2015 IL App (3d) 140484-U

Order filed November 3, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

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| WILLIAM YOUNG and RICKY E. SLUSHER, on behalf of themselves and all others similarly situated, | ) | Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois, |
| Plaintiffs-Appellants, | ) | |
| v. | ) | Appeal No. 3-14-0484<br>Circuit No. 11-L-157 |
| THE CITY OF PEKIN, a Municipal Corporation, | ) | The Honorable Paul Gilfillan, |
| Defendant-Appellee. | ) | Judge, Presiding. |

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JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held*: Trial court did not err in granting summary judgment to Defendant City of Pekin on all counts of Plaintiffs' class action complaint alleging that City's impoundment ordinance violated state rules, laws and provisions of the Illinois and federal constitutions.

¶ 2 Plaintiffs William Young and Ricky Slusher, whose vehicles were impounded by Defendant City of Pekin, filed a class action complaint on behalf of themselves and others similarly situated, alleging that the City's impoundment ordinance violates state and federal law.

Plaintiffs and the City both filed motions for summary judgment. The trial court granted the City's motion for summary judgment. We affirm.

¶ 3 FACTS

¶ 4 In 2008, the City enacted an impoundment ordinance that allows a police officer to seize a vehicle on City property and have it towed if the officer has probable cause to believe the vehicle has been used in "the possession or delivery of a Controlled Substance or Drug Paraphernalia; *** Driving Under the Influence; *** Driving While License, Permit or Privilege to Operate a Motor Vehicle is Suspended or Revoked; [or] *** the Unlawful Use of Weapons." Pekin City Code, §§ 6-2-11-2, 6-2-11-3 (2008).

¶ 5 The impounded vehicle will be released to its owner if a bond of $500 is posted with the City and all towing and storage costs are paid. Pekin City Code, § 6-2-11-4 (2008). The owner of a seized vehicle can request a preliminary hearing before a City hearing officer within 12 hours of the seizure. Pekin City Code, § 6-2-11-5 (2008). At the hearing, a hearing officer determines if there is probable cause to believe that the vehicle was used in a way set forth in section 6-2-11-2 of the City Code. *Id.*

¶ 6 The owner of the vehicle is automatically given a hearing within 30 days of the seizure. Pekin City Code, § 6-2-11-6 (2008). At the hearing, the hearing officer determines by a preponderance of the evidence if the vehicle was used as provided in section 6-2-11-2 of the City Code. *Id.* "Any party aggrieved by a final decision of the Hearing Officer may appeal that decision pursuant to the *** Illinois Administrative Review Act." Pekin City Code, § 6-2-11-10 (2008).

¶ 7 In 2010, Plaintiff William Young was arrested by a City police officer for driving under the influence (625 ILCS 5/11-501 (West 2010)). The vehicle Young was driving was towed and impounded by the City, pursuant to the City's impoundment ordinance.

¶ 8 The following year, Plaintiff Ricky E. Slusher was arrested for driving under the influence (625 ILCS 5/11-501 (West 2010)) and operating an uninsured vehicle (625 ILCS 5/3-707 (West 2010)). His vehicle was also impounded pursuant to the City's impoundment ordinance.

¶ 9 In 2013, Plaintiffs filed an amended 19-count class action complaint against the City, alleging that its impoundment ordinance is unlawful because it violates state statutes, Illinois Supreme Court Rules, and state and federal constitutional provisions. Defendant filed a motion for summary judgment. Thereafter, Plaintiffs filed a motion for summary judgment. Following hearings on the motions, the trial court granted summary judgment to the City.

¶ 10 ANALYSIS

¶ 11 Summary judgment is proper when the pleadings, depositions, admissions, and affidavits on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *DWG Corp. v. County of Lake*, 2015 IL App (2d) 131251, ¶ 11. When parties file cross-motions for summary judgment, they admit the absence of a genuine issue of material fact and ask the court to decide the questions presented as a matter of law. *Catom Trucking Inc. v. City of Chicago*, 2011 IL App (1st) 101146, ¶ 9. We review *de novo* an order granting summary judgment. *Id*.

¶ 12 I. Statutory Challenges

¶ 13 On appeal, Plaintiffs allege that the City's impoundment ordinance conflicts with Illinois statutory law, specifically (1) section 1-2.1-2 of the Illinois Municipal Code (65 ILCS 5/1-2.1-2

(West 2010)), (2) section 11-207 of the Illinois Vehicle Code (625 ILCS 5/11-207) (West 2010)), and (3) section 3-3 of the Criminal Code of 1961 (720 ILCS 5/3-3 (West 2010)).

¶ 14 A

¶ 15 In count I of their amended complaint, Plaintiffs allege that the impoundment ordinance violates section 1-2.1-2 of the Illinois Municipal Code, which states:

> "Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution. A 'system of administrative adjudication' means the adjudication of any violation of a municipal Ordinance, except for (i) proceedings not within the statutory or the home rule authority of municipalities; and (ii) any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offense under Section 6-204 of the Illinois Vehicle Code." 65 ILCS 5/1-2.1-2 (West 2010).

This provision prohibits "the administrative adjudication of moving violations." *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, ¶ 7; see also *Catom Trucking Inc.*, 2011 IL App (1st) 101146, ¶ 18 ("moving violations *** cannot be administratively adjudicated").

¶ 16 Plaintiffs claim that the impoundment ordinance unlawfully adjudicates Illinois Vehicle Code offenses, which is prohibited by section 1-2.1-2 of the Illinois Municipal Code. We disagree.

¶ 17 The City impoundment ordinance does not adjudicate moving violations. Rather, the ordinance simply sets forth the administrative procedures to be used by the City for towing, impounding and releasing vehicles where the driver is charged with various underlying offenses,

including offenses under the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq*. (West 2010)), as well as the Criminal Code of 1961 (720 ILCS 5/1-1 *et seq*. (West 2010)). While the drivers whose cars are impounded under the City's ordinance will likely be tried for underlying offenses in separate court proceedings, no underlying offenses are adjudicated pursuant to the impoundment ordinance. Thus, the ordinance does not violate section 1-2.1-2 of the Illinois Municipal Code, and the trial court properly granted the City summary judgment on count I of Plaintiffs' amended complaint.

¶ 18 B

¶ 19 In count II of their amended complaint, Plaintiffs allege that the City was prohibited by section 11-207 of the Illinois Vehicle Code from enacting its impoundment ordinance. Section 11-207 of the Illinois Vehicle Code provides:

> "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 rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Chapter, but such regulations shall not be effective until signs giving reasonable notice thereof are posted." 625 ILCS 5/11-207 (West 2010).

¶ 20 Nothing prevents municipalities from exercising authority concurrently with the state as long as the municipal law is not inconsistent with a state statute. *City of Wheaton v. Loerop*, 399 Ill. App. 3d 433, 436 (2010). Municipalities may pass traffic ordinances as long as they do not

conflict with the provisions of Chapter 11 of the Illinois Vehicle Code. *Village of Mundelein v. Franco*, 317 Ill. App. 3d 512, 519 (2000).

¶ 21 No provision of the Pekin impoundment ordinance conflicts with any provision of the Illinois Vehicle Code. Thus, section 11-207 of the Illinois Vehicle Code did not prohibit enactment of the ordinance. The trial court properly granted summary judgment to Defendant on count II of Plaintiffs' amended complaint.

¶ 22 C

¶ 23 Plaintiffs allege in count XIV of their amended complaint that the impoundment ordinance violates section 3-3 of the Criminal Code of 1961. This provision, known as the compulsory joinder rule, states:

> "(a) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense.
>
> (b) If the several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution, except as provided in Subsection (c), if they are based on the same act.
>
> (c) When 2 or more offenses are charged as required by Subsection (b), the court in the interest of justice may order that one or more of such charges shall be tried separately." 720 ILCS 5/3-3 (West 2010).

¶ 24 The purpose of section 3-3 is "to prevent successive prosecutions for multiple offenses arising from a single act." *People v. Mann*, 341 Ill. App. 3d 832, 837 (2003). The term "offense" is defined in the Criminal Code of 1961 as "a violation of any penal statute in this State." 720 ILCS 5/2-12 (West 2010).

¶ 25 Section 3-3 of the Criminal Code of 1961 does not apply to ordinances. See *People v. Hogan*, 186 Ill. App. 3d 267, 269 (1989); *Village of Round Lake Beach v. Sams*, 96 Ill. App. 3d 683, 686 (1981). Ordinances are "quasi-criminal in character but civil in form." *City of Danville v. Hartshorn*, 53 Ill. 2d 399, 401 (1973).

¶ 26 The City's impoundment ordinance does not violate section 3-3 of the Criminal Code of 1961 for several reasons. First, section 3-3 does not apply to ordinances. See *Hogan*, 186 Ill. App. 3d at 269; *Sams*, 96 Ill. App. 3d at 686. Second, the impoundment ordinance does not prosecute an individual for an "offense" but simply sets forth the administrative procedures to be used by the City for the towing, impoundment, and release of vehicles where the driver was arrested. Finally, the ordinance is civil, not criminal, in form. See *Hartshorn*, 52 Ill. 2d at 401. Since section 3-3 of the Criminal Code of 1961 does not apply, the trial court properly granted the City summary judgment on count XIV of Plaintiffs' amended complaint.

¶ 27 II. Constitutional Challenges

¶ 28 On appeal, Plaintiffs challenge the impoundment ordinance on several constitutional grounds. They assert that the ordinance (1) violates arrest and seizure provisions of the fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article 1, section 6, of the Illinois Constitution (Ill. Const. 1970, art. 1, § 6); (2) violates article 6, section 1, of the Illinois Constitution (Ill. Const. 1970, art. 6, § 2); (3) violates article 6, section 9, of the Illinois Constitution (Ill. Const. 1970, art. 6, § 9); and (4) is unconstitutional because it is unreasonable, arbitrary and capricious.

¶ 29 First, we note that municipal ordinances are presumed to be constitutional. *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill. 2d 390, 406 (2006). The burden of rebutting the presumption of constitutionality falls on the party challenging the ordinance's validity. *Id.*

¶ 30 A

¶ 31 In count III of their amended complaint, Plaintiffs allege that the arrest and seizure provisions of the impoundment ordinance are "repugnant" to the fourth amendment of the United States Constitution and article 1, section 6, of the Illinois Constitution "by unlawfully vesting the City's hearing officer with judicial power to determine probable cause for arrest and seizure of the property (vehicle) that are by law within the sole domain of a neutral magistrate."

¶ 32 The fourth amendment to the United States Constitution, which is applicable to the states through the fourteenth amendment, protects the "right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and provides that "no Warrants shall issue, but upon probable cause." U.S. Const., amend. IV; *Soldal v. Cook County*, 506 U.S. 56, 61 (1992). Likewise, article 1, section 6, of the Illinois Constitution protects the right of the people "to be secure in their persons, houses, papers and other possessions against unreasonable searches [and] seizures" and provides that "[n]o warrant shall issue without probable cause." Ill. Const. 1970, art. 1, § 6.

¶ 33 Plaintiffs assert that the ordinance is facially invalid. "In a facial challenge, a court examines whether the statute or ordinance at issue contains 'an inescapable flaw that renders the *** statute unconstitutional under every circumstance.' " *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 25 (quoting *People v. One 1998 GMC*, 2011 IL 110236, ¶ 58). A facial challenge "is the most difficult challenge to mount successfully because an enactment is invalid on its face only if no set of circumstances exists under which it would be valid." *One 1998 GMC*, 2011 IL 110236, ¶ 20. The plaintiff bears the burden of proving that no situation exists in which the ordinance would be valid. *Jackson*, 2012 IL App (1st) 111044, ¶ 30.

¶ 34 Courts examining ordinances nearly identical to the City's impoundment ordinance have upheld them as constitutional, finding that they do not lead to unreasonable seizures. *Jackson*, 2012 IL App (1st) 111044, ¶ 47; *Towers v. City of Chicago*, 173 F.3d 619, 621-23 (7th Cir. 1999). Those courts also found that impoundment ordinances serve the legitimate government purpose of deterring illegal conduct and are rationally related to that purpose by impounding vehicles that are used in illegal activities. See *Jackson*, 2012 IL App (1st) 111044, ¶ 48; *Towers*, 173 F.3d at 626-27, 629.

¶ 35 Like the impoundment ordinances enacted by other municipalities, the City's impoundment ordinance serves the legitimate purpose of deterring illegal conduct, is rationally related to that purpose by authorizing the impoundment of vehicles used in criminal activity, and does not lead to unreasonable seizures. See *Jackson*, 2012 IL App (1st) 111044, ¶ 48; *Towers*, 173 F.3d at 626-27, 629. Thus, the ordinance does not violate the search and seizure clauses of the Illinois or federal constitutions, and the trial court properly granted summary judgment to the City on count III of Plaintiffs' amended complaint.

¶ 36 B

¶ 37 In count IV of their amended complaint, Plaintiffs allege that the City's impoundment ordinance violates article 6, section 1 of the Illinois Constitution, which provides that "[t]he judicial power is vested in a Supreme Court, and Appellate Court and Circuit Courts." Ill. Const. 1970, art. 6, § 1.

¶ 38 This constitutional provision does not preclude administrative adjudications. *Cermak Club, Inc. v. Illinois Liquor Control Comm'n*, 30 Ill. 2d 90, 92-93 (1963). An ordinance may create an administrative procedure that allows an administrative hearing officer to consider evidence, make factual findings, apply the law to those findings and determine whether an

individual is liable for an ordinance violation. See *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 978 (1999). An ordinance that gives power to administrative officers to investigate, exercise judgment and make decisions does not delegate judicial powers within the meaning of the Constitution. See *Toplis & Harding, Inc. v. Murphy*, 384 Ill. 463, 472-73 (1943); *Block v. City of Chicago*, 239 Ill. 251, 262-64 (1909).

¶ 39 Here, the impoundment ordinance delegates authority to a hearing officer to make factual and quasi-legal determinations. This delegation of power to an administrative hearing officer does not violate article 6, section 1 of the Illinois Constitution. See *Murphy*, 384 Ill. at 472-73; *Block*, 239 Ill. at 262-64. The trial court properly granted the City summary judgment on count IV of Plaintiffs' amended complaint.

¶ 40 C

¶ 41 In count V, Plaintiffs allege that the ordinance violates article 6, section 9, of the Illinois Constitution. Article 6, section 9, of the Illinois Constitution provides: "Circuit [c]ourts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction ***. Circuit [c]ourts shall have such power to review administrative action as provided by law." Ill. Const. 1970, art. 6, § 9.

¶ 42 While the legislature cannot deprive courts of jurisdiction, an exception exists for administrative actions. *People v. NL Industries*, 152 Ill. 2d 82, 96 (1992). The legislature may vest exclusive jurisdiction in an administrative agency to conduct administrative proceedings. *Id*. at 96-97. As long as administrative actions are subject to judicial review, they do not infringe on the power of the judicial branch. *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 978 (1999).

¶ 43 The City's impoundment ordinance provides for judicial review of the decisions of hearing officers. See Pekin City Code, § 6-2-11-10 (2008). Thus, the ordinance does not violate article 6, section 9 of the Illinois Constitution. The trial court properly granted summary judgment to the City on count V of their amended complaint.

¶ 44 D

¶ 45 In count XVII, Plaintiffs allege that the ordinance is unconstitutional because it is "arbitrary, capricious and unreasonable and bears no relationship to public health, safety or welfare."

¶ 46 "A rational relationship exists if the challenged legislation, to some degree, tends to prevent some offense or evil or to preserve public health, morals, safety and welfare." *People v. Jaudon*, 307 Ill. App. 3d 427, 436 (1999). Ordinances that provide for the impoundment of vehicles used in the commission of crimes bear a rational relationship to the legitimate governmental interest of regulating and reducing criminal activity. See *Jackson*, 2012 IL App (1st) 111044, ¶¶ 34, 40 (regulating the possession of controlled substances within a vehicle is a legitimate governmental purpose that bears a rational relationship to impoundment ordinance); *Jaudon*, 307 Ill. App. 3d 427, 436 (regulating firearms possession and transportation legitimate state interest furthered by impoundment ordinance).

¶ 47 Here, the impoundment ordinance bears a rational relationship to protecting the public health, safety and welfare and is not arbitrary and capricious because it removes vehicles that have been used for criminal activity from further use. See *Jackson*, 2012 Il App (1st) 111044, ¶¶ 34, 40; *Jaudon*, 307 Ill. App. 3d at 436. Thus, the trial court properly granted summary judgment to the City on count XVII of Plaintiffs' amended complaint.

¶ 48 III. Right to Jury Trial

¶ 49 Plaintiffs also assert that the impoundment ordinance violates their right to a jury trial provided by (1) section 103-6 the Code of Criminal Procedure of 1963 (725 ILCS 5/103-6 (West 2010)); (2) section 2-1105 of the Code of Civil Procedure (735 ILCS 5/2-1105 (West 2010)); (3) Illinois Supreme Court Rules 501(f) (Ill. S. Ct. R. 501(f) (eff. Sept. 15, 2010)) and 505 (Ill. S. Ct. R. 505 (eff. Jan. 1, 1996)); and (4) article 1, section 13 of the Illinois Constitution (Ill. Const. 1970, art. 1, § 13).

¶ 50 A

¶ 51 Count VI of Plaintiffs' amended complaint alleges that the impoundment ordinance violates their statutory right to a jury trial provided by section 103-6 the Code of Criminal Procedure of 1963 (725 ILCS 5/103-6 (West 2010)). Section 103-6 of the Code of Criminal Procedure provides:

> "Every person accused of an offense shall have the right to a trial by jury unless (i) understandably waived by defendant in open court or (ii) the offense is an ordinance violation punishable by a fine only and the defendant either fails to file a demand for a trial by jury at the time of entering his or her plea of not guilty or fails to pay to the clerk of the circuit court at the time of entering his or her plea of not guilty any jury fee required to be paid to the clerk." 725 ILCS 5/103-6 (West 2010).

¶ 52 The Code of Criminal Procedure governs "the procedure in the courts of Illinois in all criminal proceedings except where provision for a different procedure is specifically provided by law." 725 ILCS 5/100-2 (West 2010). An "offense" is defined as "a violation of any penal statute of this State." 725 ILCS 5/102-15 (West 2010).

¶ 53 Section 103-6 of the Code of Criminal Procedure does not apply to Plaintiffs for several reasons. First, the provisions of the Code of Criminal Procedure only apply in criminal proceedings in Illinois courts. See 725 ILCS 5/100-2 (West 2010). Where, as here, the proceedings are administrative in nature, the Code does not apply. Additionally, section 103-6 does not apply because plaintiffs were not charged with violating an ordinance. The impoundment ordinance simply sets forth the administrative procedures to be used by the City for the towing, impoundment, and release of vehicles where the driver was arrested; they do not charge vehicle owners with an ordinance violation. Finally, the impoundment ordinance does not charge Plaintiffs with violating a penal statute. For these reasons, the trial court properly granted the City summary judgment on count VI of Plaintiffs' amended complaint.

¶ 54 B

¶ 55 In count VII of their amended complaint, Plaintiffs allege that the impoundment ordinance violates their statutory right to a jury trial provided in section 2-1105 of the Code of Civil Procedure (735 ILCS 5/2-1105 (West 2010)). Section 2-1105 of the Code of Civil Procedure provides in pertinent part: "A plaintiff desirous of a trial by jury must file a demand therefor with the clerk at the time the action is commenced." 735 ILCS 5/2-1105 (West 2010).

¶ 56 Section 2-1105 of the Code of Civil Procedure merely provides the process by which a party may request a trial by jury. *Bowman v. American River Transportation Co.*, 217 Ill. 2d 75, 94 (2005). It does not provide a party the right to a jury trial in any given proceeding. *Id*. That right must come from another source, such as our state constitution. *Id*. Since section 2-1105 of the Code does not provide a jury trial right, the trial court properly granted the City summary judgment on count VII of Plaintiffs' amended complaint.

¶ 57 C

¶ 58 In count VIII of their amended complaint, Plaintiffs allege that the ordinance deprived them of their right to a jury trial provided by Illinois Supreme Court Rules 501(f) and 505. They contend that the ordinance regulates traffic offenses. A "traffic offense" is defined by Rule 501(f) as "[a]ny case which charges a violation of any statute, ordinance or regulation relating to the operation or use of motor vehicles." Ill. S. Ct. R. 501(f) (eff. Sept. 15, 2010). Rule 505 provides that "[w]hen issuing a Uniform Citation and Complaint," the officer must inform the accused that he may demand a jury trial. Ill. S. Ct. R. 505 (eff. Jan. 1, 1996). "Rule 505 applies only to Rule 501 traffic offenses that are charged by a 'Uniform Citation and Complaint' ***." *People v. Norris*, 214 Ill. 2d 92, 97 (2005).

¶ 59 Neither rule applies in this case. Rule 501(f) is inapplicable because the ordinance does not charge a person with a "traffic offense," i.e., violating a statute, ordinance, or regulation relating to the operation or use of a motor vehicle. Instead, the ordinance provides for the seizure and impoundment of a vehicle that a police officer has probable cause to believe was used in the commission of certain crimes. Additionally, Rule 505 does not apply because Plaintiffs were not issued uniform citations for violating the impoundment ordinance. Plaintiffs were issued uniform citations for DUI; however, those citations have nothing to do with the ordinance. The trial court properly granted the City summary judgment as to count VIII of Plaintiffs' amended complaint.

¶ 60 D

¶ 61 In count IX of their amended complaint, Plaintiffs allege that the impoundment ordinance violated their rights to jury trials granted by the Illinois Constitution. Article 1, section 13 of the Illinois Constitution provides: "The right of trial by jury as heretofore enjoyed shall remain inviolate." Ill. Const. 1970, art. 1, § 13.

¶ 62 This constitutional provision means that the right to a jury trial shall continue in all cases where such a right existed at common law when the Illinois Constitution was adopted. *Martin v. Heinold Commodities, Inc.* 163 Ill. 2d 33, 72-73 (1994). It does not prohibit the legislature from creating new rights unknown to the common law and providing for their determination without a jury. *Id*. at 73. It was also never intended to guarantee a trial by jury in proceedings unknown to the common law. *Id*.

¶ 63 "The constitutional guarantee of right to trial by jury was never intended to apply to administrative proceedings which were unknown at common law." *Lloyd A. Fry Roofing Co. v. Pollution Control Board*, 20 Ill. App. 3d 301, 310 (1974). Additionally, there is no constitutional right to a jury trial under a newly enacted statute or ordinance. See *Atkins v. City of Chicago Commission on Human Relations ex rel. Lawrence*, 281 Ill. App. 3d 1066, 1078-79 (1996).

¶ 64 Since the City's ordinance was enacted less than 10 years ago and was unknown at common law, the constitutional right to a jury trial does not apply to the administrative procedures created by the ordinance. See *Atkins*, 281 Ill. App. 3d at 1078-79; *Lloyd A. Fry Roofing Co.*, 20 Ill. App. 3d at 310. The trial court properly granted the City summary judgment on count IX of Plaintiffs' amended complaint.

¶ 65 IV. Derivative Claims

¶ 66 Finally, Plaintiffs argue that that the trial court erred in granting summary judgment on their "derivative" claims of unjust enrichment, conversion and declaratory judgment.

¶ 67 A

¶ 68 In count XV of their amended complaint, Plaintiffs allege that the City was unjustly enriched by the fines and towing and storage fees that they and other class members were

required to pay under the impoundment ordinance. Plaintiffs allege that they are entitled to reimbursement. On appeal, Plaintiffs state: "This count is derivative in nature and substance."

¶ 69 A derivative claim is dependent upon another claim. See *Oakley Transport, Inc. v. Zurich Insurance Co.*, 271 Ill. App. 3d 716, 726-27 (1995). A judgment in favor of the defendant on the underlying claim precludes the plaintiff from recovery on the derivative claim. See *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 123-24 (1978).

¶ 70 Here, the trial court properly granted summary judgment to the City on Plaintiffs' underlying claims alleging violations of statutory and constitutional law. Since Plaintiffs' unjust enrichment claim is derivative of those claims, the trial court also properly granted summary judgment to Defendant on Plaintiffs' unjust enrichment claim.

¶ 71 B

¶ 72 In count XVI of their amended complaint, Plaintiffs allege that enforcement of the impoundment ordinance constituted conversion by the City of class members' vehicles. On appeal, with respect to this issue Plaintiffs state: "For those putative class members whose vehicles were forfeited by the City they should be reimbursed the fair market value at the time of the unlawful impoundment." Plaintiffs did not cite to any legal authority in support of this claim.

¶ 73 Since this claim is derivative of, or dependent upon, Plaintiffs' claims alleging violations of state and federal laws, and the trial court properly granted summary judgment to the City on those underlying claims, the trial court also properly granted summary judgment to the City on this count of Plaintiffs' amended complaint. See *Towns*, 73 Ill. 2d at 123-24. Additionally, Plaintiffs have forfeited this issue by failing to cite to any legal authority in support of it. See *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010); *Sekerez v. Rush University Medical Center*, 2011

IL App (1st) 090889, ¶ 81. We affirm the trial court's entry of summary judgment to the City on this count of Plaintiffs' amended complaint.

¶ 74 C

¶ 75 Finally, in count XIX of Plaintiffs' amended complaint, Plaintiffs allege that they are entitled to "a declaration that the Ordinance is illegal and unenforceable." On appeal, Plaintiffs argue: "For the reasons mentioned above plaintiffs request the court to enter an order declaring the Ordinance to be void and ordering restitution." Again, Plaintiffs cited no legal authority on this issue.

¶ 76 According to Plaintiffs, this claim is also "derivative." Since the trial court properly granted summary judgment to the City on Plaintiffs' underlying claims, the trial court also properly granted summary judgment to the City on this derivative count. See *Towns*, 73 Ill. 2d at 123-24. Additionally, Plaintiffs forfeited this claim by failing to cite to any legal authority to support it. See *Vancura*, 238 Ill. 2d at 369; *Sekerez*, 2011 IL App (1st) 090889, ¶ 81. The trial court did not err in granting summary judgment to the City on this count of Plaintiffs' amended complaint.

¶ 77 CONCLUSION

¶ 78 The judgment of the circuit court of Tazewell County is affirmed.

¶ 79 Affirmed.