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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF RIVERSIDE, Plaintiff and Respondent, v. FREEDOM WON LLC et al., Defendants and Appellants.	E069294 (Super.Ct.No. PSC1605898) OPINION

APPEAL from the Superior Court of Riverside County. James T. Latting, Judge. Affirmed.

Law Offices of J. David Nick and J. David Nick for Defendants and Appellants.

Gregory P. Priamos, County Counsel and Sophia H. Choi, Deputy County Counsel for Plaintiff and Respondent.

In this appeal, defendants and appellants Freedom Won LLC, Desert Cann Wellness Center, and David Saccullo challenge the trial court's order granting plaintiff and respondent County of Riverside's request for a preliminary injunction prohibiting them from operating their cannabis dispensary within the county. Appellants argue it was error to issue the injunction because (1) Riverside's ordinance banning cannabis businesses is invalid for failure to obtain voter approval and (2) Riverside could not demonstrate a likelihood of succeeding on the merits of its underlying public nuisance lawsuit against appellants because it had recently voted to repeal its countywide ban. We conclude appellants are wrong on both points and the trial court properly issued the injunction. We will therefore affirm.

I

FACTUAL BACKGROUND

In November 2016, the California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, which "legalized the recreational use of marijuana and reduced the penalties on various marijuana-related charges." (*People v. Smit* (2018) 24 Cal.App.5th 596, 598.) In August 2017, Riverside County's Board of Supervisors approved an amendment to the county's land use and zoning regulations—Riverside County Ordinance (RCO) No. 348.4862—which "expressly prohibits all cannabis businesses . . . medical or adult-use." This countywide ban on cannabis businesses became effective September 2017. Under RCO No. 725, any property

condition in the unincorporated areas of the county that violates a land use or zoning ordinance is "unlawful and a public nuisance that may be abated."

In November 2016, Riverside sued appellants, alleging their cannabis dispensary in Thousand Palms violated the countywide ban. The complaint sought injunctive relief for abatement of a public nuisance. Appellants demurred, raising the same arguments they raise on appeal—that Proposition 64 requires counties to obtain voter approval for cannabis business bans and Riverside had recently voted to repeal its ban. The trial court overruled the demurrer.[1] Then, in October 2017, the trial court granted Riverside's motion for a preliminary injunction to enjoin appellants from operating their dispensary.[2] Appellants timely appealed.

II

DISCUSSION

A trial court may issue a permanent injunction under numerous circumstances, including "[w]hen it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually." (Code Civ. Proc., § 526, subd. (a)(1).) A court may also issue the provisional remedy of a *preliminary* injunction before entering final judgment on the merits of a case. In deciding

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[1] Appellants sought writ review of this ruling in our court and then unsuccessfully sought a petition for review of our summary denial in the Supreme Court. (Case No. E068171)

[2] We also summarily denied appellants' request for writ review of this ruling.

whether to issue such an injunction "[t]rial courts traditionally consider and weigh two factors"—whether the plaintiff (1) can demonstrate a likelihood of succeeding on the merits and (2) will suffer greater interim harm from a denial of the preliminary injunction than the defendant is likely to suffer from its grant. (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.)

We typically review an order granting a preliminary injunction under an abuse of discretion standard, reversing only if the order was arbitrary or unreasonable. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109.) But where the success-on-the-merits factor "depends upon a question of law . . . the standard of review is not abuse of discretion but whether the superior court correctly interpreted and applied [the] law, which we review de novo." (*Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, 433.)

To support their argument Riverside's ban is invalid, appellants point to the "Findings and Declarations" section of the proposed law in the voter information guide for Proposition 64, which says, "[t]he Adult Use of Marijuana Act sets up a comprehensive system governing marijuana businesses at the state level and safeguards local control, allowing local governments to regulate marijuana-related activities, to subject marijuana businesses to zoning and permitting requirements, *and to ban marijuana businesses by a vote of the people within a locality*." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) text of Prop. 64, § 2, subd. (e), p. 179, italics added.)

According to appellants, these prefatory remarks require local governments to obtain voter approval of cannabis-related bans.

The problem with appellants' argument is the prefatory remarks, or any language requiring voter approval of local bans, does not appear in the relevant statute Proposition 64 enacted (and Sen. Bill No. 94 later amended)—the "Medicinal and Adult-Use Cannabis Regulation and Safety Act" (the Act).[3] (Bus. & Prof. Code, § 26000 *et seq.*; unlabeled statutory citations refer to this code.) Section 26000 says the Act's purpose is "to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both of the following: [¶] (1) Medicinal cannabis and medicinal cannabis products for patients with valid physician's recommendations [and] [¶] (2) Adult-use cannabis and adult-use cannabis products for adults 21 years of age and over." (§ 26000, subds. (a)-(b).) Section 26200 says the Act "shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and *enforce local ordinances* to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, *or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction*." (§ 26200, subd. (a), italics added.) That provision plainly gives Riverside the authority to enact an ordinance like

[3] Senate Bill Number 94 unified California's medicinal and adult-use regulatory schemes and employs the term cannabis instead of marijuana. (Sen. Bill No. 94, Stats. 2017, ch. 27, § 4.)

RCO No. 348.4862 completely banning cannabis dispensaries, medical or otherwise. And nowhere else in the Act is there any mention of voter approval as a prerequisite to local bans.

Appellants urge, however, that the prefatory language in the ballot initiative demonstrates the purpose behind Proposition 64 and should therefore override the statutory language of the Act. Established principles say otherwise. Only when the statutory language is ambiguous do we look to the uncodified preamble of a ballot initiative, and we certainly may not rely on the latter to contradict the former. "[I]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*People v. Valencia* (2017) 3 Cal.5th 347, 357 [interpreting Pen. Code provisions enacted by Prop. 47].) Here, the Act unambiguously allows counties to completely ban marijuana businesses, without the requirement of voter approval. (Cf. *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 762 [holding state law authorizing medical marijuana use and distribution does not "preempt[] the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions"].) Appellants attempt to create an ambiguity in the Act's language by arguing the word "prohibit" in section 26200 means something less than "ban." We are unpersuaded. Prohibit and ban are synonyms, but even if they weren't, the

Legislature made its intention clear by qualifying prohibit with "completely." (§ 26200, subd. (a).) We find no merit to appellants' first claim of error, that RCO No. 348.4862 is invalid.[4]

Appellants' second claim of error is also meritless. They claim Riverside County voted in August 2017 to "repeal [the cannabis ban zoning] ordinance after a period of study and then implement a permitting and zoning ordinance." This is simply false. The August 2017 vote appellants refer to is the one enacting RCO No. 348.4862, which, as we explained above, "*expressly prohibits* all cannabis businesses . . . medical or adult-use. . . ." (RCO No. 348.4862, italics added.) The ordinance goes on to say the ban shall be effective "*until* the County adopts a comprehensive regulatory framework for medical and adult-use cannabis." (RCO No. 348.4862, italics added.) As county counsel recommended in its submission to the board of supervisors, in the face of recent developments in cannabis policy, such as Proposition 64 and Senate Bill Number 94, the county decided to "maintain the current status quo [of a complete ban] and avoid the State issuing licenses for cannabis businesses and cannabis activities in the unincorporated areas of the County while the Board's ad-hoc committee studies the issue and develops options for the Board to consider, options such as continuing the

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[4] We also reject appellants' argument that California does not require a medicinal cannabis dispensary to obtain a license to operate. The Act does in fact require medicinal cannabis dispensaries to obtain licenses (§§ 26000, 26012), but state licensing is not the issue. Local governments may enact stricter requirements of cannabis business or even complete bans (§ 26200), which Riverside has chosen to do. So even if appellants had a state license to operate in Thousand Palms, their dispensary would nevertheless constitute a public nuisance under Riverside's ordinances.

prohibitions or developing a regulatory scheme." In other words, Riverside has not repealed the ban, it has only indicated it may someday develop a regulatory framework that allows cannabis dispensaries to operate in the unincorporated areas of the county. But until that day comes, the ban remains in place.

Appellants' misinterpretation of the vote enacting RCO No. 348.4862 appears to stem from their counsel, who filed a declaration with the trial court in which he averred that on August 29, 2017—the date of the board meeting—he "learned the County Board of Supervisors voted 3-0 to repeal the ordinance being enforced in this case." He attached to his declaration what he claimed to be "minutes" from the board meeting memorializing the "policy change." In fact, the attachment contains not minutes, but a submittal to the board from two of its supervisors, recommending they adopt an ordinance "to establish a comprehensive regulatory framework for cannabis businesses and cannabis activities subject to approval of permits issued by the County." Though it may choose to do so in the future, the board has not voted to repeal the ban and replace it with such a regulatory framework. The trial court therefore correctly determined Riverside County had demonstrated a likelihood of success on the merits.

III

DISPOSITION

We affirm the order issuing the preliminary injunction. Appellants shall bear costs on appeal.

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SLOUGH
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.