

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

BURTON D. DAVISON and HERE WE GO
AGAIN, INC. d/b/a SHENANIGAN'S IRISH
PUB and STEVIE WILLIS,

Plaintiffs,

No. 3-17-cv-33-CRW-HCA

vs.

ORDER GRANTING
SUMMARY JUDGMENT

THE CITY OF DAVENPORT, IOWA an
Iowa Municipal corporation, and WILLIAM
J. BOOM, a City of Davenport Ward
Alderman, Individually and in his Official
Capacity,

Defendants.

In a five-count Amended Complaint filed on December 20, 2017, an Iowa corporation (Here We Go Again, Inc. d/b/a/ Shenanigan's Irish Pub), Shenanigan's owner (Burton D. Davison), and a patron/employee of Shenanigan's (Stevie Willis)¹ have asserted claims against the City of Davenport, Iowa and William J. Boom, individually and in his official capacity as the third ward alderman of the City of Davenport. They allege defendants wrongfully targeted Shenanigan's for the suspension and revocation of its liquor license.

On March 5, 2019, the court held a hearing by telephone conference call on defendants' motions for summary judgment (Docket # 56, 58). The court grants defendants' motions and directs the Clerk of Court to enter judgment dismissing this lawsuit with prejudice.

Motion for Summary Judgment Standard. The court applies the familiar summary

¹ Plaintiffs on the record withdrew and dismissed all claims asserted by Willis.

judgment standard. Summary judgment is an appropriate disposition when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56. A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The parties seeking summary judgment bear the initial burden of demonstrating the absence of a genuine issue of fact for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving parties satisfy their initial burden, the nonmoving parties must go beyond the pleadings and, by their own affidavits or discovery, "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). In resisting the motion for summary judgment, plaintiffs have not demonstrated in this record that any material fact questions exist.

The following facts are not in dispute.

1. Here We Go Again, Inc. is an Iowa corporation doing business as Shenanigan's Irish Pub, ("Shenanigan's) located at 303 West Third Street, Davenport, Iowa.
2. Burton Davison, a Causcasian, is the owner of Shenanigan's.
3. Shenanigan's opened for business on October 31, 2013.
4. Shenanigan's had a Class C Liquor License. The license stated "[t]his license is a personal privilege and is subject to civil penalty, suspension, revocation or cancellation, as authorized pursuant to Iowa Code Ch. 123."
5. William J. Boom served as the Alderman for Davenport's Third Ward from January 1, 2008 through April 18, 2017. During that time, he served on various committees, including the community development and public safety committees. Boom supported the decision to seek the suspension and revocation of Shenanigan's liquor license.

6. Attorney Tom Warner is Corporate Counsel for the City of Davenport and oversees the City's Legal Department.

7. In the early afternoon of August 16, 2015, Burton Davison went to a Davenport residence. He was armed with a loaded shotgun and a baseball bat.

8. On August 16, 2015, Davenport police officers arrested Burton Davison. They charged him with Assault While Displaying a Dangerous Weapon. Burton Davison stated at that time that he did not intend to shoot, but rather "to beat the crap out of" an individual at the residence.

9. Burton Davison subsequently pled guilty to the charge of Assault While Displaying a Dangerous Weapon in violation of Iowa Code 708.2 (3).

10. On October 6, 2015, the City of Davenport Legal Department filed a revocation petition with the State of Iowa Alcoholic Beverages Division (ABD) asking it to revoke Shenanigan's liquor license. The City filed a Supplement to the Revocation Petition on November 16, 2015.

11. Three bases for revocation were identified in the petition: (1) an August 16, 2015 incident involving Davison, (2) a history of phoned descriptions of problems at Shenanigan's, and (3) problems at a Rock Island, Illinois bar that had been owned and operated by Davison.

12. Attorney Warner knew before the filing of the petition that downtown business owners had complained about ongoing problems at Shenanigan's and that downtown restaurants and bars had complained about the manner in which Shenanigan's operated its business.

13. On November 3, 2015 Alderman Matson sent an email to City Administrator Corri Spiegel, stating "[b]ased on repeated problems and Saturday's big issue—I want all legal options

presented to us today—to close down Shenanigan’s tomorrow! Thanks.”

14. On November 19, 2015, the City filed a Request for Emergency Suspension and effectuated service on Shenanigan’s by mailing via USPS a copy of the document to Shenanigan’s attorney.

15. On November 20, 2015, the ABD issued a summary Suspension Order that suspended Shenanigan’s liquor license pending a hearing. The Davenport Police Department posted a copy of the order on Shenanigan’s front door.

16. The ABD held a seven-hour hearing on December 15, 2015 on the consolidated summary suspension proceedings and the supplemented revocation petition. Shenanigan’s cross-examined the City’s witnesses and presented eight exhibits and the testimony of six witnesses of its own.

17. On December 31, 2015, the ABD issued a Proposed Decision that there was insufficient evidence that Shenanigan’s or its employees had violated any law or rule or ordinance. The Decision also stated that based on the available information, the ABD administrator acted within his statutory authority in issuing the Summary Suspension Order.

18. On January 8, 2016, the ABD issued an order accepting the Proposed Decision and reinstating Shenanigan’s liquor license.

Counts I and II. Plaintiffs allege they were deprived of property in violation of the due process provisions of the federal and Iowa Constitutions. Plaintiffs waive any substantive due process claim (See Docket #69, p7 n.3). Rather, they claim that a procedural due process violation occurred when City Assistant Attorney Brian Heyer filed the Request for Emergency Suspension of Shenanigan’s liquor license. To prevail on a due process claim, plaintiffs must

show evidence of a lost property interest. Iowa case and statutory law establish that a license to sell alcohol is not a constitutionally-protected property interest, but rather a privilege granted by the state. See Walker v. City of Clinton, 59 N.W.2d 785, 787 (Iowa 1953). Moreover, the explicit language of the liquor license itself unequivocally states that the license constitutes a privilege, not a property interest.

Plaintiffs also assert that the defendant City failed to timely notify or provide Shenanigan's with a hearing on the summary suspension request filed on November 19. Plaintiffs contend that by choosing the least likely way of notifying Shenanigan's attorney of the request for emergency suspension—U.S. regular mail—the City deprived plaintiffs of a meaningful opportunity to contest it. But the City served adequate notice in compliance with Iowa statutory administrative law. Shenanigan's was not entitled to a hearing prior to the summary suspension of its liquor license. The defendants simply afforded Shenanigan's the procedural due process to which it was entitled by following the statutory procedure for triggering a hearing and judicial determination on a liquor license suspension and revocation.

Counts III and IV. Plaintiffs allege defendants violated the equal protection guaranteed by the federal and Iowa Constitutions. Plaintiffs assert that defendants applied facially neutral liquor license suspension and revocation laws and policies against them in an intentionally discriminatory manner. Plaintiffs have presented no evidence that any defendant acted in any way that violated a plaintiff's constitutional right. On this summary judgment record plaintiffs cannot prove a) a similarity to other individuals or entities receiving more favorable treatment, or b) purposeful, invidious, intentional discrimination.

Count V. Plaintiffs allege that City officials improperly influenced the City Legal

Department to prosecute Shenanigan's liquor license. That allegation stands entirely unsupported by evidence in this summary judgment record. Defendants can be liable under section 1983 only if the government as an entity has adopted a custom or policy that causes a deprivation of a constitutional right. See Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 694 (1978). Plaintiffs have failed to produce evidence of such a custom or policy here.

The court grants defendants' motions for summary judgment (Docket #56, 58).

The Clerk of Court shall enter a judgment dismissing this lawsuit with prejudice.

IT IS SO ORDERED.

Dated this 6th day of March, 2019.


CHARLES R. WOLLE, JUDGE
U.S. DISTRICT COURT