

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY MARION COSTA-AYRES,
Appellant,
vs.
THE EXECUTIVE DEPARTMENT OF
THE STATE OF NEVADA,
Respondent.

No. 76945-COA

FILED

DEC 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gary Marion Costa-Ayres appeals from a district court order denying a petition for a writ of mandamus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

In his underlying petition, Costa-Ayres sought a writ of mandamus directed at the governor to enforce constitutional provisions against the actions of the 1951 Legislature. More specifically, Costa-Ayres contended the Legislature's decision to appoint Nevada Supreme Court justices to sit on the committee creating the Nevada Revised Statutes violated the constitution.

In evaluating the petition, the district court noted, among other things, that Costa-Ayres had previously filed identical mandamus petitions in his criminal cases pending under Fifth Judicial District Court Case Nos. CR7876, CR7877, and CR7878, all of which had been denied. And the court

further determined that, by filing the underlying petition, Costa-Ayres was trying to relitigate the issues presented in his previously rejected petitions for mandamus relief. As a result, the district court denied Costa-Ayres petition and this appeal followed.

On appeal, Costa-Ayres presents no arguments regarding the grounds on which the district court denied his petition. As a result, he has waived any such challenge to this determination. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in appellant's opening brief are waived).

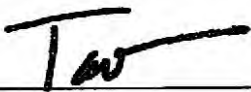
Moreover, after the district court denied Costa-Ayres' prior mandamus petitions, he appealed the decisions and this court affirmed the district court's denial of his requests for mandamus relief. *See Costa-Ayres v. State*, Docket Nos. 76809-COA, 76810-COA, and 76811-COA (Order of Affirmance, May 31, 2019) (resolving Costa-Ayres' appeals from the denial of petitions for mandamus relief filed in Fifth Judicial District Court Case Nos. CR7876, CR7877, and CR7878). Thus, to the extent Costa-Ayres seeks to relitigate the issues decided in these prior matters, his request for relief is barred by the law of the case doctrine. *See Recontrust Co., N.A. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014). (explaining that the law of the case doctrine prohibits reopening questions that have been previously decided "explicitly or by necessary implication"); *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975) (stating that "[t]he law of a first appeal

is the law of the case on all subsequent appeals” and noting that the law of the case “cannot be avoided by a more detailed and precisely focused argument subsequently made” (internal quotation marks omitted)).

Accordingly, for the reasons set forth above, we affirm the district court’s denial of Costa-Ayres’ petition for mandamus relief.

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Insofar as Costa-Ayres argues in his informal brief that the judges of this court should be disqualified, that issue is not properly presented to the court as he failed to file a formal written motion to disqualify as required by NRAP 35. *See Martin v. Beck*, 112 Nev. 595, 596, 915 P.2d 898, 899 (1996) (recognizing that an appellate court may reject a disqualification request when it does not comply with NRAP 35’s procedural requirements). And even if we construed Costa-Ayres’ request as consistent with NRS 1.225(4), which requires disqualification requests to be presented in a written “charge,” NRAP 35 supersedes that statute insofar as they are inconsistent. *See State, Second Judicial Dist. Court*, 116 Nev. 953, 959-60, 11 P.3d 1209, 1213 (2000) (recognizing that procedural rules supersede conflicting statutes regardless of whether the statute was enacted before or after the procedural rule).

cc: Hon. Robert W. Lane, District Judge
Gary Marion Costa-Ayres
Attorney General/Carson City
Nye County Clerk