IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Appellant,
vs.
180 LAND CO., LLC, A NEVADA LIMITED LIABILITY COMPANY; AND FORE STARS, LTD.,
Respondents.

No. 84345

RESPONSE TO MOTION TO DISQUALIFY

On March 18, 2022, respondents filed a notice of justice participation in lower tribunal and motion for disqualification. Appellant opposes the motion. This response follows full briefing having occurred on respondents's motion for disqualification. *See* NRAP 35.

Respondents are the owners of 250 acres of land in Clark County, Nevada. Respondents filed four separate inverse condemnation cases in the Eighth Judicial District Court. Each case pertained to a separate portion of the 250 acres. The cases have commonly been referred to as the 65-acre case, the 17-acre case, the 133-acre case and the 35-acre case. The instant appeal arises out of district court decisions involving the 35-acre case.

In August 2018, respondents filed the 65-acre case in the Eighth Judicial District Court. Multiple judges presided over the case between August 2018 and September 2020. In September 2020, the 65-acre case was assigned to me during a caseload reassignment while I was still a district court judge in the Eighth Judicial District Court. On December 16, 2020, after full briefing, I heard oral argument on a motion for summary judgment

filed in the 65-acre case by the defendant (appellant herein). On December 29, 2020, I issued a written decision granting the defendant's motion for summary judgment. Effective December 31, 2020, I left the Eighth Judicial District Court.

To begin, I strongly adhere to Nevada Code of Judicial Conduct Rule 2.7, which places on judges the responsibility to hear and decide the matters that come before them. While disqualification can sometimes be necessary, judges should not use disqualification as a means to avoid presiding over the many difficult or controversial matters that come before them. In this matter, respondents have moved for my disqualification based on general references to Nevada Code of Judicial Conduct Rules 1.2 and 2.11(A) and a specific reference to Nevada Code of Judicial Conduct Rule 2.11(A)(6)(d). Concerning the specific reference to Rule 2.11(A)(6)(d), I do not believe that reference has any applicability to this appeal because I never presided over the 35-acre case in another court and it is the 35-acre case which forms the basis for this appeal. I also did not ever preside over the 17-acre case or the 133-acre case while I was a district court judge.

Before addressing the general references to Rules 1.2 and 2.11(A), I want to discuss two things: (1) the conversation on the record I had with the attorneys in the 65-acre case prior to hearing oral argument and (2) what my ruling in the 65-acre case did and did not entail.

Prior to oral argument in the 65-acre case, I discussed with the attorneys that I had reviewed the procedural history of the pending district court cases and had learned that multiple supreme court justices had recused off of the 17-acre case when it went to the supreme court on an appeal. Because I had already been elected to the supreme court, I discussed with the attorneys in the 65-acre case whether it would be appropriate to reassign that case so that I could be involved in any subsequent supreme

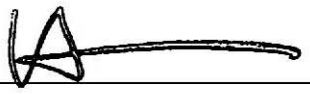
court proceedings. The attorneys on both sides requested that I move forward and decide the motion and I honored that request. My discussion with the attorneys was about the 65-acre case and the conflict I would have on that case if it ever proceeded to the supreme court. I was not presiding over the other three cases and had no concerns about subsequent appellate involvement with any or all of those cases, especially since I had not yet decided how I was going to rule or what issues I would need to address in my ruling on the 65-acre case, and therefore could not know whether any ruling I would be making could create a conflict with my potential subsequent appellate involvement with any of the three other cases. As such, I did not express to the attorneys that I believed I would have any conflict presiding over any of the three other cases should they ever make their way before the supreme court.

Secondly, the ruling I ultimately issued specifically and intentionally did not address the merits of the inverse condemnation claims and did not address any of the other three cases. I found that the plaintiffs (respondents herein) filed four independent cases that were specific to separate parcels of land; that there were a series of development applications made to the defendant in the 17-acre case, the 35 acre case and the 133-acre case; that the factual scenario specific to the 65-acre case revealed that the plaintiffs had failed to make an appropriate application to the defendant to develop the 65-acre parcel of land, and therefore, the action was unripe and the court had no jurisdiction over the claims. I further expressed in my order that addressing the merits of any remaining issues would be unwise because of the three other pending cases. In short, I did not want any opinion of mine to be construed with preclusive effect by any other judge and, just as importantly, I did not want to commit myself to any opinion on any other issues.

Moving to respondents's reference to Rule 2.1 and 2.11(A), the premise of both of these references appears only to be that I made the decision that I did in the 65-acre case. There is no allegation of any other impropriety, bias, or prejudice about the case or the parties involved that is alleged. Moreover, I can say with certainty that I do not have any bias or prejudice against any of the parties, or the attorneys, involved in this appeal regarding the 35-acre case, nor do I have any bias or prejudices related to the 17-acre case or the 133-acre case.

In regard to my ruling, I do not believe that my ruling would prohibit me from involvement in the current appeal or, for that matter, any other appellate litigation that may arise from the 35-acre case, the 17-acre case or the 133-acre case, as I do not believe that my ruling raises any appearance of impropriety in regard to involvement in the other cases. As stated above, my ruling was confined to the specific factual scenario present in the 65-acre case and it was further confined to a finding that the 65-acre case was unripe. I specifically and intentionally avoided opining on any other issues in the 65-acre case and any issues in any of the other cases.

In conclusion, I make this disclosure in response to respondents's motion for disqualification and I reiterate that I have not previously presided over this matter in another court; I have no bias or prejudices as to any of the parties or issues in this matter; and I have not prejudged any issues in this case. I further do not believe that my impartiality could reasonably be questioned.



Herndon

cc: Lansford W. Levitt, Settlement Judge
McDonald Carano LLP/Las Vegas
Shute, Mihaly & Weinberger, LLP
Las Vegas City Attorney
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Law Offices of Kermitt L. Waters