

SUPREME COURT OF OHIO

In re Disqualification of Carr

138 Ohio St. 3d 1237, 2013-Ohio-5927 (Ohio 2013) · No. 13-AP-124 · Decided December 30, 2013

SUMMARY

The Supreme Court of Ohio denied JoAnn Jacobson-Kirsch’s affidavit seeking to disqualify Ninth District Court of Appeals Judge Donna J. Carr. The court held that the objection was waived because it was not timely filed and, alternatively, that prior rulings involving the parties, speculation about recusals, and related allegations did not establish actual bias undermining the fairness and integrity of the proceedings.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Maureen O'Connor, C.J.
JURISDICTION	Ohio
DECIDED	December 30, 2013
DOCKET	13-AP-124
DISPOSITION	writ_denied
PROCEDURAL POSTURE	JoAnn Jacobson-Kirsch filed an affidavit of disqualification seeking to prevent Ninth District Court of Appeals Judge Donna J. Carr from presiding over further proceedings while Jacobson-Kirsch's application for reconsideration was pending.
STANDARD OF REVIEW	The affiant bears the burden of demonstrating timely filing and specific, sufficient facts establishing bias or prejudice. Disqualification requires compelling evidence overcoming the presumption that a judge follows the law and is not biased.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	JoAnn Jacobson-Kirsch v. Ellen C. Kaforey

TOPICS

[appellate procedure](#) [waiver](#) [civil procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Jacobson-Kirsch waived her right to seek Judge Carr's disqualification by waiting until after the court of appeals issued its final decision to file the affidavit.
2. Whether alleged prior rulings involving the parties, the recusal of trial judges, and unsupported allegations of bias established sufficient grounds to disqualify Judge Carr while a motion for reconsideration was pending.

HOLDINGS

1. Jacobson-Kirsch waived her objection to Judge Carr because she waited until after the court of appeals issued its final decision and failed to establish that the affidavit was filed as soon as possible after learning of the facts supporting the claim.
2. Even absent waiver, Jacobson-Kirsch failed to establish grounds for disqualification because prior proceedings involving the parties, the recusal of other judges, and vague or speculative allegations did not demonstrate actual bias undermining the fairness and integrity of the proceedings.

KEY QUOTATIONS

“Absent extraordinary circumstances, an appellate court judge will not be subject to disqualification when the only matter pending is a motion for the court of appeals to reconsider its final decision.” (¶ 5)

*“The statutory right to seek disqualification of a judge is an extraordinary remedy. * * * 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.” (¶ 8)*

FACTUAL BACKGROUND

Jacobson-Kirsch sued Kaforey, who had been appointed as Jacobson-Kirsch's conservator, alleging interference with Jacobson-Kirsch's parental custody rights. Judge Carr had presided over earlier appellate proceedings involving Jacobson-Kirsch and Kaforey, including a 2002 custody appeal and an unrelated 2004 case involving Kaforey. Jacobson-Kirsch also relied on the recusal of Summit County common pleas judges and asserted, without supporting evidence, that Kaforey's high-profile status caused those recusals.

PROCEDURAL HISTORY

Jacobson-Kirsch filed an affidavit under R.C. 2701.03 and 2501.13 after the Ninth District Court of Appeals issued its final decision and entry in the underlying case. She sought Judge Carr's disqualification based on alleged prior rulings and bias favoring Kaforey. The Supreme Court of Ohio denied the affidavit and allowed the case to proceed before Judge Carr.

DISPOSITION

writ_denied

CASES CITED

- In re Disqualification of O'Grady, 77 Ohio St. 3d 1240, 1241, 674 N.E.2d 353 (1996)
- In re Disqualification of Capper, 134 Ohio St. 3d 1271, 2012-Ohio-6287, 984 N.E.2d 1082, ¶ 11
- In re Disqualification of Bryant, 117 Ohio St. 3d 1251, 2006-Ohio-7227, 885 N.E.2d 246, ¶ 4
- In re Disqualification of Mitrovich, 101 Ohio St. 3d 1214, 2003-Ohio-7358, 803 N.E.2d 816, ¶ 4
- In re Disqualification of Flanagan, 127 Ohio St. 3d 1236, 2009-Ohio-7199, 937 N.E.2d 1023, ¶ 4
- In re Disqualification of George, 100 Ohio St. 3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5

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