RENDERED: April 25, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000899-MR

CITY OF PEWEE VALLEY, KENTUCKY — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 01-CI-00400

HOWARD A. FERRIELL AND
LORI J. FERRIELL, HIS WIFE;
AND STAN L. FITCH AND
GERI I. FITCH, HIS WIFE — APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: EMBERTON, CHIEF JUDGE; COMBS AND BARBER, JUDGES.

BARBER, JUDGE: Appellant, City of Pewee Valley (Appellant), appeals the entry of a declaration of rights by the Oldham Circuit Court, in favor of Appellees, Howard and Lori Ferriell and Stan and Geri Fitch, (Appellees).

The City enacted an ordinance on October 9, 1998, providing standards for the installation of driveways and

culverts on public property. Under the terms of the ordinance, the City limited its responsibility for the repair or construction of any culvert. The ordinance stated that:

> No person, firm or corporation shall hereafter construct, build, establish or install any culvert on any public street, whether or not maintained by the city, without first having obtained a written permit to do so from the City council member in charge of roads. An application for such permit shall be in writing and shall contain the name and address of the person making application; the name and address of the contractor or person who is to construct said culvert; and the proposed location and dimensions of said culvert.

Ordinance 10, Series 1998. An addition to the ordinance was made at a later date in Ordinance 8, Series 1999, adding that the City could "assess an appropriate fee" for construction of any culvert. The City proposed that any such fee would be used for "maintaining streets and roadways within the City".

The Appellees filed suit for a declaration of rights against the City challenging the ordinance and requesting a return of the fees paid under the ordinance. Appellees asserted that the fees charged were improperly generating revenue for the City in violation of Section 180 and 181 of the Kentucky Constitution. The parties briefed their positions before the trial court and participated in a hearing. The trial court entered an order ruling on the declaration of rights action filed by the Appellees.

The City argues on appeal that a motion for summary judgment was required before the trial court could enter any declaration of rights. The City claims that as Appellees had not filed a motion for summary judgment, a finding in their favor was in error. The order entered by the trial court stated that all issues had been fully briefed, and that a hearing had been conducted. In the Order overruling the City's motion to alter, amend or vacate on this ground, the trial court stated that "the case was in a posture for final resolution" at the time of entry of the order.

We find nothing in the record showing that judgment was prematurely entered, as all parties had been given ample opportunity to present relevant facts and issues to the trial court. The trial court had required all parties to respond to pending motions and to address all summary judgment issues. Briefs had been filed by all parties in accordance with the trial court's directive. Following briefing, a hearing was held. KRS 418.015 permits entry of a declaratory judgment "upon or without written pleadings" and holds in pertinent part that "the judgment shall be given according to law and the rules of equity." We find that the trial court's order was not untimely or improvidently entered.

The City asserts that the ordinance regulating driveway and culvert construction was permissible under KRS

82.082, the Kentucky "home rule" statute. This statute provides that:

> A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of Kentucky, that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute.

The City claims that it established a reasonable basis for the law by showing that driveway and culvert construction in accordance with the ordinance would decrease the maintenance costs of the City and would insure the quality of roadways in the City. KRS 82.082 permits a city to expend funds for public purposes including maintenance and drainage. An extension of this limited statute to permit imposing a fee for driveways and culverts is beyond the scope of the law.

A Kentucky city is forbidden from acting to generate revenue. Any measure concerning revenue must be strictly construed. City of Erlanger v. KSL Realty Corp., Ky., 704 S.W.2d 649 (1986).

The City complains that the trial court erred by finding that a fee must be imposed fairly and equitably among all those benefited in order to sustain a constitutional challenge. The City argues that KRS 92.280 and KRS 92.281 permit a city to impose property tax on residents on an ad valorem basis, assessing all property by the same standard, and

claims that the ordinance in question was imposed in the same way. The record shows that the fee at issue was not imposed by the same standard on all parties, and hence does not meet the standard of fairness and equity required by Barber v. Commissioner of Revenue, Ky. App., 674 S.W.2d 18, 21 (1984). Appellees argue that there is no causal link between the amount of the fee and the expenditures the City may be required to make to improve the drainage system as a result of the new construction. In fact, the record reflects that the fee was imposed on new property owners and new culverts and driveways, which cause fewer drainage problems and maintenance problems than older culverts.

The record shows that all city residents would benefit from the fees generated if the fees were used for drainage control as promised, but that only a few residents would have to pay the fee, which ranged from $3,000-$5,000. This caused the burden of the fees to fall inequitably on only a few landowners. A fee may properly be charged to residents if it is reasonably related to an increase in costs for the city, and if the fee is proven to be just enough to defray the city's cost of services rendered. Renfro Valley Folks, Inc. v. City of Mt. Vernon, Ky. App., 872 S.W.2d 472, 474 (1993). In the present case there was no evidence supporting the City's claim either that the fee at issue was necessary or was limited to simply defraying the

City's costs. A fee imposed for a "public purpose" must benefit only the public and cannot provide revenue for the city. Historic Licking Riverside Civic Assn. v. City of Covington, Ky., 774 S.W.2d 436, 437 (1989). The fee must be proven to be reasonably related to the burden on the city, and the income to be spent by the city. City of Erlanger v. KSL, Ky., 704 S.W.2d 649 (1884).

Lastly, the City asserts that a hearing on the issue of whether the fee was imposed fairly and equitably was required prior to entry of the trial court's judgment. As the trial court noted in its orders, both parties extensively briefed the case and a hearing was held. The trial court stated that it was sufficiently informed, and we find no abuse of discretion in that determination. For this reason, the declaratory judgment is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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Crestwood, Kentucky

BRIEF FOR APPELLEES, HOWARD D. FERRIELL AND LORI J. FERRIELL:

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BRIEF FOR APPELLEES, STAN L. FITCH, JR., AND GERI L. FITCH:

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