

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF DONALD L.
BRAUCH, A DECEASED ADULT.

No. 39146

CARMEN GERACI, AS EXECUTRIX OF
THE ESTATE OF DONALD L.
BRAUCH, DECEASED; SALVATORE
GERACI; AND CARMEN GERACI,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND, THE HONORABLE
WILLIAM O. VOY, DISTRICT JUDGE,
FAMILY COURT DIVISION,

Respondents,

and

KATHLEEN BUCHANAN, PUBLIC
GUARDIAN, AS PURPORTED
GUARDIAN OF THE PERSON AND
ESTATE OF DONALD L. BRAUCH;
DARA J. GOLDSMITH, ESQ.; SHELLEY
D. KROHN, ESQ.; AND GOLDSMITH &
GUYMON, P.C., AS ATTORNEYS FOR
THE PUBLIC GUARDIAN,
Real Parties in Interest.

FILED

FEB 15 2002

JANE TTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF
MANDAMUS OR PROHIBITON

This is an original petition for a writ of mandamus or, in the alternative, prohibition challenging several orders of the district court in a guardianship proceeding. We have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted. In particular, the availability of an adequate legal remedy

generally precludes extraordinary relief.¹ Petitioners may challenge the district court's award of the guardian's and her attorney's fees and costs on appeal from the final judgment resolving the guardianship proceedings.² NRS 159.169 may also provide the right to appeal from such orders, although at this juncture, we need not decide whether such a statutory right to appeal exists.

As for petitioners' challenge to the district judge's bias, we conclude that petitioners have waived this challenge. The district judge disclosed the basis for his disqualification at a March 10, 1999 hearing, and asked the parties' counsel if they wanted a recusal or would agree to a waiver of disqualification. As petitioners were not present, their counsel requested and the district judge granted, seven days to confer with petitioners. Based on the documentation petitioners have provided to this court, any further discussion of the disqualification on the record is unknown.

Petitioners contend, in their present February 4, 2002 petition, that their counsel failed to inform them about the disqualification, and the district court failed to secure their consent to a waiver on the record as required by Canon 3F of the Nevada Code of Judicial Conduct.³ Petitioners assert this challenge almost three years after the hearing at which the disqualification was raised. The district judge has since made numerous rulings in the guardianship proceeding. Petitioners do not indicate when they discovered the basis for

¹See NRS 34.170; NRS 34.330.

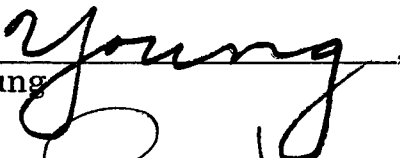
²See NRAP 3A(b)(1) (stating that an appeal may be taken from a final judgment in any action).

³NCJC Canon 3F provides that a judge disqualified under NCJC Canon 3E may disclose the basis for disqualification and ask the parties and their counsel to consider whether to waive disqualification. If the parties and counsel agree that the judge should not be disqualified, the judge may participate. The agreement must be incorporated into the record.

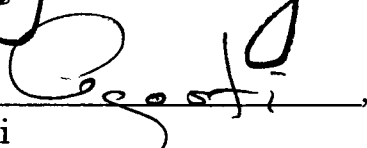
disqualification, or allege that it was recently discovered. Failure to timely assert grounds for disqualifying a judge may constitute a waiver.⁴ Counsel who is aware of facts supporting the disqualification “may not lie in wait” and raise the allegations only after the court rules on the merits.⁵ Counsel’s knowledge of facts supporting the disqualification are binding on the client.⁶ Moreover, petitioners did not pursue disqualification under NRS 1.235, which sets forth the specific procedure that a party must follow in seeking to disqualify a judge. Accordingly, petitioners waived this challenge.

Finally, we have considered the remaining contentions raised in the petition, and we conclude that petitioners have not demonstrated that extraordinary relief is warranted at this time.⁷ Accordingly, we deny the petition.⁸

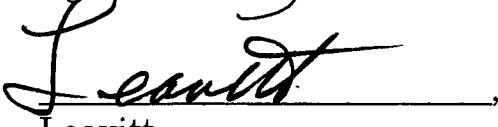
It is so ORDERED.



Young J.



Agosti J.



Leavitt J.

⁴See generally Las Vegas Downtown Redev. Agency v. Hecht, 113 Nev. 644, 651, 940 P.2d 134, 139 (1997).

⁵Ainsworth v. Combined Ins. Co., 105 Nev. 237, 260, 774 P.2d 1003, 1019 (1989) (quoting Phillips v. Amoco Oil Co., 799 F.2d 1464, 1472 (11th Cir. 1986)), modified on other grounds by Powers v. United Servs. Auto. Ass'n, 114 Nev. 690, 705, 962 P.2d 596, 606 (1998).

⁶Snyder v. Viani, 112 Nev. 568, 572, 916 P.2d 170, 172 (1996).

⁷See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁸See NRAP 21(b).

cc: Hon. William O. Voy, District Judge, Family Court Division
Law Offices of Hamilton D. Moore
Goldsmith & Guymon
Clark County Clerk