IN THE COURT OF APPEALS OF IOWA

No. 1-145 / 00-1516
Filed March 28, 2001

G & M, INC.,
Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF COMMERCE, ALCOHOLIC BEVERAGES DIVISION, and City of Des Moines,
Respondents-Appellees.

FILED
MAR 23 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

G & M, Inc. appeals from the district court's ruling upholding the decision of the administrator of the Alcoholic Beverages Division to deny G & M, Inc.'s application for beer and wine permits. G & M, Inc. contends the district court erred in determining it did not possess the requisite good moral character required for renewal of its beer and wine permits. **AFFIRMED.**

Ivy Ross Rivello of Parrish, Kruidenier, Moss, Dunn, Montgomery & Boles, L.L.P., Des Moines, for appellant.

Douglas P. Philiph, Assistant City Attorney, Des Moines, for appellee-City.

Heard by Sackett, C.J., and Vogel and Zimmer, JJ.

SACKETT, C.J.

Appellant G & M, Inc., appeals from the district court's ruling affirming the administrative decision by the Alcoholic Beverages Division of the Iowa Department of Commerce denying the appellant a renewed beer and wine permit.

On June 21, 1999, the City of Des Moines denied appellant's application for renewal of a permit to sell beer and wine. G & M appealed to the Alcoholic Beverages Division (ABD) the next day. The administrative law judge at the ABD reversed the City's permit denial in a proposed decision, which the City then appealed. In a January 3, 2000, final decision, an ABD administrator reversed the proposed decision (which had reversed the permit denial), in effect affirming the City's initial denial of the permit. In its final decision the ABD found appellant G & M's owner, Gurpal Singh, lacked the requisite good moral character to possess a liquor license. In early 1999 Singh had pleaded guilty to a charge of fraudulent practices in connection with the purchase of food stamps at his place of business for approximately half of their value. He received a deferred judgment on April 13, 1999, contingent upon his successfully completing a one-year probationary period including community service hours and a fraudulent practices class at DMACC. On August 29, 2000, following appellant G & M's petition for judicial review, the district court affirmed the final ABD decision (also an affirmance of the initial City permit denial). Appellant appeals that ruling.

Our review of ABD decisions is governed by the Administrative Procedure Act, Iowa Code chapter 17A. *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576

N.W.2d 352, 354 (Iowa 1998). We will grant relief where substantial rights of a party have been prejudiced because the agency action is in excess of the agency's statutory authority, is unsupported by substantial evidence, is unreasonable, arbitrary, or capricious, or is affected by other error of law. *Id.* *See* Iowa Code § 17A.19(8) (1997). When reviewing the decision of the district court we must determine whether the district court properly applied the law; our scope of review encompasses the entire record and is not limited to the agency's findings. *Poula v. Siouxland Wall & Ceiling, Inc.*, 516 N.W.2d 910, 911 (Iowa Ct. App. 1994).

We first address the issue of whether the ABD committed an error of law. We conclude that it did not. We grant only limited deference to the ABD on issues of law, including statutory interpretation. *Dico, Inc.*, 576 N.W.2d at 354. *See Norland v. Iowa Dep't of Job Serv.*, 412 N.W.2d 904, 908 (Iowa 1987).

Iowa Code section 123.30(1)(a) (1999) authorizes the issuance of a liquor license to "any person who is of good moral character." The Code defines "good moral character" to include those persons with "such financial standing and good reputation as will satisfy the administrator that the person will comply with [Chapter 123, Alcoholic Beverage Control]. . . ." Iowa Code § 123.3(26) (1999). The ABD has issued regulations supplementing the Code, guiding the administrator in his review of an individual's reputation:

> A local authority or the administrator may consider an applicant's . . . good reputation in addition to the other requirements and conditions for obtaining a . . . wine or beer permit . . . .
>
> b. In evaluating an applicant's "good reputation," the local authority or the administrator may consider such factors as, *but not limited*

> *to*, the following: . . . licensee or permittee misdemeanor convictions, the recency of the misdemeanor convictions.

185 Iowa Administrative Code 4.2(4), 4.2(4)(b)(emphasis added).

The appellant, citing *Iowa Beer and Liquor Control Department v. McBlain*, 263 N.W.2d 226 (Iowa 1977), argues that his deferred judgment does not count as a "conviction," as it is referred to in the above regulation, and for this reason it cannot be used to impeach his character in this proceeding. When making a judgment as to character and reputation, however, an ABD administrator has broad discretion extending beyond any parameters stated in the regulations. A full reading of the regulation shows that the administrator is not constrained by any boundaries that the term "convictions" might impose: "In evaluating an applicant's 'good reputation,' the local authority or the administrator may consider such factors as, *but not limited to*, . . . misdemeanor convictions." An analysis of the inclusiveness of "convictions" in this regulation, therefore, would not resolve the issue.

The appellant further argues that under the statute the only factors that an administrator can consider when evaluating an individual's reputation are those factors relating to Chapter 123, or the control of alcoholic beverages. I.C.A. § 123.3(26). The appellant claims that a deferred judgment due to fraudulent practices in the sale of food stamps is unrelated to the control of alcoholic beverages and should therefore be excluded from any analysis of his reputation by the ABD. Contrary to the appellant's analysis, a plain reading of the statute shows that section 123.3(26) provides for a broad scope of character inquiry: the administrator is to be satisfied that the person will comply not only with Chapter

123, but also with all laws, ordinances, and *regulations* applicable to a person's operations under Chapter 123. As we stated earlier, ABD regulations do not limit the administrator's discretion when he is evaluating an individual's reputation for purposes of issuing an alcohol permit. However, even if under section 123.3(26) the administrator could only consider factors directly relating to Chapter 123, the appellant's fraudulent practices would nevertheless be an allowable factor in that consideration. As the district court pointed out, appellant's fraudulent practices were in violation of a Chapter 123 provision, specifically section 123.49(2)(j). The record shows he knowingly engaged in the criminal activity of buying food stamps at his business while it was covered by the liquor license. So whether our reasoning concludes that section 123.3(26) does not limit an administrator's inquiry or whether we find that the appellant's actions fell within the limitations, as a matter of law the ABD was not in error in its consideration of the appellant's fraudulent practices when making a determination as to his reputation and eligibility for a renewed liquor license.

We keep in mind that, notwithstanding the court's ultimate responsibility to decide issues of law, we generally leave decisions requiring judgment and falling within the agency's expertise to the informed judgment of the agency. *See Burns v. Board of Nursing,* 495 N.W.2d 698, 699 (Iowa 1993). Although the regulations suggest possible considerations (such as misdemeanor convictions) in determining a petitioner's reputation, under a plain reading of the regulation an administrator can make the judgment on whatever basis he deems relevant. In this case the ABD, looking to its regulations, determined that the appellant lacked

the good moral character and reputation required to possess a liquor license. Taking into account our deference to the ABD regarding issues within its realm of expertise, specifically the issuance of liquor licenses, we conclude the ABD ruling was not in error as a matter of law.

In our deference to agency determinations, we nevertheless must determine that they are supported by substantial evidence. I.C.A. § 17A.19(8)(f); *Farmers Coop Oil Ass'n. v. Den Hartog,* 475 N.W.2d 7, 9 (Iowa Ct. App. 1991). *See also Jackson County Public Hospital v. PERB,* 280 N.W.2d 426, 429 (Iowa 1979). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. *Eaton v. Iowa Dep't of Job Service,* 376 N.W.2d 915, 916-17 (Iowa Ct. App. 1985). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. *Henry v. Iowa Dept. of Job Service,* 391 N.W.2d 731, 734 (Iowa Ct. App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. *Id.*

In its proposed and final rulings the ABD found that the City of Des Moines relied on Gurpal Singh's deferred judgment as its means of determining that he did not have the good reputation required to possess a liquor license. In affirming the City's denial of the permit, the final decision of the ABD concluded, "The city has valid reason to doubt whether a person who has engaged in fraudulent practices will comply with all laws and rules governing the permits." At issue is whether Mr. Singh's deferred judgment on his guilty plea to fraudulent

practices qualifies as substantial evidence to support the determination by the ABD that Mr. Singh lacked the good character and reputation required to possess an alcohol permit. We conclude that it does.

ABD regulations allow the administrator to consider the reputation of the individual applying for an alcohol permit. Iowa Admin. Code r. 185 - 4.2(4). Evidence of Mr. Singh's engagement in fraudulent practices is clearly relevant to his character and reputation. We have no question that, once reviewed, that evidence is substantial to question his character and to deny him a permit. What gives us pause is the fact that the fraudulent practices evidence in this case was actually a deferred judgment, a sentence which, under evidentiary rules, cannot be used to impeach an individual's character. In providing for deferred judgments the legislature has made a policy decision that in some situations individuals willing to acknowledge their own misdeeds should be given the opportunity for a fresh start. While we recognize that administrative hearings are not strictly governed by the Iowa Rules of Evidence and that the ABD administrator can consider all manner of relevant evidence when evaluating reputation, it does appear that, in using the deferred judgment as its sole basis for denying Mr. Singh a permit, the ABD disregards the very function of a deferred judgment. In spite of Mr. Singh's acknowledging his offense and receiving a "lighter" sentence, under the ABD decision he nevertheless remains branded by a past delinquency, the very situation which the deferred judgment sentence was designed to prevent.

Question as to the treatment of deferred judgments has arisen before. In *State v. Ege,* 274 N.W.2d 350, 355-6 (Iowa 1979), the Iowa Supreme Court concluded that a witness who had successfully completed his probationary period for a deferred sentence could not be impeached with that sentence on cross-examination. In receiving a deferred sentence the witness had never been officially convicted of his crime. His "conviction," therefore, could not be used against him for purposes of impeaching his credibility.[1]

Conversely, in *State v. Brodene,* 493 N.W.2d 793, 797 (Iowa 1992), the court found that a guilty plea alone, without judgment or sentence, amounted to a conviction sufficient for impeachment purposes. In *State v. Birth,* 604 N.W.2d 664, 665 (Iowa 2000) the court reconciled these cases. The court determined in *Birth* that until a probationary period for a deferred judgment had been completed and the deferred judgment requirements fulfilled (rather than the judgment's remaining a potential conviction contingent upon the successful completion of the probationary period), a guilty plea could be used as impeachment evidence under Iowa Rule of Evidence 609(a).

With this conception of a deferred judgment as authority, we do not have reservations in affirming the ABD final decision to deny the appellant his permit. At the time of the final ABD decision, Singh had not completed his one-year probationary period. As the court found in *Birth*, at the time of the decision his deferred judgment was a mere potentiality. Under *Birth* even under the Iowa Rules of Evidence, which are stricter than evidence rules in administrative

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[1] We do recognize that the ABD is not required to find a "conviction" for purposes of evaluating Mr. Singh's reputation and character.

proceedings and which require "convictions" for impeachment purposes, evidence of the appellant's deferred judgment could have been used against him. The ABD did not err, therefore, by relying on the substantial evidence of a deferred judgment to determine the appellant lacked the good reputation required to possess an alcohol permit.

We do note, however, that at the time of the hearing and decision the appellant had been in compliance with his probationary requirements. We do not address whether similar evidence of a deferred judgment, if the probationary period is successfully completed, can be used by the ABD against an individual applying for a beer or wine permit.

AFFIRMED.