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App.1a

**OREGON SUPREME COURT ORDER
DENYING REVIEW
(FEBRUARY 9, 2023)**

IN THE SUPREME COURT OF
THE STATE OF OREGON

CITY OF CORVALLIS,

*Plaintiff-Respondent,
Respondent on Review,*

v.

IAN A. MCELROY,

*Defendant-Appellant,
Petitioner on Review.*

S069950

Court of Appeals
A175847 (Control), A175848, A175849
Before: Meagan A. FLYNN, Chief Judge,
Supreme Court.

Upon consideration by the court.

The court has considered the petition for review
and orders that it be denied.

/s/ Meagan A. Flynn
Chief Justice, Supreme Court
2/9/2023 8:27 AM

App.2a

Bushong and James, JJ., not participating.

c: David E Coulombe
Sasha A Petrova

**OREGON SUPREME COURT ORDER
DENYING PETITION FOR
RECONSIDERATION DENYING AS MOOT
MOTIONS TO APPEAR AS AMICI CURIAE
(MARCH 30, 2023)**

IN THE SUPREME COURT OF
THE STATE OF OREGON

CITY OF CORVALLIS,

*Plaintiff-Respondent,
Respondent on Review,*

v.

IAN A. MCELROY,

*Defendant-Appellant,
Petitioner on Review.*

S069950

Court of Appeals
A175847 (Control), A175848, A175849
Before: Meagan A. FLYNN, Chief Judge,
Supreme Court.

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

The motions to appear as amici curiae are denied as moot.

App.4a

/s/ Meagan A. Flynn
Chief Justice, Supreme Court
3/30/2023 9:12 AM

Bushong and James, JJ., not participating.

c: David E Coulombe
Gregory J Christensen
Ian A McElroy

rtd

**ORDER SUPREME COURT ORDER DENYING
SUPPLEMENTAL PETITION FOR
RECONSIDERATION
(MAY 4, 2023)**

IN THE SUPREME COURT OF
THE STATE OF OREGON

CITY OF CORVALLIS,

*Plaintiff-Respondent,
Respondent on Review,*

v.

IAN A. MCELROY,

*Defendant-Appellant,
Petitioner on Review.*

S069950

A175847 (Control), A175848, A175849

Before: Meagan A. FLYNN, Chief Judge,
Supreme Court.

Upon consideration by the court.

The court construes petitioner's motion to take judicial notice as a supplemental petition for reconsideration. The order denying reconsideration issued on March 30, 2023, is withdrawn. The court has considered the supplemental petition for reconsideration and orders that it be denied.

App.6a

/s/ Meagan A. Flynn
Chief Justice, Supreme Court
5/4/2023 8:08 AM

Bushong and James, JJ., not participating.

c: David E Coulombe
Gregory J Christensen
Ian A McElroy

sh

**OREGON COURT OF APPEALS
ORDER DISMISSING APPEAL AND
DENYING MOTION TO STRIKE
(MARCH 25, 2022)**

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

CITY OF CORVALLIS,

Plaintiff-Respondent,

v.

IAN A. MCELROY,

Defendant-Appellant.

Benton County Circuit Court No.
21VI02146, 21VI02149, 21VI02150

Court of Appeals No. A175847 (Control),
A175848, A 175849

Before: Theresa M. KIDD, Appellate Commissioner.

Respondent City of Corvallis (the city) moves to dismiss this appeal for lack of jurisdiction. *See* ORS 221.360. Appellant opposes the motion to dismiss and moves to strike the city's reply to appellant's response to the motion to dismiss. Appellant's motion to strike is denied.

The court concludes that the motion to dismiss is well taken and, for the reasons identified by the

App.8a

city in support of dismissal of this appeal, the motion to dismiss is granted.

Appeal dismissed.

/s/ Theresa M. Kidd
Appellate Commissioner
3/25/2022 10:35AM

**DESIGNATION OF PREVAILING PARTY
AND AWARD OF COSTS**

Prevailing Party: Respondent

Costs: Allowed, payable by: Appellant

c: Ian A McElroy
David E Coulombe

**OREGON COURT OF APPEALS ORDER
ALLOWING RECONSIDERATION AND
ADHERING TO ORDER DISMISSING APPEAL
(MAY 6, 2022)**

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

CITY OF CORVALLIS,

Plaintiff-Respondent,

v.

IAN A. MCELROY,

Defendant-Appellant.

Benton County Circuit Court
21VI02146, 21VI02149, 21VI02150
A175847 (Control), A175848, A175849
Before: Erin C. LAGESEN, Chief Judge,
Court of Appeals.

Appellant seeks reconsideration of several decisions of the Appellate Commissioner, including an order issued by the Appellate Commissioner that dismissed this appeal for lack of jurisdiction. For the reasons that follow, the court allows reconsideration but adheres to the conclusion that this appeal must be dismissed for lack of jurisdiction.

App.10a

This is a consolidated appeal involving proceedings that arose in the municipal court for the City of Corvallis. The matter originated in 1999, when the municipal court for the City of Corvallis entered three judgments against appellant for building code violations. Pertinent to the present matter, in 2020, appellant moved in the municipal court to set aside the three 1999 building-code-violation judgments. After a hearing, the municipal court denied the motions to set aside the judgments. Appellant then appealed the resulting order to the Benton County Circuit Court, which dismissed the appeal. Appellant then appealed to this court and, on respondent's motion, the Appellate Commissioner dismissed the appeal for lack of jurisdiction.

Appellant seeks reconsideration of the Appellate Commissioner's decision on a number of grounds. Among other things, appellant points to notes on a draft document that was inadvertently provided to appellant as suggesting that the Appellate Commissioner's office has prejudged his case. The Appellate Commissioner's letter of April 14, 2022, addressed the circumstances of those notes, explaining that they do not represent the views of the Commissioner or the Court of Appeals. Nonetheless, because the notes create the appearance of potential prejudice, the court allows reconsideration to consider the question of appellate jurisdiction in the first instance. On reconsideration, having considered appellant's arguments, the case law addressing appeals to Oregon appellate courts in matters arising in municipal court, and the statutes addressing such appeals, the court concludes that the legislature has not granted it jurisdiction to hear this appeal.

As the Supreme Court long ago recognized, Oregon state courts—both trial and appellate—do not have inherent jurisdiction over appeals from municipal court decisions. The authority for an appeal must come from charter or statute. *City of Portland v. White*, 106 Or 169, 211 P 798 (1923); *see also City of Klamath Falls v. Winter*, 289 Or 757, 766-68, 619 P2d 217 (1980) (reviewing the historical jurisprudence on appeals in proceedings originating in municipal court). In *White*, for example, the Supreme Court held that dismissal was required in a proceeding originating in municipal court where no specific provision of law authorized an appeal from the circuit court to the that court: “No provision has been pointed out, and we find none, in the charter of the City of Portland or in the statute authorizing an appeal from the circuit court to this court in the case at bar.” *Id.* at 175. This court, too, has “emphasize[d] that our jurisdiction is not plenary. Rather, the sole source of appellate jurisdiction is statutory.” *City of Lowell v. Wilson*, 197 Or App 291, 296, 105 P3d 856, rev den, 339 Or 406 (2005).

In this case, appellant argues, among other things, “no known statute, rule or case law exists (under which the appellate commissioner Ordered this Dismissal) that could virtually extinguish the jurisdictional authority and obligation of this Oregon Court of Appeals to resolve the issues of constitutionality and lack of municipal court jurisdiction at the center of this case—and especially not based on the precise disputed facts the three-judge panel is duty bound to review.” But, as explained, the Oregon Supreme Court has held that the judicial-branch courts of this state do not have inherent authority to review appeals from municipal courts. That authority must be granted

to the court by statute or charter. Absent an express grant of authority by statute or charter, there is no jurisdiction to be extinguished. In other words, under Supreme Court precedent, the default rule is that this court does not have jurisdiction to review an appeal from a matter arising from municipal court unless a statute or charter provision specifically allows it.

As for a statute, appellant points to ORS 221.360 as authorizing the exercise of jurisdiction in this matter. ORS 221.360 provides a “right of appeal to circuit court” as a matter of right notwithstanding conflicting charter provisions “in the manner provided in ORS 221.359,” and a right of subsequent appeal to this court “[i]n all cases involving the constitutionality of the charter provisions under which the conviction was obtained as indicated in ORS 221.359.” Appellant asserts that this statute confers jurisdiction on this court to resolve his appeal.

That authority granted to this court by that statute does not extend to this type of appeal. As noted, ORS 221.360 provides for an appeal under ORS 221.359 as a matter of right in cases raising certain issues even if a charter would not allow for it. ORS 221.359, in turn, by its terms provides for an appeals process from a conviction only. *See* ORS 221.359(1). This consolidated appeal, as noted, is not an appeal arising from a municipal court conviction. It is, instead, an appeal from the order denying appellant’s post-judgment motion to set aside his convictions. Neither ORS 221.359 nor ORS 221.360 provides for an appeal of a post-judgment order of a municipal court. As a result, neither statute gives this court the jurisdiction to resolve this consolidated appeal.

App.13a

Beyond that, the court has reviewed the other statutes cited by appellant, as well as other statutes that pertain to appeals from municipal courts. Among them, the court has been unable to locate any that specifically provides for appeals—to the circuit court or to this court—of post-judgment decisions of municipal courts. As a consequence, and in keeping with the Supreme Court’s case law requiring a specific grant of authority for this court to resolve an appeal in a matter that arose in municipal court, this court lacks jurisdiction to hear this appeal.

/s/ Erin C. Lagesen
Chief Judge, Court of Appeals
5/6/2022 9:56 AM

c: Ian A McElroy
David E Coulombe

**OREGON COURT OF APPEALS
ORDER DENYING MOTION TO DIRECT
PRODUCTION OF EVIDENCE
(OCTOBER 3, 2022)**

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

CITY OF CORVALLIS,

Plaintiff-Respondent,

v.

IAN A. MCELROY,

Defendant-Appellant.

Benton County Circuit Court
Nos. 21VI02146, 21VI02149, 21VI02150
Court of Appeals Nos. A175847 (Control),
A175848, A175849
Before: Erin C. LAGESEN, Chief Judge,
Court of Appeals.

Appellant has moved for an order directing respondent so submit certain specified evidence regarding the parties' underlying dispute to this court. The motion is denied on the ground that the evidentiary process contemplated by appellant's motion is beyond the scope of this appellate proceeding.

App.15a

/s/ Erin C. Lagesen
Chief Judge, Court of Appeals
10/3/2022 9:44 AM

c: Ian A McElroy
David E Coulombe

**OREGON COURT OF APPEALS ORDER
DENYING MOTION FOR RECONSIDERATION
OF JUNE 28, 2022 ORDER DENYING MOTION
TO DIRECT PRODUCTION OF EVIDENCE
(OCTOBER 10, 2022)**

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

CITY OF CORVALLIS,

Plaintiff-Respondent,

v.

IAN A. MCELROY,

Defendant-Appellant.

Benton County Circuit Court
Nos. 21VI02146, 21VI02149, 21VI02150
Court of Appeals Nos. A175847 (Control),
A175848, A175849

Before: Erin C. LAGESEN, Chief Judge,
Court of Appeals.

En Banc

Appellant moves for reconsideration en banc of this court's June 28, 2022, order denying his motion to compel respondent to submit documents. The Chief Judge referred the motion to the full court for consideration by the full court. The full court has

App.17a

considered the argument presented in the motion
and orders that reconsideration is denied.

/s/ Erin C. Lagesen
Chief Judge, Court of Appeals
10/10/2022 1:06 PM

c: Ian A McElroy
David E Coulombe

**OREGON COURT OF APPEALS ORDER
DENYING MOTION FOR RECONSIDERATION
OF MAY 6, 2022 ORDER ALLOWING
RECONSIDERATION AND ADHERING TO
ORDER DISMISSING APPEAL
(OCTOBER 10, 2022)**

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

CITY OF CORVALLIS,

Plaintiff-Respondent,

v.

IAN A. MCELROY,

Defendant-Appellant.

Benton County Circuit Court
Nos. 21VI02146, 21VI02149, 21VI02150
Court of Appeals Nos. A175847 (Control),
A175848, A175849

Before: Erin C. LAGESEN, Chief Judge,
Court of Appeals.

En Banc

Appellant moves for reconsideration en banc of this court's May 6, 2022, order disposing of appellant's petition for reconsideration. The Chief Judge referred the motion to the full court for its consideration. The

App.19a

full court has considered the argument presented in
the motion and orders that reconsideration is denied.

/s/ Erin C. Lagesen
Chief Judge, Court of Appeals
10/10/2022 1:09 PM

c: Ian A McElroy
David E Coulombe

App.20a

**OREGON COURT OF APPEALS
ORDER AWARDING ATTORNEY
FEES AND COSTS
(OCTOBER 10, 2022)**

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

CITY OF CORVALLIS,

Plaintiff-Respondent,

v.

IAN A. MCELROY,

Defendant-Appellant.

Benton County Circuit Court
Nos. 21VI02146, 21VI02149, 21VI02150
Court of Appeals Nos. A175847 (Control),
A175848, A175849

Before: James C. EGAN, Presiding Judge,
Court of Appeals. KAMINS, Judge.

Respondent City of Corvallis (the city) petitions for attorney fees in the amount of \$4,295.50, pursuant to ORS 20.105(1), and requests costs totaling \$491. Appellant objects to the petition for fees and requests findings. *See* ORAP 13.10(7).

This consolidated appeal stemmed from three convictions for violating a Corvallis Building City

App.21a

Ordinance, entered by the city's municipal court, against appellant, in 1999. Appellant moved the municipal court to set aside those judgments. After the municipal court denied that motion, appellant appealed the resulting order to the Benton County Circuit Court, which dismissed the appeal. Appellant then appealed to this court, and, on the city's motion, the Appellate Commissioner dismissed the appeal for lack of jurisdiction. On reconsideration, the court adhered to the order of dismissal.

ORS 20.105(1) provides:

"In any civil appeal to or review by the Court of Appeals or Supreme Court, the court shall award reasonable attorney fees to a party against whom a claim, defense or ground for appeal or review is asserted, if that party is a prevailing party in the proceeding and to be paid by the party asserting the claim, defense or ground, upon a finding by the court that the party willfully disobeyed a court order or that there was no objectively reasonable basis for asserting the claim, defense or ground for appeal."

A claim, defense, or ground for appeal has no objectively reasonable basis "when it is entirely devoid of legal or factual support." *Mattiza v. Foster*, 311 Or 1, 8, 803 P2d 723 (1990).

In the petition for attorney fees, the city argues that appellant filed this appeal "when no substantive law authorizes an appeal of a post-judgment order from a municipal court that is not a court of record," and, therefore, the appeal was entirely devoid of legal support. Appellant, for his part, asserts that there "is

not a shred of evidence” supporting dismissal of this appeal; in appellant’s view, the order of dismissal is a “legal nullity” that cannot result in an award of attorney fees to the city.

As noted above, appellant appealed from an order dismissing his appeal from a municipal court order denying his motion to set aside the 1999 judgments. However, for reasons explained in the court’s order of dismissal and order adhering to dismissal on reconsideration, there is no statutory basis for such an appeal. Although appellant has argued to the contrary throughout this litigation and responds to the fee petition by asserting that the court was without authority to dismiss the appeal, those assertions are not supported by legal reasoning. The court concludes that there was no objectively reasonable basis for this appeal and, therefore, the city is entitled to an award of reasonable attorney fees pursuant to ORS 20.105.

Having concluded that the city is entitled to a fee award, ORS 20.075(2) directs the court to consider the factors under ORS 20.075(1) and (2) in determining the amount of fees to award. Having considered those factors, and the parties’ arguments, the court concludes that the amount requested is reasonable. In particular, the court determines that ORS 20.075(1)(b),(c), and (f), as well as ORS 20.075(2)(c) and (g), counsel in favor of awarding the full amount of fees requested. Therefore, the court awards the city \$4,295.50 in attorney fees.

As for costs, which are allowed, the city requests \$391 for the first appearance filing fee and \$100 for a prevailing party fee. Those costs are recoverable

App.23a

under ORS 20.310 and ORS 20.190 and are, therefore, awarded.

In sum, the city is awarded \$4,295.50 in attorney fees and \$491 in costs.

/s/ James C. Egan
Presiding Judge, Court of Appeals
10/10/2022 8:56 AM

c: Ian A McElroy
David E Coulombe

**OREGON COURT OF APPEALS
ORDER DENYING MOTION TO STAY
ISSUANCE OF JUDGMENT
(MAY 5, 2023)**

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

CITY OF CORVALLIS,

Plaintiff-Respondent,

v.

IAN A. MCELROY,

Defendant-Appellant.

Benton County Circuit Court
Nos. 21VI02146, 21VI02149, 21VI02150

Court of Appeals Nos. A175847 (Control),
A175848, A175849

Before: Theresa M. KIDD, Appellate Commissioner.

Following the Oregon Supreme Court's denial of review of this court's decision in this case, appellant moves to stay issuance of the appellate judgment "pending Appellant's filing of a Petition For Writ of Certiorari with the Supreme Court of the United States." (Underlining omitted.) See ORAP 14.10 (a party may move to stay issuance of the appellate judgment pending the filing of a petition for writ of

App.25a

certiorari with the Supreme Court of the United States and “must show that the certiorari petition would present a substantial question and that there is good cause for a stay”); *see also* ORAP 14.10(2)(a) (Court of Appeals shall address the motion “when the Oregon Supreme Court has denied review of a Court of Appeals decision”). Respondent opposes the motion. The court determines that appellant has not shown that the certiorari petition would present a substantial question or that there is good cause for a stay. Therefore, the motion to stay issuance of the appellate judgment is not well taken.

Accordingly, the motion is denied.

/s/ Theresa M. Kidd
Appellate Commissioner
5/5/2023 11:04 AM

c: Ian A McElroy
David E Coulombe

**OREGON COURT OF APPEALS
APPELLATE JUDGMENT
AND SUPPLEMENTAL JUDGMENT
(JUNE 7, 2023)**

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

CITY OF CORVALLIS,

Plaintiff-Respondent,

v.

IAN A. MCELROY,

Defendant-Appellant.

Benton County Circuit Court
Nos. 21VI02146, 21VI02149, 21VI02150

A175847 (Control), A175848, A175849

Before: Theresa M. KIDD, Appellate Commissioner.

Respondent City of Corvallis (the city) moves to dismiss this appeal for lack of jurisdiction. *See* ORS 221.360. Appellant opposes the motion to dismiss and moves to strike the city's reply to appellant's response to the motion to dismiss. Appellant's motion to strike is denied.

The court concludes that the motion to dismiss is well taken and, for the reasons identified by the

App.27a

city in support of dismissal of this appeal, the motion to dismiss is granted.

Appeal dismissed.

/s/ Theresa M. Kidd
Appellate Commissioner

Date: March 25, 2022

**DESIGNATION OF PREVAILING PARTY
AND AWARD OF COSTS**

Prevailing party: Respondent.

☒ Costs allowed, payable by: Appellant.

MONEY AWARD

Creditor: City of Corvallis

Attorney: David E. Coulombe, 456 SW Monroe Ste
101, Corvallis, OR 97333

Debtor: Ian A. McElroy

Attorney Fees: \$4,295.50

Costs: \$491.00

Total Amount: \$4,786.50

Interest on Attorney Fees: Simple, 9% per annum,
from the date of this appellate judgment.

\$391 filing fee due to State Court
Administrator when costs and
disbursements are collected.
(ORS 20.140)

Appellate Judgment
Effective Date: June 7, 2023

COURT OF APPEALS
(seal)

**Additional material
from this filing is
available in the
Clerk's Office.**