IN THE SUPREME COURT OF IOWA

NO. 20-0837

SIOUX CITY TRUCK SALES, INC.,
Plaintiff-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION
and PETERBILT MOTORS COMPANY,
Defendants-Appellees,

and

ALL STATE PETERBILT OF CLEAR LAKE,
Intervenor.

Response to Iowa Department of Transportation's Application for Further Review

(Court of Appeal's Decision filed June 16, 2021)

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Reprising and recycling its arguments made before the ALJ, the Iowa DOT, and the District Court, Peterbilt (through IDOT's Brief), fails to recognize, never mind show error with, many important legal conclusions, points, and principles contained in the Court of Appeals decision.

IDOT's request for further review is legally defective as it fails to establish that any of the traditional (or other important) grounds required for review exist. Indeed, other than listing two of the statutory review grounds in a perfunctory manner, IDOT does not make any attempt to logically tether the Court of Appeals decision or reasoning to those specific alleged grounds for review. IDOT instead, in its Application for Further Review, weaves together lengthy snippets of policy arguments that Peterbilt made in this case in its briefs from the past four years. While these policy arguments could arguably be important to a legislator contemplating proposed similar legislation or to a court that is properly authorized to conduct a legislative history, they are not directly relevant to a court's defining of the word "community" in the Iowa Motor Vehicle Act, a word which is explicitly defined in the relevant statute in this case.

IDOT Fails to Establish a Ground for Further Review

Iowa R. App. P. 6.1103, the rule governing further review to the Iowa Supreme Court, states in part:

> Further review by the supreme court is not a matter of right, but of judicial discretion. An application for further review will not be granted in normal circumstances. The following, although neither controlling nor fully measuring the supreme court's discretion, indicate the character of the reasons the court considers:
>
> (1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter;
>
> (2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court;

> (3) The court of appeals has decided a case where there is an important question of changing legal principles;
>
> (4) The case presents an issue of broad public importance that the supreme court should ultimately determine.

In its statement seeking Further Review, IDOT asserts that the appeal involves "an important question of law that has not been, but should be, settled by the Supreme Court." (IDOT Application, pg. 5.) "Plus", the DOT states: " this case presents a matter of broad public importance the Supreme Court should ultimately determine." (*Id.*) IDOT, however, cites no statutory provisions, court rules, case law, or arguments that explain why or how its argument that an explicit statutory definition of the word "community" should be ignored or fits within the two prongs identified by IDOT. Simply arguing that in its view the case was decided incorrectly or 'too rigidly' based on policy grounds does not entitle IDOT to review.

Indeed, Iowa R. App. P. 6.1103 cautions against requests for further review like the one made by IDOT:

> The application must contain a direct and concise statement of the reasons why the case warrants further review. The statement must not be limited to a recitation of rule 6.1103 (1)(b). For example, if the claim is that the court of appeals decision is in conflict with a decision of the supreme court or the court of appeals on an important matter, the party must cite to the case in conflict.

Iowa R. App. P. 6.1103

The closest IDOT comes to meeting one of the required standards for further review is when it states that the Court of Appeals' decision conflicts with the principles of statutory construction previously applied to the IMVA, but then undercuts the legal import of the assertion by failing to provide relevant cases showing such conflict. In the remainder of its Application, IDOT again complains that the Court of Appeals should have essayed its own definition of

"community" (and not used the explicitly defined statutory definition) based on IDOT's defective view of the legislative history of the IMVA.

As is clear to everyone, there are two goals of the IMVA, not just one, as suggested by IDOT. And, according to IDOT, if one myopically uses the statutory goal of examining consumer demand (and ignores the other goal of furthering the welfare of Iowa vehicles dealers or franchisees) the statutory verbiage "unless otherwise required" must somehow legally trump the explicitly defined term "community." After its argument regarding statutory purpose, IDOT next attempts to erect a foundation on a newly-manufactured 'logical analysis test': "one would logically look at the impact the new dealership would have in the area where the dual assignment is proposed." (IDOT Application, pg. 8.) IDOT provides no further explanation for how the failure to use it or its results after application would or could provide a basis for further review.

Still not having identified a cognizable reason for further review, IDOT in its supporting reasons section discusses its 'overlap' theory where under Peterbilt's reasoning the explicit definition of community chosen and set forth by the legislature is inherently defective unless it 'overlaps' with the personally chosen gerrymandered county configuration specifically chosen at will by the manufacturer, here Peterbilt. (IDOT Application, pg. 8.) There is no such requirement, nor could there be one in this case given that the definition is explicitly defined. Clearly the legislature would know how to incorporate the word 'overlap' if it had wanted to use IDOT and Peterbilt's artificially manufactured definition. And, again, IDOT includes no reasoning as to why a rejection of its artificial overlap theory would entitle it to further review, which is the purpose of the briefing at this point of the case.

Finally, in the last paragraph of its 'why should extraordinary review be granted' section, IDOT asserts that IDOT would in some mysterious way be 'hampered' by the decision of the

Court of Appeals in that under the statutory definition IDOT could not ensure that the public interest is protected through adequate dealership products and services. This makes no sense for many reasons, the most obvious of which is that Section 322A.16 itself allows the issue of unmet demand to be explicitly addressed by IDOT. The issue about which IDOT and Peterbilt are allegedly concerned (unmet demand) can be evaluated under the fourth, fifth, and sixth prongs of Section 322A.16; there is no reason at all, and none is provided by IDOT, why that issue must be evaluated only under the first, unrelated, prong.[1]

As an afterthought, before abandoning its effort to try to establish cause for the extraordinary review, IDOT ends its 'why' discussion by suggesting, with no justification – cursory or otherwise – that the Court of Appeals decision would undercut certainty. In making this assertion, IDOT forgets that the Court of Appeals decision – by requiring the specific use of the explicit definition for community set forth in the statute -- achieves the highest level of certainty. The definition set forth in writing in the statute will hereafter be identifiable, immutable, and easily applied. By using this absolute definition, as the Court of Appeals pointed

[1] Section 322A.16 Additional Guidelines.
In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department of inspections and appeals shall take into consideration the existing circumstances, including, but not limited to:
1. Amount of business transacted by other franchisees of the same line-make in that community.
2. Investment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the performance of their part of their franchises.
3. Permanency of the investment.
4. Effect on the retail motor vehicle business as a whole in that community.
5. Whether it is injurious to the public welfare for an additional franchise to be established.
6. Whether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicles of the line-make which shall include the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified service personnel.

out, the statute would not be subject to the very gerrymandering that Peterbilt undertook in this case.

IDOT's legal confusion does not end with its inability to articulate a rationale for why this Court should hear this case, as it readily extends into its attempt to formulate the issue on appeal. Rather than providing a concise question for review without unnecessary detail, the issue drafted by IDOT is incredibly complicated, obtuse and fact-heavy, another indication that it cannot locate a good policy reason for why this case needs further review.[2]

Preliminary Observations of the Court of Appeals.

Beyond failing to identify or articulate a sufficient legal ground justifying further review of the Court of Appeals case, IDOT also fails to identify the alleged mistakes made by the Court of Appeals. The reason for this is two-fold. First, the Court of Appeals decision is correct on the law and facts. Second, IDOT's substantive 'argument' in the Brief appears to be a cut and paste process resulting in arguments made and conclusions reached by other bodies and parties during

[2] IDOT now, as did Peterbilt earlier in the case, argues that because the "community" as defined in the dealership agreement includes a small part of an adjacent state, this in some way would 'taint' the analysis under the statutory definition of community. First, this is incorrect: the factor in dispute (the first factor under Section 322A.16) focuses properly on the efforts and money expended by the existing franchisee or dealer, in this case SCTS. (As the Court of Appeals noted, Peterbilt was free to negotiate whatever area of responsibility it desired when it signed the dealership agreement). Second, even if IDOT's criticism had any validity, IDOT in balancing and determining good cause may choose not to 'count' the activities in the adjacent state. *See, e.g., Motor Inn, Inc. v. General Motors, LLC,* Iowa Department of Inspections and Appeals Case. No. 17DOTMF0001 slip. op. at 12 (January 4, 2018) (GM failed to split out sales of the dealer in Iowa and Minnesota and therefore its proof was deficient regarding the issue of substantial detriment and performance). Every one of the counsel in this case for Peterbilt was counsel for GM in the *Motor Inn* case. DOT, who was also a party in that case, knows about this case and argument as well. Peterbilt and IDOT are well aware of the principles in *Motor Inn.*

the prior four years of litigation – almost none of the arguments made by IDOT regarding the merits of the Court of Appeals decision focus on the reasoning, cases, or conclusions used by the Court of Appeals.

Set forth below is a short summary of the legal points made by the Court of Appeals and relied upon in reaching its ruling. After each point, IDOT's response is set forth. It is notable that IDOT has failed to identify or debunk most of these points. Accordingly, the Court of Appeals' decision cannot be a ground for the requested further appeal.

1. The Court of Appeals stated that the issue in dispute is "whether the DOT and the district court used the wrong definition when assessing good cause to appoint an additional dealer-franchisee under section 322A.16" (App Decision, pg. 7.) IDOT's formulation of the issue is almost incomprehensible as it is laced with jargon and esoteric alleged facts in the case.
2. The Court of Appeals stated: "It might be necessary to determine legislative intent to determine this issue, but only if the language in issue is ambiguous."(App. Decision, pg. 8.) IDOT rejects this correct principle, asserting that even absent ambiguity (as correctly defined), that legislative intent must be examined to determine the meaning of "community." IDOT provides no case law to support this incorrect legal proposition.
3. Before examining the text, purely as background, the Court of Appeals set forth the purposes of the IMVA, identifying two:
    a. Section 322A aims "to provide for fair trade practices by motor vehicle franchisors." (App. Decision, pgs. 7-8.)

b. “The preamble identifies dual purposes for the legislation”, including protection of the individual dealer in the face of competition and the continuation of services for the public. (App.Decision, pg. 8.)

Despite the clear case law and statutory language supporting these dual goals, IDOT, as well as Peterbilt throughout the entire proceedings below, refused to even acknowledge that the statute has two goals. IDOT in its request for review, which spans almost 25 pages, fails to once recognize that one of the two goals of the IMVA is to ensure that dealer/franchisees are treated fairly.

4. The Court of Appeals noted that there was no legal necessity to examine legislative intent in this case: “Indeed, we need not hunt for legislative intent because the code provides an unambiguous definition of the key term.” (App. Decision, pg. 8.) As noted above, IDOT incorrectly believes that legislative intent should be evaluated and prevail regardless of any finding of ambiguity. However, it cites no cases for doing so. Further, IDOT’s view is inherently flawed as it has failed to give acknowledgement, never mind credence, to both goals of the IMVA.

5. The Court of Appeals stated that “The legislature explicitly defined “community” as “the franchisee’s area of responsibility as stipulated in the franchise.”(App. Decision, pg. 8.) IDOT seems to agree with this black-and-white proposition but does not agree that the word “community” is the term to be defined; according to IDOT, it is necessary to define the term “that community” and further that this term cannot include the actual definition of the word “community” set forth in the statute. Even further, IDOT asserts that despite the word “community” appearing in the two relevant provisions 322A.4 and 322A.16, it

must be interpreted differently for each section. IDOT presents no cases supporting this strained and incorrect proposition.

6. The Court of Appeals noted that "the ALJ and the DOT refused to use the clear definition of "community" and instead used a 'fact-specific definition of community…" (App. Decision, pg. 11.) IDOT disagreed that the clear definition of "community" in the statute should be applied and has argued for a fact-specific definition that could be gerrymandered by the manufacturer, such as Peterbilt.
7. The Court of Appeals stated the "district court used a "'different [and incorrect] approach to statutory interpretation.'" IDOT argued that the district court's decision was correct (even though IDOT failed to account for the different approaches used by the ALJ, DOT and the district court), and even though it fell into the same conceptual trap of skipping the 'need to find ambiguity' step of the analysis. (Application, pg. 12-13.)
8. The Court of Appeals identified the erroneous nature of the district court's decision as follows: the district court took the disclaimer in the IMVA ("unless the context otherwise requires") "as clearance to bypass the statutory definition and resort to the rules of statutory construction." (App. Decision, pg. 12.) In so doing, the court focused on the articles "any" and "that", concluding that the inclusion of those two modifiers signaled a departure from the statutory definition of community." (App. Decision, pg. 12.) The district court, according to the Court of Appeals, based that decision on three incorrect sub-issues, including:
    a. The district court view, "that community" in section 322A.16 was allegedly undefined.
    b. "that" allegedly must have meaning. (App. Decision, pg. 12.)

c. The word "that" allegedly means that the legislature intended to narrow the meaning of community under Section 322A.16 (App. Decision, pg. 13.)

IDOT, of course, rests its entire case on the view that the word "that" when included with the word "community" prevents the use of the explicit statutory definition of "community."

Legal Principles Used and Findings Made by the Court of Appeals

9. The Court of Appeals noted that it is permitted and obligated to interpret the word "community" itself and is not required to abide by the IDOT view; in other words, the Court of Appeals viewed its job properly as to forming "an independent determination of the meaning of pertinent statutes." (App. Decision, pg. 13.) IDOT has argued, incorrectly, that all courts must show deference to the decision of DOT.
10. The Court of Appeals used traditional interpretive tools, holding that "neither of Peterbilt's arguments justifies applying a different definition of "community" than the legislature prescribed." (App. Decision, pg. 14.) Absent an ambiguity, "we are obligated to apply the statutory definition … as written…" (App. Decision, pg. 14.) IDOT disagreed with this legal proposition without providing any caselaw, stating that absent ambiguity it is permissible to use the full panoply of statutory interpretation aids.
11. Applying these tools of interpretation, the Court of Appeals first looked at the issue of ambiguity, explaining that ambiguity exists "if reasonable minds could disagree as to its meaning." (App. Decision, pg. 14.) IDOT did not address this specific issue instead making the argument that Section 322A.16's language created ambiguity; in support of this proposition IDOT provided no caselaw, instead relying on almost 25 pages of

recycled arguments explaining why if IDOT and Peterbilt had written the statute, they would interpret the word community as differing from the statutory definition.

12. The Court of Appeals concluded that the district court failed to use "these traditional interpretive tools", placing "inordinate value on the introductory phrase 'unless context otherwise requires.'" (App. Decision, pgs. 14-15.) IDOT entirely ignored a justification for not using traditional statutory interpretation, instead stating that the only "logical" interpretation is to ignore the definition of community set forth in the statute by the legislature. However, IDOT provided no case law supporting the use of "logic" to displace an explicit statutory definition or traditional statutory interpretation principles.
13. The Court of Appeals examined case law regarding when an ambiguity exists (and where therefore the 'conditional language' might become relevant, concluding that the ambiguity must exist either in the (1) definition itself, or (2) the relevant provisions in which the disputed term appears. IDOT neither recognized nor commented upon this legal principle or supporting cases.
14. The Court of Appeals explained that Peterbilt argued that the case falls in the second category, since "when paired with the article "that" in section 322A.16 the "meaning of "community' becomes ambiguous." (App. Decision, pg. 15.) [In other words, the Court of Appeals correctly concluded that Peterbilt was not saying that the definition "community" itself was ambiguous.] IDOT did not address this distinction, or whether the characterization of its argument regarding ambiguity was correct. Instead, IDOT merely repeated its old argument that because the legislature defined "community" but not "that community," the term community must be ambiguous and the statutory definition may be rejected. (App. Decision, pgs. 15-16.)

15. The Court of Appeals explained that no contextual ambiguity exists. The legislature defined "community" as "the franchisee's area of responsibility as stipulated in the franchise." Section 322A.1(2) (App. Decision, pg. 16.) There is no ambiguity in that definition. (App. Decision, pg. 16.) IDOT in its Brief offers no reason or case law for "why the context of section 322A.16 would call for a different definition." As the Court of Appeals noted on this issue: Peterbilt ignores the need to show ambiguity and becomes "caught up in its complaint", urging that "we must consider the "logical consequences" and "the context of the case". This is legally infirm in that "this fact driven approach would render the definitional section meaningless."
16. According to the Court of Appeals, there is another unavoidable legal error with Peterbilt's argument: "Without supportive authority, Peterbilt contends 'the only plausible interpretation is that ['that community'] is referring to the proposed community of the proposed franchisee." "But that contention clashes with another definition. The legislature defined "franchisee" as "a person who receives motor vehicles from the franchiser under a franchise and who offers and sells such motor vehicles to the general public." Section 3232A.1(6) "By that definition, a proposed dealer like Allstate that had not yet entered into a franchise with Peterbilt is not a franchisee under this chapter.\6 Thus, the phrase "that community" refers to SCTS's area of responsibility as stipulated in the franchise." (App. Decision, pg. 17.) IDOT in its Brief asking for further review, again fails to acknowledge or answer this serious defect in its argument.
17. The Court of Appeals also, to be complete with its analysis, assumed for the purposes of argument, that the word 'that' in fact modified the word 'community' in section 322A.16. Even using Peterbilt and IDOTs initial assumption hypothetically, the Court of Appeals

nevertheless concluded it could "see no reason to abandon the definition of community in Section 322A.1(2)." IDOT did not recognize or address this specific observation.

18. In so doing, the Court of Appeals reasoned that although the district court was correct to read Section 322A.4 on additional franchises together with the good cause provision of 322A.16, it was incorrect to fail to recognize that Section 322A.16's references to "community" are back to Section 322A.4, and that this is consistent with the existence of the word "that." The Court of Appeals further stated that "contrary to the district court's analysis, section 322A.4 requires a franchiser to establish good cause for an additional dealership in "any community in which the same line is represented." (App. Decision, pgs. 17-18.) "Here that community was SCTS's area of responsibility as stipulated in its franchise with Peterbilt." (App. Decision, pg. 18.) IDOT did not acknowledge or address specifically this observation by the Court of Appeals.

19. The Court of Appeals states that "Peterbilt acknowledges the goal of section 322A.4 'is to ensure that an existing dealer can protest any establishment proposed in its assigned area of responsibility." (App. Decision, pg.18 n.8.) However, the Court of Appeals stated that it could "find nothing" showing that the statutory language intended "that community" to mean some undefined portion of the existing franchisee's area of responsibility. (App. Decision, pg. 18.) IDOT failed to reply to this point in its Brief for further review.

20. The Court of Appeals toward the end of its analysis also raised a point, that although asserted earlier in the case by SCTS, had not been addressed by Peterbilt, IDOT or any of the other decisionmakers. As the Court of Appeals stated, if the definition concocted by IDOT and Peterbilt for "that community" did not include the explicit definition of

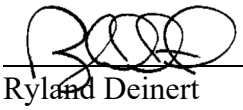
"community", then "As SCTS argues, a franchiser could "gerrymander" those boundaries such that [t]he magnitude and result of each individual statutory factor could be starkly different depending on where [the franchiser] chooses to locate the borders… We agree the legislature could not have intended that result." See State v. Miller ("We may not – under the guise of statutory construction – enlarge or otherwise change the terms of a statute as the legislature adopted it."). (App. Decision, pg. 18.) IDOT has not replied to this argument in its Brief.

Conclusion.

None of these rehashed disconnected arguments asserted by IDOT relates to – never mind establishes – any of the required grounds for further review. Indeed, IDOT's Brief is almost identical in its arguments to those made by Peterbilt on appeal to the district court in this case.

Although IDOT requests that this Court review the Court of Appeal decision, IDOT fails to base any of its arguments on the reasoning employed or cases cited by the Court of Appeals. Because IDOT in its Brief strives to animate legal ghosts of the past from proceedings below, it fails to acknowledge or address the nuanced but spot-on reasoning and legal analysis of the Court of Appeals.

Respectfully submitted,



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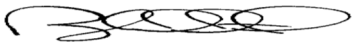
CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleading on __7/21__ _____, 2021

By: _____ U.S. Mail _____ facsimile
_____ Hand delivered _____ Overnight courier
_____ Email __X___ ECF



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