STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1664

In the Matter of the Administrative Penalty Order Issued to
Causeway on Gull Association, Inc.

Filed September 30, 2008
Affirmed
Stoneburner, Judge

Minnesota Department of Health
File No. 20900174222

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Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Muehlberg, Judge.*

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

STONEBURNER, Judge

In this certiorari review, relator, a nonprofit corporation created to manage, maintain, and operate a timeshare development, challenges respondent Minnesota Department of Health's grant of summary disposition holding that relator is required to

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

obtain a lodging license under Minn. Stat. § 157.15, subd. 1 (2006). Because there are no disputed material facts and there was no error in application of the law, we affirm.

FACTS

Appellant Causeway on Gull Association, Inc. (Causeway) is a nonprofit corporation created by owners of timeshares for the purpose of managing, maintaining, and operating the timeshare development known as Causeway on Gull, which consists of 58 townhomes located in Lake Shore, Cass County. Causeway's members are owners of timeshare units, and its board of directors is comprised of unpaid-volunteer owners. Causeway hires a property manager.

Causeway owns all of the common property in the community, but each week in each residential unit is an independently owned parcel conveyed by deed to private individuals. One week in each unit is deeded to Causeway for maintenance purposes. Owners of the timeshare units have an absolute right to rent their unit weeks to members of the general public.

Members of the public may rent directly from an owner, through Causeway, or through a timeshare-exchange organization. Causeway facilitates rentals by maintaining a central database with information about available units and rates. Although individual owners and timeshare-exchange organizations advertise the availability of units, Causeway does not advertise.

Until 2004, Causeway annually obtained a lodging license from Cass County.[1] In 2003, respondent Minnesota Department of Health (MDH) began to directly handle licensing in Cass County. In 2004, Causeway did not apply for a lodging license. When advised by MDH that a lodging license was required, the board of directors took the position that the licensing statute does not apply to Causeway.

MDH issued an administrative penalty order (APO) to Causeway for failing to obtain a lodging license. Causeway initiated a contested-case proceeding challenging the application of Minn. Stat. § 157.16 (2006), to the rental of timeshare units. Both parties moved for summary disposition. An Administrative Law Judge (ALJ) recommended that summary disposition be granted in favor of MDH. Causeway filed exceptions to the ALJ's recommendations. MDH responded to Causeway's exceptions. The Commissioner of MDH adopted the ALJ's recommendations and granted summary disposition to MDH. This certiorari appeal follows.

D E C I S I O N

I. Standard of review

A motion for summary disposition is the administrative equivalent of a motion for summary judgment. *See* Minn. R. 1400.5500K. (2006). "On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district court] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). A court reviewing a grant of summary judgment must view the record in the light most favorable to the nonmoving party. *Fabio*

[1] MDH had delegated licensing authority to the county.

v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). If no genuine issues of material fact exist, we review the application of law de novo. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989). Issues of statutory interpretation are subject to de novo review. *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002). "While this court is not bound by an agency's conclusions of law, the manner in which an agency has construed a statute may be entitled to some weight when the statutory language is technical in nature and the agency's interpretation is one of longstanding application." *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996).

II. Licensing requirement

By statute, any "person, firm, or corporation engaged in the business of conducting a . . . hotel, motel, lodging establishment, . . . or resort" is required to obtain a lodging license from MDH as a condition of operation. Minn. Stat. § 157.16, subd. 1 (2006).[2] MDH has authority to issue a correctional order or an APO assessing monetary penalties and requiring that a violation of the statute be remedied. *See* Minn. Stat. §§ 144.991, .993 (2006).

> "Resort" means a building, structure, enclosure, or any part thereof located on, or on property neighboring, any lake, stream, skiing or hunting area, or any recreational area for purposes of providing convenient access thereto, kept, used, maintained, or advertised as, or held out to the public to be a place where sleeping accommodations are furnished to the public, and primarily to those seeking recreation for periods of one day, one week, or longer, and having for rent five or more cottages, rooms, or enclosures.

[2] The statute requiring lodging licenses has been in place, virtually unchanged, since 1949.

Minn. Stat. § 157.15, subd. 11 (2006).

It is undisputed that Causeway on Gull includes structures that are located on property neighboring lakes for purposes of providing convenient access to the lakes. The ALJ held that the record is conclusive that Causeway maintains all of the property in question, including units that are rented to the public; that Causeway on Gull is "held out to the public to be a place where sleeping accommodations are furnished to the public;" and that Causeway is "engaged in the business" of conducting a resort, bringing Causeway within the licensing requirements of section 157.16.

Causeway argues that the ALJ erred as a matter of law in interpreting the licensing statute. First, Causeway contends that because the property interest owned is a "deeded fee simple absolute ownership interest in a particular residence week," the nature of the property in question is that of private residences for which all decisions are made by the private owner. Causeway asserts that because the statute does not include the terms "private homeowner's association" or "private timeshare residences" within section 157.16, the legislature did not intend to include such residences within the statutory-licensing scheme. Causeway cites several cases supporting its proposition that courts are not free to add words or meaning to a statute that were intentionally or inadvertently left out. *See Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995); *State v. Moseng*, 254 Minn. 263, 269, 95 N.W.2d 6, 11-12 (1959); *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001). But Causeway's argument ignores the plain language of the statute, which does not apply the licensing requirement according to the nature of the ownership interest involved; the statute addresses *use* of

property, not how it is owned. We find no merit in Causeway's assertion that the nature of the ownership interests at issue here precludes application of the licensing statute.

Causeway also argues that it does not engage in the business of conducting a lodging establishment, hotel, motel, or resort as defined in the licensing statute. Because the ALJ did not find that Causeway is conducting a lodging establishment, hotel, or motel, we do not address whether Causeway meets those definitions and focus instead on the evidence supporting the ALJ's determination that Causeway engages in the business of conducting a resort.

Causeway asserts that it is not subject to the licensing requirements for a resort because it does not advertise the availability of units for rent to the public. Additionally, Causeway claims that it does not engage in any activity involving the public as required by the statute because the rentals it facilitates are limited to unit owners and their guests. The ALJ noted that even if Causeway does not advertise, it plainly *maintains* the units, an activity that is sufficient to bring Causeway within the scope of the statutory definition of "resort." Additionally, we note that section 157.16, subdivision 1, applies if the facility is "held out to the public to be a place where sleeping accommodations are furnished to the public, and primarily to those seeking recreation for periods of one day, one week, or longer" without limiting who is involved in such activity. Minn. Stat. § 157.15, subd. 11. Because the units at Causeway on Gull are undisputedly "held out" by unit owners as a place where sleeping accommodations are furnished to the public, we conclude that the licensing provision in section 157.16, subdivision 1, applies.

Causeway cites *Asseltyne v. Fay Hotel*, for the proposition that "to be open to the public, a facility would be bound to provide for whomever came along to the limit of its facilities and at a reasonable price." *See* 222 Minn. 91, 98, 23 N.W.2d 357, 361 (1946). *Asseltyne* addressed the difference in the legal relationship between the operator of a hotel or boarding house and transient guests or boarders. *Id.* at 97, 23 N.W.2d at 361. We conclude that *Asseltyne* is not relevant to the determination of what it means to be "held out to the public" as required in section 157.15, subdivision 11.

In this case, it is undisputed that Causeway receives inquiries about rentals and facilitates rentals without ascertaining whether the prospective renters are owners or have any relationship with the owners of the units rented. There is no evidence that Causeway rejects anyone seeking rentals on any basis. And the record shows that the units are, in fact, regularly rented by the public. Causeway has admitted to facilitating 100 to 179 public rentals per year. Accordingly, we reject Causeway's assertion that it is not subject to licensure because its rentals are not available to the public.

Causeway also argues that it does not "engage in the business of conducting a resort," as required under the licensing statute, because it is only involved in renting out less than two percent of its unit-week rentals per year, making Causeway an "occasional renter." Causeway cites an attorney general opinion for the proposition that casual renting of a lakeside cabin for private occupancy does not constitute engaging in the business of conducting a resort under the statute. *See* Op. Att'y. Gen. 210 (May 9, 1952). But as the ALJ noted, "[r]enting units at the rate of 100-179 per year is certainly more than 'occasional.'"

Causeway also argues that our decision in *Yeh v. County of Cass* supports its assertion that renting only a small percentage of its units precludes it from qualifying as a resort. *See* 696 N.W.2d 115, 128-29 (Minn. App. 2005) (holding that prior commercial resort was residential development within meaning of county zoning ordinance when only small percentage of units were rented out), *review denied* (Minn. Aug 16, 2005). But Causeway's reliance on *Yeh* is unpersuasive. The issue in *Yeh* was whether certain property was residential or commercial in nature under the terms of a county ordinance that defines resort in terms almost identical to the definition of resort in section 157.16. *Id.* at 124. The case did not address whether the units rented in *Yeh* were subject to MDH licensing. Accordingly, our discussion of the term "resort" in *Yeh* is not determinative of the issue before the ALJ. *See id*. at 127-29. We also note that although the percentage of rentals in this case may be smaller than the percentage of rentals in *Yeh*, *Yeh* involved a facility with three rental units whereas Causeway rents hundreds of units each year, a factor which distinguishes this case from *Yeh.* *See id.* at 128.

Additionally, Causeway asserts that it is not *engaged in a business* as required by the licensing statute because it does not operate for profit. But section 157.16, subdivision 1, does not distinguish between for-profit and nonprofit organizations. We find no merit in Causeway's contention that its nonprofit status exempts it from MDH's licensing requirements.

Causeway next argues that its facility does not contain the required number of rental units to qualify for licensing because the definition of resort requires that the resort have "for rent five or more cottages, rooms, or enclosures," and most Causeway on Gull

owners own and can rent out only one unit week. Given the undisputed evidence that any or all of Causeway on Gull's 58 townhomes may be available to the public for rent through Causeway at any given time, and that each of Causeway's townhomes are made available for rent during a calendar year, we fail to see any merit in this argument.

Finally, Causeway, despite having itself sought summary disposition on the record, now argues that the existence of disputed issues of material fact, such as the amount of rental activity, precludes summary disposition to MDH. But having viewed the evidence in the light most favorable to Causeway, we conclude that any dispute regarding the frequency of such rental activity is immaterial to determining the licensing statute's application. We reject Causeway's assertion that application of the licensing provision to timeshares will cause an absurd result. Based on the undisputed facts in the record, we conclude that the licensing statute's plain language applies to Causeway.

Affirmed.