

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

December 28, 2004

MOTION AND PROCEDURAL RULINGS

2004-1765. State ex rel. Vindicator Printing Co. v. Youngstown.

In Mandamus. This cause originated in this court on the filing of a complaint for a writ of mandamus. Upon consideration of relator's motion to consolidate with Supreme Court Case No. 04-448, *State ex rel. Plain Dealer Publishing Co., v. Cleveland*, and upon determination pursuant to S.Ct.Prac.R. X(5),

IT IS ORDERED by the court that relator's motion to consolidate be, and hereby is, granted for purposes of oral argument and decision.

IT IS FURTHER ORDERED by the court sua sponte that an alternative writ be, and hereby is, granted and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file its brief within 10 days of the filing of the evidence; respondent shall file its brief within 20 days after the filing of relator's brief; and relator may file a reply brief within 5 days after the filing of respondent's brief.

2004-1971. State v. Washatka.

Cuyahoga App. No. 83679, 2004-Ohio-5384. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., Resnick and F.E. Sweeney, JJ., dissent.

2004-2009. State v. Nelson.

Cuyahoga App. No. 84108, 2004-Ohio-5608. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., Resnick and F.E. Sweeney, JJ., dissent.

2004-2087. Coffman v. Toyota Motor Credit Corp.

In Quo Warranto. On motion for stay of court of common pleas' proceedings. Motion denied.

2004-2106. Moss v. Moyer.

On Petition to Contest Election. This cause originated in this court on the filing of a petition to contest an election under R.C. 3515.08 et seq. The court has previously acknowledged the applicability of a Civ.R. 12(B)(6) dismissal for failure to state a claim upon which relief can be granted in an election contest case. *In re Election Contest of Democratic Primary Election Held May 4, 1999 for Nomination of Clerk, Youngstown Municipal Court* (1999), 87 Ohio St.3d 118, 717 N.E.2d 701. Normally, minimal notice pleading is all that is required to withstand dismissal under Civ.R. 12(B)(6). *Id.* at 120, 717 N.E.2d 701. Here, however, the contestors' claims are based primarily on fraud and mistake. Therefore, the contestors must state the "circumstances constituting fraud or mistake * * * with particularity." Civ.R. 9(B). Accordingly, upon review of contestors' petition,

IT IS ORDERED, pursuant to my authority under R.C. 3515.11 to control and direct this election contest proceeding, that the contestors shall show cause by January 7, 2005 why their petition should not be dismissed for failure to state a claim upon which relief can be granted because it does not allege the circumstances constituting fraud or mistake with particularity. Contestees may file a memorandum in response on or before January 14, 2005.

IT IS FURTHER ORDERED that the filing of an answer by the contestees and any discovery, including depositions, subpoenas, and requests for production of documents, shall be, and hereby are, stayed pending resolution of this preliminary issue.

O'Connor, J., in Chambers.

RECONSIDERATION OF PRIOR DECISIONS

2000-2119. State v. Yarbrough.

Jefferson C.P. No. 99-CR-116. Reported at 104 Ohio St.3d 1, 2004-Ohio-6087, 817 N.E.2d 845. On motion for reconsideration. Motion denied.

F.E. Sweeney, J., dissents.

2003-2169. Dayton Bar Assn. v. Parker.

Reported at 104 Ohio St.3d 117, 2004-Ohio-6236, 818 N.E.2d 684. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

2004-1404. In re \$22,161 United States Currency.

Hamilton App. No. C-030767. Reported at 104 Ohio St.3d 1409, 2004-Ohio-6364, 818 N.E.2d 711. On motion for reconsideration. Motion denied.