Arizona Supreme Court

Civil Special Action

CV-23-0002-SA **RYAN L. HEATH v HON. THOMPSON/LAKE et al**

Appellate Case Information

Case Filed: 9-Jan-2023 Archive on: 27-Jan-2033 (planned)

Case Closed: 27-Jan-2023

Dept/Composition

Side 1. RYAN L. HEATH, Petitioner

(Litigant Group) RYAN L. HEATH

- **Ryan L Heath**

Side 2. HON. PETER A THOMPSON, Respondent Judge

(Litigant Group) HON. PETER A THOMPSON

- **Hon. Peter A Thompson**

Side 3. KARI LAKE, personally as Contestant/Plaintiff; KATIE HOBBS, Contestee/Defendant personally; ADRIAN FONTES, in his official capacity as Secretary of State; STEPHEN RICHER, Defendant in his official capacity as Maricopa County Recorder; BILL GATES, CLINT H, Real Party in Interest

(Litigant Group) KARI LAKE, et al

- **Kari Lake**
- **Katie Hobbs**

CASE STATUS

Jan 27, 2023....Case Closed **Jan 27, 2023....Decision Rendered**

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2022-095403					

CASE DECISION

27-Jan-2023 **ORDER**

* Petitioner Heath, pro se, filed his January 12, 2023 "Amended Verified Special Action petition for Writ of Mandamus Arizona Constitution; Articles II, §§ 13, 21 & Article VII §§ 1 & 12, United States Constitution Fourteenth Amendment; Equal Protection &

Filed: **27-Jan-2023** Mandate:

Decision Disposition
Declined

John Lopez

5 PROCEEDING ENTRIES

1.	9-Jan-2023	RECEIPT No.: 2023-00014 ; $280.00, Check Number: 112, Applied to: RYAN L. HEATH - Class A Filing Fee ($280.00) Paid for: RYAN L. HEATH - By RYAN L. HEATH
2.	9-Jan-2023	FILED: Verified Special Action Petition for Writ of Mandamus: Arizona Constitution: Articles II §§13, 21 & Article VII §§ 1 & 12, United States Constitution Fourteenth Amendment: Equal Protection & Fundamental Right to Vote, & 42 U.S.C. §1983 (Petitioner Heath, Pro Se)
3.	12-Jan-2023	FILED: Amended Writ of Mandate; Certificate of Service; Verification; Exhibit 8 (Petitioner Heath, Pro Se)
4.	23-Jan-2023	FILED: Motion for Expedited Hearing; Certificate_of_Service_MTE (Petitioner)

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5 PROCEEDING ENTRIES

5. 27-Jan-2023 Petitioner Heath, pro se, filed his January 12, 2023 "Amended Verified Special Action petition for Writ of Mandamus Arizona Constitution; Articles II, §§ 13, 21 & Article VII §§ 1 & 12, United States Constitution Fourteenth Amendment; Equal Protection & Fundamental Right to Vote, & 42 U.S.C. § 1983." In his amended petition, "Petitioner seeks a Writ of Mandamus Ordering the Honorable Peter A. Thompson of the Maricopa County Superior Court to vacate his Under Advisement Ruling, issued December 24, 2022, 'confirming the election of Katie Hobbs as Arizona Governor-Elect Pursuant to A.R.S. § 16-676(B)[,]' and to enter judgment for Real Party in Interest, Kari Lake—setting aside all votes cast in Maricopa County's November 8, 2022, gubernatorial election. Lake v. Hobbs, et al., CV 2022-095403 (Ariz. filed Dec. 9, 2022)." (Pet. at 5) On January 23, 2023, Petitioner filed a "Motion for Expedited Hearing."

Petitioner brings his petition as "an Attorney licensed in the State of Arizona and a resident of Maricopa County, Arizona" and "an elector in Maricopa County, who cast a vote, by mail for Kari Lake during the November 8, 2022 ... general election for Arizona Governor." (Id.)

Petitioner further alleges he "has exhausted all possible avenues at the lower Court level. See Complaint & Notice of Nonsuit, Borrelli v. Hobbs, et al, CV 2022-01480 (Ariz. filed Dec. 12, 2022)" and contends he is "apparently the only Attorney challenging the 2022 Arizona gubernatorial election that cited Reyes v. Cuming, 952 P.2d 329 (Ariz. Ct. App. 1997) in his Complaint. Despite having ample grounds to show good cause for appealing the partial dismissal of the election challenge, the undersigned chose not to appeal that decision because he wrongly assumed that one of the numerous attorneys in Ms. Lake's case would live up to the ethical duties of care to research the law and disclose to the tribunal controlling authority." (Pet. at 21) And, he advises, "By the time of Judge Thompson's Ruling Under Advisement ... it was too late to file an appeal pursuant to A.R.S. § 16-672 et seq." (Id.) Petitioner therefore concedes there was no timely appeal of his statutory election challenge and that he was not a party to the superior court case that resulted in the decision he seeks to set aside.

On January 4, 2023, this Court entered an order denying Petitioner Lake's Petition to Transfer her appeal and special action from the Court of Appeals to this Court. Lake v. Hobbs, et al., T-22-0010-CV. On January 9, 2023, the Court of Appeals entered its "Order Accepting Jurisdiction, Consolidating Cases, Setting Expedited Briefing Schedule, and Resetting Conference" and setting a deadline for requests for leave to file as amicus curiae. See Lake v. Hobbs, et al., 1 CA-CV 22-0779. That proceeding is pending.

A request for mandamus relief is brought under the Arizona Rules of Procedure for Special Actions. See Ariz. P.R. Spec. Act. 1(b). The Rules of Procedure for Special Actions further provide, "Except as authorized by statute, the special action shall not be available where there is an equally plain, speedy and adequate remedy by appeal." "Special actions may not be used as a substitute for an appeal." Jordan v. Rea, 221 Ariz. 581, 586 ¶ 8 (App. 2009)(internal citation omitted). "A special action requests extraordinary relief which is usually granted only where justice cannot be satisfactorily obtained by other means. It is within the sound discretion of this court to accept jurisdiction." Nataros v. Superior Court of Maricopa Cnty., 113 Ariz. 498, 499 (1976) (internal citations omitted).

Furthermore, Arizona Special Actions Rule 7(b) requires a petitioner to explain why the petition should be brought in this Court rather than in a lower court in the first instance. "If the appellate court finds such circumstances insufficient, the court will on that ground dismiss the petition." Petitioner did not provide a statement under Rule 7(b) explaining why the action is presented in this Court.

A panel consisting of Vice Chief Justice Timmer and Justices Bolick, Lopez and Beene having considered this matter,

IT IS ORDERED declining special action jurisdiction without prejudice to seek leave to participate as amicus in the court of appeals per the schedule set by that court.

IT IS FURTHER ORDERED denying the Motion for Expedited Hearing as moot. (Hon. John R. Lopez IV)

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