Nos. 14-CV-1397 & 14-CV-488 (Consolidated)

DISTRICT OF COLUMBIA COURT OF APPEALS

EDWARD TINSLEY,

Plaintiff/Appellant,

v.

SHEILA BLACKNALL,

Defendant/Appellee.

On Appeal from the Superior Court of the District of Columbia
(2011 LTB 20076)

BRIEF OF APPELLEE

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D.C. APP. R. 28 (a)(2) STATEMENT

The parties in this case are Edward Tinsley and Sheila Blacknall. In the Superior Court, Mr. Tinsley was represented for a period of time by William P. Byrd of the William P. Byrd Law Offices; otherwise, he was *pro se*. Ms. Blacknall was represented by Rebecca C. Baden, Celine Janelle, Louisa Marion, Anna Purinton, and Carolyn Wagner of the Legal Aid Society of the District of Columbia.

In this Court, Mr. Tinsley again proceeds *pro se*. Ms. Blacknall has been represented in prior appeals in this case by Christopher A. Bates, John C. Keeney, Jr., Chinh Le, and Anna Purinton of the Legal Aid Society of the District of Columbia. She is represented in the present consolidated appeals by Jonathan H. Levy and Anna Purinton of the Legal Aid Society of the District of Columbia.

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(2011 LTB 20076)

BRIEF OF APPELLEE

STATEMENT OF THE ISSUES

1. Whether the court properly denied Mr. Tinsley's motion to vacate the consent order.
2. Whether the court properly denied Mr. Tinsley's motion to strike Ms. Blacknall's jury demand.
3. Whether the court's calculation of fines and attorney's fees was an abuse of discretion.
4. Whether the court properly denied the motion for recusal.

STATEMENT OF THE CASE

This case began as a landlord and tenant dispute regarding rent and repairs. It settled in July 2012 and then continued on for over two years of post-settlement contempt proceedings regarding Mr. Tinsley's noncompliance with the settlement terms. The present consolidated cases are the fifth and sixth appeals that Mr. Tinsley has filed in this case. None of Mr. Tinsley's previous appeals was successful.

Initially, Mr. Tinsley sued Ms. Blacknall for eviction based on unpaid rent. Ms. Blacknall counterclaimed for a rent abatement and repairs. The parties settled the case in July 2012 with a consent order that required Mr. Tinsley to complete certain repairs and inspections during the following weeks. Mr. Tinsley failed to complete those repairs and inspections in the time allotted, and Ms. Blacknall filed a motion to show cause why he should not be held in contempt of both the consent order and an earlier order requiring Mr. Tinsley to pay $624 in attorney's fees as a Rule 37 discovery sanction.

In October 2012, the court found Mr. Tinsley in contempt of both orders for failing to obtain a home inspection and a specific type of mold inspection, failing to make specified repairs, and failing to pay the attorney's fees. The court ordered that a daily fine of $50 per day, per item, accrue if Mr. Tinsley did not bring himself into compliance within seven business days. The court also awarded attorney's fees for the time spent obtaining the order, in an amount to be determined later.

Over the next several months, Mr. Tinsley made only slow and halting progress towards purging his contempt, despite the mounting daily fines and repeated warnings from the court that he faced additional sanctions. In April 2013, the court began an evidentiary hearing to make a final determination of whether Mr. Tinsley had purged his contempt and whether he had complied with subsequent orders to repair additional items in Ms. Blacknall's apartment.

Rather than bring his witnesses and present his evidence, Mr. Tinsley filed an affidavit of bias and motion for recusal of the judge – his second attempt to disqualify a judge presiding in this case. He failed to appear for the evidentiary hearing, and he never again voluntarily appeared in this case, absenting himself from all eight hearings scheduled thereafter from April 2013 through March 2014.

On April 1, 2014, the court found Mr. Tinsley's affidavit of bias insufficient and denied the motion for recusal. Mr. Tinsley filed a notice of appeal on April 26, 2014, and that issue is currently before this Court in appeal number 14-CV-488.

On November 24, 2014, the court ordered Mr. Tinsley to pay $65,700 in daily fines that accrued pursuant to the October 2012 contempt order. The court also ordered Mr. Tinsley to pay $5,472 in attorney's fees for the time Ms. Blacknall's counsel spent on the successful show cause motion through October 2012. Those fees were added to the $624 in attorney's fees that Mr. Tinsley still owed under the prior order regarding Rule 37 discovery sanctions, for total attorney's fees of $6,096. Mr. Tinsley filed a notice of appeal on December 10, 2014, currently before this Court in appeal number 14-CV-1397.

On March 2, 2015, this Court ordered the appeals consolidated. Mr. Tinsley filed two opening briefs with two appendices (distinguished herein for citation purposes by the months in which they were filed: March and April). Ms. Blacknall now responds to both with this single consolidated brief.[1]

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[1] Ms. Blacknall also files a separate appendix with several documents from the record not included by Mr. Tinsley, as well as a complete and legible copy of the docket in this case. Mr. Tinsley did not provide Ms. Blacknall with either a list of the issues he would be raising or the contents of his appendices before filing his briefs.

STATEMENT OF THE FACTS

In July 2011, Mr. Tinsley sued Ms. Blacknall for eviction for nonpayment of rent. Ms. Blacknall initially defaulted, and Mr. Tinsley obtained an eviction writ. *See* Blacknall App. 13 (writ of restitution approved on 10/1/11). The court vacated the default after hearing testimony from Ms. Blacknall that she had been hospitalized and that her mailbox was broken during the time this case was filed. *See id.* (docket entries 11/7/11, 11/21/11).

On December 12, 2011, Ms. Blacknall filed an answer and counterclaim based on the breach of the implied warranty of habitability. The answer cited housing code violations including holes in the ceiling, mold, a leaking roof, lack of heat, missing window screens, peeling paint, rats, roaches, and other deficiencies. *See* Answer, filed 12/12/11. The court (Judge Jackson) accepted Ms. Blacknall's jury demand over Mr. Tinsley's objections, and the case was certified to the civil division. *See* Blacknall App. 12 (docket entry 12/12/11).

When Mr. Tinsley learned that the case had been placed on the civil calendar assigned to Judge Combs Greene, Mr. Tinsley filed an affidavit of bias and motion for recusal, and then failed to appear for the scheduling conference. *See* Aff. of Bias, filed 1/4/12; Blacknall App. 12 (docket entry 1/6/12 (failure to appear at scheduling conference)); Mot. for Recusal, filed 1/9/12 (denied 1/13/12).

Despite Mr. Tinsley's failure to appear, the court allowed his claim to proceed and set the case on the landlord and tenant scheduling track. *See* Blacknall App. 12 (docket entry 1/6/12). Over the next few months, Mr. Tinsley failed to comply with his discovery obligations. Ms. Blacknall filed three motions to compel Mr. Tinsley to produce information she needed to prepare for trial. *See* Mots. to Compel, filed 3/6/12 (granted 4/3/12); 5/1/12 (granted in part 5/18/12); 6/8/12 (granted 7/25/12). The court awarded $624 in attorney's fees pursuant to Rule 37 in connection

with the first of these motions. *See* Order docketed 5/25/12 (awarding fees); Order docketed 7/24/12 (denying reconsideration).

During that same period, Mr. Tinsley filed four motions to dismiss Ms. Blacknall's claims and defenses, including three separate motions to strike the answer and jury demand. *See* Pl.'s Mots., filed 12/13/11 (denied orally 1/6/12, and denied in writing 1/13/12); 1/17/12 (denied 4/5/12); 6/7/12 (denied 7/3/12); 7/23/12 (denied 7/24/12).

The court denied each of these motions. At the pretrial conference on July 3, 2012, in recognition of the burdens created by Mr. Tinsley's meritless filings, the court ordered that Ms. Blacknall need not respond to any future motions filed by Mr. Tinsley unless instructed to do so by the court. *See* Blacknall App. 10 (docket entry 7/3/12). On July 24, 2012, the court further ordered Mr. Tinsley to seek leave of court before filing further motions. *See* Order docketed 7/24/12.

The court held a status hearing on July 25, 2012, in advance of the jury trial set for August 27, 2012. The parties nearly reached an agreement, and the case was continued to the next day for that agreement to be finalized. *See* Blacknall App. 9 (docket entry 7/25/12).

On July 26, 2012, the parties agreed to a settlement, styled as a consent order, that resolved all of their claims through that date. *See* Tinsley App. (March) 46-49. Mr. Tinsley and Ms. Blacknall agreed to divide the money in the registry. *Id.* at 48 (¶ 9). The protective order was vacated, and Ms. Blacknall agreed to pay her rent directly to Mr. Tinsley going forward. *Id.* Ms. Blacknall's rent was reduced until repairs were completed. *Id.* at 48 (¶ 10). Mr. Tinsley agreed to dismiss a second landlord and tenant case that he had recently filed against Ms. Blacknall. *Id.* at 49 (¶ 12).

The parties also agreed to a schedule of inspections and repairs. Mr. Tinsley agreed to repair four specific items: affix screens to certain windows, hire a licensed plumber to address

the hot water pressure and leak in the bathroom sink, repair the lock to the mailbox, and secure the bedroom window to its frame. *Id.* at 47-48 (¶ 6). He agreed to hire a home inspector from an attached list to assess whether the roof and other areas required repair, and he agreed to hire a mold inspector with specified credentials to perform mold testing and summarize the findings in a written report. *Id.* at 46-47 (¶¶ 2-5). He agreed to complete the four repairs and hire both inspectors within ten business days. *Id.* at 46-47 (¶¶ 2, 4, 6).

Mr. Tinsley and Ms. Blacknall's counsel signed the consent order on July 26, 2012, and the judge reviewed it with them on the record. *See* Blacknall App. 17-22 (Hr'g Tr. 7/26/12, at 4-9). Ms. Blacknall participated in the hearing by phone. Both parties stated their agreement to the consent order on the record, and the court then approved it. *See id.* at 24, 28-29 (Hr'g Tr. 7/26/12, at 11, 15-16). The original document was given to Ms. Blacknall's counsel to obtain her signature and file with the clerk. *Id.* at 32 (Hr'g Tr. 7/26/12, at 19). The case was marked as settled, and the jury trial was cancelled. *See* Blacknall App. 9 (docket entry 7/26/12).

Within days of signing the consent order, Mr. Tinsley announced that he would not comply with its terms. The clerk rejected the praecipe that the parties had prepared to dismiss the second case, because Mr. Tinsley had printed rather than signed his name. *See* Blacknall App. 34 (*Tinsley v. Blacknall*, 2012 LTB 16654, unfiled dismissal praecipe dated 7/26/12, found in the record here as Ex. 2 to Def.'s Mot., filed 8/3/12). Rather than correct the error, Mr. Tinsley filed a "praecipe regarding signature" stating that he would not sign anything to dismiss any case against Ms. Blacknall. *See* Tinsley App. (March) 90-91.

Mr. Tinsley also failed to obtain the repairs and inspections that he had agreed to complete within ten business days. On September 7, 2012, with the repair and inspections overdue by several weeks, Ms. Blacknall filed a motion to show cause why Mr. Tinsley should

not be held in contempt for his failure to comply with the consent order. *See* Def.'s Mot. to Show Cause, filed 9/7/12. On September 10, 2012, she also filed a motion to show cause regarding Mr. Tinsley's failure to comply with the court's May 25, 2012 order that he pay $624 in attorney's fees as a discovery sanction pursuant to Rule 37. *See* Def.'s Mot. to Show Cause, filed 9/10/12.

The court granted Mr. Tinsley two continuances of the show cause hearing date, first from September 24 to October 4, 2012, and then from October 4 to October 17, 2012. *See* Blacknall App. 8-9 (docket entries 9/24/12, 10/4/12). When Mr. Tinsley failed to appear on the third date set for the hearing, the court heard testimony and found Mr. Tinsley in contempt for failing to complete the repairs and inspections required by the July 2012 consent order, and for failing to pay the $624 in attorney's fees ordered on May 25, 2012. *See id.* at 8 (docket entry 10/17/12).

The next day, the court issued a written order giving Mr. Tinsley seven business days to purge his contempt before monetary sanctions would begin to accrue. Tinsley App. (March) 51-54 (Order Granting Def.'s Mot. to Show Cause, docketed 10/18/12). If Mr. Tinsley failed to comply, he would be fined 1) $50 per day for each day that the repairs listed in paragraph six of the consent order were not completed; 2) $50 per day for each day that the home inspection report required by paragraph two of the consent order was not received by defense counsel; 3) $50 for each day that the mold inspection report required by paragraph four of the consent order was not received by defense counsel; and 4) $50 for each day that defense counsel had not received the $624 attorney fee payment. *Id.* at 53-54. The court also stated that it would award additional attorney's fees for the time Ms. Blacknall's counsel spent obtaining the contempt order, and instructed Ms. Blacknall's counsel to submit affidavits regarding the amount of such

fees. *Id.* at 54. Ms. Blacknall's counsel filed the affidavits on October 31, 2012. *See* Tinsley App. (March) 56-66.

The seven business days expired on October 29, 2012. Mr. Tinsley still did not pay the attorney's fees and made no progress towards repairs or inspections. He also failed to appear for three additional hearings in November 2012. The court issued a bench warrant after Mr. Tinsley did not come to status hearings on November 5 and November 16, 2012. *See* Blacknall App. 7-8 (docket entries 11/5/12, 11/16/12). He was brought to court by the U.S. Marshals on November 28, 2012, and given a notice to return to court on November 30, 2012. *Id.* at 7 (docket entry 11/28/12). When he failed to appear again on that date, the court issued a bench warrant with no bond. *Id.* (docket entry 11/30/12). The court quashed the bench warrant when Mr. Tinsley appeared on December 11, 2012 with newly-retained counsel. *Id.* at 6 (docket entry 12/11/12).

At that point, almost two months after being held in contempt, Mr. Tinsley had not obtained the inspections, made the repairs, or paid the attorney's fees. Mr. Tinsley's counsel represented that Mr. Tinsley would be hiring workers the next week. *See* Blacknall App. 6 (docket entry 12/11/12 ("Plaintiff's counsel made representations that he would have workers in Defendant's apartment on Monday 12/17/12 to complete inspections and evaluate what repairs needs to be done.")). By the status hearing on December 18, 2012, the home inspection had been completed, but no repairs had been made. *See* Tinsley App. (March) 68-71 (home inspection report dated 12/17/12). The court ordered Mr. Tinsley to complete the repairs by December 31, 2012, and warned that if the repairs were not done by then, Mr. Tinsley was facing further contempt. *See* Blacknall App. 6 (docket entry 12/18/12). Two days later, Mr. Tinsley filed a praecipe to remove his counsel, and he has remained *pro se* since that request was granted on January 7, 2013. *See* Praecipe, filed 12/20/12.

From January through March 2013, the court held four more status hearings to assess Mr. Tinsley's progress on the work he had been obligated to finish the prior August. At these hearings, the court admonished Mr. Tinsley for failing to purge his contempt, reminded him that the daily fines were accruing, and warned him that he faced additional sanctions including conditional imprisonment if the work was not done. *See, e.g.*, Blacknall App. 5 (docket entries 1/10/13 (court orders repairs and inspections by February 19, 2013 and warns of further contempt); 2/20/13 (court orders further repairs); 3/12/13 (court warns Mr. Tinsley he will be incarcerated if he fails to at least identify contractors by 3/18/13); 3/18/13 (court orders repairs to be completed by 4/1/13); Blacknall App. 39 (Hr'g Tr. 2/20/13, at 50) (court warning Mr. Tinsley that sanctions were still accruing). The court also ordered Mr. Tinsley to repair several issues that were not included in the consent order or subject to the contempt order, but which had been identified by the home inspector or that had since come to require repair. *See*, *e.g.*, Blacknall App. 5 (docket entries 1/10/13 (water heater), 2/20/13 (window pane, ceiling paint, and roof)).

By mid-February 2013, Mr. Tinsley finally finished the four repairs required by paragraph six of the consent order – six months after the deadline, and four months after being held in contempt. He obtained a mold inspection, but the court found it to be insufficient. Mr. Tinsley failed to use an inspector from the agreed-upon list with the required "CMC" or "CMI" accreditation, contracted for only minimal "clearance testing" (normally used post-remediation) rather than a full initial diagnostic test, and did not obtain a written report as the consent order required. *See* Tinsley App. (March) 46-47 (consent order, ¶ 4); Blacknall App. 5 (docket entry 3/12/13 ordering Mr. Tinsley to hire a CMC or CMI inspector); *id.* at 42-46 (Hr'g Tr. 3/18/13, at 5-9) (discussion of mold testing).

The court ordered Mr. Tinsley to fully comply with the court's orders by April 1, 2013 or face incarceration for civil contempt. *See* Blacknall App. 47 (Hr'g Tr. 3/18/13, at 15). On April 2, 2013, the court began an evidentiary hearing to assess Mr. Tinsley's compliance. Ms. Blacknall presented evidence that Mr. Tinsley had still not obtained a mold inspection that fulfilled the requirements of the consent order and had not completed a window repair that had been subsequently ordered by the court. *See, e.g.*, Blacknall App. 51-52 (Hr'g Tr. 4/2/13, at 8-9 (Mr. Tinsley describing receipt for "limited" mold consultation).

The court continued the evidentiary hearing to April 10, 2013 to give Mr. Tinsley the opportunity to bring his witnesses and prepare evidence of his compliance. *See* Blacknall App. 54-56 (Hr'g Tr. 4/2/13, at 36-39); *see also id.* at 59 (Mr. Tinsley confirming availability). The court made clear to Mr. Tinsley that he would have a full opportunity to present his evidence and arguments, but that if the court found that he had unjustifiably failed to comply with the court's orders, it would no longer tolerate half-done work or excuses – Mr. Tinsley would face incarceration until he brought himself into compliance. *Id.* at 54-56.

On April 8, 2013, Mr. Tinsley filed an affidavit of bias against Judge Krauthamer. *See* Aff., filed 4/8/13. The day after, he filed a "Praecipe Regarding Medical Emergency," stating that he would not be attending the hearing on April 10 because "[t]his case has been the cause of great anxiety for me. Other factors that have developed in my life has multiplied that anxiety, causing me to be extremely depressed, and on the verge of committing suicide. I will be seeking help from a professional." Tinsley App. (April) 54. Mr. Tinsley failed to appear at the April 10 hearing, and he did not appear for any scheduled court hearing held thereafter in this case.

The court issued a bench warrant for Mr. Tinsley's non-appearance, but stayed it, informing Mr. Tinsley via a written order that he had one more opportunity to voluntarily return to court and

present his evidence on April 26, 2013. Tinsley App. (April) 56-57. The court also ordered that Mr. Tinsley bring documentation of the medical treatment referenced in his praecipe as the reason for his non-appearance. *Id.* Mr. Tinsley did not provide that documentation and never again cited a medical excuse for his absence. He filed another affidavit of bias and recusal motion on April 19, 2013, and then failed to appear in court once more on April 26, 2013. *See* Tinsley App. (April) 38-53; Blacknall App. 4 (docket entry 4/26/13).

The court again issued a bench warrant, but it was ineffective. Mr. Tinsley failed to attend hearings scheduled for July 2, 2013, July 23, 2013, August 22, 2013, October 25, 2013, November 21, 2013, December 9, 2013, and March 7, 2014. *See* Blacknall App. 2-4 (docket entries 7/2/13, 7/23/13, 8/22/13, 10/25/13, 11/21/13, 12/9/13, 3/7/14). He also never obtained the appropriate mold inspection or completed the window work. In August 2013, the court granted Ms. Blacknall's motion to order Mr. Tinsley to deposit funds into the court registry so that Ms. Blacknall could obtain a mold inspection that complied with the terms of the consent order, as well as replace windows as required by a subsequent order of the court. *See* Tinsley App. (March) 119-120 (Order docketed 8/27/13). The court stated that, if Mr. Tinsley did not pay as ordered, he would "face additional contempt sanctions, including but not limited to imprisonment until he has brought himself into compliance with the Court's orders by having window repairs and a proper mold inspection completed." *Id.* at 120.

Mr. Tinsley did not deposit the money by the deadline. On October 4, 2013, U.S. Marshals located Mr. Tinsley and brought him to court. Mr. Tinsley finally made the registry deposit that day, and the court quashed the bench warrant. Blacknall App. 3 (docket entries 10/4/13). The last item required by the consent order was completed on December 5, 2014, when Ms. Blacknall contracted for a sufficient mold inspection – sixteen months after the deadline in the consent order.

The court ordered the money disbursed directly to the contractor. *See* Blacknall App. 2-3 (docket entries 10/25/13, 12/16/13, 1/16/14).

The court then set out to resolve all remaining issues. On January 8, 2014, the court issued an omnibus order denying seven of Mr. Tinsley's outstanding motions.[2] *See* Tinsley App. (March) 138-140. On April 1, 2014, the court denied Mr. Tinsley's motions for recusal. It ruled that the affidavit of bias was insufficient, as the only allegations of bias cited by Mr. Tinsley were statements and rulings made by the court in the process of presiding over the lengthy proceedings in this case. Tinsley App. (April) 36. Mr. Tinsley appealed that ruling on April 26, 2014, and that appeal is before this Court as appeal number 14-CV-488.

On April 28, 2014, Ms. Blacknall filed a motion for calculation of fines and attorney's fees that had accrued due to Mr. Tinsley's extended period of contempt. Tinsley App. (March) 27-42. Mr. Tinsley filed an opposition on May 14, 2014. *Id.* at 95-96. On November 24, 2014, the court granted the motion and ordered Mr. Tinsley to pay $65,700 in daily fines that accrued pursuant to the October 2012 contempt order. *Id.* at 21. The court also ordered Mr. Tinsley to pay $5,472 in attorney's fees for the time Ms. Blacknall's counsel spent on the successful show cause motion through October 2012. *Id.* at 25. Those fees were added to the $624 in attorney's fees that Mr. Tinsley still owed under a prior order regarding Rule 37 discovery sanctions, for a total attorney's fees award of $6,096. *Id.* Mr. Tinsley filed a notice of appeal on December 10, 2014, and that appeal is before this Court as appeal number 14-CV-1397. This court subsequently consolidated the appeals.

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[2] After the court ordered Mr. Tinsley to seek leave of court before filing future motions, Mr. Tinsley began titling his motions as "motion for leave" to file each motion. Pursuant to the court's order of July 3, 2012, Ms. Blacknall did not respond to any of these motions because she was not instructed to do so by the court.

SUMMARY OF THE ARGUMENT

1. Mr. Tinsley's appeal of the validity of the consent order is untimely. The consent order disposed of all the pending non-collateral matters in the case and was therefore immediately appealable. Mr. Tinsley failed to file a notice of appeal within 30 days of the docketing of the consent order (or within 30 days after Mr. Tinsley's motion to vacate was denied). At any rate, there is no basis for reversing the consent order, which Mr. Tinsley voluntarily entered into in open court.

2. Mr. Tinsley's challenge to the denial of his motion to strike the jury demand was mooted by the consent order, which resulted in the dismissal of the claims to which the jury demand related. No jury trial was held.

3. The court's calculation of fines and attorney's fees was proper. Mr. Tinsley waived his right to argue about whether and when he complied with the court's orders by willfully absenting himself from the proceedings below. He also failed to raise these arguments in his opposition to Ms. Blacknall's motion for calculation of fines and attorney's fees. Moreover, the court's findings are well-supported by the record, and the fines and attorney's fees imposed are appropriate sanctions for civil contempt.

4. The Superior Court properly denied Mr. Tinsley's motion for recusal. Mr. Tinsley did not cite any allegations of personal bias in his affidavit. Every alleged instance of bias was in fact the court appropriately ruling on matters through the proceedings of this case.

ARGUMENT

I. THE CHALLENGE TO THE VALIDITY OF THE CONSENT ORDER IS UNTIMELY AND LACKS MERIT.

A. Mr. Tinsley Did Not Timely Appeal the Validity of the Consent Order.

Mr. Tinsley did not timely appeal the validity of the consent order that settled this case in July 2012. That consent order was a final order because it was approved by the court and fully resolved all claims in this case. *See In re Estate of Chuong*, 623 A.2d 1154, 1157 (D.C. 1993) (en banc) ("An order is considered final for purposes of appeal if it disposes of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered.") (internal quotation marks and citation omitted).

On August 6, 2012, Mr. Tinsley filed a motion seeking to vacate the consent order, arguably tolling the 30-day deadline for appeal. *See* Pl.'s Mot., filed 8/6/12; D.C. App. R. 4(a)(4)(A)(iii). The court denied that motion on October 17, 2012. *See* Blacknall App. 8. Mr. Tinsley had at most 30 days from October 17, 2012 to appeal the consent order. D.C. App. R. 4(a)(4)(B)(i) ("The time for filing a notice of appeal fixed by this section runs from the entry on the Superior Court docket of an order fully disposing of any of the foregoing motions," including a motion to vacate the order.).

Mr. Tinsley did not timely appeal. The operative notice of appeal was filed on December 10, 2014 – over two years after the denial of the motion to vacate the consent order that resolved this case. As Mr. Tinsley did not timely appeal after the court denied the motion to vacate the consent order, the court should dismiss that portion of his appeal.

B. Mr. Tinsley Agreed to the Settlement, and It Was Entered As a Consent Order by the Court.

Even if Mr. Tinsley had timely appealed the validity of the consent order, he presents no grounds for reversal. Mr. Tinsley argues that the July 26, 2012 consent order is invalid because he revoked his consent before Ms. Blacknall physically signed the agreement. But both Mr. Tinsley and Ms. Blacknall accepted the terms of the settlement, and it was approved and entered by the court as a consent order on July 26, 2012. Mr. Tinsley was not at liberty to revoke it later.

On July 26, 2012, Mr. Tinsley and Ms. Blacknall's counsel signed the consent order settling all claims in this case, and the record includes the order bearing Mr. Tinsley's signature. Tinsley App. (March) 49; *see also id.* at 28 ("Begrudgingly, the Plaintiff signed the Consent Order[.]"). *But cf.* Tinsley Br. (March) 11 (inaccurately suggesting that the consent order lacked Mr. Tinsley's signature).

With Ms. Blacknall actively participating in the proceedings by phone, the judge read the consent order in its entirety into the record. *See* Blacknall App. 17-22 (Hr'g Tr. 7/26/12, at 4-9). The judge then asked Mr. Tinsley a series of questions, through which he affirmed his understanding of the agreement; stated again that he accepted the agreement; and stated that he had not been coerced and accepted it voluntarily, knowingly, and intelligently. *Id.* at 28-29 (Hr'g Tr. 7/26/12, at 15-16). Ms. Blacknall also confirmed her agreement. *Id.* at 24, 29-30 (Hr'g Tr. 7/26/12, at 11, 16-17).

The judge then approved and signed the settlement. *Id.* at 29-30 (Hr'g Tr. 7/26/12, at 16-17). The court thus acknowledged the agreement of the parties and gave the settlement the effect of a court order. *See D.D. v. M.T.*, 550 A.2d 37, 48 (D.C. 1988) (noting that a settlement which has been framed as a consent order is subject to enforcement like any other court order). Based on the settlement, the court cancelled the trial date. *See* Blacknall App. 9 (docket entry 7/26/12).

In reliance on the settlement, the parties prepared documents to disburse funds from the court registry and dismiss another case pending between the parties. Blacknall App. 30 (Hr'g Tr. 7/26/12, at 17).

The fact that Ms. Blacknall did not physically sign the consent order until later has no effect on the binding nature of the agreement between Ms. Blacknall and Mr. Tinsley embodied in the consent order. Indeed, "[t]he purpose of a signature is simply to demonstrate mutual assent to a contract, but that may be shown instead, or in addition, by the conduct of the parties." *Davis v. Winfield*, 664 A.2d 836, 838 (D.C. 1995) ("When the parties to a contract set forth the terms of their agreement in writing and manifest in some manner a clear intent to be bound, the absence of one party's signature on the written agreement will not defeat or invalidate the contract."). The parties' settlement agreement was thus binding when they evidenced their agreement before the court and began to implement their agreement.

Indeed, Mr. Tinsley accepted the benefits of the agreement, including the resumption of Ms. Blacknall's rent payments directly to him and the release of funds to him from the court registry, and therefore cannot disavow that same agreement. *See Brown v. Hornstein*, 669 A.2d 139, 143 (D.C. 1996) (noting that a party to a contract cannot disaffirm the contract while also accepting its fruits).

Mr. Tinsley's contention that he could revoke the consent order after he accepted it, Ms. Blacknall accepted it, and the court approved and entered it, has no merit.[3]

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[3] Mr. Tinsley's argument that the consent order was not valid until the signed original was filed with the clerk also has no legal basis. The subsequent filing was a purely ministerial act. *See Weedon v. Gaden*, 419 F.2d 303, 306 (D.C. Cir. 1969).

II. THE APPEAL OF THE DENIAL OF THE MOTION TO DISMISS THE JURY DEMAND IS MOOT AND LACKS MERIT.

Mr. Tinsley asks the Court to review the July 3, 2012 denial of his motion to dismiss Ms. Blacknall's jury demand. Because this case settled shortly thereafter, there was no trial of any kind, and Ms. Blacknall's request for a jury trial, along with Mr. Tinsley's motions opposing a jury trial, became moot. *See Settlemire v. D.C. Office of Employee Appeals*, 898 A.2d 902, 904-905 (D.C. 2006) ("[W]hen the issues presented are no longer 'live' or the parties lack 'a legally cognizable interest in the outcome,' a case is moot."). *See also Dominique v. Ralph D. Kaiser Co.*, 479 A.2d 319, 323 (D.C. 1984) ("since a jury would have had no opportunity to perform its function, the pre-trial denial of appellant's motion for a jury trial, even if we assume an abuse of discretion or a failure to exercise discretion, was necessarily harmless.").

At any rate, the court acted well within its discretion in denying the motions to dismiss the jury demand. The court (Judge Jackson) accepted Ms. Blacknall's jury demand on December 12, 2011, after the court had previously found cause to vacate the default judgment and continue the case for settlement discussions. *See* Super. Ct. L&T R. 6 (permitting jury demands to be made on the date of the initial return or at "such extended time as the Court may allow for good cause shown."). The court also properly denied Mr. Tinsley's motions to dismiss Ms. Blacknall's jury demand because there was no valid basis for changing the initial ruling.

III. THE COURT APPROPRIATELY FINED MR. TINSLEY FOR CONTEMPT.

A. The Superior Court Had Jurisdiction to Issue the Contempt Fines.

As an initial matter, Mr. Tinsley's suggestion that the court lacked jurisdiction to issue the contempt fines has no merit. Tinsley Br. (Mar.) 5. The court's certification of the case to a civil calendar for jury trial had no impact on the court's jurisdiction. *See, e.g.*, *Threatt v. Winston*, 907 A.2d 780, 783 n.4 (D.C. 2006) ("The establishment of the functional divisions of

the Superior Court - including the Landlord-Tenant Branch - serves administrative convenience but does not establish the individual branches as separate courts or delimit their power as tribunals of the Superior Court with general jurisdiction over civil actions at law or in equity in the District of Columbia.") (citing D.C. Code § 11-921 (2001)).

B. The Daily Fines Ordered by the Superior Court Are a Proper Sanction for Mr. Tinsley's Civil Contempt.

Court orders require "full and unstinting compliance." *D.D. v. M.T.*, 550 A.2d 37, 44 (D.C. 1988). "One who is subject to a court order has the obligation to obey it honestly and fairly, and to take all necessary steps to render it effective. . . . Indeed, he or she must be diligent and energetic in carrying out the orders of the court." *Id.* The court possesses "inherent authority to enforce its orders by whatever means." *Link v. District of Columbia*, 650 A.2d 929, 932-33 (D.C. 1994). Where a party fails to carry out its obligations under a court order, the court has broad discretion to fashion appropriate remedies. *Id.* "[T]he decision to hold an individual in contempt is within the sound discretion of the trial court," and will be reversed "only upon a clear showing of an abuse of discretion." *Hill v. Bonded Adjustment Assoc.*, 398 A.2d 16, 17 (D.C. 1979).

Sanctions for civil contempt serve two purposes: "to enforce compliance with an order of the court and to compensate the aggrieved party for any loss or damage sustained as a result of the contemnor's noncompliance." *D.D.*, 550 A.2d at 43; *see also Giles v. Crawford Edgewood Trenton Terrace*, 911 A.2d 1223, 1224 (D.C. 2006). Daily fines are recognized as an appropriate means of compelling compliance with court orders in situations of civil contempt. *See, e.g.*,

D.D., 550 A.2d at 43 (noting that sanctions for civil contempt may include "a staggering daily fine.").[4]

The daily fines assessed in this case are appropriate sanctions for Mr. Tinsley's contempt of the court's orders. On October 18, 2012, the court issued a clear, written order informing Mr. Tinsley that he had been found in contempt for failing to comply with three of his obligations under the July 26, 2012 consent order, and for failing to comply with the court's May 25, 2012 order to pay attorney's fees as a discovery sanction. Tinsley App. (March) 51-54. The court's approach to sanctions was quite measured; rather than imposing fines back to the deadlines in the court's earlier orders or having fines accrue immediately going forward, it gave Mr. Tinsley seven additional business days to bring himself into compliance before any fines would be imposed. *Id.* at 53-54. If he did not purge his contempt within that time, he would be fined $50 per day, per item, until he complied with his obligations. *Id.*

The contempt sanction was properly intended and designed to compel Mr. Tinsley's compliance with the consent order. Mr. Tinsley could have avoided these fines entirely by complying with court's orders by the original deadlines in June 2012 (for paying the Rule 37 attorney's fees) and August 2012 (for the repairs and inspections). He could have avoided the fines entirely a second time by purging his contempt within seven business days of October 18, 2012, before the fines began to accrue. And he could have minimized the fines at any point thereafter by promptly fulfilling his obligations to get a home inspection, complete specified

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[4] Mr. Tinsley cites *United States v. United Mine Workers*, 330 U.S. 258 (1947), to argue that the fines are improper because they were not based on Ms. Blacknall's actual losses. Tinsley Br. (March) 22. This ignores the other purpose of such fines, namely to secure compliance. *See United Mine Workers*, 330 U.S. at 303-304 (fine for civil contempt can be set in an amount "commensurate with the injury inflicted *or is necessary to secure compliance*" with the order of the court) (emphasis added).

repairs, contract for a mold inspection that met the consent order's requirements – all things he had agreed to do – and pay $624 in attorney's fees.

The court has a strong interest in enforcing its orders, including its orders regarding civil contempt. Mr. Tinsley's obstinate disregard for the court's authority and disrespect for the agreement he entered with Ms. Blacknall has resulted in a considerable waste of the time and resources of the court, was well as that of the parties and their counsel. Had Mr. Tinsley used the time, energy, and money that he has expended on motions and appeals in this case to simply comply with the court's orders, none of this would have been necessary. The daily fines ordered to compel Mr. Tinsley's compliance are a proper sanction for Mr. Tinsley's contempt.

C. Mr. Tinsley Waived All Substantive Defenses.

Mr. Tinsley waived all substantive defenses to the fines by both failing to appear in court to present appropriate evidence and failing to raise the defenses in his written submissions. As he did not raise the issue of the alleged inaccuracy or excessiveness of the fines and attorney's fees below, he has waived it for appeal.

Mr. Tinsley waived his opportunity to argue about the dates of his compliance with the consent order when he did not appear at the evidentiary hearings set to assess his compliance. *See In re Pinckney*, 759 A.2d 1069, 1071 (D.C. 2000) ("By failing to respond to the Court's show cause order, Respondent defaulted on the issue of whether such cause exists, admitted the existence of liability, and has conceded that the imposition of [sanctions] is warranted."). The court began an evidentiary hearing on April 2, 2013, to resolve the factual dispute regarding Mr. Tinsley's compliance with the court's orders. The court continued the evidentiary hearing to April 10, 2013 to give Mr. Tinsley the opportunity to present evidence of compliance. *See* Blacknall App. 54-57 (Hr'g Tr. 4/2/13, at 36-39). Mr. Tinsley did not appear for the April 10 hearing. *See* Blacknall App.

4 (docket entry 4/10/13). The court gave Mr. Tinsley another opportunity to present his evidence on April 26, 2013, which he did not attend either. *See* Tinsley App. (April) 56-57 (Order Regarding April 26, 2013 Evidentiary Hearing); Blacknall App. 4 (docket entry 4/26/13).

Mr. Tinsley also raised no substantive objections and presented no alternative calculations in his response to the motion for calculation of fines and attorney's fees below, but simply asserted that the judge was biased. Tinsley App. (March) 95-96. He thereby waived the arguments that he now seeks to make for the first time on appeal. *See Wallace v. Skadden, Arps, Slate, Meagher & Flom LLP*, 799 A.2d 381, 388 (D.C. 2002) (citing *Miller v. Avirom*, 384 F.2d 319, 321-322 (D.C. Cir. 1967)).

Mr. Tinsley asserts that he may raise in this appeal arguments that he failed to raise at the evidentiary hearings and in his written opposition because of his surprise at the court's ruling on the motion. Tinsley Br. (March) 4 ("the Plaintiff was blindsided by the fact that Superior Court *calculated and awarded* fines and attorney's fees in the same order") (emphasis in original). The title alone of Ms. Blacknall's motion put Mr. Tinsley on notice of what Ms. Blacknall was asking the court to order. Tinsley App. (March) 27 ("Defendant's Motion for Calculation of Fines and Attorney's Fees," filed 4/28/14). The contents of the motion propose in detail how the court should calculate the fines and fees in light of Mr. Tinsley's extended contempt. *Id.* at 33-38. Mr. Tinsley had the opportunity to be heard on these arguments, and he waived that opportunity. This Court should not reward Mr. Tinsley's litigation strategy of failing to appear at scheduled hearings by allowing him to raise new arguments on appeal.

D. The Daily Fines for Mr. Tinsley's Contempt of the Repair and Inspection Requirements of the Consent Order are Proper.

If this Court nonetheless addresses the merits of Mr. Tinsley's waived challenges to the daily fines, it should reject those challenges. None of the fines is an abuse of discretion.

1. The January 10, 2013 Order Did Not Suspend or Terminate Any Daily Fine.

Mr. Tinsley contends that an oral order on January 10, 2013, stopped the daily repair fines from accruing.[5] *See* Tinsley Br. (March) 15, 26-27. Even if Mr. Tinsley could raise this argument for the first time on appeal, it has no factual or legal basis.

By the clear terms of the October 18, 2012 contempt order, the daily fines for failing to make repairs began on October 29, 2012 and continued until the repairs were completed. The January 10, 2013 oral order did not vacate, amend, or even refer to the October 18, 2012 order. Nor did it address daily fines. It merely acknowledged that as of that date, Mr. Tinsley's contempt was ongoing, and set yet another date by which Mr. Tinsley was to complete the repairs or face *additional* sanctions *beyond* the $50 per day fine. Accordingly, the January 10, 2013 order did not stop the daily fines from accruing.

2. The Requirements of the Consent Order Were Not Met By Actions Taken By Mr. Tinsley Before He Signed the Order.

Mr. Tinsley half-heartedly argues that an inspection performed on April 13, 2012, satisfied his obligation to obtain home and mold inspections under the consent order executed July 26, 2012. Tinsley Br. (March) 14, 19, 21, 27-28. However, he admits elsewhere in his brief that he was obligated to obtain additional inspections: "Begrudgingly, the Plaintiff signed the Consent Order stating that he would obtain *another* home inspection." *Id.* at 28 (emphasis added); *see also id.* at 21 ("Plaintiff begrudgingly signed the Consent Agreement that he would obtain *another* mold inspection) (emphasis added). Mr. Tinsley has thus conceded that the April 13, 2012 inspection could not have satisfied the requirements of the consent order.

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[5] Although Mr. Tinsley's argument hinges on an order made at the January 10, 2013, hearing, he did not provide a copy of the transcript of that hearing. That alone justifies rejection of his argument.

3. The Home Inspection Fine Was Proper.

When he settled this case on July 26, 2012, Mr. Tinsley agreed to obtain a hire a home inspector with specified credentials within ten business days. The inspector was to conduct an inspection of certain conditions in the apartment and create a written report within 45 days of the execution of the consent order. *See* Tinsley App. (March) 46 (consent order, ¶ 2).

Mr. Tinsley concedes that the home inspection required by the consent order was not performed until December 17, 2012. Tinsley Br. (March) 14, 28 (citing Tinsley App. (March) 68-71) (home inspection report dated 12/17/12). Using the calculation set forth in the October 2012 contempt order, the court fined Mr. Tinsley $50 per day for the 48 additional days - starting October 29, 2012, and ending December 17, 2012 - that he remained in contempt of the order to complete the home inspection required by the consent order. Tinsley App. (March) 21. That fine totaled $2,400. There is no abuse of discretion.

4. The Repairs Fine Was Proper.

When he settled this case on July 26, 2012, Mr. Tinsley agreed to complete four repairs to Ms. Blacknall's apartment within ten business days: affix screens to certain windows, have a licensed plumber ensure that there was adequate hot water pressure in the bathroom sink and that the sink was not leaking, repair the lock on the mailbox, and secure the bedroom window to its frame. Tinsley App. (March) 47-48 (consent order, ¶ 6). None of these repairs was completed timely. The court's determination that Mr. Tinsley finished the repairs on February 15, 2013, is well-supported by the record. *See, e.g.*, Tinsley App. (March) 115 (receipt for mailbox lock and window screens, dated 2/15/13). The court fined Mr. Tinsley $5,400 in daily fines for the 108 days after he was told fines would start and before he completed the repairs required by paragraph six of the consent order. Tinsley App. (March) 21. There is no abuse of discretion.

5. The Mold Inspection Fine Was Proper.

When he settled this case on July 26, 2012, Mr. Tinsley agreed hire an "American Council for Accredited Certification Microbial Investigator or Consultant" to inspect for mold and create a written report listing any necessary remediation. The consent order required the mold inspector to be selected from an attached list and have a "CMC" or "CMI" credential notation. The mold inspection was required to include mold testing, and the written report had to be produced within 45 days. *See* Tinsley App. (March) 47 (consent order, ¶ 4).

The court's finding that a sufficient mold inspection was not completed until December 5, 2013 is well-supported by the record. The evidence supports the finding that the January 24, 2013 testing was performed by an ineligible inspector, as Mr. Tinsley did not hire a person with the agreed-upon CMC or CMI certification. *Compare* Tinsley App. (March) 47 (paragraph 4(a) of the consent order), *with id.* at 111 (Ex. C to consent order, showing "911 Restoration of Baltimore" identified by a "CMRS" notation). Additionally, on April 2, 2013, Mr. Tinsley presented to the court a receipt for a "limited" mold test, in violation of the court's instruction on March 18, 2013, that he obtain a full "initial diagnostic inspection" with "no limitations" on the inspector, and include production of a written report. *Compare* Blacknall App. 51-52 (Hr'g Tr. 4/2/13, at 8-9) *with* Blacknall App. 44-46 (Hr'g Tr. 3/18/13, at 7-9).

In the motion for calculation of fines and attorney's fees, Ms. Blacknall presented a conservative calculation of the daily fine based on the date on which Mr. Tinsley contended before the court that a sufficient mold inspection had been done. Tinsley App. (March) 36-37. Ms. Blacknall also noted that a sufficient inspection was not actually completed until December 5, 2013, and that if the court calculated the fine for the full period, it would be much higher. *Id.* at 37 (n.6). The court found it appropriate to calculate the fine based on its factual finding that a

mold inspection that complied with the consent order was not completed until December 5, 2013. Tinsley App. (March) 21.

The court calculated that Mr. Tinsley accrued $20,100 in daily fines for 402 days starting when he was told fines would begin to accrue and ending on the date a sufficient mold inspection was conducted. Tinsley App. (March) 21. The court's determination that a sufficient mold inspection was not conducted until December 5, 2013 is well-supported by the record. There is no abuse of discretion.

E. The Daily Fine for Mr. Tinsley's Contempt of the Order to Pay Attorney's Fees Awarded Pursuant to Rule 37 Is Proper.

Mr. Tinsley was ordered on May 25, 2012 to pay $624 in attorney's fees to Legal Aid pursuant to Rule 37, after Ms. Blacknall filed the first of three successful motions to compel his discovery responses. *See* Order docketed 5/25/12. The payment was due on June 15, 2012. *Id.* Mr. Tinsley filed a motion for reconsideration of that order, which was denied on July 24, 2012. *See* Order docketed 7/24/12. Mr. Tinsley did not appeal the order requiring him to pay the $624 or the denial of his motion to reconsider.

Mr. Tinsley has not made the payment. The court found him in contempt of the May 25, 2012 order and warned that he would be fined $50 per day if he did not make the payment by October 29, 2012. *See* Tinsley App. (March) 53-54. The court subsequently calculated the fine as having accrued for 756 days, for a total fine of $37,800 through November 24, 2014.[6] Tinsley App. (March) 21. Ms. Blacknall did not move for an award of the daily fines for failure to pay

[6] The court further ordered that the daily fine was suspended as of November 24, 2014, but would be reinstated if Mr. Tinsley did not pay the fines and fees within 30 days. Tinsley App. (March) 25. As Mr. Tinsley has still not paid the $624 attorney's fee award through today (May 11, 2015), the court would be justified in increasing the fine if it chose to do so.

the attorney's fees in her motion for calculation of fines and attorney's fees. However, the court was well within its discretion to order Mr. Tinsley to pay the accrued daily fine.

After having been found to have violated the court's rules regarding discovery, Mr. Tinsley neither appealed nor complied with the court's order to pay the attorney's fee awarded pursuant to Rule 37. He did not even appear at the show cause hearing regarding his failure to comply with the court's order. Civil contempt daily fines are an appropriate and potentially useful tool for courts to enforce Rule 37 sanctions, and their use here was proper and should be affirmed.[7] Indeed, because the harm from Mr. Tinsley's contemptuous failure to pay the Rule 37 sanction is primarily directed at the court, rather than at Ms. Blacknall (unlike the harm from Mr. Tinsley's failure to make required repairs or complete required inspections), it would also have been appropriate to order all or a portion of those fines to be paid to the court.

IV. THE COURT'S ORDER AWARDING ATTORNEY'S FEES IS PROPER.

Mr. Tinsley argues that the court abused its discretion by ordering him to pay $5,472 in attorney's fees associated with obtaining the October 18, 2012 contempt order. Tinsley App. (March) 25. The fees awarded in this case are well-supported by the law and the record. Courts routinely include attorney's fees as a sanction for civil contempt. *D.D.*, 550 A.2d at 44 ("The 'American Rule' notwithstanding, the contemnor is ordinarily required to pay the aggrieved party's counsel fees" in cases of civil contempt). The determination of the reasonableness of an

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[7] While articulating a general rule against the use of civil contempt to enforce a money judgment or an award of counsel fees and costs, this Court stated that it "express[ed] no opinion as to the availability of civil contempt as a means of enforcing compliance with orders to pay money based on [Rule 11 or Rule 37 of the Superior's Court's Rules of Civil Procedure]." *In re Estate of Bonham*, 817 A.2d 192, 195-96 & n.7 (D.C. 2003). The Rule 37 sanction here is significantly different from a typical money judgment or attorney's fees award, as it is a sanction for a litigant's violation of court rules. The refusal to pay such a fine is contemptuous of the court in a way that the failure to pay a simple money judgment is not, and Mr. Tinsley's refusal to pay the small Rule 37 sanction at issue here – even to this day – is the epitome of contempt. Accordingly the use of civil contempt fines as an enforcement mechanism here is appropriate.

award of attorney's fees is left to the discretion of the trial court. *See Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 530 (D.C. 2003).

The objections that Mr. Tinsley raises regarding the award of attorney's fees have no merit. He first contends that he did not have notice and meaningful opportunity to respond to the motion for attorney's fees. Tinsley Brief (March) 5. Mr. Tinsley's contention that "there was never a motion or a request for attorney's fees submitted to the Court" is simply not accurate. *Id.* Ms. Blacknall explicitly sought fees in her motion to show cause filed on September 7, 2012; Mr. Tinsley opposed that motion on September 17, 2012. *See* Def.'s Mot. to Show Cause, filed 9/7/12; Opp'n, filed 9/17/12. The court awarded unspecified fees on October 18, 2012. Tinsley App. (March) 54. Ms. Blacknall's counsel later filed an affidavit regarding the amount of fees requested. *Id.* at 56-61.

Because the court had not yet issued a ruling on the amount of attorney's fees, Ms. Blacknall reiterated her fee request in the motion for calculation of fines and attorney's fees, citing the prior order and affidavits. Tinsley App. (March) 40-41. Although Ms. Blacknall's counsel has expended significant additional time enforcing the court's orders in this case since submitting the fee affidavits in October 2012, counsel only requested a ruling granting in full the amount of fees originally request in October 2012. *See id.* at 41. Mr. Tinsley filed an opposition to that motion as well. Tinsley App. (March) 95-96. The record reflects that Mr. Tinsley had notice and opportunity to be heard, and was, in fact, heard.[8]

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[8] Mr. Tinsley also objects that Ms. Blacknall's prior counsel (Rebecca Baden, Louisa Marion, and Carolyn Wagner) did not comply with the rules for legal assistance by law students set forth in D.C. App. R. 48 (Legal Assistance by Law Students) and Super. Ct. Civ. R. 101(e) (Appearance and Withdrawals of Attorneys; Law Students). Tinsley Br. (March) 24-25, 29-30. However, as Mr. Tinsley points out in his brief, Ms. Blacknall was not represented by law students, but by attorneys licensed to practice in the District of Columbia. *Id.* at 29. The law student practice rules are not applicable.

The attorney's fee award was not an abuse of discretion and should be affirmed.

V. THE COURT PROPERLY DENIED THE AFFIDAVIT OF BIAS AND MOTION FOR RECUSAL.

Mr. Tinsley argues that the court erred in finding his affidavit of bias to be insufficient and denying his motion for recusal. If a party believes that a judge "has a personal bias or prejudice either against the party or in favor of any adverse party," the party must submit a sufficient affidavit setting forth the basis of the claim that bias or prejudice exists. *See* Super. Ct. Civ. R. 63-I(a)-(b). The facts asserted in such an affidavit must: 1) be material and stated with particularity; 2) be such that, if true, they would convince a reasonable person that bias exists; and 3) show bias that is personal, as opposed to judicial, in nature. *In re Bell*, 373 A.2d 232, 234 (D.C. 1977).

The bias or prejudice "must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *In re Evans*, 411 A.2d 984, 995 (D.C. 1980). The court has repeatedly differentiated between personal bias and "judicial exposure to the case," explaining the "proper distinction is between a judicial determination derived from evidence and lengthy proceedings had before the court, and a determination not so founded upon facts brought forth in court, but based on attitudes and conceptions that have their origins in sources beyond the four corners of the courtroom." *Id.* Importantly, legal rulings against a party in the course of the case do not constitute grounds for recusal. *Browner v. District of Columbia*, 549 A.2d 1107, 1113 n.16 (D.C. 1988).

Mr. Tinsley filed an Affidavit of Bias and Motion for Recusal on April 19, 2013, seeking recusal of Judge Krauthamer. Ms. Blacknall did not file a response, pursuant to the court's order that Ms. Blacknall need not respond to Mr. Tinsley's filings unless instructed to do so. *See* Blacknall App. 10 (docket entry 7/3/12). The April 2013 motion was Mr. Tinsley's second

attempt to remove Judge Krauthamer from the case and his third overall attempt to remove a judge hearing the matter. *See* Mot. to Reassign, filed 11/13/12 (denied 11/16/12); Aff. of Bias of Judge Natalia Combs Greene, filed 1/4/12; Mot. for Recusal of Judge Natalia Combs Greene, filed 1/9/12 (denied 1/13/12).

The court correctly denied the April 2013 recusal motion and properly found that the affidavit of bias is insufficient. As the court observed, Mr. Tinsley's affidavit recounts many rulings against him and statements not to his liking, but none of them relates to anything other than the proceedings on the merits of the case. The court explained that it was "unable to find any facts whatsoever in Plaintiff's filings that are unrelated to the courtroom proceedings in this matter or that relate to the undersigned but originated outside of the courtroom. Plaintiff offers no facts arising from extrajudicial sources that could have resulted in an opinion on the merits on some basis other than what the undersigned learned from the participation in the case." Tinsley App. (April) 36.

Mr. Tinsley concedes that the affidavit of bias is based exclusively on the judge's adverse legal rulings and in-court statements. Tinsley Br. (Apr.) 4. His argument seems to be that, despite the lack of any allegation of extrajudicial bias, the court must be biased, because there is no other explanation for the many adverse rulings. This argument is without merit. A reasonable person familiar with the record of this case would find no personal bias in any of the examples cited by Mr. Tinsley. Each example in Mr. Tinsley's affidavit is an instance of the court acting within its judicial duties to resolve the issues before it in the context of the present case. Each falls squarely into the category of a "judicial determination derived from evidence and lengthy proceedings had before the court." *See In re Bell*, 373 A.2d at 234.

For example, the court's order that Mr. Tinsley provide medical documentation to corroborate the reason for his absence from court is a reasonable response to a litigant who had already failed to appear fives times during the course of contempt proceedings. *See* Tinsley Br. (April) 5; *Wagley v. Evans*, 971 A.2d 205, 208 (D.C. 2009) (finding no abuse of discretion where court denied continuance where party had received several continuances in the past and had proffered an unsworn statement regarding the party's health and stress level). Issuing a bench warrant with no bond was also quite appropriate given Mr. Tinsley's non-appearances in this case. *See* Tinsley Br. (April) 5 (suggesting that a bench warrant with no bond is only appropriate in cases of mass murder or terrorism); Blacknall App. 7 (docket entry 11/30/12 (Mr. Tinsley failed to return to court after being given notice to return by U.S. Marshals two days earlier)). What Mr. Tinsley characterizes as "threats" are examples of the court providing clear notice of the sanctions that he could face if he was found to be in continued contempt of the court's orders. *See* Tinsley Br. (Apr.) 10.

Mr. Tinsley's most sweeping suggestion is that recusal was required because he was held in contempt despite the fact that he "complied in every regard with the Consent Order dated July 26, 2012." Tinsley Br. (April) 5. Aside from the fact that there is no indication of personal bias in the contempt finding, no rational person could believe that Mr. Tinsley complied in every regard with the consent order.

As Mr. Tinsley concedes that none of the allegations of bias he raises is extrajudicial in nature, there is no need to examine each one here. Moreover, the facts presented in Mr. Tinsley's affidavit would not convince a reasonable person familiar with the record of this case that bias exists. The court correctly determined that the affidavit of bias in this case was insufficient. While a judge has an obligation to recuse himself if a sufficient affidavit of bias is

filed, the judge also has an obligation to refuse recusal where the party seeking recusal has not met that burden. *See Mayers v. Mayers*, 908 A.2d 1182, 1191 (D.C. 2006).

CONCLUSION

The contempt fines and awards of attorney's fees against Mr. Tinsley should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Brief of Appellee to be sent via first-class mail, postage prepaid, this 11th day of May, 2015, to:

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