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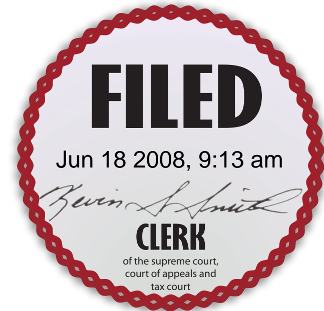

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IN THE
COURT OF APPEALS OF INDIANA

OLD PATHS BAPTIST CHURCH,)
)
Appellant,)
)
vs.) No. 88A01-0707-CV-320
)
WASHINGTON COUNTY HEALTH)
DEPARTMENT et al.,)
)
Appellees.)

APPEAL FROM THE WASHINGTON CIRCUIT COURT
The Honorable Daniel Donahue, Special Judge
Cause No. 88C01-0408-PL-240

June 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Old Paths Baptist Church ("Old Paths") appeals the dismissal of its challenge to the constitutionality of Indiana Code Section 16-20-1-25. We affirm.

Issue

Old Paths presents a single issue for review: whether the trial court erroneously dismissed Old Paths' claim that Indiana Code Section 16-20-1-25 is unconstitutional because an individual or entity targeted for a suspected health code violation must submit to an administrative search based upon hearsay or be subject to criminal penalties.

Facts and Procedural History

The instant appeal involves the latest in a series of legal proceedings prompted by the efforts of the Washington County Health Department ("the Health Department") to inspect property of Old Paths and its pastor, John Lewis ("Lewis"), for alleged sewage disposal violations, and the stance of Old Paths and Lewis that entry onto private land must be preceded by permission, a warrant, or exigent circumstances. Consistent with this position, Lewis first challenged the constitutionality of Indiana Code Section 16-20-1-23[1] and Old

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[1] Indiana Code Section 16-20-1-23, with reference to the powers and duties of local health departments, provides:

> (a) Except as provided in subsection (b), the local health officer or the officer's designee may enter upon and inspect private property, at proper times after due notice, in regard to the possible presence, source, and cause of disease. The local health officer or designee may order what is reasonable and necessary for prevention and suppression of disease and in all reasonable and necessary ways protect the public health.
> (b) However, a local health officer, or a person acting under the local health officer, shall not inspect property in which the local health officer has any interest, whether real, equitable, or otherwise. Any such inspection or any attempt to make such inspection is grounds for removal as provided for in this article.

Paths now challenges the constitutionality of Indiana Code Section 16-20-1-25.[2]

During September of 2003, Bert Engler ("Engler") and Nora Shepherd ("Shepherd") complained to the Health Department that Old Paths was discharging sewage onto the ground. On or about September 11, 2003, Michael Haddon ("Haddon"), Environmental Supervisor for the Health Department, drove to Old Paths and sought to inspect the premises concerning the alleged sewage discharge. Haddon was denied access. On or about September 15, 2003, the Health Department issued a letter to Lewis, as pastor of Old Paths, requesting inspection access. Lewis responded with a letter denying access and suggesting that the Health Department investigate Planned Parenthood.

On January 13, 2004, Haddon, accompanied by Washington County Sheriff Roger Lyles and three deputies, entered onto real estate occupied or owned by Old Paths. Haddon had no warrant. He conducted a limited visual inspection and confirmed the existence of an outhouse and a severed above ground pipe. On July 28, 2004, the Health Department issued

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> (c) This section does not prevent inspection of premises in which a local health officer has an interest if the premises cannot otherwise be inspected. If the premises cannot otherwise be inspected, the county health officer shall inspect the premises personally.

[2] Indiana Code Section 16-20-1-25, with reference to the powers and duties of local health departments, provides:

> (a) A person shall not institute, permit, or maintain any conditions that may transmit, generate, or promote disease.
> (b) A health officer, upon hearing of the existence of such unlawful conditions within the officer's jurisdiction, shall order the abatement of those conditions. The order must:
> (1) be in writing if demanded;
> (2) specify the conditions that may transmit disease; and
> (3) name the shortest reasonable time for abatement.
> (c) If a person refuses or neglects to obey an order issued under this section, the attorney representing the county of the health jurisdiction where the offense occurs shall, upon receiving the information from the health officer, institute proceedings in the courts for enforcement. An order may be enforced by injunction. If the action concerning public

a notice of violation to Lewis, with regard to Old Paths, alleging a violation of 410 IAC 6-8.1-31(a) and WCC 4-1-2 by "discharge of sewage to ground surface." (App. 21.) The notice informed Lewis that Old Paths had thirty days to remedy the violation and then would be subject to further inspection.

On August 6, 2004, Old Paths filed a Petition for Injunctive Relief, requesting that Engler be enjoined from making false reports to the Washington County Health Department, that Washington County attorney Jay Allen and the Washington County Health Department employees be enjoined from prosecuting false claims against Old Paths, and that no county or state official be allowed on the Church property without a valid search warrant. Old Paths also filed a 42 U.S.C. § 1983 claim in the United States District Court for the Southern District of Indiana. The Respondents moved to dismiss the state petition for injunctive relief because of the pending federal claim, citing principles of comity and judicial economy. They also sought dismissal for failure to state a claim upon which relief could be granted, pursuant to Indiana Trial Rule 12(B)(6). The trial court did not rule upon the motions to dismiss.[3]

On August 25, 2004, the Health Department filed a counterclaim for injunctive relief, requesting that Old Paths be enjoined from the use of public water and plumbing, absent the installation of a "properly inspected sewage disposal system or septic system." (App. 76.) Old Paths answered the counterclaim, and raised a defense of unconstitutionality, as follows: "The scheme of issuing the order allowed in IC 16-2-1-25 is unconstitutional as it is vague

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health is a criminal offense, a law enforcement authority with jurisdiction over the place where the offense occurred shall be notified.

[3] The initial trial court judge assigned to the case recused himself and a special judge was appointed.

and overbroad making it unconstitutional on its face, and further, there is no allowance for an opportunity to be heard on whether or not a violation actually exists." (App. 79.)

On September 22, 2004, Old Paths sent a Notice of Claim of Unconstitutionality of Indiana Code Section 16-20-1-25 to the Attorney General, City of Washington attorneys, Engler, and attorneys for the Indiana Civil Liberties Union. Therein, Old Paths alleged that the statute was vague or overbroad and denied due process to Indiana citizens.

On October 5, 2004, Old Paths filed an Amended Petition for Injunctive Relief, requesting that county and state officials be enjoined from entering the property of the Church without a valid warrant and that Engler and Shepherd be enjoined from making false claims against Old Paths, and that Washington County officials refrain from further prosecuting false claims against Old Paths. On October 11, 2004, the Office of the Attorney General of Indiana filed an appearance in the matter.[4]

On August 26, 2005, Old Paths and the Health Department appeared for trial on the amended petition for injunctive relief and counterclaim. The Attorney General did not

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[4] Meanwhile, the Health Department had received a complaint of a sewage discharge on Lewis's residential property. Haddon sent a notice to Lewis, ordering him to correct the violation and advising that an inspection would take place after thirty days. Lewis v. Washington County Health Dept., No. 88A01-0608-CV-354, slip op. at 1, (Ind. Ct. App. June 25, 2007). Lewis sought declaratory and injunctive relief and a finding that Indiana Code 16-20-1-23 is unconstitutional to the extent it authorizes the Health Department to search without a warrant or exigent circumstances. The Health Department counterclaimed for injunctive relief to enforce its notice. Pursuant to a stipulation of the parties, the trial court dismissed the complaint, leaving only the counterclaim. The parties stipulated that absent permission or exigent circumstances, the Health Department would not enter Lewis's property without a court finding of probable cause. See id. Thereafter, Lewis's water was shut off, a hearing ensued, and the trial court denied the Health Department's request for entry onto Lewis's property. Upon motion to correct error, a limited entry was granted. See id. Lewis appealed. This Court affirmed the order of the trial court, and in so doing observed, "[f]or the government to conduct a code-enforcement inspection of private property, absent exigent circumstances or the owner's consent, a warrant is required." Id. (citing City of Vincennes v. Emmons, 841 N.E.2d 155, 159 (Ind. 2006),

appear. Counsel for Old Paths argued that Indiana Code Sections 16-20-1-23 and 25, in conjunction, "must be unconstitutional on its face because the standard to do the abatement order is a hearsay standard because it says 'upon hearing.'" (Tr. 8.) Old Paths further argued, "obviously a warrant would be required and probable cause should be the standard." (Tr. 8.) Despite the claim of facial unconstitutionality, Old Paths made the following representation to the trial court, "if he does it constitutionally and has proper probable cause, we're going to be law abiding citizens and we'll not object. So that's, that's where we're at with this." (Tr. 9.) The parties presented a joint exhibit, a stipulation between the parties in federal court. It provided in relevant part, "The parties agree that Indiana Code § 16-20-1-23 should be interpreted to require that the Washington County Health Department must obtain judicial permission prior to conducting a health inspection, absent permission from the property owner or exigent circumstances." (Exhibits, pg. 42, App. 132.) Testimony was not concluded on the first day of trial, and the matter was continued to September 30, 2005.

On September 12, 2005, the Attorney General moved to dismiss Old Paths' constitutional challenge. The Attorney General alleged that Old Paths had failed to include any averment as to the unconstitutionality of Indiana Code Section 16-20-1-25 in its amended complaint. Additionally, the Attorney General alleged that no controversy remained as to the constitutional issue because, at the hearing conducted on August 26, 2005, Old Paths and the Health Department had agreed that, absent exigent circumstances, a warrant was required to enter Old Paths' property. On September 23, 2005, the trial court dismissed the

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reh'g denied).

constitutional challenge.

Old Paths requested that the trial court certify its order of dismissal for interlocutory appeal, and the Attorney General objected. The Objection included Attachment 1, a copy of the joint exhibit entitled "Stipulation Concerning Entry on Property." (App. 132.) The trial court denied the certification request, and the matter proceeded with a second day of trial on August 4, 2006. A third day of trial was conducted on March 30, 2007.

On June 22, 2007, the trial court entered its Findings of Fact, Conclusions of Law, and Judgment Pertaining to Injunctive Relief. The trial court enjoined Old Paths from the use of public water and indoor plumbing until such time as a properly installed sewage disposal system could be verified by the Health Department. With regard to Old Paths' request for injunctive relief, the trial court found the matter "sufficiently addressed by the Stipulation Concerning Entry on Property (Joint Exhibit 1, submitted to the Court in August 2005)." (App. 13.) Old Paths appeals, contending that it was improperly denied the opportunity to assert its constitutional challenge.

Discussion and Decision

Old Paths claims that it was erroneously deprived of the opportunity to demonstrate the facial invalidity of Indiana Code Section 16-20-1-25, when read in conjunction with Indiana Code Section 16-20-1-23. As best we can discern its argument, Old Paths asserts (notwithstanding prior stipulations to the contrary) that Indiana's statutory scheme governing local health departments is void and cannot be applied in a constitutional manner. According to Old Paths, this is so because a health code inspector privy only to a hearsay allegation may conduct a search of private land and the party to be searched has no recourse.

Every statute is clothed with the presumption of constitutionality unless clearly overcome by a contrary showing. Boehm v. Town of St. John, 675 N.E.2d 318, 321 (Ind. 1996) (construing art. X, § 1, of the Indiana Constitution). When a party claims that a statute is unconstitutional on its face, the claimant bears the burden of demonstrating that there are no circumstances under which the statute can be constitutionally applied. Baldwin v. Reagan, 715 N.E.2d 332, 337 (Ind. 1999).

At the trial in the instant matter, Old Paths and the Health Department submitted a joint stipulation that Indiana Code Section 16-20-1-23 could be constitutionally applied (specifying judicial permission, permission from the property owner or exigent circumstances). After raising the constitutionality of Indiana Code Section 16-20-1-25 (when read together with Indiana Code Section 16-20-1-23) as a defense to the counterclaim against it, Old Paths made the following representation in open court on the first day of trial: "if he does it [the search] constitutionally and has proper probable cause, we're going to be law abiding citizens and we'll not object." (Tr. 9.) Thus, Old Paths conceded that Indiana Code Section 16-20-1-25 could be applied in a constitutional manner.

There remained no controversy before the trial court with regard to the alleged facial invalidity of Indiana Code Section 16-20-1-25. The trial court properly dismissed the claimed defense. See Stroud v. State, 809 N.E.2d 274, 291 (Ind. 2004) (quoting State v. Darlington, 153 Ind. 1, 4, 53 N.E. 925, 926 (1899) for the proposition that "courts will not pass upon a constitutional question, and decide a statute to be invalid, unless a decision on that very point becomes . . . absolutely necessary to a disposition of the cause on its merits.")

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.