

**IN RE DISQUALIFICATION OF SWENSKI.**

**PHILLIPS v. DIMACCHIA**

**AND**

**PHILLIPS v. SVETE-GERARD.**

**[Cite as *In re Disqualification of Swenski*, 160 Ohio St.3d 1274,  
2020-Ohio-3850.]**

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

(No. 20-AP-030—Decided May 13, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Lorain County Court of Common Pleas,  
Domestic Relations and Juvenile Division, Case Nos. 11JG33867 and  
20DV087541.

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**O’CONNOR, C.J.**

{¶ 1} Carolyn M. Phillips has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Lisa I. Swenski from the above-referenced cases. In 2016 and 2017, Judge Swenski presided over a 15-day trial in the underlying custody case (case No. 11JG33867) and issued a decision in February 2020. Since then, the parties have filed multiple motions in the matter. On April 3, 2020, Ms. Phillips filed a petition for a domestic-violence civil protection order (case No. 20DV087541), which was also assigned to Judge Swenski.

{¶ 2} Ms. Phillips alleges that at an April 3 hearing on her request for the civil protection order, Judge Swenski made a series of disparaging, false, and prejudicial comments about Ms. Phillips and her attorney, Brent L. English. Based on the judge’s comments and rulings at that hearing, Ms. Phillips does not believe

that Judge Swenski will fairly and impartially decide the remaining issues in the underlying cases.

{¶ 3} Judge Swenski filed a response to the affidavit in which she denies any bias against Ms. Phillips and requests that the affidavit be denied. The judge attempts to give context for some of her challenged comments, and although she acknowledges that a few of those comments might appear prejudicial to an outside observer, she believes that the comments were justified based on Ms. Phillips’s and Mr. English’s prior conduct.

{¶ 4} It is well settled that “absent extraordinary circumstances, a judge will not be subject to disqualification after having presided over lengthy proceedings in a pending case.” *In re Disqualification of Celebrezze*, 94 Ohio St.3d 1228, 1229, 763 N.E.2d 598 (2001). A review of the transcript of the recent hearing indicates that a few of Judge Swenski’s comments, especially those made in response to Mr. English’s request to participate by telephone, were unnecessary and intemperate. During the current COVID-19 pandemic, judges should allow remote participation whenever possible, and Judge Swenski’s statement at the April 3 hearing that Mr. English could “pound sand” after Ms. Phillips stated that he wanted to participate by phone was undignified and unprofessional. “[N]otwithstanding the conduct of litigants or counsel, a judge ‘has an ethical obligation to conduct himself or herself in a courteous and dignified manner that does not convey the appearance of bias or prejudice toward litigants or their attorneys.’ ” *In re Disqualification of Swenski*, 140 Ohio St.3d 1208, 2014-Ohio-3299, 15 N.E.3d 859, ¶ 6, quoting *In re Disqualification of Cleary*, 88 Ohio St.3d 1220, 1222-1223, 723 N.E.2d 1106 (2000).

{¶ 5} But considering Judge Swenski’s significant and lengthy involvement with these parties, those comments do not rise to the level of extraordinary circumstances requiring her removal. *See, e.g., In re Disqualification of Stucki*, 157 Ohio St.3d 1259, 2019-Ohio-4534, 137 N.E.3d 1230, ¶ 5 (given the judge’s four-

year involvement in the parties' domestic-relations matter, his intemperate language at a hearing did not require his disqualification); *In re Disqualification of Yarbrough*, 157 Ohio St.3d 1228, 2019-Ohio-4450, 134 N.E.3d 1233, ¶ 6 (even if the judge "made a few isolated and unnecessary comments in moments of frustration, the record does not establish that he should be removed for bias, especially considering the tone and content of the judge's response" to the affidavits of disqualification).

{¶ 6} In addition, many of Judge Swenski's April 3 comments that Ms. Phillips cites relate to the judge's assessment of Ms. Phillips's credibility. For example, the judge stated that Ms. Phillips had "a severe credibility issue" and that her "word ha[d] almost no weight with this Court." In her affidavit of disqualification, Ms. Phillips avers that the judge's "sweeping declarations about [her] alleged lack of credibility" demonstrate prejudice. But "a judge, like any trier of fact, is expected to assess a witness's character and credibility. And when a judge's opinion regarding a party's credibility is formed on the basis of evidence presented during the course of the proceedings, that opinion is not deemed to be the product of bias or prejudice." (Citation omitted.) *In re Disqualification of Baronzzi*, 138 Ohio St.3d 1210, 2013-Ohio-5899, 3 N.E.3d 1196, ¶ 9; *see also In re Disqualification of Gaines*, 74 Ohio St.3d 1259, 1261, 657 N.E.2d 1359 (1994) (judge's unfavorable comments about the affiant's parenting skills, which were formed over protracted litigation in which the judge had multiple opportunities to observe the affiant, were not grounds for disqualification).

{¶ 7} Here, Judge Swenski states that her comments about Ms. Phillips's credibility were based on her testimony at the recent hearing and her prior conduct in the case. On this record, the judge's comments do not show that the judge is biased or that her disqualification is necessary.

{¶ 8} The affidavit of disqualification is denied. The cases may proceed before Judge Swenski.

SUPREME COURT OF OHIO

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