

[Cite as *Macdonald v. Cleveland*, 2015-Ohio-2147.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101176

GEORGE W. MACDONALD

PLAINTIFF-APPELLEE

vs.

CITY OF CLEVELAND, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-808568

BEFORE: E.A. Gallagher, J., Celebrezze, A.J., and Jones, J.

RELEASED AND JOURNALIZED: June 4, 2015

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EILEEN A. GALLAGHER, J.:

{¶1} Defendant-appellant city of Cleveland (“the city”) appeals from the decision of the Cuyahoga County Court of Common Pleas reversing the decision of the city of Cleveland Parking Violations “Bureau” that affirmed plaintiff-appellee George W. Macdonald’s liability for an automated traffic enforcement camera speeding offense. For the following reasons, we reverse and remand.

{¶2} On April 23, 2013, Macdonald received a notice of liability for violating Cleveland Codified Ordinances (“CCO”) 413.031. The notice stated that on April 15, 2013, Macdonald’s vehicle was photographed by an automated traffic enforcement camera traveling 46 miles per hour in a 35 mile per hour zone.

{¶3} On May 16, 2013, Macdonald appeared at an administrative hearing before the city of Cleveland Parking Violations Bureau to contest the ticket and he testified that he was not exceeding the speed limit on the day in question and he objected to the city’s procedure for assessing liability related to automated traffic camera tickets. The hearing officer read the facts of the ticket into evidence and found Macdonald liable and fined him in the amount of \$100.

{¶4} Macdonald appealed the Bureau’s decision to the Cuyahoga County Court of Common Pleas. He asserted that the Bureau’s decision was not supported by sufficient evidence and offered various arguments that the procedures employed pursuant to CCO 413.031 violate due process. The court of common pleas held a hearing on the matter pursuant to R.C. 2506.03(A) during which Macdonald did not provide any additional

evidence. Following the hearing, the court granted a motion to supplement filed by Macdonald which referenced this court's decision in *Jodka v. Cleveland*, 2014-Ohio-208, 6 N.E.3d 1208 (8th Dist.).

{¶5} In *Jodka*, we held that the procedures set forth in CCO 413.031(k) and (l) violated the Ohio Constitution's Article IV, Section 1, by attempting to divest the municipal court of its jurisdiction to adjudicate violations of municipal ordinances. *Id.* at ¶ 33. Relying on *Jodka*, the court of common pleas reversed the Bureau's finding of liability against Macdonald, denied a motion to dismiss filed by the city and dismissed the case with prejudice. The city appeals asserting the following two assignments of error:

I. The trial court abused its discretion in considering appellee's challenges to the constitutionality of CCO 413.031.

II. The trial court erred in denying Defendant-Appellant's motion to dismiss.

{¶6} We find the city's second assignment of error to be dispositive of this appeal.

In reversing the decision of the Bureau and dismissing the case with prejudice, the court of common pleas relied in good faith on this court's decisions in *Jodka* and *Dawson v. Cleveland*, 8th Dist. Cuyahoga No. 99964, 2014-Ohio-500 (holding that the finding in *Jodka* that CCO 413.031 was facially unconstitutional was controlling authority applicable in administrative appeals pursuant to R.C. Chapter 2506).

{¶7} However, this court's holding in *Jodka* was recently reversed pursuant to the Ohio Supreme Court's decision in *Walker v. Toledo*, Slip Opinion No. 2014-Ohio-5461. *Jodka v. Cleveland*, Slip Opinion No. 2015-Ohio-860. In *Walker*, the court laid to rest

the home-rule and municipal court jurisdiction challenges to automated traffic enforcement ordinances as follows:

[W]e reaffirm our holding in *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, that municipalities have home-rule authority under Ohio Constitution, Article XVIII, to impose civil liability on traffic violators through an administrative enforcement system. We also hold that Ohio Constitution, Article IV, Section 1, which authorizes the legislature to create municipal courts, and R.C. 1901.20, which sets the jurisdiction of municipal courts, do not endow municipal courts with exclusive authority over traffic-ordinance violations. Finally, we hold that Ohio municipalities have home-rule authority to establish administrative proceedings, including administrative hearings, in furtherance of these ordinances, that must be exhausted before offenders or the municipality can pursue judicial remedies.

Walker at ¶ 29.

{¶8} The city correctly argues in its second assignment of error that the court of common pleas was unable to reach the merits of Macdonald's assignments of error due to its reliance on *Jodka*. As *Jodka* is no longer controlling authority pursuant to *Walker*, it is appropriate to reverse and remand to allow the court to consider the merits of Macdonald's appeal.

{¶9} The city's second assignment of error is sustained.

{¶10} We find the city's first assignment of error to be moot.

{¶11} The judgment of the trial court is reversed and the case is remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common

pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
LARRY A. JONES, SR. J., CONCUR