IN THE COURT OF APPEALS OF IOWA

No. 9-650 / 09-0082
Filed February 24, 2010

ALLAMAKEE COUNTY, IOWA,
Plaintiff-Appellee,

vs.

THOMAS J. SCHAUMBERG LIVING TRUST,
THOMAS J. SCHAUMBERG, Trustee,
Defendant-Appellant.

TOM SCHAUMBERG, Individually and as Trustee of the THOMAS J. SCHAUMBERG LIVING TRUST,
Petitioner-Appellant,

vs.

ALLAMAKEE BOARD OF ADJUSTMENT,
Respondent-Appellee.

Appeal from the Iowa District Court for Allamakee County, Margaret L. Lingreen, Judge.

Thomas J. Schaumberg appeals from the district court's grant of summary judgment in favor of Allamakee County. **AFFIRMED.**

Marion L. Beatty of Miller, Pearson, Gloe, Burns, Beatty, & Cowie, P.L.C., Decorah, for appellant.

Mary Jane White, Allamakee County Attorney, Waukon, and Beth E. Hansen and Natalie Williams Burris of Swisher & Cohrt, P.L.C., Waterloo, for appellees Allamakee County and Allamakee Board of Adjustment.

Heard by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Thomas J. Schaumberg, individually and as trustee of the Thomas J. Schaumberg Living Trust (Schaumberg), appeals from the district court's grant of summary judgment in favor of Allamakee County and the Allamakee County Board of Adjustment (Board). This litigation concerns property owned by Schaumberg in Allamakee County, which the zoning administrator and the Board of Adjustment determined was a corner lot required to have a side-yard setback of thirty feet. On appeal, Schaumberg argues that the county zoning ordinance does not apply to his property located in a private subdivision. However, if the zoning ordinance is applicable, he argues that his property is not a corner lot required to have a side-yard setback of thirty feet. Finally, if his other arguments fail, he challenges the constitutionality of a zoning ordinance based upon the lack of a definition of a "thoroughfare" in the ordinance. Because we agree with the district court that the zoning ordinance is applicable to Schaumberg's property, his property is a corner lot required to have a side-yard setback of thirty feet, and the applicable zoning ordinance is not unconstitutionally vague, we affirm.

I. Background Facts and Proceedings.

Schaumberg owns four lots in Harpers Highland Subdivision located in Allamakee County. The property is located at the intersection of Harpers Highland Lane and Chipmunk Lane, the latter of which is a short cul de sac.[1]

The zoning ordinance applicable to the Schaumberg property was adopted by Allamakee County in 1984 and Harpers Highland Subdivision has

[1] While Schaumberg asserts Harpers Highland Lane is a cul de sac, it actually winds its way through the Harpers Highland subdivision, branching off in different directions to service the platted lots.

agricultural zoning. This zoning classification requires any residence to have a side-yard setback of ten feet, unless it is situated on a corner lot, in which case the side-yard setback increases to thirty feet.

During the summer of 2007, the county zoning administrator, Laurie Moody, met with Schaumberg to discuss his plans for constructing a home on his property. According to Schaumberg, the information he received as to required setbacks varied. On August 7, Moody informed him that the front-yard and side-yard setback would be forty feet. On August 8, 2007, Moody again met with Schaumberg at his property. Schaumberg informed Moody that he disagreed with her interpretation of the zoning rules and setback requirements. After Moody discussed the setback requirements with the county attorney, she determined that Schaumberg's property was a corner lot that required a front-yard setback of forty feet (abutting Harpers Highland Lane) and a side-yard setback of thirty feet (abutting Chipmunk Lane). At Moody's office, Schaumberg began to fill out the necessary paperwork for a building and septic permit. Moody informed Schaumberg of the setback requirements. The building permit application was filled out to state the setback requirements, including stating the lot was a corner lot and the side-yard setback was thirty feet. Schaumberg signed the application, but Moody did not sign. The following month, Schaumberg began construction of his house, which did not comply with the side-yard setback requirement of thirty feet.

Moody discovered that Schaumberg had begun construction.[2] In a letter dated November 26, 2007,[3] Moody stated to Schaumberg:

> I informed you that I had met with the county attorney and we decided that the side of your property should be treated as a "corner lot" and instead of a 40' front yard setback, it could be reduced to 30' for a corner lot side yard. This number was still not satisfactory to you and because we did not agree on the setback measurement, I did not sign your building permit application. You however did sign the permit application with my measurements written on it and paid the fee.
>
> . . . .
>
> You are in violation of not having a valid building permit for any of the construction on your property . . . .

Moody directed Schaumberg to immediately stop construction. However, Schaumberg did not comply and continued construction.

On April 28, 2008, Allamakee County filed a petition in district court requesting an injunction preventing Schaumberg from continued construction in violation of the zoning ordinance and compelling Schaumberg to remove any portion of the building in violation of the zoning ordinance.

On April 29, 2008, Schaumberg filed an appeal with the Allamakee County Board of Adjustments (Board) requesting the Board review the decision of the zoning administrator that a side-yard setback of thirty feet applied or in the alternative, grant him a variance from a required thirty-foot side-yard setback. The Board held a hearing on June 18, 2008. During the hearing, Schaumberg asserted that (1) his property was located in a privately developed subdivision, to which the zoning ordinance did not apply, and (2) even if it did apply, he was in

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[2] Schaumberg asserts that Moody viewed the construction site in October 2007, yet did not complain about the side-yard setback. Moody indicated that while she was nearby doing other work, she discovered the construction site in November 2007.

[3] The letter was sent to Schaumberg by certified mail and Schaumberg was also personally served with the letter on November 28, 2007.

compliance with it because a cul de sac is not a street and therefore he does not have a corner lot. The Board asked Schaumberg why he did not follow the building permit, to which his attorney replied, "He thought he had." The Board noted that the building permit, which Schaumberg had signed, was "pretty clear" and said the lot was a corner lot subject to a thirty-foot side-yard setback. The Board denied Schaumberg's appeal and his request for a variance.

On July 7, 2008, Schaumberg applied for judicial review of the Board's decision and petitioned for a writ of certiorari in district court. The following day, the district court ordered the county's petition for an injunction be consolidated with Schaumberg's appeal of the Board's decision/petition for a writ of certiorari. Subsequently, both parties moved for summary judgment on Schaumberg's appeal from the Board's decision/petition for a writ of certiorari. Schaumberg asserted that he was entitled to summary judgment because (1) the zoning ordinance did not apply to his property because his property was located on private roads; (2) Chipmunk Lane is a cul de sac, not a thoroughfare, and consequently his lot is not a corner lot; and (3) the zoning ordinance does not define thoroughfare and as a result is vague and unconstitutional.

On December 23, 2008, the district court granted Allamakee County and the Board's motion for summary judgment and denied Schaumberg's motion for summary judgment. The district court found that the county zoning ordinance did apply to Schaumberg's property; Chipmunk Lane was a street and Schaumberg's lot was a corner lot; and the zoning ordinance was not unconstitutional. Schaumberg applied for interlocutory appeal, which our supreme court granted and transferred to our court. *See* Iowa R. App. P. 6.104 (2009). On appeal,

Schaumberg asserts the district court erred in granting summary judgment in favor of Allamakee County and the Board.

II. Standard of Review.

We review a district court's ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.907. Summary judgment should be granted when the entire record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3).

> Thus, on review, we examine the record before the district court to decide whether any material fact is in dispute, and if not, whether the district court correctly applied the law. In considering the record, we view the facts in the light most favorable to the party opposing the motion for summary judgment.

Shriver v. City of Okoboji, 567 N.W.2d 397, 400 (Iowa 1997) (internal citations and quotation omitted). However, to the extent that a constitutional right is raised, our review is de novo. *Meduna v. City of Crescent*, 761 N.W.2d 77, 80 (Iowa Ct. App. 2008).

III. Analysis.

Schaumberg first asserts that "Allamakee County has no authority to apply its zoning to a private thoroughfare or street." Because his property is located in a private development and abutted by two private streets, he claims the zoning ordinance does not apply to his property. Iowa counties have the authority to adopt zoning regulations in accordance with Iowa Code chapter 335 (2007) (County Zoning). According to this chapter, the county board of supervisors may enact zoning regulations that apply to "land and structures located within the county but lying outside of the corporate limits of any city." Iowa Code § 335.3.

Nothing in chapter 335 limits the application of a zoning ordinance to public streets. *Cf.* Iowa Code § 335.2 (limiting a zoning ordinance enacted pursuant to chapter 335 from applying to farm land, houses, buildings, and structures used for agricultural purposes). Further, the Allamakee County Zoning Ordinance explicitly applies to private roads. It defines street as "*a public or private* thoroughfare which affords the principal means of access to abutting property." (Emphasis added.) *See Jersild v. Sarcone*, 260 Iowa 288, 298, 149 N.W.2d 179, 186 (1967) (applying a zoning ordinance to a street "not deeded or dedicated to the public"). Therefore, regardless of whether the bordering roads are public or private, the county zoning ordinance applies to Schaumberg's property.

Next, Schaumberg argues that his property is not a corner lot because both Harpers Highland Lane and Chipmunk Lane that abut his property are not streets under the zoning ordinance, but rather cul de sacs. To decide this issue, we examine the Allamakee County Zoning Ordinance.

> Although we give deference to the board of adjustment's interpretation of [the county zoning ordinance], final construction and interpretation of zoning ordinances is a question of law for us to decide. In interpreting ordinances it is appropriate to apply the general rules of construction for statutes.
>
> Controlling rules of construction are well settled. Ordinarily, where the legislature defines its own terms and meanings in a statute, the common law and dictionary definitions which may not coincide with the legislative definition must yield to the language of the legislature. The dictionary is consulted to give words their plain and ordinary meaning in the absence of a legislative definition. In interpreting words we consider the context in which the words of the statute are used.

Lauridsen v. City of Okoboji Bd. of Adjustment, 554 N.W.2d 541, 543-44 (Iowa 1996). "The assessment of an ordinance requires consideration in its entirety so

that the ordinance may be given its natural and intended meaning." *Meduna*, 761 N.W.2d at 80.

Our supreme court examined a similar question in *Lauridsen*, and we find the analysis in that case controlling. *See Lauridsen*, 554 N.W.2d at 543-44. The dispute is controlled by the ordinance's own definitions. *Id.* at 544. The Allamakee County Zoning Ordinance contains the following definitions:

> Lot, Corner: A lot abutting upon two or more streets at their intersections.
> . . . .
> Lot, Interior: A lot other than a corner lot.
> . . . .
> Street: A public or private thoroughfare which affords the principal means of access to the abutting property.

Whether a cul de sac is a street under the county zoning ordinance depends on the meaning of the phrase "thoroughfare which affords the principal means of access to the abutting property." *See id.* (discussing the definition of thoroughfare). The County and Board argue that the key phrase in the definition of street is "principal means of access." We agree. "The ordinance does not provide that all thoroughfares are streets; in order for a thoroughfare to qualify as a street it must afford 'the principal means of access to the abutting property.'" *Id.* The record is clear that Harpers Highland Lane and Chipmunk Lane provide the principal means of access, if not the only access, to the abutting properties and therefore, are streets under the ordinance.

Finally, Schaumberg argues that even if the county zoning ordinance applies, the ordinance is unconstitutionally vague for failing to define thoroughfare.

> When an ordinance is challenged on constitutional grounds, a presumption of constitutionality exists that can only be overcome by negating every reasonable basis upon which the ordinance could otherwise be sustained. To sustain a challenge based on vagueness, the aggrieved party must show that the language in the ordinance does not convey a sufficiently definite warning of proscribed conduct, when measured by common understanding or practice. In other words, when persons must necessarily guess at the meaning of the statute and its applicability, the statute is unconstitutionally vague.

Ackman v. Bd. of Adjustment, 596 N.W.2d 96, 104-05 (Iowa 1999).

We find the ordinance in question is not unconstitutionally vague. We first note that although there may have been some initial confusion over the setback required, Schaumberg was informed by the zoning administrator when he applied for his building permit prior to beginning construction, that his lot was a corner lot with a side-yard setback of thirty feet. Regardless, we believe when examined in the context of "common understanding or practice," the definition of a street includes a cul de sac. *Id.* As the district court found, "A reasonable construction of the ordinance would include a cul de sac within the definition of a street." Consequently, we find the zoning ordinance is not unconstitutionally vague. We have considered all of Schaumberg's arguments on appeal and affirm the district court's grant of summary judgment in favor of the County and Board. Costs on appeal are assessed to Schaumberg.

AFFIRMED.