



Robert L. Allum v. State of Nevada; et al

2011 | Cited 0 times | D. Nevada | August 25, 2011

ORDER

Presently before the court are plaintiff Robert L. Allum's ("Allum") motion for recusal (Doc. #37¹) and motion for reconsideration of the court's June 30, 2011 and July 7, 2011 orders (Doc. #38).

I. Factual Background

This action involves alleged violations of Allum's procedural and substantive due process rights, as well as certain unspecified state fraud and personal injury tort claims, arising out of injuries Allum sustained in a motor vehicle accident in Reno, Nevada.

On November 8, 2010, Allum filed a complaint against defendants State of Nevada; the County of Washoe; Meals-on-Wheels and Gallagher Bassett Services, Inc. asserting three causes of action: (1) violations of procedural due process; (2) violations of substantive due process; and (3) fraud and personal injury. Doc. #1. In response, each defendant filed a motion to dismiss.

Doc. #5 (State of Nevada); Doc. #7 (Gallagher Bassett Services, Inc.); Doc. #11 (Meals-on-Wheels); Doc. #19 (County of Washoe).

On June 30, 2011, the court granted defendants Gallagher Bassett Services, Inc. and the County of Washoe's motions to dismiss. Doc. #30. In the same order the court also granted in-part and denied in-part defendant Meals-on-Wheels motion to dismiss. *Id.* Subsequently, on July 7, 2011, the court granted defendant State of Nevada's motion to dismiss. Doc. #32. Thereafter, Allum filed the present motions for recusal (Doc. #37) and for reconsideration of the court's June 30, 2011 and July 7, 2011 orders (Doc. #38).

Motion for Recusal

Recusal is governed by 28 U.S.C. §§ 144 and 455. The standard for recusal in sections 144 and 455 is "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *United States v. Studley*, 783 F.2d 934, 939 th Cir. 1986). The alleged prejudice must result from an extra-judicial source; a judge's prior adverse ruling is not sufficient cause for recusal. *Id.*

In his motion for disqualification, Allum argues that this court should be disqualified from this



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action because of the court's past employment as a deputy district attorney, chief deputy district attorney, and district attorney for defendant County of Washoe from 1968 through 1979. See Doc. #37.

Allum's motion is without merit. First, the court's prior employment with the County of Washoe over thirty (30) years ago does not establish any bias or prejudice. It is axiomatic that prior to taking the bench, federal judges work as attorneys in the public and private sectors. Second, Allum has failed to identify any specific act or conduct by the court which evidences bias or prejudice. Thus, Allum's allegations are insufficient for "a reasonable person with knowledge of all the facts" to question the court's impartiality. Studley, 783 F.2d at 939.

Additionally, Allum argues that the court is biased simply because it granted defendants' motions to dismiss. See Doc. #37. Although Allum is unhappy with the orders adverse to him, which is understandable, a judge's prior adverse ruling is not sufficient cause for recusal. See Studley, 783 F.2d at 939.

Therefore, based on the record before the court and the pleadings and documents on file in this matter, the court finds that Allum has failed to demonstrate any extra-judicial influence or relationship that would lead a reasonable person to conclude that the impartiality of this court might reasonably be questioned. See 28 U.S.C. § 455(a). In the absence of a legitimate reason to recuse, a judge should participate in all cases assigned. *United States v. Holland*, 510 F.3d 909, 912 (9th Cir. 2008). Accordingly, the court shall deny Allum's motion for recusal.

III. Motion for Reconsideration

Allum brings his motion for reconsideration pursuant to Fed. R. Civ. P. 59(e). A motion under Rule 59(e) is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estaet of Bishop*, 229 F.3d 887, 890 (9th Cir. 2000). Rule 59(e) provides that a district court may reconsider a prior order where the court is presented with newly discovered evidence, an intervening change of controlling law, manifest injustice, or where the prior order was clearly erroneous. FED. R. CIV. P. 59(e); see also *United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998); *School Dist. No. 1J, Multnomah County v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

The court has reviewed the documents and pleadings on file in this matter and finds that reconsideration of the court's June 30, 2011 and July 7, 2011 order is not warranted. Allum's sole basis for reconsideration is his assumption that the court erred in its legal conclusions in this action. However, Allum fails to provide any factual or legal support for his opinion. Further, Allum fails to provide any information or legal authority that was not already before the court at the time it issued its orders. As such, reconsideration is not warranted. See e.g., *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005) ("reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already has ruled."). Accordingly, the court shall deny Allum's



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motion for reconsideration.

IT IS THEREFORE ORDERED that plaintiff's motion for recusal (Doc. #37) and motion for reconsideration (Doc. #38) are DENIED.

IT IS FURTHER ORDERED that plaintiff's motion to extend time to file motion for reconsideration (Doc. #36) is GRANTED nunc pro tunc.

IT IS SO ORDERED.

1. Refers to the court's docket number.

