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

REPLY BRIEF PLAINTIFF-PETITIONER
MASUD M. ARJMAND
ORAL ARGUMENT REQUESTED

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ARGUMENT

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

Morgan Stanley first argues that orders in the procedural progression are reviewable only from an appeal from a final judgment and not in an appeal pursuant to Rule 304(a). Morgan Stanley Brief, pp. 19-22. Thereafter, Morgan Stanley argues that the decisions of the First and Fourth Districts allowing the consideration of the denial of a petition for substitution in the context of an interlocutory appeal were incorrectly decided. Morgan Stanley Brief, pp. 22-27.

The Stogsdill Defendants argue that Plaintiff's notice of appeal does not properly confer jurisdiction over his appeal of the denial of his requests for substitution. Stogsdill Brief, p. 11. The Stogsdill Defendants also argue that a final judgment in the dissolution proceedings is required to review the denial of Plaintiff's substitution requests. Stogsdill Brief, p. 16.

As will be demonstrated below, all of these arguments are incorrect.

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

In *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 434, 394 N.E. 2d 380, 383 (1979), this Court explained that notices of appeal must be liberally construed. *Burtell*, 76 Ill. 2d at 436. Consistent with this underlying philosophy, this Court held that an appellate court had jurisdiction over an order that was in the "procedural progression" leading to the judgment appealed from. *Burtell*, 76 Ill. 2d at 436.

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This foundational law has been controlling in Illinois since at least 1979. Based upon this holding, the Appellate Court, Second District specifically recognized that a petition for substitution of judge for cause was an order that was in the procedural progression of a final order entered in the case and was therefore appealable. *Jiffy Lube International, Inc. v. Agarwal*, 277 Ill. App. 3d 722, 727, 661 N.E. 2d 463, 467 (2d Dist. 1996). The fact that the *Agarwal* arose in the context of a final judgment for the entire case is not a basis to distinguish it from the instant case.

Here, Plaintiff's appeal arises under Rule 304(a) and, therefore, does not arise from a final judgment for the entire case. However, it does arise from a final judgment. See *Blumenthal v. Brewer*, 2016 IL 118781, ¶24, 69 N.E. 3d 834, 843 (holding that "By its terms, Rule 304(a) applies only to final judgments or orders.").

The fact that the final judgment appealed in this matter was one that did not dispose of the entire proceeding in the trial court does not change its character as a final judgment. Moreover, it does not change the fact that there are orders that occurred in the procedural progression that led to that final judgment, including, the orders denying Plaintiff's motion for substitution, his motion to recuse, and his petition for substitution for cause.

Because this appeal arises from a final judgment, this Court's holding in *Burtell* controls and provides that the appellate court had jurisdiction to review the denial of Plaintiff's petition and motions for substitution because the denial of each of those occurred in the procedural progression of the order that led to the entry of the final judgment in this matter.

Additionally, as thoroughly explained and examined by this Court *In re Marriage of O'Brien*, 2011 IL 109039, ¶22, 958 N.E. 2d 647, 653, a notice of appeal provides jurisdiction over the

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denial of a request for substitution of judge that is in the procedural progression of the final judgment, even if that denial is not specifically identified in the notice of appeal. Therefore, the objection of the Stogsdill Defendants based upon the notice of appeal must be rejected.

Similarly, the Stogsdill arguments that attempt to intertwine the complaint in this action with the dissolution proceedings are incorrect. The fact is, Plaintiff filed this action in the dissolution proceeding only because Judge Sutter had ruled that the complaint was an "impermissible collateral attack on Judge McJoynt's continuing jurisdiction to preside over the divorce action." SUP2 R 626-627. The decisions in this proceeding do not control what occurs in the dissolution proceeding. This case is with the dissolution proceeding only because, given Judge Sutter's order, the dissolution proceeding is the only place that Plaintiff was able to file this action.

Quite simply, the Stogsdill Defendants are incorrect that anything needs to happen with respect to the dissolution proceeding in order for Plaintiff to receive full consideration of all of his claims in this matter.

In his opening brief, Plaintiff explained why his motion and petition for substitution were in the procedural progression of the final judgment entered in this matter. Plaintiff's Brief, pp. 22-23. In their response, the Stogsdill Defendants unconvincingly attempt to challenge this claim. Stogsdill Brief, p. 15.

Two significant reasons exist that reveal that the Stogsdill Defendants argument is incorrect. First the case they cite, *McGath v. Price*, 342 Ill. App. 3d 19, 793 N.E. 2d 801 (1st Dist. 2003) involved orders that had nothing to do with one another. Specifically, the order appealed was an order dismissing a negligence claim against one party. *McGath*, 342 Ill. App.

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3d at 34. The unspecified order that the appellant wanted to be considered in the procedural progression was an order granting summary judgment against a different defendant on a vicarious liability claim. *McGath*, 342 Ill. App. 3d at 33.

Clearly these orders had nothing to do with each other and one was not in the procedural progression of the other. The same is not true here, where Plaintiff's petition and motion for substitution directly related to his claims against Defendants.

The second reason that the Stogsdill Defendant's argument fails is because both this Court and the appellate court have specifically held that the denial of a motion or petition for substitution is in the procedural progress of an appealed judgment. See *O'Brien*, 2011 IL 109039, ¶22; *Agarwal*, 277 Ill. App. 3d at 727. Given these holdings, the Stogsdill Defendants' claims that such an order does not fall in the procedural progression is simply incorrect.

Consequently, both the appellate court and this Court have jurisdiction to consider the denial of Plaintiff's requests for substitution.

B. The First and Fourth Districts Correctly Hold That in an Interlocutory Appeal, Appellate Courts Have Jurisdiction to Review the Denial of Requests of Substitution of Judge

Morgan Stanley next argues that the First and Fourth Districts wrongly held that, in an interlocutory appeal, they had jurisdiction to review the denials of requests for substitution of judge. To begin its argument, Morgan Stanley first tries to create a difference between this appeal and the appeal in *Sarah Bush Lincoln Health Center. v. Berlin*, 268 Ill. App. 3d 184, 643 N.E. 2d 276 (4th Dist. 1994). Morgan Stanley Brief, p. 23. This purported difference is because the appeal in *Berlin* was pursuant to Rule 307, while this appeal is pursuant to Rule 304(a). Morgan Stanley argues that, because Plaintiff needed permission from the trial court

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to appeal, that means this appeal is different from a 307 appeal, which does not require permission. Morgan Stanley Brief, p. 23.

Admittedly, those facts are true. However, they provide no basis to treat this appeal differently from the appeal in *Berlin*. Permissive or not, here the trial court entered a finding pursuant to Rule 304(a). Therefore, Plaintiff was able to appeal the final judgment entered. Given that the appellate court has jurisdiction over Plaintiff's appeal, the distinction that Morgan Stanley is attempting to draw is without a difference.

Next Morgan Stanley argues that the *Berlin* court wrongly held that it had jurisdiction to review the denial of the motion for substitution. Morgan Stanley Brief, pp. 24-25. In conducting this analysis, Morgan Stanley ignores two key components of the court's decision in *Berlin*. First, the underlying policy of the *Berlin* decision was highlighted by the court when it explained that "we consider 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.

Certainly, this conclusion makes sense. As the *Berlin* court recognized, if the motion for substitution was improperly denied, any subsequent order entered by the judge is void. *Berlin*, 268 Ill. App. 3d at 187. Thus, to properly determine if the order being appealed was correct, one must first determine whether the order that was entered was void.

Additionally, the interlocutory appeal at issue was the only opportunity that the movant had to obtain appellate review of the denial of the motion for substitution. *Berlin*, 268 Ill. App. 3d at 187. The same is true here. This appeal is Plaintiff's opportunity to have the denial of his substitution requests reviewed by an appellate court.

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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). Morgan Stanley criticizes this opinion because the court did not engage in extensive analysis of the jurisdictional question. Morgan Stanley Brief, pp. 25-26. That, however, was not necessary, as it relied upon *Berlin*, which had correctly analyzed the jurisdictional issue.

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.

Because 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), any proceedings that occur after a petition for substitution of judge is erroneously denied are, 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.

By considering the denial of a petition for substitution of judge during an interlocutory appeal, this Court would promote the efficient use of judicial and party resources during the proceedings and would limit the number of void orders that are entered by a trial court. This is specifically relevant in family law cases and consistent with the Illinois Marriage and Dissolution of Marriage Act, which has, as a stated purpose, to "make provision for the preservation and conservation of marital assets during the litigation." 750 ILCS 5/102(10).

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.

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Specifically, a review of this Court's holdings with respect to procedural progression clearly support the position that the denial of a petition for substitution of judge is an order that is in the procedural progression of an order that is subject to interlocutory appeal.

Consequently, this Court should 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.

C. This Court Can, But Need Not Amend the Supreme Court Rules to Expressly Provide for Jurisdiction in This Matter

Morgan Stanley objects to the suggestion of the *Amicus Curiae* that this court amend its rules to expressly provide for "direct, mandatory, and expeditious appeals from orders denying motions for substitution." Morgan Stanley Brief, p. 28; *Amicus* Brief, p. 5.

Plaintiff agrees that this Court can do this if the Court believes that is appropriate. As explained above, however, this Court's opinions already establish that, as an order in the procedural progression of the final order appealed, both the Second District and this Court have jurisdiction to review the denial of Plaintiff's requests for substitution and recusal.

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

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

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the case was transferred, ultimately denied the petition. SUP R 258.

In its brief, Morgan Stanley asserts that Judge Kleeman correctly denied Plaintiff's petition for substitution for cause on the merits. Morgan Stanley Brief, p. 30. This is incorrect, especially since, instead of reviewing Plaintiff's petition and holding an evidentiary hearing to determine the merits, Judge Kleeman simply denied Plaintiff's petition without receiving any evidence.

Morgan Stanley also accuses Plaintiff of judge shopping. Morgan Stanley Brief, pp. 32-33. This is incorrect. Morgan Stanley's argument is based solely on the fact that Plaintiff has filed multiple motions for substitution. Morgan Stanley Brief, p. 32. This is not an accurate measure, however. Each motion or petition for substitution is in the record on appeal and available for this Court to review. C 2880-2954 V2; 3020-3604 V2; 4166-4228 V2; 4238-4289 V2; 10606-10833 V7; 11376-11391 V7; 12288-12552 V8; 12610-12802 V8. Similarly, this Court can review the motion to recuse that Plaintiff filed in the appellate court while this appeal was pending before that Court. Each of those motions and petitions reveals the bias or prejudice that Plaintiff alleged was present that he believed was preventing him from receiving a fair trial.

A review of each of these reveals that Plaintiff was seeking merely to protect his rights in the court proceedings and they do not indicate that he was engaged in judge shopping.

Further, review of the record reveals that Judge Kleeman erred in denying Plaintiff's petition for substitution of judge for cause.

A. Judge Kleeman Erred Failing to Conduct an Evidentiary Hearing on Plaintiff's Petition for Substitution for Cause

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In their briefs, both Defendants argue that Judge Kleeman was not required to hold an evidentiary hearing. Morgan Stanley Brief, pp. 33-34; Stogsdill Brief, pp. 8-11. Further, the Stogsdill Defendants claim that Plaintiff never requested an evidentiary hearing. Stogsdill Brief, p. 9.

Turning to the second point first, Plaintiff did request an evidentiary hearing. C 12984 V8; 12998 V8. Further, a review of the statute reveals that the statute contemplates an evidentiary hearing. The statute provides, in relevant part:

> 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. 735 ILCS 5/2-1001(a)(3)(iii).

When seeking a substitution of judge for cause, the request must be made by petition and supported by affidavit. 735 ILCS 5/2-1001. "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).

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

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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.

Here, before sending Plaintiff's motion to Judge Kleeman for hearing, Judge McJoynt had already determined that the petition had pleaded sufficient facts, that if true, would demonstrate actual prejudice. Given this finding from Judge McJoynt, the task for Judge Kleeman was to conduct an evidentiary hearing to determine whether the pleaded facts were true.

The fact that the statute contemplates that the required hearing will be an evidentiary hearing is demonstrated by the fact that the statute says "a hearing to determine whether the cause exists shall be conducted as soon as possible …" The very next sentence then states "The judge named in the petition need not testify but may submit an affidavit if the judge wishes." The only time the judge, or anyone else for that matter, can testify is if there is an evidentiary hearing at which to testify.

This conclusion is echoed by the Local Rules of the Eighteenth Judicial Circuit which provide that for motions for substitution of judge for cause, "Without leave of court, no judge may be subpoenaed to testify at the hearing on a Motion for Substitution of Judge for Cause." Eighteenth Judicial Circuit Local Rule 1.23(a)(3), accessible at

https://www.dupagecourts.gov/18th_judicial_circuit_court/legal_resources/court_rules/.

Here, the brief of the Stogsdill Defendants further establishes why an evidentiary hearing was necessary. Specifically, they argue that Plaintiff's allegations were not "proven by a preponderance of the evidence." Stogsdill Brief, p. 10. Of course the allegations were not proven. Plaintiff never had an opportunity to prove the allegations in his petition because

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Judge Kleeman did not hold an evidentiary hearing to allow Plaintiff to prove his allegations.

The record is clear however, that Plaintiff carried his burden of filing his petition with his allegations and supporting the petition by affidavit. Thus, Plaintiff did all that he could do until an evidentiary hearing could be held, at which time the allegations could be proven.

Based on the clear language of the statute, Judge Kleeman was obligated to conduct an evidentiary hearing. Because he failed to do so, 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.

B. Judge Kleeman Abused His Discretion in Denying Plaintiff's Petition for Substitution of Judge for Cause

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.

Before addressing the merits of this argument, Plaintiff first turns to the repeated attacks on his character by the Stogsdill Defendants based upon the fact that Plaintiff has filed motions seeking to protect and preserve his rights in this litigation as well as the dissolution proceeding.

For example, the Stogsdill Defendants have set out in their statement of facts a litany of motions or other documents that Plaintiff has filed. Stogsdill Brief, pp. 3-7. The Stogsdill Defendants claim that these motions and documents were filed by Plaintiff to forestall a final judgment on the merits in the dissolution proceeding. Stogsdill Brief, p. 3.

Notably, however, the Stogsdill Defendants do not identify or explain in any instance why any of these documents were improper or not allowed. In fact, they do not make any such claim in their brief. It seems that they simply want to attempt to impugn Plaintiff's character

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by listing a number of motions or documents filed by him.

All of these documents referenced by the Stogsdill Defendants are part of the record. Plaintiff invites this Court to review those documents and judge for itself whether any of them were improper or were, instead, simply a case of a party attempting to zealously advocate his position and protect his rights.

Additionally, both Defendants cast aspersions on Plaintiff for the fact that he has filed appeals from the dissolution proceeding. Stogsdill Brief, pp. 1-2; Morgan Stanley Brief, p. 29, n. 4. Despite the fact that Defendants imply that there is something improper about a party seeking relief in the appellate court, neither party explains why there was anything improper about Plaintiff filing appeals in an attempt to protect his rights.

Turning now to Plaintiff's petition for substitution of judge for cause, Plaintiff recognizes that cause typically arises from conduct or event occurring outside of the court proceedings. However, "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, this 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 also 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.

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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, 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 his petition Plaintiff admittedly does not rely upon an extra judicial source. C 10606-10710 V7; 12288-12415 V8. However, Plaintiff's petition did cite information outside of the record before the trial court. See C 10610 V7.

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, was 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 hear his motions. C 12331-12334 V8.

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Plaintiff's amended petition for substitution for cause reveals the following allegations that establish the bias and prejudice of Judge McJoynt against Plaintiff.

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.

On October 9, 2014, Judge McJoynt ordered Plaintiff to pay $130,000 in interim attorney fees and costs to Stogsdill Law Firm, P.C. C 4067-4068 V2. Further Judge McJoynt ordered that these fees 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.

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, 2½ years after Plaintiff first filed a motion addressing this issue, Judge McJoynt finally ruled on the question finding that the Accenture Founders Shares were Plaintiff's non-martial assets and that the order entered in February

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2013 applied only to the parties. C 8789 V6.

Plaintiff's third amended petition for substitution of judge clearly sets for allegations relating to the Plaintiff's nonmarital assets. This occurred because Judge McJoynt incorrectly claimed that he had entered an injunction with respect to those assets when, in actuality, what he had entered was a Rule 305(b) stay pending appeal. C 12305 V8. Further, when Plaintiff found that his shares had been frozen by Morgan Stanley, he sought relief from the trial court and the trial court refused to hear his motion. C 12305; C 8261, 8263 V6. As a result of the trial court's refusal to hear Plaintiff's request with respect to the purported injunction, Plaintiff was subject to judgments exceeding $8 million. C 12036 V8. C 1053 V7.

Further, despite the fact that the trial court repeatedly refused to allow Plaintiff to access these non-marital assets the trial court ordered a portion of those assets to be liquidated to pay Respondent's interim attorney fees. C 12307 V8; C 4067-4068 V2. The trial court also seemed to have no regard as to the effect of the loss of assets to Plaintiff. R 2821-2822.

Plaintiff alleged that the trial court improperly refused to continue the trial when Plaintiff's counsel discovered that he was ill and needed to seek treatment at the Mayo Clinic. C 12295; 12398-12399; 12521-12522 V8.

Plaintiff also alleged that the trial court improperly blamed Plaintiff for the loss of his assets, despite the fact that it was the trial court's order and refusal to hear Plaintiff's objections to it that caused Plaintiff to lose his assets. C 12326-27 V8. In fact, the trial court specifically blamed Plaintiff for the loss of the stock. C 12327 V8 ("But the proofs received at trial so far shows that the stock is now mostly, if not all, completely gone. Mostly due to Masud's own conduct."). This statement is simply inexplicable given that Plaintiff repeatedly brought the

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harm being caused to his stock to the attention of the trial court and the trial court refused to take any action. C 12331-12333 V8.

Notably, Plaintiff also informed the trial court that he was unable to hire counsel to represent him because of the freeze on his nonmarital assets. C 12339 V8. Despite this fact, the trial court appeared to admonish him for proceeding pro se. See C 12340 V8.

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.

Without question, the allegations in Plaintiff's petition 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.

3. 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.

Morgan Stanley claims that this motion was properly denied because Judge McJoynt had ruled on substantial issues arising in the divorce proceedings before Plaintiff filed this motion with respect to Plaintiff's claims against Defendants. Morgan Stanley Brief, pp. 35-38.

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That fact is true. However, it fails to account for two key facts in this case. First, Plaintiff filed this action in the dissolution proceeding not because he wanted to, but because he was required to by the judgment entered by Judge Sutter. In fact, after filing this action, Plaintiff requested that this action be severed from the dissolution proceeding and transferred to the law division. C 12912 V8 (Plaintiff's Motion to Sever and Transfer); 13039 V8 (Morgan Stanley's Response); 13029 V8 (Stogsdill Response). The trial court never ruled on Plaintiff's motion.

Second, Morgan Stanley's argument ignores the fact that this action is completely different from the dissolution proceeding and that rulings issued in that case should not be considered in determining whether Judge McJoynt made any substantial rulings in the matter between Plaintiff and Defendants.

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.

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

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substitution of judge as a matter of right must be reversed, all orders 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.

4. 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.

In its brief, Morgan Stanley argues that the trial court properly denied Plaintiff's request. Morgan Stanley Brief, pp. 38-41. In so doing Morgan Stanley parrots its earlier claim that Plaintiff is simply dissatisfied with the trial court's rulings. Morgan Stanley Brief, p. 39.

Conveniently, however, Morgan Stanley ignores the key point of Plaintiff's claim on appeal, which is that the trial court applied the incorrect standard in considering and denying Plaintiff's motion. The case law is clear that the key question when considering a motion to recuse is not whether the judge believes himself to be impartial. As this Court stated in *O'Brien*, 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). Further, the appellate court has held that, once "an appearance of impropriety [has] been created … 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 … . It is the appearance that he was so prejudiced or biased which mandates that his judgment be vacated and that the

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matter be remanded for a new trial before a judge… .” *Wheatley*, 297 Ill. App. 3d at 859.

In considering Plaintiff's motion, however, Judge McJoynt applied the incorrect standard, finding “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. Therefore, Judge McJoynt abused his discretion in denying Plaintiff's motion.

In their brief, the Stogsdill Defendants claim that Plaintiff refers in his opening brief to four orders that he does not provide record citations for. Stogsdill Brief, p. 28. These orders, which are referenced on page 40 of Plaintiff's opening brief are explicitly cited in that brief. Specifically, the order lifting the freeze only after the stock had been liquidated is cited on page 32 of the brief, citing to the record at C 8789 V6; 10573 V7. The order liquidating Plaintiff's assets to pay Respondent's attorney fees was cited on page 31 of the brief, citing to the record at C 6167-6169 V4. The order declaring the shares nonmarital was cited on page 32 of the brief, citing to the record at C 8789 V6. And, the fact that the assets were liquidated before a determination was made as to whether they were marital assets was cited on page 31 of the brief, citing to the record at C 4067-4068 V2. Thus, there can be no question as to which orders Plaintiff was referring.

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

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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 subject to 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).

Judge Kleeman erred in failing to conduct a statutorily required evidentiary hearing on Plaintiff's petition for substitution of judge for cause. 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 before a different judge.

Finally, the trial court erred in denying Plaintiff's motion for Judge McJoynt to recuse himself because 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

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CERTIFICATE OF COMPLIANCE

I certify that Petitioner's Reply brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, and the Rule 341(c) certificate of compliance is 5,972 words.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Bryan M. Sims

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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.	Appeal from DuPage County Circuit Number 09 D 1168 and Appellate Court Second District 2—21—0285
MASUD ARJMAND, Plaintiff, 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.	

CERTIFICATE OF SERVICE

I certify that I caused a copy of Petitioner Appellant's Reply Brief to be served to the persons identified below by sending the same via email to counsel for Defendants at the email addresses identified below on June 7, 2023:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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