

STATE COURT Docket Watch®

SUMMER
2012

INSIDE

IOWA SUPREME COURT DEEPLY DIVIDED ON WHETHER THE IOWA CONSTITUTION CONTAINS A RIGHT TO EDUCATION

by Ryan Koopmans

In April, the Iowa Supreme Court rejected a plea to read a right to a “minimally sufficient” education into Iowa’s Constitution. The case, *King v. State*,¹ is noteworthy for that ruling alone—especially because education reform was at the top of the legislative agenda in Iowa this year. But the five separate opinions—totaling 163 pages—are about much more than education. Several issues surfaced in this case, chief among them constitutional interpretation and the role of the judiciary. The justices also wrangled over how to apply the rational-basis test, issue preservation, and the pleading requirements applicable to a motion to dismiss. The case also highlights the split among the justices that formed when Justices Waterman, Mansfield, and Zager joined the court after the 2010 retention election.

I. The Decision

The plaintiffs—several students and their parents—sued the State, the Department of Education, and Iowa’s former Governor, Chet Culver, in 2008, claiming that they weren’t doing enough to serve Iowa’s largest and smallest school districts. The plaintiffs didn’t claim that the

schools were underfunded; rather, they faulted the defendants for giving too much control to the local school districts and for not implementing statewide academic standards. As a result, the plaintiffs claimed that the defendants violated the education, equal protection, and due process clauses of the Iowa Constitution.

The district court dismissed the entire lawsuit, ruling that the claims were nonjusticiable political questions. The case was briefed and then argued in the Iowa Supreme Court in March 2010, and then reargued in June 2011 after Justices Waterman, Mansfield, and Zager joined the court.

By a 4-3 vote, the Iowa Supreme Court affirmed the dismissal of the lawsuit, although not on political question grounds. Justice Mansfield, joined by Chief Justice Cady and Justices Waterman and Zager, reached the lawsuit’s merits and held that the plaintiffs’ criticisms of the Iowa’s education policy, even if true, do not amount to a violation of Iowa’s education clause. The majority also ruled

... continued page 7

NEW JERSEY SUPREME COURT RULES HOMEOWNERS’ ASSOCIATION’S SIGN RESTRICTION ON THE INTERIOR OF A UNIT IS UNCONSTITUTIONAL

by Jaime K. Fraser

On June 13, 2012, the Supreme Court of New Jersey affirmed the appellate division’s ruling and found that the sign restrictions adopted by Mazdabrook Commons Homeowners’ Association (“Association”) violate the free speech clause of the state constitution.¹ In *Mazdabrook Commons Homeowners’ Ass’n v. Khan*² (“*Mazdabrook*”), the court held that a homeowner’s free-speech right to post political signs in his home outweighed the private property interest of a homeowners’

... continued page 9

Pennsylvania Supreme Court Excludes *Any Exposure Theory* in Asbestos and Toxic-Tort Litigation

Texas Supreme Court Rules in Favor of Private-Property Owners in Case on Public Access to Beaches

Supreme Court Reaffirms Its Holding from *Citizens United*

such as our own precedent, is highly relevant. But there are risks when we draw on political history as source material for judicial decisionmaking. One risk is that we may unwittingly diminish the importance of more relevant historical events, such as the ratification debates on the Iowa Constitution, by submerging them in other political history that has only background importance. Another risk is that political trends might then be used to justify the outcome in a particular case. It is not surprising to us that Iowa's governors have believed education to be a critical responsibility of government. But demonstrating that education has been a vital concern of the political branches of government does not answer the present question whether this particular case ought to proceed through the judicial branch.

Justice Waterman also criticized Justice Appel's "wide-ranging survey of authorities," noting specifically that he "fail[s] to see how a 1948 UN Declaration helps our court ascertain the intent of the framers of the Iowa Constitution ratified ninety years earlier." That comment, in turn, drew a response from Justice Appel. He noted that several U.S. Supreme Court Justices have relied on foreign law in their decisions, that many of our nation's founders were influenced by a broad array of foreign sources, and that "the University of Iowa College of Law has a program in international and comparative law" that "provides an essential theoretical foundation for all lawyers by affording unique insight into the nature of law and legal process."

For his part, Chief Justice Cady joined Justice Mansfield's opinion in full, but he also wrote that Justice Appel had "captured the rich history of [education] in Iowa and has provided insight into its constitutional stature." That the Chief Justice would be more willing to consider modern-day events is consistent with his theory that Iowa's Constitution is a "living document" that changes "with the increasing knowledge and understanding of the world."² Nonetheless Chief Justice Cady concluded that the allegations of this case, even if true, did not state a claim under the right to education—assuming there is one. And so he was "content to wait for a different case" in which to explore Justice Appel's historical account.

* *Ryan Koopmans is an attorney at Nyemaster Goode, P.C. in Des Moines, Iowa. He is also the principal author of On Brief, a blog focused on appellate litigation in Iowa.*

Endnotes

- 1 King v. State, 2012 WL 13366597 (Iowa Apr. 20, 2012).
- 2 The Hon. Mark Cady, *Iowa View: Why the Iowa Constitution is a 'Living' Document*, DES MOINES REGISTER, Apr. 15, 2012.

NEW JERSEY SUPREME COURT RULES HOMEOWNERS' ASSOCIATION'S SIGN RESTRICTION ON THE INTERIOR OF A UNIT IS UNCONSTITUTIONAL

Continued from front cover...

association. The court found the restriction at issue—which had amounted to a near-complete ban on all residential signs—to be unreasonable and unconstitutional. However, the homeowners' associations can still adopt reasonable time, place, and manner restrictions, providing adequate alternative means of communication.³

Background and Procedural History

Wasim Khan ("Khan"), a Morris County homeowner within the Association, was sued by the Association for failure to pay his maintenance fees and fines incurred from his planting a rosebush against his home. Khan filed a counterclaim alleging, among other things, that his right to free speech had been violated by the Association's prohibition of all window signs except for one "For Sale" sign. Kahn was running for Parsippany Town Council in 2005 and wanted to publicize his candidacy.

Section 12 of the Association's Public Offering Statement provides in pertinent part: "(k) No signs are permitted on the exterior or interior of any Unit, except for one 'For Sale' sign on the interior of a Unit." Article X(a)(vii) of the recorded Declaration of Covenants and Restrictions ("Declaration") provides: "No signs . . . shall be erected or installed in or upon any Building, the Common Facilities or any part thereof without the prior written consent of the Board."

The trial judge awarded the Association \$3500, comprised of \$2000 in unpaid assessment fees and \$1500 in fines for the over-height rosebush. The judge dismissed Khan's counterclaim about the sign prohibition in its entirety. Khan appealed, and the Association cross-appealed.

The appellate division reversed in part, finding that the Association's sign restriction was unconstitutional.⁴ The Association's sign restriction effectively eliminated "an entire means of expression without a readily available alternative."⁵

Supreme Court of New Jersey's Analysis

Following the Association's appeal, the supreme court reviewed the case with emphasis on Article I, Paragraph 6 of the New Jersey Constitution, which provides that no law shall restrict the freedom of speech. The freedom of speech can be "invoked against private entities 'because of the public use of their property.'"⁶ In *Mazdabrook*, the Supreme Court of New Jersey relied on precedent from three cases.

First, the court applied *State v. Schmid*, which created a three-pronged test determining the parameters of free-speech rights on privately owned property.⁷ *Schmid* requires courts to consider "(1) the nature, purposes, and primary use of such private property, generally, its 'normal' use, (2) the extent and nature of the public's invitation to use that property, and (3) the purpose of the expressional activity undertaken upon such property in relation to both the private and public use of the property."⁸ In *Schmid*, a non-student was arrested and convicted of trespass for entering the main campus of Princeton University without permission to distribute political materials. On appeal, the court found that the defendant's expressional activity was within the public and private uses of the campus.⁹ The court held that constitutional rights of speech may be enforced against private entities.¹⁰ Private-property owners may create and enforce "'reasonable rules to control' expressional rights on their property," and the "reasonableness of those rules would depend on whether 'convenient and feasible alternative means' to free expression existed."¹¹ Second, *New Jersey Coalition against War in the Middle East v. J.M.B. Realty Corp.*¹² applied the *Schmid* test to require regional shopping centers to permit leafleting on political and societal issues.¹³ The court in *Coalition* found that all three factors in the *Schmid* test favored the plaintiff's expressional rights over the defendants' private property rights and decided the case on the basis of a "general balancing of expressional rights and private property rights."¹⁴ Third, *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*¹⁵ upheld sign restrictions that permitted homeowners to place only one sign in the window of their home and one sign in a flowerbed adjacent to their home. In *Twin Rivers*, the association was a common-interest

community, and the residential property served private purposes. The association did not invite people to use the property commercially, as seen with the shopping centers in *Coalition*. The sign restriction in *Twin Rivers* was to "avoid the clutter of signs" and preserve the uniformity and "aesthetic value of the common areas."¹⁶ The court found these reasons to be legitimate interests of a community association. However, the key in *Twin Rivers* was that the association did not completely prohibit the owners from posting signs; it only limited the number and location of signs.

The third factor in *Schmid* requires the court to consider the "fairness of the restrictions imposed . . . in relation to the plaintiffs' free speech rights."¹⁷ The private property interest in *Twin Rivers* was stronger than the interests asserted in *Schmid* and *Coalition* because the association in *Twin Rivers* had not invited the public onto its property.¹⁸

The Supreme Court of New Jersey held that Khan's rights prevailed when balancing (a) the Association's private-property owner's interest, (b) Khan's private-property owner's interest, and (c) Khan's free-speech right. First, the primary use of the property in question is residential, which would normally favor the Association. However, the residence is owned by Khan, and the use concerns what he does inside his own home. Therefore, this factor weighed in Khan's favor.¹⁹ Second, the private property is accessible to the public, but the public is not invited, as in *Schmid* and *Coalition*. However, this is less relevant in *Mazdabrook* because Khan is an owner. As such, the second factor in the *Schmid* test favors Khan because the near-absolute restriction on signs inside one's own home is overly restrictive.²⁰ Third, the purpose of the expressional activity must be weighed against the Association's property interest in uniformity and aesthetic appearance. The exclusion of all but "For Sale" signs constitutes a major restriction on Khan's expressional rights, yet there is only minimal interference with the Association's property or common areas.²¹ It would not be fair or reasonable to uphold the Association's restrictions, especially in an owner's home. Therefore, Khan's free-speech right in his own home outweighed the Association's property interests.²²

The supreme court noted that the Association has the power to adopt reasonable time, place, and manner restrictions to serve the community's legitimate interests.²³ The court also noted that an association may reasonably limit the number, location, and size of signs.²⁴ However, *Mazdabrook* banned all signs, except one "For Sale" sign,

without the prior written consent of the Board. The Association's board had not adopted any written criteria to guide its unilateral decision-making process.²⁵ Therefore, the clause "without the prior written consent of the Board" does not provide Khan with a reasonable alternative.²⁶ The court also found the Association's restriction unreasonable because it prohibited too much speech, not solely because it had content-based discrimination.²⁷ Courts must consider whether "convenient, feasible, alternative means" of substantially the same expressional activity exist for the individual whose rights may be restricted on private property.²⁸ The dissent in the appellate division agreed with the Association that there were other readily available alternatives for Khan to speak about his political candidacy, i.e. mailing information, distributing leaflets, or going door-to-door.²⁹ However, the supreme court disagreed because these other alternatives require more time and money.³⁰ The court was not persuaded that Khan's alternatives were substantially similar or adequate.³¹

The court also disagreed with the argument that Khan had waived his constitutional right when he purchased a unit in the homeowners' association because "waivers must be knowing, intelligent, and voluntary."³² The court found that Khan may have knowingly waived his right to post signs at various locations, but he did not knowingly waive his right to free speech and expression.³³ The court discussed that "restrictive covenants that unreasonably restrict speech . . . may be declared unenforceable as a matter of public policy."³⁴ Therefore, there was no waiver or adequate substitute for the restriction imposed on Khan's free speech.

Case Significance

Many homeowners' associations in New Jersey have sign restrictions, and the *Mazdabrook* ruling gave homeowners more rights and protections against these associations. However, this case was limited to signs posted on windows and doors; the decision did not address whether signs may be posted on lawns. Court watchers anticipate that there will likely be future cases where homeowners seek to expand the ruling of the court in *Mazdabrook*.

New Jersey is one of the leading states in the country pioneering the laws in community associations. Other states may apply *Mazdabrook* to community-association cases that appear before them.

**Jaime K. Fraser, Esq. is an attorney licensed in New Jersey and Pennsylvania, where she focuses almost exclusively on community association law, particularly collections and*

construction defect litigation. A New Jersey native, Ms. Fraser graduated from Rutgers-Camden Law School in 2009. While in law school, Jaime was a law clerk in John McCain's presidential campaign and National Coordinator of Law Students for McCain.

Endnotes

1 *Mazdabrook Commons Homeowners' Ass'n v. Khan*, 2012 N.J. LEXIS 668 (N.J. June 13, 2012).

2 *Id.*

3 The Court noted that the ban on political signs was not content-based discrimination because the restriction constituted almost a total ban on all signs despite content.

4 The Appellate Division also reversed the rosebush fines due to a procedural notice error.

5 *Mazdabrook Commons Homeowners' Ass'n v. Khan*, 2010 N.J. Super. Unpub. LEXIS 2170, 27-29.

6 *Mazdabrook*, 2012 N.J. Unpub. LEXIS 668 (citing *State v. Schmid*, 84 N.J. 535, 560 (1980)).

7 *State v. Schmid*, 84 N.J. 535 (1980).

8 *Mazdabrook Commons Homeowners' Ass'n v. Khan*, 2012 N.J. Super. Unpub. LEXIS 668, at 24 (citing *State v. Schmid*, 84 N.J. 535, 563 (1980)).

9 *Schmid*, 84 N.J. at 564-65.

10 *Id.* at 563-65.

11 *Mazdabrook*, 2012 N.J. LEXIS 668, at 25 (citing *Schmid*, 84 N.J. at 563, 67).

12 138 N.J. 326 (1994).

13 *Id.*

14 *Mazdabrook*, 2012 N.J. LEXIS 668, at 26-27 (citing *Coalition*, 138 N.J. at 362-65).

15 192 N.J. 344 (2007).

16 *Mazdabrook*, 2012 N.J. LEXIS 668, at 25 (citing *Twin Rivers*, 192 N.J. at 351).

17 *Mazdabrook*, 2012 N.J. LEXIS 668, at 29 (citing *Twin Rivers*, 192 N.J. at 366-67).

18 *Id.*

19 *Mazdabrook*, 2012 N.J. LEXIS 668, at 30-31.

20 *Id.* at 31-32.

21 *Id.* at 36.

22 *Id.* at 40.

23 *Id.* at 37.

24 *Id.*

25 *Id.*

26 *Id.*

27 *Mazdabrook*, 2012 N.J. LEXIS 668, at 42.

- 28 *Id.* at 38 (citing *Twin Rivers*, 192 N.J. at 358-59).
- 29 *Mazdabrook Commons Homeowners' Ass'n v. Khan*, 2010 N.J. Super. Unpub. LEXIS 2170, at 43-44.
- 30 *Mazdabrook*, 2012 N.J. LEXIS 668, at 38-39.
- 31 *Id.*
- 32 *Id.* at 43.
- 33 *Id.* at 43-44.
- 34 *Id.* at 47 (citing *Twin Rivers*, 192 N.J. 371).