

IN RE DISQUALIFICATION OF WALLACE AND CAPIZZI.

IN RE N.H.

AND

IN RE A.H.

**[Cite as *In re Disqualification of Wallace and Capizzi*, 167 Ohio St.3d 1233,
2022-Ohio-1330.]**

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

(No. 22-AP-007—Decided February 18, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Montgomery County Court of Common
Pleas, Juvenile Division, Case Nos. 2017-3548 and 2017-3539.

O’CONNOR, C.J.

{¶ 1} Aaron Paul Hartley, the father of the minor children in the above-referenced custody cases, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Helen Wallace and Judge Anthony Capizzi from those cases.

Background

{¶ 2} Mr. Hartley argues that the judges are biased against him or that their impartiality may be questioned. Specifically, Mr. Hartley avers that he is an attorney who has handled cases before Judge Wallace and Judge Capizzi, he is Facebook friends with both judges, and he donated to the campaign committees for both judges. Regarding Judge Wallace only, Mr. Hartley avers the following: Judge Wallace consulted with and gave legal advice to the mother of the minor children before the judge took the bench; the judge is former law partners with the

court-appointed guardian ad litem; the judge demanded that the custody cases be adjudicated before a pending criminal case against Mr. Hartley, which Mr. Hartley believes creates a cloud of guilt in the custody cases; and the judge refused to enforce her own orders against the mother. Mr. Hartley also alleges that both he and the mother jointly sought a visiting judge, but their request was denied.

{¶ 3} Judge Wallace and Judge Capizzi submitted separate responses to the affidavit. Judge Wallace admits that Mr. Hartley has previously appeared before the juvenile court, that she is Facebook friends with him, and that he contributed \$200 to her campaign committee in 2018. The judge also acknowledges that before she took judicial office in January 2019, the mother scheduled an initial legal consultation with her regarding a matter involving Mr. Hartley. Judge Wallace further states, however, that she declined to represent the mother, did not give the mother legal advice, and has never represented the mother in the underlying cases or any other matter. Judge Wallace acknowledges that from 2011 to 2013, she was in a legal partnership with the attorney who is currently the guardian ad litem. But the judge notes that the partnership ended years before she took judicial office. According to Judge Wallace, Mr. Hartley's assertion that she demanded that the custody cases be adjudicated prior to his criminal case is "false." The judge further notes that she has issued only two administrative orders in the custody cases and that the parties have yet to personally appear before her. Based on these facts, the judge does not believe that her disqualification is necessary.

{¶ 4} In his response, Judge Capizzi addressed some of Mr. Hartley's factual allegations against him. Judge Capizzi believes that there is no basis for his or Judge Wallace's disqualification.

{¶ 5} Although not specified in Mr. Hartley's affidavit, it appears that the underlying cases are assigned to Judge Wallace's docket, as the only order in the record was signed by her. Mr. Hartley may have included Judge Capizzi in his affidavit of disqualification in the event that if Judge Wallace were disqualified, the

cases would be transferred to Judge Capizzi, who is the other judge of the Montgomery County Court of Common Pleas, Juvenile Division. As explained below, Mr. Hartley has failed to establish that Judge Wallace's disqualification is warranted. Therefore, it is not appropriate to rule on Judge Capizzi's potential disqualification and he will no longer be referred to in this decision. *See In re Disqualification of Krueger and Gormley*, 155 Ohio St.3d 1201, 2017-Ohio-9429, 119 N.E.3d 427, ¶ 2.

Merits of the affidavit of disqualification

{¶ 6} 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.

{¶ 7} For the reasons explained below, Mr. Hartley 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. Hartley set forth a compelling argument for disqualifying Judge Wallace to avoid an appearance of partiality.

{¶ 8} First, “[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. And “[s]tanding 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.” *In re Disqualification of Kerenyi*, 160 Ohio St.3d 1201, 2020-Ohio-1082, 153 N.E.3d 121, ¶ 7. Rather, “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.” *Id.* Mr. Hartley alleges only that he has appeared before Judge Wallace in other cases and that they are Facebook friends. Without more, those facts alone do not create the appearance that he is in some sort of special position to influence the court; nor does it cast doubt on Judge Wallace’s ability to act impartially.

{¶ 9} Second, “under longstanding Ohio precedent and the Code of Judicial Conduct, it is not reasonable to question a judge’s impartiality based solely upon counsel’s or a litigant’s contribution to the judge’s election campaign.” *In re Disqualification of Breaux*, 150 Ohio St.3d 1305, 2017-Ohio-7374, 84 N.E.3d 1038, ¶ 10. Rather, “the ability of a judge to serve fairly and impartially in these situations is determined on a case-by-case basis.” *Id.* Here, Mr. Hartley’s \$200 contribution to Judge Wallace’s campaign committee four years ago does not create an appearance of impropriety.

{¶ 10} Third, Mr. Hartley has not demonstrated that Judge Wallace’s prior interaction with the mother of the minor children is disqualifying. “A judge’s prior representation of a party in matters wholly unrelated to a matter pending before the judge does not compel the judge’s disqualification, unless there is a specific

showing of actual bias on the part of the judge.” *In re Disqualification of Serrott*, 134 Ohio St.3d 1245, 2012-Ohio-6340, 984 N.E.2d 14, ¶ 6. Judge Wallace claims that years ago, she met with the mother about a matter involving Mr. Hartley. But the judge further states that she never represented the mother—in the underlying custody cases or in any other case—and did not give her substantive legal advice. Mr. Hartley has not alleged that the consultation involved the underlying custody cases. Without more, the consultation does not require Judge Wallace’s removal.

{¶ 11} Fourth, “absent circumstances in which disqualification is mandated by the Code of Judicial Conduct, a prior professional relationship—such as a law partnership or legal colleagues—between a judge and an attorney ‘will not be grounds for disqualification where that relationship ended some years ago.’ ” *In re Disqualification of Park*, 142 Ohio St.3d 65, 2014-Ohio-5872, 28 N.E.3d 56, ¶ 7, quoting *In re Disqualification of Ward*, 100 Ohio St.3d 1211, 798 N.E.2d 1 (2002) (disqualification request denied when judge’s professional relationship with an attorney appearing before him ended seven years prior). Here, Judge Wallace states that her legal partnership with the guardian ad litem ended in 2013.

{¶ 12} Fifth, Mr. Hartley offered only his affidavit to support his allegation that Judge Wallace demanded that the underlying custody cases be adjudicated before Mr. Hartley’s criminal case. Judge Wallace, however, flatly denies this allegation. The burden in these matters falls on the affiant to submit sufficient evidence demonstrating that disqualification is warranted. “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. Given the conflicting accounts in the record—and Mr. Hartley’s failure to further substantiate the allegation with a copy of the judge’s purported order or some other evidence—he has failed to set forth sufficiently compelling evidence to overcome the presumption that Judge Wallace is fair and impartial. *See, e.g., In re Disqualification of Baronzzi*, 135 Ohio St.3d

1212, 2012-Ohio-6341, 985 N.E.2d 494, ¶ 8 (the affiant’s “vague and unsubstantiated allegations—especially in the face of clear denials by Judge Baronzzi—are insufficient to overcome the presumption that Judge Baronzzi is fair and impartial”).

{¶ 13} Finally, Mr. Hartley’s belief that Judge Wallace has failed to enforce two orders against the mother is not evidence of bias. In response, Judge Wallace notes that although Mr. Hartley filed a motion to show cause, he also filed four requests for continuances, thereby delaying the court from hearing his motion. Regardless, “[d]issatisfaction or disagreement with a judge’s ruling of law, without more, does not constitute bias or prejudice and thus is not grounds for disqualification.” *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. As a general rule, a judge’s alleged inaction on a pending motion is within the judge’s sound discretion and not evidence of bias. *In re Disqualification of Pokorny*, 135 Ohio St.3d 1268, 2013-Ohio-915, 986 N.E.2d 993, ¶ 7.

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