

**Affirmed and Opinion filed November 8, 2001.**



**In The**  
**Fourteenth Court of Appeals**

---

**NO. 14-01-00434-CV**

---

**WALTER OJI, Appellant**

**V.**

**THE STATE BAR OF TEXAS, Appellee**

---

---

**On Appeal from the 333rd District Court  
Harris County, Texas  
Trial Court Cause No. 00-26227**

---

---

**OPINION**

This is an appeal from a summary judgment in a declaratory judgment action. Appellant, Walter Oji brought suit against the State Bar of Texas seeking a declaration that a prior attorney disciplinary judgment entered against him was void and unenforceable. Because we find the prior judgment is not subject to collateral attack, we affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On March 31, 1993, the State Bar of Texas brought a disciplinary action against Walter Oji, in the 333rd District Court of Harris County. Following a motion to recuse by

the State Bar of Texas, the presiding judge, the Honorable Richard P. Bianchi, signed an order on October 19, 1993, recusing himself from sitting in the case. Judge Bianchi's order requested the Honorable Thomas J. Stovall to call upon a presiding judge of another administrative district to provide a non-resident district judge. As a result, the Honorable James F. Clawson, a non-resident judge, presided over all pretrial matters through the entry of the final judgment of Oji's disbarment.

Shortly before trial, in July 1994, Oji filed a motion for substitution of counsel. Judge Clawson denied the motion two days before trial. The next day, Oji filed an unverified motion to recuse Judge Clawson for alleged bias based upon "his rulings and disposition of preliminary matters" and his "unwillingness to provide [Oji] with a reasonable opportunity for his defense or to provide the parties an equal or fair chance of presenting their case." Judge Clawson denied the recusal motion as untimely, unverified, and for failure to state a reason for recusal.

The case proceeded to trial on July 13, as scheduled. The jury returned a verdict in favor of the State Bar of Texas, and Judge Clawson entered a final judgment disbaring Oji. Oji attempted to appeal the judgment, but this court dismissed the appeal due to Oji's untimely filing of his appeal bond and his failure to file the necessary motion for extension of time.

Almost six years later, Oji brought a declaratory judgment action against the State Bar of Texas seeking to declare the prior disciplinary judgment void based solely on his claim that Judge Clawson failed to follow the procedures set forth in Texas Rule of Civil Procedure 18a, governing recusal or disqualification of judges.

Both parties filed traditional motions for summary judgment and responses. The trial court granted the State Bar's motion for summary judgment and denied Oji's without stating the grounds for its ruling.

## II. STANDARD OF REVIEW

Summary judgment is proper when the summary judgment proof shows that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). All doubts as to a material issue of fact must be resolved against the movant, and all evidence favorable to the nonmovant will be taken as true in deciding whether a fact issue precludes summary judgment. *See id.* The appellate court must indulge every reasonable inference in the nonmovant's favor. *Sabine Pilot Service, Inc. v. Hauck*, 687 S.W.2d 733, 734 (Tex. 1985).

When a trial court grants a summary judgment, the losing party appeals, and an appellate court finds reversible error in the judgment, it generally reverses the trial court's judgment and remands the cause to the trial court. However, when, as here, both sides moved for summary judgment and one motion is granted and one is denied, we review all questions presented and may reverse the trial court judgment and render the judgment the trial court should have rendered, including rendering judgment for the other movant. *Jones v. Strauss*, 745 S.W.2d 898, 900 (Tex. 1988) (per curiam).

## III. ISSUE

Oji's declaratory judgment action asserts that Judge Clawson's failure to follow the procedure set forth in Rule 18a rendered the final judgment of disbarment void. The State Bar of Texas contends, among other things, that Oji's claim fails as a matter of law because it is an attempt to collaterally attack the final judgment. The State Bar urges that, even if Judge Clawson erred in denying the motion to recuse, the judgment is at best voidable, not void, and thus is not subject to collateral attack. We agree with the State Bar of Texas. Moreover, because we find this issue dispositive, we need not reach the other arguments asserted by the State Bar.

#### IV. ANALYSIS

A collateral attack is an attempt to avoid the effect of a judgment in a proceeding brought for some other purpose. *Ranger Ins. Co. v. Rogers*, 530 S.W.2d 162, 167 (Tex. Civ. App.–Austin 1975, writ ref'd n.r.e.). In contrast, a direct attack on a judgment is an attempt to change the judgment in a proceeding brought for that specific purpose, such as an appeal or a bill of review. *Id.* A party may collaterally attack a judgment only when the judgment is either void or concerns fundamental error. *Ex Parte Coffee*, 328 S.W.2d 283, 290 (Tex. 1959). If the judgment is not void, but merely erroneous or voidable, it is not subject to collateral attack. *Cook v. Cameron*, 733 S.W.2d 137, 140 (Tex. 1987).

A collateral attack may be successful where the court rendering judgment has (1) no jurisdiction of a party, (2) no jurisdiction of the subject matter of the suit, (3) no jurisdiction to enter the particular judgment entered, or (4) no capacity to act as a court. *Id.* A collateral attack is impermissible if it is instituted to interpret a prior judgment entered by the same court or another court of coordinate jurisdiction. *See e.g., Martin v. Dosohs I, Ltd.*, 2 S.W.3d 350, 352 (Tex. App.–San Antonio 1999, pet. denied) (holding that, in Texas, a litigant may not use a declaratory judgment suit to interpret a judgment of the same or another court); *see also Cohen v. Cohen*, 632 S.W.2d 172, 173 (Tex. App. –Waco 1982, no writ) (adhering to the Texas rule that use of a declaratory judgment suit to interpret a judgment of the same or another court is an impermissible collateral attack on the previous judgment).

Oji asserts that the lower court's failure to follow the mandatory provisions of Rule 18a renders the judgment of disbarment void. We disagree. The mere failure to follow the procedural requirements of Rule 18a will not render a judgment void. *State ex. rel. Latty v. Owens*, 907 S.W.2d 484, 485 (Tex. 1995) (stating that the failure to follow proper procedure will not render judgment void); *see also In re Burlington Northern & Santa Fe Ry. Co.*, 12 S.W.3d 891 (Tex. App.–Houston [14th Dist.] 2000, pet. denied). Unlike disqualification, which cannot be waived and can be raised at any time, even by a collateral

attack of the judgment, recusal of a judge on any ground not enumerated as disqualifying in the Texas Constitution is governed by statute and rule. *Buckholts Independent School District v. Glaser*, 632 S.W.2d 146, 148 (Tex. 1982) (citing *Fry v. Tucker*, 202 S.W.2d 218, 220 (Tex. 1947)). A party waives its right to recusal of a judge if it does not raise the issue in a proper motion. *Autry v. Autry*, 646 S.W.2d 586, 588 (Tex. App.—Tyler 1983, no writ). Thus, recusal of a trial judge cannot be urged for the first time on appeal. *Id.*; see also *Amsav Group, Inc. v. American Savings and Loan Association of Brazoria County*, 796 S.W.2d 482, 485 (Tex. App.—Houston [14th Dist.] 1990, writ denied). Moreover, because a complaint regarding recusal can be waived, the judgment is merely voidable, not void. See *Vickery v. Texas Carpet Co. Inc.*, 792 S.W.2d 759, 763 (Tex. App.—Houston [14th Dist.] 1990, writ denied).

Oji had a proper remedy by appeal and failed to exercise it. Therefore, he waived his Rule 18a complaint and cannot raise it by a new suit attacking the 1994 judgment. Even assuming, without deciding, that the trial judge failed to follow the procedure prescribed in Rule 18a, the judgment would be voidable, not void. Accordingly, we find Oji’s declaratory judgment suit constitutes an impermissible collateral attack on the final judgment of disbarment. Therefore, the trial court properly granted summary judgment in favor of the State Bar of Texas, and properly denied Oji’s motion for summary judgment.

We overrule Oji’s points of error and affirm the judgment of the trial court.

/s/      Kem Thompson Frost  
Justice

Judgment rendered and Opinion filed November 8, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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