

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

ATTORNEY GENERAL, BILL SCHUETTE,
ex rel, MICHIGAN DEPARTMENT OF
HUMAN SERVICES,

Plaintiff,

Case No. 12-438-CZ

HON. JAMES JAMO

v

CLARENCE and LURA BARRETT, husband
and wife; SHAWN BARRETT,

Defendants.

Darrin F. Fowler (P53464)
Katherine Bennett (P75913)
Attorneys for Plaintiff
Michigan Department of Attorney General
Health, Education & Family Services Division
P.O. Box 30758
Lansing, MI 48909
(517) 373-7700

Harrison W. Munson (P46624)
Harrison W. Munson P.C.
Attorney for Defendants
660 Woodward Avenue, Suite 1545
First National Building
Detroit, MI 48226
(313) 965-0555

ORDER GRANTING SUMMARY DISPOSITION
AND FOR PERMANENT INJUNCTION

At a session of said court, held on
the 12 day of April, 2013 in the
County of Ingham, State of Michigan

PRESENT: Hon. James Jamo,
Circuit Court Judge

This matter has come before this Court on Plaintiff's Complaint alleging that Defendants are operating an unlicensed adult foster care facility in violation of the Adult Foster Care Facilities Licensing Act, MCL 400.701 *et seq.* The Court has reviewed the filings of the parties and has heard oral argument and is otherwise fully advised in the premises. NOW, for the reasons stated on the record:

IT IS HEREBY ORDERED that Plaintiff's summary disposition motion pursuant to MCR. 2.116(C)(10) is GRANTED as against all Defendants;

IT IS FURTHER ORDERED that Defendants are permanently enjoined from operating an unlicensed adult foster care facility anywhere in the State of Michigan without a valid license issued by the Michigan Department of Human Services;

IT IS FURTHER ORDERED that Defendants shall cooperate with the Department of Human Services' Adult Protective Services workers and licensing consultants, representatives of Community Network Services, and State and local law enforcement officers by allowing them access to the home at 337 W. Kennett Road in Pontiac for the purposes of evaluating and relocating all persons currently residing there (except for Defendants);

IT IS FURTHER ORDERED that Defendants are permanently enjoined from providing room, board, or other services at any location in the State of Michigan to any person who was a resident of 337 W. Kennett Road in Pontiac at the time it was licensed as an adult foster care facility.


James Jamo,
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the Order Granting Summary Disposition and for Permanent Injunction upon Darrin F. Fowler and Harrison W. Munson by placing said documents in an envelope and placing same for mailing with the United States Mail at Lansing, Michigan, on April 12, 2013.



Janell L. Liles
Judicial Assistant

STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT, TRIAL DIVISION

ATTORNEY GENERAL, BILL SCHUETTE,
ex rel, MICHIGAN DEPARTMENT
OF HUMAN SERVICES,

Plaintiff,

v

File No. 12-438-CZ

CLARENCE BARRETT and LURA BARRETT,
husband and wife, and SHAWN BARRETT,

Judge Jamo

Defendant.

OPINION AND ORDER GRANTING PERMANENT INJUNCTION

At a session of said court held in the circuit courtrooms,
Lansing, MI, this 13 day of April, 2013:

Present: Honorable Richard D. Ball, Visiting Circuit Judge by SCAO Assignment

Michigan regulates and licenses adult foster care facilities in accordance with MCL 400.701 *et seq.*

Per MCL 400.703(4):

(4) "Adult foster care facility" means a governmental or nongovernmental establishment that provides foster care to adults. Subject to section 26a(1), adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care.

The statute sets forth the requirements for licensing and the obligations of the licensee. MCL 400.713. The statute provides for criminal penalties for those persons who operate an AFCF without a license. MCL 400.713; MCL 400.731. The statute further provides for injunctive relief in the event an adult foster care facility is operating without complying with the requirements of MCL 400.713.

Through June, 2011, defendant Lura Barrett operated a licensed adult foster care facility (AFCF) at 337 W. Kennett Rd., Pontiac, MI. The property was owned by defendants Lura and Clarence Barrett.

Defendant Lura Barrett's license to operate the Kennett Rd. AFCH was revoked in June, 2011 after she was convicted of Medicare fraud in federal court.

After June, 2011, Lura Barrett's son, Shawn Barrett continued to operate the home while pursuing issuance of a license from plaintiff Department of Human Services in accordance with the requirements of MCL 400.713.

The license sought by to Shawn Barrett was denied in October, 2011, but the residents at Kennett Rd. continued to reside at that location after the AFCH license was revoked and after the request for reissuance of the license to Shawn Barrett was denied.

Plaintiff filed this proceeding, seeking a permanent injunction prohibiting the defendants from operating an unlicensed AFCH. Suit was filed April 20, 2012. Eventually, on December 12, 2012, defendant Lura Barrett and a number of the residents living at Kennett Rd. were deposed.

Thereafter plaintiff moved for summary disposition under MCR 2.116(C)(10) asserting the lack of any genuine dispute as to the following material facts:

1. That on December 20, 2012, defendants operated an AFCH at the Kennett Rd. address without having obtained a license. On that date the property was owned by defendants Lura and Clarence Barrett, who are husband and wife, and "managed" by their son, Shawn Barrett.
2. That defendants provided full-time supervision for residents at the property and that defendant Shawn Barrett resided at the property and if he was not able to spend the night there that Lura Barrett would.
3. That the residents at Kennett Rd. were psychologically or emotionally impaired and required supervision. "(T)he residents in that home [have] all kinds of different mental or psychological problem[s]."
4. That defendants secured medications prescribed for the residents and supervised the dispensing of those medications.
5. That defendants provided transportation for the residents to and from medical appointments.

6. That defendants arranged for a physician to visit the residents at the property.

7. That defendants provided the residents meals and supervise the residents' personal hygiene.

8. That defendants provided protection for the residents in the event of an emergency and in the event of altercations between residents.

9. That defendants assisted the residents with financial matters.

Simply put the services provided by defendants for the residents of the Kennett Rd. location are services contemplated by the adult foster care home licensing statute and the residents are mentally challenged individuals who require the services provided by a licensed AFCF.

The cold prose set forth in the transcript of Lura Barrett's deposition cannot hide her attempt to avoid the law she knows to apply to adult foster care facility that continues to operate at the Kennett Rd. property. That she refers to the facility as a "bed and board" or "bed and breakfast" is an insult to the law promulgated to protect those who reside in an AFCF, i.e. those who by definition cannot help themselves.

Plaintiff correctly asserts that the court should engage in a balancing of equitable factors before issuing a permanent injunction. *Kernen v Homestead Dev Co*, 232 Mich App 503, 514; 591 NW2d 369 (1998). And, truthfully, the court did not grant the motion for summary disposition at the time of hearing March 20, 2013, in part because it was not comfortable with the scope of the injunctive relief requested by plaintiff.

Balancing the equities in this case, however, given the undisputed facts set forth above and included in the documents and affidavits submitted by plaintiff in support of its motion for summary disposition under MCR 2.116(C)(10) becomes a fairly short exercise. It is obvious the AFCF statute was promulgated for the protection of individuals who, by definition, are not able to protect themselves, and, perhaps to a lesser extent, for the protection of the public.

There is no remedy available for the protection of the persons who are residents at the Kennett Rd. property, those guardians, attorneys-in-fact or relatives who have placed residents there other than to enjoin the three individual defendants from operating an unlicensed adult

foster care facility, and requiring the three individual defendants, and those acting in concert and participation with the three defendants, to cooperate with plaintiff and related agencies in identifying the residents, determining whether each resident should be placed in a licensed adult foster care facility.

Defendants' assertion that their right to operate their "bed and board" is guaranteed by the Fifth Amendment to the US Constitution is disingenuous at best. And it is ironic that the part of the Fifth Amendment defendant Lura Barrett failed to invoke during her deposition was that part that protected her from answering questions that tended to incriminate her.

For the reasons set forth above, with the record disclosing no genuine issues of material fact, the court grants plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). Contemporaneously herewith, the court will sign the proposed injunctive order earlier submitted by plaintiff and

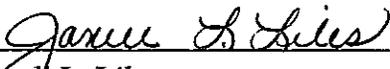
IT IS SO ORDERED.



Richard D. Ball P-26513
Visiting Circuit Judge by SCAO
Assignment

PROOF OF SERVICE

I hereby certify that I served a copy of the Opinion and Order Granting Permanent Injunction upon Darrin F. Fowler and Harrison W. Munson by placing said documents in an envelope and placing same for mailing with the United States Mail at Lansing, Michigan, on April 12, 2013.



Janell L. Liles
Judicial Assistant