IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

JESSICA BARRON, KENNETH WYLIE, and WILLIAM CAMPBELL,

Plaintiffs,

v.

THE CITY OF GRANITE CITY, ILLINOIS,

Defendant.

Case No. 3:19-cv-00834-SMY-MAB

PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND RENEWED MOTION FOR PRELIMINARY INJUNCTION (ECF 6)

Jessica Barron and Kenny Wylie have lived under the threat of eviction since June—when Granite City police first served them with a compulsory-eviction demand. On August 2, they and their landlord moved for a preliminary injunction to protect their home while this case is litigated. The City opposed that motion. It claimed, foremost, that any threat of compulsory eviction remained "entirely speculative." Opp. to Prelim. Inj. Mot. 9 (ECF 16). When the City filed its brief, a "grievance" process was pending at city hall. And that process, the City asserted, might well result in the City's changing its mind about whether Jessica and Kenny should be evicted. At the same time, the City conceded that the threat to their rights would ripen instantly if and when the grievance process "terminate[d] with a ruling in the City's favor." *Id.* At that point, the City would have a free hand to "compel" their eviction. *Id.* 2. The likelihood of harm would "at that time" be imminent and this Court's intervention warranted. *See id.*

On September 27, the grievance process terminated with a ruling in the City's favor. (Plaintiffs learned of the ruling on October 4.) The city hearing officer summarily reaffirmed that Jessica and Kenny's landlord "must begin eviction proceedings" against them. Gedge Decl.

Ex. 1, at 2. The City has now had every opportunity to rethink its campaign to strip Jessica and Kenny of their home. It has chosen to forge ahead. And having checked the grievance-hearing box, it now has free rein to "tak[e] further action to bring compliance with the eviction requirement." Opp. to Prelim. Inj. Mot. 9. In less sterilized terms, the City is poised to make an entire family homeless. It is doing so based on a crime it knows someone else committed. It is doing so on the strength of an ordinance that its chief lawyer admits is unusually "controversial." Compl. ¶ 14. And it has left Plaintiffs with no option but to urgently renew their request for a preliminary injunction (ECF 6). If the Court cannot rule on that motion immediately, Plaintiffs ask that a temporary restraining order issue without delay to preserve their rights until the preliminary-injunction motion can be decided.

1. Since May of this year, Granite City has taken escalating steps to compel Jessica Barron and Kenny Wylie's eviction from their home. *See* Mot. Prelim. Inj. 1-2, 7-9 (detailing demands and threats). On August 1, Jessica, Kenny, and their landlord, Bill Campbell, commenced this action. A day after that, they moved for a preliminary injunction. That motion details how the City seeks to punish Jessica and Kenny for a crime they had nothing to do with. It submits that this exercise in collective punishment violates both the Due Process Clause and the Equal Protection Clause. Mot. Prelim. Inj. 9-17. And it describes the irreparable harm that is likely to ensue. Put bluntly, Jessica, Kenny, and their three children face homelessness if the City persists in compelling their eviction. *Id.* 17-20.

The City's response brief brushed past three of the four requirements for preliminary-injunctive relief. The City did not seriously dispute that granting such relief would be in the public interest. *Compare* Mot. Prelim. Inj. 20, *with* Opp. Mot. Prelim. Inj. 15. The City also skated over the balance of hardships. *Compare* Mot. Prelim. Inj. 19-20, *with* Opp. Mot. Prelim.

Inj. 14-15. As for the merits, the City cited no precedent and devoted much of its brief to rebutting arguments Plaintiffs' motion did not make. Opp. Mot. Prelim. Inj. 14 (takings claim); *id.* (freedom-of-association claim), *id.* 12 (procedural due process).

Distilled, the City's main objection to preliminary relief was this: In the City's view, federal-court intervention was a hair premature. The City did not deny that the "potential loss of [a] home" is a classic "irreparable harm." *Vignola v. 151 N. Kenilworth Condo. Ass'n*, No. 16-cv-713, 2016 WL 6476547, at *5 (N.D. Ill. Nov. 2, 2016) (collecting authority). Nor did the City question any of the circumstances that make the prospect of eviction especially debilitating for Jessica and Kenny. Mot. Prelim. Inj. 18-19. Rather, the City staked its defense on the fact that landlord Bill Campbell had filed a "grievance" with city hall. Until that grievance was resolved, the City could take no further action against them. And of course, there was always the possibility the city hearing officer might say that city police had misapplied city law. So until Bill's grievance was denied, the City contended, "any further action by the City" was "not imminent" and remained "entirely speculative." Opp. Mot. Prelim. Inj. 9.

At the same time, the City conceded that the stakes would change if Bill's grievance were to be denied. "[S]hould the pre-deprivation proceeding terminate with a ruling in the City's favor," the City acknowledged, the City would be empowered to "take further action to bring compliance with the eviction requirement." *Id.* Even by the City's lights, that would make the threat of harm imminent enough to justify action on Plaintiffs' preliminary-injunction motion. "[A]t that time," the City allowed, this Court could entertain Plaintiffs' request for preliminary relief. *Id.*("Plaintiffs could at that time renew their request for injunctive relief."); *see also id.* 6.

2. "[T]hat time" is now. By an order dated September 27, Bill Campbell's predeprivation hearing terminated with a ruling in the City's favor. (Plaintiffs received notice

this past Friday, October 4.) For its "findings of fact," the decision recited that "[a] violation has occurred pursuant to" the compulsory-eviction law. Gedge Decl. Ex. 1, at 2. Hence, the decision stated, "[t]he landlord, William Campbell, must begin eviction proceedings against the tenants listed, Jason Lynch, Jessica Barron & Ken Wylie." *Id.*

3. Given this development, Plaintiffs urgently renew their request for preliminary-injunctive relief. The City has had more than two months to deescalate the immediacy of its threat to Jessica and Kenny's home. It has opted instead to ratify its original compulsory-eviction demand and reaffirm that Bill Campbell "must begin eviction proceedings." *Id.* With its denial of Bill's grievance, the City has made clear that nothing short of a federal-court injunction will induce it to honor Plaintiffs' rights. Plaintiffs' motion for preliminary injunction is fully briefed. The City has had the opportunity to respond. *See* Opp. Mot. Prelim. Inj.; *see also* Opp. to Mot. Leave to File Reply (ECF 20). And because the City's internal rules no longer prevent it from taking "further action" to compel Jessica and Kenny's eviction (Opp. Mot. Prelim. Inj. 9), Plaintiffs' need for emergency relief is now acute.[1]

For these reasons, Plaintiffs ask that their motion for preliminary injunction be granted without delay. If the Court cannot entertain the motion immediately, Plaintiffs submit that a temporary restraining order should issue "to preserve the status quo until there is an opportunity to hold a hearing on the application for a preliminary injunction." Charles Alan Wright et al., 11A Fed. Prac. & Proc. § 2951, at 274 (3d ed. 2013); *see also id.* at 276 ("When the opposing party actually receives notice of the application for a restraining order, the procedure that is

[1] The municipal code provides that hearing-officer decisions may be appealed to the mayor "within ten days." Granite City Mun. Code § 5.142.080(M). Given the one-week delay between the City's issuing its decision and notifying Plaintiffs, it is not clear when the City believes that ten-day period expires. In any event, Bill Campbell does not intend to appeal to the mayor—not least because the mayor is an adverse witness in this action. Hagnauer Aff. ¶¶ 1-2 (ECF 14-2).

followed does not differ functionally from that on an application for a preliminary injunction and the proceeding is not subject to any special requirements."); *see generally Trs. of the Carpenters' Health & Welfare Trust Fund of St. Louis v. Darr*, No. 10-cv-130-SMY, 2016 WL 2766615, at *1 (S.D. Ill. May 13, 2016) (observing that the standard for a temporary restraining order is "identical" to the standard for a preliminary injunction).

* * *

Plaintiffs' motion for a preliminary injunction (ECF 6) should be granted without delay. In the alternative, a temporary restraining order should issue and remain in force until the Court has an opportunity to rule on Plaintiffs' preliminary-injunction motion.[2]

Dated: October 7, 2019.

Respectfully submitted,

s/Samuel B. Gedge

Bart C. Sullivan, #6198093
FOXGALVIN, LLC
One South Memorial Drive, 12th Floor
St. Louis, MO 63102
Phone: 314.588.7000
Facsimile: 314.588.1965
E-mail: bsullivan@foxgalvin.com

Samuel B. Gedge (lead counsel)
Robert McNamara
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Telephone: 703.682.9320
Facsimile: 703.682.9321
E-mail: sgedge@ij.org; rmcnamara@ij.org

[2] To the extent notice to Defendant is required beyond that supplied by service of this document through CM/ECF, lead counsel for Plaintiffs certifies that he has given notice of Plaintiffs' intent to file this motion to Defendants' counsel by e-mail. *See* Fed. R. Civ. P. 65(b)(1)(B).

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2019, I electronically filed this Plaintiffs' Application for Temporary Restraining Order and Renewed Motion for Preliminary Injunction (ECF 6) with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Erin M. Phillips
Bradley C. Young
UNSELL SCHATTNIK & PHILLIPS PC
3 South 6th Street
Wood River, IL 62095
Phone: 618.258.1800
Fax: 618.258.1957
E-mail: erin.phillips7@gmail.com; bradleyyoung925@gmail.com

s/Samuel B. Gedge
Samuel B. Gedge