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2014 IL App (3d) 130331-U

Order filed June 17, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

CITY OF PEKIN,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit
)	Tazewell County, Illinois
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0331
v.)	Circuit No. 12-OV-369
)	
RONALD SCHWARTZ,)	Honorable
)	John L. Purham, Jr.
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* An ordinance modification providing increased restrictions placed upon dogs previously found to be vicious by administrative proceeding was not an *ex post facto* punishment.

¶ 2 Defendant, Ronald Schwartz, appeals from a judgment of the circuit court of Tazewell County denying his motion to dismiss the City's ordinance violation complaint against him alleging that he violated the City of Pekin Animal Control Ordinance (ordinance). Schwartz maintained that applying the ordinance to him constituted an unconstitutional *ex post facto* punishment because the amended ordinance placed greater restrictions on his ability to enjoy his

dog than the restrictions imposed when the dog was originally found to be a vicious dog after an administrative hearing approximately one year earlier. The circuit court found that the ordinance was not unconstitutional as applied to Schwartz because the amended ordinance did not "punish" Schwartz for any criminal conduct but simply imposed additional restrictions on the keeping of a vicious animal which were reasonably related to the protection of the public. For the foregoing reasons, we affirm the ruling of the circuit court.

¶ 3

FACTS

¶ 4 On May 6, 2011, an administrative hearing was held pursuant to notice for the purpose of determining whether the defendant's dog, Gunny, was a vicious dog under section 6-3-10(a) of the City of Pekin Animal Control Ordinance (the ordinance). At the conclusion of the hearing, the administrative hearing officer found the animal to be a vicious dog pursuant to the ordinance. Schwartz did not seek judicial review of that determination. In accordance with the ordinance, Schwartz was permitted to walk his dog in public only if the dog was muzzled and controlled by a leash of no more than four feet in length. When not muzzled and on a leash, the dog was required to be restrained within the owner's fenced property. The record established that, on several occasions, Schwartz muzzled and walked his dog on a leash.

¶ 5 On February 28, 2012, the Pekin city council amended the Animal Control ordinance to prohibit any walking in public of a dog determined to a "vicious" dog. This amendment effectively established that a vicious dog could no longer be walked in public even when muzzled and leashed. The amended ordinance also required that a vicious dog must be confined in a kennel structure when on the owner's property. The only time a vicious dog could be off the owner's property was for veterinary purposes. Schwartz does not allege that the ordinance was amended with him in mind, however, the record established that only one other dog was located within the city limits that had been found to be a vicious dog by administrative action. The

record also established that, following the enactment of the amended ordinance, Schwartz constructed a kennel on his property that was inspected and approved by the city animal control officer.

¶ 6 On April 5, 2012, Schwartz was cited for walking his dog in public in violation of the amended ordinance. He moved to dismiss the citation, arguing that the amended ordinance as applied to him constituted an unconstitutional *ex post facto* punishment. The circuit court held that the amended ordinance regulated conditions under which a vicious animal could be kept within the city limits and did not constitute "punishment" so as to invoke the constitutional prohibition against *ex post facto* punishment. The court denied the Schwartz's motion to dismiss the citation. He filed this timely appeal. We affirm.

¶ 7 ANALYSIS

¶ 8 Schwartz maintains that the amended ordinance, which provided that a vicious dog must thereafter be confined to an approved kennel in all but limited circumstances, constituted an *ex post facto* punishment in violation of the United States and Illinois Constitutions. We disagree.

¶ 9 The *ex post facto* clauses of the United States and Illinois Constitutions provide protection from "[r]etroactive application of a law that inflicts greater punishment than did the law that was in effect when the crime was committed." *People v. Cornelius*, 213 Ill. 2d 178, 207 (2004). Whether a legislative change violates the *ex post facto* clauses depends on whether the change alters the definition of a criminal conduct or increases the penalty by which a crime is punishable. *Fletcher v. Williams*, 179 Ill. 2d 224, 234 (1997). To show a violation of the *ex post facto* clauses, a plaintiff must show the following: (1) a legislative change; (2) the change imposed a punishment; and (3) the punishment is greater than the punishment that existed at the time the crime was committed. *Neville v. Walker*, 376 Ill. App. 3d 1115, 1117 (2007). To prevail on an *ex post facto* claim, the movant must show all three factors. *Id.*

¶ 10 Here, the circuit court found that the amended ordinance did not impose a punishment on the defendant. We review *de novo* a trial court's finding that an ordinance passes constitutional muster. *People v. Franklin*, 135 Ill. 2d 78, 107 (1990). The defendant characterizes the increased restrictions placed upon his ability to walk his dog as "punishment." He recognizes that his *ex post facto* argument rises or falls based upon whether the restrictions imposed by the amended ordinance requiring the dog to be kenneled can be characterized as "punishment." He cites *Franklin* for the proposition that a law is deemed to be *ex post facto* if it is both retroactive and "disadvantages" a defendant. *Franklin*, 135 Ill. 2d at 107. We note, however, that an enactment "disadvantages" a defendant for purposes of *ex post facto* analysis only when it imposes or increases criminal sanctions for an offense committed prior to the legislative change. *Id.*

¶ 11 Here, the increased restrictions upon the owner of a vicious dog are not criminal sanctions. It is well-settled that not all restrictions placed upon an individual by a legislative enactment constitutes "punishment" for purposes of *ex post facto* analysis. See *Cornelius*, 213 Ill. 2d at 207 (*ex post facto* does not apply to the sex-offender registration and notification statutes as the principal purpose of those statutes is to protect the public, not punish the offender); *Faheem-El v. Klinicar*, 123 Ill. 2d 291, 301 (1988) (change in mandatory supervised release conditions to protect public were not punishment). It is equally well-settled that, if the principal purpose of a legislative change is for protection of the public, the enactment is not considered a punishment that would warrant *ex post facto* application. *Neville*, 376 Ill. App. 3 at 1119.

¶ 12 Here, the record established that the motivation for amending the ordinance was to bring the ordinance in compliance with the Illinois Animal Control Act. 510 ILCS 5/1 *et seq.* (West 2010). There is no question that the provisions of the amended ordinance were reasonably

related to the legitimate aim of protecting the public from the danger of dogs likely to pose a threat to public safety. While the amended ordinance placed additional restrictions upon Schwartz's ability to walk the dog in public, the principal purpose of the ordinance amendment was the protection of the public. A vicious dog would be reasonably expected to pose a threat to the public even when leashed and muzzled, such that the additional restriction on its access to the public would appear to be reasonably related to public safety. We find, therefore, that the circuit court correctly determined that the amended ordinance imposed no *ex post facto* punishment upon Schwartz.

¶ 13

CONCLUSION

¶ 14 The judgment of the circuit court of Tazewell County is affirmed.

¶ 15 Affirmed.