

FILED

02/24/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 17, 2023

**FIRST COVENANT TRUST ET AL. v. JEFF A. WILLIS**

**Appeal from the Chancery Court for Washington County**  
**No. 21-CV-0678     John C. Rambo, Chancellor**

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**No. E2023-00230-COA-T10B-CV**

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This is an interlocutory appeal as of right, pursuant to Rule 10B of the Rules of the Supreme Court of Tennessee, filed by Jeff A. Willis (“Petitioner”), seeking to recuse the judge in this suit to collect a judgment. Having reviewed the petition for recusal appeal filed by Petitioner, and finding no error, we affirm.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which ANDY D. BENNETT, J., and J. STEVEN STAFFORD, P.J., W.S., joined.

Rick Jay Bearfield, Johnson City, Tennessee, for the appellant, Jeff A. Willis.

Mark Stephen Dessauer, Kingsport, Tennessee, for the appellee, First Covenant Trust and Advisors, LLC.

**OPINION**

First Covenant Trust and Advisors, LLC (“First Covenant”), in its capacity as Trustee of the Hurshel W. Bowers Revocable Living Trust (“the Trust”), sued Petitioner seeking to collect a judgment from a separate suit, which had been assigned to Hurshel W. Bowers, and which, upon the death of Mr. Bowers became an asset of the Trust. Some of the partners in First Covenant are also partners in Blackburn, Childers & Steagall, PLC (“BCS”). The wife of the trial court judge, Chancellor John C. Rambo, is a senior manager in the Audit Department of BCS. Petitioner filed a motion in the Chancery Court for Washington County (“the Trial Court”) seeking to recuse Chancellor Rambo, which

Chancellor Rambo denied by order entered February 14, 2023. Petitioner then timely filed a petition for recusal appeal in this Court.

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. 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 review a trial court’s ruling on a motion for recusal under a *de novo* standard of review with no presumption of correctness. Tenn. Sup. Ct. R. 10B § 2.01. “The party seeking recusal bears the burden of proof, and ‘any alleged bias must arise from extrajudicial sources and not from events or observations during litigation of a case.’” *Neamtu v. Neamtu*, No. M2019-00409-COA-T10B-CV, 2019 WL 2849432, at \*2 (Tenn. Ct. App. July 2, 2019) (quoting *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)). As this Court explained in *Neamtu v. Neamtu*:

“[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.’” *Duke [v. Duke]*, 398 S.W.3d [665] at 671 [(Tenn. Ct. App. 2012)] (quoting *Eldridge v. Eldridge*, 137 S.W.3d 1, 7-8 (Tenn. Ct. App. 2002)). 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), *perm. app. denied* (Tenn. Feb. 18, 2016). **“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)).

The terms “bias” and “prejudice” usually refer to a state of mind or attitude that works to predispose a judge for or against a party, but not every bias, partiality, or prejudice merits recusal. *Watson v. City of Jackson*, 448

S.W.3d 919, 929 (Tenn. Ct. App. 2014) (citing *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994)). “**Even though the judge is expected to have no bias at the beginning of the trial, he must, perforce, develop a bias at some point in the trial; for the decision at the conclusion of the trial is based upon the impressions, favorable or unfavorable, developed during the trial.**” *Id.* at 933 (quoting *Spain v. Connolly*, 606 S.W.2d 540, 544 (Tenn. Ct. App. 1980)). To merit disqualification, the prejudice must be of a personal character, directed at the litigant, and stem from an extrajudicial source resulting in an opinion on the merits on some basis other than what the judge learned from participation in the case. *Id.* at 929. “A trial judge’s opinions of the parties or witnesses that are based on what he or she has seen at trial are not improper and ‘generally do[ ] not warrant recusal.’” *Id.* at 933 (quoting *Neuenschwander v. Neuenschwander*, No. E2001-00306-COA-R3-CV, 2001 WL 1613880, at \*11 (Tenn. Ct. App. Dec. 18, 2001)).

*Neamtu*, 2019 WL 2849432, at \*3 (quoting *In re Samuel P.*, No. W2016-01592-COA-T10B-CV, 2016 WL 4547543, at \*2 (Tenn. Ct. App. Aug. 31, 2016)).

In his petition for recusal appeal, Petitioner asserts that Chancellor Rambo should recuse based upon Tenn. Sup. Ct. R. 10, Canon 2, Rule 2.11, which provides, in pertinent part:

(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:

\* \* \*

(2) The judge knows that the judge, the judge’s spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

\* \* \*

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; . . . .

Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.11(A)(2)(a) & (c).

In the February 14, 2023 order denying recusal, Chancellor Rambo stated:

First Covenant sued [Petitioner] in its capacity as trustee of the Hurshel W. Bowers Revocable Living Trust (“Trust”). Tennessee Code Annotated section 35-15-103 of the Tennessee Uniform Trust Code defines a fiduciary to also mean a trustee as defined at section 35-14-102. Pursuant to section 35-15-103(13), a fiduciary includes a “trustee . . . acting in a fiduciary capacity for any person, trust, or estate.”

In the Circuit Court, a judgment against Waterford Homes Development Company, Inc. (“Waterford Homes”) was obtained on a claim by Dabo builders, LLC that was assigned to Hurshel W. Bowers. As a result of his death, the claim became a part of Mr. Bowers’ estate and an asset of the Trust, which trustees included First Covenant and Jeff Blackburn as co-trustees. The Circuit Court granted the Trust a judgment of \$200,000 against defendant Waterford Homes. Asserting various theories, the Trust seeks to collect its judgment against Waterford Homes from Defendant, Jeff A. Willis.

As explained, this is not a case of First Covenant Trust seeking the recovery of its own money or to enforce its own judgment acquired on behalf of First Covenant. Rather, it is trustee of the Trust that has a judgment against Waterford Homes that the Trust, through its trustee, is seeking to collect or enforce.

The undersigned [Chancellor Rambo] and his spouse have no association with Hurshel W. Bowers. As to this judge’s association with First Covenant. [sic] The judge’s spouse works for Blackburn, Childers & Steagall, PLC (“BCS”). BCS is a Tennessee Professional Limited Liability Company with three locations in Tennessee and one in North Carolina with total employment exceeding 100 personnel. Partners in BCS are also some of the partners in First Covenant, but they are separate legal entities.

First Covenant Trust and Advisors, LLC is [a] limited liability company formed in South Dakota with its principal office in Sioux Falls. Its registered agent is David Greene, esq.[sic], in Johnson City, Tennessee. Mr. Greene is the manager and senior trust officer of First Covenant and Clay Hixon is the organization’s president and chief executive officer. Neither are partners or owners in BCS.

The undersigned’s spouse is not a partner, owner, shareholder or officer of BCS. She is a salaried, part-time, employee working a little less than forty hours on average. As such, she is not subject to financial gain, as [sic] or any intangible goodwill or reputation that may be gained from the outcome of this litigation. Moreover, [First Covenant] is not her employer,

it is a separate business owned by some of the partners of her employer. She does not work for [First Covenant].

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.” Having stated the facts regarding the spouse of the undersigned, the Court finds that a knowledgeable member of the public would not have a reasonable basis for doubting the judge’s impartiality.

We agree with Chancellor Rambo’s analysis. Petitioner bore the burden of producing “some evidence that would prompt a reasonable, disinterested person to believe that the judge’s impartiality might reasonably be questioned.” *Duke v. Duke*, 398 S.W.3d 665, 671 (Tenn. Ct. App. 2012) (quoting *Eldridge v. Eldridge*, 137 S.W.3d 1, 7 (Tenn. Ct. App. 2002)). Petitioner has failed to show that the Chancellor’s wife, as a senior manager in the audit department, falls within the category of either “an officer, director, general partner, managing member, or trustee of a party.” Tenn. R. Sup. Ct. 10B § 2.11(A)(2)(a). Rather, the categories provided for in the rule suggest someone who has a greater financial stake in or fiduciary obligation to the entity involved in the suit than a mere employee would. It is not the title of the employee that matters, but rather whether that employee has ‘skin in the game,’ which might be impacted by the lawsuit. Furthermore, we note that Chancellor Rambo’s wife is an employee of BCS, which is not a party to this suit. Chancellor Rambo’s wife is not an employee of First Covenant. As a salaried employee of BCS, Chancellor Rambo’s wife simply does not fall within the category of “an officer, director, general partner, managing member, or trustee of [First Covenant].” *Id.* Additionally, Petitioner has failed to show that Chancellor Rambo’s wife, as a salaried employee of BCS, has “more than a de minimis interest that could be substantially affected by the proceeding.” Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.11(A)(2)(c).

“[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). This is true because “[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 discussed above, Petitioner, as the party seeking recusal, bore the burden of proof. Petitioner failed to produce “evidence that would prompt a reasonable, disinterested person to believe that the judge’s impartiality might reasonably be questioned.” *Neamtu*,

2019 WL 2849432, at \*3 (quoting *In re Samuel P.*, 2016 WL 4547543, at \*2). As such, we find no error in the February 14, 2023 order denying recusal. Petitioner's motion to recuse is DENIED. The costs of this appeal are taxed to Petitioner, Jeff A. Willis, for which execution may issue. This case is remanded for further proceedings.

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KRISTI M. DAVIS, JUDGE