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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Michael Moore, Wesley Farmer, and Briana DeBose

v.

City of Center Point and Redflex Traffic Systems, Inc.

Appeal from Jefferson Circuit Court
(CV-18-900527)

BOLIN, Justice.

Michael Moore, Wesley Farmer, and Briana DeBose (hereinafter referred to collectively as "the plaintiffs") appeal from the Jefferson Circuit Court's dismissal of their declaratory-judgment action challenging the Center Point

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Automated Traffic Safety Act and the implementing City of Center Point ordinance providing for the automated photographic enforcement of red lights, stop signs, and speed limits within the corporate limits of the City of Center Point ("the City") on constitutional and statutory grounds.

Facts and Procedural History

In 2013, the Alabama Legislature enacted Act No. 2013-228, Ala. Acts 2013, a local act known as the "Center Point Automated Traffic Safety Act" ("the Act"), which authorized the automated photographic enforcement of traffic lights, stop signs, and speed limits within the corporate limits of the City. The Act became effective July 12, 2013. The legislature found in § 2(b) of the Act that vehicles that violate traffic-control regulations and signage within the corporate limits of the City were a dangerous problem; that automated traffic-camera enforcement was a highly accurate method of detecting traffic-control violations and reducing the number of traffic accidents, deaths, and injuries; that current Alabama law provides that failing to stop at a traffic-control signal and failing to abide by traffic signage and speed limits were criminal misdemeanors; and that a

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reduction in the number of drivers exceeding speed limits and running red lights and stop signs through a program using photographic evidence and enforcement to impose civil fines would promote and protect the health and welfare of the citizens of the City.

Section 4 of the Act empowered the City to

"adopt an ordinance providing for the utilization by the City or its designee of a photographic traffic signal enforcement system, a photographic stop sign enforcement system, and a photographic vehicle speed enforcement system to detect and record traffic signal violations, stop sign violations, and speeding violations in the City, to issue notices of civil violations by mail, and to collect fines for the recorded traffic signal violations, stop sign violations and speeding violations which may occur within the corporate limits of the City as provided in this act."

The legislature categorized a violation of the provisions of the ordinance authorized by the Act as a "civil violation" and made the penalty for such violation the payment of a civil fine. § 3(3). Section 3(10) of the Act defined a speeding violation as

"[a]ny violation of a motor vehicle at a speed that exceeds the legal maximum speed limits set forth in or adopted pursuant to Article 8, Chapter 5A, Title 32, Sections 32-5A-170 to 32-5A-178, inclusive, Code of 1975, or of any combination thereof; provided, however, that speed limits set by action of the Center Point City Council, if any, shall supersede

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the limits set in Article 8, Chapter 5A, Title 32, Sections 32-5A-170 to 32-5A-178, inclusive, Code of Alabama 1975. A speeding violation shall be a civil violation as defined in this act."

Section 3(12) of the Act defined a stop-sign violation as

"[a]ny violation of Section 32-5A-112, Code of Alabama 1975, wherein a vehicle proceeds into an intersection after failing to stop at a clearly marked stop line. A stop sign violation shall be a civil violation as defined in this act."

Section 3(14) of the Act defined a traffic-signal violation as

"[a]ny violation of Section 32-5A-31, Section 32-5A-32, or Section 32-5A-35, Code of Alabama 1975, or of any combination thereof, wherein a vehicle proceeds into a signalized intersection at a time while the traffic-control signal for that vehicle's lane of travel is emitting a steady red signal. A traffic signal violation shall be a civil violation as defined in the act."

On October 22, 2015, the City adopted Ordinance No. 2015-05 ("the ordinance"), which provided for the automated traffic-camera enforcement of red lights, stop signs, and speed limits within the corporate limits of the City through the imposition of a civil penalty for those motorists photographed violating traffic-control regulations.¹ Section 1.1 of the ordinance states that the Center Point City Council found that there was a high incidence of drivers "running" red

¹The language of the ordinance closely tracks the language of the Act.

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lights and stop signs and violating speed limits; that automated traffic-camera enforcement is an effective method for detecting violations of traffic-control regulations and for reducing the number of those violations and decreasing the number of traffic accidents, deaths, and injuries; and that a reduction in the number of violations of traffic-control regulations through the use of automated photographic enforcement and the imposition of civil liability would help to protect the health, safety, and welfare of the citizens of the City.

Section 2.1 of the ordinance categorized a violation of the provisions of the ordinance as a "civil violation" and imposed the payment of a civil fine as a penalty. The definitions of a "speeding violation," a "stop sign violation," and a "traffic signal violation" in the ordinance are identical to the definitions of those terms in the Act. Sections 3.1 and 3.2 of the ordinance impose a \$60 civil fine for a traffic-signal violation and a stop-sign violation, respectively. Section 3.3 of the ordinance imposes a civil fine of between \$60 and \$160 for speeding violations,

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depending on the number of miles per hour the violator is traveling over the speed limit.

Moore and Farmer allege that they were ticketed through the use of the automated photographic equipment in 2017 for running a red light within the corporate limits of the City. DeBose alleges that she was ticketed through the use of the automated photographic equipment in 2017 for not stopping at a stop sign within the corporate limits of the City.

On February 6, 2018, the plaintiffs, individually and on behalf of a putative class of individuals who had received notice of violation pursuant to the Act, sued the City and Redflex Traffic Systems, Inc.² (hereinafter referred to collectively as "the defendants"), seeking, among other things, a judgment declaring that the Act and the ordinance are unconstitutional and violative of Alabama law. The plaintiffs sought a declaration that the Act violated §§ 89, 104(14), and 105, Ala. Const. 1901. The plaintiffs further sought a declaration that the ordinance violated §§ 11-45-1 and 32-5-1, Ala. Code 1975. Additionally, the plaintiffs

²Redflex is the entity retained by the City responsible for installing, maintaining, and monitoring the automated photographic equipment.

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sought an order enjoining the City from ticketing individuals through the use of automatic traffic-enforcement cameras and a refund of all fines collected based on the use of the automatic traffic-enforcement cameras.

On March 14, 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 the plaintiffs had failed to state a claim upon which relief could be granted.³ On May 8, 2018, the plaintiffs filed a response in opposition to the motion to dismiss. On June 27, 2018, the trial court entered an order granting the motion to dismiss, holding, among other things, that neither the Act nor the ordinance violated §§ 89, 104, and 105 of the Alabama Constitution of 1901. This appeal followed.

³The defendants dispute Moore's and Farmer's assertion that they were cited for running a red light because, they say, the City did not have any automated cameras monitoring red lights within the corporate limits of the City. The defendants stated that, for purposes of their motion to dismiss, they would assume that Moore and Farmer had been cited for running a stop sign. The defendants further acknowledged in their motion to dismiss that, for purposes of addressing the legal issues presented in this case, it did not matter whether the plaintiffs were cited for running a red light, running a stop sign, or speeding. This Court agrees that, for purposes of addressing the issues presented by this appeal, it does not matter whether the plaintiffs were cited for running a red light, running a stop sign, or speeding.

Standard of Review

This Court has stated the appropriate standard of review for an appeal from an order granting a Rule 12(b)(6) motion to dismiss as follows:

"On appeal, a dismissal is not entitled to a 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 of circumstances that would entitle [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 & Mfg. 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 the commencement of the declaratory-judgment action, the motion to dismiss should be overruled and a 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 on appeal challenge the constitutionality of the Act and the ordinance. However, we must first address the threshold issue of subject-matter jurisdiction. This Court has explained:

"This Court has often said that, as a general rule, it will not decide

questions after a decision has become useless or moot. Ex parte McFry, 219 Ala. 492, 122 So. 641 (1929); Byrd v. Sorrells, 265 Ala. 589, 93 So. 2d 146 (1957); Chisolm v. Crook, 272 Ala. 192, 130 So. 2d 191 (1961); Jacobs Banking Company v. Campbell, 406 So. 2d 834 (Ala. 1981). 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. Byrd v. Sorrells, *supra*, State ex rel. Eagerton v. Corwin, 359 So. 2d 767 (Ala. 1977).
 ...'

"Arrington v. State ex rel. Parsons, 422 So. 2d 759, 760 (Ala. 1982).

""'A moot case or question is a case or question in or on which there is no real controversy; a case which seeks to determine an abstract question which does not rest on existing facts or rights, or involve conflicting rights so far as plaintiff is concerned.'" Case v. Alabama State Bar, 939 So. 2d 881, 884 (Ala. 2006) (quoting American Fed'n of State, County & Mun. Employees v. Dawkins, 268 Ala. 13, 18, 104 So. 2d 827, 830-31 (1958)). "The test for mootness is commonly stated as whether the court's action on the merits would affect the rights of the parties." Crawford v. State, 153 S.W.3d 497, 501 (Tex. App. 2004) (citing VE Corp. v. Ernst & Young, 860 S.W.2d 83, 84 (Tex. 1993)). "A case becomes moot if at any stage there ceases to be an actual controversy between the parties." Id. (emphasis added) (citing National Collegiate Athletic Ass'n v. Jones, 1 S.W.3d 83, 86 (Tex. 1999)).

""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 ab initio."" Sustainable Forests, L.L.C. v. Alabama Power Co., 805 So. 2d 681, 683 (Ala. 2001) (quoting Hunt Transition & 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, 153 S.W.3d at 501. 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, 939 So. 2d at 884 (citing Employees of Montgomery County Sheriff's Dep't v. Marshall, 893 So. 2d 326, 330 (Ala. 2004)).

""The lack of a justiciable controversy may be raised either by a motion to dismiss, Rule 12, [Ala. R. Civ. P.], or a motion for summary judgment." Hornsby v. Sessions, 703 So. 2d 932, 937 (Ala. 1997) (quoting Smith v. Alabama Dry Dock & Shipbuilding Co., 293 Ala. 644, 649, 309 So. 2d 424, 427 (1975)). Indeed, "[i]t is well settled that lack of subject-matter jurisdiction can be raised at any time by the parties or by the court ex mero motu." Ex parte V.S., 918 So. 2d 908, 912 (Ala.

2005). ""[I]f there is an absence of jurisdiction over ... the subject matter, a court has no power to act, and jurisdiction over the subject matter cannot be created by waiver or consent."" Id. (quoting Flannigan v. Jordan, 871 So. 2d 767, 768 (Ala. 2003), quoting in turn Norton v. Liddell, 280 Ala. 353, 356, 194 So. 2d 514, 517 (1967)). A court without subject-matter jurisdiction "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))....'

Chapman v. Gooden, 974 So. 2d 972, 983-84 (Ala. 2007). ...

"A declaratory-judgment action may be rendered moot.

"Declaratory-judgment actions in Alabama are governed by the Declaratory Judgment Act, codified at §§ 6-6-220 through -232, Ala. Code 1975 ("the Act"). The Act does not "empower courts to decide moot questions, abstract propositions, or to give advisory opinions, however convenient it might be to have these questions decided for the government of future cases.'" Stamps v. Jefferson County Bd. of Educ., 642 So. 2d 941, 944 (Ala. 1994) (quoting Town of Warrior v. Blaylock, 275 Ala. 113, 114, 152 So. 2d 661, 662 (1963)) (emphasis added in Stamps). Pursuant to § 6-6-226, declaratory relief may be afforded in cases "in which a judgment will terminate the controversy or remove the uncertainty," but § 6-6-229 emphasizes the

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corollary that "[t]he court may refuse to enter a declaratory judgment where such judgment, if entered, would not terminate the uncertainty or controversy giving rise to the proceeding."

"Bruner v. Geneva County Forestry Dep't, 865 So. 2d 1167, 1175 (Ala. 2003). See also Hunt Transition & Inaugural Fund, Inc. v. Grenier, 782 So. 2d 270, 272 (Ala. 2000) ('For a court to grant declaratory relief, it must have before it a bona fide, presently existing justiciable controversy that affects the legal rights or obligations of the parties.');

VanLoock v. Curran, 489 So. 2d 525, 531 (Ala. 1986) ('Indeed, moot questions are not properly the subject of declaratory judgment actions.' (citing City of Mobile v. Scott, 278 Ala. 388, 178 So. 2d 545 (1965)))."

Underwood v. Alabama State Bd. of Educ., 39 So. 3d 120, 127-28 (Ala. 2009). The parties have not addressed the justiciability of the issues presented. Because a trial court lacks subject-matter jurisdiction if there is no justiciable controversy, we address ex mero motu the justiciability of the issues presented here.

Section 6(a) of the Act states that "[a]n Administrative Hearing Officer appointed by the Mayor of the City is vested with the power and jurisdiction to conduct administrative hearings of civil violations provided for in this act." Section 6(b) of the Act provides:

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"A person who receives a notice of violation may contest the imposition of the fine by submitting a request for an administrative hearing of the civil violation, in writing, within 15 days of the 10th day after the date the notice of violation is mailed."

Section 6(c) of the Act states that "[f]ailure to pay a fine or to contest liability in a timely manner is an admission of liability in the full amount of the fine assessed in the notice of violation." Section 7(c) provides:

"A person who is found liable after an administrative hearing may challenge that finding of civil liability in the Jefferson County Circuit Court, by filing a petition for judicial review with the Jefferson County Circuit Court. The petition for judicial review must be filed not later than the 14th day after the date on which the Administrative Hearing Officer entered the finding of civil liability. The filing of a petition for judicial review shall stay the enforcement of the fine. After a petition for judicial review has been filed, civil liability will be determined by the circuit court by trial de novo pursuant to the jurisdiction granted in Section 12-11-30, Code of Alabama 1975."

Section 6.1 of the ordinance states that, "[p]ursuant to the Act, the Mayor shall appoint an Administrative Hearing Officer vested with the power and jurisdiction to conduct administrative hearings of Civil Violations provided for in the Act and this ordinance." Section 6.2 of the ordinance provides that "[a] person who receives a notice of violation

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may contest the imposition of the fine by submitting a request for an administrative hearing of the Civil Violation, in writing, within 15 days of the 10th day after the date the notice of violation is mailed." Section 6.3 of the ordinance states that "[f]ailure to pay a Fine or to contest liability in a timely manner is an admission of liability in the full amount of the Fine assessed in the notice of violation." Section 7.1 of the ordinance provides:

"A person who is found liable after an administrative hearing may challenge that finding of Civil Liability in the Jefferson County Circuit Court, by filing a petition for judicial review with the Jefferson County Circuit Court as provided in Section [7] of the Act. The petition for judicial review must be filed not later than the 14th day after the date on which the Administrative Hearing Officer entered the finding of Civil Liability. The filing of a petition for judicial review shall stay the enforcement of the Fine. After a petition for judicial review has been filed, Civil Liability will be determined by the Circuit Court by trial de novo pursuant to the Act...."

In Woodgett v. City of Midfield, [Ms. 1180051, May 1, 2020] ___ So. 3d ___ (Ala. 2020) -- a case involving a very similar act and ordinance, the opinion in which we are releasing simultaneously with this opinion -- this Court concluded that the acceptance of liability under an automated camera-enforcement act and ordinance by payment of the civil

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violation, without asserting a challenge to the act and ordinance within the time or in the manner provided for in the act and ordinance, settled the matter of the civil violation and mooted the controversy between the parties, which could not then be revived by filing a declaratory-judgment action challenging the act and ordinance. This Court held that, 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 ordinance. City of Midfield, supra.

Here, the plaintiffs received notices of civil violations under the Act and the ordinance sometime in 2017. It does not appear from the record, and the parties have not asserted, that the plaintiffs paid the fines assessed or that they challenged the Act and the ordinance within the time and manner provided for in the Act and the ordinance. The plaintiffs filed their declaratory-judgment action on February 6, 2018. Based on this Court's reasoning in City of Midfield, we conclude that no justiciable controversy existed between the parties at the time the plaintiffs filed their declaratory-judgment action; thus, the trial court lacked

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subject-matter jurisdiction over the matter. Although the plaintiffs in this case did not accept liability under the Act and the ordinance by paying the fines and thus settling the matter between the parties, the plaintiffs accepted liability under the Act and the ordinance by failing to challenge their liability within the time and in the manner provided for in the Act and the ordinance. See § 6(c) of the Act and § 6.3 of the ordinance quoted supra, which provide that the failure to pay a the fine or to contest liability in a timely manner is an admission of liability under the Act and the ordinance. As was the case in City of Midfield, the plaintiffs' acceptance of liability under the Act and the ordinance settled the matter and mooted the controversy between the parties. Because there was no justiciable controversy between the parties at the time the declaratory-judgment action was filed, the trial court lacked subject-matter jurisdiction, and the trial court properly dismissed the action. City of Midfield, supra; Ex parte Blankenship, 893 So. 2d 303, 307 (Ala. 2004) ("Lacking subject matter jurisdiction [a court] may take no action other than to exercise its power to dismiss the action Any other action taken by a court lacking subject matter

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jurisdiction is null and void."" (quoting State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1029 (Ala. 1999), quoting in turn Beach v. Director of Revenue, 934 S.W.2d 315, 318 (Mo. Ct. App. 1996)).

Accordingly, we affirm the trial court's order dismissing the plaintiffs' declaratory-judgment action.

AFFIRMED.

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

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

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