

Not Reported in S.W.3d, 2008 WL 2454225 (Tex.App.-Waco)
(Cite as: 2008 WL 2454225 (Tex.App.-Waco))

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SEE TX R RAP RULE 47.2 FOR DESIGNATION
AND SIGNING OF OPINIONS.

MEMORANDUM OPINION

Court of Appeals of Texas,
Waco.
Michael Francis TREIS, Appellant
v.
Tonia SWALBERG, Appellee.

No. 10-07-00141-CV.
June 18, 2008.

From the 40th District Court Ellis County, Texas,
Trial Court No. 70534, [Gene Knize](#), J.
Michael Francis Treis, Ferris, pro se.

[Glen W. Wood](#), [Dennis D. Conder](#), Stacy & Conder,
LLP, Dallas, TX, for Appellee/Respondent.

Before Chief Justice [GRAY](#), Justice [VANCE](#), and
Justice [REYNA](#).

MEMORANDUM OPINION

[FELIPE REYNA](#), Justice.

*1 Michael Francis Treis sued Tonia Swalberg for injuries arising from an automobile collision. During voir dire, Treis continually interrupted his trial counsel, fired his counsel, and requested a mistrial, which was denied. When Treis's disruptive behavior continued, the trial judge dismissed the case on grounds that Treis's misconduct had prejudiced his case. On appeal, Treis, acting pro se, argues that the trial judge's oath of office is void and that the judge should have recused himself. We affirm.

OATH OF OFFICE

Treis contends that the trial judge failed to comply with the oath of office requirements of [article 16, section 1, subsection \(b\) of the Texas Constitution](#), which requires all elected or appointed officers to take an anti-bribery oath.^{FN1} See [TEX. CONST. art XVI, § 1\(b\)](#). Attached to Treis's brief are copies of the trial judge's oaths filed with the County Clerk.

Treis contends that these oaths are incomplete and void because they do not include the anti-bribery oath.^{FN2}

^{FN1}. Treis also contends that the trial judge failed to comply with [5 U.S.C. § 3331](#), which requires individuals elected or appointed to "an office of honor or profit in the civil service or uniformed services" to take an oath of office. [5 U.S.C.S. § 3331](#) (LexisNexis 1994). However, this section applies to federal employees. See [5 U.S.C.S. § 2101\(1\)](#) (LexisNexis 1994) ("civil service" consists of all appointive positions in the executive, judicial, and legislative branches of the *Government of the United States*”).

^{FN2}. We note also that these documents are not part of the appellate record and may not be considered. See [Nguyen v. Intertex, Inc., 93 S.W.3d 288, 292-93 \(Tex.App.-Houston \[14th Dist.\] 2002, no pet.\)](#).

However, the anti-bribery oath prescribed by the Texas Constitution must be filed with the *Secretary of State*. See [TEX. CONST. art XVI, § 1\(c\)](#). Treis has provided no evidence demonstrating that the trial judge neither took nor filed the anti-bribery oath. See [Thomas v. Burkhalter, 90 S.W.3d 425, 426 \(Tex.App.-Amarillo 2002, pet. denied\)](#) (the record contained no evidence demonstrating "that such oaths were not taken or filed with the Secretary of State" and the "missing evidence [cannot] be supplied through our taking 'judicial notice' of the records of the Secretary of State"). Even assuming that the oath was not filed does not establish that it was never taken or is void. See [id. at 427](#) (absence of oaths does not establish that they were never taken); see also [In re GE Capital Corp., 63 S.W.3d 568, 571 \(Tex.App.-El Paso 2001, no pet.\)](#) (anti-bribery oath is not void simply because it was not filed). Accordingly, we overrule Treis's contention that the trial judge's oath of office is void.

RECUSAL

Treis filed a motion to recuse under Rule 18b(2)(b) on grounds that he had actively campaigned for the trial judge's opponent in the previous

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election and had protested at the judge's various speaking engagements. See [TEX.R. CIV. P. 18b\(2\)\(b\)](#) (“A judge shall recuse himself in any proceeding in which ... he has a personal bias or prejudice concerning the subject matter or a party”). The trial judge declined to recuse himself. The Administrative Judge assigned another district judge to hear the motion to recuse.

At the hearing on the motion to recuse, Treis testified that he actively campaigned for the trial judge's opponent in the previous election. He carried signs at several different locations, hoping that the trial judge would see the signs and reconsider his stance on giving probation to defendants charged with serious crimes. Treis did not believe that the trial judge could be “totally fair and equitable,” given Treis's “open protest to the Judge's rulings .” The assigned judge asked whether the trial judge had responded to the signs, said anything about the signs, or indicated his feelings about the signs. Treis responded that one of the district attorneys, not the trial judge, said something to him about it. Absent “evidence concerning any opinions, any actions, or any speech by the Judge,” the assigned judge denied Treis's motion. Treis challenges the trial judge's failure to recuse himself.^{FN3} We construe this argument as a challenge to the denial of his motion to recuse, which we review for abuse of discretion. See [TEX.R. CIV. P. 18a\(f\)](#).

FN3. On appeal, Treis also complains that the trial judge should have recused himself because he: (1) ruled against mediation and refused to answer Treis's questions during voir dire; and (2) he has “ties” with the father of Treis's trial counsel. Because these allegations are raised for the first time on appeal, we will not address them. See [Paul v. Merrill Lynch Trust Co., 183 S.W.3d 805, 812 n. 11 \(Tex.App.-Waco 2005, no pet.\)](#) (“A claim, issue, or allegation may not be raised for the first time on appeal”); see also [Gulf Maritime Warehouse Co. v. Towers, 858 S.W.2d 556, 559 \(Tex.App.-Beaumont 1993, writ denied\)](#) (“recusal may be waived if not raised by proper motion”).

*2 Other than his own subjective testimony, Treis has presented no evidence demonstrating any impartiality, personal bias, or prejudice on the part of

the trial judge. He improperly assumes that the trial judge is prejudiced and cannot be impartial. See [Woodruff v. Wright, 51 S.W.3d 727, 738 \(Tex.App.-Texarkana 2001, pet. denied\)](#) (“recusal is not required merely because the trial judge knows the defendant, or even because the defendant (who was for some time the only heart surgeon in this region) performed surgery on a family member of the judge”); see also [In the Interest of J.E.L., No. 09-98-457 CV, 1999 Tex.App. Lexis 5237, at *18-19, 1999 WL 498226 \(Tex.App.-Beaumont July 15, 1999, no pet.\)](#) (not designated for publication) (“Other than appellant's bare assertions of a lack of impartiality, which are not supported by any facts, there is no evidence in the record indicating the trial judge was impartial”). Accordingly, we cannot say that the assigned judge abused his discretion by denying Treis's motion to recuse the trial judge. We overrule Treis's complaint that the trial judge should have been recused.

The judgment is affirmed.

(Chief Justice [GRAY](#) concurs in the judgment but does not join the opinion of the Court. A separate opinion will not issue.)

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