[Cite as *Wilt v. Turner*, 2009-Ohio-3904.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92707

DANIEL D. WILT

PLAINTIFF-APPELLANT

vs.

EARL B. TURNER, CLERK

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-602403

BEFORE: Cooney, A.J., Rocco, J., and Kilbane, J.

RELEASED: August 6, 2009

JOURNALIZED:

FOR APPELLANT

Daniel D. Wilt, Esq. (pro se)
35000 Chardon Road, Suite 125
Willoughby Hills, Ohio 44094

ATTORNEYS FOR APPELLEE

Robert J. Triozzi
Director of Law

Mark R. Musson
Assistant Director of Law
City of Cleveland
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Plaintiff-appellant, Daniel Wilt ("Wilt"), appeals the trial court's dismissal of his administrative appeal of a decision by the City of Cleveland's Parking Violations Bureau ("Bureau"). Finding no merit to the appeal, we affirm.

{¶ 2} The facts of this case were previously set forth in Wilt's first appeal, *Wilt v. Turner*, Cuyahoga App. No. 89320, 2008-Ohio-141 (*"Wilt I"*):

> "[O]n June 13, 2006, an automated traffic camera enforcement system photographed a vehicle owned by Wilt committing a red light violation at Lakeshore Boulevard and East 159th Street in Cleveland, Ohio. At the time of the photographed infraction, Wilt was not driving the car.
>
> "The Bureau sent Wilt a notice of liability for the photographed infraction and Wilt requested a hearing. On September 12, 2006, the Bureau conducted a hearing, found Wilt liable, and assessed $100 in fines.
>
> "On September 26, 2006, within the prescribed 30 day period, Wilt filed a notice of appeal of the Bureau's decision in the Court of Common Pleas and named Earle B. Turner as the sole adverse party. Wilt subsequently delivered, by mail, a copy of the notice of appeal to Turner.
>
> "On November 3, 2006, pursuant to R.C. 2505.04, the City of Cleveland moved the Common Pleas Court to dismiss Wilt's appeal of the Bureau's decision as unperfected. On December 21, 2006, the trial court granted the City of Cleveland's motion to dismiss."

{¶ 3} In his prior appeal, Wilt argued that the trial court erred when it dismissed his administrative appeal. We agreed, finding that he had perfected the notice of appeal because the Clerk of Court was given the role of the administrative body for purposes of filing the notice of appeal under Cleveland Codified Ordinance Section 413.031(k). Id.

{¶ 4} On remand, Wilt argued that the City's attempt to expand the Bureau's jurisdiction to include violations of a camera ordinance violates the Ohio Constitution. Thus, he asked the trial court to find Cleveland Codified Ordinance Section 413.031 ("C.C.O. 413.031") unconstitutional and dismiss his camera ticket. The City of Cleveland ("City"), as attorney for defendant-appellee, Earle B. Turner, Clerk of Court, argued that Wilt's appeal should be dismissed because the trial court does not have jurisdiction to consider Wilt's constitutional challenges.[1]

{¶ 5} In December 2008, the trial court dismissed Wilt's appeal, finding, among other things, that it does not have jurisdiction to consider Wilt's facial constitutional challenge to C.C.O. 413.031.

{¶ 6} Wilt again appeals, raising one assignment of error in which he argues that the trial court erred when it dismissed his administrative appeal.

Standard of Review

{¶ 7} In *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 2000-Ohio-493, 735 N.E.2d 433, the Ohio Supreme Court distinguished the standard of review to be applied by common pleas courts and appellate courts in R.C. Chapter 2506 administrative appeals. The Court stated:

> "The common pleas court considers the 'whole record,' including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious,

---

[1]The City also argued that if the trial court decided to review Wilt's appeal on its merits, it should affirm the hearing officer's decision because Wilt failed to meet his burden in an administrative decision.

> unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence. * * *
>
> "The standard of review to be applied by the court of appeals in an R.C. 2506.04 appeal is '*more limited* in scope.' (Emphasis added.) *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 465 N.E.2d 848, 852. 'This statute grants a more limited power to the court of appeals to review the judgment of the common pleas court only on "questions of law," which does not include the same extensive power to weigh "the preponderance of substantial, reliable and probative evidence," as is granted to the common pleas court.' Id. at fn. 4. 'It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. * * * The fact that the court of appeals, or this court, might have arrived at a different conclusion than the administrative agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so." *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 261, 533 N.E.2d 264, 267." *Henley* at 147.

{¶ 8} Thus, this court will only review the judgment of the trial court to determine if the lower court abused its discretion in finding that the administrative order was supported by reliable, probative, and substantial evidence. See *Wolstein v. Pepper Pike City Council*, 156 Ohio App.3d 20, 2004-Ohio-361, 804 N.E.2d 75.

{¶ 9} In the instant case, Wilt claims the trial court erred because the Clerk of Court is not an administrative agency, the City has no authority to expand the jurisdiction of the Bureau, and C.C.O. 413.031 is void as it violates the Ohio Constitution.

{¶ 10} However, because Wilt attempts to utilize a R.C. 2506 appeal to challenge the constitutionality of C.C.O. 413.031, we affirm the trial court's dismissal of his administrative appeal.

{¶ 11} This court has previously found that: "[a] facial constitutional challenge to a[n] * * * ordinance is improper in the context of an administrative appeal." *Cappas & Karas Inv., Inc. v. Cleveland Bd. of Zoning Appeals,* Cuyahoga App. No. 85124, 2005-Ohio-2735, citing *Martin v. Independence Bd. of Zoning Appeals*, Cuyahoga App. No. 81340, 2003-Ohio-2736; *Grossman v. Cleveland Heights* (1997), 120 Ohio App.3d 435, 441, 698 N.E.2d 76. "[T]he proper vehicle for challenging the constitutionality of an ordinance on its face is a declaratory judgment action." Id.[2]

{¶ 12} In discussing the distinction between a constitutional challenge brought under R.C. Chapter 2506 and one brought pursuant to a declaratory judgment action, we stated that:

> "The [R.C. Chapter 2506 appeal] only declares the application of a[n] * * * ordinance unconstitutional and does not, therefore, affect the ordinance's overall constitutionality. A declaratory judgment relief action, however, adjudicates the overall validity of the ordinance." *Metro-Petroleum, Inc. v. Warrensville Heights* (Sept. 24, 1992), Cuyahoga App. No. 61164, citing *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 16, 526 N.E.2d 1350.

{¶ 13} In *Grossman*, this court set forth three options with which to challenge an administrative agency's decision.

> "1. Appellant [Wilt] could have filed a R.C. Chapter 2506 appeal, challenging the [Bureau's notice of liability] on the grounds it was not supported by a preponderance of the reliable, probative and substantial evidence.

---

[2] It is important to note that one of the cases on which Wilt relies involves a declaratory judgment action challenging Akron's use of automated traffic devices. See *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270.

> "2. Appellant could have challenged the constitutionality of the ordinance as applied * * * per R.C. Chapter 2506.
>
> "3. Appellant could have filed a declaratory judgment action contesting the constitutionality of the ordinance on its face." Id. at 441.

{¶ 14} Here, Wilt did none of the above. Instead, he improperly made a facial constitutional challenge to C.C.O. 413.031 in the context of an administrative appeal. Thus, we find that the trial court did not err when it dismissed Wilt's administrative appeal for lack of jurisdiction.

{¶ 15} Accordingly, the sole assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover of appellant 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.

____

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., and
MARY EILEEN KILBANE, J., CONCUR