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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 4, 2023

NATHAN A. WALLACE v. BLAKE BALLIN, et al.

Appeal from the Circuit Court for Tipton County

No. 8041 A. Blake Neill, Judge

No. W2023-01410-COA-T10B-CV

This is an accelerated interlocutory appeal as of right pursuant to Tennessee Supreme Court Rule 10B § 2.02 from the trial court's denial of a motion for recusal. This appeal arises from a civil action in which the plaintiff has brought claims of fraud and civil conspiracy against his former counsel in a criminal case that resulted in a conviction and his counsel in a pending post-conviction case. While this civil action was pending, the trial court allowed the attorneys who were representing the plaintiff in the post-conviction case to withdraw. Shortly thereafter, the plaintiff filed a recusal motion, contending that the trial judge should be recused because he showed bias in favor of the plaintiff's post-conviction attorneys when he granted their motions to withdraw without a hearing, during which the plaintiff wished to share his grievances about the attorneys. The trial court denied the plaintiff's recusal motion, and this Rule 10B appeal followed. We have concluded that neither the legal grounds nor the evidence that the plaintiff relies upon in his affidavit in support of the recusal motion are sufficient to prompt a reasonable, disinterested person to reasonably question the judge's impartiality. Accordingly, the judgment of the trial court denying the motion for recusal is affirmed.

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

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the Court, in which KRISTI M. DAVIS, J., joined. ARNOLD B. GOLDIN, J., not participating.

Nathan Allen Wallace, Clifton, Tennessee, Pro Se.

OPINION

Nathan Allen Wallace (“Plaintiff”) filed this petition for recusal appeal on October 4, 2023, in which he seeks to overturn the decision by Circuit Court Judge A. Blake Neill denying his motion for recusal, which was entered on September 14, 2023.¹

Tennessee Supreme Court Rule 10B governs appeals from orders denying motions to recuse. Pursuant to § 2.01 of Rule 10B, a party is entitled to an “accelerated interlocutory appeal as of right” from an order denying a motion for disqualification or recusal. Tenn. Sup. Ct. R. 10B, § 2.02. The appeal is perfected by filing a petition for recusal appeal with the appropriate appellate court. *Id.*

When reviewing an appeal pursuant to Tennessee Supreme Court Rule 10B, we limit our review to whether the trial court erred in denying the 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). We review the denial of the motion for recusal under a de novo standard of review with no presumption of correctness. Tenn. Sup. Ct. R. 10B, § 2.01. “De novo” is defined as “anew, afresh, a second time.” *Simms Elec., Inc. v. Roberson Assocs., Inc.*, No. 01-A-01-9011-CV-00407, 1991 WL 44279, at *2 (Tenn. Ct. App. Apr. 3, 1991) (quoting *Black’s Law Dictionary*, 392 (5th ed. 1979)).

If we determine, after reviewing the petition and supporting documents, that no answer is needed, we may act summarily on the appeal. Tenn. Sup. Ct. R. 10B, § 2.05. Otherwise, this court must order an answer and may also order further briefing by the parties. *Id.* Tennessee Supreme Court Rule 10B § 2.06 also grants this court the discretion to decide the appeal without oral argument. Tenn. Sup. Ct. R. 10B, § 2.06.

Following a review of the petition for recusal appeal, we have determined that neither an answer, additional briefing, nor oral argument is necessary, and we elect to act summarily on the appeal in accordance with Rule 10B §§ 2.05 and 2.06.

FACTS AND PROCEDURAL HISTORY

As a preface, it is important to note that the trial judge who is presiding over this civil action is also presiding over a pending post-conviction action brought by Plaintiff.

This appeal arises from a civil action in which Plaintiff asserts claims of fraud and civil conspiracy against his former attorney, Blake Ballin, who represented Plaintiff in a criminal case that resulted in a conviction, and attorneys Valerie Corder and Josie S. Holland, who were representing Plaintiff in a post-conviction case when this civil action

¹ An accelerated interlocutory recusal appeal must be filed within twenty-one days of the entry of the order denying the recusal motion. *See* Tenn. Sup. Ct. R. 10B, § 2.02. This appeal was timely filed.

was commenced.² Although the record is not entirely clear, it appears that in July 2023, attorneys Corder and Holland filed motions to withdraw from Plaintiff’s post-conviction action due to the conflict of interest that arose when their client, Plaintiff, commenced this action against them. Plaintiff, who was incarcerated at the time, filed a motion to be transported to court for the purpose of participating in the hearing on the attorneys’ pending motions to withdraw. In September 2023, Judge Neill granted the attorneys’ motions without conducting a hearing.

Plaintiff timely filed his recusal motion in this civil action along with an attached affidavit and exhibits setting forth the factual bases for the recusal motion. In a nutshell, Plaintiff sought recusal of Judge Neill on the grounds that he failed to honor Plaintiff’s request to be heard at the hearing on the attorneys’ motions in the post-conviction case and that by not holding a hearing, Judge Neill “shielded counsel with the gown of judicial protection.” In his motion for recusal, Plaintiff accused Judge Neill of “unfair and biased conduct” in protecting “counsel from the embarrassment of their own actions in a withdrawal hearing.” Based on these events, Plaintiff contended that “it is only reasonable to believe that the Judge’s unfair and biased conduct [by granting the motion to withdraw without a hearing] would also affect his judgment in the post-conviction and civil lawsuit matter[s].”

In a written order entered on September 15, 2023, Judge Neill denied the motion, finding, in pertinent part:

Plaintiff has failed to present a reasonable factual basis for questioning the Court’s impartiality due to the Court granting Defendants’ Motion to Withdraw without conducting a hearing. The Court admits that the general practice is for a defendant to be present when his counsel presents a motion to withdraw. But Plaintiff’s response to the Motion established that he did not want Defendants [Valerie] Corder and [Josie] Holland to continue to represent him. And the Court believed that it was more important to protect Plaintiff’s rights to go ahead and appoint new counsel than to reschedule a hearing on the Motion to Withdraw, which would necessarily delay the appointment of new counsel for Plaintiff’s post-conviction case. Furthermore, Plaintiff has not pointed to any statements or action of the Court that were adverse to Plaintiff. Instead, Plaintiff argues he was denied a chance to air his grievances about Defendants Corder and Holland, but these grievances were irrelevant to the Motion to Withdraw and the Court was not in a position to act on those grievances during a hearing on the Motion to Withdraw. Furthermore, Plaintiff has had multiple opportunities to discuss

² Although the record is not entirely clear, it appears that Plaintiff hired attorney Valerie Corder to represent Plaintiff in the post-conviction matter. At some point along the way, attorney Josie S. Holland was brought in to work with Ms. Corder in the post-conviction matter.

these grievances with the Board of Professional Responsibility and has filed this present lawsuit to seek legal redress for these alleged grievances. And nothing this Court has done has prevented any of these opportunities. In short, Plaintiff has not presented any evidence to show there is a reasonable basis for questioning the Court's impartiality. The Court simply granted a Motion that Plaintiff did not oppose, and Plaintiff still has the opportunity to present the evidence in open court that he complains the Court precluded him from presenting at the Motion to Withdraw hearing. For these reasons, Plaintiff has failed to present a reasonable factual basis for questioning the Court's impartiality.

This Rule 10B accelerated interlocutory appeal followed.

ANALYSIS

We begin by noting that Plaintiff is representing himself in this appeal. "Parties 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)). However, "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). Moreover, "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)).

As for the issue at hand, our Supreme Court has explained:

"Litigants in Tennessee have a fundamental right to a 'fair trial before an impartial tribunal.'" *Holsclaw v. Ivy Hall Nursing Home, Inc.*, 530 S.W.3d 65, 69 (Tenn. 2017) (quoting *State v. Austin*, 87 S.W.3d 447, 470 (Tenn. 2002)); see Tenn. Const. art. VI, § 11 ("No Judge of the Supreme or Inferior Courts shall preside on the trial of any cause in the event of which he may be interested. . . ."). Tennessee's Rules of Judicial Conduct require judges to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary," Tenn. Sup. Ct. R. 10, RJC 1.2, and to "uphold and apply the law, and . . . perform all duties of judicial office fairly and impartially." Tenn. Sup. Ct. R. 10, RJC 2.2. Our rules define "impartiality" and "impartially" as the "absence of bias or prejudice in favor 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." Tenn. Sup. Ct. R. 10, Terminology "Impartial."

Tennessee Supreme Court Rule 10, Code of Judicial Conduct, Canon 2, Rule 2.11, states that “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Bases for which a judge’s impartiality might reasonably be questioned include, as are pertinent to this case, when the judge has “a personal bias or prejudice” against any of the parties, “personal knowledge of facts that are in dispute in the proceeding. . . .” Tenn. Sup. Ct. R. 10, RJC 2.11 (A)(1), (A)(6)(a) and (b).

“[T]he test for recusal is an objective one because the appearance of bias is just as injurious to the integrity of the courts as actual bias.” *State v. Cannon*, 254 S.W.3d 287, 307 (Tenn. 2008) (citing *Davis v. Liberty Mut. Ins. Co.*, 38 S.W.3d 560, 564 (Tenn. 2001)). Thus, the test for recusal requires a judge to disqualify himself or herself in any proceeding in which “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* at 564); see also *Clinard v. Blackwood*, 46 S.W.3d 177, 187 (Tenn. 2001) (“[B]ecause judges have a privileged understanding of the legal system, they may fail to find an appearance of impropriety where one would be found by a layperson.”).

State v. Griffin, 610 S.W.3d 752, 757–58 (Tenn. 2020). 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.” *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994) (citations omitted).

Any party seeking recusal of a judge of a court of record shall do so by filing a written motion 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. The motion must be supported by an affidavit. *Id.* Further, the motion shall state, inter alia, all factual and legal grounds supporting disqualification of the judge. *Id.*

“The party seeking recusal bears the burden of proof.” *In re Samuel P.*, No. W2016-01592-COA-T10B-CV, 2016 WL 4547543, at *2 (Tenn. Ct. App. Aug. 31, 2016) (citing *Williams ex rel. Rezba v. HealthSouth Rehab. Hosp. N.*, No. W2015-00639-COA-T10B-CV, 2015 WL 2258172, at *5 (Tenn. Ct. App. May 8, 2015); *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.” *Id.* (quoting *Duke v. Duke*, 398 S.W.3d 665, 671 (Tenn. Ct. App. 2012)).

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). “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)).

“[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). The justification for this is that “[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.* (quoting *Mass v. McClenahan*, No. 93 Civ. 3290 (JSM), 1995 WL 106106, at *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.* (quoting *In re United States*, 666 F.2d 690, 695 (1st Cir. 1981)).

As noted above, “[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.” *In re Samuel P.*, 2016 WL 4547543, at *2 (quoting *Duke v. Duke*, 398 S.W.3d at 671). Having reviewed the evidence as stated in Plaintiff’s motion and affidavit, all of which pertains to Judge Neill’s decision to grant the motions to withdraw without a public hearing, we find these facts insufficient to prompt a reasonable, disinterested person to believe that Judge Neill’s impartiality might reasonably be questioned. This is particularly true given that Plaintiff no longer desired that attorneys Corder and Holland represent him in the post-conviction proceeding.

Moreover, the fact that Judge Neill’s alleged “adverse ruling” deprived Plaintiff of the opportunity to participate in a public verbal flogging of his former attorneys in open court is not a basis upon which to find bias.³ As we have often explained, rulings adverse to the proponent of a recusal motion are not, standing alone, grounds for recusal. *See Davis v. Liberty Mut. Ins. Co.*, 38 S.W.3d 560, 565 (Tenn. 2001); *see also Duke v. Duke*, 398 S.W.3d at 671.

It is also relevant to note that this civil action for “fraud” and “conspiracy” against Plaintiff’s former attorneys, which is undeterred by the withdrawal of the attorneys in the post-conviction case, provides Plaintiff the opportunity to air his grievances concerning the alleged acts or omissions of his attorneys. As a consequence, Judge Neill’s ruling has

³ As noted earlier, granting the motions to withdraw can hardly be categorized as adverse rulings because Plaintiff no longer wanted Ms. Corder or Ms. Holland to represent him in the post-conviction matter.

neither “shielded counsel with the gown of judicial protection,” nor protected “counsel from the embarrassment of their own actions.”

Applying the foregoing standards de novo to the facts of this case, we cannot conclude that a person of ordinary prudence would find a reasonable basis for questioning Judge Neill’s impartiality. Accordingly, we affirm the decision to deny the motion for recusal.

IN CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Plaintiff, Nathan Allen Wallace.

FRANK G. CLEMENT JR., P.J., M.S.