

AMOS CORMIER, III

*

NO. 2016-CA-0355

VERSUS

*

COURT OF APPEAL

LEOLA G. COX CORMIER

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

* * * * *

APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 55-219, DIVISION "B"
Honorable Frank Foil, Judge Ad Hoc

* * * * *

Judge Roland L. Belsome

* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome,
Judge Rosemary Ledet)

Felix J. Sternfels
Amos J. Cormier, III
4858 Highway 1
P. O. Box 760
Napoleonville, LA 70390

COUNSEL FOR PLAINTIFF/APPELLANT

Marc D. Winsberg
Robin P. Arnold
Jonathan D. Gamble
WINSBERG & ARNOLD, LLC
650 Poydras Street, Suite 2050
New Orleans, LA 70130

COUNSEL FOR DEFENDANT/APPELLEE

DISMISSED IN PART; AFFIRMED IN PART

DECEMBER 21, 2016

This appeal is taken from the trial court's granting of attorney's fees and court costs associated with the filing of a motion to recuse based on it being frivolous and without merit. For the reasons that follow we affirm.

Procedural History

For the purpose of this appeal the proceedings in the trial court pertain to the custody of R. C., the son of Amos Cormier and Leola Meiners.¹ The pertinent time frame that relates to the procedural history relevant to this appeal begins with the filing of a motion to recuse Judge Joy Lobrano of the Twenty-Fifth Judicial District Court filed by Mrs. Meiners in January of 2009. Judge Kevin Connor of the Twenty-Fifth Judicial District Court recused himself from hearing that motion to recuse. As a result, on March 3, 2009, the Louisiana Supreme Court in accordance with Article V, Section 5(A), Constitution of 1974, assigned James Canella as judge ad hoc to hear the motion to recuse Judge Lobrano. That motion was heard and granted by Judge Canella.²

Subsequent to that ruling, on September 29, 2009, the Louisiana Supreme Court appointed Judge Frank Foil to preside over the proceedings in this matter.

¹ Mrs. Meiners was formerly Leola Cox Cormier.

² The hearing occurred on June 18, 2009, and judgment was rendered on July 20, 2009.

From September of 2009 until June of 2014, Judge Foil heard motions, conducted a two-day trial and rendered several orders and judgments. Nonetheless, on June 9, 2014, Mr. Cormier filed a pleading captioned as a Motion for Declaratory Judgment. In the motion, Mr. Cormier sought to have the Louisiana Supreme Court's appointment of Judge Foil deemed a violation of Louisiana Supreme Court, General Administrative Rules, Part G, §5.³ Mr. Cormier also requested a stay pending resolution of the motion and directed the clerk of court to forward the pleadings to Judge Canella for a hearing date. Judge Foil set a hearing date and denied the request for a stay.

On the day that the motion was to be heard, Mr. Cormier filed a motion to recuse Judge Foil. The stated reason for recusal was that the judge had an interest in the proceedings because he was being paid for overseeing the case. In support of that argument he cited to the United States Supreme Court case of *Caperton v. A.T. Massey Coal Co. Inc.*⁴

In response to that motion, the Louisiana Supreme Court assigned Judge Canella to hold a recusal hearing. Judge Canella heard the matter on January 12, 2015. During the hearing, Mr. Cormier argued what he had asserted in his Motion for Declaratory Judgment: that the Louisiana Supreme Court violated its own rule when it appointed Judge Foil, and thus Judge Foil never had authority to act in the proceedings because Judge Canella was the only authorized jurist pursuant to Louisiana Supreme Court, General Administrative Rules, Part G, §5. At the close of arguments, Judge Canella found that Mr. Cormier failed to prove grounds for recusal; and the motion to recuse was denied.

³ Part G, §5 regulates the appointment of pro tempore and ad hoc judges.

⁴ 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009).

Following that ruling, Judge Foil moved forward with the hearing on Mr. Cormier's Motion for Declaratory Judgment. Ultimately the Motion for Declaratory Judgment, challenging the Louisiana Supreme Court's appointment of Judge Foil to oversee the proceedings, was denied. Mr. Cormier took two separate writ applications to the Louisiana Supreme Court pertaining to that ruling, both of which were denied.

On July 22, 2015, Mrs. Meiners filed a Motion for Sanctions, Attorney's Fees, and Court Costs asserting that Mr. Cormier's Motion to Recuse was meritless and filed only to harass her and to delay the proceedings. Mr. Cormier opposed the Motion for Sanctions, Attorney's Fees and Court Costs asserting that the *Caperton* case provided meritorious grounds on which to file the Motion to Recuse. After hearing arguments from both sides, the trial court found grounds under which to grant Mrs. Meiners' attorney's fees and court costs associated with the motion to recuse. More specifically, the trial court held that the Motion to Recuse was frivolous, improperly filed, and delayed the proceedings. In so finding, Mrs. Meiners was awarded a total of \$10,856.50.⁵ This appeal followed.

Assignments of Error

On appeal Mr. Cormier challenges the trial court's judgment denying his Motion for Declaratory Judgment relating to Louisiana Supreme Court, General Administrative Rules, Part G, §5, as well as, the trial court's judgment awarding attorney's fees and costs to Mrs. Meiners.⁶

⁵ The breakdown of the award was \$10,691.50 in attorney's fees and \$165.00 in court costs.

⁶ Mr. Cormier also claims that the judgment submitted to the court by Mrs. Meiners' counsel after the August 11, 2015 hearing did not comport with the transcript. However, the trial court did not sign the proposed judgment, but rather authored its own judgment.

Discussion

Mr. Cormier's Motion for Declaratory Judgment sought to have the Louisiana Supreme Court's appointment of Judge Foil invalidated based on the Court's rule regarding the appointments of ad hoc judges. That rule is Louisiana Supreme Court, General Administrative Rules, Part G, §5(i) which states in pertinent part:

In any case in which a city, municipal, traffic, parish, juvenile, or family court judge is recused, or in any case in which a written motion to recuse is filed the judge shall forward the appropriate pleadings to this Court, requesting that a sitting or retired judge, or an approved attorney, be appointed or assigned to hear the matter. If the reason for the motion to recuse, or the judge's actual recusal, is not clear from the pleadings, the judge shall also convey the reasons for the motion or the recusal. The recusal pleadings and the request for appointment/assignment shall be received in the Supreme Court at least seven judicial days prior to the date upon which the case or motion is to be heard.

The Supreme Court shall assign a sitting or retired judge to try all motions to recuse. In addition, the Supreme Court may appoint or assign a sitting or retired judge or a qualified attorney, from the list of approved attorneys compiled in accordance with Subsection (b) above, to preside over any case in which a city, municipal, traffic, parish, juvenile or family court judge recuses himself or herself.

Whenever a city, municipal, traffic, parish, juvenile or family court judge is recused after a trial of the motion to recuse, ***the sitting or retired judge previously assigned to try the motion to recuse shall continue to act as judge ad hoc for the trial of the case.***⁷

Judge Canella was appointed to hear the motion to recuse Judge Lobrano, which was granted. Thereafter, the Louisiana Supreme Court appointed Judge Foil. After approximately five years passed, Mr. Cormier asserted that the Louisiana Supreme Court's violation of its own rule required that Judge Foil's appointment be revoked. Based on, Article V, §5(A) of the Louisiana Constitution, the Supreme Court "may assign a sitting or retired judge to any

⁷ Louisiana Supreme Court, General Administrative Rules, Part G, §5 (i) (emphasis added).

court.” The Louisiana Constitution also gives the Supreme Court supervisory jurisdiction over all state courts. This Court has recognized that “[t]he Louisiana Supreme Court, as ‘the final arbiter of the meaning of the state constitution and laws,’ has the duty to interpret and apply the constitution and the laws of this State.”⁸ As an intermediate appellate court, we operate as an inferior court subject to the general jurisdiction of the Louisiana Supreme Court.⁹ Accordingly, we have no supervisory authority over the Louisiana Supreme Court to grant the relief sought.

Even though Mrs. Meiners did not raise an exception of lack of subject matter jurisdiction, it is not an exception that can be waived. It may be noticed by an appellate court on its own motion. Likewise, the trial court had no subject matter jurisdiction over the issue raised within the Motion for Declaratory Judgment and therefore any judgment rendered on that issue is void.

Next, Mrs. Meiners’ Motion for Sanctions, Attorney’s Fees and Court Costs was based on the assertion that the Motion to Recuse was filed to harass and delay the proceedings in violation of La. C.C.P. art. 863.¹⁰ More specifically, Mrs.

⁸ *Bureau of Governmental Research v. HCR 143 Committee*, 14-0387, p. 3 (La.App. 4 Cir. 10/8/14), 151 So.3d 809, 811 (citing *State v. Peart*, 621 So.2d 780, 790 (La. 1993)).

⁹ *Id.*, 14-0387, p. 4, 151 So.3d at 811-12.

¹⁰ La. C.C.P. art. 863 provides in pertinent part:

B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

* * *

D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the

Meiners contended that the Motion to Recuse was filed in contravention of La. C.C.P. arts. 151 and 154 and was therefore frivolous. Article 151 provides the grounds upon which recusal is warranted, while article 154 addresses the procedural aspect of recusation of a judge.

Mr. Cormier relies on the United State Supreme Court case of *Caperton* to defend his filing of the Motion to Recuse.¹¹ He claims that Judge Foil's recusal was required as a matter of due process because of his financial interest in the matter.

In *Caperton*, the president and chief executive officer of A.T. Massey Coal Co., Inc., contributed \$3 million to the successful election campaign of Brent Benjamin for a seat on West Virginia's Supreme Court of Appeals. After the election, Massey appealed a \$50 million judgment awarded against the company and its affiliates. On three separate occasions, Justice Benjamin refused to recuse himself from the case. The appeals court ultimately reversed the \$50 million judgment.

In a 5-4 decision, the United States Supreme Court held that Justice Benjamin should have recused himself as a matter of due process. The *Caperton* opinion found that due process "require[s] recusal when 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally

amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

E. A sanction authorized in Paragraph D shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction.

¹¹ *Supra*.

tolerable.”¹² The Court further stated that “a direct, personal, substantial, pecuniary interest” in the outcome of the case may cause a judge to be bias.

Mr. Cormier cited the *Caperton* case in the Motion to Recuse and further cited La. C.C.P. art. 151 A(4), claiming that the court was “interested in the cause.” The suggestion seems to be that, like in *Caperton*, Judge Foil had a pecuniary interest in the outcome of his Motion for Declaratory Judgment in the instant case.¹³ He maintains that because Judge Foil is paid to oversee the proceedings, Judge Foil should not have been the judge to rule on a motion challenging his appointment. Thus, the filing of a Motion to Recuse was justified.

However, at the hearing for the Motion to Recuse, Mr. Cormier abandoned the *Caperton* argument and focused solely on the claim that the Louisiana Supreme Court violated its own rule and therefore Judge Foil’s appointment was in error. Consequently, Judge Foil was not authorized to preside over the case, which was the same argument set forth in the Motion for Declaratory Judgment. Judge Canella found that Mr. Cormier failed to prove grounds under which Judge Foil should be recused. Subsequently, Mrs. Meiners filed for, and was granted, attorney’s fees and costs.

A trial court may assess attorney’s fees and costs against a party pursuant to La. C.C.P. art. 863, if it determines that a pleading was filed frivolously.¹⁴ A trial court's grant of attorney’s fees and costs pursuant to article 863 is reviewed on

¹² 556 U.S. at 872, 129 S.Ct. at 2259 (quoting *Turner v. Ohio*, 273 U.S. 510, 523, 47S.Ct. 437, 71 L.Ed 749 (1927)).

¹³ The issue was not briefed in connection with the Motion to Recuse.

¹⁴ *David v. David*, 14-999, p. 6-7 (La.App. 3 Cir. 2/4/15), 157 So.3d 1164, 1169.

appeal under the manifest error or clearly wrong standard, while the amount which is awarded is reviewed for an abuse of discretion.¹⁵

When determining if a motion to recuse was filed frivolously, courts consider the factual support for the allegations asserted. The grounds for recusal of a judge are exclusive and do not include a “substantial appearance of the possibility of bias” or even a “mere appearance of impropriety” as causes for removing a judge from presiding over a given action.¹⁶ Mr. Cormier alleged that the judge was biased or prejudiced under La. C.C.P. art. 151 A(4). Specifically, that Judge Foil was “interested in the cause.” Yet, no factual basis for that argument was presented to the trial court in brief or at the hearing on the Motion to Recuse. We find that Mr. Cormier’s focus on the Supreme Court rule did not encompass a valid factual ground for recusal as set forth by article 151. Additionally, article 154 requires that a party file its motion to recuse immediately upon discovery of facts constituting the grounds for recusation. In this case, all alleged grounds for recusal were known for years.

During the hearing on the Motion for Sanctions, Attorney’s Fees and Court Costs, Mrs. Meiners’ attorney filed and introduced into evidence the billing and cost records associated with opposing the Motion to Recuse and bringing the Motion for Sanctions, Attorney’s Fees and Court Costs. Mr. Cormier objected to those documents, but failed to state grounds for that objection. The trial court accepted the documents and the dollar amounts contained within and awarded \$10,691.50 in attorney’s fees and \$165.00 in costs.

¹⁵ *Id.*

¹⁶ *Slaughter v. Board of Sup’rs of Southern University and Agr. and Mechanical College*, 10-1114, p.8 (La.App. 1 Cir. 8/2/11), 76 So.3d 465, 47.

Based on the record, this Court cannot find that the trial court's determinations that the motion was frivolous, delayed the case even further, and was improperly filed were manifestly erroneous. Further, we find no abuse of discretion in the amount of attorney's fees and costs awarded to Mrs. Meiners.

For the reasons discussed, we find that neither the trial court nor this Court has subject matter jurisdiction over the issue raised in the Motion for Declaratory Judgment. Accordingly, issues presented on appeal relating to the denial of the declaratory judgment are dismissed for lack of subject matter jurisdiction. In addition, we affirm the trial court's judgment awarding attorney's fees and costs to Mrs. Meiners.

DISMISSED IN PART; AFFIRMED IN PART