

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FILED

May 23, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170331-U

NO. 4-17-0331

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DOUGLAS COUNTY,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Douglas County
DENISE M. WILHOIT,)	No. 15OV24
Defendant-Appellant.)	
)	Honorable
)	Gary A. Webber,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Harris and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding defendant failed to show Douglas County ordinance 15-O-4 was unconstitutional as applied to her.

¶ 2 Defendant, Denise M. Wilhoit, appeals from the trial court’s order, finding she violated Douglas County ordinance 15-O-4 by permitting alcohol consumption at an adult entertainment facility. On appeal, defendant argues Douglas County ordinance 15-O-4 is unconstitutional as applied to her because the plaintiff, Douglas County (the County), failed to provide her with actual notice of the board meeting where the ordinance was discussed and then enacted. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant is the president of Dirt Cheap, Inc. Dirt Cheap, Inc., owns and operates

an adult entertainment facility, The Hideout Gentlemen’s Club (the Hideout), in Douglas County, Illinois. Michael Bickers is also an officer of Dirt Cheap, Inc.

¶ 5 At the time Dirt Cheap, Inc., purchased the Hideout, the County did not have an ordinance prohibiting the consumption of alcohol in adult entertainment facilities. Defendant, in operating the Hideout, engaged in the practice of permitting the patrons of the establishment, without any exchange of consideration, to consume their own alcoholic beverages while watching nude dancing.

¶ 6 At a June 17, 2015, board meeting, the County discussed and then enacted Douglas County ordinance 15-O-4, which became effective July 1, 2015. In part, the ordinance provided: “It shall be unlawful for any adult entertainment employee to permit the consumption or possession of alcoholic beverages on the premises of any adult entertainment facility under their ownership, management, or control.” Neither defendant nor Bickers received actual notice of the June 17, 2015, board meeting.

¶ 7 In September 2015, the County filed an ordinance-violation complaint against defendant. In part, the County alleged, on July 24, 2015, defendant violated Douglas County ordinance 15-O-4 by permitting alcohol consumption at the Hideout.

¶ 8 In November 2016, defendant filed a “Petition for Declaratory Judgment.” Defendant argued Douglas County ordinance 15-O-4 was unconstitutional as applied to her because the County failed to provide her with actual notice of the June 17, 2015, board meeting. Defendant asserted she was entitled to actual notice because the ordinance deprived her of a property right. That is, defendant contended the ordinance had a sufficient taking affect on her “pre-existing business.” The County later filed a response, arguing, in part, defendant was not

entitled to actual notice because she did not have a property right in permitting alcohol consumption at the Hideout.

¶ 9 Following a March 2017 hearing, the trial court rejected defendant’s argument suggesting Douglas County ordinance 15-O-4 was unconstitutional as applied to her, finding she was not entitled to actual notice of the June 17, 2015, board meeting because she did not have a property right in permitting the consumption of alcohol at the Hideout. The court further found, based on the stipulated evidence, defendant violated Douglas County ordinance 15-O-4. The court imposed a \$500 fine and costs against defendant.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues Douglas County ordinance 15-O-4 is unconstitutional as applied to her because the County failed to provide her with actual notice of the June 17, 2015, board meeting where Douglas County ordinance 15-O-4 was discussed and then enacted. The County disagrees.

¶ 13 Defendant does not dispute the County provided the public with sufficient notice of the June 17, 2015, board meeting. Rather, defendant asserts she was entitled to additional, actual notice because the ordinance took away her preexisting business. In support of her argument, defendant cites, without any discussion, the following two cases: (1) *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); and (2) *Covey v. Town of Somers*, 351 U.S. 141 (1956).

¶ 14 “Procedural due process is founded upon the notion that prior to a deprivation of life, liberty or property, a party is entitled to ‘notice and opportunity for [a] hearing appropriate

to the nature of the case.” ’ ’ ” *Passalino v. City of Zion*, 237 Ill. 2d 118, 124, 928 N.E.2d 814, 818 (2010) (quoting *Jones v. Flowers*, 547 U.S. 220, 223 (2006) (quoting *Mullane*, 339 U.S. at 313)).

We turn first to the question of whether Douglas County ordinance 15-O-4 deprived defendant of a property right. See *Id.* at 124-25; *Mullane*, 339 U.S. at 313.

¶ 15 Defendant asserts Douglas County ordinance 15-O-4 deprived her of a property right in her preexisting business. That is, defendant suggests the ordinance deprived her of her preexisting business of permitting patrons to consume their own alcoholic beverages while watching nude dancing. Defendant, however, did not offer any evidence suggesting permitting patrons to consume their own alcoholic beverages had any impact on her business. Moreover, defendant has failed to present any relevant legal authority or reasoned argument suggesting such permissive activity may create a protectible property right. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017); see generally *Country Preferred Ins. Co. v. Groen*, 2017 IL App (4th) 160028, ¶ 12, 69 N.E.3d 911. Defendant has failed to show Douglas County ordinance 15-O-4 deprived her of a property right. We find no basis to conclude defendant was entitled to notice in addition to that already provided to the public.

¶ 16 III. CONCLUSION

¶ 17 We affirm the trial court’s judgment.

¶ 18 Affirmed.