

IN THE COURT OF APPEALS OF BROWN COUNTY, OHIO
FILED
COURT OF APPEALS

STATE OF OHIO ex rel. **MAY 01 2009** : CASE NO. CA2009-02-010
DENNIS J. VARNAU,

Relator, **TINA M. MERANDA** : ENTRY CONVERTING MOTION TO
BROWN COUNTY CLERK OF COURTS : DISMISS TO MOTION FOR SUMMARY
vs. : JUDGMENT AND ALLOWING PARTIES
: TIME TO FILE ADDITIONAL EVIDENCE
DWAYNE WENNINGER, : AND ARGUMENT
Respondent. :

The above cause is before the court pursuant to a motion to dismiss and affidavit of Dwayne Wenninger filed by counsel for respondent, Dwayne Wenninger, on March 16, 2009, and a memorandum in opposition to the motion to dismiss and motion for discovery and presentation of evidence filed by counsel for relator, Dennis J. Varnau, on April 3, 2009.

The present case involves a complaint for writ of quo warranto filed as an original action in the court of appeals. Relator and respondent were both candidates for the office of Brown County Sheriff in the November, 2008 general election. The complaint contends that respondent was not lawfully entitled to hold the office of sheriff, or run for that office in the election because he lacks statutory criteria for eligibility for the office. In his motion to dismiss and attached affidavit, respondent states that he is properly qualified to hold the office of Brown County Sheriff, and has complied with all applicable election laws.

Original actions filed in the Twelfth District Court of Appeals shall proceed as any civil action under the Ohio Rules of Civil Procedure. Loc. App.R. 20(A).

A reading of respondent's motion to dismiss reveals that he is relying on statements and evidence not on the face of the pleadings to support his position that

the complaint against him should be dismissed. Respondent has in effect filed a motion for summary judgment pursuant to Civ.R. 56(C), and the court therefore hereby converts the motion to dismiss to a motion for summary judgment. The parties are hereby GRANTED forty (40) days from the date of this entry or until **May 29, 2009** to file affidavits, evidence and memoranda in support of or in opposition to the motion for summary judgment.

IT IS SO ORDERED.


Bennett A. Manning, Magistrate