Zorn v. Ryan, No. 327-7-05 Wrcv (Eaton, J., Sept. 11, 2008)

STATE OF VERMONT
WINDSOR COUNTY, SS

Robert Zorn Plaintiff v. Mary K. Ryan et al. Defendant	SUPERIOR COURT Docket No. 327-7-05 Wrcv

DECISION ON MOTION TO DISQUALIFY

The undersigned was designated to decide issues of disqualification concerning Judge Mary Miles Teachout. Judge Teachout had referred this case to Administrative Judge Davenport following the filing by Robert Zorn, the pro se plaintiff, of a document on June 16, 2008, purporting to be an amended supplemental complaint naming Judge Teachout as a defendant in this litigation. Judge Davenport assigned the undersigned to determine the disqualification issue. No formal motion to disqualify was filed by Plaintiff or any other party.

This litigation was originally dismissed in June 2006 when Judge Teachout was unable to understand plaintiff's complaint sufficiently to adjudicate it and summary judgment was granted for the defendants.

Subsequently, Judge Teachout referred the case to the Administrative Judge for determination of recusal based upon Judge Teachout's concern over unsupported allegations by Plaintiff that a special relationship existed between Judge Teachout and the Lorentz and Lorentz law firm. On January 19, 2007, the Administrative Judge ruled that Judge Teachout was not recused from further participation in this case.

A large number of post judgment motions have been filed by plaintiff. Judge Teachout denied many of them as repetitive or improper. A motion for writ of attachment filed by plaintiff caused Judge Teachout to issue a Notice of Conduct and Order to Show Cause to plaintiff on March 27, 2008. Judge Teachout directed plaintiff to show cause why he should not be sanctioned for failure to comply with V.R.C.P. 11 concerning many

pleadings which did not appear to comply with the requirements of V.R.C.P. 11. A recitation of those pleadings was contained in Judge Teachout's Notice.

In turn, plaintiff has filed a number of lengthy "pleadings", more accurately described as rambling narratives, which included references to Judge Teachout, a limited sampling of which includes:

On April 3, 2008: (caps in originals)

. . .AS WELLAS [sic] THE COURT, KEVIN CANDON, AS WELLAS [sic] COLDWELL BANKER DEBBIE CANDON, AFTER THE EBTRANCE [sic] OF THE COMPALINT [sic], AND MOOTING, AND DENIAL OF MOOTIONS [sic] BY TEACHOUT, WHICH IS STRICT VIOLATION OF CIVIL RIGHTS FIFTH AMENDMENTRIGHTS [sic] IN WHICH WERE VIOLATED BY THE FRAUDULAENT CONVEYANCE OF PROPERTY . . .

. . .AS WELLAS [sic] THE MANDATE ENTERED BY THIS MOTION FOR MORE DEFINITE STATEMENT, IN WHICH UNDISPUTED AS AFACT [sic] THE COURT, TEACHOUT, AS WELLAS [sic] THE DEFENDNANTS [sic] ACTED BY FAILURE TO OMISSION OF THE FACTS OF THE CONVEYANCE . . .

. . .THE DENIED MOTIONS, OF THE CASE, OR MOOTED MOTIONS, CITE THE CAUSE OF THE WORK, AND PERFORMANCE, AS WELLAS [sic] THE CLAIM IN WHICH THE DEFENDNATS [sic] ASSENTED TO SILENCE, AS WELLAS [sic] THE COURT WHICH UNDISPUTTEDLY [sic] MAKES THE COURT, TEACHOUT, GUILTY OF THE CLAIMS AGAINST THEM . . .

. . .FURTHER MORE [sic] MARY MILES TEACHOUT AS WELLAS [sic] THE DEFENDANTS ACTED OUT OF OATH AS CITIZENS, AS WELL AS INDIVIDUALS . . ..

. . .IN WHICH THE DISCOVERY WAS BLAOCKED [sic] BY TEACHOUT, AS JUDGE, AS WELLAS [sic] THE UNDISPUTTED FACTS THE CAUSES OF ACTIONS, AS WELLAS [sic] THE RIGHTS TO A JURY TRIAL WAS DENIED . . .

. . .UNDISPUTED AS A RIGHT, AND LAW, OF THE PLACE MARY MILES TEACHOUT, HAS ABSOLUTELY NO RIGHT TO DESTROY CONTRACT RIGHTS 9IN WHICH THE NOTICE OF THE CONDUCT AND ORDER OF SHOW ABDOLUTELY [sic] TEACHOUT HAD SUPERIOR KNOWLEDGE OF THE EXTORTION . . .

On April 4, 2008:

. . .UNDISPUTED AS A FACT, TEACHOUT, BEING A RUTLAND COUNTY SUPERIOR COURT JUDGE, OF THE STATE OF VERMONT, WAS

BARRED FROM MAKING NEW CLAIMS BY MANDATE ENTERED INTO THE JUDICIAL RECORD OF THE COURT . . .

On April 8, 2008:

...IN WHICH THEY SILENCED PREVIUOSLY, WHICH IS A RACKEETERING [sic] INFLUENCED THROUGH A CORRUPT ORGANIZATION, AS ADDRESSED TO PROFIT, IN THE LITIGATION BY THE PLAINTIFF UNDISPUTTED [sic] AS AFACT [sic] IN WHICH THE ORCERDS [sic] OF TEACHOUT ARE FRIVILOUS . . ..

On May 7, 2008:

. . .THE COURT, THOUGH TEACHOUT, MALICIUOSLY AND NON CONSTITUTIIONALLY, IN VIOLATION OF ARTICLE ONE SECTION NINE AND TEN OF IMPAIRMENT OF CONTRACT RIGHTS VESTED IN THE COURT TO PROTECT THE TENTH AMENDMENT RIGHTS . . ..

On June 3, 2008:

. . .AND THE RUTLAND COUNTY JUDICIARY ET AL INCLUDING JUDGE TEACHOUT AS INDIVIDUALS, DISOBEDIANT TO CIRCUIT COURT, AND MANDATE RULE.

And on June 16, 2008, a post judgment motion styled as an amended supplemental complaint, purporting to name Judge Teachout and others for "A GRAND JURY INDICTMENT OF TREASON . . ." The amended complaint, filed without leave of the court, follows, by more than two years, the dismissal of the action.

Other pleadings have followed suit, as recently as September 5, 2008, captioned, inter alia to the Internal Revenue Services [sic] in Fresno, California. None of these pleadings comply with V.R.C.P. 7 (b)(1) or, if construed as a complaint, V.R.C.P. 8(a) or V.R.C.P. 10(b).

Judge Teachout's self-referral of this case for a second determination of potential recusal is appropriate in light of recent pleadings. While plaintiff has not expressly sought Judge Teachout's disqualification, his recent pleadings imply such a request. Review of those pleadings reveals an ever-widening net of alleged conspiracy with no factual support.

The Code of Judicial Conduct describes the judge's obligation with regard to bias 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 . . . .

Code of Judicial Conduct, A.O. 10, Canon 3(E)(1)(a).

The law is clear as to the proper standard applicable in the evaluation of a disqualification motion founded on alleged bias or generalized partiality. While no motion was filed here, the standards remain the same. A trial judge should recuse herself "whenever a doubt of impartiality would exist in the mind of a reasonable, disinterested observer." *Ball v. Melsur Corp*., 161 Vt. 35, 39 (1993) (citations omitted).

Here, the trial judge has sought, on two occasions, determination of disqualification. Under such circumstances, the question of disqualification rests in the sound discretion of a disinterested judge. *State v. Putnam*, 164 Vt. 558, 561 (1996); V.R.C.P. 40(e)(3). The court accords the judge subject to disqualification "a presumption of honesty and integrity . . . ." *Putnam*, 164 Vt. at 561. To overcome this presumption, the party seeking to disqualify a judge "must make a clear and affirmative showing of bias or prejudice." *Ball*, 161 Vt. at 40. Here no disqualification has been expressly sought by the plaintiff, however, the presumption of honesty and integrity remains, buttressed by the fact of referral by the trial judge herself. A judge has a duty to hear matters assigned to her when disqualification is not required. Code of Judicial Conduct, A.O. 10, Canon 3(B).

The plaintiff's pleadings, to the extent they can be understood, are directed at adverse rulings made by Judge Teachout. There has been no showing by plaintiff of any personal bias or prejudice on Judge Teachout's behalf. "[A]dverse rulings, no matter how erroneous or numerous," simply do not indicate bias. *Luce v. Cushing*, 2004 VT 117, ¶ 23, 177 Vt. 600 (quoting *Gallipo v. City of Rutland*, 163 Vt. 83, 96 (1994)). "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current 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." ABA Annotated Model Code of Judicial Conduct, Canon 3(E)(1), at 220 (2004).

This court is mindful of the plaintiff's pro se status and has read his pleadings with attendant tolerance. As was recently stated in *Johnson-Bey v. Brentwal LLC* 2007 WL 2021861, 2 (W.D.Mich.,2007) "The court has a duty to read a pro se plaintiff's complaint indulgently. See *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); *Kent v. Johnson*, 821 F.2d 1220, 1223-24 (6th Cir.1987). While the court holds pro se litigants to less stringent standards, "[l]iberal construction does not require a court to conjure allegations on a litigant's behalf." *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir.2004). "[L]iberal treatment of pro se pleadings does not require lenient treatment of substantive law." *Durante v. Fairlane Town Center*, 201 Fed.Appx. 338, 344 (6th Cir.2006). In short, this court has no duty to scour the pleadings and find a cause of action where none exists." 2007 WL 2021861, 2

Judge Teachout has referred this matter for disqualification opinion based upon concern over the attempted amended complaint and perhaps other pleadings referring to her or actions taken by her. Even under the most liberal of readings, plaintiff's attempted amended complaint makes no factual sense. It does not state a cause of action, instead stating numerous conclusions and a hodgepodge of legal terms.

Even if sense could be made of the pleadings, they are procedurally defective. The attempted amended complaint is a nullity, this matter having been dismissed over two years ago. Relief under V.R.C.P. 59 is time-barred. Even relief under V.R.C.P. 60(b) would be barred at this late date. No request to add a party pursuant to V.R.C.P. 15 (a) was made. No procedural requirements concerning amending of pleadings were followed. At this juncture, there is nothing to amend.

Every litigant is entitled to fair and impartial justice. This does not mean that litigants may disqualify judges who have ruled against them by alleging bias without factual support. Judges are not disqualified from hearing cases merely because a litigant sues or threatens to sue her. See, e.g., *United States v. Grismore*, 564 F.2d 929, 933 (10th Cir.1977). As the United States Court of Appeals for the Seventh Circuit recently suggested, a per se rule of disqualification under such circumstances "would allow litigants to judge shop by filing a suit against the presiding judge." *In re Taylor*, 417 F.3d 649, 652 (7th Cir.2005).

There is no basis to conclude Mr. Zorn's complaints about Judge Teachout arise from anything other than unhappiness over her rulings. There has been absolutely no showing of any bias or impartiality on her part and no showing that any ruling she made was improperly motivated. *In re Margaret Susan P.*, 169 Vt. 252, 257 (1999). Judge Teachout's insistence that the Rules of Civil Procedure, including Rule 11, apply even to pro se litigants is no grounds for her disqualification.

ORDER

Based upon the foregoing:

(1) The Amended Supplemental Complaint is a nullity

(2) The implied motion to dismiss Judge Teachout is **DENIED**

(3) Other pending motions not addressed herein will be addressed subsequently by Judge Teachout.

Dated at Woodstock this 11th day of September, 2008.

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Harold E. Eaton, Jr.
Superior Court Judge