[Cite as *Wurdlow v. Camcar Campus Towing,* 2011-Ohio-2943.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lawrence Earl Wurdlow,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-657 (M.C. No. 2009 CVI 048565)
Camcar Campus Towing et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 16, 2011

Lawrence Earl Wurdlow, pro se.

John S. Jones, for appellees.

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶1} Plaintiff-appellant, Lawrence Earl Wurdlow ("appellant"), appeals from a judgment dismissing his claims against defendants-appellees, Camcar Campus Towing ("Camcar" or "appellees") and Indianola Presbyterian Church ("the church" or "appellees"). For the reasons that follow, we affirm.

{¶2} On November 3, 2009, Camcar towed appellant's vehicle from the church's parking lot, located at 1970 Waldeck Avenue, Columbus, Ohio 43201. On November 10, 2009, appellant filed a complaint in the Small Claims Division of the Franklin County Municipal Court against appellees, and sought the return of $157.65 for the charges he

incurred as a result of the alleged wrongful removal of his vehicle from the parking lot. Before responsive pleadings were filed, appellant filed an amended complaint and various supplements, in which he sought restitution for the alleged $531.65 he incurred as a result of the improper removal of his vehicle. Appellant argued that the removal was improper because a state statute and city ordinance had conflicting requirements for the establishment of private tow-away zones. He further argued that the state statute should preempt the city ordinance. Again, these pleadings and supplements named only Camcar and the church as defendants.

{¶3} The parties presented before a magistrate for a hearing. On April 27, 2010, the magistrate issued a decision with findings of fact and conclusions of law. In the decision, the magistrate found that appellant had not met his burden of persuasion and that the state statute and city ordinance were not in conflict. As a result, the magistrate recommended that appellant's claims be dismissed. Appellant filed objections to the magistrate's decision, which the trial court overruled. The trial court then adopted the magistrate's decision as its own and entered judgment. This appeal followed and presents four assignments of error.

{¶4} Columbus City Code 2151.10 provides a mechanism for creating private tow-away zones. So too does R.C. 4513.60. Nowhere in this action does appellant argue that appellees failed to comply with the requirements of the municipal ordinance. Rather, each and every argument is premised upon purported conflicts amongst the municipal ordinance and the state statute. According to appellant, the removal of his vehicle was wrongful because of these purported conflicts. He essentially argues that no private tow-away zone was created because of these purported conflicts. Furthermore,

he expressly argues that the state statute should preempt the city ordinance. While appellant suggests that this matter is not one in which he seeks declaratory relief, that is precisely the relief he seeks.

{¶5} As an appellate court, "we are required to raise jurisdictional issues sua sponte." *Huddleston v. Mullen*, 4th Dist. No. 09CA39, 2010-Ohio-2491, ¶13, citing *Whitaker-Merrell Co. v. Geupel Constr. Co.* (1972), 29 Ohio St.2d 184, 186.

{¶6} The relevant portion of Ohio's declaratory judgment statute provides:

> * * * In any action or proceeding that involves the validity of a municipal ordinance or franchise, the municipal corporation shall be made a party and shall be heard, and, if any statute or the ordinance or franchise is alleged to be unconstitutional, the attorney general also shall be served with a copy of the complaint in the action or proceeding and shall be heard. * * *

R.C. 2721.12(A).

{¶7} These requirements are mandatory and jurisdictional. *Osborne v. Mentor* (1999), 133 Ohio App.3d 22, 26, citing *Asbury Apts. v. Dayton Bd. of Zoning Appeals*, 77 Ohio St.3d 1229, 1997-Ohio-272, and *Ohioans for Fair Representation, Inc. v. Taft*, 67 Ohio St.3d 180, 183, 1993-Ohio-218, and *Westlake v. Mascot Petroleum Co., Inc*. (1991), 61 Ohio St.3d 161, 163, and *Malloy v. Westlake* (1977), 52 Ohio St.2d 103, 104. The failure to comply with these requirements "deprives the trial court of jurisdiction." *Huddleston* at ¶15, citing *Cicco v. Stockmaster*, 89 Ohio St.3d 95, 97, 2000-Ohio-434.

{¶8} In filing this action, appellant presented constitutional issues relating to the Home Rule and preemption. As a result, and based upon the declaratory relief sought, appellant had certain obligations to undertake. Most notably, the city of Columbus should have been a party in the action challenging one of its ordinances. Indeed, it only makes sense to afford the city of Columbus with the opportunity to defend the validity of one of

its municipal ordinances. Moreover, the Ohio Attorney General should have been served with a copy of the amended complaint.

{¶9} Because appellant failed to meet the requirements of R.C. 2721.12(A), we find no error in the trial court's judgment dismissing this matter. Indeed, appellant's failures were fatal defects. See *Huddleson* at ¶17. We accordingly overrule appellant's four substantive assignments of error and affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BRYANT, P.J., and FRENCH, J., concur.