

COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

2015 OCT 13 AM 10:12

FILED
DIANE LYNCH
CLERK OF COURTS
MEIGS COUNTY, OHIO

State of Ohio, ex rel.	:	
Meigs County Home Rule Committee,	:	
by its members, Paul K. Strauss,	:	
et al.,	:	
	:	
Relators,	:	Case No. 15CA9
	:	
v.	:	
	:	
County of Meigs	:	<u>ENTRY</u>
Board of Commissioners,	:	
Michael Bartrum, et al.,	:	
	:	
Respondents.	:	

APPEARANCES:

James Kinsman, Cincinnati, Ohio and Terry J. Lodge, Toledo, Ohio, for Relators.

Colleen Williams, Meigs County Prosecuting Attorney and Jeremy Fisher, Meigs County Assistant Prosecuting Attorney, Pomeroy, Ohio for Respondents.

HARSHA, J:

The Relator Meigs County Home Rule Committee filed a petition for writ of mandamus seeking to compel the Meigs County Board of Commissioners to certify a petition for an adoption of a county charter to the Meigs County Board of Elections pursuant to R.C. 307.94. We found that the Board of Elections timely certified that there were sufficient valid signatures in accordance with R.C. 307.94, but failed to certify until after the 120-day deadline whether the petition itself was valid. Because the Board of Commissioners had no clear legal duty to certify the petition to the Board of Elections until it received a timely certification *both* that the petition is valid and that there are sufficient valid signatures, we held that the Commissioners had no clear legal duty to

certify the petition to the Board of Elections and the Committee was not entitled to the extraordinary judicial remedy of mandamus. We dismissed the petition.

Now the Committee has filed a motion asking this court to reconsider our September 9, 2015 decision dismissing the mandamus action. For the reasons that follow, we **DENY** the motion.

App. R. 26(A) does not provide specific guidelines for appellate courts to use when determining whether a prior decision should be reconsidered. *State v. Wong*, 97 Ohio App.3d 244,246 (4th Dist. 1994). "The test generally applied 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. 1981).

The Committee has not called to this court's attention an error in our judgment, nor has it cited any case law or statutory provision that conflicts with our holding. Instead, the Committee argues that even though we held that the Board of Election's July 2, 2015 letter failed to satisfy the requirements of R.C. 307.94 and thus did not trigger the Commissioners' duty to certify the petition to the board of elections for submission to the voters, we must nevertheless analyze the subsequent untimely attempts of the Board of Elections to correct this substantial omission.

Specifically the Committee asks for clarification concerning the Board of Election's untimely July 13, 2015 certification and asks us to determine whether the July 13 certification, even though made outside the statutory mandated 120-day deadline,

otherwise comports with the requirements of R.C. 307.94. However, our decision renders the effects of any subsequent certification moot. A petitioner seeking a mandamus action must prove by clear and convincing evidence that the respondent is under a clear legal duty to perform the acts. Here, we found that the Commissioner's duty to certify the petition to the board of elections was not triggered before the expiration of the 120-day deadline because the Board of Elections failed to certify the validity of the petition – a substantive omission, not a mere technical irregularity.

The Board of Elections failed to certify one of two key statutory elements when it certified the validity of the signatures but failed in its July 2, 2015 letter to certify the validity of the petition. The failure to certify the validity of the petition is more than “a technicality” and thus, the petition was not “in all other respects valid,” differentiating this case from the one the Committee cites in support of its motion for reconsideration. See, *State ex rel. Stern v. Quattrone*, 68 Ohio St.2d 9, 426 N.E.2d 1389 (1980)(where the petition was initially certified within the applicable time period but suffered from some mere technical irregularity as to form, an untimely correction of the technicality did not prevent the placement of the ordinance on the ballot and a writ was granted). The Commissioners had no legal duty to perform the act of certification by resolution. A subsequent untimely certification by the Board of Elections does not affect that determination and for us to determine the legal sufficiency of any subsequent untimely certification is to render an advisory opinion on a moot issue. *In re Arnott*, 2010-Ohio-5392, 942 N.E.2d 1124, ¶ 28 (“a court does not render advisory opinions”). The principle of “judicial restraint” mandates that Ohio courts should not exercise jurisdiction

over questions of law that have been rendered moot. *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21, at the syllabus (1910); *State v. Moore*, 4th Dist. Adams App. No. 13CA987, 2015-Ohio-2090, ¶ 6 (4th Dist.).

An application for reconsideration is not designed for use in instances where a party disagrees with a judgment of an appellate court or seeks advisory opinions on legal issues made moot by the decision. Instead, it is intended to provide a party with an opportunity to prevent a miscarriage of justice where an appellate court makes an obvious error or renders a decision that is unsupported by the law. As we previously indicated, we properly dismissed the Committee's mandamus petition.

This court has fully considered the issues raised by the Committee and, because it has not called to our attention an error in our judgment, we **DENY** the motion for reconsideration.

The clerk shall serve a copy of this order on all counsel of record at their last known addresses.

MOTION DENIED. IT IS SO ORDERED.

Hoover, P.J. and McFarland, A.J.: Concur.

FOR THE COURT



William H. Harsha, Judge