IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 14, 2002 Session

TOWN OF NOLENSVILLE v. RONALD M. KING

Appeal from the Circuit Court for Williamson County
No. I-99517 Russ Heldman, Judge

No. M2001-02572-COA-RM-CV - Filed December 19, 2003

This appeal arises from the enforcement of the Town of Nolensville's ordinance outlawing the storage of abandoned or unusable automobiles and storage trailers within its city limits. After the Nolensville City Court entered a judgment against him for $18,600 for repeated, flagrant violations of the ordinance, a town resident petitioned the Circuit Court for Williamson County for a common-law writ of certiorari seeking to set aside the city court's judgment because he had been deprived of his right to a jury trial. The trial court granted the writ and set aside the city court's judgment based on its conclusion that Tenn. Const. art. VI, § 14 guarantees the right to a jury trial for fines in excess of fifty dollars. After this court vacated the trial court's order, the resident filed a Tenn. R. App. P. 11 application with the Tennessee Supreme Court. The Court granted the application and remanded the case to this court with directions to reconsider the case in light of *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). We have determined that the resident was not deprived of his right to have a jury assess his fine because Tenn. Code Ann. § 27-5-101 (2000) affords him an absolute right to a de novo trial in circuit court where he may obtain a jury trial if he wants one.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Robert J. Notestine, III, Nashville, Tennessee, for the appellant, Town of Nolensville.

John E. Herbison, Nashville, Tennessee, for the appellee, Ronald M. King.

OPINION

I.

In 1998, the Board of Mayor and Aldermen of the Town of Nolensville enacted an ordinance to promote the health, safety, and welfare of the city's residents. The ordinance, as later amended, bans "plac[ing] or allow[ing] any abandoned or unusable automobiles, motor vehicles, or storage trailers to be stored or lodged on real property" within the city limits. The ordinance also provides that persons who violate the ordinance face a penalty of up to five hundred dollars for each offense and that each day the violation continues constitutes a separate offense.

On April 14, 1999, Ronald M. King was cited for storing nine inoperative vehicles, one semi-trailer, and several piles of assorted scrap and wooden pallets on his property. On April 24, 1999, the Nolensville City Court fined Mr. King $50 for violating the ordinance but suspended the fine for thirty days to give him an opportunity to clean up his property. Mr. King paid no heed, and on May 29, 1999, he was cited again for the same violation. At a second hearing on June 26, 1999, the city court again found Mr. King guilty of violating the ordinance but continued the proceeding for sixty days after Mr. King promised to clean up his property. The city court specifically stated that the case against Mr. King would be dismissed if he cleaned up his property within sixty days as he promised.

The city court conducted a third hearing on August 28, 1999. After determining that Mr. King had not fulfilled his commitment to bring his property into compliance, the city court determined that he had violated the ordinance for sixty-two days. The trial court also determined that Mr. King should pay $300 for each separate violation. Because the ordinance provided that each day of non-conformance was a separate violation, the city court awarded the Town of Nolensville a judgment against Mr. King for $18,600.

Mr. King pursued two, seemingly inconsistent, judicial remedies on September 8, 1999. First, he perfected a de novo appeal from the city court's judgment in the Circuit Court for Williamson County pursuant to Tenn. Code Ann. § 27-5-101 (2000). Four minutes later, Mr. King filed a petition for common-law writ of certiorari in the Circuit Court for Williamson County, requesting the reversal of the city court's $18,600 judgment because he had been denied his constitutional right to have a jury assess his monetary penalty in the city court.[1]

The trial court conducted a hearing on Mr. King's certiorari petition on October 11, 1999. Later, on November 12, 1999, the court filed a memorandum opinion and order granting Mr. King's petition, vacating the city court's $18,600 judgment, and remanding the case to the city court for the entry of a judgment not to exceed $50. The trial court based the decision on its conclusions that Mr. King was entitled to a jury trial in proceedings where the penalty could exceed $50 and that Mr. King had not waived his right to a jury trial in the city court proceedings. The trial court also dismissed Mr. King's de novo appeal without prejudice at the request of Mr. King's counsel.

The Town of Nolensville appealed to this court. On September 14, 2000, we filed an opinion vacating the trial court's order granting the petition for writ of certiorari. Consistent with the precedent established in *Barrett v. Metropolitan Gov't*, No. M1999-01130-COA-R3-CV, 2000 WL 798657, at *2 (Tenn. Ct. App. June 22, 2000),[2] we held that the city court proceedings did not violate Tenn. Const. art. VI, § 14 because the monetary assessment for violating the ordinance was not a "fine." We also held that the proceeding did not defeat or impair Mr. King's right to a jury trial because he could easily have obtained a jury trial by pursuing the de novo appeal he had already perfected in accordance with Tenn. Code Ann. § 27-5-101. *Town of Nolensville v. King*, No.

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[1] Curiously, even though Mr. King had already perfected a de novo appeal from the city court's judgment, he asserted in his petition for common-law writ of certiorari that he was "otherwise without a plain, speedy or adequate remedy."

[2] The *Barrett* decision was later reversed by the Tennessee Supreme Court. *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001).

M1999-02512-COA-R3-CV, 2000 WL 1291984, at *2 (Tenn. Ct. App. Sept. 14, 2000), *perm. app. granted* (Tenn. Oct. 22, 2001).

Mr. King filed a Tenn. R. App. P. 11 application with the Tennessee Supreme Court from our opinion. The Court granted the application and, on October 22, 2001, remanded the case with directions to reconsider our September 14, 2000 opinion in light of *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). Thereafter, we directed the parties to submit supplemental briefs and heard oral argument regarding the application of the *City of Chattanooga v. Davis* decision to this case.

II.

Proceedings to enforce municipal ordinances have long been considered to be civil actions "in the nature of actions for debt." *Briggs v. City of Union City*, 531 S.W.2d 106, 107 (Tenn. 1975); *Metropolitan Gov't v. Allen*, 529 S.W.2d 699, 707 (Tenn. 1975); *O'Dell v. City of Knoxville*, 214 Tenn. 237, 239, 379 S.W.2d 756, 758 (1964). Accordingly, for at least the past four decades, the courts held that the Fifty Dollar Fines Clause in the Tennessee Constitution did not apply to these proceedings because a monetary assessment for violating a municipal ordinance was not a "fine" under Tenn. Const. art. VI, § 14. Judge, later Justice, Chester Chattin explained that there was a "marked distinction in the meaning of the word 'penalty' . . . and the word 'fine'" and that "while a fine is always a penalty, a penalty is not always a fine." *O'Dell v. City of Knoxville*, 54 Tenn. App. 59, 63, 388 S.W.2d 150, 152 (1964).

The Tennessee Supreme Court has now repudiated this court's rationale in *O'Dell v. City of Knoxville* that courts do not impose punitive sanctions in civil proceedings. Noting that civil proceedings may impose sanctions that are so punitive in form or effect as to trigger constitutional protections, the Court held that "proceedings involving the violation of a municipal ordinance may be subject to the limitations of Article VI, section 14 when either the intended purpose or the actual purpose or effect of the monetary assessment is to serve as a punitive measure." *City of Chattanooga v. Davis*, 54 S.W.3d at 256. To aid in the application of its decision, the Court devised an elaborate analysis for determining whether a particular ordinance is remedial or punitive and whether the actual purpose or effect of a particular monetary assessment for violating an ordinance is punitive.

The first step of the Court's analysis is to determine whether the intended purpose of the monetary assessment is primarily punitive or remedial.[3] This inquiry begins with the text of the ordinance because the purpose and intent of the legislative body enacting the ordinance is reflected in the language of the ordinance itself.[4] Express statements of intent are "especially relevant" in this

[3] *City of Chattanooga v. Davis*, 54 S.W.3d at 263, 265, 266, 267.

[4] *City of Chattanooga v. Davis*, 54 S.W.3d at 265.

regard.[5] The court must also examine the substance of the ordinance rather than its form.[6] If, based on this textual examination, the court determines that the intended purpose of the ordinance is primarily punitive, the Fifty Dollar Fines Clause in Tenn. Const. art. VI, § 14 applies. If the court determines that the ordinance is primarily remedial, it must proceed to the second step of the analysis.

At the second step, if the court determines that the primary purpose of an ordinance is remedial, it must then determine whether the monetary assessment actually imposed for violating the ordinance is remedial in its actual purpose or effect.[7] This inquiry requires the court to examine the actual purpose and effect of the monetary assessment in the context of the entire "statutory scheme" and to determine "whether the totality of the circumstances demonstrates that the statutory scheme truly envisions the pecuniary sanction as serving to remedy or to correct a violation."[8] In this regard, the Court observed that monetary assessments serve remedial purposes in only limited circumstances[9] and that a monetary assessment will be considered punitive if its only remedial purpose is general deterrence.[10]

Thus, a monetary assessment that is "fixed" and "determinant [sic]"[11] will generally trigger the application of the Fifty Dollar Fines Clause in Tenn. Const. art. VI, § 14. However, a monetary assessment containing a "purge provision" allowing the offender an opportunity to reduce or avoid the fine through compliance will not be considered to be primarily punitive.[12] According to the Court, a purge provision may take one of two forms. First, it may take the form of a fixed and determinate fine that is then "suspended pending future compliance."[13] Second, it may take the form of a fine that is "imposed *per diem*, or for each day of noncompliance with an order or directive."[14]

The effect of the *City of Chattanooga v. Davis* decision was immediate and far-reaching. Because most local governments enforced their local ordinances in either municipal or general sessions courts, enforcement proceedings in all but the most trivial matters were affected because

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[5] *City of Chattanooga v. Davis*, 54 S.W.3d at 266.

[6] *City of Chattanooga v. Davis*, 54 S.W.3d at 261.

[7] *City of Chattanooga v. Davis*, 54 S.W.3d at 264, 269.

[8] *City of Chattanooga v. Davis*, 54 S.W.3d at 265.

[9] *City of Chattanooga v. Davis*, 54 S.W.3d at 270.

[10] *City of Chattanooga v. Davis*, 54 S.W.3d at 271.

[11] *City of Chattanooga v. Davis*, 54 S.W.3d at 272.

[12] *City of Chattanooga v. Davis*, 54 S.W.3d at 272.

[13] *City of Chattanooga v. Davis*, 54 S.W.3d at 272.

[14] *City of Chattanooga v. Davis*, 54 S.W.3d at 272.

these courts could not empanel juries.[15] Therefore, the Fifty Dollar Fines Clause in Tenn. Const. art. VI, § 14 prevented them from imposing fines in excess of fifty dollars for each offense unless the defendant waived his or her right to have the fine determined by a jury. Despite the Court's caution that constitutional protections should not be converted "into obstacles that prevent the enactment of honestly-motivated remedial legislation,"[16] one commentator predicted that the *City of Chattanooga v. Davis* decision would "become an effective weapon in the arsenals of clever defense attorneys for attacking the validity of fines imposed upon their clients for violating city or county ordinances and codes." Doug Hamill, Comment, *The Fifty Dollar Fines Clause Re-Emerges After Thirty-Five Years of Slumber*, 70 Tenn. L. Rev. 887, 897 (2003).

The Tennessee General Assembly, recognizing that the Fifty Dollar Fines Clause had become outmoded, had started the process to amend Tenn. Const. art. VI, § 14 in 2000. It proposed to replace the fifty dollar cap with one legislatively set. While *City of Chattanooga v. Davis* wended its way though the appellate courts, both the 101st and 102nd General Assemblies approved the proposed amendment,[17] and it was presented to the voters on November 5, 2002. The amendment fell 124,150 votes short of ratification.[18] Even though 53% of the persons who voted on the amendment approved it, the amendment was not ratified because ratification required a majority of the number of votes cast in the governor's race.[19]

III.

We now turn to the text of Nolensville's amended ordinance to determine whether the ordinance is primarily punitive or remedial. This inquiry bears little fruit because, unlike the Chattanooga and Nashville ordinances construed in *City of Chattanooga v. Davis*, this ordinance contains no language clearly pointing in one direction or the other. It does not use terms like "punish," "conviction," misdemeanor," or "unlawful" that prompted the Court to conclude that the Chattanooga ordinance was primarily punitive. Likewise, the record contains no other legislative history that might shed additional light on the ordinance's purpose.

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[15] *City of Chattanooga v. Davis*, 54 S.W.3d at 251, 267, 273.

[16] *City of Chattanooga v. Davis*, 54 S.W.3d at 263.

[17] Resolution of June 7, 2000, Sen. J. Res. 629, 2000 Tenn. Priv. Acts & Res. 604; Resolution of May 1, 2002, Sen. J. Res. 555, 2002 Tenn. Priv. Acts & Res. 1014-15.

[18] See http://www.state.tn.us/sos/election/results/2002-11/amendments.pdf. The amendment required 826,584 votes for ratification; it received only 702,434.

[19] Tenn. Const. art. XI, § 3.

When Nolensville's Board of Mayor and Aldermen enacted this ordinance, it was exercising its authority to promote the health, safety, and welfare of the town's residents.[20] In addition to defining and describing the undesirable conduct, the ordinance provided that

> [v]iolations of this chapter shall . . . subject the offender to a penalty of up to five hundred dollars ($500.00) for each offense. Each day a violation is allowed to continue shall constitute a separate offense.

We cannot say that the language of this ordinance, on its face, requires us to conclude that the ordinance is primarily punitive. It does not criminalize violations, and it contains no provision for incarceration. The terms "violation," "offender," and "offense" are far more neutral than the terms "punish," "conviction," "unlawful," and "misdemeanor" found in Chattanooga's ordinance. As best we can tell from this record, the primary purpose of Nolensville's ordinance is to preserve a wholesome, healthful, and pleasant living environment for its residents. Accordingly, mindful of the Court's admonition against erecting obstacles that prevent the enactment and enforcement of honestly motivated remedial measures, we find that the purpose of Nolensville's ordinance at issue in this case is not primarily punitive.

The *City of Chattanooga v. Davis* test requires us to press onward to consider whether the fine imposed on Mr. King was remedial in purpose or effect. Because it is a "fixed" and "determinate" monetary assessment that does not have one of the remedial purposes recognized by the Tennessee Supreme Court,[21] we have no choice other than to conclude that the $18,600 monetary assessment's actual purpose and effect is punitive unless it contains a purge provision. There is no question that both the April 24, 1999 and the June 26, 1999 orders would not have been considered punitive under the Tennessee Supreme Court's test because the city court suspended the monetary assessments "pending future compliance." However, the third order issued on August 28, 1999 was not suspended to give Mr. King a chance to comply. It was simply a judgment against him for $18,600 – no more, no less.[22]

Likewise, the August 28, 1999 order does not impose a "per diem" penalty on Mr. King. While the total amount of the monetary assessment was based on the number of days of noncompliance by Mr. King, its total amount was fixed, and it did not provide for increasing monetary assessment for each day Mr. King remained in non-compliance.

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[20] Nolensville's Charter gave the Board of Mayor and Aldermen the authority to "prohibit, abate, suppress, prevent and regulate all acts . . . [and] use of property . . . detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality" and to "inspect all buildings, lands and places as to their condition for health, cleanliness and safety, and when necessary, prevent their use and require any alteration or changes necessary to make them healthful, clean or safe." NOLENSVILLE, TN., CHARTER § 6-2-201(22), (25) (2002), found at http://www.mtas-notes.ips.utk.edu/public/CHARTERS.NSF/dbf38d8c0544e08485256893007160 3e/3bca190f00d55167852568cc0061db57/$FILE/Nolensville.cht.pdf.

[21] *City of Chattanooga v. Davis*, 54 S.W.3d at 270.

[22] The municipal court determined that Mr. King had not complied with the ordinance for sixty-two days and fined him $300 for each day of non-compliance.

We have no doubt that the municipal court in this case was primarily trying to induce Mr. King to comply with the ordinance by cleaning up his property. However, because of the strict, unbending requirements in *City of Chattanooga v. Davis*, we have no alternative other than to conclude that the actual purpose and effect of the August 28, 1999 order imposing a $18,600 monetary assessment on Mr. King was primarily intended to punish him for violating Nolensville's ordinance proscribing storing abandoned vehicles and trailers on his property.

IV.

If the municipal court hearing were the only trial available to Mr. King, our inquiry would end at this point. Because Mr. King could not have obtained a jury trial in municipal court,[23] any fine imposed in the municipal court in excess of fifty dollars for each offense would violate Tenn. Const. art. VI, § 14. However, the trial in municipal court was not the only trial available to Mr. King. It was only the first trial in a two-tier proceeding. If Mr. King was dissatisfied with the results of the hearing in municipal court, Tenn. Code Ann. § 27-5-101 gave him an absolute right to a de novo appeal to circuit court where he is entitled to have a jury to determine whether he violated the ordinance and to assess the amount of his monetary penalty. Thus, the remaining question to be answered is whether affording Mr. King a jury trial as of right on the de novo appeal to circuit court satisfies Tenn. Const. art. VI, § 14.

In our first decision in this case, we held that even if Tenn. Const. art. VI, § 14 applied to these proceedings, Mr. King's right to have a jury determine his monetary assessment was not impaired or denied because he could demand a jury as of right on a de novo appeal to the circuit court pursuant to Tenn. Code Ann. § 27-5-101. *Town of Nolensville v. King*, 2000 WL 1291984, at *2. We based our decision on our earlier decision in *Barrett v. Metropolitan Gov't*, in which we had held that the availability of a jury trial in circuit court satisfied the requirements of Tenn. Const. art. VI, § 14. *Barrett v. Metropolitan Gov't*, 2000 WL 798657, at *2. The Tennessee Supreme Court's reversal of our decision in *Barrett v. Metropolitan Gov't* rested exclusively on its conclusion that we erred by holding that Tenn. Const. art. VI, § 14 did not apply because the monetary assessment was not a "fine."

Once the Tennessee Supreme Court has addressed an issue, its decision regarding that issue is binding on the lower courts. *State v. Irick*, 906 S.W.2d 440, 443 (Tenn. 1995); *Payne v. Johnson*, 2 Tenn. Cas. (Shannon) 542, 543 (1877). Thus, the Court's decisions construing constitutional questions must be followed in the absence of cogent reasons to the contrary. *Humphries v. Manhattan Sav. Bank & Trust Co.*, 174 Tenn. 17, 25, 122 S.W.2d 446, 449 (1938); *Schultz' Estate v. Munford*, 650 S.W.2d 37, 39 (Tenn. Ct. App. 1982). The lower courts must also follow the Court's dictum, particularly when the Court is seeking to give guidance to the bench and bar. *Holder v. Tennessee Jud. Selection Comm'n*, 937 S.W.2d 877, 882 (Tenn. 1996).

[23] *City of Chattanooga v. Davis*, 54 S.W.3d at 251, 267, 273.

While the Court alluded to our alternative holding in *City of Chattanooga v. Davis*,[24] it did not address the issue head on. We have examined the briefs and record filed with the Court to ascertain the reasons for the Court's silence and have determined that the Court did not address the question because the parties did not raise it. Appellate courts, including the Tennessee Supreme Court, do not, as a general matter, address issues that have not been presented to them. Tenn. R. App. P. 13(b). It is, therefore, understandable that the Court chose to focus its attention only on the issues that were actually briefed and argued.

Constitutional rights are not defined by mere inferences in judicial opinions that did not address the constitutional question at issue. *Texas v. Cobb*, 532 U.S. 162, 169,121 S. Ct. 1335, 1341 (2001). Thus, constitutional questions lurking in a record that have not been brought to the Court's attention or ruled upon by the Court should not be considered as having been decided. *KVOS, Inc. v. Associated Press*, 299 U.S. 269, 279, 57 S. Ct. 197, 201 (1936); *State ex rel. Harbin v. Dunn*, 39 Tenn. App. 190, 210, 282 S.W.2d 203, 212 (1943). Because the Tennessee Supreme Court did not decide in *City of Chattanooga v. Davis* whether providing a violator of a non-penal municipal ordinance with a jury trial on a de novo appeal pursuant to Tenn. Code Ann. § 27-5-101 satisfies the Fifty Dollar Fines Clause, we have determined that the question remains open.

V.

In addition to its affinity with the Excessive Fines Clause in Tenn. Const. art. I, § 16,[25] the Fifty Dollar Fines Clause is closely related to the right to trial by jury protected by Tenn. Const. art. I, §§ 6 & 9. Both constitutional safeguards serve a common purpose – to prevent the possibility of oppression by the government in the form of overzealous prosecutors or judges. *Duncan v. Louisiana*, 391 U.S. 145, 155-56, 88 S. Ct. 1444, 1451 (1968); *Upchurch v. State*, 153 Tenn. 198, 205, 281 S.W. 462, 464 (1926); THE FEDERALIST No. 83, at 543-44 (Alexander Hamilton) (Bicentennial ed. 1976); Akbil R. Amar, *The Bill of Rights as a Constitution*, 100 Yale L.J. 1131, 1182-83 (1991). Thus, the precedents regarding the right to a jury trial provide us helpful guidance for the application of Tenn. Const. art. VI, § 14.

Two-tiered proceedings for adjudicating simple matters have been commonplace since the earliest years of our Nation and State. The first tier proceeding involves a trial before a local magistrate, justice of the peace, or judge. Generally, it does not provide all of the procedures and safeguards that are commonplace in state courts of record. There is no formal discovery similar to that available in circuit court; there is no motion practice; the proceedings are generally not transcribed; and there are no juries.

The second tier proceeding involves a de novo appeal to a court of record. In Tennessee's case, the de novo appeal is to the circuit court. A de novo appeal wipes the slate clean. The case begins anew, exactly as if it had been brought in the court of record in the first place. Second tier proceedings must be conducted in conformance with the Tennessee Rules of Civil Procedure, as well

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[24] *City of Chattanooga v. Davis*, 54 S.W.3d at 256.

[25] *France v. State*, 65 Tenn. 478, 485 (1873).

as the other statutory and constitutional procedures and safeguards normally associated with state courts of record.

Two-tiered proceedings benefit the parties and conserve judicial resources. In these days of increased burdens on state judges and the rising litigation costs and delays in state courts, the first tier trial provides a speedier and less costly adjudication of simple disputes that would not be possible in state courts of record. *See Colten v. Kentucky*, 407 U.S. 104, 114, 92 S. Ct. 1953, 1959 (1972).

Expediency and convenience, however, do not provide sound reasons for depriving or impairing a party's constitutional rights. *Caudill v. Mrs. Grissom's Salads, Inc.*, 541 S.W.2d 101, 106 (Tenn. 1976). The constitutionality of two-tier proceedings has, accordingly, been challenged on the ground that litigants who do not receive all their constitutional rights during the first tier trial should not be required to wait until the second tier trial to obtain the benefits of these rights. These challenges have generally been unsuccessful. The United States Supreme Court has held that two-tier proceedings do not violate the Due Process Clause of the Fourteenth Amendment or the Double Jeopardy Clause of the Fifth Amendment, even though a greater penalty could be imposed in the trial de novo than might have been imposed at the first tier proceeding. *Colten v. Kentucky*, 407 U.S. at 119-120, 92 S. Ct. at 1961-62.

The courts have also held consistently that two-tier proceedings that do not offer a jury trial at the first tier do not violate or impermissibly burden a litigant's right to a trial by jury, as long as the litigant has an absolute right to a jury during the second tier proceeding. *Ludwig v. Massachusetts*, 427 U.S. 618, 626, 96 S. Ct. 2781, 2786 (1976).[26] The Tennessee Supreme Court has likewise held on three occasions that a two-tier proceeding does not impair a litigant's right to a jury trial protected by Tenn. Const. art. I, § 6, as long as the litigant is afforded a right to a jury trial during the second tier proceeding. *Pryor v. Hays*, 17 Tenn. (9 Yer.) 416, 417-18 (1836); *Morford v. Barnes*, 16 Tenn. (8 Yer.) 444, 446 (1835); *Thompson v. Gibson*, 2 Tenn. (2 Overt.) 235, 235-36 (1814).

In addition, both the Tennessee Supreme Court and this court have, at least implicitly, found no fault with the two-tier juvenile delinquency proceedings. Juveniles facing delinquency charges that would otherwise be considered felonies have a right to a jury trial. *State v. Strickland*, 532 S.W.2d 912, 921 (Tenn. 1975) (approving this court's *Arwood v. State* decision); *Arwood v. State*, 62 Tenn. App. 453, 457-58, 463 S.W.2d 943, 946 (1970). However, these juveniles need not be given a jury trial in juvenile court, as long as they have a right to a jury trial on de novo appeal to circuit court. *See State v. Johnson*, 574 S.W.2d 739, 741 (Tenn. 1978) (holding that a juvenile who had not waived his or her right to a jury trial was entitled to a jury trial on the de novo appeal to circuit court).

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[26] *See also State ex rel. Fuller v. Mullinax*, 269 S.W.2d 72, 77 (Mo. 1954); *Opinion of the Justices*, 304 A.2d 881, 887 (N.H. 1973); *Gaskill v. Commonwealth*, 144 S.E.2d 293, 296 (Va. 1965); *City of Bellingham v. Hite*, 225 P.2d 895, 898-99 (Wash. 1950).

The Tennessee Supreme Court has invalidated two-tier proceedings only when they involved possible confinement or loss of liberty. In 1980, a deeply divided Court held that permitting non-lawyer juvenile court judges to preside over delinquency proceedings violated Tenn. Const. art. I, § 8 if the proceedings could result in confinement or the loss of liberty, even though the juvenile had the right to a de novo appeal and a trial in circuit court before a judge who was a lawyer. *State ex rel Anglin v. Mitchell*, 596 S.W.2d 779, 791, 796 (Tenn. 1980).[27] Eighteen years later, a divided Court reached the same conclusion with regard to adults accused of a criminal offense punishable by incarceration. The Court held that these persons are "entitled to a determination of his [or her] status with the full panoply of rights designed to achieve justice at the earliest hearing on the merits." *City of White House v. Whitley*, 979 S.W.2d 262, 268 (Tenn. 1998).

As we construe the Tennessee Supreme Court's decisions, a litigant is entitled to the "full panoply of [his or her] rights . . . at the earliest hearing on the merits" only when he or she faces incarceration or loss of liberty. If confinement is not involved, providing a litigant with the full panoply of his or her constitutional rights at the second tier of a two-tier proceeding may be constitutionally permissible as long as two conditions are met. First, requiring the litigant to wait until the second tier trial must not undermine the constitutional safeguard's essential purpose. Second, the litigant must not be materially prejudiced by not being afforded the full panoply of his or her rights at the first tier trial.

VI.

This case does not involve confinement because Nolensville's remedial ordinance does not criminalize conduct. While it envisions the imposition of monetary assessments for violations of the ordinance, it does not provide for incarceration. Accordingly, the only remaining questions are whether providing Mr. King with a right to have a jury determine his monetary assessment at the second tier trial will frustrate the purpose of the Fifty Dollar Fines Clause and whether Mr. King will be materially prejudiced by being required to wait until the second tier trial to have a jury determine whether he has violated the ordinance and, if he has, the amount of his fine. We have determined that the answer to both questions is no.

With regard to the first question, affording Mr. King the opportunity for a jury trial on his de novo appeal to circuit court is entirely consistent with the purpose of Tenn. Const. art. VI, § 14. The sole purpose of the Fifty Dollar Fines Clause is to insulate litigants from the imposition of excessive fines by judges. This purpose is served in a two-tier proceeding because persons like Mr. King who violate remedial ordinances will not be required to pay any monetary assessment until a jury determines that they violated the ordinance and the amount of their monetary assessment.[28]

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[27] The Court reached this decision despite the fact that the United States Supreme Court, construing the Due Process Clause of the Fourteenth Amendment, reached a different conclusion. *North v. Russell*, 427 U.S. 328, 96 S. Ct. 2709 (1976).

[28] This is a significant factual difference between the facts of this case and *State ex rel. Anglin v. Mitchell* where the Court pointed out that an appeal to circuit court from an adjudication of delinquency did not suspend the juvenile court's order or operate to release the juvenile from custody pending appeal. *State ex rel. Anglin v. Mitchell*, 596 S.W.2d (continued...)

Persons who do not pursue a de novo appeal to circuit court would be required to pay the monetary assessment imposed in the municipal court or general sessions court. Parties may waive their rights under Tenn. Const. art. VI, § 14. *State v. Durso*, 645 S.W.2d 753, 759 (Tenn. 1983).[29] Accordingly, in civil proceedings such as this one that do not involve a punitive ordinance, a party who is aware of its right to a de novo appeal but who fails to pursue one should be deemed to have waived its rights under the Fifty Dollar Fines Clause.

With regard to the second question, the two-tier proceeding available to Mr. King does not materially prejudice his substantive or procedural rights. At his option, he may either vigorously oppose or not contest the citation in the municipal court. If he prevails in municipal court, or is otherwise satisfied with the results, the proceeding is over – most likely more quickly and less expensively than if it had been filed originally in circuit court. If, however, he does not prevail, he may perfect a de novo appeal to circuit court. This appeal suspends the monetary assessment imposed in the municipal court and wipes the slate clean. The city must prove its case again, and on this occasion, Mr. King has all the procedural and substantive rights available to him, including the right to discovery under the Tennessee Rules of Civil Procedure, the right to have a jury determine whether he has violated the ordinance, and the right to have the jury determine the amount of the monetary assessment for the violation.

We adhere to our original holding that Mr. King has not been deprived of his right guaranteed by Tenn. Const. art. VI, § 14 to have a jury determine the amount of the monetary assessment for violating Nolensville's ordinance because he had an absolute right to a jury trial by perfecting a de novo appeal pursuant to Tenn. Code Ann. § 27-5-101. Mr. King perfected a timely de novo appeal to the Circuit Court for Williamson County and made a timely demand for a jury trial pursuant to Tenn. R. Civ. P. 38.03. Even though he voluntarily dismissed his de novo appeal after the trial court granted his certiorari petition, we have determined that he should not be held to this decision now in light of the unsettled legal issues existing at the time the decision was made. Mr. King would not have voluntarily dismissed his de novo appeal had the trial court denied his certiorari petition . Now that we have reversed the trial court's decision to grant his petition for common-law writ of certiorari, Mr. King should be afforded the opportunity to pursue his de novo appeal.

VII.

We vacate the November 12, 1999 order granting Mr. King's petition for writ of common-law certiorari and dismissing his de novo appeal without prejudice at his request and remand the case to the trial court for further proceedings consistent with this opinion. We tax the costs of this appeal to Ronald M. King for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., J.

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[28](...continued)
at 784. In this case, perfecting a de novo appeal to circuit court stays the order imposing the fine.

[29]*State v. Durso* overruled *Metzner v. State*, 128 Tenn. 45, 47, 157 S.W. 69, 70 (1913) that had held that Tenn. Const. art. VI, § 14 was a jurisdictional limitation.