

IN THE DISTRICT COURT OF THE DISTRICT OF OREGON
EUGENE DIVISION

Case No: 6:23-cv-01064-AA

Myntora Aguilar, Michelle Hester, &)
Nicholas Schindler, Homeless Individuals)
On Hunnell & Clausen Roads, City of Bend, OR)
On Behalf of Themselves & Other Homeless)
Individuals on Hunnell & Clausen Roads)
& Eric Garrity, Bend Equity Project, All Pro)
Se,)
Plaintiffs)

v.

Eric King, City Manager, City of Bend;)
Melanie Kebler, Mayor, City of Bend; Megan)
Perkins, Mayor Pro Tem & Anthony)
Broadman, Barb Campbell, Ariel Mendez,)
Megan Norris & Mike Riley, City Councilors,)
City of Bend, OR,)

Defendants

) COMPLAINT FOR INJUNCTION/
) TEMPORARY RESTRAINING ORDER
) UNDER FRCP RULE 65(b)

PARTIES

1

Plaintiffs Aguilar, Hester and Schindler are three disabled homeless individuals who are being displaced, along with 19 other disabled persons, from an area of the City of Bend (hereafter "City"), known as Hunnell/Clausen Road. Homeless/unhoused persons have been allowed by the City to live on Hunnell/Clausen, at a minimum, for the past 8 years. Plaintiff Garrity is a service provider with Bend Equity Group, a community organization that has been assisting the homeless on Hunnell/Clausen with meals and other services for several years.

Defendant King is the City Manager of City who made the decision that the longstanding site that Plaintiff's have called home, and at which the City has acquiesced to Plaintiff's and others living there and even provided services such as water, portable toilets and trash pickup, would be closed with just 28 days scant notice. Defendants are also the elected City Council which sat silent upon hearing the City Manager's decision, and could have overridden the City Manager's decision.

INTRODUCTION

2

On June 20, 2023, with no advanced warning, the City announced that effective July 17, 2023 Hunnell/Clausen would be closed and cleared. The City's precipitous announcement allowed only 28 days for Plaintiffs and other disabled residents of Hunnell/Clausen to relocate or face having their homes (RVs, Trailers, cars and tents) towed away or torn down and all their other belongings taken.

3

On July 3, 2023 a City agent went to every tent, car, trailer or RV on Hunnell/Clausen and attached a Notice advising every person living on Hunnell/Clausen that effective midnight Sunday evening July 16, 2023 residents had to have removed their vehicles, tents and belongings or else the morning of July 17, 2023 the streets would be blocked off, residents would not be allowed to remain and the City would begin clearing everything out.

4

On Wednesday morning, July 12, 2023, eight residents of Hunnell/Clausen submitted written Requests for Reasonable Accommodation under the City's Camping Code and the Americans with Disabilities Act asking for additional time or that the planned clearing be cancelled.

5

On Wednesday afternoon, July 12, 2023, the three Plaintiffs named above filed a lawsuit in District Court in Deschutes County seeking, inter alia, an Emergency Hearing coupled with a Temporary Injunction and other relief from the court asking that the planned clearing be delayed or cancelled.

6

On Thursday, July 13, 2023 and Friday, July 14, 2023 other Hunnell/Clausen residents with disabilities also submitted Requests for Reasonable Accommodation so that by Friday morning, a total of 22 Hunnell/Clausen residents had requested Reasonable Accommodation under the City's Camping Code and Americans with Disabilities Act. Copies of the individual Requests for Reasonable Accommodation submitted by the 22 Hunnell/Clausen Road individuals are attached as Plaintiff's Exhibit 1.

7

On the morning of Friday, July 14, 2023 the City's Accessibility Manager, who is tasked with reviewing Requests for Reasonable Accommodation under the Camping Code and the

Americans with Disabilities Act, began contacting residents of Hunnell/Clausen to ascertain whether it would be appropriate for the City to grant the requestors more time.

8

On Friday, July 14, 2023, because of the Requests for Reasonable Accommodation submitted, the City announced that the City would not require everyone to be off Hunnell/Clausen Road on pain of being physically removed until Monday at midnight, July 17th and that the clearing of Hunnell/Clausen would not begin until the morning of July 18, 2023.

9

Also on the morning of Friday, July 14, 2023 the District Court advised the parties that it was granting Plaintiff's request for an Emergency Hearing for that afternoon. At the Friday afternoon hearing the Court determined that it needed more information. The Court scheduled a follow-on hearing for Monday afternoon, July 17, 2023.

10

On the morning of July 17, 2023 the City advised the Court and Plaintiffs that the Accessibility Manager had completed her review of all 22 Requests for Reasonable Accommodation and that modification decisions were being issued. The City's Accessibility Manager advised that all the 22 requestors were being granted Reasonable Accommodation under the City's Camping Code in the form of a 7-day delay. Accordingly, all 22 requestors were advised by the Accessibility Manager they all had until July 25, 2023 before they would be removed from Hunnell/Clausen and their RVs, cars, trailers, tents, and all other property taken if they had not relocated entirely by that date.

11

At the follow-on hearing on Monday afternoon, July 17, 2023 the court was provided additional information by Plaintiffs, including a copy of the City's own Americans with Disabilities regulation (Plaintiff's Exhibit 2). The City provided copies of its Camping Code regulations (Plaintiff's Exhibit 3).

12

The City argued at the hearing that it was only required to conduct an interactive review of the Requests for Reasonable Accommodation submitted by all the requestors and then to issue a modification decision in each case, granting additional time or denying it. As aforesaid, the City's Accessibility Manager granted the 22 requestors all a 7-day delay. The City denied that Plaintiffs and the other requestors were entitled to further review under the City's Americans with Disabilities Act regulation and were only entitled to a modification decision under the City's Camping Code regulation.

13

Plaintiffs argued to the court that 7 days was insufficient for the requestors, given the serious nature of their respective disabilities and that the City was employing a cookie-cutter, one-size fits all approach. This is because all 22 requestors received the same relief despite their varying disabilities and despite the language in the City's Camping Code regulation that every case was to be treated individually. Plaintiffs argued that the City was rushing through the required process outlined in the City's Camping Code regulations simply to permit the City to proceed posthaste on July 18, 2023 with clearing Hunnell/Clausen of all who did not submit a

Request for Reasonable Accommodation, and the following week to clear out all the requestors who had been given a 7-day delay.

14

Plaintiff's argued to the court that all 22 requestors, if they were dissatisfied with the modification granted by Accessibility Manager that the requestors were entitled to appeal under the City's Americans with Disabilities regulation and that they had 15 days to do so.

15

The court denied Plaintiff's request for a Temporary Restraining Order. The court held that all Plaintiff's and the other requestors were entitled to was for the City to engage in the interactive process and to issue a modification decision.

16

Despite Plaintiff's arguments, the court declined to address whether Planitiffs and the other requestors were entitled to relief under the City's Americans with Disabilities Act regulation. Instead the court determined that the only question before the court was whether the City had complied with its own regulations. The court found that the City had complied with its regulations and there was no more the City need do. The court ruled that the City had a right, even an obligation, to regulate its own streets.

JURISDICTION, VENUE & STANDING

17

Jurisdiction is proper in this Court pursuant to 28 U.S.C. Sec. 1331 because this case

involves a civil action arising under the U.S. Constitution.

18

Plaintiff's believe their Fourteenth Amendment right to due process right to be heard is being violated by City because the City is proceeding with the closure after 7 days, pursuant to the Deschutes County court's and apparently insisting that there is no ability for Plaintiffs to assert their rights under the City's Americans with Disabilities Act. Plaintiffs are being deprived of a right and remedy granted by a federal law, the Americans with Disabilities Act, to have the modification decision issued by the City's Accessibility Manager appealed, with the City forestalling the closure action while Plaintiff's appeals are being processed.

19

Plaintiffs allege their Fourth Amendment rights will be irreparably violated without a TRO because Defendants are in the process of seizing and destroying their property.

20

Plaintiffs allege their Eighth Amendment rights were violated because they are under threat of being arrested if they refuse to leave their homes and other property on July 25, 2023.

21

Pursuant to 28 U.S.C. Sec. 1391(e)(1) venue is proper in the District Court of Oregon because the three named Plaintiff's reside in the City of Bend, in Deschutes County, in the State of Oregon and Plaintiff Bend Equity Project provides services to Plaintiffs and all similarly situated unhoused individuals on Hunnell/Clausen in the City of Bend, Deschutes County, Oregon.

22

Plaintiff's assert Standing in that there are numerous state and federal interests that are implicated by Defendant's harmful actions toward Plaintiffs and that this Court can provide Plaintiffs with meaningful redress. Defendant's actions threaten the physical, mental and emotional well-being not only of Plaintiff's but the other 19 persons who submitted a Request for Reasonable Accommodation.

IRREPARABLE HARM PLAINTIFFS WILL SUFFER IF TRO IS NOT GRANTED

23

Plaintiff's assert that the City's grant of a 7-day extension is meaningless. Due to the serious nature of Plaintiff's disabilities, 7 days is simply not enough time for Plaintiff's and the other 19 requestors to have a meaningful opportunity to relocate before the City seizes the only homes they have – their RVs, trailers and tents, – seizes their other property and forces them off the only home they have known, some for almost 8 years, with threat of arrest.

24

Plaintiff Myntora Aguilar is a Native American member of the Federation of Warm Springs who is currently living in her trailer on Clausen Road with her 8-year-old son. The City recognized, in limitedly granting Plaintiff Aguilar's Request for Reasonable Accommodation, that she has Bi-Polar II, multiple personality disorder, and complex PTSD from lifelong trauma. Plaintiff Aguilar advised the City that she scored a 9 out of 10 on the ACES questionnaire after suffering significant childhood trauma as well as trauma she has experienced since becoming an adult that

continues to the present. Plaintiff Aguilar has conscientiously, with help from local service providers, been looking for a location where she can move her trailer, the only home she has, but will be unable to find a place where it can be moved to before the 7-day extension she was granted expires. Consequently, she will lose her home and the home for her son on July 25th.

25

Plaintiff Michelle Hester has called Hunnell/Clausen home for several years. She currently lives in a disabled RV on Hunnell Road with her service dog. The City recognized, in limitedly granting Plaintiff Hester's Request for Reasonable Accommodation that she has Bi-Polar Disorder, complex PTSD and in the past has had suicidal ideations. Plaintiff Hester has a Traumatic Brain Injury (TBI) resulting from a beating she suffered several years ago while she was living in another state, when she was beaten for more than an hour, from which she has short term memory loss. Plaintiff Hester has been conscientiously working with service providers to get the repair parts necessary to get her RV running again and she has mechanics who stand ready to get her RV running again once she has the repair parts. Plaintiff Hester states that the 7 days granted by the City is simply insufficient time and that on July 25th the City will tow away her RV and she will lose her home.

26

Plaintiff Schindler lives in his RV on Hunnell/Clausen with his wife, who works fulltime. Plaintiff Schindler's wife is in danger of losing her job if the couple is required to relocate. The City recognized, in limitedly granting Plaintiff Schindler's Request for Reasonable

Accommodation that Plaintiff Schindler is HIV-Positive, Bi-Polar, has mobility issues from a car accident in 2014 which left him with an inability to sit, stand or lay down for very long. Plaintiff Schindler also has arthritis in both hips and his right hip is deteriorating rapidly so that he will soon need hip replacement surgery. Because of this Plaintiff Schindler has a service dog he relies on. His service dog will stand beside him when he needs help getting up so that Plaintiff Schindler can use his dog's back to help him stand up. His service dog provides other assistance as well. Plaintiff Schindler has also been unable to locate a place within the City of Bend that he can afford, so that he will be forced to park on city streets and must move his RV every day to comply with the City's Camping Code or risk having his RV seized and towed away, for which he will face substantial towing and storage fees that he and his wife cannot afford.

27

Plaintiff's Exhibit 1 are copies of the 22 individuals who requested Reasonable Accommodation under the City's Camping Code and the Americans with Disabilities Act. All these requestors received a blanket 7 day extension from the City and all assert that there is simply insufficient time, given their disabilities, to relocate from Hunnell/Clausen before having their homes and property seized by the City and/or being subjected to arrest if they refuse to leave their homes on July 25th.

28

In sum, in reviewing these Requests for Reasonable Accommodation this Court will find

individuals who are terminally ill, who must use a walker to get around, who have other physical and mental disabilities that prevent them from performing daily life functions but also prevent them from being able to act, within the allotted 7 day grace period granted by the City, to be able to get their RVs or trailers repaired, find someone who can tow their trailer off Hunnell/Clausen (but then they have no place to take it to), or for those in tents, find another location to relocate to.

29

Plaintiffs and the other requestors with RVs or trailers cannot go to a local shelter because they are not permitted to have their RVs or trailers on site at the available shelters in Bend and if they are forced to give up their RV or trailer in order to get into a shelter, they will lose the only home they have. They will lose the value of this property too.

30

Requestors who were granted the 7-day extension who live in tents on Hunnell/Clausen state they cannot go to a local shelter for a variety of reasons: Primarily, they have too much property for what the local shelters will allow. Also, several state they have been sexually harassed by male clientele or, given the nature of their mental disabilities, cannot contend with the closeness in the shelter environment that aggravates their mental disabilities.

Plaintiff's and these requestors will suffer the irreparable harm of losing their homes, all their property, and in the case of several individuals who are working, will potentially lose their livelihoods.

REQUIREMENTS OF FRCP RULE 65

Plaintiffs here are pro se. Rule 65(b)(1)(B)'s requirements which impose a duty on movant's attorneys. Given that Plaintiffs are pro se and without an attorney, Plaintiff's request that the Court find that the requirements of Rule 65(b)(1) are met. (See Van Hung v. Schaaf, Case Number 19-cv-01436-CRB, U.S. Dist. Ct for the Northern District of California (Mar.9, 2019).

Plaintiffs, being pro se, similarly request that this Court waive the requirements of FRCP Rule 65(c) pertaining to Security, including any requirement to provide a surety bond.

WAIVER OF FILING FEES

Plaintiffs, being pro se, further request Waiver of any Filing Fees. The three named Plaintiffs are homeless and destitute. Plaintiff Eric Garrity, on behalf of Bend Equity Project (BEP), states BEP is an entirely volunteer operation existing solely on monetary donations to buy food and other hygiene type items and has no source of income other than individual donations.

PRAYER FOR RELIEF

Wherefore, for reasons cited above, Plaintiffs request that


1. This Court immediately issue a TRO enjoining Defendants from enforcing the clearing of Hunell/Clausen on July 25th;


2. This Court schedule a hearing as soon as possible before a federal Magistrate in Bend, OR to ascertain whether a permanent injunction should issue given the substantial constitutional violations that Plaintiffs are alleging.

SERVICE OF PROCESS

Plaintiffs hereby certify that they have submitted a copy of this Petition, together with all Exhibits, to Defendant's principal business location at the Bend City Hall, 710 NW Wall Street, Bend, OR 97703.

Respectfully submitted:

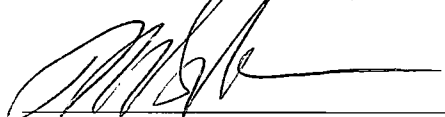

Myntora Aguilar, Plaintiff, Pro Se


Eric Garrity, Plaintiff, Pro Se
On behalf of Bend Equity Project

12608 SE Bridge Rd.
Prineville, OR 97754

412-706-2160
eric.garrity87e@gmail.com


Michelle Hester, Plaintiff, Pro Se


Nicholas Schindler, Plaintiff, Pro Se