IN THE COURT OF APPEALS OF IOWA

FILED
AUG 28 1998
CLERK SUPREME COURT

No. 8-408 / 97-1266

CIRCLE LAKE DISTRIBUTING COMPANY (an Iowa Corporation),
Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Gilbert K. Bovard, Judge.

Circle Lake appeals the district court's ruling on judicial review affirming the Iowa Department of Transportation's ruling which denied Circle Lake's request for an entrance permit on a state highway. **AFFIRMED.**

J. Vance Jorgenson, Mason City, for appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

COPIES

VOGEL, J.

Circle Lake Distributing Company (Circle Lake) appeals the district court ruling which upheld the Iowa Department of Transportation's (DOT) denial of its request for an entrance permit on a state highway. As we find this was not a contested case action which required an evidentiary hearing and that the denial was neither arbitrary nor capricious, we affirm.

Background facts. Circle Lake operates a distributing business at the intersection of U.S. Highways 65 and 18 in Mason City. Although Circle Lake has access from its property onto Highway 65, in November of 1994 it applied to the DOT for a second entrance permit onto Highway 18. On November 29, 1994, a DOT engineer denied the application, noting that Circle Lake already had one entrance and that an adjoining parking lot could be used for additional access. Circle Lake filed an appeal within the agency asserting that the adjoining parking lot was not an available option and that the denial of the entrance permit was arbitrary and capricious. Circle Lake also requested that its appeal first be considered under informal settlement procedures and that if unsuccessful, the appeal be considered as a contested case to allow for an evidentiary hearing.

The DOT denied the request for a contested case hearing, finding that Circle Lake had no constitutional or statutory right to an additional entrance nor to an

evidentiary hearing on the entrance permit. The DOT further affirmed the denial of the permit, finding that a second entrance would be unsafe.

Circle Lake filed a petition for judicial review. The district court affirmed the DOT, finding that Circle Lake's request was not a contested case action but involved "other agency action." The court further determined that the decision to deny the permit was neither arbitrary nor capricious. Circle Lake appeals.

Scope of review. A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. *Zenor v. Iowa Dep't of Transp.*, 558 N.W.2d 427, 430 (Iowa App. 1996). To make that determination, this court applies the standards of Iowa Code section 17A.19(8) to the agency action to determine whether our conclusions are the same as the district court's. *Id.*

I. Contested case/ due process right. Circle Lake claims that the district court erred in determining that this matter was not a contested case action and asserts that due process requires an evidentiary hearing.

The Iowa Administrative Procedure Act (IAPA) divides administrative action into three categories: rulemaking, adjudication, and other "agency action." *See* Iowa Code § 17A.2 (8), (2), and (9) (1995); *Polk County v. Iowa State Appeal Bd.*, 330 N.W.2d 267, 276 (Iowa 1983). The latter is not governed by the IAPA with the

exception that it is subject to judicial review provisions. Iowa Code § 17A.19 (1995); *Polk County*, 330 N.W.2d at 276 (citations omitted).

Contested case hearings as envisioned in section 17A.12 are those in which the legal rights, duties, or privileges of a party are required by constitution or statute to be determined by the agency after an opportunity for an evidentiary hearing. *See* Iowa Code § 17A.2(2); *Sindlinger v. Iowa State Bd. of Regents*, 503 N.W.2d 387, 390 n.1 (Iowa 1993). Before a deprivation of due process can be asserted, a party must demonstrate that an entitlement to a liberty or property interest has been violated. *See Notelzah, Inc. v. Destival*, 537 N.W.2d 687, 691 (Iowa 1995). We find no statutory requirement that mandates a hearing under these circumstances, and no authority to support Circle Lake's claim that it has a property interest in a second entrance. We therefore agree with the district court's determination that the denial of the permit was "other agency action" which did not require an evidentiary hearing.

It is important to note that Circle Lake was not denied any review of the permit denial. DOT procedures allow the applicant to request further review by resubmitting the application along with background information and an explanation of the need for access to the director of transportation. *See* Iowa Admin. Code § 4.1(e). We believe this available path of appeals provides sufficient opportunity for Circle Lake to seek relief.

II. Arbitrary and capricious action. Circle Lake alternatively asserts that the DOT's denial of the permit was arbitrary, capricious, and not supported by substantial evidence.

Section 17A.19(8)(g) of the IAPA authorizes the district court to grant appropriate relief from an agency action which is unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. However, because this is a judicial review of "other agency action," challenges are more limited and a sufficiency of the evidence challenge is not available. *See Sheet Metal Contractors of Iowa v. Iowa Commissioner of Ins.*, 427 N.W.2d 859, 867 (Iowa 1988).

In ruling on Circle Lake's initial appeal, the director of the DOT explained that the permit was denied not only because Circle Lake already had an entrance, but also because DOT engineers determined that an entrance onto Highway 18 would be unsafe. Because Circle Lake disagrees with the DOT engineers, it concludes that their finding was unreasonable and arbitrary. However, we readily defer to the agency's expertise in making such decisions and decline to second-guess the denial of this permit on appeal. *See Busing v. Iowa Dep't of Transp.*, 455 N.W.2d 921, 922 (Iowa 1990); *Willett v. Iowa Dep't of Transp.*, 572 N.W.2d 172, 174 (Iowa App. 1997). We therefore affirm the district court.

AFFIRMED.