

[Cite as *In re Disqualification of Schooley*, ___ Ohio St.3d ___, 2023-Ohio-4332.]

IN RE DISQUALIFICATION OF SCHOOLEY.

BARCLAYS BANK DELAWARE v. SCHMALTZ.

[Cite as *In re Disqualification of Schooley*, ___ Ohio St.3d ___,
2023-Ohio-4332.]

*Judges—Affidavits of disqualification—R.C. 2701.031—A municipal-court judge is “otherwise * * * disqualified” under R.C. 2701.031 when one of the express bases for disqualification do not apply but grounds for disqualification exist—Affiant has presented no evidence suggesting that judge is disqualified for reasons other than interest, relationship, or bias or prejudice—Disqualification denied.*

(No. 23-AP-154—Decided November 14, 2023.)

ON AFFIDAVIT OF DISQUALIFICATION

in Madison County Municipal Court Case No. CVF 2300526.

KENNEDY, C.J.

{¶ 1} Shane Schmaltz, the defendant in the underlying civil proceeding, has filed an affidavit of disqualification pursuant to R.C. 2701.031 seeking to disqualify Judge Eric M. Schooley of the Madison County Municipal Court from presiding over the case. Judge Schooley filed a response to the affidavit of disqualification.

{¶ 2} As explained below, Schmaltz has not established that Judge Schooley should be disqualified. Therefore, the affidavit of disqualification is denied. The case shall proceed before Judge Schooley.

Trial-Court Proceedings

{¶ 3} Schmaltz was sued in the Madison County Municipal Court by Barclays Bank Delaware. On August 15, 2023, Schmaltz emailed the court to inform the court that the links on its website to its forms were not working. On

August 24, Schmaltz again emailed the court and asked for an explanation as to why the clerks had refused to permit him to file a counterclaim.

{¶ 4} The plaintiff moved for a default judgment.

{¶ 5} Schmaltz then filed a motion seeking a two-year continuance on the basis that clerk's-office staff had violated his civil rights by refusing to allow him to file his counterclaim and that he was in the process of finding an attorney to represent him. On September 8, Judge Schooley denied the motion, citing no reasonable justification for such a long continuance. On September 27, Schmaltz moved for a continuance of one and a half years.

{¶ 6} On October 2, Judge Schooley denied the motion. On October 4, Schmaltz filed this affidavit of disqualification.

Affidavit-of-Disqualification Proceedings

{¶ 7} Schmaltz argues that Judge Schooley should be disqualified from presiding over the underlying civil case because the judge has violated the Code of Judicial Conduct, his constitutional rights to due process and equal protection, and his right to a fair hearing and trial. As proof of the allegations, Schmaltz points to three issues that arose in the trial court. First, Schmaltz asserts that when he attempted to file his answer and counterclaim, clerk's-office staff insisted that he make "some clerical changes and split up the answer and counterclaim." After making the requested changes, Schmaltz alleges, the staff still refused to allow him to file his counterclaim.

{¶ 8} Second, Schmaltz asserts that this is not the first time an employee of the Madison County Municipal Court has prevented him from exercising his legal rights. Schmaltz claims that in *Schmaltz v. DK Hardware Supply*, Madison M.C. No. 2300063, the magistrate refused to allow him to clarify his claim before dismissing his case. Schmaltz contends that after he moved to set aside the magistrate's order, Judge Schooley denied the motion without providing any legal reasoning.

{¶ 9} Lastly, Schmaltz maintains that Judge Schooley’s denial of his motions for continuance in the underlying case, despite the fact that the judge “must know that court cases take time,” contributed to a violation of his fundamental rights under the United States Constitution.

{¶ 10} In response, the judge states that Schmaltz’s affidavit intertwines two distinct cases and that the claims Schmaltz asserts are “more suitable for the Appellate Court than utilizing this forum.” The judge asserts that he does not have an interest in either of the matters and that he has never met the parties. And because Schmaltz did not timely file a responsive pleading, Barclays Bank Delaware filed for default judgment, and that motion is pending.

{¶ 11} As to Schmaltz’s claim that clerk’s-office staff refused to file his counterclaim, Judge Schooley believes that there was a misunderstanding. The judge states that he has instructed the clerk’s-office staff “to strive to help Pro Se litigants participate in the system [but] they are not to ‘pass judgment’ or make recommendations with regard to filings.” The judge also has reminded the staff that “if a litigant files a properly formatted document they are literally to ‘clerk’ the same” and that “[j]udgment will be made by the Magistrate or [the judge].”

Disqualification of a Municipal-Court Judge

{¶ 12} R.C. 2701.031 provides that an affidavit of disqualification may be filed against a municipal-court judge if the judge “allegedly is interested in a proceeding pending before the judge, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the judge or to a party’s counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the judge.”

{¶ 13} The burden falls on the affiant to submit “specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations.” R.C. 2701.03(B)(1). Therefore, “[a]n affidavit must describe with specificity and particularity those facts alleged to

support the claim.” *In re Disqualification of Mitrovich*, 101 Ohio St.3d 1214, 2003-Ohio-7358, 803 N.E.2d 816, ¶ 4.

{¶ 14} In this case, Schmaltz does not allege that Judge Schooley has a personal interest in the matter pending before him, nor does he allege that the judge is related to a party or has exhibited bias or prejudice in the case. If he is to succeed, then, Schmaltz must rely on that part of R.C. 2701.031 permitting the filing of an affidavit of disqualification when the judge “allegedly otherwise is disqualified to preside.” To my knowledge, no chief justice has previously considered when a judge “otherwise is disqualified.”

{¶ 15} However, the Fifth District Court of Appeals has construed analogous language in former Section 1687 of the General Code, which provided for the transfer of a case “[w]hen a judge of the common pleas court or of the superior court of Cincinnati is interested in a cause or matter pending before the court in a county of his district, or is related to, or has a bias or prejudice, either for or against, a party to such matter or cause, or to his counsel or *is otherwise disqualified to sit in such cause or matter.*” (Emphasis added.) Am.S.B. No. 36, 103 Ohio Laws 405, 417. The court explained that the clause “is otherwise disqualified to sit in such cause or matter” “necessarily brings into the statute all the common-law causes for which a judge may be disqualified in addition to those enumerated in the statute.” *Ashland Bank & Savs. Co. v. Houseman*, 5 Ohio App. 165, 176 (5th Dist.1915).

{¶ 16} “At common law, a fair tribunal meant that ‘no man shall be a judge in his own case.’ 1 E. Coke, *Institutes of the Laws of England* § 212, *141a (*‘Aliquis non debet esse iudex in propriâ causâ’*). That common-law conception of a fair tribunal was a narrow one. A judge could not decide a case in which he had a direct and personal financial stake.” *Williams v. Pennsylvania*, 579 U.S. 1, 29, 136 S.Ct. 1899, 195 L.Ed.2d 132 (2016) (Thomas, J., dissenting). And “[i]n the American Colonies, as in England, the only ground for disqualifying a judge that

was initially accepted was pecuniary interest in a pending cause.” Flamm, *Judicial Disqualification*, Section 1.3, at 11 (3d Ed.2017). In 1792, Congress passed a disqualification statute that prohibited district-court judges from hearing a cause when the judge had an interest in the matter or had been counsel for a party before the court. Act of May 8, 1792, Chapter 36, Section 11, 1 Stat. 275. Congress amended this statute in 1821 to provide for judicial disqualification also when the judge was “so related to, or connected with, either party, as to render it improper for him, in his opinion, to sit on the trial of such suit.” Act of Mar. 3, 1821, Chapter 51, 3 Stat. 643.

{¶ 17} Ohio took a similar path. From early in this state’s history, our common law and statutes required disqualification of a common-pleas-court judge who was interested in the proceedings. See *Knaggs v. Conant*, 2 Ohio 26 (1825); *Barclay v. Salmon*, 9 Ohio C.D. 520, 523 (Cir.Ct.1898) (“At common law, and in this state until a very recent date, only interest required a change of venue or disqualified a judge * * *”). Ohio maintained this rule limiting disqualification to a personal interest in the case throughout most of the nineteenth century. In 1852, the General Assembly enacted a judicial-disqualification statute that provided for reassignment when a common-pleas-court judge was “interested in the event of any cause or matter pending before [the] court.” Act of Feb. 19, 1852, Section 16, 50 Ohio Laws 67, 70. The legislature amended this statute in 1860 to provide for the transfer of the case “on affidavit of either party to [the] cause, proceeding, motion or matter pending, or his counsel, showing the fact of [the judge’s] interest.” Act of Jan. 25, 1860, Section 1, 57 Ohio Laws 5. The General Assembly thereby erected the first procedure for filing an affidavit of disqualification.

{¶ 18} In 1885, former Section 550 of the Revised Statutes included as cause for disqualification a common-pleas-court judge’s being “related to either or any party to [the] cause, or [being] otherwise disqualified to sit in such cause or matter.” H.B. No. 247, 82 Ohio Laws 16, 24. The General Assembly further

SUPREME COURT OF OHIO

expanded the grounds for an affidavit of disqualification when it amended former Section 550 in 1889 to provide for the disqualification of a common-pleas-court judge who “is interested in any cause or matter pending before the court in any county of his district, or is related to, or has bias or prejudice either for or against, either or any party to such cause, or is otherwise disqualified to sit in such cause or matter.” S.B.No. 267, 86 Ohio Laws 363. By 1889, then, the statutory grounds for disqualification of a judge that are now found in R.C. 2701.031 had been established.

{¶ 19} A municipal-court judge is “otherwise * * * disqualified” under R.C. 2701.031 when one of the express bases for disqualification—interest, relation to a party, bias or prejudice—do not apply but grounds for disqualification exist. For example, the statute speaks in terms of *actual* bias and prejudice; “[n]evertheless, even in cases in which no evidence of actual bias or prejudice is apparent, a judge’s disqualification may be appropriate to avoid an appearance of impropriety or when the public’s confidence in the integrity of the judicial system is at issue.” *In re Disqualification of Crawford*, 152 Ohio St.3d 1256, 2017-Ohio-9428, 98 N.E.3d 277, ¶ 6. As another example, this court has disqualified a judge who had extensive social and business connections with multiple parties in the underlying cases, including having worked at a firm that was representing the parties and being the beneficiary of an estate administered by a party. *State ex rel. Turner v. Marshall*, 123 Ohio St. 586, 176 N.E. 454 (1931). In addition, an *ex parte* communication between a judge and a party may be grounds for disqualification when the communication either was initiated by the judge or addressed substantive matters in the pending case. *In re Disqualification of Calabrese*, 100 Ohio St.3d 1224, 2002-Ohio-7475, 798 N.E.2d 10, ¶ 2. And a judge has been disqualified from presiding over a case in which her father had previously acted as a judge. *In re Disqualification of Celebrezze*, 127 Ohio St.3d 1217, 2009-Ohio-7207, 937 N.E.2d 1009, ¶ 11. Rule 2.11 of the Code of Judicial Conduct sets forth additional reasons

why a judge should be disqualified, including the economic interests of the judge's family members and the judge's likely being a material witness in the case.

{¶ 20} These examples are not exhaustive, but they illustrate that a judge may be “otherwise * * * disqualified,” R.C. 2701.031, when the specified grounds for disqualification are not applicable. With this understanding, I turn now to Schmaltz's affidavit. As explained below, Schmaltz has failed to establish that Judge Schooley “otherwise is disqualified” from the underlying civil case.

Analysis

{¶ 21} Schmaltz maintains that Judge Schooley has committed judicial misconduct and violated the Code of Judicial Conduct, has violated Schmaltz's constitutional right to a fair trial in ruling on his motions, and has failed to ensure that court employees do not violate the due-process rights of litigants like him.

{¶ 22} The chief justice has authority to “pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof.” Article IV, Section 5(C), Ohio Constitution. The General Assembly expanded the authority of the chief justice to rule on affidavits of disqualification filed against municipal-court judges in enacting R.C. 2701.031. That enumerated power, however, has limitations.

{¶ 23} The chief justice does not have authority to determine whether a judge has violated the Code of Judicial Conduct, *see In re Disqualification of Allen*, ___ Ohio St.3d ___, 2023-Ohio-3238, ___ N.E.3d ___, ¶ 35, or to resolve legal issues that are subject to appellate review, *see In re Disqualification of Gallagher*, ___ Ohio St.3d ___, 2023-Ohio-2977, ___ N.E.3d ___, ¶ 50.

{¶ 24} Allegations of judicial misconduct are investigated by the Office of Disciplinary Counsel, and judicial-misconduct complaints are heard by the Board of Professional Conduct. *See Allen* at ¶ 35. And questions of whether a trial court properly denied a motion to set aside a magistrate's order, violated a litigant's constitutional rights to due process and equal protection under the law, or properly

denied motions for continuances are all matters for appellate review and are not proper subjects in an affidavit of disqualification. *See Gallagher* at ¶ 50.

{¶ 25} Because there is no evidence to support a finding that Judge Schooley is disqualified for reasons other than interest, relationship, or bias or prejudice, the affidavit of disqualification lacks merit.

Conclusion

{¶ 26} The affidavit of disqualification is denied. The case may proceed before Judge Schooley.
