

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA AS DISTRIBUTION  
TRUSTEE OF THE ERIC L. NELSON  
NEVADA TRUST DATED MAY 30, 2001,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
REGINA M. MCCONNELL, DISTRICT  
JUDGE,

Respondents,

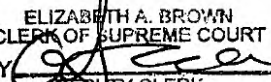
and

LYNITA SUE NELSON,  
INDIVIDUALLY AND IN HER  
CAPACITY AS INVESTMENT  
TRUSTEE OF THE LYNITA S.  
NELSON NEVADA TRUST DATED  
MAY 30, 2001; AND ERIC L. NELSON,  
Real Parties in Interest.

No. 87650

FILED

DEC 04 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS*

This emergency petition for a writ of mandamus challenges an alleged November 13, 2023, district court order concluding that the court lacked jurisdiction to consider post-judgment motions because an appeal is pending and vacating a hearing thereon.

In summer 2023, the district court entered several post-judgment orders awarding sums to the ELN Trust, including for rents owed, attorney fees, and costs. Real party in interest Lynita Sue Nelson, individually and as trustee of the LSN Trust, appealed from some of those orders, and petitioner Matt Klabacka, as trustee of the ELN Trust, cross-

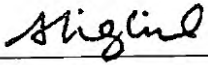
appealed. *See Nelson v. Klabacka*, Docket No. 87234. Meanwhile, according to Klabacka, he filed two motions in aid of execution on the post-judgment orders: a motion for judgment debtor examination and a motion to reconvey properties back to the LSN Trust. Lynita and the LSN Trust opposed his motions and filed a countermotion for stay, Klabacka states, but before hearing the matter, on November 13, 2023, the district court entered an order concluding that it lacked jurisdiction to consider the motions due to the pending appeal. Klabacka then filed this emergency writ petition, seeking to compel the district court to consider his motions.


As Klabacka points out in the petition, this court has repeatedly explained that the district court retains jurisdiction to consider collateral matters and to enforce its orders during the pendency of an appeal, absent a stay of enforcement pursuant to NRCP 62(d) or NRAP 8. *E.g.*, *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010) (“[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal’s merits.” (quoting *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006)); *Mack-Manley*, 122 Nev. at 858, 138 P.3d at 532 (noting that as a collateral matter, the district court may enforce orders during a pending appeal); *Bongiovi v. Bongiovi*, 94 Nev. 321, 322, 579 P.2d 1246, 1247 (1978) (same). Indeed, a district court’s refusal to enforce its orders pending appeal could in effect grant the opposing party a stay without bond. *Cf. Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005), *as modified* (Jan. 25, 2006) (discussing when stays of money judgments upon a waived or reduced bond are appropriate). Moreover, to the extent that a post-appeal motion could


result in altering the order on appeal or affect the appeal's merits, the district court may proceed under NRCP 62.1 and NRAP 12A by either denying the motion or certifying its intent to grant the motion or that the motion raises a substantial issue.

Here, however, we are unable to discern whether writ relief is warranted to remedy clear error or a manifest abuse of discretion because Klabacka failed to provide this court with copies of the district court's November 13 order and the parties' motion briefing below. NRAP 21(a)(4); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 229, 88 P.3d 840, 844 (2004) ("If essential information is left out of the petition and accompanying documentation, we have no way of properly evaluating the petition."); see also *Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 816, 820, 407 P.3d 702, 706 (2017) (discussing standards for issuing mandamus relief). Nor has Klabacka demonstrated that he brought this issue to the district court's attention before seeking writ relief. Accordingly, we deny the petition without prejudice to Klabacka's ability to refile with proper documentation if deemed warranted. NRAP 21(b).

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Stiglich

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Herndon

cc: Hon. Regina M. McConnell, District Judge, Family Division  
Solomon Dwiggins & Freer, Ltd.  
Pecos Law Group  
Michaelson Law  
Hauser Family Law  
Eighth District Court Clerk