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(Dec. 2, 2021)**

Katelyn Golder

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Debiparshad, M.D. v. Dist. Ct. (Landess), 137 Nev. Adv. Op. 71 (Dec. 2, 2021)¹

JUDICIAL CONDUCT: STATUS OF WRITTEN ORDERS WHEN JUDICIAL DISQUALIFICATION IS PENDING

Summary

The Nevada Supreme Court considered whether a judge can continue entering orders in a case after a party has filed a motion to disqualify that judge for non-compliance with the Nevada Code of Judicial Conduct (NCJC). The Court elected to provide an opinion on this matter for two reasons. First, the Court deemed that providing a clear solution to this issue would be substantially important for public policy. Second, the Court decided that their opinion was necessary due to the fact that no other current remedy at law would give the parties a suitable resolution. The Court determined that when a pending motion questions a judge's impartiality, the subject judge cannot take any additional action in that case until the motion for their disqualification resolves. If a judge enters an order while a motion to disqualify is pending, the motion will become void upon their disqualification. The Court found that the written mistrial order entered by the district court judge in this matter became void once the motion to disqualify was granted.

Background

The initial litigation stemmed from Jason Landess asserting medical malpractice claims against several medical professionals collectively referred to as Debiparshad. Landess later moved for a mistrial because Debiparshad purposely introduced provocative statements to impeach the character of his employer. District Judge Rob Bare orally granted the mistrial. Debiparshad subsequently filed a motion to disqualify Judge Bare for praising the strategies of Landess's counsel. Specifically, Debiparshad relied on NCJC to argue that Judge Bare should be disqualified because he was biased toward Landess's lawyer.² After Debiparshad filed the motion to disqualify Judge Bare, Judge Bare entered a written order to officially declare the mistrial. A neutral judge later granted Debiparshad's motion because a reasonable individual would have found Judge Bare to be unfair. The new judge assigned to the matter used Judge Bare's mistrial order to decide that Landess should be awarded attorneys costs because Debiparshad intentionally caused the mistrial. Debiparshad moved for relief on two occasions, but Debiparshad was continuously denied. This led to Debiparshad petitioning the Nevada Supreme Court.

Discussion

The Nevada Supreme Court granted the petition in favor of Debiparshad by instructing the district court to consider the written mistrial order void. Due to the fact that the mistrial order was heavily relied on to determine if attorney costs should have been awarded, the Court directed the lower court to reconsider the issue without using the voided order.

¹ Katelyn Golder.

² NEV. CODE JUD. CONDUCT r. 2.11.

We elect to entertain Debiparshad's petition

The Court had to determine if it should assess the issues conveyed in the petition. Debiparshad argued that the Court should review their petition because this would be the first time the Court could supply their opinion on this specific matter that deeply impacts public policy. However, Landess explained that the Court should not evaluate the case because the petition was filed a year after the written mistrial order was granted. The Court concluded that the petition was promptly filed because Debiparshad had not experienced harm from the situation until the new judge used the mistrial order to declare that Landess should receive costs. After the Court addressed the timeliness of the petition, the Court explained its reasoning for electing to hear the issues in this case. The Court found that there was an important legal issue that required clarification.³ The Court also acknowledged that without their review, Debiparshad would not have been given an adequate legal remedy.

Judge Bare lacked authority to enter the written mistrial order

The Court concluded that Judge Bare lacked the authority to enter a written mistrial order once the motion for his disqualification was filed. Debiparshad argued that since the motion to disqualify was filed before Judge Bare had entered a written order, the order should be considered void. However, Landess claimed that the written declaration was only a formality since Judge Bare orally declared the mistrial before the motion of disqualification was filed. The Court rejected Landess's argument because a mistrial order must be written, signed, and filed to be considered legally effective.⁴ Additionally, the Court determined that to ensure that a judge remains impartial, a judge should refrain from further trial proceedings until accusations within a disqualification motion have been adjudicated. If there are orders that have been filed by a judge when a motion to disqualify is undecided, the Court has determined that those orders will be considered void upon any judge who is rendered unfit to oversee the case.⁵ Therefore, the mistrial order of Judge Bare was void as soon as the motion of disqualification was granted.

Conclusion

The Nevada Supreme Court concluded that a judge should not continue to enter orders once a motion for their disqualification has been filed. Judges should not continue their trial proceedings until a court has had the chance to determine if the judge should be disqualified. Any orders that a judge chooses to enter after they have been disqualified will result in their rulings being considered void. The Court granted Debiparshad's petition that declared that the mistrial order of Judge Bare was void once he was disqualified. The Court also claimed that the determination of attorney's costs should be reassessed without using the now-void mistrial order.

³ Walker v. Second Jud. Dist. Ct., 476 P.3d 1194, 1198 (Nev. 2020).

⁴ Div. of Child & Fam. Servs., Dep't of Hum. Res. v. Eighth Judicial Dist. Court (J.M.R.), 92 P.3d 1239, 1245 (Nev. 2004).

⁵ Hoff v. Eighth Jud. Dist. Ct., 378 P.2d 977, 978 (Nev. 1963).