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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs February 1, 2023

**COLLIN C. ET AL., BY NEXT FRIEND HOLLY CRAFT v. MICHAEL
STEVEN TUTOR**

**Appeal from the Circuit Court for Shelby County
No. CT-3509-21 Felicia Corbin-Johnson, Judge**

No. W2023-00153-COA-T10B-CV

A Tennessee Supreme Court Rule 10B petition for recusal appeal was filed in this Court following the denial of a motion that sought the trial court judge's recusal from the case. Herein, we affirm the trial court's denial of the recusal motion.

**Tenn. Sup. Ct. R. 10B Accelerated Interlocutory Appeal; Judgment of the Circuit
Court Affirmed and Remanded**

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and KRISTI M. DAVIS, JJ., joined.

Buckner Wellford, Christopher Coats, Jennie V. Silk, and Lara E. Butler, Memphis, Tennessee, for the appellant, Michael Steven Tutor.¹

OPINION

BACKGROUND AND PROCEDURAL HISTORY

The complaint giving rise to the present case was filed in the Shelby County Circuit Court by Collin and Kathryn Craft (collectively "the Craft Children"), through their mother Holly Craft ("Ms. Craft"), against Defendant Michael Tutor ("Mr. Tutor"). Ms. Craft was previously in a romantic relationship with Mr. Tutor, and the Craft Children's complaint alleged that they had experienced "four years of severe mistreatment and outrageous conduct" from Mr. Tutor, culminating "in a violent night on June 28, 2020 when [Mr. Tutor] viciously attacked their mother." We need not delve into the specifics of each and every allegation for purposes of this appeal, but for general context we note that the Craft

¹ The other parties in this case have not participated in this appeal due to this appeal being considered solely on Mr. Tutor's submissions and without oral argument.

Children’s complaint asserted claims for intentional infliction of emotional distress, negligent infliction of emotional distress, assault, battery, and false imprisonment². Moreover, we note that, among other allegations concerning the complained-of June 28, 2020, incident, the Craft Children’s complaint alleged that Mr. Tutor had “repeatedly punched [Ms. Craft], kicked her and dragged her around her house by her hair.” Although the Craft Children’s case was initially assigned to Division IX of the Shelby County Circuit Court, it was later transferred to Division I, where a lawsuit that Ms. Craft had personally asserted against Mr. Tutor was pending. Per the representation made in the pending petition for recusal appeal, the parties have since proceeded before Division I “under the assumption that both [the Craft Children’s case and Ms. Craft’s case] are procedurally before that Court.” Division I is presided over by Judge Felicia Corbin-Johnson (“the trial court judge”).

On April 20, 2022, Mr. Tutor filed a motion for judgment on the pleadings concerning the asserted intentional infliction of emotional distress and negligent infliction of emotional distress claims. In his accompanying supporting memorandum, Mr. Tutor correctly referenced the standard that should guide a trial court’s review of such motions, i.e., that a court must accept as true all well-pleaded facts alleged by the party opposing the motion, *see Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 470 (Tenn. 2004), and argued, among other things, that the conduct alleged by the Craft Children was not “outrageous” as a matter of law. *See generally Arnett v. Domino’s Pizza I, L.L.C.*, 124 S.W.3d 529, 539 (Tenn. Ct. App. 2003) (noting that, to support a claim for intentional infliction of emotional distress, the defendant’s conduct “must be so outrageous as not to be tolerable by civilized society”).

The trial court entertained arguments on Mr. Tutor’s motion on June 10, 2022, and then again several months later on October 11, 2022. Ultimately, in an order entered on November 18, 2022, the trial court denied Mr. Tutor’s motion for judgment on the pleadings. Although the propriety of that order is not at issue in this appeal, our review follows from actions taken by Mr. Tutor in the wake of it. Indeed, following the trial court’s decision to deny the motion for judgment on the pleadings, Mr. Tutor filed a motion to transfer the Craft Children’s case back to Division IX or, alternatively, for the trial court judge to recuse herself. Concerning the recusal issue, Mr. Tutor focused on comments made by the trial court judge during the June 10 and October 11 hearings and argued that the “cumulative impact of the Court’s statements” necessitated the motion, “not any one statement in and of itself.”

The Craft Children opposed Mr. Tutor’s motion to transfer or, in the alternative, to recuse, specifically accusing Mr. Tutor of cherry-picking statements made by the trial court

² Regarding the conduct that had been alleged for intentional infliction of emotional distress, false imprisonment, battery, and assault, the complaint alleged, “in the alternative,” that the conduct was “based upon [Mr. Tutor’s] reckless conduct or gross negligence.”

judge and not considering the judge's statements in their proper context, i.e., in connection with a motion for judgment on the pleadings, pursuant to which the allegations against Mr. Tutor must be accepted as true. The trial court subsequently entered an order denying Mr. Tutor's motion to recuse, wherein the court emphasized the context in which the disputed statements had been made and concluded that "a person of ordinary prudence in the judge's position, knowing all the facts that are known to the judge, would not have a reasonable basis for questioning the judge's impartiality." Mr. Tutor then filed a petition for recusal appeal in this Court. We proceed to address the appeal summarily based on Mr. Tutor's submissions alone and without oral argument. *See* Tenn. Sup. Ct. R. 10B, § 2.05 (providing that the appellate court may act summarily on the appeal if it determines that no answer is needed); Tenn. Sup. Ct. R. 10B, § 2.06 (providing that the accelerated interlocutory appeal shall be decided on an expedited basis and, in the court's discretion, without oral argument).

DISCUSSION

The only order this Court may review in an appeal pursued under Tennessee Supreme Court Rule 10B is the trial court's order denying the motion to recuse. *Dougherty v. Dougherty*, No. W2021-01014-COA-T10B-CV, 2021 WL 4449649, at *2 (Tenn. Ct. App. Sept. 29, 2021) (citing *Duke v. Duke*, 398 S.W.3d 665, 668 (Tenn. Ct. App. 2012)). The general principles undergirding recusal issues are well settled:

"The right to a fair trial before an impartial tribunal is a fundamental constitutional right." *Bean v. Bailey*, 280 S.W.3d 798, 803 (Tenn. 2009) (quoting *State v. Austin*, 87 S.W.3d 447, 470 (Tenn. 2002)). Preserving public confidence in judicial neutrality, however, requires more than ensuring that a judge is impartial in fact. *Kinard v. Kinard*, 986 S.W.2d 220, 228 (Tenn. Ct. App. 1998). It is also important that a judge be perceived to be impartial. *Id.* In keeping with this principle, Tennessee Supreme Court Rule 10, Code of Judicial Conduct Rule 2.11 provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned[.]" Even when a judge sincerely believes that he or she can preside over a matter in a fair and impartial manner, recusal is nonetheless required where a reasonable person "in the judge's position, knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality." *Davis v. Liberty Mut. Ins. Co.*, 38 S.W.3d 560, 564-65 (Tenn. 2001) (quoting *Alley v. State*, 882 S.W.2d 810, 820 (Tenn. Crim. App. 1994)).

Hawthorne v. Morgan & Morgan Nashville PLLC, No. W2020-01495-COA-T10B-CV, 2020 WL 7395918, at *2 (Tenn. Ct. App. Dec. 17, 2020).

Not every bias merits recusal, and remarks which reflect prevailing societal attitudes are insufficient alone to mandate disqualification. *Alley*, 882 S.W.2d at 821-22. “Any comments made by the trial court must be construed in the context of all the facts and circumstances to determine whether a reasonable person would construe those remarks as indicating partiality on the merits of the case.” *Id.* at 822.

Although Mr. Tutor’s recusal motion was filed in reference to certain comments made by the trial court judge during the June 10, 2022, and October 11, 2022, hearings, his framing on appeal, including his argument and “Statement of the Issue,”³ attempts to broaden the basis for recusal by partially focusing on matters that were not a part of his recusal motion.⁴ At first glance, it is not readily clear to us how these additional matters would change the calculus of our review, but as a point of procedure, we limit our analysis herein to those matters that were actually raised with the trial court judge. *See, e.g., McKenzie v. McKenzie*, No. M2014-00010-COA-T10B-CV, 2014 WL 575908, at *6 n.3 (Tenn. Ct. App. Feb. 11, 2014) (“In her petition to this court, Ms. McKenzie seeks to add a basis for her allegations of bias that was not included in her motion for recusal presented to the trial judge. Under Rule 10B our review is limited to the trial court’s denial of the recusal motion. Accordingly, we will not address these later allegations.”).

To begin our substantive discussion, we must first make note of the June 10, 2022, hearing in which the trial court judge remarked that she has been a “champion for children.” This remark, which the Craft Children have argued is “an expression of a commonplace sentiment [and not evidence of bias that demands recusal],” was rightly regarded by Mr. Tutor as *not* creating an appearance of partiality in the context of the June 10 hearing. Indeed, Mr. Tutor did not move to recuse the trial court judge following the June 10 hearing. Moreover, he continued, several months following the trial court judge’s statement, to pursue his motion for judgment on the pleadings before her without any objection to her ability to oversee the case. Moreover, Mr. Tutor specifically acknowledges on appeal that the trial court judge’s remark during the June 10 hearing did not warrant

³ Mr. Tutor’s “Statement of the Issue,” when discussing the conduct that allegedly justifies recusal, specifically highlights the following points: (1) that the trial court judge stated that she felt a little overwhelmed by the allegations in the case, (2) that the trial court judge expressed hope that the Craft Children were receiving good counseling based on the things that were alleged, (3) that the trial court judge invoked a series of rhetorical questions to the attorneys about the allegations, (4) that the trial court judge had inaccurately quoted an allegation in the complaint, and (5) that the trial court judge had a conversation after the filing of the transfer/recusal motion with the judge in Division IX.

⁴ For instance, as evident in the last point highlighted in his “Statement of the Issue,” Mr. Tutor attempts to partially predicate recusal on conduct occurring “after” the motion to recuse was filed. From his accompanying argument on the matter, Mr. Tutor appears to invoke this subsequent conduct to allegedly “[p]rovide an [e]xtrajudicial [b]asis for the [m]otion for [r]ecusal and this [p]etition.” Several past cases have explained that when the bias alleged stems from events occurring during litigation, the party seeking a judge’s recusal has a greater burden. *See, e.g., Denney ex rel. Doghouse Computs., Inc. v. Rather*, No. M2022-01743-COA-T10B-CV, 2023 WL 316012, at *5 (Tenn. Ct. App. Jan. 19, 2023) (discussing the burden that applies and whether or not alleged biases stem from an extrajudicial source).

recusal. He does, however, point to it for “context” for statements and comments made by the trial court judge at the October 11, 2022, hearing, which Mr. Tutor states “is the focus of Defendant’s present Motion.”

The theory Mr. Tutor proceeds under is that the “cumulative effect” of the trial court judge’s comments warrants recusal. Having reviewed the complained-of statements and the overall context in which they were made, we respectfully disagree. As an initial matter, and before turning to the specific comments from the trial court judge that Mr. Tutor has marshalled for review, we note that, contrary to the suggestion by Mr. Tutor that the trial court judge evidenced bias against him and in favor of the Craft Children during the course of addressing his motion for judgment on the pleadings, the trial court judge appears to have taken an even-handed and measured approach during her oversight of this case. For instance, when inquiry was made during the June 10 hearing about the development of the law of emotional distress and potential extensions of that law in Tennessee, the trial court judge stated that she “want[ed] to very thoroughly take this under advisement, do my own research, [and] welcome any additional arguments or legal authority that [counsel] can provide.” Moreover, when the trial court judge focused on the allegations in the Craft Children’s complaint during the October 11 hearing, as she was required to do to evaluate Mr. Tutor’s motion for judgment on the pleadings, she pointed out during the course of the hearing that “they’re just allegations at this point.”

Ultimately, though, the allegations in the Craft Children’s complaint had to guide the trial court judge’s review during the June 10 and October 11 hearings, and she was tasked with determining whether, among other things, the facts that were alleged “rise to the very high bar of ‘atrocious and utterly intolerable in a civilized community’ necessary to sustain a claim for intentional infliction of emotional distress.” *Word v. Knox Cty.*, No. E2018-01843-COA-R3-CV, 2020 WL 838534, at *9 (Tenn. Ct. App. Feb. 20, 2020) (quoting *Bain v. Wells*, 936 S.W.2d 618, 623 (Tenn. 1997)). It is with this particular point and context in mind that we discern no issue to exist in relation to the statements that Mr. Tutor has highlighted in his “Statement of the Issue,” such as the trial court judge’s comment that she was a little overwhelmed by the allegations and her comments about the Craft Children and counseling. As to the former matter, the trial court judge’s comment was specifically made upon her acknowledgment that she had just read the complaint which alleged bullying, abuse, and exploitation of the Craft Children, a complaint that included, for instance, the following allegation.

16. Tutor often manufactured conflicts and grievances to give himself an excuse to leave and the “conflicts” would often center around Collin Craft. On Mother’s Day in May 2020 for example, Tutor told the family he was cancelling Mother’s Day for Holly Craft and the Plaintiffs Katie and Collin Craft because of the Plaintiff Collin Craft. Collin Craft inadvertently overslept on this day causing Mike Tutor to enter Collin Craft’s bedroom and told him “you hate your mom.” Tutor told Collin Craft to get up and wash

Tutor's car and Holly Craft's car, and then an "aggrieved" Mike Tutor left the home in his clean car. During a nearly 24-hour text exchange/war with Holly Craft, Tutor called Collin Craft a series of vulgar names and said her son was tearing them apart. Tutor spent much of the time attacking Collin Craft and sent Holly Craft repeated and divisive texts that read "Reward Collin. Punish Mike." Later that day, Collin Craft had an hour-long phone conversation with Mike Tutor in an effort to smooth things over but Tutor threatened him and told Collin Craft if he ever crossed him again Tutor would send him to military school. Tutor also told Collin Craft he would send him to whichever college he (Tutor) pleased as a "punishment" for Collin Craft's actions. Tutor called Collin Craft a "sociopath" and told the teenager that Collin Craft had no feelings for anyone other than himself. Tutor told Collin Craft that Katie and Holly Craft resented him (Collin Craft). Tutor also told Collin Craft, "Your [deceased] dad would be very disappointed in you."⁵ Mike Tutor's manipulation and emotional abuse was so devastating that Tutor was able to convince Collin Craft of things that were not true which caused Collin Craft to feel insecure, anxiety, become depressed[.]

We fail to see how a reasonable person, knowing that the trial court judge was tasked with evaluating the complaint's allegations *and accept them as true* and knowing that the trial court's judge's comment about being "overwhelmed" was communicated in connection with that task and her review of allegations such as the above, would find a reasonable basis for questioning the judge's impartiality. Similarly, although Mr. Tutor complains about the trial court judge's use of a series of rhetorical questions during the October 11 hearing, questions that included, "how much are children to tolerate?," we note again the setting in which the trial court judge's rhetoric occurred: her consideration of whether the allegations asserted by the Craft Children were of such a nature that they "rise to the very high bar of 'atrocious and utterly intolerable in a civilized community' necessary to sustain a claim for intentional infliction of emotional distress." *Id.* It appears that the trial court judge was simply accepting the complaint's allegations as true, as was proper, and considering whether those allegations did, or did not, state a claim.

Mr. Tutor also complains that the trial court judge made comments about the Craft Children's counseling. The Craft Children's complaint itself alleged that Mr. Tutor's conduct had resulted "in the necessity for the Plaintiffs to seek psychological counseling," and it is true that the trial court judge had stated, "as a sidebar," that, "if what has been alleged here [in fact occurred]," she hoped the counseling that the Craft Children were receiving dealt with adverse childhood experiences. It is not clear to us how this indicates partiality on the merits of the case, especially considering that the trial court judge's comments were all within the context of her considering "if this is what [the Craft Children

⁵ According to the complaint, the Craft Children's father passed away from ALS (Amyotrophic Lateral Sclerosis) in 2014 at the age of 48.

have] endured over a period of four years.” (Emphasis added)

Mr. Tutor further complains that the trial court judge orally misquoted allegations from the complaint when considering the motion for judgment on the pleadings. For instance, Mr. Tutor notes that the trial court judge misstated the complaint’s allegation that he called Collin Craft a “sociopath,” as the judge employed the term “psychopath” instead. Further, Mr. Tutor takes especial exception to the trial court judge’s misquoting of a complaint allegation involving Ms. Craft and the alleged notorious June 28, 2020, episode, namely an alleged threat that he made to Collin during that evening. The alleged threat, which was itself conditioned on the potential inaction by Ms. Craft with regard to a particular subject, was that Collin would never see Mr. Tutor again. The trial court judge, however, orally misstated the threat being that “Collin would never see [Ms. Craft] again.” No doubt, the trial court judge misstated the specifics of these complaint allegations during the course of her consideration of whether the complaint allegations are legally viable, but we reach a different conclusion from Mr. Tutor as to whether a few innocent oral misstatements are themselves somehow reflective of an apparent predisposition to rule against him.

While we acknowledge that Mr. Tutor’s theory is predicated on the cumulative impact of his various complaints, we fail to discern how considering the trial court judge’s various statements in the aggregate changes anything. The materials presented to us paint a picture of the trial court judge attempting to fulfill her sworn duty to rule on Mr. Tutor’s motion for judgment on the pleadings, with that process necessarily requiring that the trial court judge accept as true the allegations made against Mr. Tutor. All of the comments with which Mr. Tutor takes issue occurred during that process, and for the reasons discussed herein, we do not conclude that a reasonable person, knowing all of the facts known to the trial court judge, would find a reasonable basis for questioning her impartiality. Although we therefore do not consider the trial court judge’s conduct during her resolution of the motion for judgment on the pleadings to warrant recusal, we of course take no position on the trial court judge’s ruling on the motion for judgment on the pleadings. We express no opinion whatsoever on that matter herein, as such an issue is outside the parameters of this appeal. We are only concerned with the recusal motion that Mr. Tutor filed following the resolution of his motion for judgment on the pleadings, and finding that recusal of the trial court judge is not warranted in light of that motion, we affirm the order of the trial court denying recusal.

CONCLUSION

For the reasons stated herein, we affirm the trial court’s denial of Mr. Tutor’s motion to recuse and remand the case for further proceedings that are consistent with this Opinion.

s/ Arnold B. Goldin

ARNOLD B. GOLDIN, JUDGE