

SUPREME COURT OF WISCONSIN

Thomas D. Nowell and Suporn Nowell, d/b/a IC Willy's, LLC v. City of Wausau

351 Wis. 2d 1 (2013) · No. 2011AP1045 · Decided November 6, 2013

SUMMARY

The Wisconsin Supreme Court held that certiorari, rather than de novo review, is the appropriate standard for judicial review of a municipal decision not to renew an alcohol beverage license under Wis. Stat. § 125.12(2)(d). The court reversed the Wisconsin Court of Appeals and upheld the circuit court's use of certiorari review in affirming the City of Wausau's decision.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Ann Walsh Bradley, J.
JURISDICTION	Wisconsin
DECIDED	November 6, 2013
DOCKET	2011AP1045
DISPOSITION	reversed
PROCEDURAL POSTURE	The City of Wausau petitioned the Wisconsin Supreme Court for review of a published court of appeals decision that reversed a circuit court judgment affirming the City's refusal to renew the Nowells' Class B alcohol license.
STANDARD OF REVIEW	The Supreme Court reviewed statutory interpretation de novo. It held that judicial review of a municipal decision not to renew an alcohol license under Wisconsin Statutes section 125.12(2)(d) is by certiorari, under which the reviewing court examines whether the municipality acted within its jurisdiction, according to law, without arbitrary, oppressive, or unreasonable action representing its will rather than its judgment, and on evidence sufficient to support the decision.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; binding precedent in Wisconsin.
PARTIES	Thomas D. Nowell and Suporn Nowell, d/b/a IC Willy's, LLC v. City of Wausau

TOPICS

writ of certiorari judicial review of agency action municipal law statutory interpretation
standard of review

PRACTICE AREAS

municipal law administrative law alcohol licensing appellate procedure

QUESTIONS PRESENTED

1. Whether Wisconsin Statutes section 125.12(2)(d) requires de novo review or certiorari review of a municipality's decision not to renew an alcohol license.
2. Whether the circuit court properly applied certiorari review and affirmed the City Council's nonrenewal decision.

HOLDINGS

1. Certiorari is the proper standard of review when a court reviews a municipal decision not to renew an alcohol license under Wisconsin Statutes section 125.12(2)(d); the statute's civil-action procedures do not require de novo review.
2. The circuit court correctly applied certiorari review and properly affirmed the City Council's decision not to renew the Nowells' alcohol license.

KEY QUOTATIONS

“Thus, the scope of certiorari review is limited to: 1) whether the [municipality] kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.” (¶24)

“Therefore, we conclude that certiorari is the correct standard of review for a court to apply when, pursuant to Wis. Stat. § 125.12(2)(d), it reviews a municipal decision not to renew an alcohol license.” (¶48)

“Accordingly, we reverse the court of appeals.” (¶54)

FACTUAL BACKGROUND

IC Willy's, a tavern owned by Thomas and Suporn Nowell, received a Class B combined alcohol license from the City of Wausau on October 1, 2009. Police thereafter received numerous noise complaints, issued citations for disturbing the peace, observed nudity and lewd behavior at a "Girls Gone Wild" event, and documented failed compliance checks involving underage persons. After a municipal hearing lasting approximately fourteen hours, the City's Public Health and Safety Committee recommended nonrenewal, and the City Council accepted that recommendation.

PROCEDURAL HISTORY

The City Council refused to renew the Nowells' Class B combined intoxicating liquor and fermented malt beverage license after a municipal hearing. The Marathon County Circuit Court, applying certiorari review, affirmed the City's decision. The court of appeals reversed, holding that Wisconsin Statutes section 125.12(2)(d) required de novo review. The Wisconsin Supreme Court reversed the court of appeals.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None stated. The decision of the court of appeals was reversed, leaving the circuit court's affirmance of the City's nonrenewal decision in place.

CASES CITED

- Nowell v. City of Wausau, 2012 WI App 100, ¶¶6-12, 344 Wis. 2d 269, 823 N.W.2d 373
- Marquette Savings & Loan Ass'n v. Village of Twin Lakes, 38 Wis. 2d 310, 316, 156 N.W.2d 425 (1968)
- State ex rel. Casper v. Board of Trustees, 30 Wis. 2d 170, 176, 140 N.W.2d 301 (1966)
- Merkel v. Village of Germantown, 218 Wis. 2d 572, 577-78, 581 N.W.2d 552 (Ct. App. 1998)
- State ex rel. Smith v. City of Oak Creek, 139 Wis. 2d 788, 407 N.W.2d 901 (1987)
- Park 6 LLC v. City of Racine, 2012 WI App 123, ¶6, 344 Wis. 2d 661, 824 N.W.2d 903
- Questions, Inc. v. City of Milwaukee, 2011 WI App 126, ¶13, 336 Wis. 2d 654, 807 N.W.2d 131
- Wisconsin Dolls, LLC v. Town of Dell Prairie, 2012 WI 76, ¶¶18-19, 342 Wis. 2d 350, 815 N.W.2d 690
- State ex rel. Ruffalo v. Common Council, 38 Wis. 2d 518, 524-25, 157 N.W.2d 568 (1968)
- City of Beloit v. Town of Beloit, 37 Wis. 2d 637, 644, 155 N.W.2d 633 (1968)
- Wisconsin's Environmental Decade, Inc. v. Public Service Commission, 79 Wis. 2d 161, 170, 255 N.W.2d 917 (1977)
- State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, ¶¶45-46, 50-51, 271 Wis. 2d 633, 681 N.W.2d 110
- Zwiefelhofer v. Town of Cooks Valley, 2012 WI 7, ¶20, 338 Wis. 2d 488, 809 N.W.2d 362
- State ex rel. Ruthenberg v. Annuity & Pension Board, 89 Wis. 2d 463, 473, 278 N.W.2d 835 (1979)
- State ex rel. Grand Bazaar Liquors, Inc. v. City of Milwaukee, 105 Wis. 2d 203, 217, 313 N.W.2d 805 (1982)
- Eichenseer v. Madison-Dane County Tavern League, 2008 WI 38, ¶54, 308 Wis. 2d 684, 748 N.W.2d 154
- Highway 100 Auto Wreckers, Inc. v. City of West Allis, 6 Wis. 2d 637, 643, 96 N.W.2d 85 (1959)
- La Crosse Rendering Works, Inc. v. City of La Crosse, 231 Wis. 438, 448, 285 N.W. 393 (1939)
- California v. LaRue, 409 U.S. 109, 114 (1972)
- Stuligross v. Stuligross, 2009 WI App 25, ¶12, 316 Wis. 2d 344, 763 N.W.2d 245