

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

DARLENE HARRIS,

No. GD 19-015376

Plaintiff,

v.

CITY OF PITTSBURGH, WILLIAM PEDUTO
and CITY OF PITTSBURGH ETHICS
HEARING BOARD,

Defendants.

OPINION AND ORDER OF COURT

Honorable Joseph M. James

Copies Sent To:

James R. Burn, Jr., Esquire
Lawrence H. Baumiller, Esquire

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OPINION

James, J.

January 19, 2021

This case arises from the Defendant City of Pittsburgh Ethics Hearing Board's ("Ethics Board") decision which imposed a \$4,150 fine upon the Plaintiff Darlene Harris for violating Chapter 198 of the City of Pittsburgh Ethics Code. Section 198 required Ms. Harris to file her campaign finance reports by March 1, 2019. She was a candidate in the Democratic Primary for City Council District 1, an office she held for over thirteen years. On February 21, 2019, Ms. Harris informed the Ethics Board that she would not be filing campaign finance reports because the ordinance conflicts with state finance laws in violation of the doctrine of preemption. With a letter dated February 28, 2019, the Ethics Board again reminded her of the deadline. Ms. Harris responded in writing that she would

not be complying. On March 12, 2019, the Ethics Board filed a Complaint against Ms. Harris for failing to file the required finance reports. Ms. Harris was informed on March 18, 2019, that if she complied by March 25, 2019, then the matter would be closed. She did not comply so a hearing was scheduled for May 23, 2019. Ms. Harris was subpoenaed but did not attend. Her attorney attended the hearing. On September 27, 2019, the Ethics Board issued Findings of Facts, Conclusions of Law and a Final Order, finding that Ms. Harris knowingly and willingly violated the City Code by failing to file campaign finance reports. Ms. Harris did not appeal that decision. On November 1, 2019, the Ethics Board filed a Petition to Confirm Final Order seeking judgment against Ms. Harris in the amount of \$4,150 plus interest. Ms. Harris filed an Answer and New Matter to the Petition, claiming that the ordinance is unenforceable due to the doctrine of preemption. On December 9, 2019, Ms. Harris filed a Complaint in Declaratory Action and Injunctive Relief claiming that the ordinances in question are unconstitutional and that Defendants lack standing to file an enforcement action in the Court of Common Pleas. This Court heard oral argument on December 16, 2020 via Microsoft Teams.

Section 198 required Ms. Harris to file her campaign finance reports by March 1, 2019. After the hearing, the Ethics Board issued comprehensive Findings of Facts and Conclusions of Law as part of its Final Order issuing a fine of \$4,150. Under the Pennsylvania Judicial Code, 42 Pa. C.S. Section 5571(b), “an appeal from a tribunal or other government unit to a court or from a court to an appellate court must be commenced within 30 days after the entry of the order from which the appeal is taken, in the case of an interlocutory or final order.” Ms. Harris never appealed that Final Order. Collateral Estoppel applies if:

- (1) The issue decided in the prior case is identical to the one presented in the later action;
- (2) There was a final judgment on the merits;
- (3) The party against whom the plea is asserted was a party or is in privity with a party in the prior case;
- (4) The party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding; and
- (5) The determination in the prior proceeding was essential to the judgment.

Office of Disciplinary Counsel v. Kiesewetter, 889 A.2d 47, 50 (Pa. 2005)

Ms. Harris' attorney participated in the hearing and filed a brief. She had a full and complete opportunity to litigate all issues she wished to raise before the Ethics Board. Because she did not appeal, she has waived the preemption issue.

Alternatively, even if the preemption issue is not waived, there is no preemption of the City's campaign finance law. Ms. Harris claims that City Ordinances 197 and 198 are illegal and unenforceable because they are preempted by state law. Pennsylvania Courts recognize three forms of preemption in a municipal action. First, the General Assembly can expressly preempt local legislation, at least regarding matters of "statewide concern." Ortiz v. Commonwealth, 681 A.2d 152 (Pa. 1996). Second, if the General Assembly has preempted a field, the state has retained all regulatory and legislative power for itself and no local legislation in that area is permitted. Devlin v. City of Philadelphia, 862 A.2d 1234 (Pa. 2004). Third, municipalities cannot adopt local ordinances that conflict with state law. Cali v. City of Philadelphia, 177 A.2d 824 (Pa. 1962). The City of Pittsburgh has broad powers of regulation pursuant to its Home Rule Charter which gives the City power to regulate campaign finances. Ms. Harris' preemption argument fails due to Nutter v. Dougherty, 938 A.2d 401 (Pa. 2007). In April 2006, mayoral candidate Michael Nutter filed suit to enforce a Philadelphia ordinance that limited campaign contributions against

several individuals who allegedly were exploring mayoral candidacies but not abiding by those limits. These defendants filed counterclaims, arguing that the City's campaign finance law was beyond Philadelphia's home rule authority and preempted by state law, which places no limits on political contributions. The trial court ruled in favor of the defendants, but the appellate courts reversed, holding that the City ordinance was not preempted by state law. In December 2007, the Supreme Court of Pennsylvania upheld the City campaign finance law as a permissible exercise of the City's home rule authority. Because the City of Philadelphia's provision under its home rule charter was found not to run afoul of the state ethics statute, then the City of Pittsburgh's provision is likewise not subject to preemption. It should be noted that since the 13 years since Nutter was decided, the legislature has taken no action to indicate that it was wrongly decided.

Finally, Ms. Harris argues that this Court is an inappropriate venue to enforce fines imposed by the Ethics Board. Title 42, Judiciary and Judicial Procedure Section 931(a) gives the Court of Common Pleas the authority to enforce fines issued by the Ethics Board. It states:

Except where exclusive original jurisdiction of an action or proceeding is by statute or by general rule adopted pursuant to section 503 (relating to reassignment of matters) vested in another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas.

42 Pa.C.S.A. § 931

Ms. Harris' claims are waived because she failed to appeal the Ethics Board's decision and raise the issue of preemption. Alternatively, the City's campaign finance

ordinances are not preempted by state law. The Nutter case controls. Therefore, the fines imposed by the Ethics Board stand and judgment is entered in favor of the Defendants.

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ORDER OF COURT

AND NOW, this 19th day of January 2021, based upon the foregoing Opinion, the Ethics Board's \$4,150 fine is confirmed and Plaintiff Harris' Declaratory Judgment action is denied.

By the Court:

Joseph M. James