APPENDIX A

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

HEATHER P. HOGROBROOKS HARRIS v. JIMMIE L. SMITH

Circuit Court for Shelby County
No. CT-001046-16

No. W2019-00394-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Heather Patrice Hogrobrooks Harris and the record before us, the application is denied.

PER CURIAM

Supreme Court – Western Division
Appellate Court Clerk's Office - Jackson
Supreme Court Building
6 Hwy 45 Bypass
Jackson, TN 38301
(731) 423-5840

Heather Patrice Hogrobrooks Harris
579 Byron Drive
Memphis TN 38109

Re: W2019-00394-SC-R11-CV - HEATHER P. HOGROBROOKS HARRIS v. JIMMIE L. SMITH

Notice: Case Dispositional Decision - TRAP 11 Denied

Attached to this cover letter, please find the referenced notice issued in the above case. If you have any questions, please feel free to call our office at the number provided.

cc: Heather Patrice Hogrobrooks Harris
Melanie M. Stewart
Judge Mary L. Wagner

APPENDIX B

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APPLICATION FOR PERMISSION TO APPEAL

Pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure, Petitioner respectfully make application to appeal to the Tennessee Supreme Court from the judgments of the Tennessee Court of Appeals at Jackson, filed January 13, 2020 denying rehearing.

The panel opinion simply mocks the Petitioner as ridiculous because the trial judge refused to recuse after not hearing from petitioner but ignores the blatant lie told by her as reason for not hearing from the petitioner.

The opinion completely disregards application of the proper legal standard to the facts of the case, from substantive adverse ruling at a hearing improperly noticed; denying amendment of the complaint; failure of the trial judge to recuse after her partiality was demonstrated; and dismissing petitioner's matter with prejudice.

QUESTIONS PRESENTED FOR REVIEW

I. Whether a trial judge whose reasons for denying recusal are not only, not supported by the record or docket entry, but are conclusively shown to be untrue by a federal court order, and who was not forthright state judicial questionnaire (about the racist history of an organization she belongs to) rulings should stand simply because she is white ,politically connected, and has worked at the Tennessee Court of Appeals in Jackson- does she violate this black litigant's rights to due process and equal protection of the law if any of her rulings stand.

II. Whether the trial judge violated Cannons of judicial conduct where she refused to hear from petitioner thus invoking rule 2.6 denying petitioner the right to be heard; made rulings that were not supported by evidence and oppressively ended appellant's case violating rule 2.2; injected the issue of bias and prejudice by not hearing from petitioner and petitioner learning

that she was a member of a group with a long history of discrimination in violation of Canon 2, rule 1.2 and canon 3, rule 3.6.

III. Whether the Appellant states a good cause for seeking a continuance and thus failing to attend court (with notice of inability to attend) where her car did not have working windshield wipers, horn and heater where weather conditions were rainy and cold and she had never before sought a continuance yet continuance had been taken by the Court and respondent and Tennessee Codes Tenn. Code 55-9-201, 203 makes it a Class C Misdemeanor to drive a vehicle without working wipers and horn.

IV. Whether appellant's should have been allowed to amend her complaint pursuant to either Tenn. Code 20-7-101 , rule 15.02 where respondent's answers to the complaint violated rule 11.02 (1),(2),(3) & (4) , Tenn. Code 20-7-101 and Rule 8.06 especially where respondent had appeared in court and personally accepted liability two months before counsel filed her answer affirmatively denying liability and sought unwarranted continuances only for the purpose of attempting to undermine appellant's rights to relief with the bankruptcy trustee.

FACTS RELEVANT TO QUESTION PRESENTED FOR REVVIEW

1. Petitioner's bankruptcy case, Case No. : 17-20334 was dismissed by U.S. Bankruptcy Court Judge , Davis S. Kennedy on September 25, 2017.

2. Petitioner at a hearing on February 18, 2018, the trial judge prevented her from speaking in response to remarks about the case made by the respondent.

3. On March 15, 2018 the petitioner filed a motion to recuse the trial judge because she refused to allow petitioner to be heard and petitioner discovered the trial judge was a member of an organization with a history if racism against blacks. (Vol. 1, P 73-75).

4. The trial judge on August 16, 2018 filed her Order on Recusal. (Vol. 1, P 78) In the trial judge's order refusing to recuse she claimed her reason for not hearing from the petitioner was because of petitioner's open bankruptcy case. The petitioner's bankruptcy case was discharged on September 25, 2017.

5. The trial court record shows no docket entry granting a continuance on February 18, 2018, no motion for continuance on February 18, 2018 or order entered on February 18, 2018 continuing the matter.

6. The trial judge's claim of continuance because of petitioner's bankruptcy case is pure fabrication. The respondent had before sought a continuance on the basis of petitioner's bankruptcy and placed into the record evidence showing the matter not then closed however nothing in the record on, before or after the trial judge refused to hear from the petitioner.

7. The claims of the trial judge that the petitioner failed to properly respond to respondent's discovery request is not supported in the record as well as all other factual rulings rendered against the petitioner have no support in the records.

8. Tennessee motor vehicle operation Code requires vehicles to have working windshield wipers and horn and such failure is a Class C Misdemeanor.

RECORD FACTS

9. The automobile accident that form the basis of appellants complaint occurred January 16, 2016. On March 11, 2016 Petitioner filed her original complaint at law and request for jury trial (vol.1, P.1) .

10. The respondent's answer was filed April 21, 2016. (Vol.1, P.5).

11. In that answer at paragraph 14, respondent "affirmatively alleges" that the appellant was the sole proximate cause of the accident(Vol.1, P.6).

12. City court records show that the respondent appeared in court to answer and paid ticket and cost. (Vol. 1, P. 141) (Vol. 1, Page 142).

13. Petitioner received notice of an order entered September 20, 2018 resetting a trial date to January 22, 2019 (Vol.1, P 82-83) note that this setting date(with the exception of the January 2017) and all others were ex parte without participation by the appellant or an averment that the appellant had agreed or averment that the appellant refused to cooperate.

14. Petitioner secured the a certification from the City Court Clerk's Office (Vol. 1, P. 141) on October 11, 2018 which represented that respondent had appeared in court to answer for the ticket U240536.

15. Petitioner noticed that the certification did not show the date respondent appeared in court so she returned to the City Clerk's Office (Vol. 1, Page 142) receiving a certification that showed the court appearance was to have been January 26, 2016, additionally the accident report (Vol. 1, Page 134) shows that the certifications are for the ticket # U240536 issued as a result of the accident. Petitioner contacted respondent about the lack of truth in the answer filed and stated that she may file a Rule 11.1 petition, however, Petitioner on second thought felt such would be a waste of time considering her reception by the trial judge as she had other more pressing life events occurring deciding to just amend her complaint. (Vol. 1, P 125-131).

By file date of December 19, 2018 respondent filed a motion for partial summary judgment for appellant's claims for diminution of value for the vehicle, negligent infliction of emotional distress and her hospital bills (Vol.1, Page 84-124). (Vol. 3, P) Note that respondent

had been ready to proceed in January, 2017 and the only change had been the petitioner's receiving the fact that respondent had appeared in court and accepted responsibility before the complaint and answer was filed.

16. Petitioner filed her motion for continuance for 6 months (Vol. 1, P 125-131) on January 7, 2019 along with an amended complaint stating basically she needed time to deal with lack of honesty discovered in respondent's answer to the complaint and other pleadings and demands on appellant in ongoing litigation over her home. Petitioner also therein apprised the court of her problems with transportation as it was rainy and cold and appellant's vehicle had no heat or working windshield wipers. (Vol. 1, Page 125-126).

17. On Jan 11, 2019 respondent filed a Motion to strike amended complaint and motions in limine to prevent (1) testimony of settlement offer sent to bankruptcy trustee (2) to exclude traffic ticket (3) to prohibit mentioned of insurance (4) (152 to159).

18 Petitioner on January 15, 2019 filed her response to respondent's motions in limine and other pending motions having received notice of the filings by email dated January 14, 2019 with a hearing date of January 18, 2019. (Vol.2, P 160-167). She attached to that motion various emails including the one showing appellant received notice of the January 18, 2019 hearing on January 14, 2019.

19. Although the petitioner did not have proper notice of the January 18, 2019 hearing, the trial judge entered orders granting the relief respondent requested on January 22, 2019 thereby gutting petitioner's case. (Vol. 2, 168-172).

20. Petitioner filed a motion for reconsideration on January 30, 2019. (Vol. 2. 182-185).

21. Petitioner's case was dismissed on February 11, 2019.(Vol. 2, 191-192).

STANDARD OF REVIEW

This Court reviews evidentiary decisions under an abuse of discretion standard. Biscan v. Brown, 160 S.W.3d 462, 468 (Tenn. 2005). A lower court abuses its discretion by applying an incorrect legal standard, or reaching a decision which is against logic or reasoning that causes an injustice to the party complaining. Mercer v. Vanderbilt Univ., Inc., 134 S.W.3d 121, 131 (Tenn. 2004).

REASONS SUPPORTING REVIEW BY THE SUPREME COURT

Petitioner did not received equal protection of the law or due process of the law. The petitioner's judge was dishonest. This case was not decided based on the facts in the record. Given the lack of sound legal reasoning and application to the Petitioner's issues and facts, this case was decided at the trial court level based solely on racial animus and at the appellate lever based on class and association as the white trial judge and white respondent's attorney are clearly shown by the record to be disingenuous if not more.

Tennessee Rule of Appellate Procedure 11(a) provides the well-settled factors this Court considers when addressing this application: (1) the need to secure uniformity of decision; (2) the need to secure settlement of important questions of law; (3) the need to secure settlement of questions of public interest; and (4) the need for the exercise of this Court's supervisory authority. This case satisfies each factor.

(1) In this case the appellate panel deviated significantly from the established case law In evaluating and analyzing Appellant's facts. (2) The important questions of law presented herein are whether any litigant is bound by pleadings and rulings anchored in lies and misrepresentations-is such constitutionally permissible. Too, the question is whether equal

protection of the law is the law irrespective of race or status. (3) It is very much in the public interest to know and have faith that those with roles of responsibility and duty in the legal system are first and foremost honest people. It should not matter what ones personal beliefs and feelings and this records clearly evidences dishonesty on the part of the trial judge and severe deviation from the facts supporting the trial courts decisions. (4) If the courts job is to ensure the integrity of the judicial system, the facts presented herein cannot be ignored however unpleasant or politically tainted.

CONCLUSION

Petitioner centers her application to this court on the recusal issue although none of her Eleven Issues on appeal were analyzed. The character, honesty and integrity of a judge is crucial to our system. The rulings are so fantastical and draconian that she can only surmise that the trial judge developed sever personal animosity that petitioner dared to have sought recusal after the trial judge refused to her from her in her own matter. The prior decisions are simply grossly and it is wrong and legally inconsistent to uphold it based on petitioner's failure to attend an unfair trial setting. American may not like a result of a game but if it's been fairly played, we respect it. This result can in no way be respected and it should never be replicated because the supervising guardians of our legal system chooses to look the other ways because the conduct of its own is embarrassing.

Petitioner sought her refusal after being curtly silenced by the trial judge from responding to Respondent's counsel(a white woman whose honesty is should to be questionable in the record's pleadings and transcript). That act caused petitioner to seek recusal and in the

process discovering additional facts about the trial judge that would not hear from a litigant. From official State sites, discovering that she has spent time in each level of court in a short time, was a member of the Daughters of the American Revolution a group which had a history of racism for the majority of its existence. A well know history which the trial judge did not disclose on her judicial questionnaire.

The trial judge then in responding to Petitioner's recusal motion chose to create a lie about the state of petitioner's bankruptcy case as the reason it was not necessary to hear from the petitioner. The trial judge then proceeded in short order to make a number of adverse ruling to petitioner's case that were not supported by the facts in the record and were simply abusive and retaliatory.

As the United States Supreme Court recently said in Rippo v. Baker, 580 U.S. __ (2017) per curiam

> "Under our precedents, the Due Process Clause may sometimes demand recusal even when a judge " 'ha[s] no actual bias.' " *Aetna Life Ins. Co.* v. *Lavoie*, 475 U. S. 813, 825 (1986) . Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975) ; see *Williams* v. *Pennsylvania*, 579 U. S. ___, ___ (2016) (slip op., at 6) ("The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias" (internal quotation marks omitted)). Our decision in *Bracy* is not to the contrary: Although we explained that the petitioner there *had* pointed to facts suggesting actual, subjective bias, we did not hold that a litigant must show as a matter of course that a judge was "actually biased in [the litigant's] case," 132 Nev., at ___, 368 P. 3d, at 744—much less that he must do so when, as here, he does not allege a theory of "camouflaging bias." The Nevada Supreme Court did not ask the question our precedents require: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable. As a result, we grant the petition for writ of certiorari and the motion for leave to proceed *in forma pauperis*, and we vacate the judgment below and remand the case for further proceedings not inconsistent with this opinion."

Objectively speaking, bias is shown when a trial judge fabricates a reason for not hearing from a litigant. Further, from the Petitioner's perspective, one cannot 'objectively' square the record facts and controlling law with the trial judge's rulings. Petitioner is in this position of having to seek further review because the appellate panel was more concern with covering up the clearly inappropriate and unconstitutionally depriving behavior of one of their own then doing justice. It does not matter how much the judicial establishment wants to cover-up and whitewash the facts of this record or the facts not appearing of record that should be for the trial judge to have reach the decisions it did, Bottom-line, the trial judge refused to hear from petitionerin the first instance and then proffered lies(unsupported and externally contradicted) of her reasons for not hearing from the petitioner.

The Panel did not in good faith analyzing the appellant's facts contained in her eleven (11) issues of error against the applicable law but instead, mocked the Petitioner and ridiculed her and her reasons for seeking a continuance and not appearing in the trial court. It rested its decision on her non-appearance holding that her reasons insufficient without stating why or addressing the equal protection argument regarding denial of a continuance.

Respectfully submitted,

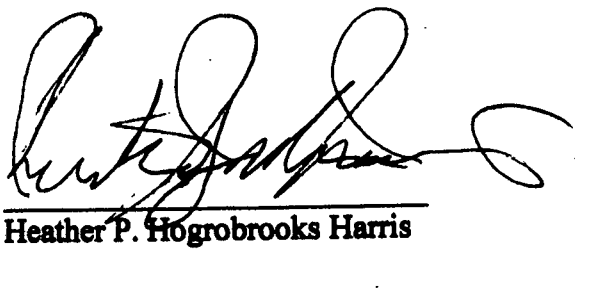
Heather P. Hogrobrooks Harris
579 Byron Drive
Memphis, Tennessee 38109
heatherpatrice@bellsouth.net

CERTIFICATE OF SERVICE

I Heather Hogrobrooks Harris certify that I have placed in the U.S. Mail, postage prepaid a copy of the Application for Permission to Appeal to:

Ms. Melanie M. Stewart
Heaton & Moore
44 North Second Street, Suite 1200
Memphis, Tennessee 38103

Done this 2nd day of March, 2020.



Heather P. Hogrobrooks Harris

APPENDIX OF PRIOR OPINIONS AND FEDERAL COURT ORDER

1. Circuit Court of Appeals Opinion filed December 20, 2019

2. Circuit Court of Appeals Opinion denying rehearing filed January 13, 2020

3. United States Bankruptcy Court Order of Discharge dated September 25, 2017.

APPENDIX C

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

HEATHER P. HOGROBROOKS HARRIS v. JIMMIE L. SMITH

Shelby County Circuit Court
CT-001046-16

No. W2019-00394-COA-R3-CV

Date Printed: 01/13/2020 **Notice / Filed Date: 01/13/2020**

NOTICE - Order - Petition to Rehear Denied

The Appellate Court Clerk's Office has entered the above action.

If you wish to file an application for permission to appeal to the Tennessee Supreme Court pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure, you must file an original and six copies with the Appellate Court Clerk. The application must be filed "within 60 days after the denial of the petition or entry of the judgment on rehearing." NO EXTENSIONS WILL BE GRANTED.

James M. Hivner
Clerk of the Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
November 12, 2019 Session

HEATHER P. HOGROBROOKS HARRIS v. JIMMIE L. SMITH

Appeal from the Circuit Court for Shelby County
No. CT-001046-16 Mary L. Wagner, Judge

No. W2019-00394-COA-R3-CV

ORDER ON PETITION FOR REHEARING

The Appellant, Heather P. Hogrobrooks Harris, filed a Petition for Rehearing pursuant to Rule 39 of the Tennessee Rules of Appellate Procedure. All matters raised in the Petition were fully argued by the parties, considered by this Court, and sufficiently addressed in our Opinion. Therefore, we find the Petition is not well taken, and it is DENIED. Costs related to this Rule 39 Petition for Rehearing are taxed to the Appellant, Heather P. Hogrobrooks Harris.

PER CURIAM

APPENDIX D

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

HEATHER P. HOGROBROOKS HARRIS v. JIMMIE L. SMITH

Shelby County Circuit Court
CT-001046-16

No. W2019-00394-COA-R3-CV

Date Printed: 12/30/2019 **Notice / Filed Date: 12/30/2019**

NOTICE - Petition - to Rehear

The Appellate Court Clerk's Office has entered the above action.

James M. Hivner
Clerk of the Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
JACKSON

NO. W2019-00394-COA-R3-CV

HEATHER P. HOGROBROOKS HARRIS

APPELLANT

V.

JIMMIE L. SMITH

APPELLEE

APPEAL FROM THE SHELBY COUNTY
CIRCUIT COURT
CT-001046-16

PETITION FOR REHEARING

Heather P. Hogrobrooks Harris
579 Byron Drive
Memphis, Tennessee 38109
901.494.1474

GROUNDS FOR REHEARING

The opinion filed on December 10, 2019 and received by the Appellant on December 24, 2019 :

1. Incorrectly states the material facts set forth by the record on the recusal issue;
2. misapprehends material facts of appellant's failure to attend court ; and
2. The opinion overlooks the Appellant's constitutional claims.

FACTS SUPPORTING REHEARING

At page 78 of Volume of I of the record is the trial judge's Order on recusal entered August 16, 2018. In her order on recusal she admits that she refused to hear from the appellant at a hearing on February 19, 2018. It then goes on to create a lie that is not supported in the record and is contradicted by the records of the United States Bankruptcy Court. The records of the bankruptcy court, In re Heather P. Hogrobrooks Harris, Case No.: 17-20334 shows that the Appellant was discharged on September 25, 2017.

In addition to the trial court's lie about a pending bankruptcy proceeding, there are no request for a continuance filed for said request or order entered for said request.

Too the panel's support for affirming and meaningfully considering appellant's points of error on the law or her constitutional equal protection claims was that the conditions of her personal transportation and financial hardship were of no moment, however the conditions affecting her vehicle created a hazard to her and the public if she driven her car to the hearing. A vehicle without a working horn and windshield wipers is a dangerous instrument.

ISSUES PRESENTED & ARGUEMENTS BY THE APPELLANT THAT THE COURT DID NOT MEANINGFULLY CONSIDER OR CONSIDER AT ALL

I. WHETHER THE TRIAL JUDGE SHOULD HAVE RECUSED WHERE SHE VIOLATED CANON 2, RULE 2.6 DENYING APPELLEANT THE RIGHT TO BE HEARD; MADE RULINGS THAT WERE NOT SUPPORTED BY EVIDENCE AND OPRESSIVELY ENDED APPELLANT'S STATE CONSTITUTIONAL RIGHTS WHICH VIOLATED CANON 2, RULE 2.2; INJECTED THE ISSUE OF BIAS AND PREJUDICE BY NOT HEARING FROM APPELLANT BEFORE GRANTING APPELLEE'S REQUEST AND NOT BEING CANDID IN HER ANSWERS TO A JUDICAL QUESTIONAR ABOUT HER AFFILIATION WITH DISCRIMATORY ORGANIZATIONS THUS VIOLATING CANON 2, RULE 1.2 AND CANON 3, RULE 3.6 AND BEAN V. BAILY, NO. E 2007-02-540-SC-510-CV (TENN, MARCH 26, 2009).

The appellant appeared before the trial judge on February 19, 2018 whereat the court refused to let the appellant be heard. The appellant taken aback by the court's refusal to allow her to respond to appellee's presentation or otherwise be heard so appellant took to the internet for what she could find out about the presiding judge. Appellant found three credible sources, (1) a bio on the State's website, (2) the case of **Runyon v. Runyon**, W2013-02651-COA-T10B-CV (Tenn, Ct.App., March 31, 2014, and (3) a judicial application filed by the judge on the County's website.

It was the combination not being heard in a matter appellant brought to the court, discovering that the judge was a member of a historically racially restrictive organization and was not candid about it, along with the fact that the trial judge herself as lawyer obviously understood the importance of a neutral and detached magistrate. Appellant, conflicted by what it portends that a woman of her age in the community she presides would seek such association as she did with a organization that has a rich and infamous racial past and appellant's treatment by her did not her to preside in her case. Appellant's recusal motion filed March 15, 2018 is at (Vol. 1, P 73-75) of the record. Appellant in her recusal motion did not mentioned he lack of candor in her description of The Daughters of the American Revolution and even tried to be empathic in analogizing the pride of a relative's service in a military service to not come off so course in the request for recusal. However the unquestionable bottom-line is that the trial judge violated judicial Canon 2.6.

There too is no question that judicial Canon 2.2 was repeatedly violated. The trial judge granted relief requested to the appellee's counsel that was not warranted under the facts and because the appellant was obviously an indispensible party none of her orders reference the

appellant as to agreement with her orders. (1) when she granted the appellee's counsel the first continuance in the record the appellee's counsel attached showed that the bankruptcy trustee had already abandon this trial as an asset back to the appellant (Vol. 1, P 16); (2) when the second continuance by appellee's counsel was granted on the basis of appellant's bankruptcy (it is documented in the trial judge order on recusal R.P. 78) it had been discharged since August 25, 2017 (3) the ruling on appellant's not being able to present evidence of hospital bills, the judge did not require support and a reading of the transcript support's the argument that she did not care if appellee's counsel assertion supported the relief requested and granted in that February 18, 2019 hearing (Vol. 3) and the lack of fairness and impartiality reverberates through all the issues presented.

Canon 2.3 violations are most starkly contrasted by the difference of consideration the trial judge gave on the continuance issues. With record evidence and public evidence available to her she grants appellee's requested relied based on misrepresentations. Appellent has the denial of a continuance before this appellate court as an issue where she sought continuance basis on need to correct misrepresentations in appellee's pleadings and personal challenges.

Then there the rules 15.01, 41.02, and 56.03 issues which deprived appellant substantive state and federal constitutional rights where the trial court did not give an ounce of consideration and the appellee's counsel proffer of support was "misleading" just to be polite about the description.

Whatever the reason the trial judge had, the admitted facts are that the trial judge denied appellant her constitutional right and had gone on to consciously ignore other legal principals and rules aimed at the meritorious consideration of litigants' and assurance that constitutional rights are protected like Rule 8.6 directive that pleadings being construed to do substantial justice; Rule 15.1 allowing amendments; summary judgment requiring the moving party to demonstrate that no material issue of fact exist for example **Bain v. Wells**, 936 S.W. 2d 618 (Tenn. 1997) and **Byrd v. Hall**, 847 S.W. 2d 208(Tenn. 1993); or in regard to Rule 41.02 where the court caution the power to involuntarily dismiss a litigant's cause of action "must be exercised most sparingly and with great care" that the right of the respective parties to a hearing shall not be denied or impaired **Harris v. Baptist Memorial Hospital**, 574 S. W. 2d 730 (Tenn. 1978) ; and then there is Article 1, Section 17.

The dereliction of duty of the duties imposed in the canon provisions stated above are unquestioned as they are admitted to or directly of gleamed from the record or transcripts found in Volumes 3 and 4. Appellant is certain that some reader and decider of this brief will have their own visceral reactions to this argument but I want them to balance that against the fact that this appellant who lives on VA dependant spouse compensation and her husband's social security having to take it at 60 was inhumanely dealt with when she sought her first continuance during the time her life was so personally challenged. and maybe the ultimate rulings by the trial judge would not had changed but appellant would have been in a personally better position to deal with them. Too consider that the indifference shown here is not likely a one off situation along with the financial and educational demographics of the community in which the trial judge sits and the cost of appeal and now the difficulty of appeal since the notice can no longer be lodged in the local trial court. None of what this appellant presents promotes the confidence in the judiciary consistent with Canon 1.2.

II. WHETHER THE TRIAL COURT'S RULE 41.02 DISMISSAL OF APPELLANTS COMPLAINT WITH PREJUDICE FOR FAILURE TO PROSECUTE WAS ARBITRARY, CAPRICIOUS, ABUSIVE OF THE USE OF DISCRETION AND VIOLATIVE OF APPELLANT'S SUBSTANTIVE AND CONSTITUTIONAL RIGHTS WHERE HARRIS V. BAPTIST MEMORIAL HOSPITAL, 574 S.W. 2D 730 (TENN. 1978) INSTRUCTS THAT THE DISMISSAL WITH PREJUDICE POWER MUST BE EXERCISED MOST SPARINGLY AND WITH GREAT CARE THAT THE RIGHT OF THE RESPECTIVE PARTIES TO A HEARING SHALL NOT BE DENIED OR IMPAIRED.

III. WHETHER APPELLANT'S SHOULD HAVE BEEN ALLOWED TO AMEND HER COMPLAINT AS TIMELY PURSUANT TO RULE 15.02 WHERE APPELLEE'S ANSWERS TO THE COMPLAINT VIOLATED RULE 11.02 (1),(2),(3) & (4) ESPECIALLY WHERE APPELLEE HAD APPEARED IN COURT AND PERSONALLY ACCEPTED LIABILITY TWO MONTHS BEFORE COUNSEL FILED HER ANSWER AFFIRMATIVELY DENYING LIABILITY AND SOUGHT UNWARRANTED CONTINUANCES IN THE CASE ONLY FOR THE PURPOSE TO UNDERMINE APPELLANT'S RIGHTS PURSUANT TO ARTICLE 1, SECTION 17 OF THE TENNESSEE CONSTITUTION.

IV. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN NOT ALLOWING THE APPELLANT TO AMEND HER COMPLAINT THUS DENYING HER DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHERE THE REQUESTED AMENDMENT WAS TO ADD CERTIFFIED COURT RECORDS AND AFFIDAVITS THAT SPOKE TO DISENGENOUS MOTIONS IN LIMINE FILED ON BEHALF OF APPELLEE AND TO BETTER GROUND THE BASIS OF APPELLANT'S CAUSES OF ACTION THUS

IMPAIRING AND OBSTRUCTING APPELLANT'S ACTION FROM BEING RESOLVED ON THE MERITS WHICH WAS INCONSISTANT WITH HENDERSON V. BUSH BROS CO., 868 S.W. 2d 236 (TENN, 1993).

V.WHETHER THE TRIAL COURT DENIAL OF APPELLANT'S MOTION FOR CONTINUANCE VIOLATED APPELLANT'S RIGHT TO EQUAL PROTECTION AND EQUAL APPLICATION OF THE LAW WHERE HER REASONS FOR REQUEST WERE NEED TO ADDRESS THE LACK OF CANDOR IN APPLEELL'S PLEADINGS THUS CORRECT A UNTRUTHFUL RECORD MADE SO ON THE FILING OF APPELLEE'S SUMMARY JUDGMENT MOTION AS WELL AS PERSONAL CONSIDERATIONS WHEN THE SAME COURT HAD GRANTED APPELLEE UNILATERAL AND NEEDLESS CONTINUANCES AND THE COURT ITSELF HAD CONTINUED THE FIRST TRIAL SETTING AND WHERE TENN CODE ALLOWS FOR CONTINUANCE AT ANY STAGE OF THE PROCEEDINGS TENN CODE 20-7-101

VI. WHETHER THE TRIAL JUDGE ERRED WHEN SHE GRANTED SUMMARY JUDGEMENT RULE 56.3 TO THE APPELLEE HOLDING THAT APPELLANT NEEDED EXPERT TESTIMONY TO PRESENT JURY TESTIMONY ON NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS WHERE SUCH IS A QUESTION OF LAW AND NEITHER T.C.A. 29-39-101, T.C.A. 29-39-102, T.C.A.29-39-103, T.C.A. 29-39-104 SPECIFICES NO SUCH REQUIREMENT AND COLEMAN V. HUMANE SOCIETY OF MENPHIS AND SHELBY COUNTY, NO. W2012-02687-COA-R-9-CV (Ct. App. Tenn., February 14, 2014)

VII. WHETHER THE TRIAL JUDGE ERRED IN HOLDING APPELLANT WOULD BE PREVENTED FROM TESTIFYING AND GRANTING RULE 56.3 SUMMARY JUDGEMENT ABOUT HOSPITAL AND MEDICAL BILLS INCURRED AS A RESULT OF THE ACCIDENT MADE THE BASIS OF THIS LAW SUIT ON THE CLAIM PURSUANT TO RULE 56.03 THAT THE DEBT HAD BEEN DISCHARGED IN BANKRUPTCY WITHOUT REFERENCE TO THE RECORD PROVING OR SUPPORTING THE FACT AS REQUIRED BY RULE 56.03

VIII. WHETHER THE APPELLANT WAS DENIED DUE PROCESS WERE HEARING WITHOUT HER PARTICIPATION ON IMPROPER NOTICE PURSUANT TO RULE 6.04 WHEREAT SAID HEARING THE TOTALITY OF HER COMPLAINT WAS GUTTED AND SUBSTANTIALLY FORCLOSED AND THE RESPONSE APPELLANT WAS ABLE TO TIMELY PUT TOGETHER WAS NOT CONSIDERED .

IX. WHETHER THE APPELLEE'S COUNSEL ABUSED AND MISUSED THE PROCESS WITH THE COURT'S ACQUIESCE BY UNILATERALLY REQUESTING AND RECEIVING CONTINUANCE AND TRIAL SETTINGS WITHOUT APPELLANT'S INPUT OF KNOWLEDGE AND BASED ON APPELLANT'S BANKRUPTCY FILING WHERE APPELLANT'S BANKRUPTCY WAS FILED 01/12/17, DISCHARGED 09/25/2017 WITH NO RETENTION OF ASSETS 11 U.S.C. 554(C) AND WHERE THE TRUSTEE DID ACCEPT APPELLEE'S OFFER TO COMPROMISE

X. WHETHER TRIAL COURT ERRED IN HOLDING THAT APPELLANT COULD NOT PRESENT EVIDENCE OR TESTIMONY REGARDING APPELLEE'S OFFER OF $1,500.00 TO THE APPELLANT AND $2,500.00 TO THE BANKRUPTCY TRUSTEE IN SETTLEMENT WHERE THE TESTIMONY WOULD BE OFFERED NOT TO PROVE LIABILITY OR VALIDITY BUT TO PROVE RACIAL BIAS AND UNWARRANTED ATTEMPTS TO FORECLOSE APPELLANT'S RIGHT TO TRIAL AS ALLOWED BY RULE 408

XI WHETHER THE TRIAL JUDGE SHOULD HAVE GRANTED APPELLEE'S COUNSEL'S SUMMARY JUDGEMENT WERE THE SUBMITTED STATEMENT OF FACTS CONTAINS MOSTLY IRRELAVANT ASSERTIONS AND WHERE RELEVANT WERE COMPLETELY MISLEADING OUTRIGHT OR MISLEADING TECHNIAL HALFTRUTHS WHICH DID NOT SPECIFICALLY POINT TO RECORD SUPPORT AND WAS NOT SUPPORTED BY AFFIDAVIT CONSISTENT WITH BYRD V. HALL, 847 S.W. 2D 208 (TENN 1993)

ARGUMENT FOR REHEARING

There is no question that the trial judge's Order on Recusal contains lies made up to justify not hearing from the Appellant. Tennessee's judicial canons do not carve out exceptions for when judges can refuse to hear from a litigant. That court recusal order as well as the panel decision denies this Appellant equal protection of the law. The same for each issue raised by this Appellant that the panel did not addressed.

After the trial court denied hearing from the Appellant and appellant discovered that the trial judge was obviously a favorite daughter as she had spent time in every level of court in this jurisdiction and was chosen to be appointed judge of the court wherein she had sought that judges recusal even against others without any questionable associations and others with more and varied experience, Appellant knew this was going to be dicey. Appellant tried to as discerningly as she could without further offending as Appellant know this was in a kill the messenger/victim situation. But, the law is not supposed to be a respecter of personage and the truth is suppose to matter even when it is not appreciated.

Appellant felt on Christmas Eve what Dred Scott must have felt in 1858. Although this Appellant has the benefit of the 13th and 14th Amendments, thus far she too has no rights that the court respects. Appellant has been black long enough to know that she can't say things that cannot be proven by other sources. On the main issue of recusal, it is the records of a federal court that shows the trial judge to be a liar as it was the records of City Clerk's office that proved the appellee's counsel to be a liar. Their white, appellants black, I get it outside a court proceeding but not inside a court proceeding at this level where biases are to left on the steps of the courthouse .

Respectfully submitted

Heather P. Hogrobrooks Harris

CERTIFICATE OF SERVICE

I, Heather Hogrobrooks Harris certify that I have caused to be served on Appellee Jimmie Smith by serving his counsel ;

Mekanie M. Stewart
Heaton and Moore
44 N. 2nd St., # 1200
Memphis, TN 38103

Postage prepaid, this 27th day of December, 2019.

Heather Hogrobrooks Harris

APPENDIX E

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
November 12, 2019 Session

HEATHER P. HOGROBROOKS HARRIS v. JIMMIE L. SMITH

Appeal from the Circuit Court for Shelby County
No. CT-001046-16 Mary L. Wagner, Judge

No. W2019-00394-COA-R3-CV

This appeal arises from a lawsuit over a car accident. Heather P. Hogrobrooks Harris ("Plaintiff"), proceeding pro se, sued Jimmie L. Smith ("Defendant") in the Circuit Court for Shelby County ("the Trial Court") for diminution in the value of her vehicle, medical expenses, pain and suffering, loss of use of her vehicle, and negligent infliction of emotional distress. On several occasions over the course of the case, Plaintiff failed to show up to court. When Plaintiff failed to appear for trial, the Trial Court granted a continuance with a warning that, should Plaintiff fail to appear again, her case would be dismissed. Plaintiff subsequently failed to appear, and the Trial Court dismissed her case with prejudice for lack of prosecution, as it warned it would. Plaintiff appeals to this Court, arguing among other things, that the Trial Court Judge was biased against her and that the Trial Court erred in dismissing her case. First, we find no evidence whatsoever that the Trial Court Judge was biased against Plaintiff. Second, Plaintiff's stated reasons for failing to show up for trial, that it was cold and rainy that day and her car was old and unreliable, respectfully will not suffice. We find no abuse of discretion in the Trial Court's dismissal of Plaintiff's case for lack of prosecution. We affirm the judgment of the Trial Court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY W. ARMSTRONG, J., joined.

Heather P. Hogrobrooks Harris, Memphis, Tennessee, Pro Se appellant.

Melanie M. Stewart, Memphis, Tennessee, for the appellee, Jimmie L. Smith.

OPINION

Background

In March 2016, Plaintiff sued Defendant in the Trial Court for diminution in the value of her vehicle, medical expenses, pain and suffering, loss of use of her vehicle, and negligent infliction of emotional distress, all arising from a January 17, 2016 car accident. Defendant filed an answer in opposition. A jury trial was set for April 2017. Defendant filed a motion to continue based on Plaintiff having filed for Chapter 7 bankruptcy in January. The Trial Court continued the trial date to November 2017. Plaintiff was discharged in bankruptcy that year.

In March 2018, Plaintiff filed a petition seeking the Trial Court Judge's recusal. In her petition, Plaintiff alleged that the Trial Court Judge had "cut the Plaintiff off after a couple of words" and was "not only dismissive but said dismissiveness was tinged with a cultural attitude that is familiar to the plaintiff." Plaintiff also put forward as a basis for recusal the Trial Court Judge's membership in Daughters of the American Revolution, which Plaintiff describes as a racist organization. In August 2018, the Trial Court entered an order denying Plaintiff's petition for recusal. The Trial Court found that Plaintiff failed to comply with Tennessee Supreme Court Rule 10B governing motions for recusal. The Trial Court found further, in pertinent part, as follows:

> This matter was originally scheduled for a status conference by the Court on November 20, 2017. The Court set this matter in November 2017 along with numerous other matters to assign a trial date. The November 2017 status conference was continued due to Plaintiff's bankruptcy status. Plaintiff and Counsel for the Defendant appeared on February 19, 2018. At the February 19, 2018 status conference, counsel for the Defendant advised the Court that there was a bankruptcy hearing scheduled for March 27, 2018. Counsel for Defendant did not address the merits of the case. Because of the bankruptcy status, there was nothing else that could be accomplished at the status conference. Further, on February 19, 2018, the Court was in the middle of a three week medical malpractice trial. The Court had jurors waiting and it was incumbent upon the Court to return to the matter as quickly as possible. Since it was neither appropriate nor necessary to discuss the merits of the case, the Court felt appropriate to conclude the status conference. The Court was not dismissive of Plaintiff but only stopped Plaintiff from going into the merits of the case on February 19, 2018 as it was not appropriate at that time. The Court continued the status conference to May 21, 2018 to await the outcome of the bankruptcy hearing.

***

> [T]he Court affirmatively finds that the Court has no actual bias, prejudice, or favor for or against any party or attorney in this matter. The Court will conduct a full hearing on the merits in accordance with the law, at the appropriate time. At that time, each party will have a full and fair opportunity to be heard and will receive a full, fair and impartial trial. That hearing on the merits cannot be conducted at a status conference or until Plaintiff's bankruptcy status is resolved in a manner that allows this Court to move forward.

***

> This Court is a member of the organization Daughters' of the American Revolution. However, there is no basis in law or fact for the general insinuations in *Plaintiff's Petition for Recusal.* A person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would not find a reasonable basis for questioning the judge's impartiality.

In December 2018, Defendant filed a motion for partial summary judgment as to Plaintiff's claims for diminution in the value of her vehicle, negligent infliction of emotional distress, and medical expenses. In his memorandum of law, Defendant asserted that Plaintiff only leased the car that was struck, and that Defendant's insurance company had paid the cost of repair. As to Plaintiff's claim of negligent infliction of emotional distress, Defendant pointed to Plaintiff's interrogatory response wherein she stated that she would not be calling any experts for trial, which Defendant argued doomed this particular claim. Regarding medical expenses, Defendant argued that summary judgment was appropriate because Plaintiff failed to itemize her medical bills, and that, at any rate, her bills were discharged in bankruptcy. On January 11, 2019, Defendant filed three motions in limine seeking to exclude evidence of settlement negotiations, the traffic ticket, and insurance, respectively. The Trial Court granted all three motions. In her January 15, 2019 response to Defendant's motions in limine, Plaintiff stated that she would not be able to attend the January 18 hearing on those or other motions because "she will be without proper transportation and is returning a rental car today."

Also in January 2019, Plaintiff filed an amended complaint, as well as a motion for continuance in which she asked for six months to conduct discovery. Defendant, for his part, filed a motion to strike the amended complaint on grounds that Plaintiff had never received either written consent from Defendant or leave of court to amend as

required by Rule 15.01 of the Tennessee Rules of Civil Procedure. The Trial Court granted Defendant's motion to strike.

Trial was set for January 22, 2019. Plaintiff did not show up to court that day. The Trial Court, while not granting Plaintiff her requested six months, did grant her some extra time. In its order on Plaintiff's motion for continuance, the Trial Court warned Plaintiff that failure to appear next time would result in the dismissal of her case with prejudice. The Trial Court stated:

> This matter was set for trial on January 22, 2019. Plaintiff did not appear. The morning of trial, the Court learned that Plaintiff filed a Motion for Continuance on January 7, 2019. The Plaintiff failed to follow the local rules by not setting this matter for hearing and by not providing the Court a courtesy copy of the Motion. Nevertheless, the Court will grant the Motion for Continuance and briefly continue this matter to allow Plaintiff to prosecute this matter. The matter will be set for trial on February 11, 2019 at 10:00 am. Absent good cause shown, it will not be continued again. If Plaintiff fails to appear at the trial of this matter on February 11, 2019, this matter shall be dismissed for lack of prosecution with prejudice.
>
> IT IS SO ORDERED ADJUDGED AND DECREED Plaintiff's Motion for Continuance is granted. The matter will be set for trial on February 11, 2019 at 10:00 am. Absent good cause shown, it will not be continued again. If Plaintiff fails to appear at the trial of this matter on February 11, 2019, this matter shall be dismissed for lack of prosecution with prejudice and costs will be assessed against the Plaintiff.

The Trial Court also granted Defendant's motion for partial summary judgment. In its order granting partial summary judgment, the Trial Court noted that Plaintiff had failed to appear at the January 18 hearing.[1] As Plaintiff never responded to Defendant's statement of undisputed material facts, the Trial Court adopted Defendant's facts:

> a. This action arises out of an automobile accident which occurred on January 17, 2016.
> b. The vehicle the Plaintiff was driving was repaired at the cost of $1,868.45 and paid for by the Defendant.

[1] Plaintiff asserts that she had only four days notice of this hearing. As Plaintiff never raised this issue below, it is waived on appeal. Furthermore, Plaintiff stated in her Response to Defendant's Motions in Limine and Other Pending Motions, filed on January 15, 2019, that she would not appear at the hearing on the 18th because of transportation issues.

c. At the time of the accident, Plaintiff was not the owner of the 2014 BMW that she was driving at the time of the accident.
d. Plaintiff did not name any expert witnesses in her answers to written discovery.
e. Plaintiff did not itemize her medical bills in the Complaint or in her answers to discovery.
f. Plaintiff filed Chapter 7 Bankruptcy and her bill from Methodist South Hospital in the amount of $2,000 was discharged in Bankruptcy.

The Trial Court proceeded to dismiss Plaintiff's claims for diminution in the value of her vehicle, negligent infliction of emotional distress, and medical expenses. On January 30, 2019, Plaintiff filed her Motion for Reconsideration or for Final Appealable Order, in which she largely rehashed her earlier allegations that the Trial Court Judge was biased against her.

On February 11, 2019, Plaintiff failed to show up yet again. The Trial Court entered an order denying Plaintiff's Motion for Reconsideration or for Final Appealable Order, a motion that the Trial Court correctly noted is not provided for by the Tennessee Rules of Civil Procedure. In its order, the Trial Court stated, in part:

> This cause came upon the Court before the Honorable Mary L. Wagner, Judge of Division VII of the Shelby County Circuit Court, upon the Plaintiff's Motion for Reconsideration or for Final Appealable Order. This matter was set for trial on February 11, 201[9]. Plaintiff's motion was filed on January 30, [2]019. Plaintiff failed to set this matter for hearing or provide the Court with a courtesy copy of the motion in accordance with local rule. Plaintiff failed to appear at the trial of this matter, on which day the Court planned to take up this Motion for argument. Nevertheless, the Court did review the motion and fully consider it.
>
> ***
>
> With regard to the allegations made by the Plaintiff, the Court has always considered Plaintiff's pleadings. In fact on more than one occasion, the Court has considered the merits of Plaintiff's motions and written responses despite Plaintiff's noncompliance with the rules of Court. In ruling on the most recent motions, the Court considered all of Plaintiff's written responses and ruled on the merits despite Plaintiff's failure to appear in Court. With regard to Plaintiff's motion for continuance, this Court granted the motion despite it not being properly set, despite Plaintiff not appearing for the court ordered trial date and over Defendant's

> objection. The Court continued this matter only a short period due to the age of this case and to allow Plaintiff to seek whatever further discovery she thought she needed. Without Plaintiff advising this Court, which she still has not done, as to what further discovery is needed, the Court had no choice but to set it on the next available trial date which would allow Plaintiff time to propound any remaining discovery that she would need. This ruling did not foreclose Plaintiff from seeking a further continuance if she took steps to prosecute this case and sought such continuance with good cause. To date, Plaintiff has not taken any further steps with regard to this case or sought further continuance. She has not issued discovery, issued subpoenas or moved this Court for further relief with regard to what she believes she needs to prosecute this case. With regard to the Plaintiff's other allegations as to this Court's rulings, the Court's orders speak for themselves. In sum, however, the Court struck Plaintiff's Amended Complaint as it was filed without compliance with Tenn. R. Civ. P. Rule 15. To date, Plaintiff has not filed a Motion seeking to amend her Complaint. Further, the Court granted summary judgement and entered an Order excluding medical bills because Plaintiff failed to produce them in discovery or otherwise show a dispute as to material fact in response to the Defendant's summary judgment argument after Defendant met its burden to obtain summary judgment.

Also on February 11, acting on a motion by Defendant, the Trial Court entered an order dismissing Plaintiff's case with prejudice for lack of prosecution. The Trial Court stated, as relevant:

> This matter was set for trial on February 11, 201[9] by Order entered January 22, 2019. When called, Plaintiff failed to appear. Plaintiff has no motions pending before this Court. Defendant moved for the case to be dismissed. Therefore, this matter shall be dismissed for lack of prosecution with prejudice pursuant to Tenn. R. Civ. P. Rule 41.02.

Plaintiff timely appealed to this Court.

Discussion

Plaintiff raises eleven issues on appeal, which we restate as follows: 1) whether the Trial Court Judge erred by not recusing herself; 2) whether the Trial Court erred in dismissing the case for lack of prosecution; 3) whether the Trial Court erred in striking Plaintiff's amended complaint; 4) Plaintiff rewords the previous issue but it is, in substance, the same; 5) whether the Trial Court erred by denying Plaintiff a continuance;

6) whether the Trial Court erred in granting summary judgment as to Plaintiff's claim of negligent infliction of emotional distress; 7) whether the Trial Court erred in granting summary judgment as to Plaintiff's claim for medical expenses; 8) whether the Trial Court erred in conducting a hearing with Plaintiff not in attendance; 9) whether the Trial Court erred in granting Defendant's motion for a continuance; 10) whether the Trial Court erred in granting Defendant's motion in limine with respect to evidence of settlement negotiations; and, 11) whether the Trial Court erred in adopting Defendant's statement of undisputed material facts. Of these eleven, we determine that two issues—one pertaining to recusal, and the other pertaining to dismissal for lack of prosecution—are dispositive of the appeal.

We first address whether the Trial Court erred by denying Plaintiff's petition for recusal. "'The right to a fair trial before an impartial tribunal is a fundamental constitutional right.'" *Bean v. Bailey*, 280 S.W.3d 798, 803 (Tenn. 2009) (quoting *State v. Austin*, 87 S.W.3d 447, 470 (Tenn. 2002)). A judge must recuse himself or herself upon request whenever "'the judge's impartiality might be reasonably questioned because the appearance of bias is as injurious to the integrity of the judicial system as actual bias.'" *Smith v. State*, 357 S.W.3d 322, 341 (Tenn. 2011) (quoting *Bean*, 280 S.W.3d at 805). "Bias" and "prejudice" are terms that refer generally "to a state of mind or attitude that works to predispose a judge for or against a party;" however, "[n]ot every bias, partiality, or prejudice merits recusal." *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994). To render disqualification of a trial judge necessary, "prejudice must be of a personal character, directed at the litigant, 'must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from . . . participation in the case.'" *Id.* (quoting *State ex rel. Wesolich v. Goeke*, 794 S.W.2d 692, 697 (Mo. App. 1990)).

Plaintiff's reasons as to why the Trial Court Judge should have recused herself can be broken down into three separate categories: (1) at a status conference, the Trial Court Judge cut Plaintiff off when she tried to speak; (2) the Trial Court Judge belongs to the Daughters of the American Revolution organization; and (3) the Trial Court ruled against Plaintiff and for Defendant.

With respect to Plaintiff's first point, the Trial Court Judge explained in her August 16, 2018 order that "[t]he Court was not dismissive of Plaintiff but only stopped Plaintiff from going into the merits of the case on February 19, 2018 as it was not appropriate at that time." The record contains no transcript of the status conference in question. We do not know what was said. This record contains no evidence that the Trial Court Judge said or did anything even mildly discourteous to Plaintiff, let alone something so egregious as to require recusal. If Plaintiff tried to speak on the merits of

her case at the status conference, the Trial Court acted properly in letting her know that was not the proper time to get into those matters.

Regarding the Trial Court Judge's membership in Daughters of the American Revolution, Plaintiff fails to cite any evidence in the record supporting her assertions about that organization's alleged discriminatory views. The record does not establish what the alleged discriminatory views are, or were, or any other details critical to Plaintiff's argument. This Court is confined to the record on appeal. There is nothing in this record, nor are there any facts so uncontroversially known as to be amenable to judicial notice, to support Plaintiff's position that the Trial Court Judge's mere membership in Daughters of the American Revolution means that the Judge was biased against her.

Finally, Plaintiff cites as evidence of impermissible bias instances where the Trial Court Judge ruled against her and in favor of Defendant. However, "[a] trial judge's adverse rulings are not usually sufficient to establish bias." *State v. Cannon*, 254 S.W.3d 287, 308 (Tenn. 2008). "Rulings of a trial judge, even if erroneous, numerous and continuous, do not, without more, justify disqualification." *Alley*, 882 S.W.2d at 821. We find not the slightest hint in the record that the Trial Court Judge was biased against Plaintiff. On the contrary, the record reflects that the Trial Court Judge went to great lengths to be fair to Plaintiff, even when Plaintiff failed to comply with applicable rules or even show up to court. There are no facts shown in this record that demonstrate either actual bias on the part of the Trial Court Judge or that would lead a well-informed, disinterested observer to question the impartiality of the Judge. We find no error in the Trial Court Judge's denial of Plaintiff's petition for recusal.

The next and final issue we address is whether the Trial Court erred in dismissing Plaintiff's case for lack of prosecution. In *Hodges v. Attorney General*, 43 S.W.3d 918 (Tenn. Ct. App. 2000), we observed:

> Parties who choose to represent themselves are entitled to fair and equal treatment by the courts. *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997). However, the courts may not prejudice the substantive rights of the other parties in order to be "fair" to parties representing themselves. Parties who choose to represent themselves are not excused from complying with the same applicable substantive and procedural law that represented parties must comply with. *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n. 4 (Tenn. Ct. App. 1995); *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). Thus, Mr.

> Hodges, like any other litigant represented or not, must comply with the requirements of [the Rules of Civil Procedure]. . . .
>
> Trial courts possess inherent, common-law authority to control their dockets and the proceedings in their courts. Their authority is quite broad and includes the express authority to dismiss cases for failure to prosecute or to comply with the Tennessee Rules of Civil Procedure or the orders of the court. Tenn. R. Civ. P. 37.02(C); Tenn. R. Civ. P. 41.02(1); *Kotil v. Hydra-Sports, Inc.*, No. 01A01-9305-CV-00200, 1994 WL 535542, at *3 (Tenn. Ct. App. Oct. 5, 1994) (No Tenn. R. App. P. 11 application filed). Because decisions to dismiss for failure to prosecute are discretionary, *White v. College Motors*, 212 Tenn. 384, 386, 370 S.W.2d 476, 477 (1963), reviewing courts will second-guess a trial court only when it has acted unreasonably, arbitrarily, or unconscionably. *Friedman v. Belisomo*, No. 02A01-9304-CH-00094, 1993 WL 498504, at *3 (Tenn. Ct. App. Dec. 1, 1993) (No Tenn. R. App. 11 application filed). Trial courts may, on their own motion, dismiss cases for lack of prosecution, but this authority should be exercised sparingly and with great care. *Harris v. Baptist Mem'l Hosp.*, 574 S.W.2d 730, 731 (Tenn. 1978).

Hodges, 43 S.W.3d at 920-21.

In its January 22, 2019 order on Plaintiff's motion for continuance, the Trial Court clearly warned Plaintiff that her case would be dismissed with prejudice if she failed to show up for the February 11, 2019 trial date. Plaintiff contends that this warning was insufficient. In her brief, Plaintiff argues: "[T]o dismiss and forever foreclose the appellant['s] Article 1, Section 17 rights something more tha[n] a[n] inconspicuous line in an order otherwise captioned was required." However, the line was not inconspicuous; it need only have been read to be understood. The meaning was plain: show up for trial on February 11 or the case is dismissed, absent good cause.

As for why Plaintiff failed to show up to court on February 11, 2019, her reasons are less than compelling. At the November 12, 2019 oral argument in this appeal, Plaintiff explained to the panel that she did not go to court on February 11 because it was cold and rainy that day, and that she had "put back in service a 1985 vehicle." Respectfully, these are insufficient reasons for not showing up for trial.

Dismissal with prejudice for lack of prosecution is a harsh sanction. However, it can be warranted in certain circumstances. Trial courts have a responsibility to manage their dockets; lawsuits cannot drag on indefinitely at a plaintiff's convenience, or only be acted upon when the weather is good. It was necessary for Plaintiff to show up to court

to try this lawsuit that she filed. She did not, and her reasons are insufficient. This being so, we find no abuse of discretion in the Trial Court's dismissal of Plaintiff's case with prejudice for lack of prosecution. All other issues raised by Plaintiff are pretermitted. We affirm the judgment of the Trial Court.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Heather P. Hogrobrooks Harris, and her surety, if any.

D. MICHAEL SWINEY, CHIEF JUDGE

APPENDIX F

IN THE CIRCUIT COURT OF TENNESSEE FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS, SHELBY COUNTY

HEATHER P. HOGROBROOKS HARRIS

Plaintiff,

v.

JIMMIE L. SMITH

Defendant.

Cause No. CT-001046-16
Div. VII

FILED
AUG 16 2018
CIRCUIT COURT CLERK
BY D.C.

ORDER ON MOTION FOR RECUSAL

This cause came upon the Court before the Honorable Mary L. Wagner, Judge of Division VII of the Shelby County Circuit Court, upon the Plaintiff's Motion for Recusal.

Upon the Court's consideration of the written Motion, the motion is denied for the following reasons:

1. This matter was originally scheduled for a status conference by the Court on November 20, 2017. The Court set this matter in November 2017 along with numerous other matters to assign a trial date. The November 2017 status conference was continued due to Plaintiff's bankruptcy status. Plaintiff and Counsel for the Defendant appeared on February 19, 2018. At the February 19, 2018 status conference, counsel for the Defendant advised the Court that there was a bankruptcy hearing scheduled for March 27, 2018. Counsel for Defendant did not address the merits of the case. Because of the bankruptcy status, there was nothing else that could be accomplished at the status conference. Further, on February 19, 2018, the Court was in the middle of a three week medical malpractice trial. The Court had jurors waiting and it was

incumbent upon the Court to return to the matter as quickly as possible. Since it was neither appropriate nor necessary to discuss the merits of the case, the Court felt appropriate to conclude the status conference. The Court was not dismissive of Plaintiff but only stopped Plaintiff from going into the merits of the case on February 19, 2018 as it was not appropriate at that time. The Court continued the status conference to May 21, 2018 to await the outcome of the bankruptcy hearing.

2. On May 21, 2018, this matter was set for Status Conference. Plaintiff did not appear. Counsel for the Defendant appeared and informed the Court of the filing of the *Petition to Recuse Trial Judge*. Tennessee Supreme Court Rule 10B § 1.02 provides that "[w]hile the motion is pending, the judge whose disqualification is sought shall make no further orders and take no further action on the case, except for good cause stated in the order in which such action is taken." Therefore, upon notification of the filing, this Court continued the status conference to June 25, 2018. The Court requested that Defense counsel prepare an order setting the status conference on June 25, 2018 so that Plaintifff would be aware. Due to the late entry of this Order and to provide Plaintiff with adequate notice, the Court *sua sponte* continued the status conference until August 20, 2018. An Order reflecting this was entered and sent to the Plaintiff on June 20, 2018.

3. Tennessee Supreme Court Rule 10B § 1.03 further provides "[u]pon the filing of a motion pursuant to section 1.01 the judge shall act promptly by written order and either grant or deny the motion." To date, Plaintiff has not set her *Petition to Recuse Trial Judge* to be heard in accordance with the local rules of court or otherwise notified the Court of her filing. Nevertheless, the Court endeavors to act promptly by entering this written order.

4. The Motion fails to comply with Tennessee Supreme Court Rule 10B governing motions for recusal. For that reason alone, the motion must be denied.

5. Further, "[t]he question of recusal on the basis of bias involves two inquiries. The first is whether the judge has actual bias; the second is whether his or her impartiality might reasonably be questioned, *i.e.*, whether there may be an appearance of bias even though no actual bias exists." *In re Bridgestone Corp.*, No. M2013–00637–COA–10B–CV, 2013 WL 1804084, at *2 (Tenn. Ct. App. 2013), *perm. app. denied* (Tenn. June 11, 2013).

6. With regard to the first inquiry, the Court affirmatively finds that the Court has no actual bias, prejudice, or favor for or against any party or attorney in this matter. The Court will conduct a full hearing on the merits in accordance with the law, at the appropriate time. At that time, each party will have a full and fair opportunity to be heard and will receive a full, fair and impartial trial. That hearing on the merits cannot be conducted at a status conference or until Plaintiff's bankruptcy status is resolved in a manner that allows this Court to move forward.

7. With regard to the second inquiry, "[a] trial judge should grant a recusal motion when 'a person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality.'" *State v. Hester*, 324 S.W.3d 1, 73 (Tenn. 2010) (quoting *Davis v. Bailey*, 280 S.W.3d 790, 809 (Tenn. 2009)).

8. This Court is a member of the organization Daughters' of the American Revolution. However, there is no basis in law or fact for the general insinuations in *Plaintiff's Petition for Recusal.* A person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would not find a reasonable basis for questioning the judge's impartiality.

IT IS SO ORDERED ADJUDGED AND DECREED, that the Motion for recusal is denied.

HONORABLE MARY L. WAGNER

DATE: 8-16-2018

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Order has been forward to:

A TRUE COPY ATTEST
JIMMY MOORE, CLERK
BY _____ D.C.

Heather P. Hogrobrooks Harris
579 Byron Drive
Memphis TN 38109

Melanie M. Stewart
44 N. Second Street Suite 1200
Memphis TN 38103

CLERK

Date: 8/16/18

APPENDIX G

First Name Middle Name Last Name

Debtor 2
(Spouse, if filing) First Name Middle Name Last Name

EIN __-_____

Social Security number or ITIN ____

EIN __-_____

United States Bankruptcy Court **Western District of Tennessee**

Case number: **17-20334**

Order of Discharge

12/15

IT IS ORDERED: A discharge under 11 U.S.C. § 727 is granted to:

Heather Patrice Hogrobrooks Harris
aka Heather Patrice Hogrobrooks, aka Heather Patrice Hogsebrooks Spivey

9/25/17

By the court: David S. Kennedy
United States Bankruptcy Judge

Explanation of Bankruptcy Discharge in a Chapter 7 Case

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

Creditors cannot collect discharged debts
This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

Most debts are discharged
Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

For more information, see page 2 >

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APPENDIX H

IN THE CIRCUIT COURT OF SHELBY COUNTY TENNESSEE
FOR THE THIRTEENTH JUDICIAL DISTRICT
AT MEMPHIS

HEATHER P. HOGROBROOKS HARRIS,

PLAINTIFF,

VS

DOCKET NO.: CT-001046-16
DIV. VII

JIMMIE L. SMITH,

DEFENDANT.

PETITION TO RECUSE TRIAL JUDGE

TO THE HONORABLE JUDGE Mary L. Wagner:

COMES NOW, the plaintiff, Heather P. Hogrobrooks respectfully requesting , that in the spirit of insuring that this litigant receives the constitutional protections she's entitled, recuse herself form presiding in this matter, and support states:

1. Plaintiff is a black female born in 1958.

2. Plaintiff along with defense counsel had an appearance on some housekeeping matters and during that hearing defense counsel was disingenuous in her representation on an issue.

3. Plaintiff, after defense counsel finish speaking , attempted to respond to the what had been stated by defense counsel.

4. Judge Wagner cut the Plaintiff off after a couple of words. She was, in plaintiff opinion and experiences in the affairs of life, not only dismissive but said dismissiveness was tinged with a cultural attitude that is familiar to the plaintiff.

5. Because of that feeling, Plaintiff sought to find information about the judge. On Tennessee's government website Plaintiff found a notice about her appointment to the circuit court. In that notice it touted the judges membership in the 'Daughters of the American Revolution'. Exhibit A.

6. Although The Daughters of the American Revolution are attempting to re-brand the organization it's best known to people like me as a racist organization that excluded individuals like me until it was successfully sued in the late 90's and gaining world-wide infamy what a sitting President's wife renounced her membership because of its practiced racism.

7. Plaintiff, certainly does not know why a women of the judges age, in a city with the demographics of Memphis, Tennessee would publicize such a membership other than to engage in dog-whistle politics thus letting those in political power (to appoint judges) know her true heart.

8. Plaintiff is concerned only that she received a fair trial before a fair, unbiased, and impartial jurist. The relevant law on the issue is as follows:

> Tennessee Code of Judicial Conduct Rule 2.11 provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned[.]" Tenn. R. Sup. Ct. 10, § 2.11. It is well-settled that "„[t]he right to a fair trial before an impartial tribunal is a fundamental constitutional right."" Bean v. Bailey, 280 S.W.3d 798, 803 (Tenn. 2009) (quoting State v. Austin, 87 S.W.3d 447, 470 (Tenn. 2002)). Article VI, Section 11 of the Tennessee Constitution, Tennessee Code Annotated Section 17-2-101
>
> The purpose of the prohibition is to "guard against the prejudgment of the rights of litigants and to avoid situations in which the litigants might have cause to conclude that the court [] reached a prejudged conclusion because of interest, partiality, or favor." State v. Austin, 87 S.W.3d 447, 470 (Tenn. 2002) (citation omitted). Additionally, we have emphasized that "the preservation of the public"s confidence in judicial neutrality requires not only that the judge be impartial in fact, but also that the judge be perceived to be impartial." Kinard v. Kinard, 986 S.W.2d 220, 228 (Tenn. Ct. App. 1998) (citations omitted). Accordingly, even in cases wherein a judge sincerely believes that she can preside over a matter fairly and impartially, the judge nevertheless should recuse herself

In cases where a reasonable person "„in the judge"s position, knowing all the facts known to the judge, would find a reasonable basis for questioning the judge"s impartiality."" Davis v. Liberty Mut. Ins. Co., 38 S.W.3d 560, 564–65 (Tenn. 2001) (quoting Alley v. State, 882 S.W.2d 810, 820 (Tenn. Crim. App. 1994)). It is an objective test designed to avoid actual bias and the appearance of bias, "since the appearance of bias is as injurious to the integrity of the judicial system as actual bias." Davis, 38 S.W.3d at 565 (citation omitted).

WHEREFORE, Plaintiff understands the pride we have in our relatives that have served this Country's military , she herself proudly carries and uses her United States Uniformed Services Identification and Privilege Card, however her interest herein is that she receives the benefits of the Constitution created after the American Revolution. Yet, for all the reasons, circumstances and law set forth above, she prays the Court with value Plaintiff's rights and recuse from presiding in this matter.

Respectfully submitted,

Heather Hogrobrooks Harris
579 Byron Drive
Memphis TN 38109
heatherpatrice@bellsouth.net

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing has been served by email and U. S. Mail, postage prepaid, upon the following:

MELANIE M. STEWART, #10034
Attorney for Defendant
44 North Second Street, Suite 1200
Memphis, TN 38103
(901) 526-5975
File No.: MS-50256
this the 15th Day of March 2018

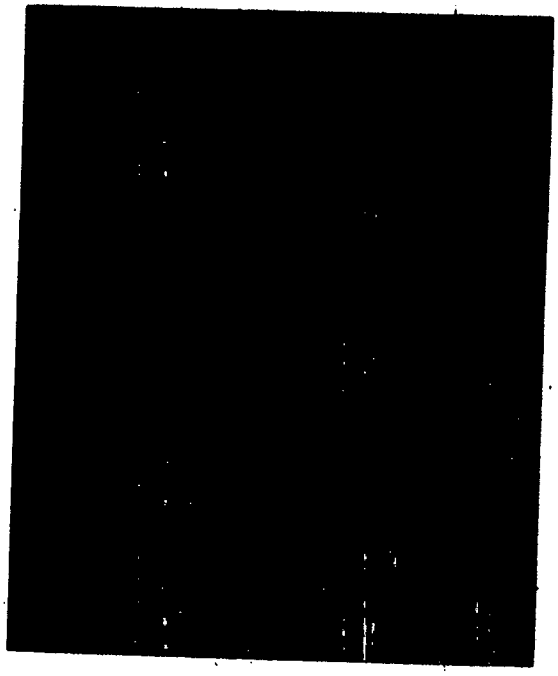
HEATHER HOGROBROOKS HARRIS

Haslam Appoints Wagner Circuit Court Judge for 30th Judicial District

Monday, October 24, 2016 | 12:40pm

NASHVILLE – Tennessee Gov. Bill Haslam today appointed Mary L. Wagner of Memphis as circuit court judge for the 30th Judicial District, which serves Shelby County. The vacancy was created by the retirement of Judge Donna M. Fields.

Since 2011, Wagner, 32, has been at the Memphis law firm Rice, Amundsen & Caperton, where she has worked in general practice with an emphasis on family law and non-profit/business organization and defense. Other areas of her practice there have included personal injury and probate.



While at the firm, she taught at the Cecil C. Humphreys School of Law at the University of Memphis from 2012-2014 as an adjunct professor, teaching second-year law students advanced skills in legal writing and oral advocacy and first-year students legal writing, research and analysis.

"With her extensive background in Shelby County, Mary Wagner is well prepared for a seat on the circuit court in the 30th Judicial District," Haslam said. "We are fortunate to have someone with her experience, and we are pleased to announce this appointment."

"I would like to thank the governor for his confidence in me," Wagner said. "I am deeply humbled and honored by this opportunity. I look forward to serving the citizens in the 30th Judicial District."

Before joining Rice, Amundsen & Caperton, Wagner was at the Leitner, Williams, Dooley and Napolitan firm from 2010-2011. She was a law clerk from 2009-2010 for Judge Steven Stafford of the Tennessee Court of Appeals, law clerk for Judge Robert L. Childers in the Shelby County Circuit Court from 2008-2009 and worked as an extern in 2008 with the U.S. Attorney's office for the Western District of Tennessee. Wagner was a research assistant in 2007 for Prof. Andrew McClurg during law school.

She has been a member of the Post Conviction Defender Oversight Commission since June 2015.

Wagner received her law degree from the University of Memphis in 2009. She received a bachelor's degree in 2006 from the University of Colorado, majoring in political science.

Wagner has also been active in her community, including membership in the Germantown Kiwanis Club since 2011 and a member of the Hermitage Chapter of the Daughters of the American Revolution since 2013. Wagner has been a member of the Christ United Methodist Church since 2015 and was previously a member of Germantown Baptist Church.

Wagner is married to Tom Owen, and they have a son, Benjamin.