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RRDogPark101a

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CITY OF ROCKY RIVER, et al.

Plaintiffs,

vs.

CITY OF LAKEWOOD, OHIO, et al.)

Defendants.

CASE NO.:

JUDGE:

EX PARTE RESTRAINING ORDER

Upon complaint by Plaintiffs, supported by affidavit, this Court received the following facts and issues the following orders:

1. Plaintiff Rocky River is a duly chartered municipal corporation located in Cuyahoga County, Ohio, and Citizen Plaintiffs are all residents of Plaintiff Rocky River (Plaintiff Rocky River and Citizen Plaintiffs being hereinafter collectively referred to as "Plaintiffs").
2. Defendant City of Lakewood, Ohio ("Defendant Lakewood") is, upon information and belief, a duly chartered municipal corporation located in Cuyahoga County, Ohio.
3. Defendant John Does and Jane Does ("Defendant Does") are the legal owners, possessors or handlers of various dogs which are the subject of this complaint.
4. Approximately three (3) years ago, Defendant Lakewood

began actively operating what is commonly referred to as a "dog park" (the "Dog Park") located in what is commonly referred to as the "Valley" or "MetroParks" on land owned by Defendant Lakewood, as described and set forth on Defendant Lakewood's web site:

"Lakewood Dog Park: Lakewood Dog Park, the only Westside off-leash dog park and the second of only two such dog parks in Cuyahoga County, is located at 1299 Metropark Drive in the Metroparks by the Water Treatment Plant. The Dog Park, which is open from 7:00 am-9:00 pm Monday through Friday and 8:00 a.m. to 9:00 p.m. on Saturdays and Sundays, provides a fenced-in area where owners may exercise their dogs off-leash to play and socialize with other dogs."

5. Upon information and belief, Defendant Does have actively utilized the Dog Park with dogs they own or possess.
6. The Dog Park is located less than 400 feet from the borders and real properties of the Plaintiffs.
7. Throughout Defendant Lakewood's ownership and operation of the Dog Park, as well as the utilization of the Dog Park by Defendant Does, dogs are permitted to run freely throughout the land in the Dog Park in such a manner as to constitute an actionable nuisance.
8. Said nuisance activities include:
 - A. Consistent, uncontrollable, unregulated and/or loud barking by the dogs; and
 - B. Consistent, uncontrollable, unregulated and/or

foul-smelling defecation and urination by the dogs;
and

C. Snapping and/or biting of humans and other dogs by the dogs.

9. Said conduct interferes with or annoys the Plaintiffs in the enjoyment of their boundaries, lands and properties.

10. The operation of the Dog park by Defendant Lakewood actually violates various ordinances of Defendant Lakewood, including but not limited to:

A. 505.11 - which states:

505.11 NUISANCE CONDITIONS PROHIBITED.

(a) No person shall keep or harbor any animal or fowl in the Municipality so as to create noxious, or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.

(b) No owner or keeper or person having custody or control of any dog shall allow or permit such dog to commit a nuisance on any public property or upon any private property other than that of the owner or keeper or person who has accepted custody or control of such dog, provided that the foregoing shall not apply to street gutters. It shall be the duty of all persons having control of a dog to curb such dog in order to carry out the intent of this section. The word "nuisance" as used herein shall be deemed to mean urination and defecation.

B. 505.12 - which states:

505.12 SPECIFIC ANIMAL NUISANCE CONDITIONS PROHIBITED.

(a) No person shall keep or harbor any animal in the City so as to permit the commission or evidence of a nuisance as hereinafter defined.

(b) Any animal which scratches or digs in or urinates or defecates upon any lawn, tree, shrub, plant, building or any other property, private or public, other than the property of the owner or person in charge or control of such animal is hereby declared to be a nuisance.

(c) In addition to the penalty provided in Sections 505.11 and this section, the court may upon proper evidence, limit the number of animals in any single-family dwelling, or any separate suite in a two-family dwelling,

multi-family dwelling or apartment within the City should the court deem that an excessive number of animals harbored within such an area constitutes a nuisance. The terms "dwelling" and "suite", as used in this section, include the lot or parcel of land on which the house or building containing the suite is located and also all out-buildings located on such lot or parcel.

No owner or keeper of such dogs or other animals shall fail to abate such nuisance by the permanent removal of such animals beyond City limits within ten days after service of such notice.

(d) On complaint of any person, police officer or the Animal Control Officer that an animal, harbored or kept in the City, damages property in the manner as specified above, notice therefor shall be given to the person harboring or keeping such animal. Failure to abate the nuisance complained of shall subject the person to penalty for violation of this section.

(e) Whoever violates this section is guilty of a minor misdemeanor.

C. 505.13 - which states:

"No person shall keep or harbor any animal, livestock or poultry within the municipality which, by frequent and habitual howling, yelping, barking or other activity, creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace and quiet of the community or as to annoy, disturb or endanger the comfort, repose or health of persons occupying property in the neighborhood. Any person who shall allow any animal habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which he occupies or owns, shall be considered as harboring such animal." (Emphasis supplied).

D. 505.15 (a) - which states:

505.15 DOG EXCREMENT REMOVAL.

(a) No person shall allow a dog under his or her control to be upon public property or upon the property of another, absent the consent of the owner or occupant of the property, without some device designed or intended for the removal or containment of such dog's excrement; nor shall any person fail to remove any excrement deposited by any dog under his or her control.

E. 505.20 - which states:

505.20 ANIMAL BITES; REPORTS AND QUARANTINE.

(a) Whenever any person is bitten by a dog, cat or other animal, report of such bite shall be made to a police officer, Animal Control Officer, or the

Division of Health within twenty- four hours. At the direction of the Animal Control Officer or other employee of the Division of Health, the dog or other animal shall either be confined by its owner or harbinger to his premises away from the public at large, or be placed under supervision of a veterinarian at the owner's or harbinger's expense. The isolation or observation period shall not be less than ten days from the date the person was bitten at which time a veterinarian must examine the animal and sign a form provided by the Division of Health releasing the animal from quarantine. The form must be returned to the Division of Health.

No person shall fail to comply with the requirements of this section or with any order of the Division of Health made pursuant thereto, nor fail to immediately report to the Division of Health any symptom or behavior suggestive of rabies.

F. 905.07 (a) - which states:

905.07 ANIMALS.

(a) **Animals Prohibited.** No dogs or other animals shall be allowed within the parks, with the exception of those animals specifically authorized by the Director of Public Works.

11. Said violations of the foregoing ordinances by Defendant Lakewood and/or Defendant Does are, by Lakewood Ordinance, "nuisances" per Lakewood Ordinance 509.14 (a), which states:

509.14 CRIMINAL ACTIVITY NUISANCES.

(a) The following activities occurring on residential or commercial property, and engaged in by an owner, occupant or invitee of the owner, occupant or person in charge of commercial or residential property (including individual apartment and condominium units), are hereby declared to be public nuisances:

(1) Any animal violations under Sections 505.02 (dogs running at large), 505.13, 505.15 and 505.20 (animal noise, excrement and biting), 505.18 or Chapter 506 (dangerous or vicious animals), 505.07 (killing or injuring animals), 505.09 (cruelty to animals) of the Codified Ordinances;

12. All of the foregoing ordinances, including Lakewood Ordinance 509.14, give Defendant Lakewood notice, injunction and prosecution responsibility and power, all of which, if the facts alleged by Plaintiffs are true, Defendant Lakewood refuses to invoke in order to abate the nuisances alleged herein.

13. Said conduct also violates various codified ordinances of the Plaintiff Rocky River (which Plaintiff Rocky River could enforce if the conduct occurred within the boundaries of Plaintiff Rocky River), including but not limited to:

A. 505.06 - which states:

505.06 BARKING OR HOWLING ANIMALS; IMPOUNDING AUTHORIZED

(a) No owner, keeper or person in charge of any animal in the City shall permit such animal to bark, yelp, howl or bay in such manner or to such extent as disturbs the peace and quiet of the City or any resident thereof. The Animal Control Officer or other designated employee may take up and impound any animal who is found disturbing the peace and quiet of any City resident in this manner. However, if at any time such animal howls, barks, screeches or bites in response to a trespass on the property of the owner, or in response to such trespasser's teasing, tormenting or abusing of such animal on the owner's property, no violation of this section exists.

B. 505.09 - which states:

505.09 ANIMAL NUISANCE ON PUBLIC OR PRIVATE PROPERTY

(a) No person, being the owner or in charge or control of any animal, shall allow or permit such animal to commit a nuisance on any school grounds, City park or other public property, or upon any private property other than that of the owner or person in charge or control of such animal without the permission of the owner of the property.

(b) In the case of defecation wherein the owner or person in charge or control of such animal shall remove all feces deposited by such animal and

dispose of same in a sanitary manner, such nuisance shall be considered abated. Failure to abate the nuisance shall subject the person to the penalty for violation of this Section.

16. According to the facts presented by Plaintiffs, the Plaintiffs have consistently contacted and complained to Defendant Lakewood about the ongoing nuisances, but Defendant Lakewood refuses to take any genuine, concrete, practical or workable action to abate the nuisances.
17. If the facts are true, said conduct constitutes both or either of the following:
 - A. Absolute nuisances, or nuisance *per se*, which consists of either a culpable and intentional act resulting in harm, or an act involving culpable and unlawful conduct causing unintentional harm, or a nonculpable act resulting in accidental harm, for which, because of the hazards involved, absolute liability attaches notwithstanding the absence of fault; and/or
 - B. Qualified nuisances, or nuisances dependent on negligence, consists of an act lawfully but so negligently or carelessly done as to create a potential and unreasonable risk of harm, which in due course results in injury to another.
18. Given: (a) the amount and the type of damage and

annoyance/interference to property suffered by Plaintiffs; (b) the fact that the conduct occurs outside the physical borders and properties of the Plaintiffs; (c) the fact that Defendant Lakewood refuses to enforce its own ordinances; (d) the fact that Plaintiffs are without the practical ability to locate the names and addresses of Defendant Does; and (e) Defendant Lakewood continues to operate the Dog Park and the Defendant Does continue to utilize the Dog Park, there is no adequate remedy at law affordable to the Plaintiffs absent injunctive relief against Defendant Lakewood.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the current operation of the Dog Park constitutes a nuisance to the Plaintiffs, and that irreparable public harm will occur which outweighs any harm to Defendants if the condition is allowed to persist, that there is a strong likelihood Plaintiffs will be successful in this case on the merits, and the public interest will be served by granting injunctive relief; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Lakewood is ordered to close and cease any operation of the Dog Park until further order of this Court; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant

Does are restrained from entering in the Dog Park (while the Dog Park is open or closed) with any dog until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall conduct a hearing on Plaintiff's request for a preliminary injunction at _____, pm/am on the _____ day of _____, 2007 in Courtroom _____ of the Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this temporary restraining order shall issue without bond.

IT IS SO ORDERED.

JUDGE