

IN THE SUPREME COURT OF OHIO

BRADLEY WALKER, * Supreme Court Case No. 2013-1277
Plaintiff-Appellee, * On Appeal from the Lucas
County Court of Appeals,
vs. * Sixth Appellate District
(Case No. L-12-1056)
CITY OF TOLEDO, et al., *
Defendants-Appellants. *

MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION OF
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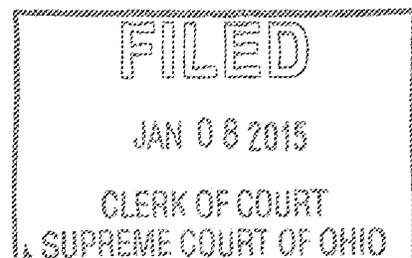
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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
MEMORANDUM IN OPPOSITION.....	1
I. Introduction.....	1
II. Standard of Review for Reconsideration.....	1
III. Argument.....	2
A. <i>Cupps v Toledo</i> has no applicability to the instant matter.....	2
B. Toledo’s presumptively valid ordinance is a proper exercise of home rule authority.....	5
C. The City Ordinance does not create a court or deprive any Court of Jurisdiction.....	6
IV. Conclusion.....	8
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Cupps v Toledo</i> , 170 Ohio St.144, 163 N.E.2d 384 (1959)	2, 3, 4
<i>Mendenhall v. Akron</i> , 117 Ohio St. 3d 33, 2008-Ohio-270	2, 5, 6
<i>State ex rel. Gordon v Rhodes</i> , 158 Ohio St. 129 (1952).....	6
<i>State ex rel. Huebner v. West Jefferson Council</i> , 75 Ohio St 3d 381, 383 (1995).....	1
<i>State ex rel. Shemo v Mayfield Hts.</i> , 96 Ohio St. 3d 379 (2002).....	1, 2
<i>Willoughby Hills v. C. C. Bar's Sahara, Inc.</i> , 1992-Ohio-111, 64 Ohio St. 3d 24.....	5

Statutes/Ordinances

Article IV, § 1 of the Ohio Constitution	4
Ohio Revised Code 1901.20	1
Ohio Revised Code Chapter 2506	4
S. CT. PRAC. R. 18.02.....	1

MEMORANDUM IN OPPOSITION

I. INTRODUCTION

It comes as no surprise that Mr. Walker and his counsel do not like this court's decision and opinion in this case. They move for reconsideration but in doing so they fail to present any new arguments, explanations or even any new plausible theories.¹ Over and over they tell this court that the Justices just could not comprehend their arguments and then they launch into absurd hypotheticals in an effort to lead the court away from the singular issue of the real application of R.C. 1901.20. There is so much repetition and hyperbole in the brief that for the City to respond to all of it, would be engaging in the same rule violation that Walker has, in spades, violated. The City will not respond in kind.

II. STANDARD OF REVIEW FOR MOTIONS FOR RECONSIDERATION

The Supreme Court Rule of Practice, 18.02(B) ("Rule") provides for the court to review motions for reconsideration to "correct decisions which, upon reflection, are deemed to have been made in error." *State ex rel. Shemo v. City of Mayfield Heights*, 96 Ohio St. 3d 379, 2002-Ohio-4905; *State ex rel. Huebner v. West Jefferson Council*, 75 Ohio St 3d 381, 383 (1995). S. CT. PRAC. R. 18.02(B), in part, provides: "(B) Basis for filing. A motion for reconsideration shall not constitute a reargument of the case..." (emphasis added) The rule clearly forbids

¹ The only new argument advanced by the Appellee is the speculative claim that recent legislative actions by the General Assembly support his position. Appellee asserts that recent legislation- HB 342- by the General Assembly somehow proves that the legislature agrees with him (Appellee motion pp. 4, 16). Appellee's measure of the General Assembly's intent is both self-serving and irrelevant. It is self-serving because the Appellee assumes the legislative amendments show the "intent" of the lawmakers to show that, until the amendment, City's could not have administrative processes like the one here. The City could just as rightly suggest that the amendments show the legislature's intent to clarify what it always meant. In the end, however, either speculation is irrelevant as it is this Court's role to interpret the statute and generally such an interpretation does not involve *guessing* the subjective intent of individual lawmakers. Moreover, whether or not the General Assembly could properly limit the City's home rule authority to establish a non-judicial administrative process is not an issue currently before this Court.

rearguments. Thus, in *Shemo* this court denied, in part, the moving parties motion for reconsideration because that party simply rehashed their previous contentions.

That is exactly the situation in this case. Walker just regurgitates, over and over again, seemingly believing that if he repeats enough his already rejected arguments that such activity will somehow get this honorable court to reconsider its well-reasoned decision and opinion.

III. ARGUMENT

First, it should be noted that Walker castigates the court, on Page 14 of his Brief, because, according to Walker, “the lead opinion uses the phrase ‘home rule’ 18 times and cites *Mendenhall* over 20 times . . .” While taking umbrage with the court on those matters, Walker then proceeds to, more than 33 times, use the terms “exclusive jurisdiction” and “political appointee” and other versions thereof presumably on the basis that if he states these erroneous conclusions enough times, maybe the court will adopt his arguments.

The fallacy with this strategy is that neither assertion is accurate or even pertinent. Walker’s theory is that by the City creating its Administrative Procedure and Ordinance, that such action somehow divests the Toledo Municipal Court of its jurisdiction and some amorphous “political appointee” is making a decision, a final decision at that, which deprives Walker or any other citizen properly noticed of a photo-enforcement violation, their “day in municipal court.” In fact, Walker uses the term at least 21 times with the hope that such an alleged deprivation will alarm the court into reconsidering its decision. Walker’s problem is that none of these assertions are accurate.

A. *Cupps v Toledo* has no applicability to the instant matter.

Appellee suggests, as he already has in his merit brief and at oral argument, that *Cupps v. Toledo*, 170 Ohio St. 144 (1959), should control the outcome of this case. Appellee even goes so far as to suggest that the majority “impliedly” overruled *Cupps*. The majority did no such thing.

Rather, as he did when he initially made this argument, Appellee continues to misread *Cupps*. *Cupps* has virtually no applicability to the case at bar. This misreading of *Cupps* is fatal to the Appellee's assertions.

In *Cupps* a city charter provision purported to deprive the common pleas court of judicial review of administrative decisions of the municipal civil service commission by declaring the administrative decisions "final." In *Cupps*, this Court correctly determined that an attempt to deprive a litigant of his/her right to judicial review placed an improper and unconstitutional limitation upon the jurisdiction of the court. However the *Cupps* court did not suggest that the city could not have an administrative hearing process. Nor did *Cupps* suggest that administrative hearings before municipal boards and commissions violated the Ohio Constitution. Rather, *Cupps* suggested home-rule was not so extensive as to allow a City to have an administrative process that foreclosed review of municipal administrative decisions by a court.

In truth, the *Cupps* decision actually favors the Appellants in this case. In this case, the City has established an administrative process. Precedent shows that it is clearly within the power of the City to create this process, as the majority noted. Unlike *Cupps*, however, the City did not attempt to deprive any person the ability to seek judicial review of the administrative proceedings.² This difference is significant.

As the majority correctly noted, in fact, there are many instances where municipalities create administrative boards to conduct administrative, quasi-judicial hearings. Toledo's administrative process at issue in this case is no different from those countless others. These

² Ironically, in this case Walker never attempted to avail himself of any process choosing instead not to challenge the notice of violation. Accordingly, Walker's attempt to suggest he was deprived of "his day in court" rings somewhat hollow. To expand upon Appellee's inapt "fine wine" analogy from page 10 of his brief, here it is more accurate to say Appellee, who stood up his host and skipped dinner altogether, is now seeking to complain about the quality of the wine served.

processes do not implicate *Cupps* where they do not, as was the case in *Cupps*, foreclose judicial review. Rather, as the majority noted, Appellee has simply provided for an administrative process.

Appellee continues to ignore the fact that the Ohio Revised Code recognizes the existence of municipal administrative processes and specifically provides for a manner in which to appeal municipal administrative decisions. See R.C. Chapter 2506.

Since nothing in the ordinance supports Walker's contentions that the Toledo City Council did "substitute-in the jurisdiction of a political appointee," nor change in any way the recognized jurisdiction of the Municipal Court nor deprived Walker of his "day in court," that should be the end of this case. Walker complains, at Page 13 of his brief, that this court did not "fully consider Walker's actual theory." Walker's "theory," and that is all it is, and allegations as expressed *ad nauseum* throughout the brief and, specifically, on Page 6, is that the "City Council vested exclusive original jurisdiction in [a] political appointee." Of course there is nothing in Section 313.12 that supports this "theory," and Walker cites none but, nevertheless, Walker uses some 20 pages to knock down the straw man that he has set up. The problem is that his "theory" assertions are facially and actually incorrect. So all of those assertions, even though repeated over and over, fall of their own weight. Neither the text of Art. IV, § 1 nor the precedents of this Court suggest a different result than that arrived at by the majority here.³

³ The Ohio Constitution provides "[t]he judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law." See, Ohio Const. Article IV, § 1. Ironically, while the Appellee spends much time arguing that Ohio's Home Rule amendment, Ohio Const. Art XVII § 3, does not expressly say a City may establish a quasi-judicial administrative processes, it is equally clear that the plain language of Ohio Const. Article IV, § 1 does not expressly or impliedly preclude the City from doing so.

B. Toledo's presumptively valid ordinance is a proper exercise of home rule authority.

As he already did in his merit brief, Appellee suggests that local governmental bodies are somehow less capable, more corruptible or less democratic than the General Assembly. This perceived flaw in local city councils leads the Appellee to suggest that it is dangerous to allow city councils any authority. While Appellee, naturally, is entitled to harbor this unjustified prejudice, neither law nor reality supports Appellee's position. In fact, the Ohio Constitution expressly recognizes the sanctity and importance of local governments. That is the essence of home-rule and this Court has always afforded actions of local legislatures with the same deference as that afforded to actions of the General Assembly. *Hilton v. Toledo*, 62 Ohio St.2d 394 (1980).

This Court has long recognized the essential nature of home-rule in Ohio's constitutional scheme. Certainly, this Court recognized home-rule power in *Mendenhall v Akron*, 117 Ohio St.3d 33, 2008-Ohio-270. Moreover, the express recognition by the *Mendenhall* court of a city's ability to create a civil violation system warrants repeated citation to the *Mendenhall* case. Nor was *Mendenhall* the only case where this Court has addressed a home rule city's ability to create administrative processes. See, for instance, *Willoughby Hills v. C. C. Bar's Sahara, Inc.*, 1992-Ohio-111, 64 Ohio St. 3d 24 (holding, in fact, that a City may, in exercise of home rule power, dictate that either party to an administrative hearing would have standing to appeal to common pleas court.)

Appellee suggests, however, that the majority's citation to *Mendenhall* was misplaced. Appellee is wrong. Because the *Mendenhall* court found that a virtually identical civil enforcement program enacted by the City of Akron was a proper exercise of Akron's home rule authority, it is hardly surprising that *Mendenhall* would be relevant in this case. In fact, the

City's ability to create a civil enforcement program was conclusively established by *Mendenhall*. While the questions faced by the Court in this case were not identical to the question presented in *Mendenhall*, it is absurd to suggest, as the Appellee does, that *Mendenhall* is not germane to the outcome of this case.

Appellee's suggestion that this Court cannot expound upon its prior holding in *Mendenhall* betrays a fundamental lack of understanding as to the role of this Court. Appellee suggests, without applicable legal support, that this Court is shackled to a rigid interpretation of precedent. In Appellee's view, the Court can only cite its prior cases that are on "all fours." The obvious problem with Appellee's view of things, of course, is that if *Mendenhall* were on all fours, this case would probably have not made it to this Court because the Sixth District Court of Appeals would have gotten it right. The practical consequence of Appellee's view, however, is that it would prevent this Court from expounding upon its earlier precedent in any case before it.

As the majority explained, the Court of Appeals was likely confused when it limited the holding of *Mendenhall*. Accordingly, the majority correctly clarified *Mendenhall* in this case and, in so doing, clarified the law in this State. Appellee suggests that this Court is limited in its application of precedent by the holding of *State ex rel. Gordon v Rhodes*, 158 Ohio St. 129 (1952). Appellee misunderstands the *Rhodes* ruling. Nothing in *Rhodes* operates to prevent this Court from citing and clarifying its earlier precedent.

C. The City Ordinance does not create a court or deprive any Court of Jurisdiction.

While, like the other issues raised by Appellee in his motion, this issue has already been exhaustively argued and fairly considered, Appellee continues to ignore the fact that Toledo's ordinance does not deprive anyone of judicial review and Appellee doggedly persists in falsely mischaracterizing the presumptively valid ordinance as an attempt to deprive the municipal court of jurisdiction. However, nothing in the City ordinance deprives any court of jurisdiction. To

the contrary, as the majority correctly notes, Toledo's ordinance merely establishes a pre-suit, quasi-judicial administrative procedure.

Toledo's ordinance provides that an administrative "decision in favor of the City of Toledo may be enforced by means of a civil action or any other means provided for by the Ohio revised Code." TMC 313.12(d)(4). Accordingly, on its face, Toledo's ordinance requires the institution of a civil action *in court* to reduce an administrative decision to judgment. This hardly creates a court or deprives a court of jurisdiction. In fact, this provision emphasizes the fact that only a court can reduce a civil notice of violation to judgment. Appellee suggests, again with no basis, that if the City files a "civil action" as required by the ordinance, "liability is already established." Appellee Motion to Reconsider p. 20. However, Appellee, who did not even attempt to dispute his notice of violation, is simply making this up. The Ordinance does not suggest that any Ohio judge is required to assume culpability in any "civil action" brought under the Ordinance. In this facial challenge, this Court should not assume otherwise.⁴

As he did in his original argument, Appellee decries the use of "political appointees" as decision makers at the administrative level.⁵ It is not clear why the Appellee suggests that the use of appointed hearing officers in an administrative setting is tantamount to usurping municipal court jurisdiction and Appellee has not provided case authority for the proposition that appointed hearing officers are inherently incapable of presiding over quasi-judicial administrative hearings. Appellee points to no precedent that suggests that a municipality cannot provide for appointed

⁴ Appellee's general assumptions and criticisms that the City might file "a boilerplate complaint in Toledo municipal court small claims division" (Appellee Memorandum p. 20) actually runs contrary to his claim that the municipal court has been deprived of jurisdiction.

⁵ Appellee does not define "political appointee" but apparently believes that decisions made by any non-elected decision maker are somehow suspect because the decision maker was appointed rather than elected. Not only would this criticism seem an affront to every Article III judge appointed to the federal judiciary, it would also seem to apply to every judge, magistrate, administrative law judge, administrator, cabinet officer, hearing officer and/or commission member ever appointed at any level of government.

boards and commissions. More importantly, Appellee has never shown that appointed administrative hearing officers usurp any court's jurisdiction where, as here, judicial review is available to any party dissatisfied with a hearing officer's decision and, where, as here, the City would be required to pursue a "civil action" in court to obtain a judgment.

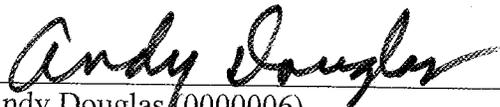
IV. CONCLUSION

It is almost impossible to fully respond to the Appellee's rambling and often incoherent argument for reconsideration without burdening this Court, as the Appellee has done, with a rehashing of arguments already made and already fairly considered. Nevertheless, it is clear that this matter is not one of the rare cases that warrant reconsideration. The majority opinion was correctly decided and should not be reconsidered. Appellee's strained analogies and repeated inaccuracies do not create a basis to warrant reconsideration of this case.

For the reasons set forth herein, as well as for the reasons set forth in Appellants RedFlex's Memorandum in Opposition to Reconsideration, the Appellee's Motion should be denied.

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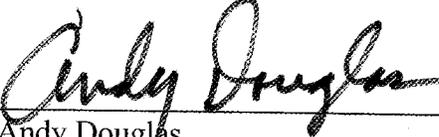
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