

IN THE SUPREME COURT OF OHIO

CASE NO. 13-1234

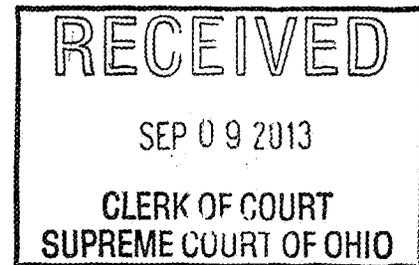
STATE EX REL. VILLAGE OF ELMWOOD PLACE, OHIO
Relator

-vs-

HON. ROBERT P. RUEHLMAN
Respondent

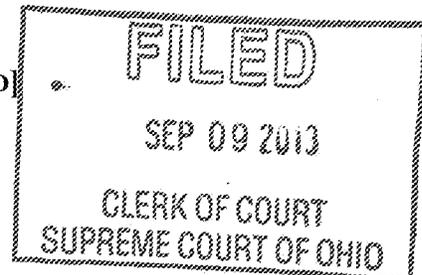
RELATOR'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S
AMENDED MOTION TO DISMISS

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COUNSEL FOR RESPONDENT, JUDGE ROBERT P. RUEHLMAN

Respondent concedes that the Relator is entitled to a stay pending an appeal from the Court of Common Pleas. However, Respondent's assertion that Relator has never requested a stay of Judge Ruehlman's Order pending appeal is incorrect. On March 12, 2013, Relator filed a Motion for Stay of Injunction Pending Appeal. The trial court simply denied the Relator's Motion for Stay without written opinion. (See attached Exhibit A).

Relator then attempted to appeal Judge Ruehlman's Order granting the injunction to the First District Court of Appeals; however, the First District dismissed the appeal because Judge Ruehlman had not awarded any attorneys fees to the Plaintiffs as part of the original judgment.

Respondent's Motion to Dismiss contains only one basis for dismissing this Mandamus Action: because the trial court has never awarded attorney's fees, there is no final judgment and the Relator is not entitled to a stay. This argument is completely unsupported by Ohio law.

Contrary to Respondent's assertions, the failure of the trial court to set attorney fees and costs against the Relator is not dispositive of this action because the trial court is completely without authority to award them in the first place. The putative award in the trial court's decision of fees and costs against the Relator and the Chief of Police is without authority under well-established Ohio law. Ohio follows the "American rule" that prevailing parties are not entitled to recover attorney's fees unless such fees are expressly authorized by statute. *See Sarin v. Bd. Of Educ. Of Warrensville Heights Sch. Dist.*, 46 Ohio St.2d 177, 347 N.E.2d 527 (1976), *citing Shuey v. Preston*, 172 Ohio St. 413, 177 N.E.2d 789 (1961), *State, ex rel. Michaels, v. Morse*,

165 Ohio St. 599, 138 N.E.2d 660 (1956), etc. There is no statute that authorizes an award of attorney's fees under the claims at issue here.

The relevant statute, in fact, expressly precludes such an award. In the underlying case, Plaintiffs' substantive claims sought only declaratory relief. The Ohio Revised Code specifically precludes an award of attorney's fees under the facts here:

A court of record shall not award attorneys' fees to any party on a claim or proceeding for declaratory relief under this chapter unless any of the following applies:

(a) A section of the Revised Code explicitly authorizes a court of record to award attorney's fees on a claim for declaratory relief under this chapter.

(b) An award of attorney's fees is authorized by section 2323.51 of the Revised Code, by the Civil Rules, or by an award of punitive or exemplary damages against the party ordered to pay attorney's fees.

(c) Regardless of whether a claim for declaratory relief is granted under this chapter, a court of record awards attorney's fees to a fiduciary, beneficiary, or other interested party...

R.C. 2721.16(A)(1) (emphasis added). There is no other section of the Revised Code that authorizes attorney's fees for claims seeking a declaration that an ordinance violates constitutional or statutory requirements. Accordingly, the trial court cannot award attorney's fees to the Plaintiffs in this matter.¹ The analysis is the exact

¹ Plaintiffs' request for injunctive relief also does not entitle Plaintiffs to an award of attorney's fees. This Court has held the limitation on an award of attorney's fees in the absence of statutory authorization or a finding of punitive damages is applicable to equity cases, as well as cases at law. *See New York, Chicago & St. Louis Rd. Co. v. Grodek*, 127 Ohio St. 22, syl. 2, 186 N.E. 733 (1933) ("[T]he court, though awarding a mandatory injunction, is not authorized to include compensation for plaintiffs' attorney in damages assessed against defendant, in

same with regard to the trial court's attempt to award "other reasonable expenses" against the Relator, which *also* is not supported under Ohio law and, in fact, is prohibited by the grant of sovereign immunity under R.C. Chapter 2744.

The inability of the Relator to appeal the lower court's award of costs and attorney's fees places the Relator in an unfair position in which it is subject to a final and immediately effective judgment from which it cannot appeal until some future date solely because the trial court, *sua sponte*, awarded (but did not specify the amount of) attorney's fees to which Plaintiffs never were entitled in the first place.

Assuming, *arguendo*, that the trial court even had the authority to award putative attorney fees and costs against the Relator, the failure of the court to specify the exact amount does not preclude the order from being a final appealable order.

Under O.R.C. §2505.02(B)(1) an order is a final order when it is "[a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment." *O.R.C. §2505.02(B)(1)*. A "substantial right" is "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." *O.R.C. §2505.02(A)(1)*. The term "substantial right" has been construed to mean a "legal right," one protected and supported by law. *Hamilton Cty. Ed. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio*, 46 Ohio St.3d 147, 153, 545 N.E.2d 1260 (1989).

Here, Relator has a substantial right pursuant to Article XVIII, Section 3 of the Ohio Constitution, to enforce its legislatively adopted Ordinances and protect the lawful

the absence of evidence which would warrant the allowance of punitive or exemplary damages.").

exercise of its Home Rule authority. The trial court's permanent injunction prohibiting further enforcement of the Ordinances indisputably prevents any possibility of a judgment in Relator's favor. As a result, this case is over as far as Relator's interests at the trial court level and appeal by Relator is proper at this time.

Respondent will contend that the permanent injunction is not a final appealable order under Civil Rule 54(B) because there were other declaratory judgment claims which the trial court did not specifically address. However, the fact that the trial court based its permanent injunction "on fewer than all of the alternate grounds argued . . . does not strip the trial court's judgment of finality," *Riverside v. Slate*, 190 Ohio App,3d 765, 775, 944 N.E.2d 281, 288 (Tenth Dist., 2010); *General Ace, Ins. Co, v, Insurance Co. of North America* (1989), 44 Ohio St3d 17,21, 540 N.E.2d 266, 270 (1989) ("Furthermore, even though all the claims or parties are not expressly adjudicated by the trial court, if the effect of the judgment as to some of the claims is to render moot the remaining claims or parties, **then compliance with Civ. R 54(B) is not required to make the judgment final and appealable.**") (Emphasis added),

As explained further by the Tenth District Court of Appeals in *Riverside, supra*:

Although the city's complaint requested only a single form relief a declaration that R.C. 718.01 (H)(II) is unconstitutional, the city pleaded its grounds for that declaration as separate claims for relief. The question of whether an order is a final, appealable order, however, "must be determined by the effect the order has upon the pending actions," *Sys., Constr., Inc, v, Worthington Forest, Ltd. (1975)*, 46 Ohio App,2d 95, 96, 75 0,0,2d 79,345 N,g,2d 428. A judgment that determines a claim in an action and has the effect of rendering moot all other claims in the action is a final, appealable order, pursuant to R,C, 2505,02, and Civ. R. 54(B) is not applicable, *Wise v, Gursky* (1981), 66 Ohio St,2d 241,243,20 0,0,3d233, 421 N.E.2d 150.

In this case, there remains no further relief to be granted. The trial court has declared the Ordinances invalid and prohibited further enforcement. To revisit alternate arguments for achieving results Plaintiffs have already obtained in full makes no sense.

Further, it has been a half year now and the trial court has still not awarded any attorney's fees to the Plaintiff as a result of the injunction. As such, the trial court is essentially keeping the case in limbo - a jurisdictional black hole – and denying the Relator the opportunity to have an appellate court review the trial court's rulings. If the Ohio Supreme Court dismisses this Mandamus action, the trial court theoretically could maintain jurisdiction over this action for eternity by simply never awarding attorney's fees. Meanwhile, months (and even years) will go by while the Relator is unable to generate any revenue whatsoever from the traffic cameras.

CONCLUSION

Respondent's Motion to Dismiss should be denied and this Court should grant Relator's Mandamus Complaint. Respondent admits that Relator is entitled to a stay of the trial court's judgment pending appeal. Respondent has refused to stay the Order by simply arguing that no attorney's fees have been awarded in the action. This argument is entirely without merit as Plaintiffs are not entitled to attorney's fees in the first place. Allowing the trial court to maintain jurisdiction over this case "while the amount of attorney's fees is determined" completely denies Relator of any right of appeal. As this Court can readily see from the record, it is has been six months now and Respondent simply refuses to make a determination of an award of attorney's fees. Accordingly, this case is "stuck" as the Common Pleas level and the Village-Relator has been denied the basic right of appeal under Ohio law and the Ohio Constitution.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent this 6th day of September, 2013 to:

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EXHIBIT A

ENTERED
MAR 13 2013

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

~~JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO~~

GARY PRUIETT, et al.,

Plaintiffs,

vs.

VILLAGE OF ELMWOOD PLACE, et al.,

Defendants.

Case No. A1209235

(Judge Robert P. Ruehlman)

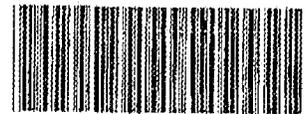
**ENTRY DENYING MOTION
FOR STAY OF INJUNCTION**

On March 12, 2013, this matter came before the Court on Village of Elmwood Place's Motion for Stay of Injunction. Upon consideration of the pleadings, record, evidence and arguments of counsel, the Court finds that Village of Elmwood Place's motion is not well taken.

WHEREFORE, IT IS HEREBY ORDERED that Village of Elmwood Place's Motion for Stay of Injunction in this action is denied.

Judge Robert P. Ruehlman

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