

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 24, 2026

FILED

08/04/2026

Clerk of the
Appellate Courts

JOSEPH COHEN v. BETHANY COHEN

Appeal from the Chancery Court for Marshall County
No. 24-CV-20275 J.B. Cox, Chancellor

No. M2026-00939-COA-T10B-CV

In this Tenn. Sup. Ct. R. 10B appeal, the husband filed a motion to recuse on April 29, 2026, based on statements made in hearings on April 30, 2025, and April 15, 2026. The complaints about statements from the April 30, 2025 hearing are untimely. The complaints about the statements made on April 15, 2026, are timely, but do not require recusal. We affirm the trial court's denial of the recusal motion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY, P.J., E.S., and VALERIE L. SMITH, J., joined.

Joseph Cohen, Lewisburg, Tennessee, pro se.

Alyssa Castronovo and Andrew Goldstein, Brentwood, Tennessee, for the appellee, Bethany Cohen.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

On June 13, 2024, Joseph Cohen (“Husband” or “Petitioner”) filed for a divorce from Bethany Cohen (“Wife”). On July 3, 2024, the trial court granted Wife an ex parte temporary order of protection, which was apparently extended several times at Husband’s request while criminal proceedings were pending. A hearing was finally held on April 30, 2025, at which only Wife testified. The trial court issued a one-year order of protection based on “a pattern of property destruction, threats, intimidation, berating conduct, and exerting unfettered control over [Wife] to place her in reasonable fear for her safety and the safety of the child.”

On March 28, 2025, Husband filed a “motion to alter or amend final order and dissolve order of protection and motion for new trial pursuant to Rules 59.04 and 59.02.” The motions were based on a plethora of allegations, including the court’s alleged improper inferences relating to Husband’s cane, misapplication of the legal standard for protective orders, Wife’s 27-day delay in filing for ex parte order, use of stale evidence and speculation, contradictory testimony, faulting Husband for not testifying, disdainful treatment of a disabled veteran and impossible financial barriers to reunification with the child. For unexplained reasons, the hearing on the motion was not held until April 15, 2026. The order for the hearing is not in the record.

Husband followed up with a Motion to Recuse on April 29, 2026, pursuant to Tenn. Sup. Ct. R. 10B. In that motion, Husband specifically raised the trial court’s comments about Husband’s cane, failure to accommodate Husband’s hearing impairment in the first hearing, treatment of Husband’s ADA accommodations requests, and an alleged pattern of partiality. The trial court denied recusal on June 16, 2026, and Husband filed a Rule 10B appeal.

ANALYSIS

The Rule 10B appellate standard of review is de novo. *See* TENN. SUP. CT. R. 10B, § 2.01. “De novo is defined as ‘anew, afresh, a second time.’” *Simms Elec., Inc. v. Roberson Assocs., Inc.*, No. 01-A-01-9011-CV-00407, 1991 WL 44279, at *2 (Tenn. Ct. App. Apr. 3, 1991) (quoting BLACK’S LAW DICTIONARY, 392 (5th ed. 1979)). Thus, on appeal we give the matter a fresh examination with no presumptions.

“[A] party challenging the impartiality of a judge ‘must come forward with some evidence that would prompt a reasonable, disinterested person to believe that the judge’s impartiality might reasonably be questioned.’” *Duke v. Duke*, 398 S.W.3d 665, 671 (Tenn. Ct. App. 2012) (quoting *Eldridge v. Eldridge*, 137 S.W.3d 1, 7-8 (Tenn. Ct. App. 2002)). Initially, Husband questions the trial judge’s statements about his cane. In the April 30, 2025 hearing about the restraining order, the trial judge observed:

It needs to be an order of protection. And I’m going to tell you how insidious it actually is. When Mr. Cohen first got up to approach the podium to start in with opening statements, he carried a cane, a weapon. He set it right over here. The next time he got up, miraculously, he didn’t need it, and he didn’t carry it back to the podium with him. Sometimes it’s the things that you see when you don’t leave your common sense at the door that helps you know how bad situations are.

Instead of a motion to recuse, Husband filed a motion to alter or amend. That motion and accompanying memorandum pointed out the trial court’s comments about the cane and

raised concerns. During the April 12, 2026 hearing on the motion to alter or amend, the trial court said:

The Court stands by its inferences drawn on the record on that day about the case, about the cane, and about its place as a weapon. Ordinary objects not intended to be, in a normal context, a weapon, are in fact, used as either a weapon of intimidation, or an actual weapon in order of protection cases all the time. . . The Court will not step back from the way that the cane was displayed upon that day, the place that the cane was displayed upon that day, and the manner in the way that it was placed on that day, in light of the knowledge that the Court had that day. Respectfully, Mr. Cohen, if I had all the knowledge that I had now, I may not have drawn that inference, but that doesn't mean you get a new trial in light of hindsight. It's just that simple.

Essentially, the trial judge admitted he was probably wrong about the cane, but that it did not change the outcome of the hearing. In his denial of Husband's recusal motion, the judge stated that his comments "were based on his observations of Petitioner's demeanor and actions."

Wife maintains that Husband waited too long to file his motion to recuse - over a year after the April 30, 2025 hearing. The motion to recuse must be "filed promptly after a party learns or reasonably should have learned of the facts establishing the basis for recusal." TENN. SUP. CT. R. 10B, § 1.01. Was the motion to recuse regarding the cane untimely? Yes, based on the language of Rule 10B, § 1.01, that the motion must be "filed promptly after a party learns or reasonably should have learned of the facts establishing the basis for recusal." Husband had that information on April 30, 2025, but did not file the motion to recuse until April 29, 2026. Husband maintains that the comments at the April 30, 2025 hearing and those at the April 15, 2026 hearing should be read together to show a pattern justifying recusal. But that is not what the rule requires. Furthermore, a judge making a mistake is not bias. "Rulings of a trial judge, even if erroneous, numerous and continuous, do not, without more, justify disqualification." *Boren v. Hill Boren, PC*, 557 S.W.3d 542, 548-49 (Tenn. Ct. App. 2017) (quoting *State v. Cannon*, 254 S.W.3d 287, 308 (Tenn. 2008)). Moreover, it has been said that "[t]he mere fact that a witness^[1] takes offense at the court's assessment of the witness cannot serve as a valid basis for a motion to recuse." *Adams v. Dunavant*, 674 S.W.3d 871, 879 (Tenn. 2023) (quoting *Davis v. Liberty Mut. Ins. Co.*, 38 S.W.3d 560, 565 (Tenn. 2001)).

¹ At the April 30, 2025 hearing, Husband represented himself. He did not testify. He made an opening statement, cross-examined Wife, and made a closing statement containing some testimony. The trial judge observed Husband and the cane in court.

Husband also claims that the trial court's failure to make accommodations for his hearing disability in the April 30, 2025 proceeding justified recusal. Again, Husband waited too long under Rule 10B, § 1.01. We also note that Husband never told the court of his disability or asked for an accommodation at that hearing.² Once the court was told of the disabilities, subsequent requests for accommodation were granted.

At the April 15, 2026, hearing, Husband argued that the trial court's failure to grant an accommodation for his undisclosed hearing disability at the April 30, 2025 hearing "infected these proceedings":

The events from that first hearing, April 30, 2025 started and permitted a pattern of discrimination that this record reflects as a whole. That discrimination is seen throughout this record.

I believe that the events that took place 50 weeks ago in that hearing communicated, whether it was the intent of the Court or not, it -- the events on their face communicated a permissiveness of abuse against me as a disabled litigant, and the events that we were here on two weeks ago^[3], began in February, as I stated, is a continuation of this. I have to point out that opposing counsel was present at the initial hearing, April 30, 2025. She witnessed all of this, and she witnessed this from a -- from a judge. She witnessed a standard, set by a judge, that perhaps communicated to her as counsel that the -- this is -- this is now allowed. It's okay to do this.

And - so we were here two weeks ago, specifically on ADA violations and discriminatory communications against me, using my disabilities against me by Opposing Counsel, drawing negative inferences about me, based on my disabilities, that were inappropriate and unfair.

We witnessed multiple violations of the ADA through the communications from Counsel in her emails, and this Court having to exercise judicial authority to stop that and to seal private records that shouldn't have been shared publicly and to basically bring an end to this, with respect to Counsel's behavior, is some recognition or acknowledgement that these behaviors are not permitted.

In its oral ruling, the trial court stated:

² Husband did ask that the audio be turned up, which, without more, does not necessarily communicate the existence of a disability.

³ The specific nature of that hearing is not entirely clear from this record. It appears to have dealt with disclosure of confidential medical information.

Frankly, this Court is insulted by the picture drawn by Mr. Cohen today in hindsight, which placed upon the Court a burden greater than the Court was required to employ without notice or without the opportunity to respond to it. I think Mr. Cohen ought to be painfully aware by this point that since I've known, and since we have gone down that road, the Court has tried to make every effort to accommodate.

If that is something that is so biased and prejudicial as someone else wants to determine that it is, more power to them. Frankly, the Court stands by its conduct and its ruling within the proper context, not the context argued by Mr. Cohen today. The entirety of his context is based upon conclusory statements viewed from his perspective alone.^[4]

The trial court also found the motion to alter or amend to be frivolous and expressed a willingness to “entertain an affidavit by Counsel” seeking attorney’s fees.

The complaints about statements from the April 15, 2026 hearing are timely, the motion to recuse being filed only two weeks after the hearing. Husband argues that “[a] judge who is ‘insulted’ by a disability claim has a stake in rejecting it.” This is an inaccurate characterization. The trial judge was not insulted by the disability claim, but by Husband’s argument that, essentially, the judge should have figured out in the April 30, 2025 hearing that Husband had an undisclosed hearing disability and that that failure set the tone for further mistreatment. Husband’s argument placed the entire burden on the trial court to fix an undisclosed problem. This apparently irked the trial judge. We do not think the comment reflects bias, as “any alleged bias must arise from extrajudicial sources and not from events or observations during litigation of a case.” *Robinson v. City of Clarksville*, 673 S.W.3d 556, 592 (Tenn. Ct. App. 2023) (citation modified).

Husband cites *Gregory v. State*, No. M2023-01502-CCA-R3-PC, 2025 WL 1753253, at *33 (Tenn. Crim. App. June 25, 2025) for a description of the treatment he wanted from the court:

Upon being told that the Petitioner could not hear and trial counsel could not continue to repeat the testimony for him, the trial court equipped the court with speakers or microphones to amplify the witness testimony. The Petitioner was twice asked if he could hear, and he responded that he could.

⁴ It is evident that the trial judge was frustrated with Husband’s complaints because the judge felt that he responded to the hearing disability promptly and effectively when notified. “A judge shall be patient, dignified and courteous to litigants” and others in the court system. TENN. SUP. CT. R. 10, RJC 2.8(B).

What distinguishes *Gregory* from this case is the fact that the petitioner's attorney in *Gregory* told the court, "We've gone a day and a half trying to have witnesses speak loud enough. It's not working. The [Petitioner] has a hearing impairment." *Id.* at *32. In the instant case, Husband, who represented himself, never mentioned a hearing disability before or during the April 30, 2025 hearing.⁵ He merely stated he could not hear a couple of times and asked the judge to adjust the sound. The judge asked the witness and attorney to speak more loudly. The court's actions were reasonable given that Husband's hearing disability was not disclosed.

Husband's final complaint is that the trial court labeled the motion to alter and amend "frivolous" and invited Wife's attorneys to apply for attorney's fees. He wants this ruling to be considered along with every other perceived slight by the court to create a mosaic picturing bias. He relies on *Cook v. State*, 606 S.W.3d 247 (Tenn. 2020), to justify this approach. *Cook*, however, involved "unique circumstances," in which "the post-conviction judge chose to made remarks that were not only egregious but also global in nature, expressing disdain for the entire class of proceedings he was charged with conducting." *Id.* at 257. We do not have that unique situation here.

In the April 15, 2026, hearing on Husband's motion to alter or amend, Husband stated that he did not believe the motion was frivolous. When giving his ruling, the trial court stated: "And lastly, this motion is frivolous. It attempts in a conclusory way to insert an inaccurate narrative of the events, the timing of the events, and requirements placed upon the Court, specifically as it relates to the hearing in April of 2025." We do not see

⁵ The Tennessee Court system has an applicable policy:

Persons requiring modification to obtain access to judicial programs, services or activities at any facility used for such purposes should contact the Local Judicial Program ADA Coordinator (Coordinator). A written Request for Modification is preferred. However, this request may be made by telephone to the Coordinator. In such instances, the Coordinator shall commit such requests to writing.

Administrative Policies and Procedures Tennessee Supreme Court Administrative Office of the Courts, # 2.07, VI (E). Furthermore,

In the event that a person requiring a Modification has not made a timely Request for Modification, the court may, in its discretion, immediately grant such Modification without requiring an advance written request. In such a case, a Request for Modification form shall be completed by either the person requesting Modification or court personnel for the court's records. Alternately, the court may, in its discretion, postpone, reschedule or otherwise delay the judicial program, service or activity affected. Under such circumstances, the individual requesting Modification shall be required to immediately submit a written request. If appropriate or upon request, court personnel will provide assistance with writing and submitting the request for Modification.

Id., VI (H).

that this finding constitutes or reflects bias against Husband, even if it is considered along with every other complaint Husband has about the trial judge. We repeat: “Rulings of a trial judge, even if erroneous, numerous and continuous, do not, without more, justify disqualification.” *Boren*, 557 S.W.3d at 548-49 (quoting *Cannon*, 254 S.W.3d at 308). This case does not present bias “so pervasive that it is sufficient to deny the litigant a fair trial.” *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994).

For the reasons expressed above, the trial court’s denial of the motion to recuse is affirmed. Wife’s request for attorney’s fees is denied. Husband’s request for a stay is denied. Husband’s request to supplement the record is granted.

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, Joseph Cohen, for which execution may issue if necessary.

/s/ Andy D. Bennett
ANDY D. BENNETT, JUDGE