

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

3-2022

Canarelli v. Eighth Jud. Dist Ct.(Canarelli), 138 Nev. Adv. Op. 12 (Mar. 24, 2022)

Nazo Demirdjian

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

Recommended Citation

Demirdjian, Nazo, "Canarelli v. Eighth Jud. Dist Ct.(Canarelli), 138 Nev. Adv. Op. 12 (Mar. 24, 2022)" (2022).
Nevada Supreme Court Summaries. 1488.
<https://scholars.law.unlv.edu/nvscs/1488>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Canarelli v. Eighth Jud. Dist Ct.(Canarelli), 138 Nev. Adv. Op. 12 (Mar. 24, 2022)¹

PROFESSIONAL RESPONSIBILITY: DISQUALIFYING JUDGES FOR VIWEING
PRIVILEGED EVIDENCE

SUMMARY

When an issue arises regarding a judge’s disqualification, the Courts look at whether the information attained was extrajudicial or non-extrajudicial. Additionally, the Court will look at the fears of bias being present or fear of bias reaching a higher level of antagonism and favoritism. The Supreme Court of Nevada looked at the Nevada Code of Judicial Conduct Rule 2.11(A) and *Kirksey* to determine that Judge Sturman having viewed certain documents that were later categorized as privileged had not biased her.² The Supreme Court reversed the District Court’s decision to disqualify her. Judge Cadish was joined by Judges Pickering and Herndon in dissenting based on lack of textual language and the wrong standard used.

OPINION

The petitioner asked the Supreme Court to reinstate a judge to a District Court case who was disqualified under impartiality reasoning for reviewing documents which were deemed privileged after they were viewed. Using the standard set forth by *Kirksey v. State*—since the sources at question were not extrajudicial—the Supreme Court of Nevada found the District Court erred in disqualifying Judge Sturman.³

FACTS AND PROCEDURAL HISTORY

Scott Canarelli was the beneficiary of the Scott Lyle Graves Canarelli Irrevocable Trust. His parents conveyed minority interest int heir business to Scott and made payments to Scott from

¹ Nazo Demirdjian.

² NEVADA CODE OF JUDICIAL CONDUCT R. 2.11(A); *Kirksey v. State*, 112 Nev. 980, 1007, 923 P.2d 1102, 1119 (1996).

³ *Kirksey*, 112 Nev. at 1007, 923 P.2d at 1119.

the same trust. His parents and Edward Lubbers all served as trustees. When his parents resigned, Lubbers became the sole trustee. Lubbers then tried to sell the parents' business entities and Scott filed a petition to have Lubbers provide inventory related to the sale. Lubbers died before Scott could obtain the deposition.

The documents at question were Lubbers' notes that were disclosed, but then deemed privileged. The commissioner found the notes to be privilege under attorney-client relationship and work product doctrine, but parts were discoverable. When Scott and the former trustees objected, Judge Sturman held a hearing and reviewed Lubbers' notes to determine their privilege. Judge Sturman agreed with the commissioner and that Scott could retain the notes. After the decision was rendered, the former trustees wanted Judge Sturman disqualified because of her inability to be partial after having reviewed Lubbers' notes, which were deemed privileged. The Chief judge disqualified Judge Sturman who filed an answer where she claimed she received no personal knowledge of the facts and there was no cause for disqualification. The Chief Judge granted the disqualification motion pursuant to Nevada Code of Judicial Conduct Rule 2.11(A).⁴

DISCUSSION

We exercise our discretion to entertain the writ petition

Mandamus is only available when there is no other quick or acceptable remedy.⁵ The Supreme Court decided to consider the petition because of judicial economy and a guidepost for future matters stemming from disqualification.

Kirksey v. State governs where the alleged bias arises from the judge's performance of her judicial duties

⁴ NEVADA CODE OF JUDICIAL CONDUCT R. 2.11(A).

⁵ NRS 34.170; Cote H. v. Eighth Jud. Dist. Ct., 124 Nev. 36, 39, 175 P.3d 906, 907-08 (Nev. 2008).

There is a presumption that judges are unbiased that even a judge's decision to not recuse themselves does not automatically lead to the decision being overturned.⁶ Scott said Judge Sturman did not exhibit favoritism as is the standard under *Kirksey*.⁷ The Nevada Supreme Court first held that the disqualification must be from an extrajudicial source.⁸ There needed to be proof that the Judge formed an opinion rendering an impossible fair decision.⁹ The Supreme Court held that the stricter NCJC Rule 2.11(A) would create situations where disqualification could occur in every case because judges might need to review prejudicial evidence in determining their admissibility and creating such stringent rules would create an unworkable standard.¹⁰ The Supreme Court held that a high standard had to be met to warrant disqualification, as is the standard set in *Kirksey*.¹¹ Because the source was not extrajudicial, NCJC Rule 2.11(A) did not apply. Judge Sturman was not biased nor is any prejudice shown to justify disqualification.¹²

CONCLUSION

The record did not show any antagonism, favoritism, or bias. Thus, the District Court's decision was erroneous. The Supreme Court granted the writ of mandamus to reinstate Judge Sturman.

CADISH, J., with whom PICKERING and HERNDON, JJ. Agree, dissenting

Firstly, Judge Cadish disagreed with the majority because of their interpretation of the extrajudicial versus non-extrajudicial distinction. She believes the majority had no textual standard for their distinction. She believed that the impartiality of a judge can stem regardless of how he or

⁶ *Millen v. Eighth Jud. Dist. Ct.* 122 Nev. 1245, 1254, 148 P.3d 694, 701 (Nev. 2006); *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (Nev. 2009).

⁷ *Kirksey*, 112 Nev. at 1007, 923 P.2d at 1119.

⁸ *Id.*

⁹ *Liteky v. United States*, 510 U.S. 540, 555 (1994).

¹⁰ NEVADA CODE OF JUDICIAL CONDUCT R. 2.11(A); *City of Las Vegas Downtown Redev. Agency v. Hecht*, 113 Nev. 664, 649, 940 P.2d 134, 138 (Nev. 1997).

¹¹ *Kirksey*, 112 Nev. at 1007, 923 P.2d at 1119.

¹² NEVADA CODE OF JUDICIAL CONDUCT R. 2.11(A).

she received the information. The text of NCJC Rule 2.11 comment 1 does not differentiate the sources of bias.¹³

Judge Cadish expressed that the test is about reasonably questionable impartiality.¹⁴ Judge Cadish stated that the majority demands a higher standard of favoritism, rather than reasonable questionable impartiality. Judge Cadish stated that even lower standards can create public distrust in the judiciary.

Next, Judge Cadish stated that the majority misapplied *Kirksey* because the controlling authority of *Liteky* was based on a different statute.¹⁵ *Liteky* was based on actual, not potential, bias.¹⁶ *Liteky* did not focus on favoritism, but any fear of inappropriateness.¹⁷ Additionally, Judge Cadish pointed that the objective standard that 2.11(A) has does not mean that every case will lead to a judge's disqualification as the majority fears. Rather, these regular jobs done by the judge do not lead to fears of impartiality, which is the motivating factor of disqualification standards.

Finally, Judge Cadish agreed that Judge Sturman acted appropriately in reviewing the documents on which the litigation was based. However, she dissented on the ground that there could very well have been reasonable questions of impartiality, rendering the District Court's disqualification justified.

¹³ NEVADA CODE OF JUDICIAL CONDUCT R. 2.11(A) Comment 1.

¹⁴ *PETA v. Bobby Berosini, Ltd.*, 111 Nev. 431, 436, 894 P.2d 337, 340 (Nev. 1995)(per curium).

¹⁵ *Kirksey*, 112 Nev. at 1007, 923 P.2d at 1119; *Liteky v. United States*, 510 U.S. 540, 555 (1994).

¹⁶ *Liteky*, 510 U.S. at 567 (Kennedy J., with whom Blackman, Stevens, and Souter JJ. join, concurring in the judgment).

¹⁷ *Id.* at 541, 544, 548.