

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN B. KILGORE,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND, THE HONORABLE
GERALD W. HARDCASTLE, DISTRICT
JUDGE, FAMILY COURT DIVISION,

Respondents,

and

ANITA F. KILGORE,
Real Party in Interest.

No. 39364

FILED

APR 08 2003

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or, in the alternative, prohibition, challenges a district court order of contempt against petitioner Steven Kilgore.

The contempt citation arises out of Steven's alleged failure to abide by the terms of a child custody order involving real party in interest Anita Kilgore, Steven's former spouse.

During the custody proceedings, Steven and Anita agreed to be bound by the recommendations of licensed clinical social worker, Cathy Arentz, as to custody and visitation of their minor children. Arentz's recommendations were included in the finds of fact section of the custody order. The order stated that:

"THE COURT FURTHER FINDS that based on her interviews and evaluations, Cathy Arentz made the following recommendations regarding custody and visitation of the minor children That the Defendant, Steven Kilgore, and his

[current] spouse, Jodi Kilgore, refrain from utilizing corporal punishment in their disciplinary procedures.”

Although the language regarding corporal punishment was included in the findings portion of the order, it was not included in the portion of the order that contained the district court’s conclusions and disposition of custody issues.

Subsequent to the issuance of the custody order, Steven disciplined his nine-year-old daughter by hitting her four times on the bottom with a stick. As a result of the incident, Anita obtained an order to show cause why Steven should not be found in contempt of court for his use of corporal punishment.

After conducting an evidentiary hearing, the district court entered an order finding Steven guilty of contempt of court. Steven filed this writ petition seeking an order directing the district court to vacate the order of contempt.

The proper mode of review for a contempt order is by original writ petition.¹ 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.² “A writ of mandamus is available to control a manifest abuse of discretion—for example, when the order purportedly violated does not clearly prohibit the conduct engaged in by the contemnor.”³

¹Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 647, 5 P.3d 569, 569 (2000).

²Id. at 650, 5 P.3d at 571.

³Id.

Steven argues that the district court's child custody order does not clearly prohibit the use of corporal punishment because Arentz's recommendation that Steven refrain from corporal punishment was stated as a finding, not a directive of the court.

An order on which a judgment of contempt is based must be clear and unambiguous.⁴ The order must spell out the details of compliance so that the contemnor will readily know exactly what duties or obligations are imposed on him.⁵

Regardless of the district court's intentions or beliefs, the child custody order does not specifically order or mandate that Steven refrain from utilizing corporal punishment in his disciplinary procedures. Instead, the order merely contains a finding that Arentz recommended that Steven and Anita refrain from utilizing corporal punishment. The order does not take that finding and use it as a basis for directing Steven not to use corporal punishment. Additionally, the use of the word "refrain" rather than a directive prohibiting corporal punishment, suggests use of corporal punishment may be permitted in certain circumstances. Because the order does not contain language clearly prohibiting Steven from using corporal punishment, we conclude that the district court manifestly abused its discretion when it found Steven in contempt.


⁴Cunningham v. District Court, 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986).


⁵Id.

Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order of contempt.⁶

It is so ORDERED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Bruce I. Shapiro, Ltd.
Mark A. Jenkin
Clark County Clerk

⁶Having reviewed the remaining issues, we conclude they lack merit.