

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANE MARK BEALS,

No. 36517

Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
CARSON CITY, AND THE HONORABLE
DAVID R. GAMBLE, DISTRICT JUDGE,
AND THE HONORABLE MARIO G.
RECANZONE, SENIOR JUDGE,

FILED

SEP 18 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Schalk*
CHIEF DEPUTY CLERK

Respondents,

and

STATE OF FLORIDA, EX REL. REBECCA
E. W., MOTHER, AND C. B. AND D.
B., MINOR CHILDREN,

Real Parties in Interest.

ORDER DENYING PETITION

This original proper person writ petition challenges Senior Judge Recanzone's refusal to recuse himself from NRS 1.235(5)(b) disqualification proceedings, and his order denying petitioner's motion to disqualify Judge Gamble in the underlying action for actual bias or prejudice.

In December 1999, Chief Justice Rose assigned the underlying civil action to Ninth Judicial District Judge David Gamble, after both First Judicial District Judges were removed from the case. On May 1, 2000, petitioner filed a motion to disqualify Judge Gamble under NRS 1.235 for actual bias or prejudice. Although Judge Gamble believed the motion was untimely, he filed an answer denying petitioner's allegations and recommended that another judge review the motion. The parties did not agree upon a judge to hear and determine the motion; consequently, on May 5, 2000, Chief Justice Rose

appointed Senior Judge Mario Recanzone to decide the disqualification motion.¹

The day before the scheduled disqualification hearing, petitioner filed a motion for Judge Recanzone to recuse himself, "based on the ground the Defendant does not agree with his appointment." Judge Recanzone declined, and after the disqualification hearing, he denied petitioner's motion to disqualify Judge Gamble. Petitioner then filed a motion in this court, which we deem to be a petition for writ relief, asking us to void Judge Recanzone's order denying disqualification, to remove Judge Recanzone from the disqualification proceeding, and to appoint a judge from the Eighth Judicial District Court to hear and determine the disqualification motion.

We have considered the petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. Judge Recanzone did not exceed his jurisdiction or manifestly abuse his discretion by declining to recuse himself; petitioner was

¹ NRS 1.235(5) (b) provides:

The judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall: . . . File a written answer with the clerk of the court within 2 days after the affidavit is filed, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of his disqualification. The question of a judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:

(1) By the presiding judge of the judicial district in judicial districts having more than one judge, or if the presiding judge of the judicial district is sought to be disqualified, by the judge having the greatest number of years of service.


(2) By the supreme court in judicial districts having only one judge.

neither required nor allowed by NRS 1.235(5)(b) to accept or reject the appointment of Judge Recanzone to hear and determine the disqualification motion. Judge Recanzone also did not exceed his jurisdiction or manifestly abuse his discretion by denying petitioner's motion to disqualify Judge Gamble; petitioner presented no evidence in support of his allegations of bias, all of which Judge Gamble denied. Accordingly, we deny the petition.² See NRAP 21(b); NRS 1.235; Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997); State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).


It is so ORDERED.



Young J.



Maupin J.



Becker J.

cc: Hon. David R. Gamble, District Judge
Hon. Mario G. Recanzone, Senior Judge
Carson City District Attorney
Shane Mark Beals
Carson City Clerk

²We deny petitioner's motion for an order requiring Judge Gamble to file a more responsive answer to the motion to disqualify; the motion is moot. We also deny petitioner's motion for appointment of counsel to assist him; petitioner does not have a right to appointed counsel in the underlying paternity action.