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### Nelson v. Dist. Ct., 137 Nev. Adv. Op. 14 (Apr. 1, 2021)

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EDCR 5.518(a)(1) – JOINT PRELIMINARY INJUNCTIONS OF COMMUNITY INTERESTS

**Summary**

Under Eighth Judicial District Court Rule (“EDCR”) 5.518(a)(1) the court clerk will grant a joint preliminary injunction (“JPI”) at the request of either party “any time prior to the entry of a decree of divorce or final judgment” to prevent the parties from transferring or selling community property or any property that is the subject of a community interest claim. In this proceeding the parties dispute whether, under EDCR 5.518, the district court was required to impose a JPI requested from an earlier appeal in this case. This Court found that, based on EDCR 5.518’s plain language, the district court was required to impose the requested JPI.

**Facts and Procedural History**

While married, Lynita S. Nelson and Eric L. Nelson, created the LSN Trust and the ELN Trust which are irrevocable self-settled spendthrift trusts. Initially the trusts were funded with separate property, but later significant transfers of property and loans between the two trusts occurred. When Eric filed for divorce, he requested a JPI, and the district court issued it. In its decree of divorce, the district court made several findings with respect to the trust property. This Court resolved those issues on appeal and vacated the parts of the divorce decree regarding awards against the trusts and ordered the district court to trace the trusts’ assets in order to determine whether they contained community property.<sup>2</sup>

On remand, Lynita moved under EDCR 5.518 to reinstate the JPI. The district court partially granted the motion and imposed a JPI over two trust properties. Lynita moved for reconsideration and argued that all properties named in the divorce decree should fall under the JPI because they are all subject to a claim of community interest. The district court denied Lynita’s requested reasoning that the ELN trust was not a party to the action, the court is not required to place a JPI on property not party to the action, and the JPI was needed only for the two properties over which ELN and LSN Trusts had held an ownership interest at some point during the proceedings.

This Court dismissed, for lack of jurisdiction, Lynita’s appeal of the district court’s decision.<sup>3</sup> Lynita now petitions for writ relief. Matt Klabacka, the ELN Trust distribution trustee, responds, and Eric joins Klabacka's response (collectively, Eric).

**Discussion**

In this proceeding, Lynita sought a writ of mandamus to direct the district court to impose a JPI under EDCR 5.518 over all property subject to a claim of community interest.

Lynita previously appealed this issue, and the Court determined that a writ petition would be proper.<sup>4</sup> The scope of EDCR 5.518 is an issue of first impression, which is why this Court elected to consider Lynita’s petition for a writ of mandamus.

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<sup>1</sup> By Cecilia Diaz.

<sup>2</sup> *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017).

<sup>3</sup> *Nelson v. Nelson*, 136 Nev. Adv. Op. 36, 466 P.3d 1249, 1250–51 (2020).

<sup>4</sup> *Id.* at 1252–53 (providing that “a writ petition would be the appropriate vehicle to seek review” in this case).

*Whether trusts may be parties under EDCR 5.518*

This Court considered whether the scope of EDCR 5.518 includes both parties' trusts. Lynita argued that both trusts are parties to the action and that the trusts may be parties to an action under EDCR 5.518. Eric conceded that the ELN Trust was joined as a necessary party, but counterargues that only persons such as husbands and wives are subject to be parties under that rule. Eric further argued that a JPI is improper over property in a spendthrift trust, which is neither separate nor community property.

Court rules are subject to the rules of statutory construction.<sup>5</sup> When the language of a statute is plain and unambiguous the language is given its ordinary meaning, and this Court does not aim to go beyond it.<sup>6</sup>

Under EDCR 5.518(a)(1) upon a request from any party the court clerk will grant a preliminary injunction against the parties and any agent of the parties who are in active concert or participation with them. A "party" constitutes an individual personally, if unrepresented, or a party can constitute that party's counsel, if they are represented.<sup>7</sup> A person includes and applies to natural persons, but also corporations, associated, firms, and all other entities.<sup>8</sup> Further, under NRS 0.039 a "person" constitutes a natural person and any form of business or social organization, with the inclusion of any other legal entity, such as corporations, partnerships, trusts, and associations.<sup>9</sup> Lastly, a trust can be a party to an action through its trustee.<sup>10</sup>

The record reflects that Lynita and Eric agreed that ELN and LSN Trusts be joined as necessary parties in the case, and the record shows documents filed by each trust's trustees, the district court's decisions name the trustees as parties, the district court's orders direct the trust to take specific actions, and that both trusts are named as parties below and to this writ petition through their respective trustees. A plain reading of EDCR shows that a trust may be a "party." Therefore, this Court concluded that both the ELN and LSN Trusts are parties to this action and the district court's finding was erroneous. EDCR 5.518 applies to trusts.

*Whether a joint preliminary injunction is proper here under EDCR 5.5.18*

Lynita also argued that EDCR 5.518 is mandatory, and subsequently, the district court was actually required to issue a JPI upon her requesting one. Eric rebutted that argument, stating that Lynita must present a prima facie case that community property exists before the district court can impose a JPI. Eric further argues that, under EDCR 5.518, the district court is not required to reinstate a JPI after a divorce decree, even if the case was remanded. Eric also argues that, under the particular facts of this case, the district court did not abuse its discretion.

In *Nelson v. Nelson* this Court explained that EDCR 5.518 requires the court clerk to issue an injunction upon a party's request and the issue is not reconsidered here.<sup>11</sup> Eric argues that because the trusts were funded by separate property, Lynita must make a prima facie case that community property existed within the trusts before the district court imposed a JPI.

EDCR 5.518 has no language that requires a party to make a showing that a community interest exists before the party may obtain a JPI. The rule mandates that a clerk impose a JPI at the

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<sup>5</sup> *Weddell v. Stewart*, 127 Nev. 645, 651, 261 P.3d 1080, 1084 (2011).

<sup>6</sup> *City Council of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

<sup>7</sup> EDCR 5.102(j).

<sup>8</sup> EDCR 5.12(f).

<sup>9</sup> NEV. REV. STAT. § 0.039.

<sup>10</sup> *See Causey v. Carpenters S. Nev. Vacation Tr.*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979).

<sup>11</sup> *Nelson*, 136 Nev. Adv. Op. 36, 466 P.3d at 1252.

request of any party on “any property that is the subject of a claim of community interest.”<sup>12</sup> Therefore, as long as there is a claim of community interest, a JPI must be imposed when a party so requests it.

This Court acknowledged that the LSN and ELN Trusts, at their creation, were funded by separate property.<sup>13</sup> However, it is also recognized that assets within the trusts may still contain community property and the case was remanded in order to allow the district court to trace the origins of the assets to determine whether any community property was transferred into or comingled within the trusts.<sup>14</sup> Therefore, this Court did not determine that all assets in the trusts were separate property. This Court’s mandate that the district trace trust assets shows that at the time of the divorce decree the LSN and ELN Trusts may have included property with a claim of community interest to which the JPI should extend. The district court must impose the JPI over all trust property with claim of community interest.

Eric further argued that EDCR 5.518 does not require the district court to reinstate a JPI after final judgment has been entered. This Court disagreed. *Klabacka* vacated portions of the divorce decree and remanded to the district court.<sup>15</sup> Vacate is defined as “nullify[ing] or cancel; make void; invalidate.”<sup>16</sup> Where there are issues left for the district court to decide, there is no final judgment.<sup>17</sup> Once a judgment or decree is vacated, even if only partly, there is no longer a final judgment. Accordingly, EDCR 5.518 applies on remand.

### **Conclusion**

EDCR 5.518’s plain language shows that trusts may be parties to a divorce action and EDCR 5.518 is mandatory, and it does not require that the party requesting a JPI make prima facie showing of community interest, and EDCR 5.518 applies on remand. The petition was granted and the court clerks were directed to issue a writ of mandamus instructing the district court to vacate its order where it found that the LSN and ELN Trusts were not parties to the action and to impose a JPI over all trust property remaining subject to a claim of community interest until the district court makes a determination as to community property.

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<sup>12</sup> See EDCR 5.518(a)(1).

<sup>13</sup> *Klabacka*, 133 Nev. 164, 394 P.3d 947 (2017).

<sup>14</sup> *Id.* at 173, 394 P.3d at 948.

<sup>15</sup> *Klabacka*, 133 Nev. at 165, 394 P.3d at 943.

<sup>16</sup> *Vacate*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>17</sup> See *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (describing a “final judgment” as “one that disposes of the issues presented in the case, . . . and leaves nothing for the future consideration of the court” (internal quotation omitted)).