IN THE SUPREME COURT OF THE STATE OF NEVADA

FLORELA MCCORKLE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE N. ANTHONY DEL VECCHIO, DISTRICT JUDGE, FAMILY COURT DIVISION,
Respondents,
and
ROBERT MCCORKLE,
Real Party in Interest.

No. 49365

FILED

MAY 04 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION AND MANDAMUS

This original petition for a writ of prohibition and mandamus challenges district court orders denying petitioner's motions to disqualify the district court judge assigned to the underlying case and granting real party in interest's motions for protective orders.

This court may issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion.[1] A writ of prohibition may be issued to compel a district court to cease performing acts beyond its legal authority.[2] Neither mandamus

[1]NRS 34.160; Washoe County Dist. Attorney v. Dist. Ct., 116 Nev. 629, 5 P.3d 562 (2000).

[2]NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

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nor prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law.[3] Because writs of mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within this court's discretion.[4]

Judicial disqualification

A petition for a writ of mandamus is the appropriate vehicle to seek disqualification of a judge,[5] and disqualification is appropriate when a judge's impartiality might reasonably be questioned.[6] But the party seeking disqualification bears the burden to demonstrate that disqualification is warranted, and speculation is not sufficient.[7] Moreover, a judge has a duty to sit in the absence of disqualifying bias, and the judge's determination that he should not voluntarily disqualify himself is entitled to substantial weight.[8] We conclude that petitioner's stated grounds for disqualification, a brief conversation with real party in interest's counsel at a continuing legal education conference, is insufficient to require our intervention, and the petition must therefore be denied.[9]

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[3]NRS 34.170; NRS 34.330

[4]Barnes v. District Court, 103 Nev. 679, 748 P.2d 483 (1987).

[5]City of Sparks v. District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16 (1996).

[6] PETA v. Bobby Berosini, Ltd., 111 Nev. 431, 894 P.2d 337 (1995).

[7]Id.

[8]Id.

[9]Id.; see also Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998) (noting that as long as a judge remains open-minded enough

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Protective orders

Generally, this court will not review, through petitions for extraordinary relief, alleged errors in discovery pertaining to matters within the lower court's jurisdiction; instead, the aggrieved party must wait to raise such issues on direct appeal from any adverse final judgment.[10] However, this court has granted extraordinary relief to prevent improper discovery in two situations when disclosure would cause irreparable injury: (1) blanket discovery orders without regard to relevance, and (2) discovery orders requiring disclosure of privileged information.[11]

This case does not fit within these exceptions, as it does not involve a blanket discovery order and the information petitioner seeks does not appear to be privileged or confidential. Therefore, because petitioner has an adequate and speedy legal remedy in the form of an appeal from any adverse final judgment entered in the underlying action,[12] this court's intervention by way of extraordinary relief is not warranted with respect to the two protective orders.

. . . *continued*
to refrain from finally deciding a case until all the evidence has been presented, remarks made by the judge during the course of the proceedings will not be considered as indicative of bias or prejudice).

[10]See Schlatter v. District Court, 93 Nev. 189, 561 P.2d 1342 (1977).

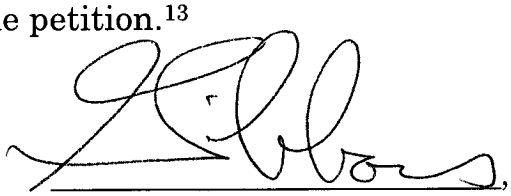
[11]Hetter v. District Court, 110 Nev. 513, 515, 874 P.2d 762, 763 (1994).

[12]See NRAP 3A(a) (providing that an aggrieved party may appeal); NRAP 3A(b)(1) (permitting an appeal from a final judgment).

Conclusion

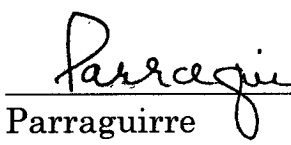
We conclude that the district court did not manifestly abuse its discretion in denying petitioner's motion to disqualify the district judge presiding over the underlying case. Also, the district court's protective orders are not the type of discovery orders that warrant our extraordinary intervention. Accordingly, we deny the petition.[13]

It is so ORDERED.



_____, J.
Gibbons

_____, J.
Douglas



_____, J.
Parraguirre

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Hanratty Roberts Law Group
Rhonda L. Mushkin, Chtd.
Eighth District Court Clerk

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[13]See NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851.