

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND A. MACDONALD,

Plaintiff-Appellant,

v

MACOMB COUNTY PROSECUTOR, COUNTY
OF MACOMB, UTICA POLICE DEPARTMENT
and CITY OF UTICA,

Defendants-Appellees.

UNPUBLISHED

April 7, 1998

No. 201003

Macomb Circuit Court

LC No. 94-004414-AW

Before: Young, Jr., P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right two orders granting summary disposition in favor of defendants Carl Marlinga, Macomb County Prosecutor and Macomb County (Macomb defendants) and in favor of defendants City of Utica and Utica Police Department (Utica defendants). We affirm.

In October 1993, plaintiff's former secretary confessed to embezzling funds from plaintiff's law practice. On August 29, 1994, plaintiff filed a writ of mandamus for enforcement of his rights pursuant to the Freedom of Information Act (FOIA), MCL 15.231; MSA 4.1801(1), and the Crime Victim's Rights Act (CVRA), MCL 780.751; MSA 28.1287(751). Plaintiff sought information regarding the prosecutor's activities with respect to the possible prosecution of the former secretary. The writ was assigned to Judge Montgomery for trial on December 1, 1994, but was reassigned to Chief Judge Peter J. Maceroni. Plaintiff moved to disqualify Chief Judge Maceroni on the ground that the assignment violated the court rules. Chief Judge Maceroni denied the motion but sent the case to the State Court Administrator's Office for assignment to a judge for a de novo hearing on the disqualification motion. The reassigned judge entered an order making any orders under Chief Judge Maceroni null and void on the ground that the reassignment was improper, and ordering the case to continue under Judge Montgomery.

Plaintiff moved to disqualify Judge Montgomery and the entire bench of Macomb County based on the impropriety of the reassignment from Chief Judge Maceroni to Judge Montgomery and on the

fact that plaintiff's former secretary was a Macomb County clerk and was married to a deputy Macomb County sheriff. Judge Montgomery denied the motion and referred the motion to the chief judge for reassignment. The chief judge denied the motion for disqualification, and denied plaintiff's request for assignment for a hearing de novo upon referral to the State Court Administrator.

Following the chief judge's order, defendants' brought motions for summary disposition, arguing that they had complied with plaintiff's FOIA requests, and that the CVRA was not violated because plaintiff did not sign the complaint against his former secretary as a complaining witness. The court granted defendants' motions.

Plaintiff's first argument on appeal is that the trial court erred in denying his motions to disqualify Chief Judge Maceroni and the entire bench of Macomb Circuit Court. We disagree. This Court will reverse the fact findings underlying a ruling on a motion for disqualification where there is an abuse of discretion. However, the application of the facts to the law is reviewed de novo. *Cain v Dep't of Corrections*, 451 Mich 470, 503 n 38; 548 NW2d 210 (1996).

A judge is disqualified when a judge is unable to "impartially hear a case." MCR 2.003(B). If the challenged judge denies the motion for disqualification, on the request of a party, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo. MCR 2.003(C)(3)(a). In a single-judge court, or if the challenged judge is the chief judge, on the request of a party, the challenged judge shall refer the motion to the state court administrator for assignment to another judge, who shall decide the motion de novo. MCR 2.003(C)(3)(b). A judge is disqualified when there is an actual showing of bias or prejudice. *Meagher v Wayne State Univ*, 222 Mich App 700, 725-726; 565 NW2d 401 (1997). For example, a judge is disqualified if he has "personal knowledge of disputed evidentiary facts concerning the proceeding" or the judge knows that he or a family member has an economic interest in the outcome. MCR 2.003(B)(2) and (5). Disqualification without a showing of actual bias is warranted in situations where experience teaches that the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerated. *Meagher, supra* at 726. A judge is presumed to be impartial, and the heavy burden of proving actual bias or prejudice rests upon the party seeking the disqualification. *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 151; 486 NW2d 326 (1992); *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 155; 532 NW2d 899 (1995).

Plaintiff's allegations of bias or prejudice center around Chief Judge Maceroni's role as an administrator who has an interest in preventing information regarding the alleged embezzlement activities of his employee from becoming public. Although plaintiff appears to present some scenarios that suggest possible bias or prejudice, plaintiff has not established any actual bias or prejudice simply on the basis that a court employee came under scrutiny for matters unconnected to her employment at the Macomb County Circuit Court, or that there were irregularities associated with the reassignment of the writ. Plaintiff refers to persons who might have had knowledge of his theory of conspiracy or subterfuge, yet plaintiff produced no supporting affidavits or testimony of those persons. The judges for Macomb Circuit Court had no demonstrable financial or economic interest in the outcome of a criminal prosecution of an employee. See MCR 2.003(B)(5). The judges did not appear to have a relationship through marriage or family with the former secretary. See MCR 2.003(B)(5) and (6). None of the

judges were directly involved in the determination to prosecute the former secretary. See MCR 2.003(B)(6). Moreover, none of the judges were identified as having personal knowledge of the facts regarding the embezzlement of plaintiff's funds with the exception of that information contained in the pleadings. See MCR 2.003(B)(2). Thus, plaintiff failed to demonstrate any actual bias or prejudice on behalf of any of the judges of Macomb Circuit Court.

Plaintiff's second argument on appeal is that the trial court erred in granting defendants' motions for summary disposition. Plaintiff failed to preserve this issue for appeal based on his complete failure to present any law in support of this argument, either in the trial court or in this Court. This Court will not seek out authority on behalf of a party to support its position. In the absence of any supporting authority, this Court will decline review of an issue. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 637; 567 NW2d 468 (1997). Moreover, even if the issue were properly preserved, plaintiff's argument fails because Macomb defendants complied with the only documented FOIA request dated March 25, 1994, and plaintiff had no claim against Macomb defendants under the CVRA under the facts presented due in part to the fact that Macomb defendants had not arraigned plaintiff's former secretary. MCL 780.756; MSA 28.1287(756). Since plaintiff asserted no basis for liability against Utica defendants under the CVRA, it did not violate any of the provisions of the CVRA. Accordingly, the trial court properly granted summary disposition.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Michael J. Kelly

/s/ Martin M. Doctoroff