

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE APPEAL OF DUNLAP V.)
STATE FARM FIRE AND) No. 504, 2007
CASUALTY COMPANY)
DISQUALIFICATION OF) Court Below: Superior Court
COUNSEL) of the State of Delaware in
) and for New Castle County
) C.A. No. 03C-12-168

Submitted: April 16, 2008

Decided: May 6, 2008

Before STEELE, Chief Justice, HOLLAND and RIDGELY, Justices.

ORDER

This 6th day May 2008, it appears to the Court that:

(1) Appellant Daniel V. Folt appeals a Superior Court judge's *sua sponte* ruling disqualifying him as defense trial counsel in a case arising from a motor vehicle accident in 1998 that left Anne Dunlap seriously injured. Folt acted as lead trial counsel for State Farm Fire and Casualty Company, the Dunlaps' automobile insurer. At the end of an August 3, 2007 opinion ruling on several pending motions, the trial judge *sua sponte* disqualified Folt. State Farm and Folt requested reargument of the disqualification order. The trial judge denied the request in a September 7, 2007 opinion. Pursuant to Supreme Court Rule 42 and the independent standing conferred upon counsel in *In re Infotechnology*,¹ Folt timely

¹ 582 A.2d 215, 217-218 (Del. 1990).

applied for an interlocutory appeal. The case settled, in the interim, however, mooted this appeal. Given the seriousness of the issue to Delaware lawyers and the lack of any other means of review, however, we will look to the public interest exception to mootness and act on Folt's appeal.²

(2) We review "matters affecting governance of the Bar" *de novo*.³ Although a court has "the inherent power to supervise the professional conduct of attorneys appearing before it . . . disqualification motions are generally disfavored."⁴ A motion to disqualify must contain clear and convincing evidence establishing a violation of the Delaware Rules of Professional Conduct so extreme that it calls into question the fairness or the efficiency of the administration of justice.⁵ "Vague and unsupported allegations are not sufficient to meet this [disqualification] standard."⁶

(3) This case, however, perplexes us as: (1) no motion was made to disqualify Folt; (2) Folt had no notice that the trial judge had disqualification under consideration; and, (3) it is impossible to review the decision under any standard

² *McDermott Inc. v. Lewis*, 531 A.2d 206, 211-12 (1987).

³ *Infotechnology*, 582 A.2d at 218.

⁴ *Unanue v. Unanue*, 2004 WL 602096, at *2 (Del. Ch. Mar. 25, 2004).

⁵ *In re Waters*, 647 A.2d 1091, 1095-96 (Del. 1994); *Infotechnology*, 582 A.2d at 221.

⁶ *Unanue*, 2004 WL 602096, at *2 (citing *Elonex I.P. Holdings, Ltd. v. Apple Computer, Inc.*, 142 F. Supp. 2d 579, 581 (D. Del. 2001)).

of review because the trial judge specified no factual basis for his decision to disqualify Folt. In his August 3, 2007 opinion and his decision denying reargument on September 7, 2007, the trial judge provided no specific instances of misconduct upon which he disqualified Folt. The trial judge based his decision more generally on strong language, loss of professional detachment in vigorous advocacy, hostility, and the expression of intense personal feelings. He declined to specify, writing that “[t]o repeat that language here is to compound the wrong.” On reconsideration, he did not elaborate on the particulars.

(4) We fully understand the trial judge’s reluctance to elaborate and provide more details in the public record that may serve to exacerbate an unfortunate situation. The trial judge no doubt viewed his reticence to be beneficial to Folt and the profession generally. Nevertheless, disqualifying Folt without preserving the reasons for review led to an inadequate record that allows unfair speculation about the egregiousness of any conduct. Trial judges must expound on the reasons for their decision to disqualify counsel and provide a basis for review either in a written opinion or on the record in a bench ruling, no matter how distasteful the circumstances. In this case, we are compelled to conclude the trial judge’s reluctance to specify the factual basis for misconduct that led to Folt’s disqualification constituted legal error.

NOW, THEREFORE, we remand and instruct the Superior Court to enter an order vacating Folt's disqualification.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice