

The Supreme Court of the State of Louisiana

PETER ADAMS, ET AL.

No. 2024-CC-00678

VS.

ENTERGY NEW ORLEANS, INC., ET AL.

IN RE: Peter Adams, et al. - Applicant Plaintiff; Applying For Writ Of Certiorari,
Parish of Orleans Civil, Civil District Court Number(s) 2015-09035, Court of
Appeal, Fourth Circuit, Number(s) 2024-C-0309;

June 18, 2024

Writ application granted. See per curiam.

SJC
JLW
JDH
JTG
WJC
JBM
PDG

Crichton, J., additionally concurs and assigns reasons.
Griffin, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
June 18, 2024

Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2024-CC-00678

PETER ADAMS, ET AL.

VS.

ENTERGY NEW ORLEANS, INC., ET AL.

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of Orleans
Civil

PER CURIAM

We are called upon to determine whether a trial judge who asks about the parties’ settlement negotiations during the course of a bench trial must be recused. For the reasons that follow, we reverse the court of appeal and find recusal is not mandated under the facts of this case.

FACTS AND PROCEDURAL HISTORY

This matter arises from a 2014 natural gas leak in a New Orleans neighborhood. Numerous nearby residents filed suit against several defendants, including Entergy New Orleans, L.L.C. (“ENO”).

A bench trial commenced on May 6, 2024 before Judge Nicole Sheppard. After court recessed on May 13, 2024, Judge Sheppard asked the counsel for the parties if settlement discussions had taken place. Apparently, plaintiffs’ counsel responded that a “low ball” offer had been received from the defense. Noting the “tense demeanor” of the attorneys, Judge Sheppard did not pursue the matter further that day.

The next day, ENO filed a motion to recuse Judge Sheppard, along with a motion for mistrial. Judge Sheppard heard arguments on the motion from the parties and then denied Entergy’s motion to recuse pursuant to La. Code Civ. P. art. 154(C),

finding the motion failed to state a valid basis for recusal. In reasons for judgment, she stated, in pertinent part:

In the instant matter, the Court does not find that ENO has set forth a mandatory ground for recusal under CCP article 151. The Court's decision-making in this case has been guided by the twin imperative duties of a judge: trying this case impartially, affording both Plaintiffs and Defendant the opportunity to put on their respective cases; and, promoting the public's confidence in the integrity and impartiality of the judiciary. Further, ENO has not set forth facts or produced evidence constituting grounds for recusal in this case. It is merely alleged that the Court was made aware of ENO's "bottom line" figure in regards to settlement during the brief discussion, however the Court was not aware that this figure represented ENO's bottom line until counsel disclosed it in open court during the recusal hearing. Settlement negotiations are not admissions of fault, and this Court does not believe the parties' engagement in negotiation, whether successful or not, is prejudicial to either party. In short, the allegation that the Court is somehow biased or prejudiced by its attempt to resolve the matter is unsupported by both statutory and jurisprudential authority, but most importantly, the record of these proceedings.

ENO sought supervisory review of this ruling. The court of appeal granted relief, ordering Judge Sheppard either to self-recuse or apply for the appointment of an ad hoc judge pursuant to La. Code Civ. P. art. 154(B). *Adams v. Entergy New Orleans, Inc.*, 2024-0282 (La. App. 4 Cir. 5/1/24), --- So. 3d ---. Thereafter, Judge Sheppard applied to this court, which appointed Judge Kirk Vaughn as judge ad hoc for purposes of hearing the motion.

After a hearing, Judge Vaughn denied the motion to recuse Judge Sheppard. In oral reasons for judgment, Judge Vaughn explained, "I don't feel that there is any type of substantial or objective basis to feel that she cannot be fair in this case and render a fair and impartial determination of the issues before the court."

ENO sought supervisory review. The court of appeal granted writs and reversed, finding "the district court's inquiry and resulting knowledge of the Relator's last settlement offer to the Respondents reveals that there is a substantial

and objective basis that would reasonably prevent her from presiding over this matter in a fair and impartial manner.”¹ The court of appeal remanded for reallocation to a new judge and a hearing on the motion for mistrial.

Plaintiff now seeks review in this court.

DISCUSSION

We begin our analysis from the well-settled proposition that a “judge is presumed to be impartial.” *Frye v. Ballard*, 2023-00317 (La. 3/14/23), 358 So. 3d 36 (quoting *Slaughter v. Bd. Of Sup’rs of S. Univ. and Agric. & Mech. Coll.*, 2010-1114 (La. App. 1 Cir. 8/2/11), 76 So. 3d 465, 471, *writ denied*, 2011-2112 (La. 1/13/12), 77 So. 3d 970).

In 2021, the legislature amended La. Code Civ. P. art. 151(B) to provide a judge “shall also be recused when there exists a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner.” In interpreting this new amendment, the jurisprudence has held “the addition of Paragraph B recognizes that there may be instances in which actual bias or prejudice cannot be proven, but which nonetheless require the recusal of the judge.” *Anderson v. Dean*, 22-233 (La. App. 5 Cir. 7/25/22), 346 So. 3d 356, 368.

Here, the court of appeal concluded, “the district court’s inquiry and resulting knowledge of the Relator’s last settlement offer to the Respondents reveals that there is a substantial and objective basis that would reasonably prevent her from presiding over this matter in a fair and impartial manner.” *Adams v. Entergy New Orleans, Inc.*, 2024-0309, p. 2 (La. App. 4 Cir. 5/24/24) (unpub’d). Plaintiffs contest this conclusion, arguing that the brief, off the record conversation does not amount to a

¹ One judge on the panel concurred to emphasize that the ad hoc judge engaged in “inappropriate discussions” about the settlement offer amount during the recusal hearing.

substantial and objective basis to warrant recusal. On the other hand, ENO asserts Judge Sheppard's knowledge of the parties' settlement negotiations compromised her ability to try the suit in a fair and impartial manner. In support, ENO cites La. Code Evid. art. 408 for the proposition that settlement offers or discussions are prohibited from disclosure because they are irrelevant and unduly prejudicial.

We agree any evidence of the parties' settlement negotiations is inadmissible. Nonetheless, it has long been recognized that a "judge is trained in the law and is able to disregard irrelevant and possibly prejudicial matter." *State v. Crothers*, 278 So. 2d 12 (La. 1973). Indeed, in her initial reasons denying the recusal motion, Judge Sheppard confirmed that she would not place any weight on the information regarding the settlement negotiations, explaining "[s]ettlement negotiations are not admissions of fault, and this Court does not believe the parties' engagement in negotiation, whether successful or not, is prejudicial to either party." Similarly, after hearing the evidence at the recusal hearing, Judge Vaughn made a factual finding there was no substantial or objective basis to find Judge Sheppard could not render a fair and impartial determination of the issues before the court.

Considering the specific and narrow facts before us, we find no error in Judge Vaughn's finding that recusal of Judge Sheppard was not warranted.² Accordingly, we find the court of appeal erred in reversing that judgment.

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the court of appeal is reversed, and the judgment of the ad hoc judge denying the motion to recuse Judge Nicole Sheppard is reinstated. The case is

² We acknowledge that decisions from other states have suggested a judge should be automatically recused from presiding over a suit when the judge has extensive involvement in pre-trial settlement conferences. *See, e.g., Timm v. Timm*, 195 Conn. 202, 203–04, 487 A.2d 191, 193–94 (1985). However, those specific facts are not presented in the matter currently before us, and we decline to express any opinion on whether Louisiana would follow a similar rule.

remanded to the district court for further proceedings, including consideration of any pending motions.