

FILED

04/29/2022

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 19, 2022

**KEVEENA MARIE MARTIN JUDZEWITSCH v.
GEORGE AARON JUDZEWITSCH**

**Appeal from the Circuit Court for Knox County
No. 134982 Gregory S. McMillan, Judge**

No. E2022-00475-COA-T10B-CV

This is an accelerated interlocutory appeal as of right pursuant to Tennessee Supreme Court Rule 10B section 2.02 from the trial court's denial of a motion for recusal. We have determined the petition must be summarily dismissed due to numerous and substantive failures to comply with Rule 10B section 2.02, including the failure to file a copy of the motion for recusal, supporting documents filed in the trial court, and a copy of the trial court's order denying recusal. Accordingly, the appeal is dismissed.

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

FRANK G. CLEMENT JR., P.J., M.S. delivered the opinion of the Court, in which CARMA DENNIS MCGEE and KRISTI M. DAVIS, JJ., joined.

George Aaron Judzewitsch, Memphis, Tennessee, pro se.

Elizabeth L. Towe and Haleigh E. Chastain, Knoxville, Tennessee, for the appellee, Keveena Marie Judzewitsch.

OPINION

Tennessee Supreme Court Rule 10B governs appeals from orders denying motions to recuse. Pursuant to Section 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. The appeal is perfected by filing a petition for recusal appeal with the appropriate appellate court. Tenn. Sup. Ct. R. 10B, § 2.02.

Our standard of review in a Rule 10B appeal is de novo. *See* 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 section 2.06 also grants this court the discretion to decide the appeal without oral argument. 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 sections 2.05 and 2.06.

ANALYSIS

George Aaron Judzewitsch (“Petitioner”) filed his Petition for Recusal Appeal on April 18, 2022, in which he seeks to overturn the decision by Judge Gregory S. McMillan denying his motion for recusal.

“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)).

Interlocutory recusal appeals require “meticulous compliance with the provisions of Rule 10B regarding the content of the record provided to this Court.” *Johnston v. Johnston*, No. E2015-00213-COA-T10B-CV, 2015 WL 739606, at *2 (Tenn. Ct. App. Feb. 20, 2015). In pertinent part, Rule 10B requires:

1.01. *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 filed no later than ten days before trial, absent a showing of good cause which must be supported by an affidavit. 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. . . .

2.02. *To effect an accelerated interlocutory appeal as of right from the denial of a motion for disqualification or recusal of the trial court judge, a 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. In civil cases, a bond for costs as required by Tenn. R. App. P. 6 shall be filed with the petition. . . .*

2.03. The petition for recusal appeal shall contain:

- (a) A statement of the issues presented for review;
- (b) A statement of the facts, setting forth the facts relevant to the issues presented for review;
- (c) An argument, setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities; and
- (d) A short conclusion, stating the precise relief sought.

(Emphasis added). Additionally, Rule 10B section 2.03 requires that the petition “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.”

We acknowledge that Petitioner is not represented by counsel on appeal. Although “pro se litigants have no legal training and little familiarity with the judicial system,” pro se litigants must “comply[] 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).

The petition filed in this matter is not accompanied by a copy of the motion, it is not accompanied by any supporting documents filed in the trial court, and it is not accompanied by a copy of the trial court’s order or opinion ruling on the motion, each of which are required pursuant to Rule 10B section 2.03. More specifically, Petitioner has failed to file with this court an essential element of his recusal motion—the affidavit that states “with specificity, all factual and legal grounds supporting disqualification of the judge[.]” Accordingly, Petitioner has failed to present to this court any “*evidence* that would prompt

a reasonable, disinterested person to believe that the judge’s impartiality might reasonably be questioned.”¹ *Duke*, 398 S.W.3d at 671 (emphasis added).

Moreover, these deficiencies prevent us from determining whether the petition for recusal appeal was timely filed. *See* Tenn. Sup. Ct. R. 10B, § 2.02 (“To effect an accelerated interlocutory appeal as of right from the denial of a motion for disqualification or recusal of the trial court judge, *a petition for recusal appeal shall be filed . . . within twenty-one days of the trial court’s entry of the order.*” (emphasis added)). “[T]he time period for filing a petition for recusal appeal is jurisdictional and cannot be extended by this Court.” *Moncier v. Wheeler*, No. E2020-00943-COA-T10B-CV, 2020 WL 4343336, at *2 (Tenn. Ct. App. July 28, 2020) (citing Tenn. Sup. Ct. R. 10B, § 2.08). The petition was not accompanied by a copy of the trial court’s order denying the motion for recusal. Accordingly, we cannot determine whether the Petition for Recusal Appeal was filed within twenty-one days of the entry of the trial court’s order. Thus, Petitioner has failed to demonstrate that this court has jurisdiction to address the merits of this appeal.

For the foregoing reasons, we dismiss the appeal.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Petitioner, George Aaron Judzewitsch.

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

¹ We acknowledge that the petition is replete with conclusory statements of Petitioner’s belief that the trial judge is biased against him; however, conclusory statements, devoid of facts or details, do “not rise to the dignity of evidence.” *Four Seasons Heating & Air Conditioning, Inc. v. Beers Skanska, Inc.*, No. M2002-02783-COA-R3-CV, 2003 WL 22999430, at *5 (Tenn. Ct. App. Dec. 23, 2003).