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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3033-14T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KEVIN D. WALSH,

Defendant-Appellant.

Argued February 14, 2017 – Decided March 28, 2017

Before Judges Yannotti, Fasciale, and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Municipal Appeal
No. 11-14.

Kevin D. Walsh, appellant, argued the cause
pro se.

Kevin B. Riordan argued the cause for
respondent.

PER CURIAM

Defendant Kevin Walsh appeals from orders entered by the Law Division following a trial de novo on a charge of violating a municipal parking ordinance. The ordinance required anyone who parked in a municipal lot to purchase a parking ticket and place the ticket on the driver's side of the dashboard. The Law Division

found that defendant had not received due notice of the requirement to place the ticket on the driver's side of the dashboard. Thus, the court vacated and dismissed defendant's conditional plea of guilty, and directed the Borough of Point Pleasant Beach (Borough) to reimburse defendant for any fines, costs, and charges he had already paid.

Defendant appeals from the Law Division's denial of his request to declare the ordinance unconstitutional and to grant relief under N.J.S.A. 2B:12-32. The statute provides that when a court rules a municipal ordinance is unconstitutional, the municipality is to purge records of anyone who has been convicted of violating the ordinance, provide notice to such persons, and refund any fines, penalties, or court costs paid by such persons. We affirm on the narrow ground that defendant was not given due notice as required by N.J.S.A. 39:4-198. Accordingly, under well-established principles of judicial restraint, we do not address defendant's alleged constitutional grounds for relief. We also reject his other arguments because they lack merit.

I.

On August 4, 2013, defendant purchased a two-hour parking ticket from an automated parking machine in the Borough. A Borough ordinance required that the parking ticket be placed on the

driver's side of the dashboard. Specifically, the ordinance provides:

Pay Machine Parking: Display of Pay Ticket. The pay ticket for each vehicle that is parked in a pay ticket parking zone shall be placed for display in the front window of the vehicle, on the driver's side of the dashboard, with the printed side face up, and the date and time of expiration clearly visible. The pay ticket shall be displayed as described, in an unobstructed manner that is clearly viewed by a law enforcement officer or a parking enforcement officer.

[Point Pleasant Beach, N.J., Rev. Ordinances ch. 10, § 3.5 (2015).¹]

The sign in the parking lot stated that the parking ticket needed to be placed on the dashboard. The parking machine dispensing the ticket stated: "Place inside on dashboard with date & time visible" and had a diagram with a green arrow pointing to the driver's side of the dashboard. The parking ticket itself only stated that the ticket needed to be placed on the dashboard.

It is undisputed that defendant paid for two hours of parking, but placed the parking ticket on the passenger side of the dashboard. When he returned to his vehicle within the two-hour period, he found a ticket requiring him to pay \$48.

¹ There has been no change to the language of this ordinance since defendant received his ticket on August 4, 2013.

Defendant appeared in municipal court, and informed the court that he would challenge the validity of the ordinance. Defendant also asked the municipal judge to recuse himself, contending that the judge could not be impartial because the governing body of the Borough had appointed him. The municipal judge denied the request for his recusal. Following briefing and arguments, the municipal court found that defendant had been given due notice to place the ticket on the driver's side of the dashboard and the court rejected defendant's argument that the ordinance was unconstitutional. Defendant, thereafter, entered a conditional guilty plea and appealed to the Law Division.

The Law Division conducted a trial de novo and found that defendant had not been given due notice and, therefore, he had not violated the ordinance. The Law Division then directed the parties to submit briefing on defendant's request to declare the ordinance unconstitutional. After conducting further oral argument, the Law Division entered an order on December 10, 2014, vacating defendant's conditional guilty plea and ordering that any fines, penalties and court costs paid by defendant be refunded. On January 20, 2015, the Law Division amended that order to clarify that defendant's guilty plea had been dismissed.

Defendant filed a notice of appeal on March 3, 2015. We remanded the matter so that the Law Division could expressly

address defendant's claims for relief under N.J.S.A. 2B:12-32, the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2, and the public trust doctrine. On June 2, 2015, the Law Division issued an order clarifying that defendant's request to declare the ordinance unconstitutional, and thereby seek relief under N.J.S.A. 2B:12-32, was denied. Specifically, the Law Division explained that it found the ordinance unconstitutional as applied to defendant because he had not been given due notice to place the ticket on the driver's side of the dashboard. The court went on to clarify that it had not found the ordinance facially unconstitutional. The court also denied defendant's request for relief under the Civil Rights Act and the public trust doctrine. Finally, the court found that the municipal court judge did not err in declining to recuse himself.

II.

On this appeal, defendant raises eight arguments: (1) the ordinance is unconstitutional because it creates a strict liability offense without ensuring that fair notice is provided; (2) the ordinance is invalid and unconstitutional because the municipality did not comply with the notice requirements of N.J.S.A. 39:4-198; (3) the ordinance is invalid because it was not passed in conformity with N.J.S.A. 39:4-8(b); (4) the absence of notice and irregularities in the adoption of the ordinance render

the ordinance unconstitutional; (5) the ordinance violates the public trust doctrine; (6) the ordinance violates the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2; (7) the municipal judge erred in refusing to recuse himself from this matter; and (8) we should direct the municipality to pay defendant's attorney's fees and costs.

We affirm because, as applied to defendant, the ordinance failed to give due notice as required by N.J.S.A. 39:4-198. Thus, we need not and do not reach any constitutional issues. We also conclude that defendant's other arguments are either moot or lack merit.

The issue on this appeal involves the application of undisputed facts to an ordinance. We review such legal questions de novo. Cypress Point Condo. Ass'n v. Adria Towers, LLC, 226 N.J. 403, 415 (2016) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Defendant's principal argument is that the Borough's parking ordinance is unconstitutional because it fails to give due notice of the requirement to place the ticket on the driver's side of the dashboard. Thus, defendant argues that the ordinance is facially invalid, the ordinance should be declared unconstitutional, and the requirements of N.J.S.A. 2B:12-32 apply.

It is well established that courts "do not address constitutional questions when a narrower, non-constitutional result is available[.]" United States v. Scurry, 193 N.J. 492, 500 n. 4 (2008) (citations omitted). Our Supreme Court has repeatedly directed that courts "should not reach a constitutional question unless its resolution is imperative to the disposition of litigation." Randolph Town Ctr., L.P. v. County of Morris, 186 N.J. 78, 80 (2006) (citations omitted).

Here, there is a narrow, non-constitutional, resolution to defendant's alleged violation of the parking ordinance. The ordinance required that the pay ticket be placed on the driver's side of the dashboard. The posted sign and the ticket itself, however, only gave notice to place the ticket on the dashboard. Thus, defendant was not given due notice to place the ticket on the driver's side of the dashboard.

That failure of notice did not necessitate a consideration of the due process notice requirements under the federal and New Jersey constitutions. U.S. Const. amends. V and XIV; N.J. Const. art. I, ¶ 1. Instead, here, there was an applicable statute that required "due notice." N.J.S.A. 39:4-198 states in relevant part:

No ordinance . . . shall be effective unless due notice thereof is given to the public by placing a sign at the places where the ordinance . . . is effective, and by briefing its provisions on signs according to

specifications contained in this chapter or as specified by the current Manual on Uniform Traffic Control Devices for streets and highways.

Consequently, here, defendant did not receive the due notice required by N.J.S.A. 39:4-198. See Township of Teaneck v. Siegel, 83 N.J. Super. 475, 479 (Law Div. 1964) (conviction for violating ordinance prohibiting parking on township streets when the snow has reached three inches until after the streets were plowed was reversed because of the municipality's failure to erect signs to alert the public of the ordinance in violation of N.J.S.A. 39:4-198). Moreover, given that the fact-findings in the Law Division were correctly limited to defendant, the ordinance was not effective as to defendant. Appropriately, there was no determination of whether the ordinance was effective as to any other individual.

As stated previously, given that defendant did not receive the due notice required by the statute, we need not and do not reach the constitutional issues defendant seeks to raise, including his argument regarding N.J.S.A. 2B:12-32.

We also find no merit in defendant's argument that the Borough's ordinance was not passed in conformity with N.J.S.A. 39:4-8(b). That statute provides, in relevant part, that "no ordinance . . . concerning, regulating, or governing traffic or

traffic conditions . . . shall be of any force or effect unless the same is approved by the [New Jersey Commissioner of Transportation.]" N.J.S.A. 39:4-8(a). By its express language, that statutory provision only applies to ordinances concerning "traffic or traffic conditions[;]" the statute does not apply to parking ordinances. Thus, N.J.S.A. 39:4-8(b) states:

A municipality may, without the approval of the commissioner, and consistent with the current standards prescribed by the Manual on Uniform Traffic Control Devices for Streets and Highways, establish by ordinance, resolution, or regulation, any of the provisions contained in [N.J.S.A.] 39:4-197.

N.J.S.A. 39:4-197 goes on to clarify that a municipality can pass an ordinance governing parking "without the approval of the commissioner[.]" N.J.S.A. 39:4-197(1)(f).

Further, we find no merit in defendant's arguments that the Borough's ordinance violated the public trust doctrine or the New Jersey Civil Rights Act. Indeed, since there was nothing in the record to indicate that defendant's right of access to the beach or his civil rights were in any way affected or violated, these arguments do not have sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We also conclude that defendant has no claim for counsel fees or costs.

Finally, defendant's argument that the municipal court judge should have recused himself is moot. Defendant received a trial

de novo in the Law Division and it is that decision that is before us on this appeal. See State v. Oliveri, 336 N.J. Super. 244, 251 (App. Div. 2001) (stating that we "consider only the action of the Law Division and not that of the municipal court"); see also State v. Hulsizer, 42 N.J. Super. 224, 228 (App. Div. 1956) (explaining that participation in a trial de novo in the Law Division results in a waiver of all defects in the proceedings in the municipal court, other than lack of jurisdiction).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION