

FILED

JUN 15 2011

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

Clerk, U. S. District Court
Eastern District of Tennessee
At Knoxville

ROSE WILLIAMS,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF SEVIERVILLE, TENNESSEE)
)
 Defendant.)
)
)
)

Civil Action No. 3:11-cv-270
Varian/Guyton

COMPLAINT

Plaintiff Rose Williams respectfully submits the following Complaint against Defendant City of Sevierville.

INTRODUCTION

1. This is an action pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief and damages to redress an unconstitutional denial of the Plaintiff's right of free speech and expression guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

PARTIES

2. Plaintiff Rose Williams (hereinafter referred to as "Ms. Williams" or "Plaintiff") lives and works in Louisville, Blount County, Tennessee, and in addition has places of business in Sevier County, Tennessee, Gatlinburg, Tennessee and Pigeon Forge, Tennessee. At her businesses, she provides intuitive psychic readings, fortune telling, tarot card reading and other spiritual services to clients requesting these services.

3. Defendant City of Sevierville ("City" or "Defendant"), is a municipality organized pursuant to the Private Acts of the State of Tennessee. At all pertinent times herein,

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the City, acting under state law, enacted and enforced Sevierville City Zoning Ordinance §707.13 Sexually oriented businesses and commercial activities, tattoo businesses, and psychic and palm reading activities... (“Ordinance”), and is responsible for the Ordinance’s impact upon the Plaintiff and all other actions complained of herein.

JURISDICTION AND VENUE

4. This suit is for injunctive and declaratory relief and nominal damages. The causes of action for injunctive relief and nominal damages are provided by 42 U.S.C. §1983, which permits actions at law and suits in equity against any person, who under color of a state statute, causes injury to another in violation of the Constitution of the United States. The cause of action for declaratory relief arises under 28 U.S.C. § 2201, which permits a court to declare the rights of any interested party in a case of actual controversy.

5. This suit presents questions that arise under the Constitution of the United States. Accordingly, jurisdiction is provided by 28 U.S.C. §§ 1331, 1343(a)(3), and 2201.

6. Venue is proper in the Court under 28 U.S.C. § 1391, as Defendant may be found in this district.

STATEMENT OF FACTS

7. At all times material hereto, the Sevierville City Zoning Ordinance §707.13 Sexually oriented businesses... has been in force. The Ordinance, in pertinent part, reads as follows:

§707.13 Sexually oriented businesses and commercial activities, tattoo businesses, and psychic and palm reading activities subject to the following conditions:

§707.13.1 The property line of these uses shall be a minimum of 1000 feet from any school, church, public assembly facility, and/or residential zoning district.

8. In September of 2010, Plaintiff leased a storefront location at 720 Parkway in the City of Sevierville with the intention of doing business providing intuitive psychic readings, fortune telling and tarot card reading. The Plaintiff and her husband made several improvements to the premises at the behest of City of Sevierville officials, including resurfacing the parking lot and placing new signage, all of which cost the Plaintiff in excess of ten thousand dollars.

9. The City of Sevierville did not permit the Plaintiff to engage in her business of intuitive psychic readings, fortune telling, and tarot card reading at this location and instead threatened to fine the Plaintiff and shutter her business if she engaged in her business using the aforementioned zoning regulation as the basis for such enforcement.

10. Thereafter the Plaintiff attempted to make use of this leased property as a retail store to sell books, crystals, etc., but this retail business was not profitable and Plaintiff was forced to close in December 2010. Plaintiff continues to pay rent for the leased premises which she is unable to use.

11. Plaintiff closed her retail business, and has not been permitted by the City of Sevierville to operate her business providing intuitive psychic readings, fortune telling, and tarot card reading, all of which has caused the Plaintiff to incur financial hardship and damages.

12. On or about May 4, 2011, Plaintiff received a letter from David Black, Chief Building Inspector for the City of Sevierville, explaining the restriction on the use of the Plaintiff's leased property at 720 Parkway, Sevierville, Tennessee. Mr. Black's letter explains:

Uses such as psychic and/or palm reading activities are not allowed at this location as these types of uses would be in violation of section 707.13.1 of the Sevierville Zoning Ordinance. This section of the ordinance states, in part, that properties with such uses must be a minimum of one-thousand (1,000) feet from any residential zoning district. The property at 720 Parkway abuts a residential (R-1) zoning district and therefore psychic and/or palm reading activities are not allowed.

VIOLATIONS AND CONSEQUENCES TO PLAINTIFF

13. Plaintiff's right to freedom of speech and expression, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, is being violated by the Ordinance. Defendant cannot establish a justification sufficient to regulate Plaintiff's speech, nor is the Ordinance tailored to serve any such justification advanced by Defendant.

14. Defendant acted under color of state law when it enacted the above-described Ordinance that abridged Plaintiff's right to freedom of expression as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, in violation of the protections of 42 U.S.C. § 1983.

15. Plaintiff seeks declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, that the Ordinance violates the protections of the First and Fourteenth Amendments to the Constitution of the United States, through the Fourteenth Amendment thereof under 42 U.S.C. § 1983.

16. As a result of Defendant's enforcement of the Ordinance, the Plaintiff has been limited in the practice of her business as a spiritual counselor, psychic, or intuitive counselor.

RELIEF REQUESTED

WHEREUPON in light of the foregoing, Plaintiff respectfully requests the following relief:

17. That this Court determine, find, and declare that the Ordinance is unconstitutional, and a deprivation of rights guaranteed to Plaintiff under the United States Constitution, Amendments I and XIV, actionable through 42 U.S.C. § 1983;

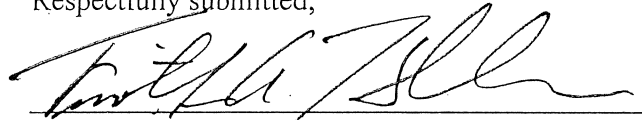
18. That this Court grant a permanent injunction enjoining Defendant from enforcing the Ordinance, or taking any action against Plaintiff on account of the events and transactions described herein;

19. That this Court award Plaintiff damages in an amount to be determined according to the evidence and the law of the case;

20. That this Court award Plaintiff reasonable attorney's fees and costs, as authorized by 42 U.S.C. § 1988, and;

21. That Plaintiff be awarded all other relief as the Court finds equitable, proper and just.

Respectfully submitted,



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