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McCrory tosses trailer restriction

Judge cancels hearing, wants 2 sides to report next month

By Linda Satter

Posted: January 12, 2017 at 5:45 a.m.

After McCrory officials amended an ordinance Tuesday night to remove a ban on mobile homes worth less than \$7,500, a federal judge canceled a hearing set for this morning on a request to halt the ordinance's enforcement.

A Washington, D.C.-based civil-rights group's request for a temporary restraining order is now moot, U.S. District Judge D. Price Marshall said Wednesday in a written order, citing "the city's promise not to enforce the challenged ordinance provision." But Marshall stopped short of dismissing the federal lawsuit, filed a week ago by Equal Justice Under the Law, saying the case itself isn't moot, just the request for stopgap injunctive relief.

Marshall imposed a stay on the case until Feb. 24 and ordered both sides to submit a joint status report to the court by Feb. 15.

Michael Mosley, an attorney with the Arkansas Municipal League, which is representing the Woodruff County town, said Wednesday that since the threat of harm has evaporated with the council's action, he intends to file a motion to dismiss the lawsuit.

Mosley filed a status report Wednesday notifying the court that a special City Council meeting was convened Tuesday night to amend Ordinance 306, which the lawsuit complained constituted wealth-based discrimination, with Ordinance 307, which omits the complained-about provision.

"Specifically," his status report said, the new ordinance "does not contain any reference or requirement regarding the value of one's mobile home, trailer, or camper." He attached a copy of Ordinance 307, which he said was unanimously approved by the five council members present for the specially called meeting. The council has six members, but one member couldn't attend, Mosley said. He noted that the new ordinance was passed with an emergency clause, making it immediately effective.

Equal Justice Under the Law, a small, nonprofit civil-rights group that specializes in wealth-based discrimination cases, filed the suit on behalf of an engaged couple, David Watlington, 31, and Lindsey Holloway, 30, who said they sought help after McCrory Police Chief Paul Hatch told them Dec. 7 that they would have to move out of the county after the holidays because their home didn't comply with the new ordinance.

Ordinance 306 was passed Sept. 16, just 10 days after the couple moved the mobile home from the nearby town of Morton to a rented plot of land in McCrory. The land isn't in a trailer park. Mosley couldn't confirm a report by KARK-TV, Channel 4, that the mobile home is located just a few yards from the police chief's home.

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The ordinance said: "No trailer shall be put in the city ... unless it has a value established by a certified appraiser or a bill of sale of not less than \$7,500. The owner is responsible for any cost to obtain these documents."

The couple estimated their mobile home to be worth \$1,500, and they said they lack the financial means to buy a more expensive home. The lawsuit complained that the ordinance was unconstitutional because it punished people for being poor.

The now-repealed ordinance provided for a fine of between \$50 and \$500 a day as long as the violation existed, and didn't specify how the fines would be determined, or by whom.

Without conceding that the chief told the couple they had to move, Mosley said Wednesday that even if the chief had issued such an order during a "discussion" he had with the couple in December, the couple haven't moved, so no harm has been done.

"It's our contention there's no case or controversy left" for the court to decide, he said.

Because the ordinance was never enforced against anyone, it's not "ripe" with an ongoing injury, as a case must be for a court to rule on, Mosley said. He added that the city sees no reason to



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continue the litigation, which will cost taxpayers' money to defend.

He also complained that the plaintiffs never approached the city about the possibility of filing a lawsuit before it was filed. If they had, he said, the matter could have been resolved through a discussion, without a need to make it a federal case.

Phil Telfeyan, an attorney who filed the suit, acknowledged Tuesday that most of his group's discussions with city officials occurred after the suit was filed and said he was hoping that as a result of those discussions, the amendment would be repealed.

Telfeyan said he became aware after filing the lawsuit that two other cities in Woodruff County -- Patterson and Augusta, the county seat -- had similar ordinances.

Mosley said Wednesday that he is "going to look into that."

The couple's affidavits, attached to the lawsuit, said Watlington, who is unemployed, bought the trailer in October 2015 and fixed it up, installing a bathroom and making other repairs. The affidavits say the couple moved into the trailer in November 2015, and decided to move it to McCrory in December to be closer to relatives and because Holloway works in McCrory, earning about \$13,000 a year.

The lawsuit sought class-action status to apply to others affected by the ordinance, compensation for Watlington and Holloway for any damages they suffered as a result of the ordinance, and attorneys' fees.

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