[Cite as *Appollini v. Michael*, 2020-Ohio-6963.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

KIM APPOLLONI,

Plaintiff-Appellee,

v.

DARREN MICHAEL,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 BE 0012

Appellant's Application for Reconsideration

BEFORE:
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Denied.

Atty. Keith A. Sommer, K. Sommer Law LLC, 409 Walnut St., P.O. Box 279, Martins Ferry, Ohio 43935, for Plaintiff-Appellee

Atty. Erik A. Schramm, Jr. and *Atty. Kyle W. Bickford*, Hanlon, Estadt, McCormick, & Schramm Co., LPA, 46457 National Road West, St. Clairsville, Ohio 43950, for Defendant-Appellant.

Dated: December 14, 2020

PER CURIAM.

{¶1} Appellant Darren Michael has filed an application for reconsideration of our Opinion in *Appollini v. Michael,* 7th Dist. Belmont No. 19 BE 0012, 2020-Ohio-4819. Appellant argues that we did not consider whether Jeffrey Wojcik was a merchant pursuant to R.C. 1302.01(A)(5). Appellant also argues that we failed to consider an affidavit filed by Bryan Mancini which Appellant believes is relevant to his equitable estoppel argument. For the reasons provided, Appellant's application for reconsideration is denied.

> 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, 37 Ohio App.3d 68, 523 N.E.2d 515 (10th Dist.1987), paragraph one of the syllabus.

{¶2} "Reconsideration motions are rarely considered when the movant simply disagrees with the logic used and conclusions reached by an appellate court." *State v. Himes*, 7th Dist. Mahoning No. 08 MA 146, 2010-Ohio-332, ¶ 4, citing *Victory White Metal Co. v. Motel Syst.*, 7th Dist. Mahoning No. 04 MA 245, 2005-Ohio-3828; *Hampton v. Ahmed*, 7th Dist. Belmont No. 02 BE 66, 2005-Ohio-1766.

{¶3} This action concerns the sale of a watercraft. Appellant purchased a 2004 Palm Beach Pontoon Boat from Jeffrey Wojcik, owner of Liberty Automotive Group dealership ("Liberty"). Later, he learned that the boat belonged to Appellee Kim Appollini. After discussions where Appellee appeared to indicate to Appellant that she approved of the sale, she requested return of her boat. Apparently, Wojcik did not provide any portion of the payment received from Appellant to Appellee. Appellant never received the certificate of title for the boat, which has been registered in the name of Appellee at all times during the relevant proceedings.

{¶4} The trial court granted summary judgment in favor of Appellee on her original complaint for replevin. On appeal, we held that evidence had been introduced to demonstrate that Appellee held title to the watercraft and Appellant admittedly never received title. Thus, pursuant to R.C. 1548.04, Appellee possesses title to the boat and has paramount claim to its ownership. We also held that Appellant could not succeed under a theory of equitable estoppel as he had not changed his position to his detriment based on any action or statement of Appellee.

{¶5} In our Opinion, we analyzed whether Wojcik and Liberty could be considered merchants that deal in the sale of watercrafts. The evidence in the record showed that Liberty was a car dealership. At most, Liberty sold three watercrafts: a blue boat, Appellee's jetski, and the instant boat. We determined that three isolated sales of watercraft were insufficient to find that Wojcik and Liberty were merchants dealing in the sale of watercrafts.

{¶6} Appellee contends that we did not consider an affidavit filed by Bryan Mancini which averred that "[i]t was readily apparent Liberty Automotive and/or Jeff

Wojcik sold various motorized goods, including watercraft, other than motor vehicles and/or automotives." (Emphasis deleted.) (Appellant's Application for Reconsideration, p. 2.) Contrary to Appellant's claim, we did consider Manicini's affidavit. However, the affidavit did not create an issue of genuine material fact as it was conclusory in nature and it provided no evidence that additional watercrafts were regularly sold at the dealership.

{¶7} Appellant also challenges our determination based on an alleged failure to consider R.C. 1302.01(A)(5). R.C. 1302.01(A)(5) defines a merchant as:

> a person who deals in goods of the kind or otherwise *by the person's occupation* holds the person out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill *may be attributed by the person's employment of an agent or broker or other intermediary who by the agent's, broker's, or other intermediary's occupation holds the person out as having such knowledge or skill*. (Emphasis added.)

{¶8} Each of the attributes within R.C. 1302.01(A)(5) that define a "merchant" are contingent on that person's occupation or employment relating to certain goods. The statute does not imply that mere knowledge or skill causes a person to be defined as a merchant. Rather, it provides that "the person's *occupation holds the person out as having knowledge or skill* peculiar to the practices or goods involved in the transaction." In other words, it is not enough to have knowledge or skills regarding a good in order to be defined as a merchant, a merchant is defined by his occupation or employment.

{¶9} Contrary to Appellant's arguments, we considered whether Wojcik could be defined as a merchant in this matter. See *Appollini, supra,* at ¶ 27. Application of R.C. 1302.01(A)(5) is intertwined with R.C. 1302.44, as the determination of whether a person is a merchant constitutes an element of R.C. 1302.44. We determined that ownership of a car dealership, alone, does not imply that the dealership or owner is also a dealer of watercrafts. We held that Liberty, a car dealership that has participated in the sale of, at most, three watercrafts over the course of several years, was not held out to be a seller of watercrafts. Also, the mere fact that Wojcik had the skill needed to start the boat's engine is insufficient to establish that, by virtue of his employment or occupation as the owner of a car dealership, he is a merchant of watercrafts. Based on this record, Wojcik cannot be considered a merchant under the definition within R.C. 1302.01(A)(5).

{¶10} As to equitable estoppel, we thoroughly addressed this issue within our Opinion. See *Appollini, supra,* at ¶ 34-37. The facts clearly demonstrate that Appellant did not change his position to his detriment based on any statement of or action by Appellee. By the time he first spoke to Appellee, he had already obtained the loan, paid Wojcik, and received possession of the boat. Any statements or actions made by Appellee after that did not affect Appellant's position in any way. As there was no reliance on any act of Appellee, Appellant cannot successfully demonstrate the elements of estoppel.

{¶11} Appellant raises no error in this Court's decision, obvious or otherwise. Appellant cites to no issue that has not previously been addressed by us. He merely disagrees with our conclusions on to those issues. "Reconsideration motions are rarely considered when the movant simply disagrees with the logic used and conclusions

reached by an appellate court." *Himes, supra*, at ¶ 4. Accordingly, Appellant's application for reconsideration is denied.

JUDGE CHERYL L. WAITE

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB

NOTICE TO COUNSEL

This document constitutes a final judgment entry.