2019 IL App (2d) 180266-U
Nos. 2-18-0266 & 2-18-0274, cons.
Order filed January 22, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MARKET SQUARE HOSPITALITY LLC, d/b/a THE INN AT MARKET SQUARE, CALLIE'S,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 17-MR-1492
ALBERT W. HILL, in his official capacity as Local Liquor Control Commissioner of the City of Zion; ZION LOCAL LIQUOR CONTROL CONTROL COMMISSION; and ILLINOIS LIQUOR CONTROL COMMISSION,	)	Honorable Michael J. Fusz,
Defendants-Appellants.	)	Judge, Presiding

JUSTICE SCHOSTOK delivered the judgment of the court.
Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The determination of the Illinois Liquor Control Commission that the plaintiff had violated a local ordinance that required it to have at least 50 seats in its restaurant when it was serving alcohol was clearly erroneous.

¶ 2 The plaintiff, Market Square Hospitality LLC, d/b/a The Inn at Market Square, Callie's (Callie's), was cited for violating a local ordinance that required it to have at least 50 seats in its restaurant when it was serving alcohol. Following an administrative hearing, the Zion Local

Liquor Control Commission (ZLLCC) upheld the citation. The Illinois Liquor Control Commission (ILCC) affirmed that decision on review. However, the circuit court of Lake County reversed the decision of the ILCC. For the reasons that follow, we affirm the circuit court's judgment.

¶ 3 I. BACKGROUND

¶ 4 The plaintiff owns and operates the Inn at Market Square, an 84-room hotel in Zion. The hotel has banquet facilities and a restaurant and gift shop named Callie's. The plaintiff holds a Class B retail liquor license, which was issued by Zion. A Class B retail liquor license authorizes the sale of alcoholic beverages "in restaurants of 50 seats or more but only at tables during that period when patrons are offered a complete meal." Zion Code, §56-56(2)(a).

¶ 5 On March 15, 2016, Officer James Krein of the Zion police department issued the plaintiff a citation for having less than 50 seats in its restaurant as required by its Class B retail liquor license.

¶ 6 On May 2, 2016, Zion Mayor Albert Hill, as the Local Liquor Control Commissioner for Zion and on behalf of the ZLLCC, conducted an administrative hearing on the citation. Officer Krein testified that on March 15, 2016, he and another officer entered Callie's restaurant, sat at a table, ordered and were served a meal. While in the restaurant, he counted 36 usable chairs, meaning only those chairs that could be comfortably sat on. He testified that there were chairs at tables on which merchandise was displayed, but people could not eat at those tables with the merchandise on the table.

¶ 7 Delaine Rogers testified that she is the managing director of the hotel and oversees the day-to-day operations of the hotel and Callie's. She created the floor plan for Callie's, including the placement of each of the tables, chairs, and display area shelves. The floor plan includes nine

tables with 50 chairs situated around those tables. Each of the chairs are placed around dining tables interspersed throughout Callie's, among the various display areas and shelves of the gift shop. There are an additional three seats at the bar area within Callie's. Customers eat meals at each of the seats in the restaurant. There were a total of 53 seats in Callie's on March 15, 2016. Photographs of Callie's were admitted into evidence.

¶ 8 On May 6, 2016, Mayor Hill issued an order and opinion finding the plaintiff to be in violation of section 56-56(2) of the city code and imposed a fine of $1,000. Mayor Hill explained that he found a photograph depicting a table in Callie's to be "clear evidence of its attempt to stretch the concept of what a reasonable person would consider as suitable seating for four (4) persons attempting to eat a complete meal."

¶ 9 The plaintiff thereafter filed a notice of appeal to the ILCC. On January 5, 2017, Administrative Law Judge (ALJ) Richard Haymaker conducted a hearing. On February 8, 2017, he recommended that the ZLLCC's decision be affirmed. ALJ Haymaker found that although it was possible for complete meals to be served to diners at each of the seats in Callie's, that would create an "elbow to elbow" dining experience. This was because some large chairs were placed around a knee-high table while other tables which were designed to accommodate four chairs had eight chairs around them. He therefore determined that Officer Krein's assessment of the utility of the seats in Callie's warranted affirming the decision that the ordinance had been violated. On February 23, 2017, the ILCC issued its final commission order affirming the decision of the ZLLCC.

¶ 10 On April 3, 2017, the plaintiff filed an application for rehearing to the entire ILCC. On May 17, 2017, the ILCC granted the petition to rehear the matter. Following the rehearing, two of the ILCC commissioners voted to affirm and two voted to reverse. Because the vote was a tie,

the decision of the ZLLCC was affirmed. Thereafter, the plaintiff filed a complaint for administrative review.

¶ 11 On March 15, 2018, the circuit court of Lake County issued a finding *nunc pro tunc* to March 7, 2018, that the ILCC's decision was clearly erroneous, and reversed both the findings of the ZLLCC and the ILCC. The defendants thereafter filed a timely notice of appeal.

¶ 12 II. ANALYSIS

¶ 13 The resolution of this appeal is based on the proper interpretation of the following ordinance:

> "Class B license shall authorize the retail sale of alcoholic liquor for consumption on the premises only in hotels as follows:
>
> a. In restaurants of 50 seats or more but only at tables during that period when patrons are offered a complete meal." Zion Code, § 56-56(2)(a).

The plaintiff argues that it complied with the ordinance because it had 50 seats in its restaurant on the day in question. The defendants respond that the ILCC properly determined that the plaintiff did not because not all of those seats could be used by 50 people to enjoy a complete meal at the same time.

¶ 14 We first observe that courts apply the principles of statutory construction to ordinances. *City of Evanston v. O'Leary*, 244 Ill. App. 3d 190, 193 (1993). The goal of a court when construing a statute is to ascertain the legislature's intent, and the surest indicator is the language in the statute. *Daniels v. Corrigan*, 382 Ill. App. 3d 66, 72 (2008). Unexpressed exceptions, limitations, or conditions should never be included where the legislature has not indicated an intent to include them. *Move N Pick Convenience, Inc. v. Emanuel*, 2015 IL App (1st) 133449, ¶ 17. If the language of an ordinance is clear and unambiguous, the court must interpret it

according to its terms without resorting to aids of construction. *La Salle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 786 (2001). The court may consider the reason and necessity for the statute and the evils it was intended to remedy, and will assume that the legislature did not intend an unjust result. *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 309 (2001).

¶ 15 As noted above, the ZLLCC found that the plaintiff had violated the ordinance, and the ILCC affirmed that decision. The trial court found that the ILCC's decision was clearly erroneous and therefore reversed both the findings of the ILCC and ZLLCC that the plaintiff had violated the ordinance. However, in an appeal from the judgment in an administrative proceeding, the appellate court reviews the administrative agency's decision, not the trial court's. *Dowrick v. Village of Downers Grove*, 362 Ill. App. 3d 512, 515 (2005). We therefore review the decision of the ILCC. See *id.* at 521.

¶ 16 The Liquor Control Act of 1934 (Act) (235 ILCS 5/1-1 *et seq*. (West 2016)) provides that final decisions of the ILCC are subject to judicial review pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2016)). 235 ILCS 5/7-11 (West 2016). Our supreme court has held that, where judicial review of an agency decision is governed by the Administrative Review Law, "[t]he applicable standard of review, which determines the degree of deference given to the agency's decision, depends upon whether the question presented is one of fact, one of law, or a mixed question of law and fact." *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). An agency's findings of fact will be upheld unless contrary to the manifest weight of the evidence, while we review *de novo* its rulings on questions of law. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). An agency's decisions on mixed questions of law and fact will be upheld unless clearly erroneous. *Id.* at 211. A mixed question of law and fact is one where the

historical facts are admitted and the rule of law is undisputed, but the issue is whether: (1) the facts satisfy the statutory standard, or (2) the rule of law as applied to the facts was violated. *AFM Messenger*, 198 Ill. 2d at 391. "Clearly erroneous" is an intermediate standard between *de novo* and manifest-weight review, that is somewhat deferential to the agency, and means that the agency's decision will be reversed only where the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 1071, 1079 (2010). "That the clearly erroneous standard is largely deferential does not mean, however, that a reviewing court must blindly defer to the agency's decision." *AFM Messenger*, 198 Ill. 2d at 395.

¶ 17 The defendants argue that we should employ the manifest weight of the evidence standard of review because the ILCC made the determinative factual finding that Callie's did not have 50 seats which could be used to enjoy a complete meal. The plaintiff insists that the appropriate standard of review is clearly erroneous because there is only an issue as to whether the 50 chairs that Callie's had in its restaurant on March 15, 2016, satisfied the statutory requirement of 50 seats or more in order to serve alcohol. We agree with the plaintiff that the appropriate standard of review is clearly erroneous.

¶ 18 There is no dispute that Callie's had 50 chairs on the day in question. Rogers testified to that fact. Officer Krein's testimony did not contradict Rogers' testimony on this point as he acknowledged that he did not count all of the seats in the restaurant. Rather, he testified that he only counted those seats which he believed could be used to enjoy a complete meal. In its recommendation for disposition, ALJ Hayward found that the floor plan and pictures entered into the record did depict a total of 50 seats.

¶ 19 Turning to the plain language of the ordinance, it imposes the following three requirements: liquor may be served only in restaurants (1) of 50 seats or more; (2) at tables; (3) during that period when patrons are offered a complete meal. As to the first requirement, it is axiomatic that a chair can be used as a seat. Thus, Rogers' testimony established that Callie's had 50 seats on the day in question. As to the second requirement, there is no issue raised as to whether the plaintiff was serving alcohol at any place other than tables. There is also no issue that the plaintiff was only serving alcohol during that time period when patrons were being offered a complete meal. Thus, based on this plain reading of the ordinance, the plaintiff was complying with the law. The ILCC's determination that the plaintiff was in violation of the ordinance therefore was clearly erroneous.

¶ 20 In response, the ZLLCC argues that the plaintiff did not really have 50 seats because not all of the seats in the restaurant were useable for meals. This was because some of the chairs were situated around tables that were covered in merchandise. Some large chairs were placed around a knee-high table while other tables which were designed to accommodate four chairs had eight chairs around them. The defendants contend that in order to satisfy the license requirement, Callie's had to have 50 chairs present in a way that could allow for the service of a complete meal to persons seated in those chairs. Because Callie's did not, they argue that the decision of the ILCC must be affirmed.

¶ 21 The problem with the defendants' argument is that it equates "seat" with a "useable or comfortable seat." However, the terms "seat" and a "comfortable seat" are not synonymous, as an uncomfortable seat is still a seat. The defendants' attempt to add a condition into the ordinance that is not there is improper. See *Emanuel*, 2015 IL App (1st) 133449, ¶ 17.

¶ 22 The defendant's argument also requires that it rephrase the ordinance in order to support its interpretation. The defendants assert that the ordinance means that 50 chairs must be present in a way that can allow for the service of a complete meal. However, this rephrasing omits a key phrase—"during the period when"—which precedes the phrase—"patrons are offered a complete meal." The phrase "during the period when" thus sets forth what time of day the plaintiff may be able to sell alcohol, that being when the plaintiff is offering people complete meals. The ordinance does not mandate that anyone, let alone 50 people, must buy a complete meal in order to purchase alcohol. It only requires that patrons be sitting at a table when they have the option of purchasing a complete meal. Again, the record indicates that the plaintiff complied with this requirement.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 25 Affirmed.