

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

DAVID W. FOLEY, JR.; and  
JENNIFER T. FOLEY,

Plaintiffs,

v.

Case No. 6:12-cv-269-Orl-37KRS

ORANGE COUNTY, FLORIDA,

Defendant.

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**FINAL JUDGMENT AND PERMANENT INJUNCTION**

Plaintiffs brought this action against Defendant asserting several claims which arise out of their efforts to operate a commercial aviary from their home in Orange County, Florida. (See Doc. 162.) In Count II of the Second Amended Complaint, Plaintiffs challenged a combination of Defendant's zoning ordinances which together operate to prohibit commercial aviculture as an accessory use or home occupation at their R-1A zoned residence. (See *id.* ¶¶ 68–89.) Specifically, Plaintiffs sought a declaration that the ordinances invade the exclusive province of the Florida Fish and Wildlife Conservation Commission to regulate captive wildlife and are consequently void. (*Id.*)

On June 14, 2013, the parties filed cross-motions for summary judgment. (Docs. 261, 269.) On August 13, 2013, the Court granted summary judgment in favor of Plaintiffs on that state-law declaratory judgment claim (Count II)<sup>1</sup> and granted summary

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<sup>1</sup> Plaintiffs additionally sought a declaratory judgment invalidating provisions of the Orange County Code of Ordinances that permit commercial aviculture at Plaintiffs' second property, zoned A-2, but only upon receipt of a special exception from Defendant. (See Doc. 162, ¶¶ 41–67.) Because Plaintiffs failed to demonstrate that Defendant had ever applied the challenged ordinances to that property, the Court determined that Plaintiffs' A-2 claim was not ripe. (Doc. 290, p. 4 n.3.)

judgment in favor of Defendant on all other claims. (Doc. 290, p. 28.) The parties were then directed to confer and advise the Court on the remedies available to Plaintiffs pursuant to the state-law declaratory judgment claim. (*Id.* at 28–29.)

Upon review of the parties' submissions (Docs. 297, 298), and pursuant to Federal Rule of Civil Procedure 54(c), the Court determines that Plaintiffs are entitled to the limited declaratory and injunctive relief set forth below.<sup>2</sup>

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. To the extent that it relates to Plaintiffs' real property located within Zone A-2 at 1349 Cupid Road, Christmas, Florida 32709, Count I of Plaintiff's Second Amended Complaint is **DISMISSED WITHOUT PREJUDICE** as unripe.<sup>3</sup>
2. **JUDGMENT** is hereby **ENTERED** in favor of Plaintiffs David W. Foley, Jr. and Jennifer T. Foley and against Defendant Orange County, Florida, as to Count II of Plaintiff's Second Amended Complaint (Doc. 162).
3. **JUDGMENT** is hereby **ENTERED** in favor of Defendant Orange County and against Plaintiffs as to Counts III–VIII of Plaintiff's Second Amended Complaint (Doc. 162).
4. The Court **DECLARES** that Chapter 38, Article I, § 38-1; Article IV,

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<sup>2</sup> The Court construes Count III of Plaintiffs' Second Amended Complaint, which seeks supplemental injunctive relief pursuant to 28 U.S.C. § 2202, as a prayer for injunctive relief made in conjunction with the declaratory judgment sought in Counts I and II. (See Doc. 162, ¶ 90.) To this end, Count III is duplicative of the relief requested in ¶¶ 148–49.

<sup>3</sup> This Judgment supersedes any language to the contrary in the decretal portion of the Court's Order on summary judgment. (Doc. 290, pp. 28–29.)

§§ 38-71–74, 38-77; and Article VI, §§ 38-301–04 of the Orange County Code of Ordinances are void to the extent that they prohibit commercial aviculture and the breeding, keeping, and raising of exotic animals as a home occupation or an accessory use to a residence located within Zone R-1A; those provisions are inconsistent with the Florida Fish and Wildlife Conservation Commission’s exclusive authority to regulate captive wildlife.

5. Defendant and all of its officers, agents, servants, employees, and attorneys, as well as other persons who are in active concert or participation with any of them, are **PERMANENTLY ENJOINED** from enforcing Chapter 38, Article I, § 38-1; Article IV, §§ 38-71–74, 38-77; and Article VI, §§ 38-301–04 of the Orange County Code of Ordinances to prohibit commercial aviculture and the breeding, keeping, and raising of exotic animals as a home occupation or accessory use to a residence located within Zone R-1A, including Plaintiffs’ residence located at 1015 North Solandra Drive, Orlando, Florida 32807.
6. Nothing herein shall prohibit Defendant from acting to enforce any amended or new code provision adopted after the date of the filing of Plaintiffs’ Second Amended Complaint.
7. The Court retains jurisdiction to enforce the terms of this Judgment.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on December 30, 2013.



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ROY B. DALTON JR.  
United States District Judge

Copies:

Counsel of Record