SUPREME COURT

STATE OF LOUISIANA

NUMBER 2013 CA 2011

A CIVIL MATTER

****

CITY OF BATON ROUGE-PARISH OF EAST BATON ROUGE

VERSUS

STEPHEN C. MYERS

ORIGINAL BRIEF ON BEHALF OF THE CITY OF BATON ROUGE/ PARISH OF EAST BATON ROUGE, PLAINTIFF-APPELLANT

APPEAL FROM THE 19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
THE HONORABLE JANICE CLARK, JUDGE PRESIDING
NUMBER IN TRIAL COURT 610,359

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JURISDICTION

The trial court, the 19th Judicial District Court, Honorable Janice Clark, judge presiding, has ruled that the East Baton Rouge Parish zoning ordinance establishing the A1 Single Family Residential zone is unconstitutional.

The City of Baton Rouge-Parish of East Baton Rouge, plaintiff, appeals that judgment.

Article V, Section 5 of the Louisiana Constitution of 1974 establishes exclusive original appellate jurisdiction in such cases with the Honorable Supreme Court.

STATEMENT OF THE CASE

Appellant, City of Baton Rouge-Parish of East Baton Rouge (hereinafter City/Parish), plaintiff in the trial court, upon learning that Steve Myers was renting his house to four unrelated young men in violation of the zoning ordinance, filed this action seeking an injunction to stop Myers' continued violation of the ordinance.

The ordinance in question is Chapter 2, "Definition of Family," and Chapter 8, Section 8.201 of the Uniform Development Code (UDC) of the City/Parish which is the zoning ordinance for the City/Parish. The zone is an "A1 Singe Family Residential zone" and occupation of a residence located in an A1 single family zone is limited to a single family.

Chapter 2, "Definitions" of the ordinance defines family as:

> Family is an individual or two 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 non-profit, cost sharing basis.

(Record, page 147; Judicial notice by trial court, Record page 259)

Contending that the four unrelated occupants of Myers' dwelling did not constitute a family as defined in the ordinance, the City/Parish sought the injunction which precipitated this matter.

Steve Myers, through counsel, answered the petition and filed a reconventional demand for a declaratory judgment ruling the ordinance unconstitutional.

In response to an exception, Myers amended his reconventional demand to specify the grounds upon which he alleged the ordinance to be unconstitutional.

In his "Second Amended Affirmative Defenses, Answer, and Reconventional Demand in Response to the Amended Petition for Preliminary and Permanent Injunction of the City of Baton Rouge/East Baton Rouge" (Record, pages 43, et seq), Myers alleged that the ordinance violated his constitutional rights to privacy, due process, freedom from the taking of property without compensation, equal protection, and association. Myers further claimed that the definition of family in the ordinance violated his right to due process because the definition was not rationally related to a legitimate governmental purpose.

RULING OF THE TRIAL COURT

Trial of this matter was had on January 29, 2013. Following trial, the court took the matter under advisement, issuing a minute entry on April 24, 2013, that set out the court's reasons for judgment. The minute entry is contained in the record at page 002 and reads as follows:

> This Court finds that the petitioner, City-Parish, has failed to establish that defendant is in violation of the definition of family contained in and applied to the Unified Development Code. The testimony by the tenants show that they are not conclusively related by blood, marriage, or adoption, that they are an interdependent fictive familiar unit having been together since they were 6-years-old. The Court further finds there is no rational basis for the definition of family in the code that furthers a state objective of treating creative kinship networks and families such as some sex relationships, non marital child birth, cohabitation, foster homes, and the like. Being as common as they are today should have disparate treatment from the traditional nuclear family. No demonstrable state objective has been demonstrated by a preponderance of the evidence. Therefore, the defendant has proven that the Unified Development Code's definition of family is unconstitutionally vague. Moreover, the evidence is overwhelmingly that this non traditional family, these graduates and contractors have not caused a decrease in property value. Quite the contrary, it was conclusively shown that the property has increased in its value significantly. Accordingly, this Court hereby dismisses the City/Parish's petition for permanent injunction with prejudice at its costs. It further declares that the definition of family contained in and applied to the Unified Development Code for the City of Baton Rouge/Parish of East Baton Rouge is unconstitutional and, thus, unenforceable ordering the City/Parish to pay costs. Judgment to be signed accordingly upon presentation. Notify counsel.

The relevant elements of the trial court's reasons for judgment are:

1. The Court found that the city-parish failed to establish that Myers is in violation of the definition of family contained in the UDC.

2. "The testimony by the tenants show that they are not conclusively related by blood, marriage, or adoption, that they are an interdependent fictive familiar unit having been together since they were 6-years-old."

3. The court could find no rational basis for treating related, or "traditional nuclear families," differently than are treated "creative kinship networks and families such as same sex relationships, non marital child birth, cohabitation, foster homes, and the like."

On May 6, 2013, the trial court signed a written judgment which, in relevant part, reads as follows:

> It is hereby ordered, adjudged and decreed that the City-Parish's Petition for Permanent Injunction is dismissed, with prejudice, at the City-Parish's cost.
>
> It is further ordered, adjudged and decreed that, in accordance with Meyer's Reconventional Demand, the definition of "family" contained in and applied to the Uniform Development Code for the City of Baton Rouge/Parish of East Baton Rouge is hereby declared unconstitutional, and thus, unenforceable. (Record, page 195)

Upon receipt of the signed judgment, City/Parish filed a motion for suspensive appeal. Following objection by Myers, the trial court denied the request for a suspensive appeal and authorized a devolutive appeal. City/Parish filed an application for supervisory writs with the Supreme Court, but becoming concerned that the delays for appeal would expire without a favorable ruling, City/Parish filed this appeal as a devolutive appeal. Nevertheless, City/Parish suggests that the trial court's denial of a suspensive appeal was an abuse of discretion and should be reversed.

As permitted by Supreme Court Rule X Section 8a, City/Parish requested that its memorandum filed in support of its application for writs be considered its brief on the application for supervisor writs.

RELEVANT EVIDENCE PRODUCED AT TRIAL

The trial court, at page 13 of the record, took judicial notice of the Unified Development Code, particularly Chapter 8 and the definition of family.

Mr. Collin Magee, called by the City/Parish, testified that he was the Land Use and Zoning Coordinator for the Planning Commission (Record, page 257). When asked the purpose

of single family zoning, Mr. Magee stated, at Record, page 228:

> The intent of A-1 zoning is to ensure the availability of residential areas that allow – that provide open space, protect against the problems of overcrowding, traffic congestion, pollution, and noise, and other nuisances that associate with overcrowded areas.

Mr. Myers, called on cross-examination, admitted that he owned the property in question, 1977 Cherrydale Ave., Baton Rouge, (Record, page 272), and that it was rented to four people (Record, pages 276 and 278). Myers, for some reason, refused to answer the question whether he occupied the property (Record, page 273), but did testify that he resided at 642 Ursaline St., Baton Rouge (Record, page 270). At page 280, Mr. Myers admitted that he did not know if the occupants of the Cherrydale residence were related or not.

City/Parish called Mr. Patrick Finneman who testified (Record, page 289) that he rented the residence at 1977 Cherrydale along with three roommates, whom he named as Christopher Shineberry, Blake Pinepinto and Jacob Krasnow. Mr. Finneman stated that none of the four were related so far as he knew (Record, page 290).

For the purpose of proving that the definition of family contained in the ordinance does not adequately define family, Myers called Dr. Dana Berkowitz, an assistant sociology professor at L.S.U. Berkowitz acknowledged that there is no generally accepted definition of family. "The definition of family is one that is fluid. It's shifting. It has never been stable despite ideas of what a family is or was in 1954. So there is no single universal definition of family" (Record, page 324). At page 336 of the record, Berkowitz explained that the concept of "fictive kin," a concept used by the trial court in its reasons for judgment, refers to any group of people who consider themselves family, although not related. Berkowitz, at page 342 of the record, opined that the four men who occupied Myers' house constituted a family "in terms of economic, emotional support" because Finneman testified that he had known one of the tenants since six years old, looked upon another as a brother, they attended movies and ate together, and discussed things in general.

At pages 341 et seq, Berkowitz admitted that whether or not the unrelated members of any particular group were to be considered a family was entirely subjective, with no standards available to prove or disprove those persons' opinion that they constituted a family.

SPECIFICATIONS OF ERROR

Appellant submits that the trial court erred in the following particulars.

1.

Ruling that the definition of family contained in the ordinance is unconstitutionally vague because it does not include as family "creative kinship networks and families such as same sex relationships, non marital child birth, cohabitation, foster home, and the like."

2.

Ruling that the ordinance violated Myers' equal protection rights and the equal protection rights of "fictive" family groups that were not parties to this litigation.

3.

By refusing to apply the presumption of the validity of legislation and by ruling that the definition was not rationally related to a legitimate governmental purpose.

4.

By finding that the City/Parish failed to prove that defendant Myers was in violation of the ordinance when he leased the residence to four unrelated people.

STANDARD OF REVIEW

Appellate review of a ruling holding a statute or ordinance unconstitutional is de novo. In Southern Silica of Louisiana v. Louisiana Insurance Guaranty Ass'n, 2007 CA 1680 (La. 4/8/08), 979 So2d 460, the Court acknowledged that rule.

> This court performs a de novo review of a judgment declaring a statue unconstitutional. State v. All Property and Casualty Insurance Carrier Authorized and Licensed to do Business in State, 06-2030, p. 6 (La. 8/25/06), 937 So2d 313. 319. In conjunction with this review, certain principles apply. As a general rule, statutes are presumed to be constitutional; therefore, the party challenging the validity of a statute has the burden of proving its unconstitutionality. State v. Citizen, 04-1841, p. 11 (La. 4/1/05), 898 So2d 325,334...
> Finally, the most pertinent principle applicable to the instant case is that because legislative acts are presumed to be within the legislature's constitutional authority, this court must construe a statute so as to preserve its constitutionality when it is reasonable to do so. State v. Fleury, 01-80871, p. 5 (La. 10/16/01), 799 So2d 468,472.

ARGUMENT

Specification of Error Number One.

> The trial court erred in ruling that the definition of family contained in the ordinance is unconstitutionally vague because it does not include as family "creative kinship networks and families such as same sex relationships, non marital child birth, cohabitation, foster homes, and the like."

The definition of family contained in the ordinance is not vague. To the contrary, the definition is clear and unambiguous.

> A law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves judges free to decide, without legally fixed criteria, when an individual must suffer the imposition of burdens or forfeiture of rights. State, in Interest of Hunter, 387 So2d 1086, 1087 (La. 1980).

"A statute is unconstitutionally vague if men of common intelligence must guess as to its meaning." State v. Prestridge, 399 So2d 564, 571 (La. 1981), citing State v. Cannon, 383 So2d 389 (La. 1980).

The definition of family set out in the ordinance is quite clear that a family consists of:

1. an individual, or
2. two or more persons who are related by blood, marriage or legal adoption living together, or
3. not more than two persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, cost sharing basis, or
4. not more than four persons (provided the owner lives on the premises) living together by joint agreement and occupying a single housekeeping unit with singe culinary facilities on a non-profit, cost sharing basis.

The ordinance is quite clear that any group of persons who do not fit into these categories does not constitute a family.

Four persons living in the same residence obviously do not quality as "an individual." The four tenants in this case are not related by marriage, blood or legal adoption. At page 290 of the record Mr. Finneman, one of the tenants, when asked if the four tenants were related, replied, "As far as I know, no." And the court, in its reasons for judgment, found that the four tenants

were not related by blood, marriage, or adoption (Minute Entry of April 24, 2013, Record, page 002).

Four unrelated occupants are more than the two unrelated occupants permitted by the definition. The owner, Myers, is not an occupant, so the four tenants are not in compliance with the requirement that the owner be an occupant. Myers, in his answer to the petition admitted that he was not an occupant of the residence, (Record, page 028); and at page 270 of the record admitted that he resided at 642 Ursaline St. in Baton Rouge.

Occupation of a single family-zoned residence by four unrelated persons where the owner is not also an occupant is a violation of the ordinance. There is simply no basis upon which to argue vagueness or ambiguity.

The fact that the definition does not include the anomalous groups described in the trial court's minute entry-reasons for judgment does not render the definition vague or ambiguous. Those groups, quite simply, do not fit the definition of family contained in the ordinance. There is no vagueness or ambiguity involved. In fact, the trial court found the definition of family to be unconstitutional because it did not contain those groups. If the ordinance does not contain those groups, then it cannot be vague with regard to those groups -- they are clearly not included.

City/Parish submits that the trial court's holding the definition of family to be vague, is erroneous and should be reversed.

Specification of Error Number Two

> The trial court erred in holding that the ordinance violated Myers' equal protection rights and the equal protection rights of "fictive" family groups that were not parties to this litigation.

The trial court determined that the ordinance violated the equal protection rights of Myers, and through "disparate treatment" the equal protection rights of certain "creative kinship networks and families such as same sex relationships, non marital child birth, cohabitation, foster homes, and the like."

Equal protection requires that parties that are similarly situated – in the same class – be treated similarly.

> Generally, the state constitutional guarantee of equal protection mandates that state laws affect alike all persons and interests similarly situated. This guarantee does not, however, take from the legislature all power of classification. Beauclaire v. Majories Greenhouse, 2005-CA-0765 (La. 2/22/06), 922 So2d 501,505, citing State v. Baxley, 94-2982 (La. 5/22/95), 656 So2d 973, 977-978.

Myers has offered no evidence to establish that the ordinance provides for treatment of Myers that is different in any way from the treatment of all other owners of property located in an A1 single family zone. Every owner of such person is prohibited from permitting occupancy in violation of the ordinance. The record provides no basis for a finding that the ordinance violates Myers' right to be treated as are all other such property owners. Thus, the trial court's determination that the ordinance violated Myers' rights to equal protection was in error.

The only parties to this litigation are the City/Parish and Mr. Myers. There are no "fictive family" groups, foster parents, same sex relationships, "non marital child birthers," "cohabitationers," or the like, who are parties to this proceeding. The four tenants of Myers' house are not parties.

The trial court, in contravention of well-established rules, has permitted Myers to assert violations of the constitutional rights of other persons.

The Louisiana Supreme Court, in In re Melancon, 2005 CA 702 (La. 7/10/05), 935 So2d 661, 668, stated:

> "[A] litigant not asserting a substantial existing legal right is without standing in court." Id. This court has explained that a party has standing to argue that a statute violates the constitution only where the statute seriously affects the party's own rights. To have standing, a party must complain of a constitutional defect in the application of the statute to him or herself, not of a defect in its application to third parties in hypothetical situations. Greater New Orleans Expressway Commission, 04-2147 at 4, 892 So2d at 573 - 574.

With the exception of the four tenants of Myers' house, there was absolutely no evidence introduced that in any way indicated that Myers had ever attempted to lease to any group such as that described in the trial court's minute entry, or that he ever intended to do so. In fact, there was no evidence that any such group ever approached Myers relative to leasing his house.

No person claiming to be a member of a "creative kinship network" or of a "same sex relationship," or of a "non marital child birth," or "cohabitation," or "foster home," was a party to this action or testified at trial. Myers, as stated above, did not testify that he had ever attempted

to lease to such groups or that he intended to do so in the future.

In fact, there is no evidence in the record that such groups actually exist. Which is probably not surprising since "fictive" is defined by Webster's Ninth New College Dictionary as "1. Not genuine; feigned; 2. of, relating to, or capable of imaginative creation; 3. Of, relating to, or having the characteristics of fiction; fictional."

Thus, Myers had no standing to raise an equal protection argument, or any other argument, on the part of such groups.

Myers offered no evidence in support of his allegations that the ordinance violated Myers' rights to privacy, association, freedom from the taking of property without compensation, or his allegation that the ordinance violated the federal Fair Housing Act. The trial court did not rule the ordinance unconstitutional on any of those grounds. The only evidence produced by Myers was in support of his position that the definition of family was unconstitutional because it did not include the anomalous groups described by Berkowitz. The trial court ruled only that the ordinance is unconstitutionally vague, that it denied equal protection, and violated due process. This appeal is from the trial court's ruling the ordinance unconstitutionally vague, and from the trial court's implied ruling that the definition is unconstitutional because it violated equal protection, and from that court's ruling that the definition of family is not rationally related to a legitimate governmental purpose. Myers has not appealed the trial court's not finding the definition unconstitutional on any other basis.

Specification of error number 3

> The trial court erred by refusing to apply the presumption of the validity of legislation and by ruling that the ordinance was not rationally related to a legitimate governmental purpose.

An ordinance is presumed to be valid, and the burden of proving otherwise is on the party asserting invalidity.

> Interpretation of a municipal ordinance enacted pursuant to the police power vested in such a political subdivision must be accomplished subject to the presumption that the ordinance is valid, and the burden of proving the contrary rests upon the party asserting its invalidity or nullity. Chapman v. City of Shreveport, 225 Ls. 859, 74 So2d 142. See also McQuillan, Law of Municipal Corporations, s. 20.06 - 20.10. This presumption is applicable to zoning

> ordinances. Archer v. City of Shreveport, La. App., 85 So. 2d 337; Sears, Roebuck & Co. V. City of Alexandria, La. App. 155 So 2d 776.
>
> The principle involved is well put in the following language appearing in Sears, Roebuck & Co. V. City of Alexandria, supra, which we quote with approbation: 'Another pertinent general principle of law is that zoning ordinances, adopted in accordance with the procedure set up in the enabling statute, are presumed to have been adopted by the municipal authorities for valid purposes and their discretion will not be interfered with by the courts, unless it is clearly shown that the ordinance is arbitrary, unreasonable and in violation of the enabling statute. Archer v City of Shreveport, 85 So.2d 337 (2nd Cir. 1956); State ex rel Dema Realty Co. V. McDonald, 168 La. 172, 121 So. 613; State ex rel Civello v. City of New Orleans, 154 La. 271, 97 So. 440, 33 A.L.R. 260; 58 Am. Jur. 949 Verbo Zoning, Section 16. The burden is always upon the one assailing the zoning ordinance to overcome this presumption of validity. The court will uphold the ordinance unless it is clearly shown to be incompatible with the enabling legislative act or the constitution. Doubtful cases are decided in favor of the zoning law.' Meyers v. City of Baton Rouge, 185 So2d 278, 283, First Circuit, 1966.

And more recently, the Fourth Circuit, in Moretco, Inc. v. Plaquemines Parish Council, 2012-CA-0430 (4th. Cir. 3/6/2013), 112 So3d 287, 294, stated:

> Zoning is a legislative function, and Louisiana law affords local governing bodies, such as the Plaquemines Parish Council, the authority to amend, supplement, change, modify or repeal existing zoning ordinances. See RS 33:106; Palermo, 561 So2d at 491. There is a presumption of validity attached to all zoning ordinances, and the burden of proving such an ordinance to be invalid lies with the challenger. Id. At 490. The Louisiana Supreme Court has described this burden as "extraordinary." Id. Here, Moretco had the burden to establish that the challenged ordinances have no real or substantial relationship to the general welfare of the Plaquemines Parish community. Id.
> The Louisiana Supreme Court set forth the scope of judicial review of zoning decisions as follows:
> It is not necessary, for the validity of the ordinance in question, that we should deem the ordinance justified by considerations of public health, safety, comfort, or the general welfare. It is sufficient that the municipal council could reasonably have had such considerations in mind. If such considerations could have justified the ordinances, we must assume that they did justify them.
> Palermo, 561 So2d at 491 (quoting State ex rel Civello v. City of New Orleans, 154 Ls 271, 282, 97 So2d 440, 443-44 (1923)

Myers has allege in his pleadings that the definition of family contained in the ordinance is not rationally related to a legitimate governmental purpose. But Myers has offered no evidence to establish that. His evidence was limited solely to an attempt to prove, through Professor Berkowitz, that marriage is old fashioned and that because other relationships are now in vogue, the ordinance should have reflected that change. And, it seems, the trial court has agreed. But whether or not the terms used in legislation is out-dated is a legislative decision; in this case, one for the Metro Council. The function of the courts is to determine whether the ordinance violates constitution or statute.

Because zoning falls under the jurisdiction of the legislature, courts do not interfere with that prerogative unless the action is palpably erroneous and without any substantial relation to the public health, safety or general welfare. (King v. Caddo Parish Commission, 97 C 1873 (La. 12/18/98), 719 So2d 410, 418)

Zoning legislation is not arbitrary and capricious if it is rationally related to a legitimate governmental purpose.

> In other words, government action comports with substantive due process if the action is rationally related to a legitimate government interest. Standard Materials, Inc. V. City of Slidell, 96 CA 0684 (First Circuit, 9/23/97), 700 So2d 975, 986, citing FM Properties Operating Company v. City of Austin, 93 F3d at 174; Summerchase Limited Partnership I v. City of Gonzales, 970 F. Supp. 522, 535 (M. Dist. La. 1997).

The United States Supreme Court, in Village of Belle Terre v. Borras, 416 U.S. 1, 94 S. Ct. 1536, 39 L.Ed.2d 797, (1974), was faced with exactly the same issue as is the Court in the present case. Did the definition of family in the Belle Terre ordinance violate the constitution?

> A New York village ordinance restricted land use to one-family dwellings, defining the word "family" to mean one or more persons related by blood, adoption, or marriage, or not more than two unrelated persons, living and cooking together as a single housekeeping unit and expressly excluding from the term and expressly excluding from the term lodging, boarding, fraternity, or multiple-dwelling houses. (Village of Belle Terre, supra at 1537.

As can be seen, the Belle Terre ordinance, in relevant part,

is identical to the Baton Rouge ordinance.

The Supreme Court in Belle Terre held that the definition of family did not violate any constitutional provision, and in so holding, the Court described the "legitimate governmental interests" involved in the establishment of single family zones.

> The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.
> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within Berman v. Parker, supra [348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27]. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people. Village of Belle Terre, supra, at 94 S. Ct. at 1541.

Mr. Myers has introduced no evidence to overcome the presumption that the definition is rationally related to a legitimate governmental purpose.

Appellant suggests that the City/Parish has a legitimate governmental interest in creating, for the benefit of citizens, areas such as those described by the court in Belle Terre. Appellant further suggests that limiting, in those areas, occupation of dwellings to single families, is rationally related to that purpose.

Thus, the governmental interest involved is the creation of "a quiet place where yards are wide, people few, and motor vehicles restricted." A zone "...where family values, youth values, and the blessings of quiet seclusion and clean air create a sanctuary for people" (Belle Terre, supra at 1541).

As the Court held in Belle Terre, an ordinance that defines family as it is defined in the Belle Terre ordinance, and in the ordinance sub judice, is rationally related to that governmental interest. It is not necessary that the method chosen by the legislature be the best; it is only required that it be rationally related. That is, that the method selected can be expected to reasonably accomplish the purpose intended.

The purpose of the ordinance is not to define family; it is to create a zone where the values described by the Court in Belle Terre can be realized. The Metro Council was free to define family in any way the council felt would accomplish the purpose of the ordinance. It is easy to see that the Berkowitz definition of family would not produce the desired result because there is no limit to the number of people in a "Berkowitz family," and permitting an unlimited number of occupants in a single dwelling would defeat the purpose of the ordinance. The purpose of ordinance is to create an area free of too many people and the resulting noise, traffic, and commotion.

It might be said that the purpose of a single family zone is to get away from the Berkowitz families.

Specification of error number 4

The trial court erred in finding that the City/Parish failed to prove that Myers was in violation of the A1 Single Family Residential zone ordinance.

The evidence clearly established that the residence in question was owned by Stephen Myers, was not occupied by Myers, was located in an A1 Single Family Residential zone, and

was leased by Myers to four unrelated people who were in fact occupying the dwelling.

In his answer to the petition, Myers admitted that he owned the residence and that he did not occupy the residence (Record page 028). In his testimony, Myers again admitted these facts and, in addition admitted that he leased the residence to the four unrelated tenants (Transcript , page 30).

Thus all of the necessary elements were established by a preponderance of the evidence. In fact, Myers did not deny that he had leased the residence in violation of the ordinance. His defense was that the ordinance is unconstitutionally vague.

City/Parish submits that the evidence did in fact establish that Myers was in violation, and that the trial court's determination to the contrary is erroneous.

CONCLUSION

City of Baton Rouge/Parish of East Baton Rouge respectfully submits that the ruling of the trial court holding the definition of family contained in the ordinance to be unconstitutional is erroneous and should be reversed.

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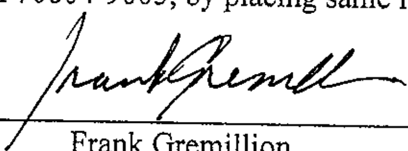
CERTIFICATE OF SERVICE

I certify that a copy of this brief has been delivered to Mr. Grant Guillot, counsel for Mr. Stephen Myers, properly addressed to his post office address, P.O. Drawer 4425, Baton Rouge, LA., 70821; and to Honorable James D. Caldwell, Attorney General, to his post office address, P.O. Box 94005, Baton Rouge, LA 70804-9005, by placing same in the United States Mail, this 12th day of February, 2014,



Frank Gremillion