

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

**STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES,****Plaintiff,****vs.****JOHN GOLDSMITH,****Defendant.**

NO. EQCV191254**RULING ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

On March 4, 2021, the Court conducted a video hearing on the Plaintiff's Motion for Summary Judgment filed January 29, 2021. Appearing and arguing the Motion on behalf of the Plaintiff was Eric Dirth. Appearing and arguing the Motion on behalf of the Defendant was Anthony Osborn. The Court now rules on the Motion as set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant John Goldsmith ("Goldsmith") owns real property located at 1470 210th St. in Sergeant Bluff, Iowa. This property is bordered to the north and south by other residential properties.

On August 7, 2018, Goldsmith had at least 5,000 railroad ties located on this property. The railroad ties had been on the property for at least one month prior to August 11, 2018. The ties were approximately 10 inches wide, eight inches deep, and between eight to nine feet long. On or around August 7, 2018, Goldsmith was informed that burning the railroad ties was illegal. Prior to August 11, 2018, Goldsmith obtained monetary estimates of the cost to dispose of the railroad ties in a landfill, but found the cost to be "horrendous." (See Plaintiff's App. at 31, lines 22-25; App. at 32, Lines 13-14.)

On August 11, 2018, at least some of the railroad ties on Goldsmith's property began to burn. Goldsmith's neighbor, Josh Lee ("Lee"), took videos of Goldsmith's property on August 11, 2018, documenting the burning. The fire on Goldsmith's property continued to burn into August 12, 13, and 14 of 2018. Lee once again took videos of the burning each of these days. After the fire on August 14, 2018, no railroad ties remained on Goldsmith's property.

In response to these events, the State filed the present action against Goldsmith on March 4, 2020, alleging: (1) violations of Iowa solid waste disposal under Iowa Code § 455B.307(1) and 567 Iowa Admin. Code 100.4; (2) the open burning of combustible materials in violation of 567 Iowa Admin. Code 23.2(1); (3) the open burning of a fire exceeding 40 percent opacity in violation of 567 Iowa Admin Code 23.3(2)(d). In the Petition, the State seeks the assessment of civil penalties for each day of these violations, as well as a permanent injunction enjoining Goldsmith from any further violations of these provisions.

The State filed the present Motion for Summary Judgment on January 29, 2021, requesting that the Court conclude as a matter of law that Goldsmith violated the aforementioned laws. The State also requests that the Court assess the maximum penalties against Goldsmith for each day of each violation and issue a permanent injunction enjoining Defendant John Goldsmith from any further violation of Iowa Code § 455B.307(1) and 567 Iowa Admin. Code 23.2(1), 23.3(2)(d), 100.4.

STANDARD OF REVIEW

In order for a Court to grant summary judgment, the moving party must show that (1) no genuine issues of material fact exist, and (2) that it is entitled to judgment as a

matter of law. Iowa R. Civ. P. 1.981(3). An issue of fact is material when it might affect the outcome of the suit. *Faeth v. State Farm Mut. Aut. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005) (quoting *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004)). The moving party may establish that there is not a genuine issue of material fact through answers to interrogatories, affidavits, admissions on file, depositions, and pleadings. Iowa R. Civ. P. 1.981(3). Courts may only consider facts that are admissible as evidence when deciding a motion for summary judgment. *Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91, 96 (Iowa 2012) (quoting Iowa R. Civ. P. 1.981(5)).

Once the party requesting summary judgment has met its burden, the party opposing summary judgment “may not rest upon the mere allegations or denials in the pleadings,” and “must set forth specific facts showing that there is a genuine issue for trial.” Iowa R. Civ. P. 1.981(5). See also *Cemen Tech, Inc. v. Three D Indus., LLC*, 753 N.W.2d 1, 5 (Iowa 2008) (quoting *Hlubek v. Pelecky*, 701 N.W.2d 93, 95 (Iowa 2005)). There is a genuine issue for trial when reasonable minds could differ on an issue’s resolution, but summary judgment is appropriate when the only issue is the legal consequences that result from undisputed facts. *Uhl v. City of Sioux City*, 490 N.W.2d 69, 74 (Iowa Ct. App. 1992) (citing *Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988); *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986)). If the nonmoving party cannot generate a prima facie case in the summary judgment record, the moving party is entitled to judgment as a matter of law. *Susie v. Family Health Care of Siouxland, P.L.C.*, 942 N.W.2d 333, 336–37 (Iowa 2020) (citing *Robinson v. Poured Walls of Iowa, Inc.*, 553 N.W.2d 873, 875, 878 (Iowa 1996)).

The Court will review the record in a light that most favors the nonmoving party

and consider all legitimate inferences from the record on that party's behalf. *Faeth*, 707 N.W.2d at 331 (quoting *Estate of Harris*, 679 N.W.2d at 677). An inference is legitimate if it is reasonable, rational, and the substantive law allows it, but not if it is based on conjecture or speculation. *McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002) (citing *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994))

ANALYSIS AND CONCLUSION

I. Liability for Solid Waste Disposal Violations

The dumping or depositing, or allowing the dumping or depositing, of solid waste at any place other than a facility permitted by the Iowa Department of Natural Resources (IDNR) is prohibited unless otherwise permitted by rule. Iowa Code § 455B.307(1); 567 Iowa Admin. Code 100.4. "Solid waste" means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such material resulting from industrial, commercial, agricultural, and domestic activities." Iowa Code § 455B.301(29). "Rubbish" includes "wood," while "refuse" includes "industrial solid waste." 567 Iowa Admin. Code 100.2.

Goldsmith does not dispute that he had the railroad ties on his property, but instead argues that railroad ties are not "solid waste" under Iowa law because they were not garbage, refuse, or trash. See Defendant's Resistance, p.3. He also argues that the ties were not discarded, but rather placed on his property for further processing and that he intended to sell them at some point in time. *Id.* Also, according to Goldsmith, the ties inadvertently caught fire when he decided to burn brush on his property. *Id.*

This is unpersuasive. Goldsmith acquired the railroad ties over several years when the railroad would replace them, which is an industrial activity. The railroad ties are also

wooden, which is covered by 567 Iowa Admin. Code 100.2. Goldsmith's property is not a facility permitted by IDNR for disposal of solid waste. These ties burned from August 11 to August 14, 2018, at which time no ties remained on the property.¹ Therefore, as a matter of law, Goldsmith acted in violation of Iowa Admin. Code 100.4, as promulgated by Iowa Code § 455B.307(1), from August 11 through August 14, 2018.

II. Liability for Open Burning Violations

Iowa law also prohibits any person from allowing, causing, or permitting the open burning of combustible materials unless a variance has been granted under 567 Iowa Admin. Code 23.2(2) or there is an applicable exemption found in 567 Iowa Admin. Code 23.2(3). See 567 Iowa Admin. Code 23.2(1). Open burning is defined as "any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack." 567 Iowa Admin. Code 20.2.

Goldsmith first argues that because the fire on his property contained landscape waste, it should be exempted from Iowa burning laws under 567 Iowa Admin. Code 23.2(3)(d). He also suggests that because the fire occurred on a single-family residential parcel, the exemption for the burning of "residential waste" in 567 Iowa Admin. Code 23.2(3)(f) should apply. That exemption applies to "[b]ackyard burning of residential waste at dwellings of four-family units or less." *Id.*

Goldsmith further maintains if the Court declines to find that an exemption under 567 Iowa Admin. Code 23.2 applies, he should only be held liable for open burning for the fire on August 11, 2018, but not for any later dates. In support of this position, he claims to have sought assistance from the Sergeant Bluff Fire Department to exterminate

¹ The State does not seek to assert violations of Iowa Admin. Code 100.4 for the days the ties were on the property prior to August 11, 2018, but rather only seeks liability for the days that the ties were burned.

the fire on August 12, 2018, but the fire department declined to respond. See Defendant's Resistance, p.4. This, he argues, negates his liability for the burning beyond August 11, 2018. See *id.* at 4-5.

While burning landscape waste is exempted from the open burning laws, it only applies to waste *originating* on the premises. See 567 Iowa Admin. Code 23.2(3)(d) (emphasis added). Additionally, the residential waste exemption Goldsmith seeks to assert applies only to “refuse generated on the premises as a result of residential activities.” See *id.*; 567 Iowa Admin. Code 20.2. The railroad ties at issue here are not landscape waste, nor were they generated as a result of residential activities. See 567 Iowa Admin. Code 20.2. Furthermore, the fact that the fire spread, or that the fire department failed to put out the fire, does not negate Goldsmith's liability for causing, permitting, or allowing the open burning of the railroad ties when he started the fire. See 567 Iowa Admin. Code 23.2(1).

No exemption under 567 Iowa Admin. Code 23.2(3) applies to Goldsmith's burning of the railroad ties. Consequently, Goldsmith violated 567 Iowa Admin. Code 23.2(1) each day the ties burned on his property.

III. Liability for Open Burning Opacity Violations

Iowa Admin. Code 23.3 governs specific contaminants affecting air quality. Specifically, this section provides that “[n]o person shall allow, cause, or permit the emission of visible air contaminants into the atmosphere from any . . . premise fire, open fire[,] equal to or in excess of 40 percent opacity . . .” 567 Iowa Admin. Code 23.3(2)(d). “Opacity” means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. 567 Iowa Admin. Code 20.2.

The State argues that the videos taken by Mr. Lee of the burning of the railroad ties on Goldsmith's property from August 11 through August 13, 2018, show that burning produced the emission of visible air contaminants which exceed the 40 percent opacity threshold under 567 Iowa Admin. Code 23.3(2)(d). Goldsmith does not dispute the veracity of Lee's videos documenting the burning on these dates. Instead, he argues that a triable issue of fact exists regarding the percentage opacity of the fire/smoke emanating from his property as shown on Lee's videos from August 11 to August 13, 2018. He contends that reasonable minds could disagree as to whether the smoke/fire met the 40 percent opacity standard under Iowa Admin Code 23.3(2)(d). He also argues that the State needs to offer an expert opinion in support of the conclusion that the smoke/fire on these days met the standard.

After reviewing Lee's video, it appears that no reasonable mind could disagree that the smoke/fire resulting from the burning on Goldsmith's property exceeded the 40 percent opacity threshold found in Iowa Admin. Code 23.3(2)(d) on August 11 and August 12, 2018. The videos show thick, black smoke rising into the air and blocking the background from visibility. See Plaintiff's App. at 95, ¶ 4-Dropbox file video 0811181904.mp4; ¶ 6-Dropbox file video 0812180631.mp4. However, the video of the burning on August 13, 2018, requires closer examination and further evidence. See *id.* at Plaintiff's App. at 95, ¶ 8-Dropbox video 0813182022.mp4. Reasonable minds could disagree as to whether the 40 percent opacity standard was met by the visible air contaminants on August 13, 2018, and therefore a finding of summary judgment for the violation on that date would be improper at this time.

IV. Assessing Civil Penalties

Civil penalties under Chapter 455B are not fixed like an action for a debt, but instead are written to not exceed a certain dollar amount for each day of a violation. See Iowa Code § 455B.307(2); Iowa Code § 455B.146. Having the civil penalty as a non-fixed amount is based on its remedial nature because the “provision is essentially regulatory and intended to secure compliance with the statute.” *First Iowa State Bank v. Iowa Department of Natural Resources*, 502 N.W.2d 164, 166 (Iowa 1993). There are various factors that Iowa courts must consider with discretion when assessing damages under these statutes at issue. See 567 Iowa Admin. Code 10.2.

The State further requests the Court assess the maximum civil penalty as provided by law for each day of violation and for the Court to enjoin Goldsmith from any further violations. Goldsmith raises several potential mitigating factors that he contends that this Court should consider when deciding the extent to assess civil damages for the violations in this case, including the gravity of the violations, his culpability, remedial measures taken, deterrence, and his financial position.

The Court will reserve for trial the determination of whether any factors exist for reducing the civil penalties to be imposed on Goldsmith for the violations committed and for the determination of injunctive relief.

CONCLUSION

The State has met the burden of proving that no genuine issues of material fact exist, and that it is entitled to judgment as a matter of law, with respect to Goldsmith’s violations of Iowa solid waste disposal law under Iowa Code § 455B.307(1) and 567 Iowa Admin. Code 100.4 for the railroad ties on his property from August 11 to August 14, 2018. The State has also met this burden in proving Goldsmith’s liability for open burning

violations under 567 Iowa Admin. Code 23.2(1) on those same dates. Finally, the State met the burden of proving that the fire/smoke emanating from the burning of the railroad ties on August 11 and August 12, 2018, exceeded the 40 percent opacity threshold set forth in 567 Iowa Admin. Code 23.3(2)(d). As a result, the State's Motion for Summary Judgment is granted for those claims on the aforementioned dates.

The Court also concludes that a genuine issue of material fact exists as to whether the smoke/fire emanating from the burning on Goldsmith's land on August 13, 2018, reaches the 40 percent opacity threshold under 567 Iowa Admin. Code 23.3(2)(d). Accordingly, the State's Motion for Summary Judgment is denied with respect to that claim. That claim is therefore reserved for trial, along with the Court's determination of whether any factors exist for reducing the civil penalties to be imposed on Goldsmith for the violations committed and for the determination of injunctive relief.

SO ORDERED.



State of Iowa Courts

Case Number
EQCV191254

Case Title
STATE OF IOWA EX REL & IOWA DNR VS. GOLDSMITH,
JOHN
Type: OTHER ORDER

So Ordered

Duane E. Hoffmeyer, Chief Judge,
Third Judicial District of Iowa

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