



E-R photo by Chris Kaufman

Evelyn Smith, who fought — and lost — a decade-long court battle to protect a right not to rent her property to an unmarried couple, is shown in her home with her dog Gigi in this file photo.

Unmarried couple's right to rent vs. landlady's religious conviction

By Michael Gardner
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SACRAMENTO — Chico's religious landlady Evelyn Smith may yet win her point even after the U.S. Supreme Court refused to hear her case last summer, a decision thought to have ended a decade-old odyssey through the state and federal legal systems.

In a ruling in an Alaska case that mirrors Smith's 1st Amendment Freedom of Religion claim, a three-member panel of justices on the 9th U.S. District Court of Appeals this week upheld the rights of Christian landlords to refuse to rent to unwed couples.

"For Mrs. Smith it offers total vindication," said Jordan Lorence,

Spurned by U.S. Supreme Court, Chico woman gets support from appellate ruling in similar, but unrelated case

her attorney based in Virginia.

For a decade Smith battled in court over state law that forbids discrimination against unmarried couples in the housing market.

In late June, the U.S. Supreme Court, without comment, refused to hear her last appeal, marking a victory for Ken Phillips and Gail Randall, the onetime couple from Chico who have since gone their separate ways.

The decision was reached immediately after the Supreme Court struck down as unconstitutional the congressionally approved Religious Freedom Restoration Act that, in part, would have given Christian landlords like Smith more rights.

Contacted at her Chico home Friday morning, Smith, a widowed devout Presbyterian, said she never abandoned hope that the laws

Landlady

From 1A

would someday be changed.

"I'm delighted. It's good news. I never gave up," said Smith. "I just always thought something would happen."

But the news was not greeted happily by Thomas Coleman, the Los Angeles-based attorney who represented Phillips.

"The battle goes on," shrugged Coleman, who represented Phillips without charge and was a consultant for the city of Alaska in the most recent case.

Coleman said he had hoped the fight had been won based on the Smith case.

"We thought Dracula was killed, but we didn't use the silver bullet," Coleman said.

Much still needs to be decided before Smith determines whether to reopen her own case in court, Lorence said.

The 9th Circuit ruling, if upheld by the U.S. Supreme Court, would be effective in California, freeing Smith to petition to have the judgment against her overturned.

When she lost, Smith was ordered to pay \$454 in damages to the couple and post signs regarding the case and promising not to discriminate.

"No one has tried to enforce the order against her," Lorence said. "If they try to move against her now, we would be in federal court blocking their actions."

Lorence said he needs to first wait and see what happens in the appeals process and then review the legal question of whether Smith needs to go back to court.

"Probably not," said Lorence when asked if there is a reason for Smith to return to the justice system. "Maybe for the emotional satisfaction," he added as an afterthought.

Smith is ready to launch another legal battle if she must.

"I didn't do anything wrong. I don't believe justice has been done," she insisted.

In the Alaska case, a group of religious apartment owners joined together to challenge a law banning discrimination based on marital status — a mirror of California's statute that was the basis of the Smith case.

The three-member appellate panel backed the Anchorage landlords, saying they had a 1st Amendment right to refuse to rent to those believed to be sinners and violating the tenets of their Christian faith.

In the 2-1 decision, the court said the landlords are "professed Christians who believe that cohabitation between unmarried individuals constitutes the sin of fornicating and that facilitating cohabitation in any way is tantamount to facilitating sin."

"They won this basically on the grounds we were trying to assert," Lorence said.

The ruling muddies the law, Lorence and Coleman agree. Separate courts in other cases have found differently, including most recently in Michigan where its State Supreme Court sided with the unmarried tenants.

"The pot keeps getting stirred," Lorence said.

Eventually, the U.S. Supreme Court has to step in and settle the issue once and for all, Lorence and Coleman indicated. But they disagree whether the Alaska case will be the vehicle.

"This is the one. I feel it in my blood," Coleman said.

But Lorence noted the court has been reluctant to take on precedent-setters because it is so ideologically divided. Neither side on the court wants to take a case as big as this and risk losing, which would set precedent for the entire nation, Lorence explained.

"It's a big game of chicken ... My prediction is the Supreme Court will probably not hear the case. The Supreme Court doesn't seem to be taking much of anything."

Expecting eventual victory, Coleman noted the justice who wrote the majority opinion — Diarmuid O'Scannlain of Portland,

Ore. — is one of the most conservative on the federal bench.

"I was shocked to see the decision," he said. "The implications are broader than just housing."

Coleman argued the ruling frees any business owner to deny services to anyone based on real or made up religious views.

Those affected would range from gays seeking housing to abortion clinics in need of office space, he argued.

"This just isn't about sexual sin," Coleman said.

"To me, the sad part is these judges issued a ruling for millions of people who didn't have a day in court. There were no tenants represented. None of the 'sinners' had the opportunity to have their day in court," Coleman argued.

The panel majority shouldn't have accepted arguments based on a "hybrid" of the 1st Amendment and 5th Amendment private property rights, he said.

But Lorence called the panel's merits "strong."

He claimed that states arguing to protect unwed couples are weakening the effects of laws targeting race and gender discrimination.

"They come down with the force of law as if she (Smith) is a Ku Klux Klan bigot. It dismisses the whole effect..." Lorence said.

But Coleman claims a favorable ruling for landlords will just free business to discriminate wherever and whenever they want in the commercial marketplace.

Coleman said the Anchorage city attorney has already started writing the briefs to ask the full 11-judge 9th Circuit Court to review the decision by the 3-member panel.

The city of Anchorage could also decide to leap straight to the U.S. Supreme Court in the appeals process, but Coleman dismissed that possibility.

Lorence represents Smith as part of his North Star Legal Center in Virginia.

Coleman represents Phillips through his work as executive director of the American Association for Single Persons.