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MUNICIPAL ORDINANCE - OHIO

Kinzel v. Ebner

Court of Appeals of Ohio, Sixth District, Erie County - January 20, 2023 - N.E.3d - 2023 WL 334768 - 2023-Ohio-164

Neighbor filed complaint against owner of two residential properties seeking injunctive relief and damages based on allegations that owner's use of properties for short-term rentals violated deed restrictions and city ordinances. Owner filed counterclaim against neighbor, neighbor's husband, and city challenging constitutionality of ordinances, and claiming that city's criminal enforcement action against him under city code prohibiting transient rentals of property violated equal protection.

The Court of Common Pleas granted partial summary judgment to neighbor, granted summary judgment to city on owner's counterclaims other than equal protection claim. Neighbor and owner appealed. The Sixth District Court of Appeals affirmed in part, reversed in part, and dismissed certain assignments of error. On remand, the Court of Common Pleas awarded summary judgment to city on owner's equal protection counterclaim, and parties settled remaining claims, leaving in tact trial court's previous holding that ordinances were valid and constitutional. Owner appealed.

The Court of Appeals held that:

- City was not required to comply with public notice and hearing requirements before passing ordinance as an emergency measure;
- City failed to substantially comply with requirement that planning commission's recommendation and report be available for public examination for at least 30 days before hearing, and thus city's ordinance amending prior ordinance was invalid;
- Ordinance prohibiting short-term rentals was not unconstitutionally vague;
- Ordinance was rationally related to legitimate governmental interest, and thus was not facially unconstitutional on due process grounds;
- Ordinance was not unconstitutional as applied to property owner; and
- City's enforcement of zoning ordinances against property owner did not violate equal protection clauses of federal and state constitutions.

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