

IN THE SUPREME COURT OF OHIO

MARIE J. NAUTH	:	
And	:	
CONCERNED CITIZENS OF MEDINA	:	
COUNTY,	:	
Relators	:	Case No. 2020-0179
v.	:	
KEITH H. DIRHAM, DIRECTOR OF	:	MANDAMUS
FINANCE, CITY OF MEDINA,	:	
And	:	
PAMELA B. MILLER, JOHN V. WELKER,	:	
JR., LARRY G. CRAY, AND CHARLES E.	:	
CALVERT, MEMBERS OF MEDINA	:	
COUNTY BOARD OF ELECTIONS	:	
Repondents	:	

RESPONDENT’S RESPONSE IN OPPOSITION TO RELATORS’

MOTION FOR RECONSIDERATION

Respondent Medina County Board of Elections, by and through counsel, respectfully requests this Court deny Relators’ request for reconsideration and submittal of additional evidence. Relators’ Motion for Reconsideration is not proper, as it is asking for a re-argument of an already disposed case, based on evidence that was not timely filed by the Court’s previous deadline.

S.Ct.Prac.R.18.02(B) states that “a motion for reconsideration shall not constitute a reargument of the case.” But that is exactly what Relators are asking for with this motion. Pursuant to S.Ct.Prac.R.18.02 the Court has the authority to grant a motion for reconsideration to “correct decisions which, upon reflection, are deemed to have been made in error.” *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1990). But, the Court will not grant reconsideration if the movant merely seeks to reargue the case. “We will

not, however, grant reconsideration when a movant seeks merely to reargue the case at hand.” *Dublin City Schools Bd. of Edn. V. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, 11 N.E.3d 222.

Here, Relators have pointed out no analysis or argument of the Court that they believe was made in obvious error or not supported by the law. As Relators state in their motion, the standard generally applied in a App.R. 26(A)(1) application for reconsideration at the appellate court level is “whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been.” *Matthews V. Matthews*, 5 Ohio App.3d 140, 143 (10th Dist. 1982). Here, Relators raise no obvious error and no issue that was not considered or fully considered by the Court.

Instead, Relators argue that reconsideration should be granted because “this Court denied Relator’s request for a writ of mandamus without considering the evidence attached to this Motion.” While this statement is technically correct, the reason this Court did not consider the evidence attached to the Motion is that Relators did not submit that evidence to the Court as part of their evidentiary filing and therefore it was not before the court or part of the record when arguments were presented and this Court made its decision.

Relator’s Motion is not a request for reconsideration, and not merely a request for re-argument, but a request for leave to file additional evidence, which would necessitate re-opening the entire case for re-argument. All of this is far beyond the scope of a Motion for Reconsideration. The original deadline for submission of evidence was May 12, 2020, twenty days after this Court denied the motion to dismiss of the Medina County respondents. issued on April 22, 2020. Relators’ decision not to submit the evidence they now say is essential to “the

interests of justice” cannot be remedied at this stage of the proceeding. Relators provide no justification for their failure to submit this evidence by the Court’s deadline. Relators realization, based on the observations made in the Court’s decision, that they failed to submit this evidence into the record is not a basis for a Motion for Reconsideration. Allowing this new evidence in would turn this into a re-argument, as new briefs would have to be written by both sides to account for the additional evidence, and the Court would have to issue a new decision, based on new evidence not previously submitted. It would in effect start the case over from the beginning.

Relators’ Motion for Reconsideration and Leave to Submit New Evidence should be denied, as Relators provide no legitimate basis for reconsideration, and instead are asking for a do-over to submit evidence that they regret not submitting by the Court’s deadline. Respondent Medina County Board of Elections respectfully asks this Court to deny Relators’ Motion.

Respectfully submitted,

S. FORREST THOMPSON
Medina County Prosecutor

/s/ Michael K. Lyons
MICHAEL K. LYONS (0030792)
SAMUEL A. SHEFFIELD (0099033)
Assistant Prosecuting Attorneys
60 Public Square, 2nd Floor
Medina, Ohio 44256
Tel: (330) 723-9539
Fax: (330) 764-8400
mlyons@medinaco.org

Attorney for Respondents

CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing *Respondent's Response in Opposition to Relators' Motion for Reconsideration* was sent via email service this 14th day of September, 2020, to the following:

Joshua J. Brown (0089836)
The Law Office of Josh Brown, LLC.
500 S. Front Street, Suite 1200
Columbus, Ohio 43215
P: (614) 284-4394
F: (614) 388-3947
josh@joshbrownesq.com

Counsel for Relators

Gregory A. Huber (0013875)
Law Director, City of Medina
132 North Elmwood Avenue
Medina, Ohio 44256
P: (330) 722-9070
F: (330) 723-3508
gghuber@medinaoh.org

*Counsel for Finance Director
City of Medina*

/s/ Michael K. Lyons
MICHAEL K. LYONS (0030792)
Assistant Prosecuting Attorney