

FILED IN OFFICE

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Jay M. Cannon
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IN THE SUPERIOR COURT OF WASHINGTON COUNTY
STATE OF GEORGIA

DONALD ASHLEY and	:	
RABUN FROST, and	:	
BRUCE WIDENER, as Executive	:	Civil Action No: 13CV347
Director of the GEORGIA	:	
ASSOCIATION OF GROUNDWATER	:	
PROFESSIONALS,	:	
on behalf of themselves	:	
And all others similarly situated,	:	
Plaintiffs,	:	
v.	:	
	:	
CITY OF SANDERSVILLE, GEORGIA,	:	
A municipal corporation,	:	
Defendant.	:	

ORDER

The Parties herein named having come before the Court and having presented evidence in this declaratory judgment action, and the Court having heard and considered the arguments of counsel, the Court finds as follows:

1.

Plaintiffs have challenged as unconstitutional on its face and in its application, and as ultra vires, an Ordinance of the City of Sandersville which purports to regulate the digging of private wells on private property, to-wit:

“§ 6-1-8. Wells.

(a) No person shall dig or extend any well in the City without first having obtained a permit from the City to do so.

(b) All drilling operations shall be conducted in accordance with state standards and shall be conducted in such a manner that the water supply of the City is protected from contamination.

(c) The City shall have the right to place a meter on every well dug, extended or already existing within the City from which water enters the public sewer system. Sewer charges for the handling of such water shall be imposed on the basis of the City sewer rate schedule. “

2.

Defendant City of Sandersville acknowledges that it has heretofore had a policy of refusing to grant any permits for private wells where City water was available and denied Plaintiff Donald Ashley a well permit based on this policy.

3.

The Court does find, that pursuant to City of Hawkinsville v. Clark, 135 Ga. App. 875, 219 S.E.2d 577, 579 (1975), a private landowner has, under the Georgia and Federal Constitutions, the right to drill a well or have a well drilled on his or her own property subject only to a government’s reasonable rules and regulations looking to the protection, safety and health of its citizens.

4.

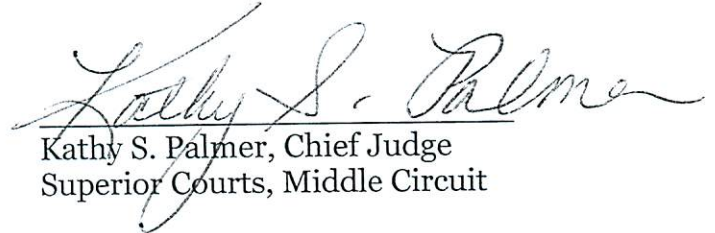
The Court does find, that the City of Sandersville’s well ordinance is unconstitutional on its face and as applied in that:

- The City’s policy of denying any well permit where City water is available is arbitrary; and
- The City’s ordinance as currently instituted and as applied does not provide a sufficient process for a determination of whether there are any safety issues. City of Hawkinsville v. Clark, 135 Ga. App. 875 (219 SEd 577) (1975).

5.

For the above and foregoing reasons, the City of Sandersville Ordinance 6-1-8 governing Wells is hereby declared unconstitutional. The City of Sandersville is ordered to pay Plaintiff's attorneys \$4,000 in court costs and attorney fees.

So ordered this the 8th day of November, 2013

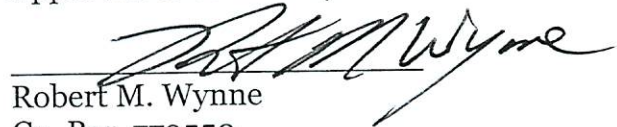

Kathy S. Palmer, Chief Judge
Superior Courts, Middle Circuit

Order prepared by:



Tom C. Rawlings
Ga. Bar 595795
Attorney for Plaintiffs
McMillan & Rawlings, LLP
120 N. Harris St.
Sandersville, GA 31082

Approved as to form by:



Robert M. Wynne
Ga. Bar 779550
Attorney for City of Sandersville
Hutcheson & Wynne
119 Malone St.
Sandersville, GA 3