

SUPREME COURT OF ALABAMA

Ex parte Bobby W. Little (In re Bobby W. Little v. Fred Lawton III);
Ex parte Bobby Little (In re Bobby Little v. Cindy L. Lewis); Ex
parte Bobby Wayne Little (In re Bobby Wayne Little v. Ted Hooks)

837 So. 2d 822 (Ala. 2002) · No. 1010797 through 1010799 · Decided June 7, 2002

SUMMARY

The Supreme Court of Alabama considered three consolidated petitions for writs of mandamus filed by Bobby Wayne Little. The Court directed the trial judge to vacate orders denying Little indigency status and to reconsider his applications, requiring written reasons for any renewed denial, but it denied Little's requests for judicial recusal. The Court held that the allegations did not establish actual bias or provide a reasonable basis to question the judge's impartiality.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Stuart, Justice; Moore, C.J.; Houston, J.; See, J.; Lyons, J.; Brown, J.; Johnstone, J.; Harwood, J.; Woodall, J.
JURISDICTION	Alabama
DECIDED	June 7, 2002
DOCKET	1010797 through 1010799
DISPOSITION	other
PROCEDURAL POSTURE	Little filed three petitions for writs of mandamus seeking to compel the circuit judge to vacate orders denying his affidavits of substantial hardship and to recuse himself. The Supreme Court of Alabama consolidated the petitions for decision.
STANDARD OF REVIEW	Mandamus is an extraordinary remedy available only upon a clear legal right, an imperative duty accompanied by refusal, lack of another adequate remedy, and properly invoked jurisdiction. Mandamus is also the proper method for reviewing whether judicial recusal is required.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential
PARTIES	Bobby W. Little, Bobby Little, Bobby Wayne Little v. Fred Lawton III, Cindy L. Lewis, Ted Hooks

TOPICS

writ of certiorari

appellate procedure

civil procedure

remedies

standard of review

PRACTICE AREAS

Civil procedure

Appellate procedure

Judicial disqualification

Indigency and waiver of court costs

Extraordinary writs

QUESTIONS PRESENTED

1. Whether Little established a clear legal right to have the orders denying his indigency applications vacated.
2. Whether the circuit judge was required to recuse himself based on the unexplained denial of indigency status and the identities or positions of the defendants.
3. Whether Little had an absolute right to indigency status or whether the circuit judge should reconsider the applications and provide written reasons for any denial.

HOLDINGS

1. Little established the requirements for mandamus relief concerning the orders denying indigency status, and the circuit judge must vacate those orders.
2. Little did not establish that the circuit judge's recusal was required because he failed to show actual personal bias or prejudice or circumstances causing the judge's impartiality reasonably to be questioned.
3. Little did not demonstrate an absolute right to indigency status; the circuit judge must reconsider the applications and state the reason in writing for any denial.

KEY QUOTATIONS

"A writ of mandamus is an extraordinary remedy, and it `will be issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.'" (at 824)

"The burden is on the party seeking recusal to present evidence establishing the existence of bias or prejudice." (at 825)

"Only if this Court is advised of the reason for denial of indigency status can this Court adequately perform our responsibility of reviewing the denial." (at 826)

FACTUAL BACKGROUND

Little, a state prison inmate, filed three civil actions against Fred Lawton III, Cindy L. Lewis, and Ted Hooks. Each action included a signed and notarized affidavit of substantial hardship stating, according to Little, that he received approximately \$5 per month in gifts. The circuit judge denied indigency status without stating a reason

and struck through the form language stating that the affiant was not indigent. Little also sought recusal based on the denial and the defendants' relationships or positions in the court system.

PROCEDURAL HISTORY

Little filed three civil actions in the Calhoun Circuit Court, each accompanied by an affidavit of substantial hardship seeking indigency status and waiver of prepayment of court costs. Judge Richard Joel Laird denied the applications, Little moved for reconsideration, and the motions were denied. Little then petitioned the Supreme Court of Alabama for mandamus relief; the court granted the petitions in part, denied them in part, and issued writs directing reconsideration of the indigency applications.

DISPOSITION

other

REMAND INSTRUCTIONS

Judge Laird must vacate the orders denying Little indigency status and reconsider each application. If he denies indigency status, he must state the reason in writing and notify Little; if the reason is that Little is not indigent, checking the appropriate box on the affidavit form is sufficient.

CASES CITED

- State v. Cannon, 369 So. 2d 32, 33 (Ala. 1979)
- Ex parte Melof, 553 So. 2d 554, 557 (Ala. 1989)
- Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993)
- Ex parte Butts, 775 So. 2d 173, 176 (Ala. 2000)
- Hartman v. Board of Trustees of the University of Alabama, 436 So. 2d 837 (Ala. 1983)

OPINION

PER CURIAM.

837 So. 2d 822 (2002) Ex parte Bobby W. LITTLE. (In re Bobby W. Little v. Fred Lawton III). Ex parte Bobby Little. (In re Bobby Little v. Cindy L. Lewis). Ex parte Bobby Wayne Little. (In re Bobby Wayne Little v. Ted Hooks). 1010797 through 1010799. Supreme Court of Alabama. June 7, 2002. *823 Bobby W. Little, pro se. Fred Lawton III of Lawton & Associates, Anniston.

Bill Pryor, atty. gen., and Fred F. Bell, asst. atty. gen., for Ted Hooks. STUART, Justice. Bobby Wayne Little filed three similar petitions for the writ of mandamus, all of which involve identical legal issues. The petitions seek an order directing Judge Richard Joel Laird to vacate his orders denying Little's affidavits of substantial hardship and directing Judge Laird to recuse himself in each of the cases.

Little seeks, by the filing of the affidavits in each case, to be declared indigent and to have the prepayment of court costs waived. We grant the petitions in part and deny them in part. Little, a State prison inmate, filed three separate civil actions in the Calhoun Circuit Court.

The actions were filed against Fred Lawton III, Cindy L. Lewis, and Ted Hooks, respectively. Each action was accompanied by a signed and notarized Unified Judicial System Form C-10, "Affidavit of Substantial Hardship and Order." According to Little, each affidavit noted his approximate income of \$5.00 a month from gifts. Only the reverse side of the affidavit of substantial hardship forms were submitted to this Court as exhibits.

The trial judge executed the order of the court portion of the form in each case; that order portion reads, in pertinent part: "IT IS THEREFORE, ORDERED AND ADJUDGED BY THE COURT AS FOLLOWS: [box checked indicating that] Affiant is not indigent and request is DENIED."

The words "Affiant is not indigent and" were stricken through. Little filed a motion to reconsider in each case; the motions were denied. He filed a petition for a writ of mandamus with this Court in each case. This Court ordered answers and briefs in each case and consolidated the cases for the purpose of writing one opinion. *824 Mandamus is "proper to compel a court to perform ministerial duties and to entertain jurisdiction," State v. Cannon, 369 So.

2d 32, 33 (Ala.1979); it is also the proper method by which to review whether recusal is required. Ex parte Melof, 553 So. 2d 554 (Ala.1989). We have often stated the standard for issuing a writ of mandamus: "A writ of mandamus is an extraordinary remedy, and it `will be issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.'

Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala.1993)." Ex parte Butts, 775 So. 2d 173, 176 (Ala. 2000). We first address the issue of the judge's denial of Little's request for indigency status as reflected on the order included in the form. Little points out that Judge Laird not only denied his request for indigency status but also struck through the following language on the form: "Affiant is not indigent."

In his response, Judge Laird acknowledges that he denied the petitioner's affidavit of substantial hardship and further denies that his action in doing so was improper. He asserts that it was within his discretion to deny the application, but he offers no reason for the denial or any explanation for striking through the words "affiant is not indigent" that appear on the order portion of the form.

Based upon the information before this Court, we conclude that Little has established a clear legal right to the order sought, that is, to have the order denying him indigency status vacated, that the respondent had a duty to perform, and that he refused to do so. Little has also demonstrated the lack of another adequate remedy, and he has properly invoked the jurisdiction of this Court.

We issue a writ of mandamus in each case directing Judge Laird to vacate his order denying Little indigency status. Little also seeks an order directing Judge Laird to recuse himself in each case. As grounds for this request he argues that Judge Laird's denying him indigency status without citing grounds for the denial demonstrates bias against Little. Little also alleges that the status of each individual defendant serves as a basis for imputing bias or partiality on the part of the trial judge: according to the petitions, Fred Lawton III is a practicing attorney in Calhoun County; Ted Hooks is the circuit clerk of Calhoun County; and Cindy L. Lewis is apparently Little's former wife.

Little also states that the sheriff of Calhoun County is a defendant, although nothing in the materials before this Court indicates that the sheriff has been named as a party. Judge Laird denies that he has done anything that should require his recusal. Canon 3.C. of the Alabama Canons of Judicial Ethics governs the disqualification of a judge.

The pertinent portion of that rule provides: "(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where: "(a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; "(b) He served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced *825 law served during such association as a lawyer in the matter, or the judge or such lawyer has been a material witness concerning it; "(c) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; "(d) He or his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person: "(i) Is named a party to the proceeding, or an officer, director, or trustee of a party; "(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; "(iii) Is to the judge's knowledge likely to be a material witness in the proceeding."

Little has failed to establish actual personal bias or prejudice on the part of Judge Laird; he has further failed to demonstrate that Judge Laird's impartiality might reasonably be questioned. We will not presume bias or prejudice. *Hartman v. Board of Trustees of the Univ. of Alabama*, 436 So. 2d 837 (Ala.1983). This Court in *Ex parte Melof* 553 So. 2d 554, 557 (Ala.1989), observed that "a mere accusation of bias that is unsupported by substantial fact does not require the disqualification of a judge."

The Court further stated: "The burden is on the party seeking recusal to present evidence establishing the existence of bias or prejudice.... "[T]he law will not suppose a possibility of bias or favor in a judge who is already sworn to administer impartial justice and whose authority greatly depends upon that presumption and idea." Any disqualifying prejudice or bias as to a party must be of a personal nature and must stem from an extrajudicial source."

553 So.2d at 557 (citations omitted). Little has failed to meet his burden with respect to Judge Laird's recusal. The evidence before this Court consists of allegations and suppositions unsupported by substantial fact.

The denial of Little's applications for indigency status and the fact that two of the individual defendants had positions in the court system as a lawyer and the circuit clerk without more, does not indicate bias or prejudice on the part of Judge Laird.

Therefore, we deny Little's request for an order directing Judge Laird to recuse himself in each of these cases. Because we have decided that Judge Laird is not required to recuse himself in these cases we must further address the matter of the affidavits of substantial hardship. While we have determined that the orders denying Little indigency status are due to be vacated, we do not find that Little has demonstrated an absolute right to indigency status.

Little has filed only the second page of each affidavit of substantial hardship form with this Court. The orders denying Little indigency status must be vacated, and Judge Laird must reconsider Little's applications.

In the event Judge Laird finds it appropriate to deny Little indigency status he shall state the reason therefor in writing and notify Little. If the reason is that Little is not indigent, checking the appropriate box on the order portion of the affidavit of substantial hardship and order forms shall be sufficient. Only if this Court is advised of the reason for denial of indigency status can this Court adequately perform our responsibility of reviewing the denial. *826 PETITIONS GRANTED IN PART AND DENIED IN PART; WRITS ISSUED.

MOORE, C.J., and HOUSTON, SEE, LYONS, BROWN, JOHNSTONE, HARWOOD, and WOODALL, JJ., concur.