



Mr. Oney and his wife resided at 64 Grove Street in Rutland prior to his incarceration and she continued to reside there afterward. The DOC denied Mr. Oney's Grove Street residence after determining that it fell within the "Red Zone" established by the Rutland Child Safety Ordinance. Sex offenders are not permitted to live within the "Red Zone" under the Child Safety Ordinance. The ordinance was passed by the Rutland Board of Alderman in August 2008. The DOC denied Mr. Oney's proposed Bennington residence because it had him living with children and was in close proximity to schools.

Mr. Oney brought this action, challenging the legality of the Rutland Child Safety Ordinance and seeking a preliminary injunction. Mr. Oney asserts that the Child Safety Ordinance is the sole reason for the DOC's disapproval of his proposed residence at 64 Grove Street in Rutland.

On January 15, 2010, Mr. Oney's counsel filed a letter informing the Court that Mr. Oney's wife was evicted from the Grove Street residence and that she moved to Pownal, Vermont. Although Mr. Oney is uncertain as to where he will live upon his release, his plan is to seek housing with his wife. Ultimately, he wishes to reside in Rutland. Despite his uncertainty as to where he will move, Mr. Oney requests that the Court still decide the case on the merits.

## **DISCUSSION**

Vermont courts have subject matter jurisdiction only over actual cases or controversies involving litigants with adverse interests. *Bischoff v. Bletz*, 2008 VT 16, ¶ 15, 183 Vt. 235. One element of the case-or-controversy requirement is that a plaintiff must have standing—he must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law. *Bischoff*, 2008 VT 16, ¶ 15.

Without standing, the court has no jurisdiction over a petition for declaratory relief; any judicial decision would be merely advisory, and Vermont courts are without constitutional authority to issue advisory opinions. *Id.*; *Brod v. Agency of Natural Resources*, 2007 VT 87, ¶ 8, 182 Vt. 234.

For standing, a plaintiff must present a real—not merely theoretical—controversy involving “the threat of actual injury to a protected legal interest rather than merely speculating about the impact of some generalized grievance.” *Brod*, 2007 VT 87, ¶ 9. To satisfy this burden, a plaintiff must show (1) injury in fact, (2) causation, and (3) redressability. *Id.* An injury in fact is defined as an “invasion of a legally protected interest.” *Id.* In a suit for declaratory judgment, an injury in fact must be reasonably expected and not based on fear or anticipation. *Id.*

Here, Mr. Oney has no standing because he cannot show an injury in fact. Mr. Oney no longer seeks to move into the Grove Street residence in Rutland. Therefore, he cannot show an “invasion of a legally protected interest.” See *Brod*, 2007 VT 87, ¶ 9. Because Mr. Oney is uncertain where he will live upon release, any alleged injury in fact is based on “fear or anticipation” that the Rutland Child Safety Ordinance will affect the suitability of a proposed residence.


Mr. Oney no longer seeks to live in the proposed residence which formed the basis of this complaint and there is no other proposed residence which falls within the “Red Zone.” Thus, it is entirely plausible that a decision rendered by this Court as to the legality of the Rutland Child Safety Ordinance would be “merely advisory.” See *Brod*, 2007 VT 87, ¶ 8. Vermont courts are without constitutional authority to issue advisory

opinions. *Brod*, 2007 VT 87, ¶ 8. Therefore, this Court does not have subject matter jurisdiction over Mr. Oney's claim and cannot decide the case on the merits.

**ORDER**

The parties have five days to submit information demonstrating the existence of an actual case or controversy. In the absence of the same, James Oney's action will be DISMISSED for lack of standing.

Dated at Rutland, Vermont this 20 day of January, 2010.

  
\_\_\_\_\_  
Hon. Harold Eaton, Jr.  
Superior Court Judge