

1 Perez et al., Appellants, v. Cleveland, Cty. Coroner, Appellee.

2 [Cite as Perez v. Cleveland (1997), _____ Ohio St.3d _____.]

3 *Coroners -- Use of declaratory judgment for challenging a coroner's*
4 *verdict is inappropriate -- R.C. 313.19, delimiting the procedure*
5 *for challenging a coroner's verdict, is not void for vagueness due*
6 *to its lack of specificity.*

7 1. Because R.C. 313.19 delimits the procedure for challenging a coroner's
8 verdict, use of declaratory judgment to resolve those same issues is
9 inappropriate. (*State ex rel. Albright v. Delaware Cty. Court of Common*
10 *Pleas* [1991], 60 Ohio St.3d 40, 42, 572 N.E.2d 1387, 1389, followed
11 and applied.)

12 2. R.C. 313.19 is not void for vagueness due to its lack of specificity
13 regarding the procedure for challenging a coroner's verdict.

14 (No. 96-108 -- Submitted March 18, 1997 -- Decided May 14 , 1997.)

15 APPEAL from the Court of Appeals for Hamilton County, No. C-940553.

16 In April 1989, appellee, Hamilton County Coroner Frank P. Cleveland,
17 signed the death certificate of Sarah Perez, the infant daughter of appellants,
18 Richard and Katherine Perez. Cleveland listed asphyxia due to homicide as the

1 cause of Sarah's death. In November of that same year, Katherine Perez was
2 tried for Sarah's murder and acquitted.

3 The Perezes filed an action under R.C. 313.19 and for declaratory
4 judgment, asking the court for an order directing Cleveland to change Sarah's
5 death record to indicate that her death resulted from natural causes rather than
6 homicide. The trial court dismissed the cause on Cleveland's motion, asserting
7 that no real or justiciable controversy existed. The appellate court affirmed that
8 dismissal. In *Perez v. Cleveland* (1993), 66 Ohio St.3d 397, 613 N.E.2d 199
9 ("*Perez I*"), this court reversed and remanded the cause to the trial court after
10 concluding that the Perezes had stated a justiciable claim for relief under R.C.
11 313.19.

12 On remand, the trial court followed decisional law for that county
13 rendered in *Roark v. Lyle* (App.1952), 68 Ohio Law Abs. 180, 52 O.O. 168,
14 121 N.E.2d 837, to determine that R.C. 313.19's provision relating to judicial
15 review of coroner decisions is void for vagueness and therefore
16 unconstitutional. The appellate court upheld the trial court's judgment.

1 The cause is now before this court pursuant to a discretionary appeal.

2

3 *James N. Perry and D. Shannon Smith*, for appellants.

4 *Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *John J.*

5 *Arnold*, Assistant Prosecuting Attorney, for appellee.

6

7 COOK, J. In this case we determine whether that portion of R.C. 313.19

8 authorizing judicial review of a coroner's verdict regarding the cause of death

9 and the manner and mode in which the death occurred can be given effect

10 under the Due Process Clauses of our state and federal Constitutions or

11 whether that portion of the statute is void for vagueness. R.C. 313.19 states:

12 “The cause of death and the manner and mode in which the death

13 occurred, as delivered by the coroner and incorporated in the coroner's verdict

14 and in the death certificate filed with the division of vital statistics, shall be the

15 legally accepted manner and mode in which such death occurred, and the

16 legally accepted cause of death, *unless the court of common pleas of the county*

1 *in which the death occurred, after a hearing, directs the coroner to change his*
2 *decision as to such cause and manner and mode of death.”* (Emphasis added.)

3 In arguing that the judicial review provision of R.C. 313.19 is not void
4 for vagueness, appellants rely on dicta contained in *Perez I, Vargo v. Travelers*
5 *Ins. Co., Inc.* (1987), 34 Ohio St.3d 27, 29, 516 N.E.2d 226, 229, fn. 3, and
6 *State ex rel. Blair v. Balraj* (1994), 69 Ohio St.3d 310, 314, 631 N.E.2d 1044,
7 1048, where this court advised that the relief afforded under R.C. 313.19 can be
8 obtained through declaratory judgment. Appellants argue that the procedures
9 set forth in the Declaratory Judgment Act, R.C. Chapter 2721, may be applied
10 to cure R.C. 313.19’s alleged procedural deficiencies. We hold that R.C.
11 313.19’s judicial review provision is not void for vagueness, but retreat from
12 our earlier statements suggesting that declaratory judgment is the proper
13 vehicle to challenge a coroner’s verdict.

14 R.C. 313.19 prescribes the presumptive value to be accorded a coroner’s
15 verdict. *Vargo, supra*, 34 Ohio St.3d 27, 516 N.E.2d 226, paragraph one of the
16 syllabus. It also outlines a special statutory procedure allowing judicial review

1 of a coroner's verdict. Jurisdiction and venue in an R.C. 313.19 action are
2 exclusively vested in the common pleas court of the county in which the death
3 occurred. Further, R.C. 313.19 mandates a hearing on the challenge and
4 empowers the court to direct the coroner to change his verdict.

5 Because R.C. 313.19 delimits the procedure for challenging a coroner's
6 verdict, use of declaratory judgment to resolve those same issues is
7 inappropriate. *State ex rel. Albright v. Delaware Cty. Court of Common Pleas*
8 (1991), 60 Ohio St.3d 40, 42, 572 N.E.2d 1387, 1389. The consequent issue is
9 whether the special statutory procedure outlined in R.C. 313.19 may be given
10 effect under our state and federal Constitutions without resort to declaratory
11 judgment.

12 Appellate courts that have found R.C. 313.19's judicial review
13 provision void for vagueness have rested their analysis on the statute's lack of
14 specificity regarding how judicial review is to be instituted and the statute's
15 failure to express a standard of proof. *Goldsby v. Gerber* (1987), 31 Ohio
16 App.3d 268, 270, 31 OBR 553, 555, 511 N.E.2d 417, 420; *Roark v. Lyle*

1 (App.1952), 68 Ohio Law Abs. 180, 52 O.O. 168, 121 N.E.2d 837; *State ex rel.*

2 *Dana v. Gerber* (1946), 79 Ohio App. 1, 8, 34 O.O. 48, 50, 70 N.E.2d 111, 115.

3 That lack of specificity, however, does not violate due process.

4 In *Grayned v. Rockford* (1972), 408 U.S. 104, 108-109, 92 S.Ct. 2294,

5 2298-2299, 33 L.Ed.2d 222, 227-228, the United States Supreme Court set out

6 the following guidelines for evaluating a void-for-vagueness claim:

7 “Vague laws offend several important values. First, because we assume

8 that man is free to steer between lawful and unlawful conduct, we insist that

9 laws give the person of ordinary intelligence a reasonable opportunity to know

10 what is prohibited, so that he may act accordingly. Vague laws may trap the

11 innocent by not providing fair warning. Second, if arbitrary and discriminatory

12 enforcement is to be prevented, laws must provide explicit standards for those

13 who apply them. A vague law impermissibly delegates basic policy matters to

14 policemen, judges, and juries for resolution on an *ad hoc* and subjective basis,

15 with the attendant dangers of arbitrary and discriminatory application. ***”¹

16 (Footnotes omitted.) Accordingly, when a statute is challenged under the due

1 process doctrine of vagueness, a court must determine whether the enactment
2 (1) provides sufficient notice of its proscriptions and (2) contains reasonably
3 clear guidelines to prevent official arbitrariness or discrimination in its
4 enforcement. *Smith v. Goguen* (1974), 415 U.S. 566, 94 S.Ct. 1242, 39
5 L.Ed.2d 605.

6 R.C. 313.19 does not proscribe or prohibit conduct. Accordingly, the
7 reasons advanced to find the judicial review provision of that statute void for
8 vagueness relate solely, if at all, to the possibility of arbitrary or discriminatory
9 enforcement of R.C. 313.19's remedial provision. See *United States ex rel.*
10 *Fitzgerald v. Jordan* (C.A.7, 1984), 747 F.2d 1120, 1129-1130.

11 The void-for-vagueness doctrine does not require statutes to be drafted
12 with scientific precision. *State v. Anderson* (1991), 57 Ohio St.3d 168, 174, 566
13 N.E.2d 1224, 1229. Nor does the doctrine require that every detail regarding
14 the procedural enforcement of a statute be contained therein. Instead, it permits
15 a statute's certainty to be ascertained by application of commonly accepted
16 tools of judicial construction, with courts indulging every reasonable

1 interpretation in favor of finding the statute constitutional. *State v. Dorso*
2 (1983), 4 Ohio St.3d 60, 61, 4 OBR 150, 151, 446 N.E.2d 449, 450.

3 Courts are well equipped to determine the appropriate procedures to
4 employ in hearing a cause of action. Issues of standing and application of the
5 appropriate statute of limitations often require judicial analysis beyond the
6 language of the statute authorizing an action. See, e.g., *Hardin v. Kentucky*
7 *Util. Co.* (1968), 390 U.S. 1, 6-7, 88 S.Ct. 651, 654-655, 19 L.Ed.2d 787, 792-
8 793; *McAuliffe v. W. States Import Co., Inc.* (1995), 72 Ohio St.3d 534, 651
9 N.E.2d 957. Likewise, courts must occasionally determine the appropriate
10 standard of proof to apply in statutory actions in the absence of a legislative
11 statement on the issue. See *Walden v. State* (1989), 47 Ohio St.3d 47, 53, 547
12 N.E.2d 962, 967 (holding that, in the absence of language indicating the
13 standard of proof to apply in a civil action for wrongful imprisonment under
14 R.C. 2305.02, “the General Assembly intended to apply the usual
15 preponderance of the evidence standard to civil proceedings”). Once these
16 determinations are made by a court, appellate review and *stare decisis* prevent

1 arbitrary or discriminatory enforcement. See *Fitzgerald, supra*, 747 F.2d at
2 1130.

3 None of the concerns connected with the void-for-vagueness doctrine is
4 implicated in R.C. 313.19's judicial review provision. Accordingly, we hold
5 that R.C. 313.19 is not void for vagueness due to its lack of specificity
6 regarding the procedure for challenging a coroner's verdict. In light of our
7 holding, we reverse the judgment of the court of appeals and remand the cause
8 to the common pleas court to conduct a hearing pursuant to R.C. 313.19.

9 *Judgment reversed*

10 *and cause remanded.*

11 MOYER, C.J., F.E. SWEENEY, PFEIFER and LUNDBERG STRATTON, JJ.,
12 concur.

13 DOUGLAS and RESNICK, JJ., concur in judgment only.

14 Footnotes:

1 1. We omit the third factor set forth in *Grayned, supra*, relating solely to
2 statutes that abut on First Amendment freedoms, as inapplicable to this case.
3 *Id.* at 109, 92 S.Ct. at 2299, 33 L.Ed.2d at 228.