

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 96-50795

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MARJORY SEDMINA ERSKINE and  
WOOD STEELE ERSKINE,

Plaintiffs - Counter Defendants - Appellants,

VERSUS

CITY OF MIDLAND, Texas, A Municipal  
Corporation,

Defendant - Counter Claimant - Appellee.

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Appeal from the United States District Court  
For the Western District

(MO-95-CV-44)

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August 18, 1997

Before JOLLY, SMITH and DENNIS, Circuit Judges.

PER CURIAM:\*

Plaintiffs-Appellants Marjory and Wood Erskine brought suit against the Defendant-Appellee City of Midland ("City") primarily to prevent the City from enforcing municipal ordinances which

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\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

require that (1) landowners in Midland maintain all vegetation, including grass, weeds, and brush, on their property below certain heights and (2) municipal residents apply for a Specific Use Permit to conduct wildlife rehabilitation activities on their property. The district court ruled in favor of the City, and the Erskines now appeal.

The Erskines raise a number of issues in their effort to overturn the final judgment of the district court. They maintain that (1) the enforcement of the City's Weedy Lot Ordinance conflicts with the Endangered Species Act; (2) the Weedy Lot Ordinance is unconstitutionally overbroad; (3) the Erskines' wildlife rehabilitation efforts and four-acre "sanctuary" are permissible as pre-existing, non-conforming uses of their land; and, (4) the City is estopped from prohibiting the Erskines' use of their land.

For essentially the reasons articulated by the district court, its judgments of November 29, 1995, and September 12, 1996, are AFFIRMED.