

IN THE CIRCUIT COURT FOR MCMINN COUNTY, TENNESSEE

STATE OF TENNESSEE, EX REL.
STEPHEN D. CRUMP, DISTRICT ATTORNEY
GENERAL FOR MCMINN COUNTY, TENNESSEE,

Petitioner,

Docket No.: 18-CV-208

vs.

THE BLUE COVE HIDEAWAY,
and CHARLES WOMAC and ENOLA G. WOMAC,

Respondents.

FILED
AUG 08 2018
RHONDA J. COOLEY 327
CIRCUIT COURT CLERK
BY *[Signature]* D.G.

FINAL ORDER

STATEMENT OF THE CASE

This matter came on to be heard in a bench trial on the 27th day of July, 2018, in the Circuit Court of McMinn County, Tennessee. The State of Tennessee was represented by Attorney Matthew Dunn. The State filed a petition to abate a public nuisance, pursuant to T.C.A. §29-3-101, 102, 103 and 105. The Blue Cove Hideaway and Charles Womac and Enola G. Womac (respondents) were represented by Attorney Van R. Irion. The State alleges that the respondents are in violation of the laws of the State of Tennessee by maintaining a place detrimental to the public welfare and safety at a business known as the Blue Cove Hideaway located in McMinn County, Tennessee. The State alleges that Mr. and Mrs. Womac are maintaining a business on their property in violation of T.C.A. §29-3-103, that is a public nuisance. The State requests that this court to abate and/or permanently discontinue the business. The

State alleges that the respondents are operating a business known as the Blue Cove Hideaway, and that the respondents do not possess a business license to operate in McMinn County, Tennessee. The State alleges that the Blue Cove Hideaway is an organized camp, as defined in T.C.A. §68-110-101, and that they do not have a valid permit issued by the Commissioner for the Department of Health or the Director of a City, County or Regional Health Department, pursuant to T.C.A. §68-110-103. The State alleges that the respondents do not have a valid permit to operate an organized camp. Furthermore, the State alleges that the respondents are operating a food service establishment as defined in T.C.A. §69-14-703(9)(A). The State alleges that the respondents are required to obtain a permit prior to January 1 of each year to operate a food establishment, and they have failed to do so pursuant to the terms of T.C.A. §69-14-706. The State alleges that in May of 2017, and again in May of 2018, the field office manager for the division of environmental health and the Tennessee Department of Health served the owner with closure notices for operating a food service establishment without a permit. The State further alleges that the Blue Cove Hideaway constitutes a public nuisance pursuant to T.C.A. §29-3-101 because of ongoing acts of drunkenness, breaches of the peace, as well as other dangerous activities that take place upon the property. The State alleges that there have been two drownings, multiple complaints of underage drinking, multiple complaints of illegal drug use, as well as other numerous complaints of illegal activity taking place on the property. The State alleges that it is reasonable to believe that the alleged illegal conduct taking place at the Blue Cove Hideaway will continue to occur. The State alleges that both the State of Tennessee and McMinn County will suffer irreparable injury unless a temporary and

permanent injunction are issued.

ISSUES

Issue #1: Is the Blue Cove Hideaway a public nuisance, detrimental to the public welfare and safety as defined in T.C.A.? Issue #2: Should the business be enjoined and restrained from continuance, and more particularly, if a nuisance is found, should the nuisance be abated and permanently discontinued? Issue #3: Does the Blue Cove Hideaway or Charles Womac and Enola G. Womac possess a valid business license? Issue #4: Is the Blue Cove Hideaway an organized camp, being operated by Charles Womac and Enola G. Womac? Issue #5: Is the Blue Cove Hideaway a food service establishment being operated by Charles Womac and Enola G. Womac? Issue #6: Do the respondents have a valid permit to operate any form of business upon the property? Issue #7: What is the proper redress for the violation of any of the above referenced issues?

FINDINGS OF FACT

The court heard the testimony of Kevin Gray, who is a Corporal with the McMinn County Sheriff's Department. Cpl. Gray testified that he has been called to the Blue Cove Hideaway on numerous occasions. Cpl. Gray testified that in March or April of 2018, he responded to a call from the Blue Cove Hideaway made by a female caller. When he arrived at the Blue Cove Hideaway, Cpl. Gray spoke with Mr. Womac about executing a warrant. He testified that Mr. Womac refused to let him in or onto the

property. Cpl. Gray testified that he responded again to the Blue Cove Hideaway on May 26, 2018, regarding another 911 call or complaint. The call had to do with underage drinking of alcohol. Upon arriving at the property, Cpl. Gray found numerous empty alcohol containers on picnic tables and in the fire pit areas. Cpl. Gray spoke to 5 or 6 campers who were camping on the premises on May 26, 2018. Finally, Cpl. Gray came upon a "younger group" and was going to question them when he observed one of the young people retrieve an item from the vehicle sitting at the camp site and then throw the item into the woods. Upon further investigation, Cpl. Gray found a metal pipe and an amount of marijuana. Upon further investigation, Cpl. Gray determined that the owner of the pipe and the marijuana was a minor. Cpl. Gray testified that he again was called to a complaint to the Blue Cove Hideaway on June 8, 2018. On that date, Mr. Womac was issued a citation. Cpl. Gray found the Blue Cove Hideaway premises to be full of debris, scrap metal, scrap wood with nails, overturned and overfilled trash cans and/or trash areas. Cpl. Gray observed 25-30 people at the premises. (See trial exhibits #1, #2, #3 and #4, showing the office area signage, piles of metal, trash and other debris, as well as pictures of campers and tents in a cliff area with a jumping platform).

The court also heard the testimony of Eric Coffee. Mr. Coffee is an employee of the Tennessee Department of Health. It is one of the duties of his job to oversee the regulation of campgrounds, pools and swimming areas.

Mr. Coffee testified that in 2015, he informed Mr. and Mrs. Womac that they were not allowed to have camping upon their property, nor to provide food services.

Mr. Coffee testified that he has provided at least three Closure Letters (see trial exhibits #13, #14, #15 and #16) during a four year period, including May 2015, June 2017 and May 2018. Mr. Coffee testified that Mr. Womac inquired of him as to what would be required to get a permit to operate a food services establishment and/or an organized camp. Mr. Coffee testified that he and others provided Mr. Womac with the information, however, neither Mr. Womac nor Mrs. Womac ever obtained a permit, either for a food service establishment or for an organized camp. Mr. Coffee testified that the food service area at the Blue Cove Hideaway is dirty, with lots of debris. He testified that Blue Cove Hideaway does not meet the requirements for a food services area. There are improper storage receptacles, improper heating devices, as well as several other violations.

Mr. Coffee testified that Blue Cove Hideaway does not meet the requirements for an organized camp. Mr. Coffee testified that it was his opinion that Blue Cove Hideaway is being used for an overnight camping area, and that each time he has visited the premises, he has observed numerous tents and/or campers. Mr. Coffee testified that there is no running water in the toilet areas, nor are there any proper sewage disposals located upon the camp sites. Mr. Coffee testified that it is his opinion that there are several current environmental violations at the Blue Cove Hideaway.

Mr. Coffee also testified that there are numerous safety requirements for swimming areas in the State of Tennessee. Mr. Coffee testified that Blue Cove Hideaway does not meet the requirements for a swimming area. The court observed the numerous pictures of the tents and campers, as well as the swimming area, the

diving and/or jumping metal platform, the numerous piles of debris and/or garbage, metal and/or piles of wood laying about the premises.

The court also heard the testimony of Nathan Stiles, who is a deputy with the McMinn County Sheriff's Department. Deputy Stiles testified that on July 28, 2018, he and another officer, wearing plain clothes, went to the Blue Cove Hideaway. Deputy Stiles testified that they inquired of Mr. Womac and/or Mrs. Womac about purchasing a camping site, as well as about purchasing food. Deputy Stiles testified that he was told by Mr. Womac that he could purchase a camp site for \$5.00 per night per person for Monday through Friday, or \$8.00 per night per person for Saturday or Sunday. Deputy Stiles was also told by Mr. Womac that he could purchase a drink for \$3.00 and with it he would receive a hot dog. The court observed numerous pictures showing the Blue Cove Hideaway area. The court observed the pictures of the pavilion with a sign entitled "Office". The court also observed several other signs, including "Life Jackets for Rent". The court observed tents with life jackets hanging near the tent set-up area. The court also observed pictures of the pavilion area with a sign entitled "The Hideaway Diner". The court observed a grill, a refrigerator, and a sign entitled "Menu" showing certain food items for sale with prices. The court also observed numerous other pictures of several campers and tents with trash, old appliances, bottles, metal piles, wood piles and other junk and debris piles, located upon the property. (See trial exhibits #1 - #12).

The court also heard the testimony of Deputy Tony Allman, who is also a McMinn County Sheriff's Deputy. Deputy Allman has been with the McMinn County

Sheriff's Department for 23 years, and is currently the Sargent on patrol. Sgt. Allman testified that in July of 2018, he responded to a 911 call to the Blue Cove Hideaway. When he arrived at the property, he went to a tent, wherein he heard a discussion going on inside of the tent pertaining to the use of Marijuana. He could also smell Marijuana being smoked. Sgt. Allman testified that while he was attempting to arrest the people that he found inside the tent smoking Marijuana, that Mr. Womac appeared on the scene and became extremely argumentative, and in fact combative with Sgt. Allman. Sgt. Allman testified that Mr. Womac informed him that if he and the other two deputies did not leave that he would lock them into the property, which ultimately Mr. Womac ended up doing. Sgt. Allman testified that Mr. Womac locked them into the Blue Cove Hideaway property by locking the gate and holding them there for a period of about 30 minutes. Finally, Mr. Womac informed Sgt. Allman and other two deputies with him that if they would ask him then he would unlock the gate and let them out. Sgt. Allman testified that while he and the other two deputies were being held at the property, that left only two deputies free to patrol the rest of the county. Sgt. Allman testified that Mr. Womac is currently facing charges for false imprisonment and disorderly conduct regarding this incident. Sgt. Allman testified that he has been called to the Blue Cove Hideaway property many times in the last few years to investigate numerous crimes and/or injuries.

The court heard the testimony of Jared Price, who is a Detective with the McMinn County Sheriff's Office. Det. Price testified that he has investigated numerous incidents at the Blue Cove Hideaway during the last few years and months. Det. Price

authorized the undercover operation, wherein his officers purchased camp sites and purchased food. Det. Price testified that officers frequently are called to the Blue Cove Hideaway to investigate crimes and/or events. Det. Price personally investigated a drowning at the Blue Cove Hideaway during the last two years, and testified that he is aware of another drowning that has occurred at the Blue Cove Hideaway during the last 2-3 years. Det. Price testified that he has personal knowledge that Mr. and Mrs. Womac have been cited for running an unauthorized camp ground and/or an unauthorized food service establishment. Det. Price testified that on June 8, 2018, he and other officers under his charge were running a DUI check point, and at one point went to the Blue Cove Hideaway and found three juveniles camping there. Det. Price testified that one of the juveniles was intoxicated. Det. Price testified that the other juveniles eventually showed Det. Price and the other officers investigating a large cooler of beer and/or alcoholic beverages.

Det. Price testified that on the date of the serving of the temporary injunction, he went to the property and observed more than 25-30 people at the property with numerous campers and tents set up and in use. Det. Price testified that he personally investigated as to whether or not the Blue Cove Hideaway has a valid business license, and found that it does not (see trial exhibit #19, Affidavit of No Business License in McMinn County, Tennessee).

ANALYSIS

In Tennessee, a food service establishment is an entity that removes food from

its original packaging and prepares it for consumption. In Tennessee, an organized camp is an entity at which camping is open to the public. The State of Tennessee has issued three closure letters to the Blue Cove Hideaway. One for operating an organized camp, and two for operating a food service establishment, all in violation of Tennessee Department of Health guidelines and requirements. Closure letters were delivered to Mr. and Mrs. Womac, in 2015, 2017 and 2018, yet the court finds that Mr. and Mrs. Womac continued to operate the Blue Cove Hideaway as a food service establishment and as an organized camp, through July of 2018 when the temporary injunction was issued. The court notes that in 2018 Mr. Coffee, who is the authorized employee for the Tennessee Department of Health, issued a closure letter for a food service establishment and delivered it to Mr. Womac. Mr. Womac tore up the closure letter and threw it to the ground at Mr. Coffee's feet. Mr. Womac then demanded that Mr. Coffee leave the property, threatening to tow Mr. Coffee's car if he failed to leave. Mr. Coffee testified that Mr. Womac continues to operate a food services establishment, as well as an organized camp, in violation of the closure letters and in violation of state statutes. Mr. Coffee testified that it is his opinion that the health and safety of the general public are at risk here, due to the fact that the organized camp being operated by the Womacs, as well as the food services establishment being operated by them, are all in violation of the health and safety requirements of the State of Tennessee. The court finds Mr. Coffee's testimony to be both compelling as well as very credible.

The court finds that the multiple Sheriff's officers who have investigated 911 and other calls at the Blue Cove Hideaway have, on numerous occasions, found several

underage individuals drinking alcoholic beverages, some of whom were also possessing and using illegal drugs.

Deputy Nathan Stiles, along with his co-worker Deputy Michael Richmond went in plain clothes to the Blue Cove Hideaway property on June 8, 2018. The court finds they were quoted a price for camping on a per person, per day basis, with one price for weekday camping and one price for weekend camping. They were also quoted a price to purchase food and beverages. The court finds that some of the food being purchased is food that requires on site preparation, and that was in fact being prepared on site. Some food was removed from its original packaging, prepared for sale and sold for consumption. While the court heard the testimony that Mr. Womac told the officers he was selling them a drink and "giving" them the hot dogs, the court does believe that this is true. The court finds that Mr. Womac and Mrs. Womac are selling food being prepared by themselves. The court also finds it of great importance that on more than one occasion, Mr. Womac told the undercover officers that he did not care what they did on the premises, as long as they paid their way to be there. The court finds the officer Stiles' testimony to be very credible.

Sgt. Tony Allman testified that he investigated an incident at the Blue Cove Hideaway wherein one of the occupants of a tent in fact handed him a Marijuana cigarette upon vacating the tent. Sgt. Allman testified that Mr. Womac immediately came upon the officers and interfered with the officers's investigation, so much so that the females found inside the tent were able to actually leave the scene of the investigation because the officers were having to deal with Mr. Womac, who had become both confrontational and belligerent with the officers. The court finds that Mr.

Womac became so confrontational and belligerent that he eventually locked the officers into the property and refused to allow them to leave for a period of about 30 minutes. The court finds that Mr. Womac's actions not only created a dangerous condition for the officers and possibly other occupants at the Blue Cove Hideaway, but also created a dangerous situation for the citizens of McMinn County, Tennessee due to the fact that the officers were locked into the Blue Cove Hideaway property and were unable to patrol the other parts of the county while they were locked into the Blue Cove Hideaway by Mr. Womac. The court finds the testimony of Sgt. Allman to be very credible.

The court finds that Det. Jared Price in June of 2018, found three minors in possession of alcohol while they were camping at the Blue Cove Hideaway. Det. Price contacted the minors' parents who came and retrieved them from the Blue Cove Hideaway camp site. Det. Price also observed numerous other individuals camping at the property. Det. Price was one of the officers who delivered the temporary injunction to Mr. and Mrs. Womac at the property. He placed closure signs on the property and put crime scene tape around the entrance to the property. However, the next day after doing so, Det. Price made a controlled call to the Blue Cove Hideaway number and was told by Charles Womac that the police had closed the Blue Cove Hideaway but that he was welcome to come to the property and swim and enjoy himself if he signed a waiver located at or near the pavilion.

The court finds that Mr. and Mrs. Womac have been provided, on numerous occasions, proper notice that they are in violation of the laws of the State of Tennessee for operating a food services establishment and/or an organized camp, all in violation of the laws of the State of Tennessee. The court finds that even after having been

provided with notice of their violations, the Womacs wilfully chose to continue to operate their business in violation of the laws of the State of Tennessee.

The court finds that Mr. Womac wilfully tore up his closure letter and threatened to tow Mr. Coffee's vehicle from the property, even though Mr. Coffee was properly engaged in doing his job. The court finds that Mr. Womac similarly confronted Sgt. Allman and held him and the deputies at the property without their consent. The court finds that Mr. Womac's actions were in violation of the laws of the State of Tennessee. The court finds that there have been numerous incidents of illegal drugs being found and being used by individuals on the property. Furthermore, the court finds that there have been numerous incidents of alcohol being used by minors on the property. The court finds that Mr. and Mrs. Womac were, or should have been, aware of these illegal uses of alcohol and/or illegal drugs, and continued to operate a business without any permit or license on an ongoing basis. The court finds that there have been numerous calls pertaining to disorderly conduct and breaches of the peace at the property, and the Womacs have wilfully continued to allow the disorderly conduct and/or breaches of the peace to continue to occur for a period beginning as early as 2015, and continuing through July of 2018 when this temporary injunction was issued. The court finds that there have been two drownings and other incidents of illegal activity at the property that have taken place at this property since 2015.

CONCLUSIONS OF LAW

Based upon all of the above, the court finds that Charles Womac and Enola Womac are in violation of the statutes of the State of Tennessee by breaching the

peace, by operating a business without proper permits and/or licenses. The court finds that Charles Womac and Enola G. Womac are in fact operating an organized camp without the proper licenses or permits. The court finds that Charles Womac and Enola G. Womac are also operating a food service establishment without the proper license and/or permit. The court also finds that the activities being allowed to exist and/or to go on at the property for a period in excess of three years. The court finds that these activities present a danger to the public's health, safety and welfare. The court finds that Mr. Womac has wilfully interfered with the McMinn County Sheriff's deputies and/or officers while performing their official duties, and the court finds that Charles Womac and Enola G. Womac have wilfully ignored the orders of this court and/or the closure letters issued by the State of Tennessee. Based upon all of the above, the court finds that the citizens of McMinn County, Tennessee and the State of Tennessee will suffer irreparable injury if the Blue Cove Hideaway is allowed to continue to operate. Based upon all of the above, the court finds that the activities being conducted by Charles Womac and Enola G. Womac on the premises known as the Blue Cove Hideaway constitute a public nuisance. The court finds that the activities taking place at the Blue Cove Hideaway are detrimental to the public welfare and safety of the citizens of McMinn County, Tennessee. The court finds that the respondents shall be permanently enjoined from owning, operating and permitting any further nuisance at that property located at 301 County Road 116, Athens, McMinn County, Tennessee, all as shown and described by the deed as shown as trial exhibit #20.

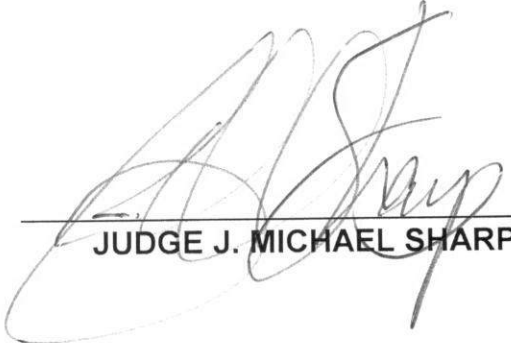
ORDER

The court finds the Blue Cove Hideaway to be a public nuisance, detrimental to the public welfare and safety as defined in the Tennessee Code Annotated. The court finds that the Blue Cove Hideaway nor Charles Womac or Enola G. Womac possess a valid business license. The court finds that the Blue Cove Hideaway in the business being operated upon the property belonging to Charles Womac and Enola G. Womac is an organized camp. The court finds that Charles Womac and Enola G. Womac are operating a food services establishment upon the property without a valid permit. The court finds that the public health, safety and welfare of the citizens of McMinn County, Tennessee is suffering, and that the citizens will suffer irreparable harm or injury if the business is allowed to continue, based upon all the facts and evidence before the court. Based upon all of the above, the court issues a permanent injunction enjoining Charles Womac and Enola G. Womac from owning, operating and permitting any further nuisance at the property.

This is a final order.

IT IS SO ORDERED.

This 9th day of August, 2018.



JUDGE J. MICHAEL SHARP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon the following by delivering the same via U. S. Mail and/or via facsimile to the parties listed below:

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This 8 day of August, 2018.


CLERK