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Defendant's Brief in Support of Demand for Trial by Jury

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED
1999 APR 14 4:30

J. FUERST
OF COURTS
CUYAHOGA COUNTY

ALAN DAVIS, Special Administrator
of the Estate of Samuel H. Sheppard,

Plaintiff,

vs.

STATE OF OHIO,

Defendant.

CASE NO. 312332

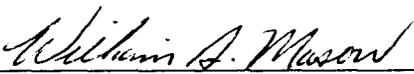
JUDGE RONALD SUSTER

**DEFENDANT'S BRIEF IN SUPPORT
OF DEMAND FOR TRIAL BY JURY**

Defendant, State of Ohio, by and through counsel, William D. Mason, Prosecuting Attorney for Cuyahoga County, and Marilyn Barkley Cassidy, Assistant Prosecutor, submit herewith for the Court's consideration, the State's Brief in Support of its Demand for Trial by Jury.

Respectfully submitted,

WILLIAM D. MASON, Prosecuting Attorney
of Cuyahoga County, Ohio



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ATTORNEYS FOR DEFENDANT

INTRODUCTION

Trial by jury is a right granted to litigants under the United States and Ohio Constitutions. Ohio permits jury trials on actions historically recognized as actions “at law” prior to the adoption of the Ohio Constitution. Ohio Revised Code §2311.04, the adoption of the Modern Courts Amendment, and the plenary rule-making authority of the Ohio Supreme Court, serve to render jury trials on mixed issues of law and equity a matter of right, or in certain instances, permissible where no right exists.

False imprisonment was a cognizable claim at common law. The State’s comparatively recent waiver of immunity and consent to be sued by virtue of R.C. 2743.02 and the subsequent enactment of R.C. 2743.48 have served only to allow claims against the State which formerly could be brought only between private parties. No new claim for relief or right of action was created. Accordingly, the State is entitled to have its liability determined by a jury, all as is set forth more fully below.

FACTS

On or about October 19, 1995 Alan Davis, Executor, filed a Motion for Declaration of Wrongful Imprisonment in the Cuyahoga County Court of Common Pleas Criminal Division, under Case Number CR 645731. Specifically, that case number is the case captioned State of Ohio v. Samuel Sheppard, the criminal prosecution of Samuel Sheppard which was initiated in approximately January of 1955. Several related pleadings and motions followed.

On or about July 24, 1996, Alan Davis, Executor of the Estate of Samuel H. Sheppard properly filed his complaint alleging wrongful imprisonment and seeking a declaration of innocence with the clerk of the civil division of the Cuyahoga County Court of Common Pleas. The case was assigned by random draw to Honorable Kathleen Sutula. It was transferred, however, to the docket of Honorable Ronald Suster.

A series of pleadings and motions were filed in Civil Case No. 312322 including, Motion to Dismiss, Answer, Motion for Judgment on the Pleadings. On or about June 18, 1997, the State of Ohio filed a petition in prohibition in the Ohio Supreme Court. Arguments were heard on January 13, 1998. The court made its ruling against prohibition on December 5, 1999. The State filed a motion for reconsideration which was overruled. The trial court resumed its jurisdiction of the within action in January, 1999.

On January 16, 1999, William D. Mason was appointed prosecuting attorney for Cuyahoga County, successor to Stephanie Tubbs Jones. At a pretrial he expressed to the court and to opposing counsel, his position that, as counsel for the State of Ohio, he would be seeking a trial by jury. The Court directed the State and petitioner to make the requisite filings and that it will determine whether or not the within case may be tried to a jury.

LAW AND ARGUMENT

I. DEFENDANT HAS A RIGHT TO TRIAL BY JURY PURSUANT TO THE OHIO CONSTITUTION SINCE FALSE IMPRISONMENT WAS ACTIONABLE AT COMMON LAW.

A. HISTORICAL BACKGROUND

The Ohio Constitution declares that the right to trial by jury in civil cases is to remain “inviolable” but does not elaborate on the scope of the right. Section 5, Article I of the Constitution states “The right of trial by jury shall be inviolable, except that in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths.”

The right guaranteed in Section 5, Article I of the Ohio Constitution is the right to a jury trial as it was at the time of adoption of the Constitution of 1802. Hence, only actions at common law were triable to a jury as of right, while actions in equity....were non jury matters. Actions at common law subject to trial by jury included, *inter alia*, various forms of action which today are characterized as torts. Baldwin’s Ohio Civil Practice, Obtaining a Trial by Jury, T27.02, p. 361. False imprisonment is a tort action which was actionable for money damages between private parties at common law and hence entitles a litigant to a trial by jury.

The state’s waiver of immunity is critical in the analysis of a party’s right to a jury trial in wrongful imprisonment actions brought pursuant to R.C. 2743.48 for the reason that the statute waiving immunity, R.C. 2743.02 (A) contains language explicitly limiting liability exposure to claims which can be brought between private parties:

R.C. 2743.02 (A):

“The state hereby waives its immunity from liability and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties. . .”

Further, that language has been interpreted NOT to have created any new cause of action.

“The state’s waiver of its sovereign immunity from liability has not opened up the public coffers to all who may seek recompense but, rather permits the liability of the state to be determined in accordance with the rules of law applicable to suits between private parties, **no new claim for relief or right of action being created by the waiver of immunity. R.C. 2743.02(A) merely permits actions against the state to be brought which were previously barred by the doctrine of sovereign immunity, but such actions must be predicated upon previously recognized claims for relief, for which the state would have been liable except for sovereign immunity.** Smith v. Wait (1975) 46 Ohio App 2d. 281 at 283, Emphasis added.

This immunity derived from the law governing **false imprisonment**. As stated in Diehl v. Friester (1882), 37 Ohio St.473, 475, “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 that such judgment or order is void.” See Brinkman v. Drolesbaugh (1918), 97 Ohio St. 171, 119 N.E.451, paragraphs five and six of the syllabus; Johns v. State (1981), 67 Ohio St.2d 325, 21 O.O.3d 204, 423 N.E.2d 863, paragraph one of the syllabus, cert. denied (1982), 455 U.S. 944. R. C. 2743 abolished this immunity for purposes of the state’s liability to “wrongfully imprisoned individuals.”

The Ohio Supreme Court determined, in 1991, that “ **R.C. 2743.48 does not replace the false imprisonment tort, but, rather, supplements it to allow a recovery in some cases where recovery was not available before.**” Bennett v. Ohio Dept. Of Rehab & Corr., 60 Ohio St. 3d at

111 (1991), Emphasis added. The court explains further:

R.C. 2743.48 addresses a narrow legal problem by providing compensation to innocent persons who have been wrongfully convicted and incarcerated for a felony. R.C. 2743.48 (A) (1) to (5). **The enactment of R.C. 2743.48 was necessary to authorize compensation because the state, even after the waiver of sovereign immunity in R.C. 2743.02, remained generally immune from lawsuits by persons who were wrongfully convicted or incarcerated.** Bennett. Ohio Dept of Rehab & Corr., supra.

B. OHIO REVISED 2311.04 CODE EXPANDS THE CONSTITUTIONAL PARAMETERS FOR TRIAL BY JURY, AND CANNOT LIMIT THE RIGHT TO TRIAL BY JURY.

R.C. Section 2311.04, **Trial of issues by court or jury:**

“Issues of law must be tried by the court, unless referred as provided in the Rules of Civil Procedure. Issues of fact arising in actions for the recovery of money only, or specific real or personal property shall be tried by a jury, unless a jury trial is waived or unless all parties consent to a reference under the Rules of civil Procedure. All other issues of fact shall be tried by the court, subject to its power to order any issue to be tried by a jury, or referred. “

With law and equity procedurally merged under the modern rules of pleading, the former sharp distinction between actions and law and in equity is blurred.

“There is a difference in focus between the constitutional right to a jury, and the right under RC 2311.04: the constitutional right depends on the form of the action, while the statutory right depends on the remedy. The difference renders the statutory right somewhat broader than the constitutional right.. Since the statutory right depends on the remedy rather than the form of action, however, it is possible for the statute to require a jury in some actions which were nonjury matters at common law. For example, a claim for money only based on principles of equity would require a jury under the statute, but not under the Constitution.” Baldwins Ohio Civil Practice, Vol. 1, T27.06, p.367. “Obtaining a Trial by Jury”.

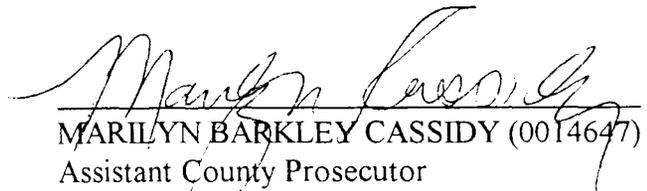
The case at bar is an action for money damages. Numerous other legal insufficiencies in the petition and allegations notwithstanding, under the Ohio Constitution, this defendant has a right inviolate to trial by jury. The fact that the legislature chose to bifurcate the proceedings between the Court of Common Pleas, where liability is determined, and the Court of Claims, wherein the question of damages is litigated is inconsequential. Moreover, the Court's failure to grant a jury trial where a party is entitled constitutes prejudicial error.

CONCLUSION

In light of the foregoing facts and principles of law, defendant respectfully submits that a trial by jury is a right held inviolate under the Ohio Constitution. Accordingly, defendant respectfully requests that its jury demand be honored.

Respectfully submitted,

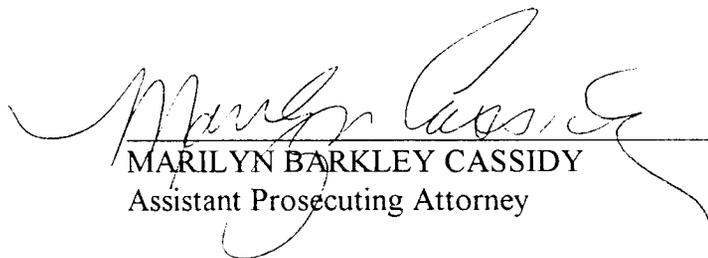
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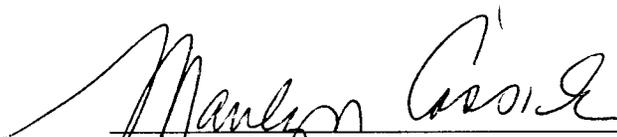
CERTIFICATE OF SERVICE

A copy of the foregoing Brief has been sent by ordinary United States Mail, postage prepaid, this _____ day of March, 1999, upon Terry Gilbert, at 1700 Standard Building, 1370 Ontario Street, Cleveland, Ohio 44113.


MARILYN BARKLEY CASSIDY
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

A copy of the foregoing Relator's Request for Oral Argument has been sent by ordinary United States Mail, this 25 day of August, 1997, to Niki Z. Schwartz, Gold, Rotatori, & Schwartz Co., The Leader Building, Cleveland, Ohio 44114.



MARILYN BARKLEY CASSIDY
Assistant Prosecuting Attorney