

[Cite as *Oriana House, Inc. v. Ohio Ethics Comm.*, 2005-Ohio-6475.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Oriana House, Inc. et al.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 05AP-427 (C.P.C. No. 04CV-5821)
Ohio Ethics Commission,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

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O P I N I O N

Rendered on December 6, 2005

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*Benesch, Friedlander, Coplan & Aronoff, LLP, Orla E. Collier, III, and Frank J. Reed, Jr.*, for appellants.

*Jim Petro*, Attorney General, and *Matthew J. Lampke*, for appellee Ohio Ethics Commission.

*Bricker & Eckler, LLP, and Quintin F. Lindsmith*, for amicus curiae Ohio Community Corrections Association.

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APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Plaintiffs-appellants, Oriana House, Inc., and James J. Lawrence ("appellants"), appeal from a decision and entry of the Franklin County Court of Common Pleas, in which that court granted judgment as a matter of law in favor of defendant-appellee, Ohio Ethics Commission ("appellee").

{¶2} According to the complaint, Oriana House, Inc. (hereinafter, "OHI"), is a private, non-profit Ohio corporation engaged in providing community-based correctional facility services in Summit County, Ohio. James J. Lawrence (hereinafter, "Mr. Lawrence"), is its president, chief operating officer and executive director. Pursuant to a contract with Summit County, OHI operates the county's community-based correctional facility ("CBCF"). Mr. Lawrence also happens to be the Director of Summit County's CBCF, having been appointed to that position by the county's Judicial Corrections Board.

{¶3} Following an audit of OHI performed by her office, Betty Montgomery, Ohio's Auditor of State, requested that appellee investigate the interplay between and among appellants and the Summit County CBCF. Before appellee's investigation began, however, appellants filed the within action for declaratory judgment and for injunctive relief. Appellants sought a declaration that appellee lacks jurisdiction to receive, initiate or investigate any complaint against appellants pursuant to R.C. 102.06(A), or to render any advisory opinion pertaining to appellants pursuant to R.C. 102.08(A), and for an injunction preventing it from engaging in any such activities.

{¶4} The parties filed cross-motions for summary judgment, both of which were opposed. On April 6, 2005, the trial court journalized a decision and entry granting appellee's motion and denying appellants' motion. Appellants timely appealed and assert the following four assignments of error for our review:

1. The trial court erred in concluding that the Ohio Ethics Commission had jurisdiction to receive, initiate or investigate complaints against Plaintiffs-Appellants pursuant to R.C. § 102.06(A) or to render any advisory opinion under R.C. § 102.08(A) since:
  - a. The Ohio Ethics Commission is not the "appropriate ethics commission" as defined by R.C. § 102.01(F) to initiate such proceedings involving a private, nonprofit corporation engaged under contract to provide services to a community-based correctional facility and program ("CBCF") under R.C. § 2301.51 et seq.; and
  - b. Plaintiffs-Appellants are not "persons subject to Chapter 102 of the Ohio Revised Code" and, therefore, are not subject to the jurisdiction of the Ohio Ethics Commission.
2. The trial court erred in concluding that Plaintiff-Appellant Oriana House, Inc. is a "public agency" as defined by R.C. § 102.01(C). Oriana House is a private, nonprofit corporation providing service to a community-based correctional facility or program and, as such, is an independent contractor and is not an "instrumentality" of the state within the meaning of R.C. § 102.01(C).

3. The trial court erred in concluding that the employees, officers and directors of Plaintiff-Appellant Oriana House, Inc. are "public officials or employees" as defined by R.C. § 102.01(B) and "public officials" or "public servants" as defined by R.C. § 2921.01(A) and (B).
4. The trial court erred in granting Defendant-Appellee's Motion for Summary Judgment since there existed genuine issues of material fact and Defendant-Appellee was not entitled to judgment as a matter of law. The trial court further erred in failing to construe the evidence against Defendant-Appellee.

{¶5} We begin by recalling that summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists, (2) the moving parties are entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, when the evidence is construed in a light most favorable to the nonmoving party. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.* (1997), 78 Ohio St.3d 181, 183, 677 N.E.2d 343.

{¶6} We will address appellants' fourth assignment of error first because the same is dispositive of the present appeal. In support thereof, appellants point out that, while appellee offered no evidentiary support for its motion for summary judgment, appellants submitted 19 exhibits in support of their motion, including the affidavit of Mr. Lawrence. Despite this, the trial court declared, "this matter revolves around an

interpretation of statutory law, and *no evidence will be considered.*" (April 6, 2005 Decision and Entry Granting Defendant's Motion for Summary Judgment, at 3.) (Emphasis added.)

{¶7} Appellants point out, however, that the trial court went on to base its grant of summary judgment upon a number of factual findings with respect to which *appellants* offered the only evidence before the court. Thus, appellants argue, the trial court erred in granting summary judgment against them without considering their evidence at all, let alone considering the same in the light most favorable to appellants as the nonmovants, as required by Civ.R. 56. We agree.

{¶8} In the case of *Murphy v. City of Reynoldsburg* (1992), 65 Ohio St.3d 356, 604 N.E.2d 138, the Supreme Court of Ohio held, at the syllabus, "Civ.R. 56(C) places a mandatory duty on a trial court to thoroughly examine all appropriate materials filed by the parties before ruling on a motion for summary judgment. The failure of a trial court to comply with this requirement constitutes reversible error."

{¶9} The *Murphy* court based its holding on the wording of Civ.R. 56(C), which, the court stated, "makes it clear that the trial court must conscientiously examine all the evidence before it when ruling on a summary judgment motion." *Id.* at 359. The court also emphasized the fact that "[c]ompliance with the terms of Civ.R. 56(C) is of

fundamental importance at the trial court level, where the initial examination of the evidence occurs, and where the issues framing the litigation are shaped." *Id.* at 360.

{¶10} As was the case in *Murphy*, the trial court's decision to grant summary judgment in this case was based on factual findings with respect to which appellants had submitted evidentiary materials. Specifically, the court found, *inter alia*, that OHI is a place of "detention" as that term is defined in R.C. 2929.01(E);<sup>1</sup> OHI is funded by public grant money;<sup>2</sup> OHI has the power to act on behalf of and bind Summit County by its actions;<sup>3</sup> and Summit County has the right to control the actions of OHI.<sup>4</sup>

{¶11} A review of the record reveals that the evidentiary materials that appellants submitted with their memorandum in opposition to appellee's motion for summary judgment addressed each and every one of the foregoing factual findings. That the court made such findings and based its grant of summary judgment thereon without having reviewed any of the evidence constitutes reversible error, pursuant to the syllabus law of *Murphy*. Accordingly, we sustain appellants' fourth assignment of error.

{¶12} Rather than reviewing for ourselves the evidence that the trial court failed to consider, we must remand this case. As the court in *Murphy* noted, "[a] reviewing court, even though it must conduct its own examination of the record, has a different focus than

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<sup>1</sup> (April 6, 2005 Decision and Entry Granting Defendant's Motion for Summary Judgment, at 5.)

<sup>2</sup> (*Id.* at 5-6.)

<sup>3</sup> (*Id.* at 7.)

<sup>4</sup> (*Id.* at 8.)

the trial court. If the trial court does not consider all the evidence before it, an appellate court does not sit as a reviewing court, but, in effect, becomes a trial court. \* \* \* [Civ.R. 56(C)] mandates that the trial court make the initial determination whether to award summary judgment; the trial court's function cannot be replaced by an 'independent' review of an appellate court." *Murphy*, supra, at 360. Therefore, having sustained appellants' fourth assignment of error, we must reverse and remand.

{¶13} Our disposition of appellants' fourth assignment of error renders moot the remaining assignments of error, and, therefore, we will not address them. Having sustained appellants' fourth assignment of error, we reverse the judgment of the Franklin County Court of Common Pleas, and remand this matter to that court for further proceedings.

*Judgment reversed and cause remanded.*

PETREE and McGRATH, JJ., concur.

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