IN THE COURT OF APPEALS OF IOWA

No. 0-791 / 10-0183
No. 0-986 / 10-1027
Filed January 20, 2011

WILLIAM CHANEY, ERIC TRACEY,
and ALPHA TAXI, L.L.C.,
d/b/a ALPHA TAXI,
Plaintiffs-Appellees,

vs.

CITY OF DES MOINES, IOWA,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, D.J. Stovall (summary judgment) and Michael D. Huppert (attorney fees), Judges.

The City of Des Moines appeals from the district court's orders granting plaintiffs' motion for summary judgment on grounds of express preemption of the City's regulation of taxicabs and awarding plaintiffs' attorney fees. **REVERSED AND REMANDED.**

Steven C. Lussier, Assistant City Attorney, Des Moines, for appellant.

William B. Ortman of Belin McCormick, P.C., Des Moines, for appellees.

Heard by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

This consolidated appeal requires us to review the district court's determinations that the City of Des Moines's taxicab ordinance was expressly pre-empted by Iowa Code section 325A.2(2) (2007) and that plaintiffs were entitled to attorney fees under 42 U.S.C. § 1988.

I. Background Facts and Proceedings

Plaintiff Alpha Taxi, L.L.C. is an owner-operated taxicab company with a fleet of two vehicles and two drivers, William Chaney and Eric Tracey. Alpha Taxi[1] provides taxicab services to passengers in the Des Moines metropolitan area. In February 2009, Alpha Taxi received a document entitled "Iowa Motor Carrier Certificate" from the Iowa Department of Transportation. This document states, "Authority type: Charter route (passenger) between all points in Iowa limited to non-commercial vehicles." The parties dispute the significance of this document.

The Des Moines Municipal Code requires "any person owning, operating or controlling a taxicab as a vehicle for hire upon the streets of the city or picking up any passenger for a fare within the corporate limits of the city" to obtain a certificate of public convenience and necessity. Des Moines Municipal Code § 126-181. The municipal code further provides that any person filing an application for a certificate of public convenience and necessity shall meet minimum requirements, which include requirements that the applicant provide a minimum of six qualified taxicab drivers and a minimum of five qualified taxicab vehicles. *Id.* § 126-182. Because Alpha Taxi was not eligible to receive a

[1] For ease of discussion, we use "Alpha Taxi" to refer to all plaintiffs.

certificate of public convenience and necessity, the ordinance blocked Alpha Taxi's operation in Des Moines.

On July 10, 2008, Alpha Taxi filed a petition challenging portions of the Des Moines taxicab licensing and regulation ordinance, alleging: (1) preemption by Iowa Code chapter 325A; (2) ultra vires under Iowa Code chapter 321; (3) a 42 U.S.C. § 1983 claim of violation of the federal and state equal protection clauses; (4) a 42 U.S.C. § 1983 claim of violation of the federal and state due process clauses; (5) a 42 U.S.C. § 1983 claim of violation of the federal fourteenth amendment privileges and immunities clause; and (6) a violation of the inalienable rights clause of the Iowa Constitution. Alpha Taxi sought attorney fees on the 42 U.S.C. § 1983 counts, declaratory judgment, and a prohibitory injunction.

Both parties filed motions for summary judgment. On June 29, 2009, the district court granted Alpha Taxi's motion on the basis that "Iowa Code section 325A.2(2) expressly preempts the City of Des Moines taxicab ordinance." The district court denied the City's motion. The other arguments presented on summary judgment were not ruled on by the district court in light of its ruling on express preemption. The City appeals the district court's grant of summary judgment in favor of the plaintiffs and denial of summary judgment for the City.

On June 11, 2010, in a case separate from the parties' case on the merits, the district court granted Alpha Taxi's application for attorney fees under 42 U.S.C. § 1988. The City also appeals this ruling.

II. Standard of Review

We review rulings on motions for summary judgment for the correction of errors at law. *City of Cedar Rapids v. James Props., Inc.*, 701 N.W.2d 673, 675 (Iowa 2005). "Summary judgment is appropriate only when the entire record demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007). We examine the record in the light most favorable to the nonmoving party and draw all legitimate inferences the evidence bears in order to establish the existence of questions of fact. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 353 (Iowa 2005). "A party resisting a motion for summary judgment cannot rely on the mere assertions in his pleadings but must come forward with evidence to demonstrate that a genuine issue of fact is presented." *Stevens*, 728 N.W.2d at 827.

III. Summary Judgment

The City argues the district court erred in concluding Iowa Code section 325A.2(2) expressly preempted the city ordinances regulating taxicabs.

Section 325A.2(2) states: "A local authority . . . shall not impose any regulations, including special registration or inspection requirements, upon the operation of motor carriers that are more restrictive than any of the provisions of this chapter . . . ." Section 325A.1(6) states: "'*Motor carrier*' means a person defined in subsection 8 [motor carrier of bulk liquid commodities], 9 [motor carrier of household goods], or 10 [motor carrier of property]." None of the subsections enumerated contemplate a transporter of passengers. The City argues that

taxicabs are not "motor carriers" and that express preemption does not apply to defeat the city's regulations of transporters of passengers.

The district court concluded that the statute was ambiguous and that the City's "narrow reading of the term 'motor carrier' would render portions of Iowa Code chapter 325A meaningless and should therefore be rejected." The City argues the district court erred in examining chapter 325A before determining the statute at issue was ambiguous. The City asserts that before the district court could consider chapter 325A in its entirety, it had to first examine only the statute at issue and conclude it was ambiguous. We disagree.

"We recognize the legislature 'may act as its own lexicographer.' When it does so, we are normally bound by the legislature's own definitions." *The Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 425 (Iowa 2010). We are obligated to apply the statutory definition as written, absent an ambiguity in that definition. *Id.* "Ambiguity may arise from specific language used in a statute or when the provision at issue is considered in the context of the entire statute or related statutes." *Id.* Thus, in determining whether the statute was ambiguous, the district court properly considered the context of related statutes.

We agree with the district court's conclusion that the statute at issue was ambiguous. If the term "motor carrier" were limited to the definition given in section 325A.1(6), it would render several other provisions in chapter 325A meaningless. For example, section 325A.11 states that "motor carriers of passengers . . . shall comply with the requirements of [subchapter 2]." However, under the definition of motor carrier given in section 325A.1(6), a motor carrier

does not carry passengers. Thus, a "motor carrier of passengers" could never exist. This logic applies to section 325A.13(3), which states, "A motor carrier providing primarily passenger service for . . . transportation-disadvantaged persons is exempt from the certification requirements of this section . . . ." Because two people might reasonably disagree on the meaning of the phrase "motor carrier," we conclude the statute at issue is ambiguous.

When we interpret ambiguous statutes, our goal is to give effect to legislative intent. *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606, 609 (Iowa 2004). The City contends that if we find the statute was ambiguous, we should find the legislature did not intend to include taxicab drivers by its use of the phrase "motor carrier." In support of its argument, the City points to a 2010 legislative amendment to section 325A.2(2), which added the following sentence: "This subsection does not, however, prohibit a local authority from . . . impos[ing] additional or more restrictive regulations or requirements upon the operation of taxicabs . . . engaged in nonfixed route transportation for hire." 2 Iowa Legis. Serv. 36 at 80 (West 2010). The City asserts that this new legislation is demonstrative of the legislature's intent regarding a local authority's home rule power over taxicabs.

The plaintiffs argue this statutory revision is not properly before the court. We agree with plaintiffs' argument that "statutes controlling appeals are those that were in effect at the time the judgment or order appealed from was rendered." *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 498 (Iowa 2003). Therefore, the recent legislative amendment to section 325A.2(2), which was not in effect at the time the district court's order was rendered, is

not controlling on appeal. We conclude, however, that the 2010 amendment clarifies the legislative intent and consider it for that purpose only.

"In determining the intention of the legislature when it uses an ambiguous term, we consider former and more recent versions of the statute." *State v. Ahitow*, 544 N.W.2d 270, 272 (Iowa 1996). "An amendment may indicate an intent either to change the meaning of a statute or to clarify it." *Barnett v. Durant Cmty. Sch. Dist.*, 249 N.W.2d 626, 629 (Iowa 1977). A material change in the statutory language gives rise to a presumption that the drafters intended to change the law. *State v. Milom*, 744 N.W.2d 117, 121 (Iowa Ct. App. 2007). "This presumption is not conclusive, however: 'the time and circumstances of the amendment . . . may indicate that the legislature merely intended to interpret the original act by clarifying and making a statute more specific.'" *State v. Guzman-Juarez*, 591 N.W.2d 1, 3 (Iowa 1999). "[O]ne well recognized indication of legislative intent to clarify, rather than change, existing law is doubt or ambiguity surrounding a statute." *Barnett*, 249 N.W.2d at 629.

> "If [the amendment] follows immediately and after controversies upon the use of doubtful phraseology therein have arisen as to the true construction of the prior law it is entitled to great weight. If it takes place after a considerable lapse of time and the intervention of other sessions of the legislature, a radical change of phraseology would indicate an intention to supply some provisions not embraced in the former statute."

Guzman-Juarez, 591 N.W.2d at 3 (quoting *People ex rel. Westchester Fire Ins. Co v. Davenport*, 91 N.Y. 574, 591–92 (1883))

The plaintiffs' petition in this case was filed in July 2008. The district court's decision was issued in June 2009. The bill including the amendment to section 325A.2(2) was introduced on February 9, 2010. We give great weight to the timing of this amendment. Under these circumstances, we think the amendment was enacted to clarify rather than to change the existing law.

We find the legislature intended that section 325A.2(2) not preempt the City's taxicab ordinance. Accordingly, we determine the district court, which did not have the benefit of the statutory amendment, did not give effect to the legislature's intent, now clarified. We decline the invitation to rule on the plaintiffs' various other arguments. *See Beck v. Phillips*, 685 N.W.2d 637, 646 (Iowa 2004) (stating it is within the court's discretion whether to uphold a summary judgment ruling on grounds urged before but not relied upon by the district court). We also decline the invitation to rule on the City's motion for summary judgment. *See Sweeney v. City of Bettendorf*, 762 N.W.2d 873, 876 (Iowa 2009) (stating that the court has broad discretion to consider whether to hear an interlocutory appeal); *McCubbin Seed Farm, Inc v. Tri-Mor Sales, Inc.*, 257 N.W.2d 55, 57 (Iowa 1977) ("A denial of summary judgment is interlocutory, but a grant of summary judgment is appealable."). We remand for consideration of the other claims presented by the parties in their competing motions for summary judgment.

The City also argues the district court erred in concluding that plaintiffs were entitled to attorney fees under 42 U.S.C. § 1988(b). Because we reverse the district court's order granting summary judgment in favor of the plaintiffs, they are not prevailing parties and are not entitled to attorney fees at this point. *See*

42 U.S.C. § 1988(b) (providing that a court may, in its discretion, award the "prevailing party" attorney fees). We remand this issue for consideration with plaintiffs' remaining claims.

REVERSED AND REMANDED.