

[Cite as *Mansfield v. Bogolis*, 2010-Ohio-1839.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CITY OF MANSFIELD
Plaintiff-Appellee

-vs-

LINDA BOGOLIS
Defendant-Appellant

JUDGES:
Hon. Julie A. Edwards, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 09 CA 123

OPINION

CHARACTER OF PROCEEDING: Appeal of the Mansfield Municipal Court,
Case No. 09CRB3637

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: April 26, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

SHARON M. WESSELMAN
Assistant Law Director
City of Mansfield
30 North Diamond Street

LINDA BOGOLIS (PRO SE)
105 Hilltop Rd.
Mansfield, OH 44906

Hoffman, J.

{¶1} Defendant-appellant Linda Bogolis appeals the September 15, 2009 Judgment Entry of the Mansfield Municipal Court. Plaintiff-appellee is the City of Mansfield.

STATEMENT OF THE CASE

{¶2} On August 27, 2009, at approximately 11:15 p.m., Officer McKinley of the Mansfield Police Department responded to a call at 328 Orange Street, commonly known as LuLu's Bar. Upon arrival, Officer McKinley heard loud music emanating from the establishment. The music could be heard for more than fifty feet from the property line. Appellant is the owner of the establishment, and was issued a summons for the noise violation.

{¶3} Appellant was charged with violation of Mansfield Codified Ordinance 509.09. The matter proceeded to a bench trial on September 15, 2009. At the conclusion of the trial, the trial court found Appellant guilty of the noise violation, imposing a fine of \$150.00 plus court costs.

{¶4} Appellant now appeals, assigning as error:

{¶5} "I. APPELLANT'S CHARGE/CONVICTION FOR LOUD UNREASONABLE NOISE WAS IN VIOLATION OF APPELLANT'S RIGHT TO EQUAL PROTECTION UNDER THE LAW {U.S. CONSTITUTION, SECTION 1} PQ12."

{¶6} Appellant maintains the trial court violated her right to equal protection as she was the only business charged with violation of the ordinance at issue. Appellant cites phone calls to the Mansfield Police Department regarding loud noise at similar area businesses, claiming such other businesses did not receive a citation.

{¶7} Upon review, the police records cited by Appellant and attached to her brief were not part of the record of the proceedings before the trial court. Accordingly, the police records are not part of the record on appeal.

{¶8} In *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, the Supreme Court held the duty to provide a transcript for appellate review falls upon the appellant as the burden of showing error by reference to the matters in the record falls upon the appellant. Because Appellant has not provided this Court with a transcript of the proceedings before the trial court, we are unable to determine from the record an affirmative demonstration Appellant's equal protection rights have been violated. See Ohio Appellate Rule 16; Local Rule 5 of the Fifth Appellate District.

{¶9} On appeal, Appellant asserts the Mansfield Police Department selectively enforced the ordinance at issue herein. However, in order for selective enforcement to reach the level of unconstitutional discrimination, Appellant must demonstrate the actions of the police department were invidious or in bad faith. *Ryncarz v. Powhatan Point*, 2005- Ohio- 2956. Assuming, arguendo, the records relative to other local businesses were properly included in the record the same do not affirmatively demonstrate the Mansfield Police Department's enforcement of the ordinance against Appellant was invidious or in bad faith. Therefore, Appellant's sole assignment of error is overruled.

{¶10} The judgment of the Mansfield Municipal Court is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CITY OF MANSFIELD

Plaintiff-Appellee

-vs-

LINDA BOGOLIS

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 09 CA 123

For the reasons stated in our accompanying Opinion, the judgment of the Mansfield Municipal Court is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE