Released: May 1, 2020

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180051

Robin Woodgett and Jerome Ruffin

v.

City of Midfield and American Traffic Solutions, Inc.

Appeal from Jefferson Circuit Court, Bessemer Division (CV-18-20)

BOLIN, Justice.

Robin Woodgett and Jerome Ruffin (hereinafter referred to collectively as "the plaintiffs") appeal from the Jefferson Circuit Court's dismissal of their declaratory-judgment action challenging the Midfield Red Light Safety Act and the

implementing City of Midfield ordinance providing for the automated photographic enforcement of red lights within the corporate limits of the City of Midfield ("the City") on constitutional and statutory grounds. We affirm.

# Facts and Procedural History

In 2011, the Alabama Legislature enacted Act No. 2011-569, Ala. Acts 2011, a local act known as the "Midfield Red Light Safety Act" ("the Act"), which authorized the automated photographic enforcement of traffic lights within the corporate limits of the City. The Act became effective June 9, 2011. The legislature found in § 2(1) of the Act that "vehicles running red lights have been and are dangerous problem in Midfield, Alabama." The legislature further found of the Act that "automated traffic camera in \$ 2(2) enforcement in a municipal area is a highly accurate method for detecting red light violations and is very effective in reducing the number of red light violations and decreasing the number of traffic accidents, deaths, and injuries." To that end, the legislature found that it "should adopt legislation that would implement a program for automated photographic enforcement of traffic signal violations." § 2(4) of the Act.

The legislature created a "non-criminal category of state law called a <u>civil violation</u> created and existing for the sole purpose of carrying out the terms" of the Act and made the penalty for committing a civil violation the "payment of a civil fine." § 3(3).

On June 27, 2011, the City adopted Ordinance No. 2011-4 ordinance"), which provided for the automated photographic enforcement of red lights within the corporate limits of the City and the imposition of a civil penalty for those motorists whose vehicles were photographed running a red Section 54-51 of the ordinance states light. Midfield City Council found that there was a "significant risk to the health and safety of the community from drivers of vehicles that run red lights within the city"; that the running of a red light is a "public nuisance"; and that "accident data establishes that vehicles running red lights ... are a dangerous problem in the city." Section 54-52 of the ordinance classifies a "traffic-signal violation" as a civil violation. Section 54-53 of the ordinance imposes a civil penalty of \$100 for violations of the ordinance.

The plaintiffs alleged that, in 2011, American Traffic Solutions, Inc. ("ATS"), approached the City regarding the installation of traffic-light-enforcement cameras within the corporate limits of the City. According the plaintiffs, ATS offered to install, maintain, and monitor traffic-lightenforcement cameras at multiple intersections throughout the corporate limits of the City. The plaintiffs further asserted that ATS represented to the City that, when a vehicle is caught on camera going through a red light, ATS would electronically forward the resulting picture to a City official for review. Upon approval from the City, the plaintiffs alleged, ATS would then mail to the owner of the vehicle that ran the red light a ticket requesting payment of a fine. Finally, the plaintiffs asserted, ATS would remit a portion of the fine recovered to the City and would retain the remainder for itself.

The plaintiffs alleged that the first automated traffic-light-enforcement cameras went into operation within the corporate limits of the City in February 2012 and that the first notices of violations of the Act and the ordinance were issued in March 2012. The plaintiffs each alleged that they

received a notice of violation in 2013 after the automated traffic-light-enforcement cameras captured their vehicles running red lights at certain unspecified intersections within the corporate limits of the City. The plaintiffs paid their respective fines.

On February 6, 2018, the plaintiffs, on behalf of a putative class of individuals who had received notice of violation pursuant to the Act, sued the City and ATS (hereinafter referred to collectively as "the defendants"), seeking, among other things, a judgment declaring that the Act and the ordinance were unconstitutional and violative of Alabama law; an order enjoining the defendants from further ticketing individuals using automated photographic equipment; and a refund of all fines and fees collected from those persons ticketed based on the use of the automated trafficlight-enforcement cameras. The plaintiffs sought in count I of the complaint a determination by the trial court that the Act violates § 105 of the Alabama Constitution of 1901, which prohibits the enactment of a local law "in any case which is provided for by a general law." The plaintiffs also sought in count I a determination that the Act violates § 89 of the

Alabama Constitution of 1901, which prohibits the legislature from authorizing any "municipal corporation to pass any laws inconsistent with the general laws of this state." The plaintiffs sought in count II of the complaint a determination that the ordinance violates § 11-45-1, Ala. Code 1975, which prohibits municipal corporations from adopting ordinances inconsistent with the laws of this State. The plaintiffs also sought in count II of the complaint a determination that the ordinance violated § 32-5-1, Ala. Code 1975, which prohibits "local authorities" from adopting any ordinance "regulating motor vehicles ... contrary to the provisions" of Chapter 5 of Title 32. The plaintiffs sought in count III of the complaint a determination that the Act violates § 104 of the Alabama Constitution of 1901, which prohibits the legislature from passing a local law that fixes the "punishment of crime" or "creat[es], extend[s], or impair[s] any lien." Finally, the plaintiffs sought in count IV of the complaint a determination that the City had improperly delegated its police power to ATS.

On April 11, 2018, the defendants moved the trial court, pursuant to Rule 12(b)(6), Ala. R. Civ. P., to dismiss the

declaratory-judgment complaint against them, arguing that it appeared from the face of the complaint that the plaintiffs could prove no set of facts entitling them to relief. Specifically, the defendants argued, among other things, that the Act and the ordinance both provide for an adjudicative hearing in municipal court and a de novo appeal to the circuit court as a means of challenging a noticed violation and that there are no allegations contained in the plaintiffs' complaint that indicate that the plaintiffs sought that relief. The defendants contend that, because the plaintiffs failed to challenge the violations pursuant to the procedures provided for in the Act and the ordinance, they cannot now present this issue in a collateral declaratory-judgment action.

On August 23, 2018, the trial court entered an order granting the defendants' motion to dismiss, holding, among other things, that the plaintiffs cannot now revive their claims in a collateral proceeding when they failed to assert those claims pursuant to the procedures provided for by the Act and the ordinance. This appeal followed.

# Standard of Review

This Court has stated the appropriate standard of review for an appeal from an order of dismissal pursuant to 12(b)(6) as follows:

"'On appeal, a dismissal is not. entitled to а presumption of correctness.... The appropriate standard of review under Rule 12(b)(6)[, Ala. R. Civ. P., ] is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set would entitle circumstances that [the pleader] to relief. ... In making this determination, this Court does not consider whether the plaintiff will ultimately prevail, but only whether [the plaintiff] may possibly prevail.... We note that a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.'"

Carr v. International Refining & Mfq. Co., 13 So. 3d 947, 952
(Ala. 2009) (quoting Nance v. Matthews, 622 So. 2d 297, 299
(Ala. 1993)). Further,

"'[f]or a declaratory-judgment action to withstand a motion to dismiss there must be a bona fide justiciable controversy that should be settled. Anonymous v. Anonymous, 472 So. 2d 640, 641 (Ala. Civ. App. 1984); Smith v. Alabama Dry Dock & Shipbuilding Co., 293 Ala. 644, 309 So. 2d 424, 427 (1975). The test for the sufficiency of a complaint seeking a declaratory judgment is whether the pleader is entitled to a

declaration of rights at all, not whether the pleader will prevail in the declaratory-judgment action. Anonymous, 472 So. 2d at 641.

"'The lack of a justiciable controversy may be raised by either a motion to dismiss or a motion for a summary judgment. Smith, [293 Ala. at 649,] 309 So. 2d at 427. See also Rule 12, Ala. R. Civ. P.; Rule 56, Ala. R. Civ. P. However, a motion to dismiss is rarely appropriate in a declaratory-judgment action. Wallace v. Burleson, 361 So. 2d 554, 555 (Ala. 1978). If there is a justiciable controversy at o f commencement declaratory-judgment action, the motion to dismiss should be overruled and declaration of rights made only after an answer has been submitted and evidence has been presented. Anonymous, 472 So. 2d at 641. However, if there is not a justiciable controversy, a motion to dismiss for failure to state a claim should be granted. Curjel v. Ash, 263 Ala. 585, 83 So. 2d 293, 296 (1955).'

"Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220, 223 (Ala. 2003)."

Muhammad v. Ford, 986 So. 2d 1158, 1161-62 (Ala. 2007).

# Discussion

The plaintiffs raise four issues on appeal, challenging the Act and the ordinance on constitutional and statutory grounds and asserting that the City has improperly delegated its police powers to ATS.

We must first, however, address the threshold issue of jurisdiction. subject-matter As mentioned above, defendants argued in their motion to dismiss that the plaintiffs could not contest the notices of violations by challenging the Act and the ordinance in a collateral declaratory-judgment action because, they say, the plaintiffs failed to avail themselves of the judicial procedures provided in the Act and the ordinance for challenging notices of violations issued under the Act and the ordinance. court agreed with the defendants and entered an order dismissing the plaintiffs' claims, based, in part, on that argument.

The plaintiffs argue that a declaratory-judgment action is the proper vehicle for challenging the Act and the ordinance because "[o]ne of the most useful fields of operation for declaratory-judgment statutes is to allow courts to settle questions regarding the validity of statutes so that the perils of proceeding under void enactments are thereby avoided." Alabama Disposal Solutions-Landfill, L.L.C. v. Town of Lowndesboro, 837 So. 2d 292, 298 (Ala. Civ. App. 2002). The plaintiffs contend that their rights have been affected by

the Act and the ordinance because they have paid fines after being issued notices of violations under the Act and the ordinance. Therefore, they say, they are entitled to a judgment declaring whether the fines they paid were imposed pursuant to an unlawful act and ordinance.

Section 6 of the Act provides, in part:

- "(a) The municipal court is vested with the power and jurisdiction to hear and adjudicate the civil violations provided for in this act, and to issue orders imposing the civil fines and costs set out in this act.
- "(b) A person who receives a notice of violation may contest the imposition of the civil fine by submitting a request for a hearing on the adjudication of the civil violation, in writing, within 15 days of the 10th day after the date the notice of violation is mailed. Upon receipt of a timely request, the city shall notify the person of the date and time of the adjudicative hearing by U.S. mail, return receipt requested.
- "(c) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil fine assessed in the notice of violation."

Section 7(c) of the Act provides:

"A person who is found liable after an adjudicative hearing may appeal that finding of civil liability to the Circuit Court of Jefferson County, Alabama, by filing a notice of appeal with the clerk of the municipal court. The notice of appeal must be filed not later than the 14th day after the date on which the municipal court judge entered the finding of

civil liability. The filing of a notice of appeal shall stay the enforcement of the civil fine penalty. An appeal shall be determined by the circuit court by trial de novo."

Section 54-54(a) of the ordinance provides that the "municipal court of the city is responsible for the enforcement and administration of" the ordinance. Section 54-55(a) of the ordinance provides:

"A person who receives a notice of violation may contest the imposition of the civil penalty by submitting a request for an adjudicat[ive] hearing of the civil penalty, in writing, within 15 days of the tenth day after the date the notice of the violation is mailed. Upon receipt of a timely request, the department shall notify the person of the date and time of the municipal court hearing on the adjudication. The adjudicative hearing shall be held before a municipal judge."

Section 54-55(b) of the ordinance provides that the failure to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty assessed. Section 54-57(a) of the ordinance provides:

"A person who is found liable after an adjudicative hearing in municipal court may appeal that finding of civil liability to the circuit court of the county by filing a notice of appeal with the clerk of the municipal court. The notice of appeal must be filed not later than the 14th day after the date on which the municipal judge entered the finding of civil liability. Unless the person, on or before the filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an

appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the circuit court by trial de novo."

It is undisputed that the plaintiffs did not seek relief from the notices of violations by invoking the judicial procedures provided for in the Act and the ordinance.

This Court has stated:

"'There must be a bona fide existing controversy of a justiciable character to confer upon the court jurisdiction to grant declaratory relief under the declaratory judgment statutes, and if there was no justiciable controversy existing when the suit was commenced the trial court had no jurisdiction.' State ex rel. Baxley v. Johnson, 293 Ala. 69, 73, 300 So. 2d 106, 110 (1974). '"'Unless the trial court has before it a justiciable controversy, it lacks subject matter jurisdiction and any judgment entered by it is void <u>ab initio.'"' Sustainable</u> <u>Forests, L.L.C. v. Alabama Power Co.</u>, 805 So. 2d 681, 683 (Ala. 2001) (quoting <u>Hunt Transition &</u> Inaugural Fund, Inc. v. Grenier, 782 So. 2d 270, 272 (Ala. 2000), quoting in turn Ex parte State ex rel. James, 711 So. 2d 952, 960 n. 2 (Ala. 1998)). 'A moot case lacks justiciability.' Crawford[ v. State], 153 S.W. 3d [497] at 501 [(Tex. App. 2004)]. Thus, '[a]n action that originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised in it have become moot by subsequent acts or events.' Case[ v. Alabama State Bar, 939 So. 2d [881] at 884 [(Ala. 2006)] (citing Employees of Montgomery County Sheriff's Dep't v. Marshall, 893 So. 2d 326, 330 (Ala. 2004))."

Chapman v. Gooden, 974 So. 2d 972, 983-84 (Ala. 2007). "It is settled that an action for declaratory judgment cannot be used

as a substitute for appeal." Ex parte Houston Cty. Bd. of Educ., 562 So. 2d 513, 514 (Ala. 1990) (citing Sparks v. Brock & Blevins, Inc., 274 Ala. 147, 145 So. 2d 844 (1962)). Sparks, the plaintiff brought a declaratory-judgment action against the State Commissioner of Revenue to recover use taxes that were paid under protest. The trial court entered a judgment for the plaintiff, and the Commissioner appealed. The Commissioner argued on appeal that the trial court should not have taken jurisdiction of the matter because the plaintiff did not file a request for a redetermination of the use tax pursuant to the applicable statute within the statutory period after the assessment was made final, although afforded the opportunity to do so, and, thus, the Commissioner asserted, the time for an appeal to the circuit court had expired. The Commissioner contended that, because the plaintiff did not appeal the tax assessment, the finding by the Commissioner was final and operated as res judicata as to the instant controversy; therefore, the Commissioner contended, justiciable controversy existed.

In reversing the judgment of the trial court, this Court stated:

"We have held on numerous occasions that the action for a declaratory judgment cannot be used as a substitute for an appeal. Ex parte State ex rel. Lawson, 241 Ala. 304, 2 So. 2d 765 [(1941)]; State v. Louis Pizitz Dry Goods Co., 243 Ala. 629, 11 So. 2d 342 [(1943)]; <u>Mitchell v. Hammond</u>, 252 Ala. 81, 39 So. 2d 582 [(1949)]. Appellee sought to do by a declaratory judgment proceeding what he could no longer do by appeal. After final assessment by the Department, appellee had the right to appeal within the time provided from the adverse finding of the Department, but he chose not to do this, but rather to wait until some months later and file an action praying for a declaratory judgment. This in effect was substituting a declaratory judgment proceeding for an appeal which we think appellee should not have been allowed to do.

"[The statute] clearly provides that taxpayer who has been notified that an assessment for use tax has been made against him under either section 794 of 795[, Ala. Code 1940,] must petition for a redetermination within thirty days and if such petition is not made, the assessment becomes final. It, of course, affirmatively appears that an appeal was not taken under § 140 of Title 51[, Ala. Code 1940,] within thirty days after the assessment was final. Thus there justiciable was no controversy between the parties. The question had already been decided by the Department having jurisdiction of the subject matter and parties. Mitchell v. Hammond, supra, and cases cited therein."

274 Ala. at 149, 145 So. 2d at 845.

Here, the legislature and the City, respectively, specifically vested the municipal court with original jurisdiction to adjudicate contested notices of violations

under the Act and the ordinance within a detailed set of procedures that provides for an adjudicative hearing in the municipal court and an appeal to the circuit court for a trial de novo. Rather than challenging the notices of violations on any grounds, including constitutional and statutory ones, as provided for in the Act and the ordinance by requesting an adjudicative proceeding in the municipal court, the plaintiffs simply accepted liability under the Act and the ordinance by paying the fines. Once the plaintiffs accepted liability under the Act and the ordinance without challenging the notices of violations, a justiciable controversy no longer existed between the parties. Sparks, supra. Nothing remained between the parties to be settled because the matter had been determined in the court having jurisdiction over the notices of violations issued pursuant to the Act and the ordinance. The plaintiffs cannot now use this declaratory-judgment action -- filed approximately five years after the notices of violations were issued and paid -- as a substitute for an challenge the Act and the ordinance appeal to constitutional and statutory grounds after failing to raise such a challenge pursuant to the procedures for doing so set

forth by the legislature and the City in the Act and the ordinance. Sparks, supra. Because no justiciable controversy existed between the parties when the complaint for declaratory relief was filed, the trial court was without subject-matter jurisdiction. Chapman, supra, See also Underwood v. Alabama State Bd. of Educ., 39 So. 3d 120, 127 (Ala. 2009) ("'"There must be a bona fide existing controversy of a justiciable character to confer upon the court jurisdiction to grant declaratory relief under the declaratory judgment statutes, and if there was no justiciable controversy existing when the suit was commenced the trial court had no jurisdiction."'" (quoting Chapman, 974 So. 2d at 983, quoting in turn State ex rel. Baxley v. Johnson, 293 Ala. 69, 73, 300 So. 2d 106, 110 (1974))).1

<sup>&</sup>quot;""Alabama courts do not give opinions in which there is no longer a justiciable controversy; yet, Alabama has recognized two exceptions to the mootness doctrine: questions of great public interest and questions that are likely of repetition of the situation."'" Moore v. Alabama Judicial Inquiry Comm'n, 234 So. 3d 458, 485 (Ala. 2017) (quoting Underwood, 39 So. 3d at 127, quoting in turn Arrington v. State ex rel. Parsons, 422 So. 2d 759, 760 (Ala. 1982)). The plaintiffs have not argued either exception in their appellate brief. Although they do mention the "capable-of-repetition" exception, they do so in only one sentence with no citation to authority or development of an argument. Rule 28, Ala. R. App. P.

The plaintiffs contend, however, that they are not prohibited from bringing this declaratory-judgment action simply because they had another remedy under the Act and the ordinance because, they say, the "remedy of declaratory relief was intended to be alternative and not dependent upon the absence of another adequate remedy." City of Dothan v. Eighty-Four West, Inc., 738 So. 2d 903, 908-09 (Ala. 1999). See also Rule 57, Ala. R. Civ. P. ("The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."). We note that the plaintiffs have dedicated only a single paragraph in their appellate brief in support of this contention.

The plaintiffs' argument in this regard is a nonstarter. Although the plaintiffs are correct in their statement that the existence of some other remedy under the Act and the ordinance does not necessarily prohibit them from bringing a declaratory-judgment action, they are prohibited from bringing a declaratory-judgment action in this particular case because an actual controversy no longer existed between the parties at the time they brought the declaratory-judgment action challenging the Act and the ordinance. The Declaratory

Judgment Act is remedial in nature and was "intended to be alternative and not dependent upon the absence of another adequate remedy." Eighty-Four West, Inc., 738 So. 2d at 908-09; see also  $\S$  6-6-221, Ala. Code 1975. However, as stated above, a declaratory-judgment action cannot be used as a substitute for an appeal, and there must a bona fide existing controversy between the parties at the time the declaratoryjudgment complaint is filed in order to confer jurisdiction upon the trial court. Chapman, supra; Sparks, supra. legislature and the City specifically vested the municipal court with original jurisdiction to adjudicate contested notices of violations under the Act and the ordinance within a framework of procedures that provides for an adjudicative hearing in the municipal court and an appeal to the circuit court for a trial de novo. After the plaintiffs received their notices of violations, they elected to accept liability under the Act and the ordinance by paying the fines and not contesting the notices of violations in the appropriate forum in accordance with the procedures provided for in the Act and the ordinance. The plaintiffs' acceptance of liability under the Act and the ordinance, without challenging the notices of

violations within the time and manner provided for in the Act and the ordinance, settled the matter and mooted the controversy between the parties. Because a justiciable controversy no longer existed between the parties, the trial court had no jurisdiction over the plaintiffs' subsequently filed declaratory-judgment action challenging the Act and the ordinance. Chapman, supra; Underwood, supra.

# Conclusion

Because we conclude that no justiciable controversy existed between the parties in this case when the plaintiffs filed the declaratory-judgment action, the trial court lacked subject-matter jurisdiction and properly granted the defendants' motion to dismiss the action. "'Lacking subject-matter jurisdiction [a court] may take no action other than to exercise its power to dismiss the action. ... Any other action ... is null and void.'" State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1029 (Ala. 1999) (quoting Beach v. Director of Revenue, 934 S.W.2d 315, 318 (Mo. Ct.

App. 1996)). Accordingly, we affirm the order dismissing the plaintiffs' complaint.

# AFFIRMED.

Bryan, Sellers, and Stewart, JJ., concur.

Parker, C.J., and Mendheim, J., concur in the result.

Shaw, Wise, and Mitchell, JJ., recuse themselves.