



## Dispute Between City of Howell and Homeowner Over Grass Cutting Ordinance Ends Up in Sixth Circuit Court of Appeals

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*Foster Swift Municipal Law News*

September 23, 2015

Disputes over unkempt lawns sometimes lead to shouting matches between neighbors, but rarely do they end up in the U.S. Court of Appeals. But that's exactly what happened in a case involving a homeowner, David Shoemaker, and the City of Howell. The U.S. Court of Appeals for the Sixth Circuit recently overturned a district court decision and ruled in favor of Howell in connection with fines and maintenance costs charged to Shoemaker for maintaining an area of lawn between the curb and sidewalk. Shoemaker refused to cut that area because, he argued, that it was not his responsibility to do so. Shoemaker alleged, but the Sixth Circuit disagreed, that Howell's actions violated his procedural and substantive due process rights.

### **FACTUAL BACKGROUND**

Howell, like most communities, has an ordinance that requires property owners to keep their lawn below a certain height. Violations result in a fine as well as costs that the city incurred by having a contractor remedy the violation.

Problems between the parties began when Shoemaker raised issue with Howell's landscaping project that resulted in a tree that Shoemaker planted being removed (against his wishes), and nine new saplings being planted. Shoemaker claimed that, when he protested the tree's removal, city employees told him "that's not your property, you have no say on what goes in or out of there."

Shoemaker then protested by refusing to mow the curb strip. After receiving numerous notices, Shoemaker still refused to mow.

Howell then hired a private contractor on two occasions to cut the grass, and charged Shoemaker for the cost of doing so. In all, Shoemaker was charged \$600 for his violations of the Ordinance - \$300 for the grass cutting and \$300 in fines.

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### **PRACTICE AREAS**

Municipal & Public Entity Law

Municipal Prosecution

In November 2011, Shoemaker brought suit against Howell in federal district court. The district court granted summary judgment in favor of Shoemaker and Howell appealed. The issue on appeal was whether Howell, through its enforcement of the Ordinance, violated Shoemaker's procedural and substantive due process rights.

### **PROCEDURAL DUE PROCESS**

The court concluded that Howell did not violate Shoemaker's procedural due process rights because it provided him with sufficient notice of the violation and an adequate opportunity to be heard. Citing Supreme Court precedent, the court explained that due process is "the requirement that a person . . . be given notice of the case against him and [an] opportunity to meet it." In deciding whether Shoemaker received due process before he was deprived of his property - the \$600 - the court noted that the requirements of due process are "fluid and fact dependent."

The district court found that Howell violated Shoemaker's due process rights because "[t]he Ordinance is devoid of any mechanism by which a citizen may invoke to seek a hearing before a court or a quasi-judicial board on any issue." The Sixth Circuit disagreed, finding notice to be adequate.

First, it noted that Shoemaker had been warned of the violation on at least six separate occasions. Shoemaker acknowledged that he knew of the charges, but argued that the city failed to notify him about how he could challenge the charges. While the city failed to comply with its own Ordinance in that the various notices did not convey all of the information they should have, the Sixth Circuit explained that Shoemaker could have learned about the procedures for objecting to the allegations against him by referencing the Ordinance or calling City Hall. It noted that, although the notices were not perfect, "the Constitution does not require strict adherence to the City's Ordinances." What is required is notice that is "reasonably calculated to alert Shoemaker of the charges against him and any avenues available for challenging those charges."

The Sixth Circuit then turned its analysis to whether Howell's procedures for challenging violations of the Ordinance are constitutional based on factors established in the Supreme Court case of *Mathews v. Eldridge*. The *Mathews* factors for deciding how much process is due are:

[1] the private interest that will be affected by the official action; [2] the risk of an erroneous deprivation[;] . . . [3] the probable value, if any, of additional or substitute procedural safeguards; and [4] the Governments' interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In this case, the Sixth Circuit found no violations. It explained that (i) the property interest at issue - \$600 in fines and fees over 16 months - is relatively minor, (ii) there is little risk of erroneous deprivation under the Ordinance, (iii) more process would add little value, and (iv) additional process would require additional costs for Howell.



The court's conclusion that Shoemaker's procedural due process rights were not violated was bolstered by the fact that Shoemaker made clear that he had no interest in contesting whether the height of the grass on his curb strip complied with the Ordinance. Rather, his goal was to test the Ordinance's constitutionality, not dispute his noncompliance with its terms. By not disputing the charges, the court explained, Shoemaker was precluded from mounting a procedural due process claim.

### **SUBSTANTIVE DUE PROCESS**

The Sixth Circuit then considered whether Howell violated Shoemaker's substantive due process rights by forcing him to maintain the curb strip. Substantive due process is "[t]he doctrine that governmental deprivations of life, liberty or property are subject to limitations regardless of the adequacy of the procedures employed." The Sixth Circuit cited the district court's opinion which acknowledged that "the [Supreme] Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended." But, in reversing the lower court, it faulted the decision for "identifying a new fundamental right: 'the right not to be forced by a municipal government to maintain municipal property.'"

Shoemaker's substantive due process argument was based on the premise that the land at issue was city-owned property. However, the Sixth Circuit ruled that, at all relevant times, Shoemaker had an interest in the property. It explained that "homeowners like Shoemaker have a special interest in the curb strips adjacent to their houses because these strips of land are, for all practical purposes, simply extensions of the homeowners' lawns." The lower court, therefore, erred in reaching the opposite conclusion. And in light of Shoemaker's ownership interest in the curb strip, "no fundamental right is impacted by the Ordinance's requirement that he mow and otherwise maintain that land."

Finally, the Sixth Circuit analyzed whether, despite not impacting fundamental rights, the Ordinance violates "the Due Process Clause where it imposes burdens without any rational basis for doing so." Under the "rational basis" test, "government action amounts to a constitutional violation only if it is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the government's actions were irrational." In this case, Howell cited several interests that the Ordinance is intended to advance, including: "traffic safety, sanitation, animal and rodent control, protection of property values, aesthetics, and public health, safety, and welfare." The court found these interests to be legitimate.

Accordingly, because no fundamental right was implicated, and because the mowing requirement was rationally related to a legitimate government purpose, the Ordinance did not violate Shoemaker's substantive due process rights.

### **CONCLUSION**

What should municipalities take away from this case? Beyond the Constitutional analysis, there is a more practical message for municipalities: considerable care should be taken in the drafting and enforcement of ordinances.



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If you have any questions regarding the drafting and enforcement of your municipality's ordinances, contact attorney Anne Seurnck at [aseurnck@fosterswift.com](mailto:aseurnck@fosterswift.com) or 616.726.2240.

