

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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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**

APPENDIX VOLUME I

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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

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

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.¹ 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 ¹ 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.² 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 The Nevada Supreme Court has previously held in *Klabacka* that Eric and Lynita
18 executed a valid Separate Property Agreement ("SPA") which transmuted the parties'
19 community property into their individual separate property as delineated on SPA Schedules A
20 and B, and that the SPA through its plain language remained in effect during divorce.³
21 Specifically, the Nevada Supreme Court "conclude[d] the SPA was valid, and the parties'
22 property was validly separated into their respective separate property trusts at that time."⁴
23
24
25
26

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

28 ³ *Klabacka v. Nelson*, 133 Nev. 164, 170 (2017).

⁴ *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.”⁵ 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.⁶ 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.⁷

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 property⁸ 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.⁹

25 ⁵ *Id.*

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

27 ⁷ *Id.* at 172.

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

⁹ *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.¹⁰
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
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26
27 ¹⁰ 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 \$416,666.67.¹¹ 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 ¹¹ 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
17 signed by the Trustee.¹²

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

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

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

¹³ 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.*¹⁴

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.¹⁵ 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.¹⁶ The plain language of the ELN Trust does not
15 require any language indicating that Eric held Wyoming Downs as the SSST’s fiduciary.¹⁷

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.

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

26 ¹⁵ *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 ¹⁶ *See* NRS 163.100 (“all powers of a trustee are attached to the office and are not personal”).

28 ¹⁷ 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."¹⁸ 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)¹⁹.
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.²⁰
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 ¹⁸ *Tarbell v. Tarbell*, 373 P.3d 966 (Nev. 2011) (unpublished).

28 ¹⁹ *See generally Klabacka*, 133 Nev. 164 (2017).

²⁰ 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.²¹ 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 unambiguous²², 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

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22 ²¹ 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 ²² *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.²³ 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.²⁴ 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."²⁵ Anthem relies on
24 the transfers between the SSSTs that were below fair market value and its own definition of
25

26 ²³ *Klabacka*, 133 Nev. at 171.

27 ²⁴ NRS 123.125(2).

28 ²⁵ 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
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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.”²⁶ 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 ²⁶ 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.²⁷ 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

²⁷ 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 Trust²⁸ for no financial consideration.²⁹ 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
24

25
26 ²⁸ The Nelson Nevada Trust in this transaction is distinct and separate from Lynita's SPT,
which was also entitled the Nelson Nevada Trust.

27 ²⁹ 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.
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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**

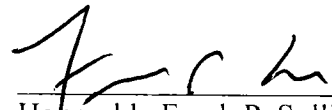
8 Based thereon:

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 29th 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

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

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

Respectfully submitted by:

SOLOMON DWIGGINS FREER & STEADMAN,
LTD.

/s/ *Jeffrey P. Luszeck*

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

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

PECOS LAW GROUP

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 7. Thus, pursuant to EDCR 5.503(b) LSN’s failure to file a motion to retax is an
12 admission that the ELN Trust’s “Verified Memorandum of Costs” is meritorious and consent to the
13 granting of the “Verified Memorandum of Costs.”
14

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

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

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

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

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



1 **IT IS HEREBY ORDERED** that the Memorandum of Costs filed by the ELN Trust is
2 approved in the total amount of \$62,935.08;

3 **IT IS FURTHER ORDERED** that Lynita's S. Nelson's Motion to Retax Costs is hereby
4 DENIED in its entirety;

5 **IT IS FURTHER ORDERED** that a judgment is hereby entered in favor of the ELN Trust
6 and against the LSN Trust in the amount of \$62,935.08. The amount of \$62,935.08 is reduced to
7 judgment, shall collect interest at the legal rate, and shall be collectible by any lawful means; and

8 **IT IS FURTHER ORDERED** a judgment is hereby entered in favor of the ELN Trust and
9 against Lynita Nelson, individually in the amount of \$62,935.08. The amount of \$62,935.08 is
10 reduced to judgment, shall collect interest at the legal rate, and shall be collectible by any lawful
11 means.
12

Dated this 27th day of July, 2023

A handwritten signature in black ink, appearing to read 'Regina M. McConnell'.

13
14
15
16 Respectfully submitted by:

17 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

B34 7B6 AB3D AB4D
Regina M. McConnell
District Court Judge

18 /s/ Jeffrey P. Luszeck

19 By: _____

Jeffrey P. Luszeck, Esq. (#09619)

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9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

21
22 *Attorneys for Matt Klabacka, Distribution Trustee of*
23 *the ERIC L. NELSON NEVADA Trust dated May 30,*
24 *2001*

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

...



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.⁷ . . . Without proper tracing, the district court is left with only the parties' testimony regarding the characterization of the property, which carries no weight.

...

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 20. The ELN Trust was the prevailing party.

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

3 22. An argument has been presented by Lynita that the LSN Trust was not a party to the
4 action and therefore, cannot be responsible for any of the attorney's fees. This argument belies the
5 record before the District Court. The LSN Trust was represented by Counsel at the Evidentiary
6 Hearing as provided for in the District Court's orders entered on June 29, 2022 and January 31,
7 2023.
8

9 23. Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270,
10 274- 75 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit
11 through its trustee. In her Writ to the Nevada Supreme Court, Lynita argued both trusts are parties
12 to this underlying action. This was also denoted in the Nevada Supreme Court's decision resolving
13 the Writ. The Nevada Supreme Court specifically wrote: Lynita argues both trusts are parties to
14 this action, and moreover, the trusts may be parties to an action under EDCR 5.518.
15

16 24. The ELN Trust filed a timely motion pursuant to NRCP 54(d)(2).
17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 39. If the ELN Trust had raised the same claims in a court of general jurisdiction, such
10 as the civil division of the Eighth Judicial District Court, the ELN Trust would not be required to
11 file a General Financial Disclosure Form to receive an award of fees. To treat the ELN Trust any
12 differently than a civil litigant would be an absurd result and would encourage civil litigants to
13 attempt to file claims in the Family Court to receive financial information that would otherwise not
14 be required under local rules.

15
16 40. Finally, during the decade-long litigation post the entry of the decree of divorce, the
17 LSN Trust has never filed a General Financial Disclosure Form. This is an admission by the LSN
18 Trust that a General Financial Disclosure Form was not a requirement as now argued.

19
20 41. The ELN Trust filed its Brunzell Affidavit as part of its underlying motion for
21 attorney’s fees filed on February 21, 2023. Thus, analysis required under *Brunzell v. Golden Gate*
22 *Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983);
23 *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), and EDCR 5.219 have been
24 satisfied.

25 42. The fees charged by the ELN Trust counsel in this matter were necessary to the
26 matter and are reasonable in the marketplace given the experience and qualities of the advocates in
27 the amount granted by the court.
28

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

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

4 44. Mark A. Solomon’s (“Mr. Solomon”) billable hourly rate of \$685.00, is
5 commensurate with his experience, reputation and skill in all areas of trust, estate and business
6 litigation. Mr. Solomon practiced law for over 45 years and was the senior founding partner of
7 SDFS. Mr. Solomon was a long-standing member of the Trust and Estate Sections of the State Bar
8 of Nevada and American Bar Association and was considered one Nevada’s premier trust and estate
9 attorneys.
10

11 45. Mr. Luszeck has been a partner at SDFS for over seven years, and has been an active
12 member of the State Bar of Nevada since 2005. He regularly litigates business, probate, and trust
13 cases at the trial and appellate level in both state and federal court, and has also received numerous
14 honors and accolades in the Nevada legal community.
15

16 46. To ensure resources, and to minimize legal expenses, SDFS delegated tasks and to
17 quality employees who have a lower billable rate, namely, Craig D. Friedel (“Mr. Friedel”) and
18 Joshua M. Hood (“Mr. Hood”). Mr. Friedel has been an associate attorney at SDFS since 2015. Mr.
19 Friedel earned his JD in or around 2015 from William S. Boyd School of Law and has practiced
20 law for several years. Mr. Hood was an associate attorney at SDFS from 2013 – 2022. Mr. Hood
21 earned his JD in or around 2010 from Valparaiso University School of Law. Similarly, Sherry
22 Keast (“Ms. Keast”) has been a paralegal at SDFS since 2005. Ms. Keast earned her Paralegal
23 Certificate in or around 1991 and has worked in the legal field for over twenty-five (25) years
24

25 ///

26 ///

27 ///.

28

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

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

5 **C. Work Performed.**

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

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

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

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

16 iv. Research on substantive issues;

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

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

20 vii. Drafting the instant Motion.⁴

21 **D. Result.**

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

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

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

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

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

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

15 Dated this 27th day of July, 2023

16 

17 Respectfully submitted by:

18 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

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

LS

19 /s/ Jeffrey P. Luszeck

20 By: _____

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

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

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." .

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19 Kimberly Stewart .

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20 Larry Bertsch .

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21 Mandi Weiss- Legal Assistant .

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22 Nick Miller .

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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
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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

Heather S. Smith

CLERK OF THE COURT

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

Defendants

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

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

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

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

3 **FINDINGS OF FACT**

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

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

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

12 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 ...

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

13 ...

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

16 ...

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

17 ...

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

24 ...

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

28 ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 28. The Notice of Entry of Order entered on June 9, 2023, states Lynita Nelson was
13 served via electronic service at sunnysidelscn@gmail.com and via mail at P.O. Box 156-164,
14 10170 West Tropicana Avenue Las Vegas, Nevada 89147. Curtis Rawlings, Esq. who
15 represented the Defendant(s) at the May 30, 2023, hearing was served via electronic service at
16 curtis@pecoslawgroup.com. Also, The Dickerson Karacsonyi Law Group was served at
17 info@thedklawgroup.com.
18

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

///

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

4 20. NRS 52.275 provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

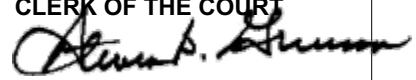
7
8 **NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND**
9 **CONCLUSIONS,**

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

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

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

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



1 **NOAS**
2 Stacy Howlett, Esq.
3 Nevada Bar No. 8502
4 Email: stacy@michaelsonlaw.com
5 Matthew D. Whittaker, Esq.
6 Nevada Bar No. 13281
7 Email: 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

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

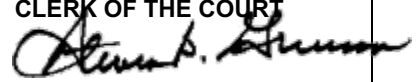
Pursuant to Nevada Rule of Civil Procedure 5(b) and NEFCR 9, the undersigned hereby certifies that on August 25, 2023, a copy of the **NOTICE OF APPEAL** was e-served in Henderson, Nevada to the following individuals and/or entities at the following addresses:

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 jluszeck@sdfnvlaw.com <i>Attorneys for Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001</i>	Michelle A. Hauser, Esq. Hauser Family Law michelle@hauserfamilylaw.com <i>Attorney for Plaintiff Eric Nelson Individually</i>
Curtis R. Rawlings, Esq. Pecos Law Group 8925 South Pecos Road, Suite 14A Henderson, Nevada 89074 curtis@pecoslawgroup.com <i>Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"</i>	

MICHAELSON LAW

/s/ Matthew Whittaker

An Employee of Michaelson Law



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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

**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**

Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated
May 30, 2001 (the “ELN Trust” or “Judgment Creditor”), applies to this Court
pursuant to NRS 21.270 for an order requiring, Lynita S. Nelson, individually, and in

her capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”) (hereinafter collectively referred to as “Judgment Debtor”), to appear before the Judgment Creditor’s attorneys, to bring documents, and to answer questions under oath regarding (1) the full nature, extent, and location of Judgment Debtor’s property and assets, and (2) the other topics for examination set forth in the proposed Order attached hereto as **Exhibit 1**. This Application is based on the following Memorandum of Points and Authorities and the papers and pleadings on file.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BRIEF STATEMENT OF FACTS

1. On June 8, 2023, this Court entered an *Order Granting in Part Motion for Immediate Payment of Funds Belonging to ELN Trust* in favor of the ELN Trust against Judgment Debtor, in the amount of \$493,216.00. *See*, June 8, 2023 Order, a true and correct copy of which is attached hereto as **Exhibit 2**.

2. On July 27, 2023, this Court entered an *Order After Hearing Denying Lynita S. Nelson’s Motion to Retax Costs; and Order Awarding ELN Trust’s Memorandum of Costs* in favor of the ELN Trust against Judgment Debtor, in the amount of \$62,935.08. *See*, July 27, 2023 Order, a true and correct copy of which is attached hereto as **Exhibit 3**.

3. On July 27, 2023, this Court entered an *Order After Hearing Granting ELN Trust’s Request for an Award of Attorney’s Fees* in favor of the ELN Trust

1 against Judgment Debtor, in the amount of \$239,772.30. *See*, July 27, 2023 Order, a
2 true and correct copy of which is attached hereto as **Exhibit 4**.

3
4 4. On August 2, 2023, this Court entered an *Order After Hearing Granting*
5 *ELN Trust's Request for an Award of Attorney's Fees* in favor of the ELN Trust
6 against Judgment Debtor, in the amount of \$952,355.86 (BANONE, LLC: \$435,260
7 in principal and \$177,601.10 in interest; Lindell Office: \$147,667.90 in principal and
8 \$60,253.58; Repayment of \$324,000.00: \$132,203.13 in interest). *See*, August 2,
9 2023 Order, a true and correct copy of which is attached hereto as **Exhibit 5**.

10
11
12 5. To date, the Judgment Debtor has not paid any amounts towards
13 pursuant to the Orders entered by this Court.

14 II. LEGAL ARGUMENT

15
16 The Court should grant Judgment Creditor's *ex parte* application because it has
17 a judgment against the Judgment Debtor, which remains unpaid. NRS 21.270 allows
18 for the examination of a judgment debtor:

- 19
20 1. A judgment creditor, at any time after the judgment is entered, is
21 entitled to an order from the judge of the court requiring the
22 judgment debtor to appear and answer upon oath or affirmation
23 concerning his or her property, before:
24 (a) The judge or a master appointed by the judge; or
25 (b) An attorney representing the judgment creditor, at a time
26 and place specified in the order. No judgment debtor may
27 be required to appear outside the county in which the
28 judgment debtor resides.
2. If the judgment debtor is required to appear before any person
other than a judge or master:
(a) The oath or affirmation of the judgment debtor must be
administered by a notary public; and

(b) The proceedings must be transcribed by a court reporter or recorded electronically. The transcript or recording must be preserved for 2 years.

3. A judgment debtor who is regularly served with an order issued pursuant to this section, and who fails to appear at the time and place specified in the order, may be punished for contempt by the judge issuing the order.

During a judgment debtor examination, the judgment creditor is entitled to ascertain the true condition of the property or business affairs of the judgment debtor. *Hagerman v. Tong Lee*, 12 Nev. 331 (1877). At such time, the judge or master may order any non-exempt property of the judgment debtor be applied toward satisfaction of the judgment. NRS 21.320.

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

1. All statements for any and all financial, money, and investment accounts in the name of Judgment Debtor for the period of January 1, 2020 to Present.
2. A copy of Judgment Debtor's credit card billings/statements from January 1, 2020 to Present.
3. All state and federal income tax and any other tax returns filed by or on behalf of Judgment Debtor for tax years 2020 to present

- 1 including all exhibits, schedules, forms, and other documents
2 referenced in or attached to those tax returns.
- 3 4. A copy of all documents, including, but not limited to paystubs
4 or other pay records, evidencing all compensation that Judgment
5 Debtor received from January 1, 2020 to Present.
- 6 5. A copy of all documents evidencing any distributions that Lynita
7 received from the LSN Trust from January 1, 2020 to Present.
- 8 6. All deeds, records, or other documents that identify or relate to
9 real property in which Judgment Debtor currently owns or claims
10 an interest, or did own or claim an interest from January 1, 2020
11 to present.
- 12 7. All documents that identify or relate to any items of personal
13 property in which Judgment Debtor currently owns or claims and
14 interest with a value (or, if the actual value is unknown, with a
15 believed value) of \$500 or more.
- 16 8. All documents, items, and things that refer in any way, directly
17 or indirectly, to any and all accounts (business or personal bank,
18 checking savings, credit union, or retirement) in which Judgment
19 Debtor has an interest, including monthly statements (or other
20 period if issued less frequently) from January 1, 2020 to present.
- 21 9. All documents that identify any interest Judgment Debtor has or
22 claims in any business, partnership (limited or general),
23 corporation, limited liability company, limited liability
24 partnership, or joint venture (collectively the "Business
25 Records"), including, but not limited to:
- 26 a. Southern Magnolia LLC; and
- 27 b. Pink Peonies, LLC.
- 28 10. The Articles of Organization, Operating Agreement, list of
members, list of managers, meeting minutes, resolutions, and
other documentary evidence of corporate/LLC action taken since
the formation of each entity identified in para. 9, to the extent not
previously produced.
11. All documents that identify assets held by (1) the LSN Trust, and
(2) any other trust in which Judgment Debtor claims or has an
interest as a beneficiary or otherwise.

1 Due to significant concerns that Judgment Debtor, has not, and will not
2 produce, any and all documents evidencing the past and current financial status of
3 herself, individually, or the LSN Trust, the above-requested financial documentation
4 is warranted and necessary to conduct a meaningful judgment debtor examination.
5

6 **III. CONCLUSION**
7

8 Based upon the foregoing, the ELN Trust respectfully requests that this Court
9 grant the instant Ex Parte Application for Allowing Examination of Judgment Debtor
10 in its entirety.
11

12 DATED this 12th day of September, 2023.

13 SOLOMON DWIGGINS FREER & STEADMAN, LTD.
14

15 /s/ Jeffrey P. Luszeck

16 By: _____

Jeffrey P. Luszeck, Esq. (#09619)

jluszeck@sdfnvlaw.com

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

18 *Attorneys for Matt Klabacka, Distribution*
19 *Trustee of the ERIC L. NELSON NEVADA*
20 *Trust dated May 30, 2001*
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

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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

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR

THIS MATTER having come before the District Court pursuant to
Plaintiff's/Judgement Creditor's 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, and the Court having reviewed the papers and pleadings on file herein, and for good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Lynita S. Nelson, individually, and in her capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”) (hereinafter collectively referred to as “Judgment Debtor”) appear before Judgment Creditor’s attorneys, Solomon Dwiggins Freer & Steadman, Ltd., for a judgment debtor examination. The examination will take place at **Solomon Dwiggins Freer & Steadman, Ltd., located at 9060 West Cheyenne Avenue, Las Vegas, Nevada 89129 on October 16, 2023 at 9:00 a.m.**, continuing from day to day until completed, legal holidays and weekend excluded. The proceeding will be recorded by video and/or stenographic means.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Judgment Debtor shall provide the following documents to Judgement Creditor’s counsel (Jeffrey P. Luszeck, Esq.) for inspection and copying at their office address above, **at least five business days** before the examination, *i.e.*, on or before, but not later than October 9, 2023, by 5:00 p./m.:

1. All statements for any and all financial, money, and investment accounts in the name of Judgment Debtor for the period of January 1, 2020 to Present.

2. A copy of Judgment Debtor's credit card billings/statements from January 1, 2020 to Present.
3. All state and federal income tax and any other tax returns filed by or on behalf of Judgment Debtor for tax years 2020 to present including all exhibits, schedules, forms, and other documents referenced in or attached to those tax returns.
4. A copy of all documents, including, but not limited to paystubs or other pay records, evidencing all compensation that Judgment Debtor received from January 1, 2020 to Present.
5. A copy of all documents evidencing any distributions that Lynita received from the LSN Trust from January 1, 2020 to Present.
6. All deeds, records, or other documents that identify or relate to real property in which Judgment Debtor currently owns or claims an interest, or did own or claim an interest from January 1, 2020 to present.
7. All documents that identify or relate to any items of personal property in which Judgment Debtor currently owns or claims and interest with a value (or, if the actual value is unknown, with a believed value) of \$500 or more.
8. All documents, items, and things that refer in any way, directly or indirectly, to any and all accounts (business or personal bank, checking savings, credit union, or retirement) in which Judgment Debtor has an interest, including monthly statements (or other period if issued less frequently) from January 1, 2020 to present.
9. All documents that identify any interest Judgment Debtor has or claims in any business, partnership (limited or general), corporation, limited liability company, limited liability partnership, or joint venture (collectively the "Business Records"), including, but not limited to:
 - a. Southern Magnolia LLC;
 - b. Pink Peonies, LLC; and
 - c. Pink Peonies Wyoming, LLC.
10. The Articles of Organization, Operating Agreement, list of members, list of managers, meeting minutes, resolutions, and other documentary evidence of corporate/LLC action taken since the formation of each entity identified in para. 16, to the extent not previously produced.

11. All documents that identify assets held by (1) the LSN Trust, and
(2) any other trust in which Judgment Debtor claims or has an
interest as a beneficiary or otherwise.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if
Judgment Debtor fails to appear at the time and place stated above, such failure may
result in Judgment Debtor being held in contempt of court and a bench warrant may
be issued for her arrest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
Judgment Debtor shall not transfer, dispose, alienate, or otherwise encumber any of
his assets, except in the ordinary course of business, from the date her counsel is
served with this Order until the Judgment Debtor Examination ordered herein is
completed.

Respectfully submitted by:

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

By: _____
Jeffrey P. Luszeck, Esq. (#09619)
jluszeck@sdfnvlaw.com
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Las Vegas, Nevada 89129

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

EXHIBIT 2

EXHIBIT 2

Heather S. Smith

CLERK OF THE COURT

ORDER

Jeffrey P. Luszeck, Esq. (#9619)

jluszeck@sdfnvlaw.com

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Facsimile: (702) 853-5485

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

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

vs.

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

Defendant.

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

Dept. No.: **O**

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

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

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



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

A. FINDINGS

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

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

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

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

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

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

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

19
20 Good Cause Appearing Therefore,

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

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

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

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

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

14 ...

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17 ...

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23 ...

24 ...

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

PRM Council

Respectfully submitted by:

Approved: **EE 9F9 9FA0: BB4F**
Regina M. McConnell
District Court Judge

LS

SOLOMON DWIGGINS FREER & STEADMAN,
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

This e-mail communication is a confidential attorney-client communication intended only for the person named above. If you are not the person named above, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please e-mail the sender that you have received the communication in error. IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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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EXHIBIT 3

EXHIBIT 3

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7
8 Based upon the findings of the District Court, the Court ordered the management fees for
9 Silver Slipper and Lindell Professional Plaza were deemed to be the separate property of the ELN
10 Trust.

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

15
16 **THE COURT FURTHER FINDS** on February 6, 2023, the ELN Trust filed its “Verified
17 Memorandum of Costs.” Pursuant to the “Verified Memorandum of Costs” the ELN Trust
18 requested the Defendant, Lynita Nelson, in her Capacity, and the LSN Trust pay costs in the amount
19 of \$78,051.18.

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

- 22
- 23 1. Billing Statements from RubinBrown-Exhibit 1;
 - 24 2. “Detail Cost Transaction File List.” Included in this documentation was canceled
25 checks and invoices-Exhibit 2;
 - 26 3. An itemization of all Copy Chargers-Exhibit 3;
 - 27 4. An itemization of all Scan Charges- Exhibit 4
- 28

1 5. An itemization of all Laser Copy Charges –Exhibit 5 \$ 3,120.66

2 6. An itemization of all Postage-Exhibit 6 \$

3 7. An itemization of all Filing Fees- Exhibit 7

4 8. An itemization of all Westlaw Legal Research-Exhibit 8

5 9. An itemization of all Courier Expenses-Exhibit 9, and

6 10. An itemization of Transcription Fees-Exhibit 10 \$ 366.00.

7
8 **THE COURT FURTHER FINDS** the requested costs were all supported with the
9 appropriate documentation for the requested costs.

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

14
15 **THE COURT FURTHER FINDS** on February 9, 2023, Defendant filed, “Defendant,
16 Lynita S. Nelson’s, Motion to Retax Cost.” Defendant, Lynita S. Nelson, filed her Motion to Retax
17 in her individual capacity and not in her capacity as Investment Trustee of the LSN Trust.

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

22
23 **THE DISTRICT COURT FURTHER FINDS** the “Decision and Order” entered on June
24 29, 2023, and the “Decision Regarding the Characterization of Management Fees” entered on
25 January 31, 2023, denote “Lynita Nelson in her individual capacity as well as her capacity as the
26 investment trustee of the LSN Trust, represented by her counsel Josef Karacsonyi, Esq., and Natalie
27 Karacsonyi. Esq.”
28

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

11 7. Thus, pursuant to EDCR 5.503(b) LSN’s failure to file a motion to retax is an
12 admission that the ELN Trust’s “Verified Memorandum of Costs” is meritorious and consent to the
13 granting of the “Verified Memorandum of Costs.”
14

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

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

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

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

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

12. NRS 18.020 provides:

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

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

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

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

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

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

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

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

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

22 20. The ELN Trust was the prevailing party.

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

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

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

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

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

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

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

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

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

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

Pratt Council

PAPP0113

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

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18 "Rhonda K. Forsberg, Esq." .

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19 Kimberly Stewart .

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20 Larry Bertsch .

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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
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EXHIBIT 4

EXHIBIT 4

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 22. An argument has been presented by Lynita that the LSN Trust was not a party to the
4 action and therefore, cannot be responsible for any of the attorney's fees. This argument belies the
5 record before the District Court. The LSN Trust was represented by Counsel at the Evidentiary
6 Hearing as provided for in the District Court's orders entered on June 29, 2022 and January 31,
7 2023.
8

9 23. Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270,
10 274- 75 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit
11 through its trustee. In her Writ to the Nevada Supreme Court, Lynita argued both trusts are parties
12 to this underlying action. This was also denoted in the Nevada Supreme Court's decision resolving
13 the Writ. The Nevada Supreme Court specifically wrote: Lynita argues both trusts are parties to
14 this action, and moreover, the trusts may be parties to an action under EDCR 5.518.
15

16 24. The ELN Trust filed a timely motion pursuant to NRCP 54(d)(2).
17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 39. If the ELN Trust had raised the same claims in a court of general jurisdiction, such
10 as the civil division of the Eighth Judicial District Court, the ELN Trust would not be required to
11 file a General Financial Disclosure Form to receive an award of fees. To treat the ELN Trust any
12 differently than a civil litigant would be an absurd result and would encourage civil litigants to
13 attempt to file claims in the Family Court to receive financial information that would otherwise not
14 be required under local rules.

15
16 40. Finally, during the decade-long litigation post the entry of the decree of divorce, the
17 LSN Trust has never filed a General Financial Disclosure Form. This is an admission by the LSN
18 Trust that a General Financial Disclosure Form was not a requirement as now argued.

19
20 41. The ELN Trust filed its Brunzell Affidavit as part of its underlying motion for
21 attorney’s fees filed on February 21, 2023. Thus, analysis required under *Brunzell v. Golden Gate*
22 *Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983);
23 *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), and EDCR 5.219 have been
24 satisfied.

25 42. The fees charged by the ELN Trust counsel in this matter were necessary to the
26 matter and are reasonable in the marketplace given the experience and qualities of the advocates in
27 the amount granted by the court.
28

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

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

4 44. Mark A. Solomon’s (“Mr. Solomon”) billable hourly rate of \$685.00, is
5 commensurate with his experience, reputation and skill in all areas of trust, estate and business
6 litigation. Mr. Solomon practiced law for over 45 years and was the senior founding partner of
7 SDFS. Mr. Solomon was a long-standing member of the Trust and Estate Sections of the State Bar
8 of Nevada and American Bar Association and was considered one Nevada’s premier trust and estate
9 attorneys.
10

11 45. Mr. Luszeck has been a partner at SDFS for over seven years, and has been an active
12 member of the State Bar of Nevada since 2005. He regularly litigates business, probate, and trust
13 cases at the trial and appellate level in both state and federal court, and has also received numerous
14 honors and accolades in the Nevada legal community.
15

16 46. To ensure resources, and to minimize legal expenses, SDFS delegated tasks and to
17 quality employees who have a lower billable rate, namely, Craig D. Friedel (“Mr. Friedel”) and
18 Joshua M. Hood (“Mr. Hood”). Mr. Friedel has been an associate attorney at SDFS since 2015. Mr.
19 Friedel earned his JD in or around 2015 from William S. Boyd School of Law and has practiced
20 law for several years. Mr. Hood was an associate attorney at SDFS from 2013 – 2022. Mr. Hood
21 earned his JD in or around 2010 from Valparaiso University School of Law. Similarly, Sherry
22 Keast (“Ms. Keast”) has been a paralegal at SDFS since 2005. Ms. Keast earned her Paralegal
23 Certificate in or around 1991 and has worked in the legal field for over twenty-five (25) years
24

25 ///

26 ///

27 ///.

28

B. Character of Work Performed.

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

C. Work Performed.

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

- i. Between May 25, 2017 to present, there were over a hundred filings, of which Undersigned Counsel filed sixty (60). Said filings include, but are not limited to: (1) Motion to Dismiss and a renewed Motion to Dismiss in 2019; (2) Writ of Mandamus; (3) numerous orders; (4) Motion for Summary Judgment; (5) Motions in Limine; and (6) Oppositions to Lynita/the LSN Trust's Motions in Limine;
- ii. Preparing for and attending numerous hearings between 2018-2022;
- iii. Various consultations, emails, and telephone conferences with opposing counsel, client, and co-counsel;
- iv. Research on substantive issues;
- v. Preparing for, and taking/defending multiple depositions, including, Eric, Lynita, Anthem Forensics and Doug Winters;
- vi. Preparing for and participating in an eight (8) day trial; and
- vii. Drafting the instant Motion.⁴

D. Result.

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

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

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

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

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

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

15 Dated this 27th day of July, 2023

16 

17 Respectfully submitted by:

18 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

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

LS

19 /s/ Jeffrey P. Luszeck

20 By: _____

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

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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eric L Nelson, Plaintiff

CASE NO: D-09-411537-D

7 vs.

DEPT. NO. Department O

8 Lynita Nelson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/27/2023

15 Jeffrey Luszeck

jluszeck@sdfnvlaw.com

16 Sherry Curtin-Keast

skeast@sdfnvlaw.com

17 "James J. Jimmerson, Esq." .

jjj@jimmersonlawfirm.com

18 "Rhonda K. Forsberg, Esq." .

Rforsberg@forsberg-law.com

19 Kimberly Stewart .

ks@jimmersonlawfirm.com

20 Larry Bertsch .

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21 Mandi Weiss- Legal Assistant .

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22 Nick Miller .

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23 Shahana Polselli .

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10	Efiling Email	efiling@jimmersonlawfirm.com
11	Matthew Whittaker	matthew@michaelsonlaw.com
12	Dorie Williams	dorie@thedklawgroup.com
13	Michelle Ekanger	michelle@michaelsonlaw.com
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18		
19		
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21		
22		
23		
24	James Jimmerson	415 South Sixth St., Ste 100
25		Las Vegas, NV, 89101
26		
27		
28		

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

EXHIBIT 5

EXHIBIT 5

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

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

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

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

PAPP0149

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

///

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

4 20. NRS 52.275 provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eric L Nelson, Plaintiff

CASE NO: D-09-411537-D

7 vs.

DEPT. NO. Department O

8 Lynita Nelson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 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

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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	Michelle Hauser	michelle@hauserfamilylaw.com
18		
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		

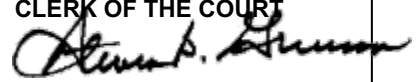
Allie Carnival

From: NoReply@clarkcountycourts.us
Sent: Wednesday, September 13, 2023 9:41 AM
To: Allie Carnival
Subject: Eighth Judicial District Court - Proposed Order Returned

Follow Up Flag: Follow up
Flag Status: Completed

Nelson v. Nelson, Case No. D-09-411537-D

Your proposed order or document requiring a judge's signature to the court has been returned for the following reason(s): The Court rejects this because this case is on appeal. Please file a Motion if you disagree.



Jeffrey P. Luszeck, Esq. (#9619)
jluszeck@sdfnlaw.com
SOLOMON DWIGGINS FREER & STEADMAN, LTD.
9060 West Cheyenne Avenue
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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

Oral Argument Requested?

☒ Yes ☐ No

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

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

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

DATED this 18th day of September, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

By: _____

Jeffrey P. Luszeck, Esq. (#09619)

jluszeck@sdfnvlaw.com

9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BRIEF STATEMENT OF FACTS

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

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

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

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

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

II. LEGAL ARGUMENT

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

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

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

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

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

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

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

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

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

III. CONCLUSION

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

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

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

5 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

6 /s/ Jeffrey P. Luszeck

7 By:

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

9 jluszeck@sdfnlaw.com

10 9060 West Cheyenne Avenue
11 Las Vegas, Nevada 89129

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

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

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

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

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

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

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

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

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

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

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

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

1 Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”) (hereinafter
2 collectively referred to as “Judgment Debtor”), to appear before me, to bring
3 documents, and to answer questions under oath regarding (1) the full nature, extent,
4 and location of Judgment Debtor’s property and assets, and (2) the other topics for
5 examination set forth in the proposed Order.
6
7

8 DATED this 18th day of September, 2023.

9
10 */s/ Jeffrey P. Luszeck*

11 _____
12 Jeffrey P. Luszeck
13
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CERTIFICATE OF SERVICE

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

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

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

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

/s/ Alexandra Carnival

An Employee of SOLOMON DWIGGINS FREER
& STEADMAN, LTD.

EXHIBIT 1

EXHIBIT 1

Heather S. Smith

CLERK OF THE COURT

ORDER

Jeffrey P. Luszeck, Esq. (#9619)

jluszeck@sdfnvlaw.com

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

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

14 ...

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

6 Dated this 8th day of June, 2023

7 
8

9 Respectfully submitted by:

Approved as to form: BB4F LS
Regina M. McConnell
District Court Judge
HAUSER FAMILY LAW

10 SOLOMON DWIGGINS FREER & STEADMAN, LTD.
11

12 /s/ Jeffrey P. Luszeck

/s/ Michelle A. Hauser

13 By: _____
14 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

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

Attorneys for Defendant, Eric Nelson
Individually

17 PECOS LAW GROUP

18 *Refused to Sign*

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

EXHIBIT 2

EXHIBIT 2

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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



1 5. An itemization of all Laser Copy Charges –Exhibit 5 \$ 3,120.66

2 6. An itemization of all Postage-Exhibit 6 \$

3 7. An itemization of all Filing Fees- Exhibit 7

4 8. An itemization of all Westlaw Legal Research-Exhibit 8

5 9. An itemization of all Courier Expenses-Exhibit 9, and

6 10. An itemization of Transcription Fees-Exhibit 10 \$ 366.00.

7
8 **THE COURT FURTHER FINDS** the requested costs were all supported with the
9 appropriate documentation for the requested costs.

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

14
15 **THE COURT FURTHER FINDS** on February 9, 2023, Defendant filed, “Defendant,
16 Lynita S. Nelson’s, Motion to Retax Cost.” Defendant, Lynita S. Nelson, filed her Motion to Retax
17 in her individual capacity and not in her capacity as Investment Trustee of the LSN Trust.

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

22
23 **THE DISTRICT COURT FURTHER FINDS** the “Decision and Order” entered on June
24 29, 2023, and the “Decision Regarding the Characterization of Management Fees” entered on
25 January 31, 2023, denote “Lynita Nelson in her individual capacity as well as her capacity as the
26 investment trustee of the LSN Trust, represented by her counsel Josef Karacsonyi, Esq., and Natalie
27 Karacsonyi. Esq.”
28

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



1 **IT IS HEREBY ORDERED** that the Memorandum of Costs filed by the ELN Trust is
2 approved in the total amount of \$62,935.08;

3 **IT IS FURTHER ORDERED** that Lynita's S. Nelson's Motion to Retax Costs is hereby
4 DENIED in its entirety;

5 **IT IS FURTHER ORDERED** that a judgment is hereby entered in favor of the ELN Trust
6 and against the LSN Trust in the amount of \$62,935.08. The amount of \$62,935.08 is reduced to
7 judgment, shall collect interest at the legal rate, and shall be collectible by any lawful means; and

8 **IT IS FURTHER ORDERED** a judgment is hereby entered in favor of the ELN Trust and
9 against Lynita Nelson, individually in the amount of \$62,935.08. The amount of \$62,935.08 is
10 reduced to judgment, shall collect interest at the legal rate, and shall be collectible by any lawful
11 means.
12

Dated this 27th day of July, 2023

A handwritten signature in black ink, appearing to read 'Regina M. McConnell'.

13
14
15
16 Respectfully submitted by:

17 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

**B34 7B6 AB3D AB4D
Regina M. McConnell
District Court Judge**

18 /s/ Jeffrey P. Luszeck

19 By: _____

Jeffrey P. Luszeck, Esq. (#09619)

jluszeck@sdfnvlaw.com

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

21
22 *Attorneys for Matt Klabacka, Distribution Trustee of*
23 *the ERIC L. NELSON NEVADA Trust dated May 30,*
24 *2001*

EXHIBIT 3

EXHIBIT 3

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

5
6 **CONCLUSIONS OF LAW**

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

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

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

14 ...

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

17 ...

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

20 ...

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

22 ...

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

24 ...

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

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

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

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

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

(2) Attorney Fees.

(A) Claim to Be by Motion.

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

(B) Timing and Contents of the Motion.

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

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

considered by the court in deciding the motion.

5. Further, EDCR 5.219 provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 20. The ELN Trust was the prevailing party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. NRS 18.010(2)(b) allows the District Court to award attorney's fees when it finds the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. 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 and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure 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.

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

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

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

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

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

8
9 39. If the ELN Trust had raised the same claims in a court of general jurisdiction, such
10 as the civil division of the Eighth Judicial District Court, the ELN Trust would not be required to
11 file a General Financial Disclosure Form to receive an award of fees. To treat the ELN Trust any
12 differently than a civil litigant would be an absurd result and would encourage civil litigants to
13 attempt to file claims in the Family Court to receive financial information that would otherwise not
14 be required under local rules.

15
16 40. Finally, during the decade-long litigation post the entry of the decree of divorce, the
17 LSN Trust has never filed a General Financial Disclosure Form. This is an admission by the LSN
18 Trust that a General Financial Disclosure Form was not a requirement as now argued.

19
20 41. The ELN Trust filed its Brunzell Affidavit as part of its underlying motion for
21 attorney’s fees filed on February 21, 2023. Thus, analysis required under *Brunzell v. Golden Gate*
22 *Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983);
23 *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), and EDCR 5.219 have been
24 satisfied.

25 42. The fees charged by the ELN Trust counsel in this matter were necessary to the
26 matter and are reasonable in the marketplace given the experience and qualities of the advocates in
27 the amount granted by the court.
28

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

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

4 44. Mark A. Solomon’s (“Mr. Solomon”) billable hourly rate of \$685.00, is
5 commensurate with his experience, reputation and skill in all areas of trust, estate and business
6 litigation. Mr. Solomon practiced law for over 45 years and was the senior founding partner of
7 SDFS. Mr. Solomon was a long-standing member of the Trust and Estate Sections of the State Bar
8 of Nevada and American Bar Association and was considered one Nevada’s premier trust and estate
9 attorneys.
10

11 45. Mr. Luszeck has been a partner at SDFS for over seven years, and has been an active
12 member of the State Bar of Nevada since 2005. He regularly litigates business, probate, and trust
13 cases at the trial and appellate level in both state and federal court, and has also received numerous
14 honors and accolades in the Nevada legal community.
15

16 46. To ensure resources, and to minimize legal expenses, SDFS delegated tasks and to
17 quality employees who have a lower billable rate, namely, Craig D. Friedel (“Mr. Friedel”) and
18 Joshua M. Hood (“Mr. Hood”). Mr. Friedel has been an associate attorney at SDFS since 2015. Mr.
19 Friedel earned his JD in or around 2015 from William S. Boyd School of Law and has practiced
20 law for several years. Mr. Hood was an associate attorney at SDFS from 2013 – 2022. Mr. Hood
21 earned his JD in or around 2010 from Valparaiso University School of Law. Similarly, Sherry
22 Keast (“Ms. Keast”) has been a paralegal at SDFS since 2005. Ms. Keast earned her Paralegal
23 Certificate in or around 1991 and has worked in the legal field for over twenty-five (25) years
24

25 ///

26 ///

27 ///.

28

B. Character of Work Performed.

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

C. Work Performed.

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

- i. Between May 25, 2017 to present, there were over a hundred filings, of which Undersigned Counsel filed sixty (60). Said filings include, but are not limited to: (1) Motion to Dismiss and a renewed Motion to Dismiss in 2019; (2) Writ of Mandamus; (3) numerous orders; (4) Motion for Summary Judgment; (5) Motions in Limine; and (6) Oppositions to Lynita/the LSN Trust's Motions in Limine;
- ii. Preparing for and attending numerous hearings between 2018-2022;
- iii. Various consultations, emails, and telephone conferences with opposing counsel, client, and co-counsel;
- iv. Research on substantive issues;
- v. Preparing for, and taking/defending multiple depositions, including, Eric, Lynita, Anthem Forensics and Doug Winters;
- vi. Preparing for and participating in an eight (8) day trial; and
- vii. Drafting the instant Motion.⁴

D. Result.

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

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

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

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

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

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

15 Dated this 27th day of July, 2023

16 

17 Respectfully submitted by:

18 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

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

LS

19 /s/ Jeffrey P. Luszeck

20 By: _____

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

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

EXHIBIT 4

EXHIBIT 4

Heather S. Smith

CLERK OF THE COURT

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

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

Defendants

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

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

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

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

3 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

///

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

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

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

8 ...

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

11 ...

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

13 ...

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

16 ...

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

17 ...

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

29 ...

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

28 ...

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

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

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

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

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

19 *See* Decision entered on April 19, 2018 at 7:9-18.
20

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

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

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

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

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

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

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

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

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

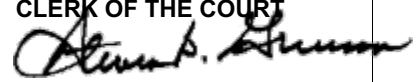
7
8 **NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND**
9 **CONCLUSIONS,**

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



MOT
HAUSER FAMILY LAW
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702-867-8313
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Attorneys for Plaintiff

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

ERIC L. NELSON,

Plaintiff

vs.

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

Defendants

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

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

Date of Hearing:
Time of Hearing:

Oral Argument Requested

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

**PLAINTIFF ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION
FOR AN EQUITABLE OFFSET**

COMES NOW, Plaintiff, ERIC NELSON (“Eric”), in his Personal Capacity,
by and through his attorney, Michelle A. Hauser, Esq. of HAUSER FAMILY LAW,
and respectfully requests that this Court enter orders granting him the following
relief:

1. The District Court order an equitable offset; and
2. Awarding Eric such other and further relief as the Court deems
appropriate.

This Motion is made and based on all the papers and pleadings on file herein,
the Memorandum of Points and Authorities submitted herewith, the exhibits
provided, and any further evidence and argument as may be adduced at the hearing
on this matter.

DATED this 18th day of September, 2023.

HAUSER FAMILY LAW

/s/Michelle Hauser

Michelle A. Hauser, Esq.

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702-867-8313

Email: michelle@hauserfamilylaw.com

Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

Eric (“Eric”) and Lynita (“Lynita”) Nelson were married on September 17, 1983. Eric filed his Complaint for Divorce in the instant matter on May 6, 2009. 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. After the entry of the Decree, the ELN Trust filed a Notice of Appeal to the Nevada Supreme Court on October 20, 2014. The matter was remanded in 2017.

The Honorable Frank Sullivan heard the remand issues when the evidentiary hearing commenced on March 28, 2022. After Lynita and the LSN Trust rested their case-in-chief, this Court issued an order on June 29, 2022, granting ELN Trust/Eric’s Motion for Judgment on Partial Findings according to NRCP 52(c) after hearing evidence over 8 days.

On January 31, 2023, Judge Sullivan entered his “Decision Regarding the Characterization of Management Fees” and “Decision Denying Plaintiff’s Motion to Correct, Clarify, Alter, or Amend; and Denying Defendant’s Motion to Correct, Clarify, and/or Reconsider.”

On February 6, 2023, Eric filed his “Eric Nelson’s Verified Memorandum of Costs.” On February 21, 2023, Eric filed his “Eric Nelson’s, In His Individual Capacity, Motion for Attorney’s Fees.” The Court entered its order resolving Eric’s request for costs and an award of attorney’s fees on July 27, 2023. According to the

1 District Court's order, Eric was awarded attorney's fees in the amount of
2 \$155,528.15 and costs in the amount of \$13,570.06, for a total of fees and costs in
3 the amount of \$169,098.21. The judgments were entered against Lynita in her
4 personal capacity and the LSN Trust.
5

6 According to the Decree of Divorce entered on June 3, 2013, Lynita was
7 awarded child support arrears of \$87,775.00, which were ordered to be paid by the
8 ELN Trust. As this Court knows, the ELN Trust appealed the Decree of Divorce on
9 October 20, 2014, when it filed its Notice of Appeal. On May 25, 2017, the Nevada
10 Supreme Court issued its Decision. Regarding this pending motion, the Nevada
11 Supreme Court made it very clear that the ELN Trust cannot be obligated to pay
12 debts of Eric in his individual capacity.
13
14

15 Lynita is currently collecting child support through the District Attorney-
16 Child Support Division. According to the DA's office records, Eric currently owes
17 Lynita child support arrears totaling \$181,057.31 through September 7, 2021. *See*
18 exhibit "1" attached. However, based on the District Court's order awarding Eric
19 attorney's fees and cost, Lynita owes Eric \$171,048.96 with interest from said
20 judgments through September 7, 2023. *See* exhibit "2" attached.
21
22

23 Therefore, Eric requests that this Court enter an order to offset the monies
24 owed for attorney's fees and costs awarded to Eric against the child support arrears
25 owed to Lynita.
26
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28

II. ARGUMENT.

A. THE DISTRICT COURT HAS JURISDICTION TO ENTER ORDERS DURING THE PENDENCY OF AN APPEAL.

As the District Court knows, Lynita and the LSN Trust filed a “Notice of Appeal” on August 25, 2023. The ELN Trust filed its “Notice of Appeal” on September 1, 2023. Although there is a pending appeal, the District Court may take interlocutory actions, enforce orders, and grant equitable relief despite the pending appeals.

A common misconception by parties is that filing a Notice of Appeal automatically stays any further District Court action. The Nevada 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), the Nevada Supreme Court held:

...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 Nevada Supreme Court held the District Court maintains jurisdiction to enforce its orders pending an appeal.¹

In *Reed v. Reed*, 88 Nev. 329, 497 P.2d 896 (1972), the Nevada Supreme Court

¹ 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)

1 held:

2 it follows that the liquidation of any judgment for arrearages may be
3 scheduled in any manner the district court deems proper under the
4 circumstance.

5 The Supreme Court has also held,

6 Accordingly, the district court did not err by permitting installment payments.
7 Nevertheless, the monthly payment set by the district court for enforcement
8 of the judgment did not include consideration of past and future interest on
9 the arrearages. As mentioned above, the judgment should include interest.
10 Therefore, we vacate the amount set by the district court (\$50 per month), and
11 remand for determination of a payment schedule which will allow for
12 liquidation of arrearages on a reasonable basis. *See Kennedy v. Kennedy*, 98
13 Nev. 318, 646 P.2d 1226 (1982).

14 Here, Lynita and the LSN Trust were ordered to pay Eric's attorney's fees and
15 costs totaling \$166,463.31. Lynita and the LSN Trust, throughout the fourteen years
16 of litigation, have demonstrated they will not comply with the court's orders and will
17 continue to torment Eric by litigating in bad faith. Thus, consistent with Nevada
18 Law, the District Court should enforce its court orders as requested.

19 **B. ERIC IS ENTITLED TO AN EQUITABLE OFFSET.**

20 In Nevada, a District Court can order an equitable offset when (1) each party
21 has a valid and enforceable debt against the other party, and (2) one of the parties is
22 insolvent. It should be noted, as will be discussed herein, that insolvency is not
23 always necessary for the defense to apply, and the doctrine of equitable offset may
24 be used to extinguish the mutual indebtedness of parties who each owe a debt to one
25 another.
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1 In *John W. Muige, Ltd v. A North Las Vegas Cab Co., Inc.* 106 Nev. 664, 799
2 P.2d 559 (1990), the Nevada Supreme Court concluded that an equitable offset “is a
3 means by which a debtor may satisfy in whole or in part a judgment or claim held
4 against him out of a judgment or claim which he has subsequently acquired against
5 his judgment creditor.” *Id.* at 666,67, 799, P.2d at 560 citing to *Salaman v. Bolt*, 74
6 Cal.App.3d 907, 141 Cal.Rptr. 841 (1977). The *Muige* court further stated equitable
7 offsets are only applicable where a debtor obtains a subsequent judgment against
8 one of his or her other creditors. *Id.* at 106 Nev. at 666, 799P.2d at 560.
9

10
11 In *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 110 P.3d. 59
12 (2005), the Nevada Supreme Court held, “Setoff is an equitable remedy that should
13 be granted when justice so requires to prevent inequity. *Id.*” at 63; 119 citing to
14 *Campbell v. Lake Terrace, Inc.* 111 Nev. 1329, 905 P.2d. 163 (1995). The Nevada
15 Supreme Court further stated:
16
17

18 Setoff is a form of counterclaim which a defendant may urge by way of
19 defense or to obtain a judgment for whatever balance is due. Setoff is a
20 doctrine used to extinguish the mutual indebtedness of parties who each owe
21 a debt to one another. In fact, the claims that give rise to a setoff need not
22 arise out of the same transaction; they may be entirely unrelated. At least one
23 court has allowed a defendant to assert the defense of setoff in an action
24 between original parties to a note. *Id.* at 63, 119;120.

25 The *Aviation* court continued by clarifying that insolvency was not needed for
26 an equitable offset. Specifically, the *Aviation* court held, “....setoff should be
27 allowed in cases where both parties solvent, but is especially necessary in cases
28

1 where one party is in insolvent to protect the interest of the solvent party.” *Id* at 64,
2 121. The *Aviation* court, in its reasoning that solvency is no longer a requirement,
3
4 held:

5 We now conclude that insolvency is not necessary to obtain a setoff between
6 two mutually indebted parties. This conclusion coheres with the purpose
7 behind the doctrine of setoff, which allows mutually indebted parties to “apply
8 the debts of the other so that by mutual reduction everything but the difference
9 is extinguished.” It also serves the interests of efficiency by allowing two
10 parties with mutual claims of indebtedness to extinguish their debts against
11 one another in a single proceeding. Therefore, we overrule that portion
12 of *Campbell* that requires insolvency for the claim to apply. *Id* at 64,121.
13 (Internal citations omitted)

14 This Court should apply the principles outlined in *Muige* and *Aviation* and
15 award an equitable offset against the attorney's fees and costs owed by Lynita to
16 Eric. Specifically, under the NCP history received by the District Attorney Child
17 Support Division, Eric owes Lynita \$166,463.31. However, Lynita owes Eric
18 attorney's fees and costs through September 7, 2023, for \$171,048.96.

19 As this Court is aware, in 2001, Eric and Lynita converted their separate
20 property trusts into valid self-settled spendthrift trusts, respectively, the ELN Trust
21 and LSN Trust (hereinafter collectively referred to as “Trusts”). By operation of the
22 Trusts, Eric and Lynita’s personal obligations cannot be satisfied from the Trusts.
23 Upon information and belief, Lynita has no assets titled in her name. Thus, Lynita
24 is insolvent, and Lynita continues to collect child support when she owes Eric
25 attorney’s fees and costs totaling \$171,048.96 is not equitable and is exactly the
26
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reason for the case law regarding equitable offset.

Therefore, Eric requests that the attorney's fees and costs awarded to him offset the child support arrears.

III. CONCLUSION

WHEREFORE, based upon the foregoing, Meghan respectfully requests this Court enter orders granting her the following relief:

1. The District Court order an equitable offset; and
2. Awarding Eric such other and further relief as the Court deems appropriate.

DATED this 18th day of September, 2023.

HAUSER FAMILY LAW

/s/ Michelle Hauser

Michelle A. Hauser, Esq.

Nevada State Bar No. 7738
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
702-867-8313
Email: michelle@hauserfamilylaw.com
Attorneys for Plaintiff
Eric Nelson


1 **DECLARATION OF PLAINTIFF IN SUPPORT OF PLAINTIFF, ERIC**
2 **NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR EQUITABLE**
3 **OFFSET**

4 I, Eric Nelson, under penalty of perjury, state:

5 That I am the Plaintiff in the above-entitled action, I have read the **PLAINTIFF,**
6 **ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR**
7 **EQUITABLE OFFSET,** and the statement it contains are true and correct to the
8
9 best of my knowledge, except those matters based on information and belief, and as
10 best of my knowledge, except those matters based on information and belief, and as
11 to those matters, I believe them to be true. The statements contained in this motion
12 are incorporated here as if fully set forth in full.

13 SIGNED UNDER PENALTY OF PERJURY.

14 DATED this ____ day of September, 2023.

15
16
17 
18 Eric Nelson (Sep 14, 2023 14:52 PDT)
19 ERIC NELSON

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HAUSER FAMILY LAW and that on the 18th day of September, 2023, I caused the above and foregoing document entitled **PLAINTIFF, ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR EQUITABLE OFFSET** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first-class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ by email to
- ☐ hand-delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Curtis R. Rawlings, Esq.
Pecos Law Group
8925 South Pecos Road, Suite 14A
Henderson, Nevada 89074
curtis@pecoslawgroup.com
*Attorney for Lynita Sue Nelson and LSN
Trust in an "Unbundled Capacity"*

Stacy Howlett, Esq.
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1746 W. Horizon Ridge Pkwy.
Henderson, NV 89012
stacy@michaelsonlaw.com
*Attorney for the Lynita S. Nelson
Nevada Trust Dated May 30, 2001*

...

...

...

...

1 Jeffrey P. Luszeck, Esq.
2 SOLOMON DWIGGINS FREER &
3 STEADMAN, LTD.
4 9060 West Cheyenne Avenue
5 Las Vegas, Nevada 89129
6 jluszeck@sdfnvlaw.com
7 *Attorneys for Matt Klabacka,*
8 *Distribution Trustee of the ERIC L.*
9 *NELSON NEVADA*
10 *TRUST dated May 30, 2001*

11 and that there is regular communication by mail between the place of mailing and
12 the place(s) so addressed.

13 /s/ Susan Pinjuv

14 An Employee of HAUSER FAMILY LAW

9.14.2023 Motion

Final Audit Report

2023-09-14

Created:	2023-09-14
By:	Michelle Hauser (michelle@hauserfamilylaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAO4maYHm1YhxP6hEb70pA0oeu0mXJ8-lb

"9.14.2023 Motion" History


-  Document created by Michelle Hauser (michelle@hauserfamilylaw.com)
2023-09-14 - 8:45:44 PM GMT
-  Document emailed to Eric Nelson (ericnelson59@gmail.com) for signature
2023-09-14 - 8:45:49 PM GMT
-  Email viewed by Eric Nelson (ericnelson59@gmail.com)
2023-09-14 - 9:51:15 PM GMT
-  Document e-signed by Eric Nelson (ericnelson59@gmail.com)
Signature Date: 2023-09-14 - 9:52:43 PM GMT - Time Source: server
-  Agreement completed.
2023-09-14 - 9:52:43 PM GMT

EXHIBIT “1”

State of Nevada
NCP Payment History Report

From: 10/01/2022 - **Through:** 09/30/2023

Page 1 of 1

Date: 09/07/2023 03:36:05 PM

(Balances Valid as of Print Date)

Case ID: 3200313227			Total Arrears: \$ 181,057.31		
Docket Number: 0000477710			Payment on Arrears: \$ 860.60		
NCP: NELSON, ERIC			Total Payments: \$ 14,594.00		
CST: NELSON, LYNITA			Total Adjustments: \$ -41,655.25		
Current Charges			Total Held Amount		
Debt Type	Periodic Amount	Frequency	Case Level Hold	NCP Level Hold	Held Amount
	0.00				0.00
Total	0.00			Total	0.00

Date	Payment	Debt Types	Charging Amount	Payment Amount	Receipt Number	Receipt Type	Check /Control Number
10/01/2022	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
11/01/2022	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
11/04/2022	INCOME WITHHOLDING		0.00	1,064.70	11/04/2022-SDU-0002-717-001	ELECTRONIC FUNDS TRANSFER	5719
12/01/2022	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
12/05/2022	INCOME WITHHOLDING		0.00	1,064.70	12/05/2022-SDU-5030-477-001	ELECTRONIC FUNDS TRANSFER	6308

01/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
01/04/2023	INCOME WITHHOLDING		0.00	1,157.70	01/04/2023-SDU-0003-699-001	ELECTRONIC FUNDS TRANSFER	7105
02/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
02/06/2023	INCOME WITHHOLDING		0.00	1,157.70	02/06/2023-SDU-5009-304-001	ELECTRONIC FUNDS TRANSFER	6066
03/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
03/06/2023	INCOME WITHHOLDING		0.00	1,157.70	03/06/2023-SDU-0005-520-001	ELECTRONIC FUNDS TRANSFER	3051
04/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
04/04/2023	INCOME WITHHOLDING		0.00	1,219.40	04/04/2023-SDU-0004-057-001	ELECTRONIC FUNDS TRANSFER	3011
05/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
05/02/2023	INCOME WITHHOLDING		0.00	814.50	05/02/2023-SDU-5051-594-001	ELECTRONIC FUNDS TRANSFER	3558
05/04/2023	INCOME WITHHOLDING		0.00	1,219.40	05/04/2023-SDU-0002-323-001	ELECTRONIC FUNDS TRANSFER	2789
06/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
06/05/2023	INCOME WITHHOLDING		0.00	1,219.40	06/05/2023-SDU-0006-016-001	ELECTRONIC FUNDS TRANSFER	3643
07/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
07/04/2023	INCOME WITHHOLDING		0.00	1,219.40	07/05/2023-SDU-0004-147-001	ELECTRONIC FUNDS TRANSFER	2474

08/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
08/04/2023	INCOME WITHHOLDING		0.00	1,219.40	08/04/2023-SDU-0003-101-001	ELECTRONIC FUNDS TRANSFER	2018
08/31/2023	NCP		0.00	860.60	08/31/2023-SDU-0001-750-001	CREDIT CARD	3001
09/01/2023	MONTHLY CHARGES	CHILD SUPPORT	0.00	0.00			
09/04/2023	INCOME WITHHOLDING		0.00	1,219.40	09/05/2023-SDU-0005-711-001	ELECTRONIC FUNDS TRANSFER	1651
Grand Total				14,594.00			

EXHIBIT “2”

Arrearage Calculation Summary

Nelson v. Nelson

Page: 1

Report Date: 09/18/2023

Summary of Amounts Due

Total Principal Due 09/07/2023:	\$169,098.21
Total Interest Due 09/07/2023:	\$1,950.75
Total Penalty Due 09/07/2023:	\$0.00
Amount Due if paid on 09/07/2023:	\$171,048.96
Amount Due if paid on 09/08/2023:	\$171,096.45
Daily Amount accruing as of 09/08/2023:	\$47.48

Date Due	Amount Due	Date Received	Amount Received	Accum. Arrearage	Accum. Interest
07/27/2023	13,570.06	07/27/2023	0.00	13,570.06	0.00
07/28/2023	155,528.15	07/28/2023	0.00	169,098.21	3.81
09/07/2023	0.00	09/07/2023	0.00	169,098.21	1,950.75
Totals	169,098.21		0.00	169,098.21	1,950.75

* Indicates a payment due is designated as child support.

Notes:

Payments are applied to oldest unpaid balance.
 Interest and penalties are calculated using number of days past due.
 Payments apply to principal amounts only.
 Interest is not compounded, but accrued only.
 Penalties calculated on past due child support amounts per NRS 125B.095.

Interest Rates Used by Program:

7.00%	from Jan 1960 to Jun 1979		8.00%	from Jul 1979 to Jun 1981
12.00%	from Jul 1981 to Jun 1987		10.25%	from Jul 1987 to Dec 1987
10.75%	from Jan 1988 to Jun 1988		11.00%	from Jul 1988 to Dec 1988
12.50%	from Jan 1989 to Jun 1989		13.00%	from Jul 1989 to Dec 1989
12.50%	from Jan 1990 to Jun 1990		12.00%	from Jul 1990 to Jun 1991
10.50%	from Jul 1991 to Dec 1991		8.50%	from Jan 1992 to Dec 1992
8.00%	from Jan 1993 to Jun 1994		9.25%	from Jul 1994 to Dec 1994
10.50%	from Jan 1995 to Jun 1995		11.00%	from Jul 1995 to Dec 1995
10.50%	from Jan 1996 to Jun 1996		10.25%	from Jul 1996 to Jun 1997
10.50%	from Jul 1997 to Dec 1998		9.75%	from Jan 1999 to Dec 1999
10.25%	from Jan 2000 to Jun 2000		11.50%	from Jul 2000 to Jun 2001
8.75%	from Jul 2001 to Dec 2001		6.75%	from Jan 2002 to Dec 2002
6.25%	from Jan 2003 to Jun 2003		6.00%	from Jul 2003 to Dec 2003
6.00%	from Jan 2004 to Jun 2004		6.25%	from Jul 2004 to Dec 2004
7.25%	from Jan 2005 to Jun 2005		8.25%	from Jul 2005 to Dec 2005
9.25%	from Jan 2006 to Jun 2006		10.25%	from Jul 2006 to Dec 2007
9.25%	from Jan 2008 to Jun 2008		7.00%	from Jul 2008 to Dec 2008
5.25%	from Jan 2009 to Dec 2012		5.25%	from Jan 2013 to Jun 2013
5.25%	from Jul 2013 to Dec 2013		5.25%	from Jan 2014 to Jun 2014
5.25%	from Jul 2014 to Dec 2014		5.25%	from Jan 2015 to Jun 2015
5.25%	from Jul 2015 to Dec 2015		5.50%	from Jan 2016 to Jun 2016
5.50%	from Jul 2016 to Dec 2016		5.75%	from Jan 2017 to Jun 2017
6.25%	from Jul 2017 to Dec 2017		6.50%	from Jan 2018 to Jun 2018
7.00%	from Jul 2018 to Jan 2019		7.50%	from Jan 2019 to Jun 2019
7.50%	from Jul 2019 to Dec 2019		6.75%	from Jan 2020 to Jun 2020
5.25%	from Jul 2020 to Dec 2020		5.25%	from Jan 2021 to Jun 2021
5.25%	from Jul 2021 to Dec 2021		5.25%	from Jan 2022 to Jun 2022
6.75%	from Jul 2022 to Dec 2022		9.50%	from Jan 2023 to Jun 2023
10.25%	from Jul 2023 to Dec 2023			

Report created by:

Marshal Law version 4.0

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Hauser Family Law - michelle@hauserfamilylaw.com - (702) 867-8313

End of Report

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON

Plaintiff/Petitioner

v.

LYNITA SUE NELSON

Defendant/Respondent

Case No. D-09-411537-DDept. 0

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

<input type="checkbox"/>	\$25	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-		
<input checked="" type="checkbox"/>	\$0	The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<div style="margin-left: 20px;"> <input type="checkbox"/> The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered. </div>		
<div style="margin-left: 20px;"> <input type="checkbox"/> The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order. </div>		
<div style="margin-left: 20px;"> <input type="checkbox"/> The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____. </div>		
<div style="margin-left: 20px;"> <input checked="" type="checkbox"/> Other Excluded Motion (must specify) _____. </div>		

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

<input checked="" type="checkbox"/>	\$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<div style="margin-left: 20px;"> <input checked="" type="checkbox"/> The Motion/Opposition is being filed in a case that was not initiated by joint petition. </div>		
<div style="margin-left: 20px;"> <input type="checkbox"/> The party filing the Motion/Opposition previously paid a fee of \$129 or \$57. </div>		
-OR-		
<input type="checkbox"/>	\$129	The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-		
<input type="checkbox"/>	\$57	The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: PLAINTIFF Date 9/18/2023

Signature of Party or Preparer /s/ Susan Pinjuv