Oklahoma Law Review

Volume 36 | Number 2

1-1-1983

Landlord and Tenant: Is Discrimination Against Children Permissible in Oklahoma?

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liability for good faith enforcement of his or her duties imposed under this Act."

This is to encourage peace officers to involve themselves in the protection of abuse victims without fear of civil liability for an oversight or a mistake in judgment.

Conclusion

The Oklahoma Protection from Domestic Abuse Act is a major social advancement in that it acknowledges the problem of domestic violence and provides a more effective remedy than ever before. If the courts, the prosecutors, and the peace officers will use this tool the legislature has provided, the victims of domestic abuse will be able, for the first time, to secure real and immediate protection from further abuse. If the legal system will immediately "get tough" with abusers by arresting them, prosecuting them, and meting out maximum penalties to them, potential abusers will get the clear message that Oklahoma will not tolerate domestic abuse. Once the message is sent, perhaps the Act will effectively prevent, as well as protect against, further domestic violence.

Lee Ann Jones

Landlord and Tenant: Is Discrimination Against Children Permissible in Oklahoma?

Since World War II the cornerstone of the American dream has been the ownership of a single-family house in which the homeowner could rear his family free from the intrusions of others. The passage of the National Housing Act[1] and the proliferation of government programs sponsored by the Federal Housing Administration, the Veteran's Administration, and their more sophisticated offspring have enabled the generations of young adults entering the work force to realize that portion of the American dream from the period beginning after World War II until the late 1970s. The advent of financial disintermediation, unbridled inflation, astronomical interest rates, and governmental insolvency has certainly damaged if not obliterated the average family's ability to afford a single-family home. That revelation is an indication of a basic adjustment in the economic structure of the American family. Just as the escalation in the price of fuel has curtailed the family vacation, the escalation of the price of single-family housing has forced a reexamination of the housing accommodations this country affords to its residents.

Heretofore, discrimination in housing has been directed primarily at racial groups and that discrimination has, of course, lost the legal sanctions it once

1. 12 U.S.C. §§ 1701-1750g (1976).

enjoyed.[2] A recent California case[3] is in all probability a forerunner of another wave of discrimination cases that will eventually realign the equities associated with the enjoyment of housing as we have known it. Regardless of one's personal prejudices, it is almost amusing to realize that there currently exists a *legally sanctioned* discrimination against the American family in the allocation of available housing. This is found in the many apartment projects that refuse families with children as tenants. As with all things, the law has a way of allocating priority to those conflicts and issues based on the underlying importance to the parties whose equities are being balanced. Given the deterioration of the ability of the American family to buy a tract house, discriminatory practices that preclude children take on a legal significance that is compelled by economic necessity. In addition, such discrimination has adverse social consequences.

A few problems thought to result from child discrimination in apartment housing are inferior education, reduced proximity to employment, loss of neighborhood relationships and contacts, social embarrassment, and similar personal, business, and social consequences.[4] It is also believed that child-oriented exclusionary patterns encourage the flight of families from the cities, decrease family-oriented neighborhoods and relationships, and contribute to the decline in the quality of available housing.[5] The subsequent harm cuts across all racial, ethnic, and economic levels, but it falls most heavily on low-income families.[6]

At the time of this note, six states have passed specific statutes prohibiting discrimination against children in housing.[7] Several other states have adopted general provisions barring discrimination in housing on the basis of age, but it is questionable whether these provisions preclude discrimination based upon the presence of children.[8]

Perhaps the most serious problem with regard to child discrimination in apartment housing exists in states that do not address the issue at all. These states either have fair housing statutes that do not specifically prohibit discrimination based on age, or like Oklahoma, do not have fair housing statutes at all. In states like Oklahoma, the only remedy for such discrimination must be found in the so-called "public accommodation statutes." A

2. *See, e.g.*, Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968); Barrows v. Jackson, 346 U.S. 249 (1953); Shelley v. Kraemer, 334 U.S. 1 (1948). At least 40 states have passed fair housing laws or have provisions in state civil rights statutes barring discrimination on the basis of race in the sale or rental of housing. Oklahoma is one of the states that does not have such a statute.

3. Marina Point, Ltd. v. Wolfson, 30 Cal. 3d 721, 640 P.2d 115, 180 Cal. Rptr. 496 (1982).

4. Fitzgerald & O'Brien, *Apartment for Rent—Children Not Allowed: The Illinois Children In Housing Statute—Its Viability and a Proposal for Its Comprehensive Amendment*, 25 DEPAUL L. REV. 64, 65 (1975).

5. Note, *Landlord Discrimination Against Children: Possible Solutions to a Housing Crisis*, 11 LOY. L.A.L. REV. 609, 611 (1978).

6. *Id.*

7. These states are Arizona, Delaware, Illinois, Massachusetts, New Jersey, and New York.

8. Trevalino, *Suffer the Little Children—But Not in My Neighborhood: A Constitutional View of Age-Restrictive Housing*, 40 OHIO ST. L.J. 295, 296 (1979).

number of states have this type of general civil rights legislation that follows the lead of the Federal Civil Rights Act of 1964[9] and prohibits discrimination based on race, color, religion, or national origin.[10] However, the majority of these statutes now prohibit discrimination in public accommodations based on sex.[11] The issue presented is whether statutes of this type are broad enough to encompass discrimination against children in apartment housing.

The purpose of this note is to analyze Oklahoma's "public accommodation" statute[12] and suggest how the Oklahoma courts should interpret its provisions when faced with the issue of child discrimination in apartment housing. The interpretation of Oklahoma's statute requires an examination of two important issues that are determinative of the statute's applicability to discrimination against children in apartment housing: (a) whether an apartment project is a "place of public accommodation" within the terms of Oklahoma's statute; and (b) whether children are a protected class under the Oklahoma statute. As an aid to such analysis, this note will first examine a recent California Supreme Court case that dealt with this issue when faced with a public accommodation statute similar to Oklahoma's.[13]

The California Decision

In *Marina Point, Ltd. v. Wolfson*,[14] the Supreme Court of California reversed a municipal court's decision and held that a landlord may not lawfully refuse to rent its apartments to a family solely because the family included a minor child. *Marina Point* involved the following set of facts. Plaintiff, Marina Point, Ltd., owned an 846-unit apartment project. In January of 1974, Mr. and Mrs. Wolfson signed a one-year lease for an apartment in the Marina Point project. Although the printed lease form states that no minors could reside in the leased premises without the landlord's written permission, Marina Point acknowledged that at the time the Wolfson lease was signed the landlord followed a policy of renting apartments to families with children.

In October of 1974, Marina Point altered its rental policy with the objective of ultimately excluding all children. Marina Point decided that it would allow the children already there to remain, but it would not enter into new leases with tenants with children or with pregnant women. In February 1975, the Wolfsons renewed their lease, and in September 1975, Mrs. Wolfson gave birth to a son. In February 1976, the Wolfsons again renewed their lease, apparently without informing the landlord of their child's presence. The new

9. *See* 42 U.S.C. §§ 3601-3631 (1976).

10. Oklahoma's statute is of this type. 25 OKLA. STAT. § 1402 (1981).

11. California's statute was amended in 1974 to prohibit discrimination based upon sex. CAL. GOV'T CODE § 12955 (West 1980).

12. 25 OKLA. STAT. § 1402 (1981): It is a discriminatory practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a "place of public accommodation" because of race, color, religion, or national origin.

13. CAL. CIV. CODE §§ 51-52 (West. Supp. 1977).

14. 30 Cal. 3d 721, 640 P.2d 115, 180 Cal. Rptr. 496 (1982).

lease made no reference to the child, but included the provision prohibiting minors.

In the fall of 1976, Marina Point's management learned of the child's presence in the apartment and informed the Wolfsons that their lease would not be renewed because of the child's presence. Marina Point subsequently agreed to a four-month extension, but required the Wolfsons to vacate their apartment by May 31, 1977. When the Wolfsons failed to vacate the premises at that time, Marina Point commenced an unlawful detainer action in municipal court. The Wolfsons answered that the policy of discriminating against families with children violated statutory and constitutional proscriptions[15] and hence did not provide a lawful basis for their eviction.

The municipal court ruled in favor of Marina Point, rejecting the Wolfsons' contention that Marina Point's policy violated either their statutory or constitutional rights. The municipal court found that "the landlord's 'exclusion of children . . . proceeds from a reasonable economic motive to promote a quiet and peaceful environment free from noise and damage caused by children.' "[16] The Wolfsons appealed, asserting that both the Unruh Civil Rights Act[17] and the Fair Housing Law[18] barred Marina Point's policy of discrimination against families with children.[19]

California's Unruh Act states that: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

The California Supreme Court disagreed with the municipal court's holding that the Unruh Act protects only the classes or persons specifically set forth in the statute, or who come under the statute by judicial determination. The municipal court had reasoned that because the statute did not specifically refer to children or families with children, the Wolfsons were not a protected class within the letter of the Unruh Act.

In discussing the municipal court's reasoning, the court relied on *In re Cox*,[20] a California Supreme Court decision of a decade earlier. After reviewing the origin, the legislative evolution, and the prior judicial decisions construing

15. See *infra*, notes 17, 18.

16. Marina Point, Ltd. v. Wolfson, 30 Cal. 3d 721, 729, 640 P.2d 115, 119, 180 Cal. Rptr. 496, 501 (1982) (quoting the municipal court's memorandum opinion).

17. CAL. CIV. CODE §§ 51-52 (West Supp. 1977). Technically, only § 51 constitutes the Unruh Civil Rights Act. Section 52 supplies the remedies for its violation. However, the two sections were enacted concurrently and § 52 is generally regarded as part of the Act.

18. CAL. GOV'T CODE § 12955 (West 1980). The statute states: "It shall be unlawful: (a) For the owner of any housing accommodation to discriminate against any person because of the race, color, religion, sex, marital status, national origins or ancestry of such person."

19. The Wolfsons also asserted that the exclusion violated their rights to familial privacy and equal protection of the law as guaranteed by the state and federal constitutions. California's Supreme Court found that Marina Point's exclusionary policy violated the Unruh Act and therefore did not address the Wolfsons' other contentions.

20. 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970).

the Unruh Act and its predecessors, the *Cox* court had concluded that the "identification of particular bases of discrimination—color, race, religion, ancestry and national origin— . . . is illustrative rather than restrictive."[21] Contrary to the municipal court's conclusion, the antidiscrimination provisions of the Unruh Act were not intended to be restricted to only those classes of persons specifically enumerated in the statute, but were intended to protect all persons from any arbitrary discrimination by a business establishment.[22]

Marina Point maintained that even if the municipal court erred in concluding that the Unruh Act did not apply because families with children were not a protected class, the judgment in its favor should nevertheless be affirmed because its policy was "reasonable" and not "arbitrary" and therefore should not be barred by the Unruh Act. Indeed, the court in *Cox* had stated:

> In holding that the Civil Rights Act forbids a business establishment generally open to the public from arbitrarily excluding a prospective customer, we do not imply that the establishment may never insist that a patron leave the premises. Clearly, an entrepreneur need not tolerate customers who damage property, injure others or otherwise disrupt his business. A business establishment may, of course, promulgate reasonable deportment regulations that are rationally related to the services performed and the facilities provided.[23]

Marina Point urged that the exclusionary policy fell within the category of permissible regulations to which *Cox* had referred. In support of the contention that the exclusionary policy was rationally related to a legitimate interest in preserving an appropriate environment, Marina Point relied on the case of *Flowers v. John Burnham & Co.*[24] In *Flowers* the court stated: "Because the independence, mischievousness, boisterousness and rowdyism of children vary by age and sex . . . regulating tenants' ages and sex to that extent is not unreasonable or arbitrary."[25]

However, the supreme court dismissed *Flowers* as resting on a fundamental misconception of the statutory right afforded "all persons" by the Unruh Act. Contrary to Marina Point's contention and the implication of *Flowers*, "the Unruh Act does not permit a business enterprise to exclude an entire class of individuals on the basis of a generalized prediction that the class 'as a whole' is more likely to commit misconduct than some other class of the public."[26]

21. *Id.* at 216, 474 P.2d at 999, 90 Cal. Rptr. at 31.

22. The Unruh Act had previously been held to apply to the business of renting housing accommodations. *See, e.g.*, Swann v. Burkett, 209 Cal. App. 2d 685, 26 Cal. Rptr. 286 (1962); Abstract Inv. Co. v. Hutchinson, 204 Cal. App. 2d 242, 22 Cal. Rptr. 309 (1962). *Cf.* Burks v. Poppy Constr. Co., 57 Cal. 2d 463, 370 P.2d 313, 20 Cal. Rptr. 609 (1962).

23. *In re* Cox, 3 Cal. 3d 205, 217, 474 P.2d 992, 999, 90 Cal. Rptr. 24, 31 (1970).

24. 21 Cal. App. 3d 700, 98 Cal. Rptr. 644 (1971).

25. *Id.* at 703, 98 Cal. Rptr. at 645.

26. Marina Point, Ltd. v. Wolfson, 30 Cal. 3d 721, 739, 640 P.2d 115, 125, 180 Cal. Rptr.

The California Supreme Court emphasized that the basic right guaranteed by the Unruh Act would be drastically undermined if a business enterprise could bar from its premises entire classes of the public simply because the owner of the enterprise had reason to believe that the class as a whole might present greater problems than other groups.[27] If Marina Point's contentions were followed, the court reasoned, it would logically follow that children could uniformly be excluded from virtually all business enterprises because most businesses can claim a legitimate interest in eliminating excessively noisy, rowdy, or boisterous conduct. Under the Unruh Act, entrepreneurs may generally exclude those persons who are in fact disruptive, but cannot pursue "a broad status-based exclusionary policy that operates to deprive individuals of the services of the business enterprise to which section 51 grants 'all persons' access."[28]

Finally, Marina Point argued that even if the potential misbehavior of children as a class did not justify the blanket exclusionary policy, the "no children" policy could nonetheless be sustained as reasonable on the grounds that the presence of children does not accord with the nature of its business and of the facilities provided. In this regard, Marina Point attempted to analogize the apartment project to such businesses as bars, adult book stores, theaters, and senior citizen facilities that routinely exclude children from their premises or services.

However, the California Supreme Court noted that the suggested analogy clearly failed. Nothing in the nature of an ordinary apartment project is incompatible with the presence of families with children.[29] The court pointed out that prior to its decision to exclude children in 1974, Marina Point freely rented its apartments to families with children and, even at the time of trial, several families with children continued to reside in the project. The court stated:

496, 507 (1982). As illustration, the supreme court cited two prior cases confirming the principle. The first was Orloff v. L.A. Turf Club, Inc., 36 Cal. 2d 734, 227 P.2d 449 (1951). In *Orloff* the court held that a race track manager could not exclude a person alleged to be a known bookmaker based upon his reputation as a man of immoral character. The court stated that absent evidence that the patron had engaged in some form of unlawful conduct while at the track, the Civil Rights Act prohibited his exclusion. The second case relied on by the court was Stoumen v. Reilly, 37 Cal. 2d 713, 234 P.2d 969 (1951). *Stoumen* held that a business establishment could not bar homosexuals simply because of their status as homosexuals. Absent some unlawful or immoral conduct, the court said, his exclusion based upon membership in a class was arbitrary.

27. As an example, the court pointed out that sailors or motorcyclists might find themselves excluded as a class from certain places because proprietors could show that, statistically, members of their occupation or vocation were more likely than others to be involved in a disturbance.

28. Marina Point, Ltd. v. Wolfson, 30 Cal. 3d 721, 740, 640 P.2d 115, 126, 180 Cal. Rptr. 496, 508 (1982).

29. One argument urged by the landlord was that the presence of swimming pools made it dangerous to have children on the premises. However, the court noted that the pools were part of the apartment complex long before the "adults only" program was instituted. Also, the landlord had never sought to adopt the less restrictive practice of simply excluding children from the use of the pools. Under those circumstances, the court determined that the presence of the swimming pools could not possibly justify the landlord's broad exclusionary rule.

> Although certain facilities offered by an apartment complex may possibly be withheld from children pursuant to such a safety rationale, a landlord cannot seize upon the availability of such incidental facilities as a justification for closing off all of its principal services, i.e., housing accommodations, to the broad class of families with children.[30]

Unlike the exclusion of children from bars, adult book stores, or movie theaters, Marina Point's exclusionary policy could not be defended by reference to any statutorily sanctioned restrictions on the activities of children.[31] Likewise, the court distinguished the exclusionary practice in issue from the age-limited admission policies of retirement communities or housing developments reserved for older citizens. Such facilities are designed for the elderly and often have particular appurtenances and exceptional arrangements for their specified purposes and thus serve a specific social need. Also, both the state and federal governments have enacted specific age-conscious legislation addressed to the special housing needs of the elderly.[32]

The court noted that in light of the public policy reflected by the legislative enactments, age qualifications as to a housing facility reserved for the elderly can operate as a reasonable and permissible means under the Unruh Act of establishing and preserving specialized facilities for persons particularly in need of such services. The court reasoned that a specialized institution created to meet a specific social need differs fundamentally from the wholesale exclusion of children from an apartment complex otherwise open to the general public and that Marina Point could not possibly claim that the exclusionary policy served any similarly compelling social interest.[33]

Thus, the California Supreme Court, when faced with the issue of discrimination against children in apartment housing, came to the well-reasoned conclusion that such discrimination was prohibited by a statute very similar to Oklahoma's. The court had previously determined that an apartment project was a business establishment covered by the Unruh Act. Hence, it relied on the fact that the Unruh Act was illustrative and not restrictive and therefore was meant to prohibit all arbitrary discrimination to support its conclusion that it is unlawful to prohibit all children from apartment complexes. The court emphasized, however, that a business establishment may promulgate reasonable deportment regulations that are rationally related to the services performed and the facilities provided.

30. Marina Point, Ltd. v. Wolfson, 30 Cal. 3d 721, 744, 640 P.2d 115, 129, 180 Cal. Rptr. 496, 510 (1982).

31. California has by statute made it unlawful to furnish alcoholic beverages to persons under 21 or to distribute "harmful matter" to another.

32. *See, e.g.*, CAL. HEALTH & SAFETY CODE § 51230 (West 1979) (reserving a proportionate share of state-financed low-income housing for occupancy by the elderly); 12 U.S.C. § 1701q (1976) (federal loan program for housing for elderly families); 42 U.S.C. § 1485 (1976) (same).

33. Marina Point, Ltd. v. Wolfson, 30 Cal. 3d 721, 640 P.2d 115, 180 Cal. Rptr. 496 (1982). Thus, the court emphasized that contrary to the dissenting opinion, the opinion of the court does not bar age-limited admission policies of retirement communities or complexes reserved for the elderly.

Oklahoma's Public Accommodations Statute

Oklahoma's public accommodations statute reads as follows: "It is a discriminatory practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a 'place of public accommodation' because of race, color, religion, or national origin."[34] The term "place of public accommodation" is statutorily defined and "includes any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds."[35]

To determine whether Oklahoma's statute encompasses child discrimination in apartment housing, two questions must be answered. First, is an apartment project a place of public accommodation and therefore within the scope of Oklahoma's statute? Second, are the enumerated prohibited bases of discrimination (i.e., race, color, religion, or national origin) merely illustrative or are they restrictive?

Apartment Housing As a "Place of Public Accommodation"

There has been very little judicial interpretation in Oklahoma as to exactly what is, or is not, a place of public accommodation. It is therefore an open question as to the actual scope of Oklahoma's statute. However, Oklahoma is not alone in this respect. In a nationwide sample of cases, a place of public accommodation has been held to include a bathhouse,[36] a bowling alley,[37] a dancing school,[38] an elevator,[39] a trailer park,[40] a dance pavilion,[41] and a movie theater.[42] The difficulty in determining what is a place of public accommodation lies with the failure of the courts adequately to set forth a lucid standard for defining a "public accommodation," as the term is used in the statutes.[43]

Oklahoma has had only one case specifically construing the statute defining "place of public accommodation." In *Valentine v. City of Tulsa*,[44] Valentine was alleged to have violated the Tulsa Public Accommodation Ordinance[45]

34. 25 OKLA. STAT. § 1402 (1981).
35. 25 OKLA. STAT. § 1401 (1981).
36. Norman v. City Island Beach Co., 126 Misc. 335, 213 N.Y.S. 379 (1926).
37. Central Amusement Co. v. District of Columbia, 121 A.2d 865 (D.C. 1956).
38. Crawford v. Kent, 341 Mass. 125, 167 N.E.2d 620 (1960).
39. Dean v. Chicago & N.W.R. Co., 183 Ill. App. 317 (1913).
40. Ohio Civil Rights Comm'n v. Lysyj, 38 Ohio St. 2d 217, 313 N.E.2d 3 (1970).
41. Amos v. Prom, Inc., 117 F. Supp. 615 (N.D. Iowa 1954); Johnson v. Auburn & Syracuse Elec. R.R., 222 N.Y. 443, 119 N.E. 72 (1918).
42. United States v. Sampson, 256 F. Supp. 470 (N.D. Miss. 1966).
43. Avins, *What Is a Place of Public Accommodation?*, 52 MARQ. L. REV. 1, 68 (1968).
44. 518 P.2d 316 (Okla. 1973).
45. 25 OKLA. STAT. § 1702 (1981) provides: "A political subdivision may adopt and enforce an ordinance prohibiting discrimination because of race, color, religion, sex or national origin not in conflict with a provision of this Act."

when she refused to enroll a black child in preschool. Valentine challenged the validity of the ordinance, stating that it was an enlargement of the state statute. The court ultimately held that the preschool fell within the definition of the ordinance and that the ordinance was not an enlargement of the statute as applied to the facts of the case. "The legislative intent was to use the word 'includes'[46] in the sense of enlargement; otherwise, such terms as 'any place' or 'other establishment' would not have been used."[47] Therefore, the court reasoned, the words of the statute are not limiting.[48]

It is a general rule of construction that a statute should be construed liberally to give effect to the objects for which the statute was enacted.[49] The section of the statute enumerating the purposes and construction of the Act states: "This Act . . . shall be *liberally* construed to further the general purposes stated in this Section and the special purposes of the particular provision involved."[50]

In light of the *Valentine* holding and the above quoted section of the statute, it is clear that the statutory language used to define "place of public accommodation" was meant to be read very broadly. This is in accordance with the purpose of the public accommodation statute. "The general purposes of this Act are to provide for execution within the State of the policies embodied in the Federal Civil Rights Act of 1964 and to make uniform the law of those states which enact this Act."[51]

When construing any statute or ordinance, the Oklahoma courts will attempt to ascertain the intention of the legislative body.[52] This will ordinarily be done by consideration of the language of the statute as a whole in light of its general purposes and objectives, as well as an in-depth examination of the legislative history of the statute.[53]

The language in the statute states that *any place* which supplies goods or *services* to the general public is a place of public accommodation. An apartment project is certainly a "place" within the meaning of the statute, and surely the act of providing housing accommodations is a service to the general public. Thus, the language of the statute, when read liberally, would support the proposition that an apartment project is in fact a "place of public accommodation" and is governed by the statute.[54]

46. 25 OKLA. STAT. § 1401 (1981). " 'place of public accommodation' includes any place, store or other establishment . . .".

47. Valentine v. City of Tulsa, 518 P.2d 316, 319 (Okla. 1973).

48. *Id.* The court noted that the New Jersey Supreme Court had interpreted the New Jersey Public Accommodation Statute the same way. Fraser v. Robin Dee Day Camp, 44 N.J. 480, 210 A.2d 208 (1965).

49. Stuart v. State, 522 P.2d 288 (Okla. Cr. App. 1974).

50. 25 OKLA. STAT. § 1101 (1981) (emphasis added).

51. *Id.*

52. Dolese Bros. Co. v. Privett, 622 P.2d 1080 (Okla. 1981); Riffe Pet. Co. v. Great Nat'l Corp., 614 P.2d 576 (Okla. 1980).

53. Oklahoma Journal Pub. Co. v. City of Oklahoma City, 620 P.2d 452 (Okla. App. 1980); Beall v. Town of Hennessey, 601 P.2d 758 (Okla. App. 1979).

54. Another provision of the statute itself would seem to suggest that apartment complexes

Oklahoma courts should also be influenced by the fact that the California Supreme Court came to the conclusion that an apartment project is governed by the provisions of a statute (the Unruh Act) that does not specifically mention apartment housing as being within its protection.[55] The Unruh Act uses the phrase, "in all business establishments of every kind whatsoever."[56] While at first glance this may seem broader than Oklahoma's statutory phrase, "place of public accommodation," after one looks to the definition given this phrase, the difference between the two is slight. Oklahoma's statute defines place of public accommodation as including "any place, store or other establishment . . . which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public."[57] This would seem to correspond to the definition of "business establishment" as the phrase is used in the Unruh Act.[58]

Finally, it should be mentioned that several other jurisdictions with public accommodation statutes have judicially determined that trailer parks are subject to regulation under such statutes.[59] Trailer parks are analogous to apartment projects in that both provide living accommodations to the general public for persons staying on other than a temporary basis (as opposed to those staying in hotels or motels). Because of the similarities in the types of services offered by trailer parks and apartment projects, it is reasonable to conclude that if a trailer park is a "place of public accommodation," then so also are apartment projects.

In light of the liberal language of the statute, the broad legislative intent, and the *Valentine* holding that the words of the statute are not limiting, it would be appropriate for the Oklahoma courts to follow California's lead in declaring apartment houses to be places of public accommodation.

Children As a Protected Class

The next step in interpreting Oklahoma's public accommodation statute is

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are places of public accommodation. The statute states: "Place of public accommodation does not include . . . any establishment located within a building which contains not more than 5 rooms for rent or hire and which is actually occupied by the proprietor of the establishment as his residence." 25 OKLA. STAT. § 1402(2) (1981). Read literally, this seems to indicate that any building that contains more than five rooms for rent or hire will be considered a place of public accommodation.

55. See note 22 *supra* and accompanying text.

56. CAL. CIV. CODE § 51 (West Supp. 1977).

57. 25 OKLA. STAT. § 1401 (1981).

58. It is also important to note that, at one time, California's Unruh Act also used the language "public accommodation." In the late 1950s, however, the legislature became concerned that courts of appeal, narrowly defining the kinds of businesses that afforded public accommodations, were improperly curtailing the scope of the public accommodation provision. Accordingly, it changed the wording of the statute to "business establishment of every kind whatsoever." The important factor is that the legislature did not intend to enlarge the scope of the statute by changing the wording from "public accommodation" to "business establishment of every kind whatsoever," but rather only meant to protect the intended scope.

59. Ohio Civil Rights Comm'n v. Lysyj, 38 Ohio St. 2d 217, 313 N.E.2d 3 (1970); Gregory v. Madison Mobile Homes Park, Inc., 24 Wis. 2d 275, 128 N.W.2d 462 (1964).

to determine if children, or families with children, are a protected class. The statute itself sets out the categories of race, color, religion, and national origin as bases of prohibited discrimination. The question is, were these classes meant to be illustrative or restrictive? That is, should the specific enumeration of certain classes of persons be taken as a signal that the legislature intended only those persons to be protected under the statute, or that those persons are only illustrative of the general intent to forbid all discrimination in regard to a public accommodation? Again, in determining whether children are to be included within the statute, it is necessary to look at the language of the statute and the legislative objective.

A statute should be interpreted to produce a reasonable result and to promote, rather than to defeat, the general purposes and policies of the law. It is a common rule of law that the apparent purpose of a statute should not be defeated in favor of a literal construction of that statute.[60] *Expressio unius est exclusio alterius* ("mention of one thing in a statute implies exclusion of another") is but a maxim and its application is not absolute nor universal. It is available as a tool by which the courts may construe legislative intent, but if the intent of the legislature was not to make the statute exclusive, the maxim is not to be applied.[61] The maxim is but an auxiliary rule of construction and not a rule of substantive law.[62] Hence, that age or children are not included as bases of discrimination does not absolutely preclude the possibility of children, or families with children, being a protected class.

The only concrete evidence available to determine the legislative intent behind the Oklahoma statute is that found in the act itself, its stated purpose being to provide for execution of the policies embodied in the Federal Civil Rights Act of 1964. There is no evidence in the legislative history of Oklahoma's statute to indicate that the legislative intent was to limit the scope of the act to the enumerated classes.

If the legislative intent was to limit the scope of the statute to only those classes of persons specifically mentioned, absurd results would follow. Assuming that the wording of the statute was intended to be restrictive rather than illustrative, it would be permissible to exclude all classes of persons from places of public accommodation by reason of the fact that the class was not specifically mentioned in the statute. For example, places of public accommodation could bar all women, senior citizens, children, the handicapped, and any other identifiable class from entering their place of business.

In light of the broad legislative intent and the results that would ensue if the language of the statute were interpreted to be restrictive and not merely illustrative, Oklahoma courts should construe the Oklahoma statute to prohibit all discrimination in places of public accommodation unless discrimination is based on reasonable deportment regulations that are rationally related to the services performed and the facilities provided.

60. Phelps v. State, 598 P.2d 254 (Okla. Cr. App. 1979).

61. State v. Smith, 539 P.2d 754 (Okla. Cr. App. 1975).

62. Hardesty v. Andro Corp.-Webster Div., 555 P.2d 1030 (Okla. 1976); *In re* Arbuckle Master Conservatory Dist., 474 P.2d 385 (Okla. 1970).