

**IN RE DISQUALIFICATION OF SCHMIDT.**

**LONG v. FRIED.**

**[Cite as *In re Disqualification of Schmidt*, 165 Ohio St.3d 1287,  
2021-Ohio-3571.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to  
demonstrate appearance of impropriety—Disqualification denied.*

(No. 21-AP-095—Decided August 3, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Ross County Court of Common Pleas,  
General and Domestic Relations Division, Case No. 21 DR 170.

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**O’CONNOR, C.J.**

{¶ 1} Plaintiff Anthony A. Long has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Matthew S. Schmidt from the above-referenced divorce case.

{¶ 2} Mr. Long alleges that Judge Schmidt’s removal is necessary to avoid an appearance of bias or impropriety. Judge Schmidt filed a response to the affidavit in which he denies having any bias and opposes the request.

{¶ 3} “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. For the reasons explained below, Mr. Long has not set forth a compelling argument for disqualifying Judge Schmidt to avoid an appearance of partiality.

{¶ 4} Mr. Long first alleges that the defendant is a practicing attorney in Ross County and that the defendant has had contact with Judge Schmidt at

professional events, such as bar-association parties. Mr. Long also alleges that the defendant has a close relationship with Deborah Barrington, a well-known attorney who frequently practices in the Ross County Court of Common Pleas, Domestic Relations Division. For his part, Judge Schmidt avers that throughout his legal career, he has had limited contact with the defendant, who primarily practices as a bankruptcy attorney. The judge acknowledges that the defendant has appeared before him on a few occasions, but he describes their relationship as “merely passing acquaintances who both practice law.” The judge further states that he has no personal relationship or friendship with the defendant or Ms. Barrington and that he has never discussed the underlying matter with Ms. Barrington. The judge also denies having frequent contact with the defendant at bar-association events and notes that he has not attended such events since taking the bench.

{¶ 5} “[T]he fact that a local attorney is a party in an action does not create an appearance of impropriety mandating the sitting judge’s removal, unless the judge’s relationship with that particular lawyer justifies disqualification.” *In re Disqualification of O’Donnell*, 137 Ohio St.3d 1242, 2013-Ohio-5762, 1 N.E.3d 418, ¶ 3. Further, “it is well established that a judge’s ‘passing acquaintance’ with a party does not require the judge’s disqualification from cases involving that party.” *In re Disqualification of Goslee*, 155 Ohio St.3d 1302, 2018-Ohio-5436, 122 N.E.3d 188, ¶ 5, quoting *In re Disqualification of Panagis*, 74 Ohio St.3d 1213, 657 N.E.2d 1328 (1989). Based on this record, nothing suggests that Judge Schmidt has the type of close personal or professional relationship with the defendant that would cause an objective observer to question his ability to remain impartial. And Mr. Long has failed to sufficiently explain how the defendant’s alleged close relationship with Ms. Barrington is relevant, especially considering that Judge Schmidt avers that he has no friendship with Ms. Barrington.

{¶ 6} Mr. Long next asserts that the defendant is Facebook “friends” with the judge’s wife and that the defendant and the judge’s wife have previously

discussed personal and family matters. In response, Judge Schmidt acknowledges that his wife is Facebook “friends” with the defendant and that his wife, whom the judge describes as an outgoing person, probably engages in conversation with the defendant when they see each other in public. But the judge further states that his wife has 1,740 Facebook “friends,” that he would not categorize the defendant as one of his wife’s close friends, and that the defendant and his wife do not spend one-on-one time together, talk on the phone, or exchange text messages. And according to Judge Schmidt, his wife has never mentioned anything to him about the defendant’s personal life, nor does he have reason to believe that his wife has knowledge about the defendant’s personal, financial, or family matters.

{¶ 7} With respect to a judge’s Facebook “friendships,” the chief justice has previously explained:

Standing alone, a judge’s Facebook “friendship” with a lawyer, litigant, or other person appearing before the judge does not automatically require the judge’s disqualification. \* \* \* Because not every relationship characterized as a friendship provides a basis for disqualification, “there is no reason that Facebook ‘friendships’—which regularly involve strangers—should be singled out and subjected to a per se rule of disqualification.” *Law Offices of Herssein & Herssein, P.A., v. United Servs. Auto. Assn.*, 271 So.3d 889, 899 (Fla.2018). Therefore, the same principles that apply to a judge’s in-person social relationships apply to the judge’s online “friendships,” and determining whether a judge should preside over a case involving a Facebook “friend” requires assessing the nature and scope of that particular relationship, combined with all other relevant factors.

*In re Disqualification of Kerenyi*, 160 Ohio St.3d 1201, 2020-Ohio-1082, 153 N.E.3d 121, ¶ 7.

{¶ 8} Here, Judge Schmidt is not a Facebook “friend” of the defendant; rather, the judge’s wife has the social-media connection. But according to Judge Schmidt, his wife is not a close personal friend of the defendant and has never discussed the defendant’s personal life with him. Under these circumstances, the fact that the defendant and the judge’s wife share a Facebook “friendship” does not create the appearance that the defendant is in some sort of special position to influence the court or cast doubt on Judge Schmidt’s ability to act impartially. *See also In re Disqualification of Jennings*, 136 Ohio St.3d 1236, 2013-Ohio-3489, 993 N.E.2d 762, ¶ 7, quoting *In re Disqualification of Bressler*, 81 Ohio St.3d 1215, 688 N.E.2d 517 (1997) (“just as ‘the mere existence of a friendship between a judge and \* \* \* a party will not disqualify the judge from cases involving that \* \* \* party,’ the mere allegation that a party before a judge is a friend of the judge’s adult daughter will not result in judicial disqualification” [ellipses sic]).

{¶ 9} Finally, Mr. Long alleges that although he perfected service of his divorce complaint before the defendant had served her separate complaint, Judge Schmidt refused to dismiss the defendant’s complaint and instead consolidated the matters after issuing other entries in the defendant’s matter. It is well established, however, that “dissatisfaction or disagreement with a judge’s rulings, even if those rulings may be erroneous, does not constitute bias or prejudice and is not grounds for the judge’s disqualification.” *In re Disqualification of Floyd*, 101 Ohio St.3d 1217, 2003-Ohio-7351, 803 N.E.2d 818, ¶ 4.

{¶ 10} The affidavit of disqualification is denied. The case may proceed before Judge Schmidt.