

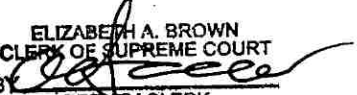
IN THE SUPREME COURT OF THE STATE OF NEVADA

DEREK JOHNSTON,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
HEIDI ALMASE, DISTRICT JUDGE,
Respondents,
and
BLAIR SHANNON CLARK,
Real Party in Interest.

No. 86872

FILED

OCT 05 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER GRANTING REHEARING AND DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

On July 25, 2023, we denied this original petition for a writ of mandamus or prohibition seeking to disqualify a district judge, because petitioner had an adequate legal remedy in the district court. Petitioner has filed a petition for rehearing of our order, explaining that he previously moved to disqualify the judge in district court and providing a copy of the chief judge order denying that motion. As directed, real party in interest filed an answer to the petition for rehearing, in which she also addresses the writ petition's merits.¹ Having considered the rehearing petition and

¹As the answer was filed within the timeframe set forth in this court's September 15, 2023, order, we take no action on real party in interest's motion for an enlargement of time. The clerk of this court shall detach from the motion and separately file real party in interest's notice of address change and her answer.

answer, we conclude that rehearing of the writ petition on the merits is warranted, grant the petition for rehearing, and reinstate the writ petition.

Having further considered the writ petition, supporting documents, and answer, however, we conclude that our extraordinary intervention is not warranted. Petitioner asserts that the district judge presiding over the custody matters below must be disqualified from taking any further action because she participated in real party in interest's scheme to defraud the court concerning criminal charges that had been filed against him and used false findings to sua sponte set a custody modification trial. He also asserts that a presiding judge may not testify as a witness at trial and that the judge violated SCR 251 and other law by ignoring his emergency contempt motion for more than six months and refusing to enforce the parties' parental agreement.

NRS 1.230 and NCJC 2.11 govern district judge disqualification for actual or implied bias. NRS 1.230(1) prohibits a judge from acting when the judge entertains actual bias against one of the parties. NCJC 2.11(A) requires disqualification for implied bias at any time the justice's "impartiality might reasonably be questioned." *See also Rippo v. Baker*, 580 U.S. 285, 287 (2017) ("Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. (internal quote marks omitted)). 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 269, 272 (2011) (internal quotation marks omitted). “Moreover, rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification.” *Matter of Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988); *see also Liteky v. U.S.*, 510 U.S. 540, 555-56 (1994) (noting that only in a rare, extreme case would a judge’s rulings or impressions formed while deciding a case be grounds for disqualification).

As the chief judge noted, petitioner’s allegations are mostly based on rulings the district judge made during the course of the custody proceedings before it, which are not grounds for disqualification. Further, petitioner has not demonstrated that this is one of the extreme cases where an exception to that rule applies. Accordingly, we

ORDER the petition DENIED.²



Stiglich C.J.



Cadish J.



Herndon J.

²In light of this order, we deny as moot petitioner’s emergency motion to assign an alternate district judge to hear his motion for immediate return of the child.

cc: Hon. Heidi Almase, District Judge, Family Division
Derek Johnston
Blair Shannon Clark
Eighth District Court Clerk