STATE OF MICHIGAN

COURT OF APPEALS

GLENN QUALLS, LETICIA QUALLS, ELIZABETH QUALLS, PAUL SMIGELSKI, and DIANE SMIGELSKI,

Plaintiffs-Appellants,

v

CITY OF DETROIT,

Defendant-Appellee,

and

DONALD ROBINSON, RAYO BAKER, ALBERTA WHITFIELD, FRANK JACKSON, DONALD PAILEN, RICHARD LANG, GREG PLUMMER, WILLIAM SNEED, and ROBERT P. MICHALAK, et al.,

Defendants.

UNPUBLISHED
May 26, 1998

No. 183373
Wayne Circuit Court
LC No. 92-206766 NI

GLENN QUALLS, d/b/a HO LEE KOW FIREWORKS FACTORY and d/b/a FIREWORKS UNLIMITED, LETITIA QUALLS, BERTA E. PEREZ, PAUL A. BRUSSE, individually and d/b/a PYROTECHNIQUES, LTD., d/b/a HO LEE KOW FIREWORKS FACTORY and FIREWORKS UNLIMITED,

Plaintiffs-Appellants/Cross-Appellees,

v

CITY OF DETROIT,

No. 183391
Wayne Circuit Court
LC No. 85-515546 CZ

Defendant-Appellee/Cross-Appellant,

and

WILLIAM HART, DONALD L. ROBINSON, JAMES BANNON, et al.,

Defendants.

GLEN QUALLS, LETICIA QUALLS, ELIZABETH QUALLS,

Plaintiffs-Appellants,

v

No. 195417
Wayne Circuit Court
LC No. 94-420312 CZ

CITY OF DETROIT, DONALD L. ROBINSON, RAYO BAKER, RICHARD LANG, WILLIAM SNEED, ROBERT P. MICHALAK, DAVID VANN, SANDRA SLAYTON, DONALD BLOOM, SETH DOYLE, O. WILSON, and MARTIN WILLIAM, et al.,

Defendants-Appellees.

Before: Hoekstra, P.J., and Murphy and Bandstra, JJ.

PER CURIAM.

In these consolidated cases, plaintiffs appeal as of right from various orders of the lower courts dismissing several claims filed against defendants which arose from the events surrounding the denial of defendant Glenn Qualls' application for a license to sell fireworks in the City of Detroit for the 1985 fireworks season. Defendant City of Detroit cross-appeals from an order of the lower court that declared portions of the Detroit City Code preempted by state law. We affirm.

Our Supreme Court in *Detroit v Qualls*, 434 Mich 340; 454 NW2d 374 (1990) ("*Qualls I*"), and a panel of this Court in *Qualls v Detroit* ("*Qualls II*"), unpublished opinion per curiam of the Court of Appeals, issued March 6, 1991 (Docket Nos. 93518, 115434, 118836, 118837, 118908, and 94209), discussed the underlying facts and procedural history surrounding these cases. Any additional facts that are necessary to resolving these cases will be discussed below.

Plaintiffs first argue that the lower court erred in finding that defendant City of Detroit did not violate plaintiff Glenn Qualls' right to due process in denying his application for a license to sell fireworks for the 1985 fireworks season. Qualls was properly licensed for the 1984-1985 fireworks season; however, this license expired on February 28, 1985, and Qualls did not apply for renewal of the license until, at the earliest, March 16, 1985, when he filed a licensing fee for the following fireworks season. On April 22, 1985, defendant Esther Shapiro notified Qualls that his application had been rejected because, among other reasons, he had previously violated the city code. Qualls was not afforded notice or a hearing before the denial of his application.

Detroit Code § 30-1-14 provides that "[u]nless the interested city departments notify the consumer affairs department of an existing violation at least (15) days prior to the expiration of the licenses, the licenses will be renewed." Plaintiffs rely upon § 30-1-14 to argue that because Qualls' license should have been automatically renewed absent an "existing violation," Qualls had a vested property interest in his license that entitled him to notice and a right to be heard before a decision was made to deny his license application. We disagree. Although Qualls eventually sought renewal of his license, he did so only after the license had expired. Accordingly, Qualls' belated request for license renewal caused Qualls' to lose any property interest that he might otherwise have had in the license.

Both the federal and state constitutions provide that no person shall be deprived of life, liberty, or property without due process. US Const, Am V; Const 1963, art 1, § 17. Our Supreme Court has held that the holder of an occupational license has a property interest in that license and is entitled to due process protection before either the revocation of the license or the denial of an application for renewal of the license. *Bundo v City of Walled Lake*, 395 Mich 679, 695; 238 NW2d 154 (1976). Such licensees are entitled to "rudimentary due process," which entails notice of the proposed action and the reasons given for this action, a hearing in which the licensee may present evidence and testimony and confront adverse witnesses, and a written statement of findings on the part of the body taking the action. *Id*., 696-697. However, in *Eastwood Park Amusement Co v Mayor of East Detroit*, 325 Mich 60, 74-75; 38 NW2d 77 (1949), our Supreme Court cited with approval *State v Minneapolis-St. Paul Metropolitan Airports Comm*, 223 Minn 175, 187; 25 NW2d 718 (1947), where the Minnesota Supreme Court held that "[a] prior expired license is *functus officio* and confers no rights upon the licensee named therein. . . . In such cases, [the licencee's] application for a license stands upon the same basis as if [he] never had been licensed." We agree with the lower court that Qualls' license expired by its own terms on February 28, 1985, and that Detroit Code § 30-1-14 did not give Qualls a continuing property interest in his license. Accordingly, Qualls was afforded all the process that he was due under the circumstances.

Plaintiffs next argue that certain portions of the city code relating to fireworks are unconstitutionally prohibitory rather than permissibly regulatory. In *Qualls I*, our Supreme Court stated that "[i]t is well established in Michigan that ordinances are presumed valid and the burden is on the person challenging the ordinance to rebut the presumption." *Qualls I, supra*, 434 Mich 364. Further, "[w]hen the action relates to matters of economics or general social welfare, the test to determine whether the law comports with due process is whether it bears a reasonable relation to a legitimate governmental purpose." *Id*., 365. Thus, our inquiry is limited to whether any state of facts either

known or which could reasonably be assumed affords support for the legislative action. *Id*., 366. And although such facts might be debatable, the legislative judgment must be accepted. *Id*. After applying this standard to the challenged code provisions, we conclude that plaintiffs have failed to rebut the presumption of validity afforded to the provisions. Accordingly, the lower court did not err in finding that the challenged code provisions are not unconstitutionally prohibitory.

Plaintiffs next argue that the state law regulating fireworks, namely, MCL 750.243a; MSA 28.440(1), is preempted by federal law, and that provisions of the state law are unconstitutionally vague and therefore void. This Court, however, recently rejected both of these challenges to the state fireworks laws in *Stajos v Lansing*, 221 Mich App 223; 561 NW2d 116 (1997). Accordingly, we decline to consider the merits of plaintiffs' claims any further.

Plaintiffs next argue that the lower court erred in finding "that the introductory prohibitory language in MCL 750.243a(2)(d)'s list of prohibited chemicals was evidence of legislative intent to totally prohibit consumer fireworks." We find that plaintiffs have mischaracterized the lower court's ruling. The lower court did not interpret MCL 750.243a(2)(d); MSA 28.440(1)(2)(d) as evidence of legislative intent to prohibit all consumer fireworks. Instead, the lower court "construe[d] MCL 750.243a[; MSA 28.440(1)] to be a general proscription against fireworks" unless excepted by the statute. We conclude that the lower court's interpretation of the statue is accurate.

Plaintiffs next argue that the lower court erred in dismissing their claims against defendants sounding in civil rights violations. We have reviewed the reasons set forth by the lower court and conclude that the lower court did not error in dismissing plaintiffs' claims. Although the record reveals that various defendants engaged in contemptuous conduct, we agree with the lower court that plaintiffs failed to establish the existence of any actionable civil rights violations. Accordingly, for the reasons stated by the lower court, plaintiffs' claims were properly dismissed.

Plaintiffs next invite this Court to reconsider the panel's decision in *Qualls II*, where it finalized a June 27, 1989, interim order that declared that the "shipped directly out of state provision" in MCL 750.243a(3)(g); MSA 28.440(1)(3)(g) referred to shipment by common carrier only. *Qualls II*, *supra*. We decline plaintiffs' invitation to engage in this analysis because this issue is controlled by the law of the case doctrine, which states that the decision of an appellate court is controlling at all subsequent stages of litigation, so long as it is unaffected by a higher court's opinion, *Reeves v Cincinnati, Inc (After Remand)*, 208 Mich App 556, 559 (1995). Further, the law of the case doctrine generally applies regardless of the correctness of the prior decision. *Id*. Although plaintiffs contend that amendments to the Motor Carrier Safety Act, namely, MCL 480.13; MSA 9.1666(3) and MCL 480.15; 9.1666(5), warrant reconsideration of this Court's previous decision, we are not persuaded that the statutory changes justify ignoring the law of the case doctrine.

On cross appeal, defendant City of Detroit argues that the lower court erred in declaring that certain provision of the city code are preempted by state law. We disagree. The lower court found that former § 19-3-64(a)(6) and (7), which prohibit the unlicensed sale of specific types of cone fountains, cylinder fountains, and smoke devices, are preempted by MCL 750.243a(3)(d) and (e); MSA 28.440(3)(d) and (e), which provides that a permit is not required in this state to sell cylinder fountains

and toy smoke devices. Detroit Code § 19-3-64 has since been amended to ban the sale of all cylinders and all smoke devices.

In *Qualls I,* our Supreme Court stated that "[a]bsent a showing that . . . the ordinance permits what the statute prohibits or prohibits what the state permits, '[t]he mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements.'" *Qualls I, supra*, 434 Mich 361-362, citing 56 Am Jur 2d, Municipal Corporations, § 374, pp 408-409. We find that plaintiffs established that § 19-3-64(a)(6) and (7) prohibit what the state fireworks statute expressly permits. That is, the state statute expressly permits the unlicensed sale of cylinder fountains and toy smoke devices, while the Detroit Code prohibits such sales. Accordingly, we affirm the decision of the lower court that declared that former § 19-3-64(a)(6) and (7) is preempted by state law.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William B. Murphy
/s/ Richard A. Bandstra