IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY LUCERO,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; THE HONORABLE GAYLE NATHAN, DISTRICT JUDGE; AND THE HONORABLE WILLIAM GONZALEZ, DISTRICT JUDGE,
Respondents,
and
SARAH EATON,
Real Party in Interest.

No. 61516

FILED

OCT 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING PETITION FOR A WRIT OF MANDAMUS

This original petition for a writ of mandamus, or alternatively, prohibition, challenges a district court decision striking as untimely a peremptory challenge for a change of judge brought under SCR 48.1.[1]

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition may be warranted when the district court exceeds its jurisdiction. NRS 34.320. Where there is no plain, speedy, and adequate remedy in the ordinary course of law, NRS 34.170; NRS 34.330, extraordinary relief may be available. Smith v. District Court, 107 Nev. 674, 677, 679, 818 P.2d 849,

[1]Petitioner's August 27, 2012, motion for leave to submit a supplement in support of his writ petition is granted. Accordingly, the supplement, which was incorporated into the motion, was considered in resolving this matter.

851, 853 (1991). Whether writ relief will be considered is within our sole discretion. Id. at 677, 818 P.2d at 851. It is petitioner's burden to demonstrate that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition, supplement, answer, reply, and the supporting documents, we conclude that our intervention is warranted, and that a writ of mandamus should issue. See State Engineer v. Truckee-Carson Irrig., 116 Nev. 1024, 13 P.3d 395 (2000) (granting mandamus relief to correct an improperly stricken peremptory challenge). Under SCR 48.1(3) a party may file a peremptory challenge within ten days after the parties are notified of a hearing date or not less than three days before the date set for a hearing on any contested pretrial matter, whichever occurs first. Here, petitioner Anthony Lucero was notified of the September 6, 2012, hearing date on his motion to modify custody on August 1 or 3, 2012, and thus his August 15, 2012, peremptory challenge was timely.[2] SCR 48.1; NRCP 6(a). Since SCR 48.1 mandates that the district court reassign the matter to a judge other than Judge Nathan, we grant the petition and direct the clerk of this court to issue a

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[2]Lucero states that he received notice of the September 6 hearing on his motion to modify custody on August 3, and real party in interest Sarah Eaton states that notice was received on August 1. The district court found that notice was received on August 1, but the peremptory challenge was timely regardless. SCR 48.1(3)(a); NRCP 6(a). Although Eaton argues that the peremptory challenge was nevertheless late under SCR 48.1(3)(b) because it was filed less than three days before the district court's August 14, 2012, order shortening time, which set a hearing for August 16, 2012, on Eaton's motion to enforce a settlement agreement, the three-day limit under SCR 48.1(3)(b) does not apply because petitioner did not receive notice of the August 16 hearing until August 14, and thus he did not have three days before the hearing to file a peremptory challenge.

writ of mandamus instructing the district court to vacate its order striking petitioner's peremptory challenge as untimely and to reassign the case to a judge other than Judge Nathan.[3]

IT IS SO ORDERED.[4]

Saitta, J.

Saitta

Pickering, J.

Pickering

Hardesty, J.

Hardesty

[3]When the peremptory challenge was filed, the case was reassigned to Judge Gonzalez. Judge Gonzalez determined that the challenge was untimely and remanded the case back to Judge Nathan. In her answer to the writ petition, Eaton states that although she believes the challenge was untimely, she does not object to the matter being reassigned and heard by Judge Gonzalez. In his supplement, however, Lucero points to "subsequent developments" in the case, stating that it appears that Eaton has had ex parte communication with Judge Gonzalez's law clerk. In particular, Lucero states that the law clerk indicated to Lucero that Judge Gonzalez would take the case back if Lucero would stipulate to dismiss this writ petition. He thus asks that this court "exercise its plenary authority" to "suggest to the presiding judge that this matter be assigned to a court other than the courts that have been involved in this matter." We conclude that the subsequent developments do not warrant our intervention beyond directing the district court vacate its order and reassign the case based on the peremptory challenge. The subsequent developments that Lucero perceives do not provide a basis for this court to mandate that the case be reassigned in any particular manner.

Lucero also states that Judge Gonzalez did not have the authority to transfer the case back to Judge Nathan because only the presiding judge of the family law division has such authority under EDCR 1.60. We conclude that this argument lacks merit.

[4]In light of this order, we vacate the temporary stay entered on August 20, 2012, and we deny as moot Lucero's alternative request for a writ of prohibition.

cc: Hon. Gayle Nathan, District Judge
Hon. William Gonzalez, District Judge
Law Offices of Tony Liker
Kelleher & Kelleher, LLC
Eighth District Court Clerk