

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

BOYLE VENTURES, LLC

PLAINTIFF

v.

CASE NO. 04CV-22-2109-6

CITY OF FAYETTEVILLE, ARKANSAS

DEFENDANT

ORDER AND JUDGMENT

NOW on this 3rd day of January, 2024, comes on for consideration the Plaintiff's Motion for Partial Summary Judgment and the Defendant's Motion for Summary Judgment. After consideration of the motions, briefs, the file and the argument of counsel on September 11, 2023, the Court finds and orders:

1. Boyle Ventures brought this action as a suit for injunctive relief to prevent enforcement of Fayetteville Ordinance No. 6857. Ordinance No. 6857 would prohibit sale of puppies or kittens through Plaintiff's retail pet store located in Fayetteville unless Plaintiff obtained the puppies or kittens from the Fayetteville Animal Shelter. Plaintiff contends that this ordinance violates the Arkansas Working Animal Protection Act, the Arkansas Retail Pet Store Consumer Protection Act of 1991, and the Arkansas Civil Rights Act. In addition, the original complaint sought declaratory judgment that Ordinance 6859 violated the above noted acts and Fayetteville should be enjoined from enforcing the ordinance.

2. On June 26, 2023, Boyle Ventures filed a Motion for Partial Summary Judgment contending that Fayetteville Ordinance 6857 is contrary or inconsistent with state law, thus unconstitutional, and therefore violated the civil rights of Boyle Ventures. Boyle Ventures concedes that relief sought for declaratory judgment is now moot, as Fayetteville repealed Ordinance 6857 on May 16, 2023. Fayetteville has replied. The Motion is ripe.

3. On July 20, 2023, Fayetteville filed its Motion for Summary Judgment contending it has qualified immunity that protects Fayetteville from any claimed constitutional violation for civil rights of the Plaintiff. Boyle Ventures has replied. The motion is ripe.

4. In combination, these dueling motions present the essential claims of both parties. A hearing was held on September 11, 2023. Both sides argued their respective positions. The Court took both motions under advisement and now offers its opinion.

5. The first question is whether Ordinance 6857 violates the Working Animal Act or the Pet Store Act or both. Relevant portions of the two acts follow.

6. The Pet Store Act provides:

A.C.A. 4-97-108(d). Any authorized person is entitled to inspect the premises and records of a retail pet store at reasonable hours.

A.C.A. 4-97-103 (10). "Records" of a retail pet store means:

(A). The permanent record of each animal's health history showing the animal's vaccinations, inoculations, wormings, and other veterinary medical procedures performed on that animal

A.C.A. 4-97-106. The State Board of Health may propose, adopt, promulgate, and enforce, in accordance with the Arkansas Administrative Procedures Act, § 25-15-201 et. seq., such additional rules, regulations, and standards as may be necessary to carry out the intent of this chapter.

7. As noted, operators of retail pet stores must conform to the Department of Health rules and must meet the requirements of Part 5. Part 5 provides:

(a) A retail pet store shall maintain a permanent record for each animal received by it, containing the following: the animal's identifying number, a description of the animal including its birth date, breed, sex and color; the date of the animal's arrival at any housing facility owned, operated,

controlled, or used by a retail pet store; and the date of the animal's exit from the retail pet store or death. The permanent record shall contain the name, address, and telephone number of the person from whom the retail pet store received the animal; and the name, address, telephone number, and signature of the person into whose ownership, possession, care, custody, or control the animal passed upon exit from the retail pet store.

(b) In addition to the information specified in subsection (a) of this section, the permanent record of each animal received by a retail pet store shall contain the name, address, telephone number of the animal's breeder, and the name of any broker, dealer, or other agent through whom the animal passed prior to being acquired by the retail pet store.

(c) It is unlawful for a retail pet store to receive or acquire an animal, whether from within or without the State of Arkansas, unless the animal is accompanied by a Health Certificate signed by a licensed veterinarian certifying such animal to be free from obvious signs of disease. Should animals be received at a pet store without a Health Certificate, they must be examined by a Veterinarian within seventy-two (72) hours of arrival and a Health Certificate issued and made a part of the permanent record. Animals that fail to pass a Veterinary examination will be removed from the premises. Such certificate shall be maintained with the animal's permanent record.

(d) It is unlawful for a retail pet store to receive or acquire an animal that was shipped or transported under eight (8) weeks of age.

8. The Working Animal Protection Act provides:

14-54-1105 (a)(1). As used in this section, "working animal" means a nonhuman animal used for the purpose of performing a specific duty or

function in commerce or animal enterprise, including without limitation human service, transportation, education, competition, or exhibition.

14-54-1105 (b)(2). An ordinance or resolution shall not be enacted by a municipality that terminates, bans, effectively bans, or creates an undue hardship relating to the job or use of a working animal or animal enterprise in commerce, service, legal hunting, agriculture, husbandry, transportation, ranching, entertainment, education, or exhibition.

9. The relevant portion of Fayetteville Ordinance 6587 which amends § 92.04 of the Code of Ordinances of Fayetteville provides:

It shall be unlawful for a pet shop to offer for sale or to display any dog, cat, puppy, or kitten unless obtained from and in cooperation with the Fayetteville Animal Shelter, a government or nonprofit animal shelter approved by Fayetteville Animal Services, or a nonprofit animal rescue organization approved by Fayetteville Animal Services.

10. A fair reading of Ordinance 6587 is that it prohibits retail pet store sales of dogs and cats unless obtained from an animal shelter. Stated above, the question is whether this ordinance conflicts with the Retail Pet Store Act of the State of Arkansas. It is admitted in the statements of several Fayetteville officials that the history of any animal that comes into possession of any shelter is open to question and usually unknown. The unknown history of a shelter animal makes it impossible for a retail pet store to comply with the record-keeping requirements of the Act or of Section 5 of the Department of Health Regulations. Thus shelter animals cannot be sold by a retail pet store. Therefore, Ordinance 6587 conflicts with the Retail Pet Store Act.

11. The definition of "working animal" "means an . . . animal used for the purpose of performing a . . . function in commerce or animal enterprise, including without limitation

(emphasis added) human service” Black’s Law Dictionary defines “commerce” as the exchange of goods, products, or property of any kind.

12. The basic rule of construction of a statute is to give effect to the intent of the legislature where the language is clear and unambiguous. *Ford v. Keith*, 338 Ark. 487, 996 S.W. 2d 20 (1992). Therefore, this Court must determine if there is ambiguity in the language of the statute. The Court sees no ambiguity in this statute. The Court finds that language employed by the legislature means that working animals performing a function in commerce as a good that may be exchanged for other valuable medium such as money are covered by this statute.

13. Fayetteville Ordinance 6857 conflicts with both the Retail Pet Store Act and the Working Animal Act.

14. The relevant portion of the Arkansas Civil Rights Act provides:

“Every person who, under color of any . . . ordinance . . . or any of its political subdivisions subjects . . . any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Arkansas Constitution shall be liable to the party injured . . . for legal and equitable relief or other proper redress.” A.C.A. § 16-123-105(a).

15. It is clear that the passage of Ordinance 6857 would deprive the Plaintiff of its right to do business in Fayetteville insofar as its business includes the sale of cats and dogs. It is equally clear that it was the intent of the Fayetteville City Council to prevent the Plaintiff from selling cats and dogs within Fayetteville unless those animals were acquired by Plaintiff from Fayetteville Animal Services. Fayetteville officials believed that otherwise Plaintiff would sell animals acquired from “puppy mills.”

16. Plaintiff argues that by passage of Ordinance 6857, Fayetteville would prevent Plaintiff from engaging in an important element of its retail business and thus violate Plaintiff’s civil rights. Fayetteville responds that it, its officials, representatives, and employees had no

knowledge of the Arkansas Retail Pet Store Act nor the Arkansas Working Animal Protection Act and therefore did not have the requisite intent to violate the civil rights of the Plaintiff. Plaintiff counters that everyone is presumed to have known the law.

17. Fayetteville contends that it has qualified immunity because neither the City nor its elected officials and employees had intent to violate the civil rights of the Plaintiff.


“Government officials performing discretionary functions are shielded from liability for civil damages and are entitled to qualified immunity unless their conduct violates “clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 102 Sect. 2727 (1982); *Shivers v. Merriwether*, 94 F. 3d 1163 (1996).

18. Meanwhile, but for the stay agreed to by Fayetteville and the Plaintiff, Plaintiff would have been prevented from engaging in a legal business enterprise. Borrowing from the Chancellor in *Klinger v. Fayetteville*, 297 Ark. 385, 762 S.W.2d 388 (1988), Boyle’s “situation excites sympathy.” But the qualified immunity of the Defendant bars recovery. The conduct of the Defendant did not violate “clearly established . . . constitutional rights of which a reasonable person would have known.”

18. The Motion of the Defendant for Summary Judgment filed on November 1, 2023, is moot and therefore denied.

IT IS THEREFORE ORDERED that the Motion for Summary Judgment filed November 1, 2023, is denied; that the Motion for Summary Judgment filed by Plaintiff on June 26, 2023, is granted in part; that the Motion for Summary Judgment file by the Defendant on July 20, 2023, is granted and the complaint of the Plaintiff is dismissed.

IT IS SO ORDERED.


DOUG SCHRANTZ
CIRCUIT JUDGE

January 3, 2024

cc: Counsel of Record
Court file