

[Cite as *Fryerson v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2730.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Lafette Fryerson,	:	
	:	
Plaintiff-Appellant,	:	No. 02AP-1216
	:	(C.C. No. 2001-02473)
v.	:	
	:	
Department of Rehabilitation and	:	(REGULAR CALENDAR)
Correction,	:	
	:	
Defendant-Appellee.	:	
	:	

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O P I N I O N

Rendered on May 29, 2003

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*Paul Mancino, Jr.*, for appellant.

*Jim Petro*, Attorney General, and *James P. Dinsmore*, for appellee.

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APPEAL from the Ohio Court of Claims

BROWN, J.

{¶1} Lafette Fryerson, plaintiff-appellant, appeals a judgment of the Ohio Court of Claims, finding he was not falsely imprisoned by the Ohio Department of Rehabilitation and Correction ("ODRC"), defendant-appellee.

{¶2} Because the matter was submitted to the Court of Claims based upon stipulations by the parties, and the underlying facts are not in dispute, we will utilize the

factual summary from the decision of the Court of Claims in *Fryerson v. Ohio Dept. of Rehab. & Corr.*, 120 Ohio Misc.2d 50, 2002-Ohio-5757 ("*Fryerson I*"):

{¶3} "On January 30, 1996, a police officer filed charges in the Cuyahoga County Court of Common Pleas, Juvenile Division, against plaintiff, age 16, in connection with two separate incidents occurring in January 1996, wherein, singularly, the alleged victims in the two incidents were Lawrence Robinson and Thomas Jones. The complaint alleged that plaintiff was a delinquent child for committing acts that would constitute criminal offenses if he had been an adult, which include kidnapping, aggravated robbery, and felonious assault as related to the incident involving Robinson; and receiving stolen property, in the incident involving Jones. The prosecutor made a motion to amend the receiving stolen property charge to aggravated robbery, but the juvenile court denied the motion.

{¶4} "Pursuant to R.C. 2151.26, the juvenile court conducted a bindover hearing. Following the hearing, the court ordered the mandatory bindover of plaintiff to the general division of the Cuyahoga County Court of Common Pleas for trial as an adult on charges of kidnapping and aggravated robbery in connection with the incident involving Robinson.

{¶5} "In case No. 340376, a grand jury indicted plaintiff for offenses against both Robinson and Jones. While pretrial proceedings were under way in that case, a grand jury indicted plaintiff in case No. 344010 on one count of robbery and one count of grand theft of an automobile, both offenses arising in connection with the incident involving Jones. On October 21, 1996, at the state's request, the trial court dismissed the indictment in case No. 340376.

{¶6} "On October 22, 1996, a jury trial commenced in case No. 344010. The jury ultimately found plaintiff guilty of robbery and grand theft, and the trial court imposed a sentence of 8 to 15 years.

{¶7} "Plaintiff's appeal to the Cuyahoga County Court of Appeals was stayed pending resolution of a petition for a writ of habeas corpus filed by plaintiff with the Belmont County Court of Appeals. By decision rendered on October 25, 1997, the Belmont County Court of Appeals denied plaintiff's petition, holding that he had an

adequate remedy at law by way of motion for leave to appeal his criminal conviction. Plaintiff appealed the denial of his petition to the Supreme Court of Ohio, and by decision rendered on February 17, 1999, the Supreme Court affirmed the judgment of the court of appeals. *State ex rel. Fryerson v. Tate* (1999), 84 Ohio St.3d 481, 705 N.E.2d 353.

{¶8} "The stay of plaintiff's appeal with the Cuyahoga County Court of Appeals was lifted and by decision filed on February 22, 2000, that court reversed and remanded the case to the juvenile court. The appellate court found that, while the complaints charging plaintiff with acts relating to Robinson were subject to a mandatory bindover under R.C. 2151.26(B), the complaint charging plaintiff with the act that would have constituted receipt of stolen property, related to Jones, was not subject to a mandatory bindover under the statute. Thus, the court reversed plaintiff's conviction on the charges relating to Jones, and the case was remanded to the juvenile court with instructions that the prosecution of plaintiff as an adult for the charges related to Jones was 'void ab initio.' *State v. Fryerson* (Feb. 10, 2000), Cuyahoga App. No. 71683, 2000 WL 146567.

{¶9} "Following remand to the juvenile court, the prosecutor elected not to continue the prosecution of plaintiff for charges relating to Jones. Based upon an order of the juvenile court, defendant released plaintiff from custody on May 26, 2000." *Fryerson I*, at ¶¶'s 2-8.

{¶10} On February 13, 2001, appellant brought the present action against ODRC alleging false imprisonment. The matter was submitted to the Court of Claims on the issue of liability based upon agreed stipulations. On October 9, 2002, the Court of Claims found appellant could not recover from ODRC for false imprisonment. Appellant appeals this judgment, asserting the following assignment of error:

{¶11} "The [C]ourt of Claims erred in awarding judgment to defendant as plaintiff was entitled to damages for false imprisonment where he was held pursuant to a judgment and sentence which was found to *void ab initio*."

{¶12} Appellant argues the Court of Claims erred in denying his claim for false imprisonment because his confinement was pursuant to a conviction on charges that were not properly boundover. "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.' " *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71, quoting 1 Harper & James, *The Law of Torts* (1956) 226, Section 3.7.

{¶13} Appellant's argument is based solely upon *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, which the Court of Claims distinguished from the present case. In *Bennett*, the plaintiff had been sentenced on May 16, 1985 to six months' incarceration for an unspecified offense with 152 days of jail-time credit. Because he was on parole from another offense at the time of sentencing, the defendants allegedly told the plaintiff that a parole revocation hearing would be held "as soon as he became available." The plaintiff's sentence expired on June 10, 1985, without any parole revocation order having been entered. The state did not release the plaintiff until December 17, 1985, despite the expiration of his sentence and several habeas corpus and mandamus actions. Bennett then filed a complaint in the Court of Claims, with ODRC and the Ohio Adult Parole Authority eventually being substituted as the defendants. The court sustained the defendants' motion for judgment on the pleadings. This court reinstated the false imprisonment claim and remanded the matter. Upon appeal to the Ohio Supreme Court, the Supreme Court affirmed our decision and held, with regard to the false imprisonment claim:

{¶14} "In the absence of an intervening justification, a person may be found liable for the tort of false imprisonment if he or she intentionally continues to confine another despite knowledge that the privilege initially justifying that confinement no longer exists." *Bennett*, at paragraph one of the syllabus.

{¶15} We find *Bennett* inapplicable to the present case. The underlying facts in *Bennett* are inapposite to those in the present case. In *Bennett*, the ODRC had no "colorable" basis for Bennett's confinement after the expiration of his sentence, but continued to imprison him. In the present case, appellant does not contend that the ODRC continued to confine him after gaining knowledge that it no longer had any right to confine him. The ODRC immediately released appellant after our decision in *Fryerson I* and the juvenile court's subsequent release order. As is apparent from paragraph one of the syllabus, *Bennett* stands only for the proposition that false imprisonment is actionable if the ODRC intentionally confined the inmate beyond the expiration of his sentence. See,

e.g., *Mickey v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-539, 2003-Ohio-90. The ODRC in the present case did not intentionally confine appellant with knowledge that it was doing so pursuant to a judgment that was "void ab initio," and it released him immediately after the court's order to do so.

{¶16} Appellant also relies upon the following passage from *Bennett* to support his claim:

{¶17} "As stated in *Diehl v. Friester* (1882), 37 Ohio St. 473, 475, 'an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear[s] that such judgment or order is void.' " *Id.* at 110-111.

{¶18} Appellant argues that because he was confined pursuant to a judgment termed by the Ohio Supreme Court as "void ab initio," he is automatically entitled to recovery for false imprisonment consistent with the above quote. However, we do not find this bare quote from *Bennett* regarding void judgments dispositive. *Bennett* did not address a situation where an inmate is confined under a void judgment, as was appellant in the present case, and its citation to *Diehl*, without any further discussion or analysis of void judgments, leaves its isolated reference to such unpersuasive. In fact, we can find no Ohio case in which a court found the ODRC liable for false imprisonment based upon a void judgment or any case in which a court specifically set forth the meaning of a "void" judgment in the context of a false imprisonment claim.

{¶19} However, this court shed some light on what type of "void" judgment may serve as an underlying basis for a false imprisonment claim in *Larkins v. Ohio Dept. of Rehab. & Corr.* (Mar. 18, 1999), Franklin App. No. 98AP-711. In *Larkins*, the plaintiff, an inmate, brought a false imprisonment claim based upon the theory that the court had been without jurisdiction to convict him because his written waiver of jury form was never filed in the underlying action, thereby resulting in a void judgment. The plaintiff's argument that the judgment was void was based upon a prior petition for writ of habeas corpus. Although the trial court had granted the writ, the Ohio Supreme Court had reversed, finding that while the court did fail to strictly comply with the jury trial waiver requirements, such was neither a jurisdictional defect nor an error for which no adequate

remedy at law existed. The trial court concluded in *Larkins* that the ODRC was not liable for false imprisonment.

{¶20} This court affirmed the trial court. We based our determination on the Ohio Supreme Court's decision with regard to the plaintiff's prior habeas corpus action, in which it held that the plaintiff's circumstances did not present a jurisdictional defect and did not affect the trial court's authority to proceed with a bench trial. We reasoned that because the trial court had "jurisdiction to proceed," the trial court's judgment in the underlying criminal action did not constitute a void judgment for the purposes of a false imprisonment claim.

{¶21} Similarly, in the present case, the trial court had some "jurisdiction to proceed" with a trial against appellant because the initial bindover to the common pleas court was technically proper based upon the crimes against Robinson. The Ohio Supreme Court made this precise holding in *State ex rel. Fryerson v. Tate* (1999), 84 Ohio St.3d 481, 485:

{¶22} "[I]n actuality [appellant] is not challenging the bindover; he is instead challenging the validity of subsequent events that took place *after* a technically correct bindover occurred. The bindover proceedings and entry \* \* \* did comply with applicable bindover procedures. Although the juvenile court may have transferred appellant [to the common pleas court] only on the charges involving Robinson, appellant was correctly bound over on those charges. Appellant's arguments in his first proposition of law instead go to the propriety of his subsequent indictment, conviction, and sentencing *after* the bindover occurred. (Emphasis sic.)

{¶23} "*Once appellant was properly bound over, the common pleas court had jurisdiction to proceed. It was only at the time of the proceedings in the common pleas court that possible error occurred, in that appellant had been bound over on charges involving Robinson and was prosecuted on the charges involving Jones. This consideration does not affect the essential validity of the bindover.*" (Emphasis added.)

{¶24} Thus, at least initially the trial court had jurisdiction to proceed against appellant based upon a valid bindover. It was not until appellant was prosecuted on crimes relating to Jones that error occurred. Further, it is significant that in remanding the

matter back to the juvenile court in the original proceedings, the Cuyahoga County Court of Appeals indicated that the juvenile court could still pursue a discretionary bindover to the common pleas court relating to the Jones' charges. Thus, although the trial court improperly prosecuted the Jones' charges during these particular proceedings, the court was not wholly without power to adjudicate such matters, as it could have exercised jurisdiction over the Jones' charges given a proper bindover proceeding. Therefore, consistent with our holding in *Larkins*, appellant has no basis for a false imprisonment claim.

{¶25} The Court of Claims relied upon a case from the Court of Appeals of New York, *Nuernberger v. State* (1976), 41 N.Y.2d 111, which contained very similar circumstances as the present case. Though not controlling authority, we find it persuasive. In *Nuernberger*, the claimant had been found guilty in a county court of various crimes involving his daughter and was imprisoned. The Court of Appeals of New York eventually reversed the conviction, finding that, although the record supported the conviction, by statute the family court had exclusive original jurisdiction over such crimes.

{¶26} The claimant then brought a claim for false imprisonment, arguing that because initial exclusive original jurisdiction was in family court, the county court in which he had been convicted and sentenced lacked jurisdiction over both the person of the claimant and the subject matter of the proceeding. Thus, the claimant argued, any mandates issued by the county court were null and void, affording no protection to the custodial authorities who acted in reliance on their validity. The Court of Claims of that state entered judgment in his favor, and the judgment was affirmed by the appellate division. Upon further appeal to the Court of Appeals of New York, the court identified the issue as whether the state was protected against a claim for false imprisonment when its administrative officials acted upon commitment papers issued by the county court, which although incompetent to adjudicate this particular subject matter, was otherwise a court of general criminal jurisdiction. The Court of Appeals answered the issue in the affirmative and reversed, finding:

{¶27} "A court, otherwise competent to determine the kind of cause before it, which has 'jurisdiction' at least to determine in the first instance whether it may or should

retain 'jurisdiction,' has, at least, some competence over the cause. Hence, its process and mandates may not be equated with process and mandates emanating from a court totally lacking in power, any power, over subject matter." *Id.* at 113.

{¶28} The court in *Nuernberger* also distinguished the competence of a court to entertain matters in categories over which it has power to adjudicate from its power to adjudicate particular causes, which arise in the categories. See *id.* at 117. The court concluded:

{¶29} "The fact is that the County Court had general jurisdiction over criminal actions of the very categories for which claimant was tried and convicted. It also had at least the initial power to adjudicate whether the fact complex required transfer to the Family Court because of its initial exclusive original jurisdiction. Hence, the court was not without some power to adjudicate and its fault was no greater than that of error which remains uncorrected until the appeal was finally resolved in the State's highest court. To say that in such circumstances the mandates of the County Court were void is to deny the reality of the legally constituted courts which issued those mandates and the recognition which would be accorded those mandates in other actions and proceedings until reversal on direct appeal." *Id.* at 118.

{¶30} Thus, in *Nuernberger*, the court found that although the county court lacked power to do more than ascertain the basic facts giving the family court first instance jurisdiction and to transfer the action to the family court, such did not render the county court's process or mandate a nullity; but for the statutory act, the competence of the county court to try and convict claimant would have been unquestioned.

{¶31} In the present case, as explained above, the common pleas court had jurisdiction to proceed based upon the initial bindover. The common pleas court was not "totally lacking in power over the subject matter" and had proper jurisdiction pursuant to the bindover regarding the Robinson charges. Further, upon remand, it could have gained proper jurisdiction pursuant to a discretionary bindover with regard to the Jones' charges. The common pleas court was certainly competent to adjudicate the "category" of crime before it relating to Jones, albeit incompetent to adjudicate the cause in this particular case and under these particular circumstances. Thus, although the judgment

may have been "void ab initio," the court had "some power to adjudicate" and was not "wholly without competence to adjudicate something in the matter before it." *Id.*

{¶32} In addition, we agree with the court in *Nuernberger* that "even if such process or mandate is void, it does not follow automatically that one affected by any kind of 'void' process or mandate is entitled to damages because those obliged to enforce the 'void' process or mandates performed the duty imposed on them by law." *Id.* at 113. The court recognized that "[s]ome 'unlawful' commands addressed to the law's ministers and minions must be obeyed \* \* \*." *Id.* The court pointed out that:

{¶33} "[E]ven were the instant conviction so clearly one to be initially resolved only in Family Court, the custodial authorities criticized by claimant may have assumed, reasonably, that the County Court proceeding took place only after the Family Court determined, as it could under the statute, that the matter should be criminally tried \* \* \*. Not until this court reversed was it 'clear' that the commitment issued pursuant to the judgment of conviction suffered from a 'facial' invalidity, if that it was." *Id.* at 115.

{¶34} In the present case, ODRC played no part in ordering appellant's confinement. The 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. Consistent with the court's reasoning in *Nuernberger*, the ODRC in the present case could have reasonably assumed that the common pleas proceeding took place only after the juvenile court exercised its discretion to bindover appellant for the Jones' charges. It was not until this court reversed that it became clear the confinement ordered by the common pleas court was procedurally invalid. For the foregoing reasons, we find that appellant's claim for false imprisonment must fail. Appellant's sole assignment of error is overruled.

{¶35} Accordingly, appellant's assignment of error is overruled, and the judgment of the Ohio Court of Claims is affirmed.

*Judgment affirmed.*

LAZARUS and WATSON, JJ., concur.

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