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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2180566 and 2180567

Ex parte Mi.G. and Me.G.

PETITION FOR WRIT OF MANDAMUS

(In re: The matter of B.A.D., a minor child)

(Mobile Juvenile Court, JU-18-1077.01 and JU-18-1077.02)

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Ex parte B.J. and W.J.

PETITION FOR WRIT OF MANDAMUS

(In re: The matter of C.E.G., a minor child)

(Mobile Juvenile Court, JU-15-373.02, JU-15-373.03,
JU-15-374.02, and JU-15-374.03)

2180576, 2180577, and 2180578

Ex parte T.S.

PETITION FOR WRIT OF MANDAMUS

(In re: The matter of K.S.P., a minor child)

(Mobile Juvenile Court, JU-14-1181.02, JU-14-1181.03, and
JU-14-1181.04)

MOORE, Judge.

Mi.G. and Me.G., B.J. and W.J., and T.S. ("the petitioners") have filed separate petitions requesting that this court issue a writ of mandamus ordering Judge George A. Brown to recuse himself from hearing these cases that are pending before the Mobile Juvenile Court and ordering that the cases be reassigned to a judge from outside the Mobile Circuit. This court previously consolidated the petitions on the request of the petitioners, and, now, we deny the petitions.

The materials attached to the petitions indicate that, in January 2019, attorney Christine C. Hernandez filed a complaint with the Alabama Judicial Inquiry Commission against Judge Edmond G. Naman, a Mobile County juvenile-court judge. Hernandez appeared as an attorney of record in several cases

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pending before Judge Naman, including these cases. It is undisputed that Judge Naman entered separate orders transferring these cases to the docket of Judge Brown of the Mobile Juvenile Court.

On March 27, 2019, the petitioners, who are all parties represented by Hernandez, filed motions in all of these cases requesting that Judge Brown recuse himself. The petitioners argued that Judge Naman's "'transfer' [was] a de facto recusal, considering the Judicial Inquiry Commission investigation of Judge Naman initiated by [Hernandez]," and that "Alabama law does not allow a recusing judge to appoint his replacement." The petitioners further requested an order transferring the cases "to the Presiding Circuit Judge for appointment of a temporary judge who resides outside of [the Mobile] Circuit." On April 2, 2019, Judge Brown denied the motions to recuse. The petitioners subsequently filed these mandamus petitions.

"A writ of mandamus is an extraordinary remedy available only when the petitioner demonstrates: "(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.'" Ex parte Nall,

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879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001)). A petition for a writ of mandamus is the proper vehicle for seeking review of an interlocutory order. Ex parte A.M.P., 997 So. 2d 1008, 1014 (Ala. 2008). However, '[a] writ of mandamus will issue only in situations where other relief is unavailable or is inadequate, and it cannot be used as a substitute for appeal.' Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998) (citing Ex parte Drill Parts & Serv. Co., 590 So. 2d 252 (Ala. 1991))."

Ex parte T.J., 74 So. 3d 447, 450 (Ala. Civ. App. 2011).

In their petitions, the petitioners argue that Judge Brown has a duty to recuse himself because, they say, Judge Naman improperly assigned Judge Brown the cases and Judge Brown has a conflict of interest as a potential witness in the proceedings relating to the complaint against Judge Naman filed by Hernandez with the JIC. We reject those contentions.

In Ex parte Jim Walter Homes, Inc., 776 So. 2d 76 (Ala. 2000), our supreme court held that, upon recusing himself or herself from a case based on disqualification, a presiding judge of a circuit court has no authority to reassign the case to a successor judge. Rather, the supreme court held that, in such cases, the presiding judge should notify "the next senior judge" of his or her recusal and that judge "shall become the

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judge to whom the case is assigned" unless that judge is also disqualified. 776 So. 2d at 80.

"[T]he Mobile Juvenile Court is a division of the Mobile District Court in the 13th Judicial District." L.R.S. v. M.J., 229 So. 3d 772, 777 n.1 (Ala. Civ. App. 2016) (opinion on application for rehearing). The materials before this court indicate that Judge Naman and Judge Brown are the only two judges sitting in the Mobile Juvenile Court. In cases in which one of those judges recuses himself based on disqualification, the other judge is "the next senior judge" to whom the case will automatically be assigned in accordance with Ex parte Jim Walter Homes, Inc. Assuming, without deciding, that Judge Naman recused himself due to disqualification, Judge Naman lacked the authority to reassign the cases to any judge; however, upon notice of the recusal, Judge Brown automatically would become the judge to whom the cases would be assigned, unless he, too, was disqualified.

The petitioners argue generally that Judge Brown is disqualified from hearing the cases because he is a "potential witness" regarding the JIC complaint against Judge Naman. In Ingram v. Allred, 119 So. 3d 1176 (Ala. Civ. App. 2012), this

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court held that a judge was disqualified from presiding over a contempt proceeding to which he was a potential witness. In the present cases, however, Judge Brown denies that he will be a witness in the JIC proceedings, and the petitioners have offered no evidence indicating that he will be a witness. Furthermore, the petitioners have offered no citation to any legal authority stating that a judge is disqualified from presiding over a case as a result of only the fact that he or she might be a witness against another judge in a JIC proceeding initiated by the attorney of one of the parties. See, generally, Thomas v. State, 611 So. 2d 416, 419 (Ala. Crim. App. 1992) ("A judge is not disqualified from sitting in a proceeding where one of the parties has filed a complaint against the judge with the Judicial Inquiry Commission."). Accordingly, we conclude that the petitioners have failed to meet their heavy burden of demonstrating that they have a clear legal right to a writ requiring Judge Brown to recuse himself from hearing these cases.

Although we do not necessarily hold that Judge Naman recused himself from these cases, we conclude that, if he did, his orders purporting to transfer the cases to Judge Brown

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effectively followed the procedure set forth in Ex parte Jim
Walter Homes, Inc. Any error that Judge Naman might have
committed in recusing himself and then reassigning the cases
would be harmless error in light of the fact that the law
required that the cases to be reassigned to Judge Brown. A
writ of mandamus will not issue to correct an error that does
not harm the petitioner. See Rule 45, Ala. R. App. P.

2180566 and 2180567 -- PETITIONS DENIED.

2180568, 2180569, 2180570, and 2180571 -- PETITIONS
DENIED.

2180576, 2180577, and 2180578 -- PETITIONS DENIED.

Donaldson, Edwards, and Hanson, JJ., concur.

Thompson, P.J., recuses himself.