[Cite as *Norris v. Philander Chase Co.*, 2010-Ohio-6653.]

See original opinion at 2010-Ohio-5297.

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO

FIFTH APPELLATE DISTRICT

JOHN NORRIS Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
PHILANDER CHASE COMPANY AND KENYON COLLEGE	:	CASE NO. 10-CA-04
	:	December 29, 2010
Defendants-Appellants		

{¶ 1} This matter came before this Court on plaintiff-appellee John Norris's Application for Reconsideration. Appellee asks this Court to reconsider our October 28, 2010 decision in *Norris v. Philander Chase Co.*, Knox App. No. 10-CA-04, 2010-Ohio-5297.

{¶ 2} "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." *State v. Owens* (1997), 112 Ohio App.3d 334, 336, 678 N.E.2d 956, dismissed, appeal not allowed, 77 Ohio St.3d 1487, 673 N.E.2d 146. 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." *Id.*

{¶ 3} “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. See, also, *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 143, 5 OBR 320, 450 N.E.2d 278. In *Matthews,* this court stated, “[t]he 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 considered at all or was not fully considered by us when it should have been.” *Id.;* see, also, *Erie Ins. Exchange v. Colony Dev. Corp.* (2000), 136 Ohio App.3d 419, 421, 736 N.E.2d 950; *Corporex Dev. & Constr. Mgmt., Inc. v. Shook, Inc.,* Franklin App. No. 03AP-269, 2004-Ohio-2715, ¶ 4.

{¶ 4} Because we find Appellee’s application calls to this Court’s attention obvious errors, and raises an issue for our consideration which was not addressed when it should have been, we grant said application.

{¶ 5} Appellee cites this Court to a number of findings in our Opinion which he submits “are contrary to the record”. In paragraph 2 of our Opinion, we state Clyde Norris and Bonnie Norris created the Trust. In paragraph 25, we note the “Trust always remained revocable by the elder Norrises”. We recognize these paragraphs contain misstatements of fact. Bonnie Norris did not create the Trust nor did she have the power to revoke it. Only Clyde Norris created the Trust and had the power to revoke it. However, we find such misstatements do not affect our analysis of the assignments of error or the outcome of the appeal.

{¶ 6} Appellee also refers to paragraph 6, in which this Court set forth the language of the March 17, 1998 amendment to the Trust. Appellee submits this Court clearly

acknowledged Clyde Norris had no authority to sell the family farm without Appellee's written consent. Appellee maintains the factual statements in paragraphs 8 and 9 are incorrect as the Norris family, Attorney Murray and Philander Chase did not have the authority to modify the Trust or generate funds for the Trust. Appellee concludes the March 17, 1998 amendment was "clearly breached". We find the argument relative to these alleged errors is nothing more than a reassertion of the argument made in his original Brief to this Court. We previously considered this argument and found it to be without merit.

{¶ 7} Appellee also takes issue with this Court's findings in paragraphs 10, 12, and 26, and our failure to impute knowledge to Kenyon College due to the fact Attorney Murray also represented the College, as well as our failure to find the College and Philander Chase had constructive notice of Appellee' option to purchase as a result of the Trust being duly recorded. Again, Appellee is merely rehashing arguments made in his original Brief to this Court. We previously considered these arguments and found such to be without merit. We find these are insufficient arguments to merit reconsideration.

{¶ 8} Appellee has correctly noted this Court failed to address his claim for tortious interference with business relations. Accordingly, we shall address the claim.

{¶ 9} In order to establish tortuous interference with a business relationship or contract, a party must demonstrate:

{¶ 10} "(1) a business relationship or contract; (2) the wrongdoer's knowledge of the relationship or contract; (3) the wrongdoer's intentional and improper action taken to prevent a contract formation, procure a contractual breach, or terminate a business

relationship; (4) a lack of privilege; and (5) resulting damages." *Kenty v. Transamerica Premium Ins. Co.,* 72 Ohio St.3d 415, 650 N.E.2d 863, 1995-Ohio-61; and *A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council,* 73 Ohio St.3d 1, 651 N.E.2d 1283, 1995-Ohio-66.

{¶ 11} We find Appellee cannot establish all these elements. First, we find there was no "business" relationship between Clyde Norris and Appellee. The act of father and son entering into the Option did not create a "business" relationship. Assuming, arguendo, there was a business relationship, we find there was no breach of the contract. The Option was always subject to the terms of the revocable Trust. As we found in our previous Opinion, the Option did not prohibit Clyde Norris from granting an easement or otherwise encumbering the property. Lastly, Appellee voluntarily exercised the Option in settling his claims with family members. The same rationale upon which we based our finding Appellee lacked evidence to prove the elements of his tortious interference with contract claim at the time he filed his Complaint apply equally to his claim for tortious interference with business relations.

{¶ 12} For the foregoing reasons, we adhere to our original decision in this matter.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

HON. W. SCOTT GWIN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

WBH/ag 12/21/10