

IN RE DISQUALIFICATION OF WALLACE.

GEMMELL v. ANTHONY

and

EVENTURESENCORE, INC. v. ANTHONY.

**[Cite as *In re Disqualification of Wallace*, 165 Ohio St.3d 1254,
2021-Ohio-2732.]**

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

(No. 21-AP-069—Decided June 23, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Hocking County Court of Common Pleas,
General and Domestic Relations Division, Case Nos. 13 CV 0046 and
21 CV 0018.

O’CONNOR, C.J.

{¶ 1} Defendant Mark Anthony has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge John T. Wallace from the above-referenced cases, now pending for show-cause and preliminary-injunction hearings.

{¶ 2} Mr. Anthony asserts that Judge Wallace predetermined issues to be decided at the show-cause hearing and that the judge improperly issued—and then extended—an ex parte temporary restraining order without giving Mr. Anthony notice or an opportunity to be heard. The judge’s actions, Mr. Anthony asserts, demonstrate bias against him.

{¶ 3} Judge Wallace filed a response to the affidavit. He denies any bias against Mr. Anthony and requests that the affidavit be denied.

{¶ 4} In disqualification requests, “[t]he term ‘bias or prejudice’ ‘implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.’ ” *In re Disqualification of O’Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956). “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. In addition, a “presumption of impartiality” is accorded all judges in affidavit-of-disqualification proceedings. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7.

{¶ 5} Mr. Anthony has not established that Judge Wallace has hostile feelings toward him or that the judge has formed a fixed anticipatory judgment on any issue in the underlying cases. Nor has Mr. Anthony set forth a compelling argument for disqualifying Judge Wallace to avoid an appearance of bias. For example, the judge’s issuance of a temporary restraining order, by itself, does not mean that the judge will be unable to impartially weigh the evidence and render a fair decision at the preliminary-injunction hearing. Indeed, as Judge Wallace notes, he has not yet heard any evidence on the issue and therefore has not yet determined the validity of the claims.

{¶ 6} Further, it is well established 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). The underlying receivership

case has been pending before Judge Wallace since 2013. The judge held a trial in 2016 and issued an 81-page decision in 2019. Considering Judge Wallace's significant and lengthy involvement with these parties and the subject matter, Mr. Anthony has not alleged any facts that would rise to the level of extraordinary circumstances warranting Judge Wallace's removal at this stage of the litigation.

{¶ 7} The affidavit of disqualification is denied. The cases may proceed before Judge Wallace.
