

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

JOHN DATTALA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA IN AND FOR THE  
COUNTY OF CLARK, THE  
HONORABLE ADRIANA ESCOBAR,

Respondents.

EUSTACHIUS C. BURSEY and  
PRECISION ASSETS and ACRY  
DEVELOPMENT LLC and LILLIAN  
MEDINA and WFG NATIONAL  
TITLE INSURANCE COMPANY

Real Parties in Interest

Case No. 83939

District Court Case

Electronically Filed  
Dec 27 2021 03:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**WFG NATIONAL TITLE  
INSURANCE COMPANY'S  
OPPOSITION TO PETITIONER'S  
MOTION FOR STAY**

WFG National Title Insurance Company, (hereinafter "WFG"), by and through its attorneys of record, Yanxiong Li, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby opposes Petitioner John Dattala's ("Petitioner") Motion for Stay.

**A. Introduction**

Petitioner's Motion for Stay is procedurally and substantively deficient. Procedurally, Petitioner improperly failed to move first in district court for a stay

order despite his inability to demonstrate “impracticability” in making such a motion. Substantively, Petitioner’s own argument concedes the absence of irreparable harm and impact to the object of his underlying writ petition given that no valid title may be transferred by Precision or any successor-in-interest if Petitioner succeeds. Thus, there is no additional utility served by the entry of a stay order. Accordingly, Petitioner’s Motion to Stay should be denied.

**B. Legal Standard**

A party seeking stay must generally move in district court before making the same request before this Court. *See* NRAP 8(a)(1)(A). In deciding whether to issue a stay, this Court generally considers 1) whether the object of the writ petition will be defeated if a stay is denied; 2) whether petitioner will suffer irreparable or serious injury if a stay is denied; 3) whether respondent/real party in interest will suffer irreparable or serious injury if a stay is granted; and 4) whether petitioner is likely to prevail on the merits in the writ petition. *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (Nev. 2000) (citing *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)). As detailed below, Petitioner’s Motion should be denied for failure to seek stay relief before the district court. Further, a stay is not warranted given Petitioner’s theory that Precision is incapable of conveying valid title.

///

### **C. Legal Argument**

#### **1. Petitioner is not entitled to rely on the “impracticability” exception to his obligation to seek stay relief before the district court as a condition precedent.**

Petitioner argues that he is entitled to rely on the “impracticability” exception “given the clear bias of the [district court]...” *See* Mot. at 6. As support for the district court’s alleged bias, Petitioner cites the district court’s denial of his motion for reconsideration of the summary judgment in favor of Precision, the subject of the underlying writ petition. *See* Mot. at 6. However, a disagreeable ruling, in and of itself, is insufficient to establish actual or implied judicial bias. Even assuming Petitioner can demonstrate judicial bias, it does not render Petitioner’s obligation to seek a stay in district court impracticable.

A trial judge has a duty to sit and ‘preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard or other compelling reason to the contrary. *See Millen v. Eighth Judicial Dist. ex rel. County of Clark*, 122 Nev. 1245, 1253, 148 P.3d 694, 699 (Nev. 2006) (citing *Las Vegas Downtown Redev. v. Dist. Ct.*, 116 Nev. 640, 643, 5 P.3d 1059, 1061 (Nev. 2000)). A judge shall be disqualified in a proceeding in which the judge’s impartiality might reasonably be questioned, including where the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding. *Id.* (citing NCJC Canon 3E(1)(a)).

Disqualification may also be warranted based on objective factors, such as pre-existing relationships between the presiding judge and parties to a proceeding. *See Id.* (citing NCJC Canon 3E(1)(b)-(d)); *see also* NRS 1.230(2) (certain relationships giving rise to implied bias).

Here, Petitioner does not contend and/or fails to offer any evidence of disqualifying relationships in support of his claim of “clear bias”. *See generally* Mot. at 6-7; *see also* NRAP 8(a)(2)(B)(ii)-(ii) (motion for stay must include originals or copies of affidavits or other sworn statements supporting facts subject to dispute and relevant parts of the record). Nor does Petitioner illuminate any disputed facts personally known to the district court judge, which knowledge impugn the judge’s impartiality when denying Petitioner’s motion for reconsideration. *See generally* Mot. at 6-7. The mere fact that Petitioner perceived annoyance or impatience from the district court in denying his motion for reconsideration “summarily” is insufficient to raise reasonable questions regarding the district court’s impartiality. *See United States v. Wilkerson*, 208 F.3d 794, 797 (9th Cir. 2000) (“expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men ... sometimes display” ordinarily fail to establish bias or partiality) (quoting *Liteky v. United States*, 510 U.S. 540, 551, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994)); *accord Millen*, 122 Nev. at 1253, 148 P.3d at 701 (disqualification for personal bias requires “an extreme showing of bias that would

permit manipulation of the court and significantly impede the judicial process and administration of justice”). Thus, Petitioner has failed to articulate or support his claim of “clear bias.”

Regardless of the merits of Petitioner’s bias claim, bias does not render Petitioner’s application for stay in district court impracticable. Impracticability exists under circumstances of extreme urgency such that the district court cannot afford immediate resolution. *See, e.g., Commonwealth v. Beshear*, 981 F.3d 505, 508 (6th Cir. 2020)<sup>1</sup> (moving in district court impracticable as in-person instruction at religious schools expected to resume 5 days after injunction issued against gubernatorial mandate prohibiting in-person instruction). *Cf. Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Boston*, 996 F.3d 37, 43 (1st Cir. 2021) (district court’s rejection of plaintiff’s claims on the merits does not suffice to show moving first in district court would have been impracticable); *Whole Woman’s Health v. Paxton*, 972 F.3d 649, 653 (5th Cir. 2020) (state’s presumption of more favorable litigation position on the merits does not bear on its ability to move in district court. Preference and impracticability are not synonyms).

---

<sup>1</sup> Federal cases interpreting identical federal rules of procedure are strong persuasive authority for the construction of Nevada rules of procedure. *See* Executive Management, 118 Nev. 46, 54 (Nev. 2002). Here, language concerning impracticability exception under FRAP 8(a)(2)(A)(i) is identical to language of the rule under NRAP 8(a)(2)(A)(i).

Here, Petitioner admittedly had ample time to move the district court for stay relief; nearly two months has lapsed between entry of the summary judgment at issue and Petitioner's instant Motion to Stay. *See Douglas v. Second Judicial Dist. Court in & for County of Washoe*, 452 P.3d 937, 2019 WL 6543103 (Nev. 2019) (unpub. disp.) (noting that petitioner failed to demonstrate that filing motion for stay in district court was impracticable where petitioner had three weeks between date of the district court order and his motion to stay filed in appellate court); Mot. at 1 (summary judgment subject to writ petition entered October 22, 2021). Petitioner's own delay belies any suggestion of extreme urgency. Further, disqualification based on bias of one district court judge does not leave the Petitioner without *any* unbiased judge to decide his motion to stay in district court; the case may be transferred to another department or another judge may be requested to hear Petitioner's Motion to Stay. *See* NRS 1.235(5)(a); *see also Towbin Dodge, LLC v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 121 Nev. 251, 260, 112 P.3d 1063, 1069 (Nev. 2005) (disqualification motions made after time limits in NRS 1.235(1)). Thus, Petitioner failed to demonstrate that moving first in district court would have been impracticable under NRAP 8(a)(2)(A)(i).

Accordingly, Petitioner's Motion to Stay should be denied for failing to move in district court first.

///

**2. Alternatively, a stay is not warranted given the absence of irreparable or serious harm to Petitioner arising from further conveyances of the subject properties.**

The object of the writ petition will not be defeated if the stay is denied. Under Petitioner's theory, Petitioner will not lose his interest in the subject real properties by Precision's further assignments or transfers as "[a] thief cannot convey good title even to an alleged good faith bona fide purchaser." Mot. at 6. By Petitioner's own concession, therefore, the absence of a stay order has no impact on his successful pursuit of the underlying writ petition as it would invalidate any assignment or transfer of interest by Precision. Thus, the stay is not warranted under this first factor.

Similarly, Petitioner cannot demonstrate any irreparable harm flowing from further transfers of title or interest in the subject properties. Because any such transferee would claim interest based on the same allegedly defective chain wherein each predecessor, beginning with Bursey, lacks the ability to convey any good title, Petitioner would not suffer any harm if he prevails on his writ petition. While Petitioner may be required to join additional transferees to his quiet title claim, the additional money, time and energy necessarily expended in litigation are not enough to demonstrate irreparable or serious injury. *Hansen*, 116 Nev. at 658, 6 P.3d at 987 (internal citations omitted).

Finally, Petitioner falls woefully short of demonstrating any likelihood of success on the merits. Specifically, his argument that facts admitted by defaulting parties precludes other parties diligently participating from contesting them runs contrary to well-settled Nevada law. As this Court explained in *Lomasto*:

Generally, entry of default against one codefendant who fails to answer or whose answer is stricken ***does not*** preclude answering codefendant from contesting liability. ...Entry of default acts as an admission by the defending party of all material claims made in the complaint.

*Estate of Lomastro ex rel. Lomastro v. Am. Family Ins. Group*, 124 Nev. 1060, 1067-68, 195 P.3d 339, 344-45 (Nev. 2008) [emphasis added]. The default of one defendant, although an admission by him of the allegations of the complaint, does not operate as an admission of such allegations as against a contesting co-defendant. *Lomasto*, 124 Nev. 1067n.8, 195 P.3d 344n.8 (quoting *State Farm Mut. Auto Ins. Co. v. Clark*, 544 So.2d 1141, 1142 (Fla. Dist. Ct. App. 1989)). Here, Petitioner cannot demonstrate any likelihood of succeeding on his writ petition as the findings in the October 15, 2021 Judgment against co-defendants Bursey and Medina were entered as a result of their default. *See* Mot. at Ex. 6. Thus, while they are deemed admitted against the defaulting co-defendants, they do not operate as admissions against non-defaulting co-defendants who have vigorously contested and successfully defended against those same allegations with admissible evidence.



Petitioner has failed to meet his burden of demonstrating a likelihood of success on the merits. Accordingly, Petitioner's Motion to Stay should be denied.

**D. Conclusion**

Petitioner's Motion fails both procedurally and substantively. For the foregoing reasons, the Court should deny the Motion to Stay in its entirety.

DATED this 27th day of December, 2021.

WRIGHT, FINLAY & ZAK, LLP

/s/Yanxiong Li, Esq.  
Yanxiong Li, Esq.  
Nevada Bar No. 12807  
7785 W. Sahara Ave, Suite 200  
Las Vegas, NV 89148  
(702) 475-7978; Fax: (702) 946-1345  
*Attorneys for WFG National Title Insurance  
Company*

**CERTIFICATE OF SERVICE**

I certify that I electronically filed on the 27th day of December, 2021, the foregoing **WFG NATIONAL TITLE INSURANCE COMPANY'S OPPOSITION TO PETITIONER'S MOTION FOR STAY** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[ ] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

**Service via electronic notification will be sent to the following:**

John Benedict  
Benjamin Childs  
Zachary Ball

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Lisa Cox

An Employee of WRIGHT, FINLAY & ZAK, LLP