

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Hobnob, Inc.,	:	
	:	
Appellant-Appellant,	:	No. 17AP-907
	:	(C.P.C. No. 17CV-5764)
v.	:	
	:	(REGULAR CALENDAR)
Ohio Liquor Control Commission,	:	
	:	
Appellee-Appellee.	:	

MEMORANDUM DECISION

Rendered on October 18, 2018

Mark S. Gutentag, for appellant.

Michael DeWine, Attorney General, *Anthony J. Garcia*, and *Charles E. Febus*, for appellee.

ON APPLICATION FOR RECONSIDERATION

LUPER SCHUSTER, J.

{¶ 1} On September 10, 2018, appellee, Ohio Liquor Control Commission ("commission"), filed an application for reconsideration pursuant to App.R. 26(A) of this court's August 30, 2018 decision in *Hobnob, Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 17AP-907, 2018-Ohio-3499, reversing the judgment of the Franklin County Court of Common Pleas affirming an order of the commission suspending the liquor license of appellant, Hobnob, Inc. ("Hobnob"), for 30 days. For the following reasons, we deny the commission's application.

{¶ 2} App.R. 26(A) provides for the filing of an application for reconsideration. "The test generally applied to an application for reconsideration is whether the application calls to the court's attention '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

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it should have been.' " *State v. Lawson*, 10th Dist. No. 12AP-53, 2013-Ohio-803, ¶ 7, quoting *Matthews v. Matthews*, 5 Ohio App.3d 140 (10th Dist.1981), paragraph two of the syllabus. However, an application for reconsideration " 'is not designed for use in instances where a party simply disagrees with the logic or conclusions of the court.' " *Lawson* at ¶ 7, quoting *State v. Burke*, 10th Dist. No. 04AP-1234, 2006-Ohio-1026, ¶ 2, citing *State v. Owens*, 112 Ohio App.3d 334, 336 (11th Dist.1996).

{¶ 3} In its application for reconsideration, the commission asserts we failed to consider or fully consider certain evidence in the record related to Hobnob's actual knowledge of Vashti Brown and Devin Bachmann's state of intoxication, and to apply the appropriate standard of review. We disagree.

{¶ 4} Hobnob's appeal presented the issue of whether the evidence before the commission reasonably supported a conclusion that Hobnob violated R.C. 4301.22(B) by furnishing beer or intoxicating liquor to a person known to be intoxicated. The record indisputably demonstrated that Brown and Bachmann were not intoxicated when they arrived at the bar, but they were heavily intoxicated when they departed the bar. However, based on our review of the entire record, we found that no evidence "supports an inference that the bartender knew that drinks were being distributed to Brown and Bachmann after they became intoxicated." *Hobnob* at ¶ 16. The commission argues that this conclusion does not account for various facts contained in the record, which, according to it, demonstrated the bartender had actual knowledge that drinks she was preparing were being distributed to Brown and Bachmann after they had become intoxicated. The commission's disagreement with our conclusion as to what reasonably may be inferred from the evidence in the record is not a basis to grant reconsideration.

{¶ 5} We also reject the commission's assertion that we applied the incorrect standard of review. An appellate court applies an abuse of discretion standard when reviewing a common pleas court's determination of whether an agency's order was supported by reliable, probative, and substantial evidence. *Watson v. Columbus State Community College*, 10th Dist. No. 15AP-1009, 2016-Ohio-3037, ¶ 10. The commission contends that, while we stated the correct standard of review for this matter, we improperly applied a de novo standard of review. The commission reasons that because our decision only states that the trial court erred in affirming the commission's order, without expressly stating the trial court abused its discretion, we did not find the requisite abuse of discretion.

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However, our finding that the trial court abused its discretion was implicit in our resolution of the issue presented by Hobnob's assignment of error. That we more broadly stated the trial court erred, instead of more specifically stating the trial court abused its discretion, does not reflect the application of the wrong standard of review.

{¶ 6} For these reasons, we find that the commission fails to identify any obvious error with our decision or raise an issue that this court either did not consider at all or did not fully consider when it should have been. *Matthews* at paragraph two of the syllabus. Accordingly, we deny the commission's application for reconsideration.

Application for reconsideration denied.

BROWN, P.J., and TYACK, J., concur.
