

REL: November 15, 2019

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

2180462

Saba Ahmed Taleb

v.

City of Tuscaloosa

Appeal from Tuscaloosa Circuit Court
(CV-18-900925)

EDWARDS, Judge.

Saba Ahmed Taleb owns the Fast Stop Market ("FSM"), which is located in Tuscaloosa. She applied to the City of Tuscaloosa, seeking approval for an off-premises retail beer license and an off-premises retail wine license ("the retail

2180462

alcohol licenses") so that she could sell wine and beer, to be consumed off the premises, at FSM. The city council first considered Taleb's applications for the retail alcohol licenses at a city-council meeting on July 24, 2018; the minutes of the July 24, 2018, city-council meeting indicate that one person appeared at the council meeting and spoke in opposition to Taleb's applications. The city council tabled Taleb's applications until July 31, 2018, at which time it heard from Taleb's husband and the manager of FSM, Yaqoob Alshega; a representative of the Tuscaloosa Police Department, Officer J.D. Burkhalter; the city attorney, Glenda Webb; and concerned citizens, Eddie Harris, Deborah Williams, Elizabeth Elliot, and an unidentified speaker. Councilor Eddie Pugh and Councilor Raevan Howard both made remarks on the record, and Antonious Mills from the city's revenue department also answered questions posed by the city council.

Officer Burkhalter presented the police calls received from the area within a quarter-mile radius of FSM by the Tuscaloosa Police Department between January 2017 and June 2018. He explained that the police department had received the following calls: 43 related to domestic incidents, 23

2180462

related to the breaking and entering of a vehicle, 19 related to assaults, 9 related to discharging a firearm and 1 "gun call," 8 related to burglary, 8 related to drug use or sale, 2 related to sexual offenses, 2 related to vehicle theft, 1 related to driving while intoxicated, 1 related to rape, and 1 related to robbery. Officer Burkhalter also indicated that the police department had no objection to Taleb's applications. He later, when questioned by Councilor Pugh, stated that the police department had record of seven vehicular accidents in the vicinity of FSM. Mills, when asked, reminded the city council that three establishments located between one and five miles from FSM had retail alcohol licenses to sell beer and/or wine.

Alshega spoke before the city council in support of Taleb's applications. Alshega presented a petition in support of the applications containing 85 signatures. He also stated that FSM had never had the police called to the store and that FSM had had "no problems."

Local resident Harris stated that he opposed the applications. He explained that he did so because, "if we keep allowing other people to come in and sell alcohol, it's

2180462

going to get worse and worse." Similarly, local resident Elliot commented that "what we do not need [is] this ... alcohol sold in our neighborhood because if you start selling alcohol in our neighborhood, then there's going to be problems. People are going to start hanging around these stores." The unidentified speaker also voiced disapproval of the applications, stating that "we all know what [the sale of alcohol] brings to the neighborhood." Local resident Williams appeared to be in favor of the applications, remarking that FSM was located closer to her residence than the nearest existing retailer with a license to sell alcohol and that it would be easier for her to shop there than to travel to the nearest existing retailer, which is approximately one-half mile away from FSM.

Councilor Pugh remarked that Webb had provided the city council with certain studies during the "pre-council" and that those studies concerned "how alcohol contributed to crime in neighborhoods." Councilor Pugh also stated that "we're doing so much to move West End forward that [issuing the retail alcohol licenses] looks like it would be something that would be moving [West End] back. Alcohol and crime is an issue

2180462

everywhere and we don't need to be adding it to this neighborhood and this district." Councilor Pugh further remarked that "it looks like there's a pretty good issue with maybe some traffic safety in this area" and commented that the council should carefully consider "[t]he safety of adding something like this" in what he described as "that dangerous turn" in the roadway upon which FSM sits.

Webb mentioned that she had provided the city council with two studies during the "pre-council": one from the United States Department of Justice, the Bureau of Justices Statistics, and one from the University of Indiana.¹ According to Webb, the Department of Justice study concerned "alcohol and crime and the relationship between alcohol and crime"; she noted that the study "documented for 20 years the relationship between alcohol and crime." She also said that the 2010 University of Indiana study concluded that "more alcohol sale sites mean more neighborhood violence."

Councilor Phyllis Odom reported that the city council had received four letters in support of the applications and five telephone calls from residents opposed to the applications.

¹The studies themselves were not made a part of the record submitted to the Tuscaloosa Circuit Court.

2180462

Councilor Howard stated near the conclusion of the hearing that she was leaning toward denying the applications. She said that she had based her decision on the information she had received and stated that,

"given the relation to where this store is located in relationship to other stores in West Tuscaloosa and given the fact that I believe we have enough information to prove that the increase of the sale of alcohol and beer and wine in [a] communit[y] [contributes] to negative effects [on] that community."

At the conclusion of the hearing, the council voted to deny Taleb's applications for the retail alcohol licenses. Taleb appealed the council's denial of her applications to the Tuscaloosa Circuit Court ("the trial court"). The trial court held a brief hearing on October 4, 2018, at which only Alshega testified; his testimony was similar to the remarks he made before the city council. The trial court was also presented documentary evidence, including two photographs, which depicted an aerial view of the FSM premises and the surrounding residential area and a front view of FSM, including its parking lot, respectively, and a copy of the minutes of the July 24, 2018, city-council meeting, at which the city council approved off-premises licenses to sell beer

2180462

and wine to an establishment named Holt Market and approved two retail liquor licenses for two restaurants. The aerial view of the FSM premises reveals that it is situated at the start of a curve in the roadway and that, as best as can be determined, it is surrounded by houses and has located behind it a wooded area.

On January 30, 2019, the trial court entered a judgment affirming the city council's denial of Taleb's applications. Taleb appeals, arguing that the city council's denial of her applications for the retail alcohol licenses was arbitrary and capricious because, she asserts, the denial was not supported by evidence indicating that the issuance of the licenses would create a nuisance or be clearly detrimental to the adjacent residential neighborhoods or to the public health, safety, and welfare. We affirm.

Appeals from the denial or approval of a license to sell alcoholic beverages arising in the City of Tuscaloosa are governed by Act No. 98-342, Ala. Acts 1998. Hadi Store, LLC v. City of Tuscaloosa, [Ms. 2180042, August 30, 2019] ___ So. 3d ___, ___ (Ala. Civ. App. 2019). As we explained in Hadi Store,

"[t]his matter is governed by Act No. 98-342, Ala. Acts 1998 ('the Act'), a local act which superseded § 28-1-7, Ala. Code 1975, to the extent that that statute applied to the city.² Section 28-1-7(c) provides, in pertinent part, that a circuit court's review of a municipal governing body's denial of an application for a liquor license 'shall be expedited de novo proceedings, heard by a circuit judge without a jury who shall consider any testimony presented by the city governing body and any new evidence presented in explanation or contradiction of the testimony.' (Emphasis added.) Regarding judicial review, the Act is essentially identical to § 28-1-7, except that it omits the term 'de novo.' The Act reads, in pertinent part:

"'Proceedings in circuit court to review an action of a municipal governing body denying approval of a license application shall be expedited proceedings, heard by a circuit judge without a jury who shall consider any testimony or matters presented to the city governing body and any new evidence presented in explanation or contradiction of the same.'

"Act No. 98-342, § 3.

" _____

"²The text of the Act can be found in the Code Commissioner's Notes regarding § 28-1-7."

Hadi Store, ___ So. 3d at ___.

In Hadi Store, we determined that, because the Act omitted the term "de novo," the circuit court's review, and, ultimately, this court's standard of review, required deference to the city council's decision. Id.

"According to the Act, in conducting a judicial review of the denial a liquor license,

"[t]he circuit court ... may set aside the denial of approval of a license only on the basis that the denial by the municipality was arbitrary and capricious in that there was no showing to the governing body of the municipality of any one of the following:

"(a) The creation of a nuisance.

"(b) Circumstances clearly detrimental to adjacent residential neighborhoods or the public health, safety and welfare.

"(c) Violations of applicable laws, ordinances or zoning regulations.'

"Act No. 98-342, § 2 (emphasis added).

"Thus, the circuit court's review was conducted for the purpose of determining whether the council's decision to deny the liquor license was arbitrary and capricious and not whether the circuit court itself would grant or deny the license. As the Act states, the 'new evidence' presented to the circuit court is intended to explain or contradict the testimony already presented to the council. Act No. 98-342, § 3. In other words, the new evidence is intended to assist the circuit court in determining whether the council's decision was arbitrary and capricious. See, e.g., In re Board of Dental Exam'rs v. King, 364 So. 2d 318 (Ala. 1978). A plain reading of the Act indicates that the 'new evidence' is not meant to persuade the circuit court to grant a license. Accordingly, in determining whether the council's decision to deny the license was arbitrary

2180462

and capricious, the 'usual presumption in favor of the findings by the city' is applicable. [City of Mobile v.] Simpsiridis, 733 So. 2d [378,] 382 [(Ala. 1999)]. Accordingly, the circuit court correctly found that the Act did not provide for de novo review and that there was a presumption of correctness in favor of the council's decision."

Hadi Store, ___ So. 3d at ___.

Therefore, in appeals not involving de novo review in the circuit court, when a city council considers the potential impacts of the issuance of a retail alcohol license and denies that license, neither the circuit court nor this court may substitute its judgment for that of the city council. Phase II, LLC v. City of Huntsville, 952 So. 2d 1115, 1121 (Ala. 2006). Furthermore,

"a license to engage in the sale of intoxicants is merely a privilege with no element of property right or vested interest," Ott v. Everett, 420 So. 2d 258, 261 (Ala. 1982) (quoting Broughton v. Alabama Beverage Control Bd., 348 So. 2d 1059, 1060 (Ala. Civ. App. 1977)). The city council had broad discretion to grant or to deny [the] liquor-license application, provided the city council had a reasonable basis for its decision."

Phase II, 952 So. 2d at 1122.

In its January 2019 judgment, the trial court summarized the information contained in the transcript of the city-council meeting, including the information regarding the

2180462

police calls in the vicinity of FSM, the concerns over the connection between crime and alcohol sales, and concerns that the traffic might be increased in the "dangerous turn." The trial court determined that "the decision of the ... city council in denying the license application[s] was not arbitrary and capricious because there was a showing of the creation of a nuisance and/or circumstances clearly detrimental to adjacent residential neighborhoods or the public health, safety and welfare."

Taleb complains that the city council was not presented sufficient proof that issuing the retail alcohol licenses to FSM would create a nuisance or be "clearly detrimental to adjacent residential neighborhoods or the public health, safety and welfare." Act No. 98-342, § 2(a) & (b). Thus, she contends that the denial of her applications was arbitrary and capricious. Relying on authority, including Phase II, LLC v. City of Huntsville, 952 So. 2d 1115 (Ala. 2006), King v. City of Birmingham, 885 So. 2d 802 (Ala. Civ. App. 2004), and City of Mobile v. Simpsiridis, 733 So. 2d 378 (Ala. 1999), Taleb contends that the proof presented to the city council was no more than speculation that negative consequences might flow

2180462

from the issuance of the retail alcohol licenses and that the information presented to the city council did not link any potential risk of increased crime or traffic danger to the potential sale of beer or wine at FSM.

In King, this court concluded that the City of Birmingham had improperly denied King his requested lounge liquor licence on the basis of speculation because it relied on evidence demonstrating that the previous operator of a lounge on the premises had operated the lounge in such a manner as to create a nuisance and to jeopardize the public safety and welfare. King, 885 So. 2d at 804. We explained in King that "[c]ourts in other jurisdictions have held that the denial of a liquor-license application based solely upon the conduct or reputation of a prior licensee in the same location is arbitrary and capricious." Id. at 805. The evidence presented in King indicated that, although the most recent previous licensee had improperly run the lounge so as to create issues for the neighborhood, licensees who had preceded the most recent licensee had been responsible owners and had properly run a respectable establishment. Id. at 806. The circumstances of King differ from those in the present case in

2180462

that the concerns in that case were about the previous licensee in an area that had long supported the premises as a lounge as opposed to concerns over the issuance of a new license allowing the sale of alcohol at a small convenience store located in the midst of a residential neighborhood. Thus, we do not find King particularly instructive.

Similarly, we are not convinced that Simpsiridis requires reversal of the trial court's judgment affirming the city council's denial of Taleb's applications. First, unlike the present case, Simpsiridis involved a judgment entered by a circuit court in a de novo appeal of the Mobile City Council's denial of a liquor license. Simpsiridis, 733 So. 2d at 381. The circuit court had determined that the Mobile City Council had arbitrarily and capriciously denied the liquor license because that denial had been based solely on the fact that the Mobile City Council had denied a similar application. Id. at 380. In addition, the circuit court's order indicated that the testimony of the Council President, Clinton Johnson, was to the effect that the Mobile City Council had "'no substantial evidence ... to [support] a decision denying the application.'" Id. (bracket inserted in Simpsiridis).

2180462

Indeed, our supreme court remarked in its opinion that "[t]he only negative matter presented on the application, according to the record before us, was Council President Johnson's concern, without any evidence to support it, that the issuance of a license at these premises might increase crime and loitering in the area." Id. at 381. Our supreme court went on to agree, however, that, if the appeal before the circuit court had not been de novo, the Mobile City Council's decision would have been "upheld if there exist[ed] any rational basis for its denial of the application." Id. at 382. Thus, the decision in Simpsiridis was based, at least in part, on the findings of the circuit court in a de novo proceeding at which the council president admitted the lack of evidence supporting denial of the application.

Phase II involved an appeal from a circuit court's review of the denial of a liquor-license application by the City of Huntsville. Phase II, 952 So. 2d at 1117. The circuit court's review was by way of a petition for the writ of certiorari, upon which the circuit court concluded that the denial of the license application was not arbitrary or capricious. Id. at 1119. Our supreme court then reviewed

2180462

the circuit court's judgment under the arbitrary-and-capricious standard of review. Id. The court explained that, "[t]o prove that a municipality's decision to approve or to disapprove a liquor license is arbitrary and capricious, the burden is on the claimant to show there is no reasonable justification supporting the municipality's decision." Id.

Taleb contends that the information presented to the city in Phase II was of better quality and quantity than that presented to the city council in the present case. We are not so convinced. The supporting information summarized in Phase II included remarks from residents of a senior-retirement community located in proximity to the proposed nightclub of the applicant, their families, and the staff of the community. Id. at 1120. Those remarks included comments that licensing the proposed nightclub "would result in increased traffic, compromised public safety, and limits on the residents' freedom of movement." Id. The police department had "reported a direct correlation between the capacity of a class 4 liquor lounge and the number of reported calls for police assistance." Id. at 1118. Representatives of a nearby church also spoke about the impact a nightclub might have on its

2180462

services, on traffic in the area, and on the likelihood of drunk-driving accidents. Id. at 1120.

To be sure, the remarks of the residents in the present case were perhaps not so specific as those of the impacted citizens in Phase II. However, the residents who spoke, and the councilors who remarked about their opinions on the matter, indicated that they were concerned about the impact that the sale of alcohol at FSM might have on crime rates and general safety in the residential area surrounding FSM. The studies about which Webb briefly spoke are not contained in the record, but the statements made by Webb before the city council indicated that the city council had been presented some information showing a correlation between alcohol sales and crime or violence. Taleb complains that the record does not reflect what the correlation might be, but it can hardly be disputed, based on the remarks of Webb, Councilor Pugh, Councilor Howard, and the local residents, that the consensus was that alcohol typically has a negative impact in a community by increasing crime and violence. In addition, Councilor Pugh's concern over the potential for traffic impacts at the curve on which FSM is located appears to be a

2180462

reasonable concern in light of the residential character of the neighborhood.

We conclude that the information made available to the city council in the present case is much like that presented in Phase II. Our supreme court has plainly stated that "it was not within the [trial] court's discretion to make the decision whether to issue the license" but instead to be certain that the city's governing body considered the matters required under the applicable statute or ordinance. Ex parte Trussville City Council, 795 So. 2d 725, 728 (Ala. 2001). Furthermore, this court has said that, "'[n]otwithstanding the absence of restrictions in a statute or ordinance, licensing authorities have as a general rule been permitted to deny licenses where the proposed location is improper by reason of the location and its surroundings.'" Biggs v. City of Birmingham, 91 So. 3d 708, 714 (Ala. Civ. App. 2012) (quoting Broughton v. Alabama Alcoholic Beverage Control Bd., 348 So. 2d 1059, 1060 (Ala. Civ. App. 1977)). Based on those principles, we further conclude, as our supreme court did in Phase II, that the denial of Taleb's applications for the retail alcohol licenses was not arbitrary and capricious

2180462

because that denial was based on information regarding the potential negative impact that granting the applications might have on the residential area surrounding FSM and, therefore, that the city council's decision to deny the applications was based on a reasonable justification. The judgment of the trial court is affirmed.

AFFIRMED.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ.,
concur.