

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DAVID JOHN SEIWERT,

Appellant,

v.

Case No. 5D19-2809

MELINA SEIWERT,

Appellee.

_____ /

Opinion filed June 19, 2020

Appeal from the Circuit Court
for Brevard County,
Charles J. Roberts, Judge.

David J. Seiwert, Indialantic, pro se.

No Appearance for Appellee.

PER CURIAM.

In this post-dissolution case, David Seiwert appeals the denial of his motion to recuse a magistrate. We affirm.

Following the dissolution of their marriage, the parties have continued to litigate multiple issues, most of which were referred to various magistrates. Following one of those disputes, the magistrate entered a report and recommendation (“R&R”), recommending that the trial court deny Seiwert’s motion to recuse because the motion was legally insufficient.¹ Seiwert filed exceptions to the R&R. However, the trial court

¹ We treat Seiwert’s motion to recuse as a motion for disqualification.

incorrectly found that no exceptions had been filed and, thus, approved and adopted the magistrate's recommendation.

When a party files exceptions to a magistrate's R&R, the trial court must hear the motion. E.g., Simmons v. Simmons, 16 So. 3d 878, 878 (Fla. 5th DCA 2009). "The purpose of such a hearing is for the trial court to review the record so as to 'ascertain whether the magistrate's finding is supported by competent evidence.'" Collado v. Pavlow, 951 So. 2d 69, 70 (Fla. 5th DCA 2007) (quoting Anderson v. Anderson, 736 So. 2d 49, 51 (Fla. 5th DCA 1999)). Here, the magistrate's R&R was based on a point of law—the legal sufficiency of the motion—rather than its factual findings. Accordingly, despite the trial court's error in failing to hold a hearing on Seiwert's timely-filed exceptions, we are nevertheless able to review the merits of Seiwert's claim.

Having reviewed Seiwert's motion, we agree with the magistrate that it was legally insufficient; Seiwert merely challenged the rulings made by the magistrate and suggested that those rulings manifested a bias against him. That theory would allow a party to remove the magistrate or judge every time a ruling was entered against him. It is well established that "[a]dverse or unfavorable legal rulings, without more, are not legally sufficient grounds for disqualification." Pilkington v. Pilkington, 182 So. 3d 776, 779 (Fla. 5th DCA 2015) (citations omitted). Accordingly, although the trial court erred in failing to hold a hearing, we nevertheless affirm the trial court's denial of Seiwert's motion because it was meritless as a matter of law.

AFFIRMED.

COHEN, EDWARDS and GROSSHANS, JJ., concur.