The Supreme Court of Ohio

CASE ANNOUNCEMENTS

July 24, 2024

[Cite as *07/24/2024 Case Announcements #2,* 2024-Ohio-2782.]

RECONSIDERATION OF PRIOR DECISIONS

2024-0373. Snyder v. Capizzi.
Hamilton App. No. C-230161, 2024-Ohio-305. Reported at 2024-Ohio-1545. On motion for reconsideration. Motion denied. Joint request for expedited review denied as moot.

Kennedy, C.J., concurs, with an opinion.
DeWine, J., concurs but would deny the joint request on the merits.
Brunner, J., concurs in part and dissents in part, with an opinion.
Deters, J., not participating.

KENNEDY, C.J., concurring.

{¶ 1} I concur in the majority's judgment denying appellant Katherine Snyder's motion to reconsider this court's dismissal of her direct appeal for want of prosecution and denying as moot the request for expedited review filed by appellees, Judge Anthony Capizzi and guardian ad litem Amanda Lawson. I write separately to respond to the assertions made in the opinion concurring in part and dissenting in part.

{¶ 2} The entire premise of that opinion is flawed. The argument presented in the opinion concurring in part and dissenting in part is that (1) this court, through its clerk, "had changed the case type" from a regular direct appeal to a direct appeal involving the termination of parental rights, (2) that "change had resulted in severely truncated filing deadlines," and (3) our failure to give Snyder notice of this change created a "'gotcha' process," "den[ying Snyder] consideration of . . . her claim [through] administrative procedures that lack fair notice" and

resulting in the dismissal of her case "based on the label the court gave her appeal." Opinion concurring in part and dissenting in part, ¶ 12. All of these assertions are wrong.

{¶ 3} The clerk of this court has no power to change the case type of a case that has been filed in this court (e.g., he may not change a regular direct appeal to one that requires expedited consideration), nor may the clerk expedite a case on his own initiative. Instead, by operation of the Supreme Court Rules of Practice, cases filed in this court that involve the termination of parental rights are *automatically* expedited. *See, e.g.*, S.Ct.Prac.R. 7.03(A)(2), 7.08(A)(1)(b), 8.02(A), 15.03(A)(2), 16.02(A)(1), and 17.04. There is an exception for original actions involving the termination of parental rights; to invoke expedited procedures in those cases, the relator must designate the case as one involving the termination of parental rights, S.Ct.Prac.R. 12.09. Importantly, though, the rules applicable to direct appeals involving the termination of parental rights that were adopted by the court do not contain that requirement, and we cannot add it by judicial fiat.

{¶ 4} The opinion concurring in part and dissenting in part also incorrectly states that it is "debatable" whether Snyder's case involved the termination of parental rights. *See* opinion concurring in part and dissenting in part at ¶ 10. The first two paragraphs of the court of appeals' opinion, which Snyder filed with her notice of appeal, state that the case involved Synder's claim that the Hamilton County Common Pleas Court lacked subject-matter jurisdiction over the motion for permanent custody that had been filed by the Hamilton County Department of Job and Family Services ("HCJFS"). 2024-Ohio-305 (1st Dist.), ¶ 1-2. Snyder's prohibition claim therefore *involved* the termination of her parental rights, because if she had succeeded on the merits of her claim, the trial court would have been prohibited from terminating her parental rights and awarding permanent custody of her children to HCJFS.

{¶ 5} It does not matter that the clerk of this court reclassified this case as one involving the termination of parental rights. Even if the clerk had not done that, Snyder's merit brief would still have been due within 20 days from the filing of the record in this court. The plain language of S.Ct.Prac.R. 16.02(A)(1) states, "In *every* appeal involving termination of parental rights or adoption of a minor child, or both, the appellant *shall* file a merit brief with the Supreme Court within twenty days from the date the Clerk of the Supreme Court files the record from the court of appeals." (Emphasis added.) As explained above, this case involved the termination of parental rights; therefore, S.Ct.Prac.R. 16.02(A)(1) made Snyder's merit brief due

within 20 days of the filing of the record, and S.Ct.Prac.R. 16.07(A) permitted this court to dismiss her appeal because she failed to meet that deadline. Tellingly, S.Ct.Prac.R. 16.02(A)(1) does not say that a case is subject to expedited briefing *only if a party or the clerk classifies the case as one involving the termination of parental rights.* Rather, S.Ct.Prac.R. 16.02(A)(1) is self-executing.

{¶ 6} Because S.Ct.Prac.R. 16.02(A)(1) plainly made Snyder's merit brief due 20 days from the filing of the record, the opinion concurring in part and dissenting in part is simply wrong when it says that Snyder had no notice of the expedited filing deadline. S.Ct.Prac.R. 16.02(A)(1) put her on notice of it. The preamble to the rules of practice warned Snyder and her attorney that "[t]o ensure compliance with the rules, the complete text of the relevant rules should also be reviewed before documents are submitted for filing." As one court of appeals put it, litigants and counsel must "abide by the relevant rules of procedure and substantive laws, regardless of their familiarity with the law." *Fontain v. H&R Cincy Properties, L.L.C.*, 2022-Ohio-1000 (12th Dist.), ¶ 26. Ignorance of the law is no excuse, yet the opinion concurring in part and dissenting in part would relieve Snyder and her attorney of the duty to read and comply with our rules of practice. And it would excuse them from knowing what their own case is about.

{¶ 7} Lastly, the reliance by the opinion concurring in part and dissenting in part on the case type selected by Snyder in our electronic-filing system is misplaced. This court is not bound by the label a party puts on his or her case upon filing. Nor does it matter that the court of appeals failed to expedite the case. The case type is determined by our application of the Supreme Court Rules of Practice, not by the parties or the lower court.

{¶ 8} For these reasons, I find the reasoning of the opinion concurring in part and dissenting in part unpersuasive, and I therefore concur in the majority's judgment.

BRUNNER, J., concurring in part and dissenting in part.

{¶ 9} I respectfully disagree with the court's decision to deny appellant Katherine Snyder's motion for reconsideration of the judgment entry dismissing her appeal, *see* 2024-Ohio-1545. Snyder instituted an appeal of right pursuant to S.Ct.Prac.R. 5.01(A)(3) and 6.01, using this court's electronic-filing system. In doing so, counsel for Snyder selected from the "case type" menu the field designating the case as a "Direct Appeal (Case Originating in Court of

Appeals)." On review by a clerk's office staff attorney and the clerk of court, the "case type" was changed to "Direct Appeal Involving Termination of Parental Rights/Adoption," resulting in the matter's being considered under expedited deadlines pursuant to S.Ct.Prac.R. 16.02(A)(1), 16.03(A)(1), 16.04(A)(1), and 18.01. No notice of this change was provided to the parties.

{¶ 10} It is debatable whether this case involves the termination of parental rights, but even if it does and the case type was properly modified, the court should not have made the change without notifying the parties, as the change affected the parties' filing deadlines. Snyder's original action filed in the First District Court of Appeals sought to prohibit further action in a juvenile-court proceeding. There was no indication in the notice of appeal or the judgment of the court of appeals that this decision involved a termination of parental rights or that the matter being appealed was heard on an accelerated schedule before it reached this court.

{¶ 11} According to the court of appeals' decision, which Snyder submitted electronically when she filed her notice of appeal, the underlying juvenile-court case involved a complex history dating back to 2016. 2024-Ohio-305, ¶ 3-4 (1st Dist.). Numerous motions for legal custody and permanent custody (which terminates parental rights, *see* R.C. 2151.011(B)(31)) had been filed and refiled and a permanent-custody determination had been reversed on appeal. *Id.* at ¶ 1, 5. When Snyder filed this writ-of-prohibition action in the First District, she was challenging the juvenile court's jurisdiction to hear a "refiled" complaint. *Id.* at ¶ 6-7. The court of appeals' decision does not describe the relief sought in that refiled complaint, and it would be difficult to determine whether the case actually involved the termination of parental rights.

{¶ 12} Snyder failed to file a merit brief before the expedited deadline, and this court dismissed the case. 2024-Ohio-1545. She now asks this court to reconsider that decision because she had no notice that the case had been placed on the expedited docket. She seeks to have this court decide the case on the merits, not on her failure to file a brief timely based on the label the court gave her appeal. No party seeking redress before this court should be denied consideration of his or her claim by administrative procedures that lack fair notice of what is needed to avail oneself of this court's review. Failing to provide notice to the parties in this case that the court had changed the case type and that the change had resulted in severely truncated filing deadlines seems more of a "gotcha" process than fair and level access to justice.

{¶ 13} We should grant reconsideration and set an expedited-briefing schedule. The court did not provide specific notice to the parties that a field in the caption of the case on the electronic docket had changed or that this change created expedited deadlines. While it is expected that counsel keep themselves apprised of entries on the court's docket that pertain to their cases, *see* Prof.Cond.R. 1.3, the change of the case type by the clerk's office in this case was not indicated as a docket entry. Rather, the change was made to part of the case information, which also includes the case number, the case caption, and the date the case was filed. It is not reasonable to expect parties to regularly check this generally static information for a change. Instead, when such a change is made, the court should indicate the change with an entry on the docket to provide notice to the parties, especially when the change results in the case's being moved to an expedited schedule.

{¶ 14} Appellees, Judge Anthony Capizzi and Guardian ad Litem Amanda Lawson, urge us to deny Snyder's motion for reconsideration, and they request that we expedite our decision on Snyder's motion. I agree with my colleagues that the request to expedite is now moot, as we have decided the motion—albeit not expeditiously. This court's failure to prioritize the motion for reconsideration by not giving it expedited consideration unfortunately compounds the lack of communication and the confusion that administrative problems of the court have already inflicted in the handling of this appeal. Holding essentially that litigants must regularly check the case-information field of the electronic docket for any administratively initiated case status change, such as from regular to expedited consideration (because specific notice to the parties of the change is not given), is odious to fair process. Moreover, the public does not serve us—we serve the public.

{¶ 15} This court's dismissal of this case for want of prosecution was unreasonable and unjust because Snyder's failure to timely file her brief was caused by the clerk's administrative change of the case type without notice to the parties. I would grant reconsideration and set an expedited briefing schedule so that this matter could be resolved on the merits as quickly as possible.