

STATE OF MISSOURI)
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CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

FILED
JUN 23 2017

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE

ZOOLOGICAL PARK SUBDISTRICT)
OF THE METROPOLITAN PARK)
MUSEUM DISTRICT,)

Plaintiff,)

No. 1522-CC09876

vs.)

Division No. 31

JEFFRY K. SMITH,)

Defendant.)

ORDER AND JUDGMENT

The Court has before it Plaintiff Zoological Park Subdistrict of the Metropolitan Park Museum District's Motion for Summary Judgment. The Court has reviewed the submissions of the parties, the relevant authorities, and the arguments of counsel, and now rules as follows.

Plaintiff, the Zoological Park Subdistrict of the Metropolitan Park Museum District ("Zoo"), brought this Verified Petition for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction, seeking to enjoin Jeffry K. Smith, a gun rights activist from Ohio, from carrying firearms into the Zoo. On February 19, 2016, this Court entered a Preliminary Injunction Order. Plaintiff now moves for summary judgment on its request for

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permanent injunctive relief prohibiting Smith (and anyone acting in concert with him or who has notice of such order) from entering upon Zoo property in possession of a firearm or any other weapon capable of lethal use, whether such weapon is possessed openly or concealed. The following facts are uncontroverted:

The Zoo is a political subdistrict of the State of Missouri. The Zoo is exempt from the payment of federal taxes. The mission of the Zoo is to conserve animals and their habitats through animal management, research, recreation, and educational programs that encourage the support and enrich the experience of the public.

The Zoo has an Education Department made up of educational professionals who have college degrees and master's degrees in education, conservation and environmental education. The Zoo operates a state-regulated, license exempt, pre-school which has a physical classroom in the Living World and also utilizes the campus of the Zoo as its classroom; the Zoo also holds camps for adults and children from pre-school to grade 12 --- these camps utilize the entire campus of Saint Louis Zoo. The Zoo's pre-school was opened on or about September 9, 2014. Moreover, school field trips and Scout and youth group outings at the Zoo account for many thousands of children visiting all portions of the Zoo on a

daily basis throughout the year for both educational and recreational purposes.

The Zoo averages as many as twenty to thirty thousand visitors per day during the Summer months. As many as seventy (70) buses per day bring children to the Zoo. In 2015, the Zoo's Education Department offered 2,731 programs for 486,410 participants.

The Zoo offers the following amusement rides / attractions for a fee: (a) a sea lion show; (b) the Conservation Carousel (mechanical merry-go-round); (c) the Zooline Railroad (1.5 mile narrated train rides through Saint Louis Zoo); (d) the 4-D Theater; (e) movies; (f) Safari Walking Tours; (g) Stingrays at Caribbean Cove (involving the feeding and touching of stingrays); (h) Green Screen photo opportunities; and (i) music concerts (Friday night concert series called "Jungle Boogie"; and Summer concert series called "Jammin' at the Zoo"). The Zoo also has concessions serving food and drinks. The Zoo has held a liquor license since before January 1, 2004. In 2009, the Zoo received an award from the International Association of Amusements Parks and Attractions.

The Zoo has a policy which prohibits visitors to the Zoo from carrying weapons onto the Zoo's property. The Zoo has posted signs at the entrances to its premises which state as follows: "No Firearms Or Weapons Allowed On This Property."

Defendant Smith is a gun rights activist residing in the State of Ohio. Smith has a concealed handgun licensed issued from the State of Ohio. Smith previously organized a gun rights rally in St. Louis. In the Fall of 2014, Smith organized a gun rights march from City Garden Park in downtown St. Louis to the St. Louis Arch grounds where 70 other participants openly carried assault rifles and other firearms.

On or about May 31, 2015 and thereafter, Smith contacted the Zoo to question its policy on prohibiting weapons from being carried on its premises. As part of his communications with the Zoo, Smith demanded that the Zoo remove the "no weapons" signs from its entrances and change its policy to allow visitors of the Zoo to carry firearms on the Zoo's property. The Zoo informed Smith that it would not change its policy or remove its "no weapons" signs.

On June 5, 2015, Smith informed the Zoo that it was his intention to carry a firearm, openly or concealed, onto the Zoo's premises sometime between June 13 and June 20, 2015. As a result of a Facebook event page, at least 690 people were invited to the event. On June 11, 2015, Smith emailed Zoo representatives and others to inform them that he planned to carry out his event at the Zoo on June 13, 2015 at 1:30 p.m. At or about the same time,

Smith updated his Facebook event page with the specific date and time. Smith stated that he intended to lead a walk through the Zoo's grounds armed with guns in order to challenge the "no weapons" policy.

The Zoo sought and received a temporary restraining order ("TRO") against Smith on June 12, 2015. On June 12, 2015, the date on which the TRO was entered against Smith, counsel for the Zoo informed Smith by telephone of the TRO while Smith was in route to St. Louis from Ohio. After the issuance of the TRO, Smith protested with an empty holster at the Zoo on June 13, 2015. Smith admits to previously disregarding no weapons signage posted on public property on at least three occasions by entering onto such property with a firearm despite the signs prohibiting it. If the injunction had not been entered against Smith, he would have carried a firearm into the Zoo on June 13.

The Zoo seeks to promote a family-friendly environment. There are people in society who are scared by the sight of a firearm held by a protester. The Zoo's management received telephone calls from parents of children who participate in the Zoo's educational programs and have learned of the dispute with Smith. Some parents expressed concern about Smith's challenge to the Zoo's policy and indicated that they would remove their children from the Zoo's

educational programs if firearms are allowed on the campus. In addition, some visitors sent written communications to the Zoo expressing support for the Zoo's no weapons policy. Similarly, Zoo employees and volunteers voiced a significant amount of concern and fear to Human Resources and management of the Zoo about the potential gun rights protest at the Zoo.

On February 19, 2016, after a preliminary injunction hearing, the Court continued the injunction against Smith pending a final determination in this case. Since the entry of the preliminary injunction, Smith testified that if the injunction is dissolved and the dissolution of the injunction were upheld on appeal (to the extent any such ruling were appealed), he would enter the Zoo property with a firearm.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Larabee v. Eichler, 271 S.W.3d 542, 545 (Mo. banc 2008); Rule 74.04(c)(6). A movant's right to judgment as a matter of law differs significantly depending upon whether that movant is a "claimant" or a "defending party." ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 381 (Mo. banc 1993).

A "claimant" is one who "seeks to recover," without regard to whether recovery is sought by claim, counterclaim, cross-claim or declaratory judgment. Id. at 380. A claimant must establish that there is no genuine dispute as to those material facts upon which the claimant would have had the burden of persuasion at trial. Id. at 381. Additionally, where the defendant has raised an affirmative defense, a claimant's right to judgment depends just as much on the non-viability of that affirmative defense as it does on the viability of the claimant's claim. Id.

The purpose of an injunction is to restrain actual or threatened acts that constitute a real injury. Metmor Fin., Inc. v. Landoll Corp., 976 S.W.2d 454, 463 (Mo.App. W.D. 1998). A permanent injunction acts as a final disposition of the merits of a case. Bates v. Webber, 257 S.W.3d 632, 636 (Mo.App. S.D. 2008). To obtain a permanent injunction, a party must demonstrate that: (1) it has no adequate remedy at law; and (2) irreparable harm will result if the injunction is not granted. Beauchamp v. Monarch Fire Protection Dist., 471 S.W.3d 805, 813 (Mo. App. E.D. 2015)

It is undisputed that Defendant Smith would attempt to enter the Zoo property with a firearm if there were no injunction barring him from doing so. Generally, the phrase "no adequate remedy at law" means that monetary damages will not adequately compensate

the plaintiff for the injury or threatened injury. City of Greenwood v. Martin Marietta Materials, Inc., 311 S.W.3d 258, 265-66 (Mo.App. W.D. 2010). Plaintiff has shown there is no adequate remedy at law for the relief it seeks. Secondly, the Zoo has shown that irreparable damage will result to the Zoo in the absence of injunctive relief. The Zoo has shown that the safety, patronage and image of the Zoo will be compromised if visitors are permitted to carry firearms or other weapons on Zoo property, which would significantly harm the level of visitorship, as well as the mission, the public image and the autonomy of the Zoo as an institution.

Finally, the Zoo's prohibition of weapons is not unlawful or unconstitutional. By city ordinance, persons within the city limits of the City of St. Louis at a place of public accommodation, which would include the Zoo, are not permitted to openly carry firearms. Section 15.130.040 of St. Louis City's Revised Code provides that:

No person, in any place of public accommodation or any public gathering or on any public property, street or thoroughfare, shall carry on or about his person, any firearm, pistol, revolver, shotgun, rifle or springback knife, or other weapon proscribed under Section 564.610 Missouri Revised Statutes, exposed in whole or in part to view.

However, effective August 28, 2014, the Missouri State Legislature preempted this St. Louis City Ordinance to the extent the person carrying the firearm has in his or her possession a valid concealed carry endorsement or permit issued by the State of Missouri, or a permit from another state that is recognized by Missouri. See 21.750.1 RSMo ("Preemption Statute"). In spite of the Preemption Statute, however, §571.107 sets out exceptions to concealed and open carry in Missouri ("Carry Statute"). Section 571.107.1 RSMo states in pertinent part as follows:

1. A concealed carry permit issued pursuant to sections 571.101 to 571.121, a valid concealed carry endorsement issued prior to August 28, 2013, or a concealed carry endorsement or permit issued by another state or political subdivision of another state shall authorize the person in whose name the permit or endorsement is issued to carry concealed firearms on or about his or her person or vehicle throughout the state. No concealed carry permit issued pursuant to sections 571.101 to 571.121, valid concealed carry endorsement issued prior to August 28, 2013, or a concealed carry endorsement or permit issued by another state or political subdivision of another state shall authorize any person to carry concealed firearms into:

* * *

(9) Any place where the carrying of a firearm is prohibited by federal law;

(10) Any higher education institution or elementary or secondary school facility without the consent of the governing body of the higher education institution or a school official or the district school board, unless the person with the concealed carry endorsement or permit is a teacher or administrator of an elementary or secondary school who has been designated by his or her school

district as a school protection officer and is carrying a firearm in a school within that district, in which case no consent is required. Possession of a firearm in a vehicle on the premises of any higher education institution or elementary or secondary school facility shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

(11) Any portion of a building used as a child care facility without the consent of the manager. Nothing in this subdivision shall prevent the operator of a child care facility in a family home from owning or possessing a firearm or a concealed carry permit or endorsement;

* * *

(13) Any gated area of an amusement park. Possession of a firearm in a vehicle on the premises of the amusement park shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

* * *

Plaintiff argues that the Zoo fits within the definition of one or more of the Gun Free Zones set forth in the Carry Statute, specifically those for an educational facility, a day care, and an amusement park. The uncontroverted facts show that, in addition to the established on-site pre-school facility the Zoo operates, the Zoo and its overall operations are very heavily infused with a wide variety of educational programs and activities aimed at elementary and secondary level students. In 2015 alone, 486,410 students participated in the Zoo's educational programs. Given these facts, plus the readily apparent underlying public policy of

protecting children in educational settings from the dangers and distractions of firearms, this Court has no difficulty in concluding that the entire gated campus of the Zoo constitutes an elementary/secondary "school facility," for purposes of subsection .1(10) of the Carry Statute.

Additionally, the Zoo is clearly a gated "amusement park" within the meaning of subsection .1(13) of the Carry Statute. The Zoo welcomes as many as twenty to thirty thousand visitors per day for amusement purposes. The Zoo is a family attraction where the presence of guns would be irregular and dangerous. The Zoo falls squarely into at least two lawful exceptions of the Carry Statute, and therefore the Zoo's prohibition on guns and weapons is not unlawful.

Neither is the Zoo's prohibition of guns unconstitutional. The Second Amendment of the United States Constitution states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Further, Article I, section 23 of the Missouri Constitution reads as follows:

Section 23. That the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned. The rights guaranteed by this section shall be unalienable.

Any restriction on these rights shall be subject to strict scrutiny and the State of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those adjudicated by a court to be a danger to self or others as a result of a mental disorder or mental infirmity.

(Emphasis added.) The Court finds that the Zoo's policy prohibiting visitors from carrying guns on the Zoo's campus is narrowly tailored to support a reasonable government purpose, and therefore, would survive a "strict scrutiny" challenge under well-settled legal precedents that inform the meaning of the term "strict scrutiny" in the context of gun regulation laws. See generally, State v. McCoy, 468 S.W.3d 892, 897 (Mo. banc 2015). The same would also be true, the Court holds, if strict scrutiny analysis were applied to these same restrictions under the Second Amendment. See id., 468 S.W.3d at 896, n.4. Accordingly, neither the Second Amendment nor Missouri's Article I, §23 provides Defendant Smith with an affirmative defense which can validly overcome Plaintiff Zoo's right, under the laws of this State, to prohibit Smith from carrying firearms onto the Zoo's property.

THEREFORE, it is Ordered and Decreed that Plaintiff Zoological Park Subdistrict of the Metropolitan Park Museum

District's Motion for Summary Judgment is GRANTED. Defendant Jeffrey K. Smith and anyone acting in concert or participation with him who has knowledge of this Order, is hereby permanently restrained and enjoined from entering upon the Saint Louis Zoo property in possession of a firearm or any other weapon capable of lethal use, regardless of whether such weapon is possessed openly or concealed.

SO ORDERED:



JOAN L. MORIARTY, Judge

Dated: June 23, 2017