

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN  
AND FOR ORANGE COUNTY,  
FLORIDA

CASE NO.: 2018-CV-000062-A-O

JULIO E. GIL DE LAMADRID  
a/k/a JULIO ENRIQUE GIL  
DE LAMADRID PEREZ,

Appellant,

v.

BOWLES CUSTOM POOLS & SPAS,  
INC., a Florida Corporation,

Appellee.

---

Appeal from the Order of  
Judge David P. Johnson,  
Orange County Judge.

Julio E. Gil De Lamadrid, pro se,  
Appellant.

Barry Kalmanson, Esq.,  
for Appellee.

Before CARSTEN, WHITEHEAD, WILSON, JJ.

**PER CURIAM.**

Based on this Court's order of April 26, 2019, this appeal is being treated as a Writ of Prohibition seeking review of the trial court's order denying a motion to disqualify the trial judge David P. Johnson ("Judge Johnson").

## **Relevant Facts**

On March 23, 2018, Appellant filed the underlying “New Motion and Affidavit for Disqualification” (“the Motion”). There is nothing in the record to indicate that the Motion was ever served personally on Judge Johnson or sent directly by Appellant to his office. Further, the Motion did not contain the dates of all previously granted motions to disqualify under the rule. Subsequently, on April 24, 2018, Appellant filed an “Informative Motion,” as well as a letter to Judge Johnson, stating that because the Judge had not acted on the Motion within the thirty-days required by Rule 2.330(j), Fla. R. Jud. Admin., the Motion was deemed granted. The “informative motion” requested immediate reassignment of the case to another county court judge. On the same day, Judge Johnson entered an order denying the Motion for legal insufficiency because it had not been properly served according to Rule 2.330(c)(4), Fla. R. Jud. Admin. Appellant then sought review via the instant writ of prohibition.

## **Standard of Review**

This Court reviews challenges to orders on motions for disqualification *de novo*. See *Peterson v. Asklipious*, 833 So. 2d 262, 263 (Fla. 4th DCA 2002). A writ of prohibition is the proper procedure for appellate review to test the validity of a motion to disqualify. *Time Warner Entm’t Co. v. Baker*, 647 So. 2d 1070, 1071 (Fla. 5th DCA 1994).

## Discussion

It is clear from the record that Judge Johnson based his decision on the legal insufficiency of the Motion. Judge Johnson stated that the Motion was not properly served on the court in the manner prescribed by Rule 2.330(c)(4), Florida R. Jud. Admin. Rule 2.330(c)(4) reads in pertinent part that “[i]n addition to filing with the clerk, the movant shall immediately serve a copy of the motion on the subject judge as set forth in Florida Rule of Civil Procedure 1.080.”

Appellant argues that the Motion had been properly filed with the clerk and was therefore before Judge Johnson and on his docket. Appellant notably does not contend that he attempted any service on Judge Johnson beyond the filing of the Motion with the clerk, which he believes was sufficient. However, the text of Rule 2.330(c)(4) is clear that “in addition to filing...the movant shall immediately serve a copy of the motion on the subject judge.” Indeed, there is nothing in the record that indicates Appellant took any additional steps beyond filing the Motion with the clerk. Accordingly, Judge Johnson’s conclusion that the Motion was legally insufficient was correct as a matter of law.

We also note that, even if Appellant had properly served the Motion on Judge Johnson and complied with that part of Rule 2.330(c)(4), Judge Johnson’s conclusion of legal insufficiency would be supportable under the “tipsy coachman” doctrine. *See Dade County Sch. Bd. V. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999). The record shows that the Motion was also legally insufficient under

Rule 2.330(c)(4) because it did not “include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.” Fla. R. Jud. Admin. 2.330(c)(4). While the Motion does make reference to a previous motion against and order by Judge Johnson, as well as previous motions and orders involving previous trial judges, the relevant dates of those motions and orders are contained nowhere in the Motion.

Based on the foregoing, Appellant’s Petition for Writ of Prohibition is **DENIED.**

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida, on this \_\_\_\_ day of \_\_\_\_\_, 2020.

---

**KEITH A. CARSTEN**  
**Presiding Circuit Judge**

WHITEHEAD and WILSON, JJ. Concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order was furnished on this \_\_\_\_ day of \_\_\_\_\_, 2020 to the following: **Barry Kalmanson, Esquire**, 500 N. Maitland Avenue, Suite 305, Maitland, Florida 32751 at [bk@barrykalmanson.com](mailto:bk@barrykalmanson.com); **Matilde de Jesus**, MB-15 Paseo del Claro, Monte Claro, Bayamon, Puerto Rico 00961; **Julio E. Gil de Lamadrid, Esquire**, Reparto Alhambra, A-11 Granada Street, Bayamon, Puerto Rico 00957 at [jgil@gildelamadrid-psc.com](mailto:jgil@gildelamadrid-psc.com).

---

Judicial Assistant