

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 26, 2015 Session

**JOHNNY L. SMITH, ET AL. V. METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

**Appeal from the Circuit Court for Davidson County
No. 13C661 Thomas W. Brothers, Judge**

No. M2014-01325-COA-R3-CV – Filed April 13, 2015

The plaintiffs sued the Metropolitan Government, claiming that prior citations that had been issued to them and paid by them were issued without authority and handled by the general sessions court without jurisdiction. The trial court granted summary judgment in favor of the government. The plaintiffs appealed, and we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

W. Gary Blackburn and Raymond T. Throckmorton, Nashville, Tennessee, for the appellants, Johnny L. Smith d/b/a Sugar Creek Carriages & Metro Livery, Inc.

Saul Solomon, Lora Barkenbus Fox, and Catherine J. Dundon, Nashville, Tennessee, for the appellee, The Metropolitan Government of Nashville and Davidson County.

OPINION

Two plaintiffs, Johnny L. Smith, owner and operator of a horse-drawn carriage business known as Sugar Creek Carriages, and Metro Livery, a passenger vehicle-for-hire transportation business, filed a declaratory judgment action against the Metropolitan Government of Nashville and Davidson County (“Metro”) alleging that the inspectors for the Transportation and Licensing Commission (“TLC”) lacked authority to issue citations to the plaintiffs and that the proceedings in the Environmental Court, a division of the Metro General Sessions Court, were void. The complaint also alleged that the TLC

inspectors held themselves out as police officers, displayed fraudulent badges and blue lights, and carried firearms.

On April 22, 2013, Metro filed a motion to dismiss for failure to state a claim, which was denied. Both sides filed cross-motions for summary judgment on March 14, 2014. The trial court denied the plaintiffs' motion and granted Metro's motion in part, stating that the citations were civil in nature and that challenges to the service of process or deficiencies with the issuance of past citations were waived by the plaintiffs' failure to raise those issues at trial or on appeal. The trial court further held that summary judgment was not appropriate as to the plaintiffs' claims regarding the procedures used by the inspectors to issue civil citations. Subsequently, the parties entered into an agreed order that the trial court's grant of partial summary judgment resolved all issues in the case and that any claim for prospective relief was moot. The plaintiffs appealed.

STANDARD OF REVIEW

Summary judgment is appropriate where the moving party is entitled to judgment as a matter of law on the undisputed facts. Tenn. R. Civ. P. 56.04. Where the facts are undisputed, this court reviews the grant of summary judgment *de novo* with no presumption of correctness. *City of Tullahoma v. Bedford Cnty.*, 938 S.W.2d 408, 412 (Tenn. 1997). This matter involves questions of law. The facts are basically undisputed and no genuine issues of material fact exist. Thus, our review is *de novo* with no presumption of correctness. *Id.*

ANALYSIS

The plaintiffs maintain that the citations were *ultra vires* because the TLC investigators did not have the authority to issue them and the proceedings in the trial court were void *ab initio*.

The plaintiffs view the nature of the citations as important. Historically and traditionally, violations of municipal ordinances have been treated as civil in nature. *City of Chattanooga v. Davis*, 54 S.W.3d 248, 259 (Tenn. 2001) ("the law now appears settled that proceedings for a municipal ordinance violation are civil in nature, at least in terms of technical application of procedure and for pursuing avenues of appeal"); *City of Chattanooga v. Myers*, 787 S.W.2d 921, 928 (Tenn. 1990) ("for 130 years proceedings to recover fines for the violation of municipal ordinances have been considered civil for the purposes of procedure and appeal, although the principles of double jeopardy have recently been determined to apply in such cases"); *Metro. Gov't of Nashville & Davidson Cnty. v. Allen*, 529 S.W.2d 699, 707 (Tenn. 1975); *City of Murfreesboro v. Norton*, No. M2009-02105-COA-R3-CV, 2010 WL 1838068, at *4 (Tenn. Ct. App. May 6, 2010).

Specifically, such an action is “a civil action brought by the municipality to recover a ‘debt.’” *Myers*, 787 S.W.2d at 928.

There are situations, however, when some additional protections are required. For example, a defendant appealing a municipal court judgment for a violation of a municipal ordinance to the circuit court is entitled to a jury trial. *Id.* Double jeopardy can also apply to a general sessions court finding of no violation of a municipal ordinance. *Metro. Gov’t of Nashville & Davidson Cnty. v. Miles*, 524 S.W.2d 656, 660 (Tenn. 1975). The sanction for a municipal ordinance may be punitive in purpose or effect and constitute a “fine” under Article VI, section 14 of the Tennessee Constitution.¹ *Davis*, 54 S.W.3d at 261.

The plaintiffs take the *Davis* analysis concerning whether an ordinance is punitive for purposes of Article VI, section 14 and argue that certain statutes and ordinances should apply to the “punitive citations” in this case. They argue that the TLC inspectors had no power to issue citations under the Tennessee Code and that, therefore, the “prosecutions” were *ultra vires*. They base this argument on the Code of the Metropolitan Government of Nashville and Davidson County, Tennessee (“Metro Code”) § 12.08.050(A)² and § 2.100.045,³ coupled with the fact that the TLC inspectors are not police officers. These code provisions, however, do not indicate that police officers are the only metro employees who can enforce traffic ordinances.

Pursuant to Tenn. Code Ann. § 7-3-501, an “employee of the metropolitan government” may be authorized to enforce ordinances through the issuance of a “citation or a civil warrant.” The Metro Charter provides for ordinances such as the ones violated by the plaintiffs. *See* Charter of the Metropolitan Government of Nashville and Davidson County, Tennessee § 2.01(22), (30), (39) and (40). The TLC inspectors are provided for in Metro Code § 2.100.050. Metro employees charged with enforcing laws or

¹ Article VI, section 14 states: “No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should be more than fifty dollars.” Even if the fines for violation of the Metro ordinances are punitive, the amount of each fine in this case was fifty dollars or less, so Article VI, section 14 does not apply.

² Metro Code § 12.08.050(A) states: “It shall be the duty of the officers of the police department, or such officers as are assigned by the chief of police, to enforce all traffic laws and regulations of the metropolitan government and all state laws applicable to traffic in the metropolitan government area.”

³ Metro Code § 2.100.045 states:

The metropolitan police department, in cooperation with the transportation licensing commission inspectors, shall enforce all laws relating to the licensing and operation of taxicabs, wreckers, limousines, sedans and other vehicles for hire and drivers, and shall report all violations thereof and all accidents involving vehicles for hire to the inspectors.

ordinances, including enforcement personnel of the public works department and the transportation licensing commission, may issue citations. Metro Code § 1.24.030(A).⁴ We find that the TLC inspectors are authorized to issue citations.

At times in the past, the TLC inspectors apparently used blue lights, carried firearms, and possessed badges. While these accoutrements were not authorized for TLC inspectors, their use does not negate the authority given by the Metro Code to the TLC inspectors to issue citations.

The plaintiffs also maintain that even if the inspectors had authority to issue citations, they failed to obey the laws governing the issuance of the citations. The statutes that they allege are violated, Tenn. Code Ann. § 40-7-118 and § 55-10-207, address citations in lieu of continued custody of an arrested person and traffic citations in lieu of arrest. These code sections are not applicable to citations for a municipal ordinance, which is a civil matter. *Davis*, 54 S.W.3d at 259.⁵

The plaintiffs next allege service of process deficiencies in the Environmental Court case. There is no record of any deficiencies being raised in those proceedings. The plaintiffs paid the fines and court costs associated with their citations. Consequently, it appears that the plaintiffs made a general appearance⁶ and voluntarily submitted themselves to the jurisdiction of the court. *See Dixie Sav. Stores, Inc. v. Turner*, 767 S.W.2d 408, 410 (Tenn. Ct. App. 1988) (“if a party makes a general appearance and does not take issue with venue, adequacy of service of process, personal jurisdiction, or other similar matters, the courts customarily find that the party has waived its objections to these matters”). Though the trial court used the Tennessee Rules of Civil Procedure to support the waiver, and those rules do not apply in general sessions courts, the doctrine of waiver would still apply. *Id.* The concept of waiver is not dependent upon the Rules of

⁴Metro Code § 1.24.030(A) states:

Whenever an employee of the metropolitan government is charged with enforcing a specific law, ordinance or code of the metropolitan government, including but not limited to enforcement personnel of the health department, board of parks and recreation, public works department, codes administration, fire marshal, traffic and parking commission, beer board and transportation licensing commission; such employees may issue citations for persons found to be violating the particular ordinances of the metropolitan code which the aforesaid employees are employed to enforce.

⁵ For similar reasons, the plaintiffs’ reliance on *State v. Ferrante*, 269 S.W.3d 908 (Tenn. 2008), is misplaced. *Ferrante* involved an arrest for violating a state criminal statute, a situation markedly different from someone being cited for violating a municipal ordinance. *Ferrante*, 269 S.W.3d 909.

⁶“General appearances consist of acts from which it can reasonably be inferred that the party recognizes and submits itself to the jurisdiction of the court.” *Dixie Sav. Stores, Inc. v. Turner*, 767 S.W.2d 408, 410 (Tenn. Ct. App. 1988) (citing *Patterson v. Rockwell Int’l*, 665 S.W.2d 96, 99-100 (Tenn.1984)).

Civil Procedure. It has always existed in Tennessee law. *See, e.g. Terril v. Rogers, Phillips & Hobbs*, 4 Tenn. 203, 206 (1817) (“A defence [sic] in chief at law is a waiver of all prior objections, and it is equally so in equity. Appearance and pleading over cures the irregularity of process both at law and equity.”).

CONCLUSION

The decision of the trial court is affirmed. Costs of appeal are assessed against the plaintiffs, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE