

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc.

DISTRICT COURT  
SIXTH DIVISION

Town of Middletown

v.

Thomas Oliver  
(RITT Appeals Panel)

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A.A. No. 13 - 026

**ORDER**

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED

that the Findings & Recommendations of the Magistrate are adopted by reference as the decision of the Court and Mr. Oliver's request for fees and costs is hereby DENIED.

Entered as an Order of this Court at Providence on this 31<sup>st</sup> day of August, 2016.

By Order:

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen C. Waluk  
Chief Clerk

Enter:

\_\_\_\_\_/s/\_\_\_\_\_  
Jeanne E. LaFazia  
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc.

DISTRICT COURT  
SIXTH DIVISION

Town of Middletown	:	
	:	A.A. No. 2013 – 026
v.	:	(C.A. No. M12-0011)
	:	(07-302-012536)
Thomas Oliver	:	
(RITT Appeals Panel)	:	

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** On January 5, 2012, Mr. Thomas Oliver was cited for speeding by a Middletown Police Officer. After he was convicted of this charge in the Middletown Municipal Court on May 8, 2012, Mr. Oliver appealed to the Rhode Island Traffic Tribunal (RITT); and, on December 12, 2012, an RITT Appeals Panel reversed Mr. Oliver’s conviction for speeding, on the ground that the officer who issued the summons did so without legal authority — in the City of Newport.

Mr. Oliver then filed a Motion for Costs and Fees in the Municipal

Court, but it was continued nisi pending the outcome of the Town's appeal to this Court. However, this Court agreed with the panel, and affirmed Mr. Oliver's acquittal. See Town of Middletown v. Thomas Oliver, A.A. No. 13-026 (Dist.Ct. 03/13/2014)(hereinafter Oliver I). Thereafter, Mr. Oliver renewed his Motion for Fees and Costs and the Town objected. Thereafter, Mr. Oliver's Motion was denied by the Municipal Court.

On March 18, 2016, Mr. Oliver filed a document in this Court styled a "Further Amended Motion for Costs and Fees." I have reviewed the Motion and the accompanying documents and exhibits. Doing so, I see no need for oral argument or further discussion. I will therefore proceed to decide the motion at this time.

## I

### **MERITS OF THE MOTION**

Mr. Oliver's Motion demands reimbursement of the costs and fees (including attorney fees) he incurred in defending the speeding citation — in support of which he cites various provisions of the General Laws: five sections of Chapter 9-22, entitled "Costs;" § 9-29-21, entitled "Attorney or

unrepresented party must sign papers--Sanctions for frivolous suits;” and two provisions of Chapter 42-92, entitled “Equal Access to Justice for Small Businesses and Individuals.” Nevertheless, for the reasons I shall now state, I find that these statutes (viewed either individually or collectively) do not provide a legal justification for the granting of the instant motion.

## A

### Chapter 9-22

In my opinion all of Mr. Oliver’s references to the provisions of Chapter 9-22 are inapt. That chapter relates to costs in civil actions, wherein one party sues another for money damages or for equitable relief. The whole of Title 9 is concerned with civil causes of action and the procedures pursuant to which they are litigated in the state courts of Rhode Island.<sup>1</sup> While a government unit can be a party to civil litigation, the instant matter was not such a proceeding.

The case before the Court did not begin with the filing of a civil claim; instead, it began when Mr. Oliver was cited by a member of the

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<sup>1</sup> They do so in conjunction with the Rules of Civil Procedure.

Middletown Police Department with a violation of a penal provision of Rhode Island's traffic code. The procedure for the trial of these cases is established in an altogether different group of statutes, in Chapter 8-8.2, entitled "Traffic Tribunal;" Chapter 8-18, "State and Municipal Court Compact;" and Chapter 31-41.1, entitled "Adjudication of Traffic Offenses."<sup>2</sup>

And so, I conclude that the provisions of Chapter 9-22 are not relevant to the instant motion and do not provide a legal basis upon which we may order the payment of costs and fees to Mr. Oliver.

## **B**

### **Section 9-29-21**

Mr. Oliver's assertion of Gen. Laws 1956 § 9-29-21 as a separate basis for the awarding of costs and fees is subject to the same general objections presented ante concerning the non-applicability of Title 9 to the instant case. And all of the cases cited in the annotations of the codifier (as having interpreted § 9-29-21) are cases arising in civil litigation.

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<sup>2</sup> Also pertinent to the trial of these cases are the Traffic Tribunal Rules of Procedure, which must be followed by the municipal courts when hearing traffic cases. See Gen. Laws 1956 § 8-18-4(e).

Moreover, I make a separate finding that the appeal by the Town in Oliver I was not frivolous; this may be rightly inferred from the length and depth of this Court’s treatment of the legal issues presented. The Town made both legal and policy arguments that merited extensive consideration, which they were given.<sup>3</sup>

## C

### **Chapter 42-92 Equal Access to Justice Act**

Finally, Mr. Oliver urges that this Court derives the authority to award costs and fees to him from Chapter 42-92 of the General Laws — the Equal Access to Justice for Small Businesses and Individuals Act. In 1988, our Supreme Court set forth the purpose and central provisions of the Act thusly:

The Equal Justice Act was propounded to mitigate the burden placed upon individuals and small businesses by the arbitrary and capricious decisions of administrative agencies

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<sup>3</sup> The General Assembly has apparently recognized the strength of the policy argument the Town advanced in Oliver I; it amended Gen. Laws 1956 § 12-7-19 to allow municipal police officers to proceed, in close pursuit of traffic violators (including violators of civil offenses) from their own municipalities into neighboring cities and towns. See P.L. 2016-469 (effective July 13, 2016).

made during adjudicatory proceedings,<sup>[1]</sup> as defined in the act. Section 42-92-3<sup>[1]</sup> provides in specified circumstances for an award by the adjudicative officer of reasonable litigation expenses incurred in an adjudicatory proceeding.<sup>[1]</sup> Such expenses will not be awarded to the prevailing party if, inter alia, the adjudicative officer finds that the agency was substantially justified in actions leading to the proceedings and in the proceeding itself. See § 42-92-2(f).<sup>[1]</sup>

Taft v. Pare, 536 A.2d 888, 892 (R.I.1988)(footnotes omitted). As the Court noted, redress under the Act is limited to those persons and small business aggrieved by arbitrary and capricious rulings made by administrative agencies in adjudicatory proceedings.

But before we may invoke this provision in the instant case, we must ask — Is the ruling of a municipal court judge made in the trial of a traffic case (pursuant to the authority vested in the municipal courts by Chapter 8-18) a decision made by an administrative agency in an adjudicatory proceeding? In my view, and for several reasons, it is not.

Firstly, in the Act, the term “agency” is defined as follows:

(3) “Agency” means any state and/or municipal board, commission, council, department, or officer, other than the legislature or the courts, authorized by law to make rules or to determine contested cases, to bring any action at law or in equity, including, but not limited to, injunctive and other relief, or to initiate criminal proceedings. This shall include

contract boards of appeal, tax proceedings, and employment security administrative proceedings.

See Gen. Laws 1956 § 42-92-2(3)(emphasis added). Clearly, by including this definition within the Act, the General Assembly excluded judicial proceedings from the ambit of the Act. And there can be no doubt that municipal courts are included within the reach of the term “the courts.” The municipal courts hear traffic cases pursuant to the authority vested in them by Gen. Laws 1956 § 8-18-3. When doing so, they must follow the procedures set forth in the Traffic Tribunal Rules of Procedure. See § 8-18-4. And the conduct of municipal court judges, when handling these cases, is governed by the code of judicial conduct. See Gen. Laws 1956 § 8-18-8.

Secondly, under § 42-92-2(2), a municipal court trial cannot be viewed as an adjudicatory proceeding:

(2) “Adjudicatory proceedings” means any proceeding conducted by or on behalf of the state administratively or quasi-judicially which may result in the loss of benefits, the imposition of a fine, the adjustment of a tax assessment, the denial, suspension, or revocation of a license or permit, or which may result in the compulsion or restriction of the activities of a party ....



See Gen. Laws 1956 § 42-92-2(2). Quite simply, proceedings before a municipal court in a traffic matter are neither “administrative” nor “quasi-judicial,” they are purely judicial. It is noteworthy in this context that appeals from the municipal courts in traffic matters do not come to the judiciary pursuant to the State Administrative Procedures Act, Chapter 42-35 of the General Laws. Instead, they proceed to an RITT appeals panel under Gen. Laws 1956 § 8-18-9, in the same manner as appeals from a trial magistrate or judge of the RITT. See Gen. Laws 1956 § 31-41.1-8. Such proceedings cannot, therefore, be considered an adjudicatory proceeding by an agency, as those terms as employed in the Equal Access to Justice Act.<sup>4</sup>

Of course, this determination would be sufficient ground upon which to reject the propriety of Mr. Oliver’s claim for costs and fees under Chapter 42-92. But, before concluding our discussion of the Act, it is

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<sup>4</sup> Recently, in Tarbox v. Zoning Board of Review of the Town of Jamestown, 2016 WL 984044, (R.I. Sup. Ct. 03/15/2016), our Supreme Court, in the course of deciding that a petition for writ of certiorari was the proper avenue by which to seek Supreme Court review of a trial justice’s decision denying the plaintiffs’ request for reasonable litigation expenses under the Act, commented that the Superior Court justice was not an “adjudicatory officer” within the meaning of § 42-92-3(b).

worth recalling the third core element that must be proven to recover under the Act — that the agency was not “substantially justified” in the actions which led to the proceeding. Now, in the instant case that would mean that the officer was not substantially justified in issuing the citation to Mr. Oliver, that the prosecution was not substantially justified in bringing the case to trial, and the judge was not substantially justified in finding him guilty. And so, we may consider whether — assuming the municipal court proceeding was within the ambit of the Act — it could be found that the municipal court proceeding was not substantially justified.

But what does the term “substantially justified” mean? Generally, we would turn to the definition contained in § 42-92-2(7),<sup>5</sup> which states:

“Substantial justification” means that the initial position of the agency, as well as the agency’s position in the proceedings, has a reasonable basis in law and fact.

But, in Oliver I, I never found the Town’s argument — that since § 12-7-9 expressly authorized greater fourth amendment intrusions (such as arrests), it should be deemed to authorize lesser ones (such as traffic

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<sup>5</sup> This definition was previously codified as § 42-92-2(f) and is so referenced in Krikorian v. R.I. Department of Human Services, 606 A.2d 671, 675 (R.I. 1992).

stops) — was frivolous, though I was not able to accept it. Indeed, as we noted ante, the policy implications of our holding in Oliver I seem to have provoked the legislature into action, amending § 12-7-9 to authorize close pursuit (into another municipality) for the purposes of issuing civil traffic citations.

In any event, in this case we are able to bypass the foregoing definition of “substantial justification” entirely. Subsection § 42-92-2(2), the first sentence of which was quoted ante, also contains a second sentence, which states:

(2) “Adjudicatory proceedings” means any proceeding conducted by or on behalf of the state administratively or quasi-judicially which may result in the loss of benefits, the imposition of a fine, the adjustment of a tax assessment, the denial, suspension, or revocation of a license or permit, or which may result in the compulsion or restriction of the activities of a party. Any agency charged by statute with investigating complaints shall be deemed to have substantial justification for the investigation and for the proceedings subsequent to the investigation. (Emphasis added).

So, if we assume arguendo that a municipal court conducts “adjudicatory proceedings,” it would seem that the police department would be the agency “charged by statute with investigating complaints.” As such, it is

apparently automatically deemed, as a matter of law, to have substantial justification for the investigation which was conducted by the officer who issued the traffic summons to Mr. Oliver, and for the subsequent trial in the municipal court.

And so, for all the foregoing reasons, the Equal Access to Justice Act must be deemed inapplicable to traffic trials conducted in municipal courts.

## II CONCLUSION

Upon careful review of the Motion and memoranda which have been filed in support and in opposition to it, I must recommend that this Court deny Mr. Oliver's Motion for Costs and Fees as being without a basis in law.

Therefore, I need not, and do not, reach secondary issues such as (1) whether this or any Rhode Island Court may order the reimbursement of payments made to an attorney not licensed in Rhode Island, and (2) whether out-of-state counsel's activities in this case constituted proper (or improper) "ghostwriting." See FIA Card Services, N.A. v. Pichette, 116

A.3d 770 (R.I. 2015).

Accordingly, I recommend that Mr. Oliver's Motion for Costs and Fees be DENIED.

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph P. Ippolito  
Magistrate

August 31, 2016

