

IN THE COURT OF APPEALS OF BROWN COUNTY, OHIO

FILED

STATE OF OHIO ex rel.
DENNIS J. VARNAU,

COURT OF APPEALS

CASE NO. CA2008-09-006

DEC 9 2008

Appellant,

ENTRY DENYING APPLICATION FOR
RECONSIDERATION

vs.

TINA M. MERANDA
CROWN COUNTY CLERK OF COURTS

BROWN CTY. BD. ELECTIONS, :

Appellee.

The above cause is before the court pursuant to an application for reconsideration filed by counsel for appellant, Dennis J. Varnau, on November 6, 2008, and a memorandum in opposition filed by counsel for appellee, the Brown County Board of Elections, on November 17, 2008.

The test generally applied when deciding an application for reconsideration is whether the application calls the court's attention to an obvious error, or raises an issue which was either not considered at all or not fully considered by the court when it should have been. *Matthews v. Matthews* (1981), 5 Ohio App.3d 140.

Appellant is an independent candidate who ran for the office of Brown County Sheriff against the incumbent Brown County Sheriff Dwayne Wenninger in the November 4, 2008 general election. Prior to the election, appellant filed a petition for writ of mandamus against the Brown County Board of Elections seeking to compel the board to accept as valid the protest appellant filed against Wenninger's candidacy. The Brown County Court of Common Pleas dismissed appellant's petition for writ of mandamus on the ground that appellant had a legal remedy to challenge Wenninger's right to hold office through a quo warranto action, citing *Whitman v. Hamilton Cty. Bd. Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, and *State ex rel. Hogan v. Hunt* (1911), 84 Ohio St. 143. In his application for reconsideration, appellant asks this court to reconsider its holding on the basis of *State ex rel. Deiter*

v. *McGuire*, 119 Ohio St.3d 384, 2008-Ohio-4536.


Contrary to appellant's argument, the supreme court's holding in *Deiter* does not warrant reconsideration of this court's decision. In *Deiter*, the supreme court noted that it is well-settled that quo warranto is the exclusive remedy by which one's right to hold a public office may be litigated, and that if a relator in a quo warranto proceeding fails to establish entitlement to the office, judgment may still be rendered on the issue of whether respondent lawfully holds the disputed office. In the present case, this court observed in its judgment entry that "[s]hould Wenninger be elected and take office, appellant has other legal remedies."

Appellant's argument does not raise an obvious error by this court, or an issue for consideration that was either not considered at all or not fully considered when it should have been. The motion for reconsideration is therefore DENIED.


IT IS SO ORDERED.



H.J. Bressler, Presiding Judge



William W. Young, Judge



Stephen W. Powell, Judge