

IN THE SUPREME COURT OF OHIO

JANINE LYCAN, *et al.* : Case No. 14-0358

Plaintiffs-Appellees, :

v. : On Appeal from the 8th District Court of

CITY OF CLEVELAND, : Appeals, Cuyahoga County, Ohio

Defendants-Appellant. : Court of Appeals Case No. 99698

**BRIEF OF AMICUS CURIAE OF VILLAGE OF ELMWOOD PLACE
IN SUPPORT OF DEFENDANT-APPELLANT, CITY OF CLEVELAND'S REPLY**

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STATEMENT OF AMICUS INTEREST

The Village of Elmwood Place (“Elmwood”) is a municipality located in Hamilton County, Ohio. Elmwood has a strong interest in its right and ability to establish and conduct administrative hearings, including but not limited to, administrative hearings enforcing ordinances implementing an automated traffic camera system. Elmwood is particularly interested in the pending case as it is also currently involved in litigation and an appeal before the 1st District Court of Appeals (Appeal No. C-130662, C-130670, and C-130779) concerning Elmwood’s own use of a similar camera-based traffic enforcement system that, like Defendant-Appellant City of Cleveland (hereinafter “Cleveland”), also utilized administrative hearings as an enforcement tool.

Like the *amicus curiae* Ohio Municipal League, Elmwood feels it must be free to enforce its ordinances, to establish administrative procedures for enforcement of those ordinances, and to avoid unwarranted and unnecessary liability and costs incurred as a result of litigation.

STATEMENT OF FACTS

Elmwood hereby adopts, in its entirety, and incorporates by reference, the statement of facts contained within the Merit Brief of Cleveland.

ARGUMENT

Proposition of Law No. 1: *Res judicata* applies to the quasi-judicial administrative hearing and should bar Plaintiffs’ claims.

The 8th District properly observed that “[t]he doctrine of res judicata provides that ‘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.’” *Lycan v. City of Cleveland*, , 2014-Ohio-203, 6 N.E.3d 91, ¶ 15 (8th Dist.) (hereinafter “*Lycan*”) (quoting *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226, syllabus).

The 8th District's subsequent refusal to actually apply *res judicata* to the Plaintiffs-Appellees' claims was an error that should be reversed. *See Lycan*. Applying *res judicata* demands dismissal of Plaintiffs-Appellees' claims against Cleveland.

The doctrines of *res judicata* and collateral estoppel apply to quasi-judicial decisions made by administrative agencies from which no appeal has been taken. Their dispositive effect does not change simply because the parties resolved the claim without vigorously controverted proceedings before the agency. Consent decrees have the same *res judicata* and collateral estoppel effects as judgments resolving disputed issues.

Scott v. City of East Cleveland, 16 Ohio App.3d 429, 431, 476 N.E.2d 710 (8th Dist. 1984) (citing *Wade v. Cleveland*, 8 Ohio App.3d 176, 177, 456 N.E.2d 829 (8th Dist. 1982) and *Horne v. Woolever*, 170 Ohio St. 178, 182, 163 N.E.2d 378 (1959)); *see also State ex rel. Barley v. Ohio Dep't of Job & Family Servs*, 132 Ohio St.3d 505, 2012-Ohio-3329, 974 N.E.2d 1183, ¶ 30 ("It is true that '*res judicata*, whether claim preclusion or issue preclusion, applies to quasi-judicial administrative proceedings.'"). Here, the 8th District completely abandoned this sound line of reasoning when, in declining to apply *res judicata*, it reasoned just the opposite: "[w]ith limited civil sanctions, there is little incentive to contest a citation or to vigorously litigate the matter." *Lycan* at ¶ 17.

Nearly identical issues were brought before the Sixth Circuit in *Carroll v. City of Cleveland*, 522 Fed. Appx. 299 (6th Cir. 2013). The 8th District cited *Carroll* in its decision, but declined to follow it. In *Carroll*, as here, the city issued citations to individuals through use of an automated camera system. The individuals paid their citations and, by doing so, admitted liability. The court ultimately held that, "Appellants could have litigated all of the claims that they now press through the ordinance's appeals process. Instead, they chose to settle with the City by paying their fines. The district court correctly concluded that claim preclusion bars Appellants' claims." *Id.* at 307.

In its analysis, the court in *Carroll* listed four requirements of *res judicata's* claim preclusion doctrine:

- (1) a prior final, valid decision on the merits by a court of competent jurisdiction;
- (2) a second action involving the same parties, or their privies, as the first;
- (3) a second action raising claims that were or could have been litigated in the first action; and
- (4) a second action arising out of the transaction or occurrence that was the subject matter of the previous action.

Id. at 303.

Clearly, elements (2) and (4) are present here. The same parties that were subject to the administrative hearing and/or paid penalties under Cleveland's program are involved here and their claims arise from the exact same occurrence as did those penalties-- their red-light camera violations.

The 8th District took issue with the first element of *res judicata*. See *Carroll* at 303 (*res judicata* requires, in part, "(1) a prior final, valid decision on the merits by a court of competent jurisdiction"). As has been cited above, *res judicata* does apply to quasi-judicial hearings as were involved here. See *Scott v. City of East Cleveland*, 16 Ohio App.3d 429, 431, 476 N.E.2d 710 (8th Dist. 1984); *Wade v. Cleveland*, 8 Ohio App.3d 176, 177, 456 N.E.2d 829 (8th Dist. 1982); *Horne v. Woolever*, 170 Ohio St. 178, 182, 163 N.E.2d 378 (1959); and *State ex rel. Barley v. Ohio Dep't of Job & Family Servs*, 132 Ohio St.3d 505, 2012-Ohio 3329, 974 N.E.2d 1183. The 8th District acknowledged that the Supreme Court has previously "found the civil hearing process provided by CCO 413.031(k) to involve the exercise of quasi-judicial authority." *Lycan* at ¶ 16 (citing *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 15). Nevertheless, the 8th District opted not to apply *res judicata*, citing "fairness and justice." *Id.*

Finding, as did the 8th District here, that the administrative hearing did not produce a sufficient judgment from a tribunal of competent jurisdiction is contrary to prior court precedent of this Court as well as the 8th District itself. See *Lycan* at ¶ 15 (“Res judicata does not apply because there was never an actual ‘judgment’ rendered by a court, or administrative tribunal, of competent jurisdiction.”). Further, the 8th District’s reliance on “fairness and justice” is also misplaced. After all, the subject ordinance and related automated system are designed to enforce red-light and speeding laws. The administrative hearing is, as the 8th District put it, “designed to provide a simple and expeditious means of disposing of literally thousands of such citations every year.” *Lycan* at ¶ 18. It would not be just or fair to allow those who violate traffic laws to be excused due to the municipality’s alleged inability to expeditiously enforce those laws through meaningful administrative hearings. It would not be just or fair to permit traffic violators to pay fines and waive any hearing to challenge those fines only to later challenge them in a different court. Accepting Plaintiffs-Appellees’ argument, a municipality could only rely on the payment of fines and waiver once the applicable statute of limitations and appellate periods had expired. Municipalities accepting Plaintiffs-Appellees’ argument would actually be encouraged to hold hearings demanding the presence of violators to ensure what Plaintiffs-Appellees strictly consider “actual litigation.” Otherwise, according to Plaintiffs-Appellees, the municipality would not be entitled to rely on the hearings’ legal finality in the form of *res judicata*.

The 8th District also took issue with the third element of *res judicata*. See *Carroll* at 303 (*res judicata* requires, in part, “(3) a second action raising claims that were or could have been litigated in the first action”). In declining to follow *Carroll*, the 8th District suggested that “[e]ven if an administrative decision had been rendered, the claims for unjust enrichment and

declaratory judgment were not claims that could have been litigated or decided[.]” *Lycan* at ¶ 15. To the contrary, Plaintiffs-Appellees could have raised any challenge to the citation or hearing process by contesting their violations at the administrative hearing and then appealed any adverse administrative decision to the Court of Common Pleas pursuant to R.C. 2506.01. R.C. 2506.01(A) provides in 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 as provided in Chapter 2505 of the Revised Code.

While the claims for unjust enrichment admittedly are unlikely to have arisen but for the Plaintiffs-Appellees’ paying a sum to Cleveland, those claims are premised on alleged deficiencies of the administrative hearing process. Any deficiency of the administrative hearing process (or otherwise) should have been raised there and then appealed to the Court of Common Pleas under R.C. 2506.01(A). *See Brunswick Hills Twp. Bd. of Trs. v. Ludrosky*, 972 N.E.2d 132, 2012-Ohio-2556, ¶ 8 (9th Dist. 2012) (“Res judicata applies to administrative actions, where a party has failed to properly appeal the administrative ruling under R.C. 2506.01.” (citing *Green v. Akron*, 9th Dist. Nos. 18284, 18294, 1997 Ohio App. LEXIS 4425, 1997 WL 625484 (Oct. 1, 1997)) and *Wade v. Cleveland*, 8 Ohio App. 3d 176, 456 N.E.2d 829, 831-832 (8th Dist. 1982) (“While application of the doctrine of *res judicata* is generally made with regard to actions which have proceeded to judicial review and determination, it is similarly applicable to actions which have been reviewed before an administrative body, in which there has been no appeal made pursuant to R.C. 2506.01.”).

The 8th District itself held consistently with this approach in *Davis v. City of Cleveland*, 8th Dist. No. 99187, 2013-Ohio-2914. That case dealt with claims of plaintiff Davis

who also received a notice of violation pursuant to Cleveland's automated speed camera system. Davis requested an administrative hearing and then brought a subsequent appeal before the Court of Common Pleas pursuant to R.C. 2506.01. The court determined that, "because Davis failed to raise this issue [of sign placement and notice] before the hearing examiner, she has waived the issue on appeal." *Id.* at ¶¶ 11-12.

Davis's challenge to Cleveland's automated speed camera system up to and including the Court of Appeals requires one to question the soundness of the 8th District's conclusion that "there is little incentive to contest a citation or to vigorously litigate the matter[.]" particularly given the instant appeal. *Lycan* at ¶ 17. With or without an incentive, litigants *are* challenging camera-based enforcement systems. *See e.g. Davis and City of Parma v. Demsey*, 8th Dist. No. 96351, 2011-Ohio-6624 (where litigant appealed the findings of the administrative hearing to the court of common pleas and then to the 8th District Court of Appeals). Again, the basis for the 8th District's decision is misplaced.

The court in *Carroll* also noted that, under Ohio law, "claim preclusion 'is . . . applicable to actions which have been reviewed before an administrative body, in which there has been no appeal made pursuant to R.C. 2506.01.'" *Carroll* at 303-304 (citing *Wade v. City of Cleveland*). Thus, regardless of whether Plaintiffs-Appellees here actually took advantage of their right to appeal to the Court of Common Pleas under R.C. 2506.01, their claims are now precluded. The appellants in *Carroll* argued that the administrative hearing was not sufficient to enable them to challenge the constitutionality of the speed camera ordinance involved there. The court noted that the only damages sought were the return of the paid fines. *Id.* at 305. The court then discussed the very problem with Plaintiffs-Appellees' claims in the present matter:

Had [appellants] successfully contested their citations in the first instance, they would not have owed anything. Had they failed, they would have owed

precisely what they paid. The administrative process, in other words, could have afforded Appellants the very monetary relief they demand, had they taken advantage of it. ... Appellants hope to proceed as a class, and therefore seek the return of *many* motorists' money. But aggregation changes only the scope, not the nature, of Appellants' claims. At bottom, Appellants could have obtained precisely the 'damages' they request had they availed themselves of the ordinance's appellate procedure.

Id. at 305. Plaintiffs-Appellees' claims should fail and the 8th District's decision should be reversed.

Proposition of Law No. 2: The 8th District erred in affirming class certification because *res judicata* bars their claims.

"If the representative member's claims are barred by *res judicata*, he lacks standing and cannot represent the class." *Lingo v. State*, 8th Dist. No. 97537, 2012-Ohio-2391, fn. 3, *aff'd on other grounds*, 138 Ohio St. 3d 427 (citing *Sierra Club v. Morton*, 405 U.S. 727, 731-32 (1972)). This Court must reverse the 8th District's decision because each Plaintiffs-Appellees' claims are barred by the doctrine of *res judicata* and, as a result, they do not have standing to pursue these claims now, after having waived or adjudicated the same claims pursuant to the ordinance. *See Tate v. City of Garfield Heights*, 8th Dist. No. 99099, 2013-Ohio-2204, ¶ 12 ("Standing is a jurisdictional prerequisite that must be resolved before reaching the merits of a suit"). Plaintiffs-Appellees opted not to take the opportunity to assert these very claims individually in any administrative hearing or with a tribunal allowed by law. They should not be permitted to bring them now, after waiving or unsuccessful prior attempts, to bring claims as a class. They should not be permitted, after admitting liability and paying the fines, to contest the legitimacy of those same fines now, before a different court.

Because *res judicata* applies to Plaintiffs-Appellees' claims, the Plaintiffs-Appellees' class lacks standing. As such, the 8th District should have reversed the trial court's certification of the class.

Proposition of Law No. 3: The Ohio Constitution's Home Rule

Amendment requires reversing the 8th District's holding.

Section 3, Article XVIII of the Ohio Constitution, indicates that “[m]unicipalities shall have authority 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.”

This Court has already specifically determined that 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. City of Akron*, 117 Ohio St.3d 33, 881 N.E.2d 255, 2008-Ohio-270, ¶ 41. This Court further held that [a] municipality has the power under home rule to enact civil penalties for the offense of violating a traffic light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code, provided that the municipality does not alter statewide traffic regulations. *Id.* at ¶ 43; *see also City of Parma v. Demsey*, 8th Dist. No. 96351, 2011-Ohio-6624, ¶ 20 (where the 8th District held that a municipality did not exceed its home rule authority in creating a similar automated traffic enforcement system).

The 8th District's holding here undermines and weakens the Constitutionally protected power of a municipality to self-govern and to adopt and *enforce* regulations like the traffic laws involved here. Here, Plaintiffs-Appellees were given the opportunity to challenge their

violations at the administrative hearing provided by Cleveland. If unsatisfied with the procedure there, Plaintiffs-Appellees had a statutory remedy in R.C. 2506.01 and .04.

R.C. 2506.01 and .04 allowed Plaintiffs-Appellees to appeal the findings of the administrative tribunal to the court of common pleas and there argue that the hearing was “unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.” *See* R.C. 2506.04. The remedy Plaintiffs-Appellees seek here were available to them through the administrative hearing and appellate process provided in these statutes. Instead, Plaintiffs-Appellees chose to pay the fines or otherwise waive their rights to such a process, and instead challenge the process here. Allowing Plaintiffs-Appellees to simply disregard the administrative hearing process carefully set forth and planned by the municipality clearly undermines and weakens the municipality’s authority to self-govern and enforce those laws. It would also undermine the Ohio legislature’s implementation of R.C. 2506.01, the method through which it intended litigants to challenge the validity of administrative hearings.

This Court should find that the Plaintiffs-Appellees’ foregoing of the administrative and appellate process available to them is fatal to their present claims. It should reverse the decision of the 8th District Court of Appeals and, in so doing, uphold Cleveland’s (as well as every municipality’s) Constitutional power to self-govern. To do otherwise and affirm the 8th District is to weaken and question that same Constitutional power.

CONCLUSION

Based on the foregoing, as well as the brief of Defendant-Appellant City of Cleveland and the amicus brief of the Ohio Municipal League, Elmwood requests this Court reverse the

Eighth District's decision and uphold municipalities' right to administer administrative enforcement hearings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing *Brief of Amicus Curiae Village of Elmwood Place* has been sent via regular U.S. mail, postage pre-paid this 23rd day of October, 2014 to:

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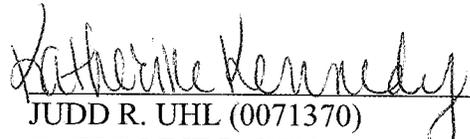
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A handwritten signature in cursive script that reads "Katherine Kennedy". The signature is written in black ink and is positioned above a horizontal line.

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