

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Revocation  
of the Manufactured Home Park  
License of Ardmor Associates,  
1989 License 1073.

On approximately September 14, 1989 the Department of Health submitted a written notice of motion and motion for summary judgment in its favor in this contested case proceeding. The Licensee filed a Memorandum of Law in opposition to the Motion for Summary Judgment on October 3, 1989. The Department filed a reply memorandum on October 10, 1989.

Paul G. Zerby, Special Assistant Attorney General, 500 Capitol Office Building, 525 Park Street, St. Paul, Minnesota 55103, represented the Minnesota Department of Health. John F. Bonner, III, Attorney at Law, 745 Park Place Office Center, 5775 Wayzata Boulevard, Minneapolis, Minnesota 55416, represented the Licensee, Ardmor Associates.

Based upon the written submissions and upon all of the filings in this case, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY RECOMMENDED:

- (1) That the Motion for Summary Judgment be GRANTED and that disciplinary action be taken against the license of Ardmor Associates.
- (2) That the final disposition of this matter by the Commissioner of Health be stayed thirty (30) days to permit the Licensee to apply for judicial review of the decision of the City of Lakeville.
- (3) That if the Licensee seeks judicial review of the City's decision that the Commissioner of Health stay her final decision indefinitely pending a judicial determination.

IT IS HEREBY ORDERED: That the hearing in this matter  
scheduled for  
November 7, 1979 is cancelled.

Dated: October 1989.

GEORGE A. BECK  
Administrative Law Judge

MEMORANDUM

The Department of Health has filed a Motion for Summary judgment in this matter. Summary judgment is appropriate if there is no genuine issue as to any material fact and one party is entitled to a Judgment as a matter of law. Minn. Rule Civ. Proc. 56.03. A genuine issue is one which is not sham or frivolous. A material fact is a fact whose resolution will affect the outcome of the case. McFarland -and Keppel, Minnesota Civil Practice, 1654. The party moving for summary judgment, in this case the Department, has the burden of proof. The nonmoving party. Ardmor Associates, has the benefit of that view of the evidence which is most favorable to it. Greaton v. Enich , 185 N.W.2d 876 (Minn. 1971). The decisionmaker's opinion as to the chance of a party prevailing at a hearing is not a proper criterion for whether or not to grant summary judgment. The nonmoving party is entitled to a hearing unless the issues are sham, frivolous or so insubstantial that it would obviously be futile to try them. Dempsey v. Jaroscak, 188 N.W.2d 779 (Minn. 1971). The decisionmaker's function is not to resolve fact questions but to determine whether or not issues of fact exists. Anderson- v. Mikel Drilling Co., 102 N.W.2d 293 (Minn. 1960).

The statute to be applied in this contested case proceeding is Minn. Stat.

327.20, subd. 1(7) which reads as follows:

A manufactured home park with ten or more manufactured homes, licensed prior to March 1, 1988, shall provide a safe place of shelter for park residents or plan for the evacuation of park residents to a safe place of shelter within a reasonable distance of the park for use by park residents in time of severe weather, including tornados and high winds. . The shelter or evacuation plan must be approved by, the municipality by March 1, 1989. The municipality may require -the park owner to construct a shelter if it determines that a safe place of shelter is not available within a reasonable distance from the park. A copy of the municipal approval and the plan must be submitted by the park owner to the department of health.

The Licensee operates Ardmor Village which is a manufactured home park

located in the City of Lakeville, Minnesota. It was constructed in the early 1970s and there are approximately 439 families in the mobile home park. The Licensee has been licensed for a number of years and has in the past submitted an evacuation plan to the State under a prior statute which provided for evacuation to a nearby church in the event of severe weather conditions. The Licensee has not constructed shelters in its mobile home park.

In 1987 the Legislature amended the statute governing licensure by adding subdivision 1(7) quoted above. Prior to that time the Licensee was governed by subdivision 1(6) which required municipal approval of the plan but prohibited license revocation if the mobile home park had made a good faith effort to develop a plan and obtain municipal approval but the municipality had failed to

approve a plan. In 1989 the Licensee submitted the plan it had previously filed with the State to the Lakeville City Council for its approval, however, the City Council refused to approve it. The Licensee alleges that Lakeville has taken the position that all mobile home parks must have storm shelters. The Licensee states that it has proposed to Lakeville that it build one shelter per year over a 3-year period but that the proposal was rejected by the City of Lakeville.

The Department argues that the Licensee is in violation of the statute since it has neither constructed a shelter at its mobile home park nor submitted an evacuation plan approved by the municipality to the Department by March 1, 1989 or subsequently. Ardmore admits it has not met these requirements. The Licensee's argument in opposition to the Motion for Summary Judgment is that there is material and genuine question of fact as to whether Lakeville's refusal to even consider its evacuation plan was impermissibly arbitrary and capricious. The Licensee points out that no matter how well intentioned a park owner might be, it cannot meet the requirements of the statute until such time as the municipality complies with its statutory obligation. It therefore argues that the reasonableness of Lakeville's failure to approve the evacuation plan is an issue in this contested case proceeding. If that is the case there are material facts which would need to be resolved at it hearing. The Licensee suggests that it would be an unreasonable interpretation of the statute to permit a municipality to put a manufactured home park out of business by withholding approval of any evacuation plan or shelter. It also suggests that due process of law would be violated if the Licensee is not able to contest the propriety of the City's refusal to approve an evacuation plan. *Greater Duluth COACT v. City of Duluth*, 701 F.Supp. 1452 (D.Minn. 1988).

The Department maintains that the reasonableness of the City's action is

not in issue in this- case. If this is true there are no, material facts in dispute -and summary judgment is appropriate. The Department would be entitled to judgment as a matter of law since the Licensee has not complied with the statute. The Department argues that it is not unreasonable for the Legislature to place approval of a plan with the municipality rather than with the Department of Health. In response to the Licensee's constitutional arguments the Department suggests that an executive branch agency lacks authority to declare it legislative enactment unconstitutional. It also suggests that the COACT case, supra, is not applicable since the statute and rules adopted by the Commissioner of Administration provide some guidance to the municipality in this case unlike COACT.

It seems clear -that the Licensee is entitled to a determination as to whether or not the action of the Lakeville City Council in refusing to approve its evacuation plan is arbitrary or capricious. The question is what forum is appropriate for this determination. This requires a consideration not only of due process, but of legislative intent as well as judicial economy. Insofar as legislative intent is concerned, the "good faith effort:" defense to license revocation which was contained in the prior law is conspicuously absent from the new language adopted in 1987. under the old language the Licensee could defend against a license revocation by showing that it had made a good faith effort to develop a plan and obtain municipal approval. The new statute has no such provision. It simply requires municipal approval of the evacuation plan.

The failure to include the "good faith" defense indicates that the Legislature did not intend it to be an issue in a proceeding such as this. This certainly makes the statute more difficult to comply with, but seems to be in keeping with the Legislature's stricter requirement that homes licensed after March 1, 1988 must provide a shelter and cannot submit an evacuation plan.

As a matter of judicial economy, it does not seem to make sense to permit the Licensee to contest the reasonableness of the decision by the City of Lakeville in this contested case proceeding. The City of Lakeville is not a party to this proceeding. Additionally, the Commissioner of Health would lack authority to direct the City of Lakeville to approve a plan or to disapprove it in a particular manner, such as with Findings of Fact in support of its determination. As the case law cited by the Licensee in its brief indicates, the customary method of challenging a municipal decision of this type is through an application for a writ of mandamus. "In situations where a governing body acts arbitrarily, capriciously and unreasonably, a writ of mandamus shall issue to remedy the unjust result." *City of Barnum v. County of -Carleton*, 386 N.W.2d 770, 776 (Minn.App. 1986); *Zylka v. City of Crystal* 283 Minn. 192, 167 N.W.2d 45 (1969).

It is therefore concluded that the appropriate forum for a determination as to whether or not the City of Lakeville acted in an arbitrary manner is the District Court. The District Court is accustomed to such review. Furthermore, the District Court has authority to order the City of Lakeville to approve the plan or to restructure its decisionmaking process if that is appropriate. A consideration of the reasonableness of the disapproval in the contested case proceeding would merely duplicate the judicial determination, would not finally resolve the matter, and is therefore inappropriate. It is recommended, however, that the Commissioner of Health stay her final decision in this matter for 30 days in order to permit the Licensee to initiate a proceeding in District Court and to stay issuance of a final decision pending resolution of

the -matter-in District Court if such an appeal is taken. The granting of the stays would alleviate the legitimate due process concerns by allowing a forum to resolve the propriety of the City's actions prior to the final decision in this case.

G.A.B.