

Third District Court of Appeal

State of Florida

Opinion filed August 21, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1369
Lower Tribunal No. 13-24744

Real State Golden Investments Inc., et al.,
Petitioners,

vs.

Manuel Antonio Ossandón Larrain,
Respondent.

A Case of Original Jurisdiction – Prohibition.

Akerman LLP, and Kristen M. Fiore (Tallahassee), and Luis A. Perez, Sandra J. Millor, and Jenny Torres, for petitioners.

O'Connor Hernández & Associates, P.A., and Patrick J. O'Connor, and Bryan Morera, for respondent.

Before SALTER, LOGUE, and LINDSEY, JJ.

PER CURIAM.

Petitioners, defendants below, seek a writ of prohibition disqualifying the trial court judge based upon comments he made at a hearing on a motion to intervene. After denying the motion to intervene, the trial court judge denied a non-existent motion to stay the proceedings. Petitioners had neither filed a motion to stay the proceedings nor suggested that they intended on filing one. Yet, the trial court judge stated that he expected a motion to stay because the defendants appeal everything in this case and that he would deny such a motion if the defendants were to file one:

THE COURT: So, it's denied and Motion to Stay, denied.

MS. MILLOR: There was no Motion for Stay.

THE COURT: There will be. You're going to appeal this, right?

MS. MILLOR: Probably.

THE COURT: Okay. So, I mean, I expect it because everything gets appealed.

MS. MILLOR: Correct.

THE COURT: For this case, anyway.

MS. MILLOR: You know, Your Honor, there has only been one appeal so far in this six-year case.

THE COURT: Okay. Maybe I'm thinking of other cases.

MS. MILLOR: I think so.

THE COURT: Again, I get a lot of appeals. But then again, this is a very litigious world. Okay. If there is an appeal, I don't think there's a reasonable chance of success on appeal now that we have conducted this full analysis and identified the different issues and different claims and claims for a positive relief, not just defenses. So, draft up an order and we'll see what happens.

“[A] judge’s announced policy or predisposition to rule in a particular manner is grounds for disqualification.” State v. Dixon, 217 So. 3d 1115, 1123 (Fla 3d DCA 2017). “A trial judge’s announced intention before a scheduled hearing to make a specific ruling, regardless of any evidence or argument to the contrary, is the paradigm of judicial bias and prejudice.” Id. at 1122 (quoting Gonzalez v. Goldstein, 633 So. 2d 1183, 1184 (Fla. 4th DCA 1994)). See also Great Am. Ins. Co. of N.Y. v. 2000 Island Blvd. Condo. Ass’n, 153 So. 3d 384, 386 (Fla. 3d DCA 2014) (“While a trial judge may form mental impressions and opinions during the course of the case, the judge is not permitted to pre-judge the case.” (quoting Kates v. Seidenman, 881 So. 2d 56, 58 (Fla. 4th DCA 2004))).

We agree with Petitioners that these remarks, made in the absence of any motion or evidence, are sufficient to leave Petitioners with an objectively reasonable fear they will not receive a fair trial. Williams v. Balch, 897 So. 2d 498 (Fla. 4th DCA 2005) (holding disqualification is required when judicial comments signal a predisposition against a party before consideration of the evidence).

We therefore grant the petition but withhold issuance of the writ as we are confident the trial judge will recuse himself.