

IN THE MUNICIPAL COURT OF TOLEDO, LUCAS COUNTY, OHIO

Roxanne M. Coyne,

2006 NOV -7 P 1:47

Plaintiff,

vs.

CLERK
VALIE ROMAN-ENGLISH

YWCA Greater Toledo,

Defendant.

Case No. CVG-06-15975

Judge C. Allen McConnell

JUDGMENT ENTRY

This matter came before the Court for hearing on the Plaintiff's motion for preliminary injunction, on August 8, 2006. Both parties submitted multiple memorandums in either support or opposition of the preliminary injunction.

The Facts of this case are as follows. The YWCA is a tax exempt organization providing shelter to homeless women through a service called the Newton Program or Newton Residency for Women. Roxanne Coyne applied to the YWCA's Newton Program in April, 2005. At the time she applied to the Newton Program, she was living with her mother. Before her mother's home, Coyne lived in and out of shelters in the Toledo area. Her brother also lived in her mother's home with Coyne. He was physically abusive to her. She needed to find other shelter.

The YWCA accepted Coyne into the Newton Program. She went to an intake meeting in May, 2005. At that time, YWCA gave her a Residency Agreement. The agreement specifies that her stay at the shelter could be terminated by YWCA, and that YWCA's services do not create a landlord-tenant relationship. The YWCA required Coyne to pay a monthly program fee, 30% of her income.

According to the YWCA, Coyne engaged in numerous instances of inappropriate behavior. On July 1, 2006, Coyne threatened a resident and confronted the Residency Director. After this, the YWCA terminated her residency.

Plaintiff, Coyne, now requests a preliminary injunction requiring the Defendant, YWCA, to readmit her to the Newton Residency for Women.

The issue before this court is whether to grant Plaintiff's motion for preliminary injunction.

Coyne asserts that she is covered by R.C. §5321, Ohio's Landlords and Tenants Law, and thus protected from eviction without proper notice and procedure. The YWCA protests that R.C. §5321 does not apply to it, or Coyne, in the present case. The YWCA asserts two main arguments: (1) the YWCA is not a residential premises, as it is exempted under R.C. §5321.01(C)(9), and (2) Coyne is not a tenant under R.C. §5321.01.

First, this Court considers whether the YWCA is a residential premises under R.C. §5321. If the YWCA is not a residential premises, it is not covered under R.C. §5321. Some facilities are exempted from Ohio's landlord-tenant chapter. One such exemption is for certain types of charitable organizations under R.C. §5321.01(C)(9).

To be exempted from coverage, under R.C. §5321.01(C)(9), the facility must be tax exempt and licensed as an SRO facility. In addition, the facility must provide occupancy for a period of less than 60 days or occupancy for participation in a program operated by the facility. R.C. §5321.01(C)(9). Finally, if the occupancy is for participation in a program, it must provide certain services (such as treatment of mental illness or substance abuse), or shelter for juvenile runaways, victims of domestic violence, or homeless persons. *Id.*

It appears then that the YWCA meets the requirements for exemption from coverage under R.C. §5321. The YWCA is tax exempt; it is licensed as an SRO facility; and it provides occupancy for participation in a program, the Newton program. This program provides shelter for homeless people.

The question still remains, however, whether the YWCA actually provided any of the services, required for exemption, to Coyne. Coyne protests that she was not actually homeless before moving into the YWCA's facilities; she resided with her mother before being accepted into the program. She argues that the YWCA never actually provided any services to her.

Coyne's argument assumes a binary understanding of homelessness; either someone is completely homeless or they are not. The nature of homelessness is often not, however, a black and white issue. There are many gray areas. Certainly, many people may be able to stay at a family member's or friend's home for a limited time. People may be able to find help from others only until they can obtain other shelter.

This Court finds it difficult to interpret R.C. §5321.01(C)(9) as requiring that the exemption only apply where the facility took persons literally from the streets. Such a rule would require facilities, such as the YWCA, to wait until someone lives on the streets before accepting them into the program. This would encourage a greater degree of homelessness. It is difficult to imagine that the legislature intended such an outcome or wished to define homelessness in such harsh terms.

Coyne lived in and out of shelters in the Toledo area. Prior to her stay at the YWCA, Coyne had no shelter of her own; she relied on a family member. According to Coyne's own affidavit, she needed other shelter because her brother was abusive to her. She was not living on the streets, but, both the YWCA and Coyne agree that she is an indigent and in need of the services of the YWCA's Newton Program. This Newton Program is primarily a homeless shelter for needy women such as Coyne. This Court concludes that Coyne was homeless for purposes of the exemption listed in R.C. §5321.01(C)(9). Therefore, the YWCA is not a residential premises; it meets all the requirements for an exemption from R.C. §5321.

Coyne also argues, however, that the YWCA is not a shelter as required for an exemption under 5321.01(C)(9). Coyne cites to Higdon v. Sign of the Cross Hous., Inc., Ohio Misc. 2d 84 (Ohio Mun. Ct. Hamilton Cty., July 9, 2003), suggesting that a shelter must be understood as offering only transient occupancy. That case dealt with a different exemption, under R.C. §5321.01(C)(10), which deals with emergency shelters. The YWCA does not argue for an exemption under that portion of the revised code.

The second issue in this case is whether Coyne is a "tenant" under R.C. §5321. The YWCA argues that Coyne was not a "tenant" and therefore not covered under R.C. §5321.

"Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others. R.C. §5321.01(A).

"Rental agreement" means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties. R.C. §5321.01(D)

"[M]utual intentions, no matter how manifested, control in the absence of some statutory provision requiring its expression in some particular form. Taking or continuing in possession, and payment of rent, manifest an intention to create a tenancy, no other form of expressing such intent being required by a statute."

Hellebush v. Tischbein Apothecaries (1936), 54 Ohio App. 162, 165.

A rental agreement is clearly required in order to qualify as a tenant under R.C. §5321. Coyne was required to sign an agreement before residing with the YWCA. The issue is whether these documents were a rental agreement.

In determining whether the documents signed and given to Ms. Coyne qualify as a rental agreement, the Court must look to how the documents were intended to be used. Mutual intentions control in the absence of some statutory provision requiring expression in some particular form.

Hellebush, 54 Ohio App. 162, 165.

Coyne argues that it was the understanding and mutual intentions of the parties that they established a landlord-tenant arrangement. The intentions of the YWCA, however, appear clearly to be the opposite. The agreement, which Coyne signed, specifically states that a landlord-tenant relationship does not exist and Coyne can be asked to leave at the sole discretion of the YWCA. The YWCA did not see their arrangement as a landlord-tenant agreement from the outset.

To further this point, the YWCA cites to Coleman v. Faith Mission, Franklin County Common Pleas No. 01CVH-10988 (Jan. 17, 2002). The Court in Coleman found that the Plaintiff was not a tenant based on similar facts as the present case. Coleman presents two important principles that apply to this case.

First, in Coleman, the Court found that there was no lease agreement where “the agreement permits Defendant to enter at any time.” Id. In the present case, Coyne was subject to inspections by the Newton Residency staff at any time.

Coyne argues that, based on Branham v. Fordyce (1957), 103 Ohio App. 379, 381, “the right of a landlord to enter the premises for certain purposes, especially if reserved in the lease or rental agreement, is not inconsistent with the landlord tenant relationship.” Branham involves a wrongful death claim from carbon monoxide poisoning. The Court did indicate, in that case, that a Landlord’s entry did not necessarily show there was no landlord-tenant relationship. More precisely, “[t]he landlord’s very reasonable and not unusual right of inspection did not change the legal status.” Id. That case involved the landlord’s duty to maintain the premises including a heater that caused the carbon monoxide poisoning. A landlord’s duty to maintain a rental unit must be distinguished from the YWCA’s right to enter and inspect a unit at any time. The landlord in Branham had no right to simply enter whenever it saw fit. The YWCA, on the other hand, reserved the right to make inspections when it felt that such inspections were necessary. This clearly was not the very reasonable and not unusual right of inspection to which the Branham Court referred.

Second, aside from the inspections at any time, the Coleman Court relied on a provision in the agreement that indicated that the agreement was not a lease and that the occupant had no rights of tenancy. Coleman v. Faith Mission. Coyne signed a similar agreement. The agreement specifically states that the relationship of the parties is not one of landlord and tenant.

Based on these two considerations, the right of inspections and the agreement, the Coleman Court found that the Plaintiff was not a tenant.

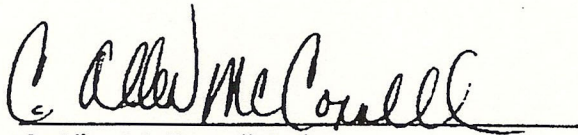
As a final consideration of the issue of whether she was a "tenant," Coyne distinguishes the present case from Ann Arbor Tenants Union v. Ann Arbor YMCA (1998), 229 Mich. App. 431, 581 N.W.2d 794, where the Court found against a similar plaintiff. In Ann Arbor, the YWCA provided its tenants with housekeeping services, linens, towels, and other furnishings. The YWCA, where Coyne resided, did not provide any furnishings. Coyne was required to provide her own possessions and she was responsible for cleaning her own room. These facts do distinguish the two cases. Coyne fails, however, to indicate why this differentiation is meaningful. The most important difference between these cases is that Ann Arbor occurred in Michigan. The landlord-tenant laws of Michigan are different from those of Ohio. Therefore, this case, and any attempt to distinguish the present case from it, has little persuasive value.

Finally, this Court must determine whether to grant the Plaintiff's motion for preliminary injunction. A party requesting a preliminary injunction must show that there is a substantial likelihood that the plaintiff will prevail on the merits. Procter & Gamble Co. v. Stoneham, 140 Ohio App.3d 260 (Ohio App. 1 Dist.,2000). Coyne argues that the YWCA may only evict her according to the rules of R.C. §5321 but the YWCA is exempted from that chapter. Therefore, the Plaintiff has not shown that there is substantial likelihood that she will prevail on the merits. This Court does not grant the Plaintiff's motion for preliminary injunction.

Clerk to notify parties.

FINAL AND APPEALABLE ORDER

Date: November 7, 2006


C. Allen McConnell, Judge