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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Ex parte Boone Newspapers, Inc., et al.

PETITION FOR WRIT OF MANDAMUS

(In re: Faya Rose Toure

v.

Boone Newspapers, Inc., et al.)

(Dallas Circuit Court, CV-19-900127)

PARKER, Chief Justice.

Boone Newspapers, Inc., the Selma Times-Journal, Blake Deshazo, and Will Whaley (collectively termed "the Newspaper defendants") seek

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mandamus review of an order denying their motion requesting that Judge Collins Pettaway, Jr., recuse himself from their case. Because the Newspaper defendants' petition is deficient under Rule 21(a)(1), Ala. R. App. P., we deny the petition.

I. Facts

Faya Rose Toure sued the Newspaper defendants, alleging that they defamed her by falsely "indicat[ing] that [Toure] was illegally removing [C]onfederate flags from a public cemetery" and by "falsely report[ing] ... that [Toure] illegally removed a [political] campaign sign from private property." Toure requested compensatory damages and \$1 million in punitive damages. The Newspaper defendants filed a summary-judgment motion, which Judge Pettaway denied; he later denied their motion for reconsideration, without a hearing. The Newspaper defendants filed a motion for recusal. The Newspaper defendants' entire argument for recusal consisted of the following paragraph:

"It is undisputed that the Hon. Collins Pettaway, Jr.[.] has a close and longstanding personal relationship with [Toure] and her husband, Hank Sanders, stemming from, among other things, their long professional relationship as law partners and the Sanders[es]' political support over the years. As a

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consequence, Hon. Collins Pettaway, Jr., though unquestionably honest and honorable, cannot be objective in cases in which the Sanders[es] are involved, much less when they are parties, particularly where, as here, [Toure] improperly makes emotional appeals to racial prejudice. Otherwise, he would have granted the [Newspaper defendants'] Motion for Summary Judgment and not summarily denied their Motion for Reconsideration. Under these circumstances, recusal is required by Alabama law and due process. [Canon 3.C(1),] Alabama Canons of Judicial Ethics [(recusal required where judge's impartiality 'might reasonably be questioned'). Caperton v. Massey Coal Co., [556 U.S. 868] (2009) (due process)."

Judge Pettaway denied that motion the next day, again without a hearing.

The Newspaper defendants seek a writ of mandamus ordering Judge Pettaway to recuse himself.

II. Standard of Review

A writ of mandamus will be issued only when (1) the petitioner has a clear legal right to it, (2) a respondent has refused to perform a duty, (3) there is no other adequate remedy, and (4) the petitioned court has jurisdiction. Ex parte Birmingham Airport Auth., 274 So. 3d 964, 966 (Ala. 2018). A judge's denial of a motion for recusal is reviewable by a mandamus petition. Ex parte Crawford, 686 So. 2d 196 (Ala. 1996).

III. Analysis

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The Newspaper defendants contend that they have a right to Judge Pettaway's recusal because "his impartiality might reasonably be questioned," Canon 3.C(1), Ala. Canons of Jud. Ethics. The Newspaper defendants present three arguments regarding his alleged questionable impartiality.

First, the Newspaper defendants state that Judge Pettaway served as counsel for Toure and her husband, Hank Sanders, in Sanders v. Smitherman, 776 So. 2d 68 (Ala. 2000). However, the Newspaper defendants did not raise this issue in their motion for recusal. See Ex parte Montgomery Cnty. Dep't of Hum. Res., 294 So. 3d 811, 818 n.4 (Ala. Civ. App. 2019) (noting that petitioner may not raise in mandamus petition new questions that he did not raise in motion for recusal). Further, beyond mentioning this issue in their statement of facts, the Newspaper defendants do not develop this issue in their petition. They do not include it in their statement of reasons why the writ of mandamus should issue, and they do not cite any case for the proposition that a judge must recuse himself if he represented a party two decades earlier. Thus, even construing the Newspaper defendants' brief mention of this issue as

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an argument, it fails under Rule 21(a)(1)(E), Ala. R. App. P., which requires a mandamus petition to contain "[a] statement of the reasons why the writ should issue, with citations to the authorities and statutes relied on." (Emphasis added.) "[F]ailure to cite authority supporting an argument [in a mandamus petition] 'provides this Court with an ample basis for refusing to consider th[e] argument[] ...' " Ex parte Price, 47 So. 3d 1221, 1225 (Ala. 2010) (quoting Ex parte Showers, 812 So. 2d 277, 281 (Ala. 2001)).

Next, the Newspaper defendants argue that Judge Pettaway cannot reasonably be impartial in a case in which one of the parties is his former law partner. However, the Newspaper defendants do not cite any authority for the proposition that a judge must recuse himself in a case in which a former law partner is a party. Instead, they merely assert that, in this situation, the absence of impartiality "is true in most any case." Bald assertions without legal authority do not warrant mandamus relief. See Rule 21(a)(1)(E); Price, 47 So. 3d at 1225.

Finally, the Newspaper defendants argue that Judge Pettaway must recuse himself under Canon 3.C(1)(c), which requires a judge to recuse

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himself in cases in which "[h]e knows that he ... has ... [an] interest that could be substantially affected by the outcome of the proceeding." The Newspaper defendants contend that Toure and Sanders have been longtime political supporters of Judge Pettaway and that, if he rules against Toure, the ruling might impact his reelection campaign. However, the Newspaper defendants do not point us to any evidence of these facts in the appendices to the mandamus petition. Instead, they rely on bare assertions in their petition, which cannot establish the facts. See Ex parte Family Dollar Stores of Alabama, Inc., 906 So. 2d 892, 902 (Ala. 2005) (noting in mandamus case that "'mere allegations and conclusory statements do not constitute sufficient evidence to establish facts'" (quoting Ex parte Gilliam, 720 So. 2d 902, 906 (Ala. 1998))).

IV. Conclusion

For these reasons, the Newspaper defendants fail to demonstrate that they have a clear legal right to Judge Pettaway's recusal. Accordingly, we deny the Newspaper defendants' petition.

PETITION DENIED.

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Bolin, Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ.,
concur.

Sellers, J., dissents.

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SELLERS, Justice (dissenting).

I respectfully dissent from the denial of the petition for a writ of mandamus directing the trial-court judge, Collins Pettaway, Jr., to recuse himself from the underlying action commenced by Faya Rose Toure, also known as Rose Sanders ("Sanders"). Sanders, an attorney and well-known civil-rights activist, sued Boone Newspapers, Inc., the Selma-Times Journal, Blake Deshazo, and Will Whaley (collectively termed "the Newspaper defendants"), alleging that the Newspaper defendants had published defamatory statements about her in various articles. The Newspaper defendants filed a properly supported motion for a summary judgment. Judge Pettaway denied that motion and a subsequently filed motion for reconsideration. The Newspaper defendants then moved for Judge Pettaway to recuse himself based on Canon 3.C(1) of the Alabama Canons of Judicial Ethics. In their motion to recuse, the Newspaper defendants contended:

"It is undisputed that [Judge Pettaway] has a close and longstanding personal relationship with [Sanders] and her husband, Hank Sanders, stemming from, among other things, their long professional relationship as law partners and the [Sanderses'] political support over the years. As a consequence,

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[Judge Pettaway], though unquestionably honest and honorable, cannot be objective in cases in which the [Sanderses] are involved, much less when they are parties, particularly where, as here, [Sanders] improperly makes emotional appeals to racial prejudice. Otherwise, [Judge Pettaway] would have granted the [Newspaper defendants'] Motion for Summary Judgment and not summarily denied their Motion for Reconsideration. Under these circumstances, recusal is required by Alabama law and due process."

Judge Pettaway denied the motion to recuse without a hearing or otherwise providing any specific reasons for his nonrecusal. The Newspaper defendants contend that they have a clear legal right to the recusal of Judge Pettaway from the underlying action under Canon 3.C(1), which provides, in pertinent part: "A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ..." (Emphasis added.) The standard for recusal is an objective one, and the proper inquiry is whether a reasonable person, based on the totality of facts known to the judge, would perceive potential bias or a lack of impartiality on the part of the judge. Ex parte Monsanto Co., 862 So. 2d 595 (Ala. 2003). As indicated, the Newspaper defendants contended in their motion to recuse that Sanders has a "close and longstanding personal relationship" with Judge

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Pettaway because Judge Pettaway was a former law partner of Sanders and her husband. The Newspaper defendants point out that Judge Pettaway in fact served as counsel of record for the Sanderses in a defamation action that the Sanderses commenced against the Mayor of Selma and a member of the Dallas County School Board. See Sanders v. Smitherman, 776 So. 2d 68 (Ala. 2000). The Newspaper defendants also contended that Sanders has been a longtime political supporter of Judge Pettaway. Given these facts, a reasonable person could perceive a lack of impartiality on the part of Judge Pettaway. Accordingly, I would grant the Newspaper defendants' petition and direct Judge Pettaway to recuse himself in the underlying action, especially under the circumstances in this case, in which Judge Pettaway neither held a hearing on the motion to recuse nor provided specific reasons for his nonrecusal.