

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

May 19, 2005

[Cite as *05/19/2005 Case Announcements*, 2005-Ohio-2420.]

MOTION AND PROCEDURAL RULINGS

2004-1523. State v. Sherrills.

Cuyahoga App. No. 84961. This cause is pending before the court as a discretionary appeal and claimed appeal of right. On October 14, 2004 and January 18, 2005, appellant filed notices that a motion to certify a conflict was pending in the court of appeals. Pursuant to S.Ct.Prac.R. IV(4)(A), this court has stayed consideration of the jurisdictional memoranda filed in this appeal. Whereas appellant has neither notified this court that the court of appeals determined that a conflict does not exist as provided by S.Ct.Prac.R. IV(4)(B) nor filed a copy of the court of appeals' order certifying the existence of a conflict as provided by S.Ct.Prac.R. IV(4)(C),

IT IS ORDERED by the court, sua sponte, that appellant show cause within fourteen days of the date of this entry why this court should not proceed to consider the jurisdictional memoranda in this appeal pursuant to S.Ct.Prac.R. III(6).

2004-1526. State v. Griffin.

Summit App. No. 22163. This cause is pending before the court as a discretionary appeal and claimed appeal of right. On September 29, 2004 and January 19, 2005, appellant filed notices that a motion to certify a conflict was pending in the court of appeals. Pursuant to S.Ct.Prac.R. IV(4)(A), this court has stayed consideration of the jurisdictional memoranda filed in this appeal. Whereas appellant has neither notified this court that the court of appeals determined that a conflict does not exist as provided by S.Ct.Prac.R. IV(4)(B) nor filed a copy of the court of appeals' order certifying the existence of a conflict as provided by S.Ct.Prac.R. IV(4)(C),

IT IS ORDERED by the court, sua sponte, that appellant show cause within fourteen days of the date of this entry why this court should not proceed to

consider the jurisdictional memoranda in this appeal pursuant to S.Ct.Prac.R. III(6).

2004-2088. Moss v. Bush.

On Petition to Contest Election. This cause came on for further review upon the motion of Secretary of State Blackwell and Ohio's 20 presidential electors for sanctions pursuant to Civ.R. 11 and S.Ct.Prac.R. XIV(5). Upon consideration thereof,

IT IS ORDERED that the motion for sanctions be, and hereby is, denied. See opinion at 2005-Ohio-2419.

Moyer, C.J., in Chambers.

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. Following the granting of contestors' application for dismissal of their election contest, contestee Secretary of State moved for sanctions pursuant to Civ.R. 11 and S.Ct.Prac.R. XIV(5) on the basis that the contest was frivolous. Although the Secretary of State did not comply with the service requirement of S.Ct.Prac.R. XIV(2)(A) because he did not serve all of the parties to the contest, I find that the motion is properly before me because there is no evidence that any party or attorney in this proceeding has been adversely affected and no one moved to strike the motion. See S.Ct.Prac.R. XIV(2)(D) ("When a party * * * fails to provide service upon a party or parties to the case in accordance with division [A] of this section, any party adversely affected may file a motion to strike the document that was not served").

Therefore, having found that the motion for sanctions is properly before me, upon review of that motion,

IT IS ORDERED that the motion is denied. R.C. 3515.11 does not authorize sanctions under Civ.R. 11 and S.Ct.Prac.R. XIV(5) in an election contest that has been dismissed without a trial. Cf. *In re Election of Nov. 6, 1990 for Atty. Gen. of Ohio* (1990), 62 Ohio St.3d 1, 2, 577 N.E.2d 343 (holding that the R.C. 2323.51 award of attorney fees to a party harmed by frivolous conduct in a civil action does not apply to election-contest cases because an award under that statute could not be made at the trial of the case). Nor does the argument presented establish entitlement to sanctions. The denial of the motion for sanctions renders moot the motion of state senators Teresa Fodor, Ray Miller, and C.J. Prentiss, and state representative Mike Mitchell for leave to join as amici curiae in the amicus curiae memorandum of U.S. Representative John Conyers Jr. in opposition to the motion for sanctions.

O'Connor, J., in Chambers.

MISCELLANEOUS DISMISSALS

2004-1711. State ex rel. Fenner v. Indus. Comm.

Franklin App. No. 03AP-412, 2004-Ohio-4648. This cause is pending before the court as an appeal from the Court of Appeals for Franklin County. Upon consideration of appellant's application for dismissal,

IT IS ORDERED by the court that the application for dismissal be, and hereby is, granted.

ACCORDINGLY, IT IS FURTHER ORDERED by the court that this cause be, and hereby is, dismissed.

2004-1923. Bakies v. Perrysburg.

Wood App. Nos. WD-03-055 and WD-03-062, 2004-Ohio-5231. This cause is pending before the court as an appeal from the Court of Appeals for Wood County. Upon consideration of the application for dismissal of appellant GEM Properties,

IT IS ORDERED by the court that the application for dismissal be, and hereby is, granted.

ACCORDINGLY, IT IS FURTHER ORDERED by the court that the appeal of GEM Properties be, and hereby is, dismissed. The appeal of Gregory Bakies, Karen Bakies, and Richard Smith remains pending.

MEDIATION REFERRALS

The following case has been returned to the regular docket pursuant to S.Ct.Prac.R. XIV(6)(E):

2005-0447. State ex rel. Downs v. Panioto.

Hamilton App. No. C-040784, 2005-Ohio-778.