

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Anthony Pierson

Court of Appeals No. L-10-1319

Appellee

Trial Court No. CI0200806046

v.

Robert J. Lawhorn

DECISION AND JUDGMENT

Appellant

Decided: August 19, 2011

* * * * *

D. Lee Johnson, for appellee.

Robert J. Lawhorn, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Robert J. Lawhorn, appeals the September 30, 2010 judgment of the Lucas County Court of Common Pleas which awarded plaintiff-appellee, Anthony Pierson, damages totaling nearly \$300,000, jointly and severally with appellant's criminal co-defendants, for injuries sustained during a kidnapping and felonious assault. Appellant appeals the trial court's award of summary judgment in the civil action for damages. For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} The underlying facts of this case are as follows. On July 13, 2007, appellant and two co-defendants were indicted on felonious assault and kidnapping charges relating to the abduction of appellee. On February 6, 2008, appellant entered a no contest plea to felonious assault and, after a denial of his motion to withdraw his plea, was sentenced to four years in prison. Appellant filed an appeal with this court which, following a remand from this court pursuant to *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, was modified via a nunc pro tunc judgment entry journalized on June 12, 2009. Appellant's conviction and sentence were affirmed on June 30, 2009.

{¶ 3} While appellant's appeal was pending, on August 11, 2008, appellee commenced this action against appellant and co-defendants Jada Farthing and Alexander Williams. In his complaint, appellee alleged that the defendants committed assault and battery, falsely imprisoned him, and intentionally inflicted emotional distress. On March 9, 2009, appellee filed a motion for summary judgment as to liability. In his motion, appellee detailed the events of May 30, 2007, through June 1, 2007, and attached the crime reports and judgment of conviction. In response, appellant argued that pursuant to *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, and *State v. Baker*, supra, his conviction was void and, thus, summary judgment was not appropriate.

{¶ 4} On January 11, 2010, the court granted appellee's motion. The court simply stated that in considering the evidence and memoranda of the parties, no genuine issue of fact remained.

{¶ 5} On September 1, 2010, appellant filed a Civ.R. 60(B)(5) motion for relief from judgment. Appellant again argued that because appellee's civil case was predicated on appellant's conviction, and because the conviction was void, the award of summary judgment must be vacated. On September 24, 2010, the trial court denied the motion. The court noted that appellant's conviction is "merely evidence on the issue of liability" and that, generally, Ohio law does not preclude additional litigation involving the facts and legal issues underlying the conviction.

{¶ 6} The damages hearing was held and, on September 30, 2010, appellant and his co-defendants were ordered to pay nearly \$300,000 in damages. This pro se appeal followed.

{¶ 7} Appellant now raises the following assignment of error:

{¶ 8} "Assignment of Error No. 1: Whether the lower court[']s judgment, being predicated solely on a 'void judgment' can sustain a grant of 'summary judgment' where clearly, the record made manifest that plaintiff was not entitled to judgment as a matter of law and there did clearly exist a genuine question as to a material fact. See: Hill v. Buchanan (1941), 6 Ohio Supp. 230, 1941 WL 3363 (Ohio Com. Pl.), 21 O.O. 24; and, Civ.R. 60(B)(4)."

{¶ 9} In appellant's sole assignment of error he argues that the trial court erroneously awarded summary judgment to appellee where the underlying criminal conviction is void. We review de novo the trial court's ruling on the summary judgment motions. *Conley–Slowinski v. Superior Spinning & Stamping Co.* (1998), 128 Ohio

App.3d 360, 363. A movant is entitled to summary judgment pursuant to Civ.R. 56(C) when it is demonstrated "that there is no issue as to any material fact, that the moving party is entitled to judgment as a matter of law, and that reasonable minds can come to but one conclusion, and that conclusion is adverse to the nonmoving party." *Miller v. Bike Athletic Co.* (1998), 80 Ohio St.3d 607, 617; Civ.R. 56(C). The nonmoving party may not rest upon the mere allegations and denials in the pleadings but instead must point to or submit some evidentiary material that demonstrates a genuine dispute over a material fact. *Henkle v. Henkle* (1991), 75 Ohio App.3d 732, 735.

{¶ 10} As set forth above, attached to appellee's March 9, 2009 motion for summary judgment were the detailed crime reports and the docket sheet evidencing appellant's conviction. The matter was stayed while the criminal case was on appeal. On June 30, 2009, this court affirmed appellant's conviction finding that the trial court did not err when it denied appellant's presentence motion to withdraw his plea. See *State v. Lawhorn*, 6th Dist. No. L-08-1153, 2009-Ohio-3216.

{¶ 11} Appellant now contends that the court erred in granting summary judgment because, pursuant to *Bezak*, supra, the underlying conviction is void. Without determining issues not currently before the court we note that appellant's *Bezak* argument may be in jeopardy based upon the Supreme Court of Ohio's determination in *State v. Fischer*, 128 Ohio St.3d 92, 2010–Ohio–6238. More importantly, however, is the fact that the standard of proof in a civil action is lesser than the "beyond a reasonable doubt" standard for conviction in a criminal action. See *Schweller v. Schweller* (Dec. 26, 1997),

1st Dist. Nos. C-970183, C-970191. Further, besides a general denial in his answer to appellee's complaint, appellant has failed to present any evidentiary material in order to create an issue of fact. *Henkle*, supra.

{¶ 12} Based on the foregoing, we find that the detailed police report attached to appellee's motion for summary judgment was sufficient to support the allegations in the complaint. Appellant's assignment of error is not well-taken.

{¶ 13} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
