

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROCHELLE MEZZANO

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, In and For the County of
Washoe, and the Honorable BRIDGET
ROBB and Honorable CYNTHIA LU

Respondent.

And

JOHN TOWNLEY

Real Party in Interest

Electronically Filed
Case No. 84235-COA Apr 05 2022 04:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No. DV19-01564

**REPLY IN SUPPORT OF PETITIONER'S REQUEST TO STAY
PROCEEDINGS IN THE SECOND JUDICIAL DISTRICT COURT
PENDING DECISION ON PETITION FOR WRIT RELIEF IN THE
COURT OF APPEALS**

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Attorneys for Petitioner

Petitioner, Rochelle Mezzano (“Ms. Mezzano”), by and through her counsel, David C. O’Mara, Esq., of The O’Mara Law Firm, P.C. hereby submits her reply in support of her request that the underlying action, currently being litigated in the Second Judicial District Court, entitled *Townley v. Mezzano*, Case No. DV19-01564, be stayed pending a decision by the Nevada Court of Appeals in connection with Petitioner’s request for a writ of mandamus, or in the alternative, writ of prohibition, directing the Second Judicial District Court to reassign the underlying action back to Judge Lu as the peremptory challenge was timely.

MEMORANDUM OF POINTS OF AUTHORITIES

On March 16, 2022, Ms. Mezzano filed the pending request to stay proceeding pending the decision on the petition for writ relief in the court of appeals. Thereafter, Mr. Townley filed his opposition to the request on April 5, 2022.

Mr. Townley claims that Ms. Mezzano has no excuse for failing to seek a stay in the trial court in the first instance. Mr. Townley cites to *Rish v. Simao*, 132 Nev. 189, 198, 368 P.3e 1203, 1210 (2016) for the proposition that “Ms. Mezzano’s claims that the trial court has no jurisdiction is immaterial” because “[o]rders entered by the trial court are enforceable until overturned.” *See* Opposition, 5:8-10. Mr. Townley fails to address the proposition that all “further orders of the recused judge are void and have no effect.” *See e.g. Bolt v. Smith*, 594

So.2d 864, 864 (Fla.Ct.App.1992). Additionally, Mr. Townley does not address the legal principle that, once divested of jurisdiction, a district court judge should only perform “mechanical duties of transferring the case to another judge or other essential ministerial duties short of adjudication.” *Stringer v. United States*, 233 F.2d 947, 948 (9th Cir. 1956).

The Nevada Supreme Court found in *Ex parte Gardner* that “where a court attempts by its process of contempt to punish a party for his refusal to comply with an order which that court had no authority to make, the original order being void for want of jurisdiction, the order punishing for contempt is also void.” *Ex Parte Gardner*, 22 Nev. 280, 39 P. 570, 571 (1895). As such, when a court does not have jurisdiction, the Court cannot enforce the void order and based upon that legal finding in *Ex Parte Gardner*, it would be impracticable for Ms. Mezzano to seek a stay before Judge Robb when the decision is “void” because the timely filed challenge has divested the Judge of jurisdiction.

Mr. Townley also argues that the Court should deny the stay on the merits because Ms. Mezzano is not likely to prevail in her writ petition.

First, contrary to Mr. Townley’s argument, the delay in the divorce proceeding was not caused by Ms. Mezzano, but by Mr. Townley. As the Court is aware, Mr. Townley failed to properly serve Ms. Mezzano with the summons and

complaint, and then, refused to allow the judgment to be set aside. This required Ms. Mezzano to file the successful appeal.

It was Mr. Townley who has continued to delay this matter. Mr. Townley has forced Ms. Mezzano to litigate two different divorce actions, one filed in 2019, and the second filed before this Court even issued its Remittitur in 2020. The Honorable Cynthia Lu has quashed service in the second divorce action (DV21-01640) because Mr. Townley, while using the same service of process company he used in the 2019 divorce, failed to properly serve Ms. Mezzano. *See* Exhibit 6.

It would be a waste of judicial economy and assets, as well as the parties time to have Judge Robb review and decide motions in which she has no jurisdiction to act. Additionally, it would put the next judge in a difficult position because the new judge would have to review the same motions knowing that a different judicial officer had already reviewed and rendered a decision, to which the new judge may not agree. The Court of Appeals should act and enter a stay so that the district court can avoid issuing orders that are and will be determined to be void.

Second, Mr. Townley will not suffer irreparable injury because of a short delay to allow the Court to review the writ and render a decision. Additionally, Ms. Mezzano would certainly agree to an expedited briefing schedule if Mr.

Townley is concerned with the time it would require for the Court of Appeals to render a decision on this important legal issue.

Third, Ms. Mezzano is likely to succeed on the merits. Indeed, as matter of right, Ms. Mezzano is entitled to one change of judge by peremptory challenge in any civil action pending in the district court.

The Nevada Supreme Court has consistently held that any order issued by a district court without proper jurisdiction is void, a nullify, and without legal effect, and thus cannot be enforceable. *See Ex Parte Gardner*, 22 Nev. 280, 39 P. 570, 571 (1895). As such, because the district court lacked the power to enter judgment, the district court has effectively rendered no decision related to this case. Void orders are a nullity and without legal effect, and thus Ms. Mezzano is likely to succeed on the merits because it is unlikely that the Court of Appeals will disregard this clear legal precedent and find that a void order is not void when it comes to a peremptory challenge of a judge.

For the forgoing reasons, this Court should stay all further proceedings in the Second Judicial District Court Case No. DV19-01564 until further order of the Nevada Court of Appeals.

Dated: April 5, 2022

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara, Esq.

311 E. Liberty Street
Reno, NV 89501

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

 X Depositing in a sealed envelope placed for collection and mailing in the United States Mail. at Reno, Nevada. following ordinary business practices
 Personal Delivery
 Email
 Federal Express or other overnight delivery
 Messenger Service
 Certified Mail with Return Receipt Requested
 Electronically through the Court's ECF system

addressed as follows:

SILVERMAN KATTELMAN SPRINGGATE, CHTD.
Alexander C. Morey, Esq.
500 Damonte Ranch Pkwy, Ste 675
Reno, Nevada 89521

Counsel for Real Party in Interest

DATED: April 5, 2022

/s/ Bryan Snyder
BRYAN SNYDER

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail. at Reno, Nevada. following ordinary business practices
_____ Personal Delivery
_____ Email
_____ Federal Express or other overnight delivery
_____ Messenger Service
_____ Certified Mail with Return Receipt Requested
___X___ Electronically through the Court's ECF system

addressed as follows:

SILVERMAN KATTELMAN SPRINGGATE, CHTD.
Alexander C. Morey, Esq.
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Reno, Nevada 89521

Counsel for Real Party in Interest

DATED: April 5, 2022

/s/ Bryan Snyder
BRYAN SNYDER

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EXHIBIT 6

EXHIBIT 6

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JOHN TOWNLEY,

Plaintiff

Case No. DV19-01564

vs.

Dept. No. 2

ROCHELLE MEZZANO,

Defendant.

ORDER OF RECUSAL AND RANDOM REASSIGNMENT

Canon 2 of the Revised Nevada Code of Judicial Conduct provides that a “judge shall perform the duties of judicial office impartially, competently, and diligently.” Rule 2.11 under that Canon states that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.”

This matter was assigned to the Honorable Dixie Grossman (“Judge Grossman”). Judge Grossman has been close friends with Alexander Morey for several years and frequently socializes with him. Therefore, Judge Grossman’s relationship may be perceived as Judge Grossman lacking impartiality and may be questioned in this matter.

Based on the foregoing, Judge Grossman voluntarily recuses herself from this matter. This case shall be randomly reassigned. Any motion currently under submission, must be resubmitted to the new department. Any hearing set in Department 2 must be reset in the new department.

DATED this 24 day of September, 2019.


DISTRICT JUDGE