

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BEN'S BAR, INC., SHANNEN RICHARDS
and JAIME SLEIGHT,

Plaintiffs,

v.

VILLAGE OF SOMERSET,

Defendant.

ORDER

01-C-082-C

In this civil action for declaratory and injunctive relief, plaintiffs Ben's Bar, Inc., Shannen Richards and Jaime Sleight challenge a municipal ordinance passed by defendant Village of Somerset that establishes a comprehensive regulatory scheme for "sexually oriented businesses." Plaintiffs argue that certain provisions of the ordinance violate the First Amendment and are preempted by the state's regulation of obscenity. Jurisdiction is present under 28 U.S.C. § 1331.

In an order entered on April 17, 2001, I denied plaintiffs' motion for a preliminary injunction, finding that the ordinance did not violate plaintiffs' rights under the First Amendment and was not preempted by state law. Defendant has now moved for summary

judgment. Because the facts have not changed, and plaintiffs have not shown any additional reason why the ordinance is unconstitutional or preempted, I reach the same conclusion I reached earlier in denying plaintiff's motion for preliminary injunction. Defendant's motion for summary judgment will be granted.

For the purpose of deciding defendant's motion for summary judgment, I find from the parties' proposed findings of fact and the record that the following material facts are undisputed.

UNDISPUTED FACTS

Plaintiff Ben's Bar, Inc. is a corporation that operates Ben's Bar, located in the Village of Somerset, St. Croix County, Wisconsin. Plaintiffs Shannen Richards and Jaime Sleight are entertainers who have performed non-obscene nude and partially nude dancing in the Village of Somerset. Defendant Village of Somerset is a municipality organized under the laws of the state of Wisconsin.

Defendant has enacted Ordinance A-472. Section 5(a) of the ordinance bars "any Person [from] knowingly and intentionally appear[ing] in a state of Nudity in a Sexually Oriented Business." A "state of Nudity" is defined in section 3(o) of the Village's ordinance as "the appearance of the human bare anus, anal cleft or cleavage, pubic areas, male genitals, female genitals, or the nipple or areola of the female breast, with less than a fully opaque

covering; or showing of the covered male genitals in a discernibly turgid state.” A “Sexually Oriented Business” is defined in section 3(w) as “an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency or sexual encounter center.” Section 5(b) of the ordinance prohibits the “sale, use or consumption of alcoholic beverages on the Premises of a Sexually Oriented Business.”

Ben’s Bar is a sexually oriented business as defined in the ordinance and a licensed liquor establishment. At the time the complaint was filed, Ben’s Bar featured non-obscene nude and partially nude dancing. Plaintiffs wish to be able to present this type of entertainment in the Village. There are currently no venues for nude barroom dance in the Village. Section 5(b) of the ordinance makes it economically impracticable for anyone to offer nude barroom dance within the Village.

Before adopting the ordinance, the Village Board had before it studies from other jurisdictions regarding the adverse secondary effects of sexually oriented businesses, judicial decisions discussing the experience of other communities in regulating sexually oriented businesses, and the oral testimony of its lawyer about the experience of the Island Bar in Cumberland and the bad effects that were observed in Cumberland while the bar was in operation. The case law and materials listed in the “findings” section of defendant’s sexually oriented business ordinance were provided to the Village Board members for their review before the ordinance was enacted.

The ordinance states expressly that its findings regarding the deleterious effects of sexually oriented businesses, as well as the fact that these adverse effects are exacerbated when alcohol is served at the sexually oriented businesses, are based on numerous studies by other municipalities, and the experiences of other municipalities reported in judicial decisions. Specifically, the ordinance provides:

WHEREAS, Sexually Oriented Businesses require special supervision from the public safety agencies of the Village of Somerset in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the Village of Somerset; and

WHEREAS, the Village Board finds that Sexually Oriented Businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the Village Board, which demands reasonable regulation of Sexually Oriented Businesses in order to protect the health and well-being of the citizens; and

WHEREAS, there is convincing documented evidence that Sexually Oriented Businesses have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, the Village Board desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the Village Board has determined that the locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this Village; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of Sexually Oriented Businesses; and

WHEREAS, it is not the intent of the Village Board to condone or legitimize the distribution of obscene material, and the Village Board recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the Village of Somerset.

In addition to these prefatory statements of purpose, the legislative findings set forth in the ordinance addressing the adverse secondary effects of sexually oriented businesses are based on twelve judicial cases and numerous studies and summaries of studies addressing the issue.

OPINION

To prevail on a motion for summary judgment, the moving party must show that even when all inferences are drawn in the light most favorable to the non-moving party, there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); McGann v. Northeast Illinois Regional Commuter Railroad Corp., 8 F.3d 1174, 1178 (7th Cir. 1993). Summary judgment may be awarded against the non-moving party only if the court concludes that a reasonable jury could not find for that party on the basis of the facts before it. Hayden v. La-Z-Boy Chair Co., 9 F.3d 617, 618 (7th Cir. 1993), cert. denied, 511

U.S. 1004 (1994). If the nonmovant fails to make a showing sufficient to establish the existence of an essential element on which that party will bear the burden of proof at trial, summary judgment for the moving party is proper. Celotex, 477 U.S. at 322. This standard is different from the standard plaintiffs had to meet on their motion for preliminary injunction. In order to prevail, they had to show merely that they had a better than negligible chance of success on their claims, that a preliminary injunction would not harm the public interest, that the injury to plaintiffs in not granting the injunction was greater than the injury to defendant of granting it, and that they had no legal remedy.

Despite the difference in standards of proof, plaintiffs fare no better when defendant has the burden than when they did. Plaintiffs' First Amendment and preemption claims fail for the reasons set out in the April 17, 2001 order attached.

Plaintiffs raise one additional claim that they did not raise in connection with their motion for preliminary injunction. They contend that defendant's ordinance is a violation of equal protection. However, they advance no argument in their brief in support of their contention. Therefore, I need not address this claim. "Arguments that are not developed in any meaningful way are waived." Central States, Southeast and Southwest Areas Pension Fund v. Midwest Motor Express, Inc., 181 F.3d 799, 808 (7th Cir. 1999); see also Finance Investment Co. (Bermuda) Ltd. v. Geberit AG, 165 F.3d 526, 528 (7th Cir. 1998); Colburn v. Trustees of Indiana University, 973 F.2d 581, 593 (7th Cir. 1992) ("[plaintiffs] cannot

leave it to this court to scour the record in search of factual or legal support for this claim”); Freeman United Coal Mining Co. v. Office of Workers' Compensation Programs, Benefits Review Board, 957 F.2d 302, 305 (7th Cir. 1992) (court has "no obligation to consider an issue that is merely raised, but not developed, in a party's brief"). I conclude that defendant is entitled to judgment.

ORDER

IT IS ORDERED that the motion of defendant Village of Somerset for summary judgment is GRANTED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this _____ day of November, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge