

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF DONALD L. BRAUCH, BY  
AND THROUGH CARMEN GERACI,  
EXECUTRIX; CARMEN GERACI,  
INDIVIDUALLY; AND SALVATORE  
GERACI, INDIVIDUALLY,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
RONALD D. PARRAGUIRRE,  
DISTRICT JUDGE,

Respondents,

and

STEPHEN R. MINAGIL, ESQ.;  
STEPHEN R. MINAGIL, LTD.;  
GOLDSMITH & GUYMON, P.C., A  
NEVADA PROFESSIONAL  
CORPORATION; DARA J.  
GOLDSMITH, ESQ.; SHELLEY D.  
KROHN, ESQ.; CLARK COUNTY;  
CLARK COUNTY PUBLIC GUARDIAN,  
AN AGENCY OF CLARK COUNTY;  
JARED SHAFER, INDIVIDUALLY;  
KATHLEEN BUCHANAN,  
INDIVIDUALLY; DARYL GLOVER,  
INDIVIDUALLY; DESIRE DUSHAUN;  
KRAVITZ, SCHNITZER & SLOANE,  
LTD.; GARY SCHNITZER, ESQ.; AND  
ABRAN VIGIL, ESQ.,  
Real Parties in Interest.

No. 40894

FILED

FEB 26 2003

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

Petitioners, through this petition for a writ of mandamus, ask this court to (1) disqualify Kravitz, Schnitzer & Sloane Chtd., in two district court cases and one federal case, (2) stay proceedings in the two district court cases and direct Kravitz to stipulate to a stay in the federal case, (3) direct Kravitz to turn over its files and billings in these cases, (4) strike the answers filed by Kravitz in the two district court cases and enter default judgments, and (5) direct Kravitz to withdraw from any litigation involving the parties in the two district court cases and the federal case. We have considered the petition, and we conclude that our intervention by extraordinary writ is not warranted.

The Kravitz firm has only represented parties whose interests are opposite to petitioner's interests, so there is no disqualifying conflict of interest between petitioners and the Kravitz firm.<sup>1</sup> Petitioners rely upon Ag Gro Services Co. v. Sophia Land Co., Inc.,<sup>2</sup> as support for their argument that the Kravitz firm is disqualified because it has invaded petitioners' attorney-client privilege with petitioners' former attorney Stephen Minagil. In Ag Gro Services, a suit arising from a real estate purchase agreement, the court granted the seller's motion to disqualify the buyer's attorney; the court held that disqualification was warranted by a private meeting between the buyer's attorney and seller's former attorney, in which the buyer's attorney obtained attorney-client privileged information about matters relevant to the suit. The court concluded, in

---

<sup>1</sup>See SCR 157.

<sup>2</sup>8 F. Supp. 2d 495 (D. Md. 1997).

short, that “[i]t is not permissible for an attorney deliberately to invade an adverse party’s attorney-client privilege.”<sup>3</sup>

Here, however, petitioners made Minagil an adverse party by suing him for malpractice, and Minagil then retained the same counsel that some other adverse parties had retained. Petitioners have not shown that the Kravitz firm deliberately invaded their attorney-client privilege. Furthermore, given the exceptions in SCR 156 and NRS 49.115 for attorneys accused of malpractice by their clients,<sup>4</sup> the Kravitz firm had no reason to believe that its representation of Minagil would likely result in its gaining improper access to privileged information. Finally, petitioners’ claims against Minagil are so broad that petitioners may be deemed to have waived their attorney-client privilege in its entirety.<sup>5</sup>

Petitioners have not demonstrated that the district court had any duty to disqualify the Kravitz firm or that its discretionary decision

---

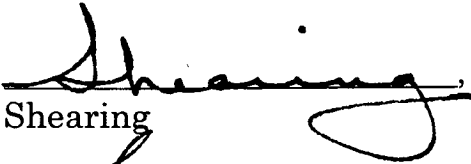
<sup>3</sup>Id. at 498.

<sup>4</sup>SCR 156 prohibits a lawyer from revealing information relating to representation of a client absent client consent, but allows the lawyer to reveal such information to the extent the lawyer reasonably believes necessary to establish the lawyer’s defense in a civil action between the lawyer and the client, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client. NRS 49.115(3) provides that there is no attorney-client privilege as to communications relevant to an issue of breach of duty between lawyer and client.

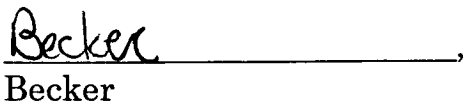
<sup>5</sup>See Wardleigh v. District Court, 111 Nev. 345, 354-57, 891 P.2d 1180, 1186-87 (1995) (adopting anticipatory waiver theory, which deems a privilege waived when the holder of the privilege pleads a claim or defense in such a way that eventually he or she will be forced to draw upon the privileged communication at trial in order to prevail).

not to disqualify the firm was arbitrary or capricious. Accordingly we deny this petition for a writ of mandamus.

It is so ORDERED.

  
Shearing, J.

  
Leavitt, J.

  
Becker, J.

cc: Hon. Ronald D. Parraguirre, District Judge  
Law Offices of Hamilton D. Moore  
Clark County District Attorney, David J. Roger/Civil Division  
Kravitz Schnitzer & Sloane, Chtd.  
Clark County Clerk