[Cite as *Flynn v. Gen. Motors Corp.*, 2004-Ohio-392.]

STATE OF OHIO, COLUMBIANA COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

DAVID FLYNN, et al.	)	CASE NO. 02 CO 71
	)	
PLAINTIFFS-APPELLANTS	)	
	)	
VS.	)	OPINION AND
	)	JOURNAL ENTRY
	)	
GENERAL MOTORS CORPORATION	)	
	)	
DEFENDANT-APPELLEE	)	

CHARACTER OF PROCEEDINGS:	Application for Reconsideration and Motion to Certify a Conflict Case No. 2002 CV 659
JUDGMENT:	Application Denied. Motion Overruled.
APPEARANCES: For Plaintiffs-Appellants, David Flynn and Columbiana Buick Olds Cadillac Co.:	Atty. Stanley Morganstern Atty. Christopher M. DeVito Morganstern, MacAdams & DeVito 623 West St. Clair Avenue Cleveland, Ohio 44113-1204
For Defendant-Appellee, General Motors Corp.:	Atty. Jeffrey J. Jones Atty. Douglas M. Mansfield Jones, Day, Reavis & Pogue 41 South High Street, Suite 1900 Columbus, Ohio 43215
For Amicus Curiae, Ohio Automobile Dealers Assoc.:	Atty. Jay F. McKirahan Atty. Jonathan R. Fulkerson Whann & Associates 6300 Frantz Road Dublin, Ohio 43017

JUDGES:
Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: January 27, 200

PER CURIAM.

{¶1} Appellants have filed a motion for reconsideration, pursuant to App.R. 26(A), of our Opinion in *Flynn v. Gen. Motors Corp.*, 7th Dist. No. 02 CO 71, 2003-Ohio-6729. Appellants have also asked us to certify a conflict pursuant to App.R. 25. For the following reasons we must overrule both motions.

{¶2} "The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, 523 N.E.2d 515, paragraph one of the syllabus.

{¶3} We dismissed the underlying appeal on jurisdictional grounds because the notice of appeal was not filed within the time limits set forth in the App.R. 4(A). Appellants argued on direct appeal that they had not received proper notice of the judgment entry being appealed, and that the time for filing an appeal was therefore tolled. Appellants are making the same argument on reconsideration. Furthermore, Appellants are attempting to add new material to the record in the form of affidavits and copies of facsimile records. Appellants apparently are not aware that this Court, as a reviewing court, may only review the official record as presented to us in

conformity with the Rules of Appellate Procedure. "It is axiomatic that a court of appeals is bound by the record before it and may not consider facts extraneous to the record." *State v. Morgan* (1998), 129 Ohio App.3d 838, 842, 719 N.E.2d 102.

{¶4} Appellants have conceded that they received a copy of the October 22, 2002, Judgment Entry at least by October 30, 2002, from the Clerk of Courts of Columbiana County. They did not file their appeal until December 2, 2002. This was beyond the thirty-day period set by App.R. 4(A) for filing an appeal. Important to our analysis, they also filed two motions with the trial court detailing the content of the October 22, 2002, Judgment Entry and requesting the court to take further action on the judgment entry. These motions were filed more than thirty days prior to the date their notice of appeal was filed. The court subsequently ruled on those motions. Appellants have not presented any new arguments on reconsideration that overcome these basic facts. We therefore overrule the motion for reconsideration.

{¶5} Turning to Appellants' request that we certify a conflict, they have not shown that our Opinion in this matter is in conflict with any other appellate district. In the instant appeal Appellants presented motions to the trial court asking for additional rulings on the judgment entry which they now claim not to have received. There was no mention in those motions about any failure in the service or receipt of the judgment entry. None of the six cases cited by Appellants are comparable to the instant appeal in this regard.

{¶6} The cases of *In re Jessica P.* (May 1, 1998), 6th Dist. No. S-97-036, and *Bank One v. DeVillers* (Sept. 26, 2002), 10th Dist. No. 01AP-1258, were decided on

the basis that the record did not clearly reflect that the parties were sent notice of the judgment entries or that they received them. The record in the instant case shows otherwise.

{¶7} In *Zuk v. Campbell,* (Dec. 30, 1994), 12th Dist. No. 94-03-018, one of the parties notified the trial court, through a Civ.R. 60(B) motion, that it had not received proper notice of a judgment entry. The Twelfth District held that the trial court should have granted the Civ.R. 60(B) motion, but further noted that, "the better procedure would have been for appellants to file a motion requesting the trial court to issue proper notice of the * * * judgment in compliance with the requirements of Civ.R. 58(B)[.]" Id. at 3. Our Opinion in this case does not contradict anything in *Zuk*.

{¶8} In *Steel v. Lewellen* (May 16, 1996), 5th Dist. Nos. 95 CA 53, 95 CA 54, one of the party complainants did not receive proper notice that its complaint was dismissed. The defendant argued that the plaintiff had actual knowledge of the judgment entry, but the Fifth District held that actual knowledge was insufficient to begin running the time for filing an appeal. The *Steel* opinion contains no indication that the aggrieved party filed any motion with the trial court actively showing that it had received the judgment entry and indicating any date by which the appeal time began to run, as occurred in the instant case.

{¶9} *In re Fennell* (Jan. 23, 2002), 4th Dist. No. 01CA45 and *Welsh v. Tanentelli* (1992), 76 Ohio App.3d 831, 603 N.E.2d 399, also involve parties who may have had actual notice of the judgment entries, but did not actively represent to the trial court through post-judgment motions that they had received the judgment entries.

Thus, the record contained no indication of a date by which the time to appeal would run, unlike the record in the present matter.

{¶10} As we do not find any of the aforementioned cases to be in conflict with our Opinion, we also overrule Appellants' motion to certify a conflict.

Waite, P.J., Donofrio and Vukovich, JJ., concur..