[Cite as *Rider-Durst v. Conotton Valley Union Local School Dist. Bd. of Edn.*, 2022-Ohio-927.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
CARROLL COUNTY

JEFFREY RIDER-DURST, et al.,

Plaintiffs-Appellants,

v.

CONOTTON VALLEY UNION LOCAL SCHOOL DISTRICT BOARD OF EDUCATION,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 20 CA 0942

Appellee's Application for Reconsideration
Appellant's Motion to Certify Conflict

BEFORE:
Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:
Denied.

Atty. Ronald G. Macala, and *Atty. Jeffrey R. Bruno*, Macala & Piatt, LLC, 601 S. Main St., North Canton, Ohio 44720, for Plaintiffs-Appellants

Atty. Nelson M. Reid, *Atty. Tarik M. Kershah*, and *Atty. Samuel Lewis*, Bricker & Eckler, LLP, 100 S. Third St., Columbus, Ohio 43215, for Defendant-Appellee.

Dated: March 3, 2022

PER CURIAM.

{¶1} On October 8, 2021, Appellee Conotton Valley Union Local School District Board of Education filed an application for partial reconsideration of this Court's Opinion in *Rider-Durst v. Conotton Valley Union Local School Dist. Bd. of Education*, 7th Dist. Carroll No. 20 CA 0942, 2021-Ohio-3587. Days later, on October 14, 2021, Appellants Jeffrey Rider-Durst, Ronald Cappillo, Jason Baker, and Christopher Stephens (collectively referred to as "Appellants") filed a motion to certify a conflict. For the reasons that follow, Appellee's application for reconsideration is denied. Appellants' motion to certify is also denied, as it is untimely.

Factual and Procedural History

{¶2} The facts of the underlying matter are addressed in *Rider-Durst, supra*. In summation, Appellee entered into a contract for the purpose of demolishing an existing press box on public school grounds and replacing it with a new structure. Appellee admittedly did not seek public bids before entering into the contract.

{¶3} Appellants' taxpayer complaint sought a declaratory judgment, a temporary restraining order, and other injunctive relief. The new structure was completed during the pendency of litigation. *Id.* at ¶ 2-3. The trial court determined that Appellants lacked standing as taxpayers. On appeal, we denied Appellee's request to declare the matter moot, as we found the issue was capable of evading review. However, we affirmed the judgment of the trial court. *Id.* at ¶ 9; 20.

{¶4} For ease of understanding, the motion to certify a conflict will be addressed first.

Motion to Certify Conflict

{¶5} Motions to certify a conflict are governed by Article IV, Section 3(B)(4) of the Ohio Constitution. It provides:

> Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

{¶6} Under Ohio law, "there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper." *Whitelock v. Gilbane Bldg. Co*., 66 Ohio St.3d 594, 613 N.E.2d 1032 (1993), paragraph one of the syllabus. We have adopted the following requirements from the Supreme Court:

> [A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be "upon the same question." Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the

> certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. (Emphasis deleted.)

Id. at 596.

{¶7} Pursuant to App.R. 25(A), "no later than ten days after the clerk has both mailed to the parties the judgment or order of the court that creates a conflict with a judgment or order of another court of appeals and made note on the docket of the mailing, as required by App. R. 30(A)." The online docket notes that the clerk mailed our Opinion to the parties on September 30, 2021. Thus, the deadline for filing a timely motion would have been October 11, 2021, as the tenth day fell on a Sunday. Appellants did not file their motion until October 14, 2021, making it three days late. Appellants argue that the "three-day" rule found in App. 14(C) applies. However, we have previously held that the three-day rule in App.R. 14(C) does not apply to applications for reconsideration or motions to certify a conflict. See *State v. Panezich*, 7th Dist. Mahoning No. 17 MA 0087, 2018-Ohio-3974, ¶ 2; *Peters v. Tipton*, 7th Dist. Harrison No. 13 HA 10, 2015-Ohio-3307.

{¶8} Appellants argue that recent changes to App.R. 25 should cause this Court to reconsider *Peters.* We find no change that would affect our holding in *Peters* or our more recent decision in *Panezich.* Further, App.R. 14(B) forbids a reviewing court from granting an enlargement of time for filing a motion to certify a conflict. It would appear that the legislature intended the ten-day period to be strictly enforced. As such, Appellant's motion to certify a conflict is denied as untimely filed.

Reconsideration

> 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.

{¶9} App.R. 26(A)(1)(a) states, in relevant part: "[a]pplication for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App. R. 30(A)."

{¶10} Again, this Court's judgment was mailed to counsel and a note relevant to this mailing was placed on the docket on September 30, 2021. In order to be timely, an application was required to be filed no later than October 11, 2021, as the tenth day fell on a Saturday. Appellee filed its application on October 8, 2021, thus is timely.

{¶11} Appellee seeks partial reconsideration of our decision to define the term "school building." At the outset, the parties dispute whether this issue was addressed by the trial court and, subsequently, the parties on appeal. The record unquestionably demonstrates that although this case was resolved both by the trial court and this Court by denying standing, the parties both raised the issue of whether the press box constituted a "school building" throughout this matter.

{¶12} Because of their claim that the issue was not raised, the parties contend that our discussion of the term constitutes dicta. Both parties correctly recognize that this

issue does not directly impact our holding on the case in chief, which pertains to standing. Our consideration of whether the disputed structure is a "school building" however, was relevant to how we resolved the mootness issue. While Appellee argued that the appeal was moot, we accepted Appellants' argument that the matter was capable of evading review. The definition of a "school building" was relevant only to that issue.

{¶13} Appellee concedes that the statute at issue on appeal does not define the term "school building." Appellee puts forward two definitions which it claims contradicts the definition utilized by this Court. However, neither of Appellee's definitions are relevant. First, Appellee cites to R.C. 3781.106. That statute is entitled: "Device to prevent ingress or egress through door in school building in emergency; rules." We fail to see how a statute that pertains to devices used to lock school doors in the event of an emergency is relevant to whether a school board must obtain competitive bids before entering into a construction contract to build a structure on school grounds.

{¶14} Appellee also relies on a definition found within R.C. 3318.01. However, that statute does not define the term "school building." Instead, it defines the term "classroom facilities." Importantly, the definition relates only to rooms that are located in "school buildings," and does not define that term. Appellee also argues that R.C. 3318.10 links the definition of R.C. 3318.01 to R.C. 3313.46. To the contrary, R.C. 3318.10 does not reference the definition found within R.C. 3318.01. Again, this section only defines classroom facilities, not a "school building."

{¶15} Appellee also cites to OAC 4101:1-2. That code section defines a school building as "[a] structure used for the instruction of students by a public or private school or institution of higher education." Such definition is vague, at best. The definition is also

not helpful as it is part of the building code generally addressing the standards of constructing certain buildings, and not the requirements of public bidding or taxpayer funds.

{¶16} Regardless, as we noted in our Opinion, Appellee cannot escape the fact that whatever definition is applied, it admittedly used public funds to build a structure on public school property for the benefit of the school and students. Again, we emphasize that this issue is relevant only to our discussion of the mootness doctrine.

{¶17} It is clear from Appellee's arguments that it merely disagrees with the decision of and logic used by this Court, which is not the appropriate basis for reconsideration. "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; *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.

Conclusion

{¶18} Appellants' motion to certify a conflict is denied as untimely. Appellee's application to reconsider is denied as it fails to state an obvious error or an issue not fully addressed.

JUDGE CHERYL L. WAITE

JUDGE GENE DONOFRIO

JUDGE DAVID A. D'APOLITO

NOTICE TO COUNSEL

This document constitutes a final judgment entry.