

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,
PENNSYLVANIA - CIVIL ACTION

MID-MON VALLEY PUBLISHING)
COMPANY LLC, d/b/a MON VALLEY)
INDEPENDENT and TINA O'DELL,)
)
Plaintiffs,)
v.)
)
CITY OF MONESSEN, a Third Class City)
and MATT SHORRAW, as Mayor of)
the City of Monessen,)
)
Defendants.)

No. 581 of 2020

OPINION AND ORDER OF COURT

BY THE COURT:

Plaintiffs, Mid-Mon Valley Publishing Company LLC d/b/a Mon Valley Independent and Tina O'Dell initiated this action with the filing of a two-count Complaint Seeking Declaratory and Injunctive Relief on February 3, 2020. Plaintiffs' first count requested relief in the form of a declaratory judgment finding that Defendants violated the Sunshine Act at an Organization Meeting held on January 6, 2020. Plaintiffs' second count requested injunctive relief based on alleged violations of due process and petition rights under the Pennsylvania and United States Constitutions. No responsive pleading was subsequently filed by Defendants, and a hearing was held on June 11, 2020. Supportive briefs were requested upon completion of the hearing, and they were provided by the parties and duly considered in rendering the within opinion.

FACTS

Plaintiff Mon Valley Independent is a limited liability company located in Monessen, and Plaintiff Tina O'Dell is a City of Monessen resident. Defendant City of Monessen is a third class city, and Defendant Matt Shorraw is the mayor of the City of Monessen and a voting member of the City Council. This case concerns the holding of a January 6, 2020 Council Organizational Meeting

held by the City of Monessen. A video of the meeting, along with two subsequent relevant meetings was submitted to the Court for viewing, along with a stipulation as to the relevant portions of the videos and the January 6, 2020 meeting agenda. Petitioners' Exhibits "1-3." A review of the agenda shows that the proposed course of the meeting involved public comment on agenda items only, followed by motions regarding various position appointments. Petitioners' Exhibit "3." The agenda then lists public comment on non-agenda items, followed by executive session and adjournment. Petitioners' Exhibit "3."

A review of the video footage of the January 6, 2020 meeting shows it to have been extraordinarily contentious from the beginning. Public comment was first taken for approximately twelve (12) minutes. After some further discussion a motion was made by Defendant Shorraw to terminate the current city solicitor, which was seconded by Councilman Gregor, with Councilpersons Coles, Thomas and Orzechowski voting nay. Despite this, Defendant Shorraw still indicated that the motion had passed.¹ Defendant Shorraw next made a motion to hire a new city solicitor, with Mayor Shorraw, Councilman Gregor and Councilman Coles voting yea and Councilpersons Thomas and Orzechowski voting nay. Public comment was not received prior to a vote on either motion. Defendant Shorraw made further motions to terminate the present city administrator, to hire a new city administrator, to restrict access to city cameras, to rescind a Sewage Authority Board appointment and to advertise for the vacancy on the Sewage Authority Board. All motions passed three to two with identical votes by the councilpersons, and public comment was not received regarding any of these motions. At the conclusion of the motions, public comment on non-agenda items was not received as indicated on the agenda, and the meeting was adjourned abruptly.

¹ The Court notes that despite Councilman Coles audibly voting against the motion at the meeting, Defendants have submitted with their brief a letter purportedly authored by Councilman Coles in which he claims that he actually meant to vote in the affirmative to dismiss the solicitor.

The Court next reviewed the recording of the January 29, 2020 meeting. The video shows Defendant Shorraw addressing the above motions with a motion to ratify actions taken on January 6, 2020. After much argument and discussion amongst the councilpersons, a vote was taken on the motion, with Mayor Shorraw, Councilman Gregor and Councilman Coles voting yea and Councilpersons Thomas and Orzechowski voting nay. No public comment was received on the motion. The Court additionally reviewed the March 10, 2020 meeting footage. At this meeting, each individual motion from the January 6, 2020 meeting was re-presented individually, with the exception of the motions regarding the Sewage Authority Board. The agenda did contain these motions as individual items, and a public comment period on these items was offered.

Testimony at time of hearing before the Court was provided by Plaintiff Tina O'Dell. (Transcript of Hearing (hereinafter "T.H.," June 11, 2020, p. 8). Plaintiff O'Dell testified that she is a resident of the City of Monessen who attended the January 6, 2020 meeting. (T.H. p. 9). She identified Petitioners' Exhibit 3 as the agenda from the meeting, and she provided a synopsis of the meeting which factually aligns with the evidence presented on the video. (T.H. p. 10-17). Plaintiff O'Dell testified that she has attended approximately fifty City of Monessen meetings in her lifetime. (T.H. p. 18). At time of hearing, Defendants declined to present a case in chief, relying on the submission of the footage of the hearings and applicable law.

DISCUSSION AND ANALYSIS

As a third class city, the City of Monessen is a political subdivision subject to the Sunshine Act. 65 Pa.C.S. § 701 *et seq.* The Sunshine Act provides rules that political subdivisions must follow to ensure governmental proceedings which are transparent and open to the public. 65 Pa.C.S. § 702. Regarding public comment, the Act requires that:

[T]he board or council of a political subdivision or of an authority created by a political subdivision shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers

of the political subdivision or of the authority created by a political subdivision or for both to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.

65 Pa.C.S § 710.1(a). “[T]he challenger bears the burden to prove a violation” of the Sunshine Act.” *Smith v. Twp. of Richmond*, 82 A.3d 407, 416 (Pa. 2013).

The Sunshine Act additionally provides:

The court may enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this chapter, it may in its discretion find that any or all official action taken at the meeting shall be invalid.

65 Pa.C.S. § 713.

COUNT I – DECLARATORY JUDGMENT

Plaintiff’s first count requests declaratory judgment in the form of a holding that Defendants violated the Sunshine Act at their Organizational Meeting of January 6, 2020. A review of the footage of the January 6, 2020 meeting shows a *prima facie* violation of the sunshine act by Monessen and Shorraw. Public comment was taken before the meeting, however many items not included on the agenda were voted upon without the opportunity for public comment. Defendants’ argue that an agenda need not include all items, and while there is certainly no rule or statute mandating a comprehensive agenda and that all comment may occur at the beginning of the meeting, the Sunshine Act is still clear that the municipal body “shall provide a reasonable opportunity at each... meeting” for its residents “both to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.” 65 Pa.C.S § 710.1(a).

Viewing the meeting, it is clear that there was absolutely no opportunity for public comment on the motions to fire the city solicitor, to hire the new city solicitor, to terminate the city administrator, to hire the new city administrator, to restrict access to city cameras, to rescind a

Sewage Authority Board appointment and to advertise for the vacancy on the Sewage Authority Board. These motions were brought abruptly and voted upon immediately, with little time for discussion by the councilpersons and absolutely no opportunity for public comment prior to the official action of voting. In their brief defendants argue that they “made no secret” of their intention to vote on the aforesaid motions, however no evidence was presented to support this contention. Brief of Defendants, p. *6. The official actions at the January 6, 2020 meeting are facially apparent violations of Section 710.1(a) of the Sunshine Act. Declaratory judgment must therefore be entered in favor of Plaintiffs and against Defendants on Count I of their complaint.

COUNT II – DUE PROCESS

Plaintiffs’ second count requests injunctive relief for alleged due process violations in the manner of invalidating the actions taken at the January 6, 2020 meeting and allegedly ratified at the two subsequent meetings. The Pennsylvania General Assembly’s findings with regard to the Sunshine Act are set out as follows:

The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

65 Pa. C.S. § 702. This finding is based on Article I, Section 20 of the Pennsylvania Constitution, which provides: “The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.” Pa. Const. art. I, § 20. The rights of procedural due process are similarly set out in Amendments V and XIV of the United States Constitution. Plaintiffs’ arguments for violations here mirror those set forth above with regard to the Sunshine Act. Plaintiffs provide no further authority or argument, however, as to how a due process analysis would apply to the situation at bar, or how it would not be duplicative of the

finding above regarding violation of the Sunshine Act. This Court cannot, therefore, find for Plaintiffs in regards to alleged due process violations committed by the Defendants.

REMEDIES

Plaintiffs specifically request relief in the form of invalidation of the action taken on the relevant motions, enjoining of the Defendants from prohibiting public comment prior to and intentionally concealing official action, requiring the Defendants attend Sunshine Act training, and the award of counsel fees and fines.

The Court will first address Plaintiffs' request to invalidate the motions which were originally voted on at the January 6, 2020 meeting, which encompass the motions to fire the city solicitor, to hire the new city solicitor, to terminate the city administrator, to hire the new city administrator, to restrict access to city cameras, to rescind a Sewage Authority Board appointment and to advertise for the vacancy on the Sewage Authority Board. Plaintiffs make this request based on Section 713 of the Sunshine Act's allowance for a court, in its discretion, to invalidate actions taken by a municipal body in violation of the Act.

Defendants point out that the Commonwealth Court "has repeatedly held that official action taken at a later, open meeting cures a prior violation of the Sunshine Act." *Smith v. Twp. of Richmond*, 82 A.3d 407, 417 n. 10 (Pa. 2013). Defendants note the rationale set forth by the Commonwealth Court, when it states that "most any Sunshine Act infraction [can be] cured by subsequent ratification at a public meeting. Otherwise, governmental action in an area would be gridlocked with no possible way of being cured once a Sunshine Act violation was found to have occurred." *Lawrence Cty. v. Brenner*, 582 A.2d 79, 84 (Pa. Cmwlth. 1990).

Here, upon the Court's viewing of the footage of the January 29, 2020 and March 10, 2020 meetings leads the Court to conclude that ratification of the motions did occur, curing the Sunshine Act violation of the January 6, 2020 meeting. Particularly at the March 10, 2020 meeting, the

motions were set forth as agenda items and public comment period regarding these items was offered to attendees. This case appears to be an example of the Commonwealth Court's repeated mandate that most violations of the Sunshine Act should be cured by subsequent ratification done in a compliant manner. Having found that the improper actions of the January 6, 2020 meeting were subsequently correctly ratified, this Court cannot invalidate said actions.

The Court will next consider the Plaintiffs' request for this Court to affirmatively order compliance with the Sunshine Act by Defendants, along with Plaintiffs' request to require the Defendants to participate in Sunshine Act instruction. Although these are not directly addressed in the memoranda of the parties pursuant to the criteria for permanent injunctive relief, the required elements are such that "the party seeking relief must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested." *Kuznik v. Westmoreland Cty. Bd. of Comm'rs*, 902 A.2d 476, 489 (Pa. 2006) (citation omitted).

Looking first to the Plaintiff's right to relief, it is clear that the City of Monessen and Mayor Shorraw are bound by the requirements of the Sunshine Act, as described above. As the statutorily proscribed remedy for a violation may be invalidation of a municipal body's action, it is also apparent that violation of the Sunshine Act is not necessary compensable through damages alone. Additionally, further violations will only lead to both the disenfranchisement of the residents of the City of Monessen and further costly litigation. As such, this Court finds that the appropriate equitable remedy in this instance is to compel adherence to the Sunshine Act by Councilmembers and Mayor of the City of Monessen, including required training in fulfilling their duties and obligations under the Sunshine Act.

The Court finally addresses the issue of counsel fees. The Sunshine Act provides that "[i]f the court determines that an agency willfully or with wanton disregard violated a provision of this

chapter, in whole or in part, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.” 65 Pa.C.S. § 714.1. Although there is no apparent case law addressing this particular statute, wanton and willful misconduct is generally described under Pennsylvania law as conduct where “the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it and so great as to make it highly probable that harm would follow.” *Krivijanski v. Union R. Co.*, 515 A.2d 933, 937 (Pa. Super. 1986). Looking to all evidence presented at trial, the Court can find nothing which would elevate the conduct of Defendants from mere lack of knowledge or ignorance of the provisions of the Sunshine Act into the realm of wanton disregard of a risk of harm.

Similarly, Section 714 of the Sunshine Act provides for fines to be levied against “[a]ny member of any agency who participates in a meeting with the intent and purpose by that member of violating this chapter.” Where the Court cannot find even wanton and willful conduct based on the evidence presented, the Court cannot find intentional or purposeful conduct on the part of the Defendants to violate the Sunshine Act, and so fines pursuant to 65 Pa.C.S. § 714 cannot be assessed against the Defendants.

Based upon the foregoing reasoning, this Court enters the following Order of Court:

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Plaintiffs,)

v.)

No. 581 of 2020

CITY OF MONESSEN, a Third Class City)
and MATT SHORRAW, as Mayor of)
the City of Monessen,)

Defendants.)

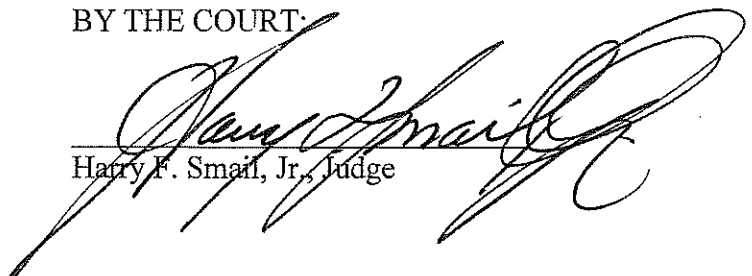
ORDER OF COURT

AND NOW, to wit, this 11th day of December, 2020, consistent with the analysis contained in the foregoing Opinion; it is hereby ORDERED, ADJUDGED and DECREED, as follows:

1. As to Plaintiffs' Count I, judgment is ENTERED in favor of Plaintiffs Mid-Mon Valley Publishing Company, LLC d/b/a Mon Valley Independent and Tina O'Dell and against Defendants City of Monessen and Matt Shorraw.
2. Defendants City of Monessen and Matt Shorraw are found to have violated 65 Pa.C.S § 710.1(a), a provision of the Sunshine Act, at the public meeting held on January 6, 2020.
3. As to Plaintiffs' Count II, judgment is ENTERED in favor of Defendants City of Monessen and Matt Shorraw and against Plaintiffs Mid-Mon Valley Publishing Company, LLC d/b/a Mon Valley Independent and Tina O'Dell.
4. Defendants City of Monessen and Mayor Matt Shorraw are ORDERED to comply with all provisions of the Pennsylvania Sunshine Act, 65 Pa.C.S. § 701 *et seq.* in any and all future proceedings.

5. Defendants Councilmembers of the City of Monessen and Defendant Mayor Matt Shorraw are further ORDERED to attend a Sunshine Act training through the Pennsylvania Office of Open Records, to be scheduled by Defendants within thirty (30) days of the date of this Order of Court.
6. Further, in accord with Pa.R.C.P. No. 236(a)(2)(b), the Prothonotary is DIRECTED to note in the docket that the individuals listed below have been given notice of this Order.

BY THE COURT:


Harry F. Smail, Jr., Judge

ATTEST:

Prothonotary

cc: James T. Davis, Esq.
Timothy J. Witt, Esq. & Matthew I. Jaynes, Esq.