

SUPREME COURT OF OHIO

Filby v. Filby

145 Ohio St. 3d 1253 (Ohio 2015) · Decided June 19, 2015

SUMMARY

The Supreme Court of Ohio denied David Filby’s affidavit seeking to disqualify Judge David L. Fuhry from further proceedings in a domestic-relations case. The court held that alleged legal errors were not grounds for disqualification and that Filby had not provided sufficient evidence to overcome the presumption that the judge was unbiased.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.
JURISDICTION	Ohio
DECIDED	June 19, 2015
DISPOSITION	writ_denied
PROCEDURAL POSTURE	David Filby filed an affidavit under Ohio Revised Code section 2701.03 seeking to disqualify Judge David L. Fuhry from presiding over further proceedings in an underlying domestic-relations case.
STANDARD OF REVIEW	After trial has commenced and evidence has been presented, disqualification is warranted only when the record clearly and unquestionably demonstrates a fixed anticipatory judgment undermining public confidence in the fairness and integrity of the proceedings. The affiant bears the burden of submitting specific facts and, when necessary, evidence substantiating the allegations.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion

TOPICS

family law procedure family law civil procedure due process

PRACTICE AREAS

family law judicial disqualification civil procedure

QUESTIONS PRESENTED

1. Whether Filby's affidavit established grounds to disqualify Judge Fuhry after trial had commenced and evidence had been presented.
2. Whether disagreement with the judge's rulings and unsupported allegations of bias can establish disqualification under Ohio Revised Code section 2701.03.

HOLDINGS

1. When an affidavit of disqualification is filed after trial has commenced and evidence has been presented, the judge should be disqualified only when the record clearly and unquestionably demonstrates a fixed anticipatory judgment that undermines public confidence in the fairness and integrity of the proceedings.
2. An affidavit of disqualification is not a vehicle for contesting substantive or procedural legal rulings; disagreement or dissatisfaction with a court's rulings, even if erroneous, is not grounds for disqualification, and the remedy lies on appeal.
3. The affiant must submit specific facts demonstrating that disqualification is warranted and, when necessary, evidence beyond the affidavit to substantiate the allegations; unsupported allegations do not overcome the presumptions that a judge follows the law and is not biased.

KEY QUOTATIONS

“an affidavit of disqualification “is not a vehicle to contest matters of substantive or procedural law.””
(1254)

“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.” (1254)

FACTUAL BACKGROUND

Judge David L. Fuhry presided over an underlying domestic-relations case in which trial had commenced and evidence had been presented. Filby alleged that the judge wrongfully jailed him, issued rulings violating his constitutional rights, and conspired with attorneys against him. Judge Fuhry stated that Filby was jailed because he repeatedly failed to comply with discovery orders. Filby supported his allegations primarily with his own affidavit and filings and did not submit an order, transcript, or other evidence substantiating his claim that he had been prevented from presenting evidence or argument.

PROCEDURAL HISTORY

The underlying domestic-relations trial had commenced and evidence had been presented, although the parties later agreed to a resolution. Filby sought Judge Fuhry's disqualification based on alleged bias, constitutional violations, wrongful incarceration, and alleged conspiratorial misconduct. Judge Fuhry denied bias and impropriety, explaining that Filby had been jailed for repeatedly failing to comply with discovery orders. The Supreme Court of Ohio denied the affidavit and allowed the case to proceed before Judge Fuhry.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

The affidavit of disqualification was denied, and the underlying case was permitted to proceed before Judge Fuhry.

CASES CITED

- In re Disqualification of Kate, 88 Ohio St. 3d 1208, 1209, 723 N.E.2d 1098 (1999)
- State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956)
- In re Disqualification of Solovan, 100 Ohio St. 3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4
- In re Disqualification of Floyd, 101 Ohio St. 3d 1217, 2003-Ohio-7351, 803 N.E.2d 818, ¶ 4
- In re Disqualification of Baronzzi, 135 Ohio St. 3d 1212, 2012-Ohio-6341, 985 N.E.2d 494, ¶¶ 6-7
- In re Disqualification of George, 100 Ohio St. 3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5

OPINION

Filby v. Filby 145 Ohio St. 3d 1253

CONNOR, J.

O'Connor, C.J. {¶ 1} Defendant David Filby has filed an affidavit with the clerk of this court under R.C. 2701.03 seeking to disqualify Judge David L. Fuhry from presiding over any further proceedings in the above-captioned domestic-relations case. {¶ 2} Filby claims that Judge Fuhry wrongfully jailed him and issued a series of rulings that violated his constitutional rights. Filby also claims that the judge conspired with Filby's former attorney and plaintiffs counsel to commit various crimes against him. {¶ 3} Judge Fuhry has responded in writing to the affidavit, denying any bias against Filby and denying any impropriety in the underlying case. Judge Fuhry states that he jailed Filby because he repeatedly failed to comply with the court's discovery orders. {¶ 4} According to both Filby's affidavit and the judge's response, trial in the underlying case commenced in May 2015, although the parties subsequently agreed to a resolution. When an affidavit is filed after commencement of a trial and presentation of evidence, a judge should be disqualified only when the record "clearly and unquestionably demonstrates a 'fixed anticipatory judgment' * * * that undermines the absolute confidence of the public in the fairness and integrity of the proceedings." In re Disqualification of Kate, 88 Ohio St.3d 1208,1209, 723 N.E.2d 1098 (1999), quoting State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956). For the reasons explained below, Filby has failed to set forth sufficient proof to carry this heavy burden.

*1254{¶ 5} First, Filby's bias claims are based on his belief that Judge Fuhry wrongfully jailed him and violated his due-process rights. However, this is not the appropriate forum to decide those claims, because an affidavit of disqualification "is not a vehicle to contest matters of substantive or procedural law." In re Disqualification of Solovan, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. Thus, a party's disagreement or dissatisfaction with a court's legal rulings, even if those rulings may be erroneous, is not grounds for disqualification. In re Disqualification of Floyd,

101 Ohio St.3d 1217, 2003-Ohio-7351, 803 N.E.2d 818, ¶ 4. The remedy for Fifty's legal claims, if any, lies on appeal, not through an affidavit of disqualification.

{¶ 6} Second, Fifty has failed to substantiate his claims. In a disqualification request, the burden falls on the affiant to submit specific facts demonstrating that disqualification is warranted, and when necessary, an affiant is required to submit evidence beyond the affidavit supporting the allegations contained therein. In re Disqualification of Baronzzi, 135 Ohio St.3d 1212, 2012-Ohio-6341, 985 N.E.2d 494, ¶ 6-7. Here, Fifty makes some serious allegations against Judge Fuhry. Yet he has not substantiated those claims with anything more than his affidavit and his own filings in the underlying case. For example, he avers that he was prevented from presenting evidence or argument at trial, but he has not submitted an order, a transcript, or any other evidence to substantiate this claim. "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. {¶ 7} Accordingly, the affidavit of disqualification is denied. The case may proceed before Judge Fuhry.