

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

HONORABLE RONDA R. FISK

CLERK OF THE COURT
R. Stannard
Deputy

IN RE THE MATTER OF
LAURA OWENS

DAVID S GINGRAS

AND

CLAYTON ECHARD

GREGG R WOODNICK

DEANDRA ARENA
JUDGE FISK
JUDGE MATA

MINUTE ENTRY

This Court has considered Petitioner Laura Owens' *Notice of Change of Judge for Cause: Memorandum & Affidavit of Support* (hereafter, the "Rule 6.1 Motion") and the separate *Affidavit of David S. Gingras In support of Petitioner's Notice of Change of Judge for Cause* (hereafter, the "Affidavit") (both filed 07/08/2024) and Respondent Clayton Echard's *Response to Notice of Change of Judge for Cause* (filed 07/11/2024). Pursuant to Rule 6.1, Arizona Rules of Family Law Procedure (ARFLP), the Rule 6.1 Motion was referred to the Family Department Presiding Judge Ronda Fisk (this Court) for ruling.¹ For the reasons set forth herein, the Rule 6.1 Motion is denied.

¹ The Rule 6.1 Motion was filed after Judge Mata's 06/17/2024 Ruling (filed 06/18/2024) and days before Petitioner filed various post-trial motions. Judge Mata prematurely ruled on the post-trial motions; that ruling was withdrawn via an 07/19/2024 Minute Entry Ruling (filed 07/23/2024). Now that this Court has ruled on the Rule 6.1 motion for change of judge, Judge Mata may rule on the pending motions. *See, e.g.*, Rule 6.1(d)(5) ("If the court determines that the party who filed the affidavit is not entitled to a change of judge, the named judge may proceed with the action.")

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Petitioner's Rule 6.1 Motion seeks to disqualify for cause the assigned Family Court Judge, Judge Julie Mata, "on the basis of bias and prejudice within the meaning of A.R.S. § 12-409(5) [sic]." See Rule 6.1 Motion at 2. Specifically, Petitioner alleges that Judge Mata purportedly did the following: (1) performed an independent investigation into the facts of the case and in so doing considered and relied upon information posted on the Internet about the case; and (2) engaged in *ex parte* communications regarding this case with her father, Harry L. Howe, who appeared at the trial as a spectator. See Rule 6.1 Motion at 1, 12.²

As a threshold matter, this Court apologizes to the parties for the delay in issuing this ruling. The Court had technical difficulties opening the compilation CD included with the Affidavit. When opened with Windows Media Player, the file entitled produced an error message; "We can't open Judge Mata's dad compilation. It uses unsupported encoded settings." With technical assistance, the Court finally was able to open and review the compilation CD using VLC Media Player. After reviewing the CD, the Court prepared this ruling.

1. Timeliness of the Rule 6.1 Motion

Respondent contends that the Rule 6.1 Motion is time-barred under A.R.S. § 12-409(B)(5) on the basis that "it was filed after final trial and final judgment under Rule 78." See Response at 4. This Court finds that the analysis as to timeliness is more nuanced than Respondent suggests. A Rule 6.1 motion for change of judge for cause must be filed "within 20 days of discovering that grounds exist for a change of judge." Rule 6.1(c), ARFLP. This Court must at least consider the factual allegations to determine whether they are time barred.

The Rule 6.1 Motion and Affidavit allege as follows: Judge Mata held an evidentiary hearing on 06/10/2024 (hereafter, the "June 10 Hearing"). See Ex. E to Affidavit. Judge Mata's father, Harry Howe, attended the June 10 Hearing as a spectator and spoke to other people in attendance. See Affidavit ¶¶ 66-67. Individuals Dave Neal and Megan Fox, among others, live-streamed and posted on social media various interviews with people who spoke to Mr. Howe at the hearing. See *id.* and accompanying compilation CD. On or about 06/17/2024 at 10:10 AM, Petitioner's counsel emailed Judge Mata's division and Respondent's counsel that the statements

² The Rule 6.1 Motion alleges that these two actions "separately violated Rules 2.9(A) [initiating, permitting, or considering *ex parte* communications outside the presence of the parties or their lawyers] and 2.9(C) ["a judge shall not investigate facts in a matter independently"] of the Arizona Rules of Judicial Conduct. It is not for this Court to determine whether Judge Mata has violated the Arizona Rules of Judicial Conduct. Moreover, the Rule 6.1 Motion makes vague allegations of violations of Petitioner's right to due process of law under both the United States and Arizona Constitutions. See Rule 6.1 Motion at 1, 11. Again, it is not within this Court's purview to determine whether Judge Mata made errors in her findings of fact and/or conclusions of law that violated due process and/or warrant a new trial.

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made on social media had “just come to [his] attention” and warranted a change of judge for cause. *See* Ex. A to Affidavit. At 11:58 AM, Judge Mata’s division sent a response email instructing counsel to file an appropriate motion to bring any issue to the court’s attention. *See* Ex. B to Affidavit.

On 06/18/2024 at 8:00 AM, Judge Mata’s 06/17/2024 Under Advisement Ruling was filed (hereafter, the “June 17 Ruling”). *See* Ex. C. to Affidavit. The June 17 Ruling contained detailed findings of fact, including the following finding: “[Dr. Samantha Deans] further testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023.” *Id.* at 10. The trial transcript from the June 10 Hearing reflects that Dr. Deans did not testify that “Planned Parenthood is not open on Sundays.” *See* Ex. E to Affidavit.

Based on the foregoing, the Court finds that the Rule 6.1 Motion—filed 07/08/2024—was timely filed. In making this finding, the Court acknowledges that “within 20 days” of 06/17/2024 is Sunday, 07/07/2024. Given the circumstances of this case (including the fact that Petitioner’s counsel was on a previously disclosed vacation from 06/10-28/2024), the Court finds that the filing of the motion on the next business day, *i.e.*, Monday, 07/08/2024, was timely.

The Affidavit also details various facts and rulings that Petitioner’s counsel alleges constitute a “summary of pre-trial judicial bias,” *see* Affidavit at 9-12, ¶¶ 37-51 and a “summary of judicial misconduct & bias at trial,” *id.* at 12-15, ¶¶ 52-64; *see also* Rule 6.1 Motion at 13 (alleging Judge Mata “manifested clear prejudice and/or bias early in the proceedings, in the form of multiple, unexplained adverse rulings”). The Court finds that these events that Petitioner contends constitute “misconduct” and “bias” occurred and were known to the Petitioner more than 20 days before she filed her Rule 6.1 Motion. The Court will limit its evaluation of the Rule 6.1 Motion solely to the two allegations identified in the second paragraph of this ruling.

2. Request for Hearing.

Petitioner has requested that this Court hold a hearing and order subpoenas *ad testificandum* for Judge Mata and Harry Howe. A presiding judge reviewing a Rule 6.1 motion for a change of judge as a matter of right has discretion as to whether to hold an evidentiary hearing. *See* Rule 6.1(d)(2) (“The presiding judge may hold a hearing to determine the issues raised in the affidavit or may decide the issues based on any affidavits and memoranda filed by the parties.”) This Court denies Petitioner’s request and will decide the Rule 6.1 Motion on the Affidavit and memoranda filed by the parties, as well as those items on the docket of which this Court takes judicial notice.

3. Analysis of Cause for Change of Judge

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A party seeking a change of judge for cause must establish grounds by affidavit. Rule 6.1(a), ARFLP. One of the grounds which may be alleged for change of judge is “that the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial.” A.R.S. §12-409(B)(5). “The sufficiency of any ‘cause to believe’ must be determined by an objective standard, not by reference to the affiant's subjective belief.” Rule 6.1(d)(5), ARFLP.

Case law instructs that “[i]n Arizona, ‘[a] party challenging a trial judge's impartiality must overcome the presumption that trial judges are ‘free of bias and prejudice.’” *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562, 568, ¶ 21 (App. 2013) (quoting *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, 63 ¶ 29 (App. 2010)). “Judicial rulings alone do not support a finding of bias or partiality without a showing of an extrajudicial source of bias or a deep-seated favoritism... A change of judge for cause is not warranted if based merely on speculation, suspicion, apprehension, or imagination.” *Id.* (internal punctuation and citations omitted). Instead, the party seeking to notice the judge for cause “must prove bias or prejudice by a preponderance of the evidence.” *In re Aubuchon*, 233 Ariz. 62, 66 ¶ 14 (2013) (quoting *State v. Carver*, 160 Ariz. 167, 172 (1989)); *see also* Rule 6.1(d)(4), ARFLP (“[t]he presiding judge must decide the issues by the preponderance of the evidence”).

The Court will separately consider Petitioner’s two claims of bias and/or prejudice.

a. Allegation of Independent Investigation by Judge Mata.

Petitioner correctly points out that Judge Mata’s July 17 Ruling contains a factual error, *i.e.*, the transcript from the June 10 Hearing shows that Dr. Samantha Deans did not testify “that Planned Parenthood is not open on Sundays.” *See* Ex. E to Affidavit. “[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *State v. Ellison*, 213 Ariz. 116, 128, ¶ 40 (2006) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). This factual error can be corrected through a post-trial motion or appellate proceeding; it does not, standing alone, indicate bias. *See, Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. at 568, ¶ 22.

To demonstrate bias, Petitioner asks this Court (Rule 6.1 Motion at 7) to infer that Judge Mata’s erroneous finding constitutes “irrefutable evidence” that she performed “a secret, undisclosed investigation in the facts of this matter,” Affidavit ¶ 93, and “copied that finding from posts on social media.” *Id.* ¶ 85. In support of this position, the Affidavit includes snips of a 06/10/2024 comment on Petitioner’s counsel’s website (“Planned Parenthood isn’t even open on Sundays in LA”) and comment posted by an anonymous Twitter user on 06/10/2024 at 5:08 PM (“It was a Sunday and all LA Planned Parenthood locations are CLOSED on a SUNDAY”). *Id.* ¶¶ 90-92.

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The Court finds Petitioner relies on mere speculation and suspicion when alleging that Judge Mata engaged in a “secret, undisclosed investigation” and therefore is biased. The record evidence reflects conflicting testimony about the day, date, and location that Petitioner obtained an ultrasound—admitted as Ex. B28—which Petitioner admitted to altering. Petitioner testified that when she was in California on a “weekend” she had an ultrasound done under a “fake name” at a Planned Parenthood. *See* Ex. E 17:20-19:8. Before trial, Petitioner had provided a declaration stating that the ultrasound occurred on 07/02/2023; at trial, she changed her testimony to say it was an unspecified weekend in late June 2023. *Id.* Petitioner further testified that she had altered the ultrasound to reflect the incorrect date of 07/07/2023 and the incorrect provider (SMIL instead of Planned Parenthood). *See id.* 55:19-58:21.

Dr. Deans testified that she had reviewed the altered ultrasound and available medical records to prepare a report (admitted as Ex. B41). Dr. Deans expressed concern about the legitimacy of Petitioner’s medical records. *See id.* 112:5-114:23. Dr. Deans confirmed that Planned Parenthood’s national guidelines “require identification at the time of a visit to confirm the identify of a patient. The patient can’t be seen anonymously.” *See id.* 112:20-113:6. Dr. Deans testimony did not address which days of the week the Planned Parenthood offices were open.

Based on the foregoing, the Court finds that when “determined by an objective standard, not by reference to the affiant’s subjective belief,” Rule 6.1(d)(5), ARFLP, Petitioner has failed to show by a preponderance of the evidence that Judge Mata’s finding that “Planned Parenthood is not open on Sundays” reflects bias or prejudice against Petitioner. Moreover—although not dispositive of the issue—the Court further finds that this singular factual finding is of little to no importance given the rest of the findings in the July 17 Ruling.

b. Allegation of Improper *Ex Parte* Communication with Harry Howe

Petitioner alleges that “Judge Mata’s father, Harry L. Howe, was present in the overflow room during the trial” and “spoke with several of [Respondent’s] supporters during and after the trial.” *See* Affidavit ¶ 66. Petitioner’s counsel admits that “the mere fact Judge Mata’s father attended the trial (if true) is not the primary concern.” *See id.* ¶ 68. For purposes of deciding the Rule 6.1 Motion, this Court accepts these allegations as true and finds that if they occurred, was not improper for Judge Mata’s father to attend a public trial as a spectator and speak to other courtroom observers.

Petitioner asks this Court to infer that various statements made by courtroom observers about Mr. Howe confirm that Judge Mata was biased or prejudiced against Petitioner. Petitioner’s counsel acknowledges that his “personal view (based on the past several months) is that Clayton’s followers are generally not honest or reliable.” *See id.* ¶ 73. Nevertheless, Petitioner’s counsel asks this Court to find that an edited compilation of these individuals’ comments about Judge Mata’s father are “clear extra-judicial evidence” showing that Judge Mata had “a hostile feeling or spirit

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of ill-will, or undue friendship or favoritism towards one of the litigants [*i.e.*, Respondent].” Rule 6.1 Motion at 13-14.

Applying an “objective standard, not by reference to the affiant’s subjective belief,” Rule 6.1(d)(5), ARFLP, the Court carefully reviewed the compilation CD and considered in context each of the comments identified in Petitioner’s counsel’s Affidavit. Given the seriousness of the allegations, the Court has made best efforts to provide both the context and verbatim language of the various statements, though admittedly the audio of the compilation CD is very difficult to understand at times.

1. Statements by Hava Darby.

Petitioner alleges that “Ms. Derby [who speaks between 0:00 and 0:40 in the compilation CD] also made statements which appear to imply that Judge Mata told her father that she intended to rule in favor of Clayton before the case was tried.” Affidavit at ¶ 69.

The first video clip on the compilation CD depicts a virtual meeting among nine participants with screen names, including one woman with the screen name “Hava Derby.” Ms. Derby holds up her phone and makes the following statement:

I ran into Judge Mata’s dad in the parking lot afterwards and I asked him like “Well, what did you think?” He was like “I gotta show you something....” [Female voice: What?] So he whips out these papers in his hand... and did anybody... I haven't been online really today... but did anybody... I saw kind of briefly that it was denied... this request for findings of fact and conclusions of law proposed findings? [Male voice: That wasn't denied.] That was not denied? OK, so anyway, did anybody get a copy of this? He was saying, “Julie told me... This is just... you... dad, you gotta read this,” and printed out a copy [unintelligible].

For purposes of deciding the Rule 6.1 Motion, this Court accepts that the scenario recounted by Ms. Derby might have occurred, though Ms. Derby appears not to be clear as to exactly what she is talking about. This Court finds that the fact that a trial judge might have told a family member that she was presiding over a case and might have provided a copy of a publicly available filing—*e.g.*, the Request for Findings of Fact & Conclusions of Law and Proposed Findings (filed 06/03/2024)—neither proves by a preponderance of the evidence that the judge was biased or prejudiced, nor proves that she told her family member how she intended to rule before the case was tried.

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2. Statements of Dave Neal and Individuals Speaking With Him.

Petitioner's counsel's Affidavit further alleges that an individual named Dave Neal made remarks "to signal to the person speaking that they should not disclose further information regarding the comments they claim to have received from Judge Mata's father, because her [sic] believed they would expose judicial misconduct and bias on Judge Mata's part, requiring a new trial if those facts were exposed." Affidavit ¶ 71.

The second video clip on the compilation CD depicts a group of people standing under an awning. The bottom left corner of the screen says "Dave Neal – Rush Hour Podcast." In the foreground there are two men talking, one in a red shirt and the other in a hat (identified in the Affidavit as Dave Neal). While the two men are talking, a woman in a hat approaches and joins their conversation. A woman on left in a black shirt chimes in, and a second woman on the right in a black shirt follows up:

Male in Red Shirt: Judge Mata's dad was in the court with us...

Dave Neal (Male in Hat): Judge Mata's dad. No way...

Male in Red Shirt: It's in the... in the court with... in the side room where we were. Judge Mata's Dad was sitting there.

Dave Neal: She did fantastic.

Woman in Hat (0:51) [interjecting]: I said "Harry, that's really nice you wanna be here to support your daughter." He said "Oh, no, no. I've been hearing about this. I'm here for the circus." [Group laughs as woman in hat walks away.]

Dave Neal (0:59) [chuckling]: Hold on. We don't need a mistrial. [Additional group laughter.]

Male in Red Shirt: We could get him some scones...

Dave Neal: Yes, scones...

[10 seconds of video deleted per podcast timestamp].

Woman on Left: I was [inaudible] waiting to get in.

Dave Neal: We just heard...

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Woman on Left: “You don’t look like the [inaudible] demographic. How did you hear about this case?” [inaudible] “My daughter.”

Dave Neal: There you go. Hey, hey, that’s uh...

Woman on Left: And he was reading case files...[inaudible]

Dave Neal: I’m sure... he was... I mean, he was probably a judge... I feel like it runs in the family.

Woman on Right: [inaudible] He did not tell me any information about her thoughts. [Female voice: “Yes, Judge Mata’s dad...”] and I was sitting right next to him.

Dave Neal: Oh, I’m sure, yeah...

Again, for purposes of deciding the Rule 6.1 Motion, this Court accepts that certain facts recounted by these courtroom observers might have occurred, *i.e.*, Mr. Howe might have informed an observer before the hearing that he heard about the case from Judge Mata; Mr. Howe might have told an observer he considered the hearing and additional goings-on to be a “circus”; and Mr. Howe might have been reviewing paperwork related to the case. When viewed by an objective standard, Mr. Howe’s alleged statements and actions do not prove by a preponderance of the evidence that *Judge Mata* was biased or prejudiced, or that she told her family member how she intended to rule before the case was tried.

This Court also finds that certain statements made by the courtroom observers reflected nothing more than mere conjecture, like Mr. Neal’s statement that Mr. Howe “was probably a judge... I feel like it runs in the family.” The Court further finds that the video reflects that Mr. Neal’s remark “we don’t need a mistrial” after the speaker started walking away was made in jest, as evidenced by his and the onlookers’ laughter and his agreement with another bystander that they should “get him a scone.”

The Court concurs with Petitioner’s counsel’s subjective belief that Respondent’s supporters gleefully celebrated Judge Mata’s father’s attendance at the hearing, *see* Rule 6.1 Motion at 12, and that the supporters’ actions—and perhaps even Mr. Howe’s alleged actions—can be perceived to have “made a mockery of these proceedings.” *Id.* This Court declines, however, to impute bias or prejudice to Judge Mata based on statements made by Respondent’s supporters (whom Petitioner’s counsel characterizes as “generally not honest

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or reliable,” Affidavit ¶ 73) about Judge Mata’s father, or even statements made by Judge Mata’s father himself.

IT IS ORDERED DENYING Petitioner’s motion for change of judge for cause.

IT IS FURTHER ORDERED DENYING Respondent’s request for leave to file a supplemental affidavit of attorney fees and costs.

IT IS FURTHER ORDERED DENYING Respondent’s request for this Court to enter further orders pursuant to Rule 8.2(a) of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED returning this matter to Judge Mata to rule on all pending post-trial motions.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: https://superiorcourt.maricopa.gov/llrc/fc_gn9/