

[Cite as *In re Disqualification of Searcy*, ___ Ohio St.3d ___, 2020-Ohio-4934.]

IN RE DISQUALIFICATION OF SEARCY.

DONISI v. DONISI.

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

(No. 20-AP-071—Decided September 24, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Court of Common Pleas, Domestic Relations Division, Case No. DR1101124.

O’CONNOR, C.J.

{¶ 1} Plaintiff Dominick Donisi has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Amy L. Searcy from the above-referenced divorce case.

{¶ 2} Mr. Donisi claims that Judge Searcy is biased against him based on his gender. In support, he alleges that in May 2018, the judge found that both he and his ex-wife were in contempt of court but the judge imposed more stringent purge conditions on him and suspended his parenting time until he completed counseling, whereas the judge did not also order Mr. Donisi’s ex-wife to undergo counseling. According to Mr. Donisi, he has completed the required counseling but Judge Searcy refuses to reinstate his parenting time. Instead, he claims, she ordered him to undergo additional reunification counseling from a particular healthcare provider, even though the named provider does not provide such services. Mr. Donisi alleges that he requested that Judge Searcy correct her order but she has failed to act on his motion.

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{¶ 3} Judge Searcy filed a response to the affidavit and denies any bias against Mr. Donisi. According to the judge, her decisions have been based on the facts and applicable law. The judge also notes that any delays in resolving Mr. Donisi’s recent motion are “a matter of docket management,” not an issue for an affidavit of disqualification.

{¶ 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, 469, 132 N.E.2d 191 (1956). “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.

{¶ 5} Mr. Donisi has not established that Judge Searcy has hostile feelings toward him or has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Mr. Donisi set forth a compelling argument for disqualifying Judge Searcy to avoid an appearance of partiality. As previously explained in a disqualification case regarding a domestic-relations matter:

Ours is a profession in which we turn to judges to resolve difficult questions in contentious matters. Adverse rulings, without more, are not evidence that a judge is biased or prejudiced.

I recognize that the affiant believes that her own health and the well-being of her child are at stake in the case before [the judge].

And she believes strongly that the judge has made multiple legal missteps over the course of many months. Her views—right or wrong—are no doubt sincerely held. Yet my statutory and constitutional authority to decide whether judges can serve fairly and impartially does not empower me 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. Reviewing alleged legal errors is not my role under the statutory provision that the affiant has repeatedly invoked.

In re Disqualification of Russo, 110 Ohio St.3d 1208, 2005-Ohio-7146, 850 N.E.2d 713, ¶ 5-6.

{¶ 6} This is not the appropriate forum to determine the propriety of Judge Searcy’s legal rulings, and Mr. Donisi’s dissatisfaction with those rulings therefore cannot be evidence of bias or prejudice. To the extent that Judge Searcy’s recent order requires Mr. Donisi to undergo counseling from a particular provider and, as Mr. Donisi alleges, that provider does not perform such counseling services, the judge should expeditiously resolve Mr. Donisi’s pending motion, especially considering that she agrees that family reunification is in the best interest of the child.

{¶ 7} Mr. Donisi has also failed to establish his claim of gender-based bias. “Allegations of such bias strike at the very heart of the judiciary and are among the most serious * * * that can be directed at a judge.” *In re Disqualification of Pokorny*, 135 Ohio St.3d 1268, 2013-Ohio-915, 986 N.E.2d 993, ¶ 6. Mr. Donisi has not provided actual evidence, beyond speculation or conjecture, to support his assertion that Judge Searcy’s rulings against him are the product of gender bias.

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“Allegations that are based solely on innuendo and speculation are insufficient to establish bias or prejudice.” *Id.*

{¶ 8} The affidavit of disqualification is denied. The case may proceed before Judge Searcy.
