

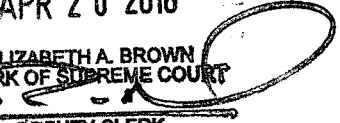
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID COPPERFIELD'S
DISAPPEARING, INC.; DAVID
COPPERFIELD, A/K/A DAVID
KOTKIN; AND MGM GRAND HOTEL,
LLC,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
GAVIN COX; AND MIHN-HAHN COX,
Real Parties in Interest.

No. 75609

FILED

APR 20 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This emergency petition for a writ of mandamus challenges a district court order denying petitioners' request to close the portions of trial during which alleged trade secrets concerning the "Thirteen" illusion are presented. Real parties in interest have timely filed an answer, as directed. Having considered the petition, answer, and supporting documents, we conclude that writ relief is warranted, as follows.

Traditionally, civil trials are held open to the public. *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1067 (3d Cir. 1984); *see Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 248 (1996) (recognizing that trials generally must be kept open to the public). While closing a courtroom is unusual, doing so is appropriate in certain circumstances, such as when a competing interest outweighs the public interest in open trials. Federal courts have held that, to limit the public's access to civil trials based on a private interest, the movant must show that the information is of the kind



18-900818

the courts protect and that good cause to close trial exists. *Publicker Indus.*, 733 F.2d at 1070-71; see also *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179-80 (6th Cir. 1983); *Del Papa*, 112 Nev. at 374, 915 P.2d at 248. Under those considerations, courts have recognized that courts may be closed to protect trade secrets. *Publicker Indus.*, 733 F.2d at 1071 (recognizing that “the protection of a party’s interest in confidential commercial information, such as a trade secret, where there is a sufficient threat of irreparable harm,” weighs against the presumptive right to an open trial); *Brown & Williamson Tobacco*, 710 F.2d at 1180 (“[L]egitimate trade secrets[are] a recognized exception to the right of public access to judicial records.”).

Nevada law also protects against the public disclosure of trade secrets during litigation. See NRS 600A.070 (“In any civil or criminal action, the court shall preserve the secrecy of an alleged trade secret by reasonable means. . .”). Here, information concerning how the “Thirteen” and other illusions are performed constitutes a trade secret, at least to the extent that that information is not public knowledge. See NRS 600A.030(5)(A). Indeed, in this case in 2014 and 2015, the parties signed agreements to maintain the confidentiality of petitioners’ illusions. Real parties in interest now assert that, due to large numbers of audience participants, how the illusion is performed is already well-known. Petitioners claim, however, that the participants are made aware of only some portions of the trick; there are parts that remain unrevealed. Because the disclosure of this information could result in irreparable harm, good cause exists to close the portions of trial during which such information could be revealed. Thus, to the extent the full procedure behind the “Thirteen” illusion has not been already disclosed, the district court manifestly abused its discretion in failing to maintain the confidentiality of such information during trial, such that writ relief is warranted to protect


that information. NRS 34.160; *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981) (explaining that writs of mandamus are available to compel the performance of a legal duty and to correct a manifest abuse of discretion).

Accordingly, in complying with this order and our writ, the district court should close the courtroom only as to information that has not yet been made public or that overlaps with information that has not been made public. If any colorable claim of a non-disclosed trade secret is made, the court should conduct a hearing to determine whether it is necessary to close the courtroom to protect against disclosure of a trade secret. Any subsequent order closing the courtroom should be limited in duration to accomplish the immediate goal of protecting a trade secret, after which the court must reopen. Therefore, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to close the courtroom during any portion of the trial that describes how an illusion is performed, in accordance with this order.¹


_____, C.J.

Silver


_____, J.

Tao


_____, J.

Gibbons

¹In light of this order, we vacate our April 18, 2018, temporary stay of trial.

cc: Hon. Mark R. Denton, District Judge
Selman Breitman, LLP/Las Vegas
Selman Breitman, LLP/Santa Ana
Morelli Law Firm PLLC
Harris & Harris
Eighth District Court Clerk