

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



02/01/2023

Devin Hamilton, Legal Assistant

FMG VALDOSTA, LLC,
Petitioner,

:
:
:

v.

: Docket No.:
: 2310457-OSAH-DOT-OA-92-Howells

GEORGIA DEPARTMENT OF
TRANSPORTATION,
Respondent,

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:
:

**INITIAL DECISION AND
ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DETERMINATION**

This dispute involves an outdoor advertising sign owned by FMG Valdosta, LLC (“FMG”). Currently pending before this court is a motion for summary determination filed by the Georgia Department of Transportation (“GDOT”). For the reasons stated below, GDOT’s motion for summary determination is **GRANTED**.

Undisputed Material Facts

1.

FMG owns and operates a standard sign located at or near milepost 20 on State Route 401 in Lowndes County, at latitude 30.860152 north and longitude 83.336801 west (the “Sign”). (Affidavit of Walter “Buddy” Sanders, Jr. (hereinafter “Sanders’ Aff.”) at ¶ 7; FMG’s Response to Statement of Material Facts (hereinafter “Response”), at ¶ 1.)

2.

The Sign is located within 660 feet of the right of way along State Route 401. (Sanders Aff. at ¶ 11; Response at ¶ 2.)

3.

The Sign is visible from State Route 401. (Sanders Aff. at ¶ 11; Response at ¶ 3)

4.

The area where the Sign is located is in a Residential Agricultural Zoning District. (Sanders Aff. at ¶ 14; Response at ¶ 4.)

5.

On or around January 24, 2022, GDOT observed that the Sign was displaying an off-premises advertisement for Valdosta Toyota and documented this through a photograph. (Sanders Aff. at ¶ 9 and Ex. A thereto; Response at ¶ 5)

6.

The content of the Sign is an off-premises message because it does not relate to activities conducted on the property where the Sign is located. (Sanders Aff. at ¶ 11; Response at ¶ 6.)

7.

GDOT is the state agency that issues outdoor advertising permits. (See generally Sanders Aff. at ¶ 6; Response at ¶ 7.)

8..

The Sign does not possess a current permit from GDOT to operate as an off-premises sign. (Sanders Aff. at 13; Affidavit of Bart Holt at ¶ 5, and Ex. 1 attached thereto.)¹

¹ FMG purports to dispute this fact; however, it produced no current permit, and no documentation showing that it has ever renewed the permit. Instead, it produced a Land Rental Data Sheet with various typewritten dates in the 1970s and handwritten notations of a purported permit number “N1727” and date of 09/01/81.

9.

There is no GDOT record of a permit ever being issued to a sign at the location of this Sign, nor is there any record of any permit renewals ever being made for it. (Sanders' Aff. at ¶ 13.)²

10.

GDOT issued to FMG an Unauthorized Sign Letter on April 7, 2022, indicating that the Sign was displaying off-premises advertising, and therefore, the Sign required a permit to do so, or it had to be removed. (Sanders Aff. at ¶ 15 and Ex. A attached thereto; Response at ¶ 10.)

11.

GDOT is only authorized to issue permits to off-premises signs that are located in zoned or un-zoned commercial and industrial areas. (Sanders Aff. at ¶ 14; Response at ¶ 11.)

12.

The Sign was observed on or around November 14, 2022, again displaying the same off-premises Valdosta Toyota advertisement. GDOT memorialized this occurrence by taking multiple, additional images of the Sign displaying this off-premises advertising. (Sanders Aff. at ¶ 10 and Ex. B thereto; Response at ¶ 13.)

² FMG also purports to dispute this fact with the Affidavit of Bart Holt, but this it cannot do. Affidavits must be made upon personal knowledge. Ga. Comp. R. & Regs. 616-1-2-.15(3). Mr. Holt has provided no basis upon which he would have personal knowledge of GDOT internal records.

Conclusions of Law

1.

On motion for summary determination, the moving party must show by supporting affidavits or other probative evidence that there is no genuine issue of material fact for determination. Ga. Comp. R. & Regs. 616-1-2-.15(1). When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show by supporting affidavit(s) or other probative evidence that there is a genuine issue of material fact for determination. Ga. Comp. R. & Regs. r. 616-1-2-.15(2)(c).

2.

In its motion for summary determination, GDOT argued that the Sign is an illegal sign because it displayed an off-premises advertisement and does not have a permit.

3.

Outdoor advertising signs which display information in the specific interest of the traveling public, and which do not relate to activities conducted on the premises are considered off-premises signs. See Ga. Comp. R. & Regs. 672-6-.03(1)(a)(1)(ii), (iii); Cf. Ga. Comp. R. & Regs. 672-6-.03(1)(a)(1)(ii), (iii) with Ga. Comp. R. & Regs. 672-6-.03(2)(b). Off-premises signs require a permit. Id.

4.

Every outdoor advertising permit expires on April 1 in the year following its issuance. O.C.G.A. § 32-6-74(a); Ga. Comp. R. & Regs. 672-6-.07(1). Permit holders must renew outdoor advertising permits each year between January 1 and April 1. Id. In December, notice of the renewal period is mailed to each permit holder with a list of all permits maintained by the permit

holder. O.C.G.A. § 32-6-74(a); Ga. Comp. R. & Regs. 672-6-.07(2). Thereafter, the permit holder must return the list, clearly indicating which permits are being renewed and which are not. Along with the list, the permit holder must submit payment of the renewal fees. Id. If the permit holder fails to renew a permit by the expiration date, GDOT must notify the permit holder by certified mail that the renewal is past due. Id. The permit holder has 45 days from the postmark of the past due notice to complete the renewal. Id. If the permit holder fails to renew the permit within the 45 day grace period, the permit expires and the sign becomes an illegal sign. Id.³

5.

An “illegal” sign is defined, in pertinent part, as follows: “A sign for the maintenance of which a permit is required under this part, or any amendment thereof, which sign is being maintained without a permit.” O.C.G.A. § 32-6-71(6)(A).

6.

Here, GDOT established a prima facie case that there is no current permit for the sign and therefore it is entitled to judgment as a matter of law. Ga. Comp. R. & Regs. 616-1-2-.15(1). Upon that showing, the burden shifted to FMG to present sufficient evidence to establish a genuine issue of material fact. Id. at 616-1-2-.15(2)(c); see also Roberts v. Nessim, 297 Ga. 278, 280 (2009). FMG has failed to show the existence of a genuine issue of material fact. The documentation presented by FMG, at best, indicates that the sign may have been permitted at one time, over 40 years ago. It does not; however, establish that the sign is currently permitted. FMG failed to present an actual permit or any documentation showing that the permit had been renewed at any time.

³ The renewal process for the permits of nonconforming signs is similar; however, the timelines differ. See O.C.G.A. § 32-6-80.

DECISION AND ORDER

For the foregoing reasons, GDOT's motion for summary determination is **GRANTED**.

GDOT's determination that FMG is maintaining an illegal sign is **AFFIRMED**.

FMG's remaining constitutional-based claims are **DISMISSED** for lack of jurisdiction.⁴

SO ORDERED this 1st day of February, 2023.

Stephanie M. Howells

STEPHANIE M. HOWELLS
Administrative Law Judge



⁴ The jurisdiction of this administrative court is limited to that conferred by the Administrative Procedures Act or other specific state or federal statutes and rules. See O.C.G.A. § 50-13-1, et seq. It has no authority to declare statutes or regulations unconstitutional. Ga. Comp. R. & Regs. 616-1-2-.22(3). Nor does it have any authority to grant a remedy on an Equal Protection claim.