

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

FILED

MAR 1 2 2007

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

STEPHANIE REYNOLDS, et al.)
)
 Plaintiffs,)
)
 and)
)
 JAMES ZHANG,)
)
 Intervenor,)
)
 v.)
)
 CITY OF VALLEY PARK, MO, et al.)
)
 Defendants.)

Cause No. 06-CC-3802

Division No. 13

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT

This matter is before the Court on Plaintiffs' Motion for Judgment on the Pleadings and Defendants' Motion to Dismiss Attorney Fee Claim. The Motions were called, heard and taken under submission on February 26, 2007. The parties submitted a Joint Stipulation of Facts, and the Court finds there is no significant factual dispute. On March 1, 2007, the Court took further submissions, argument and testimony on the limited issues raised in Plaintiffs' Motion for Judgment on the Pleadings and Defendants' Motion to Dismiss Attorney Fee Claim. The Court having heard the arguments of counsel, having read the memoranda and case law submitted, having reviewed the evidence adduced and being now fully advised, enters the following Findings of Fact, Conclusions of Law, Order and Judgment.

FINDINGS OF FACT

1. Plaintiffs filed this case under the Missouri Declaratory Judgment Act, section 527.010, RSMo., et seq., seeking to have City of Valley Park Ordinance No. 1708 and Ordinance No. 1715 declared void and unenforceable, and asking the Court for a temporary, preliminary,

and permanent injunction enjoining enforcement of those Ordinances. Plaintiffs also assert a right to an award of attorneys fees based on "unusual circumstances."

2. Defendants have filed a Motion to Dismiss for Failure to State a Claim or Cause of Action for Award of Attorney's Fees asserting that in litigation against a political subdivision of the State, attorneys' fees cannot be awarded as "costs" under the Declaratory Judgment Act.

3. Ordinance No. 1708, enacted on July 16, 2006, prohibits any "for-profit entity" from "aid[ing] and abet[ting] illegal aliens or illegal immigration" and purports to penalize those who commit such acts by denying: business permits; the renewal of business permits; and city contracts and grants "for a period of not less than [sic] five (5) years from its last offense."

4. Ordinance No. 1708 also prohibits property owners or others "in control of property" from "leasing or renting" property to an "illegal alien" and purports to penalize those who commit such acts by a "fine of not less than Five Hundred Dollars (\$500.00)."

5. On September 26, 2006, this Court entered a Temporary Restraining Order enjoining enforcement of Ordinance No. 1708. By agreement of the parties that order was continued until such time as this Court ordered it terminated, and it remains in effect today.

6. On September 26, 2006, just hours after this Court entered its Order enjoining enforcement of Ordinance No. 1708, Defendant City of Valley Park enacted Ordinance No. 1715, which expressly stated that "Sections One, Two, Three and Four of Ordinance No. 1708 are hereby repealed," leaving only the severability section of that Ordinance still viable.

7. Ordinance No. 1715 makes it "unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or part within the City," and provides that a violation of this provision which is not corrected "within three (3) business days after notification of the

violation by the Valley Park Code Enforcement Office" shall be punished by an indefinite and automatic suspension of that entity's business license.

8. Ordinance No. 1715 also makes it "unlawful for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit," and provides that a violation of this provision which is not corrected "after five (5) business days following receipt of written notice from the City that a violation has occurred" shall be punished by the suspension of the occupancy permit for the dwelling unit, and that during the period of such suspension the offending party "shall not be permitted to collect any rent, payment, fee, or other form of compensation from, or on behalf of any tenant or occupant in the dwelling unit," and "[i]n addition, the City of Valley Park shall not issue occupancy permits for any properties owned during the suspension period."

9. On September 27, 2006, this Court entered a Temporary Restraining Order enjoining enforcement of Ordinance No. 1715. By agreement of the parties that order was continued until such time as this Court ordered it terminated, and it remains in effect today.

10. Defendant has represented to this Court that it recently repealed Ordinance No. 1715, and admitted into evidence the new ordinances only for the purpose of its argument on mootness. Plaintiffs have not amended their pleadings to put the issue of the validity of the new ordinances before the Court.

11. Defendant City of Valley Park is a city of the fourth class located in St. Louis County, Missouri.

12. Missouri statutes set forth the penalties and limitations which can be imposed for an ordinance violation by a fourth class city:

For all ordinance violations the board of aldermen may impose penalties not exceeding a fine of five hundred dollars and costs, or ninety days' imprisonment, or both the fine and imprisonment.

MO.R.STAT. § 79.470.

13. Missouri statutes set forth the parameters under which a tenant can be evicted from a leased unit:

A tenancy at will or by sufferance, or for less than one year, may be terminated by the person entitled to the possession by giving one month's notice, in writing, to the person in possession, requiring the person in possession to vacate the premises.

* * *

Except as otherwise provided by law, all contracts or agreements for the leasing renting or occupation of stores, shops, houses, tenements or other buildings in cities, towns or villages ... not made in writing, signed by the parties thereto, or their agents, shall be held and taken to be tenancies from month to month, and all such tenancies may be terminated by either party thereto, or the party's agent, giving to the other party, or the party's agent, one month's notice, in writing, of the party's intention to terminate such tenancy.

MO.R.STAT. § 441.060.

... a landlord or its agent who removes or excludes a tenant or the tenant's personal property from the premises without judicial process and court order, or causes such removal or exclusion, or causes the removal of the doors or locks to such premises, shall be deemed guilty of forcible entry and detainer ...

MO.R.STAT. § 441.233.

14. In their Motion Plaintiffs assert the Ordinances at issue are void because they conflict with Missouri state law.

CONCLUSIONS OF LAW

1. This Court has previously considered the issue of standing and determined Plaintiffs have standing to challenge the validity of Ordinance No. 1708 and Ordinance No. 1715 under the Missouri Declaratory Judgment Act.

2. Without deciding whether Defendant City of Valley Park has effectively repealed Ordinance No. 1708 and Ordinance No. 1715, the Court finds and concludes under R.E.J., Inc. v. City of Sikeston, 142 S.W.3d 744 (Mo. banc. 2004), and Northeastern Florida Chapter of the Assoc. General Contractors of America v. City of Jacksonville, 508 U.S. 656, 661-62 (1993), this case is not moot. When a party files suit seeking to void a local ordinance, a defendant cannot unilaterally moot the litigation by repealing the ordinance. Id. Furthermore, the Court finds the new ordinances are “sufficiently similar” to the old ordinances in that they are directed at the same class of people and conduct and include some of the same penalties. Given that the substance of the new ordinances is the same, the Court concludes the challenged conduct will continue. City of Jacksonville, supra, 508 U.S. at 662-63 and n. 3.

3. “[A] motion for judgment on the pleadings should be sustained if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law.” Madison Block Pharmacy, Inc. v. United States Fidelity & Guaranty Co., 620 S.W.2d 343, 345 (Mo. banc 1981). Because “[t]he interpretation of an ordinance is a question of law,” State ex rel. Sunshine Enterprise of Missouri, Inc. v. Bd. of Adjustment of the City of St. Ann, 64 S.W.3d 310, 312 (Mo. banc 2002), this case is particularly well-suited for disposition by a motion for judgment on the pleadings.

4. A municipality can legislatively regulate its citizens only where the power is “granted in express words,” is “necessarily or fairly implied in or incident to” an express power, or is

“essential to the declared objects and purposes” of the municipality. State ex rel. Curators of University of Missouri v. McReynolds, 193 S.W.2d 611, 612 (Mo. banc 1946); Premium Std. Farms, Inc. v. Lincoln Township of Putnam Cty., 946 S.W.2d 234, 238 (Mo. banc 1997).

5. “Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.” Id.

6. As a fourth class city, Defendant City of Valley Park can enact and enforce only those ordinances which are “not repugnant to the constitution and laws of this state.” MO.R.STAT. § 79.110.

7. “A municipal ordinance must be in harmony with the general law of the state and is void if in conflict. In determining whether an ordinance conflicts with general laws, the test is whether the ordinance permits that which the statute forbids and prohibits, and vice-versa. The powers granted a municipality must be exercised in a manner not contrary to the public policy of the state and any provisions in conflict with prior or subsequent state statutes must yield.” Morrow v. City of Kansas City, 788 S.W.2d 278, 281 (Mo. banc 1990).

8. The express provisions of both Ordinance No. 1708 and Ordinance No. 1715 are not in harmony with and conflict with MO.R.STAT. § 79.470.

9. Ordinance No. 1708 conflicts with MO.R.STAT. § 79.470 in that it provides for a fine of “*not less than* Five Hundred Dollars (\$500.00),” and the loss of a business permit (or its renewal) for a violation of its provisions. These penalties are either expressly prohibited by, or not authorized by, the governing state statute.

10. Ordinance No. 1715 conflicts with MO.R.STAT. § 79.470 in that it penalizes a violation of its provisions by suspending existing occupancy permits, refusing the issuance of any new occupancy permits, prohibiting the collection of rent or compensation, and by forcing a

business to forego a business permit, or renewal of a business permit, for a period of "not less than five (5) years." These types of penalties are not authorized by the governing statute. In addition, the monetary value of such penalties exceeds the \$500 maximum fine authorized by Missouri law for an ordinance violation under MO.R.STAT. § 79.470.

11. The express provisions of Ordinance No. 1715 also conflict with, and are not in harmony with, MO.R.STAT. § 441.060 and MO.R.STAT. § 441.233. While the Ordinance provides penalties for any landlord who does not evict, within five days, a tenant found to be an "illegal alien," Missouri state law forbids and prohibits a landlord from evicting a tenant without at least 30 days notice (MO.R.STAT. § 441.060), and requires a landlord to use "judicial process" before forcing any eviction (MO.R.STAT. § 441.233).

12. When the invalid provisions of an ordinance are so "connected and interdependent" with those which might be valid "that it cannot be presumed the legislature would have enacted one without the other," the entire ordinance should be declared void. Stine v. Kansas City, 458 S.W.2d 601, 608 (Mo.App. 1970); see also, Missouri Association of Club Executives, Inc. v. State of Missouri, 208 S.W.3d 885, 888-89 (Mo. banc 2006).

13. This Court finds and concludes the penalty provisions of Ordinance No. 1708 and Ordinance No. 1715 are invalid due to conflicts with Missouri state law, leaving the remaining provisions ineffectual due to lack of any means of redress. Accordingly, the Ordinances are void in their entirety.

14. Generally, courts have broad discretion to award attorneys fees as costs in an action brought under the Missouri Declaratory Judgment Act, section 527.100, RSMo., upon proof of "special" or "unusual circumstances." See, David Ranken, Jr. Technical Institute v. Boykins, 816 S.W.2d 189, 193 (Mo.banc 1991).

15. However, in litigation against a political subdivision of the State of Missouri, the Court finds and concludes under Baumli v. Howard County, 660 S.W.2d 702 (Mo. 1983) and Tillis v. City of Branson, 975 S.W.2d 949 (Mo.App. S.D. 1998), that attorneys' fees cannot be awarded to a prevailing party as "costs" under the Act.

16. Plaintiffs contend their request for attorneys' fees is viable since Defendant City of Valley Park is covered by insurance and cite MO.R.STAT § 537.610, which provides that a governmental unit "may purchase liability insurance for tort claims...[and] [s]overeign immunity for the state of Missouri and its political subdivisions is waived only to the maximum amount of and only for the purposes covered by such policy of insurance." The Court concludes Defendant City of Valley Park's insurance coverage is not relevant in that Plaintiffs have not alleged a tort and the statute is addressed, by its own terms, to the waiver of sovereign immunity.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Judgment on the Pleadings is GRANTED. Judgment is hereby entered in favor of Plaintiffs and against Defendant City of Valley Park, and Ordinance No. 1708 and Ordinance No. 1715 are declared void. Pursuant to MO.REV.STAT. § 527.080 and MO.R.CIV.P. 87.10, this Court orders that the temporary restraining orders enjoining enforcement of Ordinance No. 1708 and Ordinance No. 1715 are hereby made permanent. Defendants' Motion to Dismiss for Failure to State a Claim or Cause of Action for Award of Attorneys Fees is GRANTED.

SO ORDERED:

3/12/07

Date

Barbara W. Wallace

Barbara W. Wallace, Judge

cc: Attorneys of Record