

33905

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
DIVISION I

LEA ANNE HAWKINS,

Petitioner,

v.

CASE NO.: 07-P-94
JUDGE FRED L. FOX, II

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

Respondents.

RECEIVED & FILED
IN
CIRCUIT CLERKS OFFICE
2007 OCT 23 PM 2 48
BARBARA A. COFFE
CIRCUIT CLERK

OPINION/ORDER

This case came before the Court on 20 August 2007 of the "Ex Parte Petition for Preliminary Injunction, Permanent Injunction, Temporary Restraining Order, and Petition for Writ of Prohibition" of petitioner Lea Anne Hawkins. Lea Anne Hawkins was represented by Frances C. Whiteman, Esquire; Anthony J. Julian, Judge and the Municipal Court of the City of Fairmont (hereinafter "Municipal Court") were represented by Kevin V. Sansalone, Esquire.

Having considered the evidence and arguments presented and having researched the legal issues raised, the Court is of the opinion that the petition should be denied. In support of this opinion, the Court offers the following findings of fact and conclusions of law:

Findings of Fact

1. During the period from 01 November 2005 through November 2006, petitioner Hawkins received

three hundred seventy-seven (377) parking citations for violations of the public parking ordinances for the City of Fairmont, West Virginia. Petitioner Hawkins received all of these citations for parking on Fairmont City Streets without depositing the required lawful coin(s) in the parking meter. Each citation provided for an answer within thirty (30) days. Petitioner Hawkins failed to answer the citations and an additional fine of \$10.00 was levied for each charge as provided by the citation.

2. On 28 December 2006, petitioner Hawkins executed a "Parking Fines and Penalty Payment Agreement" (hereinafter "Amnesty Agreement") with the City of Fairmont, whereby she agreed to pay the sum of \$3,801.00, which sum represents all the parking fines and one half of the penalties levied as a result of the three hundred seventy-seven (377) parking citations. At some point in 2007, petitioner Hawkins started to fall behind on her payments. She received a notice to appear before the Municipal Court on 16 August 2007 at 3:30 p.m., for her failure to make timely payments on her parking fines and penalties.

3. Petitioner Hawkins telephoned the City Attorney, Kevin Sansalone, on 16 August 2007 at 2:30

p.m. and informed him that she was not going to appear at the hearing due to commitments with her job as an Assistant Prosecutor for Marion County. She never filed a formal request for continuance at any time.

4. When Petitioner Hawkins failed to appear at the scheduled hearing, Municipal Court Judge Anthony J. Julian issued a *capias* for her arrest. Later on that same date, petitioner Hawkins was arrested at the Department of Health and Human Resources while conducting multi-disciplinary team meetings with the West Virginia Department of Health and Human Resources, as part of her duties as Assistant Prosecutor for Marion County. Petitioner Hawkins was thereafter taken into custody to the Fairmont City Police Department where she was fingerprinted and processed. Petitioner Hawkins contends that while at the police department, she fully satisfied the City of Fairmont by paying \$200.00.

5. An "arraignment" on the charge of "Capias/Fail to Appear of Parking Fine" was scheduled for 21 August 2007 at 7:30 a.m. in Municipal Court. Petitioner Hawkins thereafter filed her petition with this Court alleging that the Municipal Court lacked jurisdiction to issue the *capias* inasmuch as no

criminal complaint or citation was ever filed in Municipal Court; that any breach of the Amnesty Agreement was a civil and not a criminal matter; and that petitioner Hawkins was never charged with any criminal offense which would warrant the capias and subsequent arrest.

6. At the hearing on 20 August 2007, this Court stayed all further proceedings on the matter.

Conclusions of Law

1. West Virginia Code § 53-1-1 states that:

The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.

2. The Supreme Court of Appeals of West Virginia (hereinafter "Supreme Court") has held:

[p]rohibition 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) (citation omitted).

3. The Supreme Court has also held:

[i]n 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: (1) 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 (citation omitted).

4. The above cited factors are general guidelines and need not all be satisfied; however, "the third factor, the existence of clear error as a matter of law, should be given substantial weight." Id.

5. With regard to injunctions, the Supreme Court has held that:

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.

Syl. pt. 2, Camden-Clark Memorial Hospital Corp. v. Turner, 212 W.Va. 752, 575 S.E.2d 362 (2002) (citation

omitted).

6. Initially, the Court holds that although petitioner Hawkins titled her petition as an "Ex Parte Petition for Preliminary Injunction, Permanent Injunction, Temporary Restraining Order, and Petition for Writ of Prohibition," the respondent received notice of the hearing and was present and heard by the Court. Hence, the Court will not analyze the case in the same manner as a traditional ex parte proceeding.

7. The Supreme Court has held that "[a] violation 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) (see also Champ v. McGhee, 165 W.Va. 567, 270 S.E.2d 445 (1980)).

8. When a defendant fails to appear pursuant to a citation in Municipal Court, the Municipal Court has the authority to issue a capias or warrant. State v. Todd Andrew H., 196 W.Va. 615, 620-621, 474 S.E.2d 545, 550-551 (1996) (citing W.Va. R.Crim.P. 4(a)).

9. The City of Fairmont has enacted ordinances regarding parking meter violations in Sections Article

171, Parking Authority; Article 361, Parking; Article 363, Parking Meters; and Article 365, Off Street Parking Facilities. Section 363.03 states that "[n]o person shall cause, allow or permit a vehicle to occupy a parking meter space . . . unless he shall deposit such lawful coin of the United States of appropriate denomination in the adjacent parking meter, as required by directions on the meter."

10. Section 363.07 of Article 363, Parking Meters, establishes the fines and penalties and procedures relating to overtime parking violations. This Article specifically states 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."

11. The Court is of the opinion that based on the above cited Fairmont City Ordinances, there is no question that the Municipal Court had jurisdiction over petitioner Hawkins in order to collect the fines and penalties associated with the parking citations and Amnesty Agreement.

12. The Court also finds that the Municipal Court did not abuse its power in issuing the *capias* inasmuch as it had the authority to issue the *capias* after petitioner Hawkins failed to appear before the court for her hearing on 16 August 2007. The Court agrees that the petitioner was due to appear in Court that day for her failure to make timely payments on the parking Amnesty Agreement. The Amnesty Agreement, however, was the result of an agreement made between the petitioner and the City of Fairmont on the underlying parking citations. These citations were in fact the subject of the hearing for which the petitioner failed to appear. It is undisputed that petitioner Hawkins received notice of the hearing; she did not request a continuance for the hearing; and she did not appear at the hearing.

13. Even assuming the Municipal Court did exceed its legitimate powers, issuing a writ of prohibition in this case is not proper because petitioner Hawkins cannot satisfy the five factors in State ex rel. Conforti above. Petitioner Hawkins could easily appeal this case. She has not shown any damage that could occur if this case should continue in Municipal Court. She claims she would be subjecting herself to

proceedings for which no criminal offense took place. In reality she would be rightly subjected to proceedings for her failure to abide by the Amnesty Agreement, an agreement made to reduce her burden of paying all of the fines and penalties associated with the 377 parking citations she received. The Court does not find that the Municipal Court's Order regarding the *capias* is clearly erroneous because, as indicated above, the court had the authority to issue a *capias* for her failure to appear at a hearing, the subject of which was the underlying three hundred seventy-seven (377) parking citations.

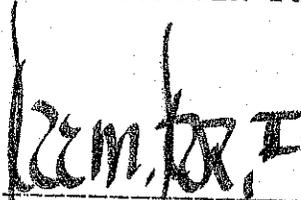
14. For the same reasons, the Court also holds that there are no grounds for injunctive relief in this case as well.

Accordingly, it is **ORDERED** that petitioner's "Ex Parte Petition for Preliminary Injunction, Permanent Injunction, Temporary Restraining Order, and Petition for Writ of Prohibition" be, and the same is, hereby, **DENIED**.

The Circuit Clerk of Marion County is directed to provide certified copies of this "Opinion/Order" to Frances C. Whiteman, Esquire, at Whiteman Burdette, PLLC, Post Office Box 2798, Fairmont, West Virginia 26555-2798; and to Kevin V. Sansalone,

Esquire at City of Fairmont, Post Office Box 1428, Fairmont, West
Virginia 26554.

ENTER: 23 OCTOBER 2007



FRED L. FOX, II, CIRCUIT JUDGE

A COPY

TESTE:



CLERK OF THE CIRCUIT CLERK
MARION COUNTY, WEST VIRGINIA