

IN THE UTAH COURT OF APPEALS

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Glenn R. Harper,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20091004-CA	
v.)		
)	F I L E D	
Judge Scott M. Hadley,)	(January 14, 2010)	
)		
Respondent.)	<table border="1"><tr><td>2010 UT App 5</td></tr></table>	2010 UT App 5
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Original Proceeding in this Court

Attorneys: Glenn R. Harper, Huntsville, Petitioner Pro Se
 Brent M. Johnson, Salt Lake City, for Respondent

Before Judges Davis, Thorne, and Greenwood.¹

PER CURIAM:

Petitioner Glenn R. Harper seeks relief in the nature of mandamus under the cited authority of rule 65B(d)(2)(B) of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 65B(d)(2)(B) (providing for extraordinary relief "where an inferior court . . . has failed to perform an act required by law as a duty of office, trust or station"). Harper requests an extraordinary writ ordering Judge Scott M. Hadley "to rule upon all the motions that have been noticed to him in any of the cases which are past the statutory time for ruling."

Our inquiry is confined to determining whether Harper is entitled to relief under rule 65B(d)(2)(B) for an alleged failure by Judge Hadley to perform his judicial duties. Rule 65B(d) defines the scope of review when an appellate court "is confronted with a petition for extraordinary writ challenging a lower court's action or inaction, stating that '[w]here the

¹Judge Pamela T. Greenwood voted on this case as a regular member of the Utah Court of Appeals. However, she retired from the court on January 1, 2010, before this decision issued. Hence, she is designated herein as a senior judge. See Utah Code Ann. § 78A-3-103(2) (2008); Sup. Ct. R. of Prof'l Practice 11-201(6).

challenged proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority.'" State v. Barrett, 2005 UT 88, ¶ 9, 127 P.3d 682 (quoting Utah R. Civ. P. 65B(d)). "Unlike a party filing a direct appeal, a petitioner seeking rule 65B(d) extraordinary relief has no right to receive a remedy that corrects a lower court's mishandling of a particular case. Rather, whether relief is ultimately granted is left to the sound discretion of the court hearing the petition." Id. ¶ 23. Accordingly, to the extent that this petition also seeks to collaterally challenge the judgments and orders of the district court, to inquire into alleged criminal behavior, to obtain declaratory rulings on the merits of any claim, or to obtain a de novo determination that Judge Hadley's actions constitute bias or prejudice, those requests are beyond the scope of a petition for extraordinary relief under rule 65B(d)(2)(B). Thus, we review only whether Judge Hadley failed to perform his judicial duties, as alleged by Harper.

To the extent that Harper asserts his disagreement with the substantive rulings of the court, the challenges must have been raised in a timely appeal. Harper filed an untimely notice of appeal from the July 15, 2008 judgment in Second District Case No. 030902215, which we dismissed for lack of jurisdiction. See Harper v. Harper, 2009 UT App 95U (mem.) (per curiam). Having failed to file a timely appeal, Harper may not utilize a petition for extraordinary relief as a substitute for a timely appeal. See Renn v. Utah State Bd. of Pardons, 904 P.2d 677 (Utah 1995). Furthermore, Harper filed a motion to disqualify Judge Hadley in Second District Case No. 030902215, which the presiding judge of the Second District denied in accordance with rule 63(b) of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 63(b). Having availed himself of that plain, speedy, and adequate remedy and having failed to file a timely appeal in which he could challenge the ruling on his motion to disqualify, Harper may not again seek disqualification through a petition for extraordinary relief filed in this court.

In sum, we conclude that neither the district court's requirement that all parties to the underlying case file post-appeal requests to submit for decision on any pending motion nor its failure to sua sponte identify and rule on those motions constitutes a failure to perform a judicial duty supporting extraordinary relief under rule 65B(d)(2)(B). Furthermore, the remainder of the claims asserted in the lengthy petition for extraordinary relief, including, without limitation, claims for declaratory relief, for inquiry into criminal behavior, and for reconsideration of the grounds for disqualification rejected in the ruling on Harper's rule 63 motion to disqualify, are denied as beyond the scope of our review of a petition for extraordinary

relief filed under rule 65B(d)(2)(B) of the Utah Rules of Civil Procedure. Accordingly, we deny the petition for extraordinary relief.

James Z. Davis,
Presiding Judge

William A. Thorne Jr., Judge

Pamela T. Greenwood, Senior Judge