

IN THE SUPREME COURT OF OHIO

14-0242

_____)
 Arlie Risner,)
)
 Plaintiff/Appellant)
)
 v.)
)
 Ohio Department of Natural Resources)
 Division of Wildlife,)
)
 Defendant/Appellee.)
)
 _____)

Supreme Court Case No.:

On Appeal from the Huron County Court of Appeals, Sixth Appellate District

Court of Appeals Case No: H-13-09

MEMORANDUM IN SUPPORT OF JURISDICTION
OF PLAINTIFF/APPELLANT, ARLIE RISNER

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This case presents an important issue of public or great general interest, to wit: Can the ODNR elect to take possession of a deer **and** to pursue restitution value when R.C. 1531.201 says the election is “**or**”. The plain language of R.C. 1531.201 does not give the chief a civil remedy for BOTH the possession and restitution. Moreover it does not state any such action may be brought if already provided (whether in a civil or criminal case). To allow the chief to bring a second action when a remedy has already been provided, chosen and carried out is nonsensical, frivolous, a violation of law and due process, and a waste of the Court’s time and resources. A second action provides for multiple sanctions and double (if not more) remedies (arguably a *res judicata* argument). Here, Risner has already forfeited the deer to the chief and

paid restitution, in addition to losing his hunting license for more than one year in light of this case (all remedies that were accepted by ODNR). If required to pay again, it would be at least the third remedy.

Risner respectfully requests this Court allow jurisdiction of this discretionary appeal from the Sixth District Court of Appeals for Huron County.

STATEMENT OF THE CASE AND FACTS

Statement of the Case. The basis for dispute in this case stems from the continued hunting/fishing suspension of Arlie Risner for his failure to pay \$27,851.33 for an alleged restitution owed to ODNR.

The apparent basis for seeking such restitution is set forth in R.C. 1531.201, which provides:

(B) The chief of the division of wildlife or the chief's authorized representative **may bring a civil action to recover possession of or the restitution** value of any wild animal held, taken, bought, sold, or possessed in violation of this chapter or Chapter 1533. of the Revised Code or any division rule against any person who held, took, bought, sold, or possessed the wild animal.

The minimum restitution value to the state for wild animals that are unlawfully held, taken, bought, sold, or possessed shall be established in division rule.

(C) (1) In addition to any restitution value established in division rule, a person who is convicted of a violation of this chapter or Chapter 1533. of the Revised Code or a division rule governing the holding, taking, buying, sale, or possession of an antlered white-tailed deer with a gross score of more than one hundred twenty-five inches also shall pay an additional restitution value that is calculated using the following formula:

Additional restitution value = ((gross score -- 100)2 x \$ 1.65). . .

(Emphasis added.)

It is clear from the plain language of the above statute, ODNR may take possession of, or seek restitution for, the alleged deer taken by Arlie Risner. By its plain language, the statute allows

for one or the other, not both. The ODNR has already taken both remedies as restitution was previously ordered by the Norwalk Municipal Court (\$90.00), and the deer was taken (in possession) of the ODNR when they confiscated the deer, and later received two separate Court orders (February 23, 2011 Order - ordered meat held as evidence to be forfeited; and April 8, 2011 Order - ordering disposition of said deer). ODNR has already elected their remedy by taking possession of the deer, and was awarded restitution in the criminal case, it is improper to allow an additional restitution value. To allow such restitution would be punishing the Defendant for actions for which he was already punished, and in violation of the very statute which Defendant now relies (allowing a civil action to recover possession ~~or~~ restitution).

Statement of the Facts. In or around November 2011, Plaintiff, Arlie Risner, was charged by the State of Ohio for hunting without permission in violation of R.C. 1533.17. That case stemmed from an allegation that Arlie Risner unlawfully hunted without a landowner's permission. Ultimately, Plaintiff pled *no contest* to the charges pending against him and was sentenced by the Norwalk Municipal Court in case No. CRB 1100072. (See copy of ticket and Judgment Entry dated February 23, 2011 attached to Risner's motion for summary judgment as Exhibit 1.) As reflected in the Court's judgment, Arlie Risner was found guilty and sentenced to a fine of \$200.00, restitution of \$90.00, and court costs of \$55.00. Further, the court ordered "DEER MEAT HELD AS EVIDENCE FORFEITED TO OHIO DIVISION OF WILDLIFE" and "RESTITUTION TO OHIO DEPARTMENT OF NATURAL RESOURCES FOR DEER PROCESSING."

Subsequent thereto, the Norwalk Municipal Court issued an order dated April 8, 2011 which provided "It is therefore ORDERED, ADJUDGED and DECREED that the property described in Exhibit A attached hereto and incorporated herein shall be turned over to the Ohio

Department of Natural Resources, Wildlife Division for disposition and or destruction as provided by law.”

By the terms of the Judgment Entry dated February 23, 2013, Risner’s Hunting License was suspended for a period of one year. At the conclusion of that one year period, Risner attempted to secure his hunting license, but was advised he could not receive the same due to a suspension of that license (as well as his fishing license) due to the failure to pay a civil restitution in the amount of \$27,851.33.¹

As a result, Risner filed the complaint with the trial court. Pursuant to discovery completed herein, ODNR has admitted the Ohio Division of Natural Resources seized the deer and disposed of the same.

The trial court granted Mr. Risner’s motion for summary judgment, which ODNR appealed. The Court of Appeals (6th District) reversed and remanded, holding “...a plain reading of R.C. 1531.201 authorizes ODNR to bring a civil action to recover, in addition to any restitution value established in division rule, additional restitution value for the taking of an antlered white-tailed deer with a gross score of more than 125 inches despite the lawful seizure and subsequent forfeiture of parts of the unlawfully taken deer.”

¹ Risner disputes the calculations ODNR arrived at for the \$27,851.33 for the deer and has reserved that argument shall the case go back before the trial court. The evidence before the trial court was an affidavit containing hearsay and the deer has since been destroyed by ODNR without Risner being able to confirm the calculations (similar to a spoliation of evidence claim).

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law I: ODNR exercised its remedy by choice pursuant to R.C. 1531.201 of possession and, thus, is barred from seeking any additional remedies, i.e., restitution value

ODNR set forth two assignments of error to the court of appeals:

FIRST ASSIGNMENT OF ERROR: The trial court erred as a matter of law by holding that ODNR had taken possession of the deer for which Arlie Risner took in violation of R.C. Chapter 1533.

SECOND ASSIGNMENT OF ERROR: The trial court erred as a matter of law by holding that the requirements of R.C. 1531.201(B) had been met and that actions to recover restitution value for the deer were improper.

The court of appeals addressed them simultaneously. It is important to note that the constitutional issues were not address by the trial court and, similarly, were not addressed by the court of appeals.

R.C. 1531.201 allows the ODNR to seek possession of **or** restitution for violations of chapter 1533 of the revised code. In this case, by ODNR's admission, as well as the criminal case punishment, ODNR took possession and was awarded possession of the deer. For that reason alone (regardless of the alleged reasons for the taking), the trial court correctly denied ODNR's motion for summary judgment because it has already received the remedy under Ohio Law. ODNR may not now seek restitution under the same statute.

ODNR claims that it cannot take possession of the deer unless the deer is living. More specifically, ODNR admits having possession of the deer meat and antlers in its appellant brief, but claims it does not have possession of the living deer, which is an implied, alleged requirement to possession. One must ask how Mr. Risner is able to turn over the soul of this "magnificent" animal. Nowhere in the section does it give reference to possession being living

for release back to the wild. The section implied that a hunting has occurred. A hunting would imply that the animal is not living.

R.C. 1531.201 (Action to Recover Possession OR Restitution Value of Wild Animal; Revocation of License, Permit, or Stamp) states, in clear, plain and unambiguous language:

(B) The chief of the division of wildlife or the chief's authorized representative may bring a civil action to recover possession of OR the restitution value of any wild animal held, taken, bought, sold, or possessed in violation of this chapter or Chapter 1533. of the Revised Code or any division rule against any person who held, took, bought, sold, or possessed the wild animal. (Emphasis added.)

This plain language does not give the chief a civil remedy for BOTH the possession and restitution. Moreover it does not state any such action may be brought if already provided (whether in a civil or criminal case). To allow the chief to bring a second action when a remedy has already been provided, chosen and carried out is nonsensical, frivolous, a violation of law and due process, and a waste of the Court's time and resources. A second action provides for multiple sanctions and double (if not more) remedies (arguably a *res judicata* argument). Here, Risner has already forfeited the deer to the chief and paid restitution, in addition to losing his hunting license for more than one year in light of this case (all remedies that were accepted by ODNR). If required to pay again, it would be at least the third remedy.

The Court of Appeals erroneously found the trial court erred when the trial court interpreted what the court of appeals found to be clear and unambiguous language. The Court cited to cases that establish how and when a statute may be interpreted. (See page 9 of decision.)

"In State ex. rel. Plain Dealer Publishing Co. v. Cleveland, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶ 38, the Supreme Court of Ohio explained when, and under what circumstances, a court must interpret, rather than apply the language of a statute duly enacted by the General Assembly:

‘If a review of the statute conveys a meaning that is clear, unequivocal, and definite, the court need look no further.’ *Columbus City School Dist. Bd. of Edn. v. Wilkins*, 101 Ohio St.3d 112, 2004-Ohio-296, 802 N.E.2d 637, ¶26. We need not resort to statutory construction when the statute is unambiguous. *State v. Evans*, 102 Ohio St.3d 240, 2004-Ohio-2659, 809 N.E.2d 11, ¶14. Instead, ‘our inquiry begins with the statutory text, and ends there as well if the text is unambiguous.’ *BedRoc Ltd. LLC v. United States* (2004), 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338. Thus, when a statute is unambiguous in its terms, courts must apply it rather than interpret it.’ *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, 772 N.E.2d 1165, ¶ 11.” ...

“[W]ords and phrases used by the General Assembly will be construed in their usual, ordinary meaning’, unless a contrary intention of the legislature clearly appears. *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536, ¶ 22. ‘[I]t is not the province of the court, under the guise of construction, to ignore the plain terms of a statute or to *insert a provision not incorporated therein by the Legislature.*’ *Akron v. Rowland*, 67 Ohio St.3d 374, 380, 618 N.E.2d 138 (1993) ..., quoting *State ex. rel. Defiance Spark Plug Corp. v. Brown*, 121 Ohio St. 329, 331, 168 N.E. 842 (1929).” (Emphasis in original.)

However, the clear and unambiguous language of R.C. 1531.201 does not state “**and**”, but states the *election* of remedies to be “**or**”. The trial court applied the clear and unambiguous meaning of the word “**or**”. To apply the meaning of the word “**and**” is to interpret the statute, which means the statute is unclear and ambiguous. This is in direct conflict to how the Court of Appeals arrived at its holding (finding the statute was clear, unequivocal and unambiguous but not applying the simple word “**or**”).

In addition, the Court of Appeals’ process of arriving at its interpretation would result in the only remedy being restitution. (See page 11 of decision.) The Court said that the possession which ODNR used to obtain the deer was by lawful seizure and that since it is unlawful for Risner to possess an unlawfully taken deer, ODNR could not elect the possession clause in R.C.

1531.201. If this were the case, then the Court's interpretation would render the possession clause unusable, extinct, and as if never written on paper. There would never be an instance where ODNR would be able to elect possession instead of restitution where R.C. 1531.201 is designed to specifically apply for those in violation of Ch. 1533. The Court, at page 7 of its decision, explained how R.C. 1531.201, R.C. 1531.99 and R.C. 1533.99 were revised in order to govern restitution for animals that are **unlawfully** taken. There is no contemplation in these sections for an animal that is **lawfully** taken by someone like Risner. Therefore, possession, according to the Court of Appeals' analysis, could never be an elected remedy. The Court of Appeals agreed that "[a] court should avoid construction that renders a provision meaningless or inoperative, superfluous, void, or insignificant." Page 12 of decision, citing to *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536, ¶ 19. (The Court of Appeals misplaced the fact that Risner had already been ordered to pay restitution by the Municipal Court and did pay the restitution ordered by that court when it held that the trial court's interpretation of the statute would render sections (C) and (D) meaningless.)

Even if the Court of Appeals specifically found and held in its decision that the statute was unclear and ambiguous, and, therefore, ready for interpretation, the Court of Appeals' interpretation that it has already applied fails.

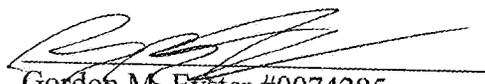
The only logical interpretation for this statute is an election of either possession or restitution value. ODNR, whether it wanted to or not, already elected possession.

CONCLUSION

The trial court correctly granted Mr. Risner's motion for summary judgment, denied ODNR's motion for summary judgment, dismissed ODNR's counterclaim, and reinstated Mr.

Risner's hunting/fishing license. Accordingly, this court should affirm the trial court's decision and reverse the Court of Appeals' decision.

McKown & McKown Co., L.P.A.


Gordon M. Eyster #0074295
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Notice of Appeal to be served upon the defendant, by and through its attorneys, Daniel J. Martin and Nicole Candelora-Norman, Assistant Attorneys General, 2045 Morse Road, D-2, Columbus, Ohio 43215, by regular U.S. mail on the 13th day of February, 2014.

McKown & McKown Co., L.P.A.


Gordon M. Eyster #0074295
Attorney for Plaintiff/Appellant

HURON COUNTY
COURT OF APPEALS
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IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

Arlie Risner

Appellee

Court of Appeals No. H-13-009

Trial Court No. CVH 20120385

v.

Ohio Department of Natural Resources,
Division of Wildlife

Appellant

Decided:

DEC 30 2013

DECISION AND JUDGMENT

Gordon M. Eyster, for appellee.

Mike DeWine, Ohio Attorney General, Nicole Candelora-Norman
and Daniel J. Martin, Assistant Attorneys General, for appellant.

JENSEN, J.

{¶ 1} Appellant, the Ohio Department of Natural Resources, Division of Wildlife (“ODNR”), appeals the entry of summary judgment by the Huron County Court of Common Pleas in favor of appellee, Arlie Risner. For the reasons that follow, we reverse the decision of the trial court and remand for further proceedings.

1.

Appx. Ex. Pg 1

{¶ 2} In November 2010, state wildlife officers began investigating a complaint that Arlie Risner had been hunting on private property without written permission. During a visit to the property, the officers discovered a tree stand, bait piles, and deer entrails and other organs. The officers retained samples of the organs and blood as evidence of the alleged unlawful taking.

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{¶ 3} In the course of the investigation, wildlife officers seized a 20-point rack (set of antlers) from a taxidermist and deer meat from a meat shop, both of which were being processed on behalf of Arlie Risner. The officers paid the meat shop \$90 for unpaid costs associated with processing the meat.

{¶ 4} The officers took the rack to Brian Watt, a certified antler scorer (Buckmasters official scorer No. 71). Mr. Watt calculated the measurements of the antlers in accordance with the procedure set forth in R.C. 1531.201(C)(2) for a gross score of 228 6/8 inches.¹ Samples of blood, organ, meat, and tissue collected from the rack's skull plate were sent to a lab in New York for DNA testing. After receiving confirmation from the lab that the seized deer meat and tissue were a genetic match to the organs and blood found on the private property, Arlie Risner was charged with taking a white-tailed deer from the lands of another without first obtaining written permission from the landowner or an authorized agent in violation of R.C. 1533.17.

¹ The trial court did not address and appellee does not now challenge the procedure utilized by Brian Watt in scoring the antlers.

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{¶ 5} In February 2011, Risner entered a plea of no contest in the Norwalk Municipal Court to a charge of hunting without permission in violation of R.C. 1533.17(A), a misdemeanor of the third degree. The court found Risner guilty and imposed a fine of \$200, plus court costs. The court ordered Risner to pay restitution to the ODNR in the amount of \$90. The seized meat was forfeited to ODNR and Risner's hunting license was suspended from February 23, 2011, to February 23, 2012. On April 8, 2011, the Norwalk Municipal Court issued an order that the "lawfully seized" rack be "turned over" to ODNR for "disposition and or destruction as provided by law."

{¶ 6} On April 7, 2011, ODNR sent Risner a letter acknowledging his conviction in the Norwalk Municipal Court. The letter informed Risner that pursuant to R.C. 1531.201 his hunting and fishing licenses would be revoked until payment of \$27,851.33 in restitution value was made to settle the loss incurred by the unlawful taking of the antlered white-tailed deer with a gross score of 228 6/8 inches.

{¶ 7} The following month, Risner filed a complaint for declaratory judgment in the Huron County Court of Common Pleas seeking a determination of his rights under R.C. 1531.201. ODNR filed an answer and counterclaim for the restitution value of the deer. The parties then filed competing motions for summary judgment. In his motion, Risner set forth four arguments: (1) R.C. 1531.201 violates Article I, Section 5, of the Ohio Constitution; (2) R.C. 1531.201 violates Article I, Section 16, of the Ohio Constitution; (3) R.C. 1531.201 violates Article I, Section 2 of the Ohio Constitution; and

(4) because ODNR selected its remedy when it sought possession of the deer in the underlying criminal case it cannot now seek restitution for the value of the deer.

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{¶ 8} In its cross-motion for summary judgment, ODNR argued that a plain reading of R.C. 1531.201 mandates the chief of the division of wildlife to revoke Risner's hunting and fishing license until Risner remits the minimum restitution value set forth in division rule (\$500) and the additional restitution value set forth in R.C. 1531.201(C) (\$27,351.33). ODNR argued that seizure and forfeiture of parts of the deer does not prohibit ODNR from recovering the restitution value of the deer because the loss to the state due to the unlawful taking was greater than the monetary value of the deer's rack and meat.

{¶ 9} On April 9, 2013, the trial court granted Arlie Risner's motion, in part, holding that "the plain language of [R.C.] 1531.201 prevents any further attempts to seek restitution value for the deer in question after Defendant had already been awarded possession of the deer and antlers in prior proceedings." The trial court ordered ODNR to terminate the suspensions of Risner's hunting and fishing licenses. The trial court did not address the constitutional issues raised in Risner's motion.

{¶ 10} ODNR appeals the April 9, 2013 judgment setting forth two assignments of error for our review:

I. The Huron County Court of Common Pleas erred as a matter of fact by holding that ODNR had already taken possession of the deer for which Arlie Risner took in violation of R.C. Chapter 1533.

II. The Huron County Court of Common Pleas erred as a matter of law by holding that the requirements of R.C. 1531.201(B) had been met and that actions to recover restitution value for the deer were improper.

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Standard of Review

{¶ 11} On appeal, a grant of summary judgment is reviewed de novo.

Bonacorsi v. Wheeling & Lake Erie Ry. Co., 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, ¶ 24. We apply the same standard as the trial court, viewing the facts in a light most favorable to the nonmoving party and resolving any doubts in favor of that party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12, 467 N.E.2d 1378 (6th Dist.1983), citing *Norris v. Ohio Std. Oil Co.*, 70 Ohio St.2d 1, 2, 433 N.E.2d 615 (1982). Civ.R. 56 sets forth the standard for summary judgment and puts the initial burden on the moving party. It requires that no genuine issues of material fact exist, that the moving party be entitled to judgment as a matter of law, and that reasonable minds be able to reach only one conclusion, which is adverse to the non-moving party. *M.H. v. City of Cuyahoga Falls*, 134 Ohio St.3d 65, 2012-Ohio-5336, 979 N.E.2d 1261, ¶ 12.

{¶ 12} An appellate court also applies a de novo standard when reviewing a lower court's interpretation and application of a statute. *Siegfried v. Farms Ins. of Columbus, Inc.*, 187 Ohio App.3d 710, 2010-Ohio-1173, 933 N.E.2d 815, ¶ 11 (9th Dist.).

Analysis

{¶ 13} The issue before us on appeal is whether the trial court erred when it held that R.C. 1531.201 precludes ODNR from bringing a civil proceeding to recover the

restitution value of an unlawfully taken wild animal when the trial court who sentenced the violator for the unlawful taking had previously forfeited lawfully seized parts of the animal to ODNR.

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{¶ 14} In its first assignment of error, ODNR asserts that the trial court erred as a matter of *fact* when it determined the state had taken possession of the wild animal during the criminal forfeiture proceedings when in fact, ODNR had only taken possession of parts of the wild animal's carcass. Then, in its second assignment of error, ODNR asserts that the trial court erred as a matter of *law* when it determined that it was improper for ODNR to recover the restitution value of the unlawfully taken wild animal when ODNR was already awarded possession of parts of the wild animal's carcass. Since both assignments of error involve the trial court's interpretation of R.C. 1531.201, we address them simultaneously.

{¶ 15} The division of wildlife, at the direction of the chief of the division, is charged with the responsibility of enforcing "by proper legal action or proceeding the laws of the state and division rules for the protection, preservation, propagation, and management of wild animals * * *." R.C. 1531.04(C). Violations of such laws and rules are prosecuted in municipal and county counts. R.C. 1531.18; R.C. 1531.16.

{¶ 16} R.C. 1533.17(A) prohibits the hunting of a wild animal upon the lands of another without obtaining written permission from the owner or the owner's authorized agent. A first time violator is guilty of a misdemeanor of the third degree. R.C. 1533.99(A). In addition to any fine, term of imprisonment, seizure and forfeiture

imposed, a court that imposes sentence for a violation of Chapter 1533 may require the violator to pay restitution for the "minimum value" of the wild animal illegally taken as established under R.C. 1531.201. *See* R.C. 1533.99(G). The "minimum value" of unlawfully taken wild animals is set forth in Chapter 1501:31-16 of the Ohio Administrative Code. This chapter also sets forth the criteria utilized in determining the monetary value of each species including (1) recreational value (the harvest and nonharvest use of a species); (2) aesthetic value (the species' beauty and unique natural history); (3) educational value; (4) state-list designation (endangered, threatened, or species of concern); (5) economics (direct and indirect economic benefit attributable to the species); (6) recruitment (reproductive and survival potential of species); and (7) population dynamics (impact of the loss of the individual animal to its local or subpopulation). Ohio Adm.Code 1501:31-16(A)(1). The minimum value of an antlered white-tailed deer is \$500. Ohio Adm.Code 1501:31-16(B)(15).

{¶ 17} In 2007, the 127th General Assembly enacted revisions to R.C. 1531.201, 1531.99 and 1533.99 to revise provisions governing the restitution value of wild animals that are unlawfully held, taken, bought, sold, or possessed. Am.H.B. No. 238, 2007 Ohio Laws 35 (the "Act"). The Act implemented a statutory formula for determining an "additional restitution value" for wildlife violations involving antlered white-tailed deer with a gross score of more than 125 inches. *Id.*

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{¶ 18} R.C. 1531.201 states, in relevant part, as follows:

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(B) The chief of the division of wildlife or the chief's authorized representative may bring a civil action to recover possession of or the restitution value of any wild animal held, taken, bought, sold, or possessed in violation of this chapter or Chapter 1533. of the Revised Code or any division rule against any person who held, took, bought, sold, or possessed the wild animal. The minimum restitution value to the state for wild animals that are unlawfully held, taken, bought, sold, or possessed shall be established in division rule.

(C)(1) In addition to any restitution value established in division rule, a person who is convicted of a violation of this chapter or Chapter 1533. * * * governing the holding, taking, buying, sale, or possession of an antlered white-tailed deer with a gross score of more than one hundred twenty-five inches also shall pay an additional restitution value that is calculated using the following formula:

$$\text{Additional restitution value} = ((\text{gross score} - 100)^2 \times \$1.65).$$

(2) The gross score of an antlered white-tailed deer shall be determined by taking and adding together all of the following measurements, which shall be made to the nearest one-eighth of an inch using a one-quarter-inch wide flexible steel tape: * * * [description of measurement or scoring omitted].

(D) Upon conviction of holding, taking, buying, selling, or possessing a wild animal in violation of this chapter, Chapter 1533. of the Revised Code, or a division rule, the chief shall revoke until payment of the restitution value is made each hunting license, fur taker permit, deer permit, wild turkey permit, wetlands habitat stamp, and fishing license issued to that person under this chapter or Chapter 1533. of the Revised Code. No fee paid for such a license, permit, or stamp shall be returned to the person.

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Upon revoking a person's license, permit, or stamp or a combination thereof under this division, the chief immediately shall send a notice of that action by certified mail to the last known address of the person. The notice shall state the action taken, order the person to surrender the revoked license, permit, or stamp or combination thereof, and state that the department of natural resources will not afford a hearing as required under section 119.06 of the Revised Code.

{¶ 19} In *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶ 38, the Supreme Court of Ohio explained when, and under what circumstances, a court must interpret, rather than apply the language of a statute duly enacted by the General Assembly:

"If a review of the statute conveys a meaning that is clear, unequivocal, and definite, the court need look no further." *Columbus City School Dist. Bd. of Edn. v. Wilkins*, 101 Ohio St.3d 112, 2004-Ohio-296, 802 N.E.2d 637, ¶ 26.

We need not resort to statutory construction when the statute is unambiguous. *State v. Evans*, 102 Ohio St.3d 240, 2004-Ohio-2659, 809 N.E.2d 11, ¶ 14. Instead, “our inquiry begins with the statutory text, and ends there as well if the text is unambiguous.” *BedRoc Ltd., LLC v. United States* (2004), 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338. Thus, when a statute is unambiguous in its terms, courts must apply it rather than interpret it. *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, 772 N.E.2d 1165, ¶ 11.

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{¶ 20} In construing the language of R.C. 1531.201 the trial court concluded that a plain reading of the statute prohibits ODNR from recovering the restitution value of the unlawfully taken wild animal because ODNR “had already been awarded possession of the deer and antlers in prior proceedings.” However, the usual, ordinary meaning of the words and phrases selected by the General Assembly are unambiguous and do not comport with the trial court’s interpretation of R.C. 1531.201. “[W]ords and phrases used by the General Assembly will be construed in their usual, ordinary meaning” unless a contrary intention of the legislature clearly appears. *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536, ¶ 22. “[I]t is not the province of the court, under the guise of construction, to ignore the plain terms of a statute or to *insert a provision not incorporated therein by the Legislature.*” *Akron v. Rowland*, 67 Ohio St.3d 374, 380, 618 N.E.2d 138 (1993) (emphasis sic), quoting *State ex rel. Defiance Spark Plug Corp. v. Brown*, 121 Ohio St. 329, 331, 168 N.E. 842 (1929).

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{¶ 21} In our opinion, a plain reading of R.C. 1531.201 clearly and unambiguously grants to the chief of the division of wildlife the option of bringing a civil action to recover possession of any wild animal held, taken, bought, sold, or possessed in violation of the law or, alternatively, to bring a civil action to recover the restitution value of such animal. There is nothing on the face of R.C. 1531.201 that conditions ODNR's authority to bring a civil action to recover the restitution value of the unlawfully taken animal on any other division, subsection, or proceeding. In other words, the statute, on its face, does not restrict ODNR from bringing a civil action to recover the restitution value if wildlife officers have already seized parts of the wild animal. To the contrary, R.C. 1531.201(E) specifically states that "[n]othing in this section affects the right of seizure under any other section of the Revised Code."

{¶ 22} Here, parts of the unlawfully taken deer were lawfully seized under the authority of R.C. 1531.13. In turn, ownership of and title to the seized wild animal parts automatically reverted to the state. *Id.* Since Mr. Risner has no title to or ownership interest in the lawfully seized wild animal parts, it is illogical to construe R.C. 1531.201(B) to require ODNR to choose between possession of the unlawfully taken parts or restitution for the unlawfully taken deer.²

² We further note that it is unlawful to possess an unlawfully taken white-tailed deer, its meat, or its rack. *See* Ohio Adm.Code 1501:31-15-11(F)(27). Since it is unlawful for Mr. Risner to possess the unlawfully taken deer, it is illogical to construe R.C. 1531.201(B) to require ODNR to choose between possession and restitution.

{¶ 23} Furthermore, the trial court's interpretation of division (B) disregards the mandatory requirements found in divisions (C) and (D). Division (C) requires a person convicted of unlawfully taking an antlered white-tailed deer with a gross score of more than 125 inches to pay, in addition to the "minimum value" set forth in the division rules, an "additional restitution value." *See* R.C. 1531.201(C)(1). In turn, division (D) requires the chief of the division of wildlife to revoke the licenses, permits, and stamps of all persons convicted of violating certain wildlife laws until the restitution value is paid. *See* R.C. 1531.201(D). "We must presume that in enacting a statute, the General Assembly intended for the entire statute to be effective. * * * Thus, all words should have effect and no part should be disregarded." *D.A.B.E., Inc.* at ¶ 19. "The Court should avoid a construction that renders a provision meaningless or inoperative, superfluous, void, or insignificant." 85 Ohio Jurisprudence 3d, Statutes, Section 239 (2013). If this court were to adopt the trial court's interpretation of R.C. 1531.201 as the interpretation intended by the legislature, then divisions (C) and (D) would be meaningless.

{¶ 24} Because we must give effect to the statute as written, we hold that a plain reading of R.C. 1531.201 authorizes ODNR to bring a civil action to recover, in addition to any restitution value established in division rule, additional restitution value for the taking of an antlered white-tailed deer with a gross score of more than 125 inches despite the lawful seizure and subsequent forfeiture of parts of the unlawfully taken deer. To that extent, appellant's first and second assignments of error are well-taken.

{¶ 25} We note that ODNR acknowledges in its brief that the forfeited parts of the animal do have some monetary value.³ To that end, our decision should not be construed to preclude Arlie Risner from arguing for an offset against the additional restitution value at a hearing on this matter.

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{¶ 26} We stress that because the trial court expressly declined to address the constitutional issues before it, the merits of those issues are not properly before us in the context of this appeal. As a general proposition, “appellate courts do not address issues which the trial court declined to consider.” *Lakota Local School Dist. Bd. of Edn. v. Brickner*, 108 Ohio App.3d 637, 643, 671 N.E.2d 578 (6th Dist.1996). “The proper remedy in this situation is to remand this action to the trial court so that it can consider the constitutional question[s] raised in [the appellee’s] motion for summary judgment.” *Battin v. Trumbull County*, 11th Dist. Trumbull, No. 2000-T-0091, 2001 WL 435348, *3 (Apr. 27, 2001).

{¶ 27} The judgment of the Huron County Court of Common Pleas is reversed and remanded for further proceedings. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

Judgment reversed.

³ R.C. 1531.06(G) specifically authorizes the chief of the division to sell confiscated or forfeited items. We do not know, however, the disposition of the forfeited deer parts in this case.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.



JUDGE

Thomas J. Osowik, J.



JUDGE

James D. Jensen, J.
CONCUR.



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

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Daniel J. Richter
cc. Harris Co. C-12
Judge Conway
Appx. Ex. Page
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IN THE COURT OF COMMON PLEAS OF HURON COUNTY, OHIO
COMMON PLEAS COURT

13 APR -9 PM 1:33

Case No. CVH 20120385

ARLIE RISNER,

Plaintiff(s),

SUSAN S. HAZEL
CLERK OF COURTS

Judge James W. Conway

vs.

Judgment Entry

OHIO DEPARTMENT OF NATURAL
RESOURCES, DIVISION OF WILDLIFE,

Defendant(s).

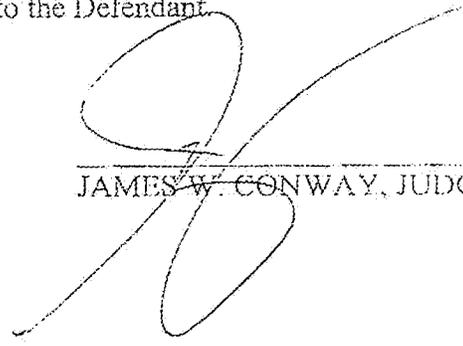
04-10-2013
VCL 1045 pg. 853

This matter came before the Court upon Plaintiff's Motion for Summary Judgment. The Court has reviewed the matter and finds the Motion to be well-taken. Upon review of the pleadings and the relevant statutes and case law, the Court finds that the plain language of O.R.C. 1531.201 prevents any further attempts to seek restitution value for the deer in question after Defendant had already been awarded possession of the deer and antlers in prior proceedings. Upon reaching this conclusion, it is not necessary for the Court to address the constitutionality of the statute.

It is hereby ORDERED, ADJUDGED and DECREED that the Court finds that the requirements of O.R.C. 1531.201 have been complied with in this matter in that the Defendant has taken possession of the deer for which Arlie Risner took in violation of Chapter 1533. As such, any action to recover restitution value of said animal is improper. Judgment is hereby granted in favor of the Plaintiff. Any action from the Defendant for value of the deer is hereby dismissed, with prejudice.

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It is FURTHER ORDERED that the Ohio Department of Natural Resources shall vacate and terminate any and all hunting, fishing or other license suspension based upon any claim for a civil restitution against the Plaintiff, Arlie Risner. If otherwise valid, Arlie Risner shall be and is entitled to receive his hunting and/or fishing license as he would otherwise be entitled. The Ohio Department of Natural Resources and any other agency shall immediately do any act necessary to fulfill the terms of this Entry and shall remove from their records any reference to any suspension of Arlie Risner's hunting/fishing license based on any civil restitution, including it's Notice which was executed March 4, 2011 and attached to Plaintiff's motion for summary judgment as "exhibit 4." Costs of this action shall be taxed to the Defendant.



JAMES W. CONWAY, JUDGE

Copies to:
Gordon M. Eyster, Esq.
Daniel J. Martin, Esq.
and Tara L. Paciorek, Esq. } (regular mail)

Direction to the Clerk: Serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment upon the journal you shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket

Appx. Ex. Page 16