

NOTICE
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2011 IL App (4th) 100860-U

Filed 9/7/11

NO. 4-10-0860

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of SHARON LABROO,)	Appeal from
Petitioner-Appellee,)	Circuit Court of
and)	Adams County
AJAY LABROO,)	No. 3D357
Respondent-Appellant.)	
)	Honorable
)	Richard D. Greenlief,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court rejected the respondent's argument that the motion judge improperly denied his supplemental motion for substitution of judge for cause.

¶ 2 In September 2010, respondent, Ajay Labroo, filed a supplemental motion for substitution of judge for cause, questioning the trial judge's impartiality. Ajay claimed that the trial judge considered *ex parte* communications from petitioner, Sharon Labroo, prior to entering a July 2010 written order that "sentenced him to jail" until he paid Sharon past-due and current family support and attorney fees pursuant to the trial court's dissolution of marriage judgment. Following a hearing held shortly thereafter, the motion judge denied Ajay's supplemental motion.

¶ 3 Ajay appeals, arguing that the motion judge improperly denied his supplemental motion for substitution of judge for cause. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Parties' Dissolution of Marriage

¶ 6 In June 1990, Sharon and Ajay were married. During their marriage, the couple had three children, M.L. (born February 24, 1993), A.L. (born September 12, 1994), and D.L. (born July 16, 1998). The parties separated in 1998.

¶ 7 In July 2002, Sharon filed a petition for dissolution of marriage. Following a July 2005 bench trial on Sharon's petition, the trial court entered a September 2005 written judgment (1) dissolving the parties' marriage; (2) ordering Ajay, who was employed as a cardiologist, to pay Sharon (a) 70% of their children's medical expenses, (b) a \$40,351 tax refund, (c) \$2,013 for credit-card purchases, (d) \$7,480 per month for child support, and (e) \$1,520 per month for temporary maintenance; and (3) mandating that Ajay maintain and provide annual proof of a \$1.6 million life-insurance policy for their children's equal benefit. (In January 2006, the court reduced Sharon's monthly maintenance to \$720.)

¶ 8 B. The Filings and Proceedings Following the Parties' Dissolution Proceedings

¶ 9 From August 2006 through September 2007, Sharon filed, in part, the following: (1) a petition to show cause, alleging that Ajay failed to pay her (a) \$18,968 in child support, (b) a \$40,351 tax refund, and (c) \$2,013 for credit-card purchases; (2) a second petition to show cause, requesting modification of visitation; (3) a third petition to show cause, alleging that Ajay failed to pay her \$1,856 for medical expenses; and (4) a petition for contempt, alleging that Ajay failed to provide proof of life insurance. With the exception of her second petition to show cause, Sharon also requested that the trial court award her reasonable attorney fees.

¶ 10 During that same time period, Ajay, who was then represented by counsel, filed

(1) a motion to reduce child support and (2) an amended petition to show cause, alleging that in July 2006, Sharon failed to comply with the trial court's dissolution judgment regarding his weekend visitation with the parties' children.

¶ 11 After hearings on the respective filings in August and October 2007, the trial court—at a December 2007 hearing—stated the following:

"Well, it seems *** that to do this justice, [this court] should review [its] notes ***, but [the court] will tell you this, *** after considering the evidence and the credibility and demeanor of the witnesses that[,] at the minimum, [Ajay] is in contempt. [Ajay] is the source of all these proceedings ***. [Ajay's] failure to pay [is] astounding. *** [A]fter listening to [Ajay's] testimony, [it's] clear to [this court] why he doesn't pay. [Ajay] chooses to do what he wants to do when he wants to do it because he respects no one except himself[.]"

¶ 12 In addressing Sharon's attorney-fee request, the trial court stated the following:

"[Sharon's] original attorney was ill. As known by counsel and the court, *** he had a stroke. He couldn't work. His sole associate couldn't handle everything. [Sharon] was put in the position of having to secure substitute counsel. She's low on funds[, and] gets her brother-in-law to help. [H]e jumps into the middle of the case from a long distance, coming from Nashville[.]

* * *

[T]hese proceedings were *** necessitated by [Ajay's] contemptuous[,] ongoing refusal to obey the orders of the court, not to mention the harassment of [Sharon with regard to] custody and visitation issues."

¶ 13 The trial court thereafter considered the reasonableness of the attorney fees, which Sharon's attorney claimed were \$45,000. Specifically, the court noted the following: (1) Sharon's attorney was prepared, concise, and used good judgment; (2) the nature of the controversy was complex in that it required (a) uncovering Ajay's attempt to hide income and (b) deciphering the associated accounting and tax implications; (3) payment of child support and visitation are issues of paramount importance; (4) Sharon's attorney was entirely responsible for her case; and (5) the attorney-fee rate was appropriate, given the complex nature of the case and the usual and customary charges for local attorneys. Based on these factors, the court granted Sharon's request for attorney fees. (The record shows that the court's award included several small fees for a second attorney who had to serve as local counsel because Sharon's brother-in-law was not licensed to practice in Illinois.)

¶ 14 In January 2008, the trial court entered a written order summarizing its findings at the August, October, and December 2007 hearings, in which it first summarized the parties' testimony as follows:

- "1. [Sharon] is a credible witness.
2. [Ajay] *** is not a credible witness. [Ajay's] explanations for, or denials of, his repeated violations of the court's orders

are either improbable or not based on facts disclosed by the evidence. [Ajay's] testimony shows that he is very intelligent, but his memory is selective, in that his recollection is precise regarding matters that *** appear to benefit his position, but imprecise or vague regarding matters [that] appear to damage his position."

¶ 15 The trial court then found Ajay in indirect civil contempt. The court also ordered Ajay to (1) modify his life-insurance policy to reflect the parties' children as equal beneficiaries and provide proof of that modification and (2) either (a) pay \$45,120, which represented the reasonable fees of Sharon's attorneys, or (b) propose and file an attorney-fee payment plan for the court's approval within 30 days. (Prior to the December 2007 hearing, Ajay had paid his outstanding financial commitments to Sharon.)

¶ 16 In denying Ajay's motion to reduce child support and amended petition to show cause, the trial court found that (1) Ajay had hidden, disguised, or misrepresented his income, expenses, and assets, to the point where his personal and business records and income-tax returns were unreliable for evaluating his motion to reduce child support; (2) Ajay's petition to show cause was meritless; (3) Ajay's aforementioned filings were contemplated to distract attention from his own contemptuous behavior and ability to fulfil his financial obligations; and (4) Ajay had "taken every opportunity to harass, antagonize, berate, belittle, and embarrass [Sharon]."

¶ 17 In June 2008, Sharon filed separate petitions for (1) contempt and (2) the imposition of sanctions. In her contempt petition, Sharon alleged that Ajay failed to pay child support and maintenance from October 2007 to April 2008, which totaled \$8,281. Sharon's petition for imposition of sanctions alleged that Ajay had failed to purge himself of contempt in

that he (1) had not provided proof that he modified his life-insurance policy to reflect the parties' children as equal beneficiaries and (2) failed to file a proposed attorney-fee payment plan as mandated by the trial court's January 2008 order.

¶ 18 At a July 2008 hearing on her petitions, Sharon reported that Ajay had tendered payment for the attorney fees and outstanding child support that same day. The trial court then continued the matter for further proceedings regarding the issues of (1) life insurance, (2) additional attorney fees as a result of Sharon's recent pleadings, and (3) attorney-fee interest.

¶ 19 At an August 2008 hearing on the aforementioned continued matters, the parties stipulated that as of August 2008, Ajay owed Sharon \$17,410 for child support, maintenance, attorney fees, and interest. During the hearing, Ajay tendered payment satisfying that financial obligation. Immediately thereafter, the trial court granted Sharon's motion to withdraw her June 2008 petitions for (1) contempt and (2) the imposition of sanctions. With regard to the latter pleading, the court noted that because Sharon's life-insurance claim had yet to be resolved, Sharon's withdrawal on that issue was without prejudice.

¶ 20 In May 2009, Sharon again filed separate petitions for (1) contempt and (2) the imposition of sanctions. In her contempt petition, Sharon alleged that Ajay failed to pay child support and maintenance from August 2008 to March 2009. Sharon's petition for imposition of sanctions alleged that Ajay failed to purge himself of contempt in that he had not modified his life-insurance policy as ordered by the trial court.

¶ 21 Immediately prior to a June 26, 2009, hearing on Sharon's petitions, Ajay *pro se* filed the following three pleadings: (1) a petition for contempt, alleging that in June, July, and August 2006, Sharon failed to comply with the trial court's judgment of dissolution of marriage

regarding visitation with the parties' children; (2) a petition for reduction of child support and other relief; and (3) a petition for change of venue.

¶ 22 Following the presentation of evidence and argument, the trial court (1) entered a \$22,624 judgment against Ajay for child support, maintenance, and associated interest; (2) found Ajay in indirect civil contempt; (3) ordered Ajay to satisfy the court's order before the next hearing; and (4) continued the matter until August 2009, at which time the court would consider (a) the attorney fees Sharon incurred as a result of the proceedings and (b) Ajay's petitions.

¶ 23 At the August 28, 2009, hearing, the trial court considered the affidavits of Sharon's attorneys concerning their respective fees as a result of Sharon's May 2009 petitions, which they calculated were \$10,560. Ajay, who proceeded *pro se*, objected, claiming that the fees incurred were higher than the prevailing market average but did not provide any evidence to support his claim. In awarding Sharon's attorneys \$10,560 for their fees and interest, the court entered a written order, that same day, summarizing, in pertinent part, its oral pronouncements at that hearing as follows:

"[Ajay] was ordered to pay those fees directly to the respective attorneys within [60] days as part of purging the contempt finding made on June 26, 2009, and to personally appear in court on November 2, 2009, *** if those fees were not paid as ordered, at which time [Ajay] would be committed to the custody of the sheriff until the fees were paid. [Ajay] was advised that if he failed to pay those fees and then failed to appear as ordered, a warrant for his arrest may issue."

The trial court's written order also implemented the following procedure:

"Because [Ajay] is a repeat contempt offender who *** has not yet purged the previous finding of contempt before committing the present misconduct, and who has repeatedly voiced his animosity toward counsel, the justice system, Illinois law[,] and the Court to the point that there is small basis to believe that [he] will pay support as ordered, and in an effort to promptly address any future lack of compliance with the orders of support with the least cost and inconvenience to [Sharon] (and to [Ajay] as well, in the event he is found guilty of additional misconduct for which he might have to pay additional attorney's fees incurred by [Sharon]), the following procedure is put in place:

If [Ajay] fails to pay any future child support, maintenance[,] or medical expense payments in full and when due, [Sharon] is granted leave to give [Ajay] notice by mail *** to appear in open court at 3 [p.m.] on the second Monday following when court is in session, at which time [Ajay] shall personally appear and be prepared to answer for any failure to purge this contempt finding and to pay support as ordered. If in such event [Ajay] fails to appear after being given due notice, a warrant may issue for his arrest."

(The court's order also denied Ajay's *pro se* motion for a change of venue as frivolous, which

prompted Ajay to withdraw his petitions for contempt and reduction of child support because he intended to appeal the court's venue determination.)

¶ 25 In September 2009, Ajay appealed the trial court's venue and attorney-fee determinations, and this court affirmed the court's judgment. *In re: the Marriage of Labroo*, No. 4-09-0748 (May 17, 2010) (unpublished order under Supreme Court Rule 23).

¶ 26 C. The Proceedings That Prompted Ajay's Latest Appeal

¶ 27 During the pendency of Ajay's September 2009 appeal and pursuant to the trial court's August 2009 order, Sharon sent correspondences to the court dated October 5, 2009; November 2, 2009; December 2, 2009; January 8, 2010; February 1, 2010; March 8, 2010; and April 13, 2010. Each letter informed the court that although Ajay paid a portion of his monthly child support and maintenance obligation, he was in arrears for the remaining amount. Sharon filed each letter with the court. Each letter indicated that a copy was also mailed to Ajay, both electronically and by "regular mail." In June 2010, Sharon filed a petition for contempt, alleging that Ajay had failed to meet his financial support obligation from September 2009 to May 2010, which resulted in an arrearage of \$30,334.

¶ 28 In July 2010—following this court's affirmance—the trial court entered a written order, which was based on Sharon's monthly letters, requiring Ajay, in part, to appear before the court on August 23, 2010, to be "remanded to the custody of the Sheriff *** until such time as all *previously ordered* family support, both current and arrearage, and attorney fees have been paid." (Emphasis added.)

¶ 29 In September 2010, Ajay—who was again represented by counsel—filed a supplemental motion for substitution of judge for cause, questioning the trial judge's impartiality.

Specifically, Ajay claimed that Sharon's letters were improper *ex parte* communications that the trial judge, Judge Chet W. Vahle, considered when he entered his July 2010 order. Following a hearing on Ajay's supplemental motion conducted later that month, the motion judge, Judge Richard D. Greenlief, rejected Ajay's characterization of Sharon's letters as *ex parte* communications. In addition, the court addressed Ajay's impartiality claims as follows:

"[The court] disagree[s] with that, and [the court] find[s] that is not the case, but here is the reason why. Judge Vahle has specifically stated his reasons for doing the things that he is doing. He had found that this is as a result of a repeat offense. He had found that it is, a number of reasons that he has laid out specifically in his order, which is made a part of the public record.

Nothing from that, [indicates] *** that Judge Vahle's impartiality, as compared necessarily to his patience, has been brought into question."

Thereafter, the motion judge denied Ajay's supplemental motion for substitution of judge for cause.

¶ 30 This appeal followed.

¶ 31 II. THE MOTION JUDGE'S REJECTION OF AJAY'S SUPPLEMENTAL
MOTION FOR SUBSTITUTION OF JUDGE FOR CAUSE

¶ 32 A. The Standard of Review

¶ 33 "Each party shall be entitled to a substitution or substitutions of judge for cause."

735 ILCS 5/2-1001(a)(3)(i) (West 2010). To prevail on a motion for substitution of judge for

cause, the moving party must establish, by a preponderance of the evidence, actual prejudice. *In re Marriage of O'Brien*, 393 Ill. App. 3d 364, 373, 912 N.E.2d 729, 738 (2009). " 'Proving prejudice so as to justify a substitution for cause is a heavy burden and the conclusion of prejudice will not be made lightly.' " *O'Brien*, 393 Ill. App. 3d at 373, 912 N.E.2d at 738 (quoting *In re Petersen*, 319 Ill. App. 3d 325, 340, 744 N.E.2d 877, 888 (2001)).

¶ 34 " 'A trial judge is presumed to be impartial[,] and the burden of overcoming this presumption rests with the party asserting bias, who must present evidence of personal bias stemming from an extrajudicial source and evidence of prejudicial trial conduct.' " *O'Brien*, 393 Ill. App. 3d at 373, 912 N.E.2d at 738 (quoting *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 248, 854 N.E.2d 774, 783 (2006)). Judicial rulings, by themselves, rarely constitute a valid basis for a motion for substitution due to bias or partiality. *Williams v. Estate of Cole*, 393 Ill. App. 3d 771, 777, 914 N.E.2d 234, 239 (2009). A motion judge's determination regarding allegations of judicial prejudice in a motion for substitution of judge for cause will not be reversed unless against the manifest weight of the evidence. *O'Brien*, 393 Ill. App. 3d at 373, 912 N.E.2d at 739.

¶ 35 B. Ajay's *Ex Parte* Communication Claim

¶ 36 Ajay argues that the motion judge improperly denied his supplemental motion for substitution of judge for cause. In support of his claim, Ajay contends that the trial judge considered *ex parte* communications prior to entering a July 2010 written order that required him to appear at an August 2010 hearing to be remanded into the sheriff's custody until he paid Sharon past-due and current family support and attorney fees associated with his dissolution of marriage. We disagree.

¶ 37 *Ex parte* is defined as "[d]one or made at the instance and for the benefit of one

party only, and without notice to, or argument by, any person adversely interested." Black's Law Dictionary 597 (7th ed. 1999).

¶ 38 In his brief to this court, Ajay begins his argument by presupposing that the written letters at issue are *ex parte* communications. In particular, Ajay takes exception that Judge Vahle " 'permitted' and considered the *ex parte* communication, or other communications made to [him] outside the presence of the parties." Ajay claims further that his receipt of Sharon's letters is irrelevant because Judge Vahle did not allow him to be heard before it issued its July 2010 order. We are not persuaded.

¶ 39 Initially, we reject Ajay's characterization of Sharon's letters as *ex parte* communications because, as previously noted, Ajay concedes that he was provided notice of the letters Sharon sent to Judge Vahle.

¶ 40 We also reject Ajay's claim that Judge Vahle did not allow him to be heard before he issued his July 2010 order. We note that in his initial appeal to this court, Ajay did not object to or appeal the portion of the trial court's August 2009 order that devised a streamlined procedure that was necessitated by his repeated unwillingness to comply with his financial obligations absent direct judicial intervention. That procedure (1) granted Sharon leave to provide Ajay notice by mail if Ajay failed to pay any future child support, maintenance, or medical expense payments and (2) scheduled a predetermined monthly hearing at which time Ajay was mandated to personally appear and be prepared to answer for any failure to purge the court's previous contempt finding and to pay support as ordered.

¶ 41 Following remand from this court, the trial court's July 2010 order was consistent with the procedure it implemented in its August 2009 order, which sought to expeditiously and

economically address Ajay's failure to pay *previously ordered* family support, both current and arrearage, and attorney fees as alleged by Sharon. In this regard, we agree with the following rationale provided by the motion judge in describing the intent of the court's July 2010 order:

"[I]t's obvious from this very succinctly worded order[] that there is the opportunity for [Ajay] to show that *** these matters had been *** paid. That [Ajay] was current, that he has purged himself of the contempt.

It gave Judge Vahle the opportunity to consider anything that might be presented and consider the propriety of *** putting [Ajay] in the custody of the sheriff in accord with prior orders directing that very same thing which had been stayed pending appeal, pending *** prior opportunities to purge."

¶ 42 Accordingly, we reject Ajay's argument that the motion judge improperly denied his motion for substitution of judge for cause.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the motion judge's judgment.

¶ 45 Affirmed.