

IN THE SUPREME COURT OF OHIO

MICHAEL J. SKINDELL,

Plaintiff-Appellant,

v.

MARY LOUISE MADIGAN, et al.,

Defendants-Appellees.

)
) On appeal from the Cuyahoga County Court of
) Appeals, Eighth Appellate District
)
) Court of Appeals Case No. CA-15-103976
)
)
)
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)
)

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT MICHAEL J. SKINDELL

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COUNSEL FOR DEFENDANTS-APPELLEES

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT MICHAEL J. SKINDELL

Plaintiff-Appellant Michael J. Skindell (“Skindell”) gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in *Skindell v. Madigan*, Court of Appeals Case No. CA-15-103976 on February 2, 2017, and journal entry denying the February 13, 2017 application for reconsideration entered on February 21, 2017. Copies of the court of appeals judgment entry and opinion granting dismissal and court of appeals journal entry denying reconsideration are attached as Exhibit A.

This case raises a substantial constitutional question and involves a question of public and great general interest.

Respectfully submitted,
Matthew John Markling, Counsel of Record

/s/ Matthew John Markling

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing will be sent via email on April 7, 2017, to the following:

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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

CV15855961

97475339



Exhibit A

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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.

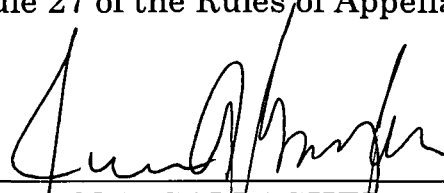
{¶5} Pursuant to *Fox v. Lakewood*, 39 Ohio St.3d 19, 528 N.E.2d 1254 (1988), any violation of R.C. 121.22 by the Lakewood City Council in the consideration and adoption of Lakewood Codified Ordinances 49-15 was cured by the adoption of the amendment by the electorate. In dismissing an open meeting challenge 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

FILED AND JOURNALIZED
PER APP.R. 22(C)

FEB 02 2017

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By  Deputy

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

MICHAEL J. SKINDELL

Appellant

COA NO.
103976

LOWER COURT NO.
CV-15-855961

COMMON PLEAS COURT

-vs-

RECEIVED FOR FILING

MARY LOUISE MADIGAN, ET AL.

FEB 21 2017

Appellee

MOTION NO. 504438

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By AM Deputy

Date 02/21/17

Journal Entry

Motion by appellant for reconsideration and request for oral argument is denied.

Sean C. Gallagher, J., Dissenting:

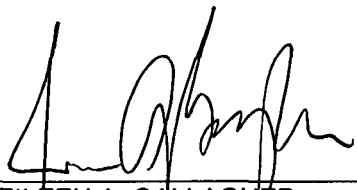
Although I am cognizant of my earlier role in the decision to dismiss this appeal as moot, I feel we should grant reconsideration and allow the parties the opportunity to argue the relevance of Fox v. Lakewood, 39 Ohio St.3d 19, 528 N.E.2d 1254 (1988), and the effect of the election in 2016 on the merits of this appeal.

In a prior order filed on October 27, 2016, I agreed to allow this matter to be referred to the conference attorney program for mediation in light of the pending election scheduled for November 8, 2016. Subsequently, on December 8, 2016, I dissented from this decision to postpone the mediation and indicated the case should be returned to the appellate panel for a full hearing.

Although I concurred with the majority on the decision to dismiss the appeal, I believe there are sufficient questions about the application of Fox to these facts that warrant reconsideration. Therefore, I respectfully dissent.

Judge TIM MCCORMACK, Concurs

Judge SEAN C. GALLAGHER, Dissents


EILEEN A. GALLAGHER
Presiding Judge

CA15103976

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Exhibit A