

CIVIL LIABILITY FOR CRIMINAL ACTS

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The Ohio Supreme Court has just decided a case that, while it does not deal directly with firefighters, may have some impact on them. The case is *Buddenberg v. Weisdack*, Slip Opinion No. 2020-Ohio-3832, decided on July 29, 2020. The issue in that case was whether Ohio Revised Code §2307.60 requires a criminal conviction before an individual could file a civil lawsuit under that statute.

Ohio Revised Code §2307.60 states in part:

“Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney’s fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages....”

In other words, an individual who is injured because of another’s criminal act, could sue for the injuries sustained because of or resulting from the criminal conduct.

The Plaintiff in the case, Buddenberg, had filed a civil lawsuit, based on §2307.60, against her former employer (the Geauga County Health District) and a number of employees or agents of the employer. She alleged that the defendants had civil liability pursuant to R.C. 2307.60 for alleged violations of three criminal statutes: R.C. 2921.05 (retaliation); R.C. 2921.03 (intimidation); and R.C. 2921.45 (interfering with civil rights). The defendants moved to dismiss the case on the theory that none of them had been criminally convicted of any of these offenses. In fact, none had even been charged with any criminal offenses.

The Ohio Supreme Court heard the case to decide whether §2307.60’s creation of a civil cause of action for injuries based on a “criminal act” requires an underlying criminal conviction; in other words, is a criminal conviction a condition precedent to a civil claim. The Court held that §2307.60 does not require an underlying criminal conviction. That is, a criminal conviction is not a condition precedent for a civil claim for injuries based on a criminal act, and an injured plaintiff could sue for damages even if the defendant had never been convicted of a crime. Buddenberg could thus pursue her civil lawsuit even though none of the defendants had been convicted of a crime.

We don’t anticipate that we’ll now see a flood of cases brought under §2307.60. A plaintiff, after all, will still have to prove that the defendant is guilty of a criminal act despite the absence of a conviction.

But the Court’s decision definitely expands the grounds that plaintiffs may use when bringing civil lawsuits. We can easily see lawsuits being brought based on allegations of bribery, intimidation, retaliation, perjury, tampering with evidence, falsification, failure to report a crime, failure to aid a law enforcement officer, obstructing official business, obstructing justice, theft in office, dereliction of duty, extortion, disorderly conduct, coercion, or interfering with civil rights (all of which are criminal acts). And this probably just scratches the surface of what could be used in §2307.60 lawsuits.

We view the *Buddenberg* ruling as a double-edged sword for firefighters. While presumably the case could benefit some firefighters who might want to file civil lawsuits, it also could be detrimental to other firefighters who could be sued for alleged criminal acts.