

IN RE DISQUALIFICATION OF KELSEY.

M.D. v. M.D.

**[Cite as *In re Disqualification of Kelsey*, 170 Ohio St.3d 1235,
2022-Ohio-4489.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—R.C. 2701.03 does not permit chief justice to consider claims of bias or prejudice against a magistrate or a court staff attorney—Disqualification denied.

(No. 22-AP-122—Decided October 7, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas, Domestic Relations Division, Case Nos.
DR-17-367298 and DV-17-367300.

O’CONNOR, C.J.

{¶ 1} M.D., the plaintiff and petitioner in the above-referenced divorce and domestic-violence civil-protection-order (“DVCPO”) cases, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Reeve W. Kelsey, a retired judge sitting by assignment, from the two matters.

{¶ 2} On July 26, 2022, this court granted a writ of procedendo compelling Judge Kelsey to, among other things, rule on all motions pending in the DVCPO case and proceed to a full hearing in that matter, rule on the defendant’s June 2020 motion to reinstate his parenting time, and proceed promptly to trial in the divorce case. *State ex rel. M.D. v. Kelsey*, 168 Ohio St.3d 679, 2022-Ohio-2556, 200 N.E.3d 1114, ¶ 14. According to M.D.’s affidavit of disqualification, since *Kelsey’s* release, Judge Kelsey has issued nine judgment entries, including entries

scheduling a full hearing in the DVCPO case, resolving the defendant's June 2020 motion to reinstate his parenting time, and scheduling a trial in the divorce case. M.D. asserts, however, that Judge Kelsey's entries "demonstrate a clear and unequivocal bias in favor of the Defendant/Respondent."

{¶ 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. 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.

{¶ 4} For the reasons explained below, M.D. has not established that Judge Kelsey has hostile feelings toward her or that the judge has formed a fixed anticipatory judgment on any issue in the underlying cases. Nor has M.D. set forth a compelling argument for disqualifying Judge Kelsey to avoid an appearance of partiality.

{¶ 5} M.D. primarily alleges that Judge Kelsey has demonstrated bias by prioritizing the defendant's recent motions to show cause and scheduling them for a hearing *before* the DVCPO hearing, while "improperly postpon[ing]" any hearing on M.D.'s motions to show cause until *after* the DVCPO hearing and divorce trial.

M.D. also alleges that Judge Kelsey has arbitrarily restricted her ability to present evidence in defense against the defendant's show-cause motions by limiting the amount of time each side has to present his or her cases. But a "judge's failure to manage [a] case in just the way that the affiant would prefer does not reflect bias on the judge's part." *In re Disqualification of Sutula*, 105 Ohio St.3d 1237, 2004-Ohio-7351, 826 N.E.2d 297, ¶ 4. Therefore, M.D.'s dissatisfaction with Judge Kelsey's scheduling of the parties' various—and numerous—motions is not evidence of bias. Nor is it the role of the chief justice in deciding an affidavit of disqualification to second guess how a judge manages his or her docket. "Trial judges are entitled to exercise considerable discretion in the management of the cases on their dockets, and any abuse of that discretion can be remedied on appeal." *In re Disqualification of O'Donnell*, 142 Ohio St.3d 68, 2014-Ohio-5873, 28 N.E.3d 59, ¶ 6; *see also In re Disqualification of Corrigall Jones*, 135 Ohio St.3d 1224, 2012-Ohio-6308, 985 N.E.2d 503, ¶ 6 ("a judge's scheduling of a trial is within her sound discretion and is not, by itself, evidence of bias or prejudice").

{¶ 6} M.D. also claims that Judge Kelsey's recent entries favor the defendant. She points out that since the release of *Kelsey*, Judge Kelsey has denied nine of her motions and scheduled 46 of her motions for a hearing after the divorce trial but granted 11 of the defendant's motions and scheduled one for a hearing before the divorce trial. It is well settled, however, that "[a] party is not entitled to a certain number of favorable rulings, and a judge must be free to make rulings on the merits without the apprehension that a disproportionate number of rulings in favor of one party will create the impression of bias toward that party or against its adversary." *In re Disqualification of Lawson*, 135 Ohio St.3d 1243, 2012-Ohio-6337, 986 N.E.2d 6, ¶ 7. No objective observer would question Judge Kelsey's impartiality solely because he has decided more motions in the defendant's favor.

{¶ 7} In addition, M.D. argues that Judge Kelsey "disregarded" the mandate in *Kelsey* by scheduling hearings on the defendant's recent motions to show cause

before the DVCPO trial. But this is not the appropriate forum in which to determine whether Judge Kelsey has complied with the *Kelsey* decision. *See, e.g., In re Disqualification of Saffold*, 157 Ohio St.3d 1214, 2019-Ohio-3838, 134 N.E.3d 214, ¶ 4 (“this is not the appropriate forum to determine whether a trial judge’s decision complies with an appellate-court order”); *In re Disqualification of Floyd*, 166 Ohio St.3d 1252, 2022-Ohio-919, 187 N.E.3d 579, ¶ 6 (“It is outside the scope of this matter to determine whether Judge Floyd has complied with the Eighth District’s remand orders or to review alleged due-process violations”). In short, M.D. has not established that Judge Kelsey’s recent orders are the product of bias against her that would warrant the judge’s removal at this stage of the litigation.

{¶ 8} Finally, M.D. suggests that Judge Kelsey has somehow acted improperly by allegedly working with a court staff attorney who formerly served as the staff attorney for a judge who recused herself from the underlying cases. R.C. 2701.03, however, does not permit the chief justice to consider claims of bias or prejudice against a magistrate or a court staff attorney. *See, e.g., In re Disqualification of Gill*, 162 Ohio St.3d 1206, 2021-Ohio-112, 166 N.E.3d 36, ¶ 2. Even if M.D.’s allegation were true and the staff attorney had some sort of conflict, M.D. has failed to establish that the remedy is Judge Kelsey’s disqualification.

{¶ 9} The affidavit of disqualification is denied. The cases may proceed before Judge Kelsey.