ORIGINAL

Case No. 129155

In the Supreme Court of Illinois

IN RE THE MARRIAGE OF:

MASUD M. ARJMAND,

Petitioner,

and

MUNEEZA R. ARJMAND, N/K/A MUNEEZA R. RAHMAN,

Respondent.

MASUD M. ARJMAND,

Plaintiff-Appellant,

v.

MORGAN STANLEY SMITH BARNEY, LLC; MORGAN STANLEY & CO., LLC; MORGAN STANLEY & CO., INC., MORGAN STANLEY INVESTMENT MANAGEMENT, INC., BRYAN ESTES; AND STOGSDILL LAW FIRM, PC,

Defendants-Appellees.

Appeal from the Appellate Court, Second District, Appellate Case Number 2—21—0285
on Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County
Case Number 09 D 1168, Honorable Timothy McJoynt, Presiding

BRIEF AND REQUIRED APPENDIX OF PLAINTIFF-PETITIONER
MASUD M. ARJMAND
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NATURE OF THE ACTION

On June 12, 2012, Plaintiff[1] appealed a decision in the underlying dissolution of marriage action. C 619. Plaintiff also filed a motion seeking a stay pending that appeal. C 614. On February 4, 2013, as part of the granting of that stay, the trial court enjoined the parties to the dissolution proceeding from selling, transferring, or encumbering any property that the parties had. C 1217-1219. Over Plaintiff's objection, the stay pending appeal enjoined property the parties acquired before and during the marriage. This property included Appellant's premarital Accenture Founder Shares. R 1971-1974. The Appellate Court issued its opinion on the appeal on October 28, 2031. *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, 998 N.E. 2d 686 (2013). The mandate was issued on May 13, 2014. C 3676-3677.

Thereafter, on July 1, 2014, Defendant Bryan Estes, of the Stogsdill Law Firm, P.C., who was representing Respondent Muneeza Rahman in the underlying dissolution of marriage proceeding, sent a letter to Defendants Morgan Stanley[2] demanding that Morgan Stanley prohibit Plaintiff from accessing his premarital Accenture Founder Shares. C 3771; 10565 V7, ¶20. As a result, Morgan Stanley froze all activity in Plaintiff's accounts. C 10565 ¶21. Morgan

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[1] Appellant is the Petitioner in the dissolution of marriage proceeding and is the Plaintiff in the underlying complaint that forms the basis of this appeal. Because this appeal involves the complaint against Morgan Stanley, *et. al.*, this brief will refer to Appellant as Plaintiff throughout this brief, even in those instances where he may technically be the Petitioner.

[2] For ease of reference, all of the Morgan Stanley Defendants will be referred to as Morgan Stanley.

Stanley advised Plaintiff that that Defendants Stogsdill Law Firm, P.C., and Estes[3] represented that there was no "blanket exception" regarding Appellant's use of his assets for routine needs and that any trading activity in his accounts required approval from the Stogsdill Defendants. C 10566 ¶¶26, 31.

Plaintiff filed a complaint against Defendants in Cook County. SUP2 C 229-269. That action was subsequently transferred to DuPage County and then dismissed based on a finding by the trial court that the action was an impermissible collateral attack on the jurisdiction of the dissolution of marriage proceeding. SUP2 C 535-536; SUP2 R 626-627. Subsequently, Plaintiff refiled that action in the underlying dissolution of marriage action. C 10560-10605 V7. While that complaint was pending, Plaintiff filed a petition for substitution of judge for cause, a motion for substitution of judge as a matter or right, and a motion for Judge McJoynt to recuse himself. C 10606 V7;C 12288, 12983, 13000, 13086, 13100 13154, 13291 V8. Plaintiff's petition and motions were denied. SUP R 257-258; C 13086 V8. Thereafter, the trial court granted Defendants' motion to dismiss on the grounds of *res judicata*. SUP R 526-527.

On appeal, the Appellate Court, Second District, Number 2-21-0285, reversed the trial court's dismissal of Plaintiff's claims. Additionally, that Court refused to consider Plaintiff's appeal of the denial of his petition and motion for substitution and his motion for recusal, finding that it lacked the jurisdiction to do so in the context of an appeal pursuant to Supreme Court Rule 304(a).

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[3] Hereinafter Stogsdill Law Firm, P.C., and Bryan Estes will be referred to collectively as the Stogsdill Defendants.

Plaintiff then sought review in this Court seeking a ruling that the Appellate Court has jurisdiction to review the denial of a petition or motion for substitution of judge or a motion for recusal, when reviewing a case pursuant to Supreme Court Rule 304(a). This Court subsequently granted Plaintiff's petition for leave to appeal.

ISSUES PRESENTED FOR REVIEW

- Appellate courts have jurisdiction to review the denial of a petition or motion for substation of judge when considering a Rule 304(a) appeal.
- The Trial Court erred in denying Plaintiff's petition and motion for substitution of judge.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this matter pursuant to Supreme Court Rule 315. The Appellate Court issued its decision on October 27, 2022. No petition for rehearing was filed. Plaintiff's petition for leave to appeal was filed on December 1, 2022, which was within 35 days of the Appellate Court's decision. Subsequently, on January 25, 2023, this Court granted Plaintiff's Petition for Leave to Appeal.

STATUTE INVOLVED

735 ILCS 5/2-1001. Substitution of judge.

(a) A substitution of judge in any civil action may be had in the following situations:

***

(2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).

(i) Each party shall be entitled to one substitution of judge without cause as a matter of right.

(ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.

(iii) If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party.

(3) Substitution for cause. When cause exists.

(i) Each party shall be entitled to a substitution or substitutions of judge for cause.

(ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.

(iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine

whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition. The judge named in the petition need not testify but may submit an affidavit if the judge wishes. If the petition is allowed, the case shall be assigned to a judge not named in the petition. If the petition is denied, the case shall be assigned back to the judge named in the petition.

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STATEMENT OF FACTS

On May 12, 2014, the trial court entered an order in the underlying dissolution of marriage action granting Respondent's section 2—1401 petition to vacate an earlier entered judgment of dissolution. C 555-569. Plaintiff appealed from that order. C 619. During that appeal, Plaintiff filed a motion seeking to stay the underlying action while the appeal was pending. C 614-617. The trial court granted Plaintiff's request for a stay. C 1217-1219. In so doing, the trial court, rather than requiring a bond, entered an order stating:

> Plaintiffs Motion for Stay is granted for the reasons spread of record on February 4, 2013. As a condition of bond, neither party shall sell, transfer, convey, assign, further encumber any real property, stock, funds held in brokerage accounts, IRAs which either party has an interest (as set forth in the court's 2—1401 ruling) and with the exception of property acquired by the parties after July 22, 2009 and subject to further elaboration and modification after Plaintiff's attorney is provided specific information, court reserves jurisdiction to further elaborate on said bond. C 1217-1219.

In announcing its ruling, the trial court specifically stated:

> Both parties are allowed to conduct their day-to-day business, day-to-day activities, pay their bills, receive their monies, do what they have done in the past. But both parties are going to be barred from transferring or otherwise alienating any of these marital assets so that the asset and the estate is protected, depending on what happens with the appeal. R 1963.

Before marrying Respondent, Plaintiff was an employee of Accenture, Ltd., and, through that employment, obtained uncertificated securities referred to as Accenture Founder Shares. Sup 2 C 29, ¶¶13-19. Morgan Stanley is the sole authorized trading agent for his Accenture Founder Shares. Sup 2 C 30, ¶24.

On July 1, 2014, more than eight months after the appellate court had ruled on Plaintiff's appeal and well after any stay entered pursuant to that appeal had expired, Attorney Estes, counsel for Respondent in the dissolution proceeding, sent a letter to Morgan Stanley. C 3771; 10565 V7, ¶20. This letter enclosed a certified copy of the stay order and stated, in part:

> Please consider this correspondence a request for your compliance with said order and prohibit Masud Arjmand from taking any action prohibited in said order for any account held with Smith Barney Morgan Stanley including but not limited to, stocks, funds, money held in an account that Masud Arjmand holds the Accenture Founder Shares; IRA account in Masud Masud's [*sic*] name; money market or checking accounts, brokerage accounts of any kind with Smith Barney Morgan Stanley. C 3771, 10565 V7, ¶20.

Thereafter, Morgan Stanley informed Plaintiff that it would restrict Plaintiff's access to his accounts as requested by Estes. C 10565 V7, ¶21. Because Morgan Stanley refused to allow Plaintiff to access his premarital Accenture Founder's Shares including access for day-day business activities, Plaintiff suffered damages, including: (i) the foreclosure of the marital home and entry of a deficiency judgment in the amount of $423,000; (C 9360) (ii) the entry of a judgment in the amount of $7.8 million with respect to commercial loans; (iii) the involuntary liquidation of Plaintiff's Accenture Founder's Shares; (iv) an income tax liability

of approximately $2.4 million from the involuntary liquidation of Plaintiff's Accenture Founder's Shares; (v) significant ongoing loss of dividend income from the Accenture Founder's Shares; and (vi) loss of appreciation of the value of the Accenture Founder's Shares. C 10570-10575 V7, ¶¶47-68.

On December 22, 2017, after his Accenture Founder's Shares had been involuntarily liquidated, the trial court specifically found that the Accenture Founder's Shares were Plaintiff's non-marital assets and that the February 4, 2013, order was "as to parties only." C 8789 V6.

To seek compensation for the damages that he incurred, Plaintiff filed an action in the Circuit Court of Cook County against the Defendants. SUP2 C 229-269. Pursuant to motion, that action was transferred to the Circuit Court of DuPage County. SUP2 C 274, 292. Thereafter, all defendants sought to dismiss Plaintiff's Complaint. SUP2 C 11, 304, 310. On August 17, 2016, the trial court dismissed that original complaint. SUP2 C 535-536. The dismissal order was based on the fact that the trial court specifically found that the lawsuit filed by Plaintiff was an impermissible collateral attack on jurisdiction of Judge McJoynt in the underlying dissolution of marriage action. SUP2 R 625.

Plaintiff subsequently filed this action against Defendants in the underlying dissolution of marriage action. C 10560 V7. Defendants sought to dismiss the complaint and the trial court granted the motions to dismiss, finding Plaintiff's claims barred by *res judicata*. C 14218 V8.

Shortly after filing his complaint in the dissolution proceeding, Plaintiff filed a petition seeking a substitution of judge for cause. C 10606 V7. This petition was brought pursuant to

Section 2—1001(a)(3) of the Code of Civil Procedure. 735 ILCS 5/2—1001(a)(3). Plaintiff subsequently filed an amended petition. C 12288 V8.

In considering the original petition, Judge McJoynt concluded that Plaintiff's petition sufficiently pleaded "actual prejudice." SUP R 150. The trial court specifically stated, "the Court finds within this lengthy SOJ petition sufficient allegations, if accepted as true, could perhaps be proven at a hearing as actual prejudice." SUP R 151. The trial court also found: "In the interest of fairness and justice, the Court finds that the SOJ complaint stated -- states a cause of action on its face." C 12903-12904 V8; SUP R 151. The matter was then transferred to Judge Kleeman for consideration of the petition for substitution for cause. C 12555 V8; SUP R 307.

Judge Kleeman heard oral argument on the petition and then denied Plaintiff's petition for substitution. SUP R 258. In reaching this conclusion, Judge Kleeman stated: "I find that, accepting Mr. Arjmand's arguments or factual assertions as true, Judge McJoynt, according to those arguments, has made incorrect rulings, has become frustrated at times. But I reject the conclusion that he has engaged in improper communications. I reject the conclusion that Mr. Arjmand has overcome the presumption of impartiality." SUP R 257-258.

Plaintiff filed a motion seeking reconsideration of the order denying his petition for substitution of judge for cause. C 12983 V8. Judge Kleeman denied that motion to reconsider without argument. C 13154 V8; SUP R 320. Plaintiff's motion to vacate that denial and to seek a hearing on his motion to reconsider was also denied without argument. SUP R 325; C 13291 V8.

On July 6, 2020, Plaintiff filed a motion for substitution of judge as a matter of right[4] and seeking the recusal of Judge McJoynt from presiding over the Complaint against Defendants. C 13000 V8. Judge McJoynt denied that motion on August 6, 2020. C 13086 V8. Plaintiff filed a motion seeking reconsideration of the denial of his motion. C 13100 V8. The trial court denied that motion on September 17, 2020. C 13292 V8.

On April 28, 2021, the trial court denied Plaintiff's motion to reconsider the dismissal of his Complaint against Defendants. C 14659-14660 V8. C 12288 V8. That order included a specific finding pursuant to Supreme Court Rule 304(a) that there was no just reason to delay the enforcement or appeal of the dismissal order. C 14659-14660 V8. C 12288 V8.

Plaintiff timely filed his notice of appeal on May 27, 2021, which was within 30 days of the denial of Plaintiff's motion to reconsider. C 14703-14704 V8. During the appeal, Plaintiff filed a motion seeking the recusal of the Appellate Court Second District from considering his appeal. The court denied Plaintiff's request.

On appeal, the Appellate Court issued a summary order, holding that the trial court erred in dismissing Plaintiff's Complaint. *In re Marriage of Arjmand*, 2—21—0285, ¶10. Consequently, the Appellate Court reversed the decision of the trial court and remanded the matter for further proceedings. *Arjmand*, 2—21—0285, ¶15.

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[4] Plaintiff is cognizant of this Court's conclusion that requests for substitution as a matter of right are raised by way of motion and requests for substitution for cause are raised by way of petition. *In re Marriage of O'Brien*, 2011 IL 109039, ¶28, 958 N.E. 2d 647, 654. Plaintiff attempts to adhere to that distinction in this brief.

In so doing, the Appellate Court also refused to consider Plaintiff's appeal with respect to his petition for substitution of judge for cause, his motion for substitution of judge as a matter of right, and his motion for Judge McJoynt to recuse himself, finding that it lacked jurisdiction to consider the denials of those requests. *Arjmand*, 2—21—0285, ¶12. In so doing, the Appellate Court explicitly recognized that its decision conflicted with that of the Appellate Court, Fourth District, in *Sarah Bush Lincoln Health Center. v. Berlin*, 268 Ill. App. 3d 184, 187, 643 N.E. 2d 276, 279 (4th Dist. 1994).

Plaintiff now seeks relief from this Court requesting that this Court make it clear that a reviewing court has jurisdiction in an interlocutory appeal to review a petition or motion for substitution that occurs in the procedural progression of the orders leading to the interlocutory order on appeal.

ARGUMENT

1. A Reviewing Court has Jurisdiction to Review the Denial of a Petition for Substitution of Judge if the Order Denying the Motion was in the Procedural Progression of the Interlocutory Order Under Appeal.

While Plaintiff's Complaint and Defendants' motions to dismiss were pending, Plaintiff filed a petition seeking a substitution of judge for cause and subsequently filed an amended motion. Judge McJoynt, the judge presiding over the matter, found that Plaintiff's petition sufficiently pleaded "actual prejudice." SUP R 150. Consequently, he ordered the petition transferred to a different judge for hearing. C 12555 V8; SUP R 307. Judge Kleeman, to whom the case was transferred, ultimately denied the petition. SUP R 258. In denying the petition, Judge Kleeman refused to grant Plaintiff an evidentiary hearing, as required by the statute. The petition was based, in part, on the fact that Judge McJoynt was partially responsible for the damages incurred by Plaintiff that he was seeking to recover in this action against Defendants. C 10613, 10616-10617 V7

Plaintiff also filed a motion for substitution of judge as a matter of right and for the recusal of Judge McJoynt from presiding over the Complaint against Defendants. C 13000 V8. Judge McJoynt denied that motion on August 6, 2020. C 13086. Plaintiff filed a motion seeking reconsideration of the denial of his motion. C 13100. The trial court denied that motion on September 17, 2020. C 13292

On appeal, the Appellate Court concluded that it lacked jurisdiction to consider the denial of Plaintiff's petition for substitution or his motion for substitution or for recusal.

A. Standard of Review

Whether a reviewing court has jurisdiction to review the denial of a motion for substitution as part of an appeal pursuant to Supreme Court Rule 304(a) is a legal question which this Court decides *de novo*. *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 46, 779 N.E. 2d 875, 881 (2002).

B. A Reviewing Court has Jurisdiction to Review the Denial of a Petition for Substitution of Judge When the Denial Order is in the Procedural Progression of the Interlocutory Order Being Appealed

Here, there are three requests relating to substitution and recusal that Plaintiff filed with respect to the lawsuit against Morgan Stanley that are relevant to this appeal. First, there is petition for substitution of judge for cause. Second, there is a motion for substitution of judge as a matter of right. Finally, there is a motion for Judge McJoynt to recuse himself (this motion was also part of the motion for substitution as a matter of right).

In considering the original petition, Judge McJoynt concluded that Plaintiff's petition sufficiently pleaded "actual prejudice." SUP R 150. Despite this finding and the provisions of the statute, Judge Kleeman denied Plaintiff's motion without an evidentiary hearing. In so doing, Judge Kleeman stated: "I find that, accepting Mr. Arjmand's arguments or factual assertions as true, Judge McJoynt, according to those arguments, has made incorrect rulings, has become frustrated at times. But I reject the conclusion that he has engaged in improper communications. I reject the conclusion that Mr. Arjmand has overcome the presumption of impartiality." SUP R 257-258.

Plaintiff also filed a motion requesting that Judge McJoynt recuse himself with respect to the Morgan Stanley Complaint. C 13000 V8. Judge McJoynt denied Plaintiff's motion. C

13088 V8. A review of the transcript on the hearing for that motion shows that Judge McJoynt did not substantively address Plaintiff's request for recusal. C 13144-13147 V8.

On appeal of the motion to dismiss his Complaint, Plaintiff sought review of the decisions denying his requests for substation and recusal. The Appellate Court concluded that it lacked jurisdiction to review the denial of the petition and motions. *In re Marriage of Arjmand*, 2—21—0285, ¶12.

This decision is squarely at odds with the holding of the Appellate Court, Fourth District, in *Sarah Bush Lincoln Health Center. v. Berlin*, 268 Ill. App. 3d 184, 187, 643 N.E. 2d 276, 279 (4th Dist. 1994).

In *Berlin*, the appellate court was reviewing the issuance of a preliminary injunction. The defendant filed an interlocutory appeal from that order pursuant to Supreme Court Rule 307(a)(1). As the *Berlin* Court noted, the first question it considered was "whether the ruling on the motion for substitution of judge, which was denied before the court issued the second preliminary injunction, can be reached in this appeal." *Berlin*, 268 Ill. App. 3d at 186.

The *Berlin* Court recognized two opinions from the Appellate Court, First District, that held that the denial of the substitution motion could not be reached on appeal. The *Berlin* Court explained that the problem with that conclusion was that it "permit[s] a judge who should not be hearing a motion for interlocutory injunctive relief to hear that matter without the objecting party having any recourse." *Berlin*, 268 Ill. App. 3d at 186–87.

The *Berlin* Court squarely rejected this reasoning and concluded that "the proper scope of the review under Rule 307 is to review any prior error that bears directly upon the question of whether the order on appeal was proper." *Berlin*, 268 Ill. App. 3d at 187. In reaching this

decision, the court emphasized that reviewing the denial of the motion for substitution in an interlocutory manner is especially important because "the wrongful refusal of a proper request for substitution of judge renders all subsequent orders by that judge entered in the case void." *Berlin*, 268 Ill. App. 3d at 187.

The Appellate Court, First District, later followed *Berlin* in *Partipilo v. Partipilo*, 331 Ill. App. 3d 394, 398, 770 N.E. 2d 1136, 1140 (1st Dist. 2002) and held that it could review the denial of a motion for substitution when considering interlocutory appeals. The First District followed suit again in *In re Marriage of Padilla & Kowalski*, 2018 IL App (1st) 173064-U, ¶79, where the Court concluded that it had jurisdiction to consider the denial of a motion for substation of judge for cause. In fact, in the First District a party has been barred from raising this issue in an appeal from a final judgment because they failed to raise it in a prior interlocutory appeal. See *Bank of America, N.A. v. Freed*, 2012 IL App (1st) 110749, ¶16, 983 N.E. 2d 509, 514.

Conversely, the Appellate Court, Second District reached a different decision in *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 970, 811 N.E. 2d 260, 269 (2d Dist. 2004). In *Nettleton*, the Second District rejected *Berlin*, concluding that it lacked jurisdiction consider the denial of motion for substitution as part of an appeal involving a finding of friendly contempt. It reasserted this conclusion in *U.S. Bank National Association v. In Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213, ¶25, 992 N.E. 2d 172, 180, where it held "our supreme court has seen fit not to provide specifically for interlocutory appeals of any order disposing of a motion for substitution."

A review of the applicable decisions reveals that the *Berlin* approach is the better reasoned approach both from a policy perspective as well as a legal perspective. With respect to policy considerations, if a petition for substitution should have been granted, the sooner that is determined, the better that it is for all involved.

Significantly, the case law is clear that all orders entered by a judge following the erroneous denial of a motion for substitution are void. *Palos Community Hospital. v. Humana Insurance Co., Inc.*, 2021 IL 126008, ¶34, 183 N.E. 3d 677, 685. Consequently, any proceedings that occur after a petition for substitution of judge is erroneously denied is, by definition, a waste of resources. This includes the judicial resources involved in handling the proceedings as well as the limited resources of the parties. Further, this is of additional concern here in that this is a dissolution proceeding in which both parties are drawing from the same limited pool of resources.

By considering the denial of a petition for substitution of judge during an interlocutory appeal, this Court would be promoting the efficient use of judicial and party resources during the proceedings and would be limiting the number of void orders that are entered by a trial court.

Additionally, reviewing such orders during an interlocutory appeal, is consistent with this Court's case law holding that appellate review includes not only the order specifically appealed, but also all orders in the procedural progression of that order. *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 436, 394 N.E. 2d 380, 384 (1979). Further, this Court has explicitly found that the denial of a motion for substitution of judge is an order in the procedural progression

of a final order and is therefore appealable. *In re Marriage of O'Brien*, 2011 IL 109039, ¶23, 958 N.E. 2d 647, 653.

In *O'Brien*, this Court stated, "The denial of John's petition to substitute was a step in the procedural progression leading to the final judgment specified in John's notice of appeal, the appellate court therefore had jurisdiction to review the order." (Citations omitted). *O'Brien*, 2011 IL 109039, ¶23.

A further point to consider is that, denying a party's ability to seek review of the denial of petition for substitution in an appeal pursuant to Supreme Court Rule 304(a) effectively denies the party of a review of that decision.

This case provides a perfect example of that. Here, Plaintiff was involved in a dissolution proceeding. He filed a separate lawsuit against Morgan Stanley and the other defendants and was required by a prior court decision to file that action in the dissolution proceeding. The trial court dismissed Plaintiff's Complaint and entered a finding pursuant to Supreme Court Rule 304(a). That finding makes perfect sense here in that this lawsuit is separate from the dissolution proceeding.

Here, in the Appellate Court, Plaintiff prevailed on the merits of the dismissal of his complaint. If he had not prevailed, his case against Morgan Stanley and the Stogsdill Defendants would have been at an end. Plaintiff would never have an opportunity to seek appellate review of the denials of his requests for substitution with respect to this Morgan Stanley matter.

The aspect of preserving judicial and party resources appears again in this matter with respect to the denials of Plaintiff's first two petitions for substitution for cause. While not

appealable in this matter because they are not in the procedural progression of the order appealed, they are indicative of the types of denials that should be subject to appellate review in an interlocutory appeal.

Plaintiff's first petition for substitution for cause was filed in February 2014. C 2879 V2. This petition alleged actual prejudice on the part of Judge McJoynt and related primarily to the proceedings surrounding Respondent's petition for contribution to college expenses. C 2881, 2884-2919, 3020-3604 V2.

Subsequently, Plaintiff filed a second petition for substitution of judge for cause. C 4166, 4238 V2. This petition focused on conduct occurring after Plaintiff's first petition for substitution for cause and centered on comments, actions, and rulings that occurred during the hearing on Respondent's Second Motion for Interim Fees and alleged that Plaintiff had been denied his rights to due process. C 4176-4182 V2.

Pursuant to the rule adopted by the Second District, had Plaintiff been able to file an interlocutory appeal in the dissolution proceeding, the Appellate Court would have had no jurisdiction to review the denial of either of the petitions for substitution of judge for cause.

A review of those denials during the other of an interlocutory appeal would likely lead to a quicker resolution of the dissolution proceeding and would prevent the trial court from entering void orders. As it stands now, however, pursuant to the Second District's analysis, these denials remain unreviewable until after the final judgment is entered in the dissolution action.

Given that approximately nine years have passed since these petitions were denied, it is possible that, after final judgment, a reviewing court could determine that either or both of

those petitions should have been granted. At that time, such a decision would result in the mandatory vacation of more than a decade of orders because they would all be void. Such a result is, of course, a significant waste of both judicial and party resources. Just considering this possibility emphasizes that significant policy reasons behind reviewing courts exercising jurisdiction in interlocutory appeals over petitions for substitution that are in the procedure progression of the order appealed.

In addition to clear policy reasons being a basis for the exercise of jurisdiction, such a conclusion is also directly supported by this Court's prior holdings relating to jurisdiction. Specifically, a review of this Court's holdings with respect to procedural progression as well as the Appellate Court's holdings involving the same clearly support the position that the denial of a petition for substitution of judge can be an order that is in the procedural progression of an order that is subject to interlocutory appeal, such as an appeal pursuant to Rule 304(a).

Consequently, this Court must hold that reviewing courts have jurisdiction to review the denial of a petition for substitution of judge that is in the procedural progression of an order that is subject to interlocutory appeal.

2. The Denial of Plaintiff's Requests for Substitution of Judge Were in the Procedural Progression of this Dismissal Order Appealed Pursuant to Supreme Court Rule 304(a)

As explained above, reviewing courts should exercise jurisdiction over the denial of petitions and motions for substitution that occur in the procedural progression of orders that are subject to interlocutory appeal. Here, Plaintiff's petition and motion for substitution were in the procedural progression of the dismissal order that he appealed pursuant to Supreme Court Rule 304(a). Consequently, the Appellate Court should have reviewed the denial of his petition and his motions, and this Court should do the same now.

A. Standard of Review

Whether a prior order is in the procedural progression of an order appealed from is a question of law that this Court may review *de novo*. See *In re Marriage of O'Brien*, 2011 IL 109039, ¶23, 958 N.E. 2d 647, 653 where this Court seemingly decides, as a matter of law, that an order was in the procedural progression of the order being appealed.

B. Plaintiff's Petition and Motions Were in the Procedural Progression of the Appealed Dismissal Order

As noted above, Plaintiff filed his Complaint against Morgan Stanley and the Stogsdill Defendants in the dissolution proceeding on December 22, 2019. C 10560 V7. Almost immediately thereafter, Plaintiff filed a petition for substitution of judge for cause. C 10606 V7. Subsequently, Plaintiff filed an amended petition. C 12288 V8.

Additionally, Plaintiff filed a combined motion for substitution as a matter of right and a motion for Judge McJoynt to recuse himself. C 13000 V8.

All of these motions were related to the complaint that this the subject of this appeal that

was filed against Morgan Stanley and the Stogsdill Defendants. After all of those motions were denied, the trial court then dismissed Plaintiff's Complaint. C 14218 V8.

Here, Plaintiff's motions were directed at the trial court with respect to the Morgan Stanley Complaint. Therefore, the orders denying the requests for substitution were part of the procedural progression of the dismissal order that forms the foundation of this appeal with respect to which the trial court entered a finding of finality and appealability pursuant to Rule 304(a).

Consequently, the denials of these requests for substitution were in the procedural progression of the order appealed from and both the Appellate Court and this Court have jurisdiction to review the propriety of the denial of Plaintiff's requests for substitution and recusal.

3. The Trial Court Erred in Denying Plaintiff's Petition for Substitution of Judge

While Plaintiff's Complaint and Defendants' motions to dismiss were pending, Plaintiff filed a petition seeking a substitution of judge for cause. C 10606 V7. Subsequently, Plaintiff filed an amended petition. C 12288 V8.

Judge McJoynt, the judge presiding over this matter, found that Plaintiff's petition sufficiently pleaded "actual prejudice." SUP R 150. Consequently, he ordered the petition transferred to a different judge for hearing. C 12555 V8; SUP R 307. Judge Kleeman, to whom the case was transferred, ultimately denied the petition. SUP R 258. In denying the petition, Judge Kleeman erred in failing to grant Plaintiff an evidentiary hearing, as required by the statute.

A. Standard of Review

The question of whether Judge Kleeman erred in failing to grant Plaintiff an evidentiary hearing on his petition for substation for cause is a question of statutory interpretation. As such, that decision is review *de novo*. *In re Estate of Wilson*, 238 Ill. 2d 519, 552, 939 N.E. 2d 426, 446 (2010).

Whether the trial court erred in denying Plaintiff's petition for substitution of judge for cause on the merits is reviewed to determine if the trial court abused its discretion. *In re Marriage of Schweihs*, 272 Ill. App. 3d 653, 658, 650 N.E. 2d 569, 572, (1st Dist. 1995). "Abuse of discretion means clearly against logic—the question is not whether the appellate court agrees with the circuit court, but whether the circuit court acted arbitrarily, without employing conscientious judgment, or whether, in view of all of the circumstances, the court exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice

resulted." *Bodine Electric of Champaign, a Division of Rathje Enterprises, Inc. v. City of Champaign*, 305 Ill. App. 3d 431, 435, 711 N.E. 2d 471, 474 (4th Dist. 1999).

B. Judge Kleeman Erred in Denying Plaintiff an Evidentiary Hearing on His Petition for Substitution for Cause

The substitution of a judge is governed by section 2—1001 of the Code of Civil Procedure (735 ILCS 5/2-1001). A party has a right to substitution of judge as a matter of right, under certain circumstances (735 ILCS 5/2—1001(a)(2). Additionally, a party can seek a substitution of judge for cause (735 ILCS 5/2—1001(a)(3).

When seeking a substitution of judge for cause, the request must be made by petition and supported by affidavit. 735 ILCS 5/2-1001(a)(3)(ii). Section 2—1001 does not define the "cause" required to allow substitution, however, "Illinois courts have held that in such circumstances, actual prejudice has been required to force removal of a judge from a case, that is, either prejudicial trial conduct or personal bias." *In re Marriage of O'Brien*, 2011 IL 109039, ¶30, 958 N.E. 2d 647, 654–55.

"To meet the statute's threshold requirements, a petition for substitution must allege grounds that, if true, would justify granting substitution for cause." *In re Estate of Wilson*, 238 Ill. 2d 519, 554, 939 N.E. 2d 426, 447 (2010). Though a "judge's previous rulings almost never constitute a valid basis for a claim of judicial bias," they may if they display a " 'deep-seated favoritism or antagonism that would make fair judgment impossible.' " *Wilson*, 238 Ill. 2d at 554, quoting *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157, 127 L. Ed. 2d 474, 491 (1994). Although "most bias charges stemming from conduct during trial do not support a finding of actual prejudice, there may be some cases in which the antagonism is so high that

it rises to the level of actual prejudice." *In re Marriage of O'Brien*, 2011 IL 109039, ¶31, 958 N.E. 2d 647, 655.

Illinois courts have consistently held that a petition for substitution for cause must "be liberally construed to promote rather than defeat the right of substitution, particularly where the 'cause' claimed by the petitioner is that the trial judge is prejudiced against him." *Wilson*, 238 Ill. 2d at 553. The right to have the petition heard by another judge "is not automatic." *Wilson*, 238 Ill. 2d at 553. "In order to trigger the right to a hearing before another judge on the question of whether substitution for cause is warranted in a civil case pursuant to section 2–1001(a)(3), the request must be made by petition, the petition must set forth the specific cause for substitution, and the petition must be verified by affidavit." *Wilson*, 238 Ill. 2d at 553. The petition must also "allege grounds that, if true, would justify granting substitution for cause." *Wilson*, 238 Ill. 2d at 554.

Here, it is undisputed that Plaintiff made his request by petition. C 10606-10710 V7; 12288-12415 V8. Further, the petition set forth the specific cause for substitution. C 10606-10710 V7; 12288-12415 V8. Additionally, Plaintiff supported his petition with an affidavit. C 10711-10833 V7; 12416-12548. Finally, in considering the petition, Judge McJoynt specifically found that Plaintiff's petition sufficiently pleaded "actual prejudice." SUP R 150. Judge McJoynt specifically stated "the Court finds within this lengthy SOJ petition sufficient allegations, if accepted as true, could perhaps be proven at a hearing as actual prejudice." SUP R 151. The trial court also found: "In the interest of fairness and justice, the Court finds that the SOJ complaint stated -- states a cause of action on its face." C 12903-12904 V8; SUP R 151.

Once Judge McJoynt made that finding, the statute provides that "a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition." 735 ILCS 5/2—1001(a)(3)(iii). Additionally, there is no question but that the hearing contemplated by the statute is an evidentiary hearing. This is demonstrated by the fact that the following sentence says: "The judge named in the petition need not testify ***." 735 ILCS 5/2—1001(a)(3)(iii). Obviously, testimony would occur only if the hearing required by the statute is an evidentiary hearing.

In this case, Judge Kleeman refused to conduct an evidentiary hearing, and instead, only heard argument on whether the petition should be granted. This decision conflicts with the plain language of the statute. Further the decision to deny Plaintiff a hearing undermines the public policy of Illinois which requires that a petition for substitution for cause "be liberally construed to promote rather than defeat the right of substitution." *Wilson*, 238 Ill. 2d at 553.

Because Judge Kleeman erred in failing to conduct an evidentiary hearing on Plaintiff's petition of substitution for judge for cause, the judgment of the trial court must be vacated, and this matter must be remanded to the trial court for an evidentiary hearing on Plaintiff's petition for substitution of judge for cause.

C. Judge Kleeman Erred in Denying Plaintiff's Motion for Substitution of Judge for Cause on the Merits

A review of Plaintiff's petition for substitution of judge for cause also reveals that Judge Kleeman abused his discretion in denying Plaintiff's petition for substation of judge for cause.

It is undisputed that, generally, proof of bias should stem from conduct or event occurring outside of the court proceedings, "there may be some cases in which the antagonism is so high that it rises to the level of actual prejudice." *O'Brien*, 2011 IL 109039, ¶31. In fact, the Supreme

Court has emphasized that "Judicial bias or prejudice can also stem from the facts adduced or the events occurring at trial." *Eychaner v. Gross*, 202 Ill. 2d 228, 280, 779 N.E. 2d 1115, 1147 (2002). This Court has cited with approval, the United States Supreme Court's explanation that bias or prejudice in the proceedings can be found where the judge displays "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Eychaner*, 202 Ill. 2d at 281, quoting *Liteky*, 510 U.S. at 555. This same language has been cited with approval again in both *Wilson* (238 Ill. 2d at 555) and *O'Brien* (2011 IL 109039, ¶31). In fact, in *O'Brien*, this Court specifically noted its continued reliance and repeated reliance upon *Liteky*. *O'Brien*, 2011 IL 109039, ¶31.

Neither *O'Brien* nor subsequent opinions has explained exactly what standard must be proven to establish actual prejudice from conduct in the courtroom. However, the Sixth Circuit Court of Appeals, relying upon the United States Supreme Court, considered this question. In so doing, the court held: "When the remarks of the judge during the course of a trial, or his manner of handling the trial, clearly indicate a hostility to one of the parties, or an unwarranted prejudgment of the merits of the case, or an alignment on the part of the Court with one of the parties for the purpose of furthering or supporting the contentions of such party, the judge indicates, whether consciously or not, a personal bias and prejudice which renders invalid any resulting judgment in favor of the party so favored." *Knapp v. Kinsey*, 232 F. 2d 458, 466 (6th Cir. 1956). The United States Supreme Court echoed this conclusion in *Litkey*, a case cited favorably by this Court in *O'Brien*, when the court explained that an extrajudicial source is not the only the only basis for establishing bias or prejudice. *Litkey*, 510 U.S. at 551. In so holding, the Court emphasized that an unfavorable predisposition can

establish bias or prejudice if it displays a "clear inability to render fair judgment." *Litkey*, 510 U.S. at 551.

The Supreme Court also cited *Caperton v. A.T. Massey Coal Co.*, 556 U. S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009) with approval, explaining "[u]nder Caperton, then, a judge reviewing a for-cause challenge against another judge should assess the constitutional due process implications raised whenever substitution is sought and guard against the 'risk of actual bias' by applying the Caperton standard to the facts of the case." *O'Brien*, 2011 Ill 109039, ¶16, quoting *Caperton*, 129 S. Ct. at 2263. This standard is whether the "probability of actual bias" of the judge "is too high to be constitutionally tolerable." *O'Brien*, 2011 Ill 109039, ¶16, quoting *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

In his petition Plaintiff admittedly does not rely upon any extra judicial conduct by Judge McJoynt. C 10606-10710 V7; 12288-12415 V8. However, Plaintiff's petition did cite to information outside of the record before the trial court. See C 10610 V7. Further Plaintiff clearly alleged that Judge McJoynt had aligned himself with Respondent and Respondent's counsel. C 10619 V7.

In considering Plaintiff's petition Judge Kleeman specifically stated that "The test is whether that – there is a fair and impartial judge." SUP R 248. That statement is not correct, however. As this Court explained in *O'Brien*, the standard is whether actual prejudice exists. *O'Brien*, 2011 IL 109039, ¶31.

A review of Judge Kleeman's ruling reveals that he believed that Plaintiff's petition was based on the fact that he received a bad outcome in the case. See SUP R 318. This, however, as decidedly not the case. Without question, Plaintiff received a bad outcome and ultimately

lost more than a million dollars. However, Plaintiff's basis for his motion was not that Judge McJoynt ruled against him, but instead, that Judge McJoynt refused to hear his motions relating to the assets held by Morgan Stanley for almost 4 years and despite at least five different requests from Plaintiff that Judge McJoynt hears his motions. In fact, McJoynt did not rule on Plaintiff's motions relating to the assets held by Morgan Stanley until three weeks after all of those assets had been involuntarily liquidated.

A review of Plaintiff's amended petition for substitution for cause reveals the following allegations.

On February 3, 2013, Judge McJoynt entered a stay pending appeal pursuant to Supreme Court Rule 305(b). C 12305 V8, ¶6. As a condition of that stay, Judge McJoynt enjoined Plaintiff from accessing his liquid assets. C 12305 V8, ¶6. Since This injunction was a condition of the appellate stay, it automatically dissolved upon the mandate issuing from the appellate court.

Plaintiff filed his first motion asking Judge McJoynt to address the alleged injunction relating to the assets held by Morgan Stanley on July 24, 2014. C 3731 V2. Plaintiff filed another motion July 30, 2014, styled a motion to vacate. C 3744 V2. Respondent responded to these motions on August 20, 2014. C 3944 V2.

On October 9, 2014, Judge McJoynt ordered Plaintiff to pay $130,000 in attorney fees and costs to Stogsdill Law Firm, P.C. C 4067-4068 V2. Further Judge McJoynt ordered that these funds be paid by liquidating a portion of the assets being held by Morgan Stanley. C 4067-4068 V2. Significantly, these were the same assets that Judge McJoynt refused to allow Plaintiff to access to pay for his own attorneys. Also, this liquidation occurred before Judge

McJoynt had ruled on Plaintiff's numerous motions with respect to the assets being held by Morgan Stanley or before Judge McJoynt had even considered whether the assets were marital. C 4067-4068 V2.

On April 7, 2015, Morgan Stanley sought to intervene in this proceeding, seeking clarification of the order of February 2, 2013. C 4401 V2.

On April 25, 2016, Plaintiff filed a "Motion for a Ruling that No Order or Stays are Currently in Effect Restricting Petitioner's Access to his Morgan Stanley Accounts." C 5212 V3. On April 25, 2016, Respondent issued a non-wage garnishment to Morgan Stanley, seeking to collect $230,050 from Plaintiff's assets. C 5220-5222 V3. Thereafter, Judge McJoynt ordered Morgan Stanley to turnover $230,000 from Plaintiff's Accenture Founders Shares to the Stogsdill Law Firm, P.C. C 6167-6169 V4. Notably, this garnishment was permitted based upon on interim fee award that remains subject to revision until a final judgment is issued in the dissolution action.

On January 9, 2017, Plaintiff filed a "Motion for Declaratory Judgment and for a Ruling That No Orders or Stays are Currently in Effect Restricting Petitioner's Access to His Assets." C 6289 V4.

On February 14, 2017, Judge McJoynt struck Plaintiff's pending motions relating to his Accenture Founders Shares held at Morgan Stanley. C 6904-6905 V5. Thereafter, on February 21, 2017, Plaintiff filed an amended motion for declaratory judgment. C 6907 V5. On June 1, 2017, Plaintiff filed a motion asking the court to set a hearing on his motion for declaratory judgment. C 7175 V5.

First Community Financial Bank filed a Law Division action against Plaintiff seeking a confession of judgment because Plaintiff had failed to timely pay property taxes on certain commercial property. C 7304 V5, ¶9. Plaintiff was unable to pay the property taxes because of the hold on his Accenture Founders Shares that had been instituted by Morgan Stanley. On June 5, 2017, Plaintiff filed motion seeking to consolidate the law division confession of judgment action with this proceeding. C 7303 V5.

On September 27, 2017, Plaintiff filed an emergency motion seeking access to his Accenture Founders Shares at Morgan Stanley to pay delinquent taxes in the amount of $22,991.88, which had to be paid by October 1, 2017. C 8255 V6, ¶16. Despite the impending deadline of October 1, 2017, just four days away, the trial court found that Plaintiff's motion did not constitute an emergency and did not hear it. C 8261 V6; C 8263 V6.

On December 1, 2017, Plaintiff's Accenture Founders Shares were involuntarily liquidated to satisfy the judgment against him in the confession of judgment action. C 10573 V7, ¶59. Just three weeks later, on December 22, 2017, two- and one-half years after Plaintiff first filed a motion addressing this issue, Judge McJoynt finally ruled on the question. C 8789 V6. In so doing, Judge McJoynt held that the Accenture Founders Shares were Plaintiff's non-martial assets and that the order entered in February 2013 applied only to the parties. C 8789 V6.

This ruling, while seemingly beneficial to Plaintiff, actually did not assist him at all because it was too little too late. By the time this ruling was actually entered Plaintiff's Accenture Founders Shares had been liquidated and there were no longer any assets for him to have access to.

As noted above the Supreme Court in *O'Brien* emphasized that, when considering a motion for substitution for cause, the court must determine whether the petitioner has demonstrated actual prejudice by the trial court. *O'Brien*, 2011 IL 109039, ¶31. Here, it is clear that Judge Kleeman abused his discretion in determining that Plaintiff's motion failed to establish actual prejudice on the part of Judge McJoynt.

First, a review of the facts set forth above relating to Plaintiff Accenture Founders Shares held by Morgan Stanley reveals actual prejudice on the part of Judge McJoynt. Plaintiff filed his first motion relating to this issue in July 2014, shortly after Estes contacted Morgan Stanley and Morgan Stanley precluded Plaintiff from accessing his accounts. Despite Plaintiff's filing of at least five different motions over a period of three- and one-half years on this issue, the trial court did not actually consider or rule on Plaintiff's motion until December 2017.

Nevertheless, during this same time that the trial court was not considering Plaintiff's motions to address his nonmarital assets that Morgan Stanley was prohibiting Plaintiff from accessing, the Judge McJoynt twice entered orders requiring Morgan Stanley to liquidate a portion of Plaintiff's non-marital Accenture Founders Shares to pay hundreds of thousands of dollars in attorney fees to Stogsdill Law Firm. At the same time, Judge McJoynt was refusing to consider Plaintiff's request that he should be granted access to his non marital Accenture Founders Shares to pay his own attorneys.

Moreover, during this time, Plaintiff appeared before the trial court seeking emergency relief to access approximately $22,000 to pay a property tax bill that needed to be paid in four days' time. Judge McJoynt summarily rejected this request, finding no basis for an emergency.

These facts alone should be sufficient to establish that actual prejudice that Judge McJoynt demonstrated toward Plaintiff during these proceedings and the fact that Judge Kleeman abused his discretion in denying Plaintiff's motion for substation for cause.

A review of Judge Kleeman's ruling reveals additional evidence of his abuse of discretion. For example, in considering Plaintiff's allegations relating to Judge McJoynt communicating with other judges about Plaintiffs, Judge Kleeman stated things such as:

- "I don't have any evidence of that."
- "I find it hard to believe.;"
- "I am not prepared to conclude that, just because *** [two judges] both made the same mistake, that that means that somehow they are involved in some improper communication;"
- "Again, I am not saying they did or they didn't."

SUP R 243-245.

Significantly, as noted above, reason that Judge Kleeman did not have any evidence of the prejudice was because he refused to conduct the evidentiary hearing required by the statute. It also appears that Judge Kleeman paid lip service to accepting Plaintiff's allegations as true and then rejected those same allegations out of hand.

Further, Plaintiff had pleaded that other attorneys had expressed their opinion that Judge McJoynt was prejudiced against Plaintiff. In response, Judge Kleeman stated: "If Mr. Arjmand's argument is that Mr. DiTommaso and other attorneys who are purportedly available to take his case won't take his case because they know Mr. Arjmand is not liked by Judge McJoynt, I mean, frankly, that's hearsay. And even if they were called in to testify, I

don't believe I'd let Mr. Attorney X say, in my opinion, Judge McJoynt doesn't like Mr. Arjmand. That's his opinion. And it's not - - it wouldn't be admissible." SUP R 246-247.

Here, Judge Kleeman's analysis fails on two levels. First, there is nothing about this statement that would indicate that it is hearsay. Obviously, if Judge Kleeman would have held an evidentiary hearing, then those attorneys could have testified, thus obviating any hearsay objection.

Despite this, Judge Kleeman doubled down on his erroneous hearsay conclusion later in the proceeding when he stated "what other attorneys thought is hearsay. An again, that's not going to move the needle for me." SUP R 255. Of course, as noted above, this evidence would not be hearsay. Moreover, this is an example of Judge Kleeman, instead of holding the evidentiary hearing required by the statute, deciding instead what the testimony will be and then rejecting that testimony.

Of course, after an evidentiary hearing, the trier of fact is allowed to evaluate testimony and give it the weight that the trier of fact believes it deserves. Here, however, Judge Kleeman skipped the evidentiary hearing portion and instead decided on his own what the testimony would be and then rejected it, all without hearing from a single witness.

Second, there is no evidence to support Judge Kleeman's unsupported conclusion that the testimony would have been opinion. The attorneys could certainly have testified to actions that they had seen that would support Plaintiff's claim of actual prejudice. Rather than allowing this, however, Judge Kleeman instead decided on his own what the witnesses' testimony would be and then decided that he would not hear such testimony.

Judge Kleeman also recognized that Plaintiff had alleged that "Judge McJoynt has an

objective or a desired outcome from this litigation that he has apparently attempted to protect through his rulings." SUP R 249. Again, Kleeman rejected this as not having been proven, despite the fact that Judge Kleeman refused to hold an evidentiary hearing to allow Plaintiff to prove his case. SUP R 249.

In addition, Judge Kleeman did not consider some of the specific actions taken by Judge McJoynt in the dissolution proceedings. For example, during the proceedings on March 4, 2019, Judge McJoynt made statements such as:

- Masud's complaints that his nonmarital Morgan Stanley stock was unfairly ""frozen" for four years by the court", was nothing more than Masud's "continued frustration with the events of the case. A frustration demonstrated by Masud more times than this Court can count."
- A review of this record indicates that Masud's frustration...appears to be self-inflicted."
- Masud's complaints about financial hardship from garnishment of his income-producing assets for interim fees were simply Masud's continued conduct to somehow "convince this court that Masud has "been abused by the system.", or "wronged by these proceedings."
- "The alleged abuse is still not relevant, even if you prove it."

C 12326 V8.

Further, a review of Judge Kleeman's ruling failed to consider the allegations of prejudgment that Plaintiff had pleaded. He also failed to acknowledge the fact that Judge McJoynt allowed Plaintiff's Accenture Founders Shares to be subject to collection, based on Judge McJoynt's prejudgment that the Accenture Founders Shares were marital property. C 12346-12348 V8.

Additionally Judge Kleeman erred in rejecting, out of hand, Plaintiff's allegations based on information and belief. In denying Plaintiff's motion, Judge Kleeman stated:

> Page 38, again, improper -- on information and belief, his improper conversations with Fawell. On information and belief again, on Page 40, Sutter and McJoynt had a conversation. He has talked about it today.
>
> Information and belief is not going to cut -- cut it when you have to overcome a presumption that they are behaving without prejudice.
>
> SUP R 252.

This summary dismissal of Plaintiff's allegations was improper. As the United States Supreme Court held in considering whether a motion for substitution of judge for cause, "[w]e are of opinion, therefore, that an affidavit upon information and belief satisfies the section and that upon its filing, if it show the objectionable inclination or disposition of the judge ***. *Berger v. United States*, 255 U.S. 22, 35, 41 S. Ct. 230, 233, 65 L. Ed. 481 (1921).

Consequently, Plaintiff's allegations of bias based on information and belief must be considered by the trial court and Judge Kleeman's erred in summarily rejecting these allegations.

Without question, these actions demonstrate that Judge Kleeman abused his discretion in denying Plaintiff's petition for substitution for cause. Therefore, the decision denying Plaintiff's petition for substitution for cause must be reversed, all subsequent orders entered by Judge McJoynt vacated, and this matter remanded for further proceedings before a different judge.

4. Judge McJoynt Erred in Denying Plaintiff's Motion for Substitution as a Right

Plaintiff filed a motion requesting a substitution of judge as a matter of right with respect to the Complaint relating to Morgan Stanley and the Stogsdill Defendants. C 13000 V8. Judge McJoynt denied Plaintiff's motion. C 13088 V8. A review of the transcript on the hearing for that motion shows that Judge McJoynt did not substantively address Plaintiff's motion for substitution as a matter of right and simply denied it. C 13144-13147 V8. Based upon the applicable case law, Plaintiff's motion for substitution as a matter of right should have been granted.

A. Standard of Review

Whether a motion for substitution of judge as a matter of right should be granted is a question of statutory interpretation and is therefore a question of law that is reviewed *de novo*. *Palos Community Hospital v. Humana Insurance Co., Inc.*, 2021 IL 126008, ¶24, 183 N.E. 3d 677, 682.

B. The Trial Court Erred in Denying Plaintiff's Motion for Substitution of Judge as a Matter of Right

Illinois law is clear that "[u]nder section 2-1001(a)(2), a party's motion for substitution as a matter of right in a civil action 'shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.' " *Palos Community Hospital*, 2021 IL 126008, ¶25. "When properly made, a motion for substitution of judge as of right is absolute; the trial court has no discretion to deny it. *Palos Community Hospital*, 2021 IL 126008, ¶25.

Here, Plaintiff filed his motion for substitution as a matter of right in the Morgan Stanley

action before trial or hearing and before Judge McJoynt ruled on any substantial issue in the case.

The trial court denied the motion "for reasons of record." C 13088 V8. Significantly, however, no reasons were stated on the record. C 13144-13147 V8.

Because Plaintiff timely made the motion for substitution as a matter of right, the trial court erred in denying Plaintiff's motion. Consequently, the denial of Plaintiff's motion for substitution of judge as a matter of right must be reversed, all order entered subsequent to that improper denial vacated as void, and this matter remanded to the trial court for further proceedings on Plaintiff's Complaint before a different judge.

5. Judge McJoynt Erred in Denying Plaintiff's Motion for Recusal

Plaintiff filed a motion requesting that Judge McJoynt recuse himself with respect to the Morgan Stanley Complaint. C 13000 V8. Judge McJoynt denied Plaintiff's motion. C 13088 V8. A review of the transcript on the hearing for that, just as with Plaintiff's motion for substitution of judge as a matter of right, Judge McJoynt did not substantively address Plaintiff's request for recusal. C 13144-13147 V8. A review of Plaintiff's motion and the applicable law reveals that Plaintiff's request for recusal should have been granted.

A. Standard of Review

Recusal is governed by Supreme Court Rule 63. In considering whether the trial court erred in denying Plaintiff's request for recusal, this Court "must determine whether the decision was an abuse of discretion." *Kamelgard v. American College of Surgeons*, 385 Ill. App. 3d 675, 679, 895 N.E. 2d 997, 1001 (1st Dist. 2008).

B. Judge McJoynt Applied the Incorrect Standard in Denying Plaintiff's Motion for Recusal

Supreme Court Rule 63(C)(1) provides that "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned ***." Further, recusal is required if there is "a mere 'appearance of impropriety.' " *O'Brien*, 2011 IL 109039, ¶32, quoting Supreme Court rule 63(C)(1). This Court has also noted that "recusal is required when the 'probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.' " *O'Brien*, 2011 IL 109039, ¶32, quoting *Withrow*, 421 U.S. at 47.

O'Brien also recognized that that the Appellate Court has held that, when considering recusal, "there 'must be a concerned interest in ascertaining whether public impression will be

favorable and the rights of an accused protected even though the judge is convinced of his own impartiality.' " Emphasis added. *O'Brien*, 2011 IL 109039, ¶36, quoting *People v. Bradshaw*, 171 Ill. App. 3d 971, 976, 525 N.E. 2d 1098 (1988).

This standard is also found in *In re Marriage of Wheatley*, 297 Ill. App. 3d 854, 697 N.E. 2d 938 (1998). In *Wheatley*, the trial judge received a letter from a former United States Congressman. The judge opened the letter, saw that it referenced the case before him, folded the letter back up, and did not read further. *Wheatley*, 297 Ill. App. 3d at 856. The judge disclosed the correspondence and provided copies to the parties. *Wheatley*, 297 Ill. App. 3d at 856. The letter argued that the trial court should grant full custody of the child to the mother. *Wheatley*, 297 Ill. App. 3d at 856.

The trial court granted full custody to the mother and the father sought to vacate that ruling, arguing that the trial court should have recused itself. Wheatley, 297 Ill. App. 3d at 856-57. The trial court refused to recuse itself. *Wheatley*, 297 Ill. App. 3d at 858.

On appeal, the appellate court reversed the trial court, holding that "the judiciary is bound to maintain a favorable impression that all parties receive impartial trials and that justice is administered fairly." *Wheatley*, 297 Ill. App. 3d at 858. Notably, [t]his obligation remains steadfast even though a judge is unequivocally sure that he is not partial to either litigant in a case pending before the court." *Wheatley*, 297 Ill. App. 3d at 858. Further, once "an appearance of impropriety [has] been created and that the trial judge [has] a duty to recuse himself." *Wheatley*, 297 Ill. App. 3d at 858. The *Wheatly* court concluded "It matters not whether the trial judge was in fact prejudiced or biased by the letter he received. It is the appearance that he was so prejudiced or biased which mandates that his judgment be vacated and that the

matter be remanded for a new trial before a judge who has not read the letter." *Wheatley*, 297 Ill. App. 3d at 859.

Here, the same standard governs. The question is where there is an appearance of bias or prejudice that required Judge McJoynt to recuse himself from considering Plaintiff's complaint against Morgan Stanley.

As set forth in Plaintiff's motion, Judge McJoynt's impartiality might reasonably be questioned when it came to his consideration of Plaintiff's complaint against Defendants and the motions to dismiss flowing from that complaint. As Plaintiff pointed out in his motion, in that complaint, Plaintiff is seeking relief against Defendants for impairing his access to his non-marital Accenture Founders Shares from July 2014 through December 22, 2017. C 13002. Notably, Judge McJoynt plays a significant role in the damages in this action in that (i) he refused to hear Plaintiff's motion relating to the freeze on his account until after those assets had already been liquidated; (ii) he ordered a liquidation of a portion of the assets to pay hundreds of thousands of dollars in attorney fees to Stogsdill Law Firm, P.C. while denying Plaintiff access to the same funds; (iii) he ultimately determined that Plaintiffs Accenture Founders Shares were non-marital property and that the order of February 2013 never applied to Morgan Stanley at all, but did so only after substantially all of the assets were liquidated; (iv) allowed the assets to be liquidated before he determined whether they were marital assets; (v) retroactively declared that he had entered an injunction when he had not; (vi) aligned himself with Respondent's position without regard to its accuracy.

Each one of these bases would cause a reasonable person to question whether Judge McJoynt could be impartial when considering Plaintiff's claims against Defendants. The

multiple bases present here raise the appearance of impropriety on the part of the trial court. Once this happens, the next step is not discretionary. As the *Wheatly* court held, once "an appearance of impropriety [has] been created and that the trial judge [has] a duty to recuse himself." *Wheatley*, 297 Ill. App. 3d at 858.

Further, it is clear that Judge McJoynt applied the incorrect standard in considering Plaintiff's motion for recusal. This is seen by Judge McJoynt's finding that "I don't find that I have been impartial or unfair to Mr. Arjmand." SUP R 715. As set forth above, this standard is exactly the standard rejected by this Court in *O'Brien*. Without question, Judge McJoynt ignored the applicable case law when he considered Plaintiff's motion. Further, Illinois law is clear that a trial court abuses its discretion when it "applies an incorrect legal standard." *In re Miroslava P.*, 2016 IL App (2d) 141022, ¶36.

Here, there is, without a doubt, an appearance of impropriety of Judge McJoynt presiding over Plaintiff's complaint against Defendants. Because of this appearance of impropriety, Judge McJoynt was required to recuse himself. His failure to do so is reversible error and requires that the trial court's subsequent orders to be vacated and this case remanded to the trial court for further proceedings before a different judge.

CONCLUSION

Reviewing Courts have jurisdiction to review the denial of requests for substitution of judge that are in the procedural progression of an order that is the foundation of an interlocutory appeal. Further, Plaintiff's petition for substitution for cause, motion for substitution as a matter of right, and for recusal are in the procedural progression of the dismissal order that forms the basis of this appeal pursuant to Supreme Court Rule 304(a).

A review of the trial court's handling of Plaintiff's petition and motions reveals that Judge Kleeman did not follow the statutory language in denying Plaintiff's petition for substitution of judge as a matter of right. Therefore, that decision must be reversed, and the matter remanded for proceedings consistent with the statute.

Further, the trial court erred in denying Plaintiff's motion for substitution as a matter of right. Therefore, the trial court's decision must be reversed, all orders entered subsequent to that vacated as void, and this matter remanded for further proceedings in front of a different judge.

Finally, the trial court erred in denying Plaintiff's motion for Judge McJoynt to recuse himself in that Judge McJoynt applied the wrong standard in rendering his decision. Consequently, Judge McJoynt erred in failing to recuse himself and that decision must be reversed, and this matter remanded to the trial court for proceedings in front of a different judge.

Respectfully Submitted,
MASUD M. ARJMAND,

/s/ Bryan M. Sims
BY: _____
One of Plaintiff's Attorneys

Bryan M. Sims
SIMS LAW FIRM, LTD.
1700 Park St.
Suite 206
Naperville, IL 60563
(630) 344-9267
bsims@simslawfirm.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 315(d) and Rule 341(a). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 45 pages.

/s/ Bryan M. Sims

Bryan M. Sims

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bsims@simslawfirm.com

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing Petition for Leave to Appeal to be served by sending the same via (i) the Court's approved electronic filing service provider; and (2) email to counsel for Defendants at the email addresses identified below on March 15, 2023:

Robert Radasevich, rradasevich@nge.com
Andrew Hamilton, ahamilton@nge.com
Bryan Estes, bryan@stogsdilllawfirm.com
Tony Sammarco, tony@stogsdilllawfirm.com
Michael DiDomenico, MDiDomenico@laketoback.com

/s/ Bryan M. Sims

Bryan M. Sims

Bryan M. Sims
SIMS LAW FIRM, LTD.
1700 Park St.
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Naperville, IL 60563
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APPENDIX

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ORDER

2009D001168-0

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE THE MARRIAGE OF
MASUD M ARJMAND
Plaintiff

AND

MUNEEZA R ARJMAND
Defendant

2009D001168
CASE NUMBER

FILED
DEC 29, 2020 02:39 PM
Candice Adams
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ORDER

THIS CAUSE coming on for hearing on the Motion to Dismiss filed by The Stogsdill Law Firm, P.C.; Bryan E. Estes; ~~and Muneeza Rahman~~; and the Motion to Dismiss filed by Morgan Stanley Smith Barney;

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion to Involuntarily Dismiss Pursuant to 735 ILCS 5/2-619 filed by The Stogsdill Law Firm, P.C., Bryan E. Estes; ~~and Muneeza Rahman~~ is granted and Masud Arjmand's Complaint filed on December 23, 2019 in the above captioned dissolution of marriage proceed is dismissed with prejudice due to *res judicata* as stated on the record on November 19, 2020.

2. The Motion to Involuntarily Dismiss filed by Morgan Stanley Smith Barney Stanley Barney, *et al* is granted and the Complaint filed by Masud Arjmand on December 23, 2019 in the above captioned dissolution of marriage proceeding is dismissed with prejudice due to *res judicata* as stated on the record on November 19, 2020.

3. The Motion to Strike filed by Morgan Stanley Smith Barney, *et al* for failure to state a cause of action is granted and the Complaint filed by Masud Arjmand on December 23, 2019 in the above captioned dissolution of marriage proceeding is stricken for the reasons stated on the record on November 19, 2020.

4. Masud Arjmand's Motion to Sever and Transfer Severed Claims to the Law Division is rendered moot and said motion is denied.

5. The above cause is continued to December 29, 2020 at 11:00 AM in Courtroom 3009 for status and setting, hearing on motions previously filed. The hearing on December 29, 2020 shall be conducted remotely via Zoom.

Submitted by: BRYAN E. ESTES
Attorney Firm: STOGSDILL LAW FIRM PC
DuPage Attorney Number: 45250
Attorney for: RESPONDENT

Entered:
JUDGE TIMOTHY J MCJOYNT
Date: 12/29/2020 Nunc Pro Tunc as of 11/19/2020

C 14218 V8

A 01

ORDER 2009D001168-0

Address: 1776 S NAPERVILLE RD, SUITE 202B
City/State/Zip: WHEATON, IL, 60189
Phone number: 630-462-9500
Email : doreen@stogsdilllaw.com

16

8370
1040

STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, WHEATON, ILLINOIS

IN RE THE MARRIAGE OF:	)	
MASUD M. ARJMAND,	)	
Petitioner,	)	
vs.	)	**Case No. 2009 D 1168**
MUNEEZA R. ARJMAND,	)	
n/k/a MUNEEZA R. RAHMAN,	)	
Respondent.	)	

ORDER

THIS CAUSE coming to be heard on MASUD ARJMAND'S Amended Third Petition for Substitution of Judge for Cause and for Assignment to a Different Appellate District via Zoom hearing in Courtroom 2014 before the Honorable Robert Kleeman, MASUD ARJMAND appearing on his own behalf and Attorneys, Bryan S. Estes and Anthony S. Sammarco of The Stogsdill Law Firm, P.C. appearing on behalf of MUNEEZA RAHMAN, the Court having considered the Pleadings, Responses, Memorandum of Law, Affidavits, Exhibits, applicable case authority and oral argument presented by each party, and otherwise being fully advised:

IT IS HEREBY ORDERED AS FOLLOWS:

1. MASUD ARJMAND'S Amended Third Petition for Substitution of Judge for Cause and for Assignment to a Different Appellate District and all relief requested therein is denied;

2. The above cause is continued to July 15, 2020 at 9:00 a.m. in Courtroom 3009 for status.

ENTERED:

JUDGE

June 3, 2020

Date

Prepared By:
THE STOGSDILL LAW FIRM, P.C.
Attorneys for Respondent
1776S. Naperville Rd., Suite 202B
Wheaton, Illinois 60189
(630) 462-9500
Atty. No. 45250
bryan@stogsdilllaw.com
Order re SOJ(3) 06 03 20 BSE/amg

ORDER

2009D001168-4913

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

MASUD M ARJMAND

-VS-

MUNEEZA R ARJMAND

2009D001168
CASE NUMBER

FILED

20 Aug 25 AM 11: 09

Chris Kachiroubas

CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ORDER

For the reasons stated on the record, Petitioner's motion to reconsider the denial of his motion for substitution of judge is denied.

Submitted by: JUDGE ROBERT G KLEEMAN
DuPage Attorney Number:
Attorney for:
Address:
City/State/Zip:
Phone number:

Entered: File Date: 08/25/2020
JUDGE ROBERT G KLEEMAN
Validation ID : DP-08252020-1109-5393

Date: 08/25/2020

C 13154 V8

A 05

ACTION ORDER 2009D001168-4881

STATE OF ILLINOIS

UNITED STATES OF AMERICA

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

COUNTY OF DU PAGE

MASUD M ARJMAND — PLAINTIFF

VS

MUNEEZA R ARJMAND — DEFENDANT

2009D001168

CASE NUMBER

FILED

20 Aug 06 PM 02: 36

Chris Kachiroubas

CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ACTION ORDER

This matter having come before the Court, the Court having jurisdiction and being fully advised in the premises:

IT IS HEREBY ORDERED as follows:

The case is continued to 08/20/2020 in 3009 at 09:30 AM for HEARING - FOR VIDEO CALL.
Description: motion to sever and two motions to dismiss

motion for soj filed on 7/6/20 by the petitioner is denied for reasons of record

Submitted by: JUDGE TIMOTHY J MCJOYNT
DuPage Attorney Number:
Attorney for:
☐ PRO SE

File Date: 08/06/2020

JUDGE TIMOTHY J MCJOYNT
Validation ID : DP-08062020-0236-14632

Date: 08/06/2020

C 13088 V8

A 06

ORDER 2009D001168-4989

UNITED STATES OF AMERICA

STATE OF ILLINOIS COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

MASUD M ARJMAND

-VS-

MUNEEZA R ARJMAND

2009D001168
CASE NUMBER

FILED

20 Sep 17 PM 03: 07

Chris Kachiroubas

CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ORDER

THIS CAUSE coming to be heard for hearing on Masud Arjmand's Motion to Reconsider August 6, 2020 Order; Masud Arjmand's Motion to Sever and Transfer Severed Claims; Masud Arjmand's Motion to Allow Time to File Motion for Rule 383 Supervisory Order Pursuant to Supreme Court Opinion – In Re Estate of Wilson; The Stogsdill Law Firm, P.C., Bryan Estes and Muneeza Rahman's Motion to Involuntarily Dismiss the Complaint; and Morgan Stanley Smith Barney, et. al. Motion to Involuntarily Dismiss Complaint, the Court having considered the pleadings, applicable statutory and case authority and oral argument submitted by the parties and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Masud Arjmand's Motion to Allow Time to File Motion for Rule 383 Supervisory Order Pursuant to Supreme Court Opinions – In Re Estate of Wilson is denied for the reasons stated on the record on September 17, 2020.
2. Masud Arjmand's Motion to Reconsider August 6, 2020 Order is denied for the reason stated on the record on September 17, 2020.
3. The Court commenced to hear oral argument on the Motions to Involuntarily Dismiss the Complaint; and, those matters scheduled for hearing which were to be addressed by the Court on September 17, 2020 are continued by separate Order of Court.

Submitted by: BRYAN S. ESTES
Attorney Firm: STOGSDILL LAW FIRM PC
DuPage Attorney Number: 45250
Attorney for: MUNEEZA ARJMAND
Address: 1776 S NAPERVILLE RD, SUITE 202B
City/State/Zip: WHEATON, IL, 60189
Phone number: 630-462-9500
Email address : bryan@stogsdilllaw.com

Entered: File Date 09/17/2020

JUDGE TIMOTHY J MCJOYNT
Validation ID : DP-09172020-0307-06673

Date: 09/17/2020

A 07

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, WHEATON, ILLINOIS

2270
3775-2260

IN RE THE MARRIAGE OF:	)	
	)	
MASUD M. ARJMAND,	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2009 D 1168
	)	
MUNEEZA R. ARJMAND,	)	
n/k/a MUNEEZA R. RAHMAN,	)	
Respondent.	)	

Masud Arjmand,	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Morgan Stanley Smith Barney, LLC	)	
Morgan Stanley & Co., LLC	)	COMPLAINT
Morgan Stanley & Co., Inc.	)	
Morgan Stanley Investment Management, Inc.	)	
	)	
Bryan S. SLF	)	
The Stogsdill Law Firm, P.C.	)	
	)	
Defendants.	)	

ORDER

THIS CAUSE coming to be heard for the continuation of the oral argument on Masud Arjmand's Motion to Reconsider and Reverse November 19, 2020 Order, the Court having considered the pleadings, case authority submitted, applicable authority, and oral arguments by the parties, and the Court being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Masud Arjmand's Motion to Reconsider and Reverse November 19, 2020 Order is denied for the reasons stated and spread of record on April 28, 2021;

2. Pursuant to Illinois Supreme Court Rule 304(a), there is no just reason for delaying enforcement or appeal of the Court's Order entered on December 29, 2020 *nunc pro tunc* as of November 19, 2020.

3. Pursuant to Illinois Supreme Court Rule 304(a), there is no just reason for delaying enforcement or appeal of this Order.

ENTERED:

JUDGE TIMOTHY MCJOYNT
Date: April 28, 2021

Robert Radasevich
NEAL, GERBER & EISENBERG LLP
Two N. LaSalle Street, Suite 1700
Chicago, IL 60602
(312) 269-8039
rradasevich@nge.com
DuPage County Attorney No. 5105

Attorney for Morgan Stanley Defendants

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:

MASUD M. ARJMAND,

Petitioner,

and

MUNEEZA R. ARJMAND, N/K/A MUNEEZA R. RAHMAN,

Respondent.

Case No. 09 D 1168

MASUD ARJMAND,

Plaintiff,

v.

MORGAN STANLEY SMITH BARNEY, LLC; MORGAN STANELY & CO., LLC; MORGAN STANLEY & CO., INC., MORGAN STANLEY INVESTMENT MANGEMENT, INC., BRYAN ESTES; AND STOGSDILL LAW FIRM, PC.,

Defendants.

NOTICE OF APPEAL

Plaintiff, Masud Arjmand, appeals from an order of the Circuit Court of DuPage County, Illinois, entered on April 28, 2021, and all orders in procedural progression leading to it. This order denied Plaintiff's Motion to Reconsider the dismissal of his complaint. The dismissal was entered on November 19, 2020.

The order of April 28, 2021 contains a finding pursuant to Supreme Court Rule 304(a) that no just reason exists to delay the appeal or enforcement of the order. Plaintiff seeks the reversal of the order of April 28, 2021, as well as the dismissal order entered on November 19, 2020.

Respectfully Submitted,
MASUD ARJMAND,

By: _____
MASUD ARJMAND, Plaintiff

Masud M. Arjmand
415 White Oak Dr
Naperville, IL 60540
masud.rrg@gmail.com
630.961.3200

#17

ORDER - BLANK 2116 (Rev. 2/16)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Masud M Arjmand

vs

Morgan Stanley et al, Bryan Esks, The Stogsdill Law Firm, P.C

2016 L 153
CASE NUMBER

FILED
16 AUG 17 PM 1:55
Chris Kachiroubas
CLERK OF THE CIRCUIT COURT
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS
File Stamp Here

ORDER

for hearing on Motion to Strike and Motion to Dismiss filed by pg 1 of 2 pgs

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, ~~IT IS HEREBY ORDERED~~: Morgan Stanley and The Stogsdill Law Firm pg 2 of 2 pgs

the Court having considered the complaint the parties Motions to Strike and Motions to Dismiss, the parties Responses and Replys thereto, Statutory and Case authority and oral argument made by the parties, and being otherwise fully advised in the premises and having reviewed substantial portions of the dissolution of marriage case 09D1168 between Masud Arjmand and Monay Rivera

It Is Hereby Ordered As Follows:

1. Defendants' Morgan Stanley et al; Brody Weck Brodt Weal Seiber and Eisenberg, LLP's Motion to Involuntarily Dismiss Masud Arjmands Verified Complaint is granted pursuant to 735 ILCS 5/2-619.

2. Defendants Bryan Esks The Stogsdill Law Firm P.C.'s Motion to Involuntarily Dismiss Masud Arjmands' Verified Complaint is granted pursuant to 735 ILCS 5/2-619.

Stogsdill

Name: Esks Stogsdill Law Firm, P.C. ☐ PRO SE
DuPage Attorney Number: 45250
Attorney for: B. Esks, Stogsdill Law Firm, P.C.
Address: 476 S. Naperville Rd. Suite 200
City/State/Zip: Wheaton, IL 60187
Telephone Number: (630) 462-9500
Email: bryan@stogsdilllaw.com

ENTER:

Judge

Date:

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

SUP2 C 535

#17

ORDER - BLANK 2116 (Rev. 2/16)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Masad M. Arjmand

vs

Morgan Stanley et al, Bryan Estes, The Stogsdill Law Firm, PC

2016 L 153
CASE NUMBER

File Stamp Here

ORDER

pg 2 of 2

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

3. Masad Arjmand's Verified Complaint and all relief requested therein is dismissed with prejudice pursuant to 735 ILCS 5/2-619 for the reasons stated and spread of record on August 17, 2016

Name: Estes, B/ Stogsdill Law Firm, P.C. ☐ PRO SE

DuPage Attorney Number: 45250

Attorney for: B Stogsdill, Stogsdill Law Firm, P.C.

Address: 1776 S. Naperville Rd, Ste 202B

City/State/Zip: Wheaton, IL 60189

Telephone Number: (630) 462-9500

Email:

ENTER:

Judge Sutter

Date: August 17, 2016

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

SUP2 C 536

2-21-0285

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

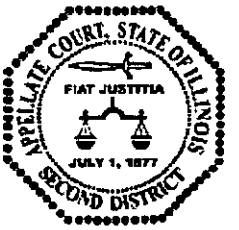
MASUD M ARJMAND
Plaintiff/Petitioner

v.

MUNEEZA R ARJMAND
Defendant/Respondent

Reviewing Court No: 2-21-0285
Circuit Court/Agency No: 2009D001168
Trial Judge/Hearing Officer: TIMOTHY J MCJOYNT

10



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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

MASUD M ARJMAND
Plaintiff/Petitioner

v.

MUNEEZA R ARJMAND
Defendant/Respondent

Reviewing Court No: 2-21-0285
Circuit Court/Agency No: 2009D001168
Trial Judge/Hearing Officer: TIMOTHY J MCJOYNT

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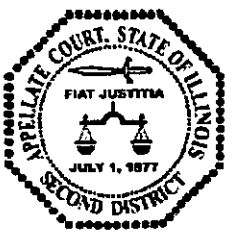

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MASUD M ARJMAND
Plaintiff/Petitioner

v.

MUNEEZA R ARJMAND
Defendant/Respondent

Reviewing Court No: 2-21-0285
Circuit Court/Agency No: 2009D001168
Trial Judge/Hearing Officer: TIMOTHY J MCJOYNT

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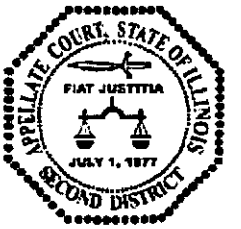

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Plaintiff/Petitioner

Reviewing Court No: 2-21-0285
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No. 2-21-0285
Summary Order filed October 27, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MASUD M. ARJMAND, Petitioner-Appellant, and MUNEEZA R. ARJMAND, Respondent (Morgan Stanley Smith Barney LLC, Morgan Stanley & Co., LLC, Morgan Stanley & Co., Inc., Morgan Stanley Investment Management, Inc., Bryan Estes, and Stogsdill Law Firm, PC, Defendants-Appellees).	)	Appeal from the Circuit Court of Du Page County. No. 09-D-1168 Honorable Timothy J. McJoynt, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

SUMMARY ORDER

¶ 1 The plaintiff, Masud Arjmand, appeals from the judgment of the circuit court of Du Page County dismissing his complaint, filed within this dissolution proceeding, against the defendants, Bryan Estes and The Stogsdill Law Firm (collectively, Stogsdill), and various entities affiliated with Morgan Stanley Smith Barney LLC (collectively, Morgan Stanley). The plaintiff also appeals from orders denying his motions for substitution of judge or for recusal. We dismiss for lack of

jurisdiction the portion of the appeal related to the motions for substitution of judge, and we reverse the dismissal of the plaintiff's complaint and remand for further proceedings.

¶ 2 In 2009, the plaintiff filed an action to dissolve his marriage to his wife, Muneeza Arjmand. In 2013, the trial court entered an order restricting the plaintiff's ability to cash in, transfer, encumber, or otherwise dispose of certain investment assets. Thereafter, defendant Stogsdill, acting as Muneeza's attorney, wrote to defendant Morgan Stanley, which held the assets at issue, to notify them of the 2013 order. Morgan Stanley thereafter restricted the plaintiff's access to his assets.

¶ 3 In 2015, the plaintiff filed a lawsuit, Case No. 16-L-153 (the 2015 complaint), against the present defendants, asserting claims for breach of contract, breach of fiduciary duty, tortious interference with prospective economic advantage, tortious interference with contract, and conversion. The claims were based on Stogsdill notifying Morgan Stanley of the 2013 order and Morgan Stanley's subsequent restriction of the plaintiff's access to his assets. The defendants moved to dismiss, arguing among other things that the suit was an improper collateral attack on the 2013 order. In August 2016, the trial court judge, Judge Ronald Sutter, agreed and dismissed the complaint with prejudice, noting that the dissolution proceeding remained pending before another judge and citing case law suggesting that it would be improper for one circuit court to review the orders of another circuit court. See, *e.g.*, *People ex rel. Kelly, Ketting, Furth, Inc. v. Epstein*, 61 Ill. 2d 229, 231 (1974). The plaintiff did not appeal the dismissal.

¶ 4 In August 2018, the plaintiff filed a petition, pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)), to vacate the August 2016 order. Judge Sutter denied the section 2-1401 petition with prejudice. On appeal to this court, we affirmed that decision. See *Arjmand v. Morgan Stanley Smith Barney, LLC*, 2019 IL App (2d) 180785-U.

¶ 5 On December 23, 2019, the plaintiff filed a new complaint (the 2019 complaint) against the defendants, within this dissolution proceeding, again alleging claims for breach of contract, breach of fiduciary duty, tortious interference with prospective economic advantage, tortious interference with contract, and conversion. The defendant also added a claim against Stogsdill for abuse of process and a claim against Morgan Stanley for wrongful garnishment. As in the 2015 complaint, the claims were based on Stogsdill notifying Morgan Stanley of the 2013 order and Morgan Stanley's actions in restricting the plaintiff's access to his assets. The defendants filed motions to dismiss the complaint asserting multiple grounds for dismissal. One of the grounds was that the complaint should be dismissed with prejudice under section 2-619(a)(4) of the Code (735 ILCS5/2-619(a)(4) (West 2018)) as barred by the doctrine of *res judicata*. The defendants' motions also raised other grounds for dismissal under section 2-615 and 2-619, including the failure to state a cause of action and statute of limitations.

¶ 6 On December 27, 2019, the plaintiff filed a third petition for substitution of judge for cause and for assignment to a judge in a different appellate district. The plaintiff later amended the petition. On February 10, 2020, following a hearing, the trial court assigned the petition to an independent judge to rule on the pleading. On June 3, 2020, following a non-evidentiary hearing, Judge Robert Kleeman denied the petition for substitution of judge. Judge Kleeman later denied the plaintiff's motion to reconsider that order.

¶ 7 On July 6, 2020, the plaintiff filed a motion for substitution of judge as of right or, alternatively, for recusal as to the plaintiff's 2019 complaint. On August 6, 2020, following a hearing, the trial court denied the motion, finding that the plaintiff was not entitled to substitution as of right because the court had already made substantial rulings in the case. The trial court also

found that the plaintiff had not presented any evidence that the trial court had an interest in the case or any bias or prejudice. The trial court denied the plaintiff's motion to reconsider that order.

¶ 8 On November 19, 2020, following a hearing, the trial court granted the defendants' motions to dismiss the plaintiff's 2019 complaint. The trial court found that the complaint was barred by *res judicata* as it was the same lawsuit filed in 2015. The trial court also stated that "in a 2-615 the tort suit filed by [the plaintiff] in this case without leave does not state a cause of action." The trial court declined to address whether the 2019 complaint could be dismissed based on the statute of limitations. In subsequently denying the plaintiff's motion to reconsider the dismissal order, the trial court found that, under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), there was no just reason for delaying enforcement or appeal of the order. Thereafter, the plaintiff filed a timely notice of appeal.

¶ 9 The plaintiff's first contention on appeal is that the trial court erred in granting the motions to dismiss his complaint based on *res judicata*. A motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the pleading but asserts an affirmative defense or other matter that avoids or defeats the claim. *Barber v. American Airlines, Inc.*, 241 Ill. 2d 450, 455 (2011). Section 2-619(a)(4) allows the involuntary dismissal of an action that is "barred by a prior judgment." 735 ILCS 5/2-619(a)(4) (West 2018). "This provision allows a party to raise the affirmative defense of *res judicata*." *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 565 (2000). "Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to a subsequent suit between the parties involving the same cause of action." *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). Application of *res judicata* to bar a claim requires: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) identity of the causes of action; and (3) identity of the parties

or their privies. *Ward v. Decatur Memorial Hospital*, 2019 IL 123937, ¶ 45. We review *de novo* the dismissal of a complaint under section 2-619(a)(4). *Morris B. Chapman & Associates, Ltd.*, 193 Ill. 2d at 565.

¶ 10 The record demonstrates that the plaintiff's complaint was not barred by the doctrine of *res judicata* because there was no prior judgment on the merits. In August 2016, Judge Sutter dismissed with prejudice the 2015 complaint against the defendants in Case No. 16-L-153. Under Supreme Court Rule 273 (eff. Jan. 1, 1967), "an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication on the merits." Here, although Judge Sutter indisputably had both personal and subject matter jurisdiction to hear the plaintiff's claims that the defendants injured him by improperly interpreting the 2013 order, it declined to exercise that jurisdiction and instead dismissed the action with prejudice. Thus, the August 2016 dismissal falls within the exceptions listed in Rule 273. Whether this dismissal is best viewed as being based on lack of jurisdiction or an aspect of improper venue, the record is clear that Judge Sutter issued no ruling on the merits of the plaintiff's claims. Accordingly, the trial court erred in dismissing the 2019 complaint on the basis of *res judicata*.

¶ 11 The defendants argue that the dismissal can be upheld on other bases appearing in the record. We note that, in its ruling, the trial court stated that, under section 2-615, the complaint failed to state a cause of action. However, Morgan Stanley argued only that two of the claims should be dismissed for failure to state a cause of action. Stogsdill did not seek dismissal of any of the claims under section 2-615 of the Code. Thus, the basis for the trial court's statement related to section 2-615 is unclear. Further, the trial court stated that it was not going to rule on whether any of the claims could be dismissed based on the statute of limitations. While the defendants are

correct that we may reach other issues as a basis to affirm the judgment below, we are not required to decide issues on which the trial court did not rule. *Fredericks v. Liberty Mutual Insurance Co.*, 255 Ill. App. 3d 1029, 1036 (1994). We thus reverse the judgment and remand the cause with directions for the trial court to consider whether dismissal is proper on any other grounds raised by the defendants' motions to dismiss. *Id.*

¶ 12 The plaintiff's next contention on appeal is that the trial court erred in denying his motions for substitution of judge or for recusal. There is no applicable provision of the Illinois Supreme Court Rules providing for an interlocutory appeal from the trial court's orders denying the motions for substitution. The denial of a motion for substitution of judge is not a final order but, instead, is an interlocutory order that is appealable on review from a final order. *In re Marriage of Nettleton*, 348 Ill.App.3d 961, 969 (2004). "Our supreme court has seen fit not to provide specifically for interlocutory appeals of *any* order disposing of a motion for substitution." (Emphasis in original.) *U.S. Bank National Association v. In Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213, ¶ 25. As there has been no final order in this dissolution proceeding, the orders denying the motions for substitution are not properly before this court.

¶ 13 In arguing that we have jurisdiction of the orders denying the motions for substitution, the plaintiff relies on *Sarah Bush Lincoln Health Center v. Berlin*, 268 Ill. App. 3d 184 (1994), *rev'd on other grounds*, 179 Ill. 2d 1 (1997). In *Berlin* the reviewing court, while considering an interlocutory appeal from a preliminary injunction, held that it could also consider whether the trial court erred in denying a motion for substitution of judge. *Id.* at 186-87. As a decision from a sister appellate district, *Berlin* is not binding on this court. See *American Economy Insurance Co. v. Holabird & Root*, 382 Ill. App. 3d 1017, 1034 (2008). In *Nettleton*, this court held that the

supreme court rules should prevail over the ruling in *Berlin*. See *Nettleton*, 348 Ill. App. 3d at 970.

¶ 14 For the reasons stated, we dismiss for lack of jurisdiction the portion of the appeal pertaining to the motions for substitution of judge, and we reverse the dismissal of the plaintiff's 2019 complaint and remand the cause for additional proceedings.

¶ 15 Reversed in part and appeal dismissed in part; cause remanded.