

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
WASHINGTON COUNTY

Timothy Huck, et al.,

Plaintiffs-Appellees,

No. 00 CA 41

v.

Muskingum Township,

**DECISION & JUDGMENT**  
**ENTRY**

Defendant-Appellant.

Released: 11/1/00

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COUNSEL FOR APPELLANT: Alfred E. Schrader, 441 Wolf Ledges  
Parkway, Suite 400, P.O. Box 0079,  
Akron, Ohio 44309-0079

COUNSEL FOR APPELLEE: Willard E. Bartel, MILLER, STILLMAN &  
BARTEL, 2000 East Ninth Street, Suite  
1100, Cleveland, Ohio 44115

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**PER CURIAM:**

Appellee, Timothy Huck, filed a motion to dismiss pursuant to CIV.R. 12(H)(3) asserting that this court lacks jurisdiction to consider this appeal because the order from which this appeal is taken denied appellant's Motion for Summary Judgment. Appellant, Muskingum Township filed a Response stating that the appeal was taken pursuant to R.C. 2744.02(C).

Appellee contends that since Am.Sub.H.B. 350, including R.C. 2744.02, was declared unconstitutional by the Ohio Supreme Court in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451 any appeal taken pursuant to R.C. 2744.02(C) must be dismissed for lack of jurisdiction. The *Sheward* decision found that Am.Sub.H.B. No. 350, which enacted, R.C. 2744.02(C), was unconstitutional *in toto*. This finding of

unconstitutionality effectively deprives this Court of its jurisdictional basis for reviewing an appeal based on R.C. 2744.02(C). See, *Huck v. Muskingum Township* (Dec. 22, 1999), Washington App. No. 99CA13, unreported. See, also, *Fannin v. City of Portsmouth* (Feb. 15, 2000), Scioto App. No. 99CA2661, unreported.

Appellant asserts that there are several cases presently before the Ohio Supreme Court raising this precise issue and urges this court to hold a decision in abeyance until the issue is resolved by that Court. We decline to do so.

Upon consideration, and pursuant to this court's previous decision in *Huck* as well as our decision in *Fannin, supra*, this appeal is **DISMISSED**.

Appellee has also requested that this court find this appeal to be frivolous pursuant to App.R. 23. We decline to do so.

**APPEAL DISMISSED.**

No. 00CA41, Washington County

**JUDGMENT ENTRY**

It is ordered that the **APPEAL BE DISMISSED** and that appellee recover of appellant costs herein taxed.

The Court finds that there were reasonable grounds for this appeal.

It is further ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Harsha, J. and Evans, J. Concur

**FOR THE COURT**

By: \_\_\_\_\_  
Peter B. Abele, Administrative Judge

**NOTICE TO COUNSEL**

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.