

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

STEVE CAUDLE

PLAINTIFF

v.

Civil No. 09-5144

CITY OF WEST FORK, et al.

DEFENDANTS

**O R D E R**

Now on this 1st day of September 2009, comes on for consideration the **Magistrate Judge's Report and Recommendation (Doc. 7)** recommending the denial of plaintiff's **Motion for Temporary Restraining Order (Doc. 3)**. Also before the Court is defendants' **Motion for Preliminary and Permanent Injunction (Doc. 9)** and the Response (Doc. 16) and Reply (Doc. 18) thereto. The Court, being well and sufficiently advised, finds and orders as follows with respect thereto.

1. On July 20, 2009, plaintiff filed a motion for a temporary restraining order, seeking to enjoin defendants from razing and demolishing the structures affixed to certain real property owned by plaintiff in West Fork. On July 23, 2009, Magistrate Judge James Marschewski issued a Report and Recommendation finding that the structures at issue constituted a nuisance and health hazard to the community. Magistrate Judge Marschewski, therefore, recommended that plaintiff's motion for temporary restraining order enjoining the City from demolishing the structures be denied. Plaintiff has not filed any objections to the Report and Recommendation.

2. On July 24, 2009, defendants filed a motion for preliminary and permanent injunction requesting that the Court order the structural nuisances abated and permit the City to carry through with its plans to raze and demolish the structures. Plaintiff has filed a response, stating that he does not object to the permanent injunction, but that he reserves his constitutional claims for damages. Defendants dispute the validity of plaintiff's constitutional claims and the parties also dispute whether defendants are entitled to attorney's fees and costs associated with the razing and removal of the structures.

3. Upon due consideration, the Court hereby orders as follows:

\* The **Magistrate Judge's Report and Recommendation (Doc. 7)** is adopted in its entirety and plaintiff's **Motion for Temporary Restraining Order (Doc. 3)** is **DENIED**.

\* Defendants' **Motion for Preliminary and Permanent Injunction (Doc. 9)** is **GRANTED** and defendants are hereby authorized to raze and remove the structures at issue.

\* The validity of plaintiff's constitutional claims for damages is not properly before the Court at this juncture and should be addressed by way of a defense motion. The issue of whether defendants are entitled to attorney's fees and costs should also be addressed by way of a motion and supported by an itemization of the fees and costs.

IT IS SO ORDERED.

/s/Jimm Larry Hendren  
HON. JIMM LARRY HENDREN  
UNITED STATES DISTRICT JUDGE