

No.
L.T. No. 2013CA-2158

**IN THE SECOND DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA**

JUANITA Y. SANDERS,

Petitioner,

v.

LAKELAND REGIONAL MEDICAL CENTER, INC.,

Respondent.

PETITION FOR WRIT OF PROHIBITION

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BASIS FOR JURISDICTION

This Court's jurisdiction to enter a writ of prohibition derives from Article V, § 4(b)(3) of the Constitution and Florida Rule of Appellate Procedure 9.030(b)(3). A petition for a writ of prohibition is the proper remedy to pursue when, as here, a trial court has denied a motion to disqualify trial judge. *E.g.*, *Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978) ("the writ of prohibition must issue directing respondent to disqualify himself in all proceedings presently pending against the petitioner"); *Pierce v. State*, 873 So. 2d 618, 619 (Fla. 2d DCA 2004) ("A writ of prohibition is the appropriate avenue for relief after the denial of a motion to disqualify a trial judge because of bias or other reasons.").

This petition arises because Respondent, the Hon. Keith P. Spoto of the Tenth Judicial Circuit in and for Polk County, Florida, denied a legally sufficient first motion to disqualify trial judge. *See* Motion To Disqualify Trial Judge (Ex. K); Order Denying Motion To Disqualify Trial Judge (Ex. L). Petitioner Juanita Y. Sanders seeks a writ of prohibition before Judge Spoto rules on Respondent Lakeland Regional Medical Center, Inc.'s Motion *In Limine* To Exclude Piero Verro, MD's t-PA Causation Testimony, Request For A *Daubert* Hearing And Incorporated Memorandum Of Law ("Motion *In Limine*"; Ex. J), which is set for hearing on January 14, 2015, *see* Notice Of Hearing (Ex. M).

FACTS ON WHICH PETITIONER RELIES

1. This is a medical malpractice case filed in the Tenth Judicial Circuit in and for Polk County, Florida. *See Sanders v. Lakeland Regional Med. Ctr.*, No. 2013CA-2158 (Fla. Cir. Ct.).

2. Ms. Sanders sued Lakeland Regional Medical Center, Inc. (“Lakeland Regional”) for substandard care that “caused or substantially contributed to progression of symptoms and permanent, debilitating injury” related to her stroke. *See Complaint For Damages And Demand For Jury Trial* (Ex. A).

3. Lakeland Regional answered and asserted affirmative defenses. *See Answer And Affirmative Defenses* (Ex. B).

4. Shortly after issue was joined, Ms. Sanders noticed her case for trial. *See Notice For Trial* (Ex. C).

5. The parties moved for a case management conference, and Judge Spoto entered a scheduling order. *See Motion For Case Management Conference* (Ex. D); *Notice Of Hearing* (Ex. E); *Order Setting Pre-Trial Conference And Jury Trial And Directing Mediation* (Ex. F).

6. The parties scheduled mediation and filed their witness lists. *See Notice Of Mediation* (Ex. G); *Plaintiff’s Witness And Exhibit List* (Ex. H); *Defendant, Lakeland Regional Medical Center’s Witness List* (Ex. I).

7. Lakeland Regional filed its Motion *In Limine* (Ex. J), which sought to exclude Ms. Sanders's medical causation expert witness.

8. Ms. Sanders moved to disqualify Judge Spoto. *See* Plaintiff's Motion To Disqualify Trial Judge ("Motion To Disqualify"; Ex. K). In full, the Motion To Disqualify provided as follows:

PLAINTIFF'S MOTION TO DISQUALIFY TRIAL JUDGE

Pursuant to Rule of Judicial Administration 2.330, Plaintiff, by and through undersigned counsel, moves to disqualify Keith P. Spoto as Trial Judge in this case and states:

1. On Wednesday, October 15th undersigned counsel learned that Judge Spoto's father, Angelo P. Spoto, Jr. is a medical doctor who currently holds staff privileges at Lakeland Regional Medical Center, the Defendant in this case.

2. Dr. Spoto's Practitioner Profile on the website of the Florida Department of Health confirmed that Dr. Spoto currently holds staff privileges at Lakeland Regional Medical Center and information concerning Dr. Spoto's completion of his Fellowship indicates that Dr. Spoto has held staff privileges at Lakeland Regional Medical Center for many, many years, including a substantial period of time in which Judge Spoto was a member of the household of Dr. Spoto, dependent on Dr. Spoto and income generated from staff privileges held by Dr. Spoto at Lakeland Regional Medical Center.

3. Based on Dr. Spoto's position as a member of the medical staff there is a high probability that Dr. Spoto and members of his family, including Judge Spoto, have developed personal relationships with personnel of Lakeland Regional Medical Center.

4. This information was immediately conveyed to Plaintiff who advised the undersigned that because of Dr. Spoto's relationship with the Defendant and Judge Spoto has benefitted and could benefit in the future from his father's financial, professional or personal relation-

ships with the Defendant, she has a genuine fear that she will not receive a fair trial or hearing because of bias or prejudice of Judge Spoto in favor of the Defendant due to his family's relationships with the Defendant.

5. Plaintiff has filed no previous Motions to Disqualify a Trial Judge in connection with this case.

6. The undersigned hereby certifies that this Motion and the client's statements as contained in her Affidavit are made in good faith.

AFFIDAVIT OF JUANITA SANDERS

STATE OF FLORIDA
COUNTY OF POLK

BEFORE ME, the undersigned authority, personally appeared JUANITA SANDERS who, after being duly sworn, states:

1. I am Juanita Sanders and the Plaintiff in the above-styled case. I have reviewed the above Motion to Disqualify Trial Judge and believe I will not receive a fair trial or hearing on the merits of my case for the reasons expressed in the Motion.

2. I hereby agree with the Motion to Disqualify and swear to the matters contained in the Motion.

FURTHER AFFIANT SAYETH NOT.

/s/ Juanita Sanders
Juanita Sanders

Before me, the undersigned authority, personally appeared JUANITA SANDERS, to me well known and known to me to be the individual described in and who executed the foregoing instrument, and she acknowledged before me that she executed the same for the purposes therein expressed.

Witness my hand and official seal this 17th of October, 2014.

/s/ Dawn S. Wargo
NOTARY PUBLIC

My Commission Expires: September 29, 2017.

I HEREBY CERTIFY that a true copy of the above and foregoing has been furnished to Ethen R. Shapiro, Esquire, Hill, Ward & Henderson, P.A., P.O. Box 2231, Tampa, FL, 33601-2231 via Electronic Service and to the Honorable Keith Spoto by U.S. Mail and to his Judicial Assistant at sriffle@jud10flcourt.org via Electronic Service on October 17, 2014.

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9. Four days later, Judge Spoto denied the Motion To Disqualify as “legally insufficient.” Order Denying Motion To Disqualify Trial Judge (Ex. L).

10. Shortly thereafter, Lakeland Regional noticed its Motion *In Limine* for a hearing on January 14, 2015 before Judge Spoto. *See* Notice Of Hearing (Ex. M).

11. This Petition followed.

NATURE OF RELIEF SOUGHT

The Court should accept jurisdiction pursuant to Article V, § 4(b)(3) of the Constitution and Florida Rule of Appellate Procedure 9.030(b)(3), enter an order to show cause to Lakeland Regional and Judge Spoto directing them to respond to this Petition, and ultimately, before he rules on the Motion *In Limine*, enter a writ of prohibition that prohibits Judge Spoto from exercising jurisdiction any longer in this case.

ARGUMENT

I. A WRIT OF PROHIBITION MUST ISSUE BECAUSE THE MOTION TO DISQUALIFY TRIAL JUDGE WAS LEGALLY SUFFICIENT

Because the Motion To Disqualify (Ex. K) was legally sufficient, a writ of prohibition must issue to prevent Judge Spoto from exercising jurisdiction any longer in this case.

Standard Of Review

Litigants are “entitled to enter the courtroom with confidence that [they] will receive a fair trial.” *Michaud-Berger v. Hurley*, 607 So. 2d 441, 446 (Fla. 4th DCA 1992). “[T]he standard for determining whether a motion [to disqualify] is legally sufficient is ‘whether the facts alleged would place a *reasonably prudent person* in fear of not receiving a fair and impartial trial.’” *Mackenzie v. Super Kids Bargain Store*, 565 So. 2d 1332, 1335 (Fla. 1990) (emphasis in original). Because this is “a

question of law,” it “follows that the proper standard of review is de novo.” *Barnhill v. State*, 834 So. 2d 836, 843 (Fla. 2002).

“The facts must be viewed from the perspective of the petitioner.” *Michaud-Berger*, 607 So. 2d at 446. If even “‘a modicum of reason’ suggests that a judge’s prejudice may bar a party from having his or her day in court,” the writ of prohibition must issue. *McQueen v. Roye*, 785 So. 2d 512, 514 (Fla. 3d DCA 2000). “Once a basis for disqualification has been established, prohibition is both an appropriate and necessary remedy.” *Bundy*, 366 So. 2d at 442.

A. The Motion To Disqualify Satisfied The Requirements Of Rule 2.330(c)

The Motion To Disqualify satisfied all the requirements of Florida Rule of Judicial Administration 2.330(c).

1. The Motion To Disqualify Was “In Writing”

The Motion To Disqualify was “in writing.” Fla. R. Jud. Admin. 2.330(c)(1).

2. The Motion To Disqualify “Allege[d] Specifically The Facts And Reasons Upon Which The Movant Relies As The Grounds For Disqualification”

The Motion To Disqualify “allege[d] specifically the facts and reasons upon which the movant relies as the grounds for disqualification.” Fla. R. Jud. Admin. 2.330(c)(2). Ms. Sanders specifically alleged Judge Spoto was the son of a “medical doctor who currently holds staff privileges at Lakeland Regional.” Motion To Disqualify (Ex. K) at 1. Moreover, Ms. Sanders alleged that while Dr. Spoto held

these staff privileges at Lakeland Regional, “a substantial period of time [passed during] which Judge Spoto was a member of the household of Dr. Spoto, dependent on Dr. Spoto and income generated from staff privileges held by Dr. Spoto at Lakeland Regional.” *Id.* at 1-2. Accordingly, Ms. Sanders alleged that “based on Dr. Spoto’s position as a member of the medical staff there is a high probability that Dr. Spoto and members of his family, including Judge Spoto, have developed personal relationships with personnel of Lakeland Regional.” *Id.* at 2.

3. The Motion To Disqualify Was “Sworn To By The Party Signing The Motion Under Oath Or By A Separate Affidavit”

The Motion To Disqualify was “sworn to by the party by signing the motion under oath or by a separate affidavit.” Fla. R. Jud. Admin. 2.330(c)(3). “[A]fter being duly sworn” before a notary public, Ms. Sanders alleged that she (1) “ha[d] reviewed the above Motion to Disqualify Trial Judge and believe[d] I will not receive a fair trial or hearing on the merits of my case for the reasons expressed in the Motion,” and (2) “agree[d] with the Motion to Disqualify and sw[ore] to the matters contained in the Motion.” Motion To Disqualify (Ex. K) at 3.

4. The Motion To Disqualify “Include[d] The Dates Of All Previously Granted Motions To Disqualify Filed Under This Rule In The Case And The Dates Of The Orders Granting Those Motions”

The Motion To Disqualify “include[d] the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders

granting those motions.” Fla. R. Jud. Admin. 2.330(c)(4). Specifically, the Motion To Disqualify stated, “Plaintiff has filed no previous Motions to Disqualify a Trial Judge in connection with this case.” Motion To Disqualify (Ex. K) at 2.

5. Ms. Sanders’s Attorneys “Separately Certif[ied] That The Motion And The Client’s Statements Are Made In Good Faith”

Ms. Sanders’s attorneys “separately certif[ied] that the motion and the client’s statements are made in good faith.” Fla. R. Jud. Admin. 2.330(c). Specifically, the Motion To Disqualify stated, “The undersigned hereby certifies that this Motion and the client’s statements as contained in her Affidavit are made in good faith.” Motion To Disqualify (Ex. K) at 2.

6. Ms. Sanders “Immediately Serve[d] A Copy Of The Motion On The Subject Judge As Set Forth In Florida Rule Of Civil Procedure 1.080

Ms. Sanders “immediately serve[d] a copy of the motion on the subject judge as set forth in Florida Rule of Civil Procedure 1.080.” Fla. R. Jud. Admin. 2.330(c). Specifically, the certificate of service provided that the Motion To Disqualify was served “to the Honorable Keith Spoto by U.S. Mail and to his Judicial Assistant at sriffle@jud10flcourt.org via Electronic Service on October 17, 2014.” Motion To Disqualify (Ex. K) at 4.¹

¹ Although the certificate of service did not list a physical address for Judge Spoto, the Motion To Disqualify was in fact served by U.S. mail to his judicial

B. The Motion To Disqualify Satisfied The Requirements Of Rule 2.330(d)

The Motion To Disqualify satisfied all the requirements of Florida Rule of Judicial Administration 2.330(d) because it showed that “that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge,” Fla. R. Jud. Admin. 2.330(d)(1), and “some person related to [the trial] judge by consanguinity or affinity within the third degree . . . is interested in the result thereof,” *id.* 2.330(d)(2).

Specifically, the Motion To Disqualify alleged Judge Spoto was the son of a “medical doctor who currently holds staff privileges at Lakeland Regional.” Motion To Disqualify (Ex. K) at 1. Moreover, Ms. Sanders alleged that while Dr. Spoto held these staff privileges at Lakeland Regional, “a substantial period of time [passed during] which Judge Spoto was a member of the household of Dr. Spoto, dependent on Dr. Spoto and income generated from staff privileges held by Dr. Spoto at Lakeland Regional.” *Id.* at 1-2. Accordingly, Ms. Sanders alleged that “based on Dr. Spoto’s position as a member of the medical staff there is a high probability that Dr. Spoto and members of his family, including Judge Spoto, have developed personal relationships with personnel of Lakeland Regional.” *Id.* at 2. All these allegations satisfy Rule 2.330(d)(1). *See infra* Argument I.B.

chambers at the following address: Hon. Keith Spoto, Polk County Courthouse, 255 North Broadway Avenue, Drawer J-152, Bartow, Florida 33830.

Additionally, fathers and sons, such as Dr. Spoto and Judge Spoto, are “related . . . by consanguinity or affinity within the third degree.” Fla. R. Jud. Admin. 2.330(d)(2). Dr. Spoto is “interested in the result” of this litigation because he has “income generated from staff privileges held . . . at Lakeland Regional Medical Center.” Motion To Disqualify (Ex. K) at 2. These facts satisfy Rule 2.330(d)(2).

Litigants are “entitled to enter the courtroom with confidence that [they] will receive a fair trial,” and “[t]he facts must be viewed from the perspective of the petitioner.” *Michaud-Berger*, 607 So. 2d 441, 446 (Fla. 4th DCA 1992). “If the attested facts supporting the suggestion are reasonably sufficient to create such a fear, it is not for the trial judge to say that it is not there. So long as the allegations are not frivolous or fanciful, they are sufficient to support a motion to disqualify.” *Breakstone v. MacKenzie*, 561 So. 2d 1164, 1167-68 (Fla. 3d DCA 1989) (citations and punctuation omitted), *approved sub nom.*, *Mackenzie v. Super Kids Bargain Store*, 565 So. 2d 1332 (Fla. 1990). Case law recognizes that a motion to disqualify that raises the kinds of fears and personal relationships that Ms. Sanders alleged is legally sufficient because “the facts alleged would place a *reasonably prudent person* in fear of not receiving a fair and impartial trial.” *Mackenzie*, 565 So. 2d at 1335 (emphasis in original).

“Recusal is appropriate where one of the parties or their counsel had dealings with a relative of the court.” *McQueen*, 785 So. 2d at 514. For instance, a writ

of prohibition directing disqualification must issue when a trial judge's stepson is pursuing a claim and potential litigation against a party in a separate matter. *See Lytle v. Rosado*, 711 So. 2d 213, 214 (Fla. 3d DCA 1998). Similarly, a motion to disqualify was "legally sufficient [when] it alleged that the judge's wife was represented by [respondent's] counsel in a separate and apparently pending matter involving her individually and as a member of the Broward County School Board." *J & J Towing, Inc. v. Stokes*, 789 So. 2d 1196, 1198 (Fla. 4th DCA 2001).

Here, Judge Spoto's father generates, and has generated for many years, income from his financial relationship with Lakeland Regional. Viewing that fact, from Ms. Sanders perspective, it is neither frivolous nor fanciful to believe that she will be deprived of the confidence, to which she is entitled, that she will receive a fair trial before Judge Spoto. That is all the law requires, and the Motion To Disqualify was therefore legally sufficient.

C. The Motion To Disqualify Was Filed Within The Time Limitation Of Rule 2.330(e)

The Motion To Disqualify was filed within the time limitation of Florida Rule of Judicial Administration 2.330(e) because it was "filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion" and was "promptly presented to the court for an immediate ruling." Fla. R. Jud. Admin. 2.330(e). Specifically, the Motion To Disqualify stated, "On Wednesday, October 15th undersigned counsel learned that Judge Spoto's father,

Angelo P. Spoto, Jr. is a medical doctor who currently holds staff privileges at Lakeland Regional.” Motion To Disqualify (Ex. K) at 1. The Motion To Disqualify was filed and served two days later on October 17, 2014. *Id.* at 4. This is timely.

D. When Judge Spoto Denied The Motion To Disqualify, He Did Not Comply With 2.330(f)

The denial of the Motion To Disqualify did not comply with the limited judicial review permitted by Florida Rule of Judicial Administration 2.330(f).

Rule 2.330(f) provides: “The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action.” Fla. R. Jud. Admin. 2.330(f) (emphasis added).

The problem with the Order Denying Motion To Disqualify Trial Judge (Ex. L) is that the Motion To Disqualify (Ex. K) was legally sufficient in all respects. *See supra* Argument I.A-I.C. Accordingly, the writ of prohibition must issue. *Bundy*, 366 So. 2d at 442 (“Once a basis for disqualification has been established, prohibition is both an appropriate and necessary remedy.”).

CONCLUSION

For the foregoing reasons, the Court should accept jurisdiction pursuant to Article V, § 4(b)(3) of the Constitution and Florida Rule of Appellate Procedure

9.030(b)(3), enter an order to show cause to Lakeland Regional and Judge Spoto directing them to respond to this petition, and ultimately, before he rules on the Motion *In Limine*, enter a writ of prohibition that prohibits Judge Spoto from exercising jurisdiction any longer in this case.

Respectfully submitted,

/s/ Thomas Burns

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 20, 2014, I electronically served the following via the Florida e-portal: Ethen R. Shapiro (ethen.shapiro@hwhlaw.com); C. Howard Hunter (howard.hunter@hwhlaw.com); and David W. Hughes (david.hughes@hwhlaw.com).

I FURTHER CERTIFY that on November 20, 2014, I served the following via U.S. Mail and e-mail: Hon. Keith P. Spoto, Polk County Courthouse, 255 North Broadway Avenue, Drawer J-152, Bartow, FL 33830, sriffle@jud10flcourt.org.

November 20, 2014

/s/ Thomas Burns

Thomas A. Burns

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

November 20, 2014

/s/ Thomas Burns

Thomas A. Burns