

IN THE SUPREME COURT OF THE STATE OF NEVADA

PN II, INC., A NEVADA
CORPORATION; AND PULTE HOME
CORPORATION, A MICHIGAN
CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KATHY A. HARDCASTLE, DISTRICT
JUDGE,

Respondents,

and

EAGLE CREEK COMMUNITY
ASSOCIATION, A NEVADA NON-
PROFIT CORPORATION,

Real Party in Interest.

No. 52697

FILED

NOV 19 2008

TRACHE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Anderson*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying petitioners' motion to disqualify a district judge. Specifically, petitioners assert that Stephen C. Earl, the brother of the district judge assigned to this case, the Honorable Allen R. Earl, represents petitioner Pulte Home Corporation.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.¹ Mandamus is an extraordinary remedy, and whether a petition will be considered is within our sole discretion.² Also, petitioners bear the burden to demonstrate that our intervention by way of extraordinary relief is warranted.³ We have held that a writ petition is the appropriate vehicle for challenging judicial disqualification rulings.⁴ Having reviewed the petition and its supporting documents, we are not persuaded that extraordinary relief is warranted.

Canon 3E(1)(d)(ii) of the Code of Judicial Conduct requires a judge to recuse himself if a person within the third degree of relationship, which includes a brother, is “acting as a lawyer in the proceeding.” The documents before this court indicate that Stephen Earl is licensed only in Arizona and that he represents Pulte Home Corporation in zoning and land use matters in that state. Stephen Earl does not represent Pulte Home Corporation in the underlying constructional defect litigation and is not participating in any way “in the proceeding.” Further, the district court did not abuse its discretion in concluding that petitioners failed to demonstrate that disqualification under Canon 3E(1) was warranted, because petitioners failed to establish that Judge Earl’s impartiality might

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

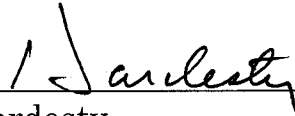
²See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

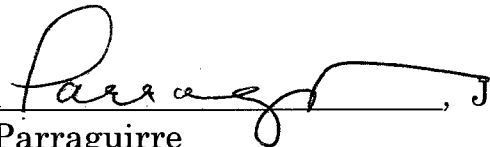
³Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁴Towbin Dodge, LLC v. Dist. Ct., 121 Nev 251, 112 P.3d 1063 (2005).

reasonably be questioned based on this relationship. Under these circumstances, we conclude that the district court did not manifestly abuse its discretion in denying disqualification. Accordingly, we

ORDER the petition DENIED.⁵


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Kathy A. Hardcastle, District Judge
Koeller Nebeker Carlson & Haluck, LLP
Feinberg Grant Mayfield Kaneda & Litt, LLP
Eighth District Court Clerk

⁵NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851.