IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

YOKOHAMA TIRE CORPORATION; YOKOHAMA RUBBER COMPANY, LTD., *Petitioners,*

v.

THE HONORABLE MARIA ELENA CRUZ,
Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA,
in and for the County of YUMA, *Respondent Judge*,

ALFREDO TALAMANTES and ELIZABETH TALAMANTES, individually and as legal guardians of ADRIAN TALAMANTES, a minor, and MARIA DE LA LUZ MARTINEZ ORTIZ, the surviving wife of decedent, FILIMON ORTIZ, individually and as the statutory representative under A.R.S. § 12-612 and on behalf of MANUEL ORTIZ, JUAN JOSE ORTIZ, EFREN ORTIZ, SANDRA ORTIZ, BENITO ORTIZ, VERONICA ORTIZ, EZEQUIEL ORTIZ, LEONEL ORTIZ, ALONSO ORTIZ, and MARTIN ORTIZ, the surviving children of FILIMON ORTIZ, *Real Parties in Interest*.

No. 1 CA-SA13-0320
FILED 12-10-2013

Petition for Special Action from the Superior Court in Yuma County
No. S1400CV0200901305
The Honorable Maria Elena Cruz, Judge

JURISDICTION ACCEPTED, RELIEF DENIED

COUNSEL

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DECISION ORDER

Judge Randall M. Howe, presiding, delivered the decision of the Court, in which Judge Samuel A. Thumma and Chief Judge Diane M. Johnsen joined.

H O W E, Presiding Judge:

¶1 Petitioners are defendants in a products liability action filed by Real Parties in Interest. In three previous special action proceedings, this Court has granted Petitioners partial relief from the trial court's discovery and sanctions orders. On September 7, 2013, Petitioners filed in the trial court an Affidavit and Motion for Change of Judge for Cause under Arizona Rule of Civil Procedure 42(f)(2), claiming that the discovery and sanctions orders showed that the trial judge was biased or prejudiced against Petitioners and that they therefore could not obtain a fair and impartial trial. Pursuant to Rule 42(f)(2)(D), the presiding judge assigned the matter to the Respondent Judge.

¶2 Real Parties in Interest opposed the motion, and the Respondent Judge heard oral argument on the matter and denied the motion. The Respondent Judge noted that judges are presumed impartial and that "[t]he bias and prejudice necessary for disqualification generally must arise from an extra-judicial source and not from what the judge has done in his participation in the case." The Respondent Judge found that Petitioners had "alleged no facts from which the court can find by a preponderance of the evidence that [the judge] was biased, except that the judge has on several occasions ruled against [Petitioners]. No actual fact of bias, hostility, or ill will ha[s] been demonstrated." Petitioners have filed a petition for special action seeking relief from this ruling.

¶3 Although Petitioners claim that special action jurisdiction is appropriate here,[1] the Arizona Supreme Court has indicated in dicta that parties aggrieved by the denial of motion for change of judge under Rule 42(f)(2) may raise that issue on appeal. *See Taliaferro v. Taliaferro*, 186 Ariz. 221, 223, 921 P.2d 21, 23 (1996) (holding that special action jurisdiction is appropriate for motions under Rule 42(f)(1) because, "unlike a proceeding based on cause under Rule 42(f)(2)," a party could not show prejudice on appeal from a denial of a Rule 42(f)(1) motion, and appeals of peremptory motions for change of judge "short of true challenges for cause," are "too late in the day"); *see also Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562, 568 ¶ 20, 307 P.3d 989, 995 (App. 2013) (considering on appeal motion to strike trial judge for judicial bias); *cf. State v .Ellison*, 213 Ariz. 116, 128 ¶ 37, 140 P.3d 899, 911 (2006) (considering on appeal whether defendant showed cause for change of judge for bias under Arizona Rule of Criminal Procedure 10.1). Nevertheless, because the jurisdictional issue is not yet settled, the order denying the motion is interlocutory, and the parties will benefit from an immediate resolution of the issue, this Court will exercise its discretion to accept jurisdiction. *See* Ariz. R. Spec. Act. 1; *see also* Ariz. R. Spec. Act. 3, Note ("acceptance of jurisdiction of special action is highly discretionary").

¶4 Rulings on motions for change of judge based on bias are reviewed for an abuse of discretion. *Stagecoach Trails MHC*, 232 Ariz. at 568 ¶ 21, 307 P.3d at 995. An abuse of discretion is "an exercise of discretion which is manifestly unreasonable, exercised on untenable grounds or for untenable reasons." *State v. Wassenaar*, 215 Ariz. 565, 570 ¶ 11, 161 P.3d 608, 613 (App. 2007) (quoting *State v. Woody*, 173 Ariz. 561, 563, 845 P.2d 487, 489 (App. 1992)). In determining whether the trial court abused its discretion, this Court "must determine not whether [it] might have so acted under the circumstances, but whether the lower court exceeded the bounds of reason by performing the challenged act." *Toy v. Katz*, 192 Ariz. 73, 83, 961 P.2d 1021, 1031 (App. 1997). Committing an

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[1] The authorities Petitioners cite for the proposition that special action jurisdiction is appropriate concern peremptory motions for change of judge as a matter of right under Arizona Rule of Civil Procedure 42(f)(1), and not motions for change of judge for cause under Rule 42(f)(2). *See, e.g., Anderson v. Contes*, 212 Ariz. 122, 123 ¶ 1, 128 P.3d 239, 240 (App. 2006) (accepting special action jurisdiction over denial of notice of change of judge under Rule 42(f)(1)(E)); *Switzer v. Hutt*, 176 Ariz. 285, 286, 860 P.2d 1338, 1339 (App. 1993) (accepting special action jurisdiction over denial of notice of change of judge under Rule 42(f)(1)).

error of law in reaching a discretionary decision, however, constitutes an abuse of discretion. *State ex rel. Montgomery v. Superior Court (Koontz)*, 233 Ariz. 8, 11 ¶ 6, 308 P.3d 1159, 1162 (App. 2013).

¶5 The Respondent Judge did not abuse her discretion in denying the motion for change of judge. Judges are presumed free of bias and prejudice, and "[j]udicial rulings alone do not support a finding of bias or partiality without a showing of an extrajudicial source of bias or deep-seated favoritism." *Stagecoach Trails*, 232 Ariz. at 568 ¶ 21, 307 P.3d at 995; *see also Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"). Mere "speculation, suspicion, apprehension, or imagination" do not warrant a change of judge. *Costa v. Mackey*, 227 Ariz. 565, 571 ¶ 12, 261 P.3d 449, 455 (App. 2011) (quoting *Ellison*, 213 Ariz. at 128 ¶ 37, 140 P.3d at 911). The only purported evidence of bias that Petitioners cite in their motion for change of judge—and the only evidence that they cite in their petition before this Court—is the trial judge's discovery rulings and sanctions order. The Respondent Judge correctly noted that bias and prejudice for disqualification "generally" must arise from an extrajudicial source and not "from what the judge has done in his participation in the case." The Respondent Judge thus found Petitioner's proof of bias lacking, and nothing in the record before this Court shows that this conclusion was an abuse of discretion.

¶6 Petitioners nevertheless argue that the Respondent Judge misstated the law by finding that adverse rulings may never be sufficient to prove judicial bias. Petitioners note that the United States Supreme Court stated in *Liteky* that a judge's opinions that "display a deep-seated favoritism or antagonism that would make fair judgment impossible" may form the basis of a disqualification motion for bias. 510 U.S. at 556. But "[t]rial judges are presumed to know the law and apply it correctly in making their decisions." *In re William L.*, 211 Ariz. 236, 238 ¶ 7, 119 P.3d 1039, 1041 (App. 2005). Nothing shows that the Respondent Judge was unaware of *Liteky*. The Respondent Judge did not state in her order that adverse rulings could *never* be sufficient to prove judicial bias. In fact, the order's statement that judicial bias "generally" arises from an extrajudicial source and not from the judge's actions in participating in a case indicates that the Respondent Judge was aware that exceptions to the general rule exist. Because the Respondent Judge is presumed to know and correctly apply the law, this Court infers that the Respondent Judge's failure to mention any exception to the general rule means that she did not find that the judge's rulings demonstrated any "deep-seated favoritism or

antagonism that would make fair judgment impossible." This Court does not find that this implicit determination was an abuse of discretion.

¶7 For these reasons, this Court accepts jurisdiction, but denies relief. Because we deny relief, we deny the request for interlocutory stay of proceedings as moot.

Ruth A. Willingham · Clerk of the Court
FILED: mjt