

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

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

**FILED**  
FEB 11 2014  
22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

SARAH TUPPER and SANDRA )  
THURMOND, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
CITY OF ST. LOUIS, et al., )  
 )  
Defendants. )  
 )

Cause No.1322-CC10008

Division No. 13

**ENTERED**  
**FEB 11 2014**  
**CNB**

ORDER AND JUDGMENT

Petitioners brought this action for temporary restraining order, preliminary injunction, and permanent injunction, and for declaratory relief, seeking to enjoin Respondents from prosecuting red light camera tickets. The matter was filed on November 25, 2013, and all parties received notice of hearing on the motion for temporary restraining order which was held on November 27, 2013. On that date, Respondent City of St. Louis dismissed the outstanding tickets against Plaintiffs, and the Court continued the matter to January 13, 2014, for a final determination of all issues including Respondents' Motions to Dismiss. All parties were present and the matter was heard on January 13, 2014. The parties filed their post-trial briefs on January 31, 2014.

Respondents have each filed motions to dismiss. Respondents City of St. Louis, Mayor Francis Slay, and Police Chief Sam Dotson move to dismiss Petitioners' action, arguing that it calls for an impermissible advisory opinion.

Respondent American Traffic Solutions, Inc. ("ATS") moves to dismiss, citing numerous reasons. First, it argues that the matter is moot, that there is no justiciable controversy, and that Petitioners do not have standing. ATS further argues that Petitioners are estopped from raising constitutional claims that they failed to assert in municipal court. ATS also argues that Petitioners are impermissibly seeking class-wide relief without utilizing the procedure for certifying a class. Finally, ATS argues that Petitioners fail to comport with the requirements under the Missouri Declaratory Judgment Act.

Respondent Linebarger Goggan Blair & Simpson, LLP ("LGBS") moves to dismiss, arguing that Petitioners' claims are moot because of the dismissal of the tickets, and that Petitioners lack standing because they are not injured by the ordinance. Respondent LGBS also argues that Petitioners are estopped from asserting constitutional claims that were not asserted in municipal court.

The Director of Revenue moves to dismiss, arguing that Petitioners seek no relief from him, and that the claims can be

adjudicated without him. The Court now rules as follows as to Respondents' motions to dismiss:

Mootness

First, Respondents argue that there is no justiciable controversy since the City dismissed the tickets issued to Petitioners (save for Ms. Tupper's first ticket for which she was acquitted and which is now on appeal). It is well-established that Missouri courts do not determine moot cases or render advisory opinions. Friends of the San Luis, Inc. v. Archdiocese of St. Louis, 312 S.W.3d 476, 483 (Mo.App. E.D. 2010). A case is moot when an event occurs that makes the court's decision unnecessary or makes granting effectual relief by the court impossible. Id.

An exception to the mootness doctrine, known as the "general public interest" exception, applies if a case presents an issue that (1) is of general public interest; (2) will recur; and (3) will evade review in future live controversies. In re Dunn, 181 S.W.3d 601, 604 (Mo.App. E.D. 2006). Here, the issue of red light camera enforcement is of general public interest because it affects all drivers and owners of automobiles in St. Louis. As far as recurrence, Petitioners have shown that the receipt of tickets for alleged violations of the ordinance has recurred and is likely to continue to recur. The issue will also evade review if Respondents

continue to dismiss tickets when an injunction seems likely. The Court finds that the general public interest exception applies to this controversy.

The Court further believes that the "voluntary cessation" doctrine is applicable. Here, it is clear that the City dismissed the Petitioners' tickets for the sole reason of avoiding an injunction in this matter, which the Court was poised to enter following the November hearing. Voluntary cessation of certain conduct does not render a case moot if there is a "reasonable expectation" the wrong will be repeated, and where the actions of government may impact on the "same objecting litigants." Bratton v. Mitchell, 979 S.W.2d 232, 236 (Mo.App. W.D. 1998). In Kandlbinder v. Reagen, 713 F.Supp. 337, 339 (W.D.Mo. 1989), the plaintiff sought declaratory relief after his federal income tax refund was intercepted for unpaid child support. The government returned his check, declared he was no longer delinquent, and moved to dismiss his case relying on the doctrine of mootness. The District Court noted that even though the government returned the check and took the plaintiff's name off the intercept list, the court should still have the power to determine the legality of the alleged practice.

The Court finds this case to be similar to Kandlbinder. The Court believes that until an injunction is entered by the Court,

Respondents will continue to enforce the red light ordinance; and, although Petitioners have no intention of "running red lights," it is likely that Petitioners will receive another ticket in the future. The Petitioners, therefore, have a right to have the Court determine the legality of the enforcement of the ordinance, and the matter is not moot.

#### Adequate Remedy at Law

Respondents next argue that Petitioners' petition for injunctive relief should be dismissed because Petitioners have an adequate remedy at law; namely, they can challenge the ordinance in municipal court. Missouri Courts have long held that an opportunity to be acquitted of violation of the ordinance is not an adequate remedy where the ordinance is invalid. "The fact that in each of such suits the plaintiffs might plead successfully the invalidity of the ordinances as a defense thereto does not give them an adequate remedy." Sylvester Coal Co. v. City of St. Louis, 32 S.W. 649, 650 (Mo. 1895). "[Citizens] are entitled to be protected from the expense, vexation, and annoyance of such a multiplicity of suits," resulting from the allegedly void ordinance. Id.

Further, the Missouri Court of Appeals, in the context of a "red light camera" case, has recently held that the challengers did not have an adequate remedy in municipal court. "The presence of an

adequate remedy at law is immaterial where a court patently and unambiguously lacks jurisdiction to act. Accordingly, Moore and Subclass 2, need not subject themselves to municipal court proceedings for an alleged violation of a void and unenforceable municipal ordinance..." Brunner v. City of Arnold, ED99034, 2013 WL 6627959 (Mo.App. Dec. 17, 2013). The Court finds that Petitioners do not have an adequate remedy at law.

#### Standing

Respondents next argue that Petitioners do not have standing to seek an injunction against the enforcement of red light cameras. In a similar vein, Respondents argue that Petitioners have not met the requirements for declaratory relief because that they have no "legally protectable interest."

Standing relates to a party's personal stake in the outcome of a proceeding. State ex rel. City of St. Louis v. Litz, 653 S.W.2d 703, 706 (Mo.App. E.D. 1983). A party has standing to challenge the validity of an ordinance if standing is expressly conferred by statute or another applicable ordinance, or if the party can demonstrate that he or she is directly and adversely affected by the ordinance. Miller v. City of Manchester, 834 S.W.2d 904, 906 (Mo.App. E.D. 1992). A party whose rights are or may be

injuriously affected by the enforcement of an ordinance may attack its validity in proper proceedings. Litz, 653 S.W.2d at 706.

Section 527.020 RSMo provides as follows: "a person whose rights, status or other legal relations are affected by a... *municipal ordinance*... may have determined any question of construction or validity arising under the... ordinance... and obtain a declaration of rights, status or other legal relations thereunder" (emphasis added). Standing is established even where a party's "interest is attenuated, slight or remote." Damon v. City of Kansas City, WD75363, 2013 WL 6170565 (Mo.App. Nov. 26, 2013), citing St. Louis Ass'n of Realtors v. City of Ferguson, 354 S.W.3d 620, 622-623 (Mo. banc 2011). Persons who have been charged with violation of an ordinance have standing to challenge its validity. Dae v. City of St. Louis, 596 S.W.2d 454, 455 (Mo.App. E.D. 1980).

Petitioners Tupper and Thurman each received citations pursuant to the red light camera ordinance, and affirmatively challenged the validity and constitutionality of the ordinance in this Court. The Court finds that they are directly affected by the Ordinance and have standing and a legally protectable interest sufficient to challenge the validity of the Ordinance.

## Waiver

Respondents further argue that Petitioners have waived their constitutional arguments by not asserting them at the earliest possible time, in municipal court. Petitioners did not participate in the municipal court proceedings relating to the tickets at issue in this matter, but have asserted their constitutional claims from the outset of this case.

In order to prevent surprise to the opposing party and to permit the trial court the opportunity to adequately and fairly address constitutional claims, Willits v. Peabody Coal Co., LLC, 400 S.W.3d 442, 449 (Mo.App. E.D. 2013) (citing Land Clearance for Redevelopment Auth. of Kansas City, Mo. v. Kansas Univ. Endowment Ass'n, 805 S.W.2d 173, 175 (Mo. banc 1991)), it is firmly established that a constitutional question must be presented at the earliest possible moment that good pleading and orderly procedure will admit under the circumstances of the given case, otherwise it will be waived. MB Town Center, LP v. Clayton Forsyth Foods, Inc., 364 S.W.3d 595 (Mo.App. E.D. 2012). Constitutional violations not raised at the earliest possible opportunity are deemed waived. State ex rel York v. Daugherty, 969 S.W.2d 223, 224 (Mo. banc 1998). "The critical question in determining whether waiver occurs is whether the party affected had a reasonable opportunity to raise



the unconstitutional act or statute by timely asserting the claim before a court of law." Daugherty, 969 S.W.2d at 225.

The Court does not believe that Petitioners waived their claims by not raising them in the municipal court proceeding in which they did not participate. None of the cases cited by Respondents support a conclusion that a party waives its constitutional arguments by not availing itself of a municipal court proceeding. See, cases cited by ATS: Callier v. Director of Revenue, 780 S.W.2d 639 (Mo. banc 1989) (constitutional violations not alleged in petition not reviewable on appeal); State ex rel. York v. Daughtery, 969 S.W.2d 223 (Mo. banc 1998) (party's constitutional challenge to Family Court Commissioner's authority was not raised in Circuit Court). Unverferth v. City of Florissant, ED98571 (Mo.App. E.D. Sept. 10, 2013), cited in LGBS' Motion to Dismiss, actually held that the trial court erred in holding that Unverferth waived her right to challenge the constitutionality of the ordinance because she did not assert such claims at the municipal court proceeding to which she was entitled.

Here, Petitioners did not "accept their convictions" and pay their fines as did the Edwards and Bissels in Edwards v. City of Ellisville, ED99389, 2013 WL 5913628 (Mo.App. E.D. Nov. 5, 2013), in which the Court applied the doctrine of waiver. The Court finds

that, here, Petitioners presented their constitutional arguments at the first reasonable opportunity and therefore there has been no waiver.

#### Class Relief

Respondents next argue that Petitioners are seeking class-wide relief without adhering to the requirements for a class action lawsuit. It has long been held that a citizen may seek to enjoin the enforcement of an invalid ordinance which consequently provides relief to all citizens without joining all such citizens. See Bhd. of Stationary Engineers v. City of St. Louis, 212 S.W.2d 454, 458 (Mo.App. 1948) ("equity may therefore rightfully intervene to determine, in one case, whether the ordinance is invalid for the reasons claimed"); Dae v. City of St. Louis, 596 S.W.2d 454, 455 (Mo.App. E.D. 1980) (individuals charged with violation of the Ordinance have standing to seek injunctive relief); Hatfield v. Meers, 402 S.W.2d 35, 39 (Mo.App. 1966) (risk to taxpayer-plaintiffs of additional taxes on their property was sufficient to vest the court with equitable jurisdiction and to enjoin enforcement of the ordinance on behalf of plaintiffs and all others similarly situated). Petitioners are not seeking to enjoin the actions of any person not a party to this action, and the Court finds that a class action is not necessary for the relief sought.

Director of Revenue's Motion

Rule 87.04 provides in part that "In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and, if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard." The Director of Revenue is represented in this matter by the Attorney General. Rule 87.04 further provides that "no declaration shall prejudice the rights of persons not parties to the proceedings." In a suit in equity, every person having a material right or interest in the subject matter of the controversy is properly made a party. Bhd. of Stationary Engineers v. City of St. Louis, 212 S.W.2d 454, 458 (Mo.App. 1948). As Petitioners have argued, the Director of Revenue may be affected by a declaration of invalidity of the Ordinance since it is the party responsible for the promulgation and application of charge codes related to the Ordinance. The Court believes that even if no specific relief is sought from the Director, he is properly a party to this equitable proceeding.

Respondents' Motions to Dismiss are hereby denied.

## Injunction

Petitioners seek an injunction enjoining the continued use and enforcement of red light cameras in the City of St. Louis. Petitioners allege that Respondents have continued to enforce the City's red light camera ordinance, despite the Ordinance having been found to be void and invalid, and Petitioners have been thereby harmed.

Prosecutions for violation of a city ordinance are in this state regarded as a civil action with quasi-criminal aspects.<sup>1</sup> Independence v. Peterson, 550 S.W.2d 860, 862 (Mo.App. 1977). Generally, a court of equity will not interfere with the enforcement of a criminal law. Burnau v. Whitten, 642 S.W.2d 346 (Mo. banc 1982). An exception to the rule exists where the law in question is unconstitutional or otherwise invalid and attempted enforcement would constitute a direct invasion of property rights resulting in irreparable injury. Cimasi v. City of Fenton, 659 S.W.2d 532, 536 (Mo.App. E.D. 1983). The two elements, i.e., statutory invalidity and direct invasion of property rights

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<sup>1</sup> The most recent "red light" cases out of the Court of Appeals have indicated that red light camera ordinances are in fact "criminal in nature" rather than quasi-criminal. See Brunner v. City of Arnold, ED99034, 2013 WL 6627959 (Mo.App. E.D. Dec. 17, 2013); Damon v. City of Kansas City, WD75363, 2013 WL 6170565 (Mo. App. W.D. Nov. 26, 2013) (remanded for a determination of whether ordinance is civil or criminal). These cases are not yet final.

resulting in irreparable injury, must be present and clearly appear. Id.

Here, the Ordinance at issue was the subject of Smith v. City of St. Louis, 409 S.W.3d 404 (Mo.App. E.D. 2013). There, the Court held in part that the Ordinance was "void for failure to comply with the Supreme Court rules." Smith, 409 S.W.3d at 427. The Supreme Court denied transfer of the case on October 29, 2013, and the Court of Appeals issued its mandate in accordance with the opinion on October 30, 2013. Despite the Court of Appeals clearly stating that the Ordinance was "invalid," supra, pages 407, 417, 418, and 427 and "void," supra, pages 407 and 427, the City has asserted the position that it could continue to enforce the Ordinance.

Respondents maintain that the Ordinance is essentially valid; that the Court of Appeals merely found that the applicable "Notice" was invalid. Respondents argue that since the City has since changed its Notice, it can continue to enforce the Ordinance. The Court notes that the Court of Appeals importantly did *not* say or imply that the ordinance was valid. The Court of Appeals said the Ordinance was *void*. It did not say, as Defendants argue, that the Ordinance was valid except for the Notice; in fact, it declined to rule on such issues as whether the Ordinance violated Due Process,

reasoning that it did not need to determine such issues because the Ordinance was already found to be void and as such, unenforceable.

When an ordinance is found to be "void," it means that the municipality never had the authority to create any legal rights or responsibilities whatsoever. R.E.J. Inc. v. City of Sikeston, 142 S.W.3d 744, 746 (Mo. banc 2004). There was nothing explicit or implicit in the Court's opinion that indicated that the Court of Appeals intended for the City to rewrite the Notice and continue enforcing the void Ordinance.

Further, if it were permissible for the City to rewrite the Notice and continue enforcing the ordinance, Respondents have not shown that the Notice has been rewritten in such a way that complies with the decision of the Court of Appeals and all applicable Supreme Court Rules. The Notice still fails to contain a "court date." It does not advise the accused that he "must respond to the violation notice by either paying the fine or pleading not guilty and appearing at trial." It merely provides a "due date" for the fine, and states that "FAILURE TO RESPOND to this notice will result in the service of a Summons and a required court appearance."

Additionally, more recent "red light" cases out of the Eastern and Western District Courts of Appeals have strongly trended

towards the invalidation of red light camera ordinances in general. See, eg., Edwards v. City of Ellisville, ED99389, (Mo.App. Nov. 5, 2013) (transfer denied Jan. 27, 2014):

The recent decisions of this Court addressing municipal red light camera legislation properly draw attention to various legal issues intertwined with such regulation. The systems of red light camera regulation we have reviewed, whether as drafted or as applied by the municipality, are in conflict with one or more of Sections 304.281, 302.225, and 302.302, and are therefore void and unenforceable.

Importantly, these recent cases have shifted the Court's prior position on the validity of the "rebuttable presumption," a prime feature of the City's red light camera ordinance. See Brunner v. City of Arnold, ED99034, 2013 WL 6627959 (Mo.App. E.D. Dec. 17, 2013) (finding that the Ordinance's rebuttable presumption violates the rights afforded by Article I, Section 10 of the Missouri Constitution, which prohibits the deprivation of life, liberty, or property without due process); Damon v. City of Kansas City, WD75363, 2013 WL 6170565 (Mo.App. W.D. Nov. 26, 2013) ("if the ordinance is determined to be criminal in nature, then the rebuttable presumption is invalid"); Unverferth v. City of Florissant, ED98511, 2013 WL 4813851 (Mo.App. E.D. Sept. 10, 2013) ("[finder of fact] is not free to infer beyond a reasonable doubt that the registered owner was the driver based solely on the

vehicle's registration because such an inference is unreasonable" (J. Mooney, dissenting)).

The Court believes that the Petitioners here have met their burden of showing that the red light camera ordinance is invalid. Petitioners have also adequately shown that the failure to enjoin the enforcement of the void ordinance is a direct invasion of their property rights.

The mere invalidity of a municipal ordinance is not alone sufficient ground for enjoining its enforcement. Smith v. City of St. Louis, 409 S.W.3d 404, 414 (Mo.App. E.D. 2013), citing Bhd. of Stationary Engineers v. City of St. Louis, 212 S.W.2d 454, 458 (Mo.App. St.L. 1948). To warrant the intervention of a court of equity, there must be a showing of something in addition to the claim of invalidity which serves to bring the case within one or more of the recognized grounds of equitable jurisdiction. Id. It must appear, for instance, that the enforcement of the ordinance would deprive the complaining party of his property rights without adequate redress by legal remedy, or that injunctive relief is required to prevent a multiplicity of actions or proceedings for violation of the ordinance. Id.

Petitioners have demonstrated to the Court that the injunction of the red light camera ordinance is necessary to prevent a




multiplicity of actions or proceedings for violation of the ordinance. Respondents continue to issue numerous red light camera citations, prosecute such citations, and/or seek collection of fines on the citations on a daily basis. The Court finds that under all the circumstances an injunction is warranted.

THEREFORE, it is Ordered and Decreed that Respondents' Motions to Dismiss are DENIED. The Court declares the red light camera ticket ordinance, No. 66868, Codified at 17.07.010 et seq., to be INVALID. Petitioners' petition for a preliminary and permanent injunction is hereby GRANTED. Respondent City of St. Louis is hereby prohibited from proceeding with any enforcement of the red light camera ticket ordinance by:

- a. Attempting to enforce the red light camera ticket ordinance, No. 66868, Codified at 17.07.010 et seq. of the Revised Code of the City of St. Louis;
- b. Sending Notices of Violations and Summons and Supplemental Notices of Violation for violation of red lights as detected by cameras as opposed to live police officers;

- c. Processing payments for alleged violations of such tickets; and
- d. Sending collection letters relating to red light camera tickets.

SO ORDERED:

  
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STEVEN R. OHMER, Judge

Dated: February 11, 2014

cc: Bevis Schock  
Michael Garvin  
Gerard Carmody  
James Layton