

FILED

01/11/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs December 20, 2022

N.H. ET AL. v. SHELBY COUNTY SCHOOLS

Appeal from the Chancery Court for Shelby County
No. CH-21-1189 Jim Kyle, Chancellor

No. W2022-01761-COA-T10B-CV

This is an interlocutory appeal as of right, pursuant to Rule 10B of the Rules of the Supreme Court of Tennessee, filed by N.R.H. (“Petitioner”), seeking to recuse the trial court judge. Having reviewed the petition for recusal appeal filed by Petitioner, and finding it fatally deficient, we dismiss the appeal.

**Tenn. Sup. Ct. R. 10B Interlocutory Appeal as of Right;
Appeal Dismissed**

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which ANDY D. BENNETT and KENNY W. ARMSTRONG, JJ., joined.

N.R.H., Memphis, Tennessee, pro se appellant.

Laura Ann Elizabeth Bailey and Kenneth Melton Walker, II, Memphis, Tennessee, for the appellee, Shelby County Board of Education.

OPINION

Petitioner, as the parent of N.H., filed suit against the Shelby County Schools. In May of 2022, Petitioner filed a motion seeking to recuse Chancellor Jim Kyle of the Chancery Court for Shelby County (“the Trial Court”). After a hearing, Chancellor Kyle denied recusal by order entered August 31, 2022. Petitioner asserted that she received service of the August 31, 2022 order on September 16, 2022.¹ Petitioner then filed a motion in the Trial Court seeking to have the August 31, 2022 order re-entered arguing that she

¹ Petitioner admitted that she received service of the August 31, 2022 order on September 16, 2022. Petitioner had up to and including September 21, 2022 within which to timely file for an interlocutory appeal of the order denying recusal.

was prejudiced by the delay in receiving the August 31, 2022 order. By order entered November 22, 2022, the Trial Court denied Petitioner's motion to re-enter the August 31, 2022 order. Petitioner filed her petition for recusal appeal in this Court on December 16, 2022.

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 deficiencies in the petition are fatal to Petitioner's claim. 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.").

We begin by noting that: "*Pro se* litigants who invoke the complex and sometimes technical procedures of the courts assume a very heavy burden." *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). Parties proceeding without benefit of counsel are "entitled to fair and equal treatment by the courts," but we "must not excuse *pro se* litigants from complying with the same substantive and procedural rules that represented parties are expected to observe." *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003).

Rule 10B of the Rules of the Tennessee Supreme Court provides for two alternative methods for appealing a trial court's denial of a recusal motion, either "the accelerated interlocutory appeal or an appeal as of right following entry of the trial court's judgment." Tenn. R. Sup. Ct. 10B, § 2.01. If an accelerated interlocutory appeal is chosen, the "petition for recusal appeal shall be filed in the appropriate appellate court within twenty-one days of the trial court's entry of the order." Tenn. R. Sup. Ct. 10B § 2.02. "The time periods for filing a petition for recusal appeal pursuant to section 2.02 . . . are jurisdictional and cannot be extended by the court." Tenn. R. Sup. Ct. 10B § 2.08.

The Trial Court entered its order denying recusal on August 31, 2022. Petitioner filed her petition for recusal appeal on December 16, 2022, which is more than one hundred days after entry of the order denying recusal. As Petitioner failed to file her petition for an accelerated interlocutory appeal within twenty-one days of the date of entry of the order denying recusal, this Court lacks jurisdiction to consider the petition and must dismiss the appeal as untimely. *See, e.g., In re Allie A.*, No. M2018-00326-COA-T10B-CV, 2018 WL

1124517 (Tenn. Ct. App. February 28, 2018) (dismissing accelerated interlocutory appeal filed twenty-four days after entry of order denying recusal), *no appl. perm. appeal filed*.

Petitioner's motion seeking to have the Trial Court re-enter its August 31, 2022 order did not toll the time for taking an interlocutory appeal of the order denying recusal. Furthermore, even if the motion had tolled the time, the Trial Court entered its order denying re-entry of the August 31, 2022 order on November 22, 2022. Twenty-one days from November 22, 2022 was December 13, 2022. Petitioner placed her petition for recusal appeal with a commercial delivery service with computer tracking on December 14, 2022,² which is twenty-two days after entry of the November 22, 2022 order.

Petitioner's petition for recusal appeal is DISMISSED. The costs of this appeal are taxed to Petitioner, for which execution may issue. This case is remanded for further proceedings.

s/ D. Michael Swiney
D. MICHAEL SWINEY, CHIEF JUDGE

² Rule 20 of the Tennessee Rules of Appellate Procedure provides: "Filing will also be timely if placed for delivery with computer tracking, either through a commercial delivery service or the United States Postal Service, within the time fixed for filing." Tenn. R. App. P. 20(a).