

## INTRODUCTION AND PROCEDURAL HISTORY

Rose Falbo and Kim Cappelletty (Complainants) filed sworn charge affidavits with the Ohio Civil Rights Commission (Commission) on August 25, 1998 and October 5, 1998, respectively.

The Commission investigated the charges and found probable cause that Raintree Village Mobile Home Park Gayle Weills, Jim Moore, and Continental Investment Property (Respondents) engaged in unlawful discriminatory practices in violation of Revised Code (R.C.) 4112.02(H)(4).

The Commission issued complaints in both cases on July 1, 1999. The public hearing was held in abeyance pending the Commission's conciliation efforts.

The Complaints allege that Respondents restricted children's use of its swimming pool during certain hours. The Complaints allege that this restriction subjected Complainants to "different terms and conditions of rental with regard to services provided" because of their familial status.

Respondents filed Answers to the Complaints. Respondents admitted certain procedural allegations, but denied that they engaged in any unlawful discriminatory practices.

A public hearing was held on March 27, 2001 at the DiSalle Government Center in Toledo, Ohio. Counsel submitted Stipulations of Fact at the beginning of the hearing.

The record consists of the previously described pleadings, Stipulations of Fact, a 61-page transcript, two exhibits admitted into evidence at the hearing, and post-hearing briefs filed by the Commission on April 23, 2001 and by Respondents on May 14, 2001.

## FINDINGS OF FACT

The following findings of fact are based upon the Hearing Examiner's assessment of the credibility of the witnesses who testified before him in these cases. These findings are also based on the pleadings, two exhibits, and Stipulations of Fact submitted by counsel.

1. Complainants filed sworn charge affidavits with the Commission on August 25, 1998 and October 5, 1998, respectively.

2. The Commission determined on July 1, 1999 that it was probable that Respondents engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H)(4).

3. The Commission attempted, but failed to resolve these matters by informal methods of conciliation.<sup>1</sup>

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<sup>1</sup> Respondents stipulated that the Commission attempted to conciliate these cases without success. (Tr. 2)

4. Raintree Village is a mobile home park located in Toledo, Ohio. It contains 320 lots. James Moore owns Raintree Village. Gayle Weills is the park manager.

5. Complainants resided at Raintree Village in 1998. Complainants had two children who were under the age of 18 and domiciled with them at that time.

6. Raintree Village operates a swimming pool for the benefit of its residents. The pool usually opens on Memorial Day and closes on Labor Day. The pool hours are 12:00 p.m. to 8:00 p.m. daily.<sup>2</sup>

7. In mid-July 1997, Weills extended the pool hours for adult homeowners. In addition to the normal hours, adult homeowners could use the pool from 10:00 a.m. to 12:00 p.m. and 8:00 p.m. to 10:00 p.m. Weills eliminated these extended hours after the 1998 pool season.

## **CONCLUSIONS OF LAW AND DISCUSSION**

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<sup>2</sup> The pool was actually open 7 hours per day. The pool closed for one hour around dinner time, usually from 5 p.m. to 6 p.m. (Tr. 9-10, 18)

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.

1. The Complaints allege that Respondents restricted children's use of its swimming pool during certain hours. The Complaints allege that this restriction subjected Complainants to "different terms and conditions of rental with regard to services provided" because of their familial status.

2. The Complaints further allege that Respondents' actions constitute a violation of R.C. 4112.02(H)(4). This provision makes it unlawful for any person to:

Discriminate against any person in the terms or conditions of . . . renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection

with the ownership, occupancy, or use of any housing accommodations . . . because of . . . familial status, . . . .

3. R.C. 4112.01(A)(15) defines “familial status” as either:

- (a) One or more individuals who are under eighteen years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian; or
- (b) Any person who is pregnant or in the process of securing legal custody of any individual who is under eighteen years of age.

4. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(H) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

5. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio St.3d 569. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under the

federal Fair Housing Act of 1968 (Title VIII), as amended.<sup>3</sup>

6. The Commission argues that “[p]olicies restricting pool use for children are an unlawful form of familial status discrimination.” (Comm.Br. 1) The Commission cites *HUD v. Paradise Gardens*, P-H: Fair Housing-Fair Lending Rptr. ¶25,037 (HUD ALJ 1992) as support for this argument.

7. In *Paradise Gardens*, the ALJ examined two rules that limited children’s use of the swimming pool: one prohibited children under 5 years of age from swimming or being in the pool area; the other restricted the pool hours for children between ages 5 and 16 from 11:00 a.m. to 2:00 p.m. The ALJ concluded that these rules were not based on reasonable health and safety concerns and, in effect, discriminated against families with children by unreasonably interfering with their enjoyment and use of the swimming pool.

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<sup>3</sup> Sections 3604(b) of Title VIII is substantially the same as R.C. 4112.02(H)(4).

8. In discussing the rule that restricted children's use of the pool from 11:00 a.m. to 2:00 p.m., the ALJ made the following findings:

- The rule prevented children between ages 5 and 16 from using the pool on weekdays during the school year;
- The three-hour period was "a highly undesirable and unhealthy time to use the pool"; and
- The rule prevented families with working parents from enjoying the pool together on most weekdays.

Based on these findings, the ALJ concluded that this rule was not:

. . . a reasonable balancing of the interests of the elderly residents in tranquility and of the families with children to use the pool; rather, it is, for all intents and purposes, denying the use of the swimming pool to families with children between the ages of 5 and 16.

*Id.*

9. The lesson of *Paradise Gardens* is not that any difference in children's access to facilities amounts to familial status discrimination. Instead, the case stands for the proposition that housing providers cannot deny or *unreasonably* restrict children's use of swimming pools and other facilities. Housing providers may attempt to balance the varying interests of all residents to promote their full enjoyment of facilities.

Although an association of residents may be empowered to

establish rules to fairly accommodate the varying interests of residents to make the community enjoyable, it cannot set rules that would, in effect, deny or unduly limit the use of facilities based on familial status.

*Id.*, at 25,389.

10. The evidence in this case shows that Raintree Village extended its pool hours in response to requests from homeowners, many of whom were elderly persons. These homeowners complained that they were unable to enjoy the pool during normal hours because of the “vulgar language” and “rowdiness” of certain children who used the pool. (R.Ex. B) Some homeowners also sought additional hours for medical reasons, e.g. water therapy.

11. Unlike the pool policies in *Paradise Gardens*, Respondent’s policy, which added four additional hours for adult homeowners, did not deny or unreasonably limit the use of the pool by children. The children’s access to pool remained the same—12:00 p.m. to 8:00 p.m. daily. Neither the number of hours that children had access to the pool at Raintree Village nor the allotted time when they could use the pool unreasonably interfered with the

enjoyment of the pool by families with children.<sup>4</sup> The policy was a reasonable attempt to balance the interests of all residents who sought enjoyment from the pool.

## RECOMMENDATION

For all of the foregoing reasons, it is recommended that the Commission issue Dismissal Orders in Complaints #8582 and 8583.

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TODD W. EVANS  
HEARING EXAMINER

June 21, 2001

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<sup>4</sup> Complainants and their children were disgruntled that the pool was not open prior to 12:00 p.m. *before* the policy in question went into effect. Housing providers are not legally required to please all families with children; they must only refrain from denying them access to facilities or otherwise unreasonably restrict their use of the facilities because of familial status.