

IN THE SUPREME COURT OF OHIO

Robert E. Murray, et al., : Case No. 15-0127
 Appellants, :
 v. : On Appeal from the Cuyahoga County Court of
 Appeals, Eighth Appellate District
 The Chagrin Valley Publishing Co., et al. : Court of Appeals
 Appellees. : Case No. CA-14-101394

**APPELLEES PATRIOTS FOR CHANGE MEMORANDUM IN OPPOSITION TO
 APPELLANTS' MOTION FOR RECONSIDERATION**

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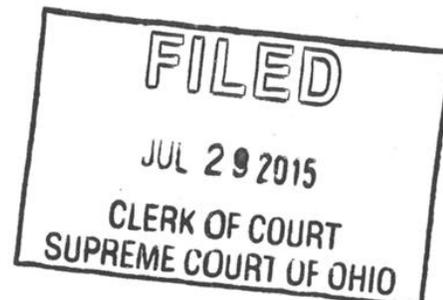
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I. INTRODUCTION

On or about July 14, 2015 this Court declined to accept jurisdiction on the above captioned case. As this Court is aware, such matter concerns Appellants' appeal of the determination that Robert Murray and related Murray corporations were not subject to defamatory statements made by the Chagrin Valley Times defendants and Patriots for Change ("Patriots").

On or about July 20, 2015 Appellants submitted their Motion for Reconsideration in support of jurisdiction. As this Court is aware this case does not concern any conflict of law or obvious error. Further, Appellants fail to identify any new issues that would justify review by this Court. For these reasons, and those set forth herein, Appellants Motion should be denied.

II. LAW AND ARGUMENT

a. **There is no recitation by Appellants of obvious error, nor is there the raising of any issue not fully considered by the Court.**

The test generally applied when filing a motion for reconsideration is whether the motion calls to the attention of the Court an obvious error in its decision, or raises an issue for consideration which was not considered or was not fully considered by the Court. See, *Matthews v. Matthews* (10th Dist., 1981) 5 Ohio App.3d 140, 143, 450 N.E.2d 278, *Columbus v. Hodge* (10thDist., 1987) 37 Ohio App.3d 68, 523 N.E.2d 515. A Court will not grant a motion for reconsideration if it is nothing more than a rehash of earlier arguments and authorities. See, *Garfield Heights City School District v. State Board of Education* (10th Dist., 1992) 85 Ohio App.3d 117, 128, 619 N.E.2d 429, 437.

A motion for reconsideration should not be granted simply because a party disagrees with the logic used by an appellate court or the conclusions that the court reached based on the

evidence. *See, State v. Owens* (11th Dist., 1996) 112 Ohio App.3d 334, 678 N.E.2d 956. A motion for reconsideration should only be granted in rare instances to prevent a miscarriage of justice that arises as a result of an obvious material error. *See, Owens* at 336.

Appellants argue “The court below conflates the elements of defamation with those of false light, effectively collapsing the two causes of action and limiting the force of Ohio privacy law.” (Motion for Reconsideration, pg. 2). In fact the Eighth District specifically addressed Appellants’ false light claims, in its thirty-two page decision, noting that none of the comments were made about public matters. This is because all of the comments that Plaintiff-Appellants alleged were defamatory concerned matters of general knowledge and publicity. Appellants recognize this in their Motion for Reconsideration, however they still argue that the Eighth District’s determination that “there are no untruthful statements commenting on private matters that placed any appellant in a false light that would be highly offensive to a reasonable person,” somehow interjects a new requirement into the standard for a false light claim that the statements at issue must be made about a private statement. The Eighth District’s decision does no such thing. Rather, the Eighth District specifically cited the case of *Welling v. Weinfield*, 113 Ohio St.3d 464, 2007-Ohio-2451, 866 N.E.2d 1051, which Appellants concede has been adopted by this Court. Accordingly, no new criteria or standard has been inserted into evaluation of a false light claim, rather the Eighth District simply identified that the statements made were public, and did not meet the definition of false light in accordance with the *Welling* standard.

Appellants next argue that the scienter required for proving a false light claim has been conflated with the defamation claim. In fact, the Eighth District did not apply the requirement of actual malice in considering the false light claims, rather the Eighth District concluded that there was no evidence that the statements were made with “reckless disregard.” *Murray, et al. v.*

Chagrin Valley Publishing Company, et al., No. 101394 at ¶ 29. In addition, Appellants do not dispute that all statements about Murray were made concerning public matters, nor do they dispute that Murray is a public figure. There is no allegation that any private statements about Murray were alleged to be defamatory or were considered for purposes of whether or not they were defamatory.

As set forth in Appellees' Memorandum in Opposition to Jurisdiction, Appellants make no showing that their claims of invasion of privacy by placing Murray and his companies in a false light, possessed merit or otherwise present questions of public or great general interest. Appellants confuse the issue of whether the law in this area needs to be further addressed by this Honorable Court, and their evidentiary burden on the record in these proceedings. Simply because Appellants failed to demonstrate that Patriots or the Chagrin Valley Defendants committed the tort of false-light invasion of privacy, does not imply that the law of this tort needs further clarification or refinement. The law is well-settled and Appellants failed to meet the essential elements of this claim.

Accordingly, the Eighth District simply noted that the nature of the statements (as well as Mr. Murray) were public. For these reasons and contrary to Appellants assertions, the Eighth District's decision does not "dramatically expand or rework the law in Ohio on false light claims.

b. This case presents no policy considerations that warrant this Court's review.

Appellants attempt to argue that because standards for defamation of admittedly public figures are high, such standard merits reconsideration by this Court. Appellants cite to statistics of success on the merits regarding the ability to succeed on a defamation and false light claims. (Motion for Reconsideration, pg. 8). Clearly, the fact that there is a wide breadth of reported and unreported cases noting the statistics for success on these matters establishes just how clearly and well defined the law on defamation and false light is in Ohio. In the absence of obvious error, no

further consideration by this Court is necessary. In addition, important policy considerations underscore the need for the law to remain stable in this area, such that this Court should not undertake review of a case that does not alter or change the standard for defamation and false light claims in Ohio. The case laws illustration of the difficulty in proving defamation reflects this Court and all Ohio court's careful consideration and protection of the right to freedom of speech. If any public individual who is angered or aggrieved by opinion or factual statements about them could successfully bring suit, the Ohio courts would be flooded with a litany of nuisance suits. Appellees like the Chagrin Valley Times and Patriots for Change are precisely the types of parties the law seeks to protect from these actions, wherein it is undisputed that no damage has occurred to the plaintiff and wherein there is no showing of actual malice. Such policy consideration was accurately reflected in the Eighth District's decision, and call to the General Assembly to enacted legislation addressing these concerns. This case presents a clear example of a garden variety defamation and false light claims involving a public figure, wherein even assuming all facts in the light most favorable to the Plaintiff there is no evidence of actual malice, no evidence of damage, and no evidence that the facts and statements were not true or matters of opinion. The standard for review of this matter has been well articulated by this Court and has been properly applied by the Eighth District in this instance.

c. An expert opinion is not required to opine that the reports done by Patriots for Change were protected, either by virtue of being facts or opinion testimony.

Appellants' *amicus* argues that despite qualifying language clearly denoting statements as opinion pieces, such statements may still be actionable as defamatory even though expressly delineated as opinion testimony. (*Amicus*, pg. 10). Appellants then spend substantial time arguing that the opinions of an expert regarding journalistic tactics were disregarded. The use of

proper journalistic tactics is not properly before this Court, nor does it form the subject of this action. The fact remains that the Eighth District properly decided and considered the issues in this case, namely, whether or not statements made regarding Robert Murray and related Murray companies were made with actual malice. Appellants' attempt to argue that the failure to consider their proposed expert's testimony regarding journalistic practices in this matter somehow qualifies as an appropriate consideration for this Court must fail. Such decision was not clear error, nor does it present a circuit split, nor is there a novel question of law or fact.

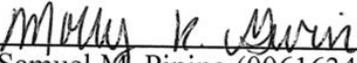
Appellants cannot point to any obvious error in this Court's decision not to accept jurisdiction of this appeal. They have pointed to no specific conflict among the Courts have Appeals, nor have they pointed to any decision by this Court to take similar action. A Motion for reconsideration should only be granted in those rare instances to prevent a miscarriage of justice that arises as a result of obvious and material error, and there has been no such obvious or material error in this Court's considered decision not to accept jurisdiction to hear this case. The fact that Appellants may disagree with the Court of Appeals is certainly not sufficient grounds this Court to accept jurisdiction.

III. CONCLUSION

For the foregoing reasons, and those previously set forth in the Memorandum in Opposition to Jurisdiction, the Appellants' Motion for Reconsideration should be overruled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent, via regular U.S. Mail, postage prepaid, this 29th day of July 2015 to the following:

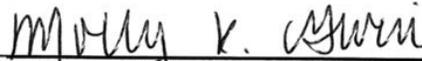
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