

ORIGINAL  
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 IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

2010 JUN 28 A 11: 01

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

**Ruby McDowell, et al.**

:

**Case No. 89 - 1709**

**Plaintiffs,**

:

*Doneghy*

:

**DECISION**

**vs.**

:

:

**City of Toledo, et al.**

:

This 27<sup>th</sup> day of June 2010 the above captioned case came on for decision on an "Emergency Motion" filed by Kyle Tate and the Fair Housing Center on June 18, 2010. The City of Toledo filed a "Motion in Opposition" on June 23, 2010.

The dispute revolves around the Consent Judgment Entry attached to the Plaintiff's complaint and marked Exhibit 1. The Entry embodies an agreement, a contract of the original parties which was made an order of the Court. The Consent Judgment deals with a permanent injunction for Ruby McDowell and provisions for how the City will deal with the termination of water services.

The Plaintiffs now were not parties to the original filing but ask for relief pursuant to Civil Rule 71. The Defendants maintain that the Plaintiffs lack standing, the Court lacks personal and subject matter jurisdiction, the claims for relief are moot, the Plaintiffs have failed to demonstrate they have any substantive or procedural due process rights, the Defendants have qualified immunity, and that no emergency exists.

The Court convened a hearing on the motion on June 23, 2010 and again on June 25, 2010. Both parties appeared and the matter was submitted for decision on the pleadings and affidavit.

The Plaintiff, Kyle Tate is an emergency movant entitled to seek relief by reason of his inclusion as a third party beneficiary of the unambiguous contract which contains a manifest intention to include parties like him.

The Plaintiff, Toledo Fair Housing Center is an incidental beneficiary of the Consent Judgment Entry.

The expiration of the permanent injunction granted to Ruby McDowell has no effect on the balance of the parties' agreement.

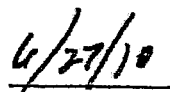
Based upon the pleadings, the affidavit, the arguments of counsel and the law the Court finds the motion well taken in part and GRANTED and not well taken in part and DENIED.

Therefore it is ORDERED, ADJUDGED AND DECREED THAT:

1. The City shall restore water service to the movant , Kyle Tate.
2. The City shall provide the occupants of 1607 Roosevelt Avenue, Toledo, Ohio with the notice provided for in the Consent Judgment Entry.
3. The Consent Judgment Entry in the case remains in full force and effect.
4. Any rules and regulations not consistent with the Consent Judgment entry are invalid.



Judge Steve Yarbrough



Date

**INSTRUCTIONS TO THE CLERK:**

Please mail a copy of the foregoing to all parties of record and their counsel by certified U. S. mail return receipt required.