

IN THE SUPREME COURT OF OHIO

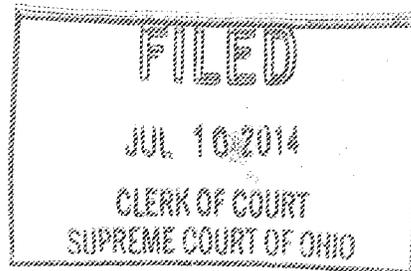
ARLIE RISNER,	:	
	:	
Appellant,	:	Case No.: 2014-0242
	:	
v.	:	
	:	
OHIO DEPARTMENT OF NATURAL	:	On Appeal from the Huron
RESOURCES, DIVISION OF	:	County Court of Appeals,
WILDLIFE,	:	Sixth Appellate District
	:	
Appellee.	:	

MERIT BRIEF OF APPELLANT, ARLIE RISNER

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STATEMENT OF FACTS

In or around November 2011, Plaintiff, Arlie Risner, was charged by the State of Ohio for allegedly 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 written 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. (Appx 35.) As reflected in the Court’s judgment of February 23, 2011, 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 “[i]t 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.” (Appx 33.)

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) as a result of the failure to pay a civil restitution in the amount of \$27,851.33. As a result, Risner filed an action for Declaratory Judgment in the Huron County Common Pleas Court.

Pursuant to discovery completed herein, ODNR has admitted the Ohio Division of Natural Resources seized and disposed of the deer. (See Request for Admission No. 1 attached to Defendant's Answers to Plaintiff's First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents, filed below.)

On May 7, 2012, Risner filed a complaint against ODNR. ODNR filed an answer with counterclaim on July 2, 2012. Both parties filed separate motions for summary judgment on February 11, 2013. After being briefed, the trial Court granted Risner's motion for summary judgment. (Appx 31.) ODNR's notice of appeal followed.

The Huron County Court of Appeals reversed the trial Court's decision. The Court of Appeals held that "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." (Appx 17.)

Risner filed his notice of appeal to this Court on February 13, 2014. (Appx 1.) On May 28, 2014, this Court granted jurisdiction to hear the case and allowed the appeal.

ARGUMENT

PROPOSITION OF LAW NO. I: Pursuant to R.C. 1531.201(B), ODNR cannot take possession of and seek the restitution value of an antlered white-tailed deer taken in violation of R.C. Chapter 1533.

R.C. 1531.201 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, if constitutional¹, ODNR may take possession of, or seek restitution for the alleged deer taken by Risner. By its plain language, the statute allows for one or the other, not both.

Risner was originally 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. R.C. 1533.17(A) provides: "No person shall . . . shoot, shoot at, catch, kill,

¹ In the Huron County Common Pleas Court, Risner argued R.C. 1531.201 violates Article I, Section 5 of the Ohio Constitution; R.C. 1531.201 violates Article I, Section 16, of the Ohio Constitution; and R.C. 1531.201 violates Article I, Section 2, of the Ohio Constitution. However, because the Huron County Common Pleas Court did not address those arguments in its entry, they are not before this Court.

injure, or pursue a wild bird, wild waterfowl, or wild animal thereon without obtaining written permission from the owner or the owner's authorized agent." By the plain language of the statute, an animal taken pursuant to R.C. 1533.17 could be killed - i.e., dead.

R.C. 1533.01 provides:

As used in this chapter, "person," "resident," "nonresident," "division rule," "rule," "closed season," "open season," "take or taking," "possession," "bag limit," "transport and transportation," "sell and sale," "whole to include part," "angling," "trotline," "fish," "measurement of fish," "wild birds," "game," "game birds," "nongame birds," "wild quadrupeds," "game quadrupeds," "fur-bearing animals," "wild animals," "hunting," "trapping," "muskrat spear," "channels and passages," "island," "reef," "fur farm," "waters," "crib," "car," "commercial fish," "fishing," "fillet," "part fillet," "round," "migrate," "spreader bar," "fishing guide," "net," "commercial fishing gear," "native wildlife," "gill net," "tag fishing tournament," "tenant," "nonnative wildlife," "reptiles," "amphibians," "deer," "domestic deer," "migratory game bird," "accompany," "electric-powered all-purpose vehicle," "wholly enclosed preserve," "commercial bird shooting preserve," "wild animal hunting preserve," and "captive white-tailed deer" have the same meanings as in section 1531.01 of the Revised Code.

R.C. 1531.01 provides:

(G) Take or taking" includes pursuing, shooting, hunting, killing, trapping, . . . wild quadruped, and any lesser act, such as wounding, or placing, setting, drawing, or using any other device for killing or capturing any wild animal, whether it results in killing or capturing the animal or not. "Take or taking" includes every attempt to kill or capture and every act of assistance to any other person in killing or capturing or attempting to kill or capture a wild animal.

(H) "Possession" means both actual and constructive possession and any control of things referred to.

(L) "Whole to include part" means that every provision relating to any wild animal protected by this chapter and Chapter 1533. of the Revised Code applies to any part of the wild animal with the same effect as it applies to the whole.

(Y) "Hunting" means pursuing, shooting, killing, following after or on the trail of, lying in wait for, shooting at, or wounding wild birds or wild quadrupeds while employing any device commonly used to kill or wound wild birds or wild quadrupeds whether or not the acts result in killing or wounding. "Hunting" includes every attempt to kill or wound and every act of assistance to any other person in killing or wounding or attempting to kill or wound wild birds or wild quadrupeds.

In fact, in the present matter, ODNR has already taken both remedies as restitution was previously ordered by the Norwalk Municipal Court (\$90.00), and the deer was taken (possession) by ODNR when they confiscated the deer and later received two (2) separate court orders (order of February 23, 2011 ordering meat held as evidence to be forfeited; and order dated April 8, 2011 ordering disposition of the deer). ODNR has already elected its remedy by taking possession of the deer and was awarded restitution in the criminal case. Therefore it is improper to allow an additional restitution value. To allow such restitution would be punishing Risner for actions that he was already punished, and in violation of the very statute which ODNR now relies (allowing a civil action to recover possession **or** restitution).

As stated above, R.C. 1531.201 allows 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. (See ODNR's responses to Request for Admissions; ODNR's Motion for Summary Judgment.) 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 had already received a remedy under Ohio Law. ODNR cannot seek another remedy under the same statute.

Obviously the legislature enacted R.C. 1531.201(B), they were aware that an animal taken in violation of Chapter 1533 could be dead. Despite that awareness, R.C. 1531.201(B)

provides for the possession of or the restitution value of, potentially, a dead deer or its parts. 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 killed deer to the chief and paid restitution, in addition to losing his hunting license for more than one year. If required to pay again, it would be at least the third remedy and contrary to R.C. 1531.201.

CONCLUSION

The trial Court correctly granted Risner's motion for summary judgment, denied ODNR's motion for summary judgment, dismissed ODNR's counterclaim, and reinstated Risner's hunting/fishing license. Respectfully, Risner submits the Court of Appeals' decision should be overturned and this Court should affirm the trial Court's decision.

Respectfully submitted,

McKown & McKown Co., LPA



Gordon M. Eyster #0074295
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the to be served upon the Appellee, by and through their attorneys, Eric E. Murphy (Counsel of Record), 30 East Broad St., 17th Floor, Columbus, Ohio 43215 by regular U.S. mail and electronically to eric.murphy@ohioattorneygeneral.gov on the 16th day of July, 2014.

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

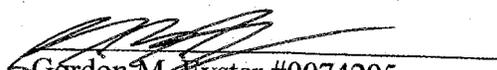

Gordon M. Eyster #0074295
Attorney for Appellant

Notice of Appeal of Plaintiff/Appellant, Arlie Risner

Plaintiff/Appellant, Arlie Risner, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Huron County Court of Appeals, Sixth Appellate District, entered in Court of Appeals case no. H-13-09, on December 30, 2013, a copy of which is attached hereto.

This case is one of public or great general interest.

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
FILED
DEC 30 2013

SUSAN S. HAZEL
CLERK

JOURNALIZED 12-30-13
VOL. 18 PG. 249

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. Pg. 3

{¶ 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 courts. 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).

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{¶ 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.*

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

(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].

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(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.

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{¶ 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.

Appx. Pg. 15

Risner v. Ohio Dept. of
Natural Resources, Div.
of Wildlife
C.A. No. H-13-009

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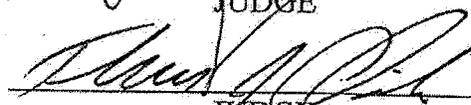
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.



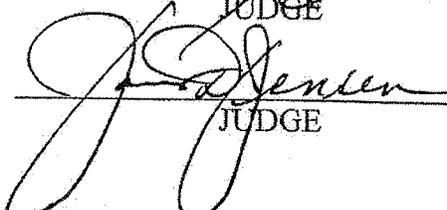
JUDGE

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. Martin
cc. Hanna Co C-1
Judge Conway Appx. Pg. 16

COPY

HURON COUNTY
COURT OF APPEALS
FILED

DEC 30 2013

SUSAN S. HAZEL
CLERK

JOURNALIZED 12-30-13
VOL. 19 PG. 249

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

Arlie Risner

Court of Appeals No. H-13-009

Appellee

Trial Court No. CVH 20120385

v.

Ohio Department of Natural Resources,
Division of Wildlife

DECISION AND JUDGMENT

Appellant

Decided:

DEC 30 2013

* * * * *

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.

Appx. P. 5. 17

{¶ 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.

Appx. Pg. 20

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

Appx. Pg. 22

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).

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{¶ 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.*

Appx Pg. 23

{¶ 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].

Appx. Pg. 24

(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.

Appx. Pg. 25

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).

Appx. Pg. 26

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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.

Appx. Pg. 27

{¶ 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, than divisions (C) and (D) would be meaningless.

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{¶ 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.

Appx Pg. 28

{¶ 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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261

{¶ 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.



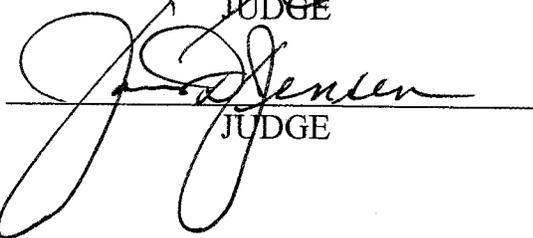
JUDGE

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. Pacht
cc. Hines to C-1
Judge Conway Appx. Pg. 30

COPY

IN THE COURT OF COMMON PLEAS OF HURON COUNTY, OHIO

FILED
HURON COUNTY
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).

JOURNALIZED 04-10-2013
VOL. 645 PG. 853

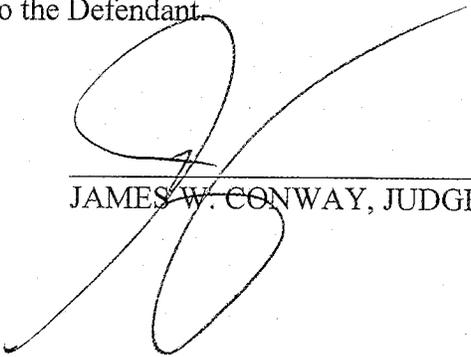
This matter came before the Court upon Plaintiff's Motion for Summary Judgment. The Court has reviewed the matter and finds the Motion to be well-taken. Upon review of the pleadings and the relevant statutes and case law, the Court finds that the plain language of O.R.C. 1531.201 prevents any further 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.

Appx. pg. 31

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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. Pg. 32

IN THE NORWALK MUNICIPAL COURT
NORWALK, OHIO

FILED
NORWALK MUNICIPAL COURT
2011 APR -8 A 10:21

IN RE: APPLICATION OF
THE OHIO DEPARTMENT OF
NATURAL RESOURCES
WILDLIFE DIVISION FOR
DISPOSITION OF
UNCLAIMED AND
FORFEITED PROPERTY

-0-

CASE NO. 11-CRB-72
Arlie Risner

JUDGE JOHN S. RIDGE

ORDER

The Ohio Department of Natural Resources, Wildlife Division having made written Application for an Order directing disposition of lawfully seized property, and the Court having found said application well taken for good cause shown the Application is hereby granted.

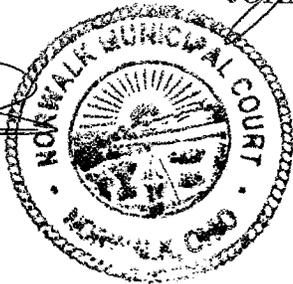
It is therefore ORDERED, ADJUDGED and DECREED that the property described in Exhibit A attached hereto and incorporated herein shall be turned over to the Ohio Department of Natural Resources, Wildlife Division for disposition and or destruction as provided by law.

IT IS FURTHER ORDERED that no costs shall be taxed for the making of such Application.

IT IS SO ORDERED.

John S. Ridge
JOHN S. RIDGE, JUDGE

Prepared by: *[Signature]*
T. Douglas Clifford
Assistant Law Director



COPIES: Law Director
Joshua J. Zientek, State Wildlife Officer
Ohio Division of Wildlife - District 2
4674 Prairie Road
Bellevue Ohio 44811

DATE: 1-30-13
I hereby certify the foregoing to
be a true and correct copy of the
original order on file
in the Norwalk Municipal Court.
by: Pamela D. Bos
Clerk - Deputy Clerk

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EXHIBIT A

Ohio Department of Natural Resources

ODNR
Division



Motion and Application For Disposition of Property

County/Municipal Court of Huron County

CASE NUMBER: CRB 1100072 Division Case Number 371369

A. Pursuant to Ohio Revised Code the Ohio Department of Natural Resources hereby makes application to any court of record that has jurisdiction over the political subdivision in which the law enforcement agency has jurisdiction to engage in law enforcement activities.

Drugs	Firearm	Wild Animal	Other
		Other (23 point Rack and Cape)	

B. Identification/serial number of property if applicable (2010 Ohio Metal Tag # 062561)

C. Said property has been:

- 1. Unclaimed and:
 - a. Reasonable efforts have been made to locate the owner.
 - b. Unknown owner, but notice was provided in a newspaper on: _____
- 2. Forfeited and:
 - a. Said property was used in the commission of a crime
 - b. The owner of the property has no lawful basis for acquiring or possessing property

D. Said property shall be disposed of in the following manner:

- Auction (to be sent to State EPM facility)
- Refuse disposal/landfill. Location: _____
- Incineration. Location: _____
- Use by the agency
- Return to owner/user. Name: _____

E. The property was disposed of on: _____
Disposal Witnessed By: _____

Division	Joshua J. Zientek	1287
	Officer Name	ID#

Upon application of the Ohio Department of Natural Resources to dispose of certain property within its custody, and the Court being fully advised in the premise herein, IT IS HEREBY ORDERED AND ADJUDGED that the items made part of the Motion and Application for disposal of the property be sold at public auction or otherwise disposed of as provided by law pursuant to Ohio Revised Code.

Motion Approved and Ordered this _____ day of _____ in the year _____.

NORWALK MUNICIPAL COURT
45 NORTH LINWOOD AVENUE
NORWALK, OH 44857
(419) 663-6750

FILED
NORWALK MUNICIPAL COURT

STATE OF OHIO

2011 FEB 23 A 10:03
Plaintiff

Case No: CRB 1100072
RC/ORD: 1533.17
HUNT W/O PERMISSION

Misdemeanor: M3

vs.

ARLIE RISNER

JUDGMENT ENTRY

Defendant

The defendant appeared before the Court on 23 February 2011, represented by Mr. Gordon M. Eyster and the State of Ohio was represented by T. Douglas Clifford.

Defendant changed his plea to **no contest**.

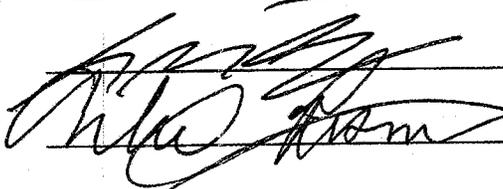
Defendant found guilty and sentenced to a **fine of \$200.00, restitution of \$90.00, and court costs of \$55.00.**

Defendant's Ohio hunting **license is suspended** from February 23, 2011, to February 23, 2012.

Defendant shall pay fine and costs within 60 days.

Approved: 


JUDGE John S. Ridge

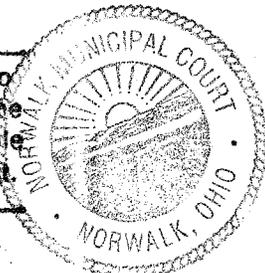


**DEER MEAT HELD AS EVIDENCE
FORFEITED TO OHIO DIVISION OF
WILDLIFE** JGR

**RESTITUTION TO OHIO DEPARTMENT
OF NATURAL RESOURCES FOR DEER
PROCESSING** JGR

DATE: 1/22/13

I hereby certify the foregoing to be a true and correct copy of the original J-entry on file in the Norwalk Municipal Court by: Carla B. Shaw
Clerk - Deputy Clerk



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1531.01 Division of wildlife definitions.

As used in this chapter and Chapter 1533. of the Revised Code:

- (A) "Person" means a person as defined in section 1.59 of the Revised Code or a company; an employee, agent, or officer of such a person or company; a combination of individuals; the state; a political subdivision of the state; an interstate body created by a compact; or the federal government or a department, agency, or instrumentality of it.
- (B) "Resident" means any individual who has resided in this state for not less than six months next preceding the date of making application for a license.
- (C) "Nonresident" means any individual who does not qualify as a resident.
- (D) "Division rule" or "rule" means any rule adopted by the chief of the division of wildlife under section 1531.10 of the Revised Code unless the context indicates otherwise.
- (E) "Closed season" means that period of time during which the taking of wild animals protected by this chapter and Chapter 1533. of the Revised Code is prohibited.
- (F) "Open season" means that period of time during which the taking of wild animals protected by this chapter and Chapter 1533. of the Revised Code is permitted.
- (G) "Take or taking" includes pursuing, shooting, hunting, killing, trapping, angling, fishing with a trotline, or netting any clam, mussel, crayfish, aquatic insect, fish, frog, turtle, wild bird, or wild quadruped, and any lesser act, such as wounding, or placing, setting, drawing, or using any other device for killing or capturing any wild animal, whether it results in killing or capturing the animal or not. "Take or taking" includes every attempt to kill or capture and every act of assistance to any other person in killing or capturing or attempting to kill or capture a wild animal.
- (H) "Possession" means both actual and constructive possession and any control of things referred to.
- (I) "Bag limit" means the number, measurement, or weight of any kind of crayfish, aquatic insects, fish, frogs, turtles, wild birds, and wild quadrupeds permitted to be taken.
- (J) "Transport and transportation" means carrying or moving or causing to be carried or moved.
- (K) "Sell and sale" means barter, exchange, or offer or expose for sale.
- (L) "Whole to include part" means that every provision relating to any wild animal protected by this chapter and Chapter 1533. of the Revised Code applies to any part of the wild animal with the same effect as it applies to the whole.
- (M) "Angling" means fishing with not more than two hand lines, not more than two units of rod and line, or a combination of not more than one hand line and one rod and line, either in hand or under control at any time while fishing. The hand line or rod and line shall have attached to it not more than three baited hooks, not more than three artificial fly rod lures, or one artificial bait casting lure equipped with not more than three sets of three hooks each.
- (N) "Trotline" means a device for catching fish that consists of a line having suspended from it, at frequent intervals, vertical lines with hooks attached.
- (O) "Fish" means a cold-blooded vertebrate having fins.

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- (P) "Measurement of fish" means length from the end of the nose to the longest tip or end of the tail.
- (Q) "Wild birds" includes game birds and nongame birds.
- (R) "Game" includes game birds, game quadrupeds, and fur-bearing animals.
- (S) "Game birds" includes mourning doves, ringneck pheasants, bobwhite quail, ruffed grouse, sharp-tailed grouse, pinnated grouse, wild turkey, Hungarian partridge, Chukar partridge, woodcocks, black-breasted plover, golden plover, Wilson's snipe or jacksnipe, greater and lesser yellowlegs, rail, coots, gallinules, duck, geese, brant, and crows.
- (T) "Nongame birds" includes all other wild birds not included and defined as game birds or migratory game birds.
- (U) "Wild quadrupeds" includes game quadrupeds and fur-bearing animals.
- (V) "Game quadrupeds" includes cottontail rabbits, gray squirrels, black squirrels, fox squirrels, red squirrels, flying squirrels, chipmunks, groundhogs or woodchucks, white-tailed deer, wild boar, and black bears.
- (W) "Fur-bearing animals" includes minks, weasels, raccoons, skunks, opossums, muskrats, fox, beavers, badgers, otters, coyotes, and bobcats.
- (X) "Wild animals" includes mollusks, crustaceans, aquatic insects, fish, reptiles, amphibians, wild birds, wild quadrupeds, and all other wild mammals, but does not include domestic deer.
- (Y) "Hunting" means pursuing, shooting, killing, following after or on the trail of, lying in wait for, shooting at, or wounding wild birds or wild quadrupeds while employing any device commonly used to kill or wound wild birds or wild quadrupeds whether or not the acts result in killing or wounding. "Hunting" includes every attempt to kill or wound and every act of assistance to any other person in killing or wounding or attempting to kill or wound wild birds or wild quadrupeds.
- (Z) "Trapping" means securing or attempting to secure possession of a wild bird or wild quadruped by means of setting, placing, drawing, or using any device that is designed to close upon, hold fast, confine, or otherwise capture a wild bird or wild quadruped whether or not the means results in capture. "Trapping" includes every act of assistance to any other person in capturing wild birds or wild quadrupeds by means of the device whether or not the means results in capture.
- (AA) "Muskrat spear" means any device used in spearing muskrats.
- (BB) "Channels and passages" means those narrow bodies of water lying between islands or between an island and the mainland in Lake Erie.
- (CC) "Island" means a rock or land elevation above the waters of Lake Erie having an area of five or more acres above water.
- (DD) "Reef" means an elevation of rock, either broken or in place, or gravel shown by the latest United States chart to be above the common level of the surrounding bottom of the lake, other than the rock bottom, or in place forming the base or foundation rock of an island or mainland and sloping from the shore of it. "Reef" also means all elevations shown by that chart to be above the common level of the sloping base or foundation rock of an island or mainland, whether running from the shore of an island or parallel with the contour of the shore of an island or in any other way and whether formed by rock, broken or in place, or from gravel.

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- (EE) "Fur farm" means any area used exclusively for raising fur-bearing animals or in addition thereto used for hunting game, the boundaries of which are plainly marked as such.
- (FF) "Waters" includes any lake, pond, reservoir, stream, channel, lagoon, or other body of water, or any part thereof, whether natural or artificial.
- (GG) "Crib" or "car" refers to that particular compartment of the net from which the fish are taken when the net is lifted.
- (HH) "Commercial fish" means those species of fish permitted to be taken, possessed, bought, or sold unless otherwise restricted by the Revised Code or division rule and are alewife (*Alosa pseudoharengus*), American eel (*Anguilla rostrata*), bowfin (*Amia calva*), burbot (*Lota lota*), carp (*Cyprinus carpio*), smallmouth buffalo (*Ictiobus bubalus*), bigmouth buffalo (*Ictiobus cyprinellus*), black bullhead (*Ictalurus melas*), yellow bullhead (*Ictalurus natalis*), brown bullhead (*Ictalurus nebulosus*), channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictis olivaris*), whitefish (*Coregonus* sp.), cisco (*Coregonus* sp.), freshwater drum or sheepshead (*Aplodinotus grunniens*), gar (*Lepisosteus* sp.), gizzard shad (*Dorosoma cepedianum*), goldfish (*Carassius auratus*), lake trout (*Salvelinus namaycush*), mooneye (*Hiodon tergisus*), quillback (*Cariodes cyprinus*), smelt (*Allosmerus elongatus*, *Hypomesus* sp., *Osmerus* sp., *Spirinchus* sp.), sturgeon (*Acipenser* sp., *Scaphirhynchus* sp.), sucker other than buffalo and quillback (*Cariodes* sp., *Catostomus* sp., *Hypentelium* sp., *Minytrema* sp., *Moxostoma* sp.), white bass (*Morone chrysops*), white perch (*Roccus americanus*), and yellow perch (*Perca flavescens*). When the common name of a fish is used in this chapter or Chapter 1533. of the Revised Code, it refers to the fish designated by the scientific name in this definition.
- (II) "Fishing" means taking or attempting to take fish by any method, and all other acts such as placing, setting, drawing, or using any device commonly used to take fish whether resulting in a taking or not.
- (JJ) "Fillet" means the pieces of flesh taken or cut from both sides of a fish, joined to form one piece of flesh.
- (KK) "Part fillet" means a piece of flesh taken or cut from one side of a fish.
- (LL) "Round" when used in describing fish means with head and tail intact.
- (MM) "Migrate" means the transit or movement of fish to or from one place to another as a result of natural forces or instinct and includes, but is not limited to, movement of fish induced or caused by changes in the water flow.
- (NN) "Spreader bar" means a brail or rigid bar placed across the entire width of the back, at the top and bottom of the cars in all trap, crib, and fyke nets for the purpose of keeping the meshes hanging squarely while the nets are fishing.
- (OO) "Fishing guide" means any person who, for consideration or hire, operates a boat, rents, leases, or otherwise furnishes angling devices, ice fishing shanties or shelters of any kind, or other fishing equipment, and accompanies, guides, directs, or assists any other person in order for the other person to engage in fishing.
- (PP) "Net" means fishing devices with meshes composed of twine or synthetic material and includes, but is not limited to, trap nets, fyke nets, crib nets, carp aprons, dip nets, and seines, except minnow seines and minnow dip nets.
- (QQ) "Commercial fishing gear" means seines, trap nets, fyke nets, dip nets, carp aprons, trotlines, other similar gear, and any boat used in conjunction with that gear, but does not include gill nets.

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(RR) "Native wildlife" means any species of the animal kingdom indigenous to this state.

(SS) "Gill net" means a single section of fabric or netting seamed to a float line at the top and a lead line at the bottom, which is designed to entangle fish in the net openings as they swim into it.

(TT) "Tag fishing tournament" means a contest in which a participant pays a fee, or gives other valuable consideration, for a chance to win a prize by virtue of catching a tagged or otherwise specifically marked fish within a limited period of time.

(UU) "Tenant" means an individual who resides on land for which the individual pays rent and whose annual income is primarily derived from agricultural production conducted on that land, as "agricultural production" is defined in section 929.01 of the Revised Code.

(VV) "Nonnative wildlife" means any wild animal not indigenous to this state, but does not include domestic deer.

(WW) "Reptiles" includes common musk turtle (*sternotherus odoratus*), common snapping turtle (*Chelydra serpentina serpentina*), spotted turtle (*Clemmys guttata*), eastern box turtle (*Terrapene carolina carolina*), Blanding's turtle (*Emydoidea blandingii*), common map turtle (*Graptemys geographica*), ouachita map turtle (*Graptemys pseudogeographica ouachitensis*), midland painted turtle (*Chrysemys picta marginata*), red-eared slider (*Trachemys scripta elegans*), eastern spiny softshell turtle (*Apalone spinifera spinifera*), midland smooth softshell turtle (*Apalone mutica mutica*), northern fence lizard (*Sceloporus undulatus hyacinthinus*), ground skink (*Scincella lateralis*), five-lined skink (*Eumeces fasciatus*), broadhead skink (*Eumeces laticeps*), northern coal skink (*Eumeces anthracinus anthracinus*), European wall lizard (*Podarcis muralis*), queen snake (*Regina septemvittata*), Kirtland's snake (*Clonophis kirtlandii*), northern water snake (*Nerodia sipedon sipedon*), Lake Erie watersnake (*Nerodia sipedon insularum*), copperbelly water snake (*Nerodia erythrogaster neglecta*), northern brown snake (*Storeria dekayi dekayi*), midland brown snake (*Storeria dekayi wrightorum*), northern redbelly snake (*Storeria occipitomaculata occipitomaculata*), eastern garter snake (*Thamnophis sirtalis sirtalis*), eastern plains garter snake (*Thamnophis radix radix*), Butler's garter snake (*Thamnophis butleri*), shorthead garter snake (*Thamnophis brachystoma*), eastern ribbon snake (*Thamnophis sauritus sauritus*), northern ribbon snake (*Thamnophis sauritus septentrionalis*), eastern hognose snake (*Heterodon platirhinos*), eastern smooth earth snake (*Virginia valeriae valeriae*), northern ringneck snake (*Diadophis punctatus edwardsii*), midwest worm snake (*Carphophis amoenus helenae*), eastern worm snake (*Carphophis amoenus amoenus*), black racer (*Coluber constrictor constrictor*), blue racer (*Coluber constrictor foxii*), rough green snake (*Opheodrys aestivus*), smooth green snake (*Opheodrys vernalis vernalis*), black rat snake (*Elaphe obsoleta obsoleta*), eastern fox snake (*Elaphe vulpina gloydi*), black kingsnake (*Lampropeltis getula nigra*), eastern milk snake (*Lampropeltis triangulum triangulum*), northern copperhead (*Agkistrodon contortrix mokasen*), eastern massasauga (*Sistrurus catenatus catenatus*), and timber rattlesnake (*Crotalus horridus horridus*).

(XX) "Amphibians" includes eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*), mudpuppy (*Necturus maculosus maculosus*), red-spotted newt (*Notophthalmus viridescens viridescens*), Jefferson salamander (*Ambystoma jeffersonianum*), spotted salamander (*Ambystoma maculatum*), blue-spotted salamander (*Ambystoma laterale*), smallmouth salamander (*Ambystoma texanum*), streamside salamander (*Ambystoma barbouri*), marbled salamander (*Ambystoma opacum*), eastern tiger salamander (*Ambystoma tigrinum tigrinum*), northern dusky salamander (*Desmognathus fuscus fuscus*), mountain dusky salamander (*Desmognathus ochrophaeus*), redback salamander (*Plethodon cinereus*), ravine salamander (*Plethodon richmondi*), northern slimy salamander (*Plethodon glutinosus*), Wehrle's salamander (*Plethodon wehrlei*), four-toed salamander (*Hemidactylium scutatum*), Kentucky spring salamander (*Gyrinophilus porphyriticus duryi*), northern spring salamander (*Gyrinophilus porphyriticus porphyriticus*), mud salamander (*Pseudotriton montanus*), northern red salamander (*Pseudotriton ruber ruber*), green

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salamander (*Aneides aeneus*), northern two-lined salamander (*Eurycea bislineata*), longtail salamander (*Eurycea longicauda longicauda*), cave salamander (*Eurycea lucifuga*), southern two-lined salamander (*Eurycea cirrigera*), Fowler's toad (*Bufo woodhousii fowleri*), American toad (*Bufo americanus*), eastern spadefoot (*Scaphiopus holbrookii*), Blanchard's cricket frog (*Acris crepitans blanchardi*), northern spring peeper (*Pseudacris crucifer crucifer*), gray treefrog (*Hyla versicolor*), Cope's gray treefrog (*Hyla chrysoscelis*), western chorus frog (*Pseudacris triseriata triseriata*), mountain chorus frog (*Pseudacris brachyphona*), bullfrog (*Rana catesbeiana*), green frog (*Rana clamitans melanota*), northern leopard frog (*Rana pipiens*), pickerel frog (*Rana palustris*), southern leopard frog (*Rana utricularia*), and wood frog (*Rana sylvatica*).

(YY) "Deer" means white-tailed deer (*Odocoileus virginianus*).

(ZZ) "Domestic deer" means nonnative deer that have been legally acquired or their offspring and that are held in private ownership for primarily agricultural purposes.

(AAA) "Migratory game bird" includes waterfowl (*Anatidae*); doves (*Columbidae*); cranes (*Gruidae*); cormorants (*Phalacrocoracidae*); rails, coots, and gallinules (*Rallidae*); and woodcock and snipe (*Scolopacidae*).

(BBB) "Accompany" means to go along with another person while staying within a distance from the person that enables uninterrupted, unaided visual and auditory communication.

(CCC) "Electric-powered all-purpose vehicle" means any battery-powered self-propelled electric vehicle that is designed primarily for cross-country travel on land, water, or land and water and that is steered by wheels, caterpillar treads, or a combination of wheels and caterpillar treads and includes vehicles that operate on a cushion of air, vehicles commonly known as all-terrain vehicles, all-season vehicles, mini-bikes, and trail bikes. "Electric-powered all-purpose vehicle" does not include a utility vehicle as defined in section 4501.01 of the Revised Code, any vehicle that is principally used in playing golf, any motor vehicle or aircraft that is required to be registered under Chapter 4503. or 4561. of the Revised Code, or any vehicle that is excluded from the definition of "motor vehicle" as provided in division (B) of section 4501.01 of the Revised Code.

(DDD) "Wholly enclosed preserve" means an area of land that is surrounded by a fence that is at least six feet in height, unless otherwise specified in division rule, and is constructed of a woven wire mesh, or another enclosure that the division of wildlife may approve, where game birds, game quadrupeds, reptiles, amphibians, or fur-bearing animals are raised and may be sold under the authority of a commercial propagating license or captive white-tailed deer propagation license obtained under section 1533.71 of the Revised Code.

(EEE) "Commercial bird shooting preserve" means an area of land where game birds are released and hunted by shooting as authorized by a commercial bird shooting preserve license obtained under section 1533.72 of the Revised Code.

(FFF) "Wild animal hunting preserve" means an area of land where game, captive white-tailed deer, and nonnative wildlife, other than game birds, are released and hunted as authorized by a wild animal hunting preserve license obtained under section 1533.721 of the Revised Code.

(GGG) "Captive white-tailed deer" means legally acquired deer that are held in private ownership at a facility licensed under section 943.03 or 943.031 of the Revised Code and under section 1533.71 or 1533.721 of the Revised Code.

Amended by 129th General Assembly File No.89, HB 389, §1, eff. 6/29/2012.

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Effective Date: 07-01-2003; 05-17-2006; 04-06-2007; 2008 SB209 06-25-2008

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1531.201 Civil action to recover possession or value of wild animal.

(A) As used in this section:

- (1) "Gross score" means the number derived by calculating the measurements of the antlers of a white-tailed deer in accordance with division (C)(2) of this section.
- (2) "Point" means a projection on the antler of a white-tailed deer that is at least one-inch long as measured from its tip to the nearest edge of antler beam and the length of which exceeds the length of its base. "Point" does not include an antler beam tip.
- (3) "Abnormal point" means a point that is nontypical in shape or location.
- (4) "Normal point" means a point that projects from the main antler beam in a typical shape or location.
- (5) "Inside spread of main antler beams" means the measurement at right angles to the center line of the skull of a white-tailed deer at the widest point between main antler beams.
- (6) "Length of main antler beam" means the measurement from the lowest outside edge of the antler burr of a white-tailed deer over the outer curve to the most distant point of what is or appears to be the main antler beam beginning at the place on the antler burr where the center line along the outer curve of the beam intersects the antler burr.
- (7) "Antler burr" means the elevated bony rim around the antler base of a white-tailed deer that is just above the skin of the pedicle.

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

(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:

- (a) Inside spread of the main antler beams, not to exceed the length of the longest main antler beam;
- (b) Length of the right main antler beam;
- (c) Length of the left main antler beam;

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- (d) Total length of all abnormal points;
- (e) Total length of all normal points as measured from the nearest edge of the main antler beam over the outer curve to the tip. To determine the baseline for normal point measurement, the tape shall be laid along the outer curve of the antler beam so that the top edge of the tape coincides with the top edge of the antler beam on both sides of the point.
- (f) Circumference taken at the narrowest place between the antler burr and the first normal point on the right main antler beam. If the first normal point is missing, the circumference shall be taken at the narrowest place between the antler burr and the second normal point.
- (g) Circumference taken at the narrowest place between the first normal point and the second normal point on the right main antler beam. If the first normal point is missing, the circumference shall be taken at the narrowest place between the antler burr and the second normal point.
- (h) Circumference taken at the narrowest place between the second normal point and the third normal point on the right main antler beam;
- (i) Circumference taken at the narrowest place between the third normal point and the fourth normal point on the right main antler beam. If the fourth normal point is missing, the circumference shall be taken halfway between the third normal point and the tip of the main antler beam.
- (j) Circumference taken at the narrowest place between the antler burr and the first normal point on the left main antler beam. If the first normal point is missing, the circumference shall be taken at the narrowest place between the antler burr and the second normal point.
- (k) Circumference taken at the narrowest place between the first normal point and the second normal point on the left main antler beam. If the first normal point is missing, the circumference shall be taken at the narrowest place between the antler burr and the second normal point.
- (l) Circumference taken at the narrowest place between the second normal point and the third normal point on the left main antler beam;
- (m) Circumference taken at the narrowest place between the third normal point and the fourth normal point on the left main antler beam. If the fourth normal point is missing, the circumference shall be taken halfway between the third normal point and the tip of the main antler beam.

Antlers may be measured at any time; no drying time is required.

(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.

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.

(E) Nothing in this section affects the right of seizure under any other section of the Revised Code.

Effective Date: 10-20-1994; 2007 HB238 03-04-2008

Appx. Pg. 43

1533.01 Hunting - fishing definitions.

As used in this chapter, "person," "resident," "nonresident," "division rule," "rule," "closed season," "open season," "take or taking," "possession," "bag limit," "transport and transportation," "sell and sale," "whole to include part," "angling," "trotline," "fish," "measurement of fish," "wild birds," "game," "game birds," "nongame birds," "wild quadrupeds," "game quadrupeds," "fur-bearing animals," "wild animals," "hunting," "trapping," "muskrat spear," "channels and passages," "island," "reef," "fur farm," "waters," "crib," "car," "commercial fish," "fishing," "fillet," "part fillet," "round," "migrate," "spreader bar," "fishing guide," "net," "commercial fishing gear," "native wildlife," "gill net," "tag fishing tournament," "tenant," "nonnative wildlife," "reptiles," "amphibians," "deer," "domestic deer," "migratory game bird," "accompany," "electric-powered all-purpose vehicle," "wholly enclosed preserve," "commercial bird shooting preserve," "wild animal hunting preserve," and "captive white-tailed deer" have the same meanings as in section 1531.01 of the Revised Code.

Amended by 129th General Assembly File No. 89, HB 389, §1, eff. 6/29/2012.

Effective Date: 03-18-1999; 2008 SB209 06-25-2008

Appx. Pg. 44

1533.17 Hunting without permission.

(A) No person shall hunt or trap upon any lands, pond, lake, or private waters of another, except water claimed by riparian right of ownership in adjacent lands, or shoot, shoot at, catch, kill, injure, or pursue a wild bird, wild waterfowl, or wild animal thereon without obtaining written permission from the owner or the owner's authorized agent.

(B) Except as otherwise provided in this division, the owner, lessee, renter, or occupant of any lands, pond, lake, or private waters upon which a person violates division (A) of this section is not liable in damages to any person in a civil action for injury, death, or loss to person or property that arises during or incidental to the violation. For the purposes of this division, a finding that a person violated division (A) of this section is not dependent upon the person being charged with or convicted of a violation of division (A) of this section. This division does not apply to civil claims based upon alleged willful or wanton misconduct or intentionally tortious conduct of the owner, lessee, renter, or occupant. This division does not create a new cause of action or a substantive legal right against the owner, lessee, renter, or occupant, and does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law, to which the owner, lessee, renter, or occupant may be entitled under circumstances not covered by this section.

(C) A person who obtains the permission required under division (A) of this section shall carry it with the person at all times during which the person is engaged in an activity for which the permission is required and shall exhibit it upon request of a wildlife officer, constable, sheriff, deputy sheriff, police officer, other law enforcement officer, or the owner of the lands, pond, lake, or private waters on which the person is hunting or trapping or the owner's authorized agent.

Effective Date: 06-01-1998

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