

IN RE DISQUALIFICATION OF GALLAGHER.

MEEHAN v. MEEHAN.

**[Cite as *In re Disqualification of Gallagher*, 170 Ohio St.3d 1207,
2022-Ohio-3055.]**

*Judges—Affidavits of disqualification—R.C. 2701.03 and 2101.39—Affiant failed
to demonstrate bias or prejudice—Disqualification denied.*

(No. 22-AP-079—Decided July 18, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas, Probate Division, Case Nos. 2019ADV244617 and 2019ADV245299.

O’CONNOR, C.J.

{¶ 1} Dianna M. Anelli, counsel for the plaintiff, has filed an affidavit pursuant to R.C. 2701.03 and 2101.39 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Laura J. Gallagher from the above-referenced cases.

{¶ 2} In mid-June 2022, Judge Gallagher presided over a four-day bench trial. Ms. Anelli filed her affidavit of disqualification less than a week after the trial ended but before Judge Gallagher issued her final decision. Ms. Anelli claims that Judge Gallagher is biased against her based on the judge’s trial conduct. For example, Ms. Anelli asserts that the judge continually rolled her eyes at Ms. Anelli, used a hostile or condescending tone with her, and repeatedly interrupted her. Ms. Anelli also claims that during trial, Judge Gallagher improperly excluded some of the plaintiff’s evidence and made several comments demonstrating that she had predetermined certain issues of fact before hearing all of the evidence. To support her claims, Ms. Anelli submitted affidavits from her client and three other people

who purportedly witnessed the judge’s conduct. Ms. Anelli also submitted a “rough draft” portion of the trial transcript.¹

{¶ 3} Judge Gallagher submitted a response to the affidavit thoroughly addressing Ms. Anelli’s allegations. The judge denies having any bias against Ms. Anelli, denies having rolled her eyes at Ms. Anelli, and denies having used a hostile or condescending tone with her. The judge notes that any frustration or impatience that she expressed was a result of Ms. Anelli’s attempting to control the proceedings or continuing to argue an issue after the judge had already decided the matter. The judge further notes that if she interrupted Ms. Anelli, she was attempting to move the case along or to better understand Ms. Anelli’s legal arguments—not because she was biased against Ms. Anelli.

{¶ 4} “When an affidavit is filed after commencement of a trial and presentation of evidence, a judge should be disqualified only when the record ‘clearly and unquestionably demonstrates a “fixed anticipatory judgment” that undermines the absolute confidence of the public in the fairness and integrity of the proceedings.’ ” (Citation omitted.) *In re Disqualification of Fuhry*, 145 Ohio St.3d 1253, 2015-Ohio-5684, 49 N.E.3d 1305, ¶ 4, quoting *In re Disqualification of Kate*, 88 Ohio St.3d 1208, 1209, 723 N.E.2d 1098 (1999), quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956). Further, “it is well settled that ‘absent extraordinary circumstances, a judge will not be subject to disqualification after having presided over lengthy proceedings in a pending case.’ ” *In re Disqualification of Swift*, 136 Ohio St.3d 1273, 2013-Ohio-4464, 996 N.E.2d 939, ¶ 5, quoting *In re Disqualification of Celebrezze*, 94 Ohio St.3d 1228, 1229, 763 N.E.2d 598 (2001). Upon review of the record here—and considering

1. Ms. Anelli submitted a 28-page affidavit. S.Ct.Prac.R. 21.01(D)(3) provides that “[a]n affidavit of disqualification shall not exceed fifteen numbered pages, exclusive of the certificate of service and any exhibits.” Ms. Anelli failed to request leave to exceed the page limitation, nor did she explain why it was necessary for her to exceed the limitation.

that Judge Gallagher presided over a four-day bench trial—Ms. Anelli has not met her “heavy burden” to succeed on her disqualification request, *In re Disqualification of Croce*, 160 Ohio St.3d 1240, 2020-Ohio-4051, 155 N.E.3d 960, ¶ 8.

{¶ 5} For example, a review of the draft partial trial transcript does not establish that Judge Gallagher had hostility toward Ms. Anelli or that the judge had improperly formed a fixed anticipatory judgment on any issue in the cases. At that point in the trial, counsel were setting forth their arguments on the defendants’ motion for directed verdict. Ms. Anelli had already presented her client’s case for three days. Judges routinely interrupt counsel during oral arguments in order to better understand a party’s arguments. Even if—as Ms. Anelli claims—Judge Gallagher’s tone was confrontational, a judge generally “will not be disqualified merely for voicing disapproval with a party’s legal argument or interrogating counsel in a confrontational tone. ‘Emotions can run high in the courtroom, and occasional flares of temper are to be expected in the heat of argument,’ ” *In re Disqualification of Jenkins*, 165 Ohio St.3d 1294, 2021-Ohio-4355, 180 N.E.3d 1191, ¶ 9, quoting *United States v. Snyder*, 235 F.3d 42, 48 (1st Cir.2000). Although Judge Gallagher acknowledges that she may have expressed frustration and impatience, the partial transcript does not support a finding that the judge is biased or should be removed at this late stage of the litigation, especially considering that she ultimately *denied* the defendants’ motion for directed verdict.

{¶ 6} Further, this is not the appropriate forum or time to decide many of Ms. Anelli’s claims. Ms. Anelli’s bias claims are intertwined with her belief that Judge Gallagher improperly excluded some of the plaintiff’s evidence and improperly allowed the defendants to “redocket” a filing. But an affidavit of disqualification “is not a vehicle to contest matters of substantive or procedural law.” *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. “[A] judge’s adverse rulings, even erroneous ones, are not

evidence of bias or prejudice,” and “reviewing alleged legal errors is not the role of the chief justice in deciding an affidavit of disqualification.” *In re Disqualification of Fuerst*, 134 Ohio St.3d 1267, 2012-Ohio-6344, 984 N.E.2d 1079, ¶ 14, 15. This is especially true when, as here, the record does not include a full transcript to substantiate an affiant’s claims. The only remedy in this proceeding is removal of the judge—not reversal or reconsideration of the judge’s rulings. If Ms. Anelli believes that Judge Gallagher’s rulings—combined with her conduct—deprived her client of a constitutional right to a fair trial, Ms. Anelli may have the opportunity to raise that issue on appeal. But Ms. Anelli has not established that Judge Gallagher’s trial conduct was so egregious that she must be disqualified before issuing final judgment.

{¶ 7} The affidavit of disqualification is denied. The cases may proceed before Judge Gallagher.
