[Cite as Hartley v. Dept. of Rehab. and Corr., 2004-Ohio-3582.]

## IN THE COURT OF CLAIMS OF OHIO

BERNICE K. HARTLEY :

Plaintiff :

v. : CASE NO. 2003-12280-AD

DEPARTMENT OF REHABILITATION : ENTRY GRANTING

AND CORRECTION DEFENDANT, S MOTION

FOR SUMMARY JUDGMENT

Defendant

{¶1} Plaintiff, Bernice Hartley, filed this claim asserting she was falsely imprisoned by defendant, Department of Rehabilitation and Correction (DRC) for a period of 180 days. Plaintiff contended that due to this alleged false imprisonment she suffered damages in the amount of \$2,500.00, the statutory maximum recoverable under R.C. 2743.10. Plaintiff's described damages included lost income, penalties, lost education loans, rent, medical cost increases, and false incarceration. Apparently, plaintiff was incarcerated due to a probation revocation based on her inability to pay restitution, fines, and costs stemming from criminal convictions for theft and forgery. On appeal, the First District Court of Appeals of Hamilton County reversed plaintiff's probation revocation and discharged plaintiff from further prosecution on April 3, 2002. Plaintiff's claim of false imprisonment is grounded on the fact that her probation revocation, which subjected her to incarceration under DRC custody, was subsequently reversed on appeal. Plaintiff was excused from paying the requisite material filing fee for this claim.

{¶2} Evidence has shown plaintiff entered a DRC institution on October 10, 2001, having

had her community control probation revoked by a judgment issued on September 21, 2001 from the Court of Common Pleas of Hamilton County. Pursuant to the judgment entry revoking community control, plaintiff was sentenced to a period of confinement of one year with 83 days credit to be applied against the one year sentence. Plaintiff remained incarcerated at a DRC facility until March 22, 2002, when she was released due to the expiration of the one-year sentence term imposed by the trial court with all credits applied. Subsequently, on April 3, 2002, plaintiff's community control revocation was reversed after plaintiff had been released from defendant's custody.

- {¶3} Defendant essentially filed a motion for summary judgment in this matter arguing that plaintiff has failed to produce any set of facts entitling her to recovery under a false imprisonment theory. Defendant contended "an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appears such judgment or order is void." *Larkins v. Ohio Department of Rehabilitation & Correction* (Mar. 18, 1999), Franklin App. No. 98AP-711. Defendant asserted plaintiff was lawfully confined under a valid court sentencing order and consequently, plaintiff is precluded from maintaining a false imprisonment action against DRC.
- {¶4} Plaintiff responded to defendant's summary judgment motion insisting she was falsely imprisoned due to the actions of the Court of Common Pleas of Hamilton County. Plaintiff did not present any evidence to establish DRC lacked justification for keeping her in confinement until March 22, 2002.
  - $\{\P 5\}$  To the extent that plaintiff alleges a claim for false imprisonment under the common

law, the tort of false imprisonment is defined as an intentional confinement of an individual in the absence of an intervening justification, despite knowledge that the privilege initially justifying that confinement no longer exists. *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St. 3d 107. However, "an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear[s] that such judgment or order of the court, is void." *Bennett*, id, at 111; *Tymcio v. State* (1977), 52 Ohio App. 2d 298, 303.

- {¶6} As stated, the substance of plaintiff's claim is that her probation revocation was overturned on appeal. Plaintiff does not allege DRC continued to confine her for any period of time after receiving notice that the judgment of revocation had been reversed. In fact, defendant released plaintiff at the expiration of her sentence before the appellate court ruled on her revocation appeal. Based upon the facts set forth in this claim, it is clear defendant initially incarcerated plaintiff pursuant to a lawful sentencing order and then released plaintiff when that sentence expired. Liability for false imprisonment does not attach under these circumstances. See *Carter v. Ohio Department of Rehabilitation and Correction* (Aug. 30, 2001), Court of Claims No. 2000-10839; *Earley v. State of Ohio* (Apr. 7, 2004), Court of Claims No. 2004-01664-WI.
- {¶7} For the foregoing reasons, defendant's motion for summary judgment is granted and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT

**Deputy Clerk** 

Entry cc:

Bernice K. Hartley 3755 Westmont Drive #21 Cincinnati, Ohio 45205

Gregory C. Trout, Chief Counsel Defendant
Department of Rehabilitation
and Correction
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RDK/laa 6/2 Filed 6/17/04 Sent to S.C. reporter 7/7/04

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