IN RE DISQUALIFICATION OF GRENDELL.

IN RE B.J.

[Cite as *In re Disqualification of Grendell*, 157 Ohio St.3d 1274, 2019-Ohio-5453.]

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to meet statutory filing deadline—Affidavit dismissed.

(No. 19-AP-122—Decided September 30, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Geauga County Court of Common Pleas, Probate and Juvenile Division, Case No. 19JD288.

O'CONNOR, C.J.

{¶ 1} Carlos K. Johnson, attorney for the allegedly delinquent minor, has filed an affidavit and an amended affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Timothy J. Grendell from the above-referenced case.

{¶ 2} Mr. Johnson avers that after his client's September 12, 2019 arraignment, Judge Grendell scheduled trial for October 1, 2019. According to Mr. Johnson, his client has been accused of rape—a serious charge for a juvenile—yet Judge Grendell has not allowed adequate time to prepare for trial or to hire experts. Mr. Johnson further asserts that he informed Judge Grendell that he is scheduled for trial in a different court on October 1 but that Judge Grendell refused to continue the underlying trial. Judge Grendell's actions, Mr. Johnson asserts, demonstrate bias and prejudice rendering him incapable of fairly presiding over the underlying case.

{¶ 3} Under R.C. 2701.03(B), an affidavit of disqualification must be filed "not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled." This statutory deadline may be set aside only "when

compliance with the provision is impossible," such as when the alleged bias or prejudice occurs fewer than seven days before the hearing date or the case is scheduled or assigned to a judge within seven days of the next hearing. *In re Disqualification of Leskovyansky*, 88 Ohio St.3d 1210, 723 N.E.2d 1099 (1999).

{¶ 4} Mr. Johnson filed his affidavit of disqualification on September 30—one day before the scheduled trial. He asserts that his affidavit is timely because on September 27, Judge Grendell denied a motion for reconsideration relating to Mr. Johnson's request to continue the trial date. The record here shows that Mr. Johnson knew on September 12 that Judge Grendell had scheduled trial for October 1. And rather than filing a timely affidavit of disqualification, Mr. Johnson moved for reconsideration. "[A]ny attempt to obtain the recusal of a judge must be made in consideration of the seven-day requirement established by the General Assembly for timely filing an affidavit of disqualification." *In re Disqualification of Kontos*, 94 Ohio St.3d 1224, 1225, 763 N.E.2d 595 (2001). Mr. Johnson has not demonstrated that it was impossible for him to comply with the statutory filing deadline. Accordingly, he has not set forth a sufficient basis for setting aside the seven-day requirement in R.C. 2701.03(B), and therefore, his affidavit of disqualification was not timely filed.

{¶ 5} Alternatively, even if Mr. Johnson's affidavit were considered timely, he seeks Judge Grendell's removal based solely on the judge's refusal to continue the scheduled trial date. It is well-settled that "a judge's decision to grant or deny a motion for a continuance is within the judge's sound discretion and is not, by itself, evidence of bias or prejudice." *In re Disqualification of Suster*, 127 Ohio St.3d 1240, 2009-Ohio-7202, 937 N.E.2d 1026, ¶ 7. Mr. Johnson may have other remedies—including appeal—if he believes that Judge Grendell's actions have prejudiced the minor child's defense or violated the Rules of Superintendence. But without more, an affidavit of disqualification "is not a vehicle to contest matters of

substantive or procedural law." *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4.

{¶ 6} The affidavit of disqualification is dismissed. The case may proceed before Judge Grendell.
