

IN THE SUPREME COURT OF IOWA

NO. 16-1080

CITY OF DES MOINES, IOWA,
Plaintiff/Appellee,

vs.

MARK OGDEN
Defendant/Appellant.

APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY
THE HONORABLE ROBERT HANSON

BRIEF OF AMICI CURIAE MARIA CARMEN VEGA, CRISTINA VEGA
MARTINEZ, DULCE ROSARIO CALDERON RODRIGUEZ, ARNULFO
CALDERON REYES, DELFINO HERNANDEZ ORDAZ, MELISSA KAY
SATER, GLORIA JANE LANG, AND RACHEL LUNA

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STATEMENT OF INTEREST FOR AMICI CURIAE

This brief is submitted on behalf of the joint interests of eight of the residents in the mobile home park at issue, namely Maria Carmen Vega, Cristina Vega Martinez, Dulce Rosario Calderon Rodriguez, Arnulfo Calderon Reyes, Delfino Hernandez Ordaz, Melissa Kay Sater, Gloria Jane Lang, and Rachel Luna (hereinafter “Amici”). These residents all own their homes but rent mobile home lots from Defendant-Appellant Mark Ogden. If the judgment of the district court were to stand, these residents will lose their homes, the only major asset that they may ever own, which are mobile only in name and too expensive to move given these residents’ meager resources. Affirming the district court would also mean that these residents, along with the other residents of the Oak Hill Mobile Home Park (hereinafter “Oak Hill”) and other low-income mobile home park residents, will face increased danger of loss of assets and even increased risk of homelessness.

STATEMENT OF FACTS

I. MOBILE HOME PARKS, GENERALLY

a. **Mobile Home Parks in the United States**

As of 2011, there were an estimated 60,000 mobile home parks and approximately 7 million occupied mobile homes in the United States. Daniel Baker et al., *A Window into Park Life: Findings From a Resident Survey of Nine*

Mobile Home Park Communities in Vermont, 6-2 J. of Rural and Cmty. Dev. 54-55 (2011). Mobile homes accounted for between 6.3% and 7% of the total occupied housing stock in the United States. *Id.*

Mobile homes are more prevalent in rural America. According to a 2014 study by the Consumer Financial Protection Bureau (CFPB), “[a]bout two-thirds of all occupied manufactured homes in the U.S. are located outside of metropolitan statistical areas (MSAs), and 14 percent of homes in non-MSA counties are manufactured homes.” *Manufactured-Housing Consumer Finance in The United States* at 11, Consumer Financial Protection Bureau (September 2014), *available at* http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

In addition, according to the CFPB study, “[i]ndividuals of Hispanic or Latino ethnicity and those with American Indian or Native Alaskan racial backgrounds make up a greater share of manufactured-home residents than site-built home residents.” *Id.* at 19.

The CFPB study also showed that “[m]anufactured-home residents have lower net worth, assets, and debt than other families.” *Id.* at 17. The CFPB found that “median income for families that live in manufactured homes is a bit more than \$26,000 per year, or roughly half the median income for other families.” *Id.*

The relative affordability of mobile homes increases the opportunities for low-income people to maintain stable housing. A U.S. Census Bureau study in

2007 found that the average manufactured home without land cost \$65,100, compared to the average site-built home cost of \$229,332 – a cost that does not include the value of the land. Daniel Baker et al., *A Window into Park Life: Findings From a Resident Survey of Nine Mobile Home Park Communities in Vermont*, 6-2 J. of Rural and Cmty. Dev. 55-56 (2011). However, the issue is not limited to home ownership, but simply maintaining low-cost housing. According to the 2014 CFPB study:

[t]ypical all-in housing costs for manufactured-home owners in non-metropolitan areas were over a third less than the costs for households that owned a site-built home in a non-metro area... and the gap is even wider for those residing within metro areas.

Manufactured-Housing Consumer Finance in The United States at 21-22.

However, the increased affordability of mobile homes is often offset by the negative features of this type of housing. For example, mobile home parks often face infrastructure challenges, particularly as they relate to water, wastewater, and internal roads. Because of this, mobile home parks and their residents are frequently the targets of derogatory terms and viewed negatively by outsiders. Baker at 54.

b. Challenges for mobile home residents

While commonly referred to as “mobile homes,” most of these homes are mobile in name only. In cases where moving a mobile home is possible at all,

moving is very expensive and beyond the financial capacity of most low-income people. First, the home has to be disconnected from all utility lines. External structures like carports and decks must be removed, and the home must be prepared for moving. Then, the home has to be raised up from its foundation and mounted on wheels, or placed on the back of a truck. All of these things must then be done in reverse when the home reaches its new lot. The moving process requires special equipment, and generally must be done by trained workers. *Id.*

There are several variables that could increase the costs associated with moving a mobile home. Size, axles, brakes, and hitches are common factors that can increase the costs of moving. Paul Luciano et. al., *Report on the Viability and Disaster Resilience of Mobile Home Ownership and Parks*, Vt. Dep’t of Hous. and Cmty. Dev. (2013) available at

<http://www.leg.state.vt.us/reports/2013externalreports/295178.pdf>. Below are minimum estimates of itemized moving costs for both single-wide and double-wide trailers.

SINGLE-WIDE	
Service & Labor for getting home ready to move	\$400
Delivery only per section	\$500
Manufactured Home new set-up (Block, Level, Tie Down, Skirt Home, Hook-up Utilities)	\$1,600
1 Oversize Load Permit Fee	\$100
Materials (Footer pads, cap boards, shims, tie downs, skirting, blocks)	\$1,975

Fuel surcharge	\$400
Total	\$4,975

DOUBLE-WIDE	
Service & Labor for getting home ready to move	\$900
Delivery only per section	\$1,000
Manufactured Home new set-up (Block, Level, Tie Down, Skirt Home, Hook-up Utilities)	\$2,250
1 Oversize Load Permit Fee	\$200
Materials (Footer pads, cap boards, shims, tie downs, skirting, blocks)	\$2,100
Fuel surcharge	\$400
Lower and then raise 5/12 Pitch Roof	\$2,400
Install and Remove Axles	\$1,500
Total	\$10,350

Report on the Viability and Disaster Resilience of Mobile Home Ownership and

Parks at 26. Even if a mobile home resident can afford these costs, which may be more than the home itself is worth, many older homes are unsafe to move in the first place. Additionally, many parks will not accept older mobile homes. *Id.*

Mobile home parks have different rules for determining when a mobile home is too old to accept, but homes older than ten years are commonly rejected from mobile home parks.

c. The Negative Effects of Homelessness

When people with low income lose their housing, the effects are devastating.

The lack of affordable housing in most communities means that people are often

left homeless and scrambling for a place to live. In 2015, approximately 12,918 Iowans were homeless and served by emergency shelters, transitional housing, rapid rehousing, or street outreach projects. Institute for Community Alliances, *2015 Annual Snapshot of Service and Shelter Use: Iowans Experiencing Homelessness at 2* available at <http://www.icalliances.org/s/Annual-Report-2015.pdf>. Over the past few years, the number of people who are homeless for the first time, as opposed to people who are chronically homeless, has increased significantly. *Id.* at 5. While emergency shelter options exist in Iowa, they are short-term, underfunded, and unable to address the needs of the entire homeless community. *Id.* at 12. Emergency shelter is limited to 90 days, and most shelters have the goal of a person's stay being 30 days or less. *Id.* at 11. The City of Des Moines has also engaged in actions to remove homeless persons from city property, resulting in the displacement of numerous city residents. *See City of Des Moines v. Webster*, 861 N.W.2d 878 (Iowa Ct. App. 2014).

The availability of longer-term housing assistance is often limited by a lengthy waiting list. United States Department of Housing and Urban Development, *Housing Choice Vouchers Fact Sheet*, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet. It is not uncommon for applicants to be on waiting lists for months or even years before receiving housing assistance. Often,

a Public Housing Authority (PHA) will be forced to close its waiting list when it has more families on the list than it will be able to assist in the near future. *Id.* In fact, the City of Des Moines Municipal Housing Authority's (DMMHA) policies provide for closing the waiting list under these circumstances:

4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]

Closing the Waiting List

If the number of families on the waiting list for a Housing Choice Voucher is such that there is no reasonable prospect that additional applicants could be provided assistance within the next year, the DMMHA may suspend the taking of further applications.

Des Moines Municipal Housing Authority, *Section 8 Administrative Plan* at 4-4, available at <http://www.dmgov.org/Departments/HousingServices/PDF/2015AdminPlanChapter4.pdf>.

Homelessness has a lasting and negative effect on a person's physical and mental health. Institute of Medicine, Committee on Health Care for Homeless People, *Homelessness, Health, and Human Need*, Nat'l Acads. Press, (1988), Section 3, available at <http://www.ncbi.nlm.nih.gov/books/NBK218232/>. Not only are some health problems a direct consequence of homelessness, but homelessness can exacerbate the problems and complicate the ability of the person and their health care provider to treat them. *Id.*

For children, the effects of homelessness are particularly troubling. Homeless children experience hunger, difficulties in school, and poor physical and mental health, all at rates much higher than children who are not homeless. American Psychological Association, *Effects of Poverty, Hunger, and Homelessness on Children and Youth*, available at <http://www.apa.org/pi/families/poverty.aspx>.

II. THE RESIDENTS OF OAK HILL

Oak Hill Mobile Home Park is home to approximately 30 mobile homes. (App. Pg. 206). The residents of Oak Hill Mobile Home Park own their mobile homes. (App. Pg. 222-223). They do not pay rent for their homes, but they pay monthly lot rent to Oak Hill Mobile Home Park to rent the land beneath their homes. (App. Pg. 223). Some Oak Hill residents have lived in this park for over 30 years. (App. Pg. 226).

The demographics of Oak Hill differ from surrounding Des Moines neighborhoods. For example, the 2014 median household income in Des Moines was \$46,430 per year, and the median gross rent was \$751. United States Census Bureau, *Quick Facts, Des Moines, Iowa*, available at <http://www.census.gov/quickfacts/table/INC110214/1921000>. The household incomes of residents living at Oak Hill Mobile Home Park are likely well below the median \$46,430 per year, since residents of the park pay only \$300 per month

in lot rent. (App. Pg. 223). The monthly lot rent charge of \$300 is \$450 per month less than housing costs paid by the median household in Des Moines. Although residents of Oak Hill own their homes, they pay little in annual taxes for these homes. Annual taxes for 1960s and 1970s mobile homes are approximately \$85.

Registration Fees by Vehicle Type *available at*

<http://www.iowataxandtags.org/vehicle-registration/registration-fees-by-vehicle-type/>. This large discrepancy in housing costs between residents of Oak Hill and

other residents of Des Moines means residents of Oak Hill Mobile Home Park likely will not be able to find affordable housing in their existing neighborhood.

The Oak Hill Mobile Home Park also has a higher percentage of Hispanic individuals than the surrounding neighborhoods. Census data from 2010 shows Hispanic individuals make up approximately 12% of the population of Des Moines, but the majority of residents of Oak Hill Mobile Home Park are Hispanic and speak Spanish as their primary language. United States Census Bureau, *Quick Facts, Des Moines, Iowa available at*

<http://www.census.gov/quickfacts/table/RHI125215/1921000>. Some of these individuals are bilingual, but many rely on their minor children or friends to interpret and translate. (App. Pg. 218).

Several of the mobile homes occupied by the residents have attached steps or other types of additions. (App. Pg. 158). Four mobile homes at Oak Hill have

been torn down since litigation began, resulting in less congestion at the park.

(App. Pg. 219).

ARGUMENT

I. THIS ZONING ENFORCEMENT ACTION IS AN OVERBROAD REMEDY FOR ADDRESSING EXISTING HEALTH AND SAFETY ISSUES AND WILL CAUSE EXTREME HARDSHIP TO LOW-INCOME PARK RESIDENTS

The Order from which Ogden appeals justifies its outcome under the logic that the underlying nonconforming use was destroyed through expansion. It is clear from the language of the opinion, however, that the real issue for the court was the condition of some of the homes and common areas in the park. However, far from enforcing health and safety, simply enjoining the operation of Oak Hill is detrimental to the health and safety of the residents residing in the mobile home park.

The district court ordered that Oak Hill shall be enjoined from operation 180 days from the May 31, 2016 ruling. (App. Pg. 283). This means Oak Hill will cease to exist as of November 27, 2016.

The district court held the “discontinuance of the nonconforming use under the 1955 Certificate of Occupancy is necessary for the safety of life or property.” (App. Pg. 280). The court held lives and property are currently endangered at Oak Hill by “the detritus of life: vehicles, outdoor recreational equipment, garbage

bins, makeshift gardens, fencing, and crudely constructed additions to the mobile homes.” (App. Pg. 280-281). Other alleged dangers to life and property include the poor condition of the road that runs through the mobile home park and the lack of evidence of fire extinguishers. (App. Pg. 281).

The vehicles, garbage bins, gardens and other items described as the “detritus of life” by this court are merely visible signs that approximately 70 individuals are residing in the mobile home park. Individuals living at Oak Hill use their vehicles to get to work, they use garbage bins to collect waste materials from the park, and they use gardens and fencing as a way to grow additional nutritious food. The court held the U-shaped road in the mobile home park is in poor repair, but there was no evidence that residents in the mobile home park or emergency services have been unable to enter or exit the park.

Jonathan Lund, the Des Moines Fire Marshal, testified that “a mobile home is inherently a little bit more dangerous in the sense that they typically use smaller dimensional lumber.” (App. Pg. 122). Additionally, structures that are built close together are a greater fire hazard than structures built far apart. (App. Pg. 123). The Des Moines Fire Department does not inspect mobile home parks. (App. Pg. 124-125). Mr. Lund testified there are no alleged fire code violations at Oak Hill. (App. Pg. 125-126). SuAnn Donovan testified the Des Moines City Code requires mobile home parks to “be equipped at all times with one fire extinguisher in good

working order for every 25 trailer spaces located not further than 200 feet from each trailer space. (App. Pg. 146). The park owner testified there are approximately eight fire extinguishers in the park. (App. Pg. 223-224).

A. The most serious concern to health and safety of the residents is the fact that many residents of Oak Hill Mobile Home Park will likely be homeless after November 2016

The City of Des Moines (hereinafter “the City”) published a Homeless Action Plan for Des Moines and Polk County in 2009 to initiate a 10 Year Plan to End Homelessness. Homeless Action Plan for Des Moines and Polk County, p. 8 available at <https://www.polkcountyiowa.gov/media/127037/Homeless-Action-Plan-for-Des-Moines-and-Polk-County.pdf>. The City’s Homeless Action Plan emphasizes a link between homelessness and lack of affordable housing and declared it a public health crisis. *Id.* at 8-9. Because homeless individuals often lack the resources and stability needed to maintain relationships with regular physicians and therapists, “the average chronically homeless person costs taxpayers an estimated \$40,000 a year through the utilization of public resources, from hospital emergency room visits to police time.” *Id.* at 10.

“The gap between income and housing affordability is one of the primary causes of homelessness.” *Id.* at 17. Because of this, the Action Plan specifically looked at an increase in homelessness among low-income renters who recently lost their housing due to job loss or other economic factors. *Id.* at 12. The most cost-

effective way to address this housing problem is likely assisting these individuals with rent or mortgage payment rather than dealing with the costs the community must shoulder if these individuals become homeless. *Id.* In 2009, the fair market rent of a 2-bedroom housing unit was \$727. *Id.* at 18. This is \$400 more than lot rent at Oak Hill. Therefore, individuals forced to move from Oak Hill Mobile Home Park will likely join the 40% of renters in Polk County that do not have enough income for rent. *Id.*

One of the five goals of the Homeless Action Plan for Des Moines and Polk County is to create new permanent housing for individuals whose income is not sufficient to pay for market housing. *Id.* at 21. To accomplish this goal, a specific number of housing units will be set aside to rent to individuals with incomes below 40 percent of the median income for the geographic area. *Id.* at 29. The existence of the Homeless Action Plan with potential solutions shows City leaders are aware of a lack of affordable housing for low-income individuals in Des Moines. City leaders are also aware of the tremendous financial costs of homelessness.

However, enjoining a mobile home park by declaring it a serious concern to health and human safety is an exaggeration of potential dangerous conditions in the park and an underestimation of the negative effect this closure will have on Oak Hill's population.

B. Enjoining the Oak Hill Mobile Home Park from operating is an overbroad remedy and any safety and health concerns can be alleviated in a more targeted manner.

The district court held that Oak Hill Mobile Home Park must close within 180 days from the entry of the ruling. (App. Pg. 283). The court held, “the current use, when compared to the past use, has a markedly deleterious effect on the surrounding area and its residents.” (App. Pg. 281). However, aside from a lack of space between some of the mobile homes and attached porches, the City did not provide specific testimony about the harm Oak Hill is causing to its residents and the surrounding community nor did the court make any specific findings based on evidence of record regarding the actual safety and health concerns.

Jonathan Lund, the Des Moines Fire Marshal, testified the mobile homes in the park were not inspected by the fire department because they are single family dwellings nor was he able to identify any fire code violations. (App. Pg. 125-126). The City of Des Moines uses the nuisance abatement process to prevent other single family dwellings from endangering public health, safety or welfare. Des Moines, Iowa City Code § 42-347 *available at* https://www.municode.com/library/ia/des_moines/codes/code_of_ordinances?nodeId=MUCO_CH42EN_ARTVINU_S42-347NUCO. The district court held overcrowding from vehicles, garbage bins, gardens, and other items endangers people and property at Oak Hill Mobile Home Park. (App. Pg. 125-126).

However, these items likely do not fall under any of the “specifically identified nuisances” identified in § 42-348 of the Des Moines City Code. If a particular property is identified as a nuisance, the City Code provides for specific notices under § 42-358 and an administrative hearing under § 42-358.02. Even if a hearing officer finds a nuisance exists, “the hearing officer may grant additional reasonable time for the abatement of the nuisance by the recipient of the notice prior to city abatement of the nuisance.” Des Moines, Iowa City Code § 42-358.02(c)(4) *available at*

https://www.municode.com/library/ia/des_moines/codes/code_of_ordinances?nodeId=MUCO_CH42EN_ARTVINU_S42-358NO.

Mark Ogden, the owner of Oak Hill Mobile Home Park, testified he had removed several of the mobile homes that appeared on the City’s exhibits. (App. Pg. 215-218). The removal of these homes helped alleviate some of the alleged overcrowding at the park. If the City identified specific safety concerns in the park, park residents could evaluate whether porches could be removed from their homes or whether vacant or unsafe homes could be removed. By addressing specific alleged nuisances in the park instead of shutting the park down, Oak Hill could continue to provide housing for low-income residents in Des Moines.

Public or subsidized housing is not a realistic option for the residents of Oak Hill, who will face imminent homelessness much sooner than the City of Des

Moines will likely be able to provide them with housing assistance. The Amici cannot afford the much higher rents, and the City now moves to deprive them of both their homes and perhaps the only substantial asset that they have. If the health of the Amici and the other residents is truly the paramount issue, then the City should be made to use methods that are less destructive and that actually stand a chance of improving their lives, rather than an overbroad zoning enforcement action that stands to make their lives worse rather than better.

CONCLUSION

For the foregoing reasons, the Amici respectfully ask that the court reverse the district court's decision ordering Ogden to cease operation of Oak Hill as a mobile home park and ordering the Amici's removal from their homes at Oak Hill.

Respectfully submitted,

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CERTIFICATE OF FILING AND PROOF OF SERVICE

The undersigned certifies that this document was filed on the 15th day of December, 2016, by electronically filing a copy through the Iowa Appellate Court Electronic Document Management System (EDMS), which system provides notice to all registered parties by email, including the following persons:

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I, Jessica Taylor, hereby certify that the actual cost of printing the foregoing Amici Curiae Final Brief was \$0.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) and Iowa R. App. P. 6.906(3) because this brief contains 3,335 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman.

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