IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Athens et al.,	:	
Plaintiffs-Appellants,	:	Nos. 18AP-144 and 18AP-189 (C.P.C. No. 17CV-10258)
v.	:	
Joseph A. Testa, Tax Commissioner of the State of Ohio,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

MEMORANDUM DECISION

Rendered on April 4, 2019

Frost Brown Todd LLC, Eugene L. Hollins, Stephen J. Smith, Frank J. Reed, Jr., Yazan S. Ashrawi, and *Thaddeus M. Boggs*, for appellants.

Walter Haverfield LLP, Darrell A. Clay, and *Brendan D. Healy*, for appellants.

Brennan, Manna, & Diamond, LLC, Jeffrey C. Miller, Martin J. Pangrace, Victoria L. Ferrise, Bryan E. Meek, and *Jacob A. Bruner*, for appellees.

Zaino Hall & Farrin LLC, Richard C. Farrin, and *Thomas M. Zaino*, for *Amici Curiae.*

ON APPLICATIONS FOR RECONSIDERATION

KLATT, P.J.

{¶ 1} Plaintiffs-appellants, two different coalitions of Ohio municipal corporations, have both applied for reconsideration of our decision in *Athens v. Testa*, 10th Dist. No.

18AP-144, 2019-Ohio-277, pursuant to App.R. 26(A)(1). For the following reasons, we deny those applications.

{¶ 2} When presented with an application for reconsideration filed pursuant to App.R. 26(A)(1), an appellate court must determine whether the application calls to the court's attention an obvious error in its decision or raises an issue that the court should have, but did not, fully consider. *Stanley Miller Constr. Co. v. Ohio School Facilities Comm.*, 192 Ohio App.3d 676, 2011-Ohio-909, ¶ 6 (10th Dist.); *Columbus v. Hodge*, 37 Ohio App.3d 68, 69 (10th Dist.1987). An appellate court will not grant an application for reconsideration merely because a party disagrees with the logic or conclusions of the underlying decision. *State v. Stewart*, 10th Dist. No. 11AP-787, 2013-Ohio-78, ¶ 3; *Wiltz v. Clark Schaefer Hackett & Co.*, 10th Dist. No. 11AP-64, 2011-Ohio-6664, ¶ 2.

{¶ 3} The Elyria plaintiffs argue that this court committed an obvious error in refusing to reverse the underlying judgment due to the trial court's failure to notify the parties that it intended to consolidate the preliminary injunction hearing with a trial on the merits. In support of this argument, the Elyria plaintiffs make two assertions. Neither assertion convinces us that an obvious error occurred.

{¶ 4} First, the Elyria plaintiffs assert that this court should have treated the lack of notification as a structural error. A structural error is a constitutional defect that defies analysis by the harmless-error standard because it affects the framework within which the trial proceeds, rather than simply being an error in the trial process itself. *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, ¶ 17. Courts recognize structural error only when the error necessarily renders a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence. *State v. Wilks*, ___ Ohio St.3d ___, 2018-Ohio-1562, ¶ 132. In determining whether an alleged error is structural, the "threshold inquiry is whether such error 'involves the deprivation of a constitutional right.' " *State v. Fisher*, 99 Ohio St.3d 127, 2003-Ohio-2761, ¶ 18, quoting *State v. Issa*, 93 Ohio St.3d 49, 74 (2001) (Cook, J., concurring). The case at bar is not a criminal case, and the Elyria plaintiffs have not alleged, much less demonstrated, that the lack of notice deprived them of a constitutional right. Consequently, no structural error exists in this case.

{¶ 5} Second, the Elyria plaintiffs assert that the lack of notice caused them prejudice. However, much of the prejudice the Elyria plaintiffs point to in their application

for reconsideration was suffered by the Athens plaintiffs, not them. We remain unpersuaded that the Elyria plaintiffs actually suffered any prejudice. Consequently, the Elyria plaintiffs have not established any grounds for reconsideration.

{¶ 6} In the Athens plaintiffs' application for reconsideration, they argue that this court: (1) did not fully consider the home-rule challenge to H.B. No. 5 and H.B. No. 49 under the "framework" or "test" set forth in *Cincinnati Bell Telephone Co. v. Cincinnati*, 81 Ohio St.3d 599 (1998), and (2) committed an obvious error when concluding that the inclusion of R.C. 718.80 through 718.95 in H.B. No. 49 did not constitute a manifestly gross and fraudulent violation of the One-Subject Rule. We are not convinced by either argument.

{¶ 7} First, *Cincinnati Bell* did not, as the Athens plaintiffs now claim, establish a "test" or "framework" for determining whether the General Assembly has exceeded the authority granted to it in Article XVIII, Section 13 of the Ohio Constitution. Nevertheless, the reasoning of *Cincinnati Bell* was integral to our decision. In deciding *Athens*, we recognized the applicability of *Cincinnati Bell* to this case, stating, "when determining the constitutionality of * * * legislation [designed to limit municipalities' exercise of local self-government in matters of taxation], courts must interpret 'the specific limiting power of the General Assembly so that it does not engulf the general power of taxation delegated to the municipalities.' " *Athens* at ¶ 41, quoting *Cincinnati Bell Tel. Co.* at 606-07.

{¶ 8} Primarily, the Athens plaintiffs contend that H.B. No. 5's amendments to R.C. 715.013 and addition of R.C. 718.04(A) resulted in the General Assembly engulfing the municipalities' power of taxation. We addressed and rejected this contention in paragraphs 53 and 54 of our decision. The Athens plaintiffs now also argue that the provisions of H.B. No. 49 that impose of a one-half percent fee and delegate administrative authority to the tax commissioner engulf the municipalities' power of taxation. While these provisions promulgate restrictions on municipalities' power to tax, they do not eliminate or take over that power. The municipalities remain able to levy net profit taxes and receive net-profit-tax revenues. Thus, we find no reason to reconsider our conclusion that the challenged provisions of H.B. No. 49 do not violate the Home Rule Amendment.

{¶ 9} By their second argument, the Athens plaintiffs attack our analysis of whether the state will expend its own funds to implement R.C. 718.80 through 718.95. We concede

that we mistakenly concluded that enactment of R.C. 718.80 through 718.95 *required* the expenditure of state funds. *Athens* at ¶ 34-35. In so concluding, we did not account for the possibility that the revenues gained through the one-half percent fee may completely cover the Department of Taxation's costs. In that scenario, the Department of Taxation would not have to turn to state funds to operate the centralized tax collection and administration system.

{¶ 10} However, given the expected administrative costs from the new workload and the uncertainty about the amount of revenue the one-half percent fee will generate, the General Assembly provided a mechanism for channeling state funds to the Department of Taxation in H.B. No. 49. 2017 Am.Sub.H.B. No. 49, Uncodified Section 409.20. Thus, the General Assembly foresaw the need for state funds to cover the Department of Taxation's costs. By supplying a means to facilitate the transfer of state funds, the General Assembly demonstrated its intent that the Department of Taxation not have to rely solely on the one-half percent fee for all its municipal-net-profit-tax expenditures. The requirement that the Department of Taxation repay state funds to the General Revenue Fund when practicable does not negate the anticipated impact on the Fund. Thus, like the other provisions of H.B. No. 49, the provisions of R.C. 718.80 through 718.95 reflect a balancing of state expenditures against state revenues to ensure operation of a state program.

{¶ 11} Finally, the Athens plaintiffs contend that the municipal and state fiscal systems are not interconnected. We disagree.

{¶ 12} In sum, we did not obviously err when concluding that the insertion of R.C. 718.80 through 718.95 in H.B. No. 49 did not constitute a manifestly gross and fraudulent violation of the One-Subject Rule. Therefore, reconsideration is not warranted on that basis.

{¶ 13} For the foregoing reasons, we deny the Elyria plaintiffs' and the Athens plaintiffs' applications for reconsideration.

Applications for reconsideration denied.

SADLER and BEATTY BLUNT, JJ., concur.