

IN THE IOWA SUPREME COURT

No. 22-0473

LIME LOUNGE, LLC,
Plaintiff-Appellant,

vs.

CITY OF DES MOINES, IOWA,
Defendant-Appellee.

On Appeal from the Iowa District Court,
The Honorable Dustria A. Relph

Reply Brief for Appellant

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Iowa Code §123*passim*

Statement of the Issues Presented for Review

(1) Iowa Grocery Industry Ass'n v. City of Des Moines is Controlling Case Law in the Instant Case.

Cases

Iowa Grocery Industry Ass'n v. City of Des Moines, 712 N.W.2d 675 (2006)

Kimble v. Marvel Entm't, LLC, 576 U.S. 446 (2015)

Michigan v. Bay Mills Indian Community, 188 L.Ed.2d 1071 (2014)

Payne v. Tennessee, 501 U.S. 808 (1991)

Statutes

Iowa Code §123

Des Moines Municipal Code §134-954

Argument

I. Iowa Grocery Industry Ass'n v. City of Des Moines is Controlling Case Law in the Instant Case.

“*Stare decisis* —in English, the idea that today's Court should stand by yesterday's decisions—is ‘a foundation stone of the rule of law.’” *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446 (2015) (citing *Michigan v. Bay Mills Indian Community*, 188 L.Ed.2d 1071 (2014)). “*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U.S. 808 (1991) (internal citations omitted). The Iowa Supreme Court in *Iowa Grocery* heard the arguments, reviewed the law, and issued a detailed, well-reasoned, and comprehensive finding in response to the issue of fees, permits, and processes required by a local authority which were not specifically authorized by—or in conflict with—Iowa Code Chapter 123. *Iowa Grocery Industry Ass'n v. City of Des Moines*. 712 N.W.2d 675 (2006).

Nevertheless, the district court, in its final order, ignored the fundamental principal of *stare decisis* by failing to apply the Court’s *Iowa Grocery* decision and analysis, holding that the case was “not particularly informative.” (App 25). The City takes a similar approach in its brief,

making only minimal reference to (and essentially *no* analysis of) *Iowa Grocery*. (Appellee Brief, p. 27, 37). Why ignore a controlling Iowa Supreme Court decision? The reason is simple—the application of *Iowa Grocery* inarguably demonstrates that the Des Moines Municipal Code §134-954 is prohibited under Iowa Code Chapter 123.

The extent of the City’s argument is that because their process (and its fee) are labeled “zoning” *Iowa Grocery* does not apply. This is no exaggeration. Quite frankly, the City’s approach should be taken as an insult to this Court. The City is making *nearly identical arguments* in this case as it made (and the Court rejected) in *Iowa Grocery*. For example, in its motion for summary judgment brief at the district court level in *Iowa Grocery*, the City argued:

...the City is not explicitly prohibited from imposing the fee, coupled with the fact that the City is allowed significant discretion in the application process, coupled with the fact that the city is explicitly allowed to legislate in the area, all combine to mean that the City’s fee ordinance is not preempted.

(App 330-331). And, that “[n]othing in Chapter 123 of The Code or Section 185 of the IAC forbids the city from imposing a license application fee.”

(App 331-332). The *Iowa Grocery* Court rejected these arguments by the City, just as it did with the home rule authority arguments that the City has also now recycled in the instant case.

Similarly, the City in its brief in the instant case argues “[b]ecause the application fee associated with the CUP was a fee associated with zoning...it was clearly not preempted by Iowa Code § 123.37.” (Appellee Brief, p. 27). However, even the most rudimentary analysis reveals that the City simply replaced its previous application process and fee with a new fee and another “extra hurdle” process. *Iowa Grocery* at 681. The City has now changed the “license application fee”—which the *Iowa Grocery* Court deemed illegal—to an “Application Fee” and “Notification Fee” for a “...**Permit for Business Selling Wine, Liquor, and/or Beer...**” (App 180-182). To employ a familiar phrase: if it walks like a duck, and it talks like a duck, it *is* a duck.

The City admits that:

- (1) “Obtaining a Conditional Use Permit requires an ‘application fee’ of \$300” (App 57);
- (2) “Obtaining a Conditional Use Permit requires a ‘notification fee’” (App 58);
- (3) “The City of Des Moines does not remit any portion of the ‘application fee’ or ‘notification fee’ collected for a Conditional Use Permit to the State of Iowa” (App 59);
- (4) “A Conditional Use Permit is a permit (App 60);
- (5) “In order for a night club or tavern to sell alcoholic beverages, wine, or beer in the City of Des Moines, that entity must first obtain a Conditional Use Permit” (App 62); and
- (6) “In order for a night club or tavern to sell alcoholic beverages, wine or beer in the City of Des Moines, that entity must pay the Conditional Use Permit fee.” (App 63).

If the permit at issue *looks* like a permit to obtain a liquor license, and it *functions* like a permit to obtain a liquor license, the logical conclusion is that it *is* a permit to obtain a liquor license. And of course, a permit to obtain a liquor license—and the associated fee—are impermissible under Iowa Code Chapter 123. The City makes no effort to differentiate what it is doing now versus what it was doing 16 years ago prior to *Iowa Grocery*, save for a not-so-clever relabeling. This Court should see the City’s argument for the sham that it is and strike down Des Moines Municipal Code §134-954 pursuant to its holding in *Iowa Grocery*.

Conclusion

As such, the Appellant respectfully requests that this Court reverse and remand this case for findings consistent with the law and arguments set forth by the Appellant in this brief.

Request for Oral Argument

The Appellant respectfully requests that the Court set this matter for Oral Argument.

/s/ Cornelius S. Qualley

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Certificate of Costs

Appellant certifies that its Brief has been filed electronically and, as such, there are no printing or duplicating costs to be assessed.

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

This brief complies with the type-volume limitation of Iowa R. App. P.

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/s/ Cornelius Qualley

Dated: July 5, 2022

Certificate of Service

The undersigned certifies a copy of this combined certificate was served on July 5, 2022 upon the all attorneys of record and upon the clerk of the supreme court via EDMS.

/s/ Cornelius S. Qualley
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