

IN THE UTAH COURT OF APPEALS

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Todd Kasteler,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20070345-CA
v.	)	
	)	
Honorable Daniel B. Gibbons,	)	F I L E D
Robert D. Gray, Honorable	)	(August 2, 2007)
Virginia Ward, Casey Fitts,	)	
Bill Anderson, Marilyn Brusch,	)	2007 UT App 267
Rea Goddard, Mike Rutter,	)	
Shane Siwik, and John Weaver,	)	
	)	
Respondents and Appellees.	)	

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Third District, Salt Lake Department, 070900875  
The Honorable Tyrone E. Medley

Attorneys: Todd Kasteler, Salt Lake City, Appellant Pro Se  
Janice L. Frost, Salt Lake City, for Appellees  
H. Craig Hall and Jennifer A. Brown, Salt Lake City,  
for Appellee Daniel B. Gibbons

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Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Appellant Todd Kasteler appeals an order dismissing his second emergency petition for extraordinary relief. This case is before the court on a sua sponte motion for summary disposition.

Kasteler was charged with driving on a suspended license in South Salt Lake. Because some witnesses were court employees, South Salt Lake Justice Court Judge Catherine M. Johnson recused herself after Kasteler filed a motion to disqualify. Judge Johnson transferred Kasteler's cases to the Holladay Justice Court and purported to appoint Judge Daniel Gibbons of the latter court as the substitute judge. Judge Denise Lindberg's ruling on Kasteler's original emergency petition for extraordinary relief vacated the appointment and directed the South Salt Lake Mayor to appoint a substitute judge to hear the cases, specifically citing Utah Code section 78-5-138. See Utah Code Ann. § 78-5-138

(2002). The mayor appointed Salt Lake City Justice Court Judge Virginia Ward to sit as a temporary judge for the South Salt Lake Justice Court.

Kasteler filed a second emergency petition for extraordinary relief, which was assigned to Judge Tyrone Medley. Kasteler claimed that: (1) Judge Daniel Gibbons was required to dismiss the case for lack of jurisdiction; (2) the South Salt Lake Mayor was required to comply with Utah Code section 78-5-134(2) in appointing a temporary justice court judge; and (3) Judge Virginia Ward exceeded her jurisdiction in setting an arraignment because there had been no review of his motion to disqualify Judge Johnson by a reviewing judge under rule 29 of the Utah Rules of Criminal Procedure. Judge Medley dismissed the second emergency petition, ruling that it was moot "in substantial part" and that Kasteler failed to demonstrate that he had no other plain, speedy, and adequate remedy through either an appeal of Judge Lindberg's ruling or proceedings to enforce that ruling. This appeal is limited to a review of Judge Medley's ruling.

Judge Medley did not err in ruling that the second emergency petition was moot in substantial part because the issues were resolved in Judge Lindberg's ruling on the original petition. The assertion that it is necessary for Judge Gibbons to dismiss Kasteler's cases is without merit because the cases remain pending in the South Salt Lake Justice Court where they originated. Similarly, Kasteler's oft repeated assertion that appointment of a temporary, substitute justice court judge must comply with the same procedures as for appointment of a permanent judge is without merit. Utah Code section 78-5-138 was referenced in Judge Lindberg's ruling as the procedure for appointment of a substitute judge under the circumstances. That statute states:

If a justice court judge is absent or disqualified, the appointing authority may appoint another justice court judge currently holding office within the judicial district to serve as a temporary justice court judge. A retired justice court judge may also be appointed as a temporary justice court judge under rule of the Supreme Court.

Utah Code Ann. § 78-5-138. The statute governs the temporary appointment of a justice court judge when the assigned judge has been disqualified, which is precisely what occurred in this case upon Judge Johnson's recusal. We note that Kasteler did not appeal any part of Judge Lindberg's ruling.

Kasteler's assertion that there must be further review of his motion to disqualify Judge Johnson is frivolous. Judge Johnson did not dispute the motion to disqualify and instead chose to recuse. No further review is required by rule 29 of the Utah Rules of Criminal Procedure because the motion was effectively granted.

Judge Medley did not err in dismissing the second emergency petition for extraordinary relief. Judge Lindberg's ruling on the original emergency petition granted the relief requested and addressed Kasteler's legitimate procedural concerns. The underlying cases remain pending in South Salt Lake, and the mayor appointed Judge Ward as a substitute judge in accordance with section 78-5-138. If Judge Ward has since elected not to participate, as suggested in the responses, the South Salt Lake Mayor should appoint another substitute judge in accordance with section 78-5-138. Accordingly, we affirm.

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Russell W. Bench,  
Presiding Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge