

5/12/22 - cc: RJD, Fred MacCraff, DOTole, JSakon, S Cousins, Morrison Mahoney

DOCKET NO.: FA16-6071228 : SUPERIOR COURT
FRANCELIA SAKON : JUDICIAL DISTRICT
: OF HARTFORD AT
VS. : HARTFORD
: :
JOHN A. SAKON : MAY 12, 2022

MEMORANDUM OF DECISION

Facts & Procedural History

On March 15, 2022, evidence was closed in the parties' custody trial. On April 11, 2022, the defendant filed a civil rights complaint in the District of Connecticut against Judge Nguyen-O'Dowd, alleging discrimination. The defendant filed notice of that suit in the Superior Court on April 13, 2022, and on April 21, 2022, he filed a motion for disqualification of the judicial authority based on the federal suit and other allegations. The motion was denied on April 21, 2022 (*Diana, J.*). On April 29, 2022, the plaintiff filed a motion for this court to vacate its prior decision and hold a hearing on the defendant's motion to disqualify.

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Susan Luciano

Discussion

“The principles that govern motions to open or set aside a civil judgment are well established. Within four months of the date of the original judgment, Practice Book [§ 17-4] vests discretion in the trial court to determine whether there is a good and compelling reason for its modification or vacation.” (Internal quotation marks omitted.) *Chapman Lumber, Inc. v. Tager*, 288 Conn. 69, 94, 952 A.2d 1 (2008).

Practice Book § 1-22 (b) provides in relevant part: “A judicial authority is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judicial authority When such an attorney or party appears before the judicial authority, he or she shall so advise the judicial authority and other attorneys and parties to the proceeding on the record, and, thereafter, the judicial authority shall either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or refer the disqualification issue to another judicial authority for a hearing and decision.”

“Practice Book § 1-23 creates a mandatory procedure to be followed by any party seeking to recuse a judge.” (Internal quotation marks omitted.) *Olson v. Olson*, 71 Conn. App. 826, 830, 804 A.2d 851 (2002). Practice Book § 1-23 provides: “A motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time.” “The requirements of Practice Book § 1-23 apply to any motion for disqualification of a judge” *Gagne v. Vaccaro*, 311 Conn. 649, 659, 90 A.3d 196 (2014); see also *State v. Weber*, 6 Conn. App. 407, 413, 505 A.2d 1266, cert. denied, 199 Conn. 810, 508 A.2d 771 (1986) (dictates of P.B. § 997, now § 1-23, “are a condition precedent to a hearing on a judge’s disqualification”); *PHH Mortgage Corp. v. Traylor*, Superior Court, judicial district of New London, Docket No, CV-07-5004315-S (October 23, 2013, *Devine, J.*) (requiring compliance with P.B. § 1-23 for a

disqualification motion filed pursuant to P.B. § 1-22). “Should the party seeking to disqualify the judge fail to follow these mandatory procedures, the claim is deemed to be waived.” *Tao v. Court of Probate*, Superior Court, judicial district of Windham, Docket No. CV-14-5005838-S (November 22, 2016, *Calmar, J.*).

“Evidence of bias sufficient to support a claim of judicial disqualification must be based on more than opinion or conclusion. . . . Our Supreme Court has indicated that, where there is a factual dispute involved in a claim of judicial bias, an evidentiary hearing *may* be in order, and it has implied that the hearing be before another judge.” (Citation omitted; emphasis added; internal quotation marks omitted.) *Turner v. Commissioner of Correction*, 201 Conn. App. 196, 222, 242 A.3d 512 (2020), cert. denied, 336 Conn. 945, 250 A.3d 694 (2021).

In the present matter, the defendant’s motion did not comply with any of the requirements of Practice Book § 1-23, as it was untimely and without an affidavit or certificate of good faith.¹ The late filing of a

¹ Though this motion was brought by a pro se litigant, the defendant has filed six prior motions to disqualify, and some included at least a section labeled “affidavit.” See *Turner v.*

motion can be excused with good cause shown. See Practice Book § 1-23. The primary basis for the defendant's motion is his filing of the civil rights suit, which occurred after the Superior Court trial but before the court's decision was rendered. Arguably, this may present good cause for a late motion. The filing of a lawsuit alone, however, is insufficient absent any other factual basis from which a reasonable person may question the trial judge's impartiality. See P.B. § 1-22 (b); *Tierinni v. Noonan*, Superior Court, judicial district of Tolland, Docket No. CV-18-5010679-S (June 18, 2019, *Seeley, J.*) (motion for disqualification cannot be premised on presumption that judges have a bias against a litigant who files a complaint against them, absent other evidence); *PHH Mortgage Corp. v. Traylor*, *supra*, Superior Court, Docket No. CV-07-5004315-S (multiple lawsuits against trial judge insufficient alone to raise reasonable concern over judge's impartiality).

The remainder of the assertions in the defendant's motion concern the judge's prior rulings in this protracted family matter. First, there is

Commissioner, *supra*, 201 Conn. App. 224 (pro se petitioner that failed to comply with P.B. § 1-23 was "no ordinary self-represented party" based on extensive filings).

no good cause for failing to bring a motion related to these claims prior to the trial, in compliance with the requirements of the Practice Book rule. Indeed, the defendant has filed six motions to disqualify previously, all involving the same or similar claims.² Second, the defendant’s allegations amount to legal conclusions that Judge Nguyen-O’Dowd’s prior rulings were improper. “[A]dverse rulings by the judge do not amount to evidence of bias sufficient to support a claim of judicial disqualification.” (Internal quotation marks omitted.) *Germain v. LaBrie*, 108 Conn. App. 587, 596, 949 A.2d 518 (2008). See also *Emerick v. Emerick*, 170 Conn. App. 368, 377, 154 A.3d 1069 (“[t]he fact that the plaintiff strongly disagrees with the substance of the court’s rulings does not make those rulings evidence of bias” [internal quotation marks omitted]), cert. denied, 327 Conn. 922, 171 A.3d 60 (2017).

² The defendant has also filed an appeal of Judge Nguyen-O’Dowd’s March 15, 2022 order, denying, inter alia, his other pending motions to disqualify, with prejudice for failure to prosecute (AC 45466).

Conclusion

The court concludes that there is no compelling reason to vacate its prior order. The motion to vacate³ is hereby denied.

So ordered,

By the Court,



Diana, J

³ Docket entry # 875