IN THE COURT OF APPEALS OF IOWA

No. 2-1124 / 12-0758
Filed March 13, 2013

GARY F. VAN DEN BOOM,
Plaintiff-Appellant,

vs.

CITY OF ELDORA,
Defendant-Appellee.

Appeal from the Iowa District Court for Hardin County, Timothy J. Finn, Judge.

Gary Van Den Boom appeals from the grant of a motion for summary judgment in favor of the City of Eldora on his petition for an injunction. **AFFIRMED.**

Brian D. Miller of Miller & Miller, P.C., Hampton, for appellant.

Sarah E. Crane and Michael C. Richards of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellee.

Heard by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Gary Van Den Boom appeals from the grant of a motion for summary judgment in favor of the City of Eldora (City) dismissing his petition for an injunction on the ground the petition was filed after the statute of limitations under Iowa Code section 384.25(2) (2011) had expired. Van Den Boom sought an injunction to prevent the City from entering into a general fund loan agreement to refinance U.S. Department of Agriculture (USDA) revenue bonds issued in 2007 for the purpose of building and operating a child care facility. The child care facility, which was built and operated, was defined as a "city enterprise" under Iowa Code section 384.24(2)(l).

Van Den Boom contends Iowa Code section 384.87, requiring revenue bonds to be paid out of the revenue of the city enterprise and defining revenue bonds as "not a debt or charge against the city," is the applicable statute. Van Den Boom also contends legal contradictions exist and that the district court did not construe the statutes consistently with division five of Iowa Code chapter 384, governing revenue financing. Finally, he argues he was denied due process and a fair trial when the district court did not allow him to conduct discovery prior to the summary judgment hearing.[1] We affirm, finding the district court correctly applied the statute of limitations in Iowa Code section 384.25(2) to Van Den Boom's petition.

[1] Van Den Boom also argues he and all City of Eldora taxpayers were denied due process in the proceedings for enactment of the loan agreement, however, as the merits of this claim were not addressed below, we do not address them for the first time on appeal. *Bowman v. City of Des Moines Mun. Hous. Agency,* 805 N.W.2d 790, 797 (Iowa 2011) ("We decline to consider an argument that is raised for the first time on appeal.").

I. Facts and Proceedings.

In 2007, the City adopted a resolution authorizing the City to enter into a loan agreement with the USDA for the purpose of building and establishing a child care facility (Resolution 2015). Resolution 2015 specified the loan was to be repaid solely from the net revenues of the child care facility.

Over the next four years, the City was unable to generate sufficient income from operation of the childcare facility to repay the loans. On May 19, 2011, the City adopted a budget amendment to address the issue; Van Den Boom petitioned the State Appeal Board protesting the budget amendment. The State Appeal Board issued an order denying $38,000 of the $1,648,000 capital projects expenditure in the budget amendment due to noncompliance by the City with Resolution 2015. After this denial, the City decided to proceed by a new resolution to refinance and refund the USDA loans through a general fund loan agreement under Iowa Code section 384.24A (Resolution 2382). Notice of this action was published on November 11, 2011.[2] The resolution authorized the City to enter into a general fund loan agreement in an amount not to exceed $340,000 to refinance the USDA loan.

A hearing was held as stated in the notice on November 28, 2011. The City then consulted with the State of Iowa Auditor and member of the State Appeal Board, David Vaudt, to evaluate the Resolution 2382 plan and determine

[2] This notice included the date, time, and location of the meeting as well as the purpose and amount proposed loan agreement. The published notice also detailed the authority for the agreement (section 384.24A), that the amount would be paid from the general fund, that objections would be received at the meeting, and that any appeal must be filed with the district court within fifteen days thereafter.

what effect, if any, the prior ruling on the budget amendment would have on a potential general fund loan agreement. The State Auditor advised the City that:

> Based upon the definitions [in Iowa Code Chapter 384, sections 384.24(2)(l), 384.3(f), and 384.24A] a child care center is an allowable city enterprise, the refunding of legal indebtedness is an essential corporate purpose, and the City can enter into loan agreements for any public purpose. Therefore, the refinancing of City's USDA child care facility revenue notes through a General Fund Loan Agreement under Code of Iowa Chapter 384.24A appears appropriate and complies with the Code of Iowa (provided the City adheres to all the applicable Code of Iowa requirements).

Vaudt concluded by stating that the proposed refinancing would render moot the earlier concerns raised before the state appeal board, as the USDA notes would no longer be outstanding. At a December 5, 2011 meeting, the City passed Resolution 2382. Van Den Boom was present at this meeting. However he did not file his petition in district court requesting an injunction until January 3, 2012—almost a month later.

February 17, 2012, the City filed a motion for summary judgment. This motion argued, among other things, that Van Den Boom's action was barred by the statute of limitations under Iowa Code section 384.25(2), which requires objections to be filed within fifteen days of the additional action by a city council to institute proceedings for the borrowing of money under Iowa Code section 384.24A. The district court agreed, and granted the motion for summary judgment based on the expiration of the statute of limitations. Van Den Boom appeals from this ruling.

II. Analysis.

We review this appeal from the district court's ruling on summary judgment in an equity case to determine "whether genuine issues of material fact

exist and whether the law was applied correctly." *Stanfield v*. *Polk Cnty*., 492 N.W.2d 648, 649 (Iowa 1992). "If under the entire record, the only conflict concerns the legal consequences flowing from undisputed facts, entry of summary judgment is proper." *Id.*

Van Den Boom points to two primary ways in which he says the district court erred when it granted the City's motion to dismiss. The first is the court incorrectly applied the statute of limitations under Iowa Code section 384.25(2). The second is the court improperly found the refinancing of the city enterprise revenue bonds using a general obligation debt to be an essential corporate purpose. The City argues that its actions were for a public purpose, and were authorized by Iowa Code section 384.24A which provides for general fund loan agreements for any public purpose. We agree.

Van Den Boom and the City present us with a question of statutory interpretation. Our goal in interpreting a statue is to determine the legislative intent from the words used by the legislature. *In re Alessio*, 803 N.W.2d 656, 661 (Iowa 2011). "We cannot extend, enlarge, or otherwise change the meaning of the statute under the pretense of statutory construction." *Id.* We must look to the statute in its entirety, not just isolated words or phrases. *Id.* We interpret the statute in a way "that best achieves the statute's purpose and avoids absurd results." *Id.*

Iowa Code section 384.24A reads, in relevant part:

> A city may enter into loan agreements to borrow money for any public purpose in accordance with the following terms and procedures: . . .
> 4. The governing body may authorize a loan agreement which is payable from the general fund . . .

> a. The governing body must follow substantially the authorization procedures of 384.25 to authorize a loan agreement for personal property which is payable from the general fund. The governing body must follow substantially the authorization procedures of section 384.25 to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement does not exceed . . .
> (1) Four hundred thousand dollars in a city having a population of five thousand or less.

Subsection 4 sets out procedures for authorization of a loan agreement by reference to Iowa Code section 384.25, which governs general obligation bonds, which can be issued for "any essential corporate purpose." *Id.* The procedural requirements of section 384.25, which are incorporated into section 384.24A are found in subsection 384.25(2):

> 2. Before the council may institute proceedings *for the issuance of bonds for an essential corporate purpose [*or, *by reference in section 384.24A(4)(a)*, *the entering into a general fund loan agreement under section 384.24A]*, a notice of the proposed action, including a statement of the amount and purposes of the bonds, and the time and place of the meeting at which the council proposes to take action for the issuance of the bonds, must be published. . . . Any resident or property owner of the city may appeal the decision of the council to take additional action to the district court of the county in which any part of the city is located, within fifteen days after the additional action is taken, but the additional action of the council is final and conclusive unless the court finds that the council exceeded its authority. The provisions of this section with regard to notice, hearing, and appeal, are in lieu of the provisions contained in chapter 73A, *or any other law*.

(Emphasis added.) Because the City authorized a general fund loan agreement and not a general obligation bond, the City argues we need not reach the issue of whether the loan agreement was for an *essential corporate purpose*, as Iowa Code section 384.24A is the statutory authorization for loan agreements and provides a loan agreement may be entered into for *any public purpose*. The statutory requirements for notice, hearing, and statute of limitations in 384.25 are

incorporated into section 384.24A by reference, but not change the plain language of section 384.24A authorizing loan agreements for any public purpose.

The court in its ruling stated the following:

> As previously stated, the procedure contained in section 384.25 applies to cities with a population less than 5,000 people and for general fund loan agreements for property which does not exceed $400,000. [The court concludes both requirements have been met and the notice procedure properly followed.] Reading together the provisions of sections 384.24, 384.24A, and 384.25, the Court finds that plaintiff's claims are barred by the fifteen-day period[.]

The City entered into a loan agreement for a public purpose—for the repayment of bonds for a childcare facility, which is a "city enterprise" under Iowa Code 384.24(2)(l). The amount of the loan agreement and the size of the city of Eldora triggered the application of section 384.24A and required the City to comply with the procedures of section 384.25. The City did follow these procedures—including publishing in its notice of the planned action that any objection must be filed within fifteen days of the final action taken.

Van Den Boom argues that the issuance of the loan agreement violates Iowa Code section 384.87 which states that revenue bonds are payable "solely out of the portion of the net revenues of the . . . city enterprise," and that the applicable statute of limitations is the sixty day period found in Iowa Code section 384.92, which provides:

> No action may be brought which questions the legality of revenue bonds or the power of the city to issue revenue bonds or the effectiveness of any proceedings relating to the authorization and issuance of revenue bonds, from and after sixty days from the time the bonds are ordered issued by the city.

Our supreme court considered a similar argument in *Stanfield v. Polk County*, under an almost identical statutory scheme. 492 N.W.2d at 649. A

county issued bonds to fund the building of a race track. *Id.* These bonds were to be paid solely from the revenues of the project. *Id.* The county executed a lease-purchase agreement in conjunction with the issuance of the bonds. *Id.* This agreement provided that payment for the project would only be paid for through the bonds and the county would pay no costs. *Id.* The agreement was amended to include a payment of rent by the county exactly equal to the annual principal and interest payments due on the bonds. *Id.* at 650. The county made its payments under the lease-purchase agreement through the general taxpayer fund. *Id.* A group of taxpayers filed suit four years after the lease-purchase agreement enactment, arguing the payments were illegal. *Id.*

The court first considered the county's affirmative defense that the lawsuit was barred by the applicable statute of limitations. *Id.* The first statute considered by the court was the three-month period for attacking the legality of the bonds under Iowa Code section 419.5. *Id.* The court rejected this argument, stating "because plaintiffs do not seek to challenge the legality of the original issuance of the bonds, we conclude that the section 419.5 time-bar is not involved in this case." *Id.*

Similarly, here, Van Den Boom is not attacking the original issuance of the 2007 revenue bonds. Looking at the plain language of section 384.92, we find that the action taken by the City here for refinancing or repayment of the 2007 revenue bonds is not related to "the authorization and issuance of revenue bonds" under section 384.92. *See In re Fowler*, 784 N.W.2d 184, 187 (Iowa 2010) ("Our rules of statutory interpretation are well established . . . [w]e do not search for meaning beyond the express terms of a statute when the statute is

plain and its meaning is clear.") Resolution 2382 was for a general fund loan agreement; an appeal from the City's action is governed by the fifteen-day statute of limitations in section 384.25(2).

Next, the court in *Stanfield* considered the applicability of an analogous fifteen-day time-bar under Iowa Code section 331.443. 492 N.W.2d at 650. The court read into section 331.443 the words "lease-purchase agreement" pursuant to Iowa Code section 331.301(10)(e)(1)(a) requiring the board to substantially follow the procedures under section 331.443. *Id.* It then applied section 331.443's fifteen-day time limit for appeal. *Id.* The court noted, "This [fifteen-day window] allows a taxpayer an opportunity to challenge the legality of the action, but closes the door when no challenge is made." *Id.* at 653.

Similarly here we are required to read together Iowa Code section 384.24A and 384.25. Van Den Boom did not file within fifteen days of the board's further action on December 5, 2011 as required under section 384.25. His action is therefore untimely. *See* Iowa Code § 384.25(2); *Stanfield*, 492 N.W.2d at 653. Because in this case "the only conflict concerns the legal consequences flowing from undisputed facts," the district court properly granted the City's motion for summary judgment. *Stanfield*, 492 N.W.2d at 653.

Van Den Boom next argues he was denied due process when the district court did not allow him to engage in discovery prior to ruling on the motion for summary judgment. Van Den Boom failed to show in his motion to continue why discovery was necessary when the motion to dismiss was based on an issue of statutory time limits. Iowa Rs. Civ. P. 1.509(1), 1.510(2), 1.512(2) (allowing further time for interrogatories, requests for admission, and requests for

production as the court allows). We therefore find Van Den Boom's due process argument to be without merit. *Shirk Oil Co*. *v*. *Peterman*, 329 N.W.2d 13, 16 (Iowa 1983).

AFFIRMED.