

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

Case No. 08-8-K-1300-1
08-8-K-1301-1
08-8-K-1302-1

City of Bismarck,

Plaintiff,

vs.

MME, Inc.,

Defendant.

ORDER

The following case came before the Court on September 24, 2008 by appeal from a Municipal Court Order, finding MME, Inc. guilty of violating Bismarck City Ordinance § 14-05-06. MME allegedly constructed a racetrack on its property at 5015 East Main Avenue in the City of Bismarck, without obtaining a Special Use Permit. Moreover, MME allegedly allowed races to occur with motorcycles and other all-terrain vehicles.

The City has charged MME with three violations of City Ordinance 14-02-03. Testimony was received by the Court from a city planner, two city residents owning property across the street from the property at issue, a video from the residents, defendant's expert witness regarding definitions of race tracks and the president of MME.

The complaints charge that MME is in violation of 14-05-06/14-02-03 on April 28-29, 2007, May 10, 2007, and April 14-15, 2007.

The evidence presented to the Court is that the property owned by MME has

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been used by dirt bike riders, walkers, four wheelers, and that trails through the property have been created and improved over the years. The videos show motorcycles and four wheelers being driven on this property. The video shows the machines create noise and dust, which impact the residents who live across the road from the property. This case is not about the noise or the dust created by the machines being used on the property the case is whether MME is guilty of violating City Ordinance 14-02-03 by allowing this property to be used as a race track.

As to file 08-K-1301 the Court finds no evidence was presented regarding this date. No evidence was offered in the form of video, documentation, or testimony that any activity occurred on the subject property on that date. Accordingly the Court finds MME not guilty of this violation on this date.

Evidence was received that activity in the form of motorcycles or four wheelers were driven on the property on the dates of April 28-29, 2007 and April 14-15, 2007. From the complaints filed the City must prove beyond a reasonable doubt that MME allowed its property to be used as a race track and the property was in fact used as a race track.

The City presents evidence and argues the trails, the use by motorcycles and the noise created by the use place this property squarely in the definition of a race track. The city further argues one single motorcycle could be racing against time and therefore the property would be considered a race track.

MME presents evidence that race tracks usually are fenced off, have start and/or finish lines. MME argues that none of the normal trappings of a race track are found

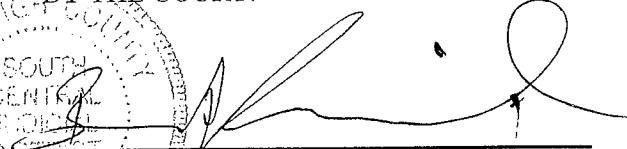
here. There is no controlled access. People can come and go as they like. There is no start or finish line within the trails on the property.

The Court finds the City has not carried its burden of proving that MME operated a race track on the dates alleged. There are motorcycles running on this track, making noise, creating dust, but no evidence that a race track is operating. If one of the landowners near the location created a path within their property similar to MME's property where a rambunctious teenager decided to run his "loud" motorcycle the city would show up and cite the individual with a violation of the city noise ordinance. Not declare the property owner was running a race track. It may be difficult to cite a noise ordinance violation, but it would be the right violation in this court's eyes.

The Court finds that MME has not violated ordinance 14-05-06.

The matter is dismissed.

Dated October 7, 2008:

BY THE COURT:

Bruce A. Romanick
District Judge

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cc P. Fraase
Z. Relham

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City of Bismarck,

Plaintiff,

vs.

MME, Inc.,

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**ORDER DENYING
MOTION TO DISMISS**

The following case came before the Court on September 24, 2008 by appeal from a Municipal Court Order, finding MME, Inc. guilty of violating Bismarck City Ordinance § 14-05-06. MME allegedly constructed a racetrack on its property at 5015 East Main Avenue in the City of Bismarck, without obtaining a Special Use Permit. Moreover, MME allegedly allowed races to occur with motorcycles and other all-terrain vehicles.

LAW AND DECISION

At issue is whether the definition of "racetrack," found in Bismarck City Ordinance § 14-02-03, is unconstitutionally vague. The ordinance provides that a racetrack is "[a] course in which vehicular races, either competitive or non competitive, are run. Such courses shall include racetracks, drag strips, go-cart tracks and other similar facilities." Bismarck City Ordinance § 14-02-03.

A city ordinance is interpreted in the same manner as any other statute. *GO*

Committee ex rel. Hale v. City of Minot, 2005 ND 136, ¶ 9, 701 N.W.2d 865. There is

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The City of Bismarck, Co.

a presumption in this state that statutes are constitutional. *State v. Martin*, 2001 ND 189, ¶ 13, 636 N.W.2d 447. The statute's challenger has the burden of overcoming this strong presumption of constitutionality. *State v. Tweed*, 491 N.W.2d 412, 418 (N.D. 1992). "Every reasonable presumption is in favor of the constitutionality of a statute. . . . This presumption is conclusive, unless it is clearly shown that the enactment is prohibited by the Constitution of the state or of the United States." *Id.*

One method of establishing that a statute violates the constitution is to show that it violates the void-for-vagueness doctrine, which requires statutes to be sufficiently definite so that ordinary people can understand them. *Martin*, ¶¶ 13-14. A statute is unconstitutionally vague if it "either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application." *Peters-Riemers v. Riemers*, 2001 ND 62, ¶ 20, 624 N.W.2d 83. On the other hand, "a statute is not unconstitutionally vague if its language, when measured by common understanding and practice, gives adequate warning of the conduct proscribed." *Western Gas Resources, Inc. v. Heitkamp*, 489 N.W.2d 869, 873 (N.D. 1992).

In the instant case, the ordinance describes a racetrack as a place where both competitive and noncompetitive races are held. MME asserts that races need to have a winner or goal to be a race, and therefore, no races were held on MME property. MME cites no authority for how it came to this definition of a race.

It is not uncommon for the courts in this state to resort to dictionary definitions

to determine the plain and ordinary language in an ordinance. *Comstock Const., Inc. v. Sheyenne Disposal, Inc.*, 2002 ND 141, ¶ 24, 651 N.W.2d 656. One dictionary definition of a race is, as MME contends, a contest “for speed . . . or supremacy.” *The American Heritage Dictionary of the English Language* 1075 (1979). However, another definition of race is “[s]teady or rapid onward movement.” *Id.*; *see also Dictionary.com*, [http://dictionary.reference.com /browse/race](http://dictionary.reference.com/browse/race).

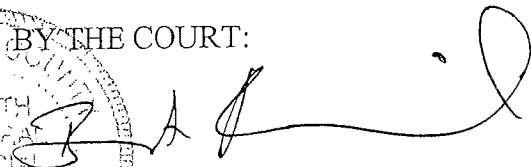
MME contends that a noncompetitive race is an oxymoron. However, the fact that one definition of a race in the dictionary is “onward movement” falls in line with the ordinance’s definition of a race being a noncompetitive venture. Although “[i]t is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary,” the dictionary adds support to what the plain language of the statute provides. *See N. X-Ray Co., Inc. v. State by and through Hansen*, 542 N.W.2d 733, 736 (N.D. 1996).

It is clear that the definition of a racetrack in the ordinance is not nearly as strict as MME would have the Court believe. A racetrack, as well as the races that take place on a racetrack, can take many shapes and forms under the ordinance. The ordinance expands the definition of racetrack to include competitive and noncompetitive races on “drag strips, go-cart tracks and other similar facilities.” Bismarck City Ordinance § 14-02-03. If the ordinance said that the definition of a racetrack was an oval shaped course, that is paved, has a clear start line and finish line, and could only involve timed races for speed that are meant to determine an overall champion, then MME would win its argument. However, the definition of a racetrack in the statute is far more expansive

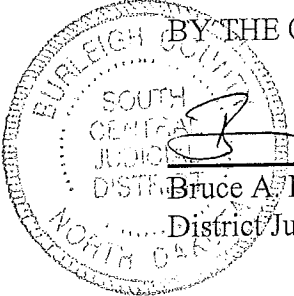
than MME's definition of a racetrack.

"The purpose of the vagueness doctrine is to ensure that all be informed as to what the state commands or forbids. When so informed, people have an opportunity to conform their conduct to the law, and those who enforce the law are provided with strict guidelines for their application." *Riemers*, ¶ 20 (internal quotations omitted). The ordinance here allows people to conform their conduct to the law. The ordinance is not void-for-vagueness because it provides a definition of that conduct which is forbidden. MME's motion to dismiss is DENIED.

Dated October 7, 2008.

BY THE COURT:


Bruce A. Romanick
District Judge



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