

[Cite as *Carter v. King Wrecking Co.*, 2009-Ohio-6802.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

THEODORE CARTER,	:	APPEAL NO. C-090208
	:	TRIAL NO. A-062630
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
KING WRECKING CO., INC.,	:	
	:	
Defendant-Appellee.	:	

Civil Appeal From: Hamilton County Common Pleas Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: December 24, 2009

*John H. Forg, III, and Repper, Pagan, Cook, Ltd.*, for Plaintiff-Appellant,

*Donald Hordes and Schwartz, Manes, Ruby & Slovin*, for Defendant-Appellee.

Please note: This case has been removed from the accelerated calendar.

**WILLIAM L. MALLORY, Judge.**

{¶1} Plaintiff-appellant Theodore Carter sued his former employer, defendant-appellee King Wrecking Company, alleging wrongful termination under R.C. 2151.211, which prohibits employers from penalizing employees for missing work to comply with a subpoena. Though the statute in question expressly prohibits employers from penalizing subpoenaed employees, it is without language purporting to extend comparable protection to employees who are summoned to court. Carter was summoned to court and later fired for missing work. The trial court concluded that the statutory protection did not inure to the benefit of summoned parties, and it therefore granted summary judgment for King Wrecking.

{¶2} On appeal, Carter asks this court to read between the statutory lines and to infer that his complaint sufficiently alleged a cognizable public-policy claim under *Greeley v. Miami Valley Maintenance Contrs., Inc.*,<sup>1</sup> because, in Hamilton County Juvenile Court proceedings, a summons and a subpoena operate interchangeably; in enacting R.C. 2151.211, the Ohio legislature meant to protect employees who are summoned to court; and the statute's failure to specifically incorporate summoned parties was unintentional. We are not convinced. We hold that R.C. 2151.211 does not extend its protection to summoned parties and that no cognizable *Greeley* claim existed in this case. We therefore affirm the summary judgment for King Wrecking Co.

***I. Carter's Termination***

{¶3} Carter had worked as a driver for King Wrecking for about two years. While employed at King Wrecking, Carter became involved in at least two cases

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<sup>1</sup> (1990), 49 Ohio St.3d 228, 551 N.E.2d 981.

involving child-support payments, or the lack thereof. Carter's cases were pending before the Hamilton County Juvenile Court ("HCJC"), which on multiple occasions had summoned him to appear for reviews of his child-support payments. In June 2005, HCJC again summoned Carter to appear. The summons was served on June 22, and Carter was to appear three days later. Carter notified the operations manager of King Wrecking that he would have to miss a partial day of work on June 25.

{¶4} On June 25, Carter worked from 6:00 a.m. to 9:30 a.m., and he then returned to King Wrecking's office to retrieve his vehicle and go to court. On arriving at King Wrecking, the president of the company, Drew Lammers, called Carter into his office and terminated him for missing work.

### ***II. Carter's Wrongful-Discharge Claim***

{¶5} In his complaint, Carter alleged that "Ohio has adopted public policies prohibiting retaliation against employees who are summoned through legal process to attend court hearings."

{¶6} R.C. 2151.211 prohibits employers from punishing employees for missing work pursuant to a subpoena: "No employer shall discharge or terminate from employment, threaten to discharge or terminate from employment, or otherwise punish or penalize any employee because of time lost from regular employment as a result of the employee's attendance at any proceeding pursuant to a subpoena under this chapter or Chapter 2152 of the Revised Code."

### ***III. Summons and Subpoena—Interchangeable?***

{¶7} The threshold question that we must answer is whether, in this case, a summons and a subpoena are interchangeable. Carter asserts that in this instance the difference between a summons and a subpoena is only a semantic one. Not so. Generally summonses are dispatched to parties to a lawsuit, whereas subpoenas are

issued to nonparty witnesses.<sup>2</sup> Juv.R. 16(A) likewise calls for summonses to be issued to parties: “[A] summons shall direct the *party* served to appear at a stated time and place.”<sup>3</sup> And Juv.R. 17 repeatedly refers to those who are served with subpoenas as *persons*—and never as parties. We conclude that summonses and subpoenas are not interchangeable terms.

#### IV. *The History of R.C. 2151.211*

{¶8} Courts may glean legislative intent by looking at a statute’s purpose.<sup>4</sup> The General Assembly has enacted a victim’s bill of rights,<sup>5</sup> and in that bill of rights, the legislature has expressed its intent to provide victims and their representatives with the right to attend, without repercussion, certain proceedings under a subpoena: “[A] victim or a victim’s representative [has a right] to attend a proceeding before a grand jury, in a juvenile case, or in a criminal case pursuant to a subpoena without being discharged from the victim’s or representative’s employment, having the victim’s or representative’s employment terminated, having the victim’s or representative’s pay decreased or withheld, or otherwise being punished, penalized, or threatened as a result of time lost from regular employment because of the victim’s or representative’s attendance at the proceeding pursuant to the subpoena, as set forth in section 2151.211.” Thus it is apparent that the legislature enacted R.C. 2151.211 to shield victims and their representatives from punishment for missing work to comply with a subpoena.

{¶9} Moreover, R.C. 2151.211’s predecessor prohibited employers from discriminating against employees appearing under a subpoena in delinquency cases

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<sup>2</sup> See, generally, Black’s Law Dictionary (8 Ed.1999) 1467, 1477.

<sup>3</sup> See, Juv.R. 16(A) (emphasis added).

<sup>4</sup> See *Family Medicine Found. v. Bright*, 96 Ohio St.3d 183, 2002-Ohio-4034, 772 N.E.2d 1177, ¶9.

<sup>5</sup> R.C. 109.42.

alone. But the General Assembly, in 1999, broadened R.C. 2151.211 to encompass not only subpoenas issued in delinquency cases, but also any subpoena issued under R.C. Chapter 2151 (in juvenile court) or 2152.<sup>6</sup> We note that the legislature chose to extend the statute's purview to subpoenas issued under R.C. Chapters 2151 and 2152, but that it did not mention summonses. In fact, this court has been unable to find any mention of summonses in any of the previous versions of R.C. 2151.211, or in its legislative history. Had the General Assembly intended summonses to be included, it certainly would have known how to do so. The General Assembly has demonstrated its ability to distinguish the terms subpoena and summons by expressly including both summonses and subpoenas in other sections of R.C. Chapter 2151.<sup>7</sup> We conclude that the General Assembly intentionally omitted summonses from the purview of R.C. 2151.211. And we are unable to glean a public policy advancing Carter's position that R.C. 2151.211 operates in favor of parties who are summoned to court.

{¶10} Our conclusion is informed by the rule of statutory interpretation that courts are to give effect to the words used in a statute and to refrain from deleting words or adding words not used.<sup>8</sup> In Ohio, the general rule governing employment relationships is employment at will.<sup>9</sup> Under the employment-at-will doctrine, an employer may terminate an at-will employee "for no cause or for 'any cause' which is not unlawful, at any time and regardless of motive."<sup>10</sup> And R.C. 2151.211 provides one narrow exception to the "any cause" rule—that employers may not punish employees for missing work when they have done so pursuant to a subpoena. Where a statutory

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<sup>6</sup> S.B. No. 179, eff. Jan. 1, 2002.

<sup>7</sup> See e.g., R.C. 2151.19, 2151.28(J), and 2151.29

<sup>8</sup> *Lesnau v. Andate Enterprises, Inc.*, 93 Ohio St.3d 467, 2001-Ohio-1591, 756 N.E.2d 97; *State v. Jordan*, 89 Ohio St.3d 488, 2000-Ohio-225, 733 N.E.2d 601; *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St.3d 543, 660 N.E.2d 463.

<sup>9</sup> *Wiles v. Medina Auto Parts*, 96 Ohio St.3d 240, 2002-Ohio-3994, 773 N.E.2d 526, ¶5.

<sup>10</sup> See *Greeley v. Miami Valley Maintenance Contrs., Inc.*, (1990), 49 Ohio St.3d 228, 551 N.E.2d 981.

exception creates a cause of action not previously recognized by the common law, the exception must be narrowly construed.<sup>11</sup> We must therefore construe the R.C. 2151.211 statutory exception narrowly, and because Carter had no claim for wrongful discharge because he responded to a summons, summary judgment was properly entered for King Wrecking.

{¶11} We note that Carter did not have to personally appear to satisfy the summons. Generally a party may appear in court pursuant to a summons by and through counsel, whereas a person who has been subpoenaed must personally appear. In this same vein, Carter had the option to send counsel to appear in his absence—and the summons provided an avenue for indigent parties to obtain counsel: “If a party is indigent, a request may be made for counsel by contacting the Hamilton County Public Defender’s Office.” We finally note that the record is devoid of evidence suggesting that Carter was fired under pretext, or for any reason other than for missing work.

{¶12} In construing R.C. 2151.211 narrowly, we conclude that it does not extend its protection to summoned parties, and because no cognizable *Greeley* claim existed, we affirm the trial court’s judgment.

Judgment affirmed.

**HENDON, P.J., and SUNDERMANN, J., concur.**

*Please Note:*

The court has recorded its own entry this date.

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<sup>11</sup> *Klever v. Canton Sachsenheim, Inc.*, 86 Ohio St.3d 419, 1999-Ohio-117, 715 N.E.2d 536.