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IN THE COURT OF APPEALS OF NORTH CAROLINA

Nos. COA23-854 & COA23-943

Filed 15 January 2025

Swain County, No. 23CVS24

ROBINSON JOSEPH MYERS AND ELIZABETH OWL-MYERS, Plaintiffs,

v.

SMOKY MOUNTAIN COUNTRY CLUB PROPERTY OWNERS ASSOCIATION, INC.; SHIRLEY SCHUBERT, In her individual and legal capacity and ED LAWSON, in his individual and legal capacity, Defendants.

Swain County, No. 23SP9

IN THE MATTER OF THE FORECLOSURE OF THE CLAIM OF LIEN ON LOT OWNED BY ROBINSON JOSEPH MYERS AND ELIZABETH OWL-MYERS

Appeal by plaintiffs from order entered 19 July 2023 by Judge William H. Coward in Swain County Superior Court. Heard in the Court of Appeals 7 February 2024. Case consolidated with COA23-943, *In Re: Myers* for appeal.

Appeal by respondents from order entered 4 August 2023 by Judge William H. Coward in Swain County Superior Court. Heard in the Court of Appeals 7 February 2024. Case consolidated with COA23-854, *Myers v. Smoky Mountain Club Property Owners Association, Inc.* for appeal.

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The Law Office of Shira Hedgepeth, PLLC, by Shira Hedgepeth, for plaintiffs-appellants and respondents-appellants.

Rayburn Cooper & Durham, PA, by Ashley B. Oldfield and Ross R. Fulton, and Sanford L. Steelman, Jr. and David A. Sawyer, for defendants-appellees and petitioner-appellee.

GORE, Judge.

Robinson Joseph Myers and Elizabeth Owl-Myers, plaintiffs and respondents (the “Myers”), bring interlocutory appeals in the above-captioned cases. The Myers appeal the interlocutory orders denying their motions to recuse Judge Coward. Upon review of the briefs and the record, we affirm.

I.

The Myers became lot owners of property within the Smoky Mountain Country Club in 2006 and members of the Smoky Mountain Country Club Association (the “Association”) pursuant to the requirement for membership within the Declaration of the Association. A lawsuit between the Association and the SMCC Clubhouse, LLC (“SMCC”) resulted in a multimillion-dollar judgment against the Association. The Association filed for chapter 11 Bankruptcy and ultimately negotiated a plan with SMCC requiring installment payments to pay the multimillion-dollar judgment. These terms required the members of the Association, the lot owners, to pay a pro-rata share of the judgment.

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Because the Myers were lot owners at the time the judgment was entered, they were assessed a “pro rata share of common expense liabilities” and later received a statement demanding payment in the amount of \$15,969.85 for the first few delinquent installment payments. The Association filed a Claim of Lien on 17 October 2022, and after the Myers refused to pay the remaining installments, the Association sought the full payment of all installments in the amount of \$48,120.00 with interest at 8% per annum on 24 March 2023. The Myers did not pay any of the assessment.

On 17 April 2023, the Association proceeded with foreclosure to enforce the Claim of Lien in the full amount against the Myers. The Myers filed a motion to dismiss and an answer in the foreclosure action. The Clerk of Superior Court, Swain County, heard the motions and entered an order on 21 July 2023 allowing foreclosure. The Myers filed a motion to recuse Judge Coward of the Superior Court prior to the entry of the foreclosure order. After the order was entered, the Myers filed a notice of appeal to the Superior Court, Swain County. On 4 August 2023, Judge Coward denied the motion to recuse.

The Myers had previously filed a lawsuit against the Association, Shirley Schubert, and Ed Lawson, on 10 February 2023, and later an amended complaint on 8 March 2023 (the “declaratory relief action”), for declaratory judgment; violation of North Carolina Unfair and Deceptive Trade Practices Act; violation of North Carolina

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Debt Collection Act; breach of fiduciary duty by the Association, Shirley Schubert, and Ed Lawson; to quiet title; for slander of title; and for negligence and breach of fiduciary duty of the condo maintenance by the Association and Shirley Schubert. The parties filed multiple motions and sought hearings on motions to dismiss, for partial summary judgment, and to quash certain subpoenas. On 14 July 2023, the Myers filed a motion to recuse Judge Coward from considering further motions and to refer the motion for recusal to a different judge. Judge Coward denied the motion for recusal.

The Myers entered a notice of appeal of the denied motion to recuse in the foreclosure action and a notice of appeal of the denied motion to recuse in the declaratory relief action seeking interlocutory review of both orders.

II.

We have consolidated the cases on appeal because both cases request appeal of the same question—whether the trial court erred by denying the motion to recuse. Generally, there is “no right to appeal an interlocutory order.” *Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 141 (2000). Further, this Court previously ruled “a motion to recuse a trial judge is an interlocutory order and is not immediately appealable.” *Lowder v. All Star Mills, Inc.*, 60 N.C. App. 699, 702, *disc. rev. denied*, 308 N.C. 387 (1983) (Mem.). However, we also recognized in *Lowder* that “an accusation about a judge’s partiality goes to the fundamental issue of maintaining confidence in our court

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system.” *Id.* In *Lowder*, we “elected to treat” the appeal as a petition for writ of certiorari and “proceed to the merits.” *Id.* Accordingly, in the present case, we elect to treat the appeal as a petition for certiorari and reach the merits of the appeal.

We review a denied motion for judicial recusal for abuse of discretion. *SPX Corp. v. Liberty Mut. Ins. Co.*, 210 N.C. App. 562, 576 (2011). The party seeking disqualification has the burden “to demonstrate objectively that grounds for disqualification actually exist. Such a showing must consist of substantial evidence that there exists such a personal bias, prejudice or interest on the part of the judge that he would be unable to rule impartially.” *Lange v. Lange*, 357 N.C. 645, 649 (2003) (internal quotation marks and citations omitted). This objectivity standard should not include “inferred perception[s].” *Id.* A trial judge’s repetitive rulings against one party are “not grounds for disqualification,” unless the party demonstrates “evidence to support allegations of interest or prejudice.” *Love v. Pressley*, 34 N.C. App. 503, 506 (1977).

The Myers raise multiple allegations against Judge Coward. These allegations include:

- Judge Coward and opposing counsel, Sanford Steelman, went to the same undergraduate and graduate schools, and both were members of Phi Alpha Delta (though the Myers do not suggest they were members at the same time).
- Judge Coward’s professional relationships with the retired Superior Court Judge James Downs and the retired appellate court judge, Sanford Steelman, who both have acted as opposing counsel in the various cases before Judge Coward.

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- Judge Coward and his staff refer to Steelman as “judge” due to Steelman’s retired appellate judge status, despite multiple objections by the Myers.
- Judge Coward has entered multiple rulings against the Myers’ counsel, Shira Hedgepeth, and multiple rulings related to the SMCC that negatively affect the Myers.
- The Myers believe Judge Coward has an interest in maintaining the outcome of the previous rulings he made that are now challenged in the Myer’s lawsuits.
- Attorney Shira Hedgepeth perceives Judge Coward “allows the constant belittling” of her by Steelman.
- Judge Coward signed Steelman’s proposed order after the hearing on the motion to quash subpoenas duces tecum despite attorney Shira Hedgepeth’s multiple objections and Judge Coward’s request at the hearing to include a statement of consent by both parties.
- Judge Coward denied the motion to recuse without referring the motion to another judge for review.

Looking to this Court’s previous explanations of what substantial evidence of “bias, prejudice, or interest” is, we determine the Myers have not carried their burden of objectively demonstrating that grounds exist for disqualification of Judge Coward. There must be “such a personal bias, prejudice or interest on the part of the judge that he would be unable to rule impartially.” *State v. Kennedy*, 110 N.C. App. 302, 305 (1993) (internal quotation marks and citations omitted). This “bias, prejudice or interest which requires a trial judge to be recused from a trial has reference to the personal disposition or mental attitude of the trial judge, either favorable or unfavorable, toward a party to the action before him.” *Id.* (cleaned up). Another way to consider whether bias or prejudice exists, is by considering whether “a reasonable person would question whether the judge could rule impartially.” *Id.*

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In the present cases, the Myers' contentions are based in large part upon generic factual allegations that would be common to many lawyers and judges in North Carolina: attending the same undergraduate and law schools, being members of a particular legal organization, and representing parties in other cases before a particular judge. The Myers have not demonstrated how these types of professional relationships have created any sort of improper bias or prejudice in this case. The remaining allegations are based upon rulings by Judge Coward that were opposed to the Myers' position. These claims of bias are based at best upon "inferred perception[s]" and frustrations toward Judge Coward's multiple rulings against them. *Lange*, 357 N.C. at 649.

There is no evidence of Judge Coward's disposition toward either party, or evidence in the record of Judge Coward ever calling Steelman "judge." In fact, all that is in the record is the Myers' attorney calling Steelman "your Honor," "Honorable Retired Judge Steelman," "Retired Judge Steelman," and "your Retired Honor." Judge Coward repeatedly referred to Sanford Steelman as Mr. Steelman. Within the record, we only find one reference of his judicial assistant referring to Sanford Steelman as a Judge; but this was in an email, not open court, and was later followed by another email in which the assistant apologized for the judicial reference.

Further, Judge Coward was not required to refer the motion to recuse to another judge unless the allegations are such that findings of fact are necessary to

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consider the judge's disqualification. *See N.C. Nat. Bank v. Gillespie*, 291 N.C. 303, 311 (1976) (“[W]hen the trial judge found sufficient force in the allegations contained in defendant’s motion to proceed to find facts, he should have either disqualified himself or referred the matter to another judge”). Accordingly, there is no substantial evidence of bias, prejudice, or interest such that a reasonable person would be concerned Judge Coward could not rule impartially. Therefore, the trial court did not abuse its discretion and we affirm the trial court’s denial of the motion for recusal.

III.

For the foregoing reasons, we affirm the trial court’s denial of the motion for recusal.

AFFIRMED.

Judges STROUD and COLLINS concur.

Report per Rule 30(e).