

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

December 29, 2022

[Cite as *12/29/2022 Case Announcements #2, 2022-Ohio-4786.*]

RECONSIDERATION OF PRIOR DECISIONS

2021-0497. Brandt v. Pompa.

Cuyahoga App. No. 109517, **2021-Ohio-845**. Reported at __ Ohio St.3d __, 2022-Ohio-4525, __ N.E.3d __. On motion for reconsideration. Motion denied.

Fischer, J., dissents, with an opinion joined by Kennedy and DeWine, JJ.

FISCHER, J. dissenting.

{¶ 1} Appellee Roy Pompa's motion for reconsideration of this court's decision in *Brandt v. Pompa*, __ Ohio St.3d __, 2022-Ohio-4525, __ N.E.3d __, should be granted. Because the majority opinion fails to do so, I must respectfully dissent.

I. By denying reconsideration today, this court denies amici curiae the opportunity to participate in the reconsideration process set forth in the Rules of Practice of the Supreme Court

{¶ 2} This court denies Pompa's motion for reconsideration two days after it was filed and 24 hours after appellant, Amanda Brandt, filed her memorandum in opposition. In ruling on this motion for reconsideration so quickly, the court denies amici curiae the chance to respond to the motion for reconsideration and denies the members of this court the opportunity to wholly consider the arguments before us.

{¶ 3} The Rules of Practice of the Supreme Court of Ohio permit a party to file a motion for reconsideration within ten days after this court's judgment entry is filed with the clerk of this court. S.Ct.Prac.R. 18.02(A). Our rules also afford a party opposing reconsideration the same amount of time to respond to that motion. S.Ct.Prac.R. 18.03(A). And our rules also specifically

allow amici curiae to file memoranda in support of or memoranda in response to reconsideration within those same time frames. S.Ct.Prac.R. 18.02(C) and 18.03(B).

{¶ 4} In this case, Pompa filed his motion for reconsideration on December 27, 2022. Brandt filed her memorandum in response to Pompa’s motion for reconsideration on December 28. Any amicus curiae would have until at least January 6, 2023, to file a memorandum in response to the motion for reconsideration. Nevertheless, over the objections of the undersigned, the justices of this court were forced to vote on Pompa’s motion by December 29—eight days before amici curiae’s deadline to respond.

{¶ 5} While both parties have had an opportunity to be heard by this court, this does not mean that this court should vote to issue a decision on this motion for reconsideration immediately, as it does today. By ruling today, we deny amici curiae, our friends of the court, the full opportunity to participate in the process as set forth in our rules. *See* S.Ct.Prac.R. 18.02(C) and 18.03(B). Amici curiae serve an important role in our system—they may provide insight into issues in a case that are not identified by the parties. As noted above, our rules allow for amici curiae to weigh in on Pompa’s motion for reconsideration. S.Ct.Prac.R. 18.02 and 18.03. Depriving them of this opportunity to respond harms the public and deprives this court of relevant information. And in this case, that is not insignificant.

{¶ 6} There were numerous amici curiae in this case. There were eight amici curiae urging reversal: (1) Child USA, (2) Ohio Crime Victim Justice Center, (3) Coalition for Children, (4) Crime Victims Center, Inc., (5) American Professional Society on the Abuse of Children, (6) Ohio Association for Justice, (7) American Association for Justice, and (8) Ohio Alliance to End Sexual Violence. And there were ten amici curiae urging affirmance: (1) Chamber of Commerce of the United States of America, (2) NFIB Small Business Legal Center, (3) American Tort Reform Association, (4) Coalition for Litigation Justice, Inc., (5) American Property Casualty Insurance Association, (6) Product Liability Advisory Counsel, Inc., (7) Ohio Attorney General Dave Yost, (8) David Goodman, former chairman of the Ohio Senate Judiciary Committee for Civil Justice, (9) Ohio Alliance for Civil Justice, and (10) Ohio Association of Civil Trial Attorneys. By denying Pompa’s motion for reconsideration today, we deprive 18 amici curiae of the opportunity to respond to Pompa’s motion and participate in the reconsideration process.

{¶ 7} Additionally, we also arbitrarily deny ourselves the time for thorough, full, and fair deliberation of Pompa’s motion for reconsideration and Brandt’s memorandum in opposition. We make our decision within 48 hours after the motion for reconsideration was filed and within 24 hours after the memorandum in opposition to reconsideration was filed. This early activity is improper as it insults the parties and the judicial system, and it denies the nearly 12 million Ohioans the full and fair consideration due to all participants in this process.

{¶ 8} There is no need for this type of rushed decision. This case is not expedited. And the change in the membership of the court will not deprive Pompa or Brandt of full and fair consideration should this court decide to wait for the entire period allotted by our rules to pass before issuing a decision on the motion for reconsideration. Justice demands that motions for reconsideration that are filed this month be treated the same as motions for reconsideration that were filed in the previous months. After all, “[j]ustice is served by the consistent and methodical application of the law.’” *State v. LaRosa*, 165 Ohio St.3d 346, 2021-Ohio-4060, 179 N.E.3d 89, ¶ 64 (Donnelly, J., concurring in part and dissenting in part), quoting *State v. Tijerina*, 3d Dist. Defiance No. 4-02-01, 2002-Ohio-2979, ¶ 11.

{¶ 9} The parties deserve the consideration that our rules demand and the same consideration that this court has provided to other litigants. And to the extent that a pattern of not following our reconsideration rules in prior election years somehow justifies the court’s reconsideration decision today, that practice should be stopped. We have these rules for a reason, and we should follow them. We should stop acting as though a change in the membership of this court is now a valid reason to shortchange the parties in the consideration of the motions filed in this court.

II. This court should grant Pompa’s motion for reconsideration

{¶ 10} But since a majority of this court demands that we consider Pompa’s motion for reconsideration today, I believe that it should be granted, even without the benefit of amici curiae briefs.

{¶ 11} It is not often that I vote to grant a motion for reconsideration. I have done so in only a handful of cases. See, e.g., *State ex rel. Maxcy v. Lucas Cty. Bd. of Elections*, 154 Ohio St.3d 1401, 2018-Ohio-4419, 111 N.E.3d 1; *State v. D.B.*, 150 Ohio St.3d 452, 2017-Ohio-6952, 82 N.E.3d 1162. But I believe that the procedural history of this case and the constitutional

issues at play, given the majority opinion’s flawed constitutional analysis, demand that we grant reconsideration.

{¶ 12} This court has the authority to grant motions 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 (1995). In this case, Pompa argues that we should grant reconsideration due to this court’s failure to follow its procedural rules and the majority opinion’s flawed as-applied constitutional analysis. Pompa does not reargue his case, but rather, he raises significant issues with the analysis in the majority opinion.

{¶ 13} While Brandt argues that the issues were “fully ventilated and considered by the entire Court,” this could not be further from the truth (which is apparent when one reads the majority opinion). The majority opinion considered only one of at least four constitutional arguments raised by Brandt and only one of her two propositions of law. It is baffling to me how anyone can argue that this is full consideration of Brandt’s case.

{¶ 14} Brandt also argues that this court had nine months to consider this decision, which should be plenty of time. This would be true if the process allowed for a linear consideration of a majority opinion. However, this court did not handle this opinion consistently with its internal rules. One only needs to read the majority opinion and consider why there is such little response to the nearly 36 pages occupied by the two dissenting opinions to understand the type of consideration that went into this decision.

{¶ 15} The analysis of the majority opinion was flawed. This court should grant reconsideration.

KENNEDY and DEWINE, JJ., concur in the foregoing opinion.
