IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 2, 2024

KELLY M. ET AL. v. AGNESS M.

Appeal from the Chancery Court for Washington County
No. 24-AD-0225 Suzanne Cook, Judge

No. E2024-00629-COA-T10B-CV

In a termination of parental rights matter, the respondent mother appeals the denial of her motion to recuse. Discerning no reversible error, we affirm.

Tenn. S. Ct. R. 10B Interlocutory Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and JEFFREY USMAN, JJ., joined.

Agness M., Johnson City, Tennessee, Pro se.

Sandy Phillips, Johnson City, Tennessee, for the Appellees, Benjamin M. and Kelly M.

OPINION

I.

This case began with a March 14, 2024 petition to terminate the parental rights of Respondent/Appellant Agness M. ("Mother") filed by Petitioners Benjamin M. ("Father") and Kelly M. (together with Father, "Petitioners") in the Washington County Chancery Court ("the trial court"). The petition alleged as grounds abandonment by failure to visit and support, mental incompetence to provide care, and failure to manifest an ability and willingness to parent.

After the original judge recused from the matter, Washington County Circuit Court Judge Suzanne Cook was designated to sit by interchange in the trial court. At some point, a guardian ad litem was also appointed for the child.

Mother filed a pro se answer and motion to dismiss on April 5, 2024, arguing, inter alia, that the trial court lacked personal and subject matter jurisdiction.[1] Relevant to this appeal, Mother asserted as a defense to the ground of abandonment by failure to support that Father had previously executed an "Affidavit of Support" promising to provide support to Mother in connection with an immigration proceeding seeking to obtain Mother's lawful permanent residency in this country. Mother further alleged that the law firm that represented Mother and Father in that matter and prepared the Affidavit of Support, Hunter, Smith, and Davis, LLP ("Hunter, Smith, and Davis"), told Mother "that this contract would continue even after divorce." According to Mother, however, Father was in arrears on his obligations under this contract, causing Mother financial hardship.

On April 9, 2024, the trial court entered an order directing the parties to appear in person for a scheduling conference on May 3, 2024. Mother then filed a motion for sanctions against Petitioners. On April 18, 2024, Mother filed a motion titled "Rule 56 Motion for Summary Judgment on [Mother's] Motion for Sanctions and Motion to Dismiss."

On or about April 19, 2024, the guardian ad litem filed a motion to withdraw, citing a conflict of interest. Specifically, the guardian ad litem, an attorney employed by Hunter, Smith, and Davis, noted that Mother's defense to the ground of abandonment by failure to support was related to Father's alleged breach of the Affidavit of Support prepared by the law firm, as well as "the law firm's advice that the obligation thereunder would continue post-divorce." The guardian ad litem explained as follows:

> While it does not appear, at first glance, that the former immigration matter and the present case are "the same or substantially related" as per Rule 8, RPC 1.9 of the Rules of Professional Conduct, Mother inextricably links the two in terms of her defense to the present matter by tying her alleged failure to support the minor child to the Affidavit of Support Contract referenced above. As such, it does not appear that a withdrawal can be avoided.

Mother responded to the trial court's scheduling order on April 23, 2024, asking that she be allowed to participate in the May 3, 2024 hearing by Zoom, as Mother no longer lives in Tennessee due to alleged domestic violence.

[1] In a later order, the trial court found that Mother's affidavit of indigency did not establish that she was entitled to appointed counsel. In so finding, the trial court relied, in part, on the fact that Mother did not exclude the possibility that she could obtain the funds to pay an attorney through crowd funding sites such as "Go Fund Me." We are not aware of any authority that requires a party to exclude the possibility that they could obtain funding for an attorney from strangers on the internet when his or her fundamental rights are stake. But our review in this appeal is limited, Mother has not asked this Court to appoint her counsel, and it does not appear that she ever filed an interlocutory or extraordinary appeal of the trial court's order denying her appointed counsel.

Also on April 23, 2024, Mother filed a motion to recuse the trial court judge on two bases. First, Mother alleged that the judge "has a history of admitted bias against [Mother] due to [Mother's] federal lawsuit" against the Washington County judges. Mother noted that other Washington County judges had previously recused, and argued that a judge from another judicial district should have been designated to preside over this case, rather than the trial court judge. Second, Mother alleged that the trial court judge was employed by Hunter, Smith, and Davis during the time frame that the firm "prepared and filed [Mother's] immigration application for permanent residency while married to [Father]."[2] Mother admitted that the law firm withdrew from the immigration matter. According to Mother, the trial court judge could not preside over the case without breaching the law firm's "contractual agreement to [Mother] and [Father]."

The trial court denied Mother's motion to recuse by order of April 24, 2024. Therein, the trial court first ruled that the federal lawsuit against the Washington County judges was not an "admitted bias." As the trial court explained:

> [Mother] sued all of the First Judicial District trial court judges because of her disagreement with a joint order in the First Judicial District which bans cellphones in the courtrooms of the district. The suit was dismissed on March 5, 2024 pursuant to Fed. R. Civ. 2 Pro. 4(m) for failure to serve process upon numerous defendants, including the undersigned.

(Citations to exhibits omitted). But the trial court ruled that an unserved and dismissed lawsuit is not evidence of bias, as the law provides that "recusal is not required simply because a party has filed a complaint against a judge."

Next, the trial court expressed concerns that Mother lacked credibility as to her location:

> [Mother] also presents a serious credibility issue in the present matter, which this Court must call to attention: [Mother] identified her address in the present suit as *** ("Johnson City address"), which is a Tennessee address in the same county as the present matter. Of note, she used the same Johnson City address on the present recusal motion. Yet, [Mother], despite the present motion to recuse has also simultaneously filed a motion seeking a hearing by Zoom on multiple motions she filed in this case in which she alleges under oath in such motion that she resides outside of Tennessee. On the other hand, publicly available records demonstrate that [Mother] is a fugitive from justice and a capias has been issued for her in Washington County, Tennessee.

[2] Mother further alleged that during this time frame Father committed domestic violence against her.

In support, the trial court attached, inter alia, a capias/bench warrant charging Mother with failure to appear on a resisting arrest charge.

The trial court further noted that Mother had engaged in a pattern of suing numerous persons, including Petitioners, attorneys, and "various judges (perhaps even every judge before whom her cases have been assigned)[.]" The trial court then listed twenty-nine individuals or entities that Mother had previously sued. The trial court further noted that Mother had sought to recuse at least five different judges in other cases. Given that the trial court had never met or interacted with any of the parties, the trial court judge found that Mother's motion was filed for an improper purpose, such that it was

> part of a demonstrable pattern employed by [Mother] . . . to move to recuse, sue, and appeal repetitively against judges, courts, and other persons, as well as to deflect and delay appearing personally in the court and jurisdiction where she has filed numerous motions seeking relief, but desires to avoid appearing in person due to the outstanding capias for her arrest[.]

The trial court judge also ruled that Mother's second basis for recusal lacked merit. While the trial court judge admitted that she was a partner of Hunter, Smith, and Davis when Mother and Father attempted to retain the firm for an immigration matter, the trial court judge explained that she did not represent Mother and Father and had no personal knowledge of the topic or the representation that occurred years prior. Moreover, the trial court judge noted that law firm informed the parties that it could no longer represent Mother and Father due to a conflict of interest in 2017. Finally, the trial court judge noted that the immigration issue "involves different and distinct legal questions than the matter in controversy years ago" and the contact that Mother and Father had with the law firm was brief and occurred seven years ago. So the trial court judge denied Mother's motion to recuse. From this order, Mother now appeals.

Proceedings continued in the trial court notwithstanding Mother's efforts to overturn the recusal ruling. For example, on April 24, 2024, the trial court denied Mother's request to appear for the May 3, 2024 scheduling conference via Zoom. On May 1, 2024, the trial court granted the guardian ad litem's motion to withdraw.

Later, on May 3, 2024, the trial court denied Mother's motion to dismiss for lack of personal and subject matter jurisdiction, improper venue, lack of standing by Petitioners, and failure to state a claim. In the same order, the trial court dismissed Mother's summary judgment motion. On the same day, the trial court appointed a new guardian ad litem for the child.

II.

Our sole concern in this interlocutory appeal is whether the trial court erred in denying Mother's motion for recusal.[3] *See* ***Duke v. Duke***, 398 S.W.3d 665, 668 (Tenn. Ct. App. 2012). Appeals from orders denying a motion to recuse are governed by Rule 10B of the Rules of the Supreme Court of the State of Tennessee.

Under section 2.01 of Rule 10B of the Tennessee Supreme Court, a party is entitled to "an accelerated interlocutory appeal as of right" of an order denying a motion to recuse. The party effects an accelerated appeal by filing a petition for recusal appeal with this Court, 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." Tenn. Sup. Ct. R. 10B, § 2.03. "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." Tenn. Sup. Ct. R. 10B, § 2.05. In this case, we have determined that no answer from Petitioners is necessary and we choose to act summarily on this appeal. *See also* Tenn. Sup. Ct. R. 10B, § 2.06 (stating that a 10B accelerated appeal should be decided on an expedited basis).

III.

As the Tennessee Supreme Court recently explained regarding recusal:

> "Tennessee litigants are entitled to have cases resolved by fair and impartial judges." ***Cook v. State***, 606 S.W.3d 247, 253 (Tenn. 2020) (citing ***Davis*** [***v. Liberty Mut. Ins.***], 38 S.W.3d [560,] 564 [(Tenn. 2001)]); *see also* ***State v. Griffin***, 610 S.W.3d 752, 757–58 (Tenn. 2020). To preserve public confidence in judicial neutrality, judges must be fair and impartial, both in fact and in perception. ***Cook***, 606 S.W.3d at 253; ***Kinard v. Kinard***, 986 S.W.2d 220, 228 (Tenn. Ct. App. 1998). To these ends, the Tennessee Rules of Judicial Conduct ("RJC") declare that judges must "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Tenn. Sup. Ct. R. 10, RJC 1.2. Another provision declares that judges "shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." ***Id.***, RJC 2.2.
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> To act "impartially" is to act in "absence of bias or prejudice in favor

[3] In her petition for recusal appeal, Mother also asserts that the trial court judge should not have judicial immunity because she is acting without personal or subject matter jurisdiction. Whether the trial court erred in denying Mother's motion to dismiss is outside the scope of this appeal. To the extent that Mother now asserts that the trial court's refusal to dismiss this case is evidence of bias, we note that rulings, even if erroneous and numerous, are not typically evidence of bias. *See* ***Alley v. State***, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994). The trial court's decision to deny Mother's motion to dismiss is not evidence of bias and does not mandate recusal in this matter.

> of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." ***Id.***, Terminology. "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." ***Id.***, RJC 2.11(A).
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> Rule of Judicial Conduct 2.11 "incorporates the objective standard Tennessee judges have long used to evaluate recusal motions." ***Cook***, 606 S.W.3d at 255. "Under this objective test, recusal is required if 'a person of ordinary prudence 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.'" ***Id.*** (quoting ***Davis***, 38 S.W.3d at 564–65).
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> The intermediate appellate courts have explained that the proponent of a recusal motion bears the burden of establishing that recusal is appropriate and that any alleged acts of bias or prejudice arise from extrajudicial sources rather than from events or observations during the litigation of the case. ***Tarver v. Tarver***, No. W2022-00343-COA-T10B-CV, 2022 WL 1115016, at *2 (Tenn. Ct. App. Apr. 14, 2022). A trial judge has a duty to serve unless the proponent establishes a factual basis warranting recusal. ***Raccoon Mtn. Caverns & Campground, LLC v. Nelson***, No. E2022-00989-COA-T10B-CV, 2022 WL 3100606, at *3 (Tenn. Ct. App. Aug. 4, 2022) (quoting ***Rose v. Cookeville Reg'l Med. Ctr.***, No. M2007-02368-COA-R3-CV, 2008 WL 2078056, at *2 (Tenn. Ct. App. May 14, 2008)).

Adams v. Dunavant, 674 S.W.3d 871, 878–79 (Tenn. 2023) (per curiam).

Mother's recusal motion generally alleged that two separate circumstances necessitate recusal in this matter: (1) the federal lawsuit filed against the trial court judge; and (2) the prior attorney-client relationship between Mother, Father, and the trial court judge's former law firm. On appeal, Mother also asserts that the trial court judge has personal knowledge outside the record because she cited a number of cases that Mother was involved with in the order denying the recusal motion. We will consider each circumstance in turn.

First, Mother alleged that recusal was required because the trial court judge was named as a defendant in a federal lawsuit that Mother had filed against the Washington County judges.[4] Mother further asserts that even though the claims against the judges were dismissed without prejudice, Mother has appealed that order.

[4] In support of this, Mother alleges that "Judge Stacy Street entered his recusal Orders on behalf of all the judges including Judge Cook because the lawsuit was served to them in their personal capacity." No such order appears among the documents that Mother filed in support of this recusal appeal.

As the trial court correctly pointed out, however, "recusal is not required simply because a party has filed a complaint against a judge." ***Denney ex rel. Doghouse Computs., Inc. v. Rather***, No. M2022-01743-COA-T10B-CV, 2023 WL 316012, at *4 (Tenn. Ct. App. Jan. 19, 2023); *see also* ***Salas v. Rosdeutscher***, No. M2021-00157-COA-T10B-CV, 2021 WL 830009, at *3 (Tenn. Ct. App. Mar. 4, 2021) (noting that "the judicial disqualification standards do not require recusal simply because the person seeking recusal has filed some type of complaint against the judge"); *cf.* ***Moncier v. Bd. of Prof'l Resp.***, 406 S.W.3d 139, 162 (Tenn. 2013) (stating that "[n]ot even the stricter judicial disqualification standards require recusal merely because a litigant dissatisfied with a judge presiding over his or her lawsuit files a separate lawsuit against the judge" and collecting cases from other jurisdiction in which recusal was not required when a litigant sued a judge).

In this case, Mother filed a lawsuit naming the trial court judge as one among many defendants. She has not asserted in this appeal that the federal lawsuit related to any personal conduct on behalf of the trial court judge or the issues in the termination proceeding. Instead, in her petition for recusal appeal, Mother admits that the federal lawsuit related only to a joint order banning cell phones. Respectfully, Mother's act of filing a lawsuit against the trial court judge based on an order of general application banning cell phones simply does not create an actual bias or an appearance of impropriety such that recusal would be warranted. As such, no 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" in the fact that the trial court judge was a defendant in an unrelated federal lawsuit. ***Adams***, 674 S.W.3d at 878.

Mother's next basis for recusal results from the fact that the trial court judge's former law firm represented Mother and Father in an immigration matter in which Father executed an Affidavit of Support and the law firm allegedly advised Mother that this obligation would persist despite the divorce. According to Mother, however, Father had not paid his obligations under the Affidavit of Support, which undermines or negates the allegation that she failed to pay support for the child. Because Mother links her defense to this ground for termination, the initial guardian ad litem, who was a current employee of the law firm, moved to withdraw, citing the "inextricable link[]" between the representation and Mother's defense. The question then, is whether this link also requires the recusal of the trial court judge, who was undisputedly not personally involved in the immigration matter that took place approximately seven years prior to the instant dispute.

A recent case discussed the issue of whether recusal is required when a judge's former client is involved in litigation before the court. In ***Carroll v. Foster***, the parties filed a motion to recuse on the basis that an expert witness for the defendant had been a former client of the trial court judge. No. E2024-00525-COA-T10B-CV, 2024 WL 1794402, at *1 (Tenn. Ct. App. Apr. 25, 2024). The parties agreed that the testimony of the expert was "of central importance to the case, and that the trial judge's assessment of his credibility

w[ould] be key." ***Id.*** The trial court denied the motion, with the judge noting that she held "no opinions nor bias for or against either party or any witness(es) in the case." ***Id.*** at *2. Both parties appealed to this Court. ***Id.*** at *3.

In evaluating this issue of first impression, we considered authority from outside our jurisdiction concerning the trial judge's prior representation of litigant, a situation akin to what is presented here. But we noted that other jurisdictions have concluded that even "[a] judge's prior representation of a litigant generally does not require the judge's recusal." ***Id.*** at *4 (quoting ***Gilbert v. State***, 509 P.3d 928, 933 (Wyo. 2022)). This is particularly true when the movant produces no evidence that the trial court judge "had any personal knowledge of the current proceedings" or that the judge "harbor[ed] any personal bias or prejudice against [the former client]." ***Id.*** (quoting ***Gilbert***, 509 P.3d at 933); *see also* ***U.S. v. Lawson***, No. 2:06cr173-MHT, 2007 WL 62854, at *2 (M.D. Ala. Jan. 9, 2007) (citing Judicial Conference Committee on Codes of Conduct, *Compendium of Selected Opinions* § 3.6-5(b) (2005) (setting forth a multi-factor test that considers: whether the prior litigation is related to the current litigation; the length, nature, and intensity of the representation; how long ago the representation ended; and whether there are any ongoing personal relationships)).

We further explained that while an appearance of impropriety is sufficient to mandate recusal, the movant must "still be able to articulate, even if only conceptually, what that alleged appearance of impropriety is." ***Carroll***, 2024 WL 1794402, at *5. The Court characterized the parties' argument as, essentially, that due to the prior representation, the trial court judge was predisposed to find the expert witness either more credible or less credible. ***Id.*** But the Court noted that there is another "equally viable possibility"—that the trial court judge "has no opinion of [the expert] one way or another." ***Id.*** And the Court concluded that this possibility was viable despite the fact that the trial court judge represented the expert for a period of seven years because the matter in which the judge represented the expert had "very little activity[.]" ***Id.*** So we rejected the parties' contentions that the trial court judge "inevitably formed opinions" about the expert and that this alone was a sufficient basis for recusal. ***Id.*** at *6. Instead, the Court held that the factors that weighed in favor of recusal—the duration of the representation and its "proximity" to the judge's ascension to the bench—were "heavily mitigated by the different subject matter and sporadic activity in the prior case." ***Id.***

Although ***Carroll*** is likely the most recent discussion of this issue, it is not the only Tennessee decision to consider a similar issue. In ***Hall v. Randolph***, the defendant doctor filed a motion to recuse the trial court judge on the basis that the defendant's own expert had performed surgery on the trial court judge during the pendency of the relevant lawsuit; the malpractice action was pending, however, before a different trial court judge at the time of the treatment. No. W2013-02571-COA-T10B-CV, 2014 WL 127313, at *1 (Tenn. Ct. App. Jan. 14, 2014). Specifically, the defendant argued that "the trial judge's former physician-patient relationship with [the expert] reasonably could impact her evaluation of

[the expert's] credibility and impact her evaluation as thirteenth juror." ***Id.*** The trial court denied the motion and the defendant doctor appealed. ***Id.***

On appeal, this Court framed the issue as "whether the trial judge's relationship as a former surgical patient of [the expert] may give rise to actual or perceived bias in light of the trial judge's role as thirteenth juror." ***Id.*** at *3. We concluded that it did. Specifically, we noted that medical malpractice actions often involve a "'battle of the experts' in which the jurors must decide which expert to believe." ***Id.*** Because the expert's testimony was central to the question of the standard of care, "a pivotal issue in [that] matter," "it [was] objectively reasonable to believe that the trial judge's credibility assessment with respect to the standard of care may be impacted—positively or negatively, as the case may be—by her personal knowledge and experience as a former patient of the expert witness." ***Id.*** Thus, we concluded that "[a]t the very least, an appearance of partiality arises where the trial judge was a patient of a key expert witness in a medical malpractice action during the pendency of the action in the court, albeit in a different division." ***Id.***

Although these cases reach opposite conclusions, we can glean some general guidance from them. It appears that when it is shown that a trial court judge's prior relationship with a party or witness will affect the judge's ability to evaluate the individual's credibility, an appearance of impropriety may be created such that recusal is warranted. Speculation alone that the prior relationship will affect the judge's ability to evaluate credibility will likely not be sufficient to necessitate recusal, however. This comports with the general rule that "[a] claim of bias or prejudice must be based on facts, not speculation or innuendo[.]" ***Runyon v. Runyon***, No. W2013-02651-COA-T10B-CV, 2014 WL 1285729, at *9 (Tenn. Ct. App. Mar. 31, 2014). Instead, the question of whether a prior relationship would affect a trial judge's credibility determinations must be evaluated based upon a careful weighing of the facts established in the record.

While this issue may therefore present a difficult question in some cases, that is simply not the situation here. We concede that Mother, with her defense to the ground of abandonment by failure to support, has implicated the Affidavit of Support created by Hunter, Smith, and Davis. Moreover, Mother has noted that the law firm advised her that the obligations of the Affidavit of Support would continue notwithstanding the parties' divorce. In our view, however, this allegation simply does not place the credibility of Hunter, Smith, and Davis's lawyers at issue.

In order to address this issue, it is helpful to outline the nature of the Affidavit of Support at issue. Under the Immigration and Nationality Act, immigrants who are likely to become dependent on public benefits are ineligible for entry into the United States unless an affidavit of support is included with their applications for admission. *See* 8 U.S.C. §§ 1182(a)(4), 1183a. The affiant is required to promise to "provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable[.]" 8 U.S.C. § 1183a(a)(1)(A).

The affidavit "is legally enforceable against the sponsor by the sponsored alien[.]" 8 U.S.C. § 1183a(a)(1)(B). Regulations provide several instances in which an affidavit of support terminates; divorce is not listed as a termination event. *See* 8 C.F.R. § 213a.2(e)(2)(i)–(ii). Thus, it does not appear that the law firm's advice to Mother was incorrect or subject to any reasonable dispute. It would be nothing more than rank speculation to suggest that Mother has placed the credibility or the advice of the law firm in dispute simply by alleging that the law firm assisted the parties in creating and executing the Affidavit of Support. *See* ***Runyon***, 2014 WL 1285729, at *9.

Moreover, even assuming arguendo that the law firm's credibility might be at issue in this matter, other factors mitigate this fact. Importantly, there is no dispute that the trial court judge was not involved in the immigration matter. The law firm's representation of Mother and Father also appears to have terminated approximately seven years prior to the current litigation. And no evidence has been presented of any personal relationship between Mother or Father and any employees or member of the law firm, much less the trial court judge. Under these circumstances, we must conclude that the trial court judge's former law firm's representation of Mother and Father in an immigration matter seven years prior to this case is not a basis for recusal of the trial court judge in this termination matter.

Finally, Mother asserts that the trial court judge "has personal knowledge about all the facts presented in the termination of parental rights and adoption proceeding" because she cited Mother's other state and federal court lawsuits, as well as the capias for Mother's arrest, in her order denying the motion to recuse. It is true that the trial court concluded that Mother's motion to recuse was taken for purposes of delay or harassment, based on the various prior cases in which Mother was a party, as gleaned from "publicly available records[.]" And our rules of judicial conduct require that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including . . . [when] the judge has . . . *personal knowledge of facts* that are in dispute in the proceeding." Tenn. Sup. Ct. R. 10, Canon 2.11 (emphasis added).

As an initial matter, it appears that Mother takes issue with the information that the trial court judge cited as to Mother's prior and ongoing litigation in other courts. We note, however, the Tennessee Rules of Evidence permit judges to take judicial notice of facts that are not subject to reasonable dispute. Tenn. R. Evid. 201(b). The Tennessee Supreme Court has indicated that courts may take "judicial notice of filed documents so long as the purpose was 'to establish the fact of such litigation and related filings,' rather than to establish the truth of the matters asserted in the other litigation." ***State v. Lawson***, 291 S.W.3d 864, 870 (Tenn. 2009) (quoting ***Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.,*** 969 F.2d 1384, 1388 (2d Cir. 1992)). Courts interpreting this holding, however, have held that this rule applies only to filings "that have occurred in an earlier proceeding involving the same [party] in our state courts." ***State v. Blaskis***, No. M2009-01154-CCA-R3-CD, 2010 WL 5054438, at *8 (Tenn. Crim. App. Dec. 8, 2010) ("The documents from the bankruptcy court are from a separate court and do not constitute an earlier proceedings

concerning the criminal charges at hand."). *But see* ***In re Treylynn T.***, No. W2019-01585-COA-R3-JV, 2020 WL 5416649, at 2 n.2 (Tenn. Dec. 16, 2020) (taking judicial notice of filings in another state court).

Still, Mother directly placed the issue of the prior litigation at issue when she filed the motion to recuse on the basis of her earlier federal lawsuit. In her recusal motion, Mother also referenced other state court actions where recusal orders had been entered by other judges. Because Mother interposed the issue of the other cases into the case-at-bar, the trial court judge was required to consider these cases in ruling on Mother's motion to recuse. Moreover, to the extent that the trial court judge cited the opinions and orders of other state and federal courts, a trial court judge is specifically afforded discretion to take judicial notice of "the common law[.]" Tenn. R. Evid. 202(b) (requiring notice to the adverse party); *see also* Common Law, *Black's Law Dictionary* (9th ed. 2009) ("The body of law derived from judicial decisions[.]").

Finally, we note that a trial judge does not obtain "personal knowledge" of a case in every circumstance in which the judge has some outside knowledge, but only when the trial judge has "'knowledge that arises out of a judge's private, individual connection to particular facts' and not including information that a judge learns 'in the course of her general judicial capacity or as a result of her day-to-day life as a citizen[.]'" ***Holsclaw v. Ivy Hall Nursing Home, Inc.***, 530 S.W.3d 65, 69–70 (Tenn. 2017) (quoting ***State v. Dorsey***, 701 N.W.2d 238, 247 (Minn. 2005)). In practice, this meant that a judge who engaged in an independent investigation in order to determine "the educational requirements needed to become a certified rehabilitation counselor" did not have personal knowledge of the type that would mandate recusal. ***Id.*** at 70–71.

Here, it appears that the trial court looked to public records from other courts for the purposes of considering Mother's history of litigation in order to evaluate whether Mother's motion to recuse was brought for an improper purpose as described by Tennessee Supreme Court Rule 10b(a). Nothing in the record indicates that the trial court judge has a private connection to the facts; instead, she only considered these facts in her judicial capacity in order to rule on the pending recusal motion. ***Id.*** at 71 (citing ***United States v. Long***, 88 F.R.D. 701, 702 (W.D. Pa. 1981), *aff'd*, 676 F.2d 688 (3d Cir. 1982) (defining "personal knowledge" as that which a judge obtains as "a witness to the transaction or occurrence not in [their] judicial capacity")).[5] The trial court's citation of Mother's prior lawsuits and the capias issued against Mother therefore do not meet the definition of "personal knowledge" under Tennessee law and are not a basis for questioning the trial court judge's impartiality in this case.

[5] Obviously, the trial court judge has some personal connection to one of the federal lawsuits, as she was a named party. However, we have already held that the federal lawsuit does not necessitate recusal, *infra*.

IV.

The judgment of the Washington County Chancery Court is affirmed, and this cause is remanded for further proceedings consistent with this Opinion. Costs of this appeal are taxed to Appellant, Agness M., for which execution may issue.

S/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE