IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT JUDGE,
Respondents,
and
180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY,
Real Parties in Interest.

No. 84221

FILED
APR 06 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING MOTION TO DISQUALIFY

This emergency, original petition for a writ of mandamus or certiorari challenges a district court order denying a stay of the inverse condemnation judgment against petitioner pending appeal and conditioning the right to appeal upon payment of the judgment. The inverse condemnation judgment is based on actions concerning one part of a larger, 250-acre golf course property—the part commonly referred to as "the 35-acre segment." Inverse condemnation actions concerning the remaining three segments were filed separately below.

On February 22, 2022, a panel of this court directed an answer to the petition. Real parties in interest then filed a motion to disqualify one of those panel members, Justice Douglas Herndon, based on NCJC 2.11(A) and (A)(6)(d), asserting that his impartiality could reasonably be questioned

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because he presided as a district judge over one of the separate inverse condemnation cases involving the golf course property—that concerning "the 65-acre segment." Petitioner has filed an opposition to the motion to disqualify, and Justice Herndon has filed a response disclaiming any biases or prejudices in this matter. Having considered the parties' arguments, as well as Justice Herndon's response, we conclude that Justice Herndon's disqualification is not warranted.[1]

NCJC 2.11(A) requires disqualification, generally, at any time the justice's "impartiality might reasonably be questioned." NCJC 2.11(A)(6)(d) requires disqualification, specifically, when a justice "previously presided as a judge over the matter in another court." The underlying 35-acre inverse condemnation case was assigned to Judge Timothy Williams, and there is no allegation that Justice Herndon ever presided over that matter in the district court. Nevertheless, real parties in interest explain that Justice Herndon presided over related proceedings and that petitioner refers to his decision in those proceedings several times in support of its writ relief and appellate arguments. Real parties in interest assert that Justice Herndon thus would be required to consider his

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[1]On March 22, 2022, real parties in interest filed, without leave, a reply in support of their motion to disqualify. On March 24, petitioner moved to strike the reply, and on April 1, real parties in interest filed a late opposition to that motion, along with a motion for a one-day extension of time. The motion for an extension of time is granted; thus, the opposition is timely and was considered. But because NRAP 35(c) prohibits filing a reply unless the court has granted leave to do so, we grant petitioner's motion and thus strike the March 22 reply. However, we further grant real parties in interest's opposed March 25 motion for leave to file a reply in support of their motion to disqualify, as well as their April 4 motion for leave to file a reply to Justice Herndon's response, and we direct the clerk of this court to detach from both motions and file the proposed replies.

prior decision in reviewing the current case before this court, resulting in the appearance of impartiality.

In evaluating impartiality, this court asks "whether a reasonable person, knowing all the facts, would harbor reasonable doubts." *People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 431, 438, 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). "[A] judge is presumed to be impartial, [and] the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification." *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011) (internal quotation marks omitted). A judge has a duty to sit in the absence of disqualifying bias, and the judge's determination that he should not voluntarily disqualify himself is entitled to substantial weight. *Berosini*, 111 Nev. at 437, 894 P.2d at 341.

Before becoming a supreme court justice, Justice Herndon presided over a separate but related inverse condemnation case. While there may be some factual overlap between the two cases, the facts and circumstances underlying Justice Herndon's decision that failure to appropriately seek development of the 65-acre segment rendered that matter not ripe for decision on the merits are significantly different from those leading to the inverse-condemnation merits judgment in this, the 35-acre segment matter. And his decision in that matter is not precedential or authoritative on this court such that its consideration is somehow necessitated in resolving the matter before us. Thus, real parties in interest have not shown that Justice Herndon presided over the same "matter" in the district court and have not demonstrated that a reasonable person would harbor doubts as to Justice Herndon's impartiality under these circumstances. *See generally In re Aubuchon*, 233 Ariz. 62, 309 P.3d 886, 890 (2013) (concluding that the judge presiding over a disciplinary

proceeding was not disqualified even though he had previously participated as a superior court judge in cases related to, but distinct from, the disciplinary proceeding); *McTurner v. McTurner*, 649 So. 2d 1, 7 (La. Ct. App. 1994), *on rehearing* (determining that no appearance of impropriety existed where a judge of an appellate court panel decided an appeal arising from the same case in which he had previously entered a stipulated judgment bearing no effect on the appeal); *Canarelli v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 12, ___ P.3d ___ (2022) (recognizing that information learned by a judge in the course of prior proceedings generally does not constitute a basis for disqualification); *State v. Henley*, 778 N.W.2d 853, 857 (Wis. 2010) (a supreme court justice who had previously participated on a court of appeals panel that decided a direct appeal involving the respondent's codefendant declined to recuse, under Wisconsin's disqualification and appearance of impropriety rules, from participating in the State's appeal from an order granting the respondent a new trial). Accordingly, we deny the motion to disqualify Justice Herndon.

It is so ORDERED.

_____, C.J.
Parraguirre

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Silver

cc: McDonald Carano LLP/Las Vegas
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