IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN HEYMAN,
Appellant,
vs.
STATE OF NEVADA BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS; AND KRISTIN MALEK,
Respondents.

No. 85815-COA

ORDER OF AFFIRMANCE

Darren Heyman appeals from a district court judgment on a jury verdict in a civil action. Eighth Judicial District Court, Clark County; David M. Jones, Sr. Judge.

In 2015, Heyman filed an amended complaint alleging that he was a graduate student and teaching assistant at respondent the University of Nevada, Las Vegas (UNLV) and alleged that respondent Kristen Malek, then a fellow graduate student, spread a rumor that Heyman intended to cheat on an upcoming exam. Heyman alleged that he discussed this issue with various employees of UNLV and he was later informed that UNLV did not believe he intended to cheat. Heyman stated that he subsequently sought disciplinary action against the persons that spread the rumor but he alleged that UNLV did not discipline those individuals. Heyman further contended that the cheating rumors may have harmed his reputation and future employment prospects. He therefore contended he was entitled to

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monetary damages based on multiple causes of action, including both state and federal claims.

Respondents removed this matter to federal court based on federal question jurisdiction. The federal court subsequently dismissed several claims and, because no federal claims remained, the court declined to exercise supplemental jurisdiction over Heyman's remaining state law claims pursuant to 28 U.S.C. § 1367(c)(3) and remanded the matter to state court.

Heyman pursued an appeal of the federal court's decision to remand this matter to state court. He also filed a motion in state court requesting a stay of the state court proceedings while his appeal proceeded before the United States Court of Appeals for the Ninth Circuit. Respondents opposed Heyman's stay motion. The district court denied Heyman's motion, finding that a stay was not warranted as Heyman did not demonstrate a likelihood of success for his federal court appeal. The record also indicates that Heyman requested the district court to recuse itself from this matter but the court denied Heyman's request.

The district court later set this matter for trial over Heyman's remaining claims. Heyman filed a motion in limine requesting, as relevant to this matter, an order precluding reference to his participation in Alcoholics Anonymous (AA). Respondents opposed the motion. The district court subsequently entered a written order deferring ruling on admission of information related to Heyman's participation in AA until trial because it found that respondents would be able to introduce such information should Heyman first place his mental health at issue during trial.

This matter proceeded to trial and the jury returned a verdict in favor of respondents on all claims. The district court subsequently entered a judgment in favor of respondents. This appeal followed.

First, Heyman argues that the district court judge should have been disqualified from this matter because he failed to properly disclose that he was friends with the federal court judge that presided over the federal court proceedings. Heyman also contends that the district court judge failed to properly disclose his intention to retire from the bench and reenter private practice, which may have caused the judge to make biased rulings to curry favor with the federal court judge.

We review a decision concerning a request to disqualify a district court judge for an abuse of discretion. *Ivey v. Eighth Jud. Dist. Ct.*, 129 Nev. 154, 162, 299 P.3d 354, 359 (2013). "A judge is presumed to be unbiased, and the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification." *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (internal quotation marks omitted), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Moreover, "disqualification for personal bias requires an extreme showing of bias that would permit manipulation of the court and significantly impede the judicial process and the administration of justice." *Millen v. Eighth Jud. Dist. Ct.*, 122 Nev. 1245, 1254-55, 148 P.3d 694, 701 (2006) (brackets and internal quotation marks omitted).

NCJC 2.11 provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." However, "the test for whether a judge's impartiality might reasonably be questioned is objective." *People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 431, 436, 894 P.2d 337, 340 (1995), *overruled on other grounds by Towbin Dodge, LLC v. Eighth Jud. Dist. Ct.*, 121 Nev. 251, 260-61, 112 P.3d 1063, 1069-70 (2005).

Preliminarily, we note that Heyman's allegation concerning the district court judge's friendship with the federal court judge, taken alone, does not demonstrate the extreme showing of personal bias that would have warranted disqualification of the district court judge in this matter. *See Millen*, 122 Nev. at 1254-55, 148 P.3d at 701; *cf. City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 632, 635, 940 P.2d 127, 128 (1997) ("This court has consistently held that the attitude of a judge toward the attorney for a party is largely irrelevant."); *Legal Ethics, Law. Deskbk. Prof. Resp.* § 10.2-2.11 (2023-2024 ed.) ("A long series of cases reflect the principle that the mere fact that the judge is a good friend and close friend of a lawyer does not, by that fact alone, require disqualification."). In addition, Heyman's unsupported speculation that the district court judge may have made rulings to gain the federal court's approval is similarly insufficient to overcome the presumption that the judge is unbiased and is not sufficient to meet his burden of establishing factual grounds that warranted disqualification. *See Rivero*, 125 Nev. at 439, 216 P.3d at 233,

Moreover, the record indicates that Heyman discussed recusal with the district court judge at a hearing conducted on September 23, 2021, and the district court declined to recuse itself from this matter. Heyman also contends that these issues were discussed during trial. Heyman's argument thus concerns arguments presented at the hearing and the trial, and the district court judge's oral ruling concerning any request for disqualification. However, while Heyman filed a transcript request form, he did not provide this court with a copy of the hearing or trial transcripts or otherwise act to ensure this court received a copy of the transcripts. *See* NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not been granted in forma pauperis status to file a copy of their completed transcript with the clerk of court).[1]

Because Heyman did not provide this court with the transcripts of the relevant hearing or the trial, we necessarily presume that the transcripts support the district court's decision to decline to recuse itself. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[ ] the district court's decision"). Indeed, without a copy of the relevant transcripts, we are unable to meaningfully review Heyman's argument. Therefore, we conclude

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[1]We note the supreme court issued a notice to Heyman in which it instructed him that appellants who have not been granted in forma pauperis status and have requested a transcript "must file a copy of the transcript in this court" and cited specifically to NRAP 9(b)(1)(B).

Heyman failed to demonstrate that the district court abused its discretion by declining to recuse itself from this matter. *See Ivey*, 129 Nev. at 162, 299 P.3d at 359.

Second, Heyman argues that the district court abused its discretion by denying his motion to stay the state court proceedings pending his appeal in federal court. Heyman contends that it was burdensome to concurrently pursue both matters. "An order resolving a request for a stay is reviewed for abuse of discretion, and we will affirm such an order unless the district court's decision is not supported by substantial evidence." *El Jen Med. Hosp., Inc. v. Tyler*, 139 Nev., Adv. Op. 36, 535 P.3d 660, 670 (2023). Here, the district court declined to stay the state court proceedings because it concluded that Heyman was unlikely to succeed before the Ninth Circuit with his appeal from the order remanding this matter to state court. For that reason, the district court denied Heyman's motion for stay. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (stating factors for consideration of a request for a stay pending appeal, including "whether appellant is likely to prevail on the merits in the appeal"). Having reviewed the record, we conclude that Heyman fails to demonstrate the district court abused its discretion by denying his motion for stay pending appeal. *See El Jen Med. Hosp., Inc.*, 139 Nev., Adv. Op. 36, 535 P.3d at 670.

Third, Heyman argues that the district court erred when evaluating his motion in limine seeking to preclude reference to his attendance in AA. Heyman contends that attendees of AA are in a protected

class and that any reference to AA during trial would have been unfairly prejudicial.

"A district court's decision to admit or exclude evidence is reviewed for abuse of discretion and will not be disturbed absent a showing of palpable abuse." *Cox v. Copperfield*, 138 Nev., Adv. Op. 27, 507 P.3d 1216, 1222 (2022) (internal quotation marks and brackets omitted); *see also In re T.M.R.*, 137 Nev. 262, 265, 487 P.3d 783, 787 (2021) ("Generally, we review the district court's decision to grant or deny a motion in limine to exclude evidence for an abuse of discretion."). A trial court commits an abuse of discretion when "no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014).

Here, the district court considered Heyman's motion in limine and, while it deferred ruling on admission of the AA evidence until trial, it nonetheless concluded respondents could introduce evidence of Heyman's participation in AA if Heyman first introduced evidence of his mental health at trial. Heyman's claim regarding his motion in limine and any admission of evidence related to his AA attendance thus concerns evidence and arguments presented during trial, and the district court's decisions regarding that evidence at trial. However, on appeal, Heyman does not argue that the evidence related to his participation in AA was discussed, presented, or admitted during trial.

Moreover, as explained above, Heyman did not provide this court with a copy of the trial transcripts or otherwise act to ensure this court received a copy of the transcripts. *See* NRAP 9(b)(1)(B). Under these

circumstances, it is impossible to determine whether the district court admitted evidence regarding Heyman's participation in AA such that this presents an actual issue on appeal. As a result, we are unable to meaningfully review Heyman's challenge to the district court's decisions relating to the admission of evidence at trial. Moreover, we must necessarily presume that the missing transcripts support the district court's evidentiary determinations at trial. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Thus, Heyman fails to demonstrate that the district court abused its discretion concerning the admission of evidence. *See Cox,* 138 Nev., Adv. Op. 27, 507 P.3d at 1222; *In re T.M.R.*, 137 Nev. at 265, 487 P.3d at 787.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

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[2]Insofar as Heyman raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 29
Hon. David M. Jones, Senior Judge
Darren Heyman
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk