Case No. 81220

In the Supreme Court of Nevada

EDWARD N. DETWILER, Petitioner, *vs.* THE HONORABLE RICHARD SCOTTI, District Judge; and the EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, Respondents, and BAKER BOYER NATIONAL BANK, Real Party in Interest.	District Court Case No. A760779

BAKER BOYER NATIONAL BANK'S ANSWER

DANIEL F. POLSENBERG (SBN 2376)
JOHN E. BRAGONJE (SBN 9519)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Real Party in Interest
Baker Boyer National Bank

NRAP 26.1 DISCLOSURE

The undersigned 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.

Real party in interest Baker Boyer National Bank is a privately held company. No publicly traded company owns more than 10% of its stock.

Baker Boyer National Bank is represented by Daniel F. Polsenberg, John E. Bragonje, and Abraham G. Smith at Lewis Roca Rothgerber Christie, LLP.

Dated this 26th day of August, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ John E. Bragonje*
DANIEL F. POLSENBERG (SBN 2376)
JOHN E. BRAGONJE (SBN 9519)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Real Party in Interest

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

STATUTES

TREATISES

OTHER AUTHORITIES

INTRODUCTION

The contempt judgment at issue in this petition must stand so long as this Court detects no abuse of discretion in the lower court's resolution of four familiar contempt elements, which the district court found by clear and convincing evidence.

1. Notice. The petitioner, Edward N. Detwiler, was personally served with an order to appear and show cause why he and his company should not be held in contempt. He had two weeks to prepare for the contempt trials, which lasted four days. For several more months after the district court adjudged him in contempt, it entertained Detwiler's extensive post-trial motions. By the time the final judgment was entered, Detwiler had enjoyed a 13-month opportunity to be heard.

2. Clear and Unambiguous Order. The district court ordered Detwiler, his company, and an associate to surrender a $5 million exotic car collection to pay a judgment. The order was based on—and incorporated as exhibits—lists of cars described by make, model year, and unique vehicle identification numbers. Detwiler and his associate understood the turn-over order because they prepared the lists identifying the cars.

3. Ability to Comply. While under oath, Detwiler for years disclaimed any knowledge or control of the collection. Apparently believing the district court would be none the wiser, Detwiler subsequently put his company into bankruptcy and listed 20 of the vehicles as estate assets. Detwiler also gave sworn testimony in the bankruptcy about his access to and care for the vehicles. The district court received this unexpected information, cited his stunning contradictions as perjury, and regarded the dramatic bankruptcy court revelations as substantial, even incontrovertible, evidence of an ability to comply.

4. Violation of the Order. Detwiler refused to turn over the vehicles. In fact, he perpetuated his ruse for so long that the associate with whom Detwiler plotted died, even as cars were sold in violation of orders. The district court assessed Detwiler $218,855.52 in attorney fees and ordered him to pay $100,000 to Baker-Boyer Bank, the real party in interest, though even that partial compensation represents less than one fifth of the value of the vehicles Detwiler listed as bankruptcy estate assets.

This Court should deny the petition.

ROUTING STATEMENT

This matter is not presumptively assigned to either the Supreme Court or the Court of Appeals.[1] The Supreme Court's precedents amply address each of the issues in this petition, including the circumstances for removing a judge, for distinguishing between civil and criminal contempt, and for holding nonparties in contempt when they refuse to turn over property belonging to the judgment debtor.

The novel positions that petitioner urges, however, would limit or overturn these settled principles, a departure that only the Supreme Court could bless. Real party in interest therefore agrees that the Supreme Court may retain this petition.

ISSUES PRESENTED

1. NRS 22.030(3) allows a prospective contemnor to peremptorily challenge the judge that will preside over a contempt trial. If a contemnor files the challenge eight months after the close of evidence and

[1] Although the contempt order is for less than $250,000, it is not a "judgment . . . in a tort case." NRAP 17(b)(5). Nor is this writ petition an "*appeal*[] from postjudgment orders." NRAP 17(b)(7) (emphasis added). And while petitioner recklessly and falsely accuses counsel of professional misconduct, this is not a case involving attorney discipline. NRAP 17(a)(4).

after learning he has lost the trial, must the district court judge still recuse herself?

2. Orders that compensate an innocent party for damages a contemnor causes implicate civil, not criminal, contempt. *United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994). Must a district court guarantee criminal-law constitutional protections to a contemnor that is ordered to pay an amount that compensates for loss?

3. If two contemnors are accused of fraudulently collaborating to violate court orders and each of the two is afforded a separate, bifurcated contempt trial, pursuant to NRS 50.155, may the first contemnor be excluded from the second contemnor's trial before the first contemnor gives friendly testimony?

4. Under the third party claim statute, NRS 31.070, may the court order the debtor, another person in possession of the debtor's property, or both to turn over the property to satisfy the creditor's judgment?

5. This Court has upheld civil-contempt orders to pay thousands of dollars to compensate the party damaged by the contempt. Are those cases wrong, and is petitioner correct, such that regardless of the

monetary damage caused by a contemnor, his disregard for court orders, or his disdain for perjury statutes, NRS 22.100 limits to just $500 the amount that a contemnor can be ordered to pay?

6. Are company agents or officers punishable for contempt where they direct the company's violations of court orders, even if the company representatives are not named parties in the action?

7. *Callie v. Bowling*, 123 Nev. 181, 160 P.3d 878 (2007) requires an independent action to establish alter ego liability. Where an associate conspires to assist a judgment debtor in evading lawful collection procedures, may the district court sanction the associate without violating the alter ego rule?

STATEMENT OF FACTS

A. The Original Loan

In 2013, real party in interest Baker Boyer National Bank (the "Bank") loaned over $1 million to James P. Foust, Jr. ("Debtor"). (1 App. 97.)[2]

[2] "App." refers to the petitioners' appendix in the indicated volume.

B. The Washington Judgment

The Bank obtained a judgment against Debtor in Washington State in July, 2017 (*id.*), currently valued at approximately $1.4 million (2 R. App. 500).[3]

C. The Nevada Foreign Judgment Collection Action

The judgment was enrolled in Nevada's courts on August 31, 2018 pursuant to the Uniform Enforcement of Foreign Judgments Act, NRS 17.330 *et seq*. (1 App. 5–24.)

D. Debtor Was Ordered to Surrender His Exotic Car Collection to Satisfy the Judgment

In his dealings with the Bank, Debtor repeatedly represented that he owned a collection of 59 exotic cars worth over $5 million, including a Ferrari, a Lamborghini, Mercedes, Porsches, and a Rolls Royce. (1 App. 25–61, 194.)

1. Debtor Claimed He Had Already Sold the Car Collection

In response to district court orders to surrender the collection to

[3] "R. App." refers to real party in interest Baker Boyer National Bank's appendix in the indicated volume.

satisfy the judgment, Debtor claimed he had already sold every last vehicle, even the Ferrari Testarossa, to others, including Harry Hildibrand, LLC (the "Fraudulent Transferee"). (1 App. 62–82.)

2. The Fraudulent Transferee Became a Party to the Action

The Fraudulent Transferee retained separate counsel and formally intervened in the action on March 2, 2018 (1 App. 136–57) pursuant to Nevada's garnishment statute, NRS 31.070, which permits "a hearing to determine title to property," NRS 31.070(5), "without the necessity of an independent action," NRS 31.070(2).[4]

3. The Fraudulent Transferee Claimed the Vehicles

The Fraudulent Transferee insisted that it was a bona fide purchaser that had acquired the vehicles at arm's length, cutting off the Bank's claim to the vehicles. (1 App. 203–04, 206; 3 App. 525–27; 5

---

[4] *See also Elliot v. Denton & Denton*, 109 Nev. 979, 980, 860 P.2d 725, 726 (1993) ("Nevada, like most states, has a statute which, by its terms, provides an exclusive and summary means for disposing of claims."); *Cooper v. Liebert*, 81 Nev. 341, 344, 402 P.2d 989, 991 (1965) ("We hold that N.R.S. 31.070 is a complete and valid remedy to third persons whose property has been attached, that the remedy therein provided is exclusive . . . and that the term 'property' includes both real and personal property.").

App. 1042; 1 R. App. 13–16.)

E. The District Court Expended Vast Resources to Resolve the Competing Claims to the Vehicles

To resolve the competing claims to the vehicles, the district court ordered three depositions (including Detwiler's); conducted about ten standard hearings with parties present (and many more in chambers); and received evidence on six days between February and November, 2018. (1 App. 203; 4 App. 853–54.) The petitioner, Edward N. Detwiler, gave sworn testimony on four occasions (4 App. 853–54) and participated in all proceedings in a representative capacity—as the Fraudulent Transferee's manager.

F. Detwiler Engaged in Pre-Hearing "Gamesmanship"

Foreshadowing the obstinacy that was to become routine, Detwiler had to be compelled to sit for his deposition. (1 R. App. 12.) And his company, the Fraudulent Transferee, initially withheld obviously relevant documents (vehicle titles and bills of sale) (1 R. App. 63–72) under what the trial court called a "facially bogus attorney-client privilege claim" (1 App. 207; 4 App. 853). This "gamesmanship," in the district court's judgment, represented an "attempt to suppress incriminating evidence." (1 App. 207; 1 R. App. 12.)

G. Detwiler Represented the Fraudulent Transferee

No one besides Detwiler ever represented the company, leading the lower court to find that Detwiler "was the sole agent and mouthpiece for the [Fraudulent Transferee] during the years this Court has presided over this lawsuit." (1 App. 692–93.)

H. Debtor and Detwiler Cooperated to Commit Fraud

At the NRS 31.070 hearings, the Bank prevailed in every respect. The district court issued its 28-page judgment on January 9, 2019 (the "Turn-Over Order"). (1 App. 193–220.)

1. Debtor and Detwiler Lied Under Oath

The lower court concluded that both Debtor and Detwiler lied repeatedly under oath. (1 App. 103–104, 199, 206, 208.)

2. Detwiler Contradicted Himself

"Detwiler's demeanor," in particular, "was untrustworthy," the district court found, because he was "willing to say whatever seemed convenient at the moment, without regard for established or incontrovertible facts." (1 App. 208–09.) He "especially" perjured himself by contradicting *his own prior, sworn testimony concerning the same subject matter*. (*Id.*)

3. Detwiler and Debtor Were Running a "Scam"

Far from dealing at arms' length, then, the district court summarized that the "whole alleged relationship between [Debtor] and [the Fraudulent Transferee] appears to the Court to be a scam for frustrating creditors' claims"—all acted out "willfully and maliciously with the intent to harm the Bank." (1 App. 210.)

4. Detwiler Was Ordered to Surrender the Vehicles

The Turn-Over Order required the defendants, including Detwiler, to surrender the vehicle collection. (1 App. 214.) The Turn-Over Order included as exhibits (1 App. 217–220) lists of vehicles prepared by Debtor and Detwiler (5 App. 1045; 1 R. App. 135–36). The cars were described by make, model year, and unique vehicle identification numbers. (1 App. 217–220.)

5. The Turn-Over Order Is Final in All Respects

No one appealed the Turn-Over Order.

I. The District Court Held Two Contempt Trials When Defendants Refused to Surrender the Cars

When the defendants continued to refuse to turn over the vehicles, the district court held two contempt trials (1 App. 347–51, 412–13, 416,

418, 474), one for Debtor (3 App. 521–537) and one for Detwiler and the Fraudulent Transferee (3 App. 688–707; 4 App. 875–82), over four days in the spring of 2019. Under the exclusionary rule, he did not listen to Debtor's testimony during *Debtor's* trial, to which Detwiler was not a party and in which Detwiler's contempt was not at issue; Debtor later called him as a friendly witness. (2 App. 347–51, 412–13, 416, 418, 474.) Detwiler was not excluded from his own contempt trial, at which he elected to call no witnesses, offering only his own testimony. (2 App. 351–412.)

J. The Contempt Trial Focused on a Subset of 20 Vehicles Originally Identified

Detwiler's contempt trial focused on a subset of 20 (out of 59) vehicles in the collection. (1 App. 224, 227; 2 App. 245, 472; 3 App. 508, 513, 584, 665, 698; 5 App. 1042–43, 1049.) Detwiler initially denied under oath having knowledge of or control over any vehicle (1 App. 208; 2 App. 354; 5 App. 1048–49; 2 R. App. 458–59, 484–500; 3 R. App. 503–23, 549–578), though a few months later, when strategies shifted, he made an 180-degree turn and touted the Fraudulent Transferee's possession of 20 vehicles in the collection (5 App. 1048–49; 1 R. App. 136).

K. The District Court Found All Defendants in Contempt

1. The District Court Found Debtor in Contempt

In June, 2019, the district court issued its judgment finding Debtor in contempt. (3 App. 521–537.)

2. The District Found Detwiler in Contempt

Later, the lower court found Detwiler in contempt in separate, lengthy rulings, which issued on January 30, 2020 (5 App. 1038–1059) and March 12, 2020 (5 App. 1060–69). The district court considered the evidence of Detwiler's contempt as clear and convincing (5 App. 1049, 1067, 1068) and even surpassing reasonable doubt (5 App. 1067).

L. The District Court Made Extensive Findings About Detwiler's Ability to Comply

At his contempt trial, the lower court concluded again—as it had following the NRS 30.070 hearing—that "Mr. Detwiler was not a credible witness." (5 App. 1044.) "Mr. Detwiler," the lower court confirmed, "repeatedly claimed he was a mere 'figurehead' of [the Fraudulent Transferee] with 'no day-to-day operations knowledge'—a manager in name only without any control over the situation." (*Id.*) But, "[a]additional evidence received by the Court proved . . . just the opposite," that

Detwiler, "exercised complete control." (*Id.*) The district court made extensive findings to this effect, relying upon exhibits (1 R. App. 37–250; 2 R. App. 251–406) previously admitted at the NRS 31.070 hearing (2 R. App. 407–94) and extensive additional testimony.

1. Detwiler Was the Only Manager of a Shell Company

The Fraudulent Transferee has no employees. (5 App. 1044; 1 R. App. 118.) Beginning in 2008, Detwiler acted, without compensation of any kind, as its only manager. (5 App. 1044.) Detwiler claimed to take direction from the Fraudulent Transferee's purported owners.[5] (*Id.*)

2. Detwiler Put the Fraudulent Transferee Into Bankruptcy

During the NRS 31.070 proceedings, the Fraudulent Transferee petitioned for bankruptcy in California.[6] (5 App. 1045; 1 R. App. 122–150; 2 R. App. 251–363.) Detwiler, as manager, signed the bankruptcy petition on June 19, 2018 and an addendum on August 7, 2018. (5 App.

---

[5] As discussed *infra*, Detwiler invented these people.

[6] *See In re: Harry Hildibrand, LLC*, 2:18-bk-18727-NB, ECF No. 1 (Bankr. C.D. Cal. July 30, 2018). The bankruptcy was ultimately dismissed about two months later for failure to prosecute. *See id.* at ECF No. 21.

1045; 1 R. App. 125, 127, 159, 164, 180.)[7]

3. In a Stunning About Face, Detwiler Admitted Knowledge of 20 Vehicles in Bankruptcy Pleadings

Although Detwiler had testified at least three times—at his deposition (2 R. App. 458–59, 484–500; 3 R. App. 503–23, 549–578) and on two different days at the contempt trials (2 App. 353–54; 2 App. 472)—in the Nevada *district court* that he had no clue where the vehicles collection was located, Detwiler's contemporaneous California *bankruptcy* petition listed 20 of the vehicles that had been the subject of the NRS 31.070 proceedings and prior orders as estate assets. (5 App. 1045; 1 R. App. 135–36.)

M. Detwiler Gave a Sworn Statement in Bankruptcy Court Showing His Control of the 20 Cars

The bankruptcy trustee conducted an 11 U.S.C. § 341 meeting of creditors in Los Angeles on August 27, 2018. (5 App. 1045; 1 R. App.

[7] *Debtor's* long time personal attorney represented the Fraudulent Transferee. (1 R. App. 75–78, 125.) The bankruptcy was filed in *Debtor's* home town, Los Angeles (1 App. 198), even though the Fraudulent Transferre was ostensibly organized and headquartered in Montana (1 App. 205–06; 1 R. App. 82).

79–121.) At his own expense, Detwiler flew from Las Vegas to represent the Fraudulent Transferee. (5 App. 1045.) Detwiler testified under oath. (5 App. 1045.) Detwiler's counsel stipulated to admit the transcript into evidence. (5 App. 1045; 2 R. App. 470.)

1. Detwiler Testified Concerning the 20 Vehicles' Location

In contradiction to his repeated district court testimony, Detwiler testified that he knew precisely where the 20 vehicles listed in the bankruptcy schedules were located: primarily in a Compton, California, warehouse rented by the Fraudulent Transferee and at other locations in Montana, Nevada, and North Dakota. (5 App. 1045–46; 1 R. App. 82, 89, 93, 115, 118.)

2. Detwiler Had a Business Plan

Detwiler claimed his company speculated in cars—it bought them, restored them, and attempted to turn a profit on resale. (5 App. 1045; 1 R. App. 90, 94, 97.)

3. Detwiler Testified About the Vehicles' Maintenance

Detwiler then gave information concerning how the vehicles were maintained:

Trustee:	Does anyone regularly use these vehicles? Any of them? Regularly use them?
Mr. Detwiler:	Some of them fairly regularly will drive, yeah.
Trustee:	No, does someone regularly drive the vehicle, any of them, on a routine basis?
Mr. Detwiler:	Yeah the ones in Los Angeles will be, you know, alternated just to keep them, you know, operational.

(5 App. 1046; 1 R. App. 92.) When the trustee asked about whether the vehicles were drivable, Mr. Detwiler offered that "some definitely are and some definitely are not." (5 App. 1046; 1 R. App. 119.)

4. Detwiler Insured the Vehicles

Caring for the vehicles, according to Detwiler, included insuring them all. (5 App. 1046; 1 R. App. 91.)

5. Detwiler Appraised the Vehicles for Bankruptcy

When asked about how he had arrived at a cumulative value of $521,575 for the 20 vehicles listed as estate assets (1 R. App. 135–36), Detwiler offered, "I think it's just purchase value," "because most—the vehicles that I've seen require work." (5 App. 1046; 1 R. App. 108, 110.) "Plainly," the trial court concluded after consideration of this testimony, "Mr. Detwiler had repeated access to the vehicles." (5 App. 1046.)

6. Detwiler Controlled the Fraudulent Transferee's Books

The bankruptcy petition listed Detwiler as the person who "audited, compiled, or reviewed the debtor's books of accounts and records" and as the person in possession of the same. (5 App. 1047; 1 R. App. 156.) Detwiler signed company checks and testified about the company's account balance. (5 App. 1047; 2 R. App. 500; 3 R. App. 501.)

7. Detwiler Even Controlled Another Sham Entity that He Claimed Was a Creditor

The district court found that the bankruptcy papers and other official regulatory filings it received into evidence (2 R. App. 368) proved that a supposed creditor of the bankrupt, StarDust Classic, LLC, was just "*another* entity controlled by" Detwiler "and/or" Debtor and "used to frustrate creditors." (5 App. 1047–48 (emphasis original).) This fake lender even used the same physical address in regulatory filings that Detwiler gave as his in the bankruptcy petition. (5 App. 1047; *compare* 1 R. App. 128, 156, 158 *with* 2 R. App. 368.)

8. Detwiler Directed the Fraudulent Transferee's Legal Affairs

The trial court found that Detwiler controlled all the Fraudulent Transferee's legal affairs (5 App. 1048), including all decision related

the district court proceedings, the decision to file bankruptcy (1 R. App. 182–83), and even the pursuit of a criminal complaint against the Bank (1 App. 145, 152–54).

N. Detwiler Styled Himself the "Head Guy"

"This extensive testimony and documentary evidence," the district court summarized, "proves that there was no aspect of" the Fraudulent Transferee "that Mr. Detwiler did not control or know about, especially with respect to the vehicles at issue." (5 App. 1048.) At the bankruptcy creditors meeting, Detwiler himself summed up his duties in an expansive fashion: "I'm head guy in charge of getting stuff done." (5 App. 1048.; 1 R. App. 94.)

O. Detwiler Attempted a Total Retraction at His Contempt Trial

When faced with contempt, Detwiler retreated from this pronouncement and claimed he was a mere "figurehead" with no authority or power generally and no knowledge of the vehicles specifically. (5 App. 1048–49.) Detwiler claimed during the contempt hearing that "I don't know anything about the cars. I was never involved with the cars." (5 App. 1049; 2 App. 354.) The district court rejected this denial, which "came after strikingly specific, contrary testimony given just

months earlier during the bankruptcy." (5 App. 1049.) That Detwiler did not scruple to lie under oath was obvious:

> During bankruptcy, he gave detailed information about the cars' location; now he claims ignorance on that subject. During bankruptcy he elaborated about the financing for the vehicles, allegedly through StarDust providing $521,000 to finance purchases over time, but now he claims "I don't know how they're financed." During bankruptcy he described extensive and regular interactions with the purported owners of [the Fraudulent Transferee], but now he claims no "relationship with any of the owners or people of [the Fraudulent Transferee]. On the converse, I have very little interacting with them." The Court finds persuasive the earlier statements Mr. Detwiler made during the bankruptcy, when he had a motivation to be forthcoming. These earlier statements impeach Mr. Detwiler's credibility in this proceeding and reveal him as an untruthful witness before this Court.

(5 App. 1049.) The district court's original contempt order (the "First Contempt Order"), which was never enforced, ran to 20 pages and called for his incarceration until the vehicles were surrendered to the Bank. (5 App. 1038–1059.) After post-trial motions, the district court issued a subsequent order on March 30, 2020 (the "Final Contempt Order" and together with the First Contempt order collectively the "Contempt Orders"). (5 App. 1060–69.) The Final Contempt Order, which took into account the fact that Detwiler claimed to have resigned as manager

during post-trial motions, reduced the punishment from imprisonment to an order to pay $100,000, along with attorney fees and court costs in the amount of $218,855.52. (5 App. 1070–74.)

P. The Final Contempt Order Made Additional Findings Further Illustrating Detwiler's Fraud

No fewer than three times, Detwiler swore under oath that for a decade he as manager took direction only from the Fraudulent Transferee's alleged owners—*not* from Debtor. (5 App. 1064; *see also* 2 App. 367; 1 R. App. 466–67; 2 R. App. 428, 430.) However, during his post-trial motions, he transmitted a purported resignation letter (4 App. 778–79) to *Debtor* and *Debtor's* long-time personal lawyer, not the supposed owners (5 App. 1064). This showed "a further collaboration between" Debtor and Detwiler "who were supposedly dealing at arm's length." (*Id.*) Detwiler's ongoing "lack of candor" convinced the district court that Detwiler "is hiding the truth," making this "just one more circumstance in a significant accumulation" of lies. (5 App. 1064–65.)

Q. Detwiler Invented a Fictional Person to Throw the District Court Off His Trail

During the post-trial motions, it became clear that Detwiler had, beginning in 2018, fabricated a person that did not exist (4 App. 964–

66); he testified for years in depositions and at multiple trials that this imaginary man owned and controlled the Fraudulent Transferee (2 App. 367; 1 R. App. 466–67; 2 R. App. 528–30); and, he, through this duplicity, made it seem as if the vehicle collection was sold to a bone fide purchaser, which he managed.[8]

R. Debtor Died Before the Bank Could Collect the Judgment

To accord due process, the district court cautiously explored every nuance of this fabricated man and this sham company for years. Detwiler brazenly promoted his ruse for so long that Debtor actually died in January, 2020 (5 App. 1013), before the Bank could collect the judgment.

S. While Perpetrating this Ruse, Detwiler's Company Auctioned Some of the Cars

Even worse, while Detwiler lied to the district court, the Fraudulent Transferee auctioned off two of the cars for $132,000 in August, 2019 (4 App. 921–925), directly flouting repeated orders. But for

[8] In the district court filing immediately following the revelation that he had invented a man, Detwiler failed to contest this fact, though he did continue to dispute related, ongoing arguments. (4 App. 967–68.) Detwiler effectively admitted his lie.

Detwiler's studied dishonesty, the Bank could have collected its judgment.

T. Detwiler and Debtor Were Cronies, Not the Unacquainted Businessmen They Pretended to Be

1. Detwiler and Debtor Invested Together

For the last decade, Detwiler testified, he has owned and developed a 26-acre, 120-room luxury resort located on the Caribbean island of Roatán, Honduras. (4 App. 1004, 1030–37; 2 R. App. 468–470) He often travels to his resort. (3 R. App. 514, 579.) Though Detwiler vehemently denied that Debtor had any interest in the resort (3 R. App. 512, 519), Debtor's financial statements, lists "Roatan West bay" as a "Current Asset" worth as much as $721,095.62 (2 R. App. 401, 398). The financial records were submitted to the Bank before these defendants appeared in the Nevada district court and had a motive to change their stories.

2. Debtor and Detwiler Worked on the Resort Together

Debtor related at his contempt trial that Detwiler asked him "to help facilitate some investment for his holdings out of the country in the [sic] Honduras." (1 App. 504.)

3. Detwiler Owed Debtor Money

Debtor's same financial statements record a $132,073.13 loan to Detwiler among Debtor's "Other Assets." (2 R. App. 401.)

4. The Defendants Shared Office Space

Debtor and Detwiler also shared office space in Henderson, listing this same address as headquarters for various entities they respectively owned or controlled. (3 App. 586, 623–34.)

U. Detwiler Prevented the Bank from Collecting the Judgment

Neither Detwiler nor Debtor ever surrendered any vehicle, nor has either man ever paid anything toward his respective judgment.

SUMMARY OF THE ARGUMENT

Detwiler has no right under NRS 22.030(3) to peremptorily challenge Judge Scotti. Detwiler filed his challenged eight months after the close of evidence and after he became aware he had lost his contempt trial.

The $100,000 award constitutes civil contempt because it compensates the Bank for losses sustained. Compensatory damages for civil contempt are available even if contemptuous conduct is not ongoing.

Detwiler had no right to the constitutional protections afforded the criminally accused, but he received them anyway.

The district court properly applied the exclusionary rule because *Detwiler* was only prohibited from part of *Debtor's* separate contempt trial before *Detwiler* gave testimony friendly to *Debtor*.

The many lesser, conclusory arguments Detwiler offers are summarily dispatched. For example, he claims the Bank does not exist because he finds no evidence of the Bank's registration with state regulators. But that is because the Bank has been federally chartered since the 1800s and has no obligation to register with states.

ARGUMENT

Standard of review: Contempt orders, *see, e.g., In re Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 906-07, 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power to protect dignity and decency in its proceedings, and to enforce its decrees" and because it has particular knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an abuse of discretion), and fee and costs awards, *e.g., Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005), are reviewed for abuse of discretion.

Constitutional questions are reviewed de novo. *E.g., Lewis v. Lewis*, 132 Nev. 453, 456, 373 P.3d 878, 880 (2016).

Contempt standards: Civil contempt orders must have clear, specific, and unambiguous terms. *E.g.*, *Southwest Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983).

I.

THE PEREMPTORY CHALLENGE WAS MONTHS LATE

The contempt statute permits a prospective contemnor to request that a different judge preside over the contempt trial. NRS 22.030(3). Critically, however, the statute indicates that the right can be waived without a timely objection: "if the 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*." (Emphasis added.)[9]

Here, however, the contempt trial concluded on May 21, 2019 (3 App. 520; 5 App. 1040), but Detwiler did not challenge the trial court

[9] Section PART One:I.C also explains how the contempt was committed in the court's presence, thus forfeiting the right to a peremptory challenge.

judge until January 30, 2020 (3 App. 676–77)—eight months late. A belated request is ineffectual. *E.g.*, *City of Las Vegas Downtown Redev't Agcy. v. Hecht*, 113 Nev. 644, 651, 940 P.2d 134, 139 (1997) ("Grounds for disqualifying a judge can be waived by failure to timely assert such grounds."). By his delay, Detwiler was just gambling on his contempt trial's outcome.

A. Detwiler Argues His Challenge was Timely Even Though it Came After the Close of Evidence

Detwiler promotes the challenge as timely, nonetheless, because it came at the end of the eighth-month period *between* the close of evidence but *before* the trial court docketed the formal Contempt Orders. (Petition, p. 41.) Even if this rationalization did not misrepresent the record, it would still be outlandish.

The lower court issued its minute entry finding Detwiler in contempt on November 19, 2019. (2 R. App. 495.) The trial court unequivocally adjudged Detwiler in contempt, finding he had "intentionally and knowingly failed to comply, without justification" and ordering his coercive imprisonment. (*Id.*)

This minute order charged Detwiler with actual and constructive knowledge of his defeat before he got around to filing his challenge almost three months later. Detwiler did nothing more, then, than "lie in wait" to accuse Judge Scotti "only after learning of the court's ruling on the merits." *Snyder v. Viani*, 112 Nev. 568, 573, 916 P.2d 170, 173 (1996), as amended (May 9, 1996) (citing *Ainsworth v. Combined Ins. Co.*, 105 Nev. 260, 774 P.2d 1019 (1989)).

B. Peremptory Challenges Must be Made Before Reception of Evidence

If litigants could remove judges at any time after the reception of evidence or the pronouncement of tentative rulings, parties would be stuck in an infinite loop. Obviously, then, the specific contempt statute in question requires a peremptory challenge before "the trial," NRS 22.030(3), as do Nevada's other judicial disqualification mechanisms, NRAP 35(a)(1) (requiring a disqualification motion within 60 days of docketing the appeal and assigning waiver thereafter); SCR 48.1(5) (disallowing peremptory challenges of district court judges after a "jury is sworn, evidence taken, or any ruling made in the trial or hearing").

C. Detwiler's Perjury Independently Supports the Denial of the Peremptory Challenge

There is another, independent basis for upholding the district court's denial of recusal. The statute disallows a challenge for "direct" contempt. That is, a challenge only operates "if the contempt is *not* committed in the immediate view and presence of the court." NRS 22.030(3) (emphasis supplied); *see also Gipson v. State*, 102 Nev. 61, 62, 714 P.2d 1007, 1008 (1986) (rejecting a NRS 22.030(3) peremptory challenge because the offensive conduct occurred in the Court's presence and constituted direct contempt). Here, Judge Scotti found Detwiler in contempt because he repeatedly lied under oath in the court's presence. (4 App. 803, 807–08; 5 App. 1045–46, 1064–65.) No right to a new judge applied for this "direct" contempt, regardless of the challenge's timing.

D. Judges are Presumed Unbiased

Detwiler rails against a "biased" judge. (Petition, P. 54, 56.) But he offers nothing more than a circular argument: "The impermissible bias of the Trial Court against Detwiler is clear and impermissible." (Petition, p. 58.) Judge Scotti enjoys a presumption of a lack of bias, *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009), and

merely making "rulings" "during the course of official judicial proceedings" does "not establish legally cognizable grounds for disqualification," *In re Petition to Recall Dunleavy*, 104 Nev, 784, 789, 769 P.2d 1271, 1275 (1988).

Far from laying bare some abuse of discretion, this episode illustrates the straightforward application of common-sense principles.

II.

THE DISTRICT COURT AFFORDED ALL APPLICABLE CONSTITUTION PROTECTIONS

Contempt leads to sanctions that may be criminal, serving to punish past misbehavior, or civil, seeking either to compel future compliance or—as is the case here—to remedy the harm caused. Criminal contempt requires criminal protections; civil contempt requires just notice and an opportunity to be heard. The district court violated constitutional protections, Detwiler insists, because it denied him protections afforded the criminally accused. However, the district court ordered Detwiler to compensate for the actual financial loss he caused the Bank. Compensatory fines implicate civil, not criminal, contempt. Detwiler

does not even argue he was denied appropriate *civil* contempt due process.[10] There is no error.

A. Detwiler Argues that the Fine was Criminal

Detwiler contends that because the contempt order unconditionally fined him $100,000 and contained no purge clause,[11] it was a criminal sanction. (Petition, p. 16, 49.) Detwiler seizes upon this Court's statement in *Lewis v. Lewis*, 132 Nev. 453, 457, 373 P.3d 878, 880–81 (2016), to the effect that the absence of a purge clause is "an additional factor" indicating criminal contempt.

B. Compensatory Fines Implicate Civil Contempt

Even if a contempt order imposes an *unconditional* fine (rather than a *contingent* fine avoidable by future compliance)—otherwise potentially a feature of a criminal contempt, *see Lewis*, 132 Nev. at 457,

---

[10] As we explained, the Contempt Orders against Detwiler issued only after personal service (3 App. 671) of an order to appear (1 App. 239–40), a multi-day trial conducted over several weeks (5 App. 1040), and the resolution of extensive post-trial motions, all filed by Detwiler (3 App. 638–662, 708–39; 4 App. 767–83; 5 App. 1062–63, 1070–74)—a 13-month episode of notice an multiple opportunities to be heard from start to finish.

[11] A purge clause permits a contemnor to stop all sanctions upon compliance with a court's order. *See, e.g.*, *Rodriguez v. Dist. Ct.*, 120 Nev. 798, 809, 102 P.3d 41, 48 (2004).

373 P.3d at 880—if the fine "compensates the complainant for losses sustained" it is "considered civil," *United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994). State[12] and federal courts,[13] including the Ninth Circuit,[14] and the Nevada federal court,[15] embrace the universal rule that "compensatory fines" are within the rubric of civil contempt. These many cases make good sense: contempt procedures exist

---

[12] *E.g.*, *Trombi v. Donahoe*, 222 P.3d 284, 290 (Ariz. Ct. App. 2009); *Huber v. Disaster Sols., LLC*, 180 So. 3d 1145, 1149 (Fla. Ct. App. 2015); *Reed v. Cassady*, 27 N.E.3d 1104, 1114 (Ind. Ct. App. 2015); *Streiffer v. Deltatech Constr., LLC*, 294 So. 3d 564, 574 (La. Ct. App. 2020); *Ruesch v. Ruesch*, 106 A.D.3d 976, 977 (N.Y. Ct. App. 2013); *Docks Venture, L.L.C. v. Dashing Pac. Grp., Ltd.*, 22 N.E.3d 1035, 1038 (Ohio 2014); *Sazama v. Muilenberg*, 729 N.W.2d 335, 345 (S.D. 2007); *York v. Performance Auto, Inc.*, 264 P.3d 212, 217 (Utah 2011); *Overnite Transp. Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 507, 511 (Tenn. 2005); *Lee v. Spoden*, 776 S.E.2d 798, 804 (2015).

[13] *E.g., Rodriguez-Miranda v. Benin*, 829 F.3d 29, 46 (1st Cir. 2016); *N.Y. State Nat'l Org. for Women v. Terry*, 159 F.3d 86, 93 (2d Cir. 1998); *Sec'y of Labor v. Altor Inc.*, 783 F. App'x 168, 171 (3d Cir. 2019); *In re Lewis*, 611 F. App'x 134, 137 (4th Cir. 2015); *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 291 (5th Cir. 2002); *Consol. Rail Corp. v. Yashinsky*, 170 F.3d 591, 596 (6th Cir. 1999); *Law v. NCAA*, 134 F.3d 1438, 1442 (10th Cir. 1998); *In re McLean*, 794 F.3d 1313, 1323 (11th Cir. 2015); *In re Contempt Finding in U.S. v. Stevens*, 663 F.3d 1270, 1274 (D.C. Cir. 2011).

[14] *E.g.*, *Koninklijke Philips Elec. N.V. v. KXD Tech., Inc.*, 539 F.3d 1039, 1042 (9th Cir. 2008).

[15] *SEC. Comm'n v. Fujinaga*, No. 2:13-cv-1658, 2020 WL 3050713, at *2 (D. Nev. June 8, 2020).

in part to compensate the innocent for loss suffered at the hands of the obstinate. *E.g.,* NRS 22.100(3) (providing that "reasonable expenses" in seeking enforcement of an order may be awarded as a penalty for contempt).

1. Nevada's Contempt Decisions Regard Compensatory Fines as Civil

When considering compensatory fines, this Court's decisions omit consideration of the protections incumbent upon criminal charges. *In re Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 909, 59 P.3d 1226, 1231 (2002) ("A civil contempt order may be used to compensate the contemnor's adversary for costs incurred because of the contempt"); *Dep't of Indus. Relations v. Albanese*, 112 Nev. 851, 856, 919 P.2d 1067, 1071 (1996) (contempt sanctions compensate the opposing party for actual losses resulting from the contemnor's noncompliance); *Hildahl v. Hildahl*, 95 Nev. 657, 601 P.2d 58 (1979) (affirming a district court's finding of contempt and entry of judgment for child support arrearages owed); *Gifford v. Gifford*, No. 73253, 2018 WL 4405845, *3 (Nev. Aug. 30, 2018) (upholding a contempt judgment for the difference between a property's market value and a divorcing spouse's deliberately low sale price).

Even the *Lewis* case on which Detwiler relies suggests that contempt orders against child-support debtors remain civil even if they threaten jail time, so long as the contemnor has the option of paying the missed child support to avoid the contempt. *Lewis v. Lewis*, 132 Nev. 453, 458, 373 P.3d 878, 881 (2016); *see also Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 804–05, 102 P.3d 41, 45–46 (2004) (support payments "for the benefit of his daughter" were not punitive so as to trigger criminal protections).

2. This Court's Contempt Precedents Build Upon the U.S. Supreme Court Decision that Inspires the Concept of Civil Compensatory Fines

Additionally, Nevada's contempt jurisprudence liberally draws on *Bagwell*,[16] the source of the rule that "compensatory fines" implicate civil, not criminal, contempt. Indeed, as this Court invokes *Bagwell* for the general proposition that criminal contempt proceedings require criminal procedural protections, *In re Hughes*, 136 Nev., Adv. Op. 46,

---

[16] *Alper v. Dist. Ct.*, 131 Nev. 430, 434, 352 P.3d 28, 31 (2015); *Peterson v. Dist. Ct.*, 385 P.3d 35 (Nev. 2016) (table); *Blandino v. Dist. Ct.*, 132 Nev. 947 (2016) (table); *Looney v. Dist Ct.*, 130 Nev. 1210 (2014) (table); *Matt v. Dillwith*, No. 72211, 2017 WL 4225866, at *3 (Nev. App. Sept. 20, 2017).

___ P.3d ___, ___ (2020), 2020 WL 4032814, *3 (citing *Bagwell* 512 U.S. at 826–27), it necessarily adopts *Bagwell's* more specific precept that a fine which "compensates the complainant for losses sustained" is "considered civil and remedial," not criminal, *Bagwell*, 512 U.S. at 829.

C. The District Court Calculated the $100,000 Order Based on the Value of the Vehicles Detwiler Refused to Surrender, So No Criminal Protections Applied

Here the district court calculated its $100,000 payment order against Detwiler as representing "less than one-fifth of the total value of the cars" that he, as the Fraudulent Transferee's manager, refused to surrender when he "had control."[17] (4 App. 870.) The denominator in the judge's fraction represented the $521,575 that Detwiler himself assigned the vehicles (5 App. 1059; 1 R. App. 135–36) in the bankruptcy he directed (5 App. 1045–48).[18]

---

[17] *See Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011) (recognizing that oral pronouncements on the record that are consistent with a judgment may be used by the appellate court to construe the judgment).

[18] The Turn-Over Order required surrender of 59 vehicles listed in documents generated by Debtor, for the underling loan (1 App. 217–18) and Detwiler, in bankruptcy (5 App. 1059; 1 R. App. 135–36). These lists included a motorhome. The Bank had levied against the motorhome by the time the Turn-Over Order issued. The fact of the seizure was taken for granted by all involved; it was the subject of many orders predating the contempt rulings. (1 App. 99–101, 195–96; 1 R. App. 9–12.) The

The Turn-Over Order here partially compensates for the Bank's $1.4 million loss. The conservative, one-fifth figure came nowhere close to exceeding the actual loss. *See, e.g., Albanese*, 112 Nev. at 856, 919 P.2d at 1071. None of the constitutional protections afforded the criminally accused applied. *Bagwell*, 512 U.S. at 827; *Hughes*, 136 Nev., Adv. Op. 46, ___ P.3d at ___, 2020 WL 4032814, at *3; *Lewis*, 132 Nev. at 457, 373 P.3d at 880.

---

district court, therefore, did not ground its contempt rulings on any failure to deliver the motorhome. Detwiler nevertheless repeatedly attacks the Contempt Orders as invalid on this basis. (Petition, p. 30, 33, 41, 43, 57, 64.) That the Turn-Over Order neglected to exclude the already repossessed motorhome is a "nit" that cannot be "picked" to undo substantial justice. Detwiler assigned the motorhome a value of $129,875 in the bankruptcy. (5 App. 1059; 1 R. App. 136.) Even subtracting this value, the district court's compensatory fine still represents just one-fourth of the value of the vehicles Detwiler refused to surrender. At most, this was harmless error. *Cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."); *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (noting that an error is not harmless if the movant shows "that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached").

III.

THE COURT AFFORDED DETWILER THE PROTECTIONS OF THOSE CRIMINALLY ACCUSED ANYWAY

Even assuming that the fine were criminal, Detwiler had criminal protections anyway.

A. Detwiler Did Not Plead the Fifth Amendment

Though he claims an infraction now (Petition, p. 4, 6, 40, 48–49), Detwiler never invoked the Fifth Amendment at his contempt trial. He waived the privilege. *Cf. Warner v. Dist. Cit.*, 111 Nev. 1379, 1383, 906 P.2d 707, 709–10 (assuming the contemnor invoked the privilege and upholding that right).

B. Detwiler Had No Right to Counsel

Detwiler chose not to hire an attorney for his contempt trial. He never requested appointed counsel. He now proclaims a violation of the constitutional right to counsel. (Petition, p. 2, 29, 43–44, 48, 60.) But he had no such right.

1. Detwiler Was Not Sentenced to Imprisonment

First, because the district court imposed only a fine, that right did not attach. *Scott v. Illinois*, 440 U.S. 367 (1979) (holding that a criminal defendant has no Sixth Amendment right to counsel when his trial

does not result in a sentence of imprisonment).

2. Detwiler Did Not Claim Indigence

Nor did Detwiler ever suggest his indigence, which would have led to appointed counsel. *See Lewis*, 132 Nev. at 461, 373 P.3d at 883 (requiring counsel if a criminal contemnor "is he found to be indigent and not already otherwise represented").

3. Detwiler Had Access to Counsel

In fact, one of this State's largest private law firms, Holland & Hart, represented Detwiler from the time of the Fraudulent Transferee's intervention (1 App. 136–57), at multiple hearings (1 R. App. 9–12), at his pretrial deposition (1 R. App. 448–450), and finally at the NRS 31.070 hearing that resulted in the Turn-Over Order (1 App. 193).

A second prominent firm, Hutchison & Steffen, represented Detwiler for the extensive post-contempt-trial motions (1 App. 635) and now for this petition. No pauper could afford this. When a man of obvious means consciously elects not to hire counsel for one phase of a multi-year proceeding, no constitutional transgression occurs.

C. The District Court Found Contempt Beyond a Reasonable Doubt

The Final Contempt Order expressly employed the reasonable doubt standard. (5 App. 1067.) Detwiler complains that Judge Scotti made contrary comments during an oral ruling (Petition, p. 50), but written orders supersede tentative, oral commentary. *See, e.g., Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688-89, 747 P.2d 1380, 1382 (1987) (explaining that before "the entry of a final judgment the district court remains free to reconsider and issue a written judgment different from its oral pronouncement").

D. A Criminal Charge Does Not Restart the Contempt Trial Process

Even though 13 months elapsed between the beginning of Detwiler's contempt trial and its conclusion (*Compare* 1 App. 239 *to* 5 App. 1070–74), Detwiler claims that the district court erred by not granting "a new evidentiary hearing" for criminal contempt (Petition, p. 49). There is no such requirement.

IV.

THE DISTRICT COURT PROPERLY APPLIED THE EXCLUSIONARY RULE

Although he accuses the district court of denying him "the opportunity cross-examine" and confront Debtor (Petition, p. 44), Detwiler, in fact, called no witnesses at his contempt trial. (2 App. 351–412.) He offered only his own testimony. (*Id.*) At the separate, bifurcated contempt trial for *Debtor* (*id.* at 347–51, 412–13, 416, 418, 474), Detwiler was rightly excluded during *Debtor's* testimony and before *Debtor* called Detwiler as a *friendly* witness in direct examination (*id.* at 349–50, 469–474).[19] But this only underscores the district court's wisdom in separating these two confederates, *see City of Las Vegas v. Dist. Ct.*, 133 Nev. 658, 660, 405 P.3d 110, 112 (2017) (witness sequestration "detect[s] falsehood by exposing inconsistencies" and prevents "witnesses from shaping their testimony in light of other witnesses' testimony"), and the absurdity of Detwiler's phantom right to cross-examine, *see*

[19] At the earlier NRS 31.070 hearing, Detwiler's testimony also supported Debtor. In fact, the Fraudulent Transferee's counsel performed a friendly, direct examination of Debtor, even though Debtor had his own counsel. (2 R. App. 408–09, 477–81.) The two cooperated at every turn.

NRS 50.145 (only parties and the judge may examine witnesses); NRS 50.155(2)(a) (the exclusion rule is inapplicable to parties, but applies to witnesses). In addition, Detwiler's contempt was not at issue in Debtor's trial, so no prejudice arose from his exclusion in that separate proceeding.

Detwiler also accuses the undersigned of violating the Rules of Professional Conduct by (we are not making this up) allegedly convincing him, allegedly during the period when he had no counsel of record, to stay on as the Fraudulent Transferee's manager when he had otherwise planned to resign (Petition, p. 45), thereby, according to this twisted logic, entrapping him into repeatedly lying under oath. The proffered supporting transcript testimony, a hearsay statement, demonstrates none of the supposed chicanery. Ad hominem smear aside, Detwiler's legal argument holds no water. He says he "would have resigned prior to the Contempt Trial but for [the Bank's] counsel's dissuading him from doing so." (*Id.*) Plainly, a company officer cannot escape contempt charges simply by resigning after the fact. *E.g.*, *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 956 (9th Cir. 2014); *Williamson v. Recovery Ltd. P'ship*, 467 F. App'x

382, 398–99 (6th Cir. 2012).[20]

V.

DETWILER CANNOT ABSOLVE HIS CONTEMPT THROUGH PITTING THE DISTRICT COURT'S ORDERS AGAINST EACH OTHER

Detwiler claims the district court's orders contradict one another. This ignores the trial court's explicit findings.

A. A Creditor Can Pursue All Fraudsters Involved in a Scheme

When conspirators hoard property to evade lawful collection process, a creditor need not elect a single fraudster to pursue and forget the others. The law requires all involved to disgorge cached property. For example, our Uniform Fraudulent Transfer Act permits "an injunction against further disposition by *the debtor or a transferee, or both*, of the asset transferred." NRS 112.210(1)(c)(1) (emphasis added). The third party claims statute, which Detwiler himself invoked (1 App. 136–57), permits "a hearing to determine title to property," NRS 31.070(5), and

[20] After Detwiler filed this petition, he penned this same screed in connection with motion practice arising out of ongoing collection activities. The district court "reject[ed]" the argument because Detwiler "presented no persuasive or credible evidence that the Bank's counsel violated any rule of professional conduct." (4 R. App. 852.)

that led to the trials below, also permitted the district court to order deposition and trial testimony of both the "defendant" (here Debtor) and the person in "possession" of the defendant's property (here Fraudulent Transferee), and, "after such examination," to "order personal property" "to be delivered" "on such terms as may be just." NRS 31.100.

B. The District Court Explicitly Rejected the Notion that *Detwiler* Could Not Comply with its Orders Because of *Debtor's* Acts and Omissions

Detwiler urges invalidation of the years-long process below because he claims the Turn-Over Order states that Debtor "owned and control all" the vehicles, as though this meant that *only* Debtor had such control, eliminating Detwiler's ability to comply. (Petition, p. 52.) The district court restated the substantial evidence that compelled it to reject this same argument in its Final Contempt Order:

> [W]hile the collaboration and conspiracy between [Debtor] and [the Fraudulent Transferee] has been discussed in prior orders, the Court never meant to suggest that [Debtor] had sole, physical possession of the vehicles or the exclusive power to turn them over, as Mr. Detwiler now argues. [The Fraudulent Transferee] has possession of the vehicles; it said so in its bankruptcy filings. Mr. Detwiler signed those bankruptcy filings under penalty of perjury. Mr. Detwiler gave detailed testimony about his involvement with the vehicles and his general powers as manager of [the Fraudulent Transferee], which are the subject of this Court's previous orders, including the Contempt Order. [The Fraudulent Transferee] also

> held the titles to the vehicles. [The Fraudulent Transferee], which acted through Mr. Detwiler as its manager, clearly has the ability to surrender the vehicles to the Bank.

(5 App. 1065; *see also* 4 App. 787–90, 806–09 (similar comments at the hearing).)[21] Rather than demonstrating ambiguity or inconsistency, the district court simply exercised its prerogative to order all involved in a fraudulent scheme to release the property to the creditor.[22]

VI.

THE COURT CAN QUICKLY DISPATCH DETWILER'S LIST OF MISCELLANEOUS GRIEVANCES

The last section of Detwiler's brief advances several arguments that misstate the law, the record, or both. When properly considered,

---

[21] The Statement of Facts, *supra*, includes these relevant record citations.

[22] At this point in his brief, Detwiler also challenges his Contempt Orders as ambiguous because they punished him for not surrendering the so-called "Excluded Vehicles." (Petition, p. 52.) In keeping with the reality that the district court conducted two separate contempt trials, the district court's order resolving *Debtor's* contempt trial found that four cars were "possibly not" in *Debtor's* control, gave him "the benefit of the doubt," and found him in contempt for refusing to surrender the balance of the vehicles (16 total). (3 App. 529.) Each of these four "Excluded Vehicles" appears on the bankruptcy asset schedules that Detwiler prepared and repeatedly submitted under penalty of perjury. (5 App. 1045, 1059; 1 R. App. 135–36.) Finding one contemnor had the ability to comply and the other did not shows thoughtful treatment of two differently situated litigants, not contradiction.

none demonstrates abuse of discretion.

A. Nevada Statutes Impose No Limit on the Amount of a Compensatory Contempt Fine

1. NRS Chapter 22 Allows Awards Equal to the Damages the Contemnor Causes

NRS 22.100 establishes a two-part conjunction of contempt penalties: a $500 fine (subsection 2) and authority to award "reasonable expenses" (Subsection 3). The second part of the duo has no upper monetary limit, *see, e.g.*, *Albanese*, 112 Nev. at 856, 919 P.2d at 1071 ($63,314.49 sanction); *Gifford*, 2018 WL 4405845, at *1 ($338,500 sanction), except that a compensatory fine must not exceed the amount of actual damages sustained, *see, e.g., Humboldt River Stream Sys.*, 118 Nev. at 909, 59 P.3d at 1231.

2. The Contempt Statutes Do Not Restrain a Court's Inherent Authority

Nor need a court explicitly invoke the statutory contempt remedies to generate a compensatory fine that repairs monetary damages caused by a contemnor. *All Minerals Corp. v. Kunkle*, 105 Nev. 835, 837, 784 P.2d 2, 4 (1989) (discussing the $500 fine in NRS 22.100 and explaining that despite the statute courts have "inherent power" to sanction "beyond the power that may be granted by the legislature").

See also NRS 1.210(2) (recognizing a court's inherent authority to "enforce order in the proceedings before it.").

3. Detwiler Can Be Sanctioned in the Amount His Acts and Omissions Cost the Bank

Detwiler nevertheless persists that the district court's $100,000 fine "is 200 times the maximum limit." (Petition, p. 54.) This is hyperbole. If this were true, a scofflaw could wrongly withhold millions of dollars in valuable property, or dig into other contemptuous conduct, by remitting a fee so modest it is within the budget of many children and then continue to flout orders. That is manifestly not the law in in this State.

The district court called on its inherent (5 App. 1050, 1067) and Legislature-given power (5 App. 1051–53, 1055–56, 1067) to compensate a non-offending party for the actual damages a contemnor causes, including a provision of the NRS Chapter 21 judgment execution statute (5 App. 1051–52), which has no monetary limitation. NRS 21.340 ("If any *person*, party or *witness* disobey an order . . . he or she may be punished by the court or judge ordering the reference, for a contempt.") (emphasis supplied). The district court did not abuse its discretion; it trav-

eled several well-worn paths to issue a financially modest fine, as compared to the actual loss suffered.

B. District Courts May Sanction Non-Parties, and Particularly Corporate Agents Like Detwiler

1. A Court Has The Power to Sanction Any Person Connected to the Proceedings

Contempt statutes reach as far as "any person" or "witnesses," NRS 21.340, involved in a case or any individual who disobeys or resists, any lawful "writ, order, rule or process," NRS 22.010(3). Even counsel filing or maintaining frivolous actions must "personally pay," NRS 7.085, though not a party.

2. The District Court Followed Clear Authority in Sanctioning "Non-Party" Detwiler

In the face of this, Detwiler demands that his contempt be whitewashed because the district court's Final Contempt Order mentioned EDCR 7.40(b), which permits a trial court to impose "fines, costs or attorney's fees" against "a party" for disobedience to orders and other vexatious practices. This argument fails for two reasons.

a. A NON-PARTY OFFICER, NO LESS THAN THE COMPANIES THEY DIRECT, MAY BE GUILTY OF CONTEMPT

Company agents are punishable for contempt where they direct the company's violations of court orders. *Cf. Humboldt River Stream Sys.*, 118 Nev. at 903, 59 P.3d at 1227 (concluding that "the district court has the power to sentence a government official to jail for criminal contempt committed in an official capacity"); *accord* 17 C.J.S. *Contempt* § 51 (updated 2020).

Detwiler was expressly fined in his representative capacity. (5 App. 1054–56, 1063–64.) Over many years, he gave countless hours of deposition and trial testimony, signed affidavits and pleadings, and otherwise directed the Fraudulent Transferee's conduct in the district and bankruptcy courts, including the ultimate refusal to surrender the 20 vehicles he personally identified in the bankruptcy. The district court appropriately fined Detwiler under EDCR 7.60(b) as the manager who caused his company to execute the contempt.

No matter the specific statute or principle that establishes contempt at the enterprise level, a company agent always bears substitutional or vicarious responsibility for the contempt she causes the company to commit. Were it otherwise, a truculent manager could simply

form a business entity and violate court orders with impunity from behind the corporate shield. That is, obviously, not our system.

b. THE DISTRICT COURT LEVELED THE SANCTION UNDER VARIOUS PROVISIONS

Second, the district court did not, Detwiler's protests notwithstanding, rely exclusively on EDCR 7.60(b). Its Contempt Orders also cited its inherent powers (5 App. 1050, 1067), NRS 22.010 (5 App. 1051–53, 1055–56), and NRS 21.340 (5 App. 1051–52), which explicitly allow contempt against non-party witnesses and corporate agents such as Mr. Detwiler.

C. The Fee Award is Supported by Substantial Evidence

1. The Trial Court Orders Fees Assessed from the Time of the Fraudulent Transferee's Addition to the Lawsuit

Attorney fees may be affirmed so long as the district court considered the required factors, and the award is based on substantial evidence. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). The Fraudulent Transferee intervened in this matter under the third-party claim statute, NRS 31.070. (1 App. 136–57). The intervention occurred on March 2, 2018, when Detwiler swore out the declaration re-

quired by NRS 31.070(1) (1 App. 144–46) and requested a hearing to determine ownership of a vehicle he claimed the Fraudulent Transferee, rather than Debtor, owned (*id.* 136–41).[23] The district court ultimately assessed court costs and attorney fees against Detwiler and the Fraudulent Transferee "from the time [the Fraudulent Transferee] intervened" (5 App. 1068) in the amount of $208,889 (fees) and $9,966.52 (costs) (5 App. 1073).

2. The Argument that the Fraudulent Transferee Never Intervened Is Absurd on Its Face

The lower court nevertheless abused its discretion, according to Detwiler, because the Fraudulent Transferee "never successfully intervened in the case," meaning the period for which fees were assessed had no legitimate start date, causing the award to swell by "more than half" its proper level. (Petition, p. 56–57.)

In addition to its successful statutory intervention under NRS 31.070, the Fraudulent Transferee simultaneously (and superfluously) attempted intervention pursuant to the *pre-trial* rule, NRCP 24, which

[23] The district court noted that Debtor and the Fraudulent Transferee agreed on the record that they had intervened pursuant to NRS 31.070. (1 App. 196.)

the district court denied as impertinent (1 App. 187–92, 185–86; 1 R. App. 1–8): this case began *after* a trial in Washington State when Debtor's underlying liability was reduced to a judgment. In Nevada, this was a foreign judgment collection action from the start. But this denial of NRCP 24 intervention, which occurred in April, 2018—two years before the conclusion of Detwiler's contempt trial—does not somehow erase the subsequent proceedings or the fact of the Fraudulent Transferee's intervention under NRS 31.070 and Detwiler's attendant contempt.

3. The District Court Thoroughly Vetted the Fee Request Before Making Its Ruling

To arrive at the fee award, the trial court required separate briefing (4 App. 844–74), which included a filing under seal of years' worth of counsels' invoices and time journals (4 App. 845–46, 854, 898; 2 R. App. 497–499) followed by a hearing (4 App. 883) analyzing the *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) factors discussed in the parties' papers. Detwiler did not challenge the sealed submission of invoices below.

And even now Detwiler challenges no specific entry or detail of the fee award, arguing instead two obviously counter-factual positions with

zero support in the record: that the Fraudulent Transferee never intervened (Petition, p. 36, 56) and that he and the Debtor did not conspire, making any fees generated by responding to Debtor's activities not chargeable to Detwiler (Petition, p. 35, 56). There is substantial, even irrefutable, evidence to reject both these high-level arguments and to support the amount of the district court's fee. It should stand.

D. *Callie v. Bowling* Does Not Apply

Callie v. Bowling, 123 Nev. 181, 160 P.3d 878 (2007) requires an independent action to establish alter ego, or, in other words, to make one individual personally liable for a judgment against another. While the district court did twice its 15-page order finding *Debtor* in contempt use the term *alter ego* in a generic sense to describe the defendants' fraudulent activities (3 App. 526, 528), neither the Turn-Over Order nor any other order imputes Debtor's $1.4 million judgment to Detwiler (or anyone else). *Cf. Callie*, 123 Nev. at 184, 160 P.3d at 879–80 (vacating a judgment against the putative alter ego, a company officer, because he was rendered individually liable for the corporation's judgment without due process).

In contradistinction to *Callie v. Bowling*, the Turn-Over Order is

in rem in nature. Consistent with the NRS 31.070 third party claim process that the Fraudulent Transferee inaugurated, the district court conducted discovery, held evidentiary hearings over the course of approximately a year, and then, pursuant to NRS 31.100, ordered all defendants to surrender the 59 vehicles because it concluded they belonged to Debtor despite a scheme to hide them in which Detwiler played the starring role. *Callie v. Bowling* does not ban the generic use of the words *alter ego*. That is all that happened here.

E. The Bank Exists

Given that Detwiler perjured himself by inventing the existence of man (4 App. 964–66) to disorient the district court, his demand for reversal because the Bank is a "nonexistent entity" (Petition, p. 58) is richly ironic. Since 1889, the Bank has operated under a federal charter. (4 App. 960.) Under the National Banking Act, 12 U.S.C. § 1, *et seq.*, a national bank has the power "[t]o sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons." 12 U.S.C. § 24.

The responsible federal regulator maintains a list of all active federally chartered banks, which includes the Bank. (3 App. 962.) One

can also instantly verify the Bank's charter status on the Internet.[24] Detwiler's search for the Bank as a Washington business entity (Petition, p. 58; 4 App. 989–91) is irrelevant because federal law preempts any state registration requirements. *E.g., Citibank N.A. v. City of Burlington*, 971 F. Supp. 2d 414, 435–36 (D. Vt. 2013) (collecting cases).[25]

Like so many of his arguments, this one, too, fails to expose an abuse of discretion. It shows, instead, Detwiler's penchant for deflecting his cynical disregard for the district court's orders with frivolous argument or conspiracy theory.

---

[24] It is available at Office of the Comptroller of the Currency, <<https://www.occ.treas.gov/publications-and-resources/tools/occ-financial-institution-search/index-occ-financial-institution-search.html>>.

[25] After Detwiler filed this petition, he raised the non-existent entity argument in the district court in connection with ongoing collection activities. The lower court overruled him, and corrected an erratum in the case caption, eliminating the circumstance on which Detwiler pinned his hope for convincing this Court that the Bank does not exist. (4 R. App. 852.)

CONCLUSION

For the foregoing reasons, this Court should deny the petition.

Dated this 26th day of August, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ John E. Bragonje*
DANIEL F. POLSENBERG (SBN 2376)
JOHN E. BRAGONJE (SBN 9519)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Real Party in Interest

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2016 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 10,297 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 26th day of August, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ John E. Bragonje*
DANIEL F. POLSENBERG (SBN 2376)
JOHN E. BRAGONJE (SBN 9519)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Real Party in Interest

CERTIFICATE OF SERVICE

I certify that on August 26, 2020, I submitted the foregoing ANSWER for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

Mark A. Hutchison
Michael K. Wall
Brenoch Wirthlin
HUTCHISON & STEFFEN
10080 W. Alta Drive, Suite 200
Las Vegas, Nevada 89145

Attorneys for Petitioner

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

The Honorable Richard Scotti
DISTRICT COURT JUDGE – DEPT. 2
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP