[Cite as *Hunt v. Morrow Cty.*, 2009-Ohio-4313.]

COURT OF APPEALS
MORROW COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FLOYD HUNT

Plaintiff-Appellee

-vs-

MORROW COUNTY, OHIO, et al.

Defendants-Appellants

JUDGES:
Hon. W. Scott Gwin, P. J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 08 CA 13

O P I N I O N
NUNC PRO TUNC

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Case No. 08 CV 113
JUDGMENT:	Reversed
DATE OF JUDGMENT ENTRY:	August 24, 2009

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1} Defendants-Appellants Morrow County, Morrow County Prosecutor Charles Howland, Morrow County Sheriff Steve Brenneman and Former Morrow County Deputy Sheriff Robert White appeal the October 21, 2008 decision of the Morrow County Court of Common Pleas denying its motion for summary judgment.

{¶2} Plaintiff-Appellee is Floyd Hunt.

STATEMENT OF THE FACTS AND CASE

{¶3} On August 5, 2005, Chris and Michelle Kempton alleged that Floyd Hunt committed sexual battery on one of their minor children. (T. at 23-26). Holmes County charged Plaintiff-Appellee Floyd Hunt with sexual battery on November 8, 2005. As of the date of the charge, Mr. Hunt was under an additional condition of his bond not to have contact with the minor victim. (T. at 22-23, 33). Specifically, the Court ordered Mr. Hunt to remain 500 feet away from the Kempton home. (T. at 33).

{¶4} Appellee's daughter Pamela Hunt lived adjacent to the Kemptons and Appellee made frequent visits to her garage. (T. at 14). Given the close proximity of the Kempton's home with Ms. Hunt's property, the Kemptons filed a Petition for a Civil Stalking Protection Order with the Court of Common Pleas of Morrow County on February 17, 2006. The order provided more detailed restrictions which enabled Floyd Hunt to have the ability to access his daughter's garage for business purposes while still maintaining an adequate distance from the Kempton family. The order specified that Mr. Hunt was only allowed to access his business on Pamela Hunt's property from 9:00 a.m. until 3:00 p.m. on weekdays. The order further provided that during the weekend and on weekdays before 9:00 a.m. and after 3:00 p.m., Mr. Hunt

was not to be within 1000 feet of the Kempton family. The terms of the order remained in full force and effect until February 17, 2007.

{¶5} On Saturday, February 18, 2006, Plaintiff-Appellee entered the garage located on his daughter's property, situated only 700 feet from the Kempton home, to change a car engine. (T. at 38, 63). Upon observing Plaintiff-Appellee near his family home and in violation of the order that prohibited him from being on the adjacent property during weekends, Chris Kempton contacted the Morrow County Sheriff's Office. At the time, Deputy Sheriff Robert White was on duty at the Sheriff's Office and took Mr. Kempton's call. Id. Deputy White listened to Mr. Kempton's concern and retrieved a copy of the February 17, 2006, Civil Protection Order. Deputy White's initial examination of the order revealed the signature of Magistrate Aebi. Id. Deputy White then consulted with Morrow County Prosecutor Charles Howland and Morrow County Sheriff Brenneman in an attempt to determine whether Floyd Hunt had been served with the order. Id. at ¶ 6. Unable to determine whether or not Plaintiff-Appellee had been served with order, Deputy White decided to drive to the 7740 County Road 183, Fredericktown, Ohio, property based upon the potential for the situation to escalate given the surrounding circumstances and the concerned reports made by Chris Kempton. Id. at ¶ 7.

{¶6} Upon arriving at the property, Deputy White noted that one of the garage buildings located on the property appeared to have a stove activated and he decided to knock at the door. Id. at ¶ 8. When no one answered, Deputy White left and went over to the Kempton home to inform Chris Kempton that he did not find Plaintiff-Appellee on the adjacent property. Id. at ¶ 9. Directly after leaving the

Kempton home, Deputy White began to drive back to the Morrow County Sheriff's Office when he received a call from the Morrow County dispatcher informing him that Mr. Kempton had, once again, called to report that Plaintiff-Appellee had returned to his daughter's garage. Id. at ¶ 10.

{¶7} Upon receipt of the new dispatch, Deputy White drove back to the building located at 7740 County Road 183 where he encountered Plaintiff-Appellee Floyd Hunt. (Id. at ¶ 11; T. at 43). Deputy White explained to Plaintiff-Appellee that he was in violation of the February 17, 2006, Civil Protection Order because he was present at the 7740 County Road 183 property during the weekend. (Id. at ¶ 12; T. at 39). Deputy White placed Plaintiff-Appellee under arrest and transported him to the Morrow County Jail, where he was booked. (Id. at ¶ 13; T. at 39-41). Later the same day, the Morrow County Jail released Plaintiff-Appellee. (T. at 44-45).

{¶8} On April 5, 2006, Plaintiff-Appellee pled guilty to the misdemeanor of Contributing to the Unruliness of a Minor in the Holmes County case. (T. at 23).

{¶9} On May 18, 2006, the Holmes County Court of Common Pleas sentenced Plaintiff-Appellee to serve 180 days in the Holmes County Jail.

{¶10} On February 14, 2008, Plaintiff-Appellee filed a Complaint against Defendants-Appellants, Morrow County, Charles S. Howland, Steve Brenneman, and Robert V. White, for false arrest, false imprisonment, and violation of his right to due process stemming from his arrest and incarceration for allegedly violating a Civil Stalking Protection Order with which he had never been served.

{¶11} On July 21, 2008, Defendants-Appellants moved for summary judgment on the following bases: (1) The undisputed facts established that Morrow

County officials acted and relied upon a valid court order and applicable law provides that such a scenario cannot give rise to claims for false arrest and false imprisonment; (2) Even in the absence of the dispositive law on the false arrest and false imprisonment claims, Ohio Revised Code Chapter 2744.01 et seq. provides that each of the named Defendants-Appellants had entitlement to political subdivision immunity for the state law tort claims; (3) Defendants-Appellants did not violate Plaintiff-Appellee's right to due process because the Morrow County officials had probable cause when they detained Plaintiff-Appellee for acting in violation of a valid court order in a deputy's presence; and (4) Defendants-Appellants acted reasonably and lawfully in their decision to detain Plaintiff-Appellee and, as such, earned the protection of qualified immunity against Plaintiff-Appellee's due process claim.

{¶12} On August 22, 2008, Plaintiff-Appellee submitted his own affidavit in response to Defendants-Appellants' motion.

{¶13} On September 5, 2008, Defendants-Appellants filed a reply brief in support of their motion with case law and reasoning as to why Plaintiff-Appellee's affidavit failed to meet the standard imposed by rule 56(E) and why the lower court should disregard the affidavit in its review of the case.

{¶14} On October 21, 2008, the Morrow County Common Pleas Court issued an Order denying Defendants-Appellants' Motion for Summary Judgment. No written opinion accompanied the Order which stated simply:

{¶15} "The Court DENIES Defendant's (sic) Motion for Summary Judgment, as the Court finds that reasonable minds could come to a different conclusion based

on the pleadings of the Parties and the Affidavit of the Plaintiff, pursuant to Civil Rule 56(C)."

{¶16} Defendants-Appellants now raise the following assignments of error for review:

ASSIGNMENTS OF ERROR

{¶17} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO DISMISS PLAINTIFF-APPELLEE'S FALSE ARREST AND FALSE IMPRISONMENT CLAIMS WHERE PLAINTIFF-APPELLEE'S ARREST AND DETENTION WERE LAWFUL AND PURSUED IN ACCORDANCE WITH A COURT ORDER.

{¶18} "II. THE COURT ERRED AS A MATTER OF LAW IN DENYING DEFENDANTS-APPELLANTS POLITICAL SUBDIVISION IMMUNITY, AS PROVIDED IN R.C. 2744.01, ET SEQ., TO SHIELD AGAINST PLAINTIFF-APPELLEE'S FALSE ARREST AND FALSE IMPRISONMENT CLAIMS.

{¶19} "III. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO DISMISS PLAINTIFF-APPELLEE'S CLAIM FOR VIOLATION OF DUE PROCESS WHERE DEFENDANTS-APPELLANTS ARRESTED AND DETAINED PLAINTIFF-APPELLEE BASED ON PROBABLE CAUSE.

{¶20} "IV. THE TRIAL COURT ERRED AS A MATTER OF LAW IN WITHHOLDING QUALIFIED IMMUNITY FROM DEFENDANTS-APPELLANTS ON PLAINTIFF-APPELLEE'S 42 U.S.C. § 1983 CLAIM.

{¶21} "V. THE TRIAL COURT ABUSED ITS DISCRETION IN CONSIDERING THE AFFIDAVIT OF PLAINTIFF-APPELLEE, WHICH DID NOT MEET THE

STANDARD IMPOSED BY OHIO RULE OF CIVIL PROCEDURE 56(E), AS ADMISSIBLE EVIDENCE TO REBUT A MOTION FOR SUMMARY JUDGMENT."

{¶22} While a denial of summary judgment is not generally a final, appealable order subject to appellate review, R.C. §2744.02(C) provides

{¶23} "An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order." See also *Doe v. Marlington Local School Dist. Bd. of Edn*. (2009) 122 Ohio St.3d 12.

"Summary Judgment Standard"

{¶24} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36. Civ.R. 56(C) provides, in pertinent part:

{¶25} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, 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. * * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, 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, such party being entitled to have the evidence or stipulation construed most strongly in his favor."

{¶26} Pursuant to the above rule, a trial court may not enter a summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 1997-Ohio-259, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107.

{¶27} It is based upon this standard that we review Appellants' assignments of error.

II.

{¶28} In their second assignment of error Appellants argue that the trial court erred in denying Appellants political subdivision immunity pursuant to R.C. §2744.01, et seq. We agree.

{¶29} As the moving parties, Appellants bear the burden of proving that there was no genuine issue of material fact that requires litigation. Appellants argue that the doctrine of sovereign immunity precludes them from being found liable for any acts performed while acting within the scope of their employment for a political subdivision.

{¶30} R.C. §2744 et seq. provides governmental immunity to political subdivisions and their employees. Specifically, R.C. §2744.02(A)(1) provides:

{¶31} "[A] political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function." (Emphasis added.)

{¶32} An "employee" is defined by R.C. §2744.01(B) as:

{¶33} "an officer, agent, employee, or servant * * * who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision."

{¶34} Among the list of identified governmental functions is "the provision * * * of police * * * services or protection" and the "enforcement * * * of any law." R.C. §2744.01(C)(2)(a)(i).

{¶35} An employee's immunity remains intact as a defense to any civil claims unless a plaintiff can prove under R.C. §2744.03(A)(6) the following:

{¶36} "(a) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

{¶37} "(b) the employee's acts or omissions were [committed] with malicious purpose, in bad faith, or in a wanton or reckless manner; [or]

{¶38} "(c) [c]ivil liability is expressly imposed upon the employee by a section of the Revised Code."

{¶39} "Malicious purpose encompasses exercising 'malice,' which can be defined as the willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through conduct that is unlawful or unjustified. *Caruso v. State* (2000), 136 Ohio App.3d 616, 620-21, citing *Jackson v. Butler County Board of*

County Commissioners (1991), 76 Ohio App.3d 448, 453-54. See, also, *Strickland v. Tower City Management Corp.* (Dec. 24, 1997), Cuyahoga App. No. 71839.

{¶40} " 'Bad Faith' connotes a dishonest purpose, conscious wrongdoing, intent to mislead or deceive, or the breach of a known duty through some ulterior motive or ill will." *Strickland,* supra.

{¶41} "[R]eckless conduct refers to an act done with knowledge or reason to know of facts that would lead a reasonable person to believe that the conduct creates an unnecessary risk of physical harm and that such risk is greater than that necessary to make the conduct negligent." *Caruso,* supra. See, also, *Ferrante v. Peters,* Cuyahoga App. No. 90427, 2008-Ohio-3799.

{¶42} "Wantonness" is described as a "degree greater than negligence." *Ferrante,* supra. Wanton misconduct is the failure to exercise any care whatsoever. *Fabrey v. McDonald Police Dept.,* 70 Ohio St.3d 351, 356, 1994-Ohio-368. "Mere negligence is not converted into wanton misconduct unless the evidence establishes a disposition to perversity on the part of the tortfeasor." Id., citing *Roszman v. Sammett* (1971), 26 Ohio St.2d 94.

{¶43} The term "reckless" is often used interchangeably with "wanton." *Ferrante,* supra. See, also, *Thompson v. McNeill* (1990), 53 Ohio St.3d 102.

{¶44} By enacting R.C. §2744.03(A)(6), the Ohio legislature has determined that a police officer, for example, cannot be held personally liable for acts committed while carrying out official duties unless one of the exceptions to immunity is established. *Cook v. Cincinnati* (1995), 103 Ohio App.3d 80, 90.

{¶45} Based on facts as presented and the applicable statutory provisions, we conclude that Appellants White, Brenneman and Howland were acting as employees of a political subdivision and were performing governmental functions. Therefore, we begin with the presumption that Appellants were immune from liability unless Appellee could show that Appellants acted maliciously, in bad faith, or in a wanton or reckless manner. R.C. §2744.03(A)(6).

{¶46} Appellee alleges that Appellants' acts of arresting and detaining him constituted wanton or reckless conduct.

{¶47} The Ohio Supreme Court recently reiterated its belief that "showing recklessness is subject to a high standard" when a plaintiff is attempting to abolish employee immunity under R.C. §2744.03(A)(6)(b). *Rankin v. Cuyahoga Cty. Dept. of Children & Family Servs.*, 118 Ohio St.3d 392, 2008-Ohio-2567.

{¶48} "[T]he exceptions to immunity set forth in R.C. 2744.03 must be narrowly construed." *Sturgis v. E. Union Twp*., 9th Dist. No. 05CA0077, 2006-Ohio-4309,

{¶49} Upon review of the events in this case, we do not find that Appellants failed to exercise any care whatsoever in carrying out their duties. Deputy Sheriff White exercised care when he took steps to investigate whether Appellee had been served with the CPO. He made personal contact with Prosecutor Howland and further made a telephone call to Sheriff Brenneman in an attempt to verify service.

{¶50} Assuming that the advice provided by Prosecutor Howland and Sheriff Brenneman was incorrect, such can only be construed as negligence at best, not wanton or reckless.

{¶51} While the CPO in this case had not yet been served on Appellee on the day in question, it was a lawful, valid Order. Having received a Complaint, Appellants had to make a swift determination as to how to respond to same. Taking into consideration that such Order was put in place to protect a minor child, we cannot find that the actions of Appellants were wanton or reckless. We do not find that Appellants' actions toward Appellee were done with a perverse disregard of a known risk.

{¶52} Based on the foregoing, Appellants' second assignment of error is sustained.

III., IV.

{¶53} In their third and fourth assignments of error Appellants argue that the trial court erred when it failed to dismiss Appellee's violation of due process claim and further failed in withholding qualified immunity from Appellants on Appellee's 42 U.S.C. §1983 claims. We agree.

{¶54} Appellee in his §1983 claim, alleged that such Appellants did not have probable cause to arrest him and, therefore, violated his Constitutional rights.

{¶55} Section 1983, Title 42, U.S. Code provides in relevant part as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

{¶56} To establish a Section 1983 claim, a plaintiff must show that (1) the conduct in question was committed by a person acting under color of state law, and (2) the conduct deprived the plaintiff of rights, privileges or immunities secured by the United States Constitution or other federal law. *1946 St. Clair Corp. v. Cleveland* (1990), 49 Ohio St.3d 33, 34, 550 N.E.2d 456.

{¶57} Public officials, including police officers and deputy sheriffs, who perform discretionary functions are shielded from liability for civil damages in a Section 1983 action by qualified immunity if their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald* (1982), 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396. The test is one of "objective reasonableness" that requires a "reasonably competent public official [to] know the law governing his conduct." *Id.* The United States Supreme Court has stated that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs* (1986), 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271. "[If] officers of reasonable competence could disagree on this issue, immunity should be recognized." *Id; See Bruce v. Village of Ontario* (Nov. 24, 1998), Richland App. No. 98-CA-9-2, 1999 WL 4085, unreported ("[a] violation of clearly established law must be so clear as to leave no doubt in the mind of a reasonable officer that his conduct was unconstitutional"). "The doctrine [of qualified immunity] recognizes that these officials must routinely make close decisions in the exercise of their authority and that the law that guides their conduct is often ambiguous and difficult to apply." *Murphy v. Reynoldsburg* (Aug. 8, 1991), Franklin App. No. 90AP-1296, 1991 WL 150138, unreported, reversed on other grounds (1992), 65 Ohio St.3d 356, 604

N.E.2d 138. Thus, qualified immunity encourages government officials to act without hesitation when confronted with a problem that requires a quick and decisive response and ameliorates the concern that most persons would be reluctant to participate in public service in the absence of such immunity. Id. Qualified immunity provides immunity not only from liability but also from trial and its related burdens, costs, risks, and distractions. *Piphus v. Blum* (1995), 108 Ohio App.3d 218, 225; (citing *Mitchell v. Forsyth* (1985), 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411).

{¶58} "Qualified immunity is a question of law, not fact, which can be properly determined by summary judgment." *Cook v. Cincinnati* (1995), 103 Ohio App.3d 80, 85, 658 N.E.2d 814 (citing *Harlow v. Fitzgerald* (1982), 457 U.S. 800, 818; *Dominque v. Telb (C.A.6,* 1987), 831 F.2d 673, 676). Therefore, given a particular set of facts viewed in the light most favorable to the non-moving plaintiff, the issue of whether a public official did not act reasonably (and hence was not entitled to qualified immunity) is a matter for the court and may properly be determined by summary judgment. *Id; Williams v. Franklin County Bd. of Com'rs.,* (2001), 145 Ohio App.3d 530, 763 N.E.2d 676; *Murphy v. Reynoldsburg* (Aug. 8, 1991), Franklin App. No. 90AP-1296, 1991 WL 150938, unreported, reversed on other grounds (1992), 65 Ohio St.3d 356, 604 N.E.2d 138. (Citing *Poe v. Haydon* (C*.A.6,* 1988), 853 F.2d 418, 425). Moreover, even on summary judgment, the ultimate burden of proof is on a plaintiff to show that a defendant is not entitled to qualified immunity. *Cook,* 103 Ohio App.3d at 85, 658 N.E.2d 814; *Murphy,* supra, *Gardenhire v. Schubert (C.A.6,* 2000), 205 F.3d 303, 310-311. Although qualified immunity is an affirmative defense, the ultimate burden is on the plaintiff to show that a defendant is not entitled to qualified immunity. *Wegener v.*

Covington (C*.A.6,* 1991), 933 F.2d 390, 392. A defendant bears the initial burden of coming forward with facts to suggest that he was acting within the scope of his discretionary authority during the incident in question. Id. Thereafter, the burden shifts to the plaintiff to establish that the defendant's conduct violated a right so clearly established that any official in the defendant's position would have clearly understood that he was under an affirmative duty to refrain from such conduct. Id*.*

{¶59} As is stated above, Appellants maintain that they did have probable cause to arrest Appellee. Probable cause exists at the time of the arrest when the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the suspect had committed an offense. *Beck v. Ohio* (1964), 379 U.S. 89, 91, 85 S.Ct. 223. Probable cause is determined from factual and practical considerations of everyday life on which reasonable and prudent men act. *Draper v. United States* (1959), 358 U.S. 307, 313, 79 S.Ct. 329. Ohio courts have interpreted this definition to include the "totality" of the facts and circumstances within a police officer's knowledge. See *State v. Finch* (1985), 24 Ohio App.3d 38; *Bowling Green v. Godwin,* 110 Ohio St.3d 38, 2006-Ohio-3563.

{¶60} Under the facts presented, we find that summary judgment was appropriate. Appellant White received a telephone call from the parent of a minor informing him that a Civil Protection Order, issued for the safety of the minor, was being violated; he verified the existence of the CPO; he further personally observed Appellee acting in contravention of said CPO. Based on the foregoing, we find that the deputy sheriff had probable cause to arrest. We find that the arrest of Appellee was supported

by probable cause. At worst, the arrest "was not so unreasonable as to strip [Appellants] of immunity." *Boyd v. Village* of Lexington, Richland App. No. 01-CA-64, 2002-Ohio-1285. We find that Appellee failed to establish that Appellants conduct in this case violated a right so clearly established that any official in [their] position would have clearly understood that he was under an affirmative duty to refrain from such conduct."

{¶61} Appellants' third and fourth assignments of error are, therefore, **sustained**.

V.

{¶62} In its fifth assignment of error Appellants argue that the trial court erred in considering Appellee's affidavit.

{¶63} Based on our disposition of the above assignments of error, we find this assignment of error moot.

I.

{¶64} Appellants, in their first assignment of error, assert that the trial court erred in failing to dismiss Appellee's claims for false imprisonment and false arrest.

{¶65} Based on our disposition of Appellants' second assignment of error, we find such assignment of error moot.

{¶66} For the foregoing reasons, the judgment of the Court of Common Pleas of Morrow County, Ohio, is reversed.

By: Wise, J.

Gwin, P. J., and

Hoffman, J., concur.

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JUDGES

JWW/d 819

IN THE COURT OF APPEALS FOR MORROW COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FLOYD HUNT	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	NUNC PRO TUNC
MORROW COUNTY, OHIO, ET AL.	:	
	:	
Defendant-Appellants	:	Case No. 08 CA 13

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Morrow County, Ohio, is reversed.

Costs assessed to Appellee.

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JUDGES