IN RE DISQUALIFICATION OF GRENDELL.

IN RE CHARDON TOWNSHIP WASTE WATER TREATMENT PLANT AND SEWER PROJECT.

[Cite as *In re Disqualification of Grendell*, 160 Ohio St.3d 1219, 2020-Ohio-1544.]

Judges—Affidavits of disqualification—R.C. 2101.39 and 2701.03—Affiant failed to demonstrate bias or prejudice—Disqualification denied.

(No. 20-AP-010—Decided February 26, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Geauga County Court of Common Pleas, Probate and Juvenile Division, Case No. 19 PC 000503.

O'CONNOR, C.J.

{¶ 1} Gerard Morgan, the Geauga County administrator, has filed an affidavit on behalf of the Geauga County Board of Commissioners pursuant to R.C. 2101.39 and 2701.03 seeking to disqualify Judge Timothy J. Grendell from the above-referenced case, which is an action under R.C. 6117.09 challenging the board's resolution to construct a new sewer project.

{¶ 2} Mr. Morgan alleges that Judge Grendell's disqualification is necessary to avoid an appearance of bias because the judge's wife, Representative Diane V. Grendell, a member of the Ohio House of Representatives, has advocated and lobbied on behalf of residents who would be affected by the proposed sewer project, which would be located in her district. In addition, Mr. Morgan avers that both Judge Grendell and Rep. Grendell are running for reelection in 2020, that Rep. Grendell has appeared on the judge's campaign materials—i.e., a Christmas card funded by the judge's campaign committee—and that Judge Grendell appears on

Rep. Grendell's official Facebook page. For these reasons, Mr. Morgan believes that Judge Grendell's impartiality might be reasonably questioned.

{¶ 3} Judge Grendell filed a response to the affidavit and for a variety of reasons, requests that it be denied. The judge denies having any bias in the underlying case and argues that Mr. Morgan's affidavit falsely assumes that he shares his wife's views or will be influenced by them. The judge also notes that his wife is not a party in the case and will not serve as a witness, attorney, or courtroom advocate; that neither he nor his wife has an economic or other interest in the outcome of the matter; and that none of the underlying parties have contributed to his reelection campaign.

{¶ 4} "The proper test for determining whether a judge's participation in a case presents an appearance of impropriety is * * * an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge's impartiality." *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8. "The reasonable observer is presumed to be fully informed of all the relevant facts in the record—not isolated facts divorced from their larger context." *In re Disqualification of Gall*, 135 Ohio St.3d 1283, 2013-Ohio-1319, 986 N.E.2d 1005, ¶ 6. In deciding a disqualification request, "[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." *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5.

{¶ 5} In a similar 2008 disqualification request, two affiants sought to remove then appellate-court judge Diane Grendell from an appeal because of public comments made by her husband, then state senator Timothy Grendell, about claims made by one of the parties in the appeal. Former Chief Justice Moyer denied the affidavit, in part because the affiants had not offered credible evidence that Judge Diane Grendell agreed with her husband's views or that she was predisposed to rule

for or against a party based on his opinions. Chief Justice Moyer concluded: "Judge Grendell's assurances that she and her husband have no economic or other interest in the pending appeal, coupled with her statements that she is not bound by her husband's views, comments, or actions, convince me that there is no reason to doubt her impartiality" and therefore, "no 'reasonable and objective observer would harbor serious doubts about the judge's impartiality.' " *In re Disqualification of Grendell*, Supreme Court case No. 08-AP-120 (Nov. 19, 2008) (unpublished), quoting *Lewis* at ¶ 8.

{¶ 6} The same reasoning applies here. In response to the affidavit of disqualification, Judge Grendell submitted his own affidavit in which he averred that his wife's views as a state representative are her own and will not affect his ability to fairly and impartially adjudicate the underlying matter, that he has not discussed the case or underlying facts with her, and that neither he nor his wife has any economic or other interest in the outcome of the case. Based on Judge Grendell's assurances, there is no reason to doubt his impartiality. And the fact that Judge Grendell's wife appeared on a Christmas card funded by his campaign committee is insufficient by itself to warrant a different result. That is, no objective observer would conclude that despite the judge's assurances mentioned above, he may be predisposed to consider his wife's views merely because he included her in a campaign Christmas greeting.

{¶ 7} Moreover, Mr. Morgan has not sufficiently explained why an objective observer might question Judge Grendell's impartiality based on Rep. Grendell's legislative activities described in the affidavit of disqualification. For example, to support his allegation that Rep. Grendell "advocated" on behalf of residents who would be affected by the proposed sewer project, he submitted a newspaper article and a blog post that vaguely refer to Rep. Grendell's involvement with the project. Mr. Morgan also averred that Rep. Grendell made repeated attempts to contact the Ohio Environmental Protection Agency. But without more,

it is unclear what specific position Rep. Grendell "advocated"—let alone whether she expressed any preferred outcome in the underlying case.

{¶ 8} Based on this record, Mr. Morgan has failed to submit compelling evidence to overcome the presumption that Judge Grendell will be fair and impartial. The affidavit of disqualification is therefore denied. The case may proceed before Judge Grendell.
