

Court of Appeals
HAMILTON COUNTY, OHIO
FIRST APPELLATE DISTRICT

Michael Dalton : Appeal No. C-060269
Defendant - Appellant, : Case No. A 0509834
vs. :
Central Committee of :
The Hamilton County Republican Party :
Plaintiffs - Appellees. :

APPEAL FROM THE HAMILTON COUNTY COURT OF COMMON PLEAS

AMENDED BRIEF OF DEFENDANT – APPELLANT

MICHAEL DALTON

FILED
COURT OF APPEALS

OCT 16 2006

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

TABLE OF CONTENTS
AND
ASSIGNMENTS OF ERROR

	<u>PAGE</u>
I. TABLE OF CONTENTS AND ASSIGNMENTS OF ERROR	i-ii
II. STATEMENT OF THE CASE	1
III. A. Procedural Posture	1
B. Statement of Facts	1
III. ASSIGNMENTS OF ERROR AND ARGUEMENT	5
<u>FIRST ASSIGNMENT OF ERROR</u>	6

THE TRIAL COURT ERRED BY CONDUCTING AN EXPARTE CONFERENCE ON 12/07/05 WITH PLAINTIFF, BRAD GREENBERG, AND FAILING TO NOTIFY THE DEFENDANT OF THE PARTY ENDORSEMENT OF THE PRESIDING JUDGE WINKLER’S BROTHER TO THE COURT OF COMMON PLEAS PUBLISHED IN THE CINCINNATI ENQUIRER ON 02/23/06, THE MORNING OF THE HEARING OF THE MOTION WHICH IS THE SUBJECT MATTER OF THIS APPEAL, THUS, CREATING AN APPEARANCE OF IMPROPRIETY.

Issue Presented for Review and Argument 6

1. When there is a political affiliation between a plaintiff and a presiding judge, the parties have a responsibility to avoid even the appearance of impropriety to maintain integrity of the court. When a member of the Central Committee of the Hamilton County Republican Party, attorney Brad Greenberg, meets privately in chambers with the presiding judge on 12/07/05 the integrity of the court is breached. Additionally, when the Hamilton County Republican Party provides a press release which endorsed the presiding judge’s brother to a judicial appointment published on 02/23/06, the same morning of defendants motion for frivolous conduct and rule 11 sanctions hearing, the plaintiff and /or presiding judge bares the responsibility to bring those facts to the attention of the defendant/appellant. When those facts are not presented, the integrity of the court is breached and an appearance of impropriety exits and a prima face case is made to remand defendant’s frivolous conduct and rule 11 motions for rehearing coupled with an order of judicial recusal.

CJC Canon 1.
CJC Canon 2.
CJC Canon 3.
CJC Canon 4.

CPR Canon 1.
CPR Canon 8.
CPR Canon 9.

THE TRIAL COURT ERRED IN DENING DEFENDANTS / APPELLANTS MOTION FOR FRIVOLOUS CONDUCT AND RULE 11 SANCTIONS AS PLAINTIFF INTENTIONALLY MISREPRESENTED THE EXISTING OHIO LAW AND OTHER AUTHORITY AND THE COMPLIANT WAS AN ATTEMPT TO CHILL SPEECH IN VIOLATION OF THE CONSTITUTION AND IMPROPERLY USED TO PROTECT OR CONCEAL A POLITICAL PARTIES REPUTATION COVERED BY LIBEL, SLANDER AND NOT TRADEMARK MISUSAL.

Issue Presented for Review and Argument

- 2. Where a citizen exercises their constitutional right of protected political speech through copywrite work product published via. the web there exist a fair use doctrine to utilize even alleged trademarks and the concealment of material facts and authorities from the court by the plaintiff in their brief / complaint which was filed without any legal justification is an attempt to chill speech in violation of the Constitution. Trademark law and Unfair Competition is an improper purpose to attempt to protect or conceal a political parties reputation.

CJC Canon 7.

In re Judicial Campaign Complaint Against Burick (1999), 95 Ohio Misc.2d 1, 9, 705 N.E.2d 422 (Judicial Code violation for "misleading and deceiving" information about endorsements);

ORC Title XXXV

O.R.C. 2323.51

O.R.C. 1329.01

O.R.C. 1329.10

O.R.C. 329.56 (J)(1)

Family Medicine Foundation, Inc. appellee, v. Bright et. al., appellants No. 2001-1544 Supreme Court of Ohio 96 Ohio. St. 3d 183, 2002 Ohio 4034 N.E. 2d 1177; 2002 Ohio Lexis 1893

Lanham Act

Taubman v. WebFeats, 319 F.3d 770, 774 (6th Cir.2003)

Organization for a Better Austin v. Keefe, 402 U.S. 415, 418 (1971)

L..L. Bean v. Drake Publishers, 811 F.2d 26, 32-33 (1st Cir. 1987)

Cliffs Notes v. Bantam Doubleday, 886 F. 2d 490, 494 (2d Cir. 1989)

Bally Total Fitness holding Company v. Faber, 29 F. Supp. 2d 1161 (C.D. Cal 1998)

Ficker v. Tuohy, 305 F. Supp. 2d 569, 572 (D. Md 2004)

Lamparello v. Falwell 420 F. 3d 309, 315 (4th Cir. 2005)

Prestonettes v. Coty, 264 U.S. 359, 368 (1924)

CONCLUSION 13

CERTIFICATE OF SERVICE 16

