



THE FAMILY COURT OF THE STATE OF DELAWARE

C----- W-----)	FILE NO. CN 15-06488
Petitioner)	
)	
vs.)	CPI NO.: 16-13554
)	
M----- H-----)	
Respondent)	

In the interest of:

J----- H---- (F) (DOB 9/--/14)

ORDER REGARDING MOTION FOR RECUSAL

Before the Court is a Motion for Recusal, filed on May 19, 2017 and amended on May 30, 2017, by M----- H---- (hereinafter “Mother”), who is self-represented, pertaining to the custody matters of Mother and C----- W----- (hereinafter “Father”), represented by Michael Corrigan, Esq. The Court considers the merits of Mother’s Motion below, following a summarization of the procedural history in this matter.

PROCEDURAL HISTORY

On May 9, 2016, Father filed a Petition for Custody against Mother in the interest of their minor daughter J----- H----- born September --, 2014 (hereinafter “Child”) Father’s Petition requested joint legal custody and shared residential placement of the Child. On May 31, 2016, Mother filed an Answer to Father’s Petition, denying that it was in the Child’s best interest that Father be awarded primary residential placement of the Child. On August 10, 2016, the parties appeared for mediation on Father’s Petition and were unable to reach an agreement. However, following mediation, the Court issued an

Interim Order affording Father gradually increased visitation with the Child pending a final hearing.

On November 2, 2016, the Court held a Case Management Conference (CMC) on the herein Petition. Mother, Father, and Father's counsel were present for the Conference. At the Conference, Father's counsel advised the Court that Father wished to amend the Petition for Custody to request primary residential placement for Father. The Court granted the Amendment. The Court issued an Order to that effect on November 3, 2016, which provided Mother with both written and verbal notice of the amendment to Father's Petition. At the Conference, Mother also requested the Court modify the Interim Order; however, the Court advised Mother that she would need to file a Motion to that effect in order to afford Father the opportunity to respond. The Court would then consider the issue of modification of the interim Order.

On November 2, 2016, Mother filed a Motion to Modify the Interim Order, asserting that Father had failed to comply with the Interim Order and had attended only seven (7) of the twenty (20) visits with the Child. Additionally, Mother asserted that Father, during a visit to Rita's Water Ice with the Child and Mother, had given the Child "a large water ice and a large spoon" and that the Child had spilled the water ice. Mother claimed that Father stated to the Child after the Child spilled the ice, "Do you want me to beat you?" Mother asserted she had been concerned that if she was not present, Father would have "followed through on his threat." Mother requested the Court direct Father to engage in anger management classes, and, following his engagement with those classes, that Father be afforded visitation, to be supervised by Mother, every Wednesday from 5:00 p.m. to 7:00 p.m. and every other Saturday from 4:00 p.m. to 7:00 p.m. Mother also requested that Father pay counsel fees in order for her to afford counsel in this matter and claimed that Father owed in excess of \$6,000 in child support arrears.

Father filed an Answer to Mother's Motion on November 16, 2016, asserting that Mother had failed to appear with the Child for Father's visitation for every visit following the Case Management Conference on November 2, 2016, despite being informed by the Court that the Interim Order remained in effect pending a final hearing. Father also denied that he yelled at the Child and denied that he owed in excess of \$6,000 in arrears

in child support; Father asserted that monies owed to Mother are for retroactive support from the time period between Mother's filing for support and the entry of the current Order.

On November 21, 2016, the Court denied Mother's Motion for Modification of the Interim Order.

On November 28, 2016, Mother filed a Petition for Protection from Abuse (PFA), asserting that Father had threatened her and the Child and that Father had "shot the window of the Master Bedroom in the back of the house." Mother's Petition included the incident recited above involving the alleged threat by Father after the Child spilled her water ice. Mother claimed that a warrant was issued for Father's arrest due to these allegations. On December 9, 2016, the Commissioner conducted the PFA trial on Mother's Petition and found that there was not sufficient evidence to determine by a preponderance of the evidence that an act of domestic violence had been committed.

On December 13, 2016, Mother filed a second Petition for Protection from Abuse, alleging largely the same claims asserted in her original Petition for Protection from Abuse denied on December 9, 2016. However, Mother asserted an additional claim, that on December 11, 2016, Father again shot at the back of her home. On December 13, 2016, the Court determined that *res judicata* barred Mother's Petition with the exception of the December 11, 2016 incident. However, this new Petition was dismissed for Mother's failure to appear on December 29, 2016.

On November 29, 2016, Father filed a Petition-Rule to Show Cause, asserting that Mother had failed to make the Child available for visitation as set forth in the Interim Order.

On December 27, 2016, Father filed a Motion to Compel Discovery, asserting that Mother had failed to respond to repeated requests for discovery.

On January 6, 2017, Father filed a Motion for Attorney's Fees and Costs associated with the filing of the Petitions for PFA. On January 13, 2017, Mother filed an Answer to Father's Motion for Attorney's Fees and Costs; however, Mother's Answer

included responses to Father's Petition-Rule to Show Cause and Father's Motion to Compel Discovery. Mother repeated in greater detail her allegations against Father in support of her Petitions for PFAs and stated she was unable to appear at the second PFA hearing due to a car accident. In her Answer, Mother also asserted that the Commissioner in the initial PFA hearing "already had in her mind what she was going to do"; indicating Mother's belief that the Commissioner was biased against her and had not carefully examined the facts asserted by Mother. Mother also denied Father's allegations in his Petition-Rule to Show Cause and claimed that she never received a Request for Production of Documents by Father.

On January 13, 2017, that same day, Mother filed an Answer to Father's Petition-Rule to Show Cause, asserting that she had made the Child available for all of Father's visitations. In her Answer, Mother claimed that her Motion to Modify the Interim Visitation Order was "foolishly denied," as was the Commissioner's denial of her Petition for Protection from Abuse. Mother also asserted details regarding Father's alleged abandonment of her in 2014 when she was pregnant with the Child and asserted that Father had "committed several acts of violence against me and my children."

On February 8, 2017, Father's Motion for Attorney's Fees and Costs was denied. On February 17, 2017, Father's Motion to Compel Discovery was granted and Mother was granted until March 1, 2017 to produce the requested discovery. On April 13, 2017, Father filed a Motion for Sanctions, asserting that Mother had not yet responded to the Motion for to Compel as ordered by this Court.

The hearing on Father's Petition-Rule to Show Cause and Petition for Custody was originally scheduled for February 1, 2017; however, due to this Judge's medical leave, the hearing was scheduled for Monday, May 22, 2017 from 9:00 a.m. to 4:30 p.m. On Friday, May 19, 2017, at 4:37 p.m., Mother filed a Motion for Recusal, seeking to recuse this Judge, Judge Coonin, in this matter and asserting that Judge Coonin exhibited bias against her during the Case Management Conference on November 2, 2016. On May 30, 2017, Mother filed an Amended Motion for Recusal. Specifically, Mother asserts the following in her Motion:

1. Mother asserts that the presiding Judge, Judge Coonin, holds bias against her and due to that bias or prejudice, he is unable to be fair and impartial in the custody matter in which she is a Respondent.
2. Mother asserts that Judge Coonin has a “personal/professional relationship with the other parties’ [sic] attorney.”
3. Mother asserts that Judge Coonin “had personal knowledge of contested facts/allegations” in her case.

Mother further asserted that Judge Coonin “ranted” at her during the Case Management Conference and indicated that Judge Coonin, due his alleged “personal relationship” with the Father’s attorney, unfairly rendered decisions regarding the interim visitation schedule for Father. Mother claimed that Judge Coonin spoke to her in a “hurried, irritated manner” and also expressed suspicion regarding the rescheduling of her case due to Judge Coonin’s medical leave.

The Court considers the merits of Mother’s Motion for Recusal below.

ANALYSIS

The standard for recusals for bias of a presiding judge is well settled in Delaware. According to the seminal case, *Los v. Los*,¹

“To be disqualified the alleged bias or prejudice of the judge ‘must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case’... When faced with a claim of personal bias or prejudice...the judge is required to engage in a two-part analysis. First, he must, as a matter of subjective belief, be satisfied that he can proceed to hear the cause free of bias or prejudice concerning that party. Second, even if the judge believes that he has no bias, situations may arise where, actual bias aside, there is the appearance of bias sufficient to cause doubt as to the judge’s impartiality. On appeal of the judge’s recusal decision, the reviewing court

¹ *Los v. Los*, 595 A.2d 381, 385 (Del. 1991).

must be satisfied that the trial judge engaged in the subjective test and will review the merits of the objective test.”

In *Los*, the Supreme Court of Delaware further noted the “compelling public policy” reasons for a judge not to disqualify himself unless actual bias or prejudice exists at the mere behest of a litigant. As noted by the Court, “In the absence of genuine bias, a litigant should not be permitted to “judge shop” through the disqualification process.”

In the case at bar, Mother asserts that the presiding judge is biased against her and claims that as a result of this bias, he unfairly renders decisions that favor Father and is unable to be impartial and fair for the remaining proceedings in this matter.

To determine if the Court must grant Mother’s Motion, the Court must engage in the two-part test enumerated in *Los*: first, the Court must be satisfied that he can proceed to hear the case free of bias or prejudice. As noted in *Los*, this is a subjective test; therefore, it may be answered only by the presiding judicial officer to the best of his or her knowledge based on an introspective inquiry.

The Court finds, as a result of this inquiry, that I am not biased against Mother in any way. I hold no ill will towards the Respondent nor any more favorable will towards the Petitioner, and am confident that I will continue to render decisions in this matter with impartiality and fairness. Contrary to Mother’s assertions, the Court became aware of the facts in this case solely from the pleadings before the Court and what exists on the record in this matter; the Court knows no facts rendered in an *ex parte* form from Father’s counsel, as alleged by Mother. Therefore, the Court finds that I am able to fairly and impartially decide this matter, without any prejudice or bias against Mother.

However, the Court must also engage in the second part of the two-part analysis enumerated in *Los*. If I find that I am subjectively confident that I can decide this case with impartiality, I must also determine whether there is the appearance of bias sufficient to cast doubt on the Court’s impartiality.

I find that there is no reasonable appearance of bias sufficient to cast doubt on the Court’s impartiality. Mother’s allegations are completely without merit; the Court has no

personal relationship with Father's counsel such that the Court would be unable to determine this matter impartially. While the Court has a professional relationship with Father's counsel, it is no different than that which this Judge has with any other attorney who practices in this Court. Additionally, as noted above, any facts about this case to which the Court has knowledge are drawn solely from what is on the record; there have been no *ex parte* communications with counsel or Father.

Mother contends the Court showed bias towards her at the November 2, 2016 Case Management Conference, based upon the alleged disparities in the manner in which Mother was addressed and treated when compared to the manner in which Father's counsel was treated. These allegations by Mother are being raised some seven (7) months after the Case Management Conference. A review of the electronically recorded record of that November 2, 2016 Case Management Conference presents no evidence to support Mother's allegations. She was not treated rudely by the Court. The Court did at no time "rant" at her as she alleges, but rather explained the procedural portions of the case and what would be expected of her, like any litigant, in order to effectively present a case at trial.

The Court finds no reason within the bounds of the inquiry expressed in *Los* to recuse myself in this matter. I find that to recuse myself without sufficient reason goes against the well-settled public policy against "judge-shopping," which it seems Mother may be attempting to do. Accordingly, the Court finds that Mother's Motion is without merit and is hereby ***DENIED***.

IT IS SO ORDERED.

June 8, 2017

Date Written Order Issued

ROBERT BURTON COONIN, Judge

RBC/cap

Cc: Counsel and parties via regular mail

Date mailed: _____