

Keego Harbor officials win adult film decision

By JUDITH BERNE

Keego Harbor has won a first round victory in its battle to prevent an adult film theater from opening.

U.S. District Judge Charles Joiner ruled Tuesday that the Keego Theater Co. failed to prove that a preliminary or permanent injunction should be issued to stop the city from interfering with the showing of X-rated films.

His decision paved the way for the city to act against X-rated films. Attorneys for the theater company said adult only films would not be shown pending the results of an appeal to a higher court.

City officials were jubilant and the attorneys for the theater company expressed surprise.

The Keego Harbor Theater Co. attorneys had sought the injunction in federal court on the belief that the city would use a 1978 zoning ordinance to prevent the showing of X-rated films. They claimed that such action would be a violation of the civil rights of the theater company owners and that the city exceeded its authority with such an ordinance.

Judge Joiner, however, ruled that the city ordinance did not infringe on the first amendment rights of the theater company owners and that the city could treat the matter of the theater location as a zoning matter to be regulated by zoning ordinances.

"I thought we had a good case," said

Keego City Attorney Thomas Dillon. Dillon said as far as he knew this was the first time that a municipality has won an initial court case against an adult theater under similar circumstances.

Theater attorney Carl Rubin said, "It's interesting. The judge created new law. It's not over yet." Rubin said he would try to expedite an appeal to the U.S. Sixth Court of Appeals in Cincinnati.

According to Rubin, who says he and partner Stephen Taylor have tried X-rated movie cases across the country, "This is the first case I know of that has been decided in this way. It fits in the face of all the previous case law."

Rubin said he doesn't expect his clients, who have chosen to remain anonymous, to open the advertised "Keego Cinema and Love Boutique" pending the appeal.

"They (owners) went to court because they didn't want to risk criminal or civil litigation over a violation of the ordinance," Rubin said. "I don't assume their position will change. I have no reason to believe they will open with adult movies until there is a favorable decision."

CITING A LANDMARK case involving Detroit, Judge Joiner ruled that establishment of an adult theater "will cause greater harm to Keego Harbor and its citizens than to the plaintiffs."

In that case (Young vs. American

Mini-Theaters), the Supreme Court said a municipality could use zoning laws to restrict the location of adult theaters to certain zoning areas and to prevent their concentration.

Keego Harbor Mayor Ray Attwater was on hand for the decision. "I'm very pleased. We did a lot of praying. The good Lord was behind us. It was the answer to our prayers."

Joiner said the 300-acre, 3,000 population city did not have to allow new businesses restricted to adults only. He added that the city already has a high number of businesses, bars and taverns, catering only to adults.

"In this case, the market area is an area much larger than the city of Keego Harbor," he said. "There is nothing in the record that Keego Harbor has prevented the plaintiff from locating in the area around. The ordinance prevents (an adult theater) 500 feet from a bar. There's nothing that prevents plaintiff from buying up the bars."

The city's defense rested on its 1978 zoning ordinance which prohibits adult theaters within 500 feet of an establishment serving liquor. The theater, which formerly showed general movies at 3040 Orchard Lake Road, is within 500 feet of two taverns.

Theater attorneys maintained that since there is nowhere in the city that is not within 500 feet of a bar, the city has, in effect, zoned X-rated theaters "out of existence." By doing so, the city exceeded its authority to regulate zon-

ing, the attorneys contended.

In his decision, Joiner said the theater's market area went beyond Keego Harbor boundaries to include "most, if not all of Oakland County. There's nothing in the law to say each and every hamlet must provide an adult motion picture theater," the judge said. He added that "They (municipalities) may not join with others (municipalities) to keep adult films out."

Dillon said Keego Harbor is too small to have an adult theater. "Obviously these little towns can't provide all the (adult) uses," Dillon said.

"ONE OF THE real keys is that they (theater company) aren't restricted from the entire market area. That's the heart of the decision," said Gerald Fisher, Dillon's co-counsel.

Rubin disagreed with the judge's ruling. "If you say it's alright for Keego Harbor to zone out adult theaters, then it's alright for West Bloomfield and Sylvan Lake."

"Municipalities have to rule within their own borders," Rubin said, disagreeing with Judge Joiner's interpretation of "market areas."

Rubin said he and Taylor have never lost a theater case which they generally pursue on the basis of civil rights violations.

"The closest we came was in Young vs. American Mini," he said, regarding

(Continued on Page 10C)

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