

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

GARY W. BAILEY,	:	APPEAL NO. C-081099
	:	TRIAL NO. A-0610026
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
VILLAGE OF CLEVES, OHIO,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant, Gary W. Bailey, appeals the summary judgment entered by the Hamilton County Court of Common Pleas in favor of defendant-appellee, the village of Cleves, Ohio, in a suit alleging that a village policy was unconstitutional under Section 1981 et seq., Title 42, U.S.Code.

A policy and procedure manual promulgated by the village governed the police department’s enforcement of civil protective orders (CPOs). Under the manual, officers were to confirm the existence and terms of CPOs by contacting either the Hamilton County central-warrant processing unit or the clerk of courts of the issuing jurisdiction for out-of-county CPOs. The manual further instructed officers that “[w]hen probable cause exists, immediately arrest defendants in violation of a \* \* \* CPO.”

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

On July 3, 2007, the Hamilton County domestic relations court issued an ex parte CPO preventing Bailey from having any contact with his wife, Lesa Bailey. That same day, Lesa Bailey called the village police and informed them that Bailey had violated the CPO. Bailey was arrested even though he had not been served with a copy of the CPO at the time of the alleged violation. A charge of violating the CPO under R.C. 2929.27 was ultimately dismissed for lack of service.

Bailey sued the village, claiming that the policy under which he was arrested violated his civil rights. Specifically, he contended that because the policy did not require verification of service, it permitted the wrongful deprivation of his liberty.

Bailey filed a motion for partial summary judgment on the issue of liability only, and the village also filed a motion for summary judgment. The trial court denied Bailey's motion and entered summary judgment in favor of the village.

In two related assignments of error, Bailey now argues that the trial court erred in denying his motion for partial summary judgment and in entering summary judgment in favor of the village. We address the assignments together.

Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence construed most strongly in favor of the nonmoving party, that conclusion is adverse to that party.<sup>2</sup> This court reviews the granting of summary judgment de novo.<sup>3</sup>

In this case, the court properly granted summary judgment in favor of the village. The village's policy mandated an arrest only upon the existence of probable

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<sup>2</sup> See *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

<sup>3</sup> *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781, ¶6.

cause. The policy was therefore consistent with the requirement for a warrantless arrest.<sup>4</sup>

Probable cause, in turn, means only that the officer possesses “sufficient information that would cause a reasonable and prudent person to believe that a criminal offense has been or is being committed.”<sup>5</sup> Under this standard, there is no requirement that the officer confirm every element of the crime for which the arrest is being made; it merely requires the reasonable belief that an offense has been committed. Accordingly, an arrest may be valid even though the defendant is ultimately acquitted of the underlying charge.<sup>6</sup>

In requiring the existence of probable cause, then, the village’s policy comported with the law, even though it did not explicitly require the officer to verify that the suspect had been served with the CPO. We overrule the assignments of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HENDON, P.J., HILDEBRANDT and SUNDERMANN, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on August 5, 2009

per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>4</sup> See *State v. Allwood*, 1st Dist. No. C-080277, 2009-Ohio-742, ¶18.

<sup>5</sup> Id., quoting *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶139.

<sup>6</sup> See, e.g., *State v. Lenker* (Jan. 30, 1991), 2nd Dist. No. 12083.