

STATE OF VERMONT
BENNINGTON COUNTY, SS

SCOTT HUMINSKI)	BENNINGTON SUPERIOR COURT
)	DOCKET NO. 184-7-97Bncv
)	
V.)	
)	
BETSY GREENAWALT)	
)	
)	
SCOTT HUMINSKI and)	DOCKET NO. 115-4-98Bncv
DANA HUMINSKI)	
)	
)	
V.)	
)	
ROBERT NORTHRUP, et al)	
)	
)	
SCOTT HUMINSKI)	DOCKET NO. 219-7-97Bncv
)	
)	
V.)	
)	
UNITED PARCEL SERVICE and)	
ROBERT NORTHRUP)	
)	
)	
SCOTT HUMINSKI)	DOCKET NO. 199-7-97Bncv
)	
)	
v.)	
)	
MICHAEL RYAN)	
)	
)	
SCOTT HUMINSKI, et al)	DOCKET NO. 335-10-98Bncv
)	
)	
V.)	
)	
)	
JOHN LAVOIE, et al)	

OPINION AND ORDER

This matter came on for hearing on November 30, 1998, on the Motion to Recuse Judge Wesley filed by Scott Huminski in the above-referenced cases. Scott Huminski did not participate in the hearing. Present were Cathy Norman, Esq., representing Defendants

John Lavoie, William Wright, David Miner, and State of Vermont in Docket # 335-10-98 Bncv, and Betsy Greenawalt representing herself in Docket #184-7-97 Bncv. The Court expressed its intent to deny the Motion for failure of Mr. Huminski to appear and support it. Mr. Huminski subsequently filed a Motion to Reconsider, requesting a new hearing on the grounds that he had mistaken the time of the hearing, and appeared at four o'clock rather than one o'clock. The Motion was granted.

A new hearing was held on December 15, 1998. Scott Huminski was present and presented his arguments to the Court. No other persons attended. The Court has considered the contents of the Motion to Recuse and attachments, and the arguments presented at both hearings.

Any claim of bias or prejudice of a judge must be affirmatively and clearly shown by the moving party. Cliche v. Fair, 145 Vt. 258, 262 (1984). The comments attributed to Judge Wesley in the article in the Bennington Banner newspaper pertained to factual findings and legal issues in an evidentiary hearing Judge Wesley was conducting on the issue of contempt of court. The argument of Mr. Huminski is that the last reported comment of Judge Wesley, i.e., "I have a feeling that what has gone on here will not go unnoticed," could be interpreted as a call to area citizens to take action against Mr. Huminski based on the Judge's negative attitude toward him, and that this reflects an appearance of impropriety or bias on the part of the Judge. The comment, however, shows only that Judge Wesley was commenting in the course of a hearing on the possible impact of Mr. Huminski's actions and his case in the community, without suggesting prospective action of any kind. "It is not enough merely to show previous adverse rulings, no matter how erroneous or numerous; or merely to show a judge's expression of opinion, uttered in what he conceived to be a discharge of a judicial duty, based upon the evidence before him." Pettengill v. New

Hampshire Insurance Company, 129 Vt. 23, 33 (1970); Cliche v. Fair, 145 Vt. at 262. Judge Wesley's comment, in and of itself, does not show personal bias against Mr. Huminski.

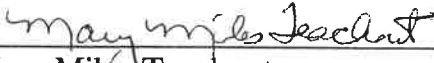
Mr. Huminski also argues that Judge Wesley issued an Entry Order in the Greenawalt case on June 18, 1996, in which he cited no law for a conclusion that disfavored Mr. Huminski, whereas two later judges issued contrary rulings on the same issue and cited legal bases for their conclusions. Mr. Huminski argues that therefore Judge Wesley's ruling is questionable, and coupled with a lack of reference to authority, it shows a "taint of bias" and suggests that Judge Wesley's ruling was based on animosity and continued bias stemming from the case reported in the Bennington Banner.

An adverse ruling in a case is not sufficient to show that a judge has a bias or prejudice against the party. Pettengill v. New Hampshire Insurance Company, 129 Vt. at 33; Cliche v. Fair, 145 Vt. at 262.

It stretches rational thought to conclude that the comments in the Bennington Banner and the ruling in the entry order reflect a bias or negative attitude toward Mr. Huminski. Such a conclusion requires an exceedingly suspicious interpretation, for which there is no support. The comment and ruling are themselves the only foundation Mr. Huminski offers in his claim of bias or prejudice. The interpretation he offers is strained, and does not meet the required standard of showing bias or prejudice clearly and affirmatively. Therefore, the Motion to Recuse Judge Wesley is DENIED.

SO ORDERED.

Dated at Rutland, County of Rutland and State of Vermont this 17th of December, 1998.



Mary Miles Teachout
Acting Administrative Court Judge