

No. 20 - _____

In the

SUPREME COURT OF THE UNITED STATES

GEOFFREY M. YOUNG, *pro se, Petitioner*

vs.

AMY McGRATH and ANDY BESHEAR,
Respondents. Patrick Hughes, Counsel for Amy
McGrath. Christie Moore, Bailey Roese and
Gina Young, Counsel for Andy Beshear

On Petition for Writ of Certiorari to the
Kentucky Court of Appeals

APPENDIX

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Appendix A

COMMONWEALTH OF KENTUCKY APR 23 2019
SCOTT CIRCUIT COURT
DIVISION I
CASE NO. 18-CI-00541

GEOFFERY (sic) YOUNG PLAINTIFF (sic)

v.

AMY McGRATH DEFENDANT (sic)

ORDER DISMISSING CASE

Plaintiff, Geoffrey Young, has filed a motion with this court challenging the ballot status of Defendant, Amy McGrath, concerning her bid for office as Democratic nominee for Kentucky's Sixth Congressional District. Having reviewed pleadings and memorandum of the parties and being aware of the time cycle of the now-completed election, this Court finds the action moot and Defendant entitled to a judgement as a matter of law.

FINDINGS OF FACT

Subsequent to the May, 22, 2018 Primary Election, Plaintiff filed a Motion Challenging the Ballot Status of Amy McGrath, Democrat, in which he alleged the Kentucky Democratic Party engaged in conduct that illegally controlled the outcome of the May, 2018, Democratic primary election. Upon filing the motion, Plaintiff did not request from the clerk a summons for service, insisting that he personally mailed a copy to Defendant. The action, therefore, was not properly commenced. Notwithstanding, the Plaintiff moved for default judgment after no response from the Plaintiff.

On November 1, 2018, the court held a hearing on the Motion for Default Judgement and denied the motion for lack of service upon Defendant. On November 5, 2018, the Plaintiff effected proper

service of his motion on Defendant. On November 6, 2018, Defendant lost her bid to represent the Sixth Congressional District of Kentucky. Plaintiff persists in bringing his motion.

CONCLUSIONS OF LAW

Defendant lost her bid to represent the Sixth Congressional District of Kentucky making all allegations of Plaintiff moot. In a recent opinion, the Kentucky Supreme Court has ruled that a moot case is one that seeks judgement upon some matter which, when rendered for any reason, cannot have any practical effect upon a then existing controversy.

Footnote 1: *Morgan v. Getter*, 441 S.W.3d 94, 98-100 (Ky 2014).

Several exceptions to this rule were recognized by the Kentucky Supreme Court, the first of which being the collateral consequences exception. This

exception applies when sufficient consequences remain in controversy beyond termination of original controversy for a court to hear the case. Footnote 2: *Id.* at 98-99. Next, the court recognizes the voluntary cessation exception. Here, a defendant voluntarily ceases an action in a way that is likely using mootness as a manipulative tool for his or her own benefit. Footnote 3: *Id.* Finally, the court recognized issues capable of repetition, yet evading review as an exception to mootness in situations where the issue is too brief in nature to remain a live controversy long enough for a court to issue a ruling. Footnote 4: *Id.* at 100. As a catch-all provision, the court also notes that an exception exists for otherwise moot cases when a question presented is of a public concern, there is a need for an authoritative determination for the future guidance of public

officers, and there is no likelihood of reoccurrence of the question. Footnote 5: *Id.* At 102.

In the case at hand, Plaintiff's challenge of Defendant's bona fides became moot upon her loss of the election and subsequent judicial review would have no practical legal effect. The facts do not present circumstances falling within the scope of any of the aforementioned exceptions to the rule prescribing mootness. Even if Defendant did not have the requisite bona fides, no consequences persist to keep Plaintiff's challenge alive. Defendant's loss was involuntary and, therefore, not manipulative. The bona fides of Defendant do not open themselves to repeat challenge by the Plaintiff, as there is no guarantee she will run for office again. Finally, there is no substantial public interest in continuing the challenge of Defendant's bona fides

after she has lost the election.

There is no legal remedy available to the Plaintiff. This court would not be able to remove the Defendant's name from the ballot or void her election if she was found to lack the requisite bona fides because the election is over, and she has lost. Because there is no legal remedy available to Plaintiff and the action does not qualify as an exception to the rule of mootness, this court dismisses this case as moot.

ORDER AND JUDGMENT

For the reasons set forth herein, no legal remedy exists for Plaintiff and no exception to mootness saves his motion. Defendant is entitled to dismissal as a matter of law.

WHEREFORE, this court DISMISSES this action as MOOT. This dismissal is a final order by the court

a8

and Plaintiff is entitled to appeal.

Entered this 23rd day of April 2019.

(signature)
JEREMY MATTOX, JUDGE
SCOTT COUNTY
DIVISION 1

COPIES TO: Attorneys of Record

* * * * *

Appendix B

Commonwealth of Kentucky

Court of Appeals

No. 2019-CA-000590-MR

GEOFFREY M. YOUNG

APPELLANT

APPEAL FROM SCOTT CIRCUIT COURT
v. HONORABLE JEREMY MATTOX, JUDGE
ACTION NO. 18-CI-00541

AMY McGRATH

APPELLEE

ORDER DISMISSING APPEAL

*** * * * *

BEFORE: LAMBERT, MAZE, AND L. THOMPSON,
JUDGES.

This cause comes before the Court on
Appellee's motion to dismiss the appeal. Appellee
also moves for sanctions against Appellant.

Pursuant to CR (footnote 1: Kentucky Rules of Civil
Procedure) 74.02(5), Appellant has moved to transfer
this case to the Kentucky Supreme Court. Footnote
2: We may only recommend a case for transfer to the
Kentucky Supreme Court under CR 74.02(5). He also
moved for impositions of sanctions against McGrath
and her lawyer. Having reviewed the record, and
being otherwise sufficiently advised, IT IS HEREBY
ORDERED as follows: 1) Appellant's motion to
transfer this case to the Kentucky Supreme Court
shall be, and hereby is, DENIED; 2) Appellant's

motion for sanctions against McGrath and her lawyer is DENIED; 3) Appellee's motion to dismiss the appeal shall be, and hereby is, GRANTED. This appeal is DISMISSED; and 4) Appellee's motion for sanctions shall be, and hereby is, DENIED.

I. BACKGROUND

Subsequent to the May 22, 2018 primary election, on September 27, 2018, Appellant Geoffrey M. Young filed a civil action in the Scott Circuit Court challenging the ballot status, *i.e.*, *bona fides*, of Appellee Amy McGrath. Young and McGrath were candidates for the Democratic nomination to the United States House of Representatives for Kentucky's Sixth Congressional District. McGrath won the primary election.

Young attempted to serve McGrath via certified mail on October 3, 2018. The certified mail

was returned as undeliverable on October 22, 2018.

Young filed a motion for default judgment on October 31, 2018. The circuit court denied the motion for a default judgment, finding that McGrath had not been served. On November 5, 2018, Young caused McGrath to be served via Constable. McGrath lost the general election on November 6, 2018.

The circuit court dismissed the action as moot on April 23, 2019. Young filed a notice of appeal on April 26, 2019. On May 15, 2019, this Court issued an order directing Young to show cause why this appeal should not be dismissed as moot. Young filed a response to the show cause order and a motion to transfer the case to the Kentucky Supreme Court. McGrath moved to dismiss the appeal as moot.

II. ANALYSIS

The circuit court dismissed the action as moot

on April 23, 2019, finding:

There is no legal remedy available to the Plaintiff. This court would not be able to remove the Defendant's name from the ballot or void her election if she was found to lack the requisite bona fides because the election is over, and she has lost. Because there is no legal remedy available to Plaintiff and the action does not qualify as an exception to the rule of mootness, this court dismisses this case as moot.

We agree this case is moot due to McGrath's having lost the general election. The Kentucky Supreme Court has explained:

[a] 'moot case' is one which seeks to get a judgment... upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a *then* existing controversy... [t]he general rule is, and has long been, that where, pending an appeal, an event occurs which makes a determination of the question unnecessary or which would render the judgment that might be pronounced ineffectual, the appeal should be dismissed. The concern underlying this rule as to mootness is

ultimately the role of the courts within our system of separated powers, a role that does not extend to the issuance of merely advisory opinions.

Morgan v. Getter, 441 S.W.3d 94, 98-99 (Ky. 2014)

(citation omitted) (emphasis original). See also

Louisville Transit Co. v. Dept. of Motor Transp., 286 S.W.2d 536, 538 (Ky. 1956) (It is the universal rule that courts will not consume their time in deciding moot cases, and have no jurisdiction to do so.”).

Stephenson v. Woodward, 182 S.W.3d 162 (Ky. 2006), relied upon by Young, is distinguishable.

Stephenson involved a dispute concerning the qualifications for a seat in the Kentucky State Senate. The day before the general election, the opposing candidate filed a motion in the Jefferson Circuit Court to disqualify Stephenson under KRS 118.176, alleging Stephenson “failed to meet the

residency requirement set forth in Section 32 of the Kentucky Constitution." *Id.* at 164. The general election was held the next day, and the names of both candidates appeared on the ballot, with Stephenson receiving more votes. *Id.* at 165.

Stephenson argued the circuit court lacked jurisdiction to enter an order disqualifying her on November 22, 2004 as "the polls had closed and all votes had been cast prior to the time of the Jefferson Circuit Court order." *Id.* The Kentucky Supreme Court rejected Stephenson's argument because KRS 118.178 (sic) unambiguously provides that an action challenging the *bona fides* of a candidate "may be commenced at any time prior to the election."

The *Stephenson* case was not moot because Stephenson *won* the election. Therefore, the Jefferson Circuit Court was able to fashion relief,

such as issuing an injunction prohibiting the County Board of Elections from certifying the election results. It further entered its November 22, 2004 order finding that Stephenson “was not a bona fide candidate and therefore ineligible to appear on the ballot,” and therefore “lost all rights to that office,” before Stephenson “had taken the oath of office, before she had been sworn in as a State Senator, and before the term of office which she sought commenced on January 1, 2005.” *Id.* at 168.

In the case *sub judice*, because McGrath lost the general election, the circuit court could not take any action which would have had “any practical legal effect upon a *then* existing controversy. Morgan, 441 S.W.3d at 99 (emphasis in original). See also *Lehman v. Gibson*, 482 S.W.3d 375, 381 (Ky. 2016) (“A court must, of course, dismiss an appeal when a

change in circumstance renders that court unable to grant meaningful relief to either party") (citation omitted).

Our jurisprudence recognizes certain exceptions to the mootness doctrine. Having determined the case is moot, we must consider whether an exception to the mootness doctrine applies. Appellant argues the public interest exception applies, and further contends this matter is capable of repetition, yet evading review. We disagree.

The public interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question.

Morgan, 441 S.W.3d at 102. All three elements of

the public interest exception must be clearly shown.

Id.

Young argues he and McGrath “might both be opponents in 2020 for the nomination to the same office.” However, Young has not shown there is a need for authoritative determination for the future guidance of public officers on this issue. “As the Supreme Court of Illinois noted, if all that was required under this exception was that the opinion could be of value to future litigants, the exception would be so broad as to virtually eliminate the notion of mootness.” *Morgan*, 441 S.W.3d at 102 (internal quotation omitted).

In the instant case, the circuit court did not reach the merits of the challenge to McGrath's candidacy. “A 'bona fide' candidate means one who is seeking nomination in a primary or election in a

special or regular election according to law.” KRS 118.176. “As used in KRS 118.176, *bona fides* refers to the good faith, genuineness, and qualifications of a candidate to hold the office to which election is sought.” *Kentucky State Bd. of Elections v. Faulkner*, ____ S.W.3d ____, 2019 WL 1177452, at *4 (Ky. 2019) (to be published). [Alternate cite: *Ky. State Bd. of Elections v. Faulkner*, 2018-SC-000351-TG, at *9 (Ky., Dec. 13, 2018)] We cannot conclude there is a need for future guidance of public officers in this area as it pertains to McGrath or others. *Cf. Lehmann v. Gibson*, 482 S.W.3d 375, 382 (Ky. 2016) (public interest exception to the mootness doctrine applied where the case presented an issue of first impression in the Kentucky courts – whether “civil discovery should be stayed pending the conclusion of a related criminal prosecution so guidance for future

cases [was] warranted.") *Id.*

We further hold this case is not one that is capable of repetition, yet evading review.

The exception for cases "capable of repetition, yet evading review," has two elements: (1) the challenged action must be too short in duration to be fully litigated prior to its cessation or expiration, and (2) there must be a reasonable expectation that the same complaining party will be subject to the same action again.

Id. at 100. *See also Commonwealth v. Hughes*, 873 S.W.2d 828, 831 (Ky. 1994) (emphasis added) ("[W]e find that the events which gave rise to the matter presently before the Court cannot be said to be *inherently* evasive of review.").

This challenged action is not inherently too short in duration to be fully litigated prior to its cessation or expiration because, as shown by *Stephens* (sic), the circuit courts may rule on a

challenge to the bona fides of a candidate which is filed before the election even after the election is held under certain circumstances, such as where the challenged candidate wins.

Moreover, although Young insists he served McGrath properly by certified mail on October 3, 2018, he does not dispute that the mail was returned as undeliverable. Under CR 4.01(1)(a), with respect to a resident of Kentucky, “[s]ervice by registered mail or certified mail is complete *only upon delivery* of the envelope (emphasis added). Young argues McGrath “did everything she could to ensure that the Court would not decide the case on its merits before the general election” by “intentionally refusing to pick up the challenge [summons and complaint] at the Georgetown Post Office,” but Young ignores that he could have had McGrath served through the

Constable at any time before November 5, 2018.

Footnote 3: Young asserts the circuit court “would have had the authority to order an officer of the Court to contact Ms. McGrath on September 27 or 28, inform her that a single hearing would be held on October 11, inform her that her presence would be required at that time to testify... and inform her that the court would enter a final and appealable decision on the merits of the Movant's challenge on the day of the evidentiary hearing or on the next day.” Young's suggestion clearly would not comport with the requirements of CR 4 or due process of law. *See, e.g., Ely v. U.S. Coal & Coke Co.*, 49 S.W.2d 1021, 1025 (Ky. 1932) (“A judgment entered without service upon defendants in some method required by law is void.”).

Finally, we deny Young's motion to transfer

this case to the Kentucky Supreme Court. CR 74.02 (5) provides this Court may recommend a case for transfer to the Kentucky Supreme Court “at any time” if the case “falls within the criteria set forth in paragraph (2) of CR 74.02.” CR 74.02(2), in turn, provides:

Such transfer is within the discretion of the Supreme Court and will be granted only upon a showing that the case is of great and immediate public importance, except that if separate appeals in a criminal case to the Supreme Court and to the Court of Appeals arise from the same trial, the Supreme Court in its discretion, on motion of the appellant whose appeal lies to the Court of Appeals, may transfer the latter appeal to the Supreme Court. The filing of a notice of appeal in a case in which a death penalty has been imposed will automatically serve to transfer the appeal to the Supreme Court.

We conclude this case is not “of great and immediate public importance” because the circuit court properly

applied the mootness doctrine.

III. CONCLUSION

WHEREFORE, Appellant's motion to transfer this case to the Kentucky Supreme Court is DENIED. This appeal is DISMISSED AS MOOT. All motions for sanctions are DENIED.

ENTERED: JUL 11 2019

(signature of James H. Lambert)

JUDGE, COURT OF APPEALS

Appendix C

Commonwealth of Kentucky

Court of Appeals

No. 2019-CA-000664-I

GEOFFREY M. YOUNG **MOVANT**

ON MOTION FOR INTERLOCUTORY RELIEF (sic)
FROM SCOTT CIRCUIT COURT
v. HONORABLE JEREMY MATTOX, JUDGE
ACTION NO. 18-CI-00541

AMY McGRATH

RESPONDENT

ORDER

*** * * * *

BEFORE: LAMBERT, MAZE, AND L. THOMPSON,
JUDGES.

This cause comes before the Court on Movant Geoffrey M. Young's motion to set aside the circuit court's order denying him relief pursuant to KRS (footnote 1: Kentucky Revised Statutes.) 118.176(4).
Movant also filed a motion to transfer this case [footnote 2: We may only *recommend* a case for transfer to the Kentucky Supreme Court under CR 74.02(5).] pursuant to CR (footnote 3: Kentucky Rules of Civil Procedure.) 74.02(5). Having reviewed the record, and being otherwise sufficiently

advised, IT IS HEREBY ORDERED as follows: 1) Movant's motion to set aside shall be, and hereby is, DENIED; and 2) Movant's motion to transfer to the Kentucky Supreme Court shall be, and hereby is, DENIED.

I. BACKGROUND

Subsequent to the May 22, 2018 primary election, Movant Geoffrey M. Young filed a civil action in the Scott Circuit Court challenging the ballot status, *i.e.*, *bona fides*, of Respondent Amy McGrath. Young and McGrath were candidates for the Democratic nomination to the United States House of Representatives for Kentucky's Sixth Congressional District. McGrath won the primary election, but she lost in the general election on November 6, 2019. The circuit court dismissed the

action as moot on April 23, 2019. Young filed his motion to set aside on May 9, 2019 [sic: the motion was received and date-stamped by the Court on April 29, 2019.] On May 15, 2019, this Court issued an order directing Young to show cause why this case should not be dismissed as moot because the circuit court did not strike McGrath from the ballot.

I. ***ANALYSIS***

KRS 118.176 provides, in pertinent part:

(2) The bona fides of any candidate seeking nomination or election in a primary or in a special or regular election may be questioned by any qualified voter entitled to vote for the candidate or by an opposing candidate by summary proceedings consisting of a motion before the Circuit Court of the judicial circuit in which the candidate whose bona fides is questioned resides. An action regarding the bona fides of any candidate seeking nomination or election in a primary or in a special or regular election may be commenced at

any time prior to the regular election. The motion shall be tried summarily and without delay. Proof may be heard orally, and upon motion of either party shall be officially reported. If the Circuit Judge of the circuit in which the proceeding is filed is disqualified or absent from the county or is herself or himself a candidate, the proceeding may be presented to, heard and determined by the Circuit Judge of any adjoining judicial circuit.

(4) If the court finds the candidate is not a bona fide candidate it shall so order, and certify the fact to the board of elections, and the candidate's name shall be stricken from the written designation of election officers filed with the board of elections or the court may refuse recognition or relief in a mandatory or injunctive way. The order of the Circuit Court shall be entered on the order book of the court and shall be subject to a motion to set aside in the Court of Appeals. The motion shall be heard by the Court of Appeals or a judge thereof in the manner provided for dissolving or granting injunctions, except that the motion shall be made before the court or judge within five (5)

days after the entry of the order in the Circuit Court, and may be heard and tried upon the original papers, and the order of the Court of Appeals or judge thereof shall be final.

In *Gibson v. Thompson*, 336 S.W.3d 81, 83 (Ky. 2011), three registered Democrats moved for relief under CR 65.09 from an order of this Court refusing to invalidate the candidacy of Thompson, a Republican candidate for Knott County Judge-Executive. The Movants argued Thompson was not qualified as a candidate due to certain federal criminal convictions. *Id.* at 81. The circuit court did not reach movants' arguments, but dismissed the action without prejudice, "concluding that the Movants, all registered Democrats, lacked standing to challenge Thompson's qualifications in the primary election." *Id.*

The Movants moved to set aside the trial

court's order pursuant to KRS 118.176(4). This Court denied the motion to set aside, and the Kentucky Supreme Court denied the movants' CR 65.09 motion, holding:

Here, the trial court made no finding that Thompson was not a *bona fide* candidate. Its order dismissing is based solely on the Movants' lack of standing. Furthermore, the order dismissing is a final and appealable order. Because the expedited appeal procedure set forth in KRS 118.176(4) applies only to orders disqualifying a candidate, the Movants were not entitled to move the Court of Appeals to set aside the order. For this reason, the Movants' motion for interlocutory relief pursuant to CR 65.09 must be denied.

Id. at 82.

In the case *sub judice*, the circuit court did not find McGrath was "not a bona fide candidate." Young therefore may not invoke this Court's jurisdiction through the expedited appeal procedure

set forth in KRS 118.176(4).

Finally, we deny Young's motion to transfer this case to the Kentucky Supreme Court. CR 74.02 (5) provides this Court may recommend a case for transfer to the Kentucky Supreme Court "at any time" if the case "falls within the criteria set forth in paragraph (2) of CR 74.02." CR 74.02(2), in turn, provides:

Such transfer is within the discretion of the Supreme Court and will be granted only upon a showing that the case is of great and immediate public importance, except that if separate appeals in a criminal case to the Supreme Court and to the Court of Appeals arise from the same trial, the Supreme Court in its discretion, on motion of the appellant whose appeal lies to the Court of Appeals, may transfer the latter appeal to the Supreme Court. The filing of a notice of appeal in a case in which a death penalty has been imposed will automatically serve to transfer the appeal to the Supreme Court.

We conclude this case is not “of great and immediate public importance” because Young's motion to set aside is governed by the unambiguous provisions of KRS 118.176(4), and the motion is simply not within the parameters of that statute.

II. CONCLUSION

WHEREFORE, Movant's motion to set aside pursuant to KRS 118.176(4) is DENIED. Movant's motion to transfer this case to the Kentucky Supreme Court is DENIED.

ENTERED: JUL 12 2019

(signature of James H. Lambert)

JUDGE, COURT OF APPEALS

Appendix D

Supreme Court of Kentucky

2019-SC-000439-D
(2019-CA-000590)

GEOFFREY YOUNG

MOVANT

SCOTT CIRCUIT COURT
V. 2018-CI-00541

AMY MCGRATH

RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the
Court of Appeals is denied.

Keller, J., not sitting.

ENTERED: March 18 , 2020.

(signature of John D. Minton, Jr.)

CHIEF JUSTICE

Appendix E

NO. 19CI06292 JEFFERSON CIRCUIT COURT
DIVISION SIX (6)
JUDGE OLU A. STEVENS

GEOFFREY YOUNG

MOVANT

v. **ORDER**

ANDY BESHEAR RESPONDENT

***** ***** *****

The matter comes before the Court for consideration of the Movant Geoffrey Young's Motion challenging the ballot status of Respondent Andy Beshear for Governor of Kentucky pursuant to KRS 118.176. In Kentucky, a candidate seeking election to the office of Governor must be at least thirty years of age and have resided in the Commonwealth for at least six (6) years preceding the general election. A careful review of Movant's motion indicates it is devoid of any allegation that the Respondent is not

at least thirty years old or has not resided in the Commonwealth for at least six years preceding the general election of November 5, 2019. The Movant's claims regarding a conspiracy are irrelevant to his claims under KRS 118.176. To the extent Movant asserts the same, those claims have been previously adjudicated and are barred by the doctrine of res judicata.

IT IS HEREBY ORDERED that Movant's Motion challenging the ballot status of Respondent Andy Beshear for Governor of Kentucky is considered and **DENIED**.

IT IS FURTHER ORDERED that the above matter is **DISMISSED** with prejudice.

This is a final and appealable Order and there is no just cause for delay.

(signature stamp)

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JUDGE OLU A. STEVENS

DATE: _____

Distribution:

*Geoffrey Young
Plaintiff (sic) Pro Se*

*Christie Moore
Counsel for Respondent Andy Beshear*

Entered 19-CI-006292 11/06/2019
David L. Nicholson, Jefferson Circuit Clerk

Appendix F

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-001659-I (sic)

GEOFFREY M. YOUNG MOVANT

ON MOTION FOR INTERLOCUTORY (sic) RELIEF
v. FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 19-CI-006292

ANDY BESHEAR

RESPONDENT

ORDER

*** * * * *

BEFORE: CLAYTON, CHIEF JUDGE,
GOODWINE AND JONES, JUDGES

This cause comes before the Court on Movant Geoffrey M. Young's motion to set aside the Jefferson Circuit Court's November 6, 2019 order denying him relief pursuant to KRS (footnote 1: Kentucky Revised Statutes) 118.176(4). The circuit court found that Mr. Young did not meet his burden of proving that Andy Beshear was not a *bona fide* candidate for governor and dismissed his challenge to Mr. Beshear's qualifications. Mr. Young also filed a motion to transfer this case [footnote 2: "We may only *recommend* a case for transfer to the Kentucky Supreme Court under CR 74.02(5).] [footnote 3:

Kentucky Rules of Civil Procedure]

On November 14, 2019, this Court entered a show cause order directing Mr. Young to show cause why this action could not be dismissed as improperly taken. As grounds for the order, the Court referenced *Gibson v. Thompson*, 336 S.W.3d 81, 83 (Ky. 2011), in which the Supreme Court held that “the expedited appeal procedure set forth in KRS 118.176(4) applies only to orders disqualifying a candidate[.]” Here, the circuit court order at issue did not disqualify Mr. Beshear as a candidate; therefore, it appeared that this motion for interlocutory relief was the improper procedure to invoke the Court’s jurisdiction. Mr. Young subsequently filed a timely response to the show cause order. The matter now stands before the Court for consideration.

Having reviewed Mr. Young's motion to set aside and his response to the Court's show cause order, and being sufficiently advised, the Court hereby ORDERS as follows: 1) Mr. Young's motion to transfer this matter to the Supreme Court of Kentucky shall be, and hereby is, DENIED; and 2) the subject action is hereby DISMISSED as improperly taken.

Analysis

“The courts of this Commonwealth have long recognized that the judicial branch has no inherent power to pass on the validity of elections or the eligibility of candidates, but only has such power as given by the General Assembly or possessed at common law through a *quo warranto* proceeding.”

Stephenson v. Woodward, 182 S.W.3d 162, 167 (Ky. 2005), *as modified* (Jan. 19, 2006) (citation omitted).

By enacting KRS 118.176, the General Assembly “has delegated to the courts the sole authority to judge the qualifications of candidates if a challenge is filed before the election.” *Id.* However, this statute, like other “statutes governing election procedures[,] must be strictly complied with because compliance with certain statutory steps are jurisdictional requirements.” *Id.* at 169 (internal quotation marks and citations omitted). This requirement of strict compliance dictates the resolution of the subject action.

KRS 118.176 provides, in pertinent part:

(2) The bona fides of any candidate seeking nomination or election in a primary or in a special or regular election may be questioned by any qualified voter entitled to vote for the candidate or by an opposing candidate by summary proceedings consisting of a motion before the Circuit Court of the judicial circuit in which the candidate

whose bona fides is questioned resides. An action regarding the bona fides of any candidate seeking nomination or election in a primary or in a special or regular election may be commenced at any time prior to the regular election. The motion shall be tried summarily and without delay. Proof may be heard orally, and upon motion of either party shall be officially reported. If the Circuit Judge of the circuit in which the proceeding is filed is disqualified or absent from the county or is herself or himself a candidate, the proceeding may be presented to, heard and determined by the Circuit Judge of any adjoining judicial circuit.

(4) If the court finds the candidate is not a bona fide candidate it shall so order, and certify the fact to the board of elections, and the candidate's name shall be stricken from the written designation of election officers filed with the board of elections or the court may refuse recognition or relief in a mandatory or injunctive way. The order of the Circuit Court shall be entered on the order book of the court and shall be subject to a motion to set aside in the Court of Appeals. The motion shall be

heard by the Court of Appeals or a judge thereof in the manner provided for dissolving or granting injunctions, except that the motion shall be made before the court or judge within five (5) days after the entry of the order in the Circuit Court, and may be heard and tried upon the original papers, and the order of the Court of Appeals or judge thereof shall be final.

In *Gibson v. Thompson, supra*, three registered Democrats moved for relief under CR 65.09 from an order of this Court refusing to invalidate the candidacy of Thompson, a Republican candidate for Knott County Judge-Executive. The Movants argued Thompson was not qualified as a candidate due to certain federal criminal convictions. *Id.* at 81-82. The circuit court did not reach movants' arguments, but instead dismissed the action without prejudice, "concluding that the Movants, all registered Democrats, lacked standing to challenge Thompson's

qualifications in the primary election.” *Id.* at 82.

The Movants then moved to set aside the circuit court's order pursuant to KRS 118.176(4). This Court denied the motion to set aside, and the Supreme Court of Kentucky denied the movants' CR 65.09 motion, holding that “[t]he motion must be denied because the Movants were not entitled to move the Court of Appeals for relief pursuant to KRS 118.176. *Id.* In particular, the Supreme Court noted:

Here, the trial court made no finding that Thompson was not a *bona fide* candidate. Its order dismissing is based solely on the Movants' lack of standing.... Because the expedited appeal procedure set forth in KRS 118.176(4) applies only to orders disqualifying a candidate, the Movants were not entitled to move the Court of Appeals to set aside the order. For this reason, the Movants' motion for interlocutory relief pursuant to CR 65.09 must be denied.

Id. at 83.

In the case *sub judice*, the circuit court did not find that Mr. Beshear was “not a bona fide candidate.” KRS 118.176(4). Therefore Mr. Young may not invoke this Court's jurisdiction through the expedited appeal procedure set forth in KRS 118.176(4). *Gibson*, 336 S.W.3d at 82-83.

We note that Mr. Young devotes a significant portion of his response to the Court's show cause order complaining about the continued viability and applicability of *Gibson v. Thompson*. However, the Court of Appeals is bound to follow precedents established by the Supreme Court. *Univ. of Kentucky v. Lexington H-L Servs., Inc.*, 579 S.W.3d 858, 862-63 (Ky. App. 2018); SCR (footnote 4: Rules of the Supreme Court.) 1.030(8)(a). Since *Gibson* is

plainly applicable here, we are compelled to adhere to it.

Finally, we deny Mr. Young's motion to transfer this case to the Supreme Court. CR 74.02(5) provides that this Court may recommend a case for transfer to the Supreme Court "at any time" if the case "falls within the criteria set forth in paragraph (2) of CR 74.02." CR 74.02(2) provides:

Such transfer is within the discretion of the Supreme Court and will be granted only upon a showing that the case is of great and immediate public importance, except that if separate appeals in a criminal case to the Supreme Court and to the Court of Appeals arise from the same trial, the Supreme Court in its discretion, on motion of the appellant whose appeal lies to the Court of Appeals, may transfer the latter appeal to the Supreme Court. The filing of a notice of appeal in a case in which a death penalty has been imposed will automatically serve to transfer the appeal to the Supreme Court.

We conclude that this case is not of “great and immediate public importance” because Mr. Young’s motion to set aside is governed by the unambiguous provisions of KRS 118.176(4) and simply does not fall within the statute.

Conclusion

For the foregoing reasons, Movant’s motion to set aside pursuant to KRS 118.176(4) is DISMISSED as improperly taken. Movant’s motion to transfer this case to the Supreme Court of Kentucky is DENIED.

ENTERED: FEB 27 , 2020

(signature of Allison Jones)

JUDGE, COURT OF APPEALS

Appendix G

OFFICE OF THE CLERK
SUPREME COURT OF KENTUCKY
ROOM 209, STATE CAPITOL
700 CAPITAL AVE.
FRANKFORT, KENTUCKY 40601-3488

SUSAN STOKLEY CLARY
Clerk

Telephone:
(502) 564-4720
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March 20, 2020

Geoffrey Young
454 Kimberly Place
Lexington, KY 40503

RE: Geoffrey Young v. Andy Beshear
File No.: 2019-CA-001659

Dear Mr. Young:

We have received from you the pleading identified below. Because it is not submitted within the time allowed by directions of the Court, it is being returned to you (in accordance with CR 65.09, this filing was due to be filed within five (5) days of the Court of Appeals order denying relief under CR 65. The pleading below was not received until March 18, 2020.)

Sincerely,

a47

KELLY STEPHENS, CLERK

By: (initials RA)
Deputy Clerk

Enclosure: 1 copy of Motion for Discretionary
Review and check #1084 for \$150.00.