[Cite as *Grange v. Swearengen*, 2022-Ohio-929.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

GRANGE INSURANCE COMPANY,

Plaintiff-Intervenor-Appellant,

v.

JAMES C. SWEARENGEN, JR., et al., INDIVIDUALLY AND AS ADMINISTRATOR FOR THE ESTATE OF JAMES SWEARENGEN, AND CAROLYN SWEARENGEN, DECEASED,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 21 JE 0005

Motion for Reconsideration
Motion to Certify Conflict

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

JUDGMENT:
Denied.

Atty. James R. Gallagher, Gallagher, Gams, Tallan, Barnes & Littrell, LLP, 471 East Broad Street 19th Floor, Columbus Ohio 43215-3872, for Intervening Plaintiff-Appellant Grange Insurance Company

Atty. Lee E. Plakas, *Atty. Megan J. Frantz Oldham*, *Atty. Maria C. Klutinoty Edwards*, and *Atty. Brandon W. McHugh*, Plakas Mannos, 220 Market Avenue North, Suite 300, Canton Ohio 44702, for Defendants-Appellees James C. Swearengen, Jr., Individually and as Administrator for the Estates of James Swearengen and Carolyn Swearengen, Deceased.

Dated: March 3, 2022

PER CURIAM.

{¶1} Appellant Grange Insurance Company filed an application to reconsider and motion to certify a conflict on October 12, 2021. Both the application to reconsider and motion to certify a conflict are denied as untimely filed.

Factual and Procedural History

{¶2} The facts of the underlying matter are addressed in *Grange Ins. Co. v. Swearengen*, 7th Dist. Jefferson No. 21 JE 0005, 2021-Ohio-3596. The appeal concerned the policy limits of an insurance policy. Specifically, the issue was limited to whether a "Products Completed Operations Hazard" ("PCOH") claim was subject to the policy limit of $1,000,000 as described within the general claims liability section, or $2,000,000 as described within a PCOH aggregate section.

{¶3} On June 5, 2020, the probate court approved a settlement agreement between James and Carolyn Swearengen and Muttons Heating and Cooling. On August 20, 2020, Appellant filed a third-party declaratory judgment action against Appellee James C. Swearengen, Jr., Individually and as Administrator for the Estate of James Swearengen, Deceased, et al. Muttons was released from all claims as part of the agreement. On February 2, 2021, the court granted summary judgment in favor of

Appellee. The court determined that the policy provided a $2,000,000 limit, as the policy carved out PCOH claims in the aggregate section of the policy. Because the PCOH claims were not included within the "per occurrence" section, the court determined that PCOH claims were subject only to an aggregate limit. On appeal, we affirmed the judgment of the trial court as to the policy limits, but reversed one assignment of error pertaining to a post-judgment interest award.

{¶4} On November 24, 2021, the parties filed a joint motion to stay the appeal pending approval of a settlement agreement. We note that the Opinion had already been released in this matter, thus only the application for reconsideration and motion to certify a conflict are appropriate subjects of the stay request. However, because both filings were untimely, a stay on the matter is unnecessary.

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.

{¶5} 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)."

{¶6} Appellant'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. However, Appellant did not file his application until October 12, 2021, one day after the deadline. Appellant did not file a motion for an enlargement of time. We have previously refused to consider an application for reconsideration filed one day after the timely filing deadline. See *State v. Perdue*, 7th Dist. Mahoning No. 16 MA 0156, 2018-Ohio-252. We note *sua sponte* that the three-day rule of 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. We observed in *Panezich* that we are permitted to enlarge the time to accept an application for reconsideration based on a showing of extraordinary circumstances. *Id.* at ¶ 2. However, Appellant failed to address its tardiness in any way. As such, the application for reconsideration is untimely and will not be considered.

{¶7} Even so, it is clear from Appellant'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." *Perdue* at ¶ 7, citing *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.

Motion to Certify Conflict

{¶8} 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.

{¶9} 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.

{¶10} As stated within App.R. 25(A), the motion must be filed no later than ten days after the judgment is mailed to the parties. As discussed above, Appellant's motion was filed eleven days after the clerk mailed the judgment to the parties. Again, the three-day rule of App.R. 14(C) does not apply to applications for reconsideration or motions to certify a conflict. See *Peters v. Tipton*, 7th Dist. Harrison No. 13 HA 10, 2015-Ohio-3307. Unlike application for reconsideration, App.R. 14(B) forbids a reviewing court from granting an enlargement of time for the filing of a motion to certify a conflict. Although the motion is untimely, we will address certain important points.

{¶11} Appellant argues that our decision is in conflict with *Burdette v. Bell*, 12th Dist. Preble No. CA2019-04-005, 2019-Ohio-5035, 137 N.E.3d 1236, appeal not allowed, 158 Ohio St.3d 1452, 2020-Ohio-1090. First and foremost, we again emphasize that the *Bell* court examined an issue completely different from the issue involved in this matter. That said, *Bell* did provide some guidance.

{¶12} Appellants cite to a portion of *Bell* concluding that the policy did not provide coverage for damage that occurred away from the insured premises. *Id.* at ¶ 29. Off premises limits are not at issue in the present case. However, the paragraph cited by Appellant contradicts its argument, as it recognized that the *Bell* policy's general liability limits were different than its PCOH liability limits. *Id.* The court reiterated that a "different limit of liability for PCOH is just that, a different applicable limit, not a separate form of coverage. *Id.* at ¶ 28. Thus, the *Bell* court recognized that general liability claims and

PCOH claims may have separate liability limits even though an insurance policy does not provide stand-alone coverage.

{¶13} Appellant also seeks to certify a conflict as to the definition of the term "aggregate." The definition of "aggregate" is irrelevant to the appeal, as the parties did not seek to define that term. Instead, they sought a determination of whether the per occurrence policy limits as to general liability claims and PCOH claims were different under the policy. We note that all but two of the cases relied on by Appellant are not Ohio cases.

{¶14} Appellant's two Ohio cases do not conflict with our decision. See *Renfro v. Professional Mut. Ins. Co*., 6th Dist. Sandusky No. S-87-46, 1989 WL 41709 (April 28, 1989); *Stumbo v. Acceleration Nat. Ins. Co*., 10th Dist. Franklin No. 94APE11-1622, 1995 WL 32614 (May 30, 1995). While both of these cases define the term "aggregate," they do not address liability limits. There is no disagreement in this matter as to the definition of the term "aggregate." There is also no disagreement that the issue on appeal involved a per occurrence claim. The sole issue on appeal was whether under the parties' policy, PCOH claims have a separate liability limit for per occurrence and aggregate claims.

Conclusion

{¶15} Appellant's application to reconsider and motion to certify a conflict are both denied as untimely.

JUDGE CHERYL L. WAITE

JUDGE GENE DONOFRIO

JUDGE DAVID A. D'APOLITO

NOTICE TO COUNSEL

This document constitutes a final judgment entry.