

IN RE DISQUALIFICATION OF PITTMAN.

THE STATE OF OHIO v. HEINZ.

**[Cite as *In re Disqualification of Pittman*, 166 Ohio St.3d 1213,
2021-Ohio-3892.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to present sufficient evidence to show that the judge had hostile feelings toward affiant or that judge had formed a fixed anticipatory judgment—Vague and unsubstantiated allegations are insufficient on their face to support a finding of bias or prejudice—Disqualification denied.

(No. 21-AP-109—Decided September 8, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Portage County Court of Common Pleas,
General Division, Case No. 2021CR00658.

O’CONNOR, C.J.

{¶ 1} Defendant Timothy J. Heinz has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Laurie J. Pittman from the above-referenced case. Mr. Heinz has also filed a revised motion to disqualify Judge Pittman with an accompanying affidavit.

{¶ 2} For several reasons, Mr. Heinz avers that Judge Pittman is biased against him and cannot impartially preside over the underlying criminal case. Judge Pittman filed a response to the affidavit and states that she can remain impartial.

{¶ 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, 132 N.E.2d 191 (1956), paragraph four of the syllabus. “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} For the reasons explained below, Mr. Heinz has not established that Judge Pittman has hostile feelings toward him or has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Mr. Heinz set forth a compelling argument for disqualifying Judge Pittman to avoid an appearance of partiality.

{¶ 5} Mr. Heinz first alleges that because Judge Pittman presided over a related foreclosure case, she has personal knowledge of facts in dispute in the underlying criminal case. Mr. Heinz also asserts that because of Judge Pittman’s involvement in the foreclosure action, she will be unable to fairly consider his arguments in the criminal case. In response, Judge Pittman acknowledges that she presided over Mr. Heinz’s foreclosure case, but she further states that she has no personal interest in his civil or criminal cases, she had never met Mr. Heinz prior to the pending criminal case, his previous foreclosure matter was one of many on the judge’s docket, and she has impartially presided over other cases involving Mr. Heinz.

{¶ 6} It is well established that “absent a showing of actual bias * * * a judge who presided over prior proceedings involving one or more parties presently before the court is not thereby disqualified from presiding over later proceedings

involving the same parties.” *In re Disqualification of Bryant*, 117 Ohio St.3d 1251, 2006-Ohio-7227, 885 N.E.2d 246, ¶ 4. Although it appears that Mr. Heinz’s foreclosure case is related to the pending criminal matter, Mr. Heinz has failed to sufficiently explain why there is any reasonable basis to question Judge Pittman’s ability to fairly preside over his criminal case merely because she decided the foreclosure matter. Nor is there anything in the record suggesting that Judge Pittman has been unduly influenced by the prior case. Therefore, the judge’s presumption of impartiality has not been overcome.

{¶ 7} Mr. Heinz next claims that Judge Pittman should be disqualified because he has named her as a defendant in a separate civil lawsuit. For her part, Judge Pittman acknowledges that Mr. Heinz sued her, the county sheriff, the county clerk of courts, the Ohio Attorney General, and others—although the judge further states that she is not actively involved in the litigation. Mr. Heinz’s separate civil lawsuit does not support disqualification. “[A] judge will not be disqualified solely because a litigant in a case pending before the judge has filed a lawsuit against that judge. To hold otherwise would invite parties to file lawsuits solely to obtain a judge’s disqualification, which would severely hamper the orderly administration of judicial proceedings.” *In re Disqualification of Pokorny*, 135 Ohio St.3d 1268, 2013-Ohio-915, 986 N.E.2d 993, ¶ 4.

{¶ 8} Mr. Heinz also alleges that Judge Pittman insulted him “by verbal cut-down(s)” during a recent court proceeding. Mr. Heinz provided only one example: he claims that when he referred to sections of the Revised Code, Judge Pittman stated that he “does ‘not know’ what he is talking about.” The judge’s alleged comment does not prove that she is biased against him, and he has failed to otherwise explain how she insulted him or what “verbal cut-downs” she used toward him. Nor did he provide a transcript to substantiate this allegation. The burden in these matters falls on the affiant to submit specific evidence demonstrating that disqualification is warranted. *See* R.C. 2701.03(B)(1). “When

necessary, an affiant should submit evidence beyond the affidavit to support the allegations contained therein.” *In re Disqualification of Trimmer*, 164 Ohio St.3d 1212, 2021-Ohio-2320, 172 N.E.3d 192, ¶ 5. Vague and unsubstantiated allegations—such as those here—are insufficient on their face for a finding of bias or prejudice. *See In re Disqualification of Walker*, 36 Ohio St.3d 606, 522 N.E.2d 460 (1988).

{¶ 9} In addition, Mr. Heinz alleges that Judge Pittman has forced an attorney to represent him. For her part, Judge Pittman states that Mr. Heinz is representing himself in his criminal case but that she assigned him “advisory counsel” to assist him and protect his rights. Nothing about the judge’s assignment of advisory counsel suggests that she is biased against Mr. Heinz. If he believes that the judge’s assignment has somehow violated his rights, he may have other remedies, including appeal. But he cannot litigate the matter in an affidavit of disqualification.

{¶ 10} Finally, Mr. Heinz suggests that Judge Pittman is biased because she indicated in an entry that the Supreme Court had overruled his first affidavit of disqualification, even though the clerk of this court had merely refused to file Mr. Heinz’s affidavit for failing to meet the statutory filing requirements. Judge Pittman’s mistake about the outcome of Mr. Heinz’s first affidavit does not prove she is biased against him.

{¶ 11} Mr. Heinz’s affidavit of disqualification and revised motion are denied. The case may proceed before Judge Pittman.
