

IN RE DISQUALIFICATION OF FLOYD.

IN RE A.S.

[Cite as *In re Disqualification of Floyd*, 166 Ohio St.3d 1235, 2022-Ohio-750.]

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

(No. 21-AP-162—Decided January 12, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas, Juvenile Division, Case No. FA 19108092.

O’CONNOR, C.J.

{¶ 1} Kia Smith and her attorney, Jonathan N. Garver, have filed affidavits pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Alison L. Floyd from the above-referenced child-custody case.

{¶ 2} Ms. Smith alleges that Judge Floyd is biased in favor of the child’s father and against her. In support, Ms. Smith avers that in 2019, Judge Floyd said that she liked the father and that he reminded her of someone in her family. Ms. Smith also asserts that Judge Floyd has managed the case in a biased manner, including by denying—in violation of court rules—Ms. Smith’s motion for transcripts, failing to take appropriate action against the father for allegedly failing a drug test, refusing to enforce court orders regarding the father’s parenting time, denying—based on a false premise—a motion to refer the case to the court’s diagnostic clinic, and failing to decide Ms. Smith’s child-support motion for over 30 months. In Mr. Garver’s affidavit, he averred that Ms. Smith will not receive a fair trial before Judge Floyd.

{¶ 3} Judge Floyd submitted a response to the affidavits and denies any bias against Ms. Smith. The judge states that she does not recall the 2019 comment but acknowledges that she may have made a positive statement of encouragement to the father. Judge Floyd explains why she denied Ms. Smith’s motion for transcripts, denies that she violated any court rule, and believes that Ms. Smith’s disagreement with the court’s various rulings does not demonstrate judicial bias. Judge Floyd further states that Ms. Smith’s assertion that the judge was untruthful in her entry refusing to refer the matter to the court’s diagnostic clinic is “patently false.” Finally, Judge Floyd asserts that various motions, including the parties’ cross motions regarding child support, are set for a three-day trial that was set to start on February 1, 2022.

{¶ 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} Ms. Smith and Mr. Garver have not established that Judge Floyd has hostile feelings toward them or that the judge has formed a fixed anticipatory

judgment on any issue in the underlying case. Nor have Ms. Smith or Mr. Garver set forth a compelling argument for disqualifying Judge Floyd to avoid an appearance of partiality. In general, a judge's isolated comment—especially from years ago—is insufficient to prove that a judge is unable to keep an open mind at trial. *See, e.g., In re Disqualification of Von Allman*, 165 Ohio St.3d 1203, 2021-Ohio-2391, 175 N.E.3d 587, ¶ 7; *In re Disqualification of Floyd*, 164 Ohio St.3d 1242, 2021-Ohio-2820, 173 N.E.3d 529, ¶ 6. Further, most of Ms. Smith's allegations relate either to her disagreement with Judge Floyd's pretrial rulings or the judge's inaction on Ms. Smith's motions. But it is well settled that "affidavits of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings." *In re Disqualification of D'Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5. It is outside the scope of this proceeding to determine whether Judge Floyd violated a court rule, review whether the judge properly enforced her pretrial orders, or second guess the judge's decision not to refer the case to the diagnostic clinic. Ms. Smith's disagreement with the judge's handling of the case cannot supply the evidentiary showing necessary to remove a judge for bias. Although Judge Floyd acknowledges that the custody matter has been pending for over two years, she further notes that the trial was scheduled to begin on February 1, 2022. The record here does not support a finding that the judge has neglected her judicial duties to such an extent that she should be disqualified a few weeks before trial. Judge Floyd, however, should resolve all pending issues as expeditiously as possible. *See, e.g., Floyd* at ¶ 5; *In re Disqualification of Searcy*, 158 Ohio St.3d 1246, 2020-Ohio-1092, 144 N.E.3d 469, ¶ 7.

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