

Ash resided at 259 Caldwell, also in Greenwood. Plaintiff Mikie Ash, Jr. does not reside in Greenwood. Plaintiffs Mikie Ash and Evette Hoosier have never been married.

The Clarksville Housing Authority contracts with the Clarksville Police Department to discourage, prevent, enforce and prosecute drug-related activity on the premises of Greenwood. Under that contract, Defendants are "empowered" to enforce the following rules and regulations:

1. Unauthorized visitors in unoccupied structures of the Authority shall be removed.
2. Unauthorized visitors creating disturbance or otherwise interfering with the peaceful enjoyment of lessees on Authority property shall be removed.
3. Unauthorized visitors destroying, defacing or removing Authority property shall be removed and/or criminal enforcement actions shall be taken.

Trial Ex. 9, p.6.

Pursuant to this contract, Clarksville police officers are authorized to give criminal trespass warnings to any persons found in violation of these rules or regulations; that is, to give notice to any violators that their entry on the property or premises is forbidden, and to arrest or cause the arrest and prosecution of any violators, when appropriate. Id.

The evidence at trial revealed that, on April 2, 1996, Plaintiff Mikie Ash was served with a notice of criminal trespass from the Clarksville Housing Authority. On October 30, 1996, Mr. Ash was arrested for criminal trespass and possession of marijuana. He eventually pled guilty, on April 27, 2000, to the criminal trespass charge, after it had been dismissed, appealed, overturned and remanded.

Plaintiff Mikie Ash was convicted in 1998 for a drug-related offense, was sentenced to incarceration for 15 years at thirty percent, and was released in August of 2000. On June 13, 2002, Plaintiff Mikie Ash entered the premises of Greenwood for the purpose of

providing care for his daughter, Amonte Ash. Because his name was on Defendants' list of persons prohibited from entering the premises, Mr. Ash was arrested by the Clarksville Police Department for criminal trespass. Mr. Ash's criminal proceeding on that criminal trespass charge is still pending in the Montgomery County Circuit Court. See Docket No. 34.

This action was originally filed in the Montgomery County Circuit Court and was removed to this Court by Defendants, based upon federal question jurisdiction.

Plaintiffs Hoosier and Mikie Ash testified at trial concerning Mr. Ash's involvement with his daughter, Amonte. Based upon that unrebutted testimony, the Court finds that Mikie Ash is an active participant in the life and parenting of Amonte Ash. For example, although he does not give Ms. Hoosier a specific amount of money for "child support," Mr. Ash provides clothing, food, recreation, medical care and help for Amonte Ash. Ms. Hoosier testified that she and Amonte visited Mr. Ash in prison, that Mr. Ash stayed with them for a time after he was released from incarceration, and that she wants Mr. Ash to be able to come to her house to assist in the care of Amonte.

Wanda Mills, Executive Director of the Clarksville Housing Authority, testified that the contract between the Clarksville Housing Authority and the City of Clarksville does not require that persons have been arrested or convicted before Defendants can place their names on the unauthorized visitors list and issue them criminal trespass notices. She testified that no one has ever been taken off the list once his or her name was placed there. Ms. Mills also testified that there is no time limitation for being on the list and no exception for being on the Housing Authority property for a legitimate business purpose.

It is undisputed that the contract has no criteria for determining who is an unauthorized visitor to the Housing Authority property. Ms. Mills stated that the contract has no criteria for determining who is authorized to be on the property and who is unauthorized. Bert Clinard, a sergeant over the major crimes unit of the Clarksville Police Department, also testified that there are no set criteria for someone's name going on the list for criminal trespass notices. Mr. Clinard stated: "There is not just a set of standards that go. It can be a bunch of different things or just one thing." He stated that he and eight agents from the major crimes unit issue the criminal trespass notices and "everything is a case-by-case basis."

CONCLUSIONS OF LAW

First, the Court must address whether the abstention doctrine set forth in Younger v. Harris, 401 U.S. 37 (1971), precludes this Court from deciding this case.¹ In Younger, the Court held that district courts are prohibited from enjoining state criminal court proceedings. Id. at 43-45.

In this case, Plaintiff Mikie Ash is charged with criminal trespass, in violation of Tennessee law, and his criminal trespass case is still pending in state court. The Tennessee criminal statute allegedly violated provides that a person commits criminal trespass who, "knowing the person does not have the owner's effective consent to do so, enters or remains on property, or a portion thereof." Tenn. Code Ann. § 39-14-405.

¹ This issue was raised by the Court, not the parties, and was briefed by the parties after trial, pursuant to an Order from the Court.

Plaintiffs do not dispute that Mikie Ash was on the Greenwood property after he was issued a criminal trespass notice. Plaintiffs do not seek to enjoin the pending criminal proceeding or overturn any criminal judgment. Plaintiffs are not challenging the constitutionality of the state criminal trespass statute. Rather, Plaintiffs in this federal action are challenging the contract between the Clarksville Housing Authority and the City of Clarksville as violating their First and Fourteenth Amendment rights. The challenge is to a government policy or contract. Plaintiffs are asking for Mikie Ash, in the future, to be able to visit his daughter in Greenwood.

The Court finds that this matter is sufficiently "collateral" to the pending state criminal proceeding that Younger abstention does not preclude the Court from making this determination, particularly because Defendants invoked federal jurisdiction by removing the action from state court and thereby waived an abstention defense. See, e.g., Habich v. City of Dearborn, 331 F.3d 524, 530 (6th Cir. 2003).

Plaintiffs brought this action pursuant to 42 U.S.C. § 1983, alleging violations of their First and Fourteenth Amendment rights of association, privacy and due process. The Court finds that Plaintiffs Evette Hoosier and Amonte Ash have not carried their burden of showing constitutional injury sufficient to establish standing, and their claims are dismissed. Based upon the testimony of Ms. Hoosier and Mr. Ash, however, the Court finds that Plaintiff Mikie Ash has carried his burden of proving that he has a constitutionally protected right to participate in the life and care of his daughter, Amonte Ash, and has standing to bring this case. When an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child,

his interest in personal contact with his child acquires substantial protection under the due process clause. Lehr v. Robertson, 103 S.Ct. 2985, 2993 (1983).²

A family member's right to participate in child rearing and education is one of the most basic and important associational rights protected by the Constitution. Johnson v. City of Cincinnati, 310 F.3d 484, 499 (6th Cir. 2002). In Johnson, the court held that the right to participate in child rearing extended to grandparents. Id. at 500. Here, as in Johnson, the family member challenging the prohibition has been an active participant in the life of the child, with the consent and support of the mother.

Where a fundamental liberty interest protected by the substantive due process component of the Fourteenth Amendment is involved, the government cannot infringe on that right unless the infringement is narrowly tailored to serve a compelling state interest. Johnson, 310 F.3d at 502. In other words, the policy or statute at issue is subject to strict scrutiny. It is undisputed that the prevention of crime, particularly drug-related crime, is a compelling state interest. The issue, then, is whether the policy and practice of Defendants, as reflected in the contract between them, is narrowly tailored to serve that interest.

Ms. Mills, Mr. Clinard, and counsel for the City of Clarksville admitted that there are no criteria for being listed as an unauthorized visitor to the Housing Authority property. This standardless discretion that effectively criminalizes conduct (violation of the criminal trespass statute) is not "narrowly tailored" and, therefore, is unconstitutional. The Supreme Court has clearly held that if arbitrary and discriminatory enforcement is to be prevented,

² For this reason, defense counsel's argument that Mikie Ash is not the "legal" father of this child is not persuasive.

laws must provide explicit standards for those who apply them. Grayned v. City of Rockport, 92 S.Ct. 2294, 2299 (1972).

The Court finds that Plaintiff Mikie Ash has carried his burden of proving that the subject policy reflected in the contract between the Clarksville Housing Authority and the City of Clarksville is not narrowly tailored to serve the Defendants' interest in preventing crime.


Clearly the government has a strong interest in ridding public housing property of crime. The Court is not finding that the Defendants cannot bar convicted felons, drug traffickers, those convicted of violent crimes or others from coming upon the Housing Authority property. Neither is the Court finding that Defendants cannot bar Plaintiff Mikie Ash from coming upon the Greenwood property with appropriately articulated standards. These questions are not ripe for decision or necessary for the Court's ruling today. The governmental policy at issue here has *no* standards and, thus, is unconstitutional.

Therefore, under the current contract between the Clarksville Housing Authority and the City of Clarksville (Trial Exhibit 9), Defendants cannot bar Plaintiff Mikie Ash from coming on the Greenwood property. The Court expresses no opinion on any future policy, on how to remove names from the unauthorized visitor list, on how to appeal being placed on that list, on Plaintiffs' alleged "moving to the problem," on the issue of "incidental burden," or other issues presented.

Accordingly, partial judgment is entered for Plaintiff Mikie Ash on the issues of liability and the challenge to the constitutionality of the contract at issue. Plaintiffs have also asked for money damages. Docket No. 20. The parties shall brief the issue of money

damages and file such briefs on or before September 15, 2004. This opinion is not a final judgment from which an appeal lies for purposes of Federal Rule of Civil Procedure 54.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

