

IN RE DISQUALIFICATION OF COOK.

ROBINSON v. SMITH.

[Cite as *In re Disqualification of Cook*, 168 Ohio St.3d 1249, 2022-Ohio-2268.]

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

(No. 22-AP-060—Decided May 27, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Summit County Court of Common Pleas,
Domestic Relations Division, Case No. DR-2011-07-2013.

O’CONNOR, C.J.

{¶ 1} Plaintiff Brandon P. Robinson has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Katarina Cook from the above-referenced custody proceeding, which was referred to the Family Recovery Court Program (“FRCP”) in June 2020.

{¶ 2} Mr. Robinson claims that Judge Cook, who administers the FRCP, and the FRCP manager¹ have demonstrated bias against him by (1) threatening him and his wife at an April 2022 hearing, (2) refusing to accept Mr. Robinson’s withdrawal from the FRCP, which he voluntarily agreed to participate in, (3) failing to enforce the FRCP rules against the defendant, (4) failing to protect the best

1. According to Judge Cook, one of her court’s Family Court Services evaluators serves as the program manager for the FRCP. Similar to bias claims against a magistrate, R.C. 2701.03 does not permit the chief justice to consider claims of bias or prejudice against a manager of a specialized-docket program. See *In re Disqualification of Celebrezze*, 135 Ohio St.3d 1218, 2012-Ohio-6304, 985 N.E.2d 499, ¶ 8 (“R.C. 2701.03 does not permit the chief justice to consider claims of bias or prejudice against magistrates”).

interests of the parties’ minor child, and (5) refusing to recognize that the FRCP has failed to help the parties in this matter.

{¶ 3} Judge Cook submitted a response to the affidavit and denies any bias against Mr. Robinson. The judge submitted an audio file of the April 2022 hearing and denies threatening Mr. Robinson. Rather, the judge says that she and the FRCP manager informed Mr. Robinson of the possible consequences if he and his new wife continued to engage in conduct that the judge perceived as interfering with the defendant’s visitation. The judge further states that although the FRCP is voluntary to enter, once the parties sign a participation agreement, they are committed to the program and nothing in the participation agreement allows a coparent to withdraw from or terminate participation in the program.

{¶ 4} 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.

{¶ 5} Mr. Robinson has not established that Judge Cook has hostile feelings toward him or that the judge has formed a fixed anticipatory judgment on any issue

in the underlying case. Nor has Mr. Robinson set forth a compelling argument for disqualifying Judge Cook to avoid an appearance of partiality. During the April 2022 hearing, Judge Cook and/or the FRCP manager expressed frustration with Mr. Robinson and his wife, interrupted Mr. Robinson, and used inappropriate language.² A judge is entitled to express dissatisfaction with litigants who the judge perceives as failing to meet the court's expectations. That dissatisfaction, however, "can and should be expressed in a way that promotes the 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. And although "[t]he Code of Judicial Conduct contemplates that a judge who administers a specialized docket assumes a more interactive role with parties, treatment providers, probation officers, social workers, and others," *In re Disqualification of Yost*, 155 Ohio St.3d 1266, 2018-Ohio-5257, 121 N.E.3d 382, ¶ 4, the judge must also be "patient, dignified, and courteous" to litigants and others with whom the judge deals in an official capacity, Jud.Cond.R. 2.8(B). The judge must also require similar conduct of court staff who are subject to the judge's direction and control. *Id.*

{¶ 6} But in the end, considering Judge Cook's lengthy and significant involvement in this case, her conduct at the April 2022 hearing does not mandate the judge's removal. *See, e.g., In re Disqualification of Stucki*, 157 Ohio St.3d 1259, 2019-Ohio-4534, 137 N.E.3d 1230, ¶ 5 (given the judge's four-year involvement in the parties' domestic-relations matter, his intemperate language at a hearing did not require his disqualification); *In re Disqualification of Swenski*, 160 Ohio St.3d 1274, 2020-Ohio-3850, 158 N.E.3d 628, ¶ 4-5 (given the judge's significant and lengthy involvement with the parties, her undignified and unprofessional comment did not require her removal).

2. The audio file of the April 2022 hearing does not identify the speakers. Therefore, it was often difficult to distinguish between Judge Cook and the FRCP manager.

{¶ 7} In addition, this is not the appropriate forum to determine whether Mr. Robinson may terminate participation in the FRCP at this late stage of the process, whether Judge Cook fairly applied the FRCP rules to the defendant, or whether the judge’s rulings were made in the best interests of the parties’ child. An affidavit of disqualification addresses the “narrow issue of the possible bias of a judge, and ‘[i]t is not a vehicle to contest matters of substantive or procedural law.’” *In re Disqualification of McGrath*, 149 Ohio St.3d 1224, 2016-Ohio-8601, 74 N.E.3d 453, ¶ 2, quoting *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. Mr. Robinson’s disagreement with Judge Cook’s interpretation and application of the FRCP guidelines is not evidence of the judge’s bias.

{¶ 8} The affidavit of disqualification is denied. The case may proceed before Judge Cook.
