IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned September 12, 2014

DENNIS MICHAEL CHRISTIE v. SHANNON DENISE CHRISTIE

Appeal from the Chancery Court for Williamson County
No. 39046 James G. Martin, III, Judge

No. M2014-01647-COA-T10B-CV - Filed September 26, 2014

In this post-divorce proceeding, Wife has filed an interlocutory appeal as of right pursuant to Tennessee Supreme Court Rule 10B from the trial court's denial of a motion for recusal. After reviewing Wife's petition for recusal appeal de novo as required under Rule 10B, we summarily affirm the trial court's denial of the motion.

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

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS, and W. NEAL MCBRAYER, JJ., joined.

Shannon Christie, Antioch, Tennessee, Pro Se.

No appellee brief filed.

OPINION

BACKGROUND

Dennis Michael Christie (Husband) and Shannon Denise Christie (Wife) were divorced by final decree on October 23, 2012. On July 18, 2014, Wife filed a Motion to Enforce Care Plan and Parenting Plan and Request an Emergency Hearing, which was followed by Wife's July 25 motion for recusal of the trial judge. The July 18 motion was eventually set to be heard on August 12, 2014. On August 11, Wife filed a request for decision on the motion to recuse. The trial court entered an order dated August 15, 2014,

denying the motion for recusal. Wife then filed an appeal of the denial of her motion for recusal on August 29, 2014.

ISSUES

The only issue raised by Wife, and the only issue this Court may consider in an appeal under Tenn. Sup. Ct. R. 10B, is whether or not the trial court erred in denying the motion for recusal.

STANDARD OF REVIEW

The trial court's denial of a motion for recusal is reviewed under a de novo standard of review. TENN. SUP. CT. R. 10B, § 2.06; *Duke v. Duke*, 398 S.W.3d 665, 668 (Tenn. Ct. App. 2012) ("[W]e review the denial of a motion for recusal under a de novo standard of review.").

ANALYSIS

Tennessee Supreme Court Rule 10B governs appeals from orders denying motions for recusal. TENN. SUP. CT. R. 10B, § 2. Pursuant to 10B, § 2.01, 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 effected by filing a "petition for recusal appeal" with the appropriate appellate court. TENN. SUP. CT. R. 10B, § 2.02. If this Court, based on the petition and supporting documents, determines that no answer is needed, we may act summarily on the appeal. TENN. SUP. CT. R. 10B, § 2.05. Otherwise, this Court may order an answer and may also order further briefing by the parties. TENN. SUP. CT. R. 10B, § 2.05. In addition, Rule 10B, § 2.06 grants this Court the discretion to decide the appeal without oral argument.

After reviewing the petition and supporting documents, we have determined that an answer, additional briefing and oral argument are unnecessary and, therefore, have elected to act summarily on the appeal in accordance with Rule 10B, §§ 2.05 and 2.06.

The portions of the Tennessee Rules of Judicial Conduct that relate to the recusal of a judge provide:

> A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

TENN. SUP. CT. R. 10, RJC 2.3(A).

> A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
>
> > (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

TENN. SUP. CT. R. 10, RJC 2.11(A).

In her motion for recusal, Wife argues that the trial judge should have recused himself pursuant to Rule 2.3(A) because he had negative personal feelings toward her. Her support for this contention is that the judge questioned her credibility at trial, continually inquired into why she had not sought employment, and seemed frustrated by her anxiety. For example, she provides the following statements made by the judge at trial:

> I don't know whether your client is intentionally deceiving the Court or whether she just doesn't know what she's doing. But it's just not right. It's frustrating.
>
> If she can't process the Court's question, I have trouble with other issues in this case. That's the point.

Wife also argues that the judge's feelings toward her are evidenced by his adverse ruling in the initial divorce proceedings, which included giving Husband the right to make all major decisions for their child. She argues this was a denial of her Ninth and Fourteenth Amendment rights. She also suggests that the judge's bias is evidenced by a number of factual inaccuracies made by the court, including mistakes regarding her child's date of birth, the date of her marriage, and the year Wife finished her schooling.

Whenever a motion to recuse is made, an objective standard must be applied to determine whether "'a reasonable person would conclude that a particular judge is biased or prejudiced against a particular defendant.'" *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994) (quoting *United States v. Baker*, 441 F. Supp. 612, 616 (M.D. Tenn. 1977)). "Bias" and "prejudice" are generally states of mind or attitude that predispose a judge for or against a party; but "[n]ot every bias, partiality, or prejudice merits recusal." *Alley*, 882 S.W.2d at 821. To require recusal 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.* (quoting *State ex rel. Wesolich v. Goeke*, 794 S.W.2d 692, 697 (Mo. Ct. App.

1990)). But, "[i]f 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.* Judicial remarks during a trial that are critical or hostile to the parties ordinarily do not support a partiality challenge. *McKenzie v. McKenzie*, No. M2014-00010-COA-T10B-CV, 2014 WL 575908, at *4 (Tenn. Ct. App. Feb. 11, 2014) (citing *United States v. Adams*, 722 F.3d 788, 837 (6th Cir. 2013)).

Furthermore, a trial judge's adverse rulings are not usually enough to establish bias. *State v. Cannon*, 254 S.W.3d 287, 308 (Tenn. 2008). "Rulings of a trial judge, even if erroneous, numerous and continuous, do not, without more, justify disqualification." *Alley*, 882 S.W.2d at 821. The reason for this has been explained by our Supreme Court:

> [T]he mere fact that a judge has ruled adversely to a party or witness . . . is not grounds for recusal. Given the adversarial nature of litigation, trial judges necessarily assess the credibility of those who testify before them, whether in person or by some other means. Thus, the mere fact that a witness takes offense at the court's assessment of the witness cannot serve as a valid basis for a motion to recuse. If the rule were otherwise, recusal would be required as a matter of course since trial courts necessarily rule against parties and witnesses in every case, and litigants could manipulate the impartiality issue for strategic advantage, which the courts frown upon.

Davis v. Liberty Mut. Ins. Co., 38 S.W.3d 560, 565 (Tenn. 2001) (citations omitted).

Wife argues that the judge should recuse himself because of his statements and actions *at trial*. However, judicial remarks made during a trial, that are hostile toward a party, typically do not support a bias challenge. *See Adams*, 722 F.3d at 837; *McKenzie*, 2014 WL 575908, at *4. A witness taking offense to a judge's opinion of the witness is not enough to justify recusal. *Davis*, 38 S.W.3d at 565. In addition, all of the judge's statements and actions occurred as a result of the judge's observance of Wife at trial, particularly her difficulty in answering questions while testifying. Any bias based upon the observance of witnesses at trial does not warrant recusal. *See Alley*, 882 S.W.2d at 821. Therefore, the judge's actions at Wife's trial are not enough to support the motion to recuse.

Wife also argues that the judge's bias is evidenced by his alleged denial of her constitutional rights. However, as previously noted, the judge's statements and actions at trial do not warrant recusal, and the judge's adverse ruling on its own is not enough to establish bias. *Id.*; *Cannon*, 254 S.W.3d at 308. Finally, Wife discusses some minor factual inaccuracies made by the trial court, but offers no evidence to suggest that these were anything more than honest errors. Moreover, these errors did not "result in an opinion on the

merits on some basis other than what the judge learned from . . . participation in the case." *Alley*, 882 S.W.2d at 821. We do not believe that such minor errors are enough for a reasonable person to conclude that the judge was biased against Wife.

CONCLUSION

Having reviewed Appellant's petition and supporting documents pursuant to the de novo standard as required by Tennessee Supreme Court Rule 10B, § 2.06, we have concluded that the trial court's rulings do not evidence a bias against Appellant. Therefore, we find no grounds to require recusal under the Rules of Judicial Conduct. The trial court's decision to deny the motion for recusal is affirmed. The Appellant, Shannon Denise Christie, is taxed with the costs for which execution, if necessary, may issue.

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ANDY D. BENNETT, JUDGE