

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRENT LOONEY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
WILLIAM B. GONZALEZ, DISTRICT
JUDGE,

Respondents,

and

JIENNA LOONEY,

Real Party in Interest.

No. 64631

FILED

JAN 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Tracie K. Lindeman*
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus or prohibition challenging a district court contempt order in post-divorce decree proceedings. Real party in interest has filed an answer as directed, and petitioner has filed a reply.

A writ of mandamus is available 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. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Whether to consider a writ petition is within this court's discretion. *Smith*, 107 Nev. at 677, 818 P.2d at 851.

Petitioner contends that the district court erred in imposing sanctions that amounted to criminal contempt without affording him his Sixth Amendment rights.¹ Real party in interest asserts that the contempt order was intended to coerce petitioner's compliance with the district court's orders, and that the district court informed petitioner of its intent. The district court's November 26, 2013, order sentenced petitioner to 375 days incarceration "as and for sanction for his contempt" of the district court's orders regarding support and property distribution. The district court directed petitioner to report to the Clark County Detention Center for two periods in November and December 2013. The order does not expressly indicate how petitioner may purge his contempt and avoid the sanctions.

This court has previously explained that "[w]hether a contempt proceeding is classified as criminal or civil in nature depends on whether it is directed to punish the contemnor or, instead, coerce his compliance with a court directive." *Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 804, 102 P.3d 41, 45 (2004). Criminal sanctions punish a party for past offensive behavior and are "unconditional or determinate . . . with the contemnor's future compliance having no effect on the duration of the sentence imposed." *Id.* at 805, 102 P.3d at 46; *see also Warner v. Second Judicial Dist. Court*, 111 Nev. 1379, 1383, 906 P.2d 707, 709 (1995) (concluding that a contempt order of a set term of 11

¹Petitioner also challenges the district court's November 25, 2013, oral order imposing a monetary fine on petitioner without conditions. Because the monetary fine has not been reduced to writing, we need not reach this issue. *See Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (explaining that district court oral rulings are not valid for any purpose).

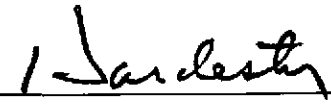
months imprisonment was punitive and criminal in nature). Civil sanctions, on the other hand, are remedial in nature and are “indeterminate or conditional . . . [and] the contemnor’s compliance is all that is sought and with that compliance comes the termination of any sanctions imposed.” *Rodriguez*, 120 Nev. at 805, 102 P.3d at 46; *see also Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994) (explaining that civil contempt sanctions are considered to be coercive and avoidable through obedience). We conclude that based on the absence of any conditions to purge the contempt sanction, the district court’s contempt order was criminal in nature and petitioner was not properly afforded his Sixth Amendment guarantee of the right to counsel. *See Rodriguez*, 120 Nev. at 804, 102 P.3d at 45 (noting that the Sixth Amendment guarantee of the right to counsel applies only in criminal proceedings).


Furthermore, we note that had the district court’s contempt order included conditions on how to purge the sanctions imposed, the proceedings would have been deemed civil in nature and petitioner would have no right to Sixth Amendment protections. *See Rodriguez*, 120 Nev. at 814, 102 P.3d at 51-52 (explaining that when the district court makes proper findings and selects an appropriate amount for the contemnor to pay in order to purge his contempt, the liberty interest at stake is diminished because the contemnor “is in control of his own destiny”). Conversely, if the district court intended to issue a criminal contempt order, it would have been required to provide petitioner with proper Sixth Amendment protections during those proceedings. *See Bagwell*, 512 U.S. at 826-27 (noting that criminal contempt penalties may not be imposed on

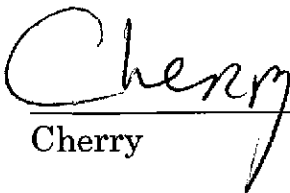
someone who has not been afforded the constitutional protections required in criminal proceedings).

For the foregoing reasons, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its November 26, 2013, contempt order and conduct further proceedings in accordance with this order. We vacate the temporary stay imposed by our December 18, 2013, order.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. William B. Gonzalez, District Judge, Family Court Division
Patricia A. Marr
Paul M. Gaudet
Eighth District Court Clerk