

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

E&T VENTURES, LLC,
Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE JOANNA KISHNER,
DISTRICT JUDGE,
Respondent,

EUPHORIA WELLNESS, LLC a
Nevada limited liability company,
Real Party in Interest.

Electronically Filed
Jan 26 2022 09:04 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. TBD

District Court Case: A-19-796919-B

**PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE,
PETITION FOR WRIT OF MANDAMUS¹**

LAW OFFICE OF MITCHELL STIPP
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Counsel for Petitioner

¹ Petitioner intends to file an emergency motion to stay which will require action by the Nevada Supreme Court on or before February 7, 2022 at 5pm.

DISCLOSURE STATEMENT

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:

1. E&T Ventures, LLC is a private, Nevada limited liability company, which is no longer a going concern.
2. Joseph Kennedy is the beneficial owner of 100% of the membership interests in E&T Ventures, LLC.
3. E&T Ventures, LLC was previously owned 100% by Alex and Kristin Taracki.
4. Mitchell Stipp, Nevada Bar No. 7531, of the Law Office of Mitchell Stipp, represents E&T Ventures, LLC.

DATED this 26th day of January, 2022.

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I. Jurisdictional/Routing Statement.

Pursuant to Article 6, Section 4 of the Nevada Constitution: “[t]he court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of its appellate jurisdiction.” The decision to entertain a writ petition lies solely within the discretion of the Nevada Supreme Court. Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). A writ of mandamus or prohibition may issue only "where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330; see also State ex rel. Dep’t Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1138 (1983). However, “each case must be individually examined, and where circumstances reveal urgency or strong necessity, extraordinary relief may be granted.” See Jeep Corp. v. Dist. Ct., 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982) (citing Shelton v. Dist. Ct., 64 Nev. 487, 185 P.2d 320 (1947)).

The Nevada Supreme Court will also exercise its discretion to consider writ petitions, despite the existence of an otherwise adequate legal remedy, when an important issue of law needs clarification, and this Court’s review would serve considerations of public policy, sound judicial economy, and administration. See

Dayside Inc. v. Dist. Ct., 119 Nev. 404, 407, 75 P.3d 384, 386 (2003), overruled on other grounds by, Countrywide Home Loans, Inc. v. Thitchener, 124 Nev. Adv. Op. No. 64, 192 P.3d 243 (2008).

This petition for a writ concerns the Order Setting Evidentiary Hearing filed on January 20, 2022. See App., Exh. A (the “Subject Order”) (App. 00005-00008).² The evidentiary hearing is scheduled to occur at 8:30 a.m. on February 8, 2022. Id. The purpose of the evidentiary hearing is to consider discovery sanctions requested by Euphoria Wellness, LLC (“Euphoria”). See App., Exhs. B-1, B-2 and B-3 (Euphoria’s Motion for Sanctions, Appendix and Motion for Order Shortening Time) (App. 00009-00299), Exhs. C-1 and C-2 (Petitioner’s Opposition/Counter-motion and Appendix) (App. 00300-00882), Exh. D (Euphoria’s Reply/Opposition) (00883-0094), and Exh. E (Petitioner’s Reply) (App. 00905-00915). The Subject Order requires Kristin Taracki to appear at the hearing as the person who verified the interrogatory responses in her role on behalf of Petitioner. See App., Exh. A (lines 20-22); see also App. 00525-00565 (Exhibit 2 to Petitioner’s Appendix in Support of Opposition/Counter-motion) (Supplemental Discovery Responses and Objections served on October 25, 2021). The Subject

² Petitioner’s Appendix and Exhibits to the Appendix shall be referred to herein as “App.” and “Exh.” or “Exhs.” respectively.

Order also demands that counsel for Petitioner “serve a copy of this Order on Ms. Kristin Taracki.” Id. (lines 26-27). Petitioner disclosed to Euphoria and the district court that Joseph Kennedy acquired 100% of the membership interests of Petitioner on or about November 29, 2019. See App. 00311 (Petitioner’s Opposition/Counter-motion) and App. 00890 (Euphoria’s Reply/Opposition). Ms. Taracki is not a party to the district court case. She became un-affiliated with Petitioner once Mr. Kennedy purchased the membership interests of Mr. and Ms. Taracki. Upon information and belief, Ms. Taracki is no longer a resident of the State of Nevada.

II. Petitioner’s Requested Relief.

For the reasons set forth in this Petition, the Petitioner seeks an order directing the clerk of the district court to vacate the Subject Order as an abuse of judicial power.

III. Statement of the Issue Presented for Review.

1. Whether the district court has jurisdiction to order a non-party to appear at an evidentiary hearing by order of the court?

2. Whether the district court can order Petitioner’s counsel to serve Ms. Taracki with a copy of the Subject Order?

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IV. Statement of Facts.

The district court conducted a hearing on January 4, 2022 to consider discovery sanctions requested by Euphoria. See App., **Exh. F** (Transcript of Hearing) (App. 00916-01061). The basis of the motion was the district court's previous order granting in part Euphoria's motion to compel. See App., **Exh. G** (App. 01062-01079) Such order required Petitioner and Third-Party Defendants to supplement their discovery responses identified in paragraphs 61 and 62 of the order. Id. (App. 01074-75). Petitioner and Third-Party Defendants supplemented their responses. See App. 00525-00624 (Exhibits 2-4 of Petitioner's Appendix in Support of Opposition/Counter-motion). However, Euphoria was not satisfied with the supplemental responses and filed a motion for sanctions.

The Subject Order requires Ms. Taracki to appear at an evidentiary hearing before the district court on February 8, 2022. The Subject Order also requires Petitioner's counsel of record to serve Ms. Taracki with the Subject Order.

VI. Points and Authorities.

Nevada law is clear on the issue before the Court. "[A] district judge lacks jurisdiction to order anyone to appear without cause and without reasonable notice,

or outside the ordinary process of the court.” See Cunningham v. District Court, 102 Nev. 551, 729 P.2d 1328 (1986) (emphasis added). According to the Nevada Supreme Court in Cunningham, “[s]uch orders, entered without jurisdiction, constitute an abuse of judicial power.” Id. at 560 (emphasis added). The district court does not have personal jurisdiction over Ms. Taracki as a non-party to the case before it. Ms. Taracki also has not been served with a subpoena to appear. Personal jurisdiction is based on conduct that subjects an out-of-state party “to the power of the [Nevada] court to adjudicate its rights and obligations in a legal dispute, sometimes arising out of that very conduct.” See Quinn v. Eighth Judicial Dist. Court of Nev., 410 P.3d 984 (Nev. 2018) (citing to Phillips Petroleum Co. v. OKC Ltd. P'ship, 634 S.2d 1186, 1187-88 (La 1984) and NRS 14.065(1) and (2)). Subpoena power “is based on the power and authority of the court to compel the attendance of at a [deposition, hearing or trial] of [a non-party] in a legal dispute between other parties.” Id. (quoting Phillips, 634 So.2d at 1188). Here, Ms. Taracki is not subject to personal jurisdiction of the district court. Further, the district court’s subpoena power over non-parties does not extend beyond the state lines of Nevada. Id. (citing to NRCP 45(b)(2)). However, parties may conduct out-of-state discovery in states that have adopted the Uniform Interstate Depositions and Discovery Act (“UIDD”).

Discovery in this case ended on January 24, 2022. See App., **Exh. H** (App. 01080-01098) (Scheduling Order). Therefore, Petitioner has no right to serve any process on Ms. Taracki. While the district court has personal jurisdiction over Petitioner and its counsel of record, neither Mr. Kennedy as representative of Petitioner nor Petitioner's counsel have personal knowledge of Ms. Taracki's current address. Under these circumstances, it is impossible for Petitioner's counsel to comply (even voluntarily subject to UIDDD).

“An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could "not lawfully adopt." Dekker/Perich/Sabatini Ltd. v. The Eighth Judicial Dist. Court of the State, 137 Nev. Adv. Op. 53, 8 (Nev. 2021) (quoting Singh v. Mooney, 541 S.E.2d 549, 551 (Va. 2001)). Despite the fact that the Subject Order is void, Petitioner's counsel has been personally ordered to complete service on Ms. Taracki. A party (or in this case its attorney as its agent/representative) is required to follow court orders, even erroneous ones, until overturned or terminated. Walker v. City of Birmingham, 388 U.S. 307, 320–21, 87

S.Ct. 1824, 18 L.Ed.2d 1210 (1967) (holding that order violating civil rights should have nevertheless been followed until overturned); see also Howat v. Kansas, 258 U.S. 181, 190, 42 S.Ct. 277, 66 L.Ed. 550 (1922) ("It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."); see also Rish v. Simao, 368 P.3d 1203, 1210 (Nev. 2016). Fortunately, an alleged violation of a void order is not contempt. Ex Rel. Reinhart v. Callahan, 48 Nev. 265 (Nev. 1924).

IV. Conclusion

For the reasons set forth in this Petition, Petitioner seeks to have this Court enter an order instructing the clerk of the court to vacate the Subject Order based on an abuse of judicial power by the district court.

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DATED this 26th day of January, 2022

LAW OFFICE OF MITCHELL STIPP

A handwritten signature in black ink, appearing to read "Mitchell Stipp", is written over a horizontal line.

MITCHELL STIPP, ESQ.

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Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

1. The petition has been prepared in a proportionally spaced typeface using Microsoft Word, Version 16.11.1, in 14 point, Times New Roman.
2. The petition does not exceed 15 pages.

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VERIFICATION

I hereby certify that I have read the petition, 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 petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 21. I understand that I may be subject to sanctions in the event that the petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of January, 2022, I filed the foregoing **PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS**, using the court's electronic filing system.

Notice of the filing of the Petition was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case and by mail to the addresses as indicated:

Judge Joanna Kishner:

Dept31lc@clarkcountycourts.us

Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

Euphoria Wellness, LLC as Real Parties-in- Interest:

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By: 

An employee of Law Office of Mitchell Stipp