

IN RE DISQUALIFICATION OF RICE.

HICKS v. CADLE CO. ET AL.

[Cite as *In re Disqualification of Rice*, 151 Ohio St.3d 1206, 2017-Ohio-7437.]

Judges—Affidavits of disqualification—R.C. 2701.03—Affiants failed to demonstrate bias or prejudice—Disqualification denied.

(No. 17-AP-059—Decided July 6, 2017.)

ON AFFIDAVIT OF DISQUALIFICATION in Trumbull County Court of Common
Pleas, General Division, Case No. 2011-CV-1148.

O’CONNOR, C.J.

{¶ 1} Defendant Daniel C. Cadle and his attorney, F. Dean Armstrong, have filed affidavits with the clerk of this court under R.C. 2701.03 seeking to disqualify Judge Ronald J. Rice from presiding over any further proceedings in the above-referenced case in the Trumbull County Court of Common Pleas.

{¶ 2} In 2014, Judge Rice granted summary judgment on Mr. Cadle’s counterclaims in favor of the plaintiff. In 2016, the Eleventh District Court of Appeals reversed the judge’s decision, determining that he used an improper procedure to convert the plaintiff’s motion to dismiss into a motion for summary judgment. *Hicks v. Cadle Co.*, 2016-Ohio-4728, 66 N.E.3d 1255, ¶ 29 (11th Dist.). In their affidavits, Mr. Cadle and Mr. Armstrong aver that Judge Rice is prejudiced against them based on language in the judge’s summary-judgment decision. In that decision, the judge found “no basis whatsoever for Mr. Cadle’s ridiculous claim” under Ohio’s Pattern of Corrupt Activities Act, R.C. 2923.31 et seq., and the judge described the manner in which Mr. Cadle pled one of his counterclaims as “lazy, sloppy, imprecise and confusing.” Mr. Cadle and Mr. Armstrong aver that this language demonstrates that Judge Rice has hostility toward them and has reached

a fixed anticipatory judgment on the counterclaims. Therefore, the affiants seek a new judge to preside over the remainder of the case.

{¶ 3} Judge Rice has responded in writing to the affidavits, denying any bias against the affiants and affirming that he can fairly preside over the remainder of the proceedings. The judge also attempts to provide context for the challenged statements in his summary-judgment decision. For example, he claims that he referred to one of Mr. Cadle’s counterclaims as “ ‘ridiculous’ * * * due to the complete lack of evidence to support the [claim].”

{¶ 4} In affidavit-of-disqualification matters, the chief justice presumes that a judge will follow the law and is not biased and “the appearance of bias or prejudice must be compelling to overcome these presumptions.” *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. That Judge Rice previously described the evidence relating to one of Mr. Cadle’s counterclaims as “ridiculous” and that he criticized the manner in which Mr. Cadle pled another counterclaim are not, by themselves, sufficient to overcome the presumption of the judge’s impartiality. The judge’s comments appear to be based on his interpretation of the pleadings and evidence. It is well established, however, that “[a] trial judge’s opinions of law, even if erroneous, are not by themselves evidence of bias or prejudice and thus are not grounds for disqualification.” *In re Disqualification of Kimmel*, 36 Ohio St.3d 602, 522 N.E.2d 456 (1987). And therefore “[i]t follows that a judge may preside over the retrial of a case even if that judge’s rulings of law were reversed on appeal.” *Id.* Here, Judge Rice has pledged to follow the mandate of the court of appeals and fairly preside over the remaining proceedings in this case. Without more, the affiants have failed to demonstrate that Judge Rice’s disqualification is necessary.

{¶ 5} The affidavits of disqualification are denied. The case may proceed before Judge Rice.