

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-469

NOVEMBER TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Windham District
	}	
Charles Chandler	}	
	}	DOCKET NO. 663-5-06 WmCr

In the above-entitled cause, the Clerk will enter:

Defendant seeks permission to file an interlocutory appeal. Specifically, defendant challenges the decision of the administrative judge declining to disqualify the assigned district court judge from presiding over defendant=s case. As a basis for disqualification, defendant states: (1) that the district court judge will be a witness in the case; and (2) that the district court judge expressed bias when she stated that she would view the evidence in the light most favorable to the state upon reviewing defendant=s motion to dismiss.

As a general proposition, the denial of a request for disqualification can be an appropriate matter for an interlocutory appeal under Rule 5.1, which permits appeal of an Aorder or ruling [that] conclusively determines a disputed issue, resolves an important issue completely separate from the merits of the action, and will be effectively unreviewable on appeal from a final judgment.@ V.R.A.P. 5.1(a).

Here, however, defendant filed his motion in the trial court for permission to file an interlocutory appeal on October 20, 2006. The subject of the motion was the disqualification of the district court judge. The administrative judge, however, did not deny the disqualification motion until October 25, 2006. Accordingly, the district court denied the request for interlocutory appeal as premature, allowing defendant to renew his motion. Defendant has failed to do so. We deny the request for interlocutory appeal on the same grounds as the district court.

Furthermore, a party seeking an interlocutory appeal must Aset[] forth the questions of law and facts necessary to an understanding of the motion.@ V.R.A.P. 5.1(a). Here, defendant alleges that the presiding district court judge Ais a witness in the above docketed case.@ Specifically, in his motion to reconsider the disqualification ruling, defendant states that certain witnesses for the state (firefighters) have been protesting the district court judge and that the district court judge therefore Awould certainly be a witness as to the credibility@ of the firefighters. This allegation is purely speculative.

In order to resolve any confusion about the judge=s alleged expression of bias, we note that, when a party files a motion to dismiss, the court is required to view the facts in the light most favorable to the non-moving party. This is the correct standard at this stage of the proceedings; it is not the standard that applies to the later stages of the case. See State v. Damon, 2005 VT 54, & 9 (in reviewing a defendant=s motion to dismiss, court examines the evidence in the light most favorable to the State). The district court was stating the correct legal standard for deciding the motion, not expressing personal bias.

FOR THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice

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