IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

KERRY R. HARTLINE ET AL.,

Plaintiffs-Appellants,

v.

ELLA J. ATKINSON ET AL.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 20 MO 0006

Motion for Reconsideration

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

JUDGMENT:
Denied

Atty. Kristopher Justice, and *Atty. Daniel Corcoran,* Theisen Brock, 424 Second Street, Marietta, Ohio 45750, for Plaintiffs-Appellants and

Atty. Kyle Bickford, and *Atty. Erik Schramm, Jr.,* Hanlon, Estadt, McCormick & Schramm Co., 46457 National Road West, St. Clairsville, Ohio 43950, for Defendants-Appellees.

Dated:
February 26, 2021

PER CURIAM.

{¶1} Plaintiffs-appellants, Kerry and Mary Hartline, have filed an application for reconsideration asking this court to reconsider our decision and judgment entry in which we affirmed the judgment of the Monroe County Common Pleas Court. See *Hartline v. Atkinson*, 7th Dist. Monroe No. 20 MO 0006, 2020-Ohio-5606.

{¶2} A motion for reconsideration must be filed within ten days of the judgment. App.R. 26(A)(1)(a). Our judgment in this case was filed on December 8, 2020. The Hartlines filed their motion on December 16, 2020. Thus, their motion is timely.

{¶3} App.R. 26, which provides for the filing of an application for reconsideration in this court, includes no guidelines to be used in the determination of whether a decision is to be reconsidered and changed. *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981). The test generally applied is whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not at all or was not fully considered by us when it should have been. *Id.* An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). Rather, App.R. 26 provides 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. *Id.*

{¶4} In our opinion in this case, we found that the trial court properly granted summary judgment in favor of defendants-appellees, Vivian Dillon, Pamela Ensinger, Patricia Rude, Paul Bierie, and Patricia Bierie (the Webbs), on the Hartlines' claims that the Webbs' mineral interests were abandoned or expired and to quiet title to those mineral interests. In so doing, we found that the Marketable Title Act (MTA) saved the Webbs' interest and did not extinguish it. Opinion at ¶ 32. We further found that Vivian Dillon timely filed her Affidavit of Claim to Preserve a Mineral Interest pursuant to Ohio's

Dormant Mineral Act (DMA) thereby preserving all of the Webbs' mineral rights. Opinion at ¶ 36-37. Finally, we found that because the Hartlines did not ask the trial court to define the parameters of the mineral interest in their complaint, they could not, on appeal, ask this court to define the parameters of the interest. Opinion at ¶ 40-42.

{¶5} The Hartlines now assert that we failed to consider two issues.

{¶6} First, they contend we should have considered whether the title transactions under the MTA preserved the portion of the Webb Interest held by Marjorie Webb.

{¶7} Charles C. Webb and his wife Belle conveyed their interest to Isaac Ady by way of the "Webb Deed." The Webb Deed accepted and reserved "the full three fourths (3/4) of all the oil and gas lying into and under the above described tracts of land" and created the Webb Interest. Charles and Belle Webb had two children (William and Marjorie) and four grandchildren. The Webbs are Charles' and Belle's grandchildren. When Charles and Belle died, the Webb Interest passed to their two children. We determined that the Webb Interest was preserved under the MTA, rather than extinguished by it, by the recording of Charles' and Belle's child's and then their grandchild's estates.

{¶8} The Hartlines claim we should have found that only William's one-half interest in the Webb Interest was affected by the title transactions. They assert that the recorded wills that we found to constitute title transactions only affected the interest that passed to William. In support, they rely on this court's decision in *Richmond Mills, Inc. v. Ferraro*, 7th Dist. Jefferson No. 18 JE 0015, 2019-Ohio-5249, and assert that we failed to address this case in our opinion.

{¶9} In *Richmond Mills*, this court addressed the continuous-possession requirement of the MTA set out in R.C. 5301.51(B). *Id.* at ¶ 31-39. We then went on to find that the continuous-possession requirement was not met by tacking among successor owners. *Id.* at ¶ 40.

{¶10} In contrast, in the present case, the issue involving the MTA involved the exception of recording title transactions under R.C. 5301.49(D). The title transaction exception was not an issue in *Richmond Mills*. Thus, while we did not address the *Richmond Mills* case in our opinion, it does not affect our decision.

{¶11} Moreover, even if the Webb Interest was not saved under the MTA, this court also found the Webb Interest was preserved under the DMA. We found that Vivian Dillon timely filed and recorded her Affidavit of Claim to Preserve a Mineral Interest and that pursuant to R.C. 5301.56(C)(2), Dillon's affidavit "preserves the rights of all holders of a mineral interest in the same lands." Opinion at ¶36. Thus, we concluded that Dillon's affidavit preserved all of the Webbs' rights to the Webb Interest. Opinion at ¶ 36.

{¶12} Second, the Hartlines assert that regardless of what they asserted in their pleadings, this court must apply the Duhig Rule to determine what fractional share of the royalty interest was originally reserved.

{¶13} This court already addressed this issue. Opinion at ¶ 38-42. We pointed out that the Hartlines' complaint did not ask the court to define the parameters of the Webb Interest and did not request a declaratory judgment that the Webbs do not have marketable record title to a greater interest in the oil and gas royalty than that which was originally accepted and reserved. We further pointed out that the Hartlines did not raise the issue for the first time until their second motion for summary judgment and the trial court did not address the matter. The Hartlines now simply disagree with our resolution of the issue.

{¶14} Moreover, the Hartlines have attached other documentary evidence to their application, which they admit is not included in the record of this appeal. This court cannot consider evidence outside of the record.

{¶15} In sum, the Hartlines have not called to our attention an obvious error nor have they raised an issue for our consideration that was either not at all or was not fully considered by us when it should have been. Therefore, we must deny their application for reconsideration.

{¶16} The Hartlines' application for reconsideration is hereby denied.

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB

NOTICE TO COUNSEL

This document constitutes a final judgment entry.