Rel: August 26, 2022

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210316

City of Center Point

v.

Atlas Rental Property, LLC, and Spartan Invest, LLC

Appeal from Jefferson Circuit Court
(CV-22-900072)

SELLERS, Justice.

The City of Center Point ("the City") appeals from a preliminary injunction entered by the Jefferson Circuit Court prohibiting the City from enforcing Ordinance No. 2019-11 ("the ordinance") because, the trial

court held, the ordinance is preempted by the Alabama Uniform Residential Landlord and Tenant Act ("the AURLTA"), § 35-9A-101 et seq., Ala. Code 1975. We affirm.

I. Facts

The City enacted the ordinance to "require owners, landlords, tenants, and roomers to maintain and improve the quality and appearance of rental housing in the City and to protect the health and safety of persons." The ordinance became effective October 1, 2019, and requires, in relevant part, that a landlord obtain a certificate of occupancy before allowing a new tenant to take possession of a rental-housing unit. Such a certificate of occupancy is valid for 12 months from the date it is issued or until the rental-housing unit becomes vacant, whichever occurs first. The ordinance specifically provides that, once a rental-housing unit becomes vacant, the landlord is responsible for notifying the City's "housing official," making a timely application for a certificate of occupancy, and scheduling an inspection to determine whether the rental-housing unit complies with the City's "technical

codes."[1] The City charges a $50 inspection fee for each certificate of occupancy. If a rental-housing unit fails to comply with any of the City's technical codes, a certificate of occupancy will not issue. Finally, the ordinance makes it unlawful for a rental-housing unit to become or remain occupied without a certificate of occupancy. Any violation of the ordinance is punishable by a fine not to exceed $500 for each offense, and a "willful violation" is punishable "by imprisonment, not to exceed six (6) months, or both [imprisonment and a fine], at the discretion of the court trying the same. Each day shall constitute a separate offense."

Atlas Rental Property, LLC, manages rental-housing property within the City's limits. Spartan Invest, LLC, owns and rents rental-housing property within the City's limits. Atlas and Spartan ("the plaintiffs") sought preliminary and permanent injunctive relief against the City, arguing that the ordinance was preempted by § 35-9A-121, Ala. Code 1975, of the AURLTA. Following a hearing, the trial court entered an order finding that the plaintiffs had demonstrated a reasonable

[1]The ordinance defines the City's technical codes as "the various technical codes promulgated by the International Code Council and the National Fire Protection Association relating to buildings, residences and other structures in the City …."

chance of success on the merits because, it concluded, the ordinance was preempted by § 35-9A-121. The trial court further found that the plaintiffs had proven all other elements necessary for the entry of a preliminary injunction. This appeal followed.

II. Standard of Review

A party seeking a preliminary injunction must demonstrate that (1) the party would suffer irreparable harm without the injunction, (2) the party has no adequate remedy at law, (3) the party has at least a reasonable chance of success on the ultimate merits of the case, and (4) the hardship that the injunction will impose on the opposing party will not unreasonably outweigh the benefit accruing to the party seeking the injunction. Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1176 (Ala. 2008). Generally, "'[t]he decision to grant or to deny a preliminary injunction is within the trial court's sound discretion. In reviewing an order granting a preliminary injunction, the Court determines whether the trial court exceeded that discretion.'" Holiday Isle, 12 So. 3d at 1175-76 (quoting SouthTrust Bank of Alabama, N.A. v. Webb-Stiles Co., 931 So. 2d 706, 709 (Ala. 2005)). We review the legal rulings of the trial court, to the

extent they resolve questions of law based on undisputed facts, de novo. Id. at 1176.

III. Discussion

A. Reasonable Chance of Success on the Ultimate Merits

The City argues that the plaintiffs failed to demonstrate that they have a reasonable chance of success on the ultimate merits of their case because, it says, the ordinance is not preempted by § 35-9A-121. The City specifically claims that the AURLTA governs only the landlord-tenant relationship. The City points out that the stated purpose of the ordinance is to encourage landlords and tenants to maintain and improve the quality of rental-housing units and to protect the health and safety of tenants and their families. Thus, the City contends that the ordinance regulates only "rental-housing units," not the contractual relationship between a landlord and a tenant.[2]

Section 11-45-1, Ala. Code 1975, provides, in relevant part, that a municipality may "adopt ordinances and resolutions not inconsistent

[2]The City asserts that its existing building regulations, adopting the 2015 International Property Maintenance Code, govern the conditions and maintenance of all property, buildings, and structures within the City's limits and that those building regulations grant the City the authority to inspect such property, buildings, and structures.

with the laws of the state" to provide for the health and safety of the inhabitants of the municipality. In other words, the legislature has clothed municipalities with the authority to adopt ordinances pursuant to their police powers. St. Clair Cnty. Home Builders Ass'n v. City of Pell City, 61 So. 3d 992 (Ala. 2010). Municipal ordinances, however, may be preempted by a state statute in three situations: (1) "when the statute defines the extent to which its enactment preempts municipal ordinances," (2) "when a municipal ordinance attempts to regulate conduct in a field that the legislature intended the state law to exclusively occupy," and (3) "when a municipal ordinance permits what a state statute forbids or forbids what a statute permits." Ex parte Tulley, 199 So. 3d 812, 821 (Ala. 2015).

Section 35-9A-102(b), Ala. Code 1975, states that the underlying purposes and policies of the AURLTA are:

> "(1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;
>
> "(2) to encourage landlords and tenants to maintain and improve the quality of housing; and
>
> "(3) to make uniform the law with respect to the subject of [the AURLTA] among those states which enact it."

(Emphasis added.)

Section 35-9A-121 specifically states:

> "[1.] [The AURLTA] applies to and is the exclusive remedy to regulate and determine rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state. [2.] No resolution or ordinance relative to residential landlords, rental housing codes, or the rights and obligations governing residential landlord and tenant relationships shall be enacted or enforced by any county or municipality, and any such resolution or ordinance enacted both prior to or after January 1, 2007, is superseded by [the AURLTA]. [3.] Notwithstanding these provisions, a county or municipality may enact and enforce building codes, health codes, and other general laws that affect rental property provided that such codes equally affect similarly situated owner-occupied residential property."

(Emphasis added.)

The trial court concluded that the ordinance fits "squarely" within the City's police power to adopt ordinances; but, it determined, the express language of § 35-9A-121 preempts the ordinance based on the legislature's clear indication that regulation of the landlord-tenant relationship in Alabama is an area the legislature intended to occupy to the exclusion of counties and municipalities. We agree. Section 35-9A-121 contains three provisions. Relevant here is the second provision, which expressly prohibits ordinances "relative to residential landlords, rental housing codes, or the rights and obligations governing residential

landlord and tenant relationships." The ordinance specifically relates to residential landlords and the rights and obligations governing the landlord-tenant relationship. The ordinance provides that, each time a rental-housing unit becomes vacant, a landlord is obligated to obtain a certificate of occupancy, which requires that the rental-housing unit be inspected for compliance with the City's technical codes. Moreover, the ordinance makes it unlawful for a rental-housing unit to be occupied without a valid certificate of occupancy and specifically provides that any violation of the ordinance is punishable by fine, imprisonment, or both. In other words, the ordinance directly interferes with the landlord-tenant relationship by restricting any association between a landlord and a prospective tenant and by preventing a contract from even forming between them unless and until the landlord acquires a certificate of occupancy. Although the stated purpose of the ordinance is "to maintain and improve the quality and appearance of rental housing in the City and to protect the health and safety of persons," it is clear that everything the ordinance purports to accomplish in that regard is addressed by the AURLTA, thus proving that the ordinance is duplicative, unnecessary, and the exact type of regulation the legislature intended to preempt.

Specifically, § 35-9A-204, Ala. Code 1975, already imposes upon a landlord affirmative duties relative to the repair and maintenance of rental-housing units. Section 35-9A-204(a) specifically states that a landlord shall:

> "(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;[3]
>
> "(2) make all repairs and do whatever is necessary to put and keep the premises in a habitable condition;
>
> "(3) keep all common areas of the premises in a clean and safe condition;
>
> "(4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;
>
> "(5) provide and maintain appropriate receptacles and conveniences for the removal of garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and
>
> "(6) supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so

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[3]The Alabama Comment to § 35-9A-204 states that subsection (a)(1) "requires compliance with various applicable city, county, and state building and housing codes" and that "[t]he generally accepted code is the 'Standard Housing Code' by the Southern Building Code Congress International, Inc."

> constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection."

Section 35-9A-401, Ala. Code 1975, further sets forth the available remedies for a landlord's noncompliance with the applicable building and housing codes affecting health and safety. In summary, the legislature has clearly stated its intent of revising and making uniform the law governing "the rental of dwelling units" and "the rights and obligations of landlords and tenants." § 35-9A-102(b)(1). The ordinance in this case clearly runs afoul of the legislature's intent by seeking to regulate an area of the law that the legislature intended the AURLTA to exclusively occupy. We conclude that the trial court properly held that the ordinance is expressly preempted by § 35-9A-121; accordingly, the trial court did not err in determining that the plaintiffs had demonstrated a reasonable chance of success on the ultimate merits of their case.

B. Irreparable Harm for Which There is No Adequate Remedy at Law

The City argues that the plaintiffs failed to demonstrate the sort of irreparable harm that would support injunctive relief because, it says, the harm they allege can be remedied through an award of monetary

damages. In Water Works & Sewer Board of Birmingham v. Inland Lake Investments, LLC, 31 So. 3d 686, 692 (Ala. 2009), this Court stated that

> "'"[i]rreparable injury" is an injury that is not redressable in a court of law through an award of money damages.' Perley v. Tapscan, Inc., 646 So. 2d 585, 587 (Ala. 1994). The Court has likewise stated that '[a] plaintiff that can recover damages has an adequate remedy at law and is not entitled to an injunction.' SouthTrust Bank of Alabama, N.A. v. Webb-Stiles Co., 931 So. 2d 706, 709 (Ala. 2005). Thus, 'a conclusion that the injury is irreparable necessarily shows that there is no adequate remedy at law.' Fleet Wholesale Supply Co. v. Remington Arms Co., 846 F.2d 1095, 1098 (7th Cir. 1988)."

(Footnote omitted.)

After considering the parties' arguments, the trial court concluded that it was evident from the nature of the requirements of the ordinance, as well as the nature of the penalties for compliance with the ordinance, that it would be difficult, if not impossible, to accurately calculate the future damages that the plaintiffs might suffer if the ordinance were allowed to stand, notwithstanding its determination that the ordinance was preempted by the AURLTA. We agree. In support of their motion for a preliminary injunction, the plaintiffs argued, in relevant part, that they would suffer immediate and irreparable injury as a result of being unable to perform repairs to rental-housing units and being unable to arrange for utility services for the units. The plaintiffs also presented

various arguments regarding the penalties imposed for noncompliance with the ordinance. Finally, the plaintiffs pointed out that enforcement of the ordinance not only would interfere with their business relations and their freedom to contract, but also would subject them to a myriad of potential lawsuits. The City makes no attempt to dispute the trial court's determination regarding future damages. Accordingly, the trial court did not exceed its discretion in determining that, without a preliminary injunction, the plaintiffs will suffer irreparable harm for which there is no adequate remedy at law.

C. Balance of Harms Favoring the Plaintiffs

Finally, the City argues that the preliminary injunction prevents the City from performing inspections on dangerous and unsanitary rental-housing units and from ensuring that such units comply with the City's technical codes. Thus, the City says, the risk of harm from enjoining its enforcement of the ordinance greatly outweighs any harm that the plaintiffs may incur by having to comply with the ordinance. In reviewing a motion for a preliminary injunction, "the trial court, in its discretion and given the facts and circumstances of each case, may consider and weigh the relative hardships that each party may suffer

against the benefits that may flow from the grant of the preliminary injunction." Martin v. First Fed. Sav. & Loan Ass'n of Andalusia, 559 So. 2d 1075, 1079 (Ala. 1990). Here, it is undisputed that the City has other avenues to protect the health and safety of its citizens. Specifically, the City concedes that Section 6-17 of its "existing Building Regulations adopts the 2015 International Property Maintenance Code to govern the conditions and maintenance of all property, buildings, and structures within the City," not just rental-housing units, and that those building regulations grant the City "the authority to inspect all buildings and structures in the City." The limitation of the ordinance to rental-housing units imposes additional regulations on landlords and tenants by applying a mandatory-inspection regime to certify compliance with the City's technical codes. As previously indicated, by enacting and enforcing the ordinance, the City has attempted to regulate an area of the law that the legislature intended the AURLTA to exclusively occupy. Accordingly, the trial court did not exceed its discretion in determining that the harm imposed on the City as a result of the issuance of the preliminary injunction is outweighed by the harm to the plaintiffs by not issuing the preliminary injunction.

IV. Conclusion

Based on the foregoing, the trial court did not exceed its discretion by entering a preliminary injunction prohibiting the City from enforcing the ordinance; accordingly, its judgment is affirmed.

AFFIRMED.

Bolin, Wise, and Stewart, JJ., concur.

Parker, C.J., concurs in part and concurs in the result, with opinion.

PARKER, Chief Justice (concurring in part and concurring in the result).

I concur in affirming the preliminary injunction because I agree with the main opinion's analysis except as to the no-adequate-remedy-at-law element and because, as to this element, the City of Center Point does not sufficiently challenge the basis for the circuit court's ruling. But I would not approve the circuit court's ruling on this element, because that ruling misunderstood the concept of an adequate remedy at law.

The circuit court concluded that it would be "difficult[to] calculat[e] the damages that would be suffered in the future." In particular, during the preliminary-injunction hearing, the court emphasized the difficulty of "predicting" ahead of time the exact amount of damages the plaintiffs would suffer. The main opinion agrees with that reasoning.

However, that reasoning fundamentally misunderstood the requirement that a plaintiff have no adequate remedy at law. This element has nothing to do with whether, at the time of deciding the motion for a preliminary injunction, the quantity of future harm to the plaintiff's interests can be predicted. Rather, this element asks whether, at the future time of final judgment, an amount of money damages that legally cures the plaintiff's harm will be quantifiable. See State ex rel.

Marshall v. TY Green's Massage Therapy, Inc., 332 So. 3d 413, 428 (Ala. 2021) (Parker, C.J., concurring in result). If "'adequate compensatory ... relief will be available at a later date, in the ordinary course of litigation,'" Morgan v. Fletcher, 518 F.2d 236, 240 (5th Cir. 1975) (citation omitted; emphasis added), i.e., at the time of final judgment, then the plaintiff has an adequate remedy at law. This element is most clearly met when, "[s]hould [the plaintiff] prevail on [its] ... claims, monetary damages ... [will] be adequate and easily quantifiable," Ex parte B2K Sys., LLC, 162 So. 3d 896, 906 (Ala. 2014) (emphasis added). Conversely, if "the [trial] court [will] be unable to grant an effective monetary remedy after a full trial because such damages [will] be inadequate or difficult to ascertain," Dominion Video Satellite, Inc. v. EchoStar Satellite Corp., 269 F.3d 1149, 1156 (10th Cir. 2001) (emphasis added), then the plaintiff has no adequate remedy at law.

This element's time perspective is illustrated by a case similar to the present one, Dennis Melancon, Inc. v. City of New Orleans, 703 F.3d 262, 279 (5th Cir. 2012). There, taxicab operators challenged local ordinances regulating the taxicab industry. The operators sought a preliminary injunction prohibiting enforcement of the ordinances,

arguing that their costs of compliance would be heavy. The United States Court of Appeals for the Fifth Circuit rejected that argument as a basis for a preliminary injunction. The court explained that, if the operators were to ultimately prevail on their claims, they would then be able to "recover the amounts they erroneously will have expended to comply with the ordinances." Id. at 279. And those amounts could be "ascertained with precision at a later hearing." Id. Because monetary damages would be calculable at that future time, the operators were not entitled to a preliminary injunction.

Accordingly, the no-adequate-remedy element does not depend on whether a judge can predict ahead of time the amount of monetary harm a plaintiff will suffer. Otherwise, many ordinary contract and tort actions would be eligible for a preliminary injunction, because often the exact amount of loss is uncertain until the end of the litigation. Here, the circuit court incorrectly analyzed the no-adequate-remedy element prospectively, asking whether the plaintiffs' monetary harm could be predicted. Viewed from the correct angle, though, several of the types of harm that the court relied on will be readily calculable at the time of final judgment: the plaintiffs' repair costs, utility costs, penalties for

noncompliance with the ordinance, and fees paid to inspectors. Because the court will be able to precisely calculate those harms, they did not weigh in favor of ruling that the plaintiffs had no adequate remedy at law.