

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2010-AP-31-A-O
Lower Court Case No: 2009-MO-1671-A-O

COURTNEY S. BROWN,

Appellant,

vs.

CITY OF ORLANDO,

Appellee.

_____ /

Appeal from the County Court,
for Orange County, Florida,
Deborah B. Ansbro, County Court Judge

Robert Wesley, Public Defender and
Kimberly M. DeVries, Assistant Public Defender,
for Appellant

Kimberly Laskoff, Esq.,
for Appellee

Before POWELL, EVANS, and O’KANE, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Brown appeals from a conviction for violating an Orlando City ordinance prohibiting off-premises canvassing. He entered a nolo contendere plea, reserving the right to appeal the denial of his motion to dismiss. The motion asserted that the ordinance violated his right to free commercial speech granted under Amendments 1 and 18 of the U.S. Constitution, and Article XX of the Florida Constitution.

The ordinance in question is Orlando, Florida Code section 43.02(1)(i), which provides

It is unlawful for any individual solicitor, agent or peddler as defined in this chapter to:

Conduct off-premises canvassing, as defined in Section 43.87...of the City Code, on public property in the Downtown Core District, as defined in Section 43.87(1) of the City Code unless the solicitor is located in a designated exempt zone, or otherwise authorized by Section 43.87 of the City Code.

Section 43.87(1) of the Orlando, Florida Code defines “off-premises canvassing” and the “Downtown Core District,” contains exemptions and prohibitions, and provides a street map showing the location of the Downtown Core District and the 35 designated exempt zones where canvassing is permitted without any restriction whatsoever on public property and on private property with the owner’s permission. Modified Resolution 3, adopted by the Orlando City Counsel August 19, 2002, provides specific locations and surveys of each exempt zone within each of the two sectors in the Downtown Core District. Although no testimony was presented at the hearing, the City attached to its Response in addition to the Resolution, several public documents supplementing and supporting the ordinance, all of which were before the trial court in the record without objection for its consideration.

At the motion hearing, counsel and the lower court agreed, and this Court concurs, that the test for validity of this ordinance is found in *Central Hudson Gas and Elec. Corp. v. Public Serv. Comm’n of New York*, 447 U.S. 557 (1980), which contains a four part analysis. The City stipulated to part one, that Brown’s actions were not fraudulent and misleading. Brown stipulated to parts two and three, that the City has substantial interest in its stated purposes of reduction of litter, harassment of pedestrians and improvement of aesthetics, and that the ordinance directly advanced those interests. At issue at the hearing was whether the City carried

its burden to establish the fourth part of the test, whether the ordinance reached further than necessary. The trial court entered an order on a written form simply stating “Motion is denied” without any findings of fact or conclusions of Law in the order on the form or on the record.

The only issue before us is whether the City carried its burden of showing that the ordinance reached no further than necessary to accomplish its stated goals. The standard of review is *de novo*. *Kortum v. Sink*, 54 So. 3d 1012, 1015 (Fla. 1st DCA 2010). The Constitution grants less protection to commercial speech than other forms of expression. *Central Hudson*, 447 U.S. 557. When a law or regulation governing commercial speech is reviewed by an appellate court, it should be accorded a presumption of correctness, and construed to affect a constitutional outcome whenever possible. *Crist v. Ervin*, 56 So. 3d 745 (Fla. 2010). Such a law or regulation need not be the least restrictive means possible or imaginative, but simply be narrowly tailored to accomplish its objectives. *Kortum*, 54 So. 3d at 1020.

Turning now to the case at hand, the Orlando ordinance does not ban all canvassing. It is content neutral. It does not regulate time and manner, only place, the exempt locations being specifically described by street location, map and surveys in the supporting public documents. It compares favorably with a similarly worded city ordinance which was upheld. *See Sciarrino v. City of Key West*, 83 F.3d 364 (11th Cir. 1996). Interestingly, Appellant had no suggestions in his hearing argument or briefs as to how the ordinance could be more narrowly tailored than it was.

For the foregoing reasons, we conclude that the Orlando ordinance did not reach farther than necessary and passes constitutional muster. Accordingly, Appellant's conviction is

AFFIRMED.

DONE AND ORDERED at Orlando, Florida this 13th day of June, 2012.

/S/

ROM W. POWELL
Senior Judge

/S/

ROBERT M. EVANS
Circuit Judge

/S/

JULIE H. O'KANE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Kimberly M. DeVries, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Kimberly Laskoff, Esq.**, P.O. Box 913, Orlando, Florida 32802-0913; and **Honorable Deborah B. Ansbro**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this 13th day of June, 2012.

/S/

Judicial Assistant