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Detwiler v. Dist. Ct. (Baker Boyer Nat'l Bank), 137 Nev. Adv. Op. 18 (May 5, 2021)

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THE APPROPRIATE SCOPE OF COMPENSATORY FINES AND ATTORNEY FEES
IMPOSED AS SANCTIONS IN CONTEMPT PROCEEDINGS

Summary

The Nevada Supreme Court held that an order to pay sanctions for contempt of court is civil rather than criminal in nature, and that the amount of the sanctions must be limited to the opponent's actual loss caused by the contempt. The Court concluded that the district court did not abuse its discretion by holding Detwiler in contempt.

In the underlying case, the district court imposed a \$218,000 attorney fee award as well as a \$100,000 penalty because Detwiler failed to comply with a court order to relinquish a classic car collection. The Nevada Supreme Court instructed the district court to vacate the \$100,000 penalty and the portion of the attorney fee award that related to attorney fees incurred before Detwiler's contemptuous conduct. The Court concluded that these amounts were improper because they did not compensate for any losses incurred.

Background

Baker Boyer National Bank (the "Bank") loaned over \$1 million to James Foust, who declared a multi-million-dollar classic car collection on his loan application. Foust defaulted on the loan and the Bank obtained a money judgment against him in Washington State for over \$800,000 in July 2017.

Foust did not pay the judgment, and the Bank began to seek assets to satisfy the judgment. As the classic car collection was purportedly in Nevada, the Bank applied to Nevada's district court to enforce the judgment and then moved the court to order Foust to relinquish the cars to satisfy the judgment under NRS 21.320. Foust opposed the motion and asserted that he had liquidated his entire car collection and had no other assets. The court ordered Foust to produce evidence that he no longer owned the cars. At an evidentiary hearing, Foust claimed he sold some of the cars, including a Motorcoach, to Harry Hildibrand, LLC ("HH") and owned less than one percent of that entity. Nevertheless, the court authorized the Bank to seize the Motorcoach, the only vehicle that the Bank successfully located.

The district court then granted the Bank's motion in full, authorizing the Bank to keep the Motorcoach and ordering Foust to relinquish all the other cars. Foust insisted that HH owned the Motorcoach but failed to produce evidence that the sale was legitimate, and the court found that the purported sale was fraudulent and void.

¹ By Samantha Goett.

In March 2018, HH claimed a right in the Motorcoach and demanded a hearing to determine title. Pursuant to NRS 31.070(1), the third-party claim included a sworn declaration by HH's manager and agent, Detwiler, who claimed HH had purchased the Motorcoach in early 2017 for approximately \$135,000. The district court denied the third-party claim.

The Bank obtains an order requiring Detwiler to turn over certain cars

In a January 9, 2019 order (the "January turnover order"), the district court found that, though ostensibly separate, Foust and HH acted under common legal representation coordinated across judicial fora. Moreover, the court found that their relationship appeared to be a scam intended to frustrate creditors' claims. Therefore, the court granted the Bank's motions and ordered Foust, HH, and any of their agents, employees, or affiliates — including Detwiler — to turn over the cars under penalty of contempt.

Detwiler is held in contempt

In February 2019, the Bank moved to have Foust, Detwiler, and HH held in civil contempt of court because they failed to comply with the January turnover order. A four-day hearing was held, and the district court ultimately held Foust in contempt. The district court later held Detwiler and HH in contempt and issued a warrant for Detwiler's arrest.

Discussion

A mistake in naming a party that causes no prejudice may be corrected by the district court

Detwiler argued that the underlying judgment was void because of a technical error in the case caption, in which the Bank was inaccurately identified as "a Washington corporation." The Court held that where the correct parties are involved in the case, and the naming error is not misleading, such an error is simply clerical and the court can correct it at any time.²

Detwiler waived a peremptory challenge to the judge

Detwiler argued that the trial judge erred by failing to recuse himself after Detwiler objected to his continued oversight of the case. The Court disagreed, holding that pursuant to NRS 22.030(3), Detwiler had waived his right to demand a change of judge by waiting until months after the trial to seek the change.³

The district court did not abuse its discretion by holding Detwiler in contempt

Detwiler argued that the contempt order was invalid because it was based on a self-contradictory order and on an unconstitutional alter-ego finding. The Court held that the district

² In re Greater Hous. Orthopaedic Specialists, Inc., 295 S.W.3d 323, 325 (Tex. 2009); Nev. R. Civ. P. 60(a).

³ Awad v. Wright, 106 Nev. 407, 410, 794 P.2d 713, 715 (1990), abrogated on other grounds by Pengilly, 116 Nev. at 649, 5 P.3d at 571.

court order clearly and unambiguously directed Foust, HH, and Detwiler to turn over the cars, and Detwiler had failed to comply. The Court further noted that HH had entered the lawsuit of its own volition.

Compensatory sanctions for contempt are civil, not criminal

Detwiler argued that the district court had imposed criminal sanctions on him without adhering to constitutionally required procedural safeguards. But the Court held that monetary sanctions payable to the opponent are civil, not criminal, because they serve a remedial purpose.⁴

Civil sanctions are limited to the opponent's actual loss resulting from the contempt

The Court held that monetary sanctions must be limited to the opponent's actual loss caused by the contemptuous conduct.⁵ Monetary sanctions exceeding the opponent's actual loss are invalid.⁶

The sanctions issued were divisible into two parts: the attorney fee award and the additional \$100,000 fine. Detwiler argued that the attorney fee award must be reduced because the award must be apportioned between him and Foust and the award was overbroad. Additionally, Detwiler argued that the \$100,000 fine did not compensate for any loss.

All contemnors may be jointly liable for fees resulting from their contemptuous conduct

The Court held that where a party has incurred attorney fees because of multiple contemnors' joint conduct, each contemnor may be liable for the full amount.⁷

Attorney fees are available only for the period of actual contempt

However, the Court agreed that the attorney fee award must not include fees incurred before the contemptuous conduct began under NRS 22.100(3). Therefore, the Court held that the attorney fees incurred prior to January 9, 2019 were improperly awarded.⁸

⁴ Hicks ex rel. Feiock v. Feiock, 485 U.S. 624, 631-32 (1988).

⁵ State, Dep't of Indus. Rel. v. Albanese, 112 Nev. 851, 856, 919 P.2d 1067, 1071 (1996) (quoting In re Crystal Palace Gambling Hall, Inc., 817 F.2d 1361, 1366 (9th Cir. 1987)); See Hanshaw v. Hanshaw, 55 So. 3d 143, 147 (Miss. 2011) ("[B]ecause civil contempt vindicates a private party's rights, the imposed sanction should not exceed the injured party's damages and expenses.").

⁶ *Id.*

⁷ See NEV. REV. STAT. 17.255 (2021); NEV. REV. STAT. 41.141(5)(b) (2021); Cafe Moda LLC v. Palma, 128 Nev. 78, 79, 272 P.3d 137, 138 (2012) (holding intentional tortfeasor liable for 100 percent of the damages and negligent tortfeasor liable for 20 percent of the damages).

⁸ See S.E.C. v. Bilzerian, 641 F. Supp. 2d 16, 20 (D.D.C. 2009) (recognizing that fees incurred before contemptuous conduct began are not recoverable); see also Shuffler v. Heritage Bank, 720 F.2d 1141, 1148-49 (9th Cir. 1983) (explaining that a contempt fine may only be imposed for "losses resulting from the period of actual contempt," not after the contempt ends); cf. Nev. Power Co. v. Fluor 111., 108 Nev. 638, 646-47, 837 P.2d 1354, 1360 (1992) (holding that NRC 37(b), the discovery sanctions rule, "limits an award of attorneys' fees to those incurred because of the alleged failure to obey the particular order in question" and reversing an order awarding "all attorneys' fees and costs").

The district court abused its discretion by imposing an additional \$100,000 sanction

The Court also agreed that the district court exceeded its authority by imposing the \$100,000 penalty. The Court held that sanctions award must be based on evidence of an actual loss, and the penalty was not based on such evidence in this instance.⁹

Conclusion

The Court's decision included the following holdings: (1) a mistake in naming a party on a case caption that causes no prejudice is a clerical error that may be corrected by the district court at any time; (2) Detweiler waived a peremptory challenge to the judge by failing to make it until after trial; (3) the district court did not abuse its discretion by holding Detwiler in contempt; (4) compensatory sanctions for contempt are civil, not criminal; (5) civil sanctions are limited to the opponent's actual loss resulting from the contempt, and monetary sanctions exceeding the opponent's actual loss are invalid; (6) all contemnors may be jointly liable for fees resulting from their contemptuous conduct; (7) attorney fees are available only for the period of actual contempt, and therefore, the district court improperly awarded attorney fees incurred before the contemptuous conduct began on January 9, 2019; and (8) the district court abused its discretion by imposing an additional \$100,000 sanction without evidence of any actual loss.

Accordingly, the Court granted the petition in part. The Court directed the clerk to issue a writ of mandamus instructing the district court to vacate its judgment and to recalculate the attorney fee award consistent with its opinion.

⁹ Albanese, 112 Nev. at 856, 919 P.2d at 1071.