

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 3, 2025 Session

FILED

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Clerk of the
Appellate Courts

HEATHER PIPER DIDOMENICO v. JAMES ANDREW DIDOMENICO

Appeal from the Chancery Court for Williamson County
No. 21CV-50218 Michael Binkley, Chancellor

No. M2024-00476-COA-R3-CV

Husband appeals the trial court's judgment in his divorce action on the sole issue of whether the trial judge should have recused himself because the judge's comments and conduct at the trial establish that his impartiality might reasonably be questioned. Applying the objective standard, we find no basis for the trial judge's recusal and affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and KRISTI M. DAVIS, J., joined.

Brandon Michael Booten, Gallatin, Tennessee, and John C. Taylor and Charles G. Ward, Murfreesboro, Tennessee, for the appellant, James Andrew DiDomenico.

Roger A. Maness, Clarksville, Tennessee, for the appellee, Heather Piper DiDomenico.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Heather Piper DiDomenico ("Wife") and James Andrew DiDomenico ("Husband") were married in September 2015 and have one minor child. Wife filed for divorce in chancery court on March 5, 2021, on grounds of irreconcilable differences or inappropriate marital conduct; Husband counterclaimed asserting the same grounds. The matter was initially assigned to Judge Joseph Woodruff.

On August 16, 2021, Wife filed a petition for order of protection in chancery court alleging that Husband raped her on August 14, 2021, and the court entered an ex parte order of protection. After a hearing in September 2021, the court extended the temporary

order of protection for a period of six months. Later, the court extended the order of protection indefinitely, pending further orders of the court. In August 2022, Father was indicted on charges of rape and released on bond subject to conditions, including no direct or indirect contact with Wife. In February 2023, the divorce case was transferred to Judge Michael Binkley so that Judge Woodruff could continue to preside over the pending criminal case arising out of Wife's rape allegations.

The divorce was tried over three days in June 2023. The court heard testimony from Wife and Husband as well as Wife's mother, Wife's former employee, Wife's therapist, the supervisor for Husband's visitation, Wife's current boyfriend, the parties' neighbor, and Husband's sister. The court then took the case under advisement and instructed the parties to file proposed findings of fact and conclusions of law. On November 16, 2023, Wife filed a motion to reopen the proof asking the court to take judicial notice of the fact that, on November 15, 2023, a jury found Husband guilty of rape.¹

On March 1, 2024, the court entered a memorandum and order awarding Wife a divorce on the ground of inappropriate marital conduct. The court found by a preponderance of the evidence that Husband raped Wife on August 14, 2021. The court named Wife the primary residential parent with 261 days of residential parenting time and Husband having 104 days of residential parenting time. The court also divided the marital property and debts and awarded Wife monthly transitional alimony in the amount of \$2,000 for two years. The court denied Wife's request for a lifetime order of protection on the ground that the matter was not yet ripe for the court to consider.

On March 15, 2024, Wife filed a motion to alter or amend the March 1, 2024 order. Wife argued, in part, that her motion to reopen the proof was now ripe because a judgment of conviction had been entered and that the conviction mandated that the court grant her previous request for a lifetime order of protection. Wife filed a petition for lifetime order of protection on May 2, 2024. The court entered an order on May 17, 2024, granting Wife's motion to reopen the proof and take judicial notice of the conviction. Further, the court granted Wife's motion to alter or amend; the court modified the parenting plan in light of Husband's conviction and designation as a sex offender. On May 30, 2024, the court entered an order awarding Wife a lifetime order of protection.

Husband appeals. The only issue raised by Husband on appeal is whether Judge Binkley should have recused himself.

¹ Husband's only issue on appeal relates to the recusal of the trial judge based upon the judge's conduct and comments during the trial. Husband does not challenge any of the judge's factual findings or rulings, and his brief does not include a detailed history of the underlying facts of the case. We do not, therefore, consider it necessary to provide more than a brief factual summary.

STANDARD OF REVIEW

Tennessee Supreme Court Rule 10B governs motions to recuse. The issue of whether a judge “should have recused himself because his impartiality might reasonably be questioned” is a question of law subject to de novo review. *Cook v. State*, 606 S.W.3d 247, 253 (Tenn. 2020) (citing TENN. SUP. CT. R. 10B, § 2.01).

ANALYSIS

Husband’s sole argument on appeal is that the trial judge should have recused himself because the judge’s conduct and comments during the trial of this matter establish that his impartiality might reasonably be questioned. For the reasons discussed below, this Court respectfully disagrees.

Under Tennessee law, “litigants are entitled to have cases resolved by fair and impartial judges.” *Cook*, 606 S.W.3d at 253. Moreover, “[t]o preserve public confidence in judicial neutrality, judges must be fair and impartial, both in fact and in perception.” *Adams v. Dunavant*, 674 S.W.3d 871, 878 (Tenn. 2023). The Tennessee Rules of Judicial Conduct (“RJC”) provide that judges must “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” TENN. SUP. CT. R. 10, RJC 1.2. These rules further declare that judges “shall perform all duties of judicial office fairly and impartially.” *Id.*, RJC 2.2. To act impartially, a judge must act without “bias or prejudice in favor of, or against, particular parties or classes of parties” and must maintain “an open mind in considering issues that may come before a judge.” *Id.*

Rule 2.11(A) of the Rules of Judicial Conduct states: “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” This rule “incorporates the objective standard Tennessee judges have long used to evaluate recusal motions.” *Cook*, 606 S.W.3d at 255. The objective test requires a judge to recuse himself or herself if “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 v. Liberty Mut. Ins. Co.*, 38 S.W.3d 560, 564 (Tenn. 2001)).

The underlying purpose of “the recusal rules is to ‘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.’” *Cain-Swope v. Swope*, 523 S.W.3d 79, 87 (Tenn. Ct. App. 2016) (quoting *Groves v. Ernst-W. Corp.*, No. M2016-01529-COA-T10B-CV, 2016 WL 5181687, at *4-6 (Tenn. Ct. App. Sept. 16, 2016)).

I. Waiver

Wife argues that Husband waived the recusal issue by failing to raise it in a timely manner.

Tennessee Supreme Court Rule 10B governs the disqualification or recusal of a judge and the procedure for filing and disposing of recusal motions. A party seeking a judge's recusal "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." TENN. SUP. CT. R. 10B, § 1.01. Thus, a recusal motion "should be filed when the facts forming the basis of that motion become known." *Bean v. Bailey*, 280 S.W.3d 798, 803 (Tenn. 2009). A party's "failure to seek recusal in a timely manner may result in the waiver of any complaint concerning the judge's impartiality." *Id.* Thus, "[a] party cannot 'know of [allegedly] improper judicial conduct, gamble on a favorable result by remaining silent as to that conduct, and then complain that he or she guessed wrong and does not like the outcome.'" *Id.* (quoting *Davis v. Tenn. Dep't of Emp. Sec.*, 23 S.W.3d 304, 313 (Tenn. Ct. App. 1999)).

In the present case, the trial ended on June 30, 2023, and the parties thereafter filed their proposed findings of fact and conclusions of law and affidavits regarding attorney fees. The court entered its memorandum and order on March 1, 2024. Husband did not challenge the impartiality of the trial judge at any time before raising the issue of recusal in his appellate brief, filed in March 2025. Husband argues that raising the issue would have been "an exercise in futility" because of the trial court's "statements of bias and partiality." Husband further argues that he should be excused from raising the issue earlier because of the withdrawal of trial counsel, preparation of the technical record, and Husband's incarceration.

Rule 10B requires a party to file a motion to recuse promptly after learning of "the facts establishing the basis for recusal." TENN. SUP. CT. R. 10B, § 1.01. Husband did not do so in this case. Husband knew all of the facts upon which he now bases his recusal argument when the trial was over in June 2023. Husband had the opportunity to file a motion to recuse during the trial or during the extended period when the trial court had not entered judgment. Instead, he waited until March 2025 to raise the issue of the judge's alleged lack of impartiality in his appeal. Rule 10B does not allow a party to "remain[] silent until after the legal matter has been resolved unfavorably to the litigant." *Cook*, 606 S.W.3d at 254. This Court is inclined to deem Husband's claim of judicial bias waived due to his failure to timely file a motion to recuse.² Nevertheless, because Husband claims to

² One basis upon which Husband challenges the trial judge's partiality is that the court demonstrated favoritism toward Wife because she is an attorney in Williamson County. Husband fails to cite any evidence to support this assertion. Unlike the other arguments asserted by Husband, this ground for recusal is not based upon the trial judge's conduct and comments at trial. The fact that Wife was a local attorney was known from the beginning of this case, and Husband did not raise the issue in a timely manner. On this

fall within exceptional circumstances that would excuse the filing of a motion to recuse, we will address the merits of Husband's recusal argument.

II. Sua sponte recusal

Despite his failure to make a motion to recuse the trial judge at the trial level, Husband takes the position that the trial judge should have recused himself because the judge's comments and conduct during the trial established a reasonable basis to question the judge's impartiality. Husband asserts that this case falls within an exceptional circumstance addressed by our Supreme Court in *Cook v. State*, 606 S.W.3d 247 (2020), where the Court held that a post-conviction judge should have recused himself, even though the petitioner had not filed a motion to recuse. We begin with an examination of *Cook* and then discuss the conduct and comments to which Husband objects.

A. *Cook v. State*

The *Cook* case involved the petitioner's post-conviction challenge to his conviction of first-degree murder. 606 S.W.3d at 249-50. At the post-conviction hearing, one of the petitioner's trial attorneys, Lorna McCluskey, testified that she had found a note in the petitioner's case file indicating that the prosecutor, William Massey, had offered the petitioner a confirmed plea deal and that the petitioner had expressed his desire to accept the plea deal. *Id.* at 250. Mr. Massey testified that he had not reviewed the petitioner's case file during the years when the post-conviction petition had been pending but that he could not recall offering a confirmed plea deal to the petitioner. *Id.* Mr. Massey did not dispute Ms. McCluskey's testimony and "acknowledged that he could have forgotten about the offer as he had not reviewed the petitioner's file." *Id.* at 251. He offered to review the file and notify the petitioner's post-conviction appointed counsel of any information that would change his testimony about the offer. *Id.* The post-conviction judge denied appointed counsel's subsequent request to allow the proof to be supplemented with any information Mr. Massey might provide. *Id.* In denying the request, the judge stated that Mr. Massey's testimony had been "clear" and "unequivocal," that Mr. Massey's memory was clear, and that "there was never an offer made, never an offer confirmed, never an offer accepted." *Id.*

At the end of the hearing, the post-conviction judge denied the petition and made a series of comments that formed the basis of the petitioner's claim that the judge should have recused himself. *Id.* The judge discussed his close professional knowledge of Ms. McCluskey and Mr. Massey as well as the high esteem in which he held them as attorneys.

point, we must conclude that any argument of bias was waived. *See Bean*, 280 S.W.3d at 803 (discussing waiver of a complaint about a judge's partiality for failure to seek recusal "when the facts forming the basis of that motion become known").

Id. The judge commented that it was “almost laughable” for an attorney to criticize Ms. McCluskey’s or Mr. Massey’s performance and to argue that they “ineffectively represented” the petitioner. *Id.* at 251-52. The judge further stated:

And Judge Axley used to tell me, “Mr. Coffee, it’s kind of like generals in a war. They sit up on a hill on their white horses, beautiful white steed horses, don’t do anything. And after the battle is over, they ride down into the middle of the conflict when people have lost their lives and that war is over and they try to tell those folks how they should have fought that battle differently, how they could have fought that battle better, when all they did was stand up on a hill on a white steed and look down at the action when these folks in the trenches are fighting this war and people are dying all around them.”

You have two very accomplished trial lawyers who absolutely told me that, “Judge Coffee, looking back on this case some seven, six years later, there is absolutely nothing that I would have done differently. There’s nothing that I could have done differently that would have make [sic] a difference in this case.”

These are two of the best trial lawyers in the world. There is absolutely nothing before this Court that would cause this Court to conclude that Mr. William Massey and Ms. Lorna McCluskey were deficient in their representation of [the petitioner].

...

And it is almost painful when lawyers start attacking other lawyers and saying -- my goodness. These lawyers did the absolute best they could. Did not [sic] the best they could, but did an exemplary job. And even getting Mr. Cook a new trial in the beginning, which this Court finds, frankly, that there was skeptical grounds in which that motion was granted.

But convinced another Judge to grant a new trial, tried this case, and did absolutely everything that any reasonable lawyer could have done. And a jury found Mr. Cook guilty of first degree murder in another trial.

And it is something that bothers this Court and it’s something that’s unique to Tennessee. I practiced law in Houston for eight years. 23 felony courts. Not courts, 23 felony courts that dealt with felony cases.

In the eight years in the State of Texas, Harris County, Texas, I may have seen three or four post-conviction petitions in 23 felony courts in eight years. But it’s part of the game -- and I do use the word game -- that goes on in Tennessee, goes on in Shelby County, Tennessee.

A person is tried. A person is tried and convicted by a jury, receives excellent representation from his lawyers, and will turn around on a post-conviction and sue a lawyer, in essence, and say, “My lawyers did a bad job. They did an absolutely horrible job for me and, therefore, I should be given a third trial.”

On appeal, the petitioner raised several issues, including a claim that the post-conviction judge was required to recuse himself. *Id.* at 253. The Court of Criminal Appeals deemed the petitioner’s challenge to the post-conviction judge’s impartiality waived for failure to file a motion to recuse. *Id.* at 254.

In its decision in *Cook*, the Supreme Court reiterated the principles of waiver applicable when a litigant fails to file a recusal motion. *Id.* The Court then stated that, in some circumstances, “judges have an obligation to recuse themselves even if litigants do not file recusal motions.” *Id.* The Court noted that the Rules of Judicial Conduct include a comment that, “a judge is obligated not to hear or decide matters in which disqualification is required, even though a motion to disqualify is not filed.” *Id.* (quoting TENN. SUP. CT. R. 10, RJC 2.11, cmt. 2). Applying the objective standard, the Court held that RJC 2.11 “obligated the post-conviction judge to recuse himself even though the petitioner did not file a motion for recusal.” *Id.* at 255.

The Court then discussed the particular aspects of the post-conviction judge’s comments that the Court found to be problematic. *Id.* at 255-57. First, the Court outlined the judge’s statements regarding Mr. Massey and Ms. McCluskey and his characterization of the appointed counsel’s argument as Monday morning quarterbacking. *Id.* at 255. The Court stated:

Under the applicable objective standard, these statements communicate that the post-conviction judge’s decision to deny the petitioner relief was based on the post-conviction judge’s personal knowledge and high personal regard for the professional abilities, skills, and reputations of the petitioner’s trial attorneys and his belief that trial counsel were so preeminent, skilled, and knowledgeable that they could never be ineffective in any case. These comments constitute a reasonable basis for questioning the post-conviction judge’s impartiality, which requires “maintenance of an open mind in considering issues[.]” TENN. SUP. CT. R. 10, Terminology “Impartial,” “Impartiality,” “Impartially.”

Id. Next, the Court addressed “the post-conviction judge’s disparaging comments about not only Tennessee’s post-conviction procedures but also post-conviction petitioners and their attorneys.” *Id.* The judge described Tennessee’s post-conviction procedures as a “game,” stated that the process bothered him, and expressed his preference for the law in

Texas. *Id.* at 255-56. The Court expressed agreement with the following comment made by the dissenting judge in the Court of Criminal Appeals decision:

It is completely inappropriate for a judge to refer to a procedure enacted by the [L]egislature to ensure that a defendant's constitutional right to effective assistance of counsel is protected as a "game." Even though the judge disagree[d] with the law in Tennessee and preferred to follow the law in Texas, he swore an oath to follow the law in Tennessee and not Texas.

Id. at 256. The Court concluded that, under the objective test, "these comments would indicate that the post-conviction judge's decision denying the petitioner relief was based as much on the post-conviction judge's disdain for and disagreement with Tennessee law on post-conviction procedures and dissatisfaction with post-conviction petitioners and their lawyers as on the evidence presented at the hearing."³ *Id.*

Addressing the State's waiver argument, the Court concluded that, "In the circumstances of this case, where Rule of Judicial Conduct 2.11 obligated the post-conviction judge to recuse, the petitioner's failure to file a recusal motion is not dispositive." *Id.* at 257. In declining to find the recusal issue waived, the Court specifically pointed to the following circumstances:

Here, the post-conviction judge chose to make remarks that were not only egregious but also global in nature, expressing disdain for the entire class of proceedings he was charged with conducting. Under these unique circumstances, no recusal motion was required; the post-conviction judge should have known that the remarks compelled him to recuse himself.

Id.

In discerning the precedential import of the Supreme Court's opinion in *Cook*, we find it significant that the matter involved a post-conviction case and that the Court emphasized the trial judge's expressions of disdain for the entire post-conviction process. The post-conviction judge's comments suggested that the court denied relief to the petitioner based largely upon the judge's disagreement with the procedure enacted by the legislature as well as the judge's personal opinion that the defense attorneys in question could not be ineffective in any case. Moreover, as pointed out by the dissenting judge in the Court of Criminal Appeals, the statements that formed the basis for recusal occurred during the judge's issuance of its oral ruling. *Cook v. State*, No. W2018-00237-CCA-R3-

³ The Court also discussed how the judge's inappropriate comments at the conclusion of the hearing "cast a different light on a number of the post-conviction judge's actions and rulings during the hearing." *Id.*

PC, 2019 WL 2122798, at *14 (Tenn. Crim. App. May 14, 2019). In these extraordinary circumstances, the Supreme Court determined that no motion to recuse was required.

B. Conduct and comments cited by Husband as basis for recusal

We will now examine the evidentiary basis for Husband's recusal argument.

To begin, we note that Husband quotes extensively from the transcript in his statement of the facts. In the argument section of his brief, Husband argues that the trial court "conducted this divorce trial with numerous, repeated and overwhelming favoritism towards Wife, and antagonism, bias, prejudice and partiality against Husband." For the most part, however, Husband fails to tie these allegations to specific parts of the transcript. The following section of Husband's argument, for example, contains no citations to the record to back up his assertions:

He [the trial judge] repeatedly prevented Husband from presenting issues necessary for rebuttal of Wife's claims (not interrupted or declared unimportant during her case presentation) and issues directly raised in the claims for relief made by both parties that were ultimately analyzed by the Court's Memorandum Order. He thwarted Husband's Counsel from fully eliciting testimony on direct examination and cross examination, yet permitted Wife's Counsel to fully engage in both. He complimented Wife and wife's witnesses, yet derided Husband's testimony to the point of admonitions, statements, comments, criticisms, and literal pausing of the trial for a break due to his outspoken frustration with Husband. Mid-trial, he challenged Husband to "be a man," "be a gentleman," questioned his maturity and suggested that he was acting like a "boy" while demonstrating what "some men" do. He openly threatened Husband with negative credibility findings (mid-testimony), constantly instructed him how to testify, and declared he was evasive, despite no substantial objection from Wife's counsel. The Court's partiality manifested in approximately fifty (50) such interruptions and interjections. Even trial judge withholding his Memorandum Order nearly eight (8) months to a time after Husband's criminal convictions, demonstrates the extent to which trial was biased against Husband.

Rule 27(a)(7) of the Tennessee Rules of Appellate procedure requires the appellant's brief to contain an argument that sets 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 appropriate references to the record* (which may be quoted verbatim) relied on." This Court "is under no duty to verify unsupported allegations in a party's brief." *Bean v. Bean*, 40 S.W.3d 52, 56 (Tenn. Ct. App. 2000). As our Supreme Court has stated, "[j]udges are not like pigs,

hunting for truffles buried in' the record." *Flowers v. Bd. of Pro. Resp.*, 314 S.W.3d 882, 899 n. 35 (Tenn. 2010) (quoting *Albrechtsen v. Bd. of Regents of Univ. of Wis. Sys.*, 309 F.3d 433, 436 (7th Cir. 2002)). Therefore, we will address Husband's arguments only to the extent that we are able to discern from his brief the evidence upon which he relies.

In order to perform his or her role, a judge must necessarily "'form[] an opinion of litigants and issues based on what is learned in the course of judicial proceedings.'" *Cain-Swope*, 523 S.W.3d at 89 (quoting *Groves*, 2016 WL 5181687, at *5). Thus, to be grounds for disqualification, a trial judge's "bias or prejudice must come from an extra-judicial source and not result from the judge's impressions during trial." *Eldridge v. Eldridge*, 137 S.W.3d 1, 7 (Tenn. Ct. App. 2002). The statements of the trial judge that Husband highlights indicate that, during the trial, the court became frustrated with Husband's evasiveness and developed concerns about Husband's credibility. However, "an opinion formed on the basis of what a judge properly learns during judicial proceedings, and comments that reveal that opinion, are not disqualifying unless they are so extreme that they reflect an utter incapacity to be fair." *Cain-Swope*, 523 S.W.3d at 89.

Husband asserts that the trial court showed impartiality by interrupting and criticizing Husband repeatedly whereas, according to Husband, Wife was permitted to present her case "with absolutely no admonition by trial judge about time, content, importance and credibility." A review of the entire transcript reveals that the trial judge repeatedly admonished Husband to answer the questions presented and became impatient with Husband's evasiveness. The following passage from Husband's direct testimony is illustrative:

MR. MANESS [Counsel for Wife]: Your Honor, if the witness could be – if his answer could be confined to the question, instead of –

THE COURT: I really wish he could. I'm going to give you some – and I don't care. I'm sorry. I'm going to do it anyway. The way a witness answers a question is this. Your lawyer's been over this with you, I'm sure. It's just a little frustrating. I was a trial lawyer for a long time. And it's just frustrating for me.

It's very elementary. Number one, when you hear a question, you pause. "What's the shortest answer I can give?" And then explain, if the explanation applies to the answer. So most can be answered with, pause, let's see here, yes, no, I don't know, or, what did you have for breakfast? Eggs. And that's it. And then you can explain.

You're going way off into orbit here, and I'm just – to be honest with you, I'm trained to turn all that off.

THE WITNESS: Sure.

THE COURT: I'm trained to listen to a question, answer, question, answer, question, answer. And I'm sure your lawyer has told you that. He's a good lawyer and so is his co-counsel. That's a basic rule of testifying, and

I'm sure he's been over that with you. Please do that. Pause. Answer the question directly. So I'll know that you're not trying to be evasive.

THE WITNESS: Yes, sir.

THE COURT: Okay? And then explain, if you feel like it's necessary. And if your lawyer looks at you and says, "You don't need to explain it," he's your lawyer. You don't need to explain it. Those are the rules.

THE WITNESS: I guess you can tell me if you want me to explain something. Other than that, I'll try to keep to the straight and narrow.

THE COURT: That'd be nice.

In the fact section of his brief, Husband quoted selective portions of this colloquy along with similar instances where the trial court expressed frustration with Husband's conduct as a witness. The trial judge's "expressions of impatience, dissatisfaction, annoyance, and even anger towards counsel, the parties, or the case, will not ordinarily support a finding of bias or prejudice unless they indicate partiality on the merits of the case." *Cain-Swope*, 523 S.W.3d at 89 (quoting *Groves* 2016 WL 5181687, at *5). The trial court's expressions of frustration were based upon Husband's conduct and statements during the trial and do not evidence any partiality regarding the merits of the case.

Husband also quotes comments made by the trial judge in response to certain testimony or lines of questioning, such as: "I'm not dying on this hill," "I'm not living or dying on this lady's testimony," and "how is this going to help me?" A judge's comments "must be construed in the context of all surrounding facts and circumstances to determine whether a reasonable person would construe them as indicating partiality on the merits of the case." *Id.* In this case, the parties and the court allocated three days for the trial of this matter. The statements cited by Husband reflect the court's attempts to remind Husband of the time constraints and the need to focus on relevant testimony. For example, the following colloquy occurred during Husband's cross-examination of Christine Bryant, the visitation supervisor, about her visitation reports:

MS. GILLILAND [Counsel for Husband]: And I'm asking her if she felt like that was an appropriate response to say to him [Husband]. Because she said that. The part she did not say – there was another part –

THE COURT: What she's trying to do is -- it's a biased type of question. She's trying to bring out some type of bias you may have. I'm not going to live or die on this one. I'm really not. I'm not going to live or die on his response. I'm not. This is not a burning issue to me, to be frank with you, either way. We've got other bigger fish to fry in this case, other than this one example.

You can finish up if you want to. I don't mind you doing that a bit. But I'm trying to look at what's really important in this case. And this is not one that we should be spending a lot of time on. I'm not going to hold it against him for making that statement, "I've raised her for five years."

Okay. That's his opinion. Fine. I understand your point about maybe bias or prejudice. Maybe. Maybe not. But this one particular incident on January 18, '23, and a statement made in the report, and I'm just not going to live or die on this one item.

MS. GILLILAND: Thank you. Understood, Your Honor. But there's more than one. I'm just trying to bring them out.

THE COURT: Okay.

MS. GILLILAND: So the point is that there's –

THE COURT: My point is do it a little bit quicker, if you would.

MS. GILLILAND: Well, yes.

THE COURT: If you could.

MS. GILLILAND: I will try to do that.

THE COURT: If you could. You know, we're all in this together, folks. I'm not being critical of you. I'm just saying, let's be reminded of our time constraints here.

For a lot of reasons that I've already said, I'm not going to put these people through another day of trial two or three weeks, months, whatever it may be down the road because my calendar is packed. So let's all cooperate with each other. Let's get to the point. Hit it hard. Move on. Thank you.

Husband has not pointed to any instances where the court prevented him from putting on proof or asking questions. Rather, the cited comments show the court's attempts to help the parties focus on the evidence considered by the court to be most relevant.

Another category of comments to which Husband objects are those which, Husband asserts, show that the trial judge prejudged the case or reached conclusions about Husband's credibility in advance of hearing his testimony. The following exchange (with portions quoted by Husband italicized) occurred during Husband's direct testimony:

Q. And as a result of that [Wife's alleged threats of getting pregnant by artificial means], Ms. Piper had said that you asked for DNA testimony after she had the miscarriage. Is that a true statement?

A. Not after, no, sir. I did make a comment to her before there was ever any miscarriage – because of her statements of getting pregnant without me, I said, "Well, if you have this baby, we'll get a DNA test," because I was just very confused. I was very suspicious and shocked about this and the threats she had made.

But under no circumstances did I ask for a DNA test after the miscarriage or from any medical professional or anyone.

Q. And she had also testified you went out to celebrate with friends. Was that a true statement?

A. It's absolutely untrue.

THE COURT: *Now, you know, I'm estimating about 93 to 95 percent of the answers that your wife gave, you're saying, no, that didn't happen. That's about right, isn't it?* So it seems like to me everything that you're saying and asked, did you ever say that, you're saying no. Is that correct? Am I right about that?

THE WITNESS: I haven't calculated percentages in my head, Your Honor.

THE COURT: Now you're being trite with me. I'm asking you a straight question. Isn't it true – I just want to be sure. I want to know what you're thinking. This is your testimony, not mine.

THE WITNESS: Yes, sir.

THE COURT: I'm observing your responses in comparison to your wife.

THE WITNESS: Yes, sir.

THE COURT: *For your benefit, let's say about 85 percent, maybe 90, of the testimony – of her testimony under oath, you've denied that you've done it; correct?*

THE WITNESS: There's a lot of it that is untrue, Your Honor, yes.

THE COURT: Okay.

MR. DIMMICK [Counsel for Husband]: Your Honor –

THE COURT: *Somebody is not telling the truth here.*

MR. DIMMICK: I have to go through this because this is rebuttal.

THE COURT: I know you do. I know you do. *But I can pretty well tell how his answers are going to be, "I didn't say that."*

MR. DIMMICK: That's fine.

THE COURT: *But that's fine. You go right ahead. Because the more I understand, the better off I am. Go ahead.*

Based upon the court's observations about how often Husband testified that Wife's testimony was untrue, Husband argues that, "It cannot be reasonably argued that [the] trial judge was 'objective' and 'open-minded' when he interrupted Husband's testimony to announce his own, mid-trial, conclusions about Husband's testimony," and that the court had predicted what Husband would say in advance. We respectfully disagree. The trial judge was noting his reaction to Husband's testimony up to the point of the court's comments—namely, that Husband was, for the most part, denying the truth of Wife's testimony. The court gave Husband an opportunity to respond to the court's impression and reminded the witness of the many contradictions between the two witnesses' testimony, which the court would have to resolve by assessing credibility. Husband also objects to the following comment made by the trial court shortly before the above-quoted colloquy: "Right now, their testimonies under oath are diametrically opposite. So I'm going to have to determine whose credibility is better in this lawsuit." Contrary to Husband's assertion, such statements are not threats of adverse credibility findings. As previously stated, part of the trial court's role is to assess the evidence and reach conclusions about

credibility. None of the testimony relied upon by Husband indicates that the trial judge prejudged his credibility or predetermined the proper result, regardless of the evidence.

Husband also argues that a reasonable person would “have cause to conclude that the court had reached a prejudged conclusion because of interest, partiality, or favor” based upon the court’s admonitions to Husband prior to his testimony. On the first day of trial, Ms. Bryant testified about what she considered inappropriate conduct by Husband during supervised visitation and about conflicts between her and Husband. At the conclusion of Ms. Bryant’s direct testimony, Wife’s counsel pointed out that Husband was scheduled to have supervised visitation the following day, during the pendency of the trial. Counsel requested that the court “[e]xplain to Mr. DiDomenico and Ms. Bryant that whatever happens, they’re not to talk about – and her testimony or anything like that.” The statements at issue (which are italicized) occurred during the following admonition by the court:

THE COURT: Ma’am [to Ms. Bryant], for your information, let me tell you what I’ve done. And I made a statement on the first day of trial that I was serious about not having people talk about this case, not have them talk about it at all. Some people don’t listen. Last thing I want to do is put somebody in jail. Like I said the first day of our trial. But if I find someone has disobeyed that rule, I will do it just like that. . . .

Do not talk about this case, testimony, or anything to do with it. You understand?

THE WITNESS: Yes, Your Honor.

THE COURT: Sir, do you understand?

MR. DIDOMENICO: Yes, Your Honor.

THE COURT: Any questions?

And, sir, let’s try to conduct yourself as a gentleman, and she can conduct herself as a lady. Let’s don’t have a whole lot of activity from the peanut gallery, either. [Reference to Husband’s family members]. If there are other people there, can you take the lead as a father of this child and say, “Look. This is my visitation. I want to have some peace and tranquility. Y’all butt out. Stay out of the visits. This is my time.”

Do you think you can do that?

MR. DIDOMENICO: Yes, sir. May I understand who you’re talking about?

MS. GILLELAND: Anybody else.

MR. DIDOMENICO: Anybody else. Oh, yes, sir.

THE COURT: The peanut gallery. The other people that are there and giving all their opinions and wanting to – I don’t know. This is simple. This is so simple. It’s a matter to *exercise a little bit of control*. I want you to be in charge. You’re the father. You tell them – you can do this. I know you can. I know you can. I’m not getting mad at you. I’m just passionate. And I want

– I am. And I want you to know I know you can do it. But if you don't do it, somebody else is going to have to do it. Okay?

MR. DIDOMENICO: Yes, sir.

THE COURT: Don't ask your mama. Don't ask your son. Just look at everybody and say, "I'm in charge here."

MR. DIDOMENICO: They don't do that.

THE COURT: Listen to me. I want you to listen to me.

MR. DIDOMENICO: Yes, sir.

THE COURT: Because you have not done this right. You haven't. It's good common sense. *If half of this is true, you haven't done it right.* You're allowing people to get under your skin when you shouldn't.

MR. DIDOMENICO: But it's not true.

THE COURT: There's only one person who can – sir, listen – do you mind listening to me?

MR. DIDOMENICO: Sure.

THE COURT: Just listen to me. You can disagree all you want to, but we've got to get moving here. We don't have time to fuss. And I'm not going to fuss with you.

There's only one man in control of you. Do you know who that is? You. *Start being a man about it.* Be a gentleman. Tell everybody you're the one in charge here, you want to have time with your daughter, and to leave you alone and stay out of everybody's business. Is that hard?

MR. DOMENICO: No, sir.

THE COURT: Lawyers, am I saying something that's not right?

MR. DIMMICK: I think that's correct.

MS. GILLELAND: That's fine, Your Honor.

THE COURT: I'm talking about these two lawyers that represent you. Am I saying something out of line here?

MS. GILLELAND: No. You're fine, Your Honor.

THE COURT: Okay. Good common sense. You've got it in there somewhere. You've just got to do it, stand up and do it. I hope that's clear. Let's see how you do.

[Next witness is called up, and the court continues to address Husband]

THE COURT: Sir, I'm sorry. I don't mean to sound like I'm yelling at you. I'm not in a popularity contest here. It's not my goal to be popular. It's my goal to do the right thing.

Somebody along the line is going to have to tell you to get yourself in charge, and control people that you can control and be nice to them. And if they don't get it, tell them they're not coming back. How hard is that? Lawyers, am I on the right track?

MS. GILLELAND: You are, Your Honor. I think he's just concerned because I think he's – he just wants you to understand that he doesn't agree

with most of what is being said. He doesn't want you to feel like it's – I think that's what he was trying to say.

THE COURT: I gotcha.

MS. GILLELAND: I think what you're saying is absolutely fine.

THE COURT: I know you don't know me. I get that. You're going to have to trust me here. You're just going to have to. It's one of those things. I've been doing this forever, most of my life.

I know you've got your side, and I'm willing to hear from you, and I will listen to you carefully.

MR. DIDOMENICO: Thank you, Your Honor.

THE COURT: Okay? And I will. I'm not – I don't have any preconceived ideas about you. Okay?

MR. DIDOMENICO: Thank you, Your Honor.

THE COURT: I'm going to listen to both sides. That's about as clear as I can make it. Now, when people start thinking differently, I can't help it, what people think. It's none of my business. There are a lot of people that don't like me. I could care less. It's none of my business what they like or don't like. Okay?

I'm very confident in myself. I'm not trying to be arrogant. There's a huge difference. I'm here to do the right thing. That's all I can say about it. All right, sir?

Contrary to Husband's argument, the italicized comments, read in context, do not demonstrate that the judge had "absolutely reached a prejudged conclusion." Rather, after hearing the testimony of the visitation supervisor and in light of the upcoming visitation session, the court cautioned Husband about his behavior and that of his family. The judge also assured Husband that the court would hear Husband's perspective but that, based upon the previous testimony, there was a need for Husband to adjust his behavior at the upcoming visit. A trial court can properly admonish witnesses and counsel. *Cook*, 606 S.W.3d at 257. We find no reasonable basis here to conclude that the trial judge had prejudged the case without considering the evidence.

Husband also highlights the italicized statement during Husband's responses to his counsel's questions:

Q. Okay. I mean this is a nasty divorce. How can the Court be assured that you're going to be able to put aside your bad feelings and coparent with Ms. Piper?

A. Because my emotions do not lie with Ms. Piper anymore. They lie with my daughter. And I do my very best for her. And I will do everything I can, including getting along with Ms. Piper, for my daughter's sake.

Q. Now, you seem pretty emotional in some of these text messages, don't you, Mr. DiDomenico?

A. Yes, sir.

Q. Two years have gone by. You're ready to be a big boy and move on?

A. Yes, sir.

THE COURT: *Well, the proof is in the pudding.* You know, people have difficult times. *It depends on your level of maturity.* We all know that. There's no mystery there.

The italicized comments are general observations by the court about how people do or do not move on after a bitter divorce, not statements about Husband in particular.

Husband also points to the trial court's comments about lies and half-truths and about Husband's maturity, "taking responsibility," and "blaming others." The judge made these comments during Husband's direct testimony, immediately after the court took a recess out of frustration with what the court considered evasive answers. The relevant passage of the transcript is the following:

THE COURT: . . . And let me make a statement for the record. And I have to make this, obviously.

The sworn testimonies – and I believe people are telling the truth. I don't buy this stuff of half truths or white lies. A lie is a lie. Doesn't matter about the color. This is a courtroom. We're not in the U.S. Senate or something where you can say anything you want to about somebody and nobody care. I care.

Now, with that said, I just want to emphasize it so people understand it. And I'm serious about it. I have a hard time with the husband answering questions in a way that I can understand the proof and make it easier for himself. It's a very elementary thing. Please answer the question, and then explain.

I told him, in one of the explanations, to please do that if he would. And I meant this, the next thing I'm getting ready to say. I'm not finding that he's not credible yet. But if he keeps it up, I don't have any choice. I cannot make it clearer. Pause. Think about the shortest answer you can give. And then give it.

I know what he's saying. He doesn't want to say the word "rape." But guess what. It's in the proof already. I'm not saying you're guilty. I don't know. I don't have a clue. I haven't heard all the proof. I'm not the criminal court judge. But you're avoiding things that you should not be avoiding.

Are each one of those things alone enough for me to say your credibility is not good? No. Are each one of the admonitions I've tried to give you to give you the benefit of the doubt so that I won't have to find you're not credible. Those are important. Is the fact that you won't listen and

you continue to do what you want to do, is that something I should pay attention to? Yes.

I can overlook snide comments. That's all right. That's okay. That doesn't bother me. What bothers me is I want the full, complete truth, and people to take responsibility, particularly grown-ups. Now, people don't do this anymore. It's just incredible.

Take responsibility for your own conduct, instead of blaming everybody else. It's a matter of basic maturity. Everybody's got an excuse – an excuse they want to give the Judge for their own conduct. It's a basic, but it's been lost.

Okay. Sorry about all of that. Is there anything that I've said that you don't understand, sir?

THE WITNESS: No, Your Honor.

These statements are entirely consistent with the trial court's duty to assess credibility. *See Davis*, 38 S.W.3d at 565 (noting that judges must "necessarily assess the credibility of those who testify before them," and that "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").

Finally, Husband references instances where the trial court complimented Wife's witness or asked for more details to enable the court to make findings of fact. During the testimony of Dana Briggs, a former neighbor of the parties, Wife's attorney asked Ms. Briggs about Wife's interactions with Husband's child, Christian. Husband's attorney objected on the ground of relevance and, after the court stated it had already heard similar testimony, Wife's attorney withdrew the question. At that point, the judge made the following comment:

Okay. I believe in her testimony. I know Husband may disagree with that. But her testimony sounds, to me, so far, very reliable, that she has a genuine love and affection for a child who is not even hers. That's commendable.

As previously stated, part of a trial judge's job is to assess witness credibility. When read in context, the court's observation here does not call the judge's impartiality into question. The following example of the court asking a witness for clarification occurred during the cross-examination of Ms. Bryant:

THE COURT: Okay. In order to have a complete record, once again – and I'm not getting on you, ma'am. But this is what we have to do in trial. It's just like saying, "Well, my husband is mean, and I want a divorce." Well, what does that mean? When you say "negative comments," explain what those negative comments are. Give us examples so I can determine what's going on here. When someone says just "negative comments," it could be negative to you and not negative to someone else. So give me those examples

and do that throughout your testimony, if you would, so I can be clear. Thank you.

Assessing credibility and making findings of fact are part of the trial court's role, and Husband has not identified any prejudgment by the trial court. Such statements or questions by the trial court do not evidence any impropriety and lack of partiality on the part of the trial court.

Looking at the evidence in light of *Cook*, we conclude that the present case does not present the "unique circumstances" necessary to require the trial judge to recuse himself sua sponte. The trial judge did not "express[] disdain for the entire class of proceedings he was charged with conducting." *Id.* Furthermore, there is no evidence that the trial judge reached a decision about the case prior to hearing the evidence. Here, unlike in *Cook*, there is nothing to indicate that the trial judge prejudged the case, kept Husband from presenting his case, or otherwise denied Husband a fair trial. Moreover, Husband has not challenged the merits of the decision reached by the trial court.⁴

Husband has presented no evidence of bias "stemming from 'extrajudicial sources' or any bias that is sufficiently pervasive so as to deny [him] a fair trial." *Harvey v. City of Memphis*, No. W2025-01145-COA-T10B-CV, 2025 WL 2402063, at *6 (Tenn. Ct. App. Aug. 19, 2025) (quoting *McKenzie v. McKenzie*, No. 2014-00010-COA-T10B-CV, 2014 WL 575908, at *3 (Tenn. Ct. App. Feb. 11, 2014)). Thus, even assuming that Husband did not waive the recusal issue, we find no basis upon which "the judge's impartiality might reasonably be questioned." TENN. SUP. CT. R. 10, RJC 2.11(A).

⁴ In his reply brief, Husband also mentions, without citing, cases cited in the dissent of Judge John Everett Williams in the decision of the Court of Criminal Appeals in *Cook v. State*, No. W2018-00237-CCA-R3-PC, 2019 WL 2122798, at *14 (Tenn. Crim. App. May 14, 2019). We find these criminal cases readily distinguishable from the present case. See *Mitchell v. State*, No. W2016-01818-CCA-R3-PC, 2018 WL 3005379 at *6-7 (Tenn. Crim. App. June 14, 2018) (concluding that the post-conviction petitioner had been denied a full and fair hearing and ordering a new trial with a different judge where the trial judge terminated the post-conviction hearing without allowing all of petitioner's witnesses to testify and "pre-determined what the testimony of trial counsel would be"); *State v. Sanders*, No. W2014-00989-CCA-R3-CD, 2016 WL 327277, at *1, *17, *22 (Tenn. Crim. App. Jan. 27, 2016) (reversing the conviction on the ground that the trial court erred by "potentially allowing the jury to hear improper propensity evidence" and ordering retrial before a new judge, but denying the defendant's motion to recuse in the trial court as untimely); *State v. Jones*, No. M2002-00738-CCA-R9-CO, 2003 WL 1562088, at *5 (Tenn. Crim. App. Mar. 26, 2003) (recusing the trial judge from further proceedings based upon comments made by the judge to the effect that there was no need to argue because he considered the defendant a pervert who should not receive pre-trial diversion, in contravention of the legislature's determination in the relevant statutes).

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, James Andrew DiDomenico, for which execution may issue if necessary.

/s/ Andy D. Bennett

ANDY D. BENNETT, JUDGE