

SUPREME COURT OF ARIZONA

KARI LAKE,) Arizona Supreme Court
) No. CV-23-0046-PR
Plaintiff/Appellant,)
) Court of Appeals
v.) Division One
) No. 1 CA-CV 22-0779
KATIE HOBBS, et al.,) 1 CA-SA 22-0237
) (Consolidated)
Defendants/Appellees.)
) Maricopa County
KARI LAKE,) Superior Court
) No. CV2022-095403
Petitioner,)
) **FILED 05/04/2023**
v.)
)
THE HONORABLE PETER THOMPSON,)
JUDGE OF THE SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for)
the County of Maricopa,)
)
Respondent Judge,)
)
KATIE HOBBS, personally as)
Contestee; ADRIAN FONTES, in his)
official capacity as Secretary)
of State; STEPHEN RICHER, in his)
official capacity as Maricopa)
County Recorder, et al.,)
)
Real Parties in Interest.)
)

ORDER

In their responses to Petitioner Lake's Petition for Review, Respondents Secretary of State Fontes and Governor Hobbs moved for sanctions against Lake and her attorneys pursuant to Ariz. R. Civ. App. P. (ARCAP) 25 and A.R.S. § 12-349 (collectively, "Motions for Sanctions"). This Court entered its Order affirming the trial court

and Court of Appeals on most issues, but reversing those courts on their dismissal of the signature verification claim on the basis of laches and remanding that issue to the trial court.

On the issue of whether votes were improperly added by a third-party vendor, we stated that “[t]he record does not reflect that 35,563 unaccounted ballots were added to the total count.” We instructed the parties to “address as a basis for sanctions only Petitioner’s factual claims in her Petition for Review (i.e., that the Court of Appeals should have considered ‘the undisputed fact that 35,563 unaccounted for ballots were added to the total [number] of ballots at a third party processing facility’).” The parties filed briefs on this issue, and Lake filed a Motion for Leave to file a motion for reconsideration of the Court’s denial of review on the chain-of-custody issue.

Candidates are free to timely challenge election procedures and results, and the public has a strong interest in ensuring the integrity of elections. Sometimes campaigns and their attendant hyperbole spill over into legal challenges. But once a contest enters the judicial arena, rules of attorney ethics apply. Although we must ensure that legal sanctions are never wielded against candidates or their attorneys for asserting their legal rights in good faith, we also must diligently enforce the rules of ethics on which public confidence in our judicial system depends and where the truth-seeking function of our adjudicative process is unjustifiably

hindered.

ARCAP 25 authorizes an appellate court to impose sanctions on an attorney if the court determines that an appeal or a motion is frivolous, and provides that “[a]n appellate court may impose sanctions that are appropriate in the circumstances of the case, and to discourage similar conduct in the future.” Other rules similarly require candor in court proceedings. See, e.g., Ariz. R. Civ. P. 11(b) (providing that “[b]y signing a pleading, motion, or other document,” an attorney “certifies that to the best of the person’s knowledge, information, and belief” that “the factual contentions have evidentiary support”); see also Ariz. R. Sup. Ct. 42, Ethical Rule (“ER”) 3.3 (“A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”).

Under A.R.S. § 12-349(A), claims are sanctionable if they are brought “without substantial justification.” Further, “without substantial justification” means that the “claim or defense is groundless and is not made in good faith.” § 12-349(F). Groundlessness is “determined objectively,” and a claim is groundless “if the proponent can present no rational argument based upon the evidence or law in support of that claim.” *Takieh v. O’Meara*, 252 Ariz. 51, 61 ¶ 37 (App. 2021), review denied (Apr. 7, 2022) (quoting *Rogone v. Correia*, 236 Ariz. 43, 50 ¶ 22 (App. 2014)).

ARCAP 25 gives an appellate court broad authority to impose sanctions "that are appropriate in the circumstances of the case" on an attorney or a party if it determines that an appeal or motion is frivolous. This includes "contempt, dismissal, or withholding or imposing costs." ARCAP 25.

In her Complaint, Lake set forth colorable claims, including ballot chain-of-custody claims, that were rejected following an evidentiary hearing in the trial court, and she duly but unsuccessfully (except for the laches issue) challenged those rulings on appeal. However, she has repeatedly asserted that it is an "undisputed" fact that 35,563 ballots were added or "injected" at Runbeck, the third-party vendor. Not only is that allegation strongly disputed by the other parties, this Court concluded and expressly stated that the assertion was unsupported by the record, and nothing in Lake's Motion for Leave to file a motion for reconsideration provides reason to revisit that issue. Thus, asserting that the alleged fact is "undisputed" is false; yet Lake continues to make that assertion in her Motion for Leave.

Lake's Petition for Review stated that it was an "undisputed fact that 35,563 unaccounted for ballots were added to the total number of ballots at a third party processing facility." In her Opposition to Motion for Sanctions and Motion for Leave, she repeats this contention, stating that "[t]he record indisputably reflects at least 35,563 Election Day early ballots, for which there is no record

of delivery to Runbeck, were added at Runbeck,” As the Court of Appeals observed, Lake’s argument was focused on one exhibit that included an estimate of the number of early ballot packets based on the number of trays and a different exhibit showing a precise count. Although Lake may have permissibly argued that an inference could be made that some ballots were added, there is no evidence that 35,563 ballots were and, more to the point here, this was certainly disputed by the Respondents. The representation that this was an “undisputed fact” is therefore unequivocally false.¹

Because Lake’s attorney has made false factual statements to the Court, we conclude that the extraordinary remedy of a sanction under ARCAP 25 is appropriate.

The Governor and Secretary seek sanctions for attorney fees and in the Secretary’s reply he seeks additional sanctions. Because Lake prevailed in her argument that the trial court improperly found her signature verification argument barred by laches, an additional sanction is not warranted. Therefore,

IT IS ORDERED denying the Motion for Leave.

¹ See ER 3.3 Comment 2: “This rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate’s duty of candor to the tribunal. Consequently, . . . the lawyer must not mislead the tribunal by false statements of law or fact or evidence that the lawyer knows to be false.”

TO:

Bryan James Blehm
Kurt Olsen
Alexis E Danneman
Abha Khanna
Lalitha D Madduri
Christina Ford
Elena Rodriguez Armenta
Shayna Gabrielle Stuart
Jake Tyler Rapp
Craig A Morgan
Thomas P Liddy
Joseph Eugene La Rue
Joseph Branco
Karen J Hartman-Tellez
Jack O'Connor
Sean M Moore
Rosa Aguilar
Emily M Craiger
Hon Peter A Thompson
Amy M Wood
David T Hardy
Ryan L Heath
Alexander Haberbush
Raymond L Billotte
Hon Joseph C Welty
Hon Jeff Fine,
Hon Danielle J Viola