

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

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| WERNER LANGE, | : | MEMORANDUM OPINION |
| Petitioner-Appellee, | : | |
| - vs - | : | CASE NO. 2014-T-0073 |
| KATHLEEN M. KING, IN HER OFFICIAL | : | |
| CAPACITY AS CLERK OF | : | |
| NEWTON FALLS, | : | |
| Respondent-Appellant. | : | |

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2014 CV 01278.

Judgment: Appeal dismissed.

Werner Lange, pro se, 510 Superior Street, Newton Falls, OH 44444 (Petitioner-Appellee).

A. Joseph Fritz, Newton Falls Law Director, 19 North Canal Street, Newton Falls, OH 44444 (For Respondent-Appellee).

COLLEEN MARY O'TOOLE, J.

{¶1} Kathleen M. King, in her official capacity as clerk of Newton Falls, appeals from the August 1, 2014 judgment entry of the Trumbull County Court of Common Pleas, granting Werner Lange a writ of mandamus compelling her to transmit a referendum initiative and petitions to the Trumbull County Board of Elections. We dismiss the appeal sua sponte as moot.

{¶2} Prior to 2012, the Village of Newton Falls granted residents a credit for municipal income taxes paid to other communities. In 2012, the village council passed an ordinance rescinding that credit. Mr. Lange and other residents organized a committee, and circulated petitions to have the ordinance rescinding the tax credit put up for referendum in the November general election. On the advice of the village law director, Mrs. King refused to transmit the referendum petition to the board of elections. The law director opined the ordinance rescinding the tax credit was an administrative function of the village council, not subject to referendum.

{¶3} Evidently, in 2013, the village council restored the tax credit.

{¶4} June 16, 2014, the village council passed Ordinance 2014-11, again abolishing the tax credit. Mr. Lange and his committee obtained a certified copy of the ordinance from Mrs. King, and circulated petitions on a form approved by the secretary of state, garnering the requisite number of signatures to obtain a referendum in the November 2014 general election. Mr. Lange filed the petition with Mrs. King June 23, 2014. June 26, 2014, Mr. Lange filed the instant petition for a writ of mandamus with the trial court.

{¶5} July 3, 2014, Mrs. King moved to dismiss the petition. Mr. Lange moved the trial court for expedited consideration. The trial court denied the motion to dismiss July 23, 2014, and both parties submitted briefs. Hearing was held before the trial court August 1, 2014, and it filed its judgment entry granting the writ that same day.

{¶6} Mrs. King noticed this appeal August 13, 2014, assigning three errors:

{¶7} “[1.] The trial court lacked jurisdiction over a moot question.

{¶8} “[2.] The trial court improperly applied Ohio referendum petition and election

law.

{¶9} “[3.] The trial court improperly applied Ohio law regarding permissive referendums.”

{¶10} However, in the summer of 2015, Mr. Lange again circulated a referendum petition to restore the tax credit. *Lange v. King*, Slip Opinion No. 2015-Ohio-3440. Mrs. King refused to certify the proposed initiative and supporting petitions to the Trumbull County Board of Elections. *Id.* Mr. Lange petitioned the Supreme Court of Ohio to issue its writ of mandamus ordering Mrs. King to certify the initiative and petitions on August 6, 2015. On August 25, 2015, a unanimous court granted the writ.

{¶11} In *Culver v. Warren*, 84 Ohio App. 373, 393 (11th Dist.1948), this court stated:

{¶12} “‘Actions or opinions are described as “moot” when they are or have become fictitious, colorable, hypothetical, academic, or dead. The distinguishing characteristic of such issues is that they involve no actual, genuine, live controversy, the decision of which can definitely affect existing legal relations.’ Borchard, *Declaratory Judgments* (2 Ed.), 35.

{¶13} “In support of the text the author cites the following:

{¶14} “‘A moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy.’ Citing *Ex parte Steele* (D. C. Ala., 1908), 162 F., 694, 701.”

{¶15} Given the decision of the Supreme Court of Ohio, the initiative will appear on the ballot for the 2015 general election. Any decision by this court regarding the instant appeal can have no practical effect: the voters of Newton Falls shall adopt or reject the initiative.

{¶16} This appeal is dismissed, sua sponte, as moot.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.