

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

International Union, et al.

Court of Appeals No. L-08-1340

Appellees

Trial Court No. CI08-4980

v.

Lucas County Common Pleas
Court Juvenile Division, et al.

DECISION AND JUDGMENT

Appellants

Decided: August 7, 2009

* * * * *

Julia Bates, Lucas County Prosecuting Attorney, John A. Borell and
Brenda Meyer, Assistant Prosecuting Attorneys, for appellees Lucas County
Common Pleas Court.

Linda L. Woeber, Kimberly Vanover Riley, and Lisa M. Zaring, for appellee
Honorable Judges Denise Navarre Cubbon and Connie F. Zimmelman.

Joan Torzewski, for appellant.

* * * * *

SWEENEY, J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of
Common Pleas, granting a Civ.R. 12(B)(6) dismissal of appellants' claims regarding
attendance at an alleged "public meeting." Because we conclude that the trial court
properly granted the motion to dismiss, we affirm.

{¶ 2} Appellants, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("Union") and Joseph Rioux ("Rioux"), an employee of the Union, sued appellees, the Lucas County Court of Common Pleas, Juvenile Division, Judge Denise Navarre Cubbon, and Judge Connie F. Zimmelman, for allegedly violating Ohio's Sunshine Law, R.C. 121.22(B)(2). Appellants claimed that Rioux was allegedly prevented from attending a discussion of certain court procedures, operations, and programs conducted by the judges at the Lucas County Juvenile Justice Center. Appellants sought monetary and injunctive relief.

{¶ 3} Appellees filed a Civ.R. 12(B)(6) motion to dismiss, asserting that R.C. 121.22 is not applicable to courts and judges. The trial court granted the motion and dismissed the suit.

{¶ 4} Appellants appeal from that judgment, arguing the following sole assignment of error:

{¶ 5} "The trial court erred in granting Defendants' 12(B)(6) [sic] Motion because it failed to liberally construe O.R.C. §121.22."

{¶ 6} An appellate court's review of a trial court's dismissal for failure to state a claim upon which relief can be granted is de novo. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St.3d 521, 523. In determining whether a complaint states a claim upon which relief may be granted, the trial court must presume all factual allegations to be true and all reasonable inferences are made in favor of the nonmoving party. *State ex rel. Talwar v. State Med. Bd. of Ohio*, 104 Ohio St.3d 290, 2004-Ohio-

6410, ¶ 5; *Perez v. Cleveland* (1993), 66 Ohio St.3d 397, 399. To dismiss a complaint pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 2004-Ohio-5717, ¶ 11.

{¶ 7} R.C. 121.22 requires that "public officials, when meeting to consider official business, conduct those meetings in public." *TBC Westlake, Inc. v. Hamilton County Bd. of Revision* (1998), 81 Ohio St.3d 58, 61; *State ex rel. Cincinnati Post v. Cincinnati* (1996), 76 Ohio St.3d 540, 542. Nevertheless, R.C. 121.22(B)(1) provides:

{¶ 8} "(B) As used in this section:

{¶ 9} "(1) 'Public body' means any of the following:

{¶ 10} "(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

{¶ 11} "(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

{¶ 12} "(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of

the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, 'court of jurisdiction' has the same meaning as 'court' in section 6115.01 of the Revised Code."

{¶ 13} R.C. 6115.01, et seq. , governs the establishment of sanitary districts in Ohio. R.C. 6115.01(D) defines "court" as "the court of common pleas in which the petition for the organization of a sanitary district was filed and granted." In other words, R.C. 121.22 only applies to a common pleas court in which proceedings had been filed regarding pollution in streams, i.e., the cleaning, regulation, and disposal of sewage and liquid waste into streams.

{¶ 14} In this case, a juvenile court has no jurisdiction over sanitary issues and, consequently, no such action would ever be filed in the Lucas County Juvenile Court or adjudicated by its judges. Therefore, as defined by R.C. 121.22, the Lucas County Juvenile court is not a "public body." As a result, R.C. 121.22 does not govern appellees or any meetings conducted by the judges.

{¶ 15} Within the context of R.C. 121.22, "public officials" are merely the persons who comprise and carry out the business of a "public body." Appellants' attempt to broaden the scope and meaning of "public officials" to include judges of any common pleas court division under R.C. 121.22 is misplaced. Although judges may be considered public *figures*, they are not "public officials" as referenced in R.C. 121.22. Consequently, appellants' argument is without merit.

{¶ 16} Thus, even presuming the facts alleged in appellants' complaint to be true, appellants cannot prove any set of facts in support of their claims which would entitle them to relief. Therefore, the trial court properly granted appellees' Civ.R. 12(B)(6) motion to dismiss.

{¶ 17} Accordingly, appellants' sole assignment of error is not well-taken.

{¶ 18} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Peter M. Handwork, P.J.

JUDGE

Thomas J. Osowik, J.

James T. Sweeney, J.
CONCUR.

JUDGE

JUDGE

Judge James J. Sweeney, Eighth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.