IN THE SUPREME COURT OF OHIO

CAREER & TECHNICAL ASSOCIATION, Plaintiff-Appellee, v. AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION, Defendant-Appellant.	)	On appeal from the Lake County Court of Appeals, Eleventh District Court of Appeals Case No. 2023-L-114

NOTICE OF APPEAL OF DEFENDANT-APPELLANT AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION

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NOTICE OF APPEAL OF DEFENDANT-APPELLANT AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION

Defendant-Appellant Auburn Vocational School District Board of Education gives notice of appeal to the Supreme Court of Ohio from the memorandum opinion and journal entry of the Lake County Court of Appeals, Eleventh Appellate District, entered in the case of *Career & Technical Assn. v. Auburn Vocational School Dist. Bd. of Edn.*, 11th Dist. Lake No. 2023-L-114, 2024-Ohio-1348, on April 9, 2024, at 9:43 a.m. and 9:48 a.m., respectively, as well as the four (4) subsequent journal entries of the Eleventh District entered on May 30, 2024, at 9:21 a.m., 9:22 a.m., 9:23 a.m., and 9:24 a.m., respectively, in the same case, copies of which are attached hereto and incorporated herein.

This case raises a substantial constitutional question and is of public and great general interest.

/s/ Matthew John Markling
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Counsel for Defendant-Appellant Auburn Vocational School District Board of Education

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing will be sent via electronic communication to the following on July 15, 2024:

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STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	) **SS.**	
COUNTY OF LAKE	)	**ELEVENTH DISTRICT**

CAREER & TECHNICAL ASSOCIATION,

Plaintiff-Appellee,

- vs -

AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION,

Defendant-Appellant.

JUDGMENT ENTRY

CASE NO. 2023-L-114

For the reasons stated in the memorandum opinion of this court, the appeal is hereby dismissed as a nullity. Any pending motions are overruled as moot.

Costs to be taxed against appellant.

PRESIDING JUDGE EUGENE A. LUCCI

MATT LYNCH, J.,

ROBERT J. PATTON, J.,

concur.

Filing # 176255 / 2023-L-114 / FILED: COURT OF APPEALS
Lake Co Common Pleas Court, Clerk Faith Andrews 04/09/2024 09:43 AM

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY

CAREER & TECHNICAL ASSOCIATION, Plaintiff-Appellee, - vs - AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION, Defendant-Appellant.	**CASE NO. 2023-L-114** Civil Appeal from the Court of Common Pleas Trial Court No. 2011 CV 003318

MEMORANDUM OPINION

Decided: April 9, 2024
Judgment: Appeal dismissed

Ira J. Mirkin, *Charles W. Oldfield*, and *Jeffrey J. Geisinger*, Green, Haines, Sgambati Co., LPA, City Centre One, Suite 800, 100 Federal Plaza East, Youngstown, OH 44503 (For Plaintiff-Appellee).

Matthew John Markling, McGown & Markling Co., LPA, 1894 North Cleveland-Massillon Road, Akron, OH 44333 (For Defendant-Appellant).

EUGENE A. LUCCI, P.J.

{¶1} Appellant, Auburn Vocational School District Board of Education ("the Board"), appeals the judgment of the Lake County Court of Common Pleas denying its post-judgment "motion for interpleader," which it filed after this court issued a final judgment and opinion affirming the trial court's adoption of the magistrate's decision subsequent to a bench trial. Appellee, Career & Technical Association ("CATA"), filed a motion to dismiss the appeal, asserting the Board's motion and the trial court's denial of

the same are nullities because they were respectively filed and entered after a valid, final judgment on the merits *and* after all avenues of appellate relief had been exhausted. We agree with CATA and dismiss the appeal.

{¶2} In December 2011, CATA filed a breach of contract action against the Board. The trial court held a bench trial to the magistrate after which the magistrate recommended judgment in CATA's favor and awarded stipulated damages to CATA in the amount of $1,486,045.78. The Board appealed the final order to this court and, in *Career & Tech. Assn. v. Auburn Vocational School Dist. Bd. of Edn.*, 2022-Ohio-2737, 194 N.E.3d 782 (11th Dist.) ("*CATA I*"), this court affirmed the trial court's various determinations in their entirety.

{¶3} The Board sought jurisdictional review with the Supreme Court of Ohio, which declined to accept jurisdiction on January 17, 2023. *Career & Tech. Assn. v. Auburn Vocational School Dist. Bd. of Edn.*, 168 Ohio St.3d 1527, 2023-Ohio-86, 200 N.E.3d 1151. The Board sought reconsideration, which the Court also denied on March 28, 2023. *Career & Tech. Assn. v. Auburn Vocational School Dist. Bd. of Edn.*, 169 Ohio St.3d 1476, 2023-Ohio-921, 205 N.E.3d 566. The Board does not contest the legal reality that the original judgment in CATA's favor became binding upon the Board upon the Supreme Court's denial of its jurisdictional appeal. *See* October 2, 2023 motion, p. 5.

{¶4} After all appellate avenues were exhausted, on October 2, 2023, the Board filed a "Motion for Interpleader and to Deposit Total Judgment Sum for the Safekeeping, Payment, and Disposition of Such Sum to the Interpleaders." In the motion, the Board proposed to deposit the total damages award with the trial court; it sought relief, however, because it claimed the damages award is exempt and otherwise excluded from STRS

contributions. Specifically, the Board contended that each of the affected teachers (a.k.a. the proposed interpleaders) are exempt from STRS contribution and, without granting the motion, issuing the payment could expose the Board to double or multiple liability. It bears emphasis that each of the proposed interpleaders were listed in a jointly-stipulated exhibit which set forth their names and the amounts to which each would be entitled upon CATA prevailing in the underlying suit. *See CATA I* at ¶ 19, 49-57, 64-65.

{¶5} It is well settled that a judgment rendered by a court that lacks jurisdiction is void ab initio. *Patton v. Diemer*, 35 Ohio St.3d 68, 70, 518 N.E.2d 941 (1988). Courts have consistently treated actions taken by the trial court after the entry of a final judgment that are not within the scope of the Ohio Rules of Civil Procedure as void. *See Mill City Mtge. Loan Tr. 2019-1, Wilmington Savings Fund Soc., FSB v. Knight*, 11th Dist. Ashtabula No. 2020-A-0053, 2021-Ohio-4135, ¶ 35; *see also Allstate Ins. Co. v. Witta*, 9th Dist. Summit No. 25738, 2011-Ohio-6068, ¶ 9-11.

{¶6} Considering these points, the purpose of Civ.R. 22 regarding interpleader is "to expedite the settlement of claims to the same subject matter, prevent multiplicity of suits, with the attendant delay and added expense, and to provide for the prompt administration of justice." *Sharp v. Shelby Mut. Ins. Co.*, 15 Ohio St.2d 134, 144, 239 N.E.2d 49 (1968). According to Civ.R. 22, a defendant who is exposed to double or multiple liability "may obtain such interpleader by way of cross-claim or counterclaim." *Id.* There is no provision in the rule for filing a "motion for interpleader" post-judgment. Indeed, once a plaintiff has reduced its claim to judgment against a stakeholder, the stakeholder may not properly compel the claimant or an adverse claimant to interplead. *Howard v. Mar-Pel's Beauty Academy*, 8th Dist. Cuyahoga No. 53453, 1987 WL 18275

(Oct. 8, 1987); *accord State ex rel. Colonna v. Curran*, 8th Dist. Cuyahoga No. 74104, 1998 WL 741929 (Oct. 22, 1998). In effect, it would appear, despite the paucity of caselaw interpreting the timing of interpleader, that the Board's motion was a nullity,

{¶7} In *Howard*, the Eighth Appellate District held that a trial court lacks authority to modify a final judgment by granting a motion for interpleader after judgment. *Id.* at *1 (the trial court had "no authority" to grant a motion by defendant/judgment debtor to interplead plaintiff and a creditor of plaintiff after entering judgment for plaintiff). Because the trial court lacked authority to consider the Board's post-final-judgment motion for interpleader, its judgment denying the motion is a nullity and not appealable.

{¶8} Notwithstanding the foregoing, even if this court were to treat the trial court's ruling as a valid, final order, this court addressed the validity of the joint stipulations and the Board's attempt to withdraw from the same in *CATA I*, 2022-Ohio-2737. Throughout the lengthy period of the underlying proceedings, the Board did not take issue with the joint stipulations (until after final judgment was entered), the final of which provided, in relevant part:

> To the extent this Honorable Court enters final judgment awarding CATA's current and former members damages for each year from the **2011-2012 school year** to the **2020-2021 school year,** the Parties agree that **Exhibit A** contains the total amount of damages that the Board owes to each member for those years and the total amounts that are to be remitted to the State Teachers Retirement System of Ohio ("STRS") on behalf of each member for those years with the exception that any damages owed by the Board shall continue to accrue through the date of final judgment and accordingly, payment of the 2020-2021 school year amounts shall be pro-rated through the date of final judgment including amounts due to STRS.

(Emphasis sic.)

{¶9} In *CATA I*, this court determined that the trial court's judgment overruling the Board's attempt to unilaterally withdraw from the joint stipulations was proper. *Id.* at ¶ 50-57. In doing so, this court observed "[w]hen parties mutually agree to facts or evidence in the case and enter into stipulations, such stipulations are regarded as '"expressing the result of proof made by both parties, and so belonging to both parties, that neither party could withdraw the same."'" *Id.* at ¶ 51, quoting *Garrett v. Hamshue*, 53 Ohio St. 482, 42 N.E. 256 (1895), quoting *Ish v. Crane*, 13 Ohio St. 574 (1862). The validity and substance of the stipulations are accordingly law of the case. *See Pipe Fitters Union Local No. 392 v. Kokosing Constr. Co.,* 81 Ohio St.3d 214, 218, 690 N.E.2d 515 (1998) (the law-of-the-case doctrine not only precludes re-litigation of matters addressed in a previous appeal but also "precludes a litigant from attempting to rely on new arguments * * * *which could have been pursued in a first appeal*[.]" (Emphasis added.))

{¶10} The Board could have challenged the inclusion of STRS payments in the joint stipulation on direct appeal in *CATA I*. The Board attempted to withdraw from those stipulations as they related to damages, but it did not take issue with STRS payments in its appellate brief. The issue could have been addressed on direct appeal but it was not broached by the Board. "The law of the case doctrine is rooted in principles of res judicata and issue preclusion." *State v. Harding*, 10th Dist. Franklin No. 10AP-370, 2011-Ohio-557, ¶ 16, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 35. The doctrine "ensures consistent results in a case, avoids endless litigation by settling the issues, and preserves the constitutional structure of superior and inferior courts." *Farmers State Bank v. Sponaugle*, 157 Ohio St.3d 151, 2019-Ohio-2518, 133 N.E.3d 470, ¶ 22.

{¶11} This matter was initiated in 2011. The Board entered into numerous joint stipulations which included references to STRS contribution, but did not seek to modify the language prior to final hearing on the issues. In this respect, the validity of the stipulations are "law of the case" and the content of the stipulations cannot be challenged after a properly entered final judgment by a superior court.

{¶12} Finally, although some issue is taken with the trial court's November 20, 2023 "Nunc Pro Tunc Correcting Order," we discern no substantive change between the original, October 14, 2021 judgment, and the November 2023 nunc pro tunc order. Specifically, the order purports to clarify the court's intent regarding the members entitled to damages and the manner in which the proceeds would or should be allocated to STRS. The original order states, "Based on this evidence, the court awards judgment to Career Tech and against Auburn in the sum of $1,486,045.78 (on behalf of and to be distributed to each member enumerated in Exhibit A[, the exhibit listing the members, the amount to which they are entitled, and an amount each should receive after contributions to STRS])." The nunc pro tunc provides: "Based on this evidence, the court awards judgment to Career Tech and against Auburn in the sum of $1,486,045.78 (to be distributed by Auburn directly to each member enumerated in Exhibit A in the amounts stipulated, as set forth in Exhibit A, less governmental withholding and the stipulated amounts owned to STRS)."

{¶13} We do not perceive a substantive modification of the final order, but merely a clarification of the content of Exhibit A. Nunc pro tunc entries "are limited in proper use to reflecting what the court actually decided, not what the court might or should have decided or what the court intended to decide." *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 164, 656 N.E.2d 1288 (1995). The clarification reflects what Exhibit A details

and does not add or subtract rights or obligations. We discern nothing problematic in the court's use of the nunc pro tunc entry to reflect what was actually decided.

{¶14} Because the judgment appealed is a nullity, the appeal is dismissed.

MATT LYNCH, J.,

ROBERT J. PATTON, J.,

concur.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	) **SS.**	
COUNTY OF LAKE	)	**ELEVENTH DISTRICT**

CAREER & TECHNICAL ASSOCIATION,

Plaintiff-Appellee,

- vs -

AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION,

Defendant-Appellant.

JUDGMENT ENTRY

CASE NO. 2023-L-114

On April 19, 2024, appellant, Auburn Vocational School District Board of Education ("the Board"), filed a "Motion for Reconsideration as to the Dismissal of the Appeal from the November 20, 2023 Nunc Pro Tunc Judgment Entry." *See Career & Technical Assoc. v. Auburn Vocational School Dist. Bd. of Edn.*, 2024-Ohio-1348, --- N.E.3d ---- (11th Dist.) ("*CATA II*"). Appellee, Career & Technical Association ("CATA"), has duly opposed the filing, and the Board replied to CATA's opposition.

The test this court applies when considering an application for reconsideration is whether the application "calls the attention to 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." *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981).

Moreover,

> [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. 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, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). The Board has failed to meet the requirements for reconsideration.

The Board provides no argument of legal foundation for its "motion." "It is not an appellate court's duty to guess the arguments of an appellant." (Citation omitted.) *Dennis v. Nickajack Farms, Ltd.*, 11th Dist. Geauga No. 2014-G-3188, 2014-Ohio-5468, ¶ 6. Moreover, even though App.R. 16(A)(7) applies to appellate briefs, we discern no reason not to extend its mandates to post-judgment applications or motions. That rule states an appellate brief must provide "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." The instant "motion" contains no argument for review, nor rationale for its thesis, and no authorities or citations to the record to support the nebulous position described in the motion's caption. Because it is unclear that appellant has *any* basis whatsoever to apply for reconsideration, the "motion" is overruled.

The Board is advised and urged that, when seeking this court's consideration of a post-appeal pleading, that it *must* provide a foundation for its claims. Without some basis, the application or, in this case "motion," is de facto frivolous.

This matter has been lingering for too long. Despite the Board's dissatisfaction, the issues in this litigation have been fully and finally resolved. The Supreme Court of Ohio has declined jurisdiction over the Board's attempt at a discretionary appeal and there is *nothing* in the record or in the law to support the instant "motion."

The Board's "motion" is overruled.

PRESIDING JUDGE EUGENE A. LUCCI

MATT LYNCH, J.,

ROBERT J. PATTON, J.,

concur.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	) **SS.**	
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CAREER & TECHNICAL ASSOCIATION,

Plaintiff-Appellee,

- vs -

AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION,

Defendant-Appellant.

JUDGMENT ENTRY

CASE NO. 2023-L-114

On April 19, 2024, appellant, Auburn Vocational School District Board of Education ("the Board"), filed a "Motion for Reconsideration as to the 2021 Appeal." Appellee, Career & Technical Association ("CATA"), has duly opposed the filing, and the Board replied to CATA's opposition. The caption of the filing indicates appellant seeks reconsideration of the 2021 appeal affirming the Lake County Court of Common Pleas judgment in *Career & Technical Assoc. v. Auburn Vocational School Dist. Bd. of Edn.*, 2022-Ohio-2737, 194 N.E.3d 782 (11th Dist.) ("*CATA I*") Pursuant to App.R. 26(A)(1)(a), a party's application for reconsideration "shall be made in writing no later than ten days" after the clerk has both mailed the decision to the parties and made note on the docket of the mailing as required by App.R. 30(A). The docket reveals the clerk mailed the relevant judgment entry in the *CATA I* matter to the parties and entered its mailing on the docket in 2022. In this regard, the Board's motion is out of rule and therefore overruled.

Even if the "motion" is treated as an application for reconsideration of this court's opinion and judgment in the underlying matter, i.e., *Career & Technical*

Assoc. v. Auburn Vocational School Dist. Bd. of Edn., 2024-Ohio-1348, --- N.E.3d ---- (11th Dist.) ("*CATA II*"), it would still lack merit.

The test this court applies when considering an application for reconsideration is whether the application "calls the attention to 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." *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981).

Moreover,

> [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. 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, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). The Board has failed to meet the requirements for reconsideration.

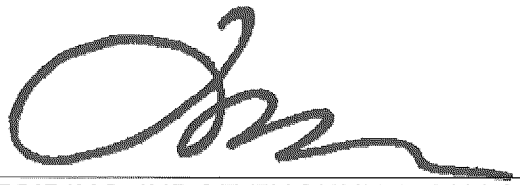
In *CATA II*, 2024-Ohio-1348, this court dismissed the Board's appeal from a judgment denying its post-judgment motion for interpleader. This court was asked to address (again) the validity of the joint stipulations of fact entered into by the parties regarding damages. This court determined the matter was fully addressed in *CATA I*. *See CATA II* at ¶ 9-10; *see also CATA I*, 2022-Ohio-2737, at ¶ 19, 50-57. Nevertheless, the Board asserts the matter should be revisited for a third time because "no such legal stipulations were ever adopted by the trial court in the original October 14, 2021 journal entry." The Board's "Motion," page 1, ¶ 2.

Again, and this court emphasizes AGAIN, the Board could have raised the issue in its 2022 appeal to this court, i.e. *CATA I* appeal. It did not. The trial court denied the Board's attempt to withdraw its stipulations of fact, which was affirmed by this court and therefore the issue is both law of the case and res judicata.

Also, the Board's claim that the trial court failed to adopt the stipulations and thus the stipulations are somehow invalid. The Board cites no authority for this proposition. As this court identified in *CATA I*, a stipulation of fact is an agreement to relieve a party's obligation of proof on an issue. *Id.* at ¶ 51. It is fundamentally unclear why, despite the Board's ipse dixit assertion, a court must formally adopt the parties' uncontested stipulations of fact. But even if such a requirement existed, this court observed in *CATA I* that the jointly stipulated damage amounts (matters of fact) were adopted by the trial court via its *adoption* of the magistrate's decision as well as its independent consideration of the issue of damages. *Id.* at ¶ 19-20. This issue is and has been res judicata.

This matter has been lingering for too long. Despite the Board's dissatisfaction, the issues in this litigation have been fully and finally resolved. The Supreme Court of Ohio has declined jurisdiction over the Board's attempt at a discretionary appeal and there is *nothing* in the record or in the law to support the instant "motion."

The Board's "motion" is overruled.



PRESIDING JUDGE EUGENE A. LUCCI

MATT LYNCH, J.,

ROBERT J. PATTON, J.,

concur.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	) **SS.**	
COUNTY OF LAKE	)	**ELEVENTH DISTRICT**

CAREER & TECHNICAL ASSOCIATION,

Plaintiff-Appellee,

- vs -

AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION,

Defendant-Appellant.

JUDGMENT ENTRY

CASE NO. 2023-L-114

On April 19, 2024, appellant, Auburn Vocational School District Board of Education ("the Board"), filed several related "motions," to wit: a "Motion to Certify A Conflict as to Whether the Trial Court is Bound by Legal Stipulations Entered into Between the Parties," a "Motion to Certify a Conflict as to Whether the Parties May be Bound to Legal Stipulations, as a Matter of Law, as to STRS Compensability," an "Application for En Banc Consideration and Motion for Reconsideration as to Whether the Trial Court is Bound by Legal Stipulations Entered into Between the Parties," and a "Motion for Reconsideration as to Whether the Parties May be Bound to Legal Stipulations, as a Matter of Law, as to STRS Compensability." Appellee, Career & Technical Association ("CATA"), duly opposed the filings, and the Board replied to CATA's opposition. Each of these motions/applications seek relief under the appellate rules vis-à-vis this court opinion and judgment in *Career & Technical Assoc. v. Auburn Vocational School Dist. Bd. of Edn.*, 2024-Ohio-1348, --- N.E.3d ---- (11th Dist.), released April 9, 2024.

Certification of a Conflict

In *Whitelock v. Gilbane Building Company*, 66 Ohio St.3d 594, 596, 613 N.E.2d 1032 (1993), the Supreme Court of Ohio discussed the particularities of the conflict certification process:

> 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 sic.)

The Board contends this court's April 9, 2024 opinion and judgment, dismissing its appeal of the trial court's denial of its post-judgment motion for interpleader, conflicts with decisions of the Eighth, Ninth, and Tenth Appellate Districts, respectively; *Wilson v. Harvey*, 164 Ohio App.3d 278, 2005-Ohio-5722, 842 N.E.2d 83 (8th Dist.); *Hill v. Wadsworth-Rittman Area Hosp.*, 185 Ohio App.3d 788, 2009-Ohio-5421, 925 N.E.2d 1012 (9th Dist.); and *State ex rel. Anderson v. State Teachers Retirement Sys. Bd.*, 10th Dist. Franklin No. 19AP-293, 2021-Ohio-1378.

The Board claims that the stipulations jointly entered between the parties were stipulations regarding *legal conclusions* which the trial court never adopted. And, pursuant to the Eighth, Ninth, and Tenth Districts' opinions, a trial court is not bound by incorrect legal conclusions.

In the Board's 2022 appeal from the trial court's judgment, after a trial to the bench relating to the merits of CATA's claim for back pay, this court observed:

> A stipulation of fact removes the issue from the litigation and renders proof unnecessary. * * * When parties mutually agree to facts or evidence in the case and enter into stipulations, such stipulations are regarded as "'expressing the result of proof made by both parties * * *.'"

Career & Technical Assoc. v. Auburn Vocational School Dist. Bd. of Edn., 2022-Ohio-2737, 194 N.E.3d 782, ¶ 51 (11th Dist.), quoting *Garrett v. Hanshue*, 53 Ohio St. 482, 42 N.E. 256 (1895), quoting *Ish v. Crane*, 13 Ohio St. 574, 580 (1862).

The stipulations at issue related to damages, which was a matter of fact to which both parties stipulated multiple times over the course of the litigation. The Board took issue with the trial court's denial of its motion to unilaterally withdraw from the stipulations *after* the trial to the bench. In this court's 2022 opinion and judgment, we affirmed the trial court's denial of the Board's attempt to withdraw from the factual stipulations. *See Career & Technical Assoc.*, 2022-Ohio-2737, ¶ 50-57. The Board could have but did not seek to certify a conflict at that time. In this respect, the issue the Board raises is res judicata.

Even if the Board's argument was not barred, its motion to certify is not premised upon a conflict of law between appellate districts. Instead, it is premised upon an inaccurate interpretation of basic factual holdings, i.e., the binding nature of *factual* stipulations versus *legal* stipulations.

Also, the case cited by the Board from the Tenth District, *Anderson*, 2021-Ohio-1378, addresses the deference accorded STRS relating to its interpretation of the relevant statutory scheme as well as the administrative code. *Id.* at ¶ 9. In

this case, the stipulations were fact specific to the teachers' particular salaries and the amount of the stipend to which each was entitled if CATA prevailed. STRS was not previously asked to weigh-in on STRS amounts and the stipulation indicates that the payments due to the affected teachers would be pro-rated through the date of the final judgment.

We discern no conflict because the cases identified by the Board are not on the same legal question. The motions to certify are overruled.

En Banc Review

App.R. 26(A)(2) provides that "[u]pon a determination that two or more decisions of the court on which they sit are in conflict, a majority of the en banc court may order that an appeal or other proceeding be considered en banc."

The Board asserts this court's determination in *Career & Technical Assoc.*, 2024-Ohio-1348, concluding that the stipulations relating to damages were "law of the case" is premised upon an erroneous conclusion that the stipulations were factual rather than legal. It maintains this court has previously held that "[w]hile courts are ordinarily bound by the factual stipulations of litigants, courts are not bound in their determination of questions of law." *Aulizia v. Westfield Natl. Ins. Co.*, 11th Dist. Trumbull No. 2006-T-0057, 2007-Ohio-3017, ¶ 14, fn. 2.

Because we have already determined the stipulations were factual in nature, we discern no intradistrict conflict. Thus, the application for en banc consideration is overruled.

Reconsideration

The test this court applies when considering an application for reconsideration is whether the application "calls the attention to 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." *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981).

The Board finally asserts this court should grant reconsideration of our holding in *Career & Technical Assoc.*, 2024-Ohio-1348, because the *parties* are bound by legal stipulations as a matter of law.

Again, the Board advances the same red-herring as it asserts above; namely, that the stipulations at issue were agreements relating to legal conclusions. The stipulations were factual in nature and not legal. Moreover, they were jointly entered and therefore the parties are bound by the same. And, significantly, as noted above under the certification-of-a-conflict analysis, the Board could have, but did not, make this argument on direct appeal from *Career & Technical Assoc.*, 2022-Ohio-2737. This issue is also res judicata.

The Board's motion for reconsideration is therefore overruled.

As emphasized in previous judgments, this matter has been lingering for too long. Despite the Board's dissatisfaction, the issues in this litigation have been fully and finally resolved. The Supreme Court of Ohio has declined jurisdiction over the Board's attempt at a discretionary appeal and there is *nothing* in the record or in the law to support the filings adjudicated in this judgment entry.

PRESIDING JUDGE EUGENE A. LUCCI

MATT LYNCH, J.,

ROBERT J. PATTON, J.,

concur.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	) SS.	
COUNTY OF LAKE	)	**ELEVENTH DISTRICT**

CAREER & TECHNICAL ASSOCIATION,

Plaintiff-Appellee,

- vs -

AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION,

Defendant-Appellant.

JUDGMENT ENTRY

CASE NO. 2023-L-114

On April 19, 2024, appellant, Auburn Vocational School District Board of Education ("the Board"), filed an "Application for En Banc Consideration and Motion for Reconsideration as to Whether the Trial Court has Jurisdiction over Nunc Pro Tunc Orders" and a "Motion to Certify a Conflict as to Whether the Trial Court has Jurisdiction over Nunc Pro Tunc Orders." (Sic.) Appellee, Career & Technical Association ("CATA"), has duly opposed the filings, and the Board replied to CATA's opposition. The "application" and "motions" challenge this court's April 9, 2024 dismissal of the Board's appeal from the trial court's judgment denying the Board's "motion for interpleader." *See Career & Technical Assoc. v. Auburn Vocational School Dist. Bd. of Edn.*, 2024-Ohio-1348, --- N.E.3d ---- (11th Dist.)

Each of the Board's filings argue this court's dismissal of its appeal in the underlying matter was error because, it claims, this court has jurisdiction over appeals from nunc pro tunc orders to determine whether such orders are deemed nullified as a matter of law. The Board cites various cases from this court supporting this conclusion and therefore seeks en banc consideration of the issue.

It additionally claims other districts have drawn the same legal conclusion. Hence, the Board requests this court to certify a conflict with the Supreme Court of Ohio.

In the underlying matter, this court dismissed the appeal for lack of a final, appealable order deriving from the trial court's denial of the Board's post-judgment/post-appeal motion for interpleader. Nevertheless, this court did make the following observations relating to the Board's contentions regarding the trial court's issuance of a November 20, 2023 "Nunc Pro Tunc Correcting Order." We noted:

> [W]e discern no substantive change between the original, October 14, 2021 judgment, and the November 2023 nunc pro tunc order. Specifically, the order purports to clarify the court's intent regarding the members entitled to damages and the manner in which the proceeds would or should be allocated to STRS. The original order states, "Based on this evidence, the court awards judgment to Career Tech and against Auburn in the sum of $1,486,045.78 (on behalf of and to be distributed to each member enumerated in Exhibit A[, the exhibit listing the members, the amount to which they are entitled, and an amount each should receive after contributions to STRS]). The nunc pro tunc provides: "Based on this evidence, the court awards judgment to Career Tech and against Auburn in the sum of $1,486,045.78 (to be distributed by Auburn directly to each member enumerated in Exhibit A in the amounts stipulated, as set forth in Exhibit A, less governmental withholding and the stipulated amounts owed to STRS)."
>
> We do not perceive a substantive modification of the final order, but merely a clarification of the content of Exhibit A.

Career & Technical Assoc., 2024-Ohio-1348, ¶ 12-13.

Because a proper nunc pro tunc entry does not affect substantive rights but merely corrects a clerical or mechanical error, a *proper* nunc pro tunc entry does

not give rise to a new final order for purposes of appeal. *State v. Lester,* 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph two of the syllabus ("A nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken"). "'Nunc pro tunc' means 'now for then' and is commonly defined as '[h]aving retroactive legal effect through a court's inherent power.'" *Lester* at ¶ 19, quoting Black's Law Dictionary 1174 (9th Ed.2009). Accordingly, a nunc pro tunc entry, by its nature, applies retrospectively to the judgment it corrects. *Lester* at ¶ 19. Thus, proper nunc pro tunc entries do not constitute final, appealable orders. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 31 (stating that nunc pro tunc entry "does not create a new final, appealable order"). And such entries do not "restart the clock" for purposes of filing a timely appeal. *State v. Damron*, 4th Dist. Scioto No. 10CA3375, 2011-Ohio-165, ¶ 10; *accord State ex rel. Womack v. Marsh,* 128 Ohio St.3d 303, 2011-Ohio-229, 943 N.E.2d 1010, ¶ 15, quoting *State v. Yeaples*, 180 Ohio App.3d 720, 2009-Ohio-184, 907 N.E.2d 333, ¶ 15 (3d Dist.) (stating that "'[a] nunc pro tunc entry is the procedure used to correct clerical errors in a judgment entry, but the entry does not extend the time within which to file an appeal, as it relates back to the original judgment entry'").

Only when the trial court changes a matter of substance or resolves a genuine ambiguity in a judgment previously rendered should the period within which an appeal must be taken begin to run anew. *Perfection Stove Co. v. Scherer*, 120 Ohio St. 445, 449, 166 N.E. 376 (1929); *Aetna Life & Casualty v. Daugherty*,

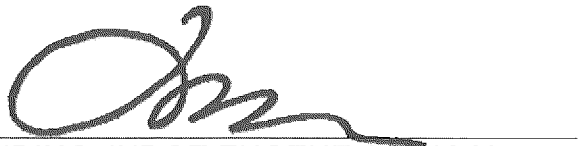
8th Dist. Cuyahoga No. 45368, 1983 WL 5940, *2 (Apr. 21, 1983). The relevant inquiry is whether the trial court, in its second judgment entry, has disturbed or revised legal rights and obligations which by its prior judgment had been settled with finality. *See Federal Trade Comm. v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211-212, 73 S.Ct. 245, 97 L.Ed. 245 (1952). *See also In re J.R.*, 8th Dist. Cuyahoga No. 92957, 2009-Ohio-4883, ¶ 11.

As demonstrated by the above-quoted passage from our underlying opinion, the nunc pro tunc entry was proper. It did not change the substance of the original entry and did not impose additional obligations on the parties or afford the parties any additional rights.

We accordingly decline to grant en banc consideration and further decline to certify a conflict with the Supreme Court of Ohio. Finally, to the extent the two filings at issue request reconsideration of the underlying matter, such a request is overruled.

For the reasons discussed in this judgment, the Board's motions/application are overruled.

Additionally, in light of this judgment, all pending motions are overruled.



PRESIDING JUDGE EUGENE A. LUCCI

MATT LYNCH, J.,

ROBERT J. PATTON, J.,

concur.