

IN RE DISQUALIFICATION OF GIULITTO.

SASSYA v. MORGAN.

**[Cite as *In re Disqualification of Giulitto*, 166 Ohio St.3d 1233,
2022-Ohio-749.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—When a visiting judge is assigned to a specific case, the assignment shall continue until the conclusion of the case, including any postjudgment proceedings, unless and until the chief justice reassigns the case or withdraws the assignment—Disqualification denied.

(No. 21-AP-160—Decided January 10, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Trumbull County Court of Common Pleas, Domestic Relations and Juvenile Division, Case Nos. 2011 DS 00293, 2020 cv 704, and 2020-T-00038.

O’CONNOR, C.J.

{¶ 1} Paul M. Kelley, counsel for defendant Carol Morgan, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Joseph Giulitto, a retired judge sitting by assignment, from the above-referenced cases.¹ In 2018, Ms. Morgan filed an affidavit of disqualification against Judge Giulitto regarding the same matter. The

1. Judge Giulitto presides in only one of the cases identified in Mr. Kelley’s affidavit: Trumbull County Court of Common Pleas, Domestic Relations and Juvenile Division, Case No. 2011 DS 00293. The other two cases relate to a complaint brought by Ms. Morgan against Judge Giulitto, but he is not the assigned judge in those matters. Mr. Kelley’s affidavit, therefore, shall be construed to apply only to Case No. 2011 DS 00293.

affidavit was denied in an entry dated December 7, 2018. *See* Supreme Court case No. 18-AP-130.

{¶ 2} In Mr. Kelley’s affidavit, he avers that for various reasons, Judge Giulitto is biased against Ms. Morgan. Judge Giulitto submitted a response to the affidavit and denies any bias. For the reasons explained below, Mr. Kelley has not established that Judge Giulitto’s disqualification is warranted.

{¶ 3} First, Mr. Kelley argues that Judge Giulitto lacks jurisdiction to preside over the case because he has violated this court’s guidelines for the assignment of judges by remaining on the matter longer than his temporary assignment. Mr. Kelley, however, misconstrues the guidelines. Under Section 5.02(A)(1) of the guidelines, when a visiting judge is assigned to a specific case, “the assignment shall continue until the conclusion of the case, including any post-judgment proceedings, unless and until the Chief Justice reassigns the case or withdraws the assignment.” Guidelines for Assignment of Judges, Section 5.02(A), <http://www.supremecourt.ohio.gov/JCS/judicialAssignment/judgeAssignGuide.pdf> (accessed Feb. 4, 2022) [<https://perma.cc/D8G4-X6JQ>]. In certificate of assignment No. 18JA1212, Judge Giulitto was specifically assigned to hear Trumbull County Court of Common Pleas, Domestic Relations and Juvenile Division, Case No. 2011 DS 293 “and to conclude any proceedings in which he participated.” Contrary to Mr. Kelley’s contention, Judge Giulitto’s assignment was not for a temporary time period. The judge has authority to continue presiding over the matter.

{¶ 4} Second, Mr. Kelley alleges that Judge Giulitto has refused to find the plaintiff in contempt for abusing the parties’ minor children and has unfairly punished Ms. Morgan by depriving her of the right to visit her children. In response, Judge Giulitto notes that his decisions in the underlying matter were based on the law and the facts before him and that Ms. Morgan failed to appeal his orders.

{¶ 5} As explained in the decision denying Ms. Morgan’s prior affidavit of disqualification, the chief justice’s statutory and constitutional authority to decide whether a judge can serve fairly and impartially does not empower the chief justice “to remove a trial or appellate judge from a case every time a party is particularly unhappy about a court ruling or series of rulings. Procedures exist by which appellate courts may review—and, if necessary, correct—rulings made by trial courts,” *In re Disqualification of Russo*, 110 Ohio St.3d 1208, 2005-Ohio-7146, 850 N.E.2d 713, ¶ 6. It is outside the scope of this matter to determine whether Judge Giulitto should have held the plaintiff in contempt or to review the judge’s custody decisions. A party’s disagreement with a judge’s rulings cannot supply the evidentiary showing necessary to remove a judge for bias. *See In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5.

{¶ 6} Third, Mr. Kelley asserts that Judge Giulitto has a conflict of interest because Ms. Morgan filed a lawsuit against him. The judge acknowledges that in June 2020, Ms. Morgan sued him and ten other people, including other judges, court employees, the guardian ad litem, and her former attorney. The judge further states that a trial court dismissed Ms. Morgan’s complaint but that the matter is currently on appeal. Regardless, “[i]t is well established that a judge will not be disqualified solely because a litigant in a case pending before the judge has filed a lawsuit against that judge. To hold otherwise would invite parties to file lawsuits solely to obtain a judge’s disqualification, which would severely hamper the orderly administration of judicial proceedings.” *In re Disqualification of Pokorny*, 135 Ohio St.3d 1268, 2013-Ohio-915, 986 N.E.2d 993, ¶ 4.

{¶ 7} The affidavit of disqualification is denied. The case may proceed before Judge Giulitto.