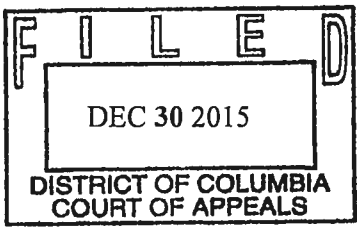
DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 14-CV-488 & 14-CV-1397

EDWARD TINSLEY, APPELLANT,

v.

SHEILA BLACKNALL, APPELLEE.



Appeals from the Superior Court
of the District of Columbia
(LTB-20076-11)

(Hon. Peter A. Krauthamer, Trial Judge)

(Submitted November 3, 2015 Decided December 30, 2015)

Before GLICKMAN and FISHER, *Associate Judges*, and NEWMAN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: On July 25, 2011, appellant Edward Tinsley sued Sheila Blacknall to evict her for non-payment of rent. Blacknall counterclaimed for breach of the implied warranty of habitability. To settle the case, the parties agreed to a consent order resolving all their claims. The consent order, which the Superior Court entered on July 26, 2012, required Tinsley to complete certain repairs and inspections within the next few weeks. Shortly after the order was entered, however, Tinsley informed Blacknall that he would not comply with it. She eventually moved to have him held in contempt for failing to fulfill his repair and inspection obligations, and also for his failure to obey an earlier court order to pay $624 in attorney's fees as a discovery sanction. On October 18, 2012, the court held Tinsley in civil contempt of both orders and gave him seven business days to purge his contempt before sanctions would begin to accrue.[1] The seven

[1] The October 18 contempt order provided that if Tinsley failed to comply, he would be fined (1) $50 per day for each day that the repairs required by the consent order were not completed; (2) $50 for each day that the home inspection

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days expired on October 29, 2012, without satisfaction by Tinsley of his obligations.

After several subsequent status hearings (at which Tinsley was given repeated warnings and reminders of the sanctions to which he might be exposed), the court commenced an evidentiary hearing on April 2, 2013, to determine whether Tinsley had purged his contempt. Blacknall presented evidence that Tinsley still had not obtained the required mold inspection or completed one of the required repairs. He also still had not paid the $624 discovery sanction. The hearing was continued to April 10 for Tinsley to present evidence, but he did not return to court. Instead, on April 8, 2013, he filed an affidavit pursuant to Civil Rule 63-I[2] charging the trial judge with bias and prejudice against him and moved for the judge to recuse himself.[3]

(continued...)
report required by the consent order was not received by Blacknall's counsel; (3) $50 for each day the mold inspection report required by the consent order was not received by Blacknall's counsel; and (4) $50 for each day that Tinsley failed to pay the $624 in attorney's fees ordered as a discovery sanction. The court also stated that it would award additional attorney's fees for the time Blacknall's counsel spent obtaining the contempt order, and instructed counsel to submit affidavits regarding the amount of an appropriate award.

[2] Super. Ct. Civ. R. 63-I.

[3] The following day, Tinsley filed a "Praecipe Regarding Medical Emergency," stating he would not attend the hearing on April 10 because he had become anxious, depressed, and suicidal, and would be seeking professional help. The court ordered Tinsley to appear in court on April 26, 2013, to present his evidence and document his medical treatment. Tinsley did not appear in court on April 26 or at any of the several later-scheduled hearings in the case. He also did not furnish any medical documentation or claim a medical excuse for his non-attendance at the subsequent court hearings. In August, the court ordered Tinsley to deposit funds into the court registry to enable Blacknall to contract herself for the required mold inspection and remaining repairs. Tinsley disregarded this order until the U.S. Marshals brought him into court on a bench warrant on October 4, 2013. He made the deposit that day and the bench warrant was quashed.

The court denied Tinsley's recusal motion on April 1, 2014, holding that his affidavit was insufficient because its allegations of bias were based solely on statements and rulings made by the judge in the course of presiding over the judicial proceedings. Thereafter, Blacknall filed a motion requesting the court to calculate the fines and attorney's fees for which Tinsley was liable by virtue of his contempt of court. On November 24, 2014, the court granted that motion and ordered Tinsley to pay $65,700 in accrued daily fines (pursuant to the contempt order of October 18, 2012), plus $6,096 in attorney's fees.[4]

In the present consolidated appeals, Tinsley challenges the foregoing orders on numerous grounds. For the following reasons, we conclude his contentions lack merit and affirm the judgment of the Superior Court.

1. Recusal. The trial court was correct in ruling that Tinsley's Rule 63-I affidavit was insufficient to allege disqualifying bias or prejudice on the part of the judge. Tinsley does not claim bias or prejudice of an extrajudicial origin; his allegations relate solely to adverse rulings and statements made by the judge while presiding over the case. But to be disqualifying, "it is firmly established that [the alleged] bias must be personal, rather than judicial, and must have originated from sources outside of court proceedings."[5] Furthermore, "[n]ot only must the bias have an extrajudicial origin, but it must result in an opinion on the merits on some basis other than what the judge learned from participation in the case."[6] Tinsley's allegations do not satisfy these requirements. We would add that we perceive "no hint or appearance of partiality"[7] in the rulings and statements of which Tinsley complains. Accordingly, the court properly denied Tinsley's recusal motion.

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[4] In addition to the $624 in attorney's fees that Tinsley owed as a discovery sanction, the court ordered him to pay $5,472 in attorney's fees for the time Blacknall's counsel spent to obtain the October 2012 contempt order.

[5] *Baylor v. United States*, 360 A.2d 42, 44 (D.C. 1976); *see, e.g.*, *Bolton v. Crowley, Hoge & Fein, P.C.*, 110 A.3d 575, 589 (D.C. 2015) ("The bias or prejudice must be personal in nature and have its source beyond the four corners of the courtroom.") (internal punctuation omitted).

[6] *Bolton*, 110 A.3d at 589 (internal quotation marks omitted).

[7] *Flax v. Schertler*, 935 A.2d 1091, 1108 n.16 (D.C. 2007).

2. Jurisdiction. Tinsley argues that the trial court lacked jurisdiction to impose the contempt fines because (he claims) the case should have remained in the Landlord and Tenant Branch and not been certified to a civil calendar for a jury trial. Even assuming *arguendo* that the certification was erroneous,[8] however, the error was not jurisdictional. As we previously have explained, "[t]he 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."[9]

3. Validity of the July 26, 2012, Consent Order. Tinsley also argues that he cannot be bound by the consent order because he revoked his intention to be bound by its terms before Blacknall physically signed the document. This argument also is without merit. In the first place, because the consent order was a final order disposing of the entire case and Tinsley did not timely appeal it, he has waived any challenges to its validity and is bound by the order for that reason alone. In any event, though, his argument that he could revoke the agreement embodied in the consent order before Blacknall signed it is fallacious. Both parties were before the judge (Blacknall participating by phone) and orally expressed their mutual assent to the agreement as the judge read it into the record and incorporated its terms in an order disposing of the case. The parties' signatures therefore were not necessary for the agreement to be binding on them.[10]

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[8] Tinsley's objections to Blacknall's jury demand are moot, since this case subsequently settled and there was no trial. *See Settlemire v. District of Columbia Office of Employee Appeals*, 898 A.2d 902, 904-05 (D.C. 2006); *Dominique v. Ralph D. Kaiser Co.*, 479 A.2d 319, 323 (D.C. 1984). That said, we also are not persuaded that the trial court abused its discretion in denying Tinsley's motions to dismiss the jury demand.

[9] *Threatt v. Winston*, 907 A.2d 780, 782 n.4 (D.C. 2006).

[10] *See 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 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.").

4. Propriety of the Imposed Contempt Sanctions. We dispose of Tinsley's several objections to the imposition of the fines and award of attorney's fees as follows. First, we reject his claim that he was not given notice and an opportunity to oppose the sanctions. Tinsley received Blacknall's motion "for calculation of fines and attorney's fees" in April 2014, over five months before the court granted it. Having already been found in civil contempt, Tinsley well knew what was at stake. His argument that he was only on notice to defend against the calculation of the fines but not their imposition borders on being frivolous, in our view.

Second, Tinsley argues that the October 2012 contempt order was superseded by an oral order of the court on January 10, 2013, directing that all repairs be completed by February 19, 2013. Tinsley raises this claim for the first time on appeal, however, and he has not provided us with the transcript of the January 10 hearing. Therefore, we consider the claim to be forfeited.

Third, we are not persuaded by Tinsley's objections to the amount of the fines and attorney's fees as excessive ("usurious," "unconscionable," and the like) and beyond what was necessary to compensate Blacknall. Sanctions for civil contempt are authorized not only to compensate the aggrieved party, but also to enforce compliance with the court's orders.[11] A conditional daily fine such as the court imposed in this case is one of "the most familiar sanctions in civil contempt proceedings designed to coerce compliance with the mandate of the court."[12] The $50 per day amount was quite reasonable in our view—all the more so because the court gave Tinsley a seven-day grace period, and in light of the inconvenience and the waste of time and resources that Tinsley's prolonged contumacy caused Blacknall, her counsel, and the court. Tinsley has only his own obstinacy and delaying tactics to blame for the fact that the ultimate amount of the fines imposed on him was very large—e.g., he ended up with a fine of $37,800 on account of his failure for two years to pay the $624 awarded as a discovery sanction—and this is therefore no basis to find that the court abused its discretion.[13] And a civil

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[11] *D.D. v. M.T.*, 550 A.2d 37, 43 (D.C. 1988).

[12] *Id.*

[13] *Cf. id.* at 44 ("[T]he sanctions for civil contempt are often drastic. A contemnor may be conditionally imprisoned until compliance. He or she may also be subject to a staggering daily fine." (internal citation omitted)).

contemnor "is ordinarily required to pay the aggrieved party's counsel fees" in addition to the monetary sanctions imposed.[14] The fees awarded in this case were relatively modest and we see nothing inappropriate in the court's computation of them.[15]

Finally, we are satisfied that the trial court had substantial evidence in the record to support its determination of the dates on which Tinsley complied with the consent order and its calculation of the fines and attorney's fees. To the extent that Tinsley now complains about the accuracy of the court's findings and computations, we consider his objections to be waived or forfeited because he forwent the opportunities he had to appear in court, present evidence and argument, and otherwise preserve his challenges in the proceedings below.

For the forgoing reasons, we conclude that appellant has not shown error in the proceedings below. Accordingly, we hereby affirm his adjudication for contempt and the trial court's order imposing monetary sanctions and awarding attorney's fees.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

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[14] *Id.*

[15] Tinsley argues that attorney's fees should not have been awarded because Blacknall's counsel did not satisfy the requirements of D.C. App. R. 48 governing representation by law students. This argument must be rejected because Blacknall's counsel were not law students, but admitted attorneys.

Copies to:

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