

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

**FILED**

**APR 07 2022**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY S. J. J. J.  
DEPUTY CLERK

*ORDER DENYING MOTION TO DISQUALIFY*

This is an appeal from a district court inverse condemnation judgment and post-judgment orders awarding costs, reimbursement of property taxes, and attorney fees and denying NRCP 60(b) relief. 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.

Respondents have filed a motion to disqualify Justice Douglas Herndon based on NCJC 2.11(A) and (A)(6)(d), asserting that his impartiality could reasonably be questioned 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.” Appellant 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.<sup>1</sup>

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, respondents explain that Justice Herndon presided over related proceedings and that appellant refers to his decision in those proceedings several times in support of its arguments in a related writ petition as to why it is likely to succeed on this appeal, asserting that appellant will probably also refer to the decision in the future briefing in this appeal. Respondents contend that Justice Herndon thus would be required to consider his 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

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<sup>1</sup>Respondents' motions for leave to file a reply to the opposition to their motion to disqualify and a reply to Justice Herndon's response are granted, and we direct the clerk of this court to detach from both motions and file the proposed replies.

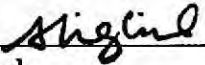
269, 272 (2011) (internal quotation marks omitted). A judge has a duty to sit in the absence of disqualifying bias, and the judge's determination that he should not voluntarily disqualify himself is entitled to substantial weight. *Berosini*, 111 Nev. at 437, 894 P.2d at 341.

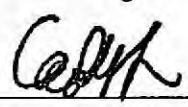
Before becoming a supreme court justice, Justice Herndon presided over a separate but related inverse condemnation case. While there may be some factual overlap between the two cases, the facts and circumstances underlying Justice Herndon's decision that failure to appropriately seek development of the 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 the case on appeal, 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, respondents 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: Lansford W. Levitt, Settlement Judge  
McDonald Carano LLP/Las Vegas  
Shute, Mihaly & Weinberger, LLP  
Las Vegas City Attorney  
Leonard Law, PC  
Law Offices of Kermitt L. Waters  
EHB Companies, LLC