

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

CITY OF BELLEFONTAINE NEIGHBORS,) No. ED92965
Plaintiff/Respondent,)
v.) Appeal from the Circuit Court
) of St. Louis County
)
MARK SCATIZZI,) Honorable Lawrence J. Permuter
Defendant/Appellant.) Date: January 26, 2010

Mark Scatizzi (Defendant) appeals from the trial court's judgment finding that he violated section 112.4(a) of ordinance 2057 of the City of Bellefontaine Neighbors (City) by marketing residential property without first applying for a certificate of building code compliance. The trial court imposed a fine of \$100 plus costs. Defendant appeals, arguing that the ordinance is unconstitutional and violates section 67.317 RSMo.

REVERSED.

DIVISION ONE HOLDS: (1) The City fails to demonstrate, and the record lacks any evidence, that the City's restriction on advertising advances directly and in the least restrictive manner the City's goal of safe housing, as required by the third and fourth prongs of Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York, 447 U.S. 557, 100 S.Ct. 2343 (1980). Thus, section 112.4(a) of ordinance 2057 violates the First Amendment. (2) Section 67.317 prohibits municipalities from restricting the right of homeowners and their agents to erect signs advertising real property for sale except as to sign size. Section 112.4(a) of ordinance 2057 purports to impose a restriction that section 67.317 expressly prohibits. As such, it is invalid.

Opinion by: Clifford H. Ahrens, J. Nannette A. Baker, J., and Kurt S. Odenwald, J.

Attorney for Appellant: Stephen C. Murphy

Attorney for Respondent: Stephanie E. Karr

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**