

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Theron Griffin,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-733 (C.C. No. 2009-01671)
Ohio Department of Rehabilitation and Correction,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on May 3, 2011

Robert Zavesky, for appellant.

Michael DeWine, Attorney General, and *Peter E. DeMarco*,
for appellee.

APPEAL from the Court of Claims of Ohio.

BRYANT, P.J.

{¶1} Plaintiff-appellant, Theron Griffin, appeals from a judgment of the Court of Claims of Ohio granting (1) the motion of defendant-appellee, Ohio Department of Rehabilitation and Correction ("ODRC"), to dismiss plaintiff's statutory claim for wrongful imprisonment, and (2) ODRC's summary judgment motion on plaintiff's common law false imprisonment claim. Because plaintiff did not first obtain a declaration from a court of

common pleas that he was a wrongfully imprisoned person pursuant to R.C. 2743.48, we affirm the Court of Claims' decision to grant ODRC's motion to dismiss, but because ODRC did not explain in its summary judgment motion why it continued to confine plaintiff for one day after it received a court order to release him, we reverse the Court of Claims' decision to grant ODRC summary judgment.

I. Facts and Procedural History

{¶2} On January 26, 2009, plaintiff filed a complaint in the Court of Claims, seeking money damages and attorney's fees. Plaintiff alleged ODRC in 2007 and 2008 incarcerated him unlawfully, falsely, or both.

{¶3} According to plaintiff's complaint, plaintiff was charged in the criminal action underlying his complaint with three separate cases involving numerous counts of gross sexual imposition, attempted rape, and intimidation. *State v. Griffin*, 8th Dist. No. 83724, 2004-Ohio-4344, ¶3-11. On April 16, 2003, plaintiff pled guilty to three counts of gross sexual imposition and one count of intimidation for which the Cuyahoga County Court of Common Pleas sentenced him to a total of three years of incarceration. *Id.* The trial court credited plaintiff for the approximately two years he spent in pretrial-detention, plaintiff completed his sentence, and ODRC released him from custody on August 6, 2004.

{¶4} While he was incarcerated, plaintiff appealed to the Eighth District Court of Appeals. On August 19, 2004, the appellate court vacated plaintiff's sentence because the trial court at sentencing failed to inform plaintiff he would be subject to a mandatory five-year term of post-release control. On remand, the Cuyahoga County Court of Common Pleas issued a journal entry on November 29, 2004, imposing the same

sentence and specifying plaintiff would be subject to five years of post-release control. Noting defendant had served his sentence, the court ordered him released.

{¶5} In 2007 plaintiff pled no contest to, and the Cuyahoga County Court of Common Pleas found him guilty of, escape arising from plaintiff's failure to report to his parole officer in connection with the underlying 2003 criminal cases. As a result, plaintiff was incarcerated for four months. Plaintiff in 2008 again was charged with escape for failing to report to his parole officer, and ODRC held plaintiff under pre-trial detention or parole violations for nearly five months. Plaintiff ultimately filed a motion to dismiss the 2008 escape charge, and a judge of the Cuyahoga County Court of Common Pleas granted the motion on June 24, 2008 "on the authority and reasoning set forth in *State of Ohio v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250." (Complaint Exhibit B.) The order stated plaintiff was "discharged in this case and [was] ordered released." ODRC did not release plaintiff until July 16, 2008. (Complaint ¶11.)

{¶6} In response to plaintiff's complaint, ODRC filed a motion to dismiss premised on Civ.R. 12(B)(1) and 12(B)(6). ODRC alleged the Court of Claims lacked subject matter jurisdiction over plaintiff's claim of statutory wrongful imprisonment because plaintiff failed first to file a separate action in the court of common pleas seeking a determination he is a wrongfully imprisoned person, as both R.C. 2305.02 and *Walden v. State* (1989), 47 Ohio St.3d 47 require. ODRC further alleged plaintiff failed to state a claim for common law false imprisonment upon which the court could grant relief because ODRC incarcerated plaintiff pursuant to a facially valid court order.

{¶7} Plaintiff replied to ODRC's motion to dismiss, asserting he could maintain his common law false imprisonment claim because he was incarcerated pursuant to a void order. He further asserted he could maintain his statutory wrongful imprisonment claim. According to plaintiff, he was not required to obtain a declaration from a court of common pleas that he is a wrongfully imprisoned person because an error in procedure resulted in his release.

{¶8} The Court of Claims filed an entry on May 8, 2009 granting in part and denying in part ODRC's motion to dismiss. (R. 15.) Agreeing with ODRC, the court determined it lacked subject matter jurisdiction over plaintiff's statutory wrongful imprisonment claim because plaintiff did not first obtain a declaration from a court of common pleas that he is a wrongfully imprisoned individual. The court, however, denied ODRC's motion to dismiss plaintiff's common law false imprisonment claim, noting the nearly three-week span between the time the Cuyahoga County trial court signed the order releasing plaintiff and the date plaintiff actually was released. (R. 15.)

{¶9} Approximately a year later, ODRC filed a motion for summary judgment, asserting ODRC is entitled to judgment as a matter of law on plaintiff's common law false imprisonment claim, as ODRC held plaintiff pursuant to facially valid orders. ODRC supported the motion with the affidavit of Debra Hearn, a Deputy Superintendent of Field Services at the Adult Parole Authority. According to the affidavit, ODRC received the order to release plaintiff on July 15, 2008 and released him on July 16, 2008. Plaintiff opposed the motion for summary judgment, stating ODRC continued to hold plaintiff after it had knowledge of the Cuyahoga County judge's order to release plaintiff. Plaintiff

supported his brief with the affidavit of his trial attorney. The Court of Claims granted ODRC's motion for summary judgment, concluding ODRC held plaintiff pursuant to facially valid orders.

II. Assignments of Error

{¶10} Plaintiff appeals, assigning the following errors:

Assignment of Error No. 1:

The Trial Court erred in dismissing Appellant's statutory claim for wrongful imprisonment, contrary to the plain terms of Ohio Revised Code Section §2743.48 and the holding of this court in Griffith v. State, 2009-Ohio-2854.

Assignment of Error No. 2:

The Trial Court erred in granting summary judgment in favor of Appellee on Appellant's common law claim for unlawful imprisonment where the summary judgment record shows there is no dispute of fact that Appellant continued to be held in confinement after a court order was entered releasing him.

III. Motion to Dismiss - Statutory Wrongful Imprisonment

{¶11} Plaintiff's first assignment of error asserts the Court of Claims erred in dismissing plaintiff's statutory wrongful imprisonment claim for lack of subject matter jurisdiction. The court granted ODRC's motion to dismiss because plaintiff failed to allege he first obtained a determination from a court of common pleas that he is a wrongfully imprisoned individual. Plaintiff contends his release on a procedural error fulfilled any prerequisite to bringing his action for wrongful imprisonment.

{¶12} A "court has subject matter jurisdiction over a case if the court has the statutory or constitutional power to adjudicate that case." *Garrett v. Columbus*, 10th

Dist. No. 10AP-77, 2010-Ohio-3895, ¶13, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11. A dismissal for lack of subject matter jurisdiction under Civ.R. 12(B)(1) "raises a question of law, and thus, this court reviews a trial court's ruling on such a motion under the de novo standard." *Id.*, citing *Crosby-Edwards v. Ohio Bd. of Embalmers & Funeral Directors*, 175 Ohio App.3d 213, 2008-Ohio-762, ¶21, appeal not allowed, 119 Ohio St.3d 1409, 2008-Ohio-3880.

{¶13} R.C. 2743.48, the wrongful imprisonment statute, allows an individual who meets the statutory definition of a "wrongfully imprisoned individual" to file a civil action against the state in the Court of Claims and recover monetary damages, reasonable attorney fees, and other expenses. A "wrongfully imprisoned individual" is one who satisfies the five requirements of R.C. 2743.48(A). R.C. 2743.48(A)(5), the only one at issue here, sets forth two alternatives. The first requires that "[s]ubsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release." Under the second, a court of common pleas must determine "the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person." See also R.C. 2305.02 (stating "[a] court of common pleas has exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who * * * seeks a determination by the court that the offense of which he was found guilty * * * either was not committed by him or was not committed by any person").

{¶14} In interpreting R.C. 2743.48(A), the Supreme Court definitively held "[o]nly courts of common pleas have jurisdiction to determine whether a person has satisfied the

five requirements of R.C. 2743.48(A)." *Griffith v. Cleveland*, 128 Ohio St.3d 35, 2010-Ohio-4905, paragraph one of the syllabus. As a result, an individual claiming wrongful imprisonment pursuant to either alternative in R.C. 2743.48(A)(5) must first "bring an action in the court of common pleas to secure a determination that he or she is a wrongfully imprisoned individual entitled to compensation" and only then may "file a civil action against the state, in the Court of Claims, to recover a sum of money." *Id.* at paragraph two of the syllabus, following *Walden v. State* (1989), 47 Ohio St.3d 47. Plaintiff failed to secure a determination from a court of common pleas that he was a wrongfully imprisoned individual.

{¶15} Accordingly, the Court of Claims properly determined it lacked subject matter jurisdiction to determine whether plaintiff is a wrongfully imprisoned individual, the prerequisite to plaintiff's statutory wrongful imprisonment claim. Plaintiff's first assignment of error is overruled.

IV. Summary Judgment - Common Law False Imprisonment

{¶16} Plaintiff's second assignment of error asserts the Court of Claims erred in granting ODRC's Civ.R. 56 motion for summary judgment on plaintiff's common law false imprisonment claim. The court stated "[t]he evidence show[ed] that plaintiff was promptly released within one day after defendant received the judgment entry from the sentencing court," leaving no genuine issues of material fact to be litigated. (R. 47.) Plaintiff contends ODRC failed to explain why he was not released the day ODRC received the order to release him.

{¶17} An appellate court's review of summary judgment is conducted under a de novo standard. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41; *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588. Summary judgment is proper only when the parties moving for summary judgment demonstrate: (1) no genuine issue of material fact exists, (2) the moving parties are entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56; *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 1997-Ohio-221.

{¶18} Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The moving party, however, cannot discharge its initial burden under this rule with a conclusory assertion that the non-moving party has no evidence to prove its case; the moving party must specifically point to evidence of a type listed in Civ.R. 56(C), affirmatively demonstrating that the non-moving party has no evidence to support the non-moving party's claims. *Id.*; *Vahila v. Hall*, 77 Ohio St.3d 421, 1997-Ohio-259. Once the moving party discharges its initial burden, summary judgment is appropriate if the non-moving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Dresher* at 293; *Vahila* at 430; Civ.R. 56(E).

{¶19} The state may be held liable for false imprisonment of its prisoners. *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, paragraph two of the syllabus. "False imprisonment occurs when a person confines another intentionally 'without lawful privilege and against his consent within a limited area for any appreciable time, however short.' " *Id.* at 109. The elements for wrongful imprisonment of an inmate beyond a lawful term of incarceration are "(1) expiration of the lawful term of confinement, (2) intentional confinement after the expiration, and (3) knowledge that the privilege initially justifying the confinement no longer exists." *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315, 318. The undisputed evidence here indicated, under those three prongs, that plaintiff's lawful term of confinement ended July 15, 2008 when ODRC received the court's order to release plaintiff, ODRC confined plaintiff until July 16, 2008, and ODRC knew as of July 15 its privilege to confine plaintiff ceased.

{¶20} False imprisonment concerns the confinement of another person, and " 'each day's continuance of the body of a person in custody, is a distinct trespass, and may be treated as such.' " *Bennett* at 109, quoting *State ex. rel. Kemper v. Beecher* (1847), 16 Ohio 358, 363. "Once the initial privilege expires, the justification for continued confinement expires and possible liability for false imprisonment begins." *Id.* at 109. The single day that ODRC intentionally confined plaintiff, after its lawful privilege to do so expired, thus could be distinct and actionable.

{¶21} *Bennett* recognized factors may support continued confinement, noting an entity may be liable for false imprisonment "[i]n the absence of an intervening justification." *Id.* at paragraph one of the syllabus. At oral argument on appeal, ODRC

explained possible reasons for the one-day delay in releasing plaintiff, such as filling out paperwork and securing transportation. The record, however, does not contain any evidence supporting ODRC's proffered justification for holding defendant an additional day. ODRC's motion for summary judgment contained no explanation for the one-day delay, and the Hearn's affidavit neither indicated at what time she received the order to release plaintiff on July 15, 2008, nor explained why ODRC did not release plaintiff until July 16, 2008. Accordingly, a genuine issue of material fact remains whether ODRC had a sufficient justification to continue to incarcerate plaintiff for one day beyond its receiving a court order to release him.

{¶22} Although arguing ODRC improperly held him for at least one day, plaintiff asserts he is entitled to compensation for all the time ODRC confined him between June 24, 2008, when the Cuyahoga County judge signed the order to release plaintiff, and July 16, 2008, the day ODRC actually released him. Plaintiff points to the affidavit of his trial attorney and claims ODRC knew a court of competent jurisdiction ordered plaintiff released yet willfully chose to ignore that order. Counsel's affidavit indicates that, after receiving the favorable ruling on June 24, 2008 and some time before July 15, 2008, counsel contacted the Cuyahoga County Sheriff's Department, plaintiff's parole officer at the Adult Parole Authority, and another individual at the Adult Parole Authority, all in an effort to secure plaintiff's release from incarceration.

{¶23} Counsel's communications were insufficient to allow ODRC to release plaintiff from its custody. "ODRC ha[s] no discretion to release an inmate until it receive[s] an entry indicating ODRC no longer [is] privileged or justified in confining the inmate."

Trice v. Ohio Dept. of Rehab. & Corr., 10th Dist. No. 07AP-828, 2008-Ohio-1371, ¶19, citing *Doyle v. Ohio Dept. of Rehab. & Corr.*, C.C. No. 2005-06716, 2006-Ohio-1802. See also *Williams v. Ohio Dept. of Rehab & Corr.*, 10th Dist. No. 09AP-77, 2009-Ohio-3958, ¶13. The undisputed facts in the record demonstrate ODRC did not receive the order to release plaintiff until July 15, 2008; counsel's communications before that date offered ODRC no discretion to release plaintiff prior to receiving the order. See *State ex. rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 573 (concluding the Adult Parole Authority had no discretion to rely on communications from sheriff indicating number of days an inmate was confined at a particular institution but was required to rely solely on the journal entry of sentence from the trial court).

{¶24} Plaintiff lastly argues he is entitled to compensation for the entire time ODRC incarcerated him because all of the sentencing orders were void. Plaintiff's argument once again runs into the same principle that renders the state not liable for claims of false imprisonment when it, through ODRC, incarcerates a person pursuant to a facially valid judgment or order, even if that order later is determined to be void. *Bradley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-506, 2007-Ohio-7150, ¶11, appeal not allowed, 117 Ohio St.3d 1500, 2008-Ohio-2028; *Roberson v. Dept. of Rehab. & Corr.*, 10th Dist. No. 03AP-538, 2003-Ohio-6473, ¶9; *Likes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 05AP-709, 2006-Ohio-231, ¶10; *Fryerson v. Dept. of Rehab & Corr.*, 10th Dist. No. 02AP-1216, 2003-Ohio-2730, ¶17, appeal denied, 100 Ohio St.3d 1412, 2003-Ohio-4948.

{¶25} For plaintiff to prevail, he would need to present evidence the courts' sentencing orders in 2003, 2007 and 2008 were invalid on their face. "Facial invalidity does not require the consideration of extrinsic information or the application of case law." *McKinney v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-960, 2010-Ohio-2323, ¶12, appeal not allowed, 126 Ohio St.3d 1586, 2010-Ohio-4542, citing *Gonzales v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 08AP-567, 2009-Ohio-246, ¶10. Neither plaintiff's original 2003 sentence, nor his 2007 and 2008 sentencing orders, were determined to be facially invalid, but rather were found to be void through court order on the extrinsic authority of *State v. Jones* (May 24, 2001), 8th Dist. No. 77657 and *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, ¶17. Because none of the sentencing orders in the underlying cases were facially invalid, here, as in *Fryerson*, "ODRC was under a statutory duty to incarcerate appellant pursuant to the ostensibly valid court commitment papers. It had no knowledge, nor could it have, that the court of appeals would eventually find the judgment void ab initio." *Id.* at ¶34.

{¶26} Accordingly, plaintiff cannot maintain a false imprisonment claim against ODRC for the time he was incarcerated pursuant to facially valid court orders, including the time before ODRC received the Cuyahoga County judge's order to release him. Because, however, ODRC did not attempt to justify in the Court of Claims the reasons it held plaintiff one day beyond receiving the order to release him, plaintiff's second assignment of error is sustained to that extent.

{¶27} Having overruled plaintiff's first assignment of error, but having sustained his second assignment of error to the extent indicated, we affirm the Court of Claims'

judgment insofar as it dismissed plaintiff's statutory wrongful imprisonment claim, we reverse the Court of Claims' judgment insofar as it granted summary judgment on plaintiff's common law false imprisonment claim, and we remand this matter to the Court of Claims for further proceedings consistent with this decision.

*Judgment affirmed in part and
reversed in part; case remanded.*

SADLER & TYACK, JJ., concur.
