

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUGLAS BROFMAN,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; THE HONORABLE DAWN
THRONE, DISTRICT JUDGE; AND
THE HONORABLE LINDA MARIE
BELL, DISTRICT JUDGE,

Respondents,

and

GINA FIORE,

Real Party in Interest.

No. 85299-COA

FILED

OCT 07 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Younky
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 order denying a motion to disqualify.

Petitioner seeks a writ of mandamus or prohibition directing the district court to vacate its order denying his motion to disqualify the district court judge presiding over his family court matter and to reassign his family matter to a new district court judge. Petitioner asserts that writ relief is warranted because the district court made a number of erroneous rulings in his family matter and made statements demonstrating that she closed her mind to the evidence, such that his motion to disqualify should have been granted.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. NRS

34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition may be warranted when a district court acts without or in excess of its jurisdiction. NRS 34.320; *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012). This court has discretion as to whether to entertain a petition for extraordinary relief and will not do so when the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; NRS 34.330; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

We presume judges are unbiased. *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254, 148 P.3d 694, 701 (2006). Generally, a judge's remarks "made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). Similarly, what a judge learns during the proceedings is generally insufficient to warrant disqualification, but a party may seek disqualification if he can show "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 12, 506 P.3d 334, 339 (2022) (internal quotation marks omitted). When a party moves to disqualify a district court judge based on a deep-seated favoritism or antagonism, the party must file his motion as soon as possible after discovering the basis for the disqualification. *See Towbin Dodge, LLC v. Eighth Judicial Dist. Court*, 121 Nev. 251, 260, 112 P.3d 1063, 1069 (2005).

Having considered the petition and supporting documents in light of these principles, we conclude that petitioner has failed to meet his burden of demonstrating that extraordinary writ relief is warranted with regard to the denial of his motion for disqualification. *See Pan*, 120 Nev. at 228, 88 P.3d at 844. Accordingly, we deny the petition. *See NRAP 21(b)(1); D.R. Horton, Inc.*, 123 Nev. at 474-75, 168 P.3d at 736-37.

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Dawn Throne, District Judge, Family Court Division
Hon. Linda Marie Bell, District Judge
Douglas Brofman
Chesnoff & Schonfeld
Eighth District Court Clerk

¹We grant petitioner's motion for leave to exceed writ petition length, transferred to this court on September 15, 2022, and we have considered his petition in its entirety in reaching this decision.