

STATE OF MICHIGAN  
COURT OF APPEALS

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GRACE E. TINDALL,

Plaintiff-Appellant/Cross-Appellee,

V

MICHAEL E. TINDALL,

Defendant-Appellee/Cross-Appellant.

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UNPUBLISHED

June 23, 2005

No. 225016

Wayne Circuit Court

LC No. 90-026438-DM

Before: Sawyer, P.J., and Markey and Murray, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order disqualifying the Wayne Circuit Court bench and transferring this case to the Macomb Circuit Court. We vacate the order and remand for further proceedings.

Whether judicial disqualification is required under the Due Process Clause, US Const, Am XIV, is a constitutional issue that this Court reviews de novo. *York v Civil Service Comm*, 263 Mich App 694, 699; 689 NW2d 533 (2004). Judicial disqualification on the basis of due process is required only in the most extreme cases and, without a showing of actual bias, is warranted only in situations where “experience teaches that the probability of actual bias . . . is too high to be constitutionally tolerable.” *Cain v Dep’t of Corrections*, 451 Mich 470, 514; 548 NW2d 210 (1996), citing *Crampton v Michigan Dep’t of State*, 395 Mich 347, 351; 235 NW2d 352 (1975); *Meagher v Wayne State University*, 222 Mich App 700, 726; 565 NW2d 401 (1997). This issue is determined on a case-by-case basis. *Cain, supra* at 514.

One of the examples identified in *Crampton* as presenting an unconstitutional risk of actual bias is when a judge “is ‘enmeshed in [other] matters involving petitioner . . . .’” *Crampton, supra* at 351, citing *Johnson v Mississippi*, 403 US 212, 215; 91 S Ct 1778; 29 L Ed 2d 423 (1971). The trial court in the instant case granted defendant’s motion to transfer on the basis that defendant had prevailed in his federal court action against the Wayne Circuit Court. Since the trial court’s decision, however, the decision in the underlying federal action was

reversed on appeal,<sup>1</sup> and defendant is no longer “enmeshed” in litigation against the Wayne Circuit Court bench. Accordingly, the probability of actual bias as discussed in *Cain, supra* at 514, and *Crampton, supra* at 351, may no longer surpass constitutional limits.

Consequently, we vacate the trial court’s order and remand this case to the trial court for reconsideration of defendant’s disqualification motion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Jane E. Markey

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<sup>1</sup> *Tindall v Wayne Co Friend of the Court*, 269 F3d 533 (CA 6, 2001), cert den 535 US 988; 122 S Ct 1540; 152 L Ed 2d 467 (2002).