[Cite as *Mentor-on-the-Lake v. Gray*, 2009-Ohio-3179.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

CITY OF MENTOR-ON-THE-LAKE,	:	**O P I N I O N**
Plaintiff-Appellant,	:	
- vs -	:	**CASE NOS. 2008-L-135 and 2008-L-136**
SKIP ANDREW GRAY,	:	
Defendant-Appellee.	:	

Criminal Appeals from the Mentor Municipal Court, Case Nos. 08 CRB 0766 and 08 CRB 1006.

Judgment: Affirmed.

Joseph M. Gurley, Mentor-on-the-Lake Prosecutor, and *James M. Lyons*, Lyons & O'Donnell Co., L.P.A., 240 East Main Street, Painesville, OH 44077 (For Plaintiff-Appellant).

Duane L. Doyle, 10826 Ravenna Road, #3, Twinsburg, OH 44087 (For Defendant-Appellee).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, city of Mentor-on-the-Lake, appeals the September 3, 2008 judgment of the Mentor Municipal Court finding section 1252.17 of Mentor-on-the-Lake Codified Ordinance ("MCO") unconstitutionally vague and ambiguous and, as a result of this finding, dismissing the complaints filed against appellee**,** Skip Andrew Gray.

{¶2} On June 13, 2008, appellant filed a complaint (Case No. CRB 0800766) in the Municipal Court alleging Gray violated MCO 1252.17, floodlights and exterior lights;

projection into yards, a misdemeanor of the fourth degree. The alleged offense occurred on May 22, 2008.

{¶3} Gray filed a motion in the trial court to declare MCO 1252.17 unconstitutional as being void for vagueness and ambiguity.

{¶4} Before the trial court rendered a decision, appellant filed a second complaint (Case No. CRB 0801006) in the Municipal Court alleging Gray violated MCO 1252.17, on July 22, 2008.

{¶5} The trial court held a hearing on Gray's motion and stated the following:

{¶6} "After a review of the ordinance, the Court agrees that the way the ordinance is written at the present time, that it leaves room for interpretation and that can't be. *** [T]he Defendant's motion ends the day due to the fact that, frankly, the way it is written, there could be porch lights that would be in violation of this ordinance.

{¶7} "So the Court will show that both cases are dismissed."

{¶8} It is from this decision that appellant filed a timely notice of appeal and raises the following assignment of error:

{¶9} "THE TRIAL COURT ERRONEOUSLY FOUND THAT SECTION 1252.17 OF THE CODIFIED ORDINANCES OF THE CITY OF MENTOR-ON-THE-LAKE WAS UNCONSTITUTIONAL."

{¶10} Appellant presents two issues for our review:

{¶11} "[1.] The Trial Court's conclusion that Section 1252.17 of the Codified Ordinances of Mentor-on-the-Lake was unconstitutional because 'it leaves room for interpretation' was in error.

{¶12} "[2.] The Trial Court's reasoning that Section 1252.17 of the Codified Ordinances of Mentor-on-the-lake (sic) was unconstitutional because 'there would be porch lights that would be in violation' was in error."

{¶13} Since appellant's issues are interrelated, we will address them in a consolidated fashion.

{¶14} In the instant case, Gray requested the trial court to declare the ordinance at issue unconstitutional, as being void for vagueness.

{¶15} In *Perez v. Cleveland* (1997), 78 Ohio St.3d 376, 378, the Supreme Court of Ohio recognized that the United States Supreme Court set forth guidelines to evaluate a claim of void-for-vagueness. The *Perez* court, quoting G*rayned v. Rockford* (1972), 408 U.S. 104, 108-109, stated:

{¶16} "'Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.' *** Accordingly, when a statute is challenged under the due process doctrine of vagueness, a court must determine whether the enactment (1) provides sufficient notice of its proscriptions and (2) contains reasonably clear guidelines to prevent official arbitrariness or discrimination in its enforcement. *Smith v. Goguen* (1974), 415 U.S. 566 ***." (Parallel citations omitted.) See, also, *State v. Ashford*, 11th Dist. No. 2003-L-215, 2005-Ohio-2880, at ¶31-33.

{¶17} To invalidate legislation, the challenger must establish its unconstitutionality beyond a reasonable doubt. *Arnold v. Cleveland* (1993), 67 Ohio St. 3d 35, 38-39. Otherwise stated, the challenger must "'prove, beyond a reasonable doubt, that the statute was so unclear that he could not reasonably understand that it prohibited the acts in which he engaged.'" *State v. Collier* (1991), 62 Ohio St.3d 267, 269. (Citation omitted.)

{¶18} MCO 1252.17 regulates, "FLOODLIGHTS AND EXTERIOR LIGHTS; PROJECTIONS INTO YARDS" and states:

{¶19} "Floodlights and other forms of exterior lighting accessory to the main use shall be designed and constructed so as not to permit the open source of light to be visible from areas not within the boundaries of the owner's property in the Residential zoning districts in the City."

{¶20} The trial court found MCO 1252.17 unconstitutional because (1) "it leaves room for interpretation" and (2) "there could be porch lights that would be in violation."

{¶21} In its brief, appellant argues the ordinance leaves no room for interpretation and provides adequate notice with respect to the conduct that is prohibited. We disagree.

{¶22} The trial court did not err by finding MCO 1252.17 unconstitutional. The ordinance does not define "open source of light," which leads persons to guess at its meaning. Also, we agree with the trial court that even porch lights could be in violation of the ordinance as written. This facial ambiguity violates the due process doctrine of vagueness as it allows official discretion that leads to arbitrary or discriminatory

enforcement. See *Cleveland v. Daher* (Dec. 14, 2000), 8th Dist. No. 76975, 2000 Ohio App. LEXIS 5937, at 10, citing *Chicago v. Morales* (1999), 527 U.S. 41, 56.

{¶23} Appellant's first and second issues are without merit.

{¶24} For the foregoing reasons, appellant's assignment of error is not well-taken. The judgment of the Mentor Municipal Court is hereby affirmed. It is ordered that appellant is assessed costs herein taxed. The court finds there were reasonable grounds for this appeal.

DIANE V. GRENDELL, J., concurs,

TIMOTHY P. CANNON, J., dissents with Dissenting Opinion.

TIMOTHY P. CANNON, J., dissenting.

{¶25} I respectfully dissent from the majority.

{¶26} In the instant case, Gray requested the trial court to declare the ordinance at issue unconstitutional, as being void for vagueness. It is well-settled that in order to be presumed constitutional, legislation is not required to be drafted with scientific precision. *Steubenville v. Thorne*, 7th Dist. No. 08 JE 3, 2008-Ohio-6299, at ¶12. (Citation omitted.)

{¶27} In *Willoughby v. Taylor*, 180 Ohio App.3d 606, 2009-Ohio-183, at ¶12, this court stated:

{¶28} "Generally, an ordinance will not be considered overly vague where it provides '"fair notice" to those who must obey the standards of conduct specified therein.' *** '(A) law will survive a void-for-vagueness challenge if it is written so that a

person of common intelligence is able to ascertain what conduct is prohibited, and if the law provides sufficient standards to prevent arbitrary and discriminatory enforcement.' *** However, a statute will not be declared void simply because it could have been worded more precisely. ***." (Internal citations omitted.)

{¶29} As stated by the majority, in order to invalidate legislation, the challenger must prove, beyond a reasonable doubt, that the statute was so unclear that he could not reasonably understand that it prohibited the acts in which he engaged.

{¶30} The key phrase in contention is "the open source of light" as set forth in MCO 1252.17. The trial court found MCO 1252.17 unconstitutional because (1) "it leaves room for interpretation" and (2) "there could be porch lights that would be in violation."

{¶31} The fact there might be porch lights in violation does not make the ordinance vague. This conclusion reached by the trial court does not comport with the guidelines set forth in *Perez* or *Grayned* cited to by the majority. See *Perez v. Cleveland* (1997), 78 Ohio St.3d 376 and *Grayned v. Rockford* (1972), 408 U.S. 104. While Gray maintains that this ordinance prohibits "*virtually* any outdoor lighting" (emphasis added) the ordinance at issue only prohibits "the open source of light" from "floodlights" and "other forms of exterior lighting accessory to the main" to be visible from outside the boundaries of the owner's property. The city simply states that the open source of light is the bulb itself. Therefore, if a porch light is not enclosed by any type of fixture, and it could be seen from the neighboring property, this could be a violation. It may be silly, but it is not vague.

{¶32} Although I recognize that the ordinance could have been worded more precisely, it does set forth sufficient standards of conduct so that people of ordinary intelligence are on notice of what conduct is prohibited. It is good to be reminded that we have an "obligation to liberally construe statutes to avoid constitutional infirmities." *Willoughby v. Taylor*, supra, at ¶17. Applying the law to the instant scenario, MCO 1252.17 affords a person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited so that he or she may act accordingly.

{¶33} It is certainly possible that the city may attempt to enforce this ordinance in a specific factual scenario that would be a clear departure from the language of the ordinance. In that instance, enforcement of the ordinance could be unconstitutional as applied to that specific fact pattern. However, there is nothing in the record to establish, beyond a reasonable doubt, the unconstitutional application of this ordinance to the facts surrounding Gray's alleged violation. Therefore, I would determine MCO 1252.17, is, on its face, constitutional and not void-for-vagueness.