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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

CITY OF LOS ANGELES,

Plaintiff and Appellant,

v.

2000 JEEP CHEROKEE etc.,

Defendant;

RICHARD REINSDORF,

Defendant and Respondent.

B185673/w B188182

(Los Angeles County
Super. Ct. No. BS097278)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County, Victor Greenberg, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded with directions.

Rockard J. Delgadillo, City Attorney, Asha Greenberg, Assistant City Attorney, Jonathan S. Galatzan and Maria G. Aguillon, Deputy City Attorneys, for Plaintiff and Appellant.

Mark T. Clausen for Defendant and Respondent.

In *Horton v. City of Oakland* (2000)82 Cal.App.4th 580 Division Three of the First District rejected a preemption challenge to a City of Oakland ordinance authorizing the civil forfeiture of vehicles involved in soliciting prostitution or acquiring drugs. In *OConnell v. City of Stockton* (2005)128 Cal.App.4th 831, the Third District disagreed with *Horton*, finding that a similar City of Stockton ordinance was preempted by state law. On September 7, 2005, our Supreme Court granted review in *OConnell* (S135160) and the case is still pending.

Meanwhile, in April 2005, Richard Reinsdorf was arrested for soliciting prostitution (Pen. Code, § 647, subd. (b)), and his Jeep was seized. In May, he was notified that the City of Los Angeles had initiated forfeiture proceedings under section 41.70 of the Los Angeles Municipal Code, which authorizes the seizure and forfeiture of vehicles used to solicit prostitution.¹ Reinsdorf challenged the City's action, claiming the ordinance was preempted by state law. The trial court agreed, gave judgment to Reinsdorf against the City, and later granted Reinsdorf's motion for attorney's fees in the amount of \$49,735.90.

The City appeals, contending *Horton* is correct. We agree, and reverse both the judgment and the attorney fee award.

DISCUSSION

A.

To determine whether an ordinance is preempted by state law, we must determine whether there is a genuine conflict between a state statute and the

¹ All references to section 41.70 are to that section of the Los Angeles Municipal Code.

ordinance, which there is if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. An ordinance enters an area that is fully occupied" by general law when the Legislature has expressly manifested its intent to fully occupy the area, or when it has impliedly done so as shown by these indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. (*Horton v. City of Oakland*, supra, 82 Cal.App.4th at p. 585.)

B.

Vehicle Code section 22659.5, subdivision (a), authorizes any city to adopt an ordinance establishing a five-year pilot program that implements procedures for declaring any motor vehicle a public nuisance when the vehicle is used [to pimp, pander or solicit prostitution]" and the defendant is convicted of one of the specified offenses (or pleads guilty to a lesser included offense).² In *Horton*, the claim was that section 22659.5 provides the exclusive authorization for local ordinances designed to abate as a nuisance vehicles used to solicit prostitution, and that the Oakland ordinance conflicted with the

² All references to section 22659.5 are to that section of the Vehicle Code. Although the statute as originally enacted applied only to certain designated cities and counties and included a sunset clause, it was amended in 1998 to remove its temporal and geographical restrictions. (*Horton v. City of Oakland*, supra, 82 Cal.App.4th at p. 588, fn. 11.)

statute because it authorized a forfeiture rather than impoundment and did not require a conviction or plea by the defendant. (Horton v. City of Oakland, supra, 82 Cal.App.4th at p. 589.)

Because section 22659.5 contains no explicit statement of the Legislature's intent to occupy the area, the Horton court framed the issue as "whether the passage of legislation authorizing local communities to enact a pilot program constitutes a clear indication of intent to occupy the area sufficient to support a finding of implied preemption." (Horton v. City of Oakland, supra, 82 Cal.App.4th at p. 589.) Horton holds that it does not:

We note first that the Legislature has not taken definitive action to pass encompassing legislation that would be binding statewide. In fact, the Oakland ordinance was in effect and this lawsuit was pending when section 22659.5 was amended in 1998 to remove its geographical restrictions. The Legislature did not take the opportunity to amend the law to prohibit local nuisance abatement through vehicle forfeiture. [Citation.] Thus in enacting section 22659.5, the Legislature has left it to local communities to establish a pilot program pursuant to that statute if they so choose. Section 22659.5 also provides certain specifications for any pilot program adopted pursuant to that statute. However, it does not preclude local governments from enacting other provisions if they decide not to adopt the proffered pilot program.

Because the Oakland ordinance was not enacted pursuant to section 22659.5, it is not constrained by the procedural requirements of that statute. We also note that the history of section 22659.5 indicates legislative concern with traffic and parking problems resulting from drivers distracted by the search for

prostitutes, whereas the Oakland ordinance is specifically directed more broadly at nuisance and blight abatement, traditionally an area of local regulations. [Citations.]” (Horton v. City of Oakland, supra, 82Cal.App.4th at pp. 589-590, fn. omitted.)

Section 41.70, the City of Los Angeles ordinance, is distinguishable from the Oakland ordinance only because ours addresses only prostitution, not drugs. With regard to prostitution, the ordinances are virtually identical.³

C.

Our conclusion that Reinsdorf was not entitled to judgment on preemption grounds means that both the judgment in his favor and the award of attorneys fees he obtained as the prevailing party must be reversed.⁴

We deny Reinsdorf's requests for judicial notice and for attorneys fees on appeal, and summarily reject his suggestion that this appeal is moot.

³ Section 41.70 was adopted after Horton approved the Oakland ordinance. In 2002, the Los Angeles City Council found: “The City of Oakland is one of many municipalities in California . . . that have enacted vehicular forfeiture statutes using local control. These laws have been shown to decrease nuisance prostitution activity when applied in areas of blatant streetwalking prostitution. The California Supreme Court [presumably by denying review in Horton] has ruled [on] the constitutionality of this type of approach, choosing to uphold the [Oakland] ordinance” (Horton v. City of Oakland, supra, 82Cal.App.4th 580, review denied Oct. 18, 2000.) Section 41.70 became effective in 2003.

⁴ If our opinion appears conclusory, it is because we assume Reinsdorf will petition for review in this case, and that his petition will be granted and held pending the Supreme Court's decision in O'Connell.

DISPOSITION

The judgment and attorney fee order are reversed, and the cause is remanded to the trial court with directions to address the merits of all issues. The parties are to pay their own costs of this appeal.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

MALLANO, Acting P.J.

ROTHSCHILD, J.