

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

William Coffman,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 12AP-267
v.	:	(C.P.C. No. 11CVH-09-11406)
	:	
Ohio State Adult Parole Board et al.,	:	(ACCELERATED CALENDAR)
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on January 17, 2013

William Coffman, pro se.

Michael DeWine, Attorney General, and Peter L. Jamison, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Plaintiff-appellant, William Coffman ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying his motion for judgment on the pleadings and granting a motion for judgment on the pleadings filed by defendant-appellee, the Ohio State Adult Parole Board ("Parole Board"), and from a judgment denying a motion for joinder filed by appellant's wife, Belinda L. Coffman ("Mrs. Coffman"). Because we find that the Parole Board was entitled to judgment as a matter of law and that the trial court did not abuse its discretion in denying Mrs. Coffman's motion for joinder, we affirm.

{¶ 2} Appellant is a prison inmate, incarcerated at the Chillicothe Correctional Institution, serving an indefinite sentence of 11 to 40 years. In April 2010, the Parole Board conducted a parole hearing and scheduled appellant for parole release on

October 1, 2011. Appellant signed forms related to his parole release titled "Waiver of Extradition" and "Conditions of Supervision" which stated that his projected release date was October 1, 2011. On June 15, 2011, appellant received a pre-release report indicating that his projected release date had been rescinded and that another hearing would be held. In August 2011, another parole hearing was conducted; the Parole Board determined that appellant was not suitable for parole and continued his sentence until his next parole hearing in June 2013.

{¶ 3} Appellant filed an action for declaratory judgment and injunctive relief in the Franklin County Court of Common Pleas, arguing that the Parole Board acted in bad faith by rescinding his release on parole. Mrs. Coffman filed a motion for joinder, seeking to add claims for loss of consortium and intentional infliction of emotional distress. The trial court issued a judgment denying Mrs. Coffman's motion for joinder. Both the Parole Board and appellant filed motions for judgment on the pleadings. The trial court entered a judgment denying appellant's motion for judgment on the pleadings, granting the Parole Board's motion for judgment on the pleadings, and dismissing the complaint with prejudice.

{¶ 4} Appellant appeals from the trial court's judgments, assigning two errors for this court's review:

FIRST ASSIGNMENT OF ERROR:

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT RULED OUT OF ORDER ON THE MOTION'S [sic] FOR JUDGMENT ON THE PLEADINGS BECAUSE THE STATE MOVED FOR JUDGMENT AND THE COURT WAS BY LAW TO INTERPRET CIVIL RULE 12(C) MOST FAVORABLE TO THE NON-MOVING PARTY.

SECOND ASSIGNMENT OF ERROR:

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED PLAINTIFF'S WIFE FROM JOINING HER HUSBAND AGAINST DEFENDANTS FOR INFLICTION OF EMOTIONAL DISTRESS.

{¶ 5} In the statement of his first assignment of error, appellant suggests that the trial court erred by ruling "out of order" on the motions for judgment on the pleadings.

However, in his brief, appellant argues that the trial court erred by granting the Parole Board's motion for judgment on the pleadings. Therefore, we will construe appellant's first assignment of error as an argument that the trial court erred by granting the Parole Board's motion for judgment on the pleadings.

{¶ 6} Civ.R. 12(C) provides that, "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." In reviewing a motion for judgment on the pleadings, a court must construe all material allegations in the complaint, as well as any reasonable inferences drawn from those allegations, as true and in favor of the nonmoving party. *Franks v. Ohio Dept. of Rehab. & Corr.*, 195 Ohio App.3d 114, 2011-Ohio-2048, ¶ 5 (10th Dist.). The motion for judgment on the pleadings tests the allegations of the complaint and presents questions of law. *Id.* A court may grant a motion for judgment on the pleadings only if no disputes of material fact exist and the pleadings demonstrate that the moving party is entitled to judgment as a matter of law. *Curtis v. Ohio Adult Parole Auth.*, 10th Dist. No. 04AP-1214, 2006-Ohio-15, ¶ 24. We review de novo a decision granting a motion for judgment on the pleadings. *Franks* at ¶ 5.

{¶ 7} Generally, "the decision to grant or deny parole is within the exclusive discretion of the Ohio Parole Board." *Fuller v. Collins*, 10th Dist. No. 10AP-297, 2010-Ohio-5444, ¶ 12. Further, it is well-established that the Parole Board possesses discretion to rescind an unexecuted order granting parole at a future date. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 422 (1998); *Hattie v. Anderson*, 68 Ohio St.3d 232, 233 (1994). "There is no constitutional or inherent right to be released before the expiration of a valid sentence." *State ex rel. Miller v. Leonard*, 88 Ohio St.3d 46, 47 (2000).

{¶ 8} Although appellant concedes that he has no vested right to parole, he argues that the waiver of extradition and conditions of supervision forms constituted written contracts providing for his release on October 1, 2011. Appellant claims that the Parole Board breached these written contracts by rescinding its earlier parole decision.

{¶ 9} " 'A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a

manifestation of mutual assent and legality of object and of consideration.' " *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, ¶ 16, quoting *Perlmutter Printing Co. v. Strome, Inc.*, 436 F.Supp. 409, 414 (N.D. Ohio 1976). Consideration sufficient to form a contract may include an agreement to forego a legal right. *Motorists Mut. Ins. Co. v. Columbus Fin., Inc.*, 168 Ohio App.3d 691, 2006-Ohio-5090, ¶ 8 (10th Dist.); *Williams v. Ormsby*, 131 Ohio St.3d 427, 2012-Ohio-690, ¶ 16 ("Consideration may consist of either a detriment to the promisee or a benefit to the promisor. [Citation omitted.] A benefit may consist of some right, interest, or profit accruing to the promisor, while a detriment may consist of some forbearance, loss, or responsibility given, suffered, or undertaken by the promisee."). "A meeting of the minds as to the essential terms of the contract is a requirement to enforcing the contract." *Minister Farms Coop. Exchange Co., Inc. v. Meyer*, 117 Ohio St.3d 459, 2008-Ohio-1259, ¶ 28.

{¶ 10} Appellant argues that the waiver of extradition and conditions of supervision forms constituted written contracts providing that he would be released on parole on October 1, 2011. Appellant asserts, in effect, that in exchange for his agreement to abide by the conditions set forth in these forms, the Parole Board agreed to release appellant on parole on October 1, 2011. As explained above, the Parole Board has broad discretion to grant or deny parole or to rescind a decision granting parole before a prisoner has been released. Therefore, an agreement by the Parole Board to limit its right to change appellant's parole date or rescind his parole prior to release could constitute sufficient consideration to form a contract. However, there is nothing in either the waiver of extradition form or the conditions of supervision form suggesting that the Parole Board intended to or agreed to limit its discretion to change appellant's parole date or rescind his parole prior to his release date. To the extent that appellant believed he was entering into written contracts providing that he would be released on October 1, 2011, it appears that there was no "meeting of the minds" as to whether the Parole Board agreed to be bound by the parole release date. Thus, the waiver of extradition and conditions of supervision forms do not constitute binding contracts requiring the Parole Board to release appellant on parole on October 1, 2011.

{¶ 11} To the extent that the waiver of extradition and conditions of supervision forms could be read as contracts, it is clear that they impose obligations on appellant *after*

his release on parole. By signing the forms, appellant agreed that he would perform certain acts, such as informing his supervising officer of his residence and place of employment or refrain from performing certain acts, such as not leaving the state without written permission. Thus, appellant's release on parole constituted a condition precedent to these obligations. A condition precedent is a condition that must be performed before obligations in a contract become effective. *Atelier Dist., L.L.C. v. Parking Co. of Am., Inc.*, 10th Dist. No. 07AP-87, 2007-Ohio-7138, ¶ 35. "If the condition is not fulfilled, the parties are excused from performing." *Id.* In this case, the condition precedent was not fulfilled because the Parole Board rescinded appellant's parole prior to his release date. Therefore, appellant's argument that he fulfilled his duties under the purported contracts and that the Parole Board breached the contracts by failing to release him on October 1, 2011 fails.

{¶ 12} Appellant argues, however, that he was subject to certain obligations before his release on parole. In support of this argument, appellant cites to portions of documents labeled "Ohio Parole Board Decision." One of these documents contains the following note:

Release on PRD [projected release date] is contingent on good institution behavior and/or reduction from maximum security status. A PRD may be extended for a Class II violation when the case is reviewed at the PRD Pre-Release Review.

Another document also contains this note:

A release recommendation is subject to review and approval by the Parole Board Chair, and is not final until actual release from custody occurs. The physical release may be stopped by the Parole Board Chair up to and including the day of release if significant new information is received that was not considered at the release hearing. Significant new information can include institutional rule infractions and/or a petition from the Office of Victim Services for a Full Board hearing pursuant to Section 5149.101 of the Ohio Revised Code.

Based on these provisions, appellant argues that his release on parole was contingent on good institutional behavior *prior to* his parole release date. Thus, he argues that his contractual obligations commenced before he was released on parole. Appellant further

asserts that, because there was no evidence that he violated these conditions, the trial court erred by holding that there was no binding contract for his release on October 1, 2011.

{¶ 13} We reject appellant's contention for two reasons. First, the "Ohio Parole Board Decision" documents were not attached to appellant's complaint or any of the other pleadings. "Determination of a motion for judgment on the pleadings is restricted solely to the allegations in the pleadings, as well as any material incorporated by reference or attached as exhibits to those pleadings." *Curtis* at ¶ 24. Therefore, these documents were not properly within the trial court's consideration in ruling on the motion for judgment on the pleadings. Second, even if the documents had been within the court's consideration, they would not change the result. Nothing in either of the provisions imposes a limit on the Parole Board's broad authority to change or rescind appellant's parole. Rather, these clauses simply reflect some of the circumstances in which the Parole Board could exercise its authority to rescind the grant of parole. Even taking this language into consideration, we find no contractual obligation requiring the Parole Board to release appellant on October 1, 2011.

{¶ 14} Accordingly, appellant's first assignment of error is without merit and is overruled.

{¶ 15} In appellant's second assignment of error, he asserts that the trial court erred by denying his wife's motion to join the action as a plaintiff. On October 27, 2011, Mrs. Coffman filed a motion for joinder as a plaintiff pursuant to Civ.R. 19(A)(2). Mrs. Coffman sought to assert claims for loss of consortium and intentional infliction of emotional distress. The trial court denied this motion, concluding that appellant's claims arose from the Parole Board's alleged bad faith in not granting appellant parole and that Mrs. Coffman had no claims arising from the alleged bad faith.

{¶ 16} Civ.R. 19.1(A)(2) provides that a person who is subject to service of process shall be joined as a party in an action if the person has interest in or a claim arising out of "[p]ersonal injury or property damage to a husband or wife and a claim of the spouse for loss of consortium or expenses or property damage if caused by the same wrongful act." Appellant's complaint sought declaratory judgment and injunctive relief, not recovery for personal injury or property damage. Therefore, Civ.R. 19.1(A)(2) did not apply to Mrs.

Coffman's claims for loss of consortium or intentional infliction of emotional distress. Likewise, none of the other provisions of Civ.R. 19.1(A) apply to her claims.

{¶ 17} Because Civ.R. 19.1 does not apply to Mrs. Coffman's claims, we will construe her request as a motion for permissive joinder under Civ.R. 20(A). "Whether to grant or deny a motion for permissive joinder pursuant to Civ.R. 20(A) is a matter committed to the sound discretion of the trial court." *N. Side Bank & Trust Co. v. Performance Home Buyers, L.L.C.*, 181 Ohio App.3d 344, 2009-Ohio-1277, ¶ 12 (2d Dist.). Therefore, we review the trial court's decision for abuse of discretion. An abuse of discretion occurs where a trial court's decision is "unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 18} Civ.R. 20(A) provides that "[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or succession or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." Arguably, Mrs. Coffman's claims may arise from the same event that forms the basis for appellant's claims—i.e., the denial of his parole. However, appellant's claims are based on a theory that he had a contract with the Parole Board, and Mrs. Coffman was not a party to any purported contract; thus, the claims would not turn on the same question of law. There may have been questions of fact common to both appellant's and Mrs. Coffman's claims, but appellant has failed to point to any specific common issues of law or fact, thereby failing to demonstrate that the trial court abused its discretion by denying Mrs. Coffman's motion for joinder.

{¶ 19} Further, as the Parole Board notes on appeal, Mrs. Coffman's claims were based on tort law and would be compensated by monetary damages. The Court of Claims of Ohio has exclusive jurisdiction over civil actions against the state for money damages that sound in law. *Pankey v. Ohio Adult Parole Auth.*, 10th Dist. No. 11AP-35, 2011-Ohio-4209, ¶ 5. Appellant filed his action in the common pleas court, which would not have jurisdiction to award money damages on Mrs. Coffman's claims. Thus, if the trial court granted Mrs. Coffman's motion for joinder, it ultimately would have been required to dismiss her claims for lack of jurisdiction. Under these circumstances, we conclude that the trial court did not abuse its discretion by denying Mrs. Coffman's motion for joinder.

{¶ 20} Accordingly, appellant's second assignment of error is without merit and is overruled.

{¶ 21} For the foregoing reasons, we overrule both of appellant's assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and CONNOR, JJ., concur.
