IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, A NEVADA CORPORATION; AM-GSR HOLDINGS, LLC, A NEVADA CORPORATION; AND GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, A NEVADA CORPORATION,
Petitioners,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE AND THE HONORABLE ELIZABETH GONZALEZ (RET.), SENIOR JUDGE, DEPARTMENT OJ41; AND RICHARD M. TEICHNER, RECEIVER,
Respondents,
and
ALBERT THOMAS, INDIVIDUALLY; JANE DUNLAP, INDIVIDUALLY; JOHN DUNLAP, INDIVIDUALLY; BARRY HAY, INDIVIDUALLY; MARIE-ANNIE ALEXANDER AS TRUSTEE OF THE MARIE-ANNIE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI AND GEORGE VAGUJHELYI AS TRUSTEES OF THE GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT U/T/A APRIL 13, 2001; D'ARCY NUNN, INDIVIDUALLY; HENRY NUNN, INDIVIDUALLY; MADELYN VAN DER BOKKE, INDIVIDUALLY; LEE VAN DER BOKKE, INDIVIDUALLY; DONALD SCHREIFELS, INDIVIDUALLY;

No. 88444

FILED

SEP 18 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

SUPREME COURT
OF
NEVADA

25-40872

ROBERT R. PEDERSON, INDIVIDUALLY AND AS TRUSTEE OF THE PEDERSON 1990 TRUST; LOU ANN PEDERSON, INDIVIDUALLY AND AS TRUSTEE OF THE PERDERSON 1990 TRUST; LORI ORDOVER, INDIVIDUALLY; WILLIAM A. HENDERSON, INDIVIDUALLY; CHRISTINE E. HENDERSON, INDIVIDUALLY; LOREN D. PARKER, INDIVIDUALLY; SUZANNE C. PARKER, INDIVIDUALLY; MICHAEL IZADY, INDIVIDUALLY; STEVEN TAKAKI, INDIVIDUALLY; FARAD TORABKHAN, INDIVIDUALLY; SAHAR TAVAKOL, INDIVIDUALLY; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, INDIVIDUALLY; R. RAGHURAM, INDIVIDUALLY; USHA RAGHURAM, INDIVIDUALLY; LORI K. TOKUTOMI, INDIVIDUALLY; GARRET TOM, INDIVIDUALLY; ANITA TOM, INDIVIDUALLY; RAMON FADRILAN, INDIVIDUALLY; FAYE FADRILAN, INDIVIDUALLY; PETER K. LEE AND MONICA L. LEE AS TRUSTEES OF THE LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, INDIVIDUALLY; ELIAS SHAMIEH, INDIVIDUALLY; JEFFREY QUINN, INDIVIDUALLY; BARBARA ROSE QUINN, INDIVIDUALLY; KENNETH RICHE, INDIVIDUALLY; MAXINE RICHE, INDIVIDUALLY; NORMAN CHANDLER, INDIVIDUALLY; BENTON WAN, INDIVIDUALLY; TIMOTHY D. KAPLAN, INDIVIDUALLY; SILKSCAPE INC.; PETER CHENG, INDIVIDUALLY; ELISA CHENG, INDIVIDUALLY; GREG

A. CAMERON, INDIVIDUALLY; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, INDIVIDUALLY; SANDRA LUTZ, INDIVIDUALLY; MARY A. KOSSICK, INDIVIDUALLY; MELVIN CHEAH, INDIVIDUALLY; DI SHEN, INDIVIDUALLY; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, INDIVIDUALLY; SEEMA GUPTA, INDIVIDUALLY; FREDRICK FISH, INDIVIDUALLY; LISA FISH, INDIVIDUALLY; ROBERT A. WILLIAMS, INDIVIDUALLY; JACQUELIN PHAM, INDIVIDUALLY; MAY ANN HOM AS TRUSTEE OF THE MAY ANN HOM TRUST; MICHAEL HURLEY, INDIVIDUALLY; DOMINIC YIN, INDIVIDUALLY; DUANE WINDHORST, INDIVIDUALLY; MARILYN WINDHORST, INDIVIDUALLY; VINOD BHAN, INDIVIDUALLY; ANNE BHAN, INDIVIDUALLY; GUY P. BROWNE, INDIVIDUALLY; GARTH A. WILLIAMS, INDIVIDUALLY; PAMELA Y. ARATANI, INDIVIDUALLY; DARLENE LINDGREN, INDIVIDUALLY; LAVERNE ROBERTS, INDIVIDUALLY; DOUG MECHAM, INDIVIDUALLY; CHRISINE MECHAM, INDIVIDUALLY; KWANGSOO SON, INDIVIDUALLY; SOO YEUN MOON, INDIVIDUALLY; JOHNSON AKINDODUNSE, INDIVIDUALLY; IRENE WEISS AS TRUSTEE OF THE WEISS FAMILY TRUST; PRAVESH CHOPRA, INDIVIDUALLY; TERRY POPE, INDIVIDUALLY; NANCY POPE, INDIVIDUALLY; JAMES TAYLOR, INDIVIDUALLY; RYAN TAYLOR, INDIVIDUALLY; KI HAM,

INDIVIDUALLY; YOUNG JA CHOI, INDIVIDUALLY; SANG DAE SOHN, INDIVIDUALLY; KUK HYUNG (CONNIE), INDIVIDUALLY; SANG (MIKE) YOO, INDIVIDUALLY; BRETT MENMUIR AS TRUSTEE OF THE CAYENNE TRUST; WILLIAM MINER, JR., INDIVIDUALLY; CHANH TRUONG, INDIVIDUALLY; ELIZABETH ANDERS MECUA, INDIVIDUALLY; SHEPARD MOUNTAIN, LLC; ROBERT BRUNNER, INDIVIDUALLY; AMY BRUNNER, INDIVIDUALLY; JEFF RIOPELLE, INDIVIDUALLY; PATRICIA M. MOLL, INDIVIDUALLY; AND DANIEL MOLL, INDIVIDUALLY,
Real Parties in Interest.

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges district court orders finding petitioners in contempt of court and awarding attorney fees and costs related to the contempt proceedings.

Real parties in interest (collectively, Thomas) own condominium units in the Grand Sierra Resort (GSR), which is owned by petitioners and is governed by the Grand Sierra Resort Unit Owners Association (GSRUOA). GSRUOA is bound by a set of Covenants, Conditions, and Restrictions (CC&Rs), which, as relevant here, require petitioners to maintain GSR "at a level of service and quality generally considered to be first class."

In 2012, Thomas sued petitioners, alleging various forms of mismanagement pertaining to Thomas's condo units and GSRUOA. Thomas's operative complaint also sought the appointment of a receiver to manage GSRUOA's financial affairs. In 2015, Thomas renewed their request for the appointment of a receiver. Over petitioners' objection, the district court granted Thomas's request and appointed a receiver (the Appointment Order). The Appointment Order directed the Receiver to (1) enforce compliance with GSRUOA's CC&Rs, and (2) ensure that petitioners' GSRUOA-related revenue is distributed, utilized, or held in reserve in accordance with the CC&Rs. In particular, the Appointment Order stated that "[t]he Receiver is appointed for the purpose of implementing compliance, among all condominium units, including units owned by [petitioners,] . . . with the Covenants Codes and Restrictions [CC&Rs] recorded against the condominium units," and that the Receiver has the power to "take control of . . . all deposits relating to the Property," "all accounting records," "all accounts receivable," and "all documents relating to repairs of the Property." To that end, the Appointment Order required petitioners to "[t]urn over to the Receiver all rents, dues, reserves and revenues derived from [GSR] wherever and in whatsoever mode maintained." Correspondingly, the Appointment Order authorized the Receiver to "[d]emand, collect and receive all dues, fees, reserves, rents and revenues derived from [GSRUOA]." The Appointment Order also required petitioners to "cooperate" with the Receiver "in accomplishing the terms described in this [Appointment] Order."

By all accounts, the receivership got off to a bad start. While the parties dispute who was at fault, the Receiver did not initially open an independent account to manage GSRUOA's finances but instead chose to

simply "monitor" petitioners' existing GSRUOA accounts, thus giving petitioners continued access to those accounts. In addition, the district court judge assigned to this case at that time neglected to rule on various pending motions or otherwise meaningfully preside over the case for several years.[1]

Within that context, in May 2020, petitioners moved for the district court's permission to withdraw roughly $8 million from their account (to which they still had access, subject to the Receiver's monitoring) to reimburse themselves for improvements they had made to the GSR. In their motion, petitioners represented that the work was done to comply with the CC&Rs' requirement that they maintain GSR as a "first class" establishment. Consistent with its prolonged disregard for this case, the district court failed to timely rule on this request for over a year. Without any ruling, petitioners nevertheless withdrew approximately $3.6 million from the reserve account. Then, roughly a year after petitioners filed their first motion, they filed a second motion again seeking the district court's approval to withdraw more funds from the reserve account based on what petitioners represented were additional CC&R-required renovations. Again, the district court failed to timely rule on the second motion. When the motion went unresolved, petitioners withdrew roughly an additional $12.9 million from the account.

In response to petitioners' withdrawals, Thomas filed various motions seeking an order to show cause why petitioners should not be held in contempt for violating the Appointment Order. In particular, Thomas

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[1]The respondent district court judge was not the presiding judge at the time referenced in the text but assumed responsibility for the case thereafter.

argued that petitioners' approximately $16 million in withdrawals from the reserve account violated the Appointment Order, which, as indicated, stated that the Receiver has the power to "take control of . . . all deposits relating to the Property," "all accounting records," "all accounts receivable," and "all documents relating to repairs of the Property" and directed petitioners to "[t]urn over to the Receiver all rents, dues, reserves and revenues derived from the Property wherever and in whatsoever mode maintained."

After the presiding district court judge was replaced, the respondent district court judge held a four-day trial on Thomas's contempt motions. Near the end of the trial, the district court orally stated that petitioners' contemptuous conduct was supported by "clear and convincing evidence." Thereafter, the district court entered a written order (the Contempt Order) holding petitioners in contempt for withdrawing $16 million without advance court or Receiver approval. The Contempt Order also directed petitioners to return the $16 million to the reserve account and ordered petitioners to pay a $500 fine to Thomas. The district court subsequently awarded Thomas roughly $100,000 in attorney fees (the Fee Order) that Thomas incurred litigating the show-cause motions.

Petitioners challenge both the Contempt Order and the Fee Order in this writ petition, raising four primary arguments: (1) the district court improperly held them in criminal contempt while applying the lower civil-contempt standard of proof; (2) petitioners' conduct was not contempt-worthy because the Appointment Order was ambiguous; (3) the district court and the Receiver made compliance with the Appointment Order impossible; and (4) the amount of attorney fees awarded was excessive. "[A] writ of prohibition may be warranted when a district court acts without or in excess of its jurisdiction." *Bd. of Rev., Nev. Dep't of Emp., Training &*

Rehab. v. Second Jud. Dist. Ct., 133 Nev. 253, 255, 396 P.3d 795, 797 (2017). A writ of mandamus may issue "to compel the performance of an act which the law requires as a duty resulting from an office or where discretion has been manifestly abused or exercised arbitrarily or capriciously." *Scarbo v. Eighth Jud. Dist. Ct.*, 125 Nev. 118, 121, 206 P.3d 975, 977 (2009).

We entertain this writ petition because an appeal from a final judgment may not be an adequate legal remedy for an erroneous contempt order. *See Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649-50, 5 P.3d 569, 571 (2000) ("Writ petitions are . . . more suitable vehicles for review of contempt orders."). That said, we are not persuaded that writ relief is warranted because petitioners have not demonstrated that the district court lacked or exceeded its jurisdiction or manifestly abused its discretion.

The district court held petitioners in civil contempt

Petitioners contend that the district court erroneously held them in criminal contempt by using the lower civil-contempt standard of proof that the district court referenced near the end of the trial. More specifically, petitioners contend that the Contempt Order compelling petitioners to repay the $16 million to the Receiver constitutes a criminal-contempt sanction, both because petitioners are being monetarily sanctioned and because the Receiver is an arm of the court. *Cf. Detwiler v. Eighth Jud. Dist. Ct.*, 137 Nev. 202, 210, 486 P.3d 710, 718 (2021) (recognizing that a fine payable to the court constitutes criminal contempt); *U.S. Bank, N.A. v. Palmilla Dev. Co.*, 131 Nev. 72, 77, 343 P.3d 603, 607 (2015) (recognizing that a receiver acts as "an arm of the court" (internal quotation marks omitted)).

We disagree and conclude that the Contempt Order held petitioners in civil contempt. "[W]hether a contempt is civil or criminal turns on the 'character and purpose' of the sanction involved. Thus, a contempt sanction is considered civil if it 'is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.'" *Detwiler*, 137 Nev. at 210, 486 P.3d at 718 (quoting *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827-28 (1994)).

Apart from the nominal $500 fine it imposed, the Contempt Order did not impose any punishment on petitioners. Rather, the Contempt Order was remedial in nature and made for the benefit of those holding an interest in GSRUOA. By its terms, the Contempt Order simply directed petitioners to return to the account presently under the Receiver's control the $16 million they had taken from that account without advance permission. This directive restored the status quo by ordering the return of funds to the GSRUOA accounts—remediating the ill effects of the contemptuous act. The order did not award the funds to the Receivership as a fine; nor do we read the Contempt Order as in any way foreclosing the funds' subsequent award, in whole or in part, to petitioners as reimbursement for their expenditures.

Though the demarcation between civil and criminal contempt is not always clear, the criminal form is punitive, while the civil form serves as a sanction to enforce compliance with a court order or to compensate for losses or damages sustained by reason of noncompliance. *Hawaii Pub. Emps. Rels. Bd. v. Hawaii State Teachers Ass'n*, 520 P.2d 422, 427 (Haw. 1974) ("Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or

damages sustained by reason of noncompliance . . . ."). Thus, "[c]ivil contempt can serve two purposes, either coercing compliance with an order or compensating a party who has suffered unnecessary injuries or costs because of contemptuous conduct." *In re Bradley*, 588 F.3d 254, 263 (5th Cir. 2009) (internal citation, quotation marks, and alteration omitted). "[R]emedial contempt is civil, because it remedies the consequences of defiant conduct on an opposing party, rather than punishing the defiance per se." *Id.* at 263-64. In *Bradley*, the appellate court concluded that it was dealing with a remedial civil contempt proceeding where the bankruptcy court held a party liable to the bankruptcy estate rather than imposing a fine payable to the court. *Id.* at 264. This is analogous to what was ordered here. Petitioners were ordered to return the funds withdrawn from the Receiver-controlled accounts, which remedied the contemptuous conduct, i.e., the non-compliance with the Appointment Order. Accordingly, the Contempt Order held petitioners in civil contempt, imposing remedial sanctions, and we reject petitioners' argument that the district court improperly held them in criminal contempt.

To the extent that petitioners argue that the subsequent imposition of attorney fees constituted a criminal contempt sanction, we disagree. NRS 22.100(3) and NRS 22.010(3) authorized attorney fees in this case without regard to whether the contempt was civil or criminal in nature. Relatedly, to the extent that petitioners contend the $500 fine rendered the Contempt Order criminal in nature, we again disagree, as that fine was payable to Thomas, not the court. *See Detwiler*, 137 Nev. at 210, 486 P.3d at 718. ("[A] contempt sanction is considered civil if it is remedial, and for

the benefit of the complainant." (internal quotation marks omitted)).[2] Additionally, in light of our December 29, 2023, order in Docket Nos. 87243 and 87566 determining that the district court had not entered a final judgment before imposing civil sanctions, we reject petitioners' argument that the district court lacked jurisdiction to hold petitioners in civil contempt. Finally, we decline to consider petitioners' "retroactive finality" argument because it is not supported by authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is a party's responsibility to support arguments with salient authority).

The Appointment Order was unambiguous

Petitioners next contend that the Appointment Order cannot be enforced by contempt because the order was ambiguous. *See Div. of Child & Fam. Servs., v. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 454-55, 92 P.3d 1239, 1245 (2004) ("An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him." (internal quotation marks omitted)). Namely, petitioners claim that nothing in the Appointment Order expressly prohibited them from withdrawing money

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[2]Petitioners rely on *In re Determination of Relative Rights of Claimants & Appropriators of Waters of Humboldt River Stream System & Tributaries*, 118 Nev. 901, 909-10, 59 P.3d 1226, 1230 (2002) *(Humboldt River Stream)*, for the proposition that a fine imposed under NRS 22.100 is necessarily a criminal sanction. But we disagree with petitioners' position that *Humboldt River Stream* imposed such a hard-and-fast rule. *Cf. Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 877 (2014) (reviewing de novo the interpretation of this court's previous dispositions).

from the reserve account as reimbursement for expenditures made by them as required by the CC&Rs.

While the Appointment Order did not expressly state that "petitioners may not withdraw reserve account funds," such prohibition is implicit when the Appointment Order is read as a whole. As indicated, the Appointment Order provided that "[t]he Receiver is appointed for the purpose of implementing compliance . . . with the [CC&Rs] recorded against the condominium units," and that the Receiver has the power to "take control of . . . all deposits relating to the Property," "all accounting records," "all accounts receivable," and "all documents relating to repairs of the Property." Even more to the point, the Appointment Order directed petitioners to "[t]urn over to the Receiver all rents, dues, reserves and revenues derived from the Property wherever and in whatsoever mode maintained." The Appointment Order further prohibited petitioners from "[i]nterfering with the Receiver, directly or indirectly; in the management and operation of the Property." Given these unambiguous provisions imposing the responsibility on the *Receiver* to manage GSRUOA's affairs and directing petitioners to turn over funds to the Receiver and to not interfere with the *Receiver*'s management, it is unreasonable for petitioners to read the Appointment Order as permitting them to remove funds from the reserve account without the district court's or the Receiver's approval.

Petitioners nevertheless contend that their conduct was justified because the Appointment Order simply required them to "cooperate" with the Receiver in enforcing the CC&Rs. We are not persuaded. Substantial evidence supports the district court's finding that petitioners' failure to cooperate with the Receiver, as specified in the Appointment Order, led to petitioners being held in contempt. Despite the

Appointment Order empowering and authorizing the Receiver to control, collect, utilize, and disburse rents, dues, reserves, and revenues derived from GSR, petitioners withdrew those funds without obtaining authority to do so. And while initially the Receiver chose to monitor existing reserve accounts instead of opening a new account (the Receiver made a request to transfer reserve funds in 2021 to an account for which the Receiver had exclusive signatory authority), the Appointment Order is clear that the Receiver is in control of the funds in the reserve accounts, including making disbursements and payments therefrom. That petitioners filed two motions in district court seeking reimbursement supports that they understood that approval for withdrawals was a component of the Appointment Order, and petitioners acknowledged that they could have waited to withdraw those reserve funds until a court order was issued. The Appointment Order authorizes and empowers the Receiver to pay out of the GSR rents and GSRUOA dues collected, "all the reasonable and necessary . . . costs and expenses of operation and maintenance of [GSR]," and petitioners did not successfully obtain authorization from either the Receiver or the district court before withdrawing funds from the reserve account in 2021 and 2022. Therefore, the district court was within its discretion in finding petitioners' conduct to be contemptuous. *See Detwiler*, 137 Nev. at 206, 486 P.3d at 715 ("Whether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court's order should not lightly be overturned. Accordingly, this court normally reviews an order of contempt for abuse of discretion." (internal quotation marks, citation, and alteration omitted)).

Compliance with the Appointment Order was possible

Petitioners next contend that the district court's and the Receiver's neglect made it "impossible" for petitioners to comply with the Appointment Order. Namely, they point to the district court's abandonment of the case during the relevant time frame and the Receiver's refusal to perform the duties set forth in the Appointment Order. Because of this undisputed neglect by both the district court and the Receiver, petitioners contend that they could not have complied with the obligation the CC&Rs imposed on them to keep the property in first-class condition if they did not withdraw the $16 million. But by petitioners' own acknowledgment, they not only could—but did—comply with the CC&Rs by paying on their own for the upgrades to the GSR and only thereafter withdrawing the $16 million to reimburse themselves.

We recognize and share petitioners' frustration with the Receiver's and the district court's neglect of this case during the pertinent time frame. But that did not entitle petitioners to engage in self-help by taking the money without court or Receiver approval. Rather, as petitioners are aware, a writ from this court would have been an appropriate remedy to seek. *Cf.* NRS 34.160 (providing that this court may issue a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station"). The Contempt Order in no way prohibits petitioners from seeking reimbursement for amounts spent to comply with the CC&Rs. Thomas's answer and the Contempt Order suggest that petitioners spent all or some of the $16 million on improvements to the GSR that were not part of GSRUOA and so are not reimbursable. On this record, we do not agree with our dissenting colleagues that the district court had a mandatory duty to have an evidentiary hearing to decide which expenditures were reimbursable and

which were not before ordering the funds restored to the proper accounts, with the reimbursement proceedings to follow.

The amount of attorney fees awarded was appropriate

Petitioners finally challenge the amount of attorney fees the district court awarded to Thomas. In particular, they contend that because the district court denied five out of the seven show-cause motions Thomas filed, the fee award was excessive. But the district court's October 3, 2023, order accounted for this when it awarded only 75 percent of Thomas's requested fees, "given the observations made by the Court of the overlap among the issues presented at the contempt trial." While petitioners observe that Thomas prevailed on only 29 percent of their motions, the district court was in the best position to determine the degree to which the various motions overlapped and which ones required the most litigation. Accordingly, we are not persuaded that the district court's award lacked the support of substantial evidence or was otherwise an abuse of discretion, much less a manifest abuse of discretion. *Scarbo*, 125 Nev. at 121, 206 P.3d at 977 (setting forth the standard for writ relief); *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) ("We review an award of attorney fees for an abuse of discretion, and will affirm an award that is supported by substantial evidence." (internal quotation marks and citations omitted)). To the extent that petitioners contend Thomas failed to sufficiently document their requested costs, petitioners did not raise that argument in the district court, so we decline to consider it here. *See Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 822, 407 P.3d 702, 708 (2017) (observing that this court generally declines to consider arguments in a writ petition that were not raised in district court).

Consistent with the foregoing, we

ORDER the petition DENIED.[3]

Pickering, J.
Pickering

Bell, J.
Bell

Stiglich, J.
Stiglich

Cadish, J.
Cadish

[3]The Honorable Ron Parraguirre, Justice, did not participate in the resolution of this matter.

HERNDON, C.J., with whom LEE, J., agrees, concurring in part and dissenting in part:

I concur with my colleagues' conclusion that the district court acted within its authority to hold petitioners in civil contempt. I depart from the majority's conclusion that the district court properly ordered petitioners to repay over $16 million in full, absent an evidentiary hearing addressing the work completed and the expenses incurred. I therefore respectfully dissent in part.

I believe a more complete recitation of the factual and procedural history of this case is necessary not only to provide the landscape on which petitioners' actions were predicated, but to highlight the very troubling and dilatory conduct that underlies this petition. The majority correctly describes many of the facts underlying this case, and I will not recite those not in dispute here. The majority, however, elides several salient facts that cannot be ignored.

The litigation underlying this petition began in 2012. The original district court judge assigned to this case issued a number of rulings against petitioners, including striking their answer based on discovery violations. Petitioners argued that the discovery problems arose from their counsel's personal issues but the district court nonetheless struck their answer as a sanction for the discovery violations and then entered a default judgement against petitioners. Following the default, a receiver was appointed in 2015. This appointment can only be described as one of form over substance. The receiver failed to perform any duties as required, including: failure to open an independent account to manage GSRUOA's finances, failure to take control of any reserve accounts, and failure to

calculate payments to determine net rent amounts or distribute rental money.

Moreover, petitioners contend that they had obligations under the CC&Rs to maintain the premises as "first class" and the order appointing receiver did not relieve them of any of their obligations under the governing documents. Thus, absent action by the receiver, petitioners believed they had to act to comply with their contractual obligations to maintain the property. In so doing, the petitioners incurred millions in costs—money which petitioners themselves fronted. Petitioners sought reimbursement of these renovation expenses from the receiver, but, in a pattern consistent with this case, nothing was done.

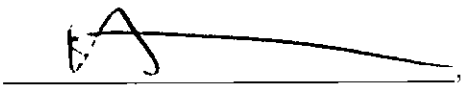
During this time, in November 2020, the presiding district court judge lost re-election. In February 2021, a senior judge was designated to preside over the case. At the time of assignment, six pending matters stood to be resolved, including a pending request from petitioner to be reimbursed for the renovation costs it incurred in maintaining the premises. That request had been pending for almost one year. The senior judge, however, took no action. From this time until September 2022, counsel for both parties submitted forty-two requests for submission, including a second request by petitioner for reimbursement that was filed in June, 2021. The senior judge entirely failed to resolve any of the pending motions or issue orders. Ultimately, because of the failures of the receiver and the court to act, and due to petitioner's belief that the order appointing receiver did not prohibit petitioner from withdrawing funds from the reserve accounts to cover the renovation costs, the petitioners withdrew roughly $16 million from the reserve account for the renovation costs.

Thereafter, the receiver filed motions seeking an order to show-cause why petitioners should not be held in contempt for these withdrawals. Given the senior judge's conduct—including failure to rule on the multiple reimbursement motions—the senior judge was removed from the case, and a replacement was designated. A trial on the receiver's contempt motions was held and petitioners were held in contempt, ordered to return the full $16 million to the reserve account, and assessed a fine. Thereafter, the district court awarded the receiver attorney fees related to litigating the show-cause motion.

While I agree with the majority that petitioners could have petitioned this court to force the senior judge to act on the reimbursement motions, given the troubled history of this matter, and the inaction of both the receiver and the senior judge, I believe that both in the interest of fundamental principles of fairness and consistent with our rules and jurisprudence, the district court should not have ordered petitioners to turn over the $16 million that petitioner's reimbursed themselves for renovation costs, absent a finding that those withdrawals were not appropriately made to compensate petitioner for monies spent in compliance with petitioner's obligations to maintain the premises. "Generally, evidentiary hearings should be utilized where 'factual questions are not readily ascertainable[.]'" *Nelson v. Eighth Jud. Dist. Ct.*, 138 Nev. 824, 830, 521 P.3d 1179, 1185 (2022) (quoting *United Commercial Ins. Serv. Inc. v. Paymaster Corp.*, 962 F.2d 853, 858 (9th Cir. 1992)).

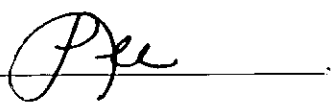
I would hold that petitioners should not have been ordered to repay the entire $16 million without an evidentiary hearing conducted by the district court addressing the utilization of the money by petitioners, including an accounting of expenses incurred, itemization of the work

performed, and a determination of whether such expenses were reasonable. To find that petitioners should turn over an excess of $16 million because petitioners *could* subsequently seek reimbursement, as the majority concludes, is contrary to our rules requiring the just, speedy, and inexpensive determination of the action. *See* NRCP 1. Had petitioners properly used any or part of this money to provide necessary upgrades, as required under the CC&R's, it would be illogical to order petitioners to turn over the full amount only to subsequently find that these monies were properly spent and then turn around and return this same amount back to petitioners. Instead, an evidentiary hearing would have been the proper vehicle to resolve the factual questions surrounding the amount spent and the work done. The district court's refusal to conduct an evidentiary hearing needlessly prolongs litigation and expenses between the parties. Further, petitioners *did* seek reimbursement for these costs after initially fronting the money, but their motions stood inexcusably dormant for years. Especially in light of the procedural history, petitioners should not have been ordered to return the money before an evidentiary hearing was conducted. I therefore dissent in part.



_____, C.J.
Herndon

I concur:



_____, J.
Lee

cc: Chief Judge, The Second Judicial District Court
Hon. Elizabeth Gonzalez, Senior Judge
Meruelo Group LLC/Reno
Pisanelli Bice, PLLC
Robertson, Johnson, Miller & Williamson
Robison, Sharp, Sullivan & Brust
Lemons, Grundy & Eisenberg
Washoe District Court Clerk