STATE OF MICHIGAN
IN THE SUPREME COURT

CITY OF MONROE,

Plaintiff/Appellant,

vs.

HELEN FAITH JONES,

Defendant/Appellee.
_____/

Supreme Court No.
Court of Appeals No.241486
Circuit Court No. 01-13988-AV

APPELLEE'S BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

125289

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JURISDICTION OF COURT

The Appellant's statement of the jurisdiction of this Court is complete and correct.

COUNTER-STATEMENT OF ISSUES

Issue #1. Whether the instant controversy involves legal principles of major significance to this state's jurisprudence?

Appellee says:	**NO**
Appellant says:	Yes

Issue #2. Whether M.C.L.A. 257.675(6) prohibits the City of Monroe from enforcement of its municipal parking ordinance against disabled persons?

Appellee says:	**YES**
Appellant says:	No
District Court says:	No
Circuit Court says:	No
Court of Appeals says:	**YES**

STATEMENT OF FACTS

The facts giving rise to this matter are undisputed. Appellee adopts the version of the facts as set forth by Appellant in its Application.

OVERVIEW OF LEGAL ARGUMENT

The instant Application for Leave to Appeal is before the Court for the plain and simple reason that the City of Monroe steadfastly refuses to accept the limitations imposed by M.C.L.A. 257.675(6). As outlined below, the legal issues are insignificant as the subject is delineated by MCR 7.302(B)(3). Although it is facile to argue that an issue involves legal principles of major significance to Michigan's jurisprudence, same is untrue in the instant controversy. Alternatively, supposing that the matter is of some significance to Michigan jurisprudence, the issue was correctly perceived and ruled upon by the Court of Appeals. The state's judicial resources should not be wasted merely because the City continues to promulgate arguments which are not on point and persists in pleading adherence to rulings of the lower courts which were errantly focused.

Inexplicably, the City of Monroe expends considerable effort in fanning the smoldering ashes of irrelevant arguments. Arguments that were summarily dismissed by the Court of Appeals; namely: The City seeks to implicate subsections (8) and (9) of M.C.L.A. 257.675[1], as well as, adoption of the Uniform Traffic Code (UTC)/ Motor Vehicle Code[2] (MVC) as somehow supportive of their position. These tenets are not germane to the current discourse and are therefore given a cursory treatment in Appellee's Brief.

The City of Monroe also labors to champion the employment of the rule of statutory construction which provides for remedy when interpretation of a statute produces absurd consequences. In doing so, the City of Monroe ironically cites a case which is detrimental to its

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[1] Page 13 of Appellant's brief purports to create some relevance of M.C.L.A. 257.675(8)&(9) in the case at bar. Whether intentionally misconstrued or misunderstood by Appellant, these subsections must be read in conjunction with subsection (7) of same statute, lest the former provisions be taken out of context.

[2] Whether the City has 'adopted' the UTC or the MVC is wholly a moot point. The tickets at issue in the instant controversy were issued under a local ordinance. Moreover, adoption of the MVC would necessarily includes adoption of the 'courtesy' provided by M.C.L.A. 257.675(6).

cause.[3] The City proposes that the Court of Appeals' decision will lead to the absurd consequence of nullifying all parking ordinances (and arguably all other traffic control ordinances), somehow making disabled persons "above the law".

The instant controversy centers upon a specific statute which expressly grants a mandatory courtesy to disabled motorists *in no uncertain or ambiguous terms*. The repercussions hinted at by the City of Monroe are largely fanciful, since the statute at issue has no effect outside this very specific arena of motor vehicle parking by disabled individuals. Advancing such phobia, the City of Monroe implies that *all* traffic control ordinances are null as applied to disabled persons in Monroe despite the exceptions for fire lanes or to accommodate rush hour traffic. Such advocacy also neglects to address the inapplicability of M.C.L.A. 257.675(6) to moving violations and the provisions of M.C.L.A. 257.674.

While the City of Monroe's reliance on the aforementioned rule of statutory construction is misplaced (for the imagined effects of the Court of Appeals' decision are greatly exaggerated), adoption of the meaning propounded by Appellant would violate a host of other rules of statutory interpretation which *are* applicable. These rules call for effect to be given, where possible, to every word or phrase in a statute - i.e., no part of the statute should be rendered nugatory by interpretation. To this end, the question that naturally follows is: If the Appellant's position is adopted, what meaning does M.C.L.A. 257.675(6) retain? The Appellee has posed this query to the City of Monroe at *every level of litigation* and has heretofore been met with no response. Most likely, it is because M.C.L.A. 257.675(6) would be left with no meaning thereby defeating the City of Monroe's argument.

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[3] King v. Director of Midland County Dept. of Social Services, 73 Mich App 253, (1977) is cited by Appellant as a statement of the 'absurd consequences' maxim. However, at pg. 259, the Court of Appeals in King augments Appellee's argument by reinforcing that the word 'shall' indicates a mandatory condition.

LEGAL ARGUMENT

Issue #1. Does the instant controversy involve legal principles of major significance to this state's jurisprudence?

According to the Michigan Rules of Court, a party applying for leave to appeal a decision to the Supreme Court of this state must include in the application a statement of the grounds for the appeal. MCR 7.302(B). In its Application, Appellant professes that "the issue involves legal principles of major significance to the [s]tate's jurisprudence" in effort to satisfy MCR 7.302(B)(3) as the grounds for its Appeal. See Appellant's Application for Leave to Appeal, pg. 1 (Dec. 16, 2003). No other grounds for appeal are put forth by Appellant. For the reasons outlined below, Appellee submits that MCR 7.302(B)(3) is not met in the instant matter, and this Court should therefore deny Appellant's Application for Leave to Appeal.

Upon close analysis, Appellant attempts to parlay the instant controversy into one having state-wide implications by belaboring the point that the City of Monroe has adopted the Motor Vehicle Code. The City's misguided insistence is demonstrated at page 16 of their Brief to this Court:

> Once more, as stated, on September 18, 2000, the City of Monroe adopted the Michigan Vehicle Code in addition to the UTC. Hence, the local ordinance was authorized by statutory authority and the ordinance reflects the Michigan Vehicle Codes parking restrictions.

The conclusion here is erroneous because the ordinance *does not* reflect the MVC's parking restrictions nor the courtesy of M.C.L.A. 257.675(6). In the instant case, the ordinance goes beyond them and creates a nearly complete disagreement with M.C.L.A. 257.675(6). Contrary to the City of Monroe advocacy, the issue is not conflicting provisions within the Motor Vehicle Code. In fact, the issue arises simply because a local ordinance conflicts with the Motor Vehicle Code. Thus, the

City of Monroe's Application is before the Court because Appellant seeks to enforce an ordinance contrary to state law, namely M.C.L.A. 257.675(6). To this end, this case deals with a very narrow issue: The enforceability of a narrow and unique local parking ordinance. Consequently, the requirements of MCR 7.302(B)(3) are not satisfied.

Appellant also argues that "[t]he effect of the Court of Appeals' decision is to nullify all local parking ordinances to the extent that they are applicable to disabled individuals." See Appellant's Application for Leave to Appeal, pg. 1 (Dec. 16, 2003). This statement is inaccurate. In truth, the Court of Appeals' decision merely gives effect to an unambiguous state statute to residents and visitors of the City of Monroe. The Court of Appeals did not undertake a lengthy judicial construction of some vague provision of statutory law thereby creating some unforeseeable and impractical consequence. Rather, the Court could "only conclude that M.C.L.A. 257.675(6) clearly and unambiguously precludes plaintiff from citing defendant, a disabled person, for a time-restriction parking violation under the local ordinance." Court of Appeals Opinion, pg. 4, (Nov. 18, 2003).[4]

Although illuminative case law is extremely sparse, it has been noted that the Supreme Court has necessarily interpreted the provisions of MCR 7.302(B) strictly as the volume of cases appealed has steadily increased. Michigan Court Rules Practice, section 1.15. Moreover, in his concurrence in Tebo v. Havlik, Justice Levin stated that the Supreme Court, "which must yearly consider some 2,500 applications for leave to appeal and requests for review, ... may not on the first presentation of a question perceive that the subject matter of the appeal involves legal principles of major significance to the jurisprudence of the State." Tebo v. Havlik, 418 Mich 350,

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[4] Taking a step back from this embroilment reveals that the Appellant's true umbrage is with M.C.L.A. 257.675(6) itself. Thus, the appropriate forum to redress such tribulation is the State Legislature, not the Supreme Court.

378, 343 N.W.2d 181 (1984). While the foregoing is not recognized as law in this State, it does shed light on the care that this Court must exercise in selecting which cases are appropriate for review at the highest level. The Appellant is entirely dependent upon subsection (3) of MCR 7.302(B). While the characteristic "catch-all" nature of the preceding has value, the corollary to this value is the necessity of a heightened screening function by the Court when it is pled. The summary conclusion reached by Appellant that the issue in this case involves legal principles of major significance to Michigan jurisprudence is ill-founded, weakly supported and cannot be relied upon as grounds for Leave to Appeal.

Issue #2. Does M.C.L.A. 257.675(6) prohibit the City of Monroe from enforcement of its municipal parking ordinance against disabled persons?

The Constitution of this State grants to cities and villages the power "to adopt resolutions and ordinances relating to its municipal concerns, property and government, ***subject to the constitution and law***." Const. 1963, Art. 7, § 22. The Doctrine of Preemption demands that a municipality must not tread on legislative ground that the state has already specifically addressed. There are two circumstances under which a municipal ordinance is preempted by state law: (1) If the state statute "completely occupies the field that [the] ordinance attempts to regulate"; or (2) The ordinance directly conflicts with a state statute. Rental Prop. Owners Assn. of Kent County v. City of Grand Rapids, 455 Mich. 246, 257, 566 N.W.2d 514 (1997). Michigan has passed a law regulating enforcement of local parking ordinances against persons with disabilities. It is M.C.L.A. 257.675(6), which specifically provides:

> A disabled person with a certificate of identification, windshield placard, special registration plates issued under section 803d, a special registration plate issued under section 803f that has a tab for persons with disabilities attached, a certificate of identification or

> windshield placard from another state, or special registration plates from another state issued for persons with disabilities is entitled to courtesy in the parking of a vehicle. ***The courtesy shall relieve the disabled person or the person transporting the disabled person from liability for a violation with respect to parking***, other than in violation of this act. (emphasis added)

It is important to recognize that under the Motor Vehicle Code, the word "shall" indicates a *mandatory* - not a discretionary - condition. M.C.L.A. 257.82. The Code outlines only two (2) exceptions under which this right may be superceded by local ordinance:

> A local authority may by ordinance prohibit parking on a street or highway to create a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extending to veterans and physically disabled persons under this subsection do not supersede that ordinance. Id.

The one (1) hour parking ordinance at issue is in effect from 8:00 a.m. to 5:00 p.m. and does not exist to create a fire lane, nor to accommodate either morning nor afternoon rush-hour traffic. Ms. Jones is a disabled person with a windshield placard from the State of Ohio. Thus, M.C.L.A. 257.675(6) shields Ms. Jones from the City of Monroe's local parking ordinance.

In the lower courts, Ms. Jones asserted both Field Preemption and Direct Conflict Preemption. In support of her preemption arguments, Ms. Jones pointed out that because the statute clearly delineates only two (2) exceptions where local authority may regulate parking by persons with disabilities, all other exceptions are prohibited. Ms. Jones is relying on the well-settled legal doctrine, "expressio unius est exclusio alterius," in her Brief in Opposition to Application for Leave to Appeal.

Cities are not autonomous entities with inherent powers. They have only those granted by the state through constitutional provision or statutory enactment. Sebewaing Industries,

Inc. v. Village of Sebewaing, et al., 37 Mich. 530, 543, 60 N.W.2d 444 (1953). To this end, the District Court judge found that M.C.L.A. 257.606(1) vested local units of government with authority to promulgate and enforce regulations concerning the parking of motor vehicles. Notwithstanding the mandatory provisions of M.C.L.A. 257.675(6), the District Court then allowed the City of Monroe to ticket Ms. Jones for overtime parking because the Motor Vehicle Code did not specifically abolish the enforcement of time limits against disabled persons.

Agreeing with Appellee, the Court of Appeals found that the lower court ruling violates the maxim of statutory interpretation - "expressio unius est exclusio alterius" - which means that the express mention by the legislature of one exception is to the exclusion of all others. County of Alcona v. Wolverine Environmental Production, Inc., 233 Mich.App. 238, 252, 590 N.W. 2d 586 (1998). Applying this maxim, the United States Supreme Court held that when a legislature provides exceptions in a statute, the only proper inference is that the legislature considered the issue of other exceptions and, in the end, limited the statute to the exceptions expressed. U.S. v. Johnson, 120 S.Ct. 114 (2000). Accordingly, the ultimate question before this Honorable Court is: Does M.C.L.A. 257.675(6) prohibit the promulgation and enforcement of the City of Monroe's overtime parking ordinance against disabled persons like Ms. Jones, when the overtime ordinance does not create a fire lane nor effect rush-hour traffic?

In deliberating this ultimate question, Ms. Jones calls the court's attention to the decisions and reasoning of our Appellate courts in Sebewaing Industries, Ic. v. Village of Sebewaing, et al., 37 Mich. 530, 60 N.W.2d 444 (1953) and County of Alcona v. Wolverine Environmental Production, Inc., 233 Mich.App. 238, 590 N.W. 2d 586 (1998).

In Sebewaing Industries, the question before the court involved whether a power not expressly granted to a local entity could be inferred from some other powers which were conferred.

Id. at 544. Denying the municipality's argument for additional, inferred powers, the Michigan Supreme Court relied upon the doctrine "expressio unius est exclusio alterius." The court explained that "[w]hen powers are granted by statute to its creature, the enumeration thereof in a particular field must be deemed to exclude all others of a similar nature in that same field." Id. at 545. Moreover, the Sebewaing Industries court found:

> It is a well-established rule of statutory construction that where powers are specifically conferred they cannot be extended by inference, but that the inference is that it was intended that no other or greater power was given than that specified. Id. at 546, citing Eikhoff v. Detroit Charter Commission, 176 Mich. 535, 540, 142 N.W.2d 746 (1913).

Accordingly, the Michigan Supreme Court flatly rejected the municipality's argument for an expansive definition by inference.

In Wolverine Environmental, a county argued to the Court of Appeals that the county was empowered to implement environmental regulations because it was given the power to enforce the rules promulgated by the Michigan Department of Environmental Quality. Id. at 242, 251. The Wolverine Environmental court disagreed and applied the doctrine "expressio unius est exclusio alterius." The court reasoned that by providing only "cities, villages and townships" with power to promulgate additional environmental regulation, "counties" were not permitted such authority. Id. at 252.

Both cases support Ms. Jones' argument because they prohibit the inference of power not specifically conferred under statute. M.C.L.A. 257.675 (6) only creates two (2) specific exceptions which empower a local authority by ordinance to prohibit disabled motorists from parking on a street or highway (fire lanes and rush-hour traffic). Accordingly, the legal maxim "expressio unius est exclusio alterius" necessarily precludes application of a "one (1) hour" parking

ordinance against Ms. Jones because the Court must assume that the Michigan legislature considered and rejected an exception for the City of Monroe to ticket disabled motorists for overtime parking.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. As far as possible, effect should be given to every phrase, clause, and word in the statute. Sun Valley Foods Co. v. George E. Ward, et al., 460 Mich. 230, 237, 596 N.W.2d 119 (1999). If the language is clear and unambiguous, judicial construction is neither required nor permitted, and a court must apply the statute as written. Turner v. Auto Club Ins Ass'n, 448 Mich. 22, 27, 528 N.W.2d 681 (1995). Moreover, when construing a statute, a court should presume that every word has some meaning and should avoid a construction that renders a statute, or any part thereof, surplusage or nugatory. Frank v. William A. Kibbe & Associates, Inc., 208 Mich.App. 346, 350-351, 527 N.W.2d 82 (1995).

To this end, M.C.L.A. 257.675(6) makes it is abundantly clear that the Legislature intended to relieve disabled motorists from tickets for virtually all local parking violations. When statutory language is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded. Moreover, provisions of a statute are not to be construed in isolation, but, rather, in the context of other provisions of the same statute to give effect to the purpose of the whole enactment. Wolverine Environmental at 246, 247. Thus, while City of Monroe is allowed to regulate the standing and parking of motor vehicles, the Motor Vehicle Code supersedes and prohibits enforcement of municipal overtime parking regulations against disabled persons regardless of location because M.C.L.A. 257.675(6) does not distinguish between state, county and local thoroughfares in extending its courtesy.

The City of Monroe's argument and the trial court decision rendered M.C.L.A. 257.675(6) meaningless except for parking tickets which are unenforceable for lack of notice. Stated

again, disabled persons were unable to rely upon M.C.L.A. 257.675(6) when traveling and parking within the jurisdiction of the City of Monroe. Considering that M.C.L.A. 257.675(6) has been reaffirmed and survived eleven (11) statutory amendments since 1980 without allowing exceptions for overtime parking in downtown business districts, one must ask: If the City of Monroe is correct, what protection does the legislation extend to disabled motorists parking anywhere within the State of Michigan?

In the trial and circuit court, the City of Monroe essentially asked the judges to ignore M.C.L.A. 257.675(6); the ***only provision*** that precisely addresses the case at bar: i.e. a disabled person with a windshield placard parking a vehicle. In doing so, the City of Monroe asks the courts to determine the validity of Monroe's one hour parking ordinance as against State law but to avert their eyes to the law as same "paints with too fine of brush.". Such argument is akin to asking a stamp collector to determine the value of a stamp without looking at a valuation guide. Looking at the stamp without the aid of the guide, the collector is left to guess at its market value drawing on various tidbits of information including the face value on the stamp. Similarly, trying to interpret the validity of the Monroe ordinance without the aid of Section 257.675(6), we are left to grab and straws and wisps of legislative intent strewn across other sources. The more sparse our results, the more tempted we become to conclude that the ordinance must be valid.

But we ***must*** look at Section 257.675(6) because the provisions of chapter VI of the Code are to be uniform throughout the state. Section 257.605 provides, in relevant part:

> (1) This chapter and chapter VIII apply uniformly throughout this state and in all political subdivisions and municipalities in the state. ***A local authority shall not adopt, enact, or enforce a local law that provides lesser penalties or that is otherwise in conflict with this chapter*** or chapter VIII.

> (2) A local law or portion of a local law that imposes. . . a criminal penalty or civil sanction in excess of that prescribed in this act, is in conflict with this act and is void to the extent of the conflict. (emphasis added).

The statutory language makes clear that any local law which conflicts with chapter VI, including Section 257.675(6), is void to the extent of the conflict. The City of Monroe's one hour parking ordinance is no exception and cannot be saved by incorporation of the Michigan Motor Vehicle Code or the Uniform Traffic Code.

CONCLUSIONS OF LAW

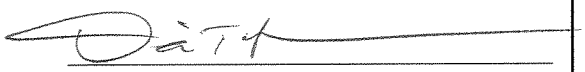
The Application for Leave to Appeal should be denied for lack of significance to the state's jurisprudence. While the City of Monroe attempts to frame the controversy as one relating to the viability of the Motor Vehicle Code. In truth, the issue is rather narrow with impact only to a local and unique parking ordinance. Candidly speaking, Appellant would allow one to believe that the Court of Appeals' ruling will result in a virtual state of "disabled anarchy", with a disability placard being equivalent to a shield against any and all traffic mandates. Same is simply and utterly untrue, and perfectly exemplifies the City's ill-founded misgivings. The statute and subsequent Appellate decision are restricted to matters of a local parking ordinance. Furthermore, the City remains free to enforce the parking infractions identified by M.C.L.A. 257.674, as well as, local ordinances relating to fire lanes and rush-hour traffic.

The City of Monroe's power to enforce overtime parking regulation against persons with disabilities is limited by M.C.L.A. 257.675(6). While persons who are not disabled may lawfully be prosecuted under the one (1) hour limits of the City Ordinance, it is preempted against enforcement against Ms. Jones by Michigan statute under the doctrine "expressio unius est exclusio alterius." Additionally, the meaning urged by Appellee is in accordance with both logic and the rules

of statutory construction commonly employed to give meaning to the laws of this state. These facts were seized upon by the Court of Appeals and, therefore, its decision should remain intact.

SUMMARY AND RELIEF

WHEREFORE, your Appellee Helen Faith Jones respectfully petitions that this Honorable Court uphold the guarantees afforded by the Constitution of the State of Michigan and the protections afforded to the disabled by the laws of this state, follow the standards set forth in the federal and Michigan cases cited herewith, and deny Appellant's Application for Leave to Appeal.



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