

IN RE DISQUALIFICATION OF MAYBERRY.

WISNIEWSKI v. ROMANIN.

**[Cite as *In re Disqualification of Mayberry*, 161 Ohio St.3d 1201,
2020-Ohio-4203.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiants failed to identify
any matter pending before judge—Affidavits dismissed.*

(No. 20-AP-050—Decided July 1, 2020.)

ON AFFIDAVITS OF DISQUALIFICATION in Wood County Court of Common Pleas,
General and Domestic Relations Division, Case No. 2019CV0275.

O’CONNOR, C.J.

{¶ 1} Plaintiff Russell E. Wisniewski and his attorney, Marshall D. Wisniewski, have filed affidavits pursuant to R.C. 2701.03 seeking to disqualify Judge Alan R. Mayberry from the above-referenced civil case. In March 2020, Judge Mayberry dismissed the plaintiff’s complaint after a jury returned a verdict for the defendants. Affiants believe that Judge Mayberry acted in a biased manner toward them during the one-day trial.

{¶ 2} The chief justice’s statutory authority to disqualify judges extends only to those matters in which “a proceeding [is] pending before the court.” R.C. 2701.03(A). “[T]he chief justice cannot rule on an affidavit of disqualification when * * * nothing is pending before the * * * court.” *In re Disqualification of Hayes*, 135 Ohio St.3d 1221, 2012-Ohio-6306, 985 N.E.2d 501, ¶ 6. Here, affiants claim that they intend to file motions for judgment notwithstanding the verdict and for a new trial, but they also aver that nothing is currently pending before Judge Mayberry.

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{¶ 3} Because affiants have failed to identify any matter currently pending before the judge they seek to disqualify, there is no statutory basis to order Judge Mayberry’s removal. The chief justice will not decide an affidavit of disqualification based merely on the possibility of posttrial motions. *See, e.g., id.*; *In re Disqualification of Selvaggio*, 156 Ohio St.3d 1301, 2019-Ohio-1826, 128 N.E.3d 264, ¶ 4 (“The chief justice will not decide an affidavit of disqualification based merely on the possibility of a remand from the court of appeals”).

{¶ 4} The affidavits of disqualification are dismissed.
