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## Panel upholds red light ticket process

### Holland and Knight lawyers successfully defend Schaumburg

BY PAT MILHIZER  
Law Bulletin staff writer

Drivers and car owners who want to protest a red light violation captured by an automated camera lack a right to a jury trial, a state appeals panel ruled.

The village of Schaumburg fined Gina Fischetti \$100 in 2009 after an intersection camera photographed her vehicle, which she wasn't driving, running a red light at Meacham and Woodfield roads. The village gave Fischetti the option to contest the citation by mail or at a hearing.

She submitted a letter stating that the suburb lacks jurisdiction "to issue me a citation for disobeying a traffic control signal." After a hearing officer held Fischetti liable for the citation, she paid the fine.

She then filed a complaint in Cook County Circuit Court, alleging that the suburb adjudicated the alleged violation through an administrative hearing process even though the suburb lacked statutory authority to do that. She also contended that the suburb

disregarded her constitutional rights to due process and equal protection.

Fischetti cited the Illinois Municipal Code, which authorizes administrative adjudication of local violations — except for offenses under the Illinois Vehicle Code "or a similar offense that is a traffic regulation governing the movement of vehicles."

The suburb cited the Illinois Vehicle Code, which allows for the administrative procedure. The suburb issues citations by relying on an ordinance that's permitted by state law.

Associate Judge Carolyn G. Quinn granted summary judgment to Schaumburg, ruling that the state law that authorizes red light cameras provides that municipalities can administratively adjudicate hearings. The civil penalties don't trigger constitutional and statutory rights to a jury trial, Quinn held.

On Friday, the 1st District Appellate Court affirmed Quinn's ruling in a 17-page opinion written by Justice Margaret Stanton McBride.

McBride wrote that Fischetti "simply disregarded pertinent statutes" by arguing that Schaumburg can't use an administrative process.

McBride noted that when state lawmakers authorized red light cameras, they clearly stated



Jack M. Siegel

that these citations don't fall under the exception of the municipal code. And lawmakers decided that these violations can't be recorded on a vehicle owner's driving record.

Regarding due process, McBride held that Fischetti received written notification of the citation. In addition, the suburb let her either contest the violation by mail or at a hearing.

"Finally," McBride wrote, "Fischetti's contention that she had a constitutional or statutory right to a jury trial is based on the faulty premise that she was accused of a criminal act. ... What occurred was not a criminal offense; it was a civil violation, and therefore, not subject to the protections, presumptions and standard of

proof afforded in criminal prosecutions."

Jack M. Siegel and Andrew N. Fiske of Holland & Knight LLP represented the suburb. Siegel said state lawmakers possess the power to decriminalize certain acts, which they did with red light cameras.

The appellate opinion, Siegel said, "affirms our constitutional right to do exactly what the legislature told us we could do. I think there's plenty of due process as apparently the court recognized. She gets noticed; she gets an opportunity to object; she got the opportunity to get judicial review."

James P. Newman and Brianne M. Connell of James P. Newman & Associates LLC in St. Charles represented Fischetti.

Newman said the law violates equal protection because drivers who receive a red light ticket from a police officer can go to court and get a jury trial.

"You cannot treat people differently for the same offense," Newman said. "If you happen to be a lucky one and get a ticket from a cop, now the burden is on the state to prove you guilty beyond a reasonable doubt."

Justices Joseph Gordon and Nathaniel Howse Jr. concurred in the opinion, which is *Gina Fischetti v. The Village of Schaumburg*. 2012 IL App (1st) 111008.