

IN RE DISQUALIFICATION OF WALLACE.

IN RE R.H.

**[Cite as *In re Disqualification of Wallace*, 158 Ohio St.3d 1231,
2019-Ohio-5452.]**

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

(No. 19-AP-116—Decided September 27, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Montgomery County Court of Common
Pleas, Juvenile Division, Case No. 2016-007436.

O’CONNOR, C.J.

{¶ 1} Anthony W. Williams, father of the minor child, has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Helen Wallace from the above-referenced case, now pending for a permanent-custody trial.

{¶ 2} Mr. Williams claims that Judge Wallace is biased in favor of the children-services agency’s attorney. Judge Wallace has filed a response to the affidavit and addressed each of Mr. Williams’s allegations.

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

{¶ 4} First, Mr. Williams claims that Judge Wallace failed to disclose that she has a personal friendship with the agency’s attorney, who also served on the judge’s election campaign. Mr. Williams believes that the judge’s relationship with the agency’s attorney presents a conflict of interest, and he asserts that she has allowed their friendship to “cloud her better judgment.” In response, Judge Wallace states that at the most recent hearing, she *did* disclose that she shared a friendship with the agency’s attorney and that the attorney had contributed \$100 to the judge’s

election campaign. The judge further states that she assured Mr. Williams that her relationship with the agency's attorney would not affect her ability to fairly and impartially preside over the underlying case.

{¶ 5} Judge Wallace should have disclosed her friendship with the agency's attorney when the case was first transferred to the judge's docket in August 2019. Nevertheless, based on this record, that relationship does not require Judge Wallace's disqualification. The chief justice has long held that "the mere existence of a friendship between a judge and an attorney * * * will not disqualify the judge from cases involving that attorney." *In re Disqualification of Bressler*, 81 Ohio St.3d 1215, 688 N.E.2d 517 (1997). "In today's legal culture, friendships among judges, lawyers, and former colleagues are common, and a judge need not cut himself or herself off from the rest of the legal community." *In re Disqualification of Lynch*, 135 Ohio St.3d 1208, 2012-Ohio-6305, 985 N.E.2d 491, ¶ 6. However, a judge should not remain on a case in which his or her relationship with an attorney is so close that an objective observer would harbor serious doubts about the judge's ability to rule fairly and impartially. *See, e.g., United States v. Murphy*, 768 F.2d 1518, 1536-1538 (7th Cir.1985) (an objective observer would have reasonably doubted the ability of a judge to impartially preside over a trial involving an attorney who had a close friendship with the judge, had previously vacationed with the judge, and had a vacation planned with the judge and his family immediately after completion of the trial); *In re Disqualification of Rastatter*, 127 Ohio St.3d 1215, 2009-Ohio-7205, 937 N.E.2d 1007 (disqualifying judge from a case in which a litigant was a friend of the judge's and had lifted weights with the judge on an almost daily basis).

{¶ 6} The record here indicates only that Judge Wallace and the agency's attorney share a friendship. To be sure, Judge Wallace has an obligation to step aside if her friendship with the agency's attorney is closer than what might reasonably be expected. But without more, "[j]udges are presumed to be capable

of distinguishing their personal lives from their professional obligations,” *In re Disqualification of Lynch* at ¶ 10, and Mr. Williams has not overcome that presumption.

{¶ 7} Similarly, “under longstanding Ohio precedent and the Code of Judicial Conduct, it is not reasonable to question a judge’s impartiality based solely upon counsel’s or a litigant’s contribution to the judge’s election campaign.” *In re Disqualification of Breaux*, 150 Ohio St.3d 1305, 2017-Ohio-7374, 84 N.E.3d 1038, ¶ 10, citing Comment 1 to Jud.Cond.R. 2.11 (“A judge’s knowledge that a lawyer * * * in a proceeding contributed to the judge’s election campaign within the limits set forth in [Jud.Cond.R.] 4.4(J) and (K), or publicly supported the judge in the campaign, does not, in and of itself, disqualify the judge”). Rather, the ability of a judge to serve fairly and impartially in these situations is determined on a case-by-case basis. *Id.* Here, the agency’s attorney’s \$100 contribution to Judge Wallace’s campaign does not create any inference of an appearance of impropriety. *See id.* (a law firm’s \$3,600 in-kind contribution to a judge’s campaign did not require the judge’s disqualification from a case involving that law firm).

{¶ 8} Finally, Mr. Williams alleges that several of Judge Wallace’s rulings demonstrate bias in favor of the agency’s attorney. For example, he criticizes some of the judge’s evidentiary decisions and her allowing his counsel to withdraw on the eve of trial. For her part, Judge Wallace has explained her reasons for each of the challenged rulings. Contrary to Mr. Williams’s contention, an “affidavit[] of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings.” *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5. Accordingly, the fact that Mr. Williams disagrees with some of Judge Wallace’s recent rulings is not evidence of bias. It is not the role of the chief justice in deciding an affidavit of disqualification to review a trial judge’s decisions.

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{¶ 9} The record here does not establish that Judge Wallace's recent rulings were the product of bias or favoritism toward the agency based on the judge's relationship with the agency's attorney. The affidavit of disqualification is denied. The case may proceed before Judge Wallace.
