

Court of Appeals, Division One

Civil Appeal

1 CA-CV 23-0383

FINCHEM v. FONTES, et al.

Appellate Case Information

Case Filed: 29-Jun-2023

Case Closed:

Dept/Composition

Department D

Hon. Samuel A Thumma
Hon. Michael J Brown
Hon. Andrew M Jacobs

Side 1. MARK FINCHEM, Plaintiff/Appellant

(Litigant Group) MARK FINCHEM

- Mark Finchem

Attorneys for: Plaintiff/Appellant

Dennis I Wilenchik, Esq. (AZ Bar No. 5350)

Garo Moughalian, Esq. (AZ Bar No. 38315)

Side 2. ADRIAN FONTES, et al., Defendant/Appellee

(Litigant Group) ADRIAN FONTES, et al.

- Adrian P Fontes
AZ Bar No. 22162
[Current Member]

Attorneys for: Defendant/Appellee

Craig A Morgan, Esq. (AZ Bar No. 23373)

Shayna Gabrielle Stuart, Esq. (AZ Bar No. 34819)

Jake Tyler Rapp, Esq. (AZ Bar No. 36208)

(Litigant Group) ANDRIAN FONTES (As Secretary of State)

- Adrian P Fontes
AZ Bar No. 22162
[Current Member]

Attorneys for: Defendant/Appellee (Sec of State)

Kara Karlson, Esq. (AZ Bar No. 29407)

Kyle R Cummings, Esq. (AZ Bar No. 32228)

Karen J Hartman-Tellez, Esq. (AZ Bar No. 21121)

CASE STATUS

Jul 16, 2024.....Pending in ASC

Table with 6 columns: PREDECESSOR CASE(S), Cause/Charge/Class, Judgment/Sentence, Judge, Role <Comments>, Trial, Dispo. Row 1: MAR, CV2022-053927, Verified Statement of Election Contest, Melissa Iyer Julian, Authoring Judge of Order.

Table with 2 columns: DESCENDENT CASE(S), Cause/Charge/Class. Row 1: ASC, CV-24-0154-PR.

CASE DECISION

13-Jun-2024 MEMORANDUM DECISION

Samuel Thumma.....Author

Michael Brown.....Concur

Andrew Jacobs.....Concur

Filed: 13-Jun-2024

Mandate:

Decision Disposition

Affirmed

63 PROCEEDING ENTRIES

- 1. 29-Jun-2023 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 05/31/23
2. 29-Jun-2023 FILED: e-Record on Appeal: Instruments/Minute Entries Exhibits: None
3. 29-Jun-2023 FILED: Appellate Clerk Notice re: Appellant's Fee/Case Management Statement/Brief Due
4. 14-Jul-2023 FILED: Notice of Payment of Appellant's Filing Fee; Certificate of Service (Appellant)
5. 19-Jul-2023 RECEIPT No.: 2023-00656 ; \$280.00, Authorization: #00009483659, Applied to: MARK FINCHEM - Class A Filing Fee (\$280.00) Paid for: McCauley Law Offices PC - By nCourt LLC
6. 21-Jul-2023 FILED: Appellate Clerk Notice re: Appellee's Fee; Appellant's Brief/Case Management Statement Due

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7. 21-Jul-2023 FILED: Notice of Payment of Filing Fee; Certificate of Service (Appellee Adrian Fontes, et al.)
8. 27-Jul-2023 RECEIPT No.: 2023-00687 ; \$140.00, Authorization: 08009303251, Applied to: ADRIAN FONTES, et al. - Class B Filing Fee (\$140.00) Paid for: Sherman & Howard LLC - By nCourt LLC
9. 28-Jul-2023 FILED: Case Management Statement (Appellant)
10. 29-Aug-2023 FILED: Appellant's Opening Brief; Certificate of Compliance Re: Appellant's Opening Brief; Certificate of Service Re: Appellant's Opening Brief (Appellant)
11. 29-Aug-2023 FILED: Appendix to Appellant's Opening Brief (Appellant)
12. 29-Aug-2023 FILED: Appendix 5 (Appellant)
13. 29-Aug-2023 FILED: Appendix 6; (Untitled) Appendix 6 Part 2 (Appellant)
14. 29-Aug-2023 FILED: Appendix 7 (Appellant)
15. 29-Aug-2023 FILED: Appendix 9; (Untitled) Appendix 9 Part 2 (Appellant)
16. 29-Aug-2023 FILED: Appendix 10 (Appellant)
17. 29-Aug-2023 FILED: Appendix 11 (Appellant)
18. 29-Aug-2023 FILED: Certificate of Service re: Appendix to Opening Brief (Appellant)
19. 29-Sep-2023 FILED: Appellee Adrian Fontes' Answering Brief in his Individual Capacity; Certificate of Compliance; Certificate of Service: Answering Brief (Appellee)
20. 29-Sep-2023 FILED: Appendix to Appellee Adrian Fontes' Answering Brief; Certificate of Service: Appendix (Appellee)
21. 10-Oct-2023 FILED: Ex Parte Notice of Substitution of Counsel for Defendant Arizona Secretary of State Adrian Fontes in his Official Capacity; Certificate of Service Ex Parte Notice of Substitution of Counsel for the Secretary in his Official Capacity (Appellee)
22. 10-Oct-2023 FILED: Arizona Secretary of State's Joinder to Contestee's Answering Brief; Arizona Secretary of State's Certificate of Compliance; Certificate of Service (Appellee Fontes as Secretary of State)
23. 13-Oct-2023 ORDERED: Ex Parte Notice of Substitution of Counsel for Defendant Arizona Secretary of State Adrian Fontes in his Official Capacity (Appellee) = GRANTED and substituting Kara Karlson and Kyle Cummings as counsel for appellee Adrian Fontes in his official capacity as Arizona Secretary of State in place of Amy Chan. Melina Brill ProTem Judge - Author
24. 20-Oct-2023 FILED: Appellant's Reply Brief; Certificate of Compliance Re: Appellant's Responsive Brief; Certificate of Service Re: Appellant's Responsive Brief (Appellant)
25. 20-Oct-2023 FILED: Appendix to Appellant's Reply Brief (Appellant)
26. 24-Oct-2023 FILED: Request for Oral Argument; Certificate of Service Re Request for Oral Argument (Appellant)
27. 24-Oct-2023 FILED: Appendix to Appellant's Reply Brief (Amended Appendix); Certificate of Service Re: Amended Appendix (Appellant)
28. 30-Oct-2023 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
29. 9-Nov-2023 FILED: Supplemented Superior Court e-Record with Revised Index of Record
30. 15-Nov-2023 ORDERED: Request for Oral Argument (Appellant) = GRANTED. Hon David B Gass - Author
[vacated per order filed 12/20/2023]
31. 24-Nov-2023 CLNDR: MONTHLY COURT CASE CALENDAR, Department D, 1-31-24, 10:15 am, COURTROOM 2.
32. 27-Nov-2023 FILED: Notice of Oral Argument
[vacated per order filed 12/20/2023]
33. 27-Nov-2023 FILED: Return Receipt for Notice of Oral Argument, signed by Craig Morgan on 11/27/2023 (Appellee Fontes, et al.)
34. 12-Dec-2023 FILED: Emergency Motion to Be Released as Counsel; Certificate of Service (Appellant)
35. 12-Dec-2023 FILED: Emergency Motion to Withdraw Opening and Reply Briefs; Certificate of Service (Appellant)
36. 12-Dec-2023 FILED: Emergency Motion to Extend Time (to Secure New Counsel); Certificate of Service (Appellant)

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37. 13-Dec-2023 FILED: Appellee Adrian Fontes' Combined Response to Appellant's Counsel's Emergency Motion to Be Released as Counsel, Emergency Motion to Withdraw Opening and Reply Briefs, and Emergency Motion to Extend Time; Certificate of Service (Appellee)
38. 13-Dec-2023 ORDERED: Emergency Motion to Be Released as Counsel (Appellant) = DENIED without prejudice to Appellant/Counsel filing an application to withdraw as counsel that complies with the requirements of Arizona Rule of Civil Procedure 5.3(a)(2)(B) and, to the extent that such a future application to withdraw as counsel seeks a procedural order, that complies with ARCAP 6(b). FURTHER ORDERED: Emergency Motion to Withdraw Opening and Reply Briefs and Emergency Motion to Extend Time (to Secure New Counsel) (Appellant) = DENIED without prejudice. Hon Samuel A Thumma - Author
39. 17-Dec-2023 FILED: Emergency Application to Withdraw as Counsel; Certificate of Service; Exhibit A - Declaration of Terrence Woods; Order Approving Emergency Application to Withdraw as Counsel (Appellant)
40. 17-Dec-2023 FILED: Emergency Motion for Procedural Order to Extend Time; Certificate of Service; Order Approving Emergency Motion to Extend Time (Appellant)
41. 17-Dec-2023 FILED: Emergency Motion for Procedural Order to Withdraw Opening and Reply Briefs; Certificate of Service; Order Approving Emergency Motion to Withdraw Opening and Reply Briefs (Appellant)
42. 17-Dec-2023 FILED: Appellant's Statement in Support of Withdraw of Counsel and to Withdraw Opening and Reply Briefs and Request to Extend Time; Certificate of Service (Appellant)
43. 18-Dec-2023 FILED: Appellee Adrian Fontes' Combined Response to Appellant's Counsel's Emergency Motion to Be Released as Counsel Emergency Motion to Withdraw Opening and Reply Briefs and Emergency Motion to Extend Time; Certificate of Service (Appellee)
44. 19-Dec-2023 FILED: Appellee Adrian Fontes' Combined Response to Appellant's Counsel's Emergency Motion to Be Released as Counsel Emergency Motion to Withdraw Opening and Reply Briefs and emergency [sic] Motion to Extend Time; Certificate of Service (Appellant)
45. 19-Dec-2023 FILED: Emergency Motion to Seal Declaration; Certificate of Service; Order Approving Emergency Motion to Seal Declaration (Appellant)
46. 20-Dec-2023 ORDERED: Emergency Application to Withdraw as Counsel (Appellant) = GRANTED, effective upon Appellant's counsel immediately delivering, in writing, to counsel for Appellee with Appellant's address and contact information (including telephone and electronic mail to contact him) and providing notice to this Court of such action. FURTHER ORDERED: Emergency Motion for Procedural Order to Withdraw Opening and Reply Briefs (Appellant) = DENIED. FURTHER ORDERED: Emergency Motion for Procedural Order to Extend Time (Appellant) = DENIED. FURTHER ORDERED: Should Appellant wish to retain replacement counsel, he should do so promptly such that, by no later than 01/18/2024, any replacement counsel files with this court a notice of appearance, and any request to alter the current briefing or schedule. FURTHER ORDERED: Vacating the 11/15/2023 Order Granting Request for Oral Argument and the 11/27/2023 Notice of Oral Argument. FURTHER ORDERED: Reaffirming conference previously set for 01/31/2024 without oral argument and, absent further Order of this court, without further notice. Hon Samuel A Thumma - Author
47. 21-Dec-2023 ORDERED: Emergency Motion to Seal Declaration (Appellant) = The Declaration of Terrence Woods and the exhibits thereto, attached as Exhibit A to the Emergency Application for Withdrawal of Counsel filed 12/17/2023, are to be sealed by the Clerk of this Court pending further order of this court. Hon Samuel A Thumma - Author
48. 21-Dec-2023 FILED: Notice of Appellant's Contact Information; Certificate of Service (Appellant)
49. 12-Jan-2024 FILED: Memorandum: Judge Jacobs for Judge Campbell (Chief Judge Gass)
50. 12-Jan-2024 FILED: Notice of Appearance and Request to Reinstate Oral Argument; Certificate of Service Regarding Notice of Appearance and Request to Reinstate Oral Argument (Appellant)
51. 24-Jan-2024 FILED: Return Receipt for Notice of Oral Argument, signed by Craig Morgan on 01/24/2024 (Appellee Adrian Fontes, et al.)
52. 24-Jan-2024 ORDERED: Notice of Appearance and Request to Reinstate Oral Argument (Appellant) = GRANTED and resetting conference to Wednesday, 03/06/2024 at 10:15 a.m. before Department D, Courtroom 2 (see order). Hon Samuel A Thumma - Author
53. 26-Jan-2024 FILED: Return Receipt for Notice of Oral Argument, signed by Dennis Wilenchik on 01/24/2024; Certificate of Service (Appellant)
54. 28-Feb-2024 FILED: Return Receipt for Notice of Oral Argument, signed by Karen Hartman-Tellez on 01/24/2024 (Appellee Fontes as Secretary of State)
55. 6-Mar-2024 FILED: Sign-in Sheet/Case is Under Advisement as of 03/06/2024
56. 13-Jun-2024 MEMORANDUM DECISION (Affirmed) Hon Samuel A Thumma - Author; Hon Michael J Brown - Concur; Hon Andrew M Jacobs - Concur
57. 13-Jun-2024 FILED: Decision Distribution Notification

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63 PROCEEDING ENTRIES

- 58. 21-Jun-2024 FILED: Appellee Adrian Fontes' Statement for Attorneys' Fees and Costs; Certificate of Service; Exhibit A (Appellee)
- 59. 8-Jul-2024 FILED: Appellant Mark Finchem's Objection to Appellee Secretary Adrian Fontes' Statement for Attorneys' Fees and Costs; Certificate of Service (Appellant)
- 60. 12-Jul-2024 FILED: Appellee Adrian Fontes' Reply in Support of Statement for Attorneys' Fees and Costs; Certificate of Service (Appellee)
- 61. 16-Jul-2024 FILED: Email Notice from ASC re: Petition for Review filed 07/15/24; request for partial record
- 62. 16-Jul-2024 FILED: Letter forwarding partial record to Arizona Supreme Court
- 63. 30-Jul-2024 ORDERED: Appellee Adrian Fontes' Statement for Costs (Appellee) = GRANTED Defendant/Appellee costs in the amount of \$189.43 and, in the exercise of the Court's discretion, granting Defendants/Appellee Adrian Fontes attorneys' fees in the amount of \$38,500. Hon Samuel A Thumma - Author