STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1808

Ahmed Mohamed Eshmawy,
Relator,

vs.

City of Minneapolis,
Respondent.

Filed July 15, 2013
Affirmed
Hooten, Judge

City of Minneapolis Department of Licenses and Consumer Services
File Nos. 12-0891238, 12-0912130

May C. Yang, Mitchell R. Hadler, Law Office of Mitchell R. Hadler, Minneapolis, Minnesota (for relator)

Susan L. Segal, Minneapolis City Attorney, Joel M. Fussy, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Hooten, Judge; and Klaphake, Judge.*

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

HOOTEN, Judge

In this certiorari appeal from an administrative-citation hearing, relator challenges the administrative hearing officer's decision to uphold fines for violating respondent-

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

city's ordinance that prohibits the operation of unlicensed motor-vehicle-repair garages. Relator argues that his operation does not fall within the definition of a motor-vehicle-repair garage and that the findings and the evidence are insufficient to support the imposition of fines. We affirm.

FACTS

Mohamed Zein Eshmawy and his brother Mohamed Nour Eshmawy owned and operated Z & N Auto Repair, Inc., a licensed motor-vehicle-repair garage located at 4056 Washington Avenue North in Minneapolis. Z & N's license expired on September 1, 2010, they did not renew it. Z & N dissolved around the same time that Mohamed Zein Eshmawy passed away, in June 2011. Relator Ahmed Mohamed Eshmawy is the son of Mohamed Zein Eshmawy.

Nicole Anderson, a business-license inspector for the city of Minneapolis, visited Z & N on September 1, 2011. She met with relator's uncle, Mohamed Shams Eshmawy, alerted him that the business was no longer licensed, and placarded the business to notify the public of the same. The city, unaware of his death, sent a letter warning Mohamed Zein Eshmawy that his motor-vehicle-repair garage was not licensed, directed him to cease all business activity requiring a license, and included license application materials. The city did not receive a response.

On September 22, 2011, relator, who wished to continue his father's business, registered "Minneapolis Auto Repair Inc." as a new corporation with an address of 4056 Washington Avenue North and submitted a license application to begin operating a motor-vehicle-repair garage on September 23. That same day, city inspectors visited

4056 Washington Avenue North. They knocked on the door several times and announced their presence, but no one answered the door even though the inspectors sensed activity inside. The city, again not knowing that Mohamed Zein Eshmawy had died and that relator sought to take over the business, subsequently fined Mohamed Zein Eshmawy $250 for violating Minneapolis, Minn. Code of Ordinances (MCO) § 317.20 (2013), which prohibits the operation of unlicensed motor-vehicle-repair garages. Relator paid the fine.

Inspectors next visited 4056 Washington Avenue North on September 29, 2011. They observed a person working in the garage. After learning that relator would be taking over the garage, the city fined relator $400, which was paid.

Inspectors visited the address for a fourth time on December 9, 2011. A man greeted them at the door. The inspectors asked him whether he was performing repair work. He denied that he was working even though inspectors noted that his hands were covered in silver paint, saw spray cans near a truck, and smelled spray paint. Another man washed parts near a vehicle that was suspended in the air. The city fined relator $800, which relator paid.

On January 6, 2012, inspectors visited the address a fifth time. Inspectors observed two or three mechanics, including Mohamed Shams Eshmawy, in the building. They smelled spray paint and saw vehicles' hoods raised, lights illuminating vehicles' engines, and vehicles elevated on lifts. Some of the vehicles were taxicabs, including Blue & White taxicabs. Mohamed Shams Eshmawy holds several taxicab licenses in the city, and Blue & White taxicabs are listed as part of his fleet. As evidenced by

photographs taken by the inspectors, the building also housed other taxicabs, vans, and SUV-type vehicles. The city fined relator $1,600. Relator appealed the fine.

Inspectors visited the address a sixth time on March 8, 2012. The inspectors observed Mohamed Shams Eshmawy performing auto repair work on a Blue & White cab while another man stood nearby. Inspectors noticed that the air was cloudy and smoky. Photographic evidence indicates multiple vehicles within the building and elevated on lifts. The city fined relator $2,000. Relator appealed the fine.

On May 11, 2012, inspectors visited the address for a seventh time. Mohamed Shams Eshmawy told inspectors that he and another man were working on his daughter's vehicle. Inspectors observed several vehicles elevated on lifts with open hoods and that these vehicles were different than those present on previous inspections. Photographic evidence reveals individuals and vehicles in the garage, and several vehicles elevated on lifts. The city fined relator $2,000, and relator appealed.

Relator and the city participated in an administrative citation hearing before an administrative hearing officer (AHO) to review the propriety of the fines. The city's business licensing manager testified that Mohamed Shams Eshmawy was observed working on vehicles at 4056 Washington Avenue North on at least 13 occasions, but conceded that he had no evidence of business transactions, financial records, or bills of sale for service. He added that if Mohamed Shams Eshmawy exclusively maintained a fleet of vehicles at the garage, then he could work on his own vehicles in compliance with MCO § 317.20.

Anderson, who inspected the garage between September 2011 and May 2012, admitted that she did not have any documentation of receipts, invoices, or bills of sale. She clarified, however, that the city does not necessarily request those records if a garage is not licensed. She did not attempt to call a business line or ask whether Minneapolis Auto Repair charges customers. She also stated that she had no pay stubs indicating that the mechanics were paid for their services.

Another license inspector testified that he visited the garage and observed vehicles that appeared to be in the process of being repaired. He also saw many Blue & White taxicabs, as well as unlicensed taxicabs and taxicabs from other companies.

Relator testified that he owns Minneapolis Auto Repair, located at 4056 Washington Avenue North, and that the entity is not a business open to the public. Relator does not charge third parties for services, but, instead, permits Mohamed Shams Eshmawy to work on his taxicabs free of charge and allows other family members' vehicles to be repaired.

The AHO concluded that Minneapolis Auto Repair qualified as a motor-vehicle-repair garage, that relator operated an unlicensed motor-vehicle-repair garage on the dates that the city issued the fines, and that the city proved the license violations by a preponderance of the evidence. Relator appeals.

D E C I S I O N

I.

Relator contends that Minneapolis Auto Repair does not meet the definition of "motor vehicle repair garage" because he is not running a "business." Generally, "a

municipality may regulate by license any business or trade which may injuriously affect the public health, morals, safety, convenience, or general welfare." *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (Minn. 1955). The City of Minneapolis requires the licensure of motor-vehicle-repair garages, which are defined as

> Business[es] engaged in the repair of motor vehicles, except:
>
> (a) A business which performs motor vehicle servicing solely to the extent of fueling, checking fluid levels, replacing filters, and other minor servicing functions customarily performed by a gasoline filling station, when those services do not exceed a cost of fifteen dollars ($15.00) including parts and labor;
>
> (b) A garage or shop engaged exclusively in repairing the motor vehicles of its own fleet.

Minneapolis, Minn. Code of Ordinances (MCO) §§ 317.10, .20 (2013). The ordinance does not define business or specifically require that a business make a profit or collect income.

Relator and the city disagree on whether Minneapolis Auto Repair is a business as contemplated in the ordinance. The interpretation of an ordinance is a question of law reviewed de novo. *Eagle Lake of Becker Cnty. Lake Ass'n v. Becker Cnty. Bd. of Comm'rs*, 738 N.W.2d 788, 792 (Minn. App. 2007). The rules governing statutory interpretation apply to the interpretation of ordinances. *Yeh v. Cnty. of Cass*, 696 N.W.2d 115, 128 (Minn. App. 2005), *review denied* (Minn. Aug. 16, 2005). The object of statutory interpretation is to ascertain and effectuate the intention of the legislature. Minn. Stat. § 645.16 (2012). Words and phrases are construed according to their common and approved usage, unless doing so would be inconsistent with legislative intent. *Urban ex. rel. Urban v. Am. Legion Post 184*, 695 N.W.2d 153, 159 (Minn. App.

2005), *aff'd*, 723 N.W.2d 1 (2006). We first assess whether the language, on its face, is clear or ambiguous. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). A statute is ambiguous if it is susceptible to more than one reasonable interpretation. *Id.*

The parties disagree whether an entity must have a profit-making motive in order to constitute a business. Dictionary definitions may be considered when analyzing the plain and ordinary meaning of words. *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009). *Black's Law Dictionary* defines business as "A commercial enterprise carried on for profit . . . ." *Black's Law Dictionary* 226 (9th ed. 2009). The *American Heritage Dictionary* defines business as "[a] commercial enterprise or establishment." *American Heritage Dictionary* 252 (5th ed. 2011). "Commercial" means "[o]f or relating to commerce . . . . [e]ngaged in commerce . . . . [h]aving profit as a chief aim . . . . [i]ntended for or appealing to a large audience." *Id.* at 371.

Both relator and the city submit caselaw supporting their respective arguments as to whether the definition of business includes a profit-making motive. Relator cites *Blocher Outdoor Adver. Co. v. Minn. Dep't of Transp.*, in which we affirmed the transportation commissioner's conclusion that, because of a lack of evidence indicating that business was being conducted in the area, a billboard sign was not placed in an "unzoned commercial or industrial area." 347 N.W.2d 88, 91–92 (Minn. App. 1984). We observed that:

> [The business on the property] is at best a sporadic, part-time operation. The advertising and income are minimal. [The property owner] claims to repair vehicles, yet he claims

> no income from the repair work. There were no automobile parts on the property other than a pile of tire rims, there was no worksite on the property, and there were no changes in the stockpiles of old farm machinery. The phone was not answered at times when [the property owner] claimed to be operating his business. No tire tracks were observed on the property in late winter or early spring and the road to the property was not plowed. The neighboring landowner observed no activity on the . . . property during the summer.

Id. Relator claims that his situation is similar in that the city did not show that he has any profit or income.

Relator also cites *United States Jaycees v. McClure*, in which the supreme court examined the criteria for determining whether an organization was a "place of public accommodation" within the meaning of Minnesota's anti-discrimination statute. 305 N.W.2d 764, 765 (Minn. 1981) (quotation omitted). The supreme court held that the organization in question was a business by virtue of its sale of individual memberships with accompanying goods and privileges, and because it sold those memberships vigorously and unselectively, the organization was a public business. *Id.* at 769, 771. Relator claims that under the rationale of this case, his operation is not a business because there is no evidence that he was open to the public.

In support of its claim that a profit-making motive is not necessary to show that relator operated a business, the city relies on *United States v. Shirling*, 572 F.2d 532 (5th Cir. 1978). In that case, the Fifth Circuit Court of Appeals determined that a profit, or intent to make a profit, was not necessary in order to find that a person was engaged in "business" within the meaning of the federal firearms licensing statute. *Id.* at 534. Like

the ordinance in this case, the federal statute does not include the term "profit" or otherwise refer to commercial transactions. *Id.* at 533. The court explained:

> We think the better reasoned view is that expectations of profit are not determinative of whether one is engaged in the business of selling firearms. In some cases, evidence that the defendant made or hoped to make a profit may be relevant to the question of whether he engaged in a business. Other factors, however, such as the continuing or repeated nature of the sales, or representations made to prospective buyers, may suffice to prove engagement in business, even in the absence of a profit motive. . . . Anyone is engaged in the business of dealing in firearms if they have guns on hand or are ready and able to procure them, in either case for the purpose of selling some or all of them to such persons as they might from time to time conclude to accept as customers.

Id. at 534 (citations and quotation omitted). The court reasoned that reading a profit-making motive into the statute would vitiate its corrective and remedial purpose of curbing crime. *Id.*

In light of the dictionary definitions and caselaw, we hold that the term "business" is not ambiguous. We agree with relator that a "business" for purposes of the licensing ordinance means a commercial enterprise with a profit-making motive. We are not persuaded by *Shirling* because it has not been cited for its reasoning outside of the context of the federal firearms licensing statute, and that statute's purpose differs from the purpose of a city's licensing scheme. *Compare id.* (noting that the federal firearms statute seeks to curb criminal activity) *with Dalsin*, 245 Minn. at 329, 71 N.W.2d at 858 (stating that a municipality may license certain business and trades in order to promote public health and safety).

We disagree with relator, however, to the extent that he asserts that the city must prove his profit-making motive by submitting evidence of his finances. Receipts, invoices, bills of sale, and other financial evidence would likely provide strong evidentiary proof that an entity is a business. But other evidence may be considered and may indicate that an entity is a business, such as the permanency of the operation, amount of advertising, worksite operations, traffic to and from the business, and activity relating to marketing and the sale of goods and services. *See McClure*, 305 N.W.2d at 769, 771; *Blocher*, 347 N.W.2d at 91–92. In sum, an entity may be proved to be a business by broader evidence than merely that which is financial in nature.

II.

Relator argues that the AHO did not make sufficient findings in his order. "Agency action must be based on objective criteria applied to the facts and circumstances of the record at hand." *Carter v. Olmstead Cnty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998) (quotation omitted). "In order to facilitate appellate review, an administrative agency must state the facts and conclusions essential to its decision with clarity and completeness." *Id.* "The agency must explain on what evidence it is relying and how that evidence connects rationally with its choice of action." *Id.*

The AHO's findings are sufficient. The AHO found that relator has a pending business-license application and a registered business corporation; that relator's "operation at 4056 Washington Avenue North included extensive motor-vehicle repairs, completed on numerous vehicles in an industrial/commercial setting utilizing hoists, lifts and a professional setting with multiple mechanics"; that the repairs included "utilizing

junk cars to replace transmissions and engines on operable vehicles"; and that relator "engaged in repeated and continuing motor vehicle repairs at his large-scale commercially-equipped repair facility." The AHO also found that the facility repaired and maintained taxicab vehicles owned by Mohamed Shams Eshmawy or other family members. The AHO credited relator's testimony relating to the nature of the repairs at the garage, that he owns the garage, and that his family members bring their taxicabs to the garage to be repaired. The AHO stated the facts and conclusions essential to his decision and explained how the evidence connected with his choice of action.

III.

Relator contends that the evidence is not sufficient to support the AHO's conclusion that he violated the ordinance. The scope of review of an administrative decision is limited. The city initially bears the weight of proving by a preponderance of the evidence that a violation occurred, MCO § 2.100(f) (2013), but "we are not privileged to weigh the evidence and make a determination as to where the preponderance lies," *Nyberg v. R.N. Cardozo & Bro., Inc.*, 243 Minn. 361, 364, 67 N.W.2d 821, 823 (1954). Still, the AHO's decision must be supported by substantial evidence. *Carter*, 574 N.W.2d at 730. "Substantial evidence means more than a scintilla of evidence, some evidence, or any evidence." *Id.* (quotations omitted). This court reviews an agency's decision for an abuse of discretion. *Id.*

The AHO concluded that relator's operation qualified as a motor-vehicle-repair garage. Under these specific facts and given our deferential standard of review, we conclude that this decision is supported by substantial evidence. The business-licensing

inspector described 4056 Washington Avenue North as a "large building" with "service bay doors" and as "a repair garage" with "large parking areas."

Anderson testified that on one of her visits, she met two or three mechanics who immediately stopped working when she entered the building. Although she did not have direct evidence that they were mechanics, "[t]hey were in their mechanic clothing with grease all over their hands" and added that she knew one of the mechanics because she met him at another garage that was owned by Mohamed Shams Eshmawy. On several of her visits, she saw vehicles' hoods open, vehicles elevated on hoists, and wheels and license plates removed from cars. Some vehicles were taxicabs, others were not. She admitted that she had no financial evidence relating to relator's business, but "[b]eing an unlicensed auto repair, we don't necessarily ask for that. As a licensed repair garage, they are required to keep transactions on record at the location." *See* MCO § 317.80 (2013) (requiring every motor vehicle repair garage licensee to maintain records showing all work orders, estimates, invoices, and names of customers).

Another license inspector testified that he visited the garage and observed vehicles that "looked like they were in the process of being repaired or otherwise serviced." Many, but not all, of the taxicabs in the garage were Blue & White taxicabs. Others were unlicensed or from different companies.

Relator confirmed that, in an attempt to continue his father's business, he owns Minneapolis Auto Repair, which is located at 4056 Washington Avenue North in Minneapolis. He also acknowledged that he applied for a license to operate Minneapolis Auto Repair as a motor-vehicle-repair garage at that location. Relator testified that he is

not present when "the shop is closed" and when he is at other garages in St. Paul. Relator claimed that he only services his taxicabs and those owned by Mohamed Shams Eshmawy and that he allows Mohamed Shams Eshmawy to repair his taxicabs in the garage. He explained that any of his family members could bring their vehicles to the garage for repair.

In addition to testimony from the city's witnesses and relator's admissions, the photographic evidence also supports the AHO's conclusion. Based upon this record, we are satisfied that there is substantial evidence supporting the AHO's conclusion that relator was operating a business.

Relator argues that, in the alternative, he meets an exception to the licensure requirement because the ordinance would have permitted Mohamed Shams Eshmawy to maintain and service his own fleet of taxicabs at the 4056 Washington Avenue address. The ordinance exempts from the definition of a motor-vehicle-repair garage a "garage or shop engaged exclusively in repairing the motor vehicles of its own fleet." MCO § 317.10(b). The business-licensing inspector acknowledged that Mohamed Shams Eshmawy could work on his own vehicles without a motor-vehicle-repair license if he maintained his fleet vehicles at the garage.

But the plain language of the ordinance exempts garages engaged *exclusively* in repairing the motor vehicles of *its own fleet*. Relator's garage did not exclusively repair his own fleet vehicles. Anderson testified that she was not aware that any of the vehicles were a part of relator's fleet and, during one of her visits, Mohamed Shams Eshmawy told her that he was repairing his daughter's vehicle. Relator testified that the garage

services his and Mohamed Shams Eshmawy's taxicabs, as well as the vehicles of other family members. The AHO's findings—that Mohamed Shams Eshmawy made repairs to his fleet, that he does not own any interest in the repair garage, and that relator does not have an ownership interest in Mohamed Shams Eshmawy's taxicabs—support the conclusion that relator does not fit within the relevant licensure exemption.

Affirmed.