

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

LAURA UNVERFERTH, JOSEPH)	No. ED98511
CUSUMANO, and FRANCIS CUSUMANO,)	
)	
Appellants,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Tommy W. DePriest, Jr.
CITY OF FLORISSANT and AMERICAN)	
TRAFFIC SOLUTIONS, INC.,)	
)	
Respondents.)	FILED: September 10, 2013

Appellants Laura Unverferth (“Unverferth”) and Joseph and Francis Cusumano (“Cusumanos”) (collectively, “Appellants”) appeal from the judgment of the trial court granting motions to dismiss filed by Respondents City of Florissant (“Florissant”) and American Traffic Solutions, Inc. (“ATS”) (collectively, “Respondents”). Appellants received red light camera tickets from Florissant stating that they had committed a “Violation of Public Safety (Failure to Stop at a Red Light)” in violation of a Florissant municipal ordinance (“the Ordinance”). Appellants challenged the validity of the Ordinance in a six-count petition. Appellants alleged the Ordinance violated their due process rights and the privilege against self-incrimination, sought declaratory judgment regarding the validity and constitutionality of the Ordinance and its enforcement, and asserted a claim of civil conspiracy against Florissant and ATS. Unverferth also asserted claims of unjust enrichment against Florissant and ATS.

Florissant and ATS filed motions to dismiss Appellants’ petition alleging, *inter alia*, that Appellants’ constitutional claims should be dismissed on the bases of standing, waiver, and estoppel. The trial court agreed and granted Respondents’ motions to dismiss on those grounds. The trial court then addressed the substantive issues raised by Appellants and dismissed each count with prejudice. Appellants now appeal the trial court’s judgment, but do not appeal the dismissal of their civil conspiracy or self-incrimination claims.

AFFIRMED IN PART, REVERSED IN PART.

Division I holds: The Cusumanos have an adequate remedy at law and may raise their claims in municipal court. Therefore, we affirm the trial court’s judgment with regard to its dismissal of all of the Cusumanos’ claims. Because Unverferth has standing to raise her claims and has not waived those claims, we reverse the trial court’s dismissal of Unverferth’s claims on the bases of standing and waiver. Furthermore, because Unverferth pleaded sufficient facts to defeat Respondents’ claim of estoppel, we reverse the trial court’s judgment and remand to the trial court for further proceedings consistent with this opinion. We further reverse that portion of the trial court’s judgment declaring the Ordinance valid because it was enacted with proper

authority. Appellants sufficiently pleaded that Florissant exceeded its authority under its police power to enact the Ordinance in that the purpose of the Ordinance is to raise municipal revenue and not to regulate traffic or promote safety. We therefore remand that portion of the trial court's judgment for proceedings consistent with this opinion. We also reverse the trial court's judgment declaring that the Ordinance does not conflict with state law. Appellants have adequately pleaded and we hold that the Ordinance conflicts with Missouri law because it regulates moving violations without requiring the municipal court to report the violation to the Director of Revenue as required by Missouri statute. Because Appellants have adequately pleaded that the Ordinance has denied them notice, a fair hearing and adequate procedural protections as required under Missouri Supreme Court Rules and Article I, Section 10 of the Missouri Constitution, we also reverse that portion of the trial court's judgment dismissing the allegations related to due process. Finally, we affirm the judgment of the trial court on Unverferth's claims for restitution because Unverferth is barred from receiving a refund of the fine she voluntarily paid under a theory of unjust enrichment.

Opinion by: Kurt S. Odenwald, J., and Clifford H. Ahrens, P.J., Concur,
Lawrence E. Mooney, J., Concur in Part and Dissents in Part.

Attorney for Appellants: John G. Simon and Ryan A. Keane

Attorney for Respondents—City of Florissant: John M. Hessel & Mark R. Sowers

Attorney for Respondents—American Traffic Solutions, Inc.: Jane E. Dueker & Nicholas G. Frey

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.