STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1783

Dakota Liquor, Inc.,
Relator,

vs.

City of Prior Lake,
Respondent,

MGM Wine and Spirits,
Respondent.

Filed July 28, 2009
Affirmed
Kalitowski, Judge

City of Prior Lake
Resolution 08111

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Considered and decided by Kalitowski, Presiding Judge; Klaphake, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Relator Dakota Liquor, Inc. challenges respondent City of Prior Lake's (the city) issuance of a liquor license to respondent MGM Wine & Spirits (MGM). Relator argues that the issuance of the liquor license to MGM violates provisions of the Prior Lake city code respecting the proximity of a liquor store to a school and the issuance of a liquor license to an applicant with a prior conviction. We affirm.

D E C I S I O N

The decision whether to issue a liquor license is a quasi-judicial act. *Micius v. St. Paul City Council*, 524 N.W.2d 521, 523 (Minn. App. 1994). "Municipal authorities have broad discretion to determine the manner in which liquor licenses are issued, regulated, and revoked." *Bourbon Bar & Cafe Corp. v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn. App. 1991). "A city council's decision may be modified or reversed if the city violated constitutional provisions, exceeded its statutory authority, made its decision based on an unlawful procedure, acted arbitrarily or capriciously, made an error of law, or lacked substantial evidence in view of the entire record submitted." *Montella v. City of Ottertail*, 633 N.W.2d 86, 88 (Minn. App. 2001) (affirming city's decision to deny relators' liquor license application). Our review is confined to the record before the city council at the time it made its decision. *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 173 (Minn. App. 2001).

The Daycare Facility

Relator argues that because a daycare center qualifies as a "school" under the Minnesota statute governing the sale of intoxicating liquors, chapter 340A, the fact that a daycare center is located within 300 feet of MGM's liquor store site required the city to deny MGM's license application pursuant to section 301.600(9) of the city code. We disagree.

Section 301.600(9) of the city code provides that an application for a liquor license shall be denied if the "premise to be licensed is located within 300 feet of any church or school." Prior Lake, Minn., City Code § 301.600 (9). All parties concede that the city code does not define the term "school." But several definitions of the words "school" and "daycare" indicate that "school" does not encompass a daycare facility under the city code.

"Under the basic canons of statutory construction, we are to construe words and phrases according to rules of grammar and according to their most natural and obvious usage unless it would be inconsistent with the manifest intent of the legislature." *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005).

First, the *American Heritage Dictionary* defines "daycare" as the "[p]rovision of daytime training, supervision, recreation, and often medical services for children of preschool age." *American Heritage Dictionary* 477 (3d ed. 1992). By contrast, a "school" is "[a]n institution for the instruction of children or people under college age . . . [t]he process of being educated formally, especially education constituting a planned series of courses over a number of years." *Id.* at 1615.

Second, Minnesota law provides different definitions for schools and daycare facilities. Chapter 120A of the Minnesota statutes establishes the department of education (MDE) and provides for the mission of public education. Minn. Stat. §§ 120A.02, .03 (2008). Section 120A.05 of the Minnesota statutes defines and categorizes schools based on the age of the students in attendance. Minn. Stat. § 120A.05 (2008). An elementary school is defined as "any school with building, equipment, courses of study, class schedules, enrollment of pupils ordinarily in prekindergarten through grade 6 or any portion thereof, and staff meeting the standards established by the commissioner [of education.]" Minn. Stat. § 120A.05, subd. 9. "Day care," by contrast, is the "care of a child in a residence outside the child's own home for gain or otherwise, on a regular basis, for any part of a 24 hour day." Minn. R. 9502.0315, subp. 9 (2007). Thus, under Minnesota statutes and rules, the words daycare and school are not equivalent.

Moreover, different state agencies enforce the prescribed rules for schools and daycare facilities, thereby underscoring that they are not equivalent. The MDE enforces the rules for schools, while the department of human services (DHS) regulates daycare facilities. *See* Minn. Stat. § 120A.02 (providing that the MDE shall carry out the provisions of chapter 120A); Minn. R. 9502.0325 (2007) (providing for DHS governance of daycare facilities).

Finally, if the city had intended to restrict the proximity of liquor stores to daycare facilities, it could have done so explicitly, as it does in other places in the city code. For example, the "Adult Uses" provision of the city code prohibits the operation of a sexually

oriented business on a property within a radius of 700 feet from "property frequented by children or designed as a family destination, such as a *day care facility, school*, library, park, playground, nature center, religious institution or other public recreation facility." Prior Lake, Minn., City Code § 1111.300(1) (emphasis added). Given this section's separate listing of the words "day care facility" and "school," it would be unreasonable to interpret section 301.600(a)'s use of the word "school" to include daycare facilities.

We conclude that the city's determination that a daycare facility is not a school, and that the location of a daycare facility is not relevant for purposes of the section 301.600(9), comports with the plain language of the city code. Therefore, the city's determination was not unreasonable, arbitrary, capricious, or based on an error of law.

Conviction

Relator contends, without reference to any statutory authority or caselaw, that the issuance of the license to MGM "violates section 300.600(2) [of the city code because MGM] has had an alcohol violation . . . within the last five years." We disagree.

Under the city code, it shall be grounds for the city council to deny a license application if the "applicant has been *convicted* within the past five (5) years of a violation of any provision of this Section or a violation of a Federal, State, or local law, Ordinance provision, or other regulation relating to alcohol or related products." Prior Lake, Minn., City Code § 301.600 (2) (emphasis added).

Minnesota law defines "conviction" as "(1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilty by the court" that is "accepted and recorded by the court." Minn. Stat. § 609.02, subd. 5 (2008). The Minnesota Supreme Court has held

that neither a civil fine, nor a license suspension, "entail the legal and social ramifications of a criminal conviction," *State v. Guminga*, 395 N.W.2d 344, 347 (Minn. 1986), and that to be criminally convicted, due process requires that a person be found guilty beyond a reasonable doubt of every element of the crime. *State v. Auchampach*, 540 N.W.2d 808, 816 (Minn. 1995).

Here, MGM paid a fine to the City of Minnetonka in 2006 for selling alcohol to a minor in violation of the Minnetonka City Code. The imposition of a fine in the City of Minnetonka did not require a hearing, but merely a "finding that the licensee . . . failed to comply with any applicable statute, regulation or ordinance relating to section 600." Minnetonka, Minn., Code of Ordinances § 600.080 (2009). The city council determined that a civil penalty was not a criminal conviction for purposes of section 301.600(2) of the city code, and that MGM had no convictions that "would preclude the granting of the license."

Because the imposition of a civil fine required only a finding by the city council of Minnetonka, we conclude that the Prior Lake city council did not act unreasonably, arbitrarily, capriciously, or fraudulently in determining that MGM had no convictions that preclude granting the license to MGM.

Finally, respondent MGM challenges relator's standing to contest the issuance of the liquor license because relator's only interest is to stifle competition. Because we conclude that the city properly issued the liquor license, we decline to reach the merits of this issue.

Affirmed.