

Reversed and Remanded and Opinion filed June 14, 2001.



In The

Fourteenth Court of Appeals

NO. 14-98-00171-CV

ARTHUR JOHNSON, Appellant

V.

CELERIA DALE JENKINS, TOMMY B. THOMAS, AND J. BLANCHARD, Appellees

**On Appeal from the 280th Judicial District Court
Harris County, Texas
Trial Court Cause No. 96-36092**

O P I N I O N

Arthur Johnson appeals from an adverse judgment in his lawsuit against Celeria Jenkins, Tommy Thomas, and J. Blanchard. Johnson filed suit alleging, among other things, that he was assaulted by Jenkins and that Thomas, the Sheriff of Harris County, and Blanchard, a Harris County Sheriff's deputy, failed to file criminal charges against Jenkins on the assault. The trial court entered a take nothing judgment on the claim against Jenkins and dismissed the claims against the sheriff and his deputy. On appeal, Johnson contends that the trial court erred: (1) in failing to abide by the motion to recuse; (2) in refusing to enter requested findings of fact and conclusions of law; and (3) in failing to set the motion to reinstate for an oral hearing. We

reverse and remand.

Motion to Recuse

Johnson contends in his first two points of error that the trial court erred in failing to abide by the motion to recuse. Johnson filed his motion on February 19, 1997. The record contains no indication that the trial court ever acted in response to the motion in any way.

“One of the most fundamental components of a fair trial is ‘a neutral and detached judge.’” *Metzger v. Sebek*, 892 S.W.2d 20, 37 (Tex. App.—Houston [1st Dist.] 1994, writ denied), *cert denied*, 516 U.S. 868 (1995)(quoting *Ward v. Village of Monroeville*, 409 U.S. 57, 62 (1972)). The impartiality of the judge is not only a matter of constitutional law but of public policy, as well. *Id.* at 38. How the court system handles motions to recuse goes to the very heart of the promise of impartiality.

When a motion to recuse is filed, a trial court has only two options: recusal or referral of the case to the presiding judge for a determination as to its merits. TEX. R. CIV. P. 18a(c); *In re Rio Grande Valley Gas Co.*, 987 S.W.2d 167, 178-79 (Tex. App.—Corpus Christi 1999, no pet.); *Carson v. Gomez*, 841 S.W.2d 491, 493 (Tex. App.—Houston [1st Dist.] 1992, no writ). The court does not have the option of doing nothing. *In re Rio Grande*, 987 S.W.2d at 178; *Brosseau v. Ranzau*, 911 S.W.2d 890, 892 (Tex. App.—Beaumont 1995, no writ). This is true even when the motion may be considered untimely or as stating insufficient grounds for recusal. *Jamilah v. Bass*, 862 S.W.2d 201, 203 (Tex. App.—Houston [14th Dist.] 1993, no writ). The motion may ultimately fail on those grounds, but that decision should be made by some other judge so as to avoid even the appearance of impropriety. *Brosseau v. Ranzau*, 28 S.W.3d 235, 238 (Tex. App.—Beaumont 2000, no pet.). In pursuing an option unavailable under the rule, the trial judge violates his plain duty and abuses his discretion as a matter of law. *Jamilah*, 862 S.W.2d at 203.

Furthermore, if a trial court fails to comply with the rules governing motions for recusal, all subsequent actions by the court in the case are void. *Brosseau*, 28 S.W.3d at 238; *In re Rio Grande*, 987 S.W.2d at 179. *See also Carson v. McAdams*, 908 S.W.2d 228, 228-

29 (Tex. App.—Houston [1st Dist.] 1993, orig. proceeding)(during pendency of motion to recuse court shall take no further action except for good cause stated in the order).

In the present case, Johnson filed a motion to recuse, but the trial court took no action on the motion. The court then went on to dismiss some of Johnson’s claims and enter a take nothing judgment against his remaining claims. Irregardless of the facial sufficiency of the motion, this was error. *See Brosseau*, 28 S.W.3d at 238; *In re Rio Grande*, 987 S.W.2d at 179; *Carson v. McAdams*, 908 S.W.2d at 228-29. The actions taken by the trial court after the filing of the motion are void. *See Brosseau*, 28 S.W.3d at 238.

We sustain Johnson’s first two points of error. The remaining points are consequently rendered moot because they concern actions of the trial court occurring after the motion to recuse was filed.

We reverse and remand this case for further proceedings in accordance with this opinion.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed June 14, 2001.

Panel consists of Justices Sears, Draughn, and Andell.

Do Not Publish — TEX. R. APP. P. 47.3(b).*

* Senior Justices Ross A. Sears and Joe L. Draughn and Former Justice Eric Andell sitting by assignment.