No. 32836-8

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

Jeri Mainer,

Appellant,

v.

City of Spokane,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION.

Appellant Jeri Mainer's belated and collateral challenge to her traffic citation, which she received and voluntarily paid nearly three-and-a-half years ago, was properly dismissed by the trial court. In December 2010, Ms. Mainer ran a red light and received a Notice of Infraction ("NOI") from the City of Spokane ("City"). Ms. Mainer challenged the NOI at that time, but the Spokane Municipal Court found Ms. Mainer committed the infraction. As a result, on March 25, 2011, Ms. Mainer voluntarily paid the $124 fine. Over three years later, Ms. Mainer filed a lawsuit to both collaterally attack the earlier finding that she committed the infraction, and also argue for the first time that issuance of the NOI violated Washington law. The trial court properly dismissed her claim.

As a threshold matter, this case should be dismissed outright because this Court lacks jurisdiction to consider Ms. Mainer's appeal. The amount in controversy for Ms. Mainer's one asserted claim is $124. This Court's appellate jurisdiction, however, extends to cases only when the original amount in controversy exceeds $200. Dismissal is therefore required.

Even if this Court had jurisdiction to hear this appeal, Ms. Mainer's claim for unjust enrichment fails as a matter of law for four

separate and independent reasons. *First,* res judicata prevents re-litigation of the NOI. *Second,* the three-year statute of limitations bars Ms. Mainer's claim. *Third,* the voluntary-payment doctrine is a complete defense to a claim of unjust enrichment. *Finally,* because Ms. Mainer's claim is subject to the exclusive jurisdiction of the Spokane Municipal Court, the trial court lacks subject-matter jurisdiction. The trial court's dismissal of Ms. Mainer's claim should thus be affirmed.

II. STATEMENT OF THE CASE.

On December 7, 2010, Ms. Mainer ran a red light in the City of Spokane. CP 6, ll. 11-13; Appellant's Brief at pg. 6.[1] This was detected by an automated traffic safety system (red light camera). *Id.* Subsequently, on December 14, 2010, Ms. Mainer received an NOI in the mail related to her traffic infraction. *Id.*; CP 16-34; Appellant's Brief at pg. 7. In response, and before the Spokane Municipal Court, Ms. Mainer contested the citation by arguing only that "she was not sure who may have been driving the vehicle at the time of the alleged violation." CP 6, ll. 18-19; CP 25; Appellant's Brief at pg. 7. Despite

[1] Respondent's citations to "CP" are to the Index to Clerks Papers submitted by the Appellant. Respondent notes that most citations to "CP" contained within pages 4-7 of the Appellant's Opening Brief do not correspond to the documents contained in the Index to Clerks Papers.

full opportunity to do so, Ms. Mainer did not assert any other challenges to the NOI. CP 25. After considering Ms. Mainer's challenge, the Spokane Municipal Court entered a finding that Ms. Mainer had "committed" the infraction. CP 6, ll. 20-21; CP 33. Ms. Mainer did not appeal or seek to vacate that order. CP 6, ll. 20-22; CP 33. Instead, on March 25, 2011, Ms. Mainer "paid the $124.00 fine as ordered." *Id.*; CP 34.

Over three-and-a-half years later, Ms. Mainer sued the City in Spokane Superior Court seeking collateral review of her infraction, asserting a new legal argument that Ms. Mainer concedes was not raised in the first instance, and pursuing a claim only for unjust enrichment. CP 7, ll. 1-4; CP 8, ll. 6-12; CP 9, ll. 20-30; CP 10, ll. 1-24; CP 12, ll. 1-3; CP 38-47. In response, the City moved to dismiss under CR 12(b)(6), seeking to dismiss the case on four separate and independent grounds: (1) res judicata prevents re-litigation of the NOI; (2) the three-year statute of limitations bars Ms. Mainer's claim; (3) the voluntary-payment doctrine is a complete defense to unjust enrichment; and (4) the trial court lacks subject-matter jurisdiction because Ms. Mainer's claim is subject to the exclusive jurisdiction of the Spokane Municipal Court. The Spokane Superior Court granted the City's motion. Ms. Mainer then filed this appeal.

III. ARGUMENT.

A. STATNDARD OF REVIEW.

A trial court's ruling on a motion to dismiss for failure to state a claim on which relief can be granted is a question of law that courts of appeal review *de novo*. CR 12(b)(6); *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994) (en banc). Courts should dismiss a claim under CR 12(b)(6) only if it appears beyond a reasonable doubt that no facts exist that would justify recovery. *Cutler*, 124 Wn.2d at 755. Such motions are appropriate when, as here, a plaintiff "includes allegations that show on the face of the complaint that there is some insuperable bar to relief." Orwick v. Seattle, 103 Wn.2d 249, 254, 692 P.2d 793 (1984); *see also Atchison v. Great W. Malting Co.*, 161 Wn.2d 372, 382, 166 P.3d 662 (2007) (dismissing case under CR 12(b)(6) based on statute of limitations); *Yurtis v. Phipps*, 143 Wn. App. 680, 689, 181 P.3d 849 (2008) (dismissing case under CR 12(b)(6) based on doctrine of res judicata).

B. THE APPEAL SHOULD BE DISMISSED BECAUSE THIS COURT LACKS JURISDICTION.

Under RCW 2.06.030, "[t]he appellate jurisdiction of the court of appeals does not extend to civil actions at law for the

recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars." In *City of Bremerton v. Spears*, 134 Wn.2d 141, 153, 949 P.2d 347 (1998), a case involving motorcycle helmet infractions, this Court concluded that it did not have jurisdiction to review civil traffic cases in which the original amount in controversy is less than $200. Such is the case here, as the amount in controversy is only $124. This is well below the $200 amount-in-controversy requirement necessary to vest this Court with appellate jurisdiction. As such, dismissal of this appeal is required.

C. THE TRIAL COURT PROPERTLY CONSIDERED MS. MAINER'S NOTICE OF INFRACTION.

Despite not lodging an objection below, Ms. Mainer challenges the trial court's dismissal order on grounds that the trial court improperly relied on "matters outside of the pleadings," namely a document titled "Notice of Infraction." Appellant's Brief at pp. 8-9. As a threshold matter, Ms. Mainer is wrong on the law.

Critical here, the Notice of Infraction that Ms. Mainer takes issue with was only *part* of what the City's request for judicial notice. CP 40, ll. 5-16. In fact, the City asked the trial court to take judicial notice of the Spokane Municipal Court's entire court file

including, and relevant here, a one-page document evidencing the specific date on which Ms. Mainer paid her infraction (the "Payment Details"). CP 13-34. It is the Payment Details, to which Ms. Mainer did not and does not object, that are relevant to the City's statute-of-limitations argument, discussed below in Section F.

Ms. Mainer did not object below to the trial court taking judicial notice of the payment date or the Payment Details. Because "appellate courts will not entertain issues raised for the first time on appeal," Ms. Mainer has waived any challenge concerning the Payment Details. *Wilson & Son Ranch, LLC v. Hintz*, 162 Wn. App. 297, 303, 253 P.3d 470 (2011); *see also* RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court."). Not only did Ms. Mainer waive this point by not seeking to strike the Payment Details below, she does not now challenge the Payment Details on appeal. Accordingly, Ms. Mainer's argument that the trial court relied on matters outside the pleadings is without merit.

D. MS. MAINER'S RELIANCE ON AN ORDER FROM A SEPARATE TRIAL COURT (*WARDROP*) IS MISPLACED.

In a desperate attempt to revive her claim, Ms. Mainer grossly mischaracterizes the law by asserting that a ruling by a

different judge in Spokane Superior Court, in a case involving different plaintiffs and different facts, somehow applies to void her NOI. Ms. Mainer's reliance on Judge Jerome Leveque's decision in *City of Spokane v. Wardrop, et al.*, Cause No. 2011-02-00432-0 (Spokane Superior Court) is wholly misplaced.[2] Ms. Mainer's legal position is fundamentally flawed because the *Wardrop* order is "not legal authority and [has] no precedential value." *Bauman v. Turpen*, 139 Wn. App. 78, 87, 160 P.3d 1050 (2007).[3]

Further, the scope of the *Wardrop* order makes clear it applies only to the three individual plaintiffs named in the case. The case did not involve a class. In ruling that the named plaintiffs' infractions were void and subject to dismissal, the *Wardrop* court necessarily limited its ruling to the three named plaintiffs.[4] With apologies for stating the obvious, Ms. Mainer was not one of those

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[2] A copy of the *Wardrop* order relied upon by Ms. Mainer is included in the City's Appendix for the convenience of the Court.

[3] Ms. Mainer also suggests that the *Wardrop* order required the City to reimburse *all* people who received an infraction signed in contradiction of GR 30. Appellant's Brief at p. 15, at n.5. To support this argument, Ms. Mainer relies on *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 157 P.3d 847 (2007). The *Nelson* case was a certified class action. The *Wardrop* case, in contrast, was not a class action and involved only three named plaintiffs. The *Nelson* decision is therefore plainly inapposite.

[4] More specifically, the *Wardrop* court noted "[t]his failure makes the citations issued to *the parties involved in the appeal* void." (emphasis added). The court also noted that "[t]he finding of committed for the appellants Mark Wardrop, Jennifer Lee and Susan Annechiarico is hereby reversed and the infractions are dismissed."

three named plaintiffs. Ms. Mainer's reliance on the *Wardrop* order therefore fails as a matter of law.

E. THE TRIAL COURT CORRECTLY RECOGNIZED THAT MS. MAINER'S CLAIM IS BARRED UNDER RES JUDICATA PRINCIPLES.

The trial court correctly dismissed Ms. Mainer's claim because Ms. Mainer failed to bring her original challenge before the Spokane Municipal Court, and is thus barred from raising the challenge now on res judicata grounds. Ms. Mainer, for reasons unknown, elected not to raise her challenges to the NOI in the first instance. She cannot now, over three years later, commence a new action to dispute her 2010 citation on grounds not raised before.

Res judicata prevents a party from re-litigating all claims that were raised, *or that could have been raised* in an earlier action. *See Stevens County v. Futurewise*, 146 Wn. App. 493, 502, 192 P.3d 1 (2008) (emphasis added). The res judicata doctrine exists to prevent piecemeal litigation and to ensure the finality of judgments. *Id.* at 502-03. The elements necessary to satisfy the res judicata doctrine are well established. A party seeking to bar claims under this doctrine must show an identity between the prior action and the second action by showing that the two cases have

the same (1) parties, (2) subject matter, (3) cause of action, and (4) quality of the persons for or against the claim is made. *Id.*, at 503.

Courts in Washington, as well as throughout the country, have applied these four elements of the res judicata doctrine to prevent actions just like this one. For example, in *Holder v. City of Vancouver*, No. C08-5099RBL, 2008 WL 918725, *3 (W.D. Wash. Apr. 3, 2008), the district court granted the City of Vancouver's motion to dismiss on res judicata grounds because the plaintiff there was merely trying to re-litigate his parking infraction. In doing so, the *Holder* court noted:

> The Plaintiff's constitutional challenge must fail because he had an opportunity at the Washington Court of Appeals to litigate these claims but did not. *See Schoeman v. New York Life Ins. Co.*, 106 Wash.2d 855, 859, 726 P.2d 1 (1986). First, *the previous action pertained to a code violation assessed against the Plaintiff for improper parking of his vehicles.* The subject matter in this case is identical to the claims Plaintiff litigated before the Washington Court of Appeals.

Id. (emphasis added). Thus, the court in *Holder* applied res judicata to bar a plaintiff from asserting new challenges to his traffic ticket. Courts in other jurisdictions are in accord.[5]

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[5] *See, e.g., Kovach v. Dist. of Columbia*, 805 A.2d 957, 962-63 (D.C. Ct. App. 2002) (plaintiffs estopped from re-litigating traffic camera tickets); *Dajani v. Governor & Gen. Assembly of the State of Md.*, No. Civ.CCB-00-713, 2001 WL 85181, at*2-3 (D. Md. Jan. 24, 2001) (finding that analogous *Rooker-Feldman* doctrine bars re-litigation of municipal court claim in subsequent federal action).

Against this legal backdrop, Ms. Mainer's unjust-enrichment claim is plainly barred. Starting with the first element — the parties between the first and second action are the same — it is easily satisfied as they are identical. Indeed, Ms. Mainer and the City were both parties to the original NOI contest. For this same reason, the fourth element, which asks whether the quality of the persons for or against the claim is made is the same, is too satisfied. *See, e.g.*, *Bordeaux v. Ingersoll Rand Co.*, 71 Wn.2d 392, 397-98, 429 P.2d 207 (1967) (holding that because the parties occupy the same roles in both actions, res judicata bars the second suit).

Turning to the second element, whether the subject matter between both actions is the same, it is also satisfied because in the municipal court action and this one, Ms. Mainer is seeking to overturn her citation for a traffic infraction. Lastly, the third element, which examines whether the claims between both actions are the same, is fulfilled. To determine whether two causes of action are the same, Washington courts consider whether "(1) prosecution of the later action would impair the rights established in the earlier action, (2) the evidence in both actions is substantially the same, (3) infringement of the same right is alleged in both actions, and (4)

the actions arise out of the same nucleus of facts." *Civil Serv. Comm'n v. City of Kelso*, 137 Wn.2d 166, 171, 969 P.2d 474 (1999). Like the other three elements of res judicata, this element is easily satisfied. Ms. Mainer's original contest clearly established that she violated a Spokane ordinance and, as a result, was subject to a fine. CP 16-34. In fact, Ms. Mainer paid the fine. CP 6, ll. 20-22; CP 34. Here, in this new action, Ms. Mainer is challenging the same citation and is seeking to undo it, without any new evidence. CP 3-14. Given that the exact same citation and fine are at issue in both cases, this third element is surely satisfied.

In short, each of the elements of res judicata is satisfied here. Nonetheless, Ms. Mainer attempts to avoid application of the res judicata doctrine by arguing that elements one and four are not met because "the parties differ from [her municipal court case], as this case is *not* simply Ms. Mainer, but rather Ms. Mainer and a class of plaintiffs similarly situated." Appellant's Brief at p. 12. This argument is completely without merit because whether this case is a putative class action or not does not change the fact that Ms. Mainer was a party to *both* actions.

Additionally, Ms. Mainer's argument fails because this case is merely a putative class action and it has not been certified as a

class action. Putative class members are, as a matter of law, not parties to the case. *Dep. Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 358 n.21 (1980) (while members of a putative class may be "interested parties," that does not make them parties to the litigation in any sense); *see also In re Nazi Era Cases Against German Defendants Litig.*, 198 F.R.D. 429, 440 (D.N.J. 2000) ("Until a class is certified, the interest of putative class members must be classified as speculative."). Because the putative class members are not "parties" to this action, they cannot be considered for purposes of res judicata. *See, e.g., Newton v. S. Wood Piedmont Co.*, 163 F.R.D. 625, 634 (S.D. Ga. 1995) (applying res judicata to proposed class representative based on only her prior involvement in related case). If this were not the case, any class representative could always get two proverbial "bites at the apple." That is not the law. As such, Ms. Mainer's argument that the first and fourth elements of res judicata are not satisfied fails.

Ms. Mainer also argues that the second and third elements are not satisfied because the municipal court action involved only a traffic infraction whereas this case involves a claim for unjust enrichment related to allegations that the City "falsely stated the [traffic] tickets were issued under penalty of perjury . . . ."

Appellant's Brief at p. 13. Ms. Mainer continues by arguing that this case "will be the first opportunity for her to present evidence of the City's systematic violations." *Id.* Ms. Mainer, however, does not explain why she could not have presented such evidence in the municipal court action, either in the municipal court itself or, on appeal, in the Spokane Superior Court.

Ms. Mainer could have presented such evidence in the municipal action. *See City of Spokane v. Wardrop*, 165 Wn. App. 744, 267 P.3d 1054 (2011). Indeed, in *Wardrop*, the very case Ms. Mainer relies on to support her substantive argument that her infraction is void, the plaintiff made the exact argument Ms. Mainer wants to raise now in a collateral attack. Given that Ms. Mainer could have raised this argument in the original action but did not, her arguments that elements two and three are not satisfied also fail.

In sum, Ms. Mainer's claim is barred by res judicata principles. As such, the trial court's order granting the City's motion to dismiss should be affirmed on this ground.

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F. THE TRIAL COURT CORRECTLY RECOGNIZED THAT MS. MAINER'S CLAIM IS BARRED BY THE THREE-YEAR STATUTE OF LIMITATIONS.

Ms. Mainer's claim is also barred by the statute of limitations because she filed this lawsuit more than three years after she paid the fine. Ms. Mainer's complaint alleges only a claim for unjust enrichment and such claims are subject to a three-year statute of limitations. RCW 4.16.080 provides that "[a]n action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated" shall be commenced within three years. *See also Geranios v. Annex Invest., Inc.*, 45 Wn.2d 233, 273 P.2d 793 (1954) (holding that the three-year statute of limitations applicable to actions on unwritten contracts, RCW 4.16.080(3), applies to an action for unjust enrichment). In fact, Ms. Mainer, as she must, admits this in her opening brief. Appellant's Brief at p. 15. What Ms. Mainer disputes is when her claim accrued.

Under Washington law, unjust enrichment claims accrue at the time of payment. *See, e.g.*, *Wash. Sec. Co. v. State*, 9 Wn.2d 197, 203, 114 P.2d 965 (1941) ("respondent, immediately upon payment by it to, and receipt by, the state of the purchase money,

could have instituted an action to recover the purchase price paid"); *Eckert v. Skagit Corp.*, 20 Wn. App. 849, 583 P.2d 1239 (1978) ("the cause of action arose, if ever, when the employer first made use of the device"). Here, it is undisputed that Ms. Mainer paid the fine at issue on March 25, 2011. This means the limitations period ran on March 25, 2014—three years after Ms. Mainer paid the fine. As such, Ms. Mainer's claim for unjust enrichment, which was filed on June 13, 2014, is time-barred.

To avoid this result, Ms. Mainer argues that the discovery rule tolled the three-year statute of limitations until Judge Leveque issued his decision. Appellant's Brief at pp. 14-16. Ms. Mainer, however, did not raise the discovery rule below to the trial court and thus makes this argument for the first time on appeal. As such, she has waived this issue. RAP 2.5(a); *see also Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008) ("A party who fails to raise an issue at trial normally waives the right to raise that issue on appeal.").

Even if Ms. Mainer had properly preserved this issue, the discovery rule does not save her unjust-enrichment claim. Under the discovery rule, a cause of action accrues when the plaintiff discovers, or in the reasonable exercise of due diligence should

discover, the elements of a cause of action. *1000 Va. Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 575–76, 146 P.3d 423 (2006). Importantly, "[t]his does not mean that the action accrues when the plaintiff learns that he or she has a legal cause of action; rather, *the action accrues when the plaintiff discovers the salient facts underlying the elements of the cause of action.*" *Id.* (emphasis added). As such, as the court in *Vertecs* made clear, what matters for the discovery rule is the discovery of "facts underlying the elements of a cause of action," and not learning of the existence of a new cause of action.

Applying these legal principals here, Ms. Mainer's argument that the applicable statute of limitations commenced not when she paid the ticket on March 25, 2011, but on June 17, 2011, "... the day Judge Leveque ruled that photo red light infractions issued [to date] by the City were void ..." is plainly wrong. Appellant's Brief at p. 15. Although Ms. Mainer grossly overstates the effect of Judge Leveque's ruling, any such legal ruling, at best, educated Ms. Mainer that she *may* have a new legal argument. The ruling did not change the facts available to Ms. Mainer surrounding her infraction and fine. Indeed, Ms. Mainer had knowledge of all relevant facts underlying any cause of action on December 14, 2010, the date

she received the NOI. Accordingly, the discovery rule does not apply and the statute of limitations for an unjust-enrichment claim ran on March 25, 2014. This Court, therefore, should affirm the trial court's order on this basis too.

G. THE TRIAL COURT CORRECTLY RECOGNIZED THAT MS. MAINER'S CLAIM FOR UNJUST ENRICHMENT IS BARRED UNDER THE VOLUNTARY-PAYMENT DOCTRINE.

Ms. Mainer's unjust-enrichment claim is also barred by the voluntary-payment rule. Under Washington law, "money voluntarily paid under a claim of right to the payment, and with knowledge by the payor of the facts on which the claim is based, cannot be recovered on the ground that the claim was illegal, or that there was no liability to pay in the first instance." *Speckert v. Bunker Hill Ariz. Mining Co.*, 6 Wn.2d 39, 106 P.2d 602 (1940); *see also Lynch v. Deaconess Med. Ctr.*, 113 Wn.2d 162, 165 (1959) (holding same); *Riensche v. Cingular Wireless*, 2007 WL 3407137, *5 (W.D. Wash. Nov. 9, 2007), *rev'd on other grounds*, 320 Fed App'x 646 (9th Cir. 2009) (applying voluntary-payment rule to claim for unjust enrichment).

The voluntary payment doctrine imposes upon a person who disputes the appropriateness of a bill the obligation to assert the

challenge either before or contemporaneously with making payment. *Riensche*, 2007 WL 3407137, at *5. Neither a mistake of law nor a claim of legal compulsion is a valid defense to application of the voluntary-payment rule. *Miller v. United Pac. Cas. Ins. Co.*, 187 Wn. 629, 640, 60 P.2d 714 (1936); *see also Telescripps Cable Co. v. Welsh*, 247 Ga. App. 282, 542 S.E.2d 640 (2000) (holding that a mistake of law does not prevent application of the voluntary-payment rule); *Hawkinson v. Conniff*, 53 Wn.2d 454, 459, 334 P.2d 540 (1959)(holding that a "threat of civil proceedings does not constitute duress if it is made in good faith and without coercion" and, as such, does not defeat the voluntary-payment rule).

Applying these legal principals here, Ms. Mainer's unjust-enrichment claim is barred under the voluntary-payment rule. Indeed, it is plain from the face of the Complaint that Ms. Mainer challenged her infraction but ultimately, without asserting her current challenge, or any other argument, voluntarily paid the fine. CP 6, ll. 18-22; CP 22; CP 25; CP 34. To this end, the Complaint expressly states that "Ms. Mainer paid the fine of $124.00 as ordered." CP 6, l. 22.

Despite this established case law, Ms. Mainer tries to avoid application of the voluntary-payment doctrine by arguing that an

exception exists to application of the voluntary-payment rule for payments made as the result of fraud or deceit. Appellant's Brief at p. 16. Ms. Mainer claims that she paid the traffic infraction under "deceit insofar as the citation referenced that the issuing officer signed the contract in Washington when that was not true." Appellant's Brief at p. 17. Ms. Mainer never raised a deceit argument below and, as such, has waived that argument. RAP 2.5(a); *see also Brundridge*, 164 Wn.2d at 441 ("A party who fails to raise an issue at trial normally waives the right to raise that issue on appeal."). Moreover, even if Ms. Mainer had raised her deceit argument in front of the Spokane Superior Court, it would nonetheless fail because the alleged deceit at issue was not the cause of Ms. Mainer paying the infraction.

Ms. Mainer also asserts that the voluntary-payment rule does not apply because she "was unaware that the photo red citation she received violated RCW 9A.72.085." As noted above, however, "money voluntarily paid under a claim of right to the payment, and with knowledge by the payor of the facts on which the claim is based, *cannot be recovered on the ground that the claim was illegal*, or that there was no liability to pay in the first instance." *Speckert*, 6 Wn.2d at 52. Thus, whether the citation

violated Washington law or not is irrelevant to application of the voluntary-payment rule.

Ms. Mainer, in a footnote, also seems to argue that that she paid the infraction under legal compulsion because of fear of additional penalties. Appellant's Brief at p. 17. This argument is baseless. *Conniff*, 53 Wn.2d at 459. Indeed, "a threat of civil proceedings does not constitute duress if it is made in good faith and without coercion." *Id.* Accordingly, Ms. Mainer's legal compulsion argument fails too.

In sum, this Court may affirm the trial court's dismissal order on grounds that Ms. Mainer's claim is barred by the voluntary-payment rule.

H. THE TRIAL COURT CORRECTLY RECOGNIZED THAT THE TRIAL COURT LACKS SUBJECT MATTER JURISDICTION.

The Spokane Superior Court lacks subject-matter jurisdiction over Ms. Mainer's unjust-enrichment claim because her claim plainly arises under a Spokane Ordinance and her violation of that ordinance. Under RCW 3.50.020, "[t]he municipal court shall have *exclusive* original jurisdiction over traffic infractions arising under city ordinances . . . ." (emphasis added). The Washington Supreme Court, in interpreting this provision, held that:

> If a court has original jurisdiction, an action may be filed there. *If it has exclusive original jurisdiction, the action must be filed there and nowhere else. If a court has exclusive original jurisdiction, all that remains to any other court is appellate jurisdiction.*

City of Spokane v. County of Spokane, 158 Wn.2d 661, 682, 146 P.3d 893 (2006) (internal citations and quotations omitted) (emphasis added). This means that Ms. Mainer's claim challenging the validity of her infraction can be brought only in Spokane Municipal Court. A trial court, therefore, does not have original jurisdiction over Ms. Mainer's claim. Rather, such jurisdiction is vested solely with the Spokane Municipal Court. For this reason alone, Ms. Mainer's case was subject to dismissal as a matter of law.

Ms. Mainer argues that despite these legal principles, the Spokane Superior Court had jurisdiction over her unjust-enrichment claim because her claim was one for equity and, Ms. Mainer argues, superior courts have original jurisdiction over all cases in equity. Appellant's Brief at pp. 10-12. To support her argument, Ms. Mainer relies on *Bill v. Gattavara*, 34 Wn.2d 645, 650, 209 P.2d 457 (1949). The court in *Gattavara*, however, noted that "while the action for unjust enrichment is an equitable proceeding, its essence is that of an action *ex contractu*," a legal action. *Id.* Subsequent

Washington courts have also held that claims like unjust enrichment are legal in nature. *See, e.g.*, *Auburn Mechanical, Inc. v. Lydig Const., Inc.*, 89 Wn. App. 893, 905 (1998) (citing *Gattavara*, 34 Wn.2d at 650); *Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 893 P.2d 1127 (1995) (same). The court in *Ducolon*, for instance remarked that "*quantum meruit* and restitution . . . are legal remedies," and noted that "Ducolon has not requested equitable relief. In its original complaint, it requested damages or recovery in *quantum meruit* for the reasonable value of its services to *Shinstine*." *Id.* at 711 n.2. Here, the primary relief sought is not equitable, but recovery of the "amount of the ticket paid plus prejudgment interest," in other words, monetary relief. CP 7, ll. 1-4; CP 8, ll. 8-9; CP 9, ll. 23-24; CP 10, ll. 10-23; CP 11, ll. 2-4, ll. 19-20. Thus, just like the plaintiff in *Ducolon*, Ms. Mainer's claim is legal in nature and, as such, the Spokane Superior Court lacks subject-matter jurisdiction to hear such claim.

Ms. Mainer also argues that the Spokane Superior Court had jurisdiction to hear her claim because "the Superior Court has jurisdiction over equitable claims regarding system wide violations of mandatory statutory requirements . . . and from repetitious

violations of constitutional rights by a municipality in enforcement of municipal ordinances." Appellant's Brief at p. 11. Ms. Mainer relies on *Orwick v. City of Seattle*, *supra*, to support this assertion. In *Orwick*, the plaintiffs asserted "claims for injunctive and declaratory relief based on their *rights under a state statute and the state and federal constitutions*." *Id.* at 796 (emphasis added). The court concluded that such claims do not "arise under" a municipal ordinance and, therefore, are not within the exclusive jurisdiction of the Seattle Municipal Court.

In contrast to the plaintiffs' claims in *Orwick*, here Ms. Mainer asserts a claim seeking a refund of the fine she paid pursuant to a Spokane ordinance. She has not asserted claims based on "rights under a state statute and the state and federal constitutions."[6] As a result, this type of claim plainly "arises under" Spokane's municipal ordinance and, as a result, is within the exclusive jurisdiction of the Spokane Municipal Court. The court's decision in *Orwick,* therefore, is both consistent with the City's argument and inapposite.

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[6] While Ms. Mainer does claim that a violation of RCW 9A.72.085 makes her traffic infraction invalid, RCW 9A.72.085 provides no "rights" or cause of action and, as such, reliance on it does not confer jurisdiction on the Spokane Superior Court.

Ms. Mainer also relies on *Silver Surprize, Inc. v. Sunshine Mining Co.*, 74 Wn.2d 519, 522, 445 P.2d 334 (1968) to support her jurisdictional argument. It is unclear what applicability this case has at all, as it neither involves a municipal ordinance nor a superior court's jurisdiction over claims arising under a municipal ordinance. As such, it provides no guidance here.[7]

In short, this Court may also affirm the trial court's dismissal order on grounds that the trial court lacked subject-matter jurisdiction over Ms. Mainer's claim.

IV. CONCLUSION.

For the foregoing reasons, this Court should affirm the trial court's ruling granting the City's motion to dismiss.

Respectfully submitted this 20th day of February, 2015.

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Assistant City Attorney
Attorneys for Respondent City of Spokane

[7] Although Ms. Mainer asserts only a claim for unjust enrichment, in her prayer for relief, she also sought an "order enjoining Defendant and/or related entities, as provided by law, from engaging in the unlawful conduct set forth herein." CP 11, ll. 16-17. This request for relief necessarily fails because, as Ms. Mainer concedes in her Complaint, the City now has an officer personally sign each citation. CP 5, ll. 28-29; *see also*, Appellant's Brief at p. 4, n. 3. This makes Ms. Mainer's claim for injunctive relief moot. *See, e.g., Cooper v. Dep't of Institutions*, 63 Wn.2d 722, 388 P.2d 925 (1964) (affirming dismissal on mootness grounds where the proviso had expired by its express terms, and the proviso had not been carried forward by subsequent re-enactment). As such, this claim, to the extent asserted, was properly dismissed by the trial court.

DECLARATION OF SERVICE

I declare, under penalty of perjury, that on the 20th day of February, 2015, I caused a true and correct copy of the foregoing "Brief of Respondent," to be delivered to the parties below in the manner noted:

Dean T. Chuang Crary, Clark & Domanico, P.S. 9417 E. Trent Ave. Spokane, WA 99206-4285 Fax: 924-7771 Email: dchuang@ccdlaw.com Attorney for Appellant	[ ] VIA FACSIMILE [ ] VIA EMAIL [ ] VIA U.S. MAIL [ ] VIA OVERNIGHT SERVICE [X] VIA HAND DELIVERY
Matthew Crotty Crotty & Son Law Firm, PLLC 905 W. Riverside Ave., Ste. 409 Spokane, WA 99201 Email: matt@crottyandson.com Attorney for Appellant	[ ] VIA FACSIMILE [ ] VIA EMAIL [ ] VIA U.S. MAIL [ ] VIA OVERNIGHT SERVICE [X] VIA HAND DELIVERY

Doris Stragier

Doris Stragier
City Attorney's Office
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3326

APPENDIX

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

CITY OF SPOKANE, Plaintiff/Respondent, v. MARK WARDROP, JENNIFER M. LEE, AND SUSAN ANNECHIARICO Defendants/Petitioners.	Case No. 2011-02-00432-0 FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER was heard by the Court on June 17, 2011. The Honorable Jerome J. Leveque presided at the hearing. The Appellants were represented through their attorney Dean T. Chuang of CRARY, CLARK & DOMANICO, P.S. and Margaret Harrington, Assistant City Attorney, appeared on behalf of the City of Spokane. This case was an appeal from the City of Spokane Municipal Court.

The Court has considered the briefing by the parties, the declarations and exhibits filed herein, transcripts of the municipal court proceedings, the argument of counsel, and being fully advised on the premises, now enters the following:

FINDINGS OF FACT

1. The legislature in 2005 voted on a bill to use traffic cameras in the State of Washington. This was codified into the law in the statute RCW 46.63.170. The City of Spokane

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subsequently enacted ordinance 16A.64 which permits the use of automated traffic cameras to enforce RCW 46.61.060.

2. The penalty for violations of RCW 46.61.060 are fines of $124.

3. The City of Spokane has contracted with American Traffic Solutions L.L.C. ("ATS") to install and maintain red light traffic cameras at certain intersections. The City of Spokane uses the automated web-based citation processing system, called Axsis, to issue citations of RCW 46.61.060.

4. The red light camera system is placed at an intersection. If a vehicle allegedly runs a red light, the system will take video of the incident, as well as photos of the vehicle and front and back license plates. The license plate numbers are then run against Department of Licensing records. Citations are issued to the registered owners of the vehicles.

5. The process to issue a citation involves an officer logging onto Axsis using his or her unique user ID and secure Password. This ID and Password allows the officer to enter the system and review the alleged infractions.

6. Once in the Axsis system, the Officer can review the photos and videos of the alleged infractions to determine whether an infraction has occurred.

7. The officer, if after viewing the video and believing proximate cause has been established sufficient to issue an infraction, presses an accept button that electronically signals to the Arizona Traffic Systems in Tempe, Arizona, the request and authorization to print the citation and to affix, again in Tempe, Arizona, the officer's signature on the citation.

8. That citation then is sent electronically from Tempe, Arizona to Spokane, Washington to be issued.

9. Mark R. Wardrop was issued a photo red citation on 1/20/2010 for allegedly running a red light on 1/16/2010 in the intersection of Browne Street and Sprague Avenue in Spokane, Washington.

10. Mark R. Wardrop's citation states that it was signed in Spokane, Washington.

11. Susan Annechiarico was issued a photo red citation on 4/26/2010 for allegedly running a red light on 4/20/2010 at the intersection of Division Street and Francis Avenue in Spokane, Washington.

12. Susan Annechiarico's citation states that it was signed in Spokane, Washington.

13. Jennifer M. Lee was issued a photo red citation on 5/03/2010 for allegedly running a red light on 4/10/2010 at the intersection of Division Street and Francis Avenue in Spokane, Washington.

14. Jennifer M. Lee's citation states that it was signed in Spokane, Washington.

15. Each of the above citations included the language in the form as follows:

NOTICE OF INFRACTION

City of Spokane
Red Light Photo Enforcement Program
PO Box 29041
Tempe, AZ 85285-9042

I certify, as true and correct, under penalty of perjury under the laws of the State of Washington that based upon my review of the photographs and video recording made by an automated traffic camera, as authorized by Spokane Municipal Code 16A.64, I have probable cause to believe, and do believe, that on the date, time, and location indicated above, the operator of the vehicle described was in violation of RCW 46.61.050(1) (Red Light Violation). The photographs and video recording taken together show the vehicle and the license plate, portray a fair and accurate representation of the location listed above and show that the vehicle operator was facing a steady red signal when the operator failed to stop the vehicle at the clearly marked stop line or other stopping point. The registered owner of the vehicle is named above based upon information received from the State of Washington Department of Licensing. Signed at Spokane, Washington.

OFFICER	BADGE#	DATE ISSUED
[signature]	661	04/14/2010

This Notice of Infraction is filed in Spokane Municipal Court, 1100 W. Mallon, Spokane, WA 99260, (509) 625-4400.

City of Spokane
Red Light Photo Enforcement Program
P.O. Box 742503
Cincinnati, OH 45274-2503

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16. The defendants filed motions to dismiss the photo red tickets on the basis that the tickets did not comply with RCW 9A.72.085 and GR13. The defendants filed additional briefing arguing that the City failed to comply with GR 30(d)(2)(D), that the process for issuance of the photo red tickets had not been approved by the Administrative Office of the Courts, and that photo red tickets failed to comply with the electronic filing technical standards.

17. After extensive briefing, and two oral arguments, the Spokane Municipal Court denied the motions to dismiss and a written decision was filed on November 29, 2010.

18. On December 16, 2010 Mark Wardrop, Susan Annechiario and Jennifer Lee went to hearing. At the contested hearing, counsel renewed the issues presented at the motion hearing. The motions were denied and the Spokane Municipal Court entered a finding of Committed.

19. On January 7, 2011, defendants filed a Notice of Appeal to Superior Court and Certification of Filing Status of the Spokane Municipal Court decision.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Court makes the following Conclusions of Law:

1. General Rule 30 governs court signature and tracks in the requirements of RCW 9A.72.085.

2. RCW 9A.72.085 has four requirements that must be present: (1) recites that it is certified or declared by the person to be true under penalty of perjury; (2) is subscribed by the person; (3) states the date and place of its execution; and (4) states that it is so certified or declared under the laws of the State of Washington.

3. General Rule 30(D)(2)(d) creates a presumption for an arresting or citing officer only to the date of the execution to be at the same time as the officer uses their ID and Password.

4. This presumption does not include a presumption of where the ticket is signed.

5. The clicking of an accept button is not a signature.

6. The place of the signature is Arizona.

7. Because the signature is cited as taking place in Spokane, Washington, but actually takes place in Arizona, the citation is factually incorrect and fails to meet one of the requirements of RCW 9A.72.085.

8. The failure to correctly state the location where the signature is affixed fails to comply with RCW 9A.72.085. This failure makes the citations issued to the parties involved in the appeal void.

9. The finding of committed for the appellants Mark Wardrop, Jennifer Lee and Susan Armstrong is hereby reversed and the infractions are dismissed.

DONE IN OPEN COURT this 3rd day of August, 2011.

By JEROME J. LEVEQUE
The Honorable Jerome J. Leveque