

IN RE DISQUALIFICATION OF LEACH.

MAHBUB v. MAHBUB.

**[Cite as *In re Disqualification of Leach*, 173 Ohio St.3d 1252,
2023-Ohio-4776.]**

Judges—Affidavits of disqualification—R.C. 2701.03—A court-appointed guardian ad litem is not a “party to the proceeding” for purposes of R.C. 2701.03(A)—Affiant, guardian ad litem appointed by court in divorce case, lacks standing to seek judge’s disqualification—Affidavits dismissed.

(No. 23-AP-166—Decided December 1, 2023.)

ON AFFIDAVITS OF DISQUALIFICATION in Franklin County Court of Common Pleas, Domestic Relations and Juvenile Branch, Case No. 20 DR 1272.

KENNEDY, C.J.

{¶ 1} Chelsea L. Long, the guardian ad litem in the underlying divorce case, has filed an affidavit of disqualification and a supplemental affidavit of disqualification pursuant to R.C. 2701.03 seeking to disqualify Judge George W. Leach of the Franklin County Court of Common Pleas, Domestic Relations and Juvenile Branch, from presiding over the case. Judge Leach filed a response to the affidavit of disqualification.

{¶ 2} This matter presents the threshold question whether Long, as the court-appointed guardian ad litem in a divorce case involving the allocation of parental rights and responsibilities, is qualified under R.C. 2701.03(A) to file an affidavit of disqualification against the presiding judge. As explained below, Long lacks standing to file the affidavits of disqualification. Therefore, the affidavits of disqualification are dismissed.

Standing to File an Affidavit of Disqualification

{¶ 3} Standing to file an affidavit of disqualification is conferred by statute. See *In re Disqualification of Gallagher*, 173 Ohio St.3d 1201, 2023-Ohio-2977, 228 N.E.3d 1, ¶ 26. R.C. 2701.03(A) provides that “[i]f a judge of the court of common pleas allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party’s counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court, *any party to the proceeding or the party’s counsel may file an affidavit of disqualification* with the clerk” of this court. (Emphasis added.)

{¶ 4} Under this plain and unambiguous language, only a “party to the proceeding or the party’s counsel” may file an affidavit of disqualification. “Former chief justices have ‘strictly enforced’ this statutory language and have consistently found that ‘individuals who do not qualify as a “party” or “party’s counsel” do not have standing to file an affidavit of disqualification.’ ” *Gallagher* at ¶ 26, quoting *In re Disqualification of Grendell*, 137 Ohio St.3d 1220, 2013-Ohio-5243, 999 N.E.2d 681, ¶ 2, citing *In re Disqualification of Cleary*, 74 Ohio St.3d 1225, 657 N.E.2d 1337 (1990), and *In re Disqualification of Haas*, 74 Ohio St.3d 1217, 657 N.E.2d 1331 (1990).

{¶ 5} A “party’s counsel” includes counsel of record in the underlying case from which the judge’s disqualification is sought *or* an attorney retained by a party in the underlying case to file an affidavit of disqualification in this court. *Id.* at ¶ 29-34.

{¶ 6} Long does not allege in the affidavit of disqualification or supplemental affidavit that she serves as counsel to any party in the underlying proceeding or that she was retained by a party in the underlying proceeding to file the affidavit of disqualification. Rather, she avers that “[a]s an officer of the court, [she] felt duty bound to file th[e] affidavit” and that the “supplemental affidavit

primarily addresses the Judge’s treatment of [her].” And there is no evidence indicating that Long filed the affidavits of disqualification as an attorney for any party in the underlying case.

{¶ 7} That leaves an issue of first impression: whether a court-appointed guardian ad litem is a party to the underlying case for purposes of R.C. 2701.03(A).

{¶ 8} Long vaguely refers to herself as “a party to the case” in the affidavit of disqualification, although she also admits that she was “appointed as an extension of the Court and [to] serve as the Court’s witness” and that her role was “to investigate, report, and recommend.”

{¶ 9} In the judge’s response, Judge Leach states that Long was appointed to serve only as the guardian ad litem and that she did not become a “party” as a result of that appointment.

{¶ 10} Based on the applicable statute and superintendence rule, Long is not a party to the underlying proceeding.

{¶ 11} A “party” is defined as “[o]ne by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment.” *Black’s Law Dictionary* 1350-1351 (11th Ed.2019). In divorce cases, the parties are the two spouses. *See, e.g.*, R.C. 3105.17(A) (“Either party to the marriage may file a complaint for divorce or for legal separation, and when filed the other may file a counterclaim for divorce or for legal separation”).

{¶ 12} Sup.R. 48 is controlling on the appointment of a guardian ad litem in a local court. The rule defines “guardian ad litem” as “an individual appointed to assist a court in its determination of the best interest of a child.” Sup.R. 48.01(C). And Sup.R. 5(A)(1) authorizes courts to adopt local rules of practice that are not inconsistent with rules promulgated by this court.

{¶ 13} The Franklin County Court of Common Pleas, Domestic Relations and Juvenile Branch, adopted local rules of practice in accord with Sup.R. 5. *See*

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Franklin County Court of Common Pleas, Domestic Relations and Juvenile Branch, *Franklin County Local Rules*, https://drj.fccourts.org/DRJ.aspx?PN=Local_Rules.htm [<https://perma.cc/8ZVT-DTBW>]. Franklin County Domestic Court Rule 15 is controlling on the appointment of a guardian ad litem in that court. It requires an attorney appointed as a guardian ad litem to “perform all duties and responsibilities and comply with all requirements as set forth in Sup.R. 48.01, et. seq.” Loc.R. 15(B)(3) of the Franklin County Domestic Court.

{¶ 14} Therefore, Long’s exclusive role in the underlying proceeding is to serve the court and provide recommendations as to what is in the best interest of the child. She is not a party to the case.

{¶ 15} Because Long is not a party to the underlying proceeding, she lacks standing to seek Judge Leach’s disqualification under R.C. 2701.03(A).

Conclusion

The affidavits of disqualification are dismissed.
