IN THE SUPREME COURT OF THE STATE OF NEVADA

ALI SHAHROKHI,
Appellant,
vs.
KIZZY J. S. BURROW A/K/A KIZZY BURROW,
Respondent.

No. 81978

FILED

JAN 08 2021

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

ORDER DENYING MOTION TO DISQUALIFY

This is a pro se appeal from a district court order finally determining child custody by granting respondent sole legal and primary physical custody of the parties' minor child and allowing them to relocate out-of-state. The appeal was transferred to the court of appeals on December 24, 2020, pursuant to NRAP 17(b)(10), upon appellant moving for a stay of the district court's order on an emergency basis.

Appellant has now submitted a motion to disqualify the three court of appeals judges, which motion was transferred to this court pursuant to NRS 1.225(4).[1] In the motion, appellant asserts that the judges must be disqualified because their review of his several previous writ petitions, and the district court's refusal to comply with their November 6, 2019, writ in *Shahrokhi v. Eighth Judicial Dist. Court*, Docket No. 79336-

[1]Appellant's motion for leave to file a motion to disqualify after the NRCP 35 deadline and in excess of the NRAP 27 page limit is granted; the motion to disqualify was filed in this court on December 31, 2020.

COA, improperly places them in a position to review their own orders in the course of deciding this appeal.

Appellant points to 28 U.S.C. § 47, which prohibits a federal judge from deciding an appeal of a matter the judge tried. However, even if § 47 applied to Nevada judges, *cf.* NCJC 2.11(A)(6)(d), this appeal was not, and could not have been, taken from the court of appeals' orders in the writ proceedings appellant filed. *See* Nev. Const. art. 6, § 4; NRAP 40B. Instead, the appeal is from the district court's orders, and thus appellant may not challenge the court of appeals' orders or its alleged failure to enforce its writ in this proceeding.

Appellant also relies on NCJC 2.11(A), which provides that a judge should recuse when his or her impartiality could reasonably be questioned, including when the judge has "personal knowledge of facts that are in dispute in the proceeding," is "likely to be a material witness in the proceeding," or participated as a public official in the proceeding. *See also* NRS 1.225(2) (providing for disqualification based on implied bias). But despite appellant's contentions otherwise, this rule does not appear to apply here: appellant points to facts learned in the official record of these proceedings, not *personal* knowledge; it is not likely that the court of appeal judges will be material witnesses in this proceeding, as the appellate courts generally do not hear from witnesses in the course of resolving appeals; and judges are not the public officials to which the rule refers—as noted in the previous subsection, NCJC 2.11(A)(5), the public statements of concern are those originating "other than in a court proceeding." Additionally, appellant refers to NCJC 2.11(A)(6)(d), which, similar to the federal rule above, requires recusal when the judge has presided over the matter "in another

court." This does not apply because appellant points to acts the court of appeals judges undertook while on the court of appeals, not while in another court.

Appellant further takes issue with language in the district court's order that references a court of appeals' order and, in particular, quotes from Judge Tao's dissent, complaining that the district judge argues the correctness of his ruling in the order in an attempt to sway the appellate court's review. It is unclear how the district judge's referral to the court of appeals' order in this manner could show bias or impartiality on the part of the court of appeals judges, and appellant does not point to any authority in support of his proposition that the district judge's doing so requires the court of appeals judges' disqualification.

Finally, appellant points to Judge Tao's prior dissents as a basis for recusal. This ground for disqualification was previously argued and denied in one of appellant's writ petitions, *see Shahrokhi v. Eighth Judicial Dist. Court*, Docket No. 81218 (Order Denying Motion to Disqualify, May 29, 2020), and appellant has not demonstrated that anything requires a different result here. *See Matter of Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) ("Moreover, rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification."); *see also Liteky v. U.S.*, 510 U.S. 540, 555-56 (1994) (noting that only in a rare, extreme case would a judge's rulings or impressions formed while deciding a case be grounds for disqualification).

The party seeking disqualification bears the burden to demonstrate that disqualification is warranted, and speculation is not sufficient. *People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*,

111 Nev. 431, 437, 894 P.2d 337, 341 (1995), *overruled on other grounds by Towbin Dodge, LLC v. Eighth Judicial Dist. Court*, 121 Nev. 251, 112 P.3d 1063 (2005). In light of the above, we conclude that appellant has not met his burden, and we deny the motion to disqualify.

It is so ORDERED.

Cadish, J.

Pickering, J.

Herndon, J.

cc: Ali Shahrokhi
Standish Law