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### Summary of Alper v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 43 (June 26, 2015)

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*Nevada Law Journal*

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## REMEDIES: SANCTIONS

### **Summary**

The Court held that the district court's order finding the judgment debtor in contempt but allowing him to purge by participating in a debtor's examination exceeded the scope of the bankruptcy court's lift stay order because a contempt order that permits a judgment debtor to purge incarceration is civil, not criminal, in nature. The Court granted the writ of prohibition.

### **Background**

In August 2010, the district court entered a judgment for Petitioner Eliot Alper of more than \$15,000,000 against William Plise. Afterwards, the district court granted an order for a debtor's examination in an attempt to satisfy the judgment.

Plise failed to attend the first scheduled debtor's examination. Plise appeared at the next examination, but asserted a Fifth Amendment privilege in response to questions and failed to produce the required documents. A subsequent examination was scheduled, but Plise again failed to attend. Alper filed a Motion for Order to Show Cause why Plise should not be held in contempt for his failure to appear. Plise filed a bankruptcy petition before the hearing on the motion was held.

Alper obtained an order from the bankruptcy court granting him relief from the automatic stay. The order allowed the district court to, "conduct a hearing and enter an order with regard to the alleged criminal contempt" of Plise.

The district court found Plise guilty of contempt and sentenced him to 21 days in jail. The district court, however, allowed Plise the opportunity to purge his contempt if he participated in a judgment debtor examination.

Plise filed a petition arguing that the district court's order exceeded the scope of the bankruptcy court's order granting relief from the stay. Plise argued that 11 U.S.C § 362(a) was violated when the district court allowed Plise to avoid his criminal contempt punishment through a conditional purge and thus, transformed the contempt proceeding from criminal to civil.

### **Discussion**

*Writ relief is appropriate*

A writ of prohibition is appropriate when, "the proceedings of any tribunal, corporation, board or person exercising judicial functions...are without or in excess of the jurisdiction of such tribunal, corporation, board or person."<sup>2</sup> Contempt orders may only be challenged through an original petition.

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<sup>1</sup> By Scott Lundy

<sup>2</sup> NEV. REV. STAT. § 34.320.

*The opportunity to purge in the contempt order converted the criminal sanction to civil and thus exceeded the authority granted by the bankruptcy's lift stay order*

An automatic stay under § 362 of the United States Bankruptcy Code stays all state actions against the debtor, but does not stay criminal actions or proceedings against the debtor.<sup>3</sup>

Here, the bankruptcy court granted relief from the automatic stay so as to allow the district court to “conduct a hearing and enter an order with regard to [Plise’s] alleged criminal contempt.” The district court held the hearing and found Plise in contempt of court. The district court punished him to 21 days in confinement. However, the punishment was conditional because the district court allowed Plise the opportunity to purge his contempt through compliance with the debtor’s examination.

*The criminal/civil distinction in contempt sanctions*

“Whether a contempt proceeding is classified as criminal or civil in nature depends on whether it is directed to punish the contemnor or, instead coerce his compliance with a court directive.”<sup>4</sup> Criminal sanctions are unconditional and intended to punish past disobedience. Civil sanctions are remedial, intended to coerce compliance, and may be conditional.<sup>5</sup> The Court concludes that the conditional provision in Plise’s contempt order transforms the sanction from criminal to civil because it was intended to compel Plise’s compliance with the debtor’s examination. “This opportunity to purge is coercive, as it provides Plise an option to avoid incarceration or obtain early release if he submits to the examination.”

## **Conclusion**

The Court held the district court’s order is civil in nature and thus, the district court exceeded the scope of its authority granted by the bankruptcy court. The Court granted Plise’s petition and issued a writ instructing the district court to vacate its contempt order and conduct proceedings consistent with the opinion.

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<sup>3</sup> See 11 U.S.C § 362 (2010).

<sup>4</sup> *Rodriguez v. Eighth Jud. Dist. Ct.*, 120 Nev. 798, 804 (Nev. 2004).

<sup>5</sup> *Id.* at 805.