

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 1267, 2019-Ohio-4535.]

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

(No. 19-AP-086—Decided August 7, 2019.)

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

O’CONNOR, C.J.

{¶ 1} Karen S. Dummermuth has filed an affidavit and a supplemental affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Linda A. Kate from presiding over any further proceedings in the above-referenced case. This is the second affidavit of disqualification that Ms. Dummermuth has filed against Judge Kate in this matter. Her prior affidavit was denied in an entry dated July 10, 2019. *See* 157 Ohio St.3d 1240, 2019-Ohio-4449, 136 N.E.3d 528.

{¶ 2} In her present affidavits, Ms. Dummermuth repeats and attempts to further substantiate the allegations raised in her prior affidavit of disqualification. For example, to support her claim that she has a “close relationship” with the probate and juvenile court, Ms. Dummermuth included statistics regarding the number of cases in which she has appeared as a guardian ad litem or guardian. Ms. Dummermuth also alleges that because Judge Kate recused herself from a related custody matter involving some of the same parties, the judge should be disqualified from the underlying trust case. In addition, Judge Kate, Ms. Dummermuth alleges, failed to recuse herself from a series of other cases in which the judge acknowledges having a conflict with some of the parties in those matters.

{¶ 3} Judge Kate has filed a written response and asserts that Ms. Dummermuth has not provided any new evidence supporting disqualification. The judge again states that her relationship with Ms. Dummermuth is no different from her relationship with any other attorney appearing before her and that she has no close social relationship with Ms. Dummermuth. The judge also explains that she recused herself from the related custody matter because of a conflict with individuals who are *not* parties in the underlying trust case. The judge therefore does not believe that she has any conflict preventing her from presiding over the trust matter.

{¶ 4} “The statutory right to seek disqualification of a judge is an extraordinary remedy. 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.” (Citation omitted.) *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. Ms. Dummermuth has again failed to establish the existence of any extraordinary circumstances warranting Judge Kate’s disqualification.

{¶ 5} As previously explained, “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. Ms. Dummermuth appears frequently in Judge Kate’s courtroom, but without more, Ms. Dummermuth has failed to sufficiently explain why that relationship requires the judge’s disqualification.

{¶ 6} Similarly, Ms. Dummermuth has failed to sufficiently explain why Judge Kate’s recusal in the related custody matter requires the judge’s removal from the underlying trust case. According to the judge, she recused herself from the custody matter because of a potential conflict of interest with the minor child’s former custodians, who are not parties in the trust litigation. In response, Ms.

Dummermuth points out that Judge Kate failed to recuse herself from several other cases involving those same former custodians. In general, “ ‘a trial judge cannot, without explanation, recuse himself [or herself] in a substantial number of cases and, at substantially the same time, decline to recuse himself [or herself] in another group of cases that appears indistinguishable for purposes of recusal.’ ” *In re Disqualification of Burge*, 138 Ohio St.3d 1271, 2014-Ohio-1458, 7 N.E.3d 1211, ¶ 8, quoting *Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 170 (3d Cir.2004). But even if Ms. Dummermuth’s allegation is true, she has not proved that Judge Kate’s disqualification is necessary in a case in which the custodians are *not currently* parties.

{¶ 7} Finally, Ms. Dummermuth again asserts that Judge Kate—through a court employee—indicated that the judge has predetermined this case before hearing any evidence. This allegation, however, was fully addressed in the entry denying Ms. Dummermuth’s prior affidavit of disqualification.

{¶ 8} The affidavits of disqualification are denied.
