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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs September 15, 2023

**MICHAEL HALLIBURTON v. BLAKE BALLIN ET AL.**

**Appeal from the Circuit Court for Shelby County**  
**No. CT-2948-20 Gina C. Higgins, Judge**

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**No. W2023-01304-COA-T10B-CV**

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This is an interlocutory appeal as of right, pursuant to Rule 10B of the Rules of the Supreme Court of Tennessee, filed by the plaintiff, Michael Halliburton, seeking to recuse the trial judge in this case. Having reviewed the petition for recusal appeal filed by Mr. Halliburton, and finding no error, we affirm.

**Tenn. Sup. Ct. R. 10B Interlocutory Appeal as of Right; Judgment of the  
Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which CARMA DENNIS MCGEE and JEFFREY USMAN, JJ., joined.

Michael Halliburton, Memphis, Tennessee, Pro Se Appellant.

Jeffrey E. Nicoson, Memphis, Tennessee, for the appellees, Blake Ballin and Ballin, Ballin & Fishman PC.

**OPINION**

**Background**

The plaintiff, Michael Halliburton, filed this action against his former counsel in the Shelby County Circuit Court (“Trial Court”). Mr. Halliburton has filed three motions to recuse the trial judge, Gina C. Higgins, during the underlying action. The first two motions to recuse were addressed in a previous appeal to this Court. *See Halliburton v. Ballin*, No. W2022-01208-COA-T10B-CV, 2022 WL 4397190 (Tenn. Ct. App. Sept. 23, 2022) (“*Halliburton I*”). The first motion to recuse did not comply with Tenn. Sup. Ct. R. 10B by being supported by an affidavit and stating that the motion was not being presented for

any improper purpose.<sup>1</sup> *Id.* at \*3. Before the first motion was resolved, Mr. Halliburton filed a second motion to recuse. *Id.* at \*2. In these motions, Mr. Halliburton makes several claims of bias, including Judge Higgins referring to him as “the elephant in the room” due to his status as pro se, Judge Higgins’ disregard of documents he had filed prior to a hearing, and a litany of other allegations regarding his criminal cases and the respective trial and appellate courts handling those cases. *Id.* at \*1-3. The motions further questioned Judge Higgins’ motives with regard to actions and rulings that were made in her capacity as the judge presiding over this case. *Id.*

In August 2022, Judge Higgins entered an order denying Mr. Halliburton’s two motions to recuse. *Id.* at \*3. The first motion was denied because it had not complied with the requirements of Tenn. Sup. Ct. R. 10B. *Id.* Judge Higgins denied the second motion to recuse, stating that she had harbored no bias or prejudice against Mr. Halliburton and that Mr. Halliburton’s past experiences with the judicial system were not a proper basis for her recusal. *Id.* In *Halliburton I*, this Court affirmed Judge Higgins’ denial of Mr. Halliburton’s motions to recuse, determining that Judge Higgins’ actions had not demonstrated bias toward Mr. Halliburton and that “[a] person of ordinary prudence in the judge’s position, knowing all the facts known to the judge, would not find a reasonable basis for questioning her impartiality.” *Halliburton I*, at \*5.

Subsequently, the defendants, Blake Ballin and Ballin, Ballin & Fishman, PC, filed a motion to dismiss Mr. Halliburton’s amended complaint. Plaintiff filed a response in opposition to the dismissal. On July 10, 2023, Judge Higgins heard oral argument regarding the defendants’ motion to dismiss and the plaintiff’s opposition thereto. Judge Higgins held the motion in abeyance and subsequently issued its oral ruling on July 25, 2023. In her oral ruling, Judge Higgins granted the defendants’ motion to dismiss the amended complaint.

Before Judge Higgins was able to enter her written order, Mr. Halliburton filed a third motion to recuse Judge Higgins in the underlying matter on August 3, 2023.<sup>2</sup> The

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<sup>1</sup> Tenn. Sup. Ct. R. 10B § 1.01 provides as follows:

Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge of a court of record, or a judge acting as 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. . . . The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge and shall 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.

<sup>2</sup> The motion does not include a file-stamp date on the face of the motion, but the Trial Court’s order states that the motion was filed on August 3, 2023. While not explicitly stated as such in the rule, it is clear that

parties were unable to agree on a proposed order granting the defendants' motion to dismiss to submit to Judge Higgins for approval; therefore, the parties appeared before Judge Higgins on August 11, 2023. The defendants submitted their proposed order. Judge Higgins ultimately accepted defendants' proposed order and entered her written order granting the motion to dismiss on or about August 11, 2023.<sup>3</sup> In the written order, Judge Higgins adopted the findings and conclusions in her oral ruling. Mr. Halliburton also filed an addendum to the third motion to recuse on or about August 15, 2023.<sup>4</sup> Judge Higgins subsequently conducted a hearing on Mr. Halliburton's motion to recuse and the addendum. On August 23, 2023, Judge Higgins entered an order denying Mr. Halliburton's third motion to recuse.<sup>5</sup> Mr. Halliburton timely filed an interlocutory appeal as of right from Judge Higgins' order denying recusal, pursuant to Tenn. Sup. Ct. R. 10B.

### Discussion

We have determined in this case after a review of the petition and supporting documents submitted with the petition, that an answer, additional briefing, and oral argument are unnecessary to our disposition because the record provided by Mr. Halliburton does not demonstrate error by Judge Higgins with regard to the denial of his motion for recusal. As such, we have elected to act summarily on this appeal in accordance with sections 2.05 and 2.06 of Rule 10B. *See* Tenn. Sup. Ct. R. 10B, § 2.05 (“If the appellate court, based upon its review of the Petition for recusal appeal and supporting documents, determines that no answer from the other parties is needed, the court may act summarily on the appeal. Otherwise, the appellate court shall order that an answer to the petition be filed by the other parties. The court, in its discretion, also may order further briefing by the parties within the time period set by the court.”); § 2.06 (“An accelerated interlocutory appeal shall be decided by the appellate court on an expedited basis. The appellate court’s decision, in the court’s discretion, may be made without oral argument.”).

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the only record the appellate court generally will have in expedited appeals under Rule 10B is the record provided by the appellant with his or her petition pursuant to the mandatory language of section 2.03 of the rule. *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.”).

<sup>3</sup> The order included with Mr. Halliburton's petition does not include a date that the order was filed; however, the Trial Judge signed the order on August 11, 2023.

<sup>4</sup> The motion also included a motion to vacate the August 11, 2023 judgment pursuant to Tenn. R. Civ. P. 59.04; however, the Trial Court did not consider that portion of the motion during this hearing and stated it would be heard at a later date.

<sup>5</sup> We note that Mr. Halliburton included a copy of this order, but it was missing every other page. In lieu of dismissing Mr. Halliburton's appeal due to noncompliance with Rule 10B, this Court obtained a copy of the complete order denying his recusal motion from the trial court clerk.

We 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.’” *Neamtu v. Neamtu*, No. M2019-00409-COA-T10B-CV, 2019 WL 2849432, at \*2 (Tenn. Ct. App. July 2, 2019), *no appl. perm. appeal filed*, (quoting *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), *no appl. perm. appeal filed*). As this Court explained in *Neamtu*:

The party seeking recusal bears the burden of proof. *Williams*, 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) (*no perm. app. filed*). “[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 [v. Duke]*, 398 S.W.3d [665,] 671 [(Tenn. Ct. App. 2012)] (quoting *Eldridge v. Eldridge*, 137 S.W.3d 1, 7-8 (Tenn. Ct. App. 2002)). 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)).

*Neamtu*, 2019 WL 2849432, at \*3 (quoting *In re Samuel P.*, No. W2016-01592-COA-T10B-CV, 2016 WL 4547543, at \*2 (Tenn. Ct. App. Aug. 31, 2016), *no appl. perm. appeal filed*.) (emphasis in original).

In his petition, Mr. Halliburton argues that Judge Higgins made several errors in her rulings and that these errors of fact and law were used to support the ruling against Mr. Halliburton to “unfairly undermine his case.” According to Mr. Haliburton, these errors amount to pervasive bias against him.

Upon review of the Rule 10B petition, many of the alleged errors raised by Mr. Halliburton were contained in his earlier petitions to recuse which were previously appealed to this Court. *See Halliburton I*, at \*1-3. For example, Mr. Halliburton refers to a statement made by the Trial Judge during a hearing in November 2020, in which he claims the Trial Judge labeled him as “the elephant in the room.” This Court addressed Mr. Halliburton’s argument on this issue in its 2022 opinion in *Halliburton I*. In

*Halliburton I*, this Court recognized that Judge Higgins denied that she had referred to Mr. Halliburton as the “elephant in the room” but explained in her order that she had described “*this case*” as “the elephant in the room” when questioning Mr. Halliburton about the procedural rules and explaining the consequences of self-representation due to the complexity of the issues in this case. *Halliburton I*, at \*4. This Court noted in *Halliburton I* that Mr. Halliburton had not included the transcript containing the statement at issue with his first Rule 10B interlocutory appeal as of right. *Id.* at \*5. Therefore, accepting Judge Higgins’s explanation of the statement elucidated in her order, this Court determined that this was not a basis to find error with Judge Higgins’ denial of the recusal motion. *Id.* In this current appeal of the third motion to recuse, Mr. Halliburton now includes an excerpt from the transcript containing “the elephant in the room” statement. The transcript supports the explanation given by Judge Higgins in the previous Rule 10B appeal.

Additionally, Mr. Halliburton spends an inordinate amount of time complaining of the actions by this Court, the Tennessee Supreme Court, and other individuals, which are irrelevant to the issue of whether Judge Higgins should recuse herself. Moreover, Mr. Halliburton’s allegations regarding the errors of law and fact that he alleges were used to support Judge Higgins’ ruling against him stem from rulings by Judge Higgins that occurred during litigation of the underlying proceedings. We note that the only order this Court may review as to its correctness or merits in a Tenn. Sup. Ct. R. 10B recusal 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 . . .”).

Without question, “[t]he 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)); *see also* Tenn. Const. Art. VI, § 11. This constitutional right “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 *Austin*, 87 S.W.3d at 470). “[P]reservation of the public’s confidence in judicial neutrality requires not only that the judge be impartial in fact, but also that the judge be perceived to be impartial.” *Kinard v. Kinard*, 986 S.W.2d 220, 228 (Tenn. Ct. App. 1998); *see also Offutt v. United States*, 348 U.S. 11, 14 (1954) (holding that “justice must satisfy the appearance of justice”). As such, Rule 2.11(A) of the Code of Judicial Conduct as set forth in Rule 10 of the Rules of the Supreme Court of Tennessee requires a judge to recuse himself or herself “in any proceeding in which the judge’s impartiality might reasonably be questioned.” *See also Smith v. State*, 357 S.W.3d 322, 341 (Tenn. 2011) (noting that recusal is required, even if a judge subjectively believes he or she can be fair and impartial, whenever “the judge’s impartiality might be reasonably questioned because the appearance of bias is as injurious to the integrity of the judicial system as actual bias” (quoting *Bean*, 280 S.W.3d at 805)).

The terms “bias” and “prejudice” generally “refer to a state of mind or attitude that works to predispose a judge for or against a party”; however, “[n]ot every bias, partiality, or prejudice merits recusal.” *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994). To merit disqualification of a trial judge, “prejudice must be of a personal character, directed at the litigant, ‘must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from . . . participation in the case.’” *Id.* “If the bias is based upon actual observance of witnesses and evidence given during the trial, the judge’s prejudice does not disqualify the judge.” *Id.* “However, if the bias is so pervasive that it is sufficient to deny the litigant a fair trial, it need not be extrajudicial.” *Id.* That said, “[a] trial judge’s adverse rulings are not usually sufficient to establish bias.” *State v. Cannon*, 254 S.W.3d 287, 308 (Tenn. 2008); *see also Alley*, 882 S.W.2d at 821. In fact, “[r]ulings of a trial judge, even if erroneous, numerous and continuous, do not, without more, justify disqualification.” *Alley*, 882 S.W.2d at 821; *see also State v. Reid*, 313 S.W.3d 792, 816 (Tenn. 2006). In other words, “if the bias is alleged to stem from events occurring in the course of the litigation, the party seeking recusal has a greater burden to show bias that would require recusal, i.e., that the bias is so pervasive that it is sufficient to deny the litigant a fair trial.” *McKenzie v. McKenzie*, No. M2014-00010-COA-T10B-CV, 2014 WL 575908, \*3 (Tenn. Ct. App. Feb. 11, 2014).

Furthermore, “a judge should not decide to recuse unless a recusal is truly called for under the circumstances.” *Rose v. Cookeville Reg’l Med. Ctr.*, No. M2007-02368-COA-R3-CV, 2008 WL 2078056, \*2 (Tenn. Ct. App. May 14, 2008), *no appl. perm. appeal filed*. This is true because “[a] judge has as much of a duty not to recuse himself absent a factual basis for doing so as he does to step aside when recusal is warranted.” *Id.* at \*2 (quoting *Mass v. McClenahan*, No. 93 Civ. 3290 (JSM), 1995 WL 106106, \*1 (S.D.N.Y. Mar. 9, 1995)). Recusal based upon an asserted appearance of bias or prejudice “is appropriate only if the facts provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge’s impartiality.” *Id.* at \*2 (quoting *In re United States*, 666 F.2d 690, 695 (1st Cir. 1981)).

Mr. Halliburton’s appeal concerning the denial of his third motion for recusal presents no reason for recusal specifically related to Judge Higgins’ actions other than the fact that Judge Higgins has ruled against him on certain issues, that he is unhappy with a number of Judge Higgins’ rulings, and that Judge Higgins allegedly made mistakes of fact and law to his detriment to support those adverse rulings. Adverse rulings and a litigant’s resultant unhappiness with the rulings, even if the trial court’s rulings are erroneous and numerous, are insufficient, without more, to justify recusal. We do not hold that numerous events occurring during trial court proceedings can never rise to the level of perceived bias but, instead, that Mr. Halliburton has not proven bias by Judge Higgins that is so pervasive such that it would deny Mr. Halliburton a fair trial. *See McKenzie*, 2014 WL 575908, at \*3. Many of Mr. Halliburton’s concerns regarding Judge Higgins’ “appearance of impropriety” involve the merits of the underlying trial court proceedings. These concerns regarding Judge Higgins’ ruling would be better addressed in any appeal that may result

from the underlying proceedings. Mr. Halliburton has failed to produce evidence that would prompt a person of ordinary prudence in Judge Higgins' position, with knowledge of all facts known to Judge Higgins, to find a "reasonable basis for questioning the judge's impartiality." See *Adams v. Dunavant*, - - S.W.3d - - , No. W2023-00304-SC-T10B-CV, 2023 WL 4676073, at \*5 (Tenn. July 21, 2023). Therefore, we find no error in Judge Higgins' denial of Mr. Halliburton's motion for recusal.

### **Conclusion**

Having determined that the record provided by Mr. Halliburton does not demonstrate error, we affirm Judge Higgins' denial of the motion for recusal. Michael Halliburton is taxed with the costs of this appeal, for which execution may issue. This case is remanded for further proceedings.

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**D. MICHAEL SWINEY, CHIEF JUDGE**