[Cite as *Middleburg Hts. v. McClellan*, 2016-Ohio-816.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103212

CITY OF MIDDLEBURG HEIGHTS

PLAINTIFF-APPELLEE

vs.

CLAUDIA L. McCLELLAN

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

Criminal Appeal from the
Berea Municipal Court
Case No. 15TRD00904

BEFORE: Jones, A.J., Stewart, J., and Blackmon, J.

RELEASED AND JOURNALIZED: March 3, 2016

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LARRY A. JONES, SR., A.J.:

{¶1} Defendant-appellant Claudia McMillion McClellan[1] appeals her speeding in a school zone conviction, a fourth-degree misdemeanor, which was entered after a bench trial. We dismiss this appeal.

I. Procedural History and Facts

{¶2} On February 26, 2015, at approximately 7:55 a.m., McClellan was pulled over on Bagley Road by Middleburg Heights police officer Ken Hall. Officer Hall had been running radar in a 20 m.p.h. school zone when his radar detected a vehicle being driven by McClellan traveling at 35 m.p.h. Officer Hall testified that at the time he detected McClellan's vehicle there was a flashing 20 m.p.h. school zone sign on. The posted speed limit on that portion of Bagley Road when the school zone limitation is not in effect was 35 m.p.h. According to Hall, at the time he stopped McClellan, traffic was light and "moving fairly slow" because it was snowing.

{¶3} Officer Hall testified that after he informed McClellan of the reason for the stop, she told him that the law only required observance of the 20 m.p.h. speed limit if children are walking to school, and that there were no children visible at that time. The officer disagreed with McClellan and issued her a ticket.

{¶4} At the close of the city's case, the defense moved for judgment in its favor. The defense argued that the purpose of the city's ordinance was to protect students, and there was no evidence that there were students in the school zone at the relevant time to protect. The defense relied on *State v. Roberts*, 1st Dist. Hamilton No. C-960373, 1996 Ohio App. LEXIS 5886 (Dec.

[1]The record indicates that the defendant changed her named from McMillion to McClellan during the course of the trial court proceedings.

31, 1996), in support of its position.[2] The court overruled the defense's motion.

{¶5} McClellan testified. She testified about driving in the school zone as follows:

> I guess I felt there were no children anywhere. I wasn't — I don't think I was purposely going over the speed limit, but there's definitely no children. As a matter of fact, when you go through there, you never see any because they're all backed off.

McClellan admitted that she did not have knowledge that no children at all walk to and from school, however. McClellan also described the traffic as light at the time in question, but did not recall that it had been snowing. She testified that she was paying attention to the driving conditions and was driving reasonably for those conditions.

{¶6} The trial court found McClellan guilty and imposed a $25 fine and court costs. The record shows that McClellan paid the fine and costs the same day as the court's judgment. McClellan now appeals, raising the following two assignments of error for our review:

> I. The Trial Court erred as a matter of law in determining that the applicable ordinance did not require that school children be present, either at recess or going to or leaving school during the opening or closing hours before imposing the school zone speed limit.
>
> II. The Trial Court erred in not finding that defendant was driving reasonably for conditions and had rebutted any applicable prima facie speed limit where the only testimony was that defendant was driving reasonably for conditions and there was no evidence to the contrary.

II. Law and Analysis

{¶7} We do not reach the substance of McClellan's two assignments of error because we find this appeal moot and dismiss it.

Generally, "[w]here a defendant, convicted of a criminal offense, has voluntarily

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[2]In *Roberts*, the First District interpreted an ordinance similar to the Middleburg Heights ordinance under which McClellan was charged. The court held that the mere activation of the flashing lights in a school zone was not prima facie evidence of a 20 m.p.h. speed limit, but, rather, in order to prove a violation, it must be demonstrated that children were present in the area.

> paid the fine or completed the sentence for that offense, an appeal is moot when no evidence is offered from which an inference can be drawn that the defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction."

State v. Montavon, 10th Dist. Franklin No. 12AP-631, 2013-Ohio-2009, ¶ 6, quoting *State v. Wilson*, 41 Ohio St.2d 236, 325 N.E.2d 236 (1975), syllabus; *see also Lakewood v. Sclimenti*, 8th Dist. Cuyahoga No. 101931, 2015-Ohio-1842, ¶ 6.

{¶8} In *Cleveland Hts. v. Lewis*, 129 Ohio St.3d 389, 2011-Ohio-2673, 953 N.E.2d 278, the Ohio Supreme Court examined the issue of "[w]hether an appeal

is rendered moot when a misdemeanor defendant serves or satisfies [her] sentence after unsuccessfully moving for a stay of execution in the trial court, but without seeking a stay of execution in the appellate court." *Id.* at 389. The *Lewis* court explained that in determining whether an appeal is moot, courts should consider whether the misdemeanant (1) contested the charges at trial; (2) sought a stay of execution of sentence for the purpose of preventing an intended appeal from being declared moot; and (3) appealed the conviction. *Id.* at 394. These circumstances demonstrate

> that the sentence is not being served voluntarily, because no intent is shown to acquiesce in the judgment or to intentionally abandon the right of appeal. These circumstances also demonstrate that the appellant has "a substantial stake in the judgment of conviction," *State v. Wilson*, 41 Ohio St.2d 236, 325 N.E.2d 236, 237 (1975) so that there is "subject matter for the court to decide." *In re S.J.K.*, 114 Ohio St.3d 23, 2007-Ohio-2621, 867 N.E.2d 408, ¶ 9.

Id.

{¶9} Here, although McClellan contested the charge at trial and obviously appealed the conviction, she did not seek a stay of the fine and court costs; rather she paid the $25 fine and $160 court costs the same day as the court rendered its judgment. McClellan has not contended that she did suffer or will suffer any collateral disability as the result of her conviction or that she

did not voluntarily pay the fine and costs.

{¶10} In light of the above, this appeal is moot.

{¶11} Dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Berea Municipal 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.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., and
PATRICIA ANN BLACKMON, J., CONCUR