

Third District Court of Appeal

State of Florida

Opinion filed September 18, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1493
Lower Tribunal No. 18-28387

Omer Becker,
Petitioner,

vs.

Dana Lee Becker,
Respondent.

A Case of Original Jurisdiction—Prohibition.

Law Offices of Robin Bresky, and Jeremy Dicker and Robin Bresky (Boca Raton), for petitioner.

Nancy A. Hass, P.A., and Nancy A. Hass (Fort Lauderdale), for respondent.

Before SALTER, SCALES and LINDSEY, JJ.

PER CURIAM.

Omer Becker (the “husband”) petitions this Court to prohibit the trial judge from further presiding over this dissolution of marriage action. We grant the petition because the husband’s verified disqualification motion was legally sufficient.

I. RELEVANT FACTS AND PROCEDURAL BACKGROUND¹

On December 4, 2018, the husband filed a petition for dissolution of marriage from Dana Lee Becker (the “wife”) in the lower court. Immediately following a June 17, 2019 hearing on various motions, the husband learned that the wife’s counsel had, several years prior, represented the trial judge in the trial judge’s contested divorce case.

The following day, June 18, 2019, the husband filed a verified motion for disqualification of the trial judge. In his motion, the husband asserted that the previous attorney-client relationship (between the wife’s counsel and the trial judge) had not been disclosed by either the trial judge or the wife’s counsel. The husband asserted that, as a result of the nondisclosure, (i) the husband was concerned that the trial judge may have a bias in favor of the wife’s counsel, and (ii) the husband had a reasonable fear that the husband would not receive a fair trial.

¹ The facts are taken from the husband’s June 18, 2019 verified motion for disqualification. “In determining whether the allegations are sufficient, the facts must be taken as true and must be viewed from the movant’s perspective.” Baez v. Koelemij, 960 So. 2d 918, 919 (Fla. 4th DCA 2007).

On July 3, 2019, the trial court summarily denied the husband's disqualification motion as legally insufficient. The husband now seeks a writ from this Court prohibiting the trial judge from continuing to preside over this case. We have jurisdiction.²

II. ANALYSIS

Canon 3E of Florida's Code of Judicial Conduct provides, in relevant part, as follows:

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
 - (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer;

Fla. Code Jud. Conduct, Canon 3E(1)(a). The commentary to Canon 3E(1) explains that, under this rule, "[a] judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

Fla. Code Jud. Conduct, Canon 3E(1) Cmt.; see also Valdes-Fauli v. Valdes-Fauli, 903 So. 2d 214, 217 (Fla. 3d DCA 2005) ("The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's

² Gieseke v. Grossman, 418 So. 2d 1055, 1056 (Fla. 4th DCA 1982) (concluding that the district court has original jurisdiction, pursuant to Florida Rule of Appellate Procedure 9.030(b)(3), to review an order denying the petitioner's verified motion for disqualification of the trial judge and to issue a writ of prohibition).

impartiality rather than the court's own perception of its ability to act fairly and impartially.”).

In a contested marital dissolution action, the trial judge should, at the first practicable instance, disclose the fact that one of the parties' attorneys personally represented the trial judge in the trial judge's own marital dissolution proceeding. Even if the attorney-client relationship ended years before,³ and even if the trial judge genuinely believes no bias exists, reasonable people might consider such prior representation relevant to the issue of the trial judge's impartiality.

In this case, we conclude that the husband's alleged fears of bias and of not receiving a fair trial were objectively reasonable given the trial judge's prior attorney-client relationship with the wife's attorney in a divorce proceeding and the trial judge's failure to disclose the relationship to the former husband. See Ballard v. Campbell, 127 So. 3d 693, 695 (Fla. 4th DCA 2013) (“The general rule is that disqualification is required if counsel for one of the parties is representing or has recently represented the judge.”); City of Fort Lauderdale v. Palazzo Las Olas Grp., LLC, 882 So. 2d 1102, 1103 (Fla. 4th DCA 2004) (same); Marcotte v. Gloeckner, 679 So. 2d 1225, 1226 (Fla. 5th DCA 1996) (concluding that the prior representation

³ In this case, while disputed by the parties, it appears that the wife's attorney's representation of the trial judge ended approximately three years prior to the husband's filing of his petition for dissolution of marriage.

of the trial judge by a subrogated insurer's law firm required disqualification of the judge even though the judge might not have been "biased as a matter of fact"). The husband's verified disqualification motion was legally sufficient and, therefore, should have been granted.⁴

III. CONCLUSION

To be clear, we are not suggesting that the impartiality of the trial judge in this marital dissolution action was compromised by the trial judge's former attorney-client relationship with the wife's attorney in the trial judge's own divorce proceeding. Nor are we articulating *any* blanket rule requiring that a trial judge recuse or disqualify himself or herself in all instances where one of the parties is represented by an attorney who previously represented the trial judge in a legal matter. It is, however, incumbent upon the trial court to disclose a prior attorney-client relationship with an attorney. The trial judge's failure to disclose the prior attorney-client relationship with the wife's attorney created, in this case, objectively reasonable fears of bias and that the husband would not receive a fair and impartial proceeding.

⁴ "Allegations in a motion to recuse or disqualify a trial judge are reviewed under a *de novo* standard as to whether the motion is legally sufficient as a matter of law." Valdes-Fauli, 903 So. 2d at 216. Such motion is legally sufficient "when the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." Id. The trial court must grant a legally sufficient motion and proceed no further. Clarendon Nat'l Ins. Co. v. Shogreen, 990 So. 2d 1231, 1233 (Fla. 3d DCA 2008).

We grant the petition, but, confident that the trial judge will disqualify herself from the proceedings, withhold issuance of the writ.

Petition granted. Writ withheld.