

IN THE SUPREME COURT OF OHIO

<i>State of Ohio ex rel. TIMOTHY J. MCGINTY,</i>	:
	:
<i>Relator,</i>	:
	:
	:
v.	:
	:
	:
THE COURT OF APPEALS FOR THE	:
EIGHTH APPELLATE DISTRICT,	:
	:
<i>Respondent.</i>	:

Case No. 2014-1091

Original Action in Prohibition

**RESPONDENT’S RESPONSE IN OPPOSITION TO
MOTION FOR RECONSIDERATION**

Relator, the Cuyahoga County Prosecuting Attorney, filed an original action seeking a writ of prohibition preventing the Court of Appeals for the Eighth Appellate District (“the Eighth District”) from considering an interlocutory appeal of an order from a criminal case being prosecuted by Relator. Respondent filed a motion to dismiss based on Relator’s failure to state a claim, and this Court granted said motion. Subsequently, Relator filed a motion for reconsideration, making a number of arguments. However, because the only argument that is not a rehash of prior arguments does not support reconsideration, Respondent respectfully asks this Court to deny Relator’s motion for reconsideration.

Pursuant to S.Ct.Prac.R. 18.02, a party may file a motion for reconsideration regarding this Court’s granting of a motion to dismiss; however, it cannot “constitute a reargument of the case.” S.Ct.Prac.R. 18.02(B)(3). This Court has specifically held that it will not “grant reconsideration when a movant seeks merely to reargue the case at hand.” *Dublin City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, 11 N.E.3d 222, ¶9. Despite this Court, only one of Relator’s arguments is not a rehash of the previous arguments.

In the motion for reconsideration, Relator asserts that permitting the appeal to proceed will cause irreparable delay and affect an “untold number” of other cases. Motion for Reconsideration at 3. However, he made these same arguments in his memorandum supporting his complaint. *See* Memorandum in Support of Complaint for Writ of Prohibition (“Memo in Support”) at 2-3, 12. Relator next argues that Madison’s substantial rights were not implicated and that the psychological examination would not violate the Fifth Amendment because it would not be testimonial until used at trial. Motion for Reconsideration at 3-4. These arguments too were raised in support of the complaint. *See* Memo in Support at 8-12, 15-16 (“Any harm at this point is purely hypothetical because there has been no testimony.”).

Relator also argues on reconsideration that the trial court’s order is not determinative and any harm could be remedied on direct appeal; both of which were also asserted in support of Relator’s complaint. Motion for Reconsideration at 4; Memo in Support at 3, 7, 11. The last duplicative argument is that the trial court’s order does not involved privileged material or any other provisional remedy. Motion for Reconsideration at 4-6. However, Relator also previously raised these arguments. Memo in Support at 13, 15 (“Madison’s examination by the state’s expert does not implicate any Fifth Amendment protections or *testimonial privilege*.” (emphasis added)). Accordingly, because all of these arguments are merely rearguments of the case, this Court should deny Relator’s motion for reconsideration as to all of these assertions.

The only new argument is that Madison has filed a new motion in the trial court in which he “cites authority which recognized Relator’s ability to have him submit to an examination.” Motion for Reconsideration at 2; *see also* Relator’s Reconsideration Ex. A. However, nothing in Madison’s new motion indicates that he will use mental health evidence during his criminal case; rather, he argues that the Relator’s request for an examination is premature until Madison

confirms his intent to use such evidence. *See* Relator's Reconsideration Ex. A at 5-6. Respondent based its jurisdiction decision on Madison's denial of his intent to submit to psychiatric testimony at trial. *See* Complaint Ex. 11. Accordingly, because nothing in Madison's new motion indicates that his assertion to Respondent has changed, it does not support Relator's motion for reconsideration.

Therefore, for the reasons discussed above, Respondent the Court of Appeals for the Eighth Appellate District respectfully requests that this Court deny Relator's motion for reconsideration.

Respectfully submitted,

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Court of Appeals for the Eighth Appellate District

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Response* was served by first class mail via the U.S. Postal Service on December 22, 2014, upon the following:

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