

IN THE SUPREME COURT OF THE STATE OF NEVADA

JO ANN JACKSON,  
Appellant,

vs.

JANET RAPHIEL A/K/A JANET  
RAFAEL A/K/A JANET JACKSON,  
AND WILSON RAPHIEL A/K/A  
WILSON RAFAEL A/K/A WILSON  
JACKSON, HUSBAND AND WIFE,  
Respondents.

No. 42358

**FILED**

FEB 03 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rhoads*  
CHIEF DEPUTY CLERK

ORDER REVERSING AND REMANDING

This is a proper person appeal from a district court order that dismissed appellant's case pursuant to NRCP 41(e). Eighth Judicial District Court, Clark County; Stephen L. Huffaker, Judge.

Appellant Jo Ann Jackson filed a proper person complaint against respondents Wilson and Janet Raphiel on June 12, 1998. Between June 12, 1998, and April 2003, Jackson filed several motions for summary judgment and sought disqualification of numerous district court judges in the Eighth Judicial District Court. Her motions for summary judgment were denied, but various judges were disqualified or recused themselves from hearing the case. Eventually, Senior Judge Stephen Huffaker was assigned to the case.

Judge Huffaker recognized that NRCP 41(e)'s five-year rule would run on June 12, 2003. Accordingly, he held an all-day hearing on May 23, 2003, in an attempt to get the parties ready for a trial before June 12, 2003. Judge Huffaker set trial to begin on June 10, 2003.

However, on May 30, 2003, Jackson filed a petition for a writ of prohibition with this court, asking this court to disqualify Judge Huffaker. A few days later, on June 3, 2003, Jackson moved to disqualify Judge Huffaker in the district court. Judge Huffaker denied that he held

any bias towards Jackson, and the matter was set for a hearing before the chief district judge on the morning of June 10, 2003. Jackson's motion was denied at the hearing. Later that morning, Judge Huffaker convened the court for trial and noted that Jackson had filed a petition for a writ of prohibition with this court. Judge Huffaker determined that Jackson's writ petition divested the district court of jurisdiction, and he concluded that he could not proceed until he received a remittitur from this court. Accordingly, Judge Huffaker vacated the trial date. Subsequently, the Raphiels moved to dismiss Jackson's complaint based on NRCP 41(e). The district court granted the motion and dismissed Jackson's action.

The Nevada Constitution grants this court original jurisdiction to issue writs of mandamus or prohibition.<sup>1</sup> Because a writ petition invokes this court's original jurisdiction, the district court retains jurisdiction over the underlying case during the pendency of the writ proceedings.<sup>2</sup> In contrast, the district court is divested of jurisdiction when a proper notice of appeal is filed.<sup>3</sup> Consequently, Jackson's petition for a writ of prohibition did not divest the district court of jurisdiction, and the district court erroneously vacated Jackson's trial date. Because the district court's erroneous ruling deprived Jackson of her trial, and resulted in the dismissal of her action under NRCP 41(e), we reverse the district court's dismissal order and remand Jackson's case for further proceedings consistent with this order.

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<sup>1</sup>Nev. Const. art. 6, § 4; Mineral County v. State, Dep't of Conserv., 117 Nev. 235, 20 P.3d 800 (2001).

<sup>2</sup>See Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000).

<sup>3</sup>Id.; Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

In addition, given the short time left in Jackson's five-year period, it is extremely unlikely that Jackson could bring her case to trial within the time remaining. Therefore, in the interest of equity, we instruct the district court to give Jackson a "reasonable period of time to set and bring [her] case to trial," provided that Jackson acts expeditiously.<sup>4</sup> However, we are mindful of NRCP 41(e)'s purpose to compel reasonable diligence in the prosecution of an action. Jackson has spent an inordinate amount of time seeking summary judgment and the disqualification of numerous district court judges. Unmeritorious motions for summary judgment and motions for disqualification<sup>5</sup> do not serve the purpose of NRCP 41(e). Thus, we warn Jackson that she must act expeditiously to bring this case to trial, or face dismissal of her case.

Finally, we note that it is unclear which district judge is assigned to this case. From the appellate record it appears that Jackson filed a July 17, 2003 motion to disqualify Judge Huffaker that was never heard or ruled upon. However, the timeliness of Jackson's motion is

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<sup>4</sup>Rickard v. Montgomery Ward & Co., 120 Nev. \_\_\_, \_\_\_, 96 P.3d 743, 747 (2004).

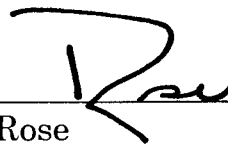
<sup>5</sup>We note that a party seeking disqualification bears the burden to establish sufficient facts warranting disqualification. Kirksey v. State, 112 Nev. 980, 1006, 923 P.2d 1102, 1118 (1996). A judge's decision not to recuse himself is given substantial weight and will be affirmed absent an abuse of discretion. Id. Further, conclusory allegations that are not supported by any evidence do not support disqualification. Rippo v. State, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997); see also United States v. Cooley, 1 F.3d 985, 993 (10th Cir. 1993) (stating that "[r]umor, speculation, beliefs, conclusions, innuendo, suspicion, opinion, and similar non-factual matters" do not ordinarily support disqualification).

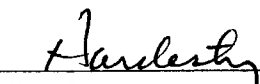
unclear.<sup>6</sup> Accordingly, we direct Chief Judge Kathy Hardcastle to assign this case to Judge Huffaker for him to determine the timeliness of Jackson's disqualification motion.<sup>7</sup> If Judge Huffaker concludes that the motion is untimely, then he shall deny it, but if Jackson's motion is timely, we direct Chief Judge Hardcastle to assign a judge to hear Jackson's disqualification motion.

In sum, we reverse the order of the district court dismissing Jackson's complaint, and we remand this case to the district court for further proceedings consistent with this order.

It is so ORDERED.<sup>8</sup>

  
\_\_\_\_\_, C.J.  
Becker

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Hardesty

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<sup>6</sup>See NRS 1.235(1) (requiring a party to file an affidavit not less than three days before any pretrial hearing, or twenty days before the date set for trial, whichever occurs first); cf. NRS 1.235(2) (noting that if the facts upon which disqualification is sought are not known to the party before any pretrial hearing is held, the affidavit must be filed before trial).

<sup>7</sup>See City of Sparks v. District Court, 112 Nev. 952, 920 P.2d 1014 (1996) (denying writ relief because disqualification motion was untimely); Jacobsen v. Manfredi, 100 Nev. 226, 679 P.2d 251 (1984) (affirming district court's conclusion that motion for recusal was untimely) .

<sup>8</sup>Although Jackson was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from her, and we deny the relief requested therein.

cc: Hon. Kathy A. Hardcastle, Chief Judge  
Hon. Stephen L. Huffaker, Senior Judge  
Jo Ann Jackson  
Janet Raphiel  
Wilson Raphiel  
Clark County Clerk