[Cite as *Parker's Tavern v. Ohio Dept. of Health*, 2011-Ohio-5767.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Parker's Tavern,	:	
Appellant-Appellant,	:	
v.	:	No. 10AP-968 (C.P.C. No. 10CV01-513)
Ohio Department of Health,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on November 8, 2011

Tyler W. Kahler, for appellant.

Michael DeWine, Attorney General, and *Stacy Hannan*, for appellee.

ON APPLICATION FOR RECONSIDERATION

KLATT, J.

{¶1} Appellant, Parker's Tavern (hereinafter "the Tavern"), has filed an application for reconsideration, pursuant to App.R. 26(A), requesting that the court reconsider its decision rendered on July 21, 2011. Appellee, the Ohio Department of Health, through its designee, the Franklin County Board of Health (hereinafter "Franklin County"), has filed a memorandum in opposition. For the following reasons, we grant the Tavern's application for reconsideration and reaffirm our previous decision.

{¶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 was not fully considered by the court when it should have been. *State v. Wade*, 10th Dist. No. 06AP-644, 2008-Ohio-1797, ¶2; *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, 69. " '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.' " *Columbus v. Dials*, 10th Dist. No. 04AP-1099, 2006-Ohio-227, ¶3 (quoting *State v. Owens* (1996), 112 Ohio App.3d 334, 336). "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." *Owens* at 336.

{¶3} In our July 21, 2011 decision, we affirmed a judgment of the Franklin County Court of Common Pleas that affirmed a decision of the appellee finding the Tavern in violation of Ohio's Smoke Free Workplace Act. In doing so, we overruled the Tavern's first assignment of error because we concluded that the Tavern did not make the argument in the trial court. The Tavern requests that we reconsider that decision, because it claims that it did make the argument to the trial court. We agree. While the Tavern's assignments of error in its trial court brief do not mention this argument, the Tavern did make the argument under its second assignment of error which contested the sufficiency of the evidence supporting its smoking violation. Therefore, we grant the Tavern's application for reconsideration and will address the Tavern's first assignment of error.

{¶4} The Tavern argues in its first assignment of error that appellee's inspectors did not conduct interviews as required by Ohio Adm.Code 3701-52-08(D) as part of its investigation. We disagree.

{¶5} Ohio Adm.Code 3701-52-08(D)(2) provides, in pertinent part:

> (2) The Ohio department of health may, in its discretion, investigate a complete report of violation or promptly transmit the report of violation to a designee in the jurisdiction where the reported violation allegedly occurred for investigation and enforcement. If the report of violation is transmitted to a designee, the designee shall investigate all complete reports of violation. For the purposes of this chapter, an investigation may include but is not limited to:
>
> (a) A review of report of violation;
>
> (b) A review of any written statement or evidence contesting the report of violation;
>
> (c) Telephone or on-site interviews; and,
>
> (d) On-site investigations.

{¶6} Despite the permissive nature of this language, the next portion of the administrative code appears to make these investigative activities, including the interviews, mandatory in certain situations:

> (3) Prior to issuing a proposed civil fine for a violation of Chapter 3794. of the Revised Code and this chapter, the department's investigation shall include all investigation activities set forth in paragraphs (D)(2)(a) to (D)(2)(d) of this rule.

{¶7} The Tavern argues that appellee's inspectors failed to conduct these interviews. We disagree.

{¶8} "Interview" is not defined by these regulations. When a statute or regulation fails to ascribe a definition to a word used, courts resort to the common, everyday meaning of the word. *Am. Fiber Systems, Inc. v. Levin,* 125 Ohio St.3d 374, 2010-Ohio-1468, ¶24. Pursuant to Webster's Third New International Dictionary (1966), an "interview" is defined as "a meeting face to face: a private conversation; a formal meeting for consultation." Merriam-Webster's Online Dictionary further defines an

"interview" as a "meeting at which information is obtained (as by a reporter, television commentator, or pollster) from a person." See http://www.merriam-webster.com/dictionary/interview.

{¶9} We note that the administrative code does not describe who must be interviewed in an investigation. Thus, appellant's argument that the investigators did not interview any of the smoking customers at the bar is not relevant. Here, appellee's investigators did meet with people during their investigation of smoking at the Tavern. The investigators testified that after they observed smoking in the bar, they spoke to a bartender during the investigation. (Tr. 45.) The investigators asked her if the Tavern had stopped serving alcohol to the smoking customers. (Tr. 53.) They also discussed the matter with the bar's owner. (Tr. 51.) That discussion did not last long. (Tr. 60.)

{¶10} The investigators' communication with the bartender and the owner was not extensive. Nevertheless, the investigators met with these witnesses in an attempt to gather information. That communication was sufficient to constitute an interview as that term is commonly understood.

{¶11} Upon reconsideration, we overrule the Tavern's first assignment of error and we reaffirm our previous decision.

{¶12} The application for reconsideration is granted.

Application for reconsideration granted.

CONNOR and SADLER, JJ., concur.
