

Writ of Mandamus is GRANTED; Opinion Filed September 13, 2013.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-13-01077-CV

IN RE TODD TOMASELLA, Relator

**On Appeal from the 86th District Court
Kaufman County, Texas
Trial Court Cause No. 61378**

MEMORANDUM OPINION

Before Justices FitzGerald, Lang, and Myers
Opinion by Justice Lang

Before the Court is relator's petition for writ of habeas corpus relating to the trial court's March 28, 2013 "Order for Writ of Commitment for Todd Michael Tomasella, and Setting of Bond." Relator complains that he was wrongfully denied the right to a jury trial. We agree.

The trial court's order finds relator guilty of criminal contempt, sentences him to six months plus an additional three months, and orders the sentences to run consecutively. Because relator was sentenced to more than six months in jail, he was entitled to a trial by jury. *See Ex parte Sproull*, 815 S.W.2d 250, 250 (Tex. 1991). Real party in interest agrees that relator's sentence for criminal contempt must be set aside. However, as real party in interest points out, relator was also incarcerated on a finding of civil contempt. Relator has not challenged his sentence for civil contempt, and we do not disturb the trial court's findings or sentence related to civil contempt.

Therefore, we **GRANT** habeas corpus relief and **VACATE** the criminal contempt portion of the written order dated March 28, 2013, entitled Order for Writ of Commitment for Todd Michael Tomasella, and Setting of Bond, issued by the 86th Judicial District Court of Kaufman County, Texas, in the case styled *In the Interest of M.D.T., a Child*. The portion of that order committing Todd Michael Tomasella to the custody of the Sheriff of Kaufman County for civil contempt remains in effect. We **ORDER** that relator Todd Michael Tomasella be unconditionally released and discharged from the custody of the Sheriff of Kaufman County pursuant only to the criminal contempt portion of that order.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

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