

**IN RE DISQUALIFICATION OF KATE.**

**IN RE WRONGFUL DEATH OF KING FOR THE BENEFIT OF M.K.**

[Cite as *In re Disqualification of Kate*, 157 Ohio St.3d 1240, 2019-Ohio-4449.]

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

(No. 19-AP-073—Decided July 10, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Tuscarawas County Court of Common Pleas, Probate and Juvenile Division, Case No. 2017 TE 59022.

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**O’CONNOR, C.J.**

{¶ 1} Attorney Karen S. Dummermuth, the trustee of the trust at issue in the above-referenced case and the legal custodian of the trust beneficiary, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge Linda A. Kate from presiding over any further proceedings in the matter.

{¶ 2} Ms. Dummermuth claims that Judge Kate must be disqualified because of Ms. Dummermuth’s “close relationship with the Court” and the judge’s “prejudicial statements that were made before hearing the merits of the case.”

{¶ 3} Judge Kate has filed a response to the affidavit and requests that it be denied.

{¶ 4} For the reasons explained below, no basis has been established to order the disqualification of Judge Kate.

{¶ 5} First, Ms. Dummermuth has not established that she has the type of relationship with Judge Kate that would require the judge’s disqualification. Ms. Dummermuth asserts only that she has practiced in the Tuscarawas County probate and juvenile courts since 2002 and that she routinely appears as a guardian ad litem or an attorney in those courts. But “the fact that a local attorney is a party in an

action does not create an appearance of impropriety mandating the sitting judge's removal, unless the judge's relationship with that particular lawyer justifies disqualification." *In re Disqualification of O'Donnell*, 137 Ohio St.3d 1242, 2013-Ohio-5762, 1 N.E.3d 418, ¶ 3. Judge Kate states that her relationship with Ms. Dummermuth is no different from her relationship with any other attorney who appears before her and that she has no social or professional relationship with Ms. Dummermuth outside the courtroom. Based on this record, there is no reason to conclude that Judge Kate could be tempted to depart from her expected judicial neutrality merely because of Ms. Dummermuth's involvement in the underlying proceeding.

{¶ 6} Second, Ms. Dummermuth has not established that Judge Kate made any prejudicial comments warranting her removal. Ms. Dummermuth avers that during a telephone call with one of the judge's employees, the employee told her that Judge Kate believed—prior to any hearing on the issue—that the trust "assets should be spent down to exhaustion." Judge Kate, however, expressly denies making that statement and denies instructing her employee to relay that information to Ms. Dummermuth. Further, the judge's employee submitted an affidavit in which she recalled the communication much differently than Ms. Dummermuth. Presumably, there was a miscommunication between the judge's employee and Ms. Dummermuth. Regardless, in affidavit-of-disqualification proceedings, "[a] judge is presumed to follow the law and not to be 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. Given the conflicting evidence here, Ms. Dummermuth has failed to set forth sufficiently compelling evidence to overcome the presumption that Judge Kate is fair and impartial. *See id.*; *In re Disqualification of Baronzzi*, 135 Ohio St.3d 1212, 2012-Ohio-6341, 985 N.E.2d 494, ¶ 8 (affiant's "vague and unsubstantiated allegations—especially in the face of clear denials by Judge Baronzzi—are

insufficient to overcome the presumption that Judge Baronzzi is fair and impartial”).

{¶ 7} The affidavit of disqualification is denied. The case may proceed before Judge Kate.

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