

**STATE OF VERMONT
WASHINGTON SUPERIOR COURT**

Christopher Hagan,
Plaintiff

v.

Docket No. 320-5-09 WNCV

City of Barre,
Defendant

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, Christopher Hagan, now moves for summary judgment pursuant to Vt. R. Civ. P. 56(c)(3). As no genuine dispute of material fact exists, and as Mr. Hagan is entitled to judgment as a matter of law, the Court should now enter judgment in his favor.

I. Procedural History and Facts

Mr. Hagan filed suit in this Court on May 6, 2009 to contest the legality of Barre Ordinances § 11-36 (the "Exclusion Ordinance"), which purports to bar the plaintiff from continuing to reside in his home because of its location and because of his 2001 conviction for lewd and lascivious conduct. Mr. Hagan moved for issuance of a preliminary injunction barring the defendant from enforcing the Exclusion Ordinance and, after a hearing at which both parties presented evidence, the Court issued the injunction on June 29, 2009 and set a conference for July 16, 2009. At that conference, the Court established a summary judgment briefing schedule and suggested that due to the Court's resolution of the legal question at the heart of this case and the seeming identity of the material facts between the preliminary injunction and summary judgment stages of the litigation, the plaintiff's summary judgment brief need not repeat at length earlier briefing.

Accordingly, the plaintiff now moves for summary judgment without rehearsing the facts and the legal arguments already settled, although the plaintiff has attached a statement of undisputed fact as required by Vt. R. Civ. P. 53(c)(2).

II. The Summary Judgment Standard

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” Vt. R. Civ. P. 56(c)(3). The non-moving party receives the benefit of all reasonable doubts and inferences when a court is determining whether a genuine dispute of material fact exists, *e.g.*, *Provoncha v. Vermont Motocross Ass’n, Inc.*, 2009 VT 29, ¶ 11. A fact is “‘material’ for these purposes when it ‘might affect the outcome of the suit under the governing law.’” *Jeffreys v. City of New York*, 426 F.3d 549, 553 (2d Cir. 2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (interpreting virtually identical Fed. R. Civ. P. 56(c)). As such, the party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts,” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986), by resting “upon the mere allegations or denials of the adverse party’s pleading.” Vt. R. Civ. P. 56(e). Rather, the party seeking to avoid summary judgment “must set forth specific facts showing that there is a genuine issue for trial.” *Id.*

III. No Genuine Dispute of Material Fact Remains in this Case

Mr. Hagan’s sole claim against the defendant is that its Exclusion Ordinance is of no legal effect because the defendant lacked the legal authority to issue the ordinance. The Exclusion Ordinance, in turn, applies to individuals who meet just two criteria: those who, (1) at any time

in their lives, have been convicted of a crime enumerated at Vt. Stat. Ann. tit. 13, § 5401(10), and who (2) “establish a residence” anywhere within one thousand feet of a school or recreation facility as those terms are defined by the ordinance. Exclusion Ordinance § 11-36(a).

The ordinance’s two predicates are the sole material facts in this case: a dispute over either fact would place the ordinance’s applicability in question, and thus, Mr. Hagan’s standing to challenge the ordinance. However, neither party disputes that Mr. Hagan has been duly convicted of a crime enumerated at Vt. Stat. Ann. tit. 13, § 5401(10), and that Mr. Hagan’s domicile lies within one thousand feet of a school or recreation facility as the Exclusion Ordinance defines those terms.

No dispute of material fact lies in the Department of Corrections records that the defendant seeks to access, because no fact of Mr. Hagan’s offense, incarceration, probation, and treatment has any affect on the defendant’s legal authority to issue the Exclusion Ordinance. Nothing in the ordinance conditions Mr. Hagan’s ability to live in the exclusion zone on the facts of his conviction, his behavior while incarcerated, or the intimate details of his life contained within the presentence report. Moreover, the defendant has adduced no evidence whatsoever that it even sought out or considered such information prior to enforcing the Exclusion Ordinance against him. It cannot now avoid judgment by pointing to facts that its own ordinance ignores.

As the only material facts in the case – Mr. Hagan’s conviction and present domicile – are not in dispute, no issue of fact remains for trial. This Court should accordingly enter judgment for Mr. Hagan.

IV. Mr. Hagan Is Entitled to Judgment as a Matter of Law

Briefly, the second prong of Mr. Hagan’s summary judgment burden is to demonstrate that he is entitled to judgment as a matter of law. Rather than recite an argument that the Court

has already carefully considered and ruled on in his favor, Mr. Hagan will rest on his preliminary injunction moving papers and on the Court's preliminary injunction ruling. As the Court has already ruled that the defendant lacked the legal authority to issue the Exclusion Ordinance, Mr. Hagan is entitled to judgment as a matter of law and summary judgment should now enter in his favor.

III. Conclusion

For the reasons set forth above, the Court should now grant summary judgment to the plaintiff.

_____/s/_____
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Dated this 16th day of July, 2009.

PLAINTIFF'S VT. R. CIV. P. 56(C)(2) STATEMENT OF UNDISPUTED FACTS

1. Christopher Hagan currently resides at 6 Kent Place, Apartment 2, Barre, VT 05641. Compl. app. B (defendant's notice to Mr. Hagan, hereinafter "Exclusion Notice"); *see also Hagan v. City of Barre*, No. 320-5-09, Slip Op. at 2 (Vt. Super. June 29, 2009) ("Preliminary Injunction Ruling").
2. The property line of Mr. Hagan's dwelling lies within one thousand feet of a school or recreation facility as those terms are defined by Barre Ordinances §§ 11-36(a)(2),(3). Exclusion Notice.
3. Mr. Hagan has been duly convicted of lewd and lascivious conduct, Vt. Stat. Ann. tit. 13, § 2601. Christopher Hagan aff. in support of motion for preliminary injunction ¶ 3; Preliminary Injunction Ruling at 2.
4. From his conviction until 2005, Mr. Hagan was under the supervision of the Vermont Department of Corrections in the form of probation and incarceration. Preliminary Injunction Ruling at 2-3.
5. Mr. Hagan completed the sex offender education program while incarcerated. *Id.* at 3.
6. Following his release from prison in 2005, Mr. Hagan attended college in Iowa. *Id.*
7. He returned to Vermont in 2006, where he met his spouse, Amy. *Id.* at 2-3.
8. Chris and Amy Hagan were married in 2007. *Id.* at 2.
9. The couple have two children. *Id.*
10. By February 2009, the couple and their children were living in Richmond, Vermont, where they rented a trailer using Section 8 rental assistance benefits from the Vermont State Housing Authority ("VSHA"). *Id.* at 3.
11. During that month, the couple received notice that they would have to vacate the trailer

- because the trailer's owner had fallen behind on her lot rent. *Id.*
12. The Hagans were current in their rent obligations, and were forced to leave the trailer solely because of their landlord's failure to pay lot rent. *Id.*
 13. The Hagans could not move into any available apartment: in order to utilize Section 8 rental assistance, the apartment had to pass inspection by VSHA staff and fall below a particular monthly rent inclusive of utility costs. *Id.*
 14. On or around April 1, 2009, the Hagans located their current apartment and entered into lease negotiations with the landlord. *Id.*
 15. During negotiations, Mr. Hagan told the landlord of his offense and that he was listed on the non-public sex offender registry. *Id.*
 16. The landlord believed that the Exclusion Ordinance did not apply to Mr. Hagan. *Id.*
 17. Mr. Hagan signed the VSHA paperwork necessary to rent the apartment, but did not sign the lease itself. *Id.*
 18. Mrs. Hagan signed both the VSHA paperwork and the lease. *Id.*
 19. After meeting with the landlord and agreeing to rent the apartment, Mr. Hagan proceeded directly to the Vermont Department of Public Safety in Waterbury and registered his new address as is his duty under Vt. Stat. Ann. tit. 13, § 5407. *Id.* at 4.
 20. While there, Mr. Hagan was told that his conviction would prevent him from dwelling in the Kent Place apartment. *Id.*
 21. At the time the Hagans learned of the ordinance that might have barred them from moving into the Kent Place apartment, the Richmond trailer was about to be removed from its lot by the trailer park's owner. *Id.*
 22. The Hagans contacted Reenie Sargent, their VSHA case worker, for advice. *Id.* at 5.
 23. Mr. Hagan suggested to Ms. Sargent that his spouse and children move into the apartment

while he move out until the question of the Exclusion Ordinance's applicability was resolved. *Id.*

24. Ms. Sargent advised Mr. Hagan to move into the apartment and stay there, as he would forfeit his Section 8 assistance were he to move out alone. *Id.*
25. Were Mr. Hagan to lose his Section 8 assistance in such a manner, he would have to re-apply to the program and would be denied assistance because of his criminal record. *Id.*
26. The Section 8 wait list is currently closed, and is not expected to re-open until the end of the summer. *Id.* at 6.
27. Once the list re-opens to new applicants, the wait is approximately three to five years before benefits can be given to an applicant. *Id.*
28. If, on the other hand, the entire Hagan family were to move out of the Kent Place apartment, it will be very difficult to find a replacement apartment that would meet Section 8 eligibility criteria. *Id.* at 6.
29. Accordingly, finding a suitable replacement apartment could not happen immediately. *Id.*
30. Moreover, the Kent Place apartment is of an unusually high quality for the monthly rent, and the landlord agreed to lower the rent in order to permit the Hagans to utilize their Section 8 rental assistance. *Id.* at 5.
31. Mr. Hagan contacted the Barre City police to inquire as to whether his new apartment lies within the exclusion zone, and was told that it does. *Id.* at 4.
32. Mr. Hagan contacted the office of Senator Bernie Sanders for assistance, and was told to contact the mayor of Barre. *Id.*
33. The mayor of Barre suggested that Mr. Hagan attend a city council meeting and ask for an exception to be made to the Exclusion Ordinance. *Id.*
34. Mr. Hagan attended the Barre city council meeting on April 7, 2009 and asked to be

- excepted from the Exclusion Ordinance. *Id.*
35. The Barre city council did not grant Mr. Hagan an exception or waiver, but told him that it would take ninety days to amend the ordinance and that he would have to leave his apartment within fifteen days of receiving notice to do so in accordance with the Exclusion Ordinance. *Id.*
 36. On April 23, 2009, Mr. Hagan received notice from the Barre police department that he would have to leave his apartment within fifteen days because he was in violation of the Exclusion Ordinance. Exclusion Notice; Preliminary Injunction Ruling at 4.
 37. Neither Chris nor Amy Hagan are currently working outside the home, although Chris is actively seeking work and Amy is the children's primary caregiver. Preliminary Injunction Ruling at 5.
 38. The Hagans have no savings and no income. Chris Hagan aff. in support of application to proceed *in forma pauperis*; Preliminary Injunction Ruling at 5.
 39. The Hagans are currently subsisting on public benefits. Chris Hagan aff. in support of application to proceed *in forma pauperis*; Preliminary Injunction Ruling at 5.
 40. The Hagans do not have sufficient funds to locate, rent, and move to a different apartment. Preliminary Injunction Ruling at 5.
 41. Various community agencies could provide assistance to the Hagans were they to be turned out of the Kent Place apartment, but such assistance is conditioned upon an application procedure and is not guaranteed. *Id.*

CERTIFICATE OF SERVICE

I hereby certify that I have served the above by email and postage prepaid first class mail upon the following individuals:

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Dated this 16th day of July, 2009.