

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

2021

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

Mia Bacher

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

FAMILY LAW: JOINT PRELIMINARY INJUNCTIONS

Summary

Based on the plain language of EDCR 5.518, trusts may be parties to a divorce action. EDCR 5.518 is (1) mandatory upon request of a party, (2) it does not require the requester to make a prima facie showing of community interest, (3) and applies on remand. Thus, the court directed the court clerk to issue a writ of mandamus instructing the district court (1) to vacate its prior order which found the LSN and ELN Trusts were not parties to this action and (2) to impose a JPI over all trust property that remains subject to a claim of community interest, until the court makes a determination as to any community property.

Facts and Procedural History

During their marriage, Lynita S. Nelson and Eric L. Nelson, created two irrevocable self-settled spendthrift trusts: the LSN Trust and the ELN Trust. Initially, the trusts were funded with separate property, but significant transfers happened between them during the marriage. Eric filed for divorce and requested a joint preliminary injunction (JPI) be issued under EDCR 5.518(a)(1), which enjoins the parties from transferring or selling community property or “any property that is the subject of a claim of community interest.”

In the divorce decree, the district court made findings regarding trust property and both parties appealed. The Nevada Supreme Court vacated parts of the decree and ordered the district court to trace trust assets to determine whether they were community property.² On remand, Lynita moved to reinstate the JPI and the district court granted her motion in part, allowing it only to cover the two trust properties. Lynita moved for reconsideration to cover all property listed in the decree. The court denied this request because the ELN trust was not a party to the action and the JPI was only warranted for the two properties in which the ELN and LSN Trusts held ownership interests. Lynita’s appeal of this decision was denied for lack of jurisdiction. The preceding decision was based on Lynita’s petition for writ of mandamus directing the district court to impose a JPI over all property subject to a claim of community property interest.

¹ By Mia Bacher

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

Discussion

Whether trusts may be parties under EDCR 5.518

Lynita argued that both the ELN and LSN Trusts are parties to this action and, more generally, that trusts may be parties to an action under EDCR 5.518. While Eric conceded the ELN Trust was joined as a necessary party, he argued only people may be parties under EDCR 5.518 and a JPI is improper over property in a spendthrift trust.

The court first looked at the plain language of EDCR 5.518, which states “[u]pon the request of any party... a preliminary injunction will be issued by the clerk against the parties to the action or enjoining them and their officers, agents, servants, employees, or a person in active concert or participation with them.” Under EDCR 1.12(f), a person “must include and apply to corporations, firms, associations and all other entities, as well as natural persons” and NRS 0.039 has an even broader definition which includes “a natural person, any forms of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. Additionally, the court has previously held that a trust may be a party to a lawsuit through its trustee.³ Thus, under the plain language of the rules, a trust may be a party under EDCR 5.518.

Here, Eric and Lynita stipulated and agreed that the ELN and LSN Trusts would be joined as necessary parties. For this reason, the court held that the Trusts are parties to this action. The court also held that EDCR 5.518 applies to trusts.

Whether a joint preliminary injunction is proper here under EDCR 5.518

Lynita argued that EDCR 5.518 is mandatory and that the district court was required to issue a JPI upon her request. Eric argued that (1) Lynita needed first present a prima facie case that community property exists in order to get a JPI, (2) that a district court is not required to reinstate a JPI after a divorce decree even if it is ultimately remanded, and (3) that the district court did not abuse its discretion here to not re-issue a JPI.

The court agreed with Lynita and held that EDCR 5.518 is mandatory, citing *Nelson v. Nelson*.⁴ Despite this, Eric still contended that Lynita was required to make a prima facie showing that the trusts contained community property before the court was required to impose the JPI. The court disagreed, noting that EDCR 5.518 has no language indicating a prima facie showing of community interest exists prior to the issuing of a JPI. Rather, the rule requires a JPI upon request

³ Causey v. Carpenters S. Nec. Vacation Tr., 95 Nev. 609, 610, 600 P.2d 244, 245 (1979).

⁴ 136 Nev. Adv. Op. 36, 466 P.3d 1249, 1252 (2020).

of a party on any property subject to a “claim” of community interest. Thus, as long as there is a claim of community interest, a JPI must be imposed upon request.

Next, the court noted that in *Klabacka v. Nelson* it recognized assets within the LSN and ELN Trusts *may* contain community property and remanded the case for tracing of trust assets to determine whether community property was transferred into or comingled within the trusts. Thus, the holding of *Klabacka* demonstrated that at the time of the divorce decree, the Trusts may have included property with a claim of community interest. Because of this claim of community interest, the district court must impose a JPI over all the trust property.

Finally, the court addressed Eric’s argument that EDCR 5.518 does not not require reinstatement of a prior JPI after final judgment even if the case is ultimately remanded. The court noted that in *Klabacka*, they vacated part of the divorce decree and remanded it for further proceedings. Once the decree was partially vacated and remanded, there was no longer a final judgement;⁵ thus, EDCR 5.518 still applied.

Conclusion

The court granted Lynita’s petition and directed the court clerk to issue a writ of mandamus instructing the district court to vacate its order to the extent it found that the LSN and ELN Trusts were not parties to this action and to impose a JPI over all trust property that remains subject to a claim of community interest, until the court makes a determination as to any community property.

⁵ See *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).