RENDERED: DECEMBER 4, 2015; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000888-MR

EDWARD H. FLINT — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 14-CI-000178

COACH HOUSE, INC. — APPELLEE

OPINION AND ORDER

* * * * * *

BEFORE: COMBS, MAZE, AND VANMETER, JUDGES.

MAZE, JUDGE: Appellant Mr. Flint, proceeding *pro se*, filed this appeal from a June 3, 2015, order of the Jefferson Circuit Court denying his motion to recuse the trial judge, Hon. Mitch Perry. The trial court did not designate its order as final and appealable, and the trial court retained jurisdiction over the merits of Mr. Flint's claims against the Appellee, Coach House, Inc. Coach House now moves to dismiss the appeal for failure to appeal from a final and appealable order.

We agree that the motion to dismiss must be granted. Contrary to Mr. Flint's assertions, the issue presented does not concern his right to appeal from the

trial court's orders or the merits of that matter, only whether his appeal is properly presented to this Court at this time. Generally, the jurisdiction of the Court of Appeals is restricted to final judgments. *See* Kentucky Rules of Civil Procedure (CR) 54.01. The trial court's order denying his motion to recuse disposed of only a single procedural issue and specifically reserved all other matters for further adjudication. Consequently, Mr. Flint's appeal is taken from a clearly interlocutory order.

Furthermore, the trial court did not include the recitations set out in CR 54.02(1) which are necessary to allow appellate review. Even if the recitations had been included, the order could not be made final because it did not conclusively determine the rights of the parties in regard to that particular phase of the proceeding. *Francis v. Crounse Corp.*, 98 S.W.3d 62, 65 (Ky. App. 2002), citing *Hale v. Deaton*, 528 S.W.2d 719 (Ky. 1975). Finally, we find no basis in the judicial disqualification statute, Kentucky Revised Statutes (KRS) 26A.015, or otherwise, which would permit the taking of an immediate appeal from an interlocutory order denying a motion to recuse. Indeed, Mr. Flint has an adequate right to appeal from this ruling following an adverse judgment. *Foster v. Overstreet*, 905 S.W.2d 504, 505-06 (Ky. 1995). Thus, this Court lacks subject-matter jurisdiction and we have no other recourse than to grant the motion to dismiss Mr. Flint's appeal.

Before proceeding further, this Court must briefly address the question of bias. While the issue has not been raised in this appeal, Mr. Flint has

filed motions in other cases seeking to recuse all but three members of this Court. KRS 26A.015(2) requires recusal when a judge has "personal bias or prejudice concerning a party ..." or "has knowledge of any other circumstances in which his impartiality might reasonably be questioned." KRS 26A.015(2)(a) and (e); *see also* Rules of the Supreme Court (SCR) 4.300, Canon 3B. The burden of proof required for recusal of a judge is an onerous one. *Stopher v. Commonwealth*, 57 S.W.3d 787, 794 (Ky. 2001). There must be a showing of facts "of a character calculated seriously to impair the judge's impartiality and sway his judgment." *Id.*, citing *Foster v. Commonwealth*, 348 S.W.2d 759, 760 (Ky. 1961).

"The mere belief that the judge will not afford a fair and impartial trial is not sufficient grounds for recusal." *Stopher,* 57 S.W.3d at 794–95, citing *Webb v. Commonwealth*, 904 S.W.2d 226 (Ky. 1995). Furthermore, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. *Alred v. Commonwealth, Judicial Conduct Comm'n*, 395 S.W.3d 417, 433-34 (Ky. 2012), citing *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994). Mr. Flint has not identified any factual basis which would require recusal of any member of this panel, nor are the members of this panel aware of any facts which would affect their ability to render an impartial decision in the matter remaining before this Court. Therefore, we find no basis to require recusal in this present case.

We now turn our attention to Coach House's motion for sanctions against Mr. Flint for filing a frivolous appeal. CR 73.02(4) provides:

> If an appellate court determines that an appeal or motion is frivolous, it may award just damages and single or double costs to the appellee or respondent. An appeal or motion is frivolous if the court finds that it is so totally lacking in merit that it appears to have been taken in bad faith.

While *pro se* litigants are sometimes held to less stringent standards than lawyers in drafting formal pleadings, Kentucky courts still require them to follow the Kentucky Rules of Civil Procedure. *Watkins v. Fannin*, 278 S.W.3d 637, 643 (Ky. App. 2009). Nevertheless, we will not impose the added penalty of sanctions under CR 73.02(4) simply because a *pro se* litigant (or an attorney) has erred due to a simple misunderstanding of the law or the court rules. Rather, the Court must find that Mr. Flint's "appeal is so totally lacking in merit that it appears to have been taken in bad faith." *Lake Vill. Water Ass'n, Inc. v. Sorrell*, 815 S.W.2d 418, 421 (Ky. App. 1991).

Although proceeding *pro se*, Mr. Flint has prosecuted numerous lawsuits and appeals in the state and federal courts. As noted by Judge Charles R. Simpson, III, in an opinion involving another of Mr. Flint's cases, "[t]o say that Flint is an experienced litigator despite his *pro se* status would be an understatement." *Flint v. McDonald*, 3:12-CV-613, 2013 WL 211077, Slip op. at 3 (W.D. Ky. 2013). Since 2009, Mr. Flint has filed twenty-six appeals to this Court. Of those matters, this Court has dismissed seven of those appeals for failure to

appeal from a final and appealable order. All of those dismissals were based upon appeals from interlocutory orders denying motions to recuse a trial judge. *Flint v. Express Scripts*, No. 2014-CA-001806-MR (Order Dismissing 3/11/2015); *Flint v. Coach House*, *Inc.,* No. 2014-CA-001829-MR (Order Dismissing 3/11/2015); *Flint v. Marx*, No. 2014-CA-001642-MR (Order Dismissing 2/10/2015); *Flint v. Coach House*, *Inc.,* No. 2014-CA-001762-MR (Order Dismissing 12/23/2014); *Flint v. Hewlett-Packard Company*, No. 2014-CA-001724-MR (Order Dismissing 2/13/2015); *Flint v. Marx*, 2010-CA-002198-MR (Order Dismissing 3/15/2011); and *Flint v. Coach House, Inc.*, No. 2010-CA-000649-MR(Order Dismissing 7/07/2010). There are also pending motions for sanctions against Mr. Flint involving a number of his other pending appeals.

We are constrained to consider only the propriety of sanctions in the case before us. However, those prior dismissals are relevant as to whether Mr. Flint knew or should have known of the requirement of a final order before filing this appeal. Mr. Flint's actions demonstrate a persistent unwillingness to abide by or even to familiarize himself with the Rules of Civil Procedure governing appeals. He has repeatedly attempted to appeal from interlocutory orders denying his motions to recuse a trial judge. In so doing, Mr. Flint delayed further proceedings in circuit court, requiring the opposing party and this Court to expend resources to deal with his frivolous appeals. In addition, this Court previously cautioned Mr. Flint about the possibility of sanctions for filing frivolous appeals.

> While Mr. Flint apparently has an immeasurable pool of time and resources, the Kentucky Court of Justice does not. It is my hope that the members of the Court of Justice, at both the trial and appellate levels, will take reasonable steps in the future to ensure that an inordinate amount of these extremely limited resources [is] not exhausted on a single unappeasable plaintiff.

Flint v. Jackson, No. 2014-CA-000426-MR, 2014 WL 7206835, at *6 (Dec. 19, 2014), Maze, J., concurring.

Based upon all of these circumstances, we conclude that Mr. Flint's appeal is so totally lacking in merit that it appears to have been taken in bad faith. CR 73.02(4) permits this Court to impose either single or double costs as a sanction for this conduct. At this point, we conclude that the imposition of single costs is the most appropriate penalty. However, we will consider double costs if Mr. Flint persists in this course of conduct.

The Court, having considered the motion to dismiss and the response thereto, and having been otherwise sufficiently advised, ORDERS that the motion be GRANTED and that this appeal be DISMISSED for failure to appeal from a final and appealable order.

Having further considered the Appellee's motion for sanctions and the response thereto, the Court ORDERS that the motion be GRANTED. The Appellee shall have ten days to file with this Court an itemized statement of costs and fees expended in defending this appeal with supporting affidavits. Within ten days of that filing, the Appellant may file a response with this Court showing service on the other party and the circuit court judge. This appeal shall remain on

this Court's active docket for entry of sanctions in accord with CR 73.02(4), whereupon a final order of dismissal will be entered at that time.

ALL CONCUR.

ENTERED: December 4, 2015

/s/ Irv Maze
JUDGE, COURT OF APPEALS

COUNSEL FOR APPELLANT:

Edward Flint, *pro se*
Louisville, Kentucky

COUNSEL FOR APPELLEE:

Robert Thomas Watson
Christopher Gadansky
Louisville, Kentucky