

FILED
06-24-2020
Clerk of Circuit Court
Racine County
2020CV001045

BY THE COURT:

DATE SIGNED: June 24, 2020

Electronically signed by Jon E. Fredrickson
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

RACINE COUNTY

DAVID YANDEL,

Plaintiff,

v.

Case No. 20CV1045

CITY OF RACINE et al.,

Defendants.

SUPPLEMENTAL TEMPORARY INJUNCTION ORDER

The above captioned matter is before the Court on an ex parte motion by Plaintiff, David Yandel, seeking a second order temporarily enjoining Defendants from enforcing City of Racine Ordinance 0004-20, and issuing or enforcing any additional general orders of general jurisdiction regarding COVID-19. In support, Mr. Yandel has filed a First Amended Complaint expanding the scope of his lawsuit, to address the Constitutionality of newly enacted City of Racine Ordinances § 54-33 and 54-34. Defendants have written a letter asking the Court not to grant the motion.

On June 19, 2020, this Court heard argument on Mr. Yandel's first motion for a temporary injunction. In his initial Complaint, Mr. Yandel alleged that Defendant Bowersox issued an unlawful and unconstitutional order affecting his business, to wit, Defendant Bowersox's May 13, 2020 Safer at Home – Racine Order. (Complaint, ¶¶ 26 – 37). After his case was filed, Bowersox amended her order on May 21, 2020 and again on May 29, 2020. At oral argument, Defendants argued Bowersox had authority to issue her orders under Wis. Stat. § 252.03, Wis. Admin. Code DHS § 145.06, and Ch. 54 of the Racine Ordinances. This Court noted during argument that there was nothing in Ch. 54 that appeared to allow Bowersox to issue such orders.

One business day after this Court temporarily enjoined the City from: (1) enforcing the Forward Racine Order; and (2) enacting any other orders pursuant to Administrator Bowersox's exercise of general powers to issue general orders of general application, the Common Council of the City of Racine passed Ordinance 0004-20, amending Chapter 54 of the Municipal Code of the City of Racine to codify the Forward Racine Order under Ordinance 54-33(a). The City further codified and explicitly granted Bowersox the vast power to open and shutter the City of Racine at her will that this Court found so troubling at oral argument that it described it as despotic power. This Court takes judicial notice of the enactment of Ordinance 0004-20, and the amendments and additions to Chapter 54 of the Municipal Code of the City of Racine, including, but not limited to, Sec. 54-33.

Plaintiff filed his First Amended Complaint, in response to Defendants' ordinance actions, on June 24, 2020. In it, in part, he adds the following allegations to his initial complaint:

32. On June 22, 2020, the Common Council for the City of Racine approved "Ordinance 0004-20 – Safer Racine

2019 Novel Coronavirus Response” (the “**Ordinance**”) purporting to grant the Local Health Officer “authority to modify the Safer Racine COVID-19 Pandemic Response Standards as necessary to respond to changing COVID-19-related public health conditions.” Attached hereto and incorporated herein is a true and correct copy of the Ordinance as **Exhibit D**.

33. The Ordinance fully incorporates, verbatim, the Racine Order (original and as amended).

34. The Racine Order includes standards of conduct that the City of Racine has prohibited under threat of civil forfeiture (the “**Standards**”).

35. The Ordinance grants the Local Health Officer the power to modify the Standards as necessary.

36. The Ordinance allows the Local Health Officer to modify the Standards without action by the Common Council.

37. The Ordinance permits the Local Health Officer to modify the Standards based upon “then-current guidance from the World Health Organization [(“**WHO**”)], the Centers for Disease Control [(“**CDC**”)], and the Wisconsin Department of Health Services [(“**DHS**”)].

38. The WHO website has no less than 13 subpages and over 85 pages of COVID-19 information.

39. The CDC website has no less than 15 subpages and over 50 pages of COVID-19 information.

40. The DHS has no less than 15 subpages, fact sheets, and linked documents.

41. A person of average intelligence and understanding, when reading the Ordinance, cannot tell what conduct is regulated and forbidden.

42. The Ordinance contains no standard by which all persons may know their rights and obligations thereunder.

43. The Ordinance is not definite and certain.

44. The Ordinance is vague and ambiguous.
45. The ordinance is unconstitutional.
46. The ordinance is unlawful.

(First Amended Complaint, ¶¶ 32 - 45.)

In its June 19th order, this Court stated that Mr. Yandel was more than likely to succeed on the merits in this case, that he had no other adequate remedy at law to stop the enjoined Forward Racine order from being enforced against him, that he was being harmed by the substance of the order, and that the injunction was necessary to preserve the status quo that existed prior to the orders. The City of Racine has engaged in a direct attack on this Court's order by incorporating the enjoined substance of the Forward Racine order into an ordinance, and then claiming the right to enforce the enjoined language through a new ordinance, despite this Court's order.

Pursuant to this Court's last order, both Defendants were enjoined from enforcing the substantive portion of the Forward Racine order. When issued, that meant both Defendants were barred from forcing the residents, faith organizations, and businesses in the City of Racine to comply with the Forward Racine Order while the constitutional and statutory power to issue such orders, as well as the constitutionality and statutory breadth and scope of the orders, remain at issue in this case. Instead of complying, Defendants cut and pasted the challenged language at issue in this case into a new ordinance that they are now enforcing. Strike One. At this time, this Court is not going to ascribe motives to Defendant City of Racine in its enactment of the new ordinances. Going forward, this Court warns Defendants that it will not hesitate to issue an order to show cause for contempt

if any one, or both, of Defendants attempt to undermine the orders of this Court. There are no strikes two, or three, in this Court.

The Court makes the additional following specific findings in regards to plaintiff's ex-parte motion:

1. Mr. Yandel has more than a reasonable probability of success on the merits on all of his claims in the First Amended Complaint.
2. There is more than a reasonable probability that this Court will find that Administrator Bowersox's COVID-19 Orders, and City of Racine Ordinances 54-33 and 54-34 are unconstitutional.
3. Mr. Yandel has no other adequate remedy at law.
4. Mr. Yandel is likely to suffer irreparable harm to his business.
5. A supplemental temporary injunction is necessary to preserve the status quo.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiff's motion for a supplemental temporary injunction regarding the newly enacted City of Racine Ordinances is GRANTED.
2. Defendants are temporarily enjoined from enforcing Racine Ordinances Secs. 54-33 or 54-34.
3. Defendant City of Racine is temporarily enjoined from enacting, as ordinances, any other COVID-19 General Orders of General Application against the residents, faith-based organizations, or businesses in the City of Racine.
4. Defendants remain temporarily enjoined from issuing, or enforcing, any COVID-19 General Orders of General application.