

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN C., A MINOR,
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE,
AND, THE HONORABLE ROBERT W.
LANE, DISTRICT JUDGE, THE
HONORABLE JOHN P. DAVIS,
DISTRICT JUDGE,

Respondents,
and

THE STATE OF NEVADA,
Real Party in Interest.

No. 52625

FILED

NOV 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a decision by District Court Judge Robert W. Lane to reassign the underlying juvenile proceeding to District Court Judge John P. Davis after Judge Lane recused himself from the case to avoid the appearance of bias or prejudice. Petitioner has also filed a motion to stay further proceedings before Judge Davis. For the reasons discussed below, we deny the petition and the motion.

Petitioner apparently faces a juvenile delinquency petition based on an alleged sexual assault involving the step-daughter of a probation officer with the Nye County Juvenile Probation Department. The case was assigned to Department 2 of the Fifth Judicial District—Judge Lane's department. Based on the familial relationship between the alleged victim and a juvenile probation officer and because the judges of

the Fifth Judicial District Court have supervisory authority over the Nye County Juvenile Probation Department,¹ petitioner filed a motion to recuse the court, arguing in the alternative that such action was mandatory under NCJC Canon 3E(1)(d)(i) or that the court should voluntarily recuse itself to avoid any appearance of impropriety under NCJC Canon 2A.² The State did not oppose the motion, indicating at a hearing on the motion that recusal might be appropriate to avoid the appearance of impropriety. Judge Lane orally ruled on the motion, indicating that the court would contact the Administrative Office of the Courts to inquire as to a senior judge assignment for the case. Thereafter, however, Judge Lane entered a written order voluntarily recusing himself and reassigning the case to Department 1 of the Fifth Judicial District Court—Judge Davis' department.

After the reassignment, petitioner filed another motion to recuse based on the same grounds as the prior motion. This time, the State opposed the motion, arguing that recusal was not mandatory under the NCJC or NRS 1.230 and that there also was no ground for a voluntary recusal. Judge Davis held a brief hearing and indicated his opinion that the motion lacked merit but continued the proceedings until November 18, 2008, so that he would have the opportunity to further review the file and hear arguments. Petitioner then filed the instant petition and motion for a stay.

¹See NRS 62G.010; NRS 62G.040-.060.

²The motion also sought the "recusal" of the Nye County Juvenile Probation Department. The district court did not address that portion of the motion, and it has not been raised in the instant petition.


At this point in the proceedings, Judge Davis has not formally ruled on the pending motion. Thus, the only issue properly before this court at this time is the challenge to Judge Lane's decision, upon his voluntary recusal, to reassign the case to Judge Davis instead of having a senior judge assigned to the case. As to that issue, petitioner has not demonstrated that the district court failed to exercise its jurisdiction, acted in excess of its jurisdiction, or exercised its discretion in an arbitrary or capricious manner.³ Although Judge Lane's oral ruling may have appeared to be broader than his individual recusal, his written order is based on a voluntary recusal to avoid the appearance of bias or prejudice and does not recuse the entire Fifth Judicial District Court. Petitioner has not identified any statute or court rule requiring the judge in such circumstances to request assignment of a senior judge or precluding the judge from reassigning the case to another department of the court. And to the extent that the motion and counsel's affidavit alleged bias or prejudice, Judge Lane's decision appears to be consistent with the applicable statute governing the procedure for disqualifying district court judges.⁴ Thus, on the sole issue properly before us in this original writ proceeding, we conclude that petitioner has not demonstrated that our

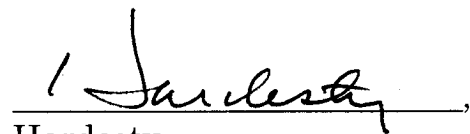
³See NRS 34.160; NRS 34.170; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

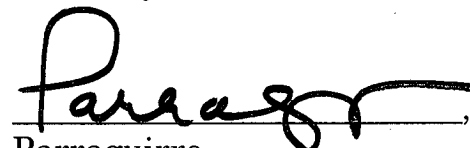
⁴NRS 1.235(5)(a), (b) (providing that when affidavit alleging bias or prejudice is filed against judge, that judge shall proceed no further and shall "[i]mmediately transfer the case to another department of the court" or file a written response with court clerk, in which case disqualification issue is heard and determined by another judge).

intervention is warranted at this time.⁵ Accordingly, we deny the petition and the motion for a stay.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. John P. Davis, District Judge
Hon. Robert W. Lane, District Judge
Christina A. DiEdoardo
Nye County District Attorney/Tonopah
Nye County Clerk

⁵We express no opinion as to the substantive merits of petitioner's underlying motion or the propriety of Judge Lane's decision to voluntarily recuse himself.