

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES N. BELSSNER,
Appellant,

vs.
CASABLANCA HOMEOWNERS
ASSOCIATION; SIERRA COMMUNITY
MANAGEMENT; AND AMERICAN
FAMILY INSURANCE,
Respondents.

No. 87858

FILED

APR 08 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Stiglich J.

Stiglich

Pickering J.

Pickering

Parraguirre J.

Parraguirre

cc: Hon. Gloria Sturman, District Judge
Charles N. Belssner
Hutchison & Steffen, LLC/Las Vegas
Eighth District Court Clerk

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JAN 19 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order denying a motion to strike a hearing. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Review of the notice of appeal and documents transmitted to this court pursuant to NRAP 3(g) reveals a jurisdictional defect. This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). No statute or court rule authorizes an appeal from the challenged order. Accordingly, this court lacks jurisdiction and

ORDERS this appeal DISMISSED.

Stiglich, J.

Stiglich

Pickering, J.
Parraguirre, J.

Parraguirre

B

21-2024

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10 *Attorney for Defendant Sierra Community Management*

11 **DISTRICT COURT**12 **CLARK COUNTY, NEVADA**

13 CHARLES N. BELSSNER,

14 Plaintiff,

15 vs.

16 CASABLANCA HOMEOWNERS
17 ASSOCIATION; SIERRA COMMUNITY
18 MANAGEMENT; AMERICAN FAMILY
19 INSURANCE,

20 Defendants.

21 Case No. A-22-856574-C
22 Dept. No. 26

23 **ORDER ON SIERRA COMMUNITY
24 MANAGEMENT'S MOTION TO
25 DISMISS SECOND AMENDED
26 COMPLAINT**

27 **Hearing: June 6, 2023
28 Time: 10 a.m.**

29 Defendant Sierra Community Management's Motion to Dismiss Second Amended
30 Complaint came on for hearing before this Court on June 6, 2023. Appearing before the Court
31 was Plaintiff on behalf of himself and Todd W. Prall, Esq. on behalf of Defendant Sierra
32 Community Management. The Court, having considered Defendant's Motion to Dismiss, the
33 Opposition and Reply briefs, and oral argument of the parties, enters the following findings and
34 order:

35 **FINDINGS**

36 1. On March 28, 2023, this Court entered an order dismissing Plaintiff's First
37 Amended Complaint with leave to amend. The Court granted leave to amend because the
38 Court was unable to determine whether any of Plaintiff's claims were outside of the scope of

1 NRS 38.310, which requires certain types of claims to be submitted to mediation before a
2 lawsuit can be brought and mandates dismissal of any claims within its scope.

3 2. Plaintiff filed a Second Amended Complaint (the "SAC") on April 11, 2023.

4 3. On May 1, 2023, Sierra Community Management ("Sierra") filed a motion to
5 dismiss the SAC on the grounds that it still failed to adequately allege claims that were outside
6 the scope of NRS 38.310. Sierra further argued that, even if there were some claims that could
7 avoid dismissal under NRS 38.310, these claims were so inextricably intertwined with
8 allegations that fell within NRS 30.310 that the entire SAC should be dismissed.

9 4. The Court, again, finds that any claims Plaintiff has that require the Court to
10 evaluate the duties of the Casablanca Homeowners Association ("HOA") either under the
11 Codes, Covenants, and Restrictions (CC&Rs) or the application of NRS 116 cannot be decided
12 by the Court until Plaintiff completes mandatory mediation pursuant to NRS 38.310. Any such
13 claims should be dismissed as to all the defendants identified in the amended complaint even if
14 they have not yet appeared.

15 5. Because of the nature of the SAC, Court has evaluated the different allegations
16 one at a time to determine whether the facts relate to a claim that need not be dismissed under
17 NRS 38.310 or whether the allegations should be stricken from the SAC. The Court also
18 evaluated the claims and determined which ones would be dismissed.

19 6. On the first page of the SAC, there are three paragraphs that are separate from
20 the general allegations. These three allegations have no relevance to any claims that may
21 remain in the SAC after dismissal of claims under NRS 38.310.

22 7. In reviewing the SAC the Court finds that there are some allegations concerning
23 negligence, performance of repairs and other related allegations that form a personal injury
24 claim and a potential property damage claim.

25 8. The Court therefore concludes that the First Cause of Action for
26 negligence/willful negligence for personal injury and property damage should not be dismissed
27 under NRS 38.310. This First Cause of Action can include the allegations from the Second
28 Cause of Action.

9. To the extent the Second Cause of Action alleges similar negligence to the First Cause of Action and also alleges property damage, it should not be dismissed under NRS 38.310. But, to the extent the Second Cause of Action makes allegations concerning the action of board members or alleged suppression of transcripts, the Second Cause of Action should be dismissed.

6 10. The Third Cause of Action, however, either relates to interpretation of CC&Rs
7 or NRS 116 or alleges wrongdoing by individuals who are not parties to the lawsuit and should
8 therefore be dismissed. To the extent the Third Cause of Action includes allegations about the
9 performance of a plumber hired by the HOA, allegations about negligent cuts into the walls, or
10 other similar allegations, those allegations may remain in the SAC as part of the First Cause of
11 Action. But the Third Cause of Action should be dismissed in its entirety.

12 11. Because this case cannot include any factual allegations or address issues that
13 require the Court to interpret the CC&Rs or NRS 116, or otherwise determine the relationship
14 between each unit owner and the HOA, the Court orders that all paragraphs in the SAC that
15 make such allegations be stricken.

16 12. Specifically, the Court finds that Paragraphs 1, 2, 11, 12, 13, 14, 15, 16, 37, 43,
17 53, and 56 of the SAC all contain allegations that solely relate to issues concerning the
18 interpretation of the CC&Rs and/or NRS 116 and should therefore be stricken. To the extent
19 there are other allegations in the SAC that solely deal with these issues, then they should not be
20 considered part of the claims remaining before the Court.

21 13. Similarly, the Court finds that the allegations contained on the first page of the
22 SAC should be stricken.

ORDER

Based on the above, findings,

25 IT IS HEREBY ORDERED that Defendant Sierra Community Management's Motion
26 to Dismiss Second Amended Complaint is hereby GRANTED IN PART and DENIED IN
27 PART.

IT IS FURTHER ORDERED that the Third Cause of Action shall be dismissed.

1 IT IS FURTHER ORDERED that to the extent any of the remaining claims include or
2 allege wrongs based on the duties of the HOA as outlined in the CC&Rs or in NRS 116, those
3 claims shall also be dismissed so that all that should remain is a negligence personal injury
4 claim and a negligence property damage claim. All other claims shall be dismissed pursuant to
5 NRS 38.310.

6 IT IS FURTHER ORDERED that the first three paragraphs on the first page of the SAC
7 before the general allegations are stricken.

8 IT IS FURTHER ORDERED that Paragraphs 1, 2, 11, 12, 13, 14, 15, 16, 37, 43, 53,
9 and 56 of the Second Amended Complaint are stricken.

10
11 Dated this 13th day of August, 2023
12



13 2DE F58 5A75 0F4E
14 Gloria Sturman
15 District Court Judge

16 Respectfully Submitted By:
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18 HUTCHISON & STEFFEN, PLLC
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20 */s/ Todd W. Prall*

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23 Attorney for Defendant Sierra Community Management.
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1 CSERV

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5 Charles Belssner, I, Plaintiff(s)

6 CASE NO: A-22-856574-C

7 vs.

8 DEPT. NO. Department 26

9 Sierra Community Management,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 8/13/2023

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17 Cindy Simmons

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18 CHARLES BELSSNER

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**DISTRICT COURT
CLARK COUNTY, NEVADA**
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INTRODUCTION

The above-referenced matter is set for hearing before Chief Judge Jerry A. Wiese II, on 11/3/22 at 9:30 a.m. in Courtroom 17A, with regard to Plaintiff Charles N. Belssner's "Affidavit Seeking Disqualification of Judge Due to Bias or Prejudice."

Mr. Bellsner, acting in *proper person*, is the Plaintiff in a civil matter, assigned to Judge Gloria Sturman, District Court Department 26. Mr. Bellsner filed the present Affidavit on 10/17/22. Judge Sturman filed an Answer to Mr. Sullivan's Affidavit on 10/18/22.

Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to decide these matters on the pleadings, consequently, this Order issues.

DECISION AND ORDER

The Court notes that Nevada Revised Statute 1.230 provides the statutory grounds for disqualifying District Court judges. The statute provides as follows:

NRS 1.230 Grounds for disqualifying judges other than Supreme Court justices or judges of the Court of Appeals.

1. A judge shall not act as such in an action or proceeding when the judge entertains actual bias or prejudice for or against one of the parties to the action.

2. A judge shall not act as such in an action or proceeding when implied bias exists in any of the following respects:

1

- (a) When the judge is a party to or interested in the action or proceeding.
- (b) When the judge is related to either party by consanguinity or affinity within the third degree.
- (c) When the judge has been attorney or counsel for either of the parties in the particular action or proceeding before the court.
- (d) When the judge is related to an attorney or counselor for either of the parties by consanguinity or affinity within the third degree. This paragraph does not apply to the presentation of ex parte or uncontested matters, except in fixing fees for an attorney so related to the judge.

3. A judge, upon the judge's own motion, may disqualify himself or herself from acting in any matter upon the ground of actual or implied bias.

4. A judge or court shall not punish for contempt any person who proceeds under the provisions of this chapter for a change of judge in a case.

5. This section does not apply to the arrangement of the calendar or the regulation of the order of business.

See NRS 1.230

Further, the Revised Nevada Code of Judicial Conduct provides substantive grounds for judicial disqualification. Pursuant to NCJC 2.11:

Rule 2.11. Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;
(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding, or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter or controversy in regard to the proceeding.

(4) [Reserved.]

(5) The judge, while a judge, makes a public statement, other than in a court proceeding, judicial decision, or opinion,

1 that commits or appears to commit the judge to reach a particular result
2 or rule in a particular way in the proceeding or controversy.

3 (6) The judge:

4 (a) served as a lawyer in the matter in controversy or was
5 associated with a lawyer who participated substantially as a lawyer in the
6 matter during such association;

7 (b) served in governmental employment and in such capacity
8 participated personally and substantially as a lawyer or public official
9 concerning the proceeding, or has publicly expressed in such capacity an
10 opinion concerning the merits of the particular matter in controversy;

11 (c) was a material witness concerning the matter; or

12 (d) previously presided as a judge over the matter in another
13 court.

14 (B) A judge shall keep informed about the judge's personal and
15 fiduciary economic interests and make a reasonable effort to keep
16 informed about the personal economic interests of the judge's spouse or
17 domestic partner and minor children residing in the judge's household.

18 (C) A judge subject to disqualification under this Rule, other than for
19 bias or prejudice under paragraph (A)(1), may disclose on the record the
20 basis of the judge's disqualification and may ask the parties and their
21 lawyers to consider, outside the presence of the judge and court staff,
22 court officials and others subject to the judge's direction and control,
23 whether to waive disqualification. If, following the disclosure, the parties
24 and lawyers agree, without participation by the judge or court staff, court
25 officials and others subject to the judge's direction and control, that the
26 judge should not be disqualified, the judge may participate in the
27 proceeding. The agreement shall be incorporated into the record of the
28 proceeding.

See NCJC 2.11

A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might be reasonably questioned. *Ybarra v. State*, 247 P.3d 269, 271 (Nev. 2011). The test for whether a judge's impartiality might be reasonably questioned is objective and courts must decide whether a reasonable person, knowing all the facts, would harbor reasonable doubts about a judge's impartiality. *Id.* at 272.

The burden is on the party asserting the challenge to establish sufficient factual and legal grounds warranting disqualification. *Las Vegas Downtown Redevelopment Agency v. District Court*, 5 P.3d 1059, 1061 (Nev. 2000). A judge has a duty to preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or compelling reason otherwise. *Id.* A judge is presumed to be unbiased. *Millen v. District Court*, 148 P.3d 694, 701 (Nev. 2006). A judge is presumed to be impartial, and the burden is on the party asserting the challenge to

1 establish sufficient factual grounds warranting disqualification. *Yabarra*, 247 P.3d at
2 272. Additionally, the Court must give substantial weight to a judge's determination
3 that the judge does not voluntarily disqualify themselves, and the judge's decision
4 cannot be overturned in the absence of clear abuse of discretion. *In re Pet. to Recall*
5 *Dunleavy*, 104 Nev. 784, 769 P.2d 1271, 1274 (Nev. 1988).

6 The Nevada Supreme Court has stated "rulings and actions of a judge during the
7 course of official judicial proceedings do not establish legally cognizable grounds for
8 disqualifications." *Id.* at 1275. The personal bias necessary to disqualify must "stem
9 from an extrajudicial source and result in an opinion on the merits on some basis other
10 than what the judge learned from participation in the case." *Id.* "To permit an
11 allegation of bias, partially founded upon a justice's performance of his [or her]
12 constitutionally mandated responsibilities, to disqualify that justice from discharging
13 those duties would nullify the court's authority and permit manipulation of justice, as
well as the court." *Id.*

14 Moreover, the Nevada Supreme Court held that while generally what a judge
15 learns in his or her official capacity does not result in disqualification, "an opinion
16 formed by a judge on the basis of facts introduced or events occurring in the course of
17 the current proceedings, or of prior proceedings, constitutes a basis for a bias or
18 partiality motion where the opinion displays 'a deep-seated favoritism or antagonism
19 that would make fair judgment impossible.' *Kirksey v. State*, 112 Nev. 980, 1007, 923
20 P.2d 1102, 1119 (Nev. 1996), citing *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct.
21 1147, 1157, 127 L.Ed.2d 474 (1994); see also *Canarelli v. Eighth Judicial Dist. Court*,
22 138 Nev. Adv. Op. 12, 506 P.3d 334 (2022). However, "remarks of a judge made in the
23 context of a court proceeding are not considered indicative of improper bias or
24 prejudice unless they show that the judge has closed his or her mind to the presentation
25 of all the evidence." *Cameron v. State*, 968 P.2d 1169, 1171 (Nev. 1998).

26 In considering Mr. Bellsner's arguments and Judge Sturman's Response, the
27 Court cannot find that Mr. Bellsner has met his burden, to establish any bias against
28 him. NRS 1.230; *Las Vegas Downtown Redevelopment Agency v. District Court*, 5
P.3d 1059, 1061 (Nev. 2000). This Court acknowledges that it should "liberally
construe the 'inartful pleadings' of pro se litigants." *Eldridge v. Block*, 832 F. 2d 1132
(9th Cir. 1987). However, even in liberally construing Mr. Bellsner's arguments, the

1 Court cannot find that Mr. Bellsner has articulated any legally cognizable allegations
2 against Judge Sturman that would implicate proceedings under NRS 1.235. Similarly,
3 this Court cannot find anything in the record which suggests that Judge Sturman
4 displays 'a deep-seated favoritism or antagonism that would make fair judgment
impossible.' *Kirksey*, 923 P.2d 1107; *Canarelli*, 138 Nev. Adv. Op. 12.

5 Based on an "objective" analysis of the evidence presented by Mr. Bellsner and
6 review of the record, this Court finds that a reasonable person, knowing all of the facts,
7 would not question Judge Sturman's impartiality. *Ybarra v. State*, 247 P.3d 269, 272
8 (Nev. 2011). Because Mr. Bellsner has failed to establish that Judge Sturman has acted
9 with any bias or prejudice against him, whether implicit or explicit, his request to
10 disqualify must be denied.

11 With regard to Mr. Bellsner's arguments directed towards opposing counsel or
12 the Las Vegas Justice Court, this Court declines to address those issues. Rather, this
13 Court's review is limited to Mr. Bellsner's request for disqualification of Judge
14 Sturman.

15 Consequently, and good cause appearing, Plaintiff Charles N. Belssner's
16 "Affidavit Seeking Disqualification of Judge Due to Bias or Prejudice" is hereby
17 **DENIED**.

18 Because this matter has been decided on the pleadings, the hearing scheduled
19 for 11/3/22 will be taken off calendar, and consequently, there is no need for any
20 parties or attorneys to appear.

21 Dated this 2nd day of November, 2022



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24 Jerry A. Wiese
25 District Court Judge
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Charles Belssner, I, Plaintiff(s)

CASE NO: A-22-856574-C

vs.

DEPT. NO. Department 26

Sierra Community Management,
Defendant(s)

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/2/2022

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