

[Cite as *Green v. Dept. of Rehab. & Corr.*, 2019-Ohio-2454.]

ANTHONY GREEN

Plaintiff

v.

DEPARTMENT OF REHABILITATION  
AND CORRECTION

Defendant

Case No. 2018-01228JD

Judge Patrick M. McGrath  
Magistrate Robert Van Schoyck

ENTRY GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

{¶1} On February 27, 2019, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On March 12, 2019, plaintiff filed a combined response and cross-motion for partial summary judgment on the issue of liability pursuant to Civ.R. 56(A). On March 26, 2019, defendant filed a motion to strike plaintiff's motion for partial summary judgment, arguing that it was untimely under the order of November 7, 2018, which provided that any dispositive motions were to be filed on or before March 1, 2019. Plaintiff did not file a response to the motion to strike, which, upon review, is GRANTED.

{¶2} Defendant's motion for summary judgment is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶3} Civ.R. 56(C) states, in part, as follows:

{¶4} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can 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 or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564, ¶ 6, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 364 N.E.2d 267 (1977).

{¶5} Plaintiff brings this action seeking to recover damages under theories of false imprisonment and negligence, alleging that after he served out his prison term in 2013, defendant subjected him to post-release control and confined him for post-release control violations without lawful authority to do so.

{¶6} Regarding the claim of false imprisonment, defendant argues that it is entitled to judgment as a matter of law because plaintiff's confinement was at all times privileged in accordance with facially-valid sentencing entries. "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."" *Bennett v. Ohio Dept. of Rehab. & Corr.*, 60 Ohio St.3d 107, 109, 573 N.E.2d 633 (1991), quoting *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71, 362 N.E.2d 646 (1977), quoting 1 Harper & James, *The Law of Torts*, Section 3.7, 226 (1956). "Under the provisions of R.C. 2743.02(A)(1), 'the state may be held liable for the false imprisonment of its prisoners.'" *Abercrombie v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-744, 2017-Ohio-5606, ¶ 9, quoting *Bennett* at paragraph two of the syllabus. "A plaintiff may not maintain an action against DRC for false imprisonment, however, when the imprisonment is in accordance with an order of a court, unless it appears that the order is void on its face." *Fisk v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-432, 2011-Ohio-5889, ¶ 12. "Accordingly, DRC may not be held liable on a claim for false imprisonment if DRC incarcerated the plaintiff pursuant to a facially-valid order, even if that order is later determined to be void." *Id.*

{¶7} It is undisputed that in 2005 the Hamilton County Common Pleas Court sentenced plaintiff to an aggregate ten-year prison term for first-degree felony convictions in two criminal cases. The sentencing entries stated, in part: "AS PART OF

THE SENTENCE IN THIS CASE, THE DEFENDANT IS SUBJECT TO THE POST RELEASE CONTROL SUPERVISION OF R.C. 2967.28.” While the sentencing entries did not specify the duration of post-release control, R.C. 2967.28 required the imposition of a five-year term based on plaintiff’s first-degree felonies. The parties agree that when plaintiff completed his prison term on September 9, 2013, defendant released him from confinement and placed him on post-release control. There is no dispute that defendant subsequently confined plaintiff or caused him to be confined on three separate occasions for post-release control violations.

{¶8} It is undisputed that on August 23, 2017, the Hamilton County Common Pleas Court issued an entry granting a motion that plaintiff filed to vacate the post-release control portion of his sentence. According to an affidavit that defendant submitted from Ohio Parole Board member Scott Widmer, who avers that from 2001 to 2018 he was employed by defendant as a Parole Board Hearing Officer at the Adult Parole Authority (APA), “[o]n April 23, 2018, the APA was advised of” the entry vacating plaintiff’s post-release control and, as a result, plaintiff’s “post release control was terminated and he was released from APA supervision” that day.

{¶9} Plaintiff claims that the portions of the sentencing entries imposing post-release control were “void on their face” because they did not include the following language:

- (a) Whether post-release control is discretionary or mandatory;
- (b) The duration of the post-release control;
- (c) A statement to the effect that the Ohio Adult Parole Authority will administer the post-release control pursuant to the R.C. §2967.28 and that any violation by the offender of the conditions of post-release control will subject the offender to the consequences set forth in that statute;
- (d) Failure to properly impose post-release control renders that portion of the person [sic] of the sentence void.

(Complaint, ¶ 9.) According to plaintiff, in the absence of such language defendant did not have lawful authority to place him on post-release control and confine him for any alleged violations thereof. As authority, plaintiff points to case law regarding the measures that a sentencing court is to take when imposing post-release control, including *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700; *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254; and, *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864. (Response, pp. 3-4.) “To succeed on a false imprisonment claim based on imprisonment pursuant to a court’s entry or order, however, the court’s entry must be invalid on its face. Facial invalidity does not require the consideration of extrinsic information or the application of case law.” *Beachum v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-635, 2012-Ohio-673, ¶ 7.

{¶10} Plaintiff’s sentencing entries subjected him to post-release control pursuant to R.C. 2967.28, which undisputedly mandated a five-year term of post-release control based upon the nature of his offenses. While the sentencing entries did not specify the statutorily mandated five-year term of plaintiff’s post-release control, there is no question that defendant applied R.C. 2967.28 in that manner. See *Dailey v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 18AP-21, 2018-Ohio-3500, ¶ 20 (where a sentencing court did not specify whether sentences were to run consecutively or concurrently, defendant acted appropriately in applying statutory “mandatory consecutive sentencing provisions” when calculating the expiration of the sentence). Whether it can be shown through case law that there was some procedural error in plaintiff’s sentencing is immaterial to his claim of false imprisonment. When it is only through the application of case law that a sentencing entry may be shown to be invalid, the only reasonable conclusion to be drawn is that the sentencing entry is valid on its face. See *McKinney v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-960, 2010-Ohio-2323, ¶ 12. “ODRC is not a court and is not to be held liable for failing to

divine from the procedural history of an inmate's case that what appears to be a facially valid order has defective roots that affect whether it should continue to hold a prisoner. ODRC cannot and should not second-guess facially valid orders from the judiciary." *Mavroudis v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 17AP-430, 2017-Ohio-8649, ¶ 11.

{¶11} It is noted that the third and final occasion when defendant confined plaintiff for a post-release control violation was from April 10 to 23, 2018, which was after the Hamilton County Common Pleas Court issued its entry vacating the post-release control portion of plaintiff's sentence on August 23, 2017. "ODRC may be found liable for the tort of false imprisonment if it intentionally continues to confine an inmate despite having knowledge that the privilege initially justifying that confinement no longer exists." *Jones v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-138, 2016-Ohio-5425, ¶ 8. But, as previously stated, Widmer's affidavit provides that defendant did not know of the entry vacating plaintiff's post-release control until April 23, 2018, whereupon plaintiff was released. Plaintiff has provided no countervailing evidence. Accordingly, reasonable minds can only conclude that at no time did defendant continue to confine plaintiff with knowledge that its initial privilege to do so no longer existed. Defendant is thus entitled to summary judgment on plaintiff's claim of false imprisonment.

{¶12} Finally, in addition to claiming false imprisonment, plaintiff's complaint separately raises one count of negligence and one count of negligent hiring, training, retention, and supervision. Defendant argues that Ohio law does not recognize a claim of negligent false imprisonment. In *Bennett*, which involved a claim that defendant imprisoned an inmate beyond the lawful expiration of his sentence, the Supreme Court of Ohio held that he stated a claim for relief sounding in false imprisonment. *Bennett*, 60 Ohio St.3d at 110. The court in *Bennett* went on to state that because the plaintiff in that case "alleged a knowing or intentional failure to follow the law, we have no occasion herein to determine whether there is a cause of action for an official's negligent failure to

follow the law in releasing a prisoner.” *Id.* Here too there can be no question that defendant knowingly or intentionally confined plaintiff and that his claim sounds in false imprisonment. Further, plaintiff’s alleged damages entail emotional distress and economic loss, but there can be no relief under a theory of negligent infliction of emotional distress since there is no suggestion plaintiff was physically injured or in fear of some physical peril (*Prysock v. Bahner*, 10th Dist. Franklin No. 03AP-1245, 2004-Ohio-3381, ¶ 12), and “the economic loss rule generally prevents recovery in tort of damages for purely economic losses.” *425 Beecher, LLC v. Unizan Bank, N.A.*, 186 Ohio App.3d 214, 2010-Ohio-412, 927 N.E.2d 46, ¶ 49 (10th Dist.). Also, since there is no proof of some underlying tort or wrong by an employee of defendant, there can be no relief with respect to the claim of negligent hiring, training, retention, and supervision. See *Ford v. Brooks*, 10th Dist. Franklin No. 11AP-664, 2012-Ohio-943, ¶ 22.

{¶13} Based upon the foregoing, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. As a result, defendant’s motion for summary judgment is GRANTED and judgment is hereby rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH  
Judge