

Filed in The District Court of Travis County, Texas

OCT 30 2015

At 4:16 P.M. Velva L. Price, District Clerk

No. No. D-1-GN-15-004336

GRASSROOTS LEADERSHIP.

Plaintiff.

v.

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES (DFPS), CHRIS TRAYLOR, in his official capacity as DFPS Executive Commissioner, and TREVOR WOODRUFF, in his official capacity as DFPS General Counsel,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353rd JUDICIAL DISTRICT

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TEMPORARY RESTRAINING ORDER

On the date and time stated at the end of this order, the Court heard Plaintiff's application for a temporary restraining order. All parties received notice of a hearing on this Temporary Restraining Order had the opportunity to appear through their attorneys of record. After considering the pleadings, exhibits, and all other documents filed in this case to date, and the arguments of counsel at hearing, the Court is of the opinion that Plaintiff's application for a temporary restraining order should be, and is, GRANTED because:

(1) in accord with TEX. GOV'T CODE § 2001.038, Plaintiff has asserted a valid cause of action for declaratory relief with regard to the invalidity of the emergency regulation adopted by the Texas Department of Family and Protective Services and published in the Texas Register on September 18, 2015 as Title 40, Part 19, Chapter 748, Subchapter A, Rule § 748.7;

(2) Plaintiff has shown a probable right to a declaratory judgment as to this regulation's invalidity because no imminent peril to public health, safety or welfare exists as required by TEX.

GOV'T CODE 2001.034(a)(1) to support the agency's use of emergency procedures, and no federal or state law required the agency to use emergency procedures;

(3) Plaintiff will suffer immediate and irreparable harm absent a temporary restraining order because money damages are unavailable against the state agency, and Plaintiff will be deprived of the public participation rights granted to Plaintiff by statute, including the rights to adequate notice and opportunity to comment prior to implementation of agency rules, and the right to review and if need be challenge the adequacy of reasons that the agency states in writing in response to Plaintiff's comments, as provided in Tex. Gov't Code §§ 2001.029 to 2001.030, which the legislature intends for courts to effectuate pursuant to TEX. GOV'T CODE § 2001.038; and

(4) the temporary restraining order is necessary to preserve the *status quo* while the validity of the agency's regulation is litigated pursuant to TEX. GOV'T CODE § 2001.038.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Application for Temporary Restraining Order be and is hereby GRANTED.

ACCORDINGLY, THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, and its agents, servants, employees, and attorneys be and hereby are ORDERED to desist and refrain from implementing in any way the regulation that the agency published in the Texas Register on September 18, 2015 as described above, which includes relying on this regulation to license any residential facility until further order of this Court.

IT IS FURTHER ORDERED that Plaintiff shall execute and file with the clerk of this Court a bond, or cash deposit in lieu of bond, in the amount stated below in conformity with Rule 684 of the Texas Rules of Civil Procedure, payable to Defendant and conditioned that Plaintiff will abide by the decision which may be made in the cause and that Plaintiff will pay all sums of

money and costs that may be adjudged against it if the temporary restraining order shall be dissolved in whole or in part.

The clerk shall forthwith, when so requested by Plaintiff and after Plaintiff has filed the bond described above, issue a writ of temporary restraining order in conformity with the law and the terms of this Order.

IT IS FURTHER ORDERED that, unless extended by agreement of the parties or changed by further order of this Court, this Order become effective only at such time as Plaintiff files with the clerk of this court a bond in the amount of \$ 100.

IT IS FURTHER ORDERED that Plaintiff's application for a temporary injunction will be heard before this Court on November 12, 2015 at 2 o'clock p.m.

IT IS FURTHER ORDERED that this order expires no later than fourteen days after issuance or when amended by order of this Court, whichever occurs first.

SO ORDERED this 30th day of October, 2015 at 4:13 o'clock p.m.



JUDGE PRESIDING