

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

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Sep 27 2021 03:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NUVEDA, LLC,

Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,

Respondent,

SHANE TERRY, PHIL IVEY, AND
DOTAN Y. MELECH, receiver for
CWNEVADA, LLC, a Nevada limited
liability company,

Real Parties in Interest.

Supreme Court Case No. 82649

Case: A-20-817363-B

Lead Case: A-17-755479-B

Other Consolidated Cases with Lead
Case:
A-19-791405-C and A-19-796300-B

PETITION FOR REHEARING

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I. INTRODUCTION

NuVeda, LLC, a Nevada limited liability company (“Petitioner” or “NuVeda”), filed a petition for a writ concerning the refusal of Judge Elizabeth Gonzalez in Department 11 of the Eighth Judicial District Court, State of Nevada, to recuse herself from presiding over an evidentiary hearing on contempt, as required pursuant to NRS 22.030(3). NRS 22.030(3) provides in pertinent part as follows:

3. [I]f a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be **shall not preside at the trial of the contempt over the objection of the person.**

(emphasis added). There is no dispute NuVeda objected to Judge Gonzalez presiding over the evidentiary hearing on contempt. NRS 22.030(3) does not specify the timing for the exercise of peremptory rights thereunder. Previously, the Nevada Supreme Court decided in Detwiler v. Eighth Judicial District Court, 137 Nev., Adv. Op. 18, 486 P.3d 710 (Nev. 2021).

The Nevada Supreme Court considered the filings before it in this case and denied NuVeda’s petition. See Dkt. 21-27497 (137 Nev. Adv. Op. 54) According

to the decision, requests for a change of judge under NRS 22.030(3) “must be made with reasonable promptness under the circumstances, and here, the district court did not err by determining [NuVeda’s request] was untimely.” Id. at 2. After NuVeda’s review of the decision, it respectfully requests that the panel of the Nevada Supreme Court which decided the matter rehear it in accordance with NRAP 40(c)(2) on the issue of the timeliness of NuVeda’s request. NuVeda believes the Court overlooked or misapprehended material facts in the record pertaining to the reasonableness of the timing of NuVeda’s exercise of its rights under NRS 22.030(3).

II. ARGUMENT

At a hearing on February 1, 2021, the court granted the request by the receiver for CWNevada, LLC, Shane Terry, and Phil Ivey for an order to show cause. See Court Minutes, Dkt. 21-08254 (Exhibit 5, Appendix 0077-0079). No actual order to show cause has been entered from the hearing on February 1, 2021.¹

¹ A court’s oral pronouncement from the bench, the clerk’s minute order, and even an unfiled written order are ineffective for any purpose. Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987). More importantly, “[d]ispositional orders that are unrelated to administrative procedure and case management, and that have not been signed and filed, are ineffective and cannot serve as a basis for contempt.” State, Div. Child Fam. Servs. v. Dist. Ct., 120 Nev. 445, 447 (Nev. 2004).

After the hearing on February 1, 2021, Joe Coppedge, Esq., counsel for the receiver appointed over CWNevada, emailed the court on February 8, 2021 requesting a protective order. See Receiver's Appendix Volume II, Dkt. 21-11836, RA 399-414. No motion was filed by Mr. Coppedge. At an informal, off-the-record telephonic hearing scheduled the same morning, the court ordered depositions to be conducted via Zoom and the evidentiary hearing would be re-scheduled to April 5, 2021. No order was entered from the telephonic hearing on February 8, 2021.

There is no dispute that the issue of a continuance of the hearing on contempt was not before the district court on February 22, 2021.² Regardless of the explanation provided by NuVeda at the hearing on March 17, 2021 or the error by Judge Gonzalez,³ it appears that the Nevada Supreme Court believes it is

² The matter before the district court on February 22, 2021 was NuVeda's request for a stay of the case by Shane Terry. See Nevada Supreme Court Case No. 82767. The motion before the district court at that hearing was filed by NuVeda on February 12, 2021. See Volume VI of NuVeda's Appendix in Case No. 82767, Appendix 0385-0407.

³ Judge Gonzalez apparently confused two (2) separate matters: telephonic hearing on February 8, 2021 and the properly notice hearing held on February 22, 2021 on the stay of Shane Terry's claims. Although the Nevada Supreme Court has assumed otherwise, it is possible that Judge Gonzalez believed NuVeda should have exercised its rights under NRS 22.030(3) on February 8, 2021 (since she specifically referenced NuVeda's purported request for a continuance). As pointed out by NuVeda and confirmed by the Nevada Supreme Court, NRS 22.030(3) does not contain any express deadlines, and NuVeda was not aware under Nevada law at the time that the district court could impose any restriction on the exercise of its statutory rights.

immaterial. While the explanation or the error may not matter, the facts and circumstances prior to NuVeda's exercise of its rights under NRS 22.030(3) do.

As required by the district court, NuVeda filed a status report on February 26, 2021. See Receiver's Appendix Volume II, Dkt. 21-11836, RA 415-418. In the status report, NuVeda noted that it still did not have notice of the orders alleged to have been violated for purposes of the evidentiary hearing on contempt. Id. (paragraph 4, RA 417). With no response, on March 5, 2021, NuVeda submitted an application to Judge Gonzalez for a status check to be heard on shortened time. NuVeda's Appendix, Dkt. 21-08255 (Exhibit 7, Appendix 0097-0110) (un-filed application submitted to chambers of Judge Gonzalez). The application specifically included a request for recusal under NRS 22.030(3) only if the court still intended to conduct the evidentiary hearing on April 5, 2021 (i.e., after Judge Gonzalez considers the matters briefed in the filing). Id. Appendix 0105-0106. With no response and timing being of the essence (evidentiary hearing on April 5, 2021), NuVeda filed the application with the clerk of the court, and the district court subsequently granted the request to hear the matter on shortened time. See NuVeda's Appendix, Dkt. 21-08254 (Exhibit 6, Appendix 0080-0093). At the hearing on March 17, 2021, the district court for the **FIRST TIME** announced the

specific orders the court believed were purportedly violated. See NuVeda's Appendix, Dkt. 21-08255 (Exhibit 8, Appendix 0111-0113). Given the belief by Judge Gonzalez at the hearing on March 17, 2021 that NuVeda should have exercised its rights under NRS 22.030(3) earlier (i.e., on or before February 22, 2021), the district court denied NuVeda's request to have another judge preside over the evidentiary hearing. Id. NuVeda filed a renewed objection on March 17, 2021. See NuVeda's Appendix, Dkt. 21-08255 (Exhibit 9, Appendix 0114-0125). The district court overruled the objection. Id. (Exhibit 10, Appendix 0126-0127). This time the clerk's minutes reference a telephone call on February 18, 2021 concerning a continuance where no objection under NRS 22.030(3) was made. Id.

As NuVeda noted in its Petition, the Nevada Supreme Court will not generally intervene to review an order to show cause. Vaile v. Eighth Judicial Dist. Court of State, 381 P.3d 671 (Nev. 2012). Even so, there was and still is no actual order to show cause, which is enforceable by the district court though contempt.⁴ Accordingly, while NuVeda alleged there was no basis for an order to show cause in its Petition, it did not ask the Nevada Supreme Court to review the matter. However, NuVeda believes the absence of an enforceable order to show

⁴ See Footnote 1 above.

cause and actual notice by the district court of the court's orders alleged to have been violated affected the timing of the exercise of rights under NRS 22.030(3). As set forth above, the grounds for an order to show cause (and contempt) were not known until the hearing on March 17, 2021. Under these facts and circumstances, NuVeda's exercise of its rights under NRS 22.030(3) are timely.

III. CONCLUSION

For the reasons set forth in this Petition for Rehearing, Petitioner respectfully asks that the panel of the Nevada Supreme Court rehear the portion of its Decision determining that the timing of NuVeda's exercise of its rights under NRS 22.030(3) was not timely.

DATED this 27th day of September, 2021.

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CERTIFICATE OF COMPLIANCE AND VERIFICATION

1. The petition has been prepared in a proportionally spaced typeface using Microsoft Word, Version 16.11.1, in 14 point, Times New Roman.
2. The petition does not exceed 10 pages.
3. I hereby certify that I have read the petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 21. I understand that I may be subject to sanctions in the event that the petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of September, 2021, I filed the foregoing **PETITION FOR REHEARING**, using the court's electronic filing system.

Notice of the filing of the Petition was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case No. A-17-755479-B and by mail to the addresses as indicated:

Judge Mark Denton:

Dept13lc@clarkcountycourts.us

Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

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Shane Terry, Phil Ivey, and Dotan Y Melech (Receiver) as Real Parties-in-Interest:

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