

IN THE COUNTY COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA

CITY OF FORT LAUDERDALE,

CASE NOS. 17-003615MO10A

Plaintiff,

13-010799MO10A

v.

IRA ANDERSON and SEAN FORD,

Defendants.

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**ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS**

This matter originally came before the Court on Defendant Sean Ford's Motion to Dismiss a citation against him for violating the City's Sex Offender Residence Restriction, Section 16-217, Fort Lauderdale Code of Ordinances (hereinafter "the Ordinance"), on the basis that it was unconstitutional as applied and on its face under the ex post facto clauses of the State and Federal Constitutions. Ira Anderson subsequently made the identical claim about the Ordinance in a case before the Honorable Robert Diaz. On motion of both Ford and Anderson, and without objection from the City, this Court and Judge Diaz ordered consolidation of the claims in this Court for the purpose of a previously-scheduled evidentiary hearing on Ford's motion. This hearing took place as scheduled on February 16, 2018.

The Ordinance, enacted on October 2, 2007, prohibits all persons ever convicted of enumerated child sex offenses from residing within 1,400 feet of various designated landmarks, including schools and school bus stops.<sup>1</sup> Defendants were both convicted of enumerated child sex offenses, based on conduct committed more than ten years before the Ordinance's enactment. Both defendants reside less than 1,400 feet from designated landmarks, with friends or family members who charge them little to no rent.

The defendants presented two witnesses, both admitted as experts in their fields. Professor Kelly Socia is an expert in geomapping the impact of residence restrictions on the availability of affordable rental housing units. Professor Jill Levenson is an expert in treating convicted sex offenders to reduce their risk of reoffense, and in gauging the impact of residence restrictions in reducing the risk of sexual reoffense.

Professor Socia analyzed data provided by the City, the U.S. census, and HUD, with respect to a 2016 map produced by the City depicting those areas unrestricted by the Ordinance. Viewing the unrestricted areas, Professor Socia looked for available affordable rental housing units. He defined "available" as vacant and for rent; and "affordable" as \$969/month, which, under HUD

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<sup>1</sup> While the Ordinance contains three exemptions, these do not apply to either Ford or Anderson.

guidelines, is 30% of the maximum income of a low-income person residing in Ft. Lauderdale. Using the City's 2016 map, and these definitions, Professor Socia concluded that only 1% of the City's total stock of residential units was unrestricted, and that of these, only 1%, (<.1% of all residential units) was both available and affordable at any given time. At the time of Professor Socia's report, there were fewer than 10 such units.

The City presented a more recent map at the hearing. Professor Socia testified, and this Court finds, that the recent map was virtually the same as the 2016 map with respect to unrestricted rental housing options. The City presented no evidence to impeach Professor Socia's methodology or to contradict his findings. This Court finds Professor Socia's testimony to be credible.

Professor Jill Levenson testified that residence restrictions do not reduce the risk of sexual reoffense, because proximity to schools is not a risk factor in sexual reoffense. Relying on data from the Florida Department of Law Enforcement, Levenson noted that, when the Ordinance was enacted in October 2007, there were 18 sex offenders/predators registered as "transient," or homeless; but that there are now more than 250 homeless sex offenders/predators. Levenson testified that homelessness is a risk factor for

reoffense among convicted felons generally, while residing with family or friends promotes community reintegration, which reduces the risk of reoffense. Levenson also pointed out that the City's restriction prevented sex offenders only from spending the night near places children tend to gather only during the day.

Professor Levenson testified, without objection, to the age, physical condition and financial resources of both defendants. Ford is 52 years old, suffers from Crohn's Disease, and earns \$25,000.00 a year as a part-time paralegal. Anderson is 67 years old, suffers from Diabetes and Glaucoma, and receives less than \$12,000.00 a year in government disability payments and food stamps. Both men have tried without success to find affordable vacant rental units in the City. Both men will become homeless if forced to comply with the Ordinance. The City presented no evidence to contradict Levenson's testimony. This court finds Levenson to be credible.

Defendants contend that the Commissioners enacted the Ordinance with punitive intent; and that, even if the intent were non-punitive, the effects of the Ordinance are so punitive as to negate the Commissioners' remedial intent.

Notwithstanding defendants' arguments to the contrary, this Court finds that the Commissioners' intent in passing the Ordinance was, as clearly stated in

its preamble, remedial, not punitive. Having made this determination, this Court must examine whether defendants have met their burden to establish punitive effects by the clearest proof. *Smith v. Doe*, 538 U.S. 84, 92-93 (2003). This Court finds that defendants have met this burden.

In particular, this Court finds the following factors from *Smith v. Doe*, 538 U.S. at 97, citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963), to produce severely punitive effects: (1) The Ordinance constitutes a severe disability or restraint, because it excludes all but a handful of affordable rental housing units. Like most convicted felons, defendants cannot afford to secure other than low-income rental housing, as defined by Professor Socia. Applying the Ordinance to them, given their scarce resources and the City's high-priced housing market, will render them homeless, an especially punitive impact in light of their age and infirmity. (2) By making it nearly impossible for convicted sex offenders to find housing, the Ordinance resembles banishment, a historical form of punishment. (3) Because the Ordinance keeps sex offenders from spending the nights near places children gather only during the day, it is not reasonably related to its goal to protect children from sex offenses.

Based on the foregoing, this Court concludes that the Ordinance, on its face and as applied, violates the ex post facto clause of the state and federal constitutions.

ORDERED this 23 day of March 2018.



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Mindy Solomon, County Court Judge