FILED
01/13/2023
Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs December 29, 2022

# WAYNE HADDIX D/B/A 385 VENTURES v. JAYTON STINSON ET AL.

**Appeal from the Chancery Court for Shelby County**
**No. CH-17-0002 JoeDae L. Jenkins, Chancellor**

---

**No. W2022-01813-COA-T10B-CV**

---

This accelerated interlocutory appeal is taken from the trial court's order denying Appellant's motion for recusal. Because there is no evidence of bias that would require recusal under Tennessee Supreme Court Rule 10B, we affirm the judgment of the trial court.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JOHN W. MCCLARTY, J., joined.

Mark T. Stinson, Memphis, Tennessee, pro se.[1]

## OPINION

### I. Background

This case arises from a motion to recuse filed in the Shelby County Chancery Court ("trial court"). The underlying litigation concerned an agreement by Shelby County Schools, Connex Staffing, Inc. ("Connex"), and Ameriprise Financial Services ("Ameriprise"). Appellant Mark Stinson is an owner of Connex. Under the agreement, Connex agreed to provide staffing services to Shelby County Schools, and Wayne Haddix of Ameriprise would provide funding. This case involves a conflict between Messrs. Stinson and Haddix involving the amount of funds paid by and owed to Mr. Haddix.

[1] Other parties have not participated in this appeal, which we consider solely on Mr. Stinson's submissions and without oral argument.

On March 3, 2017, and without opposition from Mr. Stinson, the trial court ordered that $73,033.89 owed from Shelby County Schools to Connex be deposited with the Chancery Court Clerk and Master. By order of April 20, 2020, the trial court granted summary judgment in favor of Ameriprise and Mr. Haddix. On April 27, 2021, the trial court entered the order denying Mr. Stinson's motion to reconsider and entered final judgment in favor of Ameriprise. Neither the April 20, nor the April 27 order are included as supporting documents in Mr. Stinson's petition for recusal. *See* Tenn. Sup. Ct. R. 10B, § 2.03 ("The petition shall be accompanied by a copy of the motion and all supporting documents filed in the trial court, a copy of the trial court's order or opinion ruling on the motion, and a copy of any other parts of the trial court record necessary for determination of the appeal."). Accordingly, we take the procedural history from the trial court's order denying the motion for recusal and note that, from our limited record, it is unclear how the trial court distributed the $73,033.89.

On November 16, 2022, Mr. Stinson filed a "motion for notice of accelerated interlocutory appeal as of right" in the trial court. In this motion, Mr. Stinson requested "an [a]ccelerated [i]nterlocutory [a]ppeal of the [d]isqualification of [the trial judge] . . . ." By order of December 8, 2022, the trial court denied the motion.

On December 28, 2022, Mr. Stinson filed his appeal to this Court. After reviewing the petition for recusal and supporting documents, we conclude that an answer, additional briefing, and oral argument are unnecessary. Accordingly, we will act summarily on the appeal in accordance with Tennessee Supreme Court Rule 10B, sections 2.05 and 2.06.

## II. Issue

Under Tennessee Supreme Court Rule 10B, the only order this Court may review on an appeal is the trial court's order denying a motion to recuse. ***Duke v. Duke***, 398 S.W.3d 665, 668 (Tenn. Ct. App. 2012) ("Pursuant to [Tennessee Supreme Court Rule 10B], we may not review the correctness or merits of the trial court's other rulings[.]"). Accordingly, the sole issue is whether the trial court erred in denying Mr. Stinson's motion for recusal. ***Williams by & through Rezba v. HealthSouth Rehab. Hosp. N.***, No. W2015-00639-COA-T10B-CV, 2015 WL 2258172, at *5 (Tenn. Ct. App. May 8, 2015).

## III. Standard of Review

Tennessee Supreme Court Rule 10B requires appellate courts to review a trial court's ruling on a motion for recusal under a *de novo* standard of review with no presumption of correctness. Tenn. Sup. Ct. R. 10B, § 2.01. The party seeking recusal bears the burden of proof, and "any alleged bias must arise from extrajudicial sources and not from events or observations during litigation of a case." ***Williams by & through Rezba***, 2015 WL 2258172, at *5 (quoting ***McKenzie v. McKenzie***, No. M2014-00010-COA-T10B-CV, 2014 WL 575908, at *3 (Tenn. Ct. App. Feb. 11, 2014)).

We further note that while we are cognizant of the fact that Mr. Stinson is representing himself in this appeal, it is well-settled that "pro se litigants are held to the same procedural and substantive standards to which lawyers must adhere." ***Brown v. Christian Bros. Univ.***, 428 S.W.3d 38, 46 (Tenn. Ct. App. 2013). This Court has held that "[p]arties who choose to represent themselves are entitled to fair and equal treatment by the courts." ***Hodges v. Tenn. Att'y Gen***., 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000) (citing ***Paehler v. Union Planters Nat'l Bank, Inc***., 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997)). Nevertheless, "courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe." ***Young v. Barrow***, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003) (citing ***Edmundson v. Pratt***, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); ***Kaylor v. Bradley***, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995)).

## IV. Analysis

As a preliminary matter, we note some deficiencies in Mr. Stinson's motion to recuse. Tennessee Supreme Court Rule 10B requires that a motion seeking disqualification/recusal "shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge . . . ." Tenn. Sup. Ct. R. 10B, § 1.01. The rule also requires that the motion "affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Tenn. Sup. Ct. R. 10B, § 1.01. Mr. Stinson omitted the foregoing requirements from his motion.

We also address the timing of the motion to recuse. Under Tennessee Supreme Court Rule 10B, "[a]ny party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge of a court of record . . . shall do so by a written motion filed promptly after a party learns or reasonably should have learned of the facts establishing the basis for recusal." Tenn. Sup. Ct. R. 10B, § 1.01; ***Cain-Swope v. Swope***, 523 S.W.3d 79, 88 (Tenn. Ct. App. 2016), *perm. app. denied* (Tenn. April 12, 2017) (citation omitted) ("[A] recusal motion must be filed promptly after the facts forming the basis for the motion become known, and the failure to assert them in a timely manner results in a waiver of a party's right to question a judge's impartiality."). One of Mr. Stinson's grounds for recusal is his allegation that the trial court "illegally seized [$73,033.89] from [Connex's] account receivables." As discussed, *supra*, the trial court ordered Shelby County Schools to deposit $73,033.89 with the Chancery Court Clerk and Master on March 3, 2017. The trial court entered the final order in the underlying litigation on April 27, 2021. Yet, Mr. Stinson did not file the motion to recuse until November 16, 2022. If Mr. Stinson had legitimate grounds for recusal involving the deposit of the $73,033.89 or the trial court's conduct in the underlying litigation, it was incumbent on him to bring his concerns to the trial court's attention promptly. Under the specific facts of this case, Mr. Stinson's delay of more than five years (or, at the very least, nineteen

months) between the trial court's actions and the filing of his motion for recusal was neither prompt nor timely. A party's failure to assert recusal motions "in a timely manner results in a waiver of a party's right to question a judge's impartiality." ***Kinard v. Kinard***, 986 S.W.2d 220, 228 (Tenn. Ct. App. 1998) (internal citations omitted); *see also* ***Duke***, 398 S.W.3d at 670.

Despite the foregoing deficiencies, for completeness, we will address the substantive issue before us. However, we caution litigants that "while in this case we chose to proceed with our review despite the fact that [a party] chose not to abide by the rules of th[e] [Tennessee Supreme] Court, we cannot say we will be so accommodating and choose to do the same in the future." ***Watson v. City of Jackson***, 448 S.W.3d 919, 928 (Tenn. Ct. App. 2014) (quoting ***Wells v. Wells***, No. W2009-01600-COA-R3-CV, 2010 WL 891885, *4 (Tenn. Ct. App. March 15, 2010)).

We begin with a review of the applicable legal principles concerning questions of recusal, which are succinctly stated in ***In Re: Samuel P.***, No. W2016-01592-COA-T10B-CV, 2016 WL 4547543, at *2 (Tenn. Ct. App. Aug. 31, 2016), to-wit:

> When reviewing requests for recusal alleging bias, "it is important to keep in mind the fundamental protections that the rules of recusal are intended to provide." ***In re A.J.***, No. M2014-02287-COA-R3-JV, 2015 WL 6438671, at *6 (Tenn. Ct. App. Oct. 22, 2015), *perm. app. denied* (Tenn. Feb. 18, 2016). "The law on judicial bias is intended 'to guard against the prejudgment of the rights of litigants and to avoid situations in which the litigants might have cause to conclude that the court had reached a prejudged conclusion because of interest, partiality, or favor.'" ***Id.*** (quoting ***Bean v. Bailey***, 280 S.W.3d 798, 803 (Tenn. 2009)).
>
> The terms "bias" and "prejudice" usually refer to a state of mind or attitude that works to predispose a judge for or against a party, but not every bias, partiality, or prejudice merits recusal. ***Watson***[, 448 S.W.3d at 929] (citing ***Alley v. State***, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994)). "'Even though the judge is expected to have no bias at the beginning of the trial, he must, perforce, develop a bias at some point in the trial; for the decision at the conclusion of the trial is based upon the impressions, favorable or unfavorable, developed during the trial.'" ***Id.*** at 933 (quoting ***Spain v. Connolly***, 606 S.W.2d 540, 544 (Tenn. Ct. App. 1980)). To merit disqualification, the prejudice must be of a personal character, directed at the litigant, and stem from an extrajudicial source resulting in an opinion on the merits on some basis other than what the judge learned from participation in the case. ***Id.*** at 929. "A trial judge's opinions of the parties or witnesses that are based on what he or she has seen at trial are not improper and 'generally do[ ] not warrant recusal.'" ***Id.*** at 933 (quoting ***Neuenschwander v.***

***Neuenschwander***, No. E2001-00306-COA-R3-CV, 2001 WL 1613880, at *11 (Tenn. Ct. App. Dec. 18, 2001)).

***In Re: Samuel P.***, 2016 WL 4547543, at *2. In its order denying the motion for recusal, the trial court correctly stated that "Supreme Court Rule 10B requires that a motion for recusal shall state, with specificity, all factual and legal grounds supporting disqualification of the judge." *See* Tenn. Sup. Ct. R. 10B, § 1.01. We also reiterate that "[t]he party seeking recusal bears the burden of proof." ***In Re: Samuel P.***, 2016 WL 4547543, at *2 (citing ***Williams by & through Rezba***, 2015 WL 2258172, at *5; ***Cotham v. Cotham***, No. W2015-00521-COA-T10B-CV, 2015 WL 1517785, at *2 (Tenn. Ct. App. Mar. 30, 2015)). Specifically, "a party challenging the impartiality of a judge 'must come forward with some evidence that would prompt a reasonable, disinterested person to believe that the judge's impartiality might reasonably be questioned.'" ***Duke***, 398 S.W.3d at 671 (quoting ***Eldridge v. Eldridge***, 137 S.W.3d 1, 7 (Tenn. Ct. App. 2002)).

Mr. Stinson alleges two grounds for recusal: (1) the trial court "illegally seized [$73,033.89] from [Connex's] account receivables"; and (2) the trial judge abused his discretion by refusing to recuse himself when Mr. Stinson filed a lawsuit against him. As to Mr. Stinson's first argument, the supporting documents show that the trial court did not seize $73,033.89. As discussed, *supra*, the trial court ordered Shelby County Schools to deposit this amount with the Chancery Court Clerk and Master during the pendency of the underlying litigation. Furthermore, as noted in the trial court's order denying recusal, Mr. Stinson did not oppose such action at the time. To the extent Mr. Stinson argues that the trial court erred in its distribution of these funds, this question is not within our purview in the instant appeal. ***Duke***, 398 S.W.3d at 668 ("Pursuant to [Tennessee Supreme Court Rule 10B], we may not review the correctness or merits of the trial court's other rulings[.]").

As to Mr. Stinson's second argument, it is unclear when Mr. Stinson filed his lawsuit against the trial judge as he provided no supporting documentation. However, in its order denying recusal, the trial court found that it "[was] just now receiving any information regarding [Mr. Stinson's case against the trial judge]," and "[n]o service of [the] action ha[d] been made upon [the trial judge]." Accordingly, it appears that Mr. Stinson did not serve process on the trial judge during the underlying litigation; as such, there is no indication that the trial judge was aware of Mr. Stinson's lawsuit at the time he rendered judgment in this case. In other words, as the trial court found in its order, "the [trial judge] ha[d] no personal interest in . . . the case." The trial court concluded that Mr. Stinson "has not supplied the [trial court] with a basis for which recusal is appropriate." From our review of the petition and supporting documents, we agree. Mr. Stinson has not provided any evidence to support a finding that the trial court showed prejudice of a personal character, directed at Mr. Stinson, which stemmed "from an extrajudicial source and result[ed] in an opinion on the merits on some basis other than what the judge learned from . . . participation in the case." ***Alley***, 882 S.W.2d at 821; *see also* ***Watson***, 448 S.W.3d at 929. Because Mr. Stinson did not meet his burden of proof, the trial court did not err in

denying recusal.

## V. Conclusion

For the foregoing reasons, we affirm the trial court's order denying the motion for recusal. The case is remanded to the trial court for such further proceedings as are necessary and consistent with this Opinion. Costs of the appeal are assessed against the Appellant, Mark T. Stinson. Because Mr. Stinson is proceeding *in forma pauperis* in this appeal, execution for costs may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE