

RENDERED: AUGUST 29, 2008; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2006-CA-001068-MR

DONALD VIOLETT

APPELLANT

APPEAL FROM WARREN CIRCUIT COURT  
v. HONORABLE CATHERINE RICE HOLDERFIELD, JUDGE  
ACTION NO. 94-CI-00215

TERESA VIOLETT (NOW SEXTON), H. DEAN  
JAGGERS, MARGARET LONDON

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON AND DIXON, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

CLAYTON, JUDGE: Donald Violettt appeals from an order of the Warren Circuit Court that imposed sanctions against him for filing frivolous pleadings and

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<sup>1</sup>Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

attempting to relitigate claims barred by *res judicata*. These sanctions were in the nature of a setoff of money owed to him from a divorce. For the reasons stated below, we affirm.

Violett and Sexton married in 1988. Violett was incarcerated in 1993. Following his incarceration, he filed a replevin action in 1994 against Sexton for return of various plumbing tools and personal effects that he claimed were non-marital property. Sexton counterclaimed for divorce. Violett represented himself throughout this matter and in all subsequent actions. On November, 14, 1995, the Domestic Relations Commissioner entered the Commissioner's Trial Report. No exceptions to this were filed, and this report was approved by the court in the findings of fact, conclusions of law and decree of dissolution of marriage that was entered May 7, 1996. After determining the property that was non-marital, which included Violett's tools and personal effects, Sexton was ordered to convey this property to Violett. When determining the equitable division of the marital property, the court found that Sexton owed Violett \$1,500. Violett filed wage garnishment forms to attempt to collect this amount. In 1998, the trial judge stated that Sexton had complied with all court orders and owed no further obligation to Violett. The judge, in an order, also stated that Violett was not to file any further pleadings concerning matters that had already been adjudicated, and that, if further

pleadings were filed, Violetta could be subject to sanctions under Kentucky Rules of Civil Procedure (CR)11. This was affirmed on appeal.

Beginning in 2004, Violetta filed a number of motions attempting to relitigate the property and divorce issues. On July 18, 2005, the trial court entered an order in which it noted that the court had previously ruled that Sexton had complied with all court orders and that she had no further obligation to Violetta, and that Violetta had been restrained from filing further pleadings related to issues previously tried. The judge overruled all those motions “**WITH THE EXCEPTION** of the portion of Petitioner’s Petition to Clarify Rulings and Motion to Clarify Rulings . . . and Set for Final Adjudication . . . which states that . . . Sexton has not complied with an order of this Court to pay . . . Violetta a sum of funds and return the items of property as ordered.” (Emphasis original). The court then set the matter for a hearing on August 30, 2005. The court found that Sexton had not paid any amount to Violetta toward the \$1,500. The judge issued an order stating that Sexton was to make a diligent effort to determine if she had any of Violetta’s non-marital property. The judge also ordered that Violetta was to pay Sexton’s attorney’s fees for everything that she had to defend against after the divorce. However, because Sexton had never paid Violetta the \$1,500 equitable share of marital property, her attorney’s fees were setoff by this amount, and the judge found that neither party owed money to the other. Violetta appeals from this order.

In his appeal, Violetta claims that Judge Holderfield abused her discretion by “vacating” the May 6, 1996, judgment in violation of Kentucky Revised Statutes (KRS) 26A.015(2)(a)(e). He also argues that the judge considered his criminal conviction in making her decision. Violetta further alleges that the order to pay Sexton’s attorney’s fees was improper. We cannot agree.

KRS 26A.015(2)(a)(e) deals with the disqualification of a judge, and states, in pertinent parts, that a judge shall disqualify herself where she has “a personal bias or prejudice concerning a party” or where she has “knowledge of any other circumstances in which [her] impartiality might reasonably be questioned.” “The burden of proof required to demonstrate that recusal of a trial judge is mandated is an onerous one. It must be shown that the trial judge is prejudiced to a degree that she cannot be impartial.” *Brand v. Commonwealth of Kentucky*, 939 S.W.2d 358-59 (Ky. App. 1997). “A party’s mere belief that the judge will not afford a fair and impartial trial is not sufficient. The asserted belief must be predicated upon stated facts showing bias or prejudice[.]” *Howerton v. Price*, 449 S.W.2d 746, 748 (Ky. 1970). Nothing in the record indicates the judge was biased or prejudiced in any way. Appellant’s status as an inmate was not raised during the hearing or in any motion. We hold that there is no basis for disqualification.

Violetta misunderstands the order from which he appeals. The order did not vacate the judgment – it setoff the \$1,500 that Sexton owed to Violetta by the amount of attorney’s fees that Violetta owed Sexton in accordance with

Sexton's motion for attorney's fees as a CR 11 sanction for filing frivolous pleadings.

When reviewing CR 11 sanctions, an Appellate Court will apply a clearly erroneous standard to the court's findings in support of sanctions, a *de novo* review of the legal conclusion that a violation occurred, and an abuse of discretion standard on the type and amount of sanctions imposed. *Clark Equipment Co., Inc. v. Bowman*, 762 S.W.2d 417, 421 (Ky. App. 1988). Violettt had notice that sanctions could potentially be imposed for filing further actions attempting to relitigate the property and divorce matters in the 1998 order, yet beginning in 2004 he filed a number of pleadings that purported to do just that. The attorney's fees awarded by the judge were reasonable and supported by an affidavit by Sexton's attorney that detailed the amount that she had been billed to defend in the post-divorce actions. In light of these facts, we hold that the sanctions imposed were proper.

For the foregoing reasons, the order of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Donald Violettt, Pro Se  
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