DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MANAGEMENT PROPERTIES, LLC,

Appellant,

v.

TOWN OF REDINGTON SHORES, FLORIDA,

Appellee.

No. 2D22-372

December 5, 2022

Appeal from the Circuit Court for Pinellas County; Thomas M. Ramsberger, Judge.

Joseph P. Kenny of Weber, Crabb & Wein, P.A., St. Petersburg, for Appellant.

Robert M. Eschenfelder of Trask Daigneault, LLP, Clearwater, for Appellee.

STARGEL, Judge.

In this action concerning the validity of a municipal ordinance regulating vacation rentals, Management Properties, LLC,

challenges the trial court's entry of judgment on the pleadings in favor of the Town of Redington Shores (the Town). We affirm the final judgment in all respects but one. Because the pleadings on their face do not reflect that the ordinance's mandatory reporting provision—one of two provisions at issue in Management Properties' compelled speech claim—withstands constitutional scrutiny, we reverse in part.[1]

BACKGROUND

Management Properties operates a beachfront single-family property in Redington Shores, Florida, as a vacation rental. The Town's zoning codes govern whether, and in which zoning districts, short-term rentals can exist. For many years, the Town's code prohibited rentals for less than thirty days in all zoning districts except in the Commercial Tourist Facilities District—where the property in this case is located—and in Planned Unit Development Districts with a Future Land Use Plan category of Resort Facilities Medium. Prior to August 2020, the Town had no regulations or

[1] We affirm the entry of judgment on the pleadings on Management Properties' preemption claim without further comment.

restrictions on vacation rentals within the Commercial Tourist Facilities District.

On August 5, 2020, the Town adopted an ordinance creating section 90-116 of the Code of the Town of Redington Shores, which established a regulatory scheme for vacation rental properties within the Commercial Tourist Facilities District.[2] Section 90-116 requires vacation rental operators to obtain a certificate of use from the Town in order to operate a vacation rental, imposes certain recordkeeping requirements on vacation rental operators, sets maximum occupancy standards for vacation rentals, and regulates various other matters related to the operation of a vacation rental.

As pertinent to this appeal, section 90-116(D)(2)(a) requires vacation rental operators to provide written notice to guests prior to occupancy of all vacation rental standards "and other applicable laws, ordinances, or regulations concerning noise, public nuisance, vehicle parking, solid waste collection, and common area usage" as well as to make such information available to each guest inside the

[2] Certain provisions of section 90-116 were later amended by ordinance in February 2021. However, those changes are not significant for the purposes of this opinion.

property. Section 90-116(D)(2)(b) further requires that vacation rental operators "[e]nsure compliance with all provisions of" the Town's vacation rental standards and to "promptly address and report any violations of this section or of such other law or regulation of which the responsible party knows or should know to the Town or law enforcement."

On June 18, 2021, Management Properties filed an action for declaratory relief in Pinellas County challenging the validity of section 90-116. Among other claims, Management Properties alleged that the provisions of section 90-116(D)(2)(a)-(b) requiring vacation rental operators to provide written notice to guests of the laws and regulations governing vacation rentals and to report violations of those laws and regulations constitute compelled speech in violation of article I, section 4 of the Florida Constitution.

The Town answered the complaint and later filed a motion for judgment on the pleadings. Management Properties also filed a motion for summary judgment. In its motion for judgment on the pleadings, the Town argued that the disclosure and mandatory reporting provisions were subject to rational basis review and that the Town's interest in ensuring that out-of-town visitors know and

comply with the applicable laws and regulations outweighed any minimal imposition on Management Properties' free speech rights. For its part, Management Properties argued that the challenged provisions were subject to strict scrutiny or, alternatively, intermediate scrutiny, and that that Town had failed to articulate a sufficient governmental interest under either standard.

The trial court held a hearing on the parties' competing motions. At the conclusion of that hearing, the trial court orally pronounced its ruling granting the Town's motion for judgment on the pleadings and denying Management Properties' motion for summary judgment. The court found that section 90-116(D)(2)(a) and (b) involved commercial speech and that the disclosure requirements in the ordinance survived under either intermediate scrutiny or rational basis review. The court later rendered a corresponding written order along with the final judgment from which Management Properties now appeals.

STANDARD OF REVIEW

We review an order granting a motion for judgment on the pleadings de novo. *See Schwartz v. Greico*, 901 So. 2d 297, 299 (Fla. 2d DCA 2005). A motion for judgment on the pleadings must

be decided only on the pleadings and attachments thereto without reference to outside matters. *Id.* (citing *Tanglewood Mobile Sales, Inc. v. Hachem*, 805 So. 2d 54, 55 (Fla. 2d DCA 2001)); *Siegel v. Whitaker*, 946 So. 2d 1079, 1081 (Fla. 5th DCA 2006). The trial court may grant judgment on the pleadings "only if the moving party is clearly entitled to judgment as a matter of law." *Tanglewood Mobile Sales*, 805 So. 2d at 55.

As the Florida Supreme Court has explained, "[t]he scope of the protection accorded to freedom of expression in Florida under article I, section 4 is the same as is required under the First Amendment." *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 461 (Fla. 1982). As such, this court "must apply the principles of freedom of expression as announced in the decisions of the Supreme Court of the United States." *Id.* To be sure, the United States Supreme Court has "held that in some instances compulsion to speak may be as violative of the First Amendment as prohibitions on speech." *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 650 (1985); *see also Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796 (1988) ("[I]n the context of protected speech,

the difference [between compelled speech and compelled silence] is without constitutional significance . . . .").

Generally, under the First Amendment, content-based regulations of speech "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (first citing *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992); and then citing *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115, 118 (1991)). However, in the context of commercial speech, the Supreme Court has applied the more flexible standard of intermediate scrutiny. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 562-64 (1980). Under intermediate scrutiny, regulations of commercial speech must directly advance a substantial governmental interest and be no more extensive than necessary to serve that interest. *Id.* at 564.

Furthermore, in limited circumstances involving commercial advertising, the Supreme Court has applied a rational basis-type inquiry to regulations mandating the disclosure of "purely factual and uncontroversial information." *Zauderer*, 471 U.S. at 651.

Under this standard, "an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Id.*

ANALYSIS

As an initial matter, we find no error in the trial court's findings with respect to section 90-116(D)(2)(a)'s disclosure requirement. The Town's stated interest in promoting compliance with the laws and regulations governing vacation rentals suffices under any level of constitutional scrutiny, particularly in light of the minimal burden imposed upon vacation rental operators, who are simply required to pass along this information to their guests. Therefore, we must affirm the entry of judgment on the pleadings as to this portion of Management Properties' compelled speech claim.

Turning to section 90-116(D)(2)(b), we disagree with the Town's argument that the mandatory reporting requirement, which bears no relation to commercial advertising, is subject to the lower standard of scrutiny under *Zauderer*. *See Nat'l Ass'n of Mfrs. v. S.E.C.*, 800 F.3d 518, 522 (D.C. Cir. 2015) (explaining that "the Supreme Court's opinion in *Zauderer* is confined to advertising" and "that the Court was not holding that any time a government forces a

commercial entity to state a message of the government's devising, that entity's First Amendment interest is minimal").

We are unable to conclude from the face of the pleadings that the mandatory reporting requirement withstands either level of heightened constitutional scrutiny. Specifically, we are not persuaded that the Town's stated interest of promoting compliance with the standards for vacation rentals, i.e., preventing violations of those standards from occurring, would be directly advanced by a mandatory requirement to report violations that have already occurred. And nowhere in the pleadings or attachments thereto has the Town suggested any other governmental interest that would be served by imposing upon vacation rental operators a duty to report any violation of the laws and regulations governing vacation rentals.

Further, section 90-116(D)(2)(b) is not limited to reporting violations of laws or regulations governing vacation rentals. It specifically mandates that those engaged in the business of vacation rentals "promptly address and report any violations of this section *or of such other law or regulation of which the responsible party knows or should know to the Town or law enforcement.*"

(Emphasis added.) The record reflects no effort on the part of the Town to present any evidence regarding how a vacation rental operator must "address" such violations, nor has the Town provided sufficient evidence to meet its burden to compel such speech or actions.

We also note that while the trial court made detailed oral findings on the compelled speech claim, it only specifically addressed that issue as it pertained to section 90-116(D)(2)(a)'s disclosure requirement. And while the relevant portion of the trial court's written order purported to address both of the provisions at issue in that claim, its analysis was similarly focused on the disclosure requirement. Thus, it appears that the trial court may have failed to consider whether the speech regulated by the mandatory reporting provision differed from the speech regulated by the disclosure provision in any constitutionally meaningful way. For these reasons, we conclude that further proceedings are necessary on this aspect of Management Properties' compelled speech claim.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

LaROSE and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.