NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DANI BAKER	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SEAN BOWIE AND KELLY BOWIE ANDRES ORTEGA-GONAZALEZ	:	
	:	No. 109 EDA 2022
APPEAL OF: SEAN BOWIE AND KELLY BOWIE	:	

Appeal from the Order Entered December 2, 2021
In the Court of Common Pleas of Northampton County Civil Division at No(s): C-48-CV-2019-04196

BEFORE: BOWES, J., STABILE, J., and McLAUGHLIN, J.

MEMORANDUM BY BOWES, J.: **FILED JUNE 28, 2022**

Sean Bowie and Kelly Bowie ("Maternal Grandparents") appeal from the order deeming their motion for recusal moot. For the reasons that follow, we affirm the order deeming the motion for recusal moot, vacate the attached statement of reasons, and seal the statement of reasons and motion for recusal.

This appeal stems from a prolonged history of disputes between Dani Baker ("Mother") and Maternal Grandparents concerning the custody of B.J.O.-G., born in April 2014, as well as Mother's parental rights. B.J.O.-G. has lived with Maternal Grandparents since 2016. Generally speaking, the parties were able to come to various agreements on visitation and

reunification throughout the case, over which the Honorable Jennifer R. Sletvold had presided as the trial court.

The specific dispute giving rise to the underlying motion to recuse began when Maternal Grandparents petitioned for special relief regarding the jurisdiction of the Northampton County Court of Common Pleas and Mother's amended petition to modify custody. Judge Sletvold scheduled a hearing on the petitions for November 15, 2021. Maternal Grandparents filed preliminary objections to Mother's amended petition to modify custody, and Mother filed preliminary objections in response to those preliminary objections. Thereafter, Maternal Grandparents filed the instant recusal motion. Judge Sletvold added these filings for consideration at the November hearing and ordered a settlement conference before the Honorable Samuel P. Murray.

Prior to the scheduled hearing before Judge Sletvold, the parties reached an agreement before Judge Murray regarding custody and visitation. They also agreed to withdraw all pending motions and transfer jurisdiction for any future custody disputes to Schuylkill County. Judge Murray did not immediately finalize the agreement by court order. In the interim and in anticipation of the agreement being adopted by order of court, Judge Sletvold disposed of the recusal motion as moot but included a verbose statement of reasons "to address the numerous fallacies and aspersions asserted by [Maternal] Grandparents and their counsel[.]" Order with Statement of Reasons Regarding Recusal, 12/2/21, at 1; ***see also id***. at 14-47 (addressing various grounds raised for recusal). Thereafter, Judge Murray entered an

order of court adopting the above agreement in the custody matter. In the trial court, Maternal Grandparents filed a motion for reconsideration and to strike the statement of reasons attached to the order deeming the motion for recusal moot. Judge Sletvold deemed the motion for reconsideration moot and denied the motion to strike the statement of reasons.

This timely appeal followed. Maternal Grandparents and the trial court complied with Pa.R.A.P. 1925. Maternal Grandparents raise the following issues for our consideration:

> 1. Whether the entry of the December 2, 2021 order, declaring a withdrawn motion for recusal on an underlying settled case to be "MOOT," and the accompanying 53 page statement of reasons regarding recusal should be vacated and stricken from the record to eliminate harm to [Maternal] Grandparents because it was advisory only in that it was issued when there was neither pending case nor controversy in violation of the mootness doctrine.
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> 2. Whether the order should be vacated and stricken from the record to correct the harm to [Maternal] Grandparents who have a constitutional right to be free from unchecked statements, made without procedural or substantive due process, which harm their reputation.
>
> 3. Whether the order should be vacated and stricken from the record to eliminate harm to [Maternal] Grandparents because it was issued in violation of the rule of coordinate jurisdiction in that a settlement, specifically withdrawing the motion for recusal, had been reached before another judge on the same bench on November 23, 2021.

Maternal Grandparents' brief at 5-6 (numbering supplied, unnecessary capitalization and parentheticals omitted).

We begin our review with the mootness doctrine. Generally, "an actual case or controversy must exist at all stages of the judicial process, or a case will be dismissed as moot." ***In re D.A.***, 801 A.2d 614, 616 (Pa.Super. 2002) (*en banc*) (citation omitted). However, we may reach the merits of an appeal if one of the following exceptions applies: "1) the case involves a question of great public importance, 2) the question presented is capable of repetition and apt to elude appellate review, or 3) a party to the controversy will suffer some detriment due to the decision of the trial court." ***Id***. (citations omitted).

Here, no case or controversy currently exists. The parties have withdrawn all motions pertaining to the instant custody dispute and transferred jurisdiction for future disputes to another county. Thus, this appeal is moot and subject to dismissal pursuant to the mootness doctrine. Nonetheless, Maternal Grandparents argue that all three exceptions to the mootness doctrine apply. As to the third exception, Maternal Grandparents aver that the harm to their reputation will contaminate any future custody matters in Schuylkill County if the statement of reasons is permitted to remain in the record. Maternal Grandparents' brief at 34-36. We agree and therefore turn to the merits of their appeal.

A recusal motion "is properly directed to and decided by the jurist whose participation is challenged." ***Commonwealth v. Travaglia***, 661 A.2d 352, 370 (Pa. 1995) (citation omitted). Since the recusal motion was directed at the trial court, Judge Sletvold properly issued the order dismissing the motion to recuse as moot in anticipation of the matter being transferred to another

county and the motion to recuse being withdrawn. However, it is also well settled that "[a]n advisory opinion is one which is unnecessary to decide the issue before the court, and . . . that the courts of this Commonwealth are precluded from issuing such advisory opinions." ***Sedat, Inc. v. Fisher***, 617 A.2d 1, 4 (Pa.Super. 1992). As discussion of the merits of the motion to recuse was unnecessary given its mootness, the attached statement of reasons was an impermissible advisory opinion. Therefore, the statement of reasons must be vacated. ***See Gulnac by Gulnac v. S. Butler Cnty. Sch. Dist.***, 587 A.2d 699, 701 (Pa. 1991) (vacating declaratory judgment order because "it was unnecessary to reach the constitutional issue and by doing so, the trial court rendered an advisory opinion which our courts are not entitled to do").

Having vacated the trial court's statement of reasons, we now address the status of the underlying motion to recuse. In vacating the statement of reasons, we are not blind to the general policy that it is important for the public to know the outcome of recusal motions. ***See*** ADAM SKAGGS AND ANDREW SILVER, BRENNAN CENTER FOR JUSTICE, PROMOTING FAIR AND IMPARTIAL COURTS THROUGH RECUSAL REFORM 7 (2011) ("[I]n a state that holds judicial elections, a failure to explain disqualification decisions deprives the public of valuable information concerning how judges or justices address challenges to their impartiality.").[1]

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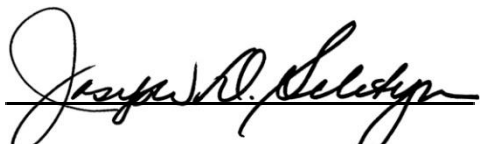
[1] ***See*** https://www.brennancenter.org/sites/default/files/2019-08/Report_Promoting_Fair_Courts_2011.pdf

In short, it is clear the trial court issued the statement of reasons to explain to the public why it believed the underlying motion to recuse lacked merit. If the underlying motion remains of public record, our decision to remove the trial court's statement from the record deprives it of the opportunity to provide a transparent response for the benefit of the public. Accordingly, in the interest of fairness, we seal both the statement of reasons and the underlying recusal motion.

Order dismissing motion to recuse as moot affirmed. Attached statement of reasons vacated. Statement of reasons and motion to recuse sealed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/28/2022