

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, in his capacity as
Distribution Trustee of the Eric L. Nelson
Nevada Trust dated May 30, 2001;

Petitioner,

vs.

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

Respondents,

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.

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Clerk of Supreme Court

Supreme Ct. No.:

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

EMERGENCY WRIT UNDER NRAP 27(e)

PETITION FOR WRIT OF MANDAMUS

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Attorney for Petitioner

NRAP 27(e) Certificate

Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001 (“ELN Trust” or “Petitioner”) respectfully certifies that this writ is filed on an emergency basis requiring relief on or before January 10, 2023 to avoid irreparable harm. Immediate relief is necessary as the district court entered judgments in favor the ELN Trust against Lynita S. Nelson (“Lynita”) and the Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”) in the cumulative amount of \$1,748,279.06. Lynita is the Investment Trustee of the LSN Trust, and in such capacity Lynita has transferred a substantial amount of real property titled in the name of the LSN Trust to a number of entities that she created without the knowledge or consent of the district court, Eric L. Nelson (“Eric”) and/or the ELN Trust. The ELN Trust is informed and believes that Lynita, in her capacity as Investment Trustee, will continue to sell and transfer assets, the majority of which is real property, in order to ensure that the ELN Trust cannot collect on the outstanding judgments.

The relief sought in the Writ of Mandamus (“Writ”) is akin to the relief requested in a Motion to Reconsider the Court’s Order Vacating Hearing for Jurisdiction filed on November 13, 2023 (“Motion for Reconsideration”), filed by Eric on November 21, 2023, and joined by the ELN Trust on December 4, 2023. The Motion for Reconsideration is scheduled to be heard by the district court on January 25, 2024. As will be explained in greater detail below, Eric requested that

the district court hear the Motion for Reconsideration on shortened time, however said request was denied.

A. NRAP 27(e)(3)(a) Telephone Numbers and Office Addresses of the Attorneys for the Parties.

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Attorneys for Lynita Sue Nelson, Individually and as investment Trustee of the Lynita S. Nelson Trust dated May 30, 2001

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Attorney for Eric Nelson, Individually

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Attorney for Lynita Sue Nelson and LSN Trust in an “Unbundled Capacity”

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Attorney for Matt Klabacka, Distribution Trustee of the Eric L. Nelson Trust dated May 30, 2001

B. Facts Showing the Existence and Nature of the Claimed Emergency (NRAP 27(e)(3)(b))

As indicated *supra*, immediate relief is necessary as the district court entered judgments in favor the ELN Trust against Lynita and the LSN Trust in the cumulative amount of \$1,748,279.06, and Lynita in her capacity as Investment

Trustee of the LSN trust has transferred a substantial amount of real property titled in the name of the LSN Trust to a number of entities that she created without the knowledge or consent of Eric and/or the ELN Trust, or the district court. The ELN Trust is informed and believes that Lynita will continue to sell and transfer assets, the majority of which is real property, in order to ensure that the ELN Trust cannot collect on the outstanding judgments. Notwithstanding, because of the district court's error the ELN Trust is precluded from conducting a debtor examination and/or beginning collection on the outstanding judgments.

C. Notification of Parties pursuant to NRAP 27(e)(3)(c)

Counsel for the ELN Trust notified the Parties of the filing of this Writ of Mandamus. This notification was made by Jeffrey P. Luszeck, Esq. *via* email on December 26, 2023. Service of the Writ will take place by email and e-service upon all Parties' counsel and by mail to the other interested parties, if any.

DATED this 27th day of December, 2023.

Respectfully Submitted,

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

JEFFREY P. LUSZECK, ESQ., NSB #9619
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129

Attorney for Petitioner

ATTORNEY’S CERTIFICATE PURSUANT NRAP 28.2

1. The undersigned attorney hereby certifies that he has read the Writ.
2. To the best of the attorney’s knowledge, information and belief, the Writ is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
3. The Writ complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found.
4. The Writ complies with the formatting requirements of Rule 32(a)(4-6), and either the page- or type-volume limitations stated in Rule 32(a)(7).

DATED this 27th day of December, 2023.

Respectfully Submitted,

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

JEFFREY P. LUSZECK, ESQ., NSB #9619
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129

Attorney for Petitioner

NRAP 26.1 DISCLOSURE

Pursuant to Rule 26.1 of the Nevada Rules of Appellate Procedure, Petitioner states that it has no parent corporations and no publicly held company owns 10% or more of the stock of Petitioner. The undersigned Counsel of Record certifies that the following are persons and entities, as described in NRAP 26.1(a), which must be disclosed. These representations are made in order for the honorable judges of this Court may evaluate possible disqualification or recusal.

Counsel for Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001:

SOLOMON, DWIGGINS FREER & STEADMAN, LTD.
Jeffrey P. Luszeck, Esq.

Counsel for Eric Nelson, individually:

HAUSER FAMILY LAW
Michelle A. Hauser, Esq.

Counsel for Lynita Sue Nelson, Individually and as investment Trustee of the Lynita S. Nelson Trust dated May 30, 2001:

MICHAELSON LAW
Stacy Howlett, Esq.
Michael Whittaker, Esq.

Counsel for Lynita Sue Nelson and LSN Trust in an “Unbundled Capacity”

PECOS LAW GROUP
Curtis R. Rawlings, Esq.

NRAP 21(a)(1) ROUTING STATEMENT

NRAP 21(a)(3)(A) requires that a Writ state “whether the matter falls in one of the categories of cases retained by the Supreme Court pursuant to NRAP 17(a) or presumptively assigned to the Court of Appeals pursuant to NRAP 17(b).” This case technically falls into one of the categories of cases presumptively assigned to the Court of Appeals pursuant to NRAP 17(b), *i.e.*, “cases involved family law matters other than termination of parental rights or NRS Chapter 432B proceedings.” Petitioner, believes, however, that this case should be retained by the Supreme Court for the following reasons:

- (1) The Supreme Court has previously heard an appeal in this matter – Nevada Supreme Court Case No. 66772 – which resulted in a published decision: *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017). The *Klabacka* decision defined the district court’s obligation on remand. In addition to *Klabacka*, the Supreme Court has ruled upon a number of writs in Nevada Supreme Court Case Nos.’ 53432, 63545, 66772, 66772, 68292, 77254, 77473, and 81564. This matter is also currently on appeal in Nevada Supreme Court Case No. 87234.
- (2) This case involves a trust matter with a corpus in excess of \$10,000,000.
- (3) The Supreme Court entered its Order Denying Petition for Writ of Mandamus on December 4, 2023, in Case No. 87650, which

addressed the identical issue identified herein.

TABLE OF CONTENTS

NRAP 27(e) Certificate.....ii

ATTORNEY’S CERTIFICATE PURSUANT NRAP 28.2..... v

NRAP 26.1 DISCLOSURE vi

NRAP 21(a)(1) ROUTING STATEMENT vii

TABLE OF CONTENTS..... ix

Table of Authorities x

RELIEF SOUGHT..... 1

ISSUES PRESENTED..... 1

FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED 1

REASONS WHY RELIEF SHOULD ISSUE..... 13

 A. The District Court Erred By Finding That It Lacked Jurisdiction To Consider
 Pending Issues Merely Because Lynita/the LSN Trust Filed An Appeal. 13

 B. Should A Stay Issue A Supersedeas Bond Should Be Required 15

CONCLUSION 16

VERIFICATION BY DECLARATION 17

CERTIFICATE OF COMPLIANCE..... 18

(NRAP FORM 9)..... 18

CERTIFICATE OF SERVICE 20

TABLE OF AUTHORITIES

Page(s)

Cases

and Huneycutt v. Huneycutt,
94 Nev. 79, 575 P.2d 585 (1978) 13

Foster v. Dingwall,
126 Nev. 49, 228 P.3d 453 (2010)..... 13

Klabacka v. Nelson,
133 Nev. 164, 394 P.3d 940 (2017)..... *passim*

Mack-Manley v. Manley,
122 Nev. 849, 138 P.3d 525 (2006)..... 13

Myers v. Haskins,
381 P.3d 644 (Nev. 2012)..... 14

State ex rel. P.C. v. District Court,
94 Nev. 42, 574 P.2d 272 (1978) 13

Rust v. Clark Cty. School District,
103 Nev. 686, 747 P.2d 1380 (1987) 13

Smith v. Emery, II
109 Nev. 737, 856 P.2d 1386 (1993) 13

Statutes

NRS Chapter 432B..... vii

Nevada Rules of Appellate Procedure Rule 26.1 vi

Rule 28(e)..... v

Rule 32(a)(4-6)..... v

Rule 32(a)(7) v

I.

RELIEF SOUGHT

Petitioner seeks a writ of mandamus directing the district court to rule on the pending issues before it, specifically, the ELN Trust’s Motion for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, Individually, and in her Capacity as Investment Trustee of the LSN Trust, and Motion to Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies Wyoming, LLC and Southern Magnolia, LLC.

II.

ISSUES PRESENTED

1. Did the district court err by finding that it lacked jurisdiction to consider pending issues because a party has appealed some, but not all, of a monetary judgment?
2. If it is appropriate for the district court not to consider pending issues, did the district court err by not requiring a supersedeas bond be posted?

III.

FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED

The Supreme Court is intimately familiar with the facts and circumstances regarding the Parties in this matter as they have been involved in four (4) separate appeals, namely 66772, 68292, 77254 and 87234, and numerous writs. *See, e.g.,*

Supreme Court Case Nos.’ 53432, 63545, 66772, 66772, 68292, 77254, 77473, 81564, and 87650.

Notwithstanding, the basic facts relating to the instant Writ, many of which come directly from the Supreme Court’s Opinion in *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017), are as follows.

In 1993, Eric L. Nelson (“Eric”) and Lynita S. Nelson (“Lynita”), husband and wife, entered into a separate property agreement in order to transmute their community assets into each Parties’ respective separate property. *Klabacka*, 133 Nev. at 166, 394 P.3d at 943. Said separate property ultimately funded each Parties’ respective separate property trust (*i.e.* Eric funded his separate property trust with his separate property and Lynita funded her separate property trust with her separate property). *See id.*

On May 30, 2001, Eric created a self-settled spendthrift trust named the Eric L. Nelson Nevada Trust dated May 30, 2001 (“ELN Trust”) and funded said trust with the assets contained within his separate property trust. Conversely, on the same day, Lynita created the Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”) and funded said trust with the assets contained within her separate property trust. *See id.*

Eric filed for divorce on May 6, 2009, and on August 9, 2011, both the ELN Trust and LSN Trust were added as necessary Parties to the divorce action. *Klabacka*, 133 Nev. at 167, 394 P.3d at 944.

On June 3, 2013, the district court issued its Decree of Divorce, which was ultimately appealed by the ELN Trust. Said appeal resulted in this Court issuing its opinion in *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017), wherein it: “affirm[ed] in part and vacate[d] in part the district court’s decree of divorce” . . . and remand[ed] this matter for further proceedings consistent with this opinion.” *Klabacka*, 133 Nev. at 182, 394 P.3d at 954.

On remand, the Parties were tasked with “tracing the assets contained within the [ELN Trust and LSN Trust] either through a reliable expert or other available means” in order to determine whether there was any community property in either the ELN Trust or LSN Trusts. *Klabacka*, 133 Nev. at 174, 394 P.3d at 949. A trial on the tracing and other issues relating to the remand occurred on March 28-31, 2022, April 1, 2022, April 6-7, 2022, April 27, 2022 and April 28, 2022. (Five years post-remand)

On June 29, 2022, the district court entered its Decision and Order wherein it concluded/found as follows: “[i]n conclusion, this Court has found that based upon the expert testimony and report by Anthem Forensics, and other testimony and exhibits presented before this Court, that Lynita has not met her burden of proof to establish by clear and convincing evidence that any community property exists with the Parties respective SSSTs.” PAPP V1:1-22. As such, the district court ordered that “the separate property within the [ELN Trust] and [LSN Trust] from the period of May 30, 2001, to June 3, 2013, is not subject to an equitable

distribution between Eric and Lynita pursuant to this Court's Decree of Divorce.”

Id. Notwithstanding, the district court requested additional evidence and testimony regarding an issue that is impertinent to the instant Writ. *Id.*

On June 8, 2023, the district court entered an Order Granting in Part Motion for Immediate Payment of Funds Belonging to ELN Trust in favor of the ELN Trust against Lynita, individually, and the LSN Trust, in the amount of \$493,216.00. PAPP V1:23-28.

On July 27, 2023, the district court entered an Order After Hearing Denying Lynita S. Nelson's Motion to Retax Costs; and Order Awarding ELN Trust's Memorandum of Costs in favor of the ELN Trust against Lynita, individually, and the LSN Trust, in the amount of \$62,935.08. PAPP V1:29-39.

On July 27, 2023, the district court entered an Order After Hearing Granting ELN Trust's Request for an Award of Attorney's Fees in favor of the ELN Trust against Lynita, individually, and the LSN Trust, in the amount of \$239,772.30. PAPP V1:40-63.

On August 2, 2023, the district court entered an Order After Hearing Granting ELN Trust's Request for an Award of Attorney's Fees in favor of the ELN Trust against Lynita, individually, and the LSN Trust, in the amount of \$952,355.86 (BANONE, LLC: \$435,260 in principal and \$177,601.10 in interest; Lindell Office: \$147,667.90 in principal and \$60,253.58; Repayment of \$324,000.00: \$132,203.13 in interest). PAPP V1:64-78.

In summary, the ELN Trust has judgments in the cumulative amount of \$1,748,279.06 (plus statutory interest) against Lynita, individually, and the LSN Trust, which is broken down as follows:

- \$493,216.00, *see* June 8, 2023 Order;
- \$62,935.08, *see* July 27, 2023 Cost Order;
- \$239,772.30, *see* July 27, 2023 Attorneys' Fees Order; and
- \$952,355.68, *see* August 2, 2023 Order.

TOTAL: \$1,748,279.06¹

On August 25, 2023, Lynita, individually, and as Investment Trustee of the LSN Trust appealed on the July 27, 2023 Order and August 2, 2023 Order. PAPP V1:79-81. It is important to note that the LSN Trust did not appeal the June 8, 2023 Order (in the amount of \$493,216.00), PAPP V1:23-28, or the July 27, 2023 Cost Order (in the amount of \$62,935.08). PAPP V1:29-39. Further, although the LSN Trust technically appealed the August 2, 2023 Order, said appeal is limited to the interest in the amount of \$370,057.81, not principal in the amount of \$582,928.05, that Lynita/the LSN Trust were ordered to pay. PAPP V1:64-78.

As such, even though there are judgments against Lynita/the LSN Trust in favor of the ELN Trust in the cumulative amount of \$1,748,279.06, the LSN Trust has only appealed \$609,830.11 of said judgments (\$239,772.30 in attorneys' fees, *see* July 27, 2023 Order, PAPP V1:68-84, and \$370,057.81 in interest, and August 2, 2023 Order, PAPP V1:68-84). Therefore, even if successful on appeal,

¹ This does not include monies awarded to Eric in his individual capacity or interest that is accruing on said judgements.

Lynita/the LSN Trust will still owe the ELN Trust \$1,138,448.95, which does not include the interest that is compounding daily pursuant to the June 8, 2023 Order, PAPP V1:23-28, and July 27, 2023 Cost Order, PAPP V1:29-39, neither of which were appealed, PAPP V1:79-81, and the principal amount identified in the August 2, 2023 Order that is not being appealed. PAPP V1:64-78.

Since Lynita/the LSN Trust admittedly owe the ELN trust at least \$1,138,448.95, the ELN Trust filed an Ex Parte Application for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, Individually, and in her Capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001. PAPP V1:82-158. This request was denied by the district court due to the pending appeal. In doing so, the district denied the request indicating it did not have jurisdiction to enter the order due to the pending appeal. PAPP V1:159.

On September 18, 2023, Eric filed his Motion for an Equitable Offset. PAPP V1:160-226. Due to the ELN Trust's Ex Parte Application being denied, Eric briefed the jurisdictional issue raised by the district court in its Motion for an Equitable offset.

On September 18, 2023, the ELN Trust filed a Motion for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, Individually, and in her Capacity as Investment Trustee of the LSN Trust ("Motion for Debtor Examination"). PAPP V1:227-247.

On September 22, 2023, the ELN Trust also filed a Motion to Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies Wyoming, LLC and Southern Magnolia, LLC (“Motion to Convey”). PAPP V2:248-336. The Motion to Convey was intended to address the fact that the LSN Trust, during the pendency of the appeal in *Klabacka*, had transferred most of its real property to a number of entities that Lynita/the LSN Trust created without district court approval, knowledge and/or consent of Eric, the ELN Trust and/or the district court. *See id.* Upon information and belief, Lynita/the LSN Trust transferred said assets to impede the ELN Trust’s ability to collect on any judgment that it received against the LSN Trust. *See id.* As such, the ELN Trust requested in its Motion to Convey that the district court compel Lynita, in her capacity as Investment Trustee of the LSN Trust, transfer said real property back to the LSN Trust. *See id.*

On October 2, 2023 and October 6, 2023, respectively, Lynita/the LSN Trust filed an Opposition to the Motion for Debtor Examination, Motion for an Equitable Offset and Motion to Convey. PAPP V2:337-344, PAPP V2:345-350 and PAPP V2:351-358. The LSN Trust’s Opposition to the Motion for Debtor Examination also contained a Countermotion to Stay Execution of Judgment Pursuant to NRAP 8. PAPP V2:337-344. Even though the LSN Trust failed to articulate why a stay of the entire judgment should be granted (in light of the fact that Lynita/the LSN Trust admittedly owe the ELN trust at least \$1,138,448.95), it

conceded that should the stay of execution be granted “Ms. Nelson will post a supersedeas bond pursuant to NRC 62.” PAPP V2:337-344.

On October 9, 2023 and October 13, 2023, respectively, the ELN Trust filed a Reply to Opposition to the Motion for Debtor Examination and Motion to Convey. PAPP V2:359-373 and PAPP V2:374-387.

On October 9, 2023, Eric filed a Reply to Opposition to the Motion for an Equitable Offset. PAPP V2:388-403.

On November 13, 2023, two (2) days before the hearing on the Motion for Debtor Examination, Motion to Convey and Motion for an Equitable Offset, the district court entered an Order Vacating Hearing for Jurisdiction, which provides, in part:

The COURT FINDS that this matter is currently before the Supreme Court of Nevada. The Defendant filed her Notice of Appeal on August 25, 2023, and Case Appeal Statement on August 25, 2023; Cross-Claimant filed his Notice of Appeal on September 2, 2023, and Case Appeal Statement on September 2, 2023, and as a result, which the case is pending before the Supreme Court of Nevada, this Court lacks jurisdiction to consider the pending issues.

THEREFORE THIS COURT ORDERS that all hearings presently set for November 15, 2023 shall be VACATED.

THIS COURT FURTHER ORDERS that, following the completion of the appellate process, Plaintiff, Defendant and Cross-Claimant may file a Re-Notice of Hearing. PAPP V2:403-406.

The district court’s Order Vacating Hearing for Jurisdiction is contrary to Nevada law as a district court does in fact have jurisdiction to entertain pending

motions despite the filing of an appeal, and was silent as to Lynita/the LSN Trust's concession that if a stay were granted it would post a bond.

On November 13, 2023, Eric, individually, filed a Motion for Reconsideration, which was joined by the ELN Trust on December 4, 2023. PAPP V2:417-429. Unfortunately, a hearing on the Motion for Reconsideration was not scheduled until January 25, 2024. The Motion for Reconsideration specifically addressed why the district court had jurisdiction pending the appeal, and requested that the district court hearing her outstanding motions. *See id.* On December 5, 2023, Lynita/the LSN Trust filed an Opposition to the Motion for Reconsideration. PAPP V2:430-437, and on December 1, 2023, Eric filed a Reply to Opposition to Motion for Reconsideration. PAPP V2:439-454.

On November 27, 2023, the ELN Trust filed a Petition for Writ of Mandamus wherein it requested that the Supreme Court enter a writ of mandamus directing the district court to rule on the pending issues before it, specifically, the ELN Trust's Motion for Debtor Examination.

On December 4, 2023, the Supreme Court, in Case No. 87650, entered its Order Denying Petition for Writ of Mandamus wherein it stated that it "was 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." As such, the

Supreme Court den[ie]d the petition without prejudice to Klabacka's ability to refile with proper documentation if deemed warranted."

Although the Petition for Writ of Mandamus was technically denied, the Supreme Court reemphasized in its Order 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:

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); *Bongioui v. Bongioui*, 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.

Following the entry of the Supreme Court's Order on December 4, 2023, Eric filed an Ex Parte Application for an Order Shortening Time in which to hear his Motion for Reconsideration. PAPP V2:408-416. The purpose for the Ex Parte

Application was two-fold. First, as the Ex Parte Application specifically cited the language in the Supreme Court’s December 4, 2023, Order Denying Petition for Writ of Mandamus that the district court in fact retained jurisdiction to consider collateral matters and to enforce its orders during the pendency of an appeal, absent a stay of enforcement pursuant to NRC 62(d) or NRAP 8, Eric was hopeful that the district court would *sua sponte* place the Motion for Debtor Examination, PAPP V1:227-247, and Motion to Convey, PAPP V2:248-336, back on calendar. Alternatively, Eric was hopeful that this Court would hear the Motion for Reconsideration, PAPP V2:416-428, on shortened time.

Unfortunately, on December 6, 2023, the district court advised Eric’s counsel that “your proposed order or document requiring a judge’s signature to the court has been returned for the following reasons(s): The Court did not find good cause to move up the hearing on the Motion for Reconsideration.” PAPP V2:438.

As stated in the Motion for Debtor Examination, Motion to Convey and Motion for Reconsideration, the “good cause” to hear the aforementioned motions on shorted time is that Eric and the ELN Trust are concerned that Lynita/the LSN Trust are actively transferring assets to impede the ELN Trust’s ability to collect on the judgment entered against the LSN Trust, which Lynita/the LSN Trust concede is at least \$1,138,448.95.² PAPP V1:23-28, PAPP V1:29-39 and PAPP

² Indeed, as indicated *supra*, as such, even though there are judgments against Lynita/the LSN Trust in favor of the ELN Trust in the cumulative amount of

V1:79-81. As such, while the ELN Trust concedes that the Motion for Reconsideration will ultimately be heard by the district court on January 25, 2023, it is concerned that said delay will give Lynita/the LSN Trust additional time to hinder and/or impede the ELN Trust's ability to collect on the judgments entered by the district court.

Further, and perhaps more importantly, the Motion for Reconsideration pending before the district court will only resolve the issue regarding whether the district court has jurisdiction to hear the pending motions before it (an issue that the Supreme Court has already decided). Assuming *arguendo* the district court reconsiders its order and confirms it has jurisdiction to hear the underlying motions discussed herein, a new hearing will need to be scheduled to hear the outstanding motions, which will cause another delay on the outstanding motions being heard on its merits, and with the LSN Trust still not posting a bond. Thus, by the time the underlying motions are heard, the LSN Trust will have received at minimum six months from the date of ELN Trust filing its underlying Motion for Debtor's Examination and Motion to Convey on September 18, 2023, to the date of the

\$1,748,279.06, the LSN Trust has only appealed \$609,830.11 of said judgments (\$239,772.30 in attorneys' fees, *see* July 27, 2023 Order, PAPP V1:29-39, and \$370,057.81 in interest, and August 2, 2023 Order, PAPP V1:64-78). Therefore, even if successful on appeal, Lynita/the LSN Trust will still owe the ELN Trust \$1,138,448.95 pursuant to the June 8, 2023 Order and July 27, 2023 PAPP V1:23-28 and PAPP V1:29-39, neither of which were appealed, PAPP V1:79-81, and the principal amount identified in the August 2, 2023 Order that is not being appealed.

hearing on said motions to continue to squander and otherwise dispose of assets that are subject to collection by the ELN Trust.

IV.

REASONS WHY RELIEF SHOULD ISSUE

A. The District Court Erred By Finding That It Lacked Jurisdiction To Consider Pending Issues Merely Because Lynita/the LSN Trust Filed An Appeal.

This district court has jurisdiction to entertain the pending Motion for Debtor Examination and Motion to Convey despite the filing of Lynita/the LSN Trust's appeal. A common misconception by parties is that filing a Notice of Appeal automatically stays any further District Court action. The Supreme Court has repeatedly held this is not the case. In *State ex rel. P.C. v. District Court, 94 Nev. 42, 574 P.2d 272 (1978)*, this Court held:

... not required to post a bond, is entitled to a stay of judgment upon the mere filing of the notice of appeal. Not only here would such a result torture our prevailing rules of court, but such a determination would render the language meaningless and would do untold mischief to the effective administration of justice.

In *Mack-Manley v. Manley, 122 Nev. 849, 138 P.3d 525 (2006)*, the Supreme Court held the district court maintains jurisdiction to enforce its orders pending an appeal.³

In *Foster v. Dingwall, 228 P.3d 453 (2010)* the Supreme Court held:

³ See also *Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987)*; *Smith v. Emery, 11 109 Nev. 737, 740, 856 P.2d 1386, 1388 (1993)*; and *Huneycutt v. Huneycutt, 94 Nev. 79, 80, 575 P.2d 585, 585 (1978)*

We have further held that when 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. *Citing to Mack-Manley*, 122 Nev. At 855, 138 P.3d at 529-30.

In *Myers v. Haskins*, 381 P.3d 644 (Nev. 2012) the Supreme Court in a footnote, denoted:

In *Myers v. Haskins*, 381 P.3d 644 (Nev. 2012) the Nevada Supreme Court in a footnote, denoted: In light of this order. We deny as moot respondent's motion for temporary remand, in which he contends that the underlying proceedings are halted whenever appellant files a notice of appeal. We remind the parties and the district court that after a notice of appeal is filed, the district court retains jurisdiction to decide matters collateral to or independent from the issues on appeal, to enforce orders that are before this court on appeal, and to hold hearings concerning matters that are pending before this court. *Foster v Dingwall* 126 Nev. -----, -----, 228 P.3d 453, 455 (2010); *Mack-Manley v. Manley*, 122 Nev. 894, 855, , 858, 138 P.3d 525, 531, 532 (2006) (providing that the district court has the authority to resolve matters that are collateral to and independent of the issues on appeal, "i.e., matters that in no way affect the appeal's merits," and explaining that a "district court is simply without jurisdiction to enter an order that modifies or affects the order being challenged on appeal. *Foster* 126 Nev. -----, -----, 228 P.3d

The relevant case law makes it clear, much of which was cited by the Supreme Court in the Order Denying Petition for Writ of Mandamus entered on December 4, 2023, in Supreme Court Case No. 87650, confirm that the district court retains jurisdiction to enforce its orders pending an appeal. As indicated herein, while a Motion for Reconsideration, PAPP V2:417-429, regarding this issue is pending the ELN Trust is concerned that waiting until January 25, 2024,

to address this issue will give Lynita/the LSN Trust additional time to move assets and/or otherwise thwart its collection efforts. Although a request to have the Motion for Reconsideration heard on shortened time, said request was denied. PAPP V2:438. As such, emergency relief from this Court is warranted.

B. Should A Stay Issue A Supersedeas Bond Should Be Required

NRCP 62(c) provides:

Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants or refuses to grant, or dissolves or refuses to dissolve, an injunction, the court may stay, suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

Further, this Court may condition a party's request for a stay of judgment on the party's filing of a bond or appropriate security in the district court. NRAP 8(a)(2)(E)

As shown herein, the Lynita/LSN Trust have already transferred a substantial amount of its assets to entities that may or not be owned by the LSN Trust. PAPP V2:248-336. Absent a bond, it is likely that the ELN Trust will never be able to recover the substantial judgment awarded regarding of the outcome of this writ proceeding or the pending appeal.

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V.

CONCLUSION

In light of the foregoing, Petitioner respectfully requests that this Court enter a writ of mandamus directing the district court to rule on the pending issues before it, specifically, the ELN Trust's Motion for Debtor Examination and Motion to Convey. Further, if this Court does not believe that the district court must consider pending issues, Petitioner requests that this Court direct the district court to require a supersedeas bond be posted.

DATED this 27th day of December, 2023.

Respectfully Submitted,

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

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VERIFICATION BY DECLARATION

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

Jeffrey P. Luszeck, Esq. hereby deposes and states under penalty of perjury:

1. I am a partner at the law firm of Solomon Dwiggin & Freer, Ltd., Counsel for Petitioner. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those facts, I believe them to be true.

2. This Petition for Writ of Mandamus (“Writ”) is verified by me as Petitioner’s counsel because the facts upon which the Writ is based are within my personal knowledge in that the issues primarily involve the lengthy procedural history of the instant matter and issue of law.

3. I have participated in the drafting and reviewing of the Writ and know the content thereof. To the best of my knowledge, the Writ and the facts contained therein are true and correct, except those facts stated on information and belief of which I believe to be true.

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

Dated this 27th day of December, 2023.

/s/ Jeffrey P. Luszeck
JEFFREY P. LUSZECK, ESQ.

CERTIFICATE OF COMPLIANCE
(NRAP FORM 9)

1. I hereby certify that this Petition For Writ of Mandamus (“Writ”) complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in 14-point Times New Roman type style.

2. I further certify that this Writ complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is not proportionately spaced, has a typeface of 14 points, and contains 3,817 words.

3. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Writ complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 27th day of December, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

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Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a)(1), I hereby certify that I am an employee of the law firm of Solomon Dwiggin & Freer, Ltd., and that on December 27, 2023, I served a true and correct copy of the foregoing **PETITION FOR WRIT OF MANDAMUS**, via Electronic Mail and U.S. Mail, Postage Prepaid, to the following:

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Trust in an "Unbundled Capacity"*

/s/ Alexandra Carnival

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