

IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY, TENNESSEE

RECEIVED

APR 9 - 2018

ELIJAH SHAW and PATRICIA RAYNOR,)
)
 Plaintiffs,)
)
 v.)
)
 METROPOLITAN GOVERNMENT OF)
 NASHVILLE AND DAVIDSON COUNTY,)
)
 Defendant.)

N.F.
Dav. Co. Chancery Court
No. 17-1299-11
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
2018 APR 13 PM 12:45
FILED

ORDER DENYING MOTION TO DISMISS

For the reasons explained below, after considering the pleadings and hearing the arguments on this matter, this Court hereby **denies** the motion filed on behalf of the Defendant ("Metro") to dismiss this lawsuit for failure to state a claim upon which relief can be granted, under Tenn. R. Civ. P. 12.02(6).

The Plaintiffs in this case challenged Metro's restriction on home-based businesses that serve clients found at Metro. Code § 17.16.250(D)(1) as violating their rights to equal treatment under the law and due process as protected under Tennessee's Constitution. Plaintiffs seek a declaratory judgment that the provision is unconstitutional and a permanent injunction prohibiting the enforcement of this particular provision. Metro filed a motion to dismiss on two grounds: 1) that no right of action existed for the plaintiffs to question Metro's law as unconstitutional; and, 2) that the challenged law was rationally related to a legitimate governmental interest and thus, does not violate either equal protection or substantive due process.

The purpose of a motion to dismiss is to determine whether the pleadings state a claim upon which relief can be granted. *Cullum v. McCool*, 432 S.W.3d 829, 831 (Tenn.

2013). This stage of the proceedings “is particularly ill-suited for an evaluation of the likelihood of success on the merits or of the weight of the facts pleaded, or as a docket-clearing mechanism.” *Id.* This Court is to construe the complaint liberally, presume that all factual allegations are true and give the plaintiffs the benefit of all reasonable inferences. *Id.* Only when it appears that the plaintiffs can prove no such set of facts in support of their claim that would entitle the plaintiffs to relief should a trial court grant a motion to dismiss. For this reason, “[m]otions to dismiss for failure to state a claim are now rarely granted in light of the liberal pleading standards in the Tennessee Rules of Civil Procedure.” *Kaylor v. Bradley*, 912 S.W.2d 728, 731 (Tenn. Ct. App. 1995).

Right of Action

First addressing Metro’s argument that no right of action exists, the Court finds that Metro presents the incorrect standard to determine whether the Plaintiffs have standing in this case. The Declaratory Judgment Act (DJA) provides a cause of action to raise constitutional claims to any party with standing.

Metro’s argument rests on Tenn. Code Ann. § 1-3-119. This provision states that legislation does not contain a private right of action unless it is expressly standard. That is not the standard in this case. Tenn. Code Ann. § 1-3-119 only applies to statutory claims by its very terms. The Plaintiffs in this case make claims that are constitutional, not statutory.

The criteria for standing to assert a constitutional claim under the DJA is well established. *See City of Memphis v. Hargett*, 2012 WL 5265006 (Tenn. Ct. App. Oct. 25, 2012). The DJA “allows a proper plaintiff to challenge the constitutionality of a statute or seek a construction of a statute when the plaintiff does not seek to reach state funds.” *Id.* (citing *Colonial Pipeline Co. v. Morgan*, 827 853 (Tenn. 2008)). To establish standing, a plaintiff must meet three elements: 1) distinct and palpable injury; 2) causal connection; and, 3) the injury must be capable of being redressed by the court. *See also Hamilton v.*

Metro. Gov't of Nashville, 2016 WL 6248026 (Tenn. Ct. App. Oct. 25, 2016); *Durham v. Haslam*, 2016 WL 1301035 (Tenn. Ct. App. Apr. 1 2016). Metro relies upon cases that did not deal with the DJA at all or are statutory challenges.

The Court finds that the complaint demonstrates that the Plaintiffs have standing. They have been injured. They are trying to operate a business in their home. They cannot because of this particular code provision. That injury was related to the Metro Code provision in question. But for the code provision, they would be allowed to operate these business in their home. This injury would be addressed by a ruling from this Court. The Plaintiffs do have standing.

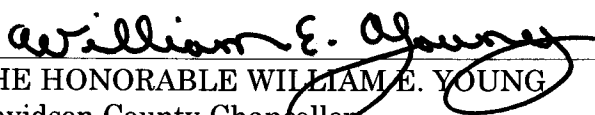
Rational basis standard

The Court further finds that it is inappropriate to resolve questions about whether the code provision is rational or arbitrary on a motion to dismiss. The complaint, taken as true, pled sufficient facts such that the Plaintiffs have stated a claim upon which relief can be granted.

The Court holds that it would be inappropriate to resolve this case on the merits at this stage. Metro essentially asserts that because its intended goal of protecting neighborhoods was legitimate, this Court can dismiss the complaint. The Court must accept all of the Plaintiffs' factual allegations because this is a question of fact and the Plaintiffs have pled with great specificity in alleging Metro's law to be unconstitutionally arbitrary, and violative of their equal protections rights. The question of rational basis is a question of fact. In *State v. Whitehead*, 43 S.W.3d 921, 926 (Tenn. Ct. App. 2000), the Court of Appeals specifically stated that "[w]hether a classification is reasonable depends upon the facts in each case." Thus, it would be inappropriate to dismiss the Plaintiffs' complaint at this stage.

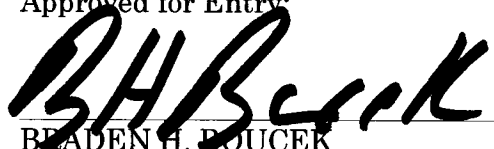
The Court therefore denies Metro's Motion to Dismiss. It is hereby **ordered, adjudged, and decreed.**

Signed,



THE HONORABLE WILLIAM E. YOUNG
Davidson County Chancellor

Approved for Entry:



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DATED: April 9, 2018.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served upon the following, by the following means:

Counsel	Counsel for	Via
Lora Fox Metro Legal Metro Courthouse Ste. 108 P.O. Box 196300 Nashville, TN 37219-6300 Lora.fox@nashville.gov 615/862.6341	Defendant	<input type="checkbox"/> United States mail, postage prepaid <input checked="" type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF

Dated: April 9, 2018.

Respectfully submitted,



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IN THE CHANCERY COURT, PART II
FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

PATRICIA RAYNOR and
ELIJAH SHAW

Petitioners,

V.

THE METROPOLITAN GOVERNMENT
OF NASHVILLE and
DAVIDSON COUNTY,

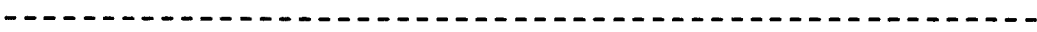
Respondent.



Docket No.17-1299-II



TRANSCRIPT OF COURT RULING
THE HONORABLE WILLIAM E. YOUNG, PRESIDING JUDGE
MARCH 16, 2018



BRIGGS & ASSOCIATES
ANGELA RUSSELL
222 Second Avenue North, Suite 360M
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APPEARANCES

FOR THE PETITIONER:

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FOR THE RESPONDENT:

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1 R U L I N G

2 THE COURT: The complaint in this case
3 was filed on December 5, 2017. Basically the
4 complaint challenges the constitutionality of
5 Metropolitan Code Section Number 17.16.250, Subsection
6 D1, which prevents persons from serving clients at
7 their home-based businesses. The petitioners, two
8 petitioners in this case, claim that this particular
9 code provision violates substantive due process under
10 Article 1, Section 8, of the Tennessee Constitution,
11 as well as the Equal Protection provisions of Article
12 1, Section 8 and Article 11, Section 8 of the
13 Tennessee Constitution. They seek, among other
14 things, a declaratory judgment that the Metro Code
15 provision is unconstitutional and a permanent
16 injunction prohibiting the enforcement of this
17 particular Metro Code provision.

18 Per the complaint, the Plaintiff Shaw
19 operates a recording studio at his home, which his
20 clients use. That's set forth in Paragraphs 10 to 37
21 of the complaint. And the Plaintiff Raynor operators
22 a hair salon at her residence, and that's set forth in
23 Paragraphs 38 to 93 of the complaint filed in this
24 matter.

25 The Plaintiffs, per the complaint, claim that

1 these constitutional provisions previously cited by
2 this Court, are violated essentially because there's
3 no rational basis or legitimate reason to treat the
4 plaintiffs differently from other home-based
5 businesses that Metro allows to operate legally. They
6 also claim that these constitut- -- this co provision
7 is arbitrary and capricious. Their argument is set
8 forth -- and the Court is summarizing the argument,
9 but it's set forth in Paragraphs 94 to 138 and
10 Paragraphs 139 to 156 of the complaint.

11 Metropolitan Government has moved to dismiss
12 this complaint under Tennessee Rule of Civil Procedure
13 12.02(6), making two arguments. First, that there's
14 no private right of action for the petitioners to
15 enforce -- or the plaintiffs, in this case, to enforce
16 the Tennessee Constitution; and, second, that the
17 Metro Code provision at issue is rationally related to
18 a legitimate governmental purpose, and thus, does not
19 violate either substantive due process or equal
20 protection.

21 The Court, on a motion to dismiss, is bound
22 by the standards adopted in a number of Tennessee
23 Appellate Court decisions. The Court will usually
24 cite, and in this case, relies upon the case of
25 Cullum v. McCool, reported at 432 S.W.3d 829, a

1 decision out of this state's -- I believe it's the
2 Tennessee Supreme Court. It is the Tennessee Supreme
3 Court. In there, the supreme court states that under
4 Tennessee Rule of Civil Procedure 12.02(6), the
5 purpose of a motion to dismiss is to determine whether
6 the pleading states a claim upon which relief can be
7 granted. The court -- the supreme court states that a
8 motion to dismiss jurisprudence reflects the principle
9 that this stage of the proceedings is particularly
10 ill-suited for an evaluation of the likelihood of
11 success on the merits or of the weight of the facts
12 pleaded or as a docket-clearing mechanism.

13 In reviewing such motions, trial courts are
14 required to construe the complaint liberally, presume
15 that all factual allegations are true and give the
16 plaintiff -- in this case the plaintiffs -- the
17 benefit of all reasonable inferences. Only when it
18 appears that the plaintiffs can prove no such set of
19 facts in support of their claim that would entitle the
20 plaintiffs to relief, should a trial court grant a
21 motion to dismiss.

22 It is for this reason that the court of
23 appeals has noted in the case of Kaylor v. Bradley at
24 912 S.W. 2d 728, the court of appeals noted that
25 motions to dismiss for failure to state a claim are

1 now rarely granted in light of the liberal pleading
2 standards in the rules of civil procedure. So on a
3 motion to dismiss, the party filing the motion has a
4 very high hill to climb to prevail on such a motion.

5 The Court will deal with Metro's reasons for
6 dismissing this, first, with the question raised on
7 whether the plaintiffs have a -- cannot bring this
8 case because there is no private right of action to
9 bring a claim challenging the Tennessee Constitution.
10 The Court finds that that's not the correct standard
11 to determine whether the plaintiffs have standing in
12 this case. And that is what, really, Metro is
13 questioning, they're questioning the standing of these
14 plaintiffs to bring this claim, and claiming that
15 because of the lack of standing, then this Court lacks
16 jurisdiction to pursue this case.

17 But this is not a question of creating a
18 private right of action, as would be required when
19 reviewing the Tennessee statute under the statutory
20 cite relied upon by Metro, which is at TCA § 1-3-119.
21 Here, instead, the Court is dealing with a
22 constitutional challenge to a Metro ordinance. The
23 criteria for standing to assert a constitutional
24 challenge under the Declaratory Judgment Act,
25 Tennessee's Declaratory Judgment Act, is

1 well-established, and the Court here will rely on a
2 number of cases.

3 First, the City of Memphis v. Hargett case,
4 Tre Hargett, our Secretary of State, not yet reported
5 in S.W. 3d, but can be found at 2012 WL 5265006, where
6 the court goes through the analysis of constitutional
7 challenge under the Declaratory Judgment Act. And the
8 court states as follows -- and this is the Tennessee
9 Court of Appeals Judge Bennett writing for the
10 court: The primary purpose of the Declaratory
11 Judgment Act is to settle and to afford relief from
12 uncertainty and insecurity with respect to rights,
13 status and other legal relations. The act is to be
14 liberally construed and administered. The act allows
15 a proper plaintiff to challenge the constitutionality
16 of a statute or seek construction of a statute when
17 the plaintiff does not seek to reach state funds.

18 And here Judge Bennett is citing the
19 Tennessee Supreme Court's decision in Colonial
20 Pipeline, relied upon by the petitioners in this case,
21 where the supreme court in that case has stated: We
22 hold that sovereign immunity simply does not apply to
23 a declaratory judgment action challenging the
24 constitutionality of a statute against state
25 officers -- or in this case against metropolitan

1 officers, a local government of the state.

2 The court goes on to state, that a plaintiff
3 must have standing to seek a declaratory judgment, and
4 Judge Bennett says, to establish standing, a plaintiff
5 must show three indispensable elements about the same
6 degree of evidence as other matters on which the
7 plaintiff bears the burden of proof. First, a
8 plaintiff must show a distinct and palpable injury.
9 Second, the plaintiffs must show there's a casual
10 connection between the claimed injury and the
11 challenged conduct. And third and finally, the
12 plaintiffs must show, to establish standing, that
13 there is a showing that the alleged injury is capable
14 of being redressed by favorable decision of the court.

15 This is not the only case that the Court
16 relies upon in interpreting the requirements of
17 standing in the declaratory judgment action. Indeed,
18 those standards were recently reiterated in a case
19 involving the Metropolitan Government of Nashville and
20 Davidson County, in the case of Hamilton v.
21 Metropolitan Government and Nashville Davidson County,
22 not yet reported that S.W. 2d, but can be found at
23 2016 WL 6248026, case entered on October 25, 2016.
24 Judge Armstrong speaking for Tennessee Court of
25 Appeals reiterated the same standards as were

1 reiterated by Judge Bennett. And also the case of
2 Durham v. Haslam, another 2016 case, setting forth
3 those same standards, can be found at 2016 WL 1301035.
4 Those are the standards that this Court is required to
5 address to determine whether these petitioners have
6 standing to assert a constitutional challenge to a
7 Metropolitan Code provision, not the statute relied
8 upon by Metro.

9 The Court, in passing, notes that the case
10 cited by Metro, Davidson County v. Hoover, did not
11 deal with any constitutional issue, did not deal with
12 the issue of the declaratory judgment statute at all.
13 And also the other cases relied upon by Metropolitan
14 Government on the standing issue are really statutory
15 cases where this -- the provision, statutory provision
16 previously cited would apply.

17 Here, the Court finds based upon the criteria
18 for establishing standing to assert a constitutional
19 challenge under the Tennessee Declaratory Judgment
20 Act, that the petitioners meet the requirements for
21 standing. First, they have an injury. They're trying
22 to operate a business in their homes -- and as set
23 forth in the complaint, again, the Court is required
24 to accept the complaint as true -- they have been
25 unable to do so because of this particular code

1 provision. So they have an injury. It's related to
2 the code provision; but for the code provision, they
3 would be allowed to operate these businesses in their
4 home. And finally, the Court, this Court, can resolve
5 that issue by ruling upon the constitutionality of
6 this particular Metro Code provision.

7 So the Court finds that Metro's request to
8 dismiss this case for lack of standing is not
9 well-taken and should be denied. These petitioners do
10 have standing to bring this Court -- a case before
11 this Court.

12 Finally, the Court also, turning to the
13 second issue raised by Metro, finds it's inappropriate
14 to resolve questions of whether the Metro Code
15 provision is rational or arbitrary on a motion to
16 dismiss. As the Court has previously stated, on a
17 motion to dismiss, this Court must accept as true all
18 allegations in the complaint.

19 This complaint alleges with great specificity
20 that the Metro Code provision is not rational, that
21 it's arbitrary, it's set forth a number of reasons why
22 that is so. And on a motion to dismiss, this Court is
23 unable to deny those allegations, and he must accept
24 them as true, must accept that there are reasons that
25 this particular code provision is not rational or is

1 arbitrary and capricious.

2 As the Court stated in the questioning,
3 really the question of whether there's a rational
4 basis for this particular code provision is one of
5 fact, and that's inappropriate to be resolved on a
6 motion to dismiss a case. The Court would rely upon
7 the case of State v. Whitehead. It's out of our
8 Tennessee Court of Criminal Appeals, reported at
9 43 S.W. 3d 921. There, we're dealing with a challenge
10 to a statute, an equal protection challenge, and the
11 question of whether that particular statute survived
12 the rational basis test. The Court specifically
13 stated, that whether a classification is reasonable
14 depends upon the facts in each case.

15 While the constitutionality of the code is a
16 legal question for a judge, the question of whether a
17 rational basis exists is one of fact that cannot be
18 resolved, this Court finds, on a motion to dismiss,
19 where the Court's required to accept the allegations
20 in the complaint as true. The Court also -- well,
21 strike that.

22 So for these reasons, the Court finds that
23 Metro's motion to dismiss should be denied. The Court
24 however, in so holding, notes, as Ms. Fox alludes to,
25 that the plaintiffs here have a very high and a very

1 difficult burden to overcome. The question of whether
2 substantive due process exists is a very narrow one.
3 You have to show some sort of fundamental right.

4 There is, as Ms. Fox points out in her
5 argument, great discretion given to our general
6 assembly and, in this case, to Metropolitan
7 Government, in enacting these laws. And this Court
8 also through -- in his prior experience working with
9 the attorney general's office, it's very hard to show
10 that a statute doesn't have a rational -- or in this
11 case, the code provision doesn't have a rational
12 basis.

13 In those types of cases, as the courts make
14 clear, great discretion is given to the legislative
15 body to determine what is and is not a rational basis,
16 and when the legislative body makes exceptions to a
17 general rule, generally, the courts are going to defer
18 to those legislative decisions that there can be shown
19 any basis, any rational basis, to support those
20 decisions.

21 So while the Court is denying the motion to
22 dismiss, the Court is pointing out that this is a
23 high -- a high burden for the petitioners to overcome.
24 Nonetheless, the petitioners have survived this part
25 of the proceeding, and the Court's going to deny the

1 motion to dismiss at this point.

2 Mr. Boucek, I would ask that you prepare the
3 order for the Court, based upon the Court's ruling
4 here today, denying Metropolitan Government's motion
5 to dismiss for the reasons the Court has stated. And
6 certainly, Ms. Fox, you have three days to file a
7 competing order if for some reason you believe the
8 order doesn't capture what the Court has ruled here
9 today. And on this one, to be quite honest, if you
10 wanted to do an order that attached the transcript,
11 that would be appropriate. So I'll rely on you,
12 Mr. Boucek, and your discretion to decide which way to
13 pursue.

14 MR. BOUCEK: We'll do that, Your Honor,
15 as soon as we get that from the court reporter.

16 THE COURT: Because the Court has gone
17 through the reasons for its ruling, and I'm assuming
18 that we will be quickly back here. Metropolitan
19 Government will not let any time waste in coming back
20 probably on a motion for summary judgment, not that I
21 would anticipate what you're going to do, Ms. Fox.

22 But, in any event, gentlemen, I appreciate
23 your argument, and, Ms. Fox, ladies, I appreciate your
24 argument. As always, a well-argued case on both
25 sides. Mr. Boucek always does a good job of filing

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well-written documents with this Court. And, Ms. Fox, despite having more than she can say grace over, always does a good job in filing informative briefs with this Court, and it is greatly appreciated.

Gentlemen, I wish you good -- best travels back to Arizona, and the weather there is probably just as good as it is here. You might want to stay here for a little while. It's going to be 75 tomorrow, one of those beautiful days in Tennessee.

So with that, are there any questions from Counsel on the Court's ruling on this matter?

MR. BOUCEK: No, Your Honor.

MS. FOX: No, Your Honor.

THE COURT: All right. Counsel, I appreciate your arguments, again. Thank you very much. You-all have a good day.

(End of Proceedings.)

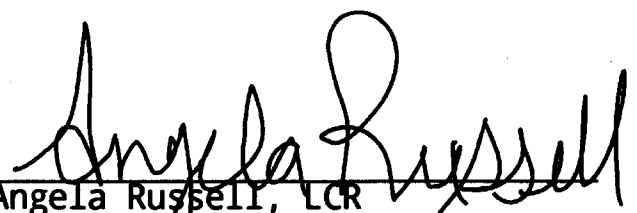
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CERTIFICATE OF REPORTER

I, Angela Russell, Tennessee Licensed Court Reporter, do hereby certify that I recorded to the best of my skill and ability by machine shorthand all the proceedings in the foregoing transcript; and that said transcript is a true, accurate, and complete transcript to the best of my ability.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

SIGNED this 2nd day of April, 2018.


Angela Russell, LCR
LCR #096, EXP: 6/30/2018