

[Cite as *Fisk v. Ohio Dept. of Rehab. & Corr.*, 2011-Ohio-5889.]
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Antwon Fisk,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-432
v.	:	(C.C. No. 2010-11838)
	:	
Ohio Department of Rehabilitation and	:	(REGULAR CALENDAR)
Correction,	:	
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on November 15, 2011

Paul L. Wallace, for appellant.

Michael DeWine, Attorney General, Stephanie Pestello-Sharf, and Amy S. Brown, for appellee.

APPEAL from the Court of Claims of Ohio.

FRENCH, J.

{¶1} Plaintiff-appellant, Antwon Fisk ("appellant"), appeals the judgment of the Court of Claims of Ohio, which denied his motion for summary judgment and granted the motion for summary judgment filed by defendant-appellee, Ohio Department of Rehabilitation and Correction ("DRC"). Having concluded that the trial court did not err

by granting judgment in favor of DRC on appellant's claim of false imprisonment, we affirm.

I. BACKGROUND

{¶2} In 2001, appellant was found guilty of robbery and kidnapping in the Franklin County Court of Common Pleas. He was sentenced to concurrent, five-year sentences on the robbery and kidnapping charges and given jail-time credit. At the end of his prison term in 2005, appellant was released on Post-Release Control ("PRC") supervision for a period of five years.

{¶3} In 2006, appellant was found guilty of forgery in the Delaware County Court of Common Pleas. He was sentenced to 10 months on the forgery charge and also sentenced to serve 1,300 days of the time remaining on his period of PRC from the 2001 convictions and sentence.

{¶4} On May 4, 2010, appellant filed a motion in the Delaware County Court of Common Pleas to vacate his sentence based on *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126. In *Hernandez*, the Supreme Court of Ohio held that the Ohio Adult Parole Authority ("APA") could not impose PRC on an offender unless the trial court had informed the inmate at sentencing that he would be subject to a period of PRC and incorporated that notice into the sentencing entry. Appellant contended that the Franklin County Court of Common Pleas did not specify the correct term of PRC in the 2001 judgment entry. Failure to do so, appellant argued, rendered the 2001 sentence void, but also rendered the Delaware County court's imposition of the remaining period of PRC as part of the 2006 sentence unlawful.

{¶5} On August 27, 2010, the Delaware County court issued a judgment entry in which it found that, as of February 24, 2010, appellant's PRC was terminated and a final release was issued pursuant to *Hernandez* and *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434. The court vacated the sentence imposed for PRC and, because appellant had served more than his 10-month sentence on the forgery conviction, released appellant. DRC released appellant from its custody that same day.

{¶6} On November 15, 2010, appellant filed a complaint against DRC for false imprisonment. Both appellant and DRC filed motions for summary judgment. The trial court granted summary judgment in favor of DRC.

II. ASSIGNMENTS OF ERROR

{¶7} Appellant filed a timely appeal. He raises the following assignments of error:

[I.] THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT THE APPELLANT'S MOTION FOR SUMMARY JUDGMENT.

[II.] THE TRIAL COURT ERRED WHEN IT GRANTED THE APPELLE[E]'S MOTION FOR SUMMARY JUDGMENT.

III. DISCUSSION – THE COURT'S GRANT OF SUMMARY JUDGMENT

{¶8} In his first and second assignments of error, appellant contends that the trial court erred by granting summary judgment in favor of DRC. We will address these assignments together.

{¶9} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's

disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶10} Pursuant to Civ.R. 56(C), 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." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶11} 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 and James, *The Law of Torts*, 226, Section 3.7 (1956). In order to prevail on a claim of false imprisonment, a plaintiff must show the following: (1) his lawful term of confinement expired; (2) the defendant intentionally confined him after the

expiration; and (3) the defendant had knowledge that the privilege initially justifying the confinement no longer existed. *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315, 318.

{¶12} DRC may be held liable for false imprisonment under R.C. 2743.02(A)(1). *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 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. *McKinney v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-960, 2010-Ohio-2323, ¶9. 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.*; *Pilz v. Dept. of Rehab. & Corr.*, 10th Dist. No. 04AP-240, 2004-Ohio-4040 (sentencing entry later corrected); *Fryerson v. Dept. of Rehab. & Corr.*, 10th Dist. No. 02AP-1216, 2003-Ohio-2730 (judgment and sentence found void ab initio).

{¶13} Here, DRC incarcerated appellant based on the 2006 judgment entry. In determining that the 2006 entry was facially valid, the trial court made the following findings: "Upon review of the sentencing entries that [DRC] relied upon to incarcerate [appellant], the court does not perceive any error which would draw into question the validity of the orders. Additionally, based upon the affidavit of Melissa Adams, the court finds that [DRC] released [appellant] when it became aware that the privilege initially justifying [appellant's] confinement no longer existed."

{¶14} We agree with the court that nothing on the face of the 2001 and 2006 entries would indicate their invalidity. Rather, a determination of their invalidity would have required consideration and application of relevant case law. This court has previously held, however, that "[f]acial invalidity does not require the consideration of extrinsic information or the application of case law." *McKinney* at ¶12, citing *Gonzales v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 08AP-567, 2009-Ohio-246, ¶10 (plaintiff's contention that case law demonstrated the invalidity of an entry does not challenge the facial validity of the entry).

{¶15} Nevertheless, appellant contends that DRC was aware at least by February 24, 2010, that appellant's sentence for PRC was no longer valid. In support, appellant submitted a document entitled "TERMINATION FROM SUPERVISION" issued to appellant by the APA. The document identifies appellant by name and institution number and states that, "[u]nder the Authority of the *Supreme Court decision*, the Ohio Adult Parole Authority hereby issues a Final Release on the above number to take effect on" February 24, 2010. (Emphasis sic.) The document is signed by an APA official and dated February 24, 2010. The Delaware County court relied on this document in determining that appellant's PRC was terminated and a final release was issued "as of February 24, 2010."

{¶16} Based on this document, appellant argues that, at the very least, a question of fact remains concerning whether DRC knew that appellant's lawful term had expired and whether DRC intentionally confined appellant beyond that term. We disagree. The February 24, 2010 document shows that someone within DRC knew that

appellant's term imposed for PRC in 2001 had expired. It does not, however, show that DRC knew the sentence imposed in 2006 was unlawful. Only through the application of case law to the 2001 order and the 2006 order could DRC have formed an opinion that appellant's incarceration was unlawful. And even if DRC had formed that opinion, it would have lacked the authority to release appellant without a new order from the Delaware County court. See R.C. 2949.12 (a convicted felon "shall be kept within the institution, jail, or workhouse until the term of the felon's imprisonment expires, the felon is pardoned, paroled, or placed under a post-release control sanction, or the felon is transferred under laws permitting the transfer of prisoners"). DRC held appellant pursuant to a facially-valid order and released him as soon as the Delaware County court issued a new order. Therefore, the trial court did not err by granting summary judgment in favor of DRC on appellant's claim of false imprisonment, and we overrule appellant's assignments of error.

IV. CONCLUSION

{¶17} In summary, we overrule appellant's first and second assignments of error. We affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BRYANT, P.J., and CONNOR, J., concur.
