

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; THE HONORABLE
BRIDGET E. ROBB, DISTRICT JUDGE;
AND THE HONORABLE CYNTHIA LU,
DISTRICT JUDGE,
Respondents,
and
JOHN TOWNLEY,
Real Party in Interest.

No. 84235-COA

FILED

APR 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E.A. Brown*
DEPUTY CLERK

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR
PROHIBITION*

This original petition for a writ of mandamus or prohibition challenges a district court judge's authority to preside over the underlying divorce proceedings following a peremptory challenge.

Real party in interest John Townley filed a complaint for divorce from petitioner Rochelle Mezzano in 2019. The case was ultimately assigned to respondent, the Honorable Bridget E. Robb, Judge, who later entered a default divorce decree. Mezzano filed a motion to set the decree aside, arguing it was void because Townley had not properly served her with process. Townley opposed the motion, and the district court entered an order denying it, finding that Mezzano was adequately served. Mezzano appealed from that order, and the supreme court reversed, concluding that "the district court abused its discretion by denying Mezzano's motion

because the judgment was void for lack of service,” and remanding for proceedings consistent with that disposition. *Mezzano v. Townley*, No. 81379, 2021 WL 5002540, at *3 (Nev. Oct. 27, 2021) (Order of Reversal and Remand) (citing *Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998)).

On remand, Mezzano filed a notice of peremptory challenge under SCR 48.1 to get the case reassigned from Judge Robb to a different district court judge. Townley filed an objection to the notice, arguing Judge Robb had already presided over contested matters in the case such that a peremptory challenge was no longer available pursuant to SCR 48.1(5). The district court clerk subsequently reassigned the case to respondent, the Honorable Cynthia Lu, Judge, who promptly filed an order striking Mezzano’s notice of peremptory challenge and directing the clerk to reassign the case to Judge Robb. This petition followed.

A petition for extraordinary relief is the proper mechanism for challenging a district court judge’s authority to preside over a case following a peremptory challenge. *See Turnipseed v. Truckee-Carson Irrigation Dist.*, 116 Nev. 1024, 1032, 13 P.3d 395, 400 (2000) (granting a writ of mandamus to compel the district court to vacate its order striking a peremptory challenge and to reassign the case to a different judge); *State, Dep’t of Motor Vehicles & Pub. Safety v. Eighth Judicial Dist. Court*, 113 Nev. 1338, 1342-43, 948 P.2d 261, 263 (1997) (granting a writ of prohibition to prevent a district court judge from presiding over a case following a valid peremptory challenge). We therefore consider this petition on its merits.

In the petition, Mezzano essentially argues that, in light of the supreme court’s prior ruling in this matter, the district court lacked

jurisdiction over her, and thus all of the orders it entered in the case concerning her were nullities. From there, Mezzano reasons that, although SCR 48.1(5) provides that “[a] notice of peremptory challenge may not be filed against any judge who has made any ruling on a contested matter . . . in the action,” since Judge Robb’s orders were nullities, she must be deemed to have not made any rulings on a contested matter.

We are unpersuaded by Mezzano’s arguments. Although she is correct that the supreme court concluded that the default divorce decree was void, it did not conclude that the district court lacked jurisdiction to enter any orders concerning Mezzano whatsoever. Indeed, the district court had the authority to consider Mezzano’s motion for relief from the default divorce decree and decide the contested matter of whether it should be set aside. *See Dobson v. Dobson*, 108 Nev. 346, 348, 830 P.2d 1336, 1337-38 (1992) (providing that the proper method for challenging a default judgment on grounds that it is void for lack of service is a motion or action under NRCF 60(b)). The district court simply reached the wrong decision in ruling against Mezzano on that issue, which resulted in the supreme court’s order of reversal and remand.

But despite Judge Robb having already decided a contested matter in this case, and despite Mezzano having submitted that matter to Judge Robb without filing a notice of peremptory challenge at the time she sought to set aside the default divorce decree, Mezzano now wishes to make such a challenge. Allowing a peremptory challenge under these circumstances would run afoul of SCR 48.1(5) and would be inconsistent with the purpose of the rule, “which is to keep parties from testing the waters, then challenging the judge if rulings are not in accord with their

hopes.” *State, Dep’t of Motor Vehicles & Pub. Safety*, 113 Nev. at 1342, 948 P.2d at 263. Accordingly, we conclude that extraordinary relief is not warranted in this matter, NRAP 21(b)(1), and we therefore

ORDER the petition DENIED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Bridget E. Robb, District Judge, Family Court Division
Hon. Cynthia Lu, District Judge, Family Court Division
O’Mara Law Firm, P.C.
Silverman, Kattelman, Springgate, Chtd.
Washoe District Court Clerk

¹In light of our disposition, we deny Mezzano’s March 16, 2022, motion for stay as moot.