

IN THE SUPREME COURT OF OHIO

BRADLEY WALKER, :

Plaintiff-Appellee, : Supreme Court Case No. 13-1277

v. : On Appeal from the Lucas County Court of

CITY OF TOLEDO, *et al.*, : Appeals, Sixth Appellate District

Defendants-Appellants. : (Case No. L-12-1056)

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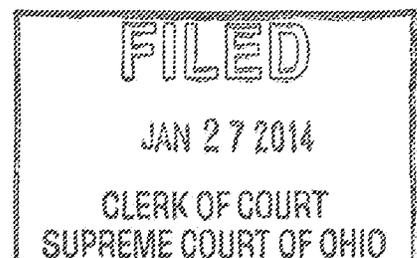
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STATEMENT OF FACTS

Amicus City of Columbus adopts and incorporates into this brief the statement of facts as set forth in the merit briefs of Appellant City of Toledo and Appellant Redflex Traffic Systems Inc.

ARGUMENT

Proposition of Law No. I:

Local ordinances which establish an administrative process to hear noncriminal traffic infractions do not divest the municipal court of its criminal and traffic jurisdiction as set forth in R.C. 1901.20(A)(1) in violation of Article IV, Section 1 of the Ohio Constitution.

Amicus City of Columbus joins Appellants City of Toledo and Redflex Traffic Systems Inc. in urging this Court to reject the findings of the Sixth District Court of Appeals and to reinstate the decision of the trial court granting Appellant's motion to dismiss. The appellate court erroneously determined that the administrative process established by Appellant City of Toledo to hear photo red light appeals violated Article IV, Section 1 of the Ohio Constitution by divesting the Toledo Municipal Court of its jurisdiction over traffic offenses.

Charter municipalities derive authority to create administrative bodies and conduct administrative hearings from the Ohio Constitution, not state law as indicated by the Sixth District Court of Appeals in its majority opinion. See *Walker v. Toledo*, 6th Dist. Lucas No. L-12-1056, 2013 Ohio 2809, ¶ 35. Article XVIII, Section 7, commonly known as the "Home Rule Amendment," states that "any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government." Appellant City of Toledo, along with Amicus City of Columbus and many other municipalities, has adopted such a charter and may accordingly "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." Article XVIII, Section 3 of the Ohio Constitution. As this Court has previously confirmed, "by reason of Ohio Const. art XVIII, §§ 3 and 7, a charter city has all powers of local self-

government except to the extent that those powers are taken from it or limited by other provisions of the constitution or by statutory limitations on the powers of the municipality which the constitution has authorized the general assembly to impose.” *Bazell v. Cincinnati*, 13 Ohio St.2d 63, 68, 233 N.E.2d 864 (1968). Thus, a charter municipality’s authority to enact an administrative appeals process to enforce a municipal ordinance that concludes with a final order that can be appealed to a trial court pursuant to Chapter 2506 is derived from these constitutional provisions.

Charter municipalities throughout the state of Ohio have, pursuant to their home rule powers, established and codified administrative processes resulting in a final order in the interest of protecting the public. The photo red light enforcement scheme created by Appellant is but one of many examples of the exercise of this power. To date, there is no general law that conflicts with this exercise of police power. The ruling by the appellate court that such administrative schemes are unconstitutional conflicts with decisions of this Court recognizing the right of municipal administrative agencies created pursuant to the City’s constitutionally derived home rule powers to render final orders that are subject to appellate review pursuant to Chapter 2506 of the Ohio Revised Code. See *Willoughby Hills v. CC’s Bar Sahara*, 64 Ohio St.3d 24; 591 N.E.2d 1203 (1992). The effect of the appellate court’s decision is that the only way in which purported violations of city ordinances can be heard by a municipal court is through the City’s filing of original criminal or civil actions. If R.C. 1901.20(A)(1) requires all violations of municipal ordinances to be initiated as an original action filed in a municipal court, the entirety of Chapter 2506 of the Revised Code would be nullified. Such a result cannot withstand scrutiny because it ignores the applicability of R.C. 2506.01(A) to the issue of jurisdiction over administrative appeals relating to violations of municipal ordinances.

Chapter 2506 of the Ohio Revised Code explicitly enables the decisions of a political subdivision to be subject to judicial review via administrative appeal. In particular, R.C. 2506.01(A) provides:

Except as otherwise provided in sections 2506.05 to 2506.08 of the Revised Code, and except as modified by this section and sections 2506.02 to 2506.04 of the Revised Code, every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505 of the Revised Code.

Municipalities that have enacted administrative schemes for automated traffic enforcement provide notice and an opportunity for an administrative hearing before a hearing officer in which evidence may be presented by the City and the individual challenging the citation. These features satisfy the requirement that action taken by an administrative agency must be the product of quasi-judicial proceedings to be appealable under Chapter 2506. *See State ex rel. Scott v. Cleveland*, 112 Ohio St. 3d 324; 2006-Ohio-6573; 859 N.E.2d 923 (in which this Court recognized that the civil hearing process provided by the City of Cleveland's photo enforcement ordinance "involves the exercise of quasi-judicial authority"). Similarly, the decision of the hearing officer meets the definition of a final order under R.C. 2506.01(C).

On page 9 of Appellee's reply brief filed with the Sixth District, he claims that Chapter 2506 has nothing to do with this case. This position is inconceivable to Amicus City of Columbus because Chapter 2506 was enacted by the legislature to address this very scenario. Appellee alleges that administrative orders that are subject to appellate review under Chapter 2506 are not violations of ordinances, citing *Athenry Shoppers Ltd. v. Dublin Planning & Zoning Comm.*, 10th Dist. Franklin No. 08AP-742, 2009-Ohio-2230, in support. Appellee's reliance on this case is puzzling because the dispute at issue involved the denial of a development plan

application. There is nothing in this decision to suggest that the Court was imposing limits on the application of Chapter 2506 to administrative appeals of violations of municipal ordinances. Certainly, a denial of an application by an administrative board constitutes a final order that can be adjudicated under Chapter 2506 but it is disingenuous to suggest that the appellate review available under Chapter 2506 is limited to land use cases involving denials of applications for variances or other relief. Even a cursory review of the annotations accompanying Chapter 2506 reveals that Appellee's position is not supported by the case law.

For instance, the Eighth District Court of Appeals reviewed an appeal brought pursuant to Chapter 2506 involving violations of the City of Cleveland's Building and Housing Code in which a property owner was cited with an administrative notice for violating twenty-one provisions of this code. *1476 Davenport Ltd. P'ship v. Cleveland Bd. of Zoning*, 8th Dist. Cuyahoga No. 85872, 2005-Ohio-3731. The violations were heard by the City's Zoning Board and were subsequently appealed to the Court of Common Pleas pursuant to Chapter 2506. See also *Thrower v. Akron*, 9th Dist. Summit No. 21153, 2003-Ohio-1307 (notice of violations of Akron's Housing Code issued to property owner that were administratively appealed to the Housing Appeals Board and eventually the court of common pleas pursuant to Chapter 2506); *Ensley v. Dayton*, 2nd Dist. Montgomery No. 14487, 1995 Ohio App. LEXIS 3366 (August 16, 1995) (notice of violations of housing, zoning, and fire prevention codes issued to property owner which were neither corrected nor appealed to the appropriate administrative boards ultimately resulting in the filing of criminal charges and property owner seeking injunctive relief to prevent Dayton from pursuing criminal prosecution for the violations). If Appellee's position is correct, municipalities have no legal authority to pursue violations of municipal ordinances administratively. However, as evidenced above, appellate districts are routinely the last stop for

Chapter 2506 appeals where the municipality chooses to pursue violations of its ordinances administratively rather than through the filing of a criminal complaint. Appellee's position that Chapter 2506 is irrelevant to these proceedings lacks merit and should be rejected by this Court.

Amicus City of Columbus asserts that Appellee's cause of action must also fail because it relies upon a misreading of R.C. 1901.20(A)(1). Appellee's interpretation of this statute is inconsistent with well-established case law, notwithstanding the decision by the appellate court in this case. The plain language of R.C. 1901.20 demonstrates that this statute establishes the criminal and traffic jurisdiction of a municipal court. Therefore, the quasi-judicial administrative process established by Appellant City of Toledo and the other municipalities that have implemented photo enforcement programs do not implicate or conflict with the jurisdiction conferred on the municipal court by R.C. 1901.20.

This Court analyzed R.C. 1901.20 in a manner consistent with this proposition in *State v. Cowan*, 101 Ohio St.3d 372; 2004-Ohio-1583; 805 N.E.2d 1085 at ¶ 11:

Municipal courts are creatures of statute and have limited jurisdiction. R.C. 1901.18 and 1901.20 provide for their creation, with the former statute relating to civil matters and the latter relating to criminal and traffic matters.

In *Cheap Escape Co. v. Haddox, L.L.C.*, 120 Ohio St. 3d 493; 2008-Ohio-6323; 900 N.E.2d 601 at ¶ 18, this Court again confirmed the meaning of this statute:

Likewise, R.C. 1901.20 provides that municipal courts have subject-matter jurisdiction in criminal matters only when the crime was committed "within its territory" or "within the limits of its territory." R.C. 1901.20(A)(1) and (B). We find no reason that the General Assembly would have granted municipal courts statewide subject-matter jurisdiction over civil matters but only territorial subject-matter jurisdiction over criminal matters.

This interpretation of R.C. 1901.20 as a statute that addresses the criminal jurisdiction of a municipal court has been regularly applied by the appellate courts in Ohio. *See State v. Lovelace* 1st Dist Hamilton No. C-110715, 2012-Ohio-3797, 975 N.E.2d 567 at ¶ 23 ("With

respect to criminal matters, municipal courts have subject-matter jurisdiction over misdemeanors occurring within their territorial jurisdiction. R.C. 1901.20(A)(1).”); *Columbus v. Miller*, 10th Dist. Franklin No. 09AP-770, 2010-Ohio-1384 at ¶31 (“With regard to criminal matters, R.C. 1901.20(A)(1) provides that a municipal court has subject-matter jurisdiction ‘of the violation of any ordinance of any municipal corporation within its territory * * * and of the violation of any misdemeanor committed within the limits of its territory.’ Because the instant case involved an alleged misdemeanor violation of a municipal ordinance of the city of Columbus, which is located within Franklin County, the municipal court properly had subject matter jurisdiction to hear and decide the charge against defendant.”); *State v. Davis*, 2nd Dist. Montgomery No. 19540, 2003-Ohio-4584, at ¶17. (“Pursuant to R.C. 1901.20(A)(1), a municipal court is authorized to adjudicate alleged violations of any misdemeanor committed within the limits of its territory.”)

Judge Yarborough’s dissent in the instant appeal relies upon the precedent established by this Court to explain why the civil administrative mechanism created by Appellant City of Toledo’s ordinance does not usurp the jurisdiction conferred by R.C. 1901.20:

R.C. 1901.20 was intended to establish the jurisdiction of the municipal court over criminal offenses (misdemeanors) and traffic code violations that carry criminal penalties. Had the General Assembly intended to vest an exclusive jurisdiction in the municipal court over criminal violations of traffic ordinances and any parallel scheme that would treat the same violations as civil infractions, it would have used that word—“exclusive”—as an adjectival modifier preceding the primary subject-noun of the sentence, “jurisdiction.”

Walker v. Toledo, 6th Dist. Lucas No. L-12-1056, 2013-Ohio-2809 at ¶47.

The dissent continues in its critique of the majority decision:

The majority then engages in rewriting the first sentence of R.C. 1901.20(A)(1) to find “exclusive” jurisdiction by interpreting the word “any” as if it somehow modified the word “jurisdiction,” which it does not. * * * Given how the word “any” is actually placed in R.C. 1901.20(A)(1), it modifies only the word

"ordinance," which is not the primary subject-noun of the sentence. Because "any" does not in any way modify the word "jurisdiction," it cannot support a conclusion of exclusivity for the municipal court to adjudicate all violations of city traffic ordinances. The majority has improvidently accepted Walker's invitation to "imagine" that the first sentence of the statute reads other than it does.

Id. at ¶¶48-50.

In 2008, this Court in *Mendenhall v. Akron* explicitly authorized municipalities to implement ordinances such as those adopted by Appellant City of Toledo that create a civil administrative system of traffic enforcement:

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.

Mendenhall v. Akron, 117 Ohio St.3d 33; 2008-Ohio-270; 881 N.E.2d 255 at ¶ 41.

Furthermore, this Court made it quite clear in its consideration of Akron's ordinance that the criminal jurisdiction of the municipal court was not implicated by Akron's civil camera enforcement ordinance:

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 license.

Id. at ¶8.

Although a specific constitutional challenge to the Akron ordinance based upon a violation of Article IV, Section 1 was not before this Court when it decided *Mendenhall*, cases decided by this Court prior to and subsequent to *Mendenhall* demonstrate that this Court has already rejected the premise that a quasi-judicial administrative process of traffic enforcement

culminating with appellate review pursuant to R.C. 2506 unconstitutionally usurps the jurisdiction of the municipal court to hear misdemeanor cases. In particular, this Court has had the opportunity on two occasions to find that municipalities exercising this power were patently and unambiguously without jurisdiction to do so but declined to make such a finding.

For instance, in the case of *State ex rel. Scott v. Cleveland*, 166 Ohio App.3d 293; 2006-Ohio-2062; 850 N.E.2d 747, the Eighth District Court of Appeals considered a lawsuit in which relators specifically argued that the Cleveland ordinance which created a civil administrative process to address speeding violations unconstitutionally conflicted with the jurisdiction granted to the Cleveland Municipal Court to hear speeding infractions. The appellate court found that “neither relators nor respondents has provided this court with clearly controlling authority regarding the issue presented in this case: whether a municipality is patently and unambiguously without jurisdiction to impose civil liability for speeding violations photographed by an automated traffic enforcement camera system.” *Id.* at ¶17. In upholding the decision of the lower court to dismiss relators’ petition, this Court specifically found that the City did not patently and unambiguously lack jurisdiction, albeit without making a finding on relators’ constitutional claim based upon Article IV, Section 1. *See State ex rel. Scott v. Cleveland*, 112 Ohio St. 3d 324; 2006-Ohio-6573; 859 N.E.2d 923.

More recently in 2011, an original class action lawsuit seeking mandamus and a writ of prohibition was filed with this Court in which relator made the same jurisdictional argument, yet this Court again rejected it by dismissing the claim. *See State ex rel. Christoff v. Turner*, 128 Ohio St. 3d 1479; 2011-Ohio-2055; 946 N.E.2d 238. In dismissing the complaint in *Christoff*, this Court had to conclude that the Cleveland ordinance did not patently and unambiguously deprive the Cleveland municipal court of jurisdiction established in R.C. 1901.20. The granting

of the City of Cleveland's motion to dismiss the complaint in *Christoff* signals this Court's continuing understanding that the civil administrative quasi-judicial hearing process it previously recognized in *Scott* does not strip the municipal court of any statutory jurisdiction contrary to Article IV, Section 1. By finding that Appellant City of Toledo's ordinance was an unconstitutional usurpation of municipal court jurisdiction, the appellate court in this case ignored the message this Court was sending to the lower courts when it upheld the ordinances at issue in *Scott*, *Mendenhall*, and *Christoff*, respectively.

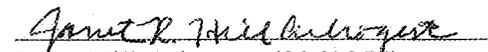
CONCLUSION

There is no language in R.C. 1901.20 (A)(1) that limits a municipality's ability to create a civil administrative process that is entirely separate from the manner by which individuals are cited and charged with traffic misdemeanors that fall under the jurisdiction of a municipal court. Appellee cites to no legal authority that stands for the proposition that municipalities cannot establish administrative processes to address violations of municipal ordinances because there is no such authority. The decision by the appellate court majority in the instant appeal ignores a long history of statutory interpretation of R.C. 1901.20 as discussed above and completely disregards the existence of R.C. Chapter 2506. The ordinance enacted by Appellant City of Toledo and all other municipalities that have adopted similar ordinances is a complementary enforcement process to that which would occur if a police officer were present, observed the same violation, and acted on it. *Mendenhall v. Akron*, 117 Ohio St.3d 33; 2008-Ohio-270; 881 N.E.2d 255 at ¶ 37. On this basis, Amicus City of Columbus strongly urges this Court to reject the analysis of the appellate court and to reinstate the original decision by the trial court to grant Appellant City of Toledo's Motion to Dismiss and to make a specific finding that such

ordinances do not usurp the criminal and traffic jurisdiction of a municipal court established by R.C. 1901.20 in violation of Article IV, Section 1 of the Ohio Constitution.

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This will certify that a copy of the foregoing *Amicus Brief of City of Columbus* was sent by regular U.S. mail, postage prepaid to the following this 27th day of January 2014.

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