

STATE OF MISSOURI )  
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CITY OF ST. LOUIS )

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)

ALEXA SMITH, et al., )  
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Plaintiffs, )  
 ) Cause No.0922-CC10285  
vs. )  
 ) Division No. 5  
CITY OF ST. LOUIS, )  
 )  
Defendant. )

**FILED**  
FEB 17 2012  
22<sup>ND</sup> JUDICIAL CIRCUIT  
BY CIRCUIT CLERK'S OFFICE  
DEPUTY

ORDER AND AMENDED FINAL JUDGMENT

The Court has before it Defendant's Motion for Reconsideration of Order and Partial Judgment Dated May 20, 2011; Plaintiffs' Motion for Reconsideration or Clarification; Defendant's Motion to Amend July 11, 2011, Order; Plaintiffs' Motion for Summary Judgment on Count I, and Defendant's Cross-Motion for Summary Judgment on Count I. The Court now rules as follows.

In its May 20, 2011, Order, this Court held that the City's Red Light Camera Ordinance was void because the City enacted it without enabling legislation from the Missouri legislature. Defendant moves to reconsider this portion of the May 20, 2011, Order, arguing that the finding is incorrect as a matter of law because the Missouri Constitution expressly grants charter cities,

such as St. Louis, all legislative powers unless such power is limited or denied by the constitution, statute, or charter.

A city, even a charter city, is a creature of the state and, as such, has no inherent police power. City of Kan. City v. Jordan, 174 S.W.3d 25, 41 (Mo.App. W.D. 2005). The only police power a city has is that conferred to it by the state. Id. "The state expresses its grant of such powers via our state constitution and statutes." Id. A city's exercise of police power delegated to it by the State "must conform to the terms of the statutory grant." Moore v. City of Parkville, 156 S.W.3d 384, 387 (Mo. App. W.D. 2005). With respect to whether an ordinance is fairly referable to a legitimate exercise of police power, "the test, as stated by the Missouri Supreme Court in Bellerive, is whether the expressed requirements or regulations of an ordinance have a substantial and rational relation to the health, safety, peace, comfort and general welfare of the inhabitants of the municipality." Id., (citing Bellerive Inv. Co. v. Kansas City, 13 S.W.2d 628, 634 (Mo. 1929)).

As this Court originally stated in its May 20, 2011, Order, the City's "red light camera ordinance" does nothing to regulate and control the streets or traffic; and the City presented no evidence to the contrary. The Court does not believe that the ordinance has a substantial and rational relation to the health,

safety, peace, comfort, and general welfare of the inhabitants of St. Louis. This Court concludes that without specific enabling legislation passed by the General Assembly of the State of Missouri, the ordinance is void. Defendant's Motion for Reconsideration is denied.

Plaintiffs also brought a Motion for Reconsideration or Clarification relating to the May 11, 2011, Order and Partial Judgment. First, Plaintiffs ask this Court to reconsider its statement that "In the instant suit, Plaintiff Smith seeks a refund of the \$100 fine she paid. Boyd and Morgan seek only injunctive relief." They argue that Plaintiff Morgan is seeking damages in addition or in the alternative to her claims of equitable relief.

In Plaintiffs' Third Amended Class Action Petition, they allege that "Plaintiffs Faith Morgan and David Boyd were issued a notice of Violation and have not paid the requisite fine (hereinafter the "Named Plaintiffs representing Subclass 2")." On Page 3 of the Third Amended Class Action Petition, Plaintiffs allege "Named Plaintiffs representing Subclass 2 bring this action on behalf of themselves and Subclass 2 against Defendant for injunctive relief." There is no paragraph stating that Faith Morgan and Subclass 2 are seeking any other type of relief. In Counts IV and V, Unjust Enrichment and Money Had and Received,

Plaintiffs only allege that Plaintiffs in Subclass 1 were damaged. Although the Request for Relief at the end of the Petition seeks punitive damages, pre-judgment interest, post-judgment interest, and attorneys' fees and costs, Plaintiff Faith Morgan only states equitable claims in the Petition. Plaintiffs' Motion for Reconsideration is denied as to this Court's finding that Faith Morgan seeks only injunctive relief.

Next, Plaintiffs seek clarification of this Court's statement that the City was entitled to summary judgment on Plaintiff Alexa Smith's claims, as they relate to damages. The Court stated as follows:

"Though it shocks the equitable conscience, the general rule is well-settled that the sovereign need not refund taxes voluntarily paid, but illegally collected." Ring v. Metropolitan St. Louis Sewer District, 969 S.W.2d 716, 718 (Mo. banc 1998). Thus, for the City to face the possibility of any liability to those who paid the fine, there must be a waiver of sovereign immunity and the persons claiming a refund or credit for illegally paid taxes must have complied with the terms of the waiver of sovereign immunity or have paid the tax involuntarily. Id.

The uncontroverted facts show that Plaintiff Smith did not pay her fine involuntarily. Nor did she pay the fine under protest. Although Plaintiff Smith did not intentionally waive her constitutional claims by paying the fine, she cannot now seek a refund of the fine she paid. Defendant is entitled to partial summary judgment on Plaintiff Alexa Smith's claims, as they relate to damages.

It is clear that although this Court referred generally to Smith's claims for "damages," it was referring only to her ability to receive a refund for the fine she already paid. As Plaintiffs point out in their motion for clarification, Plaintiff Smith also seeks compensatory and punitive damages, interest, and attorneys' fees. The ability to seek this other relief is not precluded by this Court's finding that Smith did not pay her fine involuntarily and cannot now receive a refund for the fine.

Next, in its Motion to Amend this Court's July 11, 2011, Order, Defendant seeks clarification on which claims remain pending in this action. In that Order, this Court stated that "the Court did not make any judgment as to Counts IV, V, or VI, as those were not before the Court." Defendant argues that because the Court had ruled that Plaintiff Alexa Smith could not receive a refund for her fine that she paid, it was *de facto* a ruling on Plaintiffs' unjust enrichment and money had and received claims (Counts IV and V).

In Count IV, Plaintiffs allege that Subclass 1 conferred a benefit on Defendant by making payments in the form of fines, costs, and fees paid by them. The essence of unjust enrichment is that the defendant has received a benefit that it would be inequitable for him to retain. Pitman v. City of Columbia, 309 S.W.3d 395, 403 (Mo.App. W.D. 2010). Unjust enrichment "permits

restitution based upon the value of the benefit received" by the defendant. Id. In Count V, Plaintiffs allege that Defendant received monies (in the form of fines, costs, and fees) pursuant to an unlawful and unconstitutional ordinance. An action for money had and received "lies for restitution of money that belongs in good conscience to the plaintiff, but was obtained by the defendant by duress or other means making it unjust for the defendant to keep the money." Id. In other words, causes of action sounding in both unjust enrichment and money had and received seek a refund of money paid by the plaintiff to the defendant. Because this Court has determined that Plaintiffs are not entitled to a refund of red light camera fines already paid, Counts IV and V must fail as a matter of law. Defendant is entitled to judgment on Counts IV and V.

Count VI of Plaintiffs' petition seeks a permanent injunction to prevent enforcement of the City's Red Light Camera Ordinance. Defendant argues that this claim is moot if the Ordinance is declared void. A void ordinance, of course, cannot be enforced. As such, the Court assumes that the City will not attempt to enforce the Ordinance if and when a judgment declaring the Ordinance void becomes final. A claim for an injunction is not ripe for adjudication at this point.

Finally, the parties move for summary judgment on Count I regarding procedural due process. Section Five of the Red Light Camera Ordinance provides in pertinent part:

"Upon the filing of an information in the municipal court, the Court Clerk shall issue a summons, with a court date, pursuant to Missouri Supreme Court Rules 37.42 through 37.44. Not later than sixty (60) days after the date the violation is alleged to have occurred, the summons shall be served on the Owner by mailing it, together with: 1) a copy of the violation notice; and 2) a copy of the recorded image(s) of the alleged violation, which forms the basis of the information; and 3) a copy of the supplemental violation notice as described in subparagraph B of this section, to the Owner's last known address by first class mail."

It is undisputed that Plaintiffs did not receive a summons with a court date with their Notice of Violation as required by the Ordinance and Rule 37.33. It is further undisputed that the Notice of Violation does not contain a court date.<sup>1</sup>

A failure to follow procedural rules does not by itself violate constitutional due process. Reasoner v. Meyer, 766 S.W.2d 161, 167 (Mo.App. W.D. 1989) (Nugent, J., concurring). Nonetheless, the United States Supreme Court has consistently held that some form of hearing is required before an individual is finally deprived of a property interest. Mathews v. Eldridge, 424

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<sup>1</sup> Plaintiff Faith Morgan and others similarly situated received a "Final Notice" which did contain a court date and time. However, this notice was not sent until after the "Due Date" for the \$100 fine imposed by the Notice of Violation.

U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976); Wolff v. McDonnell, 418 U.S. 539, 557-558, 94 S.Ct. 2963, 2975-2976, 41 L.Ed.2d 935 (1974). The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." Id., (quoting Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring)). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." Id., (quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965)).

Resolution of the issue of whether or not the administrative procedures provided by the Ordinance are constitutionally sufficient requires analysis of the governmental and private interests that are affected. Id., (citing Arnett v. Kennedy, 416 U.S. 134, 166, 167-168, 94 S.Ct. 1633, 1650, 40 L.Ed.2d 15 (1974) (Powell, J., concurring in part)), Goldberg v. Kelly, 397 U.S. 254, 263-266, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). More precisely, due process analysis generally requires consideration of three distinct factors: First, the private interest that will be affected by the

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official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and third, the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. Id., at 334-335, (citing Goldberg, 397 U.S. at 263-271). As to the second prong, the risk here is that the Notice of Violation used by the City will erroneously lead alleged violators to believe that they do not have the right to contest the violations.

In Mills v. City of Springfield, 2010 U.S. Dist. LEXIS 92031 (W.D. Mo. Sept. 3, 2010), the District Court for the Western District of Missouri noted that "Courts evaluating automated traffic ordinances similar to that of the City of Springfield have found that an administrative scheme provides constitutionally adequate process." However, in the cases cited by Mills, Mendenhall v. City of Akron, No. 09-3061, 374 Fed. Appx. 598, 2010 U.S. App. LEXIS 6454, 2010 WL 1172474 (6th Cir. Mar. 29, 2010), and Ware v. Lafayette City-Parish Consol. Gov't, Civil Action No. 08-0218, 2009 U.S. Dist. LEXIS 97836, 2009 WL 5876275 (W.D. La. 2009), the underlying courts had found that the notices sent to the violators included "an opportunity for a hearing," Mendenhall, 374

Fed. Appx. at 600, or the "procedure for requesting a hearing." Ware, 2009 U.S. Dist. LEXIS 97836 at \*22. Here, no such opportunity for a hearing or instructions on requesting a hearing were contained in the Notice of Violation.

Defendant argues that the Court of Appeals for the Eastern District's recent opinion in City of Creve Coeur v. Nottebrok, ED96396 (Mo.App. E.D. October 25, 2011) (not final; application for transfer to Missouri Supreme Court pending) requires dismissal of Plaintiffs' due process claim. In Nottebrok, the Court held that the automated traffic ordinance at issue did not violate the vehicle owner's constitutional right to procedural due process, because 1) the ordinance at issue did not require the City to prove that the Owner was operating the vehicle at the time of the infraction; and 2) the ordinance was a civil ordinance, not subject to heightened procedural protections.

The Creve Coeur ordinance is most readily distinguishable from the City's Ordinance at issue here in that the Creve Coeur ordinance does not purport to impose a fine on the operator of a vehicle. It likens itself to a parking violation, and states that the mere presence of the vehicle in the intersection while a light is red subjects the owner's vehicle to a fine. The City's Ordinance, on the other hand, is merely an enforcement mechanism

for the City's "steady red indication" ordinance, which can only be violated by a "driver."

Secondly, in finding that the Creve Coeur ordinance was civil in nature, the Court of Appeals pointed in part to the language of the Ordinance that stated, "under no circumstances may a person be imprisoned for such an infraction." The City's Ordinance has no such limiting language.

Further, even if the City's Ordinance is properly classified as "civil," this does not relieve the City from procedural due process requirements. While civil ordinances "need not provide the heightened procedural protections required by the Fifth, Sixth, and Eighth Amendments of the U.S. Constitution," the fundamental requirement of due process is "the opportunity to be heard at a meaningful time and in a meaningful manner." Nottebrok, ED96396 at \*9. This is, in the opinion of this Court, where the City's enforcement of its Red Light Camera Ordinance is procedurally deficient. As explained above, there is no summons or court date provided with the Notice of Violation, and the Notice does not convey to the recipient the right to contest the Notice of Violation except where "the vehicle was being operated by a person other than the Owner, or the vehicle or the license plate captured by the Automated Traffic Control System was stolen."

The Court finds that the City's Red Light Ordinance violates procedural due process and Plaintiffs are entitled to summary judgment on Count I.

THEREFORE, it is Ordered and Decreed that Defendant's Motion for Reconsideration of Order and Partial Judgment Dated May 20, 2011, is DENIED; Plaintiffs' Motion for Reconsideration or Clarification is GRANTED IN PART; and Defendant's Motion to Amend July 11, 2011 Order is GRANTED. This Court's May 20, 2011, Order and Partial Judgment is clarified to grant partial summary judgment in Defendant's favor on Plaintiff Alexa Smith's claims for damages only as they relate to recovery of the \$100 fine she paid, and is also clarified to reflect that summary judgment is granted in favor of Defendant on Counts IV and V; and Count VI is dismissed without prejudice. Plaintiffs' Motion for Summary Judgment on Count I is GRANTED, and Defendant's Cross-Motion for Summary Judgment on Count I is DENIED. In summary, this Court enters FINAL JUDGMENT as follows on Plaintiffs' Third Amended Class Action Petition as follows:

Count I - violation of Article I, § 10 of the Missouri Constitution (due process): JUDGMENT FOR PLAINTIFFS;

Count II - violation of Article I, § 19 of the Missouri Constitution (self-incrimination): JUDGMENT FOR DEFENDANT;

Count III - violation of Article I, § 18(a) of the Missouri Constitution (confrontation clause): JUDGMENT FOR DEFENDANT;

Count IV - Unjust Enrichment: JUDGMENT FOR DEFENDANT;

Count V - Money Had and Received: JUDGMENT FOR DEFENDANT;

Count VI - Permanent Injunction: DISMISSED; and

Count VII - Ordinance Conflict with State Statutes: JUDGMENT FOR PLAINTIFFS.

SO ORDERED:

  
MARK H. NEILL, Circuit Judge

Dated: February 17, 2012

cc: Russell Watters  
Michael Garvin