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Summary of Ivey v. Dist. Ct., 129 Nev. Adv. Op. 16

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JUDICIAL ETHICS – CAMPAIGN CONTRIBUTIONS

Summary

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying a request to recuse a district court judge in a family law action. Petitioner asserted that campaign contributions to the reelection campaign of the judge assigned to the case, provided by her ex-husband, his lawyers, and others connected to the divorce, required recusal under the Due Process Clause of the United States Constitution, as well as N.R.S. 1.230 and the Nevada Code of Judicial Conduct.

Disposition/Outcome

The Court affirmed the order of the District Court. The Court held that the contributions at issue in this case were not significant enough to violate either party's due process rights, nor could they raise a reasonable question regarding the district court judge's impartiality.

Facts and Procedural History

This case arises out of divorce proceedings between Phillip and Luciaetta Ivey. The Iveys were married for seven year prior to their divorce. District Court Judge William Gonzalez was the assigned judge for the original proceedings which resulted in a Marital Settlement Agreement under which Phillip was to pay Luciaetta \$180,000 per month in alimony.

Subsequent to the approval of the settlement agreement and entry of the decree of divorce Judge Gonzalez successfully ran for reelection to his position in 2010. During the campaign Phillip, his lawyers, and others connected to the divorce accounted for approximately 14% of the cash and 25% of the in-kind contributions collected by Judge Gonzalez's campaign.

In May 2011, a dispute arose over the monthly alimony payments. Following the dispute, Luciaetta filed a motion to reopen discovery, which was assigned to Judge Gonzalez based on his continuing jurisdiction over the divorce settlement. Prior to a hearing on the motion, Luciaetta filed a separate motion to disqualify Judge Gonzalez based on the Due Process Clause of the United States Constitution, as well as N.R.S. 1.230 and the Nevada Code of Judicial Conduct. District Court Judge Jennifer Togliatti denied the disqualification motion, finding that under both federal and state law the contributions did not rise to such a level as to create an appearance of impropriety.

Discussion

Justice Gibbons delivered the opinion on behalf of a unanimous court. There was a separate concurring opinion filed by Justice Hardesty, who was joined by Justices Pickering, Parraguirre, and Douglas. There was also a separate concurring opinion filed by Justice Saitta.²

¹ By David H. Rigdon.

Federal Due Process

Luciaetta argued that the United States Supreme Court decision in *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009), required Judge Gonzalez's recusal under the Due Process Clause of the 14th Amendment. Under the Due Process Clause proof of actual bias is not necessary to compel recusal.³ Rather, a court must determine whether the probability of bias is too high to ensure protection of a party's due process rights.⁴ Such determinations are made on a case by case basis.⁵ A court must examine the size of the contribution in comparison to the total campaign contribution amount, the total sum spent during the election, and the effect that the contribution may have had on the outcome.⁶ A court must also consider the timing of the campaign contributions in relation to the judge's election and the status of the contributor's case.⁷

The Court contrasted the facts of the *Caperton* decision with the facts in this case. In *Caperton*, the party contributed \$3,000,000 to an independent expenditure committee.⁸ This was 300% more than the judge's own campaign committee spent on the election and more than the total spent by both candidates' campaign committees combined.⁹ By contrast, the cash contributions by Phillip and others connected to the Ivey divorce amounted to approximately \$10,000 of Judge Gonzalez's \$71,240 in total cash contributions, or 14%. Likewise, the in-kind contribution of \$3,543 by Phillip's lawyer was approximately 25% of the total in-kind contributions for the entire campaign.

The Court concluded that the donations by Phillip and the others did not rise to the "exceptional" level of the contributions at issue in *Caperton*. In addition, the timing of the contributions was less suspicious than the timing of the *Caperton* donations since Phillip and the others contributed to the campaign only after the conclusion of the divorce. Accordingly, Judge Togliatti did not abuse her discretion by finding that Judge Gonzales hearing Luciaetta's motion to reopen discovery would not violate Luciaetta's due process rights.

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Luciaetta argued that even if disqualification was not required under the Due Process Clause, the district court should have disqualified Judge Gonzalez under N.R.S. 1.230 and the Nevada Code of Judicial Conduct.

² The various concurring opinions highlight a disagreement over whether the Nevada rules governing judicial conduct should be amended. Since they do not affect the outcome of the case, this summary will not discuss them.

³ *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 883-84 (2009).

⁴ *Id.*

⁵ *Id.* at 884-86.

⁶ *Id.* at 884.

⁷ *Id.* at 886.

⁸ *Id.* at 884.

⁹ *Id.*

The Court noted that in Nevada, “a judge has a general duty to sit, unless a judicial cannon, statute, or rule requires the judge’s disqualification.”¹⁰ N.R.S. 1.230 prohibits a judge from presiding over any matter in which the judge’s impartiality might reasonably be questioned.¹¹ Likewise, the Nevada Code of Judicial Conduct requires a judge to recuse himself if bias exists.¹² In interpreting these rules, the Court noted its previous holding “that a contribution to a presiding judge by a party or an attorney does not ordinarily constitute grounds for disqualification.”¹³ The Court further specified that campaign contributions made within statutory limits, without more, cannot constitute grounds for disqualification of a judge under Nevada law.

The Court noted that the contributions of Phillip and the others were all within statutory limits, and again emphasized that the contributions occurred after the divorce decree was entered. The Court concluded that the campaign contributions at issue in this case were not significant enough to “raise a reasonable question” as to the Judge’s impartiality. Therefore, Judge Togliatti did not abuse her discretion by finding that Nevada law does not require Judge Gonzalez’s disqualification.

Conclusion

The Court concluded that Judge Gonzalez was not disqualified from presiding over Luciaetta’s motion based on contributions made to his campaign by her ex-husband, his lawyers, and others connected to the divorce. Neither the Due Process Clause of the 14th Amendment, nor Nevada law required recusal in this situation. Accordingly, the writ petition was denied.

¹⁰ Millen v. Dist. Ct., 148 P.3d 694, 700 (Nev. 2006).

¹¹ Nev. Rev. Stat. § 1.230.

¹² Nev. Code Jud. Conduct § 2.11(A).

¹³ Las Vegas Downtown Redev. V. Dist. Ct., 5 P.3d 1059, 1062 (Nev. 2000) (ordering a judge who recused himself to hear the case).