

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

BRANDALYN ORCHARD and)
EDWARD GILLESPIE,)
)
Plaintiffs,)
v.) Case No. 1:13-CV-185-SNLJ
)
CITY OF MINER, MO, et al.)
)
Defendants.)

ORDER AND JUDGMENT

This Court, having reviewed and taken notice of the pleadings herein, and with the consent of plaintiffs and defendants, hereby enters Judgment as follows:

Findings

1. Defendant City of Miner, Missouri, previously enacted Ordinance 110, which contained Sections Thirteen (Vagrancy), Eighteen (Begging, etc.), and Nineteen (Loitering).
2. Plaintiffs alleged that they were threatened with arrest for violating one or more of the foregoing sections of Ordinance 110 and that enforcement thereof violated their civil rights.
3. Following the filing of this litigation, the City enacted Ordinance 1071, which amended Ordinance 110 by removing Sections Thirteen (Vagrancy), Eighteen (Begging, etc.), and Nineteen (Loitering), thereby making plaintiffs' claims for declaratory judgment and injunctive relief moot in light of the foregoing amendment to Ordinance 110.
4. Since plaintiffs were subjected to the foregoing sections of Ordinance 110 prior to its amendment, they seek an award of damages in this case,

5. Defendants have agreed to pay each plaintiff the sum of \$2,500.00 for that plaintiff's alleged damages.
6. The parties agree that Plaintiffs have incurred taxable costs of \$405.00.
7. The parties agree that plaintiffs should be deemed prevailing parties for the purposes of 42 U.S.C. §1983, and that their reasonable attorneys' fees are \$4,316.00.

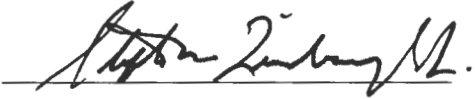
Order

Based on the aforementioned Findings, the Court hereby orders as follows:

8. The former version of Ordinance 110 of the City of Miner, specifically Sections Thirteen (Vagrancy), Eighteen (Begging, etc.) and Nineteen (Loitering) that existed at the time of the filing of this lawsuit contained unconstitutional provisions under existing federal case law. E.g., *City of Chicago v. Morales*, 527 U.S. 41, 43-55 (1999) (invalidating loitering ordinance); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 164-65 (1972) (invalidating vagrancy laws); *Speet v. Schuette*, 726 F. 3d 867, 880 (6th Cir. 2013) (invalidating Michigan statute criminalizing begging in public places). Although plaintiffs' claim for declaratory judgment and injunctive relief are moot, the Court observes that the City of Miner, by removing the foregoing sections of Ordinance 110 that gave rise to plaintiffs' action, has implicitly recognized that re-enactment and enforcement of those sections in the future would subject the City and any City official enforcing those sections to liability for violation of Constitutional rights.
9. Plaintiffs are entitled to an award of damages in the total amount of \$5,000.00 and Judgment is entered in favor of plaintiffs and against defendant City of Miner in the total amount of \$5,000.00 (\$2,500.00 for each plaintiff).
10. Plaintiffs are prevailing parties for purposes of 42 U.S.C. §1988(b).

11. Costs of \$405.00 are taxed in favor of plaintiffs and against defendant City of Miner.
12. The amount of attorneys' fees agreed upon by the parties is reasonable, and the Court awards plaintiffs' attorney fees in the amount of \$4,316.00
13. This Order and Judgment fully and finally resolves the claims asserted in this matter.

Date: October 14, 2014.



Honorable Stephen N. Limbaugh, Jr.
United States District Judge