

[Cite as *Skindell v. Madigan*, 2017-Ohio-398.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103976

MICHAEL J. SKINDELL

PLAINTIFF-APPELLANT

vs.

MARY LOUISE MADIGAN, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-855961

BEFORE: E.A. Gallagher, P.J., McCormack, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: February 2, 2017

ATTORNEYS FOR APPELLANT

Matthew J. Markling
Sean Koran
Patrick S. Vrobel
McGown & Markling Co. L.P.A.
1894 North Cleveland Massillon Rd.
Akron, Ohio 44333

ATTORNEYS FOR APPELLEES

Robert E. Cahill
Sutter O'Connell Co.
1301 East 9th Street
3600 Erieview Tower
Cleveland, Ohio 44114

Kevin M. Butler
City of Lakewood Law Director
BY: Jennifer L. Swallow
Chief Assistant Law Director
12650 Detroit Avenue
Lakewood, Ohio 44107

EILEEN A. GALLAGHER, P.J.:

{¶1} For the following reasons, appellees Mary Louise Madigan, et al.’s motion to dismiss is granted.

{¶2} Appellant’s appeal and the counts in his underlying complaint are predicated upon an alleged violation of R.C. 121.22, Ohio’s Open Meeting Act, by the Lakewood City Council pertaining to the consideration and adoption of Lakewood Codified Ordinances 49-15.

{¶3} Normally, an appellate court can only consider what is in the record on appeal. When it comes to deciding whether an event has caused an issue to be moot, however, it may be proved by extrinsic evidence outside the record. *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163.

{¶4} In this instance, such evidence establishes that on November 8, 2016, the voters of Lakewood approved Lakewood Codified Ordinances 49-15 by way of referendum in a 11,818 to 11,111 vote.

{¶5} Pursuant to *Fox v. Lakewood*, 39 Ohio St.3d 19, 528 N.E.2d 1254 (1988), any violation of R.C. 121.22 by the Lakewood City Council in the consideration and adoption of Lakewood Codified Ordinances 49-15 was cured by the adoption of the amendment by the electorate. In dismissing an open meeting challenge to another Lakewood ordinance that was subsequently adopted by the Lakewood electorate, the *Fox* court noted that “the intent of the Sunshine Law, that deliberations concerning public issues be made

public, could not be further served by invalidating a decision insofar as such deliberations were laid before the public eye.” *Id.* at 23, quoting *Moraine v. Bd. of Cty. Commrs.*, 67 Ohio St.2d 139, 145, 423 N.E.2d 184 (1981). Under *Fox*, the adoption of Lakewood Codified Ordinances 49-15 by the electorate via the referendum precludes the injunctive relief sought by appellant under R.C. 121.22(I) and renders moot the declarations sought by appellant under R.C. 121.22(H). Furthermore, because appellant’s claims for civil forfeiture, court costs and attorney fees under R.C. 121.22(I)(2)(a) are predicated upon the issuance of the unavailable injunctive relief by a trial court, such claims are also precluded.

{¶6} In accordance with the foregoing, this matter is moot and it is accordingly dismissed.

It is ordered that appellees recover from appellant the costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, PRESIDING JUDGE

TIM McCORMACK, J., and
SEAN C. GALLAGHER, J., CONCUR