IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 5, 2023

CHRISTOPHER L. WIESMUELLER v. CORRINE OLIVER ET AL.

Appeal from the Circuit Court for Dickson County
Case No. 20CV35 Roy B. Morgan, Jr., Senior Judge

No. M2023-00651-COA-T10B-CV

This is an accelerated interlocutory appeal as of right pursuant to § 2.02 of Tennessee Supreme Court Rule 10B from the trial court's denial of a motion for recusal. Having reviewed the petition for recusal appeal, pursuant to the de novo standard as required under Rule 10B, § 2.01, we affirm the trial court's decision to deny the motion for recusal.

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 ARNOLD B. GOLDIN and KRISTI M. DAVIS, JJ., joined.

Christopher Lee Wiesmueller, White House, Tennessee, Pro Se.

Olin Baker, Charlotte, Tennessee, for the appellees, Corrinne Nichole Oliver, Charlene Oliver, and Cary Oliver.

OPINION

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. 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 § 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 §§ 2.05 and 2.06.

ANALYSIS

Christopher Lee Wiesmueller ("Petitioner") filed his Petition for Recusal Appeal on May 5, 2023, in which he seeks to overturn the decision by Senior Judge Roy B. Morgan, Jr., 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)).

The essence of Petitioner's motion for recusal was that Judge Morgan demonstrated bias against Petitioner by repeatedly ruling against him. However, as we explained in *Boren v. Hill Boren, PC*,

> "A trial judge's adverse rulings are not usually sufficient to establish bias." Even rulings that are "erroneous, numerous and continuous, do not, without more, justify disqualification." There is good reason for this proposition: "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."

557 S.W.3d 542, 550 (Tenn. Ct. App. 2017) (citations omitted).

Petitioner acknowledges that adverse rulings are seldom grounds for recusal; nevertheless, he relies on the limited exception to that general rule that, as stated in *Boren*, recusal is warranted when "the cumulative effect of the repeated misapplication of

fundamental, rudimentary legal principles that favor one party substantively and procedurally." *Id.*

Petitioner's motion for recusal reads in pertinent part:[1]

> Judge Morgan has undermined the integrity of the proceedings by permitting opposing counsel and the opposing party to make false statements of fact in this and a related matter, without any repercussions.
>
> Furthermore, Judge Morgan has caused a reasonable basis to question his impartiality, based on the foregoing issue of permitting the opposing party to make false representations without recourse, but also "the cumulative effect of the repeated misapplication of fundamental, rudimentary legal principles that favor one party substantively and procedurally."
>
> Likewise, Judge Morgan has made apparent on more than one occasion that he apparently does not have the entire case file with him in his offices in Jackson.

(Citations omitted) (quoting *Boren*, 557 S.W.3d at 551).

In an attached affidavit, Petitioner sets forth, *inter alia*, the following facts upon which Petitioner contends Judge Morgan should be recused:

> 2. Beginning September 1, 2022, Judge Morgan presided over post-judgement divorce proceedings between myself and Corrine Oliver. We were divorced in February 2019.
>
> 3. The current case involves claims of Promissory Estoppel, Intentional Infliction of Emotional Distress, Two Claims of Malicious Prosecution, and a Claim of Abuse of Process. The Defendants are my former father-in-law, former mother-in-law, and former wife.
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> . . . .
>
> 7. On January 4, 2023, I emailed Atty Hendrickson notices of deposition for the three defendants in this matter for depositions to be held on January 11, 2023 in their county, as permitted by Tennessee Civil Procedure R. 30.02(1)

[1] The motion for recusal at issue was Petitioner's second motion for recusal, which was filed 19 days after the filing of the order denying first motion.

8. Upon receiving the notices of deposition, Ms. Hendrickson stated a scheduling conflict, but refused to schedule other dates. (This email exchange is clearly articulated in my motion to disqualify Attorney Baker and his firm filed February 22.)

9. After Attorney Hendrickson affirmatively stated her clients would not attend and would not reschedule, only then did I cancel the depositions. I then filed a motion for discovery sanctions on January 10, 2023.

. . . .

13. Judge Morgan denied my motion for sanctions and frankly ignored that I had even asked for alternative relief to order them to sit for depositions.

. . . .

25. Regardless, Judge Morgan allowed Attorney Baker, counsel for the defendants to proceed on the Rule 12. Then took an oral Rule 12 motion to dismiss as to Claim #5. A *written motion* is required according to Tenn. Rule Civ Pro. R. 12.02.

26. Judge Morgan began hearing the motion, before asking if I had ever filed a response previously. I was then required to email my 2021 response. This is even more troubling because part of my 2021 response was to incorporate the summary judgement motions.

27. In ruling on the Rule 12 motion to dismiss motion, Judge Morgan did not state, nor did he apply the deferential standard for such a review and he did not make any factual inferences in Plaintiff's favor. Likewise, Judge Morgan held Plaintiff to higher pleading standard for malicious intent than required by Tenn. Civ. Pro. R. 9.

28. It is important to point out, that greater specificity in the complaint would have been possible, if Plaintiff had been able to depose the Defendants. Plaintiff did not want to lay out every piece of evidence, conversation, email, and communication in the complaint and is not required to.

. . . .

31. While this matter was pending, Judge Morgan also presided over post judgement proceedings in the Chancery Court Family matter. Unfortunately, Judge Morgan's handling of the March 17, 2023 post-judgment relief hearing in that matter also undermined the integrity of the proceedings before him.

32. Judge Morgan indicated that it was not an issue that Mother had falsely represented her income. At the December 7, 2022 trial Ms Oliver testified contradictory that her monthly income was $9154/mo and $118,000/yr (which is actually $9,833/mo). Ms. Oliver and her counsel did not correct it relative to a child support hearing had on December 29, 2022. In fact, Attorney Baker re-affirmed the monthly salary number as late as January 24, 2023 as $9,166/mo.

33. In reality, based on her W-2 provided February 15, 2022, Ms. Corrine Oliver made $122,605.98 in 2022, or $10,217.16/month, which is over $1,000 more per month than the amount that ended up the basis for child support. At the March 17 Chancery hearing, Judge Morgan was not alarmed by this deception, accepting Attorney Baker's speculative reasoning for the variance.

34. The December 7, 2022 trial involved Ms. Oliver's petition that my visitation be supervised. Ms. Oliver, in her motion filed July 2021 and in her testimony indicated it was her opinion that I was causing emotional harm to our children. Ms. Oliver has primary decision-making authority for medical decision making, including psychological treatment. During the nearly year and half her motion was pending, she did not get our children any mental health treatment. She only hired an expert psychologist, Dr. Jay Woodman, in August 2022. He was excluded as a witness in November 2022.

35. When I asked Ms. Oliver as a witness under oath at trial December 7, 2022 as to whether she had gotten our children any mental health treatment, she indicated, surprisingly that her *expert* psychologist was treating the children and she would continue to take them to see Dr. Woodman for treatment.

36. At the March 17, 2023 hearing, I had filed a motion to depose Dr. Woodman as to his role. The Court denied this because I had successfully excluded his expert testimony, apparently not understanding the truthfulness issue. Likewise, as a parent, I am entitled to any of my children's treatment records. Attorney Baker directly contradicted his client's aforementioned sworn testimony, emphatically stating treatment never happened. Again, Judge Morgan does not care if he is being lied to.

37. Furthermore, the full transcript of the December 7, 2022 hearing has not been prepared yet. In my post judgement motion, I cited a deposition transcript, and prior proceedings before Judge Acree, yet Judge Morgan said "Mr. Wiesmueller really cited extensively in his motion the transcript, itself,

evidencing the Court's consideration of matters." Therefore, I do not believe that Judge Morgan is truly reading my motions.

38. In addition, on 1/24/23 and 2/28/23 we heard both cases and at the end of the hearing, the Court went back to recap everything from both cases. This presented a problem for the court reporter as to separating the transcript, resulting in a joint hearing transcript.

39. When I attempted to raise this issue about making a "clean break" between proceedings in the midst of the March 17, 2023 hearing, Judge Morgan would not let me finish to explain the issue[.]

. . . .

Conclusion

40. Judge Morgan's bias is so pervasive, such as to ridicule a *pro se* party for not filing a draft order, but allowing a licensed attorney to proceed improperly on an oral Rule 12 motion to dismiss a claim. Likewise, opposing counsel can lie to the Court repeatedly and does not have to follow discovery rules. Judge Morgan doesn't let me explain or finish speaking. He jumps to conclusions about what he thinks I am saying and does not let me finish speaking. He also has failed to enforce basic rules of civil procedure and the Rule 12 dismissal standards.

(Citations omitted) (footnote omitted).

Pursuant to an order entered on April 18, 2023, the trial court denied the motion for recusal, stating in pertinent part:

5. Plaintiff has now filed this Second Motion for Recusal within approximately 19 days of the last Order Denying Recusal.

6. Plaintiff clearly disagrees with the Court's rulings, and his remedy is now appellate review, even on the Recusal issue if he so desires.

7. Plaintiff's Second Motion for Recusal merely states his claimed history of the case and his opinion as to what he feels should have been the Court's rulings. Any prior ruling would be subject to appellate review if Plaintiff files the proper and timely appeal.

8. As stated in the Order of March 24, 2023, "A Recusal Motion is not the appropriate means to challenge a trial court's ruling based on its interpretation of the facts and the law."

9. It appears that the only remaining matter pending to be heard in this docket #22CC-202-CV35 is the Defendant's Claim against Plaintiff for Abusive Civil Actions under T.C.A. 29-41-101, et. seq.

10. Plaintiff's Second Motion for Recusal is without merit and must be denied.

IT IS THEREFORE ORDERED that Plaintiff's Second Motion for Recusal filed on April 12, 2023, is hereby DENIED and as requested Plaintiff is granted a stay of proceedings pending only the filing of an interlocutory appeal and ruling.

(Citation omitted). This recusal appeal followed.

As we explained in *Boren*,

A motion to recuse should be granted when judges have any doubt about their ability to preside impartially in a case or when "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." The relevant portion of the Code of Judicial Conduct [RJC 2.11(A)] provides:

> 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.

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; however, "[n]ot every bias, partiality, or prejudice merits recusal." To merit disqualification 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.'"

> However, "[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." It is for this reason that "[a] trial judge's adverse rulings are not usually sufficient to establish bias." "Rulings of a trial judge, even if erroneous, numerous and continuous, do not, without more, justify disqualification."

Boren, 557 S.W.3d at 548–49 (citations omitted). We also explained the rationale for this proposition:

> [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.

Id. at 549 (quoting *Davis v. Liberty Mut. Ins. Co.*, 38 S.W.3d 560, 565 (Tenn. 2001)).

The foregoing notwithstanding, we acknowledge that in rare situations the cumulative effect of the "'repeated misapplication of fundamental, rudimentary legal principles that favor[] [one party] substantively and procedurally' can be the basis for recusal." *Id.* at 551 (quoting *Krohn v. Krohn*, No. M2015-01280-COA-R10B-CV, 2015 WL 5772549, at *7 (Tenn. Ct. App. Sept. 22, 2015)). However, Petitioner has failed to show that any rulings by Judge Morgan are erroneous or the result of misapplications of fundamental, rudimentary legal principles. Thus, in the context of a recusal motion, he cannot show that bias should be presumed from the cumulative effect of repeated misapplications of fundamental, rudimentary legal principles that favor his adverse parties. *See id.* Accordingly, Petitioner has failed to carry his burden of proof.

Having reviewed the adverse rulings and other facts upon which Petitioner bases his claim of bias, we find no basis upon which to conclude that a person of ordinary prudence in Judge Morgan's position, knowing all of the facts known to the judge, would find a reasonable basis for questioning his impartiality. *See Davis*, 38 S.W.3d at 564; Tenn. Sup. Ct. R. 10, RJC 2.11(A). Therefore, we affirm the denial of the motion for recusal.

IN CONCLUSION

The judgment of the trial court is affirmed. Costs of appeal are assessed against Petitioner Christopher Lee Wiesmueller, for which execution may issue.

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