

IN THE SUPREME COURT OF OHIO

State ex rel. Anthony C. Christoff, et al.,)	CASE NO. 2011-0235
)	
Relators,)	
vs.)	
)	Original Action
Earle B. Turner, et al.)	
)	
Respondents.)	

**RESPONDENTS' BRIEF IN OPPOSITION TO RELATORS'
MOTION FOR RECONSIDERATION**

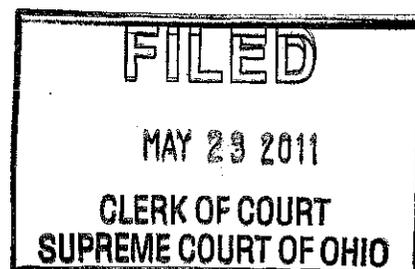
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I. Introduction

On May 13, 2011 Relators filed a motion seeking reconsideration of this Court's order of May 4, 2011 dismissing their original action. Relators do not suggest that the standards governing the issuance of peremptory and alternative writs of prohibition and mandamus have changed in the interim. Relators' motion fails to address the significant factual and legal standards associated with seeking the requested writs. Instead, Relators have presented this Court with a confusing patchwork of incorrect arguments that have no relationship to their dismissed causes of action, and that clearly fail to understand municipal home rule authority and this Court's prior guidance and holdings in *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006 -Ohio- 6573 and *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008 -Ohio- 270. Relators' motion offers no basis for reconsideration of this Court's earlier order dismissing their Complaint and the motion should be denied.

II. Law and Argument

A. Relators Motion for Reconsideration Fails to Address the Law Governing Writs of Prohibition and Mandamus.

Relators' motion for reconsideration advances no arguments that would suggest the allegations contained in their Complaint were sufficient to state claims for writs of prohibition and mandamus. In this regard, it is telling that while Relators' motion identifies at page one that it is requesting this "Court to reconsider its dismissal without decision of their petition in mandamus and prohibition," Relators thereafter avoid further

use of the words “mandamus” and “prohibition” in the context of their arguments until the concluding sentence at page thirteen (13) of their supporting memorandum.

(1) Writ of prohibition

In seeking a writ of prohibition Relator had the burden of establishing that (1) Respondents are about to exercise judicial or quasi-judicial power, (2) the exercise of that power was unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Brady v. Pianka* (2005), 106 Ohio St.3d 147, 2005 -Ohio- 4105, ¶ 7. Relator Christoff's allegations established that he had filed his complaint seeking a writ of prohibition more than five months after the “Payment/Hearing Request Due Date” identified in the Notice of Liability he had received from the City. It was evident that Respondents were not about to exercise quasi-judicial authority when the facts placed before the Court by Relator established that he had let the time for requesting a hearing lapse. See *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*(1999), 87 Ohio St.3d 184, 186.

Additionally, the motion for reconsideration fails to address the reality that this Court had previously determined (a) that the City of Cleveland does not patently and unambiguously lack jurisdiction to enforce CCO 413.031 and (b) that the administrative proceedings established in the ordinance provide ticketed individuals with an adequate remedy in the ordinary course of law. *State ex rel. Scott v. Cleveland* 112 Ohio St.3d 324, 2006 -Ohio- 6573, ¶¶ 17, 24. Relators' motion presents nothing to this Court that further addresses or even raises questions with regard to these controlling circumstances.

(2) Writ of Mandamus

“The burden is on the [relator] to ‘demonstrate that there is plain, clear, and

convincing evidence which would require the granting of the writ.’ ” *State ex rel. Henslee v. Newman* (1972) 30 Ohio St.2d 324 at 325, 285 N.E.2d 54 at 55. A Relator must show (1) that there is a clear legal right to the relief, (2) a clear legal duty on the Respondents to provide the relief, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Fain v. Summit Cty. Adult Probation Dept.* (1995), 71 Ohio St.3d 658. Relator had made clear in his complaint that the writ of mandamus being requested was contingent upon first obtaining the writ of prohibition. The complaint clearly evidenced that there was no clear right to relief in this matter and therefore no duty to refund relator’s voluntary ticket payments. Relators’ motion fails to address the standards governing mandamus and dismissal of the complaint was required where as in this case “it appear[ed] beyond all doubt, after presuming the truth of all material factual allegations of [relator’s] complaint and making all reasonable inferences in his favor, that he [was] not entitled to the requested extraordinary relief in mandamus.” *State ex rel. Husted v. Brunner* (2009) 123 Ohio St.3d 119, 2009 -Ohio- 4805, at ¶ 8.

B. Relators’ Arguments Evidence a Fundamental Misunderstanding of Local Civil Traffic Camera Enforcement Laws and Contradict this Court’s Decisions in *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006 -Ohio- 6573 and *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008 -Ohio- 270.

Relators’ characterizations that civil camera enforcement ordinances are “permitting a city to license speeding and red light ordinance violations for a purely monetary price through extra-judicial proceedings” and that the Court’s dismissal ruling “allows those who speed and run red lights in Cleveland to avoid with impunity the imposition of statutorily mandated collateral-disability penalties such as court-imposed

points and predicate-offense penalty enhancements”¹ reflect a fundamental and profound misunderstanding of the role of CCO 413.031 and all local civil camera enforcement laws, while offering argument that is wholly unrelated to any reconsideration of whether Relators stated cognizable claims in prohibition and mandamus.

Relators fail to understand that local automated camera enforcement laws like CCO 413.031 do not supersede state law but rather serve as a local supplement. See *Mendenhall* at ¶ 37. The complementary relationship between local civil camera enforcement laws and the State’s traffic laws was further explained with this Court’s review of Akron’s camera enforcement ordinance:

Akron Ordinance 461-2005, which provides for implementation of an automated mobile speed-enforcement system, does not conflict with state law because it does not alter or supersede state law. The ordinance provides for a complementary system of civil enforcement that, rather than decriminalizing behavior, allows for the administrative citation of vehicle owners under specific circumstances. Akron has acted within its home rule authority granted by the Constitution of Ohio.

Mendenhall at ¶ 42.

That Relators arguments at pages 8-11 of their motion contradict *Mendenhall* is established by the very caption employed: “2. Municipal ordinances imposing civil penalties for speeding and red light violations conflict with state laws.” Relators follow this incorrect caption lead with selective quotes from and citations to *Mendenhall* in attempting to establish the existence of a conflict between local civil enforcement ordinances such as CCO 413.031 and a state laws because of the “total absence of the opportunity for the mandatory imposition of collateral disabilities, i.e. “penalties.”²

¹ See Relators Motion for Reconsideration at pp. 1-2.

² Relators’ Motion for Reconsideration at p. 8.

Relators reliance on *Mendenhall* in this context is seriously misplaced as the holding in the decision is diametrically opposed the position they seek to argue.

This Court identified in *Mendenhall* at ¶ 2 that it was undertaking the following:

We have accepted pursuant to S.Ct.Prac.R. XVIII(6) an issue certified by the United States District Court for the Northern District of Ohio, Eastern Division: “Whether a municipality has the power under home rule to enact civil penalties for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code.”

After considering the certified question and analyzing in detail the state/local enforcement issues presented the Court held:

An Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations. (Syllabus of the Court).

It was clearly understood by the Court in upholding the authority of municipalities to enact automated camera systems for the enforcement of traffic laws that no points would be assessed against a driver’s license and that the criminal justice system would not be involved in penalizing speeders caught by the cameras.

The criminal justice system is not involved in penalizing violations of the speed limit captured by an automated camera. Unlike those who receive speeding citations from a police officer who has observed the infraction, speeders caught by the automated enforcement system do not receive criminal citations, are not required to appear in traffic court, and do not have points assessed against their driving records.

Mendenhall at ¶ 6. Plaintiff’s arguments that State law requires that points be assessed and recorded against a driver’s license for any moving violation and that all such offenses must be adjudicated in municipal court are simply wrong.

Even earlier, in *State ex rel. Scott v. Cleveland*, wherein this Court upheld on appeal the dismissal of an early writ of prohibition challenge to CCO 413.031, this Court

had recognized that the City's civil camera ordinance did not implicate the assessment of points against a driver's license and the ordinance established administrative proceedings that did not require compliance with statutes and rules that were applicable only to courts:

Fourth, many of the statutes and rules cited by appellants in support of their prohibition claim are inapplicable to administrative proceedings such as the proceeding specified in Section 413.031. Cf. R.C. 4510.036(B) (“Every court of record or mayor's court before which a person is charged with a violation for which points are chargeable by this section shall assess and transcribe to the abstract of conviction that is furnished by the bureau to the court the number of points chargeable by this section * * *” [emphasis added]); ... * * * ...Section 413.031 authorizes an administrative proceeding that does not require compliance with statutes and rules that, by their own terms, are applicable only to courts.

Id. at ¶ 21.

Relators' confusing argument at pages 11-12 concerning home rule authority and the *Scott* decision is not well taken. This Court upheld the dismissal of a complaint seeking a writ of prohibition in *Scott* that had “challeng[ed] the validity of a municipal ordinance [CCO 413.031] authorizing civil penalties against owners of automobiles that have been photographed by an automated-camera system that detects and photographs cars that run red lights or speed.” *Id.* at ¶ 1. There can be no misunderstanding that this Court found the City did not patently and unambiguously lack jurisdiction to enact CCO 413.031 because first, the City's ordinance was presumed to be constitutional (*Id.* at ¶ 18) and second the City had authority under the Home Rule Amendment to regulate traffic:

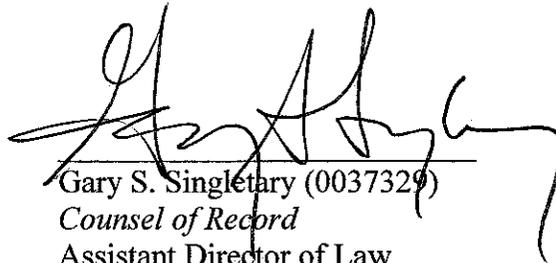
[T]he Home-Rule Amendment authorizes Ohio municipalities “to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Section 3, Article XVIII, Ohio Constitution. “Thus, a municipality may regulate in an area such as traffic whenever its regulation is not in conflict with the general laws of the state.” *Linddale v. State* (1999), 85 Ohio St.3d 52, 54, 706 N.E.2d 1227. Section 413.031 represents Cleveland's attempt to regulate on the subject of local traffic.

Id. at ¶ 19. *Scott's* reasoning was further amplified and substantiated by the subsequent decision in *Mendenhall* wherein it was formally recognized that that Ohio municipalities had home rule authority to enact traffic camera enforcement laws that imposed civil liability upon those violating traffic laws. Relators' arguments in support of reconsideration do not reflect the law of Ohio and are simply not well taken.

III. Conclusion

Relators fail to establish that there was any error in this Court's dismissal of their Complaint and their motion offers no basis for reconsidering their requests for writs of prohibition and mandamus. Relators' arguments, further, are contrary to this Court's decisions in *Mendenhall* and *Scott* and reflect a continuing misunderstanding of municipal home rule authority. Respondents request that Relators' motion for reconsideration be denied.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Respondents Motion to Dismiss
was served by regular U.S. Mail this 21st day of May 2011 to:

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