

SUPREME COURT OF OHIO

Wilkerson v. Wilkerson

110 Ohio St. 3d 1213 (Ohio 2005) · Decided May 4, 2005

SUMMARY

The Supreme Court of Ohio denies Chun Cha Wilkerson's affidavit seeking the disqualification of Butler County Domestic Relations Judge Eva D. Kessler. The court holds that a party's support for a judge's electoral opponent, without additional evidence of bias or prejudice, is insufficient to warrant disqualification.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.
JURISDICTION	Ohio
DECIDED	May 4, 2005
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Defendant Chun Cha Wilkerson filed an affidavit seeking the disqualification of Butler County Domestic Relations Judge Eva D. Kessler from further proceedings in the underlying divorce case.
STANDARD OF REVIEW	The court considered whether a reasonable and objective observer would harbor serious doubts about the judge's ability to serve fairly and impartially.
PRECEDENTIAL VALUE	published

TOPICS

- family law procedure
- family law
- civil procedure

PRACTICE AREAS

- family law
- judicial disqualification
- civil procedure

QUESTIONS PRESENTED

1. Whether a party's public support for a judge's election opponent, without additional evidence of bias or prejudice, requires the judge's disqualification.

HOLDINGS

1. A party's or lawyer's campaigning for or against a judge is not, by itself, grounds for disqualification. Disqualification is unwarranted absent an additional reason supporting a claim of bias or prejudice.

KEY QUOTATIONS

“[T]he fact that a party or lawyer in a pending case campaigned for or against the judge is not grounds for disqualification.” (1213)

“I conclude that a reasonable and objective observer would not harbor serious doubts about the judge’s ability to serve fairly and impartially in this case.” (1214)

FACTUAL BACKGROUND

Chun Cha Wilkerson publicly supported Judge Eva D. Kessler's opponent in the 2004 Butler County primary election. Darlene Todd, a friend of Wilkerson, also criticized Judge Kessler's treatment of Wilkerson during the campaign and filed a similar affidavit. Judge Kessler denied knowing about Wilkerson's campaign support and denied any bias or prejudice against her.

PROCEDURAL HISTORY

The defendant and a friend filed affidavits under Ohio Revised Code section 2701.03 alleging that the defendant's public support for Judge Kessler's opponent in the 2004 primary created doubts about the judge's impartiality. Judge Kessler responded by denying bias and stating that she had fairly considered the defendant's and other witnesses' testimony. The Supreme Court of Ohio denied the affidavit and directed that the case proceed before Judge Kessler.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

The underlying case shall proceed before Judge Kessler.

CASES CITED

- In re Disqualification of Cleary, 77 Ohio St. 3d 1246, 1247, 674 N.E.2d 357 (1996)
- Pierce v. Charity Hosp. of Louisiana at New Orleans, 550 So. 2d 211, 214-215 (La. App. 1989)
- McDermott v. Grossman, 429 So. 2d 393 (Fla. App. 1983)
- In re Disqualification of George, 100 Ohio St. 3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5

OPINION

Wilkerson v. Wilkerson 110 Ohio St. 3d 1213

MOYER, J.

Moyer, C.J. {¶ 1} Defendant Chun Cha Wilkerson has filed an affidavit with the clerk of this court under R.C. 2701.03 seeking the disqualification of Judge Eva D. Kessler from acting on any further proceedings in case No. DR-2001-06-0775 in the Court of Common Pleas of Butler County, Domestic Relations Division. {¶ 2} The defendant alleges that she publicly supported Judge Kessler's opponent in the 2004 primary election in Butler County and now lacks confidence in the judge's ability to preside fairly and impartially over the case. Darlene Todd, a friend of the defendant's, has filed a similar affidavit, and she states that she criticized the judge's treatment of the defendant during the primary election campaign. {¶ 3} Judge Kessler has responded to the affidavit, and she denies holding any bias or prejudice against the defendant. She indicates that she was unaware of the defendant's support for her opponent's campaign last year and states that she has given fair consideration to any testimony offered in the case by the defendant, by Darlene Todd, and by other witnesses. {¶ 4} I find no basis for ordering the disqualification of Judge Kessler. "[T]he fact that a party or lawyer in a pending case campaigned for or against the judge is not grounds for disqualification." *In re Disqualification of Cleary* (1996), 77 Ohio St.3d 1246, 1247, 674 N.E.2d 357. Absent some additional reason supporting a party's claim of bias, this court and others have always assumed that judges can remain impartial when an attorney or party who voiced opposition to the election of the judge appears in the judge's courtroom. See, e.g., *Pierce v. Charity Hosp. of Louisiana at New Orleans* (La.App.1989), 550 So.2d 211, 214-215 ("A judge is often in the position of handling matters which involve an attorney who has campaigned [for] or contributed to the judge's opponent," yet absent some evidence of bias, courts will not presume that bias or the appearance of bias exists); *McDermott v. Grossman* (Fla.App.1983), 429 So.2d 393 ("Where a *1214lawyer voices his opposition to the election of a judge, it is assumed that the judge will not thereafter harbor prejudice against the lawyer affecting the judge's ability to be impartial in cases in which the lawyer is involved"). {¶ 5} The defendant's affidavit does not suggest that the judge has done or said anything that reflects bias or prejudice on her part. I conclude that a reasonable and objective observer would not harbor serious doubts about the judge's ability to serve fairly and impartially in this case. As I have said, "[a] judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions." *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. Those presumptions have not been overcome in this case. {¶ 6} For the reasons stated above, the affidavit of disqualification is denied. The case shall proceed before Judge Kessler.