

ORIGINAL

IN THE SUPREME COURT OF OHIO

Arlie Risner, Plaintiff-Appellant	:	
	:	Case No. 14-0242
v.	:	
	:	
Ohio Department of Natural Resources,	:	
Division of Wildlife, Defendant-Appellee	:	

DEFENDANT-APPELLEE'S
MEMORANDUM IN OPPOSITION TO JURISDICTION

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INTRODUCTION

This matter involves a narrow question regarding the interpretation of a civil restitution statute for the unlawful taking of a wild animal where a criminal case was concluded that resulted in parts of the wild animal being returned to the State of Ohio. Appellant seeks review of a unanimous decision from the Ohio 6th District Court of Appeals reversing a trial court decision that found that once deer parts and deer meat were turned over to the State upon completion of a criminal case for hunting without permission, that the State had been made whole and could not obtain restitution for the value of the taken deer as provided by R.C. 1531.201. The reversal of the trial court's erroneous interpretation of the separate civil remedy provided in the statute does not rise to the level of a matter of public or great general interest.

STATEMENT OF THE CASE & FACTS

The Ohio Department of Natural Resources ("ODNR") is the State agency, through its Division of Wildlife, in charge of managing Ohio's white-tailed deer population. Mr. Arlie Risner was convicted of hunting an antlered white-tailed deer ("deer buck" or "deer") on private property without permission, and as a part of his sentence, Mr. Risner's hunting license was suspended for one year. *Risner v. Ohio Dept. of Natural Resources, Div. of Wildlife*, 2013-Ohio-5902, at ¶5.

Prior to this conviction and during the course of its investigation, ODNR investigators obtained deer meat and a set of deer antlers from the illegally-taken deer to be used as evidence in its criminal case against Mr. Risner. *Id.* at ¶4. After the criminal case concluded, the deer meat and antlers were turned over to ODNR by the court for disposition and/or destruction as provided by criminal evidence statutes. *Id.* at ¶5; R.C. 2981.12.

After Mr. Risner's conviction, ODNR sent a letter to him informing him that his hunting and fishing licenses were revoked until he paid \$27,851.33 restitution to ODNR for the deer pursuant to R.C. 1531.201(B), *id.* at ¶6, which states:

“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.”

In May, 2012, Mr. Risner filed suit for declaratory judgment in the Huron County Court of Common Pleas to declare the restitution demand improper, and to obtain the return of his hunting and fishing privileges. In July, 2012, ODNR filed its Answer and responded with a counterclaim for the restitution value for the deer as calculated by ODNR using the methodology established in R.C. 1531.201(C)(2). In February and March of 2013, the parties each filed a motion for summary judgment. On April 9, 2013, the trial court filed a Judgment Entry granting Mr. Risner's motion for summary judgment and denying ODNR's motion for summary judgment. The Judgment of the trial court was appealed to the 6th District Court of Appeals on May 8, 2013. Oral arguments were held in October, 2013 and a decision was rendered on December 30, 2013.

The 6th District Court of Appeals agreed unanimously with ODNR on all of its assignments of error and reversed and remanded the case back to the Common Pleas Court for a hearing on valuation of the restitution. It held that a plain reading of R.C. 1531.201(B) did not prevent ODNR from seeking restitution for the value of the unlawfully taken deer even though the deer meat and antlers had been forfeited to it in a prior proceeding. *Id.* at ¶23.

The Court of Appeals recognized the difference between the value of a whole deer and “deer parts.” They are not interchangeable. The Court went on to hold that since Mr. Risner had

no title to or ownership interest in the unlawfully taken deer, it was illogical to construe R.C. 1531.201(B) to require ODNR to choose between possession of the unlawfully taken parts or restitution for the full value of the unlawfully taken deer. In addition, the Court of Appeals found the trial court's decision illogical in face of R.C. 1531.201(C) which authorizes ODNR to seek "additional restitution value" in addition to "minimum values" set forth in the division rules. Further, the Court of Appeals found that R.C. 1531.201(D) expressly acknowledges a separate license suspension tied to civil restitution as opposed to a suspension stemming from the criminal offense. Finally, and most significantly, the Court of Appeals recognized the language in R.C. 1531.201(E) which states "nothing in Chapter 1531. affects any right of seizure under any other section of the Revised Code." *Id.* at ¶21 Thus, the Court of Appeals determined that the General Assembly recognized the need to make it clear that the restitution remedy in R.C. 1531.210 was independent of, and potentially in addition to, other rights of seizure.

ARGUMENT

THIS CASE DOES NOT PRESENT A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST OR A CONSTITUTIONAL QUESTION

This is not a case of public or great general interest. It only affects ODNR's Division of Wildlife and those who violate Ohio's wildlife laws by illegally taking an antlered deer. Neither is there a split in authority between courts of appeals. Also, no constitutional question has been framed at this juncture. This is merely the interpretation of the straightforward law in R.C. 1531.201(B), and a harmonization of that law with other sections of the Revised Code, specifically in this case, the application of a criminal evidence management statute.

A. Review is not needed as Revised Code Section 1531.201(B) was interpreted correctly by the Court of Appeals.

In Ohio, the ownership and title to all wild animals not legally confined or held in private

ownership legally acquired, is in the state, "...which holds such title in trust for the benefit of all the people." R.C. 1531.02. Once someone illegally kills, i.e. poaches, a deer buck in Ohio on private land without permission of the landowner, he or she violates R.C. 1533.17. At that point, R.C. 1531.201(B) is triggered. After Mr. Risner refused to pay the appropriate restitution for the poached deer, the Chief of the Division of Wildlife brought a civil action against Mr. Risner, as expressly authorized in R.C. 1531.201(B), in his counterclaim to Mr. Risner's declaratory judgment action.

The General Assembly clearly intended that poaching have consequences, and the potential of restitution and a continuing licensing suspension through R.C. 1531.201 indeed provide powerful deterrents. The Court of Appeals correctly interpreted this statute and its application in this case. Further, as Mr. Risner himself states in the footnote of page five of his memo, Mr. Risner will have ample opportunity to challenge the valuation placed upon the poached deer by ODNR when the case returns to the trial court for the valuation hearing. See also *Risner v. Ohio Dept. of Natural Resources, Div. of Wildlife*, 2013-Ohio-5902, at ¶25. Therefore, there is no need for this Court to consider this case further.

Last, this case has no general or great public interest because it only affects ODNR and those who violate Ohio's wildlife laws. It does not affect the general public. The holding of the Court of Appeals merely harmonizes two different statutory processes – one for the management of evidence in a criminal case and one for the restitution of the value of an illegally taken natural resource belonging to the people of the State of Ohio. Further, the holding still provides a convicted violator with a hearing to determine if the amount of restitution he has been told to pay is appropriate.

Finally, as Mr. Risner admits in his brief, the trial court and appellate court did not address or raise any constitutional issues. Mr. Risner had argued potential constitutional issues in his initial declaratory action, but the trial court did not address them and neither did the appellate court. As allowed by the Court of Appeals, Mr. Risner is free to revive any such claims at the trial court valuation hearing. *Id.* at ¶26.

B. Review is not needed as the Court of Appeals correctly recognizes that The Ohio Department of Natural Resources does not obtain double recovery where it seeks restitution pursuant to a separate civil remedy provision enacted by the General Assembly after a return of evidence in a criminal case.

As discussed above, the General Assembly created the civil restitution remedy as a remedy independent of other seizures permitted under the law. Although Mr. Risner incorrectly claims to have been penalized three times, it is clear the General Assembly recognized the need to create R.C. 1531.201(B) as a separate civil mechanism to recoup the full economic loss of this valuable resource. The return of evidence did not make the State whole, nor should it be construed as a satisfaction of restitution liability per a separately created civil statute. R.C. 1531.201(E).

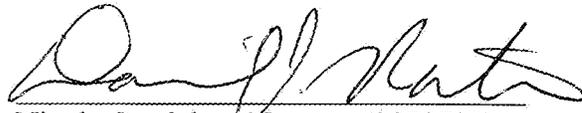
Mr. Risner is also incorrect when he states that ODNR received restitution for the deer when the municipal court in the criminal case provided ODNR with \$90 restitution for the cost of paying for the deer processing fees when it collected the processed deer meat as evidence from the deer processor. This was merely a court-ordered reimbursement of costs expended as part of the prosecution of the criminal case against Mr. Risner, and hardly makes the people of Ohio “whole” for the unlawful taking of this animal. As noted above, the Court of Appeals simply and correctly harmonized the statutes that apply to this case and their decision is not in need of review.

CONCLUSION

For the foregoing reasons, ODNR respectfully asserts that this matter was properly decided by the Sixth District Court of Appeals, and presents no question of public or great general interest or constitutional question. Accordingly, this Court should decline jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a foregoing Defendant-Appellee's Memorandum In Opposition To
Jurisdiction was served by U.S. Mail this 17th day of March, 2014 upon the following counsel:

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