

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION

FILED

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U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ DEPT. CLERK

Candice Wohlfeil,)
)
Plaintiff,)
)
v.)
)
City of East Ridge,)
)
Defendant.)
)
)
)

Civil Action No. 1:10-CV-275

Collier/Carter

COMPLAINT

Plaintiff Candice Wohlfeil respectfully submits the following Complaint against Defendant City of East Ridge.

INTRODUCTION

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

PARTIES

2. Plaintiff Candice Wohlfeil ("Ms. Wohlfeil" or "Plaintiff") lives and works in East Ridge, Tennessee. She runs her own business in the East Ridge Flea Market. At her business, she provides intuitive readings and other spiritual services to clients requesting these services.

3. Defendant City of East Ridge ("City" or "Defendant"), is a municipality organized pursuant to the Private Acts of the State of Tennessee. At all pertinent times herein, the City, acting under state law, enacted and enforced East Ridge City Ordinance § 11-201 Fortune telling, etc. ("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 relevant times, East Ridge City Ordinance § 11-201 Fortune telling, etc. has been in force. The ordinance states: “It shall be unlawful for any person to conduct the business of, solicit for, or ply the trade of fortune teller, clairvoyant, hypnotist, spiritualist, palmist, phrenologist, or other mystic endowed with supernatural powers. A violation of this section shall subject the offender to a penalty of up to five hundred dollars (\$500.00) for each offense.”

8. For approximately three and one half years, Plaintiff has rented a booth where she operates a business in the East Ridge Flea Market. At her business, she provides intuitive readings and other spiritual services, including the reading of tarot cards, to clients requesting these services.

9. In 2008, Plaintiff was threatened with prosecution under § 11-201 by the City. She negotiated with the City Attorney, who allowed her to continue working while he made a

decision on whether she should be fined under the ordinance. Plaintiff continued working, and did not hear back from the City Attorney.

10. On or about September 5, 2010, a City Codes Enforcement Officer informed her that she must close her business, or she would be fined \$500 per offense under § 11-201. Plaintiff closed her business, causing her great financial hardship. As a result of the City's actions, she is unable to pay her booth rent, and could possibly lose her business.

11. On or about September 9, 2010, Plaintiff attended a meeting of the East Ridge City Council. At this meeting, she addressed the City Council regarding the enforcement of § 11-201. She has not heard from the City Council since the meeting.

VIOLATIONS AND CONSEQUENCES TO PLAINTIFF

12. Plaintiff's right to freedom of 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.

13. 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.

14. 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.

15. 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.

RELIEF REQUESTED

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

16. 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;

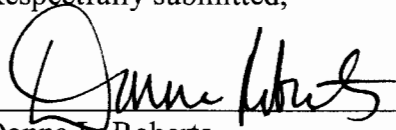
17. That this Court grant a permanent injunction enjoining Defendant from enforcing the Ordinance, or taking any action against Plaintiff on account of the events and transactions described herein;

18. That this Court award Plaintiff nominal damages of \$1;

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

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

Respectfully submitted,



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