Missouri Court of Appeals

Southern District

Division One

CITY OF SPRINGFIELD, MISSOURI, Respondent,	)	
vs.	)	No. SD29605
ADOLPH BELT, JR., Appellant.	)	Opinion filed: July 7, 2009

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

Honorable Mark Fitsimmons, Judge

AFFIRMED.

Adolph Belt ("Appellant") appeals the trial court's grant of a motion to dismiss filed by the City of Springfield, Missouri ("the City"), which disposed of his "Request for Trial de Novo" filed in connection with an underlying citation issued against Appellant for his violation of the City's "[a]utomated traffic control system[ ]" or red light camera ordinance.

Appellant asserts two points relied on. We affirm the judgment of the trial court.

The record reveals that on July 11, 2008, the City notified Appellant that on April 10, 2008, at 10:38 a.m., a vehicle registered in his name was photographed running a red light by the red light traffic camera positioned at the corner of Campbell Avenue and Battlefield Avenue. The City maintained that such an action by Appellant was a violation of the City's Municipal Code, which sets out in section 106-161(d) that:

> [t]he owner or operator of a vehicle which is photographed by the automated traffic control system while in violation of section 106-155[1] shall be mailed a written notice of violation indicating the

---

[1] Section 106-155 of the City's Municipal Code states:

> (3) *Steady red indication:*
>
> a. Vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in subsection (3)c.
>
> b. Vehicular traffic facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication permitting the movement indicated by such red arrow is shown except as provided in subsection (3)c.
>
> * * *

> commencement of an action under this chapter. Within 30 days of the issuance of the notice of violation, a vehicle owner who receives a notice of violation that will be supported by evidence from the automated traffic control system record must either pay the civil penalty as set forth in this chapter or request an administrative hearing. Failure to pay the civil penalty or to contest liability within 30 days shall be construed as an admission of liability. The [C]ity may also request an administrative hearing, and an administrative hearing may be held whether or not the vehicle owner responds to the notice of violation. The hearing shall be held in accordance with the procedures set forth in article X of the land development code[2] and shall be held within 90 days of the request unless continued based on a showing of good cause. The hearing examiner, as appointed by the [C]ity manager, shall take evidence and determine if the facts support a finding of a violation. If the hearing examiner finds a violation occurred, an order shall be entered consistent with the remedies set forth in this chapter. The order of the hearing examiner shall be considered the same as an order of a municipal judge for purposes of enforcement of the order . . . .

As best we discern, after receiving the citation from the City, Appellant expressly requested an administrative hearing pursuant to section 106-161(d). The City then mailed Appellant a "NOTICE OF CONTESTED HEARING ON PHOTO REDLIGHT VIOLATION." This notice

---

> (5) . . . If a violation of this section is enforced through the use of an automated red light traffic enforcement system, then the penalty shall be punishable by a fine in an amount not less than $100.00 and shall be a civil, non-point penalty . . . .

[2] Article X of the land development code, section 36-1001, states the purpose of this article

> is to establish uniform procedures for administrative enforcement of the building, electric, plumbing, mechanical and fire codes and other codes of the [C]ity when so designated by the city council. The purpose of this article is to provide for the administrative action with respect to the correction of code violations, thereby providing for civil remedies in lieu of criminal penalties to correct or abate violations of the applicable code.

apprised Appellant of a hearing that would be held on August 1, 2008, at 3:00 p.m. at the Springfield Municipal Court building.

The administrative hearing was held on September 5, 2008, "in the Municipal Court of the City . . ." and was presided over by Todd M. Thornhill ("the Hearing Examiner").[3] On September 16, 2008, the Hearing Examiner issued its "FINDINGS OF FACT AND CONCLUSIONS OF LAW" which determined Appellant did not meet his burden of rebutting the presumption that, as the registered owner of the vehicle in question, he was driving the vehicle at the time it ran a red light on April 10, 2008. The Hearing Examiner then declared that "[p]ursuant to [Municipal Code Section] 106-155(5), a penalty of $100.00 is imposed against [Appellant]."

On September 25, 2008, Appellant filed an "APPLICATION FOR TRIAL DE NOVO" requesting a de novo appeal of the Hearing Examiner's determination.[4] *See* § 479.200, RSMo 2000; *see also* Rules 37.71 - 37.74, Missouri Court Rules (2008). The City then filed on October 24, 2008, a "LIMITED ENTRY OF APPEARANCE AND MOTION TO DISMISS"

---

[3] It appears that the Hearing Examiner is also employed as a Municipal Court Judge for the City.

Further, no transcripts from any of the proceedings in this matter were provided to this Court.

[4] The City asserts in its brief that in addition to requesting a trial de novo in the trial court, Appellant also filed a petition for judicial review pursuant to the Missouri Administrative Procedures Act found in Chapter 536 of the Missouri Code. There are no other references to this filing in either the briefs or the legal file presented to this Court.

in which it questioned the trial court's subject matter jurisdiction to grant a trial de novo in a case where there had been an administrative decision issued by a Hearing Examiner as opposed to a criminal conviction by a municipal court. Appellant filed a motion in opposition to the City's motion to dismiss and the trial court ultimately overruled the City's motion.

On December 31, 2008, the City filed a "MOTION TO RECONSIDER MOTION TO DISMISS" and on January 2, 2009, the City apparently filed a second "MOTION TO RECONSIDER MOTION TO DISMISS."[5] Appellant filed a response to this motion on January 9, 2009, and requested the matter be set for trial.

On January 12, 2009, a hearing was held and at its conclusion the trial court took the matter under advisement. On January 20, 2009, the trial court entered its "Judgment of Dismissal" in which it found that it "lack[ed] jurisdiction to hear a Request for Trial de Novo in this matter." Accordingly, it sustained the City's motion to dismiss with prejudice and found "[e]ach party shall be responsible for his or her own attorney's fees and costs incurred herein." This appeal followed.

Initially, we observe that Appellant has not brought a constitutional challenge as to section 106-161 of the City's Municipal Code and its application to the instant matter. We now turn to Appellant's points relied on. In his first point relied on, Appellant asserts

[5] This Court is unable to locate a copy of this motion in the legal file, but the docket sheet sets out that it was filed on the date stated above.

the trial court erred in sustaining the City's motion to dismiss because Appellant "was entitled to a trial de novo . . . ." Appellant's second point relied on states: "[t]he municipal court and circuit court erred in not discharging [Appellant], because [the City] failed to file a sufficient information conferring jurisdiction on either the municipal court or the circuit court, in that [the City] filed no information . . . ." We shall address them conjunctively as both are interrelated.

Here, Appellant filed a request for an administrative hearing before the Hearing Examiner; he appeared before the Hearing Examiner; he participated in that hearing; and he acquiesced to the administrative procedures which were held in relation to the citation he received from the City. Based on the record before this Court, it appears Appellant never challenged the procedures utilized by the City as set out in section 106-161 of the City's Municipal Code prior to Appellant's request for a trial de novo in the trial court. It is clear that a party "cannot complain on appeal of any alleged error in which, by his or her own conduct at trial, he or she joined in or acquiesced to." ***Ratcliff v. Sprint Missouri, Inc.***, 261 S.W.3d 534, 545 (Mo.App. 2008). Appellant willingly and actively proceeded in this matter under the administrative procedures previously set out. Appellant cannot now be heard to complain because he did not like the conclusion reached by the Hearing Examiner. On appeal he cannot now argue he was entitled to a trial de novo. Points I and II are denied.

The judgment of the trial court is affirmed. [6]

Robert S. Barney, Judge

BATES, J. – CONCURS

SCOTT, P.J. – CONCURS

Appellant's attorney: Jason T. Umbarger
Respondent's attorney: Johnnie J. Burgess

---

[6] In so holding, this Court has determined the foregoing issues based on the specific arguments espoused by Appellant in his brief. We do not reach the issue of the constitutionality of the ordinance at issue. *See* ***Yellow Freight System's v. Mayor's Comm'n***, 791 S.W.2d 382, 384 (Mo. banc 1990); Mo. Const. Art. V, Sec. 23; § 479.010, et seq., RSMo 2000.