

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

Rhett Loftsgard,

*Appellant,*

v.

Stephanie Muir,

*Appellee.*

May 26, 2021

Court of Appeals Case No.  
21A-JP-217

Appeal from the Hamilton  
Superior Court

The Honorable Michael A. Casati,  
Judge

The Honorable Darren J. Murphy,  
Magistrate

Trial Court Cause No.  
29D01-1802-JP-161

**Brown, Judge.**

[1] Rhett Loftsgard appeals the trial court’s order denying his motion for change of judge. We affirm.

### *Facts and Procedural History*

[2] On February 5, 2018, Stephanie Muir, by the State as intervenor, filed a petition to establish child support in the Hamilton Superior Court under cause number 29D01-1802-JP-161 (“Cause No. 161”).<sup>1</sup> On March 14, 2018, the court held a hearing on the petition and entered an order,<sup>2</sup> and on June 20, 2019, it entered an order on parenting time.<sup>3</sup>

[3] On December 9, 2019, Muir filed an emergency petition for immediate return of child and contempt and a notice of intent to relocate. On December 16, 2019, Magistrate Darren J. Murphy held a hearing. After several motions, Magistrate Murphy held a hearing on April 22, 2020.

[4] On July 21, 2020, Magistrate Murphy entered an Order on Hearing of April 22, 2020, indicating that the hearing was dedicated to Loftsgard’s multiple requests that the court reconsider its previous orders imposing supervised parenting time. The court found Loftsgard had exhibited bizarre and troubling behavior culminating in a video in which he expressed clear suicidal ideation. It ordered

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<sup>1</sup> The record does not contain a copy of the petition.

<sup>2</sup> The record does not contain a copy of the transcript of the hearing or the order. The entries in the chronological case summary regarding the hearing and the order state: “Judicial Officer: Varie, Katherine M.” Appellant’s Appendix Volume II at 4.

<sup>3</sup> The chronological case summary entry states: “Judicial Officer: Ruetz, Todd L – MAG.” Appellant’s Appendix Volume II at 6.

Loftsgard's parenting time to be restricted to supervised parenting time pending further order of the court. It also ordered Loftsgard to complete a number of requirements before it would consider returning his parenting time to unsupervised including submitting to psychological screening and enrolling in therapy with a PhD level therapist.

[5] Loftsgard filed multiple motions including an Emergency Verified Motion for Approval on July 22, 2020, which stated: "May I[,] the father of [L.L.], be allowed to bring my son his birthday presents[]? I personally am terrified that Judge Murphy will think this is a form of abuse." July 22, 2020 Emergency Verified Motion for Appeal at 1. That same day, he filed another Emergency Verified Motion for Approval, which stated: "May I[,] the father of [L.L.], my son, be allowed to show affection to my son in forms of [h]olding, hugging, [and] kissing? I personally am terrified that Judge Murphy will think this is a form of abuse." July 22, 2020 Emergency Verified Motion for Approval at 1.

[6] An August 4, 2020 chronological case summary entry states: "Father's Emergency Motions for Approval filed on July 23rd are Denied as they are nothing more than sarcasm directed at the Court without substance. Any other matters raised in Father's Motions filed on July 23rd are consolidated for hearing on October 12, 2020 at 3 p.m." Appellant's Appendix Volume II at 17.

[7] On August 6, 2020, Loftsgard filed a Petition for An Order for Protection and Request for a Hearing under cause number 29D02-2008-PO-5391 ("Cause No. 5391") in the Hamilton Superior Court alleging Magistrate Murphy committed

repeated acts of harassment and placed him in fear of physical harm.<sup>4</sup> That same day, he filed a Petition for an Order for Protection and Request for a Hearing – Filed on Behalf of a Child against Magistrate Murphy under cause number 29D02-2008-PO-5393 (“Cause No. 5393”) in the Hamilton Superior Court.<sup>5</sup> On August 10, 2020, Judge Justin Hunter of Clinton County assumed jurisdiction as special judge in Cause Nos. 5391 and 5393.

[8] On August 24, 2020, Loftsgard filed a Verified Motion to Attach to Case Number in Cause No. 161 and referenced Cause Nos. 5391 and 5393. On August 25, 2020, Magistrate Murphy made an entry which stated:

The Court has reviewed [Loftsgard’s] August 24, 2020 *Verified Motion*. The Court notes that the entire Hamilton County judiciary recused themselves from any involvement in

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<sup>4</sup> Specifically, Loftsgard alleged that, on or about January 2020, Magistrate Murphy “used online public media with intent to cause physical and psychological harm and abuse to my 3 year old son, my 72 year old mother, and myself by asking the public and state paid employees to act in a violent manner against myself and my son” and that, on or about December 2019, he “[h]arassed [sic] and mentally abused me through my 3 year old son by repeated and continued psychological abuse to my son causing [sic] me to have thoughts of Suicide to make the mental abuse stop against my son. Did this in a manner of online, through common people of interest, and through my son[’]s mother.” Appellant’s Appendix Volume II at 61.

<sup>5</sup> Loftsgard alleged that, on or about December 2019:

[Magistrate Murphy] has raped my now 4 year old son of his spirit, his innocents, [sic] and his well-being by forcing him out of his normal life. He uses my son as his rape and psychological puppet. [He] has purposely, skillfully, and with gross intentions raped my son of all that is good as he knew it. My son now suffers from high anxiety brought on purposely by [him].

[He] placed a public notice on a social platform with intent to cause harm by violence if necessary. [He] took no care in the fact that a then 3 year old would be a victim of his malicious intent. My son was terrorized by the sight of having police and bystanders approach the car he was riding in. Furthermore this was/is being done as a retaliation and revenge tactic to not only my son but his family members.

Appellant’s Appendix Volume II at 71.

[Loftsgard's] protective order cases filed against Magistrate Murphy. The protective order petitions were assigned to Judge Hunter in Clinton County. Any motion regarding Judge Hunter's denial of Rhett Loftsgard's protective order petitions needs to be served through the protective order cause numbers to Judge Hunter as directed by Judge Hunter in his order.

*Id.* at 55.

[9] On October 22, 2020, Judge Hunter entered an order in Cause No. 5393 finding that Loftsgard had not shown by a preponderance of evidence that harassment had occurred sufficient to justify the issuance of an order for protection, denying the petition, and finding that Loftsgard was “abusing a court process in an attempt to retaliate against Magistrate [] Murphy for decisions he made in a Juvenile proceeding.” *Id.* at 81. That same day, Judge Hunter entered an order in Cause No. 5391 with similar language.

[10] On December 18, 2020, Loftsgard filed a Motion for Change of Judge in Cause No. 161 citing Ind. Trial Rule 79(C)(4) and asserting that he had filed verified petitions for orders of protection against Magistrate Murphy under Cause Nos. 5391 and 5393. He asserted the entire Hamilton County judiciary had been apprised of the protective order cases and requested that Magistrate Murphy and the entire Hamilton County judiciary recuse.

[11] On January 6, 2021, the court denied the motion, noted that the orders issued on October 22, 2020, under Cause Nos. 5391 and 5393 found Loftsgard's petitions were not meritorious and were dismissed, and found that “[s]uch

actions do not result in disqualification of Magistrate Murphy or the Hamilton County judiciary . . . .”<sup>6</sup> *Id.* at 22.

### *Discussion*

- [12] The issue is whether the trial court erred or abused its discretion in denying Loftsgard’s motion for change of judge. Loftsgard argues the trial court failed to recognize that impartiality might reasonably be questioned. He cites Ind. Trial Rule 79(C)(4) and Ind. Code of Judicial Conduct Rules 1.2 and 2.11 and asserts that recusal would be based on “the rational inference of [Magistrate] Murphy’s bias or prejudice against [him] in the related, corresponding causes of action, despite the dismissal of such actions.” Appellant’s Brief at 10.
- [13] Muir argues that Loftsgard does not allege any actual bias or prejudice against him on Magistrate Murphy’s part. She also asserts that Loftsgard’s petitions for protective orders and motion for change of judge were “nothing more than vindictive and transparent attempts to retaliate against the trial court and Magistrate Murphy after the trial court issued the Order on Hearing of April 22, 2020.” Appellee’s Brief at 14.
- [14] A judge’s decision about whether to recuse is reviewed for an abuse of discretion. *L.G. v. S.L.*, 88 N.E.3d 1069, 1071 (Ind. 2018). An abuse of discretion occurs when the judge’s decision is against the logic and effect of the

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<sup>6</sup> This order was signed by Judge Michael A. Casati.

facts and circumstances before it. *Id.* “Adverse rulings and findings by a trial judge are not sufficient reason to believe the judge has a personal bias or prejudice.” *Id.* at 1073. “Further, Indiana courts credit judges with the ability to remain objective notwithstanding their having been exposed to information which might tend to prejudice lay persons.” *Id.* “The law presumes that a judge is unbiased and unprejudiced.” *Id.* “To overcome this presumption, the moving party must establish that the judge has personal prejudice for or against a party.” *Id.* “Such bias or prejudice exists only where there is an undisputed claim or the judge has expressed an opinion on the merits of the controversy before him.” *Id.* “[T]he mere appearance of bias and partiality may require recusal if an objective person, knowledgeable of all the circumstances, would have a rational basis for doubting the judge’s impartiality.” *Bloomington Mag., Inc. v. Kiang*, 961 N.E.2d 61, 64 (Ind. Ct. App. 2012).

[15] Ind. Trial Rule 79(C) provides:

A judge shall disqualify and recuse whenever the judge . . . :

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(4) is associated with the pending litigation in such fashion as to require disqualification under the *Code of Judicial Conduct* or otherwise.

Upon disqualification or recusal under this section, a special judge shall be selected in accordance with Sections (D) and (H) of this rule.

[16] Canon 1 of the Ind. Code of Judicial Conduct commands: “A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety.” Ind. Code of Judicial Conduct Rule 1.2 provides that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” (Asterisks omitted). Canon 2 of the Ind. Code of Judicial Conduct commands: “A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently.” Ind. Code of Judicial Conduct Rule 2.11 governs disqualification of judges and provides in part that “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned . . . .” (Asterisk omitted). Rule 2.11 contains comments which are provided for “guidance regarding the purpose, meaning, and proper application of the Rules” and to “identify aspirational goals for judges,” Ind. Code of Judicial Conduct, Scope at 3-4, including: “Under this Rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.” Ind. Code of Judicial Conduct Rule 2.11 cmt. 1.

[17] Magistrate Murphy’s July 21, 2020 order found that Loftsgard had exhibited bizarre and troubling behavior and ordered him to submit to psychological screening and enroll in therapy with a PhD level therapist before the court would consider returning his parenting time to unsupervised. Judge Hunter’s



October 22, 2020 orders in Cause Nos. 5391 and 5393 denied Loftsgard's petitions for protective orders and found that he was abusing court process in an attempt to retaliate against Magistrate Murphy for decisions made in the juvenile proceeding. Under the circumstances, we cannot say that an objective person, knowledgeable of all the circumstances, would have a rational basis for doubting the judge's impartiality. We find no abuse of discretion.

[18] For the foregoing reasons, we affirm the trial court's order.

[19] Affirmed.

Bradford, C.J., and Vaidik, J., concur.