

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Joanne R. Wissler,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 09AP-569
	:	(C.C. No. 2006-02218)
Ohio Department of Job and	:	
Family Services,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on September 2, 2010

Joanne R. Wissler, pro se.

Richard Cordray, Attorney General, and *Eric A. Walker*, for appellee.

ON APPLICATION FOR RECONSIDERATION

CONNOR, J.

{¶1} On August 9, 2010, plaintiff-appellant, Joanne R. Wissler ("appellant"), filed an application for reconsideration pursuant to App.R. 26, requesting that this court reconsider its July 22, 2010 decision and judgment entry in *Wissler v. Ohio Dept. of Job and Family Services*, 10th Dist. No. 09AP-569, 2010-Ohio-3432, in which we affirmed the judgment of the Franklin County Court of Common Pleas rendered in favor of defendant-appellee, Ohio Department of Job and Family Services ("appellee" or "ODJFS"). On

August 18, 2010, appellee filed a response opposing appellant's application for reconsideration.

{¶2} When presented with an application for reconsideration, an appellate court must determine whether the application calls to the court's attention an obvious error in its decision, or raises an issue for consideration that was either not considered at all or not fully considered by the court when it should have been. *State v. Rowe* (Feb. 10, 1994), 10th Dist. 92AP-1763, citing *Matthews v. Matthews* (1981), 5 Ohio App.3d 140. However, "[a]n 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* (1997), 112 Ohio App.3d 334, 336. "App.R. 26 does not provide specific guidelines to be used by an appellate court when determining whether a decision should be reconsidered or modified." *Id.* at 335.

{¶3} In appellant's motion, she references a number of alleged failures regarding our prior decision. Specifically, she argues that this court failed to consider and/or mischaracterized various facts and failed to address numerous issues and inconsistencies raised in her brief. Appellant further argues we relied entirely upon the overriding business justification element and ignored the other elements in determining she failed to establish a claim for wrongful termination in violation of public policy. In addition, appellant asserts our decision failed to explain why the performance management plan and 45-day probationary extension both needed to be signed and why they did not create an implied-in-fact contract as in *Fouty v. Ohio Dept. of Youth Servs.*, 167 Ohio App.3d 508, 2006-Ohio-2957. As a result, she argues that we must reconsider this matter.

{¶4} Many of the arguments raised by appellant in her motion for reconsideration were previously raised in her brief, which we thoroughly read and considered prior to issuing our decision. In reviewing this matter under a manifest weight of the evidence standard, we must presume the findings of the trier of fact are correct. See *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81. Furthermore, appellant's contention that we failed to consider certain facts or that we reached certain factual conclusions with which she disagrees does not establish an obvious error for reconsideration.

{¶5} Although appellant would like more specific examples, the allegations regarding appellant's poor performance, inability to maintain an objective approach in dealing with county agencies, and argumentative responses when given criticism or direction are supported by competent, credible evidence, as required by the standard under which we must review this case. Additionally, the evidence is sufficient to demonstrate ODJFS possessed a legitimate business justification for terminating appellant's probationary employment. Because appellant is required to meet all of the elements of a *Greeley*¹ claim for wrongful termination in violation of public policy, our focus upon just one element, the legitimate business justification element, was proper and our determination on this issue is supported by sufficient authority.

{¶6} Finally, as our decision points out, whether or not appellant signed the performance management plan, appellant failed to demonstrate an intent to be bound by a contractual agreement of employment on the part of both parties. The plan was simply a management tool, not a contract for continued employment, and appellant's signature

¹ *Greeley v. Miami Valley Maintenance Contractors, Inc.* (1990), 49 Ohio St.3d 228.

or lack thereof is not itself determinative. Furthermore, pursuant to R.C. 124.27(C), appellant's at-will employment could be legally terminated at any point during her period of probationary employment.

{¶7} After a review of the arguments presented in appellant's application for reconsideration, we find nothing that warrants reconsideration of our prior decision. As a result, we conclude the application neither calls our attention to an obvious error in our judgment, nor raises an issue for consideration that was not fully considered in our original decision. Accordingly, we deny appellant's application for reconsideration.

Application for reconsideration denied.

KLATT and McGRATH, JJ., concur.
