IN THE SUPREME COURT OF THE STATE OF NEVADA

E&T VENTURES, LLC,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JOANNA KISHNER, DISTRICT JUDGE,
Respondents,
and
EUPHORIA WELLNESS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Real Party in Interest.

No. 84336

FILED
DEC 29 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of prohibition or mandamus challenges a district court order denying a motion to disqualify a judge pursuant to NRS 1.235, as well as a related decision by a judge to continue presiding over the matter.

In the underlying matter, petitioner filed a motion to disqualify respondent district judge Joanna Kishner. Before petitioner and real party in interest notified Chief Judge Linda Marie Bell whether they had been able to agree upon a judge to resolve the disqualification motion, *see* NRS 1.235(6)(a), Chief Judge Bell entered an order denying the motion.

Later that same day, petitioner filed a motion for reconsideration of Chief Judge Bell's order denying the disqualification motion. This motion attached a new affidavit, but that affidavit was not served on Judge Kishner in compliance with NRS 1.235(4), which requires the affidavit to be either personally served on the judge or left "at the judge's

chambers with some person of suitable age and discretion employed therein."

The following day, Judge Kishner held a hearing on a pending matter in the case. At the outset of the hearing, petitioner's counsel informed Judge Kishner that it was his belief that Judge Kishner could not preside over the evidentiary hearing due to the unresolved motion for reconsideration. *Cf.* NRS 1.235(5)(a) (providing that "the judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall . . . . immediately transfer the case to another department"). Judge Kishner responded that she had not been served with a new affidavit in compliance with NRS 1.235(4) and, after canvassing her staff, she confirmed that none of them had been served with a new affidavit either. She also informed counsel that, in light of Chief Judge Bell's previous order denying the disqualification motion, it was her belief that she had the authority to preside over the hearing. Thereafter, Judge Kishner held the hearing and continued to preside over the underlying matter until this court stayed the proceedings pending the resolution of this writ petition.[1] *See E&T Ventures, LLC v. Eighth Judicial Dist. Court*, No. 84336 (June 9, 2022, Order Granting Motion for Stay).

Petitioner's writ petition challenges (1) Chief Judge Bell's allegedly premature denial of the initial disqualification motion, and (2) Judge Kishner's decision to hold the evidentiary hearing while the affidavit accompanying petitioner's motion for reconsideration had been *filed* but not properly *served*.[2] As explained below, we are not persuaded that petitioner

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[1]Chief Judge Bell denied petitioner's motion for reconsideration roughly three weeks after Judge Kishner held the complained-of hearing.

[2]Although the record contains petitioner's allegations of bias against Judge Kishner, petitioner's writ petition raises only these two procedural-

is entitled to writ relief. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the petitioner carries the burden of demonstrating that writ relief is warranted).

Petitioner's first argument is premised on the idea that Chief Judge Bell needed to wait until the parties informed her that they could not agree on a judge to decide the disqualification motion before Chief Judge Bell could resolve it on her own. *See* NRS 1.235(6)(a) ("The question of the judge's disqualification must thereupon be heard and determined by *another judge agreed upon by the parties or, **if they are unable to agree***, by [the chief judge]." (Emphases added.)). We are not persuaded *under the facts of this case* that Chief Judge Bell's decision to resolve the motion before the parties notified her of their disagreement was either an excess of her jurisdiction or a clearly erroneous application of the law. *See Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (setting forth the standards for when a writ of prohibition or writ of mandamus are warranted). Namely, at the time Chief Judge Bell entered her order resolving the motion, the parties *were*, in fact, "unable to agree" on a judge, and real party in interest's counsel was planning to convey that disagreement to Chief Judge Bell roughly one hour after she entered her order. Given these facts, we conclude that petitioner is not entitled to writ relief with respect to its first argument.

Likewise, with respect to petitioner's second argument, we are not persuaded that writ relief is warranted. To be sure, NRS 1.235 is unclear regarding what a judge whose disqualification is sought must do when an affidavit is *filed* but not *served*. *Compare* NRS 1.235(5)(a) ("[T]he judge against whom an affidavit alleging bias or prejudice is filed shall

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based arguments. We therefore need not address any allegations of bias in our resolution of this writ petition.

proceed no further with the matter . . . ."), *with* NRS 1.235(4) ("At the time the affidavit is filed, a copy must be served upon the judge sought to be disqualified . . . ."). However, while we caution that a district court judge whose disqualification is sought should generally refrain from presiding over the matter until the disqualification request is resolved, we are not persuaded, under the facts of this case, that Judge Kishner's decision to hold the hearing and continue to preside over the matter was clearly erroneous as to warrant the relief that petitioner is seeking, which is to invalidate roughly four months' worth of orders in the underlying matter. *See Smith*, 107 Nev. at 677, 818 P.2d at 851 (observing that a writ of mandamus is warranted "to compel the performance of an act [that] the law requires").[3] In light of the foregoing, we

ORDER the petition DENIED.

_____, J.
Parraguirre

_____, J.
Stiglich

_____, J.
Herndon

[3]In this, we note that petitioner has not coherently argued that Judge Kishner exceeded her jurisdiction such that a writ of prohibition would be warranted. *Cf. Senjab v. Alhulaibi*, 137 Nev., Adv. Op. 64, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present.").

cc: Hon. Joanna Kishner, District Judge
Hon. Jerry A. Wiese, Chief Judge
Law Office of Mitchell Stipp
Jones Lovelock
Eighth District Court Clerk