28, 2022, March 29, 2022, March 30, 2022, March 31, 2022, April 1, 2022,
18 April 6, 2022, April 7, 2022, April 27, 2022, and April 28, 2022.

19 **THE COURT FURTHER FINDS** pursuant to the District Court’s “Decision and Order”
20 entered on June 29, 2022, the District Court determined there was no community property and there
21 was never a transmutation of community property in the properties and businesses known as
22 Wyoming Downs, Cleopatra, Hacienda Casita, Evanston Horse Racing Inc, Wyoming Downs
23 Rodeo, Russell Road, Lindell Office, High Country Inn, Tierra Del Sol, Tropicana Avenue
24 Property, Flamingo Property, Brian Head Cabin, and Harbor Hills.

25 **THE COURT FURTHER FINDS** the “Decision and Order” was entered on June 29, 2022,
26 with the filing of a Notice of Entry of Order.

1 **THE COURT FURTHER FINDS** on January 31, 2023, a Notice of Entry of Order was
2 filed with the District Court regarding “Decision Regarding the Characterization of Management
3 Fees.” In this Decision, the District Court found that Defendants had not met their legal burden by
4 clear and convincing evidence regarding Management Fees for Silver Slipper and Lindell. The
5 Court further found the Defendants did not show by clear and convincing evidence that the
6 management fees were Eric L. Nelson’s personal income.
7

8 Based upon the findings of the District Court, the Court ordered the management fees for
9 Silver Slipper and Lindell Professional Plaza were deemed to be the separate property of the ELN
10 Trust.
11

12 **THE COURT FURTHER FINDS** with the entry of the “Decision and Order” entered on
13 June 29, 2022, and the “Decision Regarding the Characterization of Management Fees” entered on
14 January 31, 2023, all issues presented at the evidentiary hearing conducted over ten days were
15 resolved.
16

17 **THE COURT FURTHER FINDS** on February 6, 2023, the ELN Trust filed its “Verified
18 Memorandum of Costs.” Pursuant to the “Verified Memorandum of Costs” the ELN Trust
19 requested the Defendant, Lynita Nelson, in her Capacity, and the LSN Trust pay costs in the amount
20 of \$78,051.18.
21

22 **THE COURT FURTHER FINDS** attached to the “Verified Memorandum of Costs” were
23 the following statements for the Court’s consideration:
24

- 25 1. Billing Statements from RubinBrown-Exhibit 1;
- 26 2. “Detail Cost Transaction File List.” Included in this documentation was canceled
27 checks and invoices-Exhibit 2;
- 28 3. An itemization of all Copy Chargers-Exhibit 3;
4. An itemization of all Scan Charges- Exhibit 4

5. An itemization of all Laser Copy Charges –Exhibit 5 \$ 3,120.66
6. An itemization of all Postage-Exhibit 6 \$
7. An itemization of all Filing Fees- Exhibit 7
8. An itemization of all Westlaw Legal Research-Exhibit 8
9. An itemization of all Courier Expenses-Exhibit 9, and
10. An itemization of Transcription Fees-Exhibit 10 \$ 366.00.

THE COURT FURTHER FINDS the requested costs were all supported with the appropriate documentation for the requested costs.

THE COURT FURTHER FINDS, as discussed below, Defendant objected to the cost incurred by the ELN Trust. Defendants did not object to the documentation presented by the ELN Trust in support of its requested relief but, as will be discussed below, Defendants objected to the reasonableness of the cost.

THE COURT FURTHER FINDS on February 9, 2023, Defendant filed, “Defendant, Lynita S. Nelson’s, Motion to Retax Cost.” Defendant, Lynita S. Nelson, filed her Motion to Retax in her individual capacity and not in her capacity as Investment Trustee of the LSN Trust.

THE COURT FURTHER FINDS in reviewing the pleadings in this case; since the LSN Trust and ELN Trust became parties to the action, all pleading filed on behalf of Lynita in her individual capacity and on behalf of the LSN Trust, were filed by The Dickerson Karacsonyi Law Group.

THE DISTRICT COURT FURTHER FINDS the “Decision and Order” entered on June 29, 2023, and the “Decision Regarding the Characterization of Management Fees” entered on January 31, 2023, denote “Lynita Nelson in her individual capacity as well as her capacity as the investment trustee of the LSN Trust, represented by her counsel Josef Karacsonyi, Esq., and Natalie Karacsonyi. Esq.”

1 represented by Counsel at the evidentiary hearing in this manner. The LSN Trust was represented
2 by the same counsel as the Defendant, Lynita S. Nelson, in her Individual Capacity.

3 5. As the LSN Trust was represented by Counsel, the LSN Trust should have filed a
4 timely motion to retax as required by NRS 18.110(4), however, it failed to do so.

5 6. EDCR 5.503 (b) provides: failure of an opposing party to serve and file a written
6 opposition may be construed as an admission that the motion is meritorious and a consent that it be
7 granted. Although a “Verified Memorandum of Cost” as required pursuant to NRS18.110 (4) may
8 not be a “motion,” the language in NRS 18.110(4) requires a party to respond by filing a motion to
9 retax. LSN’s failure to file a motion to retax acts similarly to a party failing to oppose a motion.

10 7. Thus, pursuant to EDCR 5.503(b) LSN’s failure to file a motion to retax is an
11 admission that the ELN Trust’s “Verified Memorandum of Costs” is meritorious and consent to the
12 granting of the “Verified Memorandum of Costs.”

13 8. As the LSN Trust did not file a timely motion/memorandum to retax, the LSN Trust
14 has waived any objections to the costs requested by the ELN Trust.

15 9. A District Court may award attorney fees to a prevailing party when it finds that the
16 opposing party brought or maintained a claim without reasonable grounds. NRS 18.010(2)(b). The
17 court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees
18 in all appropriate situations. See Nev. Rev. Stat. Ann. § 18.010.

19 10. For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no
20 credible evidence to support it. *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901
21 P.2d 684, 687-88 (1995).

22 11. While the District Court has discretion to award attorney fees under NRS
23 18.010(2)(b), there must be evidence supporting the District Court’s finding that the claim or
24 defense was unreasonable or brought to harass.” *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470,

493, 215 P.3d 709, 726 (2009), holding modified by *Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. 15, 293 P.3d 869 (2013). A claim is frivolous or groundless if there is no credible evidence to support it. *Capanna v. Orth*, 134 Nev. Adv. Op. 108, 432 P.3d 726, 734 (2018).

12. NRS 18.020 provides:

Cases in which costs allowed prevailing party. Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court. (Emphasis Added).

13. A party prevails in an action “if it succeeds on any significant issue in litigation,” it need not prevail on all claims to be the prevailing party. *Las Vegas Metro. Police Dep’t v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (emphasis omitted) (quoting *Valley Elec. Assn v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)).

14. On remand the issues that the District Court adjudicated fall squarely within NRS 18.020. Specifically, Lynita/the LSN Trust were seeking: (1) “recovery of real property or a possessory right thereto,” *see* NRS 18.020(1), (2) personal property in excess of \$2,500, *see* NRS 18.020(2), (3) recovery of money or damages in excess of \$2,500, *see* NRS 18.020(3).

15. Lynita’s contention that this is strictly a “family law” matter and that any and all other civil/trust law should be disregarded is contrary to *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017), wherein the Nevada Supreme Court repeatedly relied upon Titles 12 and 13 to adjudicate issues relating to the Trusts.

1 16. Although this case “was initiated as a divorce proceeding under NRS Chapter 125,”
2 the District Court must still apply the Nevada Rules of Civil Procedure, Titles 12 and 13, etc. as it
3 relates to matters outside of the scope of NRS 3.223 and NRS 125.

4 17. EDCR 5.219 provides: Sanctions may be imposed against a party, counsel, or other
5 person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct
6 including but not limited to: (a) Presenting a position that is obviously frivolous, unnecessary, or
7 unwarranted; (b) Multiplying the proceedings in a case so as to increase costs unreasonably and
8 vexatiously; (c) Failing to prepare for a proceeding; (d) Failing to appear for a proceeding; (e)
9 Failing or refusing to comply with these rules; or (f) Failing or refusing to comply with any order
10 or directive of the court.
11

12 18. Pursuant to the October 2021 “Decision,” Lynita and the LSN Trust were on notice
13 they were unable to meet their burden of proof as discussed in the District Court’s Findings. Despite
14 knowing this well in advance of the evidentiary hearing, the LSN Trust and Lynita elected to
15 proceed forward with the evidentiary hearing.
16

17 19. Ultimately, after hearing all of the evidence, Lynita and the LSN Trust did not
18 prevail on any of the issues heard during the evidentiary hearing. As indicated above, this was
19 known to Lynita and the LSN Trust well in advance of the evidentiary hearing, and yet, they elected
20 to proceed to trial.
21

22 20. The ELN Trust was the prevailing party.

23 21. The decision to proceed to a trial/evidentiary knowing you cannot meet your
24 evidentiary basis is the definition of a frivolous or a groundless claim.

25 22. NRS 18.005(5) provides: Reasonable fees of not more than five expert witnesses in
26 an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after
27
28

1 determining that the circumstances surrounding the expert's testimony were of such necessity as to
2 require the larger fee.

3 23. Here, the ELN Trust expert fees were \$47,461.86. This was a necessary expense
4 given the nature of this litigation. This litigation commenced in 2009 with a final ruling being
5 entered in 2023. During the 14 years of litigation, this matter has been appealed multiple times,
6 including separate and distinct Writs being filed. The nature of the post-remand litigation was
7 complex and required the review of financial records for multiple legal identities and real properties.
8

9 24. The LSN Trust and Lynita likewise hired an expert. In reviewing the information
10 provided to the District Court in Lynita's request for attorney's fees, it appears Lynita and the LSN
11 Trust paid their expert more than the ELN Trust paid its expert.

12 25. Thus, for these reasons, the District Court accepts the expert fees in the amount of
13 \$47,461.86.
14

15 26. Pursuant to NRS 18.005 the fees for a Process Server in the amount of \$160.00,
16 Postage Fees in the amount of \$12.12, Filing Fees in the amount of \$520.44, Courier Fees in the
17 amount of \$296.00 and Transcription Fees in the amount of \$366.00 are reasonable.

18 27. Pursuant to NRS 18.005, one-half of the fees for Westlaw Legal Research in the
19 total amount of \$21,995.75 are reasonable. Although there are free research tools the ELN Trust
20 could have used to conduct its research as asserted by Lynita, given the complexity of the issues
21 presented throughout this litigation, it can be reasonably expected that the ELN Trust would incur
22 research fees in the amount of \$10,998.00.
23

24 28. Pursuant to NRS 18.005(17), ELN Trust's request for "Outside" Laser Copy
25 Charges in the amount of \$3,120.66 are reasonable.

26 **NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND**
27 **CONCLUSIONS,**
28

Pratt Council

EXHIBIT 3

EXHIBIT 3

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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

Case No.: D-09-411537-D
Dept.: O

LYNITA SUE NELSON, MATT KLABACKA,
as Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated May
30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**ORDER AFTER HEARING GRANTING ELN TRUST'S REQUEST FOR AN AWARD OF
ATTORNEY'S FEES**

THIS MATTER having come before the District Court for oral argument on May 30, 2023
and then for a Decision on its Chambers Calendar on July 24, 2023, on MATT KLABACKA,

DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001 (“ELN TRUST”), “Motion for Attorneys’ Fees Pursuant to NRCP 54” filed on February 21, 2023.

FINDINGS OF FACT

1. Eric L. Nelson (“Eric”) and Lynita S. Nelson (“Lynita”) were married on September 17, 1983.

2. In 1993, Eric and Lynita entered into a valid separate property agreement (the “SPA”) which transmuted their community property into each Parties’ respective separate property.

3. The property equally divided by the SPA contemporaneously funded each Parties’ 1993 separate property trust. Eric’s Separate Property Trust is hereinafter referred to as “Eric’s SPT,” and Lynita’s Separate Property Trust is hereinafter referred to as “Lynita’s SPT.”

4. In 2001, Eric and Lynita converted each of their respective 1993 separate property trusts into valid self-settled spendthrift trusts – respectively, the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita S. Nelson Nevada Trust (“LSN Trust”) (collectively, the “Trusts”).

5. On May 6, 2009, Eric filed his Complaint for Divorce in the instant matter.

6. On June 24, 2011, Eric filed a motion seeking to join the ELN Trust as a necessary party in the instant matter.

7. On June 3, 2013, over five years after the original Complaint for Divorce was filed, a Decree of Divorce (“Decree”) was entered after multiple trials and hearings on the matter. After the entry of the Decree, the ELN Trust filed a Notice of Appeal to the Nevada Supreme Court on October 20, 2014.

8. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to the pending issues before this Court, the Nevada Supreme Court held:

Both the [separate property agreement] and the parties’ respective SSSTs were signed, written agreements. We hold the written instruments at issue here are all valid and the terms therein are unambiguous.

...

1 We conclude the [separate property agreement] is a valid transmutation
2 agreement, and the plain terms of the [separate property agreement] indicate
3 it remains in effect during divorce.

4 We conclude the [separate property agreement] is a valid transmutation
5 agreement and the parties' community property was converted into separate
6 property.

7 [W]e conclude the [separate property agreement] was valid, and the parties'
8 property was validly separate into their respective separate property trusts.

9 [W]e hold that the SSSTs are valid and the trusts were funded with separate
10 property stemming from a valid separate property agreement.

11 The parties contest whether the assets within the SSSTs remained separate
12 property or whether, because of the many transfers of property between the
13 trusts, the assets reverted back to community property. In a divorce
14 involving trust assets, the district court must trace those assets to determine
15 whether any community property exists within the trusts – as discussed
16 below, the parties' respective separate property in the SSSTs would be
17 afforded the statutory protections against court ordered distribution, while
18 any community property would be subject to the district court's equal
19 distributions. We conclude the district court did not trace the assets in
20 question.⁷ . . . Without proper tracing, the district court is left with only the
21 parties' testimony regarding the characterization of the property, which
22 carries no weight.

23 Separate property contained within the spendthrift trusts is not subject to
24 attachment or execution, as discussed below. However, if community
25 property exists within the trusts, the district court shall make an equal
26 distribution of that community property.

27 Having concluded the district court had subject- matter jurisdiction, the
28 written instrument at issue are valid, and the district court must trace trust
assets to determine whether any community property exists within the
trusts.

9. The language in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d
270, 274-75 (2021) likewise reiterates the holding in *Klabacka v. Nelson*, 133 Nev. 164 (2017).
Specifically, in *Nelson v. Eighth Jud. Dist. Ct.*, the Nevada Supreme Court specifically stated:
we also recognized assets within the trusts may contain community property and remanded the case
so that the district court could conduct proper tracing of the trust assets to determine whether any

1 community property was transferred into or commingled within the trusts. *Id.* at 274. [Emphasis
2 Added]

3 10. Lynita had the burden of proving by clear and convincing evidence that separate
4 property had been transmuted into community property. This legal issue was disputed by Lynita
5 for a minimum of two years post-remand.
6

7 11. Lynita continued for the next two years litigating the date the tracing period should
8 commence. Lynita's request was repeatedly denied by this Court. After the Court denied Lynita's
9 request, Lynita filed a Petition for A Writ of Mandamus or Prohibition with the Nevada Supreme
10 Court on the issue of the applicable period for tracing between the two Trusts, which was denied.
11

12 12. After this matter was remanded by the Nevada Supreme Court, the ELN Trust
13 immediately requested confirmation that both Eric and Lynita would retain individual experts.
14 Lynita refused to retain her own expert and demanded that Larry Bertsch, CPA be appointed as a
15 Special Matter.

16 13. On August 22, 2017, Lynita argued that this Court "should re-appoint Mr. Bertsch
17 to update the prior forensic accounting through the present date. *See* Lynita's Reply to Opposition
18 to Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the
19 Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property
20 Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial
21 Information, and for Sale of Property for Payment of Attorneys' Fees and Costs, filed with this
22 Court on August 22, 2017, at p. 11:27-28.
23

24 14. Although Eric disputed any transmutation occurred, he was ordered to financially
25 assist Lynita's efforts to meet her burden that could not be met based upon the history of the Parties'
26 trusts by paying one-half of Mr. Bertsch's fees. The District Court later removed Mr. Bertsch on
27
28

October 27, 2020 (after it became clear that he was not serving in a neutral capacity, and was not meeting the deadlines imposed by the Court), significant costs were incurred by the ELN Trust.

15. The ELN Trust filed a Motion for Burden of Proof at Trial on May 18, 2020, to clarify the scope of the issues pending before the District Court and the Parties' burdens of proof.

16. On October 27, 2020, the District Court issued its Decision and Order wherein it reiterated the direction provided by the Nevada Supreme Court, and held that the burden of proof by the party asserting that separate property was transmuted into community property lies with the moving party and that Lynita had the burden of proof to establish that transmutation occurred.

17. Lynita filed a Writ to the Nevada Supreme Court, which was denied.

18. Subsequent to Mr. Bertsch's removal from the case, Lynita utilized Anthem Forensics ("Anthem") and its principal Melissa Attanasio, to serve as her expert witnesses in this matter. Even though Anthem's principal – Joe Leauanae – had testified at his deposition on July 27, 2010, that "we've completed most of the forensic accounting analysis," no expert report was produced by Lynita until April 30, 2021.

19. The ELN Trust filed a motion seeking summary judgment on June 21, 2021. As argued in this motion, Anthem's report did not complete a tracing analysis and was unable to identify any specific assets that had been transmuted. The report also stated Lynita denied her expert access to documents that were available to her such as the Parties' joint tax returns for tax years 2001, 2002, and 2003.

20. The District Court's October 2021 order was further discussed at the hearing conducted on October 25, 2021, wherein it specifically stated:

My intent on that summary judgment thing was to show, from what I've seen, looking at that light, I was seeing transfers from trust to trust. I wasn't seeing anything that was showing that there was a community property interest or her claim of that basis on that report. See October 25, 2021 hearing at 54:14.

21. After hearing arguments on October 12, 2021, the District Court issued its order indicating that Lynita had not met her burden (“MSJ Order”).

22. The District Court’s findings in the MSJ Order also provided Lynita with a framework regarding what Lynita was required to prove at the trial in this matter.

23. The October 12, 2021, the “Decision” regarding the ELN Trust “Motion for Summary Judgment, or Alternatively, Motion to Strike and/or Motion to Extend Deadline to File Rebuttal Expert Report and to Continue Trial.” Although in this Decision, the District Court denied the ELN Trust Motion for Summary Judgement, it identified concerns regarding the Defendant’s expert report as it relates to Defendant(s) claim there was a transmutation of separate property to community property. The District Court provided a ten-page analysis of the issues with the state of Defendant(s) evidence.

24. On page 19 of the “Decision,” the District Court stated,

Therefore, this Court presumes that the following assets held by the SSSTs are characterized as the separate property of their respective trusts: (a) the Russel Road Property; (b) Lindell Office; (c) High Country Inn; (d) Tierra del Sol; (e) Tropicana Avenue Property; (f) Flamingo Property; (g) Brian Head Cabin; (h) Wyoming Horse Racing, Inc.; (i) the rental income attributed to Silver Slipper RV Park; and (j) the rental income attributable to the real property in Greenville, Mississippi.

25. Lynita elected to proceed forward to trial and essentially presented the same evidence outlined in Anthem’s Report that the Court already indicated would not meet her burden of proof.

26. Rather than completing a tracing analysis, or withdrawing her claims that were not supported by the evidence in this case, Lynita elected to engage in costly litigation filing the following motions:

1. October 26, 2021, Defendant, Lynita S. Nelson’s, Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision on Motion for Summary Judgement Entered on October 21, 2021.

2. December 21, 2021, Reply in Support of Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision on Motion for Summary Judgement Entered on October 21, 2021 and Opposition to Countermotion in Limine.

3. January 7, 2022, Defendant, Lynita S. Nelson's, Status Report for January 11, 2022.

4. January 13, 2022, Defendant, Lynita S. Nelson's, Motion Regarding Management of the Lindell Property.

5. February 1, 2022, Defendant, Lynita S. Nelson's Emergency Motion for an Order to Show Cause to Issue Against Eric L. Nelson and Matt Klabacka for Egregious Violation of JPI in Selling Ten Banone Properties, for Funds from Sale to be Deposited into Blocked Account and Frozen, for Sanctions of Contempt and Attorney's Fees, and For Related Relief.

27. The trial commenced on March 28, 2022, with Lynita having five years post-remand to gather evidence regarding her transmutation claims.

28. After Lynita and the LSN Trust rested their case-in-chief, the District Court issued an order on June 29, 2022, granting the ELN Trust/Eric's Motion for Judgment on Partial Findings pursuant to NRCP 52(c) after hearing evidence over 8 days of testimony.

29. After the District Court issued its order on June 29, 2022 ("June 29, 2022 Order"), Lynita/the LSN Trust continued to file motions.

30. On July 4, 2022, Lynita/the LSN Trust filed a Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision and Order entered June 29, 2022, which this Court denied in an Order entered on January 31, 2023.

31. In the Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision and Order entered June 29, 2022, Lynita/the LSN Trust requested the Court find that tax returns from 2001 and 2002 be deemed community property.

32. The District Court found that the issue "was merely mentioned during trial," and Lynita/the LSN Trust's own expert had failed to conduct any tracing investigation regarding this

1 issue. *See* Decision Denying Defendant’s Motion to Correct, Clarify, Alter or Amend, and/or
2 Reconsider Decision and Order entered June 29, 2022.

3 33. On January 31, 2023, the District Court entered its “Decision Regarding the
4 Characterization of Management Fees” and “Decision Denying Plaintiff’s Motion to Correct,
5 Clarify, Alter, or Amend; and Denying Defendant’s Motion to Correct, Clarify, and/or Reconsider.”
6 The District Court previously entered its “Decision and Order” on June 29, 2023.
7

8 34. The District Court’s “Decision and Order” entered on June 29, 2022, was entered
9 after nine days of an evidentiary hearing. The District Court heard evidence on March 28, 2022,
10 March 29, 2022, March 30, 2022, March 31, 2022, April 1, 2022, April 6, 2022, April 7, 2022,
11 April 27, 2022, and April 28, 2022.
12

13 35. Pursuant to the Court’s “Decision and Order” entered on June 29, 2022, the Court
14 determined there was no community property and there was never a transmutation of community
15 property in the properties and businesses known as Wyoming Downs, Cleopatra, Hacienda Casita,
16 Evanston Horse Racing Inc, and Wyoming Downs Rodeo, Russell Road, Lindell Office, High
17 Country Inn, Tierra Del Sol, Tropicana Avenue Property, Flamingo Property, Brian Head Cabin,
18 and Harbor Hills.
19

20 36. The “Decision and Order” was entered on June 29, 2022, with the filing of a Notice
21 of Entry of Order.

22 37. On January 31, 2023, a Notice of Entry of Order was filed with the District Court
23 regarding “Decision Regarding the Characterization of Management Fees.” In this Decision, the
24 District Court found that Defendant(s) had not met their legal burden by clear and convincing
25 evidence regarding Management Fees for Silver Slipper and Lindell. The Court further found the
26 Defendant(s) did not show by clear and convincing evidence that the management fees were Eric’s
27 personal income.
28

1 38. Based upon the findings of the District Court, the Court ordered the management
2 fees for Silver Slipper and Lindell Professional Plaza were deemed to be the separate property of
3 the ELN Trust.

4 39. The entry of the “Decision and Order” entered on June 29, 2023, and the “Decision
5 Regarding the Characterization of Management Fees” entered on January 31, 2023, all issues
6 presented at the evidentiary hearing conducted over ten days were resolved.

7 40. On February 21, 2023, The ELN Trust filed, “MOTION FOR ATTORNEYS’ FEES
8 PURSUANT TO NRCP 54.” In this motion, the ELN Trust requested an award of attorney’s fees
9 in the amount of \$539,979.80.

10 41. On March 22, 2023, Defendant filed her “Defendant/Cross-Defendant, Lynita S.
11 Nelson's, Opposition to ELN Trust and Eric Nelson’s Motions for Attorney’s Fees” and “Appendix
12 of Exhibits in Support of Defendant/Cross-Defendant, Lynita S. Nelson's, Opposition to ELN
13 Trusts and Eric Nelsons Motions for Attorney’s Fees.”

14 42. Unlike the Motion to Retax filed by the Defendant on February 9, 2023, this
15 Opposition was filed by “Defendant/Cross-Defendant, LYNITA S. NELSON (“Lynita”),
16 Individually and as Investment Trustee of the LSN NEVADA TRUST, dated May 30, 2001 (“LSN
17 Trust”).”

18 43. On April 28, 2023, The ELN Trust and Eric Nelson, in His Individual Capacity filed,
19 “Joint Reply to "Defendant/Cross- Defendant Lynita S. Nelson's Opposition to ELN Trust's and
20 Eric Nelson's Motion for Attorney's Fees."

21 44. The District Court heard an oral argument on this motion on May 30, 2023. The
22 Court scheduled the motion to be heard on a “special setting.” All Parties were represented by
23 Counsel at this hearing.

1 45. The District Court considered all papers and pleadings filed and the oral arguments
2 of counsel.

3 46. If any of these findings of fact are more appropriately designated Conclusions of
4 law, they shall be so deemed.

5
6 **CONCLUSIONS OF LAW**

7 1. This Court has subject matter jurisdiction and personal jurisdiction over the parties
8 to this action.

9 2. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to
10 the pending issues before this Court, the Nevada Supreme Court held:

11 Both the [separate property agreement] and the parties' respective SSSTs
12 were signed, written agreements. We hold the written instruments at issue
13 here are all valid and the terms therein are unambiguous.

14 ...

14 We conclude the [separate property agreement] is a valid transmutation
15 agreement, and the plain terms of the [separate property agreement] indicate
16 it remains in effect during divorce.

17 ...

17 We conclude the [separate property agreement] is a valid transmutation
18 agreement and the parties' community property was converted into separate
19 property.

20 ...

20 [W]e conclude the [separate property agreement] was valid, and the parties'
21 property was validly separate into their respective separate property trusts.

22 ...

22 [W]e hold that the SSSTs are valid and the trusts were funded with separate
23 property stemming from a valid separate property agreement.

24 ...

24 The parties contest whether the assets within the SSSTs remained separate
25 property or whether, because of the many transfers of property between the
26 trusts, the assets reverted back to community property. In a divorce
27 involving trust assets, the district court must trace those assets to determine
28 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
distributions. We conclude the district court did not trace the assets in
question.⁷ . . . Without proper tracing, the district court is left with only the
parties' testimony regarding the characterization of the property, which
carries no weight.

...
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.

...
Having concluded the district court had subject- matter jurisdiction, the written instrument at issue are valid, and the district court must trace trust assets to determine whether any community property exists within the trusts.

3. Based upon the Nevada Supreme Court's decision (and consistent with *Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 286 (1994), *Lake v. Bender*, 18 Nev. 361, (1884); *Carlson v. McCall*, 70 Nev. 437 (1954); *Zahringer v. Zahringer*, 76 Nev. 21 (1960); *Kelly v. Kelly*, 86 Nev. 301 (1970); *Todkill v Todkill*, 88 Nev. 231 (1972); *Burdick v. Pope*, 90 Nev. 28 (1974); *Cord v. Cord*, 98 Nev. 210 (1982); *Forrest v. Forrest*, 99 Nev. 602 (1983); *Pryor v. Pryor*, 103 Nev. 148, at 150, 734 P.2d 718 (1987); and *Verheyden v. Verheyden*, 104 Nev. 342 (1988)) it was clear that Lynita/the LSN Trust had the burden to prove by clear and convincing evidence that separate property had been transmuted into community property.

4. NRCP 54(d)(2) provides in relevant part:

(2) Attorney Fees.

(A) Claim to Be by Motion.

A claim for attorney fees must be made by motion. The court may decide a postjudgment motion for attorney fees despite the existence of a pending appeal from the underlying final judgment.

(B) Timing and Contents of the Motion.

Unless a statute or a court order provides otherwise, the motion must:

- (i) be filed no later than 21 days after written notice of entry of judgment is served;
- (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
- (iii) state the amount sought or provide a fair estimate of it;
- (iv) disclose, if the court so orders, the nonprivileged financial terms of any agreement about fees for the services for which the claim is made; and
- (v) be supported by:
 - (a) counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable;
 - (b) documentation concerning the amount of fees claimed; and
 - (c) points and authorities addressing the appropriate factors to be

considered by the court in deciding the motion.

5. Further, EDCR 5.219 provides:

Sanctions may be imposed against a party, counsel, or other person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct including but not limited to:

- (a) Presenting a position that is obviously frivolous, unnecessary, or unwarranted;
- (b) Multiplying the proceedings in a case so as to increase costs unreasonably and vexatiously;
- (c) Failing to prepare for a proceeding;
- (d) Failing to appear for a proceeding;
- (e) Failing or refusing to comply with these rules; or
- (f) Failing or refusing to comply with any order or directive of the court.

6. A party may seek attorneys' fees when allowed by an agreement, rule, or statute.

See NRS 18.010 (governing awards of attorney fees); *RTTC Communications, LLC v. The Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (noting that "a court may not award attorney fees absent authority under a specific rule or statute").

7. A court may additionally grant an award of attorneys' fees to a prevailing party when

(a) the prevailing party's recovery is not more than \$20,000; or (b) when the court finds that the claim, cross-claim, third party complaint, or defense was brought by the opposing party without a reasonable ground or to harass the prevailing party. NRS 18.010(2)(b)

8. NRS 18.010(2)(b) provides that:

The Court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph . . . in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

9. Black's Law Dictionary 1145 (7th ed. 1999) defines "prevailing party" as a "[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded. A party can be a "prevailing party," under the general attorney fee statute, if it succeeds on any significant issue

1 in litigation which achieves some of the benefit it sought in bringing suit. N.R.S. 18.010, subd. 2(a).
2 *Women's Federal Sav. and Loan Ass'n of Cleveland v. Nevada Nat. Bank*, 1985, 623 F.Supp. 469.

3 10. “[T]he Nevada Supreme Court has concluded that a prevailing party on a motion
4 may be entitled to an award of attorney’s fees.” *Love v. Love*, 114 Nev 527, (Nev. 1998).

5 11. In *Romano v. Romano*, the Nevada Court upheld an award of attorney’s fees awarded
6 in a post-divorce motion hearing. *Romano v. Romano*, 138 Nev. Adv. Op. 1, 501 P.3d 980, 986
7 (2022).

8 12. “In determining the amount of fees to award, the [district] court is not limited to one
9 specific approach; its analysis may begin with any method rationally designed to calculate a
10 reasonable amount, so long as the requested amount is reviewed in light of the Brunzell factors”.
11 *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (citing *Haley v. Eighth Judicial Dist.*
12 *Court*, 128 Nev. 171, 273 P.3d 855, 860 (internal quotations omitted)). The Supreme Court in
13 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969) gave
14 guidance on how a court is to determine the reasonable value of the work performed by a movant’s
15 counsel. Brunzell directs courts to consider the following when determining a reasonable amount
16 of attorney fees to award: (1) the qualities of the advocate: his ability, his training, education,
17 experience, professional standing and skill; (2) the character of the work to be done: its difficulty,
18 its intricacy, its importance, time and skill required, the responsibility imposed and the prominence
19 and character of the parties where they affect the importance of the litigation; (3) the work actually
20 performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the
21 attorney was successful and what benefits were derived. *Id.* (internal quotation marks omitted). In
22 addition to the *Brunzell* factors, the court must evaluate the disparity of income between parties to
23 family law matters. *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). The
24 court has been unable to make this consideration as Plaintiff has refused to participate in these
25
26
27
28

proceedings. The court can follow any rational method so long as it applies the *Brunzell* factors; it is not confined to authorizing an award of attorney fees exclusively from billing records or hourly statements. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (approving awards based on a “lodestar” amount, as well as a contingency fee arrangement). Although the court must “expressly analyze each factor”, no single factor should be given undue weight. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33. After determining the reasonable value of an attorney’s services analyzing the factors established in *Brunzell*, the court must then provide sufficient reasoning and findings concerning those factors in its order. *Shuette*, 121 Nev. at 865, 124 P.3d at 549. The court’s decision must be supported by “substantial evidence”. *Logan*, 131 Nev. at 266, 350 P.3d at 1143. Substantial evidence supporting a request for fees must be presented to the court by “affidavits, unsworn declarations under penalty of perjury, depositions, answers to interrogatories, [or] admissions on file”. The Supreme Court has confirmed that the *Brunzell* factors must be presented by affidavit or other competent evidence. *Miller v. Wilfong*, 121 Nev. 619, 624, 119 P.3d 727, 730 (2005); *Katz v. Incline Vill. Gen. Improvement Dist.*, 452 P.3d 411 (Nev. 2019), cert. denied, 141 S. Ct. 253, 208 L. Ed. 2d 26 (2020) (citing *Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762, 765 (1989) (holding that an affidavit documenting the hours of work performed, the length of litigation, and the number of volumes of appendices on appeal was sufficient evidence to enable the court to make a reasonable determination of attorney fees, even in the absence of a detailed billing statement); *Cooke v. Gove*, 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding an award of attorney fees based on, among other evidence, two depositions from attorneys testifying about the value of the services rendered)). An award that is not based on such substantial evidence is subject to reversal, as the court will have no factual basis on which to base its decision. *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

1 13. In *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274- 75
2 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit through its
3 trustee.

4 14. NRCP 16 and NRCP 16.205 require each party governed by the applicable rule to
5 file a complete General Financial Disclosure Form.

6 15. In *Young v. Nev. Gaming Control Bd.*, 473 P.3d 1034 (2020), the Nevada Supreme
7 Court held a word is ambiguous if it “is subject to more than one reasonable interpretation.”
8 *Savage*, 123 Nev. at 89, 157 P.3d at 699.

9 16. If a word is not vague, the next issue is whether interpreting its plain meaning would
10 provide an absurd result or was clearly unintended. *See Young v. Nev. Gaming Control Bd.*, 473
11 P.3d 1034 (2020).

12 17. *Landreth v. Malik*, 127 Nev. Adv. Op. N0. 16, 49732 (2011) held we hold that a
13 district court judge in the family division has the same constitutional power and authority as any
14 district court judge, a family court judge has the authority to preside over a case improperly filed
15 or assigned to the family court division.

16 18. Pursuant to the October 2021 “Decision,” Lynita and the LSN Trust were on notice
17 they were unable to meet their burden of proof as discussed in the District Court’s Findings. Despite
18 knowing this well in advance of the evidentiary hearing, the LSN Trust and Lynita elected to
19 proceed forward with the evidentiary hearing.

20 19. Ultimately, after hearing all of the evidence, Lynita and the LSN Trust did not
21 prevail on any of the issues heard during the evidentiary hearing. As indicated above, this was
22 known to Lynita and the LSN Trust well in advance of the evidentiary hearing, and yet, they elected
23 to proceed to trial.

24 20. The ELN Trust was the prevailing party.

1 21. The decision to proceed to a trial/evidentiary hearing knowing you cannot meet your
2 evidentiary basis is the definition of a frivolous or a groundless claim.

3 22. An argument has been presented by Lynita that the LSN Trust was not a party to the
4 action and therefore, cannot be responsible for any of the attorney's fees. This argument belies the
5 record before the District Court. The LSN Trust was represented by Counsel at the Evidentiary
6 Hearing as provided for in the District Court's orders entered on June 29, 2022 and January 31,
7 2023.

8
9 23. Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270,
10 274- 75 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit
11 through its trustee. In her Writ to the Nevada Supreme Court, Lynita argued both trusts are parties
12 to this underlying action. This was also denoted in the Nevada Supreme Court's decision resolving
13 the Writ. The Nevada Supreme Court specifically wrote: Lynita argues both trusts are parties to
14 this action, and moreover, the trusts may be parties to an action under EDCR 5.518.

15
16 24. The ELN Trust filed a timely motion pursuant to NRCP 54(d)(2).

17 25. In reviewing the *Klabacka v. Nelson*, 133 Nev. 164 (2017) the Nevada Supreme
18 Court never stated the District Court had to conduct a tracing of the assets as argued by the
19 Defendant(s). To the contrary, the Nevada Supreme Court found the SSST's were legally valid
20 instruments, and thus, the property contained with the ELN Trust was funded with Eric's separate
21 property. The Supreme Court further found the assets were the separate property of each respective
22 trust thereby upholding the validity of the SSST's, and if any party wanted to allege there was
23 community property in either trust, a proper tracing under *Schmanski v. Schmanski*, 115 Nev. 247,
24 984 P.2d 752 (1999) could be conducted.

25
26 26. Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270,
27 274-75 (2021) the Supreme Court reiterated the holding in *Klabacka v. Nelson*, 133 Nev. 164
28

1 (2017). Specifically, in *Nelson v. Eighth Jud. Dist. Ct.*, the Nevada Supreme Court specifically
2 stated: we also recognized assets within the trusts **may** contain community property and
3 remanded the case so that the district court could conduct proper tracing of the trust assets to
4 determine whether any community property was transferred into or commingled within the trusts.
5 *Id.* at 274. [Emphasis Added]
6

7 27. Nothing in the Supreme Court's decision required the District Court to conduct
8 tracing of the assets. This was the decision of either of the parties to make based upon the
9 information they received during the discovery process.

10 28. The ELN Trust is entitled to an award of attorney's fees as the LSN Trust and Lynita
11 pursuant to EDCR 5.219 (a) and (b). After the District Court entered its order in October 2021,
12 providing a detailed explanation as why The LSN Trust and Lynita had not met its legal burden,
13 the LSN Trust and Lynita unilaterally decided to continue to litigate the matter, knowing it could
14 not make its legal burden.
15

16 29. Moreover, as discussed in the pleadings filed before the District Court, at the original
17 trial conducted in 2012, the ELN Trust proffered expert testimony that "no evidence that any
18 community property was transferred to [Eric's Trust] or that any community property was
19 commingled with the assets of [Eric's Trust]. See *Klabacka v. Nelson*.
20

21 30. By the time of the evidentiary hearing/trial in 2022, Lynita/the LSN Trust had
22 possession of the ELN Trust expert report which was presented during the 2012 trial for a decade.
23 In fact, on the first day of the evidentiary hearing, the Lynita/the LSN Trust called the 2012 expert
24 as their first witness in its case in chief.

25 31. In reviewing the testimony from the Defendant(s) first witness, Dan Gerety, testified
26 that he provided all of the source documentation to support his 2012 report during the 2012 trial,
27 by handing Mr. Dickerson a thumb drive with all of the documents used to complete his report.
28

1 32. In reviewing *Klabacka v. Nelson*, 133 Nev. 164 (2017) the Nevada Supreme Court
2 never stated the District Court had to conduct a tracing of the assets as argued by the Defendant(s).

3 33. Despite the 2012 expert report and the District Court's decision of October 2021,
4 Lynita/the LSN Trust proceeded to trial, knowing they could not meet their legal burden. This was
5 in violation of EDCR 5.219 (a) and (b).
6

7 34. NRS 18.010(2)(b) allows the District Court to award attorney's fees when it finds
8 the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was
9 brought or maintained without reasonable ground or to harass the prevailing party. The court shall
10 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all
11 appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant
12 to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure
13 in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses
14 because such claims and defenses overburden limited judicial resources, hinder the timely
15 resolution of meritorious claims and increase the costs of engaging in business and providing
16 professional services to the public.
17

18 35. As discussed *infra*, Lynita/the LSN Trust undertook a claim to an evidentiary
19 hearing/trial knowing they could not prevail. For the same reasons the ELN Trust is entitled to fees
20 pursuant to EDCR 5.219 (a) and (b), the ELN Trust is entitled to fees pursuant to NRS 18.010(2)(b).
21

22 36. Lynita/the LSN Trust have alleged the ELN Trust is not entitled to fees as the ELN
23 Trust has not filed a General Financial Disclosure Form. The Court has reviewed NRCP 16.2 and
24 NRCP 16.205 and finds the term "party" is vague.

25 37. Specifically, in reviewing NRCP 16.2 and NRCP 16.205, the term party in these
26 sections concerns an "individual" and not a "person" such as a husband, wife, mother, father, etc.
27
28

NRCP 16.2 and NRCP 16.205 did not contemplate this type of litigation wherein a special trust pursuant to NRS 166.020 would be a party.

38. Interpreting the term “party” as written in NRCP 16.2 and NRCP 16.205 would provide an absurd result and was clearly unintended. *See Young v. Nev. Gaming Control Bd.*, 473 P.3d 1034 (2020). Pursuant to *Landreth v. Malik*, 127 Nev. Adv. Op. No. 16, 49732 (2011) a Family Court Judge has the same authority as a general jurisdiction Judge. Meaning, a Family Court Judge can hear “civil” and “criminal” matters.

39. If the ELN Trust had raised the same claims in a court of general jurisdiction, such as the civil division of the Eighth Judicial District Court, the ELN Trust would not be required to file a General Financial Disclosure Form to receive an award of fees. To treat the ELN Trust any differently than a civil litigant would be an absurd result and would encourage civil litigants to attempt to file claims in the Family Court to receive financial information that would otherwise not be required under local rules.

40. Finally, during the decade-long litigation post the entry of the decree of divorce, the LSN Trust has never filed a General Financial Disclosure Form. This is an admission by the LSN Trust that a General Financial Disclosure Form was not a requirement as now argued.

41. The ELN Trust filed its Brunzell Affidavit as part of its underlying motion for attorney’s fees filed on February 21, 2023. Thus, analysis required under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983); *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), and EDCR 5.219 have been satisfied.

42. The fees charged by the ELN Trust counsel in this matter were necessary to the matter and are reasonable in the marketplace given the experience and qualities of the advocates in the amount granted by the court.

43. The ELN Trust provided the court with the following sworn testimony and other evidence in its “Declaration of Jeffrey P. Luszeck In Support of Motion for Attorney’s Fees.”

A. The Qualities of the Advocate.

44. Mark A. Solomon’s (“Mr. Solomon”) billable hourly rate of \$685.00, is commensurate with his experience, reputation and skill in all areas of trust, estate and business litigation. Mr. Solomon practiced law for over 45 years and was the senior founding partner of SDFS. Mr. Solomon was a long-standing member of the Trust and Estate Sections of the State Bar of Nevada and American Bar Association and was considered one Nevada’s premier trust and estate attorneys.

45. Mr. Luszeck has been a partner at SDFS for over seven years, and has been an active member of the State Bar of Nevada since 2005. He regularly litigates business, probate, and trust cases at the trial and appellate level in both state and federal court, and has also received numerous honors and accolades in the Nevada legal community.

46. To ensure resources, and to minimize legal expenses, SDFS delegated tasks and to quality employees who have a lower billable rate, namely, Craig D. Friedel (“Mr. Friedel”) and Joshua M. Hood (“Mr. Hood”). Mr. Friedel has been an associate attorney at SDFS since 2015. Mr. Friedel earned his JD in or around 2015 from William S. Boyd School of Law and has practiced law for several years. Mr. Hood was an associate attorney at SDFS from 2013 – 2022. Mr. Hood earned his JD in or around 2010 from Valparaiso University School of Law. Similarly, Sherry Keast (“Ms. Keast”) has been a paralegal at SDFS since 2005. Ms. Keast earned her Paralegal Certificate in or around 1991 and has worked in the legal field for over twenty-five (25) years

///

///

///.

1 **B. Character of Work Performed.**

2 47. The character of the work of SDFS has performed was important and necessary. The
3 underlying facts of this case presented an issue regarding whether the ELN Trust held any
4 community property.

5 **C. Work Performed.**

6 48. The work performed in this matter included, but is not limited to:

7
8 i. Between May 25, 2017 to present, there were over a hundred filings, of which
9 Undersigned Counsel filed sixty (60). Said filings include, but are not limited to: (1) Motion
10 to Dismiss and a renewed Motion to Dismiss in 2019; (2) Writ of Mandamus; (3) numerous
11 orders; (4) Motion for Summary Judgment; (5) Motions in Limine; and (6) Oppositions to
12 Lynita/the LSN Trust's Motions in Limine;

13 ii. Preparing for and attending numerous hearings between 2018-2022;

14 iii. Various consultations, emails, and telephone conferences with opposing counsel,
15 client, and co-counsel;

16 iv. Research on substantive issues;

17 v. Preparing for, and taking/defending multiple depositions, including, Eric, Lynita,
18 Anthem Forensics and Doug Winters;

19 vi. Preparing for and participating in an eight (8) day trial; and

20 vii. Drafting the instant Motion.⁴

21 **D. Result.**

22
23 49. The quality and outcome of SDFS's representation is reflected in this Court's June
24 29, 2022 Order and January 31, 2023 Order as the ELN Trust was a prevailing party.

25 50. The District Court also reviewed the Billing Statements provided by the ELN Trust
26 and found the billing statements to be fair and reasonable.
27
28

1 NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND
2 CONCLUSIONS,

3 IT IS HEREBY ORDERED that the ELN Trust's Motion for Attorneys' Fees is
4 GRANTED in the total amount of \$239,772.30.

5 IT IS FURTHER ORDERED that a judgment shall be entered in favor of the ELN Trust
6 and against the LSN Trust in the amount of \$239,772.30 as and for an award of attorney's fees.
7 The amount of \$239,772.30 is reduced to judgment, shall collect interest at the legal rate, and shall
8 be collectible by any lawful means.

9 IT IS FURTHER ORDERED a judgment shall be entered in favor of the ELN Trust and
10 against Lynita Nelson, Individually in the amount of \$239,772.30 as and for an award of attorney's
11 fees. The amount of \$239,772.30 is reduced to judgment, shall collect interest at the legal rate, and
12 shall be collectible by any lawful means.
13
14

15 Dated this 27th day of July, 2023

16 

17 Respectfully submitted by:

18 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

3DD E35 E723 2C46
Regina M. McConnell
District Court Judge

LS

19 /s/ Jeffrey P. Luszeck

20 By: _____

21 Jeffrey P. Luszeck, Esq. (#09619)
22 jluszeck@sdfnvlaw.com
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

23 *Attorneys for Matt Klabacka, Distribution Trustee of*
24 *the ERIC L. NELSON NEVADA Trust dated May 30,*
25 *2001*

EXHIBIT 4

EXHIBIT 4

Heather S. Smith

CLERK OF THE COURT

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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT KLABACKA,
as Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants

Case No.: D-09-411537-D
Dept.: O

MATT KLABACKA, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated May
30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**ORDER AFTER HEARING GRANTING THE ELN TRUST'S MOTION FOR
IMMEDIATE PAYMENT OF FUNDS BELONGING TO ELN TRUST**

THIS MATTER having come before the District Court for oral argument on May 30, 2023
and then for a Decision on its Chambers Calendar on July 24, 2023, on MATT KLABACKA,
DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001

1 (“ELN TRUST”), “Motion for Immediate Payment of Funds Belonging to ELN Trust” filed on
2 February 21, 2023.

3 **FINDINGS OF FACT**

4 1. Eric (“Eric”) and Lynita (“Lynita”) Nelson were married on September 17, 1983.

5 2. In 1993, Eric and Lynita entered into a valid separate property agreement (the
6 “SPA”) which transmuted their community property into each Parties’ respective separate
7 property.
8

9 3. The property equally divided by the SPA contemporaneously funded each Parties’
10 1993 separate property trust. Eric’s Separate Property Trust is hereinafter referred to as “Eric’s
11 SPT,” and Lynita’s Separate Property Trust is hereinafter referred to as “Lynita’s SPT.”
12

13 4. In 2001, Eric and Lynita converted each of their respective 1993 separate property
14 trusts into valid self-settled spendthrift trusts – respectively, the Eric L. Nelson Nevada Trust
15 (“ELN Trust”) and the Lynita S. Nelson Nevada Trust (“LSN Trust”) (collectively, the “Trusts”).

16 5. On May 6, 2009, Eric filed his Complaint for Divorce in the instant matter.

17 6. On June 24, 2011, Eric filed a motion seeking to join the ELN Trust as a necessary
18 party in the instant matter.

19 7. On June 3, 2013, over five years after the original Complaint for Divorce was
20 filed, a Decree of Divorce (“Decree”) was entered after multiple trials and hearings on the matter.
21

22 8. On June 5, 2013, two days after this Court entered the Decree, Lynita/the LSN
23 Trust filed a Motion for Payment of Funds Belonging to the Defendant Pursuant to Court’s
24 Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert,
25 wherein Lynita/the LSN Trust demanded the transfers ordered in the Decree be made
26 immediately.
27

28 ///

1 9. The ELN Trust filed a Countermotion to Stay Payments and Transfer Property
2 Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ.

3 10. The ELN Trust's Countermotion was denied. In the Order entered on September
4 3, 2013, the District Court stated:

5 The release of funds at issue will not put the ELN Trust at risk; that there
6 are sufficient assets in the LSN Trust to act as collateral for the payment of
7 the funds at issue; and there has been nothing presented to the Court which
8 would make the Court believe that Mrs. Nelson would try to get rid of
9 funds and not pay any funds if the Supreme Court overturned this Court's
10 decision.

11 11. On June 4, 2014, the District Court entered an Order for Payment of Funds from
12 Blocked Account ("Order for Payment"), which provides, in part:

13 IT IS HEREBY ORDERED that Bank of Nevada shall release/pay to
14 Defendant LYNITA SUE NELSON ("Lynita"), the amount of Three
15 Hundred Twenty-Four Thousand (\$324,000.00) from the funds on deposit
16 in Account No. 7502338705 (the account previously frozen and blocked
17 by this Court)." The account at Bank of Nevada was titled in the name of
18 the ELN Trust and/or an entity owned by the ELN Trust. Said Three
19 Hundred Twenty-Four Thousand (\$324,000.00) payment was secured by
20 properties titled in the name of the LSN Trust.

21 12. The District Court also ordered "Lindell and Banone properties are to be
22 transferred to the LSN Trust. The Lindell and Banone properties are NOT to be sold or otherwise
23 encumbered."

24 13. After the transfers of the Banone properties and Lindell Office, Lynita/the LSN
25 Trust collected substantial rent from said properties from which she retained 100% of the
26 proceeds. This Court also ordered the ELN Trust to remit payment to the LSN Trust in the amount
27 of \$75,000.00, the payment of which was effectuated on June 30, 2014.

28 14. The ELN Trust also paid the LSN Trust a \$6,050.00 security deposit relating to the
Banone, LCC Properties.

///

1 15. After the entry of the Decree, the ELN Trust filed a Notice of Appeal to the
2 Nevada Supreme Court on October 20, 2014.

3 16. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to
4 the pending issues before this Court, the Nevada Supreme Court held:

5 Both the [separate property agreement] and the parties' respective SSSTs
6 were signed, written agreements. We hold the written instruments at issue
7 here are all valid and the terms therein are unambiguous.

8 ...

8 We conclude the [separate property agreement] is a valid transmutation
9 agreement, and the plain terms of the [separate property agreement]
10 indicate it remains in effect during divorce.

11 ...

10 We conclude the [separate property agreement] is a valid transmutation
11 agreement and the parties' community property was converted into
12 separate property.

13 ...

13 [W]e conclude the [separate property agreement] was valid, and the
14 parties' property was validly separate into their respective separate
15 property trusts.

16 ...

15 [W]e hold that the SSSTs are valid and the trusts were funded with
16 separate property stemming from a valid separate property agreement.

17 ...

17 The parties contest whether the assets within the SSSTs remained separate
18 property or whether, because of the many transfers of property between
19 the trusts, the assets reverted back to community property. In a divorce
20 involving trust assets, the district court must trace those assets to
21 determine whether any community property exists within the trusts – as
22 discussed below, the parties' respective separate property in the SSSTs
23 would be afforded the statutory protections against court ordered
24 distribution, while any community property would be subject to the
25 district court's equal distributions. We conclude the district court did not
26 trace the assets in question. . . . Without proper tracing, the district court is
27 left with only the parties' testimony regarding the characterization of the
28 property, which carries no weight.

24 ...

24 Separate property contained within the spendthrift trusts is not subject to
25 attachment or execution, as discussed below. However, if community
26 property exists within the trusts, the district court shall make an equal
27 distribution of that community property.

28 ...

27 Having concluded the district court had subject- matter jurisdiction, the
28 written instrument at issue are valid, and the district court must trace trust

1 assets to determine whether any community property exists within the
2 trusts.

3 17. On April 19, 2018, the District Court entered its Decision wherein it ordered, in
4 part, that the LSN Trust must transfer its 50% interest in the Lindell Office and its 100% interest
5 in the Banone, LLC Properties to the ELN Trust via Quitclaim Deed.” The District Court also
6 ordered the LSN Trust to provide quarterly accountings for the properties to the ELN Trust
7 “including any and all supporting documentation,” for the period of June 3, 2013 through April
8 2018.

9 18. Although it ordered the LSN Trust to transfer the aforementioned real property
10 back to the ELN Trust, it did not rule on the following financial issues:
11

- 12 • Rents the LSN Trust collected from the Banone, LLC Properties;
- 13 • Rents the LSN Trust collected from the Lindell Office;
- 14 • \$324,000.00 paid to Lynita/the LSN Trust;
- 15 • \$6,050.00 security deposit paid to the LSN Trust from the ELN Trust;
- 16 • Payments collected by the LSN Trust pursuant to the Farmouth Circle
17 Note; and
- 18 • \$75,000.00 paid to the LSN Trust by Banone-AZ, LLC.

19 *See* Decision entered on April 19, 2018 at 7:9-18.

20 19. In its Decision, the District Court indicated that it was not inclined to order the
21 LSN Trust to make any financial transfers until a tracing of both trusts occurred. The District
22 Court further stated, “[it] has reviewed the assets of both the ELN and LSN Trusts and has
23 determined that there are sufficient assets in both trusts to offset any deficiency once a final
24 balance and distribution amount has been determined.” *Id.* at 7:25-8:2. The District Court further
25 held that “[o]nce the tracing is finalized and a final balance sheet is received, this Court will Order
26 the proper funds to be transferred to each party accordingly.” *Id.* at 8:2-5.
27
28

1 20. After Lynita and the LSN Trust rested her case-in-chief, this Court issued an order
2 on June 29, 2022, granting the ELN Trust/Eric's Motion for Judgment on Partial Findings
3 pursuant to NRCP 52(c) after hearing evidence over 8 days of testimony.

4 21. On January 31, 2023, the District Court entered its "Decision Regarding the
5 Characterization of Management Fees" and "Decision Denying Plaintiff's Motion to Correct,
6 Clarify, Alter, or Amend; and Denying Defendant's Motion to Correct, Clarify, and/or
7 Reconsider."

8 22. On February 21, 2023, the ELN Trust filed "Motion for Immediate Payment of
9 Funds Belonging to ELN Trust."

10 23. On March 22, 2023, Defendant filed "Defendant/Cross-Defendant, Lynita S.
11 Nelson's, Opposition to Motion for Immediate Payment of Funds Belonging to ELN Trust, and
12 Countermotion for Final Determination of Alimony Issue, and Payment of Monies Owed by ELN
13 Trust to LSN Trust" and "Appendix of Exhibits in Support of Defendant/Cross-Defendant, Lynita
14 S. Nelson's, Opposition to Motion for Immediate Payment of Funds Belonging to ELN Trust, and
15 Countermotion for Final Determination of Alimony Issue, and Payment of Monies Owed by ELN
16 Trust to LSN Trust" Volumes 1 through 3.

17 24. On April 28, 2023, the ELN Trust filed its "Reply to Defendant/Cross- Defendant,
18 Lynita S. Nelson's, Opposition to Motion for Immediate Payment of Funds Belonging to ELN
19 Trust and Opposition to Countermotion for Final Determination of Alimony Issue, and Payment
20 of Monies Owed by ELN Trust to LSN Trust."

21 25. The District Court heard oral arguments on the pending motion on May 30, 2023.
22 The hearing commenced at 1:33 p.m. and concluded at 5:01 p.m. During the lengthy hearing, the
23 District Court heard arguments regarding the pending issues before the Court.
24
25
26
27
28

1 26. The District Court determined at the May 30, 2023, hearing it needed additional
2 information from the parties and required the parties to provide additional briefing as it related to
3 the rents and expenses for Banone, LLC and the Lindell Office.

4 27. An order was entered and served on all parties on June 9, 2023, providing the
5 Briefing schedule. The order specifically provided:
6

7 A. **IT IS HEREBY FURTHER ORDERED** that if they so desire to
8 further brief the issue, the Parties have until June 20, 2023, to file briefs
9 regarding the rents collected from BANONE, LLC and the Lindell Office;
and

10 B. **IT IS HEREBY FURTHER ORDERED** that the Parties will
11 have until July 5, 2023, to file responses to briefs regarding rents collected
from the BANONE, LLC and the Lindell Office.

12 28. The Notice of Entry of Order entered on June 9, 2023, states Lynita Nelson was
13 served via electronic service at sunnysidelscn@gmail.com and via mail at P.O. Box 156-164,
14 10170 West Tropicana Avenue Las Vegas, Nevada 89147. Curtis Rawlings, Esq. who
15 represented the Defendant(s) at the May 30, 2023, hearing was served via electronic service at
16 curtis@pecoslawgroup.com. Also, The Dickerson Karacsonyi Law Group was served at
17 info@thedklawgroup.com.

18 29. During the hearing conducted on May 30, 2023, Defendant's counsel participated
19 in the discussions regarding the timing of the Briefs and made representations he would be filing
20 a Brief. *See* Video Transcript at 4:49:15 through 5:01:38.
21

22 30. On June 20, 2023, the ELN Trust filed its "Supplement to Motion for Immediate
23 Payment of Funds Belonging to ELN Trust Pursuant to Court Order Entered on June 9, 2023" and
24 "Appendix of Exhibits to Supplement to Motion for Immediate Payment of Funds Belonging to
25 ELN Trust Pursuant to Court Order Entered on June 9, 20-3" Volume I through II.
26

27 31. Neither Lynita Nelson nor the LSN Trust filed a Brief on June 20, 2023, pursuant
28 to the District Court's order entered on June 9, 2023.

32. Pursuant to the Order entered on June 9, 2023, the parties were to file reply briefs on July 5, 2023. Neither Lynita Nelson nor did the LSN Trust file a reply brief on July 5, 2023.

33. Since the hearing was conducted on May 30, 2023, Lynita Nelson nor has the LSN Trust filed any further pleadings, papers, etc.

34. The District Court considered all papers, pleadings, and appendix exhibits filed and the oral arguments of counsel.

35. If any of these findings of fact are more appropriately designated Conclusions of law, they shall be so deemed.

CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction and personal jurisdiction over the parties to this action.

2. On June 3, 2013, the District Court entered a Decree of Divorce (“Decree”) wherein he ordered, in part, that certain assets be transferred from the ELN Trust to the Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”).

3. On June 5, 2013, two days after the District Court entered the Decree, Lynita/the LSN Trust filed a Motion for Payment of Funds Belonging to the Defendant Pursuant to Court’s Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert, wherein they demanded the transfers ordered in the Decree be made immediately.

4. The ELN Trust filed a Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ.

5. The Countermotion was denied due to the District Court’s belief that:

The release of funds at issue will not put the ELN Trust at risk; that there are sufficient assets in the LSN Trust to act as collateral for the payment of the funds at issue; and there has been nothing presented to the Court which would make the Court believe that Mrs. Nelson would try to get rid of funds and not pay any funds if the Supreme Court overturned this Court’s decision. *See* Order Denying Countermotion to Stay Payments and

1 Transfer Property Pending Appeal and/or Resolution to the Nevada
2 Supreme Court for an Extraordinary Writ entered on September 3, 2013,
at 2:14-18.

3 6. On June 4, 2014, the District Court entered an Order for Payment of Funds from
4 Blocked Account (“Order for Payment”), which ordered, in part, that the “Lindell and Banone
5 properties are to be transferred to the LSN Trust. The Lindell and Banone properties are NOT to
6 be sold or otherwise encumbered.” *See* Court Minutes entered on June 4, 2014.

7
8 7. After the transfers of the Banone properties and Lindell Office, Lynita/the LSN
9 Trust collected substantial rent from said properties from which she retained 100% of the
10 proceeds.

11 8. On May 25, 2017, the Nevada Supreme Court issued its Opinion that provides, in
12 relevant part, “the district court erred in ordering Eric’s personal obligations be paid by Eric’s
13 Trust.”

14
15 9. On April 19, 2018, the District Court entered its Decision, wherein, in part, the
16 LSN Trust must transfer its 50% interest in the Lindell Office and its 100% interest in the
17 Banone, LLC Properties to the ELN Trust via Quitclaim Deed.”

18 10. The District Court also ordered Lynita/the LSN Trust to provide quarterly
19 accountings for the properties to the ELN Trust “including any and all supporting
20 documentation,” for the period of June 3, 2013 through April 2018.

21
22 11. Although the District Court ordered the LSN Trust to transfer the aforementioned
23 real property back to the ELN Trust (and Lynita, in her capacity as Investment Trustee of the LSN
24 Trust did in fact transfer said assets back to the ELN Trust), the District Court did not rule on the
25 following financial issues:

- 26
- Rents Lynita/the LSN Trust collected from the Banone, LLC Properties;
 - Rents Lynita/the LSN Trust collected from the Lindell Office.
- 27
28

- \$324,000.00 paid to Lynita/the LSN Trust from the ELN Trust;
- \$6,050.00 security deposit paid to the LSN Trust from the ELN Trust;
- Payments collected by the LSN Trust pursuant to the Farmouth Circle Note; and
- \$75,000.00 paid to the LSN Trust by Banone-AZ, LLC

See Decision entered on April 19, 2018 at 7:9-18.

12. In its Decision, the District Court held that “[o]nce the tracing is finalized and a final balance sheet is received, this Court will Order the proper funds to be transferred to each party accordingly.” *Id.* at 8:2-5.

13. The District Court ruled on all outstanding issues in its Decision and Order entered on June 29, 2022, and Decision Regarding Characterization of Management Fees entered on January 31, 2023.

14. Based upon the law of the case, once the District Court has completed the tracing analysis the District Court would order the proper funds to be transferred.

15. Based upon the pleadings filed with the District Court, it is not disputed the ELN Trust has yet to receive the rental proceeds for the Banone Properties and its share of the Lindell property.

16. Thus, the District Court must resolve the pending issues, and requested additional briefing from the parties.

17. In dispute is the proper deductions Lynita and the LSN Trust should receive from the net rental proceeds it received.

18. It is also in dispute whether Lynita and the LSN Trust provided source documentation as required by the District Court’s previous orders.

///

1 19. The District Court reviewed the documentation provided by Lynita and the LSN
2 Trust in its Appendix filed on March 22, 2023, and the arguments raised in the ELN Trust's
3 briefs.

4 20. NRS 52.275 provides:

5 1. The contents of voluminous writings, recordings or photographs
6 which cannot conveniently be examined in court may be presented in the
7 form of a chart, summary or calculation.

8 2. The originals shall be made available for examination or copying,
9 or both, by other parties at a reasonable time and place. The judge may
order that the originals be produced in court.

10 21. In reviewing the documents provided by Lynita and the LSN Trust, the District
11 Court notes the information provided were summary charts and no source documentation was
12 provided such as receipts, invoices, etc.

13 22. The ELN Trust understands it does not have the source documentation and it is
14 entitled to the same. However, the ELN Trust as stated in its Supplement filed on June 20, 2023,
15 has indicated that in order to avoid the cost of a fourth trial, it will accept the information
16 provided by Lynita and the LSN Trust.

17 23. Additionally, if the matter were to proceed to a fourth evidentiary hearing/trial, the
18 ELN Trust would request economic damages, instead of a simple interest calculation as requested
19 in the Briefs filed with the court.

20 24. The evidentiary hearing/trial cost the ELN Trust more than \$600,000.00, and five
21 years to litigate. The District Court is concerned that a fourth trial would be costly and would
22 delay a final resolution which is not in the best interest of the parties.

23 25. As the ELN Trust is willing to forego the requirement for source documentation
24 and economic damages, the District Court will rule on the pleadings provided by the parties.
25
26
27
28

26. Banone, LLC, an entity that was owned/titled in the name of the ELN Trust, owned a number of rental properties in Las Vegas located on the following streets: Anaconda, Baxter, Cambria, Churchill, Clover Blossom, Compass Rose, Concord Village, Guadalupe, Heather Ridge, Marnell, Rusty Ridge, Sawyer and Terra Bella.

27. Pursuant to the District Court's order, Banone, LLC transferred 100% of its interest to the LSN Trust. In or around May 2018, the LSN Trust relinquished its interest in Banone, LLC.

28. Lynita/the LSN Trust has admitted to collecting the following rent from the following properties titled in the name of BANONE, LLC between July 1, 2014 - April 2018:

- Anaconda: \$52,900.00
- Baxter: \$10,700.00
- Cambria: \$36,003.00
- Churchill: \$41,569.00
- Clover Blossom: \$46,000.00
- Compass Rose: \$42,000.00
- Concord Village: \$38,281.50
- Guadalupe: \$37,300.00
- Heather Ridge: \$33,390.004
- Marnell: \$38,310.00
- Rusty Ridge: \$42,345.00
- Sawyer: \$39,650.00
- Terra Bella: \$46,800.00

29. The District Court has reviewed Lynita/the LSN Trusts Second Post Appeal Disclosure of Documents at LSN000315. The District Court concludes the expenses for Legal Fees, Accounting, Automobile Expenses, Telephone, Interest Expenses, and Bank Charges are not reasonable expenses to maintain the rental properties. Moreover, Lynita/the LSN Trust did not provide source documentation for these expenditures. As it relates to the Legal Fees, the "Dickerson Law Group" was paid \$159,810.00 to prosecute this action which is not a reasonable expense to maintain the rental properties.

1 30. The \$3,652.72 listed by Lynita and the LSN Trust was paid to Rochelle McGowan
2 for her attorneys' fees and costs associated with a lawsuit that Lynita filed against Rochelle. *See*
3 Arbitrator's Decision on Request for Fees/Costs filed on December 2, 2016, in the matter entitled
4 LYNITA SUE NELSON v. ROCHELLE A. MCARTHUR, Clark County Case No. A15-726599-
5 C. There was no benefit to Banone for the payment of this expense from the rental proceeds.

6
7 31. The District Court has reviewed the ELN Trust Calculation for the rents owed to it
8 as provided in Exhibit 14. The District Court notes, that despite the LSN Trust and Lynita not
9 providing an accrual accounting of the monies received minus the appropriate expenses for the
10 properties, the ELN Trust has undertaken this task on a monthly basis for all of the Banone
11 Properties.

12 32. Lynita/the LSN Trust has not objected to Exhibit 14 as provided in the ELN Trust
13 Supplemental Briefing.

14
15 33. Lynita/the LSN Trust admits that she collected \$347,784.50 in rent between July 1,
16 2014 - September 2019.

17 34. Lynita/The LSN Trust further admits it collected rents for Lindell in the amount of
18 \$97,395.95 between October 1, 2019 - December 2020.

19 35. Lynita/the LSN Trust further admits it collected rents for Lindell \$14,490.40 for
20 January and February 2021.

21 36. Lynita/the LSN Trust has not objected to ELN Trust Exhibit 18 which indicates
22 Lynita/the LSN Trust owes \$296,381.84 to the ELN Trust for its share of the Lindell rents.

23 37. The ELN Trust paid the LSN Trust \$6,050.00 for a security deposit. This is not
24 disputed by the LSN Trust, and this amount was previously awarded to ELN Trust at the May 30,
25 2023 Hearing.
26
27
28

1 38. The LSN Trust/Lynita owes money to the ELN Trust for monies it received for
2 Farmouth Circle in the amount of \$88,166.00, which amount was previously awarded to ELN
3 Trust at the May 30, 2023 Hearing.

4 39. The LSN Trust owes the ELN Trust \$75,000.00 for the principal paid by Banone-
5 AZ, LLC. The LSN Trust has not disputed it received \$75,000 from Banone-AZ, LLC, which
6 amount was previously awarded to ELN Trust at the May 30, 2023 Hearing.

7
8 **NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND**
9 **CONCLUSIONS,**

10 **IT IS HEREBY ORDERED** that the ELN'S TRUST MOTION FOR IMMEDIATE
11 PAYMENT OF FUNDS BELONGING TO ELN TRUST is hereby GRANTED;

12 **IT IS FURTHER ORDERED** the LSN Trust and/or Lynita Nelson shall repay the ELN
13 Trust the for the rents collected from BANONE, LLC in the amount of \$435,260.15 plus interest
14 from May 26, 2017 through July 31, 2023 in the amount of \$177,601.10, for a total of
15 \$612,861.25. The amount of \$612,861.25 is reduced to judgment, shall collect interest at the
16 legal rate, and shall be collectible by any lawful means;

17
18 **IT IS FURTHER ORDERED** that Lynita/the LSN Trust shall repay the ELN Trust the
19 for 50% of the rents collected from the Lindell Office in the amount of \$147,667.90 plus interest
20 from May 26, 2017 through July 31, 2023 in the amount of \$60,253.58, for a total of \$207,921.48.
21 The amount of \$207,921.48 is reduced to judgment, shall collect interest at the legal rate, and
22 shall be collectible by any lawful means; and

23
24 **IT IS FURTHER ORDERED** that along with the previous order for repayment of
25 \$324,000.00, Lynita/the LSN Trust shall repay the ELN Trust \$132,203.13 in interest from May
26 26, 2017 through July 31, 2023. The total amount of \$456,203.13 is reduced to judgment, shall
27 collect interest at the legal rate, and shall be collectible by any lawful means.
28

EXHIBIT “3”

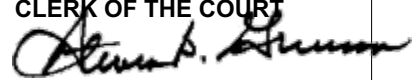
TO

OPPOSITION TO

MOTION FOR STAY

OF ENFORCEMENT

OF JUDGMENT



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Fax: (702) 731-2337
*Attorneys for the Lynita S.
Nelson Nevada Trust Dated May 30, 2001*

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Cross-claimant,

LYNITA SUE NELSON,

Cross-defendant

District Court Case No.: D-09-411537-D

**OPPOSITION TO MOTION FOR
ORDER ALLOWING EXAMINATION
OF JUDGMENT DEBTOR, LYNITA S.
NELSON, INDIVIDUALLY, AND IN
HER CAPACITY AS INVESTMENT
TRUSTEE OF THE LYNITA S. NELSON
NEVADA TRUST DATED MAY 30, 2001,
AND
COUNTERMOTION TO STAY
EXECUTION OF JUDGMENT
PURSUANT TO NRAP 8**

NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE
CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR
RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE

1 A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR
2 RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING
3 GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED
4 HEARING DATE.

5 The Lynita S. Nelson Nevada Trust Dated May 30, 2001 (“LSN Trust”) by and through its
6 attorneys, Stacy Howlett, Esq. and Matthew D. Whittaker, Esq. of Michaelson Law, hereby
7 submits this Opposition to Motion for Order Allowing Examination of Judgment Debtor, Lynita
8 S. Nelson, Individually, and in Her Capacity as Investment Trustee of the Lynita S. Nelson Nevada
9 Trust Dated May 30, 2001, and Countermotion to Stay Execution of Judgment Pursuant to NRAP
10 8.

11 This Opposition and Countermotion is made and based on the papers and pleadings on file
12 in the above-captioned case, the Memorandum of Points and Authorities below, and upon such
13 oral argument as the Court may entertain at the hearing on this matter.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. STATEMENT OF FACTS**

16 The parties are where they are today because Mr. Nelson is an abusive ex-husband. The
17 entire reason why the court ordered ELN Trust to pay Mr. Nelson’s debts to Ms. Nelson is because
18 the trial court did not find Mr. Nelson to be an honest and outstanding guy. The court found Mr.
19 Nelson to be “at the very least . . . less than truthful with this Court” about the ELN Trust’s financial
20 position. *See* Decree of Divorce at 24:3. The court found that Mr. Nelson attempted to circumvent
21 the injunction and “clearly reflect that Mr. Nelson lacks credibility.” *Id.*, 24:16-17. The court
22 further found that “Mr. Nelson’s behavior and conduct during the course of these proceedings has
23 been deplorable. This Court has observed Mr. Nelson angrily bursting from the courtroom
24 following hearings.” *Id.*, 25:7-9. Mr. Nelson also exhibited “inappropriate conduct towards
25 opposing counsel . . . including cursing at him, leave bulgar voice messages on his office phone
26 and challenging him to a fight in the parking lot of his office.” *Id.*, 25:9-12. The court then set off
27 the last decade of litigation in this matter because it ordered Mr. Nelson’s trust to pay Mr. Nelson’s
28 debts to Ms. Nelson because the Court believed Mr. Nelson would simply deplete his own personal

1 assets to avoid paying Ms. Nelson. *Id.*, 39:6-26.

2 Now, Mr. Nelson seeks revenge against Ms. Nelson because she exercised her right to an
3 appeal and refused Nelson's invitation by text message to agree to a very lopsided child support
4 settlement – a child support settlement that Mr. Nelson pushes because his failure to pay child
5 support is causing gaming license issues for his business ventures.

6 Instead of doing the honest thing and simply paying the child support, Mr. Nelson seeks to
7 make Ms. Nelson's life until she yields to his demands. In other words, their marriage may have
8 ended years ago but Mr. Nelson still seeks abusive power and dominion over his ex-wife to get his
9 way.

10 Mr. Nelson and his trust wish to proceed executing on the very orders and judgments at
11 issue in the pending appeal.

12 This Court ordered Lynita Nelson and the LSN Trust to pay attorney's fees to both Eric
13 Nelson and the ELN Trust for going to trial and losing. This Court found that, although the Court
14 sided with Lynita Nelson at the summary judgment stage, Ms. Nelson unreasonably proceeded
15 with trial on the issue of tracing community property. Accordingly, the Court granted attorney's
16 fees to both Eric Nelson and ELN Trust pursuant to NRS 18.010 and EDCR 5.219.

17 This Court also ordered Lynita Nelson and the LSN Trust to pay interest to ELN Trust on
18 income and rent money after remand from the Nevada Supreme Court – even in light of the
19 incredible amount of money that Mr. Nelson still owes Ms. Nelson and Mr. Nelson's own
20 disobedience of a court order to pay rent on the Lindell building.

21 Lynita Nelson, individually and as trustee of the LSN Trust, timely filed a Notice of Appeal
22 from those orders. In those appeals, Ms. Nelson contends that the Court misapplied and
23 misinterpreted Nevada rules and laws and otherwise abused its discretion in entering those orders.

24 **II. LEGAL ARGUMENT AGAINST ALLOWING JUDGMENT DEBTOR**
25 **EXAM AND IN FAVOR OF MOTION TO STAY EXECUTION OF**
26 **JUDGMENT**

27 Nevada Rule of Appellate Procedure 8(a)(1) allows a party to move the trial court for stay
28 of the judgment or order of, or proceedings in, a district court pending appeal to the Supreme Court
or Court of Appeal.

The court is to apply four tests when considering whether to grant a stay:

- (1) Whether the object of the appeal will be defeated if the stay is denied;
- (2) Whether appellant will suffer irreparable or serious injury if the stay is denied;
- (3) Whether respondent will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether appellant is likely to prevail on the merits.

See Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *see also* NRAP 8(c).

The object of the appeal would be defeated if the stay is denied. As the Nevada Supreme Court held as law of this case, trusts are not to be held liable for a settlor's personal debts. *See Klabacka v. Nelson*, 133 Nev. 164, 177, 394 P.3d 940, 950 (2017). Yet, LSN Trust is being held liable for attorney's fees incurred by Mr. Nelson and ELN Trust for Ms. Nelson proceeding to trial on her individual, personal right to division of any and all community property. Because the right was personal to Ms. Nelson, LSN Trust could not proceed to trial unreasonably or with intent to harass ELN Trust because LSN Trust did not go to trial on any issues. Therefore, the object of holding this court to mandatory Nevada precedence would be defeated should LSN Trust have to pay debts personal to Ms. Nelson.

Ms. Nelson and the LSN Trust would be irreparably harmed if the stay is denied. Irreparable harm is harm for which compensatory damages would be inadequate, such as the sale of a home, because real property is unique. *See Hansen v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 650, 658, 6 P.3d 982, 986–87 (2000) citing and quoting *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987). ELN Trust seeks information regarding Ms. Nelson and LSN Trust's real property holdings to execute the judgment against. Such real property is unique and therefore harm would exist upon execution that clouds title to such property.

ELN Trust will not suffer irreparable harm should the stay be granted. Due to the Nevada Supreme Court's decisions, ELN Trust's assets are vastly large and more significant than LSN Trust's assets.

Appellant is likely to prevail on the merits of the appeal. ELN Trust is only entitled to attorney's fees pursuant to NRS 18.010 and EDCR 5.219 if Ms. Nelson and LSN Trust proceeded

1 to trial unreasonably or with an intent to harass ELN Trust. As LSN Trust did not proceed to trial
2 on any claims, LSN Trust could not unreasonably proceed to trial or otherwise intend to harass
3 ELN Trust. Additionally, the court sided with Ms. Nelson at the summary judgment stage and the
4 court's ultimate decision from the trial rested on testimony from the trial. Further, the Nevada
5 Supreme Court ordered this court to complete the community property tracing. *See Klabacka v.*
6 *Nelson*, 133 Nev. at 173 (finding that the district court "must still perform[]" the tracing of trust
7 assets and mandating the district court that it "shall make an equal distribution of community
8 property" if community property exists in the trusts).

9 Additionally, LSN Trust will prevail on the issue of interest owed to ELN Trust because
10 the Court's order violates NRAP 37. NRAP 37(b) explicitly states that if the appellate court
11 reverses or modifies a judgment that a money judgment be entered in the district court, the mandate
12 must contain instructions about the allowance of interest. The appellate decision had no such
13 instructions.

14 Finally, ELN Trust's requests go beyond the statutory allowance of NRS 21.270. ELN
15 Trust requests documents about entities not party to or privy to this matter or the judgments.
16 Namely, all Articles of Organization, Operating Agreements, lists of members and managers,
17 meeting minutes, resolutions, and other documentary evidence of Southern Magnolia LLC and
18 Pink Peonies LLC – none of which are reasonably calculated to identify executable assets of Ms.
19 Nelson or LSN Trust. Accordingly, such requests are meant only to harass Ms. Nelson and her
20 trust.

21 Ms. Nelson will post a supersedeas bond pursuant to NRCP 62 should the court grant the
22 stay of execution.

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III. CONCLUSION

Based on the foregoing, this Court should deny the Motion for Order Allowing Examination of Judgment Debtor and grant the Countermotion to stay execution of the judgment pursuant to NRAP 8.

Dated this 2nd day of October, 2023.

MICHAELSON LAW

/s/ Matthew D. Whittaker

Stacy Howlett, Esq.
Nevada Bar No. 8502
Matthew D. Whittaker, Esq.
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*Attorneys for the Lynita S. Nelson Nevada
Trust Dated May 30, 2001*

**DECLARATION OF COUNSEL SUPPORTING OPPOSITION TO MOTION FOR
ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S.
NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE
OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001, AND
COUNTERMOTION TO STAY EXECUTION OF JUDGMENT PURSUANT TO NRAP 8**

Matthew D. Whittaker, being first duly sworn, deposes and says:

That I have been recently retained by Lynita Nelson on behalf of the Lynita S. Nelson Nevada Trust dated May 30, 2001. I have read the **OPPOSITION TO MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001, AND COUNTERMOTION TO STAY EXECUTION OF JUDGMENT PURSUANT TO NRAP 8**, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

SIGNED UNDER THE PENALTY OF PERJURY.

Dated this 2nd day of October, 2023.

MICHAELSON LAW

/s/ Matthew D. Whittaker

Stacy Howlett, Esq.
Nevada Bar No. 8502
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*Attorneys for the Lynita S. Nelson Nevada
Trust Dated May 30, 2001*

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b) and NEFCR 9, the undersigned hereby certifies that on October 2, 2023, a copy of the **OPPOSITION TO MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001, AND COUNTERMOTION TO STAY EXECUTION OF JUDGMENT PURSUANT TO NRAP 8** was e-served and/or mailed by US Priority Mail in Henderson, Nevada to the following individuals and/or entities at the following addresses:

Jeffrey P. Luszeck, Esq. SOLOMON DWIGGINS FREER & STEADMAN, LTD. 9060 West Cheyenne Avenue Las Vegas, NV 89129 Tel: (702) 853-5483 Fax: (702) 853-5485 jluszeck@sdfnvlaw.com <i>Attorneys for Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001</i>	Michelle A. Hauser, Esq. Hauser Family Law 1489 W. Warm Springs Road, Suite 100 Henderson, NV 89014 michelle@hauserfamilylaw.com <i>Attorney for Plaintiff Eric Nelson Individually</i>
Curtis R. Rawlings, Esq. Pecos Law Group 8925 South Pecos Road, Suite 14A Henderson, Nevada 89074 curtis@pecoslawgroup.com <i>Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"</i>	

MICHAELSON LAW

/s/ Michelle Ekanger

An Employee of Michaelson Law

EXHIBIT “4”

TO

OPPOSITION TO

MOTION FOR STAY

OF ENFORCEMENT

OF JUDGMENT



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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants

Case No.: D-09-411537-D

Dept.: O

Oral Argument Requested?

☒ Yes ☐ No

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**REPLY TO OPPOSITION TO MOTION FOR ORDER ALLOWING
EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON,
INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE
OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001;
AND OPPOSITION TO COUNTERMOTION TO STAY EXECUTION OF
JUDGMENT PURSUANT TO NRAP 8**

Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001 (the “ELN Trust” or “Judgment Creditor”), hereby submits this Opposition to Motion for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, Individually, and in Her Capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001, and Opposition to Countermotion to Stay Execution of Judgment Pursuant to NRAP 8.

This Reply and Opposition are based on the following Memorandum of Points and Authorities, the papers and pleadings on file and upon such oral argument as the Court may entertain at the hearing on this matter.

DATED this 9th day of October, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

By: _____

Jeffrey P. Luszeck, Esq. (#09619)

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9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
Trust dated May 30, 2001*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RESPONSE TO THE LSN TRUST'S FALSE AND MISLEADING STATEMENT OF FACTS

The Opposition's Statement of Facts makes it appear as if the LSN Trust's new Counsel did not read the Motion for Order Allowing Examination of Judgment Debtor, or have a firm grasp regarding the procedural history in this matter. It is important to note that Lynita, individually, did not file an Opposition to the Motion for Order Allowing Examination of Judgment Debtor, and such a failure to

In case there is any misunderstanding, the Motion for Order Allowing Examination of Judgment Debtor has nothing to do with Eric's individual obligations, or the LSN Trust's reliance on certain findings in the Honorable Frank Sullivan's June 3, 2013, Divorce Decree, which were largely reversed and remanded in *Klabacka v. Nelson*, 133 Nev. Adv. Op. 24 (May 25, 2017). The Motion for Order Allowing Examination of Judgment Debtor merely requested the production of certain documentation/information and the ability to conduct a judgment debtor examination pursuant to NRS 21.270 for the \$1,748,279.06 owed by Lynita/the LSN Trust to the ELN Trust.

Indeed, a debtor examination is being request not as a result of "revenge," but the fact that Lynita and the LSN Trust owe the ELN Trust \$1,748,279.06, which is broken down as follows:

- \$493,216.00, *see* Motion for Debtor Examination at Ex. 1, June 8, 2023 Order;



- \$62,935.08, *see* Motion for Debtor Examination at Ex. 2, July 27, 2023 Cost Order;
- \$239,772.30, *see* Motion for Debtor Examination at Ex. 3, July 27, 2023 Attorneys' Fees Order; and
- \$952,355.68, *see* Motion for Debtor Examination at Ex. 4, August 2, 2023 Order.

TOTAL: \$1,748,279.06

It is important to note that the LSN Trust did not appeal the June 8, 2023 Order (in the amount of \$493,216.00) or the July 27, 2023 Cost Order (in the amount of \$62,935.08). Further, although the LSN Trust appealed the August 2, 2023 Order, said appeal is limited to the interest in the amount of \$370,057.81, not principal in the amount of \$582,928.05, that Lynita/the LSN Trust were ordered to pay.

In conclusion, although there are judgments against Lynita/the LSN Trust in favor of the ELN Trust in the cumulative amount of \$1,748,279.06, the LSN Trust has only appealed \$609,830.11 of said judgments (\$239,772.30 in attorneys' fees, *see* Motion for Debtor Examination at Ex. 3, July 27, 2023 Attorneys' Fees Order, and \$370,057.81 in interest, *see* Motion for Debtor Examination at Ex. 4, August 2, 2023 Order). Therefore, even if the LSN Trust succeeds on its appeal, the LSN Trust will still owe the ELN Trust \$1,138,448.95 pursuant to the June 8, 2023 Order and July 27, 2023 Cost Order, neither of which were appealed, and the principal amount identified in the August 2, 2023 Order.

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II. LEGAL ARGUMENT

A. THE LSN TRUST'S CONTENTION THAT THE REQUEST FOR DEBTOR EXAMINATION GOES "BEYOND THE STATUTORY ALLOWANCE OF NRS 21.270 IS FACTUALLY AND LEGAL ERRONEOUS.

The LSN Trust's only real objection to the debtor examination proceeding is that the judgment debtor examination goes "beyond the statutory allowance of NRS 21.270" because of its mistaken belief that neither SOUTHERN MAGNOLIA, LLC nor PINK PEONIES, LLC are "privy to this matter or the judgments" or "are reasonably calculated to identify executable assets of Ms. Nelson or LSN Trust." The LSN Trust's argument regarding this issue is intellectually dishonest as Ms. Nelson testified that said entities were in fact owned by the LSN Trust. Indeed, during her deposition on March 10, 2022, Lynita testified that she had transferred (1) the Mississippi Properties from the LSN Trust to SOUTHERN MAGNOLIA, LLC or the Wyoming Properties from the LSN Trust to PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC. Specifically, as it relates to the Mississippi Properties Lynita testified as follows:

Q. Okay. And then similarly, what is Southern Magnolia, LLC?

A. What do I hold in that? Is that what you're saying?

Q. Sure. What is --

A. When you ask what it is, it's an LLC.

Q. What is it -- what is the purpose of Southern Magnolia, LLC?

A. It holds the properties and the land in Mississippi.

Q. All of the Mississippi properties?

A. Yes.

- 1 Q. And when was that founded?
- 2 A. I won't be able to give you dates on that. That's not
- 3 something that I remember.
- 4 Q. Was it founded prior to the decree of divorce that was
- 5 issued by Judge Sullivan?
- 6 A. No. I don't think so. I don't want to say "no" or "yes." I
- 7 don't know.
- 8 Q. Does Southern Magnolia, LLC, hold any other assets
- 9 other than Mississippi properties?
- 10 A. Just the -- just the Mississippi properties, that I know of.¹

11 ...

- 12 Q. So let's go back. Pink Peonies, LLC, is an LSN Trust
- 13 entity?
- 14 A. It's underneath.
- 15 Q. It's underneath what?
- 16 A. It's held underneath the trust.
- 17 Q. LSN Trust?
- 18 A. Uh-huh.
- 19 Q. Okay. What about Southern Magnolia, LLC?
- 20 A. They all are, yeah.
- 21 Q. Okay. They're all LSN Trust entities?
- 22 A. Well, they're held underneath that trust. That's -- I mean, I
- 23 could not do anything otherwise.
- 24 Q. Okay.
- 25 A. That would be the only honest thing to do.²

26 ...

- 27 Q. Just so we're clear, we have the -- sorry. I need to pull up
- 28 my notes -- Southern Magnolia, LLC?
- A. Yes.
- Q. That holds which property? I'm sorry. Is that the
- Mississippi property?

26 ¹ See Lynita's Deposition Transcript dated March 10, 2022, select portions of

27 which are attached hereto as **Exhibit 7**, at 56:20-57:18.

28 ² See *id.* at 65:7-20.

1 A. It's okay. Yeah.³

2 Similarly, in regards to PINK PEONIES, LLC/PINK PEONIES-WYOMING,
3
4 LLC Lynita testified as follows:

5 Q. Do you -- have you formed any other LLCs? Do you
6 currently have any other LLCs --

7 A. I have another, uh-huh.

8 Q. -- I guess would be proper.

9 A. Pink Peonies Wyoming.

10 Q. And what does Pink Peonies Wyoming hold?

11 A. The land in Wyoming.

12 Q. All of the Wyoming properties, or is it just one?

13 A. It's 200 acres plus. It's, like, 202-point-something.
14 It's the land, you know.

15 Q. Does it hold anything else other than that 200 acres?

16 A. No.⁴

17 ...

18 Q. And then the Wyoming properties, do you believe they
19 went directly from Pink Peonies Wyoming to the -- I'm
20 sorry. Do you think it went directly from LSN Trust to
21 Pink Peonies Wyoming, LLC, or do you believe it went
22 through the One Oak Tree Lane Trust?

23 A. You know, I don't think it did. I think just because
24 Pebble Beach was here in town, I did that, but I would
25 have to look it up myself, honestly.

26 Q. As you sit there today, are you certain that the Wyoming
27 properties are held by Pink Peonies Wyoming, LLC, at
28 this juncture?

A. Yeah. Do I believe, did you say? Or what did you say?

Q. Are you certain? I mean, do you know that they're
actually held by that LLC?

³ See *id.* at 75:16-22.

⁴ See *id.* at 58:3-16.

1 A. Yeah. I mean, the last time I looked, they were. It was
2 Pink Peonies, yeah -- Pink Peonies Wyoming.⁵

3 Despite Lynita's testimony that the Mississippi Properties, which are titled in
4 the name of the SOUTHERN MAGNOLIA, LLC, and Wyoming Properties, which
5 are titled in the name of PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC,
6 were held under the umbrella of the LSN Trust, none of the documentation that has
7 been produced by Lynita confirms the same. It is for this reason that a debtor
8 examination is being requested along with the production of certain information and
9 documentation relating to SOUTHERN MAGNOLIA, LLC or PINK PEONIES,
10 LLC/PINK PEONIES-WYOMING, LLC.
11
12
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14 B. THE LSN TRUST IS NOT ENTITLED TO A STAY UNDER NRAP
15 8(c).

16 In deciding whether to grant a stay, this Court considers the following factors
17 set forth in NRAP 8(c): (1) Whether the objection of the appeal will be defeated if
18 the stay is denied; (2) Whether appellant will suffer irreparable or serious injury if
19 the stay is denied; (3) Whether respondent will suffer irreparable or serious injury if
20 the stay is granted; and (4) Whether appellant is likely to prevail on the merits. *See*
21 *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). *See also*
22 NRAP 8(c). The Nevada State Legislature has correlated similar stay factors with
23 the legal test for entering an injunction. *See* NRS 233B.140(2) ("In determining
24
25
26

27 _____
28 ⁵ *See id.* at 75:15-76:9.

1 whether to grant a stay, the court shall consider the same factors as are considered for
2 a preliminary injunction under Rule 65 of the Nevada Rules of Civil Procedure.”).
3
4 Further, there is no automatic stay or entitlement to a stay relating to trust matters.
5 See NRS 155.195 (“Unless otherwise ordered by the court, an appeal pursuant to NRS
6 155.190 does not stay any order or proceeding in the estate or trust.”).
7

8 Upon the weighing of the NRAP 8(c) factors, this Court should deny the LSN
9 Trust’s Countermotion to Stay Execution of Judgment.

10 *1. The Object of the LSN Trust’s Appeal Will Not Be Defeated and*
11 *It Will Not Suffer Irreparable Harm if a Stay is Denied.*

12 As set forth in the Motion for Order Allowing Debtor Examination, the ELN
13 Trust is seeking documentation/information relating to assets titled in the name of the
14 LSN Trust and the ability to take a debtor examination of Lynita, individually, and in
15 her capacity as Investment Trustee of the LSN Trust. The Motion for Order Allowing
16 Debtor Examination is not seeking to “sell a home” or execute any of the judgments
17 entered by the Court as the LSN Trust alludes to in its Opposition. See Opposition at
18 4:16-23.
19
20
21

22 Even if that was the ELN Trust’s goal, however, allowing the ELN Trust to
23 conduct a debtor examination would not defeat the appeal because even if the LSN
24 Trust is successful on appeal it will still owe the ELN Trust \$1,138,448.95.
25

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1 2. *The ELN Trust Will Be Injured if a Stay is Imposed.*

2 Unlike the LSN Trust, the ELN Trust will be injured if a stay is imposed
3
4 because the LSN Trust has already transferred assets from the LSN Trust to other
5 LLC's. Specifically, as indicated *supra*, Lynita testified on March 10, 2022, that she
6 transferred the Mississippi Properties from the LSN Trust to SOUTHERN
7 MAGNOLIA, LLC and the Wyoming Properties from the LSN Trust to PINK
8 PEONIES, LLC/PINK PEONIES-WYOMING, LLC. As such, the ELN Trust is
9 concerned that if a stay is imposed the LSN Trust will continue to transfer assets
10 outside this Court's purview thereby making it impossible for the ELN Trust to
11 collect.
12

13
14 Further, and more importantly, a stay would also hinder the ELN Trust's ability
15 to collect the \$1,138,448.95 that is not subject to the appeal.
16

17 3. *The LSN Trust is Not Likely to Prevail on the Merits of Its Appeal.*

18 As a final argument, the LSN Trust (with no real analysis) contends that a stay
19 should issue because it is likely to prevail on the merits of its appeal relating to
20 attorneys' fees and interest. Once again, even if successful on appeal the LSN Trust
21 will still owe the ELN Trust \$1,138,448.95.
22
23

24 i. This Court Correctly Found that the ELN Trust is Entitled
25 to Attorneys' Fees.

26 The LSN Trust has apparently forgotten that it also filed a Motion for
27 Attorneys' Fees against Eric/the ELN Trust on virtually identical grounds as Eric/the
28

ELN Trust, but said motion was denied. Now that Lynita/the LSN Trust's Motion for Attorneys' Fees is denied, however, she contends that the ELN Trust is not entitled to its attorneys' fees pursuant to NRS 18.010 or EDCR 5.219. Since the LSN Trust has failed to provide any argument regarding this issue as required by as required by the Eighth Judicial Court rules, the ELN Trust is unable to rebut the same and relies on the analysis contained within this Court's twenty-two (22) page Order After Hearing Granting ELN Trust's Request for an Award of Attorney's Fees entered on July 27, 2023.

ii. The ELN Trust is Entitled to Interest on the Money Owed by Lynita/the LSN Trust.

As this Court is certainly aware, the ELN Trust is owed substantial interest on any amounts owed by Lynita/LSN Trust for property transfers vacated on appeal, namely, Banone, LLC, Lindell Property, security deposit, Farmouth Circle Note and \$75,000.00 paid to the LSN Trust by Banone-AZ, LLC. For years, Lynita/the LSN Trust enjoyed – and the ELN Trust was denied – the use of the transferred property, including rent generated by those properties. Nevada recognizes in both statutory and case law that time has monetary value and compensates for lost time by awarding interest. *See, e.g.,* NRS 17.130(1) (calculating interest when no other rate of interest is provided by law or contract); *Powers v. United Services Automobile Association*, 114 Nev. 690, 705-06, 962 P.2d 596, 605-06 (1998) (noting the purpose of post-judgment interest is compensation for the loss of the use of awarded money).

1 The LSN Trust cites NRAP 37 in an attempt to avoid returning the full value
2 of the property. NRAP 37 provides:

- 3
- 4 (a) When the Court Affirms. Unless the law provides otherwise, **if a**
5 **money judgment in a civil case is affirmed**, whatever interest is
6 allowed by law is payable from the date when the district court's
7 judgment was entered.
- 8 (b) When the Court Reverses. If the court modifies or reverses a
9 judgment **with a direction that a money judgment be entered** in
10 the district court, the mandate must contain instructions about the
11 allowance of interest.

12 (Emphasis Added). Thus, for NRAP 37 to apply, the Nevada Supreme Court must
13 either affirm a money judgment or direct this Court to enter a money judgment. *See,*
14 *e.g., Polk v. Armstrong*, 91 Nev. 557, 563, 540 P.2d 96, 100 (1975) (directing trial
15 court to determine monetary damages and add interest); *Hellman v. Capurro*, 92 Nev.
16 314, 317, 549 P.2d 750, 752 (1976) (directing payment of specific monetary amount
17 but no interest); *Mountain Shadows of Incline v. Kopsho*, 92 Nev. 599, 601, 555 P.2d
18 841, 842 (1976) (directing money judgement and interest); *Weaver v. State Indus.*
19 *Ins. Sys.*, 104 Nev. 305, 306, 756 P.2d 1195, 1196 (1988) (affirming money judgment
20 but not interest); *Schiff v. Winchell*, 126 Nev. 327, 330, 237 P.3d 99, 101 (2010)
21 (affirming money judgment and interest). Either way, there must be a money
22 judgment from the Nevada Supreme Court.

23

24 Here, the Nevada Supreme Court vacated an order, namely the Divorce
25 Decree, but did not affirm or direct the entry of a money judgment thereby making
26 NRCP 37 inapplicable.

27

28

1 As a final matter, it is inconsistent for Lynita to demand that Eric pay interest
2 on child support and alimony from June 3, 2013 through present on one hand, and
3 then take the position that she does not have to pay interest on money that she/the
4 LSN Trust collected and utilized nearly a decade ago on the other hand.

5
6 C. ALTERNATIVELY, IF THE COURT GRANTS A STAY THE LSN
7 TRUST SHOULD BE REQUIRED TO POST A BOND FOR THE
8 AMOUNTS AT ISSUE IN THE APPEAL, INTERESTS AND
9 DAMAGES FOR DELAY.

10 If after weighting the NRAP 8(c) factors, the Court is inclined to enter a stay,
11 the next step is to determine the sufficiency of the bond or security. *See State ex rel.*
12 *Public Serv. Comm'n*, 94 Nev. at 44, 574 P.2d at 274 (“the sufficiency and amount
13 of the supersedeas bond are secondary and a distinctly separate consideration from
14 the issue of entitlement to a stay.”). As a matter of law, an appropriate bond amount
15 includes the whole amount of the judgment remaining unsatisfied, costs on the
16 appeal, interest, and damages for delay. *See Poplar Grove Planting and Ref. Co. v.*
17 *Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979).

18
19 Here, although the LSN Trust states that it will pay a supersedeas bond if a stay
20 is granted it fails to identify the amount of the bond or how bond will be posted,
21 especially in light of the fact that the LSN Trust is apparently arguing that neither the
22 Mississippi Properties or Wyoming Property are owned by the LSN Trust. As
23 indicated supra, the LSN Trust’s position is contrary to Lynita’s sworn testimony.

24
25 Assuming the LSN Trust has the ability to post a supersedeas bond, the ELN
26
27
28

1 Trust submits that the bond must be no less than \$709,830.11 (\$239,772.30 in
2 attorneys' fees, *see* Motion for Debtor Examination at Ex. 3, July 27, 2023 Attorneys'
3 Fees Order, and \$370,057.81 in interest, *see* Motion for Debtor Examination at Ex.
4 4, August 2, 2023 Order) plus costs on appeal, interest and damages for delay in the
5 approximate amount of \$100,000.00. As such, the supersedeas bond should be no
6 less than \$709,830.11.
7

9 **III. CONCLUSION**

10 Based upon the foregoing, the ELN Trust respectfully requests that this Court
11 grant its Motion for Order Allowing Examination of Judgment Debtor, Lynita S.
12 Nelson, individually, and in her capacity as Investment Trustee of the Lynita S.
13 Nelson Nevada Trust dated May 30, 2001, in its entirety. Once again, it is important
14 to note that Lynita, individually, never objected to said relief.
15

16 The ELN Trust additionally requests that this Court deny the Countermotion
17 to Stay in its entirety.
18

19 DATED this 9th day of October, 2023.
20

21 SOLOMON DWIGGINS FREER & STEADMAN, LTD.
22 /s/ Jeffrey P. Luszeck

23 By: _____
24 Jeffrey P. Luszeck, Esq. (#09619)
25 jluszeck@sdfnvlaw.com
26 9060 West Cheyenne Avenue
27 Las Vegas, Nevada 89129

28 *Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
Trust dated May 30, 2001*

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on October 9, 2023, I caused to be served a true and correct copy of the **REPLY TO OPPOSITION TO MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001** to the following in the manner set forth below:

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Return Receipt Request
- ☒ E-Service through Odyssey eFileNV as follows:

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/s/ Alexandra Carnival

An Employee of SOLOMON DWIGGINS FREER
& STEADMAN, LTD.

EXHIBIT “5”

TO

OPPOSITION TO

MOTION FOR STAY

OF ENFORCEMENT

OF JUDGMENT

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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D
Dept.: O

**ORDER GRANTING THE ELN’S TRUST MOTION FOR ORDER
ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S.
NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT
TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY
30, 2001**

The District Court having considered the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 (“ELN Trust”) Motion for Order Allowing Examination of Judgement Debtor, Lynita S. Nelson, Individually, and In Her Capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust Dated May 30, 2001 filed on September 18, 2023, and the Opposition made thereto, hereby makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On September 18, 2023, the ELN Trust filed its Motion for Order Allowing Examination of Judgement Debtor, Lynita S. Nelson, Individually, and In Her Capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust Dated May 30, 2001 (“Motion for Debtor Examination”).

2. On October 2, 2023, the LSN Trust filed their Opposition to Motion for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, Individually, and in Her Capacity as Investment Trustee of The Lynita S. Nelson Trust Dated May 30, 2001 and Countermotion to Stay Execution of Judgment Pursuant to NRAP 8 (“Opposition”).

3. On October 9, 2023, the ELN Trust filed its Reply to Opposition to Motion for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson,

1 Individually, and in her Capacity as Investment Trustee of the Lynita S. Nelson
2 Nevada Trust dated May 30, 2001; and Opposition to Countermotion to Stay
3 Execution of Judgment Pursuant to NRAP 8 (“Reply”).
4

5 4. On June 8, 2023, this Court entered an Order Granting in Part Motion
6 for Immediate Payment of Funds Belonging to ELN Trust in favor of the ELN Trust
7 against Lynita and/or the LSN Trust, in the amount of \$493,216.00.
8

9 5. On July 27, 2023, this Court entered an Order After Hearing Denying
10 Lynita S. Nelson’s Motion to Retax Costs; and Order Awarding ELN Trust’s
11 Memorandum of Costs in favor of the ELN Trust against Lynita and/or the LSN Trust
12 for \$62,935.08.
13

14 6. On July 27, 2023, this Court entered an Order After Hearing Granting
15 ELN Trust’s Request for an Award of Attorney’s Fees in favor of the ELN Trust
16 against Lynita and/or the LSN Trust, for \$239,772.30.
17

18 7. On August 2, 2023, this Court entered an Order After Hearing Granting
19 ELN Trust’s Request for an Award of Attorney’s Fees in favor of the ELN Trust
20 against Lynita and/or the LSN Trust, in the amount of \$952,355.86 (BANONE, LLC:
21 \$435,260 in principal and \$177,601.10 in interest; Lindell Office: \$147,667.90 in
22 principal and \$60,253.58; Repayment of \$324,000.00: \$132,203.13 in interest).
23

24 8. The District Court considered all papers and pleadings filed.
25

26 9. If any of these findings of fact are more appropriately designated
27 Conclusions of law, they shall be so deemed.
28

CONCLUSIONS OF LAW

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1. This Court has subject matter jurisdiction and personal jurisdiction over the Parties to this action.

2. NRCP 1 and EDCR 1.10 state that the procedures in District Courts shall be administered to secure efficient, speedy, and expensive determinations in every action.

3. NRS 21.270 allows for the examination of a judgment debtor:

1. A judgment creditor, at any time after the judgment is entered, is entitled to an order from the judge of the court requiring the judgment debtor to appear and answer upon oath or affirmation concerning his or her property, before:
 - (a) The judge or a master appointed by the judge; or
 - (b) An attorney representing the judgment creditor, at a time and place specified in the order. No judgment debtor may be required to appear outside the county in which the judgment debtor resides.
2. If the judgment debtor is required to appear before any person other than a judge or master:
 - (a) The oath or affirmation of the judgment debtor must be administered by a notary public; and
 - (b) The proceedings must be transcribed by a court reporter or recorded electronically. The transcript or recording must be preserved for 2 years.
3. A judgment debtor who is regularly served with an order issued pursuant to this section, and who fails to appear at the time and place specified in the order, may be punished for contempt by the judge issuing the order.

5. During a judgment debtor examination, the Judgment Creditor is entitled to ascertain the true condition of the property or business affairs of the judgment debtor. *Hagerman v. Tong Lee*, 12 Nev. 331 (1877). At such times, the judge or

1 master may order any non-exempt property of the judgment debtor to be applied
2 toward the satisfaction of the judgment. *See* NRS 21.320
3

4 **6.** The ELN Trust has a judgment against Lynita and/or the LSN Trust that
5 has not been satisfied. Specifically, the District Court entered the following orders:
6

7 a. On June 8, 2023, this Court entered an Order Granting in
8 Part Motion for Immediate Payment of Funds Belonging to ELN Trust
9 in favor of the ELN Trust against Lynita and/or the LSN Trust, in the
10 amount of \$493,216.00.

11 b. On July 27, 2023, this Court entered an Order After
12 Hearing Denying Lynita S. Nelson's Motion to Retax Costs; and Order
13 Awarding ELN Trust's Memorandum of Costs in favor of the ELN
14 Trust against Lynita and/or the LSN Trust for \$62,935.08.

15 c. On July 27, 2023, this Court entered an Order After
16 Hearing Granting ELN Trust's Request for an Award of Attorney's
17 Fees in favor of the ELN Trust against Lynita and/or the LSN Trust, for
18 \$239,772.30.

19 d. On August 2, 2023, this Court entered an Order After
20 Hearing Granting ELN Trust's Request for an Award of Attorney's
21 Fees in favor of the ELN Trust against Lynita and/or the LSN Trust, in
22 the amount of \$952,355.86 (BANONE, LLC: \$435,260 in principal and
23 \$177,601.10 in interest; Lindell Office: \$147,667.90 in principal and
24 \$60,253.58; Repayment of \$324,000.00: \$132,203.13 in interest).
25

26 **7.** According to NRS 21.270, the ELN Trust is entitled to an order
27 requiring Lynita, individually, and in her capacity as Investment Trustee of the LSN
28 Trust, to appear before the ELN Trust attorneys, to bring documents, and to answer
questions under oath.

1 **NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND**
2 **CONCLUSIONS,**

3
4 **IT IS HEREBY ORDERED** the ELN Trust's Motion for Order Allowing
5 Examination of Judgement Debtor, Lynita S. Nelson, Individually, and In Her
6 Capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust Dated May 30,
7 2001 is hereby granted, and the ELN Trust is entitled to inquire as to any of the
8 matters set forth in said Motion, or any other matters necessary to ascertain the true
9 condition of the property or business affairs of Lynita, Individually, and/or the LSN
10 Trust.
11

12
13 **IT IS FURTHER ORDERED** the ELN Trust shall submit a separate order
14 stating the date and time Lynita, Individually, and as the Investment Trustee of the
15 LSN Trust shall appear for the Judgement Debtor Exam.
16

17 **IT IS FURTHER ORDERED** the hearing on the ELN Trust's Motion or
18 Debtor Examination scheduled for January 25, 2024, at 1:00 p.m. is hereby vacated.
19

20 **IT IS FURTHER ORDERED** the hearing scheduled for January 25, 2024,
21 shall proceed forward on Eric's Motion for Equitable Offset and the ELN's Motion
22 to Convery Properties, etc.
23

24 ///

25 ///

26 ///

27 ///

IT IS FURTHER ORDERED the Parties and counsel shall appear in person at the hearing scheduled for January 25, 2024, at 1:00 p.m.

Dated this 23rd day of January, 2024

PRM = Cancel

LS

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

D71 39B 2EB3 5548
Regina M. McConnell
District Court Judge

/s/ Jeffrey P. Luszeck

By:

Jeffrey P. Luszeck, Esq. (#9619)

jluszeck@sdfnvlaw.com

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Eric L Nelson, Plaintiff

CASE NO: D-09-411537-D

7 vs.

DEPT. NO. Department O

8 Lynita Nelson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 1/23/2024

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EXHIBIT “6”

TO

OPPOSITION TO

MOTION FOR STAY

OF ENFORCEMENT

OF JUDGMENT

Heather S. Linn

CLERK OF THE COURT

ORDR

THE DICKERSON KARACSONYI LAW GROUP

ROBERT P. DICKERSON, ESQ.

Nevada Bar No. 000945

JOSEF M. KARACSONYI, ESQ.

Nevada Bar No. 010634

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON, MATT
KLABACKA as Distribution Trustee
of ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants/Counterclaimants.

CASE NO.: D-09-411537-D
DEPT NO.: O

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30,
2001,

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated May 30,
2001, and ERIC L. NELSON,
Individually and as Investment
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30,
2001,

Cross-Defendants.

1 ORDER FROM MAY 4, 2023 HEARING GRANTING MOTION
2 TO WITHDRAW AS ATTORNEY FOR DEFENDANT/CROSS-
3 DEFENDANT AND GRANTING IN PART MOTION TO
4 ADJUDICATE AND REDUCE ATTORNEYS' LIEN TO
5 JUDGMENT

6 This matter having come for hearing on this 4th day of May, 2023,
7 before the Honorable Regina M. McConnell, on The Dickerson Karacsonyi
8 Law Group's Motion to Withdraw as Attorney for Defendant/Cross-
9 Defendant, and to Adjudicate and Reduce Attorneys' Lien to Judgment;
10 Plaintiff, ERIC L. NELSON, present with his attorney, MICHELLE
11 HAUSER, ESQ., of JONES & LOBELLO, MATT KLABACKA,
12 Distribution Trustee of the ERIC L. NELSON NEVADA TRUST, dated
13 May 30, 2001, not present but represented by and through his attorney,
14 JEFFREY P. LUSZECK, ESQ., of SOLOMON DWIGGINS & FREER,
15 LTD., JOSEF M. KARACSONYI, ESQ., of THE DICKERSON
16 KARACSONYI LAW GROUP, present via BlueJeans, and
17 Defendant/Cross-Defendant, LYNITA S. NELSON, present via Bluejeans;
18 the Court, having reviewed the papers and pleadings on file herein, and
19 having considered the arguments made at the hearing, and good cause
20 appearing therefor,

21 IT IS HEREBY ORDERED that the Motion to Withdraw as Attorney
22 for Defendant/Cross-Defendant is GRANTED. Robert P. Dickerson, Esq.,
23 Josef M. Karacsonyi, Esq., Natalie E. Karacsonyi, Esq., The Dickerson
24 Karacsonyi Law Group and any and all other lawyers of The Dickerson
25 Karacsonyi Law Group are hereby WITHDRAWN as lawyers for
26 Defendant/Cross-Defendant, LYNITA SUE NELSON, individually and in
27 her capacity as Investment Trustee of the LSN NEVADA TRUST, dated
28 May 30, 2001.

IT IS FURTHER ORDERED that Defendant/Cross-Defendant's last
known address at which she may be served with notice of further

1 proceedings in the case, and her last known telephone number at which she
2 may be contacted, are as follows:

3 Lynita Sue Nelson
4 P.O. Box 156-164
5 10170 West Tropicana Avenue
6 Las Vegas, Nevada 89147
7 Telephone: 702-875-3363

8 IT IS FURTHER ORDERED that in accordance with NRS
9 18.015(6), and the Court having considered the factors in *Brunzell v. Golden*
10 *Gate National Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969), The
11 Dickerson Karacsonyi Law Group's retaining lien is adjudicated, and
12 JUDGMENT is hereby entered in favor of ROBERT P. DICKERSON,
13 CHTD., doing business as THE DICKERSON KARACSONYI LAW
14 GROUP, against Defendant/Cross-Defendant, LYNITA SUE NELSON,
15 individually, in the principal amount of \$542,415.63, plus accrued interest
16 of \$20,878.08 as of March 23, 2023, for a total of \$563,293.71. The
17 principal balance shall continue to accrue interest at the agreed-upon rate
18 of two percent (2%) per month from April 1, 2023 until satisfied in full.
19 NRS 99.050(1); NRS 17.130(2). Such judgment may be collected by any
20 and all legal means.

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1 IT IS FURTHER ORDERED that The Dickerson Karacsonyi Law
2 Group's request that the lien described above also be reduced to judgment
3 against Defendant/Cross-Defendant, LYNITA SUE NELSON, in her
4 capacity as Trustee of the LSN NEVADA TRUST, dated May 30, 2001, is
5 CONTINUED until the hearing currently scheduled for May 30, 2023 at
6 1:30 p.m.

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11 Dated this 5th day of May, 2023

12 

13
14 6C7 DB8 BAC7 D047
15 Regina M. McConnell
16 District Court Judge

LS

17 Respectfully Submitted by:

18 THE DICKERSON KARACSONYI
19 LAW GROUP

20 /s/ Josef Karacsonyi

21 ROBERT P. DICKERSON, ESQ.

22 Nevada Bar No. 000945

23 JOSEF M. KARACSONYI, ESQ.

24 Nevada Bar No. 010634

25 NATALIE E. KARACSONYI, ESQ.

26 Nevada Bar No. 010579

27 1645 Village Center Circle, Suite 161
28 Las Vegas, Nevada 89134

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eric L Nelson, Plaintiff

CASE NO: D-09-411537-D

7 vs.

DEPT. NO. Department O

8 Lynita Nelson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/5/2023

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