

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Gerry E. Griffith, Jr.,	:	
Plaintiff-Appellant,	:	No. 08AP-964
v.	:	(C.C. No. 2008-07861-WI)
The State of Ohio,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 16, 2009

Slicer Law Office, and *Charles W. Slicer, III*, for appellant.

Richard Cordray, Attorney General, and *Peter E. DeMarco*,
for appellee.

APPEAL from the Ohio Court of Claims.

BROWN, J.

{¶1} Gerry E. Griffith, Jr., plaintiff-appellant, appeals from a judgment of the Ohio Court of Claims, in which the court granted the motion to dismiss filed by the State of Ohio, defendant-appellee.

{¶2} On April 2, 2004, a Cleveland school security officer witnessed appellant speaking to a female pedestrian from his vehicle. The officer spoke to the female, who

police later learned was 18 years old, and the female told the police that appellant tried to get her inside his car. The officer saw appellant at a nearby gas station and spoke with him. Appellant denied that he had tried to lure the female into his car but, instead, said he was asking her directions to his hotel, as he lived in Dayton and was unfamiliar with Cleveland. The officer gave appellant directions.

{¶3} On that same day, a 14-year-old girl was abducted from Cleveland. On April 8, 2004, the school security officer reported to police the April 2, 2004 incident with appellant. Police then obtained a "warrant," which was issued by a prosecutor, to search appellant's home. Later that day, officers from Cleveland, Dayton, and the Federal Bureau of Alcohol, Tobacco, and Firearms called appellant and told him that his home had been burglarized. When appellant arrived home, he was arrested for attempted abduction of the 18-year-old girl. Appellant was asked to sign a consent to search his home, which he did. The abducted girl was not found in the house, but drugs and a gun were discovered after a search of the entire home. The abduction charges were eventually dropped when police discovered the girl was 18 years old.

{¶4} Appellant was indicted in federal court on a firearm charge. Appellant moved to suppress evidence of the gun and drugs found in his house, claiming the consent was obtained pursuant to an unlawful arrest, and the search was beyond the scope of his consent. The federal district court eventually found the arrest to have been lawful based upon probable cause. On appeal, in *United States v. Griffith* (C.A.6, 2006), 193 Fed.Appx. 538, the Sixth Circuit Court of Appeals found that the police did not have probable cause to make the arrest, and the consent to search appellant's home was the

fruit of his unlawful arrest. The circuit court remanded the matter to the district court. Appellant was released from custody in January 2007.

{¶5} On August 1, 2008, appellant filed a second amended complaint in the Court of Claims alleging he was wrongfully imprisoned pursuant to R.C. 2743.48. On August 15, 2008, the state filed a motion to dismiss, pursuant to Civ.R. 12(B)(1), claiming that the Court of Claims lacked jurisdiction over the subject matter until appellant commenced an action in the common pleas court, pursuant to R.C. 2305.02, and obtained a declaration that he was wrongfully imprisoned.

{¶6} On September 29, 2008, the Court of Claims entered an entry of dismissal, in which the court found that it did not have jurisdiction over the matter until appellant obtained a determination from the common pleas court finding that he was wrongfully imprisoned. Appellant appeals the judgment of the trial court, asserting the following assignment of error:

MR. GRIFFITH COMPLIED WITH THE REQUIREMENTS
SET FORTH IN THE WRONGFUL IMPRISONMENT
STATUTE; THEREFORE, THE COURT OF CLAIMS ERRED
WHEN IT GRANTED A MOTION TO DISMISS PURSUANT
TO 12(B)(1).

{¶7} In appellant's assignment of error, appellant argues that the trial court erred when it dismissed his complaint. The only ground for dismissal cited in the state's motion to dismiss was pursuant to Civ.R. 12(B)(1). Appellate review of a trial court's decision to dismiss a case, pursuant to Civ.R. 12(B)(1), is de novo. *Crestmont Cleveland Partnership v. Ohio Dept. of Health* (2000), 139 Ohio App.3d 928, 936. De novo review means that we apply the same standards as the trial court. *GNFH, Inc. v. W. Am. Ins. Co.*, 172 Ohio App.3d 127, 2007-Ohio-2722, ¶16.

{¶8} To dismiss a complaint under Civ.R. 12(B)(1), we must determine whether a plaintiff has alleged any cause of action that the court has authority to decide. *Crestmont* at 936. Furthermore, when a trial court determines its own jurisdiction, it has authority to consider any pertinent evidentiary materials. *Nemazee v. Mt. Sinai Med. Ctr.* (1990), 56 Ohio St.3d 109, 111, fn. 3. Thus, in determining whether the plaintiff has alleged a cause of action sufficient to withstand a Civ.R. 12(B)(1) motion to dismiss, a court is not confined to the allegations of the complaint. *Southgate Dev. Corp. v. Columbia Gas Transmission Corp.* (1976), 48 Ohio St.2d 211, paragraph one of the syllabus.

{¶9} In the present case, the Court of Claims found it did not have jurisdiction over the matter because appellant failed to first file an action in the common pleas court and obtain a judgment finding that he had been wrongfully imprisoned pursuant to R.C. 2305.02 and 2743.48. R.C. 2305.02 provides:

A court of common pleas has exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who satisfies divisions (A)(1) to (4) of section 2743.48 of the Revised Code and that seeks a determination by the court that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person. If the court enters the requested determination, it shall comply with division (B) of that section.

R.C. 2743.48 provides, in pertinent part:

(A) As used in this section and section 2743.49 of the Revised Code, a "wrongfully imprisoned individual" means an individual who satisfies each of the following:

(1) The individual was charged with a violation of a section of the Revised Code by an indictment or information prior to, or

on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

(2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

(3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.

(4) The individual's conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

(5) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that 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.

(B)(1) When a court of common pleas determines, on or after September 24, 1986, that a person is a wrongfully imprisoned individual, the court shall provide the person with a copy of this section and orally inform the person and the person's attorney of the person's rights under this section to commence a civil action against the state in the court of claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice.

(2) The court described in division (B)(1) of this section shall notify the clerk of the court of claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the name and proposed mailing address of the person and of the fact that the person has the rights to commence a civil action and

to have legal representation as provided in this section. The clerk of the court of claims shall maintain in the clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this section and shall create files in the clerk's office for each such individual.

* * *

[C](2) If a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(1) of this section does not commence a civil action under this section within six months after the entry of that determination, the clerk of the court of claims shall send a letter to the wrongfully imprisoned individual, at the address set forth in the notice received from the court of common pleas pursuant to division (B)(2) of this section or to any later address provided by the wrongfully imprisoned individual, that reminds the wrongfully imprisoned individual of the wrongfully imprisoned individual's rights under this section. Until the statute of limitations provided in division (H) of this section expires and unless the wrongfully imprisoned individual commences a civil action under this section, the clerk of the court of claims shall send a similar letter in a similar manner to the wrongfully imprisoned individual at least once each three months after the sending of the first reminder.

(D) Notwithstanding any provisions of this chapter to the contrary, a wrongfully imprisoned individual has and may file a civil action against the state, in the court of claims, to recover a sum of money as described in this section, because of the individual's wrongful imprisonment. The court of claims shall have exclusive, original jurisdiction over such a civil action. The civil action shall proceed, be heard, and be determined as provided in sections 2743.01 to 2743.20 of the Revised Code, except that if a provision of this section conflicts with a provision in any of those sections, the provision in this section controls.

(E)(1) In a civil action as described in division (D) of this section, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the court of claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. No other evidence shall be

required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and the claimant shall be irrebuttably presumed to be a wrongfully imprisoned individual.

(2) In a civil action as described in division (D) of this section, upon presentation of requisite proof to the court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

* * *

(F)(1) If the court of claims determines in a civil action as described in division (D) of this section that the complainant is a wrongfully imprisoned individual, it shall enter judgment for the wrongfully imprisoned individual in the amount of the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section.

(2) If the wrongfully imprisoned individual was represented in the civil action under this section by counsel of the wrongfully imprisoned individual's own choice, the court of claims shall include in the judgment entry referred to in division (F)(1) of this section an award for the reasonable attorney's fees of that counsel. These fees shall be paid as provided in division (G) of this section.

(3) The state consents to be sued by a wrongfully imprisoned individual because the imprisonment was wrongful, and to liability on its part because of that fact, only as provided in this section. However, this section does not affect any liability of the state or of its employees to a wrongfully imprisoned individual on a claim for relief that is not based on the fact of the wrongful imprisonment, including, but not limited to, a claim for relief that arises out of circumstances occurring during the wrongfully imprisoned individual's confinement in the state correctional institution.

* * *

(H) To be eligible to recover a sum of money as described in this section because of wrongful imprisonment, a wrongfully imprisoned individual shall not have been, prior to September 24, 1986, the subject of an act of the general assembly that authorized an award of compensation for the

wrongful imprisonment or have been the subject of an action before the former sundry claims board that resulted in an award of compensation for the wrongful imprisonment. Additionally, to be eligible to so recover, the wrongfully imprisoned individual shall commence a civil action under this section in the court of claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual.

{¶10} In the present case, appellant claims nothing in R.C. 2743.48 or 2305.02 required him to first institute a civil action to determine if he was wrongfully imprisoned. We agree. As indicated above, R.C. 2743.48(A) provides that, to be a "wrongfully imprisoned individual," one must satisfy the five requirements in section (A)(1) through (A)(5). Every individual must satisfy the first four requirements in (A)(1) through (A)(4), and there is no indication in any part of section (A) that the requirements in (A)(1) through (A)(4) must be established by a court of common pleas. However, the requirement under (A)(5) has two parts separated by the disjunctive conjunction "or." "Or" is "a function word indicating an alternative between different or unlike things." *Pizza v. Sunset Fireworks Co., Inc.* (1986), 25 Ohio St.3d 1, 4-5. As written, under (A)(5), an individual must show either: (1) that an error in procedure resulted in the individual's release, or (2) it was determined by a court of common pleas that the offense of which the individual was found guilty either was not committed by the individual or was not committed by any person. There is no indication in the first alternative that a common pleas court must establish the fact that an error in procedure resulted in the individual's release. Only the second alternative explicitly indicates that a court of common pleas must determine that the offense was either not committed by the individual or was not committed by any person.

{¶11} Section (A)(5) was amended April 9, 2003. It is apparent from the grammatical structure used by the legislature that the legislature intentionally placed the burden of obtaining a common pleas determination only upon the second alternative. The prior version of R.C. 2743.48(A)(5) read:

Subsequent to his sentencing and during or subsequent to his imprisonment, it was determined by a court of common pleas that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person.

When the legislature amended (A)(5), it chose to place the alternative option "an error in procedure resulted in the individual's release" before the phrase "it was determined by a court of common pleas." It is well-established that, in determining the legislature's intent, we must read words and phrases in context according to the rules of grammar and common usage. *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, ¶23. It must be presumed that the legislature was aware of the rules of grammar when the statute was promulgated and articulated its thoughts consistent with these rules of grammar. *Penn v. A-Best Prods. Co.*, 10th Dist. No. 07AP-404, 2007-Ohio-7145, ¶9, citing *State ex rel. Rear Door Bookstore v. Tenth Dist. Court of Appeals* (1992), 63 Ohio St.3d 354, 362. Furthermore, when the language of a statute is clear, this court must assume that the legislature meant what it said, as well as what it did not. See *Kocisko v. Charles Shutrump & Sons Co.* (1986), 21 Ohio St.3d 98, 100 (J. Wright, dissenting), citing *Andrianos v. Community Traction Co.* (1951), 155 Ohio St. 47. Here, the legislature's choice of grammatical structure in amending section (A)(5) to add an alternative method of qualifying for recovery without preceding it with a requirement that one obtain a prior court determination is exceptionally persuasive.

{¶12} R.C. 2305.02 supports the above distinction between the first and second alternatives in (A)(5). R.C. 2305.02 indicates that a common pleas court has exclusive, original jurisdiction to hear and determine an action by an individual who seeks a determination that the offense of which he was found guilty either was not committed by him or was not committed by any person. R.C. 2305.02 does not require a determination by a common pleas court that an error in procedure resulted in the individual's release. If the legislature had wanted the common pleas court to make both determinations, it would have amended R.C. 2305.02 when it amended 2743.48(A)(5). See *Guider v. LCI Communications Holdings Co.* (1993), 87 Ohio App.3d 412, 419 (as the legislature could have included certain language had it wanted, the court must assume that the General Assembly's failure to do such was intentional).

{¶13} Furthermore, while R.C. 2743.48(B), (C), (E), and (H) all contain some interplay between a determination by the common pleas court under R.C. 2305.02, and an action in the Court of Claims under R.C. 2743.48, there is nothing in those sections that would conflict with our above determination. The notification provisions in R.C. 2743.48(B)(1) apply only "[w]hen a court of common pleas determines * * * that a person is a wrongfully imprisoned individual." Similarly, the "reminder" requirements for the Court of Claims under R.C. 2743.48(C)(2) apply only when there exists "a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(1) of this section." There is nothing in these sections that precludes an individual from filing an action directly in the Court of Claims when a court of common pleas is not required by R.C. 2305.02 to make a determination that an individual was a wrongfully imprisoned individual. Therefore, neither section (B) nor (C) requires a common pleas

court determination for individuals who have been released based upon an error in procedure.

{¶14} In addition, while R.C. 2743.48(E)(1) indicates that a complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the Court of Claims a certified copy of the common pleas court's entry that the claimant is a wrongfully imprisoned individual, this section in no way indicates that a judgment entry from the common pleas court is the sole method to demonstrate the claimant is a wrongfully imprisoned individual. Nothing in (E)(1) precludes an individual from filing an action directly in the Court of Claims seeking a determination that the individual was wrongfully imprisoned when the individual was released from incarceration based upon a procedural error. Therefore, we find this section also does not conflict with our above conclusion.

{¶15} Also, although R.C. 2743.48(H) provides that, to be eligible to recover for wrongful imprisonment, the wrongfully imprisoned individual must commence a civil action under R.C. 2743.48 in the Court of Claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual, the time limitation contained in section (H) does not indicate an individual who has been released based upon an error in procedure must obtain a determination first in the common pleas court that he is a wrongfully imprisoned individual. Thus, this section also does not conflict with our above conclusion.

{¶16} For all the above reasons, we cannot say that the Court of Claims lacked jurisdiction to consider appellant's complaint because he failed to first file an action in the common pleas court seeking a determination that he was a wrongfully imprisoned

individual. Nothing in R.C. 2743.48 or 2305.02 requires such. The April 2003 amendment to R.C. 2743.48(A)(5) provides an alternative method for individuals who were released based upon an error in procedure to obtain recovery as a wrongfully imprisoned individual without first filing an action in the common pleas court. The jurisdictional parameters of R.C. 2305.02 are also clear. The common pleas court has exclusive, original jurisdiction only to determine whether the offense of which an individual was found guilty either was not committed by him or was not committed by any person. R.C. 2305.02 does not grant the common pleas court exclusive, original jurisdiction to determine whether an individual was released from prison based upon a procedural error, and we cannot read such into the plain language of the statute. Furthermore, no other provisions in R.C. 2305.02 or 2743.48 conflict with our conclusion that an individual who is released from incarceration based upon an error in procedure may obtain recovery as a wrongfully imprisoned individual without first filing an action in the common pleas court. Therefore, the Court of Claims erred when it dismissed appellant's action, pursuant to Civ.R. 12(B)(1), and appellant's assignment of error is sustained.

{¶17} Accordingly, appellant's assignment of error is sustained, the judgment of the Ohio Court of Claims is reversed, and this matter is remanded to that court for further proceedings in accordance with the law, consistent with this decision.

*Judgment reversed
and cause remanded.*

KLATT and CONNOR, JJ., concur.
