

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

RANDY KINCAID,

Plaintiff-Appellee,

v

LARRY J. DAVIS and RUTH ANN DAVIS,

Defendants-Appellants.

---

UNPUBLISHED

October 10, 2006

No. 260520

Sanilac Circuit Court

LC No. 03-029217-AV

Before: Fitzgerald, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Defendants appeal by leave granted from a denial of a motion to disqualify the circuit court judge who heard the appeal of their case and from the circuit court's decision affirming the district court's denial of their motion for judgment notwithstanding the verdict. We affirm.

This case involves a family dispute over a portion of property. Testimony at the trial in the district court indicated that plaintiff purchased a portion of defendants' land. Although the parties agreed that plaintiff had paid the agreed price for the land, defendants never gave plaintiff a deed. After a number of disputes between the parties, plaintiff filed suit in the circuit court requesting equitable relief and money damages. Judge M. Richard Knoblock granted summary disposition as to the equitable portion of plaintiff's complaint and remanded the remaining claims to the district court for trial. After trial, and the jury awarded plaintiff a judgment of \$3,500 against defendant Larry Davis and \$2,500 against defendant Ruth Ann Davis.

Defendants' appeal to the circuit court was eventually assigned to Judge Knoblock.<sup>1</sup> Defendants moved to disqualify Judge Knoblock on the basis that he previously ruled on issues in the case. Judge Knoblock denied the motion, and the case was assigned to Judge Patrick R. Joslyn for review of the motion to disqualify. Judge Joslyn also denied defendants' motion. Judge Knoblock heard defendants' appeal and affirmed the district court's denial of defendants' motion for judgment notwithstanding the verdict (JNOV). Defendants then applied for leave to appeal to this Court, which was granted.

---

<sup>1</sup> The initially assigned judge recused himself because he had previously done so regarding the initial action under MCR 2.403(N)(2)(d).

Defendants first argue that Judge Knoblock should have been disqualified from hearing their appeal. Considering the unique circumstances of this case, we disagree. When reviewing a motion for disqualification, this Court reviews the trial court's findings of fact for an abuse of discretion and the applicability of the facts to the relevant law de novo. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 596; 640 NW2d 321 (2001).

In most instances, disqualification of a judge will require a showing of actual prejudice. MCR 2.003(B)(1). The party challenging the impartiality of a judge “must overcome a heavy presumption of judicial impartiality.” *Van Buren Charter Twp v Garter Belt, Inc*, 258 Mich App 594, 598; 673 NW2d 111 (2003) (citation omitted). However, the Due Process Clause also “requires an unbiased and impartial decisionmaker. Thus, where the requirement of showing actual bias or prejudice under MCR 2.003(B)(1) has not been met, or where the court rule is otherwise inapplicable, parties have pursued disqualification on the basis of the due process impartiality requirement.” *Cain v Dep’t of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). “Due process requires judicial disqualification without a showing of actual prejudice only in the most extreme cases.” *Van Buren Charter Twp, supra* at 599.

Our Supreme Court considered situations where due process may require disqualification in *Crampton v Dep’t of State*, 395 Mich 347; 235 NW2d 352 (1975). The Court stated:

The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where “experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” Among the situations identified by the Court as presenting that risk are where the judge or decisionmaker

- (1) has a pecuniary interest in the outcome;
- (2) “has been the target of personal abuse or criticism from the party before him”;
- (3) is “enmeshed in [other] matters involving petitioner \* \* \*”; or
- (4) might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker. [*Id.* at 351 (citations omitted).]

We must examine claims that due process requires judicial disqualification on a case-by-case basis, *Cain, supra* at 514, and review the totality of the circumstances. *Van Buren Charter Twp, supra* at 601. Only in situations “where ‘experience teaches that the probability of actual bias . . . is too high to be constitutionally tolerable’” should disqualification occur. *Crampton, supra* at 351, quoting *Withrow v Larkin*, 421 US 35, 47; 95 S Ct 1456; 43 L Ed 2d 712 (1975). In other words, disqualification is necessary “when the risk of actual bias is too prevalent, so that the constitutional guarantee of a fair trial would be inhibited.” *Cain, supra* at 514. “[T]he constitutional standard for disqualification is not easily met.” *Id.* It is through the examination

of the four situations listed in *Crampton* that the “‘experience teaches’ test . . . is rendered meaningful.” *Id.*

Although defendants argue that Judge Knoblock should have been disqualified because of his previous involvement in the case, we conclude that Judge Knoblock’s prior involvement did not rise to the level where disqualification was required. Judge Knoblock heard a number of motions in the case, including defendants’ motion for summary disposition. Judge Knoblock also granted summary disposition of the equity portion of plaintiff’s claims and, because the remaining claims were within district court jurisdiction, removed the remaining claims for trial in the district court. The appeal involved the claims tried by the district court, although defendants argue that it also involved Judge Knoblock’s earlier ruling by implication.

However, these circumstances did not require Judge Knoblock to disqualify himself. In most circumstances, due process would not allow a court to hear an appeal of its own ruling. However, in this case, Judge Knoblock was not hearing an appeal of his own ruling, but rather hearing an appeal of the portion of the case that he did not decide. Defendants appealed the denial of their motion for JNOV. Judge Knoblock made no ruling on the claims heard by the trial court in this case and made no ruling on defendants’ motion for JNOV. Although defendants argued Judge Knoblock’s earlier ruling on the motion for summary disposition was involved, the involvement was extremely limited. The only way the motion for summary disposition was implicated was by way of defendant arguing that some of the evidence on the claims that Judge Knoblock granted summary disposition on was used to prove plaintiff’s other claims. This did not involve Judge Knoblock’s actual ruling on summary disposition in any way, nor were defendants appealing that ruling. Considering the unique circumstances presented by the procedural history of this case, we conclude that Judge Knoblock did not have to disqualify himself from hearing this appeal. Defendants have not shown that the risk of actual bias in this case was too high to inhibit the constitutional guarantees of a fair review. *Cain, supra* at 514. Although Judge Joslyn erred in concluding that defendants had to show actual prejudice for disqualification, he reached the right result, albeit for a wrong reason. *Gray v Pann*, 203 Mich App 461, 464; 513 NW2d 154 (1994).

Defendants also argue that they were denied a de novo hearing of the motion to disqualify because Judge Joslyn decided the motion without hearing oral argument. MCR 2.003(C)(3)(b) allowed defendants a de novo review of a motion for disqualification by another judge. However, the court rule does not state that oral argument must be heard on this motion. Not holding oral argument on the motion does not mean that Judge Joslyn did not review the issue de novo. On our review of Judge Joslyn’s order, we conclude that the judge reviewed motion to disqualify de novo and after this review, affirmed Judge Knoblock’s decision.

Defendants also argue that the circuit court erred in affirming the district court’s denial of their motion for JNOV. However, defendants failed to provide the circuit court with a transcript of the trial. MCR 7.101 applies to circuit court appeals, and MCR 7.101(C)(2)(d) requires the appellant to “[o]rder in writing a copy for the full transcript and secure payment for it.” Defendants only provided the circuit court with a copy of the transcript of the motion for JNOV. An appellant “is obliged to provide a transcript of all proceedings.” *Nye v Gable, Nelson & Murphy*, 169 Mich App 411, 416; 425 NW2d 797 (1988). This obligation “is not limited to a transcript of the proceedings on the specific order being appealed from. Rather, unless one is

excused from providing the entire transcript . . . , a transcript of all proceedings must be supplied, even where it does not appear that a particular transcript of a particular proceeding is directly relevant to the issues on appeal.” *Id.* Here, the transcript of the trial was directly relevant to the issue defendants were appealing, yet they failed to provide the transcript to the circuit court. Because defendants failed to properly present their appeal on this issue, they have waived any review of the trial court’s denial of the motion for JNOV by this Court. *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987).

Defendants finally argue that they should have been awarded offer of judgment sanctions. MCR 2.405 provides for offer of judgment sanctions in certain situations. However, MCR 2.405(E) clearly states that costs are not to be awarded under MCR 2.405 when the case is submitted to case evaluation unless the case evaluation award was not unanimous. This case was submitted to case evaluation two times after the offer of judgments were submitted by the parties. Defendants did not provide any evidence that MCR 2.405(E) was satisfied. Defendants also argue that they are entitled to case evaluation sanctions. Again, defendants did not submit any evidence on the case evaluations results or any additional argument or citation to authority on this issue. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). We therefore, conclude that defendants have abandoned this issue.

We affirm.

/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey  
/s/ Michael J. Talbot