

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK LEAR; LORIN LEAR;
JENNIFER LEAR; MARA BERTELLI;
VALENTE BERTELLI; VANESSA
BERTELLI; JESSE JACKSON; LUKE
JACKSON; AND CHLOE JACKSON,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF WASHOE,
AND THE HONORABLE STEVEN R.
KOSACH, DISTRICT JUDGE,
Respondents,
and
IN THE MATTER OF THE ESTATE OF
WILLIAM POWELL LEAR,
Real Party in Interest.

No. 52132

FILED

DEC 04 2008

TRADE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER GRANTING IN PART AND DENYING IN
PART PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order appointing a special master.

In March 2008, the district court entered an order appointing a special master "to preside over all matters associated" with the Estate of William Powell Lear. Petitioners then filed a motion in the district court, opposed by real party in interest, to vacate the order appointing the special master. On June 2, 2008, the special master filed in the district court findings of fact, conclusions of law, and recommendations, and concluded that the motion to vacate the appointment should be denied. The district court subsequently entered an order on July 10, 2008, approving the special master's findings of fact, conclusions of law, and recommendations. This petition followed.

On October 7, 2008, this court granted a stay of the proceedings in this matter pending our resolution of this petition. Thereafter, this court directed the parties to provide supplemental briefing on the question of whether litigants are typically required to pay for the services of the probate commissioner designated in SDCR 57.3. Petitioners and real party in interest filed responses.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station,¹ or to control a manifest abuse of discretion.² The counterpart to a writ of mandamus, a writ of prohibition, is available when a district court acts without or in excess of its jurisdiction.³ The decision to entertain a petition for a writ of mandamus or prohibition is addressed to our sole discretion.⁴ Here, we conclude that a writ of mandamus is the appropriate vehicle for challenging the order appointing the special master.

Petitioners seek to vacate the appointment of the special master, arguing that requiring payment for a special master to perform the duties that the district court ordinarily provides for similarly situated litigants is unreasonable and unnecessary. Real party in interest, however, argues that under Local Rule 57.3 of the Second Judicial District Court, all probate and trust proceedings are automatically referred to a master designated the “probate commissioner” and that because the

¹NRS 34.160.

²Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

³NRS 34.320.

⁴Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

probate commissioner was disqualified here, it was appropriate for the district court to appoint a special master to replace the probate commissioner.

As NRCP 53(b) states, a reference to a special master should be “the exception and not the rule” for the district court.⁵ While NRCP 53(b) does not require a showing of exceptional circumstances for matters of account, which is the situation here, neither NRCP 53(b) nor the relevant local rules of the Second Judicial District Court⁶ expressly authorize the district court to appoint a special master at party expense when the probate commissioner is disqualified from presiding over a probate or trust matter. Thus, when the probate commissioner is disqualified from participating in a particular proceeding, the matter should generally be referred back to the district court judge. We note that the automatic referral of probate and trust proceedings to a probate commissioner, under SDCR 57.3, does present the problem at issue here stemming from the referral to a special master because nothing in either the local rules or the relevant statutes requires the parties to pay additional fees for proceedings before a probate commissioner as they would for proceedings before a special master. Accordingly, after reviewing the documents before us, we conclude that the district court manifestly abused its discretion in referring this matter to a special master and we grant the petition to the extent that petitioners seek


⁵See also Venetian Casino Resort v. Dist. Ct., 118 Nev. 124, 128, 41 P.3d 327, 329 (2002) (stating that in all cases, even matters of account, “referral to a special master is only warranted when it is necessary, not merely when it is desirable”).


⁶See SDCR 57; SDCR 24.

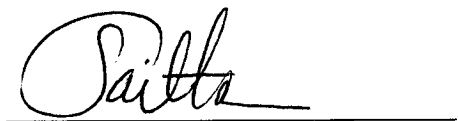
mandamus relief to compel the district court to vacate its order appointing the special master.⁷

Finally, petitioners' additionally request that this case be reassigned to a judicial district other than the Second Judicial District. Having considered the arguments on point, we conclude that this request lacks merit and the petition is therefore denied to the extent that it seeks reassignment of the underlying case. Accordingly, we

ORDER the petition GRANTED IN PART AND DENIED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate the order appointing the special master.⁸


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Saitta

⁷See Round Hill Gen. Imp. Dist., 97 Nev. 601, 637 P.2d 534.

⁸In light of this order, we vacate the stay imposed by our October 7, 2008, order.

cc: Hon. Steven R. Kosach, District Judge
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