

IN THE SUPREME COURT OF OHIO

DOUG WIEDEMAN, : CASE NO. 07-2165
: :
Plaintiff/Appellant, : :
: :
-vs- : On Appeal from the Court of
: Appeals, Second Appellate District
: Greene County, Ohio
SKY BANK, INC., et al., : :
: :
Defendants/Appellees. : Court of Appeals No.
: 2007 CA 0017

**APPELLEES, CITY OF SPRINGBORO, SHARTS, BARTON,
AND WHEELER'S MEMORANDUM IN RESPONSE TO
APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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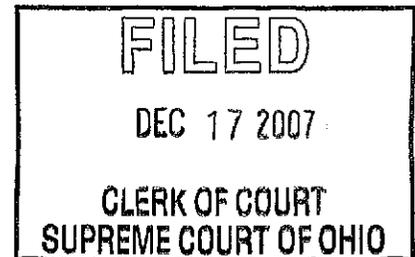


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II. **ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITIONS OF LAW.**

A. **Response to Proposition of Law No. 1**

A Dismissal of Criminal Charges Against an Accused on the Basis of a Procedural Technicality and not on the Merits is not a Termination in Favor of the Accused.

Wiedeman maintains the dismissal of the criminal charges against him by the Warren County Court on a technicality represents a dismissal of the charges against him in his favor for purposes of a claim for malicious prosecution. Quite simply, the dismissal by the Warren County Court of the charges against Wiedeman was, by the Court's own acknowledgment, dismissal as a result of a technicality and not on the merits of the case.

Judge Heath could not have made this fact any clearer in his decision:

It is with great reluctance that the Court must take this step. The alleged actions of Mr. Wiedemann clearly merit the intervention of the judicial system. The fact that he will not be held accountable for his behavior may seem to be an injustice. However, the Constitutional requirements and mandates of the Ohio Revised Code do not make an allowance for this situation. The charges are accordingly dismissed on this procedural technicality and **not** on the merits of this case. (Emphasis original)

The dismissal of the charges against Wiedeman did not occur as a result of the prosecution "abandoning" the case nor for any other reason which could be construed as a termination of the proceedings in favor of Wiedeman. A determination the proceedings terminated in his favor is necessary in order to proceed on a claim for malicious prosecution. *Trussell v. Gen. Motors Corp.*, 53 Ohio St.3d 142 (1990).

The Court of Appeals did not address this proposition of law raised by Wiedeman since it upheld the entry of summary judgment on behalf of all Defendants for other

reasons. However, had it reached this issue it would have done so in accordance with this Court's decision in *Ash v. Ash*, 72 Ohio St.3d 520 (1995). The *Ash* Court recognized the issue of whether the criminal proceedings are terminated in favor of an accused is a question of law for the Court. In addition, there must be something in the dismissal of the criminal charges that indicates the accused was innocent. Where the question of the accused's guilt or innocence remains open, there has not been a termination in favor of the accused. The dismissal of the criminal charges by the Warren County Court clearly established the dismissal was not on the merits. As a consequence, Wiedeman cannot claim the criminal proceedings were terminated in his favor.

B. Response to Proposition of Law No. 2

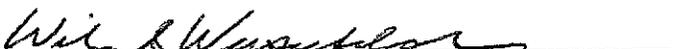
**The Issuance of an Arrest Warrant for Wiedeman
Established Probable Cause.**

Wiedeman claims the Clerk of a Mayor's Court is without authority to issue an arrest warrant. Yet, Wiedeman offers no authority for this proposition. To the contrary, the Court in *Frank v. Whitehouse*, 1992 WL 238495 (Ohio App. 5 Dist.), correctly determined the issuance of an arrest warrant, not tainted by fraud, deception, etc. insulates an individual from claims of malicious prosecution. The Court of Appeals in this matter correctly determined that in the absence of some irregularity in the issuance of the arrest warrant for Wiedeman, the arrest warrant established probable cause thereby defeating Wiedeman's claim for malicious prosecution.

III. CONCLUSION

Based on the foregoing, Wiedeman has not presented issues which are of public or great general issue nor do they present substantial constitutional questions. Therefore, this Court lacks jurisdiction over this matter.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum was served upon the following by first-class U.S. mail, postage prepaid, on this the 14th day of December, 2007:

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