

IN THE IOWA DISTRICT COURT IN AND FOR MONROE COUNTY

MONROE COUNTY, IOWA,

Plaintiff/Counterclaim Defendant,

v.

IOWA FIREARMS COALITION, INC.,
J.D. THOMPSON,

Defendants/Counterclaim Plaintiffs,

v.

DENNIS AMOSS, JOHN HUGHES,
MICHAEL BEARY, in their official and
individual capacities, AMANDA HARLAN,
in her official capacity, and DANIEL
JOHNSON, in his official capacity,

Third-Party Defendants.

CASE NO. CVEQ009563

RULING ON PENDING MOTIONS

On June 11, 2021, this case came before the Court for hearing on pending motions. At issue is Monroe County's Motion for Partial Summary Judgment filed April 20, 2021, and a cross Motion for Partial Summary Judgment filed by J.D. Thompson and Iowa Firearms Coalition, Inc. on May 4, 2021. Monroe County appeared by Monroe County Attorney John A. Pabst. Attorneys Alan R. Ostergren and William R. Gustoff appeared on behalf of J.D. Thompson and the Iowa Firearms Coalition, Inc.

FINDINGS OF FACT

The Court finds the following facts relevant and undisputed and proven by a preponderance of the evidence:

On June 19, 2017, Chief Justice Mark Cady issued a supervisory order prohibiting all weapons from courtrooms, court-controlled spaces, and public areas of courthouses and other justice centers occupied by the court system. Soon after the June order, the Iowa Legislature amended Iowa Code section 724.28 to create a cause of action for declaratory and injunctive relief for persons adversely affected by local regulation of firearms. A second supervisory order was issued on December 19, 2017, as a supplement to the June order, which allowed a chief judge of a district to modify the prohibition by eliminating the prohibition in public areas of courthouses not totally occupied by the court system. Section 724.28 was again amended in 2020, now awarding a prevailing party all attributable damages, reasonable attorney fees, and court costs. The 2020 amendment also created a safe haven in which a political subdivision could regulate firearms within a building or structure if the subdivision provided for weapon screenings and armed security personnel in the building.

Monroe County enacted a policy prohibiting weapons within the Monroe County Courthouse. The courthouse does not have screenings nor armed security personnel. The courthouse is a joint use facility with space shared between county offices and the court system. J.D. Thompson is a resident of Monroe County and believed the County's weapon policy in the courthouse violated Iowa Code section 724.28. Mr. Thompson raised the issue to the Monroe County Board of Supervisors, which chose to keep the policy.

CONCLUSIONS OF LAW

Summary judgment is proper only when the entire record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007) (citing *Carr v. Bankers Trust*

Co., 546 N.W.2d 901, 903 (Iowa 1996)); Iowa R. Civ. P. 1.981(3). An issue of fact is material when a dispute exists that may affect the outcome of the suit, given the applicable governing law. *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992) (citing *Hike v. Hall*, 427 N.W.2d 158, 159 (Iowa 1988)). The requirement that the issue be genuine “means the evidence is such that a reasonable jury could return a verdict” for the party resisting the motion. *Id.* (citing *Hike*, 427 N.W.2d at 159). In determining whether a motion for summary judgment should be granted, the court ““must determine whether any facts have been presented over which a reasonable difference of opinion could exist that would affect the outcome of the case.”” *Id.* (quoting *Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987)).

The party requesting summary judgment bears the burden of proof. *Clinkscapes v. Nelson Sec., Inc.*, 697 N.W.2d 836, 841 (Iowa 2005) (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004)). “A court entertaining a motion for summary judgment must view the evidence in the light most favorable to the nonmoving party.” *Id.* (citing *Harris*, 679 N.W.2d at 677). “Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw different inferences from them and thereby reach different conclusions.” *Id.* (citing *Walker Shoe Store, Inc. v. Howard's Hobby Shop*, 327 N.W.2d 725, 728 (Iowa 1982)). The nonmoving party should be afforded every legitimate inference that can be reasonably deduced from the evidence. *Id.* (citing *Cent. Nat'l. Ins. Co. v. Ins. Co. of N. Am.*, 522 N.W.2d 39, 42 (Iowa 1994)). However, “[t]he resistance must set forth specific facts constituting competent evidence to support a prima facie claim.” *Hoefler v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991) (citing *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989); *Prior v. Rathjen*, 199 N.W.2d 327, 330 (Iowa 1972)). The adverse party “may not rest upon the mere

allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.” Iowa R. Civ. P. 1.981(5).

Speculation is not sufficient to generate a genuine issue of fact. *Walls v. Jacob North Printing Co.*, 618 N.W.2d 282, 284 (Iowa 2000). “A fact issue is generated if reasonable minds can differ on how the issues should be resolved, but if the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper.” *Uhl v. City of Sioux City*, 490 N.W.2d 69, 74 (Iowa App. 1992).

Declaratory judgment permits the court to “declare rights, status, and other legal relations whether or not relief is or could be claimed.” Iowa Court Rule 1.1101. A declaratory judgment “does not involve executory or coercive relief,” rather the “declaration stands by itself.” *Dubuque Policemen’s Protective Ass’n v. City of Dubuque*, 553 N.W.2d 603, 606 (Iowa 1996) (quoting 22A Am.Jur.2d *Declaratory Judgments* § 1, at 670 (1988)).

For a declaratory judgment action to be ripe for adjudication, there must be a justiciable controversy and not just a desire for a decision on a point of law or fact. *Bechtel v. City of Des Moines*, 225 N.W.2d 326 (Iowa 1975). A justiciable controversy is one where there is substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant declaratory judgment. *Id.* (quoting *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 512 (1941)). “Mere differences of opinion to the rights of parties does not constitute such a controversy.” *In re Hoelscher’s Estate*, 249 Iowa 444, 87 N.W.2d 446 (Iowa 1958). An aspect of justiciable controversy is the party against whom judgment is sought must

have a concrete adverse legal interest. *Farm & City Ins. Co. v. Coover*, 225 N.W.2d 335 (Iowa 1975). In making the determination, the court must consider the plaintiff's interest in expeditious resolution of the claim, whether future factual development might affect the resolution of the claim, the need to conserve judicial resources and avoid rendering advisory opinions, and whether declaratory relief will bring finality to the controversy between the parties. *Greenbriar Group, L.L.C. v. Haines*, 854 N.W.2d 46 (Iowa Ct. App. 2014).

ANALYSIS

I. Motion for Partial Summary Judgment filed by Monroe County

The Court begins with the Motion for Partial Summary Judgment filed by Monroe County. However, before the Court may address the merits of the Motion, it must first settle the question of whether there is jurisdiction to consider the County's Petition. The Court has inherent power to determine whether it has jurisdiction over a case, and the Court has a duty to refuse "to decide controversies that are not properly" before it. *City of Des Moines v. Des Moines Police Bargaining Unit Ass'n*, 360 N.W.2d 729, 730 (Iowa 1985).

The Court has jurisdiction to hear declaratory judgment actions generally. However, it is less clear whether this particular action properly invokes the Court's jurisdiction. Declaratory judgment actions require a justiciable controversy, which must be shown by the pleaded facts of the petition. *Wesselink v. State Dept. of Health*, 248 Iowa 639, 80 N.W.2d 484 (Iowa 1957). Mr. Thompson is only referenced three times in the Petition, including paragraph 31 that states that the County is not seeking any personal judgment against Mr. Thompson. The only substantive allegation concerning Mr. Thompson is that he "petitioned Monroe County Iowa to enforce the provision of HF2502. Monroe County, Iowa denied Mr. Thompson's request." The pleadings in

the Petition do not show a substantial controversy exists between Monroe County and Mr. Thompson. The Court is aware that Mr. Thompson has publicly taken the stance that Monroe County's firearm prohibition policy violates state law. Beyond this, there is nothing in the record demonstrating Monroe County and Mr. Thompson have adverse legal interests of sufficient immediacy and reality to warrant declaratory judgment.

Next, the Court determines whether there is a justiciable controversy between Monroe County and the Iowa Firearms Coalition. Like Mr. Thompson, the IFC is only briefly discussed in the Petition. The County alleges that the IFC has advised they will "impose this unfunded mandate" or that the County "will be liable for this unfunded mandate plus attorney fees and other costs." It is implied, though unstated, that the IFC will bring suit against the County as the method of imposing the alleged mandate and to recover attorney fees. However, there is no allegation that such a suit was likely to happen or that it would be immediately forthcoming. These are requirements for a justiciable controversy to exist that would warrant declaratory judgment.

For the above stated reasons, the Court determines there is no justiciable controversy between Monroe County and Mr. Thompson and/or Iowa Firearms Coalition. The County's claims are not ripe for adjudication. Therefore, the Court is obligated, by law, to dismiss the County's Petition. While the County may desire judicial review of its firearm policy and the interplay between Chief Justice Cady's supervisory orders and enacted statute, they must seek that determination with a proper defendant.

II. Motion for Partial Summary Judgment filed by Thompson and Iowa Firearms Coalition

Mr. Thompson and the IFC are seeking summary judgment solely on counterclaim I, which requests declaratory judgment, damages, and injunction. The facts are not in dispute rendering summary judgment proper. Mr. Thompson and the IFC seek a declaration from the Court that Monroe County's firearm policy is preempted by the provisions of Iowa Code section 724.28. Third-Party Defendants Amoss, Hughes, Beary, Harlan, and Johnson took no position on said Motion. The section states that any political subdivision of the state, which includes a county:

shall not enact an ordinance, motion, resolution, policy, or amendment regulating the ownership, possession, legal transfer, lawful transportation, modification, registration, or licensing of firearms, firearms attachments, or other weapons when the ownership, possession, transfer, transportation, or modification is otherwise lawful under the laws of this state.

Iowa Code § 724.28(2). A person who prevails in an action under the section shall be awarded reasonable attorney fees and court costs. Iowa Code § 724.28(3). An exception to the general prohibition exists for those buildings or physical structures under a political subdivision's control that possess "adequate arrangements" for screening persons for firearms or weapons and there is armed security personnel inside the building or physical structure. Iowa Code § 724.28(4).

Monroe County argues its policy is pursuant to supervisory orders issued by Chief Justice Cady regarding courthouse security. The first supervisory order was issued June 19, 2017, and recognized the increasing concern over security in court facilities. The Iowa Supreme Court invoked its supervisory and administrative control under article V, section 4 of the Iowa Constitution, and issued a statewide policy prohibiting all weapons from courtrooms, court-controlled spaces, and public areas of courthouse and other justice centers occupied by the court system. Then, on December 19, 2017, the Court issued a supplementary order. This December order specifically acknowledged that most courthouses in the state are shared between court and

county offices, and that a more individualized approach to security was necessary. Therefore, the Court ordered that the weapons prohibition from the June order was to remain in place, but that the chief judge of the judicial district possessed the authority to modify the prohibition to eliminate it in public areas of a courthouse not totally occupied by the court system. The order mandated the chief judge make the modification upon the request of a county board of supervisors or other controlling entity. Upon the entry of the chief judge's modifying order, the court system relinquished any authority over the regulation of weapons in the public areas not totally occupied by the court system to the requesting entity. Both supervisory orders remain in effect.

Monroe County asserts that its firearm policy, which applies to the entire courthouse, was necessary to be in compliance with the Chief Justice Cady's supervisory orders, as the courthouse is shared by the court system and the county offices. Mr. Thompson and the IFC disagree with argument that the supervisory orders do not require a county to enact its own policy to carry out the Court's order. Further, the December order explicitly stated that a county board of supervisors could elect to have the Court's prohibition be modified so as to not apply to joint spaces.

The Court agrees with Mr. Thompson and the IFC. There is no language in the supervisory orders that direct or command the counties to enact a policy to carry out the Supreme Court's order. Rather, the language clearly indicates the Court's orders were issued pursuant to its "constitutional authority and responsibility to supervise and administer Iowa's district courts." Any dispute as to whether the judicial branch was attempting to regulate spaces beyond those controlled by the court system should have been resolved by the December order, which granted the chief judge of a district the authority and responsible to modify the prohibition to cover only court-controlled spaces upon request of a county board of supervisors. If the Supreme Court was

attempting to regulate all joint use spaces, it is illogical that it would then proceed to give counties a method to effectively opt out of that authority. This Court thinks the more reasonable interpretation is that the December order recognized the judicial branch lacked the authority to regulate these public or joint use spaces without the consent of the county, and therefore created a process by which the county could choose to accept or reject the prohibition in those spaces. Therefore, the Court is unpersuaded by the argument that the Monroe County firearms policy was mandated or necessary to be in compliance with Chief Justice Cady's June or December supervisory orders.

Having found that the Monroe County policy was not required by the supervisory orders, the Court turns to the argument of Mr. Thompson and the IFC that the County's policy is preempted by Iowa Code section 724.28, and that the County is in violation of that section. Preemption is a doctrine of law that prevents municipalities from acting if the legislature has directed otherwise. *City of Davenport v. Seymour*, 755 N.W.2d 533 (Iowa 2008). In other words, "when exercised, legislative power trumps the power of local authorities." *Id.* at 538. There are three types of preemption recognized; however, only one type applies here. Express preemption "applies where the legislature has specifically prohibited local action in a given area." *Id.* With express preemption, the Court uses the specific language used by the legislature to resolve any issues. The language of Iowa Code section 724.28 is plainly a statement of express preemption. Thusly, the Court finds that Monroe County is prohibited from adopting any policy that regulates the possession of firearms. It is undisputed that Monroe County has such a policy. Therefore, the Court finds that the Monroe County policy is in violation of and preempted by section 724.28. Further, it is undisputed that courthouse does not have any screening arrangements or have armed

security personnel in the building on a regular basis, so the safe haven of section 724.28(4) is not applicable.

Having found that Monroe County has violated section 724.28, then the Court determines that Mr. Thompson and the IFC are entitled to declaratory and injunctive relief and all damages attributable to the violation. Additionally, Mr. Thompson and the IFC shall be awarded reasonable attorney fees and court costs. As damages, attorney fees, and court costs are matters of fact needing further development, the Court reserves making any specific findings regarding such an award at this time.

RULING

IT IS THEREFORE ORDERED that the Motion for Partial Summary Judgment filed by Monroe County is hereby DISMISSED for lack of jurisdiction. Costs are assessed to the County.

IT IS FURTHER ORDERED that the Motion for Partial Summary Judgment filed by J.D. Thompson and the Iowa Firearms Coalition, Inc. is hereby GRANTED. Monroe County and its officers, employees, and third parties under its control, are enjoined from enforcing any policy, practice, ordinance, or resolution contrary to Iowa Code § 724.28, including the posting of signage appearing to communicate such a policy.

IT IS FURTHER ORDERED that counsel for Mr. Thompson and the IFC are directed to file with the Court a statement of damages attributed to the Iowa Code § 724.28 violation and reasonable attorney fees so that the Court may make the proper award under § 724.28(3). Said submission shall be filed on or before July 30, 2021. Monroe County and Third-Party Defendants Amoss, Hughes, Beary, Harland, and Johnson may then file any responsive brief, if desired, on or before August 18, 2021.

IT IS FURTHER ORDERED that counsel for all parties shall jointly contact Court Administration for a trial date for the remaining counterclaims after the filing of an agreed upon discovery plan. Counsel for Thompson and the IFC shall then prepare and present a proposed Order Setting Trial to the Court on or before 9:00 a.m. on July 23, 2021.

IT IS SO ORDERED.



State of Iowa Courts

Case Number
CVEQ009563

Case Title
MONROE COUNTY IOWA VS JD THOMPSON & IOWA
FIREARMS
OTHER ORDER

Type:

So Ordered

Joel D. Yates, District Court Judge,
Eighth Judicial District of Iowa