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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1497**

Gerald Beckius,
Appellant,

vs.

City of Canby,
Respondent.

**Filed July 1, 2008
Affirmed in part, reversed in part, and remanded
Schellhas, Judge**

Yellow Medicine County District Court
File No. 87-CV-06-145

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Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's ruling that an ordinance enacted by
respondent, restricting appellant's ability to carry passengers on his golf cart, does not

violate anti-discrimination laws and is not preempted by state traffic regulations. Because we conclude that the ordinance does not discriminate against appellant on the basis of his disability, we affirm the district court as to appellant's discrimination claims. But because we hold that the ordinance is preempted by state law, we reverse the district court's decision as to that claim and remand.

FACTS

On August 5, 1986, under authority of Minn. Stat. § 169.045 (1986), respondent City of Canby adopted Ordinance No. 231 (the ordinance), allowing the operation of golf carts on its streets.¹ Section five of the ordinance, entitled "Conditions of Permit," enumerated the conditions that applicants must meet in order to obtain a permit, including their demonstration that they are physically disabled and can safely operate a golf cart. Other sections of the ordinance restricted the operation of golf carts consistent with section 169.045. On July 19, 2004, the city adopted Ordinance No. 231.1, an amended version of Ordinance No. 231. The amended ordinance provides that no passengers are allowed in golf carts without "a permit issued under this ordinance." In effect, the amended ordinance prohibits passengers in golf carts unless they are physically disabled and can safely operate a golf cart.

Appellant Gerald Beckius is a Canby resident who has cerebral palsy and does not own an automobile. On July 16, 2003, Beckius received a permit to operate his golf cart on the streets of Canby. Until the city's adoption of the amended ordinance, Beckius

¹ Minnesota Statutes, section 169.045, subdivision 1, authorizes cities to permit the operation of golf carts on their streets at their discretion.

regularly drove his golf cart with passengers, such as his children, friends, and wife. Since the city's adoption of the amended ordinance, Beckius has been unable to carry passengers in his golf cart because his intended passengers are not disabled and therefore ineligible for permits.

Beckius filed suit against the city, claiming that the amended ordinance's restriction on passengers conflicts with state traffic regulations and violates the Americans with Disabilities Act (ADA), the Federal Rehabilitation Act (FRA), and the Minnesota Human Rights Act (MHRA), which prohibit discrimination based on physical disability. Both parties moved for summary judgment, and the district court granted summary judgment to the city.

The parties have stipulated to the fact that Beckius is a "qualified individual with a disability" for the purposes of the ADA and section 504 of the FRA, and he is a "qualified disabled person" for the purposes of the MHRA. The parties have also stipulated to the fact that the city is a municipal corporation, subject to the ADA and the MHRA, and it receives federal funding, making it subject to the FRA.

The district court concluded that Beckius failed to make a prima facie case as to his claims under the FRA, ADA, and MHRA, because he failed to show that he was denied a benefit that is available to others, due to his disability. As to Beckius's claim that the amended ordinance conflicts with state traffic regulations, the district court concluded that under Minn. Stat. § 169.045 (2006), the city's passenger restriction for golf carts, contained in section ten of the amended ordinance, is authorized. The district court reasoned that because the legislature allowed cities to choose whether or not to

allow golf-cart operation, it did not intend to establish statewide uniformity with respect to golf-cart operation on city streets. Appellant challenges the district court's ruling.

DECISION

Based on undisputed facts, we must determine the applicability of federal and state statutes prohibiting discrimination against disabled persons, and whether the amended ordinance is preempted by state law. "When the district court grants a summary judgment based on its application of statutory language to the undisputed facts of a case . . . its conclusion is one of law and our review is de novo." *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998). The determination of whether an ordinance is preempted by state law is also a question of law that we review de novo. *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007).

In construing and interpreting statutes, "[t]he object . . . is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2006). When the language of a statute is plain and unambiguous, the plain language must be followed. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). Courts must construe words and phrases according to their most natural and obvious usage, and to the rules of grammar, unless it would be inconsistent with the manifest intention of the legislature to do so. Minn. Stat. § 645.08(1) (2006). If the words of a statute are clear and unambiguous, further construction is not permitted. Minn. Stat. § 645.16; *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986).

Discrimination

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132 (2000). Section 504 of the FRA, states in relevant part that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794 (2000). Beckius argues that the district court erred in concluding that the amended ordinance does not violate the ADA or the FRA because it ignored regulations that set forth the applicable legal standards of discrimination in enforcing the ADA and FRA.

The United States Department of Justice, at the direction of Congress, issued regulations, 28 C.F.R. §§ 35.101-.190 (2007), that identify different types of discriminatory conduct that violate the ADA. *See* 42 U.S.C. § 12134 (2000) (authorizing the attorney general to promulgate regulations for implementing the ADA); 28 C.F.R. § 35.101 (defining the purpose of part 35 as to effectuate the ADA). The Department of Justice has issued similar regulations, 28 C.F.R. §§ 41.1-.58 (2007), identifying discriminatory conduct under section 504 of the FRA. *See* 28 C.F.R. § 41.1 (describing the purpose of part 41 as to implement section 504 of the FRA). Here, the regulations at issue are those providing that public entities may not, on the basis of physical disability, “[a]fford a qualified individual with a disability an opportunity to participate in or benefit

from [an] aid, benefit, or service that is not equal to that afforded others.” 28 C.F.R. § 35.130(b)(1)(ii) (prohibiting such conduct under the ADA); *see* 28 C.F.R. § 41.51(b)(1)(ii) (prohibiting similar conduct for recipients of federal funding under section 504 of the FRA). Also at issue here are regulations providing that public entities may not, on the basis of physical disability, “[p]rovide different or separate . . . services to individuals with disabilities . . . than [are] provided to others unless such action is necessary to provide qualified individuals with disabilities with . . . services that are as effective as those provided to others.” 28 C.F.R. § 35.130(b)(1)(iv) (prohibiting such conduct under the ADA); *see* 28 C.F.R. § 41.51(b)(1)(iv) (prohibiting similar conduct for recipients of federal funding under section 504 of the FRA). In view of Congress’s delegation, the Department of Justice’s regulations should be accorded “controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.” *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844, 104 S. Ct. 2778, 2782 (1984); *see Yeskey v. Comm’r of Pa. Dep’t of Corr.*, 118 F.3d 168, 170-71 (3d Cir. 1997) (applying this rule to the regulations implementing the ADA and section 504 of the FRA), *aff’d*, 524 U.S. 206, 118 S. Ct. 1952 (1998).

The district court concluded that the amended ordinance does not deprive appellant of equal access to city streets. Beckius argues that the district court should have evaluated his claim relative to his ability to use a golf cart on city streets, instead of his general access to city streets. Beckius argues that because other cities that have implemented golf-cart programs do not similarly restrict passengers, the amended ordinance impermissibly discriminates against him by denying him the full benefit of the

golf-cart program. But assuming *arguendo* that other cities have not so restricted passengers, Beckius ignores that the ADA and FRA prohibit affording the unequal benefit of a service, “on the basis of disability.” 28 C.F.R. §§ 35.130(b)(1)(ii), 41.51(b)(1)(ii). To the extent that permit-holders in other cities may have greater opportunities to carry passengers, the difference is not “on the basis of disability,” but on the basis of physical location. Therefore, Beckius failed to show that the amended ordinance violates the ADA or FRA in this regard.

Beckius also argues that the district court erred by not finding that the city, by adopting the amended ordinance, impermissibly and “on the basis of disability . . . [provides] different or separate aids, benefits, or services to individuals with disabilities,” and that the amended ordinance is not “necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others.” 28 C.F.R. §§ 35.130(b)(1)(iv), 41.51(b)(1)(iv). That the ordinance and amended ordinance create a separate program for the disabled in the form of the golf-cart program is undisputed. The district court concluded that because Beckius has the same access to city streets as the public at large and because the golf-cart program provides Beckius an additional way to access city streets, the amended ordinance does not impermissibly discriminate against Beckius. As with his earlier argument, Beckius argues that the district court erred in assuming that the “service” at issue is access to city streets and not the golf-cart program itself. Beckius argues that the amended ordinance violates the ADA and FRA by creating a separate program that is less effective for permit-holders in the city than it is for others in the state, because Canby’s amended ordinance restricts

passengers. But as with Beckius's earlier argument, any differences between Canby's ordinances pertaining to golf-cart use and those of other cities are not "on the basis of disability," but rather physical location.

Beckius has failed to make a prima facie case that the city impermissibly discriminated against him "on the basis of disability" under either the ADA or the FRA, and the district court's grant of summary judgment to the city on these claims was proper.

The MHRA provides that "[i]t is an unfair discriminatory practice to discriminate against any person in . . . full utilization of or benefit from any public service because of . . . disability . . . unless the public service can demonstrate that providing the access would impose an undue hardship on its operation." Minn. Stat. § 363A.12, subd. 1 (2006). Beckius argues that the district court should have concluded that the amended ordinance deprives him of the "full utilization of, or benefit of" the golf-cart program. In *City of Minneapolis v. Richardson*, the supreme court set the standard for establishing a violation of the MHRA with respect to the provision of public services. 307 Minn. 80, 87, 239 N.W.2d 197, 202 (1976). A violation of the MHRA can be established by showing (1) "an adverse difference in treatment with respect to public services of one or more persons when compared to treatment accorded others similarly situated except for the existence of an impermissible factor [such as disability]," or (2) "treatment so at variance with what would reasonably be anticipated absent determination that discrimination is the probable explanation." *Id.* Beckius argues that the first circumstance is established in this case, i.e., that he has received an adverse difference in treatment with respect to the city's golf-cart program based on his disability.

Beckius again compares the city's golf-cart program with golf-cart programs in other cities. Similar to his claims under the ADA and the FRA, Beckius fails to explain how differences in the treatment he receives under the city's program as compared with treatment he would receive under other cities' programs are due to his disability. As with his ADA and FRA claims, Beckius fails to make a prima facie case of a violation under the MHRA because any difference in treatment with respect to the city's golf-cart program's passenger restrictions, as compared to programs in other cities, is not conditioned on his disability. In addition, in *Podruch v. State, Dep't of Pub. Safety*, we noted that "the legislature expressly protected from the broad anti-discrimination prohibitions of MHRA 'any program, service, facility, or privilege afforded to a person with a disability, which is intended to habilitate, rehabilitate, or accommodate that person.'" 674 N.W.2d 252, 255 (Minn. App. 2004) (quoting 1973 Minn. Laws ch. 729, § 2), *review denied* (Minn. Apr. 20, 2004). Because the city's golf-cart program appears to be the kind of program exempted from the anti-discriminatory prohibitions of the MHRA and because appellant fails to show that he received adverse treatment because of his disability, the district court properly granted summary judgment to the city on this claim, also.

Preemption

"Generally, municipalities have no inherent powers" except for those "expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred." *Kuhlman*, 729 N.W.2d at 580. Minnesota Statutes, sections 169.001-.99 (2006), the Minnesota Traffic Regulations (the regulations), regulate the

operation of vehicles on roadways in general and provide that the application of the regulations should be uniform throughout the state. Minn. Stat. §§ 169.02, .03, subd. 9. But the legislature “did not intend to preempt the field of highway traffic regulation entirely” when it adopted the regulations. *City of St. Paul v. Olson*, 300 Minn. 455, 456, 220 N.W.2d 484, 485 (1974). Rather, the regulations provide that “[l]ocal authorities may adopt traffic regulations which are not in conflict with the provisions of,” or are expressly permitted by, the regulations. *Id.* In *Kuhlman*, the supreme court distilled established caselaw “related to preemption and conflict in the context of traffic violations” into four distinct points of law. 729 N.W.2d at 581. First, “state law preempts the field of traffic law except for that which is expressly permitted by state statute.” *Id.* Second, “no conflict exists when an ordinance is merely additional and complementary to a state law and covers specifically what the statute covers generally.” *Id.* Third, “municipalities must provide the same procedural protections as the state when prosecuting offenses that are covered by an ordinance and a statute.” *Id.* Fourth, “a municipality may not prohibit by ordinance conduct that is not prohibited by statute.” *Id.* at 581-82. Beckius argues that the amended ordinance violates the fourth point in *Kuhlman* and is not protected by the first or second points.

The first point in *Kuhlman* establishes that an ordinance that regulates what a state statute explicitly allows it to regulate is not preempted by state law. 729 N.W.2d at 581. Section 169.045 of the regulations authorizes municipalities to decide whether to allow drivers to operate golf carts on streets within their jurisdiction, and explicitly allows cities to “prescribe conditions under which a permit can be granted.” Minn. Stat. § 169.045,

subd. 1. But, here, the provision of the amended ordinance at issue does not place a condition on issuing a permit; rather, it places a restriction on the operation of golf carts. The statute itself regulates the operation of golf carts on city streets, *id.*, subds. 3 (prohibiting use of golf carts at night), 4 (requiring a slow-moving vehicle emblem on golf carts), 5 (permitting golf-cart drivers to cross any street or highway intersecting a designated roadway), but does not explicitly authorize municipalities to do so independently. The amended ordinance, therefore, cannot be afforded the protection of the first point in *Kuhlman*. Neither can the amended ordinance be afforded the protection of the second point in *Kuhlman*, because the amended ordinance does not cover specifically what the statute covers generally. None of the provisions in the statute regulates the operation of golf carts in general ways so that the amended ordinance may regulate more specifically. *See* Minn. Stat. § 169.045, subds. 3 (regulating times of golf-cart operation), 4 (requiring golf carts to carry a slow-moving vehicle emblem).

The city argues that the amended ordinance is a specific application of other parts of the regulations. Certain sections of the regulations restrict passengers in specific types of motor vehicles. *See* Minn. Stat. §§ 169.223 (restricting passengers on motorized bicycles to parent or guardian of driver under 16), .447 (regulating passengers on school buses), .974 (restricting passengers of motorcycles, motor scooters, and motor bikes). Other sections either ban passengers on other motor vehicles outright or restrict passengers of motor vehicles in general. *See* Minn. Stat. §§ 169.225 (banning passengers on motorized foot scooters), .685 (generally requiring child passenger restraints in vehicles), .686 (generally requiring passengers to wear seatbelts). But none of these

sections covers generally what the amended ordinance covers specifically, i.e., restricting passengers in golf carts to those who hold golf-cart permits. The amended ordinance is not, therefore, a specific application of any of the regulations.

The fourth point in *Kuhlman* establishes that “[a] municipality may not prohibit by ordinance conduct that is not prohibited by statute.” 729 N.W.2d at 581-82. This point was not devised as an inflexible test. Rather, it reflects a desire for uniformity in traffic regulations across the state so that drivers can travel throughout the state without the risk of violating ordinances unfamiliar to them. *Id.* at 581. In *Kuhlman*, because the ordinance at issue extended owner liability beyond the specific situations where the regulations provided it, the supreme court ruled that upholding the ordinance would permit any city to hold owners liable for “any number of traffic offenses” and “render the [regulations’] uniformity requirement meaningless.” *Id.* at 583. In *Duffy v. Martin*, on which *Kuhlman* relied, the supreme court stated that “[t]he purpose of uniformity required by our statutes is to enable a driver of a motor vehicle to proceed in all parts of the state without the risk of violating an ordinance with which he is not familiar.” 265 Minn. 248, 255, 121 N.W.2d 343, 348 (1963), *cited in Kuhlman*, 729 N.W.2d at 583.

Section 169.045 allows cities to permit golf-cart use on their streets, at their discretion, and allows cities to set conditions on *obtaining permits* so long as they are consistent with the provisions of that section. Minn. Stat. § 169.045, subd. 2. We conclude that section 169.045 prescribes an adequately uniform implementation of the golf-cart program as it relates to the *operation* of golf carts, such that it preempts the city’s attempt to further restrict golf-cart operation. Section 169.045 explicitly sets

specific parameters on golf-cart operation and contains no language implying that municipalities may independently restrict golf-cart operation, if they choose to allow it on their streets. *See id.*, subds. 3 (prohibiting golf-cart use at night), 5 (allowing golf-cart drivers to “cross any street or highway intersecting a designated roadway”). Additionally, this section provides that golf-cart drivers have “all the rights and duties applicable to the driver of any other vehicle under the provisions of” the regulations. *Id.*, subd. 6.

The intent of the legislature is apparent: cities may choose whether to allow golf carts on their streets, and have limited discretion in setting conditions for granting permits, but the operation of golf carts must be uniformly consistent with the regulations in all cities where golf-cart use is permitted. Thus, because the amended ordinance prohibits what the regulations do not, by requiring that all passengers obtain permits, the amended ordinance is preempted by the regulations.

Affirmed in part, reversed in part, and remanded.