

IN THE COURT OF APPEALS OF MIAMI COUNTY, OHIO

EARHART PETROLEUM, INC.	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 10CA04
vs.	:	T.C. CASE NO. 07CV962
	:	
PEOPLE'S TRANSPORTATION, INC.	:	(Civil Appeal from
et al.	:	Common Pleas Court)
Defendants-Appellants	:	

. . . . .

O P I N I O N

Rendered on the 28th day of January, 2011.

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Attorney for Defendant-Appellant, Yolanda Jenkins

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GRADY, J.:

Defendant, Yolanda Jenkins, appeals from a final judgment of the court of common pleas that awarded Plaintiff, Earhart Petroleum, Inc. ("Earhart"), attorneys fees on a finding that Jenkins engaged in frivolous conduct in prosecuting a prior civil appeal to this court.

The common pleas court awarded Earhart \$1,752.50 for legal fees Earhart incurred in defending against Jenkins' prior appeal.

The court also awarded Earhart \$3,346.90 for legal fees Earhart incurred in prosecuting its fee claim in the common pleas court.

Both awards were made pursuant to R.C. 2323.51.

In a Decision and Entry filed on November 12, 2010, we cited prior decisions of this court and another appellate court which held that the relief for frivolous conduct authorized by R.C. 2323.51 is limited, in civil cases, to attorney fee awards in connection with appeals by inmates. *Mueller v. City of Vandalia* (March 31, 1999), Montgomery App. No. 17285; *In the Matter of the Guardianship of Wernick*, Franklin App. No. 06AP-263, 2006-Ohio-5950. Because the issue was not raised in the appellate briefs the parties filed, we granted them leave to file supplemental briefs addressing the issue and its application in this case. No supplemental briefs have been filed.

#### ASSIGNMENT OF ERROR

"THE TRIAL COURT ABUSED ITS DISCRETION BY IMPOSING SANCTIONS IN THIS MATTER."

It is undisputed that the prior appeal Jenkins filed and prosecuted was not an appeal by an inmate in a civil case. The trial court therefore erred when it awarded attorneys fees to Earhart pursuant to R.C. 2323.51. *Mueller; Wernick*.

The assignment of error is sustained. The judgment from which the appeal is taken will be reversed and vacated.

FROELICH ,J. And WAITE, J., concur.

(Hon. Cheryl L. Waite, Seventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

Copies mailed to:

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Hon. Jeffrey M. Welbaum  
Hon. Christopher Gee