[Cite as *Ohio Dept. of Jobs & Family Servs. v. Ohio Wilderness Boys Camp,* 2015-Ohio-2331.]

STATE OF OHIO, NOBLE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

OHIO DEPARTMENT OF JOBS AND FAMILY SERVICES PLAINTIFF-APPELLANT CROSS-APPELLEE	)	CASE NO. 13 NO 403
VS.	)	OPINION
OHIO WILDERNESS BOYS CAMP, et al. DEFENDANTS-APPELLEES CROSS-APPELLANTS	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from the Court of Common Pleas of Noble County, Ohio Case No. 212-0197.
JUDGMENT:	Reversed. Injunction granted against Appellees.
APPEARANCES: For Plaintiff-Appellant Cross-Appellee:	Atty. Atty. Mike DeWine Attorney General of Ohio Atty. Natalie R. Brown Atty. Jonathan R. Fulkerson Assistant Attorneys General Health and Human Services Section 30 East Broad Street, 26th Floor Columbus, Ohio 43215
For Defendants-Appellees Cross-Appellants:	Atty. Stephen S. DeWeese 7737 Olentangy River Road Columbus, Ohio 43235

JUDGES:
Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: June 12, 2015

[Cite as *Ohio Dept. of Jobs & Family Servs. v. Ohio Wilderness Boys Camp,* 2015-Ohio-2331.]
WAITE, J.

{¶1} Appellant Ohio Department of Job and Family Services appeals an April 11, 2013 Noble County Common Pleas Court judgment entry denying an injunction against Appellees Ohio Wilderness Boys Camp, Joe Thompson, and Wayne Wengerd (collectively referred to as "Appellees"). The injunction sought to prevent Appellees from continuing to operate as a facility that receives and cares for children without a state license. Appellant is correct that R.C. 5103.03 is to be applied on an organizational or operational basis and not on a client by client basis as determined by the trial court. As Appellees' organization receives and cares for children for two or more consecutive weeks, R.C. 5103.03 applies and Ohio Wilderness Boys Camp must obtain a state license to operate. Appellees have presented no evidence to support their contention that similar facilities exist without licensing in Ohio. Appellees are also mistaken in their belief that the theory of estoppel applies to state government. Finally, Appellees have not shown that the injunction would affect the constitutional rights of parents whose children reside at the facility. For the reasons provided, Appellant's argument has merit. Accordingly, the judgment of the trial court is reversed and the injunction is granted.

Factual and Procedural History

{¶2} Appellees designed a plan to open and operate an outdoor treatment facility for troubled boys. As Appellees wished to include boys from court-appointed lists, they attempted to gain certification from Appellant's agency, the Ohio Department of Jobs and Family Services ("ODJFS"). To initiate the process,

Appellees contacted ODJFS and spoke to a licensing specialist who attempted to assist Appellees in the license application process.

{¶3} Shortly thereafter, Appellees learned that the specialist with whom they had been working retired. Another specialist, Claire Kuzma, began to assist Appellees. Kuzma informed Appellees that, as a wilderness camp, they would need several variances in order to obtain ODJFS certification. However, Kuzma informed Appellees that a change in policy had led to a temporary freeze on variances.

{¶4} In June or July of 2009, Kuzma allegedly suggested to Appellees that instead of obtaining ODJFS certification, they could operate under the Department of Health as a residential camp. Because licensing requirements apply to facilities that care for children for two or more weeks, in order to remove themselves from ODJFS' jurisdiction Appellees orchestrated a plan to have the parents check the boys out of the camp for a few hours every two weeks and then check them back into the facility. Under this plan, Appellees opened their facility and began accepting boys into the program in September of 2009.

{¶5} In May of 2010, an incident of alleged sexual contact between two boys at the facility was reported to ODJFS. As a result, an ODJFS agent conducted an unannounced site visit at Appellees' facility. During the visit, Appellees informed the agent that their facility operates in nine six-week sessions with a four and a half day break in between sessions.

{¶6} After an investigation, Appellant determined that the Boys Camp fell within its jurisdiction and lacked the requisite certification pursuant to R.C. 5103.03.

Accordingly, Appellant sent Appellees a cease and desist letter ordering Appellees to terminate their operations until they received certification. Appellees responded that, due to their check out procedure, they did not receive or care for children for two or more consecutive weeks. Thus, they did not fall within Appellant's jurisdiction. As Appellees indicated that they would not comply with the cease and desist order, Appellant sought an injunction from the trial court. After a hearing, the trial court determined that the hour or two break after two weeks was "sufficient to break the 'consecutive' requirement of R.C. 5103.03." (4/11/13 J.E., p. 2.) Accordingly, the trial court denied Appellant's injunction request. Appellant has filed a timely appeal of the trial court's decision.

Assignment of Error

> The lower court erred in denying the Ohio Department of Job and Family Services' request for injunctive relief pursuant to Ohio Revised Code 5103.03(H) (Journal Entry dated April 11, 2013).

{¶7} R.C. 5103.03(H) provides:

> If the director of job and family services determines that an institution or association that cares for children is operating without a certificate, the director may petition the court of common pleas in the county in which the institution or association is located for an order enjoining its operation. The court shall grant injunctive relief upon a showing that the institution or association is operating without a certificate.

{¶8} R.C. 5103.02(A)(1)(a) provides that R.C. 5103.03 applies to: "Any incorporated or unincorporated organization, society, association, or agency, public or private, that receives or cares for children for two or more consecutive weeks."

{¶9} A decision whether to grant an injunction lies within the sound discretion of the trial court. *Perkins v. Village of Quaker City,* 165 Ohio St. 120, 125, 133 N.E.2d 595 (1956), citing *Burnet v. Corporation of Cincinnati*, 3 Ohio 73, 88, 17 Am.Dec. 582 (1827). As such, absent an abuse of discretion apparent on the record, a reviewing court will not disturb the trial court's judgment. *Id.* Whether an injunction is granted or not "depends largely on the character of the case, the peculiar facts involved and other pertinent factors, among which are those relating to public policy and convenience." *Id.*

{¶10} Under established Ohio law, "when a statute grants a specific injunctive remedy to an individual or to the state, the party requesting the injunction 'need not aver and show, as under ordinary rules in equity, that great or irreparable injury is about to be done for which he has no adequate remedy at law * * *.' " *Ackerman v. Tri-City,* 55 Ohio St. 2d 51, 56, 378 N.E.2d 145 (1978), citing *Stephan v. Daniels*, 27 Ohio St. 527, 536 (1875). Further, no balancing of the equities is necessary when a statute provides an injunction as a means to enforce public policy. *Id.,* citing *Brown v. Hecht Co.*, 78 App.D.C. 98, 101, 137 F.2d 689 (1943).

{¶11} The decision to deny the injunction, here, was based on the trial court's interpretation of a statute. Appellant contends that the legislature created in R.C. 5103.02(A)(1)(a) an organization-specific rule where the focus is on how many

consecutive weeks the organization takes in and cares for children. Appellant argues that the trial court, however, erroneously applied a per-child rule based on how many consecutive weeks an individual child has physically remained at the facility. Appellant explains that pursuant to the legislature's plain language, Appellees were required to obtain certification as their organization receives and cares for children for periods of more than two weeks. Although Appellees have attempted to circumvent this rule by having the children checked out of the facility for a few hours every two weeks, Appellant urges that this does not exempt them from the clear language of the law.

{¶12} Appellant states that Appellees clearly operate a six-week program. In fact, Appellant highlights the fact that, although a slight break occurs after each six-week program, the average child's stay is fourteen months and some children stay for more than two years. In addition, Appellant explains that as a government entity it cannot be estopped from enforcing the law, so Appellees cannot maintain that they relied on suggestions allegedly made by ODJFS employees. As the organization receives and cares for children for periods of two weeks or more and the remaining elements are not in dispute, Appellant urges that the trial court erred in denying the injunction.

{¶13} In response, Appellees argue that Appellant's former employee gave assurances that the facility did not fall under ODJFS' jurisdiction. The employee assured Appellees that the statute would not apply if the children were checked out of the facility every two weeks. Appellees assert that they relied on this advice in

opening the facility. As they maintain that it is impossible for a wilderness camp such as theirs to comply with R.C. 5103.03 in its entirety, Appellees state that they will have to shut down the program if the injunction is granted.

{¶14} Appellees also allege that similarly situated facilities exist in Ohio without certification, yet Appellant has not taken similar action against those facilities. Further, Appellees argue that parents are solely responsible for making decisions regarding their children. If the injunction is granted, the state will be taking away a parent's right to send their child to the facility.

{¶15} For an injunction to lie, Appellant was required to show: (1) that Appellees are an organization that receives or cares for children, (2) for two or more consecutive weeks, and (3) they are not certified by ODJFS. Appellees do not dispute elements one and three; thus, only the second element is in dispute. Accordingly, we will focus our discussion on the second element.

{¶16} Contrary to Appellees' arguments, the plain language of R.C. 5103.03 applies when an organization receives and cares for children for two or more consecutive weeks, not simply when an individual child, on a case by case basis, remains in a facility for the requisite time period. The legislature's intent to create a rule that applies to the organization itself as a whole is clearly demonstrated through the language "[a]ny * * * agency, public or private, that *receives or cares for children for two or more consecutive weeks*." (Emphasis added.) It is apparent that the language "* * * receives or cares for children" modifies the word "agency," as "[a]ny

agency * * * that receives or cares for children." There is no other way to read this language, either logically or grammatically.

{¶17} We note that even if we agreed with Appellees, they have admitted their "hour or two" checkout procedure was a mere ruse intended to bypass the statutes. Further, they have admitted that they do not intend to continue the two-week checkout procedure as it "is not what our program calls for and would be detrimental to our clients." (1/7/13 Defendant's Closing Brf., Exh. A.) This belief is evidenced by the fact that Appellees had discontinued the checkout procedure for a time and only reinstated it when they received the cease and desist letter from Appellant.

{¶18} Contrary to Appellees' argument, it is well-settled law in Ohio that estoppel cannot be used against the state, its agencies, or agents during the exercise of a government function. *Campbell v. Campbell,* 87 Ohio App.3d 48, 50, 621 N.E. 853 (9th Dist.1993). The rationale for the rule is based on public policy considerations. *Id.* Specifically, "[m]istaken advice or opinions of a government agent do not create an estoppel." *Halluer v. Emigh,* 81 Ohio App.3d 312, 318, 610 N.E.2d 1092 (9th Dist.1992), citing *Chevalier v. Brown,* 17 Ohio St.3d 61, 63, 477 N.E.2d 623 (1965). Thus, even if Appellees relied on suggestions allegedly made by Appellant's former employee, this reliance is immaterial to Appellant's request for injunctive relief.

{¶19} We note that the public policy rationale is important in this matter as the current governor was presented with legislation seeking to exempt wilderness camps such as Appellees' from certain licensing regulations. The proposed legislation was

vetoed, because "[t]he safety, well-being, and success of Ohio's children is of the utmost importance and this item could create dangerous situations which challenge these goals." State of Ohio Executive Department, Office of the Governor, Veto Messages, http://governor.ohio.gov/Portals/0/FY2014-15%20Budget%20Veto%20Messages.pdf, Item No. 7 (accessed Dec. 24, 2014.)

{¶20} Appellees have also failed to present actual evidence to support their argument that this camp was treated differently than any other similarly situated organization or facility. In their brief, Appellees simply list organizations like the Boy Scouts, YMCA, church groups, and other children's camp groups as camps lacking ODJFS certification. There is no evidence whatsoever as to how, or whether, these groups operate the facilities they are alleged to provide. As such, Appellees concede that they have presented no evidence of similarly situated camps that operate without certification and Appellees' argument is unpersuasive.

{¶21} Finally, Appellant has correctly stated that Appellees' assertion regarding a parent's right to make decisions for their children is irrelevant to this appeal. This statement by Appellees also lacks any evidence or real argument as to how a requirement that Appellees obtain a license for their facility impacts on any parental rights.

{¶22} For these reasons, we find that the trial court erred in denying the injunction. The plain language of R.C. 5103.02(A)(1)(a) applies to require Appellees to become licensed by the state in order to operate their facility. Accordingly, we reverse the judgment of the trial court and grant the injunction against Appellees.

Conclusion

{¶23} Appellant has correctly stated that R.C. 5103.03 applies to an organization or agency and not to an individual child served by that agency as the trial court decided. The court erred in its interpretation of the statute. Appellees have failed to present evidence that similarly situated unlicensed facilities have been allowed to operate in Ohio. Estoppel may not be applied to the government in order to bar enforcement of the law. Finally, Appellees have not shown that the injunction would interfere with a constitutional, or any other, right of parents to make decisions regarding their children. Accordingly, the judgment of the trial court is reversed and Appellant's injunction is granted.

Donofrio, P.J., concurs.

Robb, J., concurs.