

RENDERED: FEBRUARY 19, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-000550-MR

DENNIS BELL

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE ROBERT J. HINES, JUDGE  
ACTION NO. 08-CI-00276

DEBBIE WARNER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND MOORE, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

MOORE, JUDGE: Dennis Bell appeals the McCracken Circuit Court's order granting judgment on the pleadings to the Appellee. After a careful review of the record, we affirm because the circuit court had proper jurisdiction.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 11(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

In March of 2008, Bell contracted to purchase a mobile home from Jack Zeilenga. Bell breached the contract by failing to pay \$10,000 of the purchase price. In a notarized document, Zeilenga assigned his rights and interests in the underlying contract (between Zeilenga and Bell) to Debbie Warner in consideration of \$10,000. Unable to collect the \$10,000 balance on the contract, Warner filed a complaint against Bell for breach of contract.

McCracken Circuit Court Judge Craig Clymer recused *sua sponte*. The case was then transferred to Circuit Court Judge Robert J. Hines, and the case was set for bench trial.

On October 15, 2008, Bell filed a motion to disqualify Judge Hines calling Judge Hines “argumentative” and his conduct “outrageous.” The Chief Justice of the Kentucky Supreme Court denied the motion to disqualify, ordering that the motion was “insufficient to demonstrate any disqualifying circumstance which would require the appointment of a special judge.”

Upon denial of the motion to disqualify, the bench trial proceeded before Judge Hines. At that time, Bell filed a motion to dismiss asserting that Warner lacked standing to assert the claim. Judge Hines denied this motion. Due to deficiencies in discovery, the bench trial was rescheduled.

The day before trial, Bell filed a second motion to disqualify Judge Hines, which was substantively identical to the first motion to disqualify. At trial,

the court denied the motion and issued a finding that the second motion to disqualify did not contain any new facts “demonstrating prejudice and warranting disqualification.” The trial court also found that the second motion did not comply with local rules as it was not noticed for a hearing.

The court entered a judgment on pleadings because Bell was in default for failing to file an answer to the amended complaint, failing to comply with the order to file a brief, and for failure to answer requests for admissions. Bell now appeals.

## II. STANDARD OF REVIEW

The question of jurisdiction is one of law, meaning that the standard of review to be applied is *de novo*. *Appalachian Regional Healthcare, Inc. v. Coleman*, 239 S.W.3d 49 (Ky. 2007). *See also Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803 (Ky. 2004).

## III. ANALYSIS

Bell’s first ground for reversal is that the trial court lacked jurisdiction because Warner was not a real party in interest. There is abundant authority for the proposition that an assignee of contract rights is the real party of interest. *See e.g., Maxwell v. Moorman*, 522 S.W.2d 441 (Ky. 1975); *Louisville & N.R. Co. v. Mack Mfg. Corp.*, 269 S.W.2d 707 (Ky. 1954). A real party in interest is one having actual substantial interest in the subject matter of action. *Harris v. Jackson*, 192 S.W.3d 297 (Ky. 2006); *Combs v. Richards*, 63 S.W.3d 193 (Ky. App. 2001); *Cannon v. Metry*, 208 S.W.2d 520 (Ky. 1948).

In this case, Zeilenga assigned his rights in interest to the underlying contract to Warner for consideration of \$10,000. A notarized document evidencing this agreement between Zeilenga and Warner is included in the record. As an assignee, Warner was a real party in interest and therefore, had proper standing to bring this action.

Bell's second argument is that the case should have been stayed pending resolution of his second motion to disqualify the trial judge to which he attached his affidavit. The second motion is substantively identical to the first motion which was denied by the Chief Justice for being insufficient to demonstrate any disqualifying circumstance under Kentucky Revised Statutes 26A.020(1) and 26A.015(2)(a) and (2)(d). "A party's mere belief that a judge will not afford a fair and impartial trial is not sufficient grounds to require recusal." *Webb v. Commonwealth*, 904 S.W.2d 226, 229 (Ky. 1995) (internal citations omitted). The affidavit must contain facts which necessarily show prejudice or bias. *See generally Foster v. Commonwealth*, 348 S.W.2d 759, 760 (Ky. 1961). Bell did not present any facts to create even a remote appearance of bias. Additionally, the second motion to disqualify did not comply with local rules as it was not noticed for a hearing. Thus, the trial judge's refusal to recuse himself was not error.

#### **IV. CONCLUSION**

Accordingly, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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