

# SUPREME COURT OF OHIO

## Branden v. Branden

122 N.E.3d 1303 (Ohio 2018) · Decided November 14, 2018

### SUMMARY

The Ohio Supreme Court considered an affidavit seeking to disqualify Judge Rosemary Grdina Gold from further proceedings in a domestic-relations case. The court held that the alleged procedural mistake, conduct in unrelated cases, and delays did not establish bias, prejudice, or egregious neglect warranting disqualification, and denied the affidavit.

### CASE DETAILS

|                       |                                                                                                                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                                                    |
| WRITING FOR THE COURT | Maureen O'Connor, Chief Justice                                                                                                                                                          |
| JURISDICTION          | Ohio                                                                                                                                                                                     |
| DECIDED               | November 14, 2018                                                                                                                                                                        |
| DISPOSITION           | other                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Cari Branden filed an affidavit under Ohio Revised Code section 2701.03 seeking to disqualify Judge Rosemary Grdina Gold from presiding over further proceedings in the underlying case. |
| STANDARD OF REVIEW    | The court determines whether the affidavit establishes bias, prejudice, or other grounds requiring judicial disqualification under Ohio Revised Code section 2701.03.                    |
| PRECEDENTIAL VALUE    | Published Ohio Supreme Court opinion; precedential                                                                                                                                       |
| PARTIES               | Cari Branden v. Judge Rosemary Grdina Gold                                                                                                                                               |

### TOPICS

family law procedure

civil procedure

### PRACTICE AREAS

Judicial disqualification

Family law

Civil procedure

### QUESTIONS PRESENTED

1. Whether Judge Gold should be disqualified because her premature ruling on a motion demonstrated bias or prejudice against Branden.
2. Whether Judge Gold's conduct in unrelated cases involving Branden's counsel established bias requiring disqualification.
3. Whether delays in resolving postdecree motions were sufficiently egregious to require Judge Gold's disqualification.

## HOLDINGS

1. The affidavit did not establish that Judge Gold harbored hostility toward Branden or had formed a fixed anticipatory judgment on an issue in the underlying case; therefore, disqualification was not required.
2. Although neglect or unreasonable delay may support disqualification in an appropriate case, the delays alleged here were not sufficiently egregious to mandate Judge Gold's removal.

## KEY QUOTATIONS

*“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.” (¶ 4)*

## FACTUAL BACKGROUND

Judge Gold prematurely decided one of the defendants' motions before Branden had an opportunity to respond, but corrected the error after learning of it. Branden also relied on Judge Gold's conduct in two unrelated cases involving Branden's counsel, including one case in which the judge voluntarily recused herself. Finally, Branden alleged substantial delays in resolving postdecree motions; Judge Gold attributed the delays to both the court and the parties' counsel.

## PROCEDURAL HISTORY

Branden alleged judicial bias based on the judge's premature ruling on a motion, alleged hostility toward her counsel in unrelated cases, and delays in resolving postdecree motions. Judge Gold responded, acknowledged and explained the premature ruling and delays, denied bias, and stated that she could remain impartial. The Supreme Court of Ohio denied the affidavit and allowed the case to proceed before Judge Gold.

## DISPOSITION

other

## CASES CITED

- In re Disqualification of O'Neill, 100 Ohio St. 3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14
- State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956)
- In re Disqualification of George, 100 Ohio St. 3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5
- In re Disqualification of Swift, 136 Ohio St. 3d 1273, 2013-Ohio-4464, 996 N.E.2d 939, ¶ 5

## OPINION

CONNOR, J.

O'Connor, C.J. \*1321{¶ 1} Plaintiff, Cari Branden, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge Rosemary Grdina Gold from presiding over any further proceedings in the above-referenced case. {¶ 2} Ms. Branden avers that Judge Gold is biased against her for the following reasons: (1) the judge mistakenly granted one of the defendant's motions before giving Ms. Branden an opportunity to present a response, (2) the judge and her staff exhibited hostility toward Ms. Branden's counsel in two unrelated cases, and (3) the judge delayed resolving postdecree motions for substantial periods of time. {¶ 3} Judge Gold has responded in writing to the affidavit and denies any bias against Ms. Branden.

Specifically, the judge (1) acknowledges that she made an error by prematurely deciding one of the defendant's motions but further states that after learning of her mistake, she addressed it with counsel and corrected her error, (2) describes the circumstances of the two unrelated cases involving Ms. Branden's counsel, one of which resulted in Judge Gold's voluntary recusal, and affirms that those matters will not affect her ability to remain impartial in Ms. Branden's case, and (3) acknowledges that although there have been delays in the underlying case, the delays have been attributable to both the court and the parties' counsel. {¶ 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). Ms. Branden has not established that Judge Gold has hostility toward her or a fixed anticipatory \*1322judgment on any issue in the underlying case. For example, merely because Judge Gold made a mistake in deciding a prior motion or recused herself from an unrelated case involving plaintiff's counsel does not prove that she is biased in the underlying matter.

"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. Without more, the record here does not require Judge Gold's removal, especially considering her lengthy and significant involvement in the proceedings.

See *In re Disqualification of Swift*, 136 Ohio St.3d 1273, 2013-Ohio-4464, 996 N.E.2d 939, ¶ 5 (absent extraordinary circumstances, a judge should not be disqualified after having presided over lengthy proceedings in a pending case and after presentation of the evidence has already commenced). {¶ 5} In addition, although a judge's neglect or unreasonable delay in a case

\*1304could be a reason for disqualification, Ms. Branden has not established that Judge Gold's actions or inactions were so egregious to mandate her removal. {¶ 6} The affidavit of disqualification is denied.

The case may proceed before Judge Gold.