STATE OF MICHIGAN

COURT OF APPEALS

RENT-A-CAR & TRUCK OF MUSKEGON, INC., d/b/a HERTZ RENT-A-CAR,

Plaintiff-Appellant,

v

COUNTY OF MUSKEGON and MUSKEGON COUNTY BOARD OF COMMISSIONERS,

Defendants-Appellees.

UNPUBLISHED
March 14, 2000

No. 216483
Muskegon Circuit Court
LC No. 98-038404-CZ

Before: Fitzgerald, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On March 1, 1998, defendants Muskegon County and Muskegon County Board of Commissioners ("defendants") adopted a resolution requiring off-site car rental companies to pay a seven percent user charge on gross revenues from airport business and to adhere to a permit system while conducting business at the municipal airport. Plaintiff Rent-A-Car & Truck of Muskegon, Inc., d/b/a Hertz Rent-A-Car is an off-site car rental company.

Plaintiff sued and challenged the resolution on the ground that the resolution violated the Michigan Aeronautics Code, MCL 259.1 *et seq*.; MSA 10.101 *et seq*. (the "Code"), by imposing user charges on off-site rental companies without also imposing user charges on taxicabs, limousines, or the courtesy transportation vehicles provided by hotels and motels. Specifically, plaintiff alleged that the resolution violated § 133 of the Code. Section 133, in pertinent part, empowers the county to:

> (e) [C]onfer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities; enter into leases, contracts, agreements, or grants of privileges of concessions with any person or persons, . . . for the operation, use, or occupancy, either exclusively or in common with others, of all or any part of the airport, . . . establishing the charges, rentals, or fees at a fixed or variable rate binding

upon the parties for the full term of the lease, contract, agreement, or grant, which lease, contract, agreement, or grant may provide for the resolution of disputes or for the fixing of variable terms through arbitration or similar procedure. The terms, charges, rentals, and fees shall be equal and uniform for the same type of facilities provided, services rendered, or privileges granted *with no discrimination between users of the same class for like facilities provided, services rendered, or privileges granted*. However, the public shall not be deprived of its rightful, equal, and uniform use of facilities provided, services rendered, or privileges granted.

(g) Determine the charges, rentals, or fees for the use of any properties under its control, and the charges for any services or accommodations, and the terms and conditions under which the properties may be used, which rentals, fees, charges, terms, and conditions shall be equal and uniform for the same type of use provided, services rendered, or accommodations granted *with no discrimination between users of the same class for like use provided, services rendered, or accommodations granted* . . . . However, the public shall not be deprived of its rightful, equal, and uniform use of such property. [MCL 259.133(e), (g); MSA 10.233(e), (g) (emphasis added.)]

Both parties moved for summary disposition, and agreed that there were no genuine issues of fact. Plaintiff relied solely on the language of the statute. Plaintiff admits that defendants have authority to impose the permit requirement and to charge user fees. Plaintiff's sole argument was that rental car companies such as plaintiff are "users of the same class for like facilities provided, services rendered, or privileges granted" as taxicabs, limousines, or the courtesy transportation vehicles provided by hotels and motels, and that defendants acted discriminatorily by imposing the user charge only on rental car companies. Defendants said that plaintiff presented no support for a finding that taxicabs, limousines, and hotel and motel courtesy vehicles are of the same class as off-site care rental companies. Despite plaintiff's sole reliance on the plain meaning of the statute, the trial court devoted the majority of its opinion to a constitutional equal protection analysis. With respect to the statute, the opinion simply states that plaintiff "conceded that defendant has this authority."

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1994). If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *People v Nantelle*, 215 Mich App 77, 80; 544 NW2d 667 (1996).

Subsection (g) of § 133 states that charges and fees shall be equal and uniform for the same type of privileges granted with "no discrimination between users of the same class for like facilities provided, services rendered, or privileges granted." MCL 259.133(g); MSA 10.233(g). The statute prohibits discrimination between "users of the *same class*" who use the airport property in the same manner. Plaintiff argued heavily that off-site car rental companies engage in the same *use* of the airport property as taxicabs, limousines, and hotel and motel courtesy vehicles and that defendants are required to impose the same regulations on these users. However, the statute clearly prohibits discrimination between users of the "same class." Thus, it was imperative for plaintiff to show that taxicabs, limousines, and hotel and motel courtesy vans are "of the same class" as an off-site car rental company.

Yet, plaintiff failed to build a sufficient record to support its claim.[1] Accordingly, the trial court properly granted summary disposition in favor of defendants, albeit for the wrong reason. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 190; 600 NW2d 129 (1999).

Plaintiff also says that defendants violated § 133(e) by refusing to allow plaintiff to have advertising space and a direct telephone link within the airport terminal while allowing hotels, motels, and taxicab companies to advertise and to have a direct telephone link. However, plaintiff again failed to build a sufficient record to support a finding that off-site car rental companies are in the "same class" as hotels, motels, and taxicab companies. Hence, summary disposition in favor of defendants was proper.

Finally, plaintiff argues that the trial court erred by failing to address plaintiff's argument that the resolution is unreasonable because it does not impose the same regulations on taxicabs, limousines, and hotel and motel courtesy vans. To the extent that plaintiff's challenge is based on the code, we have already concluded that plaintiff failed to show that off-site car rental companies are in the "same class" as the other users. With regard to the reasonableness of the specific regulations imposed on off-site car rental companies, in the absence of any authority supporting a conclusion of unreasonableness, *Impullitti v Impullitti*, 163 Mich App 507, 509; 415 NW2d 261 (1987), we are not required to discuss the merits of this issue.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Henry William Saad
/s/ William C. Whitbeck

[1] Plaintiff's claim is premised on the bald assertion that these vehicles are of the "same class."