

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO.: 610-359

DIVISION "D"

CITY OF BATON ROUGE

VERSUS

STEPHEN MYERS

PER CURIAM

The Court considering the Order issued by the Louisiana Supreme Court, regarding this Court's finding that Section 2.8 of The Unified Development Code Title 7, Chapter 2, is unconstitutional with regards to its definition of family.

The facts of this case are as follows: Stephen Myers is the owner of a property located at 1977 Cherrydale Ave., Lot: 116 [sic], Sq: 11., Baton Rouge, Louisiana, in the subdivision of University Gardens. On or about September 13, 2011, the City of Baton Rouge, Parish of East Baton Rouge, through its Complaint Manager, Neal Bezet, sent a letter to Stephen Myers stating that an inspection of the aforementioned premises revealed a violation of the Unified Development Code Title 7, Chapter 2, which defines family as "an individual or two (2) or more persons who are related by blood, marriage or legal adoption living together and occupying a single housekeeping unit with single culinary facilities; or not more than two (2) persons, or not more than four (4) persons (provided the owner lives on the premises) living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost-sharing basis." Stephen Myers was given until September 27, 2011 to remedy the violation.

On or about December 8, 2011, the CITY-PARISH, through Assistant Parish Attorney, Maimuna Magee, sent a letter to Stephen Myers indicating that the Cherrydale Property was in violation of the Unified Development Code of the City of Baton Rouge and the Parish of East Baton Rouge, the violations consisting of having more than two (2) unrelated persons residing in an A-1 zone. The letter further stated that Stephen Myers had ten (10) days to correct the violation or the CITY-PARISH would take legal

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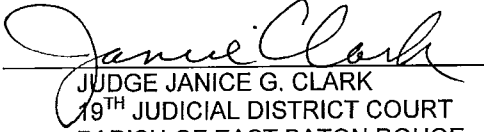
action to force compliance. In response, Stephen Myers filed suit to enjoin the CITY-PARISH from enforcing the Unified Development Code.

Under Louisiana law statutes are presumed constitutional; thus, the party challenging the statute bears the burden of proving its unconstitutionality. *Wooley v. State Farm Fire and Cas. Ins. Co.*, 04-0882, p. 19 (La.1/19/05), 893 So.2d 746, 742. A party seeking a declaration of unconstitutionality must show clearly and convincingly that it was the constitutional aim to deny the legislature the power to enact the statute in question. *Polk v. Edwards*, 626 So.2d 1128, 1132 (La. 1993). However, when a statute conflicts with a constitutional provision, the statute must fall. *Caddo-Shreveport Sales and Use Tax Comm'n*, 97-2233 at 6, 710 So.2d at 780. Additionally, if an ordinance conflicts or is inconsistent with the constitution, or if the ordinance "infringe(s) the spirit of state law or (is) repugnant to the general policy of the state," the ordinance is unconstitutional. *Morial v. Council City of New Orleans*, 413 So.2d 185 (La App. 4th Cir. 1982) quoting from *National Food Stores of Louisiana, Inc. v. Cefalu*, 280 So. 2d 903 (La. 1973).

At the hearing on the merits, the testimony by the tenants shows that they are not conclusively related by blood, marriage, or adoption. In fact, the tenants' testimony supports a finding that they are an interdependent fictive familiar unit living together and occupying a single housekeeping unit with single culinary facilities. More particularly, that they are more than two (2) persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost-sharing basis, none of which comports with the definition of "family" as outlined in the Unified Development Code Title 7, Chapter 2. After reviewing the statutes, briefs, evidence and argument by counsel, the Court finds that there is no rational basis for the definition of "family" found in the Unified Development Code that furthers a State objective. Being as common as they are today, treating creative kinship networks and families such as same sex relationships, non-marital child births, cohabitations, foster homes, and the like with disparate treatment from the traditional nuclear family appears out of touch with society's reality and denies several non-traditional groups the right to cohabitate as a family unit. This restrictive definition of "family" is in direct conflict with the 14th Amendment of the US Constitution by denying the aforementioned groups

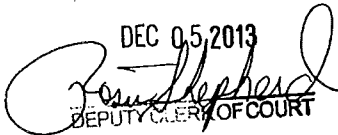
equal protection of the laws by limiting the number of nontraditional familial members residing in a single family dwelling located in an A-1, A-2, or Rural zoning district, while affording greater liberties to traditional family units by allowing an unlimited number of those familial members to reside in the same zoning district. No demonstrable State objective has been demonstrated by the evidence presented, thus, it is without question that it is the constitutional aim to deny the legislature the power to enact a statute that so narrowly defines "family" that it excludes several significant and ever growing familial segments of our society. Therefore, the defendant has proven that the Unified Development Code's definition of "family" is unconstitutionally vague.

SIGNED THIS 5TH DAY OF DECEMBER, 2013, IN BATON ROUGE, LOUISIANA.


JUDGE JANICE G. CLARK
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
DIVISION "D"

FILED

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DEPUTY CLERK OF COURT