

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERTO DOCOUTO, AN
INDIVIDUAL,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DAVID WALL, DISTRICT JUDGE,
Respondents,

and

VISTA CONTINENTAL
CORPORATION, A DELAWARE
CORPORATION,
Real Party in Interest.

No. 46632

FILED

JUL 19 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Casella*
DEPUTY CLERK

ALBERTO DOCOUTO, AN
INDIVIDUAL,
Appellant,

vs.

VISTA CONTINENTAL
CORPORATION, A DELAWARE
CORPORATION,
Respondent.

No. 46653

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS (NO.
46632) AND REVERSING (NO. 46653)

These consolidated matters include a petition for a writ of mandamus challenging a district court contempt order and an appeal from a district court order granting a preliminary injunction. Eighth Judicial District Court, Clark County; David Wall, Judge.

These cases stem from an ongoing dispute between real party in interest/respondent Vista Continental Corporation, a Delaware Corporation (the Company), and petitioner/appellant Alberto Docouto, who purportedly owns stock in the Company through his closely held

companies.¹ Due to Docouto's alleged interference with the Company, the Company sought and obtained an ex parte temporary restraining order (TRO) against Docouto on September 21, 2005.

Shortly thereafter, on September 26, 2005, the Honorable Jackie Glass held a hearing in the district court on the Company's motion for a preliminary injunction. After listening to arguments and speaking to counsel for both parties off the record, Judge Glass orally indicated her intention to issue a mutual preliminary injunction, preventing Docouto from, among other things, holding himself out as part of — or interfering with — the Company and its business. Although the hearing was held on September 26, 2005, the order for a preliminary injunction was not reduced to writing and filed until November 17, 2005. No bond or other security was set or given by the Company at the time of the hearing or upon entry of the written preliminary injunction.

After the preliminary injunction hearing, but before the written order was entered, Docouto publicly filed documents with the Delaware Secretary of State, the Nevada Secretary of State, and the Securities and Exchange Commission, holding himself out as a director and/or officer of the Company. He further represented himself as the sole director of the Company to the Signature Stock Agent and allegedly removed \$85,000 from the Company's bank account. At a district court hearing on November 22, 2005, the Honorable Judge David Wall determined that these actions violated the preliminary injunction and held Docouto in contempt, ultimately fining him \$2,500.

¹We only recite those facts necessary to the disposition of this writ and appeal and do not address the parties' underlying factual disputes.

Docouto appeals from the district court order granting the preliminary injunction and petitions this court for a writ of mandamus, seeking to vacate the contempt order.² As both matters raise issues regarding the validity of the preliminary injunction, we have consolidated the two matters and discuss them below.

Docouto argues that the injunction is void because no bond was set and a void injunction cannot serve as the basis for a contempt order. We agree. NRCP 65(c) provides:

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof.

We have previously held that “[w]here a bond is required by statute before the issuance of an injunction, it must be exacted or the order will be

²A writ of mandamus is an extraordinary remedy that may issue if the petitioner has no plain, speedy and adequate remedy at law. NRS 34.170. This court has absolute discretion whether to consider a mandamus petition. State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002). The writ generally serves “to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.” Id.

This court does not have jurisdiction to consider an appeal from an order holding a party or a nonparty in contempt because no rule or statute provides for such an appeal. Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000). The proper way to challenge a contempt order is through a writ petition. Id. Consequently, this petition appropriately challenges the district court’s contempt order.

absolutely void.”³ Additionally, “the bond [must] be filed before the order is made, and the fact that the bond was procured about the time the order was issued and was later filed under a nunc pro tunc order does not cure the defect.”⁴ Here, the preliminary injunction was entered on November 17, 2005, but the district court did not set the bond until the December 6, 2005 status hearing.⁵ Because no bond or other security was given at the time the preliminary injunction was entered, the preliminary injunction is void.⁶ We therefore reverse the district court order granting the preliminary injunction. Likewise, because an injunction that does not comply with NRCP 65(c) is void and unenforceable, such an order cannot serve as the basis for a later contempt order. Therefore, we further grant Docouto’s petition and direct the clerk of this court to enter a writ of mandamus instructing the district court to vacate its order holding Docouto in contempt.

³Strickland v. Griz Corp., 92 Nev. 322, 323, 549 P.2d 1406, 1407 (1976) (quoting Shelton v. District Court, 64 Nev. 487, 494, 185 P.2d 320, 323-24 (1947)). This holding applies with equal force to a bond required by NRCP 65(c).

⁴Culinary Workers v. Court, 66 Nev. 166, 183, 207 P.2d 990, 998 (1949), overruled, in part, on other grounds by Vegas Franchises v. Culinary Workers, 83 Nev. 236, 240, 427 P.2d 959, 961-62 (1967).

⁵It is unclear from the record whether the bond has in fact been posted.

⁶We reject the Company’s argument that because the preliminary injunction enjoined both parties, no security or bond was required. NRCP 65(c) still requires the giving of security even if the district court enters a mutual preliminary injunction. Nor does the district court have the discretion to waive the bond requirement in this case.

We also grant the writ of mandamus because the alleged contemptuous conduct occurred at least six weeks before entry of the written preliminary injunction. As we recently stated in State, Division Child & Family Services v. District Court, “[d]ispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective.”⁷ Conversely “[o]ral [court] orders dealing with summary contempt, case management issues, scheduling, administrative matters or emergencies that do not allow a party to gain a procedural or tactical advantage are valid and enforceable.”⁸

Here, the preliminary injunction was clearly dispositional. The order did not deal with case management issues, scheduling or administrative matters. Rather, the preliminary injunction pertained to the parties and prohibited Docouto from engaging in certain activities in which he would otherwise engage. Because the order was dispositional, it was ineffective until entered as a written order. Therefore, the district court lacked authority to hold Docouto in contempt for violating an order that, at the time Docouto engaged in the proscribed conduct, remained unwritten and ineffective.⁹ Accordingly, we grant the petition in Docket No. 46632 and direct the court clerk to issue a writ of mandamus

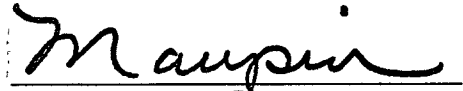
⁷120 Nev. 445, 455, 92 P.3d 1239, 1246 (2004).

⁸Id.

⁹The Company asserts that Docouto’s counsel delayed the entry of the preliminary injunction order until November 17, 2005, however the Company fails to provide any evidence in support of its allegation. Nor does this alter our conclusion that Judge Glass’ oral order cannot serve as a basis for a contempt finding.

directing the district court to vacate its contempt order, and we reverse the district court's preliminary injunction in Docket No. 46653.

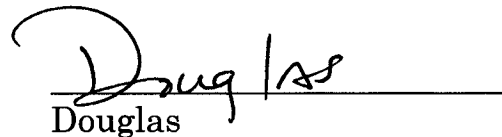
IT IS SO ORDERED.¹⁰

 _____, C.J.

Maupin

 _____, J.

Gibbons

 _____, J.

Douglas

¹⁰Docouto's notice of appeal also indicates that he is appealing from the district court's order denying: (1) his motion to dismiss, (2) his motion to set aside the TRO, (3) his motion to set aside the preliminary injunction, and (4) his motion for an injunction. Because the preliminary injunction is void, the district court likewise erred in denying Docouto's motion to set aside the preliminary injunction. We conclude that the district court did not otherwise err in resolving Docouto's motions. In this, we concur with the district court's conclusion that the TRO expired by operation of law, and as such, Docouto's motion to set aside the TRO was rendered moot. Regardless, a TRO is generally not appealable. See Sugarman Co. v. Morse Bros., 50 Nev. 191, 198-99, 255, P.2d 1010, 1012 (1927).

We have also considered the parties' other arguments and conclude they are meritless.

cc: Hon. David Wall, District Judge
M. Nelson Segel, Settlement Judge
Law Offices of Richard McKnight, P.C.
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger
Goodman Brown & Premsrirut
Eighth District Court Clerk