



June 4, 2012

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Mayor & Alderman of the City of Savannah v. Batson-Cook Company:

Supreme Court of Georgia Rejects Abuse of Discretion Standard of Review for Determining the Sufficiency of a Motion to Recuse

In *Mayor & Alderman of the City of Savannah v. Batson-Cook Company*, Case No. S11G1814 (May 29, 2012), a contractual dispute between the City of Savannah and its contractor, Batson-Cook Company, resulted in the return of a multi-million-dollar jury verdict against the City and the entry of judgment thereon. The Court of Appeals affirmed the judgment in *Mayor, etc., of Savannah v. Batson-Cook Co.*, 310 Ga.App. 878, (2011). The Georgia Supreme Court granted the City's petition for a writ of certiorari to decide whether the Court of Appeals erred when it determined the trial judge did not abuse its discretion when, having been presented with a motion to recuse him, he denied the motion rather than refer it to another judge.

In Georgia, OCGA § 15-1-8 and Canon 3 of the Georgia Code of Judicial Conduct are applicable when the issue of judicial recusal is considered. Additionally, Uniform Superior Court Rule 25 provides the procedural framework for determining a motion to recuse. Under this procedure, the threshold inquiries are as follows: was the motion timely filed, were the affidavits supporting the motion legally sufficient, and did the affidavits aver facts that, when assumed to be true, would warrant the trial judge's recusal from hearing the case? USCR 25.1, 25.2. If all three conditions precedent are met, the trial judge is required to refer the motion to another judge. USCR 25.3.

Here, the trial judge made no finding with regard to the timeliness of the motion and determined that the affidavits attached to the motion were legally insufficient to warrant his recusal and that recusal would not be warranted even assuming the veracity of the facts set out in the affidavits. The Court of Appeals reviewed the trial judge's denial of the motion to recuse for abuse of discretion following a line of precedent that had its roots in *Central of Ga. RR Co. v. Lightsey*, 198 Ga.App. 59, 60 (1990). In *Lightsey*, the Court of Appeals adopted the "abuse of discretion" standard of review employed by federal courts on motions to recuse. The Georgia Supreme Court stated that as a matter of first impression, it has not adopted the abuse of discretion standard when reviewing a trial judge's determination that a motion to recuse did not meet the tenets of USCR 25.3. The Court then decided that whether a motion is timely, whether the affidavit is legally sufficient, and whether the facts asserted authorize recusal under any of the factual scenarios set forth in OCGA § 15-1-8 and Canon 3E (1), do not require the exercise of discretion; rather, they present questions of law, for which the appropriate standard of review is de novo. In so holding, the Court overruled *Moore v. State*, 313 Ga.App. 519 (2012); *Grant v. State*, 304 Ga.App. 133 (2010); *Ga. Kidney & Hypertension Spec. v. FreseniuUSA Marketing*, 291 Ga.App. 429 (2008); *Adams v. State*, 290 Ga.App. 299 (2008); *Keller v. State*, 286



State Prosecution Support

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Ga.App. 292 (2007); *Hill v. Clayton County Bd. of Commrs.*, 283 Ga.App. 15 (2006); and *In re J.E.T.*, 269 Ga.App. 567 (2004).

Reviewing the motion to recuse de novo, the Court found that the trial court erred because the motion satisfied the three conditions precedent under USCR 25. First, the motion was filed timely, within five days of the affiant first learning of the alleged grounds of disqualification. Further, the Court stated that the affidavits accompanying the motion were legally sufficient and contained definite and specific foundation facts of the trial judge's extra-judicial conduct demonstrating a purported lack of impartiality. Lastly, the Court found that the familial relationship between the judge and an attorney who had represented one of the parties, who was employed by a firm, a partner of which was general counsel to a party in the case, who acted at times as if counsel of record, and whose conversation with the trial judge advising him of the existence of the case was followed by the trial judge's assignment of the case to himself, are objective facts which the Court concluded would cause a fair-minded and impartial person to have a reasonable perception of the trial judge's lack of impartiality. The Court therefore reversed the judgment and remanded for disposition of the motion to recuse by a different judge.