

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON

No. 33905

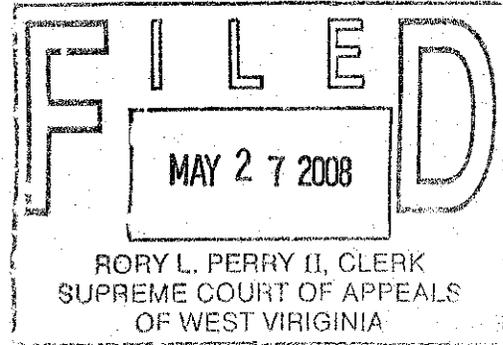
LEA ANNE HAWKINS,

Petitioner Below/Appellant,

v.

ANTHONY J. JULIAN, JUDGE,
MUNICIPAL COURT OF THE CITY OF FAIRMONT,

Respondents Below/Appellees.



AND

No. 33906

GRETCHEN MEZZANOTTE,

Petitioner Below/Appellant,

v.

ANTHONY J. JULIAN, JUDGE,
MUNICIPAL COURT OF THE CITY OF FAIRMONT,

Respondents Below/Appellees.

REPLY BRIEF OF APPELLEES TO BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

The Honorable Fred L. Fox, II, Judge of the Circuit Court of Marion County, West Virginia, entered two OPINION/ORDERS denying Appellants' requests for injunctive relief and writs of prohibition seeking to prohibit the Municipal Court for the City of Fairmont from proceeding to hear matters involving the Appellants and the City of Fairmont, wherein the City sought to enforce the payment of parking fines and penalties levied against Appellants, Ms. Lea Anne Hawkins and Ms. Gretchen Mezzanotte, as a result of certain parking violations issued to them pursuant to the public ordinances of the City of Fairmont.

It is respectfully submitted that the Circuit Court of Marion County, West Virginia was correct in entering the aforementioned OPINION/ORDERS and that the Appellants' appeal should be denied.

STATEMENT OF FACTS

The City of Fairmont, under *Fairmont City Traffic Code* § 363.07, cited and summonsed Appellant Lea Anne Hawkins, a resident and Assistant Prosecuting Attorney for Marion County, West Virginia, with three hundred seventy-seven (377) separate parking meter violations in one year's time, from November 2005 through November 2006. Appellant, Gretchen Mezzanotte, a resident of Marion County, West Virginia, and Deputy Clerk of the Marion County Circuit Clerk's Office was similarly cited and summonsed by the City of Fairmont with ninety-four (94) separate parking meter violation citations throughout the months of November 2005 through October 24, 2006.

Each parking meter violation identified that the ticket was in fact a parking violation, informed the cited individual of the nature of the violation charged, the amount of the fine assessed for such violation, and the penalty for not paying the fine within thirty (30) days of its

issuance. Neither Appellant Hawkins, nor Appellant Mezzanotte responded to the parking meter violations. Therefore, in accordance with the citations, \$10.00 was levied to each unpaid parking meter violation. Each parking meter ticket also advised the Petitioners that if the fine was not paid within the next 48 hours enforcement warrants may be issued for their arrest.

In an attempt to resolve the outstanding tickets, The City of Fairmont executed a *Parking Fines and Penalty Payment Agreement* ("The Agreement") with Appellant Lea Anne Hawkins. The Agreement provided that Ms. Hawkins would pay \$3,801.00, which total represents all of the 377 parking fine amounts assessed and half of the penalties levied as a result of the 377 unanswered parking violations. A similar *Parking Fines and Penalty Payment Agreement* was executed by Appellant Gretchen Mezzanotte, agreeing to pay \$724.00, which total represents all parking violations and half of the penalties levied as a result of the unanswered parking violations.

The Agreements signed by the Petitioners contained a "Time for Payment" clause and a "Forfeiture" clause. "Failure to provide for any monthly payment in a timely manner shall, in the City's sole discretion, work a forfeiture of this agreement and the Agreement may be deemed null and void". If the agreement were to become null and void through non-payment, "all unpaid fines and the entire amount of all penalties . . . less any payments made hereunder, shall be deemed past due"

Subsequent to the execution and in violation of said Agreements, Appellants became delinquent in their payments to the City of Fairmont. As a result of non-payment, the agreement became void, notice was sent to Lea Ann Hawkins and Gretchen Mezzanotte on June 22, 2007, and July 16, 2007, respectively, to appear before the Municipal Court on August 16, 2007, at 3:30 p.m., to answer to parking meter violations. Neither Appellant appeared at the scheduled

August 16, 2007, hearing, nor did they request a continuance. Capias' were issued in the names of Lea Ann Hawkins and Gretchen Mezzanotte for their failure to appear.

Ms. Hawkins and Ms. Mezzanotte were taken into custody, processed, given an opportunity to post bond and provided a date and time, being August 21, 2007, at 7:30 a.m., to appear before the Municipal Court for failure to appear at a scheduled hearing. Ms. Hawkins and Ms. Mezzanotte, through counsel, each filed an *Amended Ex Parte Petition for Preliminary Injunction, Permanent Injunction, Temporary Restraining Order, and Petition for Writ of Prohibition*. Marion County, West Virginia Circuit Judge Fred L. Fox denied the Petitions, and the matter is now before this Court on appeal.

Further, the Appellants Statement of Facts contains arguments, not statements of fact, and raises factual issues, which are not before the Court and have not been admitted by the Appellees.

ARUGMENT OF LAW

FIRST ASSIGNMENT OF ERROR

I. The Judge of the Municipal Court is empowered with subject matter jurisdiction to enforce criminal prohibitions, fines, forfeitures and penalties of parking meter violations.

The first issue the Appellants' raise is that the Circuit Court erred in ruling that the charges against them were not criminal in nature. There is no argument made that the City of Fairmont does not have the right to issue traffic tickets for parking violations.

The Appellants contend that tickets, as issued in this matter, are civil fines and not criminal fines. This question has already been answered by the West Virginia Supreme Court.

Violations of the public ordinances of cities, towns, and villages are strictly criminal in nature, being offenses against the public, and not merely private wrongs.

Syl. Pt. 1 *City of Charleston v. Beller*, 45 W. Va. 44, 30 S.E. 152 (1898).

Although the underlying controversy in *Beller* is factually distinguishable from this case, the holding and rule of law established is applicable to the City of Fairmont's parking ordinances and dispositive of its criminality. In *Beller*, the Court stated:

A controversy is thus raised as to whether prosecutions for violations of the ordinances of municipalities are civil or criminal proceedings. The legal definition of crime at common law was a capital offense, and all other offenses were misdemeanors. It is now sought to limit the definition, not alone to capital offenses, but to such offenses as are declared to be criminal by positive legislative enactment, known as 'felonies' and 'misdemeanors,' excluding therefrom offenses against the ordinances of municipalities, although imposed by legislative authority. The true definition of the word 'criminal,' however, as distinguished from the word 'civil,' as recognized by the laws of this state, ... is a violation of any law or ordinance of man subjecting the offender to public punishment, including fine or imprisonment, and excluding redress for private injury, punitive or compensatory. Because... 'the proceeding in such case shall be by summons in the corporate name of the town or village as plaintiff, and shall conform so far as practicable, to the regulations respecting civil actions before justices,' the criminal character of the offense involved is not converted into a demand of a civil nature, for the reason that criminal proceedings, so far as practicable, and not repugnant thereto, always correspond to civil proceedings, unless otherwise provided. Proper process, unless otherwise ordered by the court, in all misdemeanor cases, is a summons, to be followed by a *capias* when necessary....

Beller, 30 S.E. 152 at 152-153.

Further, the Court recognized that power delegated to municipalities under what is now *West Virginia Code* §8-11-1, is not an "increase of civil, but an increase of the criminal, jurisdiction" *Id.* at 153.

The principles of *Beller* were cited as authority in *Champ v. McGhee*, 165 W. Va. 567, 270 S.E.2d 445 (1980). In *Champ*, citing *Beller*, the Court reiterated that "...violations of the public ordinances of municipalities are strictly criminal in nature since they are not private wrongs...." *Champ*, 270 S.E.2d 445 at 447.

Moreover, in *Champ*, in discussing a person's right to a jury trial at the municipal court level where the possibility of a jail sentence exists, the Court recognized the criminality of a parking violation. The Court stated:

...[i]f a jury trial were required for every misdemeanor under a literal reading of the Constitution, the validity of a 50 cent parking violation could conceivably be an issue to be determined by twelve jurors. In refusing to find an absolute right to a jury trial for all crimes and misdemeanors, we recognize that there is a significant difference between fine and imprisonment.

Champ, 270 S.E.2d 445 at 448.

As further support for Appellees' position, in *State v. Todd*, 196 W. Va. 615, 474 S.E.2d 545 (1966), a violation of a municipal ordinance supported a juvenile delinquency petition.

Further, the Appellants assert that no underlying citations were ever issued and that no criminal case was instituted. This assertion is without foundation. The Appellants have acknowledged in open court that they received hundreds of separate parking citations over a period of one year. The parking tickets for each citation contain the following language:

You are charged with the parking violation checked above. The minimum fine indicated will apply if deposited within the next 48 hours. If not paid within these time limits, enforcement warrants may be issued for your arrest.

An additional fine of \$10.00 will be levied for failure to answer this complaint within 30 days.

Each citation required the Appellants to answer for violating the public parking ordinances of the City of Fairmont. Each citation advised Appellants of the fines and penalties that could be assessed. Each citation was assigned a municipal court case number. When Appellants failed to answer said charges, an additional fine of \$10.00 was levied for each charge as provided. As part of the language printed on the face of the citations that were given to the Appellants, specific reference was made indicating that "enforcement warrants may be issued for

your arrest.” Therefore, the City of Fairmont properly treated parking meter violations as a criminal matter from the very beginning.

Subsequent to being charged a combined more than four hundred (400) times for parking violations, in order to resolve all of the charges, Appellants Gretchen Mezzanotte and Lea Anne Hawkins executed separate Parking Fines and Penalty Payment Agreements with the City of Fairmont. In entering into her Agreement dated December 21, 2006, Appellant Mezzanotte was offered and refused the list of parking citation (case) numbers. Appellant Hawkins executed her Parking Fines and Penalty Payment Agreement with the City of Fairmont on January 31, 2007.

As part of Appellants’ arguments, they contend parking violations are civil wrongs. Appellants’ assert that towing, immobilization and civil remedies are the exclusive methods of enforcement of parking fines and penalties available to the City of Fairmont. In advancing their arguments, Appellants ignore the plain language of Section 363.07 of the Fairmont City Code. In reality, said section provides that “[i]n addition to any other remedies which may be available for the collection of any fines and penalties assessed pursuant to the provisions of this section said fines and penalties shall be a debt due and owing the City which may be collected through any and all civil methods provided by law.”

The Appellants argue the failure of the West Virginia Legislature to provide municipalities with the power to suspend one's driver's license for failing to pay parking citations or its failure to assign other remedies to such failure it is not indicative of the non-criminality of parking violations. The lack of a particular remedy or procedure does not dictate the nature of the offense.

The manner of the procedure, whether by summons or warrant in the name of the town or state, cannot change the nature of the offense from a public crime to a private wrong....The enforcement of fines, penalties, and imprisonment under the ordinances of the municipality is a governmental duty for the protection of society

against the lawless, and the preservation of peace and good order, and is purely a state or public function; and while it is done in the name of the municipality, it is by the sovereignty of the state or the people;....

Beller, 30 S.E. 152 at 153-154.

Appellants argue that they were never served with any notice of any criminal case. That statement is simply not true. They were given citations for each violation with a notice that if the violations were not paid enforcement warrants may be issued for their arrest.

The Parking Fines and Penalty Payment Agreement specifically provides:

Failure to provide for any monthly payment in a timely manner shall, in the City's sole discretion, work a forfeiture of this Agreement . . . and the Agreement may be deemed null and void.

There is no dispute that forfeiture or failure to provide monthly payments was made under the Parking Fines and Penalty Payment Agreement by both Appellants. The Notice of Hearing or Trial that was served upon the Petitioners was for "Parking Meter Violations," and included a notation specifying "failure to pay on payment arrangements," which was shorthand for identifying the numerous parking meter violations for which the Petitioners were being charged.

Appellants were repeatedly informed of the charges against them and the potential corresponding penalties. The criminal charges in citation form, the warnings that enforcement warrants may be executed for Appellants' arrest, the notice of hearing, and the *capias*' all collaborate the fact that each Appellant was well aware of the specific charges against them. Only when the Appellants failed to respond to the written charges and the notice of hearing were the *capias*' issued.

Petitioner contends that the City of Fairmont Code, Section 363.07, does not define a parking meter violation as a criminal offense or a misdemeanor. Parking meters are placed upon

the streets for the purpose of controlling traffic and traffic flow. Obviously, when one reads the *Beller* case and the logic contained therein, the Ordinance itself does not have to state that violation of this section is a crime. Syllabus 1 of *Beller* says that violations of public ordinances of streets, towns and villages are strictly criminal in nature, being offenses against the public and not merely private wrongs.

Appellants acknowledge that the City of Fairmont Code, Section 363.07, authorizes police officers and any parking enforcement officer or other authorized person to issue a ticket to any illegally parked vehicle. In fact, the very first paragraph of Section 363.07 of the City of Fairmont Code reads as follows:

A police officer of the City of Fairmont, any parking enforcement officer or other authorized person shall attach a ticket to any illegally parked vehicle with a notice to the owner of such vehicle parking in violation of the provision of this article, whether the meter is located on the street or in a municipal parking lot, instructing such owner to comply with the directions contained in such ticket or report to the Police Department in regard to such violation. (Emphasis added).

The ordinance authorizes giving a ticket for an illegally parked vehicle, and *Beller* says that a violation of the Ordinance is a crime. The ticket itself advises the Appellants that if they do not pay the ticket, enforcement warrants may be issued for their arrest. The Appellants were charged with a crime and informed that they may be arrested for failing to appear at a hearing concerning their parking ticket violations.

Appellants further argue that even if the illegal parking was a crime, the ticket was issued by a meter maid, and a meter maid is not an authorized person to issue a criminal citation.

Fairmont Code 363.07 creates the authority for a meter maid to issue a ticket by providing that “any parking enforcement officer or other person authorized or other authorized person shall attach a ticket to any illegally parked vehicle....” (Emphasis added).

By the provisions of *West Virginia Code* §8-16-2, every municipality, including the City of Fairmont, is empowered and authorized to own, equip, maintain and operate any municipal public works. Public Works are defined, among other things, as "parking facilities." See *West Virginia Code* §8-16-1. The definition of parking facilities includes "curb-line parking, meters and other facilities considered necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles." See *West Virginia Code*, §8-16-1(a).

By statute, the custody, maintenance and operation of public works and the collection of revenues therefrom are under the supervision and control of the governing body, a committee, or both, which in Fairmont's case are the City Council and the Parking Authority. See *West Virginia Code*, §8-16-4.

Both the City and the Parking Authority are vested with the right to employ parking enforcement officers. See *West Virginia Code*, §8-5-11 and *West Virginia Code*, §8-16-5. The City of Fairmont has, by ordinance, provided for the position of meter maid, described the same, and established the compensation of such position as required by the provisions of *West Virginia Code*, §8-5-11.

In addition, the City of Fairmont, by the provisions of *West Virginia Code*, §17C-2-8, has been vested with the power to regulate the standing and parking of vehicles on streets and highways within its jurisdiction. In *County Court of Webster County v. Roman*, 121 W. Va. 381, 3 S.E.2d 631 (1939), this power was recognized by the Supreme Court of Appeals of West Virginia. In addition, the Court has further recognized and discussed the authority of meter maids to issue parking citations. In *Mason v. City of Welch*, 180 W. Va. 101, 375 S.E.2d 572 (1988), the Court states:

The parties have not identified the source of the parking-meter attendants' authority to issue citations ("tickets") for illegal parking. While we do not decide

that question, we note that *W. Va. Code*, 30-29-1 (1984) defines a 'law-enforcement officer,' for the purpose of requiring training and certification, to mean 'any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, *other than parking ordinances.*' (emphasis added). *W. Va. Code*, 17C-2-8-(a)(1) (1963) recognizes the power of local authorities to regulate 'the standing or parking of vehicles' on streets and highways under their jurisdiction. *W. Va. Code*, 8-14-5a (1971) authorizes municipalities to provide by ordinance for special parking lot or parking building police officers with the power to enforce municipal ordinances with respect to such lots or buildings, including arrest powers. *W. Va. Code*, 8-5-11 (1969) delegates to each municipality the power to provide by ordinance, for, *inter alia*, the employment and powers and duties of municipal employees, subject to state constitutional and statutory law."

Mason, 375 S.E.2d 572 n. 3 (1988).

In *Mason*, the Court clearly distinguished between meter maids and special parking lot or parking building police officers described in *West Virginia Code* 8-14-5a. *West Virginia Code* 8-14-5(a), does not define a meter maid's authority and cannot be relied upon by Appellants as a description of a meter maid's power to issue citations. A meter maid's power and authority are derived from the provisions of §8-16-1, §8-16-2, §8-16-4, §8-5-11, §8-16-5 and §30-29-1 and the ordinances of the City of Fairmont.

The Appellants then argue that the Municipal Judge of the City of Fairmont does not have jurisdiction to collect fines for parking tickets. The Municipal Judge of the City of Fairmont has the authority to enforce parking fines and penalties levied pursuant to the duly enacted ordinances of the City of Fairmont and embodied in a Parking Fines and Penalty Payment Agreement.

West Virginia Code, §8-11-1, provides, in part, that:

To carry into effect the powers and authorities conferred upon any municipality or its governing body by the provisions of this Chapter, or any past or future act of the Legislature of this state the governing body has plenary power and authority to:

- (1) Make and pass all needful ordinances, orders, bylaws, resolutions, rules and regulations not contrary to the constitution and laws of this state; and
- (2) Prescribe reasonable penalties for violation of its ordinances, orders, bylaws, acts, resolutions, rules and regulations, in the form of fines, forfeitures and confinement in the county or regional jail or the place of confinement in the municipality, if there is one, for a term not exceeding thirty days.
- (3) The fines, forfeitures and confinement shall be recovered, imposed or enforced under the judgment of the mayor of the municipality or the individual lawfully exercising the mayor's function, or the police court judge of the municipal court judge of a city, if there is one, and may be suspended upon reasonable conditions as may be imposed by the mayor, other authorized individual or judge.

The City of Fairmont has duly enacted certain ordinances, which are codified as Article 171 Parking Authority, Article 361 Parking Generally, Article 363 Parking Meters, and 365 Off Street Parking Facilities. Of particular import to this proceeding are the prohibitions, fines, forfeitures and penalties set out on section 363.07 of Article 363 Parking Meters, which establish the fines and penalties and procedures relating to overtime parking violations.

West Virginia Code §8-10-1 provides, in part:

[T]he mayor of every municipality shall see that the ordinances, orders, bylaws, resolutions, rules and regulations of the governing body thereof are faithfully executed. He shall have jurisdiction to hear and determine any and all alleged violations thereof and to convict and sentence persons therefore [I]t shall be his duty to especially to see that peace and good order of the municipality are preserved He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the party in default to the jail of the county or counties in which such municipality is located

In the City of Fairmont, pursuant to the City Charter and *West Virginia Code*, §8-10-2, these duties are exercised by the Judge of the Municipal Court.

Pursuant to the above authority, in conjunction with the municipal powers and the points and authorities hereinbefore cited, the Judge of the Municipal Court is empowered and vested with the subject matter jurisdiction to enforce the specific provisions of Article 363 Parking Meters and the criminal prohibitions, fines, forfeitures and penalties as set out in Section 363.07 thereof.

SECOND ASSIGNMENT OF ERROR

II. The Circuit Court decision refusing to grant the Appellants request for permanent injunction should only be overturned on this Court's finding an abuse of discretion, which has not been pled by the Appellants.

The Appellants' contend in their Second Assignment of Error that the Court should have granted a permanent injunction under the prongs of the *Camden-Clark* test for injunctive relief. The Court below cited and relied upon the opinion of *Camden-Clark Memorial Hospital Corp. v. Turner*, 212 W.V. 752, 575 S.E.2d 362 (2002). In that case, the West Virginia Supreme Court held:

The granting or refusal of an injunction, whether mandatory or preventative, calls for the exercise of sound judicial discretion in view of all the circumstances of the particular case; regard being had to the nature of the controversy, the object for which the injunction is being sought, and the comparative hardship or convenience to the respective parties involved in the award or denial of the writ.

Camden-Clark, 575 S.E.2d 362 at 364.

Under the *Camden-Clark* test, the lower court, after reviewing the object for which the injunction is being sought; the comparative hardship or convenience to the respective parties involved; and all the circumstances of the particular case exercised his sound judicial discretion in denying the injunction. The issue before this Court is not whether an injunction *could* have been issued, but the issue is whether the lower court abused its sound judicial discretion. In

determining whether or not a court abused its sound judicial discretion, the West Virginia Supreme Court stated in *Chapman v. Catron*:

Unless an absolute right to injunctive relief is conferred by statute, the power to grant or refuse or to modify, continue, or dissolve a temporary [preliminary] or permanent injunction, whether preventive or mandatory in character, ordinarily rests in the sound discretion of the trial court, according to the facts and the circumstances of the particular case; and its action in the exercise of its discretion will not be disturbed on appeal in the absence of a clear showing of an abuse of such discretion.

Chapman v. Catron, 220 W. Va. 393, 647 S.E.2d 829 (2007) (citing Syl. Pt. 11, *Stuart v. Lake Washington Realty*, 141 W. Va. 627, 92 S.E.2d 891 (1956); Syl. Pt. 1, *G Corp, Inc. v. MackJo, Inc.*, 195 W. Va. 752, 466 S.E.2d 820 (1995); Syl. Pt. 1, *Baisden v. West Virginia Secondary Schools Activities Commission*, 211 W. Va. 725, 568 S.E.2d 32 (2002)).

In this case, the West Virginia Supreme Court chose not to disturb the lower court decision on appeal. In the present case, the Appellants do not cite any authority which would suggest that Judge Fox violated his sound judicial discretion to the extent that the decision should be reversed. On the contrary the case law clearly supports the right of a judge to use his discretion and to rule accordingly. For these reasons it is clear that the Appellants Second Assignment of Error should be denied.

THIRD ASSIGNMENT OF ERROR

III. The enforcement of unpaid parking tickets is well within the subject matter jurisdiction of the Municipal Court; thus making a writ of prohibition an improper remedy according to the West Virginia Supreme Court of Appeals.

The Appellants' Third Assignment of Error is that the court below erred by denying writ of prohibition against the City of Fairmont and the Municipal Court because the court lacked jurisdiction over the subject matter of the Appellants' breach of contract with the City of Fairmont.

This argument starts out with an incorrect assumption. The basis for this action was clearly unpaid parking meter tickets. By the Appellants failing to pay the tickets timely, the alleged contract between the City of Fairmont and the Municipal Court became null and void. The City sent a notice to the Appellants to appear for unpaid parking tickets and then issued a *capias* when the Appellants failed to appear.

Prohibition lies only to restrain inferior courts from proceeding in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for [a petition for appeal] or certiorari.

Syl. pt. 1, *State ex rel. Conforti v. Wilson, et al.*, 203 W. Va. 21, 506 S.E.2d 58 (1998).

The Supreme Court has also held:

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression.

Id. at Syl. pt. 2.

The lower court clearly correctly decided that the parking meter tickets issued were criminal charges and that the Municipal Court had the right to proceed to enforce the fines levied by those tickets.

The legislature may provide for the establishment in incorporated cities, towns or villages of municipal, police or mayors' courts, and may also provide the manner of selection of the judges of such courts. Such courts shall have jurisdiction to enforce municipal ordinances, with the right of appeal as prescribed by law.

West Virginia Constitution, Art. 8 Sec. 11.

The *West Virginia Constitution* explicitly gives municipal courts the power to enforce ordinances, and as cited above, parking meter tickets qualify as an ordinance violation.

The entire essence of the Appellants' claim as to all phases concerning the writ of prohibition rests upon whether or not parking tickets constitute criminal violations or whether they are civil violations for which a civil suit should be instituted. To impose such a rule upon cities in the State of West Virginia would require a civil suit to be brought for every ticket issued to enforce collection of the ticket.

A city's time and resources would be exhausted to pursue the violation of a parking meter violation. The city would have to advance the cost of filing suit; complete service of process upon the party; and there would be a required hearing before a Magistrate, or if the party did not appear, which would be most likely; an order for default judgment would be prepared, entered and executed upon.

This position brings us full circle to the initial argument as to whether or not the principles of *City of Charleston v. Beller*, *Champ v. McGhee*, and *State v. Todd* apply. The argument further circles back to the code provisions authorizing a municipality to exercise supervision, control, and enforcement over its streets, and the right of a city to have a municipal court to act as a judge on issues of traffic violations. The law clearly supports such a right, and any other ruling would be detrimental to the enforcement of traffic regulations adopted by cities for the good of the general public.

CONCLUSION

Cities have the right to regulate parking on public streets for the general good of the public and to control traffic flow. That right was exercised by the City of Fairmont by having an authorized meter maid issuing tickets for parking meter violations. The Appellants elected to

ignore the attempts of the City to regulate the parking on the public streets of the City of Fairmont. As a consequence, parking tickets were issued warning that arrests may be made and that warrants may be issued for the violators arrest. Notice of Hearing was set for parking meter violations, and the Appellants elected not to appear, nor to file a Motion for Continuance.

Lea Anne Hawkins and Gretchen Mezzanotte ignored the Order of the Municipal Court directing their appearance the same as they ignored the requirement that they pay money into a parking meter in the City of Fairmont. A capias was issued for the crimes committed, and they sought a permanent injunction and writ of prohibition. The law in the State of West Virginia is clear that violation of a public ordinance is a crime. Appellants now argue that their violations were civil in nature without any law to support the argument. The Municipal Court had clear jurisdiction to issue a the capias' under the circumstances of this case, and neither a writ of prohibition nor a permanent injunction was appropriate. The lower court did not abuse its discretion in denying both remedies requested by the Appellants.

RELIEF PRAYED FOR

WHEREFORE, the Appellees request this Court to affirm the decision of the Marion County Circuit Court.


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AND

No. 33906

GRETCHEN MEZZANOTTE,

Petitioner Below/Appellant,

v.

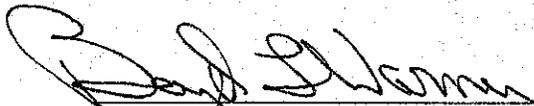
ANTHONY J. JULIAN, JUDGE,
MUNICIPAL COURT OF THE CITY OF FAIRMONT,

Respondents Below/Appellees.

CERTIFICATE OF SERVICE

I hereby certify that, on the 23rd day of May, 2008, I served the foregoing "**Reply Brief of Appellees to Brief of Appellants**" upon the following, by depositing a true copy thereof in the United States mail, postage prepaid, in a sealed envelope addressed as follows:

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