



CSU
College of Law Library

Cleveland State University
EngagedScholarship@CSU

1995-2002 Court Filings

2000 Trial

5-10-1999

Defendant's Reply to Plaintiff's Brief in Opposition to Trial by Jury and Amended Answer of the State of Ohio to the Petition for Declaration of Wrongful Incarceration

William D. Mason
Cuyahoga County Prosecutor

Marilyn B. Cassidy
Cuyahoga County Assistant Prosecutor

Follow this and additional works at: https://engagedscholarship.csuohio.edu/sheppard_court_filings_2000

How does access to this work benefit you? Let us know!

Recommended Citation

Mason, William D. and Cassidy, Marilyn B., "Defendant's Reply to Plaintiff's Brief in Opposition to Trial by Jury and Amended Answer of the State of Ohio to the Petition for Declaration of Wrongful Incarceration" (1999). *1995-2002 Court Filings*. 35.
https://engagedscholarship.csuohio.edu/sheppard_court_filings_2000/35

This Davis v. State of Ohio, Cuyahoga County Common Pleas Case No. CV96-312322 is brought to you for free and open access by the 2000 Trial at EngagedScholarship@CSU. It has been accepted for inclusion in 1995-2002 Court Filings by an authorized administrator of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

FILED

1999 MAY 10 P 4:06

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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 REPLY TO
: PLAINTIFF'S BRIEF IN OPPOSITION
: TO TRIAL BY JURY

Defendant, State of Ohio, by and through counsel, William D. Mason, Prosecuting Attorney for Cuyahoga County, and Marilyn B. Cassidy, Assistant Prosecuting Attorney, for its reply to plaintiff's brief in opposition to jury demand, submits the following arguments for the court's consideration:

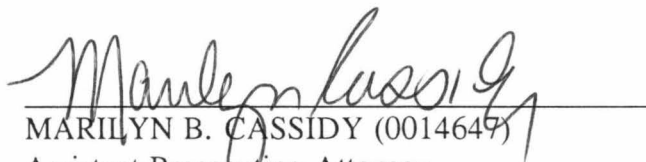
1. Granting defendant leave to amend its answer to include a jury demand does not constitute an abuse of discretion. Procedurally, this trial court has had jurisdiction over the matter for a relatively short period of time. The case is in the early stages of discovery. Accordingly, defendant has not been dilatory .

2. False imprisonment was an action at law at the time the Ohio Constitution was created which affords the state a right to trial by jury. The state's exercise of immunity, and subsequent waiver, in no way transforms the nature and substance of the action at bar.

The law and facts upon which these propositions are based are set forth fully in the memorandum attached hereto and expressly incorporated herein.

Respectfully submitted,

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

A handwritten signature in cursive script, appearing to read "Marilyn B. Cassidy", is written over a horizontal line.

MARILYN B. CASSIDY (0014647)
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7785
ATTORNEYS FOR DEFENDANT

MEMORANDUM IN SUPPORT

DEFENDANT HAS NOT BEEN DILATORY IN MAKING A
DEMAND FOR TRIAL BY JURY

A review of the procedural history of the case at bar amply illustrates that defendant has litigated in a timely and efficient manner. The first petition filed in 1995, although pending for nine months amounts to a legal nullity. Upon the filing of this civil action, in July of 1996, defendant filed its responses. Defendant's motion for judgment on the pleadings was overruled June 3, 1997. Within three weeks, a prohibition action was commenced in the Ohio Supreme Court and an Alternative Writ in Prohibition issued. **Thus the trial court had no jurisdiction of this case until the Ohio Supreme Court denied prohibition in December of 1998.** As soon as the trial court resumed jurisdiction and held a pretrial in January of 1999, the state made known its intention to demand a trial by jury. Plaintiff's suggestion that allowing a jury demand three months after the supreme court's determination that the trial court is vested with jurisdiction over the matter is simply wrong.

DEFENDANT HAS A RIGHT TO TRIAL BY JURY ON THE
QUESTION OF WRONGFUL IMPRISONMENT, SINCE
SUCH ACTIONS WERE A QUESTION OF LAW AT THE
TIME OF THE ADOPTION OF THE OHIO CONSTITUTION

As is set forth in detail in defendant's first brief, litigants are entitled to trial by jury in matters that were actionable at law between private parties at the time the Ohio Constitution was adopted. **The Ohio Supreme Court has ruled that R.C. 2743 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). Plaintiff's

assertion that the Ohio Supreme Court has rejected this position in Walden v. State, 47 Ohio St. 3d 17 (1989) can be dismissed by observing the dates on the opinions. Walden was decided in 1989 while Bennett was decided in 1991. Plaintiff neglects to include also in his citation, the court's footnote at page 53 stating explicitly "We express no opinion on the question of whether there is a right to a jury trial in a proceeding under R.C. 2305.02, as this question is not presented for our review." Walden, supra, at 53. Finally, it is significant that the Walden court was reviewing the case on the question of whether or not a defendant acquitted by reason of self-defense is a wrongfully imprisoned individual. In contrast, the Bennett court analyzes the question of whether or not a "common law" false imprisonment action may be brought against the state.

CONCLUSION

The development of the law of wrongful imprisonment is an outgrowth of constitutional and tort law evolution. Historically, by virtue of sovereign immunity, a wrongfully imprisoned individual had no action as against the state, although false imprisonment claims generally were recognized at common law. R.C. 2743.02, the state's waiver of immunity granted statutory authority for parties to sue the state in some instances. That waiver did not include wrongfully imprisoned individuals until 1984. In the interim, the Ohio Legislature attempted to rectify injustices through moral claims process, until the enactment of R.C. 2743.48, which provides a legal recourse against the state for wrongly convicted individuals.

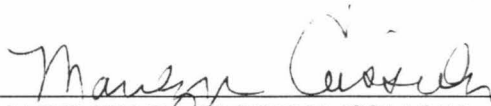
In that context, it is abundantly clear that the Ohio Constitution confers upon the parties the right to a jury trial in these matters. Plaintiff's assertion that because no jury was used in the moral claims process translates into a constitutional prohibition against a jury is plainly wrong. As recently as 1991 the Ohio Supreme Court, in Bennett, supra, clearly articulated that R.C. 2743.48 is an

extension of tort law, not a substantive change to the prior tort law, nor the creation of a new legal animal.

For all of the foregoing reasons, defendant, State of Ohio respectfully requests that its leave to amend answer and demand for trial by jury be granted.

Respectfully submitted,

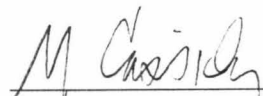
WILLIAM D. MASON, Prosecuting Attorney
of Cuyahoga County, Ohio



MARILYN B. CASSIDY (0014647)
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7785
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A copy of the foregoing Reply has been sent by ordinary United States Mail, postage prepaid, this 11 day of May, 1999 to Terry Gilbert, 1700 Standard Bldg., 1370 Ontario Street, Cleveland, Ohio 44113.



MARILYN B. CASSIDY
Assistant Prosecuting Attorney

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED
1999 MAR 11 P 4:30
JUDGE E. FUERST
CLERK 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

:
: **AMENDED ANSWER OF**
: **THE STATE OF OHIO TO THE**
: **PETITION FOR DECLARATION OF**
: **WRONGFUL INCARCERATION**

:
: (Jury Demand Endorsed Hereon)

The State of Ohio, by and through counsel, William D. Mason, Prosecuting Attorney for Cuyahoga County, and Marilyn Barkley Cassidy, Assistant Prosecuting Attorney, for its amended answer to the petition herein states as follows:

1. State admits the allegations set forth in paragraphs one, two, three and four of the petition.
2. State admits that Dr. Sheppard was incarcerated in Ohio prison(s) but denies the period of time set forth in paragraph five.
3. The State denies the allegations set forth in paragraphs six and seven of the petition.
4. The State denies for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in paragraphs eight, nine, ten, eleven and twelve.
5. The State specifically denies paragraph thirteen of the petition.

AFFIRMATIVE DEFENSES

6. Failure to state a claim upon which relief can be granted.
7. This Court lacks jurisdiction to render judgment.
8. The Estate of Samuel Sheppard lacks standing to assert a claim of wrongful incarceration.
9. This action is barred by the statute of limitations.
10. This action is barred by laches.
11. Any claim that Samuel Sheppard may have lawfully pursued has abated with his death, the passage of time, and through his failure to timely assert a claim at or near the time of his acquittal.
12. This claim is barred by the doctrine of *res judicata*.
13. This claim is barred by the doctrine of collateral estoppel.

WHEREFORE, defendant respectfully requests a trial by jury on all issues so triable.

Respectfully submitted,

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



WILLIAM D. MASON (0037540)
Prosecuting Attorney, Cuyahoga County



MARILYN B. CASSIDY (0014647)
Assistant Prosecuting Attorney
1200 Ontario Street - 8th Floor
Cleveland, Ohio 44113
(216) 443-7785
ATTORNEYS FOR DEFENDANT