

IN RE DISQUALIFICATION OF LEACH.

WOLFE v. WOLFE ET AL.

**[Cite as *In re Disqualification of Leach*, 167 Ohio St.3d 1239,
2022-Ohio-2140.]**

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

(No. 22-AP-035—Decided April 25, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
Domestic Relations and Juvenile Division, Case No. 21 DR 004118.

O’CONNOR, C.J.

{¶ 1} Mary C. Ansbro, counsel for the plaintiff, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge George W. Leach from the above-referenced divorce case.

{¶ 2} Ms. Ansbro alleges that at a February 18, 2022 status conference, Judge Leach demonstrated bias against her and her client and engaged in inappropriate behavior. Ms. Ansbro also avers that in two prior matters, Judge Leach exhibited bias against her and female litigants. Judge Leach submitted a response to the affidavit and denies any bias against Ms. Ansbro. The judge states that he treats all attorneys and litigants equally.

{¶ 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. For the reasons explained below, Ms. Ansbro has not established that Judge Leach has hostile feelings toward her or her client or that the judge has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Ms. Ansbro set forth a compelling argument for disqualifying Judge Leach to avoid an appearance of partiality.

The February 18 status conference

{¶ 4} Contrary to Ms. Ansbro’s allegations, the transcript of the February 18 status conference does not show that Judge Leach must be removed due to bias.

{¶ 5} The plaintiff’s complaint included allegations against a third-party defendant, who later filed a motion to dismiss and for sanctions. Although a copy of the motion is not included in this record, it appears that the third-party defendant argued that the plaintiff’s allegations against him were contradicted by publicly available property records. At the status conference, Ms. Ansbro said that she had included those allegations in the complaint based on her client’s understanding of a family trust involving both the defendant and the third-party defendant. Ms. Ansbro also indicated, however, that she had not seen the purported trust. Judge Leach questioned Ms. Ansbro’s basis for joining the third-party defendant and made comments to her such as: “[Y]ou have a duty. I don’t care what your client tells you. Let’s not be that naïve here. We don’t listen to our clients all the time,”

and “[d]o your job and your due diligence as counsel, not listening to our clients all the time and decide what you are going to do with this case.”

{¶ 6} Ms. Ansbro asserts that the judge’s language was demeaning and derogatory. Judge Leach says that his comments were meant to impress upon Ms. Ansbro that she needed to produce sufficient information for him to decide the third-party defendant’s motion, to which Ms. Ansbro had otherwise failed to respond. The judge has affirmed, however, that his comments did not mean that he had prejudged the matter.

{¶ 7} Judges are entitled to express dissatisfaction with what they perceive as improper attorney conduct, although “that dissatisfaction can and should be expressed in a way that promotes public confidence in the integrity, dignity, and impartiality of the judiciary.” *In re Disqualification of Corrigan*, 105 Ohio St.3d 1243, 2004-Ohio-7354, 826 N.E.2d 302, ¶ 10. The transcript shows some tension between Judge Leach and Ms. Ansbro, but the transcript does not clearly establish that the judge is biased against her. In general, “a judge will not be disqualified merely for voicing disapproval with a party’s legal argument or interrogating counsel in a confrontational tone.” *In re Disqualification of Jenkins*, 165 Ohio St.3d 1294, 2021-Ohio-4355, 180 N.E.3d 1191, ¶ 9. *See also In re Disqualification of Winkler*, 135 Ohio St.3d 1271, 2013-Ohio-890, 986 N.E.2d 996, ¶ 11 (disqualifying a judge whose comments “crossed the line between acceptable sentencing comments about a defendant’s character and comments that convey the appearance of bias or prejudice”).

{¶ 8} During the status conference, Judge Leach also said that he had retrieved property records from the Internet, which Ms. Ansbro argues shows that he had engaged in an improper factual investigation. In response, Judge Leach explains that before the status conference, his staff attorney accessed a county website to print copies of records that were more legible than those that counsel had already submitted. The Ohio Code of Judicial Conduct prohibits judges from

independently investigating the facts in a matter and requires that they consider only the evidence presented. Jud.Cond.R. 2.9(C) and (D). The prohibition extends to information available on the Internet. *Id.* at comment 6. Although judges must be vigilant about considering evidence presented only by the parties, given Judge Leach's explanation here, his comments and actions do not indicate that he is biased against Ms. Ansbro or that he has predetermined the matter based on any independent investigation of the facts.

Bias against female attorneys and female litigants in prior cases

{¶ 9} Ms. Ansbro alleges that Judge Leach's actions in two prior cases demonstrate his disdain for her and female litigants. Regarding the first of those matters, she argues, the judge exhibited bias in several different ways, including by scheduling trial immediately after her return from parental leave, which required her to prepare for trial during her leave time, and by denying her and her female client's requests to continue certain days of the trial due to family and medical issues. Ms. Ansbro further alleges that during one day of the trial, Judge Leach berated her regarding her presentation of certain evidence and demanded that she create a spreadsheet summarizing the evidence for him by the following day. Ms. Ansbro says that at the time, she was breastfeeding every two hours and that Judge Leach nonetheless denied her requests for additional time to create the summary for him. Regarding the second matter, Ms. Ansbro alleges that the judge attempted to proceed without the presence of an interpreter for a female litigant who did not speak English and that Judge Leach again berated Ms. Ansbro during that proceeding.

{¶ 10} In response, Judge Leach asserts that in the first matter, he scheduled trial for after Ms. Ansbro's parental leave had ended and for a date agreed to by counsel. He also says that he made several accommodations for Ms. Ansbro and her client during trial, and he has explained why he initially denied their requests for continuances before he ultimately granted them. The judge acknowledges that

in an attempt to move the case forward, he admonished Ms. Ansbro—outside the presence of her client—for poor organization of her trial notebooks and suggested that she prepare summary pages for the court. Regarding the second matter, Judge Leach says that without a transcript, he cannot recall the exact details of the case, but he believes he would not force any party to go forward without an interpreter.

{¶ 11} An attorney’s or a party’s “experience before an allegedly biased judge in previous proceedings is an important factor to be weighed in a bias determination.” *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 32. However, an affidavit of disqualification must “be filed as soon as possible after the incident giving rise to the claim of bias and prejudice,” and failure to do so may result in waiver of the objection, especially when “the facts underlying the objection have been known to the party for some time.” *In re Disqualification of O’Grady*, 77 Ohio St.3d 1240, 1241, 674 N.E.2d 353 (1996). The affiant has the burden to demonstrate that the affidavit is timely filed. *In re Disqualification of Capper*, 134 Ohio St.3d 1271, 2012-Ohio-6287, 984 N.E.2d 1082, ¶ 11. If Ms. Ansbro believed that Judge Leach had demonstrated bias against her in the prior matters, she should have sought the judge’s removal from those matters while they were pending before him. Because nothing in the record justifies her delay in raising those allegations, she has failed to sufficiently explain why Judge Leach should be removed from the underlying case based on his conduct in prior unrelated matters. *See, e.g., In re Disqualification of Dezso*, 134 Ohio St.3d 1223, 2011-Ohio-7081, 982 N.E.2d 714, ¶ 6 (“[affiant’s] delay in filing the affidavit of disqualification constitutes an independent ground for denying his disqualification request”).

{¶ 12} Even if Ms. Ansbro had not waived her objections to Judge Leach, she has failed to substantiate her allegation that he is biased against female attorneys and litigants. In affidavit-of-disqualification proceedings, “the burden falls on the affiant to submit specific evidence demonstrating that disqualification is

warranted.” *In re Disqualification of Jamison*, 146 Ohio St.3d 1252, 2015-Ohio-5683, 55 N.E.3d 1116, ¶ 5, citing 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. This is especially true when an affidavit includes allegations of racial or gender bias, which are among the most serious allegations that can be directed at a judge and, if true, would not only constitute a violation of the judge’s oath of office and the Code of Judicial Conduct but also would strike at the very heart and integrity of the judiciary. *In re Disqualification of Pokorny*, 135 Ohio St.3d 1268, 2013-Ohio-915, 986 N.E.2d 993, ¶ 6; *In re Disqualification of Cunningham*, 100 Ohio St.3d 1216, 1216-1217, 798 N.E.2d 4 (2002).

{¶ 13} Here, Ms. Ansbro has offered her affidavit and a few emails to support her claims of gender bias, even though many of them, if true, could have been substantiated by transcripts or other evidence—including her allegations that the judge had berated her in two prior cases. For his part, Judge Leach has thoroughly addressed each allegation and denied that he acted improperly or in a biased manner. 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. Given the conflicting accounts in the record, Ms. Ansbro has failed to set forth sufficiently compelling evidence to overcome the presumption that Judge Leach 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 (affiant’s “vague and unsubstantiated allegations—especially in the face of clear denials by [the judge]—are insufficient to overcome the presumption that [the judge] is fair and impartial”); *In re Disqualification of Harwood*, 137 Ohio St.3d 1221, 2013-Ohio-5256, 999 N.E.2d 681, ¶ 6-7 (affiant failed to set forth compelling evidence to overcome presumption of impartiality when judge had

denied affiant's allegations and affiant had failed to substantiate her allegations with third-party affidavits or other evidence).

{¶ 14} The affidavit of disqualification is denied. The case may proceed before Judge Leach.
