IN THE SUPREME COURT OF THE STATE OF NEVADA

MADELINE WASSERMAN, AN INDIVIDUAL; AND GUARDIAN SCIENTIFIC AFRICA, INC., A NEVADA CORPORATION,
Appellants,
vs.
MARVIN G. LIPSCHULTZ, AN INDIVIDUAL; KEN BAXTER, AN INDIVIDUAL; AND MEDSEARCH USA, INC., A NEVADA CORPORATION,
Respondents.

No. 50186

FILED

MAR 19 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a tort action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

In challenging the district court judgment, appellant Madeline Wasserman argues that the court abused its discretion in denying her motion to associate a California attorney pro hac vice and her motion to continue the trial. Wasserman further contends that she was denied a fair trial due to misconduct by the district court and that the district court erred in awarding respondents punitive damages.[1]

Motion to associate

Wasserman first argues that the district court judgment should be reversed because the court improperly denied a motion to

[1]Because Wasserman makes no arguments regarding the award of attorney fees, we need not address that portion of the district court's judgment. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that because appellant did not present relevant authority and cogently argue his position on appeal, this court would not consider his appellate contentions).

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associate a California attorney who had assisted as counsel in representing Guardian Scientific Africa, Inc., (GSA) in matters connected to the joint venture at issue in this case.[2] Respondents opposed the motion to associate. Ultimately, the district court denied the motion to associate on the basis that a conflict of interest existed, which meant that the California attorney was disqualified to represent GSA in this matter.

The district court has broad discretion regarding determinations on disqualification in a particular case, and this court will not disturb the determination by the district court absent an abuse of discretion. Robbins v. Gillock, 109 Nev. 1015, 1018, 862 P.2d 1195, 1197 (1993). In resolving whether an attorney's conflicts of interest prevents representation, "any doubt should be resolved in favor of disqualification." Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1507, 970 P.2d 98, 123 (1998), overruled in part on other grounds by GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11 (2001). A motion for disqualification, however, should also not be used as an instrument of harassment or delay. Brown v. Dist. Ct., 116 Nev. 1200, 1205, 14 P.3d 1266, 1270 (2000).

Here, Wasserman's Nevada attorney filed a motion to associate a California attorney. Respondents argued in their opposition that the California attorney was at one point the lawyer for GSA and,

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[2]GSA indicates in the opening brief that it also challenges the district court's judgment on appeal to the extent that the judgment awards punitive damages. We note, however, that no separate arguments are advanced on behalf of GSA in the opening brief regarding this issue other than its statement that it joins Wasserman in challenging the punitive damages award. Consequently, we decline to review the punitive damages award as it pertains to GSA beyond our analysis of Wasserman's arguments respecting the award. See Edwards, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (2006).

according to a deposition of Wasserman, assisted during the representation in matters connected to the joint venture. By representing GSA in furtherance of the joint venture, respondents argued, the California attorney also represented respondents, who were partners in the joint venture with GSA. Thus, argued respondents, a conflict of interest existed for the California attorney, as his representation of appellants at trial would conflict with his duties to the other partners in the joint venture.

We conclude that the district court did not abuse its discretion in denying the motion to associate. The representation of a partner in a joint venture, even if no advice was ever expressly given by the attorney to all the other partners in the joint venture, fairly establishes "a reasonable possibility" that an impropriety "did in fact occur." See id.; see also Brennan's, Inc. v. Brennan's Restaurants, Inc., 590 F.2d 168, 172 (5th Cir. 1979) (explaining, under the American Bar Association Code of Professional Responsibility, the obligation of an attorney not to misuse information acquired in the course of representation); but see Bieter Co. v. Blomquist, 132 F.R.D. 220 (D. Minn. 1990) (declining to find the existence of an attorney-client relationship under similar circumstances). Further, public suspicion may properly weigh against allowing an attorney who previously acted on behalf of a joint venture to subsequently act as trial counsel in a lawsuit between the partners regarding the very same joint venture. See Brown, 116 Nev. at 1205, 14 P.3d at 1270.

Motion to continue trial

Wasserman next challenges the district court's denial of a motion to continue trial in light of the denial of the motion to associate and the subsequent withdrawal of her Nevada attorney. A motion for a continuance is addressed to the trial court's discretion. Benson v. Benson,

66 Nev. 94, 99, 204 P.2d 316, 318 (1949) (citing Neven v. Neven, 38 Nev. 541, 546, 148 P. 354, 356 (1918). Further, this court has explained that the withdrawal of one's attorney on the eve of trial is not necessarily grounds for a continuance, "particularly where the withdrawal is unexplained, where no diligence in inducing counsel to remain in the case or in securing new counsel is disclosed, and where it is not shown that the party is free from fault in the matter." Id. at 98, 204 P.2d at 318.

Here, when asked by the district court whether she had a position on her Nevada attorney withdrawing, Wasserman responded, "I'm not opposed to [the attorney] withdrawing." Further, Wasserman did not file her motion to associate the California attorney until April 24, 2007, even though the trial had apparently already been set for May 7, 2007. As the motion to associate was apparently filed so close to the trial date, and because Wasserman consented to the withdrawal of her Nevada attorney, we perceive no abuse of discretion when the district court determined that Wasserman had not demonstrated sufficient grounds for a continuance.

Denial of a fair trial

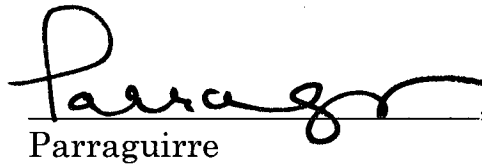
Wasserman next argues that the district court judge's "impatience with the pace of the trial" indicated judicial bias and resulted in the denial of a fair trial. She also contends that counsel for respondents inappropriately attempted to gain favor with the district court. A judge is presumed to be unbiased, and the burden is on the challenging party "to establish sufficient factual grounds warranting disqualification." Goldman v. Bryan, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988), overruled in part on other grounds by Halverson v. Hardcastle, 123 Nev. 29, 163 P.3d 428 (2007). Having reviewed the trial transcripts and considered Wasserman's arguments, we conclude that these arguments

lack merit, as Wasserman has failed to rebut the presumption that the judge in this matter was unbiased. Id.

Award of punitive damages

Finally, Wasserman challenges the award of punitive damages contending that the district court erred in failing to conduct an evidentiary hearing on her financial position or receiving any evidence regarding her financial status. Here, the punitive damages award was well within the statutory parameters set forth in NRS 42.005. See Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 614, 5 P.3d 1043, 1053 (2000). Further, it appears that the district court did not believe Wasserman's bald assertion that she owns no property and has no income. See Countrywide Home Loans v. Thitchener, 124 Nev. ___, ___, 192 P.3d 243, 252 (2008) (explaining that, when reviewing a punitive damages award, this court assumes that the fact-finder "believed all [of] the evidence favorable to the prevailing party and drew all reasonable inferences in [that party's] favor") (emphasis in original and internal quotations omitted). As a result, we reject Wasserman's argument that the district court's approach to her financial position was improper.

In light of the above discussion, we ORDER the judgment of the district court AFFIRMED.



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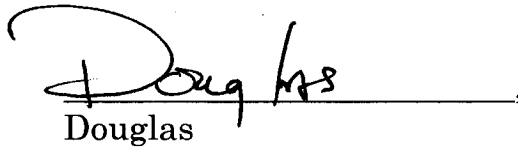
Parraguirre



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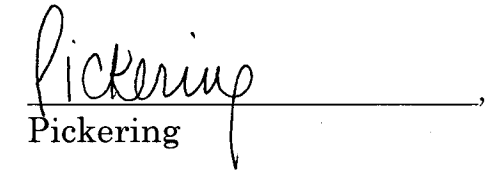

_____, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
William F. Buchanan, Settlement Judge
Mayfield, Turco & Gruber
Gregory M. Heritage
Eighth District Court Clerk