IN THE COURT OF APPEALS OF IOWA

No. 9-119 / 98-0805
Filed July 23, 1999

VIVID, INC.,

Petitioner-Appellant,

vs.

OFFICE OF RIGHT OF WAY, IOWA DEPARTMENT OF TRANSPORTATION

FILED
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CLERK SUPREME COURT

Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Petitioner appeals the revocation of its outdoor advertising sign permits. **AFFIRMED.**

Richard Updegraff and Miranda L. Hughes of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Carolyn J. Olson, Assistant Attorney General, for appellee.

Considered by Huitink, P.J., and Streit and Mahan, JJ.

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MAHAN, J.

Vivid, Inc. appeals the revocation of its outdoor advertising sign permits. Vivid contends the signs in question were not substantially modified, and it did not receive proper written notice and an opportunity for a hearing before the permits were canceled. We affirm.

Vivid had two permits for advertising signs along Highway 6 in Coralville, Iowa. Permit No 52-0061 authorized a 45.5 ft. x 16.5 ft. sign ("larger sign"). Permit No. 52-5016 authorized an 8 ft. x 4 ft. sign ("smaller sign"). The signs were located back-to-back on the same structure.

During a field review by the Iowa Department of Transportation in April of 1996, it was discovered the two signs had been modified without the submission of amended permit applications. Vivid removed, but did not replace, the wood framing and skirt on the larger sign. Vivid removed the wood because it had deteriorated over the approximately thirty-five-year existence of the sign. As a result, the dimensions of the sign were then 40 ft. x 10 ft., a 47 percent reduction in size. Vivid had intended to submit an amended permit application to enlarge the smaller sign. However, due to an error, the 8 ft. x 4 ft. dimensions were copied onto the application instead of the larger dimensions Vivid wanted. Vivid enlarged the smaller sign to 12 ft. x 6 ft., a 125 percent change in size.

In a letter dated May 6, 1996, the IDOT notified Vivid the signs had been modified in violation of Iowa Administrative Code rule 761-117.6(4) (now Iowa

Administrative Code rule 761-117.6(5)). The permits were canceled and Vivid was invited to submit applications for new permits. The letter further stated Vivid's failure to submit new applications would result in removal action by the IDOT. The signs were removed by the City of Coralville shortly thereafter on other grounds.[1]

Vivid appealed the IDOT's notice of removal. The administrative law judge sustained the IDOT's findings that the permits should be canceled, and determined the date of cancellation was the date of the notice to remove. The decision of the administrative law judge was affirmed on appeal to the reviewing officer.

Vivid petitioned for judicial review arguing the facts did not support a finding the signs had been substantially modified and that the date of cancellation should be the conclusion of the contested case proceedings, not the date of the notice of removal. The district court affirmed the decisions of the administrative law judge and the reviewing officer.

Vivid appeals.

I. STANDARD OF REVIEW. On appeal, we apply the standard of review set forth in Iowa Code section 17A.19 to the agency decision to determine if our conclusions are the same as those of the district court. *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 625 (Iowa 1997). We will reverse an agency's findings if, after we review the record as a whole, we determine substantial evidence does not support the agency findings. Iowa Code § 17A.19(8)(f); *Pointer v. Iowa Dep't of*

[1] The City of Coralville had purchased the land on which the signs were located. The signs were removed due to a road construction project.

Transp., 546 N.W.2d 623, 625 (Iowa 1996). Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made. *Id.*

II. SUBSTANTIAL MODIFICATION. Vivid contends the removal of the trim and the skirt of the larger sign is not a substantial change because the advertising face remained the same size. Even if it was a substantial change, Vivid argues it is within the "customary maintenance" exception. Vivid also contends the enlargement of the smaller sign is not a substantial change because it is still smaller than the larger sign to which it is attached back-to-back. We disagree.

A new permit is required prior to the modification of an advertising device. Iowa Admin. Code r. 761-117.6(5). "Modification means any addition to or change in dimensions . . . , except as incidental to the customary maintenance of an advertising device." Iowa Admin. Code r. 761-117.1. The dimensions of an advertising device encompasses the entire display area *including border and trim.* Iowa Admin. Code r. 761-117.3(3)(emphasis added).[2]

The larger sign, as defined by the Iowa Administrative Code, was 47 percent smaller than the permitted size for the sign. Vivid characterizes the removal of the

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[2] It appears the dimensions of Vivid's larger sign were improperly calculated by including the area of the skirt. However, Vivid has not challenged the measurement of the signs; therefore, we will assume the numbers provided are correct.

trim and skirt as "customary maintenance," simply "repairs" authorized by the rules. However, we note "repair" suggests returning the sign to its original condition and an IDOT advertising control agent testified that during customary maintenance, the rotted boards removed by Vivid would normally have been replaced. Therefore, we conclude there is substantial evidence to support the agency findings that the larger sign had been substantially modified and was subject to removal.

The smaller sign was 125 percent larger than the permitted size. Vivid cites no authority for the proposition that the size of the larger sign may be considered in determining whether or not the separately-permitted smaller sign has been substantially modified. Therefore, we conclude there is substantial evidence to support the agency findings that the smaller sign had been substantially modified and was subject to removal.

III. NOTICE AND HEARING. Vivid argues in the alternative that it did not receive proper written notice and an opportunity for a hearing before the permits were canceled, and, thus, the date of the notice of removal is not the date of cancellation of the permits. We disagree.

Vivid attempts to rely upon notice and hearing provisions of Iowa Code section 17A.18(3).[3] However, section 17A.18(3) must be read in conjunction with section

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[3] Section 17A.18(3) reads:

No revocation, suspension, annulment or withdrawal, in whole or in part, of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written, timely notice by personal service as in civil actions or by restricted certified mail to the licensee of facts or conduct and the provisions of law which warrant the intended action, and the licensee was

17A.18(1). *Beier Glass Co. v. Brundige*, 329 N.W.2d 280, 283 (Iowa 1983). Section 17A.18(1) provides:

> When the grant, denial, or renewal of a license is required by Constitution or statute to be preceded by notice and opportunity for an evidentiary hearing, the provisions of this chapter concerning contested cases apply.

Id. Thus, the provisions of section 17A.18(3) only apply if the statute requires the cancellation of an advertising permit to be preceded by notice and an opportunity for an evidentiary hearing.

Iowa Code section 306C.18, which discusses the necessity of permits for advertising devices and the application process, does not require prior notice and an opportunity for an evidentiary hearing before a permit can be canceled. Similarly, Iowa Code sections 306C.19, which outlines the thirty-day notice of removal provisions, does not require prior notice and an opportunity for an evidentiary hearing before a permit can be canceled. Therefore, we conclude Vivid received proper notice of removal and the cancellation of the permits was effective on the date of the notice of removal.

For these reasons, we affirm.

AFFIRMED.

> given an opportunity to show, in an evidentiary hearing conducted according to the provisions of this chapter for contested cases, compliance with all lawful requirements for the retention of the license.

Iowa Code § 17A.18(3).