

FILED

December 20, 2017

STATE OF MINNESOTA

IN SUPREME COURT

**OFFICE OF
APPELLATE COURTS**

A17-0860

In re Don T. Mashak, Petitioner

Federal National Mortgage Association,

Respondent,

vs.

Donald Mashak,

Petitioner,

The Provident Bank, et al.,

Defendants.

ORDER

On October 17, 2017, the court of appeals filed an order in this appeal that denied the writ of prohibition sought by petitioner. The deadline to file a petition requesting review of this decision was November 16, 2017. *See* Minn. R. Civ. App. P. 117, subd. 1 (requiring a petition for review to be filed “within 30 days of the filing of the Court of Appeals’ decision”).

On November 16, 2017, petitioner Donald Mashak submitted a petition for review that was rejected because the petition did not comply with the word-count limit established by Minn. R. Civ. App. P. 117, subd. 3 (limiting the petition for review in a civil case to 2,000

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Append A

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words), included an addendum that exceeded 50 pages, *see* Minn. R. Civ. App. P. 130.02(b), and did not conform to the format requirements in Minn. R. Civ. App. P. 132.02, subd. 1 (requiring typed material to be double-spaced). On December 12, 2017, petitioner filed a motion to accept a late petition for review, including with his motion a corrected and re-drafted petition.

Minnesota Rule of Civil Appellate Procedure 117 requires a petition for review of a decision of the court of appeals in a civil case to be served and filed within 30 days of the filing date of the court of appeals' decision. The deadline for a petition for review in this case was November 16, 2017. Thus, by the time petitioner filed his motion to accept a late petition for review, on December 12, 2017, the time to seek review of the court of appeals' October 17 decision had already expired. Although Rule 126.02 of the Minnesota Rules of Civil Appellate Procedure generally authorizes the court to extend time limitations for good cause shown, it specifically provides that "[t]he appellate court may not extend . . . the time prescribed by law for securing review of a decision or an order of a court . . . except as specifically authorized by law." Thus, an extension of time to file a petition for review of a decision of the court of appeals in a civil case is not authorized by the Rules of Civil Appellate Procedure.

Petitioner asks the court to accept his late petition because, he contends, the rules that govern appeals are complex and convoluted, and his existing medical condition makes it difficult for him to "decipher" the rules. We generally do not excuse a late filing that results from a failure to follow the procedural rules. *In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 4 (Minn. 2003). Although we have accepted late filings in an exceptional or rare case, *see id.*

at 3-4, petitioner has not shown that the circumstances that delayed the submission of a timely petition for review in this case are exceptional.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Donald Mashak to accept a late petition for review be, and the same is, denied.

Dated: December 20, 2017

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice

LILLEHAUG, J., took no part in the consideration or decision of this case.

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

October 17, 2017

**OFFICE OF
APPELLATE COURTS**

In re Don T. Mashak, Petitioner
Federal National Mortgage Association,
Respondent,

ORDER

#A17-0860

vs.

Donald Mashak,
Petitioner,
The Provident Bank, et al.,
Defendants.

Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and Florey, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

Petitioner Donald Mashak seeks a writ of prohibition, for relief from an order filed on April 28, 2017, denying reconsideration of the assigned judge's ruling on Mashak's motion to remove under Minn. R. Civ. P. 63.03.

In October 2015, Mashak removed an assigned judge in the underlying matter. Once a party has removed a judge as a matter of right, any additional disqualification requires "an affirmative showing of prejudice." Minn. R. Civ. P. 63.03. A motion to

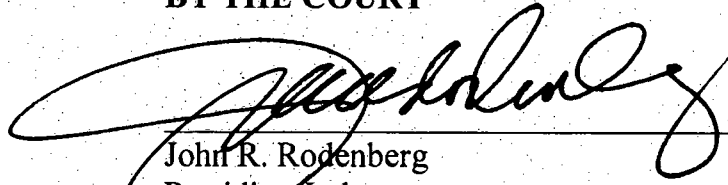
remove a judge “on the basis of actual prejudice or bias shall be heard in the first instance by the judge sought to be removed,” subject to reconsideration by the chief judge or a designee. Minn. R. Gen. Pract. 106. “Whether to honor a request for removal based on allegations of actual prejudice is a matter for the trial court’s *discretion*.” *Durell v. Mayo Found.*, 429 N.W.2d 704, 705 (Minn. App. 1988). The existence of adverse rulings does not constitute a showing of disqualifying prejudice or bias. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

The order being challenged addressed Mashak’s assertions that (a) court staff were not sufficiently responsive and (b) the judge had been assigned to a previous collections matter (on which the judge did not make any dispositive ruling), as well as Mashak’s “requests” that the matter be heard “by a judge who began their tenure by first being elected rather than appointed.” The district court concluded, in the challenged order filed on April 28, 2017, that these assertions did not establish the existence of disqualifying bias or prejudice, and we agree. We have also reviewed Mashak’s other submissions, including his assertions of conspiracy and improper conduct by entities and individuals that are not parties to this case, and conclude that all are insufficient to establish the existence of disqualifying bias or prejudice.

IT IS HEREBY ORDERED: The petition for prohibition is denied in its entirety.

Dated: October 17, 2017

BY THE COURT



John R. Rodenberg
Presiding Judge

**Additional material
from this filing is
available in the
Clerk's Office.**