



NUMBER 13-19-00309-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ROGELIO RODRIGUEZ,

Appellant,

v.

WILL NEWTON, M.D.,

Appellee.

**On appeal from the County Court at Law No. 2
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Longoria**

Appellant Rogelio Rodriguez sued Will Newton, M.D. for medical malpractice. By three issues on appeal, Rodriguez argues that: (1) the trial court erred by denying his request for discovery; (2) Judge Inna Klein was disqualified for a “possible interest” in the subject matter of the suit; and (3) Judge Klein should have been recused because of an appearance of impropriety. We affirm.

I. BACKGROUND

In September 2017, Rodriguez brought suit against Newton for medical malpractice. Trial was scheduled to begin on January 22, 2019. Shortly before jury selection began, the trial court judge, Judge Klein, informed the parties that her husband, David Klein, is associated with Woolsey & Woolsey, the law firm representing Newton. According to Judge Klein, David had performed some work for the law firm over eight months ago, but he was not currently performing any work for them and he had no ownership or financial interest in the law firm itself. Judge Klein also indicated that David had not been involved with any of the legal work for the underlying matter. Judge Klein asserted that most attorneys in Nueces County were already aware of the relationship; however, she indicated that she wanted to inform Rodriguez's attorneys of the relationship because they were from out of town. Rodriguez made an oral motion to recuse, followed by a written motion to recuse filed later that day. Rodriguez also orally requested continuance so that discovery could be conducted. However, Judge Klein immediately referred the motion to the administrative judge, who referred the motion to Judge David Stith. On the same day, Judge Stith held a hearing on the motion to recuse.

At the hearing, Rodriguez argued that Judge Klein should be recused because David has maintained a business relationship with Woolsey & Woolsey since 1995. Rodriguez further argued that because David's name appears on the letterhead of the law firm, it appears as if he is an employee of the firm. Newton's counsel testified that David is an independent contractor for Woolsey & Woolsey, not an employee. Furthermore, Newton's counsel argued that David is not a partner in the firm, has no ownership in the firm, has no office space at the firm, and has not performed any work for

the firm in eight months. Newton's counsel admitted that David does make court appearances for Woolsey & Woolsey and that he is paid hourly for such appearances. Newton also reiterated that David had never performed any legal work for the underlying matter and that he and Judge Klein derived no benefit from the outcome of this case.

Judge Stith informed Rodriguez that he could call David as a witness, if he desired, and that he was allowed to put on evidence. After going off the record, Rodriguez called Newton's counsel to the stand. He testified that David was not an associate of the firm and that David had not performed any work for the underlying case. He also could not recall any instances within the last two years where David appeared for the firm at court. Rodriguez's co-counsel was called next and testified that Woolsey & Woolsey had never informed him of the relationship between David and Judge Klein. Rodriguez did not file a motion for continuance or seek to have David testify. Judge Stith denied the motion to recuse and the case was returned to Judge Klein.

On March 11, 2019, jury trial began. On May 15, 2019, a final judgment was signed in favor of Newton. This appeal followed.

II. REQUEST FOR DISCOVERY

By three issues, Rodriguez argues that: (1) it was an abuse of discretion to deny his request for discovery; (2) Judge Klein was disqualified because she has a "possible interest" in the subject matter; and (3) Judge Klein should have been recused because of an "appearance of impropriety." Rodriguez does not otherwise challenge the final jury verdict or any specific actions of the trial court.

In his first issue, Rodriguez argues that the trial court erred by not granting his discovery request so that he could further investigate the recusal and disqualification

matters. Rodriguez complains that instead of granting his request for discovery, “within fifteen minutes a hearing before an assigned judge was set and heard.” However, this is in line with what the Texas Rules of Civil Procedure requires. See TEX. R. CIV. P. 18a(f)(1). Within three days of receiving a motion for recusal, a trial court judge must either file an order of recusal or an order referring the motion to the regional presiding judge. See *id.* Furthermore, “[i]f a motion [for recusal] is filed before evidence has been offered at trial, the respondent judge must take no further action in the case until the motion has been decided.” *Id.* R. 18a(f)(2)(A). Therefore, it would have been improper for Judge Klein to grant the discovery request after the motion to recuse was filed. See *id.*

Judge Stith provided Rodriguez an opportunity to present evidence and even indicated that Rodriguez would be allowed to question David, if desired. Rodriguez did not follow up on the invitation to question David or call additional witnesses. Rodriguez did not bring the earlier request for additional time to conduct discovery to Judge Stith’s attention or file any additional motions for continuance or discovery. Judge Stith’s order simply denied Rodriguez’s motion to recuse and/or disqualify. Because Rodriguez failed to secure a ruling on the request for discovery, this objection has not been preserved for our review. See TEX. R. APP. P. 33.1; *Robinson & Harrison Poultry Co. v. Galvan*, 323 S.W.3d 236, 245 (Tex. App.—Corpus Christi—Edinburg 2010, pet. denied).

Rodriguez has not shown that either trial court judge erred by failing to grant his request for additional discovery. We overrule his first issue.

III. DISQUALIFICATION & RECUSAL

In his second and third issues, respectively, Rodriguez argues that: (1) Judge Klein was disqualified because she has a “possible interest” in the subject matter; and (2) Judge Klein should have been recused because of an “appearance of impropriety.”

A. Disqualification

1. Standard of Review & Applicable Law

Whether a judge is disqualified is a question of law that we generally review de novo. *Fuelberg v. State*, 410 S.W.3d 498, 503 (Tex. App.—Austin 2013, no pet.); *McElwee v. McElwee*, 911 S.W.2d 182, 185 (Tex. App.—Houston [1st Dist.] 1995, writ denied).

Under the Texas Rules of Civil Procedure, “A Judge must disqualify in any proceeding in which . . . the judge knows that, individually or as a fiduciary, the judge has an interest in the subject matter in controversy.” TEX. R. CIV. P. 18b(a)(2); see TEX. CONST. art. V, § 11 (“No judge shall sit in any case wherein the judge may be interested.”). The type of interest “required for disqualification must be of a pecuniary nature so that the judge would gain or lose by the judgment rendered in the case.” *Williams v. Viswanathan*, 64 S.W.3d 624, 627 (Tex. App.—Amarillo 2001, no pet.). The interest must additionally be “direct, real, certain, and in the subject matter of the case in question.” *Id.*; see *Kennedy v. Wortham*, 314 S.W.3d 34, 37 (Tex. App.—Texarkana 2010, pet. denied); *Palais Royal, Inc. v. Partida*, 916 S.W.2d 650, 653 (Tex. App.—Corpus Christi–Edinburg 1996, no writ).

2. Discussion

Rodriguez next argues that Judge Klein should have been disqualified for her “possible interest” in the case. Rodriguez acknowledges that Judge Klein has no direct

pecuniary interest in this case. Nevertheless, Rodriguez asserts that “she possesses an interest in insuring Woolsey & Woolsey succeeds in this litigation, in order that its reputation will be enhanced, increasing employment opportunities to her husband.” This is the type of indirect, remote interest that we have previously concluded does not disqualify a judge. See *Palais Royal*, 916 S.W.2d at 653 (observing that a judge is not disqualified by her interest in a case if that interest is affected only “remotely, or at some future date”). The record reflects that David is an independent contractor, not an employee, of Woolsey & Woolsey. David also has not performed any work for the firm for approximately eight months. Rodriguez has failed to show that Judge Klein has any direct, real, or certain pecuniary interest that would disqualify her. See *Kennedy*, 314 S.W.3d at 37 (concluding, in a lawsuit that named the trial court judge as a defendant, that the judge did not have a direct, pecuniary interest in the case because the petition did not seek monetary damages, only injunctive relief); *Williams*, 64 S.W.3d at 627 (concluding that the judge had no direct interest in the underlying case that was “capable of valuation”).

We overrule Rodriguez’s second issue.

B. Recusal for Appearance of Impropriety

1. Standard of Review & Applicable Law

We review orders denying a motion to recuse for an abuse of discretion. See Tex. R. Civ. P. 18a(j)(1)(a); *Hansen v. JP Morgan Chase Bank, N.A.*, 346 S.W.3d 769, 776 (Tex. App.—Dallas 2011, no pet.). “A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to any guiding rules or principles.” *Hansen*, 346 S.W.3d at 776.

Courts enjoy a presumption of judicial impartiality. See *In Interest of E.R.C.*, 496 S.W.3d 270, 280 (Tex. App.—Texarkana 2016, pet. denied). However, a “judge must recuse in any proceeding in which . . . the judge’s impartiality might reasonably be questioned.” See Tex. R. Civ. P. 18b(b)(1). The test for recusal is “whether a reasonable member of the public at large, knowing all the facts in the public domain concerning the judge’s conduct, would have a reasonable doubt that the judge is actually impartial.” *Hansen*, 346 S.W.3d at 776; see *Sears v. Olivarez*, 28 S.W.3d 611, 614 (Tex. App.—Corpus Christi–Edinburg 2000, no pet.) (“However, beyond the demand that a judge be impartial is the requirement that a judge appear to be impartial so that no doubts or suspicions exist as to the fairness or integrity of the court.”).

2. Recusal for an Appearance of Impropriety

Lastly, Rodriguez argues that Judge Klein should have been recused because of an “appearance of impropriety.” Rodriguez cites several out-of-state decisions to suggest that Judge Klein should have been recused, but none of those cases are binding. See *In re Nettles*, 394 F.3d 1001, 1002 (7th Cir. 2005); *Sommers v. Commonwealth*, 843 S.W.2d 879, 882 (Ky. 1992); *Jenkins v. Forrest County General Hospital*, 542 So.2d 1180, 1181 (Miss. 1989).

As more persuasive authority, we note that the Dallas Court of Appeals has addressed recusal in a relatively similar fact pattern. See *Hansen*, 346 S.W.3d at 776. In *Hansen*, the trial court judge’s campaign treasurer was an attorney for the law firm that represented the defendant. See *id.* The court held that this relationship between the judge and the former treasurer alone was not enough to mandate recusal for impropriety. See *id.*

We acknowledge that “[o]ne of the most fundamental components of a fair trial is ‘[a] neutral and detached judge.’” *Johnson v. Pumjani*, 56 S.W.3d 670, 672 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (quoting *Metzger v. Sebek*, 892 S.W.2d 20, 37 (Tex. App.—Houston [1st Dist.] 1994, writ denied)). We further acknowledge that to prevent suspicions from arising concerning the integrity of the court, it is upon judges to not only act with absolute impartiality but also avoid even the appearance of impartiality. See *Sears*, 28 S.W.3d at 614. And thus, judges should always be mindful of this and do their best to avoid appearing impartial in any manner. See *id.* However, with the record currently before us, we cannot conclude that recusal was required. The record simply does not contain sufficient information to demonstrate that Judge Stith abused his discretion in determining that a reasonable member of the public at large, knowing the full extent of Judge Klein’s relationship to Woolsey & Woolsey, would not form a reasonable doubt concerning her partiality. See *id.* In other words, with the record before us, Rodriguez has failed to overcome the presumption of judicial impartiality. See *In Interest of E.R.C.*, 496 S.W.3d at 280.

Therefore, Judge Stith did not abuse his discretion in denying the motion to recuse. See *Hansen*, 346 S.W.3d at 776. We overrule Rodriguez’s third issue.

IV. CONCLUSION

We affirm the judgment of the trial court.

NORA L. LONGORIA
Justice

Delivered and filed the
16th day of July, 2020.