

IN RE DISQUALIFICATION OF FLOTTMAN.

EDELSTEIN v. EDELSTEIN.

**[Cite as *In re Disqualification of Flottman*, 173 Ohio St.3d 1265,
2023-Ohio-3239.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Chief justice lacks authority
to void or stay orders issued by a trial judge—Motion to stay denied as
moot.*

(No. 23-AP-103—Decided August 1, 2023.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Court of Common
Pleas, Domestic Relations Division, Case No. DR2201279.

KENNEDY, C.J.

{¶ 1} On July 27, 2023, defendant Kimberly Edelstein filed an affidavit of disqualification pursuant to R.C. 2701.03 seeking to disqualify Judge Anne B. Flottman of the Hamilton County Court of Common Pleas, Domestic Relations Division, from presiding over Edelstein’s divorce case. On July 28, this court issued an order staying the judge’s authority to hear the case. On that same day, Edelstein filed an “emergency motion to stay underlying action.” As explained below, the emergency motion to stay is denied as moot.

Allegations in the Emergency Motion

{¶ 2} Edelstein claims that on Monday, July 24, 2023, she emailed a copy of her affidavit of disqualification to Judge Flottman’s chambers and that on Tuesday, July 25, she emailed the judge’s chambers a copy of her amended affidavit of disqualification. Edelstein further asserts that on Wednesday, July 26, the trial court informed her by email that custody-evaluation interviews had been scheduled for Friday, July 28.

{¶ 3} Edelstein cites R.C. 2701.03(D)(1), which deprives a judge of authority to preside in a case during the pendency of an affidavit of disqualification, and argues that “the lower court scheduled interviews for a custody evaluation” despite Judge Flottman’s knowledge that Edelstein was seeking to have the judge disqualified and despite the filing of her “Amended Affidavit of Disqualification” in this court. Edelstein further claims that after receiving notice of the interviews, she informed the “court social worker” that she and her minor son were unavailable for interviews on July 28 and that she was attempting to secure legal counsel for her son. The court social worker, Edelstein claims, rescheduled Edelstein’s interview but refused to reschedule the child’s interview.

{¶ 4} Edelstein argues that “[t]he sudden scheduling of interviews the week the Amended Affidavit of Disqualification was filed, the rush to complete the custody evaluation, and the refusal to allow the minor child representation causes [her] great concern that the best interest of the child standard is being ignored and the court continues to act in a prejudicial matter.” She claims that “[s]taying the lower court’s actions will prevent further injustices from occurring,” and therefore she seeks “an emergency order that all activity in the lower court cease until the Supreme Court can review the Amended Affidavit of Disqualification.”

Analysis

{¶ 5} As explained below, Edelstein’s timeline of the relevant filings is inaccurate, and it is beyond the constitutional and statutory authority of the chief justice in deciding an affidavit of disqualification to stay or void prior trial-court orders or to address matters that are subject to appellate review.

Procedural history

{¶ 6} In the emergency motion, Edelstein argues that on Wednesday, July 26, Judge Flottman lacked authority under R.C. 2701.03(D)(1) to schedule the custody-evaluation interviews. Edelstein asserts that the judge was aware that she

was seeking the judge's disqualification and that she had filed her amended affidavit of disqualification in this court.

{¶ 7} However, the affidavit of disqualification was not filed in this court until Thursday, July 27. Although Edelstein attempted to file an affidavit of disqualification on July 25, the clerk of this court rejected it for failing to comply with the requirements of R.C. 2701.03(B). Edelstein did not present an affidavit of disqualification that complied with R.C. 2701.03(B) until July 27, which was the date that the clerk of this court accepted it for filing. On July 28, Judge Flottman was notified in an entry that the affidavit of disqualification was filed, and an order was issued staying the judge's authority to preside in the case.

{¶ 8} R.C. 2701.03(D)(1) provides, "Except as provided in divisions (D)(2) to (4) of this section, if the clerk of the supreme 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 pursuant to [R.C. 2701.03(E)]." The filing of an affidavit of disqualification "automatically divests the judge of jurisdiction to proceed until the matter is resolved." *State v. Myers*, 97 Ohio St.3d 335, 2002-Ohio-6658, 780 N.E.2d 186, ¶ 57.

{¶ 9} Therefore, Edelstein's claim that Judge Flottman lacked authority on Wednesday, July 26, to schedule the Friday, July 28 custody-evaluation interviews is incorrect.

The chief justice lacks authority to stay prior court orders

{¶ 10} In the emergency motion to stay, Edelstein seeks an "emergency order that all activity in the lower court cease until the Supreme Court can review the Amended Affidavit of Disqualification." Although Edelstein's motion appears to primarily challenge the trial court's refusal to reschedule the minor child's custody-evaluation interview, she seeks a broadly worded order that would stay "all action in the underlying matter."

{¶ 11} To the extent Edelstein seeks an emergency order prohibiting *Judge Flottman* from taking further action in the divorce case, Edelstein’s motion is moot. As stated above, R.C. 2701.03(D)(1) provides that when 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,” except as provided in R.C. 2701.03(D)(2) through (4). Judge Flottman was notified on July 28 that she was deprived of any authority to preside in the divorce case until the chief justice decides the affidavit of disqualification. Therefore, an emergency order prohibiting Judge Flottman from taking further action in the divorce case is unnecessary.

{¶ 12} To the extent that Edelstein seeks an emergency order staying prior orders issued by Judge Flottman in the underlying divorce case, the motion is denied. Similarly, to the extent Edelstein seeks an emergency order to appeal or review the trial court’s refusal to reschedule her son’s custody-evaluation interview, the motion is denied.

{¶ 13} R.C. 2701.03(D)(1) deprives only “*the judge* against whom the affidavit of disqualification was filed” of authority to preside in the case during the pendency of the affidavit of disqualification. (Emphasis added.) R.C. 2701.03(D) does not automatically “stay” all other activity or deadlines in the underlying case.

{¶ 14} Further, in affidavit-of-disqualification proceedings, the chief justice’s authority is limited to passing on the matter of disqualification and, if necessary, assigning a replacement judge. *See* Article IV, Section 5(C), Ohio Constitution; R.C. 2701.03. “It is beyond the constitutional and statutory authority given to the chief justice in affidavit-of-disqualification proceedings to void or stay orders issued by a trial judge.” *In re Disqualification of Burt*, 138 Ohio St.3d 1213, 2013-Ohio-5898, 3 N.E.3d 1198, ¶ 6. An affidavit of disqualification “is [also] not a vehicle to contest matters of substantive or procedural law.” *In re*

Disqualification of Solovan, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. “Trial judges are entitled to exercise considerable discretion in the management of [the] cases on their dockets, * * * and any alleged abuse of that discretion should be remedied on appeal, not in an affidavit-of-disqualification proceeding.” *In re Disqualification of Holbrook*, 138 Ohio St.3d 1206, 2013-Ohio-5863, 3 N.E.3d 201, ¶ 7. Therefore, in deciding an affidavit of disqualification, the chief justice lacks authority to unilaterally stay a judge’s prior orders or to exercise interlocutory appellate powers, even during the pendency of the affidavit of disqualification.

Conclusion

{¶ 15} For the reasons explained above, Edelstein’s emergency motion to stay underlying action is denied as moot.
