

IN THE CIRCUIT COURT OF THE FIFTH
JUDICIAL CIRCUIT IN AND FOR HERNANDO
COUNTY, FLORIDA

CITY OF BROOKSVILLE,

Petitioner,

-v-

PATRICK MIKETINAC, SHIRLEY
MIKETINAC, et.al.,

Respondents.

CASE NO.: H-27-CA-2014-921

Hogan Law Firm

OCT 28 2014

Received

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come before the Court upon the Amended Verified Motion for Summary Judgment filed by Petitioner City of Brooksville, as well as the Respondents' Motion for Partial Judgment on the Pleadings. The Court has carefully reviewed each party's motion as well as supporting memorandums of law filed by each party. The Court also held a hearing on the above-referenced motions on October 14, 2014, and thereafter allowed the parties to file written arguments to support the various motions for consideration by the Court. Upon consideration of all of the above, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That in order for a Court to grant a Motion for Summary Judgment pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, there must be an absence of genuine issue of material fact and the moving party must be entitled to a judgment by law.
2. That in the case at bar, a review of the court file, a review of the pleadings, a review of the respective motions filed by the parties and a review of the

memorandums of law filed by the parties show that in fact there is no genuine issue of material fact.

3. That both parties agree that there are no genuine issues of material fact. They disagree, however, on the conclusions to draw from there being no genuine issue of material fact.
4. That prior to the institution of this lawsuit the City of Brooksville, Florida, adopted a program to enforce the laws related to the violation of the red light traffic signals within the borders of the city, pursuant to Chapter 316.0083, Florida Statutes, sometimes referred to as the Mark Wandell Traffic Safety Program. Further, the ordinance authorizing the use of red light cameras within the City of Brooksville was codified into the City Municipal Code of Brooksville under Article 5, entitled Traffic Light Safety, Section 74-201 through 74-212.
5. That the City of Brooksville, after the passage of aforementioned ordinance authorizing the use of red light cameras within the city, entered into a contract with a private vendor, to-wit: Sensys America, Inc. This company was contracted with by the City of Brooksville to provide certain performances for the enforcement of the red light camera program for the city.
6. That an amendment to the City of Brooksville charter was proposed by the Respondents which would prohibit the use of red light cameras or other traffic infraction detectors within the City of Brooksville. (The language of the proposed charter amendment is more fully set forth below). This prohibition as contained within the proposed charter amendment does not pertain to just the present time but would prohibit in the future any use of red light cameras within the City of Brooksville.

7. That the City of Brooksville received certification from the Hernando County Supervisor of Elections that the required number of electors from the voter registration rolls had signed a request to place the aforementioned charter amendment on the ballot for consideration by the city electorate at the next general election. The next general election was scheduled for November, 2014.
8. That thereafter the city council of the City of Brooksville held a meeting to receive legal advice from the city attorney concerning the proposed charter amendment and to receive input from its citizens as well as council members.
9. That after receiving legal advice from the city attorney and after hearing from the public and city council members, the city of Brooksville through its attorney filed a declaratory judgment with the Hernando County Circuit Court on the legality of the language contained in the proposed charter amendment.
10. That the Petition for Declaratory Judgment was filed by the Petitioner on June 11, 2014.
11. That the Respondents filed responsive pleadings to the declaratory judgment action filed by the Petitioner and also filed a Counter Petition for a Writ of Mandamus. Further, it is the Respondents' position that they are entitled to a writ of mandamus, requiring the City of Brooksville to place the proposed charter amendment on the ballot for consideration by the electorate.
12. That as more fully set forth below the decision to be made by the Court turns on the Florida Constitution, relevant Florida case law, and the laws of the City of Brooksville, as well as Florida Statutes. In other words, there are no genuine issues of material fact.
13. That the proposed charter amendment at issue provides in relevant part that no ordinance shall be adopted by the City Council which would permit or authorize

any red light camera or other automated traffic infraction detector system in the City of Brooksville. Any ordinance adopted by the City Council in violation of this section shall be null and void. Neither the City Council, or any officer or employee of the City when acting in his or her official capacity, shall (i) take any action which would directly or indirectly result in the authorization, approval or installation of any red light camera or other automated traffic infraction detector system in the City of Brooksville; or (ii) acquiesce or concur in any action or decision of any other governmental agency or governmental official having jurisdiction concerning such red light cameras where a protest or objection procedure is available to the City and where failure to so protest or object could result in the authorization, approval, or installation of any red light camera or other automated traffic infraction detector system in the City of Brooksville; or (iii) approve, authorize, execute or enter into any agreement or understanding, or take any other action of any nature whatsoever, which would authorize, approve, or in any way facilitate or result in the installation of any red light camera or other automated traffic infraction detection system in the City of Brooksville, including, but not limited to, any agreement or understanding relating to the installation of any red light camera or automated traffic infraction detector system which would result in the receipt by the City of any revenue of any kind from such cameras or automated system.

14. That one of the Petitioner's arguments concerning the legality of the proposed charter amendment is that the proposed amendment is both preempted by state law and in conflict with state law.
15. That of relevance to the instant cause is Chapter 316, Florida Statutes, which is known as the Florida Uniform Traffic Control Law.

16. That in relevant part, Chapter 316.002, Florida Statutes, provides that it is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter.
17. That Chapter 316.007, Florida Statutes, provides in relevant part that the provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized.
18. That Chapter 316.0076, Florida Statutes, provides that regulation of the use of cameras for enforcing provisions of this chapter is expressly preempted to the state. The regulation of the use of cameras for the enforcing the provisions of this chapter (316) is not required to comply with provisions of Chapter 493, Florida Statutes.
19. That Chapter 316.008, Florida Statutes, authorizes municipalities to install traffic infraction detectors (red light cameras) within the boundaries of the municipality. Subsection 8 of Chapter 316.008, Florida Statutes, provides that a county or municipality may use traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1. when a driver fails to stop at a traffic signal on streets and highways under its jurisdiction under s. 316.0083. Only a municipality may install or authorize the installation of any such detectors within the incorporated area of the municipality.
20. That also of relevance to a determination by the Court is Chapter 166, Florida Statutes.
21. That Chapter 166.021(3), Florida Statutes, provides in relevant part that the legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art.

VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except (c) "any subject expressly preempted to state or county government by the constitution or by general law".

22. That Chapter 166.031(1), Florida Statutes, which pertains to charter amendments, provides that the governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.
23. That Chapter 166.031(3), Florida Statutes, provides in relevant part that a municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary.
24. That the proposed charter amendment as drafted conflicts with Chapter 166.031(1), Florida Statutes, and violates the Municipal Home Rule Powers Act. The proposed charter amendment if passed would remove or eliminate the power of the Brooksville city council to take any action that may result in the authorization of the use of red light cameras in the future. For example, the Brooksville city council would be prohibited from submitting to the electors of the city by ordinance a proposed charter amendment authorizing the use of red light cameras in the future. However, the explicit language of Chapter 166.031(1),

Florida Statutes, allows for the governing body of a municipality by ordinance to submit to the electors of a municipality a proposed amendment to the charter.

This power granted to the governing body of a municipality to propose a charter amendment is in addition to the power of the electors of a municipality to propose a charter amendment pursuant to Chapter 166.031(1), Florida Statutes.

25. That Black's Law Dictionary, Ninth Edition, defines regulation as "the act or process of controlling by rule or restriction".
26. That the proposed charter amendment is an attempt to regulate the use of red light cameras within the City of Brooksville. However, regulation of the use of red light cameras has been preempted to the state. Chapter 316.0076, Florida Statutes; Masone v. City of Aventura, No. SC12-644 (2014); City of Orlando v. Udowychenko, No. SC-1471 (2014); Sarasota Alliance v. Browning, 28 So.3d 880 (Fla. 2010). If passed the charter amendment would prohibit the use of red light cameras in the City of Brooksville now and in the future, prohibit a city official from taking any action that would directly or indirectly result in the use of red light cameras within the City of Brooksville, and require city officials to act affirmatively to prevent the use of red light cameras in the City of Brooksville.
27. That the proposed charter amendment, if passed, would allow the City of Brooksville to regulate on matters covered by Chapter 316, Florida Statutes, without having been given legislative authority to do so. See Chapter 316.007, Florida Statutes.
28. That as Florida Supreme Court recognized in Masone v. City of Aventura, supra, the history of Florida traffic law supports the conclusion that these statutes (Chapter 316, Florida Statutes) should be strictly construed to effectuate their purpose. Any attempt by a local government to circumvent Chapter 316, whether

by ordinance or contract, is invalid unless expressly authorized by the legislature.

City of Hollywood v. Arem, Case No. 4D12-1312 (Fla. 4th DCA 2014).

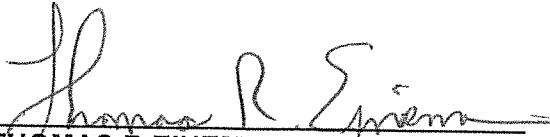
29. That in addition to the above, the State of Florida has authorized the use of red light cameras within municipalities to help enforce traffic laws. See Chapter 316.008, Florida Statutes. The passage of the proposed charter amendment would make red light cameras illegal in the City of Brooksville, i.e., the charter amendment would make illegal that which the State of Florida has made legal. City of Palm Bay v. Wells Fargo Bank, N.A., 114 So.3d 924 (Fla., 2013). This a city or municipality may not do. Even in those areas or matters where concurrent state and municipal regulation is permitted because the state has not preemptively occupied a regulatory field, a municipality's concurrent legislation must not conflict with state law. Brennan v. City of Miami, Case No. 3D12-3059 (Fla. 3d DCA 2014).
30. That based upon the matters contained above, the Court need not reach the merits of the other matters or arguments contained within the Petitioner's Amended Verified Motion for Summary Judgment and the Respondents' Motion for Partial Judgment on the Pleadings.

NOW THEREFORE, It is ORDERED and ADJUDGED as follows:

1. That this Court has jurisdiction of this cause of action and of the parties hereto.
2. That the City of Brooksville's Amended Verified Motion for Summary Judgment is hereby granted.
3. That the Respondents' Motion for Partial Judgment on the Pleadings is hereby denied.

4. That this Court retains jurisdiction of this cause of action and of the parties hereto for the entry of such further orders as are necessary or expedient to effectuate the terms of this Order.

DONE AND ORDERED in Chambers in Brooksville, Hernando County, Florida, this 24th day of October, 2014.


THOMAS R. EINEMAN
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the addresses listed below, by U.S. Mail, on 27 day of October, 2014.

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