[Cite as *Risner v. Ohio Dept. of Natural Resources, Div. of Wildlife*, 2013-Ohio-5902.]

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

Arlie Risner	Court of Appeals No. H-13-009
Appellee	Trial Court No. CVH 20120385
v.	
Ohio Department of Natural Resources, Division of Wildlife	**DECISION AND JUDGMENT**
Appellant	Decided: December 30, 2013

* * * * *

Gordon M. Eyster, for appellee.

Mike DeWine, Ohio Attorney General, Nicole Candelora-Norman and Daniel J. Martin, Assistant Attorneys General, for appellant.

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JENSEN, J.

{¶ 1} Appellant, the Ohio Department of Natural Resources, Division of Wildlife ("ODNR"), appeals the entry of summary judgment by the Huron County Court of Common Pleas in favor of appellee, Arlie Risner. For the reasons that follow, we reverse the decision of the trial court and remand for further proceedings.

{¶ 2} In November 2010, state wildlife officers began investigating a complaint that Arlie Risner had been hunting on private property without written permission. During a visit to the property, the officers discovered a tree stand, bait piles, and deer entrails and other organs. The officers retained samples of the organs and blood as evidence of the alleged unlawful taking.

{¶ 3} In the course of the investigation, wildlife officers seized a 20-point rack (set of antlers) from a taxidermist and deer meat from a meat shop, both of which were being processed on behalf of Arlie Risner. The officers paid the meat shop $90 for unpaid costs associated with processing the meat.

{¶ 4} The officers took the rack to Brian Watt, a certified antler scorer (Buckmasters official scorer No. 71). Mr. Watt calculated the measurements of the antlers in accordance with the procedure set forth in R.C. 1531.201(C)(2) for a gross score of 228 6/8 inches.[1] Samples of blood, organ, meat, and tissue collected from the rack's skull plate were sent to a lab in New York for DNA testing. After receiving confirmation from the lab that the seized deer meat and tissue were a genetic match to the organs and blood found on the private property, Arlie Risner was charged with taking a white-tailed deer from the lands of another without first obtaining written permission from the landowner or an authorized agent in violation of R.C. 1533.17.

[1] The trial court did not address and appellee does not now challenge the procedure utilized by Brian Watt in scoring the antlers.

{¶ 5} In February 2011, Risner entered a plea of no contest in the Norwalk Municipal Court to a charge of hunting without permission in violation of R.C. 1533.17(A), a misdemeanor of the third degree. The court found Risner guilty and imposed a fine of $200, plus court costs. The court ordered Risner to pay restitution to the ODNR in the amount of $90. The seized meat was forfeited to ODNR and Risner's hunting license was suspended from February 23, 2011, to February 23, 2012. On April 8, 2011, the Norwalk Municipal Court issued an order that the "lawfully seized" rack be "turned over" to ODNR for "disposition and or destruction as provided by law."

{¶ 6} On April 7, 2011, ODNR sent Risner a letter acknowledging his conviction in the Norwalk Municipal Court. The letter informed Risner that pursuant to R.C. 1531.201 his hunting and fishing licenses would be revoked until payment of $27,851.33 in restitution value was made to settle the loss incurred by the unlawful taking of the antlered white-tailed deer with a gross score of 228 6/8 inches.

{¶ 7} The following month, Risner filed a complaint for declaratory judgment in the Huron County Court of Common Pleas seeking a determination of his rights under R.C. 1531.201. ODNR filed an answer and counterclaim for the restitution value of the deer. The parties then filed competing motions for summary judgment. In his motion, Risner set forth four arguments: (1) R.C. 1531.201 violates Article I, Section 5, of the Ohio Constitution; (2) R.C. 1531.201 violates Article I, Section 16, of the Ohio Constitution; (3) R.C. 1531.201 violates Article I, Section 2 of the Ohio Constitution; and

(4) because ODNR selected its remedy when it sought possession of the deer in the underlying criminal case it cannot now seek restitution for the value of the deer.

{¶ 8} In its cross-motion for summary judgment, ODNR argued that a plain reading of R.C. 1531.201 mandates the chief of the division of wildlife to revoke Risner's hunting and fishing license until Risner remits the minimum restitution value set forth in division rule ($500) and the additional restitution value set forth in R.C. 1531.201(C) ($27,351.33). ODNR argued that seizure and forfeiture of parts of the deer does not prohibit ODNR from recovering the restitution value of the deer because the loss to the state due to the unlawful taking was greater than the monetary value of the deer's rack and meat.

{¶ 9} On April 9, 2013, the trial court granted Arlie Risner's motion, in part, holding that "the plain language of [R.C.] 1531.201 prevents any further attempts to seek restitution value for the deer in question after Defendant had already been awarded possession of the deer and antlers in prior proceedings." The trial court ordered ODNR to terminate the suspensions of Risner's hunting and fishing licenses. The trial court did not address the constitutional issues raised in Risner's motion.

{¶ 10} ODNR appeals the April 9, 2013 judgment setting forth two assignments of error for our review:

> I. The Huron County Court of Common Pleas erred as a matter of fact by holding that ODNR had already taken possession of the deer for which Arlie Risner took in violation of R.C. Chapter 1533.

II. The Huron County Court of Common Pleas erred as a matter of law by holding that the requirements of R.C. 1531.201(B) had been met and that actions to recover restitution value for the deer were improper.

Standard of Review

{¶ 11} On appeal, a grant of summary judgment is reviewed de novo. *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, ¶ 24. We apply the same standard as the trial court, viewing the facts in a light most favorable to the nonmoving party and resolving any doubts in favor of that party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12, 467 N.E.2d 1378 (6th Dist.1983), citing *Norris v. Ohio Std. Oil Co.*, 70 Ohio St.2d 1, 2, 433 N.E.2d 615 (1982). Civ.R. 56 sets forth the standard for summary judgment and puts the initial burden on the moving party. It requires that no genuine issues of material fact exist, that the moving party be entitled to judgment as a matter of law, and that reasonable minds be able to reach only one conclusion, which is adverse to the non-moving party. *M.H. v. City of Cuyahoga Falls*, 134 Ohio St.3d 65, 2012-Ohio-5336, 979 N.E.2d 1261, ¶ 12.

{¶ 12} An appellate court also applies a de novo standard when reviewing a lower court's interpretation and application of a statute. *Siegfried v. Farms Ins. of Columbus, Inc.*, 187 Ohio App.3d 710, 2010-Ohio-1173, 933 N.E.2d 815, ¶ 11 (9th Dist.).

Analysis

{¶ 13} The issue before us on appeal is whether the trial court erred when it held that R.C. 1531.201 precludes ODNR from bringing a civil proceeding to recover the

restitution value of an unlawfully taken wild animal when the trial court who sentenced the violator for the unlawful taking had previously forfeited lawfully seized parts of the animal to ODNR.

{¶ 14} In its first assignment of error, ODNR asserts that the trial court erred as a matter of *fact* when it determined the state had taken possession of the wild animal during the criminal forfeiture proceedings when in fact, ODNR had only taken possession of parts of the wild animal's carcass. Then, in its second assignment of error, ODNR asserts that the trial court erred as a matter of *law* when it determined that it was improper for ODNR to recover the restitution value of the unlawfully taken wild animal when ODNR was already awarded possession of parts of the wild animal's carcass. Since both assignments of error involve the trial court's interpretation of R.C. 1531.201, we address them simultaneously.

{¶ 15} The division of wildlife, at the direction of the chief of the division, is charged with the responsibility of enforcing "by proper legal action or proceeding the laws of the state and division rules for the protection, preservation, propagation, and management of wild animals * * *." R.C. 1531.04(C). Violations of such laws and rules are prosecuted in municipal and county counts. R.C. 1531.18; R.C. 1531.16.

{¶ 16} R.C. 1533.17(A) prohibits the hunting of a wild animal upon the lands of another without obtaining written permission from the owner or the owner's authorized agent. A first time violator is guilty of a misdemeanor of the third degree. R.C. 1533.99(A). In addition to any fine, term of imprisonment, seizure and forfeiture

imposed, a court that imposes sentence for a violation of Chapter 1533 may require the violator to pay restitution for the "minimum value" of the wild animal illegally taken as established under R.C. 1531.201. *See* R.C. 1533.99(G). The "minimum value" of unlawfully taken wild animals is set forth in Chapter 1501:31-16 of the Ohio Administrative Code. This chapter also sets forth the criteria utilized in determining the monetary value of each species including (1) recreational value (the harvest and nonharvest use of a species); (2) aesthetic value (the species' beauty and unique natural history); (3) educational value; (4) state-list designation (endangered, threatened, or species of concern); (5) economics (direct and indirect economic benefit attributable to the species); (6) recruitment (reproductive and survival potential of species); and (7) population dynamics (impact of the loss of the individual animal to its local or subpopulation). Ohio Adm.Code 1501:31-16(A)(1). The minimum value of an antlered white-tailed deer is $500. Ohio Adm.Code 1501:31-16(B)(15).

{¶ 17} In 2007, the 127th General Assembly enacted revisions to R.C. 1531.201, 1531.99 and 1533.99 to revise provisions governing the restitution value of wild animals that are unlawfully held, taken, bought, sold, or possessed. Am.H.B. No. 238, 2007 Ohio Laws 35 (the "Act"). The Act implemented a statutory formula for determining an "additional restitution value" for wildlife violations involving antlered white-tailed deer with a gross score of more than 125 inches. *Id.*

{¶ 18} R.C. 1531.201 states, in relevant part, as follows:

(B) The chief of the division of wildlife or the chief's authorized representative may bring a civil action to recover possession of or the restitution value of any wild animal held, taken, bought, sold, or possessed in violation of this chapter or Chapter 1533. of the Revised Code or any division rule against any person who held, took, bought, sold, or possessed the wild animal. The minimum restitution value to the state for wild animals that are unlawfully held, taken, bought, sold, or possessed shall be established in division rule.

(C)(1) In addition to any restitution value established in division rule, a person who is convicted of a violation of this chapter or Chapter 1533. * * * governing the holding, taking, buying, sale, or possession of an antlered white-tailed deer with a gross score of more than one hundred twenty-five inches also shall pay an additional restitution value that is calculated using the following formula:

Additional restitution value = ((gross score − 100) ^{2} x $1.65).

(2) The gross score of an antlered white-tailed deer shall be determined by taking and adding together all of the following measurements, which shall be made to the nearest one-eighth of an inch using a one-quarter-inch wide flexible steel tape: * * * [description of measurement or scoring omitted].

(D) Upon conviction of holding, taking, buying, selling, or possessing a wild animal in violation of this chapter, Chapter 1533. of the Revised Code, or a division rule, the chief shall revoke until payment of the restitution value is made each hunting license, fur taker permit, deer permit, wild turkey permit, wetlands habitat stamp, and fishing license issued to that person under this chapter or Chapter 1533. of the Revised Code. No fee paid for such a license, permit, or stamp shall be returned to the person.

Upon revoking a person's license, permit, or stamp or a combination thereof under this division, the chief immediately shall send a notice of that action by certified mail to the last known address of the person. The notice shall state the action taken, order the person to surrender the revoked license, permit, or stamp or combination thereof, and state that the department of natural resources will not afford a hearing as required under section 119.06 of the Revised Code.

{¶ 19} In *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶ 38, the Supreme Court of Ohio explained when, and under what circumstances, a court must interpret, rather than apply the language of a statute duly enacted by the General Assembly:

"If a review of the statute conveys a meaning that is clear, unequivocal, and definite, the court need look no further." *Columbus City School Dist. Bd. of Edn. v. Wilkins*, 101 Ohio St.3d 112, 2004-Ohio-296, 802 N.E.2d 637, ¶ 26.

> We need not resort to statutory construction when the statute is unambiguous. *State v. Evans*, 102 Ohio St.3d 240, 2004-Ohio-2659, 809 N.E.2d 11, ¶ 14. Instead, "our inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States* (2004), 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338. Thus, when a statute is unambiguous in its terms, courts must apply it rather than interpret it. *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, 772 N.E.2d 1165, ¶ 11.

{¶ 20} In construing the language of R.C. 1531.201 the trial court concluded that a plain reading of the statute prohibits ODNR from recovering the restitution value of the unlawfully taken wild animal because ODNR "had already been awarded possession of the deer and antlers in prior proceedings." However, the usual, ordinary meaning of the words and phrases selected by the General Assembly are unambiguous and do not comport with the trial court's interpretation of R.C. 1531.201. "[W]ords and phrases used by the General Assembly will be construed in their usual, ordinary meaning" unless a contrary intention of the legislature clearly appears. *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health,* 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536, ¶ 22. "'[I]t is not the province of the court, under the guise of construction, to ignore the plain terms of a statute or to *insert a provision not incorporated therein by the Legislature*.'" *Akron v. Rowland*, 67 Ohio St.3d 374, 380, 618 N.E.2d 138 (1993) (emphasis sic), quoting *State ex rel. Defiance Spark Plug Corp. v. Brown*, 121 Ohio St. 329, 331, 168 N.E. 842 (1929).

{¶ 21} In our opinion, a plain reading of R.C. 1531.201 clearly and unambiguously grants to the chief of the division of wildlife the option of bringing a civil action to recover possession of any wild animal held, taken, bought, sold, or possessed in violation of the law or, alternatively, to bring a civil action to recover the restitution value of such animal. There is nothing on the face of R.C. 1531.201 that conditions ODNR's authority to bring a civil action to recover the restitution value of the unlawfully taken animal on any other division, subsection, or proceeding. In other words, the statute, on its face, does not restrict ODNR from bringing a civil action to recover the restitution value if wildlife officers have already seized parts of the wild animal. To the contrary, R.C. 1531.201(E) specifically states that "[n]othing in this section affects the right of seizure under any other section of the Revised Code."

{¶ 22} Here, parts of the unlawfully taken deer were lawfully seized under the authority of R.C. 1531.13. In turn, ownership of and title to the seized wild animal parts automatically reverted to the state. *Id.* Since Mr. Risner has no title to or ownership interest in the lawfully seized wild animal parts, it is illogical to construe R.C. 1531.201(B) to require ODNR to choose between possession of the unlawfully taken parts or restitution for the unlawfully taken deer.[2]

[2] We further note that it is unlawful to possess an unlawfully taken white-tailed deer, its meat, or its rack. *See* Ohio Adm.Code 1501:31-15-11(F)(27). Since it is unlawful for Mr. Risner to possess the unlawfully taken deer, it is illogical to construe R.C. 1531.201(B) to require ODNR to choose between possession and restitution.

{¶ 23} Furthermore, the trial court's interpretation of division (B) disregards the mandatory requirements found in divisions (C) and (D). Division (C) requires a person convicted of unlawfully taking an antlered white-tailed deer with a gross score of more than 125 inches to pay, in addition to the "minimum value" set forth in the division rules, an "additional restitution value." *See* R.C. 1531.201(C)(1). In turn, division (D) requires the chief of the division of wildlife to revoke the licenses, permits, and stamps of all persons convicted of violating certain wildlife laws until the restitution value is paid. *See* R.C. 1531.201(D). "We must presume that in enacting a statute, the General Assembly intended for the entire statute to be effective. * * * Thus, all words should have effect and no part should be disregarded." *D.A.B.E., Inc.* at ¶ 19. "The Court should avoid a construction that renders a provision meaningless or inoperative, superfluous, void, or insignificant." 85 Ohio Jurisprudence 3d, Statutes, Section 239 (2013). If this court were to adopt the trial court's interpretation of R.C. 1531.201 as the interpretation intended by the legislature, than divisions (C) and (D) would be meaningless.

{¶ 24} Because we must give effect to the statute as written, we hold that a plain reading of R.C. 1531.201 authorizes ODNR to bring a civil action to recover, in addition to any restitution value established in division rule, additional restitution value for the taking of an antlered white-tailed deer with a gross score of more than 125 inches despite the lawful seizure and subsequent forfeiture of parts of the unlawfully taken deer. To that extent, appellant's first and second assignments of error are well-taken.

{¶ 25} We note that ODNR acknowledges in its brief that the forfeited parts of the animal do have some monetary value.[3] To that end, our decision should not be construed to preclude Arlie Risner from arguing for an offset against the additional restitution value at a hearing on this matter.

{¶ 26} We stress that because the trial court expressly declined to address the constitutional issues before it, the merits of those issues are not properly before us in the context of this appeal. As a general proposition, "appellate courts do not address issues which the trial court declined to consider." *Lakota Local School Dist. Bd. of Edn. v. Brickner*, 108 Ohio App.3d 637, 643, 671 N.E.2d 578 (6th Dist.1996). "The proper remedy in this situation is to remand this action to the trial court so that it can consider the constitutional question[s] raised in [the appellee's] motion for summary judgment." *Battin v. Trumbull County*, 11th Dist. Trumbull, No. 2000-T-0091, 2001 WL 435348, *3 (Apr. 27, 2001).

{¶ 27} The judgment of the Huron County Court of Common Pleas is reversed and remanded for further proceedings. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

Judgment reversed.

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[3] R.C. 1531.06(G) specifically authorizes the chief of the division to sell confiscated or forfeited items. We do not know, however, the disposition of the forfeited deer parts in this case.

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.

Thomas J. Osowik, J.

James D. Jensen, J.
CONCUR.

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JUDGE

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