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NuVeda, LLC v. Eighth Jud. Dist. Ct., 137 Nev. Adv. Op. 54 (Sept. 23, 2021).

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NuVeda, LLC v. Eighth Jud. Dist. Ct., 137 Nev. Adv. Op. 54 (Sept. 23, 2021)¹
Civil Practice: NRS 22.030(3) Objections Must be Reasonably Prompt and Timely

Summary:

NuVeda challenged the district court's decision to deny the motion to transfer the contempt hearing to another judge under NRS 22.030(3).² NRS 22.030(3) is a peremptory challenge that allows accused contemnors the right to request a new judge if they request it in a timely and prompt manner. NuVeda requested a petition for writ of prohibition and mandamus. The Court found the district court did not err when they denied NuVeda's motion. The court emphasized that a party may waive its right to move for a new judge if they fail to make the request in a reasonably prompt manner. Therefore, the Court denied the petition.

Facts and Procedural History:

The dispute arises from a complex business case where NuVeda allegedly violated the court order constituting contempt. Appellant denies the alleged contempt, but the facts of the business dispute are immaterial to the writ petition at bar.

On February 1, 2021, Judge Gonzalez found that NuVeda's alleged contempt warranted a hearing. Accordingly, the judge scheduled the hearing for March 1. The Appellant's managing member could not attend the hearing, so on or around February 22, it was rescheduled to April 5. On March 10, NuVeda raised NRS 22.030(3) for the first time, objecting to Judge Gonzalez from presiding over the contempt hearing. The district court acknowledged that it might have granted the request for a new judge to preside over the hearing, but NuVeda invoked the statute too late. The district court found NuVeda waived its right when it failed to include it in its continuance motion. Appellant denied that it ever moved for a continuance and renewed its objection under the statute. The district court overruled its objection. This Court stayed the contempt hearing until it resolved the writ petition.

Discussion:

This issue before the Court is whether the district court erred when it denied the motion to transfer the contempt hearing to another judge under NRS 22.030(3),

The Court Will Entertain the Writ Petition

The Court retains discretion to determine writs of prohibition or mandamus due to their extraordinary remedies because clarification is needed, and it is in the best interest of preserving the judicial economy.³ The Court reiterated that NRS 22.030(3) is a procedural rule that risks implication in contempt hearings irrespective of the underlying substantive law. Thus, the Court retains the right to consider the writ petition at bar.

¹ By Alyssa Rogan.

² NEV. REV. STAT. § 22.030(3) (1999).

³ *Cote H v. Eighth Jud. Dist. Ct.*, 107 Nev. 36, 39, 175 P.3d 906, 908 (2008); *see also Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 820, 407 P.3d 702, 706 (2017).

Standard of Review

The Court concluded that a writ of mandamus and prohibition are counterparts, which require different standards of review.⁴ A writ of mandamus requires a showing of an abuse of discretion.⁵ A writ of prohibition requires a court to review the facts de novo because the court is responsible for ascertaining whether a district court exceeded its authority.⁶ Here, NuVeda seeks both forms of relief, so the Court reviewed the jurisdictional facts de novo. However, the Court emphasized that the burden remains on the petitioner to show the district court exceeded its authority.⁷

A Motion for a new Judge under NRS 22.020(3) Must be Made Reasonably Promptly

NRS 22.020(3) serves as a preemptory challenge and when invoked, “automatic[ally] recuse[s]” a judge from presiding over the contempt trial.⁸ However, the Court emphasized that if a party invokes the statute, they are still subject to doing so in a “timely and properly.”⁹ The Court previously ruled that invoking the statute *after* the contempt hearing did not meet the “timely” standard.¹⁰

NuVeda asserts that the statute does not expressly provide a deadline for when a party must object. Thus, they maintain that if the objection is raised *any time* before the contempt trial takes place, then recusing the judge is automatic. However, the Court rejects NuVeda’s interpretation and holds that objections can be waived if a party does not assert it reasonably and promptly. The justification for this is because of the increased chance of wasting judicial time and resources or the possibility of litigants using it for strategic purposes.¹¹

The District Court did not Err

The Court concluded that the District Court did not err when they found that NuVeda’s motion was untimely because it was raised 37 days (filed on March 10) after they were aware of the contempt hearing (February 1). NuVeda asserts that the district court erred when they held NuVeda waived its objection when it moved for a continuance (February 22). This Court held this inquiry is immaterial to deciding if the objection was raised timely. Instead, the Court reiterated NuVeda had the opportunity to request for a new judge any time after February 1 but did not do so for 37 days. NuVeda presented no justification for its delay demonstrating the Court’s concern of wasting judicial resources and time or misuse of the statute if raised too late. The Court held the district court did not err since NuVeda lacked any justification for the 37-day delay.

⁴ Agwara v. State Bar of Nev., 133 Nev. 783, 785, 406 P.3d 488, 491 (2017).

⁵ Stephens Media, LLC. v. Eighth Jud. Dist. Ct., 125 Nev. 849, 860, 221 P.3d 1240, 1248 (2009).

⁶ See Fulbright & Jaworski LLP v. Eighth Jud. Dist. Ct., 131 Nev. 30, 35, 342 P.3d 997, 1001 (2015).

⁷ Nev. State Bd. of Architecture, Interior Design & Residential Design v. Eighth Jud. Dist. Ct., 135 Nev. 375, 377, 449 P.3d 1262, 1264 (2019).

⁸ Awad v. Wright, 106 Nev. 407, 411, 794 P.2d 713, 715 (1990).

⁹ *Id.* at 410, 794 P.2d at 715.

¹⁰ See Detwiler v. Eighth Jud. Dist. Ct., 137 Nev. Adv. Op. 18, 486 P.3d at 717.

¹¹ Preston v. United States, 923 F.2d 731,733 (9th Cir. 1991).

Conclusion:

The Court emphasized an accused of contemnors' right to object from having the district court judge presiding over the contempt trial under NRS 22.030(3). A district court cannot deny a party this right if the party raises it timely and promptly. Here, the district court did not err when it denied NuVeda's request for a new judge for the contempt trial because NuVeda invoked the statute 37 days after the court scheduled the hearing. NuVeda had ample time to move for a new judge but did not. Nor did NuVeda provide a sufficient justification for its delay. Thus, this Court denies the petition for a writ of relief.