

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 22 2020 04:53 p.m.

Elizabeth A. Brown

Clerk of Supreme Court

EDWARD N. DETWILER, an
individual,

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR CLARK
COUNTY; THE HONORABLE
RICHARD SCOTTI, DISTRICT
JUDGE, DEPT. 2,

Respondent,

and

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Real Party in Interest.

Supreme Court Case No.

District Court Case No.: A-17-760779-F

**PETITION FOR WRIT OF
MANDAMUS OR PROHIBITION**

Hutchison & Steffen

Mark A. Hutchison, Esq.

Nevada Bar No. 4639

Michael K. Wall, Esq.

Nevada Bar No. 2098

Brenoch Wirthlin, Esq.

Nevada Bar No. 10282

10080 W. Alta Dr., Suite 200

Las Vegas, Nevada 89145

Phone: (702) 385-2500

bwirthlin@hutchlegal.com

Attorneys for Petitioner, Edward N. Detwiler

NRCP 26.1 DISCLOSURE

Counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

Petitioner/Non-Party Edward N. Detwiler is an individual.

Petitioner is represented by Michael K. Wall, Esq. and Brenoch Wirthlin, Esq. at Hutchison & Steffen.

DATED: May 22, 2020.

HUTCHISON & STEFFEN

By /s/ Brenoch Wirthlin, Esq.

Mark A. Hutchison, Esq.

Nevada Bar No. 4639

Michael K. Wall, Esq.

Nevada Bar No. 2098

Brenoch Wirthlin, Esq.

Nevada Bar No. 10282

10080 W. Alta Dr., Suite 200

Las Vegas, Nevada 89145

Phone: (702) 385-2500

Attorneys for Petitioner

ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding because it raises as a principal issue questions of first impression involving the U.S. Constitution, Nevada Constitution and/or common law. NRAP 17(a)(11). Moreover, this Court should retain this writ proceeding because it raises as a principal issue questions of statewide public importance. NRAP 17(a)(12). In particular, this matter directly concerns Petitioner Edward N. Detwiler's ("Detwiler") due process rights, available to him under the U.S. Constitution, Nevada Constitution and Nevada law.

This matter specifically addresses due process and constitutional concerns associated with the Trial Court: (1) excluding Detwiler from a contempt trial against him, thereby prohibiting Detwiler from confronting his accuser and cross-examining adverse witnesses; (2) refusing to recuse himself from the contempt proceedings after Detwiler filed his NRS 22.030(3) objection; (3) issuing criminal sanctions against Detwiler when he was not notified of the potential for criminal sanctions, and which sanctions were issued without separate notice, hearing and opportunity to be heard on a criminal charge; (4) issuing a sanction in excess of the \$500.00 maximum limit allowable under NRS 22.100(2); (5) awarding attorneys' fees and costs that were specifically not incurred as a result of any purported contempt; and (6) awarding attorneys' fees and costs under EDCR 7.60(b)(5), which only allows

sanctions against a party, not against a non-party (*i.e.*, Detwiler).

TABLE OF CONTENTS

	Page
NRCP 26.1 DISCLOSURE	i
ROUTING STATEMENT.....	ii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	vii
I. INTRODUCTION AND RELIEF SOUGHT	1
A. Relief Sought by this Writ Petition	6
II. ISSUES PRESENTED	7
III. FACTUAL AND PROCEDURAL BACKGROUND	8
A. Underlying Case and Identity of BBNB	8
B. BBNB attempts to collect on the Foust Judgment	8
C. 2018 Evidentiary Hearing and resulting January 2019 Order.....	10
D. Order to show cause seeking civil sanctions.....	15
E. Contempt Trial and exclusion of Detwiler.....	17
F. June 2019 Foust Contempt Order	25
G. BBNB decides to pursue Detwiler	29
IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE.....	38
A. Standard of Review	38

B.	The Trial Court erred in refusing to recuse itself after and over Detwiler’s NRS 22.030(3) Objection.....	40
C.	Detwiler’s Constitutional and due process rights were violated as he was excluded from the Contempt Trial, prevented from hearing witnesses against him, and not provided the opportunity to confront or cross-examine adverse witnesses	42
D.	The Trial Court violated Detwiler’s rights in issuing criminal sanctions without a separate notice or opportunity to be heard	45
E.	Detwiler’s Constitutional criminal protections were violated	48
F.	The Trial Court issued criminal sanctions based upon a standard less than beyond a reasonable doubt	50
G.	The January 2019 Order, and the Detwiler Contempt Order, are ambiguous and judicial estoppel applies.....	51
H.	The Writ should issue based on additional, troubling errors by the Trial Court.....	53
1.	The sanctions otherwise violate Nevada law	53
a.	\$100,000.00 sanction is 200 times the maximum limit allowed by NRS 22.100(2)	54
b.	The Trial Court sanctioned a non-party (Detwiler) as a party under EDCR 7.60(b) as an end-run around the maximum fine allowed by law.....	55
c.	The award of attorneys’ fees and costs were improper	56
d.	Violation of Callie v. Bowling	57
e.	Baker Boyer National Bank, a Washington Corporation does not exist and Judgment entered in its favor is considered to be a nullity	58
V.	CONCLUSION	59

CERTIFICATE OF COMPLIANCE.....	61
VERIFICATION	62
CERTIFICATE OF SERVICE.....	63

TABLE OF AUTHORITIES

<u>Cases</u>	Page(s)
<i>Aetna Ins. Co. v. Kennedy</i> , 301 U.S. 389 (1937).	43
<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965)	49
<i>Awad v. Wright</i> , 794 P.2d 713, 106 Nev. 407 (1990)	passim
<i>Badger v. Eighth Judicial Dist. Court</i> , 132 Nev. Adv. Op. 39, 373 P.3d 89 (2016)	39
<i>Causey v. Carpenters S. Nevada Vacation Tr.</i> , 95 Nev. 609, 600 P.2d 244 (1979)	58
<i>Callie v. Bowling</i> , 123 Nev. 181, 160 P.3d 878 (2007)	57
<i>Cooke v. United States</i> , 267 U.S. 517, 537, 45 S.Ct. 390, 69 L.Ed. 767 (1925)	47
<i>Del Papa v. Steffen</i> , 915 P. 2d 245 (Nev. 1996)	54
<i>Evitts v. Lucey</i> , 469 US 387 (1985)	44
<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972)	43, 49
<i>Garaventa Land & Livestock Co. v. Second Judicial Dist. Court</i> , 61 Nev. 350, 128 P.2d 266 (1942)	55
<i>Garland Family Trust v. Melton</i> , 2020 WL 1531769 (March 2020)	58

<i>Givens v. State</i> , 99 Nev. 50, 657 P.2d 97 (1983)	44
<i>Gumm v. Mainor</i> , 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002)	39
<i>Heglemeier v. State</i> , 878 P. 2d 294 (Nev. 1994)	44
<i>Hicks v. Feiock</i> , 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988)	46, 47
<i>Jackson v. State</i> , 128 Nev. 598, 291 P.3d 1274 (2012)	38, 49
<i>Kellar v. Eighth Judicial Dist. Court</i> , 470 P. 2d 434 (Nev. 1970)	50
<i>Lee v. GNLV Corp.</i> , 116 Nev. 424, 996 P.2d 416 (2000)	39
<i>Lewis v. Lewis</i> , 132 Nev. Adv. Op. 46, 373 P.3d 878 (2016).....	37, 38, 48, 59
<i>Mayfield v. Koroghli</i> , 124 Nev. 343, 184 P.3d 362 (2008)	56, 57
<i>McCormick v. The Sixth Judicial Court</i> , 67 Nev. 318, 218 P.2d 939 (1950)	40, 41
<i>Mine Workers v. Bagwell</i> , 512 U.S. 821, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994)	47
<i>MountainView Hosp., Inc. v. Eighth Judicial Dist. Court</i> , 128 Nev. 180, 273 P.3d 861 (2012)	38
<i>NOLM, LLC v. County of Clark</i> , 120 Nev. 736, 100 P.3d 658 (2004)	53

<i>Ohio Bell Tel. Co. v. Public Utilities Comm’n</i> , 301 U.S. 292 (1937)	43
<i>Pengilly v. Rancho Santa Fe Homeowners Association</i> , 116 Nev. 646, 649, 5 P.3d 569, 571 (2000)	39
<i>Smith v. Baca</i> , No. 314CV00512MMDCLB, 2020 WL 376651, at *15 (D. Nev. Jan. 23, 2020)	44
<i>So. California Edison v. First Jud. Dist. Ct.</i> , 255 P. 3d 231 (Nev. 2011)	53
<i>Southwest Gas Corp. v. Flintkote Co.</i> , 99 Nev. 127, 659 P.2d 861 (1983)	52
<i>State, Dep’t of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese</i> , 112 Nev. 851, 919 P.2d 1067 (1996)	56, 57
<i>Talancon v. State</i> , 102 Nev. 294, 721 P.2d 764 (1986)	44
<i>Turner v. Rogers</i> , 564 US 431 (2011)	46
<i>Valley Bank of Nevada v. Ginsburg</i> , 110 Nev. 440, 874 P.2d 729 (1994)	55
<i>Warner v. District Court</i> , 906 P. 2d 707, 111 Nev. 1379 (1995)	passim
<i>W.T. Grant Co. v. Haines</i> , 531 F.2d 671 (2d Cir.1976)	45
<i>Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court</i> , 133 Nev. Adv. Op. No. 52, 399 P.3d 334 (2017)	38, 55

Statutes

NRS 22.030(3)	passim
---------------------	--------

NRS 22.100(2)	passim
NRS 22.100(3).....	56
NRS 50.155(2)(a)	5, 43
NRS 50.155(2)(d)	5, 43
NRS 171.204(1)(g)	5, 43
NRS 193.150(1)	46, 54, 55
NRS 199.340(4)	46, 53, 54

Other Authorities

EDCR 7.60(b).....	5, 46, 54, 55, 56
Nevada Constitution, Article 1 § 3	6, 40, 48
Nevada Constitution, Article 1 § 8(1)	6, 40, 48
Nevada Constitution, Article 1 § 8(2)	6, 40, 48, 49
Nev. R. App. P. 3A(b)(1).....	39
Nev. R. App. P. 3A(b)(8).....	39
Nev. R. App. P. 28(e)	61
Nev. R. App. P. 32(a)(7)(A)(ii)	61
NRCP 60(b)	passim
NRPC Rule 4.3	45
U.S. Constitution, 5th Amendment	4, 6, 40, 48, 49
U.S. Constitution, 6th Amendment	4, 6, 40, 48, 49

U.S. Constitution, 14th Amendment	4, 6, 40, 48, 49
---	------------------

I. INTRODUCTION AND RELIEF SOUGHT¹

Petitioner Edward N. Detwiler (“Petitioner” or “Detwiler”) respectfully requests this Court issue a writ of mandamus or prohibition to the trial court, Honorable Richard Scotti, reversing and vacating the contempt Judgment at issue against Detwiler in its entirety.

The underlying case, case no: A-17-760779-F (“Underlying Case”), began on August 31, 2017 when an entity calling itself “Baker Boyer National Bank, a Washington Corporation” (“BBNB”), filed an application to enforce a foreign judgment against the underlying defendant/debtor, James Patterson Foust, Jr. (“Foust Judgment”). There is no entity named “Baker Boyer National Bank, a Washington Corporation.” It does not exist. There is a bank known as “The Baker Boyer National Bank of Walla Walla.” However, that is not the entity that filed the Underlying Case.

The fight below was between BBNB and Foust over some vehicles (“Subject Vehicles”) Foust allegedly had represented he possessed, and offered as security for a loan he obtained from BBNB. BBNB sought their turnover to satisfy the Foust Judgment. Foust asserted the Subject Vehicles were owned or possessed by a company of which he was at one time an owner and manager, a Montana limited liability company known as Harry Hildibrand, LLC, (“HH”). Detwiler became

¹ Citations to the appellate record are as follows: “Appx. Vol. [#], at PA[#].”

involved because he was, at one time, a manager of HH, although his role was limited to real estate aspects of HH.

After an evidentiary hearing in late 2018, BBNB obtained an order in January, 2019. The January 2019, Order unequivocally found that Foust owned, possessed and controlled the Subject Vehicles, and controlled HH. The January 2019 Order also found that any purported transfers of the Subject Vehicles to HH or anyone else were fraudulent and void *ab initio*. Confusingly, despite these findings, the January 2019, Order directed Foust and HH (including its managers and agents, including Detwiler) to turn over the Subject Vehicles. The January 2019 Order did not clarify how it contemplated Detwiler turning over vehicles the Trial Court had found were owned, possessed and controlled by Foust.

Detwiler never had possession of the Subject Vehicles, and was unable to turn them over to BBNB. Detwiler did contact Foust and tell him to comply with the Trial Court's order. Foust did not.

Subsequently, BBNB applied for and obtained an order to show cause why “defendants”—defined to include Foust and HH—should not be held in civil contempt. Detwiler appeared at the civil contempt trial (“Contempt Trial”) without counsel. Despite the possibility of civil sanctions against Detwiler personally, upon the request of BBNB's counsel, the Trial Court excluded Detwiler from the majority of Foust's testimony, during which Foust put the blame on HH – and by extension,

Detwiler – for not turning over the Subject Vehicles. Detwiler was also not provided with a declaration filed by Foust in which he stated that HH owned the Subject Vehicles, nor was Detwiler provided an opportunity to cross-examine Foust as to his allegations against him.

In June, 2019, the Trial Court issued a contempt order against Foust (“Foust Contempt Order”), again reiterating and incorporating all findings from the January 2019 Order that Foust owned, possessed and controlled the Subject Vehicles, and owned and controlled HH.

BBNB had difficulty finding Foust. It then turned its sights on the low-hanging fruit: Detwiler. Unlike Foust, Detwiler had obeyed all court orders to appear and testify.

However, Detwiler had resigned as manager of HH in September, 2019. Despite counsel for BBNB and the Trial Court being made aware of this fact, BBNB sought and obtained – over objection of counsel on behalf of Detwiler to the Trial Court presiding over further proceedings pursuant to NRS 22.030(3) (“Objection”) – an order of contempt against Detwiler (“Detwiler Contempt Order”). Strangely, despite all of the findings in the January 2019 Order and reiterated by the Trial Court in the Foust Contempt Order that Foust owned, controlled and possessed the Subject Vehicles and HH, the Detwiler Contempt Order now found that Detwiler controlled HH and the Subject Vehicles. The Detwiler Contempt Order also inconsistently

found that somehow Detwiler had the ability to turn the Subject Vehicles over to the Bank, including one of the Subject Vehicles the bank had already repossessed, and four others which the Trial Court had previously found were not the proper subject of a contempt citation. The Trial Court also issued a warrant for Detwiler's arrest and indefinite imprisonment until he turned over all 20 Subject Vehicles, even the one that had already been repossessed by BBNB.

Through counsel, Detwiler filed a Rule 60(b) motion, arguing that he had resigned as manager of HH in September, 2019. The Trial Court vacated the civil contempt findings and recalled the warrant against Detwiler. However, the Trial Court made additional findings (over the Objection) that Detwiler should be sanctioned an unconditional amount of \$100,000 as punishment for his allegedly contemptuous violation of the January 2019 Order, as well as an additional \$218,855.52 in fees and costs. The order punishing Detwiler for this alleged contempt was unconditional and contained no purge clause, thereby constituting a criminal sanction.

The Trial Court violated Detwiler's constitutional and due process rights and committed multiple errors warranting issuance of the requested writ.² Not only was

² Detwiler asserts violations of his constitutional and due process rights afforded to him under the following: U.S. Constitution, 5th, 6th and 14th Amendments; Nevada Constitution, at Article 1, §§ 3, 8(1) and 8(2); *Awad v. Wright*, 794 P.2d 713, 716, 106 Nev. 407, ___ (1990); and *Warner v. District Court*, 906 P. 2d 707, 111 Nev. 1379 (1995). Additionally, in conjunction with the Trial Court violating such rights,

Detwiler excluded from the Contempt Trial,³ but as a result of his exclusion, Detwiler was not afforded his due process rights to confront and cross-examine adverse witnesses. *Awad v. Wright*, 794 P.2d 713, 716, 106 Nev. 407, ____ (1990). Additionally, contrary to NRS 22.030(3) and the standing in *Awad* (requiring automatic recusal upon filing of an NRS 22.030(3) Objection), the Trial Court committed a substantial error by refusing to recuse itself from the contempt proceedings after Detwiler timely filed his Objection,⁴ which occurred prior to the Detwiler Contempt Order ever being entered. *Awad*, 794 P.2d at 715.

Further, while the original Detwiler Contempt Order was conditional, indeterminate and civil in nature, the Trial Court vacated its finding of civil contempt and instead issued a punitive, unconditional and determinate sanction of \$100,000.00 - 200 times the maximum allowable fine under NRS 22.100(2) – along with attorneys’ fees and costs in excess of \$218,000.00, which constitutes criminal sanctions.⁵ *Warner v. District Court*, 906 P. 2d 707, 709, 111 Nev. 1379 (1995).

Detwiler was provided no proper notice or opportunity to be heard on any

the Trial Court committed errors, warranting issuance of the requested writ, in violating NRS 50.155(2)(a) & (d), NRS 171.204(1)(g), NRS 22.030(3), NRS 22.100(2) & (3) and EDCR 7.60(b).

³ Appx. Vol. II, at PA00347, ll. 8-18. This not only is this a violation of Detwiler’s due process rights, but also violates NRS 50.155(2)(a) & (d) and NRS 171.204(1)(g).

⁴ Appx. Vol. III, at PA00676-PA00677.

⁵ Appx. Vol. III, at PA00688-PA00707; Appx Vol. IV, at PA00875-P00882 and PA00950-PA00955.

criminal charge, nor even given notice that criminal sanctions were possible, further exacerbating the Trial Court's violations of Detwiler's due process rights afforded to him under the U.S. and Nevada Constitutions. *Id.*; U.S. Constitution, 5th, 6th and 14th Amendments; Nevada Constitution, at Article 1, §§ 3, 8(1) and 8(2).

A. Relief Sought by this Writ Petition.

The January 2019, Order was ambiguous. Since BBNB did not know who owned or possessed the Subject Vehicles, it ordered multiple parties to turn them over, even though it found that Foust owned, possessed and controlled them. In addition, the Trial Court's violations of Detwiler's due process and Constitutional rights are numerous and severe. The Trial Court committed multiple additional errors warranting issuance of the requested writ, as set forth above and herein. Detwiler respectfully requests this Court issue a writ of mandamus or prohibition, to the Trial Court requiring it to vacate the contempt Judgment in its entirety.

Alternatively, this Court should issue a writ of mandamus compelling: (1) the Trial Court to immediately recuse itself and assign the civil contempt proceedings to a new Trial Court Judge as required by Detwiler's objection under NRS 22.030(3) ("Objection"); and (2) the new Trial Court Judge to set a briefing schedule and hearing to determine whether or not all charges against Detwiler should be dismissed, based upon the ambiguity of the January 2019 Order and other defenses that may be raised by Detwiler.

II. ISSUES PRESENTED

1. Did the January 2019 Order contain unambiguous terms so that Detwiler would readily know exactly what duties or obligations are imposed on him?
2. Did the Trial Court's exclusion of Detwiler from the Contempt Trial against him warrant issuance of the writ requested herein?
3. Did the Trial Court's issuance of unconditional and determinate, criminal sanctions against Detwiler without a separate notice and a hearing violate Detwiler's constitutional and due process rights?
4. Given that the plaintiff in the underlying action is a non-existent entity, is the judgment at issue against Detwiler a nullity?
5. Did the Trial Court commit error warranting issuance of the requested writ when it refused to recuse itself after Detwiler filed his Objection pursuant to NRS 22.030(3)?
6. Did the Trial Court violate NRS 22.100(2) when it imposed a sanction, in excess of the \$500.00 maximum limit allowed by NRS 22.100(2)?
7. Was the award of attorneys' fees and costs, including the portion in excess of \$118,000 which was incurred prior to the existence of any order requiring Detwiler to take any action, improper?

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Underlying Case and Identity of BBNB

1. The underlying case, case no: A-17-760779-F, began on August 31, 2017, when an entity calling itself “Baker Boyer National Bank, a Washington Corporation” (“BBNB”), filed an application to enforce a foreign judgment against the underlying defendant/debtor, James Patterson Foust, Jr. (“Foust”).⁶

2. There is no Washington corporation named “Baker Boyer National Bank, a Washington Corporation.” It does not exist. There is a bank known as “The Baker Boyer National Bank of Walla Walla.”⁷ However, that is not a Washington corporation, nor is it the entity that filed the Underlying Case.

3. BBNB purportedly domesticated its judgment against Foust (“Foust Judgment”) in August, 2017 (“Domestication”).

B. BBNB attempts to collect on the Foust Judgment

4. According to BBNB, Foust had obtained a loan from BBNB by representing that he had a collection of approximately 59 classic cars (the “Classic Cars”).⁸

5. Foust was a manager and/or member of an entity known as Harry

⁶ Appx. Vol. I, at PA00001-PA00024.

⁷ See charter for “The Baker Boyer National Bank of Walla Walla” (Appx. Vol. IV, at PA00960); *see also* Washington Secretary of State’s Certificates of No Record (Appx. Vol. IV, at PA00989 and PA00991).

⁸ Appx. Vol. I, at PA00027-PA00028 and PA00053-PA00054.

Hildibrand, LLC, a Montana limited liability company (referred to herein as “HH”).⁹

6. Petitioner, Detwiler, was also a manager of HH at one time, although he had no involvement with Foust’s loan, the Classic Cars, or otherwise.¹⁰ Detwiler is a real estate broker and was brought in as a manager of HH solely to help develop the real estate aspect of HH.¹¹

7. After the Domestication, BBNB sought turnover of the Classic Cars from Foust.¹²

8. One of the Classic Cars was a 1998 Marathon Motorcoach alleged to be worth \$129,875 (“Motorcoach”).¹³

9. HH moved to intervene in the Underlying Case because it alleged that it had an interest in the Motorcoach so it should not be turned over to BBNB.¹⁴

10. Subsequently, HH filed a bankruptcy petition, attempting to prevent BBNB from obtaining the Motorcoach (“Bankruptcy”).¹⁵

11. As part of the Bankruptcy, Detwiler was asked by HH to attend the 341 meeting of creditors along with HH’s attorney, Jim Lezei (“Lezei”).¹⁶

⁹ Appx. Vol. I, at PA00099.

¹⁰ Appx. Vol. I, at PA00111, PA00119 and PA00144.

¹¹ *Id.*

¹² Appx. Vol. I, at PA00025-PA00061

¹³ Appx. Vol. I, at PA00220.

¹⁴ Appx. Vol. I, at PA00108-PA00174.

¹⁵ Appx. Vol. I, at PA00197-PA00198.

¹⁶ Appx. Vol. I, at PA00199.

12. At the meeting, Lezei – not Detwiler – testified that twenty of the Classic Cars (a subset of the Classic Cars referred to as the “Subject Vehicles”), were located at a warehouse in California.¹⁷ Lezei also asserted that HH had an ownership interest in the Subject Vehicles.¹⁸

13. Detwiler stated that he had seen some vehicles in a warehouse on one occasion; however, he was unaware whether the vehicles he saw were the Subject Vehicles.¹⁹

14. On April 16, 2018, an order was entered denying HH’s motion to intervene. BBNB was permitted to repossess the Motorcoach.²⁰

15. HH’s Bankruptcy was dismissed.

C. 2018 Evidentiary Hearing and resulting January 2019 Order

16. In March, 2018, the Trial Court issued an order requiring Foust to turn over the Classic Cars to BBNB.²¹

17. Foust claimed that some of the Classic Cars, including some of the Subject Vehicles, had been transferred to HH.²² Foust also claimed that some of the Subject Vehicles were subject to a security interest by a Wyoming entity named

¹⁷ Appx. Vol. I, at PA00198-PA00199.

¹⁸ *Id.*

¹⁹ Appx. Vol. I, at PA00206-208.

²⁰ Appx. Vol. I, at PA00187-PA00192.

²¹ Appx. Vol. I, at PA00096-107.

²² *See* Motion for Order Requiring Judgment Debtor to Deliver Possession of Classic Car Collection, opposition and reply. Appx. Vol. I, at PA00025-PA00089.

StarDust Classic, LLC (“StarDust”).²³ Therefore, Foust asserted he could not turn over the Subject Vehicles.²⁴

18. The Trial Court held an evidentiary hearing on this issue in late 2018 (“2018 Evidentiary Hearing”).

19. At the hearing, BBNB submitted substantial evidence that the Subject Vehicles were owned, possessed and controlled by Foust. As a result of the 2018 Evidentiary hearing and based upon said evidence, the Trial Court issued an order in January, 2019 (“January 2019 Order”).²⁵

20. In the January 2019 Order, the Trial Court specifically found that “Foust and his wife and daughters have possession of and use three Mercedes and a GMC Yukon that HH claimed to own in its bankruptcy schedules. **As for the balance of the 20 cars HH claims in its bankruptcy [i.e. the Subject Vehicles], Foust controls them because he owns HH and StarDust Classic. Someone must control these cars.**”²⁶

21. The January 2019 Order also acknowledged that the Trial Court had previously “ruled that Foust owned HH”.²⁷ Further, as part of the January 2019 Order, the Court found that HH had “claimed repeatedly that a company called

²³ *Id.*

²⁴ *Id.*

²⁵ Appx. Vol. I, at PA00193-PA00220.

²⁶ Appx. Vol. I, at PA00206 (Emphasis added).

²⁷ Appx. Vol. I, at PA00194.

StarDust Classic, LLC was its [meaning HH's] sole member and owner. Foust owns and/or controls StarDust Classic, so he owns HH.”²⁸

22. The January 2019 Order made clear that HH did not own any of the Subject Vehicles. The Trial Court held as follows

HH claims in bankruptcy schedules to own 20 of these cars [*i.e.* the Subject Vehicles]. **Neither Foust nor HH (sometimes collectively the “defense” or the “defendants”) offered any documentary evidence – such as car titles, contracts for sale, or evidence of payment – showing any legitimate sale of cars by Foust to HH.** Defendants could not even say what the purchase price for these alleged sales was. Additionally, **even if some bare transfer of title did occur, it was fraudulent and voidable.**²⁹

23. The Trial Court then reiterated in the January 2019 Order that all of the Subject Vehicles were owned and controlled by Foust:

51. **The only actual evidence before this Court conclusively provides that Foust continues to own and control all the cars mentioned on any list, and certainly those HH claimed to own in the bankruptcy.**

59. ... If HH really owned these cars, then HH would be paying these costs, not Foust.

61. ... This Court believes that if HH really owned these cars, then HH would be paying the registration costs and attorney fees, not Foust.

62. ... even assuming for the sake of argument that a transfer of the 20 cars that HH identifies in its bankruptcy schedules (Exhibit B) [*i.e.* the Subject Vehicles] did occur, **there is clear and convincing evidence that such a sale is a voidable,**

²⁸ *Id.*

²⁹ Appx. Vol. I, at PA00195 (emphasis added).

fraudulent transfer.

63. ... Foust transferred the 20 cars identified in the HH bankruptcy [*i.e.* the Subject Vehicles] to himself **because Foust owns and controls HH.**

64. At the Prior Hearing, this Court rejected Foust's claim that he divested himself of any interest in HH because, on the one hand, he "produced no documentary evidence of this alleged divestment" while, on the other hand, and [*sic*] this Court received evidence of official corporate filings and annual reports generated by the Montana Secretary of State **showing that Foust was "the sole member and/or manager for Harry Hildibrand, LLC."** ...

67. **The evidence is uncontroverted and overwhelming that Foust "retained possession or control of the property transferred [*i.e.* the Subject Vehicles] after the transfer."** See NRS 112.180(2)(b). Foust and Detwiler admitted in their depositions that Foust and his wife and daughters have possession of and use three Mercedes and a GMC Yukon that HH claimed to own in its bankruptcy schedules. **As for the balance of the 20 cars HH claims in its bankruptcy [*i.e.* the Subject Vehicles], Foust controls them because he owns HH and StarDust Classic. Someone must control these cars.**³⁰

24. In the Conclusions of Law and Final Judgment section of the January 2019 Order, the Trial Court again made clear that Foust owned, possessed and controlled the Subject Vehicles:

17. The Plaintiff has offered substantial and credible evidence showing that **Foust still owns, possesses, and controls the cars in question, including especially the four cars he openly admits he and his family use (the three Mercedes and the 200 GMC Yukon) and the 20 cars that HH claims to own in the**

³⁰ Appx. Vol. I, at PA00203-PA00206.

bankruptcy [i.e. the Subject Vehicles].”

18. **Foust is the owner of all cars over which HH claims an interest, including those cars identified in the bankruptcy (Exhibit B).**

19. **Foust is the owner of all cars over which StarDust Classic claims an interest, including those cars identified in the bankruptcy (Exhibit B).**

20. Foust is the owner of all of the cars that HH contends or has contended that it obtained from Foust and transferred to some third parties.

21. Foust is the owner of all cars, believed to number 59 (Exhibit A), which he owned or claimed to own at the time he became indebted to Bank, and/or which he contends or has contended were transferred by him to some third parties or party.

23. ... **The alleged sale of cars by Foust to HH is a scam and a fraudulent transfer.**

24. **Any alleged sale or transfer of the 20 cars that HH still claims to own (Exhibit B) is void *ab initio* and is of no effect whatsoever ...**³¹

25. Despite such unequivocal findings that Foust “owns, possesses and controls” all the Subject Vehicles, the Court ordered as follows:

29. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Detwiler and StarDust Classic and any of its agents) are ordered on penalty of contempt, to deliver up, surrender possession of, and turn over to the Plaintiff promptly...all cars identified in Exhibits A and B, with any cost or expense involved in delivery to the Plaintiff to be borne by Foust and/or HH.³²

³¹ Appx. Vol. I, at PA00213-PA00214.

³² *Id.*

26. The vehicles listed in Exhibit A to the June 2019 Order were the 59 Classic Cars.³³

27. The vehicles listed in Exhibit B to the June 2019 Order were the 20 Subject Vehicles. The vehicles listed in Exhibit B were the Subject Vehicles, which were a subset of twenty of the Classic Cars.³⁴ The Subject Vehicles included the Motorcoach, which was purportedly valued at \$129,875.³⁵ The total value of the Subject Vehicles was alleged to be \$521,575.³⁶

D. Order to show cause seeking civil sanctions.

28. Foust did not turn over the Subject Vehicles to BBNB.

29. Detwiler could not turn over the Subject Vehicles which the Trial Court found in the January 2019 Order were “owned, possessed and controlled” by Foust.

30. On February 21, 2019, BBNB filed an “Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt” (“Application”).³⁷

31. The Application, however, was unclear as to who the term “defendants” included. The first time the term “defendants” was defined in the Application was in footnote 1 (“Footnote 1”) on page 2 of the Application. The Application stated that “[i]n particular, the Court ordered the defendants [Footnote 1] to turn over the

³³ Appx. Vol. I, at PA00216-PA00218.

³⁴ Appx. Vol. I, at PA00219-PA00220.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Appx. Vol. I, at PA00221-PA00238.

vehicles to the Bank.”³⁸ Footnote 1 then stated that “Foust and HH are sometimes collectively referred to as the defendants or the defense.” Detwiler was not mentioned in this definition.

32. Confusingly, the Application sought “an order to show cause why the defendants, particularly Foust and Detwiler (HH’s manager), should not be held in contempt for their obstinate refusal to comply with this Court’s clear judgment and order [*i.e.* the January 2019 Order].”³⁹

33. The Application sought only civil contempt sanctions.⁴⁰

34. Specifically, the Application requested “an order to show cause why the defendants should not be held in civil contempt” and requested the order contain a purge clause:

If the defendants refuse to turn over the vehicles by an outside deadline ordered by this Court, the Court should then issue warrants for the imprisonment of Foust and Detwiler, with a purge clause that permits the contemnors’ release upon transfer of the vehicles. Specifically, Foust ought to be imprisoned until the four vehicles he and his family members possess and the 20 vehicles mentioned in the bankruptcy are turned over to the Bank; Detwiler ought to be imprisoned until the 20 vehicles mentioned in the bankruptcy are turned over.⁴¹

35. On February 21, 2019, the Trial Court issued an “Order to Show Cause

³⁸ *Id.*

³⁹ Appx. Vol. I, at PA00222.

⁴⁰ Appx. Vol. I, PA00221-PA00238, at p. 1 (*i.e.*, caption), along with 3:1-4, 6:2, 7:19-27, 9:14-17, 9:21-27 and 10:21-22.

⁴¹ Appx. Vol. I, at PA00223.

Why Defendants Should Not Be Held in Civil Contempt” (“OSC”).⁴²

36. The OSC required “defendants” to “appear and show cause why you should not be held in civil contempt for failing to comply with this Court’s January 9, 2019 ‘Findings of Fact, Conclusions of Law, and Judgment,’ and especially the order therein requiring Foust Harry Hildibrand, LLC [*sic*] and their agents (including Detwiler, Harry Hildibrand LLC’s manager) to turn over vehicles to the Bank.”⁴³

E. Contempt Trial and exclusion of Detwiler.

37. The contempt trial against Detwiler and Foust took place through a series of evidentiary hearings held on April 1, 2019 (“April 1, 2019 Hearing”), April 24, 2019 (“April 24, 2019 Hearing”), May 17, 2019 (“May 17, 2019 Hearing”) and May 21, 2019 (“May 21, 2019 Hearing” and collectively the “Contempt Trial”).

38. The Contempt Trial began on April 1, 2019 with BBNB beginning the direct examination of Foust.⁴⁴ Neither BBNB nor any other party to the proceedings attempted to invoke the exclusionary rule prior to the commencement of Foust’s examination.⁴⁵

39. Foust’s direct examination was not complete on April 1, 2019, and the Court stopped the testimony for the day.⁴⁶

⁴² Appx. Vol. I, at PA00239-PA00240.

⁴³ *Id.*

⁴⁴ Appx. Vol. I/II, at PA00241-PA00310.

⁴⁵ *Id.*

⁴⁶ *Id.*

40. At the April 1, 2019 Hearing, counsel for BBNB acknowledged that his client BBNB had “possession of the motor coach for over a year.”⁴⁷

41. Further, the Trial Court clarified at the April 1, 2019 Hearing that the only vehicles at issue were the Subject Vehicles, stating that “[t]he 20 is a subset of the 59”.⁴⁸

42. At the end of the April 1, 2019 Hearing, the Trial Court acknowledged Detwiler’s attendance at the hearing that day, and ordered the Contempt Trial continued.⁴⁹

43. At the April 24, 2019 Hearing, Foust’s counsel was present to state that his client, Foust, would not be able to attend that day. The Trial Court continued the Contempt Trial to May 17, 2019.⁵⁰

44. At no point during this discussion did the Trial Court make Detwiler aware that he could be personally subject to sanctions for alleged civil contempt.⁵¹

45. At the May 17, 2019 Hearing, Foust’s counsel again appeared to state that his client, Foust, would not be present at the hearing.⁵²

46. Also at the May 17, 2019 Hearing, for the first time BBNB raised the

⁴⁷ *Id.*, at p. 62, ll. 5-7.

⁴⁸ *Id.*, at p. 59, 14-16.

⁴⁹ *Id.*

⁵⁰ Appx. Vol. II, PA00318-PA00334.

⁵¹ *Id.* generally.

⁵² Appx. Vol. II, PA00335-PA00392.

“witness exclusion rule.”⁵³ The Trial Court stated that “the exclusionary rule should apply” and stated that the Trial Court was going to “require that one witness be out of the room when the other witness is being exempt.”⁵⁴

47. The Trial Court then ordered that Detwiler take the stand and testify, while Foust’s counsel, Michael Mazur, was permitted to remain and was even allowed to question Detwiler.⁵⁵

48. Detwiler testified that he had no access to the Subject Vehicles, and that his role as a manager of HH was limited to being “involved in real estate.”⁵⁶ He stated that he also knew “nothing about the operations” of HH and had no financial interest in the company.⁵⁷

49. BBNB’s counsel was allowed to cross-examine Detwiler. On cross-examination, BBNB’s counsel asked Detwiler if he had “called anyone to say that the Court is ordering these vehicles delivered?”⁵⁸ In response, Detwiler confirmed that he had, but had “gotten no response.”⁵⁹ The Trial Court itself acknowledged that Detwiler had been held out to “take the fall.”⁶⁰

⁵³ *Id.* at p. 12.

⁵⁴ *Id.* at p. 13, ll. 8-13.

⁵⁵ *Id.* at p. 17, ll. 10-25.

⁵⁶ *Id.* at p. 19, ll. 11-19 – p. 20, ll. 21.

⁵⁷ *Id.*

⁵⁸ *Id.* at p. 33, l. 5 – p. 34, l. 6.

⁵⁹ *Id.*

⁶⁰ *Id.*

50. At no time did the Court state that Detwiler could be subject to criminal sanctions.

51. The Trial Court then continued the hearing to May 21, 2019.⁶¹

52. At the May 21, 2019 Hearing, the Trial Court again imposed the exclusionary rule, and instructed Foust to leave the courtroom.⁶² However, Foust's counsel was free to remain in the courtroom to hear Detwiler's testimony.⁶³

53. Detwiler was then again put on the stand and cross-examined by BBNB's attorney, with Foust's counsel, Mr. Mazur, permitted to observe and hear Detwiler's testimony.

54. During his testimony, Detwiler stated that he had called Foust "over the weekend" to try to get Foust to comply with the Court's January 2019 Order, but that he himself had no ability to turn over the Subject Vehicles.⁶⁴

55. At that point, Foust's counsel stated that Foust was going to call Detwiler as a witness. The Trial Court ordered Detwiler out of the courtroom because the exclusionary rule was invoked, despite having permitted Foust's counsel to remain in the courtroom during Detwiler's testimony, and even to question Detwiler.⁶⁵

⁶¹ *Id.* at p. 58.

⁶² Appx. Vol. II, PA00393-PA00413, at p. 4.

⁶³ *Id.*

⁶⁴ *Id.* at pp. 18-20.

⁶⁵ Appx. Vol. II/III, PA00414-PA00520, at p. 5.

56. Unbeknownst to Detwiler, prior to the May 27, 2019 Hearing, Foust had filed a Declaration of James Patterson Foust, Jr. on April 8, 2019 (“Foust Declaration”).⁶⁶

57. In the Foust Declaration, Foust set forth allegations as to the location of each of the 20 Subject Vehicles.

58. Foust’s Declaration asserted that 18 of the 20 Subject Vehicles were either registered to, or last known to be located with, HH.⁶⁷

59. Regarding the remaining two (2) Subject Vehicles, Foust’s Declaration stated that one of them was a motorcycle which was in the possession of Harry Hildibrand, Jr. (the individual), and the other was the Motorcoach which BBNB’s counsel had already confirmed was repossessed.⁶⁸

60. Inconsistently, Foust’s Declaration also states that four (4) of the 18 Subject Vehicles which Foust alleged were registered to or possessed by HH, were actually located and possessed by his ex-wife or daughter (the “Family-Controlled Vehicles”).⁶⁹

61. Foust’s Declaration also inconsistently stated that 14 of the 18 Subject Vehicles which Foust alleged were registered to or possessed by HH, were in fact

⁶⁶ Appx. Vol. II, PA00311-PA00317.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*, at items 1, 3, 6 and 7.

“subject to a security interest by StarDust Classics LLC and/or Ronald Vega” and that Mr. Vega “is either attempting to enforce its security interest or has already enforced its security interests and repossessed this vehicle.” (the “Reposessed Vehicles”).⁷⁰

62. Finally, the Foust Declaration also inconsistently stated that three (3) of the 18 Subject Vehicles which Foust alleged were registered to or possessed by HH, had in fact been sold – two of them in 2011 and one in 2016 (well before the commencement of the Underlying Case) -- to third parties (the “Sold Vehicles”).⁷¹

63. Foust’s Declaration was not served on Detwiler.⁷²

64. At no time during the Contempt Trial was Detwiler provided Foust’s Declaration, or provided an opportunity to cross-examine Foust regarding his assertions that HH owned or possessed the Subject Vehicles.⁷³

65. The Court stated that the Motorcoach could be removed from the list of 20 Subject Vehicles because it had already been repossessed.⁷⁴

66. Despite prior findings that Foust was **“the sole member and/or manager for Harry Hildibrand, LLC”**⁷⁵, Foust testified that he was not a manager

⁷⁰ *Id.*, at items 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, and 17.

⁷¹ *Id.* at items 18, 19, 20.

⁷² *Id.* (lacking a certificate of service).

⁷³ *See generally*, Transcripts of Contempt Trial.

⁷⁴ *Id.* at p. 16, l. 20 – p. 17, l. 2.

⁷⁵ Appx. Vol. I, PA00193-PA00220.

of HH.⁷⁶ Foust also testified that he did not exercise control over HH.⁷⁷

67. Foust then testified as follows:

Q. Do you know whether or not Harry Hildibrand LLC has any of the vehicles that were on the list, the 20 that were subject to today's hearing?

A. At this time, I believe that all of the vehicles belong to Harry Hildibrand. The ones that haven't – that we had just previously talked about.⁷⁸

68. Foust's counsel went through the Foust Declaration on direct examination with Foust, who confirmed the statements in the Foust Declaration.⁷⁹

69. Then, Foust again pointed the finger at HH:

BY MR. MAZUR:

Q And part of today's proceedings, orders to show cause, plaintiffs are claiming noncompliance with the court order, findings of fact, notice of entry, of findings of fact from January 10th, part of it which requires being the vehicles that Hildibrand still owns or void ab initio that you still own, but you don't – did not own any vehicles as of the time of this order?

A. No.

Q. Okay. And were you aware whether or not Hildibrand LLC owned any of the vehicles as of the date of the order?

A. I think they did, yes.⁸⁰

...

THE COURT: -- since this action? I'd like to know. Since this action was commenced –

⁷⁶ Appx. Vol. II/III, PA00414-PA00520, at p. 18, ll. 21-25.

⁷⁷ *Id.* at p. 19, ll. 13-14.

⁷⁸ *Id.* at p. 19, ll. 17-22.

⁷⁹ *Id.*

⁸⁰ *Id.* at p. 32, l. 17 – p. 33, l. 2.

MR. MAZUR: Okay.

THE COURT: -- do you know if Harry Hildibrand sold or transferred any of the vehicles that were in its name?

THE WITNESS [Foust]: I think they have, yes.

...

THE COURT: Do you know if it's any of these 20 that we're talking about now?

THE WITNESS: Not specifically. I just think that they have.

THE COURT: All right.

THE WITNESS: Certainly, the -- those Mercedes were.

THE COURT: All right. That wasn't done with your supervision or direction?

THE WITNESS: Not my supervision, no.

THE COURT: Okay. How about your direction?

THE WITNESS: No.⁸¹

70. BBNB was afforded an opportunity to cross-examine Foust. Foust's counsel was permitted redirect.⁸²

71. At no time was Detwiler informed by the Court or otherwise that Foust had testified HH owned or possessed any of the Subject Vehicles, or that Foust had testified that he (Foust) no longer managed or controlled HH. Nor did Detwiler have the chance to confront the person accusing him of not turning over the Subject Vehicles as manager of HH, or to cross-examine Foust.⁸³

72. Foust's counsel, was then permitted to examine Detwiler, knowing that Detwiler had been excluded from hearing Foust's testimony that day.⁸⁴

⁸¹ *Id.* at p. 33, l. 12 – p. 34, l. 7.

⁸² *Id.* generally.

⁸³ *Id.*

⁸⁴ *Id.*

73. Finally, Tom Larkin testified at the May 21, 2019 Hearing, and testified that at least seven of the Subject Vehicles had, in fact, been repossessed by Mr. Vega and/or StarDust.⁸⁵

74. Mr. Larkin also confirmed that Detwiler was “brought into Harry Hildibrand to facilitate real estate trades.”⁸⁶

F. June 2019 Foust Contempt Order.

75. As a result of the Contempt Trial, on June 21, 2019, the Trial Court issued its “Order for Punishment of Contempt” (“Foust Contempt Order”).⁸⁷

76. In the Foust Contempt Order the Trial Court again reiterated its findings that Foust, not HH, owned and controlled the Vehicles. In fact, the Trial Court specifically and expressly incorporated into the Foust Contempt Order “any other evidentiary findings in the January 9, 2019, Order, which is not discussed herein to support Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust.”⁸⁸

77. Thus, after all the evidentiary hearings had been completed, all the evidence received, and all testimony by Detwiler concluded, the Trial Court again reiterated its prior findings of **Foust’s “ownership and control” of the Subject**

⁸⁵ *Id.* at p. 67, l. 20 – p. 75, l. 4.

⁸⁶ *Id.* at p. 90, l. 21-23.

⁸⁷ Appx. Vol. III, at PA00521-PA00537.

⁸⁸ *Id.* at p. 6, ¶ 28.

Vehicles, as set forth in the January 2019 Order. The pertinent findings and conclusions from the Foust Contempt Order are as follows:

- As discussed herein, the Court finds that **Foust fraudulently testified to this Court that he no longer had any ownership interests in the subject vehicles.** (p. 4).⁸⁹
- The evidence presented in these proceedings to date has proved that, **at all times pertinent hereto, Foust directly and/or indirectly controlled HH.** (p. 4).⁹⁰
- **Foust has failed to provide into evidence car titles showing transfer of the subject vehicles to HH or anyone else.** (p. 6).⁹¹
- This Court further incorporates herein any other evidentiary findings in the January 9, 20 19, Order, which is not discussed herein **to support Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust.** (p. 6)⁹²
- The Court finds that, at all relevant times herein, **Foust, HH, and StarDust were and are alter egos of each other** with respect to all of the subject vehicles listed in Exhibit A. (p. 6)⁹³
- Thus, **Foust owns the Mercedes Vehicles and the Yukon either directly or indirectly through HH. Foust and HH know where the Mercedes Vehicles and the Yukon are located, and Foust has the right, ability, and duty, under the Order to locate, surrender, and deliver these four (4) vehicles to the Bank.** As a result of Foust's violation of the Order regarding each of the Mercedes Vehicles and the Yukon, Foust is in civil contempt of Court. (p. 6).⁹⁴

⁸⁹ *Id.*, at PA000524.

⁹⁰ *Id.*

⁹¹ *Id.*, at PA00526.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

- ...Foust has offered no valid reason, and indeed has no valid reason, to fail to surrender the Kawasaki, **which he owns either directly or indirectly through HH.** (p. 7).⁹⁵
- **Whether Foust claimed to own the subject vehicles in his name, or whether they were held indirectly by HH-the entity that Foust "ultimately owned"-Foust has no valid excuse for not surrendering all twenty (20) subject vehicles over to the Bank.** (p. 7).⁹⁶
- Furthermore, as noted above, **StarDust is an alter ego of Foust,** and thus, Foust has no valid reason for failing to surrender the aforementioned eleven (11) vehicles in Paragraph 34, which he either owns directly, or indirectly through StarDust. (p. 8).⁹⁷
- While it is perfectly clear, and supported by clear and convincing evidence, that as of April 1, 2009, the twenty (20) subject vehicles that are identified in Exhibit A hereto, were in the possession, custody, control of, and owned by, either Foust directly, or by Foust indirectly through HH, **and remain in the control of Foust,** (pp. 8-9)⁹⁸
- **Foust is the owner of all vehicles** identified in Exhibit A over which Star Dust claims an interest. (p. 9)
- **Foust is the owner of all vehicles** identified in Exhibit A over which HH claims an interest. (p. 9)
- **Foust fraudulently testified to this Court that he no longer had any ownership interests in the vehicles identified in Exhibit A;** he presented no valid excuse for violating the Court's Order; he presented no valid excuse for failing to turn over the subject vehicles; and he presented no evidence of any effort whatsoever to attempt to retrieve the subject vehicles from their present locations. (p. 6).⁹⁹

⁹⁵ *Id.*, at PA00527.

⁹⁶ *Id.*

⁹⁷ *Id.*, at PA00528.

⁹⁸ *Id.*, at PA00528-PA00529.

⁹⁹ *Id.*, at PA00526.

78. No contempt finding against Detwiler was included in the Foust Contempt Order.¹⁰⁰

79. The Trial Court found that four (4) of the Subject Vehicles were not the proper subject of a contempt order:

- 42. While it is perfectly clear, ... the twenty (20) subject vehicles that are identified in Exhibit A hereto, were in the possession, custody, control of, and owned by, either Foust directly, or by Foust indirectly through HH, and remain in the control of Foust, this Court will give Foust the benefit of the doubt and hereby finds that the four (4) remaining subject vehicles are possibly not held by Foust, HH, or StarDust. **These four vehicles only are not the proper subject of a contempt citation.**
- 43. Accordingly, the Court finds that each of Foust's failure to turn over each of the sixteen (16) vehicles listed in Exhibit A hereto, excluding the four mentioned in the prior paragraph (the 1966 Ford thunderbird – red; 1966 Plymouth Belvedere; 200 Plymouth Prowler; and 1963 Chevy 425/409 S/S), constitutes a separate act of civil contempt of the Court's Order.¹⁰¹

80. The Trial Court found, however, that failure to turn over the remaining 16 Subject Vehicles constituted 16 acts of contempt by Foust:

- 24. Foust's failure to turn over each of the sixteen (16) subject vehicles identified in Exhibit A and which are the subject of the Court's January 9, 2019 Order, excluding the four vehicles discussed in Paragraph 43 of the Findings of Fact herein, constitutes a separate and distinct act of civil contempt of Court, for a total of sixteen (16) separate acts of civil contempt.¹⁰²

¹⁰⁰ *Id.*, at PA00521-PA00537.

¹⁰¹ *Id.*, at PA0000529, ll. 7-10.

¹⁰² *Id.*, at PA00533-PA00534.

81. Interestingly, the “four vehicles discussed in Paragraph 43 of the Findings of Fact” which were excluded from the contempt proceedings (“Four Excluded Vehicles”) did not include the Motorcoach, which was one of the sixteen (16) vehicles constituting “sixteen (16) separate acts of civil contempt” committed by Foust, despite the Fact that BBNB’s counsel, Foust, and even the Trial Court itself had acknowledged that the Motorcoach had already been repossessed.¹⁰³

G. BBNB decides to pursue Detwiler

82. Because BBNB apparently did not have much luck pursuing the real contemnor, Foust, on January 17, 2020, BBNB served a subpoena on Detwiler compelling him to provide testimony on a range of matters related to the Subject Vehicles (the “Subpoena”).¹⁰⁴

83. Detwiler had been unrepresented by counsel to this point, but now realized that BBNB was pursuing him directly, since apparently finding Foust proved difficult.

84. BBNB’s counsel had also begun telling Detwiler that he could be jailed “indefinitely” as the Subject Vehicles had not been turned over.¹⁰⁵

¹⁰³ *Id.*, at PA00537 (Exhibit A thereto), listing the 20 Subject Vehicles.

¹⁰⁴ Appx. Vol. III, at PA00574-PA00582.

¹⁰⁵ Appx. Vol. II, at PA00357.

85. It was at this point that undersigned counsel appeared on behalf of Detwiler and immediately filed a motion for protective order regarding the Subpoena on January 29, 2020.¹⁰⁶

86. As part of the motion for protective order, counsel for Detwiler let the Trial Court know that Detwiler had resigned as a manager of HH in September, 2019.¹⁰⁷

87. In addition, on January 30, 2020, Detwiler, through counsel, filed an Objection to the Trial Court continuing to preside over the contempt proceedings pursuant to NRS 22.030(3).¹⁰⁸

88. But the Trial Court refused to recuse itself, despite the fact that no contempt order had been entered against Detwiler.¹⁰⁹

89. Rather, on January 30, 2020, the Trial Court entered yet another contempt order (“Detwiler Contempt Order”).

90. Despite having found previously that Foust owned, controlled and possessed all of the Subject Vehicles – both in the January 2019 Order and reiterated in the Foust Contempt Order – the Detwiler Contempt Order now found that

¹⁰⁶ Appx. Vol. III, at PA00635-PA00637 and PA00638-PA00662.

¹⁰⁷ Appx. Vol. III, at PA00645, PA00655 and PA00657-PA00658.

¹⁰⁸ Appx. Vol. III, at PA00676-PA00677.

¹⁰⁹ Compare times in filing Objection (7:51 a.m.) to time of hearing (1:30 p.m.) to time of entry of Contempt Order (3:16 p.m.). Appx. Vol. III, at PA00676-PA00677, PA00687 and PA00688-PA00707.

somehow Detwiler had committed twenty (20) acts of contempt by not turning over all twenty of the Subject Vehicles.¹¹⁰

91. The Detwiler Contempt Order made no exceptions for the Four Excluded Vehicles – despite the fact that the Foust Contempt Order had found that said vehicles were “not the proper subject of a contempt citation” – and further made no exception for the Motorcoach, despite the Trial Court’s acknowledgement that the Motorcoach had already been repossessed by BBNB.¹¹¹

92. The Detwiler Contempt Order ordered Detwiler to turn over all twenty Subject Vehicles, even the Four Excluded Vehicles, and the Motorcoach, not to mention the Family-Controlled Vehicles, the Repossessed Vehicles, and the Sold Subject Vehicles.¹¹²

93. Interestingly, the Detwiler Contempt Order offered Detwiler an alternative to purge himself of the contempt: he could pay to BBNB the entire amount of all the alleged value of all Subject Vehicles - \$521,575.00.¹¹³ This amount included \$129,875.00 for the Motorcoach which the bank had already repossessed, providing a double recovery for BBNB and no possible way for Detwiler to comply with the order.¹¹⁴

¹¹⁰ Appx. Vol. III, at PA00688-PA00707.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at p. 17, ¶ 31.

¹¹⁴ *Id.*

94. The \$521,575 also included \$76,000 for the Four Excluded Vehicles which the Trial Court had already found were not the proper subjects of a contempt citation.¹¹⁵

95. Moreover, the findings in the Detwiler Contempt Order were inconsistent with the Trial Court's prior findings, including without limitation the following:

DETWILER CONTEMPT ORDER	PRIOR FINDING
4. HH owns and possess the 20 vehicles identified in Exhibit B, which list HH prepared for its bankruptcy petition. ¹¹⁶	Foust is the owner of all vehicles identified in Exhibit A over which HH claims an interest. (p. 9) [Foust Contempt Order] ¹¹⁷ 24. Any alleged sale or transfer of the 20 cars that HH still claims to own (Exhibit B) is void ab initio and is of no effect whatsoever ...” ¹¹⁸

¹¹⁵ *Id.* at Exhibit B (there is no Exhibit A).

¹¹⁶ Appx. Vol. III, at PA00688-PA00707, at p. 10, ¶ 4.

¹¹⁷ Appx. Vol. III, at PA00529.

¹¹⁸ Appx. Vol. I, at PA00214.

DETWILER CONTEMPT ORDER	PRIOR FINDING
<p>52. This extensive testimony and documentary evidence provides that there was no aspect of HH that Detwiler did not control or know about, especially with respect to the vehicles at issue.</p>	<p>“Foust transferred the 20 cars identified in the HH bankruptcy [<i>i.e.</i> the Vehicles] to himself because Foust owns and controls HH.” (January 2019 Order)¹¹⁹</p> <p>This Court further incorporates herein any other evidentiary findings in the January 9, 2019, Order, which is not discussed herein to support Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust. (p. 6)¹²⁰</p>
<p>“No one besides Detwiler claiming a connection with HH or purporting to represent HH has ever appeared before this Court.”¹²¹</p>	<p>The evidence presented in these proceedings to date has proved that, at all times pertinent hereto, Foust directly and/or indirectly controlled HH. (p. 5)¹²²</p> <p>This Court received evidence of official corporate filings and annual reports generated by the Montana Secretary of State showing that Foust was “the sole member and/or manager for Harry Hildibrand, LLC.”¹²³</p>

¹¹⁹ *Id.*, at PA00205-PA00206.

¹²⁰ Appx. Vol. III, at PA00526.

¹²¹ Appx. Vol. III, at PA00692, ¶ 23.

¹²² Appx. Vol. III, at PA00525.

¹²³ *Id.*

DETWILER CONTEMPT ORDER	PRIOR FINDING
<p>On the other hand, the Bank has proved by clear and convincing evidence that HH and Detwiler had the ability to turn over the Vehicles.¹²⁴</p>	<p>This Court further incorporates herein any other evidentiary findings in the January 9, 2019, Order, which is not discussed herein to support Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust. (p. 6)¹²⁵</p> <p>While it is perfectly clear, and supported by clear and convincing evidence, that as of April 1, 2009, the twenty (20) subject vehicles that are identified in Exhibit A hereto, were in the possession, custody, control of, and owned by, either Foust directly, or by Foust indirectly through HH, and remain in the control of Foust...”¹²⁶</p>

96. Through counsel, Detwiler filed a motion for relief under NRCP 60(b), as well as various other rules (“Rule 60(b) Motion”) on February 5, 2020.¹²⁷

97. At the hearing on Detwiler’s Rule 60(b) Motion on February 12, 2020, the Trial Court acknowledged that “if [the proceedings are] no longer civil, it’s criminal -- due process requires a new evidentiary hearing.”¹²⁸

¹²⁴ Appx. Vol. III, at PA00697, ¶ 58.

¹²⁵ Appx. Vol. III, at PA00526.

¹²⁶ *Id.*, at PA00526-PA00527.

¹²⁷ Appx. Vol. III, at PA00708-PA00739.

¹²⁸ Appx. Vol. IV, at PA00784-834, at 30:22-31:1.

98. As a result of the Rule 60(b) Motion, and the additional evidence and findings that Detwiler had resigned from HH, the Trial Court vacated the contempt finding against Detwiler.¹²⁹

99. The Trial Court did not stop there. Despite its own admission that any criminal sanction required separate notice and a separate evidentiary hearing, and the Objection, the Trial Court issued unconditional sanctions against Detwiler to punish him for his purported violation of the January 2019 Order.¹³⁰

100. The sanctions were in the amount of \$100,000.00, which is 200 times the \$500 permissible limit under NRS 22.100(2), as well as attorneys' fees.¹³¹

101. BBNB sought attorneys' fees and costs from March 2, 2018 onward, in the total amount of \$218,855.52, despite no order requiring Detwiler to do anything existed prior to January, 2019 (*i.e.* the January 2019 Order).¹³² The difference was approximately \$118,000.¹³³ The attorneys' fee award included BBNB's efforts to collect against Foust alone, and therefore had no bearing on any purported contempt by Detwiler.¹³⁴

¹²⁹ Appx. Vol. IV, at PA00835-PA00843.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Appx. Vol. IV, PA00844-PA00857, at ¶¶ 3 and 6.

¹³³ Appx. Vol. IV, PA00858-PA00874, at p. 4.

¹³⁴ *Id.*

102. Further, the Sanctions Order awarded attorneys' fees from the time HH "intervened" in the action.¹³⁵ As noted above, the Trial Court denied HH's motion to intervene, and therefore there was no such intervention.¹³⁶

103. Before issuing its ruling on the 60(b) Motion on February 18, 2020, the Trial Court stated that even though Detwiler could not comply with the January 2019 Order, it found that he could have complied and intended to punish him for his contempt, based upon application of a standard that was "higher than a preponderance of the evidence, but it doesn't rise to a level of beyond a reasonable doubt, but a clear and convincing evidence standard."¹³⁷

104. Further, the Trial Court stated that "[a]s for after the date of the resignation, I just can't find that on a clear and convincing evidence standard that he still has the ability to comply. I think at this point in time, I'm not convinced by the clear and convincing evidence standard that he has possession, custody or control over the cars. I do find that there was failure to comply with this Court's order up through the point in time when he did resign."¹³⁸

105. Thus, only after determining Detwiler could no longer comply with the order to deliver the Subject Vehicles did the Trial Court issue unconditional,

¹³⁵ Appx. Vol. IV, PA00875-PA00882, at p. 7.

¹³⁶ Appx. Vol. I, PA00187-PA00192.

¹³⁷ Appx. Vol. IV, PA00836, ll. 20-23.

¹³⁸ *Id.*, at PA00836-PA00837.

criminal sanctions of \$100,000.00 plus attorneys' fees and costs noted above in excess of \$218,000, on March 12, 2020. ("Sanctions Order").¹³⁹

106. There was no purge clause in the Sanctions Order.¹⁴⁰

107. Although, as noted above, the Trial Court was very clear that the standard it employed in finding contempt by Detwiler "doesn't rise to a level of beyond a reasonable doubt", when BBNB drafted the Order for Sanctions, it included that the contempt finding was "beyond a reasonable doubt", further confirming the criminal character of the Sanctions Order.¹⁴¹

108. The Sanctions Order awarded unconditional, criminal sanctions of \$100,000.00, along with attorney's fees and costs of \$218,855.52, totaling \$308,889.52 in sanctions against Detwiler.¹⁴²

109. As noted above, the Sanctions Order also contains no purge clause.¹⁴³ This rendered the Sanctions Order criminal in nature under this Court's holding in *Lewis v. Lewis*¹⁴⁴ ("We hold that a contempt order that does not contain a purge clause is criminal in nature.").

¹³⁹ Appx. Vol. IV, at PA00875-PA00882 and PA00950-PA00955.

¹⁴⁰ *Id.*

¹⁴¹ Appx. Vol. IV, at PA00875-PA00882, at 6:16-18.

¹⁴² Appx. Vol. IV, at PA00875-PA00882 and PA00950-PA00955.

¹⁴³ *See* Appx. Vol. IV, at PA00875-PA00882.

¹⁴⁴ 132 Nev. 453, 455, 373 P.3d 878, 879 (2016).

110. Such criminal sanctions were issued without a separate notice or opportunity to be heard in violation of Detwiler’s constitutional protections and due process rights. Moreover, under binding Nevada case law set forth herein, the Trial Court’s actions in imposing criminal sanctions rendered the Contempt Trial a criminal proceeding with respect to Detwiler. As a result, the Trial Court’s improper exclusion of Detwiler – and the resulting inability to hear the accusations against him or cross-examine adverse witnesses – and lack of notice regarding possible criminal sanctions, constitute violations of Detwiler’s due process and Constitutional rights, requiring issuance of the requested Writ.

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

A. Standard of Review

While an order of contempt is normally reviewed for abuse of discretion, this Court reviews constitutional and due process issues de novo. *Lewis v. Lewis*, 132 Nev. Adv. Op. 46, 373 P.3d 878, ____ (2016) (holding that while this Court normally reviews an order of contempt for abuse of discretion, “**we review constitutional issues de novo.**”); *Jackson v. State*, 128 Nev. 598, 603, 291 P.3d 1274, 1277 (2012). “This Court has original jurisdiction to issue writs of mandamus and prohibition.” *MountainView Hosp., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. 180, 184, 273 P.3d 861, 864 (2012). Generally, writ relief is available when a petition presents legal rather than factual issues. *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*,

133 Nev. Adv. Op. No. 52, 399 P.3d 334, 341 (2017). Extraordinary writ relief is available when there is no plain, speedy, and adequate remedy at law. *Badger v. Eighth Judicial Dist. Court*, 132 Nev. Adv. Op. 39, 373 P.3d 89, 93 (2016).

Due to the Trial Court determining and treating Detwiler as a party, Detwiler previously filed an appeal of the subject Contempt Judgments issued by the Trial Court out of an abundance of caution. However, this Court dismissed Detwiler's appeal for the following reasons: (1) Detwiler was not a party; and (2) even if he was a party, the contempt judgments are not appealable. Nev. R. App. P. 3A(b)(1); Nev. R. App. P. 3A(b)(8); *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000); *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002); *Pengilly v. Rancho Santa Fe Homeowners Association*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000).¹⁴⁵ Thus, this Writ Petition is Detwiler's only chance at having this Court review and correct the constitutional and due process violations he suffered below.

This Petition merits this Court's consideration as it raises important issues concerning violations of Detwiler's constitutional and due process rights afforded to him under both the U.S. and Nevada Constitutions.¹⁴⁶ Such constitutional and due process violations included, but are not limited to: (1) Detwiler being excluded from the Contempt Trial against him; (2) as a result of his exclusion, Detwiler was not

¹⁴⁵ Appx. Vol. IV, at PA00995-PA00998.

¹⁴⁶ See footnote 2 above.

afforded his due process rights to confront and cross-examine adverse witnesses, including Foust; (3) the Trial Court issuing criminal sanctions without a separate notice or opportunity to be heard prior to the Trial Court converting the civil contempt to criminal contempt; and (4) the Trial Court not providing Detwiler with the protections that the Constitution requires in criminal proceedings. U.S. Constitution, 5th, 6th and 14th Amendments; Nevada Constitution, at Article 1, §§ 3, 8(1) and 8(2); *Awad*, 794 P.2d at 715; *Warner*, 906 P. 2d at 709.

B. The Trial Court erred in refusing to recuse itself after and over Detwiler’s NRS 22.030(3) Objection.

NRS 22.030(3) provides in relevant part:

3. Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt over the objection of the person.

Nev. Rev. Stat. Ann. § 22.030 (West). Nevada’s public policy, as upheld by this Court in *Awad* and *McCormick*¹⁴⁷ requires this Court to review this Petition as the Trial Court refused to recuse himself after Detwiler filed his NRS 22.030(3)

¹⁴⁷ Nevada’s public policy upheld in *Awad* and *McCormick* states: “The legislature has thus declared the public policy of the state, not so much for the protection of an individual litigant, as for the preservation of the respect and high regard the public has always maintained for the courts.... And so the legislature of this state felt it important to eliminate the possibility of a reasonable apprehension that a judge might not be entirely free from bias in enforcing the orders and decrees of the court of which [she] he is the judge.”

Objection, despite no contempt order against Detwiler having been entered.¹⁴⁸ *Awad v. Wright*, 794 P.2d 713, 106 Nev. 407 (1990); *McCormick v. The Sixth Judicial Court*, 67 Nev. 318, 218 P.2d 939 (1950).

Before the Detwiler Contempt Order was entered, Detwiler timely filed his NRS 22.030(3) Objection, objecting to Judge Scotti presiding at any further proceedings regarding Detwiler's alleged contempt.¹⁴⁹ Despite recusal being automatic under NRS 22.030(3), the Trial Court judge refused to recuse himself and continued to preside over the contempt proceedings, including entering the Detwiler Detwiler Contempt Order, Sanctions Order, and related Judgment over Detwiler's Objection. The grievous nature of a violation of such an objection was set forth in this Court's decision in *Awad*¹⁵⁰ as follows:

Awad argues that Judge Shearing committed reversible error when she did not recuse herself under Awad's NRS 22.030(3) peremptory challenge. We agree. ...

...

Judge Shearing's refusal to recuse herself, coupled with her fining Awad \$2,000.00 when the maximum fine provided by NRS 22.100(1) was only \$500.00, are strong indications of a bias against Awad. The purpose of the legislature in passing an automatic recusal was precisely to avoid such situations. Based on NRS 22.030 and on the McCormick case, Judge Shearing committed reversible error when she did not recuse herself when Awad requested her to do so.¹⁵¹

¹⁴⁸ Appx. Vol. III, at PA00676-PA00677.

¹⁴⁹ *Id.*

¹⁵⁰ *Awad v. Wright*, 106 Nev. 407, ____, 794 P.2d 713, 715 (1990) *abrogated on other grounds*.

¹⁵¹ *Id.* (emphasis added).

NRS 22.030(3) exists to prevent decisions based on anger at the presiding judge's own order purportedly having been violated. That is exactly what happened here. The Objection was timely, as neither the Detwiler Contempt Order, nor the Sanctions Order or related Judgment had been entered at the time of the Objection, nor had the Trial Court made any findings of contempt by Detwiler. After the Objection, the Trial Court impermissibly continued to preside over the proceedings, including receiving evidence, making additional findings of contempt, including imposing civil sanctions.

Further, after the Objection, the Trial Court converted the sanctions from civil to criminal, without proper notice or opportunity to be heard. Such action only affirms the timeliness of the Objection, and renders the Trial Court's refusal to rescue himself all the more egregious. Just as in Awad, this Court must determine the Trial Court committed serious error warranting issuance of the requested writ when he did not recuse himself after Detwiler's NRS 22.030(3) Objection.

C. Detwiler's Constitutional and due process rights were violated as he was excluded from the Contempt Trial, prevented from hearing witnesses against him, and not provided the opportunity to confront or cross-examine adverse witnesses.

In an absolutely shocking violation of Detwiler's due process rights, the Trial Court unlawfully excluded Detwiler from his own civil Contempt Trial, thereby

denying Detwiler the opportunity to confront and cross-examine adverse witnesses.¹⁵²

In *Awad*, this Court provided the following due process requirement in indirect contempt cases:

[I]n a prosecution for contempt, not committed in the presence of the court, due process requires that the person charged be advised of the nature of the action against him, have assistance of counsel, if requested, **have the right to confront witnesses**, and have the right to offer testimony on his behalf.

Awad, 794 P.2d at 716, *abrogated on other grounds* (emphasis added).

The Court's exclusion of Detwiler ignored the specific due process requirements provided by *Awad*.¹⁵³ Excluding Detwiler from his own Contempt Trial is not only a violation of Detwiler's due process rights, but also violates NRS 50.155(2)(a) & (d) and NRS 171.204(1)(g). NRS 50.155(2)(a) specifically prohibited the Trial Court from excluding Detwiler.¹⁵⁴ NRS 50.155(2)(a). In addition, by not invoking the exclusionary rule at the beginning of the Contempt

¹⁵² Appx. Vol. II, at PA00347.

¹⁵³ Detwiler did not waive any of due process rights. Even in the civil area, the U.S. Supreme Court has said that "[w]e do not presume acquiescence in the loss of fundamental rights". *Fuentes v. Shevin*, 407 U.S. 67, n. 31 (1972), *citing Ohio Bell Tel. Co. v. Public Utilities Comm'n*, 301 U. S. 292, 307 (1937). Indeed, in the civil no less than the criminal area, "courts indulge every reasonable presumption against waiver." *Fuentes*, at n. 31, *citing Aetna Ins. Co. v. Kennedy*, 301 U. S. 389, 393 (1937).

¹⁵⁴ Appx. Vol. IV, at PA00883.

Trial on April 1, 2019, when Foust began testifying, BBNB waived the ability to later invoke the exclusionary rule and had no right to seek exclusion when it did.¹⁵⁵

Regardless of whether Detwiler was or was not a “party” for appellate purposes, *Awad* requires due process be given to a pro se individual at his own Contempt Trial. This is especially true since the Trial Court belatedly – over the Objection – converted the Contempt Trial from a civil to a criminal proceeding with no notice to Detwiler of the same.

This Court has held that “prejudice is presumed when a violation of NRS 50.155 occurs unless the record demonstrates a lack of prejudice.” *Heglemeier v. State*, 878 P. 2d 294 (1994); *Givens v. State*, 99 Nev. 50, 55, 657 P.2d 97, 100 (1983), *overruled on other grounds*, *Talancon v. State*, 102 Nev. 294, 301, 721 P.2d 764, 768 (1986). Detwiler’s due process rights were violated as he had no opportunity to cross examine adverse witnesses at his trial, including Foust. Nor did Detwiler even have any way of knowing what Foust was alleging against him.

Further, Detwiler was unrepresented during this part of Contempt Trial and no one was in the Courtroom with similar interests to him.¹⁵⁶ BBNB’s counsel dissuaded Detwiler from resigning as a manager of HH before the Contempt Trial:

¹⁵⁵ *Smith v. Baca*, No. 314CV00512MMDCLB, 2020 WL 376651, at *15 (D. Nev. Jan. 23, 2020).

¹⁵⁶ The U.S. Supreme Court determined that an unrepresented defendant at trial is unable to protect the vital interests at stake. *Evitts v. Lucey*, 469 US 387, 396 (1985).

THE WITNESS: When Mr. Bragonje [BBNB's counsel] called me I don't know how long ago, I had talked about wanting to resign this position. But it would not absolve me of being here. And I would very much like to resign as the managing member of this company as soon as is practical, because this has been a toll on my time and I was also a little bit intimidated when the call -- when Mr. Bragonje said to me, I've seen crazy things happen in court, and you could be going to jail.¹⁵⁷

This specifically violates the NRPC Rule 4.3, which provides, in relevant part, that a lawyer "shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client."¹⁵⁸ This violation is particularly egregious since the contempt finding against Detwiler was based entirely on his status as manager of HH, which he would have resigned prior to the Contempt Trial but for BBNB's counsel dissuading him from doing so.

D. The Trial Court violated Detwiler's rights in issuing criminal sanctions without a separate notice or opportunity to be heard.

The Trial Court issued the Detwiler Contempt Order which, despite the inconsistencies with prior orders, contained a purge clause if Detwiler turned over all of the Subject Vehicles (including the repossessed Motorcoach and the Excluded

¹⁵⁷ Appx. Vol. II, at PA00357, ll. 18-24.

¹⁵⁸ *W.T. Grant Co. v. Haines*, 531 F.2d 671, 676 n. 3 (2d Cir.1976) ("it is ... improper for one party's attorney to advise the unrepresented other party as to the course of conduct the attorney thinks the latter should pursue").

Vehicles), or pay \$521,575.¹⁵⁹ This alone violated due process, as the United State Supreme Court has held that even a civil sanctions order with which a contemnor clearly cannot comply is invalid. *Turner v. Rogers*, 564 U.S. 431, 442, 131 S. Ct. 2507, 2516, 180 L. Ed. 2d 452 (2011) (“A court may not impose punishment ‘in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order.’ ”).¹⁶⁰

After Detwiler filed his Rule 60(b) Motion (where he further indicated he had resigned from HH and was unable to comply with the Court’s Order), the Trial Court vacated the sanctions included in the Detwiler Contempt Order; however, the Trial Court subsequently issued the Sanctions Order, which sanctioned Detwiler unconditionally in the determinate amount of \$100,000.00¹⁶¹ and a separate award of attorneys’ fees and costs in excess of \$218,000.00.¹⁶²

¹⁵⁹ Appx. Vol. III, at PA00704, ¶ 29.

¹⁶⁰ *Citing Hicks v. Feiock*, 485 U.S. 624, 638, n. 9 (1988).

¹⁶¹ Any sanction for civil contempt cannot exceed \$500.00 and any sanction for criminal contempt cannot exceed \$1,000.00. NRS 22.100(2), NRS 199.340(4) and NRS 193.150(1). Further, EDCR 7.60(b), only authorizes the Trial Court to “impose upon...a party any and all sanctions”. EDCR 7.60(b). As Detwiler is not a party, these sanctions are inappropriate.

¹⁶² *See* Order for Sanctions and Order and Judgment. The Order and Judgment was erroneously entered twice on separate dates by BBNB. Appx. Vol. IV, at PA00875-PA00882 and PA00950-PA00955.

This Court has previously held that “[w]hether a contempt charge constitutes a criminal prosecution depends on whether the contempt charge is civil or criminal in nature”, explaining as follows:

“[S]ince a civil contempt sanction is designed to coerce the contemnor into complying with a court order, it must be conditional or indeterminate — that is, it must end if the contemnor complies. (Citation omitted) In contrast, a criminal contempt sanction is intended to punish the contemnor for disobeying a court order and, thus, must be determinate or unconditional.”

Warner, 906 P. 2d 707, 111 Nev. 1379 (1995) *citing Hicks v. Feiock*, 108 S.Ct. 1423, 1430, 99 L.Ed.2d 721 (1988).

Under this standard, the Sanctions Order is criminal. The Trial Court specifically indicated during a hearing that the \$100,000.00 sanction is not a conditional amount.¹⁶³ As criminal sanctions were issued against Detwiler, he is entitled to “the protections that the Constitution requires of such criminal proceedings”. *Mine Workers v. Bagwell*, 512 U.S. 821, 826, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994), *citing Cooke v. United States*, 267 U.S. 517, 537, 45 S.Ct. 390, 69 L.Ed. 767 (1925). He was not afforded such protections. Respectfully, the Petition should be granted on this basis alone.

¹⁶³ Appx. Vol. IV, at PA00840, ll.4-5.

E. Detwiler’s Constitutional criminal protections were violated.

Given the criminal sanctions entered against Detwiler, by excluding Detwiler from the Contempt Trial against him, the Trial Court violated Detwiler’s constitutional and due process rights as afforded to him by the U.S. Constitution (5th, 6th and 14th Amendments) and the Nevada Constitution. These constitutional rights provide that Detwiler:

- (1) shall not “be compelled in any criminal case to be a witness against himself” (U.S. Constitution, 5th Amendment);
- (2) shall enjoy the right to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him” (U.S. Constitution, 6th Amendment);
- (3) shall not “be deprived of life, liberty, or property, without due process of law” (U.S. Constitution, 5th and 14th Amendments; Nevada Constitution, at Article 1, § 8(2));
- (4) “shall be allowed to appear and defend in person, and with counsel, as in civil actions” and shall not “be compelled, in any criminal case, to be a witness against himself” (Nevada Constitution, at Article 1, § 8(1)); and
- (5) “shall enjoy the right to a speedy and public trial, by an impartial jury” (U.S. Constitution, 6th Amendment; Nevada Constitution, at Article 1, § 3).

Prior to issuing criminal sanctions, the Trial Court did not provide Detwiler with the protections afforded to him under the U.S. and Nevada Constitutions. These violations require this Court to review the sanctions de novo. *Lewis v. Lewis*, 132

Nev. Adv. Op. 46, 373 P.3d 878, ____ (2016); *Jackson v. State*, 128 Nev. 598, 603, 291 P.3d 1274, 1277 (2012).

It is equally fundamental that the right to notice and an opportunity to be heard “must be granted at a meaningful time and in a meaningful manner.” *Fuentes v. Shevin*, 407 U.S. 67, ____ (1972), citing *Armstrong v. Manzo*, 380 U. S. 545, 552. Based on *Warner* and the Trial Court issuing criminal sanctions, Detwiler is entitled to the due process protections under the U.S. Constitution (5th and 14th Amendments) and the Nevada Constitution (Article 1, § 8(2)).

Here, the notices that Detwiler received (i.e., the Order to Show Cause and its Application, along with the Brief to Continue to Hold in Civil Contempt) each indicated that only civil contempt was being sought - - not criminal contempt.¹⁶⁴ This is not proper notice for criminal contempt. The Trial Court even acknowledged if criminal sanctions are contemplated – which they were not until several months after the Contempt Trial – the proceedings are no longer in the civil arena, and due process requires a new evidentiary hearing.¹⁶⁵ Despite this correct acknowledgement, a new evidentiary hearing was not held by the Trial Court and, instead, criminal sanctions were issued.

¹⁶⁴ Appx. Vol. I, at PA00221-PA00238 and PA00239-PA00240 and Appx. Vol. III, at PA00583-PA00634.

¹⁶⁵ Appx. Vol. IV, at PA00784-834, at 30:22-31:1.

F. The Trial Court issued criminal sanctions based upon a standard less than beyond a reasonable doubt.

This Court has recognized that where a contempt proceeding is even “quasi-criminal” in nature, the contempt must be proven “beyond a reasonable doubt.” *Kellar v. Eighth Judicial Dist. Court*, 86 Nev. 445, 448, 470 P.2d 434, 436–37 (1970) (“When the appellant challenged Judge O'Donnell, and requested his disqualification, the judge complied and assigned the matter to Judge Mendoza, who determined that the matter was quasi-criminal in nature and required the respondent to prove the contempt beyond a reasonable doubt.”). Here, the Trial Court failed to comply with this requirement. As noted above, in issuing criminal contempt sanctions, the Trial Court failed to require the Plaintiff to prove the contempt beyond a reasonable doubt. In speaking on the standard it implemented instead, the Trial Court indicated as follows:

“So here’s the way I see it. At least up through the date that Detwiler resigned, the Court finds and has found that he had the ability to actually comply with the Court order. And the Court had made that determination, although it may not be stated in the rule. The Court went back and reviewed everything, and the Court believes that that is accurate based upon a clear and convincing evidence standard. Not a preponderance – I mean, higher than a preponderance of the evidence, **but it doesn’t rise to a level of beyond a reasonable doubt, but a clear and convincing evidence standard.**”¹⁶⁶

As noted above, when BBNB drafted the Order for Sanctions, it included that

¹⁶⁶ Appx. Vol. IV, PA00836, ll. 18-23.

the contempt finding was “beyond a reasonable doubt”.¹⁶⁷ This was disingenuous as the Trial Court had expressly denied using that standard, but only goes to prove the criminal nature of the Sanctions Order and resulting judgment.

G. The January 2019 Order, and the Detwiler Contempt Order, are ambiguous and judicial estoppel applies.

The Trial Court issued the January 2019 Order regarding the Subject Vehicles which the Plaintiff sought to obtain in order to partially satisfy the Foust Judgment.¹⁶⁸ Foust had claimed that four (4) of the Vehicles were in the possession of his family. The remainder (other than the Motorcoach) – according to Foust’s unchallenged testimony which Detwiler did not have the chance to examine – were either repossessed by StarDust, transferred to HH (which the Trial Court rejected as “fraudulent” and “void *ab initio*”) or sold to third parties. *Id.* Detwiler was a manager of HH for a time with an extremely limited role, but resigned in September, 2019.¹⁶⁹ A critical conclusion in the January 2019 Order was that “[a]s for the balance of the 20 cars [*i.e.* the Vehicles] Foust controls them because he owns HH and StarDust Classic.” *Id.*

In the January 2019 Order the Trial Court also found, on no fewer than five (5)

¹⁶⁷ Appx. Vol. IV, at PA00875-PA00882, at 6:16-18.

¹⁶⁸ See List of the Vehicles, Appx. Vol. I, at PA00220.

¹⁶⁹ Appx. Vol. III, at PA00657-PA00658.

occasions, that Foust owned and controlled all of the Subject Vehicles.¹⁷⁰ These findings were reiterated and incorporated into the June 2019 Order, after the 2019 evidentiary hearings comprising the vast majority of the Contempt Trial.¹⁷¹ Yet, despite these clear findings, the Trial Court ordered that “Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Detwiler and StarDust Classic and any of its agents) are ordered on penalty of contempt, ... to turn over to the Plaintiff promptly [the Vehicles]...”¹⁷² Moreover, the Detwiler Contempt Order required Detwiler to do something the Trial Court had already found he could not: turn over the Subject Vehicles including the Motorcoach which BBNB had already repossessed, and the Excluded Vehicles which the Trial Court had already found were not the proper subject of a contempt citation.¹⁷³

This ambiguous orders – which appears to order Detwiler to turn over Subject Vehicles which were owned and controlled by Foust, and others which were impossible to turnover – violate the requirement that “an order for civil contempt must be grounded upon one’s disobedience of an order that spells out ‘the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed on him.’”¹⁷⁴ The January 2019

¹⁷⁰ Appx. Vol. I, at PA00213, ¶¶ 17-21.

¹⁷¹ Appx. Vol. III, at PA00521-PA00537.

¹⁷² Appx. Vol. I, at PA00214, ¶ 29.

¹⁷³ Appx. Vol. III, at PA00688-PA00707.

¹⁷⁴ *Southwest Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983)

Order and Detwiler Contempt Order beg the question: How can Detwiler turn over vehicles which the Trial Court found unequivocally were owned, possessed and controlled by Foust, and others which had been either repossessed, sold to third parties, or otherwise not the proper subject of a contempt citation?

This Court has previously determined that judicial estoppel applies to protect the judiciary's integrity, prevents a party from taking inconsistent positions by "intentional wrongdoing or an attempt to obtain an unfair advantage" and this court may invoke the doctrine at its discretion.¹⁷⁵ BBNB improperly changed its position 180 degrees, after having prevailed on the position that Foust owned, possessed and controlled the Subject Vehicles, to later pretend that Detwiler controlled the Subject Vehicles. Judicial estoppel prohibits BBNB's inconsistent and disingenuous flip-flopping just because it was not able to find Foust.

H. The Writ should issue based on additional, troubling errors by the Trial Court.

1. The Sanctions Order violates Nevada law.

In a severe miscarriage of justice, the Trial Court exceeded its jurisdiction in issuing a sanction of \$100,000.00, which violates NRS 22.100, NRS 199.340, EDCR

(quoting *Ex parte Slavin*, 412 S.W.2d 43, 44 (Tex.1967)).

¹⁷⁵ *So. California Edison v. First Jud. Dist. Ct.*, 255 P. 3d 231 (Nev. 2011); *NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (quoting *Kitty-Anne Music Co. v. Swan*, 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796, 800 (2003)).

7.60(b), and constitutional and due process rights. *Del Papa v. Steffen*, 915 P. 2d 245 (Nev. 1996), citing *Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 109 P.2d 942, 948 (1941) (“Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of *stare decisis*, are in excess of jurisdiction, [. . . .]”).

a. The \$100,000.00 sanction is 200 times the maximum limit allowed by NRS 22.100(2).

This Court found strong indications of a bias against Awad when the Trial Court Judge sanctioned the party at issue \$2,000.00 for the alleged contempt – four (4) times the allowable limit in NRS 22.100. *Awad v. Wright*, 106 Nev. 407, 715, 794 P.2d 713, ____ (1990). NRS 21.100(3)(“...if a person is found guilty of contempt, a fine may be imposed on the person not exceeding \$500...).

Here the Trial Court sanctioned Detwiler \$100,000.00 – 200 times the allowable limit. Even assuming that proper notice of a criminal contempt was provided (which it was not), the maximum limit is still only \$1,000.00. NRS 199.340(4) (being found guilty of criminal contempt of willful disobedience of a Court Order constitutes a misdemeanor); NRS 193.150(1)(“Every person convicted of a misdemeanor shall be punished ... by a fine of not more than \$1,000....”). Issuing a fine at even 100 times the maximum limit is extremely severe and constitutes strong indications of a bias against Detwiler as described in *Awad*.

b. The Trial Court sanctioned a non-party (Detwiler) as a party under EDCR 7.60(b) as an end-run around the maximum fine allowed by law.

Despite the clear and unambiguous language of NRS 22.100(2), as well as NRS 193.150(1), the Trial Court ignored these statutes to issue sanctions against Detwiler in excess of the allowable limits. Under Nevada law, “when the language of a statute is unambiguous, the courts are not permitted to look beyond the statute itself when determining its meaning.” *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev. Adv. Op. No. 52, 399 P.3d 334, 344 (2017). The Court issued sanctions against Detwiler under EDCR 7.60(b);¹⁷⁶ however, such rule specifically only authorizes the Trial Court to “impose upon...a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney’s fees...” but only “after notice and an opportunity to be heard”. EDCR 7.60(b).

BBNB never requested EDCR 7.60(b) sanctions and the Trial Court issued them without notice or opportunity to be heard on sanctions under EDCR 7.60(b). More importantly, as this Court has already determined in Detwiler’s appeal, Detwiler is not a party.¹⁷⁷ *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994), *citing Garaventa Land & Livestock Co. v. Second Judicial*

¹⁷⁶ Appx. Vol. IV, at PA00839 and PA00880-881.

¹⁷⁷ Appx. Vol. IV, at PA00996.

Dist. Court, 61 Nev. 350, 354, 128 P.2d 266, 267-68 (1942). Sanctions based on EDCR 7.60(b) against Detwiler are improper.

c. The award of attorneys' fees and costs was improper.

The Trial Court's unfair bias against Detwiler is further demonstrated by the attorney's fees award against him. NRS 22.100(3) allows an award of only those attorneys' fees "incurred by the party as a result of the contempt."¹⁷⁸ Despite no finding by the Trial Court that BBNB had incurred fees as a result of Detwiler's purported contempt – as opposed to that of Foust,¹⁷⁹ whom the Trial Court repeatedly found owned, possessed, and controlled the Subject Vehicles – the Trial Court awarded fees incurred from the time Detwiler "was officially a party in this action"¹⁸⁰ and later from the time "HH intervened" in this action.¹⁸¹ As noted above, Detwiler was never a party to the Underlying Case, and HH never successfully intervened in the Underlying Case.

Further, despite there being no order directed at Detwiler before January 2019 – and in violation of its own statements – the Trial Court proceeded to award fees and

¹⁷⁸ *Mayfield v. Koroghli*, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008); *State, Dep't of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese*, 112 Nev. 851, 856, 919 P.2d 1067, 1070 (1996).

¹⁷⁹ The Trial Court cannot just lump costs incurred into a barrel and merely say Detwiler is liable as to all fees and costs. "[T]he district court must make a good faith effort to apportion the costs." *Mayfield v. Koroghli*, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008).

¹⁸⁰ Appx. Vol. IV, at PA00837.

¹⁸¹ Appx. Vol. IV, at PA00876.

costs from March, 2018 onward, totaling \$218,885.52.^{182, 183} Of that amount, more than half - \$118,036.72 – were incurred *prior to Detwiler having any order directing him to do anything in this matter*.¹⁸⁴ The impermissible bias of the Trial Court against Detwiler is clear and impermissible.

d. Violation of Callie v. Bowling

The Trial Court’s improper finding of an alter ego relationship between Foust, HH, StarDust – and the resulting contempt finding against Detwiler based upon this purported relationship – further violates Detwiler’s due process rights under the US Constitution, Nevada Constitution and *Callie v. Bowling*, 123 Nev. 181, 160 P.3d 878 (2007). As this Court has recognized, “[a] party who wishes to assert an alter ego claim must do so in an independent action against the alleged alter ego with the requisite notice, service of process, and other attributes of due process.”¹⁸⁵ BBNB failed to do this. The Trial Court therefore improperly found alter ego relationships, then used those findings against Detwiler. This was a direct violation by the Trial Court of *Callie* and Detwiler’s due process rights.

¹⁸² Appx. Vol. IV, at PA00845 and PA00951.

¹⁸³ In further violation of Nevada law, and evidencing the Trial Court’s bias, the Trial Court failed to even attempt to apportion any fees to Foust. *Mayfield v. Koroghli*, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008); *State, Dep’t of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese*, 112 Nev. 851, 856, 919 P.2d 1067, 1070 (1996).

¹⁸⁴ Appx. Vol. IV, at PA00861, ll. 14-25.

¹⁸⁵ *Callie v. Bowling*, 123 Nev. 181, 185, 160 P.3d 878, 881 (2007).

e. Baker Boyer National Bank, a Washington Corporation does not exist and Judgment entered in its favor is considered to be a nullity.

In addition to the very serious and concerning due process and constitutional violations, the Trial Court issued a judgment against Detwiler in favor of a non-existent entity. There is no entity known as “Baker Boyer National Bank, a Washington corporation”.¹⁸⁶ When this issue was brought to the Trial Court’s attention, the Trial Court permitted BBNB to respond.¹⁸⁷ BBNB was only able to produce a charter from an entity known as “Baker Boyer National Bank of Walla Walla,” but could not produce any evidence of the existence of a Washington corporation named “Baker Boyer National Bank.”¹⁸⁸ In fact, the Washington Secretary of State confirms no such entity exists.¹⁸⁹ Despite this undisputed fact, the Trial Court failed to correct the error.

The Sanctions Order and resulting Judgments against Detwiler is in favor of a nonexistent entity. This Court has made absolutely clear that “[a] judgment for a legally nonexistent entity is a nullity.”¹⁹⁰ The Trial Court’s entry of the Sanctions

¹⁸⁶ A bank known as *The Baker Boyer National Bank of Walla Walla* exists, but that is not the judgment creditor. See charter for “The Baker Boyer National Bank of Walla Walla” (Appx. Vol. IV, at PA00960) and Washington Secretary of State’s Certificates of No Record (Appx. Vol. IV, at PA00989 and PA00991).

¹⁸⁷ Appx. Vol. IV, at PA00859 and PA00930-PA00949.

¹⁸⁸ Appx. Vol. IV, at PA00956-PA00966.

¹⁸⁹ Appx. Vol. IV, at PA00989 and PA00991.

¹⁹⁰ *Causey v. Carpenters S. Nevada Vacation Tr.*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979); *Garland Family Trust v. Melton*, 2020 WL 1531769 (March 2020).

Order and resulting Judgment against Detwiler is a nullity.

V. CONCLUSION

The Trial Court has violated Detwiler's constitutional and due process rights afforded to him under the U.S. and Nevada Constitutions, as well as under the Nevada cases of *Awad* and *Warner*. The Trial Court excluded Detwiler from the Contempt Trial against him, thereby not affording Detwiler the opportunity to cross-examine or confront adverse witnesses. The Trial Court also refused to recuse himself after Detwiler objected to his continuing to preside over the contempt proceedings, pursuant to NRS 22.030(3). Instead the Trial Court entered a civil Contempt Order against Detwiler.

When Detwiler filed his Rule 60(b) Motion, the Trial Court determined Detwiler was no longer able to comply with the Court's Order, but the Trial Court sought to still punish Detwiler for his purported violation. In issuing punitive, unconditional, and criminal sanctions, the Trial Court far exceeded the \$500.00 maximum allowed under NRS 22.100(2) by sanctioning Detwiler \$100,000.00, plus attorney's fees and costs in excess of \$218,000.00. Such sanctions constitute criminal sanctions, which were issued without proper notice or opportunity to be heard and in complete disregarding of Detwiler's constitutional and due process rights.

Based upon the standard in *Lewis*, Detwiler respectfully submits that this

Court must review this Petition under the *de novo* and grant the Petition to correct the multiple troubling and substantial errors committed by the Trial Court. Thus, Detwiler requests that this Court grant the Petition, order the Trial Court to vacate the Detwiler Contempt Order, Sanctions Order and resulting Judgments, and grant such other and further relief as the Court deems appropriate.

DATED: May 22, 2020.

HUTCHISON & STEFFEN

By /s/ Brenoch Wirthlin, Esq.

Brenoch Wirthlin, Esq. (NV Bar 10282)
10080 W. Alta Dr., Suite 200
Las Vegas, Nevada 89145
Phone: (702) 385-2500
Attorneys for Petitioner,
Edward N. Detwiler

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, FOR WRIT OF PROHIBITION**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter is to be found. Further, this Petition complies with Nev. R. App. P. 32(a)(7)(A)(ii) as it contains no more than 14,000 words. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: May 22, 2020.

HUTCHISON & STEFFEN

By /s/ Brenoch Wirthlin, Esq.

Mark A. Hutchison, Esq.

Nevada Bar No. 4639

Michael K. Wall, Esq.

Nevada Bar No. 2098

Brenoch Wirthlin, Esq.

Nevada Bar No. 10282

10080 W. Alta Dr., Suite 200

Las Vegas, Nevada 89145

Phone: (702) 385-2500

Attorneys for Petitioner,

Edward N. Detwiler

VERIFICATION

I, Brenoch Wirthlin, Esq., declare as follows:

1. I am an attorney with Hutchison & Steffen, counsel of record for Petitioner/Non-Party, Edward N. Detwiler.

2. I verify that I have read the foregoing **PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, FOR WRIT OF PROHIBITION**; that the same is true to my own knowledge, except for matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under the penalty of perjury the statements herein are true and correct.

Executed on May 22, 2020 in Clark County, Nevada.

By: /s/ Brenoch Wirthlin, Esq.
Brenoch Wirthlin, Esq.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, FOR WRIT OF PROHIBITION** on the following parties, via the manner of service indicated below, on May 22, 2020:

Via Electronic Service through E-Flex System:

John Bragonje, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy., # 600
Las Vegas, Nevada 89169
JBragonje@lrrc.com
Attorney for Real Party in Interest

Via US Mail:

The Honorable Richard Scotti
District Court, Dept. 2
Regional Justice Center
200 Lewis Ave.
Las Vegas, Nevada 89155
Phone No.: (702) 671-4318
Respondent

James Foust
8175 Arville St.
Las Vegas, Nevada 89139
Defendant

Harry Hildibrand, LLC
3011 American Way
Missoula, Montana 59808
Third Party

Dated: May 22, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen