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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

TODD WEDEKING, D.D.S.,

Petitioner,

v.

**THE SUPERIOR COURT OF
CONTRA COSTA COUNTY,**

Respondent;

MARY JANE PEREZ GROSE,

Real Party in Interest.

A136711

**(Contra Costa County
Super. Ct. No. CIVMSC1001377)**

THE COURT:*

Petitioner seeks writ relief from a contempt adjudication. Review by prohibition is appropriate. (*Koehler v. Superior Court* (2010) 181 Cal.App.4th 1153, 1165 (*Koehler*).) We grant this petition by way of this memorandum opinion because “[t]he Courts of Appeal should dispose of causes that raise no substantial issues of law or fact by memorandum or other abbreviated form of opinion.” (Cal. Stds. Jud. Admin., § 8.1.)

“In the review of a contempt proceeding ‘the evidence, the findings, and the judgment are all to be strictly construed in favor of the accused [citation], and no intendments or presumptions can be indulged in aid of their sufficiency. [Citation.] If the record of the proceedings, reviewed in the light of the foregoing rules, fails to show

* Before Jones, P.J., Needham, J. and Bruiniers, J.

affirmatively upon its face the existence of all the necessary facts upon which jurisdiction depended, the order must be annulled.’ [Citation.]” (*Mitchell v. Superior Court* (1989) 49 Cal.3d 1230, 1256, italics omitted.)

Petitioner was found in contempt for failing to appear at a deposition and disobeying a subpoena. Since this act was “not committed in the immediate view and presence of the court, or of the judge at chambers” (Code Civ. Proc., § 1211, subd. (a)), this case concerns an alleged act of indirect contempt. (*Koehler, supra*, 181 Cal.App.4th at p. 1159.) Based on the record before us, it is apparent that the procedural prerequisites attendant to indirect contempt proceedings were not followed. (See generally *id.* at pp. 1159-1160, 1169.)

No affidavit initiating the contempt proceeding preceded the superior court’s oral order setting a contempt hearing. (*Koehler, supra*, 181 Cal.App.4th at p. 1169.) No order to show cause was issued or personally served on petitioner. (*Ibid.*) No contempt hearing was held; indeed, at the time set for the contempt hearing, the superior court indicated it had already determined that petitioner should be held in contempt, and the purpose of the hearing was to determine contempt sanctions, i.e., whether to impose a jail sentence and/or a fine. (*Id.* at p. 1159; *Farace v. Superior Court* (1983) 148 Cal.App.3d 915, 917; Code Civ. Proc., § 1217.) No valid contempt order was issued, addressing the court’s jurisdiction, petitioner’s knowledge of the order, petitioner’s ability to obey the order, and petitioner’s willful disobedience of the order. (*Koehler, supra*, 181 Cal.App.4th at pp. 1160, 1169.)¹

Since the indirect contempt proceedings failed to comport with established due process principles, the contempt adjudication must be annulled. (*Koehler, supra*, 181 Cal.App.4th at pp. 1157, 1171-1172.) In accordance with our prior notification to the parties that we might do so, we will direct issuance of a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) Petitioner’s right to relief is obvious, and no useful purpose would be served by issuance of an alternative writ, further

¹ In light of our conclusions, we find it unnecessary to address petitioner’s remaining contentions.

briefing and oral argument. (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see also *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1241; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1240-1244.)

The contempt adjudication is annulled. Let a peremptory writ of prohibition issue directing respondent superior court to refrain from any further proceedings on the contempt. In the interests of justice, this decision shall be final as to this court five court days after its filing. (Cal. Rules of Court, rule 8.490(b)(3).) The previously issued stay shall dissolve upon issuance of the remittitur. (Cal. Rules of Court, rules 8.490(c), 8.272.) The parties shall bear their own costs. (Cal. Rules of Court, rule 8.493(a)(1)(B); see *Chahal v. Superior Court* (1999) 73 Cal.App.4th 399, 403 [decided under former rule 56.4].)