

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO

HELEN GRYBOSKY, et al.,	:	OPINION EN BANC
Plaintiffs-Appellants,	:	
- vs -	:	CASE NO. 2010-A-0047
OHIO CIVIL RIGHTS COMMISSION,	:	
et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2009 CV 1153.

Judgment: Affirmed.

Tarin S. Hale, 6085 Waterloo Road, Centerville, OH 45459 (For Plaintiffs-Appellants).

Mike DeWine, Ohio Attorney General, and *Patrick M. Dull*, Assistant Attorney General, State Office Tower, 15th Floor, 30 East Broad Street, Columbus, OH 43215-3428 (For Defendants-Appellees).

THOMAS R. WRIGHT, J.

{¶1} On March 13, 2012, pursuant to the Application for En Banc Consideration of defendants-appellees, the Ohio Civil Rights Commission, et al., this court entered judgment finding that a conflict exists in this district on the question of whether identical allegations sounding in a claim for relief pursuant to 42 U.S.C. Section 1983 against employees of the Ohio Civil Rights Commission are properly pled Section 1983 claims that withstand a Civ.R. 12(B)(6) motion, or, are the claims unripe such that they must be

dismissed under Civ.R. 12(B)(6) and await completion of the prior administrative process? Compare *Transky v. Ohio Civ. Rights Comm.*, 193 Ohio App.3d 354, 2011-Ohio-1865 with *Grybosky v. Ohio Civ. Rights Comm.*, 11th Dist. No. 2010-A-0047, 2011-Ohio-6843, ¶40. Accordingly, this court decided to hear the matter en banc pursuant to App.R. 26(A)(2). The parties both submitted briefs in support.

{¶2} For the reasons stated in *Grybosky*, it is the opinion of the majority of this court that the claims are properly pled Section 1983 claims that withstand a motion to dismiss pursuant to Civ.R. 12(B)(6). Accordingly, *Grybosky* is hereby affirmed and *Transky* is expressly overruled.

MARY JANE TRAPP, J., concurs,

DIANE V. GRENDALL, J., concurs with a Concurring Opinion,

TIMOTHY P. CANNON, P.J., dissents with a Dissenting Opinion,

CYNTHIA WESTCOTT RICE, J., concurs in the Dissenting Opinion of Judge Timothy P. Cannon.

DIANE V. GRENDALL, J., concurring.

{¶3} I concur with the majority's en banc opinion, which concludes that the claims pled against the Ohio Civil Rights Commission defendants Krosky, Choi, Martin, and Boggs were properly pled Section 1983 claims that withstand a Civ.R. 12(B)(6) motion to dismiss.

{¶4} I write separately, however, to briefly address an additional issue raised by appellants in their Brief in Support of En Banc Consideration, that the claims against Ohio Attorney General Cordray and Senior Attorney General Tobocman were improperly dismissed based on the majority’s holding in both *Transky* and *Grybosky* that they had immunity.

{¶5} In response to this argument, I would advance the analysis in my concurring/dissenting opinions in *Transky v. Ohio Civil Rights Comm.*, 193 Ohio App.3d 354, 2011-Ohio-1865, 951 N.E.2d 1106, and *Grybosky v. Ohio Civil Rights Comm.* 11th Dist. No. 2010-A-0047, 2011-Ohio-6843. As is extensively noted in those opinions, when considering the allegations in the plaintiffs’ complaint, it cannot be found that the Ohio Attorney General and the Senior Attorney General have immunity at the Civ.R. 12(B)(6) stage in the proceedings. Instead, the complaint against them should not have been dismissed, since the plaintiffs must have the opportunity to conduct discovery to prove that they acted outside the scope of their judicial or quasi-judicial duties and are not entitled to immunity.

TIMOTHY P. CANNON, P.J., dissenting.

{¶6} I respectfully dissent from the opinion of the en banc majority opinion. I continue to believe the issue is simply not ripe for adjudication, as explained in the majority opinion in *Transky v. Ohio Civ. Rights Comm.*, 193 Ohio App.3d 354, 2011-Ohio-1865 (11th Dist.), and further analyzed in the dissent in *Grybosky v. Ohio Civ. Rights Comm.*, 11th Dist. No. 2010-A-0047, 2011-Ohio-6843.