

**IN RE DISQUALIFICATION OF LUEBBERS.**

**GAUTHIER v. GAUTHIER ET AL.**

**[Cite as *In re Disqualification of Luebbbers*, 169 Ohio St.3d 1241,  
2022-Ohio-4434.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—Although a judge’s ruling during pendency of an affidavit of disqualification could be evidence of bias, a judge’s inadvertent ruling after filing of an affidavit does not typically warrant disqualification—Disqualification denied.*

(No. 22-AP-115—Decided October 18, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Court of Common  
Pleas, General Division, Case No. A-1303244.

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**O’CONNOR, C.J.**

{¶ 1} Thomas E. Grossmann, counsel for the plaintiff, has filed an affidavit and a supplemental affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Jody M. Luebbbers from the above-referenced case.

{¶ 2} Mr. Grossmann alleges that Judge Luebbbers is biased against him and his client and that the judge’s impartiality is in question. Mr. Grossmann primarily claims that the judge demonstrated bias by (1) unilaterally scheduling an attorney-fee hearing without consulting the parties or counsel, (2) going forward with the attorney-fee hearing even though the plaintiff could not attend due to his experiencing COVID-19 symptoms, (3) imposing an arbitrary and unreasonable one-hour time limit for Mr. Grossmann to cross-examine defense counsel on his fee request, (4) acting in a dismissive manner toward Mr. Grossmann during the

attorney-fee hearing, (5) issuing her attorney-fee decision after Mr. Grossmann had filed his original affidavit of disqualification, and (6) awarding the defendant the same amount in attorney fees as she previously did, even though the court of appeals had reversed her prior attorney-fee decision.

{¶ 3} Judge Luebbers submitted a response to the affidavit and denies any bias against Mr. Grossmann or the plaintiff. According to the judge, she rescheduled the attorney-fee hearing twice to accommodate the plaintiff’s schedule and offered him the option of participating via remote technology but he declined to do so. The judge further explains that pursuant to a decision of the court of appeals, she held the attorney-fee hearing for the sole purpose of allowing Mr. Grossmann to cross-examine defense counsel and that before the hearing, she informed Mr. Grossmann that the cross-examination would be limited to one hour. The time restriction, the judge believes, was reasonable. The judge also believes that Mr. Grossmann is merely unhappy with her attorney-fee decision.

{¶ 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. Grossmann has not established that Judge Luebbers has hostile feelings toward him or the plaintiff or that the judge has formed a fixed anticipatory judgment on any remaining issue in the underlying case. Nor has Mr. Grossmann set forth a compelling argument for disqualifying Judge Luebbers to avoid an appearance of partiality. This is not the appropriate forum in which to decide whether Judge Luebbers abused her discretion in scheduling the attorney-fee hearing or in restricting Mr. Grossmann's time to complete cross-examination. Nor is it within the scope of this proceeding to second guess Judge Luebbers's attorney-fee decision. Reviewing alleged legal errors is not the role of the chief justice in deciding affidavits of disqualification, and an attorney's disagreement with a judge's decisions cannot supply the evidentiary showing needed to so reflect on a judge's partiality as to warrant disqualification. *In re Disqualification of D'Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5.

{¶ 6} Further, a review of the transcript of the attorney-fee hearing does not support Mr. Grossmann's claim that Judge Luebbers was hostile toward him. According to the judge, the hearing was for the limited purpose of allowing Mr. Grossmann to cross-examine defense counsel on the reasonableness of his fee request. If Mr. Grossmann believes that the judge erred or thwarted the appellate court's decision, then he may raise those issues on appeal. But the judge's refusal to allow Mr. Grossmann to file an additional brief or to submit additional case law does not, by itself, show that she is biased.

{¶ 7} Finally, Mr. Grossmann correctly notes that pursuant to R.C. 2701.03(D)(1), if the clerk of this court accepts an affidavit of disqualification for filing, "the affidavit deprives the judge against whom the affidavit was filed of any authority to preside in the proceeding until the chief justice of the supreme court \* \* \* rules on the affidavit." According to documents submitted with Mr.

Grossmann’s supplemental affidavit, it appears that Judge Luebbbers signed her attorney-fee decision the same day that Mr. Grossmann filed his initial affidavit, although Mr. Grossmann claims that he filed the affidavit hours *before* the judge issued her decision. It is beyond the scope of this proceeding to determine whether Judge Luebbbers had statutory authority to issue her attorney-fee decision. *See In re Disqualification of Knece*, 138 Ohio St.3d 1274, 2014-Ohio-1414, 7 N.E.3d 1213, ¶ 8. Although a judge’s ruling during the pendency of an affidavit of disqualification could be evidence of bias, *see, e.g., In re Disqualification of Celebrezze*, 74 Ohio St.3d 1242, 657 N.E.2d 1348 (1992), a judge’s inadvertent ruling after the filing of an affidavit does not typically warrant disqualification, *see, e.g., In re Disqualification of Giulitto*, 163 Ohio St.3d 1223, 2021-Ohio-625, 168 N.E.3d 546, ¶ 10 (“there is no reason to question [a judge’s] impartiality merely because he appears to have inadvertently issued an entry during the pendency of [an affidavit of disqualification]”); *In re Disqualification of Lanzinger*, 155 Ohio St.3d 1222, 2018-Ohio-5259, 120 N.E.3d 14, ¶ 7 (judge’s inadvertent ruling after the filing of an affidavit of disqualification did not warrant her removal). Based on this record, there is no reason to question Judge Luebbbers’s impartiality merely because she issued her attorney-fee decision on the same day as—or a few hours after—Mr. Grossmann filed his affidavit of disqualification.

{¶ 8} The affidavits of disqualification are denied. The case may proceed before Judge Luebbbers.