

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2       MATT           KLABACKA           AS  
3       DISTRIBUTION TRUSTEE OF THE  
4       ERIC L. NELSON NEVADA TRUST  
5       DATED MAY 30, 2001;

6                   Petitioner,

7       vs.

8       EIGHTH JUDICIAL DISTRICT COURT  
9       OF THE STATE OF NEVADA, CLARK  
10      COUNTY;    THE    HONORABLE  
11      REGINA M. MCCONNELL,

12                   Respondents,

13      LYNITA SUE NELSON, individually,  
14      and in her capacity as Investment Trustee  
15      of the Lynita S. Nelson Nevada Trust,  
16      dated May 30, 2001,

17      and

18      ERIC L. NELSON,

19                   Real Parties in Interest.

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Supreme Ct. No.:

District Ct. No: D-09-411537-D

**EMERGENCY WRIT UNDER  
NRAP 27(e)**

**PETITION FOR WRIT OF  
MANDAMUS**

**APPENDIX VOLUME I**

22                   **SOLOMON DWIGGINS FREER & STEADMAN, LTD.**

23                   JEFFREY P. LUSZECK, ESQ., NSB #9619

24                   E-mail: [jluszeck@sdfnvlaw.com](mailto:jluszeck@sdfnvlaw.com)

25                   9060 W. Cheyenne Avenue

26                   Las Vegas, Nevada 89129

27                   Telephone: (702) 853-5483

28                   Attorneys for Petitioner

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

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

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

**DECISION AND ORDER**

This matter came before this Court on March 28, 2022, March 29, 2022, March 30, 2022, March 31, 2022, April 1, 2022, April 6, 2022, April 7, 2022, April 27, 2022, and April 28, 2022, for a trial. Present before the Court via BlueJeans and in person were the following parties: Eric Nelson in his individual capacity and his capacity as the investment trustee of the ELN Trust, represented by his counsel Michael Carman, Esq., and Michelle Hauser, Esq.;

1 Lynita Nelson in her individual capacity as well as her capacity as the investment trustee of the  
2 LSN Trust, represented by her counsel Josef Karacsonyi, Esq., and Natalie Karacsonyi, Esq.;  
3 and the ELN Trust through its distribution trustee Matt Klabacka, through its counsel Jeffrey  
4 Luszeck, Esq. The Court has considered the testimony presented by multiple witnesses, the  
5 numerous exhibits admitted into evidence by all parties, oral arguments by counsels, and the  
6 lengthy history of this case, and issues the following decision.  
7

### 8 **I. FINDINGS OF FACT**

9 This case has a long and arduous history, but this Court will attempt to briefly  
10 summarize the facts relevant to its current decision.  
11

12 Eric Nelson ("Eric") and Lynita Nelson ("Lynita") were married on September 17,  
13 1983. In 1993, Eric and Lynita entered into a Separate Property Agreement ("SPA") which  
14 transmuted their marital community property into the parties' respective separate property,  
15 pursuant to Schedules A and B attached to the SPA.<sup>1</sup> Schedule A of the SPA funded Eric's  
16 separate property trust ("Eric SPT"). Schedule B of the SPA funded Lynita's separate property  
17 trust ("Lynita SPT").  
18

19 On May 30, 2001, Eric and Lynita converted their separate property trusts into self-  
20 settled spendthrift trusts (collectively, "SSSTs"), the Eric SPT became the Eric L. Nelson  
21 Nevada Trust ("ELN Trust") and the Lynita SPT became the Lynita S. Nelson Nevada Trust  
22 ("LSN Trust"). Except for personal details such as trustees and beneficiaries, the trust  
23 agreements for the ELN Trust and the LSN Trust are identical. Both trust agreements are  
24 written documents that establish an irrevocable trust. Each SSST contains a spendthrift  
25 provision which states that any property distributable by the SSST is not subject to attachment.  
26

27  
28 <sup>1</sup> See Defendant Lynita S. Nelson's Exhibit SSS-R ("Separate Property Agreement dated July 13, 1993").

1 assignment, or encumbrance. Both SSSTs name the settlor as the investment trustee, the legal  
2 owner of the trust estate. From 2001 to 2013, the ELN Trust and the LSN Trust transferred  
3 numerous properties between themselves.  
4

5 Eric filed for divorce in 2009. Both SSSTs were joined as necessary parties to the  
6 divorce case. On June 3, 2013, this Court issued its Decree of Divorce for Eric and Lynita.  
7 However, this Court did not dispose of the Wyoming Downs property in its Decree of Divorce.  
8 On September 22, 2014, this Court disposed of Wyoming Downs, making its judgment final.  
9 Eric and the ELN Trust filed its first Notice of Appeal after this Court's disposition of  
10 Wyoming Downs.  
11

12 On June 8, 2015, this Court ordered Eric and the ELN Trust to pay additional monies to  
13 Lynita to enforce the decree. Eric and the ELN Trust filed its second Notice of Appeal  
14 regarding this Court's June 8, 2015, Order.  
15

16 On May 25, 2017, the Nevada Supreme Court issued its Decision regarding the two  
17 appeals filed by Eric and the ELN Trust. The Nevada Supreme Court first held that the SPA  
18 was a valid transmutation agreement under its plain, unambiguous language, and that the  
19 parties' community property was validly separated into the parties' respective separate property  
20 trusts. The Nevada Supreme Court then held that the SSSTs were validly created and funded  
21 with separate property stemming from a valid separate property agreement. The Nevada  
22 Supreme Court further held that this Court erred by not tracing the assets contained within each  
23 SSST to determine if community property existed in either SSST, either through a reliable  
24 expert or by other available means, as without a proper tracing the Court is left only with the  
25 parties' testimony on characterization, which holds no weight. The Nevada Supreme Court  
26 remanded the case to this Court in order to conduct a tracing of the assets within the SSSTs to  
27  
28

1 determine if community property exists in either SSST, which would be subject to equitable  
2 distribution upon divorce.  
3

4 This Court has issued a number of decisions based on the Nevada Supreme Court's  
5 remand. In its April 19, 2018, Decision, this Court found that the proper date to begin the  
6 tracing period was May 30, 2001, the date the SSSTs were created, to June 3, 2013, the date of  
7 the divorce decree.<sup>2</sup> This Court also found that the property that initially funded the SSSTs was  
8 the parties' separate property. Based upon the Nevada Supreme Court's Order, in its October  
9 10, 2019, Decision, this Court appointed a Special Master to conduct a tracing of each asset  
10 within the SSSTs during the tracing period. This Court stressed that it was not the Special  
11 Master's role to determine the ultimate character of the assets, but simply to perform a detailed  
12 list of each asset's origin and disposition. However, this Court later relieved the Special Master  
13 of his duties in its October 27, 2020, Order and informed the parties that they would have to  
14 retain their own experts to trace the assets in the SSSTs during the relevant tracing period.  
15

## 16 II. CONCLUSIONS OF LAW 17

18 The Nevada Supreme Court has previously held in *Klabacka* that Eric and Lynita  
19 executed a valid Separate Property Agreement ("SPA") which transmuted the parties'  
20 community property into their individual separate property as delineated on SPA Schedules A  
21 and B, and that the SPA through its plain language remained in effect during divorce.<sup>3</sup>  
22 Specifically, the Nevada Supreme Court "conclude[d] the SPA was valid, and the parties'  
23 property was validly separated into their respective separate property trusts at that time."<sup>4</sup>  
24  
25  
26

27 <sup>2</sup> This Court reaffirmed the proper tracing period in its May 22, 2018, Decision.

28 <sup>3</sup> *Klabacka v. Nelson*, 133 Nev. 164, 170 (2017).

<sup>4</sup> *Klabacka*, 133 Nev. at 171.

1 The Nevada Supreme Court further held that “the SSSTs are valid and the trusts were  
2 funded with separate property stemming from a valid separate property agreement.”<sup>5</sup> The  
3 Nevada Supreme Court conducted its own analysis of the SSSTs’ validity. Specifically, the  
4 Nevada Supreme Court reviewed the statutory requirements to create a spendthrift trust: the  
5 settlor’s intent; a spendthrift requirement; a trustee who is a Nevada resident; and that the SSST  
6 be in writing, be irrevocable, not require distributions to the settlor, and not intended to hinder,  
7 delay, or defraud known creditors.<sup>6</sup> The Nevada Supreme Court found that “a plain reading of  
8 the written terms of [the SSSTs]” met all of the requirements to create valid Nevada self-settled  
9 spendthrift trusts.<sup>7</sup>

12 The Nevada Supreme Court has directed this Court is to examine the property within  
13 Eric’s and Lynita’s individual self-settled spendthrift trusts (“SSSTs”) from the date of creation  
14 of the SSSTs on May 30, 2001, to the date of the decree of divorce on June 3, 2013. While the  
15 Nevada Supreme Court did not specifically name those dates, in its Decision in *Klabacka* it  
16 states that the SSSTs were initially funded on the date of creation (May 30, 2001) with separate  
17 property<sup>8</sup> and any possible community property would have ended with the dissolution of the  
18 community upon the decree of divorce (June 3, 2013).

20 The Nevada Supreme Court also informed this Court that it must conduct a tracing to  
21 determine if any community property exists within the SSSTs, as any community property  
22 within the SSSTs would be subject to equal distribution in divorce.<sup>9</sup>

---

25 <sup>5</sup> *Id.*

26 <sup>6</sup> *Id.* at 171-72. *See also* NRS 166.050, 166.015(2)(a), and NRS 166.040(1)(b).

27 <sup>7</sup> *Id.* at 172.

28 <sup>8</sup> “We hold the SSSTs are valid and the trusts were funded with separate property stemming  
from a valid separate property agreement.” *Id.* at 171.

<sup>9</sup> *Id.* at 173.



1  
2 Based on the Nevada Supreme Court's holding in *Klabacka* that the SSSTs were  
3 originally funded by the parties' separate property, this Court has previously held in its  
4 October 27, 2020, Decision, that Lynita bears the burden of proof by clear and convincing  
5 evidence that community property ever existed in either SSST and that the separate property in  
6 each of the SSSTs was commingled with community property to the extent that the separate  
7 property and the community property could no longer be separated via tracing.<sup>10</sup>  
8

9 **A. Wyoming Downs is not community property and was never transmuted**  
10 **into community property.**

11 At trial, Lynita presented two theories as to how community property could be present  
12 in the two SSSTs: first, that the Wyoming Downs property ("Wyoming Downs") directly  
13 funded the purchase of at least 80% of the community property; second, that trust to trust  
14 transfers between spouses' trusts transmute separate property into community property. This  
15 Court will first address Lynita's argument regarding Wyoming Downs.

16 This Court will first very briefly review the history of Wyoming Downs. The Eric  
17 Separate Property Trust ("Eric SPT"), created before either of the SSSTs, purchased Wyoming  
18 Horse Racing, Inc. ("WHR") in 1998. At the time of the Eric SPT purchase, WHR owned  
19 Wyoming Downs. Wyoming Downs is a piece of property of approximately 400 acres in  
20 Wyoming, which included a racetrack. Eric then became the president of WHR. WHR then  
21 sold Wyoming Downs to Dynasty Inc., for cash and a promissory note.  
22

23 After the creation of the SSSTs, Dynasty Inc.'s successor-in-interest, Phoenix Leisure,  
24 defaulted on the promissory note to WHR. On March 9, 2003, Phoenix Leisure promised to  
25

26  
27 <sup>10</sup> See also NRS 123.125(2) ("A spouse or other party in a case must establish by clear and  
28 convincing evidence the transmutation of community property or separate property that is  
transferred into a trust...")

1 pay "Eric L. Nelson, as an individual" a total of \$416,666.67.<sup>11</sup> Phoenix Leisure defaulted on  
2 its note, and WHR then repossessed Wyoming Downs. On October 15, 2004, Eric, as president  
3 of WHR, conveyed Wyoming Downs to the ELN Trust. After Wyoming Downs had been  
4 transferred to the ELN Trust, the ELN Trust sold the Wyoming Downs racetrack for  
5 approximately \$11 million while maintaining ownership of the surrounding 400 acres. The  
6 ELN Trust gifted the LSN Trust approximately 200 of the total 400 acres of Wyoming Downs.  
7 The LSN Trust then granted approximately 11 acres of Wyoming Downs to the ELN Trust for  
8 \$10.  
9

10  
11 Lynita argues that because Phoenix Leisure issued a promissory note to pay "Eric L.  
12 Nelson, as an individual" that at that point Eric took Wyoming Downs as a married individual,  
13 thus creating community property. Lynita continues her argument by stating that because  
14 Wyoming Downs was community property, then any further property that can be traced back to  
15 the subsequent sale of Wyoming Downs must also be community property.  
16

17 This Court finds that Lynita's argument regarding Wyoming Downs has no merit, as  
18 she cannot show by clear and convincing evidence that Wyoming Downs was ever transmuted  
19 into community property.

20 Lynita's argument rests on the language "Eric L. Nelson, as an individual." However,  
21 Eric as an individual did not repossess Wyoming Downs; WHR as a corporation did. It is clear  
22 to this Court that Eric was acting in his capacity as president of WHR, not in his individual  
23 capacity. The Court examined the transfer of Wyoming Downs from WHR to the ELN Trust.  
24 WHR, through its president Eric, conveyed Wyoming Downs to the ELN Trust. This  
25 transaction establishes that when Wyoming Downs was repossessed, it was done so by WHR  
26

27  
28 <sup>11</sup> See Defendant Lynita S. Nelson's Exhibit HHHH-R ("Secured Convertible Promissory Note").

1 and not by Eric as an individual. If Eric took Wyoming Downs as an individual, then the  
2 transfer to the ELN Trust would have been from Eric, as an individual, rather than from WHR.  
3 through its president Eric. The Court has seen no evidence to conclude that Eric ever took  
4 possession of Wyoming Downs as an individual.  
5

6 Even if this Court were to find that the language "Eric L. Nelson, as an individual"  
7 meant that Eric (and not WHR) did in fact take possession of Wyoming Downs, this Court  
8 finds that by the language of the parties' own SSSTs, Eric never held Wyoming Downs as an  
9 individual. Rather, Eric held Wyoming Downs in his individual capacity as the investment  
10 trustee for the ELN Trust.  
11

12 Both the ELN Trust and the LSN Trust state in Article 9 that:

13 [T]he Trustor shall have the right, at any time, to devise, bequeath, grant,  
14 convey, give or transfer additional real ... properties to the Trust by inter vivos  
15 act ... subject to the same terms and conditions as the original provisions of this  
16 Trust Agreement, and said additions shall be evidence by receipt therefore  
signed by the Trustee.<sup>12</sup>

17 The ELN Trust and LSN Trust also both state the following in Article 12.1:

18 The Investment Trustee shall have the following powers, all of which are to be  
19 exercised in a fiduciary capacity: (a) To register any securities or other property  
20 held hereunder in the name of the Investment Trustee or in the name of a  
21 nominee, *with or without the addition of words indicating that such securities or*  
22 *other property are held in a fiduciary capacity*, and to hold in bearer form any  
securities or other property held hereunder so that title thereto will pass by  
23 delivery, but the books and records of the Trustee shall show that all such  
24 investments are part of his respective funds.<sup>13</sup>

25 <sup>12</sup> Defendant Lynita S. Nelson's Exhibit RRRRRRRR-R, the Eric L. Nelson Nevada Trust  
26 Agreement, Dated May 30, 2001, Article 9. See also Defendant Lynita S. Nelson's Exhibit  
27 CCCCCCCC-R, the Lynita S. Nelson Nevada Trust Agreement. Dated May 30, 2001, Article  
9.

28 <sup>13</sup> Defendant's Exhibit RRRRRRRR-R at Article 12.1 (emphasis added). See also Defendant's  
Exhibit CCCCCCCC-R at Article 12.1.

1 The ELN Trust and LSN Trust further both state the following in Article 12.3:

2  
3 *Any property held in trust and any income earned by the trusts created*  
4 *hereunder shall be the separate property* (in distinction with community  
5 *property, joint tenancy property, tenancy in common, marital property, quasi-*  
6 *community property or the tenancy by the entirety) of the beneficiaries of such*  
7 *trusts. Additionally, any distribution to or for the benefit of any beneficiary shall*  
8 *be and remain the sole and separate property and estate of beneficiaries.*<sup>14</sup>

9 When read as a whole, the ELN Trust states that an investment trustee can hold property  
10 in his individual name without an indication that the investment trustee is holding it in a  
11 fiduciary capacity.<sup>15</sup> Even assuming that the language “Eric L. Nelson, as an individual” meant  
12 that Eric did in fact take possession of Wyoming Downs as an individual, it is clear to this  
13 Court that Eric did not take personal possession but rather took possession for the ELN Trust in  
14 a fiduciary capacity as its investment trustee.<sup>16</sup> The plain language of the ELN Trust does not  
15 require any language indicating that Eric held Wyoming Downs as the SSST’s fiduciary.<sup>17</sup>

16 Additionally, the plain language of the ELN Trust states that any property held by the  
17 SSST and any income derived from that property is the separate property of the beneficiaries.  
18 During his life, Eric is the primary beneficiary of the ELN Trust. Under this method of  
19 analysis, Wyoming Downs ultimately was Eric’s separate property. Regardless of which  
20 method of valid analysis this Court examines, it is clear that Wyoming Downs was never Eric’s  
21 individual property, and thus Wyoming Downs could have never been community property.

22  
23  
24 <sup>14</sup> Defendant’s Exhibit RRRRRRR-R at Article 12.3 (emphasis added). *See also* Defendant’s  
25 Exhibit CCCCCCCC-R at Article 12.3.

26 <sup>15</sup> *See also* NRS 163.410 (“A fiduciary may make contracts and execute instruments ... as may  
be necessary in the exercise of the powers herein granted.”).

27 <sup>16</sup> *See* NRS 163.100 (“all powers of a trustee are attached to the office and are not personal”).

28 <sup>17</sup> The Court would like to note that this analysis would also apply to Lynita and the LSN Trust,  
as the language contained within the ELN Trust is identical to language contained within the  
LSN Trust.

1  
2 Lynita argues that a spouse could transfer any property into a trust, and that transfer in  
3 and of itself would subvert the community property presumption in Nevada. This Court finds  
4 that this is an overbroad simplification of the specific facts present in this case. Eric and Lynita  
5 executed not one, not two, but three separate agreements demonstrating their intent to create  
6 and keep separate property rather than community property -- the initial SPA, the parties' SPTs,  
7 and the parties' SSSTs. The Nevada Supreme Court previously held that spouses holding  
8 separate accounts and separate property trusts "evidenced a clear intent to keep separate  
9 property separate."<sup>18</sup> There are *three* separate documents here, including two documents that  
10 the Nevada Supreme Court has held are valid and unambiguous (the SPA and the SSSTs)<sup>19</sup>.  
11 that evince a clear and unambiguous intent to keep separate property separate. Transferring  
12 Wyoming Downs (or any property) into a trust alone did not subvert the community, and the  
13 Court finds Lynita's argument that a spouse-to-trust transfer alone subverts the community is  
14 devoid of merit. In this specific case, Wyoming Downs was and remains Eric's separate  
15 property because of the specific language contained within the ELN Trust -- an irrevocable  
16 self-settled spendthrift, *separate property* trust.

17  
18  
19 Lynita also argues that the transfer of 200 acres of Wyoming Downs from the ELN  
20 Trust to the LSN Trust transmuted Wyoming Downs into community property. A mere trust-to-  
21 trust transfer does not transmute separate property into community property, or vice versa.<sup>20</sup>  
22 Lynita would need to demonstrate by clear and convincing evidence that Wyoming Downs was  
23 so commingled with existing community property that it cannot be traced to separate  
24 properties. Lynita has not. The Eric SPT, which was funded by a valid SPA, initially bought  
25

26  
27 <sup>18</sup> *Tarbell v. Tarbell*, 373 P.3d 966 (Nev. 2011) (unpublished).

28 <sup>19</sup> *See generally Klabacka*, 133 Nev. 164 (2017).

<sup>20</sup> NRS 123.125(2).

1 Wyoming Horse Racing and by extension Wyoming Downs. Anything stemming from that  
2 initial purchase by the Eric SPT is Eric's separate property. Lynita further stated that it was the  
3 parties' intent for Wyoming Downs to be community property. However, during Lynita's  
4 cross-examination by Mr. Carmen, Mr. Carmen correctly pointed out that Lynita alleged in her  
5 previous court pleadings that Eric invested in many risky gaming ventures and that the purpose  
6 of the SSSTs was to insulate their individual assets from creditors if Eric lost money through  
7 his speculative gaming investments.<sup>21</sup> While this Court cannot consider parol evidence because  
8 language of the Separate Property Agreement (and the Eric SPT, and the SSSTs themselves) is  
9 unambiguous<sup>22</sup>, the testimony heard at trial confirms this Court's conclusion upon examining  
10 the plain language of the SPA and the SSSTs -- Wyoming Downs is and was intended to be  
11 Eric's separate property.  
12

13  
14 No matter how this Court examines Wyoming Downs, there is no logical conclusion for  
15 this Court to draw in which Wyoming Downs is community property. Lynita has failed to show  
16 by clear and convincing evidence that this Court should characterize Wyoming Downs as  
17 community property.  
18

19  
20  
21  
22 <sup>21</sup> This Court has previously heard testimony in this case that Lynita did not want to associate  
23 with the ownership in any businesses dealing with gaming or alcohol; it is logical to conclude  
24 that based upon those representations, Lynita wanted nothing to do with nor any interest in  
25 Wyoming Downs. *See also Tarbell* (holding that a spouse could not argue community property  
26 over earnings, retirement, and investments made after the creation of valid separate property  
27 trusts).

28 <sup>22</sup> *Klabacka*, 133 Nev. at 171 (holding that Lynita could not use extraneous evidence, including  
a purported verbal agreement between her and Eric, to demonstrate that the parties' intent was  
to have certain properties remain community property and not be transmuted by an SPA). *See*  
*also Frei v. Goodsell*, 129 Nev. 403, 409 (2013) (holding that "[e]xtrinsic or parol evidence is  
not admissible to contradict or vary the terms of an unambiguous written instrument, since all  
prior negotiations and agreements are deemed to have been merged").

1  
2 **B. All other properties (excluding Wyoming Downs) are not community**  
3 **property and were never transmuted into community property.**

4 Lynita further argues that, based upon her expert report, that the remaining properties in  
5 question should be considered community property. This Court is bound by the statutory  
6 definition of community property and finds that Lynita's expert's definition of community  
7 property does not align with the statutory definition of community property. Thus, this Court  
8 must find that Lynita did not demonstrate by clear and convincing evidence that any  
9 community property ever existed within the SSSTs.

10 NRS 123.220 states that any property acquired by the spouse(s) after marriage is  
11 community property, unless the spouses state otherwise in writing. The Nevada Supreme Court  
12 has already stated that the SSSTs were originally funded with separate property, consistent with  
13 the SPA previously executed by Eric and Lynita.<sup>23</sup> Once separate property is created, a spouse  
14 seeking to challenge the characterization of property held in trust must demonstrate by clear  
15 and convincing evidence that it was transmuted to community property.<sup>24</sup> This Court has  
16 previously informed Lynita that she bears the burden of proof to demonstrate by clear and  
17 convincing evidence that community property existed in the SSSTs and that said community  
18 property was so commingled with the existing separate property that the properties could no  
19 longer be separated via tracing.  
20

21  
22 Lynita's expert, Anthem Forensics ("Anthem") defined community property as "any  
23 transactions made from one trust to another for less than fair market value."<sup>25</sup> Anthem relies on  
24 the transfers between the SSSTs that were below fair market value and its own definition of  
25

26 <sup>23</sup> *Klabacka*, 133 Nev. at 171.

27 <sup>24</sup> NRS 123.125(2).

28 <sup>25</sup> Defendant Lynita S. Nelson's Exhibit GGGGGG-R ("Anthem Forensics Expert Witness  
Report dated April 30, 2021").

1 community property to demonstrate that: a) the existing separate property in the SSSTs was  
2 transmuted into community property, and b) the property is so commingled that it should be  
3 considered community property. Anthem further stated in its expert report that any transfers  
4 from the ELN Trust to any entities within the ELN Trust could be commingling and that any  
5 transfers from the ELN Trust to the parties' children could be commingling, without  
6 considering if the children were beneficiaries of the ELN Trust.  
7

8 Anthem's representative in Court, Jennifer Allen, testified that based upon their  
9 definition of community property ("any transactions made from one trust to another for less  
10 than fair market value") that the entirety of the transfers between the SSSTs over the tracing  
11 period would be considered community property. However, on cross-examination by Mr.  
12 Carmen, Ms. Allen stated that without Anthem's assumption that a trust-to-trust transfer  
13 without fair market value is community property, then any trust-to-trust transfers would be  
14 separate property. Ms. Allen further stated on cross-examination that Anthem did not review  
15 the ELN Trust or the LSN Trust, as it was considered to be outside the scope of their  
16 engagement. Additionally, Ms. Allen stated on cross-examination that characterizing particular  
17 property as community property was a legal conclusion that was outside of her expertise. Upon  
18 cross-examination by Mr. Luszeck, Ms. Allen stated that she was unable to complete a tracing  
19 from 2009-2013 for the LSN Trust due to a lack of documentation from the LSN Trust (i.e.,  
20 bank records, accountings, etc.).  
21

22 This Court does not hold any weight to whether or not a trust-to-trust transfer was done  
23 above, at, or below fair market value when determining transmutation into community  
24 property. The SSSTs are entities separate from Eric or Lynita, and as such the SSSTs can  
25 transfer property freely between themselves. A trust-to-trust transfer does not create community  
26  
27  
28



1 property nor does it transmute existing separate property into community property. NRS  
2 123.220 defines community property as “all property ... *acquired after marriage by either*  
3 *spouse or both spouses* ... unless otherwise provided by an agreement in writing between the  
4 spouses, or a decree of separate maintenance issued by a court of competent jurisdiction.”<sup>26</sup> The  
5 statutory definition of community property does not make any reference as to fair market value  
6 or trust-to-trust transactions. A SSST cannot create community property by transferring  
7 property to another SSST; the statutory definition states that only property acquired after  
8 marriage *by a spouse or both spouses* is community property.  
9

10  
11 Lynita relied heavily upon Anthem’s report to demonstrate that the separate property  
12 was transmuted into community property. Again, this Court must abide by the statutory  
13 definition of community property. Anthem’s definition of community property does not even  
14 remotely match the statutory definition. Additionally, Ms. Allen herself stated on cross-  
15 examination that without Anthem’s definition of community property, then all of the transfers  
16 during the tracing period would be separate property. Lynita did not provide this Court any  
17 evidence other than Anthem’s expert report to demonstrate that the existing separate property  
18 within the SSSTs was transmuted into community property. Because Lynita did not  
19 demonstrate transmutation to this Court by clear and convincing evidence, by extension Lynita  
20 did not demonstrate by clear and convincing evidence that the separate property and  
21 community property were so commingled that tracing would not be able to separate them.  
22 However, this Court will briefly analyze the properties that Anthem listed in its expert report  
23 using this Court’s analysis.  
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28 <sup>26</sup> NRS 123.220. (emphasis added)

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*1. Cleopatra properties, Hacienda Casita, Evanston Horse Racing Inc.,  
and Wyoming Downs Rodeo*

Lynita argues that because the Cleopatra properties, the Hacienda Casita, Evanston Horse Racing Inc., and Wyoming Downs Rodeo were transferred to the SSSTs after May 30, 2001, these properties are community property rather than separate property. This Court accords this argument no weight. These properties had never been addressed by Lynita at any point during this case's extensive proceedings prior to this trial. This Court finds that these transfers were no more than funding the SSSTs with the separate property as established by the SPA. Additionally, Ms. Allen stated that Anthem had not conducted any community property analysis over Hacienda Casita, Evanston Horse Racing Inc., Wyoming Downs Rodeo, and all of the Cleopatra properties, included, but not limited to, Cleopatra Gaming Management, Cleopatra Palace, Cleopatra Club, Cleopatra Casino, Cleopatra Wild Goose, Cleopatra Cable, and Cleopatra Wild Grizzly. Even if this Court was to consider these properties this late in the proceedings, as stated hereinabove, Ms. Allen testified that she did not perform any analysis as to the characterization of these properties. Thus, this Court finds that the Cleopatra properties, Hacienda Casita, Evanston Horse Racing Inc., and Wyoming Downs Rodeo are considered separate property.

*2. Russell Road Property*

As of May 30, 2001, the Russell Road Property was held by the Lynita SPT which was then transferred to the LSN Trust upon its formation. As of May 31, 2001, the LSN Trust held a 50% interest in CJE&L, LLC.<sup>27</sup> On June 14, 2001, the Russell Road Property was transferred from the LSN Trust to CJE&L, LLC, for no financial consideration. In 2004, Lynita signed a guarantee on a flooring contract for Cal's Blue Water Marine, a business that was to be

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<sup>27</sup> An acronym for Cal, Jeanette, Eric, and Lynita.

1 operated out of the Russell Road Property. On January 1, 2005, Lynita withdrew her guarantee  
2 of the flooring contract and, as a result, the LSN Trust's 50% interest in CJE&L, LLC was  
3 transferred to the Nelson Nevada Trust<sup>28</sup> for no financial consideration.<sup>29</sup> On February 3, 2010,  
4 CJE&L, LLC sold a 50% interest in the Russell Road Property to Eric Nelson Auctioneering, a  
5 company 100% held by the ELN Trust, for \$4,000,000.  
6

7 This Court finds that the transaction outlined above, and referenced in detail in the  
8 Anthem expert report, shows that the LSN Trust transferred its ownership interest of the  
9 Russell Road Property to CJE&L, LLC, on January 1, 2005. As the LSN Trust held the Russell  
10 Road Property as separate property, pursuant to the valid funding of the LSN Trust, and  
11 transferred its interest to CJE&L, LLC, there is insufficient evidence to show that the Russell  
12 Road Property was transmuted into community property.  
13

### 14 *3. Lindell Office*

15 On August 22, 2001, ownership of the Lindell Office was transferred into the LSN  
16 Trust and was considered separate property at the time of transfer. On March 28, 2007, a 50%  
17 interest in the Lindell Office was transferred to the ELN Trust for no financial consideration.  
18 This Court has determined that the 50% ownership interest was a trust-to-trust transfer and that  
19 a lack of financial consideration has no bearing on a property converting from separate to  
20 community. No other evidence was presented to rebut the presumption that interest of the  
21 Lindell Office held by the ELN Trust is separate property. This Court reviewed the rents  
22 collected for the Lindell Office and finds that it has no bearing on the status of the property as  
23  
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25  
26 <sup>28</sup> The Nelson Nevada Trust in this transaction is distinct and separate from Lynita's SPT,  
which was also entitled the Nelson Nevada Trust.

27 <sup>29</sup> While there was no financial consideration for this transaction, the testimony heard by this  
28 Court demonstrated that there was consideration, as Lynita was relieved of any personal  
liability on the flooring contract and CJE&L, LLC would assume her liability.

1 separate or community. Additionally, this Court is not the proper venue for any dispute  
2 regarding the collection of rents for the Lindell Office.  
3

4 *4. High Country Inn*

5 On January 11, 2000, the Lynita SPT purchased a 100% ownership interest in the High  
6 Country Inn which was subsequently transferred to the LSN Trust. On January 18, 2007, the  
7 100% ownership interest in the High Country Inn was transferred to the ELN Trust for no  
8 financial consideration. This Court finds that this is a trust-to-trust transfer and that a lack of  
9 financial consideration has no bearing on a property converting from separate to community.  
10 No other evidence was presented to rebut the presumption that the interest of the High Country  
11 Inn held by the ELN Trust is separate property.  
12

13 *5. Tierra Del Sol*

14 As of February 1, 1994, the Lynita SPT held a 100% ownership interest in Tierra Del  
15 Sol, which was subsequently transferred to the LSN Trust on October 18, 2001. On August 5,  
16 2005, the LSN Trust sold Tierra Del Sol for \$4,800,000. Proceeds from the sale were dispersed  
17 to the LSN Trust and the ELN Trust. This transaction shows no transfer of the property itself to  
18 the ELN Trust. This Court finds that the LSN Trust had 100% of the ownership interest in  
19 Tierra Del Sol prior to its sale. No additional evidence was presented to show that the ELN  
20 Trust ever held an interest in Tierra Del Sol. This Court finds that the dispersion of funds from  
21 the sale of Tierra Del Sol has no bearing on transmuting property from separate to community  
22 status. Additionally, this Court is not the proper venue for any dispute regarding the dispersion  
23 of funds from the sale of Tierra Del Sol.  
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*6. Tropicana Avenue Property*

On May 29, 2002, the ELN Trust purchased a 50% interest in the Tropicana Avenue Property. On or about October 9, 2003, a \$700,000 promissory note was issued by the ELN Trust to the LSN Trust with the Tropicana Avenue Property pledged as collateral. On January 5, 2005, the ELN Trust transferred its 50% interest in the Tropicana Avenue Property to the LSN Trust to satisfy the October 9, 2003, promissory note. On June 25, 2007, the LSN Trust transferred the 50% interest in the Tropicana Avenue Property to the ELN Trust for no financial consideration. This Court finds that this is a trust-to-trust transfer and that a lack of financial consideration has no bearing on a property converting from separate to community. No other evidence was presented to rebut the presumption that the interest of the Tropicana Avenue Property held by the ELN Trust is separate property.

*7. Flamingo Property*

On November 15, 2002, the LSN Trust purchased the Flamingo Property. On May 27, 2004, the LSN Trust transferred its ownership interest in the Flamingo Property to Grotta Financial Partnership for no financial consideration. The LSN Trust owned 16.6667% interest in the Grotta Financial Partnership at the time of the transfer. Subsequently, Grotta Financial Partnership transferred the Flamingo Property to Grotta Group, LLC. On December 2, 2005, Grotta Group, LLC sold the Flamingo Property for \$4,000,000. \$565,000 (representing the LSN Trust's interest in the proceeds from the sale of the Flamingo Property) from the sale were dispersed to the LSN Trust. After the deposit, the funds were dispersed to both Eric and the ELN Trust.

This transaction shows no transfer of the property itself to the ELN Trust. This Court finds that the LSN Trust had 100% of the ownership interest in the Flamingo Property prior to

1 its sale. No additional evidence was presented to show that the ELN Trust ever held an interest  
2 in the Flamingo Property. This Court finds that the dispersion of funds from the sale of the  
3 Flamingo Property have no bearing on transmuting property from separate to community  
4 status. Additionally, this Court is not the proper venue for any dispute regarding the dispersion  
5 of funds from the sale of the Flamingo Property.  
6

7  
8 *8. Brian Head Cabin*

9 On October 11, 1995, the Lynita SPT purchased the Brian Head Cabin, which was  
10 subsequently transferred to the LSN Trust on October 22, 2001. On May 22, 2007, the LSN  
11 Trust transferred a 50% interest in the Brian Head Cabin to the ELN Trust for no financial  
12 consideration. This Court finds that this is a trust-to-trust transfer and that a lack of financial  
13 consideration has no bearing on a property converting from separate to community. No other  
14 evidence was presented to rebut the presumption that the interest of the Brian Head Cabin held  
15 by the ELN Trust is separate property.  
16

17 *9. Harbor Hills*

18 On November 6, 2007, the LSN Trust purchased the Harbor Hills property. On October  
19 17, 2008, the following transfers occurred regarding the property: the LSN Trust transferred the  
20 property to Lynita in her personal capacity, Lynita transferred the property to Eric in his  
21 personal capacity. Eric transferred the property to the ELN Trust, and the ELN Trust  
22 transferred the property to Banone, LLC, which is held entirely by the ELN Trust. None of  
23 these transfers included any financial consideration.  
24

25 This Court finds that after analyzing the transfers discussed above, the Harbor Hills  
26 property remains the separate property of Eric. The LSN Trust states in Article 12.3 that "any  
27 property held in trust and any income earned by the trusts created hereunder shall be the  
28

1 separate property . . . of the beneficiaries of such trusts. Additionally, any distribution to or for  
2 the benefit of any beneficiary shall be and remain the sole and separate property and estate of  
3 beneficiaries.” Based upon the language from the LSN Trust, the distribution of the Harbor  
4 Hills property from the LSN Trust to Lynita individually was Lynita’s separate property, as  
5 Lynita is the sole beneficiary of the LSN Trust during her lifetime. Lynita then transferred her  
6 separate property to Eric as his separate property. Any transfer by Eric subsequent to this  
7 transfer would not change the characterization of this property. This Court has seen no  
8 evidence to overcome the presumption present within the SPA, SPTs, and the SSSTs to  
9 overcome the established presumption that the parties intended to keep their separate property  
10 separate. Thus, the transfer from Eric to the ELN Trust did not change the characterization of  
11 the Harbor Hills property, and the Harbor Hills property remains Eric’s separate property.  
12

#### 13 *10. Rental Income*

14  
15 The Anthem expert report makes mention of rents collected by the ELN Trust from  
16 properties owned wholly by the LSN Trust. This Court finds that collection of rents by the ELN  
17 Trust from properties owned by the LSN Trust has no bearing on the characterization of the  
18 properties themselves. Lynita has provided no additional evidence to rebut the presumption that  
19 property held in the ELN Trust remains separate property. This Court is not the proper venue  
20 for any disputes regarding the appropriate collection of rents for the properties.  
21

#### 22 **C. Management Fees**

23 This Court also considered whether or not management fees paid to Eric were separate  
24 property or community property. Both the spouses’ SPTs and the SPA itself are silent as to  
25 whether future wages are considered separate property or community property. Because there is  
26 nothing in writing demonstrating to this Court that a spouse’s wages were the spouse’s separate  
27  
28

1 property, this Court must assume that if the management fees were being paid to Eric as his  
2 individual wages, then the management fees must be considered community property and  
3 would be subject to equitable distribution in divorce.  
4

5 However, it is not clear to this Court whether the management fees were considered  
6 Eric's individual wages, or whether the management fees were reinvested into the ELN Trust,  
7 or if Eric received the wages as the beneficiary of the ELN Trust. If either of the latter two  
8 theories are true, then the management fees would be considered Eric's separate property and  
9 would not be subject to equitable distribution in divorce. This Court requires further evidence  
10 as to the issue of management fees paid to Eric before ruling on whether said fees are separate  
11 property or community property.  
12

#### 13 **D. Other Outstanding Issues**

14 Lynita argued several other theories before this Court, including several tort claims such  
15 as breach of fiduciary duty. The underlying matter before this Court is the divorce of Eric and  
16 Lynita. This Court is limited in its scope in this particular matter to the issue that the Nevada  
17 Supreme Court remanded the case for: conducting a tracing of assets within the SSSTs. In its  
18 October 16, 2018, Decision, this Court previously denied Lynita's motion to consolidate the  
19 present divorce matter with her tort claims, as there was no common question of law or fact.  
20 This Court repeats here that it is not the proper forum in which to argue any tort claims, such as  
21 those related to fiduciary duties, unjust enrichment, or any other claim specifically arising from  
22 the management of the SSSTs.  
23

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1  
2 **III. CONCLUSION**

3 In conclusion, this Court has found that based upon the expert testimony and report by  
4 Anthem Forensics, and other testimony and exhibits presented before this Court, that Lynita  
5 has not met her burden of proof to establish by clear and convincing evidence that any  
6 community property exists within the parties' respective SSSTs.

7 **IV. ORDER**

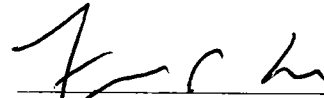
8 Based thereon:

9  
10 **IT IS HEREBY ORDERED** that the ERIC L. NELSON NEVADA TRUST'S  
11 MOTION FOR JUDGMENT ON PARTIAL FINDINGS pursuant to NRCP Rule 52(c) is  
12 hereby **GRANTED** as to all issues except for the question of ERIC NELSON's Management  
13 Fees;

14 **IT IS FURTHER ORDERED** that additional evidence and testimony will be taken by  
15 this Court to determine the characterization of ERIC NELSON's Management Fees on dates  
16 later to be determined by this Court;

17  
18 **IT IS FURTHER ORDERED** that the separate property within the Eric L Nelson  
19 Nevada Trust dated May 30, 2001, and the Lynita S. Nelson Nevada Trust dated May 30, 2001.  
20 from the period of May 30, 2001, to June 3, 2013, is not subject to an equitable distribution  
21 between Eric and Lynita pursuant to this Court's Decree of Divorce.

22 Dated this 29<sup>th</sup> of June, 2022.

23  
24   
25 Honorable Frank P. Sullivan  
26 District Court Judge - Dept. O  
27  
28

*Heather S. Smith*

CLERK OF THE COURT

**ORDER**

Jeffrey P. Luszeck, Esq. (#9619)

[jluszeck@sdfnvlaw.com](mailto:jluszeck@sdfnvlaw.com)

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

9060 West Cheyenne Avenue

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  
28

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

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

**Dated this 8th day of June, 2023**

Pratt Council

Respectfully submitted by:

Approved as to Form: BB4F  
Regina M. McConnell  
District Court Judge

LS

SOLOMON DWIGGINS FREER & STEADMAN, HAUSER FAMILY LAW  
LTD.

/s/ Jeffrey P. Luszeck

/s/ *Michelle A. Hauser*

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

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

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

*Attorneys for Defendant, Eric Nelson  
Individually*

PECOS LAW GROUP

*Refused to Sign*

By: Curtis R. Rawlings, Esq.  
8925 South Pecos Road, Suite 14a  
Henderson, Nevada 89074

## Allie Carnival

---

**From:** Michelle Hauser <michelle@hauserfamilylaw.com>  
**Sent:** Thursday, June 1, 2023 4:44 PM  
**To:** Jeffrey Luszeck; curtis@pecoslawgroup.com  
**Cc:** Allie Carnival; Susan Pinjuv  
**Subject:** RE: Nelson v. Nelson

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Categories:** Linked to MyCase

Good evening Jeff-

You have my authority to sign the order on my behalf.

Thank you,

*Michelle A. Hauser, Esq.*



**P: 702-867-8313**  
**A: 1489 West Warm Springs Road, Suite 110**  
**Henderson, Nevada 89014**

**E: michelle@hauserfamilylaw.com**

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**From:** Jeffrey Luszeck <jpl@sdfnlaw.com>  
**Sent:** Thursday, June 1, 2023 4:30 PM  
**To:** curtis@pecoslawgroup.com; Michelle Hauser <michelle@hauserfamilylaw.com>  
**Cc:** Allie Carnival <acarnival@sdfnlaw.com>  
**Subject:** Nelson v. Nelson

Curtis and Michelle,

The draft Order from yesterday's hearing is attached hereto for review and comment. Please let me know of any proposed revisions by close of business tomorrow, or alternatively, please advise if I may use your e-signature. If I do not receive any revisions by then I will submit to the Court for review and execution. Thank you. Jeff

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: 6/8/2023

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



1	Josef Karacsonyi	Josef@thedklawgroup.com
2	Natalie Karacsonyi	Natalie@thedklawgroup.com
3		
4	Josef Karacsonyi	Josef@thedklawgroup.com
5	Info info email	info@thedklawgroup.com
6	Grayson Moulton	grayson@shumwayvan.com
7	Jacob Crawley	jcrawley@sdfnlaw.com
8	Edwardo Martinez	edwardo@thedklawgroup.com
9	Efiling Email	efiling@jimmersonlawfirm.com
10		
11	Dorie Williams	dorie@thedklawgroup.com
12	Michelle Hauser	michelle@hauserfamilylaw.com
13	Susan Pinjuv	susan@hauserfamilylaw.com
14	Efile Notice	efilenotification@hauserfamilylaw.com
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Jeffrey P. Luszeck, Esq. (#9619)  
[jluszeck@sdfnlaw.com](mailto:jluszeck@sdfnlaw.com)  
SOLOMON DWIGGINS FREER & STEADMAN, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: (702) 853-5483  
Facsimile: (702) 853-5485

*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.  
27  
28

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

PAPP0041

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: 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

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

Jeffrey P. Luszeck, Esq. (#9619)  
[jluszeck@sdfnlaw.com](mailto:jluszeck@sdfnlaw.com)  
SOLOMON DWIGGINS FREER & STEADMAN, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: (702) 853-5483  
Facsimile: (702) 853-5485

*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.

...



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

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

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

...  
[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 determine whether any community property exists within the trusts – as discussed below, the parties' respective separate property in the SSSTs would be afforded the statutory protections against court ordered distribution, while any community property would be subject to the district court's equal distributions. We conclude the district court did not trace the assets in question.<sup>7</sup> . . . 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.

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.

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

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

5           23. The October 12, 2021, the “Decision” regarding the ELN Trust “Motion for  
6 Summary Judgment, or Alternatively, Motion to Strike and/or Motion to Extend Deadline to File  
7 Rebuttal Expert Report and to Continue Trial.” Although in this Decision, the District Court denied  
8 the 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 Countermotion  
4 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 for  
10 an Order to Show Cause to Issue Against Eric L. Nelson and Matt Klabacka  
11 for Egregious Violation of JPI in Selling Ten Banone Properties, for Funds  
12 from Sale to be Deposited into Blocked Account and Frozen, for Sanctions  
13 of Contempt and Attorney's Fees, and For Related Relief.

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

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

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

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

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

27 32. The District Court found that the issue "was merely mentioned during trial," and  
28 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.



## CONCLUSIONS OF LAW



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

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

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

23           26.     Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270,  
24 274-75 (2021) the Supreme Court reiterated the holding in *Klabacka v. Nelson*, 133 Nev. 164  
25  
26  
27  
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

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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.<sup>4</sup>

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](mailto: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  
26  
27  
28

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: 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

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		
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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

James Jimmerson	415 South Sixth St., Ste 100
	Las Vegas, NV, 89101

Jeffrey P. Luszeck, Esq. (#9619)  
[jluszeck@sdfnlaw.com](mailto:jluszeck@sdfnlaw.com)  
SOLOMON DWIGGINS FREER & STEADMAN, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: (702) 853-5483  
Facsimile: (702) 853-5485

*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 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

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                   ...

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

14                   ...

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

17                   ...

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

19                   ...

19                   The parties contest whether the assets within the SSSTs remained separate  
20 property or whether, because of the many transfers of property between  
21 the trusts, the assets reverted back to community property. In a divorce  
22 involving trust assets, the district court must trace those assets to  
23 determine whether any community property exists within the trusts – as  
discussed below, the parties' respective separate property in the SSSTs  
would be afforded the statutory protections against court ordered  
distribution, while any community property would be subject to the  
district court's equal distributions. We conclude the district court did not  
trace the assets in question. . . . Without proper tracing, the district court is  
left with only the parties' testimony regarding the characterization of the  
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  
distribution of that community property.

27                   ...

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

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

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

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



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



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: 8/2/2023

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

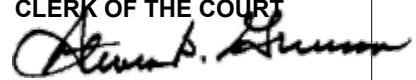
25 The Dickerson Karacsonyi Law Group .

info@thedklawgroup.com

1	Josef Karacsonyi	Josef@thedklawgroup.com
2	Natalie Karacsonyi	Natalie@thedklawgroup.com
3		
4	Josef Karacsonyi	Josef@thedklawgroup.com
5	Info info email	info@thedklawgroup.com
6	Stacy Howlett	stacy@michaelsonlaw.com
7	Grayson Moulton	grayson@shumwayvan.com
8	Edwardo Martinez	edwardo@thedklawgroup.com
9		
10	Curtis Rawlins	curtis@pecoslawgroup.com
11	Lynita Nelson	sunnysidelscn@gmail.com
12	Efiling Email	efiling@jimmersonlawfirm.com
13	Matthew Whittaker	matthew@michaelsonlaw.com
14	Dorie Williams	dorie@thedklawgroup.com
15	Michelle Ekanger	michelle@michaelsonlaw.com
16	Amber Pinnecker	amber@michaelsonlaw.com
17		
18	Michelle Hauser	michelle@hauserfamilylaw.com
19	Susan Pinjuv	susan@hauserfamilylaw.com
20	Efile Notice	efilenotification@hauserfamilylaw.com

21  
22 If indicated below, a copy of the above mentioned filings were also served by mail  
23 via United States Postal Service, postage prepaid, to the parties listed below at their last  
24 known addresses on 8/3/2023

24	James Jimmerson	415 South Sixth St., Ste 100
25		Las Vegas, NV, 89101
26		
27		
28		



1 **NOAS**  
2 Stacy Howlett, Esq.  
3 Nevada Bar No. 8502  
4 Email: [stacy@michaelsonlaw.com](mailto:stacy@michaelsonlaw.com)  
5 Matthew D. Whittaker, Esq.  
6 Nevada Bar No. 13281  
7 Email: [matthew@michaelsonlaw.com](mailto:matthew@michaelsonlaw.com)  
8 MICHAELSON LAW  
9 1746 W. Horizon Ridge Parkway  
10 Henderson, Nevada 89012  
11 Ph: (702) 731-2333  
12 Fax: (702) 731-2337  
13 *Attorneys for the Lynita S.*  
14 *Nelson Nevada Trust Dated May 30, 2001*

15 **DISTRICT COURT**  
16 **FAMILY DIVISION**  
17 **CLARK COUNTY, NEVADA**

18 ERIC L. NELSON,

19 Plaintiff,

20 vs.

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

25 Defendants

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

Cross-claimant,

LYNITA SUE NELSON,

Cross-defendant

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

**NOTICE OF APPEAL**

Notice is hereby given that Defendant/Cross-Defendant Lynita Nelson, individually and as trustee of The Lynita S. Nelson Nevada Trust Dated May 30, 2001, by and through attorneys, Stacy Howlett, Esq. and Matthew D. Whittaker, Esq. of Michaelson Law, hereby appeal to the Supreme Court of Nevada, the **Order After Hearing Granting ELN Trust's Request for an Award of Attorney's Fees** entered in this action on July 27, 2023, the **Order After Hearing Granting Eric Nelson's, in His Personal Capacity, Request for Attorney's Fees and Verified**



**Memorandum of Costs** entered in this action on July 27, 2023, and the **Order After Hearing Granting the ELN Trust's Motion for Immediate Payment of Funds Belonging to ELN Trust** entered in this action on August 2, 2023.

DATED: August 25, 2023

MICHAELSON LAW

*/s/ Matthew D. Whittaker*

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Stacy Howlett, Esq.  
Nevada Bar No. 8502  
Matthew D. Whittaker, Esq.  
Nevada Bar No. 13281  
1746 W. Horizon Ridge Parkway  
Henderson, NV 89012  
Ph: (702) 731-2333  
*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 August 25, 2023, a copy of the **NOTICE OF APPEAL** was e-served 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 <a href="mailto:jluszeck@sdfnvlaw.com">jluszeck@sdfnvlaw.com</a> <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 <a href="mailto:michelle@hauserfamilylaw.com">michelle@hauserfamilylaw.com</a> <i>Attorney for Plaintiff Eric Nelson Individually</i>
Curtis R. Rawlings, Esq. Pecos Law Group 8925 South Pecos Road, Suite 14A Henderson, Nevada 89074 <a href="mailto:curtis@pecoslawgroup.com">curtis@pecoslawgroup.com</a> <i>Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"</i>	

MICHAELSON LAW

/s/ Matthew Whittaker

An Employee of Michaelson Law