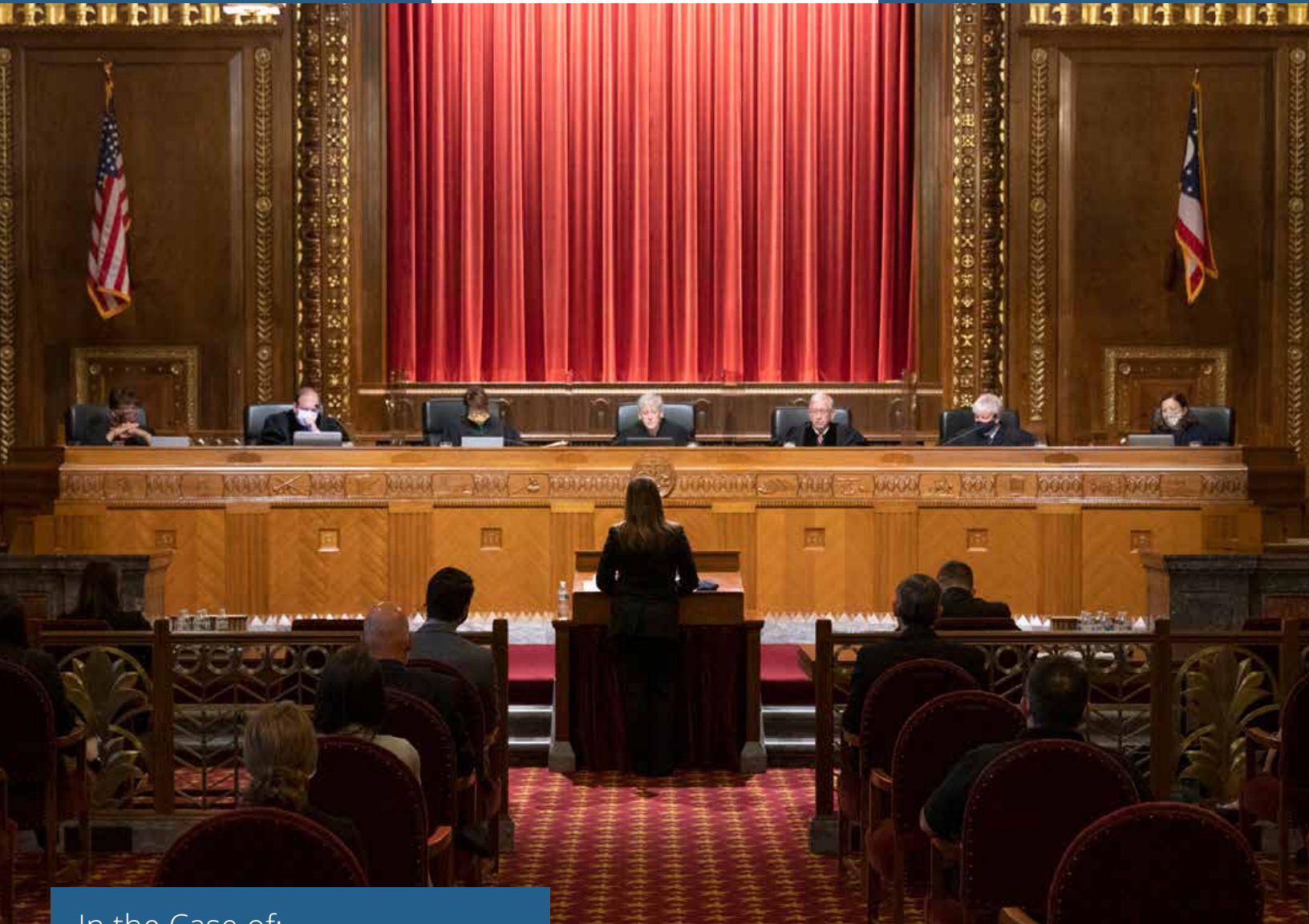


THE SUPREME COURT *of* OHIO

PRESENTS

UNDER ADVISEMENT Ohio Supreme Court Cases On Demand

STUDENT RESOURCE GUIDE



In the Case of:

Rebecca Buddenberg v. Robert K. Weisdack et al., Case no. 2018-1209

Rebecca Buddenberg worked in the finance department for the Geauga County Board of Health. She reported unequal pay practices and potential ethical violations by her supervisor, County Health Commissioner Robert K. Weisdack. After the report, Weisdack allegedly began to retaliate against Buddenberg. She resigned her job and filed a federal lawsuit against Weisdack and others seeking to recover financial compensation. She is alleging her employers committed several state crimes when retaliating against her. The Ohio Supreme Court is asked to determine if a civil lawsuit based on a criminal act requires a conviction before the civil case can proceed in court.

Introduction

THE SUPREME COURT *of* OHIO



The title of this program, *Under Advisement*, comes from the statement that Chief Justice Maureen O'Connor uses to end each case heard during oral arguments, "Thank you. We'll take the matter under advisement and you'll be notified of our decision." In the Supreme Court setting, taking the matter "under advisement" means the justices will consider the legal arguments of each party in a case before issuing a ruling.



Wood County Courthouse, Bowling Green, Ohio

Ohio's Court System

The courts oversee and administer the law. They resolve disputes under the law and strive to apply the law in a fair and impartial manner. As in other states, Ohio is served by separate state and federal court systems organized into trial courts,

intermediate courts of appeals, and a Supreme Court in each system. State courts primarily deal with cases arising under state law, and federal courts primarily deal with cases arising under federal law.

State Courts

Ohio Trial Courts

In Ohio, most cases begin and are resolved in trial courts, which are the workhorses of the state's judicial system. Ohio has several kinds of trial courts and each has venue and jurisdiction over cases. Simply stated, venue is the geographical location where a case is heard. Jurisdiction is the power and authority to hear and decide certain types of cases. Ohio's trial courts include common pleas courts, municipal and county courts, and mayor's courts.

- Common pleas courts have countywide venue and jurisdiction to decide all levels of civil and criminal cases. The common pleas court is Ohio's court of general jurisdiction, which means that it has the authority to hear almost any civil or criminal matter. The most serious civil or criminal cases must be heard in common pleas court. Each of the state's 88 counties has a common pleas court.
- Municipal and county courts have more limited jurisdiction than common pleas courts, and the authority to only decide less serious civil and criminal cases.
- Mayor's courts do not have civil jurisdiction and only have limited authority to hear minor criminal matters that occur within a city or village. Mayor's courts are not courts of record because they are not required to keep a record of their proceedings.

Ohio Courts of Appeals

The goal of every judicial system is to achieve complete and equal justice with every trial, but trial courts sometimes make mistakes or parties may disagree about the outcome of a particular case. This is why the courts of appeals were established. Ohio's courts of appeals review questions brought from common pleas courts, municipal courts, and county courts.

Only a final judgment or order can be appealed, and appeals generally must be on questions of law and not the facts of a case. Appeals court judges generally do not hear new testimony. They review transcripts from the lower court's hearings to determine if the law was interpreted and applied correctly. The party appealing the lower court's decision is the appellant, and files a written argument explaining why the trial court erred. The party that won the case in the trial court is the appellee, and also may file a written brief, but is not required to do so. The court then may hold

oral arguments, at which time the judges can ask questions about the case before making a decision. Ohio's appeals court system is divided into 12 districts.

The number of judges in each district varies based on population, but each district has a minimum of four appellate judges. A panel of three of the district's judges hear cases challenging decisions made by a lower trial court located within its district. Although many cases end with a decision by a district court of appeals, such courts are not the last resort; rather they are an intermediate step from the trial courts to the Supreme Court of Ohio.

To qualify for election, court of appeals judges must be licensed attorneys with at least six years' experience. Once elected, they serve six-year terms.

The Supreme Court of Ohio

The Supreme Court of Ohio's main purpose is to serve as a court of appeals and Ohio's court of last resort. The Court is empowered to review final judgments and orders of lower courts; to affirm, reverse, remand (send back to a lower court), or modify judgments. Appeals to the Supreme Court generally are from the 12 district courts of appeals, rather than from the trial courts. The Court is required to hear some types of cases (cases involving the death penalty, some appeals from state agencies, cases involving state constitutional issues, and others), but most of its jurisdiction is discretionary and it selects cases of great importance or public interest to resolve.

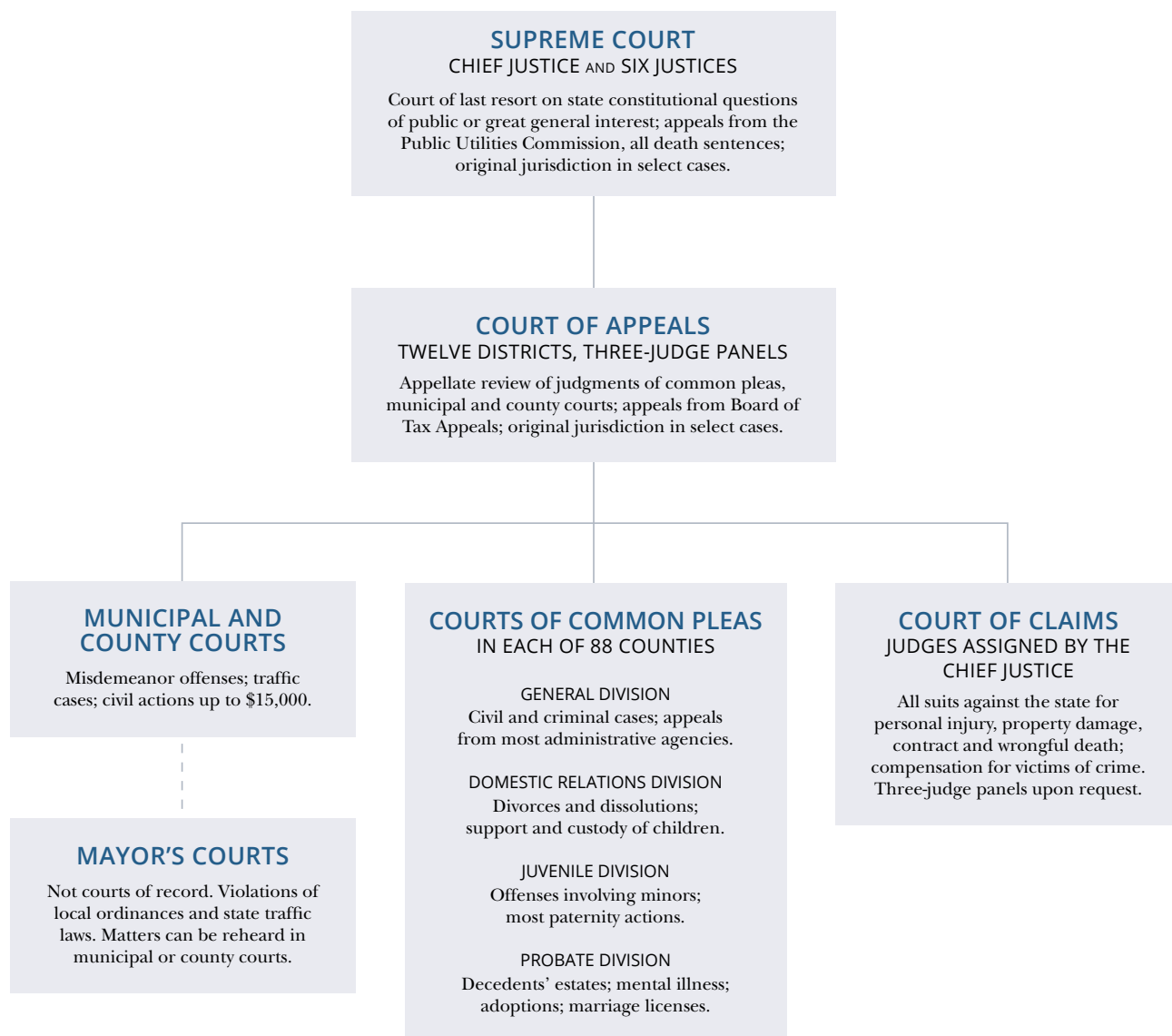
The Supreme Court of Ohio has original (trial) jurisdiction for certain special remedies that permit a person to file an action in the Supreme Court. These extraordinary remedies include writs of habeas corpus (involving the release of persons allegedly unlawfully imprisoned or committed),

writs of mandamus and procedendo (ordering a public official to do a required act), writs of prohibition (ordering a lower court to cease an unlawful act), and writs of quo warranto (against a person or corporation for usurpation, misuse, or abuse of public office or corporate office or franchise).

The Supreme Court of Ohio also has other important duties. These duties include prescribing rules of procedure for and providing general oversight of all lower courts, and overseeing the practice of law by attorneys.

The Supreme Court of Ohio consists of a chief justice and six justices. To qualify for election, candidates must be licensed attorneys with at least six years' experience. Once elected, they serve six-year terms. The Supreme Court of Ohio is located in downtown Columbus.

OHIO JUDICIAL STRUCTURE



Oral Argument Preview

Rebecca Buddenberg v. Robert K. Weisdack et al., Case no. 2018-1209



Glossary of Legal Terms

Amicus curiae: Latin, meaning “friend of the court.” A person or group that is not a party in a case, but who asks a court or is requested by a court to file a brief because of a special interest in the subject of the case.

Allege: To claim or assert something as true.

Appeal: A request made by a party that has lost on one or more issues for a higher court to review the decision for correctness.

Appellant: The party who appeals a court’s decision and seeks to have the decision overturned.

Appellee: The party who opposes an appeal and seeks to have an earlier court decision affirmed.

Brief: A written statement submitted to a court that explains legal or factual positions.

Cause of action: A legal claim.

Civil lawsuit: Based on non-criminal statutes, such as disputes involving accidents or contracts. Civil suits typically seek to recover money damages or allow/disallow certain acts, rather than to imprison or punish a person.

Claim: The assertion of an existing right or a statement about a matter that is yet to be proven as true.

Common law: Legal principles that arise from a series of judicial decisions. Common law principles can be changed by legislation.

Conviction: A judgment that a defendant is guilty of a particular criminal offense.

Damages: Money that the losing party is ordered to pay in a civil case. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).

Defendant: In a civil case, someone against whom a lawsuit is filed. In a criminal case, someone accused of a crime.

Dismiss: Court action concluding a case.

Dissenting opinion: An opinion disagreeing with the judgment reached by the majority of the court.

Et al.: Latin, meaning “and others.” An abbreviation usually used after the first name listed in a case name when there are many parties (ex: “Smith et al. v. Jones et al.”).

Judge: An official of the judicial branch with authority to decide lawsuits brought before courts.

Justice: One of the seven members of the Supreme Court of Ohio.

Liable: Legally responsible or obligated.

Majority opinion: An opinion joined by more than half of those judges considering a case, which becomes the opinion of the court.

Ohio General Assembly: The state legislature of Ohio.

Ohio Revised Code: Contains all current statutes of the Ohio General Assembly of a permanent and general nature, consolidated into provisions, titles, chapters, and sections.

Opinion: A judge’s written explanation of the decision of the court in a case.

Oral argument: An opportunity for lawyers to argue their positions and answer questions from the judges who will decide the case being appealed.

Party: In court proceedings, one who files a civil or criminal case, one against whom a case is filed, or one with a direct interest in a case.

Precedent: A decision in an earlier case – with facts and legal issues similar to a dispute currently before a court – that should be followed unless there is good reason to depart from the earlier ruling.

Glossary of Legal Terms

Preponderance of evidence: A standard that requires the proof offered in a case to be greater in weight than the proof opposing it. The evidentiary standard common in civil lawsuits.

Standard of proof: The degree of proof required. In criminal cases, prosecutors must prove a defendant's guilt "beyond a reasonable doubt." The majority of civil lawsuits require proof "by a preponderance of the evidence" (50% or more), but in some cases the standard is higher and requires "clear and convincing" proof.

Statute: A law passed by the legislature.

Trial: A formal court proceeding in which a judge or a jury decides disputed facts and determines guilt or liability based upon the evidence presented.

Background

Buddenberg Resigns from Position with Geauga County Board of Health

- In April 2016, Rebecca Buddenberg was hired as the fiscal coordinator for the Geauga County Board of Health. A few months later, she reported unequal pay practices and potential ethical violations by county health commissioner Robert K. Weisdack.
- Among her allegations were that a male employee was paid a higher salary than a female employee of the same position and that Weisdack had awarded himself a no-bid contract without the required county auditor's approval.
- After raising these concerns, Weisdack allegedly retaliated against Buddenberg. He changed her work hours, lodged false written disciplinary allegations against her, demoted her, and suspended her for three days.
- After months of working in what Buddenberg described as an intolerable environment, she resigned on May 27, 2017.

Buddenberg Files Federal Lawsuit against County Health Commissioner and Others

Lawsuit Filed

- Buddenberg sues Weisdack (the county health commissioner), members of the health board, the board's hired attorney, and other employees of the Geauga County Health District in the U.S. District Court for the Northern District of Ohio, Eastern Division in Cleveland.
- Buddenberg claims the defendants violated her First Amendment right to free speech when they retaliated against her for reporting unequal pay practices and ethical violations by Weisdack.
- She claims three state laws were broken:
 1. Retaliation against her for performing her duties as a public servant;
 2. Intimidation by using a false writing to influence a public servant; and
 3. Interfering with her First Amendment right to free speech.

Weisdack Answers

- Weisdack answers the lawsuit by asking the federal court judge to dismiss the charges.
 - The defendants claim the state laws [R.C. 2307.60](#) and [R.C. 2921.03](#) that Buddenberg cites in her civil lawsuit require that the defendants be convicted of a crime before the civil lawsuit can commence. Weisdack asks the judge to dismiss the case because no one was convicted of committing any criminal acts.



*Carl B. Stokes
U.S. Courthouse,
Cleveland*

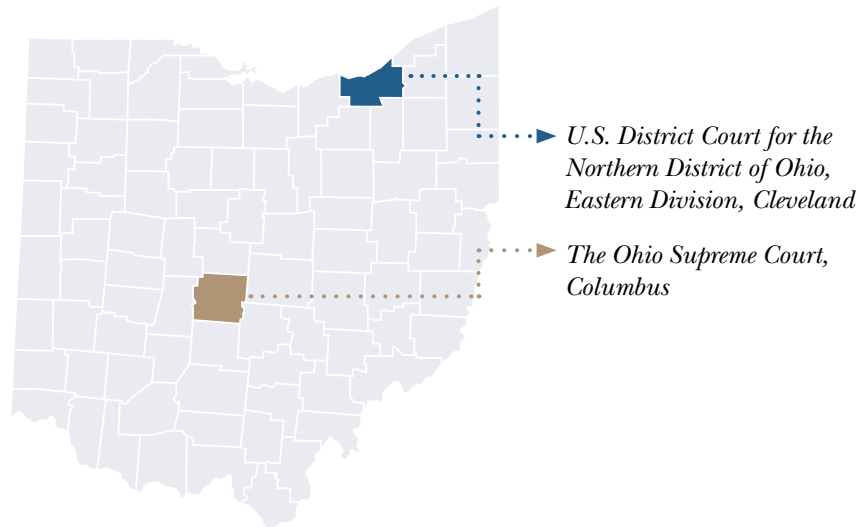
Case Proceedings

- ▶ The federal trial court judge refuses to dismiss the case. After reviewing the General Assembly’s amendment to the law in 2007 and an Ohio Supreme Court case from 2016, the judge determines it is not clear if a criminal conviction is required for a plaintiff to seek civil damages using [R.C. 2307.60](#).
- ▶ Before continuing with the lawsuit, the federal court asks the Supreme Court of Ohio to answer two questions about state law:
 1. Does [R.C. 2307.60](#)’s creation of a civil cause of action for injuries based on a “criminal act” require an underlying criminal conviction?
 2. Under Ohio law [R.C. 2921.03](#), must a criminal conviction occur first before filing a lawsuit alleging injury from a crime?

Certified Questions for the Ohio Supreme Court

The Ohio Supreme Court accepts the case.

- ▶ A federal district court is allowed to send or “certify” a question of state law directly to a state supreme court. Unlike a case filed in a state trial court, this case does not have to go or proceed through the same appeals process via a district court of appeals.
- ▶ Four of the seven justices on the Ohio Supreme Court must vote in favor of accepting the case.
- ▶ The Supreme Court agrees to answer the two questions.



Oral Argument Scheduled

When the Supreme Court accepts a case, the parties submit written arguments, then the Court sets a date for oral argument.

- ▶ Prior to appearing before the Supreme Court, the parties are expected to submit merit briefs. These are written arguments explaining why each side thinks it should win the case.
- ▶ An attorney for each party typically presents arguments in front of the justices of the Supreme Court and answers questions from the justices.
- ▶ Other organizations interested in how the court might rule can file “amicus” briefs. These also are known as friend-of-the-court briefs.



The Ohio Statehouse, Columbus

Two Ohio statutes are relevant to this case:

[R.C. 2307.60\(A\)\(1\)](#) | Civil Action for Damages for Criminal Act

- Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section [2315.21](#) or another section of the Revised Code.

[R.C. 2921.03\(C\)](#) | Intimidation

- A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

Weisdack's Arguments

Civil Lawsuit Claim Requires Conviction

- Ohio has laws that allow civil lawsuits to be filed based on certain criminal acts. These laws specify which crimes require a criminal conviction and potential civil liability. Ohio even has laws that allow for civil lawsuits based on criminal conduct if the crime isn't prosecuted. The law in question, [R.C. 2307.60](#), is not one of those laws.
- Although the General Assembly did not include the word "conviction" in [R.C. 2307.60](#), they implied that a conviction is required to file a civil lawsuit based on a criminal act.
- *Black's Law Dictionary* defines "criminal act" as an "unlawful act that subjects the actor to prosecution under criminal law." By this definition, the "criminal act" is an act that is unlawful and prosecuted.
- For an act to be "criminal," a crime must be committed, and for a crime to be committed, there must be a conviction.
- [R.C. 2921.03\(C\)](#) also doesn't define "commission of the offense." The only way to have a criminal violation and a committed offense is through a conviction.

Buddenberg's Arguments

Conviction Not Required for Civil Lawsuit

- The plain language of [R.C. 2307.60](#) does not require a conviction. The lawmakers could have easily written that a conviction was required to seek civil damages, but they did not.
- The term “criminal act” means the underlying unlawful conduct and does not require a conviction. A person accused of a criminal act may avoid prosecution for any number of reasons, but this does not mean a criminal act did not occur.
- In response to Weisdack’s interpretation of *Black’s Law Dictionary* definition of “criminal act,” Buddenberg argues that “subject to” prosecution is not the same as “has been prosecuted.” Instead, it means that a person could be prosecuted for an unlawful act.
- [R.C. 2921.03\(C\)](#) does not require a conviction to file a civil lawsuit. The term “commission of offense” is not the same as “conviction.”

Friend-of-the-Court Briefs

“Amicus curiae briefs” were filed by organizations with a high level of interest in the outcome of the case.

- The Supreme Court allows these groups to submit written briefs, but doesn’t generally allow them to present oral arguments.
- In some cases, a party will agree to split oral argument time with one of the amicus groups supporting their position.

Groups that Filed Amicus Briefs in This Case

The following groups filed a joint brief supporting Weisdack’s position:

- Ohio School Boards Association
- Ohio Transit Risk Pool
- County Commissioners Association of Ohio
- The Ohio Association of Civil Trial Attorneys filed a separate brief.

The following groups filed a joint brief supporting Buddenberg’s position:

- Ohio Crime Victim Justice Center
- Ohio Alliance to End Sexual Violence
- Cleveland Rape Crisis Center
- Ohio NOW Education and Legal Fund

The Ohio Attorney General’s Office filed a brief only supporting the position that [R.C. 2307.60](#) does not require a conviction to file a civil lawsuit.

Observing the Oral Argument

Rebecca Buddenberg v. Robert K. Weisdack et al., Case no. 2018-1209





Attorneys Will Refer to Previous Federal and Ohio Court Decisions

U.S. Supreme Court Decision:

Sedima, S.P.R.L. v. Imrex Co., Inc. (1985)

This federal case dealt with the Racketeer Influenced and Corrupt Organizations Act (RICO). The U.S. Supreme Court determined there is no requirement that a civil lawsuit can proceed only if the defendant already was convicted of a RICO violation. Although the *Buddenberg* case does not deal with RICO violations, both sides use this case as an example of a similar situation in which the U.S. Supreme Court determined whether a law required a criminal conviction before a party could move forward with a separate civil case.

Ohio Supreme Court Decision:

Jacobson v. Karforey (2016)

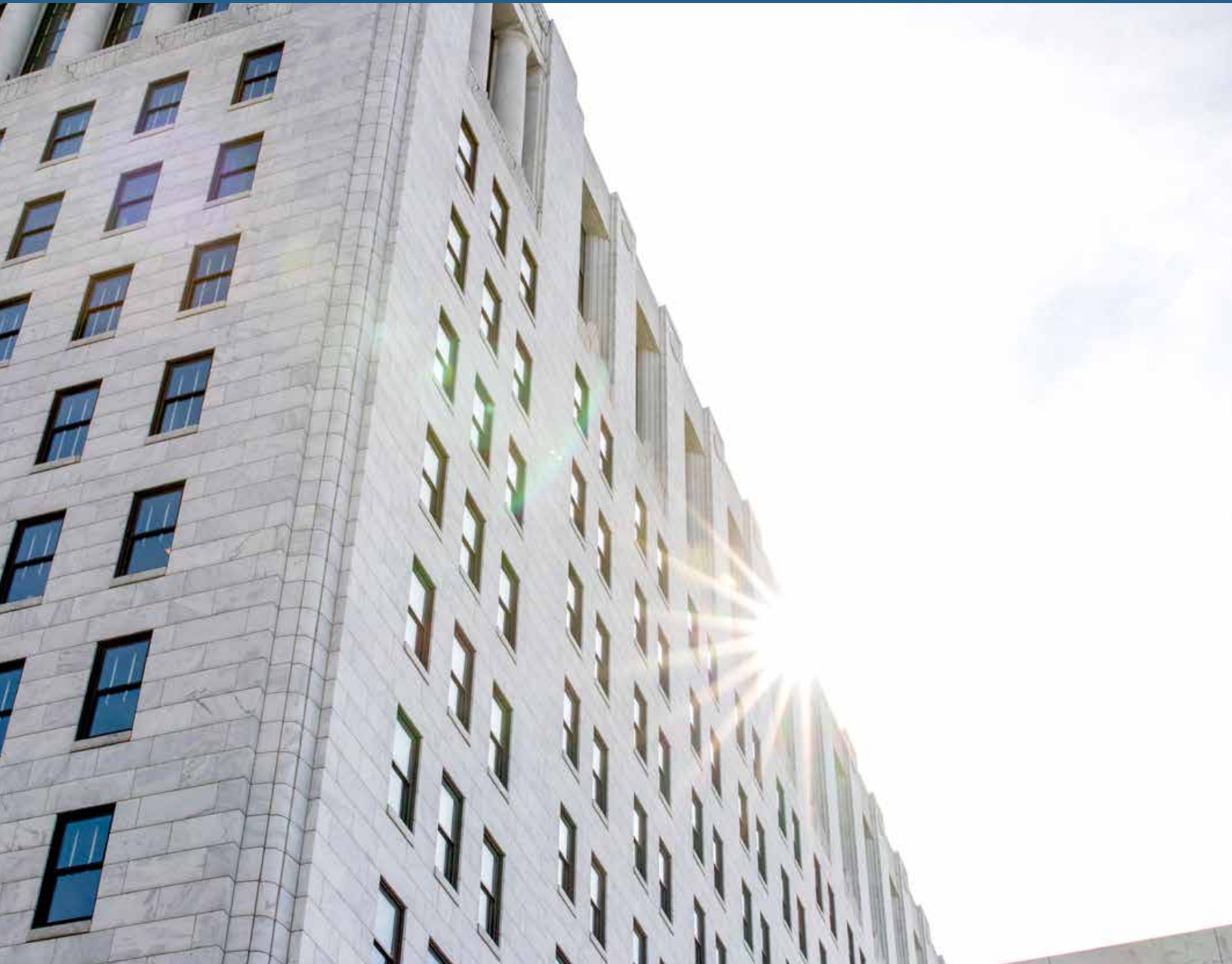
The Ohio Supreme Court was asked if “the current version of [R.C. 2307.60](#) independently authorize[s] a civil action for damages caused by criminal acts, unless otherwise prohibited by law?” The Court ruled that [R.C. 2307.60](#) allows a civil case to be filed for damages resulting from any criminal act. The question asked in the *Buddenberg* case is how to determine if a criminal act occurred.



*This is your final reading activity
until after observing the case.*

Decision Summary

Rebecca Buddenberg v. Robert K. Weisdack et al., Case no. 2018-1209



Conviction Not Required to Pursue Civil Lawsuit

Case: *Buddenberg v. Weisdack*, 161 Ohio St.3d 160, 2020-Ohio-3832

Full Opinion:

sc.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-3832.pdf

The Ohio Supreme Court ruled that Ohio law allows a person to file a civil lawsuit based on injuries caused by a criminal act without having to show the crime resulted in a conviction.

In a 7-0 decision, the Supreme Court determined that a conviction for a criminal act is not required before a civil lawsuit can be filed. Writing for the majority, Chief Justice Maureen O'Connor stated without the legislature specifying that a conviction is required, the Court "would not read such intent into" the law.

Worker Challenges Termination

In 2018, Buddenberg sued the Geauga county health commissioner Weisdack, certain members of the health board, her supervisor, and the health district's attorney James Budzik. Buddenberg filed the lawsuit in the U.S. District Court for the Northern District of Ohio, claiming federal and state anti-discrimination laws were violated.

Referring to the Ohio law [R.C. 2307.60](#), Buddenberg claimed she could file claims for civil liability based on the alleged violation of the criminal acts of retaliation, intimidation, and interfering with civil rights. The health district asked the federal court to dismiss the case. It argued that civil claims can only be filed if there is a conviction for the alleged criminal acts.

The federal court denied the request and then asked the Ohio Supreme Court to answer two questions about Ohio law:

1. Does [R.C. 2307.60](#) require a conviction in order to file a civil lawsuit?
2. Does the civil claim for the crime of intimidation, [R.C. 2921.03](#), specifically require a conviction before a claim can be filed?

Court Examines Statutes

The Court first reviewed the statute [R.C.2307.60\(A\)\(1\)](#) which states: "Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section [2315.21](#) or another section of the Revised Code."

The opinion noted that when words in a statute have one clear meaning, the Court will not provide a new interpretation. In this case, the Court found that the law does not require any proof of a criminal conviction.

The Court pointed out that the word "conviction" was not included in the law. The health district argued that a civil lawsuit could only be filed if an act were "committed." In its view, this means there must be a conviction.

"But crimes can be committed without a conviction. They often are," the opinion stated. "The fact that a person's actions subject him or her to prosecution in no way establishes that he or she will in fact be prosecuted."

The Court also noted if a conviction was required under [R.C. 2307.60\(A\)\(1\)](#), it would make the next section of the law, [R.C. 2307.60\(A\)\(2\)](#), unnecessary. That section of the law allows a plaintiff to use a conviction as evidence in a civil case. The Court explained that because the use of a conviction is

allowed, but not required, to prove a case, this part of the law would not be necessary if a conviction were required.

The intimidation statute, [R.C. 2921.03](#), allows a civil lawsuit to be filed if harm was caused “as a result of the commission of the offense.” The health district argued this means there must be a conviction before a suit can be filed.

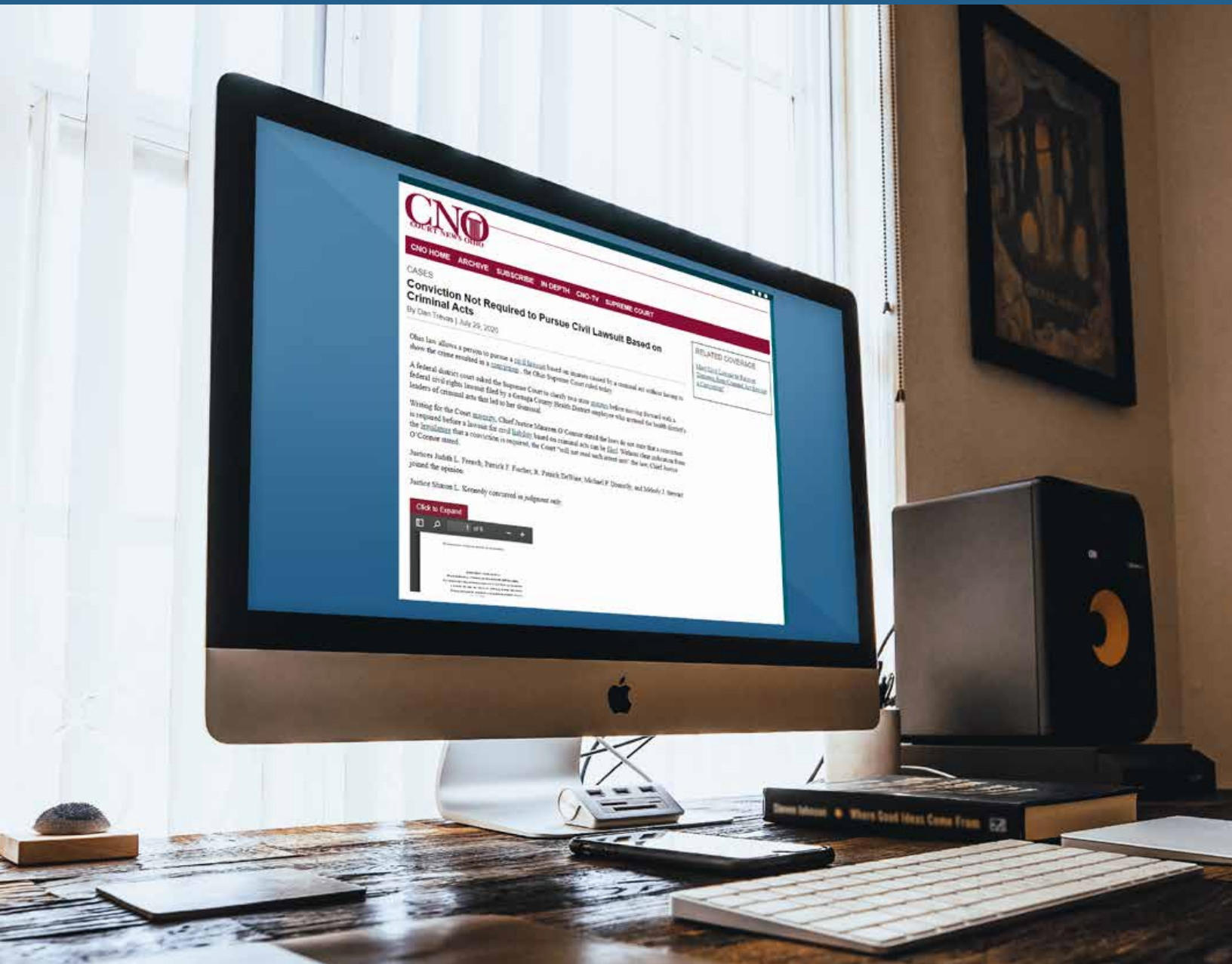
The Court did not agree with this argument, again noting that the word “conviction” was missing

from the statute. The health district also argued the term “offense” is the same as “crime” and both mean “acts that have been the subject of criminal proceedings.” Once again, the Court disagreed with this argument.

“But, again, being the subject of a criminal proceeding is not the equivalent of being convicted of the crimes charged,” the opinion stated.

Decision News Article

Rebecca Buddenberg v. Robert K. Weisdack et al., Case no. 2018-1209



► *The decision news article explains an Ohio Supreme Court opinion in non-legal language. The article is in news story form and intended to inform Ohioans about a ruling of the Court and how it might be relevant to their lives.*

► *The decision news article is drafted by public information staff and then edited by the justices and attorneys for the justices to ensure the legal accuracy and that the justices' positions on the case are clear. The article also is helpful to Ohio lawyers by giving them the "highlights" of a Court decision. The article always contains a link to the actual opinion for those who wish to read the opinion in its entirety, which is written in traditional legal form and language.*

Conviction Not Required to Pursue Civil Lawsuit

Full Opinion: sc.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-3832.pdf



By Dan Trevas | July 29, 2020

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Buddenberg v. Weisdack, 161 Ohio St.3d 160, [2020-Ohio-3832](#).

Note: Opinion summaries are prepared by the Office of Public Information for the general public and news media. Opinion summaries are not prepared for every opinion, but only for noteworthy cases. Opinion summaries are not to be considered as official headnotes or syllabi of court opinions. The full text of this and other court opinions are available [online](#).