

THE ARKANSAS COURT OF APPEALS HOLDS THAT THE JEFFERSON COUNTY CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY GRANTING A MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL WHO DID NOT CURE A CONFLICT OF INTEREST BEFORE THE COURT ISSUED ITS RULING.

In *Murphy v. Bunge N. Am., Inc.*<sup>1</sup>, the Arkansas Court of Appeals affirmed the Jefferson County Circuit Court's grant of the motion to disqualify plaintiffs' counsel, Luther Sutter.<sup>2</sup> The court considered Rule 1.7 of the Arkansas Rules of Professional Conduct<sup>3</sup> to determine that because Attorney Sutter did not gain consent from each affected client before the court issued its ruling, his disqualification was proper.<sup>4</sup>

This appeal arose from a race discrimination suit that Sutter filed against Bunge North America, Inc. and Bunge employee, Kris Tillie on behalf of Jonathan Murphy d/b/a Murphy Trucking.<sup>5</sup> While the original complaint was filed in July of 2009, by the fall of 2009 several other plaintiffs had joined the suit.<sup>6</sup> In May of 2011, Sutter filed a separate but identical lawsuit on behalf of C.J. King and C.J. King Trucking.<sup>7</sup> Bunge filed a motion to consolidate the two suits in accordance with Rule 42 of the Arkansas Rules of Civil Procedure.<sup>8</sup> During the hearing on the motion to consolidate, Sutter contested the motion on the grounds that he had a conflict and his client C.J King would not agree to provide written consent to waive the conflict.<sup>9</sup> Sutter claimed that if the cases were tried separately, the conflict would "essentially disappear"<sup>10</sup> because two different juries would hear the cases.<sup>11</sup> Counsel for the defense argued that if a conflict existed, it would exist whether or not the lawsuits were consolidated or tried separately.<sup>12</sup>

On September 6, 2011, the court consolidated the two cases but declined to remove Sutter from the lawsuit.<sup>13</sup> On January 11, 2012, appellees filed a motion to disqualify Sutter.<sup>14</sup> Alex Guynn filed an entry of appearance from the King plaintiffs on February 15, 2012, and on March 29, 2012, a hearing was held on the motion to disqualify Sutter.<sup>15</sup> At the hearing, appellees argued that it was too late to obtain informed consent and allowing Sutter to continue in the suit

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<sup>1</sup> 2013 Ark. App. 372, 2013 WL 2457276.

<sup>2</sup> *Id.* at 1, 2013 WL 2457276.

<sup>3</sup> Ark. R. Prof. Conduct 1.7.

<sup>4</sup> *Murphy*, 2013 Ark. App. 372 at 5, 2013 WL 2457276.

<sup>5</sup> *Id.* at 1, 2013 WL 2457276.

<sup>6</sup> *Id.* at 2, 2013 WL 2457276.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Murphy*, 2013 Ark. App. 372 at 2, 2013 WL 2457276.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

might interfere with the integrity of the proceedings.<sup>16</sup> Sutter countered by pointing out that “disqualification is an extreme sanction.”<sup>17</sup> He also asserted that because Guynn was now co-counsel, the conflict had been resolved.<sup>18</sup> The conflict was discussed at an in camera hearing with Sutter promising to get a written waiver from King within two weeks.<sup>19</sup> The waiver was not received by the stated two week period, and on May 30, 2012, the circuit court entered an order granting the motion to disqualify Sutter.<sup>20</sup> The plaintiffs filed a Rule 59 motion to alter or amend on June 12, 2012 and a notice of appeal from the disqualification order on June 29, 2012.<sup>21</sup> The written waiver from plaintiff King was not filed until July 4, 2012.<sup>22</sup>

On appeal, the Arkansas Court of Appeals reviewed Arkansas Supreme Court guidance on disqualification, concluding that while disqualification “is a drastic measure to be imposed only where clearly required by the circumstances,”<sup>23</sup> disqualification decisions involve the exercise of judicial discretion and will be reviewed with an abuse of discretion standard.<sup>24</sup> This abuse of discretion standard can be established by an erroneous interpretation of the law.<sup>25</sup> In their ruling, the appeals court also consulted Rule 1.7 of the Arkansas Rules of Professional Conduct and concluded that Sutter did not fulfill the requirements of the rule because he failed to obtain written consent from each affected client before the circuit court’s ruling.<sup>26</sup> Sutter only obtained consent from plaintiff King, and that consent was obtained after the circuit court ruled to disqualify him.<sup>27</sup>

The Arkansas Court of Appeals found that the circuit court did not abuse its discretion by granting the motion to disqualify Sutter and affirmed the ruling.<sup>28</sup>

\*Furonda Brasfield

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<sup>16</sup> *Murphy*, 2013 Ark. App. 372 at 2–3, 2013 WL 2457276.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Murphy*, 2013 Ark. App. 372 at 3, 2013 WL 2457276.

<sup>23</sup> *Id.* at 4, 2013 WL 2457276 (quoting *Weigel v. Farmers ns. Co., Inc.*, 356 Ark. 617, 158 S.W.3d 147 (2004); *Craig v. Carrigo*, 340 Ark. 624, 12 S.W.3d 229 (2000)).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Murphy*, 2013 Ark. App. 372 at 4, 2013 WL 2457276.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 5, 2013 WL 2457276.