

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Ballard v. Campbell

127 So. 3d 693 (Fla. 4th DCA 2013) · Decided November 20, 2013

SUMMARY

The Florida Fourth District Court of Appeal granted a petition for writ of prohibition challenging the denial of a motion to disqualify a judge in a post-dissolution timesharing dispute. The court held that the motion was timely because it was filed on the date the petitioner discovered the judge's prior representation by counsel for the opposing party, and that the alleged facts established an objectively reasonable fear of judicial bias.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Per Curiam; Damoorgian, C.J.; Gross, J.; Ciklin, J.
JURISDICTION	Florida
DECIDED	November 20, 2013
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for writ of prohibition challenging the denial of a motion to disqualify the judge presiding over a post-dissolution timesharing proceeding.
PRECEDENTIAL VALUE	Published Florida Fourth District Court of Appeal opinion
PARTIES	Ballard v. Campbell

TOPICS

writ of certiorari

family law procedure

child custody

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

family law

judicial disqualification

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether Ballard's motion to disqualify was timely under Florida Rule of Judicial Administration 2.330(e).

2. Whether the alleged prior representation of the presiding judge by a partner in counsel's law firm created an objectively reasonable fear of judicial bias and rendered the motion legally sufficient.
3. Whether prohibition was an appropriate remedy for the denial of the motion to disqualify.

HOLDINGS

1. A motion to disqualify is timely under Florida Rule of Judicial Administration 2.330(e) when filed no later than ten days after the moving party discovers the facts constituting the grounds for disqualification. Because Ballard discovered the judge's prior representation on May 2 and filed his motion that same day, the motion was timely.
2. A motion to disqualify is legally sufficient when the alleged facts would cause a reasonably prudent person to fear that the judge could not provide a fair and impartial trial. A law firm's representation or recent representation of the presiding judge supports disqualification because the appearance of justice requires reassignment even without proof of actual bias.
3. Prohibition is available to prevent a trial judge from continuing to preside when a legally sufficient motion for disqualification has been denied.

KEY QUOTATIONS

“the appearance of justice proscribes the trial judge from continuing, even though the record may be void of any actual bias or prejudice on her part.” (695)

“As we emphasized in Atkinson, we agree that justice must satisfy the appearance of justice.” (695)

FACTUAL BACKGROUND

The underlying post-dissolution dispute concerned timesharing of a minor child after approximately five years of inactivity. Campbell sought timesharing for a holiday in 2013. The presiding judge disclosed that she had previously been represented in her own dissolution proceeding by a partner in the law firm representing Campbell, and Ballard moved to disqualify her on the same day he received the disclosure.

PROCEDURAL HISTORY

After Campbell filed a motion seeking visitation and timesharing, the presiding judge disclosed that she had previously been represented by a partner in the law firm representing Campbell. Ballard moved to disqualify the judge on the day he received the disclosure letter. The trial court denied the motion, and Ballard sought prohibition in the Fourth District Court of Appeal.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The presiding judge must be disqualified and the matter reassigned to another judge.

CASES CITED

- Hayslip v. Douglas, 400 So. 2d 553, 556 (Fla. 4th DCA 1981)
- Parker v. State, 3 So. 3d 974, 982 (Fla. 2009)
- City of Fort Lauderdale v. Palazzo Las Olas Group, LLC, 882 So. 2d 1102 (Fla. 4th DCA 2004)
- Atkinson Dredging Co. v. Henning, 631 So. 2d 1129, 1130 (Fla. 4th DCA 1994)
- Smith v. Sikorsky Aircraft, 420 F. Supp. 661 (C.D. Cal. 1976)

OPINION

PER CURIAM.

PER CURIAM. Petitioner seeks prohibition following a trial court order denying his motion to disqualify the judge presiding in a post-dissolution proceeding. We grant the petition. The underlying case involves a post-dissolution dispute between Petitioner and Respondent, over the timesharing of a minor child.

After five years of inactivity in the case, Respondent filed a motion for visitation, seeking timesharing of the child for a holiday in 2013. On April 19, 2013, the presiding judge sent a letter to Petitioner's attorney disclosing the fact that she had been previously represented by the law firm that represented Respondent.

In particular, one of the firm's partners had represented the judge during her dissolution of marriage action. Due to an absence from the jurisdiction, Petitioner's attorney did not receive the letter until May 2, 2013. That same day, Petitioner moved to disqualify the judge based on fears that he would not receive a fair hearing or trial because of the judge's prior representation by Respondent's counsel.

Citing Florida Rule of Judicial Administration 2.330, the trial court denied the motion to disqualify. Under Rule 2.330, a motion to disqualify filed on these grounds is required to be legally sufficient. Respondent argues that the motion was insufficient because it was untimely.

In particular, it alleges that the motion was filed more than 10 days after the judge's April 19th letter. *695We disagree with Respondent's position. Florida Rule of Judicial Administration 2.330(e) requires that a motion to disqualify be filed no later than 10 days after discovery of the facts that constitute grounds for the motion.

Here, the judge's letter was not discovered until May 2nd—the same date on which the motion to disqualify was filed. Furthermore, the term legal sufficiency encompasses more than mere technical compliance with the rule and the statute. See Hayslip v. Douglas, 400 So.2d 553, 556 (Fla. 4th DCA 1981). Courts are also required to assess whether the facts alleged would prompt a reasonably prudent person to fear that he or she could not get a fair and impartial trial.

Id. The fear of judicial bias must be objectively reasonable. *Parker v. State*, 3 So.3d 974, 982 (Fla.2009). This Court's jurisprudence suggests that Petitioner's burden for disqualification was satisfied. The general rule is that disqualification is required if counsel for one of the parties is representing or has recently represented the judge. See *City of Fort Lauderdale v. Palazzo Las Olas Group, LLC*, 882 So.2d 1102 (Fla.

4th DCA 2004). In *Atkinson Dredging Co. v. Henning*, 631 So.2d 1129 (Fla. 4th DCA 1994), this Court found that the trial judge should be prohibited from presiding over a pending case because a law firm representing one of the parties was currently representing the judge in an unrelated matter.

In that case, we found that "the appearance of justice proscribes the trial judge from continuing, even though the record may be void of any actual bias or prejudice on her part." Id. at 1130. In *Atkinson*, this Court approved of *Smith v. Sikorsky Aircraft*, 420 F.Supp. 661 (C.D.Cal.1976), where a judge sua sponte ordered the case reassigned because a member of the law firm representing the plaintiff had previously acted as counsel for the judge.

As we emphasized in *Atkinson*, we agree that justice must satisfy the appearance of justice. In keeping with this principle, we conclude that Petitioner's motion was sufficient and grant the petition for writ of prohibition. Petition granted. DAMOORGIAN, C.J., GROSS and CIKLIN, JJ., concur.