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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CALIFORNIA HOLISITIC HEALING &
WELLNESS et al.,

Plaintiffs and Appellants,

v.

COUNTY OF SAN BERNARDINO,

Defendant and Respondent.

E058620

(Super.Ct.No. CIVDS1112412)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge.

Affirmed.

Law Office of James DeAguilera and James DeAguilera for Plaintiffs and
Appellants.

Jean-Rene Basle, County Counsel, John R. Tubbs II, Deputy County Counsel, for
Defendant and Respondent.

Plaintiffs and appellants California Holistic Healing and Wellness, Trung Than Ngo and Joseph Edward Eagan appeal from an order denying their petition for writ of administrative mandate. Appellants brought the petition seeking to overturn an administrative ruling upholding multiple citations for operating a medical marijuana dispensary in violation of a zoning ordinance which prohibits operation of such dispensaries in all unincorporated portions of respondent County of San Bernardino. After the superior court denied appellants' petition and entered judgment for the county, the California Supreme Court held, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729 (*Inland Empire*), that local governmental entities can exercise their police power to regulate or ban facilities that distribute medical marijuana by means of zoning ordinances. (*Id.* at pp. 752, 753-763.) Appellants concede the point, but contend that the county cannot ban activities of a medical marijuana collective, such as educational activities and promoting the medical benefits of marijuana to members of the collective. They contend that what they term the injunction is overly broad and infringes on their right as a collective to free speech and association.

We are unable to find in the record an order or injunction which precludes any activity other than the operation of a medical marijuana dispensary. Accordingly, we will affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

The factual record in this case is very sparse. Appellant Trung Than Ngo is the owner of a property at 858 W. 40th Street, San Bernardino, which is apparently in an unincorporated area of San Bernardino County. Appellant Joseph Edward Eagan apparently operates California Holistic Healing and Wellness. On multiple dates in July, August and September 2011, code enforcement officer Loreman of the county's Land Use Services Department visited the premises. Eagan confirmed that marijuana sales were being conducted on the premises. Reviews of California Holistic Healing and Wellness on an internet site also confirmed that sales were taking place there at least since May 20, 2011.

San Bernardino County Code section 810.01.150, subdivision (r)(1), defines a medical marijuana dispensary as “[A]ny facility or location, whether fixed or mobile, where marijuana is cultivated, made available, and/or distributed by or to three or more persons within the following categories: a primary caregiver, a qualified patient, or a patient with an identification card, as those terms are defined in Health and Safety Code §§ 11362.5 and 11362.7 *et seq.* as such sections may be amended from time to time.”

San Bernardino County Code section 82.02.070, subdivision (a), which became effective on May 5, 2011, provides in pertinent part: “[I]n no event shall a medical marijuana dispensary as defined in Section 810.01.150 be considered a permitted or conditionally permitted use in any land use zoning district. A medical marijuana dispensary is prohibited in all land use zoning districts, as those may be amended from time to time, and no permit of any type shall be issued therefor. This section shall not affect the right

to possess, use or cultivate marijuana for medicinal purposes as is presently authorized or prohibited by the laws of the State of California as set forth in the Health and Safety Code, Penal Code, or other state law, or by any federal law.”

Officer Loreman issued citations for violations of San Bernardino County Code section 82.02.070 on July 19, August 2, 10, 17, and September 2, 2011. An administrative hearing was held on the citations. Appellants stipulated to “the facts of the matter,” and on October 6, 2011, the citations were upheld by an administrative hearing officer. On October 26, 2011, appellants filed a petition for writ of administrative mandate. They alleged that the county ordinance violated California law, which permits the establishment of a medical marijuana dispensary. The court denied the petition, holding that the county ordinance is a valid exercise of the county’s police power and that appellants had no constitutional right to operate a marijuana dispensary. The court also denied appellants’ appeal of the administrative citations. Judgment was entered on February 25, 2013, and appellants filed a timely notice of appeal.

LEGAL ANALYSIS

In May 2013, after the entry of judgment on appellants’ writ petition, the California Supreme Court issued its decision in *Inland Empire, supra*, 56 Cal.4th 729. In that case, the court held that the right of local governmental entities to exercise their police power by means of zoning ordinances to regulate or ban facilities that distribute medical marijuana is not preempted by any state law, including the Compassionate Use Act of 1996 (Health & Saf. Code, § 11362.5) and the Medical Marijuana Program (Health & Saf. Code 11362.7 et seq.). (*Id.* at pp. 737, 752, 753-763.) Appellants

concede that *Inland Empire* moots their argument that state law preempts local ordinances which regulate or ban the operation of medical marijuana dispensaries. However, they assert, *Inland Empire* does not “ban or prohibit the collaborative efforts of patients (collective members) to promote safe access to medical marijuana” or to provide “education as to the use and benefits of medical marijuana.” This is true, but it has no bearing on this case. Appellants were not cited for such promotional or educational activities, and the judgment denying their petition for a writ of mandate does not address any such activities. Appellants’ contention that “the injunction” is overly broad and infringes on their right to act as a collective is equally unfounded.

DISPOSITION

The judgment is affirmed. Respondent County of San Bernardino is awarded costs on appeal.

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McKINSTER
Acting P. J.

We concur:

KING
J.

MILLER
J.