IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARDSON CONSTRUCTION, INC., A NEVADA CORPORATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ERIC JOHNSON, DISTRICT JUDGE,
Respondents,
and
AMERICAN DIALYSIS CENTERS, NORTH LAS VEGAS LLC, A NEVADA LIMITED LIABILITY COMPANY; AND CYRIL OVUWORIE, M.D., AN INDIVIDUAL,
Real Parties in Interest.

No. 86332

FILED
SEP 26 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

This petition for a writ of mandamus and/or prohibition challenges a district court order denying a motion to disqualify counsel.[1]

The matter arises from attorney Robert Vannah's previous representation of petitioner Richardson Construction, Inc (RCI). Vannah, now counsel for real parties in interest, represented RCI nearly twenty years ago. Based on this earlier representation, RCI moved to disqualify Vannah from representing the real parties in interest in the underlying suit. The district court denied RCI's motion, finding that the scope of Vannah's representation in the prior action was limited, that it was not reasonable to infer that Vannah obtained confidential information in his

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this matter.

prior representation of RCI, and that information obtained in the prior action was irrelevant to the instant litigation. RCI then filed this petition for a writ of mandamus.[2] We elect to entertain Richardson's petition, as we have "consistently held that mandamus is the appropriate vehicle for challenging orders" concerning motions to disqualify counsel. *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007).

When considering a mandamus petition that challenges a district court's decision on a motion to disqualify an attorney, we will not set aside that decision "absent a manifest abuse of" the district court's "broad" discretion. *Id.* at 54 & n.26, 152 P.3d at 743 & n.26. For a potentially disqualifying conflict to exist based on an attorney's former representation of a party, the party seeking disqualification must establish: "(1) that it had an attorney-client relationship with the lawyer, (2) that the former matter and the current matter are substantially related, and (3) that the current representation is adverse to the party seeking disqualification." *Id.* at 50, 152 P.3d at 741; *see also* RPC 1.9(a) (discussing duties to former clients). The parties here dispute only the second element, which RCI had the burden of proving. *See Waid v. Eighth Judicial Dist. Court*, 121 Nev. 605, 610, 119 P.3d 1219, 1222 (2005) ("The burden of proving that two

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[2]Because the district court had jurisdiction to decide the motion to disqualify Vannah, we deny RCI's alternative request for a writ of prohibition. *See Goicoechea v. Fourth Judicial Dist. Court*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980) (holding that a writ of prohibition "will not issue if the court sought to be restrained had jurisdiction to hear and determine the matter under consideration"); *see also* NRS 34.320 (providing that a writ of prohibition is available to "arrest[ ] the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person").

matters are substantially related falls on the party seeking disqualification.").

When evaluating the substantially-related element, we have directed the district court to

> (1) make a factual determination concerning the scope of the former representation, (2) evaluate whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client in those matters, and (3) determine whether that information is relevant to the issues raised in the present litigation.

Id. at 610, 119 P.3d at 1223. "[A] superficial resemblance between the matters is [in]sufficient," *Yellow Cab*, 123 Nev. at 52, 152 P.3d at 742, instead the district court must focus "on the precise relationship between the present and former representation," *id.* (quoting *Waid*, 121 Nev. at 610, 119 P.3d at 1222).

Here, RCI previously retained Vannah to litigate a discovery dispute and to assist with limited posttrial motions. As to the discovery dispute, it was not a manifest abuse of discretion for the district court to find that Vannah would not have obtained information beyond that needed to resolve the discovery dispute, which arose from the opposing party concealing thousands of relevant documents. As to the posttrial motion practice in which Vannah was involved, the district court similarly did not manifestly abuse its discretion, as the issues in that matter pertained to an attempt to disqualify counsel and did not involve the merits of the case. And Vannah's current representation of the real parties in interest consists of defending against RCI's allegation that Vannah's clients failed to pay amounts owed under a contract, such that any confidential information he obtained in the limited scope of his previous representation would not be relevant to the issues before the district court. We further conclude that

the district court did not manifestly abuse its discretion by finding that the two representations were not substantially related because the passage of time has rendered irrelevant any confidential information Vannah obtained in the prior representation. *See Waid*, 121 Nev. at 610, 119 P.3d at 1222; *Watkins v. Trans Union, LLC*, 869 F.3d 514, 520, 523 (7th Cir. 2017) (concluding that "[i]t was not clear error for the district court to find that any confidential information [counsel] may have gained during his prior representation [over ten years ago] has been rendered obsolete"); *see also* Model Rules of Prof'l Conduct r. 1.9 cmt. 3 (Am. Bar. Ass'n 2019) ("Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related.").

We further note that RCI's averment that Vannah obtained knowledge of its "billing practices and procedures" does not support disqualification. *See Watkins v. Trans Union, LLC*, 869 F.3d 514, 520, 522 (7th Cir. 2017) (stating that "general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation" because this is "not the type of confidential information with which [the equivalent to RPC] 1.9 is concerned" (citing Ind. R. Prof'l Conduct 1.9, cmt. 3, which is substantively identical to Nevada's RCP 1.9)). And the second affidavit introduced by RCI suggests that Vannah's knowledge of the case was limited to information gathered from "pleadings, deposition transcripts, and trial transcripts," rather than confidential records, and that Vannah did not participate in meetings where confidential information was discussed.[3] RCI was unable to produce any additional evidence as to Vannah's earlier

[3]The trial transcripts of the earlier proceeding similarly fail to reflect or suggest that Vannah had obtained confidential information.

representation when given the chance. As the district court did not manifestly abuse its discretion in finding that RCI failed to carry its burden on the substantially-related element, we must deny RCI's request for writ relief. We therefore

ORDER the petition DENIED.

Stiglich, C.J.

Lee, J.

Bell, J.

cc: Hon. Eric Johnson, District Judge
Parker, Nelson & Associates
Vannah & Vannah
Eighth District Court Clerk