

# 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)

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