

ORIGINAL

IN THE SUPREME COURT OF OHIO

HENRY SMITH,	:	
	:	Case No. 2013-2008
Plaintiff-Appellee,	:	
	:	On Appeal from the
-v-	:	Franklin County Court of Appeals
	:	Case No. 12AP-1027
YING H. CHEN, D.O., ET AL.,	:	
	:	
Defendants-Appellants.	:	

**APPELLEE'S MEMORANDUM IN OPPOSITION TO APPELLANTS'
MOTION FOR RECONSIDERATION**

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CLERK OF COURT SUPREME COURT OF OHIO

MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION

On April 21, 2015, this Court vacated the judgment of the court of appeals because it lacked jurisdiction. The Court held that the Appellants did not establish that the trial court's order compelling discovery was a final, appealable order and that neither it, nor the court of appeals, had jurisdiction to consider the merits of an interlocutory order that is not final and appealable.

On April 30, 2015, Appellants filed a motion asking the Court to reconsider its decision. Motions for reconsideration in this Court are governed by S.Ct.Prac.R. 18.02. Subsection (B) of this rule sets forth the circumstances under which the Court will consider a motion for reconsideration.

A motion for reconsideration shall not constitute a reargument of the case and may be filed only with respect to the following Supreme Court decisions:

- (1) Refusal to accept a jurisdictional appeal;
- (2) The sua sponte dismissal of a case;
- (3) The granting of a motion to dismiss;
- (4) A decision on the merits of the case.

S.Ct.Prac.R. 18.02(B). The decision from which Appellants seek reconsideration is not one of the types of decisions identified in the rule and reconsideration should be denied.

The Court's decision is not a refusal to accept a jurisdictional appeal from which reconsideration is permitted under S.Ct.Prac.R. 18.02(B)(1). The rules define a "jurisdictional appeal" as;

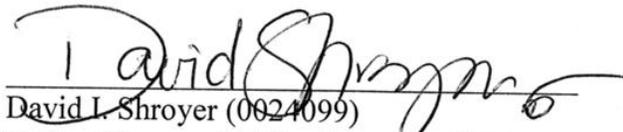
[A]n appeal from a decision of a court of appeals that asserts one or more of the following:

- (1) The case involves a substantial constitutional question, including an appeal from the decision of a court of appeals under App.R. 26(B) in a noncapital case, pursuant to Article IV, Section 2(B)(2)(a)(ii) of the Ohio Constitution;
- (2) The case involves a felony pursuant to Article IV, Section 2(B)(2)(b) of the Ohio Constitution;
- (3) The case involves a question of public or great general interest pursuant to Article IV, Section 2(B)(2)(e) of the Ohio Constitution.

In this case, the Court accepted the jurisdictional appeal filed by Appellants. Its decision is not a refusal to accept it but, rather, a decision determining that the order appealed from was not a final appealable order.

For the foregoing reasons, Appellee respectfully requests that the Court overrule the motion for reconsideration.

Respectfully submitted,



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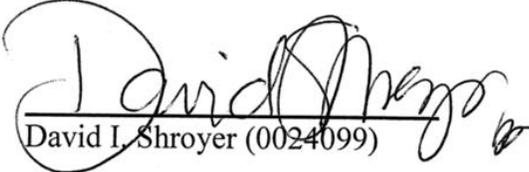
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by ordinary U.S. mail as well as by courtesy e-mail on May 11, 2015, to the following:

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