[Cite as *S. Euclid v. Datillo*, 2020-Ohio-4999.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF SOUTH EUCLID,	:	
Plaintiff-Appellant,	:	No. 109180
v.	:	
ANTHONY DATILLO,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 22, 2020

Criminal Appeal from the South Euclid Municipal Court
Case No. CRB 1700037

Appearances:

Michael P. Lograsso, South Euclid Director of Law; Nicola Gudbranson & Cooper, L.L.C., and Michael E. Cicero, *for appellant*.

Michael A. Heller, *for appellee.*

RAYMOND C. HEADEN, J.:

{¶ 1} Plaintiff-appellant city of South Euclid ("the City") appeals the municipal court's ruling that granted defendant-appellee Anthony Datillo's

("Datillo") motion to dismiss criminal charges. For the reasons that follow, we reverse and remand for proceedings consistent with this opinion.

I. Factual and Procedural History

{¶ 2} On January 11, 2017, the City filed criminal charges against Datillo under South Euclid Codified Ordinances 1409.01(c), 1409.02, and 1409.05 ("local ordinances" or "SECO __"). Specifically, the City charged Datillo — a property owner and landlord in South Euclid, Ohio — for failure to possess a certificate of occupancy for a rental unit, failure to apply for a certificate of occupancy, and failure to pay the required application fee. The charges were first-degree misdemeanors.

{¶ 3} SECO 1409.01(c) precludes issuance of an occupancy certificate to rental property owners with a delinquent property tax balance unless the property owner or agent-in-charge submits documentation of being in good standing on a county payment plan. Datillo was delinquent on his county property taxes and, therefore, an occupancy certificate was not issued. Without an occupancy permit, Datillo was in violation of the local ordinances.

{¶ 4} On February 27, 2017, Datillo pleaded not guilty to the criminal charges. Datillo subsequently filed a motion to dismiss that argued SECO 1409.01(c) was unconstitutional. Specifically, Datillo conceded that the City held the power to require residential rental property owners to obtain occupancy permits. However, Datillo argued it was outside of the City's home-rule authority to deny issuance of an occupancy permit and, thereby, create a criminal violation based upon the property owner's failure to pay residential real estate taxes. Datillo

maintained that property taxes were regulated by the state through the general laws promulgated in R.C. Chapters 5707 and 5713, and the state had exclusive jurisdiction to enact and enforce those laws. Datillo argued that the specified general laws — R.C. Chapters 5707 and 5713 — did not impose a criminal penalty for failure to pay real estate property taxes and the City's enactment of an ordinance that imposed greater penalties than those presented in the state statutes was unconstitutional.

{¶ 5} The City opposed Datillo's motion to dismiss but on October 10, 2017, the municipal court granted the motion. The City appealed that judgment on October 26, 2017. In *S. Euclid v. Datillo*, 8th Dist. Cuyahoga No. 106687, 2018-Ohio-4711, we refrained from ruling on the merits of the case but reversed on procedural grounds:

> [T]he municipal court's journal entry, consisting of a single sentence, provided no indication of its reasoning for the dismissal of the charges. As such, it was insufficient to comply with the requirements of Crim.R. 48(B). Under Crim.R. 48(B), the municipal court must state on the record its finding of fact and reasons for the dismissal.

Id. at ¶ 12.

{¶ 6} The South Euclid Municipal Court reactivated the case on January 28, 2019. Datillo, on June 25, 2019, filed a motion that requested the trial court to execute a revised journal entry in compliance with Crim.R. 48(B). On July 1, 2019, the City filed a renewed brief in opposition to Datillo's motion to dismiss. The South Euclid Municipal Court journalized a nunc pro tunc journal entry on

September 13, 2019, that provided findings of fact and reasoning to justify its dismissal of Datillo's charges and reads, in pertinent part:

> This court finds that the City of South Euclid lacks the legal authority to withhold an occupancy permit from the defendant where the basis rests on the fact that the defendant has failed to satisfy a tax obligation to another governmental entity — in this instance, Cuyahoga County. Further, where that governmental entity has an adequate remedy at law to collect upon said outstanding tax debt, it is both unreasonable and unnecessary for the City of South Euclid to substitute itself as the collection authority.
>
> Further, this court finds that the City of South Euclid's enforcement of Codified Ordinance 1409.01 in the within case is unconstitutional as applied because it creates penalties, for actions where under Ohio Revised Code chapters 5707 and 5713 which regulate the payment of property taxes that have no penalty at law.
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> * * *

{¶ 7} The City filed a timely appeal on October 7, 2019, and raised, verbatim, this single assignment of error:

> The trial court erred by dismissing the criminal complaints against Appellee over the City's written objection, as South Euclid Codified Ordinance [Sections] 1409.01(c), 1409.02 and 1409.05 are valid exercises of the Home Rule Power pursuant to Ohio Constitution, Article XVIII, Section 3.

II. Law and Analysis

A. Standard of Review

{¶ 8} We review a trial court's dismissal of criminal charges for an abuse of discretion. *State v. Coon*, 8th Dist. Cuyahoga Nos. 97280 and 97281, 2012-Ohio-1057, ¶ 9, citing *State v. Busch*, 76 Ohio St.3d 613, 616, 669 N.E.2d 1125 (1996). A trial court abuses its discretion when it acts unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140

(1983). An unreasonable decision occurs when no sound reasoning process supports that decision. *AAAA Ents. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). An abuse of discretion also occurs when a court "applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, 892 N.E.2d 454, ¶ 15 (8th Dist.). "When applying the abuse of discretion standard, this court may not substitute its judgment for that of the trial court." *Grisafo v. Hollingshead*, 8th Dist. Cuyahoga No. 107802, 2019-Ohio-3763, ¶ 17, citing *AAAA Ents.* at 161.

B. Home Rule

{¶ 9} The City argues that its enforcement of SECOs 1409.01(c), 1409.02, and 1409.05 is a valid home-rule power and, therefore, the trial court erred when it dismissed the criminal charges against Datillo. Datillo contends that SECOs 1409.01(c), 1409.02, and 1409.05 conflict with general laws of the state of Ohio and, therefore, are in contravention with the Ohio Constitution and its delegation of home-rule authority.

{¶ 10} The City asks this court to assess whether SECOs 1409.01(c), 1409.02, and 1409.05, which are part of the City's housing code, are valid exercises of its home-rule authority. In the lower court, Datillo's motion to dismiss argued that only SECO 1409.01(c) was unconstitutional; the trial court's ruling was limited to SECO 1409.01 and its journalized entry found the City's enforcement of SECO 1409.01

unconstitutional. Based upon the proceedings below, we limit our review to whether SECO 1409.01(c) is an unconstitutional exercise of the City's home-rule power.

{¶ 11} The Home Rule Amendment, conferred under Section 3, Article XVIII of the Ohio Constitution, grants a municipality "authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Constitution, Article XVIII, Section 3.

{¶ 12} Ohio courts have adopted the *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, three-part test to determine if "a municipality has exceeded its powers under the Home Rule Amendment. 'A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.'" *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 17, quoting *Canton* at ¶ 9. The Ohio Supreme Court has pointed out that the *Canton* three-part test should not be analyzed in sequential order:

> Although it may seem that the three issues should be taken in sequence as stated, we must examine the two legislative enactments before determining whether a conflict exists. Thus, the *Canton* test should be reordered to question whether (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute.

Mendenhall at ¶ 17.

{¶ 13} We apply the *Canton* test to the facts sub judice. The parties do not dispute the prong of the *Canton* test that confirms the ordinance in question is an exercise of South Euclid's police power and, as a result, we need not assess that issue. The next step in the inquiry is whether the statute qualifies as a general law. If the state statute is not a general law, the ordinance is not invalidated under home-rule authority.

> To qualify as a general law, a statute must "(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus.

Mendenhall at ¶ 20.

{¶ 14} Datillo and the trial court cited to R.C. Chapters 5707 and 5713 as the general laws with which the local ordinances conflict. R.C. Chapter 5707 — County Taxes — discusses the levying of taxes and tax credits while R.C. Chapter 5713 — Assessing Real Estate — governs the assessment of real property tax values. A review of those code provisions indicates they are part of a statewide and comprehensive legislative enactment and they apply uniformly throughout the state; provide police regulations rather than simply grant or limit a municipality's legislative power; and implement a rule of conduct upon Ohio citizens. In other words, the state statutes qualify as general laws under the *Canton* analysis.

{¶ 15} The last prong of the *Canton* test addresses whether the ordinance and general law conflict. "In determining whether a local ordinance conflicts with the general law of the state, the court must consider whether the ordinance prohibits that which the [state law] permits, or vice versa." *Ohioans for Concealed Carry, Inc. v. Cleveland*, 2017-Ohio-1560, 90 N.E.3d 80, ¶ 10 (8th Dist.), citing *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 53. Evidence of either a direct conflict or conflict by implication between the ordinance and statute may be presented. *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, at ¶ 31. "[C]onflict by implication * * * recognizes that sometimes a municipal ordinance will indirectly prohibit what a state statute permits or vice versa." *Id.*, citing *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 167 N.E. 158 (1929). In evaluating a conflict by implication, we also look to see if the General Assembly indicated the issue at hand is to be exclusively governed by the state. *Mendenhall* at ¶ 23.

{¶ 16} In his motion to dismiss, Datillo referenced R.C. Chapters 5707 and 5713 and stated "[t]he area of the payment of property taxes is remarkably and completely regulated by the state of Ohio" through these code sections. (Appellant's motion to dismiss at 3.) The municipal court judge also relied upon those code sections when she found SECO 1409.01 was an unconstitutional application of the city's home-rule authority.

{¶ 17} "The power conferred upon municipalities to enforce within their limits local police, sanitary and other similar regulations is only limited by general

laws in conflict therewith upon the same subject matter." *Youngstown v. Evans*, 121 Ohio St. 342, 168 N.E. 844 (1929), paragraph one of the syllabus. The local ordinances questioned by Datillo govern residential rental properties and do not address the same subject matter of R.C. Chapters 5707 and 5713 that apply to taxes. SECO 1409.01(c)'s reference to real estate property taxes does not change the fact that the ordinances govern residential rental properties, not taxation. The Ohio Supreme Court found where a local ordinance and state general law do not represent the same subject matter, no conflict exists:

> Necessarily the conflict which limits the municipal local self-government must relate to a conflict with state legislation on the same subject matter. * * * If by processes of interpretation this court should establish a rule that any and all municipal legislation relating to "local police, sanitary and other similar regulations" should first be found to be wholly free from conflict with all state legislation, even though the same should not be even remotely related to the same subject-matter, municipal councils would be seriously handicapped in maintaining law and order, and it is doubtful if any such acts could be made to meet the test. This court has repeatedly declared that any alleged conflict must relate to the same subject-matter. *Fitzgerald v. City of Cleveland*, 88 Ohio St., 338, 103 N. E., 512, Ann. Cas., 1915B, 106; *City of Fremont v. Keating*, 96 Ohio St., 468, 118 N. E., 114; *Heppel v. City of Columbus*, 106 Ohio St., 107, 140 N. E., 169; *Village of Struthers v. Sokol*, 108 Ohio St., 263, 140 N. E., 519.

Youngstown at 346-347. Similarly, no conflict exists here between the local ordinances and R.C. Chapters 5707 and 5713, which represent unrelated subject matters.

{¶ 18} The trial court also found the local ordinance unconstitutional because SECO 1409.01, as applied, created a penalty where R.C. Chapters 5707 and 5713 imposed no penalty at law. However, a municipality may impose additional

restrictions that constitute a reasonable exercise of a city's police power for its public health, safety, and welfare. *Lakewood v. Nearhouse*, 8th Dist. Cuyahoga No. 44993, 1983 Ohio App. LEXIS 12878, 5 (Jan. 27, 1983). South Euclid required a residential rental property owner to satisfy payment of county real estate taxes prior to issuance of an occupancy permit for the benefit of the city's public health, safety, and welfare. A portion of property taxes are distributed to the local school district and help fund municipal services. Additionally, payment of county property taxes may prevent a rental property from undergoing foreclosure proceedings, which is disadvantageous to tenants and the community at large.

{¶ 19} Further, in applying the contrary directives test that reviews whether an ordinance permits that which the general law forbids or vice versa, we find no conflict between SECO 1409.01 and R.C. Chapters 5707 and 5713. *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, at ¶ 29. SECO 1409.01 neither permits that which R.C. Chapters 5707 and 5713 forbid nor does the ordinance forbid that which R.C. Chapters 5707 and 5713 permit. No conflict exists between SECO 1409.01 and R.C. Chapters 5707 and 5713.

{¶ 20} Inherent in the *Canton* analysis and the determination whether an ordinance is within a municipality's home-rule authority is the consideration of the statewide-concern doctrine. "[T]he term 'statewide concern' describes 'the extent of state police power which was left unimpaired by the adoption of the Home Rule Amendments as well as * * * those areas of authority which are outside the outer limits of 'local' power, i.e., those matters which are neither 'local self government'

nor 'local police and sanitary regulations.'" *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 29, quoting Vaubel, *Municipal Home Rule in Ohio*, at 1108 (1978). "[T]he doctrine is relevant only in 'deciding, as a preliminary matter, whether a particular issue is "not a matter of merely local concern, but is of statewide concern, and therefore not included within the power of local self-government."'" *Am. Fin. Servs. Assn.* at ¶ 29, quoting *Dayton v. State*, 157 Ohio App.3d 736, 2004-Ohio-3141, 813 N.E.2d 707, ¶ 76 (2d Dist.), quoting *Billings v. Cleveland Ry. Co.*, 92 Ohio St. 478, 485-486, 111 N.E. 155 (1915).

{¶ 21} In considering the doctrine, we find SECO 1409.01(c)'s requirement that an occupancy permit will not be issued to residential rental property owners delinquent on their real estate taxes was a local concern that did not affect the general public of the state beyond the inhabitants of South Euclid. *Cleveland Elec. Illum. Co. v. Painesville*, 15 Ohio St.2d 125, 129, 239 N.E.2d 75 (1968). SECO 1409.01 is an exercise of self-government and a comprehensive statutory plan regarding occupation permits — and withholding those permits from property owners delinquent in payment of their county real estate taxes — was not necessary to promote the safety and welfare of all citizens of the state. *Am. Fin. Servs. Assn* at ¶ 30.

{¶ 22} For the foregoing reasons, we find that SECO 1409.01(c) does not conflict with R.C. Chapters 5707 and 5713 and, therefore, the ordinance is a constitutional exercise of the City's home-rule authority. The trial court's granting

of Datillo's motion to dismiss was an abuse of discretion and, thus, we sustain the City's assignment of error.

{¶ 23} Judgment reversed and remanded with the directive that SECO 1409.01(c) is to be found enforceable as a constitutional use of the City's home-rule power and it is permissible for a violation of the ordinance to be criminally enforced.

{¶ 24} Judgment is reversed and remanded to the trial court for further proceedings consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

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RAYMOND C. HEADEN, JUDGE

MARY J. BOYLE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR