

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 20, 2016 Session

CITY OF LA VERGNE v RANDALL T. LeQUIRE

**Appeal from the Circuit Court for Rutherford County
No. 70238 Howard W. Wilson, Chancellor**

No. M2016-00028-COA-R3-CV – Filed October 19, 2016

This appeal arises from a traffic citation issued to the appellant by a municipal police officer. The citation charged the appellant with a violation of “SPEEDING 55-8-152,” a reference to Tennessee’s statutory prohibition on speeding codified at Tennessee Code Annotated section 55-8-152 (2012). The appellant was found guilty of speeding in the municipal court and appealed to the circuit court. The circuit court judge entered a judgment against the appellant for a violation of a municipal ordinance rather than for a violation of the state statute charged on the citation. On appeal, the appellant contends that the citation was insufficient to provide him with notice of the charge for which he was convicted. We agree. We, therefore, reverse the judgment of the circuit court and dismiss this case.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Dismissed

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and KENNY ARMSTRONG, JJ., joined.

Randall T. LeQuire, Franklin, Tennessee, pro se.

Nicholas C. Christiansen, Murfreesboro, Tennessee, for the appellee, City of La Vergne, Tennessee.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

On February 24, 2015, Randall T. LeQuire was issued a traffic citation in La Vergne, Tennessee (“the City”). The citation was issued by one of the City’s police officers and charged Mr. LeQuire with the offense of “SPEEDING 55-8-152.” The citation ordered Mr.

LeQuire to appear in the La Vergne City Court. Following a hearing in the city court on August 26, 2015, the word “GUILTY” was stamped on the citation and a judgment was entered against Mr. LeQuire.¹ Shortly thereafter, Mr. LeQuire filed an appeal to the Rutherford County Circuit Court.²

The case was heard in the circuit court on November 9, 2015. Mr. LeQuire appeared pro se at the hearing; the City was represented by counsel. At the outset of the hearing, the following exchange occurred:

[Mr. LeQuire]: Your honor, the defense request trial by jury.

[The City’s Counsel]: Objection, Your Honor, the defendant was cited for a violation of the City of La Vergne municipal code, a civil violation, and is, therefore, not entitled to a jury trial.

[Mr. LeQuire]: Your Honor, the defendant was not charged with a civil violation. The defendant was charged with a violation of the Tennessee Code Annotated, a class C misdemeanor, which is a criminal charge.

[The City’s Counsel]: Your Honor, the defendant was cited for violating Section 15-801 of the La Vergne Municipal Code, which incorporates by reference Tennessee Code Annotated 55-8-152. Specifically, Section 15-801 states “By the authority granted under Tennessee Code Annotated, § 16-18-302, the City of La Vergne adopts by reference as if fully set forth in this section, the Rules of the Road as codified in Tennessee Code Annotated, §§ 55-8-101 through 55-8-131, and §§ 55-8-133 through 55-8-180. Additionally, the City of La Vergne adopts Tennessee Code Annotated, §§ 55-8-101 through 55-8-193, §§ 55-9-601 through 55-9-606 and § 55-12-139 by reference as if fully set forth in this section.” The defendant was first tried in the City of La Vergne Municipal Court for a civil penalty relating to speeding in violation of City of La Vergne Municipal Code Section 15-801 via T.C.A. § 55-8-152, which, again, is incorporated by reference as part of the City’s municipal code via City of La Vergne Code Section 15-801. The City is only seeking to

¹ Mr. LeQuire contends that the city court found him in violation of a state statute. The City contends that the city court found him in violation of a municipal ordinance. The municipal court’s judgment is not in the record.

² Tennessee Code Annotated section 16-18-307 (2009) provides that any person dissatisfied with the judgment of a municipal court may appeal to the circuit court of the county within 10 days.

impose a civil fine against the Defendant and is not seeking a ruling that the defendant is guilty of a class C misdemeanor.

Judge: [Mr. LeQuire], this type of civil charge does not entitle you to a jury trial.

The City then presented the testimony of Officer Ken Vaughn of the La Vergne Police Department who testified that he clocked Mr. LeQuire's vehicle on his radar detector as traveling at 55 mph in a 35 mph zone after observing the vehicle pass him at a high rate of speed. Mr. LeQuire cross-examined Officer Vaughn but did not present any evidence. At the close of proof, the circuit court judge announced his judgment in favor of the City.

On November 20, 2015, the circuit court entered a written order reflecting its ruling. The circuit court found, by a preponderance of the evidence, that Mr. LeQuire "violated the City of La Vergne Municipal Code Section 15-801 via a violation of T.C.A. 55-8-152, which is incorporated by reference pursuant to City of La Vergne Municipal Code Section 15-801, for speeding." Based on that violation, the circuit court held that Mr. LeQuire "should be liable for the fines and court costs related to the City of La Vergne Municipal Court judgment and the appeal to [the circuit court]." Mr. LeQuire timely filed a notice of appeal to this Court.

DISCUSSION

Mr. LeQuire presents the following issue for review on appeal, restated from his appellate brief:

1. Whether the trial court erred in granting judgment against Mr. LeQuire on the basis of La Vergne Municipal Code section 15-801 when Mr. LeQuire was not aware that he was charged with violating that ordinance.

The City raises the following additional issue for review on appeal, restated from its appellate brief:

1. Whether this appeal should be dismissed in light of Mr. LeQuire's failure to submit an appellate brief that complies with Rule 27 of the Tennessee Rules of Appellate Procedure.

The issues raised on appeal present questions of law. We review questions of law *de novo* without affording any presumption of correctness to the trial court's decision. *Tennessean v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 862-63 (Tenn. 2016).

Mr. LeQuire's Appellate Brief

As an initial matter, we address the alleged shortcomings of Mr. LeQuire's appellate brief. In doing so, we recognize that Mr. LeQuire is proceeding pro se in this appeal and, therefore, may have little familiarity with the rules of this Court. Parties who decide to represent themselves are entitled to equal treatment by the courts and are expected to comply with the same substantive and procedural rules that represented parties are expected to observe. *Murray v. Miracle*, 457 S.W.3d 399, 402 (Tenn. Ct. App. 2014). Nevertheless, pro se litigants who are untrained in the law are entitled to a certain amount of leeway in their pleadings and briefs. *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003). The courts are encouraged to give effect to the substance, rather than the form or terminology, of a pro se litigant's filings. *Id.* at 904.

Rule 27 of the Tennessee Rules of Appellate Procedure provides that the brief of an appellant should contain, among other things, citations to relevant legal authority. Tenn. R. App. P. 27(a)(7). As the City points out, Tennessee courts have routinely held that the failure to cite relevant authority in compliance with that rule constitutes a waiver of the issue. *Bean v. Bean*, 40 S.W.3d 52, 55-56 (Tenn. Ct. App. 2000) (citations omitted). The City, therefore, contends that this appeal should be dismissed for Mr. LeQuire's failure to cite relevant legal authority in his appellate brief.

While we agree that Mr. LeQuire's brief is not in strict compliance with Rule 27, an appellate court may, in its discretion, suspend or relax the procedural rules in a given case for good cause. Tenn. R. App. P. 2; *see also Bean*, 40 S.W.3d at 54-55; *Paehler v. Union Planters Nat'l Bank*, 971 S.W.2d 393, 397 (Tenn. Ct. App. 1997). Having considered the circumstances, we find that such good cause exists in this case. Tennessee public policy strongly favors the resolution of disputes on their merits rather than on procedural technicalities. *See, e.g., Norton v. Everhart*, 895 S.W.2d 317, 322 (Tenn. 1995). Additionally, the Rules of Appellate Procedure are to be interpreted and applied in a manner that enables appeals to be considered on their merits. Tenn. R. App. P. 1; *Fayne v. Vincent*, 301 S.W.3d 162, 171 (Tenn. 2009). Despite its shortcomings, Mr. LeQuire's brief does not impede our ability to consider the merits of his argument on appeal. Moreover, the City does not contend that it would be unfairly prejudiced by our doing so. The substantive argument Mr. LeQuire advances on appeal is clear: that the trial court erred in entering a judgment against him for a violation of La Vergne City Code section 15-801 because he was not charged with violating that ordinance. We, therefore, find no compelling reason to dismiss this appeal based on the shortcomings of Mr. LeQuire's brief and will proceed to consider the substance of this case.

Sufficiency of the Citation

Proceedings to enforce municipal ordinances occupy an unusual place in our jurisprudence. The Municipal Court Reform Act of 2004, codified at Tennessee Code Annotated section 16-18-301, *et seq.*, sets forth the jurisdiction of municipal courts in Tennessee. In pertinent part, the statute provides:

- (1) A municipal court possesses jurisdiction in and over cases:
 - (A) For violation of the laws and ordinances of the municipality; or
 - (B) Arising under the laws and ordinances of the municipality; and
- (2) A municipal court also possesses jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if the state criminal statute mirrored, duplicated or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars (\$50.00).

Tenn. Code Ann. § 16-18-302(a). However, while municipal courts have jurisdiction to enforce ordinances that mirror, duplicate, or cross-reference certain state criminal statutes, proceedings for the violation of a municipal ordinance are not criminal prosecutions. *City of Chattanooga v. Myers*, 787 S.W.2d 921, 928 (Tenn. 1990) (quoting *City of Sparta v. Lewis*, 23 S.W. 182, 183 (1892)). Rather, they are civil actions brought by the municipality to recover the penalty imposed for violation of the ordinance. *Id.* Despite having been characterized as “quasi criminal,” “partly criminal,” and “criminal rather than civil in substance,” the law is settled that proceedings to enforce a municipal ordinance are considered civil actions for procedural and appellate purposes. *City of Chattanooga v. Davis*, 54 S.W.3d 248, 259-60 (Tenn. 2001) (citations omitted). They are therefore governed “by the rules of pleading applicable to civil actions.” *Myers*, 787 S.W.2d at 926 n.5 (quoting *Robinson v. City of Memphis*, 277 S.W.2d 341, 342 (Tenn. 1955)).

All civil actions are initiated by the filing of a complaint. Tenn. R. Civ. P. 3. In Tennessee, a municipal officer may initiate proceedings for the violation of a municipal ordinance by issuing a complaint, or citation, for the offense. Tenn. Code Ann. § 7-63-101. The citation should contain the offense charged and the time and place when the offender should appear in court, and the officer should give the offender a copy of the citation. *Id.* On

several occasions in the past, Tennessee courts have considered the sufficiency of the language used in such citations.

In *Guidi v. City of Memphis*, the defendant was arrested and tried on a warrant charging him with “the offense of Vio. Sec. 1683 Exceeding the Speed Limit within the City of Memphis.” 236 S.W.2d 532, 533 (Tenn. 1953). A judgment was entered against him in the city court and subsequently in the circuit court. *Id.* The Tennessee Supreme Court granted certiorari to consider “whether or not the warrant charges an offense, and, if so, is the language used sufficient to enable the defendant to make a proper defense thereto.” *Id.* at 534. The court held that the warrant was sufficient, explaining its reasoning as follows:

The declaration should state the cause of action clearly, explicitly, and briefly.

But how clear and explicit must the statement be? No more than to convey a ‘reasonable certainty of meaning,’ and ‘by a fair and natural construction,’ to show a substantial cause of action. No cavil, or straining, or criticism, is to be allowed as ground of exception, if the statement is intelligible enough, according to the ordinary meaning of the language used.

Had the warrant merely charged the defendant with the violation of a certain numbered section of the traffic laws of Memphis, and nothing more, it would have been fatal.

There is no merit in the insistence of counsel that the statement or charge in the warrant ‘Exceeding Speed Limit’ is a mere conclusion of law. On the contrary it is a clear and intelligible statement of a fact, i.e. that the defendant was violating the traffic laws of the City of Memphis and named a specific offense. Moreover we think the language in the warrant is sufficient notice to the defendant that he was arrested for exceeding the speed limit as fixed by the laws and ordinances of the City of Memphis. We are justified in the assumption that the defendant was driving an automobile when he was arrested and held a driver’s license which authorized him to operate it. It is not unreasonable to suppose that operators of motor-propelled vehicles in Memphis and Shelby County are fully cognizant of all traffic laws in said city, including the limit as to the speed of such vehicles.

Id. at 534-35 (citations omitted). Thereafter, the defendant filed a petition to rehear in which he relied on criminal cases involving the sufficiency of criminal warrants in support of his position. *Id.* at 535. The court denied the petition, concluding that the cited criminal cases were inapplicable because “a proceeding for the violation of a municipal ordinance is not a criminal prosecution but a civil action.” *Id.* at 536. The court explained that the “technical

nicety of pleading [required in a criminal prosecution] is not required in a warrant charging the violation of a municipal ordinance.” *Id.* “The only requirement is that the accused be given reasonable notice of the nature of the *ordinance* alleged to have been violated.” *Id.* (emphasis added).

Two years later, in *Robinson v. City of Memphis*, the Tennessee Supreme Court examined another city warrant to consider “whether it gave [the defendant] reasonable notice of the offense it call[ed] upon him to answer.” 277 S.W.2d 341, 343 (Tenn. 1955). In that case, the warrant charged the defendant with “the offense of Vio. Sec. 152 violating liquor law-within the City of Memphis, Shelby County, in violation of the ordinances of said City.” *Id.* However, the referenced ordinance provided that “[t]he manufacture, sale, receipt, possession, storage, transportation, distribution, or in any manner dealing in alcoholic beverages within the corporate limits of the city, shall be regulated in accordance with the provisions of Chapter 49 of the Public Acts of Tennessee for 1939[.]” *Id.* The referenced state statutes provided that doing any one of many different acts with reference to alcoholic beverages was a criminal offense. *Id.* As such, the court found the warrant was “totally insufficient to give [the defendant] any notice of the offense he will be called upon to answer” and therefore insufficient under the standard set forth in *Guidi*. *Id.* at 343-44.

Most recently, in *City of Murfreesboro v. Norton*, the defendant was issued a citation after he was involved in an automobile accident. No. M2009-02105-COA-R3-CV, 2010 WL 1838068, at *1 (Tenn. Ct. App. May 6, 2010). The citation stated that the defendant “did unlawfully commit the following offense in violation of city code: failure to yield.” *Id.* A judgment was entered against the defendant in the city court, and he appealed to the circuit court. *Id.* At the outset of the circuit court proceedings, the City moved to amend its complaint (the citation) pursuant to Rule 15.02 of the Rules of Civil Procedure to specify a violation of City Code section 32-741. *Id.* The circuit court granted the motion, and the citation was so amended. *Id.* The circuit court offered the defendant a continuance if he needed further time to prepare a defense to the amended citation, but the defendant declined. *Id.* at *2. Following a bench trial, the circuit court found no evidence that the defendant violated City Code section 32-741 but *sua sponte* found that the defendant violated City Code section 32-713(b). *Id.* The circuit court permitted the City to amend the citation to allege a violation of City Code section 32-713(b) after it announced its ruling and entered a judgment against the defendant for a violation of that ordinance. *Id.* On appeal, this Court expressed doubt as to whether the original citation gave the defendant reasonable notice of the offense charged but recognized that “a traffic citation is ‘subject to amendment under conditions of fairness as any other civil pleading,’ and that an amendment is ‘permissible so long as the defendant was allowed a fair opportunity to prepare a defense to it.’” *Id.* at *6 (quoting *Clark v. Metro. Gov’t of Nashville & Davidson Cnty.*, 827 S.W.2d 312, 315-16 (Tenn. Ct. App. 1991)). Nevertheless, the Court expressed that the trial judge “reached the outer limits

of the discretion accorded him” by *sua sponte* entering judgment for the violation of an ordinance other than the one alleged and permitting the City to amend the citation after its ruling was announced. *Id.* at *7. Additionally, the Court noted that there was no ordinance in the record stating the penalty imposed for a violation of City Code section 32-713(b). *Id.* The Court held that “the penalty ordinance as well as the ordinance contended to have been violated must be introduced in evidence before a valid fine may be assessed and a valid judgment entered thereon.” *Id.* (quoting *Town of Madisonville v. Tucker*, No. C.A.69, 1990 WL 6369, at *2 (Jan. 31, 1990)). Because no such ordinance was included in the record, the Court dismissed the case. *Id.* at *8.

Unlike the aforementioned cases, the citation issued to Mr. LeQuire in this case does not reference a specific ordinance number, and the record does not reflect that the City ever requested to amend it. The citation states only that Mr. LeQuire committed the offense of “SPEEDING 55-8-152,” yet the circuit court found Mr. LeQuire in violation of La Vergne Municipal Code section 15-801. Section 15-801 states:

Adoption of state traffic statutes. By the authority granted under Tennessee Code Annotated, § 16-18-302, the City of La Vergne adopts by reference as if fully set forth in this section the Rules of the Road as codified in Tennessee Code Annotated, §§ 55-8-101 through 55-8-131, and §§ 55-8-133 through 55-8-180. Additionally, the City of La Vergne adopts Tennessee Code Annotated, §§ 55-8-181 through 55-8-193, §§ 55-9-601 through 55-9-606 and § 55-12-139 by reference as if fully set forth in this section.

The City argues that because La Vergne Municipal Code section 15-801 incorporates Tennessee Code Annotated section 55-8-152—the state criminal statute that generally prohibits speeding—by cross-reference, the use of “SPEEDING 55-8-152” in the citation was sufficient to give notice that Mr. LeQuire was charged with a violation of the municipal ordinance. In support of its argument, the City points out that the citation does not expressly reference the Tennessee Code. Mr. LeQuire, on the other hand, contends that by stating that he committed the offense of “SPEEDING 55-8-152,” the citation put him on notice that he was charged with a violation of Tennessee Code Annotated section 55-8-152.

In our view, Mr. LeQuire’s argument clearly prevails. Although the citation does not expressly reference the Tennessee Code, it is plainly more reasonable for an individual charged with “SPEEDING 55-8-152” to believe he or she has been charged with a violation of the state criminal statute, Tennessee Code Annotated section 55-8-152, than a violation of La Vergne Municipal Code section 15-801. Indeed, the City’s assertion that “SPEEDING 55-8-152” is not a reference to a state statute is seriously undermined by its argument that the charge is, instead, a reference to the municipal ordinance adopting that state statute.

Accordingly, we hold that the citation failed to give notice that Mr. LeQuire was charged with violating a municipal ordinance.

The City contends that this Court should affirm the circuit court's judgment against Mr. LeQuire even if the language used in the citation was insufficient to give him notice that he was charged with violating a municipal ordinance rather than a state criminal statute because the error was harmless. The City argues that because La Vergne Municipal Code section 15-801 incorporates Tennessee Code Annotated section 55-8-152 by reference, the elements and defenses for a violation of the ordinance are the same as those for a violation of the statute. The City submits that, in light of the evidence presented, a judgment against Mr. LeQuire would therefore be appropriate under either. We disagree. The fact that the elements to be proven under state and local law are identical does not make the two interchangeable. Although the elements of the statute and ordinance at issue in this case are identical, the punishments available for a violation of each are not. *See generally Davis*, 54 S.W.3d 248, 277 (“[W]e do not believe that a municipality’s failure to require the same penalties as mandated by state law violates the Class Legislation Clause, even when the elements required to be proven by state and local law are identical.”). Pursuant to Tennessee Code Annotated section 16-18-302(a)(2), the maximum penalty available for a violation of La Vergne Municipal Code section 15-801 is a civil fine not to exceed of \$50. Conversely, a violation of Tennessee Code Annotated section 55-8-152 is a Class C misdemeanor punishable by up to 30 days incarceration, a fine not to exceed \$50, or both. Tenn. Code Ann. § 55-8-152(f). In our view, Mr. LeQuire was entitled to know the possible penalties he faced prior to the city court hearing. Additionally, whether a defendant is charged with violating a municipal ordinance or a state statute affects the subject matter jurisdiction of this Court on appeal. If the speed limit is set by the state and the defendant is charged with violating a state statute, the Criminal Court of Appeals has jurisdiction. *See State v. Tubwell*, No. W2012-01385-CCA-R3-WM, 2012 WL 6476097, at *2 (Tenn. Crim. App. Dec. 13, 2012) (remanding the case for findings on the issue of whether the defendant was charged violating a state statute or a municipal ordinance). However, if the speed limit is set by the city and the defendant is charged with violating a municipal ordinance, this Court has jurisdiction. *See City of Knoxville v. Brown*, 284 S.W.3d 330, 338 (Tenn. Ct. App. 2008). Accordingly, we hold that the absence of a reference to a specific municipal ordinance in the citation at issue in this case was not harmless error.

In sum, we hold that the citation issued to Mr. LeQuire in this case was insufficient to provide reasonable notice of the municipal ordinance he was charged with violating. While the City could have cured the deficiency by moving to amend the citation to specify a violation of La Vergne Municipal Code section 15-801 and allowing Mr. LeQuire further time to prepare his defense, the record does not reflect that it did so. As such, the case should have been dismissed.

CONCLUSION

For the foregoing reasons, we reverse the decision of the circuit court and dismiss this case. Costs of this appeal are taxed to the appellee, the City of La Vergne, for which execution may issue if necessary.

ARNOLD B. GOLDIN, JUDGE