

Circuit Court for Montgomery County
Case No. 468148V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 328

September Term, 2023

SEBASTIAN A. CAMPBELL

v.

CHERYL A. MCCALLY, *ET AL.*

Nazarian,
Kehoe, Stephen H.,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 17, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

After trial by jury in the Circuit Court for Montgomery County in 2017, Sebastian A. Campbell was found guilty of four counts of second-degree rape and two counts of sex abuse of a minor. All of his convictions were affirmed on appeal.

This appeal arises from a civil suit that Mr. Campbell filed *pro se* against the judge who presided over his trial. In his complaint, Mr. Campbell alleged that the judge and other court personnel omitted material information from the record of his trial in violation of his right to due process, equal protection, and a fair appeal. The circuit court dismissed Mr. Campbell's complaint for failure to state a claim upon which relief can be granted. The court also denied Mr. Campbell's motion for assignment of an unaffiliated judge. Mr. Campbell appeals and we affirm.

I. BACKGROUND

In August 2017, a jury found Mr. Campbell guilty of four counts of second-degree rape and two counts of sex abuse of a minor. The court sentenced him to a total of 130 years in prison. On direct appeal, this Court affirmed Mr. Campbell's convictions. *Campbell v. State*, 243 Md. App. 507 (2019).

In preparation for his direct appeal, Mr. Campbell received a copy of his trial transcript. He then filed a Motion to Correct the Record on the ground that the transcript purportedly omitted several items. The State did not oppose Mr. Campbell's motion and later filed its own Motion to Correct the Record that acknowledged that the appellate record

“may be incomplete.” We did not grant either motion and explained our reasoning in a reported opinion affirming Mr. Campbell’s convictions:

In October of 2018, [Mr. Campbell] filed in this Court a “Motion to Correct the Record,” in which he claimed that the trial court had made several comments during trial that supported his position but had been omitted from the trial transcript. In November of 2018, appellant’s motion was denied. In September of 2019, the State filed its own “Motion to Correct the Record,” claiming that the trial transcript “may be incomplete” with regard to the issues raised in appellant’s motion and indicating that the omitted portions “would likely be relevant to [Mr.] Campbell’s first question presented.” The State then asked that this Court order appellant to correct the record “by ordering the missing portions of the . . . trial transcript.” [Mr. Campbell] thereafter filed a response, arguing that the State’s motion should be denied on the grounds that it would be “absurd” for him to be “responsible for providing proof of errors or omissions when his proper motion attempting to do exactly that was categorically denied.” From those facts, we see no need to address the State’s motion, as the relief requested, namely, ordering [Mr. Campbell] to correct the record, has already been denied by this Court and would serve no useful purpose given that [Mr. Campbell] has made clear that he no longer wishes to correct the record.

Id. at 524 n.3. Mr. Campbell filed a petition for writ of *certiorari* in the Supreme Court of Maryland and the Court denied his petition. *Campbell v. State*, 467 Md. 695 (2020).

In September 2019, Mr. Campbell filed a *pro se* civil suit against the judge who presided over his trial, Judge Cheryl McCally. Mr. Campbell’s complaint named multiple co-defendants in addition to Judge McCally, including (1) the Administrative Judge at the time, Judge Robert Greenberg; (2) Judge McCally’s judicial assistant, Lidia Laboy; (3) the Clerk of the Court at the time, Barbara H. Meiklejohn; (4) a transcription company; and

(5) several unnamed court clerks, court reporters, and transcriptionists.¹ In his complaint, Mr. Campbell claimed that Judge McCally and the court personnel “deliberately, maliciously and secretly omitt[ed] material information from the record^[2] in violation of [his] right to due process, and equal protection.” He claimed further that the alleged alteration of the record “prejudice[ed] [his] ability to receive a fair appeal.”

In addition to a monetary judgment, Mr. Campbell sought a declaratory judgment that Judge McCally “perpetrated a fraud” against him. He also sought “an injunction against Judge McCally stripping her of all jurisdiction, authority, and ability to violate [his] due process in any future proceeding” and “an injunction barring all defendants from the ability to utilize a recording method that provides any possibility of clandestine manipulation”

On August 21, 2021, Judge McCally and the court personnel moved to dismiss Mr. Campbell’s suit with prejudice. They argued that they were “immune from Mr. Campbell’s suit for damages” under the Maryland Tort Claims Act because they were acting within the scope of their public duties and Mr. Campbell’s complaint fell “well short of alleging facts to support an inference that the Defendants acted with malice or gross negligence”

¹ We will refer to the co-defendants collectively as “the court personnel.”

² Mr. Campbell identified six purported omissions from the transcript: (1) his objection to the conspicuous placement of Sheriff’s deputies next to him at trial; (2) a bench conference regarding the exclusion of a witness’s signed letter as substantive evidence; (3) his request for a copy of a “Detroit Police Report”; (4) the exclusion of the police report for inadequate authentication; (5) a ruling that a sworn affidavit could not constitute perjury unless it was notarized; and (6) his dialogue with the court about his “Probation Violation Report.”

Further, they contended that the circuit court lacked jurisdiction to provide the injunctive relief that Mr. Campbell requested because circuit court judges do not have the authority to discipline other circuit court judges and cannot dictate the method of audio recordings. In addition, Judge McCally and the court personnel argued that Mr. Campbell’s complaint failed to state a claim on which relief may be granted because “Mr. Campbell’s description of Judge McCally’s conduct [wa]s a collection of bald assertions and conclusory statements.”

On April 3, 2023, the circuit court dismissed Mr. Campbell’s complaint on the grounds that (1) he “d[id] not allege well-pleaded facts to support his conclusory allegations of ‘malicious corruption of the record’”; (2) Judge McCally and the court personnel “[we]re judicially immune from tort liability”; (3) “[t]here [wa]s no legal basis to grant the requested injunctive relief” because the court had “no authority to discipline a sitting judge” or to “require undetermined and unspecified recording methods”; and (4) there was no basis to grant Mr. Campbell’s request for declaratory judgment because he “failed to state a claim upon which relief can be granted.”

On February 21, 2023, about a month before his case was dismissed, Mr. Campbell filed a motion for assignment of an unaffiliated judge. In that motion, he contended that there was a “distinct possibility” that the judge presiding over his trial had interacted previously with the defendants in the case because the judge was a visiting judge and “visiting judges are on a ‘regular’ rotation” He argued further that it was “entirely possible” that the Administrative Judge may have received a “benefit” for assigning the

visiting judge and that “this possibility present[ed] an unacceptable risk of extrajudicial factors influencing the consideration of the case.” After a hearing, the circuit court denied Mr. Campbell’s motion for assignment of an unaffiliated judge.

Mr. Campbell timely appealed. We provide additional facts as necessary below.

II. DISCUSSION

This appeal raises two issues:³ *first*, whether the circuit court erred in dismissing Mr. Campbell’s complaint for failure to state a claim upon which relief can be granted; and *second*, whether the court erred in denying Mr. Campbell’s motion for assignment of an unaffiliated judge. We hold that (1) the court dismissed Mr. Campbell’s complaint properly because Judge McCally and the court personnel have absolute judicial immunity from civil liability for any alleged errors made in the record of Mr. Campbell’s trial and (2) the court

³ Mr. Campbell did not list any Questions Presented.

Judge McCally and her co-defendants phrased the Questions Presented as:

1. Did the circuit court lack jurisdiction to adjudicate Mr. Campbell’s complaint seeking injunctive relief, because the circuit court could not grant the injunctive relief sought?
2. Did Mr. Campbell fail to plead a proper cause of action against the state defendants, because the complaint failed to state a viable claim or cause of action relating to due process violations, equal protection violations, or a declaratory judgment?
3. Were the state defendants immune from suit because they were entitled to judicial immunity?
4. Was Mr. Campbell’s motion for assignment of an unaffiliated judge properly denied, because the circuit court did not abuse its discretion?

denied Mr. Campbell’s motion for assignment of an unaffiliated judge properly because Mr. Campbell failed to overcome the presumption of judicial impartiality.

A. Judge McCally And The Court Personnel Are Entitled To Absolute Judicial Immunity.

Mr. Campbell argues *first* that judicial immunity does not apply because “Judge McCally’s action was not ‘making’ the record, it was ‘modifying’ the record which . . . ‘is not a function normally performed by a circuit court judge,’ without an order from the appellate court.” He argues as well that it is possible that the modification of the record occurred while the circuit court was “divested of jurisdiction” over the case due to his appeal of the final judgment and that “judicial immunity would not attach to Judge McCally ‘making’ the record in that interim.” The State responds that the court did not err in finding that judicial immunity applies because “[t]here can be no dispute that Judge McCally was acting in a judicial capacity when she presided over Mr. Campbell’s criminal trial” and any actions taken by the court personnel at the direction of Judge McCally are covered by judicial immunity.

“On appeal from a dismissal for failure to state a claim, we must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them” *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 193 (2012) (quoting *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011)). “Dismissal is proper only if the facts and allegations, so viewed, fail to afford a claimant relief if proven” *Lewis v. Murshid*, 147 Md. App. 199, 203 (2002).

“The principle that judicial officers should be immune from all civil liability for their judicial acts has been part of the common law since very early days.” *Keller-Bee v. State*, 448 Md. 300, 305 (2016) (quoting *Parker v. State*, 337 Md. 271, 277 (1995)). “The doctrine of absolute judicial immunity bars civil suits against judges ‘for acts done by them in the exercise of their judicial functions.’” *Id.* Absolute judicial immunity “applies regardless of the nature of the tort and even where the suit against the judge alleges that he acted in bad faith, maliciously or corruptly.” *Parker*, 337 Md. at 284–85; *Maryland Bd. of Physicians v. Geier*, 241 Md. App. 429, 488 (2019) (quoting *Stump v. Sparkman*, 435 U.S. 349, 359 (1978)) (“A judge is not subject to liability even if he or she committed ‘grave procedural errors’”). “A judge may be sued only for ‘actions not taken in the judge’s judicial capacity’ or for ‘actions, though judicial in nature, taken in the complete absence of all jurisdiction.’” *Geier*, 241 Md. App. at 488 (quoting *Mireles v. Waco*, 502 U.S. 9, 9 (1991)).

“[W]hen determining whether an individual is entitled to receive absolute judicial immunity, courts should consider whether: (1) the act performed was by a judicial officer; and (2) the act was a judicial act.” *D’Aoust v. Diamond*, 424 Md. 549, 600 (2012). “With regard to the issue of determining whether an individual is a judicial officer, courts have focused mainly on the function performed by that individual.” *Id.* at 598. “The critical determination to be made in this respect is whether the individual is exercising judgment similar to that of a judge.” *Id.* As to whether an act qualifies as a “judicial act,” courts look to “the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge,

and to the expectations of the parties, *i.e.*, whether they dealt with the judge in [her] judicial capacity.” *Id.* at 599 (quoting *Parker*, 337 Md. at 290).

In this case, Judge McCally and the court personnel are entitled to absolute judicial immunity. Maryland Rule 16-503(a) provides that “[a]ll trials, hearings, testimony, and other judicial proceedings before a circuit court judge . . . shall be recorded verbatim in their entirety by a person authorized by the court to do so” The Rule provides further that the “[p]roceedings may be recorded by any reliable method or combination of methods approved by the County Administrative Judge.” Md. Rule 16-503(b). Making a record of judicial proceedings indisputably is a judicial function delegated to the circuit court. Judge McCally and the court personnel were acting as judicial officers when making the record of Mr. Campbell’s trial and they are entitled to judicial immunity for any errors in the record. *See D’Aoust*, 424 Md. at 599 (quoting *Gill v. Ripley*, 352 Md. 754, 771 (1999)) (“[I]ndividuals such as law clerks and court clerks are entitled to judicial immunity ‘when performing tasks that are integral to the judicial process[.]’”).

We are not persuaded by Mr. Campbell’s argument that judicial immunity does not apply because Judge McCally was “modifying” rather than “making” the record. To be sure, Maryland Rule 16-503 provides that trials must be “recorded verbatim.” Taking Mr. Campbell’s allegations as true, we will assume for the moment that Judge McCally “deliberately, maliciously and secretly omitt[ed] material information from the record . . . ,” and failed to produce a *verbatim* recording as required by the Rule. But even if Judge McCally failed somehow to comply with the Rule due to some modification of the

record, the doctrine of absolute judicial immunity still bars civil suits against her because the act of producing the record was an exercise of her judicial function. *See Geier*, 241 Md. App. at 488 (“A judge is not subject to liability even if he or she committed ‘grave procedural errors’” (*quoting Stump*, 435 U.S. at 359)); *Parker*, 337 Md. at 284–85 (absolute judicial immunity applies “even where the suit against the judge alleges that he acted in bad faith, maliciously or corruptly”).

We disagree as well with Mr. Campbell’s argument that judicial immunity does not attach because it’s possible that the alleged modification of the record occurred when the circuit court was “divested of jurisdiction. . . .” Mr. Campbell cites to *State v. Simms*, 456 Md. 551 (2017), to argue that Judge McCally lacked jurisdiction to make the record of his trial after he filed a notice of appeal because the case was within the “exclusive jurisdiction” of the appellate court at that point. (Emphasis omitted). In *Simms*, the defendant appealed his criminal conviction and the State then entered a *nol pros* for the underlying charges in an attempt to dismiss the appeal. *Id.* at 576. The Maryland Supreme Court held that “[b]ecause [the defendant] appealed his conviction and sentence, the trial court had no jurisdiction to alter the conviction or sentence by relying on the State’s *nol pros* authority.” *Id.* *Simms* clarified that jurisdiction to alter a conviction or sentence shifts from the circuit court to the appellate court once the defendant appeals the final judgment, but that case doesn’t say that the circuit court no longer has jurisdiction to produce a record of the proceedings that already occurred. Judge McCally was not stripped of jurisdiction

to make a record of Mr. Campbell’s trial simply because Mr. Campbell filed a notice of appeal.⁴

B. Mr. Campbell’s Motion For Assignment Of An Unaffiliated Judge Was Denied Properly.

Second, Mr. Campbell contends that the circuit court erred in denying his motion for assignment of an unaffiliated judge because his case was assigned “to be adjudicated by a judge who is a closely affiliated colleague, perhaps even a friend, to [Judge McCally and the court personnel].” Judge McCally responds that Mr. Campbell’s motion was denied properly because he failed to provide factual support for any claim of partiality and his “single statement speculating that [the presiding judge] is a ‘friend’ of the state defendants cannot ‘overcome the presumption of impartiality’ afforded to [the presiding judge].” We agree that Mr. Campbell failed to overcome the presumption of impartiality.

“[T]here is a strong presumption . . . that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified.” *Conner v. State*, 472 Md. 722, 738 (2021) (*quoting Jefferson-El v. State*, 330 Md. 99, 107 (1993)). “The party requesting recusal has a heavy burden to overcome the presumption of impartiality and must prove that the judge has a

⁴ Relatedly, we agree as well with the State’s arguments that Mr. Campbell’s complaint was dismissed properly on the grounds that (1) the circuit court in this case lacked the authority to grant an injunction stripping Judge McCalley “of all her jurisdiction, authority, and ability to violate [Mr. Campbell’s] due process in any further proceeding,” a power reserved to the Commission on Judicial Disabilities and the Supreme Court of Maryland, *see* Md. Const. art. IV, § 4B, and (2) Mr. Campbell may not challenge his conviction collaterally through this (or any other) civil suit. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

personal bias or prejudice against him or her or has personal knowledge of disputed evidentiary facts concerning the proceedings.” *Attorney Grievance Comm’n of Maryland v. Shaw*, 363 Md. 1, 11 (2001). “The decision to recuse oneself ordinarily is discretionary and will not be overturned except for abuse.” *Id.*

In this case, Mr. Campbell argued in his motion that because the judge presiding over his case was a visiting judge and “visiting judges are on a ‘regular’ rotation . . . ,” there was a “distinct possibility” that the presiding judge had interacted previously with the defendants in the case. In addition, Mr. Campbell argued that it was “entirely possible” that the Administrative Judge may have received a benefit for assigning the visiting judge to preside and that “[t]his possibility present[ed] an unacceptable risk of extrajudicial factors influencing the consideration of the case.” These allegations, which are supported by no factual allegations, fail to satisfy the “heavy burden” of overcoming the presumption of impartiality.⁵ *Id.*

Mr. Campbell’s allegations speculate about *possible* interactions or benefits that may have resulted in a personal bias. But nothing in the record suggests that any such interactions occurred in fact, and “the law will not suppose a possibility of bias or favor in a judge, who is already sworn to administer impartial justice” *Boyd v. State*, 321 Md. 69, 80 (1990) (cleaned up). And even if the presiding judge had in fact interacted with

⁵ Mr. Campbell contended as well that the presiding judge showed a personal bias by offering her condolences on the record after counsel for Judge McCally stated that Judge McCally’s judicial assistant and co-defendant had passed away two months prior. We are unpersuaded. The presiding judge did not show partiality by offering condolences for a recent death unrelated to the merits of the case.

Judge McCally and the court personnel on previous occasions as a visiting judge on “rotation,” those interactions would not, without more, undermine the presumption that the presiding judge was impartial. *See Carey v. State*, 43 Md. App. 246, 249 (1979) (interactions in the form of “prior legal proceedings involving related parties or issues [are] simply not grounds for a judge to recuse [her]self”).

Moreover, we disagree with Mr. Campbell that his motion for assignment of an unaffiliated judge cannot be analyzed as a request for recusal. In his motion, Mr. Campbell argued that his allegations “demonstrated the necessity for an impartial and unaffiliated judge” The essence of his motion was to have the presiding judge exchanged on the ground that the assigned judge was not impartial. There would be no practical difference in our analysis whether we reviewed the presiding judge’s decision not to recuse herself or the administrative judge’s decision not to assign a new presiding judge—Mr. Campbell would need to overcome the presumption of impartiality in either instance and he hasn’t.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**