

IN RE DISQUALIFICATION OF NIST.

ORR v. ORR ET AL.

[Cite as *In re Disqualification of Nist*, 170 Ohio St.3d 1216, 2022-Ohio-3482.]

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

(No. 22-AP-085—Decided August 19, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Stark County Family Court Case No.
2019 DR 1222.

O’CONNOR, C.J.

{¶ 1} Plaintiff Matthew Orr has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge David R. Nist from the above-referenced divorce case, now pending on the parties’ objections to the magistrate’s decision.

{¶ 2} Mr. Orr asserts that Judge Nist demonstrated a lack of impartiality by ordering him to pay for a transcript copy in excess of the fee rates established by the court’s local rule and without giving him notice or an opportunity to be heard on the court reporter’s motion for extraordinary fees. Mr. Orr also claims that Judge Nist attempted to punish him for questioning the court reporter’s fees by vacating the judge’s prior order requiring the parties to split the transcript fees, ordering Mr. Orr to pay the full amount of the transcript fees, and ordering the parties to appear in person at all future hearings (which Mr. Orr says will unnecessarily require him to miss work). Mr. Orr also claims that the judge has financially favored a court employee—presumably, the court reporter.

{¶ 3} Judge Nist filed an initial and a supplemental response to the affidavit and denies any bias against Mr. Orr or attempt to punish him. The judge explains why he vacated his prior order requiring the parties to split the transcript fees, and the judge emphasizes that he is no longer requiring payment for the second copy of the transcript and that he may address the allocation of costs and transcript fees in his final decision on the parties' objections. Judge Nist also explains why he required the parties to appear in person at future hearings. And the judge denies attempting to financially favor the court reporter, who, the judge notes, is not an employee of the court. Judge Nist affirms that he will continue to issue rulings based on the law and the facts.

{¶ 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. Orr has not established that Judge Nist 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. Orr set forth a compelling argument for disqualifying

Judge Nist to avoid an appearance of partiality. An affidavit of disqualification “addresses the narrow issue of the possible bias of a judge, and ‘it 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. Although Mr. Orr claims that Judge Nist violated a local court rule by permitting the court reporter to charge extraordinary fees for a second copy of the transcript, the judge notes that he has since vacated the order and is no longer requiring payment for the second copy. Judge Nist also notes that he has issued only interim orders relating to transcript fees and that he may address the allocation of costs and transcript fees in his final decision on the parties’ objections to the magistrate’s decision. It is outside the scope of this matter to determine whether Judge Nist properly permitted a court reporter to charge rates in excess of those established by a local court rule. Regardless, a judge’s adverse rulings, even erroneous ones, are generally not evidence of bias or prejudice. *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5. Without more, Mr. Orr has not demonstrated that Judge Nist’s interim decisions were the product of bias against Mr. Orr or that the judge must be disqualified before ruling on the parties’ objections.

{¶ 6} The affidavit of disqualification is denied. The case may proceed before Judge Nist.
