

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Brian McKinney,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 09AP-960
v.	:	(C.C. No. 2005-06465)
	:	
Ohio Department of Rehabilitation	:	(REGULAR CALENDAR)
and Correction,	:	
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on May 25, 2010

Gottlieb, Johnston, Beam & Dal Ponte, and *Miles D. Fries*, for appellant.

Richard Cordray, Attorney General, and *Stephanie D. Pestello-Sharf*, for appellee.

APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶1} Plaintiff-appellant, Brian McKinney, appeals from a judgment of the Court of Claims of Ohio granting summary judgment in favor of defendant-appellee, Ohio Department of Rehabilitation and Correction ("ODRC"). For the following reasons, we affirm that judgment.

{¶2} In March 1998, appellant was convicted of complicity to commit involuntary manslaughter in the Fairfield County Court of Common Pleas ("the trial court"), following a

no contest plea. The trial court sentenced him to three years in prison. On June 22, 1998, the trial court granted appellant judicial release and placed him on community control for a period of five years, ending on June 22, 2003.

{¶3} On May 28, 2003, the state of Ohio moved to revoke appellant's community control based on a violation of the terms and conditions of his community control. Ultimately, by judgment entry filed October 10, 2003, the trial court revoked appellant's community control and ordered him to serve the remainder of his original prison sentence.

{¶4} On appeal, the Fifth District Court of Appeals reversed the trial court's revocation of appellant's community control. The court reasoned that the trial court lacked jurisdiction to revoke appellant's community control because it did so after appellant's term of community control had expired. *State v. McKinney*, 5th Dist. No. 03CA083, 2004-Ohio-4035, ¶19 (applying *Davis v. Wolfe*, 92 Ohio St.3d 549, 552, 2001-Ohio-1281, in which the Supreme Court of Ohio held that a trial court lacks jurisdiction to revoke probation after end of probationary period). The court ordered appellant discharged from prison, and ODRC released appellant the next day.

{¶5} Subsequently, appellant filed the present lawsuit in the Court of Claims of Ohio. He claimed that as a result of the trial court's October 10, 2003 entry, ODRC falsely imprisoned him until his release from prison after the *McKinney* decision. ODRC requested summary judgment on appellant's claim, arguing that it was not liable for false imprisonment as a matter of law because it imprisoned appellant pursuant to the trial court's facially-valid sentencing entry. The Court of Claims of Ohio agreed and, accordingly, granted summary judgment in favor of ODRC.

{¶6} Appellant appeals and assigns the following error:

THE OHIO DEPARTMENT OF REHABILITATION AND
CORRECTION FALSELY IMPRISONS AN INDIVIDUAL
WHEN IT DOES SO BASED UPON A JUDGMENT THAT IS
VOID ON ITS FACE.

{¶7} Appellant's appeal is from the court of claims' grant of summary judgment in favor of ODRC. Appellate review of summary judgment motions is de novo. *Helton v. Scioto Cty. Bd. of Commrs.* (1997), 123 Ohio App.3d 158, 162. "When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court." *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103. Civ.R. 56(C) provides that summary judgment may be granted when the moving party demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. *State ex rel. Grady v. State Emp. Relations Bd.* (1997), 78 Ohio St.3d 181, 183.

{¶8} Initially, we note that appellant does not present a claim pursuant to R.C. 2743.48, the wrongful imprisonment statute. Instead, appellant's complaint asserts a common law claim for false imprisonment. False imprisonment occurs when a person confines another intentionally " 'without lawful privilege and against his consent within a limited area for any appreciable time, however short.' " *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 109 (quoting *Feliciano v. Krieger* (1977), 50 Ohio St.2d 69, 71); *Roberson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 03AP-538, 2003-Ohio-6473, ¶9. The state may be held liable for false imprisonment. *Id.*; *Bennett* at paragraph two of the syllabus.

{¶9} An action for false imprisonment cannot be maintained, however, when the imprisonment is in accordance with the judgment or order of a court, unless it appears such judgment or order is void on its face. *Bradley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-506, 2007-Ohio-7150, ¶10; *Fryerson v. Dept. of Rehab. & Corr.*, 10th Dist. No. 02AP-1216, 2003-Ohio-2730, ¶17; *Diehl v. Friester* (1882), 37 Ohio St. 473, 475. Thus, the state is immune from a common law claim of false imprisonment when the plaintiff was incarcerated pursuant to a facially-valid judgment or order, even if the facially-valid judgment or order is later determined to be void. *Bradley* at ¶11; *Roberson* at ¶9; *Likes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 05AP-709, 2006-Ohio-231, ¶10.

{¶10} ODRC incarcerated appellant pursuant to the trial court's October 10, 2003 judgment entry that revoked his community control. Relying on the holding in *Davis* and former R.C. 2951.09,¹ appellant claims the entry is void on its face because the entry itself noted that his period of community control would end on June 22, 2003, yet his community control was not revoked until October 10, 2003, after his period of community control ended. Appellant argues that this language put ODRC on notice that the trial court lacked jurisdiction to revoke his community control.

{¶11} Notwithstanding the language in the October 10, 2003 judgment entry, the trial court concluded that the judgment entry was not void on its face, noting that the judgment entry did not contain any apparent defect indicating that it was invalid. We agree.

¹ Former R.C. 2951.09 provided that a trial court loses jurisdiction over a defendant at the end of a probationary period. That statute was repealed in 2004.

{¶12} To succeed on a false imprisonment claim based on imprisonment pursuant to a court's entry or order, it is not determinative that the entry or order was later determined to be void. *Roberson*. The court's entry must be invalid on its face. Facial invalidity does not require the consideration of extrinsic information or the application of case law. *Gonzales v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 08AP-567, 2009-Ohio-246, ¶10 (noting that an allegation that case law demonstrated the invalidity of an entry does not challenge the facial validity of the entry); see also *Bradley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-506, 2007-Ohio-7150, ¶14. Here, the invalidity of the judgment entry is only apparent by the application of case law. Therefore, the judgment entry was not facially invalid.

{¶13} In conclusion, we find that the trial court's October 10, 2003 judgment entry was valid on its face and, therefore, cannot form the basis of a common law false imprisonment claim. Accordingly, the trial court did not err by granting summary judgment in favor of ODRC. Appellant's lone assignment of error is overruled, and the judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

BRYANT and BROWN, JJ., concur.
