IN THE COURT OF APPEALS OF IOWA

No. 7-571 / 05-2036
Filed October 24, 2007

DAVID CARLISLE,
Plaintiff-Appellant,

vs.

CITY OF SHANNON CITY,
RINGGOLD COUNTY BOARD OF HEALTH,
and SOUTHERN IOWA RURAL WATER ASSOCIATION,
Defendants-Appellees.

Appeal from the Iowa District Court for Ringgold County, Martha Mertz, Judge.

David Carlisle appeals from denial of his petition for injunctive relief. **AFFIRMED.**

Douglas D. Daggett of Douglas D. Daggett, P.C., Creston, for appellant.

Marion E. James, Creston, for appellee.

David L. Jungmann and Amy J. Hughbanks of Jungmann & Hughbanks, P.C., Greenfield, for appellee.

Clinton L. Spurrier, Mt. Ayr, for appellee.

Heard by Zimmer, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

David Carlisle appeals from the district court's denial of his petition seeking an injunction prohibiting the City of Shannon City and the Ringgold County Board of Health from enforcing provisions of the city ordinances that require mandatory hook-up to city wastewater treatment facilities.

I. Background and Facts

Small communities in Iowa commonly face problems in dealing with waste management. On the one hand, many private septic systems are not regularly tested and monitored or well maintained, resulting in a high failure rate. These small communities may have untreated sewage in ditches and streams, resulting in odor and increased risks to public health, i.e., disease and contamination of groundwater. On the other hand, many small communities are unable to use traditional sewer systems because constructing a traditional pipeline central collection system is cost prohibitive.

The wastewater operations section of the Iowa Department of Natural Resources (DNR) works with small communities to make it financially feasible to treat sewage in these communities.[1] Because small communities are not equipped to handle the management and infrastructure issues associated with a community sewer system, they often partner with agencies with expertise in these systems to provide the installation and monitoring of the systems.

[1] The cost of constructing a traditional system in a small community may be cost prohibitive because the cost per home is higher when there are fewer homes using the system. According to testimony from Brent Parker with the DNR, seventy-five percent of the cost of a traditional central collection system is the transport system and twenty-five percent is the actual treatment system. Therefore, the DNR has been exploring ways to provide cluster or on-site technology to reduce the need to transport the waste, thereby reducing the overall cost of the sewage system.

Shannon City is a small community consisting of less than fifty households that had experienced waste management problems, including untreated sewage draining within the city limits and most of the private septic systems in the city operating outside applicable laws and regulations. In order to address these problems, the city developed a system of individual on-site septic systems which are approved, installed, owned, and monitored by the Southern Iowa Rural Water Association (SIRWA), a rural water district organized pursuant to Iowa Code Chapter 357A (2005). Prior to this, the city had no citywide sewer service. Individual landowners were responsible for the installation and maintenance of a private system in compliance with all applicable federal, state, and county requirements. Few property owners were familiar with or in compliance with these requirements. For example, when SIRWA installed the on-site systems in Shannon City, it discovered one home with a fifty-five gallon drum being used as a septic system and more than one home that didn't have any septic tank, just toilet paper and sewage at the end of a pipe.

SIRWA is also responsible for ensuring compliance with all applicable laws and regulations. The city obtained grant funding through the United States Department of Agriculture to offset the initial cost of constructing and installing the on-site systems. Such funding was only available because this was a community system under central management. While property owners incurred no expense for the initial cost of installing the on-site system, the city assesses a sixteen dollar monthly sewer charge to users of the system.

Shannon City is the first city in Iowa to use individual on-site systems managed as a community system, and it is therefore considered an experimental

system. The DNR is working on two similar systems in the state. If the Shannon City system is successful, it may set an example for other communities of similar size throughout the country.

In August 2000, the city held a public election where voters approved an ordinance granting SIRWA the right and "non-exclusive franchise to construct, operate, repair, remove, replace and maintain on-site wastewater treatment facilities within the city." In May 2004, the city adopted a mandatory connection ordinance requiring all habitable buildings to be connected to the sewer and wastewater treatment facilities. The ordinance provided that failure to comply with the ordinance would constitute a misdemeanor, and each day of non-compliance would constitute a separate offense.

Throughout the public debate surrounding the onsite wastewater treatment systems, Carlisle opposed the project. He particularly opposed the requirement that owners of habitable buildings execute an on-site wastewater user agreement, which grants to SIRWA the right to enter on the owner's property for the purpose of constructing, installing, maintaining, and monitoring the system. Carlisle refused to allow SIRWA to install a system on his property, which is located in the small section of the city that is in Ringgold County. SIRWA has completed installation of the on-site systems for all other residents of the city.

Following the adoption of the mandatory connection ordinance, the Ringgold County Board of Health (Board), a county board of health organized pursuant to Iowa Code Chapter 137, sought to enforce the city's ordinance against Carlisle. The Board notified Carlisle that, if he did not comply, it intended to enforce the mandatory connection ordinance and Iowa Administrative Code section 567-

69.1(3)(a)(2).[2] On December 28, 2004, Carlisle applied for and received a permit from the Board for the installation of a private septic system. That same day, the Board notified him that a private system would not satisfy their requirements because it would not be constructed or operated pursuant to the franchise agreement with SIRWA.

On January 10, 2005, Carlisle filed a petition for injunctive relief seeking a temporary and permanent injunction prohibiting the city and the Board from enforcing provisions of the city ordinances that require mandatory hookup to wastewater treatment facilities constructed or maintained by the city or SIRWA. SIRWA sought to intervene as the franchisee charged with the construction, installation, and monitoring of the on-site systems. The district court granted the petition to intervene. A trial was held on June 8 and 9, 2005. The district court denied the injunction on October 10, 2005. Carlisle subsequently filed a motion to amend and enlarge conclusions of law, which was denied. Carlisle appeals.

II. Merits

Carlisle contends the district court erred in (1) concluding he was subject to the jurisdiction of the mandatory connection ordinance, (2) finding that the franchise and mandatory connection ordinances applied to him, (3) concluding that the ordinances were authorized by statute, and (4) concluding that the ordinances were a constitutional exercise of municipal power.

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[2] Iowa Code section 137.5 (2005) provides that county boards have jurisdiction over public health matters within the county. Section 137.6(1) provides that the boards "[e]nforce state health laws and the rules and lawful orders of the state department [of public health]." Per Iowa Administrative Code section 567-69.1(3)(a)(2), "[w]hen a public sanitary sewer becomes available within 200 feet, any building then served by an on-site wastewater treatment and disposal system shall connect to said public sanitary sewer within a time frame or under conditions set by the administrative authority."

This action for injunctive relief was tried in equity; therefore our review is de novo. Iowa R. App. P. 6.4; *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000). We give weight to the fact findings of the district court, especially concerning the credibility of witnesses, but are not bound by them. *Owens*, 610 N.W.2d at 865.

A. Jurisdiction

Carlisle first contends the ordinances do not jurisdictionally apply to him because the language of the franchise ordinance only grants the franchise from Shannon City, Union County, to SIRWA, and, although he lives within the city limits of Shannon City, his property is located in Ringgold County. He cites no authority for this proposition. We find no merit to this argument. The ordinances consistently refer to the City of Shannon City, and Carlisle's house is located in the city. The ordinances clearly apply to Carlisle.

B. Application of Ordinances

Carlisle next contends that the franchise and mandatory connection ordinances do not apply to him because "the mandatory connection ordinance requires connection to 'the sewer and wastewater treatment facility installed by [SIRWA].'" He argues that the mandatory hookup contemplated by Iowa Administrative Code section 567-69.1(3)(a)(2) is limited to "a situation where a sewer main in the public right-of-way is within 200 feet of the subject property and the private property owner has the obligation to install a pipe from his residence . . . to the city sewer line." Because there is no such system in the city, he argues, he cannot be found in non-compliance.

We also find this argument to be without merit. Iowa Administrative Code section 567-69.1(3)(a)(1) states that the "[f]inal determination of availability shall be made by the administrative authority." Because the Board has determined that a public sewer is available to him, Carlisle is required to connect to it.

C. Statutory/Home Rule Authority

Carlisle next contends that the franchise and mandatory connection ordinances were not authorized by statute. He argues that the authorization of sewer service franchises in Iowa Code section 357A.23 "clearly means a city-wide network . . . rather than a mandate for installation of private sewage disposal systems on private property." He further contends that the ordinances are not authorized by the city's home rule authority. He argues that "the legislature has preempted a city's home rule authority to enter into franchise agreements for utility services including sewers by expressly and extensively identifying the extent of the city's authority."

Iowa has adopted "legislative home rule," which allows the state legislature to legislate on matters involving local affairs. *Berent v. City of Iowa City*, 738 N.W.2d 193, 198 (Iowa 2007). Absent an expression of intent by the legislature to preclude local authority in an area, we apply home rule principles, which "authorize local regulation *unless* local action conflicts with state law or otherwise is contrary to the principles of home rule power." *Goodell v. Humboldt County*, 575 N.W.2d 486, 500 (Iowa 1998). Further, a local ordinance "is *not* inconsistent with a state law unless it is *irreconcilable* with the state law." *Id.* (quoting Iowa Code § 331.301(4)).

Under the home rule amendment to the Iowa Constitution, municipal corporations are granted

> broad authority to regulate matters of local concern . . . . Limitations on a municipality's power and authority over local affairs are not implied; they must be imposed by the legislature.
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> . . . When considering whether a city ordinance violates "home rule" powers, we seek to interpret the state law in such a manner as to render it harmonious with the ordinance.

Goodenow v. City Council of Maquoketa, Iowa, 574 N.W.2d 18, 26 (Iowa 1998) (citations omitted).

Disposal of sewage clearly advances the "safety, health, welfare, comfort, and convenience of its residents" and may be regulated at the local level. Iowa Code § 364.1; *accord Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 568 (Iowa 2000); *Kasparek v. Johnson County Bd. of Health*, 288 N.W.2d 511, 517 (Iowa 1980). Accordingly, Shannon City's wastewater treatment program falls within its home rule authority, absent a legislative enactment denying cities this power. *Crippen*, 618 N.W.2d at 568. We do not believe that the legislature has preempted the city's home rule authority to enter into a franchise agreement for on-site systems. Further, we agree with the district court's conclusion that

> [t]he Shannon City ordinances do not conflict with relevant state statutes. What the plaintiff's argument overlooks is that Iowa law does not prohibit installation of public sewer systems other than a traditional pipeline system. Carlisle correctly states that the statutory provisions relating to sewers do not refer to alternative public systems. However, these same statutes do not require cities to install conventional pipeline systems . . . . Since Iowa statutes do not mandate conventional pipeline systems, Shannon City's ordinances are not in conflict with state law. Since the ordinances are not in conflict with state law, the adoption of a public sewer system requiring the installation of individual on-site septic systems approved by SIRWA is valid.

(Citations omitted.). We find no merit to the argument that the ordinances are not authorized by statute or by home rule. This is the type of innovative solutions and flexibility that home rule was designed to allow. *See Bechtel v. City of Des Moines*, 225 N.W.2d 326, 332 (Iowa 1975) (noting the intent of home rule is "to grant cities power to rule their local affairs and government").

D. Constitutional Exercise of Municipal Power

Carlisle's final argument is that the ordinances are an unconstitutional exercise of the city's authority. He first asserts that the requirement that he sign an easement enabling SIRWA to come onto his property will diminish his private property rights without compensation and is a taking in violation of both the Iowa and United States Constitutions.

Regulations concerning disposal of sewage relate to the health and cleanliness of the city and are a valid exercise of police power. *Kasparek*, 288 N.W.2d at 517; *State ex rel. Lown v. City of Iowa Falls*, 247 Iowa 558, 563, 74 N.W.2d 594, 597 (1956). An exercise of police power may rise to the level of a taking if it deprives a property owner of the substantial use and enjoyment of his property. *Kasparek*, 288 N.W.2d at 517. No taking occurs, however, where there is no "interference with the property owner's 'primary expectation concerning the use of the parcel.'" *Id.* (quoting *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 136, 98 S. Ct. 2646, 2666, 57 L. Ed. 2d 631, 656 (1978)). While a regulation under the police power entitles a property owner to no compensation, a taking of property under eminent domain requires that the property owner be compensated for the appropriation of the property for public use. *Woodbury County Soil Conservation Dist. v. Ortner*, 279 N.W.2d 276,

278 (Iowa 1979). The point at which a police power regulation results in a taking must be determined based upon the circumstances of each case. *Id*.

We conclude that the restraints imposed on Carlisle from the requirement that SIRWA be allowed to come onto his property to monitor and maintain the on-site waste treatment system would not unconstitutionally deprive him of valuable property interests. We agree with the district court that "[b]oth the landowner and the public benefit from the installation of approved septic systems." Carlisle will receive a new on-site system for little or no initial cost, and the monthly charge to utilize the system is reasonable. Further, Carlisle will still have the use and enjoyment of his property, limited only by the existing need to comply with applicable laws and regulations, which will now be handled by SIRWA. The requirement that he allow SIRWA to come onto his property is not a taking within the meaning of the Iowa or United States Constitutions.

Carlisle further asserts that the city's franchise with SIRWA is an irrational exercise of the city's police power to address public health and safety. He argues that, because he can install and maintain a private septic system that will produce the same end product, the mandatory connection ordinance serves no public purpose and is arbitrary.

In exercising its police power, a city may adopt an ordinance to provide for the safety and comfort of its citizens. *Goodenow*, 574 N.W.2d at 23. "To be constitutional, however, the ordinance must have a definite, rational relationship to the ends sought to be served by the ordinance." *Id.* (citation omitted).

> It is the commonest exercise of the police power of a state or city to provide for a system of sewers, and to compel property owners to connect therewith . . . . It may be that an arbitrary exercise of the

> power could be restrained, but it would have to be palpably so to justify a court in interfering with so salutary a power and one so necessary to the public health.

Lown, 247 Iowa at 564, 74 N.W.2d at 598 (quoting *Hutchinson v. City of Valdosta*, 227 U.S. 303, 308, 33 S. Ct. 290, 292, 57 L. Ed. 520, 523 (1913)).

In order to succeed in this argument, Carlisle must establish that the ordinances constitute an arbitrary exercise of police power. *Id*. He has failed to do so. We agree with the district court that "[t]he safe disposal of sewage that might otherwise be released on the surface or contaminate the soil or pollute the surrounding area is a benefit to every resident of Shannon City." A traditional pipeline system is financially impractical for a small community, grant funding for installation is not available for private septic systems that are not under central management, and mandatory connection and monitoring by SIRWA is a reasonable means to ensure compliance with applicable laws and regulations. Mandatory compliance with the city's sewer ordinances is a reasonable means by which to protect the health of the community. We disagree with the assertion that this is an arbitrary and irrational use of police power.

III. Conclusion

Because Carlisle's house is located in the city, and the ordinances clearly apply to the City of Shannon City, the ordinances apply to Carlisle. Further, because the Board has determined that a public sewer is available to him, Carlisle is required to connect to the system. Because the ordinances do not conflict with relevant state statutes, the adoption of a public sewer system requiring the installation of individual on-site septic systems is valid. Further, the requirement that Carlisle sign an easement enabling SIRWA to come onto his

property is not an unconstitutional taking, and the ordinances are a reasonable exercise of police power. We have carefully considered all issues raised on appeal and find they have no merit or are effectively resolved by the foregoing. The judgment of the district court is affirmed.

AFFIRMED.