IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

FILED 2017 APR -4 PM 3:26 MARY L. SWAIN BUTLER COUNTY CLERK OF COURTS

DOREEN BARROW, et al., :

Appellees, :

vs. :

VILLAGE OF NEW MIAMI, et al., :

Appellants. :

:

CASE NO. CA2017-03-031
REGULAR CALENDAR

ENTRY DENYING MOTION TO DISMISS APPEAL, LIMITING SCOPE OF APPEAL AND DENYING MOTION TO PLACE CASE ON THE ACCELERATED CALENDAR

The above cause is before the court pursuant to a motion to dismiss and alternative motion to limit appeal and place on accelerated track filed by counsel for appellees, Doreen Barrow, et al., on March 6, 2017; a memorandum in opposition filed by counsel for appellants, Village of New Miami, et al., on March 16, 2017; a reply memorandum filed by counsel for appellees on March 20, 2017; and a "sur-reply" filed by counsel for appellant on March 23, 2017.

This case arises out of the operation of an automated speed enforcement program in the Village of New Miami. In their amended complaint filed in the Butler County Court of Common Pleas, appellees asserted that the program improperly usurps the jurisdiction of the municipal court and violates due process of law under the Ohio Constitution. The amended complaint sought a declaratory judgment and preliminary and permanent injunction preventing the Village from continuing the automated speed enforcement program, and prohibiting the Village from enforcing Ordinance 1917, which established the program.

In March 2014, following a hearing, the trial court granted summary judgment to appellees on counts two (declaratory judgment) and three (injunctive relief) of the amended complaint. The court concluded that Ordinance 1917 was unconstitutional

because it violated due process provisions of the Ohio Constitution and entered a permanent injunction prohibiting further enforcement of the ordinance.

The present case has been before this court twice on appeal. First, in *Barrow v. Village of New Miami*, 12th Dist. Butler No. CA2014-04-092, 2014-Ohio-5743, this court reversed and remanded a class certification ruling so that the trial court could articulate its reasoning for certifying a class. Following the remand, the trial court filed an entry reaffirming and explaining the class certification ruling. A second appeal was filed, and this court affirmed the decision of the trial court and remanded the matter for further proceedings. *Barrow v. Village of New Miami*, 12th Dist. Butler No. CA2015-03-043, 2016-Ohio-340.

On February 11, 2017, the trial court granted summary judgment to appellees on counts two, three and four of the amended complaint, but no final judgment was entered. The matter was set for a hearing before the trial court to consider the "proper amount of restitution/refund as determined under the laws of equity." The February 11, 2017 entry also denied defenses raised by the Village which asserted sovereign immunity.

The basis for the motion to dismiss is that a number of issues remain pending, including the actual amount of restitution to be paid to the class as a whole and the manner of distribution of those funds. Accordingly, appellees contend that the order appealed from is not a final appealable order, except to the extent that it denies relief based upon sovereign immunity. See R.C. 2744.02(C). Appellees assert that appellants intend to appeal not only sovereign immunity issues, but also other issues related to rulings made by the trial court. They therefore contend that this appeal

should be dismissed, or its scope limited to immunity issues. In response, appellants contend that the order appealed from is a final appealable order on all issues because the only decisions left to be made by the trial court constitute mere "ministerial tasks."

The general rule is that an order determining liability but not damages is not a final appealable order. *Walburn v. Dunlap*, 121 Ohio St.3d 373, 2009-Ohio-1221. However, there is an exception to this general rule: A judgment that does not completely determine damages is final and appealable "where the computation of damages is mechanical and unlikely to produce a second appeal because only a ministerial task similar to assessing costs remains." *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 546, 1997-Ohio-366.

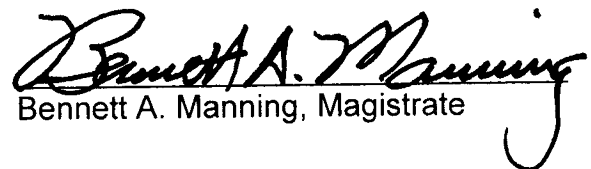
In the present case, appellees' motion for summary judgment requested as damages and restitution all of the money collected by the Village under the program. Appellants opposed that on the basis of sovereign immunity, and also argued that even if ordered to make restitution, they should be ordered to pay only the amount the Village itself collected and retained under the program. The trial court stated that after being advised of amounts paid under the invalidated ordinance, the court will "set the proper amount of restitution/refund as determined under the laws of equity."

The remaining issues here do not amount to performance of a "ministerial task" similar to assessing costs. Although the trial court's summary judgment order provides a broad outline as to how damages will be awarded, no damage amount is part of the record. There is no indication whether one or the other or both subclasses named by the trial court will be awarded damages. Although the trial court has determined that restitution will be awarded on an equitable as opposed to a legal

basis, it is not clear from the record what that will mean in terms of awarding available damage amounts. Further, there is no indication in the record whether a damage award will include all penalties paid under the automated speed program, including money paid to the non-party company administering the program, or only the sixty percent of fees paid actually retained by the Village. There will almost certainly be an appeal filed from whatever damage award is made, and from whatever attorney fee award is fashioned by the trial court. Judicial economy is better served by waiting until final resolution of all of these issues.

Based upon the following, the court makes the following orders: The motion to dismiss the present appeal is DENIED. The motion to limit the issues on appeal to those involving sovereign immunity is GRANTED. The motion to place this case on the accelerated calendar is DENIED so that the parties will have a full opportunity to brief the immunity issues.

IT IS SO ORDERED.



Bennett A. Manning, Magistrate