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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-23-189

ELIZABETH LYON APPELLANT V. THE ACADEMY, INC., AND MARK HENRY APPELLEES	Opinion Delivered June 5, 2024 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72CV-20-1287] HONORABLE JIM D. SPEARS, JUDGE AFFIRMED

CINDY GRACE THYER, Judge

Elizabeth Lyon appeals from several decisions of the Washington County Circuit Court. She challenges the court's order granting a motion for Rule 11 sanctions filed by appellees The Academy, Inc., and Mark Henry; the denial of her motion for reconsideration of the sanctions order; the denial of her motion for the court to recuse itself; and the denial of her attempt to disqualify the judge. We find no error and affirm.

I. *Factual and Procedural Background*

The Academy is the operator of Haas Hall Academy and Haas Hall Bentonville, open-enrollment charter schools in Washington County. Lyon originally filed suit against The Academy under the Arkansas Freedom of Information Act (FOIA), codified at Arkansas Code Annotated sections 25-19-101 et seq. (Repl. 2014 & Supp. 2023), in December 2018. She voluntarily nonsuited that action pursuant to Arkansas Rule of Civil Procedure 41(a) in

January 2019. Lyon refiled her FOIA complaint in June 2020, this time naming The Academy and its attorney, Mark Henry, as defendants. Henry was alleged to be "the de facto custodian of records for [The] Academy." The complaint was accompanied by fifty-one exhibits. Lyon filed an amended complaint in October 2020, omitting the exhibits.

The Academy and Henry subsequently moved to dismiss and for Rule 11 sanctions on October 30, 2020. The motion to dismiss asserted that Lyon's refiling of her lawsuit following her voluntary nonsuit was untimely under the savings statute, Arkansas Code Annotated section 16-56-126 (Repl. 2005). In addition, the motion contended that Henry had been improperly named as a defendant in the FOIA action because he was The Academy's lawyer and not the custodian of records. The Academy and Henry sought Rule 11 sanctions against Lyon's attorney, Matt Campbell, on the grounds that suing Henry personally was without a good-faith basis in law or fact. The motion thus asked the court to strike Henry as a defendant pursuant to Rule 12(b), dismiss the entire lawsuit as untimely, and impose sanctions in the form of attorney's fees and expenses pursuant to Rule 11.

Lyon responded to the motion to dismiss on November 6. The same day, she filed a motion asking Circuit Judge Jim D. Spears to recuse himself.[1] The circuit court denied the motion to recuse on November 24, 2020, finding it to be "without merit and groundless."

On December 11, the circuit court issued a letter opinion ruling on the motion to dismiss the case and motion to dismiss Henry as a party. The court determined that the

[1]Judge Spears was appointed to the case by the supreme court in August 2020 after all the judges in Washington County recused themselves from the matter.

savings statute was inapplicable because Lyon had refiled her case within FOIA's five-year statute of limitations. The court agreed, however, that Henry should be dismissed as a party to the litigation. An order reflecting the court's decision was entered on December 21, 2020. In it, the court found that Lyon's naming Henry as a defendant in the FOIA action was "factually and legally unsupported" and that there was "no plausible allegation by [Lyon] that Mr. Henry did anything other than advise his client consistent with traditional ethical representation of clients." The court reserved the issue of Rule 11 sanctions, asserting its belief that a hearing was necessary to address attorney Campbell's motives "in signing his name to a lawsuit against Mr. Henry." The hearing was not to take place "until there is a lifting of the COVID restrictions on in-person hearings on civil cases or at such time as the Court may conduct such hearing."

The case then lay dormant until February 17, 2022, when The Academy filed a motion to dismiss for lack of prosecution pursuant to Arkansas Rule of Civil Procedure 41(b). The circuit court issued a show-cause order that same day, giving Lyon until March 9, 2022, to provide good cause why the case should continue on the docket. Lyon responded that the court itself had advised in December 2020 that it was "not interested in any in-person proceedings at this time" due to the pandemic; therefore, she had "simply been waiting until such time as this court was comfortable with an in-person trial before attempting to schedule the matter for a final hearing." Lyon added that she was in law school in Little Rock and was "waiting until closer to the end of the school year to attempt to

schedule a trial." The court rejected Lyon's arguments and entered an order on March 25, 2022, dismissing her complaint with prejudice. There was no appeal from this order.

On April 4, 2022, The Academy moved for attorney's fees and costs. It then supplemented its motion for attorney's fees and costs on April 11, 2022, attaching an itemized list of Henry's attorney's fees incurred during the course of the litigation. The itemized list, covering the period of time from June 2020 through March 2022, was highlighted to isolate the fees related only to his work on the motion to dismiss himself from the case.[2] The court scheduled a hearing on the motion for August 5, 2022. Just before that hearing, however, on August 3, Lyon moved to disqualify Judge Spears pursuant to amendment 80 of the Arkansas Constitution, arguing that he was not qualified to serve as a special judge because he did not reside within the judicial circuit over which he was presiding.

At the August 5 hearing, Lyon testified about her activities as a blogger and about her history with the case. She acknowledged that in a January 2019 email, she recognized that the custodian of records at The Academy was Dr. Martin Schoppmeyer, superintendent of Haas Hall Academy. She further agreed that over the previous two years, she had addressed approximately seventy FOIA requests to Dr. Schoppmeyer. She also conceded that in an email dated April 20, 2020, she expressly recognized that Mark Henry was not the custodian

[2]The motion explained that the list represented "attorneys' fees incurred by the defendant only in the second lawsuit" and excluded "the extensive fees and costs tied to [Henry's] former association to Rose Law Firm in defending the first matter" as well as costs and fees tied to responding to the original FOIA requests.

of records for Haas Hall. In another email exchange, Henry wrote to Lyon, "Please direct your correspondence to me. I am counsel for Hass Hall"; Lyon replied, "Counsel your client, then. I'll continue to direct my AFOIA requests to the custodian of records." Lyon testified that by "custodian of records," she meant Dr. Schoppmeyer.

On cross-examination, Lyon asserted that she had not filed any of her lawsuits for purposes of delay or harassment. She said she named Mark Henry as a defendant in her second lawsuit because "at all times in every request he handled all of my FOIA requests, including the initial acknowledgment and then the responsive documents and answering any questions I had . . . about what the redactions were. Dr. Schoppmeyer never communicated with me; it was always Mr. Henry." She said that sometime between April and October 2020, Henry told her not to contact Dr. Schoppmeyer again and to communicate only with him. She added that every time she tried to contact Dr. Schoppmeyer, he forwarded her emails to counsel. On redirect, however, Lyon conceded that Henry, as well as a previous attorney for The Academy, had always maintained that they were not the records custodians for Haas Hall.

At the conclusion of the hearing, the court denied Lyon's motion for directed verdict as well as her motion for disqualification. The court then inquired whether Henry's petition for attorney's fees itemized the time spent on the motion to dismiss. Henry replied that he could "separate it for [the court]." On August 8, Henry submitted a supplement to the motion for attorney's fees and costs, reattaching the same highlighted list of invoices from his April supplemental motion that reflected his time spent on the dismissal issue.

On September 2, 2022, the circuit court entered its "Final Judgment and Order Granting Sanctions." The court noted that the "lone issue remaining" after the initial FOIA case had been dismissed with prejudice was "a claim for fees and costs on [a] theory of either Rule 11 or as prevailing party on [the] claim the lawsuit was instituted for improper purposes." The court declined to award fees pursuant to FOIA but found they were proper as a Rule 11 sanction:

> Specifically, this Court finds that naming attorney Henry as a party defendant was an attempt to cause additional expense to the defendant and cause Mr. Henry to recuse as he would be a witness in the case as well as a party. The Academy would have had to hire a new attorney, and did so, and Mr. Henry may well have had to employ counsel as well. As all parties knew attorney Henry was acting as the attorney for the defendant in dealing with Ms. Lyon, the naming of him as separate defendant was calculated to cause additional expense and to harass. After reviewing the evidence and testimony, it is clear that adding Mr. Henry as a party had no chance of success and was done to harass and cause needless litigation expense. Rule 11 sanctions are therefore appropriate.

Accordingly, the court found that Lyon and her attorney, Campbell, were jointly and severally liable to The Academy for the sum of $13,263.50. That figure represented the "itemized time entries for attorney Henry which related only to the dismissal of attorney Henry and the associated pleadings, and in finding such investment to be reasonable, consistent with the hourly rate charged for such services, reasonable and customary to the locale, and that such amount does not represent repayment for defense of both cases relative to the FOIA claims presented."

On September 19, Lyon filed a motion for reconsideration pursuant to Arkansas Rule of Civil Procedure 59. In it, she raised numerous alleged factual errors. In addition, she

argued that the circuit court committed error in the assessment of the amount of recovery. Specifically, she claimed that some of the dates and dollar amounts claimed on Henry's itemized list of billing entries related to work for time spent on matters other than Henry's dismissal motion. Other entries "commingled relevant and non-relevant work" and included work on unrelated matters. By her calculations, Lyon contended that the total dollar amount for time entries that "appear to have been properly itemized in accordance with the court's . . . order is $5,407.50, not $13,163.50." Finally, Lyon argued that the circuit court erred when it sua sponte barred her from requesting the same documents from The Academy that formed the basis of its suit.

Henry responded to Lyon's motion for reconsideration, pointing out, with respect to the amount of attorney's fees, that she had "had tremendous opportunity to respond and identify problems tied to the proposed motion for fees, the attached exhibits, the itemization of fees, and the explanation of fees submitted to the court in advance of the hearing." Henry therefore asked the court to deny the motion.

The circuit court did not act on Lyon's motion for reconsideration within thirty days; the motion was thus deemed denied on October 19, 2022. The court nonetheless entered an order on November 16, 2022, denying the motion. Lyon timely filed her notice of appeal on November 18, 2022.

II. *Discussion*

A. Rule 11 Sanctions

In her first point on appeal, Lyon argues that the circuit court's decision to grant the motion for Rule 11 sanctions was in error. We review a circuit court's Rule 11 award of attorney's fees under an abuse-of-discretion standard. *McDermott v. Cline*, 2019 Ark. App. 472, 588 S.W.3d 144. In our review, we give "substantial deference" to the circuit court's determination of whether a violation of Rule 11 occurred and what the appropriate sanction should be. *Id.* at 7, 588 S.W.3d at 149. The primary purpose of Rule 11 sanctions is to deter future litigation abuse, and the award of attorney's fees is but one of several methods of achieving this goal. *Id.*

Rule 11 is not intended to permit sanctions just because the circuit court later decides that the attorney against whom sanctions are sought was wrong. *Stephens v. Wilson*, 2020 Ark. App. 404, 609 S.W.3d 439. The circuit court is expected to avoid using the wisdom of hindsight and should test counsel's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. *Id.* The essential issue is whether the attorney who signed the pleading or other document fulfilled his or her duty of reasonable inquiry into the relevant law, and the indicia of reasonable inquiry into the law include the plausibility of the legal theory espoused in the pleading and the complexity of the issues raised. *Id.* The moving party establishes a Rule 11 violation when it is patently clear that the nonmoving party's claim had no chance of success. *Chlanda v. Killebrew*, 329 Ark. 39, 945 S.W.2d 940 (1997). When a violation of Rule 11 occurs, sanctions are mandatory. *Crockett & Brown, P.A. v. Wilson*, 321 Ark. 150, 901 S.W.2d 826 (1995).

The circuit court determined that Rule 11 sanctions were appropriate in this case because the decision to name Henry as a defendant "had no chance of success and was done to harass and cause needless litigation expense." Lyon argues on appeal that her decision to name Henry as a party to the FOIA action was based on her assessment that Henry was acting as the custodian of records for The Academy.

Under the FOIA, the "custodian" of a record, "except as otherwise provided by law and with respect to any public record, means the person having administrative control of that record." Ark. Code Ann. § 25-19-103(1)(A) (Supp. 2023). The FOIA does not define the term "administrative control." *Fox v. Perroni*, 358 Ark. 251, 260, 188 S.W.3d 881, 888 (2004). Nevertheless, Lyon claims that because Henry was "the sole person to contact [Lyon] in response to her requests, to make decisions regarding disclosure, [and] to make arguments to [Lyon] as to why certain things were or were not released," he was "acting in the capacity of custodian" such that naming him as a defendant was proper.

Lyon's claim that she reasonably believed Henry was custodian of records is, however, belied by her own words and conduct throughout the course of this litigation. For example, in her original 2018 FOIA complaint, although she identified Dr. Schoppmeyer as the "'custodian' of the requested records," she did not name him as a separate defendant; instead, she named The Academy as the sole defendant. In a May 8, 2020 email to Dr. Schoppmeyer, filed as an attachment to her June 2020 complaint, she stated, "Mark Henry[ ] . . . represents Haas Hall very poorly. Fortunately, *since he is not the custodian of records for Haas Hall*, it's appropriate for me to . . . email you directly." In an April 20, 2020 email,

Lyon told Henry that she would "continue to direct my AFOIA requests *to the custodian of records*," clearly evidencing her knowledge that Henry was not the custodian. Another email from Henry to Lyon informed her that The Academy's previous attorney, Tori Jones, was "no longer representing Haas Hall Academy thus I will be your primary contact. *She was not custodian of records anyway.*"[3] (Emphasis added.) Yet another email from Lyon to Jones expressed that if Jones, "as an attorney in private practice," chose not to communicate with her, "then the responsibility falls back on *the custodian of the records: Dr. Schoppmeyer*." (Emphasis added.) Additionally, Lyon's testimony at the hearing on Rule 11 sanctions, as described above, reflected that she was aware that Dr. Schoppmeyer, not Henry, was the custodian of records at The Academy.

Emails from Matt Campbell, Lyon's attorney, also reflected his awareness that Henry was not the custodian of records. For example, on February 22, 2019, before filing the second lawsuit, Campbell sent an email to Henry in which he stated, "If Haas chooses to have those discussions [regarding Lyon's FOIA requests] *through counsel, rather than having the actual custodian discuss the requests as the statute contemplates*, then she can discuss those requests with counsel as necessary." (Emphasis added.) An email he wrote to Jones in January 2019 likewise acknowledged that the custodian of records and The Academy's attorney were not the same entity and did not serve the same function: "[T]here is no reason that *the custodian of records*

[3]It is worth noting that, as with Dr. Schoppmeyer, Lyon never named attorney Jones as a defendant.

cannot or should not communicate with [Lyon] directly. The statute does not contemplate or allow for an entity *to ask a lawyer* to make release or redaction decisions." (Emphasis added.)

In short, the evidence overwhelmingly showed that Lyon and Campbell both knew that Henry was not the custodian of records for The Academy, yet they chose to name him as a defendant in the June 2020 lawsuit.

The cases on which Lyon relies do not compel a different result. For example, in *City of Fayetteville v. Edmark*, 304 Ark. 179, 801 S.W.2d 275 (1990), the supreme court held that legal memoranda prepared by outside counsel for a governmental entity for litigation purposes are public records within the meaning of FOIA. The court did not hold, however, that outside private counsel necessarily becomes the custodian of records simply by the fact that counsel prepared a document at the city's request. And in *Apprentice Information Systems, Inc. v. DataScout, LLC*, 2018 Ark. 146, at 5, 544 S.W.3d 39, 43, the supreme court held that although a private entity or individual may occasionally keep a public record for a public official, it is the public official who retains the obligation to produce the public record. The court clarified that the General Assembly clearly intended for the responsibility of initially determining whether a record sought was a public record to rest with the public official, not a private entity. *Id.* at 6, 544 S.W.3d at 43.

Because the evidence was clear that Henry was not the custodian of records for The Academy, and because it was therefore not his burden to produce the records in response to Lyon's request, it was patently clear that Lyon's claims against Henry had "no chance of success." *Chlanda*, 329 Ark. at 41, 945 S.W.2d at 941. Henry and The Academy therefore

established a violation of Rule 11, *see City of Little Rock v. Nerhan*, 2013 Ark. App. 672, at 9, 430 S.W.3d 203, 209, and sanctions were therefore mandatory. *See Pomtree v. State Farm Mut. Auto. Ins. Co.*, 353 Ark. 657, 121 S.W.3d 147 (2003). The circuit court thus did not abuse its discretion in imposing Rule 11 sanctions against Lyon and Campbell.

In addition to Lyon's argument that the court erred in finding that her claim against Henry had no chance of success, she also argues that the court erred in determining that naming Henry as a party "was an attempt to cause additional expense to the defendant and cause Mr. Henry to recuse as he would be a witness in the case as well as a party." She urges that there was no evidence introduced to this effect at the hearing, and the court abused its discretion in so finding. Since Henry was required to establish only that Lyon's claim against him had no chance of success, however, her purported motivation in naming Henry as a defendant is immaterial.

Finally, Lyon claims that the circuit court failed to consider the requisite factors for determining the amount of a Rule 11 sanction. In *Hodges v. Cannon*, 68 Ark. App. 170, 183, 5 S.W.3d 89, 99 (1999), this court held that

> [w]hen a trial court imposes a monetary award as a Rule 11 sanction, the trial court should explain the reason for the sanction so that a reviewing court may have a basis to determine whether the chosen sanction is appropriate. The trial court should consider: (1) the reasonableness of the moving party's attorney's fees; (2) the minimum sanction necessary to deter the nonmoving party from future misconduct; (3) the ability of the nonmoving party to pay; and (4) factors relating to the severity of the nonmoving party's Rule 11 violation.

(Internal citations omitted.) *See also Crockett & Brown*, 321 Ark. at 159, 901 S.W.2d at 830–31.

At the conclusion of the sanctions hearing, Campbell presented arguments concerning each of these factors. He asserted that Henry's legal-fee request "does not appear on its face reasonable to me." He acknowledged that he would "leave that to the court" to determine the minimum sanction necessary to deter future conduct, but he claimed, without having introduced any evidence on the matter, that both he and Lyon lacked the ability to pay a sanction. Finally, he urged that the severity of the violation was "mild" and had no impact on Haas Hall's ability to defend the case the way it desired.

In its final order, the court explained its reasoning for imposing Rule 11 sanctions:

> The court arrived at [the amount of $13,263.50] by reviewing the itemized motion for attorneys' fees filed by defendant, additionally reviewing the August 8, 2022 supplement to the motion for attorneys' fees and costs, additionally reviewing the itemized time entries for attorney Henry which related only to the dismissal of attorney Henry and the associated pleadings, and in finding such investment to be reasonable, consistent with the hourly rate charged for such services, reasonable and customary to the locale, and that such amount does not represent repayment for defense of both cases relative to the FOIA claims presented.

The court specifically addressed one of the factors––the reasonableness of the fee. As to the remaining *Hodges* factors, we agree with The Academy that the factors are "implicit in the [circuit] court's decision and are clear from the record."

For example, regarding the second and fourth factors––the minimum sanction necessary to deter future misconduct and the severity of the nonmoving party's Rule 11 violation––the court had before it evidence that Lyon "made repetitive and redundant serial requests to The Academy and brought litigation against a party that had no chance of success." And with respect to the ability of the nonmoving party to pay, neither Lyon nor

Campbell introduced any evidence regarding their finances at the sanctions hearing. Indeed, the only mention of this factor came during Campbell's closing arguments, and of course, arguments of counsel are not evidence. *See Tackett v. Freedman*, 2022 Ark. App. 135, 641 S.W.3d 683. As such, the court had no evidence to discuss pertaining to this factor.

In deciding an appropriate sanction, circuit courts have broad discretion not only in determining whether sanctionable conduct has occurred, but also what an appropriate sanction should be, and that court's determination will not be overturned by this court absent an abuse of that discretion. *Williams v. Martin*, 335 Ark. 163, 171, 980 S.W.2d 248, 252 (1998). Here, although the court relied heavily on the factor concerning the reasonableness of the attorney's fees, we cannot find that it otherwise abused its discretion in determining the amount of Rule 11 sanctions on the basis of the record before it.

B. Motion for Reconsideration

In her second point on appeal, Lyon argues that the circuit court erred in denying her posttrial Rule 59 motion. The decision to grant or deny a new trial under Rule 59(a) is within the discretion of the circuit court, and that decision will not be reversed absent a manifest abuse of discretion, that is, discretion exercised thoughtlessly and without due consideration. *Losurdo v. Losurdo*, 2023 Ark. App. 584, 680 S.W.3d 487; *Horton v. Horton*, 2011 Ark. App. 361, 384 S.W.3d 61.

Lyon argues primarily that the court's final order imposing Rule 11 sanctions included errors of fact and errors in the assessment of the amount of damages to be imposed. She points to multiple instances in Henry's billing records where he included items unrelated

to his work on his dismissal as a party. Excluding these improperly included billing records, she contends that the proper amount of the Rule 11 sanctions should have been $5,407.50, instead of $13,263.50.

Lyon's arguments relative to the amount of attorney's fees that should have been awarded are not preserved for our review, however. As noted above, on April 4, 2022, The Academy filed a motion for attorney's fees and costs. The Academy filed a supplement to its motion for attorney's fees and costs on April 11, 2022, attaching an itemized list of Henry's attorney's fees incurred during the course of the litigation and related to his work on the motion to dismiss him from the case. The court conducted a hearing on the motion on August 5, 2022. On August 8, Henry submitted a second supplement to the motion for attorney's fees and costs, which, as noted previously, was identical to the April itemization. The circuit court subsequently entered its final order granting sanctions and a judgment in the amount of $13,263.50 in attorney's fees on September 2, 2022.

Despite being aware of the billing statements and amounts that Henry was claiming since April, Lyon did not complain about the amount or characterization of Henry's fees until her motion for reconsideration, only then raising the issue for the first time. It is axiomatic that an issue must be presented to the circuit court at the earliest opportunity in order to preserve it for appeal. *Jones v. Double "D" Props., Inc.*, 352 Ark. 39, 98 S.W.3d 405 (2003). Stated another way, a party may not wait until the outcome of a case to bring an error to the circuit court's attention. *LaFont v. Mooney Mixon*, 2010 Ark. 450, 374 S.W.3d 668. This principle likewise applies to the current situation. Lyon cannot be heard to complain

about Henry's billing records for the first time in her motion for reconsideration after the circuit court has issued its ruling on The Academy's motion for Rule 11 sanctions. Lyon did not present these arguments to the circuit court in her response to either of The Academy's motions for sanctions, when Henry submitted his billing statements before the hearing, or during the hearing itself. Accordingly, we conclude that her arguments were not timely raised below and are therefore not preserved for our review on appeal.

Lyon also complains that the circuit court erred in "sua sponte award[ing] injunctive relief" to The Academy when it "barred [her] from again requesting the same documents from [The Academy] that had formed the basis of her lawsuit." She urges that the court failed to comply with Arkansas Rule of Civil Procedure 56 in the manner in which it "grant[ed] an injunction" and that the court created an exemption to FOIA that does not exist in the statute.

This ruling by the court, however, did not make its way into the final order. Our law is clear that to the extent a court's oral ruling conflicts with its written order, the written order controls. *Mathis v. Hickman*, 2024 Ark. App. 172, 687 S.W.3d 119; *Tipton v. Tipton*, 2017 Ark. App. 601; *Howard v. Codling*, 2013 Ark. App. 641. Because the court's written order does not mention this "injunction," it is not before us for review.

C. Motion for Recusal

In her third point on appeal, Lyon argues that the circuit court erred in denying her motion for the court to recuse itself. The motion was based on events that took place in 2014 when attorney Campbell was working on a report for his blog. Judge Spears conveyed certain

information to Campbell about a matter Campbell was investigating. On November 6, 2020, Lyon filed a motion for Judge Spears to recuse himself on the basis of his involvement in the above matter. The circuit court denied the motion as "without merit and groundless" in an order entered on November 24, 2020. The court subsequently entered its order dismissing the case with prejudice on March 25, 2022.

On appeal, Lyon argues that the circuit court abused its discretion in denying her motion for recusal. She failed, however, to timely appeal the order denying that motion. As just mentioned, the order denying Lyon's motion for recusal was entered on November 24, 2020, and the order dismissing the case with prejudice was entered on March 25, 2022. That dismissal order would have been a final, appealable order standing on its own, and an appeal from this order would have brought up any intermediate orders, such as the order denying recusal, for review. *See* Ark. R. App. P.–Civ. 3(a) (2024) ("An appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment.").

Lyon failed, however, to appeal from the March 2022 dismissal order. Instead, she waited until after the September 2, 2022 order imposing Rule 11 sanctions before she filed a notice of appeal. That notice of appeal was only effective as to the order imposing sanctions and did not bring up the court's earlier orders. This is so because our supreme court has held that a Rule 11 motion "raises a collateral and independent claim, not a matter integral to the merits of the action." *Spring Creek Living Ctr. v. Sarrett*, 318 Ark. 173, 174, 883 S.W.2d 820, 821 (1994) (citing *Lupo v. R. Rowland & Co.*, 857 F.2d 482 (8th Cir. 1988)). Thus, where

a party files a timely notice of appeal with respect to an order awarding Rule 11 sanctions but does not timely appeal from the underlying judgment, the only issue that may be appealed is the issue of sanctions. *See Banks v. Riddle*, 2013 Ark. App. 334, at 5–6.

The only notice of appeal in this case followed the deemed denial of Lyon's motion for reconsideration of the order imposing Rule 11 sanctions. Because Lyon failed to file a timely notice of appeal from the order that would have brought up the recusal issue, the recusal matter is not properly before us.

D. Motion for Disqualification

Finally, Lyon argues that Judge Spears should have been disqualified from hearing the case because he did not meet the qualifications for judges set out in the Arkansas Constitution. Lyon filed her motion to disqualify Judge Spears on August 3, 2022, arguing that amendment 80, section 13(E) requires that "special and retired Justices and Judges selected and assigned for temporary judicial service shall meet the qualifications of Justice or Judges of the Court to which selected and assigned." Section 16 of the same amendment provides that "[a]ll Justices and Judges shall be qualified electors within the geographical area from which they are chosen, and Circuit . . . Judges shall reside within that geographical area at the time of election and during their period of service. A geographical area may include any county contiguous to the county to be served when there are not qualified candidates available in the county to be served."

Lyon alleged in her motion––without providing supporting evidence––that Judge Spears is a resident of Sebastian County, not Washington County, where the case was being

heard. Accordingly, she argued that he was disqualified from being appointed a special judge to hear the instant matter. The court denied her motion from the bench at the hearing on Rule 11 sanctions.

We decline to reach the merits of Lyon's argument because her disqualification motion was untimely. Arkansas Supreme Court Rule 6-4 requires that a motion for disqualification "shall be filed a reasonable time prior to the submission of the case to the Court." The rule is based on the common-sense principle that a party should not be allowed to wait on the adverse outcome of a case to decide whether to seek disqualification of a judge. *See Nowlin v. Kreis*, 213 Ark. 1027, 214 S.W.2d 221 (1948); *Ingram v. Raiford*, 174 Ark. 1127, 298 S.W. 507 (1927). In *Worth v. Benton County Circuit Court*, 351 Ark. 149, 154–55, 89 S.W.3d 891, 895 (2002), the supreme court held that a judge's alleged disqualification may be waived "by a failure to seasonably object." In *Ashley v. Ashley*, 2012 Ark. App. 230, at 3–4, we held that "[t]o preserve a claim of judicial bias for review, appellant must have made a timely motion to the circuit court to recuse." And in *Rayford v. State*, 2020 Ark. 299, at 5, the supreme court reaffirmed that "[t]he disqualification of a judge may be waived by the failure to timely object." *See also Bates v. Homan*, 2021 Ark. App. 266, at 9.

When Lyon filed her motion for disqualification, Judge Spears had been assigned to the case for two years, he had long since dismissed her underlying FOIA action with prejudice, and the hearing on The Academy's motion for Rule 11 sanctions was only two days away. Because Lyon failed to "seasonably object" to the court's qualifications, we conclude that she waived the issue and do not address it further on appeal.

Affirmed.

BARRETT and BROWN, JJ., agree.

Pinnacle Law Firm, PLLC, by: *Matthew D. Campbell*, for appellant.

Tim Cullen, for appellees.