

SUPREME COURT OF OHIO

LaSalle Institutional Realty Advisors, L.L.C. v. Nantucket on Montgomery Road, Ltd.

134 Ohio St. 3d 1226, 2012-Ohio-6289 (Ohio 2012) · No. 11-AP-132 · Decided January 19, 2012

SUMMARY

The Supreme Court of Ohio granted an affidavit of disqualification against Judge Richard S. Sheward based on an improper ex parte conversation with opposing counsel concerning substantive matters in the underlying real-estate litigation. The court held that the communication warranted disqualification because it demonstrated grounds for concern about impartiality and created an appearance of impropriety.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.
JURISDICTION	Ohio
DECIDED	January 19, 2012
DOCKET	11-AP-132
DISPOSITION	other
PROCEDURAL POSTURE	An affidavit of disqualification was filed under R.C. 2701.03 seeking to disqualify a common-pleas-court judge based on an alleged improper ex parte communication with opposing counsel.
STANDARD OF REVIEW	In an affidavit-of-disqualification proceeding, the issue is whether the alleged ex parte communication demonstrates bias or prejudice, including whether it addressed a substantive matter or would cause a reasonable and objective person to harbor serious doubts about the judge's impartiality.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential treatment of judicial-disqualification standards.
PARTIES	LaSalle Institutional Realty Advisors, L.L.C., et al. v. Nantucket on Montgomery Road, Ltd., et al.

TOPICS

civil procedure

discovery dispute

summary judgment

sanctions

commercial litigation

PRACTICE AREAS

judicial disqualification

civil procedure

legal ethics

commercial litigation

discovery

QUESTIONS PRESENTED

1. Whether the judge's ex parte conversation with opposing counsel addressed substantive matters in the underlying case and therefore constituted grounds for disqualification.
2. Whether the ex parte conversation created an appearance of impropriety requiring the judge's disqualification even absent proof of actual bias or prejudice.

HOLDINGS

1. An ex parte communication between a judge and opposing counsel that permits counsel to continue arguing issues still in controversy outside the presence of opposing counsel constitutes grounds for automatic disqualification.
2. A judge must be disqualified when an ex parte conversation with opposing counsel creates an appearance of impropriety such that a reasonable and objective person aware of the conversation would harbor serious doubts about the judge's impartiality, even without evidence of actual bias, prejudice, or a disqualifying interest.

KEY QUOTATIONS

"In sum, sufficient evidence exists in this case to conclude that Judge Sheward allowed Little to continue to argue issues that were still in controversy outside the presence of opposing counsel. Such conduct constitutes grounds for automatic disqualification." (¶ 17)

"The fact that Judge Sheward and Little discussed topics that were closely related to matters pending before the court has the potential of undermining the impartiality and integrity of the trial court." (¶ 21)

"The law requires not only an impartial judge but also one who appears to the parties and the public to be impartial." (¶ 22)

FACTUAL BACKGROUND

Judge Richard S. Sheward conducted a pretrial conference concerning discovery disputes, motions for summary judgment, and sanctions in the underlying case. After the conference, the judge spoke privately with defense counsel while plaintiffs' counsel remained connected to the telephone line and overheard the conversation. The evidence indicated that the discussion concerned discovery, sanctions, summary-judgment motion practice, and the judge's views regarding appellate treatment of shortened discovery periods.

PROCEDURAL HISTORY

During a pretrial conference in the underlying Franklin County Common Pleas Court case, the judge addressed discovery and summary-judgment matters. After the conference ended, the judge spoke ex parte with defense

counsel while opposing counsel remained connected to the telephone line and overheard the conversation. The Supreme Court of Ohio determined that the conversation addressed substantive matters and created an appearance of impropriety, and ordered the judge disqualified from further proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

Judge Sheward was ordered to participate no further in the underlying proceedings, and the case was returned to the Franklin County Court of Common Pleas for reassignment to another judge.

CASES CITED

- In re Disqualification of Saffold, 94 Ohio St.3d 1238, 1239, 763 N.E.2d 605 (2001)
- In re Disqualification of Williams, 74 Ohio St.3d 1248, 1249-1250, 657 N.E.2d 1352 (1993)
- In re Disqualification of Aurelius, 77 Ohio St.3d 1254, 674 N.E.2d 362 (1996)
- In re Disqualification of Floyd, 101 Ohio St.3d 1217, 2003-Ohio-7351, 803 N.E.2d 818, ¶¶ 6-7
- In re Disqualification of Lewis, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8
- In re Disqualification of Corrigan, 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E.2d 720, ¶ 11