

ORIGINAL

IN THE SUPREME COURT OF OHIO
2013

STATE OF OHIO,

Plaintiff-Appellant,

-vs-

SHARLENE AGUIRRE,

Defendant-Appellee.

Case No. 2013-870

2013-876

On Appeal from the
Franklin County Court
of Appeals, Tenth
Appellate District

Court of Appeals

Case No. 12AP-415

PLAINTIFF-APPELLANT'S MOTION TO SUPPLEMENT THE RECORD

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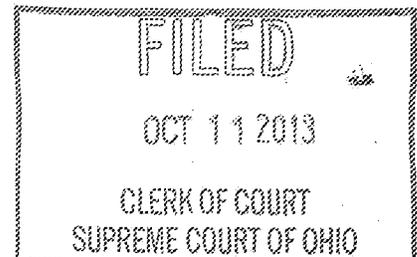
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2013

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-vs-

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Case No. 2013-870

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Case No. 12AP-415

PLAINTIFF-APPELLANT'S MOTION TO SUPPLEMENT THE RECORD

The State of Ohio, plaintiff-appellant, respectfully moves this Court to supplement the record with the Tenth District Court of Appeals' decision rendered in this case on March 5, 2013, a copy of which is attached. S.Ct.Prac.R. 15.08. The record before this Court does not currently contain the appellate court's decision rendered in this case, although the record does contain a copy of the court's decision attached to the Notice of Certified Conflict, as well as the judgment entry rendered in this case on March 5, 2013 (attached), affirming the judgment of the trial court "[f]or the reasons stated in the decision." (R. 22) Thus, out of an abundance of caution, the State respectfully moves this Court to supplement the record with the Tenth District Court of Appeals' decision rendered in this case on March 5, 2013.

Respectfully submitted,

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Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

This is to certify that pursuant to S.Ct.Prac.R. 3.11(A)(1), a copy of the foregoing was sent by regular U.S. Mail this day, October 11, 2013, to E. Kelly Mihocik, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215; Counsel for Defendant-Appellee.



Barbara A. Farnbacher 0036862
Assistant Prosecuting Attorney

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 12AP-415
 : (C.P.C. No. 12EP-01-26)
 Sharlene K. Aguirre, : (REGULAR CALENDAR)
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on March 5, 2013

Ron O'Brien, Prosecuting Attorney, *Barbara A. Farnbacher*
and *Branden J. Albaugh*, for appellant.

Timothy Young, Ohio Public Defender, and *Jason A. Macke*,
for appellee.

APPEAL from the Franklin County Court of Common Pleas

McCORMAC, J.

{¶ 1} The State of Ohio, plaintiff-appellant, is appealing the judgment of the Franklin County Court of Common Pleas sealing the record of defendant's conviction in criminal case No. 01CR-7203 (commonly known as expungement of her record).

{¶ 2} Appellant's assignment of error and issue presented for review reads as follows:

THE TRIAL COURT ERRED WHEN IT GRANTED THE
DEFENDANT'S PREMATURELY FILED APPLICATION
FOR EXPUNGEMENT.

{¶ 3} On May 22, 2002, defendant-appellee entered a guilty plea to a single count of theft, a fourth-degree felony. The parties jointly recommended a term of community control. On July 9, 2002, the trial court imposed a five-year period of community control including, among other conditions, the provision that appellee pay \$2,000 in restitution

to Economy Enterprises and the balance of \$32,562.47 restitution to two third-party insurance companies through the probation department and to pay court costs.

{¶ 4} On January 12, 2012, appellee filed an application for expungement of the conviction. On February 17, 2012, appellant filed an objection to the application. The basis of the appellant's objection was that appellee had not fully satisfied her obligation to pay restitution and court costs and that her application was therefore premature. Appellee acknowledged that she had not completed payment of the court-ordered restitution to the two third-party insurance companies.

{¶ 5} The trial court held a hearing and found that appellee had completed payment of all of the conditions of the community control order, but that she had not completed payment of the third-party ordered restitution, finding that the balance remaining for that restitution was \$14,152 out of the original amount of \$32,562.47. The trial court found that appellee's application for expungement should be granted since more than three years had passed since appellee had completed all of the provisions of community control. The trial court found that the third-party payments ordered to the insurance companies should not be a bar to expungement since the court had completely released appellee from any obligations under the community control provisions other than completion of the two third-party restitution orders made to liability insurance companies.

{¶ 6} Appellant argues that all obligations must be taken care of before there is an eligibility to expunge the record, and that, even though appellee had completed all obligations owed to the state, she still owed money to the third-party insurers who obtained their claims by subrogation. Appellant argues that appellee must pay off the balance of the \$32,561 although appellee had commendably paid about 60 percent or \$18,000 of that amount, despite that probably, at least in part, due to her criminal record and inability to secure employment that would be as remunerative. To summarize, appellant asserts that appellee must pay off the balance, wait at least three more years without having problems before filing her motion for expungement.

{¶ 7} The sentencing court, as part of the community control sanctions, ordered a \$2,000 payment to Economy Enterprises (which was quickly paid, for direct expenses). The court ordered the balance of the \$32,562.47 to be paid as soon as possible to two third-third party insurance companies.

{¶ 8} The court considered appellant's present and future ability to pay a fine and/or financial sanctions and ordered that appellee pay only court costs.

{¶ 9} Community control sanctions provide that "[f]ulfilling the conditions of a community control sanction does not relieve the offender of a duty to make restitution under section 2929.28 of the Revised Code." R.C. 2929.25(E).

{¶ 10} When we examine R.C. 2929.28, it refers to misdemeanors, but obviously is intended to apply to anyone, including appellee, who has completed community control with restitution obligations still owed. The amounts due have been determined, the entity entitled to restitution obtains a judgment and is entitled to the entire range of options for execution of the judgment. The entity seeking restitution may be, among others, the victim or private provider. Some public assistance is offered at a fee for those who may need it (at the cost of the judgment debtor).

{¶ 11} R.C. 2929.28 is silent about expungement. When the appellee has performed all conditions of community control and is released from all that control but still owes restitution, may expungement apply? That is the issue we must decide.

{¶ 12} The statutory provisions governing conviction expungement are remedial in nature and must be liberally construed to promote those purposes. *State v. Boddie*, 170 Ohio App.3d 590, 2007-Ohio-626 (8th Dist). As stated in *State v. Wilson*, 10th Dist. No. 06AP-1060, 2007-Ohio-811, an appellate court reviews a trial court's decision on an application to seal a record for an abuse of discretion.

{¶ 13} The standard to be applied in an expungement case is: "[t]he court must weigh the interest of the public's need to know as against the individual's interest in having the record sealed, and must liberally construe the statute so as to promote the legislative purpose of allowing expungements." *State v. Hilbert*, 145 Ohio App.3d 824, 827 (8th Dist.2001). It is noted that the original expungement provisions have been amended to provide more liberal relief for expungement: i.e., changing the original position of only one misdemeanor, with certain exceptions, to two misdemeanors, and allowing expungement of certain types of felony convictions, one of which is the fourth-degree felony conviction of appellee.

{¶ 14} The trial court informed appellee at the time he granted the application for expungement that she remained in debt to these companies and that collection by them would be a matter between her and the insurance companies and that it was something

that should be paid. Essentially, the same remedies the creditor now has for collection of unpaid restitution was available under R.C. 2929.28.

{¶ 15} Appellant argues that the trial court, in essence, amended the community control provision concerning restitution by excepting a restitution provision from the requirement that appellee comply with all provisions of the community control doctrine.

{¶ 16} We do not believe that to be the case. We believe that the trial court interpreted the community control provision as it now exists to place victims and private parties into a state judgment collection agency if they need or choose this remedy. They can also use private remedies if they choose.

{¶ 17} We believe that denying expungement is a continued punishment, with no benefit to a victim or private payer who is owed restitution. The entity who is owed has the best of both worlds. The judgment debtor can be more likely to obtain a better job and more likely to have the means to pay the restitution, and the state will provide collection help.

{¶ 18} The Supreme Court of Ohio, in *Barker v. State*, 62 Ohio St.2d 35 (1980), determined R.C. 2953.31 et seq. expungement statutes to be remedial in nature and subject to liberal construction as mandated by R.C. 1.11. The liberal trend has increased since that time, apparently in a manner that best serves the needs of society. We would also note that insurance companies are also entitled to use the mandated collection procedures.

{¶ 19} Appellant's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and TYACK, JJ., concur.

McCORMAC, J., retired, of the Tenth Appellate District,
assigned to active duty under authority of Ohio Constitution,
Article IV, Section 6(C).

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 12AP-415
v.	:	(C.P.C. No. 12EP-01-26)
	:	
Sharlene K. Aguirre,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on March 5, 2013, appellant's assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs assessed against appellant.

McCORMAC, J., BRYANT and TYACK, JJ.

John W. McCormac

Judge John W. McCormac, retired, of the Tenth Appellate District, assigned to active duty under authority of Ohio Constitution, Article IV, Section 6(C).

Franklin County Court of Appeals Clerk of Court