

Judge tosses Island Drug lawsuit, says law enforcement activity at pharmacy justified



A federal judge on Wednesday threw out a lawsuit filed by the owners of a now-defunct Marco Island drugstore, ruling the police department and its former chief did not harass the store and customers in an attempt to shut it down.

U.S. District Court Judge Sheri Polster-Chappell's ruling ends the 2010 lawsuit filed by Larry and Susan Heine and averts a trial scheduled for next month. The Heines retired in July, closed the 43-year-old store and sold the customer accounts to CVS.

"The Marco Island Police Department had a valid purpose in halting or deterring criminal conduct," Chappell wrote in her 16-page ruling. "The Marco Island Police Department was there to address reported criminal activity and perhaps deter criminal activity. ... An increase in drugs, loitering, medical issues, and thefts are all viable issues to reasonably concern anyone, let alone law enforcement."

The judge ruled the focus on customers by Marco Police and its then-chief Thom Carr wasn't irrational, arbitrary or so conscience-shocking that it violated the Heines' constitutional rights.

In granting the defendants' summary judgment motion, the judge determined no "material dispute" exists for a jury to decide and canceled a pretrial conference set for Monday.

Attorneys representing police and Carr, declined to comment. The Heines' lawyer, Michael McDonnell, could not be reached for comment on whether he will appeal.

The Heines sued in June 2010, accusing police and Carr of civil rights violations that included harassment, stopping and searching customers, warning them not to return and asking the Heines not to fill East Coast prescriptions. The Heines contended that damaged their reputation and they lost customers and profits.

After years of dry legal arguments, the defendants filed a motion for summary judgment in November that revealed what prompted the police presence at Marco Town Center.

The motion, depositions by employees and neighboring store owners and an expert's report said the Heines knowingly filled prescriptions for dealers and addicts that were prescribed by pill mill pain clinics and doctors who had pending complaints, were shut down or eventually lost their licenses.

Employees and shop owners described gangs of customers who came in carloads, bumped into shelves, were high on drugs, incoherent, nodded off and sold prescriptions outside. They said addicts flocked there because Island Drug didn't have a computer system to track fraud like bigger pharmacies.

The motion said Island Drug sold more than 1 million oxycodone pills in 2010, well above the national store average of 69,000 pills, and doubled its annual income in 2009 and 2010, reaching nearly \$1 million by attracting customers statewide, nearly all cash-paying.

The suspicious practices attracted the attention of pharmaceutical companies, which all eventually stopped supplying the store.

Last month, the defendants asked the judge to sanction the Heines for destroying their computers and records after being asked to preserve all evidence.

The judge agreed police didn't cause the Heines to go out of business. Pointing to the evidence, she said pharmaceutical suppliers stopped providing drugs. She also noted the Heines admitted they retired due to "longtime pressure" by their children and that Larry Heine admitted he could work as a pharmacist again if he wanted to.

"This evidence directly contradicts any notion that defendants deprived the plaintiffs of their rights to a livelihood," the judge ruled. "There is no evidence that defendants harassed plaintiffs."