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### Summary of Paley v. Second Judicial District Court, 129 Nev. Adv. Op. 74

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## DIRECT CONTEMPT & MOOTNESS

### **Summary**

The Court determined whether it should consider petitioner's writ of mandamus against a direct contempt order under an exception to the mootness doctrine.

### **Disposition**

The Court may adjudicate a moot case when the issue is likely to arise again and the challenged action is generally complete before fully litigated. Conduct is only directly contemptuous when it disrupts the court and occurs in the observable presence of the judge.

### **Factual and Procedural History**

In 2012, Heather Paley was held in direct contempt for testing positive on a drug test "immediately prior" to a hearing before the juvenile drug court. Paley was not disruptive while in court. Paley filed a petition for a writ of mandamus to vacate the order. A month later the juvenile court vacated the direct contempt order.

### **Discussion**

For a writ of mandamus to compel performance the petitioner must not have an adequate remedy in the regular course of law.<sup>2</sup> The Court has discretion to consider a mandamus to clarify an important issue of law and serve public policy.<sup>3</sup> The Court determined that "because the juvenile court vacated the order of contempt, there is no longer an actual controversy for this court to adjudicate."

A moot case may be adjudicated if the issue is likely to arise again and the challenged action ends before litigation is complete.<sup>4</sup> For direct contempt, the conduct must occur in the judge's "immediate view and presence."<sup>5</sup> Paley "did not engage in any disorderly, insolent, boisterous, or violent conduct" while in court. This issue is not likely to arise again because a positive drug test, outside of court, is clearly not contemptuous conduct. Upon this finding, the Court held that "Paley's petition does not fall under an exception to the mootness doctrine."

### **Conclusion**

The district court erred in finding Paley in direct contempt but rectified this error by vacating the contempt order. No exception to the mootness doctrine applies in this case because the issue is unlikely to arise again. The Court denied the petition as moot.

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<sup>1</sup> By Alexandria K. Mendonca.

<sup>2</sup> NEV. REV. STAT. § 34.170 (2013).

<sup>3</sup> Mineral Cnty. v. State Dep't of Conservation and Natural Res., 117 Nev. 235, 243, 20 P.3d 1240, 1247 (2001).

<sup>4</sup> Stephens Media, L.L.C. v. Eighth Jud. Dist. Ct., 125 Nev. 849, 858, 221 P.3d 1240, 1247 (2009).

<sup>5</sup> NEV. REV. STAT. § 22.030 (2013).