

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICIA VACCARINO, ESQ.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MARY D. PERRY, DISTRICT JUDGE,
Respondents,
and
SHANE JENSEN,
Real Party in Interest.

No. 83983-COA

FILED
MAY 20 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yassiny
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus and/or prohibition challenges a district court order imposing sanctions against an attorney in a child custody and support matter.

In the underlying action, petitioner, attorney Patricia Vaccarino, Esq., represented Caroline Jensen, who is not a party to this matter, against real party in interest Shane Jensen in divorce proceedings and subsequent custody and support disputes. After several years of litigation with regard to the post-divorce decree custody and support issues, the parties eventually reached a settlement in 2020, leaving only the issue of attorney fees and costs to the district court.

At the subsequent hearing on the fees and costs issue, Judge Perry awarded Shane approximately \$10,000 in fees based on Caroline's failure to properly submit an order in 2018 (before a different district court judge) that would have substantially resolved the pending issues. Vaccarino orally moved for reconsideration, arguing that the previous judge

had ordered Shane, and not her client, to submit the order to the court. Although Judge Perry initially denied Vaccarino's motion, she later entered an order vacating the minute order from the hearing and indicating that she would review the record in full. Judge Perry also scheduled (and then vacated) two status checks to discuss her findings.

Three months after the initial hearing, and without additional briefing or argument, Judge Perry entered a twelve-page written order requiring Caroline to pay Shane \$15,000 in attorney fees and costs. As relevant here, this order also sanctioned Vaccarino personally for, among other things, "various failures to act in good faith in this matter, causing extensive unnecessary litigation" and found that "it is proper that sanctions pursuant to NRS 7.085, NRS 18.010(2)(b) and EDCR 7.60 be assessed in the total amount of \$1,500 to be paid by Patricia L. Vaccarino, Esq. to the Legal Aid Center of Southern Nevada." Vaccarino now petitions this court for a writ of mandamus and/or prohibition directing the district court to vacate the sanctions order against her.¹

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). "Sanctioned attorneys do not have standing to appeal because they are not parties in the underlying action;

¹Because the sanctions award against Vaccarino appears to have been issued sua sponte, we directed the Honorable Mary Perry to respond to Vaccarino's writ petition. Pursuant to that order, Judge Perry filed her answer on March 30, 2022, and Vaccarino filed her reply on April 21, 2022. Shane has not filed an answer to the petition, although he was given leave to do so.

therefore, extraordinary writs are a proper avenue for attorneys to seek review of sanctions.” *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 131 Nev. 783, 786-87, 358 P.3d 228, 231 (2015). Nonetheless, the petitioner bears the burden of demonstrating that extraordinary relief is warranted.² *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

In her petition, Vaccarino asserts that the district court violated her due process rights by issuing the sanctions order without providing her with notice and an opportunity to be heard. Judge Perry disagrees and contends that Vaccarino was provided with sufficient notice and an opportunity to be heard prior to the issuance of sanctions. Having considered the parties’ filings, we agree with Vaccarino and—for the reasons set forth below—we conclude that our extraordinary intervention is warranted and grant the petition for a writ of mandamus.

In the instant case, Vaccarino was sanctioned under EDCR 7.60(b)(3),³ which provides that “[t]he court may, after notice and an opportunity to be heard, impose upon an attorney . . . any and all sanctions which may . . . be reasonable” And our supreme court has held that, when sanctioning an attorney for professional misconduct, principles of due process require “[a]dvance notice that the court is considering sanctions and

²As we conclude that a writ of mandamus is the appropriate vehicle to address the sanctions at issue here, *see Watson Rounds*, 131 Nev. at 791, 358 P.3d at 234 (issuing a writ of mandamus in an attorney sanctions matter), we deny Vaccarino’s alternative request for a writ of prohibition.

³Judge Perry also relied on NRS 18.010(2)(b) and NRS 7.085 to sanction Vaccarino. But those statutes cannot support the sanctions at issue here, as they address an award of attorney fees as sanctions, which was not what was awarded in this case.

an opportunity to respond in opposition” to the sanctions. *Valley Health Sys., LLC v. Estate of Doe*, 134 Nev. 634, 647, 427 P.3d 1021, 1032-33 (2018) (alteration in original) (quoting *Sun River Energy, Inc. v. Nelson*, 800 F.3d 1219, 1230 (10th Cir. 2015)).

Here, the motion practice prior to the hearing did not indicate that Shane requested or advocated for sanctions against Vaccarino. And in her answer, Judge Perry does not dispute Vaccarino’s contention that she was not provided with advance notice that sanctions would be considered at the hearing on the fees and costs issue. To the extent Judge Perry argues that Vaccarino was put on notice of the impending sanctions at the hearing itself, the portion of the transcript included in Vaccarino’s appendix demonstrates that Judge Perry awarded fees against Vaccarino’s client, but commended both attorneys on their professionalism, commitment to settling the case, and “quick resolution” of the matter, which would seem inconsistent with an intent to issue sanctions. Regardless, because *Valley Health* provides that advance notice of the consideration of potential sanctions is required prior to the hearing at which sanctions will be addressed, notice provided at the hearing would necessarily be insufficient.⁴ 134 Nev. at 647, 427 P.3d at 1032-33. Further, neither the subsequent minute order from the hearing nor the order vacating that minute order and

⁴Judge Perry also argues that she had inherent equitable authority to sanction Vaccarino, and appropriately exercised that power when issuing sanctions here. We disagree. While district courts have the inherent authority to impose sanctions for litigation abuses, see *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990), the exercise of such authority would still be subject to the advance notice and an opportunity to be heard requirement articulated in *Valley Health*, which, as discussed above, was not provided here. 134 Nev. at 647, 427 P.3d at 1032-33.

granting Vaccarino's oral motion for reconsideration regarding the award of attorney fees and costs mention the possibility that Vaccarino could be personally sanctioned.

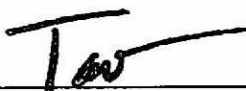
Nevertheless, Judge Perry relies on *Valley Health*, 134 Nev. at 647-48, 427 P.3d at 1032-33, to argue that any deficiency in providing advance notice was subsequently cured, as Vaccarino could have moved for reconsideration on the sanctions issue but failed to avail herself of that opportunity and instead simply filed the instant petition. However, *Valley Health* only holds that a due process violation *may* be subsequently cured by briefing the matter in a motion for reconsideration—it does not provide that a sanctioned attorney *must* move for reconsideration in the district court prior to filing an original petition to address alleged due process violations. *Id.* Therefore, we find these arguments regarding Vaccarino's failure to file a motion for reconsideration unpersuasive.

Because Judge Perry failed to provide Vaccarino with advance notice that sanctions might be issued and an opportunity to respond to the misconduct allegations, we conclude that the district court abused its discretion when it sanctioned Vaccarino without providing advance notice of the impending sanctions and an opportunity to be heard. *See id.* at 647, 427 P.3d at 1032-33.

Accordingly, we grant Vaccarino's petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate the portion of its April 12, 2021, order directing Vaccarino to pay a sanction in the amount of \$1,500 to the Legal Aid Center of Southern Nevada.

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mary D. Perry, District Judge, Family Court Division
Vaccarino Law Office
Pecos Law Group
Attorney General/Las Vegas
Eighth District Court Clerk

⁵To extent Vaccarino presents arguments in her reply regarding the attorney fees and costs portion of the challenged order, that award was already challenged as part of an appeal, which the parties subsequently stipulated to dismiss. *See Jensen v. Jensen*, Docket No. 82929 (Nev. Dec. 22, 2021) (Order Dismissing Appeal). Because that appeal, as opposed to this writ petition, was the proper vehicle for challenging the award of fees and costs, any arguments regarding this award are not properly before us and thus we do not consider them.

Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.