

SUPREME COURT OF ARIZONA

JEANNE KENTCH; TED BOYD; ABRAHAM) Arizona Supreme Court
HAMADEH; and REPUBLICAN NATIONAL) No. CV-23-0205-SA
COMMITTEE,)
) Mohave County
Petitioners/Plaintiffs/) Superior Court
Contestants,) No. S8015CV202201468
)
v.)
)
HON. LEE F. JANTZEN, JUDGE OF) **FILED 8/23/2023**
THE SUPERIOR COURT OF THE STATE)
OF ARIZONA, in and for the)
County of Mohave,)
)
Respondent Judge,)
)
KRIS MAYES, an individual,)
)
Real Party in Interest/)
Contestee)
)
v.)
)
ADRIAN FONTES, in his official)
capacity as the Secretary of)
State, et al.,)
)
Nominal Defendants.)
)
)
_____)

O R D E R

The Court, en banc, has considered the Petitioners' *Petition for Special Action*, the court-ordered responses filed by Respondents Mayes and Fontes, the *Brief of Amici Curiae Speaker of the Arizona House of Representatives Ben Toma and President of the Arizona Senate Warren Petersen*, and Petitioners' reply.

Under Special Action Rule 3(a), the only question that may be

raised in a special action in the context of a pending proceeding is whether the respondent judge has failed to exercise discretion which he has a duty to exercise or to perform a duty required by law as to which he has no discretion. Ariz. R. P. Spec. Act. 3(a).

Petitioners' Petition advises the Court that they have diligently sought a final ruling from the trial court. ("In fact, Petitioners filed a Motion for an Order Reflecting Additional Rulings of the Court on December 28, 2022, *specifically urging the trial court to issue a final judgment.*" Petition at 13 (emphasis added); "*Despite repeated attempts,* Petitioners have been unable to move the trial court to action." Petition at 19 (emphasis added).) In their responses, Respondents point out that this assertion was false, and Petitioners now concede in their reply that they have never asked the trial court for a final judgment.

Petitioners have therefore not established that they are entitled to special action relief.

IT IS ORDERED declining jurisdiction without prejudice to seeking expedited consideration of a proper appeal in the Court of Appeals.

IT IS FURTHER ORDERED denying Petitioners' request for fees.

IT IS FURTHER ORDERED that although the record indicates that the trial court entered its order on July 17, 2023 which was within 60 days of submission of Petitioners' final pleadings, see Ariz. Const. art. 6, § 21; and Ariz. R. Sup. Ct. 91(e), at this point there is no apparent impediment to entering a final judgment, and the trial court should

enter a final appealable judgment forthwith.

Respondents Mayes and Fontes seek their reasonable attorney fees pursuant to ARCAP 25 and A.R.S. § 12-349(A)(1) and (A)(3).

The factors the Court is to consider under the statute include “[t]he extent of any effort made to determine the validity of a claim before the claim was asserted,” and “[w]hether issues of fact determinative of the validity of a party’s claim or defense were reasonably in conflict.” A.R.S. § 12-350(1) and (6).

Because Petitioners were not only aware that they needed a final judgment to seek appellate relief but also misrepresented to this Court that they had sought such relief when they had not done so, and because this representation was the underlying premise upon which this petition was brought, and because all of Petitioners’ claims for trial court error can be presented on appeal, we find that the special action unnecessarily expanded the proceeding and compelled Respondents to incur the unnecessary expense of filing their court-ordered responses. Therefore,

IT IS FURTHER ORDERED granting Respondent Mayes’ and Respondent Fontes’ request against Petitioners under A.R.S. § 12-349(A)(3) and A.R.S. § 12-350 for their reasonable attorney fees incurred to respond to the petition.

IT IS FURTHER ORDERED denying America First Legal Foundation’s Motion for Leave to File Amicus Curiae Brief as moot.

As a final matter, the Court is mindful of the difficulties

presented in this extraordinarily close election. Notwithstanding these difficulties, the Court advises both sides to focus on the important legal and factual issues presented here and refrain from disparaging their opponents. See Ariz R. Sup. Ct. 41, A Lawyer's and Legal Paraprofessional's Creed of Professionalism of the State Bar of Arizona.

B. With Respect to Opposing Parties and Their Counsel.

DATED this 23RD day of August, 2023.

/s/

ROBERT BRUTINEL
Chief Justice

TO:

Timothy A LaSota
Alexander Michael Del Rey Kolodin
Veronica Lucero
Arno Naeckel
Jennifer Wright
James C Sabalos
Sigal Chattah
Paul F Eckstein
Alexis E Danneman
Matthew R Koerner
Margo R. Casselman
Samantha Jones Burke
Craig A Morgan
Shayna Gabrielle Stuart
Jake Tyler Rapp
Emily M Craiger
Thomas P Liddy
Joseph Branco
Karen J Hartman-Tellez
Jack O'Connor
Sean M Moore
Rosa Aguilar
Joseph E La Rue
Celeste M Robertson
Joseph Young
Christine Roberts
Paul Correa
William P Ring
Jeff Dalton
Jean Anne Roof
Scott Adams
Ryan Norton Dooley
Ryan Henry Esplin
William Davis
Jason S Moore
Daniel S Jurkowitz
Ellen Ridge Brown
Javier Adalberto Gherna
Craig C Cameron
Scott Matthew Johnson
Allen Hatch Quist
Jim Mitchell
Kimberly J Hunley
Robert F. May
Thomas M Stoxen
Michael J Gordon
William J Kerekes

Hon Lee Frank Jantzen
Hon Christina Spurlock
Alberto Rodriguez