

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

Theodore E. Wymyslo, M.D.,
Director Ohio Dept. of Health

Court of Appeals No. L-13-1145

Appellant

Trial Court No. CI0201003182

v.

T Rips Ltd., et al.

DECISION AND JUDGMENT

Appellees

Decided: March 7, 2014

* * * * *

Mike Dewine, Ohio Attorney General, and Angela M. Sullivan and Carol V. Mosholder, Assistant Attorneys General, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Theodore E. Wymyslo, M.D., Director of the Ohio Department of Health (“ODH”), appeals a decision from the Lucas County Court of Common Pleas wherein the court granted a permanent injunction against appellee, T Rips Ltd., d.b.a. Rip Cord, (“Rip Cord”). For the reasons that follow, we affirm.

{¶ 2} Pursuant to R.C. 3794, the Smoke Free Workplace Act (“the Smoke Free Act”), proprietors of public places of employment are not to permit smoking in their establishments. The ODH and its designees are charged with the enforcement of the Smoke Free Act. R.C. 3794.07. Rip Cord is a privately owned bar in Toledo, Ohio, that has been cited for violations of the act on multiple occasions.

{¶ 3} On April 6, 2010, ODH’s director filed a complaint seeking preliminary and permanent injunctive relief ordering appellees to comply with the Smoke Free Act and to pay all outstanding fines. The complaint alleged that appellees had incurred over 13 violations. Both parties filed motions for summary judgment.

{¶ 4} On May 31, 2013, the trial court granted a permanent injunction ordering appellees to comply with all provisions of the Smoke Free Act but denied ODH’s request for a mandatory injunction requiring Rip Cord to pay its outstanding fines. ODH now appeals setting forth the following assignments of error:

I. The trial court erred in holding that once a fine is certified to the Attorney General’s Office for collection under R.C. 131.02(A), the Ohio Department of Health lost the right to seek mandatory injunctive relief requiring payment of that fine.

II. The trial court erred in holding that the Attorney General’s Office must prove the efforts it made to collect fines, and the result of those efforts, when determining if debtors must pay fines as owed as set forth in final orders.

{¶ 5} In its first assignment of error, the ODH claims the court erred in denying its request for a mandatory injunction requiring Rip Cord to pay its outstanding fines.

{¶ 6} Regarding the collection of fines as it pertains to the Smoke Free Act, Ohio Adm.Code 3701-52-09(G) states:

Upon a final finding of violation, the Ohio department of health shall invoice the proprietor or individual for the assessed fines. All fines assessed on a proprietor or individual shall be paid within thirty days of the date the Ohio department of health's invoice. All fines shall be sent to the Ohio department of health in the manner prescribed by the director of health and in the form of a cashier's check or a postal money order, payable to the "Treasurer, State of Ohio."

{¶ 7} R.C. 3794.09 states that ODH "may institute an action in the court of common pleas seeking an order in equity against a proprietor or individual that has repeatedly violated the provisions of [the Smoke Free Act] or fails to comply with its provisions."

{¶ 8} Pursuant to R.C. 3794.09, ODH brought this instant action. However, none of the fines were paid in a timely manner as defined in the Ohio Administrative Code.

{¶ 9} R.C. 131.02 states in pertinent part:

[w]henver any amount is payable to the state, the officer, employee, or agent responsible for administering the law under which the amount is payable shall immediately proceed to collect the amount or cause the

amount to be collected and shall pay the amount into the state treasury or into the appropriate custodial fund in the manner set forth pursuant to section 113.08 of the Revised Code. Except as otherwise provided in this division, if the amount is not paid within forty-five days after payment is due, the officer, employee, or agent shall certify the amount due to the attorney general, in the form and manner prescribed by the attorney general, and notify the director of budget and management thereof.

{¶ 10} In its decision, the trial court noted that ODH had certified \$78,454.84 to the Ohio Attorney General for collection as required by R.C.131.02. The court further stated:

Since R.C.131.02 clearly states that the Ohio Attorney General shall collect the fines once they are more than forty-five days past due, the court finds that it cannot grant ODH's request for an order requiring [Rip Cord] to pay such fines to the ODH.

{¶ 11} The Ohio Supreme Court has stated that a court's primary objective when interpreting statutory language is to apply the statute as the legislature intended. *State v. S.R.*, 63 Ohio St.3d 590, 594, 589 N.E.2d 1319 (1992). Unless expressly defined, words and phrases in a statute must be given their plain, common, ordinary meaning and are to be construed "according to the rules of grammar and common usage." R.C. 1.42;

{¶ 12} *Kunkler v. Goodyear Tire & Rubber Co.*, 36 Ohio St.3d 135, 137, 522 N.E.2d 477 (1988).

{¶ 13} Applying the above principles, we agree with the trial court that ODH lacks authority to collect the outstanding fines from Rip Cord. ODH's first assignment of error is found not well-taken.

{¶ 14} In its second assignment of error, ODH contends that the trial court erred in finding that the Ohio Attorney General must prove its efforts to collect the outstanding fine. ODH's argument is based on their contention that they are entitled to collect the money and therefore, any efforts on the part of the Attorney General are irrelevant. Having already determined that ODH lacks the authority to collect the fines, its second assignment of error is found not well-taken.

{¶ 15} 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

Arlene Singer, 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:
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