NOT DESIGNATED FOR PUBLICATION

SUZANNE DE BOISBLANC WIFE OF THOMAS N. TYLER	*	**NO. 2016-CA-0016**
	*	
VERSUS		**COURT OF APPEAL**
	*	
THOMAS N. TYLER		**FOURTH CIRCUIT**
	*	
		STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2011-12037, DIVISION "J"
Honorable Paula A. Brown, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Chief Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome)

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JUDGMENT AFFIRMED

JULY 13, 2016

The underlying matter involves the trial court's grant of a motion for sanctions against the appellant, Attorney Louis R. Koerner. Appellees herein, Thomas N. Tyler and Herman, Herman & Katz, LLC, intervenor and Tyler's former counsel, brought the motion. The sanctions arose out of a motion Koerner filed on behalf of his client, Suzanne de Boisblanc, to recuse the trial judge who presided over the divorce action between de Boisblanc and Tyler. Koerner appeals the "judgment of November 6, 2015 granting sanctions and from all prior interlocutory orders and judgments referenced in support of the motion to recuse, from the denial of the motion to recuse, and from the denial of the motion for new trial." For the reasons that follow, we affirm the judgment.

FACTS/PROCEDURAL HISTORY

Suzanne de Boisblanc filed a petition for divorce against Tyler on November 14, 2011. On or around December 2014, Koerner joined de Boisblanc's existing team of attorneys.[1] At the time, the dispute between de Boisblanc and Tyler

[1] Brett A. Bonin and Donald F. de Boisblanc, Sr. represented Suzanne de Boisblanc at the time of Koerner's enrollment as counsel.

included compliance with discovery demands, support issues, and the identification, evaluation, and alienation of the parties' community assets, including Tyler's alleged ownership interest in certain businesses located in Jamaica. Ultimately, a special master was appointed to facilitate the exchange of financial discovery records between the parties.

On or around September 22, 2015, on behalf of de Boisblanc, Koerner filed a "Motion to Recuse Pursuant to La. C.C.P. art. 151(4)[2] and For a Stay of All Proceedings During the Pendency of This Motion."[3] The motion was filed shortly after the special master and the trial judge, Judge Nakisha Ervin-Knott, did not allow de Boisblanc to compel additional discovery from Tyler outside the deadlines fixed in the court's Scheduling & Pre-trial Order.

The recusal motion alleged in part that Judge Ervin-Knott showed favoritism towards Tyler's counsel and committed egregious legal errors. In support of the favoritism claim, it suggested that Judge Ervin-Knott demonstrated bias when the court granted a protective order that relieved Tyler from his alleged duty to update and produce certain business and tax records; revoked an order that had previously granted de Boisblanc's request for 35 additional interrogatories; and allowed Tyler's counsel to interrupt de Boisblanc's counsel at a hearing. In support of the egregious legal errors claim, the motion principally relied on two writ dispositions

[2] La. C.C.P. art. 151(A)(4) provides for recusal of a judge when it is shown the judge "[I]s biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings."
[3] Koerner was the only attorney who signed off on the motion to recuse. The other attorneys had apparently withdrawn as de Boisblanc's counsel.

in which de Boisblanc had sought supervisory review of adverse trial court decisions.

The first writ decision arose from the trial court's judgment of April 15, 2015 and related orders from April 14, 2015. The April 15, 2015 judgment denied de Boisblanc's supplemental petition to garnish the trust account of Booth & Booth, Tyler's counsel, and to compel the firm's responses to garnishment interrogatories. The April 14, 2015 orders rescheduled a hearing on de Boisblanc's motion to tax costs and set child and interim child support; and also denied de Boisblanc's motion that sought the production of documents and the deposition of defendant's accountant.

Upon review, this Court granted in part and denied in part the writ application.[4] In granting the writ in part, it found the trial court prematurely denied the garnishment petition and remanded the matter for the trial court to conduct an evidentiary hearing as to whether de Boisblanc was a judgment debtor and whether the garnishee was in possession of any property subject to seizure.[5] Although the writ decision did not order garnishment or order the issuance of a writ of seizure, the recusal motion suggested that Judge Ervin-Knott's subsequent failure to sign such orders conflicted with the writ disposition and might be construed as constructive contempt as defined in La. C.C.P. art. 224(9).[6]

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[4] *Suzanne de Boisblanc v. Thomas N. Tyler*, 2015-0479 (La. App. 4 Cir. 6/17/15).
[5] This Court denied that portion of the writ seeking review of the April 14, 2015 orders.
[6] La. C.C.P. art. 224(9) defines constructive contempt in part as: "Willful disobedience by an inferior court judge, or other officer thereof, of the lawful judgment, order, mandate, writ, or process of an appellate court…"

The second writ decision which allegedly demonstrated Judge Ervin-Knott's bias stemmed from judgments of July 10, 2015 and July 22, 2015. The July 10, 2015 judgment denied de Boisblanc's "Request For Emergency Stay Due To Plaintiff's Inability To Continue Litigation Without Court's Enforcement Of Its Judgment From June 10, 2014 And Motion For Contempt For Mr. Tyler's Failure And Refusal To Satisfy Contempt And Advance Judgment Rendered June 10, 2014" without a hearing. The judgment of July 22, 2015 denied de Boisblanc's "Emergency Motion That Jamaican Residence Be Allocated To Plaintiff To Partially Satisfy The $199,987.50 Advance Judgment and $1500 Contempt Judgment Rendered Against the Defendant; Emergency Request That Ms. de Boisblanc Be Authorized To Act On Behalf Of Community Business To Prevent Further Depletion of Community Assets In Violation of Restraining Order"; and Second Contempt." Upon writ review, this Court found the trial court erred in denying the emergency motion and motion for contempt without first having show cause and evidentiary hearings. Accordingly, we granted the writ application and instructed the trial court to conduct hearings.[7]

Tyler's and HH&K's opposition to the motion to recuse argued the motion lacked merit. They emphasized it did not document actual bias or prejudice; but rather, the motion was exclusively motivated by de Boisblanc's dissatisfaction with certain rulings of Judge Ervin-Knott. They cited Louisiana jurisprudence which holds that adverse rulings alone do not show bias or prejudice for purposes of

[7] *Suzanne De Boisblanc, Wife Of Thomas N. Tyler v. Thomas N. Tyler*, 2015-0972 (La. App. 4 Cir. 9/10/15).

recusation.[8] Tyler and HH&K claimed the recusal motion was no more than a ruse by Koerner to interrupt the scheduling order deadlines and an attempt to buy time because Koerner was not prepared for the evidentiary hearing on the emergency motion and contempt motion that had been fixed by Judge Ervin-Knot. Tyler and HH&K also asserted that Koerner could not produce any objective evidence of a personal relationship of any kind between Tyler's attorneys and Judge Ervin-Knott.

Judge Ervin-Knott denied any prejudice. Notwithstanding, Judge Ervin-Knott referred the motion for a hearing. The motion to recuse was allotted to Judge Paula Brown.[9]

At the start of the recusal hearing, an attorney retained to represent Judge Ervin-Knott moved to quash a subpoena directed to the judge. Koerner did not contest the motion to quash and deemed the motion "meritorious."

As to the merits of the motion to recuse, Koerner was the only witness to testify in support of the motion. He did not call any other witnesses he had represented might be called, including the former attorney who allegedly suggested that Koerner file the motion to recuse. Koerner's evidence of alleged bias and egregious legal errors consisted primarily of his reference to supervisory writs taken of adverse decisions and general references to transcripts of various hearings before the recusal judge.

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[8] *See David v. David*, 2014-999, p. 5 (La. App. 3 Cir. 2/4/15), 157 So.3d 1164, 1168, *writ denied*, 2015-0494 (La. 5/15/15), 170 So.3d 968.

[9] Hereinafter, references to the trial judge or the trial court shall note the rulings of Judge Brown. Where required to distinguish between Judge Brown and Judge Ervin-Knott, Judge Ervin-Knott shall be referenced as the recusal judge.

On cross-examination, Koerner conceded that he had missed discovery deadlines because he had not read or calendared the recusal court's scheduling order. He claimed adherence to the scheduling order was the responsibility of de Boisblanc's other attorneys; emphasized that the recusal motion was brought in part on the recommendation of one of de Boisblanc's former attorneys; and admitted he was not present in court for some of the alleged acts of bias he attributed to the recusal judge.

The trial court noted that Koerner's case presentation was "argument" of counsel and not evidence. At the end of Koerner's case in chief, the trial court granted a directed verdict in favor of Tyler and HH&K to deny the motion to recuse and stated the court would entertain a motion for sanctions in accordance with La. C.C.P. art 863.

The motion for sanctions was heard on October 23, 2015. Prior to the hearing on the motion, the trial court denied Koerner's request for a new trial which had been filed the day before. In arguing that the recusal motion was not frivolous, Koerner reiterated that hearing transcripts and favorable supervisory writ decisions of some of the recusal judge's adverse decisions demonstrated the recusal judge's bias. However, the trial court noted that Koerner made allegations without proof; failed to call any witnesses, including the attorney he claimed told him of the recusal judge's alleged bias; failed to review discovery deadlines; failed to make filings within the time delays allowed by the case management order; and

had filed the motion to recuse only after the recusal judge had denied his client's request for an extension of time.

Based on the above findings, the trial court granted the motion for sanctions as to Koerner.[10] The court concluded that Koerner's lack of evidence showed the motion to recuse was brought for an improper purpose, such as harassment, causation of undue delay, and/or needless increase in the cost of litigation as discussed in La. C.C.P. art. 863(B)(1). The trial court also concluded the motion to recuse lacked legal or evidentiary support as required by La. C.C.P. art. 863(B)(2) and La. C.C.P. art. 863(B)(3). In order to achieve the purpose for which sanctions were imposed-to deter frivolous litigation- the trial court awarded HH&K $15,948.50 ($10,000 plus fees and costs) and $14,080.50 ($10,000 plus fees and costs) to Tyler.[11]

At the conclusion of the hearing, Koerner attempted to withdraw as de Boisblanc's attorney. The motion was denied. However, Judge Brown allowed testimony from de Boisblanc. She testified she no longer wanted Koerner to represent her. She referred to him as mentally or physically impaired. Judge Brown then allowed de Boisblanc to terminate Koerner as her attorney. Subsequent thereto, de Boisblanc retained new counsel and settled the divorce case on November 13, 2015.

This appeal from Koerner followed on November 20, 2015.

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[10] The trial court denied HH&K's motion to also sanction de Boisblanc.
[11] HH&K introduced into evidence an affidavit showing fees and costs of $5,948.75; and Tyler's affidavit showed fees and costs of $4,080.50.

LAW/DISCUSSION

ASSIGNMENTS OF ERROR

Koerner poses the following as assignments of error:

1. The district court erred in awarding sanctions because Koerner's motion to recuse did not violate La. C.C.P. art. 863;
2. The district court erred in awarding the unprecedentedly high amount of sanctions as La. C.C.P. art. 863 limits sanctions to actual attorney's fees and the amount awarded constituted punitive damages not authorized by statute;
3. The denial of the motion to recuse was error given the allegations of the motion to recuse; this Court's favorable decisions on two writ applications, and its refusal to exercise supervisory jurisdiction on the third; and the district court's failure to review all of the evidence contained in the record or in the writ applications;
4. The district court erred in improperly restricting and limiting the evidence offered by Koerner and/or failing to consider it, thus depriving Koerner of the due process to which he was entitled;
5. The district court erred in not carefully considering all the issues raised in writ no. 2015-C-0972 as grounds for recusal;
6. The district court erred in not considering all the issues raised in writ application 2015-C-1086 as grounds for recusal;
7. The district court erred in not considering whether the decisions rendered in writ no. 2015-C-0972 and 2015-1086 could reasonably be constructed to find that Judge Ervin-Knott committed egregious legal errors and improperly favored Tyler;

8. Based on the proffered material offered in support of the motion for new trial, the district court erred in not making a determination that the lack of an explanation from the absent witness, Judge Ervin-Knott, should be construed against Judge Ervin-Knott and in not requiring Judge Ervin-Knott's testimony;
9. The district court erred in not substantively considering the material submitted in support of the motion for new trial;
10. The district court erred in failing to address the issues raised in the original motion to recuse in deciding the motion for sanctions;
11. The district court erred in not considering whether the recusal judge's decision to vacate an order that previously had granted plaintiff's request to file 35 additional interrogatories demonstrated egregious legal error or bias;
12. The district court erred in not considering whether the recused judge's decision not to confront alleged misrepresentations of defense counsel and refusal to issue the writ of seizure supported the filing of the motion to recuse;
13. The district court erred in not considering whether the recused judge demonstrated bias when the judge did not allow Koerner to dispute alleged misrepresentations by defense counsel regarding whether a hearing took place on a La. C.E. art. 517 motion in deciding the merits of the recusal motion;
14. The district court erred in not considering whether any other grounds raised in the motion to recuse were sufficiently reasonable to find that the filing of the motion was not sanctionable.

Upon review, Koerner's appeal falls into two broad categories, namely, whether the trial court erred in granting the motion for sanctions and whether it erred in denying the motion to recuse. Assignments of error numbered one and two go to whether the trial court erred in granting the motion for sanctions; while assignments of error enumerated three through fourteen challenge whether the trial court erred in denying the motion to recuse and motion for new trial.

Appellees, Tyler and HH&K, have filed motions to dismiss the appeal as it relates to assignments of error arising out of the denial of the motion to recuse and the denial of the motion for new trial. Appellees note that the motion to recuse was brought on behalf of Suzanne de Boisblanc; hence, they maintain that inasmuch as Koerner no longer represents de Boisblanc and the underlying litigation has settled, Koerner lacks standing to challenge the denial of the motion to recuse.

This Court shall first consider whether the trial court erred in its decision to sanction Koerner and in the amount of the sanctions assessed; and thereafter, review whether the trial court properly denied the motion to recuse and the motion for new trial.

STANDARD OF REVIEW

A trial court's determination regarding the imposition of sanctions is subject to the manifest error or clearly wrong standard of review.[12] Once a trial court finds a violation of La. C.C.P. art. 863 and imposes sanctions, the determination of the type and/or amount of sanction is reviewed on appeal by utilizing the abuse of discretion standard.[13]

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[12] *Slaughter v. Board of Sup'rs of Southern University and Agr. and Mechanical College*, 2010-1114, p. 6 (La. App. 1 Cir. 8/2/11), 76 So.3d 465, 469-470, *writ denied*, 2011-2112 (La. 1/13/12), 77 So.3d 970.
[13] *Id*.

MOTION FOR SANCTIONS/SANCTIONS AWARD

Koerner contends the trial court erred in assessing sanctions and the amount of sanctions awarded. The guidelines to determine whether sanctions are appropriate and the type of sanction to assess are outlined in La. C.C.P. art. 863. The article provides in part as follows:

> B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry, he certifies all of the following:
>
> (1) The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
> 2) Each claim, defense, or other legal assertion in the pleading is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.
> (3) Each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
> (4) Each denial in the pleading of a factual assertion is warranted by the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief....
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> **************
>
> D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.
> E. A sanction authorized in Paragraph D shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction....
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> G. If the court imposes a sanction, it shall describe the conduct determined to constitute a violation of the provisions of this Article and explain the basis for the sanction imposed.

A trial court must find that one of the certification attestations imposed by La. C.C.P. art. 863(B) has been violated in order to impose sanctions.[14]

In the present matter, the trial court initially referenced the reasons it denied the motion to recuse in explaining its reasons to sanction Koerner. It specifically noted that Ms. de Boisblanc, through her counsel, had failed to meet her burden of proof and failed to present competent evidence to show that the recusal judge was biased, prejudiced, and/or had an interest in the outcome of the litigation. The trial court also chided Koerner's concession that he had not adhered to the recusal judge's court-ordered deadlines. The trial court then outlined the reasons for its decision to sanction Koerner pursuant to La. C.C.P. art. 863(D) as follows:

> In the present case, it is clear to this Court that sanctions should be imposed pursuant to Article 863(D). It is this Court's opinion that the pleadings at issue were filed for an improper purpose, such as harassment, causation of undue delay, and or/or needless increase in the cost of litigation pursuant to Article 863(B)(2). Further, the allegations made in the pleading did not have evidentiary support, nor was there likely to be evidentiary support even after a reasonable opportunity for further investigation or discovery pursuant to Article 863(B)(1).
>
> In order to decide whether sanctions are appropriate for filing a frivolous pleading, the Court is to consider whether the litigant and his counsel made the required reasonable factual inquiry given the time available for investigation; the extent of the attorney's reliance on the client for support for the pleading; the feasibility of pre-filing investigation; whether the signing attorney accepted the case from another attorney; the complexity of the factual and legal issues; and the extent to which development of factual circumstances underlying the claim required discovery. In the present

[14] *Id.*, pp. 6-7, 76 So.3d at 470.

> case, none of these factors are applicable, because Mr. Koener's testimony revealed, at the urging of plaintiff's former counsel, Brett Bonin, he filed the motion for recusal after Judge Knott failed to extend a discovery deadline in favor of plaintiff.
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> Based on the foregoing, this Court finds the motion for recusal filed by Mr. Koerner was, in fact, frivolous and it factual assertion has no evidentiary support. As such, this Court finds that sanctions are appropriate.
>
> In determining the type of sanctions to be imposed, the Court is to take into account the conduct that is being punished or sought to be deterred; the expenses or costs caused by the violation of the rule; whether the costs or the expenses are reasonable as opposed to self-imposed; and whether the sanction is appropriate in order to achieve the purpose of the rule under which it is imposed. *Keaty v. Raspanti*.
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> As such, this Court hereby grants Herman, Herman & Katz, LLC's motion for sanctions in the amount of the $15,948.75, inclusive of attorney's fees and costs. This Court further grants Thomas Tyler's motion for sanctions in the amount of $14,080.50. These amounts shall be borne by Mr. Koerner who signed the pleading without verification from his client.

Upon review, the trial court clearly provided a reasonable factual basis upon which to support its decision to sanction Koerner. The trial court expressly described the sanctionable conduct and explained the basis for the sanctions imposed. Accordingly, we cannot say that the decision to sanction was manifestly erroneous or clearly wrong.

With reference to the type and the amount of sanctions assessed, the trial court also provided a factual basis for its decision to award HH&K and Tyler $10,000 each in sanctions, plus attorney fees and costs. Generally, four factors are considered to determine an appropriate sanction for violating La. C.C.P. art. 863 certification mandates. They include 1) what conduct is being punished or is sought to be deterred by the sanction; 2) what expenses or costs were caused by the

violation of the rule; 3) were the costs or expenses reasonable as opposed to self-imposed, mitigatable, or the result of delay in seeking court intervention; and 4) was the sanction the least severe sanction adequate to achieve the purpose of the rule under which it was imposed.[15]

Koerner asserts the trial court erred because it assessed monetary sanctions and also awarded attorney fees and costs. However, we see no prohibition within art. 863(D) that expressly restricts the trial court's ability to impose a monetary sanction, as well as make an award of reasonable attorney fees and costs. Indeed, the article expressly states the sanction may include an order to pay reasonable attorney fees.

In the case before us, the trial court specifically emphasized it wanted to assess sanctions to deter the conduct that warranted the sanctions, notably its finding that the motion to recuse was filed without proof with the intent to harass. It also considered the affidavits of attorney fees and costs introduced into evidence by HH&K and Tyler in determining the amount of the award.[16] Thus, when we apply the factors to review the propriety of sanctions assessed, as well as utilize the abuse of discretion standard in reviewing the award, we cannot say the trial court abused its discretion in the amount and type of sanctions awarded.

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[15] *Keaty v. Raspanti*, 2003-1080, p. 5 (La. App. 4 Cir. 2/4/04), 866 So.2d 1045, 1050.

[16] The record shows Koerner did not object to the introduction of the attorney fees and costs affidavits.

MOTION TO RECUSE/NEW TRIAL MOTION

As previously referenced herein, assignments of error numbered three through fourteen relate to the denial of the motion to recuse and the denial of the motion for new trial. Tyler and HH&K argue that this Court should decline to exercise its supervisory jurisdiction regarding the denial of these motions because Koerner no longer represents de Boisblanc and the underlying case has settled. We find some merit in this argument.

A justiciable controversy is defined as an "existing actual and substantial dispute, distinguished from one that is merely hypothetical or abstract [moot]." [17] Our Louisiana jurisprudence is well established that our courts will not decide abstract, hypothetical, or moot controversies, or render advisory opinions with respect to such controversies.[18]

In the present matter, the underlying reason for the motion to recuse and the motion for new trial are no longer justiciable controversies based on the settlement of the divorce action between de Boisblanc and Tyler. Moreover, Koerner certainly lacks standing to challenge the denial of the motion to recuse and lodge an appeal on behalf of de Boisblanc because he no longer represents her.[19] Accordingly, as to de Boisblanc, the appeal of the denial of the motion to recuse and motion for new trial is moot. Notwithstanding, we acknowledge Koerner's independent interest in the denial of the motion to recuse in that the denial of the recusal motion formed the basis for the imposition of sanctions against him; and

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[17] *St. Charles Parish School Board v. GAF Corporation, et al*, 512 So.2d 1165 (La. 1987).
[18] *Louisiana Associated General Contractors, Inc. v. State Through Div. of Admin. Office of State Purchasing*, 95-2105, p. 9 (La. 3/9/96), 669 So.2d 1185, 1193.
[19] *See* La. C.C.P. art. 2084 which authorizes a legal representative to file an appeal for the benefit of the person he represents.

therefore, will review whether the trial court erred in denying the motion to recuse and motion for new trial.

La. C.C.P. art. 151 outlines the grounds for recusal of a trial judge as follows:

> A. A judge of any court, trial or appellate, shall be recused when he:
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> (1) Is a witness in the cause;
> (2) Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause, and the judge participated in representation in the cause;
> (3) Is the spouse of a party, or of an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause; or
> (4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.
>
> B. A judge of any court, trial or appellate, may be recused when he:
>
> (1) Has been associated with an attorney during the latter's employment in the cause;
> (2) At the time of the hearing of any contested issue in the cause, has continued to employ, to represent him personally, the attorney actually handling the cause (not just a member of that attorney's firm), and in this case the employment shall be disclosed to each party in the cause;
> (3) Has performed a judicial act in the cause in another court; or
> (4) Is related to: a party or the spouse of a party, within the fourth degree; an attorney employed in the cause or the spouse of the attorney, within the second degree; or if the judge's spouse, parent, child, or immediate family member living in the judge's household has a substantial economic interest in the subject matter in controversy sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.
>
> C. In any cause in which the state, or a political subdivision thereof, or a religious body or corporation is

> interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, or is a member of the religious body or corporation, is not a ground for recusation.

As discussed in *Slaughter*, the grounds for recusation of a trial judge as enumerated in Article 151 are exclusive and do not include a "substantial appearance of the possibility of bias" or even a "mere appearance of impropriety" as causes for removing a judge from presiding over a given action. Article 151 requires a finding of actual bias or prejudice, which must be of a substantial nature and based on more than conclusory allegations.[20] As also discussed herein, adverse rulings alone do not show bias or prejudice requiring recusal of a judge; moreover, alleged bias or prejudice which stems from testimony and evidence set forth in the proceedings is not of an extra-judicial nature to warrant recusal.[21]

A trial judge is presumed to be impartial.[22] In the matter before us, the record shows that Koerner failed to call any independent witnesses to document his claims of bias; that his claims of bias were principally premised on adverse rulings of the recusal trial judge; and that his "proof" of bias was based on testimony and transcripts of the underlying divorce proceedings. Based on our jurisprudence, the type of evidence submitted by Koerner was insufficient to rebut the recusal judge's presumed impartiality so as to warrant recusal. We agree with the trial court that Koerner's evidence amounted to conclusory allegations and argument. Accordingly, we find the trial court did not err in denying the motion to recuse.

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[20] *Slaughter*, p. 8, , 76 So.3d 465, 471.
[21] *David*, p. 5, 157 So.3d at 1168.
[22] *Slaughter*, p. 8, 76 So.3d at 471.

We next consider whether the trial court improperly denied the motion for new trial. A motion for new trial may be summarily denied in the absence of a clear showing in the motion of facts or law reasonably calculated to change the outcome or reasonably believed to have denied applicant a fair trial; it is discretionary with a trial judge and summary denial is generally proper if the new trial motion simply reiterates issues thoroughly considered at trial on merits. *Allen v. Noble Drilling (U.S.) Inc.*, 93-2383, pp. 6-7 (La. App. 4 Cir. 5/26/94), 637 So.2d 1298, 1302.

Our review of the record shows the motion for new trial was filed on the day before the hearing on the motion for sanctions. The issues raised in the motion for new trial consisted of the same issues considered at the trial on the motion to recuse. Therefore, we find no abuse of the trial court's considerable discretion in its denial of the motion for new trial.

Wherefore, based on the foregoing reasons, we affirm the judgment assessing sanctions and the amount of sanctions assessed.

JUDGMENT AFFIRMED