

[Cite as *Scott v. Falcon Transport Co.*, 2004-Ohio-389.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

CLARENCE SCOTT, et al.,	)	
	)	CASE NO. 02 CA 145
PLAINTIFFS-APPELLANTS,	)	
	)	
- VS -	)	OPINION AND
	)	JOURNAL ENTRY
FALCON TRANSPORT COMPANY,	)	
et al.,	)	
	)	
DEFENDANTS-APPELLEES.	)	

CHARACTER OF PROCEEDINGS:	Appellants' Application for Reconsideration.
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JUDGMENT:	Application Denied.
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APPEARANCES:

For Plaintiffs-Appellants:	Attorney Howard V. Mishler 30400 Detroit Road Suite 108 Westlake, OH 44145-1855
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For Defendants-Appellees:	Attorney Michael J. Cindric 34 N. Aurora Rd., #2 P.O. Box 357 Aurora, OH 44202-0357 Attorney for Kenneth D. Papp and George Friend
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JUDGES:  
Hon. Mary DeGenaro  
Hon. Gene Donofrio  
Hon. Joseph J. Vukovich

Dated: January 30, 2004

Per Curiam.

{¶1} Appellants have filed an App.R. 26(A) application for reconsideration of our previous decision in *Scott v Falcon Transport* (Dec. 12, 2003) 7th Dist. No.02CA145.

{¶2} As a preliminary matter, Appellees Kenneth Papp and George Friend filed a document seeking leave to respond to Appellants' application for reconsideration and for reconsideration of our decision denying sanctions. Appellees request fails for three reasons. First, Appellees made this filing beyond the ten days provided by App.R. 26(A) to file a response to Appellants application for reconsideration. Second, the rule does not provide for the option to obtain leave to file a response. Finally, Appellees request for reconsideration of our decision denying their motion for sanctions was filed more than ten days after our opinion was filed, and if they were seeking leave to do so untimely, the rule does not provide for such an option. For these reasons, Appellees request is denied.

{¶3} The test generally applied when determining whether an appellate decision should be reconsidered is, "whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for the court's consideration that was either not considered at all or was not fully considered by the court when it should have been." *State v. Wong* (1994), 97 Ohio App.3d 244, 246; *Juhasz v. Costanzo* (Feb. 7, 2002), 7th Dist. No. 99-CA-294. A motion for reconsideration is "a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law" and, thus, must demonstrate more than the fact that the movant "simply disagrees with the conclusions reached and the logic used by an appellate court." *State v. Owens* (1996), 112 Ohio App.3d 334, 336. As the basis for the application is reiteration of the arguments initially presented to this court, the application is denied.

{¶4} First, Appellants claim that the affidavits offered in support of Appellees' Motion for Summary Judgment were not based on personal knowledge. This is precisely the same argument presented in Appellants' merit brief. We will not revisit the same issue now since Appellants have pointed to no obvious error by this court in our initial

decision.

{¶5} Next, Appellants maintain that we erroneously decided the issue regarding their request for extension of time. Once again, Appellants cite to no authority demonstrating that our determination was clearly erroneous. We have thoroughly addressed this issue once and are not swayed by Appellants' additional arguments.

{¶6} Finally, Appellants argue that we should have reversed the decision of the trial court based on the Notice of Settlement that was filed with this court in August of 2003. Because the appeal was never actually dismissed by the parties, we conclude once again that the filing of that notice had no bearing or effect on our determination of the merits of the appeal.

{¶7} Appellants' arguments demonstrate that they merely disagree with our conclusion. As this type of disagreement cannot form the basis for a motion for reconsideration, Appellants' application is denied.

Donofrio, Vukovich and DeGenaro, JJ., concur.