

IN THE SUPERIOR COURT OF ELBERT COUNTY

STATE OF GEORGIA

N.E. GA. PET RESCUE, INC.
a domestic nonprofit corporation

*

*

and

*

DONALD L. GILBERT,

*

CIVIL ACTION NO.:

Plaintiffs

*

v.

*

ELBERT COUNTY

*

Defendant

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

N.E. Ga. Pet Rescue, Inc. and Donald L. Gilbert, Plaintiffs, by Harvey Wasserman and Allyson Brookshire, their attorneys, bring this suit for declaratory and injunctive relief against Defendant Elbert County, and for reasons, state:

1. Plaintiff, N.E. Ga. Pet Rescue, Inc. (hereinafter "Pet Rescue") is a domestic nonprofit corporation formed for the purpose of providing an animal shelter (hereinafter "shelter") as defined by the Georgia Animal Protection Act, O.C.G.A. 4-11-1, to stray dogs of Elbert County, Georgia. Plaintiff's principal place of business is its animal shelter located at 1591 Triple "T" Drive, Dewy Rose, Georgia 30634 and, pursuant to O.C.G.A. 4-11-3, is licensed for operation as a shelter by the Georgia Department of Agriculture pursuant to the Georgia Animal Protection Act.

2. Plaintiff, Donald L. Gilbert, is a resident of Elbert County and is the sole shareholder of Pet Rescue and responsible for the day to day operation of the shelter.

3. The shelter is located on approximately 8.6 acres of land in Dewey Rose and normally has more than fifteen (15) dogs housed at the shelter at any given time.

4. Defendant Elbert County has enacted an ordinance, Chapter 10, Section 6 of The Code of Ordinances for Elbert County which, effective October 13, 2005, requires every owner or custodian of more than fifteen (15) dogs to obtain a kennel license from the Elbert County Animal Control Department. (A copy of the ordinance is attached hereto as Exhibit A)

5. The Code of Ordinances for Elbert County, Chapter 10, Section 10-6(b)(2) provides in pertinent part that:

No such application shall be approved unless said application is accompanied by a written statement signed by the head of household of each residence located within 1,200 feet of the kennel or proposed location of the kennel, stating that said resident does not object to the location and operation of a kennel at said location or proposed location.

6. Plaintiffs have been unable to secure the written statements required by Section 10-6(b)(2) and, therefore, do not qualify, and will not be approved, for an Elbert County kennel license.

7. Section 10-6(e) provides that the owner or custodian of fifteen (15) or more dogs may be given a warning for a first offense, and shall be given five (5) calendar days to comply with Section 10-6, but thereafter a second offense shall be punishable by a Fifty Dollar (\$50.00) fine and a third or subsequent offense

punishable as a misdemeanor under Section 1-12 of The Code of Ordinances for Elbert County, along with the impoundment of all dogs owned or in the custody of the violator.

8. Plaintiffs have been informed and advised by those agents and employees of Elbert County responsible for enforcement of the ordinance in question that their animal shelter must be licensed pursuant to the ordinance and that they can expect a compliance inspection in the very near future. Since plaintiffs are unable to obtain the written consents required by Section 10-6(b)(2), they will be found in violation of the ordinance and subject to its penalties, including a criminal prosecution and confiscation of the dogs at their shelter.

9. The ordinance, and particularly Section 10-6(b)(2) is unconstitutional and therefore unenforceable because: (a) it conditions the granting of a license upon the completely arbitrary and subjective approval of neighbors, Foster v. State, 273 Ga. 555 (2001); Bozick v. Cobb County, 240 Ga. 537 (1978); and (b) the term “head of household” is unconstitutionally vague, Genesis of Mount Vernon, N.Y., Inc. v. Zoning Board of Appeals of the City of Mount Vernon, 152 Misc.2d 997; see: Maddox v. Queen, 150 Ga. App. 408 (1979).

10. Unless enforcement of the ordinance is immediately enjoined, , Plaintiffs will suffer irreparable injury regarding the closure of their shelter and loss of their dogs as well as be subjected to an unlawful criminal prosecution.

WHEREFORE, Plaintiffs respectfully request:

A. That this court issue a judgment declaring The Code of Ordinances for Elbert County, Chapter 10, Section 10-6 unconstitutional;

B. That this court issue an emergency, temporary, interlocutory and permanent injunction enjoining Defendant from enforcing The Code of Ordinances for Elbert County, Chapter 10, Section 10-6;

C. That this court award Plaintiffs such other and further relief as the nature of their cause may require.

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