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DISTRICT IV

April 24, 2025

To:

Hon. Brian A. Pfitzinger
Circuit Court Judge
Electronic Notice

James R. Donohoo
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Kimberly A. Theobald
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP1416

Lisa Caraballo v. Robin Lea Schumacher (L.C. # 2022FA38)

Before Blanchard, Graham, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Lisa Caraballo appeals a circuit court order denying her motion for recusal of the judge presiding over this case in the circuit court. In the same order, the circuit court also denied Caraballo's motion for reconsideration of a prior order. However, the sole issue argued in the appellant's brief on appeal is that the circuit court erred in denying Caraballo's recusal motion. The respondent, Robin Schumacher, filed a respondent's brief. No reply brief was filed. Based

upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We summarily affirm.

Motions to disqualify a judge may be made on either statutory or constitutional grounds. In this case, Caraballo moved for recusal of the judge presiding in this case, Hon. Brian A. Pfitzinger, on statutory grounds. Specifically, Caraballo moved for recusal pursuant to WIS. STAT. § 757.19(2)(g), which requires disqualification of a judge when he or she “determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.”

Whether there is a basis to disqualify a judge under WIS. STAT. § 757.19(2)(g) is a determination that is left to the subjective view of that judge. *State v. American TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 182, 443 N.W.2d 662 (1989). “[T]he determination of the existence of a judge’s actual or apparent inability to act impartially in a case is for the judge to make.” *Id.* at 183. Paragraph 757.19(2)(g) does not require disqualification when someone other than the judge makes an objective argument that it appears that the judge will not be able to act impartially, or when someone other than the judge could reasonably question the judge’s impartiality. *American TV*, 151 Wis. 2d at 183. Because the basis for disqualification under § 757.19(2)(g) is subjective, the only review available is for the appellate court to determine whether the judge whose recusal is sought decided that there is an actual or apparent inability for the judge to act impartially. *American TV*, 151 Wis. 2d at 186.

Here, the record reflects that Judge Pfitzinger considered the issue of recusal pursuant to WIS. STAT. § 757.19(2)(g) and made a subjective determination that, throughout the case, he had in fact acted and would continue to act impartially and that there was no appearance to the

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

contrary. Because Judge Pfitzinger made a subjective determination of his impartiality, the judge satisfied the requirements of § 757.19(2)(g). Our review goes no further, and we affirm the order of the circuit court on that basis.

We now briefly explain why the sole legal authority cited in the appellant’s brief, *State v. Walberg*, 109 Wis. 2d 96, 325 N.W.2d 687 (1982), is inapplicable to the circumstances here. Caraballo cites *Walberg* to suggest that the issue of whether Judge Pfitzinger properly recused himself is an issue of law subject to this court’s independent review, and to further suggest that this court may apply an objective test in determining whether the recusal motion should have been granted. *See Walberg*, 109 Wis. 2d at 104-105. Caraballo’s reliance on *Walberg* is misplaced, because the criminal defendant in *Walberg* did not file a statutory motion for recusal under WIS. STAT. § 757.19(2)(g), as Caraballo did here. In *American TV*, our supreme court expressly rejected a suggestion that the independent and objective standard applied by the reviewing court in *Walberg* could be applied to a determination of whether a judge is disqualified by § 757.19(2)(g). The court stated:

To the extent prior cases ... suggest that a reviewing court, in determining whether a judge should have recused himself [or herself], is to independently and objectively determine whether there was an appearance of impartiality, *State v. Asfoor*, 75 Wis. 2d 411, 249 N.W.2d 529 (1977), or whether the judge’s impartiality can reasonably be questioned, *State v. Walberg*, 109 Wis. 2d 96, 325 N.W.2d 687 (1982), they are inapplicable to a determination [of] whether a judge was disqualified by [§] 757.19(2)(g).

American TV, 151 Wis. 2d at 183-84.²

² There is no difference between the version of WIS. STAT. § 757.19(2)(g) at issue in *State v. American TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 443 N.W.2d 662 (1989), and the current version. *See American TV*, 151 Wis. 2d at 181 n.1.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.83(2).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals