

SUPREME COURT OF IOWA

Robert P. Kleiman, on Behalf of Himself and All Others Similarly
Situatd v. City of Waterloo, Iowa

No. 07-1855 (Iowa June 4, 2010) · No. No. 07-1855 · Decided June 4, 2010

SUMMARY

The Iowa Supreme Court reviewed an interlocutory appeal concerning a class action seeking refunds of franchise fees imposed by the City of Waterloo on cable television services. The court held that Iowa Code section 477A.7(5), which ratified the city's past assessment and collection of the fees, did not violate federal or state due process protections. The court reversed the denial of summary judgment and remanded for entry of judgment in favor of the city.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Per curiam
JURISDICTION	Iowa
DECIDED	June 4, 2010
DOCKET	No. 07-1855
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the denial of the city's motion for summary judgment in a class action seeking refunds of cable television franchise fees.
STANDARD OF REVIEW	Review of a summary judgment ruling and the constitutionality of a statute; the opinion adopts the analysis stated in Zaber v. City of Dubuque.
PRECEDENTIAL VALUE	Nonprecedential; opinion states that it shall not be published.
PARTIES	City of Waterloo, Iowa v. Robert P. Kleiman, on behalf of himself and all others similarly situated

TOPICS

- municipal law
- public utilities
- due process
- summary judgment
- interlocutory appeal

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Iowa Code section 477A.7(5) violated the Due Process Clause of the Fifth Amendment to the United States Constitution when applied to the city's past assessment and collection of cable television franchise fees.
2. Whether Iowa Code section 477A.7(5) violated article I, section 9 of the Iowa Constitution by retroactively validating the city's past assessment and collection of franchise fees.
3. Whether the plaintiffs were entitled to refunds of franchise fees after the legislature ratified the city's past assessment and collection of those fees.

HOLDINGS

1. Iowa Code section 477A.7(5) does not violate the Due Process Clause of the Fifth Amendment to the United States Constitution.
2. Iowa Code section 477A.7(5) does not violate the due process clause of article I, section 9 of the Iowa Constitution.
3. Because the legislature ratified the city's past assessment and collection of franchise fees, the plaintiffs are not entitled to refunds of those fees.

KEY QUOTATIONS

“Because the legislature has ratified the city’s past assessment and collection of franchise fees, the plaintiffs are not entitled to a refund of those fees.” (at 3)

FACTUAL BACKGROUND

Robert Kleiman brought a class action seeking refunds of franchise fees paid on cable television services to the City of Waterloo, alleging that the fees were illegally exacted. The district court certified the class. The city relied on Iowa Code section 477A.7(5), which prospectively legalized the franchise fees, while Kleiman argued that retroactive application violated the Due Process Clauses of the federal and Iowa Constitutions.

PROCEDURAL HISTORY

Kleiman filed a class action against the City of Waterloo seeking refunds, declaratory and injunctive relief, and related remedies concerning franchise fees imposed on cable television services. The district court certified the class and denied the city's motion for summary judgment, concluding that Iowa Code section 477A.7(5) was not a curative act and that its application violated the plaintiffs' due process rights. The Supreme Court of Iowa granted the city's application for interlocutory appeal, reversed, and remanded for entry of summary judgment in favor of the city.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the district court for entry of summary judgment in favor of the City of Waterloo.

CASES CITED

- Zaber v. City of Dubuque, ___ N.W.2d ___ (Iowa 2010)
- Curtis v. City of Bettendorf, No. 07-1856
- Lindstrom v. City of Des Moines, No. 07-1641

OPINION

Robert P. Kleiman, On Behalf Of Himself And All Others Similarly Situated Vs. City Of Waterloo,
Iowa

PER CURIAM.

IN THE SUPREME COURT OF IOWA

No. 07–1855 Filed June 4, 2010 ROBERT P. KLEIMAN, On Behalf of Himself and All Others
Similarly Situated, Appellee, vs.

CITY OF WATERLOO, IOWA,

Appellant. Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge. The city appeals from a district court ruling denying its motion for summary judgment. DISTRICT COURT DECISION REVERSED AND CASE REMANDED. Ivan T. Webber and James R. Wainwright of Ahlers & Cooney, P.C., Des Moines, for appellant. Terry M. Giebelstein, Thomas D. Waterman, and Richard A. Davidson of Lane & Waterman LLP, Davenport, for appellee Kleiman. Terrence L. Timmins, Des Moines, for amicus curiae Iowa League of Cities. Bruce H. Stoltze of Stoltze & Updegraff, P.C., Des Moines, and Brad A. Schroeder of Hartung & Schroeder LLP, Des Moines, for amicus curiae Iowa Trial Lawyers Association. 2 PER CURIAM. Appellee, Robert Kleiman, filed this class action against the appellant, City of Waterloo, for refunds of franchise fees paid on cable television services, claiming these fees were illegally exacted by the city. He sought certification of the class, judgment against the city in an amount sufficient to compensate him and the other class members for the illegal tax and interest, attorney fees, a declaration that the franchise fees are illegal and void, an injunction stopping the city from enforcing the franchise fees in the future, and other proper relief. The district court certified the class. The city filed a motion for summary judgment claiming Iowa Code section 477A.7(5) (Supp. 2007) relieved it of any liability. Kleiman acknowledged that section 477A.7(5) prospectively legalized the city's franchise fees, but resisted the retroactive application of the law, claiming it was unconstitutional under the Due Process Clauses of the Federal and State Constitutions. The district court concluded section 477A.7(5) was not a curative act, and held this provision violated the plaintiffs' due process rights because it impaired their vested rights. Therefore, the court denied the city's motion for summary judgment. The city filed an application for interlocutory appeal, which we granted. 1 On appeal, the parties raise the identical issues

addressed in *Zaber v. City of Dubuque*, ___ N.W.2d ___ (Iowa 2010), a decision we also file today. Upon our consideration of these issues and for the reasons set forth in our opinion in *Zaber*, we hold that section 477A.7(5) does not violate the Due Process Clause of the Fifth Amendment to the United States Constitution. 1 This case was combined for appeal with *Curtis v. City of Bettendorf*, No. 07–1856; *Lindstrom v. City of Des Moines*, No. 07–1641; and *Zaber v. City of Dubuque*, No. 07–1819. The clerk docketed the combined appeals under No. 07–1641. 3 States Constitution or the due process clause of article I, section 9 of the Iowa Constitution. Because the legislature has ratified the city’s past assessment and collection of franchise fees, the plaintiffs are not entitled to a refund of those fees. Therefore, we reverse the decision of the district court and remand this case to the district court for entry of summary judgment in favor of the city.

DISTRICT COURT DECISION REVERSED AND CASE

REMANDED. All justices concur except Wiggins and Hecht, JJ., who dissent. This opinion shall not be published. 4 #07–1855, *Kleiman v. City of Waterloo* WIGGINS, Justice (dissenting). I dissent for the reasons stated in my dissent in *Zaber v. City of Dubuque*, ___ N.W.2d ___, ___ (Iowa 2010) (Wiggins, J., dissenting). Hecht, J., joins this dissent.