

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

PAUL EDWARD BUNTING

Plaintiff-Appellant

-vs-

STATE OF OHIO

Defendant-Appellee

: JUDGES:

:
: Hon. W. Scott Gwin, P.J.
: Hon. William B. Hoffman, J.
: Hon. Patricia A. Delaney, J.

: Case No. 2009CA00153

: O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Canton Municipal Court
Case No. 2009 CRF 0209

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

September 14, 2009

APPEARANCES:

For Plaintiff-Appellant:

PAUL EDWARD BUNTING
ID. No. 395-279
Belmont Correctional Institution
68518 Bannock Rd.
P.O. Box 540
St. Clairsville, OH 43950-0540

For Defendant-Appellee:

JOSEPH MARTUCCIO
CANTON LAW DIRECTOR

TYRONE D. HAURITZ
CANTON PROSECUTOR

ANTHONY J. FLEX
218 Cleveland Ave. S.W.
P.O. Box 24218
Canton, OH 44702

Delaney, J.

{¶1} Plaintiff-Appellant, Paul Edward Bunting appeals the May 26, 2009 judgment entry of the Canton Municipal Court. Defendant-Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On April 14, 2009, Appellant filed a complaint and affidavits with the Canton Municipal Court requesting that a warrant and/or summons be issued for thirty-six felonies, three accompanying misdemeanors, and other federal law violations. Appellant's complaint arose from allegations that he was an heir of his deceased mother, Mary Jane Bunting, and entitled to inherit from her estate. He accused his sister, Mary Watts of improperly obtaining power of attorney prior to his mother's death and unlawfully transferring estate property.¹

{¶3} The trial court issued a judgment entry on April 15, 2009 finding that the affidavits were not filed in good faith and the claims were not meritorious. The trial court referred the affidavits to the Prosecuting Attorney for investigation pursuant to R.C. 2935.10(A). Appellant requested a probable cause hearing and the trial court held a probable cause hearing on May 21, 2009. Based upon the evidence presented at the hearing and the Prosecutor's recommendation that there was no probable cause to issue any arrest warrants, the trial court filed its judgment entry on May 26, 2009 declining to find probable cause to issue the requested arrest warrants. The trial court found that the affidavits and pleadings were not filed in good faith and that the claims made in Appellant's thirty-six felony and three accompanying misdemeanor allegations were not meritorious.

¹ These matters were also addressed by this Court in *Bunting v. Estate of Bunting*, Stark App. Nos. 2008CA00173, 2008CA00199, 2009-Ohio-3136.

{¶4} It is from this decision Appellant now appeals.

{¶5} Appellant raises one Assignment of Error:

{¶6} "THE CITY PROSECUTING LAW DIRECTOR HAD FAILED THE QUALIFIED OFFICE INCUMBENCY POSITION TO COMPTENTLY [SIC] AND ITELLIGENTLY [SIC] EXERCISE AN INVESTIGATIVE PROCEDURE AND THE MUNICIPAL COURT ABUSED ITS DETERMINING DISCRETION BY PREJUDICIALLY ACCEPTING THE RECOMMENDATION THAT DECLINED THE BLATANT RECOGNIZABLE EXHIBITED PRIMA FACIE CLEAR EVIDENCE THAT HAD DEMONSTRATED PROOF TO FIND PROBABLE CAUSE ON THE GROUND OF STATUTORILY RECOGNIZED FELONY VIOLATIONS TO CONSIDER WARRANTING THE ARRESTS FOR A VALID AGGRAVATED THEFT COMPLAINT TO PROVIDE THE CIVIL INTERESTS OF PROTECTING A VICTIM'S DUE PROCESS RIGHT WITHOUT DISCREPANCY ...TO BE REVIEWED UNDER THE ABUSE OF DISCRETION STANDARD THAT THE COURT'S DETERMINATION WAS DENIED IN VIOLATION OF THE STATUTORY PROVISION AND VICTIM'S EQUAL PROTECTION."

{¶7} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶8} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusory form. The decision may be by judgment entry in which case it will not be published in any form."

{¶9} One of the important purposes of accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶10} This appeal shall be considered in accordance with the aforementioned rules.

{¶11} R.C. 2935.09 governs accusation by affidavit to cause arrest or prosecution. Subsection (D) states the following:

{¶12} “A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume.”

{¶13} R.C. 2935.10 governs procedures upon filing of affidavit or complaint. Subsection (A) states the following:

{¶14} “Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk, or magistrate, unless he has reason to believe that it was not filed in good faith, or the

claim is not meritorious, shall forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer; otherwise he shall forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.”

{¶15} In *State ex rel. Boylen v. Harmon*, 107 Ohio St.3d 370, 2006-Ohio-7, ¶ 6-7, the Supreme Court of Ohio explained the required procedures as follows:

{¶16} “Boylen's claim lacks merit. As we have consistently held, ‘R.C. 2935.09 does not mandate prosecution of all offenses charged by affidavit.’ * * * ‘While R.C. 2935.09 provides that a “private citizen having knowledge of the facts” shall file with a judge, clerk of court, or magistrate an affidavit charging an offense committed in order to cause the arrest or prosecution of the person charged, it must be read *in pari materia* with R.C. 2935.10 which prescribes the subsequent procedure to be followed.’ * * *

{¶17} “Under R.C. 2935.10(A), if the affidavit filed under R.C. 2935.09 charges a felony, the judge, clerk, or magistrate with whom the affidavit is filed must issue a warrant for the arrest of the person charged in the affidavit unless the judge, clerk, or magistrate ‘has reason to believe that it was not filed in good faith, or the claim is not meritorious.’ [O]therwise, he shall forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.’ R.C. 2935.10(A). Boylen's affidavits charge various felonies, so R.C. 2935.10(A) requires the clerk to follow the specified procedure.”

{¶18} Pursuant to *State v. Boylen*, Stark App. No. 2005CA00164, 2006-Ohio-2030 and R.C. 2935.10(A), the trial court referred Appellant's affidavit to the prosecutor's office for an investigation on April 15, 2009. A trial court is to review a

prosecutor's decision on the issue of whether the claims in the affidavit lacked merit and the affidavit was not filed in good faith under an abuse of discretion standard. *State ex rel. Evans v. Columbus Dept. of Law* (1998), 83 Ohio St.3d 174, 175, 699 N.E.2d 60. "In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217. This court likewise will review the trial court's decision under the same standard. *In re Slayman*, Licking App. No. 08CA70, 2008-Ohio-6713.

{¶19} A probable cause hearing was held before the trial court on May 21, 2009 where evidence was presented regarding the prosecutor's investigation pursuant to R.C. 2935.10(A). Appellant did not file a transcript of the probable cause hearing with his appeal of the May 26, 2009 trial court decision. Absent a transcript, this Court will presume regularity of the proceedings in the trial court. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384.

{¶20} As such, we overrule Appellant's sole Assignment of Error.

{¶21} The judgment of the Canton Municipal Court is affirmed.

By: Delaney, J.

Gwin, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

PAD:kgb

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

PAUL EDWARD BUNTING	:	
	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STATE OF OHIO	:	
	:	
	:	
	:	Case No. 2009 CA 00153
Defendant-Appellee	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN