

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)