

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

December 30, 2022

[Cite as *12/30/2022 Case Announcements #9, 2022-Ohio-4808.*]

RECONSIDERATION OF PRIOR DECISIONS

2020-1129. Ohio Pub. Works Comm. v. Barnesville.

Belmont App. No. 19BE0011, 2020-Ohio-4034. Reported at __ Ohio St.3d __, 2022-Ohio-4603, __ N.E.3d __. On motion for reconsideration. Motion denied.

Fischer, J., concurs, with an opinion.

Kennedy and DeWine, JJ., dissent.

FISCHER, J., concurring.

{¶ 1} I believe that the majority opinions in *Siltstone Resources, L.L.C. v. Ohio Pub. Works Comm.*, __ Ohio St.3d __, 2022-Ohio-483, __ N.E.3d __, and *Ohio Pub. Works Comm. v. Barnesville*, __ Ohio St.3d __, 2022-Ohio-4603, __ N.E.3d __, were wrongly decided. However, I agree that the motion for reconsideration filed by appellants, Gulfport Energy Corporation and Village of Barnesville, should be denied. Thus, I concur in the decision to deny the motion for reconsideration. I write separately to emphasize that I have a significant problem with the way these motions for reconsideration are being handled by this court at this time.

{¶ 2} The Rules of Practice of the Supreme Court of Ohio permit a party to file a motion for reconsideration within ten days after entry of this court's judgment. 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).

{¶ 3} In this case, Gulfport Energy Corporation and the Village of Barnesville filed a motion for reconsideration on December 30, 2022. Appellee, Ohio Public Works Commission, filed its memorandum in opposition to reconsideration the same day. Any amicus curiae would have until January 9, 2023, to file a memorandum in response to reconsideration. Nevertheless, over the objections of the undersigned, the justices of this court were forced to vote on this motion by December 30, 2022—ten days before the amici curiae’s deadline to respond. *See* S.Ct.Prac.R. 18.03(B).

{¶ 4} While the parties have had an opportunity to be heard by this court, that does not mean that this court should issue a decision on this motion for reconsideration immediately, as it does today. Doing so not only denies the amicus curiae the opportunity to participate in the reconsideration process that is guaranteed by our rules, but we also arbitrarily deny ourselves the time for a thorough, full, and fair deliberation of the motion for reconsideration and the memorandum in opposition to reconsideration. The court makes this decision less than eight hours after the motion for reconsideration was filed and less than four hours after the memorandum in opposition to reconsideration was filed. This early activity is improper because 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.

{¶ 5} 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 Gulfport Energy Corporation, the Village of Barnesville, or the Ohio Public Works Commission 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.

{¶ 6} The parties in this case deserve the same consideration that this court has provided to other litigants, which our rules demand. 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 stop acting as though a change in the membership of this court is now a valid reason to shortchange the parties in our consideration of motions filed in this court.

{¶ 7} Nevertheless, after reviewing Gulfport Energy Corporation and the Village of Barnesville's motion for reconsideration and the Ohio Public Works Commission's memorandum in opposition to reconsideration, but without consideration of any response that any amici curiae may wish to file within the time frame allowed by our rules, I agree that the motion should be denied. Therefore, I respectfully concur.
