

# The Supreme Court of Ohio

FILED

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CLERK OF COURT  
SUPREME COURT OF OHIO

In re Disqualification of Hon. Moná  
Scott

Supreme Court Case No. 23-AP-128

## JUDGMENT ENTRY AND DECISION

ON AFFIDAVIT OF DISQUALIFICATION in *City of Cleveland v. Shaker Heights Apartments Owner, LLC, et al.*, Cleveland Municipal Court, Housing Division, Case No. 2023-CVH-002772.

Grant J. Keating, counsel for the defendants in the underlying civil nuisance case, has filed an affidavit of disqualification pursuant to R.C. 2701.031 seeking to disqualify Judge Moná Scott of the Cleveland Municipal Court, Housing Division, from the defendants' case. Judge Scott filed a response to the affidavit of disqualification.

As explained below, Keating has not established that Judge Scott is biased or prejudiced against the defendants or that the judge should be disqualified to avoid an appearance of bias. Therefore, the affidavit of disqualification is denied. The case may proceed before Judge Scott.

### **Trial-Court Proceedings**

Keating represents Shaker Heights Apartments Owner, L.L.C. ("Apartments Owner"), and seven other defendants in the underlying civil nuisance action relating

to three apartment buildings located at 12500, 12600, and 12701 Shaker Boulevard in Cleveland. Keating seeks to disqualify Judge Scott from the nuisance action based on the judge's comments and conduct in other proceedings—namely, (1) *City of Cleveland v. Moreland, Ohio, L.L.C.*, an unrelated case against an entity that owned a building near the Shaker Boulevard properties owned by Apartments Owner, and (2) Apartments Owner's separately-filed eviction actions against its tenants.

#### *The Moreland case*

In November 2021, the city of Cleveland filed a criminal case in the Cleveland Municipal Court, Housing Division, against Moreland Ohio L.L.C. ("Moreland"). Moreland owned a rental property with the address of 12700 Shaker Boulevard, which is adjacent to the Shaker Boulevard properties owned and operated by Apartments Owner. After Moreland failed to appear in the criminal case, Judge Scott placed the case on what she refers to as the housing division's "Corporate Docket," which handles warrants for corporate defendants that have failed to appear. Because Moreland was placed on the Corporate Docket, the judge also stayed Moreland's then pending evictions actions against its tenants.

According to Judge Scott, at that time, the housing division had increasing difficulty obtaining service on defendants in criminal matters. Yet those same defendants were regularly appearing before the housing division to prosecute

eviction cases against tenants. Therefore, the housing division adopted a local rule that required plaintiffs in eviction cases, who were also subject to an open warrant or capias in a housing-division criminal case, to first enter an appearance and plea in the criminal case before the housing division would schedule an appearance in the eviction case.

An attorney filed a notice of appearance in Moreland's criminal case. At a November 14, 2022 pretrial, Moreland's counsel stated that Moreland was not trying to evade service and that Moreland was working to resolve the issues at the rental property. Judge Scott responded by first acknowledging the presence of a member of city council in the courtroom. The judge then stated that "when you go and pull up" information about Moreland on the secretary of state's website, it was intertwined with other entities, including Apartments Owner. After Moreland's counsel stated that the properties located at 12500, 12600, and 12701 Shaker Boulevard had "zero affiliation or connection" with Moreland, Judge Scott responded:

I don't know how you figure that, because you go pull up the deeds and the names are all intertwined. It's not complicated. It's not complicated.

You can't stand here before the Court and tell me – because one thing I am is, I'm gifted. I used to be a City of Cleveland prosecutor. I used to be a Cuyahoga County Prosecutor, worked in the general felony unit, worked in the foreclosure unit. One thing that I'm gifted with is, I read and I remember. I remember all names. May not touch the file, may

not be intimate with it, but it comes across because I've got to sign everything.

*See Keating affidavit, Ex. B at 9.*

Later in the hearing, Moreland's counsel stated that he also represented Cleveland Ohio Residents L.L.C. Judge Scott stated that Cleveland Ohio Residents was also intertwined with Apartments Owner and that the business relationships were "incestuous." *Id.* at 21. When Moreland's counsel repeated that he had no connection with the buildings at 12500, 12600, and 12701 Shaker Boulevard, Judge Scott responded: "You've got to convince me. It's 1,000 percent a connection." *Id.* at 22.

Despite counsel's repeated insistence that neither he nor Moreland nor Cleveland Ohio Residents were connected to Apartments Owner or the properties owned by Apartments Owner on Shaker Boulevard, Judge Scott stated that she would not lift the stay on Moreland's eviction actions until Moreland filed a brief proving that it was not connected to the other Shaker Boulevard properties. The judge stated:

I just need for you to tell me in a brief how they're not related and attach some documentation disproving me, because I'm telling you here, that they are. And I'm not lifting the stay until Shaker – the main culprit from the 12701 or whichever one – I don't know, I'm not about to get into this. Come here, answer for this criminal complaint.

\* \* \*

But all of your clients – it's still related to the Moreland – which is related to – and so on and so on. They part and parcel this all the day – I deal with defendants that own 10 to 100 properties. You won't be the first. Your client – not you as an attorney, but these clients from out of New York, they are not the first ones I've dealt with. I do it all the time. The prosecutors deal with them too.

\* \* \*

You know, they own several properties. And they'll – it'll be a group of ten and they'll separate into five, and then they'll come back together and then there's 20. I don't know. They'll change the names. They have multiple names. They're legions. I don't know.

\* \* \*

That's just how they – that's what they do. It's business. It's not personal. It's business. This is how they move properties. They're out-of-state investors. They're not vested in the state of Ohio. They're not vested in the communities here. They're running money. It's residual income for them. And they don't really care about the properties or the people that live in them.

*Id.* at 24-25.

The criminal case against Moreland was later dismissed.

#### *Apartments Owner's Eviction Actions*

In June 2022, Cleveland filed a misdemeanor complaint and a minor misdemeanor citation against Apartments Owner for allegedly failing to comply with an order of the city building department. The city obtained service on Apartments Owner in September 2022, but no one appeared on behalf of the defendant for the arraignment. Therefore, Apartments Owner's misdemeanor cases were placed on the housing-division's Corporate Docket.

On March 10, 2023, Judge Scott filed entries staying 28 separate eviction actions commenced by Apartments Owner until it resolved the criminal cases. The judge noted that it was inequitable that Apartments Owner had sought to invoke the housing-division's jurisdiction in the eviction actions but failed to appear in the misdemeanor cases.

On April 4, Apartments Owner filed a petition for writs of procedendo and mandamus against Judge Scott in the Eighth District Court of Appeals seeking to vacate the stay entries. In support, Apartments Owner cited *Shaker House LLC v. Daniel*, 8th Dist. No. 111183, 2022-Ohio-2778, in which the appellate court held that the housing division may not use its equitable powers to frustrate the purpose of the forcible-entry-and-detainer statutes, which provide for a speedy method of recovery for leased property.

On April 10, the appellate court issued an alternative writ of procedendo ordering Judge Scott to vacate the entries staying the eviction proceedings or show cause why the housing division should not be ordered to do so.

On May 4, Judge Scott vacated the stays on the ground that Apartments Owner's misdemeanor cases were no longer on the housing-division's Corporate Docket. The judge moved to dismiss the writ action as moot, and the appellate court

granted the judge's motion. *State ex rel. Shaker Heights Apartments Owner, LLC v. Scott*, 8th Dist. No. 112587, 2023-Ohio-1901.

Apartments Owner filed a second petition for writs of procedendo and mandamus against Judge Scott in the appellate court on May 24. Apartments Owner alleged that the judge had failed to issue a decision in one of the 28 eviction cases and had been employing various measures designed to frustrate Apartments Owner's ability to obtain relief in eviction actions.

On May 30, Judge Scott entered judgment in favor of Apartments Owner in the remaining eviction case. The judge then moved to dismiss the writ action as moot.

On July 21, the appellate court rejected the judge's mootness argument and granted writs of mandamus and procedendo against Judge Scott. The appellate court ordered Judge Scott to resolve the eviction cases "forthwith and without delay." *State ex rel. Shaker Heights Apartments Owner, LLC v. Scott*, 8th Dist. No. 112769, 2023-Ohio-2589, ¶ 16-18.

#### *The Underlying Case: The Nuisance Action*

On March 6, Cleveland filed the underlying civil complaint for public nuisance abatement, injunctive relief, and receivership against several entities and individuals, including Apartments Owner. The complaint alleges that Apartments

Owner's three Shaker Boulevard properties are not in compliance with various building, housing, health, and safety codes and constitute a public nuisance. The city sought to enjoin the defendants from engaging in certain conduct, including prohibiting the defendants from pursuing any eviction actions until the defendants prove that the properties are in full compliance.

Keating filed this affidavit of disqualification on August 22.

### **Affidavit-of-Disqualification Proceedings**

Keating alleges that Judge Scott is biased and prejudiced against the defendants and that the judge must be disqualified to avoid the appearance of bias or impropriety. The judge argues that there are no grounds for disqualification.

#### *Bias and Prejudice*

In support of the allegation that Judge Scott is biased and prejudiced, Keating points to the record in *Moreland* where the judge admitted to researching factual issues regarding the ownership of the properties, to the judge's inappropriate comments to Moreland's counsel during the November 14 pretrial hearing and to News 5 Cleveland, and to the judge's improper orders in Apartments Owner's eviction cases. Keating asserts that it is improper for the judge to have researched factual issues in the criminal case against Moreland. And the judge's comments to Moreland's counsel demonstrate bias when she said the property owners are "all out



of New York,” that out-of-state investors were “legions,” which Keating claims the Bible defines as a group of demons, and that out-of-state investors “don’t really care about the properties or the people that live in them.” *See* Keating affidavit at ¶ 3-15-21, Ex. A.

Approximately three months later, Keating claims that the judge made improper public comments about issues in dispute in the nuisance action to News 5 Cleveland. In an article Judge Scott is quoted as noting the difficulty in tracking down out-of-town property owners because they are often changing company names and addresses.

“You see they have 24 different names, and they’re so used to switching real fast, they think no one is paying attention,” Scott said. “We’re dealing with a building that doesn’t have working elevators, doesn’t have working heat, doesn’t have working hot water.”

*See* Keating affidavit Ex. C.

These comments, Keating argues, demonstrate that Judge Scott has announced “conclusions about factual allegations that are in dispute in the [nuisance case] without hearing any evidence.” *See* Keating affidavit at ¶ 3, 22-26.

Approximately one month later Judge Scott filed entries staying 28 separate eviction actions commenced by Apartments Owner. Keating claims that because of the judge’s illegal conduct, Apartments Owner was forced to seek writs of procedendo and mandamus in the appellate court and that in the second writ case,

the appellate court criticized Judge Scott's recalcitrance and delay in Apartments Owner's eviction cases. Keating argues that these acts taken separately or together demonstrate that Judge Scott is biased and prejudiced against Apartments Owner.

In response, Judge Scott denies any bias against the defendants and denies prejudging any issue in the nuisance case. The judge claims that Keating is taking her comments in the *Moreland* hearing out of context. At the time of the *Moreland* hearing, the judge was focused on the problem the city and the court were having obtaining service of criminal complaints on corporate defendants. There were separate misdemeanor cases pending against Apartments Owner that the court was unable to serve.

The judge expressed her concerns about service to Moreland's counsel and that in doing so, was relying on her memory. The judge asserts that she does not hear cases in a vacuum and that many corporate defendants are often connected. Based on her recollection, the judge thought that the company that managed Moreland also managed the properties owned by Apartments Owner. The judge claims that she spoke in generalities, that none of her comments were specific to Apartments Owner, and that her comments do not demonstrate that she had prejudged the nuisance case.

The judge also denies speaking to the reporter about the pending nuisance case. She spoke to the reporter about the housing-division's rent-escrow program and in general terms about "out-of-state investors."

The judge also states that since the issuance of the writ by the appellate court in July 2023, Apartments Owner's eviction cases have moved forward and some of the cases were decided in favor of Apartments Owner.

#### *Appearance of Bias or Impropriety*

Keating also argues that the same evidence supporting the bias-and-prejudice allegation supports the allegation that the judge's disqualification is necessary to avoid an appearance of bias or impropriety. Keating argues "[a]ny reasonable objective observer would necessarily have doubts about whether [the judge] could fairly decide the [nuisance] Matter." *See* Keating affidavit at ¶ 9-10, 26, 32-33.

Judge Scott did not specifically address this allegation in the response. The judge did assert however that there are no grounds for disqualification.

#### **Disqualification of a Municipal-Court Judge**

R.C. 2701.031 provides that if a judge of the municipal court "allegedly is interested in a proceeding pending before the judge, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the judge or to a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding

pending before the judge,” then that party or the party’s counsel may file an affidavit of disqualification with the clerk of this court. Granting or denying the affidavit of disqualification turns on whether the chief justice determines that the allegations of interest, bias, prejudice, or disqualification alleged in the affidavit exist. R.C. 2701.031 and 2701.03(E).

In affidavit-of-disqualification proceedings, the burden falls on the affiant to submit “specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations.” R.C. 2701.03(B)(1). Therefore, “[a]n affidavit must describe with specificity and particularity those facts alleged to support the claim of bias or prejudice.” *In re Disqualification of Mitrovich*, 101 Ohio St.3d 1214, 2003-Ohio-7358, 803 N.E.2d 816, ¶ 4. Vague and unsubstantiated allegations “are insufficient on their face for a finding of bias or prejudice.” *In re Disqualification of Walker*, 36 Ohio St.3d 606, 606, 522 N.E.2d 460 (1988).

“The 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, 132 N.E.2d 191 (1956), paragraph four of the syllabus.

A judge is accorded a “presumption of impartiality” in an affidavit-of-disqualification proceeding. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7. “The proper test for determining whether a judge’s participation in a case presents an appearance of impropriety is \* \* \* an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge’s impartiality.” *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8.

### **Analysis**

For the reasons explained below, Keating has not established that Judge Scott’s disqualification is warranted.

#### *Bias and Prejudice*

As stated above, “if a judge’s words or actions convey the impression that the judge has developed a ‘hostile feeling or spirit of ill will,’ or if the judge has reached a ‘fixed anticipatory judgment’ that will prevent the judge from hearing the case with ‘an open state of mind \* \* \* governed by the law and the facts,’ then the judge should not remain on the case.” *In re Disqualification of Hoover*, 113 Ohio St.3d 1233,

2006-Ohio-7234, 863 N.E.2d 634, ¶ 7, quoting *Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956). Keating has not submitted sufficient evidence to support a finding that Judge Scott has developed a hostile feeling or spirit of ill toward the defendants or that the judge has a fixed anticipatory judgment that will prevent her from presiding over the nuisance case with an open state of mind.

Keating is correct that judges are prohibited from independently investigating the facts in a matter and that this prohibition extends to information available on the Internet. See Jud.Cond.R. 2.9(C) and (D); *In re Disqualification of Leach*, 167 Ohio St.3d 1239, 2022-Ohio-2140, 193 N.E.3d 594, ¶ 8. Although Judge Scott stated during the *Moreland* hearing that she had pulled property information from a website, those comments and actions do not support a finding that the judge has predetermined an issue in the nuisance case and are not evidence of bias. And it is beyond the authority of a chief justice in an affidavit-of-disqualification proceeding to determine whether a violation of the Code of Judicial Conduct has occurred. See *In re Disqualification of Allen*, \_\_\_ Ohio St.3d \_\_\_, 2023-Ohio-3238, \_\_\_ N.E.3d \_\_\_, ¶ 35.

Moreover, most of Judge Scott's challenged comments during the *Moreland* hearing relate to the housing-division's problems with service on corporate defendants in criminal cases. Based on the judge's recollection, she believed that

the Moreland and Apartments Owner were linked. However, the judge was mistaken. Merely because the judge incorrectly connected the two entities does not prove that the judge has animus toward the underlying defendants.

To be sure, the judge's editorializing about out-of-state investors was unnecessary. Judges must be dignified and courteous "when speaking with lawyers and others in an official capacity" and to "refrain from words or conduct that might manifest bias or prejudice." *In re Disqualification of Bickerton*, 170 Ohio St.3d 1286, 2023-Ohio-1104, 212 N.E.3d 962, ¶ 8, citing Jud.Cond.R. 2.3(B) and 2.8(B). A judge's undignified comments, however, "do not always reflect judicial bias or preclude a judge from fairly and impartially presiding over a case." *In re Disqualification of Holbrook*, 167 Ohio St.3d 1244, 2022-Ohio-2141, 194 N.E.3d 387, ¶ 9.

The judge maintains that her comments during the hearing were general and not directed at one specific defendant. And no evidence has been presented to prove otherwise. Keating did not attest in the affidavit of disqualification that his clients are from New York or are "out-of-state investors." Apartments Owner has a Columbus, Ohio address.

"In affidavit-of-disqualification proceedings, the burden falls on the affiant to submit sufficient argument and evidence to support the disqualification request."

*In re Disqualification of Spon*, 134 Ohio St.3d 1254, 2012-Ohio-6345, 984 N.E.2d 1069, ¶ 24. Keating has not met that burden with respect to the judge's comments during the *Moreland* hearing.

Similarly, the February 13, 2023 news article also does not support a finding that the judge is biased against the defendants or has prejudged any issue in the nuisance case. Judges are prohibited from making any public statement that might reasonably be expected to affect the outcome or impair the fairness of a pending or impending matter, although judges may make public statements explaining "court procedures." Jud.Cond.R. 2.10(A) and (D). "Whether a judge will be disqualified on the basis of public comments to the media ordinarily depends on the nature and content of the complained-of comments." *Holbrook*, 167 Ohio St.3d 1244, 2022-Ohio-2141, 194 N.E.3d 387, at ¶ 11.

The article did not refer to any specific case or any specific defendants by name. Likewise, the judge's quoted comments did not mention any specific case or party; rather, she made general statements about the court's rent-escrow program and noted that out-of-town owners are difficult to track down but the judge did not refer to a specific out-of-town owner.

Lastly, the appellate court's issuance of the writs of procedendo and mandamus against Judge Scott is not evidence that the judge is biased against the



underlying defendants. A reversal of a judge's decision in a critical opinion by the appellate court does not imply the judge will be biased or will retaliate against the petitioner. *See, e.g., In re Disqualification of Floyd*, 135 Ohio St.3d 1249, 2012-Ohio-6336, 986 N.E.2d 10, ¶ 10. The appellate court and Judge Scott stated that the judge stayed the eviction cases under the doctrine of unclean hands because Apartments Owner had failed to enter an appearance in the misdemeanor cases. *See State ex rel. Shaker Heights Apartments Owner LLC v. Scott*, 8th Dist. No. 112587, 2023-Ohio-1901, ¶ 1.

Moreover, it is outside the scope of an affidavit-of-disqualification proceeding to determine whether, as Keating claims, Judge Scott illegally stayed the eviction actions. The issue before the chief justice in disqualification proceedings is narrow and limited to determining whether a judge in a pending case has an interest, bias, prejudice, or other disqualification that mandates the judge's removal from the case. *In re Disqualification of Gallagher*, \_\_\_ Ohio St.3d \_\_\_, 2023-Ohio-2977, \_\_\_ N.E.3d \_\_\_, ¶ 39. Even if Judge Scott's reliance on the court's equitable powers were misplaced, "it is long established that '[a] trial judge's opinions of law \* \* \* are not themselves evidence of bias or prejudice and thus are not grounds for disqualification.' " *Id.*, quoting *In re Disqualification of Murphy*, 36 Ohio St.3d 605, 606, 522 N.E.2d 459 (1988).

Therefore, this allegation lacks merit.

*The Appearance of Bias or Impropriety*

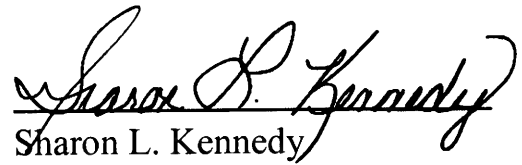
As stated above, a judge will be disqualified to avoid an appearance of impropriety “if a reasonable and objective observer would harbor serious doubts about the judge’s impartiality.” *Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, at ¶ 8. “The reasonable observer is presumed to be fully informed of all the relevant facts in the record—not isolated facts divorced from their larger context.” *In re Disqualification of Gall*, 135 Ohio St.3d 1283, 2013-Ohio-1319, 986 N.E.2d 1005, ¶ 6.

For the reasons cited above, a well-informed, objective observer would not harbor serious doubts about Judge Scott’s ability to impartially preside over the nuisance case. Neither the judge’s comments during the *Moreland* hearing, the judge’s statements quoted in the news article, nor Judge Scott’s belief that she had authority to stay Apartments Owner’s eviction actions is sufficient evidence to support a finding that the judge’s disqualification is necessary to avoid an appearance of bias or impropriety.

**Conclusion**

For the reasons explained above, the affidavit of disqualification is denied. The case may proceed before Judge Scott.

Dated this 25th day of October, 2023.

  
Sharon L. Kennedy  
Chief Justice

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