

ORIGINAL

IN THE SUPREME COURT OF OHIO

JANINE LYCAN, *et al.*

Plaintiff-Appellees,

vs.

CITY OF CLEVELAND,

Defendant-Appellant.

: Case No. 2014-0358
:
:
: On appeal from the Eighth District
: Court of Appeals of Ohio
:
:
: Eighth District Case Number 99698
:

MERIT BRIEF OF AMICUS CURIAE CITY OF TOLEDO IN
SUPPORT OF APPELLANT CITY OF CLEVELAND

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I. STATEMENT OF AMICUS INTEREST

This matter is of great interest to Amicus Curiae City of Toledo (“Toledo”). Toledo currently has a similar photo-enforcement program and this Court’s ruling will impact Toledo’s program as well. Moreover, Toledo is currently an Appellant in a case before this Court that challenges the constitutionality of Toledo’s photo-enforcement program. *See Walker v. City of Toledo*, S.Ct. Case No. 2013-1277. The *Walker* case is decisional at this time.

If the decision of the Eighth District Court of Appeals is not reversed, the decision will create uncertainty and confusion with regard to the presumptive finality of any number of long ended quasi-judicial administrative actions. The ruling below could potentially create major instability in Toledo. “The instability that would follow the establishment of a precedent for disregarding the doctrine of *res judicata* for equitable reasons would be greater than the benefit that might result from relieving some cases of individual hardship.” *Grava v. Parkman Twp.*, 73 Ohio St. 3d 379, 384, 653 N.E.2d 226, 230 (1995). In essence, the ruling of the Eighth District Court of Appeals in this matter provides a disincentive to conclusive resolution of controversies involving the same core of facts. The unintended result would be the promotion of inefficient use of limited judicial or quasi-judicial time and resources. Id.

II. STATEMENT OF THE CASE AND FACTS

Toledo adopts and incorporates by reference Cleveland’s statement of the case and facts.

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1: The doctrine of *res judicata* should apply where a person has rights to administrative proceedings but waives those proceedings and pays a civil penalty without contest.

As in most jurisdictions, Ohio has long recognized that the doctrine of *res judicata* applies where an existing final judgment between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit. *Rogers v. City of Whitehall*, 25 Ohio St. 3d 67, 69, 494 N.E.2d 1387, 1388 (1986). “A valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava*, 73 Ohio St. 3d at 382. Under Ohio law, four prerequisites have to be satisfied for *res judicata* to apply. *See Carroll v. City of Cleveland*, 522 F. App’x 299, 303 (6th Cir. 2013).¹ In the case below Cleveland satisfied all four of these prerequisites. Nevertheless, the Court of Appeals refused to apply the doctrine.

First, the Cleveland program and similar programs satisfy the first prerequisite for the application of *res judicata*, - a prior final, valid decision on the merits by a body of competent jurisdiction. *Id.* While application of *res judicata* is generally made with regard to actions which have proceeded to judicial review and determinations, the doctrine is equally applicable to quasi-judicial proceedings before an administrative body from which no appeal has been taken pursuant to Ohio Revised Code § 2506.01. *Id.*

The civil hearing process provided by CCO 413.031 and similar photo-enforcement programs involves the exercise of quasi-judicial authority, which is the “power to hear and determine controversies between the public and individuals that require a hearing resembling a judicial trial.” *State ex rel. Scott v. Cleveland*, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d

¹ In *Carroll*, the United States Court of Appeals for the Sixth Circuit looked at Ohio law to determine the preclusive effect of the prior state judgment against plaintiff. Federal courts must give the same effect to a state court judgment that would be given by a court of the state in which the judgment was rendered. Therefore, when asked to give preclusive effect to a prior state court judgment, a federal court must look to the law of the rendering state to determine whether and to what extent that prior judgment should receive preclusive effect in a federal action.

923.² Because CCO 413.031 involves the exercise of quasi-judicial authority by way of the administrative proceedings, it provides an adequate remedy in the ordinary course of law to those receiving civil notices of liability.

Appellees' voluntary payment of the civil fines in lieu of contesting the notice of violation through available procedures operates as *res judicata* to the same extent as a judgment on the merits. *See Carroll*, 522 F. App'x at 304. Appellees did not receive administrative hearings because they had voluntarily paid or otherwise had not challenged their citations after receiving the CCO 413.031 notices of violation. If the Appellees had chosen to contest their citations, they would have received ample opportunity to present evidence and develop the facts surrounding their citations both in an administrative proceeding and, if necessary, in the Ohio court system.

The Appellees should not escape application of *res judicata* simply because they resolved their claims and waived available process. The preclusive effect of a final judgment "does not change simply because the parties resolved the claim without vigorously controverted proceedings." *Scott v. City of E. Cleveland*, 16 Ohio App. 3d 429, 431, 476 N.E.2d 710, 713 (8th Dist. 1984). This is especially true here because the citations that each of the Appellees received clearly indicated that paying the fine without contesting the citation, was an admission of liability.³ By not asserting any defenses in the quasi-judicial administrative process, each of the Appellees knowingly admitted waived challenging the underlying civil violation.

² The Home-Rule Amendment authorizes Cleveland and other charter cities like Toledo to exercise all powers of local self-government and to adopt and enforce the complimentary civil traffic regulations. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255

³ Significantly, even where there is a contested or uncontested administrative determination of liability, Cleveland would still have to go to court to get a judgment; "[a] decision [by the administrative body] in favor of the City of Cleveland may be enforced by means of a *civil action* or any other means provided by the Ohio Revised Code." CCO 413.031(k)(4) [emphasis added.] Presumably, therefore, a person that does not voluntarily pay could contest the violation in court when a civil action is commenced.

The Court of Appeals decision would adversely affect the finality of settlements in all cases involving administrative processes. The Court of Appeals concluded that there could not be *res judicata* unless there was a judgment issued. [Lycan ¶15] The ruling of the court below unnecessarily restricts the entire principle of the doctrine of *res judicata* because it would eliminate the finality of settlement. Here, Appellees had process available but chose to pay a civil fine without contest. They should not be able to resurrect the case later.

Moreover, like an agreed settlement in a civil case, the admission of liability of each of the Appellees qualified as a final disposition. Just as *res judicata* applies to a party who settles a civil case and later attempts to litigate claims that she could have pursued in the case that she settled, so too does it apply to the Appellees here. *Carroll*, 522 F. App'x at 304. Instead of contesting their citations, the Appellees conceded civil liability by paying their fines. CCO 413.031(a) explicitly defines automated-camera system as “civil enforcement system.” Therefore, the Appellees admitted liability by paying their traffic fines, and Cleveland’s subsequent acceptances of those payments, qualified as a valid, final settlement.

Cleveland also satisfies the second prerequisite for the application of *res judicata* - a second action involving the same parties as the first. *Id.* Without question, the Appellees’ class action involves the same parties as the earlier civil violation. Cleveland issued a citation to each of the Appellees. Also, had each of the Appellees taken advantage of the appeals process, Cleveland would also have been the adverse party.

City of Cleveland also satisfies the third prerequisite for the application of *res judicata*, which requires a second action raising claims that were or could have been litigated in the first action. *Id.* *Res judicata* requires a plaintiff to present every ground of relief in the first action, or be forever barred from asserting it. *Natl. Amusements, Inc. v. City of Springdale*, 53 Ohio St. 3d

60, 62, 558 N.E.2d 1178, 1180 (1990). The claim extinguished by *res judicata* includes “all rights of the plaintiff to remedies against the defendant with respect to all, or any part of the transaction or series of connected transactions, out of which the action arose.” *Carroll*, 522 F. App’x at 303. Therefore it is irrelevant and of no consequence that the Appellees attempt to present evidence or theories of the case that could have been but were not offered in the first place, or that the Appellees seek equitable remedies not previously demanded.

Appellees could have appealed their quasi-judicial administrative decisions, if necessary, to the court of common pleas. *Id.* at 303. Ohio Revised Code § 2506.01 states in pertinent part that “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.” Since the court of common pleas has the authority to review the ruling of Cleveland’s Parking Violations Bureau, the court of common pleas could have determined, during the course of its review, whether each of the Appellees administrative orders were “unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.” *See Dickson & Campbell, L.L.C. v. Cleveland*, 181 Ohio App. 3d 238, 2009-Ohio-738, 908 N.E.2d 964. However, instead of chancing litigation, each of the Appellees admitted liability by paying their civil penalties without contest.

The Appellees could have pursued the equitable restitution claims predicated in unjust enrichment raised in their class action during the course of the § 2506.01 appeal that they chose not to pursue. An individual pursuing an administrative appeal through § 2506.01 need not limit herself to administrative claims. *See Carroll*, 522 F. App’x at 305. Since Appellees could have

raised their equitable restitution claims had they availed themselves of the ordinance's appellate procedure, they are barred from raising it in the class action. In addition, the only remedy that the Appellees seek through their unjust argument theory is their already paid fines. Since the action authorized by § 2506.01 is in the nature of an action for declaratory judgment, had the Appellees successfully contested their citations in the first instance, they could have received a declaratory judgment in their favor and the return of the amounts paid to satisfy the fines. Id. Had they failed, they would have owed precisely what they paid.

Moreover, Appellees proceeding as a class changes only the scope, not the nature, of Appellees' claims. Id. If Appellees had successfully taken advantage of the administrative process, it would have afforded them the relief that they demand now as a class. In other words, had Appellees taken advantage of the opportunity for judicial review that Cleveland and Ohio law provide, they would not need to seek restitution now.

City of Cleveland satisfies the fourth prerequisite for the application of *res judicata*, which requires a second action arising out of the transaction or occurrence that was the subject matter of the previous action. Id. at 303. A "transaction" under Ohio law is a common nucleus of operative facts. *Grava*, 73 Ohio St. 3d at 382. "That a number of different legal theories casting liability on an actor may apply to a given episode does not create multiple transactions and hence multiple claims. This remains true although the several legal theories depend on different shadings of the facts, or would emphasize different elements of the facts, or would call for different measures of liability or different kinds of relief." Id. at 382-83.

The common nucleus of operative facts that underlie the Appellees' class action are identical to the common nucleus of operative facts that confronted the Appellees when they received their notices of liability. The dominant transactions, issuance of traffic citations to lessees rather than

owners of vehicles and each of the Appellees failing to invoke his or her right to a hearing, are the same for Appellees' class action and when the Appellees received their notices of liability. Therefore, as a matter of Ohio law, it is irrelevant that the Appellees' class action includes claims that rest on evidence or grounds or theories of the case not presented in the first action, or seek remedies or forms of relief not demanded in the first action. *See Carroll*, 522 F. App'x at 307. Because the Appellees' class action arises from their prior traffic citations and failure to invoke their right to a hearing, the final prerequisite for the application of *res judicata* is satisfied.

Moreover, since the doctrine of *res judicata* serves important public and private interests, exceptions to the doctrine's application should be narrowly construed. *Natl. Amusements*, 53 Ohio St. 3d at 60. *Res judicata* "encourages reliance on judicial decisions, bars vexatious litigation, and frees the court to resolve other disputes." *Id.* at 62. It is essential to the maintenance of social order. *Id.* *Res judicata* adds a quality of conclusiveness to judicial decisions. If judicial decisions were missing the latter quality, courts would not be invoked for the vindication of rights of person and property.

Although the Appellees may speak in terms of allowing an exception to *res judicata* for "fairness and justice," these are generally overstatements. *Id.* This Court has found that "refusing to allow [the Plaintiff] to use an alternate legal theory overlooked in the previous proceedings does not work an injustice." *Grava*, 73 Ohio St. 3d at 383. This is especially true here, since the Appellees had voluntarily paid or otherwise had not challenged their citations after receiving the CCO 413.031 notices of violation.

Since the Appellees made the informed choice of waiving their right to equitable relief by not challenging their citations, as a matter of Ohio law, the Appellees should be foreclosed from any right to equitable relief demanded by them in their class action. It is clear that Cleveland

certainly carries its burden by satisfying the four prerequisites required to apply *res judicata* to the Appellees' misguided class action. Appellees could have litigated all of the claims that they now raise in their class action through the ordinance's appellate process that they waived. Instead, they chose to settle with Cleveland by paying their fines. That they chose to not present the defenses raised in their class action to Cleveland's first judgment against them does not change the preclusive effect of that judgment. Therefore, since the Appellees received a civil citation issued pursuant to CCO 413.031 and knowingly declined to take advantage of the available adequate remedies at law provided by the ordinance, they are precluded by *res judicata* from subsequently acting as class representatives and presenting equitable restitution claims predicated in unjust enrichment.

Of course, the impact of the ruling of the courts below is broader than the facts of this particular case. The ruling, if undisturbed, would open a veritable "Pandora's Box" by allowing persons who have long since abandoned their right to initial administrative review to simply run to court at a later date and argue that their voluntary waiver of hearing through the payment of a fine was unfair. Finality in administrative cases like these will become illusive as persons with second thoughts can simply resurrect and relitigate their case under the guise of a civil action sounding in unjust enrichment.

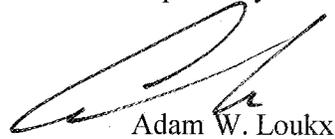
Public policy and judicial economy do not favor the position taken by the Court of Appeals in this case. As this Court has previously noted: "by providing parties with an incentive to resolve conclusively an entire controversy involving the same core of facts, such refusal establishes certainty in legal relations and individual rights, accords stability to judgments, *and promotes the efficient use of limited judicial or quasi-judicial time and resources.* The instability that would follow the establishment of a precedent for disregarding the doctrine of *res judicata*

for 'equitable' reasons would be greater than the benefit that might result from relieving some cases of individual hardship." *Grava*, 73 Ohio St. 3d at 383-84 (emphasis added).

IV. CONCLUSION

For the foregoing reasons, the City of Toledo respectfully requests that this Honorable Court reverses the decision of the Eighth District Court of Appeals to reject *res judicata* under such circumstances. This Court should hold that the persons that waive dispositive hearings are barred from presenting equitable restitution claims predicated in unjust enrichment as class representatives.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Adam W. Loukx', is written over the typed name. The signature is stylized with a large initial 'A' and a long horizontal stroke.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent by U.S. Mail postage pre-paid this 21 day of August 2014 to the following:

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