

SUPREME COURT OF ARKANSAS

Stilley v. Perry

372 Ark. 259 (2008) (Ark. 2008) · No. No. 07-981 · Decided January 31, 2008

SUMMARY

The Supreme Court of Arkansas addresses Oscar Stilley’s motions for recusal and reconsideration. The court declines recusal, grants reconsideration to permit expansion of the appellate record, declines to order entry of a final order or recusal of the circuit judge by extraordinary writ, and resets the briefing schedule.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	January 31, 2008
DOCKET	No. 07-981
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Stilley sought reconsideration of the Arkansas Supreme Court's denial of his petition for certiorari to complete the appellate record, mandamus to compel entry of a final order, and prohibition requiring the trial judge to recuse.
STANDARD OF REVIEW	Recusal decisions are discretionary with the judge involved. Extraordinary writs are available only when their legal requirements are satisfied; mandamus was improper where the circuit court determined that no additional final order was warranted.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Oscar Stilley v. Jim Perry, University of Arkansas at Fort Smith, et al.

TOPICS

- appellate procedure
- writ of certiorari
- motion for reconsideration
- sanctions
- civil procedure

PRACTICE AREAS

- Appellate procedure
- Civil procedure
- Extraordinary writs
- Judicial recusal

QUESTIONS PRESENTED

1. Whether the Arkansas Supreme Court justices were required to recuse themselves because the court had referred a matter involving Stilley to the Professional Conduct Committee.
2. Whether Stilley was entitled to oral argument on his motion for recusal.
3. Whether reconsideration should be granted to permit expansion of the appellate record through certiorari.
4. Whether mandamus should issue to compel the circuit court to enter a final order.
5. Whether prohibition should issue to require the circuit judge to recuse.

HOLDINGS

1. Recusal was not required because Stilley provided no reason showing that the justices were biased against him; recusal matters are discretionary with the individual judges involved.
2. Neither an evidentiary hearing nor five minutes of oral argument was required on the recusal motion.
3. The petition for reconsideration was granted insofar as it sought certiorari to complete the record, and the writ issued with a fifteen-day deadline.
4. Mandamus was properly denied because the circuit court believed no additional order was warranted and the issue was not an appropriate subject for an extraordinary writ.
5. Prohibition was not proper to command the circuit judge to recuse; a recusal motion must first be directed to the circuit court and, if denied, may be raised on appeal.

KEY QUOTATIONS

*“An extraordinary writ, whether it be prohibition or mandamus, is not proper to command a circuit judge to recuse under these circumstances.” (*494)*

*“Any motion to recuse must first be directed to the circuit court and, if denied, may be an issue on appeal.” (*494)*

FACTUAL BACKGROUND

Stilley appealed circuit-court orders entered on May 11, May 21, and June 5, 2007, but informed the circuit court that no final order existed. He later sought additional transcripts and documents to complete or expand the appellate record. He also sought recusal of the Arkansas Supreme Court justices and the circuit judge based on the court's referral of a matter involving him to the Professional Conduct Committee.

PROCEDURAL HISTORY

Stilley appealed several circuit-court orders but later advised that no final order had been entered. After filing the appellate record, he petitioned for certiorari to expand or complete the record, mandamus to require a final order, and prohibition concerning the trial judge's recusal. The Supreme Court initially denied the petition without opinion, then granted reconsideration in part, issuing certiorari to complete the record while declining reconsideration of the mandamus and prohibition requests.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The writ of certiorari issued for completion of the appellate record within fifteen days of the order, and the clerk was directed to reset the briefing schedule. The requests for mandamus and prohibition were denied.

CASES CITED

- Nash v. Hendricks, 369 Ark. 60, 250 S.W.3d 541 (2007)
- Stilley v. Fort Smith Sch. Dist., 367 Ark. 193, 238 S.W.3d 902 (2006)

OPINION

PER CURIAM.

273 S.W.3d 492 (2008) Oscar STILLEY, Appellant, v. Jim PERRY, et al., Appellees. No. 07-981. Supreme Court of Arkansas. January 31, 2008. *493 PER CURIAM. a. Motion for Recusal On December 2, 2007, Appellant Oscar Stilley moved that each justice on this court recuse from hearing the motion for reconsideration filed that same day. Each justice declines the suggestion of recusal.

Recusal matters are discretionary with the individual judges involved. See, e.g., Nash v. Hendricks, 369 Ark. 60, 250 S.W.3d 541 (2007). Mr. Stilley has given the seven justices of this court no reason to recuse. He asserts that the court referred a matter involving him to the Professional Conduct Committee for its assessment and review.

In doing so, he claims that the members of this court became his "accusers" and, thus, are biased against him for purposes of the present motion and the subsequent appeal. We disagree and state that the members of this court are not biased against Mr. Stilley in any respect. Nor do we agree with Mr. Stilley that a five-minute hearing to argue his reconsideration motion is required before this court.[1] Initially, we observe that evidentiary hearings on recusal matters are not required.

Stilley v. Fort Smith Sch. Dist., 367 Ark. 193, 238 S.W.3d 902 (2006). The same applies for arguments of counsel on recusal motions before this court. Moreover, Mr. Stilley has filed a twenty-eight-page motion for recusal detailing his arguments in plenary fashion.

Because of this, we conclude that oral argument by counsel for five minutes would not be helpful to this court. b. Motion for Reconsideration On June 19, 2007, Mr. Stilley filed his notice of appeal from the circuit court's orders of May 11, 2007; May 21, 2007; and June 5, 2007.

On July 10, 2007, Mr. Stilley advised the circuit court by letter that there was no final order from which to appeal. The court had previously asked the parties what remained to be decided. The

court ultimately decided not to enter further orders respecting the orders that are the subject of this appeal.[2] On September 12, 2007, Mr. Stilley filed the record for his appeal.

On October 19, 2007, Mr. Stilley petitioned for certiorari to complete the record, for mandamus to compel the trial court to enter a final order, and for prohibition commanding the sitting trial court to recuse from further participation in this case.

On November 8, 2007, this court denied that petition without opinion. Mr. Stilley now asks for reconsideration of our decision not to permit him to expand the record for purposes of his appeal with additional transcripts of hearings and other documents he considers relevant to his appeal. Respondent University of Arkansas at Fort Smith initially objected to expansion on grounds that Mr. Stilley had not been diligent in filing his record for his appeal originally, and that, in addition, Mr. Stilley was using the expanded record to raise new and additional issues in his appeal.

We denied Mr. Stilley's petition for certiorari on November 8, 2007. Nevertheless, we now grant his petition for reconsideration to expand the record because *494 the initial petition for certiorari was filed within thirty-seven days from the date the record was filed.

We add this caveat, however. Should it be determined that the University is correct and that the expanded record was not sought for a proper purpose, Mr. Stilley will be subject to appropriate sanctions by this court. Mr. Stilley also contended in his original petition that a final order had not been entered by the circuit court.

The circuit court and the respondents disagreed. We declined to order the circuit court to enter a final order when it was clear that the circuit court believed no additional order was warranted and that this was not an appropriate subject for the extraordinary writ of mandamus.

We decline to reconsider our decision on this point. Mr. Stilley further prays for prohibition commanding the circuit judge to recuse. An extraordinary writ, whether it be prohibition or mandamus, is not proper to command a circuit judge to recuse under these circumstances. Recusal matters lie within the discretion of the judge, as already stated in this opinion.

Any motion to recuse must first be directed to the circuit court and, if denied, may be an issue on appeal. The writ of certiorari is issued for completion of the record within fifteen days of the date of this order.

The clerk of this court will reset the briefing schedule. NOTES [1] This court limits oral arguments on motions to five minutes to a side, when such arguments are permitted by this court. [2] The circuit court did enter an order on July 16, 2007, denying an emergency motion to intervene filed by T.D. Young.