

IN RE DISQUALIFICATION OF GOLDBERG.

KRIWINSKY v. KRIWINSKY.

**[Cite as *In re Disqualification of Goldberg*, 165 Ohio St.3d 1285,
2021-Ohio-3628.]**

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

(No. 21-AP-097—Decided July 29, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas, Domestic Relations Division, Case No. DR-15-357855.

O’CONNOR, C.J.

{¶ 1} Jeffrey F. Slavin, counsel for the defendant, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Francine B. Goldberg from the above-referenced domestic-relations case.

{¶ 2} Mr. Slavin alleges that Judge Goldberg is biased against the defendant based on the judge’s various rulings in the underlying matter. For example, Mr. Slavin avers that the judge has (1) refused to reconsider a December 2020 order suspending the defendant’s parenting time despite Mr. Slavin’s demonstrating that the judge’s decision was based on a faulty guardian-ad-litem report, (2) refused to remove the guardian ad litem, even though—according to Mr. Slavin—the guardian’s report included false statements and misrepresentations, (3) unfairly denied the defendant’s motions to compel the plaintiff to sit for a deposition and turn over what Mr. Slavin claims are illegally obtained tape recordings of the defendant, (4) refused to sanction the plaintiff’s attorney for discovery violations,

and (5) refused to hold hearings on some of the defendant's motions and recently denied his motion for a more definite statement and motion to strike. According to Mr. Slavin, Judge Goldberg has denied all of the defendant's motions.

{¶ 3} 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.

{¶ 4} Mr. Slavin has not established that Judge Goldberg has hostile feelings toward the defendant or favoritism toward the plaintiff or that she has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Mr. Slavin set forth a compelling argument for disqualifying Judge Goldberg to avoid an appearance of partiality. “[A]ffidavits of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings,” and “reviewing legal errors is not the role of the chief justice in deciding affidavits of disqualification.” *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5. Further, “[a] party is not entitled to a certain number of favorable rulings, and a judge must

be free to make rulings on the merits without the apprehension that a disproportionate number of rulings in favor of one party will create the impression of bias toward that party or against its adversary.” *In re Disqualification of Lawson*, 135 Ohio St.3d 1243, 2012-Ohio-6337, 986 N.E.2d 6, ¶ 7. The matters complained of here fall within the discretion of the judge in a custody case, and it is not the chief justice’s role in deciding an affidavit of disqualification to second-guess such decisions. Procedures exist by which appellate courts may review—and, if necessary, correct—rulings made by a trial judge, but Mr. Slavin may not litigate such matters in an affidavit of disqualification. *See, e.g., In re Disqualification of Russo*, 110 Ohio St.3d 1208, 2005-Ohio-7146, 850 N.E.2d 713, ¶ 5-6.

{¶ 5} The affidavit of disqualification is denied. The case may proceed before Judge Goldberg.
