

IN THE COURT OF APPEALS OF IOWA

No. 1-765 / 11-0253
Filed January 19, 2012

MARION DURRAH,
Plaintiff-Appellee,

vs.

**DUBUQUE HOUSING & COMMUNITY
DEVELOPMENT DEPARTMENT, DAVID
HARRIS in His Capacity as Director of the
Assisted Housing Program, and
CITY OF DUBUQUE,**
Defendants-Appellants.

Appeal from the Iowa District Court for Dubuque County, Monica L.
Ackley, Judge.

The defendants appeal from the district court's order in Marion Durrah's
certiorari action. **AFFIRMED.**

Crenna Brumwell, Assistant City Attorney, Dubuque, for appellants.

Alexander Kornya of Iowa Legal Aid, Dubuque, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

EISENHAUER, P.J.

The defendants appeal from the district court's order in Marion Durrah's certiorari action. They contend the court erred in remanding the matter for a new hearing. Specifically, the defendants argue the court erred in finding Durrah was denied due process when she was not issued subpoenas for her informal review hearing. They claim the director of the assisted housing department does not have the authority to issue subpoenas.

I. Background Facts and Proceedings. Marion Durrah applied for section 8 voucher program benefits from the City of Dubuque in May 2009. She was denied benefits on September 17, 2009, because she was found to have three individuals not listed in her application living with her in violation of housing program regulations. The notice of denial informed her of her right to informal review of the decision.

Durrah requested an informal review on September 23, 2009. Through counsel she sought to obtain subpoenas for the hearing under the Dubuque Municipal Code, but was informed the municipal code was inapplicable to an informal hearing on a section 8 application denial and, therefore, she had no right to obtain subpoenas. A hearing was held on November 24, 2009. At the hearing, the city submitted as evidence documents, such as police reports, that are not available to the general public without subpoena. On December 1, 2009, the director of the assisted housing department issued a letter of decision, upholding the denial of a section 8 voucher.

On January 6, 2010, Durrah filed this certiorari action against Dubuque Housing and Community Development Department, David Harris in his capacity

as director of the assisted housing department, and the City of Dubuque, challenging the informal review decision. She made several arguments, but chief among them were her claims she was entitled to obtain subpoenas under the municipal code and she was denied due process of the law. In its January 19, 2011 order, the district court agreed, stating:

The Plaintiff was denied the right to proceed in a meaningful manner when the housing authorities denied her the ability to obtain records. Some records, due to the manner by which they are maintained, were not available to the Plaintiff without a subpoena. Plaintiff would be entitled to records which may or may not have presented exculpatory evidence. As the City of Dubuque has created the housing authority, which therefore makes it subject to the Dubuque Municipal Code, it is bound to conduct statutorily required hearings per the guidelines of the code.

The court remanded the matter to the director of the housing authority for a new hearing to permit Durrah a full opportunity to be meaningfully heard. The defendants appeal.

II. Scope and Standard of Review. We review a district court certiorari ruling at law. *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 64 (Iowa 2001). We are bound by the trial court's findings if they are supported by substantial evidence in the record. *Id.* Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Id.*

III. Analysis. The defendants contend the district court erred in holding Durrah was denied due process when subpoenas were not issued for her informal review hearing. The defendants argue the housing director does not have the authority to issue subpoenas.

Congress has established what is known as the "section 8" voucher program for the purpose of aiding low-income families in obtaining "a decent

place to live” by providing housing assistant payments. 42 U.S.C. § 1427f(a). The Iowa legislature has empowered municipal corporations to administer the funding for this program. Iowa Code § 403A.4 (2009). The Iowa Code provides a municipality may exercise this power directly or create an administrative agency known as a “municipal housing agency” to administer it. *Id.* § 403A.5(5). Although the City of Dubuque has created the Dubuque Housing & Community Development Department, the city has not elected to exercise its housing powers through the department; as stated in the city’s administrative plan, “The City of Dubuque has exercised its authority and retained for itself the housing powers conferred by the Iowa Code [under chapter 403A].”

The power of a city is vested in its city council. *Id.* § 364.2(1). The Dubuque Municipal Code applies to proceedings required by statute that are “to be determined by the city council after an opportunity for an evidentiary hearing.” Dubuque Municipal Code § 1-9-1(B). Because the housing department is acting under the delegated power of the city council, the housing department has the same power as the city council under its municipal code. Accordingly, the provisions of the municipal code apply to the informal review as it is a proceeding required by statute to be determined after an evidentiary hearing. Section 1-9-4 of the Dubuque Municipal Code states “[t]he city council may issue a subpoena for . . . the production of . . . evidence at a hearing upon the request of a member of the city council or upon the written demand of any party.” We agree with the district court’s conclusion the housing department, through the power delegated by the city council, had the ability to issue subpoenas.

Because we conclude the process adopted by the City of Dubuque authorizes the housing director to issue subpoenas, we do not address the constitutional claim.

AFFIRMED.