IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 22, 2023 Session

AMANDA B. WOLFE v. SURGOINSVILLE BEER BOARD ET AL.

Appeal from the Circuit Court for Hawkins County
No. CC-21-CV-17 Thomas J. Wright, Senior Judge

No. E2022-01605-COA-R3-CV

Following the denial of her application for a beer permit, Amanda B. Wolfe ("Ms. Wolfe") filed a Petition for Writ of Certiorari in the Circuit Court for Hawkins County (the "trial court") against Surgoinsville Beer Board (the "Beer Board") and the Town of Surgoinsville (collectively, "the City"), seeking a trial de novo. Ms. Wolfe contended that the Beer Board incorrectly reviewed her application for a beer permit under a newly amended ordinance. After a bench trial, the trial court ruled in Ms. Wolfe's favor, ordering the issuance of her beer permit and finding that the amended ordinance lacked a rational basis. Having reviewed the record, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court for Hawkins County Affirmed; Case Remanded

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY and THOMAS R. FRIERSON, II, JJ., joined.

Joseph E. May, Mount Carmel, Tennessee, for the appellants, Surgoinsville Beer Board and Town of Surgoinsville.

Francis X. Santore, Jr., Greeneville, Tennessee, for the appellee, Amanda B. Wolfe.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

In September of 2020, Ms. Wolfe went to the City Hall of Surgoinsville and requested a beer permit application for her establishment, "Rack Em Up Billiard/Grill." The relevant Surgoinsville municipal code sections in place at this time were Section 8-209 and Section 8-212. Section 8-209 provided, "Permits for the retail sale of beer shall be restricted to the sale of beer to be consumed on and off the premises. The issuance of a

beer permit in no way authorizes the sale of liquor." Surgoinsville, Tenn., Municipal Code ch. 2, § 8-209. Section 8-212 provided, "It shall be unlawful for any beer permit holder to: (1) Be within three hundred (300) feet of any church, school, or public gathering that would otherwise interfere with traffic, public health, safety, and morals." *Id.* § 8-212. During her September 2020 visit to City Hall, the City Recorder incorrectly informed Ms. Wolfe that Surgoinsville did not have an ordinance authorizing the issuance of permits for on-premises beer sales.

Ms. Wolfe then appeared at the September 14, 2020 Surgoinsville Board of Mayor and Alderman (the "BMA") meeting to inquire about obtaining an on-premises permit. Once again, Ms. Wolfe was mistakenly informed that Surgoinsville did not have an ordinance authorizing the issuance of such permits. At this meeting, the BMA discussed the possibility of passing such an ordinance but took no further action that day.

Ms. Wolfe attended a second BMA meeting on October 12, 2020. She was again told that a permit could not be issued and that a new ordinance would have to be passed to allow for on-premises consumption. Again, as the above ordinances demonstrate, it was unnecessary for the BMA to pass a new ordinance. At that meeting, the Mayor concluded the issue by saying, "[t]his is not going to go any farther" and "[t]his issue is done, and this is as far as we can go with this."

Despite no success with the BMA at the September and October meetings, on November 16, 2020, Ms. Wolfe, through her attorney, mailed a completed application for an on-premises beer permit, along with a cashier's check for two hundred and fifty dollars ($250.00), in compliance with Surgoinsville's ordinance regulating beer permit applications. The check was cashed upon receipt. At the time Ms. Wolfe filed her application, it was prohibited by ordinance for any beer permit holder to "[b]e within three hundred (300) feet of any church, school, or public gathering that would otherwise interfere with traffic, public health, safety, and morals." However, the ordinance did not explain how to measure the relevant three-hundred-foot distance.

After Ms. Wolfe submitted her application, she repeatedly contacted City Hall to determine when the Beer Board might consider it, but she received no clear answer. On December 16, 2020, the City published a newspaper notice of two special-called meetings on December 21 and 22, during which the BMA would consider an amendment to ordinance section 8-212, establishing the method of measurement for the three-hundred-foot rule. At these meetings, the BMA adopted the following amendment:

> (1) Be within three hundred feet (300') of any church, school, or other place of public gathering:
>
> (a) at a location, having any part of the property adjoining a four-lane divided route, road or highway, as measured in a

> straight line from the nearest part of the entire building of a church, school, or other place of public gathering to the nearest part of the entire building from which beer will be sold.
>
> (b) at a location, having any part of the property adjoining a two-lane route, road or highway, within three hundred feet (300') of any church, school, or other place of public gathering, as measured in a straight line from the nearest point on the property line of the church, school, or other place of public gathering to the nearest point on the property line of the property upon which sits the building from which beer will be sold.
>
> (c) at any location that is a corner lot or parcel adjoining both a four-lane divided route, road or highway and a two-lane route, road or highway, as measured in a straight line from the nearest part of the entire building of a church, school, or other place of public gathering to the nearest part of the entire building from which beer will be sold.

On December 26, 2020, the Beer Board published notice in the newspaper that it would meet on December 28, 2020, to consider Ms. Wolfe's beer permit application. At the December 28 meeting, the Beer Board denied Ms. Wolfe's permit because her establishment, when measured from property line to property line, is less than three hundred feet from a church.

On February 9, 2021, Ms. Wolfe filed her Petition for Writ of Certiorari in the trial court, which provides that it was filed "pursuant to the Constitution of the State of Tennessee, Article 6, Section 10, and pursuant to [Tennessee Code Annotated section 57-5-108(d).]" Ms. Wolfe requested that the trial court conduct a trial de novo regarding her beer permit application and apply the version of the municipal code in place when she filed her application. Ms. Wolfe claimed, *inter alia*, that the BMA intentionally deterred her from seeking a beer permit by repeatedly telling her, erroneously, that Surgoinsville did not have an ordinance allowing for the issuance of on-premises beer permits, such that the amended ordinance could be passed before she submitted her application. The trial court granted Ms. Wolfe's Petition for Writ of Certiorari on March 22, 2021, and the City submitted its response to the writ on September 20, 2021.

On October 19, 2021, the City filed a motion to dismiss. The City argued, *inter alia*, that under *Coffman v. Washington County Beer Board*, 615 S.W.2d 675 (Tenn. 1981), the Beer Board properly applied the amended ordinance to its review of Ms. Wolfe's application, rather than the ordinance in place at the time Ms. Wolfe filed her application; that the property line to property line method of measurement was reasonable; that the trial

court was prohibited from examining the motives of the BMA in enacting the amendment; and that Ms. Wolfe could not establish that the distance requirements in the amended section 8-212 lacked a rational basis. The trial court entered an order denying the City's motion to dismiss and setting the case for trial on March 17, 2022.

Three witnesses testified at the final hearing: Merrell Graham, the Mayor of Surgoinsville; Jack Case, Chairman of the Beer Board; and Bobby Jarnagin, Vice Mayor of Surgoinsville. In its order issued on May 16, 2022, the trial court incorporated its oral ruling from the March 17, 2022 trial and made the following findings:

> Beyond preventing the issuance of an on-premises beer permit to Petitioner, the Court can conceive of no rational basis or justification for the December 22, 2020 amendment to municipal code § 8-212, and Respondent has articulated none. Respondent's exercise of its regulatory power in creating a dual measuring criteria was arbitrary and capricious. The Court finds that Petitioner has carried her burden in this matter, and that she is entitled to have her permit considered under the ordinance that existed at the time of her application and prior to amendment. Respondent does not dispute that Petitioner meets the measuring requirement under the previous ordinance. Accordingly, the on-premises beer permit shall be issued to Petitioner.

Following the trial court's order, the City filed a motion to alter or amend the judgment, which was subsequently denied. This appeal followed.

II. ISSUES

The issues raised by the City on appeal are restated for clarity:

1. Whether the City appropriately applied the amended ordinance to Ms. Wolfe's application.

2. Whether the trial court erred in its application of the "any conceivable reason" standard to its review of the amended ordinance.

3. Whether the amended ordinance is protected from judicial inquiry.

In her posture as appellee, Ms. Wolfe argues that the amended ordinance lacks a rational basis and was enacted arbitrarily and capriciously.

III. STANDARD OF REVIEW

The procedure for appealing the denial of a beer permit application is the filing of a "statutory writ of certiorari, with a trial de novo as a substitute for an appeal, the petition of certiorari to be addressed to the circuit or chancery court of the county in which any such order was issued." Tenn. Code Ann. § 57-5-108(d). In the trial de novo, "the cause is tried as if it originated in the circuit or chancery court. . . . The trial judge is required to make an independent judgment on the merits, which . . . results in the trial judge substituting his judgment for that of the beer board . . . ." *Cantrell v. DeKalb Cnty. Beer Bd.*, 376 S.W.2d 480, 482 (Tenn. 1964). In a statutory writ of certiorari, the trial "court may consider both the evidence contained in the administrative record and any additional or supplemental evidence that the parties wish to introduce." *Yafai v. Metro. Beer Permit Bd. of Metro. Gov't of Nashville Davidson Cnty.*, No. M2009-00270-COA-R3-CV, 2010 WL 845379, at *3 (Tenn. Ct. App. Mar. 10, 2010) (citing *Cantrell*, 376 S.W.2d at 482).

Additionally, Ms. Wolfe argued in the trial court and now argues on appeal that the amended ordinance at issue lacks a rational basis. Usually, challenges to legislative action by a municipality—in this case, the passage of the amended ordinance—are done via declaratory judgment. *Fallin v. Knox Cnty. Bd. of Com'rs*, 656 S.W.2d 338, 342 (Tenn. 1983) (citing Tenn. Code Ann. §§ 29-14-101–29-14-113). While there was no such action filed in this case, under *Fallin*, a trial court may still treat review of an ordinance as if an action for declaratory judgment were filed, which is how the trial court proceeded in the present case. *Id.* at 342 ("[W]here, . . . the plaintiff mistakenly employs the remedy of certiorari the court may treat the action as one for declaratory judgment and proceed accordingly, rather than dismiss the action.").

Thus, the procedural standards for Ms. Wolfe's action against the Beer Board and her action against the BMA were different. As to the Beer Board's action, Ms. Wolfe claimed that she was wrongly denied a permit. As to the BMA's action, she claimed that the amended ordinance lacked a rational basis because it is arbitrary and capricious. At the appellate level, however, the factual findings of the trial court as to both actions are reviewed "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d); *see also Yafai*, 2010 WL 845379, at *3.

IV. DISCUSSION

The first issue presented is whether the Beer Board properly applied the amended ordinance to Ms. Wolfe's application. This is a threshold question because it is undisputed that if Ms. Wolfe's application was considered under the original ordinance, the requirements would have been satisfied. Ms. Wolfe argues that the ordinance in place at the time she submitted her permit application, which contained the same three-hundred-foot prohibition but without a stated method of measurement, is the

ordinance under which her application should have been considered. The City, on the other hand, points to our Supreme Court's opinion in *Coffman v. Washington County Beer Board* to posit that the Board was entitled to amend the ordinance prior to considering Ms. Wolfe's application.

In *Coffman*, the plaintiff applied for a beer permit on October 21, 1976, but the hearing on his application did not take place until January 31, 1978. 615 S.W.2d 675, 676 (Tenn. 1981). During that fifteen-month period, the Washington County Quarterly Court passed regulations for the issuance of beer permits in the county, including the following:

> No permit shall be issued for the sale, storage and/or manufacture of beer at a location which is within 2,000 feet of any church, school, or other place of public gathering. Neither shall a permit be issued for the sale or storage of beer within 300 feet of a residential dwelling, measured from building to building, provided the owner or occupant of the residential dwelling appears in person before the county beer board and objects to the issuance of such permit or license.

Id. As in the present case, the *Coffman* applicant argued that the ordinance in place at the time he filed his application was the law that should have been applied to his permit application. *Id.* However, the Tennessee Supreme Court disagreed, finding that at the time his application was considered, the new regulation was lawfully in place and that the plaintiff did not meet its requirements. *Id.* at 677. Thus, his application was properly denied. *Id.* The court reasoned that "'[a] license to sell liquor (or beer) is not a contract by right of property but is merely a temporary permit to do that which would otherwise be unlawful.'" *Id.* at 676–77 (quoting *McClellan v. State of Tenn.*, 282 S.W.2d 631 (Tenn. 1955)).

In her appellate brief, Ms. Wolfe claims to have a vested interest in receiving a beer permit. *Coffman* clearly provides otherwise. 615 S.W.2d at 676–77; *see also Wright v. State*, 106 S.W.2d 866, 870 (Tenn. 1937); *Cravens v. Storie*, 133 S.W.2d 609, 609–10 (Tenn. 1939) (same). Accordingly, we agree with the City that the Beer Board is entitled to change its local ordinances while applications are pending, and Ms. Wolfe is not entitled to relief on that basis alone.

This does not end our inquiry, however. While we agree with the City that it was within its rights under *Coffman* to amend the ordinance while Ms. Wolfe's application was pending, this does not mean that the amended ordinance is automatically shielded from critique. *Coffman* does not answer the question of whether the amended ordinance lacks a rational basis. Indeed, the second issue presented in this case is whether the trial court erred in its application of the "any conceivable reason" standard to its review of the amended ordinance.

The City correctly argues that, under Tennessee law, municipalities are generally given broad discretion in regulating beer. Tennessee Code Annotated section 57-5-106(a) provides:

> All incorporated cities, towns and Class B counties in this state are authorized to pass proper ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and/or distribution of beer within the corporate limits of the cities and towns and within the general services districts of Class B counties outside the limits of any smaller cities as defined in § 7-1-101 and to provide a board of persons before whom such application shall be made, but the power of such cities, towns and Class B counties to issue licenses shall in no event be greater than the power herein granted to counties, but cities, towns and Class B counties may impose additional restrictions, fixing zones and territories and provide hours of opening and closing and such other rules and regulations as will promote public health, morals and safety as they may by ordinance provide.

Tenn. Code Ann. § 57-5-106(a). Courts generally view a municipal ordinance regulating the sale of beer with a liberal construction in favor of the ordinance and the entities it is designed to protect, with a strict construction against the permit applicant. *Youngblood v. Rutherford Cnty. Beer Bd.*, 707 S.W.2d 507, 509 (Tenn. 1986) (quoting *Y&M v. Beer Comm'n or Bd. of Johnson Cnty.*, 679 S.W.2d 446, 447 (Tenn. 1984)). A municipal ordinance is presumed valid, and the party challenging the ordinance "has the burden of showing that it 'is not reasonably related to a protectable interest or that it is oppressive in its application.'" *Beer Bd. for Goodlettsville v. Brass A Saloon of Rivergate, Inc.*, 710 S.W.2d 33, 35–36 (Tenn. 1986) (quoting *Rivergate Wine and Liquors, Inc. v. City of Goodlettsville*, 647 S.W.2d 631, 634 (Tenn. 1983)).

However, municipal power to regulate the sale of beer is not unlimited. *DeCaro v. City of Collierville*, 373 S.W.2d 466, 469 (Tenn. 1963); *see also Rivergate Wine and Liquors, Inc.*, 647 S.W.2d at 634 ("Although no property right vests in a liquor licensee, those who regulate liquor do not possess unbridled discretion."). When passing an ordinance, the "appropriate board must act in good faith and not in a discriminatory and arbitrary manner." *Brass A Saloon*, 710 S.W.2d at 35 (citing *DeCaro*, 373 S.W.2d at 469). Further, the Board's ability to regulate "is not to be used as a subterfuge for refusing licenses at the behest of those who do not agree with the ordinances of the municipality regulating the issuance of such licenses." *Case v. Carney*, 376 S.W.2d 492, 495 (Tenn. 1964).

In *Rivergate Wine & Liquors, Inc.*, our Supreme Court summarized the two-part test for whether an ordinance is unreasonable or discriminatory. The test first requires that "the regulation . . . bear some relation to a legitimate interest protectable by the police power. Second, the regulation may not be unreasonable or oppressive as to the licensee." *Rivergate Wine & Liquors, Inc.*, 647 S.W.2d at 634 (citing *Wise v. McCanless*, 191 S.W.2d 169 (Tenn. 1945)).

Here, the trial court found that the amended ordinance did not satisfy the above test, concluding that

> [t]here's no justification for the difference in measurements provided in the words of the ordinance, no rational basis or justification for the exercise of the Town's police power in changing the manner of measurement has been articulated by the Town's governing office holders today, and it's the Court's conclusion that I can conceive of no rational basis for the differential treatment of how this distance is measured, other than to preclude the issuance of a sale for consumption of beer on premises.

We agree with the trial court and conclude that the measuring system in the amended ordinance fails the above-mentioned test, primarily because the new measuring system is unreasonable and oppressive and because the record bears out that the ordinance's passage was arbitrary and capricious. *See Rivergate Wine & Liquors, Inc.*, 647 S.W.2d at 634 ("[T]he regulation may not be unreasonable or oppressive as to the licensee."). Even if the dual-measuring system had any "relation to a legitimate interest protectable by the police power," *Rivergate Wine & Liquors, Inc.*, 647 S.W.2d at 634, the second prong of the test cannot be satisfied in this case. The amended ordinance provides differing methods of measurement depending upon whether a business is located on a four-lane or two-lane road. If the business is on a four-lane road, then the measurement is from building to building. If the business is on a two-lane road, then the measurement is from property line to property line. If the business is on the corner of both a two-lane and four-lane road, then the measurement is from building to building. The City claims in its brief that this difference is valid under Tennessee Code Annotated section 57-5-106(a), as part of its ability to create different zones for the sale or consumption of beer. However, the City's scheme is not as simple as just creating zones; rather, it is undisputed that under the new ordinance, the only business affected is Ms. Wolfe's. The City claims that the ordinance only codifies what it has done for years, that is, measuring distances from property line to property line, rather than from building to building. However, nothing in the record supports this assertion beyond equivocal testimony that the property line to property line method of measurement was a "custom or practice" of the Beer Board. This claim is further refuted by the fact that the City told Ms. Wolfe several times that there was no ordinance at all under which such a permit could be provided.

While this court may not inquire into the motivations of the legislators in passing the ordinance, the trial court could determine that the ordinance is unreasonable and oppressive without such an inquiry. *Madison v. City of Maryville*, 121 S.W.2d 540, 541–42 (Tenn. 1938). The undisputed facts show that Ms. Wolfe was told several times, incorrectly, that the type of permit she sought did not exist under Surgoinsville ordinances. Nonetheless, when Ms. Wolfe paid the City a fee in her attempt to obtain her permit, the check was cashed. In the interim, the City passed an ordinance under which the only business affected is Ms. Wolfe's, while leaving open the possibility that other businesses may apply for the same type of permit, depending upon what road said businesses are on. The record establishes, and the trial court found, that the amended ordinance specifically targeted Ms. Wolfe. *See Rivergate Wine & Liquors, Inc.*, 647 S.W.2d at 636 ("The nature of discrimination is unequal treatment among like kinds. As all retail stores in Goodlettsville are forbidden to sell chilled wines, it follows there is no unequal treatment and, hence, no discrimination."). Further, "those who regulate liquor do not possess unbridled discretion[,]" and "the exercise of [police] power is subject to the implied limitation of reasonableness." *Rivergate Wine & Liquors, Inc.*, 647 S.W.2d at 634. When passing an ordinance, the "appropriate board must act in good faith and not in a discriminatory and arbitrary manner." *Brass A Saloon*, 710 S.W.2d at 35 (citing *DeCaro*, 373 S.W.2d at 469). We agree with the trial court's assessment in this case.

On appeal, the City argues that the amended ordinance is protected from judicial inquiry. The City argues as follows:

> The Trial Court did not have subject matter jurisdiction to require the legislators of Appellant Town to justify their legislative action; their subjective motive in adopting the amended beer ordinance is not a justiciable issue. Constitutional and common law Legislative Immunity and its complimentary evidentiary and testimonial privilege limit the power of the judiciary to inquire into the subjective motive of legislators. Legislative immunity, like judicial immunity, arises from the common law; however, unlike judicial immunity, legislative immunity is embodied in both the Constitution of Tennessee and the United States Constitution. Legislative immunity as a Constitutional doctrine is not an affirmative power; but, is instead, a lack of judicial power—conducive to the proper balance of power between the legislative and judicial branches of government. The immunity is absolute, not subject to balancing of any kind.[1]

[1] In making this argument, the City cites *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001). In that case, this Court considered whether a decision to hold closed legislative meetings is subject to judicial review. *Id.* at 765. The court held that such a decision was not subject to judicial review. *Id.* The

Respectfully, the City conflates a local body's authority to pass ordinances with the idea that those ordinances are completely immune from any judicial review. This is plainly not the law. *See DeCaro*, 373 S.W.2d at 469 ("The only limitations on the power given by this Act is that the Board must exercise such power in good faith and not do it in a discriminatory and arbitrary manner."); *Brass A Saloon*, 710 S.W.2d at 35 ("The only limitation upon the exercise of power is that the appropriate board must act in good faith and not in a discriminatory and arbitrary manner."); *Case*, 376 S.W.2d at 495 ("This is a discretion to be exercised reasonably and in good faith, and not in a discriminatory and arbitrary manner . . . . It is not to be used as a subterfuge for refusing licenses at the behest of those who do not agree with the ordinances of the municipality regulating the issuance of such licenses."). As stated above, we agree with the City that it is not for the trial court to inquire into legislative motivations, but the City's argument that all local legislation is exempt from judicial review is simply wrong, as a matter of law. The trial court did not require the City to justify its passing of the ordinance; rather, after it found that Ms. Wolfe had met her burden of proof, the trial court gave the City the opportunity to put on proof that there was, in fact, a rational relationship between the amended ordinance's differing methods of measurement and the City's interests. The City failed to do so. Accordingly, we disagree with the City's argument that the trial court inappropriately required the City to justify its actions.

V. CONCLUSION

The judgment of the Circuit Court for Hawkins County is hereby affirmed, and the case is remanded for enforcement of the trial court's judgment. Costs of this appeal are assessed to the appellants, for which execution may issue if necessary.

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KRISTI M. DAVIS, JUDGE

City included in its footnote the following quotation from the case: ". . . [A] legislator's immunity from suit when performing his or her legislative duties prevents the courts from making the Legislature justify its decision . . . ." The City omitted the last portion of this quotation, which reads, "to hold closed sessions." *Mayhew*, 46 S.W.3d at 776. In a previous section of the opinion, we reasoned that the decision by the Legislature to hold these closed sessions was not subject to judicial review because it "[was] a purely political question" and the court could "see no 'judicially discoverable and manageable standards' for deciding when the Legislature's business 'ought to be kept secret.'" *Id.* at 773. The validity of the ordinance at hand is not a political question, and this Court is required to determine whether a rational basis exists for the amended ordinance. The City's reliance on *Mayhew* is unavailing.